



### **Request for Authority for Yonge-Dundas Board of Management to enter into Extension of Outdoor Advertising Contract between the City of Toronto and Clear Channel Outdoor for an Additional One (1) Year Period**

<b>Date:</b>	April 25, 2016
<b>To:</b>	Government Management Committee
<b>From:</b>	General Manager, Yonge-Dundas Square
<b>Wards:</b>	27
<b>Reference Number:</b>	

#### **SUMMARY**

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The purpose of this report is to recommend that City Council authorize the Yonge-Dundas Square Board of Management ("Board") to execute an amending agreement to the existing outdoor advertising agreement ("Existing Agreement") between the City of Toronto and Clear Channel Outdoor (CCO) which will extend the term of the Existing Agreement for a one (1) year period and permit CCO to replace, subject to all applicable legal requirements, the existing LED displays conditional upon CCO increasing its funding commitment from 40% to 45% of net advertising revenue.

#### **RECOMMENDATIONS**

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**The General Manager, Yonge-Dundas Square recommends that:**

1. City Council authorize the Yonge-Dundas Square Board of Management to execute an amending agreement on behalf of the City of Toronto to extend the existing contract between the City of Toronto and Clear Channel Outdoor (CCO) for an additional one-year period, concluding on June 30, 2017, such amendment to allow

CCO to replace the two existing LED advertising signage units with two new units of similar dimensions, and increasing the funding commitment from CCO from 40% to 45% of net advertising revenue and subject to such other terms and conditions recommended by the General Manager of Economic Development and Culture and City Solicitor.

## **Financial Impact**

The contract with CCO provides the City with the greater of 40% of gross revenues (net of agency commission), or \$75,000. In 2015, the City received \$211,000 in revenue under the Existing Agreement. These revenues are an important contribution to the annual operating revenues for Yonge-Dundas Square. Extension of the Existing Agreement will allow the City to continue to receive the revenues utilized by Yonge-Dundas Square until the Yonge-Dundas Square Board of Management completes its procurement process for a new multi-year signage opportunity. In exchange for this extension, CCO has agreed to make improvements to the signs and increase its guaranteed minimum from 40% to 45% of net advertising revenue. The Board will also receive benefit from the value of newly upgraded sign at the end of the extended contract.

Amending the Existing Agreement would extend the term of a revenue sharing agreement with the City of Toronto. Under section 771-8K, of Municipal Code, Chapter 771, Taxation, Third Party Sign Tax, no tax is payable by an owner entered into a revenue sharing agreement with the City of Toronto during the term of the revenue sharing agreement with the City of Toronto. The sign owner of a Class V sign under Chapter 771, if not exempted under section 771-8, is subject to an annual tax of \$25,478.27 for the 2016 taxation year. The impacts of the structure of the Existing Agreement on the administration of Chapter 771 have been considered and are incorporated into the proposed increase in revenues paid from 40% to 45% of net advertising revenue contained in the proposed amending agreement.

The Deputy City Manager & Chief Financial Officer has reviewed this report and concurs with the financial impact statement.

## **DECISION HISTORY**

At its meeting of July 22, 23, 24, 2003, City Council authorized Yonge-Dundas Square Board of Management to execute on behalf of the City of Toronto a 10-year agreement with Eller Media Company Canada carrying on business as Clear Channel Outdoor, to design, supply, install, maintain, and operate an advertising sign at Yonge Dundas Square.

<http://www.toronto.ca/legdocs/2003/agendas/council/cc030722/pof8rpt/cl025.pdf>

At its meeting of June 22, 23 and 24, 2004, City Council amended Municipal Code Chapter 636, Public Squares, to delegate certain authorities to the Yonge-Dundas Square Board of Management to enter into agreements on its own behalf concerning vending, sponsorship and advertising agreements, without the need for Council authority.

<http://www.toronto.ca/legdocs/2004/agendas/council/cc040622/cofa.pdf>

At its meeting of February 23, 24 and 25, 2009, City Council authorized Yonge-Dundas Square Board of Management to execute on behalf of the City an amending agreement to the existing agreement, extending the agreement to 2016 in exchange for CCO replacing the two existing sign faces and increasing the minimum annual guaranteed payment during the additional two years of the agreement from 30 to 40 percent of net advertising revenue, or \$75,000, whichever is greater.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2009.TE23.3>

## **BACKGROUND**

Clear Channel Outdoor (CCO) has maintained and operated outdoor advertising signage at Yonge-Dundas Square under an agreement with City of Toronto since 2003. In 2005, Eller Media Company Canada amalgamated with Clear Channel Outdoor Company Canada 11, Atrium Media Tower Company, and Adshel Canada Inc. to form Clear Channel Outdoor Company Canada. The 2009 amendments to the Existing Agreement reflected these changes in corporate structure, as well as addressing other developments.

The Existing Agreement predates the current provisions of Chapter 636, Public Squares concerning the authority of Yonge-Dundas Square to directly enter into vending, sponsorship and advertising agreements on its own behalf. Additionally, the Existing Agreement was negotiated prior to the implementation of Chapter 771, and the variety of exemptions for certain Owners of signs implemented thereunder.

The Existing Agreement with CCO, as amended in 2009, provides the City of Toronto with either a guaranteed minimum payment or a portion of the net advertising revenues generated by the signs. The Existing Agreement is between the City of Toronto and CCO, under which payments are provided to the City as portion or share of the revenues generated by the sign. Amending the Existing Agreement would extend the term of a revenue sharing agreement with the City of Toronto. Under Chapter 771, an Owner, as defined, is exempted from payment of the City's "third party sign tax" for a sign that is the subject of a revenue sharing agreement with the City of Toronto during the term of the agreement. No such provisions exist to exempt an Owner from the payment of tax where the owner has entered into a revenue sharing agreement directly with a local board, such as the Yonge-Dundas Square Board of Management. The increases in the percentage of net advertising revenues paid under the 2009 amendment to the Existing Agreement addressed the particular tax implications of the particular structure of the Existing Agreement under Chapter 771.

## **COMMENTS**

The Existing Agreement between the City of Toronto and Clear Channel Outdoor (CCO) has now expired. Yonge-Dundas Square Board of Management is requesting the authority to execute, on behalf of the City, an amending agreement for the City's Existing Agreement with CCO to provide a one-year extension to the term.

The Existing Agreement with CCO, as amended in 2009, provides the City of Toronto with either a guaranteed minimum payment or a portion of the net advertising revenues generated by the signs. In 2015, the City of Toronto received \$211,000 from CCO under the existing Agreement. Under the terms of the Existing Agreement, the Yonge-Dundas Square Board of Management is responsible, on behalf of the City, to collect the revenues payable by CCO. The revenues collected by the City under the Existing Agreement are incorporated into the annual budget for Yonge-Dundas Square.

The Yonge-Dundas Square Board of Management is currently undertaking a procurement process for a multi-year signage program. Any agreements issued with respect to the new multi-year signage program, will reflect the City's current taxation regime on Third-Party Signs, and the current authority of Yonge-Dundas Square Board of Management to directly entering into an agreement concerning advertising matters.

However, this procurement process will not be completed prior to the expiration of the City's Existing Agreement with CCO. Therefore, in order to ensure that the City may maintain its current revenue stream, the Yonge-Dundas Square Board of Management is seeking the authority to enter into a further amending agreement on behalf of the City to provide one-year extension to the Existing Agreement with CCO until such time as a new signage arrangement can be secured.

In exchange for this extension, CCO has agreed to replace the two existing LED advertising signage units with two technologically upgraded units of the similar size, and increase its funding commitment from 40% to 45% of net advertising revenue. Amending the Existing Agreement would extend the term of a revenue sharing agreement with the City of Toronto. The impacts of the structure of the Existing Agreement on the administration of Chapter 771 have been considered. The proposed increase in revenues paid from 40% to 45% of net advertising revenue, are projected to more than offset the revenues otherwise payable under Chapter 771.

The replacement of the two existing LED advertising signage units with two new units of identical dimensions, by CCO provides a further benefit to the City.

The Yonge-Dundas Square Board of Management, believes that the value of the repairs of the sign, provides a further benefit of approximately \$200,000.00 of improvements to the signage in Yonge-Dundas Square. Under the Existing Agreement, the City has the ability to purchase the sign, as repaired, at the conclusion of the term for \$1.00 plus any applicable taxes. The Board believes that due the relatively short time period between the repairs and the when this option to purchase becomes available, the competitive position of Yonge-Dundas Square Board of Management in the procurement process will be improved as the signage will be relatively much newer than the displays previously installed. Providing the Yonge-Dundas Square Board of Management the authority to further amend the Existing Agreement between CCO and the City for a further one-year term, will allow the City to continue receive revenues and refresh the electronic elements

of the signage at Yonge-Dundas Square, while a new signage arrangement is being procured.

## **CONTACT**

Taylor Rath  
General Manager, Yonge-Dundas Square  
Tel: 416-979-9960 ext. 115  
Fax: 416-979-8836  
E-mail: [taylor@ydsquare.ca](mailto:taylor@ydsquare.ca)

## **SIGNATURE**

Taylor Rath  
General Manager, Yonge-Dundas Square