ATTACHMENT 3 – Clarity's Notice of Appeal Enclosing Letter of Objection (February 3, 2017)

TORONTO

Application

Notice of Appeal

(Chapter 771 – Taxation, Third Party Sign Tax, ARTICLE X, City of Toronto Municipal Code)

City Clerk's Office
Administrator, Government Management Committee
10 West, Toronto City Hall
100 Queen Street West
Toronto, Ontario M5H 2N2

Date of Appeal (yyyy-mm-dd)
2017-02-03

Description of Re-assessment / Statement of Disallowance

Re-assessment (Invoice) Number / Statement of Disallowance Number		
1800040470 / No. 11-19-059-A - 2011 Taxation Year		
Sign Number: 19-059	Sign Location: 2 Strachan Avenue	Sign Class: CLASS V

Appellant Information

First Name	Last Name	Company Name (if applicable)
WILLIAM	MOORE	CLARITY OUTDOOR MEDIA INC.

Street Number	Street Name	Suite/Unit Number	Telephone Number
	RPO Cityside	PO Box 30104	

City/Town	Province	Postal Code	Mobile Number
MISSISSAUGA	ON	L4Z 0B9	

E-mail Address	Fax Number
wmoore@mandaville.com	

Contact Information for Appellant Representative (if applicable)

First Name	Last Name	Company Name (if applicable)
PATRICK	HARRINGTON	AIRD & BERLIS LLP

Street Number	Street Name	Suite/Unit Number	Telephone Number
181	BAY	1800	416-863-3424

City/Town	Province	Postal Code	Mobile Number
TORONTO	ON	M5J 2T9	

E-mail Address	Fax Number
pharrington@airdberlis.com	416-865-1515

Continue on next page

311 toronto at your service

Application

Notice of Appeal

Content of Appeal

Please clearly provide a statement of the allegations of fact and the provisions and reasons in Chapter 771, Taxation, Third Party Sign Tax, of the City of Toronto Municipal Code, that the person is submitting in support of this appeal (use additional pages if necessary and attach supporting documentation if necessary).

Please refer to covering letter of February 3, 2017.

Process

As provided for in §771-42, Service, of ARTICLE X of Chapter 771, Taxation, Third Party Sign Tax, of the City of Toronto Municipal Code, this Notice of Appeal is required to be served on the City Clerk of the City of Toronto, by registered mail, and on the Chief Building Official of the City of Toronto, by personal service or by registered mail, within 90 days from the day on which notice has been mailed to such person under §771-37 (Reconsideration of a Notice of Objection – Re-assessment or Statement of Disallowance).

As provided for in §771-40, Limitation, of ARTICLE X of Chapter 771, Taxation, Third Party Sign Tax, of the City of Toronto Municipal Code, this Notice of Appeal shall contain only those issues raised by the person in a Notice of Objection to the Re-assessment or the Statement of Disallowance being appealed.

Any personal information collected on, or in relation to this form is collected under the City of Toronto Act, 2006, S. 267(1), (4) and Article X of Ch. 771, Taxation, Third Party Sign Tax, of the City of Toronto Municipal Code. The information collected will be used for evaluating, and processing the appeal filed, contacting appellants in relation to the appeal, creating aggregate statistical reports and shall form and shall be maintained as part of the City Council and Committee records related to the appeal, and shall be a record that is available to the general public . Questions about this collection may be referred to the Supervisor, Sign By-law Unit, Toronto Building, 100 Queen Street West, Ground Floor East Tower, Toronto M5H 2N2, (416) 392-4113.

TORONTO

Application

Notice of Appeal

(Chapter 771 – Taxation, Third Party Sign Tax, ARTICLE X, City of Toronto Municipal Code)

City Clerk's Office
Administrator, Government Management Committee
10 West, Toronto City Hall
100 Queen Street West
Toronto, Ontario M5H 2N2

Date of Appeal (yyyy-mm-dd)
2017-02-03

Description of Re-assessment / Statement of Disallowance

Re-assessment (Invoice) Number / Statement of Disallowance Number		
1800056125 / No. 12-19-059-B - 2012 Taxation Year		
Sign Number: 19-059	Sign Location: 2 Strachan Avenue	Sign Class: CLASS V

Appellant Information

First Name	Last Name		Company Name (if applicable)
WILLIAM	MOORE		CLARITY OUTDOOR MEDIA INC.
Street Number	Street Name: RPO Cityside	Suite/Unit Number: PO Box 30104	Telephone Number
City/Town: MISSISSAUGA	Province: ON	Postal Code: L4Z 0B9	Mobile Number
E-mail Address: wmoore@mandaville.com			Fax Number

Contact Information for Appellant Representative (if applicable)

First Name	Last Name		Company Name (if applicable)
PATRICK	HARRINGTON		AIRD & BERLIS LLP
Street Number: 181	Street Name: BAY	Suite/Unit Number: 1800	Telephone Number: 416-863-3424
City/Town: TORONTO	Province: ON	Postal Code: M5J 2T9	Mobile Number
E-mail Address: pharrington@airdberlis.com			Fax Number: 416-865-1515

Continue on next page

311 Toronto at your service

Application

Notice of Appeal

Content of Appeal

Please clearly provide a statement of the allegations of fact and the provisions and reasons in Chapter 771, Taxation, Third Party Sign Tax, of the City of Toronto Municipal Code, that the person is submitting in support of this appeal (use additional pages if necessary and attach supporting documentation if necessary).

Please refer to covering letter of February 3, 2017.

Process

As provided for in §771-42, Service, of ARTICLE X of Chapter 771, Taxation, Third Party Sign Tax, of the City of Toronto Municipal Code, this Notice of Appeal is required to be served on the City Clerk of the City of Toronto, by registered mail, and on the Chief Building Official of the City of Toronto, by personal service or by registered mail, within 90 days from the day on which notice has been mailed to such person under §771-37 (Reconsideration of a Notice of Objection – Re-assessment or Statement of Disallowance).

As provided for in §771-40, Limitation, of ARTICLE X of Chapter 771, Taxation, Third Party Sign Tax, of the City of Toronto Municipal Code, this Notice of Appeal shall contain only those issues raised by the person in a Notice of Objection to the Re-assessment or the Statement of Disallowance being appealed.

Any personal information collected on, or in relation to this form is collected under the City of Toronto Act, 2006, S. 267(1), (4) and Article X of Ch. 771, Taxation, Third Party Sign Tax, of the City of Toronto Municipal Code. The information collected will be used for evaluating, and processing the appeal filed, contacting appellants in relation to the appeal, creating aggregate statistical reports and shall form and shall be maintained as part of the City Council and Committee records related to the appeal, and shall be a record that is available to the general public . Questions about this collection may be referred to the Supervisor, Sign By-law Unit, Toronto Building, 100 Queen Street West, Ground Floor East Tower, Toronto M5H 2N2, (416) 392-4113.

17-0100 2017-02

TORONTO

Application

Notice of Appeal

(Chapter 771 – Taxation, Third Party Sign Tax, ARTICLE X, City of Toronto Municipal Code)

City Clerk's Office
Administrator, Government Management Committee
10 West, Toronto City Hall
100 Queen Street West
Toronto, Ontario M5H 2N2

Date of Appeal (yyyy-mm-dd)
2017-02-03

Description of Re-assessment / Statement of Disallowance

Re-assessment (Invoice) Number / Statement of Disallowance Number		
1800014318 / No. 13-19-059-C - 2013 Taxation Year		
Sign Number: 19-059	Sign Location: 2 Strachan Avenue	Sign Class: CLASS V

Appellant Information

First Name	Last Name	Company Name (if applicable)
WILLIAM	MOORE	CLARITY OUTDOOR MEDIA INC.

Street Number	Street Name	Suite/Unit Number	Telephone Number
	RPO Cityside	PO Box 30104	

City/Town	Province	Postal Code	Mobile Number
MISSISSAUGA	ON	L4Z 0B9	

E-mail Address	Fax Number
wmoore@mandaville.com	

Contact Information for Appellant Representative (if applicable)

First Name	Last Name	Company Name (if applicable)
PATRICK	HARRINGTON	AIRD & BERLIS LLP

Street Number	Street Name	Suite/Unit Number	Telephone Number
181	BAY	1800	416-863-3424

City/Town	Province	Postal Code	Mobile Number
TORONTO	ON	M5J 2T9	

E-mail Address	Fax Number
pharrington@airdberlis.com	416-865-1515

Continue on next page

311 toronto at your service

Application

Notice of Appeal

Content of Appeal

Please clearly provide a statement of the allegations of fact and the provisions and reasons in Chapter 771, Taxation, Third Party Sign Tax, of the City of Toronto Municipal Code, that the person is submitting in support of this appeal (use additional pages if necessary and attach supporting documentation if necessary).

Please refer to covering letter of February 3, 2017.

Process

As provided for in §771-42, Service, of ARTICLE X of Chapter 771, Taxation, Third Party Sign Tax, of the City of Toronto Municipal Code, this Notice of Appeal is required to be served on the City Clerk of the City of Toronto, by registered mail, and on the Chief Building Official of the City of Toronto, by personal service or by registered mail, within 90 days from the day on which notice has been mailed to such person under §771-37 (Reconsideration of a Notice of Objection – Re-assessment or Statement of Disallowance).

As provided for in §771-40, Limitation, of ARTICLE X of Chapter 771, Taxation, Third Party Sign Tax, of the City of Toronto Municipal Code, this Notice of Appeal shall contain only those issues raised by the person in a Notice of Objection to the Re-assessment or the Statement of Disallowance being appealed.

Any personal information collected on, or in relation to this form is collected under the City of Toronto Act, 2006, S. 267(1), (4) and Article X of Ch. 771, Taxation, Third Party Sign Tax, of the City of Toronto Municipal Code. The information collected will be used for evaluating, and processing the appeal filed, contacting appellants in relation to the appeal, creating aggregate statistical reports and shall form and shall be maintained as part of the City Council and Committee records related to the appeal, and shall be a record that is available to the general public . Questions about this collection may be referred to the Supervisor, Sign By-law Unit, Toronto Building, 100 Queen Street West, Ground Floor East Tower, Toronto M5H 2N2, (416) 392-4113.

17-0100 2017-02

TORONTO

Application

Notice of Appeal

(Chapter 771 – Taxation, Third Party Sign Tax, ARTICLE X, City of Toronto Municipal Code)

City Clerk's Office
Administrator, Government Management Committee
10 West, Toronto City Hall
100 Queen Street West
Toronto, Ontario M5H 2N2

Date of Appeal (yyyy-mm-dd)
2017-02-03

Description of Re-assessment / Statement of Disallowance

Re-assessment (Invoice) Number / Statement of Disallowance Number		
1800011469 / No. 14-19-059-D - 2014 Taxation Year		
Sign Number: 19-059	Sign Location: 2 Strachan Avenue	Sign Class: CLASS V

Appellant Information

First Name	Last Name	Company Name (if applicable)
WILLIAM	MOORE	CLARITY OUTDOOR MEDIA INC.

Street Number	Street Name	Suite/Unit Number	Telephone Number
	RPO Cityside	PO Box 30104	

City/Town	Province	Postal Code	Mobile Number
MISSISSAUGA	ON	L4Z 0B9	

E-mail Address	Fax Number
wmoore@mandaville.com	

Contact Information for Appellant Representative (if applicable)

First Name	Last Name	Company Name (if applicable)
PATRICK	HARRINGTON	AIRD & BERLIS LLP

Street Number	Street Name	Suite/Unit Number	Telephone Number
181	BAY	1800	416-863-3424

City/Town	Province	Postal Code	Mobile Number
TORONTO	ON	M5J 2T9	

E-mail Address	Fax Number
pharrington@airdberlis.com	416-865-1515

Continue on next page

311
Toronto at your service

Application

Notice of Appeal

Content of Appeal

Please clearly provide a statement of the allegations of fact and the provisions and reasons in Chapter 771, Taxation, Third Party Sign Tax, of the City of Toronto Municipal Code, that the person is submitting in support of this appeal (use additional pages if necessary and attach supporting documentation if necessary).

Please refer to covering letter of February 3, 2017.

Process

As provided for in §771-42, Service, of ARTICLE X of Chapter 771, Taxation, Third Party Sign Tax, of the City of Toronto Municipal Code, this Notice of Appeal is required to be served on the City Clerk of the City of Toronto, by registered mail, and on the Chief Building Official of the City of Toronto, by personal service or by registered mail, within 90 days from the day on which notice has been mailed to such person under §771-37 (Reconsideration of a Notice of Objection – Re-assessment or Statement of Disallowance).

As provided for in §771-40, Limitation, of ARTICLE X of Chapter 771, Taxation, Third Party Sign Tax, of the City of Toronto Municipal Code, this Notice of Appeal shall contain only those issues raised by the person in a Notice of Objection to the Re-assessment or the Statement of Disallowance being appealed.

Any personal information collected on, or in relation to this form is collected under the City of Toronto Act, 2006, S. 267(1), (4) and Article X of Ch. 771, Taxation, Third Party Sign Tax, of the City of Toronto Municipal Code. The information collected will be used for evaluating, and processing the appeal filed, contacting appellants in relation to the appeal, creating aggregate statistical reports and shall form and shall be maintained as part of the City Council and Committee records related to the appeal, and shall be a record that is available to the general public . Questions about this collection may be referred to the Supervisor, Sign By-law Unit, Toronto Building, 100 Queen Street West, Ground Floor East Tower, Toronto M5H 2N2, (416) 392-4113.

17-0100 2017-02

AIRD & BERLIS LLP

Barristers and Solicitors

Patrick Harrington
Direct: 416.865.3424
E-mail: pharrington@airdberlis.com

February 3, 2017

File No. 118310

BY EMAIL AND HAND-DELIVERY

City Clerk
Government Management Committee
10th Floor, City Hall
100 Queen Street West
Toronto, ON M5H 2N2

Email: clerk@toronto.ca

Attention: Ulli S. Watkiss, City Clerk

Dear Ms. Watkiss:

Re: Notices of Appeal by Clarity Outdoor Media Inc.
Pursuant to § 771-38 of the Third Party Sign Tax By-law
Request for Refund Nos. 001-004; Sign I.D. No. 19-059 [2 Strachan Avenue]
Taxation Years 2011-2014

I act for Clarity Outdoor Media Inc. ("Clarity"). Pursuant to the City of Toronto's Third Party Sign Tax ("TPST") By-law, Clarity was the *Owner* of a *Third Party Sign* displayed at 2 Strachan Avenue (the "Strachan Sign") from July 1, 2010 to May 30, 2014.

On January 23, 2017, Clarity provided payment of the TPST principal that the City of Toronto (the "City") asserts is owing in respect of Clarity's operation of the Strachan Sign for the above-noted period. At the same time, Clarity requested a refund of this payment on grounds that Clarity was exempt from taxation pursuant to § 771-8K of the TPST By-law.

On January 25, 2017, the Chief Building Official ("CBO") issued Notices of Disallowance asserting that § 771-8K did not apply during Clarity's operation of the Strachan Sign during the relevant period.

Pursuant to § 771-38 of the TPST By-law, on January 30, 2017, Clarity filed a detailed Notice of Objection to the CBO's Notices of Disallowance (the "Objection"). On February 1, 2017, the CBO issued a decision on the Objection. The CBO declined to reconsider its position as outlined in the Notices of Disallowance.

Clarity maintains that the exemption provided by § 771-8K of the TPST By-law was applicable during Clarity's operation of the Strachan Sign. Pursuant to § 771-33 of the TPST By-law, Clarity hereby appeals the CBO's disallowance to City Council. The grounds for this appeal are outlined in Clarity's Objection as filed, a copy of which is attached to this Notice of Appeal.

It is noted that in the CBO's Notices of Disallowance (dated January 25 and February 1), the CBO relies on section 10 of the *City of Toronto Act, 2006* ("COTA") as providing the authority to differentiate within the TPST By-law between city boards and the City itself. With respect, this position is not tenable at law.

At common law, the Ex Place BOG is the City's agent for purposes of dealing with Exhibition Place. The City acknowledges that the Agreement could be enforceable against (or enforceable by) the City by virtue of the City's existing agency relationship with the Ex Place BOG.

COTA does not change the common law with respect to the agency relationship between the Ex Place BOG and the City. In fact, subsection 142(2) of COTA expressly confirms the common law by specifying that a city board is an agent of the City. This subsection contains no caveats and itself provides no powers to the City to disregard these agency relationships in certain circumstances.

By comparison, section 10 of COTA does contain a significant caveat:

> **Scope of by-laws generally**
>
> 10. (1) Without limiting the generality of section 6 and **except as otherwise provided**, a by-law under this Act may be general or specific in its application and may differentiate in any way and on any basis the City considers appropriate.
>
> **Exceptions**
>
> (2) Subsection (1) does not apply with respect to a by-law made under Part VII (Financial Administration), VIII (Finances), XI (Traditional Municipal Taxes), XII (Limits on Traditional Municipal Taxes), XIII (Collection of Traditional Municipal Taxes) or XIV (Sale of Land for Tax Arrears (Real Property Taxes)).

Subsection 10(1) states that the City may differentiate in its by-laws "except as otherwise provided". Note that Part X, under which the City passed the TPST By-law, is not included in the exceptions listed in subsection 10(2).

The limitation contemplated by subsection 10(1) is provided, in part, by subsection 11(1) of COTA, which says that a by-law cannot conflict with or frustrate the purpose of superior legislation. In this case, the superior legislation is COTA itself, which expressly states that a city board is an agent of the City. Subsection 10(1) accordingly does not give the City the authority to disregard its agency relationships through a by-law enacted under Part X of COTA. To do so would be directly contrary to subsection 11(1) of COTA.

The CBO also repeatedly asserts that if Council had intended to exempt city boards from taxation under the TPST By-law, Council would have done so directly. With respect, this is backwards. Under common and statutory law, city boards are agents of the City. If Council wanted to differentiate between itself and its city boards, it must have done so directly. There is no such manifest differentiation in the TPST By-law. The separate references to "The City of Toronto" in § 771-8I and "local boards" (which are not statutory agents of the City) in § 771-8J certainly are not direct indications of a Council intention to exclude revenue sharing agreements with the City's agents for purposes of § 771-8K.

Pursuant to § 771-39, the power to hold a hearing in respect of this appeal is delegated to the City's Government Management Committee. We ask that this appeal be heard at the Committee's next meeting, which is scheduled for February 21, 2017.

Yours truly,

AIRD & BERLIS LLP

Patrick J. Harrington

PJH/np

cc. Clarity Outdoor Media Inc.
N. Brown, City of Toronto Legal Services
R. Bader, City of Toronto Sign By-law Unit
M. Angelucci, City of Toronto Buildings

28386490.3

AIRD & BERLIS LLP
Barristers and Solicitors

Patrick Harrington
Direct: 416.865.3424
E-mail: pharrington@airdberlis.com

January 30, 2017

File No. 118310

BY EMAIL

Mario Angelucci
Chief Building Official and Executive Director (Acting)
Toronto Building
Ground Floor, East Tower
100 Queen Street West
Toronto, ON M5H 2N2

Dear Mr. Angelucci:

Re: Notices of Objection by Clarity Outdoor Media Inc.
Pursuant to § 771-33 of the Third Party Sign Tax By-law
Request for Refund Nos. 001-004; Sign I.D. No. 19-059 [2 Strachan Avenue]
Taxation Years 2011-2014

As you are aware, I act for Clarity Outdoor Media Inc. ("Clarity"). Pursuant to the City of Toronto's Third Party Sign Tax ("TPST") By-law, Clarity was the *Owner* of a *Third Party Sign* displayed at 2 Strachan Avenue (the "Strachan Sign") from July 1, 2010 to May 30, 2014.

On January 23, 2017, Clarity provided payment of the TPST principal that the City of Toronto (the "City") asserts is owing in respect of Clarity's operation of the Strachan Sign for the above-noted period. At the same time, Clarity requested a refund of this payment on grounds that Clarity was exempt from taxation pursuant to § 771-8K of the TPST By-law.

On January 25, 2017, the Chief Building Official ("CBO") issued Notices of Disallowance asserting that § 771-8K did not apply to Clarity during Clarity's operation of the Strachan Sign. Pursuant to § 771-33, please accept this letter and the attached forms as Clarity's Notices of Objection to the City's Notices of Disallowance.

For the reasons that follow (collectively, the "Objection"), Clarity asserts that § 771-8K did apply during the period that Clarity was the *Owner* of the Strachan Sign.

Background Facts

2 Strachan Avenue is located within the southwest quadrant of Strachan Avenue and the Gardiner Expressway. These lands are owned by the City and comprise part of Exhibition Place. The operation of Exhibition Place is delegated to the Board of Governors of Exhibition Place (the "Ex Place BOG").

In 2009, the City of Toronto issued a Request for Proposals (RFP No. 0801-09-7106) calling for a qualified outdoor billboard operator to operate a large, multi-format third party ground sign at 2 Strachan Avenue. Clarity was the successful bidder. Clarity entered into a licence agreement with the Ex Place BOG effective July 1, 2010. The term of the licence agreement was 15 years. The licence agreement was presented to and finally approved by City Council on August 25, 2010.

Elements of Exemption Provided by § 771-8K

(i) No tax is payable by an owner…

In the first paragraph on page 1 of the Notices of Disallowance, the CBO confirms that it is "not disputed that Clarity was the owner as defined by Chapter 771 ("Sign Owner") of the third party ground sign at 2 Strachan Avenue for the taxation year[s] at issue."

Clarity was eligible for an exemption under § 771-8 as the Strachan Sign's "owner" during the relevant period.

(ii) Revenue Sharing Agreement

In the first paragraph on page 2 of the Notices of Disallowance, the CBO confirms that "a revenue sharing agreement dated July 1, 2010 (the "Agreement") was entered into between Clarity and the Ex Place BOG in respect of the [Strachan] Sign."

Clarity had entered into a "revenue sharing agreement", the term of which covered the period when Clarity was the "owner" of the Strachan Sign.

(iii) …with the City of Toronto

The position of the CBO, as expressed through the Notices of Disallowance, is that the Agreement was not with the City of Toronto. While the CBO acknowledges that the Ex Place BOG is a statutory agent of the City, the CBO's interpretation of § 771-8 is that it differentiates between the "City of Toronto" and other City-related entities, such as its "local boards" (see § 771-8J).

Clarity disagrees with the CBO's position and provides the following submissions for consideration as part of this Objection:

1. Difference Between "Local Boards" and "City Boards"

Throughout the Notices of Disallowance, the CBO makes reference to the Ex Place BOG being a "local board" of the City. While this is accurate, it does not form the basis of Clarity's refund request. Clarity is not asserting that § 771-8K applies because the Ex Place BOG is a local board. Clarity is asserting that § 771-8K because the Ex Place BOG is a city board.

While all "city boards" are deemed to be "local boards" pursuant to subsection 142(3) of the *City of Toronto Act, 2006* ("COTA"), the reverse is not true. COTA identifies a select number of "city boards" that include the Ex Place BOG, the TTC, the Toronto Zoo, and several other entities that exist to manage the assets and/or provide services on behalf of the City. More importantly, pursuant to subsection 142(2) of COTA, only "city boards" are agents of the City. Local boards are not agents of the City.

Applying the foregoing to § 771-8, it is entirely consistent that "local boards" and "the City of Toronto" are identified separately as "owners" that are potentially exempt from TPST. However, there is nothing in § 771-2 (Definitions), § 771-8 (Exemptions), or any other section of the TPST By-law that purports to define or identify the City of Toronto as not inclusive of its city boards.

2. *The Ex Place BOG Exists to Manage Ex Place on Behalf of the City*

According to subsection 407(1) of COTA, the purposes of the Ex Place BOG are the operation, management, and maintenance of Exhibition Place. These purposes are detailed in the City's Exhibition Place Governance By-law (Chapter 63 to the Toronto Municipal Code) and the Relationship Framework between the City and the Ex Place BOG (updated February 4, 2015).

(a) Exhibition Place Governance By-law

The Exhibition Place Governance By-law confirms that the Ex Place BOG does not operate or manage the lands that comprise Exhibition Place on its own behalf, but on behalf of the City. Several sections of the by-law confirm this:

- § 63-2 states that all members of the Ex Place BOG are appointed by Council (including the Chair) and serve at the pleasure of Council. The City has the right to change the composition of the Ex Place BOG at any time.
- § 63-4A provides that the BOG's mandate is "the continued, long-term operation, management and maintenance of Exhibition Place as a strategic City asset on behalf of the City of Toronto."
- § 63-4B and 63-7F indicate that the City supports the Ex Place BOG by providing it with capital funding (with operating surpluses being payable to the City) and covering any deficits.
- § 63-4H provides that the Ex Place BOG has the authority to enter into any contracts in its own name, but only within the constraints of the City's by-laws and the Relationship Framework.
- § 63-6F states that any agreement between the Ex Place BOG and a third party related to the provision of services, leasing and/or licensing of buildings or lands in excess of four years must be approved by Council.[1]

[1] The Agreement was finally approved by City Council pursuant to this section on August 25, 2010.

The foregoing is consistent with the agency relationship between the Ex Place BOG and the City. The City owns the relevant asset, being Exhibition Place, and has created the Ex Place BOG to manage that asset on the City's behalf. This relationship is recognized by COTA as being one of agency, such that actions by the Ex Place BOG are in fact actions taken on behalf of the City. This is expressly true in the case of agreements lasting longer than four years, which explicitly require Council authorization. This authorization was provided in the case of the Agreement.

(b) Relationship Framework

The agent/principal relationship between the Ex Place BOG and the City is further detailed in the Relationship Framework, which repeats much of the Exhibition Place Governance By-law, in addition to providing additional operational and management details for the Ex Place BOG. Once again, several sections of the Relationship Framework confirm that the Ex Place BOG acts as agent on behalf of the City in dealing with Exhibition Place:

- The preamble confirms that the Ex Place BOG is continued under COTA as a "city board", that Exhibition Place is a significant asset of the City, and that the governance and management of Exhibition Place by the Ex Place BOG is subject to COTA and the Relationship Framework.

- Section 1.2.5 (Purpose of the Relationship Framework) states that one of the purposes of the Relationship Framework is to articulate Council's delegation of authority, expectations, and requirements to the Ex Place BOG.

- Section 1.3 (Legislative Framework) repeats that the Ex Place BOG is continued under COTA as a city board, a body corporate, an agent of the City, and a local board for all purposes.

- Section 2.2 (Rationale for a Board Providing the Service) confirms that the City has engaged the Ex Place BOG to manage Exhibition Place as an agent as opposed to the City directly managing the asset itself.

- Section 2.3.1 (Mandate of the Ex Place BOG) states that the Ex Place BOG reports to Council and is charged with "the continued, long term operation, management and maintenance of Exhibition Place <u>as a strategic City asset on behalf of the City of Toronto</u>." [emphasis added]

- Similar to the Exhibition Place Governance By-law,

    - section 2.3.2 indicates that the City supports the Ex Place BOG's mandate by providing capital funding and covering any operating deficit;

    - section 2.3.8 provides that the Ex Place BOG has authority to enter into any agreement in its own name, but only within the constraints of the City's by-laws and the Relationship Framework; and

- article 3G indicates that any agreement with a third party related to the provision of services, leasing and/or licensing of buildings or lands in excess of four years requires the approval of Council.

- Section 10.2.1 requires the Ex Place BOG to acknowledge in all public materials its relationship with the City and that the City provides support to the Board and Exhibition Place. This includes identifying that the Ex Place BOG is a board of the City.

- The Ex Place BOG is subject to the following accountability and transparency institutions and officials of the City: the Integrity Commissioner (section 12.1), the Ombudsman (section 12.2), the Lobbyist Registry (section 12.3), and the Auditor General (section 12.4).

In summary, when the Ex Place BOG enters into a revenue sharing agreement in respect of the use of land within Exhibition Place, the Ex Place BOG is doing so as the agent of the City in respect of Exhibition Place. This is particularly true of revenue sharing agreements lasting more than four years, which the Ex Place BOG lacks the delegated authority to enter into on its own – only Council may authorize such agreements. Accordingly, as confirmed by various sections of the Exhibition Place Governance By-law and the Relationship Framework, Clarity's revenue sharing agreement with the Ex Place BOG was an agreement with the City of Toronto. Section § 771-8K therefore applied to Clarity's operation of the Strachan Sign.

3. The CBO's Interpretation is Contrary to Statutory and Common Law

The Notices of Disallowance indicate that the CBO is reading § 771-8K in a manner that differentiates between the Ex Place BOG and the City.

First, there is no direct indication anywhere in the TPST By-law that such a differentiation is intended. The differentiation is being implied by the CBO by the presence of a separate reference to "local boards" and the absence of a reference to "city boards". If the City had intended to differentiate between the City and its statutory agents for purposes of a TPST exemption, such intention needed to be made manifest. Inferring such intention indirectly is an unreasonable reading of the TPST By-law.

Second, using the TPST By-law to separate the City from the Ex Place BOG is contrary to subsection 23(2) of COTA. While the City has delegated the control and management of Exhibition Place to the Ex Place BOG, the City may not by by-law remove the City's power to deal with Exhibition Place. The CBO's reading of § 771-8K attempts to disassociate the City from its powers over Exhibition Place, which powers include the sole authority to authorize four-year contracts like the Agreement.

Third, an interpretation of § 771-8K that disassociates the City from the Ex Place BOG is contrary to subsection 11(1) of COTA, which states that a city by-law is without effect to the extent of any conflict with a provincial Act. COTA is a provincial Act. It specifically states that the Ex Place BOG is an agent of the City for purposes of operating and managing Exhibition Place. The interpretation given to § 771-8K by the CBO would fail to

give effect to the express provisions of COTA by deeming the Ex Place BOG to not be the City's agent for purposes of the TPST By-law. This conflict is avoided if Clarity's interpretation is accepted.

Finally, there is ample jurisprudence concerning the law of agency to confirm that in executing the Agreement, the Ex Place BOG was acting on behalf of its principal, the City. When an agent acts with actual (or presumed) authority on behalf of a named or unnamed principle to make a contract with a third party, the resulting contract is between the third party and the principal.[2]

The Agreement states that it is an agreement between Clarity and "*The Board of Governors of Exhibition Place, a local board of the City of Toronto under the laws of Ontario*". This identification provides a clear indication that the Agreement was entered into by the Ex Place BOG acting on behalf of the City. This is further confirmed in the recitals and by section 1.3 of the Agreement, which both state that the Agreement is subject to approval by Council, failing which the Agreement is deemed null and void.

Various other provisions in the Agreement confirm that Clarity had direct obligations not only to the Ex Place BOG, but also to the City:

- Section 4.3.1(a) records that the City acknowledges receipt of a non-refundable deposit from Clarity toward the "Lump Sum" fee required under the Agreement.
- Section 5.1, required Clarity to provide free advertising on the Strachan Sign for the City and its agencies, boards and commissions.
- Section 11.1, required Clarity to fully indemnify the City in respect of claims arising under the Agreement.
- Under section 12, the City was to be a named insured under the liability, property, and builder's risk insurance policies that Clarity was obligated to have in place for the duration of the Agreement.
- Under section 17.1, the City was at liberty to discharge any construction liens against Exhibition Place lands and require Clarity to compensate the City for its reasonable costs of doing so.

The Agreement reads consistently with the proposition that the Ex Place BOG was entering into a revenue sharing agreement with a third party as part of its mandate to manage Exhibition Place as the City's agent. There is no indication in the Agreement that the agency relationship between the Ex Place BOG and the City was being altered or that the Ex Place BOG would be deemed to not be "the City of Toronto" for certain purposes. It is therefore untenable for the CBO to now take the position that the Agreement is with an entity other than "the City of Toronto" for purposes of § 771-8K.

[2] See Harvey, *Agency Law Primer*, 3rd ed. (Toronto: Carswell, 2003) at p. 77, cited with approval in *Forensic Support Services Inc. v. Out of the Cold Resource Centre Inc.*, 2007 CarswellOnt 391 (S.C.J) at para. 24.

In summary, the CBO's position that § 771-8K does not include a revenue sharing agreement signed by the Ex Place BOG acting on behalf of (and with the approval of) the City, is a position that is contrary to the intentions of COTA, the City's Exhibition Place Governance By-law, the Relationship Framework, and the common law of agency. By comparison, interpreting § 771-8K as including the Ex Place BOG in the context of the Agreement fully conforms with the intentions, purposes, and normal reading of each of the foregoing statutory, regulatory, and jurisprudential references.

* * * * *

For the foregoing reasons, Clarity asks that the CBO reconsider its Statements of Disallowance and grant the Refund requested. I look forward to the CBO's response.

Yours truly,

AIRD & BERLIS LLP

Patrick J. Harrington

PJH/np

cc. Clarity Outdoor Media Inc.
N. Brown, City of Toronto Legal Services
R. Bader, City of Toronto Sign By-law Unit

28325901.2