### CITY OF HAMILTON

**PUBLIC WORKS DEPARTMENT**  
*Transportation, Energy & Facilities Division*

| TO: | Chair and Members  
Public Works Committee |
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<td>WAR(S) AFFECTED:</td>
<td>CITY WIDE</td>
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<th>COMMITTEE DATE:</th>
<th>March 22, 2010</th>
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<tr>
<th>SUBJECT/REPORT NO:</th>
<th>Transit Shelter Advertising Agreement (TOE01061a) - (City Wide)</th>
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| SUBMITTED BY: | Gerry Davis, CMA  
General Manager  
Public Works Department |
|-----|---------------------|
| PREPARED BY: | Andy McLaughlin  
Supervisor of Planning  
(905) 546-2424, Extension 1809 |

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### RECOMMENDATION:

(a) That Staff be authorized to undertake negotiations with CBS Outdoor Advertising (CBS), respecting amendments to the existing transit shelter advertising agreement for the period 2011 to 2015 or longer, in a form acceptable to the General Manager of Public Works, Purchasing and Legal Services;

(b) That the General Manager of Public Works report back within sixty days with recommendations arising from the negotiations.

### EXECUTIVE SUMMARY

The purpose of this report is to seek Council’s authorization and direction to respond to notice from CBS of their intent to exercise their option to early termination of their contract with the City on December 31, 2010, (Appendix A), citing successive years of losses due to declining sales and rising maintenance costs, that have increased in order of magnitude since the onset of the recession.

Report TOE01061, dated January 1, 2001, authorized staff to enter into a fifteen year contract, for the period 2001 through 2015, with CBS for the exclusive rights to bus shelter advertising in exchange for a number of benefits to the City that included an initial up front payment of $733,000, a minimum annual guaranteed revenue that increased over the period of the agreement (in the amount of $325,000 in 2010), a guaranteed revenue bonus based on sales volume, an annual shelter refurbishment...
program, an annual capital expansion program, and repairs & maintenance of the City's entire bus shelter inventory.

The agreement allows for either the City or CBS to cancel the agreement on the 5th and 10th anniversaries, with 2010 being the 10th year of the contract.

To date, this agreement has been extraordinarily beneficial to the City of Hamilton. During the 2001 to 2010 period, the City has received a total of $3.0 million in annual guaranteed revenue which has been used to reduce the annual transit levy. Between 2001 and 2009, 266 advertising shelters have been replaced and 77 new expansion shelters have been added to the transit network bringing the total shelter inventory to 557. The total value of the contract to date in favour of the City has been in the order of $9 million.

While CBS state that they are no longer prepared to sustain annual losses, they have expressed an interest in negotiating an amended contract for the final five year period in the alternative to outright cancellation effective December 31, 2010.

Staff has had an opportunity to survey other municipalities and are able to confirm that bus advertising contract renewals in recent years have experienced dramatic declines in benefits to the municipality relative to historical experience. Also, there are very few advertising agencies with demonstrated history of success in the industry that are bidding on Requests for Proposals (RFP). For this reason, staff see little downside in attempting to renegotiate an amendment to the existing agreement on the understanding that the negotiations proceed in a timely fashion, so as to allow staff the alternative to conclude an RFP process before the end of the year in the event of failed negotiations. For this reason, staff is recommending a maximum 60-day period for negotiations and reporting back to Council.

Alternatives for Consideration - See Page 4

FINANCIAL / STAFFING / LEGAL IMPLICATIONS

Financial: No operating or capital budget impact in 2010.

Staffing: No Staffing implications.

Legal: Renegotiation of the current transit shelter advertising agreement will require involvement by Legal Services and Purchasing staff, along with their final sign-off on a series of satisfactory agreement amendments that will be required by the City of Hamilton.

HISTORICAL BACKGROUND

In June 2001 Committee of the Whole authorized the General Manager of Transportation, Operations and Environment, or his designate, to negotiate and enter into an amendment to the existing contract between the City of Hamilton and Mediacom Inc. (now CBS) regarding the sale of advertising on transit shelters and the replacement and maintenance of the bus shelter capital program. The agreement, acceptable to
Legal Services, was executed in February 2002 for a term starting January 1, 2001, and expiring on December 31, 2015. The City of Hamilton received a one time payment of $733,000 at the commencement of the agreement and annual guaranteed minimum revenue payments starting at $275,000 in 2001 and increasing by $50,000 in five year intervals to expected payments of $375,000 per year between 2011 and 2015. The City has received the 2010 guaranteed revenue payment of $325,000.

Between 2002 and 2006, CBS replaced 266 advertising shelters with new units and they are required to install fifteen new additional shelters per year between 2004 and 2015. CBS is responsible for satisfactory delivery of an on-going shelter maintenance program.

Contained within the agreement are clauses that permit early termination by either party in 2005 or 2010. CBS has served notice (Appendix A) that they intend to terminate the agreement on December 31, 2010.

The contract between the City and CBS compels CBS to report annual net revenue. Each year the City receives a letter from PricewaterhouseCoopers, Chartered Accountants. Reported net revenues since the beginning of the contract are provided below.

<table>
<thead>
<tr>
<th>Year</th>
<th>Net Revenue</th>
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<tbody>
<tr>
<td>2001</td>
<td>$1,097,458</td>
</tr>
<tr>
<td>2002</td>
<td>$802,759</td>
</tr>
<tr>
<td>2003</td>
<td>$1,004,838</td>
</tr>
<tr>
<td>2004</td>
<td>$793,281</td>
</tr>
<tr>
<td>2005</td>
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<td>2006</td>
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<tr>
<td>2007</td>
<td>$739,265</td>
</tr>
<tr>
<td>2008</td>
<td>$559,688</td>
</tr>
<tr>
<td>2009</td>
<td>$407,662</td>
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POLICY IMPLICATIONS

N/A

RELEVANT CONSULTATION

Finance & Corporate Services, Legal Services and Purchasing have been advised of the notice of agreement termination by CBS.

ANALYSIS / RATIONALE FOR RECOMMENDATION

In their notice of intent to terminate the Bus Shelter Advertising Agreement, CBS cites the unpredictability of economic and market conditions, resulting in soft advertising revenues, combined with a level of extreme transit shelter vandalism, with resulting maintenance costs exceeding those of all Canadian markets where this street
advertising contractor operates. CBS has concluded that the business plan upon which the existing transit shelter agreement with the City of Hamilton was modelled is no longer sustainable. CBS will no longer accept the remaining annual guaranteed revenue provisions of the current agreement and are also seeking exemption from the annual capital commitments that the agreement requires.

Given the risk and financial exposure faced by the City of Hamilton should the present transit shelter agreement be terminated and the fact that CBS is receptive to a renegotiation of the current agreement, staff is of the view that it is in the City of Hamilton’s best interests to enter into negotiations in order to seek a satisfactory amended agreement for the 2011 to 2015 period that results in a minimization of the City of Hamilton’s risk exposure, as appropriate under the present circumstances.

Should the recommendations contained within this report be approved, a second report will be brought forward detailing the results of the transit shelter agreement amendment negotiations, with appropriate recommendation(s), within sixty days.

**ALTERNATIVES FOR CONSIDERATION:**

Council could direct staff to proceed directly to an RFP for bus shelter advertising effective January 1, 2011.

CBS has also expressed a willingness to allow the contract to lapse on December 31, 2010, and negotiate contract terms and conditions for continuing on a month-to-month basis.

**CORPORATE STRATEGIC PLAN**


**Skilled, Innovative & Respectful Organization**

- Council and Senior Management Team are recognized for their leadership and integrity.

**Financial Sustainability**

- Delivery of municipal services and management capital assets/liabilities in a sustainable, innovative and cost effective manner.

**Healthy Community**

- Plan and manage the built environment.

**APPENDICES / SCHEDULES**

Appendix “A” to Report TOE01061a - Correspondence from CBS Outdoor
February 15, 2010

Hamilton Street Railway Company
2200 Upper James Street
Mount Hope, ON
L0R 1W0

Attention: Mr. Don Hull – Director of Transit

Re: Transit Shelter Agreement

Dear Sir:

2010 marks the tenth anniversary of a 15 year Transit Shelter Agreement which provides for CBS Outdoor and/or The City of Hamilton/HSR with the right to cancel the agreement subject to compliance with section 18 of the agreement entitled “Termination”.

During the past ten years CBS Outdoor has invested in excess of $9,000,000 dollars and has met all contractual obligations to date, comprised of $3,000,000 paid in cash guarantees, the supply and installation of over 300 new shelters including but not limited to the full replacement of all existing advertising shelters, city-wide cleaning, maintenance, concrete pad installation and repair, including hydro connection and consumption fees and shelter relocation services.

Regrettably, the business plan developed by a careful review of our market knowledge and regional experience have not met expectations, brought about in part by a number of unpredictable economic and market conditions realized during the term of agreement. Furthermore, excessive maintenance calls caused by numerous accidents and reports of broken glass resulting from increased reports of vandalism in the City has impacted greatly on the bottom line. Graffiti and acid etching in Hamilton is a frequent reality and is reoccurring at an alarming rate. CBS Outdoor has worked to assist the Mayor’s initiative to combat vandalism and we have also assisted local police when arrests resulting from acts of vandalism have been made. The level of vandalism and associated costs in Hamilton far exceeds our current experience when compared to any other Canadian market where CBS Outdoor operates.

CBS Outdoor has paid in advance the tenth annual guaranteed rental fee of $325,000 to cover the period ending December 31, 2010 however, it is now clear that the contract provisions for the period January 1, 2011 to December 31, 2015 will not be acceptable in ensuring a mutually beneficial arrangement. In the absence of further negotiation, CBS Outdoor will experience a hardship that will impact on our ability to deliver a high standard of service expected by the City and our advertising clients.
Since 1993 CBS Outdoor formerly Mediacom has enjoyed an excellent business relationship with the City and HSR staff. However, as permitted in the current agreement it is our intention to provide the City/HSR formal notification of cancellation of the agreement a minimum of 120 days in advance of the end of 2010. We remain interested and willing to participate in a further discussion with the City/HSR with the intention that a mutually beneficial renegotiated arrangement is possible to ensure and maintain ongoing convenience to the systems riding public through to the end of 2015.

I will be in contact to discuss this matter further within the next few business days.

Sincerely,

Darcy Clark
National Director, Transit Franchise

cc: Nick Araki, V.P. General Manager
    CBS Outdoor Canada