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**TO:** GENERAL COMMITTEE

**SUBJECT:** SCORE BOARD AGREEMENT – 555 BAYVIEW AVENUE

**WARD:** ALL

**PREPARED BY AND KEY CONTACT:** R. BELL, MANAGER, RECREATION FACILITIES EXT. 4452

**SUBMITTED BY:** B. ROTH, DIRECTOR OF RECREATION SERVICES

**GENERAL MANAGER APPROVAL:** D. MCALPINE, GENERAL MANAGER OF COMMUNITY AND CORPORATE SERVICES

**CHIEF ADMINISTRATIVE OFFICER APPROVAL:** M. PROWSE, CHIEF ADMINISTRATIVE OFFICER

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### **RECOMMENDED MOTION**

1. That the Mayor and Clerk be authorized to execute the Score Board Agreement with Horsepower Sports and Entertainment Group Inc., for the replacement of the centre ice score board in the arena located at 555 Bayview Ave, subject to the agreement conforming to the following:
  - a) The replacement of the centre ice score board/clock at 555 Bayview Avenue covering all aspects including but not limited to – contribution of the board/clock by Horsepower Sports and Entertainment Group Inc., installation, use by the City, repairs and maintenance, operation, term, renewal and fees generally in accordance with the agreement attached as Appendix “A” to Staff Report REC002-18;
  - b) The term of the agreement shall be for five years, with an option for an additional five years upon mutual consent and a further ten years at the sole discretion of the City of Barrie;
  - c) The City of Barrie shall contribute the cost of the electrical upgrade to the existing system, to allow for an increased power supply for the new board/clock, with an upset limit of \$30,000 dollars; and
  - d) The agreement shall contain any other terms and conditions deemed necessary by the General Manager of Community and Corporate Services, and the form of the agreement shall be prepared to the satisfaction of the Director of Legal Services.
2. That the Mayor and City Clerk be authorized to execute extensions of the agreement under the same general conditions.

### **PURPOSE & BACKGROUND**

#### **Report Overview**

3. The Horsepower Sports and Entertainment Group Inc. (HSE) contacted the City of Barrie with the generous offer to supply a new score board/clock over centre ice at 555 Bayview Avenue. The existing board/clock is 10 years old and is beginning to show signs of failure. A decision to repair or replace the score board/clock by the City would be averted with the offer from the HSE.

4. Negotiations were held to discuss a variety of topics that included:
- a) Increased power requirements;
  - b) Shared use of the new board/clock and the video board;
  - c) Project Management;
  - d) Installation criteria and permitting; and
  - e) Ongoing operation.

### **ANALYSIS**

5. A mutual agreement was reached where the City of Barrie would benefit from the new installation, by being able use the score board/clock for all regular rentals, as well as the complete video board, including the operator for 3 events each year. In addition, HSE's purchase of the board/clock would avoid the need for the City to undertake the score board/clock replacement that was included as a forecasted capital project item in 2023.
6. This agreement includes a power supply upgrade of a one-time cost of up to \$30,000 dollars for a transformer and line improvements, to meet the increased power requirements of the new score board. This cost would be borne by the City of Barrie.
7. The City of Barrie will continue to pay for the yearly cost of hydro for the operation of this new system.
8. The HSE will be responsible for all repairs and maintenance related to the operation of the score clock.
9. The responsibility for the score board repair costs and use have been always been challenging to navigate as a formal agreement had ever been prepared. This agreement would outline responsibilities and shared use of the score board/video screen as well as the financial responsibilities for the board/clock costing approximately \$300,000 dollars. This score board/clock will benefit all users of the facility and will be the centre piece of the arena.

### **ENVIRONMENTAL MATTERS**

10. There are no environmental matters related to the recommendation.

### **ALTERNATIVES**

11. The following alternatives are available for consideration by General Committee:

**Alternative #1** Leave the existing board/clock and repair damaged modules until the forecasted replacement in 2023.

This alternative was not recommended as the old board/clock would not meet the needs of the Horsepower Sports and Entertainment Group and the Barrie Colts. A new board/clock will allow for superior video displays, updated graphics and increased advertising possibilities.

**Alternative #2** General Committee could recommend that the score board/clock be accepted without a formal agreement.

This alternative is not recommended as it would not identify responsibilities of each party related to the installation, operation, repair and maintenance of the board/clock.

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**FINANCIAL**

12. The City of Barrie would contribute the costs associated with increase to the existing power supply to the score board/clock, to a maximum of \$30,000 dollars, funded from the current operating budget.

**LINKAGE TO 2014-2018 STRATEGIC PLAN**

13. The recommendation(s) included in this Staff Report support the following goals identified in the 2014-2018 Strategic Plan:
- Responsible Spending
  - Inclusive Community
14. The proposed agreement related to the replacement of the board/clock would allow for the City and users of the facility to benefit from an upgraded score board/clock and avoids the City funding this capital project in the near future. The proposed partnership with HSE provides an opportunity to work with a community partner to supply a better experience within one of the City's facilities. As the proposed agreement permits other users access to the time and scorekeeping function, it ensures that the score board/clock is usable by community groups and other users.

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**APPENDIX "A"**  
**Score Clock Agreement**

**AGREEMENT REGARDING  
CENTRE ICE SCORE BOARD - CITY OF BARRIE ARENA AT  
555 BAYVIEW AVENUE**

BETWEEN:

**THE CORPORATION OF THE CITY OF BARRIE**  
(the "City")

- AND -

**HORSEPOWER SPORTS AND ENTERTAINMENT GROUP INC.**

(the "User")

- FOR -

**THE INSTALLATION AND USE OF THE SCORE BOARD**

WHEREAS:

- A. The City and the User have collaborated on the supply and installation of a centre ice score board (the "Score Board") for the arena owned by the City at 555 Bayview Avenue, Barrie, ON (the "Arena");
- B. The Arena is owned and operated by the City;
- C. The City and the User desire to enter into an agreement for the initial term, commencing July 1, 2018, ending June 30<sup>th</sup> 2023, with an additional 5 year term upon mutual agreement, and an additional 10 year term at the sole discretion of the City of Barrie, with respect to the installation and use of the Score Board;
- D. The User has agreed to provide all financial contributions to the City for the Supply and Installation of the Score Board, except the cost for the upgrade of the electrical service which will be borne by the City to an upset limit of \$30,000 dollars;
- E. Alterations and Improvements; The City may, by written notice to the HSE Group upon the expiry of the Term or any earlier termination of this Agreement, require the removal at the expense of the User, of any or all of such partitions, improvements or alterations and the restoration of the Team Facilities to the same condition that they were in before any such partitions, improvements or alterations were made, erected or installed reasonable wear and tear excepted;

NOW THEREFORE, in consideration of the mutual covenants herein contained, the Parties agree as follows, intending the same to be legally binding:

**PART 1: GENERAL TERMS & CONDITIONS**

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**1. TERM**

- 1.1 The term of this Agreement shall be for a period commencing on the 1<sup>st</sup> day of June, 2018 and ending on the 31<sup>st</sup> day of May 2023, with an option to renew for 5 more years upon mutual agreement between the City of Barrie and the User, and another 10 years at the sole discretion of the City of Barrie.

1.2 If the User is not then in default of any material terms of this Agreement, the City may, at its sole option upon 60 (sixty) days written notice to the User prior to the end of the Term, extend or renew the Term of this Agreement for an additional term of ten (10) years.

## **2. SUPPLY AND INSTALLATION**

2.1 The City and the User agree the removal of the existing Score Board and the installation of a new scoreboard will be solely at the cost of the User. The City will supply up to \$30,000 dollars for the upgrade to the existing electrical service and continue to pay the yearly hydro costs for the Score Board.

2.2 The User will supply all installation packages and permit information for the Score Board to satisfy all regulatory requirements. Such installation packages, stamped drawings and permit information shall be to the satisfaction of the City.

2.3 The City will supply a project manager to control and guide all aspects of the project to ensure safe and proper installation of the Score Board in the City of Barrie facility.

2.4 The User will provide

2.4.1 Insurance, minimum \$2M per occurrence general liability (or more if required in the existing contract) with annual aggregate limit of no less than \$5M, with the City of Barrie as Named Insured. The User may wish be named as additionally insured

2.4.2 At the end of the project and prior to acceptance, operator / user training and maintenance requirements, and provision of relevant owner's operations / maintenance manuals

2.4.3 Approved structural drawings stamped by a structural engineer licensed to provide such certification in the province of Ontario.

2.4.4 The warranty provided on the equipment including any limitations;

2.4.5 Shop drawings for owner's General Conformance review including full specifications of the model to be provided including all agreed-upon options. The City's review and general acceptance does not absolve the supplier of meeting all regulatory and operability requirements necessary to ensure the new board functions as intended

2.5 All 'Hot Work' and electrical work performed by the User shall follow the City's Hot Work and No Live Work policies and procedures

2.6 The User shall ensure that all licenses required to operate equipment will be on site for inspection when required.

2.7 The timeframe for the installation of the Score Board shall be within the City's present schedule (from July 16 to 27<sup>th</sup>, 2018). Should the installation extend into August 2018 and cause interruption into any event rentals, the User will be responsible for any costs incurred to relocate that event, which includes but is not limited to loss of revenue, increased costs due to overtime or delays in installation of ice.

## **3. OPERATION OF THE SCORE BOARD**

3.1 The operation of the Score Board will be as outlined below;

3.1.1 The time and score option on the Score Board will be made available to the City for all rentals, and it must be able to be operated from the timekeepers box.

3.1.2 The City will receive three (3) free uses of the full Video Board including the operator (over and above the daily use of the Score Board time and score and timer portion). Any uses above the 3 will be at a cost of \$800.00 per five hour block (including the operator). Any needs for a camera operator will be at an increased cost, unless a properly trained professional can be supplied.

3.1.3 Two (2) City staff members shall be trained by the User on the operation of the Score Board and the video board, as a back-up when needed.

3.2 The ongoing repair and maintenance of the Score Board will be the responsibility of the User.

#### **4. POLICIES, PROCEDURES AND REGULATIONS**

4.1 The User acknowledge that the City in its sole discretion may establish, alter, or otherwise change policies, procedures and regulations regarding use and rental of the Facility by the community at large, insofar as such general policies will not contravene any portion of this Agreement or serve to limit the primary use of the Arena by the User. These general policies may include, but not be limited to: the rent to be charged for such uses; the process for allocating facility availability to requested community uses, including the deadlines for recurring requests; regulations concerning acceptable and prohibited uses and activities.

#### **5. ALTERATIONS AND IMPROVEMENTS**

5.1 The User agrees that all improvements which are made to the Team Facilities (as defined in the BMC User Agreement between the City and HSE dated June 1, 2013) by the User will not be removed or encumbered by the User during the Term of this Agreement or at the end of the Term, and that at the end of the Term such improvements shall become the property of the City.

5.2 The City may, by written notice to User upon the expiry of the Term or any earlier termination of this Agreement, require the removal at the expense of the User, of any or all of such partitions, improvements or alterations and the restoration of the Team Facilities to the same condition that they were in before any such partitions, improvements or alterations were made, erected or installed reasonable wear and tear excepted.

#### **6. CLAIM OR DEMAND**

6.1. The User shall not have any claim or demand against the City or any of its servants or agents for damage, accident or injury of any nature whatsoever or however caused at or to the Facility, or to any person or property, including any structures, equipment, materials, supplies, vehicles or any other articles on or about the said lands, unless such demand or injury is due to the negligence of the City or any of its servants or agents.

#### **7. LIABILITY AND INDEMNITY**

7.1 The User shall at all times indemnify and save harmless the City and any of its servants or agents from any claims and demands by whomsoever made, brought or prosecuted, in any manner based upon, occasioned by or attributable to the execution of this Agreement.

#### **8. INDEPENDENT PARTIES**

8.1 The Parties act as independent parties and no Party has or shall have the right or authority to undertake or create an obligation or responsibility for, or on behalf of, or otherwise bind, any other Party.

#### **9. ASSIGNMENT**

9.1 No portion of this Agreement or the rights provided herein shall be assigned, transferred, sublet or delegated by any Community Partner, in whole or in part, without the prior written authorized consent of the City. Any attempted assignment, transfer, subletting or delegation without the prior written authorization shall be void

#### **10. SEVERABILITY**

10.1 Each provision of this Agreement is severable and if any paragraph or portion hereof shall be held invalid for any reason, the remainder shall not thereby be invalidated, but shall remain in full force and effect.

#### **11. WAIVER**

11.1 Failure of any Party at any time to require performance by any other Party of any provision herein shall not be deemed a continuing waiver of that provision or a waiver of any other provision of this Agreement, whether or not of the same or similar nature.

#### **12. HEADINGS**

12.1 The descriptive headings shall not constitute a part of this Agreement and no inference shall be drawn from them.

#### **13. ENTIRE AGREEMENT**

13.1 This Agreement represents the complete understanding and shall constitute the entire Agreement of the Parties respecting the subject matter hereto and shall supersede and revoke all previous Agreements, communications and understandings, either written or oral, between the Parties relative to the subject matter herein.

#### **14. AMENDMENTS**

14.1 This Agreement may only be modified or amended by written Agreement of the Parties and signed by their authorized representatives

#### **15. FORCE MAJEURE**

15.1 The failure of any Party to fulfill any of its obligations under this Agreement shall not be considered a default to the extent such failure arose from an event that is beyond the reasonable control of a Party and makes that Party's performance of its obligations under this Agreement impossible (or so impracticable as reasonably to be considered impossible in the circumstances), if the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of the Agreement.

#### **16. JURISDICTION**

16.1 This Agreement shall be governed and construed in accordance with the laws of the Province of Ontario, Canada.

#### **17. AGREEMENT BINDING**

17.1 This Agreement shall ensure to the benefit of and be binding upon the Parties, their respective successors, heirs and assigns.

#### **18. COMMUNICATIONS**

18.1 Notices shall be provided in person or by means of certified or registered mail as noted below or at such other address as a Party may notify in writing. Notice sent by certified or prepaid registered mail shall be deemed to have been received five (5) working days from the date of mailing.



**THE CORPORATION OF THE CITY OF BARRIE**

P.O. Box 700  
70 Collier Street  
Barrie, Ontario  
L4M 4T5  
Attention: City Clerk

**HORSEPOWER SPORTS AND ENTERTAINMENT GROUP INC.**

(Insert Notice Details for User)



**PART 2: CONTRIBUTION TO THE FACILITY**

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**19. CONTRIBUTION TO THE FACILITY**

19.1

19.1.1 The ongoing repair and maintenance of the score board will be the responsibility of the User.

**PART 3: POLICIES AND PROCEDURES**

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**PART 4: CLAIMS, LIABILITY AND INSURANCE**

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[SIGNATURES ON FOLLOWING PAGE]

**IN WITNESS WHEREOF** each of the Parties have caused this AGREEMENT. to be executed by its duly authorized officers having authority to bind the Community Partners as of the date first above written.

**THE CORPORATION OF THE CITY OF BARRIE**

Per: \_\_\_\_\_  
[Signature] [Printed Name]

Per: \_\_\_\_\_  
[Signature] [Printed Name]

**HORSEPOWER SPORTS AND ENTERTAINMENT GROUP INC.**

Per: \_\_\_\_\_  
[Signature] [Printed Name]

Per: \_\_\_\_\_  
[Signature] [Printed Name]