

Kevin Newson
Executive Director Procurement
Waterfront Toronto
20 Bay St Suite 1310
Toronto, Ontario
M5J2N8

November 30, 2018

Re: Quayside Project, RFP 2017-13

Dear Mr. Newson,

As you know I was appointed as Fairness Advisor in relation to the above noted Quayside procurement. On October 11, 2017 I provided a letter to Waterfront Toronto certifying that all aspects of the RFP, including the evaluation of proposals submitted in response to it, were fair to all proponents in the sense that no proponent was given any advantage, or exposed to any disadvantage, in the process followed by Waterfront Toronto in this procurement. My letter to you of October 11, 2017 focused on the RFP and its evaluation, through which Sidewalk Labs was selected as the successful proponent. In November 2018, I was asked by Waterfront Toronto to expand upon my fairness opinion so as to include matters relevant to Waterfront Toronto's contact with potential proponents before the Quayside RFP was released in 2017. This letter sets out my opinion in that respect. It should be read with my letter of October 11, 2017.

As is frequently the case, the surrounding circumstances leading to the release of the Quayside RFP and the evaluation of the short listed proposals are important. The question to be asked and answered is whether there is any factual basis upon which to conclude that before the release of the RFP, Waterfront Toronto provided an advantage to the successful proponent, Sidewalk Labs, or to any proponent.

In its original incarnation, the Quayside Project was a typical development procurement. This was reflected in an RFP prepared by Waterfront Toronto when its Chief Executive Officer was John Campbell. Shortly before what would have

been the RFP release date, Mr. Campbell retired. He suggested, and Waterfront Toronto accepted, that substantive matters relevant to the Quayside opportunity might be better left to be determined by his successor Will Fleissig. Shortly after his appointment as Waterfront Toronto's CEO, Mr. Fleissig concluded that the Quayside opportunity would better accommodate the pillars upon which Waterfront Toronto was constructed if the Quayside RFP were to be rewritten to provide for the selection of an innovation development partner. After a detailed review, this appears to me to be what happened. The RFP referred to above was rewritten to accommodate a significant change in Waterfront Toronto's Quayside procurement strategy. This change was aptly referred to by Waterfront Toronto as a "pivot".

In light of the contemplated pivot, Waterfront Toronto decided to seek the market's reaction to what it proposed to do in relation to the Quayside Project. The focal point of this letter is to assess whether anything Waterfront Toronto did in relation to the market sounding it undertook was, in any respect, unfair. To answer that question I reviewed Waterfront Toronto documents relevant to the pre RFP market sounding contact with 52 listed organizations. I also met with Waterfront Toronto's Chief Development Officer, its Vice President, Innovation Sustainability and Prosperity and its Chief Strategy Officer and Director of Development. With one exception, all of these meetings were face to face so that those I interviewed did not have the benefit of their colleagues' commentary. The exception was my meeting with Waterfront Toronto's Chief Strategy Officer. It was done by telephone and was also only with the individual being interviewed.

As I have noted, Waterfront Toronto contacted 52 organizations in its market sounding endeavour. The organizations contacted included the successful proponent and the other short listed proponents. As part of the market sounding, Waterfront Toronto prepared a PowerPoint presentation. I am attaching the PowerPoint presentation to which I referred above. It provided general, and publicly available information about Waterfront Toronto.

In addition to the presentation, some of the listed market sounding contacts were provided with documents that were requested by the organization contacted. I am satisfied that all of these documents were publicly available documents or documents that Waterfront Toronto had the practice of making available upon request. In result the recipient of any documents provided by Waterfront Toronto

gained no advantage, given the fact that the documents were public or readily available upon request.

In addition to its direct market sounding contacts with the 52 identified organizations, on November 11, 2016 Waterfront Toronto hosted a meeting that was referred to as “Going to Scale Summit”. This meeting was held to validate findings emerging from Waterfront Toronto’s market sounding work. To ensure that all concerned had access to the same information Waterfront Toronto representatives provided an updated presentation before the blackout period for those organizations that had been interviewed early in the market sounding process and had expressed an interest in being informed of the process. Waterfront Toronto meticulously recorded pre RFP market sounding contacts. In assessing the market reaction to the newly structured RFP, Waterfront Toronto acted reasonably in my view.

The RFP was released on March 17, 2017. It provided that a blackout period was in effect throughout the procurement process. The blackout was adhered to by Waterfront Toronto. Further details regarding this part of the process can be found in my letter dated October 11, 2017.

In summary, I am satisfied that no organization, including the eventual short-listed proponents, was provided with any information or documentation that was not public or readily accessible. The evidence pertaining to this seems to me to be clear. I am satisfied that Waterfront Toronto successfully took all reasonable steps to ensure that the Quayside procurement proceeded on the basis that no proponent or potential proponent secured any unfair advantage. In my opinion, there is no evidence that would support a contrary conclusion.

Let me know if anything further is required.

A handwritten signature in blue ink, appearing to read "Coulter Osborne".

Coulter Osborne, Q.C.