TORONTO

STAFF REPORT
ACTION REQUIRED

Proposal – Tuggs Incorporated Investment Proposal for Redevelopment of the Eastern Beaches Food Service Facilities.

Date:	**9 January 2007**
To:	Parks and Environment Committee
From:	General Manager of Parks, Forestry and Recreation, and Deputy City Manager and Chief Financial Officer
Wards:	**Ward 32 (Beaches-East York)**
Reference Number:	

SUMMARY

This report responds to City Council's direction that the proposal from Tuggs Incorporated (Tuggs) for the redevelopment of the eastern beaches food service facilities be accepted subject to a review of the proposal and submission of a report to the successor committee of the Economic Development and Parks Committee.

Staff advised both Committee and City Council in 2006 not to accept the Tuggs proposal as the City policy is not to accept unsolicited proposals to ensure that the best price possible is obtained through a competitive process. The Purchasing and Materials Management Division continues to prefer to have a public Request for Proposals issued to ensure that the best possible value is obtained by the City. City Council, however, accepted the proposal from Tuggs at the September 2006 Council meeting subject to staff review of the proposal and report back to Committee/Council. Staff had to use a set of internal criteria to review the proposal as there is no comparative information available to base the review upon. The final result of the review is that the Tuggs proposal be accepted subject to obtaining additional information outlined in the report and, provided that the information provides assurances sought, that staff be authorized to finalize a twenty-year extension to the current Tuggs agreement with the City in accordance with the conditions outlined and the terms outlined in the unsolicited proposal.

RECOMMENDATIONS

The General Manager of Parks, Forestry and Recreation, and the Deputy City Manager and Chief Financial Officer recommend:

1. Based on Council direction and a review, that the proposal from Tuggs Incorporated be accepted with the following additional conditions, and further clarification as follows:

    (i) The proponent's capital improvements valued at a minimum of $2.15 million be completed by January 1, 2009;

    (ii) Tuggs and the City will identify a state of good repair program for the physical assets and Tuggs will be responsible to ensure the program is implemented and be responsible for the full costs to do so;

    (iii) The City will pre-approve any sponsorship activities that Tuggs proposes, and there will be no conflict with any city contracts or programs related to sponsorship;

    (iv) Any signage to be installed on the renewed assets must have prior city approval;

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    (v) Effective January 1, 2018, the rent revenue shall be recalculated at five year intervals at a fair market rent for such terms as agreed to by the parties or established by arbitration to be set out in the lease agreement;

    (vi) the City will have final approval of the use of the "allowance for development costs" of $200,000 as outlined in years 2007-2008 of the Capital Investment Summary Section 3.1 of the proposal; and

    (vii) subject to the receipt and review of a detailed business plan, including financial forecasts, evidence of financing, a marketing plan, and a partnership plan between the City and the proponent, to the satisfaction of the Deputy City Manager and Chief Financial Officer, and the General Manager of Parks, Forestry and Recreation; and

2. Staff be authorized to enter in to an agreement with Tuggs Incorporated to finalize a twenty-year extension to the current Tuggs agreement with the City in accordance with the additional conditions outlined in number 1 above, and the terms outlined in the unsolicited proposal in a form satisfactory to the City Solicitor by July 2007; and

3. No other unsolicited proposals be entertained by the City until a policy review and revised practice to be prepared by the City Treasurer is adopted by City Council to deal with unsolicited proposals.

FINANCIAL IMPACT

The acceptance of the proposal will result in Tuggs paying the City a combination of flat land rent, a percentage of sponsorship revenue, and capital contributions to refurbish and expand the facility. It must be clearly noted that the sponsorship revenue indicated in the proposal is a “potential” source of revenue and should not be considered as minimum revenue.

The final agreement will have to outline the types of sponsorships, the physical area concerned, and ensure there are no conflicts with other sponsorships the City already has in place. It will also have to reflect the following key points:

(i) Tuggs and the City will identify a state of good repair program for the physical assets and Tuggs will be responsible to ensure the program is implemented and be responsible for the full costs to do so

(ii) Any signage to be installed on the renewed assets must have prior city approval;

(iii) Effective January 1, 2018, the rent revenue shall be recalculated at five year intervals at a fair market rent for such terms as agreed to by the parties or established by arbitration to be set out in the lease agreement. Based on this review the basic rent structure could be amended; and

(iv) the City will have final approval of the use of the “allowance for development costs” of $200,000 as outlined in years 2007-2008 of the Capital Investment Summary Section 3.1 of the proposal.;

Over the twenty year period Tuggs proposes to pay the City $5.75 million in land rent; spend $2.15 million in capital facility upgrades and expansion to improve service; and possibly donate funding for community improvements. In addition Tuggs proposes to pay to the City 20% of any sponsorship revenues that may be developed or $0.025 million per year (escalates to $0.050 million starting in 2018) whichever is greater.

The value of improvements proposed for the fixed assets would benefit sales and justify the higher rents proposed. Tuggs has been advised that their information will be made public in this report.

The payment structure submitted in the proposal is as follows.

Period	Base Rent Revenue	Potential Sponsorship Revenue
2007	$210,000*	Nil
2008-2012	$250,000	The greater of 20% of revenue or a minimum of $25,000
2013-2017**	$275,000	The greater of 20% of revenue or a minimum of $25,000
2018-2022	$300,000	The greater of 20% of revenue or a minimum of $50,000
2023-2027	$325,000	The greater of 20% of revenue or a minimum of $50,000

*Rent Payable in FY 2007 of $210,000 is based on the existing agreement that will expire on September 14, 2007
** The proposed base rent revenue escalations provided in the initial Tuggs proposal, at five-year intervals, equate to approximately 1.5% annual increases over the 20-year term. Note this report recommends that the base rent escalations be reviewed in 2018, which could result in base rent amounts varying from those listed in the table.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

An unsolicited proposal was initially submitted by Tuggs to the Economic Development and Parks Committee in August 2006. The staff report accompanying the proposal was amended by the committee, and forwarded to City Council, and dealt with at its meeting of September 25, 26, 27 and 28, 2006. The report may be found at http://www.toronto.ca/legdocs/2006/agendas/council/cc060925/edp6rpt/cl022.pdf

City Council agreed to accept the concept proposed by Tuggs at the 25-28 September 2006 City Council meeting, but made the approval subject to a review of the proposal by the General Manager of Parks, Forestry and Recreation and the Deputy City Manager/Chief Financial Officer.

ISSUE BACKGROUND

Council's decision regarding this proposal will likely result in the submission of other unsolicited proposals from operators that are in place with the Parks, Forestry and Recreation Division.

Staff are recommending that no further unsolicited proposals be entertained until an outstanding report from the Deputy City Manager & CFO and the City Solicitor with respect to renewal of existing long term leases by small business operators where the City intends to renew the lease for the same or similar purpose is submitted to Council. That report requirement arose from the same meeting of City Council where the Tuggs proposal was discussed. The reference link is http://www.toronto.ca/legdocs/2006/agendas/council/cc060925/nomj(59).pdf

This report will be forwarded to the General Government Committee as part of a revised Policy Framework for Unsolicited Proposals. It is expected that this report will be submitted to Council within the first quarter of 2007.

COMMENTS

Proposal Summary

The current agreement expires on 14 September 2007. It is intended that a new agreement be in place effective 15 September 2007 so there is continuity and to ensure an operator is selected and on-site.

The proposal in summary is that Tuggs will make a capital expenditure of $2.15 million to refurbish the Boardwalk Café in Woodbine Park and two other eastern beach concessions at Kew Gardens and Donald D. Summerville Pool. In terms of the Woodbine facility, the exterior and roof of the facility will be refurbished; the interior will be updated including equipment and furnishings; and the facility is to be expanded to provide for increased year-round use while, at the same time, ensuring that the restaurant business fits within its park setting. Refurbishing and internal improvements to the other concessions will also improve customer service and returns. It is recognized that as the plans develop that there may be other improvements that evolve and these may be agreed upon between Tuggs and the City.

All of this work will be done with no budget outlay by the City of Toronto. Tuggs, in return, has requested a 20-year extension to the agreement.

Proposal Review

To undertake the Council directed review, a team of staff from Purchasing and Materials Management Division, Corporate Finance, Parks, Forestry and Recreation, and Financial Planning was convened.

The task of the review was especially difficult given that there was no competitive bidding process, so there are no other bids with which to compare or contrast the Tuggs proposal. It is not possible for staff to determine whether or not the City is receiving the best possible value from this unsolicited proposal. Furthermore, the unsolicited proposal did not contain details on key business terms and projections nor evidence of satisfactory financing arrangements. Accordingly, to be able to undertake as much due diligence as possible in the circumstances, staff used a number of criteria to assess the proposal.

The criteria included:

(a) Return on Capital Investment.
The City will obtain investment of $2.15 million at no direct impact to the Parks, Forestry and Recreation Divisions capital plan and, at the same time, receive new and improved facilities.

(b) Guaranteed Rents
The proposal provides marginally higher rents than in past, but they are now guaranteed. Further the rents are consistent with food service industry standards. The City is also recommending that Effective January 1, 2018, the rent revenue shall be recalculated at five year intervals at a fair market rent for such terms as agreed to by the parties or established by arbitration to be set out in the lease agreement. Based on this review the basic rent structure could be amended.

(c) Additional Revenue
The proposal provides the potential for additional revenue stream by providing an annual minimum of revenue from sponsorships via percentage improvements if the base returns are exceeded. The final agreement will outline the types of sponsorships, the areas concerned, and ensure there are no conflicts with other sponsorships the City already has in place.

(d) Experience and Quality of Service
Tuggs has 20 years experience providing the concessions at the sites; they are in good standing with the City; and their service quality to consumers is good.

(e) State of Good Repair Identified
Much of the work to be undertaken by Tuggs is consistent with what the City has identified as being required under its state of good repair program. Not only will the facility be improved and expanded which should result in greater revenues, but costs that the City would normally have to cover for state of good repair will be avoided. The City additionally will require that Tuggs and the City will identify a state of good repair program for the future maintenance of physical assets, and Tuggs will be responsible to ensure the program is implemented and be responsible for the full costs to do so.

Based on review of the Tuggs proposal against the criteria and considering the additional conditions being put forward - the proposal seems to be a positive development for the City. However, staff has identified the requirement for additional information, other than that received, to conduct the due diligence required to ensure that the Tuggs proposal is achievable. This due diligence will include a review of Tuggs':

- Financial forecasts (sales and cash flow projections)
- Financing plan for the capital expansion
- Marketing plan to support the revenues to achieve the higher rent
- Partnering plan for the added sponsorship revenue

Under normal circumstances, this information would be requested through a Request for Proposal process. This information will help staff assess whether or not the City can count on the rental and sponsorship revenue proposed by Tuggs over the course of the agreement. Once the additional information and clarification is received and reviewed, and the detail provides the assurances that the business plan can support the revenue stream, the final agreement will be negotiated and finalized in a form satisfactory to the City Solicitor.

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