

TORONTO TRANSIT COMMISSION REPORT NO.

MEETING DATE: MAY 24, 2013

SUBJECT: RECONSIDERATION - GATEWAY LEASE
(SUPPLEMENTAL REPORT)

ACTION ITEM

RECOMMENDATION

It is recommended that the Board approve:

1. The issuance of a new Request For Proposals for retail opportunities within the TTC (the “new RFP”);
2. That the issuance of the new RFP be deferred until 2016 (with a commencement date for the new tenant(s) of May 1, 2018) in order to allow the TTC CEO to:
 - (a) Examine and study opportunities to maximize revenue through the retail operations available throughout the TTC; and
 - (b) Examine and study opportunities to improve the customer experience through retail operations within the transit system with an emphasis on modernizing the retail experience to best meet our customer expectations;
3. The TTC CEO report back on items 2(a) and (b) above by December 31, 2014; and
4. In the interim, extending the current lease agreements, or entering into new agreements, with Tobmar Investments International Inc. (“Gateway”) for the newsstand retail locations and two cafes, located at Islington and Warden Subway Stations, based on the following principles and subject to negotiating the agreements on other terms and conditions satisfactory to Gateway and TTC’s Head of Legal Department and General Counsel:
 - (a) Term to commence on May 1, 2014 and expire on April 30, 2018;
 - (b) Base annual rent payable to the TTC during the term for the newsstand locations of \$2,366,697, plus common area maintenance, realty tax, Hydro and HST;
 - (c) Base annual rent payable to the TTC for the two cafes of \$144,000 (\$24,000 increase per annum), plus common area maintenance, realty tax, Hydro and HST to commence upon execution of a lease amending agreement (or new lease);

- (d) Annual increases of \$0.25 per square foot for common area maintenance charges;
- (e) Signing bonus of \$600,000 payable to the TTC prior to December 31, 2013;
- (f) Gateway committing to spend \$500,000 on capital improvements during the term;
and
- (g) Gateway committing to the issuance of a separate RFP for the distribution of free daily newspapers within the TTC. The TTC to be involved in the preparation and evaluation of the RFP.

FUNDING

Based on the proposed principles, the resultant 2013 lease revenues will fall \$400,000 short of the budget. Additionally, 2014 revenues will include an increase of approximately \$667,000.

BACKGROUND

This report is a supplemental report to the Reconsideration – Gateway Lease Report which has been submitted to the May 24, 2013 Board meeting.

DISCUSSION

At its meetings of October 24, 2012, and again on January 21, 2013, the Board authorized staff to execute agreements based on a proposal from Tobmar Investments International Inc. (referred to as “Gateway”) for the operation and management of newsstand locations throughout the TTC. The proposal also included extensions of current leases related to bakeries, cafes and lottery locations in the subway system.

At its meeting of March 27, 2013, the Board adopted a motion to reconsider the Gateway Lease matter originally decided on October 24, 2012 and reconsidered on January 21, 2013.

A further motion was made during the March 27, 2013 meeting for the Board to rescind its previous decisions from October 24, 2012 and January 21, 2013. During the debate of the motions, Gateway through its representatives, including its external counsel, indicated that it believed it had a binding commitment with the TTC based on the previous Board approvals. Following significant discussion related to the motions, the Board deferred the item to allow the TTC CEO to consider the material presented by the speakers during the March 27, 2013 meeting.

A separate confidential attachment has been provided to the Board addressing a number of potential legal issues.

As previously set out in the January 21, 2013 staff report, the issuance of a new RFP for retail opportunities within the transit system remains the preferred option. However, in order to ensure stability within the transit system during the Toronto 2015 Pan-Am/Parapan Am Games, while also providing certainty and reducing any potential commercial or legal risk, it is recommended that the new RFP be issued in 2016, with a commencement date for a new tenant(s) of May 1, 2018.

Prior to the issuance of the new RFP, TTC staff will be examining and reporting back to the Board on all potential retail opportunities within the transit system with a focus on: (a) maximizing revenue potential; and (b) improving the customer experience through retail operations with an emphasis on modernizing the retail experience to best meet TTC customer expectations.

JUSTIFICATION

In order to allow TTC staff the opportunity to properly examine the potential retail opportunities available within the transit system, while ensuring stability during the Toronto 2015 Pan-Am/Parapan Am Games, it is recommended that, as a commercially reasonable compromise, the TTC negotiate with Gateway a short extension to its current lease agreement(s), based on the principles set out above. The proposed base annual rent payable to the TTC, commencing on May 1, 2014 is, on a per annum basis, consistent with Gateway’s proposal as previously approved by the Board.
