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**In reply please quote:
Ref.: 08-GM13.8**

May 2, 2008

GOVERNMENT MANAGEMENT COMMITTEE:

**Subject: Government Management Committee Item 13.8
Termination of Mr. Vending Inc. License Agreement (Ward: All)**

City Council on April 28 and 29, 2008, referred this Item, together with the following motions, back to the Government Management Committee for further consideration:

Moved by Councillor Ainslie:

That Recommendation 2 of the Government Management Committee be amended by deleting the percentage "100%" and substituting the percentage "20%", so that Recommendation 2 now reads as follows:

- "2. '20% Healthy Snack Choices' be included in the evaluation process for awarding this RFP."

Moved by Councillor Del Grande:

That the General Manager, Parks, Forestry and Recreation, be requested to include provisions in this RFP which would protect the City's interests, such as a requirement for a Letter of Credit or a Performance Bond or a personal guarantee.

Moved by Councillor Fletcher:

1. That Part 2 of the motion by Councillor Shiner be amended by adding the words, "subject to a maximum of two districts", so that the motion now reads:

"That Recommendation 3 of the Government Management Committee be amended to read as follows:

3. The highest ranking proponent, in each of the following 4 areas, be awarded in that area, subject to a maximum of two districts:
 - Etobicoke York District
 - North York District
 - Scarborough District
 - Toronto and East York District.”
2. That vendors be required to include culturally-diverse products in their RFP.
3. That the motion by Councillor Ainslie be amended by deleting the percentage “20%” and substituting the percentage “50%” so that Recommendation 2 of the Government Management Committee now reads as follows:
 - “2. ‘50% Healthy Snack Choices’ be included in the evaluation process for awarding this RFP.”

Moved by Councillor Lindsay Luby:

1. That Recommendation 1 of the Government Management Committee be amended to read as follows:
 - “1. Requests for Proposals for Snack and Hot Drink Vending for a five-year term commencing October 1, 2008, to September 30, 2013, with a three-year renewal option, exercisable at the discretion of the City, for the period October 1, 2013, to September 30, 2016, be issued for the following districts:
 - Scarborough and Toronto and East York; and
 - North York and Etobicoke York.”
2. That Recommendation 2 of the Government Management Committee be deleted and replaced with the following:
 - “2. That there be a requirement that each provide for 100% healthy choices in 5 locations as a pilot project, and that the General Manager, Parks, Forestry and Recreation be requested to report on the success of this pilot project within one year to determine whether this should be extended.”
3. That Recommendation 3 of the Government Management Committee be deleted and replaced with the following:
 - “3. That, in the event the City does not receive viable proposals, that the City not pursue the vending machine business.”

Moved by Councillor Shiner:

1. That the new Request for Proposal (RFP) to be issued for the operation of Snack and Hot Drink Vending within Parks, Forestry and Recreation facility locations for the period commencing October 1, 2008, to September 30, 2013, with a three-year renewal option for the period October 1, 2013, to September 30, 2016, indicate that products which include peanuts in their ingredient list not be sold in vending machines within Parks, Forestry and Recreation Division facilities.
2. That Recommendation 3 of the Government Management Committee be amended to read as follows:
 - “3. The highest ranking proponent, in each of the following 4 areas, be awarded in that area:
 - Etobicoke York District
 - North York District
 - Scarborough District
 - Toronto and East York District.”

Moved by Councillor Vaughan:

That the motion by Councillor Del Grande be amended by deleting the words “be requested to”, and replacing them with the word “must”, so that it now reads as follows:

“That the General Manager, Parks, Forestry and Recreation must include provisions in this RFP which would protect the City’s interests, such as a requirement for a letter of credit or a performance bond or a personal guarantee.”

for City Clerk

M. Toft/csb

Attachment


TORONTO City Council Decision

Government Management Committee – Item 13.8

Considered by City Council on April 28 and 29, 2008

GM13.8	REFERRED			Ward: All
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Termination of Mr. Vending Inc. License Agreement

City Council Decision

City Council on April 28 and 29, 2008, referred this Item, together with the following motions, back to the Government Management Committee for further consideration:

Moved by Councillor Ainslie:

That Recommendation 2 of the Government Management Committee be amended by deleting the percentage “100%” and substituting the percentage “20%”, so that Recommendation 2 now reads as follows:

- “2. ‘20% Healthy Snack Choices’ be included in the evaluation process for awarding this RFP.”

Moved by Councillor Del Grande:

That the General Manager, Parks, Forestry and Recreation, be requested to include provisions in this RFP which would protect the City’s interests, such as a requirement for a Letter of Credit or a Performance Bond or a personal guarantee.

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1. That Part 2 of the motion by Councillor Shiner be amended by adding the words, “subject to a maximum of two districts”, so that the motion now reads:

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Moved by Councillor Lindsay Luby:

1. That Recommendation 1 of the Government Management Committee be amended to read as follows:
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3. That Recommendation 3 of the Government Management Committee be deleted and replaced with the following:
 - “3. That, in the event the City does not receive viable proposals, that the City not pursue the vending machine business.”

Moved by Councillor Shiner:

1. That the new Request for Proposal (RFP) to be issued for the operation of Snack and Hot Drink Vending within Parks, Forestry and Recreation facility

locations for the period commencing October 1, 2008, to September 30, 2013, with a three-year renewal option for the period October 1, 2013, to September 30, 2016, indicate that products which include peanuts in their ingredient list not be sold in vending machines within Parks, Forestry and Recreation Division facilities.

2. That Recommendation 3 of the Government Management Committee be amended to read as follows:
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Moved by Councillor Vaughan:

That the motion by Councillor Del Grande be amended by deleting the words “be requested to”, and replacing them with the word “must”, so that it now reads as follows:

“That the General Manager, Parks, Forestry and Recreation must include provisions in this RFP which would protect the City’s interests, such as a requirement for a letter of credit or a performance bond or a personal guarantee.”

(April 1, 2008) Report from General Manager, Parks, Forestry and Recreation

Committee Recommendations

The Government Management Committee recommends that:

1. A Request for Proposal for Snack and Hot Drink Vending for a five-year term commencing October 1, 2008 to September 30, 2013 with a three year renewal option, exercisable at the discretion of the City, for the period October 1, 2013 to September 30, 2016 be issued.
2. “100% Healthy Snack Choices” be included in the evaluation process for awarding this RFP.
3. The highest ranking proponent be awarded first choice of all Districts, or a combination of Scarborough and Toronto East York Districts or North York and Etobicoke York Districts. If necessary, the second place proponent will be awarded the remaining Districts.

4. The City Solicitor be authorized to commence legal proceedings against Mr. Vending, to appeal any orders, and settle the claim, if in the City Solicitor's view, it is in the City's interest to do so.

Financial Impact

The License Agreement with Mr. Vending required guaranteed payments of \$185,000 per year. In addition to this annual payment, an exclusive rights fee in the amount of \$20,000 was to be paid within sixty days of the execution of the agreement. The exclusive rights payment of \$20,000 was made on October 13, 2006 and the first payment towards the 2006 year was made on February 5, 2007 in the amount of \$90,000. Further payment in the amount of \$11,250 was made on September 27, 2007. This was the final payment received from Mr. Vending.

As of the termination date of March 10, 2008, Mr. Vending owed approximately \$293,000 as per the terms of the agreement; \$42,000 from 2006, \$185,000 from 2007 and \$66,000 from 2008. Due to the termination of this agreement, no revenue will be realized in 2008 until a new agreement is in place. For the balance of 2008, \$119,000 would have been anticipated under the terminated contract, but until a new contract is in place, future revenue cannot be estimated.

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

Summary

The purpose of this report is to advise the Government Management Committee with respect to the termination of the License Agreement with Mr. Vending Inc. as of March 10, 2008. This License Agreement is for Request for Proposal (RFP) No. 0613-05-0166 for the operation of Snack and Hot Drink Vending within Parks, Forestry and Recreation facility locations in all Districts. This agreement commenced on November 1, 2005 for a term of five years plus a three year option.

It is recommended that a new RFP be issued for the operation of Snack and Hot Drink Vending within Parks, Forestry and Recreation facility locations for the period commencing October 1, 2008 to September 30, 2013 with a three year renewal option for the period October 1, 2013 to September 30, 2016.

This report highlights proposed changes from the previous RFP relating to healthy snacks.

Background Information

Report - Termination of Mr. Vending Inc. License Agreement
(<http://www.toronto.ca/legdocs/mmis/2008/gm/bgrd/backgroundfile-11977.pdf>)



STAFF REPORT ACTION REQUIRED

Termination of Mr. Vending Inc. License Agreement

Date:	April 1, 2008
To:	Government Management Committee
From:	Brenda Librecz, General Manager, Parks, Forestry and Recreation
Wards:	All
Reference Number:	

SUMMARY

The purpose of this report is to advise the Government Management Committee with respect to the termination of the License Agreement with Mr. Vending Inc. as of March 10, 2008. This License Agreement is for Request for Proposal (RFP) No. 0613-05-0166 for the operation of Snack and Hot Drink Vending within Parks, Forestry and Recreation facility locations in all Districts. This agreement commenced on November 1, 2005 for a term of five years plus a three year option.

It is recommended that a new RFP be issued for the operation of Snack and Hot Drink Vending within Parks, Forestry and Recreation facility locations for the period commencing October 1, 2008 to September 30, 2013 with a three year renewal option for the period October 1, 2013 to September 30, 2016.

This report highlights proposed changes from the previous RFP relating to healthy snacks.

RECOMMENDATIONS

The General Manager of Parks, Forestry and Recreation recommends that:

1. a Request for Proposal for Snack and Hot Drink Vending for a five-year term commencing October 1, 2008 to September 30, 2013 with a three year renewal option, exercisable at the discretion of the City, for the period October 1, 2013 to September 30, 2016 be issued;
2. “100% Healthy Snack Choices” be included in the evaluation process for awarding this RFP;

3. the highest ranking proponent be awarded first choice of all Districts, or a combination of Scarborough and Toronto East York Districts or North York and Etobicoke York Districts. If necessary, the second place proponent will be awarded the remaining Districts; and
4. the City Solicitor be authorized to commence legal proceedings against Mr. Vending, to appeal any orders, and settle the claim, if in the City Solicitor's view, it is in the City's interest to do so.

FINANCIAL IMPACT

The License Agreement with Mr. Vending required guaranteed payments of \$185,000 per year. In addition to this annual payment, an exclusive rights fee in the amount of \$20,000 was to be paid within sixty days of the execution of the agreement. The exclusive rights payment of \$20,000 was made on October 13, 2006 and the first payment towards the 2006 year was made on February 5, 2007 in the amount of \$90,000. Further payment in the amount of \$11,250 was made on September 27, 2007. This was the final payment received from Mr. Vending.

As of the termination date of March 10, 2008, Mr. Vending owed approximately \$293,000 as per the terms of the agreement; \$42,000 from 2006, \$185,000 from 2007 and \$66,000 from 2008. Due to the termination of this agreement, no revenue will be realized in 2008 until a new agreement is in place. For the balance of 2008, \$119,000 would have been anticipated under the terminated contract, but until a new contract is in place, future revenue cannot be estimated.

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

DECISION HISTORY

Mr. Vending was awarded the contract for RFP No. 0613-05-0166 for the operation of Snack and Hot Drink Vending within Parks, Forestry and Recreation facility locations and entered into a five year License Agreement with the City.

<http://www.toronto.ca/legdocs/2005/agendas/committees/edp/edp051017/it014.pdf>

<http://www.toronto.ca/legdocs/2005/agendas/committees/edp/edp051017/agenda.pdf>

Following issuance of the award to Mr. Vending a legal action was commenced by one of the unsuccessful proponents. This action is being defended and will have no impact on the new RFP.

ISSUE BACKGROUND

Mr. Vending Inc. entered into a five year License Agreement with the City to operate Snack and Hot Drink Vending as well as Bulk and Popcorn Vending on November 1, 2005. The Snack and Hot Drink Vending rent was \$185,000 annually or 39% of revenue, whichever was higher.

After several months, Mr. Vending requested that the Agreement be amended to provide for a reduction in rental payments and also began to withhold rental payments.

On November 14, 2007 Mr. Vending was presented with a written notice from Legal Services which required the company to reconcile the outstanding balance by January 8, 2008 or risk termination.

Mr. Vending failed to meet the payment deadline and on January 9, 2008. A “Notice of Default and Termination” was issued in accordance with the License Agreement, giving Mr. Vending sixty days to settle the outstanding balance in order to avoid termination. The company did not respond or comply. At the date of termination the outstanding rent was approximately \$293,000 plus GST.

It is recommended that a new RFP be released as soon as possible in order to secure vending service by the fall of 2008. No revenue from vending services will be received until a new vending contract is in place. A sole source to cover the interim period is not a viable option.

COMMENTS

Future of Public Snack Vending

The termination of the agreement with Mr. Vending Inc. has provided Parks, Forestry and Recreation with an opportunity to be on the leading edge of addressing childhood obesity. Children make up a large percentage of recreation facility users and in the past, Parks, Forestry and Recreation snack vending machines were not adequately stocked with healthy snack foods. Instead, the former License Agreement with Mr. Vending allowed for what was termed “Healthier Food Choices” and many of these “Healthier Choices” failed to meet the standards of healthy choices as defined by Canada’s Food Guide. By way of example, baked potato chips were considered a “Healthier Food Choice;” however, they do not make the grade as a “Healthy Choice” under the Canada Food Guide due to a high sodium and caloric content.

Since 2002 Business Services staff have been working with Toronto Public Health to encourage and promote “Healthier Food Choices” in Parks, Forestry and Recreation snack bars and vending machines. “Healthier Food Choices” allowed for a percentage of different nutritional levels of snack foods. Vendors were able to stock machine with sugary and high calorie snacks, as well as a percentage of healthier low fat, low sugar snack items. However, when children are given these choices, they inevitably chose the less nutritious snack.

The release of the new RFP for Snack and Hot Drink Vending will allow for the introduction of “Healthy Snack Choices” in vending machines. This represents the future of public vending and is a unique approach to healthy vending. “100% Healthy Snack Choices” will assist in fostering healthy eating habits in Parks, Forestry and Recreation facilities.

North American Study

Research conducted across North America found many school boards with a 100% healthy vending policy similar to “Healthy Snack Choices.” Most Parks and Recreation vending agreements in Canada have continued to blend healthy snacks with unhealthy snacks in vending machines. However, San Diego County, California has been praised for introducing a policy to support “100% Healthy Choices” in Parks and Recreation vending machines in 2006. San Diego County has taken this step to aid in reducing the obesity rate amongst children and youth. San Diego County’s policy is applicable only at recreation facilities that serve predominantly children and youth. All other county facilities must comply with a policy of “50% Healthy Choices.” San Diego County is a fair comparison to the City of Toronto as their population is approximately 3 million residents.

Healthy Snack Choices

Toronto Public Health recommends using the following measures to define “100% Healthy Snack Choices”:

Food Product	Criteria
<ul style="list-style-type: none"> Vegetable or Fruit (raw, canned, dried, frozen, including applesauce) 	100% Pure Juices or Smoothies made without added sugar
<ul style="list-style-type: none"> Natural Nuts, Seeds, or Legumes or Any Mixture of These 	100% natural nut, seeds, or legumes or mixture of these (all vendors must comply with Council’s recommendations for “Potential Removal of Peanut and Nut Products from Parks, Forestry and Recreation Facilities)
<ul style="list-style-type: none"> Yogurt 	2% M.F. or less, plain or fruit-flavoured
<ul style="list-style-type: none"> Cheese 	Reduced-fat (20% M.F. or less)
<ul style="list-style-type: none"> Whole Grain Crackers, Flatbreads, Bagels, and Cereals 	Minimum of 2g of fibre and not more than 5g of fat, 3 g of saturated fat, 300 calories and 450mg of sodium
<ul style="list-style-type: none"> Sandwiches and Wraps 	Made with whole grain breads/buns, vegetable and low fat fillings
<ul style="list-style-type: none"> Coffee/Tea 	Decaffeinated always an option when caffeinated coffee/tea is available

Trans Fat Guidelines:

All snack and hot beverage items must comply with the trans fat guidelines based on the Health Canada’s Trans Fat Task Force:

Food Product	Recommended Percent of Trans Fat
Vegetable oils and soft (tub) margarines	2% of total fat content or less
All other foods purchased by consumers or for use	5% of total fat content or less

as an ingredient	
Food Products in which the fat comes only from meat or dairy sources such as single ingredient meat or dairy food; or multiple ingredient foods or ingredients where the fat comes only from meat or dairy sources	No trans fat limit, but lower total fat products are recommended

Snacks including candies, chocolate bars, potato chips, tortilla chips, corn chips and cheesies are not recommended and will be replaced by “Healthy Snack Choices”. We will continue to work with Toronto Public Health to broaden the options available for “100% Healthy Snack Choices” in Parks, Forestry and Recreation snack vending machines as we move towards the future.

100% Healthy Snack Program – Challenges

Challenges	Comments
1. The First City in the Greater Toronto Area to Introduce 100% Healthy Snack Vending	Most vending companies are not currently ready to deliver this service and will require further knowledge and support.
2. Limited Selection of Healthy Snacks	As a result of a lack of demand for healthy snacks in the industry, it will take some creativity to locate our niche product market.
3. Brand Recognition	Many healthy snacks do not carry a nationally recognized brand. This could initially result in lower sales.
4. Possible Lower Revenue	We are entering into a new market and sale projections are unknown. Prospective vendors may be conservative in their sales estimates. This would result in lower revenue than the previous \$185,000 per year.
5. Refrigerated Machines Required	Many healthy snacks such as yogurt must be refrigerated. Prospective vendors may be required to purchase/lease new equipment.
6. Increase in Utility Cost at Facilities	Refrigerated machines will increase hydro cost at each facility. The estimated utility cost will be passed on to the vendor(s).

2008 Priorities

Proponents participating in the procurement process for Snack and Hot Drink Vending services will be required to provide “100% Healthy Snack Choices” as part of their proposal. Parks, Forestry and Recreation facility users will also be educated on the benefits of healthy snack vending. Surveys will be conducted to determine the range of healthy products in demand at

Parks, Forestry and Recreation facilities. Parks, Forestry and Recreation staff will work with Toronto Public Health to further develop a diverse list of “Healthy Snack Choices”.

“100% Healthy Snack Choices” is a pragmatic step towards addressing obesity. This initiative dovetails with the City’s Medical Officer of Health’s objectives to reduce childhood obesity. Parks, Forestry and Recreation will endeavour to promote “Healthy Snack Choices” in recreation facilities and work in alliance with perspective vendors and Toronto Public Health to maintain a high level of compliance. Snack vending machines will be utilized as an avenue to reinforce healthy nutritional habits to facility users and specifically children and youth.

CONTACT

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Doug McDonald, Manager, Business Services, Tel: 416-392-8587, Fax: 416-392-3355, Email: dmc dona0@toronto.ca

SIGNATURE

Brenda Librecz
General Manager, Parks, Forestry and Recreation