



STAFF REPORT ACTION REQUIRED

Café on the Square, 100 Queen Street West – proposed resolution of outstanding Lease issues

Date:	February 9, 2015
To:	City Council
From:	Chief Corporate Officer
Wards:	27 Toronto Centre - Rosedale
Reference Number:	P:\2015\Internal Services\RE\Cc15006re

SUMMARY

The purpose of this report is to recommend a proposed resolution of the outstanding issues under the lease with 1158093 Ontario Limited o/a Café on the Square for the cafeteria at City Hall. This report also recommends that staff consult with social enterprise food services providers and, if necessary, undertake a new selection process to find a food service operator(s) to provide food services at City Hall following the expiry or termination of the lease with Café on the Square.

RECOMMENDATIONS

The Chief Corporate Officer recommends that City Council delete the Government Management Committee's Recommendations in Item GM1.4 and replace them with the following Recommendations:

1. City Council authorize a lease amending agreement (the "Lease Amending Agreement") between the City and 1158093 Ontario Limited o/a Café on the Square ("Café on the Square"), to amend the existing lease (the "Lease") for the cafeteria at City Hall, 100 Queen Street West, substantially on the terms set out in Appendix 1 and such other and amended terms as may be acceptable to the Chief Corporate Officer, and in a form satisfactory to the City Solicitor, provided that on or prior to execution of the Lease Amending Agreement, Café on the Square pays all of the outstanding rent arrears owing to the City under the Lease.

2. City Council authorize each of the Chief Corporate Officer and the Director of Real Estate Services severally to execute the Lease Amending Agreement and authorize the Chief Corporate Officer or his or her designate to administer and manage the amended Lease, including the provision of any consents, approvals, notices and notices of termination, provided that the Chief Corporate Officer may, at any time, refer consideration of such matters (including their content) to City Council for its determination and direction.
3. If Café on the Square fails to pay the outstanding rent arrears and execute the Lease Amending Agreement by the deadline specified by the Chief Corporate Officer, City Council authorize the Chief Corporate Officer and/or the City Solicitor or their respective designates to demand rectification of the outstanding breaches under the Lease and if the breaches are not rectified as demanded, to terminate the Lease, evict Café on the Square and exercise all other remedies available to the City pursuant to the Lease or otherwise at law, including holding Café on the Square liable for all rent arrears under the Lease and all future damages as a result of the City losing the benefit of the Lease over its unexpired term, as well as all charges and expenses incurred by or on behalf of the City with respect to Café on the Square's default under the Lease.
4. City Council request the Chief Corporate Officer to consult with the Ontario Restaurant Association and training organizations such as the YMCA, UNITE HERE Local 75, George Brown College and other social enterprise food service providers during the remaining term of Cafe on the Square's Lease, as amended, to determine the feasibility of and possible interest in a social enterprise food services operation being established at City Hall following the expiry or termination of the Lease and to report back to City Council, through the Government Management Committee, on the results of the consultations.
5. If the results of the consultations with social enterprise food service providers indicate that a social enterprise model is not a feasible option for City Hall, City Council authorize the Chief Corporate Officer to undertake a new selection process during the remaining term of Cafe on the Square's Lease, as amended, substantially as described in the report (February 9, 2015) of the Chief Corporate Officer entitled, "Café on the Square, 100 Queen Street West-proposed new selection process", to find a new food service operator(s) for City Hall to provide food services following the expiry or termination of the Lease with Café on the Square.

Financial Impact

Financial Impact for 2015 is a loss in revenues of approximately \$73,588 due to the reduction in Common Area and Maintenance costs paid by the current tenant is included in the 2015 Recommended Operating Budget for Real Estate Services.

Early termination of the lease with the current tenant will result in a total loss of revenues of \$981,089 for the period January 1, 2016 to May 31, 2022 (6 years and 5 months). This loss may be partially offset by revenues from leasing arrangements with a new operator of the space. Any impact of the leasing arrangement with the new operator will be included in the 2016 Recommended Operating Budget in the 2016 Budget process.

In addition, the Tenant will not complete leasehold improvements in the amount of \$140,000.

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

DECISION HISTORY

At its meeting held on January 5, 2015, the Government Management Committee requested the Chief Corporate Officer to report directly to City Council on the proposed new selection process set out in Recommendation 2 of Government Management Committee Item GM1.4, which is before City Council for consideration at its meeting on February 10 and 11, 2015.

The Chief Corporate Officer has submitted a separate report (February 9, 2015) to Council, entitled "Café on the Square, 100 Queen Street West-proposed new selection process", about the proposed new selection process.

COMMENTS

Staff recently met with representatives of Cafe on the Square in an attempt to resolve the outstanding issues under the Lease. At the meeting, agreement was reached, subject to City Council's approval, on amendments to be made to the Lease, as set out in Appendix 1.

Approval of these amendments and execution of the Lease Amending Agreement will result in:

- (1) immediate payment to the City of the outstanding rent arrears in the approximate amount of \$216,000.
- (2) early expiry of the Lease on December 31, 2015, rather than May 31, 2022.
- (3) payment to the City of a reduced fixed amount on account of common area and maintenance costs ("CAM") during the period February 1, 2015 to December 31, 2015, rather than payment of a proportionate share of the actual CAM costs during this period.

- (4) immediate prepayment of the rent for the last three (3) months of the amended term.
- (5) the continued provision of food services at City Hall while staff consults with social enterprise food providers to determine the feasibility of a social enterprise food services operation being established at City Hall, and if necessary, while staff carries out a new selection process to find a tenant for the cafeteria space following the expiry or termination of the Lease with Cafe on the Square.

On the whole, the proposed amendments provide a benefit to the City. Therefore, the terms of the proposed Lease Amending Agreement are recommended for approval. A copy of a letter from Cafe on the Square's solicitor, dated February 5, 2015, is attached as Appendix 2, confirming Cafe on the Square's agreement with the terms set out in Appendix 1.

If Cafe on the Square fails to pay the outstanding rent arrears and execute the Lease Amending Agreement by the deadline specified by the Chief Corporate Officer at the time execution copies of the Lease Amending Agreement are delivered to Cafe on the Square, it is recommended that the City proceed to exercise its remedies under the Lease by demanding rectification of the outstanding breaches and if the breaches are not rectified as demanded, by terminating the Lease, evicting Café on the Square and exercising all other remedies available to the City pursuant to the Lease or otherwise at law, including holding Café on the Square liable for all rent arrears under the Lease and all future damages as a result of the City losing the benefit of the Lease over its unexpired term, as well as all charges and expenses incurred by or on behalf of the City with respect to Café on the Square's default under the Lease.

As recommended by the Government Management Committee, staff will consult with the Ontario Restaurant Association and training organizations such as the YMCA, UNITE HERE Local 75, George Brown College and other social enterprise food services providers, to determine the feasibility of and possible interest in a social enterprise food services operation being established at City Hall following the expiry or termination of the Lease with Café on the Square. Following these consultations, Real Estate Services will report back to City Council, through the Government Management Committee, on the results of the consultations.

If the consultations indicate that a social enterprise model is not a feasible option for City Hall, Real Estate Services staff will follow the new selection process described in the report (February 9, 2015) of the Chief Corporate Officer, entitled “Cafe on the Square, 100 Queen Street West-proposed new selection process”, to find a new tenant for the cafeteria space following the expiry or termination of the Lease with Cafe on the Square.

CONTACT

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SIGNATURE

Josie Scioli
Chief Corporate Officer

ATTACHMENT

Appendix 1 - Proposed Terms of Lease Amending Agreement
Appendix 2 - Letter from Solicitor for Cafe on the Square, dated February 5, 2015