TORONTO CENTRE FOR THE ARTS

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STAFF REPORT
ACTION REQUIRED

Recommendations for the Use of the Toronto Centre for the Arts' 2005 Operating Budget Surplus arising from the Receipt of Livent Settlement Funds

Date:	March 13, 2007
To:	Budget Committee
From:	Stan Shortt, Executive Manager, Toronto Centre for the Arts
Wards:	All
Reference Number:	AFS#2281

SUMMARY

At its November 30, 2006 meeting, the Board of Directors of the Toronto Centre for the Arts finalized its thorough review of the short-, medium- and long-term options for the most appropriate use of the $1.848 million of additional 2005 operating surplus resulting from the Livent Claim receipts.

This report to the Budget Committee details the Board's recommendations on the use of these funds.

RECOMMENDATIONS

The Board of Directors of the Toronto Centre for the Arts recommends that:

1. $1.500 million from the Livent Claim receipts be allocated to the NYPACC Capital Reserve Fund; and

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2. The balance of the funds from the Livent Claim receipts of $0.348 million remain in the NYPACC Stabilization Reserve Fund and be earmarked to cover costs associated with transitioning to a potential third party management agreement of the facility with a view to reducing the City's financial contribution.

Financial Impact

The transfer of $1.500 million of the additional 2005 operating surplus, currently residing in the NYPACC Operating Stabilization Reserve Fund, to the NYPACC Capital Reserve Fund is recommended to significantly reduce the current annual capital contribution shortfall to the Centre's Capital Reserve Fund identified by a 2005 review and update of the Centre's1995 reserve fund study.

The allocation of the remaining additional 2005 operating surplus of $0.348 million is recommended to be used to offset one-time operating costs associated with transitioning to third-party management of the facility. The availability of these funds reduces the Centre's need to significantly increase a future operating budget draw to facilitate a third-party management agreement of the facility.

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

DECISION HISTORY

In June 2006, City Council adopted a recommendation included in the 2005 Final Year-end Operating Variance Report which stated:

"$1.848 million of additional 2005 operating surplus generated from the Toronto Centre for the Arts (TCA) be contributed to the TCA Stabilization Reserve Fund pending a report from the TCA Board on recommended options for its disposition."

ISSUE BACKGROUND

In the fall of 1998, Toronto Centre for the Arts filed a claim against Livent for $23.725 million for breach of a management agreement.

In 2004, the Centre forecasted a transfer to the Centre's Capital Reserve Fund of $0.200 million as part of the 2004 Approved Budget but no funds were received from the Livent claim in that year.

In 2005, the Centre received the following two settlement payments totalling $1.848 million generating the additional 2005 operating surplus:

- $1.543 million received March 2, 2005
- $0.305 million received August 23, 2005

During the 2006 budget process, the Board identified the following seven options for the use of the additional 2005 operating surplus from the Livent claim proceeds. At that time, it was agreed that the Centre's Board should have the opportunity to examine and evaluate the options.

Short-Term Option

- Fully offset the 2006 Operating Budget of $1.384 million net and partially offset the 2007 Operating Budget using the balance of $0.465 million. It should be noted that this would create a situation where, in the absence of third-party agreements, there would be a large year-over-year budget increase, creating a significant budget pressure for future years.

Medium-Term Options

- Partially offset the budgets over a period of several years, for example, over 5 or more years to keep the annual request below $1.0 million
- Pay for any ongoing North York Performing Arts Centre Corporation (NYPACC) operating or capital costs since these are unlikely to be covered by a future third-party agreement.

Longer-Term Options

- Contribution to the Capital Reserve Fund, given the fact that the facility is approximately 14 years old and will require major maintenance in future years for which the ticket surcharge for state of good repair maintenance would be inadequate. The Centre's staff estimate an annual capital improvement fund (CIF) shortfall of $0.600 million beginning in 2006, calculated over a period of 40 years.
- Establishment of a risk fund that would enable the Centre to produce or co-produce productions at the Centre, thereby reducing both the annual net City support and CIF shortfall through increased ticket sales.
- Payment for any reconfiguration of the Centre or equipment purchases required to facilitate a long-term third-party management agreement of the Centre.
- Place in contingency fund in case a future third-party agreement is terminated prematurely and the Centre has to re-enter the facility rentals market with a reduced rental client base.

In June 2006, City Council adopted a recommendation that included the transfer of the Centre's 2005 operating surplus be contributed to the NYPACC Operating Stabilization Reserve Fund pending a report from the Centre's Board on recommended options for its disposition.

A review and update of the 1995 40-year reserve fund study for the Toronto Centre for the Arts confirmed an average annual shortfall in contributions to the Capital Reserve

Fund of approximately $0.600 million based on current interest rates and recent average annual contributions to the Capital Reserve Fund of $0.200 million. The updated 40-year reserve fund study determined that in order to maintain the $48.000 million dollar facility, an average annual contribution to the Capital Reserve Fund of approximately $0.800 million is required to ensure that the Centre's Capital Reserve Fund remains properly funded. The balance of the Capital Reserve Fund as at December 31, 2006 was $5.399 million.

In addition, the Centre is actively trying to secure a third-party management agreement. The transition to a third-party management agreement would involve costs such as employee severance settlements and legal fees. These costs, which would be borne by the City, are not included in the Centre's net incremental budget forecasts. Therefore, it would be prudent to make a provision to offset such costs.

In light of this information, at the Centre's Board meeting on November 30, 2006, the Board finalized its evaluation of options for the use of the additional 2005 operating surplus and formulated the following combination of recommended options on how to best utilize the funds.

1. $1.500 million from the Livent Claim receipts be allocated to the NYPACC Capital Reserve Fund; and

2. The balance of the funds from the Livent Claim receipts of $0.348 million remain in the NYPACC Stabilization Reserve Fund and be earmarked to cover costs associated with transitioning to a potential third party management agreement of the facility with a view to reducing the City's financial contribution.

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SIGNATURE

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