

**Municipal Contribution Agreement for OLG Gaming Site
at Woodbine Racetrack**

Date:	October 28, 2013
To:	Executive Committee
From:	City Manager Deputy City Manager and Chief Financial Officer
Wards:	All
Reference Number:	P:\2013\Internal Services\Cf\Ec13022cf (AFS #17856)

SUMMARY

This report recommends that Council authorize execution of the Municipal Contribution Agreement (MCA) between the Ontario Lottery and Gaming Corporation (OLG) and the City of Toronto for the purpose of allowing the City to continue to receive from the OLG a share of the gaming revenue for the gaming site located at Woodbine Racetrack, retroactive to April 1, 2013. The MCA supersedes the previous agreement dated November 3, 2000.

By way of a letter to the City Manager dated October 17, 2013, OLG acknowledged that it would ensure that private sector service providers, currently being selected in a competitive procurement process to run the day-to-day operations of the gaming sites, would be required to follow Council's resolution of May 21, 2013, and not be permitted to add live table games to OLG Slots at Woodbine. If Toronto City Council chooses to enter into the new MCA, that decision will not alter Council's position on expansion of the Woodbine site, nor, as confirmed in the letter, affect OLG's instructions to service providers that live table games are not permitted at Woodbine.

City Council approval of the new MCA is required in order to preserve and continue the existing slots revenue sharing.

RECOMMENDATIONS

The City Manager and Deputy City Manager and Chief Financial Officer recommend that:

1. City Council authorize the appropriate City officials to enter into a Municipal Contribution Agreement with the Ontario Lottery and Gaming Corporation (OLG) to require payment to the City of a share of the gaming revenue generated at the OLG gaming site located at Woodbine Racetrack (the "Woodbine Site") retroactive to April 1, 2013, in accordance with the terms and conditions outlined in this report and otherwise to the satisfaction of the City Manager and in a form satisfactory to the City Solicitor.

Financial Impact

Since the inception of the Slots at Woodbine Racetrack in 2000, the City has received financial contributions (or hosting fees) from OLG under the Racetrack Municipality Contribution Agreement, whereby the OLG paid the City a share of the slots revenue according to a formula based on the number of slot machines at the Woodbine Slots on a quarterly basis. The 2013 approved operating budget for the Woodbine Slots revenue is \$14.9 million provided for in the Non-Program Corporate Revenue account.

Under the auspice of modernization of the Province's gaming industry introduced in 2012, OLG terminated the Slots Machine Program at Racetracks as of March 31, 2013. On July 19, 2013 OLG presented the City with a new draft Municipal Contribution Agreement (MCA). Staff discussions resulted in a final amended and restated MCA, received on October 2, 2013.

Under the new MCA, calculation of the municipal share is based on a different formula which is dependent solely on gaming revenues irrespective of the number of slot machines. Gaming revenues include those generated from electronic games (including slot machines) and live table games, where applicable. Woodbine currently has about 3,000 electronic games but no live table games. It is estimated that the annual City revenue under the new MCA would remain at approximately \$15 million per year, or 2.5% of total gaming revenues at the site of about \$600 million.

The following table summarizes the difference between the new and old formulas for the municipal share of revenue as provided in the new and the previous MCAs:

New Agreement	Previous Agreement dated Nov 3, 2000
<p>OLG will pay the host municipality an amount equal to A + B: A is the sum of:</p> <ul style="list-style-type: none"> - 5.25% for the 1st \$65 million of Electronic Games Revenue[*], plus - 3.00% on the next \$135 million of Electronic Games Revenue[*], plus - 2.50% on the next \$300 million of Electronic Games Revenue[*], plus - 0.50% on the remainder of Electronic Games Revenue[*] exceeding \$500 million <p>B is 4.00% of Live Table Games Revenue[*], if any</p>	<p>OLG paid the host municipality an amount equal to 5% of the Net Win[*] derived from the slot machines on the first 450 slot machines, and 2% of the Net Win from slot machines in excess of 450.</p>

* Please refer to Appendix 2 for the definitions of Electronic Games Revenue, Live Table Games Revenue, and Net Win

Ratification of the new agreement, retroactive to April 1, 2013, will provide for the continuation of payments to the City by OLG. By not signing the agreement, the City risks losing the revenues in the Operating Budget.

DECISION HISTORY

On May 9-11, 2000 City Council approved that the City enter into a revenue-sharing agreement with the Ontario Lottery and Gaming Corporation with respect to the operation of slot machines at Woodbine Racetrack, along with a number of requests to the Province and directions for City services affected by the decision, through the adoption of Clause No. 1 of Report No. 6 of the Policy and Finance Committee, titled "Woodbine Racetrack Slot Machines and Financial Impacts (Ward 5 – Rexdale Thistletown)":

<http://www.toronto.ca/legdocs/2000/minutes/council/cc000509.pdf>

On January 29, 2008, City Council adopted Executive Committee item EX16.7 titled "Revenue Sharing Fairness of Woodbine Slots", which among other things authorized the Mayor and staff to negotiate a change in the Racetrack Municipality Contribution Agreement with the OLG with respect to revenue sharing with the objective of increasing the City's share to be the same as other non-government stakeholders, i.e. 10% of the Net Win as defined by the existing agreement; and that these negotiations take place on a political, as well as staff-to-staff level. In addition, Council directed that a copy of the report (December 19, 2007) from the City Manager and the Deputy City Manager and Chief Financial Officer be forwarded to all municipalities that host slot gaming venues, with a view to building a coalition of the municipalities that host gaming facilities:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2008.EX16.7>

<http://www.toronto.ca/legdocs/mmis/2008/ex/bgrd/backgroundfile-9690.pdf>

On September 24, 2008 Council considered Motion MM24.1 from Councillor Palacio, which recommended that Woodbine Entertainment Group and the City of Toronto approach OLG with a joint proposal to amend the City's agreement with OLG to increase the City's share of the slot revenues to 10 percent, irrespective of the number of slot machines, and that the City Manager report back to the Executive Committee on the status of the City of Toronto's efforts to alter the current slot machine revenue sharing arrangement, as well as how the current WoodbineLive! proposal can be effectively leveraged in any way to meet this City objective. Council referred Motion MM24.1 to the Executive Committee:

<http://www.toronto.ca/legdocs/mmis/2008/ex/bgrd/backgroundfile-16665.pdf>

On November 10, 2008, Executive Committee considered the item EX26.28 entitled "Woodbine Slot Revenue Agreement" and deferred consideration of the above Motion MM24.1, until such time as Woodbine Entertainment Group approaches the City of Toronto with a further proposal.

<http://www.toronto.ca/legdocs/mmis/2008/ex/minutes/2008-11-10-ex26-mn.pdf>

On May 21, 2013, City Council considered Executive Committee item EX30.1 titled "New Casino and Convention Development in Toronto", and among other things resolved to oppose the expansion of existing gaming sites at Woodbine Racetrack in the C2 Zone.

<http://app.toronto.ca/tmmis/viewPublishedReport.do?function=getCouncilMinutesReport&meetingId=7725>

ISSUE BACKGROUND

In 1999, the OLG introduced the Slots-at-Racetrack Program, and has since established 17 racetrack slots facilities and six OLG casinos across the Province, including the slots facility at Woodbine Racetrack which was opened on March 29, 2000.

Under this program, OLG paid a percentage of the gaming revenues (Net Win) from each slot operation in commissions to host municipalities, horse breeders and racetrack owners. The Municipal Contribution Agreement (MCA) formula sets the host municipality's share at 5% of the gross gaming revenue (Net Win) on the first 450 slot machines and 2% on the number of slots in excess of 450 machines. The balance of the gross revenue was distributed in the following manner: racetrack owner - 10%; horse breeders - 10%; Ministry of Health's Problem Gambling Strategy - 2%; and the rest towards OLG's operating expenses with the residual to the Province's Consolidated Revenue Fund and the Ontario Trillium Foundation.

In 2000 the City and the OLG entered into the standard Racetrack Municipal Contribution Agreement for the Woodbine Racetrack Slots facility. The number of slot machines increased from 1,700 in the first year to 3,000 by the end of 2012.

The following table summarizes the annual revenue from Woodbine since inception:

	Gross gaming revenue (\$M)	City's MCA share (\$M)	City's MCA share as % of gross gaming revenue	No. of slots at year-end
2000 *	279.2	7.9	2.84%	1,700
2001	432.1	12.1	2.79%	1,700
2002	512.4	14.3	2.79%	1,700
2003	563.3	15.7	2.79%	1,700
2004	562.8	15.7	2.79%	1,709
2005	524.3	14.5	2.77%	1,945
2006	549.8	14.8	2.69%	1,947
2007	593.7	15.9	2.68%	2,009
2008	626.9	16.8	2.67%	2,009
2009	602.8	16.1	2.67%	2,061
2010	589.6	15.4	2.62%	2,235
2011**	601.6	15.2	2.52%	2,711
2012**	593.1	15.1	2.55%	3,001

* opened March 27, 2000

** Gross revenues are shown on CGAAP basis for comparability.

OLG adopted IFRS reporting standard effective April 1, 2011. IFRS gaming revenue in 2011 and 2012 were respectively \$590.3M & \$577.5M.

Since Woodbine's 2000 inception, Council's position has been that the City requires a larger share of the gross gaming revenue. This was premised on the fact that the City incurs additional operating and capital costs to support the slot operation at Woodbine, e.g. planning, emergency services (police, fire and EMS), transit and transportation. Further, it is also an issue of fairness. Toronto receives a smaller share of the total gaming revenue than all other host municipalities of similar slot operations. Also, Toronto receives a disproportionately smaller return than it contributes to the Province in the racetrack slot operation. Woodbine is the largest and most profitable non-commercial slot facility in the Province with the most slot machines, but the City vis-à-vis the other host municipalities is disadvantaged by the slot facility's size with respect to revenue sharing.

Over the last few years the City's several attempts to seek an improved template agreement from the OLG did not result in a successful outcome.

Effective April 1, 2011 OLG implemented a reporting standards conversion as required by the Public Sector Accounting Standards, from Canadian Generally Accepted Accounting Principles (CGAAP) to International Financial Reporting Standards (IFRS). The conversion would have reduced the municipal share (hosting fees) for the City by approximately \$400,000 annually. After dialogue with the host municipalities, OLG provided temporary compensating assistance as part of the quarterly payments to offset the IFRS conversion impacts until March 31, 2013. The assistance has been discontinued under the new formula.

In early 2012 after a lengthy review of the gaming and lottery industry, the Province announced the OLG Modernization Plan for the lottery and gaming industry, and the termination of the Slots-at-Racetracks Program effective March 31, 2013. While host municipalities would continue to receive gaming revenues under a different formula, the horse breeders and racetrack owners would lose their respective 10% share.

In the fall of 2012 the OLG presented the City and the other existing host municipalities with a new standard Municipal Contribution Agreement (MCA) which was to be effective April 1, 2013 after the current agreement was terminated. Given the public consultation and analyses that City staff was planning to conduct regarding a proposed new casino, this draft MCA was put on hold and not executed. It is staff's understanding that the majority of current host municipalities in the Province had signed this MCA prior to March 31, 2013.

In March 2013, at the request of the Ontario Premier, OLG undertook a review of the funding formula for sharing revenues with host communities. OLG indicated that the principles of fairness and equal treatment would govern the formula and the same formula would be applied across all host communities. On May 17, 2013 the Province announced an amended hosting fee formula retroactive to April 1, 2013 that would apply to all existing and new host municipalities of OLG gaming facilities. In addition to sharing slots revenue, the new formula provides host municipalities with a share of live table game revenues. With the same slot configuration at Woodbine the City is expected to receive about the same annual revenue as under the previous agreement (approximately \$15 M). Other host municipalities, such as Niagara Falls or Windsor where a commercial casino is located, will receive higher hosting fees under this new MCA due to the sharing of live table games revenue.

On May 21, 2013, City Council decided to oppose the establishment of a new gaming site anywhere in the City and the expansion of the existing gaming site at Woodbine, among other things.

Woodbine now hosts approximately 3,000 electronic games/slot machines in a 75,000 ft² gaming area, amongst the largest in Ontario behind Niagara, and operates seven days a week and 24 hours a day. In 2012, the slot machines generated approximately \$578 million in gross slots revenue (IFRS basis, or \$593 million CGAAP basis), and the City received \$15 million in hosting fees from OLG, equivalent to 2.6% of the slot revenue. The racetrack owner at Woodbine and the horse-racing industry received approximately \$120 million (totalling 20% of the slots revenue). With the termination of the Slots-at-Racetrack Program, OLG no longer shares the slots revenue with the site holder or the horse-racing industry, but has since entered into a three-year lease agreement with Woodbine Entertainment Group to allow the continual operation of the slots and horse-racing at the facility. OLG employs approximately 650 full-time equivalents at the Woodbine slots. Approximately 5.2 million patrons visited the facility in 2012.

COMMENTS

OLG has provided the new Municipal Contribution Agreement and a copy is attached as Appendix 1.

Appendix 2 is a summary of the key terms of the new MCA and the main differences from the previous terminated agreement. Notable changes in the new MCA include the new hosting fee formula and the requirement for a Community Recognition Program, discussed in more details below.

Hosting fee formula:

According to the new MCA, the host municipality is entitled to receive from OLG in each Operating Year (defined as April 1 – March 31 during the term of the agreement) an amount (the Annual Contribution) equal to the sum of A + B, where:

- A is the sum of:
- (i) 5.25% on the first \$65 million of the annual Electronic Games Revenue¹, plus
 - (ii) 3.00% on the next \$135 million of the annual Electronic Games Revenue¹ (that is more than \$65 million and less than or equal to \$200 million), plus
 - (iii) 2.50% on the next \$300 million of the annual Electronic Games Revenue¹ (that is more than \$200 million and less than or equal to \$500 million), plus
 - (iv) 0.50% on the annual Electronic Games Revenue¹ that is more than \$500 million; and
- B is 4.00% of the annual Live Table Games Revenue², if any.

If Woodbine continues to have the same number of slot machines and no live table games, generating the same gaming revenues (2012: \$578 million), the City's Annual Contribution or hosting fees would be approximately the same under the new formula (at \$15 million).

Regarding the City's 2013 revenues from hosting fees, OLG has paid the first and second quarterly payments as of this report date — the first quarter based on the previous agreement and the second on the amended agreement beginning April 1, 2013 (although the agreement has not been executed).

Since the Operating Year under the new MCA goes from April to March, the Q2 payment will be the largest, and Q1 the smallest. In 2013, the City will receive a normal /average Q1 payment under the old agreement and Q2 - Q4 payments under the new agreement.

¹ Electronic Games Revenue is generally all net revenues generated from all electronic gaming devices, including reel-type and video-type slot machines, electronic table games, and dealer assisted electronic games whether or not a live dealer is present to enable or control game play. Please see the definition in Appendix 2.

² Live Table Games Revenue is generally all net revenues generated from Live Table Games (operated by a live dealer at a single gaming table). Please see the definition in Appendix 2.

Therefore 2013 revenue will exceed the normal annual revenue share. Future years should not be affected. The one-time projected 2013 year-end budget surplus is estimated at \$2.1 million, as summarized in the following table.

	June 2013 YTD	2013 projected year-end
Approved Budget	\$7.5 million	\$14.9 million
Actual	\$9.7 million	\$17.0 million
Variance	+ \$2.2 million	+\$2.1 million

City Council approval of the new MCA is required in order to preserve and continue the existing slots revenue sharing.

Community Recognition Program:

The new MCA requires the host municipality to implement a Community Recognition Program (CRP), which is a new joint initiative to increase public awareness and transparency around how the hosting fees are put to use in the community. OLG has indicated that it plans to financially support this initiative in each host municipality.

It is expected that CRP will include, at a minimum, one community event every year, regular discussions and meetings between OLG and the City relating to the use of the hosting fees, and the allocation of responsibilities and obligations in respect of the development, operation and other activities of the CRP.

The City is expected to comply with reasonable initiatives and requests proposed by OLG relating to the CRP and its initiatives, including branding, marketing and public acknowledgement in respect of funding by OLG.

In addition, the MCA requires the City to ensure that its marketing and advertising materials are not false, misleading or deceptive, do not portray OLG or customers of Woodbine or the general public in a disparaging manner, and that such marketing and advertising materials are in compliance with OLG's marketing and branding guidelines. In the event the City does not comply with OLG's marketing and branding guidelines, OLG may require the City to submit all proposed advertising and marketing materials to OLG for its review and approval not less than 15 business days prior to their use.

The City in discussion with the OLG has clarified that the marketing and branding guidelines as described in the MCA pertain only to the Community Recognition Program. The guidelines are still under development by the OLG.

Municipal Consent for Adding Live Table Games

By way of a letter to the City Manager dated October 17, 2013 (attached as Appendix 3), OLG acknowledged that it would ensure that private sector service providers, currently being selected in a competitive procurement process to run the day-to-day operations of the gaming sites, would be required to follow Council's resolution of May 21, 2013, and will not be permitted to add live table games to OLG Slots at Woodbine. If Toronto City

Council chooses to enter into the new MCA, despite reference in the new MCA to possible table game revenues, that decision will not alter OLG's instructions to service providers that live table games are not permitted at Woodbine.

The City Solicitor was consulted in the preparation of this report and concurs with the recommendations herein.

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ATTACHMENTS

Appendix 1 — OLG Final Amended and Restated Municipal Contribution Agreement

Appendix 2 — Summary of key terms of the OLG Municipal Contribution Agreement and changes from the previous agreement

Appendix 3 – Letter dated October 3, 2013 from OLG's President and CEO to the City Manager

Appendix 2
Summary of key terms of the OLG Municipal Contribution Agreement (MCA)
and changes from the previous agreement

Key sections of the new MCA	Previous agreement (terminated as of Mar 31, 2013)	Comment
<p><u>Term and Termination:</u></p> <p>Effective April 1, 2013 or such later date as OLG may specify.</p> <p>Will terminate at the earliest of: the termination of the slots operation by OLG, generally 30 days' notice by OLG, and a date mutually agreed to by both parties</p>	<p>Effective March 29, 2000</p> <p>Similarly no fixed term</p> <p>Termination by OLG only for breach by the City after 30 day notice and opportunity to remedy breach.</p>	<p>The City is protected from termination by OLG only by the Province's intention to continue to share this revenue.</p>
<p><u>Payments:</u></p> <p>OLG will pay the host municipality an amount equal to A + B: A is the sum of:</p> <ul style="list-style-type: none"> (i) 5.25% for the 1st \$65 million of Electronic Games Revenue¹, plus (ii) 3.00% on the next \$135 million of Electronic Games Revenue¹, plus (iii) 2.50% on the next \$300 million of Electronic Games Revenue¹, plus (iv) 0.50% on the remainder of Electronic Games Revenue¹ exceeding \$500 million <p>B is 4.00% of Live Table Games Revenue²</p> <p>¹ Electronic Games Revenue is defined as the sum of net revenue generated from Electronic Games (all electronic gaming devices, including but not limited to reel-type and video-type slot machines, electronic table games, and dealer assisted electronic games whether or not a live dealer is present to enable or control game play) calculated in accordance with International Financial Reporting Standards (IFRS) or other Canadian generally accepted accounting principles as OLG adopts from time to time in its sole discretion.</p> <p>² Live Table Games Revenue is defined as the sum of net revenue generated from Live Table Games (operated by a live dealer at a single gaming table, but excluding Electronic Games) calculated in accordance with IFRS or other Canadian generally accepted accounting principles</p>	<p>OLG to pay the host municipality an amount equal to 5% of the Net Win³ derived from the Slot Machines on the first 450 slot machines, and 2% of the Net Win from slot machines in excess of 450.</p> <p>³ Net Win is calculated in accordance with industry practices, as the difference between the total amount recovered by OLG from the slot machines (the total "drop"), less</p> <ul style="list-style-type: none"> 1) the amounts added to the slot machines in the ordinary course by OLG (the total "fill"); and 2) the prizes that are not paid out by the slot machines ("jackpots" and "handpays"). <p>Effective 2011, OLG has implemented International Financial Reporting Standards, which changed the interpretation of Net Win and reduced the basis of revenue-sharing by the cash value of loyalty programs and rebates. A transitional compensating payment plan was adopted by OLG from April 1, 2011 to March 31, 2013, which essentially offset the IFRS impact.</p>	<p>Under the new agreement, payments to the City depend on gaming revenues, not operational considerations such as number of machines.</p> <p>Furthermore, the marginal participation in increases or decreases to slot revenues is reduced from 2.0% to 0.5%, which should stabilize City revenue expectations.</p> <p>Finally, the City no longer receives the interim adjustment for the accounting change to IFRS.</p>

Key sections of the new MCA	Previous agreement (terminated as of Mar 31, 2013)	Comment
<p>as OLG adopts from time to time in its sole discretion.</p> <p>Payments are subject to adjustments by OLG if the City imposes additional taxes, charges, conditions or requirements on OLG.</p> <p>Overpayments as determined by OLG up to 60 days after the year-end may be deducted from future quarterly payments</p>		<p>Only overpayments are addressed in the MCA. It is silent on underpayments. It is not clear what criteria or processes OLG will use to determine overpayments.</p>
<p><u>Timing of Payments, Audit Rights:</u></p> <p>Payment will be made within 21 days after each quarter end. OLG will provide current audited consolidated financial statements after they are made public by the Ministry of Finance in public accounts.</p>	<p>Similar terms, but provided for an adjustment after the audited consolidated financial statements were available.</p>	<p>Agreement still does not allow the City to access audited financial information specific to the Woodbine facility.</p>
<p><u>Community Recognition Program:</u></p> <p>OLG and City will jointly build public awareness around how the hosting fees are put to use in the community, including branding, marketing and public acknowledgement of the OLG funds.</p> <p>The City will ensure that its marketing and advertising materials are not false, misleading or deceptive, do not portray OLG or customers of the gaming site at Woodbine or the general public in a disparaging manner, and that such marketing and advertising materials are in compliance with the marketing and branding guidelines which OLG communicates to the City from time to time. In the event the City does not comply with OLG's marketing and branding guidelines, OLG may thereafter require the City to submit all proposed advertising and marketing materials in relation to the matters set out herein to OLG for its review and approval not less than 15 business days prior to the expected use or distribution of such materials.</p>	<p>No such requirements</p>	<p>The requirement imposes communications obligations on the City.</p> <p>OLG has indicated it plans to financially support this initiative in each host municipality.</p> <p>The marketing and branding guidelines are still under development by the OLG.</p>

Key sections of the new MCA	Previous agreement (terminated as of Mar 31, 2013)	Comment
<u>Relationship of the Parties:</u> OLG has the sole right to determine the number and type of Electronic Games.	No such clause	This has been the case since Woodbine Slots' inception in 2000.
<u>Liabilities:</u> OLG and the Province are not liable to the City under the Agreement or in respect of the slot machines. The City releases OLG from all losses.	Similar provision without the release.	The City is now required to provide OLG with a release.
<u>Dispute Resolution:</u> No recourse to arbitration	Unresolved disputes subject to referral to arbitration	The City never sought an arbitrated settlement, but the right gave the host greater power
<u>Parity with other jurisdictions</u> No requirement to match enhanced revenue sharing should it be implemented elsewhere	Required that enhanced formulas in other jurisdictions be matched at Woodbine	OLG indicated that the principles of fairness and equal treatment will govern the formula and the same formula will be applied evenly across all host communities.