

## **SUMMARY**

The City of Greater Sudbury has previously confirmed its support for the Place des Arts project through the provision of capital funding in the amount of \$5 million, along with access to the property on Larch Street (valued at approximately \$600,000), and operational funding of \$149,213 from the 2019 budget. The total value of the capital project is \$30 million, funded by both public and private sources.

Earlier this summer, staff received a request from Place des Arts (PdA) asking for the City's consent to the PdA mortgaging its lease with the City. The organization is securing a line of credit for \$7.5 million from Caisse Populaire Voyageurs Inc., which is payable on demand, and they are proposing to secure it by way of a mortgage against the lease on the property, located at the corner of Elgin and Larch Streets. The terms of the lease require the City's consent for such a mortgage.

The risks and the benefits associated with the City's role in this financing structure are outlined below. Staff are seeking Council's approval to provide its consent in order that Place des Arts can secure this financing.

PdA have advised that the Line of Credit, which will be secured by mortgage, will be used for construction only, and not for ongoing operations. The agreement with the Lender explicitly limits the amount of funds available to PdA to the lesser of construction costs actually incurred and funds receivable (from funders and confirmed major donors).

In order to reduce pressure on the Line of Credit and thereby mitigate risks associated with the loan, Place des Arts is exploring options with its federal funding partners at the Cultural Spaces program at Heritage Canada to "front-load" as much of their contribution as possible during the 2019-2020 and 2020-2021 fiscal years, based on achieving specific project milestones.

Based on the disbursement schedule in the PdA-CGS contribution agreement, it is anticipated that the City itself will be in position to issue a second installment of \$1 million in the next several weeks, as the project has achieved the milestones associated with this allotment of funds (including site plan control agreement, awarding of the construction contract and issuance of the conditional building permit). A third disbursement (\$1.5 million) is expected in the spring of 2020 (50% completion of construction).

Receipt of these funds will greatly reduce the project's reliance on the line of credit by supporting the cash flow required to cover costs associated with construction and enabling the project to pay for costs in advance of receiving payment from other funders, such as the Northern Ontario Heritage Fund Corporation, that work on a reimbursement basis rather than a cash-advance basis.

## **RISKS, BENEFITS, ALTERNATIVES**

As noted, Place des Arts has confirmed that it has all funding sources either in place or confirmed for the capital phase of the project. The organization is also working with senior government partners to explore "front-loading" of the funding in order to reduce reliance on the Line of Credit and ensure cash flow is available to cover construction expenses.

### **Risks of Inability to Pay Off**

Should Place des Arts unexpectedly find itself unable to pay for construction costs or not in a position to make the regular payments to the Lender for the Line of Credit, it is possible that the PdA may look to the City for further financial assistance. In a default situation, the Lender would be in a position to exercise its remedies under the mortgage.

The organization may find itself with the inability to pay off the Line of Credit, potentially due to:

- overspending relative to the budgeted amounts so that the debt incurred exceeds the grant amounts to be advanced;
- fundraising results not matching goals (to the extent that the organization is relying on the line of credit for the fundraising gap); or
- an unforeseen change in one of the grant agreements with another funder, reducing the grant funding available from that agency.

The organization's capacity to make the required monthly payments could also be impacted by timing of advances from funders (e.g. quarterly or by milestones achieved).

In these cases, the Lender may be put into position to exercise its enforcement remedies in a default situation. These could include (among others):

- garnishment of rents owing to the PdA, creating a shortfall in the operating costs;
- foreclosure of the PdA interest in the lease, which means that the Lender becomes the tenant (and subject to the terms of the lease with the City);
- installation of a management organization to operate, or
- power of sale, in which the Lender would convey the PdA's interest to a third party who would become the tenant (again, subject to the terms of the City's lease).

### **Risk of Declining Consent**

In contrast, should the City decline consent to the mortgage of lease, the project would not be in a position to pay for construction costs up-front, thereby potentially forfeiting reimbursement by other funders and putting the entire project at risk, including the City's own significant contribution of land, operating dollars and significant in-kind support.

### **Benefits of Providing Consent**

By approving consent for the mortgage of lease, the City is confirming its ongoing commitment to Place des Arts as an important initiative for the community. This is in alignment with Council's strategic objective to "invest in transformative facilities, spaces and infrastructure initiatives that support economic activity" as outlined as item 4.4 in the new *Strategic Plan 2019-2027*.

Providing its consent for the mortgage of lease enables the City to send an important signal to other funding partners and senior levels of government by reconfirming support for collaboration with these agencies for this initiative.

### **Alternative Approach**

If the City wished to provide further support, without consenting to the mortgage of lease, the City could consider co-signing on the loan and becoming jointly liable for payment, or making a further loan to PdA in lieu of the commercial Lender. At this time, it is recommended that consent to mortgage of lease is the more expeditious and lower-risk option.

### **Lease versus Ownership of Land**

As part of its support for the project, the City has provided the Larch Street property through a long-term (99 year) lease agreement. This was done as a way to protect the City's future interests and guarantee the City's first right of refusal in the event of any changes in the facility and its ownership/management.

As such, Place des Arts does not own the land, and therefore does not have access to the equity that the land represents for the Lender to use as potential security against the Line of Credit.

However, even in the case that the City was to transfer the ownership of the property to Place des Arts directly, the value of the land is approximately \$600,000, which does not represent a significant level of security against a \$7.5 million Line of Credit. It is not recommended that transfer of ownership of the property to Place des Arts is a feasible alternative to providing consent to mortgage of lease.

### **BACKGROUND**

Recognizing the initiative as one of the Large Projects and therefore a priority of the City, Council approved a contribution of \$5 million as part of the 2017 Budget, with dollars going toward the capital costs of the Place des Arts facility, a multidisciplinary and multi-function arts centre located in downtown Sudbury. The City's contribution also included a long-term lease of land for the facility. The contribution was made conditional on confirmation of other public funding dollars from the province and the federal government.

The total value of the capital project is approximately \$30 million, with contributions of public dollars from all three levels of government as well as significant donations from the private sector and individuals. To date, all public funding sources have been confirmed, and PdA has also reached its first goals for securing private donations as well.

As part of project financing plans, PdA confirmed its use of a Line of Credit for the construction phase, and emphasized its commitment to using fundraising in order to reduce its reliance on debt. In order to secure this Line of Credit, the project's Lender is seeking the City's consent to register a mortgage of the land lease as collateral for the loan.

Place des Arts has Council representation on the organization's Board of Directors, as designated by Council through its Nomination Committee and the related process. This was requested by the proponents as part of their collaborative approach to the project and their expressed commitment to good stewardship of the municipality's investment.

In addition to the capital investment, the City has also confirmed an annual grant to support operational costs of the Place des Arts project, starting with a contribution of \$149,213 from the 2019 budget.

The initial request to the City in late 2015 for project support included both capital funding and the land itself; the requirement for the City to consent to register a mortgage on title follows the decision to lease the land to PdA on a long-term basis, rather than transferring ownership of the land outright.

To date, PdA has confirmed that their fundraising cabinet has been working over the past two years and has achieved the primary fundraising goals. They now have a new fundraising cabinet in place to continue the effort, and the total fundraising goal remains at \$3.75 million.

The project has also secured a contractor through a competitive process, and construction is in its early phases on the Larch Street property. Place des Arts is on track to have the capital phase completed for a facility opening in late 2020.

## **CONCLUSION**

The consent of the City for the mortgage of lease is an important component of ongoing municipal support for this project. Pending Council approval, the CAO would execute the consent in the form requested by the Lender's lawyer.

Place des Arts is required to provide regular updates to staff on cashflow and debt repayment as part of its ongoing reporting obligations as outlined in the Contribution Agreement signed in early 2018. Information will continue to be provided to Council as a component of Large Projects updates.