TO: Chair and Members  
Emergency & Community Services Committee  
WARD(S) AFFECTED: WARD 6  

COMMITTEE DATE: March 3, 2010  

SUBJECT/REPORT NO:  
Mohawk 4Ice Operating Letter of Credit (CS10019) (Ward 6)  

SUBMITTED BY:  
Joe-Anne Priel  
General Manager,  
Community Services  

PREPARED BY:  
Antonio D Tollis  
(905)546-2424 Ext. 4549  
Diane LaPointe-Kay  
(905)546-2424 Ext. 4610  

RECOMMENDATION:  

(a) That the correspondence from Hamilton Arena Partners (attached as Appendix A to Report CS10019), requesting removal of the requirement for Hamilton Arena Partners Inc. to provide the City of Hamilton with a letter of credit in the amount of $150,000, as per Article 3.17 of the Mohawk 4 Ice Centre Operating and Maintenance Agreement, be received.  

(b) That staff be directed to return the Letter of Credit, in the amount of $150,000, which is currently held by the City of Hamilton, as per Article 3.17 of the Mohawk 4 Ice Centre Operating and Maintenance Agreement, to the Hamilton Arena Partners Inc.;  

(c) That staff be directed to transfer $150,000 from the Four Pad Arena Capital Reserve to the Mohawk 4Ice Arena Operating Stabilization Reserve #110049.
EXECUTIVE SUMMARY

The Hamilton Arena Partners (HAP) is the management company of the Mohawk 4 Ice Pad Arena. HAP is requesting that the City return a Letter of Credit in the amount of $150,000. The Operating and Maintenance Agreement (the Agreement), between the City of Hamilton and the Hamilton Arena Partners Inc., states that the Letter of Credit can be returned if the same amount is set up in an Operating Stabilization Reserve using surpluses generated from the operation. Surpluses to date have been used to offset the operating deficits in the first year and a half of operations. After 2009, all the deficits will be repaid and the first contribution to the Operating Stabilization Reserve will be made. As well, the arena construction (completed by HAP) resulted in a surplus of $341K. This amount was credited to the Capital replacement reserve.

By shifting 50% of the construction surplus to the Operating Stabilization Reserve, the terms of returning the Letter of Credit will have been met. It is expected that any ongoing City contribution towards any future deficit will be covered through this reserve. Staff is therefore recommending that the Letter of Credit be returned to HAP.

Alternatives for Consideration – See Page 4

FINANCIAL / STAFFING / LEGAL IMPLICATIONS

Financial:
After the 2009 fiscal year, 2005 and 2006 deficits will have been repaid through annual operating surpluses. It is estimated that there will be enough surplus in 2009 to make a small contribution to the Operating Stabilization Reserve. This money, together with the proposed transfer of 50% of the construction surplus, will provide enough security for any City portion of future deficits should they materialize.

Staffing:
There are no staffing implications associated with Report CS10019.

Legal:
There are no legal implications associated with Report CS10019.

HISTORICAL BACKGROUND

A letter was received on June 2, 2009, from the operators of the Mohawk 4 Ice Facility (attached as Appendix A to Report CS10019) requesting that the requirement for an Operating Letter of Credit in the amount of $150,000 be returned to the operator. This report will outline the City’s consideration of this request.
POLICY IMPLICATIONS

There are no policies affecting Report CS10019.

RELEVANT CONSULTATION

Treasury Services Division, Corporate Services Department
Legal Services Division, Corporate Services Department
Recreation Division, Community Services Department
Hamilton Arena Partners

ANALYSIS / RATIONALE FOR RECOMMENDATION

The requirement for a Letter of Credit is outlined in the Operating Agreement between the City and Hamilton Arena Partners in Article 3.17 and reads as follows:

“On or before the Commencement Date, HAP will provide to Hamilton an irrevocable Letter of Credit in the amount of One Hundred and Fifty Thousand dollars ($150,000) drawn on a major Canadian Chartered Bank and shall renew the same on an annual basis. Hamilton agrees that HAP is authorized to reduce the value of the Letter of Credit by an amount equivalent to the annual deposit to Hamilton’s Operating Stabilization Account pursuant to Article 3.14. For greater certainty, Hamilton shall only be able to draw against the Letter of Credit in the event of a breach of the Agreement by HAP that HAP has not remedied in accordance with the terms of this Agreement”

Article 3.14 referenced above refers to the reduction of the Letter of Credit once an Operating Stabilization Reserve is set up in a similar amount, using operating surpluses.

The following is the Operating Results for the Arena since the start of operations:

<table>
<thead>
<tr>
<th>YEAR</th>
<th>ANNUAL SURPLUS (DEFICIT)</th>
<th>ACCUMULATED DEFICIT</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004</td>
<td>(39,608)</td>
<td>(39,608)</td>
</tr>
<tr>
<td>2005</td>
<td>(146,619)</td>
<td>(186,227)</td>
</tr>
<tr>
<td>2006</td>
<td>(41,300) Funded 50 / 50</td>
<td>(186,227)</td>
</tr>
<tr>
<td>2007</td>
<td>50,118</td>
<td>(136,109)</td>
</tr>
<tr>
<td>2008</td>
<td>99,413</td>
<td>(36,696)</td>
</tr>
<tr>
<td>2009</td>
<td>75,000 Estimate</td>
<td>0</td>
</tr>
</tbody>
</table>
Operating surpluses to date have been sufficient to repay the deficits in 2005 and 2006. Any future surpluses will go first to set up a Stabilization Fund of $250,000, then will be split 70% contribution to the City and 30% payable to HAP. Any future deficits will be split on a 50/50 basis. The City’s portion will come from the Stabilization Reserve.

In 2008, the Capital Account for the Quad Pad was closed. There was a surplus in funding in the amount of $341,000. This amount was transferred to the Four Pad Arena Capital Reserve. The surplus was generated by HAP in that the design and construction was done by them.

In 2009, it is expected that all previous deficits will be repaid and the first contribution to the Operating Stabilization Reserve will be made.

By shifting $150,000 of the $341,000 Capital Surplus (estimated 2009 balance of this reserve is $600,000) to the Operating Stabilization Reserve, the Letter of Credit would no longer be required as the intent of the Agreement with respect to the Letter of Credit would have been fulfilled.

The City of Hamilton and HAP continue to have a strong working partnership that provides a high quality recreation facility that is fiscally responsible and provides many health benefits to the community.

**ALTERNATIVES FOR CONSIDERATION:**

There are no alternatives to Report CS10019.

**CORPORATE STRATEGIC PLAN**


**Financial Sustainability**

- Delivery of municipal services and management capital assets/liabilities in a sustainable, innovative and cost effective manner.

**APPENDICES / SCHEDULES**

June 2, 2009

Tony Tollis
City of Hamilton
71 Main St West
Hamilton, ON L8P 4Y5

Re: Article 3.17 of the Mohawk 4 Ice Centre Operating and Maintenance Agreement

Dear Mr. Tollis,

Please accept this letter as a formal request to remove the requirement for Hamilton Arena Partners Inc. (HAP) to provide the City of Hamilton with a letter of credit as per Article 3.17 of the Mohawk 4 Ice Centre Operating and Maintenance Agreement

“Article 3.17 Operating Security
On or before the Commencement Date, HAP will provide to Hamilton an irrevocable Letter of Credit in the amount of One Hundred and Fifty Thousand dollars ($150,000) drawn on a major Canadian Chartered Bank and shall renew the same on an annual basis. Hamilton agrees that HAP is authorized to reduce the value of the Letter of Credit by an amount equivalent to the annual deposit to Hamilton’s Operating Stabilization Account pursuant to Article 3.14. For greater certainty, Hamilton shall only be able to draw against the Letter of Credit in the event of a breach of the Agreement by HAP that HAP has not remedied in accordance with the terms of this Agreement”

The Hong Kong Bank of Canada currently requires an equal amount of cash to be deposited to cover the $150,000 letter of credit. HAP’s desire is to have this cash freed up and to remove the annual cost of the letter, which must be paid by the Centre, for what HAP believes to be an unnecessary letter of credit.

Article 3.17 states that the value of the letter of credit could be reduced by an amount equal to the deposits to Hamilton’s Operating Stabilization Account. To date, the value of the letter has not been reduced as previous years profits have not gone to the Account, as per the Agreement, but have instead gone towards paying off the first year losses. These losses were a direct result of unanticipated delays in approval of the partnership after the agreements were drafted, and this repayment is an act of good faith on the part of HAP.

HAP has worked diligently over the past four and a half years to ensure that the City has been able to enjoy a well managed facility. HAP continues to provide the City with monthly financial reports and an annually audited set of financial statements summarizing the operations of the Centre. The City is also provided with bank statements on a regular basis and is free to request any information that can be provided.

HAP believes it has an excellent partnership with the City of Hamilton and requests the approval to remove the requirement for the $150,000 letter of credit.

Respectfully submitted,

Robert Hendry, CMA
Controller