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<b>TO:</b>	<b>CHAIR AND MEMBERS STRATEGIC PRIORITIES AND POLICY COMMITTEE MEETING ON DECEMBER 18, 2014</b>
<b>FROM:</b>	<b>MARTIN HAYWARD MANAGING DIRECTOR, CORPORATE SERVICES AND CITY TREASURER, CHIEF FINANCIAL OFFICER</b>
<b>SUBJECT:</b>	<b>ORCHESTRA LONDON – ADDITIONAL GRANT REQUEST</b>

<b>RECOMMENDATION</b>
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That, on the recommendation of the Managing Director, Corporate Services and City Treasurer, Chief Financial Officer, the following actions be taken with respect to a request from Orchestra London Canada Inc. (Orchestra London) for funding assistance:

- (a) the request for \$375,000 of support to assist with unpaid salaries, CRA remittances and the retaining of professional insolvency practitioners, under separate cover on the same Strategic Priorities and Policy Committee agenda, **BE DENIED**;
- (b) the source of funding, attached as Appendix 'A', **BE APPROVED** in the event the TD Bank Group makes demand for payment from the City under the Guarantee between the City and the TD Bank Group;
- (c) the Memorandum dated December 15<sup>th</sup>, 2014 from Joe O' Neill – Chair of the Board of Directors of Orchestra London providing additional information for consideration by the Strategic Priorities and Policy Committee, attached as Appendix 'B', **BE RECEIVED** for information; and,
- (d) the impact of events surrounding Orchestra London Canada Inc. on the revenue for Centennial Hall for both 2014 and 2015 **BE RECOGNIZED** noting that \$49,793.45 remains unpaid for October through December 2014 and 2015 booking cancellations may impact revenue for the facility in 2015.

<b>PREVIOUS REPORTS PERTINENT TO THIS MATTER</b>
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Orchestra London Loan Guarantee -  
(December 10, 2008 meeting of Board of Control)

Orchestra London -  
(January 19, 2011 meeting of Finance and Administration Committee)

Orchestra London 2010-2011 Financial Results –  
(November 16, 2011 meeting of Finance and Administration Committee)

Orchestra London –  
(January 23, 2012 meeting of Investment and Economic Prosperity Committee)  
<http://sire.london.ca/agdocs.aspx?doctype=minutes&itemid=6160>

Orchestra London 2011-2012 Financial Results –  
(January 28, 2013 meeting of Investment and Economic Prosperity Committee)  
<http://sire.london.ca/agdocs.aspx?doctype=minutes&itemid=17382>

Orchestra London -  
(March 31, 2014 meeting of Investment and Economic Prosperity Committee)  
<http://sire.london.ca/agdocs.aspx?doctype=minutes&itemid=26110>

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Orchestra London Credit Guarantee –  
 (August 27, 2014 meeting of Investment and Economic Prosperity Committee)  
<http://sire.london.ca/agdocs.aspx?doctype=minutes&itemid=28520>

**BACKGROUND**

**City of London relationship with Orchestra London Canada Inc.**

Orchestra London Canada Inc. (Orchestra London) is a corporation without share capital incorporated under the Ontario Corporations Act. Orchestra London operates independently of the City. It is not an agency, local board, commission or service corporation of the City.

Orchestra London is governed by a Board of Directors appointed by its members. The City is not a member of Orchestra London and does not appoint any directors to its Board.

In 2014, the City of London provided funding to Orchestra London through an operating grant in the amount of \$482,688 and support through a Guarantee to the TD Bank Group (TD Bank) which guarantees the obligations of Orchestra London to the TD Bank in an amount not to exceed \$500,000 plus costs and expenses of the TD Bank in enforcing the Guarantee.

**Chronology**

In December 2008, Council approved a guarantee on a line of credit up to \$500,000 (the Guarantee) with the Bank of Nova Scotia by Orchestra London. Orchestra London was in financial difficulty and had an accumulated deficit in excess of \$700,000. The guarantee along with continuation of a grant (up to \$500,000 per year) enabled Orchestra London to continue operations. Council also placed a number of requirements on Orchestra London in exchange for the guarantee:

<b>Requirement:</b>	<b>Compliance:</b>
i. The Orchestra London Board continuing to try to find community partners to assume some portion of the loan guarantee and, if so, the City's guarantee being reduced accordingly;	✓ part of their day to day mandate
ii. Orchestra London continuing to seek donations to fund Orchestra London's cash flow shortage;	✓ part of their day to day mandate
iii. Jim Dunlop being assigned as Orchestra London's financial consultant, with direct monthly reporting to the Civic Administration and, in turn, with semi-annual reporting, or sooner should issues arise, from the Civic Administration to the Municipal Council; Condition amended in 2011, as follows: a. April 18, 2011 - Jim Dunlop to vacate his position as Orchestra London's financial consultant; and b. April 18, 2011 - A current member of the Orchestra London's Finance Committee to take the position of financial consultant for the Orchestra London, with the same monthly reporting to Civic Administration as was completed by Mr. Dunlop.	✓ Chair of Board is Joe O'Neill, Partner, PwC
iv. An interim Financial Oversight Committee of up to five prominent citizens being established to assist the Orchestra London Board for the life of the loan guarantee, with the Committee being composed of volunteers agreed upon by the Orchestra London Board being implemented; and,	✓ Finance Sub-committee of Board reviewed financials

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<p>v. The new Business Plan present by the Orchestra London Board being implemented.</p>	<p>✓ January 2009 report included a copy of the Orchestra London's "Plan for a Sustainable Future".</p> <p>✓ An updated version was issued in April 2013</p>
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At the August 27, 2014 meeting of the Investment and Economic Prosperity Committee, Civic Administration brought forward a report detailing Orchestra London's financial results and status of the guarantee, noting that Orchestra London had established different Credit Facilities with TD Bank Group and was requesting that the City guarantee its indebtedness to the TD Bank Group.

At that time, Civic Administration indicated that although the 2013-2014 results were unaudited at the time of the report, the draft financial statements indicated a projected surplus of \$46,820. The report also suggested that the September to December funding be provided for an immediate release to assist in cash flow for the balance of 2014. Similar to prior years, the first few months of the Orchestra London's new year (July – September) showed negative cash flows due to the front end costs associated with setting up the new production season. The September to December funding was released to Orchestra London in September, to assist in reducing their reliance on the line of credit. City Council authorized the City to provide a guarantee to the TD Bank Group (TD Bank) for the obligations of Orchestra London to the TD Bank in an amount not to exceed \$500,000 plus costs and expenses of the bank in enforcing the Guarantee for a term not to exceed three (3) years, ending December 15<sup>th</sup>, 2017. The previous guarantee with the Bank of Nova Scotia was discharged.

For the previous four years, Orchestra London has achieved a surplus. The 2013 year end surplus of \$30,740 was due to an anonymous donation received in 2013. The City was advised that this donation was directed to be used to support operations and was pledged with an allocation over 3 years as follows:

- 2012/2013 year end \$350,000, received in July 2013
- 2013/2014 year end \$350,000
- 2014/2015 year end \$300,000

Orchestra London Board Chair and the Executive Director communicated with Civic Administration on December 8<sup>th</sup>, 2014 that the donor has re-purposed the 2<sup>nd</sup> and 3<sup>rd</sup> instalment of the donation. The new conditions of the pledge require the funds to be used as a capital gift towards a new venue. As such, the donation for the 2014 year end, will not be recorded, which will result in a net deficit for the June 30, 2014 year end of approximately \$332,000 (from a projected surplus of \$46,820).

5 year financial trends are highlighted in the next chart:

<b>Orchestra London - 5 Year Financial Trends</b>					
	<b>Year ending</b>				
	2010	2011	2012	2013	2014 <sup>1</sup>
	30-Jun-10	30-Jun-11	30-Jun-12	30-Jun-13	30-Jun-14
<b>Accumulated Deficit</b>	(1,054,622)	(986,838)	(981,508)	(950,768)	(1,282,758)
<b>Net surplus (deficit) for the year</b>	59,266	67,784	5,330	30,740	(331,989)
<b>Line of credit balance</b>	(185,000)	(170,000)	(350,000)	(580,000)	(540,000)
<b>Total Revenues</b>	2,945,252	2,849,931	3,132,218	3,082,786	2,498,308
<b>Total Expenditures</b>	2,885,986	2,782,147	3,126,888	3,052,046	2,826,577

<sup>1</sup> Based on 2014 draft audited financial statements at time of this report.

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The five year trend indicates that Orchestra London has achieved a surplus for four of the past years. Over this same period, reliance on the line of credit has grown.

Since mid-November 2014, Civic Administration has been requesting from Orchestra London its 2014 Audited Financial Statements, as well as other financial reports. To date the Audited Financial Statements are still outstanding, although draft financial statements were received on December 11<sup>th</sup>.

On December 8<sup>th</sup> the Orchestra London Board Chair and Executive Director advised the Civic Administration of the change in status of a significant donation, resulting in an overall loss of \$650,000 in operating revenue (\$350,000 for the 2013/14 year ending June 30<sup>th</sup>, 2014 and \$300,000 for the 2014/15 year ending June 30<sup>th</sup> 2015). At that time a verbal request was made for support. Civic Administration asked for this request to be made in writing.

On December 16<sup>th</sup> a formal request and letter from the Orchestra London Board Chair was received. In the letter submitted (Appendix 'B') the Board Chair states: "We believe we need professional insolvency practitioners involved in light of the patrons subscriptions outstanding, unpaid wages and outstanding CRA remittances." The Chair goes on to say that "...unless there is a funder available, with a significant cash infusion to fund a restructure, this will be a bankruptcy". In the letter there is also general acknowledgement that the "...business model is badly flawed..."

In addition, a formal request from the Orchestra London Board asks for funding of \$375,000 which has been identified to pay the following items:

- \$215,000 for Salaries of musicians and staff for periods covering December 2014
- \$110,000 to bring current the amounts for Canada Revenue Agency (CRA) for source deductions. The request indicates "...the Board of Directors was unaware that these amounts were unpaid. They represent priority payables"
- \$50,000 to pay for BDO insolvency practitioners

#### **Line of Credit Guarantee**

The City of London currently has a Guarantee up to \$500,000 with the TD Bank to secure the indebtedness of Orchestra London's. The Guarantee is set to expire on December 15, 2017.

Confidential legal advice with respect to the Guarantee has been submitted by the City Solicitor.

If the guarantee is exercised Appendix 'A' identifies the source of funding.

**Financial Impact Summary and Conclusion**


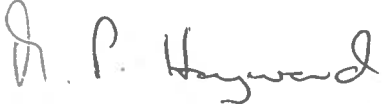
Funding for Orchestra London in the amount of \$482,688 has been approved in the 2014 budget and has already been flowed in its entirety to the Orchestra.

Should the Guarantee be called, \$500,000 would be payable immediately to the TD Bank on behalf of satisfying this Orchestra London liability.

Unpaid rent for Centennial Hall may have to be written-off in the City of London income statement (approximately \$49,793). In addition, the 2015 rental revenue may be impacted as a result of the cancellation of a number of dates that have been booked.

It is **not** recommended that the additional funding request of \$375,000 be approved, given statements by the Board Chair with respect to the "...going concern status of the corporation".

Council should seek advice, In Camera, from the City Solicitor on this matter.

<b>PREPARED AND SUBMITTED BY:</b>	<b>RECOMMENDED BY:</b>
	
<p><b>SHARON SWANCE MANAGER, ACCOUNTING</b></p>	<p><b>MARTIN HAYWARD, MANAGING DIRECTOR, CORPORATE SERVICES AND CITY TREASURER, CHIEF FINANCIAL OFFICER</b></p>

**APPENDIX 'A'**  
**SOURCE OF FINANCING**

Chair and Members  
Strategic Priorities & Policy Committee

December 16, 2014

**RE: Orchestra London - Loan Guarantee**

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**FINANCE REPORT ON THE SOURCES OF FINANCING:**

Finance confirms that the cost of this project can not be accommodated by the approved Operating Budget. The source of financing is as follows:

<b><u>ESTIMATED EXPENDITURES</u></b>		<b><u>Approved Budget</u></b>	<b><u>Additional Request</u></b>	<b><u>Revised Bduget</u></b>
Loan Guarantee	1)	\$0	\$500,000	\$500,000
<b>NET ESTIMATED EXPENDITURES</b>		<b><u>\$0</u></b>	<b><u>\$500,000</u></b>	<b><u>\$500,000</u></b>
<b><u>SOURCE OF FINANCING:</u></b>				
Operating Budget Contingency Reserve		\$0	\$500,000	\$500,000
<b>TOTAL FINANCING</b>		<b><u>\$0</u></b>	<b><u>\$500,000</u></b>	<b><u>\$500,000</u></b>

- 1) \$500,000 is the current estimated cost to support the loan guarantee for Orchestra London, noting that there is the potential for additional unforeseen incidental costs that may increase this amount.

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Larry Palarchio  
Director of Financial Planning & Policy



Appendix "B"

FINANCE  
REFERRED TO: 1  
SUBSEQUENT REFERRALS

Memorandum – December 15, 2014

To: Strategic Priorities and Planning Committee and City Council

From: Joe O'Neill – Chair Board of Directors – Orchestra London Canada Inc.

DEC 16 2014

FOR ACTION  
 FOR INFORMATION  
 FOR REPORT  
 FILE  
 B.F.  
 OTHER

My sincere apologies for the situation involving the Orchestra. It has come at a bad time for the new Council and that is of concern to me. It is also weighing heavily on our Board and at least in my case it is not being received well on the home front.

This is difficult and it is not going to get any better any time soon.

To help you, I have provided the following information.

1. I received the following from BDO, relative to acting in a voluntary bankruptcy:

*Thanks for the update, Joe. I don't see any reason why we couldn't accept the engagement. Once you advise us you are prepared to proceed we would run our usual conflicts (we would require the names of all board members). Absent something arising from that we could move ahead. Without some substantial source of funding, as we outlined in the meeting, I don't see a restructuring here. This would be a bankruptcy. In order to proceed we would require a retainer of \$25k ( I will confirm with Chester) or a guarantee from the City that our fees and disbursements will be covered.*

I am compiling the list of our voting Board Members and have spoken to Orchestras Canada regarding the possibility of funding to pay BDO. We will not be able to fund it on our own of course and I don't know if the city possibly has a contingency fund for such situations.

We believe we need professional insolvency practitioners involved in light of the patrons subscriptions outstanding, unpaid wages and outstanding CRA remittances.

For your reference, notwithstanding our Executive Directors comments in the Free Press etc. unless there is a funder available, with a significant cash infusion to fund a restructure, this will be a bankruptcy.

2. I have been involved in the Orchestra for two years, almost all of it as the President and Board Chair. It is a wonderful community asset. But the business model is badly flawed and needs to be revamped. When I first arrived, I saw this clearly and would have recommended that the orchestra restructure or declare bankruptcy, which means either I never would have lasted as the President, or any such motion would have been defeated at the Board level. I did not, as we had the opportunity to possibly, after 30 years, to house our orchestra in a facility worthy of its quality. In hindsight, perhaps that was a mistake, however, as we were getting pressure from all sides and obstacles were being put up everywhere to make this more difficult we believed that if the Orchestra went under, that would kill any hope of successfully responding to the City's RFP.

4. The reason I considered bankruptcy, is that when the restructuring and project Bravo occurred in 2009, the flaw in the initiative, was that while the orchestra was restructured it was not bailed

out and it was saddled with a \$1,000,000 accumulated deficit from the previous regime. The business is highly seasonal. For such a business to operate properly, it needs a \$1,000,000 surplus, not a deficit, so that advanced ticket sales can be held in trust. If that was a requirement placed on the Orchestra in 2009, Project Bravo would never have proceeded as the Orchestra would not have been able to meet this commitment.

5. Finally, should the Orchestra resurface in some form, the following will be in place (or I won't be involved)

a. There will be a new management team in place.

b. It will be well capitalised

c. It will operate within the restrictive confines of the revenue the orchestra can generate in Centennial Hall (there will be no assumption that at any point a new facility would be available)

d. It will be structured as either a community orchestra, a fee for service orchestra or possibly as a Labour Cooperative (this last one seems less likely due to the small size of the orchestra) It will not and cannot be a full professional orchestra (a mini New York Philharmonic if you will) as that doesn't work in many places, certainly not here, regardless of whether we have a new concert hall or not.

My last consideration is to be cognisant of outstanding Director liabilities. We have insurance, but we may be exposed as community volunteers. All we have ever tried to do is volunteer our time to help benefit a worthy community asset.

Thank you for your help and guidance.

Regards,

A handwritten signature in black ink, appearing to read "J. O'Neill", with a stylized, cursive script.

Joseph R. O'Neill

Chairperson