

DECLASSIFIED

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Approved to Release C. [Signature]

Date March 15/2011

Item No.

Halifax Regional Council

March 15, 2011

In Camera

TO: Mayor Peter Kelly and Halifax Regional Council

Original Signed

SUBMITTED BY:

Gloria McCluskey
Gloria McCluskey, Chair Standing Committee Audit & Finance

DATE: March 15, 2011

SUBJECT: Contractual Issue – Concert Promotion

PRIVATE AND CONFIDENTIAL

ORIGIN

- Summer 2010 Concerts on the Commons
- March 10, 2011 Audit & Finance Standing Committee

RECOMMENDATION

It is recommended that the Halifax Regional Council approve:

1. An unbudgeted payment of \$359,550 to Metro Centre Limited as per the budget implications section of this report, from Fiscal Services M310 – 6999 Other Goods and Services.
2. Refer the issue of staff conduct, policy and guidelines around HRM's role in concert promotion, governance and internal controls for Metro Centre Limited to the HRM Municipal Auditor General for his consideration for further investigation.
3. That this report be released to the public, pending Council approval on March 15, 2011.

BACKGROUND

This report and the accompanying recommendations are being referred to Regional Council as a result of a recommendation from the March 10, 2011 meeting of the Audit & Finance Committee.

At the March 10th meeting, the committee was given a verbal report by Cathie O'Toole, Director of Finance/CFO and Larry Munroe, Municipal Auditor General with respect to cash advances which have been made with respect to concert promotions.

DISCUSSION

A business practice of advancing cash from the Halifax Metro Centre to Power Promotional Events Limited was initiated by a senior HRM administrative official in 2008. Cash was advanced through the Metro Centre based upon the instructions of the Acting Chief Administrative Officer (CAO), to the concert promoter, and repaid from the proceeds of the event's ticket sales. This practice was established without knowledge or consent of HRM Council, and without consultation with HRM legal or finance staff, to assess the financial impact, risk, or legislative & policy compliance. The establishment of this business practice clearly exceeded the authority of the Acting CAO, violated the HRM Charter, and exposed the municipality to financial risk.

Advancing cash through the Metro Centre for concert promotion is what eventually led to the current issue, which is an unbudgeted liability of \$359,550. The unbudgeted liability relates to a balance of funds which had been extended by Metro Centre to Power Promotional Events Inc. based upon the instructions of the Acting CAO in relation to the Halifax Rocks and Country Rocks concerts, which became a "forgivable grant" if ticket sales did not exceed a specified target.

On March 3, 2011 the Acting CAO advised HRM Finance that HRM had a potential unbudgeted liability of \$359,550 owing to Metro Centre Limited. Cash advances had been made (as per the schedule in Attachment C), under direction of the Acting CAO, from the Metro Centre to Power Promotional Events Inc. commencing in January 2010, up to and including the summer of 2010 regarding Halifax Rocks concerts. It was explained that two weeks prior to the concerts, the promoter had threatened cancellation of the concerts if they did not receive further financial assistance. At that time, a decision was made to advance an additional \$400,000 (\$200,000 per concert), as a "repayable grant" per the terms outlined in Attachment A.

In total, cash advances of \$2,250,000 were made during 2010, and included in this amount was the "repayable grant" of \$400,000 which would be forgiven if ticket sales were less than the specified amount. Extending the \$400,000 grant was intended to prevent the larger financial loss of the then current balance of outstanding cash advances. A total of \$1,850,000 was advanced prior to the July 21, 2010 authorization of the \$400,000 grant. Staff has been advised that a key reason for the advances was that cancellation of the concerts would also have caused embarrassment and reputational risk.

HRM Finance, Legal, the Municipal Auditor General, and the Acting CAO are in agreement that violations of systems, policies, and legislation have occurred and further review is warranted. The initial assessment was based on verbal interviews with individuals involved, and a review of:

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- the agreement with Power Promotional Events Inc., dated July 21, 2010 (Attachment A)
 - an invoice from Halifax Metro Centre to the Acting CAO dated Sept. 30, 2010 for \$359,550 (the balance of funds remaining regarding the repayable grant of \$400,000) (Attachment B)
 - a schedule of Metro Centre cash advances totaling \$2,339,903 for 2010 concerts, provided by Trade Centre Limited (Attachment C)

The Metro Centre is owned by HRM, and any net surplus or deficit from the Metro Centre is HRM's. Metro Centre Limited is managed through an agreement with the Trade Centre Limited. HRM does not have access to supporting records for day to day transactional activity. HRM does receive copies of Metro Centre's Audited Financial Statements, and the Metro Centre's bank accounts are established under HRM's umbrella banking agreement with Royal Bank. Metro Centre Limited is currently projecting a small surplus at year end of approximately \$60 k. If HRM does not reimburse the \$359,550 to Metro Centre Limited, they will end the year with a deficit of approximately \$299,550. TCL's Auditor KPMG and the Chair of the TCL Board are aware of this issue.

Relevant areas of the HRM Charter:

1. HRM Charter Section 35 (2) (d) (i) - Responsibilities of the Chief Administrative Officer. The authority of the CAO was exceeded both through establishment of the initial business practice regarding cash advances, and the arrangement for a forgivable grant.
2. HRM Charter Section 79 – Power to Expend Money. The \$400,000 identified as a repayable grant, that would be forgiven if individual general admission sales were less than a specified amount, was to a for profit entity. The municipality cannot make grants to for-profit entities. Also, the nature of the cash advances to the for-profit concert promoter appears to provide financing for the concert. Providing financing, even of a temporary nature, to a profit- oriented enterprise, does not qualify as a permissible expenditure under Section 79 – Power to Expend Money. Some further investigation is required around the Articles of Incorporation of Metro Centre Limited to examine whether the transactions are compliant.

It is our understanding Power Promotional Events Inc. ceased operations in October 2010. Even if the Acting CAO had not signed a letter authorizing a \$400,000 forgivable grant, it appears the company is out of business.

The above noted issues were explained to the Audit & Finance Standing Committee by the Acting CAO, Director of Finance/CFO and Municipal Auditor General on March 10th. The Audit & Finance Standing Committee directed that the issue be brought forward to Council as quickly as possible, and approved the recommendations that are reflected in this report.

BUDGET IMPLICATIONS

If HRM Council honors the agreement made by the Acting CAO and reimburses Metro Centre Limited \$359,550, the funds will come from Fiscal Services M310- Account 6999 Other Goods and Services. There is currently a projected surplus in this account sufficient to cover this unbudgeted amount. Corporately, it is projected that the close of the 2010/11 Fiscal Year will result in a small surplus.

The liability would be booked in the 2010/11 Fiscal Year however no payment would be released until potential recovery through insurance or other means is explored.

ALTERNATIVES

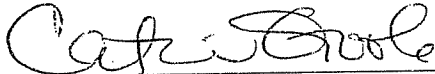
HRM could refuse to pay the \$359,550 to Metro Centre Limited. This is not recommended because Metro Centre did not benefit from the concerts, and reporting this as an expense in the Metro Centre's books would be incorrect from a business perspective. If the funds are not reimbursed, Metro Centre Limited will end the year with a deficit, and the reason for the deficit would be HRM's failure to reimburse the funds.

ATTACHMENTS

- A) July 21, 2010 Letter to Harold H. MacKay, President, Power Promotional Events Inc.
- B) September 30, 2010 Invoice from Halifax Metro Centre
- C) Metro Centre - Schedule of Cash Advances and Repayable Loan

Report Prepared by: Cathie O'Toole, CGA, MBA – Director of Finance/CFO 490-6308

Financial Approval by:


Cathie O'Toole, CGA, MBA - Director of Finance/CFO, 490-6308

Report Approved by:


Mary Ellen Donovan, QC, Director of Legal Services, 490-4226



P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

FAXED

July 21, 2010

Power Promotional Events Inc.

Address Redacted.

Att: Harold H. MacKay, President

Dear Harold:

As per the meeting this morning between the Mayor and I representing HRM and you and Edgar, I hereby authorize the release by Metro Centre Limited of an amount up to \$400,000 to Power Promotional Events Inc., in two installments of \$200,000 each representing a repayable grant towards the expenses involved in your producing the July 25th 2010 County Rocks Concert and the August 6th and 7th, 2010 Halifax Country Rockfest on the Halifax Common (the Concerts), subject to the following conditions:

These funds are advanced on the following conditions:

- (1) The first installment of \$200,000 shall be paid on the execution of this agreement by all of the parties thereto; the second installment of \$200,000 shall be paid on Tuesday, August 3rd, 2010;
- (2) The funds advanced shall be used exclusively to cover artists fees and other expenses associated with the production of the Concerts and for no other purpose; and without limiting the generality of the foregoing the cumulative funds advanced shall under no circumstances be used to cover any expenses arising out of losses incurred in respect of any past events promoted by Power Promotional Events Inc., or any associated companies;
- (3) Repayment of the cumulative advance shall be derived from the net funds of the ticket sales for the three Concerts as outlined in the agreements with HRM;
- (4) The first installment of \$200,000 shall be repaid on a pro-rata basis of \$50 per ticket sold on total ticket sales for the July 25th 2010 County Rocks Concert from 9,000 to 10,000 and \$100.00 per ticket on total ticket sales from 10,001 to 11,500. Subject to condition (6), if general admission sales are less than 9,000, the grant shall be forgivable;
- (5) The second installment of \$200,000 shall be repaid on a pro-rata basis of \$50 per ticket sold on total ticket sales for the August 6th and 7th, 2010 Halifax Country Rockfest from 10,000 to 11,000 and then \$100.00 per ticket on total ticket sales from 11,001 to 12,500. Subject to condition (6), if general admission sales are less than 10,000, the grant shall be forgivable;

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(6) If ticket sales to all the concerts are such that it is more advantageous to HRM to calculate repayment on the total ticket sales of all the concerts, HRM may opt to do so, with repayment being calculated on the basis of \$50.00 per ticket from total ticket sales of 19,000 to 21,000 and \$100.00 per ticket from 21,001 to 24,000 tickets sold.;

(7) Power Promotional Events Inc., Power Promotional Concepts Inc., *private names redacted.* and Arrow Construction Products Limited jointly agree and guarantee to provide the additional funding necessary to ensure and do agree and guarantee that the three concerts do take place;

(8) In the event of a default or cancellation of any of the three concerts the total grant shall be repayable;

(9) *private name* and Power Promotional Events Inc. hereby grant the first right of refusal to HRM to host any outdoor concerts to be promoted by them in the Maritimes for the next three years on the Halifax Commons.

Please acknowledge agreement with these terms and conditions by signing and returning copy of letter attached to me. On receipt of the same I shall arrange for the cash advance(s)..

Yours Truly,

Original Signed

Wayne Anstey,
Acting CAO, HRM

We hereby agree with terms and conditions set out in this letter.

Original Signed

Power Promotional Events Inc.
Per: Harold H. MacKay, President

Witness

Original Signed

Power Promotional Concepts Inc.
Per: Harold H. MacKay, President

Witness

Original Signed

Arrow Construction Products Limited
(NOTE: Please ensure this corporate name is correct)
Per: Edgar Goguin, President

Witness

Original Signed
private name redacted.

Witness

Original Signed

Private name redacted

Witness



COPY

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1800 Argyle Street
Halifax NS B3J 2V9

Phone:(902)421-8686 Fax:(902)422-2922
www.halifaxmetrocentre.com

HST Registration# R894283845

To:

Mr. Wayne Anstey
Halifax Regional Municipality
P. O. Box 1749
Halifax NS B3J 3A5

Invoice

Invoice#: H000002610
Date 9/30/2010
Page 1
Customer#: HAL402

Payment Terms: Due Upon Receipt

RE: SUMMER CONCERTS GRANT JULY 24, AUGUST 6 & 7, 2010

PER:

ADVANCE (REPAYABLE GRANT PURSUANT TO JULY 21 AGREEMENT)	\$400,000.00
LESS : HOLDBACK ON EVENT SETTLEMENT	-\$40,000.00
TICKET REBATE	-\$450.00

- WWS

Subtotal before tax	\$359,550.00
	\$0.00
HST	\$0.00
Total Amount	<u>\$359,550.00</u>
Less Deposit received	<u>\$0.00</u>
Amount Due	<u>\$359,550.00</u>

CONFIDENTIAL
FOR DISCUSSION PURPOSES ONLY

Cash Advances and Repayable Loan

Date	Halifax Rocks	Country Rocks	Total Notes
20-Jan-10		400,000	400,000 Advance per email Jan 13 authorized by Deputy CAO
29-Mar-10	500,000		900,000 Advance per March 29 letter authorized by Deputy CAO
6-Jun-10	600,000		1,500,000 Advance per email authorized by Deputy CAO
19-Jul-10	250,000		1,750,000 Per July 16th letter from Acting CAO
21-Jul-10	200,000		1,950,000 Per July 21st letter from Acting CAO
3-Aug-10		200,000	2,150,000 Per July 21st letter from Acting CAO
5-Aug-10		100,000	2,250,000 Per July 16th letter from Acting CAO
16-Aug-10		89,903	2,339,903 Event Settlement (See Attached)
Total			2,339,903