



Office of the Auditor General / Bureau du vérificateur général

**AUDIT OF THE CITY'S MANAGEMENT
OF A LOAN AGREEMENT**

2010

**VÉRIFICATION DE LA GESTION D'UN
CONTRAT DE PRÊT PAR LA VILLE**

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EXECUTIVE SUMMARY

Introduction

The Audit of the City's Management of a Loan Agreement was included in the 2010 Audit Plan of the Office of the Auditor General (OAG), first presented to City Council in the 2009 Annual Report. The audit started in November 2010 and the first draft report was presented to management in February 2011.

Background

At the October 25, 2006 City Council meeting, *Rules of Procedure* had been suspended to consider and approve City Council motion number 67/12. The City Council motion referred to the June 14, 2006 date where City Council approved the concept and location of the Ottawa Firefighters Memorial to be installed on the grounds of City Hall at 110 Laurier.

City Council motion 67/12 stated that, "Whereas Ottawa Firefighters Community Foundation Inc. (OFFCF) wishes to complete the project in late spring/early summer of 2007. In order to commence construction, that City Council approve an interest-free loan of up to \$550,000 to the Ottawa Firefighters Community Foundation Inc, a non-profit organization with the following conditions: That the loan be paid back over four years; and, Demonstration of a viable business/fund-raising plan."

Audit Objectives and Scope

The objectives of this audit are to confirm the conditions for the approval of a loan, as specified in the motion from City Council, were met.

The objective was not to question or review the City Council decision but to ensure that City staff role was appropriate in the management of the loan.

Summary of Key Findings

- Despite the City's collections efforts, loan payments throughout the four year period were consistently past due including an outstanding balance of \$225,000 or 41% of the total \$550,000 loan. This was not repaid within four years, by the December 31, 2010 due date, in default of the City Council-approved loan conditions. The amount remained outstanding as of May 13, 2011;
- Lack of notation on the documents to evidence that a review of a viable business/fund-raising plan had been undertaken;
- Lack of an agreement (or agreements), prior to the release of loan funds, with sufficient terms and conditions to protect the City's interests;
- Lack of a standard audit clause to ensure that costs were reasonable and that funds were used for the intended purpose; and,

- During the course of the audit, management has indicated that at the request of the OFFCF for an extension to the repayment terms, management did take action by tabling a report to Finance and Economic Development Committee and City Council in March 2011 which included extending the terms of the loan repayment and resulted in City Council amending the motion to extend repayment by seven years.

Recommendations and Management Responses

Recommendation 1

That the City ensures that prior to loaning funds that they have a structured process and evidence of a thorough review to demonstrate a viable business/fund-raising plan.

Management Response

Management agrees with this recommendation.

In the case of this loan, Finance staff did review the fundraising plan submitted and determined it was reasonable but did not make any notations on the plan. Unfortunately, the economic downturn in 2008 made the plan unachievable.

Reviews that are performed prior to the decision of Council, to provide either a loan or guarantee, will be noted in the Financial comment section of the Council report. Management notes that not all such requests will require a business plan or fundraising plan but that, in those cases, there should be other information available evidencing financial strength or security to support the transaction. The process will include Finance requesting financial statements and business plans and Finance staff documenting their review in the file.

Recommendation 2

That the various departments at the City ensure that prior to advancing loan funds, that agreements are in place, including standard clauses, where and when applicable, pertaining to reporting requirements, audit, insurance, liability and licenses and permits.

Management Response

Management agrees with this recommendation.

Overall, this file has seen significant activity over the last four months as the Ottawa Firefighters Community Foundation requested an extension of the repayment terms and maintenance requirements. A report was presented to the Finance and Economic Development Committee on March 1, 2011 and to City Council on March 10, 2011 that has changed the loan terms and maintenance requirements significantly. The loan is no longer in default due to the changes

approved by City Council and the maintenance financial requirements have been modified. As a result of Council direction, Finance staff, in conjunction with the City Clerk and Solicitor department, have drafted a new repayment agreement to incorporate Council direction and approval of the extended payment terms and the maintenance payment. Both the Foundation and the City have executed the agreement.

The repayment agreement includes a revised repayment schedule, a repayment schedule provision, events of default and the City's remedies in the event of default, an enforcement provision, as well as an audit provision that permits the Finance department to inspect and audit the Foundation's books of account and records upon request. This is a standard repayment agreement that has been developed and approved by the City Clerk and Solicitor department. No further action is required.

Provisions with respect to insurance, licenses and permits are not applicable to a standard repayment agreement and are, therefore, not included. These issues would be addressed independently by the Real Estate Partnerships and Development Office (REPDO) and the Special Operations branch. REPDO ensures that licenses are properly executed with relevant clauses pertaining to liability insurance in place and monitored. Special Operations ensures that the permit process is consistent with the plans and that other items are adhered to including WSIB requirements. Special Operations coordinates with the Building Branch to complete inspections as per permits (plans) and monitors progress of the project. Ongoing awareness of the responsibilities contained within the agreement and their compliance would be monitored by the client group.

Recommendation 3

That the City reviews the reasonableness of the planned and actual costs.

Management Response

Management agrees with this recommendation.

The Special Operations branch will consult with the Design and Construction branch on the plans and budget to ensure reasonable construction costs and lifecycle budget if the Fire Fighters Group decides to continue with Phase Two or Three of the Monument.

Recommendation 4

That the City ensures proper establishment of the trust fund by the OFFCF for on-going maintenance and operations expenses relating to the monument, otherwise it could create a budget pressure.

Management Response

Management agrees with this recommendation.

Overall, this file has seen significant activity over the last four months as the Ottawa Firefighters Community Foundation requested an extension of the repayment terms and maintenance requirements. A report was presented to the Finance and Economic Development Committee on March 1, 2011 and to City Council on March 10, 2011 that has changed the loan terms and maintenance requirements significantly. The loan is no longer in default due to the changes approved by City Council and the maintenance financial requirements have been modified. As a result of Council direction, Finance staff, in conjunction with the City Clerk and Solicitor department, have drafted a new repayment agreement to incorporate Council direction and approval of the extended payment terms and the maintenance payment. Both the Foundation and the City have executed the agreement. Public Works is addressing the changes to the maintenance agreement. A maintenance agreement will be in place by the end of Q3 2011.

Conclusion

As at December 31, 2010, \$225,000 out of the \$550,000 interest-free loan provided to the Ottawa Fire Fighters Community Foundation (OFFCF) for the Fire Fighter Memorial was past due in violation of the condition that the interest-free loan be repaid over four years. The amount remained outstanding as at May 13, 2011.

The second condition for the interest-free loan was the demonstration of a viable business/fund-raising plan. While this document was provided to the City Treasurer and she stated that staff reviewed it, there was no notation on the documents at the City to evidence that this plan was reviewed to determine its viability and that issues were identified and addressed.

During the course of the audit, management has indicated that at the request of the OFFCF for an extension to the repayment terms, they did take action by presenting a report to Finance and Economic Development Committee and City Council in March 2011 to extend the terms of the loan repayment and revise the trust fund requirements for maintenance and operations. This resulted in Committee and City Council amending the motion to extend repayment by seven years and reduce the amount and timing of the trust fund.

Although the loan is no longer considered to be in default due to the changes put in place at Committee and City Council, as approximately 41% of the loan remains outstanding, the City should look at the reasonableness of the planned and actual costs to ensure that funds were incurred for their intended purpose.

Acknowledgement

We wish to express our appreciation for the cooperation and assistance afforded the audit team by management.

RÉSUMÉ

La vérification de la gestion d'un contrat de prêt par la Ville figure dans le plan de vérification 2010 du Bureau du vérificateur général (BVG), présenté pour la première fois au Conseil municipal dans le cadre du rapport annuel de 2009. La vérification a débuté en novembre 2010 et le premier rapport préliminaire a été présenté à la direction en février 2011.

Contexte

Lors de la réunion du 25 octobre 2006 du Conseil municipal, les Règles de procédure avaient été suspendues pour examiner et approuver la motion numéro 67/12 du Conseil municipal, laquelle faisait référence au 14 juin 2006, date à laquelle le Conseil municipal avait approuvé le concept et l'emplacement du Monument commémoratif des pompiers d'Ottawa devant être érigé sur le terrain de l'hôtel de ville, au 110, avenue Laurier.

La motion 67/12 du Conseil municipal stipule : « Attendu que la Fondation communautaire des pompiers d'Ottawa Inc. souhaite compléter le projet à la fin du printemps ou au début de l'été de 2007. Afin de pouvoir commencer la construction, que le Conseil municipal approuve un prêt sans intérêt d'un montant maximal de 550 000 \$ à la Fondation communautaire des pompiers d'Ottawa Inc., un organisme sans but lucratif, aux conditions suivantes : que le prêt soit remboursé en quatre ans; qu'il soit prouvé que l'on dispose d'un plan d'affaires ou de financement réalisable. »

Objectifs et portée de la vérification

Les objectifs de la présente vérification consistent à confirmer si les conditions pour l'approbation d'un prêt, telles qu'elles ont été établies dans la motion du Conseil municipal, ont été remplies.

L'objectif n'était pas de remettre en question ni d'examiner la décision du Conseil municipal, mais de s'assurer que le rôle du personnel de la Ville convenait à la gestion du prêt.

Résumé des principales constatations

- Malgré les efforts de recouvrement de la Ville, les paiements de remboursement du prêt ont été régulièrement en retard pendant toute la période des quatre ans et comportent un solde impayé de 225 000 \$, ce qui correspond à une proportion de 41 p. cent du prêt de 550 000 \$. Le montant du prêt n'a pas été remboursé en quatre ans, à la date d'exigibilité, soit le 31 décembre 2010, ce qui constitue un bris des conditions du prêt approuvé par le Conseil municipal. Le montant demeure impayé en date du 13 mai 2011.

- Les documents étudiés ne démontrent pas que le plan d'affaires ou de financement ait été examiné pour s'assurer qu'il était réalisable.
- Absence d'un contrat (ou contrats), précédant le déblocage des fonds du prêt, contenant des conditions suffisantes pour protéger les intérêts de la Ville.
- Absence d'une clause normale de vérification visant à s'assurer que les coûts étaient raisonnables et que les fonds ont été utilisés aux fins prévues.
- Au cours de la vérification, la direction a fait savoir qu'à la demande de la Fondation communautaire des pompiers d'Ottawa, qui désirait une prolongation des conditions de remboursement, la direction a pris des mesures en présentant en mars 2011 un rapport au Comité des finances et du développement économique, de même qu'au Conseil municipal, dans lequel se trouvait une prolongation des conditions de remboursement du prêt. À la suite de ce rapport, le Conseil municipal a modifié sa motion afin de prolonger de sept ans le remboursement du prêt.

Recommandations et réponses de la direction

Recommandation 1

Que la Ville s'assure, avant d'accorder un prêt, que son processus soit structuré et qu'elle détient la preuve qu'un examen minutieux a été effectué afin de démontrer que le plan d'affaires ou de financement est réalisable.

Réponse de la direction

La direction est d'accord avec cette recommandation.

En ce qui concerne le présent prêt, le personnel des finances a examiné le plan de financement soumis et a déterminé qu'il était raisonnable, mais n'a pas inséré de notes au plan. Malheureusement, le plan n'a pas pu se réaliser en raison du ralentissement économique qui a eu lieu en 2008.

Les examens effectués avant que le Conseil ne prenne sa décision d'accorder un prêt ou une garantie seront pris en note dans la section des commentaires financiers du rapport du Conseil. La direction fait observer que ce ne sont pas toutes les demandes de ce genre qui requièrent un plan d'affaires ou de financement, mais que, dans ces cas-là, des renseignements supplémentaires doivent être disponibles pour prouver la capacité ou la garantie financières à l'appui de la transaction. Dans le cadre du processus décisionnel, le personnel des finances devra demander des états financiers et des plans d'affaires, puis consigner les résultats de leur examen dans le dossier.

Recommandation 2

Que les divers services de la Ville s'assurent, avant d'avancer des fonds d'emprunt, que des accords sont en place, et que ces derniers comportent des clauses modèle, s'il y a lieu, concernant la vérification, l'assurance, la responsabilité, les licences, les permis et les exigences en matière de rapports.

Réponse de la direction

La direction est d'accord avec cette recommandation.

Dans l'ensemble, ce dossier a fait l'objet d'une importante activité au cours des quatre derniers mois, alors que la Fondation communautaire des pompiers d'Ottawa a demandé une prolongation du délai de remboursement et une révision des besoins en matière d'entretien. Un rapport a été présenté au Comité des finances et du développement économique le 1^{er} mars 2011, puis au Conseil municipal, le 10 mars 2011. Ce rapport apporte des modifications importantes aux conditions du prêt et aux besoins d'entretien. Le prêt n'est donc plus en défaut de paiement en raison des modifications approuvées par le Conseil municipal, et les besoins financiers pour l'entretien ont été modifiés. À la suite de la directive du Conseil, le personnel des finances, en collaboration avec le Service du greffier municipal et chef du contentieux, a rédigé un nouvel accord de remboursement tenant compte de la directive du Conseil, de l'approbation d'une prolongation du délai de remboursement du prêt et du paiement relatif à l'entretien. La Fondation et la Ville ont toutes deux signé cet accord.

L'accord de remboursement comprend un calendrier de remboursement révisé, une disposition relative au calendrier des paiements, des cas de défaut et les recours de la Ville en cas de défaut, une disposition d'exécution, ainsi qu'une disposition de vérification permettant au Service des finances d'inspecter et de vérifier sur demande les livres comptables et les dossiers de la Fondation. Il s'agit d'un accord de remboursement courant élaboré et approuvé par le Service du greffier municipal et chef du contentieux. Aucune autre mesure ne doit être prise à cet égard.

Les dispositions ayant trait à l'assurance, aux licences et aux permis ne s'appliquent pas à un accord de remboursement standard et ne sont donc pas incluses dans l'accord. Ces questions doivent être examinées de façon indépendante par le Bureau des partenariats et du développement en immobilier (BPDI) et la Direction des opérations spéciales. Le BPDI s'assure que les licences sont exécutées comme il faut, qu'elles contiennent les clauses se rapportant à l'assurance responsabilité civile actuelle et qu'elles sont surveillées. La Direction des opérations spéciales s'assure que le processus relatif aux permis est conforme aux plans et que les autres points sont respectés, y compris les exigences de la Commission de sécurité professionnelle et de l'assurance contre les accidents de travail (CSPAAT). En outre, la Direction des opérations spéciales agit en coordination avec la Direction des services du bâtiment dans le but de procéder

aux inspections conformément aux permis (plans) et de suivre les progrès accomplis dans le cadre du projet. Le groupe client s'assure que les responsabilités contenues dans l'accord sont respectées.

Recommandation 3

Que la Ville examine la vraisemblance des coûts prévus et réels.

Réponse de la direction

La direction est d'accord avec cette recommandation.

Si le groupe des pompiers décide de poursuivre avec la deuxième ou la troisième phases du Monument, la Direction des opérations spéciales consultera la Direction de la construction et du design à propos des plans et du budget, afin de s'assurer du caractère raisonnable des coûts liés à la construction et du budget du cycle de vie.

Recommandation 4

Que la Ville s'assure que la Fondation communautaire des pompiers d'Ottawa établit correctement le fonds en fiducie en vue de l'entretien continu et des dépenses de fonctionnement du monument, afin d'éviter des pressions budgétaires.

Réponse de la direction

La direction est d'accord avec cette recommandation.

Dans l'ensemble, ce dossier a fait l'objet d'une importante activité au cours des quatre derniers mois, alors que la Fondation communautaire des pompiers d'Ottawa a demandé une prolongation du délai de remboursement et une révision des besoins en matière d'entretien. Un rapport a été présenté au Comité des finances et du développement économique le 1^{er} mars 2011, puis au Conseil municipal, le 10 mars 2011. Il apporte des modifications importantes aux conditions du prêt et aux besoins d'entretien. Le prêt n'est donc plus en défaut de paiement en raison des modifications approuvées par le Conseil municipal, et les besoins financiers pour l'entretien ont été modifiés. À la suite de la directive du Conseil, le personnel des finances, en collaboration avec le Service du greffier municipal et chef du contentieux, a rédigé un nouvel accord de remboursement tenant compte de la directive du Conseil, de l'approbation d'une prolongation du délai de remboursement du prêt et du paiement relatif à l'entretien. La Fondation et la Ville ont toutes deux signé cet accord. Le Service des travaux publics examine les modifications apportées à l'accord d'entretien. Un accord pour les travaux d'entretien sera en place d'ici la fin du troisième trimestre de 2011.

Conclusion

Au 31 décembre 2010, il restait un solde impayé de 225 000 \$ sur les 550 000 \$ prêtés sans intérêt à la Fondation communautaire des pompiers d'Ottawa pour le Monument commémoratif des pompiers, ce qui constitue une violation de la condition stipulant que le prêt sans intérêt devait être remboursé en quatre ans. Le solde était toujours impayé au 13 mai 2011.

La deuxième condition relative au prêt sans intérêt était de démontrer que le plan d'affaires ou de financement était réalisable. Bien que ce document ait été présenté à la trésorière municipale et que cette dernière déclare qu'il a été examiné par le personnel, on ne trouve sur le document aucune note prouvant que ce plan ait été examiné dans le but de déterminer sa validité ni que les problèmes aient été relevés et étudiés.

Au cours de la vérification, la direction a fait savoir qu'à la demande de la Fondation communautaire des pompiers d'Ottawa, qui désirait une prolongation des conditions de remboursement, la direction a pris des mesures en présentant en mars 2011 un rapport au Comité des finances et du développement économique, de même qu'au Conseil municipal, en vue de prolonger les conditions de remboursement du prêt et d'examiner les besoins d'un fonds en fiducie pour l'entretien et l'exploitation du Monument. À la suite de cette demande, le Comité des finances et du développement économique et le Conseil municipal ont modifié la motion afin de prolonger la période de remboursement de sept ans et de réduire le montant et de retarder le calendrier du fonds en fiducie.

Même si un solde d'environ 41 p. cent demeure impayé, ce prêt n'est plus considéré comme en défaut de paiement à la suite des modifications apportées par le Comité des finances et du développement économique et le Conseil municipal. Toutefois, la Ville devrait vérifier la vraisemblance des coûts prévus et réels afin de s'assurer que le fonds a été dépensé aux fins prévues.

Remerciements

Nous tenons à exprimer nos remerciements à la direction pour la collaboration et l'aide qu'elle a offertes à l'équipe de vérification.

1 INTRODUCTION

The Audit of the City's Management of a Loan Agreement was included in the 2010 Audit Plan of the Office of the Auditor General (OAG), first presented to Council in the 2009 Annual Report. The audit started in November 2010 and the first draft report was presented to management in February 2011.

2 BACKGROUND

At the October 25, 2006 City Council meeting, *Rules of Procedure* had been suspended to consider and approve City Council motion number 67/12. The City Council motion referred to the June 14, 2006 date where City Council approved the concept and location of the Ottawa Firefighters Memorial to be installed on the grounds of City Hall at 110 Laurier.

City Council motion 67/12 stated that, "Whereas Ottawa Firefighters Community Foundation Inc. (OFFCF) wishes to complete the project in late spring/early summer of 2007. In order to commence construction, that City Council approve an interest-free loan of up to \$550,000 to the Ottawa Firefighters Community Foundation Inc, a non-profit organization with the following conditions: That the loan be paid back over four years; and, Demonstration of a viable business/fund-raising plan."

3 AUDIT SCOPE AND OBJECTIVES

The objectives of this audit are to confirm the conditions for the approval of a loan, as specified in the motion from City Council, were met.

The objective was not to question or review the City Council decision but to ensure that City staff role was appropriate in the management of the loan.

4 AUDIT CRITERIA

1. To assess that the loan was paid back over four years;
2. To assess that City staff ensured that there was demonstration of a viable business/fund-raising plan; and,
3. To assess that a process was in place to ensure that the funds were used for the intended purpose.

5 APPROACH

1. Correspondence with City management;
2. Review of City by-laws and related legislation;
3. Review of agreement and supporting documentation at the City;
4. Review of website related to the memorial;

5. Observation of memorial site; and,
6. Review of payments and receipts through the City's accounting system.

6 DETAILED FINDINGS, OBSERVATIONS AND RECOMMENDATIONS

- Despite the City's collections efforts, loan payments throughout the four year period were consistently past due including an outstanding balance of \$225,000 or 41% of the total \$550,000 loan. This was not repaid within four years, by the December 31, 2010 due date in default of the City Council approved loan conditions. The amount remained outstanding as of May 13, 2011;
- Lack of notation on the documents to evidence that a review of a viable business/fund-raising plan had been undertaken;
- Lack of an agreement (or agreements), prior to the release of loan funds, with sufficient terms and conditions to protect the City's interests;
- Lack of a standard audit clause to ensure that costs were reasonable and that funds were used for the intended purpose; and,
- During the course of the audit, management has indicated that at the request of the OFFCF for an extension to the repayment terms, they did take action by tabling a report to Finance and Economic Development Committee and City Council in March 2011 which included extending the terms of the loan repayment and resulted in City Council amending the motion to extend repayment by seven years.

6.1 *Loan Repayment Past Due*

November 15, 2006, the President, Vice-President and Treasurer of the Ottawa Fire Fighters Community Foundation and the City Treasurer signed and dated a one-page agreement on OFFCF letterhead. The agreement requested the full amount of \$550,000 on or before December 1, 2006 to allow sufficient lead-time to carry out the necessary engineering, design and foundry work for the monument.

The City Council resolution included the condition that the loan is repaid over four years. The report to City Council and the City Council resolution did not include the date when funds were to be advanced or the specific dates repayments were to be made. The agreement included the following loan repayment schedule, which indicated that the Foundation would repay the loan over four years, as follows:

By December 31, 2007	\$ 10,000
By December 31, 2008	\$100,000
By December 31, 2009	\$140,000
By December 31, 2010	<u>\$300,000</u>
Total repayment	<u>\$550,000</u>

The Office of the Auditor General received a legal opinion from the City Clerk and Solicitor that if the repayment plan is within the parameters established by City Council then the City Treasurer could renegotiate the repayment schedule based on that original City Council direction. The parameters included repayment over four years and demonstration of a viable business/fundraising plan.

The City cheque in the amount of \$550,000 for payment of loan proceeds to the OFFCF was dated November 30, 2006 and had been setup in the City's financial system as a Long-Term Accounts Receivable within the Grant cost element.

The following table contains the status of the loan repayment as at December 31, 2010 and the details of the balance owing of \$225,000 which is past due:

Table 1 Summary of Loan Payment Status (as at December 31, 2010)

	Payments Due (Note 1)	Payments Received (Note 2)		Outstanding Payments Due	
	Amount	Amount	Date	Amount	Date
Payment due December 31, 2007	\$10,000	\$10,000	Nov-08		
Payment due December 31, 2008	100,000	5,000	May-09		
		6,000	Jul-09		
		1,000	Aug-09		
		1,000	Sep-09		
		6,000	Oct-09		
		1,000	Nov-09		
		5,000	Dec-09		
		50,000	Feb-10		
		25,000	Apr-10		
Payment due December 31, 2009	140,000	2,500	May-10		
		7,500	Jun-10		
		2,500	Jul-10		
		2,500	Aug-10		
		117,500	Sep-10		
		2,500	Oct-10		
		2,500	Nov-10		
		2,500	Dec-10		
Payment due December 31, 2010	300,000	50,000	Nov-10		
		25,000	Dec -10	225,000	31-Dec-10
Balance as at December 31, 2010	\$550,000	\$325,000		\$225,000	

Note 1 From November 15, 2006 One-page agreement signed by City Treasurer with Ottawa Fire Fighters Community Foundation Officers.

Note 2 From Finance department management.

Note 3 Fourth instalment due December 31, 2010 has only been partially paid and \$225,000 remains outstanding (past due) as at December 31, 2010.

Finance department management provided the detailed collections contact history, which occurred from March 2009 to November 2010 and included regular follow-up by the City. They indicated that in March 2009 when they were following up the December 31, 2008 payment, the OFFCF Treasurer indicated that they did not have funds in full for the first instalment and would like to modify the plan and confirmed the loan would be repaid by 2010 as promised.

The notes indicated that the City Treasurer agreed to modify the agreement. Although requested as part of this audit, further details of the City Treasurer's agreement were not provided. Therefore, we conclude that there was no modified agreement.

Finance department management indicated that follow-up had been set to contact the OFFCF Treasurer every month for additional payments given some of the paid services may be donated. They also indicated that in all conversations, the Treasurer of the OFFCF was very uncertain about the current cash flow, however, prior to December 2009 had always expressed that they would meet the final payment commitments.

Finance department management indicated that in December 2009, the OFFCF Treasurer left a voicemail stating they were still reviewing financial statements prior to meeting with the City and that financials showed that they could not meet the timeframe set and would be looking for an extension.

Finance department management indicated that in April 2010, the City Treasurer requested a conference call to discuss the balance of the loan. Finance department management including the City Treasurer subsequently met with the OFFCF Treasurer who indicated that Foundation fund raising efforts had not raised the funds originally expected, that he would send in a payment for \$20,000 the next week, would develop a plan to show the financial picture and that OFFCF would likely be seeking City Council approval to extend terms of the loan. Finance department management indicated that the OFFCF Treasurer came to the office and met with them, submitted financial statements for the project, and committed to pay \$20,000 in post dated cheques of \$2,500/month for May to December 2010. Finance department management indicated they reviewed the statements and found that the statements showed cash commitments and little surplus to clear the balance of the loan.

Finance department management indicated that in July 2010, the OFFCF Treasurer expected to make a large payment in September and were hoping to pay the 2009 and 2010 balance by year end.

We found that for collections activities carried out by the Revenue branch of the Finance department that management exercised due diligence in trying to work with the OFFCF while protecting the interests of the City.

Despite the City's collections efforts, the loan was not repaid within four years and therefore did not meet the conditions of the original City Council motion. As at December 31, 2010, \$225,000 or 41% of the original \$550,000 loan has not been repaid and would have been considered past due and in default of the City Council-approved loan conditions. OAG confirmed that the City's accounting records show that this amount remains outstanding as at May 13, 2011.

Finance department management indicated that they do not bring loans/accounts to City Council's attention unless they are asking for permission to write-off amounts or change terms. They indicated that they have a process to deal with arrears which was followed.

During the course of the audit, management has indicated that at the request of the OFFCF for an extension to the repayment terms, management did take action by tabling a report to Finance and Economic Development Committee and City Council in March 2011 which included extending the terms of the loan repayment and resulted in City Council amending the motion to extend repayment by seven years.

6.2 Lack of Documentation to Evidence Review of Demonstration of a Viable Business/Fundraising Plan

The November 15, 2006 one-page agreement signed by the President, Vice-President and Treasurer of the Ottawa Fire Fighters Community Foundation (OFFCF) and the Treasurer of the City of Ottawa indicated that the Foundation herewith provides a copy of its business/fundraising plan. The plan included an estimate of probable construction costs of \$1.1 million (Class D Rough Order of Magnitude).

During the course of this audit, we requested from Finance department management an annotated copy or document to show what review or analysis had been done in order to validate the demonstration of a viable business/fundraising plan, however this was not provided. Further to our request as part of this audit, we were advised by Finance department management that they reviewed the plan but did not make any notations as they had no concerns. The City Council resolution required the demonstration of a viable business/fundraising plan. We conclude that there was no evidence that the business plan was reviewed.

At a minimum, in our opinion, there were items that should have been questioned in November 2006 prior to advancing the funds, such as:

- A detailed listing of committed funds or in-kind services;
- More detailed fundraising events or strategies;

- In the review of the business plan, we would have expected documentation as to why the capital cost increased from \$700,000 to \$1.1 million, an increase of 57%. This increase arose from the time the report went to City Council in June 2006 when they approved the concept and location and appeared on the indicative cost assessment dated September 25, 2006 which were Class D Rough Order of Magnitude with a cost base of Fall 2006;
- That the original estimate of \$850,000 reported to City Council in June 2006 included a trust fund of \$150,000 for on-going maintenance. On-going maintenance of the monument site is not included in the revised \$1.1 million. There was no discussion or estimates of on-going maintenance in the business plan.
- That the schedule didn't tie to payment disbursements in order to determine the timing of cash outflows.
- That the business/fundraising plan did not determine how they would report progress to the City regarding completion of the business/fundraising plan.

Finance department management indicated that the difference in estimated costs was not reported to City Council and Committee as it did not impact on the concept, the location, or the amount of the loan. They indicated that the business plan provided addressed the fundraising required based on the revised estimate of costs.

Recommendation 1

That the City ensures that prior to loaning funds that they have a structured process and evidence of a thorough review to demonstrate a viable business/fund-raising plan.

Management Response

Management agrees with this recommendation.

In the case of this loan, Finance staff did review the fundraising plan submitted and determined it was reasonable but did not make any notations on the plan. Unfortunately, the economic downturn in 2008 made the plan unachievable.

Reviews that are performed prior to the decision of Council, to provide either a loan or guarantee, will be noted in the Financial comment section of the Council report. Management notes that not all such requests will require a business plan or fundraising plan but that, in those cases, there should be other information available evidencing financial strength or security to support the transaction. The process will include Finance requesting financial statements and business plans and Finance staff documenting their review in the file.

6.3 Lack of an Agreement with Sufficient Terms and Conditions to Protect the City's Interests

This loan was processed with an agreement that did not have sufficient terms and conditions to protect the City's interests or with the same level of rigour as used when the City provides grant funding. For example, grants processed at the City normally require following terms and conditions documented in a legal agreement reviewed by the City Clerk and Solicitor department. This should have included submitting an application including the governance structure, providing initial, ongoing and post-mortem financial and activity reports relating to project and fundraising revenue and costs, an audit clause, timing of the release of loan proceeds, and timing of loan repayments. A structured process regarding loans would provide some degree of assurance to the City that the funds were continuing to be used for the intended purpose and would provide some indication where repayment delays occur and the steps to be taken to rectify the situation on a timely basis.

Although the loan was approved at City Council, there is a responsibility for Finance to provide some guidelines to ensure that the City's interests are protected to the extent possible.

Finance department management provided the following information to the OAG which they obtained from Legal Services. Legal Services has confirmed that there was no documentary evidence to support that this loan agreement or any other loan agreement was reviewed by the City Clerk and Solicitor department prior to this audit. Legal Services has indicated that not all agreements need to be reviewed by their group.

In our opinion, there was a lack of due diligence in advancing the loan funds because the City should have ensured that prior to advancing loan funds an agreement (or agreements), including standard clauses, where and when applicable, should have been done to properly protect and document the City's interests. An appropriate agreement or agreements should have been established with the Foundation prior to releasing the funds to them. After the funds have been released it is too late to add terms and conditions to ensure that the funds were used for the intended purpose and to ensure that the City's interests were protected.

Recommendation 2

That the various departments at the City ensure that prior to advancing loan funds, that agreements are in place, including standard clauses, where and when applicable, pertaining to reporting requirements, audit, insurance, liability and licenses and permits.

Management Response

Management agrees with this recommendation.

Overall, this file has seen significant activity over the last four months as the Ottawa Firefighters Community Foundation requested an extension of the repayment terms and maintenance requirements. A report was presented to the Finance and Economic Development Committee on March 1, 2011 and to City Council on March 10, 2011 that has changed the loan terms and maintenance requirements significantly. The loan is no longer in default due to the changes approved by City Council and the maintenance financial requirements have been modified. As a result of Council direction, Finance staff, in conjunction with the City Clerk and Solicitor department, have drafted a new repayment agreement to incorporate Council direction and approval of the extended payment terms and the maintenance payment. Both the Foundation and the City have executed the agreement.

The repayment agreement includes a revised repayment schedule, a repayment schedule provision, events of default and the City's remedies in the event of default, an enforcement provision, as well as an audit provision that permits the Finance department to inspect and audit the Foundation's books of account and records upon request. This is a standard repayment agreement that has been developed and approved by the City Clerk and Solicitor department. No further action is required.

Provisions with respect to insurance, licenses and permits are not applicable to a standard repayment agreement and are, therefore, not included. These issues would be addressed independently by the Real Estate Partnerships and Development Office (REPDO) and the Special Operations branch. REPDO ensures that licenses are properly executed with relevant clauses pertaining to liability insurance in place and monitored. Special Operations ensures that the permit process is consistent with the plans and that other items are adhered to including WSIB requirements. Special Operations coordinates with the Building Branch to complete inspections as per permits (plans) and monitors progress of the project. Ongoing awareness of the responsibilities contained within the agreement and their compliance would be monitored by the client group.

6.4 Monument Differs from Design Presented to Council

The project plan showed the plan to break ground in the spring of 2007 and have the monument completed for the inaugural ceremony September 11, 2007 resulting in the need for the funds by December 2006. In fact, site construction only started in spring 2009 and the Firefighters monument was unveiled on September 11, 2009.

As at December 31, 2010, the project has not been fully completed based on the monument design presented to City Council in June 2006. Following are examples of components from the monument design presented to City Council in June 2006 that have not been completed to date:

- water cascading over glass (wall) enclosure,

- bridge under the fall of water,
- upper and lower reflecting (water) pools, and,
- an interactive installation with information screen and monitors telling the story of Firefighters in Ottawa.

Finance department management provided the following information to the OAG which they obtained from Public Works. Public Works indicated that, *"The design and subsequent scope of work that Council approved as per the report was reduced prior to construction as a result of a funding shortfall by the organization. The water features, reflecting ponds and proposed archway were eliminated to reflect the economic reality. A report to Council was not contemplated as it is an operational commonplace to adjust scopes of work to projects. The downsized project was carried out and completed with a view to perhaps adding back the original features if finances permit."*

Although the loan is no longer considered to be in default due to the changes put in place at Committee and City Council, as approximately 41% of the loan remains outstanding, the City should look at the reasonableness of the planned and actual costs to ensure that funds were incurred for their intended purpose.

Recommendation 3

That the City reviews the reasonableness of the planned and actual costs.

Management Response

Management agrees with this recommendation.

The Special Operations branch will consult with the Design and Construction branch on the plans and budget to ensure reasonable construction costs and lifecycle budget if the Fire Fighters Group decides to continue with Phase Two or Three of the Monument.

6.5 Site Approval Process

At the June 6, 2006 Corporate Services and Economic Development Committee meeting a report had been provided by Real Property and Asset Management to recommend that City Council approve the concept and location of the Ottawa Firefighters' Memorial to be installed on the grounds at City Hall, 110 Laurier. This was approved at the June 14, 2006 Council meeting. The report indicated that the estimated capital cost was \$850,000 including \$150,000 for a trust fund for on-going maintenance after construction. The Ottawa Firefighters' Memorial Project committee would raise all funds to maintain and build.

December 2010, City management indicated that the specific trust fund for the on-going maintenance and operational expenses has not yet been created as the monument has not been completed. They also indicated that there have been discussions as to whether or not the next two phases which would include the water element and fountain would be built given the cost. Finance department management has confirmed with Public Works department and Real Estate Partnership and Development Office that there are maintenance clauses in the agreement, allowing the City to recover all costs incurred by the City associated with the operations and maintenance of the monument by invoicing the Ottawa Fire Fighters Community Foundation. They indicated there are no maintenance charges for 2009 or 2010.

Finance department management provided the following information to the OAG which they obtained from Public Works. Public Works also indicated that changes to the project (noted in section 6.4) also substantially reduced the ongoing financial requirement for both operations and maintenance. If there are further additions, additional funding for ongoing care would have to be negotiated.

During the course of this audit, management has indicated that a report was tabled at the Finance and Economic Development Committee on March 1, 2011 seeking the approval of Committee and City Council to eliminate the maintenance trust fund of \$150,000 and require the OFFCF pay maintenance of \$20,000 to be paid in year seven of the extension. The report and motion was carried as amended at the Finance and Economic Development Committee and City Council on March 10, 2011.

The OAG is raising this matter to the attention of City Council based on past experience collecting funds from this organization on this loan. We are concerned that the trust fund for on-going maintenance and operational expenses will not be set-up and that payment for on-going maintenance and operations expenses would not otherwise be provided. As previously noted by Public Works, if there are further additions to the monument additional funding for ongoing care would have to be negotiated.

Recommendation 4

That the City ensures proper establishment of the trust fund by the OFFCF for on-going maintenance and operations expenses relating to the monument, otherwise it could create a budget pressure.

Management Response

Management agrees with this recommendation.

Overall, this file has seen significant activity over the last four months as the Ottawa Firefighters Community Foundation requested an extension of the repayment terms and maintenance requirements. A report was presented to the Finance and Economic Development Committee on March 1, 2011 and to City Council on March 10, 2011 that has changed the loan terms and maintenance requirements significantly. The loan is no longer in default due to the changes approved by City Council and the maintenance financial requirements have been modified. As a result of Council direction, Finance staff, in conjunction with the City Clerk and Solicitor department, have drafted a new repayment agreement to incorporate Council direction and approval of the extended payment terms and the maintenance payment. Both the Foundation and the City have executed the agreement. Public Works is addressing the changes to the maintenance agreement. A maintenance agreement will be in place by the end of Q3 2011.

7 CONCLUSION

As at December 31, 2010, \$225,000 out of the \$550,000 interest-free loan provided to the Ottawa Fire Fighters Community Foundation (OFFCF) for the Fire Fighter Memorial was past due in violation of the condition that the interest-free loan be repaid over four years. The amount remained outstanding as of May 13, 2011.

The second condition for the interest-free loan was the demonstration of a viable business/fund-raising plan. While this document was provided to the City Treasurer and she stated that staff reviewed it, there was no notation on the documents at the City to evidence that this plan was reviewed to determine its viability and that issues were identified and addressed.

During the course of the audit, management has indicated that at the request of the OFFCF for an extension to the repayment terms, they did take action by presenting a report to Finance and Economic Development Committee and City Council in March 2011 to extend the terms of the loan repayment and revise the trust fund requirements for maintenance and operations. This resulted in Committee and City Council amending the motion to extend repayment by seven years and reduce the amount and timing of the trust fund.

Although the loan is no longer considered to be in default due to the changes put in place at Committee and City Council, as approximately 41% of the loan remains outstanding, the City should look at the reasonableness of the planned and actual costs to ensure that funds were incurred for their intended purpose.

8 ACKNOWLEDGEMENT

We wish to express our appreciation for the cooperation and assistance afforded the audit team by management.