



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

Separation of the Canadian National Exhibition Association (CNEA) from the Exhibition Place Board of Governors

Date:	January 31, 2012
To:	Executive Committee
From:	City Manager
Wards:	City-wide
Reason for Confidential Information:	This report involves information pertaining to the security of property belonging to the City of Toronto or one of its agencies, and to matters about identifiable individuals, including municipal or local board employees and labour relations or employee negotiations
Reference:	

SUMMARY

The purpose of this report is to:

1. Seek City Council's approval of the terms and conditions upon which the City would implement the independence of the Canadian National Exhibition Association (CNEA), including confidential attachments regarding employee information associated with this agreement; and
2. Make recommendations to City Council regarding the composition of the Exhibition Place Board of Governors to remove the four CNEA representatives on the Exhibition Place Board of Governors in order to transition the CNEA to independent governance.

Council approval of the Term Sheet and governance adjustments will enable the Board of Governors of Exhibition Place to execute a Master Agreement with the CNEA and implement a transition for CNEA independence in 2013. The Exhibition Place Report dated January 31, 2012 from the Chief Executive Officer in Attachment 1 to this report should be referred to for more detailed and technical information.

RECOMMENDATIONS

The City Manager recommends that:

1. Council approve the following recommendations of the Board of Governors of Exhibition Place (Board of Governors) submitted in its report dated January 31, 2012 from the Exhibition Place CEO, which forms Attachment 1 to this report:
 - a. Council approve a Master Agreement between the Board of Governors of Exhibition Place and the Canadian National Exhibition Association, which will have a Transition Term (pre-independence) commencing April 1, 2012; and an Initial Term (post-independence) commencing April 1, 2013 and expiring March 31, 2017, substantially on terms and conditions set out in the Term Sheet attached to the Board of Governors report in Attachment 1, including two (2) three-year Renewal Terms and such other terms and conditions as may be satisfactory to the City Manager, the City Solicitor and the CEO of Exhibition Place;
 - b. Council authorize the Exhibition Place Board of Governors to negotiate as schedules to the Master Agreement, terms and conditions of the following specific agreements which terms and conditions must be satisfactory to the City Manager, City Solicitor and the CEO of Exhibition Place:
 - i. Licence Agreement for use of the Exhibition Place grounds for the annual CNE Event including an addendum for use of the Food Building;
 - ii. Lease Agreement for the use of the Press Building as the year-round administrative offices for the CNEA for nominal rent;
 - iii. Storage Agreement for year-round use of certain storage areas on the grounds for a nominal fee;
 - iv. Administration Services Agreement for the provision of particular administrative services by Exhibition Place staff as requested by the CNEA, and on terms and conditions negotiated by the parties;
 - v. Event Services Agreement for the provision of direct event services by the Board of Governors and the Exhibition Place staff during the CNE Event on a cost recovery basis.
2. Council authorize the placement of any surplus in excess of the Council approved budget for the CNEA Program, which is contained within the Exhibition Place Operating Budget, for 2011 and 2012 into the “Exhibition Place Stabilization Reserve” (an existing Reserve presently held by the City) for the sole purposes of assisting the CNEA to become independent from the Board and the City in 2013, and authorize, for this purpose, a temporary exemption to the City's Surplus Management Policy for the Exhibition Place budget.
3. Council authorize the Board of Governors of Exhibition Place to provide a deemed grant to the CNEA for the 4-year term of the Master Agreement in the form of a reduction to the published rental rates of the Board of Governors as set out in the Financial Implications & Impact Statement in this report, which is consistent with current arrangements;

4. Council authorize the Board of Governors to take action as recommended in Confidential Attachment 1 to the Term Sheet in the Board of Governors report which forms Attachment 1 to this report, and that this information not be released publicly and remain confidential in its entirety in accordance with the provisions of the *City of Toronto Act, 2006*, as it pertains to personal matters about identifiable individuals, including employees of the Board of Governors;
5. The confidential information contained in the Confidential Attachment to the City Solicitor's report (Appendix "F" to the Board of Governor's report) dated January 19, 2012, with respect to Legal Advice on the Proposed Separation and Independence of the CNEA from the Board of Governors of Exhibition Place: Employment-Related Implications not be released publicly and remain confidential in its entirety in accordance with the provisions of the *City of Toronto Act, 2006* as it pertains to personal matters about identifiable individuals, including employees of the Board of Governors.
6. Council approve a change in the composition of the Exhibition Place Board of Governors to remove all four CNEA seats, so that the structure of the Exhibition Place Board of Governors is reduced from 13 members to 9 members appointed by Council as follows: the Mayor or a Council member whom the Mayor recommends as his designate and is appointed by Council, 4 members of Council, and 4 citizen members;
7. Council rescind the appointment of the 4 current CNEA incumbents on the Exhibition Place Board of Governors, effective upon the date Council approves this recommendation, in order to achieve independence in governance consistent with operational independence, and to avoid any perception of a conflict of interest during further negotiations and transition;
8. Council authorize the City Solicitor to introduce the necessary bills to amend Chapter 63, Exhibition Place Governance, of the Municipal Code, to reflect Council's decision regarding the composition of the Board of Governors of Exhibition Place.
9. Council authorize the City Manager to make the necessary amendments to any governance policies or instruments consistent with the decisions of Council in this report, including the "Relationship Framework of the City with the Board of Governors of Exhibition Place", approved by Council on March 31 & April 1, 2010 in Item EX41.1 of the Executive Committee of March 1, 2010.

Financial Impacts

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

2011 / 2012 Budget Implications

There is no impact on the 2012 Council approved Capital Budget for Exhibition Place as a result of this report.

There is no budgetary impact on the Council approved 2012 Operating Budget for either Exhibition Place or for CNEA, and no budget adjustment or technical amendment is required.

As part of the 2012 budget process, Council has reaffirmed the Surplus Management Policy so that all surpluses, including agency surpluses, are a part of the City's revenues. The surpluses over approved budget target for 2011 and 2012, which would normally flow to the City from CNEA Program and are consolidated in the Exhibition Place budget, will go into the Exhibition Place Stabilization Reserve, with the objective of facilitating the CNEA's independence. For 2011, the net excess revenue to the City from only the CNEA Program is estimated to be \$1.2 million. The budget target will therefore be met. For 2012, the amount of the surplus over budget to be committed to the reserve from the CNEA Program will be determined after the conclusion of the CNE Event.

Exhibition Place / CNEA Financial Arrangements

The financial terms to be established in the Master Agreement are based on the assumption that for the first four-year term, neither the Board of Governors / City nor the CNEA will experience any substantial changes to the financial structure of the 2008 MOU, as reflected in the Exhibition Place 2012 Consolidated Operating Budget. The current financial arrangements will remain intact, with a modest 2% CPI annual adjustment.

The Licence Agreement for the use of the grounds and the buildings for the CNE Event requires CNEA to pay Exhibition Place a base rent reflective of the listed rental rates approved annually by the Board of Governors, estimated to be \$4,817,230.83 (2012 rate plus estimated CPI), less a deemed grant to be provided by the Board of Governors of \$1,492,486.83 (plus equivalent CPI increase). The Exhibition Place revenues of \$3,259,553 for 2012 from licensing the space to the CNEA, based on this arrangement, would therefore be as shown in Table 1 following this section.

As noted in Table 1, the rent paid by the CNEA to the Board of Governors in 2012 will stay the same for the first four (4) year term except for CPI increases. This will allow the Board of Governors/City to remain financially “whole” while allowing the CNEA to reach financial stability as an independent organization.

Table 1: CNEA Rent for the Transition Term (pre-independence) and for First Four Year Term of the Master Agreement

	2012 Operating Budget	2013 2% CPI	2014 2% CPI	2015 2% CPI	2016 2% CPI	2017 2% CPI (Q1 only)
CNEA Rent / Site Fee paid to Exhibition Place	\$3,259,553	\$3,324,744	\$3,391,239	\$3,459,064	\$3,528,245	\$3,598,810 (annualized rate)

The rent to be paid by the CNEA in 2013 does provide to the CNEA a financial discount from the Board of Governors' approved listed rental rates for Exhibition Place. However, the Master Agreement also provides that the parties must share all financial data in Year 3 to begin negotiations for the First Renewal Term, and language for the Second Renewal Term includes a direction to eliminate discounts from Board of Governors approved rental rates as the CNEA's finances are stabilized and it becomes more profitable.

Finally, the Term Sheet also addresses inventory / equipment that has been used exclusively by the CNEA since 1998 and proposes that the ownership of this inventory (with a book value of approximately \$0.458M) be transferred to the CNEA for nominal consideration. In return, the CNEA will transfer ownership of the Garden of the Greek Gods statuary to Exhibition Place, which has an equivalent book value as the inventory transferred to the CNEA. There is therefore no net impact on City assets or finances from this transaction.

Further information is contained in Confidential Attachment 2 and the report of the Board of Governors of Exhibition Place.

DECISION HISTORY

The report complies with Council's referral of September 26 & 27, 2011, in Item EX10.1, Core Service Review, conducted by KPMG. Council directed that the City Manager, in consultation with the CEO of Exhibition Place, negotiate and report back to the Executive Committee as required on an agreement for separation and governance arrangements between the Board of Governors of Exhibition Place and the CNEA:

2. *City Council initiate the divestment of the following City agencies or bodies by taking the following actions and request the City Manager to report back to Executive Committee as required:*
 - a. *Request the City Manager, in consultation with the CEO of Exhibition Place, to negotiate, and report on an agreement for separation and governance arrangements between Exhibition Place and the Canadian National Exhibition Association (CNEA);*

The City has now received the resolution of the Board of Governors of Exhibition Place reached at its meeting of January 27, 2012, as contained in Attachment 1 to this report, recommending Council's approval of the term sheet that will substantially form the Master Agreement between CNEA and the Board of Governors. The CNEA Board of Directors has also approved the CNEA Independence Report, including the term sheet, at its meeting of January 26, 2012.

ISSUE BACKGROUND

The CNE Event is the largest exhibition in Canada and one of Toronto's premier events in the summer. The event provides major benefits to the City, including the fact that it creates 633 person years of employment, including youth employment, in the Toronto area. It generates \$4.3M in commodity taxes and attracts 1.3 to 1.4 million attendees each year: 44 % residents of Toronto, 30% from GTA and 26% from various locales 80 km and more. The fair also generates significant economic benefits for the GTA and for the province. Since 1998, the CNE Event has contributed \$4.8M to the revenues of the Board of Governors/City. However, although the event is beneficial to the City of Toronto, the current financial and governance relationship of the CNEA with the Board of Governors of Exhibition Place is not consistent with the independent decision-making of the association.

Current Governance Structure

Exhibition Place Board of Governors currently provides oversight and administrative support to the CNEA on behalf of the City. The CNEA program is included as an Exhibition Place program in the consolidated budget and financial statement of the Board of Governors. This relationship is governed by a 2008 Memorandum of Understanding, as amended, attached in Schedule A to the Term Sheet in Attachment 2 of this report. To facilitate this close operational relationship, Council has appointed 4 members of the CNEA to the Board of Governors.

While the City owns all lands and buildings of the Exhibition Place site, the *City of Toronto Act, 2006* (COTA) has a requirement for Exhibition Place to have "an annual exhibition" on the grounds. The CNE Event not only meets this requirement but has enormous benefits to both Exhibition Place and the City.

The CNEA has largely been successful from 1998 to 2010, posting a cumulative profit of \$4.8M. However, as indicated in the KPMG Consultant report on the Core Service Review, the CNEA cannot immediately become independent without some financial assistance from the City/Board of Governors. Although the CNE Event has been financially successful over the last 10 years, the CNEA has not been allowed to retain any of its earnings, as the current arrangement provides that all surpluses belong to the City in return for underwriting the liabilities associated with the CNE Event. In view of the benefits of the CNE Event to Exhibition Place and the City, it is therefore necessary for the City to provide a degree of financial support (grant and reserve) to ensure a smooth transition and the continued viability and successful operation of the CNE Event in the City.

Therefore, the Term Sheet in Attachment 2 recommends an agreement that assists the CNEA to become independent and continue to be profitable and viable in the long-term and provides a transitional period towards that independence. The current governance and financial relationship of the Exhibition Place Board of Governors and the CNEA is inconsistent with the independent decision-making of the CNEA.

Confidential Attachment 2 to this report involves information pertaining to the security of property belonging to the City of Toronto or one of its agencies, or contains personal information

or labour relations and employee information regarding identifiable individuals. Accordingly, it is necessary that this attachment remains confidential in its entirety.

COMMENTS

This Term Sheet sets out the substantive terms and conditions of CNEA independence and governs the transition period leading up to independence and the substantive terms of a Master Agreement to take effect on April 1, 2013. The agreement as contemplated in this Term Sheet is subject to the approval of the Board of Governors, CNEA and the City.

a. The Transition Term

During this approximately 1-year Transition Term, the 2008 Memorandum of Understanding, as amended, attached as Appendix “A” of the Exhibition Place report, previously entered into by the Board of Governors and the CNEA on January 1, 2008, will continue on a month-to-month basis.

b. Date of CNEA Independence

On April 1, 2013, or a later date as agreed to by the Parties, the CNEA will operate independently and the operation will be in accordance with the following principles:

1. The CNEA shall plan and stage an annual CNE (the “CNE Event”) worthy of community support at Exhibition Place at the sole cost and expense of the CNEA.
2. The CNEA will operate as a distinct and independent not-for-profit organization; and
3. CNEA and Exhibition Place acknowledge that it is important and mutually beneficial for all parties to stage the CNE Event on the grounds each year, and are therefore entering into the agreements as contemplated in this Term Sheet.

c. Master Agreement

It is intended that by April 30, 2012, the Exhibition Place Board of Governors and the CNEA will negotiate and enter into a Master Agreement for a Transition Term (pre-independence) commencing April 1, 2012; and Initial Term (post independence) commencing April 1, 2013 and expiring March 31, 2017, substantially on the terms and conditions set out in this Term Sheet as described above, and other terms as may be agreed to.

d. Renewal Terms:

If the CNEA is not in breach of any of the material terms of the Master Agreement, the CNEA may request that the Master Agreement be renewed for two separate Renewal Terms as follows:

- a. First Renewal Term – A term of three (3) years, subject to negotiation by the parties of mutually agreeable terms; and

- b. Second Renewal Term - A further term of three (3) years, subject to negotiation by the parties of mutually agreeable terms, with the purpose of having the CNEA pay a base rent reflective of the rental prices approved from time to time by the Board of Governors of Exhibition Place for use of Exhibition Place.

e. Reserve Established by the City For Stabilization of the CNEA

This report recommends that City Council authorize the Deputy City Manager and Chief Financial Officer to deposit all actual surpluses over the Council approved budget for the CNEA Program (which is contained within the Operating Budget for Exhibition Place) for the years 2011 and 2012 into the Exhibition Place Stabilization Reserve (an existing reserve currently held by the City), for the sole purpose of stabilizing the CNEA, subject to any specified deductions in the Term Sheet, and following the completion of the annual audit for the consolidated Exhibition Place operations for the years ending December 31, 2011 and December 31, 2012 respectively. The revenues that accumulate in the reserve from the CNEA could be in the range of \$ 1.2 million for 2011. It is intended that such funds be removed from this account and transferred to the City if the CNEA does not become independent by the required date.

f. Dispute Resolution Process:

The Exhibition Place Board of Governors and the CNEA have agreed to utilize the dispute resolution process set out in Appendix D of the Term Sheet with respect to any of the terms and conditions of the Master Agreement, or any other related agreements.

g. Provision for Catastrophic Financial Events:

The continued viability of an independent CNEA is to the mutual benefit of all parties: CNEA, Exhibition Place and City of Toronto. The term sheet therefore includes a provision to allow Exhibition Place and the City to work with the CNEA to attempt finding a solution in the event of a major catastrophic event.

If, in 2012 or during the Initial Term, the CNEA experiences a substantial material financial loss due to an extraordinary event beyond the control of the CNEA, then the Board of Governors and the City will work with the CNEA to attempt to address the financial impact of the event. This provision is subject to the financial ability of the Board of Governors and the City to provide such assistance, and subject to the requirement of the CNEA to provide financial information to the Board of Governors and the City as requested. It also applies only to catastrophic events other than those resulting from a decision of the CNEA, considered an event beyond the control of the CNEA such as for example, inclement weather, an extended power outage, or an epidemic (e.g. SARS).

It is possible that some other minor variations to the Term Sheet may be introduced during detailed negotiations. Adoption of Recommendation 1 authorizes the Exhibition Place Board of Governors and the City of Toronto to execute a Master Agreement between the Board of Governors of Exhibition Place and the Canadian National Exhibition Association, substantially on the terms and conditions as may be satisfactory to the City Manager, the City Solicitor and the CEO of Exhibition Place.

Governance Relationship during the Transition Term

Except as otherwise stated in the Term Sheet in Appendix “A” of the Board of Governors report, the 2008 MOU will govern the relationship of the parties during the 1-year Transition Term. In addition, this report is recommending that Council change the composition of the Board of Governors of Exhibition Place by reducing it to 9 members from the current 13, and removing the 4 CNEA seats on the Board of Governors. Upon approval of this recommendation, the composition would now be 9 members appointed by Council: the Mayor or a Council member whom the Mayor recommends as his designate and is appointed by Council, 4 members of Council, and 4 citizen members.

The report therefore recommends that Council rescind the appointment of the current CNEA members who were appointed by City Council to the Board of Governors of Exhibition Place.

It may also be necessary for the City Manager to report back to Council with alternative governance mechanisms regarding Exhibition Place and CNEA, if the agreement between the two Boards is not executed by 2012 as prescribed, or as otherwise agreed to between the parties, or if required under the new governance arrangements of the Master Agreement.

Conclusion

Upon agreement and signature of the Master Agreement and the disentanglement of the CNEA from membership on the Exhibition Place Board of Governors in 2012, and approval of a stabilization reserve from 2011 and 2012 CNEA revenues, it is expected that Exhibition Place and the City can bridge the CNEA to independence in 2013.

CONTACTS

Karen Jones, Strategic and Corporate Policy Division, City Manager's Office
Telephone: 416-397-4429, Fax: 416-696.3645; E-mail: kjones3@toronto.ca

Martin Herzog, Strategic and Corporate Policy Division, City Manager's Office
Tel: 416-392-5491, Fax: 416-696-3645; E-mail: mherzog@toronto.ca

SIGNATURE

Joseph P. Pennachetti
City Manager

ATTACHMENTS

- Attachment 1: Report from the Board of Governors of Exhibition Place dated January 31, 2012
- Attachment 2: Confidential Attachment: Financial Implications of Potential Employee Related Impacts