

# EP3.22 Appendix A

## APPENDIX "A" MATERIAL TERMS AND CONDITIONS OF LEASE (the "Term Sheet")

### Background:

- A. By a lease dated May 1, 2008 (the "Original Lease"), the Board of Governors of Exhibition Place (the "Board") leased to the Tenant the Leased Property, as defined in the Lease, for a term of three (3) years commencing on May 1, 2008 and expiring on April 30, 2011.
- B. By a Lease Amending Agreement between the Board and the Tenant dated May 1, 2010 (the "2010 Amendment"), the Lease was amended and extended for a further period of nine (9) years, expiring on April 30, 2020;
- C. By a Lease Amending Agreement between the Board and Tenant dated May 9, 2018 (the "2018 Amendment"), the Landlord and the Tenant agreed to amend the Original Lease to allow for certain upgrades to the Leased Property;
- D. The Original Lease, as extended and amended by the 2010 Amendment and the 2018 Amendment, is referred to as the "Existing Lease".
- E. The Tenant has offered to enter into a new lease (the "Lease") on the terms and conditions set out below.
- F. Pursuant to Executive Committee Item 29.5, adopted by Toronto City Council on December 5, 6, 7 and 8, 2017, the Board's authority to enter into leases of premises located at Exhibition Place was modified and, as a result, the lease proposed herein, if authorized and accepted by the City of Toronto, will be executed by City of Toronto, as Landlord.
- G. All capitalized terms not defined herein have the meaning given them in the Existing Lease.

### Terms and Conditions of Lease:

- a) Existing Lease: The Lease shall be materially on the same terms and conditions as the Existing Lease, save as modified or amended in this term sheet and subject to any necessary changes to reflect the City of Toronto, rather than the Board, as Landlord.
- b) Landlord: City of Toronto.
- c) Board Execution: The Board will also execute the Lease and, unless the Landlord advises otherwise and save as expressly otherwise provided in the Lease, all rights, covenants and obligations of the Landlord may be exercised, performed or complied with by the Landlord and/or the Board,

- d) Tenant: 16730801 Ontario Inc.
- e) Leased Property: Part of the Building known as the Queen Elizabeth Theatre, consisting of the Theatre Portion and the Lobby Portion, all as defined in the Existing Lease, and shown attached hereto on Schedules "A1", "A2", "A3" and "A4". The Landlord is provided a right of access to those parts of the Leased Premises as shown on Schedules "A1", "A2", "A3" and "A4".
- f) Term: Ten (10) years, commencing May 1, 2020 and expiring April 30, 2030 (the "Term")
- g) Section 3.2 of the Existing Lease shall be deleted in its entirety.
- h) Basic Rent: See Confidential Attachment 1
- i) Percentage Rent: See Confidential Attachment 1
- j) Additional Rent: The Tenant shall pay Additional Rent in accordance with the Existing Lease.
- k) Payment of Rent: All payments of Basic Rent, Percentage Rent and Additional Rent shall, unless the Landlord advises otherwise, be paid to the Board.
- l) Net Lease: As in the Existing Lease, the Lease is a carefree and absolutely net lease to the Landlord, except as expressly set out, and that the Landlord shall not be responsible during the Term or Extension Term for any costs, charges, expenses, and outlays of any nature whatsoever arising from or relating to the Leased Property, the contents, the use or occupancy thereof, or the business carried on therein. The Tenant shall pay all charges, impositions, costs and expenses of every nature and kind, extraordinary as well as ordinary and foreseen as well as unforeseen, relating to the Leased Property. Any amount and any obligation relating to the Leased Property not expressly declared in the Lease to be the responsibility of the Landlord shall be the responsibility of the Tenant.
- m) Use of Leased Property: The Tenant shall use the Leased Property solely for the purposes permitted under, and in full compliance with, Section 5.1 of the Existing Lease (save for the last paragraph of Section 5.1, which is deleted as set out in subsection (w), below) and all other provisions of the Existing Lease governing the Tenant's use of the Leased Property. Without limitation to the foregoing, the Tenant acknowledges that its use and occupation of the Leased Property is not permitted to violate the Horticulture Building Restriction, and that it shall continue to honour and comply with all provisions in the Existing Lease regarding the Horticulture Building Restriction.
- n) Prohibited Uses: Section 5.2 of the Existing Lease shall be deleted and replaced by the following:

## 5.2 Prohibited Uses

The use of the Leased Property by the Tenant shall be subject to all existing contractual obligations of the Landlord respecting the use of the Lands and, in addition to the restrictions set out in paragraph h) above, the Leased Property shall not be used for any of the following purposes:

- (i) a themed dinner theatre;
  - (ii) trade and consumer shows and any activities (including the provision of food and beverages) related to trade and consumer shows;
  - (iii) corporate meeting, conferences and conventions;
  - (iv) professional sports events;
  - (v) banquets;
  - (vi) a casino; and
  - (vii) a permanent indoor live performance venue/nightclub providing live and recorded musical entertainment for standing room crowd capacities of greater than 500 persons but less than 2,999 persons
- o) Tenant's Use during the CNE: Section 5.7 of the Existing Lease shall be deleted in its entirety.
- p) Shared Use by Tenant: Section 5.8 shall be deleted and replaced with the following:

### 5.8 Shared Use by the Tenant

The Tenant shall have the non-exclusive right, in common with others entitled thereto, to use all or part of the following areas within the Queen Elizabeth Complex for event intermissions for events held in the Leased Property:

- (i) the elevator and the adjoining stairwell in the hallway that adjoins the Leased Property and the Withrow Common (formerly Queen Elizabeth Executive Office);
- (ii) the men's and women's washrooms in the lobby area for the Fountain Dining Room on the second floor of the Withrow Common; and
- (iii) the handicapped washroom in the lobby area for the Fountain Dining Room on the second floor of the Withrow Common (collectively, the "Shared Areas");

provided that:

- (i) the Tenant acknowledges that the Shared Areas may also be used by the Landlord, the Board and their respective invitees,

and may be subject to a lease or license in favour of a third party tenant or licensee;

- (ii) the Tenant shall ensure that its use under this Section 5.8 does not interfere with any use of the Shared Areas and/or the areas known as the Fountain Dining Room, the Second Floor Boardroom or President's Room by the Landlord or the Board or their respective invitees, or by any tenant or licensee of any such areas; and
- (iii) the Tenant shall pay all costs associated with use of the Shared Areas including, but not limited to, cleaning costs and security costs, as required by the Landlord.

Without limitation to Section 13 of this Lease, the Tenant shall indemnify the Landlord and the Board and save them harmless from and against any and all loss, claims, actions, damages, liability and expenses in connection with loss of life, personal injury, damage to property or any other loss or injury whatsoever arising in any way from the Tenant's use of the Shared Areas, except if and to the extent such loss of life, injury, damage or loss is caused by the negligence of the Landlord or the Board or those for whom they are in law responsible.

- q) Section 6.1(a) of the Existing Lease shall be amended by deleting the following sentence: "The Landlord acknowledges that the Tenant intends to make the improvements listed in Schedule "I" to which the Landlord has no objections, provided the Tenant obtains all approvals required pursuant to this Lease prior to construction or installing the improvements."
- r) Section 6.1(b) of the Existing Lease shall be deleted in its entirety.
- s) A new Section 6.9(4) is added to the Lease as follows:
  - (4) The Tenant acknowledges and agrees that:
    - (a) pursuant to the Theatre Renovation, it shall make a capital investment in the Leased Property of no less than Two Million Four Hundred Thousand Dollars (\$2,400,000), plus HST (the "Minimum Renovation Budget"); and
    - (b) by no later than May 31, 2021, the Tenant shall have made a capital investment in the Leased Property of no less than ninety-five percent (95%) of the Minimum Renovation Budget.

In the event the Tenant does not comply with either or both of subsections (a) and/or (b) of this Section 6.9(4), the Tenant shall immediately and without any further notice or action on the part of the Landlord be deemed to be in default of its obligations under this Lease, and the Landlord shall be entitled to all rights and remedies available to it under this Lease or at law, including, without limitation to

the foregoing, to enter into and upon the Leased Property or any part thereof and the Lease shall thereupon terminate.

- t) Security Deposit: The Landlord shall continue to hold the deposit of ten thousand (\$10,000.00) dollars paid by the Tenant under the Existing Lease, which shall be held as a security deposit and returned to the Tenant, without interest, at the end of the Term, if the Tenant has duly fulfilled all of its obligations and covenants as set out in this Lease.
- u) Compliance with Collective Agreements at Exhibition Place: Section 15.1 of the Existing Lease shall be deleted and replaced with the following:

### **15. COMPLIANCE WITH COLLECTIVE AGREEMENTS AT EXHIBITION PLACE**

- (1) The Tenant acknowledges that the Board has collective agreements with the following local unions and the Tenant will take all necessary action not to put the Board in breach of any of these agreements:
  - (a) Labourers' International Union of North America, Local 506 (Operations);
  - (b) The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local Union 46;
  - (c) The International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local #58, Toronto;
  - (d) The Ontario Provincial Council, United Brotherhood of Carpenters and Joiners of America (O.P.C.), Local Union 27;
  - (e) Canadian Union of Public Employees, Local 2840;
  - (f) International Brotherhood of Electrical Workers, Local Union 353;
  - (g) Canadian Union Public Employees Local 5116 (Security); and
  - (h) International Brotherhood of Painters and Allied Trades District Council 46.
- (2) The Tenant agrees that it shall comply with the foregoing collective agreements and any future collective agreements to which the Landlord and the Board become bound with respect to the operation of the Leased Property (collectively the "Collective Agreements") and shall endeavor not to prejudice any relationship between the Landlord or the Board and any union or trade organization. The Tenant shall obtain any clearance required by any

union or trade organization having any jurisdiction over any work to be done by the Tenant on the Lands. The Landlord agrees to provide written notice to the Tenant of the Collective Agreements together with a copy thereof and copies of any amendments to such Collective Agreements, any grievances filed thereunder with respect to operation of the Leased Property and ongoing status reports with respect to such grievances thereafter. In addition, in the event a party asserts through the grievance and arbitration procedure of a Collective Agreement that the Landlord or the Board is in breach thereof and said breach was caused solely or partially by the Tenant's failure to comply with same, then the Tenant shall indemnify the Landlord and the Board with respect to any costs, damages, losses and awards that may be incurred by them as a result of a breach by the Tenant of its obligations hereunder, including without limitation, negotiated settlements resulting in payment by the Landlord and/or the Board or any awards against the Landlord and/or the Board rendered by an arbitrator, Ontario Labour Relations Board or other adjudicative body with jurisdiction to make such an award against the Landlord or the Board, to the extent directly resulting from such Tenant's breach notwithstanding that such grievance is filed after termination or earlier expiry of this Lease provided such grievance is filed within the time limits set out in the applicable Collective Agreement or as otherwise permitted by Applicable Laws and relates to that period of time the Lease was in effect. The Tenant shall pay any such award, settlement, loss and other costs and damages, incurred by the Landlord and/or the Board, within fifteen (15) business days of receipt of demand therefore from the Landlord. All amounts payable by the Tenant under this clause shall be Additional Rent.

- (3) The Tenant agrees that it shall comply with any collective agreements to which the Landlord and the Board is bound in the construction industry with respect to any construction work by the Tenant on the Lands throughout the Term. Construction work is as defined under the *Labour Relations Act* (Ontario). The Tenant will comply with both the Labour Trades Contractual Obligations in the Construction Industry Policy and Fair Wage Policy, which are subject to amendments and change from time to time. A copy of each of these policies as they stand as of the date of this Lease is attached as Schedule "N". The Tenant shall provide such evidence of compliance as the Landlord may reasonably request from time to time. The Tenant shall contact the Landlord's Fair Wage Office prior to commencement of any construction, obtain copies of current policies and applicable information for the purpose of pre-qualifying proposed contractors, as determined by and in accordance with the then-current usual practices for the Landlord's Fair Wage Office and obligations to the Landlord. The Tenant shall adhere to and comply with all collective agreements in the construction industry (under the *Labour Relations Act* (Ontario)) to which the Landlord and the Board are bound (or become bound prior to the commencement of any construction). The Tenant agrees to indemnify the Landlord and the Board with respect to any costs, damages, losses and awards that may be incurred by it as a

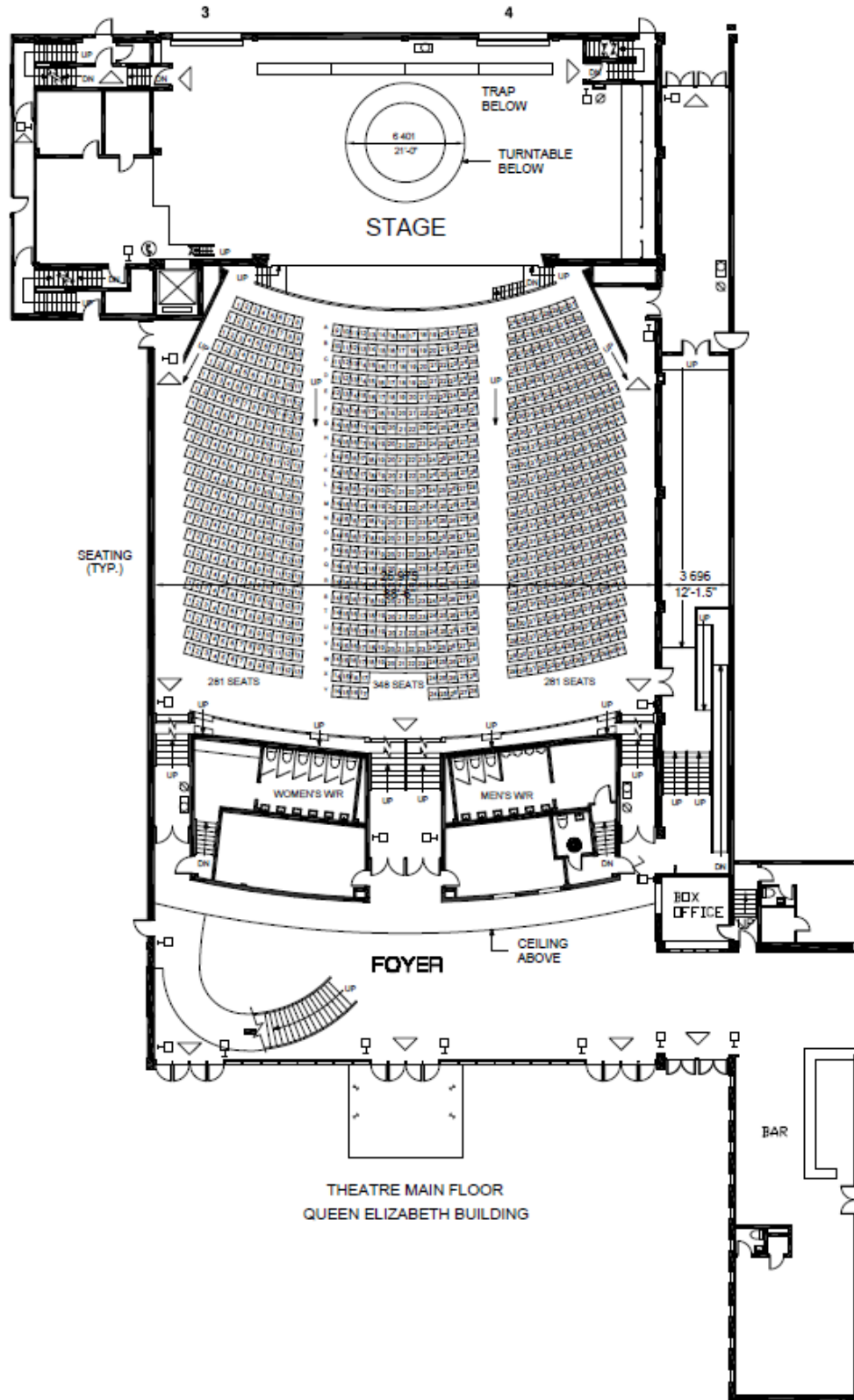
result of a breach by the Tenant of its obligations hereunder, including without limitation, negotiated settlements resulting in payment by the Landlord and/or the Board or any awards against the Landlord and/or the Board resulting from a grievance filed against the Landlord and/or the Board with respect to a breach of any of the collective agreements to which the Landlord and the Board are bound in the construction industry. The Tenant shall pay any such award, settlement, loss and other costs and damages, incurred by the Landlord and/or the Board, within fifteen (15) business days of receipt of demand therefore from the Landlord. The Tenant shall be permitted to attend the mediation and/or hearing of any grievance subject to an order to the contrary by the arbitrator or Vice-Chair of the Ontario Labour Relations Board hearing the grievance referral. For grievances that are settled by the Landlord or the Board prior to or at any point during any grievance or grievance arbitration or referral hearing, the Landlord shall engage and consult with the Tenant as to the financial terms of settlement, but final determination as to whether a matter is to be settled and the terms of settlement shall remain with the Landlord. All amounts payable by the Tenant under this clause shall be Additional Rent.

- v) Tenant's Right of Early Termination: Section 15.2 of the Existing Lease shall be deleted in its entirety.
- w) Fountain Dining Room Lease: The following provisions in the Existing Lease, relating to the Tenant's lease of the Fountain Dining Room, which expires on the same date as the Existing Lease, shall be deleted:
  - a. The last paragraph of Section 5.1, as added by Section (2)(g) of the 2010 Amendment;
  - b. Section 16.2(3), as added by Section (2)(l) of the 2010 Amendment; and
  - c. Section 18.9, as added by Section 2(n) of the 2010 Amendment.
- x) Schedule "I" of the Existing Lease shall be deleted in its entirety.
- y) Schedule "K" of the Existing Lease shall be deleted and replaced by Schedule "K" that is outlined in detail in Confidential Attachment 1.
- z) Schedule "L" of the Existing Lease shall be deleted in its entirety.
- aa) Schedule "N" attached hereto shall be attached to the Lease as a new Schedule "N".
- bb) Lease Documentation: If the Tenant's offer to enter into the Lease is authorized and accepted by the City of Toronto, the lease agreement shall be prepared by the Landlord on the Landlord's standard form and shall incorporate the terms set out herein. The Tenant shall execute the Lease within thirty (30) days after receipt. The Tenant acknowledges that this term sheet contains the basic terms and conditions upon which the Landlord will lease the Leased Property to the Tenant, and that supplementary terms and conditions and revisions to the terms and conditions of this

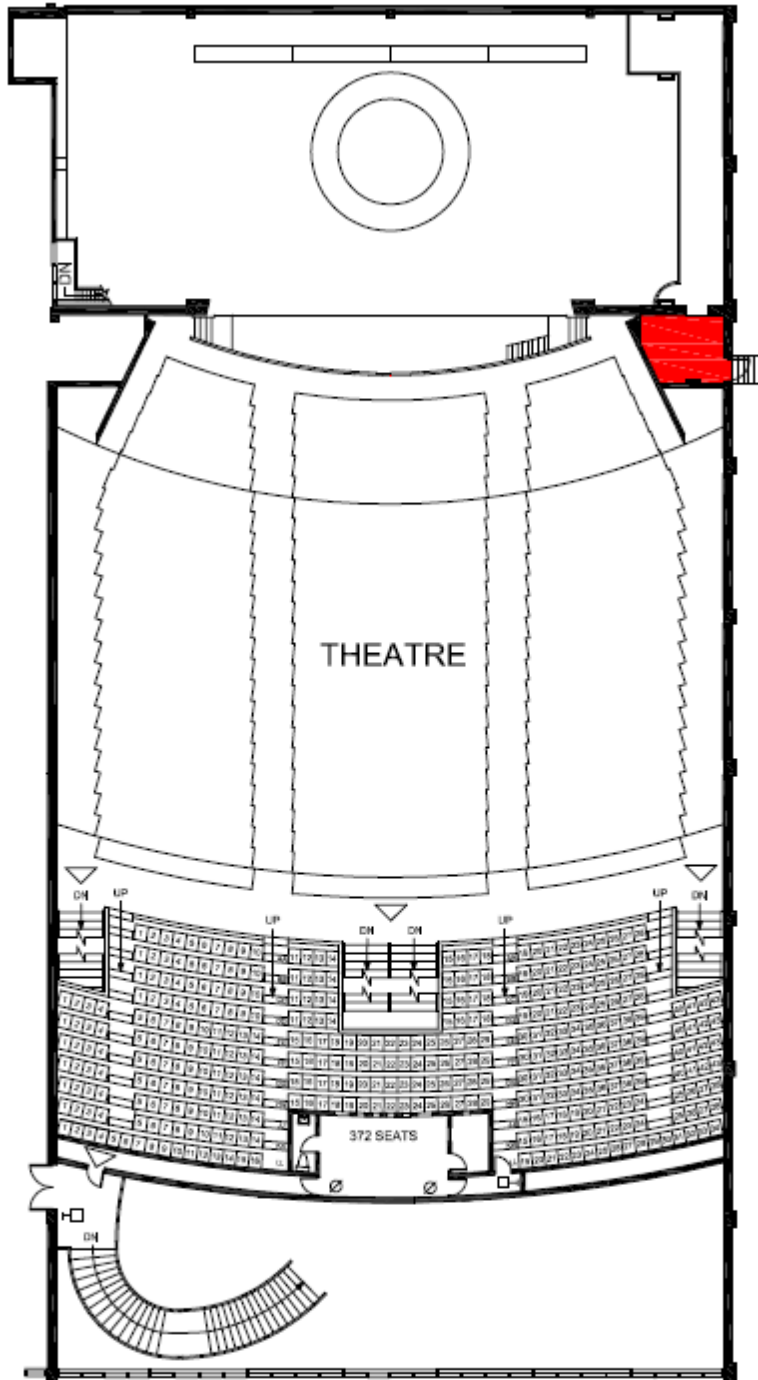
term sheet may be contained in the Lease. Without limitation to the foregoing, the Tenant acknowledges that certain provisions in the Landlord's standard form have been amended or updated since the Existing Lease documentation. All documentation shall be in a form and content satisfactory to the City Solicitor.



# Schedule "A1" Main Floor Theatre



Schedule "A2"  
Mezzanine of Theatre

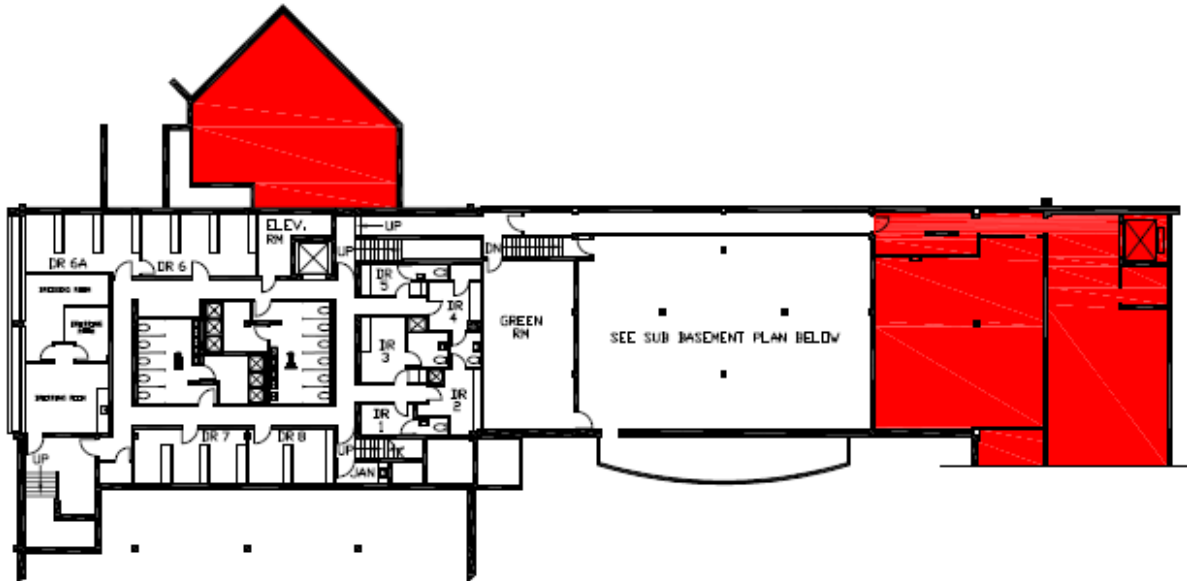


**THEATRE - MEZZANINE**  
**QUEEN ELIZABETH BUILDING** 

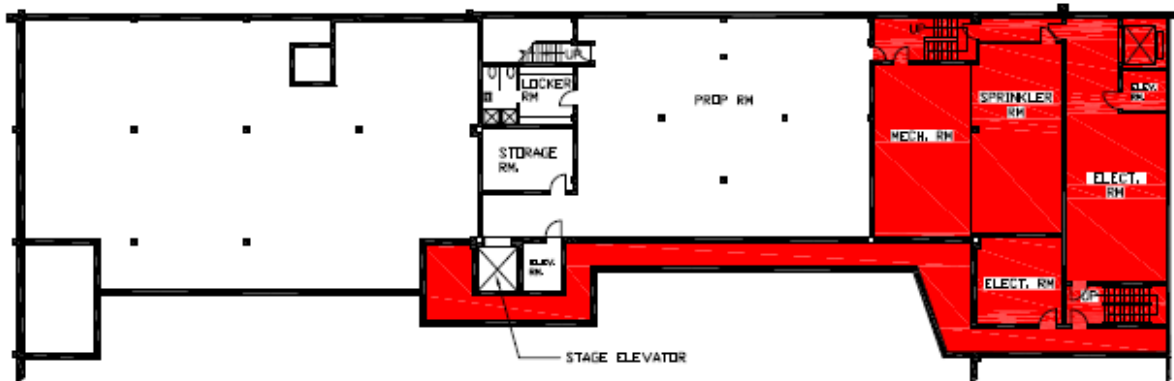


ACCESS REQUIRED BY EXHIBITION PLACE

Schedule "A3"  
Theatre Basement Dressing Rooms



BASEMENT PLAN



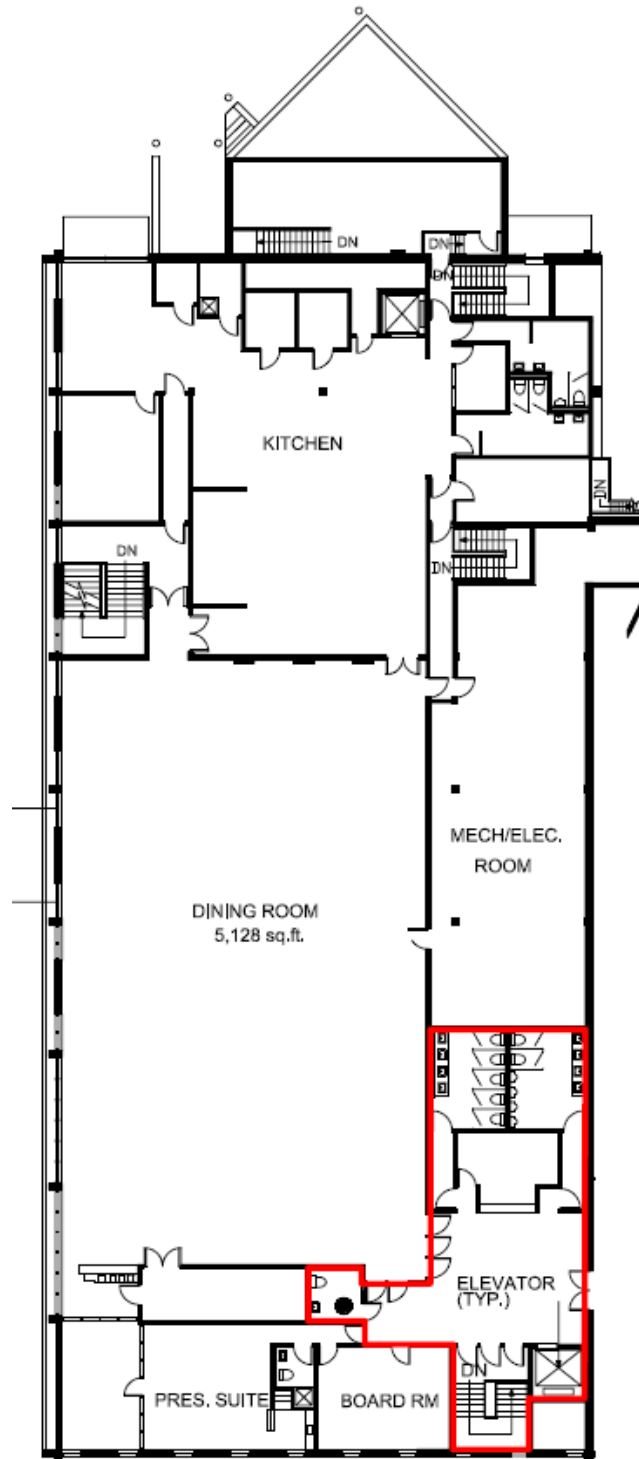
SUB BASEMENT PLAN

QUEEN ELIZABETH BUILDING, - BASEMENT



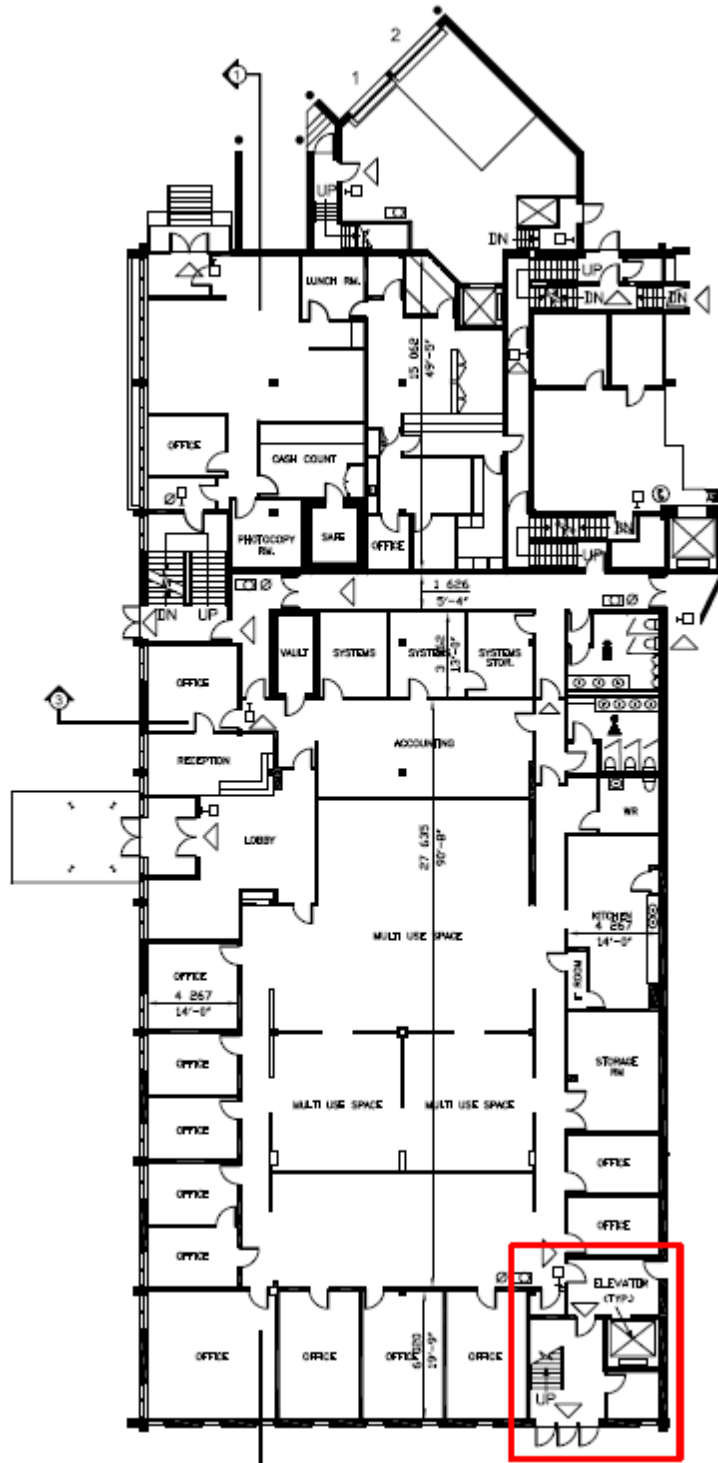
ACCESS REQUIRED BY EXHIBITION PLACE

Schedule "A4"  
Shared Washrooms, Foyer Vestibule & Elevator  
Upper Level



FOUNTAINBLU - DINING ROOM

Schedule "A4" Continued  
Shared Washrooms, Foyer Vestibule & Elevator  
Lower Level



Withrow Common Street Entrance to Fountainblu Dining Room

**SCHEDULE "N"**  
**FAIR WAGE POLICY**

- § 67-A1. Definitions.**
- § 67-A2. City of Toronto Council references.**
- § 67-A3. Purpose and history of Fair Wage Policy.**
- § 67-A4. Intent of Fair Wage Policy.**
- § 67-A5. Application.**
- § 67-A6. Establishment of rates.**
- § 67-A7. Contractor and sub-contractor responsibilities.**
- § 67-A8. Responsibilities of Manager, Fair Wage Office.**
- § 67-A9. Penalty provisions.**
- § 67-A10. Disqualification provisions.**

[Amended 2007-10-23 by By-law 1140-2007; 2019-01-31 by By-law 255-2019<sup>1</sup>]

**§ 67-A1. Definitions.**

As used in this Fair Wage Policy, the following terms have the meanings indicated:

**APPRENTICE** - An individual who has entered into a registered training agreement under which the individual is to receive workplace-based training in a trade, other occupations or skill set as part of an apprenticeship program approved by the Ontario Ministry of Training, Colleges and Universities.

**APPRENTICESHIP PROGRAM** - A program recognized by Ontario Ministry of Training, Colleges and Universities which provides for the qualification, recruitment, selection, employment, and training on the job. Apprenticeship and training leads to Ontario Certification of Qualification and Apprenticeship for journey person status, which is recognized by employer and employee representatives of industry.

**CONTRACT** - A legal, business agreement between the City of Toronto and the contractor to perform work or services or to provide materials and supplies.

**CONTRACTORS** - Any person or business entity with whom the City enters into a contract with to perform the work or provide services.

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<sup>1</sup> Editor's Note: By-law 255-2019 deleted references to "Government Management Committee" throughout this Schedule, other than in Subsection 67-A2, and replaced them with "General Government and Licensing Committee". By-law 255-2019 is deemed to have come into effect on December 13, 2018.

**FAIR WAGE SCHEDULE** - Stipulated rates of pay for different classifications of work produced and obtainable from the Fair Wage and Labour Trades Office.

**FIELD WORK** - All work in performance of the contract that is not shop work.

**FRINGE BENEFITS** - Includes such benefits as company pension plans, extended health care benefits, dental and prescription plans, etc. It does not include legislated payroll deductions such as C.P.P., E.H.T., W.S.I.B. or E.I.C.

**NON-COMPLIANCE** - The occurrence of any of the following conditions:

- A. Contractor fails to co-operate with the Manager, Fair Wage Office in fulfilling his or her responsibilities under the Fair Wage Policy and the Labour Trades Contractual Obligations in the Construction Industry.
- B. Sub-contractor fails to co-operate with the Manager, Fair Wage Office in fulfilling his or her responsibilities under the Fair Wage Policy and the Labour Trades Contractual Obligations in the Construction Industry.
- C. Contractor or sub-contractor has been found in violation of the Fair Wage Policy (non-compliance applies to both contractor and sub-contractor).
- D. Contractor has been found in violation of the Labour Trades Contractual Obligations in the Construction Industry.
- E. Sub-contractor has been found in violation of the Labour Trades Contractual Obligations in the Construction Industry.

**PROCUREMENT CALL DOCUMENT** - Includes a tender, request for quotations and a request for proposals as issued by the Purchasing and Materials Management Division, and as defined in Chapter 195 of the Toronto Municipal Code.

**SHOP WORK** - Any work in performance of the contract that is done in or at any factory, foundry, shop or place of manufacture not located at or upon the site of the work, and not operated solely for the purpose of the work.

**SUB-CONTRACTOR** - Any person or business entity not contracting with or employed directly by the City but who supplies services or materials to the improvement under an agreement with the contractor or under the contract with another sub-contractor.

**WAGES or RATE OF WAGES** - Includes the hourly rate, vacation and holiday pay and any applicable amount for fringe benefits shown in the current Fair Wage Schedule, to be paid to the worker as part of the worker's wages or for the worker's benefit provided for in any collective agreement applicable to that worker.

**WORKERS** - Includes mechanics, workers, labourers, owners and drivers of a truck or other vehicle employed in the execution of the contract by the contractor or by any sub-contractor under them and clerical staff.

### **§ 67-A2. City of Toronto Council references.**

- A. City of Toronto Council, by the adoption of Corporate Services Committee Report 13, Clause 1, as amended, at its meeting of October 1 and 2, 1998, directed that the Fair Wage Policy of the former Municipality of Metropolitan Toronto be adopted for all City departments, agencies, boards and commissions and replace all existing fair wage policies of the former local municipalities.
- B. City of Toronto Council, by the adoption of Administration Committee Report 7, Clause 1, as amended, at its meeting of June 18, 19 and 20, 2002, directed that certain changes be made to the Fair Wage Policy and Procedures.
- C. City of Toronto Council, by the adoption of Administration Committee Report 5, Clause 2, at its meeting of June 24, 25 and 26, 2003, directed that certain further changes be made to the Fair Wage Policy and Procedures, and to the Fair Wage Rate Schedule.
- D. City of Toronto Council, by the adoption of Government Management Committee Item 8.9, at its meeting of October 22 and 23, 2007, directed that certain changes be made to the Fair Wage Policy.

### **§ 67-A3. Purpose and history of Fair Wage Policy.**

- A. The Fair Wage Policy has as a central principle the prohibition of the City doing business with contractors, sub-contractors and suppliers who discriminate against their workers.
- B. Originally implemented in 1893 to ensure that contractors for the City paid their workers the union rates or, for non-union workers, the prevailing wages and benefits in their field, the Fair Wage Policy has expanded over the years to other non-construction classifications such as clerical workers.
- C. The policy also requires compliance with acceptable number of working hours and conditions of work in order to protect the rights of workers.

### **§ 67-A4. Intent of Fair Wage Policy.**

The intent of the Fair Wage Policy can be summarized as follows:

- A. To produce stable labour relations with minimal disruption;
- B. To compromise between the wage differentials of organized and unorganized labour;
- C. To create a level playing field in competitions for City work;
- D. To protect the public; and
- E. To enhance the reputation of the City for ethical and fair business dealings.



#### **§ 67-A5. Application.**

- A. The provisions of the Fair Wage Policy apply equally to contractors and all sub contractors engaged in work for the City of Toronto. It is understood that contractors cannot sub-contract work to any sub-contractor at a rate lower than called for in the Fair Wage Policy.
- B. The fair wage rates do not apply to small businesses, typically those with owner operators, or partnerships, or principals of companies as long as they undertake the work themselves.
- C. It should be noted that under the above City of Toronto Council reference authorities, the conditions of the Fair Wage Policy cannot be waived, unless authorized by Council to do so.

#### **§ 67-A6. Establishment of rates.**

- A. Establishing fair wage rates and schedules are intended to minimize potential conflicts between organized and unorganized labour in the tendering and awarding of City contracts.
- B. Certain designated construction-related rates are based on the lowest rate established by collective bargaining, while the wage rates for other classifications are based on market and industrial surveys in accordance with the prevailing wages for non-union workers in the geographic area.
- C. The City encourages contractors to hire and train apprentices under approved apprenticeship programs. Apprentices/trainees will be assessed based on Provincial Qualification Apprenticeship Certification Criteria.
- D. Fair wage rates, including rates for apprentices, are established through discussion between the Fair Wage Office and with employee and employer groups and associations (having both union and non-union members). This discussion will also include appropriate apprenticeship programs for construction-related trades.
- E. The proper wage rates to be paid to apprentices/trainees are those specified by a particular industry program in which they are enrolled, expressed as a percentage of the journeyman rate on the wage determination. In the event employees reported as apprentices and trainees have not been properly registered, or are utilized at the jobsite in excess of the ratio of journeymen permitted under the approved program, they must be paid the applicable schedule of wage rate. The Manager, Fair Wage Office may assess established employee work history as to determine the appropriate apprentice/trainee level.
- F. These rates are reviewed by the above-noted groups and approved by the Manager, Fair Wage Office, every three years commencing in 2013, as delegated under § 67-3.1 and are effective upon the enactment of the necessary by-law amendment. **[Amended 2013-10-11 by By-law 1287-2013]**

#### **§ 67-A7. Contractor and sub-contractor responsibilities.**

- A. Contractors will be responsible for any violations or non-compliance issues arising from the engagement of any sub-contractor on City work.

- B. The contractor or sub-contractor shall pay or cause to be paid weekly or biweekly to every worker employed in the execution of the contract wages at the following rates, namely:
- (1) For workers employed in shop work:
    - (a) The union rate of wages in the particular district or locality in which the work is undertaken for any class of work in respect of which there is such union rate; and
    - (b) For any class of work for which there is no such union rate, the rate of wages shall be the rate of wages, as determined by the Manager, Fair Wage Office, prevailing in the particular district or locality in which the work is undertaken.
  - (2) For workers employed in field work:
    - (a) Where the contractor or sub-contractor is in contractual relationship with a union recognized by the Ontario Labour Relations Board as the bargaining agent for the relevant workers, the applicable rate of wages set out in the collective agreement; and
    - (b) Where there is no such contractual relationship, a rate not less than that set out for such work in the Fair Wage Schedule and filed by the Manager, Fair Wage Office, with the City Clerk in accordance with the authority delegated to the Manager, Fair Wage Office under § 67-3.1; and **[Amended 2013-12-18 by By-law 1717-2013]**
    - (c) For any class of work for which there is no rate, the rate of wages shall be the rate of wages, as determined by the Manager, Fair Wage Office, prevailing in the particular district or locality in which the work is undertaken.
- C. Workers engaged in clerical office work are to be paid a rate of wages no less than the surveyed standard for each classification of worker for the particular industry at the time of tendering.
- D. The contractor and sub-contractor shall:
- (1) At all times keep a list of the names and classifications of all workers employed in the work, the hourly rate and hours worked per day and a record of the amounts paid to each.
  - (2) From time to time, if demanded by the Manager, Fair Wage Office, furnish a certified copy of all paysheets, lists, records and books relating to the work and keep the originals thereof open at all times for examination by the Manager.
  - (3) At all times furnish and disclose to the said Manager any other information respecting wages of workers that may be desired by the Manager in connection with the work.
  - (4) Attach to all accounts rendered for payment of money upon the contract, a declaration affirming that the requirements of the Fair Wage Policy have been fully complied with.

- (5) Display legible copies of this Fair Wage Policy in a prominent position in his or her workshop(s), accessible to all employees.
- E. The contractor or sub-contractor shall not compel or permit any worker engaged for the work to work more than the number of hours per day and the number of hours per week set out in the Fair Wage Schedule for the particular type of work involved except in case of emergency, and then only with the written permission of the commissioner or head of the department having charge of the work or the person then acting as such.

**§ 67-A8. Responsibilities of Manager, Fair Wage Office.**

- A. To fulfil the duties of the Manager, as set out in Chapter 67 of the Toronto Municipal Code, § 67-3.
- B. In every procurement call to which the Fair Wage Policy applies, the Manager, Fair Wage Office, will determine the applicable Fair Wage Schedules for the work requested in the procurement call, or whether unionized workers need to be utilized for the work requested in the procurement call as per Chapter 67, Schedule B, Labour Trades Contractual Obligations in the Construction Industry.
- C. Once the applicable Fair Wage Schedule is determined for a specific procurement call, the Manager, Fair Wage Office will provide a copy of the Fair Wage Schedule to Purchasing & Materials Management Division to insert into the procurement document, before the procurement document is issued.
- D. In case of a jurisdictional dispute or dispute as to rate of wages to be paid under the contract or as to the amount to be paid to any worker or apprentice, the decision of the Manager, Fair Wage Office, shall be final and binding upon all parties.
- E. After the procurement call closes, the Manager, Fair Wage Office, at the request of Purchasing & Materials Management Division, will send a fair wage declaration form to the three lowest bidders, to determine if the bidder will comply with the fair wage policy and fair wage schedules.

**§ 67-A9. Penalty provisions.**

- A. If the contractor or sub-contractor fails to pay any worker wages at the rate called for in § 67-A7, the City may:
  - (1) Charge an administrative fee not in excess of 15 percent of the balance necessary to make up the amount that should have been paid from the contractor's progress draw or holdback; and
  - (2) Pay the worker(s) directly for any back-wages owing directly from the contractor's progress draw or holdback.
- B. If a tenderer or bidder is found not to comply with the Fair Wage Policy, the Manager may recommend the next lowest bidder for contract award to Purchasing & Materials Management Division in the following circumstances:

- (1) On the declaration form discussed in § 67-A8E, a contractor or subcontractor does not meet the Fair Wage Schedules.
- (2) An investigation is underway and the firm does not co-operate in providing timely information within five business days after being requested by the Manager, Fair Wage Office in fulfilling his or her responsibilities under the Fair Wage Policy and the Labour Trades Contractual Obligations in the Construction Industry and, operationally, the provision of goods and/or services cannot be delayed.
- (3) A contractor or sub-contractor is in violation of the Fair Wage Policy and has not paid restitution to its workers.
- (4) A contractor or sub-contractor is unable to comply with the City of Toronto Labour Trades Contractual Obligations in the Construction Industry.

**§ 67-A10. Disqualification provisions.**

- A. When a contractor or any sub-contractor is found to be in non-compliance with the provisions of the Fair Wage Policy in two separate instances over a period of three years inclusive, the Manager, Fair Wage Office must report and may recommend to the General Government and Licensing Committee that the said contractor or sub-contractor be disqualified from conducting business with the City for a period of two years, inclusive.
- B. The disqualification period will start from the day of the decision of Council.
- C. After the disqualifying period is over, the said contractor or sub-contractor will be placed on probation for the next year. If another non-compliance violation occurs, the Manager, Fair Wage Office must report and may recommend to the General Government and Licensing Committee that the said contractor or sub-contractor be disqualified from conducting business with the City for an indefinite period of time.
- D. All non-compliance activities (including firm names) and disqualification statistics will be reported to Council annually. Disqualified firms will be published on the City's Web site.

**LABOUR TRADES CONTRACTUAL OBLIGATIONS IN THE CONSTRUCTION INDUSTRY**

**§ 67-B1. Legislative applicability of labour trades obligations.**

**§ 67-B2. Current labour trades contractual obligations in the construction industry.**

**§ 67-B3. Guidelines for prospective bidders.**

**§ 67-B4. Decisions, Fair Wage Policy.**

**§ 67-B1. Legislative applicability of labour trades obligations.**

- A. The mandatory labour trades provisions for municipalities bound by Province-wide collective agreements are separate from Fair Wage Policy established, monitored and enforced by the City. Central to any understanding of municipal obligations to labour trades is that the City has no discretion in setting wage rates or in using union labour for certain trades performing work for the City. This is by virtue of the Province-wide collective agreements applicable to trades in the industrial, commercial and institutional

(ICI) and residential sectors and other negotiated collective agreements in other sectors of the construction industry.

- B. The Province-wide collective agreements are binding on all employers in the sector. The former City of Toronto was first considered an "employer" when the relevant unions obtained bargaining rights beginning in 1978. As a result, subject to the jurisdiction of the collective agreements, union workers must be used for contracted-out work. The use of union sub-contractors for municipal building projects is also required in most cases.

**§ 67-B2. Current labour trades contractual obligations in the construction industry.**

- A. The City of Toronto is bound by the current Province-wide collective agreements with respect to the industrial, commercial and institutional sectors of the construction industry between:
- (1) The Carpenters' Employer Bargaining Agency and the Ontario Provincial Council, United Brotherhood of Carpenters and Joiners of America.
  - (2) The Mechanical Contractors Association of Ontario and the Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe-Fitting Industry of the United States and Canada.
  - (3) The Electrical Trade Bargaining Agency of the Electrical Contractors Association of Ontario and The International Brotherhood of Electrical Workers and the IBEW Construction Council of Ontario.
  - (4) The International Union of Bricklayers and Allied Craftsmen and the Ontario Provincial Conference of the International Union of Bricklayers and Allied Craftsmen, and The Masonry Industry Employers Council of Ontario.
  - (5) The International Association of Heat and Frost Insulators and Asbestos Workers and The Master Insulators' Association of Ontario, Inc.
  - (6) The International Brotherhood of Painters and Allied Trades and The Ontario Painting Contractors Association.
  - (7) The Ontario Glazier Agreement between The Architectural Glass and Metal Contractors Association and The International Brotherhood of Painters and Allied Trades. **[Amended 2006-02-14 by By-law 175-2006]**
  - (8) The Environmental Sheet Metal Association and the Sheet Metal Workers' International Association and the Ontario Sheet Metal Workers' Conference. **[Amended 2006-02-14 by By-law 175-2006]**
  - (9) The Ontario Erectors Association, Incorporated and the International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers and Ironworkers District Council of Ontario. **[Added 2006-02-14 by By-law 175-2006]**
- B. Exhibition Place is bound:

- (1) By collective agreements in all sectors of the construction industry between:
    - (a) The Carpenters' Employer Bargaining Agency and The Ontario Provincial Council, United Brotherhood of Carpenters and Joiners of America.
    - (b) The Mechanical Contractors Association of Ontario and The Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada.
    - (c) The Electrical Trade Bargaining Agency of the Electrical Contractors Association of Ontario and The International Brotherhood of Electrical Workers and the IBEW Construction Council of Ontario; and
  - (2) By Letters of Understanding between the Board and, respectively, Local 506 of the Labourers International Union of North America and The International Brotherhood of Painters and Allied Trades.
- C. Any non-maintenance part(s) of the work that is the work of union members for whom the said Council, Brotherhood, Association or Local is the collective representative under the provisions of any one of the said collective agreements or the said letters shall in each case be performed only by an employer owing contractual obligations to such representative, unless such obligations do not prohibit performance of such part(s) of the work by others.

**§ 67-B3. Guidelines for prospective bidders.**

This summary is an overview of the current status of trades' certifications and the relevant construction sectors for which firms and workers with the appropriate union affiliations must be used when performing the following work for the City of Toronto and Exhibition Place:

| <b>Type of Work</b>                          | <b>City of Toronto</b> | <b>Exhibition Place</b> |
|--|------------------------|-------------------------|
| <b>I.C.I.*</b>                               |                        |                         |
| Asbestos/insulation                          | X                      |                         |
| Bricklaying/masonry                          | X                      |                         |
| Carpentry                                    | X                      | X                       |
| Electrical                                   | X                      | X                       |
| Glazing                                      | X                      |                         |
| Labourers                                    |                        | X                       |
| Mechanical                                   | X                      | X                       |
| Painting                                     | X                      | X                       |
| Sheet metal                                  | X                      |                         |
| Iron work                                    | X                      |                         |
| <b>[Added 2006-02-14 by By-law 175-2006]</b> |                        |                         |

\*NOTE: "I.C.I." means industrial, commercial, institutional sector.

**§ 67-B4. Decisions, Fair Wage Policy.**

The Fair Wage and Labour Trades Office will make final decisions with respect to:

- A. Work jurisdictions, in consultation with the industry.
- B. Type of work involved.
- C. Whether or not union firms/workers must be used.
- D. If labour trades contractual obligations apply.