

## REPORT FOR ACTION

# **Amended and Restated Master Agreement with the Canadian National Exhibition Association and City of Toronto - Results of Second Renewal Negotiations**

Date: January 19, 2023

To: Board of Governors of Exhibition Place

From: Don Boyle, Chief Executive Officer

Wards: All

## **SUMMARY**

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This report recommends, subject to obtaining the necessary City of Toronto authorization, that the Board enter into an Amended and Restated Master Agreement dated April 1, 2023 between the Board, the City, and the Canadian National Exhibition Association, commencing April 1, 2023 and expiring March 31, 2028, plus a contemplated renewal term of five (5) years.

In accordance with the current Master Agreement, negotiations of a Second Renewal Term (commencing April 1, 2023) were to be for “the purpose of having the CNEA pay a license fee reflective of the rental prices then approved by the Board to be consistent with Council direction. This arrangement has not yet been achieved due to the Covid-19 pandemic in 2020 and 2021 which resulted in cancellation of the Fair, however, the proposed renewal terms in the Amended and Restated Master Agreement recommended in this report, will provide a basis for a similar arrangement/requirement in the future negotiations assuming the continued success in hosting the fair.

The substantial terms and conditions of the Amended and Restated Master Agreement are set out in Appendix A to this report are recommended for approval by the CNEA Board at its meeting on January 23, 2023.

## **RECOMMENDATIONS**

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The Chief Executive Officer recommends that:

1. Subject to City Council approval, the Board of Governors of Exhibition Place approve an Amended and Restated Master Agreement with the CNEA and the City for a term of

five years starting on April 1, 2023 and expiring on March 31, 2028, and including a renewal term of a further five (5) years, all substantially on the terms and conditions set out in Appendix A to this report and such other terms and conditions as may be satisfactory to the City Manager and the Chief Executive Officer of Exhibition Place, and in a form satisfactory to the City Solicitor.

2. The Board of Governors of Exhibition Place recommend that City Council approve an Amended and Restated Master Agreement with the CNEA and the City for a term of five (5) years starting on April 1, 2023 and expiring on March 31, 2028, and including a renewal term of a further five (5) years, substantially on the terms and conditions set out in Appendix A to this report and such other terms and conditions as may be satisfactory to the City Manager and the Chief Executive Officer of Exhibition Place, and in a form satisfactory to the City Solicitor.

## **FINANCIAL IMPACT**

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Approval of the proposed Amended and Restated Master Agreement described in this report will provide rental fee revenue to Exhibition Place of \$20,557,281 over the five-year term. In addition, the CNEA will continue to pay for Exhibition Place show services at Board cost plus an administrative mark-up of 12%; have use of the entire grounds for the 18-day event plus move-in/move-out times at discounted Board-approved License Fee rates; occupy year-round the Press and Food Buildings for its exclusive use at discounted rents; and compensate Exhibition Place for all utilities associated with CNEA's use of the facilities.

In 2023, the net License fee for the first year of the term will be \$3,779,309 (Appendix A) and will increase to \$4,506,273 by end of the term in year five (5). The proposed License Fee rates for the first year charged to CNEA for the term represent a 52.1% discount of Board/City approved License Fee rates for Exhibition Place (\$4,112,215 in 2023). To work to get closer to a market rate, the subsidy level will decrease in each year from years 2 to 5 and in year five (5) the discount to market rate will drop to 49.3%.

The Licence fee for the upcoming term is lower than the current term due to the various new construction activities on the grounds resulting in loss of certain parking lots historically licensed by the fair. The financial pressure from this change is approximately \$450,000; however, this will not impact the 2023 operating budget net expenditure provided to the City as the shortfall is offset by additional revenue increase from IT and telecommunications services charged/recovered from the CNEA, and additional revenue increases and lower expenditures savings in various areas. The licence fee reduction will assist the CNEA to address the loss of usable production space.

The continued success for both the CNEA and Exhibition Place operations has positive financial implications for the City through revenues paid by CNEA to Exhibition Place and economic activity related to the annual CNE event.

## DECISION HISTORY

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The Board Strategic Plan 2022-2026 has a Business Development goal to grow event activity and maintain strong relationships with existing clients and identify areas for revenue enhancements.

At its meeting of June 24, 2011, Exhibition Place approved a recommendation to commence negotiations with the CNEA Board of Directors on the terms and conditions of a transition process for the CNEA to become financially and programmatically separate and independent of the Board and the City as requested by CNEA Board of Directors.

[https://www.explace.on.ca/files/file/58c6f532effb6/Item-29-OpBudget\(1\).pdf](https://www.explace.on.ca/files/file/58c6f532effb6/Item-29-OpBudget(1).pdf)

At its meeting of September 26, 2011, City Council considered a report from the City Manager on the KPMG Core Services Review and approved a recommendation for the City Manager, in consultation with the CEO of Exhibition Place, to negotiate separation and governance arrangements between the City, the Board, and the CNEA.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.EX10.1>.

At its meeting of January 27, 2012, Exhibition Place approved of a Master Agreement between the Board of Exhibition Place, the City, and the CNEA that allow for CNEA to become independent from Exhibition Place. The terms and conditions of the Master Agreement included an annual licence agreement for the 18-day CNE event; a lease for the Press Building; extended use of the Food Building; a Storage Agreement; and the provision of event services. The Initial Term of the Master Agreement was April 1, 2013 to March 31, 2017 with two renewal terms of 3 years each, for a total of 10 years. Negotiations of the Renewal Term were to be for “the purpose of having the CNEA pay a license fee reflective of the rental prices then approved by the Board.

[https://www.explace.on.ca/files/file/58bf177738aa4/Item-16-CNEA\(1\).pdf](https://www.explace.on.ca/files/file/58bf177738aa4/Item-16-CNEA(1).pdf)

At its meeting of March 5, 2012, City Council approved of a Master Agreement between the Board of Exhibition Place, the City, and the CNEA that allow for CNEA to become independent from Exhibition Place.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.EX16.7>.

At its meeting of January 31, 2017, City Council authorized the City Manager to finalize and execute on behalf of the City of Toronto the Amended and Restated Master Agreement for the First Renewal Term for a five-year period between the Canadian National Exhibition Association, Board of Governors of Exhibition Place, and the City of Toronto.

City Council also authorized the Board of Governors of Exhibition Place to enter into the following leases with the Canadian National Exhibition Association:

- a. Lease Agreement for the Press Building; and
- b. Lease Agreement for the Food Building.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.EX21.4>

At its meeting of May 11 and 12, 2022, City Council authorized staff to amend the Amended and Restated Master Agreement with the Canadian National Exhibition Association and the City to provide for a one-year extension of the First Renewal Term due to Covid-19 pandemic, starting April 1, 2022 and expiring March 31, 2023.

<https://secure.toronto.ca/council/agenda-item.do?item=2022.EX32.11>

## **COMMENTS**

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### **Issue Background**

The CNEA has held its annual fair at Exhibition Place since 1879 and attracts 1.5 million attendance annually. Generally, all the buildings constructed on the grounds between 1879 and 1980 were built to service the annual CNE Event, and the CNE Event was known as the place where visitors could see the newest and the best from both the agricultural and industrial sectors of the province and the country. The CNE Event continues to be the largest exhibition in Canada; the 7th largest in North America; and the largest annual event held at Exhibition Place. Its objective is to support art, culture, sport, business, innovation, and agriculture with a diverse array of programming. According to a CNEA-commissioned report in 2017, the economic impact/generation of the CNEA is approximately \$93.0 Million for the GTA and \$128.0 Million for the province annually. In addition, the CNEA generates 633 person years of employment (including 5,000 youth employment from diverse ethnic and economic backgrounds) annually in the Toronto area.

In 2011, KPMG, consultant to the City of Toronto, determined in the Core Services Review that while there was a “traditional relationship” between the CNEA/CNE Event and Exhibition Place/City, it was not a “core service” of the City of Toronto. In September 2011, City Council requested “the City Manager, in consultation with the CEO of Exhibition Place, to negotiate, and report on an agreement for separation and for governance arrangements between Exhibition Place and the CNEA”. Pursuant to the Council direction, Exhibition Place and the City entered into negotiations that resulted in a Master Agreement with the CNEA.

The Master Agreement originally provided for an Initial Term of four (4) years expiring March 31, 2017, with the right of the CNEA to renew for two terms of three (3) years each.

Council subsequently in January 2017 (EX21.4) approved a First Renewal Term of five (5) years and a Second Renewal Term for a further five (5) years as contained in the current Master Agreement.

### **First Renewal Term - One Year Extension Due to Covid-19**

On September 20, 2021, the CNEA submitted a written request to the City for an extension of the First Renewal Term for two (2) years due to the impacts of the Covid-19 pandemic which resulted in the cancellation of the 2020 and 2021 CNE's fairs. Exhibition Place, City, and CNEA staff met to discuss the request and City and

Exhibition Place staff agreed to seek authority for a one (1) year extension of the First Renewal Term, from April 1, 2022 and expiring March 31, 2023, on the same terms and conditions of the First Renewal Term. This request was approved by Council on May 11, 2022 by adoption of report EX32.11. The one-year extension was recommended in recognition of CNEA's financial position and the global pandemic. In support of the CNEA, the Board/City did not increase the licence fee paid by the CNEA.

## Renewal Terms

The renewal terms in the current Master Agreement suggested a direction/basis for negotiations. While the First Renewal Term provided that the renewal term was to be on “mutually agreeable terms”, the Second Renewal Term was to be on “mutually agreeable terms with the purpose of having the CNEA pay a license fee reflective of the rental prices then approved by the Board for the use of Exhibition Place.”

Publicly available Financial Statements for the CNEA since independence for the years 2013 to 2021 show a net deficit of \$1.308 million as per the chart below, with the cumulative annual net surplus being \$5.403 million for the pre pandemic years 2013 to 2019, an average annual surplus of \$0.772 million for the seven (7) years. The post pandemic 2022 fair generated increased attendance and positive financial performance. The surplus for the 2022 fair is estimated by the CNEA to be between \$7.0 to \$8.0 million.

As per Audited Financial Statements provided by CNEA				
Year	Net Income (Loss)	Cash	Investments	
2013	335,106			
2014	1,639,737			
2015	3,538,911			
2016	1,646,817			
2017	1,573,546			
2018	(1,895,190)			
2019	(1,435,479)			
2020	(5,587,304)			
2021	(1,124,320)	2,612,080	1,470,861	
Audited	(1,308,176)			
2022 Unaudited	7,000,000	Estimate		
	5,691,824			

## **CNEA Reserve Fund**

The CNEA has established its own internal reserve fund to strengthen its financial stability. In addition to the City transfer of \$3.273 Million in 2013 as a working capital on independence, the CNEA has contributed its accumulated retained earnings to the reserve, most of which was used to cover its 2018 to 2021 losses. Preliminary reports for the 2022 CNE indicate that attendance had increased and surpassed 2019 level. Therefore, additional earnings from the 2022 CNE of approximately \$7.0 to \$8.0 million could also be committed to the CNEA's reserve. However, losses experienced from 2018 to 2021 of \$10.0 million suggest the CNEA has not achieved financial (and operational) independence at this time.

## **Second Renewal Term**

Negotiations on the terms for a further agreement commenced on September 30, 2022 and successfully concluded in early January 2023. The Exhibition Place team included the Exhibition Place CEO, General Manager, and CFO & Corporate Secretary, City staff from the City Manager's Office, and Legal Services. The CNEA was represented by the CNEA CEO, CFO, other senior CNEA management, and the President of the CNEA Board.

In accordance with the current Master Agreement, negotiations of both the First and Second Renewal Term were to be based on the parties reaching "mutually agreeable terms" and for "the purpose of having the CNEA pay a license fee reflective of the rental prices then approved by the Board". The fair was cancelled in 2020 and 2021 due to the Covid-19 pandemic which created financial challenges for the CNEA. In 2022 the CNEA has indicated in negotiations that the fair will have a very positive financial performance and felt it prudent to use the year surplus to start building up its reserve fund. The Board and the City staff are supportive of this direction to assist the CNEA to build up a sufficient reserve to guard against future financial disruptions, as the success of the fair in future years is also very weather dependent and accordingly considered this history in arriving at the net licence fee for the next five (5) years.

Given the significance of the CNE Event to Exhibition Place and the City, failure of the CNEA to become a stable operation would have had significant detrimental effects for the Board/City financially and culturally.

## **CONTACT**

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Hardat Persaud, CFO & Corporate Secretary, 416-263-3031, [Hpersaud@explace.on.ca](mailto:Hpersaud@explace.on.ca)

Laura Purdy, General Manager, 416-263-3020, [Lpurdy@explace.on.ca](mailto:Lpurdy@explace.on.ca)

**SIGNATURE**

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Don Boyle  
Chief Executive Officer

**ATTACHMENTS**

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Appendix A - Master Agreement Amended Terms and Conditions - Amendment

## Appendix A

### Amended and Restated Master Agreement - Proposed Terms and Conditions

The proposed Amended and Restated Master Agreement shall be based on the terms and conditions of the current Master Agreement (dated April 1, 2017) and shall include the following:

1. Term: The parties agree to a Term of five (5) years, commencing April 1, 2023 and ending on March 31, 2028.
2. Renewal Term: A further term of five (5) years, subject to negotiation by the Parties of mutually agreeable terms with the purpose of, but not limited to, having the CNEA pay a licence fee reflective of the rental prices then approved by the Board/City for the use of Exhibition Place.
3. License Fee: The Licence Fee payable (Table A) for the five-year Term will be as follows, subject to changes on an annual basis based on actual space usage by the CNEA.

Table 'A'						
LICENSE FEE SCHEDULE	2023	2024	2025	2026	2027	TOTAL
CNE Total License fee (Market Rate)	7,891,524	8,128,270	8,372,118	8,623,281	8,881,980	41,897,173
Discount on License fee	(3,680,722)	(3,791,144)	(3,818,136)	(3,841,600)	(3,861,215)	(18,992,817)
Discount on Parking Lot	(431,493)	(444,438)	(466,660)	(489,993)	(514,492)	(2,347,075)
CNE License fee after all Discount	3,779,309	3,892,688	4,087,322	4,291,689	4,506,273	20,557,281
Licence Fee Annual % increase	3%	3%	5%	5%	5%	
Licence Fee Discount to Market Rate	52.1%	52.1%	51.2%	50.2%	49.3%	

The Parties agree that, in consideration of the benefits granted to the CNEA under this Agreement, it shall, in addition to Taxes and the other fees, charges, and expenses which it is obligated to pay under this Agreement, pay to the Board an annual license fee (the "License Fee") in the amount of approximately \$3,779,309 (not including applicable taxes) for 2023, to be increased in each year of the Second Renewal Term per Table A. The License Fee has been established by taking the total license fee payable based on the Board's 2022 rates and discounting that rate such that the base license fee equals approximately \$3,779,309 (the "Established Rate"). The Established Rate is determined without prejudice to the position of any Party on the renegotiation of the License Fee as part of a renewal under this Agreement.

4. Inventory of Equipment/Event Services: Inventory shall be as previously agreed provided that the reference to the purchase of fifth train/tram/people movers shall be removed.
5. Inventory of Equipment/Event Services: Shall be as previously agreed provided that it shall no longer include the washroom trailers.



6. Security Services: Amend clause to clarify that Exhibition Place Security Services staff no longer belong to a Union.

7. Collective Agreements: Update Section to reflect current language and remove (c) (viii) Canadian Union Public Employees Local 5116 (Security) as staff are no longer unionized.

8. Catastrophic Financial Event:

If at any time during the Term, the CNEA experiences a substantial material financial loss due to a Catastrophic Financial Event, then the Board and the City will work with the CNEA to attempt to address the financial impact of the event, subject to the financial ability of the Board and the City to provide such assistance, and subject to the requirement of the CNEA to provide financial information to the Board and the City as requested by the Board and the City.

9. Event Guide Rules and Regulations:

Prior to February 1st of each year of the Term, the Board will provide the CNEA with the Board's standard Event Guide and Emergency Preparedness Plan and prior to May 1st of each year of the Term, the Board, and the CNEA shall review such Event Guide and Emergency Preparedness Plan and shall determine which provisions shall be applicable to the CNE Period that year. Those provisions shall be incorporated into this Agreement by reference, and CNEA shall comply fully therewith.

10. Existing & Future Tenants Rights:

Shall be amended to include the integration of Tenants operations into the CNE Program for securing designated and reserve parking space on west end of grounds. The CNEA agrees to provide 150 priority parking spaces for Tenants at the west end of the grounds for specified Tenant business/events occurring during the CNE Period. The CNEA shall manage the priority parking and shall retain all parking revenues associated with the priority parking.

11. Force Majeure: Shall include a pandemic or epidemic, as identified by the Medical Officer of Health for the City of Toronto as a force majeure event.

12. Event Services - Cleaning Services shall transition from Exhibition Place to the CNEA as follows:

Phase 2 – 2023 – For the 18 days of the Canadian National Exhibition

For Phase 2, the CNE will recruit for housekeeping and labour for the following additional areas on day and afternoons shifts (no overnight).

- Princes' Boulevard West (Zone 3\*)
- Kidsworld (Zone 1\*)
- Bandshell Park (Zone 2\*)
- West Food Building (Zone 4\*)
- Exterior Food Building (Zone 5\*)
- Garbage Collections from depots to compactors/bins

(\*Zones illustrated in Site Map)

Exhibition Place will look to third party providers for the backfilling of positions for all shifts at the Enercare Centre and for overnight grounds cleaning. Any additional costs incurred by supplying third party staffing will be the sole responsibility of the CNEA.

Phase 3 – 2024 – For the 18 days of the Canadian National Exhibition

For Phase 3, the CNE would recruit for the housekeeping and labour for the following areas on day and afternoon shifts (no overnight).

- North Midway (Zone 6\*)
- South Midway (Zone 7\*)
- Princes' Boulevard East (Zone 8\*)
- Garbage Collections from depots to compactors/bins

In this Phase 3, the CNEA would also arrange for third-party providers for the following:

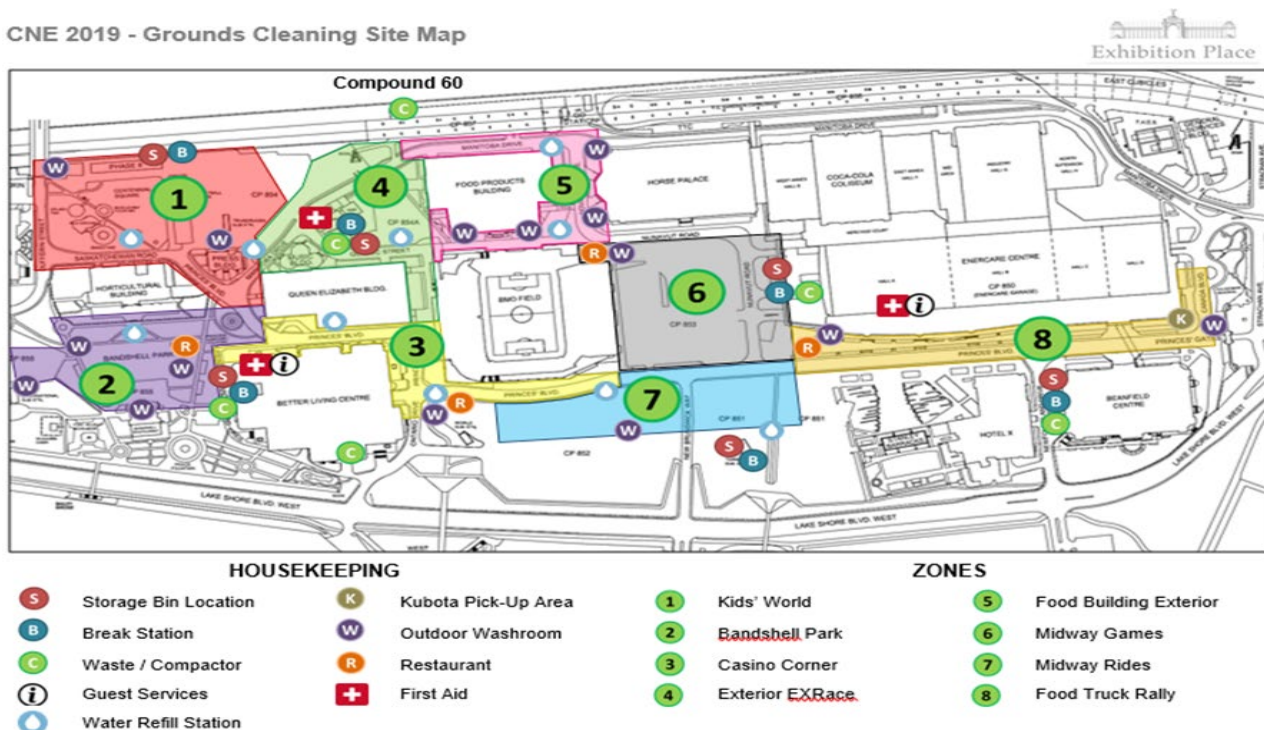
- Woodlawn Farms (Grease)
- Taber Farms (Hay and Manure)
- Third party driving services (Gatsby)

Exhibition Place would continue to provide housekeeping services during the Phase 2 and Phase 3 and beyond 2024 for the following areas:

- Enercare Centre - days, afternoons, and midnights
- Grounds Zones 1 to 8 - midnight shift
- All pre and post cleaning for CNE fair

(\*Zones illustrated in Site Map)

CNE 2019 - Grounds Cleaning Site Map



### 13. Construction Activities:

(a) CNEA acknowledges and agrees that it is aware that Construction Activities may be scheduled within Exhibition Place during the Term which may result in material inconvenience and disruption to CNEA or the CNE Fair during the period of the Construction Activities. The Board agrees that it shall make reasonable best efforts to provide the CNEA with prior notice of Construction Activities which may materially impact upon the CNEA or the CNE Fair and shall also make reasonable best efforts, in consultation with the CNEA, to minimize such impact. The CNEA agrees that it shall cooperate and act reasonably in working with the Board to minimize any impact. In the event that Construction Activities do occur so as to temporarily or permanently prevent the use or occupation of lands or premises within Exhibition Place by the CNEA, the Board will make its reasonable best efforts to provide alternative lands or premises within, or in reasonable proximity to, Exhibition Place for use or occupancy by the CNEA which are suitable for the purposes of the CNEA.

List of lands affected by current projects as of current time/date shall be included as follows and map to be provided as reference:

- Lot 851 – Removed permanently because of Hotel X Phase 2 & Performance Venue Development from 2023 forward
- Lot 854 – Closed portion along Gardiner (from basketball courts to Lot 857) for Gardiner Expressway Rehabilitation Project Laydown Area from 2023-2027
- Lot 856 & Centennial Square – Closed around Dufferin Bridge for Dufferin Gate relocation and to allow work zone around the Dufferin Bridge from 2023-2027
- Lot 857 – Removed permanently because of the Ontario Line construction & future new Station / Plaza location from 2023 forward
- Lot 858 – Closed for the Gardiner Rehabilitation Project from 2023-2027
- Lot 852/Princes' Blvd. – Closed for FIFA Temporary Seating Removal 2026 (exact dates unknown but post matches)
- Food Building South Plaza – Closed for FIFA Temporary Seating Removal 2026 (exact dates unknown but post matches)
- Centennial Square – Redesign for the Master Plan Improvements exact dates unknown

14. Construction Activities: Shall include activities undertaken by the Province within Exhibition Place.

"Construction Activities" shall be defined as meaning major repair, demolition, construction, or reconstruction work which may be undertaken by the Board or the City **and the Province of Ontario** within Exhibition Place during the Term and which is not related to a Redevelopment in respect of which any part of the lands or buildings of Exhibition Place may be removed from use by the CNEA, other than on a temporary basis, and for which notice is required to be given under the Agreement.

15. Schedule N: Harbourfront LRT Extension - Shall be amended to include the Ontario Line from 2023 forward in a separate subparagraph.

16. Additional changes to current Schedules to be made as required:

(a) Schedule B (10) - Utilities - Metered readings to be provided to the CNEA on a weekly basis on every Monday during the CNE fair period.

(b) Schedule B7 - Board's Environmental Plan - Update/Reference with new Exhibition Place GREENSmart handbook

(c) Schedule B13 - Outdoor Billboard Operators - update to reflect current operators (Astral Media and Branded Cities).

(d) Article 1 - Schedule C - Storage Agreement: Shall be amended to remove certain storage space as follows.

- Certain units in Centennial Square, an outdoor area located under the Gardiner Expressway, and use of storage units 1 through 5 (Appendix C-43), due to Centennial Square Redevelopment
- Appendix C-7 – Gardiner Expressway two Bays Storage, due to Gardiner Rehabilitation
- Appendix C-8 – Enercare Centre Labour Pool Area

(e) Schedule D - Administrative Services Agreement for IT- Update pricing to reflect units provided by Exhibition Place to the CNEA all year round and seasonal for the CNE fair period. The Parties agreed to the following fees as per the chart below during the term net of discount provided. Notwithstanding, the amount below for IT Licencing fee for Office 365, the CNEA shall be invoiced based on CNEA actual software license usage, CNEA may modify its software requirements based on its level of staffing and technical requirements. Notice requirements for changes in software licensing agreements shall be based on the terms of the respective licensing agreements.

IT Services	2023	2024	2025	2026	2027	TOTAL
IT Service Fee	429,532	542,418	543,045	625,108	643,862	2,783,965
IT Licensing fee for Office 365	72,800	74,984	86,352	88,942	96,440	419,518
Total Fee	502,332	617,402	629,397	714,051	740,302	3,203,483

(f) Schedule F - Current Tenant Agreement Rights: update Schedule as follows:

- Remove item E7 – Toronto Animal Shelter (the “Shelter”)
- Remove item E9 – Sunnybrook Stables Riding Academy at the Horse Place to Toronto Equestrian to reflect new Lease

(g) Inventory of Equipment/Event Services: Updated lists to be included

(h) Schedule T - Coronation Park Licence Agreement - The form of Licence Agreement will be updated to the satisfaction of the General Manager of Parks Forestry & Recreation, the City Solicitor and the CNEA, all acting reasonably. Additionally, the Schedule will include the following updates:

- Clarify the use of the City's annual approval process for the dates of the licence for use of all of the baseball diamonds located within the Park for the Lions-CNE Peewee Baseball Tournaments for the purposes of use outlined in the Licence Agreement.

(i) Schedule U - Marilyn Bell Park Licence Agreement - The form of Licence Agreement will be updated to the satisfaction of the General Manager of Parks Forestry & Recreation, the City Solicitor and the CNEA, all acting reasonably. Additionally, the Schedule will include the following updates:

- Clarify the use of the City's annual approval process for the dates of the licence for use of the park and the applicable water area in the Western Channel for the purposes of use outlined in the Licence Agreement;
- Include explicit reference to and clarify the City's obligations under the City Council decision PE28.1 dated July 8, 2014, subject to change by Council decision, which directed that City Council restrict the hosting of motorboat-towed competitions and events within the West Channel to a combined total maximum of 10 days per calendar year.

17. Phase 2 Hotel Development - Shall be amended to clarify that the rights of the Hotel tenant to construct include both a Phase 2 tower and Performance Venue with approximately 6,000 to 7,000 seats.

18. The Agreement shall include such other commercial terms (e.g. indemnities, insurance requirements, etc.), amendments, terms, and conditions, as may be satisfactory to the City Manager and the Chief Executive Officer of Exhibition Place, and in a form satisfactory to the City Solicitor.