

November 17, 2010

To: The Board of Governors of Exhibition Place

ACTION REQUIRED

From: Dianne Young
Chief Executive Officer

**Subject: Memorandum of Understanding
between the Board of Governors and CNEA**

Summary:

The Board of Governors (BOG) and the Canadian National Exhibition Association Board of Directors (CNEA) first approved of a Memorandum of Understanding (“MOU”) in 1997. Historically, the annual CNE has always taken place on the grounds of Exhibition Place by some form of agreement, originally with the City of Toronto; with Metro Toronto when it existed and then finally with the BOG on behalf of the City. In 1997, the CNEA was contemplating seeking independence from the BOG and the City and that first formal MOU allowed the CNEA sufficient independence to develop the administrative, operational and financial tools to move to an independent status. In 2004, the CNEA determined that it would continue to be operational and financially linked to the BOG and both boards approved of the terms and conditions of the 2004 MOU.

The substantial financial terms of the MOU since 1997 have been the payment by the CNEA for (1) usage of the site (Site Usage Fee); (2) provision of administrative services (Administrative Services Fee); and (3) usage of the Direct Energy Centre (formerly NTC Fee). The Site Fee reflected the CNE’s use of the grounds and buildings and was calculated by the number of days of CNE use related to the annual operational costs to maintain the buildings and the grounds. The Administrative Services Fee reflected the cost of a full range of services provided to the CNEA Program by the management and administrative staff outside of the CNEA Program. The NTC Fee reflected one month of the actual costs of building operations, staff services and utilities.

From 1997 to 2007, all three cost factors were increased based on cost-of-living increases or changes in the Consumer Price Index. In 2008, with the change of the NTC program from one operated by the private sector to a merger with the other Exhibition Place programs, this specific fee was absorbed either within the Administrative Services Fee, the Site Usage Fee or direct recoveries, as appropriate. Attached as Appendix “A” to this report is a list of the fees paid by the CNEA since 1997.

While the BOG and CNEA have typically entered into agreements for a term of 2 or more years, the new CNEA has established a MOU Subcommittee (composed of present and past President(s)) to review the terms and conditions of the 2008 MOU, specifically the level of the Administrative Services Fee, the Site Usage Fee and the level of annual net profit required for the CNEA Program. The CNEA MOU Subcommittee has also indicated its desire not to enter into a 2011 MOU but rather continue the 2008 MOU on a month-to-month basis pending conclusion of the review requested. However, the CNEA MOU Subcommittee have also

suggested that the existing 2008 MOU would be amended in accordance with the specific financial projections set out in the 2011 Operating Budget as approved by the Board.

Recommendation:

Given the request of the CNEA MOU Subcommittee, it is recommended that the 2008 MOU be extended on a month-to-month basis subject to the amendment of the Administration Fee and Site Fee in keeping with the 2011 Operation Budget approved by the Board and set out in Appendix “A” to this report.

Financial Impact:

For 2010 and 2011 budget, the City Financial Planning Department directed a 5% annual improvement in the operating budget as part of its cost savings strategies to mitigate the City annual operating shortfall. In the case of the CNEA Program this would have amounted to an increase of \$82,000 to the net surplus in the MOU to a new level of \$882,000. However, this increase was not passed onto the CNEA Program in 2010 or 2011 Operating Budgets approved by the BOG and instead the full amount requested by City Finance was made up by the other BOG Programs to comply with the City guidelines.

The purchase and sale of the Greek God artifacts from CNEA to the BOG will be an actual cost to the BOG but such cost will only be incurred if there is a surplus over budget within the actual consolidated operating budget.

Decision History:

At its meetings of June 20, 2008 and June 19, 2008 respectively, the BOG and the CNEA approved of entering into the 2008 MOU on the terms and conditions set out in that report which term was for 3-year period commencing on January 1, 2008 and expiring December 31, 2010.

At its meeting of September 24, 2004 and August 4, 2004 respectively, the BOG and the CNEA approved of a recommendation that the CNEA be operational and financially linked to the Board as a program of the BOG, subject to the BOG and the CNEA entering into an agreement detailing the terms and conditions of this governance model.

At its meeting of April 3, 2010, the Board approved of proceeding with the purchase and sale of the Statues of the Greek Gods.

Issue Background:

The CNEA is governed and operated under the jurisdiction of the CNEA Act of 1983, as amended by the Statues of Ontario, 1999 (BillPr32) and received Royal Assent in December 2000. The BOG was established in 1983 pursuant to the Municipality of Metropolitan Toronto Act and is continued pursuant to the *City of Toronto Act, 2007*. Since 1983, the BOG and the CNEA have entered into successive agreements that address the operation of the annual CNE on the grounds.

In addition to the above legislation, the CNEA has a Foundation which was incorporated on February 12, 1975 under Section 131 of the *Corporations Act* (Ontario) and registered as a public foundation under Section 149(1) (f) of the *Income Tax Act* (Canada), the purposes of promoting interest in the study of agriculture, horticulture, music, art, education and sports.

Comments:

One of the major aspects of prior MOU's was the payment by the CNEA for usage of the site; for shared administrative services received; and for usage of the Direct Energy Centre (formerly NTC Fee). The Site Cost Reimbursement and Administrative Services Fees and the formulae for these fees were first calculated in 1998/99 with the assistance of the City Corporate Services which did a high level review of the operating budgets for 1996 and 1997.

- (a) The Administrative Fee was based on a calculation of the percentage of time spent by administrative staff working outside the CNEA Program (finance, corporate secretariat, executive offices, systems, records/archives, purchasing and stores, and human resources) on CNEA tasks. This percentage was applied to the annual operating budgets for these areas.
- (b) The Site Cost Reimbursement Fee was based on a percentage usage of the buildings as determined by the CNEA needs. This percentage was applied to the operating accounts that are dedicated to maintenance and repairs of the buildings and grounds - annual operating budget for operations administration, grounds maintenance, health & safety, cleaning, special appropriations, benefits, physical plant maintenance, welding, carpentry, painting, mechanics, HVAC, electrical, capital works administration, rentals and technical services, creative services, IATSE and security.
- (c) The NTC Fee was based on cost recovery for operational overheads for one month to reflect usage such as service contract for elevators and escalators, HVAC, fire protection, building automation, building security and control; plus utility usage which is based on actual consumption; and percentage of staff time for event coordination and operations. In 2007, with the merger of the NTC program into the entire Exhibition Place organization, this fee was eliminated with the transfer of these costs to the Administrative Fee, the Site Cost Reimbursement Fee or to direct costs.

Appendix "A" attached outlines the Site Cost Reimbursement; the Administrative Services Fees; and the NTC Fee paid by the CNEA since the first MOU in 1997 and the proposed 2011 fees. The budgeted net operating surplus for the CNE as set out in the 2011 Operating Budget is \$800,000.

CNEA Cultural Artifacts

To update the Board on the direction of Cultural Artifacts, in the 1997 MOU, the parties recognized the CNEA's ownership of the Haines Murals (located in the Galleria of the Direct Energy Centre); the Satok Mural (located at the east-facing side of the Medieval Times Building); and the Garden of the Greek Gods (located at the south side of the Muzik Clubs building). A valuation for the fair market value for these artifacts was completed in April 2008 and valued them as follows: \$150,000 for the Haines Murals; \$130,000 for the Satok Mural; and \$500,000 for the statues of the Garden of the Greek Gods. As of December 2009, full payment

has been deposited in the CNEA Foundation for the purchase of the Haines Murals and Satok Mural. With respect to purchase of the Garden of the Greek Gods, the Board approved of an agreement of purchase and sale with the following terms:

- a) Subject to paragraph (b), (c), (d), and (e) below, the BOG pay up to \$125,000 to the CNEA Foundation for 2010, 2011, 2012, 2013 and, if necessary, 2014. as a budgeted expense for the purchase at fair market value of the statuary of the Garden of the Greek Gods;
- b) If, in any one year, the consolidated actual financial results for the BOG is less than the budget as approved by City Council, then there will be no payment to the CNEA Foundation that year;
- c) The CNEA confirms and agrees that all funds in the CNEA Foundation shall be used for the charitable purposes in accordance with the Foundation's incorporating documents and that an amount up to the interest earned on the Foundation monies shall be included as both a revenue and expense within the CNE's annual operating budget which overall operation budget must be recommended and approved by the BOG as part of the consolidated operating budget for Exhibition Place.
- d) The BOG will take all reasonable steps as required by a reputable conservator to regularly inspect the artifacts and to maintain the artefacts at an appropriate level recommended by the conservator; and,
- e) If, for whatever reason, the CNEA ceases to hold an annual CNE and the CNEA ceases to exist as a corporate body, the CNEA will cooperate with the BOG to take all reasonable actions necessary to transfer all funds then existing in the CNEA Foundation to the BOG or the City of Toronto.

As of the end of 2009, the CNEA Foundation had accumulated funds in the amount of \$484,949. The limited purpose of this Foundation according to its charter is to receive and maintain funds for use in supporting charitable projects generally serving the same purposes as the CNEA. In the past, the CNEA has included the interest earned from Foundation funds and a small contribution from the CNE Casino to fund the Foundation for its general expenses and the grants given out each year. These grants have been used to help support programs put forward by staff of the CNEA Program and external charities and non-profit organizations. There are additional such programs that would meet the Foundation's mandate if there were more funds.

At the completion of the sale of the Garden of the Greek Gods there would be an infusion of \$500,000 into the Foundation which would then total \$984,949 and at current interest rates would yield approximately an average of \$6,000 annually in interest payments that could be used by the CNEA for programming as allowed by the Foundation criteria. Agricultural associations similar to the CNEA (such as the Royal Agricultural Winter Fair) have determined the need to have at least two million dollars set aside as "restricted assets" - one million to ensure a reserve for working capital for continuing operations, plus another one million dollars as a stabilization reserve in order to cope through "problematic" years. If the CNEA Board of Directors was able to adopt a similar initiative and established such a reserve, then eventually increasing the CNEA Foundations assets to \$984,949 (excluding any interest earned) would also provide this coping measure for a stabilization fund. In addition, the infusion of these funds into the Foundation

could serve as an impetus to make the Foundation more active to raise additional funds from the community through new events.

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Submitted by:

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Appendix A
THE BOARD OF GOVERNORS OF EXHIBITION PLACE
HISTORY OF CNE ADMIN SUPPORT AND SITE PREPARATION COSTS FROM 1998 TO 2011

DESCRIPTION	1998 ACTUAL	1999 ACTUAL	2000 ACTUAL	2001 ACTUAL	2002 ACTUAL	2003 ACTUAL	2004 ACTUAL	2005 ACTUAL	2006 ACTUAL	2007 ACTUAL	2008 ACTUAL	2009 ACTUAL	2010 PROJECT	2010 BUDGET	2011 BUDGET
EP OVERHEAD - ADMIN SUPPORT	900,000	900,000	900,000	811,000	811,000	801,000	890,000	1,091,723	1,164,130	1,157,804	1,319,832	1,359,427	1,373,021	1,373,021	1,414,212
EP OVERHEAD - SITE PREPARATION	2,379,402	1,930,000	1,930,000	1,930,000	1,930,000	1,930,000	1,884,000	1,901,000	1,984,315	2,034,776	2,274,540	2,342,776	2,366,204	2,366,204	2,416,063
SUBTOTAL	3,279,402	2,830,000	2,830,000	2,741,000	2,741,000	2,731,000	2,774,000	2,992,723	3,148,445	3,192,580	3,594,372	3,702,203	3,739,225	3,739,225	3,830,274
DEC OVERHEAD (INCLUDED UTILITIES) - CNE PERIOD	422,707	414,802	384,666	405,276	396,061	394,334	439,023	487,517	511,825	529,300	-	-	-	-	-
DEC - UTILITIES	-	-	-	-	-	-	-	-	-	-	158,209	239,309	240,488	240,488	258,812
TOTAL	3,702,109	3,244,802	3,214,666	3,146,276	3,137,061	3,125,334	3,213,023	3,480,240	3,660,270	3,721,880	3,750,581	3,941,512	3,985,713	3,985,713	4,089,087
ANNUAL % INCREASE (DECREASE)	0	-12.4%	-0.9%	-2.1%	-0.3%	-0.4%	2.8%	8.3%	5.2%	1.7%	0.8%	5.1%	1.1%	1.1%	2.6%