



## STAFF REPORT ACTION REQUIRED

### Access and Remediation Agreement to TEDCO Holdings in the Port Lands and East Bayfront for Waterfront Renewal Activities

<b>Date:</b>	January 22, 2008
<b>To:</b>	Executive Committee
<b>From:</b>	Deputy City Manager Richard Butts
<b>Wards:</b>	Portions of 28, 30 and 32
<b>Reference Number:</b>	

#### SUMMARY

---

The purpose of this report is to seek Council approval of an Access and Remediation Agreement between the City of Toronto Economic Development Corporation (TEDCO) and the Toronto Waterfront Revitalization Corporation (TWRC). The Agreement provides TWRC and parties acting on its behalf with global access to TEDCO holdings in the Port Lands and East Bayfront for the purposes of site and archaeological investigation, site remediation, surveying and other related activities outlined in the Memorandum of Understanding (MOU) between the City of Toronto, TEDCO and the TWRC dated March 31, 2006.

As it is expected that most of the lands owned by TEDCO in East Bayfront (excluding the First Waterfront Place lands and some smaller parcels) will be transferred to the City in the near future, the Access and Remediation Agreement will apply only to those smaller parcels that are not being conveyed to the City or that require site investigations prior to their transfer.

This report also recommends that the City make a unanimous shareholder declaration to the board of directors of TEDCO, pass a resolution of the board to enter into the Access and Remediation Agreement, and provide a companion indemnity in favour of the directors and officers of TEDCO. TEDCO officials have requested these documents. City staff's position is that these documents are not required, but staff recognizes that providing these documents will provide comfort to the directors and officers of TEDCO.

Site access is to be provided solely for projects identified in the Council-approved Five-Year Business Plan/10-Year Financial Forecast (2007-2016) for Toronto Waterfront Revitalization, updated annually.

Action report for TWRC site access to TEDCO holdings in the Port Lands and East Bayfront

It is conditional upon the provision by TWRC and third parties acting on its behalf of appropriate insurance and indemnities protecting TEDCO and the City.

Streamlining and simplifying the manner in which TWRC and its representatives obtain site access to TEDCO holdings in the Port Lands and East Bayfront will accelerate waterfront renewal by eliminating the need for individual, site-by-site access agreements.

## **RECOMMENDATIONS**

---

The Deputy City Manager whose responsibilities include Waterfront Revitalization recommends that Council:

1. authorize the City, as the sole shareholder of City of Toronto Economic Development Corporation (TEDCO), to make a unanimous shareholder declaration (the Shareholder Declaration) to the board of directors of TEDCO (the Board), and pursuant to that Shareholder Declaration, pass a resolution of the Board (the Resolution) authorizing TEDCO to enter into an access and remediation agreement with the Toronto Waterfront Revitalization Corporation (TWRC) in the form attached as Appendix A to this report, with any amendments being acceptable to the Deputy City Manager whose responsibilities include Waterfront Revitalization and the City Solicitor (the Access and Remediation Agreement);
2. authorize the City to provide an indemnity (the Indemnity) in favour of the directors and officers from time to time of TEDCO indemnifying and saving them harmless against any claims that arise out of TEDCO entering into the Access and Remediation Agreement and performing its obligations under that agreement;
3. authorize and direct any officer or director of TEDCO, or the Deputy City Manager and Chief Financial Officer and the City Clerk or any person acting in their capacity, for and in the name of TEDCO, to execute (whether under the corporate seal of TEDCO or otherwise) the Access and Remediation Agreement;
4. Authorize the Deputy City Manager and Chief Financial Officer and City Clerk or any person acting in their capacity to execute and deliver the Shareholder Declaration, the Shareholder Resolution and the Indemnity;
5. authorize the Deputy City Manager whose responsibilities include Waterfront Revitalization and the Deputy City Manager and Chief Financial Officer or any person acting in their capacity to execute any other documents or take any other action that may be required to give effect to the forgoing resolutions; and
6. authorize and direct the appropriate City Officials to take the necessary action to give effect thereto.

## Implementation Points

Adoption of the proposed Access and Remediation Agreement will streamline and simplify the manner in which TWRC and parties acting on its behalf access TEDCO holdings in the Port Lands and East Bayfront for the purposes of site, archaeological, surveying and environmental investigations on projects identified in the Five-Year Business Plan/Ten-Year Forecast for Toronto Waterfront Revitalization (2007-2016), updated annually. The City, by directing and authorizing TEDCO to enter into the Access and Remediation Agreement, is ensuring that the City will indemnify directors and officers of TEDCO against any claims that may be made against it for entering into that agreement. The City's obligation to so indemnify directors and officers is set out in the March 31, 2006 indemnity given when TEDCO, the City and TWRC entered into the MOU for the revitalization of the Port Lands and East Bayfront.

## Financial Impact

There is no financial impact to the City or TEDCO as a result of approving this report. The Access and Remediation Agreement, like the MOU, anticipates incremental access to TEDCO holdings (other than TEDCO project lands) in the Port Lands and to any holdings (other than TEDCO project lands) that TEDCO continues to own in East Bayfront so that TEDCO's use of these lands can continue until lands are required for waterfront revitalization.

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

## DECISION HISTORY

On October 9, 2001, City Council approved Making Waves: Principles for Building Toronto's Waterfront, the City's Central Waterfront Secondary Plan to guide the renewal of Toronto's waterfront, [http://www.toronto.ca/waterfront/waterfront\\_part2.htm](http://www.toronto.ca/waterfront/waterfront_part2.htm), as modified by the Ontario Municipal Board. [http://www.toronto.ca/waterfront/pdf/waterfront\\_cwp\\_revised\\_nov07.pdf](http://www.toronto.ca/waterfront/pdf/waterfront_cwp_revised_nov07.pdf)

At its January 31 to February 2, 2006 meeting, Council adopted the Toronto Waterfront Revitalization: Memorandum of Understanding (MOU) between the City, TEDCO and TWRC, (as well as a unanimous shareholder declaration and a TEDCO shareholder resolution), which set out the phasing and respective roles and responsibilities of the partners with respect to waterfront renewal activities and appointed TWRC as the revitalization lead in East Bayfront and the Port Lands. [http://www.toronto.ca/waterfront/pdf/report\\_twrc\\_memo\\_feb06.pdf](http://www.toronto.ca/waterfront/pdf/report_twrc_memo_feb06.pdf)

In July 16-19, 2007, Council adopted a motion to authorize and direct TEDCO to transfer to the City, and the City to acquire from TEDCO, the lands owned by TEDCO in East Bayfront, except for those lands required for First Waterfront Place. The lands to be transferred to the City are shown in Appendix C of this report.

<http://www.toronto.ca/legdocs/mmis/2007/cc/decisions/2007-07-16-cc11-dd.pdf> (p.28 EX.10.8)

In July 16-19, 2007, Council adopted the Toronto Waterfront Revitalization Initiative Five-Year

Business Plan/Ten-Year Forecast (2007-2016), updated annually, outlining waterfront renewal projects in the Port Lands, East Bayfront and West Don Lands committed to by the Government of Canada, the Province of Ontario and the City of Toronto.

<http://www.toronto.ca/legdocs/mmis/2007/cc/decisions/2007-07-16-cc11-dd.pdf> (p.32 EX.10.9)

## **ISSUE BACKGROUND**

TEDCO owns the majority of lands in the Port Lands, defined in the MOU as the lands south of the Lakeshore/Gardiner corridor generally bounded by the east edge of the Inner Harbour and Leslie Street. It also owns some remaining lands in East Bayfront, which generally consists of the area between Jarvis Street and Cherry Street, south of the Lake Shore/Gardiner Corridor and north of the Inner Harbour and the Keating Channel (see Appendices B and C).

The TWRC would like to begin site investigation and preparation activities on a number of TEDCO holdings to expedite implementation of projects approved in the Five-Year Business Plan. Preparatory activities include environmental site investigations and testing. Under the MOU, TEDCO agrees to provide TWRC and third parties acting on its behalf with timely data and information about its Port Lands and remaining East Bayfront holdings, as well as site access for the purposes of site investigations and site preparation work. The MOU also requires that TEDCO not permit the creation of new encumbrances that would prevent its lands from being available for waterfront renewal purposes and that TEDCO make its lands available to TWRC as revitalization lead when TWRC requires those lands for redevelopment, in accordance with a phasing plan appended to the MOU.

To facilitate and clarify the terms of TWRC's right of access as revitalization lead, and to avoid the need for individual access agreements, Legal Services has prepared an overall Access and Remediation Agreement between TEDCO and TWRC (Appendix A). The authority for the City to execute this Agreement on behalf of TEDCO is outlined in Section 5 of the Amended Shareholder Resolution that was adopted by Council when it authorized the MOU. That resolution authorizes the City Clerk and the Deputy City Manager and Chief Financial Officer, or persons acting in those capacities, to execute on behalf of TEDCO all such agreements and documents as they may determine are necessary or advisable in order to carry out the intent of the MOU, Shareholder Declaration and Shareholder Resolution.

As outlined in Appendix D, TWRC will require access to TEDCO holdings in the Port Lands and East Bayfront in the next 5-year period for several projects identified in the Five-Year Business Plan. These projects include Lake Ontario Park, Unwin Avenue Recreational Node (including the Regional Sports Complex), Lower Don Lands and Don Greenway, Cherry Street Sewer Outfall, and East Bayfront Precinct Implementation. Specific activities related to these projects requiring access to TEDCO holdings in 2008 include environmental site assessment, site inventory, survey, tree inventory, geo-technical investigation, servicing assessment, off-site construction staging and special event promotions.

## **COMMENTS**

Environmental improvements in Toronto's Port Lands and East Bayfront through the creation of parks, public spaces, municipal infrastructure and new communities are key to achieving Council's vision for waterfront renewal outlined in the Central Waterfront Secondary Plan.

A number of lands in the Port Lands and East Bayfront have environmental contamination issues. Consequently, the MOU established TWRC as the revitalization and environmental remediation lead in the Port Lands and East Bayfront, imposing strong obligations on TWRC and third parties acting on its behalf to properly address environmental issues in a manner that eliminates or minimizes risk to TEDCO and the City. These include obligations that relate to, among other matters, the appropriate conduct of site investigations and remediation, the provision of insurance and indemnities to protect TEDCO and the City, and the potential for TWRC-funded peer reviews of remediation and site preparation processes. The MOU sets out a number of TWRC obligations which have been carried forward into the Access and Remediation Agreement. They include the obligations set out below.

### **Site Investigations and Site Preparation Work**

Under the MOU, TWRC and parties acting on its behalf must ensure that site investigations and site preparation work for approved waterfront renewal projects are carried out in accordance with the Ministry of the Environment's (MOE) *Environmental Protection Act* and any higher remediation standards of the appropriate City divisions.

As outlined in the MOU and the proposed Access and Remediation Agreement, site investigation work includes Phase I and Phase II environmental site assessments and any other survey work, soil testing, ground water testing, archaeological investigation, drilling of bore holes, examination of infrastructure and other site investigations and testing. Site preparation work includes the implementation of measures to manage impacted soils and ground water and risk assessment, risk management and physical treatment methods.

### **Marketing TEDCO Lands**

As previously reported to Council, it is assumed that waterfront lands developed for employment purposes will be developed through long-term lease, while those developed for residential purposes will be divested to a private developer through an TWRC-led request for proposal process. Section 10.3 of the MOU outlines TEDCO's obligation to provide site access to prospective purchasers or lessees of TEDCO lands in the Port Lands and East Bayfront for the purpose of carrying out site investigations, subject to the provision of acceptable environmental indemnity(ies) from the prospective developer or parties acting on its behalf.

### **Acceptable Consultants**

Section 4 of the Access and Remediation Agreement requires that TWRC ensure that, in undertaking

environmental and site preparation work, parties acting on its behalf comply with all applicable laws. These laws include, among others, the *Occupational Health and Safety Act*, *Workplace Safety and Insurance Act*, *Construction Lien Act*, *Ontario Water Resources Act* and *Environmental Protection Act*.

In addition, TWRC is obligated to engage only Acceptable Consultants and Contractors as defined in Sections 2 and 4 of the Access and Remediation Agreement to undertake site investigations and environmental remediation and reporting activities on its behalf.

### **Environmental Insurance and Indemnities**

Section 6 of the Access and Remediation Agreement requires TWRC to put in place Acceptable Environmental Insurance to protect TEDCO and the City against risks in relation to site investigation and site preparation activities.

Under Section 7 of the Agreement, TWRC and parties acting on its behalf are required to provide broad indemnities to TEDCO and the City in respect of claims, including damages incurred as a result of carrying out renewal activities or actions attributable to the performance of renewal activities and/or failure to properly identify or address environmental conditions.

### **Notice to TEDCO and the City**

TWRC's 2008 Port Lands and East Bayfront Work Plan and Access Request, attached as Appendix D, summarizes renewal activities and access requirements in the Port Lands and East Bayfront from 2008 to 2011. TWRC must prepare annual detailed work plans following consultation with TEDCO for site investigations and any site preparation work. TWRC must also provide TEDCO and the City with at least seven (7) days written notice prior to beginning site work on TEDCO lands and must coordinate its activities with TEDCO to minimize interference with TEDCO tenants.

In addition, TEDCO representatives are permitted to be present during site investigations and environmental remediation and reporting activities undertaken on TEDCO lands and to receive all data and reports generated with respect to these activities.

## **Conclusions**

Council's approval of the Access and Remediation Agreement between TEDCO and TWRC will expedite achievement of Council's vision for waterfront renewal by eliminating the need for an individual access agreement each time TWRC requires access to TEDCO holdings in the Port Lands and East Bayfront.

## **CONTACT**

Elaine Baxter-Trahair  
Waterfront Secretariat Director  
416-397-4083  
[ebaxter@toronto.ca](mailto:ebaxter@toronto.ca)

Rebecca Hartley  
Solicitor  
416-397-5415  
[rhartle@toronto.ca](mailto:rhartle@toronto.ca)

## **SIGNATURE**

---

Richard Butts, Deputy City Manager

## **ATTACHMENTS**

### **APPENDIX A:**

Access and Remediation Agreement between the City of Toronto Economic Development Corporation (TEDCO) and the Toronto Waterfront Revitalization Corporation (TWRC)

### **APPENDIX B:**

2006 City/TEDCO/TWRC MOU Map of East Bayfront and the Port Lands

### **APPENDIX C:**

TEDCO Ownership- East Bayfront

### **APPENDIX D:**

TWRC 2008 Port Lands and East Bayfront Work Plan and Access Request

**APPENDIX A: ACCESS & REMEDIATION AGREEMENT BETWEEN TEDCO and TWRC**

**THIS AGREEMENT** is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2008

BETWEEN

**CITY OF TORONTO ECONOMIC DEVELOPMENT  
CORPORATION**  
(“TEDCO”)

- and -

**TORONTO WATERFRONT REVITALIZATION  
CORPORATION**  
(“TWRC”)  
(collectively the “Parties”)

**WHEREAS:**

- A. TWRC and TEDCO, together with the City of Toronto (the “City”) executed a Memorandum of Understanding dated March 31, 2006 (the “MOU”) setting out, *inter alia*, the respective roles and responsibilities of the parties in the revitalization of lands owned by TEDCO (other than TEDCO Project Lands as defined in the MOU) in the Port Lands and East Bayfront (as defined in the MOU);
- B. As primary developer of the Port Lands and East Bayfront, TWRC is responsible for ensuring that the Site Investigation, Remediation Activities, Environmental Remediation and Reporting and Site Preparation Work, construction and development (collectively, the “TWRC Activities”) are completed on the TEDCO-owned lands in the Port Lands and East Bayfront;
- C. TEDCO owns a number of parcels of land in the Port Lands and East Bayfront (collectively the “TEDCO Parcels”), shown outlined in Schedule “A” attached hereto;
- D. The MOU requires TEDCO to work together with TWRC to facilitate revitalization of the waterfront, by providing access to TEDCO-owned lands, including the TEDCO Parcels to TWRC,



its agents, consultants, contractors, employees, representatives, invitees and prospective purchasers (the “Permitted Users”) for the purposes of site investigations and site preparation work, including environmental remediation, construction and development; and

- E. TEDCO and TWRC wish to record their agreement in respect of the Permitted Users entering onto the TEDCO Parcels for the purposes of the TWRC Activities.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements set forth in this Agreement and the sum of Ten Dollars (\$10.00) paid by each party to the other and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto covenant and agree as follows:

### 1. **Definitions**

The following terms shall have, for the purposes of this Agreement, the following meanings:

- (a) **“Acceptable Consultant”** means an independent, duly qualified consultant that is approved by the Parties and the City acting reasonably and having regard for TWRC’s procurement requirements.
- (b) **“Acceptable Contractor”** means an independent, duly qualified contractor that has been selected pursuant to a tender that was issued to contractors pre-approved by the Parties and the City, or that is approved by the Parties and the City acting reasonably, having regard for TWRC’s procurement requirements
- (c) **“Acceptable Environmental Insurance”** means insurance which:
  - (i) pertains to the TWRC Activities;
  - (ii) is from a reputable insurance company or companies acceptable to the TWRC and the City, in consultation with TEDCO, and is on terms and in amounts and with limits and exclusions, if any, as TWRC and the City, in consultation with TEDCO, determine are appropriate given the specific circumstances at hand;

- (iii) includes workers compensation, employer's liability insurance, general liability insurance, contractor's pollution liability insurance (including insurance relating to failure to fully and properly characterize the environmental condition of the site or failure to appropriately address the environmental condition of the site) and, as appropriate, professional negligence (errors and omissions) insurance;
  - (iv) has each of TWRC, the City and TEDCO as an additional insured; and
  - (v) is otherwise acceptable to TWRC and the City acting reasonably.
- (d) “**Claims**” means claims, demands, actions, suits, causes of action, assessments, charges, judgments, debts, liabilities, costs, expenses, damages, losses, fees, including fees and disbursements of legal counsel on a substantial indemnity basis, consultants and advisors.
- (e) “**Construction Activities**” means those construction activities and works undertaken by TWRC required to fulfill the terms of the MOU;
- (f) “**Commencement Date**” means the date this Agreement has been executed by both Parties.
- (g) “**Dispute**” means any dispute between the Parties arising out of the terms of this Agreement.
- (h) “**DCM**” means the City's Deputy City Manager responsible for Waterfront revitalization or his/her designate.
- (i) “**DWA**” means the area prescribed as the designated waterfront area in Ontario Regulation 200/03, as amended by Ontario Regulation 79/04, made under the *Toronto Waterfront Revitalization Corporation Act, 2002*.
- (j) “**Entry Notice**” has the meaning ascribed to it in Subsection 4(b).
- (k) “**Environmental Remediation and Reporting**” means, collectively, undertaking soil and ground water remediation and risk assessment, environmental management

measures including measures to manage impacted soils and groundwater, and grading and similar site work, and all related regulatory reporting and filing obligations and, for clarity, as defined in the MOU.

- (l) “**Governmental Authority**” means any government, legislature, municipality, regulatory authority, agency, commission, department, board or court or other law, regulation or rule-making public entity of similar authority (including, without limitation, a Minister of the Crown).
- (m) “**Immediately Required Work**” means work such as, but not limited to, installing hoarding and signage, carrying out remediation work that in the opinion of the DCM or other City officials in consultation with TWRC should be undertaken as soon as practically possible to address conditions on the East Bayfront Lands and the Portlands, as the case may be, and completing all reports and filing all documents that are required in connection with that work;
- (n) “**Laws**” means applicable laws (including common law), statutes, by-laws, official plans, official plan amendments, rules, regulations, orders, ordinances, protocols, codes, guidelines, treaties, policies, notices, directions, decrees and judicial, arbitral, administrative, ministerial or departmental judgments, or all requirements of any Governmental Authority.
- (o) “**Remediation Activities**” means environmental remediation, risk assessment, environmental management measures and grading and similar site work, and includes the implementation of measures to manage impacted soils and ground water, and risk assessment, risk management and physical treatment methods and, for clarity, as defined in the MOU.
- (p) “**Site Preparation Work**” means environmental remediation, servicing, grading and any other site work that may reasonably be required, and includes the implementation of measures to manage impacted soils and ground water, and risk assessment, risk management and physical treatment methods and, for clarity, as defined in the MOU.
- (q) “**Site Investigations**” means Phase I and Phase II environmental site assessments and any survey work, soil testing, ground water testing, drilling of bore holes, examining

infrastructure and other site investigations and testing that may be required and, for clarity, as defined in the MOU.

- (r) **“Term”** means five (5) years after the Commencement Date.
- (s) **“Waterfront Liaison Committee”** means the committee established to resolve jurisdictional and governance issues, ensure that municipal services and resources are available in a timely manner, and facilitate implementation of TWRC’s five year plan/ten year financial forecast for revitalization of the DWA and, for clarity, as defined in the MOU.

## 2. Access

### (a) TWRC Activities

TEDCO hereby grants, on the terms and conditions set out herein, non-exclusive access to the TEDCO Parcels at mutually convenient times and from time to time during the Term to TWRC and the Acceptable Consultants and Acceptable Contractors, and to the Permitted Users for the purpose of performing the TWRC Activities by any of the foregoing. Notwithstanding TEDCO’s existing obligations and undertakings to any party or authority respecting environmental reporting and other works, TEDCO hereby waives i) the opportunity in section 10.1 of the MOU to undertake further Site Investigations, and ii) the opportunity in section 11.1 of the MOU to undertake further Environmental Remediation Reporting. TWRC acknowledges and agrees that it is being granted access to the TEDCO Parcels in their present condition and waives all rights in respect of the conditions of the TEDCO Parcels.

### (b) Construction Activities

Access for the Construction Activities shall follow the delivery of a business plan for the specific construction project then under consideration by the TWRC and the review and acceptance thereof pursuant to the provisions of the MOU including obtaining council approval where necessary.

## 3. Termination

During the Term of this Agreement, the DCM shall have the right in his/her sole discretion to terminate this Agreement, in whole or as it relates to either a portion of the TWRC Activities or a

specific user of the rights granted herein upon giving seven (7) days written notice thereof to TWRC and TEDCO indicating a default in compliance with the terms of this Agreement, i) where such default is not cured or ii) where TWRC is not actively and diligently pursuing the curing of such default within such seven (7) day cure period. In the event of such notice, this Agreement shall terminate, and TWRC shall restore the TEDCO Parcels to their original condition subject to with Subsection 4(i) herein.

#### **4. TWRC Obligations**

TWRC agrees to undertake Site Investigations and Environmental Remediation and Reporting, and, where necessary and possible, the Remediation Activities and Site Preparation Work on the TEDCO Parcels in as minimal time as is reasonably possible. TWRC shall ensure that the following actions are taken in connection with the TWRC Activities:

- (a) TWRC shall engage only Acceptable Consultants and Acceptable Contractors to undertake the TWRC Activities.
- (b) TWRC shall give TEDCO not less than seven (7) days prior written notice outlining the date(s) and time(s) the work is to be performed, particulars regarding the scope of the TWRC Activities to be performed and the specific municipal address on which the work is to be performed (the “**Entry Notice**”) before commencing the TWRC Activities on each separate property forming part of the TEDCO Parcels, and shall not thereafter be required to give notice for the purposes of gaining entry to such a property. Notwithstanding the foregoing, TWRC shall be required to provide an Entry Notice for any municipal addresses not yet included in a previous Entry Notice, and shall be required to provide additional written notification of the intended access where the Entry Notice is delivered more than two (2) weeks prior to the intended timing of the TWRC Activities to be performed.
- (c) In advance of undertaking any site activities, TWRC shall prepare and provide TEDCO and the City with a detailed work plan for the activities required in the year 2008, attached in draft as Schedule “B”, including a work and implementation plan for Site Investigations, any remediation, risk assessment and environmental management plans for Environmental Remediation and Reporting, along with work and implementation

plans for Remediation Activities and Site Preparation Work, where applicable, and shall provide such detailed work plans on an annual basis thereafter by January 15<sup>th</sup> of each subsequent calendar year. TWRC shall consult with TEDCO during the preparation of all such plans, which shall be approved by the DCM prior to commencement of any of the TWRC Activities.

- (d) TWRC shall co-ordinate its activities with TEDCO so as to minimize the degree of interference with TEDCO and/or TEDCO's tenants on the TEDCO Parcels. TWRC shall not install or erect any fences, signs, structures and/or fixtures on the TEDCO Parcels or make any changes in surfacing, grading or landscaping to the TEDCO Parcels without giving seven (7) days written notice to TEDCO. TWRC shall keep the TEDCO Parcels free of debris or anything of noxious, odorous or offensive nature or which could create a fire hazard or undue vibration, heat or noise.
- (e) TWRC shall permit TEDCO's representatives to be present during any TWRC Activities carried out on the TEDCO Parcels. Copies of all data and reports generated and/or prepared with respect to TWRC Activities shall be addressed to TWRC with a copy made available to TEDCO and the City.
- (f) Except where TWRC and/or the City and/or TEDCO otherwise have a pre-existing obligation or undertaking, TWRC shall be responsible, at its sole cost and expense, for all operating costs related to the use of the TEDCO Parcels by TWRC or its consultants, contractors, agents, employees, representatives and invitees, including the cost of all repairs, maintenance and utilities. TWRC, at its sole expense, shall be responsible for installing and properly maintaining anything necessary for its operations.
- (g) If the TWRC Activities reveal environmental conditions that pose elevated risks to human health and safety or conditions that could lead to further spreading of contaminants or other adverse impact ("Conditions of Immediate Concern"), TWRC shall notify TEDCO, the DCM, the Director of the City's Waterfront Secretariat and the City's Medical Officer of Health ("Medical Officer") of those conditions (both verbally and in writing) immediately. TWRC then shall work with the DCM and other City staff and officials, including the Medical Officer, to develop the scope of the Immediately

Required Work. TWRC shall undertake all Immediately Required Work immediately after it becomes aware of any Condition of Immediate Concern, and complete that work to the satisfaction of the DCM and the Medical Officer as soon as possible. TWRC shall carry out all Immediately Required Work at no cost to the City, other than the City's contributions under existing contribution agreements with TWRC and the other orders of government.

- (h) Once the problems and deficiencies, if any, have been rectified and the TWRC Activities and any Immediately Required Work have been fully completed, TWRC shall have its consultants prepare one or more completion certificates ("Completion Certificates") regarding such work, and TWRC shall forward the Completion Certificate(s) to the DCM. The Completion Certificate(s) shall be in a form satisfactory to the DCM and shall include:
  - (i) confirmation satisfactory to the DCM that the required work has been completed (as "completed" is used in the Construction Lien Act), that all accounts have been paid, and that there are no liens or claims under the Construction Lien Act;
  - (ii) confirmation satisfactory to the DCM that any deficiencies revealed by the site inspection have been rectified to the satisfaction of the DCM and TWRC;
  - (iii) a certificate stating that the required work has been completed in accordance with the approved plans and drawings and the provisions of this Agreement, and giving the completion date;
  - (v) a complete set of "as built" drawings and maintenance drawings for the services and other installations and improvements, and a related report, all in form and format satisfactory to the DCM; and
  - (vi) a complete set of construction administration documentation in a form satisfactory to the DCM.
  
- (i) Upon expiry of the Term or upon earlier termination of this Agreement for any reason whatsoever, TWRC shall:
  - i) expeditiously repair and restore or cause to be repaired or restored at its own expense, to the satisfaction of the DCM, acting reasonably, all damage to the

TEDCO Parcels caused by any exercise of TWRC's rights under this Agreement;

ii) forthwith remove all fixture(s), equipment, structure(s) installed by TWRC and debris from the TEDCO Parcels caused by TWRC; and

iii) restore the TEDCO Parcels to as close as is practicable to its original condition at TWRC's sole cost and expense, to the satisfaction of the DCM, acting reasonably;

all in accordance with applicable laws, subject to i) any changes made to the TEDCO Parcels due to the TWRC Activities approved pursuant to work plans as outlined in this Agreement and/or ii) changes made pursuant to TEDCO's requirement to relinquish control of the specific parcel for waterfront renewal purposes.

## **5. TEDCO Obligations**

TEDCO's obligations include the following:

- (a) Within twenty (20) business days of execution of this Agreement, TEDCO agrees to provide TWRC with copies of all reports, information and documents referable to the TEDCO Parcels including, without limitation, lease documentation, property information and information regarding the environmental condition of the TEDCO Parcels. TWRC shall reimburse TEDCO for any disbursements incurred in providing this information, in accordance with Subsection 8.3(b) of the MOU.
- (b) TEDCO agrees that the performance of the TWRC Activities by TWRC or its consultants, contractors and agents shall not constitute waste of the TEDCO Parcels or a nuisance.
- (c) TEDCO represents, warrants and covenants that, while it is the owner of any of the specific parcels comprising the TEDCO Lands, it will pay all costs referable to the such parcels, including property taxes, utilities and insurance, save and except it shall not be responsible for any costs referable to the TWRC Activities including any increase in



taxes exigible on the TEDCO Lands due to the TWRC Activities, except for those costs previously agreed to by the Parties.

- (d) TEDCO and the City consent to the registration and filing against the TEDCO Parcels of a record of site condition, certificate of prohibition and any other document of similar nature, in furtherance of this Agreement and/or as required by the MOU.

## **6. Acceptable Environmental Insurance**

In accordance with sections 10.2(c) and 11.2(g) of the MOU, TWRC hereby acknowledges and agrees that it has an obligation to put in place and maintain Acceptable Environmental Insurance in respect of the TWRC Activities on the TEDCO Parcels, such insurance to be to the satisfaction of the DCM acting reasonably. TWRC shall not be granted access to any portion of the TEDCO Parcels without proof of such insurance being delivered to TEDCO, with a copy to the City.

## **7. Acceptable Consultant/Contractor Indemnities**

In accordance with sections 10.2(c) and 11.2(h) of the MOU, TWRC's obligations respecting indemnities shall include ensuring that TWRC, the Acceptable Consultant and/or the Acceptable Contractor, as the case may be (the "Indemnifier"), provides an indemnity satisfactory to the City, acting reasonably, in favour of TWRC, the City and TEDCO in respect of Claims arising out of or attributable to the performance of Site Investigations, Environmental Remediation and Reporting, Remediation Activities, and Site Preparation Work, as the case may be, including any failure of the Indemnifier or those for whom it responsible to

- i) fully and properly characterize the environmental condition of the TEDCO Parcels in the performance of the Site Investigations;
- ii) appropriately and properly address the environmental condition of the TEDCO Parcels in the performance of Environmental Remediation and Reporting;
- iii) implement the measures required on the TEDCO Parcels in the performance of the Remediation Activities; and/or

iv) appropriately and fully address the work required on the TEDCO Parcels in the performance of the Site Preparation Work;

as the case may be, and including Claims which are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, that arise out of, or are attributable to, the performance of Site Investigations, Environmental Remediation and Reporting, Remediation Activities, or Site Preparation Work as the case may be, all on such terms as are appropriate given the specific circumstances at hand and as are settled between TWRC and the Indemnifier, and as acceptable to the City Solicitor, DCM and TEDCO acting reasonably.

## **8. Costs**

Except where TWRC and/or the City and/or TEDCO otherwise have a pre-existing agreement, all Site Investigations and Environmental Remediation and Reporting on the TEDCO Parcels by TWRC shall be conducted at no cost to TEDCO or the City other than what has been committed to the five-year business plan/ten-year forecast or relevant contribution agreement. Each of TEDCO and TWRC shall be responsible for its own fees and costs, including legal fees, incurred in connection with this Agreement and the actions and documents contemplated hereby.

## **9. Compliance**

### **(a) Applicable Laws**

All TWRC Activities on the TEDCO Parcels shall be conducted by TWRC or its agents in compliance with applicable Laws. TWRC shall save TEDCO and the City harmless from any and all liabilities or costs suffered by TWRC, TEDCO or the City as a result of TWRC's failure to so comply, unless caused by the willful misconduct or negligence of TEDCO and/or the City.

### **(b) Digging**

If digging or ground penetration is necessary and approved under this Agreement, TWRC or its agents, consultants, contractors, employees or representatives, as the case may be, is responsible for contacting the following utilities to arrange for stake-outs of the site:

Ontario One – Call Before You Dig (Hydro/Gas/Phone/Cable\*)

1-800-400-2255 or [www.on1call.com](http://www.on1call.com)

\*Rogers Cable Only 905-829-0098

Toronto Water Services (if applicable)

416-338-8888

Once stakeouts of these utilities have been completed, TWRC or its agents, consultants, contractors, employees or representatives, as the case may be, must contact TEDCO and the City to provide written proof of completed utility stakeouts.

## **10. Further Assurances**

Each Party agrees to sign and deliver such documents and instruments and such further assurances as may reasonably be required by the other Party or the City in connection with the matters set out in this Agreement.

## **11. Dispute Resolution**

In the event of any Dispute, such Dispute shall be resolved in accordance with the following procedure:

(a) the Parties first shall attempt to resolve the Dispute through good faith negotiation between such Parties working through the Waterfront Liaison Committee;

(b) failing resolution of the Dispute through negotiation within fifteen (15) days after the Waterfront Liaison Committee becomes involved in efforts to resolve the Dispute, either Party, by written notice to the other Party cause the Dispute to be submitted, by way of a report, to the DCM whose decision shall be final and binding upon the Parties.

## **12. General**

### **(a) Notices**

Any notices required pursuant to or permitted by this Agreement must be addressed to:

TWRC:

20 Bay Street, Suite 1310  
Toronto, Ontario  
M5J 2N8

Attention: President and C.E.O.  
Tel: (416) 214-1344 Ext. 233  
Fax: (416) 214-4591

TEDCO:

Metro Hall  
55 John Street  
7<sup>th</sup> Floor  
Toronto, Ontario  
M5V 3C6

Attention: President and Chief Executive Officer  
Tel: 416-214-4641  
Fax: 416-214-4640

With a Copy To:

City of Toronto  
100 Queen Street West, 12 East  
Toronto City Hall  
Toronto, Ontario  
M5H 2N2

Attention: Director, Waterfront Secretariat  
Tel: 416-397-4083  
Fax: 416-392-8805

Notices under this Agreement shall be in writing and sent via facsimile transmission, personal delivery or mail. Notices by personal delivery or facsimile shall be deemed to have been received at the time of delivery or transmission unless delivered or transmitted on a weekend or holiday, in which case such notices shall be deemed to have been received on the next business day. Notices by mail shall be deemed to have been received on the fourth (4<sup>th</sup>) business day after the date of mailing.

**(b) Confidentiality**

The Parties agree to ensure that their directors, officers, employees, consultants, contractors, agents and appointees shall maintain the confidentiality and security of all material and information which is the property of the Parties and in the possession or under the control of the Parties pursuant to this Agreement. The Parties further agree that their directors, officers, employees, consultants, contractors, agents and appointees shall not directly or indirectly disclose or use, except where required by law or for the purposes of this Agreement, or where it is prudent for commercial purposes to disclose same to third parties who have agreed to maintain the confidentiality of such material or information, any material or information belonging to another Party, without first obtaining written consent from the Party that is the owner of the material or information for such disclosure or use.

**(c) Conflict of Interest**

TEDCO and TWRC, and any of their respective officials, directors, officers, appointees, employees, agents, volunteers and sub-contractors shall not engage in any activity or provide any services where such activity or the provisions of such services creates a conflict of interest with the services to be provided pursuant to this Agreement. Without limiting the foregoing, TEDCO acknowledges that the *Municipal Conflict of Interest Act* applies to it and to its directors, and TWRC acknowledges that section 132 (conflict of interest) of the Ontario *Business Corporations Act* applies to TWRC and its directors, and that both Parties have policies or codes of conduct in place that must be followed. Without limiting the foregoing, a Party shall disclose to the other Party, in writing and without delay, any actual or potential situation that reasonably may be interpreted as a conflict of interest. The Parties acknowledge that it shall be a conflict of interest for them to use confidential information of another Party for purposes of gaining an unfair advantage or benefit unless the other Party has specifically authorized such use.

**(d) Records**

The Parties shall be responsible for the proper care, transportation, handling, maintenance, use and interim storage of their respective records, in accordance with

applicable legislation, regulations, government directives, guidelines and policies, as amended from time to time.

**(e) Applicable Laws**

This Agreement shall be governed by the laws of the Province of Ontario and the applicable laws of Canada. The Parties acknowledge that their obligations under this Agreement are subject to all applicable law. Any reference in this Agreement to a statute, regulation, by-law or rule of any governance or other regulatory body shall be interpreted as meaning such law or rule as amended or re-enacted from time to time.

**(f) Interpretation**

The section numbering and headings are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

**(g) Assignment**

This Agreement shall not be assigned by any Party hereto without the prior written consent of the other Party.

**(h) No Strict Construction**

The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

**(i) Severability**

If, in any jurisdiction, any provision of this Agreement or its application to any party or circumstance is restricted, prohibited or unenforceable, such provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions of this Agreement and without affecting the validity or enforceability of such provision in any other jurisdiction or without affecting its application to other parties or circumstances.

**(j) Time**

Time is of the essence in the performance of the Parties' respective obligations.

**(k) Time Periods**

Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends.

**(l) Counterparts**

This Agreement may be executed by the Parties in separate counterparts. A copy of the full Agreement with counterpart signing pages for each Party together shall constitute one and the same instrument.

**(m) Survival**

The confidentiality provisions of this Agreement shall survive the expiry or termination of this Agreement.

**(n) Binding Agreement**

This Agreement shall be binding upon and shall ensure to the benefit of and be binding on the Parties and their respective successors and assigns.

**(o) Entire Agreement and Amendments**

This Agreement sets forth the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether written or oral. This Agreement may not be amended, supplemented or rescinded except by a written instrument duly executed by each of the Parties hereto.

**IN WITNESS WHEREOF** TWRC and TEDCO have executed this Agreement under the hand of their respective properly authorized signing officers duly authorized in that behalf as of the date first written above.

**TORONTO WATERFRONT  
REVITALIZATION CORPORATION**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the Corporation.

**CITY OF TORONTO ECONOMIC  
DEVELOPMENT CORPORATION**

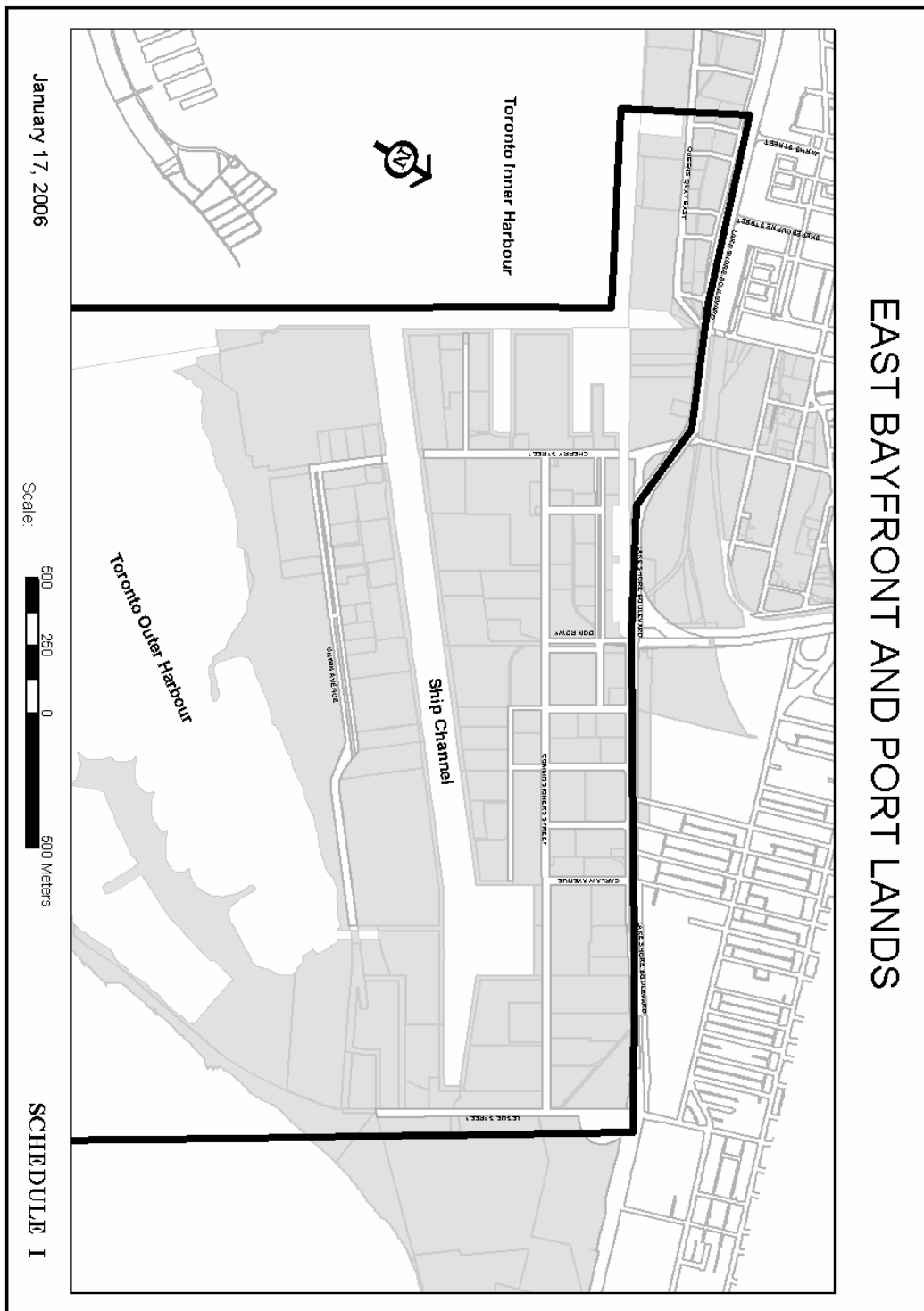
Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the Corporation.



SCHEDULE "A" TO ACCESS AND REMEDIATION AGREEMENT  
Overview Maps of the Location of the TEDCO Parcels



# TEDCO Ownership - EAST BAYFRONT



June 5, 2007

SCHEDULE "B" TO ACCESS AND REMEDIATION AGREEMENT  
2008 Draft Work Plan

**A. Port Lands**

**Lake Ontario Park**

1. Environmental Site Assessment
2. Site Inventory/ Survey
3. Tree Inventory

**Unwin Avenue Recreational Node, Including Regional Sports Complex**

1. Environmental Site Assessment
2. Geo-Tech Investigation
3. Site Inventory/ Survey/ Servicing Assessment

**Lower Don Lands**

1. Site Inventory/ Survey
2. Geo-Tech Investigation
3. Environmental Site Assessment (TRCA)

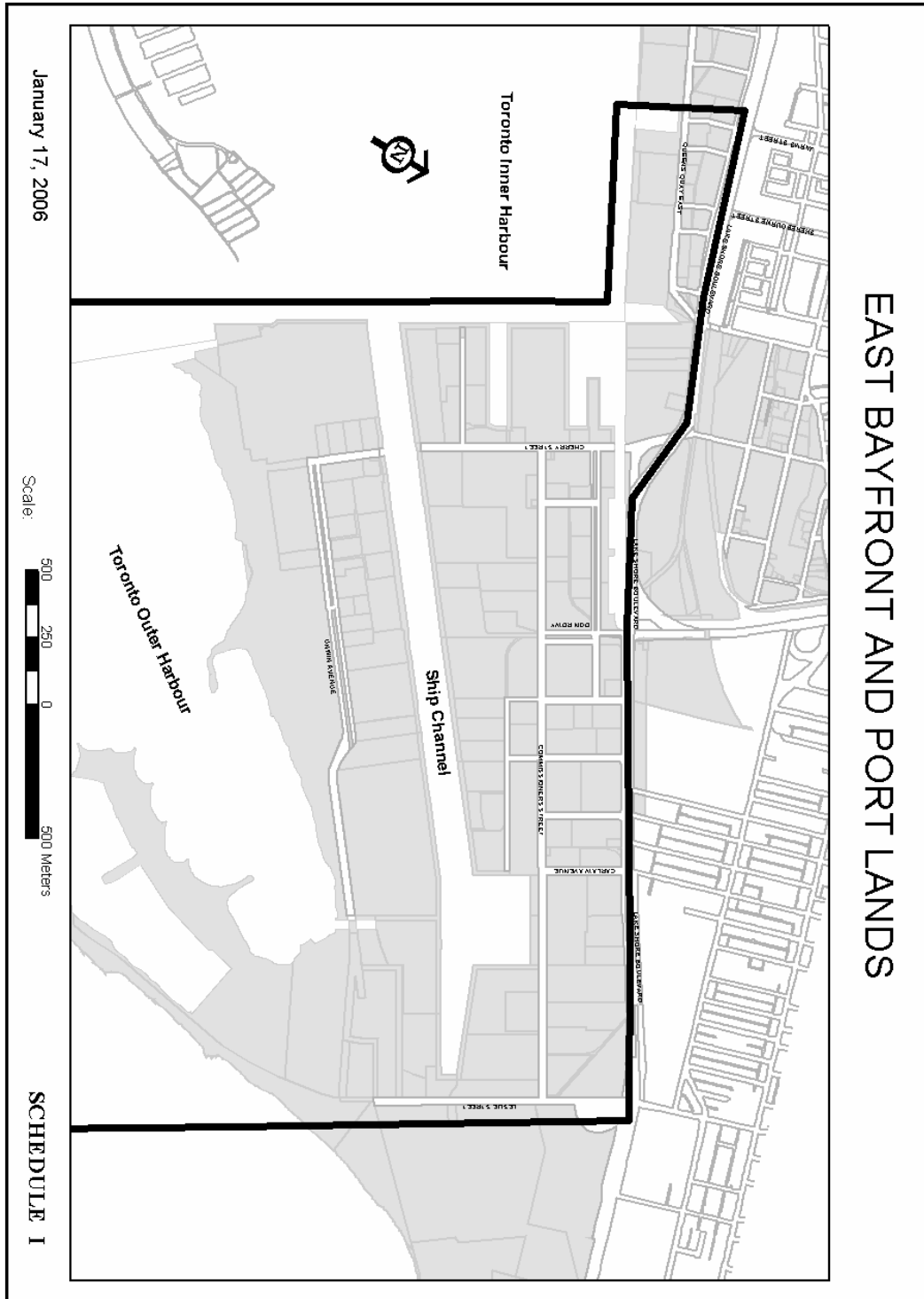
**Cherry Street Sewer Outfall**

1. Site Inventory/ Survey
2. Geo-Tech Investigation
3. Environmental Site Assessment

**B. East Bayfront & Vicinity**

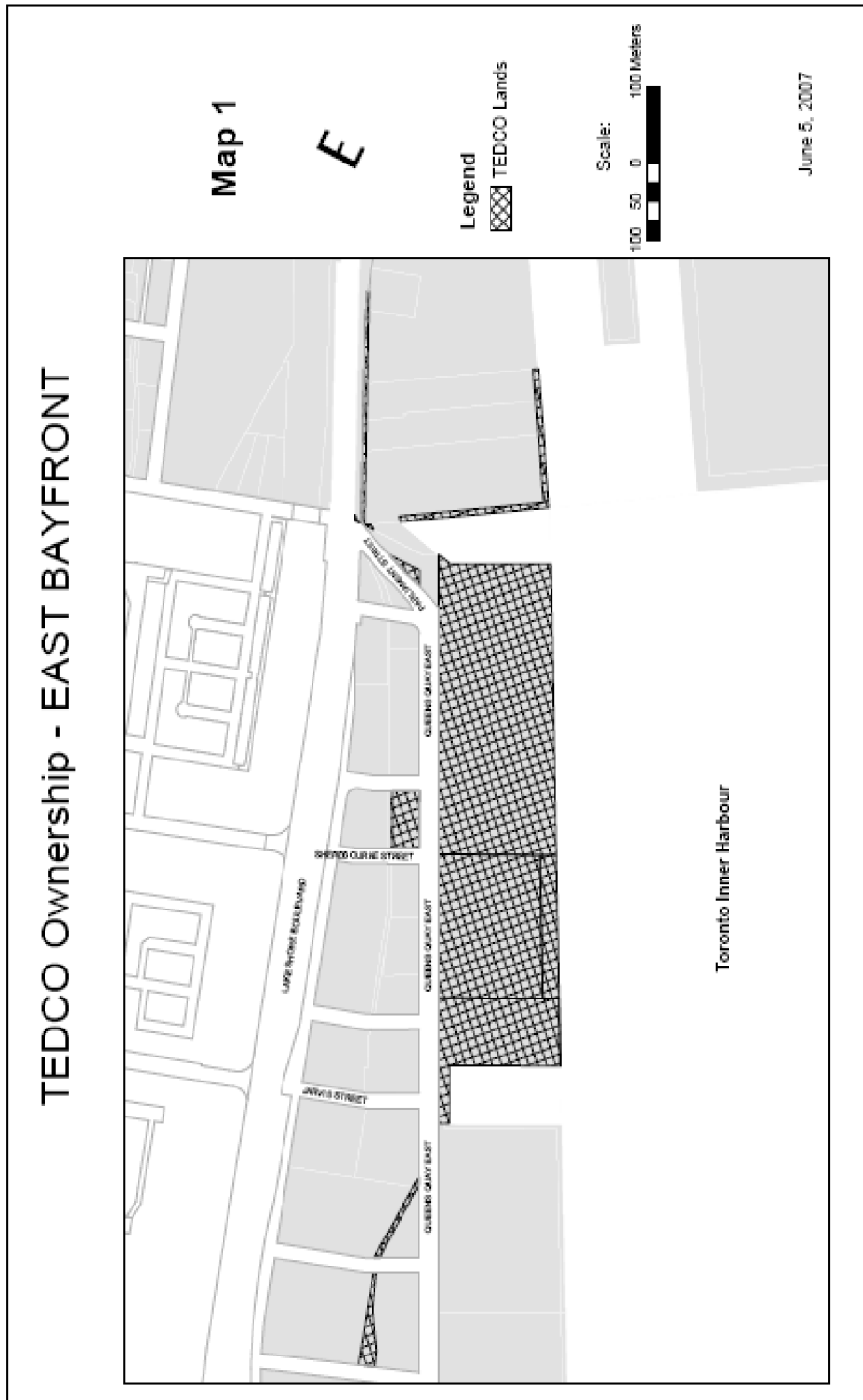
1. Site Investigation/Survey
2. Off-site Construction Staging
3. Special Events Promotion

**APPENDIX B: CITY/TEDCO/TWRC MOU MAP- EAST BAYFRONT & PORT LANDS**



Note: The Access & Remediation Agreement will also apply to two TEDCO parcels included in the East Bayfront land transfer that are located west of Jarvis, as shown in Appendix C.

# APPENDIX C: TEDCO OWNERSHIP- EAST BAYFRONT



## **APPENDIX D: TWRC 2008 PORT LANDS AND EAST BAYFRONT WORK PLAN AND ACCESS REQUEST**

### **A. Port Lands**

Lake Ontario Park- Environmental Site Assessment, Site Inventory, Survey, Tree Inventory

Unwin Avenue Recreational Node, Including Regional Sports Complex- Environmental Site Assessment, Geo-Technical Investigation, Site Inventory, Survey, Servicing Assessment

Lower Don Lands/Don Greenway- Site Inventory, Survey, Geo-Technical Investigation, Environmental Site Assessment (TRCA)

Cherry Street Sewer Outfall- Site Inventory, Survey, Geo-Technical Investigation, Environmental Site Assessment

### **B. East Bayfront & Two TEDCO Parcels west of Jarvis**

- Site Investigation, Survey, Off-site Construction Staging, Special Events Promotion