

Clause embodied in Report No. 10 of the Policy and Finance Committee, as adopted by the Council of the City of Toronto at its meeting held on June 18, 19 and 20, 2002.

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City of Toronto Economic Development Corporation (TEDCO) (City Wide)

(City Council on June 18, 19 and 20, 2002, amended this Clause by:

- (1) *amending the recommendations embodied in the joint reports dated May 1, 2002, and January 17, 2002, respectively, from the Chief Administrative Officer and the Commissioner of Economic Development, Culture and Tourism, as amended by the Policy and Finance Committee, by inserting in Recommendation No. (8), after the words “arms-length corporation”, the words “as long as it is consistent with the City of Toronto’s emerging directions and objectives for the Waterfront”, so that such recommendation shall now read as follows:*

“(8) TEDCO be directed to comply with the Reporting and Communications Protocol for Waterfront Revitalization, as appropriate to the mandate of TEDCO as an arms-length corporation, as long as it is consistent with the City of Toronto’s emerging directions and objectives for the Waterfront, and this report be forwarded for information to the Waterfront Reference Group through the Executive Lead for the Waterfront;”;

- (2) *amending the Shareholder Direction embodied in Attachment No. 2 to the joint report dated May 1, 2002, from the Chief Administrative Officer and the Commissioner of Economic Development, Culture and Tourism, as embodied in the Clause, by:*

- (a) *adding to Article (4.2), the words “The Board shall not act in any manner contrary to the policies of the Shareholder.”, so that such Article shall now read as follows:*

“(4.2) Matters Requiring Shareholder Approval

Notwithstanding section 4.1, the Board shall obtain the Shareholder’s approval in respect of any matters requiring approval of the Shareholder pursuant to this Direction, the OBCA, the TEDCO Arm’s Length Agreement (II) or otherwise, all as more particularly described in Article 7. The Board shall not act in any manner contrary to the policies of the Shareholder.”; and

- (b) *adding to Article (6.1), the words “and City Council policies with respect to conflict of interest”, so that such Article shall now read as follows:*

“(6.1) Conflict of Interest Policy

The Directors shall strictly abide by the requirements of the OBCA and any TEDCO policies in respect of conflicts of interest, including any requirements for disclosure and abstention from voting and City Council policies with respect to conflict of interest.”; and

(3) *adding thereto the following:*

“It is further recommended that:

- (a) the procedural by-law governing meetings of the TEDCO Board of Directors be modelled as closely as possible after Chapter 27, Council Procedures, of the City of Toronto Municipal Code; and*
- (b) Members of City Council shall be entitled to obtain copies of the minutes of the meetings of the TEDCO Board of Directors, on request, subject to the confidentiality provisions outlined in Article (8.4).”*

The Policy and Finance Committee recommends the adoption of the joint reports (May 1, 2002) and (January 17, 2002) from the Chief Administrative Officer and the Commissioner of Economic Development, Culture and Tourism subject to amending the Recommendations to read as follows:

“It is recommended that:

- (1) the size of the Board of Directors of TEDCO be set at 11 members comprised of:**
 - (a) the Mayor or his designate;**
 - (b) the Chair of the City’s Economic Development and Parks Committee;**
 - (c) two members of Council to be selected from the Economic Development and Parks Committee;**
 - (d) 6 citizen members, one of whom to be a designate of the Labour Council of Metro Toronto and York Region; and**
 - (e) the Commissioner of Economic Development, Culture and Tourism or his designate as an ex-officio non-voting member;**
- (2) the Shareholder Direction attached to the May 1, 2002, report as Attachment No. 2 (revised from the shareholder direction attached to the January 17, 2002 report to incorporate an additional area of expertise to be considered in selection of directors, namely experience in general environmental matters, as recommended by TEDCO’s Board and to delete matters addressed in TEDCO Arm’s Length Agreement II) be**

- approved with appropriate amendments to the clauses regarding the composition of the Board of Directors as decided by Council;**
- (3) the Agreement Amending TEDCO Arm's Length Agreement (II) attached to the May 1, 2002, report as Attachment No. 3 be approved, the full agreement as amended attached to this report as Attachment No. 4;**
 - (4) TEDCO be designated as the City's redevelopment agency with authority to explore, pilot and implement incentives and redevelopment tools on behalf of the City as permitted by the Province of Ontario;**
 - (5) as part of the City's strategy for aligning Program Operating Boards to the relevant City Departments, the Board of Directors of TEDCO be functionally aligned with the Economic Development, Culture and Tourism Department and report to the Economic Development and Parks Committee through that Department;**
 - (6) the amending By-law No. 9 of the City of Toronto Economic Development Corporation, authorizing Council to determine the number of directors of TEDCO, as presented in Appendix II of the January 17, 2002, report be approved;**
 - (7) TEDCO's Articles of Incorporation be amended to read: "The minimum number of directors be five and the maximum number of directors be the number of directors approved by Council";**
 - (8) TEDCO be directed to comply with the Reporting and Communications Protocol for Waterfront Revitalization, as appropriate to the mandate of TEDCO as an arms length corporation, and this report be forwarded for information to the Waterfront Reference Group through the Executive Lead for the Waterfront;**
 - (9) the citizen members be selected as follows:**
 - (a) the Labour Council of Metro Toronto and York Region be requested to nominate one director;**
 - (b) the Toronto Board of Trade be requested to nominate one director;**
 - (c) the Commissioner of Economic Development, Culture and Tourism engage a search consultant to assist in recruiting the remaining citizen members in accordance with the qualifications as set out in the Shareholder Direction and that funding for the consultant be paid by TEDCO; and**
 - (d) the Mayor, two members of Council (one of which is a member of the Board of TEDCO and recommended by the Board), the Chief Administrative Officer and the Commissioner Economic Development, Culture and Tourism form a Selection Committee to recommend to Council the citizen slate of directors, including the recommended Chair of the Board ; and**

(10) the appropriate City Officials and the Board of Directors of TEDCO be authorized and directed to take the necessary action to give effect thereto.

The Policy and Finance Committee reports, for the information of Council, having requested the Chief Administrative Officer to:

- (1) submit a report directly to Council for its meeting scheduled to be held on June 18, 2002, outlining the implications of the foregoing Committee recommendations; and
- (2) submit a report to the Budget Advisory Committee, during the 2003 budget deliberations, on TEDCO's contribution to the Toronto Port Authority's subsidy and recommended increases to it.

The Policy and Finance Committee submits the following joint report (May 1, 2002) from the Chief Administrative Officer and the Commissioner of Economic Development, Culture and Tourism:

Purpose:

- (1) to report back comments from TEDCO's Board of Directors on January 17, 2002, joint report from the Chief Administrative Officer and Commissioner of Economic Development, Culture and Tourism entitled "City of Toronto Economic Development Corporation (TEDCO)" which was referred to the Board for comment by the Policy and Finance Committee on January 31, 2002;
- (2) to bring forward the amended TEDCO Arm's Length Agreement and Shareholder Direction resulting from the governance structure changes proposed in the January 17, 2002, report; and
- (3) to recommend a process for recruiting citizen appointees to the TEDCO Board of Directors.

Financial Implications and Impact Statement:

There are no financial implications resulting from the adoption of this report.

Recommendations:

It is recommended that:

- (1) Council consider the recommendations of the TEDCO Board of Directors attached as Attachment No. 1 to determine whether amendments should be made to the recommendation by staff in the January 17, 2002, report, which recommends 8 directors; the Board's recommendations being that the Board of Directors of TEDCO be 10 or 11 members comprised of:
 - (a) the Mayor or his designate (same as staff report);

- (b) the Chair of the City's Economic Development and Parks Committee (same as staff report);
 - (c) either one or two more members of Council at-large, such number to be decided by City Council (in addition to staff recommended membership);
 - (d) 6 citizen members, one of whom to be a designate of the Labour Council of Metro Toronto and York Region (one more than staff recommendation); and
 - (e) the Commissioner of Economic Development, Culture and Tourism or his designate as an ex-officio non-voting member (same as staff recommendation).
- (2) the Shareholder Direction attached to this report as Attachment No. 2 (revised from the shareholder direction attached to January 17, 2002 report to incorporate an additional area of expertise to be considered in selection of directors, namely experience in general environmental matters, as recommended by TEDCO's Board and to delete matters addressed in TEDCO Arm's Length Agreement II) be approved with appropriate amendments to the clauses regarding the composition of the Board of Directors as decided by Council;
- (3) the Agreement Amending TEDCO Arm's Length Agreement (II) attached to this report as Attachment No. 3 be approved, the full agreement as amended attached to this report as Attachment No. 4;
- (4) Recommendations Nos. 1, 2, 5, 6, and 8 from the January 17, 2002, joint Chief Administrative Officer and the Commissioner of Economic Development, Culture and Tourism report, be brought forward for approval (except that if Council in considering recommendations from the TEDCO board determines that there should be 11 directors, the maximum permitted number of directors in recommendation (6) should be changed from ten to eleven), those recommendations being:
- “(1) TEDCO be designated as the City's redevelopment agency with authority to explore, pilot and implement incentives and redevelopment tools on behalf of the City as permitted by the Province of Ontario;
 - (2) as part of the City's strategy for aligning Program Operating Boards to the relevant City Departments, the Board of Directors of TEDCO be functionally aligned with the Economic Development, Culture and Tourism Department and report to the Economic Development and Parks Committee through that Department;
 - (5) the amending By-law No. 9 of the City of Toronto Economic Development Corporation, authorizing Council to determine the number of directors of TEDCO, as presented in Appendix II of the January 17th report be approved;

- (6) TEDCO's Articles of Incorporation be amended to read: "The minimum number of directors be five and the maximum number of directors be ten" – with appropriate amendment to the maximum number of directors if Council approves the composition of the Board recommended by TEDCO's current Board of Directors;
 - (8) TEDCO be directed to comply with the Reporting and Communications Protocol for Waterfront Revitalization, and this report be forwarded for information to the Waterfront Reference Group through the Executive Lead for the Waterfront."
- (5) the citizen members be selected as follows:
- (a) the Labour Council of Metro Toronto and York Region be requested to nominate one director;
 - (b) the Toronto Board of Trade be requested to nominate one director;
 - (c) the Commissioner of Economic Development, Culture and Tourism engage a search consultant to assist in recruiting the remaining citizen members in accordance with the qualifications as set out in the Shareholder Direction and that funding for the consultant be paid by TEDCO; and
 - (d) the Mayor, two members of Council (one of which is a member of the Board of TEDCO and recommended by the Board), the Chief Administrative Officer and the Commissioner Economic Development, Culture and Tourism form a Selection Committee to recommend to Council the citizen slate of directors, including the recommended Chair of the Board ; and
- (6) the appropriate City officials and the Board of Directors of TEDCO be authorized and directed to take the necessary action to give effect thereto.

Background:

A joint report from the City's Chief Administrative Officer and Commissioner of Economic Development, Culture and Tourism dated January 17, 2002, was before the Policy and Finance Committee on January 31, 2002. The Committee deferred consideration of the report to afford the TEDCO Board of Directors an opportunity to review the report and submit comments to the Policy and Finance Committee and the Chief Administrative Officer was directed to:

"submit a report to the Policy and Finance Committee when this matter is again being considered, on a proposed process for the selection of citizen appointees to the City of Toronto Economic Development Corporation (TEDCO)".

The TEDCO Board of Directors met on April 12, 2002, to consider the joint report and submitted recommendations as attached to this report as Attachment No. 1. The Board recommended amendments to the composition of the Board proposed by City staff and recommended additional qualifications be added to the selection criteria outlined in the Shareholder Direction.

In the intervening period since January 31, 2002, staff also reviewed the 1994 TEDCO Arm's Length Agreement, an agreement between the former City of Toronto and TEDCO which primarily dealt with TEDCO's commitments respecting lands assumed by TEDCO from the former Toronto Harbour Commission in 1994. This agreement, however, also dealt with the reporting relationship to the City. Staff have reviewed both the Arm's Length Agreement and the originally proposed Shareholder Direction and are now proposing amendments to both which will eliminate any duplication and inconsistency between the Shareholder Direction and the TEDCO Arm's Length Agreement, and add environmental expertise to the list of qualifications to be considered in the selection of directors under the Shareholder Direction, as recommended by the current TEDCO Board.

Comments:

Composition of Board of Directors:

TEDCO's work complements the City's economic development program. Accordingly it should be aligned with the root economic development program.

Strong linkages with the City's Economic Development program, both at the operation level and strategic level, are important to ensure relative roles are clear and there is regular and effective communication with the City.

Although the value of land held by TEDCO is significant, the operation is small. Future development activity in the port lands, where most of TEDCO's current land holdings are located, is likely to be implemented through the Toronto Waterfront Development Corporation. TEDCO's attention will be turned to brownfield reclamation in other areas.

For these reasons, it was originally recommended in the January 17, 2002, report that TEDCO's Board be reduced to 8 members, so as not to be larger than the staff group that it directs.

Because of the strengthened administrative link to the City core Economic Development program and the reporting relationship to Economic Development through the Economic Development, Culture and Tourism Department, it was proposed that the number of members of Council be limited to 2 including the Mayor or designate and chair of the Economic Development and Parks Committee

The current TEDCO Board has indicated its preference to keep the Board structure close to its current structure. The following provides a comparison of the two proposals.

Original CAO/EDCT Recommendation	TEDCO Board Recommendation
1 Mayor (or designate)	1 Mayor (or designate)
1 Chair of EDPC	1 Chair of EDPC
-	1 or 2 other Councillor(s)
5 citizens with experience in law, finance, real estate and land development	5 citizens with experience in law, finance, real estate and land development, and environmental matters
-	1 member of Labour Council nominated by Labour Council
1 Commissioner of EDCT ex officio (or designate)	1 Commissioner of EDCT ex officio (or designate)

Totals:

2 Members of Council

5 citizens

1 staff

8 Total

3 or 4 Members of Council

6 citizens

1 staff

10 or 11 Total

Timing of Appointments:

The original report recommended that the new Board be in place by May 24, 2002. This timing was recommended to coincide with the changes in Councillor appointments at the mid-point of the term of Council. Due to the deferral of this report, it will no longer be possible to engage a consultant, and recruit and screen candidates by that time. It is therefore recommended that the current citizens be asked to continue serving on the Board until after the Council appointments are made.

Citizen Selection Process:

The TEDCO Board recommended that the Labour Council of Metro Toronto and York Region be requested to nominate one director of the TEDCO Board. Staff support this recommendation. In addition, staff recommend that the Toronto Board of Trade also be requested to nominate one member. Due the very specific nature of the qualifications requested and the need to select knowledgeable and experienced people to serve on the Board, it is recommended that a search consultant be engaged by the Commissioner of Economic Development, Culture and Tourism to assist in the recruitment and screening process. Funding for the search consultant should be provided by TEDCO.

It is also recommended that the Mayor, two members of Council (one of which is a member of the Board of TEDCO and recommended by the Board), the Chief Administrative Officer and the Commissioner of Economic Development, Culture and Tourism form a Selection Committee to recommend to Council the citizen slate of directors, including the recommended Chair of the Board.

Conclusion:

This report brings forward the recommendations of the Board of Directors of TEDCO regarding the composition of TEDCO's Board in future. The Mayor, two members of Council (one of which is a member on the Board of TEDCO), the Chief Administrative Officer and the Commissioner Economic Development, Culture and Tourism form a Selection Committee to recommend the citizen slate of directors, including the Chair of the Board, to Council. In addition, other recommendations contained in the original staff report of January 17, 2002, have been brought forward for approval. The TEDCO Arm's Length Agreement and the Shareholder Direction have also been amended to reflect additions and to eliminate overlaps and inconsistencies.

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Attachment No. 1

(Recommendations of the TEDCO Board of Directors)

Recommendation:

The Board of Directors of TEDCO recommends that the joint report (January 17, 2002) from the Chief Administrative Officer and the Commissioner, Economic Development, Culture and Tourism regarding the City of Toronto Economic Development Corporation (TEDCO) be adopted subject to amending Recommendation (4) to read:

- “(4) the size of the Board of Directors of TEDCO be set at 10 or 11 (see point (iii) below) and comprise:
- (i) the Mayor or his designate;
 - (ii) the Chair of the Economic Development and Parks Committee;
 - (iii) either one or two Council Members-at-large, such number to be decided by City Council;
 - (iv) 6 citizen members one of whom to be a designate of the Toronto and York Region Labour Council; and

- (v) the Commissioner of Economic Development, Culture and Tourism, or his designate, who shall serve on the Board ex officio as a non-voting member

and that the qualifications of citizen members be expanded to include experience or knowledge with respect to environmental matters and that Article 5 of the Shareholder Directive attached as Appendix I to the above-noted joint report be amended accordingly.”

Background:

At its meeting on April 12, 2002, the TEDCO Board of Directors considered the joint report (January 17, 2002) from the Chief Administrative Officer and the Commissioner, Economic Development, Culture and Tourism proposing a new board structure, reporting relationship and shareholder direction for TEDCO.

The TEDCO Board of Directors supported the recommendations of the report with the exception of Recommendation (4) and, in this regard, proposed changes with respect to the size and composition of the Board which would add either one or two Council Members-at-large and recommended that Council decide on the exact number; increase the citizen membership to include a member designated by the Toronto and York Region Labour Council; and expand the qualifications of citizen members to the Board to include experience or knowledge of environmental matters.

(Attachment 2)
Shareholder Direction
Relating to
City of Toronto Economic Development Corporation (TEDCO)

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Appendix A: Reporting and Communications Protocol for Waterfront Revitalization

WHEREAS:

- (1) Capitalised terms used in these recitals have the meanings set out in section 1;
- (2) TEDCO is a corporation existing under the OBCA;
- (3) The Shareholder is the beneficial owner of all of the issued shares of TEDCO; and
- (4) The Shareholder wishes to establish certain principles of governance relating to TEDCO.

NOW THEREFORE THIS DIRECTION WITNESSES:

Article 1
Interpretation

(1.1) Definitions

In this Direction, the following terms have the meanings set out below:

“Auditor” means the auditor of TEDCO;

“Authorized Signatory” means those individuals who are authorized to sign a certified minute of Council, or who are otherwise authorized by Council to sign written Shareholder approvals or decisions relating to TEDCO;

“Board” means the Board of Directors of TEDCO;

“Business Plan” means TEDCO’s five-year business plan and budget, prepared and submitted to the Commissioner and the CFO in accordance with Section 8.1;

“CFO” means the City’s Chief Financial Officer;

“Chair” means the Director of TEDCO appointed as chair of the Board by the Board upon nomination by the Shareholder from time to time;

“Citizen” means with respect to a Board member or a candidate for such membership an individual who is not a member of Council, and is not related to whether or not an individual is a Canadian citizen;

“City” means the City of Toronto;

“Commissioner” means the City’s Commissioner of Economic Development, Culture and Tourism and any successor officer appointed or designated as being responsible for the service areas included in that office;

“Council” means the Council of the City;

“Directors” means members of the Board;

“Economic Development Strategy” means the strategy guiding the direction of economic development for the City, as approved by Council from time to time;

“Financial Statements” means, for any particular period, audited or unaudited (as stipulated in this Direction), comprehensive financial statements of TEDCO consisting of not less than a balance sheet, a statement of income and retained earnings, a statement of changes in financial position, a report or opinion of the Auditor (in the case of audited Financial Statements) and such other statements, reports, notes and information and as are required in accordance with any applicable laws, all prepared in accordance with generally accepted accounting principles consistently applied;

“OBICA” means the *Business Corporations Act* (Ontario), as such statute may be amended or re-enacted from time to time;

“Shareholder” means the City, as owner of all issued shares of TEDCO;

“TEDCO” means the City of Toronto Economic Development Corporation, a corporation existing under the OBICA; and

“TEDCO Arm’s Length Agreement (II)” means the agreement of that name made between TEDCO and the City dated as of the 31st day of October, 1994, as amended by amending agreement made between TEDCO and the City of even date with this Shareholder Direction.

Article 2 Objectives and Principles

(2.1) Purposes

This Direction:

- (a) Subject to the Board's authority to manage or supervise the management of the business and affairs of TEDCO, provides the Board with the Shareholder's fundamental principles regarding TEDCO;
- (b) Sets out the accountability, responsibility and relationship between the Board and the Shareholder; and
- (c) Informs the residents of the City of Toronto of the Shareholder's fundamental principles regarding TEDCO.

(2.2) Shareholder Objectives

The Shareholder's objectives with its relationship with TEDCO are as follows:

- (a) TEDCO shall conform to the City's overall priorities in the spheres of business growth, job creation and economic development;
- (b) TEDCO shall utilize its assets to explore, pilot and implement incentives and redevelopment tools in the City as permitted under applicable laws;
- (c) TEDCO shall take a lead role in stimulating reinvestment in strategic areas and underutilized sites within the City; and
- (d) TEDCO shall work with investors and private partners to maximize the economic development potential of lands owned by TEDCO and lands over which TEDCO is given management responsibility.

(2.3) Principles

The following principles shall govern the Board's actions with respect to the operations of TEDCO:

- (a) TEDCO is integral to the well-being and the economic development of the City. The City directs that, in the best interests of TEDCO and the community of stakeholders whom TEDCO affects, all members of the Board shall cause TEDCO to conduct its affairs:
 - (i) on a commercially prudent basis;
 - (ii) in a manner consistent with the City's Economic Development Strategy;

- (iii) in a manner consistent with the City's objectives for Waterfront Revitalization and in compliance with Council's Reporting and Communications Protocol for Waterfront Revitalization (attached as Appendix A), as it may be amended by Council from time to time;
- (iv) in compliance with the City's Official Plan;
- (v) in a safe and environmentally responsible manner;
- (vi) in accordance with the financial performance and strategic objectives as set out in its Business Plan; and
- (vii) in accordance with governing legislation and all other applicable laws.

Article 3 Business of TEDCO

(3.1) Business Activities

Subject to the ongoing ability of TEDCO to meet the objectives of the Shareholder set out in this Direction and the ability of the Board to demonstrate the same, TEDCO may engage in any of the following business activities:

- (a) acquisition, rehabilitation and development of strategic lands in the City of Toronto in the pursuit of the objectives set out in section 2.2;
- (b) the provision, operation and improvement of sites, buildings and facilities for the establishment and carrying on of industries and of industrial operations and uses incidental thereto;
- (c) management of TEDCO-owned properties and of properties owned by the City over which TEDCO is given management responsibility; and
- (d) the making of grants or loans to any person for the carrying on of promotional activities in relation to the establishment and carrying on of industries and industrial operations and uses incidental thereto.

(3.2) Staff

TEDCO shall employ its own staff. TEDCO staff shall not be employees of the Shareholder. TEDCO is not an agency, board or commission of the Shareholder.

(3.3) Operational Decisions

Subject to the terms of this Direction, the Board shall be responsible for the management of TEDCO's assets. Without limiting the generality of the foregoing, subject to the terms of this Direction, the Board shall make all policy and operational decisions of TEDCO.

The Board shall submit TEDCO's annual Business Plan to Council, through the Commissioner and the CFO (see Section 8.1), and shall submit TEDCO's annual report to Council, through the Commissioner and the CFO (see Section 8.3).

(3.4) Act Fairly

TEDCO at all times shall carry on business in accordance with good business practices, and shall act fairly, exercise due diligence and generally act in a manner that is a model to the community.

(3.5) No Bonussing

TEDCO shall not grant bonuses in aid of any manufacturing business or other industrial or commercial enterprise.

Article 4
Operation and Control

(4.1) Board Responsibilities

The Board shall manage or supervise the management of the business and affairs of TEDCO, including the following specific matters:

- (a) establishing annual and long-range strategies and plans consistent with the provisions of this Direction;
- (b) establishing and maintaining appropriate reserves consistent with sound financial principles and the financial performance objectives provided for herein;
- (c) selecting bankers and other financial institutions and establishing all banking authorities;
- (d) appointing the officers of TEDCO; and
- (e) managing and directing all labour and employee relations matters.

(4.2) Matters Requiring Shareholder Approval

Notwithstanding section 4.1, the Board shall obtain the Shareholder's approval in respect of any matters requiring approval of the Shareholder pursuant to this Direction, the OBCA, the TEDCO Arm's Length Agreement (II) or otherwise, all as more particularly described in Article 7.

Article 5
Board of Directors

(5.1) Information Regarding Composition of the Board

As background information for members of the Board and for no other purpose, and without restricting the rights of the Shareholder, this article provides Directors with information regarding composition of the Board.

(5.2) Qualifications of Directors

In naming Directors to the Board, the Shareholder will give due consideration to the qualifications of candidates, including:

- (a) Experience or knowledge with respect to:
 - (i) legal aspects of real-estate development, property management and brownfields redevelopment;
 - (ii) environmental matters generally;
 - (iii) business and financial management;
 - (iv) commercial real estate; and
 - (v) land development;
- (b) commercial sensitivity and acumen;
- (c) independence of judgement; and
- (d) personal integrity.

(5.3) Composition of the Board

- (a) The Board will be composed of seven (7) voting Directors, comprised of five (5) Citizens and two (2) members of Council. In addition, the Commissioner or his designate will serve on the Board ex officio as a non-voting Director.
- (b) Officers of TEDCO shall not be Directors.

Note to Draft: Council may decide to amend the composition of the Board after consideration of suggestions made by TEDCO board members as described in the accompanying staff report.

(5.4) Vacancies

If a member of the Board ceases to be a Director for any reason, the Shareholder will fill the vacancy created thereby as soon as reasonably possible.

(5.5) Term of Appointments

Subject to the provisions of section 5.6:

- (a) the term of office for a Director who is not a member of Council will be three years or until his or her successor is appointed;
- (b) subject to subsection (c), the term of office for a Director who is a member of Council will be eighteen months or until his or her successor is appointed;
- (c) the term of office of the first Directors who are members of Council and who are appointed under this Shareholder Direction will expire on November 30, 2003;
- (d) any Director may stand for re-appointment to the Board at the expiry of his or her term; and
- (e) any Director appointed in his or her capacity as a member of Council will cease to be a Director if he or she ceases to be a member of Council.

(5.6) Applicable Laws

Nothing in section 5.5 or any other section of this Direction restricts, amends or purports to restrict or amend any provisions in TEDCO's articles or by-laws, the OBCA, other applicable laws, or elsewhere regarding removal of one or more Directors from the Board or resignation or deemed resignation of one or more Directors from the Board.

(5.7) Remuneration

The remuneration of the members of the Board for their services as Directors will be as authorized by Council from time to time. Members of Council and City employees will receive no additional remuneration as Directors. TEDCO will reimburse Directors for all reasonable expenses incurred during the conduct of TEDCO's business.

(5.8) Notices

The Board shall ensure that at the same time as copies of all notices of Board meetings and all agendas for Board meetings are sent to Directors, copies of such documents shall be sent to the CFO or as the CFO otherwise directs by notice in writing. The CFO or his designate shall be entitled to attend all Board meetings. The Board also shall ensure that copies of all minutes of all Board meetings are sent to the CFO or as the CFO otherwise directs within 15 days after approval by the Board.

Article 6 Conflict of Interest and Confidentiality

(6.1) Conflict of Interest Policy

The Directors shall strictly abide by the requirements of the OBCA and any TEDCO policies in respect of conflicts of interest, including any requirements for disclosure and abstention from voting.

(6.2) Confidentiality

- (a) The Shareholder and the Directors and officers of TEDCO shall ensure that no confidential information of the Shareholder or TEDCO is disclosed or otherwise made available to any person, except to the extent that:
 - (i) disclosure to the Shareholder's or TEDCO's employees or agents is necessary for the performance of any of their duties and obligations under this Direction; and
 - (ii) disclosure is required in the course of judicial proceedings or pursuant to law, or the confidential information becomes part of the public domain (other than through unauthorized disclosure by any party).
- (b) TEDCO shall abide by all provisions of the *Municipal Freedom of Information and Protection of Privacy Act* that apply to TEDCO.

Article 7 Shareholder Matters

(7.1) Matters Requiring Shareholder Approval

Without the approval of the Shareholder TEDCO shall not:

- (a) take any action, make any change or enter into any transaction which requires Shareholder approval pursuant to the OBCA, as more particularly described in section 7.2;
- (b) acquire, through purchase or lease, land outside of the boundaries of the municipality;
- (c) sell or otherwise dispose of land owned by TEDCO, or enter into any lease or other agreement that has the effect of granting the use of or right in land directly or by entitlement to renewal for a period of twenty-one (21) years or more;
- (d) appoint new directors to fill vacant positions on the Board;
- (e) pass or amend any by-law or by-laws with respect to the term of office Directors;

- (f) pass any by-law or by-laws that are inconsistent with this Direction; or
- (g) alter the corporate structure of TEDCO in any way, including establishing subsidiaries.

(7.2) Matters Requiring Shareholder Approval under the OBCA

In accordance with the provisions of the OBCA, TEDCO shall not, without the approval of the Shareholder:

- (a) amend its articles of incorporation;
- (b) amalgamate, apply to continue as a body corporate under the laws of another jurisdiction, merge, consolidate or reorganise, or approve or effect any plan of arrangement, in each case whether statutory or otherwise;
- (c) take or institute proceedings for any winding up, arrangement, reorganization or dissolution;
- (d) create new classes of shares or reorganize, consolidate, subdivide or otherwise change its outstanding securities;
- (e) sell or otherwise dispose of, by conveyance, transfer, lease, sale and leaseback, or other transaction, all or substantially all of its assets or undertaking;
- (f) change the Auditor;
- (g) make any change to the number of directors comprising the Board; or
- (h) enter into any other transaction or take any other action that requires shareholder approval pursuant to the OBCA.

(7.3) Approvals and Decisions of the Shareholder

Where Shareholder approvals or decisions are required under the provisions of this Direction or otherwise:

- (a) it is the responsibility of the Board to obtain Shareholder approvals and decisions and those approvals and decisions must be in writing and signed by an Authorized Signatory;
- (b) the Board shall give the Shareholder reasonable advance notice in writing of the need for decision or approval and shall provide such information as reasonably is necessary for the Shareholder to make an informed decision regarding the subject matter requiring approval or decision; and

- (c) the Board shall submit such requests to the Shareholder through the Commissioner.

Article 8 Reporting

(8.1) Business Plan

Not later than 60 days prior to the end of each fiscal year of TEDCO, the Board shall approve and submit to the Commissioner and the CFO a Business Plan for the next five fiscal years. The Board shall prepare the Business Plan on a basis consistent with the Business Plan then in effect. TEDCO shall carry on its business and operations in accordance with the Business Plan. The Business Plan shall include, in respect of the period covered in the plan, all of the following:

- (a) The strategic direction and any new business initiatives that TEDCO will undertake for each of its business units, including an assessment of current operations, an analysis of current and future opportunities and challenges, identification of goals, objectives and key priorities, and an action plan for the five-year period including key performance measures and trends.
- (b) An operating and capital expenditure budget for the next fiscal year and an operating and capital expenditure projection for each of the four remaining fiscal years in the planning period, including the resources necessary to implement the Business Plan. The operating budget shall include a breakdown by business unit of all proposed expenditures and revenues for the year ahead and estimated/actual expenses and revenues for the current and previous years. The capital budget projections shall include total project costs, financing assumptions and impacts on operating costs.
- (c) The projected annual revenues and profits for each fiscal year during the term of the Business Plan, with a year to year comparison.
- (d) The projected annual withdrawals, contributions and balances of reserves and reserve funds.
- (e) Pro forma consolidated and unconsolidated Financial Statements.
- (f) An acquisition budget setting out the nature and type of capital expenditures proposed to be made in the following fiscal year, supported by explanations, notes and information upon which the budget is based.
- (g) Any material variances in the projected ability of any business activity to meet or continue to meet the financial or economic development objectives of the Shareholder.
- (h) Any material variances from the Business Plan then in effect.

- (i) A resources plan that includes human resources, information and other technology and other assets.

(8.2) Changes to Business Plan in First Year

If the Board makes any material changes to the Business Plan during the first year of that plan, the Board shall advise the Commissioner and the CFO of those changes in writing within 30 days after the changes are made.

(8.3) Annual Report and Financial Statements

Within 120 days after the end of each fiscal year of TEDCO, the Board shall prepare an annual report and submit it to Council, through the Commissioner and the CFO. This report shall include:

- (a) audited consolidated and unconsolidated Financial Statements;
- (b) a performance report for the preceding calendar year that includes a summary of financial performance, the performance measure indicators, and a quantitative and qualitative review of TEDCO's previous year's activities by business unit;
- (c) a capital budget performance report for the preceding calendar year showing a summary of actual expenditures and a variance report with explanations for variances;
- (d) such explanations, notes and information as are required to explain and account for any variances between the actual results from operations and the budgeted amounts set forth in the Business Plan, and any material variances in the projected ability of any business activity to meet or continue to meet the financial and economic development objectives of the Shareholder;
- (e) information that is likely to materially affect the Shareholder's financial or economic development objectives;
- (f) information regarding any matter, occurrence or other event which is a material breach of the requirements of this Direction or a material breach or violation of any law, including major findings of internal and other audits;
- (g) information regarding the performance of TEDCO which is sufficiently detailed to enable the Shareholder to determine that this Shareholder Direction has been respected; and
- (h) such additional information as the Shareholder may specify from time to time.

Following submission of each report, the Directors shall make themselves available, if requested, to meet with Council or the appropriate committee of Council, or both, to discuss the report.

(8.4) Access to Records and Information

The Commissioner or his designate or the CFO or his designate, and any other duly appointed representatives of the Shareholder, as approved by Council from time to time, shall have unrestricted access to the books and records of TEDCO during normal business hours. Such representatives shall treat all confidential information of TEDCO with the same level of care and confidentiality as any confidential information of the Shareholder.

(8.5) Information to Shareholder on Request

On written request from the Clerk of the Shareholder, acting on the direction of Council, or on written request from the Commissioner or the CFO, the Directors shall provide such information relating to the operations, business and affairs of TEDCO as is requested. The Directors shall provide the requested information within 30 days after TEDCO receives the request, provided however that if the information is required by the Shareholder on an urgent basis, the Directors shall use their best efforts to provide such information within five (5) business days of receipt of the request, or within such other time frame as may be specified.

(8.6) Material Information

The Board shall advise the CFO or the Commissioner immediately of any legal claim or action made against TEDCO, any pending or threatened legal claim or action against TEDCO of which the Board is aware, or any incident that reasonably could affect TEDCO's ability to conduct its affairs or meet its legal obligations under agreements to which it is a party, or could become a matter of public debate.

(8.7) Audit

(a) The Auditor will be appointed by the Shareholder in accordance with the OBCA. TEDCO shall determine the remuneration for the Auditor. The annual consolidated and unconsolidated Financial Statements will be audited by the Auditor. All other audit and review requirements, including internal audits, will be the sole responsibility of the Board.

(b) The City Auditor may audit all or any portion of TEDCO's records at any time.

(8.8) Accounting

TEDCO, in consultation with the Auditor, shall adopt and use the accounting policies and procedures which may be approved by the Board from time to time and all such policies and procedures shall be in accordance with generally accepted accounting principles and applicable regulatory requirements.

Article 9
Financial Performance

(9.1) Financial Performance Targets

The Board shall use its best efforts to ensure that TEDCO meets the financial performance targets set out in each year's Business Plan.

(9.2) Financial and Administrative Procedures

TEDCO shall establish and maintain financial and administrative procedures which ensure the accurate recording and reporting of its operations and which maintain adequate administrative and financial controls.

Article 10
General

(10.1) Amendments to Direction

The Shareholder in its sole discretion may amend this Direction on written notice to the Board. The amendments shall come into effect six weeks after the Shareholder gives the Board written notice of the amendments, or on such other date as the Shareholder in its sole discretion may specify.

Dated at Toronto on the day of 2002.

CITY OF TORONTO

By: _____
Chief Financial Officer and Treasurer

By: _____
City Clerk

Attachments:

Appendix A - Reporting and Communications Protocol for Waterfront Revitalization

Appendix A

(Shareholder Direction, City of Toronto Economic Development Corporation)

Reporting and Communications Protocol for Waterfront Revitalization

- (1) All Departments, Agencies, Boards and Commissions (DABCs) provide the Waterfront Reference Group, through the Waterfront Project Secretariat, with at least two weeks advance notice of all communications, reports, contracts, activities or other initiatives that directly or indirectly impact waterfront revitalization.
- (2) All DABCs that manage or hold land or property in the area addressed by the Central Waterfront Part II Plan be required to report to the Waterfront Reference Group, through the Waterfront Project Secretariat, for approval of any lease renewals extending beyond a single year or of any proposed sales.
- (3) Similarly, the above DABCs are asked to report to the Waterfront Reference Group on any development proposals or directions that they are entertaining for their sites with a duration of more than one year.
- (4) All Official Plan and rezoning applications in the area of the Central Waterfront be forwarded from the appropriate Community Council to the Waterfront Reference Group, with a covering report from the Executive Lead for the Waterfront clarifying the extent to which the proposed action impacts waterfront revitalization, if at all.
- (5) All public communications, events, and reports (including requests for proposals and requests for expressions of interest) directly or indirectly related to waterfront renewal be coordinated through the Waterfront Project Secretariat to ensure consistency with directions endorsed by the three levels of government and the TWRC for Waterfront Revitalization and the effective management of issues and resources.
- (6) Finally, the Commissioner of Urban Development Services as the Executive Lead for the Waterfront, or her designate, will review all communications resulting from implementation of this Protocol to determine if they are minor in nature and consistent with directions of the Central Waterfront Part II Plan and the Toronto Waterfront Revitalization Corporation and if a report is required to the Waterfront Reference Group.

(Attachment No. 3)
Agreement Amending TEDCO Arm's Length Agreement (II)

THIS AGREEMENT made as of the _____ day of _____, 2002

B E T W E E N:

CITY OF TORONTO ECONOMIC DEVELOPMENT CORPORATION

(hereinafter called "TEDCO")

OF THE FIRST PART

- and -

CITY OF TORONTO

(hereinafter called the "City")

OF THE SECOND PART

WHEREAS:

- A. The City and TEDCO entered into an agreement entitled TEDCO Arm's Length Agreement (II) made as of October 31, 1994;
- B. The City is issuing a shareholder direction to TEDCO which addresses some of the matters addressed by the TEDCO Arm's Length Agreement (II) as well as certain additional matters;
- C. The parties wish to amend the provisions of the TEDCO Arm's Length Agreement (II) to delete provisions which are addressed in the shareholder direction; and
- D. At its meeting of _____, Council of the City (adopting Policy and Finance Committee Report No. __, Clause __) authorized the entering into of an amending agreement with TEDCO.

IN CONSIDERATION of the foregoing, the mutual covenants contained in this Amending Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and TEDCO covenant and agree as follows:

Article 1 - Definitions and Interpretation

1. Definitions

In this Agreement, unless inconsistent with the subject matter or context:

- (a) “1994 Agreement” means the agreement made between TEDCO and the City dated as of the 31st day of October, 1994 and called TEDCO Arm’s Length Agreement (II);
- (b) “City Council” means Council of the City;
- (c) “Lands” has the meaning specified in Recital F of the 1994 Agreement; and
- (d) “THC” means the Toronto Harbour Commissioners and its successor, the Toronto Port Authority.

1. Sections and Headings

The division of this Agreement in articles and sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms “this Agreement”, “hereof” and similar expressions refer to this agreement and not to any particular article, section or other portion and include any supplemental or amending agreements or instruments. Unless inconsistent with the subject matter or context, references to articles and sections are to articles and sections of this Agreement.

1. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable in Ontario.

Article 2 - Amendments

2.1 Amendments to 1994 Agreement

The parties hereby make the following amendments to the 1994 Agreement:

- (a) Paragraph 1.01 of the 1994 Agreement is deleted.
- (b) Paragraph 1.02 of the 1994 Agreement is deleted and the following is substituted therefor:

“When TEDCO submits its annual capital and operating budgets to the City pursuant to any shareholder direction from its shareholder, those budgets shall include a separate breakdown of:

- (a) expenses and revenues as they relate to the Lands, and

- (b) reserves and reserve funds, and contributions to and expenditures from reserves and reserve funds, as they relate to the Lands,
- for the current year, with comparisons to the current year projected annuals and to the previous year actuals.”
- (c) Paragraph 1.03 of the 1994 Agreement is deleted and the following is substituted therefor:
- “1.03 After providing for operating expenses for all of TEDCO’s operations, works, improvements and programs, and for contributions to reserves or reserve funds, and for the performance of other duties of TEDCO including its obligation to pay subsidies directly to the THC or indirectly to the THC through the City, surplus monies shall be used or held for the purposes of TEDCO, in accordance with its Business Plan.”
- (d) Paragraph 2.04 is amended by replacing the words “City Auditor” with the words “City’s Chief Financial Officer”.
- (e) Paragraph 2.06 deleted.
- (f) Paragraph 2.09 is deleted.
- (g) Paragraph 2.10 is deleted and the following is substituted therefor:
- “2.10 TEDCO shall not sell or otherwise dispose of land owned by TEDCO, or enter into any lease or other agreement that has the effect of granting the use of or right in TEDCO-owned land directly or by entitlement to renewal for a period of twenty-one (21) years or more, without the prior written approval of the City.”
- (h) Paragraph 2.11 is deleted.
- (i) Paragraph 2.12 is deleted.
- (j) Paragraph 2.13 is amended by deleting everything after “by THC” in the fourth line in that paragraph, and adding a period after “by THC”.
- (k) Paragraph 2.15 is amended by adding the words: “which have the effect of impairing TEDCO’s ability to pay the subsidies to the THC.” after “management activities” at the end of that section.
- (l) Paragraph 2.17 is deleted and replaced with the following:
- “(a) TEDCO at its expense shall maintain and keep in force such policies of insurance as the City’s Manager of Insurance and Risk Management or such other person as may be designated by the CFO (“Insurance and Risk Manager”) may request. Policies to be maintained shall include but not be limited to comprehensive commercial liability insurance covering bodily and personal injury and property

damage, and crime and fidelity insurance. All policies shall be in a form and have minimum limits satisfactory to the Insurance and Risk Manager and, if he or she so requests, shall name the City as an additional insured.

- (b) TEDCO, on request by the Insurance and Risk Manager, shall furnish him or her with certificates or other proof of insurance in a form satisfactory to the Insurance and Risk Manager establishing the existence or continuation of all policies required to be maintained.”
- (m) Paragraph 4.03 is amended as follows:
 - (a) By changing the City’s Fax No. to “(416) 392-2980”.
 - (b) By amending TEDCO’s address to read:

“Metro Hall, 7th Floor
55 John Street
Toronto, Ontario M5V 3C6

Attention: President
Fax No. (416) 214-4660”.

Article 3 - General

3.1 1994 Agreement Continues in Effect

Except as amended in accordance with section 2.1 of this Amending Agreement, the provisions of the 1994 Agreement continue in full force and effect.

3.2 Numbering

Notwithstanding the foregoing additions and deletions, the numbering in the 1994 Agreement remains the same. Where paragraphs have been deleted and not replaced, the word “DELETED” is deemed to have been inserted beside the paragraph number.

3.3 Office Consolidation of 1994 Agreement, as Amended by this Agreement

For purposes of convenience, a consolidation of the 1994 Agreement, as amended by this Agreement, is attached as Schedule A, and a “black-line” version comparing the 1994 Agreement, as hereby amended with the 1994 Agreement is attached as Schedule B. In the event of any discrepancy or inconsistency between the provisions in the main body of this Amending Agreement and Schedules A and B, the provisions of the main body of this Amending Agreement shall prevail.

3.4 Notices

Any demand, notice or report to be given or made pursuant to this Agreement shall be given or made in accordance with the notice provisions in the 1994 Agreement, as amended by the provisions of section 2.1(m) of this Agreement.

3.5 Waiver

No action or failure to act by the City or the THC will constitute a waiver of any right afforded to either the THC or the City, as the case may be, under this Amending Agreement or the 1994 Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence to any breach thereunder, except as may be specifically agreed in writing.

3.6 Severability

The invalidity or unenforceability of any provision or part of any provision of this Amending Agreement or any covenant shall not affect the validity or enforceability of any other provision or part provision or covenant, and any such invalid provision or part thereof or covenant shall be deemed to be severable.

3.7 No Agency

The parties confirm that TEDCO is not now and never has been an agent, partner or joint venture partner of the City. TEDCO and the City are and continue to be independent of each other.

3.8 Further Assurances

The City and TEDCO agree to do such things, attend such meetings and execute such further documents and assurances as may be deemed necessary or advisable from time to time in order to carry out the terms and conditions of this Agreement in accordance with its true intent.

3.9 Successors

This Agreement and everything contained in this Agreement shall enure to the benefit of and be binding upon TEDCO and the City and their respective successors.

IN WITNESS WHEREOF the parties hereto have executed this Agreement by affixing their corporate seals under the hands of their respective officers duly authorized on that behalf.

CITY OF TORONTO

Name: Joseph Pennachetti
Title: Chief Financial Officer and Treasurer

c/s

Name: Ulli Watkiss
Title: City Clerk

CITY OF TORONTO ECONOMIC
DEVELOPMENT CORPORATION

Name:
Title:

c/s

Name:
Title:

Authorized by Clause No. ... Report
No.....of theCommittee
adopted by the Council of the City of
Toronto on theday of
....., 2002.

Approved as to Form

Anna Kinastowski
City Solicitor

Attachment No. 4

This is an office consolidation
of the Agreement as revised
and will not be executed.

Revised with explanatory notes re revisions

November 29, 1994, Amended , 2002

TEDCO ARM'S LENGTH AGREEMENT (II)

THIS AGREEMENT made as of this 31st day of October, 1994 as amended by Amending
Agreement made as of the day of , 2002

B E T W E E N:

CITY OF TORONTO ECONOMIC DEVFLOPMENT CORPORATION
(hereinafter referred to as "TEDCO")

OF THE FIRST PART

- and -

THE CORPORATION OF THE CITY OF TORONTO
(hereinafter referred to as the "City")

OF THE SECOND PART

WHEREAS:

- A. TEDCO was incorporated on March 24, 1986 under the Business Corporations Act with the following purposes:
- (a) the provision, operation and improvement of sites, buildings and facilities for; and
 - (b) the making of grants or loans to any person upon such terms as may be agreed between TEDCO and the person for the carrying on of promotional activities in relation to,
- the establishment and carrying on of industries and of industrial operations and uses incidental thereto;
- B. TEDCO is a wholly owned subsidiary of the City, accountable to the City but operating at arm's length from the City, with its Board of Directors appointed by the City and TEDCO serves as the City's entrepreneurial arm to facilitate business growth, job creation and economic development in the City of Toronto;
- C. By an agreement of purchase and sale endorsed by City Council, (the "Purchase Agreement") TEDCO agreed to acquire certain lands from the Toronto Harbour Commissioners ("THC") on certain terms and conditions;
- D. City Council at its meeting of April 18 and 19, 1994 adopted Clause 5 of Economic Development Committee Report No. 4, being a report from the Chair of the THC recommending the restructuring of THC operations (the "Restructuring Plan"), based in part on transfer to TEDCO of the Lands and providing that the City would ensure that the THC receive an annual operating subsidy;
- E. City Council at its meeting of October 11, 1994 adopted Clause 61 of Executive Committee Report No. 23 being a joint report (the "October Report") from the Acting Commissioner of City Property, the President of TEDCO, the Medical Officer of Health and the Commissioner of Public Works and the Environment recommending the transfer of additional parcels of land not required for the restructured THC operations to TEDCO and to the City, provided that the City ensured that the THC continued to receive an annual subsidy sufficient to support the restructured THC operations and provided TEDCO agreed to provide the City with \$2,390,000.00 in 1995 and an annual amount to be determined thereafter according to s.1.02 below toward the annual subsidy requested by the City to support the restructured THC operations;
- F. The Parties acknowledge and agree that the lands acquired or to be acquired or managed by TEDCO from THC pursuant to the Purchase Agreement and pursuant to

the October Report (the "Lands") with the approval of TEDCO's sole shareholder, the City, provide a major role for TEDCO to play in the industrial/commercial development of the City and that in undertaking that role TEDCO must remain accountable to its sole shareholder, the City, for its operations and for the manner in which TEDCO lands are developed, and TEDCO revenues are dealt with;

- G. The Parties wish to enter into this Agreement to clarify their mutual understanding of the responsibilities, reporting obligations and authorities of TEDCO and the City and to ensure that TEDCO fulfils its mandate as outlined above;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual premises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree with each other as follows:

1.00 City/TEDCO Budget Process

1.01 [DELETED]

Note: S. 1.01 was deleted because covered, in slightly different way, in s. 8.1 of Shareholder Direction. S. 8.1 of Shareholder Direction requires TEDCO to submit a 5-year Business Plan (including operating and capital budgets and acquisition budget for next year) to City's Commissioner of Economic Development and CFO not later than 60 days before end of TEDCO fiscal year. In the Shareholder Direction there is no requirement for Council to approve Business Plan or budget.

1.02 When TEDCO submits its annual capital and operating budgets to the City pursuant to the Shareholder Direction, those budgets shall include a separate breakdown of:

- (a) expenses and revenues as they relate to the Lands, and
- (b) reserves and reserve funds, and contributions to and expenditures from reserves and reserve funds, as they relate to the Lands,

for the current year, with comparisons to the current year projected annuals and to the previous year actuals.

Note: Revised s. 1.02 sets out a slightly different description of breakdown of operating and capital budgets to better reflect the way the City would like to see the budget be set out. No substantive change in the type of information that must be provided to City.

1.03 After providing for operating expenses for all of TEDCO's operations, works, improvements and programs, and for contributions to reserves or reserve funds, and for the performance of other duties of TEDCO including its obligation to pay subsidies directly to the THC or indirectly to the THC through the City, surplus monies shall be used or held for the purposes of TEDCO, in accordance with its Business Plan.

Note: In s. 1.03 of 1994 Agreement, TEDCO was required to use surplus monies (revenues less expenditures including subsidies TEDCO is required to pay directly or indirectly to THC) as City

Council directs. S. 1.03 has been substantially revised. Under revised s. 1.03 TEDCO is to use or hold surplus revenues for purposes of TEDCO, in accordance with its Business Plan.

1.04 (a) Without limiting the generality of the foregoing, TEDCO acknowledges and agrees that THC has agreed to transfer the Lands to TEDCO upon receiving assurances from the City that THC shall receive an annual subsidy from the City to the extent necessary for efficient, economical and effective THC operations, and that the City and THC have entered into an agreement of even date herewith to give effect to those assurances.

(b) TEDCO and the City acknowledge certain of the Lands to be transferred to the City pursuant to the October Report and known as the "Municipal Sites" will generate approximately \$385,000.00 for 1995 to be available to the City for the subsidy payments to THC.

(c) TEDCO further acknowledges and agrees that except as stated in 1.04(b), the City has no independent source of income from which to pay the THC any subsidy, and that it is the expectation of the City, with which TEDCO agrees, that subject to 1.04(b) any subsidy to be granted to THC in any year shall be paid by TEDCO from revenues generated through operations on, or the sale or leasing of, the Lands. Payments shall be made in equal monthly instalments in the manner determined in each year by City Council, provided however that where a subsidy for any year has not yet been determined by City Council, there shall be monthly instalments paid from January on, based on the level of the subsidy paid for the previous year, with an appropriate adjustment when the current year's subsidy has been determined by City Council.

1.05 Notwithstanding paragraph 1.04, the parties hereby agree that the 1995 operating subsidy to be paid to THC in 1995 by TEDCO shall be \$2,390,000.00 (subject to adjustment as set forth below), through revenues generated from the lands transferred to TEDCO pursuant to the April Report, and the Municipal Industrial Development Sites, as that term is defined in the October Report. In the THC Subsidy Agreement of even date herewith, THC has acknowledged and agreed that the portion of the subsidy to be paid by TEDCO based on projected revenues from Municipal Industrial Development Sites is subject to adjustment due to outstanding issues relating to two of the properties. In the event that the transfer of any of the Municipal Sites or the Municipal Industrial Development Sites does not occur before December 31, 1994, and as a result the projected revenues to the City and TEDCO described in the October Report are reduced, THC has acknowledged and agreed that there will be a corresponding reduction to the 1995 subsidy to be paid to the THC. It is acknowledged that the reduction in the 1995 subsidy to be paid to THC mentioned in the previous sentence due to a delay in transfer of the title to certain parcels of land will be offset for THC by the continuing availability to THC of the revenue from such parcels of land. The subsidy amount to be paid by TEDCO pursuant to this paragraph 1.05 shall be paid in equal monthly instalments by TEDCO to THC, beginning on January 5, 1995, and thereafter on the first business day of each month

2.00 TEDCO'S Responsibilities

2.01 TEDCO shall determine its priorities, policies and practices in a manner consistent with its articles, by-laws, legislated mandate, and directions given by City Council from time to time,

and advise City Council 30 days in advance of any public announcement of major changes to its established priorities, policies or practices and shall advise City Council of any major new initiatives being undertaken by other levels of government of which TEDCO is made aware which may have an impact on TEDCO's established priorities, policies or practices.

2.02 In recognition of the many demands placed on the City by individuals, organizations and corporations for subsidies, grants and other forms of support, as well as the City's own organizational and service needs, all of which result in a constant strain on the City's available funds, TEDCO covenants and agrees that in establishing and implementing its annual budget submission and its priorities, policies and practices it will continually strive to seek ways to maximize revenues by exploring new and/or increased sources of income and to continually strive to minimize the expenses it incurs in its operations, with a view to operating at an optimum level of efficiency, economy and effectiveness.

2.03 TEDCO shall inform City Council no less than 30 days in advance of any proposed significant organizational changes, other than those specifically contemplated in this Agreement.

2.04 TEDCO shall provide the City's Chief Financial Officer with signed copies of minutes of all Board meetings as soon as reasonably possible after their approval by the Board.

2.05 City Council may, acting reasonably, request from TEDCO information regarding TEDCO's organization, functions, operations and programs, and TEDCO shall submit the requested information to the City Council within a reasonable period of time.

2.06 [DELETED]

Note: S. 2.06 was deleted because these matters now are covered in s. 8.3 of Shareholder Direction. Under s. 8.3 of Shareholder Direction, the outside date for TEDCO to provide financial statements will be 4 (rather than 6) months after fiscal year end. TEDCO's auditor will not be the City Auditor, but rather will be TEDCO's own auditor, who will be appointed by the City (as TEDCO's shareholder) in accordance with the provisions of the *Ontario Business Corporations Act*.

2.07 TEDCO shall notify City Council, in writing, immediately upon any of the following acts occurring:

- (a) the bankruptcy or insolvency of TEDCO, the filing against TEDCO of a petition in bankruptcy, the making of an authorized assignment or proposal for the benefit of creditors by TEDCO, the appointment of a receiver or trustee for TEDCO or for any assets of TEDCO, or the institution by or against TEDCO of any other type of insolvency proceeding under the Bankruptcy Act or otherwise;
- (b) the institution by or against TEDCO of any formal or informal proceeding for the dissolution or liquidation of TEDCO, notice, statement or settlement of claims against or instituted by TEDCO, or the winding up of the affairs of TEDCO;

- (c) if any execution, sequestration, extent or other process of any court becomes enforceable against TEDCO or if a distress or analogous process is levied upon the assets of TEDCO or any part thereof, having a value of \$50,000.00 or more.

2.08 TEDCO shall notify City Council, in writing, immediately if any certificate, statement, representation, warranty or audit report heretofore or hereafter furnished by or on its behalf pursuant to or in connection with this Agreement or otherwise:

- (a) proves to have been false or inaccurate in any material respect at the time as of which the facts therein set forth were stated or certified; or
- (b) has omitted any contingent or unliquidated liability or claim against TEDCO having a value of \$50,000.00 or more.

2.09 [DELETED]

2.10 TEDCO shall not sell or otherwise dispose of land owned by TEDCO, or enter into any lease or other agreement that has the effect of granting the use of or right in TEDCO-owned land directly or by entitlement to renewal for a period of twenty-one (21) years or more, without the prior written approval of the City.

2.11 [DELETED]

2.12 [DELETED]

Note: S. 2.09, 2.11 and 2.12 were deleted and s. 2.10 was amended because these matters are covered (although in a different way) in s. 8.1 (Business Plan) of the Shareholder Direction. Under s. 8.1, TEDCO prepares Business Plan and submits it to Commissioner of Economic Development and CFO (it's not submitted to Council as was required under 1994 Agreement). Under both 1994 Agreement and new Shareholder Direction, TEDCO is required to obtain approval from City Council before it sells property. The Shareholder Direction also provides that TEDCO is required to obtain Council Approval before it leases property for a term of 21 years or more (same term as would require a Committee of Adjustment consent/severance).

2.13 TEDCO shall obtain the prior written consent of the City before entering into any financial obligation (including the establishment of any borrowing or credit facilities, or any actual borrowing of money for a term continuing past any year end) which could have the effect of impairing TEDCO's ability to pay for the future subsidy requests to the City by THC.

Note: Final portion of s. 2.13 was deleted because TEDCO expenditures are covered in its Business Plan. The focus of the 1994 Agreement was the obligation of TEDCO to pay subsidies, which goes along with the transfer of lands to TEDCO. S. 2.13 was amended to limit that section to matters relating to the subsidies.

2.14 TEDCO shall establish and maintain financial and administrative procedures which ensure the accurate recording and reporting of its operations and which maintain adequate administrative and financial control, and shall maintain accounting procedures consistent with sound business operating practices in accordance with generally accepted accounting principles.

2.15 TEDCO agrees that it will, from time to time, and at all times hereafter, well and truly save, keep harmless and fully indemnify the City, its successors and assigns from all claims and demands whatsoever which may be brought against or made upon the City, and against all loss, liability, judgments, costs, demands or expenses which the City may sustain, suffer or be put to resulting from or arising out of any of the acts or errors and omissions of TEDCO in carrying out its programs, operations and land development, disposition and management activities which have the effect of impairing TEDCO's ability to pay the subsidies to the THC.

2.16 TEDCO acknowledges that it has conducted its own due diligence investigations of the environmental condition of the Municipal Industrial Development Sites. TEDCO covenants and agrees that from the date it assumes responsibility for the Municipal Industrial Development Sites, it shall fully indemnify and save harmless the City, its successors and assigns from all claims, demands, actions, suits, judgements, proceedings, and expenses (collectively "Claims") which may be incurred or suffered by the City, its successor and assigns, whether as a result of actions taken by the Ministry of Environment and Energy, any other governmental authority having jurisdiction or any other person, by reason of or in connection with the environmental condition of the Municipal Industrial Development Sites and any flooding of the Municipal Industrial Development Sites unless such Claims arise in the negligence or deliberate acts or omissions of the City or the THC, its Commissioners, employees, contractors or agents occurring after September 30, 1994. TEDCO covenants and agrees that, on the date that it assumes responsibility for the Municipal Industrial Development Sites, it shall provide to THC TEDCO's agreement to indemnify THC with respect to the said Claims.

2.17 (a) TEDCO at its expense shall maintain and keep in force such policies of insurance as the City's Manager of Insurance and Risk Management or such other person as may be designated by the CFO ("Insurance and Risk Manager") may request. Policies to be maintained shall include but not be limited to comprehensive commercial liability insurance covering bodily and personal injury and property damage, and crime and fidelity insurance. All policies shall be in a form and have minimum limits satisfactory to the Insurance and Risk Manager and, if he or she so requests, shall name the City as an additional insured.

NOTE: The amendments update insurance provisions

(b) TEDCO, on request by the Insurance and Risk Manager, shall furnish him or her with certificates or other proof of insurance in a form satisfactory to the Insurance and Risk Manager establishing the existence or continuation of all policies required to be maintained.

2.18 TEDCO shall maintain and keep in force crime and fidelity insurance covering the loss of money and securities by actual destruction, disappearance and wrongful abstraction inside and outside the premises, through depositors forgery and third party, computer, and funds transfer fraud and including coverage for employee dishonesty and shall provide proof of such insurance to the City annually, if requested.

3.00 City Responsibilities

3.01 In each year after 1995 City Council shall decide the subsidy which will be granted to THC. City Council may, in determining such subsidy, require that certain funds be allocated for

specific purposes. Finally, City Council will then decide how much of such subsidy will be paid by TEDCO and TEDCO hereby covenants to then pay same in accordance with any instructions concerning such payment that the City gives to it.

4.00 General

4.01 The parties hereto hereby agree that this TEDCO Arm's Length Agreement (II) shall supersede and replace the initial TEDCO Arm's Length Agreement dated August 10, 1994 which, upon the signing of this Agreement, shall be of no further force and effect.

4.02 Neither party shall assign or in any way transfer this Agreement or any of its rights, privileges, duties or obligations hereunder.

4.03 Any notice or document given under this Agreement shall be in writing and any such notice shall be served either by personal delivery to the City or TEDCO, or by fax or registered mail, postage prepaid, to the following addresses:

(a) if to the City, at:

THE CORPORATION OF THE CITY OF TORONTO
City Hall
100 Queen Street West
M5H 2N2

Attention: City Clerk
Fax No.: (416) 392-2980

(b) if to TEDCO, at:

CITY OF TORONTO ECONOMIC DEVELOPMENT CORPORATION
Metro Hall, 7th Floor
55 John Street
Toronto, ON M5V 3C6

Attention: President
Fax No.: (416) 214-4660

Any notice given in accordance with the paragraph shall be deemed to have been given on the day of delivery and shall be deemed if sent by fax, to be received on the day of transmission, or if by registered mail to be received 5 days after posting in Canada. Either party may at any time give notice under this section to the other of a change of address and thereafter such changed address shall be substituted for the address set out above.

4.04 This Agreement and everything herein contained shall enure to the benefits of, and be binding upon, the Parties hereto and their successors.

IN WITNESS WHEREOF the parties hereto have affixed their respective corporate seals attested to by the hands of their proper signing officers in that behalf duly authorized.

THE CORPORATION OF THE CITY OF TORONTO

Per: _____

Per: _____

CITY OF TORONTO ECONOMIC DEVELOPMENT
CORPORATION

Per: _____

Name:

Title:

Per: _____

Name:

Title:

Authorized by Report No. 17 (Clause 59)
of the Executive Committee adopted by Council
on July 25 and 26, 1994; and

Report No. 23 (Clause 61) of the Executive Committee
adopted, as amended, by Council on October 11, 1994.

**The Policy and Finance Committee also submits the following joint report
(January 17, 2002) from the Chief Administrative Officer and the Commissioner of
Economic Development, Culture and Tourism:**

Purpose:

This report proposes a new board structure, reporting relationship, and shareholder direction for the City of Toronto Economic Development Corporation (TEDCO).

Financial Implications and Impact Statement:

There are no financial implications resulting from the adoption of this report.

Recommendations:

It is recommended that:

- (1) TEDCO be designated as the City's redevelopment agency with authority to explore, pilot and implement incentives and redevelopment tools on behalf of the City as permitted by the Province of Ontario;
- (2) as part of the City's strategy for aligning Program Operating Boards to the relevant City Departments, the Board of Directors of TEDCO be functionally aligned with the Economic Development, Culture and Tourism Department and report to the Economic Development and Parks Committee through that Department;
- (3) the Shareholder Direction presented as Appendix I of this report be approved, effective immediately, except for the implementation of the new Board composition which will take effect May 24, 2002;
- (4) the size of the Board of Directors of TEDCO be set at eight and comprise:
 - (i) the Mayor or his designate;
 - (ii) the Chair of the Economic Development and Parks Committee;
 - (iii) five citizens; and
 - (iv) the Commissioner of Economic Development, Culture and Tourism, or his designate, who shall serve on the Board ex officio as a non-voting member;
- (5) the amending By-law No. 9 of the City of Toronto Economic Development Corporation, authorizing Council to determine the number of directors of TEDCO, as presented in Appendix II of this report be approved;
- (6) TEDCO's Articles of Incorporation be amended to read: "The minimum number of directors be five and the maximum number of directors be ten";
- (7) the Nominating Committee be directed to nominate five citizens for the new Board of Directors of TEDCO, giving due consideration to the qualifications of candidates as set out in the attached Shareholder Direction;
- (8) TEDCO be directed to comply with the Reporting and Communications Protocol for Waterfront Revitalization, and this report be forwarded for information to the Waterfront Reference Group through the Executive Lead for the Waterfront; and
- (9) the appropriate City officials and the Board of Directors of TEDCO be authorized and directed to take the necessary action to give effect thereto.

Background:

This report addresses a number of outstanding Council directives to review the mandate, structure and Board of Directors of TEDCO. Currently, TEDCO is operating with three

vacancies on its Board of Directors and with an interim staffing arrangement. In addition, the City's Waterfront revitalization plans have progressed significantly and provide an added pressure to clarify TEDCO's mandate and relationship to the City.

This report also addresses issues raised in the 2001 report from the Mayor's ABC Reduction Task Force, and aligns TEDCO more closely with the Economic Development, Culture and Tourism Department, as per TEDCO's designation as a Program Operating Board in the Classification of Special Purpose Bodies, approved by Council in February 1999.

Comments:

TEDCO was incorporated under the *Ontario Business Corporations Act* (OBCA) by the former City of Toronto in March 1986, pursuant to Section 9 of the *City of Toronto Act, 1985*. The City of Toronto is the sole shareholder, and it appoints TEDCO's Board of Directors and approves its operating and capital budgets on an annual basis. The President/CEO is responsible for the execution of the Board's policies and directives, manages the day-to-day operations of TEDCO and its staff, and currently serves on the Board of Directors ex officio.

TEDCO's original mandate was to facilitate business growth, job creation and economic development throughout the former City of Toronto. Its early activities included the initiation and support of "incubator" projects: the Toronto Fashion Incubator, the Toronto Kitchen Incubator, and the Toronto Business Development Centre.

With the acquisition in 1994 and 1995 of over 400 acres in the port lands, previously owned by the former Toronto Harbour Commissioners (now the Toronto Port Authority), TEDCO began to focus almost exclusively on brownfields reclamation, property management and real estate development along the Toronto waterfront. By virtue of its extensive land base and related revenue streams, TEDCO is self-sufficient, requiring no subsidy from the City.

Mandate:

The former City of Toronto created and maintained TEDCO as a tool with which to implement selected elements of its own, broader economic development strategy. These elements - business growth and job creation -- remain valid under the City's current Economic Development Strategy, and the corporate structure of TEDCO provides opportunities to undertake projects in partnership with the business community in a way that the municipality cannot.

Two undertakings remain especially useful for TEDCO to actively pursue its part in the implementation of the City's Economic Development Strategy.

The first is an opportunity to build on TEDCO's "incubator" program. The City's Economic Development Strategy emphasizes the importance of new firm formation in key industries and the growing role that incubators and commercialization centres play in this regard in competitive jurisdictions. New firm formation is an integral and essential ingredient in growing strategic industry clusters as a means to generate wealth and employment in higher value-added activities.

The second and larger role that TEDCO can play in realizing the City's Economic Development Strategy is to take a lead role in stimulating reinvestment in strategic areas and underutilized sites. This would include the identification, acquisition, rehabilitation and development of strategic lands and buildings to create "development-ready" sites as a catalyst for new employment-related investment. TEDCO is ideally positioned to do this work on behalf of the City, using whatever tools the Province might make available for such purposes (e.g., Tax Increment Financing), and working directly with investors and private partners to maximize the City's economic development potential. The direct benefits of such redevelopment will be jobs, an expanding tax base and greater prosperity for Toronto.

Jurisdiction:

The properties TEDCO manages and has redeveloped have been exclusively in the former City of Toronto, specifically in the port lands, although it has never been restricted to that district by law. TEDCO should be encouraged to expand its role in the redevelopment of brownfields lands beyond the waterfront to encompass the whole jurisdiction of the City of Toronto, and to take advantage of any redevelopment opportunities vis-à-vis underutilized sites and strategic lands wherever they might be situated.

Neither TEDCO's Articles of Incorporation nor its By-laws specifically limit its geographical jurisdiction to the current City of Toronto, and it is not recommended that any explicit limit be placed on the Corporation's area of jurisdiction at this time. Nevertheless, because TEDCO's mandate is directly linked to economic development in the City of Toronto, the attached Shareholder Direction obligates TEDCO to obtain Council approval to purchase or lease land outside the City's boundaries.

Relationship to the City:

This report recommends that TEDCO report to the Economic Development and Parks Committee through the Commissioner of Economic Development, Culture and Tourism. By reporting through the Commissioner, TEDCO can be assured that its programs continue to conform to the overall City priorities in the areas of business growth, job creation and economic development.

TEDCO is classed as a program operating board of the City because its program represents a portion of a larger departmental program. In a sense it is an alternative service delivery method for a portion of the economic development program. As such, it should be closely aligned with the root program.

The key objectives in establishing this linkage are a clearer definition of relative roles, improved accountability, and more effective and regular communication with the City. It also provides an administrative window to the City for budgeting and financial monitoring.

This linkage will be achieved in two ways:

- (1) at an operational level, the inclusion of the Commissioner of Economic Development, Culture and Tourism as an *ex officio* member of the Board of TEDCO will provide an

appropriate communications link between TEDCO and Economic Development and facilitate the establishment of integrated staff teams to ensure alignment of priorities and co-ordination of activities. There should be obvious synergies created in the following areas:

- (i) economic Revitalization and Community Partnerships - with respect to the identification of strategic reinvestment areas, exploration and application of existing and new tools (e.g., Tax Increment Financing);
 - (ii) business Attraction and Retention - to ensure that real estate data and investment intelligence is optimized;
 - (iii) strategic Clusters - to ensure that incubator activities carried out under TEDCO are effectively linked and support broader cluster development plans and industry networks; and
 - (iv) small Business/Enterprise Toronto - with respect to the alignment of small business, training and entrepreneurial development and incubator services and programs; and
- (2) at the strategic and administrative levels, the Commissioner will act as a liaison between TEDCO and the City with respect to the City's business processes. TEDCO will report through the Commissioner to the political structure. This relationship in no way limits the autonomy or responsibility of the Board, nor does it replace or delegate any Council authority, but rather it facilitates and simplifies the shareholder/corporation relationship by providing a consistent and informed window to the City.

It is anticipated that once the Toronto Waterfront Revitalization Corporation (TWRC) is fully functioning and the City of Toronto determines what City assets ought to be within the management of the TWRC, a further report will be prepared for Council on any impacted lands/assets presently under TEDCO's jurisdiction. Furthermore, protocols will be required to ensure collaboration between the two organizations in the facilitation of Waterfront revitalization.

In the meantime, TEDCO should conform to the Reporting and Communications Protocol established by the Waterfront Reference Group and the Waterfront Project Secretariat for the management of issues and initiatives that could potentially impact future Waterfront plans.

Board of Directors:

This report recommends a more focussed Board of Directors, to be comprised of two members of Council, five citizens to be appointed by Council, and the Commissioner of Economic Development, Culture and Tourism.

It is recommended that the two members of Council appointed to TEDCO's Board be:

- (i) the Mayor or his designate; and

(ii) the Chair of the Economic Development and Parks Committee.

The citizen component would allow TEDCO to benefit from specialized advice, as appointments would be made on the basis of experience in law, finance, real estate and land development. The Commissioner of Economic Development, Culture and Tourism (or his designate), sitting ex-officio on the Board as a non-voting director, would enhance linkages and ensure that the desired functional alignment with Economic Development is realized at the operational level.

The establishment of the new Board should be timed to coincide with the next round of Councillor appointments made through the Striking Committee and scheduled for approval by Council at its meeting on May 21-24, 2002.

Changes Required to TEDCO's Articles of Incorporation:

TEDCO's current Articles of Incorporation specify that the number of directors be fixed at ten. As this report recommends that the Board of TEDCO be reduced to eight, a change to the Articles of Incorporation is required. It is recommended that the Articles of Incorporation be changed to read:

“The minimum number of directors be five and the maximum number of directors be ten”.

This will allow for flexibility should Council choose to increase or decrease the number of directors in the future.

Requirement to Enact an Amending By-law:

To establish consistency with the proposed Shareholder Direction and other recommendations of this report, it is necessary for TEDCO to enact a By-law amending certain provisions of By-law No. 1 of City of Toronto Economic Development Corporation. The sections requiring amendment refer to the number of directors. Draft By-law No. 9, amending these sections, is attached to this report as Appendix II.

Shareholder Direction:

Attached to this report as Appendix I, is a Shareholder Direction from the City to TEDCO. This document spells out in detail a revised mandate, governance structure and reporting relationship for TEDCO. The Shareholder Direction also provides the Board of TEDCO with an outline of the City's fundamental principles and objectives, which shall govern the operations of TEDCO.

Conclusions:

As a Program Operating Board of the City, it is important that TEDCO operate in tandem with other City activities in the area of economic development, specifically the creation of jobs and industrial/commercial tax assessment through the revitalization of strategic employment lands, incubator activities to support the growth of key industry clusters, and Waterfront revitalization. The new governance structure and reporting relationship described in this report and detailed in

the Shareholder Direction (Appendix I) will ensure greater accountability for TEDCO's decisions and better alignment of TEDCO's mission with the Council-approved Economic Development Strategy. The formal links to Economic Development, Culture and Tourism will clarify the roles and responsibilities between TEDCO and the various City departments, and provide a strong partnership mandate among staff.

The Chair of the Board of TEDCO, the Executive Lead for the Waterfront, and staff from Legal Services have been consulted in the writing of this report.

Contacts:

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Appendix I
Shareholder Direction Relating to
City of Toronto Economic Development Corporation (TEDCO)

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Appendix A: Reporting and Communications Protocol for Waterfront Revitalization

Shareholder Direction Relating to
City of Toronto Economic Development Corporation (TEDCO)

Recitals

- 1. Unless inconsistent with the context, capitalised terms used in these recitals have the meanings set out in section 1;
- 2. TEDCO is a corporation existing under the OBCA;

3. The Shareholder is the beneficial owner of all of the issued shares of TEDCO; and
4. The Shareholder wishes (i) to articulate for the Directors of TEDCO the Shareholder's objectives as the sole shareholder of TEDCO, and the Shareholder's expectations of the principles to which TEDCO shall adhere in carrying on business, and (ii) to establish certain principles of governance relating to TEDCO.

Now Therefore This Direction Witnesses:

Article 1 Interpretation

1.1 Definitions

In this Direction, the following terms have the meanings set out below:

“Auditor” means the auditor of TEDCO;

“Authorized Signatory” means those individuals who are authorized to sign a certified minute of Council, or who are otherwise authorized by Council to sign written Shareholder approvals or decisions relating to TEDCO;

“Board” means the Board of Directors of TEDCO;

“Business Plan” means TEDCO's five-year business plan and budget, prepared and approved in accordance with Section 8.1;

“Chair” means the Director of TEDCO appointed as chair of the Board by the Board upon nomination by the Shareholder from time to time;

“Citizen” means with respect to a Board member or a candidate for such membership an individual who is not a member of Council, and is not related to whether or not an individual is a Canadian citizen;

“City” means the City of Toronto;

“Council” means the Council of the City;

“Directors” means members of the Board;

“Economic Development Strategy” means the strategy guiding the direction of economic development for the City, as approved by Council from time to time;

“Financial Statements” means, for any particular period, audited or unaudited (as stipulated in this Direction), comprehensive financial statements of TEDCO consisting of not less than a balance sheet, a statement of income and retained earnings, a statement of changes in financial position, a report or opinion of the Auditor (in the case of audited

Financial Statements) and such other statements, reports, notes and information prepared in accordance with generally accepted accounting principles (consistently applied) and as are required in accordance with any applicable laws;

“OBCA” means the *Business Corporations Act* (Ontario), as such statute may be amended or re-enacted from time to time;

“Shareholder” means the City, as owner of all issued shares of TEDCO;

“TEDCO” means the City of Toronto Economic Development Corporation, a corporation existing under the OBCA.

Article 2 Objectives and Principles

2.1 Purpose of Direction

This Direction is made solely for the purposes of articulating the Shareholder's objectives regarding TEDCO and establishing certain principles of governance. It is not a declaration under s.108(3) of the OBCA, and it is not and shall not be deemed to be a unanimous shareholder agreement.

2.2 Shareholder Objectives

The Shareholder's objectives in holding its interest in TEDCO are as follows:

- (a) TEDCO shall assist the City in achieving the City's overall priorities in the spheres of business growth, job creation and economic development;
- (b) TEDCO shall utilize its assets to explore, pilot and implement incentives and redevelopment tools in the City of Toronto as permitted by the Province of Ontario;
- (c) TEDCO shall take a lead role in stimulating reinvestment in strategic areas and underutilized sites within the City of Toronto; and
- (d) TEDCO shall work with investors and private partners to maximize the economic development potential of lands owned by TEDCO and lands over which TEDCO is given management responsibility.

2.3 Principles

The following principles shall govern the Board's actions with respect to the operations of TEDCO:

- (a) TEDCO is integral to the well-being and the economic development of the City. The City directs that, in the best interests of TEDCO and the community of

stakeholders whom TEDCO affects, all members of the Board shall cause TEDCO to conduct its affairs:

- (i) on a commercially prudent basis;
- (ii) in a manner consistent with the City's Economic Development Strategy;
- (iii) in a manner consistent with the City's objectives for Waterfront Revitalization and in compliance with Council's Reporting and Communications Protocol for Waterfront Revitalization (attached, Appendix A), as may be amended by Council from time to time;
- (iv) in compliance with the City's Official Plan; and
- (v) in accordance with the financial performance and strategic objectives as set out in its Business Plan.

2.4 No Interference with Legal Obligations

In issuing this Shareholder Direction the Shareholder is in no way attempting to interfere with any Director's duty to act in the best interests of the Corporation.

Article 3 Business of TEDCO

3.1 Business Activities

Subject to the ongoing ability of TEDCO to meet the objectives of the Shareholder set out in this Direction and the ability of the Board to demonstrate the same, TEDCO may engage in any of the following business activities:

- (a) acquisition, rehabilitation and development of strategic lands in the City of Toronto in the pursuit of the objectives set out in section 2.2;
- (b) management of TEDCO-owned properties and of properties owned by the City over which TEDCO is given management responsibility; and
- (c) development and operation of industry incubators.

3.2 Operational Decisions

TEDCO shall employ its own staff and, subject to the terms of this Direction, the Board shall be responsible for the management of TEDCO's assets, making all policy and operational decisions and being held accountable for these decisions through submission to the City of its annual Business Plan (see Section 8.1) and annual report (see Section 8.2).

Article 4 Operation and Control

4.1 Board Responsibilities

Subject to any matters requiring approval of the Shareholder pursuant to this Direction, the OBCA or otherwise, the Board shall manage or supervise the management of the business and affairs of TEDCO, including the following specific matters:

- (a) establishing annual and long-range strategies and plans consistent with the provisions of this Direction;
- (b) establishing and maintaining appropriate reserves consistent with sound financial principles and the financial performance objectives provided for herein;
- (c) selecting bankers and other financial institutions and establishing all banking authorities;
- (d) appointing the officers of TEDCO; and
- (e) managing and directing all labour and employee relations matters.

Article 5 Board of Directors

5.1 Information Regarding Composition of the Board

As background information for members of the Board and for no other purpose, and without restricting the rights of the Shareholder, this article provides Directors with information regarding composition of the Board.

5.2 Qualifications of Directors

In naming Directors to the Board, the Shareholder will give due consideration to the qualifications of candidates, including:

- (a) Experience or knowledge with respect to:
 - (i) legal aspects of real-estate development, property management and brownfields redevelopment;
 - (ii) business and financial management;
 - (iii) commercial real-estate; and
 - (iv) land development;

- (b) commercial sensitivity and acumen;
- (c) independence of judgement; and
- (d) personal integrity.

5.3 Composition of the Board

The Board will be composed of seven (7) voting Directors, comprised of five (5) Citizens and two (2) members of Council. In addition, the Commissioner of Economic Development, Culture and Tourism, or his designate, will serve on the Board *ex officio* as a non-voting Director.

Officers of TEDCO shall not be Directors.

5.4 Vacancies

If a member of the Board ceases to be a Director for any reason, the Shareholder will fill the vacancy created thereby as soon as reasonably possible.

5.5 Term of Appointments

Subject to the provisions of section 5.6:

- (a) the term of office for a Director who is not a member of Council will be three years or until his or her successor is appointed;
- (b) subject to subsection (c), the term of office for a Director who is a member of Council will be eighteen months or until his or her successor is appointed;
- (c) the term of the first Directors who are members of Council and who are appointed under this Shareholder Direction will expire on November 30, 2003;
- (d) any Director may stand for re-appointment to the Board at the expiry of his or her term;
- (e) each nominee holds office at the pleasure of Council and may be removed or replaced at any time without notice or financial compensation in lieu of notice; and
- (f) any Director appointed in his/her capacity as a member of Council will cease to be a Director if he/she ceases to be a member of Council.

5.6 Applicable Laws

Nothing in section 5.5 or any other section of this Direction restricts or amends or purports to restrict or amend any provisions in TEDCO's articles or by-laws, the OBCA,

other applicable laws, or elsewhere regarding removal of one or more Directors from the Board or resignation or deemed resignation of one or more Directors from the Board.

5.7 Remuneration

The remuneration of the members of the Board for their services as Directors will be as authorized by Council from time to time. Members of Council and City employees will receive no additional remuneration as Directors. TEDCO will reimburse Directors for all reasonable expenses incurred during the conduct of TEDCO's business.

Article 6 Conflict of Interest and Confidentiality

6.1 Conflict of Interest Policy

The Directors shall strictly abide by the requirements of the OBCA and TEDCO's By-laws in respect of conflicts of interest, including any requirements in respect of disclosure and abstention from voting.

6.2 Confidentiality

The Directors shall ensure that no confidential information of TEDCO is disclosed or otherwise made available to any person, except to the extent that:

- (a) disclosure to the Shareholder's or TEDCO's employees or agents is necessary for the performance of any of their duties and obligations under this Direction; and
- (b) disclosure is required in the course of judicial proceedings or pursuant to law, or the confidential information becomes part of the public domain (other than through unauthorized disclosure by any party).

Article 7 Shareholder Matters

7.1 Approvals and Decisions of the Shareholder

The following shall apply with respect to any matters that require Shareholder approvals or decisions under the OBCA or the provisions of this Direction or otherwise:

- (a) the Board is required to obtain Shareholder approvals and decisions and those approvals and decisions must be made in writing and signed by an Authorized Signatory;
- (b) the Board shall give the Shareholder reasonable advance notice in writing of the need for decision or approval and shall provide such information as is reasonably necessary for the Shareholder to make an informed decision regarding the subject matter requiring approval or decision; and

- (c) the Board shall submit such requests to the Shareholder through the Commissioner of Economic Development, Culture and Tourism.

7.2 Matters Requiring Shareholder Approval

Without the approval of the Shareholder TEDCO shall not:

- (a) take any action, make any change or enter into any transaction which requires Shareholder approval pursuant to the OBCA;
- (b) acquire, through purchase or lease, land outside of the boundaries of the municipality;
- (c) pass or amend any by-laws (i) with respect to the composition or number of Directors or the term of Directors or (ii) that are inconsistent with this Direction; or
- (d) alter the corporate structure of TEDCO in any way, including establishing subsidiaries.

Article 8 Reporting

8.1 Business Plan

Not later than 60 days prior to the end of each fiscal year of TEDCO, the Board shall approve and submit to the Commissioner of Economic Development, Culture and Tourism a Business Plan for the next five fiscal years. The Board shall prepare the Business Plan on a consistent basis with the Business Plan then in effect. TEDCO shall carry on its business and operations in accordance with the Business Plan which shall include, in respect of the period covered in such plan:

- (a) the strategic direction and any new business initiatives which TEDCO will undertake;
- (b) an operating and capital expenditure budget for the next fiscal year and an operating and capital expenditure projection for each fiscal year thereafter, including the resources necessary to implement the Business Plan;
- (c) the projected annual revenues and profits for each fiscal year during the term of the Business Plan;
- (d) pro forma consolidated and unconsolidated Financial Statements;
- (e) an acquisition budget setting forth the nature and type of capital expenditures proposed to be made in the following fiscal year, supported by explanations, notes and information upon which the budget is based;

- (f) any material variances in the projected ability of any business activity to meet or continue to meet the financial or economic development objectives of the Shareholder; and
- (g) any material variances from the Business Plan then in effect.

8.2 Annual Report and Financial Statements

Within 120 days after the end of each fiscal year of TEDCO, the Board shall prepare an annual report and submit this report to Council, through the Commissioner of Economic Development, Culture and Tourism. This report shall include:

- (a) audited consolidated and unconsolidated Financial Statements;
- (b) such explanations, notes and information as are required to explain and account for any variances between the actual results from operations and the budgeted amounts set forth in the then current Business Plan, and any material variances in the projected ability of any business activity to meet or continue to meet the financial and economic development objectives of the Shareholder;
- (c) information that is likely to materially affect the Shareholder's financial or economic development objectives;
- (d) information regarding any matter, occurrence or other event which is a material breach of the requirements of this Direction or a material breach or violation of any law, including major findings of internal and other audits;
- (e) information regarding the performance of TEDCO such that the Shareholder can determine that this Shareholder Direction has been respected; and
- (f) any such additional information as the Shareholder may specify from time to time.

Following submission of each report, the Directors shall make themselves available, if requested, to meet with Council or the appropriate committee of Council, or both to discuss the report.

8.3 Access to Records and Information

The Commissioner of Economic Development, Culture and Tourism (or his designate), the City Auditor (or his designate) and any other duly appointed representatives of the Shareholder (as approved by Council from time to time) shall have unrestricted access to the books and records of TEDCO during normal business hours. Such representatives shall treat all confidential information of TEDCO with the same level of care and confidentiality as any confidential information of the Shareholder.

8.4 Audit

- (a) The Auditor will be appointed by the Shareholder in accordance with the OBCA. TEDCO shall determine the remuneration for the Auditor. The annual consolidated and unconsolidated Financial Statements will be audited by the Auditor. All other audit and review requirements, including internal audits, will be the sole responsibility of the Board.
- (b) The City Auditor may audit all or any portion of TEDCO's records at any time.

8.5 Accounting

TEDCO, in consultation with the Auditor, shall adopt and use the accounting policies and procedures that may be approved by the Board from time to time and all such policies and procedures shall be in accordance with generally accepted accounting principles and applicable regulatory requirements.

Article 9 Financial Performance

9.1 Financial Performance Targets

The Board shall use its best efforts to ensure that TEDCO meets the financial performance targets set out in each year's Business Plan.

Article 10 Amendments

10.1 Amendments to Direction

The Shareholder in its sole discretion may amend this Direction on written notice to the Board. The amendments shall come into effect six weeks after the Shareholder gives the Board written notice of the amendments, or on such other date as the Shareholder in its sole discretion may specify.

Dated at Toronto on the day of 2002.

CITY OF TORONTO

By: _____
Chief Financial Officer and Treasurer

By: _____
City Clerk

Shareholder Direction
City of Toronto Economic Development Corporation
Appendix A

Reporting and Communications Protocol for Waterfront Revitalization

- (1) All Departments, Agencies, Boards and Commissions (DABCs) provide the Waterfront Reference Group, through the Waterfront Project Secretariat, with at least two weeks advance notice of all communications, reports, contracts, activities or other initiatives that directly or indirectly impact waterfront revitalization;
- (2) All DABCs that manage or hold land or property in the area addressed by the Central Waterfront Part II Plan be required to report to the Waterfront Reference Group, through the Waterfront Project Secretariat, for approval of any lease renewals extending beyond a single year or of any proposed sales;
- (3) Similarly, the above DABCs are asked to report to the Waterfront Reference Group on any development proposals or directions that they are entertaining for their sites with a duration of more than one year;
- (4) All Official Plan and rezoning applications in the area of the Central Waterfront be forwarded from the appropriate Community Council to the Waterfront Reference Group, with a covering report from the Executive Lead for the Waterfront clarifying the extent to which the proposed action impacts waterfront revitalization, if at all;
- (5) All public communications, events, and reports (including requests for proposals and requests for expressions of interest) directly or indirectly related to waterfront renewal be co-ordinated through the Waterfront Project Secretariat to ensure consistency with directions endorsed by the three levels of government and the TWRC for Waterfront Revitalization and the effective management of issues and resources; and
- (6) Finally, the Commissioner of Urban Development Services as the Executive Lead for the Waterfront, or her designate, will review all communications resulting from implementation of this Protocol to determine if they are minor in nature and consistent with directions of the Central Waterfront Part II Plan and the Toronto Waterfront Revitalization Corporation and if a report is required to the Waterfront Reference Group.

Appendix II
By-Law No. 9

A By-Law amending certain provisions of Sections One and Three of By-Law No. 1 of City of Toronto Economic Development Corporation (the Corporation).

BE IT ENACTED AND IT IS HEREBY ENACTED as a by-law of the Corporation as follows:

1. Clause (viii) of Section 1.01 of By-Law No. 1 of the Corporation hereby is repealed and the following is substituted therefor:
“(viii) “number of directors” means the number of directors provided for in the articles or, where a minimum and maximum number of directors is provided for in the articles, the number of directors determined by Toronto City Council from time to time.”

2. Section 3.01 of By-Law No. 1 of the Corporation hereby is repealed and the following is substituted therefor:

“3.01 NUMBERS OF DIRECTORS. Until changed in accordance with the Act, the board shall consist of not fewer than the minimum number and not more than the maximum number of directors provided for in the articles, or articles of amendment. The exact number of directors shall be established by Toronto City Council, as it shall determine from time to time.”

3. This By-Law shall come into force without further formality upon its enactment.

PASSED AND ENACTED by the directors of the Corporation in accordance with the provision of the Ontario Business Corporations Act, this day of 2002.

.....
Chairman of the Board

.....
Secretary