

Consolidated Clause in Policy and Finance Committee Report 1, which was considered by City Council on January 31, February 1 and 2, 2006.

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Toronto Waterfront Revitalization: Memorandum of Understanding between the City of Toronto, City of Toronto Economic Development Corporation and Toronto Waterfront Revitalization Corporation

City Council on January 31, February 1 and 2, 2006, amended this Clause:

- (1) *to provide that the Memorandum of Understanding be amended to ensure that the public realm is protected as set out in the East Bay Front Precinct Plan and that both Project Symphony and Project 24/7 be sited in consultation with the Ward Councillor, the Toronto Waterfront Revitalization Corporation and the citizen coalition, at the western end of the Queen Elizabeth Docks;*
- (2) *in accordance with the following staff recommendation contained in the Recommendation Section of the supplementary report (January 30, 2006) from Deputy City Manager Fareed Amin:*

“It is recommended that Recommendation (3) contained in the January 17, 2006 report from Deputy City Manager Fareed Amin be amended by substituting the amended Shareholder Resolution attached as Appendix 1 to this report for the Shareholder Resolution referred to in Recommendation (3), and the Shareholder Resolution to be attached to the Memorandum of Understanding and the Unanimous Shareholder Declaration be the amended Shareholder Resolution that is attached as Appendix 1 to this report.”,

subject to amending Appendix 1 to the report (January 30, 2006) by:

- (a) *deleting Part (5) and inserting instead the following new Part (5):*
 - “(5) *as directed by Council, any one officer or director of TEDCO, of the following officers of the City: the City Clerk or the person acting in that capacity and the Deputy City Manager and Chief Financial Officer or the person acting in that capacity (the ‘City Representatives’), is authorized and directed, for and in the name of and on behalf of TEDCO, to execute (whether under the corporate seal of TEDCO or otherwise) and deliver all such other agreements, instruments, certificates and other documents and to do all such other acts and things as have been directed by Council, in order to carry out the intention of the foregoing resolutions.”; and*

(b) *including the following additional provision:*

“Given that the City of Toronto is making a unanimous shareholder’s declaration to TEDCO directing TEDCO to pass a resolution to enter into the MOU, make Property Transfers in accordance with the MOU, and otherwise comply with the MOU, the City provide an indemnity to the directors and officers of TEDCO, indemnifying them and holding them harmless against any liabilities or expenses they may incur as a result of any legal action brought against them arising from compliance with the terms of the unanimous shareholder’s declaration, such indemnity to be in a form satisfactory to the City Solicitor and the Deputy City Manager and Chief Financial Officer.”; and

(3) *by adding the following:*

“That Deputy City Manager Fareed Amin be requested to report to the Policy and Finance Committee on:

- (1) the financial contributions, both in land and cash, originally agreed to with all three levels of government, as well as the commitments made under (former) Mayor Lastman;*
- (2) the details of the commitments currently in place by all three levels of government and the amount of their contributions to date;*
- (3) a request to the partner governments to match any City land contributions, made by the City of Toronto; and*
- (4) a request to the Toronto Waterfront Revitalization Corporation to forward to City Council, as soon as practicable, a full Business Plan including revenue projections.”*

This Clause, as amended, was adopted by City Council.

Council also considered additional material, which is noted at the end of this Clause.

The Policy and Finance Committee recommends that:

- (1) City Council adopt the staff recommendations contained in the Recommendations Section of the report (January 17, 2006) from Deputy City Manager Fareed Amin; and**
- (1) Project Symphony be included in the MOU as a TEDCO project exactly on the same terms and conditions as Project 24/7 and that the MOU be amended accordingly.**

Action taken by the Committee:

The Policy and Finance Committee requested the City Manager to report directly to City Council for its meeting to be held on January 31, 2006 on issues raised by TEDCO in the communication dated January 23, 2006 from TEDCO.

The Policy and Finance Committee submits the report (January 17, 2006) from Deputy City Manager Fareed Amin:

Purpose:

To obtain Council approval of:

- (a) a Memorandum of Understanding (MOU) between the City of Toronto, City of Toronto Economic Development Corporation (TEDCO) and the Toronto Waterfront Revitalization Corporation (TWRC) that sets out their respective roles and responsibilities in revitalizing East Bayfront and the Port Lands and clarifies how and when public lands in these areas are to be made available for renewal; and
- (b) a related Unanimous Shareholder Declaration from the City of Toronto to the Board of Directors of TEDCO.

Financial Implications and Impact Statement:

The proposed MOU provides the framework for implementing waterfront revitalization in East Bayfront and the Port Lands. It contemplates the incremental transfer of TEDCO lands in these areas to the City or to third parties to achieve Council's waterfront renewal objectives. Lands will be remediated and redeveloped for public realm purposes and/or marketed to attract private investment in accordance with TWRC business and implementation plans to be submitted to Council for approval. All proceeds from the sale or lease of lands are to be reinvested in waterfront renewal, except for those lands defined in the MOU as the TEDCO Projects, which include the Port Lands film and media production complex, the initiative known to TEDCO as Project 24/7, the Concrete Campus and redevelopment of public lands in Polson Quay.

The value of all lands contributed by each government is to be recognized and accounted for as part of the respective government's overall contribution to waterfront renewal in accordance with a tri-government Accounting Protocol. Where a land transfer is expected to have a financial impact on TEDCO, it is proposed that TEDCO prepare a Financial Impact Statement that provides details of the impact on its operations. The Deputy City Manager and Chief Financial Officer will review the Statement and recommend to Council measures to mitigate any impacts on TEDCO.

Through waterfront revitalization, the City benefits from an improved parks base, significant public realm and environmental improvements and additional revenues. The impact of these new revenues will be projected and reported to Council in 2006, along with strategies for mitigating the costs to the City of operating new parks, public spaces and infrastructure. Finally,

existing liabilities associated with brownfield management are minimized as a result of remediation and risk assessment processes.

Recommendations:

It is recommended that City Council:

- (1) authorize the City to enter into a Memorandum of Understanding between the City of Toronto, the City of Toronto Economic Development Corporation (TEDCO) and the Toronto Waterfront Revitalization Corporation (TWRC), substantially in the form attached to this report as Appendix A;
- (2) authorize the City, as the sole shareholder of TEDCO, to make a Unanimous Shareholder Declaration to the Board of Directors of TEDCO, substantially in the form attached to this report as Appendix B;
- (3) authorize the City, as the sole shareholder of TEDCO, to pass a Resolution of TEDCO, substantially in the form attached to the Unanimous Shareholder Declaration and forming part of Appendix B, authorizing and directing TEDCO to enter into and act in accordance with the MOU;
- (4) approve the process outlined in this report for identifying and, where required, mitigating the financial impact on TEDCO of its transfer of lands to waterfront revitalization, which process requires that TEDCO officials report on the financial impact to the City's Deputy City Manager and Chief Financial Officer, who, in turn, will review and report to Council on mitigating measures, should they be required; and
- (5) authorize and direct the appropriate City officials to execute the MOU, the Unanimous Shareholder Declaration and the TEDCO Resolution and to take any other necessary action to give effect thereto.

Executive Summary:

This report satisfies directives from Council in December 2004, and September 2005, to develop an MOU between the City of Toronto, TEDCO and the TWRC that provides TWRC with responsibility for implementing Toronto waterfront renewal, including environmental remediation and management. The MOU (attached as Appendix A) defines the respective roles and responsibilities of the three entities in revitalizing East Bayfront and Port Lands in the central waterfront, facilitates cooperation and collaboration among the parties, and clarifies how and when public lands in these areas are to be made available for renewal.

The MOU was approved in principle by the TWRC Board of Directors on January 12, 2006. The TEDCO Board is scheduled to consider it and the Unanimous Shareholder Declaration on January 19, 2006.

Proposed Roles of City, TEDCO and TWRC:

TWRC has a mandate to meet tri-government priorities by creating comprehensive, integrated and sustainable communities of international renown in Toronto's central waterfront. TEDCO's mandate is to meet municipal economic development priorities by readying brownfields across the city for commercial and industrial uses with particular focus on expanding and retaining employment. In accordance with Council's direction, the MOU makes TWRC the revitalization lead in East Bayfront and the Port Lands, while providing three important roles for TEDCO in the waterfront.

Specifically, the MOU recommends that TWRC continue its normal business of preparing precinct plans, business cases, and development and phasing strategies for Council approval. In its new capacity as revitalization lead, TWRC will lead the marketing of the waterfront initiative and of specific waterfront lands, preparation of planning and development applications for public lands, management of developer proposal calls and funding and managing remediation activities.

The MOU recommends that TEDCO:

- (a) continue to lead "TEDCO Projects," with these projects being the Port Lands film and media production complex, Project 24/7 at the foot of Jarvis Street as it relates to the previously announced tenant, the revitalization of public lands on Polson Quay, and management of that portion of Concrete Works that is under TEDCO's jurisdiction;
- (b) continue its property management role in the Port Lands, including the pursuit of interim uses, until lands are needed for renewal; and
- (c) undertake site preparation and development activities through service or delivery agreements with TWRC.

The incremental approach to the transfers of TEDCO lands, outlined in the Public Land Management Protocol included in the MOU, allows TEDCO time to develop new revenue opportunities through interim uses and new projects both within and outside of the Designated Waterfront Area (DWA).

The City's role in the MOU is to ensure City Council's broad public objectives in waterfront renewal are met. The MOU maintains Council's authority on policy and regulatory matters such as zoning and site plan approval, TWRC business and implementation plan approval, precinct plans and contribution agreement approval, and authority over major changes in project strategy and direction. A new City/TEDCO/TWRC staff liaison committee has been created to facilitate timely implementation of the MOU and the recently approved TWRC 10-Year Financial Forecast for renewal, as well as to resolve any issues that may arise among the parties.

Public Land Management Protocol:

The MOU proposes that TEDCO transfer all lands for parks, public spaces and public realm to the City, and lands to be redeveloped for residential, mixed-use and commercial development to a third party through long-term lease or title transfer. As per Council's December 2004,

directive, the MOU requires that all revenues from the lease or sale of public lands be reinvested in waterfront renewal. All land and cash contributions will be tracked in a tri-government Accounting Protocol. The value of the lands contributed by each government is to be accounted for and recognized as a component of its contribution.

Control of public lands will be transferred to the City or to third parties incrementally, based on Council approval of precinct plans and detailed business and implementation plans, as well as guaranteed financial commitments. An incremental transfer minimizes government risk and duplication of City/TWRC resources, enhances government and public confidence as TWRC delivers results, and allows TEDCO lands to be used for other purposes until required for renewal. The MOU provides that TEDCO retain all revenues from its TEDCO Projects while contributing to public realm and infrastructure components on those sites. A Port Lands phasing strategy outlines the projected dates by which TWRC will undertake precinct planning, site investigations and environmental remediation, and obtain control of public lands for renewal (attached to the MOU as Schedule 2B).

Liability Protection:

The MOU assigns the TWRC overall responsibility for environmental remediation in East Bayfront and the Port Lands with the requirement to develop Environmental Frameworks for each precinct that detail soil and groundwater remediation approaches and related issues. TWRC also must ensure that all remediated lands are subject to filing of Records of Site Condition in the Ministry of the Environment's environmental site registry.

Risk protection for TEDCO from site testing and preparation, remediation, and long-term maintenance of risk-assessed land will be secured through a variety of means, including the requirement for the use of consultants and contractors that are acceptable to the City and, where appropriate, TEDCO; insurance and indemnities where appropriate; establishment of a reserve fund, where appropriate, for ongoing monitoring or other costs relating to risk-assessed land; and the City's authority to call for TWRC-funded peer review at its discretion.

Concerns have been expressed that TEDCO's transfer of lands to the waterfront revitalization initiative for nominal consideration may cause TEDCO Directors to breach their fiduciary duty to act in the best interests of TEDCO. TEDCO's objects focus on public improvement and are furthered under the MOU through the transfer of lands to a significant city-building and improvement initiative. To address TEDCO concerns, however, this report recommends that, as TEDCO's sole shareholder, City Council issue a Unanimous Shareholder Declaration directing TEDCO to enter into the MOU and carry out its terms. Such action shields TEDCO Directors from potential claims that it has not acted honestly, in good faith, and in the best interest of the corporation.

Conclusion:

The MOU is the final piece in a comprehensive implementation framework that will equip the TWRC to advance Council's priority of creating a dynamic and publicly accessible waterfront. The MOU defines the specific roles and responsibilities of the three parties with respect to revitalizing East Bayfront and Port Lands. The MOU also clarifies how and when public lands

in these areas are to be made available for renewal and facilitates the cooperation and collaboration necessary to achieve the timely resolution of issues needed to advance Toronto's waterfront objectives.

Background:

Toronto waterfront revitalization was launched on November 3, 1999, when the City of Toronto, Province of Ontario and Government of Canada announced the creation of the Toronto Waterfront Revitalization Task Force to develop a comprehensive vision for Toronto waterfront renewal. In June 2001, the three governments approved the creation of an interim TWRC to oversee the 30-year renewal of the DWA and strategic projects at Mimico Creek and Port Union. Lands in the DWA, which extends between Dowling and Coxwell Avenues, are substantially in public ownership. The TEDCO-owned lands are located in East Bayfront and the Port Lands, as shown in Maps 1 and 2, respectively, of Appendix C.

TWRC Act:

Provincial legislation creating the permanent TWRC, *Toronto Waterfront Revitalization Corporation Act, 2002*, came into effect on April 1, 2003. The *TWRC Act* mandated the TWRC to implement a plan that enhances the economic, social and cultural value of land in the DWA in an environmentally, publicly accountable and fiscally sound manner. The *Act* gave the TWRC powers to enter into contracts of limited dollar value, but no power or authority to mortgage assets, form subsidiaries, acquire land, raise revenue or borrow money.

Since its creation, TWRC has produced a 30-year business and development strategy, annual business plans for 2003 and 2004 and a Five-Year Business Plan/Ten-Year Financial Forecast, which was endorsed by City Council at its meeting on September 28 to 30, 2005. In addition, TWRC has prepared, and Council has approved, precinct and environmental master plans for community building in West Don Lands and East Bayfront. An implementation strategy for the Port Lands and a comprehensive Central Waterfront Public Space Framework, including continuous and distinctive water's edge promenade, has been created. Portions of this plan have been realized at Harbourfront Centre, Port Union, Cherry Beach, Marilyn Bell Park and the Port Lands. TWRC has also successfully built momentum for waterfront renewal through effective and award-winning public consultation.

New Waterfront Governance Structure:

While suitable for planning efforts, the original TWRC governance model impeded the advancement of Toronto's waterfront renewal. The need for tri-government approval of many decisions proved to be time-consuming and resulted in project delays. In addition the lack of one clear waterfront champion made it difficult for TWRC to leverage public funds with private resources.

To remedy these concerns, City Council approved a strengthened TWRC as the entity best suited to lead revitalization of Toronto's waterfront, following a due diligence review of the *TWRC Act* and governance models from around the world. The new waterfront governance structure, which was approved by Council in December 2004, and refined by it in September 2005:

- (i) includes elected officials on the TWRC Board of Directors in recognition of the increased need for public accountability;
- (ii) clarifies roles and responsibilities of public sector entities involved in Toronto's waterfront, with the TWRC as the single entity charged as the revitalization lead;
- (iii) directs that all proceeds from the revitalization of public lands be re-invested in the project to realize the full waterfront vision and TWRC self-sufficiency; and
- (iv) directs that land-holding ABCCs such as TEDCO undertake new activities outside the DWA, continue their lease management role within the DWA until lands are required for revitalization, maintain their lead role in projects which they initiated in the DWA that are in advanced stages of planning, or undertake new initiatives in the DWA through service or delivery agreements with TWRC. (The MOU applies only to TEDCO lands in East Bayfront and the Port Lands.)

It was concluded by all government partners that a single entity must be responsible for waterfront renewal in Toronto to avoid piecemeal development, ongoing jurisdictional gridlock, duplication of resources, and project delays. In addition, it was noted that a single accountable entity was critical to: attracting private-sector investment; implementing waterfront-wide sustainable infrastructure and public realm requirements; and ensuring accountability, transparency and the revenue generation and reinvestment necessary to meet overall infrastructure requirements.

In approving the new model, Council, among other things, approved Mayor David Miller as Council designate on the TWRC Board of Directors for a three-year term and directed the preparation of this MOU between the City, TEDCO and TWRC. The Province of Ontario has approved a similar MOU between the Ministry of Public Infrastructure Renewal, the Ontario Realty Corporation and the TWRC regarding revitalization of the West Don Lands.

This report on an MOU between the City, TEDCO and TWRC is the final piece needed to implement Council's new waterfront governance structure.

Comments:

In developing this MOU, the City coordinated approximately 24 meetings of City, TEDCO and TWRC officials from April 2005, to January 2006. The purpose of the MOU is to clarify the roles and responsibilities of the City, TEDCO and TWRC as the main project participants in the revitalization of the Port Lands and East Bayfront. More specifically, the MOU is intended to:

- (i) define TWRC's role as Revitalization Lead;
- (ii) ensure that all lands owned by TEDCO in the Port Lands and East Bayfront are not unnecessarily sterilized pending revitalization nor unnecessarily encumbered when required for revitalization;

- (iii) foster co-ordination, cooperation, communication, joint decision-making and the timely resolution of disputes among the parties; and
- (iv) ensure that the City's interests, priorities and policies in respect of the revitalization initiative are advanced in a collaborative manner.

Critical Success Factors Guiding the MOU:

Critical success factors, approved by Council and used to evaluate waterfront governance models in 2004, were also used to guide MOU development. These include:

- (1) effectiveness in removing barriers to project implementation; ensuring streamlined, cost-efficient and timely delivery of the public amenities; maintaining design and environmental excellence; achieving deliverables; and accomplishing strategic use of public-sector investment;
- (2) public transparency and accountability to Council, other governments, and the public;
- (3) expediency of development with a cost-efficient organizational structure and administrative procedures that enable expedient decision-making and build on the strengths of all project partners;
- (4) co-ordination among governments and ABCCs to encourage widespread, multi-government commitment to renewal; facilitate alignment among the governments and their ABCCs; reflect government priorities; and facilitate resolution of disputes;
- (5) encouraging private investment in waterfront revitalization by facilitating partnering with third-party organizations in the public, private and non-profit sectors; and
- (6) minimizing government risk and cost and facilitating public input and participation.

Scope of the MOU:

Geographically, the MOU applies to TEDCO land holdings in East Bayfront and the Port Lands. Specifically, TEDCO owns the 28-acre Queen Elizabeth Docks, bounded by Jarvis and Parliament Streets, south of Queens Quay East; an additional 0.7-acre parcel at the northeast corner of Sherbourne Street and Queens Quay East; and various parcels comprised of dockwall and former rail spurs and rights-of-way that amount to 1.3 acres.

In the Port Lands, TEDCO owns more than 400 acres of land, which will be transformed incrementally over a 25-year period into parks, public spaces, commercial districts (including a film and media production complex), and sustainable mixed-use communities. Maps 1 and 2 of Appendix C illustrate TEDCO holdings in these areas.

Project Phasing:

Attached to the MOU as Schedule 2 is the detailed Port Lands Phasing Strategy and map, which is to be reviewed on an annual basis. This plan identifies when specific parcels or precincts will be required for planning, environmental testing, site preparation and ultimately development purposes.

Revitalization of TEDCO lands in East Bayfront is imminent, following Council's recent approval of the precinct plan for the area. The MOU anticipates that the 28-acre Queen Elizabeth Docks will be made available for revitalization prior to the end of 2006, following Council approval of a detailed business and implementation strategy from TWRC for the area. Of TEDCO's 400 acres in the Port Lands, 25 acres will be required in 2007 for the creation of Commissioners Park. In 2008, it is anticipated that 32 acres in the Quays, excluding Polson Quay, and 59 acres in the central Port Lands, north of the ship channel, will be required for transformation into sustainable and integrated mixed-use communities. Specific sites are highlighted in the phasing strategy. Precinct planning for these areas will begin this year and conclude in 2007. As a result, the timing of precinct implementation in these areas is subject to refinement and will be reviewed on an annual basis.

With the exception of minor parcels to create the Don Greenway and possibly interim sports fields, no additional TEDCO holdings in the Port Lands will be required for revitalization purposes until approximately 2017. East of the Don Greenway, additional lands – excluding the site of the film and media production complex and Concrete Works – have been identified as a long-term target for revitalization. These lands are to remain under TEDCO's control until at least 2020. In this capacity, TEDCO can pursue interim and possibly permanent uses for these sites, on the condition that permanent uses are consistent with the Central Waterfront Secondary Plan.

An additional three parcels in the Port Lands – Polson Quay, the site of the future film and media production complex, and Concrete Works (a developing campus that is consolidating existing companies in the concrete business in a campus format in the Port Lands, a portion of which is under lease to the Toronto Port Authority) are identified as TEDCO Project Lands and will remain under TEDCO's permanent control.

MOU Relationship to the TWRC 10-Year Financial Forecast:

In September 2005, Council approved a Five-Year Business Plan and 10-Year Financial Forecast for the waterfront that clarifies, among other things, how the \$1.5B of shared government investment will be allocated to specific waterfront initiatives. In developing this plan, the governments and TWRC recognized the need for public funds to address upfront environmental remediation, infrastructure and public realm requirements needed to successfully attract the private investment required to develop integrated and sustainable communities.

The financial forecast is a rolling document that will be updated annually. Expenditures to 2010 are detailed and allocated among specific projects. Expenditures in years six to 10 (i.e., beyond 2010) are more general and will be refined on an annual basis as the initiative advances. Annual

refinements, including the addition of future years to the forecast, are subject to Council's annual budget process and to the appropriations processes of the government partners.

Included in the current forecast are funds for the implementation of the East Bayfront and West Don Lands precinct plans, with first occupancy in these new communities anticipated in 2008. Also included is funding for a variety of individual projects in the Port Lands and central waterfront, such as design and development of Commissioners Park and an adjacent Sports and Recreation Centre; development of interim sports fields; implementation of phase one of the Tommy Thompson Park Master Plan; completion of the Western Beaches Watercourse, and construction of portions of the water's edge promenade. In addition, improvements to Cherry Beach, Martin Goodman Trail, Leslie Street and Cherry Street are underway and will continue in 2006. Similarly, implementation of the TEDCO-led film and media production complex (Filmport), is imminent.

In addition, the current financial forecast includes an unallocated reserve of approximately \$100M intended to facilitate the provision of transit and other services in the Port Lands and western waterfront. The specific nature of these services and the required magnitude of investment will become clear as precinct planning for these areas is undertaken.

TEDCO officials have suggested that the scope of the MOU be limited to lands for which funds are earmarked in TWRC's 10-year forecast. This would exclude a significant portion of the Port Lands. The MOU strikes a balance between not sterilizing land in the interim while ensuring that it is available for revitalization when needed. It achieves this by proposing an incremental approach to the provision of land that enables governments to ensure that required funding commitments are in place and reflected in the rolling nature of the financial forecast. The approach is consistent with Council's 2004 direction that land be made available incrementally.

Failure to include the Port Lands in the MOU at this juncture would result in ongoing jurisdictional gridlock, hamper the ability of TWRC to develop integrated and sustainable infrastructure and jeopardize investment by the other governments and private sector in the initiative.

Roles and Responsibilities under the MOU:

The MOU clearly defines roles and responsibilities of TWRC, TEDCO and the City of Toronto in revitalizing East Bayfront and the Port Lands. The roles reflect the strengths and unique mandates of the parties and addresses the critical success factors approved by Council by reducing duplication and government risk, ensuring public accountability, and outlining performance deliverables, timelines and dispute resolution processes. The specific roles and responsibilities of the parties are summarized below.

TWRC Roles and Responsibilities:

The *TWRC Act (2002)* defines the mandate of the Corporation as:

- (i) implementing a plan that enhances the economic, social and cultural value of land in the DWA, and creating an accessible and active waterfront for living, working and

recreation, in a fiscally and environmentally responsible manner and with regard to the City's Official Plan;

- (ii) ensuring that ongoing development in the DWA can continue in a financially self-sustaining manner;
- (iii) promoting and encouraging private-sector involvement in development of the DWA; and
- (iv) encouraging public input in the development of the DWA.

The TWRC mandate differentiates it from other public agencies managing or owning property in the waterfront as it goes beyond good fiscal management to include developing sustainable, balanced and healthy communities that address the policy and public realm priorities of three orders of government.

The MOU defines TWRC as the Revitalization Lead but requires that it undertake many of its activities in consultation or partnership with the City and, where appropriate, TEDCO. Specifically, the MOU assigns TWRC responsibility for:

- (i) promoting Toronto's waterfront revitalization initiative and marketing lands owned by TEDCO in East Bayfront and the Port Lands for mixed-use, commercial and residential purposes; leading requests for proposals that seek developer involvement; and consulting regularly with members of the public and other stakeholders;
- (ii) developing precinct plans for Council approval and coordinating planning and development applications to the City for lands owned by TEDCO in East Bayfront and the Port Lands;
- (iii) preparing sites for servicing and remediation, including developing Environmental Frameworks for East Bayfront and the Port Lands that detail soil and groundwater remediation approaches, and assuming responsibility for overall environmental management and reporting;
- (iv) delivering on a timely basis the public realm components of the waterfront plan, including parks and public spaces, the water's edge promenade and transit;
- (v) attracting strategic employment, tourism, businesses and business clusters to these areas and encouraging private investment and public/private partnership;
- (vi) facilitating the relocation of businesses impacted by the revitalization initiative, including financing appropriate business relocation and interruption costs; and
- (vii) developing detailed Business and Implementation Plans for the East Bayfront and the Port Lands on a parcel, precinct, block or project basis, for Council approval. The MOU directs that these plans include, among other things:

- (a) detailed revenue, expense, occupancy and investment projections, including reinvestment strategies for revenues obtained from the revitalization of public lands;
- (b) detailed project phasing and deliverables, with recommendations regarding how TEDCO Lands are to be made available for a specific project or precinct (freehold or long-term lease); and
- (c) identification of financial contribution and other agreements required from the governments or other partners to implement the plan.

TEDCO Roles and Responsibilities:

The former City of Toronto created TEDCO in 1986 to facilitate business growth, job creation and economic development in the City. With the transfer of land from the Toronto Harbour Commission to TEDCO in 1994/95, TEDCO's role became focused on brownfield reclamation, property management and real estate development.

In 2002, Council approved a new mandate and Board structure for TEDCO that, among other things:

- (i) named TEDCO the City's Redevelopment Agency responsible for stimulating reinvestment in strategic and underutilized sites across Toronto;
- (ii) authorized TEDCO to use its assets to explore, pilot and implement incentives and redevelopment tools as permitted under applicable laws; and
- (iii) aligned TEDCO with the City's Economic Development Office and ensured that it conform with the City's Economic Development Strategy as it relates to job growth, job creation and brownfield revitalization.

Council's objective in augmenting TEDCO's mandate was to expedite creation of development ready sites to act as catalysts for brownfield investment and employment generation across the City. In light of TWRC responsibilities and the need to recapture investment (property taxes and jobs) in areas beyond the waterfront, Council directed that TEDCO pursue opportunities across Toronto. Council also instructed TEDCO to operate in a manner that is consistent with the City's directions and objectives for waterfront revitalization.

Roles and responsibilities assigned to TEDCO under the MOU build on its existing strengths and expertise. Generally, the MOU provides TEDCO with three distinct and important roles:

- (1) leading TEDCO-initiated projects that are in advanced stages of planning (TEDCO Projects);
- (2) continuing its property management role, including the pursuit of interim uses, on Port Lands sites until they are required for revitalization purposes; and

- (3) undertaking site preparation and development activities in East Bayfront and the Port Lands through service or delivery agreements with TWRC.

These roles, each of which is discussed in greater detail below, are consistent with direction provided by Council in December 2004, and satisfy the critical success factors related to waterfront governance.

- (1) TEDCO Projects:

Under the MOU, TEDCO retains its lead role in implementing projects which it has initiated, and which are in advanced stages of planning and consistent with the Central Waterfront Secondary Plan. Referred to in the MOU as the TEDCO Projects, these are development of the 45-acre film and media production complex 'Filmport' in the Port Lands, continued development of the Concrete Works campus at the east end of the Port Lands, and development of a commercial employment use at the foot of Jarvis Street in East Bayfront as it relates to the prospective tenant known to TEDCO as Project 24/7. In addition, TEDCO retains its holdings in Polson Quay, a key waterfront site. TEDCO can assume a lead role on other initiatives upon agreement of the three parties.

As the lead in the above initiatives, TEDCO retains all revenues which the projects generate but is required to contribute to or implement public realm and infrastructure requirements of the specific sites. All TEDCO Projects remain subject to the City's regulatory and other approval processes.

- (2) Property and Lease Management:

TEDCO will continue its property and lease management role in the Port Lands until land is required for revitalization. Port Lands revitalization will occur incrementally over a 25-year period, in accordance with the previously discussed phasing plan. The phasing plan provides TEDCO with the capacity to pursue interim and potentially permanent uses on a number of sites east of the Don Roadway.

- (3) Partnerships between TWRC and TEDCO:

To date, TEDCO has undertaken a number of projects in the Port Lands through an Eligible Recipient Agreement with TWRC. The MOU encourages TWRC to continue to pursue such partnerships and requires that TWRC provide TEDCO with the first opportunity to carry out site investigation and remediation work on TEDCO-owned lands. The MOU also allows the scope of future partnerships to be expanded to include development and other activities should TEDCO and TWRC agree on terms.

The partnering approach advocated in the MOU allows TWRC to benefit from TEDCO's expertise, provides TEDCO with additional opportunities, enables the government partners to hold TWRC accountable for implementation of the initiative and ensures effective use of public resources.

City of Toronto Roles and Responsibilities:

The MOU maintains City Council's authority on policy and regulatory matters, such as zoning and site plan approval and approval of TWRC business and implementation plans, precinct plans, employment and tourism strategies, contribution agreements and major changes in project strategy.

The City of Toronto Waterfront Project Secretariat facilitates all City activities related to the transformation of Toronto's waterfront, monitors and advises City Council on the TWRC's business performance and fiscal requirements, and coordinates the activities of corporate and intergovernmental teams to plan and deliver waterfront objectives. The Secretariat will assume the lead coordinating role in ensuring that the City's responsibilities under the MOU are addressed. These responsibilities include:

- (i) ensuring accountability and transparency of municipal contributions to the revitalization initiative by tracking cash and in-kind contributions made by each of the governments, TWRC expenditures, revenues from the sale or lease of public lands and return on investment; and by assessing TWRC's achievements and effectiveness in meeting tri-government project priorities and achieving deliverables; and
- (ii) providing policy direction and leadership to ensure the waterfront initiative conforms to City policies and priorities, including, through City Planning, ensuring that the City's authority under the *Planning Act* is respected and, through the Economic Development, Culture and Tourism Division, ensuring that plans are in place to achieve the City's employment and tourism targets and objectives for the waterfront.

In addition, the City will continue to work closely with TWRC in developing and implementing precinct, infrastructure and communications plans, developing and reviewing third-party development proposals and RFP processes, undertaking environmental assessment initiatives and developing and implementing business attraction, relocation and retention strategies.

Public Land Management Protocol:

In approving a new governance structure for the waterfront revitalization initiative in December 2004, Council also approved a set of principles to govern management of public lands in the DWA. These principles required, among other things:

- (i) development of a Public Land Management Protocol that is streamlined, straightforward and practical; applies prudent land management practices; appropriately limits and allocates risk; and meets public policy objectives; and
- (ii) to the extent possible, retention of public lands in public hands, with individual governments owning and operating parks, public spaces, and infrastructure as is consistent with their mandate.

The Public Land Management Protocol contained in the MOU requires TEDCO to make lands available incrementally, in accordance with the previously discussed phasing plan, following Council approval of precinct plans and detailed business and implementation plans from TWRC for the lands in question. The protocol also sets out clear targets and deadlines for the delivery of parks and public realm requirements, and the achievement of public policy objectives in the areas of housing and employment.

In accordance with the principle of “public lands in public hands,” lands for parks, public spaces and infrastructure purposes are to be transferred to the City or as the City otherwise directs for nominal consideration. The general approach is that where lands are to be used for commercial and, where feasible, mixed-use purposes a ground leasehold interest will be transferred. Where lands are to be used for residential purposes, a fee simple (ownership) will be transferred. At present, in Toronto it is difficult to market residential development on leased lands.

The MOU requires that proceeds from the sale or long-term lease of public lands be reinvested in the revitalization initiative through TWRC, in accordance with its Council-approved rolling 10-year financial forecast and business and implementation plans. These revenues will offset the total infrastructure costs required to make waterfront revitalization a reality. Council endorsed the reinvestment of these revenues, subject to a similar agreement being put in place with respect to provincial lands in West Don Lands, for which provincial officials will be seeking formal policy approval.

In September 2005, Council approved an accounting framework for the waterfront that recognizes the City’s land contributions to waterfront renewal. The framework addresses when land is to be valued and notes that the three governments must agree on the valuation process and parameters. The governments, through the Intergovernmental Steering Committee, are working together to develop this process and ensure that in-kind contributions are considered equitably and fairly. A number of tools exist to balance contributions, such as provincial and federal incentives to encourage private investment and the possible creation with TWRC of legacy or endowment funds to offset the operating cost of new public realm infrastructure.

The Public Land Management Protocol provides TWRC with access to a pooled asset base on which to build, as well as clear responsibility for project delivery. It facilitates the attraction of private investment to the DWA and enables TWRC and its partners, including the City, to benefit from the economies of scale associated with waterfront-wide infrastructure and public realm development.

Through waterfront revitalization, the City benefits from an improved parks base, significant public realm improvements and additional revenues. The impact of these new revenues will be projected and reported to Council in 2006, along with strategies for mitigating the costs to the City of operating new parks, public spaces and infrastructure.

Strategic Issues – TEDCO Financial Position:

Concerns have been raised about the impact that the proposed transfer of TEDCO lands will have on TEDCO's financial position. The MOU recognizes TEDCO's reliance on revenues derived from its land holdings, and identifies that, where specific lands are to be transferred, TEDCO prepare a Financial Impact Statement detailing the direct net revenues derived from the parcels being transferred and the impact that such revenue loss will have on its ability to meet its financial obligations. Upon review of the Impact Statement, the Deputy City Manager and Chief Financial Officer, in consultation with the Waterfront Secretariat, will submit a report to Council recommending measures to mitigate the financial impacts on TEDCO, should such measures be required.

It is important to note, however, that approximately 144 acres of TEDCO's total current city-wide landholdings of 468 acres will need to be transferred to the City or third-party developer between 2006 and 2017. A number of opportunities also exist for TEDCO to mitigate the impact of potential losses in revenues from existing tenants, including its generation of revenues from the TEDCO Projects and the City's likely provision of municipal properties outside of East Bayfront and the Port Lands to TEDCO for renewal.

Strategic Issues – Environmental Liability:

Many of the lands in East Bayfront and the Port Lands are brownfields. A key objective of waterfront renewal and one of TWRC's key tasks as revitalization lead is to improve the environmental condition of these lands. Environmental management through remediation and/or risk assessment will protect and enhance the environment, and is expected to render environmental liabilities against the City or TEDCO as remote after such work is conducted.

The MOU imposes strong obligations on the TWRC regarding environmental remediation and management. It requires that TWRC provide TEDCO the first opportunity to remediate its own lands, failing which TWRC and any third parties it engages must provide the City and TEDCO with appropriate protections. These protections relate to the appropriate conduct of site investigations and remediation work, insurance and indemnities and potential for peer review. Specifically, TWRC is required to:

- (i) create Environment Frameworks for each precinct, which include remediation, risk assessment and management plans;
- (ii) where appropriate, require the creation of a reserve fund for maintenance of risk-assessed lands;
- (iii) ensure the use of acceptable consultants and contractors; and
- (iv) provide acceptable environmental insurance and indemnities.

In addition, TEDCO can be present for any work on its land and the new brownfields legislation formalizes the concept of risk assessment and provides certain immunity to current and future owners and occupants and others having control of the property when remediation and/or risk assessment is complete and a Record of Site Condition (RSC) filed with the provincial Registry.

Filing of a RSC, however, does not eliminate risk as there are exceptions to the immunity, such as future discharges of contaminants; contamination migrating to other properties after a RSC is filed; emergency re-openers by the Ministry of Environment if the Minister has reasonable grounds to believe that the residual contamination poses a danger to health and safety of any person or to water supply; and civil claims. TEDCO has therefore requested full indemnity from the TWRC, guaranteed by the three orders of government. The MOU does not recommend this approach as either necessary or feasible and, instead, stipulates that any residual liability after cleanup of the lands remain with TEDCO. The likelihood of liability after remediation and/or risk assessment to provincial standards is remote and further minimized by the tools outlined above. Indemnities are, therefore, not warranted for an entity with a mandate for redevelopment in the public interest. Such a requirement threatens and delays the revitalization process and is contrary to the public purpose of the initiative.

Strategic Issues – TEDCO Directors Responsibilities and Liabilities/Shareholder Declaration:

Concerns have been expressed that TEDCO's transfer of lands for nominal consideration may cause TEDCO's directors to breach their fiduciary duty to TEDCO. As an Ontario *Business Corporations Act* (OBCA) corporation, TEDCO's directors have a duty to act honestly, in good faith and in the best interests of the corporation, referred to as a fiduciary duty. TEDCO differs from other OBCA corporations, however, in many important respects. First, it is not required to pay dividends to its sole shareholder, the City. Secondly, TEDCO's objects focus on public improvements, not profit. Under the MOU, TEDCO would further its public improvement objects by transferring lands for waterfront renewal, which is widely regarded as a significant city-building and improvement project.

The incremental transfer of TEDCO lands outlined in the MOU, backed by funding from three orders of government, is also consistent with TEDCO's objects. Further, it is the City, as sole shareholder of TEDCO, that would be the party principally concerned about any breach of the fiduciary duty, and it is the City, as a party to the MOU and a participant in waterfront renewal, that is the one requiring TEDCO to transfer the lands. Accordingly, it would be highly unlikely that the City would take issue with the directors' fiduciary duties in carrying out that requirement.

To address the concerns of TEDCO Directors, however, this report recommends that the City make a Unanimous Shareholder Declaration directing TEDCO to enter into the MOU and to transfer lands needed for waterfront renewal, in accordance with the provisions in the MOU. A Shareholder Declaration is provided for in Section 108 of the *Ontario Business Corporations Act*, and permits a 100 percent shareholder to stand in the

place of the directors. This report recommends that, as sole shareholder, the City stand in the place of TEDCO Directors to authorize and direct TEDCO to enter into the MOU and carry out its terms, including land transfers. Such action shields TEDCO Directors from potential claims that it has not acted honestly, in good faith, and in the best interest of the corporation in respect of these actions.

Strategic Issues – Collaboration and Dispute Resolution:

City, TEDCO and TWRC officials have acknowledged the importance of working cooperatively. As a result, they have agreed to share information and technical expertise and to advise each other on various waterfront issues and initiatives as needed.

To expedite cooperation and collaboration, the City has established a Waterfront Liaison Committee to facilitate decision making and information sharing in all aspects of the revitalization initiative, including matters relating to the MOU. The committee's mandate is to resolve jurisdictional and governance issues, ensure that municipal services and resources are available in a timely manner, and facilitate implementation of TWRC's five-year plan/10-year forecast. Members of the committee include senior representatives of the City, TEDCO and TWRC.

In the event of a dispute that cannot be resolved at the staff level, the MOU outlines a dispute resolution process that includes discussion at the Waterfront Liaison Committee and, if necessary, involvement of an independent expert in the area of the dispute. Failing this, recommendations for resolving the dispute will be submitted to Council in a staff report, with Council's decision being final.

Conditions Causing the MOU to be Unwound:

This MOU is structured to minimize financial and environmental risk to the City. It is subject to a detailed review after two years, along with an annual review of the Port Lands phasing strategy and the achievement of deliverables.

In addition, both the City and TWRC are entering into this MOU on the assumption that TWRC and the three governments are committed to revitalizing East Bayfront and the Port Lands over a 25-year period and that there will be sufficient public and private investment to meet these objectives. If at any time the City believes that there is insufficient commitment for revitalization among the partners, the City can request that other options for revitalizing the TEDCO Lands be identified. The City, on 90 days notice, can terminate the MOU as it relates to TEDCO Lands, other than lands for which signed contribution agreements are in place, if agreement has not been reached on alternative options within six months of the City's initial request.

Conclusions:

This report satisfies directives from Council in December 2004, and September 2005, for a Memorandum of Understanding between the City of Toronto, TEDCO and the TWRC that provides TWRC with full responsibility for implementing Toronto waterfront renewal, including

environmental remediation and management. The MOU defines the specific roles and responsibilities of the three parties with respect to revitalizing East Bayfront and Port Lands. The MOU also clarifies how and when public lands in these areas are to be made available for renewal and facilitates the cooperation and collaboration necessary to achieve the timely resolution of issues needed to advance Toronto's waterfront objectives.

This MOU is the final piece in a comprehensive implementation framework that will equip the TWRC with the powers to advance Council's priority of creating a dynamic and publicly accessible Toronto waterfront.

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Attachments:

Appendix A – City of Toronto / TEDCO / TWRC Memorandum of Understanding

Appendix B – Unanimous Shareholder Declaration to TEDCO

Appendix C – Map 1: TEDCO Ownership –East Bayfront

Map 2: TEDCO Ownership – Port Lands

Appendix A – City of Toronto/TEDCO/TWRC Memorandum of Understanding

City of Toronto

- and -

City of Toronto Economic Development Corporation

- and -

Toronto Waterfront Revitalization Corporation

Memorandum of Understanding

Revitalization of City and TEDCO Owned Lands in the Port Lands and East Bayfront

, 2006

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Memorandum of Understanding
- Revitalization of City and TEDCO Owned Lands in the
Port Lands And East Bayfront

City of Toronto (the City or Toronto)

- and -

City of Toronto Economic Development Corporation
(TEDCO)

- and -

Toronto Waterfront Revitalization Corporation
(TWRC)

(Collectively, the “Parties”)

Agree as Follows:

Background:

- (A) capitalized terms used in this MOU have the meanings ascribed to them in Article 0;
- (B) Toronto, Ontario and Canada recognize that it is in the public interest to revitalize Toronto's central waterfront, and in October 2000, Toronto, Ontario and Canada announced a total commitment of \$1.5 billion towards Toronto waterfront revitalization;
- (C) in November 2001, Toronto, Ontario, and Canada incorporated the interim TWRC under the Business Corporations Act (Ontario) to oversee and lead waterfront renewal, and in 2002 TWRC was continued as a corporation without share capital under the TWRC Act;
- (D) in October 2001, TWRC released its development plan and business strategy outlining how revitalization is to be implemented over a 30-year period;
- (E) in April 2003, Council approved the City's Central Waterfront Secondary Plan;
- (F) in December 2004, Council approved a report, entitled "Governance Structure for Toronto Waterfront Revitalization", in which it reaffirmed support of TWRC and approved its transformation to an empowered corporation focused on implementation subject, among other things, to:
 - (a) agreement being reached among the three orders of governments and the TWRC on a five-year business plan, short and long-term priorities, deliverables and performance measures;
 - (b) control of public lands in the DWA being transferred to TWRC incrementally, following completion of detailed business and implementation strategies that are satisfactory to the three orders of government;
 - (c) agencies, boards, commissions and corporations of each of the three orders of government with land holdings in the DWA, the main ones being TEDCO, Ontario Realty Corporation and Toronto Port Authority, undertaking activities on the lands in the DWA through service or delivery agreements with TWRC or in compliance with a public land management protocol;
 - (d) such agencies, boards, commissions and corporations with projects in advanced stages of planning, including TEDCO, entering into agreements with TWRC for continued implementation of these projects, in keeping with the waterfront vision; and
 - (e) the City, TEDCO and TWRC City entering into a Memorandum of Understanding that, among things, ensures that lands owned and managed by TEDCO are not unnecessarily encumbered when they are required for revitalization and clarifies the timing and phasing of revitalization on TEDCO properties so as not to sterilize these lands pending revitalization;
- (G) in late 2004, TWRC released its five-year plan/ten year financial forecast for waterfront revitalization;

- (H) TWRC, through consultations with surrounding communities and its government partners, developed a plan for the East Bayfront precinct, and which plan was approved by Council in November of 2005, and TWRC will be undertaking a similar process for the Port Lands;
- (I) TEDCO has extensive landholdings in the Port Lands and in the Queen Elizabeth Docks area of East Bayfront which are subject to this MOU; and
- (J) the purpose of this MOU is to facilitate the implementation of the East Bayfront precinct plan, and the precinct plans for the Port Lands following approval of that plan by City Council, and ensure that the public lands in the Port Lands and East Bayfront are dealt with in a manner that expedites the realization of the waterfront vision.

1.0 Definitions and Schedules:

1.1 Definitions:

In this Memorandum of Understanding:

“Acceptable Consultant” means an independent, duly qualified consultant that has either been pre-approved by the Parties or that is approved by the parties acting reasonably, with any dispute as to the choice of consultant to be resolved in accordance with the Dispute Resolution Process;

“Acceptable Contractor” means an independent, duly qualified contractor that has been pre-approved by the Parties or that has been selected pursuant to a tender that was issued to pre-approved contractors or that is approved by the Parties acting reasonably, with any dispute as to the approval of the contractor to be resolved in accordance with the Dispute Resolution Process;

“Acceptable Environmental Indemnity” means an indemnity in favour of the City and TEDCO in respect of losses, costs, expenses, damages, actions, suits and proceedings (collectively, “Claims”) that arise out of, or are attributable to, the performance of Site Investigations or Remediation Activities, as the case may be, including any failure of the indemnifier or those for whom it is responsible (the “Indemnifier”) to fully and properly characterize the environmental condition of the site in the performance of the Site Investigations, and any failure of the Indemnifier to appropriately and properly address the environmental condition of the site in the performance of the Remediation Activities, and includes Claims which are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property that arise out of, or attributable to, the performance of Site Investigations or Remediation Activities, as the case may be, all on such terms as are appropriate given the specific circumstances at hand and as are settled in accordance with Section 8.7;

“Acceptable Environmental Insurance” means insurance which:

- (a) pertains to either Site Investigations or Remediation Activities;
- (b) is from a reputable insurance company or companies acceptable to the City, in consultation with TEDCO, and is on terms and in amounts and with limits and exclusions, if any (the “insurance particulars”) as the City, in consultation with TEDCO, determines are appropriate given the specific circumstances at hand;
- (c) includes workers compensation, employer's liability insurance, general liability insurance, contractor's pollution liability insurance (including insurance relating to failure to fully and properly characterize the environmental condition of the site or failure to appropriately address the environmental condition of the site) and, as appropriate, professional malpractice (errors and omissions) insurance;
- (d) has each of TEDCO and the City as an additional named insured; and
- (e) is otherwise acceptable to the City, acting reasonably;

“Business and Implementation Plan” means a detailed business and implementation strategy of TWRC that sets out TWRC’s strategy and work plan for implementing revitalization of (A) a precinct or district that includes the TEDCO Lands, or (B) one or more parcels of land owned by TEDCO, and which plan has been (i) reviewed and commented on by TEDCO, (ii) approved by Council, and (iii) accepted or approved by the other order or orders of government that are providing funding for implementation of the plan, with those approvals to be either written approvals or deemed approvals in the form of signed Contribution Agreements or approval of initiatives in the TWRC’s rolling five year plan/ten year financial forecast for revitalization;

“Canada” means the Government of Canada;

“Concrete Campus” means the area in the Port Lands which is occupied or proposed to be occupied by concrete, cement, or aggregate businesses as a concrete works campus, and a portion of which is subject to a long term ground lease from TEDCO to the Toronto Port Authority;

“Council” means City council;

“Dispute” means any dispute between the parties arising out of the terms of this MOU;

“Dispute Resolution Procedure” has the meaning ascribed to it in Section 0;

“DWA” means the area prescribed as the designated waterfront area in Ontario;

Regulation 200/03 made under the Act;

“East Bayfront” means the area between Jarvis Street and Cherry Street, south of the Gardiner/Lake Shore Corridor and north of the harbour and the Keating Channel, as shown on the map attached as Schedule 1;

“East Bayfront Project” means the TWRC overall project generally described in Section 0;

“Eligible Recipient” means the entity that will carry out a specific project or initiative on behalf of TWRC, with funds flowing through TWRC;

“Environmental Framework” has the meaning ascribed to it in Section 0;

“Environmental Remediation and Reporting” means, collectively, undertaking soil and groundwater remediation and risk assessment and management measures and all related regulatory reporting and filing obligations with respect to TEDCO Lands in accordance with the Environmental Framework;

“Existing TEDCO Eligible Recipient Agreement” means the agreement between TEDCO and TWRC made as of February 23, 2004, as it may be amended from time to time and any addenda thereto;

“Expert” has the meaning ascribed to it in Paragraph 0;

“Film Port” means the film and media complex and related leased lands to be built in the Port Lands as a TEDCO Project on the lands shown on Schedule 2-A;

“GSTWR Report” means Report No. 9(1) of the City’s Policy and Finance Committee adopted by Council on November 30, December 1 and 2, 2004, entitled “Governance Structure for Toronto Waterfront Revitalization” authorizing the development of this MOU between the City, TEDCO and TWRC;

“MOU” means this memorandum of understanding as it may be amended, supplemented or replaced from time to time;

“Ontario” means the Province of Ontario;

“Other Persons” means Acceptable Consultants and Acceptable Contractors working under Eligible Recipient agreements or service agreements with TWRC, and for greater certainty does not include TEDCO;

“Polson Quay” means the lands identified as Polson Quay on Schedule 2-A;

“Port Lands” means the lands south of the Lakeshore/Gardiner corridor generally bounded by the east edge of the harbour and Leslie Street, as shown on the map attached as Schedule 1;

“Port Lands Phasing Strategy” has the meaning ascribed thereto in Section 0, and establishes an agreed upon timing for completion of applicable Precinct Plans, availability of lands for development, and completion of development, in each case, for the Port Lands;

“Port Lands Project” means the overall TWRC project generally described in Article 0;

“Public Realm Lands” means lands that are to become parks, public spaces and other components of the public realm;

“Queen Elizabeth Docks” means the area in East Bayfront between Jarvis and Parliament Streets south of Queens Quay, and for purposes of this MOU, also includes an approximately .7 acre parcel of land at the north-east corner of Sherbourne Street and Queens Quay East, as well as various linear remnant parcels comprising former rail spurs and portions of former street rights of way;

“Remediation Activities” has the meaning given to it in Subsection 0 and for greater certainty, includes the implementation of measures to manage impacted soils and ground water, and risk assessment, risk management and physical treatment methods;

“Revitalization Initiative” means the broad initiative undertaken by the City, Ontario and Canada for the environmental improvement, rejuvenation of economic activity and overall improvement of quality of life through revitalization of the DWA;

“Revitalization Lead” means TWRC in its role in performing the activities set out in Section 3.6 in this MOU;

“Site Investigations” means Phase I and Phase II environmental site assessments and any other survey work, soil testing, ground water testing, drilling of bore holes, examining infrastructure and other site investigations and testing;

“Site Preparation Work” has the meaning given to it in Subsection 0 and for greater certainty, includes the implementation of measures to manage impacted soils and ground water, and risk assessment, risk management and physical treatment methods;

“TEDCO Lands” means the lands, other than the TEDCO Project Lands, owned by TEDCO in East Bayfront and the Port Lands;

“TEDCO Project Lands” means the lands to be occupied by the TEDCO Projects;

“TEDCO Projects” means Film Port, subject to the provisions in Section 0 the project known as 24/7, the Concrete Campus, any projects in Polson Quay, and other projects, if any, in East Bayfront or the Port Lands that the parties agree are TEDCO Projects;

“Transfer” includes a transfer by way of freehold title and grant of a long term ground lease;

“TWRC Act” means the *Toronto Waterfront Revitalization Corporation Act, 2002*, as amended or replaced from time to time;

“Waterfront Liaison Committee” means the committee established to fulfill the mandate described in Section 0; and

“Waterfront Project Secretariat” means the staff project team within the City charged with the task of overseeing the Revitalization Initiative.

1.2 Schedules:

The schedules to this MOU which form part of this MOU, are as follows:

Schedule 1 Plan showing East Bayfront and the Port Lands

Schedule 2 Port Lands Phasing Strategy:

-2-A-Port Lands Phasing Plan

-2-B-Revitalization Timeline

2.0 Purpose of MOU:

The purpose of this MOU is to clarify the respective roles and responsibilities of TWRC, the City and TEDCO as the main project participants in the revitalization of the Port Lands and East Bayfront as part of the Revitalization Initiative. More specifically, the purpose of this MOU is to:

- (a) facilitate the implementation of the approved precinct plan for East Bayfront, and the implementation of TWRC’s precinct plans for the Port Lands following approval of such plans by City Council;
- (b) ensure that all lands owned by TEDCO in the Port Lands and East Bayfront are dealt with in a manner that realizes the City's and TWRC's waterfront revitalization vision;
- (c) ensure that lands owned by TEDCO in the Port Lands and East Bayfront are not unnecessarily sterilized pending permanent revitalization;
- (d) define TWRC’s role as Revitalization Lead in the DWA;
- (e) provide for the timely resolution of disputes in the implementation of the Port Lands and East Bayfront Projects;
- (f) ensure that the City’s interests, priorities and policies in respect of the Revitalization Initiative are advanced in a collaborative manner; and

- (g) foster co-ordination, cooperation and communication, and joint decision-making, when needed, between the City, TEDCO and TWRC in the implementation of the Port Lands and East Bayfront Projects.

3.0 The Three Parties:

3.1 City:

The City has made the revitalization of its waterfront a priority, and sees the revitalization of East Bayfront and the Port Lands as being necessary to:

- (a) further the City's objectives, as set out in its Official Plan, of encouraging compact and sustainable growth, and directing such growth to areas such as the waterfront that can accommodate change, and away from areas where the City must protect green space or the existing character of neighbourhoods;
- (b) implement the four principles in the City's Central Waterfront Secondary Plan, namely:
 - (i) removing barriers/making connections;
 - (ii) building a network of spectacular waterfront parks and public spaces;
 - (iii) promoting a clean and green environment; and
 - (iv) creating dynamic and diverse communities; and
 - (v) further the City's objectives of job creation and assessment growth, as set out in the City's Economic Development Strategy and Tourism Plan, by ensuring early delivery of employment components of the Central Waterfront Secondary Plan and supporting job creation and assessment growth.

3.2 City Role Under MOU:

With respect to the Port Lands Project, the East Bayfront Project and the Revitalization Initiative generally the City shall:

- (a) through its Waterfront Secretariat:
 - (i) monitor and ensure accountability and transparency for the City's contributions to the Revitalization Initiative; in this regard it shall track cash and in-kind contributions made by each of the three orders of government, TWRC expenditures, revenues from sale or lease of land, and return on investment for each of the three orders of government;

- (ii) assess TWRC's achievements and TWRC's effectiveness in meeting tri-government project priorities;
- (iii) provide policy direction and leadership to ensure that planning initiatives and directions conform to overall City policies and priorities and to City-building and employment objectives;
- (iv) negotiate and determine strategic direction regarding waterfront initiatives in the context of ongoing discussions with the three orders of government;
- (v) facilitate resolution of Disputes and if the City cannot facilitate resolution of a Dispute, bring the Dispute forward to meetings of the Waterfront Liaison Committee for resolution in accordance with the dispute resolution process outlined in Section 0;
- (vi) co-ordinate all cross-corporate and intergovernmental initiatives and activities related to the Revitalization Initiative; and
- (vii) work with TWRC to ensure that public realm and infrastructure components of the Central Waterfront Secondary Plan and related precinct plans are completed early on, and that waterfront revitalization enhances the economic, social, cultural and recreational life of Toronto;
- (viii) through its Planning Division, ensure that the City's authority under the *Planning Act* is respected and protected including, without limiting the foregoing, to maintain its lead role in developing by-laws and addressing other regulatory requirements for effective implementation of Council-approved precinct plans; and
- (ix) through its Economic Development, Culture and Tourism Division and its Waterfront Secretariat, ensure that plans are in place to achieve the employment and tourism targets and objectives, and evaluate and report on progress in achieving the targets and objectives.

3.3 TEDCO:

- (a) TEDCO was incorporated in 1986 to identify and encourage opportunities for business growth, job creation and economic development in the City. TEDCO has experience and expertise in a number of areas including brownfields reclamation, property management and real estate development.
- (b) In 2002, Council approved a new mandate for TEDCO which, among other things:
 - (i) designated TEDCO as the City's redevelopment corporation responsible for stimulating reinvestment in strategic and underutilized sites across the City through the acquisition, rehabilitation and development of land;

- (ii) authorized TEDCO to utilize its assets to explore, pilot and implement incentives and redevelopment tools in the City as permitted under applicable laws, and gave TEDCO authority to explore, pilot and implement incentives and redevelopment tools in the City as permitted by Ontario;
- (iii) instructed TEDCO to manage its own properties and properties owned by the City over which TEDCO is given management responsibility; and
- (iv) directed TEDCO to place priority on identifying and encouraging employment opportunities across the City.

3.4 TEDCO Role Under MOU:

TEDCO shall:

- (a) continue with its work on the TEDCO Lands under its Eligible Recipient agreement with TWRC made as of February 23, 2004, as it may be amended and extended from time to time, and under any addendum to that agreement, with such work to be funded by TWRC;
- (b) continue with its lead role in the Film Port project and, subject to Section 0, in the project known as 24/7, with that project to conform to the East Bayfront precinct plan;
- (c) following Council approval of the appropriate precinct plan, assume a lead role, with impacted long-term tenants, in revitalizing public lands Polson Quay in a manner that conforms with the precinct plan and complements the overall Revitalization Initiative;
- (d) undertake such other projects, if any, that the parties agree in the future are TEDCO Projects;
- (e) conduct Site Investigations and carry out Remediation Activities on TEDCO Lands (and on other lands if TWRC in its discretion decides to retain TEDCO for that purpose) pursuant to one or more agreements with TWRC (whether an addenda to its existing Eligible Recipient agreement, a new Eligible Recipient agreement or a service agreement) if TEDCO elects to carry out such investigations and activities, in accordance with Sections 0 and 0, respectively, and if TEDCO and TWRC can reach agreement in a timely manner on the terms for TEDCO doing such work;
- (f) maintain an interim property management and interim landlord role in the Port Lands and the Queen Elizabeth Docks, as more particularly described in this MOU, it being recognized that in the Port Lands interim uses might continue for more than twenty (20) years;

- (g) provide input to TWRC with respect to the development of the Environmental Framework; and
- (h) generally provide assistance to and work with TWRC and the City to achieve the revitalization of the East Bayfront and the Port Lands precincts;

all as more particularly described in this MOU.

3.5 TWRC:

Pursuant to the TWRC Act, TWRC's mandate is to:

- (a) implement a plan that enhances the economic, social and cultural value of land in the DWA, and create an accessible and active waterfront for living, working and recreation, and to do so in a fiscally and environmentally responsible manner;
- (b) ensure that ongoing development in the DWA can continue in a financially self-sustaining manner;
- (c) promote and encourage the involvement of the private sector in the development of the DWA; and
- (d) encourage public input into the development of the DWA.

TWRC's mandate includes building a waterfront of international renown and developing sustainable, balanced and healthy communities and commercial districts that address the policy priorities of the three orders of government.

3.6 TWRC Role Under MOU:

TWRC is to function as the Revitalization Lead in the DWA, including East Bayfront and the Port Lands. In that capacity TWRC, among other things, shall:

- (a) in consultation with the City, and with TEDCO where TEDCO Lands are included, take the lead role in developing Business and Implementation Plans, for East Bayfront and the Port Lands; in that capacity and where appropriate for individual parcels, precincts or blocks within those areas, as more particularly described in Articles 0 and 0;
- (b) advise on the conveyance or long term ground lease of TEDCO Lands, other than the TEDCO Project Lands, in accordance with the provisions of Section 0;
- (c) in consultation with TEDCO and appropriate divisions within the City, take the lead role in identifying and attracting key employment, tourism, businesses and business clusters to the DWA;

- (d) take a lead role in encouraging private investment, and participate in public/private partnership initiatives where appropriate;
- (e) in consultation with the City and TEDCO, commission reports required for planning purposes, and develop precinct plans and design guidelines for Council consideration and approval;
- (f) lead and coordinate planning and development applications to the City for lands, other than the TEDCO Projects Lands, that are owned by the City or TEDCO in East Bayfront and the Port Lands, with participation by others as described in this MOU;
- (g) have overall responsibility for Site Investigations and for Site Preparation Work, including servicing;
- (h) in consultation with the City and TEDCO, develop the Environmental Framework for East Bayfront and the Port Lands, and have overall responsibility for Environmental Remediation and Reporting;
- (i) be responsible for promotion of the Revitalization Initiative and the DWA;
- (j) be responsible for the marketing of lands, other than the TEDCO Project Lands, that are owned by the City or TEDCO in East Bayfront and the Port Lands and are to be developed for industrial, commercial or residential purposes; and
- (k) issue, lead and manage requests for proposals seeking developer involvement in the revitalization of lands, other than the TEDCO Project Lands, in East Bayfront and the Port Lands that are owned by the City or TEDCO.

3.7 Waterfront Liaison Committee:

- (a) The City has established a committee called the Waterfront Liaison Committee to facilitate decision making and information sharing in all aspects of the Revitalization Initiative including matters relating to this MOU. The committee's mandate is to resolve jurisdictional and governance issues, ensure that municipal services and resources are available in a timely manner, and facilitate implementation of TWRC's five year plan/ten year financial forecast for revitalization. The initial members of the Waterfront Liaison Committee will be the Deputy City Manager whose responsibilities include waterfront revitalization, the City Waterfront Project Director, TWRC's Chief Executive Officer, and TEDCO's Chief Executive Officer, or their designates, as well as a representative of the Mayor's Office. The Deputy City Manager whose responsibilities include waterfront revitalization will chair the Waterfront Liaison Committee.
- (b) Each of the City, TEDCO and TWRC, in addition to doing normal corporate reporting, shall keep the others apprised of progress and developments with its projects and activities in the DWA through the Waterfront Liaison Committee.

- (c) The Waterfront Liaison Committee shall meet quarterly, or more frequently, at the call of the chair of that committee, if required.

3.8 Make Use of Available Expertise:

- (a) TWRC recognizes the very significant technical and other expertise and experience available at the City and TEDCO. Among other things, the City and TEDCO have significant expertise regarding the development of Business and Implementation Plans, precinct plans, sustainability plans, economic development and sector development strategies, investment attraction strategies, and other strategies and plans. TWRC shall avoid costly duplication of resources by accessing this expertise. Similarly, TEDCO shall avoid activities that duplicate or delay activities that are being undertaken by or are within the purview of TWRC.
- (b) TWRC shall undertake and complete by March 31, 2006, a comprehensive organizational review that, among other things, clarifies how TWRC will avail itself of the expertise within the City and TEDCO, and how investment in planning initiatives and consulting services will be reduced as a result of improved collaboration with existing planning and technical functions within the City.
- (c) TEDCO also recognizes the very significant technical and other expertise available at the City and TWRC. TEDCO shall avoid costly duplication of resources by accessing this expertise on TEDCO Projects and on initiatives that TEDCO undertakes in the DWA as an Eligible Recipient or under a service contract with TWRC. Among other things, the City and TWRC have significant expertise in project management and in the development of business and implementation plans, precinct plans, and sustainability plans.

4.0 TWRC, TEDCO and TEDCO Lands:

4.1 TWRC as Directing Corporation:

The underlying premise of a directing corporation (and the term “directing” is being used in place of “empowered”, which was used in the 2004 governance report, because it better describes the role) versus a coordinating revitalization corporation for the DWA is that a directing corporation takes the lead role in implementing the waterfront vision and has sufficient power and capacity to do so. The lead role includes overall responsibility for revitalization matters including preparation of Business Implementation Plans, site investigations, environmental remediation and risk management, site preparation work, hard services and other public realm improvements, community services, promotion and marketing, and directing the transfer of development lands to third party purchasers or ground lease tenants. To be clear, TEDCO does not perform this role for the TEDCO Projects.

4.2 TWRC Reinvestment of Revenues:

TWRC shall invest its revenues from land transfers (freehold or leasehold) and other activities back into the Revitalization Initiative in accordance with Business and Implementation Plans, the rolling ten year financial forecast and the financial and accounting framework agreed to by the three orders of government.

4.3 Making TEDCO Lands Available:

TEDCO is the major land owner in the Port Lands and owns all of the lands in the Queen Elizabeth Docks. TEDCO shall make the TEDCO Lands (which do not include the TEDCO Project Lands) available incrementally for revitalization activities and for transfer to the City, to other public sector transferees or to private sector transferees, as the case may be, all on and subject to the provisions of this MOU. Without limiting the generality of the foregoing, TEDCO shall:

- (a) if TEDCO does not undertake Site Investigations on one or more parcels of TEDCO Lands (and for clarity, this does not include TEDCO Project Lands) as provided for in Section 0, permit TWRC or parties for whom TWRC is responsible to have access to those lands for purposes of conducting Site Investigations in accordance with Section 10.2;
- (b) if TEDCO does not carry out Site Preparation Work on one or more parcels of TEDCO Lands, as provided for in Section 11.1 permit TWRC, or third parties for whom TWRC is responsible, to carry out the Site Preparation Work on those lands in accordance with Section 11.2;
- (c) not create or permit the creation of new encumbrances against title to any TEDCO Lands without (i) consulting with (but not requiring the approval of) TWRC, and (ii) obtaining the approval of the City's Deputy City Manager whose responsibilities include waterfront revitalization for the creation of the new encumbrances; it is understood that such Deputy City Manager, in making his decision, will consider whether or not the proposed new encumbrance or encumbrances would prevent the lands from being available when TWRC needs them for the Revitalization Initiative or would make the lands less attractive or useable for the Revitalization Initiative, and there may be situations in which such Deputy City Manager, in making his decision, will seek instructions or input from City Council or the Waterfront Liaison Committee before making his decision; and
- (d) Transfer fee simple title to TEDCO Lands that are to become Public Realm Lands to the City, or as TWRC and the City otherwise request, in writing, for nominal consideration (i.e., \$2);
- (e) Transfer (in fee simple or by ground lease as determined in accordance with the provisions of Sections 5.2 and 8.0) TEDCO Lands, other than lands that are to become Public Realm Lands, to the City or to third parties in accordance with

written requests from the City and TWRC jointly, with the net proceeds from the transfers (net proceeds meaning proceeds less reasonable out-of-pocket expenses incurred by TEDCO) going to TWRC;

provided that (A) the parcels are required for projects that are included in a Business and Implementation Plan, and (B) if the Business and Implementation Plan contemplates TWRC spending money on those lands before they can be used, that funding has been committed pursuant to a signed Contribution Agreement between one or more of the orders of government and TWRC.

all as more particularly described in this MOU.

4.4 TEDCO's Ability to Meet its Financial Obligations:

- (a) The City acknowledges that TEDCO has existing financial obligations, and that it relies on revenues from its land holdings to meet those obligations and to carry on its activities. TEDCO has provided the City's Deputy City Manager and Chief Financial Officer with an overall summary of its ongoing financial obligations as of December 31, 2005, and TEDCO shall update that summary from time to time at the request of the City's Deputy City Manager and Chief Financial Officer.
- (b) TEDCO shall keep the City's Deputy City Manager and Chief Financial Officer apprised on an ongoing basis of any impact that upcoming or anticipated transfers of lands by TEDCO pursuant to this MOU will have on TEDCO's ability to meet its financial obligations.
- (c) Issues relating to TEDCO's financial obligations shall be issues between the City and TEDCO, and shall not affect TEDCO's obligations to Transfer TEDCO Lands pursuant to this MOU.

5.0 Business and Implementation Plans:

5.1 Preparation and Approval of Plans:

- (a) TWRC, in consultation with the City and TEDCO, shall prepare one or more Business and Implementation Plans for each of the Port Lands and East Bayfront. These plans shall be precinct or project specific and shall provide the information and strategic direction required to:
 - (i) refine project phasing and timing;
 - (ii) identify businesses that need to be relocated and the strategy for relocation;
 - (iii) with reference to Subsection 0, indicate whether transfers of TEDCO Lands are to be freehold or ground leasehold in nature;

- (iv) identify projects that will be completed early on in the revitalization of the Port Lands and East Bayfront and facilitate the completion of those projects, and in this regard the parties agree that it is important to deliver parks, public spaces and other components of the public realm and infrastructure, as well as uses that will generate employment, early on in the revitalization of these precincts;
 - (v) identify a clear strategy for attracting employment and tourism uses, and achieving targets for employment generation and tourism/visitor trips;
 - (vi) outline any amendments or regulations to the *Toronto Waterfront Revitalization Act, 2002*, any consents from one or more of the three orders of government, and the details of the contribution agreements with one or more of the orders of government that will be required to implement the plan;
 - (vii) identify the requirements for and the manner in which land revenues are to be reinvested in the Revitalization Initiative; and
 - (viii) provide a framework for future activities.
- (b) The Business and Implementation Plans shall also shall include detailed revenue and expense projections, occupancy projections and investment and reinvestment strategies, and shall address what happens in terms of projects and activities under the plans when TWRC is wound up.
 - (c) Each Business and Implementation Plan for lands in the Port Lands and East Bayfront must be approved by City Council, regardless of whether or not the City is providing funding for implementation of that plan.
 - (d) Each Business and Implementation Plan also must be approved or deemed to be approved by each of the other orders of government that are providing funding for implementation of that plan or any part of it. A Business and Implementation Plan will be deemed to have been approved by Ontario or Canada, or as the case may be, once the order of government in question either has approved the plan in writing, or has entered into a contribution agreement with TWRC to fund the project or projects included in the plan.

5.2 Fee Simple Title or Leasehold Interest:

- (a) The Business and Implementation Plans shall indicate whether transfers of TEDCO Lands are to be fee simple or leasehold in nature, and whether lands will be transferred to the City or third parties. The general intention is that TEDCO transfer (i) freehold title, where lands are transferred to the City or are to be used for residential purposes, (ii) ground leasehold title where lands are to be used for commercial purposes, and (iii) either fee simple or ground leasehold interest in lands to be used for mixed uses, depending on the circumstances. Unless the City

and TEDCO agree otherwise, TEDCO shall transfer to the City fee simple title to all lands to be developed for parks, public spaces, and other public realm requirements.

- (b) TEDCO Lands will be transferred directly to third parties or to the City, as the case may be.
- (c) Where TEDCO Lands is transferring lands by way of ground lease, with TEDCO as the ground lease landlord, TEDCO, the City and TWRC shall use all reasonable efforts to settle the terms of the ground lease in a timely manner. If they are not able to settle such terms in a timely manner, either the City, in consultation with TEDCO, shall settle any disputed terms, or if the City is unable or unwilling to settle the terms, the terms shall be finalized pursuant to Dispute Resolution in accordance with Article 0.
- (d) TWRC shall use all proceeds from the sale of TEDCO Lands and all rents or other proceeds from the long-term leasing of TEDCO Lands (which, to be clear, does not include the TEDCO Projects) for purposes of the Revitalization Initiative in the manner described in Section 4.2.

6.0 East Bayfront:

6.1 The East Bayfront Project:

Under the East Bayfront Project:

- (a) East Bayfront will become a commercial and cultural destination and a residential neighbourhood;
- (b) the revitalized East Bayfront will include a continuous 1.5 kilometre-long publicly accessible water's edge promenade and improved transit;
- (c) by 2015, East Bayfront will have approximately 6,300 residents in approximately 1,700 housing units, and 5,000 to 10,000 new jobs in approximately two million square feet of commercial space;
- (d) TWRC shall carry out extensive public realm and infrastructure improvements in accordance with the East Bayfront precinct plan, which improvements are to be implemented in the early stages of the revitalization process; and
- (e) TEDCO shall Transfer title to the water's edge promenade lands and future park and public realm sites to the City or, as the City may direct, after Council has approved the East Bayfront precinct plan.

6.2 Early Stage East Bayfront Activities:

- (a) The precinct plan for East Bayfront has been approved by Council. It is anticipated that the Business Implementation Plan for East Bayfront will be approved by Council in June 2006, and that revitalization of the Queen Elizabeth Docks will be one of the first projects in East Bayfront.
- (b) TWRC and the City anticipate that, subject to Council approval of the Business and Implementation Plan for East Bayfront, TWRC will require access to and effective control of the TEDCO Lands (which do not include the TEDCO Project Lands) in Queen Elizabeth Docks by July 1, 2006. Therefore, TEDCO will be required either (i) to Transfer the TEDCO Lands in the Queen Elizabeth Docks to the City on or before July 1, 2006, or (ii) if the City so directs, to Transfer the TEDCO Lands in Queen Elizabeth Docks to one or more third parties on or before December 31, 2006. Such timing will be updated, if necessary, on a parcel or precinct basis.
- (c) Following Council approval of the Business and Implementation Plan for East Bayfront, or earlier on receipt of a written request from TWRC and the City, TEDCO shall give the required notice to all existing tenants in the Queen Elizabeth Docks terminating their leases, and shall confirm in writing to the City that it has done so.
- (d) Revitalization in the Queen Elizabeth Docks will commence in or before 2007. It will commence with public realm improvements and initiatives, including major infrastructure and community facilities, and with mixed residential and commercial uses.

6.3 Project 24/7:

- (a) The project previously announced as Project 24/7 is of interest to TEDCO, the City and TWRC as a potential enhancement of the waterfront. If the project has materialized through a signed lease between TEDCO and the announced tenant by September 30, 2006:
 - (i) the project shall be a TEDCO Project, as defined in this MOU, subject to the provisions of this Section 6.3;
 - (ii) TEDCO shall ensure that Project 24/7 is consistent with the East Bayfront precinct plan, that public realm improvements including infrastructure are provided as part of that project, and that such public realm and infrastructure improvements are consistent with, and integrated with, those to be provided elsewhere in such precinct;
 - (iii) the project design shall be subject to an appropriate public review process, and TEDCO shall submit the project to the TWRC's design review panel; and

- (iv) TEDCO shall retain freehold title to the 24/7 site, and shall be entitled to keep the revenues from the Project 24/7, net of required contributions to the public realm and infrastructure components of the Project 24/7 site.
- (b) TEDCO shall keep the City and TWRC informed as to the status of its negotiations with the announced tenant, and shall provide TWRC and the City on request with information concerning any proposed transaction as it relates to TWRC's Business and Implementation Plans, block plans and public realm design.
- (c) TEDCO shall neither deal with other prospective tenants for the 24/7 parcel, nor pursue other arrangements in respect of the Project 24/7 parcel. Notwithstanding the foregoing, if TEDCO and the announced tenant are actively working on finalizing Project 24/7 and the plans for the project contemplate or require uses or services that are part of or ancillary to Project 24/7 (parking facilities for example), this paragraph does not prohibit TEDCO from pursuing the complementary or ancillary uses or services as part of finalizing arrangements with the announced tenant.
- (d) If by September 30, 2006, TEDCO has not entered into a lease with the announced tenant, Project 24/7 shall not be designated as a TEDCO Project, the 24/7 parcel shall become part of the TEDCO Lands and TWRC shall take the lead with respect to that parcel as part of the Revitalization Initiative.
- (e) If, when TWRC issues one or more requests for proposals for lands in the Queen Elizabeth Docks, TEDCO does not have a lease with the announced tenant for the project referred to as Project 24/7, TWRC shall be entitled to make prospective proponents aware of the possibility that the Project 24/7 lands could be integrated into the RFP process after September 30, 2006. If, by the time TWRC issues one or more requests for proposals for lands in the Queen Elizabeth Docks, TEDCO has a lease with the announced tenant for Project 24/7, TEDCO shall provide TWRC with information, if any, regarding Project 24/7 that might be of interest to prospective proponents for other parts of the Queen Elizabeth Docks, and that TEDCO is able to share without breaching confidentiality arrangements.

7.0 The Port Lands:

7.1 The Port Lands Project:

Under the Port Lands Project:

- (a) the Port Lands will be transformed into a number of new neighbourhood communities and commercial districts;
- (b) there will be an international convergence district for knowledge-based industries, institutions and film and new media activities, extensive public space improvements including a publicly accessible water's edge promenade, new

transit lines, new public parks referred to as Commissioners Park, the Don Greenway and Lake Ontario Park, and other recreational areas and uses, as well as cultural and tourist attractions;

- (c) a portion of the eastern Port Lands will be retained for commercial, commercial industrial and industrial uses in the long term.
- (d) it is anticipated that by 2035, the Port Lands will house 30,000 new residents (19,400 housing units) and include 28,000 jobs.

7.2 Timing:

TWRC, in consultation with the City and TEDCO, shall commence precinct planning for the Port Lands in 2006, and shall complete this process in 2008. One or more Business and Implementation Plans for the Port Lands will be developed concurrently with development of the precinct plans.

7.3 phasing Strategy for the Port Lands:

The parties have agreed upon a Phasing Strategy for the Port Lands which is attached as Schedule 2 hereto (the "Port Lands Phasing Strategy"). The Port Lands Phasing Strategy indicates, on a precinct-by-precinct or where appropriate a parcel-by-parcel basis, the projected dates (the "Needed By Dates"), and where applicable, the duration of time, for the carrying out of the following activities on TEDCO Lands in the Port Lands:

- (a) Precinct planning;
- (b) Site Investigations;
- (c) Environmental remediation, servicing, grading and any other site work that reasonably may be required (collectively, "Site Preparation Work"); and
- (d) Transfer of title (freehold or leasehold, as the case may be) of lands that are not going to remain with TEDCO, recognizing that a decision by Council (making that decision in the place of the TEDCO board of directors by means of a unanimous shareholder declaration) or by the TEDCO board will be required before title (freehold or leasehold, as the case may be) is transferred;

including those early stage realization activities that are referred to in Section 0.

7.4 Annual Review:

TWRC, the City and TEDCO shall conduct an annual review of the progress of the Revitalization Initiative in the Port Lands and provide an update and status report with recommended actions to ensure achievement of goals and objectives. The timing and details of revitalization of the remainder of the Port Lands will be refined at that time.

7.5 Port Lands Revitalization Activities:

Although full-scale revitalization of the Port Lands is not expected to be underway for at least five years, certain revitalization activities are “early starts” and will proceed earlier (in fact some activities already are underway). Revitalization will commence with public realm improvements including new parks and open spaces and the Film Port studios. In particular:

- (a) TWRC shall continue with land assembly and planning and design for Commissioners Park and the Don Greenway, and shall proceed with the improvement of those parks, as more particularly described in Section 0.
- (b) TWRC, in consultation with the City and TEDCO, shall proceed with the planning and design of Lake Ontario Park (the location of the future Lake Ontario Park in the Port Lands is shown on Schedule 1).
- (c) TEDCO shall proceed with the Film Port and shall coordinate the planning of the Film Port with the planning of The Quays precinct and the Central precinct which are shown on the Port Lands Phasing Strategy (Schedule 2).
- (d) TWRC shall continue to implement plans for a regional sports complex and interim sports field in the Port Lands.

Further, although this is not a revitalization activity, TEDCO may continue with its interim leasing of lands not required for revitalization in the rolling five year plan/ten year financial forecast provided that this is consistent with the Port Lands Phasing Strategy and otherwise in accordance with the terms hereof.

7.6 Commissioners Park and Don Greenway:

- (a) TWRC shall continue with and work diligently to complete the assembly of the lands required for Commissioners Park and the Don Greenway. A significant portion of the lands required for these parks is owned by TEDCO.
- (b) TWRC shall continue with and work diligently to complete the detailed design work for Commissioners Park and the Don Greenway. The proposed design for such parks must be approved by the three orders of government, or by the order or orders of government funding the land acquisitions if the land acquisitions are not being funded by all three orders of government.
- (c) TWRC is leading and shall continue to lead the land acquisition process, but title shall be transferred to the City. TWRC acknowledges that lands to be acquired for Commissioners Park are to be transferred to the City as soon as possible and in any event before January 1, 2007.

- (d) TEDCO shall co-operate with TWRC and facilitate TWRC's efforts to complete such parks. Among other things, TEDCO shall make all reasonable efforts to come to an agreement with TWRC, in a timely manner, on the terms on which TWRC, or persons for whom it is responsible, may enter onto TEDCO Lands for purposes of doing Site Preparation Work and site servicing, and completing some or all of the park improvements before the TEDCO Lands needed for these parks are transferred to the City. If TWRC and TEDCO are unable to come to an agreement on the terms for this access on a timely basis, such terms shall be determined by the City acting reasonably, or if the City does not wish to or is unable to determine the terms, the terms shall be settled by Dispute Resolution in accordance with Article 0.

7.7 Possible EXPO Bid:

The parties acknowledge the possibility of a bid being made to host EXPO 2015 in the Toronto waterfront, and recognize the need to ensure that officials of the City, TEDCO and TWRC are involved in the steering committee for the bid, and that any bid is consistent with the City's Central Waterfront Plan and is integrated with the Revitalization Initiative.

8.0 Access to and transfers of TEDCO Lands:

8.1 Actual Dates for Revitalization Activities on and Transfers of TEDCO Lands:

- (a) TWRC shall give at least two years notice of its anticipated requirements for transfers of lands to be developed for commercial, residential or mixed uses.
- (b) TWRC shall give TEDCO and the City not less than ninety (90) days' notice of the exact dates on which it requires that (i) access to the TEDCO Lands in the Port Lands be provided, or (ii) title (fee simple or ground leasehold interest, as the case may be) to TEDCO Lands in the Port Lands be transferred to third parties or to the City, as the case may be. The anticipated dates for such activations are shown on the Phasing Strategy.
- (c) The parties acknowledge that TWRC may require access to, or a Transfer of, one or more parcels of TEDCO Lands before the Needed By Date(s) shown in the original Port Lands Phasing Strategy or any revised Port Lands Phasing Strategy approved by the three parties. In these circumstances, provided that Council has approved the Business and Implementation Plan for the precinct or parcel in question, and that the Transfer otherwise complies with the provisions in this section, TEDCO will provide such earlier access or make such earlier Transfer if TEDCO is able to make arrangements with its tenants (and TEDCO agrees to use all reasonable commercial efforts to make these arrangements) to provide TWRC with earlier access or an earlier Transfer, as the case may be. TWRC shall cover all reasonable out-of-pocket expenses incurred by TEDCO in terminating the lease or leases to accommodate earlier access or Transfer. TEDCO shall obtain

TWRC's approval of such proposed termination costs before it commits to such expenditures.

8.2 Public Realm Lands:

- (a) Public Realm Lands are to be in public ownership. TEDCO shall Transfer its Public Realm Lands to the City or as the City otherwise directs.
- (b) The parties contemplate that TWRC or persons retained by TWRC will carry out improvements on parcels of Public Realm Lands before those parcels are conveyed to the City.
- (c) Given TEDCO's experience and background relating to the TEDCO Lands, TWRC shall provide TEDCO with the first opportunity to carry out these improvements where they are to be carried out on TEDCO-owned lands. Provided that TWRC and TEDCO are able to finalize arrangements with TEDCO to do this work, TEDCO shall do the work under an Eligible Recipient agreement with TWRC that meets the requirements set out in the applicable Contribution Agreement, or as a third party contractor under a service agreement with TWRC that meets the requirements set out in the applicable Contribution Agreement. If TEDCO is not interested in doing the work, or if TEDCO and TWRC are unable to agree on the terms, TEDCO shall permit TWRC or persons retained by TWRC to enter on TEDCO Lands to complete such improvements before the lands are transferred to the City. TWRC shall not retain third parties to do this work on terms that are more favourable to such third parties (in terms of remuneration or otherwise) than the terms offered to TEDCO.

8.3 Site Information:

- (a) Before TEDCO transfers title to lands to the City or third parties, TEDCO shall respond, to the best of its knowledge, to any requests for information or any questions from the City or TWRC arising out of title searches or other investigations or due diligence carried out by or on behalf of TWRC or prospective purchasers.
- (b) If TWRC so requests, TEDCO shall provide TWRC with copies of all material environmental audits, environmental assessments, reports and other material information relating to the subject TEDCO Lands, and TWRC shall pay TEDCO's disbursements in providing this information. Material provided by TEDCO shall be provided without representation or warranty.
- (c) Where TEDCO is transferring lands in fee simple to the City or to third parties as TWRC may direct, it shall transfer those lands on an "as is where is" basis.

8.4 Further Assurances:

TEDCO shall sign and deliver such documents and instruments and provide such further assurances as TWRC may reasonably require (having regard to the provisions of this MOU) in connection with the Transfer of TEDCO Lands.

8.5 Record of Site Condition:

It shall be a condition of any transfer by TEDCO (including any transfer pursuant to a unanimous shareholder declaration by the City) of any portion of the TEDCO Lands, whether by sale or lease, to a third party, that the purchaser covenant to and obtain and register a Record of Site Condition for the affected portion of the TEDCO Lands in the Environmental Site Registry in accordance with regulatory requirements regarding liability protection. TWRC shall require any tenants to comply with the conditions, if any, in the Record of Site Condition or in any certificate of property use, or both.

8.6 Environmental Representations:

TWRC shall make commercially reasonable efforts to transfer lands to third parties on an “as is, where is” basis (with no representations or warranties with respect to environmental conditions being provided by the City or TEDCO). In the event that an “as is, where is” sale is not commercially feasible or advisable, environmental and other representations and warranties with respect to the sale of TEDCO Lands will be provided as acceptable to the City and TEDCO, acting reasonably.

8.7 Eliminating or Minimizing Environmental Risk:

Each time a parcel of TEDCO Lands is to be Transferred pursuant to this MOU, the onus will be on TWRC to develop an approach to eliminating or minimizing TEDCO’s exposure to claims or orders relating to existing environmental conditions. The approach shall include Acceptable Environmental Insurance and an Acceptable Environmental Indemnity, and may include covenants in favour of TEDCO, and insurance and indemnities beyond Acceptable Environmental Insurance and an Acceptable Environmental Indemnity. The City must be satisfied with the approach proposed by TWRC, and with the strength of any covenants to be provided to TEDCO or the City, or both, before the lands are Transferred. The City will consult with and seek input from TEDCO regarding the proposed approach to eliminating or minimizing risk, but it is the City that must be satisfied with the approach.

8.8 Reserve Fund:

Where ongoing Environmental Remediation and Reporting (including maintenance or operation of remediation, monitoring or management systems) are required, TWRC, if required by the City, shall establish a reserve fund to be funded by or on behalf of the transferee. That reserve fund will be used for the sole purpose of Environmental Remediation and Reporting (including maintaining and operating ongoing remediation, monitoring and management equipment and measures). If requested by the City, TWRC

also shall secure a covenant from the transferee to carry out such Environmental Remediation and Reporting as well as the ongoing maintenance and operation of such equipment and measures until such efforts are no longer necessary, as determined by the City in consultation with TEDCO. Such reserve fund, including the timing of establishment of the fund and the particulars of that fund, are to be established to the satisfaction of the City's Deputy City Manager and Chief Financial Officer.

8.9 Interim Uses on TEDCO Lands:

- (a) The Revitalization Initiative is a 25-year project. Interim uses are permitted on TEDCO Lands until they are needed for the Revitalization Initiative, and for some areas those interim uses may continue for 20 years or more. TEDCO shall keep TWRC informed of its plans for interim uses through the Waterfront Liaison Committee, if TWRC requests that information, but TEDCO does not require TWRC approval of proposed interim uses.
- (b) TEDCO shall maintain its property management and landlord role, and continue to use the TEDCO Lands for interim purposes until they are required for the Revitalization Initiative. TEDCO retains the revenues which it generates from such interim uses.
- (c) The parties agree that interim uses in the Port Lands must in no way encumber implementation of the Central Waterfront Secondary Plan or related Precinct Plans.
- (d) The parties acknowledge that certain interim uses in the Port Lands could continue as permanent uses if those uses conform to the Precinct Plan and the zoning by-laws.
- (e) TWRC acknowledges that it will not need control or ownership of the remainder of the TEDCO Lands west of the Don Greenway before 2007, and of the TEDCO Lands east of the Don Greenway before 2020. However, these dates are subject to review as appropriate. (This subsection does not apply to any lands in Polson Quay as it is not part of the TEDCO Lands.)
- (f) Interim uses are subject to the provisions of Section 0.

8.10 Limitation on Further Encumbrances:

TEDCO shall not:

- (a) Transfer any TEDCO Lands to a third party without the approval of Council; or
- (b) Grant a lease or mortgage, or otherwise encumber TEDCO Lands without the approval of the City's Deputy City Manager whose responsibilities include waterfront revitalization, it being understood that (i) such Deputy City Manager, in making his decision, will seek input from TWRC as to whether or not the

proposed lease, mortgage or other encumbrance would prevent the lands from being available when TWRC needs them for the Revitalization Initiative, or would make the lands less attractive or useable for the Revitalization Initiative, and (ii) there may be situations in which such Deputy City Manager, in making his decision, will seek instructions or input from City Council or the Waterfront Liaison Committee.

9.0 Environmental issues:

9.1 TWRC Primary Responsibility:

- (a) TWRC shall have primary responsibility for Environmental Remediation and Reporting. TWRC, in consultation with TEDCO and the City, shall develop a comprehensive environmental master plan (the “Environmental Framework”) for each of East Bayfront and the Port Lands, establishing, among other things, the approach by which soil and groundwater contamination and related issues will be addressed in the context of the land uses contemplated for the two precincts. TWRC, the City and TEDCO each confirms that it is committed to risk assessment and risk management as a sustainable approach to environmental management of impacted soils and ground water.
- (b) TWRC shall use the Environmental Framework and the remediation and risk assessment standards set out in Section 0 to identify environmental conditions so that the Business and Implementation Plans for TEDCO Lands can take such environmental conditions into account in identifying and addressing development constraints.

9.2 Site Specific Approach:

The approach taken by TWRC in addressing environmental conditions, including remediation and risk assessment or management issues and requirements, will vary depending on the conditions of the site in question, its intended use, and any agreements negotiated with the prospective owner but it should include a detailed phasing plan for soil and groundwater remediation or risk assessment analysis on a site by site basis. In determining the preferred approach, objectives include eliminating or minimizing TEDCO and City risk.

9.3 Standards:

- (a) In addition to the approach referenced in Section 0, the standards to be applied in a risk assessment shall be those standards established pursuant to the *Environmental Protection Act* and associated regulations, including the requirement for acknowledgement by the Provincial Ministry of the Environment.

- (b) Where the lands are to be used for park purposes, walkways or streets, or otherwise are to become part of the public realm, TWRC shall comply with the remediation standards of the appropriate City divisions, if those standards are higher than the standards set out in the Provincial regulatory requirements.
- (c) All lands upon which Environmental Remediation and Reporting has been conducted shall be subject to a Record of Site Condition, which shall be filed with the Ministry of Environment and registered in the Environmental Site Registry in accordance with regulatory requirements to establish limited liability protection available under the *Environmental Protection Act*.

10.0 Site Investigations:

10.1 site Investigations by TEDCO:

Given TEDCO's experience and background relating to the TEDCO Lands, TWRC shall provide TEDCO with the first opportunity to conduct Site Investigations on TEDCO Lands, provided that TWRC, on a timely basis, is able to finalize arrangements with TEDCO to do this work, on a timely basis, in which event TEDCO shall do the work either as an Eligible Recipient under an Eligible Recipient agreement with TWRC that meets the requirements set out in the applicable Contribution Agreement, or as a third party contractor under a service agreement with TWRC that meets the requirements set out in the applicable Contribution Agreement.

10.2 Site Investigations by Others:

If TEDCO advises TWRC that it does not wish to undertake Site Investigations, or fails to respond within ninety (90) days to an opportunity provided by TWRC to undertake Site Investigations on one or more of its sites, or if TWRC and TEDCO are unable to agree in a timely manner on the terms for doing so, TEDCO shall permit TWRC and Other Persons to have timely access to the TEDCO Lands for the purpose of carrying out Site Investigations, provided that:

- (a) TEDCO shall be given reasonable prior notice of the Site Investigation(s) and a copy of the work plan for the Site Investigation(s);
- (b) TWRC and the Other Persons shall co-ordinate their activities so as to minimize the degree of interference with TEDCO and its tenants, and shall ensure that the TEDCO Lands are restored to the condition that existed prior to the Site Investigations or to such other condition as may be agreed between TEDCO and TWRC;
- (c) TWRC and the Other Persons shall have Acceptable Environmental Insurance in place with respect to the conduct of the Site Investigations, and TEDCO and the City shall have been provided with an Acceptable Environmental Indemnity from the Other Persons; and

- (d) TWRC and the Other Persons shall permit TEDCO's representatives to be present during any Site Investigations. TWRC shall provide copies of all data and reports generated and/or prepared with respect to such Site Investigations to TEDCO.

10.3 Site Investigations by Prospective Purchasers:

The parties recognize that there may be situations where prospective purchasers of TEDCO Lands also wish to conduct their own Site Investigations. TEDCO shall permit such prospective purchasers to have timely access to the TEDCO Lands for the purpose of carrying out Site Investigations, provided that:

- (a) the prospective purchaser shall use Acceptable Consultants and/or Acceptable Contractors;
- (b) TEDCO shall be given reasonable prior notice of the Site Investigations and a copy of the work plan for the Site Investigations;
- (c) the prospective purchaser shall coordinate activities so as to minimize the degree of interference with TEDCO and its tenants, and shall ensure that the TEDCO Lands are restored to the condition that existed prior to the Site Investigations;
- (d) the prospective purchaser or its Acceptable Contractor and/or Acceptable Consultant shall have Acceptable Environmental Insurance in place with the respect to the conduct of the Site Investigations and TEDCO and the City shall have been provided with an Acceptable Environmental Indemnity from the prospective purchaser and contractor or from the prospective purchaser alone in respect of [any loss, damages, costs or expenses TEDCO may incur as a result of the carrying out of] the Site Investigations; and
- (e) TEDCO's representatives shall be permitted to be present during any Site Investigations and copies of all data and reports generated and/or prepared with respect to such Site Investigations shall be provided to TEDCO without representation, warranty or other liability.

11.0 Environmental Remediation and Other Site Preparation Work:

11.1 Remediation by TEDCO:

- (a) Notwithstanding TWRC's overall responsibility for Environmental Remediation and Reporting, given TEDCO's experience and background relating to the TEDCO Lands, TWRC shall provide TEDCO with the first opportunity to conduct environmental remediation, risk assessment, environmental management measures and grading and similar site work ("Remediation Activities") on TEDCO Lands on a timely basis, provided that TWRC is able, in a timely manner, to finalize arrangements with TEDCO to carry out the Remediation Activities in a timely manner. In such event TEDCO shall do the work either as an Eligible Recipient under an Eligible Recipient agreement with TWRC that

meets the requirements set out in the applicable Contribution Agreement, or as a third party contractor under a service agreement with TWRC that meets the requirements set out in the applicable Contribution Agreement. Regardless of who does the work, the work shall respect the parties' mutual commitment to risk managed revitalization of these lands.

- (b) Notwithstanding Subsection (a), if the terms of the settlement of the existing litigation relating to the lands municipally known as 155 Villiers Street and 150 Commissioners Street (the "CP Lands") and the lands municipally known as 105 and 165 Villiers Street (the "TEDCO Villiers Street Lands") preclude TEDCO from conducting Remediation Activities on either or both of the CP Lands or the TEDCO Villiers Street Lands (the "precluded lands"), TEDCO will not be given an opportunity to carry out Remediation Activities on the precluded lands. In such event, TWRC shall retain another qualified third party who is acceptable to the City, in consultation with TEDCO, to carry out the Remediation Activities on the precluded lands, and TWRC shall require that third party to carry out those remediation activities on and subject to the terms and conditions of this MOU.
- (c) If TEDCO does not respond in a timely manner to an opportunity provided by TWRC to undertake Remediation Activities on any particular site, or if TWRC and TEDCO cannot finalize arrangements for TEDCO to do so in a timely manner, TEDCO shall permit TWRC and Other Persons to have timely access to the TEDCO Lands for the purpose of carrying out Remediation Activities and TWRC shall ensure that the Other Person(s) it retains carry out the Remediation Activities in accordance with Section 0.

11.2 Requirements:

If any Remediation Activities are being undertaken, whether by TWRC or Other Persons, TWRC shall put in place, or shall ensure that Other Persons put in place, appropriate protections to minimize risks to TEDCO, the City, and the public arising from the Remediation Activities and to ensure that the Remediation Activities will be carried out in a way that complies with all applicable environmental and other laws. Such protections shall include:

- (a) TEDCO shall be given reasonable prior notice of the Remediation Activities to be conducted on the TEDCO Lands and a copy of the work plan for such Remediation Activities;
- (b) TWRC and/or the Other Person (as applicable) shall engage only Acceptable Consultants and Acceptable Contractors;
- (c) remediation, risk assessment and environmental management plans shall be acceptable to the City, and the City agrees that it shall consult with TEDCO regarding the acceptability of proposed plans;

- (d) TWRC and/or the Other Person (as applicable) shall co-ordinate their or its activities with TEDCO so as to minimize the degree of interference with TEDCO and its tenants;
- (e) TWRC shall ensure that the TEDCO Lands are remediated in accordance with the Environmental Framework and Environmental Remediation and Reporting requirements (including the standards set out in Section 0);
- (f) at the discretion of the City, in consultation with TEDCO, the City or TEDCO or parties acceptable to the City may conduct a peer review of the Remediation Activities, and TWRC shall pay the reasonable costs of that peer review;
- (g) TWRC and/or the Other Person (and in the event of any uncertainty as to whether it is both or either that must have the insurance, the City will make that determination) shall have Acceptable Environmental Insurance in place insuring TEDCO and the City against risks in relation to Remediation Activities, including risks associated with general liability, worker injury, accidents that worsen the degree of contamination and the general remediation process;
- (h) TWRC and/or the Other Person (and in the event of any uncertainty as to whether it is both or either that must provide the indemnity, the City will make that determination) shall have provided an Acceptable Environmental Indemnity to TEDCO and the City in relation to any direct loss, damages, costs or expenses TEDCO or the City may incur as a result of the carrying out of the Remediation Activities; if it is TWRC that is to provide the indemnity, TWRC shall act diligently and use all reasonable efforts to obtain the consent of the three orders of government to give that indemnity;
- (i) TWRC and/or the Other Person (as applicable) shall permit TEDCO's representatives to be present during any Remediation Activities carried out on TEDCO Lands, and copies of all data and reports generated and/or prepared with respect to such Remediation Activities shall be provided to TEDCO;
- (j) TWRC shall ensure that any contamination identified in the course of Remediation Activities that was not provided for in the initial work plan will be addressed through additional Remediation Activities to be carried out on and in accordance with the requirements herein; and
- (k) If the City so requests, TWRC and/or the Other Person shall obtain remediating insurance products to address remediation cost over-runs, the remediation of unanticipated environmental conditions, liabilities related to off-site migration of contaminants and/or third party liabilities.

11.3 Soil Management Facility:

The parties acknowledge the possibility that the Environmental Framework may contemplate the establishment or procurement, and the operation, of a soil management facility to treat soils originating from the Port Lands Project and the East Bayfront Project. If that is the case, TWRC shall, at its cost, have overall responsibility for conducting feasibility studies for the facility, designing the facility and obtaining all approvals for it. TWRC shall also, at its cost, have overall responsibility for operating and decommissioning the soil management facility and restoring the lands where the facility was located to the satisfaction of the City. A site for such facility must be identified by January 31, 2006.

12.0 Planning Applications, Marketing and Promotion:

12.1 Planning Applications:

TEDCO hereby authorizes TWRC, acting as TEDCO's agent, to file all necessary planning and development applications for lands owned by TEDCO in the DWA, other than the TEDCO Projects Lands which include the lands in Polson Quay. TWRC also will be the "one window" point of contact for addressing issues raised by the City or others related to the processing of the planning and development applications regarding those lands. The parties acknowledge that the reference to agent reflects the language in planning applications and is not intended to, and does not, create an agency relationship between TEDCO and TWRC. Each of the parties agrees to sign any documents that any of the parties reasonably may require to clarify TWRC's relationship with TEDCO or the City with respect to the applications. TWRC shall keep TEDCO informed with respect to all proposed planning and development applications.

12.2 Promotion:

TWRC, in consultation with the City and TEDCO, shall develop a plan for promoting the Revitalization Initiative and encouraging private investment in the DWA. That plan shall be consistent with the City's Economic Development and Tourism Strategies. TWRC, in consultation with the City and TEDCO, shall update or modify that plan as required from time to time.

12.3 Marketing TEDCO Lands in East Bayfront and the Port Lands:

- (a) To be clear, in this MOU, the term TEDCO Lands does not include the TEDCO Projects lands.
- (b) TEDCO shall market TEDCO Projects, where marketing is required, and TEDCO agrees to keep TWRC and the City informed as to its marketing plans.
- (c) TWRC, in consultation with the City and TEDCO, shall develop a marketing plan for TEDCO Lands in East Bayfront, and shall update and modify that plan from time to time as required.

- (d) TWRC, in consultation with the City and TEDCO, shall develop an overall promotion and marketing strategy plan for the Port Lands, and shall refine the strategy and develop marketing plans as precinct plans are developed.
- (e) TEDCO shall be responsible for marketing interim uses in East Bayfront and the Port Lands, and it shall keep the City and TWRC informed of its plans for marketing interim uses, if requested.
- (f) With the exception of the TEDCO Projects and interim uses, TWRC shall be solely responsible for carrying out the marketing of the East Bayfront Lands and the Port Lands in accordance with the marketing plans referred to in Subsections (a) and (d), and TWRC shall keep the City and TEDCO apprised regarding marketing efforts.
- (g) Notwithstanding Subsection (f):
 - (i) TWRC, at the City's request, will work with the City's economic development and tourism personnel and any related entities, such as Toronto International, in marketing TEDCO Lands in the DWA, but TWRC shall be the lead; and
 - (ii) TWRC shall explore with the City and TEDCO opportunities for joint or shared marketing initiatives, with a view to minimizing costs and increasing outreach effectiveness.
- (h) TWRC shall initiate, pursue and evaluate opportunities for interested tenants and users in the DWA. If TEDCO or the City receives any inquiries or expressions of interest from potential tenants for space in East Bayfront and the Port Lands (other than relating to TEDCO Project Lands), it shall refer such enquiries or expressions of interest to TWRC. Similarly, if TWRC receives any inquiries or expressions of interest from potential tenants or other users for interim uses in the DWA or for permanent uses in Polson Quay or outside of the DWA, it shall refer such enquiries or expressions of interest to TEDCO or the City. Both TEDCO and TWRC shall inform the City of these leads so that the three parties can work together to support investment attraction activities.

12.4 TWRC Proposal Calls:

- (a) TWRC, in consultation with the City and TEDCO, shall be responsible for the preparation of all documents required for requests for proposals and other proposal processes seeking developer involvement for East Bayfront and the Port Lands, except for the TEDCO Project Lands, and shall manage those processes. The City and TEDCO shall have an opportunity to review and comment on that documentation. The documentation will include, among other things:

- (i) detailed urban design guidelines covering matters including the public realm, the interface between development and the public realm, street and block configuration, and building massing;
 - (ii) building envelope regimes;
 - (iii) soil and groundwater management protocol;
 - (iv) green building standards;
 - (v) provisions for district heating;
 - (vi) requirements to provide roads and services within blocks;
 - (vii) provision for a design review panel to review site plan applications to ensure that urban design guidelines are followed;
 - (viii) requirements for compliance with applicable standards as contained in Section 0;
 - (ix) an explanation of the proposal call process; and
 - (x) employment and tourism targets.
- (b) TWRC shall establish a steering committee (the "Steering Committee") to guide the development, management and evaluation of development proposal calls, with such committee to include professional advisors and qualified individuals, and representatives from the City and TEDCO. The City at its option may decide that its and TEDCO's representatives will participate on the Steering Committee as advisors only.
- (c) In conducting RFP processes, TWRC shall use disposition guidelines approved by Council and establish criteria against which proposals will be evaluated.
- (d) The parties acknowledge that there may be occasions where opportunities arise outside of the request for proposal process, such as trying to keep a business in Toronto, or responding to a business that is interested in looking to move to or establish itself in Toronto, and that some flexibility is required.

12.5 Evaluation of Proposals:

- (a) The Steering Committee described in Paragraph 0, shall guide the evaluation of developer proposals.
- (b) The Steering Committee shall evaluate bids and identify a recommended proposal, and forward the recommended proposal to the board of directors of TWRC for consideration.

- (c) If the TWRC board of directors endorses the proposal, the board shall provide the proposal to the City for consideration. TWRC shall obtain the endorsement of the City before it selects a preferred proponent. Where a proposal involves a parcel of TEDCO Lands, TEDCO shall have an opportunity to provide input and advice to City staff. The final decision as to whether or not to endorse any proposal put forward by TWRC and select a proponent is with the City.
- (d) If endorsed by the City, lands will be transferred or leased by the City or TEDCO, as the case may be, to the winning proponent in accordance with the terms approved by the City. TWRC shall ensure that the third party's obligations relating to the proposal have been provided for in agreements that are satisfactory to the City, in consultation with TEDCO.

TWRC acknowledges that the City will seek input from TEDCO as part of the City's consideration of proposals for lands owned by TEDCO.

12.6 Financial Incentives:

TWRC, the City and TEDCO shall work together to develop financial incentives, where appropriate, for revitalizing and improving properties in East Bayfront and the Port Lands. TWRC agrees to quantify any financial incentives directly funded by the City or by TEDCO to the satisfaction of the Deputy City Manager and Chief Financial Officer and to report to the three orders of government pursuant to the terms of any financial framework agreement between the three orders of government.

13.0 Business Relocation:

13.1 Existing Business Activity:

The parties agree that retaining industrial and commercial businesses in the City is a high priority, as is the desirability that planning initiatives respect existing business activity and that business relocations be undertaken only when necessary. The parties agree that a strategy for relocation must be in place prior to a final business relocation decision being made. Any business relocation strategy shall clarify, among other things, resource requirements and the criteria under which TWRC may provide financial assistance to businesses being relocated.

13.2 Roles:

- (a) TWRC shall take the lead in identifying businesses within the DWA to be relocated, and possible alternative locations. TWRC, in consultation with the City's Economic Development division, TEDCO, and others where needed, shall use reasonable commercial efforts to secure appropriate space for those businesses that are to remain within the DWA, with particular emphasis on those tenants in the Queen Elizabeth Docks whose businesses are consistent with the revitalization vision for East Bayfront.

- (b) For the businesses identified in Subsection 0, the City's Economic Development division and TEDCO shall work with TWRC to facilitate relocation of businesses that cannot be accommodated in the DWA to other locations in Toronto. TEDCO shall take the lead where tenants are existing TEDCO tenants.
- (c) TEDCO, with the support of TWRC and assisted by the City, shall assume the lead role in addressing business relocation and interruption issues involving parties with whom it has a relationship. This may require the sharing of lease and other information. TWRC and the City shall enter into such confidentiality agreements as TEDCO, acting reasonably, may require as a condition of obtaining access to or disclosure of any information or records in the possession of TEDCO.
- (d) Without limiting the generality of paragraph (c), TEDCO shall notify existing tenants in the Queen Elizabeth Docks and the Port Lands of the dates on which their leases will be terminated, and TEDCO shall assume a lead role, with the support of TWRC and the assistance of the City, in facilitating the relocation of such tenants. TWRC shall pay all appropriate business interruption and relocation costs for those relocated parties that have valid and existing compensable interests, provided that no such payment shall be made in circumstances where early termination is permitted under the applicable lease without compensation, reimbursement or other payment to the tenant. TEDCO shall obtain TWRC's approval of such proposed business interruption and relocation costs.

14.0 Financial Management and Reporting Requirements:

14.1 Reporting to Waterfront Liaison Committee:

TEDCO, TWRC and the City's Waterfront Project Secretariat shall report to the Waterfront Liaison Committee, on a quarterly basis or more frequently as required, to report on and discuss:

- (a) the status of implementing this MOU;
- (b) the status of TWRC-led waterfront initiatives in East Bayfront and the Port Lands;
and
- (c) the status of the TEDCO Projects.

14.2 Reporting to City:

TWRC shall continue to report on a quarterly basis to the Project Director of the City's Waterfront Project Secretariat. That reporting will be done in accordance with the tri-government financial and accounting framework and will address project status including:

- (a) project milestones;
- (b) detailed financial and project progress reports;
- (c) phasing, including properties required for renewal;
- (d) interim land uses;
- (e) progress achieved and expected;
- (f) explanations and variances, if any, on project deliverables; and
- (g) expected results for the following three months.

15.0 Co-operation and Communication:

15.1 Work Co-operatively:

The parties agree to work co-operatively with each other for the purpose of realizing the objectives and the purposes of this MOU. Specifically:

- (a) To the extent necessary, each party shall share with the other parties information in respect of the DWA which is pertinent and material to the Revitalization Initiative and within its ownership or control, such as information pertaining to properties in the DWA, including the results of soil and groundwater testing and other environmental measures including remediation and risk assessment.
- (b) TEDCO shall advise the other parties on issues and considerations as and when they arise which could impact the availability and usability of the TEDCO Lands for the Revitalization Initiative.
- (c) The parties shall communicate to one another at the earliest appropriate time, information concerning any proposals for interim or permanent land uses that may be inconsistent with the Central Waterfront Secondary Plan or that might negatively impact economic assumptions supporting TWRC's business strategy for the Revitalization Initiative or any Business and Implementation Plans.

All information and records provided by the parties to one another shall, unless otherwise agreed by the providing party, be maintained on a confidential basis, and not communicated or provided to any other person without the permission of the providing party, subject to disclosure permitted under Section 0.

15.2 Openness and Transparency:

The parties recognize the importance of openness and transparency in respect of the Revitalization Initiative, both because it involves the expenditure of public funds and because of the importance of the initiative. Each of the parties agrees to be open and

transparent, subject to appropriate limitations including those relating to protection of privacy and the confidentiality of commercially sensitive information.

16.0 Dispute Resolution:

16.1 Dispute Resolution:

In the event of any Dispute, such Dispute shall be resolved in accordance with the following procedure (the “Dispute Resolution Procedure”):

- (a) the parties directly involved (the “Involved Parties”) first shall attempt to resolve the Dispute through good faith negotiation between such parties working through the Waterfront Liaison Committee;
- (b) failing resolution of the Dispute through negotiation within 15 days after the Waterfront Liaison Committee becomes involved in efforts to resolve the Dispute, any Involved Party, by written notice to the other Involved Party or Parties (the “Step-Up Notice”), may request that the Involved Parties refer the Dispute to an independent third party (the “Expert”) who is an expert in the subject area of the Dispute, who is mutually acceptable to the Involved Parties, and who shall endeavour to achieve a mediated resolution of the Dispute; and
- (c) if the Involved Parties fail to select a mutually acceptable Expert within ten (10) days after the Step-Up Notice has been given, or if the Expert fails to achieve a mediated resolution of the Dispute within 15 days after the Dispute is referred to the Expert, then any of the Involved Parties may, upon written notice to the other Involved Party or Parties, cause the Dispute to be submitted, by way of a report, to City Council, whose decision shall be final and binding upon the parties, it being acknowledged that the other orders of government are not bound by such decision.

17.0 Term and Review, and Expectation of Continued Support:

17.1 Term:

This MOU is effective as of the date of its signature by all the parties, and shall continue in effect until TWRC winds up or otherwise ceases to exist.

17.2 Review:

Two years after the date of this MOU, the parties shall review its provisions in order to consider any changes that may be necessary or desirable to further the purposes of the MOU and the successful completion of the revitalization of the TEDCO Lands as part of the Revitalization Initiative. Any changes to this MOU shall be made by means of a written amending agreement between the parties.

17.3 Continued Support:

- (a) TEDCO owns a significant amount of the land in East Bayfront and the Port Lands. In this MOU, it is agreeing to make TEDCO Lands available to TWRC so that TWRC can be the Revitalization Lead in the DWA. TEDCO also is agreeing to permit only interim uses on TEDCO Lands (the TEDCO Lands do not include the TEDCO Project Lands) pending revitalization of those lands as part of the Initiative.
- (b) Both the City and TWRC are entering into this MOU on the assumption that (i) TWRC and the three orders of government are committed to the revitalization of East Bayfront and the Port Lands over a twenty or twenty-five year period, and (ii) there will be sufficient public and private investment to revitalize those precincts in a manner that meets TWRC's legislated objects.
- (c) If at any time the City is of the view that there is insufficient commitment, financial or otherwise, on the part of TWRC, Ontario and Canada for TWRC to continue with the revitalization the East Bayfront lands or the Port Lands, the City may give notice to this effect (the "City Notice") to TWRC, Canada and Ontario. If the City's concerns cannot be addressed to the City's satisfaction, the parties will consider other options for revitalization of the TEDCO Lands. If, within six months after the date of the City Notice, the parties have not come to an agreement on other options, the City on 90 days notice may terminate this MOU as it relates to TEDCO Lands in East Bayfront and the Port Lands other than lands for which signed contribution agreements are in place.

18.0 General:

18.1 Notices:

- (a) Any notices required pursuant to or permitted by this MOU must be addressed to:
 - (i) City of Toronto
Waterfront Secretariat
Toronto City Hall
100 Queen Street West
12th Floor East
Toronto, Ontario
M5H 2N2

Attention: Elaine Baxter-Trahair, Waterfront Project Director
Tel: 416- 397-4083
Fax: 416- 392-8805

- (ii) City of Toronto Economic Development Corporation
Metro Hall
55 John Street
7th Floor
Toronto, Ontario
M5V 3C6

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

- (iii) Toronto Waterfront Revitalization Corporation
207 Queens Quay West, Suite 822
Toronto, Ontario
M5J 1A7

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

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

18.2 Confidentiality:

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

18.3 Conflict of Interest:

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

18.4 Records:

The parties shall be responsible for the proper care, transportation, handling, maintenance, use and interim storage of their respective records, in accordance with applicable legislation, regulations, government directives, guidelines and policies, as amended from time to time.

18.5 Applicable Laws:

This MOU shall be governed by the laws of the Province of Ontario and the applicable laws of Canada. The parties acknowledge that their obligations under this MOU are subject to all applicable law, including, but not limited to, the *Environmental Assessment Act* and the TWRC Act. Any reference in this MOU to a statute, regulation, by-law or rule of any governance or other regulatory body shall be interpreted as meaning such law or rule as amended or re-enacted from time to time.

18.6 Interpretation:

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

18.7 Assignment

This MOU shall not be assigned by any party hereto without the prior written consent of the other parties.

Dated this _____ day of _____ 2006

CITY OF TORONTO

City Clerk

Deputy City Manager and
Chief Financial Officer

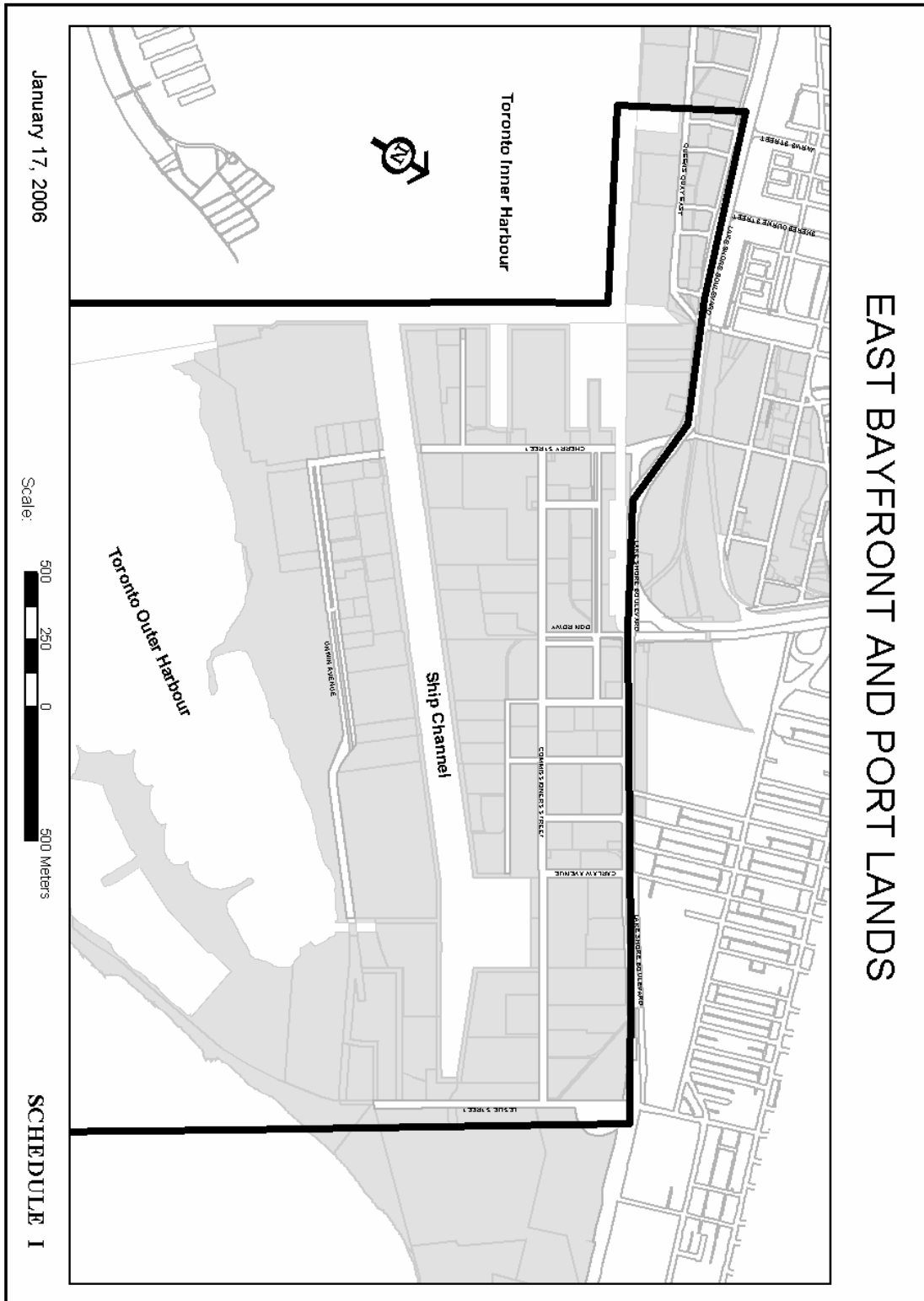
CITY OF TORONTO ECONOMIC DEVELOPMENT CORPORATION

Jeffrey Steiner
President and Chief Financial Officer

TORONTO WATERFRONT REVITALIZATION CORPORATION

John Campbell, Chief Executive Officer

Appendix A – Schedule 1: East Bayfront and Port Lands



Appendix A – Schedule 2: Port Lands Phasing Plan

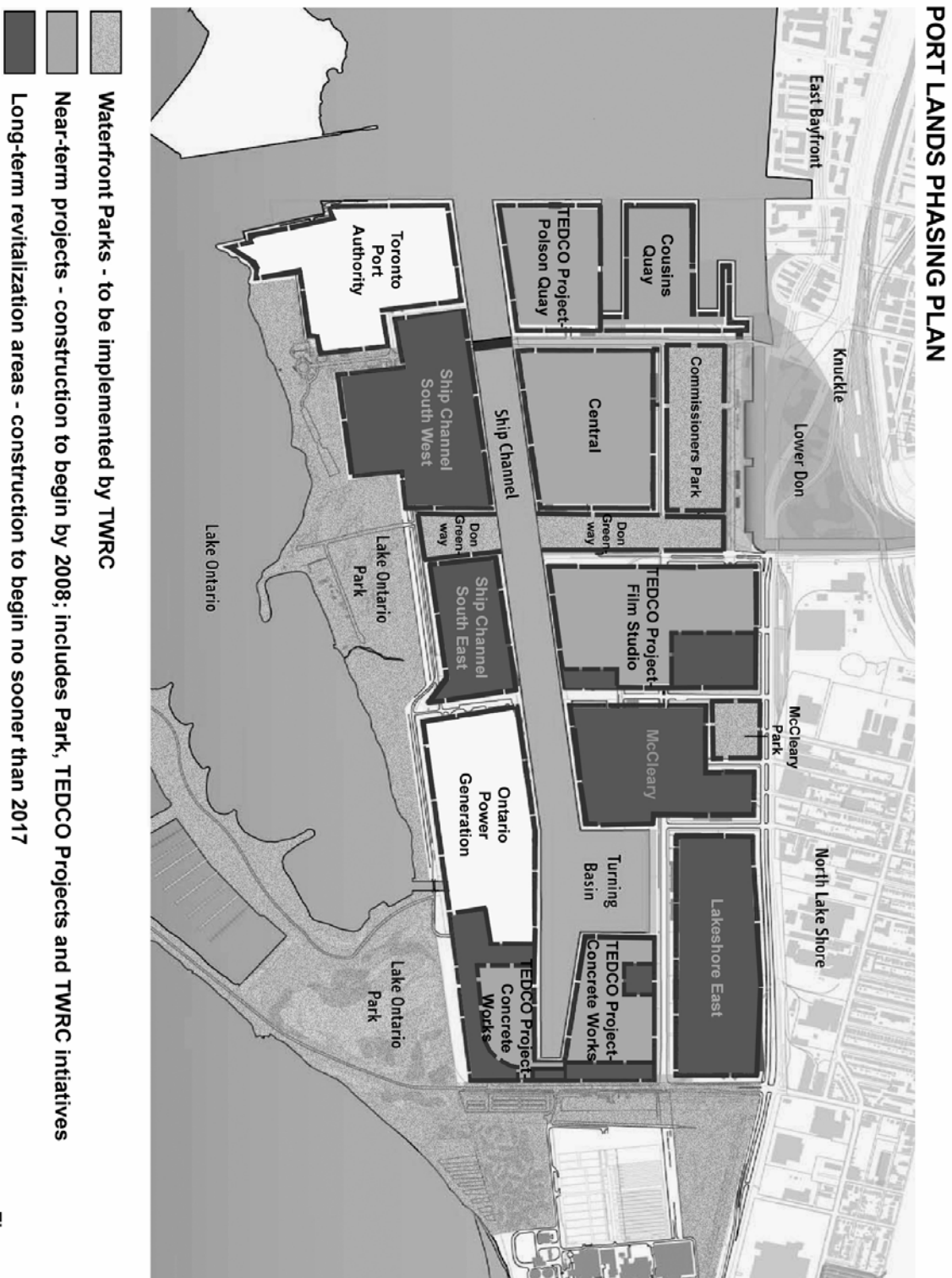


Figure 1

Appendix A – Schedule 2B: Port Lands Revitalization Timeline

Schedule 2 B
Portlands Revitalization Timeline

<u>Precinct Name</u>	<u>#</u>	<u>Precinct Planning</u>	<u>Site Access/ Rezoning</u>	<u>Effective Control</u>
Commissioner's Park	1	2005	2006	2007
The Quays	2	2006	2007	2008
Central	3	2006	2007	2008
Don Greenway (North)	4	2006	2007	2008
Don Greenway (South)		2006	2007	2008
Lakeshore East	5		To be reviewed in 2020	
Ship Channel SW	6	2007	2016	2017
Ship Channel SE	7	2007	2019	2020
Film Studio	8	-	-	-
McCleary	9	2008	-	-
The Hearn	10		-	-
Turning Basin	11		-	To be reviewed in 2020
Lake Ontario Park	12	2006		

Appendix B
Unanimous Shareholder Declaration to TEDCO
City Of Toronto Economic Development Corporation
Unanimous Shareholder Declaration

WHEREAS the undersigned (the “Shareholder”) is the beneficial owner of all of the issued and outstanding shares in the capital of the City of Toronto Economic Development Corporation (“TEDCO”), a corporation existing under the *Business Corporations Act* (Ontario) (the “OBCA”);

AND WHEREAS it is proposed that the Shareholder, TEDCO and the Toronto Waterfront Revitalization Corporation enter into a Memorandum of Understanding relating to the revitalization of lands owned by TEDCO in the East Bayfront and the Port Lands precincts in the City of Toronto as part of the initiative known as the Toronto Waterfront Revitalization Initiative;

AND WHEREAS pursuant to subsection 108(3) of the OBCA this declaration shall be, and be deemed to be, a unanimous shareholder direction restricting, to the extent provided herein, the powers of the directors of TEDCO to manage or supervise the management of the business and affairs of TEDCO;

IT IS DECLARED THAT:

1. the Shareholder shall have all the rights and powers of the directors of TEDCO to pass the resolution attached as Schedule A and the powers of the directors to manage, or supervise the management of, the business and affairs of TEDCO are restricted to that extent effective the date hereof; and

2. the directors of TEDCO shall be relieved of, and the Shareholder shall be subject to, the duties and liabilities of the directors to the extent that this declaration so restricts their powers.

IN WITNESS WHEREOF the undersigned has executed this declaration this ■ of ■, 2006.

City of Toronto

by

Name:

Title:

Name:

Title:

Schedule A
Form of Resolution

City Of Toronto Economic Development Corporation
Shareholder Resolution

WHEREAS the City Of Toronto Economic Development Corporation (“TEDCO”) is a wholly owned subsidiary of the City of Toronto (the “City”);

AND WHEREAS it is proposed that the City, TEDCO and the Toronto Waterfront Revitalization Corporation (“TWRC”) enter into a memorandum of understanding in the form attached hereto as Exhibit A (the “MOU”) with respect to the revitalization of certain lands owned by TEDCO in the Port Lands and East Bayfront precincts in the City of Toronto (the “TEDCO Lands”);

AND WHEREAS any capitalized term used and not otherwise defined herein shall have the meaning ascribed thereto in the MOU;

AND WHEREAS pursuant to the proposed MOU, TEDCO, among other things, agrees to permit TWRC and others to carry out certain investigations and activities on some of the TEDCO Lands, and agrees to transfer freehold or leasehold title to some of the TEDCO Lands to the City and to third parties or as the City may direct (the “Proposed Transfers”) on an incremental basis, all in accordance with and on and subject to the terms and conditions of the MOU;

AND WHEREAS the City, as sole shareholder of TEDCO, has determined that having TEDCO enter into the MOU, and take the actions contemplated in the MOU is in the public interest and will benefit the residents of the City of Toronto;

IT IS RESOLVED THAT:

the execution and delivery of the MOU by TEDCO are hereby authorized, approved and directed;

the completion of the Proposed Transfers in accordance with the provisions of the MOU, together with the execution and delivery of all documentation required to effect the Proposed Transfers (collectively, the “Transfer Documents”), are hereby authorized, approved and directed;

the carrying out of such other actions, the permitting of such other activities and otherwise complying with the terms of the MOU are hereby authorized, approved and directed;

1. any one officer or director of TEDCO or any one of the following officers of the City: [the City Clerk or the person acting in that capacity, or the Deputy City Manager and Chief Financial Officer or the person acting in that capacity (each a “City Representative”) is authorized and directed, for and in the name of and on behalf of TEDCO, to execute (whether under the corporate seal of TEDCO or otherwise) and deliver the MOU and the Transfer

Documents, with such deletions, amendments or additions thereto as any City Representative may in his or her absolute discretion determine appropriate, the execution of such agreements or instruments (by, or at the direction of, such City Representative) in accordance with the provisions of this paragraph being conclusive evidence of such determination; and

2. any one officer or director of TEDCO, or any one of the following officers of the City: the City Clerk or the person acting in that capacity, or the Deputy City Manager and Chief Financial Officer or the person acting in that capacity (each a “City Representative”), is authorized and directed, for and in the name of and on behalf of TEDCO, to execute (whether under the corporate seal of TEDCO or otherwise) and deliver all such other agreements, instruments, certificates and other documents and to do all such other acts and things as such officer or director or authorized signing officer may determine to be necessary or advisable, to carry out the intention of the foregoing resolutions, the execution and delivery of any such agreement, amendment, instrument, certificate or other document or the doing of any such other act or thing by such officer or director or authorized signing officer being conclusive evidence of such determination.

The undersigned being the sole shareholder of the City of Toronto Economic Development Corporation, passes the foregoing resolutions pursuant to the unanimous shareholder declaration dated ■, 2006 and pursuant to the *Business Corporations Act* (Ontario).

DATED _____, 2006.

City of Toronto
by _____

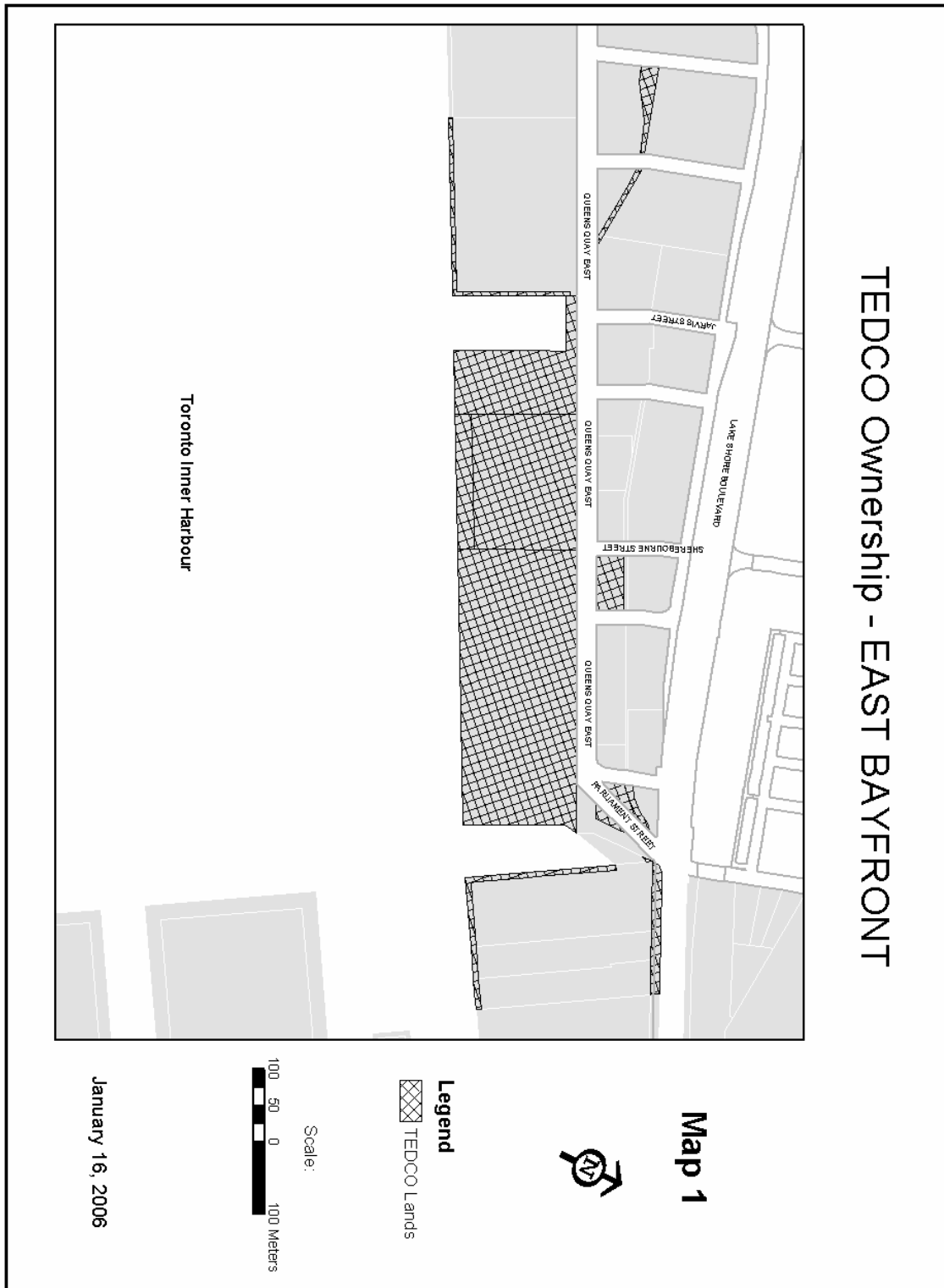
Name:

Title:

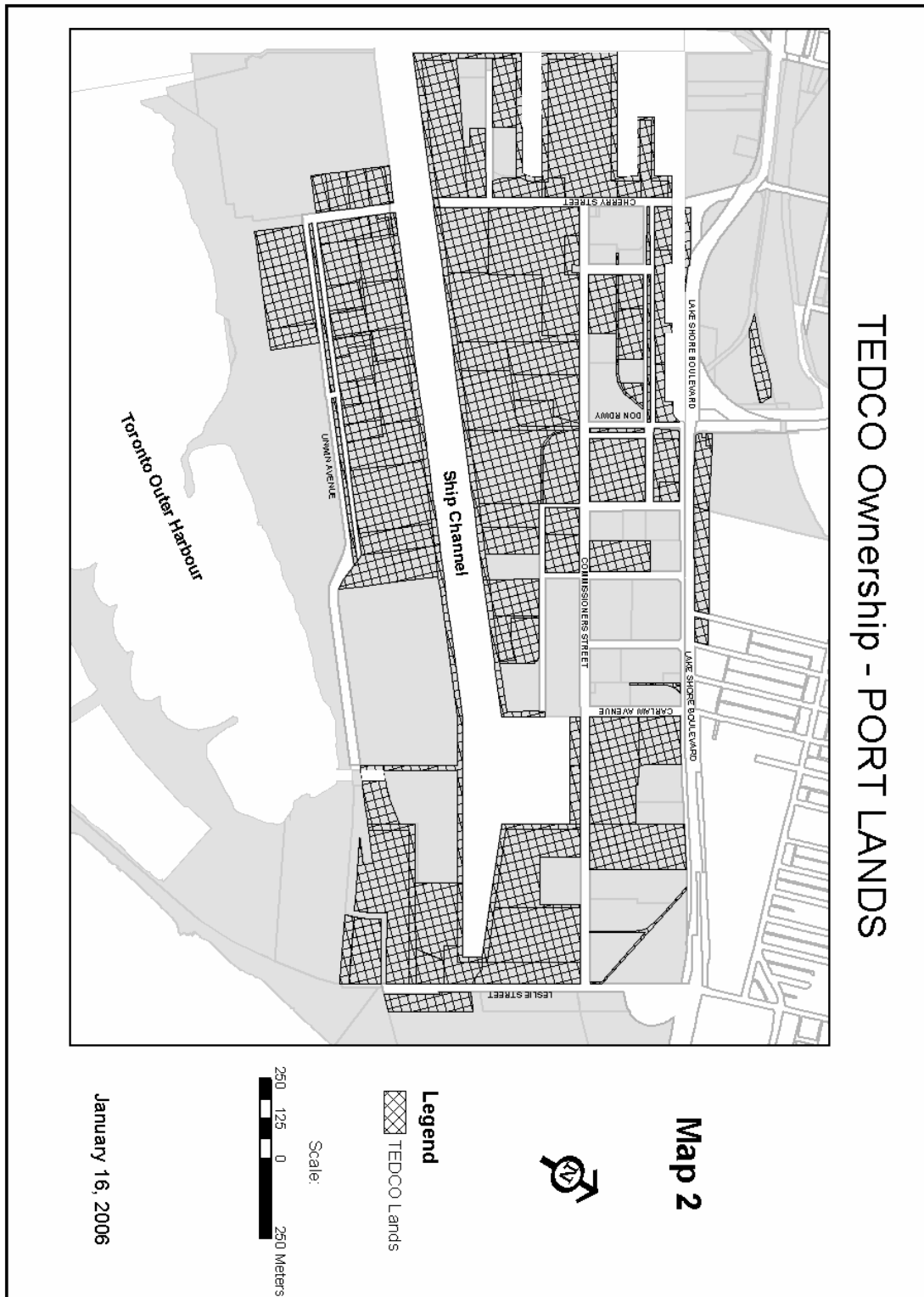
Name:

Title:

Appendix C - Map 1: TEDCO Ownership – East Bayfront



Appendix C – Map 2: TEDCO Ownership – Port Lands



The Policy and Finance Committee also considered a communication dated January 23, 2006, from Jeffrey D. Steiner, President, City of Toronto Economic Development Corporation entitled "TEDCO Comments on Proposed MOU with TWRC."

Councillor Brian Ashton, Scarborough Southwest, addressed the Policy and Finance Committee with respect to this matter.

City Council – January 31, February 1 and 2, 2006

Council also considered the following:

- *Report (January 30, 2006) from the Deputy City Manager Fareed Amin [Communication 19(b)]:*

Subject: Clause No. 27 of Report No. 1 of Policy and Finance Committee

To response to the TEDCO communication dated January 23, 2006 to members of Policy and Finance Committee regarding the proposed Memorandum of Understanding between the City of Toronto, City of Toronto Economic Development Corporation and the Toronto Waterfront Revitalization Corporation.

Purpose:

To address the January 23, 2006 Policy and Finance Committee directive that City staff report directly to Council with a response to comments made by TEDCO in a communication to Committee members on January 23, 2006 regarding the proposed Memorandum of Understanding between the City, TEDCO and TWRC. In response to one of the comments in the TEDCO memorandum, City staff has amended the proposed shareholder resolution included in the staff report that was before the Committee.

Financial Implications and Impact Statement:

There are no financial implications as a result of adopting this report.

Recommendations:

It is recommended that:

- (1) *Recommendation (3) contained in the January 17, 2006 report from Deputy City Manager Fareed Amin be amended by substituting the amended Shareholder Resolution attached as Appendix 1 to this report for the Shareholder Resolution referred to in Recommendation (3), and the Shareholder Resolution to be attached to the Memorandum of Understanding and the Unanimous Shareholder Declaration be the amended Shareholder Resolution that is attached as Appendix 1 to this report.*

Background:

On January 23, 2006, Policy and Finance Committee considered report one, clause 27 (the MOU Report) from Deputy City Manager Fareed Amin regarding a proposed Memorandum of Understanding between the City of Toronto, City of Toronto Economic Development Corporation (TEDCO) and the Toronto Waterfront Revitalization Corporation (TWRC). The purpose of the report was to seek approval of the proposed MOU and a related unanimous shareholder declaration from the City to TEDCO.

On the same day, TEDCO staff submitted a memorandum (the TEDCO Memorandum) to members of Policy and Finance Committee providing commentary on the proposed MOU.

Policy and Finance Committee adopted all recommendations contained in the staff report from the Deputy City Manager and recommended that the MOU be amended to include the project known to TEDCO as “Project Symphony” as a TEDCO project in the MOU. Policy and Finance also directed City staff to report directly to City Council with comments on the issues raised in the TEDCO Memorandum.

Comments:

TEDCO Memorandum:

TEDCO’s January 23, 2006 comments regarding the MOU relate to environmental liabilities, TWRC being given certain de facto decision-making authority regarding lands owned by TEDCO in the Port Lands and East Bayfront, the size of the City/TEDCO contribution to waterfront revitalization relative to that of the other orders of government, and the financial implications of the MOU. TEDCO also raised an issue regarding the wording of the proposed Unanimous Shareholder Declaration from the City to TEDCO.

This report addresses TEDCO’s comments.

Environmental Liabilities:

TEDCO officials have commented that as a result of the MOU, environmental liabilities are stranded within TEDCO, a city asset, while the benefit (value) of TEDCO Lands is transferred to TWRC. City staff disagrees with this statement for the following reasons:

- 1. Strong environmental obligations with TWRC.*

The MOU imposes very strong obligations on TWRC to properly address environmental issues. These include obligations relating to the appropriate conduct of site investigations and remediation, the provision of insurance and indemnities to protect the City and TEDCO, and the potential for TWRC-funded peer reviews of remediation and site preparation processes. In addition, TEDCO has the first opportunity to carry out site investigations and remediation work on TEDCO-owned lands under an agreement with TWRC and, should such work be undertaken by a third party, TEDCO can review and approve all work plans, consultants and contractors and be present during all testing and remediation activities.

All remediation work must be done to legal standards provided by the Ministry of the Environment and, where applicable, to higher City standards, and under plans approved by the City with TEDCO input. TWRC must ensure that records of site condition are filed, which provides certain immunity to TEDCO and future owners. Environmental management through remediation and risk management will protect and enhance the environment. The risk of environmental claims or orders after this work is completed is remote.

Each time a parcel of TEDCO lands is to be transferred to a third party pursuant to the MOU, the onus will be on TWRC to develop an approach to eliminating or minimizing TEDCO's exposure to claims or orders relating to existing environmental conditions. This may include covenants in favour of TEDCO from third-party developers selected for specific sites.

2. Benefit to Public

TEDCO states that the benefit (value) of the TEDCO Lands is transferred to TWRC. In fact, it is the public that will benefit from TWRC's activities. All TWRC activities will be undertaken in accordance with detailed business and implementation plans that have been approved by Council. Revenue from the ground leasing or selling of public lands will be invested, through TWRC, in waterfront parks, public spaces, and other municipal infrastructure. In addition, funding for such infrastructure is being provided by all three orders of government.

3. Review of Alternatives

The TEDCO Memorandum does not make any suggestions as to what different approach could have been taken in the MOU. There are two alternatives which City staff assessed during the 2004 review of waterfront governance models.

The first would be TEDCO revitalizing its own lands and retaining revenues generated from sales and ground leases. This is not consistent with the governance model that staff recommended and Council approved in 2004 and would not result in development of a sustainable, transit-oriented waterfront inclusive of parks, public spaces and promenades.

The second alternative would have TWRC and the three governments indemnify TEDCO against any possible environmental liability. Imposing such a requirement would frustrate the initiative. Federal and Province Governments are unlikely to provide these indemnities and City staff does not recommend that the City provide them. The likelihood of environmental liability following remediation and risk management is remote, but staff submits that the City should not take on this risk.

TEDCO's Decision Making and Fiduciary Duties:

The TEDCO Memorandum suggests that the separation of legal title and de facto decision making outlined in the MOU creates problems in the corporate governance of TEDCO and undermines the fiduciary duties of its directors.

Specifically, this comment relates to provisions in the MOU that permit TWRC to carry out certain activities on or relating to TEDCO-owned lands before these lands are transferred to the City or to third parties. Permitted activities include site investigations, environmental remediation, risk management and other site preparation work; promotion and marketing activities; the submission of planning applications; and the issuing of Requests for Proposals for private sector involvement.

Staff has three comments on this point:

1. Protections for TEDCO

Under the MOU there are many protections for TEDCO where TWRC undertakes activities on or relating to TEDCO lands. The protections relating to site investigations, site remediation and other site preparation work are described earlier in this report.

With respect to promotion and marketing, the MOU requires that TWRC consult with the City and TEDCO when developing or modifying plans for promoting the revitalization initiative and attracting private developer investment. Similarly, TWRC must develop and modify marketing plans for TEDCO lands in East Bayfront and the Port Lands in consultation with the City and TEDCO.

TWRC must consult with the City and TEDCO regarding proposal calls to the private sector and TEDCO has an opportunity to provide input and advice throughout the proposal call and evaluation process.

2. Review of Alternatives

There are two alternatives to that which is proposed in the MOU that were assessed during the 2004 review of waterfront governance models.

The first, again, would see TEDCO marketing and revitalizing its own lands and retaining revenues generated from the sale and lease of these lands. As previously noted, that is not consistent with the governance model selected by Council in 2004 and would undermine development of the parks, public spaces and infrastructure necessary to achieve the waterfront vision.

The second alternative would see TEDCO transfer all of its lands (other than the TEDCO Project Lands) to TWRC immediately. Staff does not recommend this approach. It is contrary to Council's direction with respect to waterfront governance and the management of public lands in the waterfront area and is not in the City's best interest.

Under the MOU, lands are made available to TWRC incrementally and only when (i) it has developed and Council has approved a detailed business and implementation plan for the lands in question and (ii) funding agreements are in place to implement the plan for the specific site in question.

Making land available on an incremental basis reflects Council's direction with respect to the management of public lands in the waterfront. It requires that TWRC prove itself by effectively delivering on approved projects prior to accessing additional lands; ensures that lands transferred by TEDCO are used for projects that Council supports and for which funding is in place; and enables TEDCO to pursue interim uses on lands until they are required for revitalization purposes, in some cases for twenty or more years.

There is an additional advantage to the MOU approach with respect to the management of public lands. If TEDCO lands were transferred first to TWRC, and then to the City or third parties, land transfer tax would be applied twice. This would increase revitalization costs significantly.

With respect to issues of corporate governance and fiduciary duties, staff notes that the City did not incorporate TEDCO to earn profits that would be paid to the City, its shareholder, as dividends. The special legislation authorizing the City to incorporate TEDCO does not permit TEDCO to pay dividends to its shareholder. TEDCO's objects are ones of public improvement. In making its lands available for revitalization with funding provided by three governments TEDCO is achieving these objects.

Further, the City will be issuing a shareholder declaration to TEDCO so that its directors will not be concerned as to whether or not they are fulfilling their fiduciary duties.

3. Financial Implications of Revitalization to the City:

The TEDCO Memorandum suggests that the proposed MOU has many financial implications to the City that have not been examined. Specifically, the TEDCO Memorandum raises issues with respect to the costs of maintaining new waterfront parks and public spaces and TEDCO's ability to make remaining settlement payments to the Toronto Port Authority. TEDCO also notes that contributions by the City and TEDCO to waterfront renewal are larger than those of the Provincial and Federal Governments given the magnitude of the City's land holdings.

City staff's response to those comments is as follows:

With respect to investment made in revitalization by each of the governments, this is an issue between the City and its government partners. Staff notes, however, that the three governments have approved a 10-year financial forecast for revitalization and have developed and approved a financial protocol for tracking and recognizing financial and land contributions to the initiative. In addition, the report to Policy and Finance notes that a number of options exist for addressing this imbalance, including the provision of Provincial and Federal financial incentives to attract employment and investment to the waterfront.

The creation of parks, public spaces and municipal infrastructure is key to effective waterfront renewal and to achieving the vision outlined in the Council's Central Waterfront Secondary Plan. TWRC and City officials are exploring options for establishing endowment or other legacy funds to off-set the ongoing costs of maintaining new parks and public spaces. In addition, as the report to Policy and Finance notes, staff will be reporting on the operating implications of waterfront renewal and on options for mitigating costs later in 2006. While the City will be

required to operate and maintain a significant portion of new waterfront amenities, it will also benefit from increased economic activity, job growth and expanded property tax base.

With respect to TEDCO's ability to satisfy its financial obligations to the Toronto Port Authority, this can be addressed through the process outlined in the report to Policy and Finance for identifying and, where required, mitigating the financial impact on TEDCO of any land transfers. This process requires that TEDCO identify the impacts on a site by site basis and that the Deputy City Manager and Chief Financial Officer review this information and report to Council on mitigation measures, should they be required. This incremental approach provides TEDCO with the time necessary to expand its activities outside of the waterfront and to advance the TEDCO projects defined in the MOU.

Shareholder Declaration from the City to TEDCO

The TEDCO Memorandum notes that one of TEDCO's legal counsel has concerns with elements of the Shareholder Declaration. As a result, City staff and the City's outside counsel have made minor modifications to the Shareholder's Resolution that is attached to the Shareholder Declaration. The modified Shareholder's Resolution is attached as Appendix 2 to this report.

The modifications made to the Shareholder's Resolution can be summarized as follows:

- Section 2 has been amended to state explicitly that before TEDCO, or the City exercising its rights under its Shareholder Declaration, transfers property pursuant to the MOU, City Council must have approved the proposed transfers.*
- Section 3 has been amended to replace the words "the carrying out of such other actions, the permitting of such other activities and otherwise complying with the terms of the MOU" with the words "otherwise complying with the terms of the MOU" to be more precise.*
- Section 4 has been amended to require that both (rather than either) the City Clerk and the Deputy City Manager and Chief Financial Officer are to sign documents on behalf of TEDCO.*
- Section 5 is a general clause regarding executing and delivering documents, and it has been amended to include a reminder that additional authority from City Council may be required before documents are signed.*
- Finally, the Shareholder Resolution provides that modifications, if any, that are made to the MOU which is appended to Policy and Finance Committee report one, clause 27, before it is signed must be modifications that the Deputy City Manager whose responsibilities include waterfront renewal, in consultation with the Deputy City Manager and Chief Financial Officer, determines are of a non-substantial nature and appropriate.*

Additional Comments

TEDCO staff has suggested that the MOU should require TWRC to undertake performance reporting. Staff notes that this is an issue between TWRC and its government partners and does not belong in a MOU between TWRC, TEDCO and City. That being said, TWRC is required to

report to the governments on its performance on a quarterly basis. In turn, progress reports are presented to Council annually as part of the City's capital budget process.

Conclusions:

This report responds to issues raised by TEDCO staff in a January 23, 2006 memorandum to the Policy and Finance Committee. City staff and the City's outside counsel providing advice on the MOU have reviewed TEDCO's comments. Staff is not recommending any changes to the MOU. Staff is, however, recommending minor amendments to the Shareholder's Resolution so that it is more precise regarding the actions that are authorized by the Shareholder Declaration.

Contacts:

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Waterfront Secretariat
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ebaxter@toronto.ca*

*Mary Braun, Solicitor
Legal
(416) 392-7221
mbraun@toronto.ca*

List of Attachments:

Appendix 1 - Amended Shareholder Resolution

Amended Shareholder Resolution

**CITY OF TORONTO ECONOMIC DEVELOPMENT CORPORATION
SHAREHOLDER RESOLUTION**

WHEREAS the CITY OF TORONTO ECONOMIC DEVELOPMENT CORPORATION ("TEDCO") is a wholly owned subsidiary of the CITY OF TORONTO (the "City");

AND WHEREAS it is proposed that the City, TEDCO and the TORONTO WATERFRONT REVITALIZATION CORPORATION ("TWRC") enter into a memorandum of understanding in the form attached hereto as Exhibit A (the "MOU") with respect to the revitalization of certain lands owned by TEDCO in the Port Lands and East Bayfront precincts in the City of Toronto (the "TEDCO Lands");

AND WHEREAS any capitalized term used and not otherwise defined herein shall have the meaning ascribed thereto in the MOU;

AND WHEREAS pursuant to the proposed MOU, TEDCO, among other things, agrees to permit TWRC and others to carry out certain investigations and activities on some of the TEDCO Lands, and agrees to transfer freehold or leasehold title to some of the TEDCO Lands to the City and to third parties or as the City may direct (the "Proposed Transfers") on an incremental basis, all in accordance with and on and subject to the terms and conditions of the MOU;

AND WHEREAS the City, as sole shareholder of TEDCO, has determined that having TEDCO enter into the MOU, and take the actions contemplated in the MOU is in the public interest and will benefit the residents of the City of Toronto;

IT IS RESOLVED THAT:

- 1. the execution and delivery of the MOU by TEDCO are hereby authorized, approved and directed;*
- 2. the completion of the Proposed Transfers in accordance with the provisions of the MOU, which include the requirement that City Council has first approved such Proposed Transfers, together with the execution and delivery of all documentation required to effect the Proposed Transfers (collectively, the "Transfer Documents"), is hereby authorized, approved and directed;*
- 3. otherwise complying with the terms of the MOU, is hereby authorized, approved and directed;*
- 4. any one officer or director of TEDCO or the following officers of the City: the City Clerk or the person acting in that capacity and the Deputy City Manager and Chief Financial Officer or the person acting in that capacity (the "City Representatives") is or are authorized and directed, for and in the name of and on behalf of TEDCO, to execute (whether under the corporate seal of TEDCO or otherwise) and deliver:*
 - (a) the MOU, with such deletions, amendments or additions of a non-substantial nature thereto as Deputy Manager Fareed Amin, in consultation with the City's Deputy City Manager and Chief Financial Officer, may determine are appropriate, the execution of such agreement by the City Representatives or by any officer or director of TEDCO being conclusive evidence of such determination; and*
 - (b) the Transfer Documents, following City Council approval of Proposed Transfers; and*
- 5. any one officer or director of TEDCO, or the following officers of the City: the City Clerk or the person acting in that capacity and the Deputy City Manager and Chief Financial Officer or the person acting in that capacity (the "City Representatives"), is authorized and directed, for and in the name of and on behalf of TEDCO, to execute (whether under the corporate seal of TEDCO or otherwise) and deliver all such other agreements, instruments, certificates and other documents and to do all such other acts and things as such officer or director or City Representatives may determine to be necessary or advisable (or in the case of the City Representatives, if required, where such persons have received such further direction from City Council that the same are necessary or advisable), to carry out the intention of the foregoing resolutions, the execution and delivery of any such agreement, amendment, instrument, certificate or other document or the doing of any such other act or thing by such officer or director or authorized signing officer being conclusive evidence of such determination.*

The undersigned being the sole shareholder of the CITY OF TORONTO ECONOMIC DEVELOPMENT CORPORATION, passes the foregoing resolutions pursuant to the unanimous shareholder declaration dated ■, 2006 and pursuant to the Business Corporations Act (Ontario).

DATED _____, 2006.

City of Toronto

by _____

Name:

Title:

Name:

Title:

Communications:

- *(January 30, 2006) from the President and Chief Executive Officer, Toronto Waterfront Revitalization Corporation [Communication 19(a)]; and*
- *(January 27, 2006) from the President and Chief Executive Officer, City of Toronto Economic Development Corporation (TEDCO) [Communication 19(c)].*