

## SHAREHOLDER DIRECTION

### CITY OF TORONTO ECONOMIC DEVELOPMENT CORPORATION

Dated as of November 13<sup>th</sup> 2008

#### WHEREAS:

- A. Capitalised terms used in these recitals and not otherwise defined have the meanings set out in section 1.1;
- B. The Shareholder is the beneficial owner of all of the issued shares of TEDCO, an OBCA corporation;
- C. The Shareholder made a shareholder direction to TEDCO in 2006 to set out certain principles of governance, and subsequently made minor amendments to that shareholder direction (that shareholder direction, as previously amended, is called the “Original Shareholder Direction”);
- D. The Shareholder, at its City Council meeting held October 29 and 30, 2008, passed by-laws, among other things, to (i) establish two new OBCA corporations with the operating names Build Toronto and Invest Toronto pursuant to subsection 148(1) of the *City of Toronto Act, 2006* and O. Reg. 609/06, City Services Corporations; (ii) amend TEDCO’s by-laws to reduce the number of directors on the TEDCO Board to five, and (iii) effective November 14, 2008 appoint five specific individuals to the board of directors of TEDCO;
- E. The City is making this Shareholder Direction to reflect the changes to TEDCO that arise from the establishment of Build Toronto and Invest Toronto; and
- F. Effective as of the date hereof, this Shareholder Direction replaces the Original Shareholder Direction.

#### NOW THEREFORE THIS DIRECTION WITNESSES:

### ARTICLE 1

#### INTERPRETATION

##### 1.1 Definitions

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

“**Auditor**” means the external auditor of TEDCO;

“**Board**” means the board of directors from time to time of TEDCO;

“**Build Toronto**” means Build Toronto Inc.;

“**Business Plan**” means TEDCO’s five-year business plan and budget, prepared and submitted to the CFO in accordance with Section 7.1;

“**City**” means the City of Toronto;

“**City CCO**” means the City’s Chief Operating Officer;

“**City CFO**” means the City’s Deputy City Manager and Chief Financial Officer;

“**Chair**” means the Director appointed as chair of the Board by the Directors;

“**City Auditor**” means either or both of the City’s internal auditor and the City’s Auditor General;

“**City Manager**” means the City’s City Manager;

“**Council**” means City Council;

“**Directors**” means the members of the Board;

“**Financial Statements**” means, for any particular period, audited or unaudited (as stipulated in this Direction or in TEDCO’s corporate documents) comprehensive financial statements of TEDCO prepared in accordance with generally accepted accounting principles consistently applied;

“**GM EDCT**” means the City’s General Managing Economic Development, Culture and Tourism;

“**Invest Toronto**” means Invest Toronto Inc.;

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

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

“**TEDCO**” means City of Toronto Economic Development Corporation; and

“**TEDCO Subsidiaries**” means any subsidiaries of TEDCO from time to time

## **ARTICLE 2**

### **OBJECTIVES AND PRINCIPLES**

#### **2.1 Management**

TEDCO shall:

- a) Prudently manage all of TEDCO's lands, leases, other interests in lands, and other assets on and subject to the provisions of this Shareholder Direction;
- b) Without limiting TEDCO's activities in paragraph (a), prudently manage environmental conditions on all of its lands and comply with any reporting and all agreements, commitments, memoranda of understanding and obligations with or to the Ministry of the Environment and comply with all environmental laws, directions, orders and mandatory requirements relating thereto;
- c) Manage and dispose of TEDCO-owned lands in accordance with the Council decisions listed in Schedule 1 to this Shareholder Direction, and any subsequent City decisions;
- d) Issue shareholder directions to TEDCO's Subsidiaries to prudently manage the lands and projects owned by those subsidiaries; and
- e) Make grants or loans to any person for the carrying on of promotional activities in relation to the establishment and carrying on of industries and industrial operations and uses incidental thereto if it determines that it would be prudent and effective to do so.

#### **2.2 Staff**

TEDCO shall employ its own staff. TEDCO staff shall not be deemed to be employees of the Shareholder.

#### **2.3 Operational Decisions**

Subject to the terms of this Shareholder Direction, and any unanimous shareholder declarations made by the City to TEDCO, the Board shall be responsible for the management of TEDCO's assets, and for making all policy and operational decisions of TEDCO.

## **ARTICLE 3**

### **OPERATION AND CONTROL**

#### **3.1 Board Responsibilities**

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

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

## **ARTICLE 4**

### **BOARD OF DIRECTORS**

#### **4.1 Information Regarding Composition of the Board**

The composition of the Board shall be determined by the Shareholder from time to time.

#### **4.2 Term of Appointments**

Subject to the provisions of paragraph (c) of this section 4.2: [how can (c) be subject to (c)?]

- (a) the term of office for a Director will be set by Council, but may not exceed a term expiring later than the third annual meeting of shareholders following the election of the directors;
- (b) any Director may stand for re-appointment to the Board at the expiry of his or her term subject to Council policy; and
- (c) any Director appointed in his or her capacity as a member of Council or as an employee of the City will cease to be a Director if he or she ceases to be a member of Council or an employee of the City, as the case may be.

#### **4.3 Quorum**

Quorum shall be a majority members appointed.

#### **4.4 TEDCO Subsidiaries**

The boards of directors of TEDCO Subsidiaries shall be composed of individuals who also are directors of TEDCO.

#### **4.5 Open Meetings**

Meetings of the Board and the boards of directors of TEDCO Subsidiaries, and committees of such boards, shall be open to the public, provided, however, that a meeting or a part of a meeting may be closed to the public if the subject matter being considered comes within one or more of the exceptions set out in subsection 190(2) of *City of Toronto Act, 2006*.

#### **4.6 Remuneration**

Remuneration of Directors will be set by Toronto City Council. Directors who serve ex officio and are members of City Council or City staff will not receive any additional remuneration for serving as Directors. TEDCO shall reimburse Directors for all reasonable expenses incurred during the conduct of TEDCO's business.

### **ARTICLE 5**

#### **CONFLICT OF INTEREST and MFIPPA**

##### **5.1 Conflict of Interest Policy**

The Directors shall abide by the requirements of the OBCA and the *Municipal Conflict of Interest Act* as well as any TEDCO policies in respect of conflict of interest, including any requirements for disclosure and abstention from voting, and City policies with respect to conflicts of interest.

##### **5.2 MFIPPA**

TEDCO is part of the City for purpose of the *Municipal Freedom of Information and Protection of Privacy Act*.

##### **5.3 Policies**

TEDCO shall adopt and maintain policies with respect to its (i) sale and other disposition of land; (ii) hiring of employees, and (iii) procurement of goods and services.

**ARTICLE 6**  
**REPORTING**

**6.1 Business Plan**

Not later than 60 days prior to the end of each fiscal year of TEDCO, the Board shall approve and submit to the GM EDCT, or such other City official as the City CFO may direct in writing, a Business Plan for the next five fiscal years. The Business Plan shall include, in respect of the period covered in the plan, all of the following:

- (a) An operating and capital expenditure budget for the next fiscal year;
- (c) The projected annual revenues and profits for each fiscal year during the term of the Business Plan, with a year to year comparison;
- (d) The projected annual withdrawals, contributions and balances of reserves and reserve funds;
- (e) Pro forma consolidated and unconsolidated Financial Statements; and
- (h) Any material variances from the Business Plan then in effect.

**6.2 Annual Report and Financial Statements**

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

- (a) audited consolidated and unconsolidated Financial Statements;
- (b) a performance report for the preceding calendar year that includes a summary of TEDCO's activities in the previous year; and
- (c) Such additional information as the Shareholder may specify from time to time.

**6.3 Audit**

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

**6.4 Accounting**

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

**6.5 Financial and Administrative Procedures**

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

**ARTICLE 7**

**GENERAL**

**7.1 No Agency**

TEDCO is not an agent of the shareholder.

**7.2 Interpretation**

Wherever there is a reference to a City official, that reference includes any person acting in that capacity, or any successor officer appointed or designated as being responsible for the service area included in that office.

**7.3 Amendments to Direction**

The Shareholder in its sole discretion may amend this Direction on written notice to the Board.

Dated at Toronto as of the 13<sup>th</sup> day of November, 2008.

**CITY OF TORONTO**

By: \_\_\_\_\_ (signed original)  
Deputy City Manager and  
Chief Financial Officer

By: \_\_\_\_\_ (signed original)  
City Clerk

## SCHEDULE 1

### COUNCIL DECISIONS AFFECTING TEDCO: NEW MODEL TO ENHANCE TORONTO'S ECONOMIC COMPETITIVENESS

*In this Schedule, "ABC" means agencies, boards and commissions of the City, "CCO" means the Chief Corporate Officer of the City or the person acting in that capacity, "CFO" means the Deputy City Manager and Chief Financial Officer or the person acting in that capacity, and "EDCT" means the City's Economic Development, Culture and Tourism Division or any successor division.*

#### Governance:

9. a. Effective January 1, 2009, TEDCO's current incubator programs along with the associated funding and staffing be managed by and subsequently transferred to EDCT and included in the 2009 budget; and
- b. the General Manager of EDCT, or a person acting in that capacity, be authorized to execute on behalf of the City any agreements necessary with TEDCO or others to provide for the transfer of the incubator programs and the funding for such programs.

#### Real Estate Strategy and Authorities for Land Transfers and Turnovers:

Note 1: A land transfer conveys title to Build Toronto; a land turnover gives Build Toronto effective control over the lands to manage, develop and market lands without transferring title. Transfers may be used when there are no City or ABC program interests in the lands and a turnover may be used when there is one or more City or ABC program interests.

Note 2: "TEDCO's lands" means TEDCO's development projects and land holdings, together with the development projects and land holdings of TEDCO's subsidiaries.

11. To immediately begin the process of unlocking the value of land holdings, the City's CCO develop a City-wide real estate strategy that incorporates long term plans for all City and ABC programs and be authorized to conduct any real estate audits necessary, and all stakeholders be directed to participate in the process as set out in section C of the report, New Model to Enhance Toronto's Economic Competitiveness; all with a view to optimizing the use of City and ABC land holdings and transferring or turning over to Build Toronto any City or ABC lands with potential for private development.
12. Council authorize the Deputy City Manager responsible for waterfront revitalization to review and determine the appropriate disposition of all TEDCO's lands within the waterfront planning area, with a view to expediting renewal of this large area, ensuring effective management of those lands that are likely to remain in industrial use, and



ensuring that the use of other lands is optimized while awaiting renewal by Waterfront Toronto.

13. Those prior Council authorities providing for the transfer of title of certain City-owned properties to TEDCO, as more particularly set out in Attachment A to this Schedule 1, be rescinded.
  
14. Conditional upon a satisfactory review by the CFO of the financial and real estate issues and subject to the execution of an agreement with Build Toronto on terms and conditions satisfactory to the CFO and in a form satisfactory to the City Solicitor:
  - a. the properties that are the subject matter of the authorities rescinded by the adoption of recommendation 13 above, be transferred to Build Toronto;
  
  - b. all TEDCO's lands outside the waterfront planning area be transferred to Build Toronto for nominal consideration, with appropriate arrangements for supporting staff and other resources as deemed necessary; and
  
  - c. as a result of the review in recommendation 11 above, where the Deputy City Manager determines that lands should be transferred to Build Toronto, those lands be transferred to Build Toronto for nominal consideration, with appropriate arrangements for supporting staff and other resources as deemed necessary.

## **ATTACHMENT A TO SCHEDULE 1**

### **Property Transfer Authorities to be Rescinded**

1. That portion of Recommendation (1) providing for the intended manner of disposal of the property known as part of 301 Rockcliffe Boulevard contained in Policy and Finance Committee Report 1(28), entitled “Declaration as Surplus of Various City-Owned Properties for Transfer to the City of Toronto Economic Development Corporation” adopted by City Council on January 31, February 1 and 2, 2006.
2. That portion of Recommendation (3) providing for the intended manner of disposal of the property known as 411 Victoria Park Avenue contained in Policy and Finance Committee Report 1(28), entitled “Declaration as Surplus of Various City-Owned Properties for Transfer to the City of Toronto Economic Development Corporation” adopted by City Council on January 31, February 1 and 2, 2006.
3. That portion of Recommendation (4) providing for the intended manner of disposal of the property known as 1035 Sheppard Avenue West contained in Policy and Finance Committee Report 1(28), entitled “Declaration as Surplus of Various City-Owned Properties for Transfer to the City of Toronto Economic Development Corporation” adopted by City Council on January 31, February 1 and 2, 2006.
4. That portion of Recommendation (1) and (2) dealing with the properties known as 301 Rockcliffe Boulevard, 411 Victoria Park Avenue and 1035 Sheppard Avenue West contained in the Consolidated Clause 1 in Policy and Finance Committee and Administration Committee Joint Report 1, entitled “Status Report on the Proposed Terms of Transfer of Properties to the City of Toronto Economic Development Corporation” adopted by City Council on May 23, 24 and 25, 2006.
5. Consolidated Clause 18 in Administration Committee Report No. 5, entitled “Transfer of Parts of 1035 Sheppard Avenue West to the City of Toronto Economic Development Corporation”, adopted by City Council on July 25, 26 & 27, 2006.