



STAFF REPORT ACTION REQUIRED

New Model to Enhance Toronto's Economic Competitiveness

Date:	September 22, 2008
To:	Executive Committee
From:	City Manager
Wards:	All
Reference Number:	

SUMMARY

The *Prosperity Agenda* and the *Blueprint for Fiscal Stability and Economic Prosperity* both indicated a need for substantive change in how the City attracts new investment and uses its under-utilized real estate holdings to regenerate Toronto. The City has reorganized the Economic Development Culture and Tourism Division (EDCT) and, together with its Federal and Provincial partners, commenced waterfront revitalization through Waterfront Toronto. The logical next phase is to review the optimal organization and governance structure for City arm's length corporation(s) to achieve the City's economic development objectives and to enable the City to maximize the value of its real estate holdings.

The City Manager engaged the Randolph Group and NetGain Partners to conduct interviews of all stakeholders including the City of Toronto Economic Development Corporation (TEDCO) board and staff, and to recommend a model that would satisfy both of these objectives. The law firm of Borden, Ladner, Gervais LLP was engaged to provide legal advice on corporate structures, financing options, and land ownership issues. To provide world-wide context, staff reviewed an extensive study of other jurisdictions by Greg Clark, an acknowledged global expert and advisor on city and regional development. Business and development experts also provided comments on the proposed model. The Toronto Transit Commission (TTC) study of its own real estate function and the review of the City's Facilities and Real Estate Division (FRED) were also taken into account.

Based on this wide range of advice, this report recommends establishing two new City corporations referred to in this report as Invest Toronto and Build Toronto, amending the mandates of EDCT and FRED, and instituting a centralized real estate strategy that includes all City land holdings including those managed or owned by City Agencies, Boards, and Commissions (ABCs) such as the TTC.

“Invest Toronto” will engage the private sector in promoting Toronto as an investment opportunity through marketing, conducting trade missions, and coordinating with other governments and business. “Build Toronto” will engage private and public sector partners in the development of under-utilized City real estate to unlock value, stimulate the creation of desirable jobs, and regenerate neighbourhoods, consistent with the City’s broader economic, social and environmental goals. Development revenues will either be used by Build Toronto to fund additional projects that further the City’s agenda or will come back to the City through various forms of revenue sharing from development projects or dividends to be used for City requirements. The activities of both corporations will lead to an increased tax base. Both corporations will be closely aligned with the City’s policy objectives, but will be able to implement plans on an independent basis.

This plan represents a vital step forward in meeting the objectives laid out in the Prosperity Agenda and the Blueprint for Fiscal Stability and Economic Prosperity.

RECOMMENDATIONS

The City Manager recommends that:

1. To advance Toronto’s broad economic competitiveness and unlock the value of the City’s under-utilized real estate holdings, Council adopt the Business Case Study, Attachment 1 to this report, for the establishment of 2 new corporations referred to as Build Toronto and Invest Toronto.

Governance:

2. Council authorize the City Solicitor to incorporate two new corporations pursuant to section 148 of the *City of Toronto Act, 2006* and Ontario Regulation 609/06, the City Services Corporation Regulation, and the *Business Corporations Act (Ontario)*:
 - a. one with the operating name Build Toronto to unlock the value in under-utilized lands and use the available City and ABC land base to attract targeted industries, stimulate the creation of desirable employment, and regenerate neighbourhoods;
 - b. one with the operating name Invest Toronto to engage the private sector in marketing and promotion activities to increase business investment and create desirable jobs in Toronto; and, as of the date of incorporation, appoint the City Manager, Deputy City Manager and Chief Financial Officer (CFO), and City Chief Corporate Officer (CCO) as initial interim directors of both boards until the new boards are appointed by Council, in order to execute any documents or take other actions necessary to set up operations.
3. Effective on the date that Council appoints the recruited citizen directors, the Board of Directors of Build Toronto be comprised of 11 members as follows:
 - a. the Mayor as Chair for the first 2 year term;
 - b. a citizen as Vice-Chair for the first 2 year term;
 - c. the Chair of the City’s Economic Development Committee;
 - d. the City’s General Manager of EDCT;

- e. the City's Chief Corporate Officer; and
 - f. 6 residents of Toronto who are not elected officials or employees of the City or any of its ABCs or Corporations (ABCCs);
- and that after the initial 2 year term, or as the Chair deems appropriate, the Vice-Chair become the Chair and the Mayor may continue as Vice-Chair or name a designate to be Vice-Chair of the Board.
4. Effective on the date that Council appoints the recruited citizen directors, the Board of Directors of Invest Toronto be comprised of 15 members as follows:
 - a. the Mayor as Chair;
 - b. a citizen as Vice-Chair;
 - c. the Chair of the City's Economic Development Committee;
 - d. the City's General Manager of EDCT; and
 - e. 11 residents of Toronto who are not elected officials or employees of the City or any of its ABCCs.
 5. The Public Appointments Policy corporations nominating process, currently used for other corporate boards, apply to Build Toronto and Invest Toronto and the City Manager be authorized to amend the Policy by adding the following specific qualifications for each board:
 - a. For Build Toronto – accomplished in real estate law, planning and development, capital financing, environmental remediation, and construction
 - b. For Invest Toronto – accomplished in international business, academics, marketing, government relations, labour, tourism or other marketing linkages.
 6. The Mayor establish a Corporations Nominating Panel to recruit citizen members of the Board of Directors for the 2 new corporations and conduct a national search for the Chief Executive Officers for the 2 corporations.
 7. The Remuneration Policy and the Expense Reimbursement Policy for City ABCCs apply to Invest Toronto and Build Toronto and the City Manager recommend remuneration for these boards for Council approval at the same time as the citizen board members are appointed by Council.
 8. The City Manager develop shareholder directions for the 2 new corporations for Council approval at the same time as the citizen board members are appointed by Council.
 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.

10. 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 this report in order to optimize the use of City and ABC land holdings, and to transfer or turn over to Build Toronto any City or ABC lands with potential for private development.
11. 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.
12. Those prior Council authorities providing for the transfer of title of certain City-owned properties to TEDCO, as more particularly set out in Attachment 5, be rescinded.
13. 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 12 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.
14. (a) Authority be granted to enter into Turnover Agreement(s) with Build Toronto, on terms and conditions satisfactory to the City Manager (including, but not limited to, those terms set out in Attachment 2), in consultation with the City Solicitor, and including amending agreements from time to time, all in a form satisfactory to the City Solicitor;

(b) Conditional upon Build Toronto having entered into a Turnover Agreement, land which has been declared surplus with the intended manner of disposal to be by way of turnover to

Build Toronto to manage, develop and market, be turned over to Build Toronto for such purposes; and

(c) Authority be granted to execute a Power-of-Attorney or other authority to empower signing officers of Build Toronto to sign documents on behalf of the City relating to City-owned lands turned over to Build Toronto, without further review or approval by City staff.

15. While Build Toronto will be entirely free to deal with the inventory of lands transferred in title to it (subject only to the terms of any Transfer Agreement), the terms of any proposed transfer of title of City or ABC land to Build Toronto, and of any proposed sale/disposal (including leases of 21 years or more) by Build Toronto of land subject to a Turnover Agreement, be reported through Committee and Council for consideration and determination.
16. The City Solicitor be authorized to complete the Turnover, future Transfer, and other, Agreements on behalf of the City, including paying any necessary expenses, amending the closing and other dates, and amending and waiving terms and conditions, on such terms as she considers appropriate.

Funding

17. Council allocate the amount of \$10 million to the non-program expenditure budget to be funded from the Land Acquisition Reserve Fund, to be disbursed to Build Toronto and Invest Toronto, on terms satisfactory to the CFO, for the purpose of setting up and commencing business development operations including development of a business plan that identifies sustainable revenue sources.

Unanimous Shareholder Declaration, Shareholder Resolution, and Indemnity

This will require TEDCO to take all actions necessary by TEDCO to implement the recommendations in this report.

18. In order to protect current and future directors and officers of TEDCO, and current and future officers of TEDCO subsidiaries, the City:
 - a. make a unanimous shareholder declaration to TEDCO, and pursuant to that declaration, make a shareholder resolution in form and substance as Attachment 3 with such changes as the City Manager may determine are appropriate, and
 - b. indemnify and save harmless the directors and officers from time to time of TEDCO and the directors and officers from time to time of TEDCO subsidiaries against any claims they may incur from compliance (or in the case of directors and officers of TEDCO subsidiaries, compliance at the direction of TEDCO) with the unanimous shareholder declaration.

Amendments/Review - Existing By-laws and Decisions

19. City of Toronto Municipal Code, Chapter 213, Sale of Real Property, be amended as set out in the draft Bill in Attachment 4.

20. The City Manager be requested to review the financial needs of Build Toronto together with the existing Policy entitled "...Proceeds from Sale of Surplus City Owned Real Property" embodied in Clause No. 1 of Report No. 9 of the Policy and Finance Committee adopted as amended by Council on June 18, 19 and 20, 2002 and report back to Council.

General Authorities

21. Authority be granted to enter into such additional or other agreements or documents and to do all things deemed appropriate as may, in the opinion of the City Manager or City Solicitor, be desirable to give effect hereto.

22. The appropriate City officials be authorized and directed to introduce in Council any Bills necessary to give effect to the foregoing.

Financial Impact

According to the Blueprint for Fiscal Stability and Economic Prosperity, the final report of the Mayor's Fiscal Review Panel, developing under-utilized City and ABC properties could realize substantial revenue for the City. It is therefore important to invest sufficient resources to achieve the full potential of City assets. Until these corporations are established and operational and the CCO completes his review of real estate holdings, it is difficult to determine the scale of investment needed.

Over the long term, Build Toronto will be self financing. In the short term, just as for TEDCO, there are insufficient revenues to fund substantive development projects. Build Toronto will have the advantage of being able to borrow against its own assets and future revenue streams, but will need seed money to complete a hiring process, conduct the initial review of City land assets to identify potential for private investment, and prepare a business plan. Development revenues will either be used by Build Toronto to fund additional projects that further the City's agenda or will come back to the City through various forms of revenue sharing from development projects or dividends to be used for City requirements. The activities of both corporations will lead to an increased tax base.

Invest Toronto initially will have no substantive revenue streams and must be funded from other sources. Once Invest Toronto establishes itself, there will be opportunities for private contributions from those who stand to benefit from the increased foreign marketing of Invest Toronto, fees for participation in trade missions and research fees. Invest Toronto could also provide Build Toronto with front-end marketing and lead-development services on a contract basis.

Existing lease revenues will be sufficient to fund property management for leased lands, the incubator programs, and Invest Toronto's costs in the early years.

It is recommended that \$10 million be provided by the City as seed money to support the start-up stage of both corporations. This funding will be made available to the new corporations as needed and on terms established by the City CFO. Both corporations are expected to develop business plans during their first year of operation to set out their future plans.

Although various City staff can provide significant resources to assist in the transition to the new model, it is expected that specific external expertise will be required to assist with human resources transitioning and with structuring the necessary land and project transfers. These additional resources could be cost-shared between TEDCO and the City.

Although every effort will be made to minimize transitional cost, there could be additional costs incurred in connection with the transition of assets and employees to the new corporations, and other employment matters. It is not possible to quantify those costs in the absence of specific fact situations. These issues must also be seriously considered in structuring agreements between the City and each of these corporations whenever these corporations provide services to the City.

While it is true that there are increased costs to operating two distinct corporations, the expected long term economic benefits to both the City and the Toronto community are eminently worth the investment.

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

DECISION HISTORY

In July 2006, the City Manager recommended changes to legislation to permit amendments to TEDCO's mandate and remove existing limitations. The Provincial Legislature did not include the requested changes in the new *City of Toronto Act, 2006*. However, Provincial Regulation 609/06 provided the conditions under which the City could establish new corporations.

In June 2007, Executive Committee had before it a report from the Deputy City Manager concerning the transfer of certain TEDCO lands in East Bayfront to the City to facilitate waterfront revitalization. The Financial Impact Statement stated:

“TEDCO control over its remaining Waterfront lands will continue to decline over time, as will its opportunities to generate revenues from these lands, as the Revitalization Initiative led by Waterfront Toronto continues to move through its implementation phase. TEDCO's long-term self-sustainability will necessitate a change in its business direction.”

A letter from the Mayor accompanying this report advised Council that the City Manager was undertaking a review to address this issue.

Since then, each of the following initiatives all identified compelling grounds for a new approach:

- The Prosperity Agenda identified the need for a new arm's length structure to help implement a comprehensive strategy for ensuring Toronto continues to be economically competitive and inclusive in the local, national, and international arenas. The Prosperity

Agenda also stated it is critical that Toronto attract new investment by stepping up its marketing, promotion, and international presence.

- The program review of EDCT identified the need for a new model for an arm's length structure to complement the role of EDCT within the Prosperity Agenda. In addition, internationalization was stated as a key issue that needed to be enhanced.
- The Fiscal Review Panel recommended a review to determine an organization structure that would best enable the City to maximize the value of the real estate holdings of the City and its ABCCs.
- The TTC undertook a review of land under its jurisdiction and concluded that it would benefit from an enhanced structure to develop its under-utilized lands.
- FRED undertook a review of the City's facilities and land management practices and concluded that a centralized approach to developing a strategy and implementing land development would be beneficial.

As articulated in the Mayor's letter to the Executive Committee, while Waterfront renewal is critical in this plan, the City also needs to take a more broadly proactive role in development activities City-wide and to strategically manage its enormous land holdings to the City's economic advantage. It is opportune to rethink what role a City development corporation can play in this regard.

ISSUE BACKGROUND

Charged with the task of determining what arm's length organizational structure would best meet the City's needs in advancing Toronto's broad economic agenda and best enable the City to maximize the value of City and ABC real estate holdings, the City Manager engaged the Randolph Group in association with NetGain Partners to conduct a review.

The consultants interviewed numerous stakeholders and experts, reviewed models used in other jurisdictions, and developed and assessed a number of alternative structures. Working closely with the City Manager's Office, the Mayor's Office, Deputy Mayor and the Chair of the Economic Development Committee, the consultants recommended that the functions of TEDCO be separated into two new corporations, each with an expanded mandate.

The consultant's recommended model was then vetted with external experts, and the law firm of Borden, Ladner, Gervais LLP was engaged to work out the details of how each corporation would be established, and how the transition could occur.

The recommended model is outlined in the Business Case Study document, Attachment 1 to this report. Council is being asked to approve the Business Case Study, consult with the public through the public forum represented by the Executive Committee, and approve the recommendations in this staff report to implement the plan.

The transition objectives are:

- (1) to ensure that both new corporations are closely aligned with City policy objectives, but able to act independently and implement in a nimble fashion;
- (2) to maintain continuity of TEDCO projects currently underway so as not to disrupt progress;
- (3) to treat all staff with respect and fairness during the transition;
- (4) to protect the City from assuming any environmental risk related to contaminated lands;
- (5) to avoid paying any unnecessary taxes;
- (6) to preserve lands in the waterfront planning area for future development by Waterfront Toronto;
- (7) to enable Build Toronto to operate on an equal footing with private sector partners while respecting any constraints or requirements the City places on its land holdings;
- (8) to ensure FRED, City divisions, and ABCs that manage or own lands optimize their use of properties, determine real estate surplus to their needs, and identify opportunities for development.

COMMENTS

A. Governance:

The governance model consists of two new corporations:

A.(1) Mandate

Invest Toronto's mandate will be to engage the private sector in marketing and promotion activities to increase business investment and create desirable jobs in Toronto through the following activities:

- promotion and advertising for business investment in targeted industries;
- organizing trade missions;
- coordinating with other orders of government;
- referring investors to Build Toronto

Build Toronto's mandate will be to unlock the value in under-utilized lands and use the available City and ABC land base to attract targeted industries, stimulate the creation of desirable employment, and regenerate neighbourhoods through the following activities:

- developing City and ABC surplus lands and excess real estate with development potential;
- working with other sectors in urban regeneration;
- remediating brownfields;
- catalyst development;
- recommending to the City optimal use of City real estate holdings;
- using financial incentive tools as provided by the City

“Developing” is intended to imply a wide range of activities focused on unlocking value including acquisition and disposition of properties, project management, financing,

environmental remediation, planning and rezoning and joint ventures with other private and public sector organizations.

A.(2) Structure

Paragraph (1) of Subsection 148(1) of the *City of Toronto Act, 2006* permits the City to establish corporations. Regulation 609/06 outlines a number of constraints and requirements that the City must respect while establishing these corporations. It is recommended that the new corporations be share capital corporations with the City as the sole shareholder.

These corporations can be established immediately following Council approval, but it will take a number of months to recruit the citizen members of the boards. In order to begin transitioning lands, projects, staff and assets to these corporations, it is recommended that senior City staff be appointed as board members until such time as the new boards are appointed. These interim boards will be able to authorize any agreements or documents required so that a smooth transition can occur, beginning immediately.

The recommended board compositions are as proposed in the Business Case Study, with citizen members forming the majority on each board. The City has a standard recruitment process for selecting corporate board members and it is recommended that this process be followed for these two corporations. Recruitment can also begin immediately through a Corporations Nominating Panel to be established by the Mayor, in accordance with the Public Appointments Policy. Once citizen board members are appointed, the new board structure will take effect and the interim board will no longer hold office.

The City Manager, in consultation with all relevant stakeholder, will develop a shareholder direction for each corporation that will clearly outline the City objectives for each corporation, board responsibilities and authorities, operating principles, reporting requirements, accountability mechanisms, expectations of how the City and the board will work together.

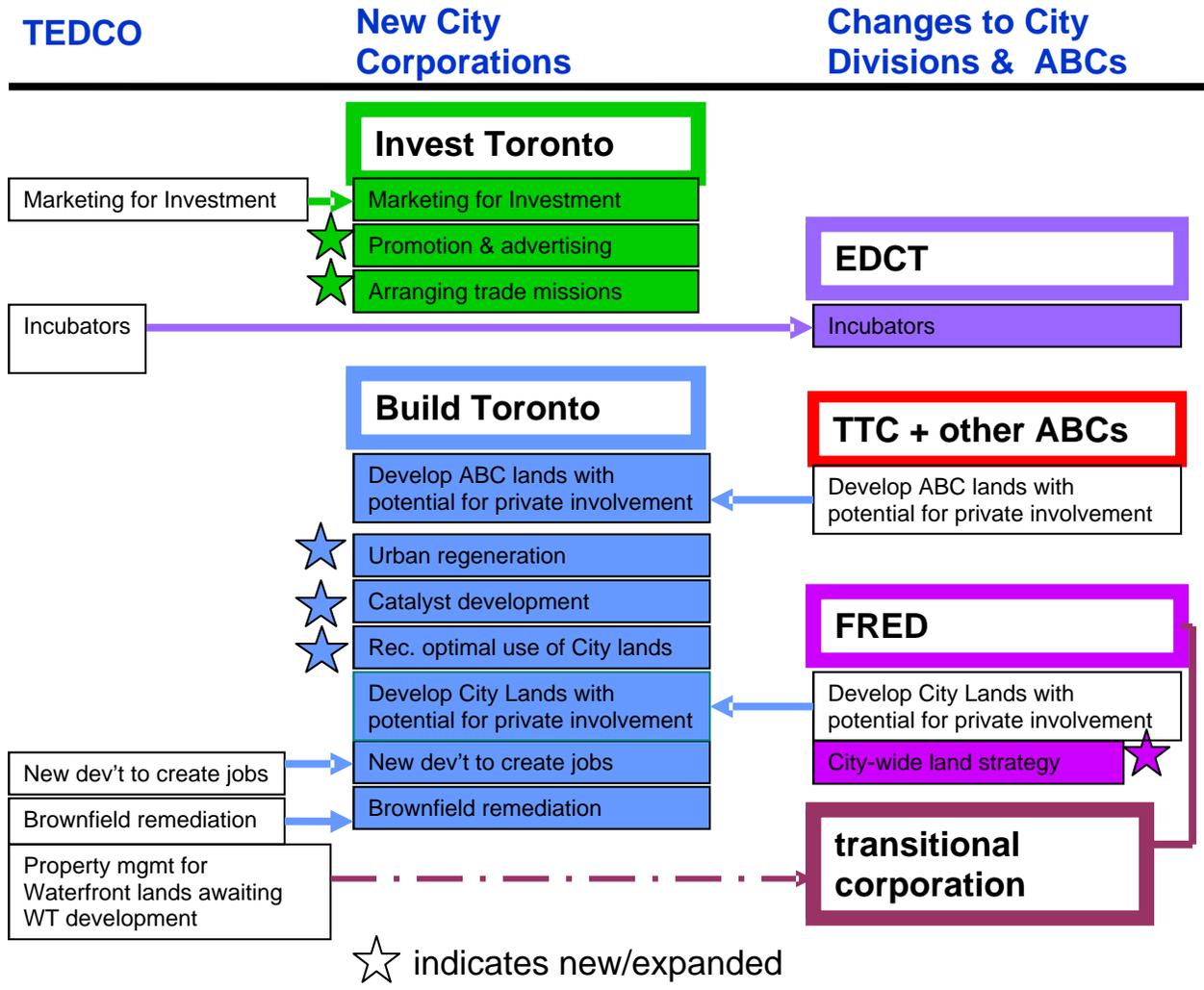
Both corporations will employ their own workforce, establish their own administrative processes and policies, have authority over their own finances, own their own assets and manage assets on behalf of the City, and be able to borrow from third parties.

Although the corporations will be independent of each other, there are still some natural synergies between the two and it is expected that the two organizations will work cooperatively wherever it is in their best interests.

B. Functional Realignment

B.(1) Function Transfers

The diagram on the following page illustrates how functions will be re-assigned to implement this new model.



The intent is for all of the current TEDCO functions to migrate as soon as practicable to one of the two new corporations with 2 exceptions: (1) incubators and (2) TEDCO lands in the waterfront planning area; and then to enhance the functions of each new corporation.

Incubators will be managed by EDCT. The incubator program complements EDCT’s sector development role and other programs that provide services to small businesses.

B.(2) TEDCO Lands in the Waterfront

TEDCO lands and development projects outside of the waterfront planning area will be reviewed and transferred to Build Toronto as soon as practicable as per recommendation 13(b). TEDCO lands in the waterfront planning area need some special consideration. A review of such lands will be undertaken by the Deputy City Manager responsible for waterfront revitalization as indicated in recommendation 11 and further outlined below.

The Port Lands is comprised of 1,000 acres of largely contaminated lands, 420 acres of which are currently owned by TEDCO. Renewal of this area and its conversion into vibrant, mixed use communities will occur over an extended period of more than twenty years and will require significant public and private sector investment. Development will be incremental so as not to result in an oversupply of space in the real estate market in the same area.

There are 3 possible categories of TEDCO lands within the waterfront area:

- (1) lands that will be developed by Waterfront Toronto in the near future
- (2) lands that will eventually be developed in accordance with the waterfront plan, but may take several years before projects begin
- (3) the portion of the eastern section of the Port Lands that will likely remain in industrial use for many decades. (Such uses are required to service development and other activities in the downtown area of the City.)

Until the review of lands in the waterfront is completed, it will be necessary to continue the leasing and property management operations and keep lands in ownership of the transitional corporation. The review of land holdings and current development projects will categorize each land parcel into one of the above 3 categories and determine their best disposition.

Lands in categories (1) and (2) await development by Waterfront Toronto. In order to isolate environmental liability risk and to avoid any unnecessary taxes, it is anticipated that these lands and current development projects may remain within the scaled-down, transitional corporation until management of these lands is assumed by Waterfront Toronto. Once the transition is complete and the current board's term expires on May 31, 2009, it is suggested that a new board, comprised of City staff be appointed as a care-taking board. This recommendation will be brought forward once the other transitions are complete.

The report entitled "Streamlining Waterfront Renewal", directed the City Solicitor and the Waterfront Project Director to update and streamline the MOU that currently exists among the City, TEDCO and Waterfront Toronto. Staff will meet with officials of Build Toronto and Waterfront Toronto to explore options for the two corporations working together to advance Port Lands development. The MOU should reaffirm Waterfront Toronto's role as revitalization lead in the waterfront and should clarify the relative roles and responsibilities, 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.

C. Developing the City Real Estate Strategy

Currently each program area that owns or manages property develops their own strategy for facilities to support their individual programs. There is a cross-corporate Property Management Committee that reviews lands no longer required by a program to determine whether they can be made available for housing purposes or used by another program. This is an effective process once a program manager identifies lands no longer required.

Although program managers consider how facility use can be optimized within their own programs, there are few opportunities for program managers to work together to share facilities or co-locate. It is proposed that the CCO assume responsibility for taking a cross-corporate view and develop a City-wide real estate strategy with the objective of optimizing facility usage across the corporation and identifying opportunities for intensification.

This strategy will have two benefits – to reduce on-going facility costs to individual programs and to identify properties that can be declared surplus or are candidates for intensification. Along with this strategy, the CCO will develop guidelines that will set out time limits for how long a property should be retained for future use and will have the authority to conduct real estate audits of properties under the care of City divisions and ABCs.

In order to meet the objective of unlocking the value in City real estate holdings, the City must pursue an aggressive strategy of identifying lands that can be declared surplus and lands where there are opportunities for private development in and around program space. To do this effectively, properties should be examined from 3 perspectives:

- (1) Program managers will identify their program needs and any constraints on their properties that will ensure development does not adversely impact the program as well as suggest what uses may be complementary to the program. For instance, the TTC could identify the need to maintain passenger entry and exit points, specify bus and parking space requirements, and identify uses that would provide services desired by their passengers.
- (2) The CCO is in a position to look across programs to identify where there might be opportunities for co-location or facility sharing.
- (3) Build Toronto will be in the best position to identify properties that may interest the private sector in developing a City property, intensifying its use, or building in and around City program space.

Taking all three perspectives into account will result in optimal use of City real estate and make available for development all under-utilized lands. The ground work for this process is already underway since there is a plan in place for the CCO to assume responsibility for all City facility capital over the next 8 years. The City Manager and CFO will develop a program to ensure City and ABC program managers bring forward these opportunities. It is intended that FRED continue to build facilities needed for municipal programs, but that all opportunities for private development or joint ventures be turned over to Build Toronto.

In summary, the following actions should be taken as soon as possible to begin the process of unlocking the value in City and ABC land holdings:

- a. the CCO begin the process of developing a City-wide real estate strategy that incorporates long term plans for all City and ABC land holdings and be authorized to conduct any real estate audits deemed necessary to complete this task;
- b. the CCO, in exercising his delegated authority to declare real estate surplus and approve the intended manner of disposal and working within the City's property management process, consider turnover or transfer to Build Toronto;

- c. the City Manager and CFO develop and recommend for Council approval a program that will encourage divisions and ABCs to identify lands with development potential;
- d. the CCO review existing land management policies with a view to removing barriers to optimizing land use in accordance with City priorities and develop guidelines for divisions and ABCs for retention of properties not currently used as program space such as placing a time limit for holding properties for future use;
- e. all City divisions and ABCs that occupy and manage program-specific space be engaged in the development of the real estate strategy and cooperate in identifying opportunities for shared program space, lands surplus to their needs, and opportunities for intensification and private development;
- f. the Mayor, as Chair, ensure that the first order of business for Build Toronto be to review City and ABC land holdings, with the objective of identifying properties that may interest the private sector in intensifying development and make recommendations to the City's CCO for inclusion in the real estate strategy; and
- g. the CFO develop a policy on asset transfers to the two new corporations for Council approval and a supporting process to satisfy requirements of Regulation 609/06, prior to transferring title of any City or ABC lands to Build Toronto.

D. Policy and Process Changes

Prior to any City property being declared surplus to the City's needs, such land is processed through the City's Property Management Committee (PMC) process, including the application of the City's Housing First Policy.

By the adoption of Government Management Committee Item GM6.18 entitled "Policy with Respect to the Sale/Disposition of Land" and the enactment of By-law 814-2007 on July 19, 2007 (City of Toronto Municipal Code, Chapter 213 – Sale of Real Property), the CCO was granted standing authority to declare surplus land no longer required for City operations/ programs and to approve the intended manner of disposal (including leases of 21 years or more). The terms of the sale or other disposal are then approved by Council.

In exercising such authority, the CCO will now give specific consideration to the turnover or transfer of land to Build Toronto. It is recommended that authority be put in place to allow for lands to be turned over to Build Toronto to manage, market and develop. A list of some base conditions of such turnover agreements is set out in Attachment 2, and it is recommended that authority be granted to the City Manager to develop the full terms of such agreements on a case-by-case basis.

Where land is transferred in title to Build Toronto, Build Toronto will be able to use and dispose of the land as it sees fit, subject to the terms of any Transfer Agreement. Where land remains under the ownership of the City and Build Toronto takes management and control of the lands under a Turnover Agreement, the City must still approve (as owner) any sale or lease for 21 years or more that Build Toronto may propose.

City staff will continue to have jurisdiction over the City's interests in operating/programming sites, surplus portions of which have been turned over to Build Toronto, as well as for the disposal of those City lands not transferred or turned over to Build Toronto.

In order to expedite signing of documents pursuant to a Turnover Agreement (the "Documents"), the City should delegate signing authority for Documents by way of power of attorney to officers of Build Toronto.

In order to implement the intended proposal, certain housekeeping revisions to the City's Disposal Policy are required. A draft Bill is attached.

The TTC and Toronto Library Board own some properties in their own names. In the case of the Library, however, the Board has already formally turned over to the City its jurisdiction to deal with its surplus lands. (Reference ACR 13(10) - June 7, 8, 9, 2000).

The intent of developing the City-wide real estate strategy is to consider the most effective and efficient use of all City and ABC properties to meet the needs of programs. To make this process fully effective, it may be necessary to review the authorities and processes for dealing with lands in other ABCs as well, such as the Toronto Parking Authority. Where there is an opportunity to intensify or redevelop such properties in association with the private sector, the properties may be either transferred or turned over to Build Toronto for development purposes.

E. Financial Issues

In the mature state, both corporations are expected to be self-sustaining. Build Toronto will establish a revenue stream from lease payments from developed properties, sale or access right agreements of small properties, and proceeds from private development agreements. Where City program lands are involved, some proceeds may come back to the City. Build Toronto will also have access to external financing for development projects. Once Invest Toronto establishes itself, there will be opportunities for private contributions from those who stand to benefit from the increased foreign marketing of Invest Toronto, fees for participation in trade missions and research fees. Invest Toronto could also provide Build Toronto with front-end marketing and lead-development services on a contract basis.

In the short term, the only available revenue sources are the lease payments from tenants on lands currently owned by TEDCO. This revenue is sufficient to pay for property management costs for tenanted lands, the incubator program, the initial costs of Invest Toronto, and possibly some costs of Build Toronto. It will be necessary to develop service agreements among these organizations.

It is clear that there is a need for the City to provide seed money to Build Toronto in order to complete a hiring program, conduct the initial review of City land assets identifying potential for private investment, and developing a business plan. This one-time investment is worth the significant benefits expected for the City in the longer term.

F. Transition

F.(1) Planning and Resources

Winding down TEDCO operations and establishing the 2 new corporations will require a significant amount of planning and will have a particular impact on TEDCO's staff. As with any new entity or structure the City establishes, there may be employment issues to be addressed, but the objective is to treat all staff with respect and fairness. It will be necessary to determine the disposition of TEDCO's projects and land holdings before determining the appropriate arrangement for TEDCO staff. A human resources specialist will be engaged to assist in the specific transitioning details.

It will be necessary to engage additional resources to conduct the many transitioning details that are inherent in a reorganization of this magnitude. Existing City staff within the City Manager's Office, Finance, Legal, EDCT, FRED, and Waterfront Secretariat will all provide specific support activities and expertise, but additional external resources are necessary to provide the detailed transition activities. Besides the human resource specialist, experts in real estate transfers and land management agreements will be essential in order to expedite the transfers.

F.(2) Unanimous Shareholder Declaration

The TEDCO Board has been briefed on this proposed plan and members expressed support for this direction. The City Manager also met with all TEDCO staff to discuss the changes and answer their questions. The cooperation of the TEDCO Board of Directors and staff is vital to ensure a smooth transition.

In order to protect and enable TEDCO's Board of Directors to take all necessary actions to effect the transfers of projects, lands and other resources required to implement the recommendations in this report, and in order to ensure an effective transition of such projects and lands and the provision of funds to assist in such transition, Council, as sole shareholder of TEDCO, will need to approve a unanimous shareholder declaration.

The declaration and resolution attached to it will cause the Board of Directors of TEDCO to comply with the recommendations in this report as approved by Council and to do all things necessary to effect the required transfer of functions and resources.

The resolution also puts limits on the business that can be transacted during the transition period and requires that any agreements or leases for terms longer than 1 year or that exceed a specified dollar amount must be approved by a designated City authority.

It is also recommended that the City indemnify and save harmless the directors and officers of TEDCO from and against any claims they may incur from compliance with the unanimous shareholder declaration.

CONTACTS

Rosanna Scotti, Director, Strategic & Corporate Policy
Tel: 416-392-8637; Fax: 416-696-3645; Email: rscotti@toronto.ca

Nancy Autton, Manager, Governance & Corporate Perf., Strategic & Corporate Policy
Tel: 416-397-0306; Fax: 416-696-3645; Email: nautton@toronto.ca

Mary Braun, Senior Solicitor, Legal Division
Tel: 416-392-7221; Fax: 416-392-1017; Email: mbraun@toronto.ca

SIGNATURE

Shirley Hoy, City Manager

ATTACHMENTS

- Attachment 1** - Business Case Study - New Model To Enhance Toronto's Economic Competitiveness Agenda
- Attachment 2** - Base Terms to be Included in Turnover Agreements
- Attachment 3** - Shareholder Declaration, including Schedule A - Shareholder Resolution
- Attachment 4** - Draft Bill to amend City of Toronto Municipal Code, Chapter 213, Sale of Real Property
- Attachment 5** - Property Transfer Authorities to be Rescinded

BUSINESS CASE STUDY

NEW MODEL
TO ENHANCE TORONTO’S ECONOMIC COMPETITIVENESS AGENDA

This document is based on the research, analysis and findings of the City’s consultants, the Randolph Group in association with NetGain Partners. Their report is available on the City’s website.

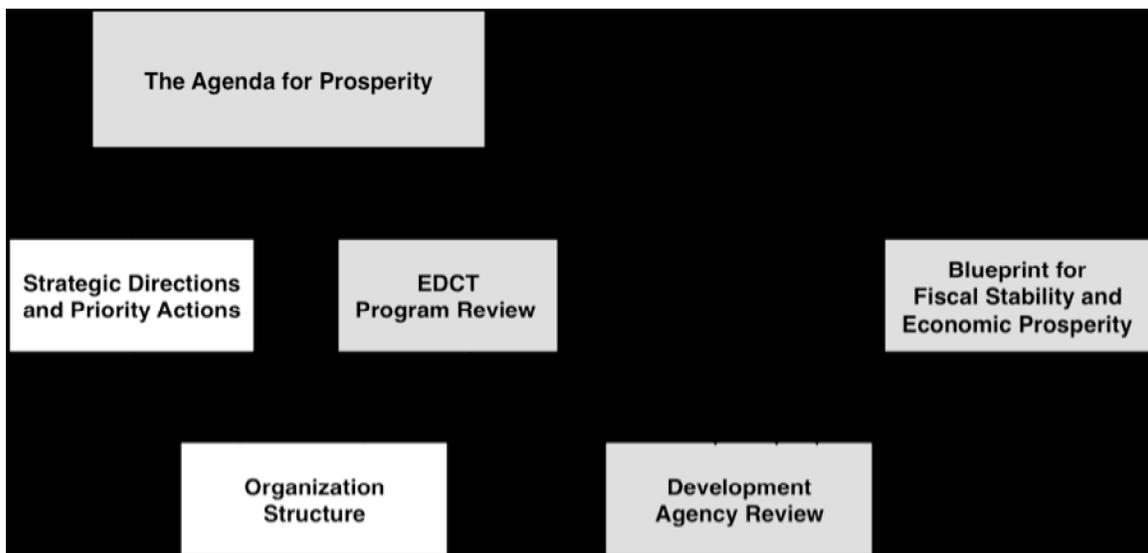
The City provided the background, some additional details for the model and the implications of implementation. The City’s staff report recommends the actions necessary to implement this model.

1.0 WHY CHANGE IS REQUIRED

Numerous forces are driving the need for action on the City’s development agenda including changes in local and global economic forces, as well as the evolving roles of other players involved in economic development. Documents and reviews have highlighted the need for a new approach to be put in place to ensure Toronto’s future success.

This agency review has been guided by this broader context as well as the Prosperity Agenda, the Economic Development, Culture and Tourism (EDCT) Program Review and the Blueprint for Fiscal Stability and Economic Prosperity.

The consultant’s report illustrated these linkages in the following diagram:



Key conclusions/recommendations of these reports relevant to the Agency Review are:

1. The Agenda for Prosperity	The EDCT Program Review	The Blueprint for Fiscal Stability and Economic Prosperity – A Call to Action
<ul style="list-style-type: none"> • The need for a development agency is identified <i>“Position, fund and provide appropriate tools and resources to a development agency ...”</i> • The need for a focused approach to “internationalization” and marketing efforts is also identified: <i>“Develop policies, including sustainable financial models to support and elevate Toronto’s international presence ...”</i> • The need for an expanded Mayor’s office is also identified: <i>“Expand Mayor’s office to include an economic competitiveness advisor and support team ...”</i> 	<p>The Program Review considered how best to deal with the functions of international trade support, international events development and investment marketing. These functions have unique operating requirements and are vital to the City’s future success.</p> <p>The Review identified two primary options for the placement of the international trade, international events and investment marketing functions:</p> <ul style="list-style-type: none"> • Add some or all of these functions to the Strategic Growth and Sector Services grouping <li style="text-align: center;">or • Transfer some or all of these functions to a development agency 	<p>The Blueprint included a number of relevant recommendations as well: Re: Unlock The Value of Real Estate Holdings and Infrastructure</p> <ul style="list-style-type: none"> • <i>“The City must have a new structure and strategy for managing, coordinating, and maximizing the real estate holdings (conservatively valued at \$17.9 billion) and the infrastructure of the City and the ABCCs.”</i> • <i>“The City should recognize the importance of planning and economic development for future regional economic growth and prosperity.”</i> – The City should appoint an Economic Development Senior Officer reporting to the Mayor.

2.0 CURRENT SITUATION AND SCOPE

The City and its Agencies, Boards and Commissions (ABCs) own over 7000 properties valued at approximately \$18 billion, mostly in the name of the City of Toronto. Enwave, Toronto Community Housing Corporation, and Toronto Hydro Corporation own and manage their own portfolio of properties independently of the City and all of their assets are used to deliver their respective programs. Any surplus properties are disposed of under their own authorities. This proposed model does not impact these corporations.

2.1 TEDCO lands

TEDCO was incorporated by the former City of Toronto in 1986 under the authority of s. 9 of the *City of Toronto Act, 1985* that prescribes the mandate and business constraints on the corporation. Its land ownership was all within the Toronto Port Lands at that time. Soon after amalgamation, the City expanded TEDCO’s scope of operations beyond the Port Lands to the management of land development City-wide. As waterfront regeneration advances, certain TEDCO land holdings are required to implement the waterfront plan and these lands have been placed under the effective control of Waterfront Toronto as they have been needed. Although the City has given TEDCO a couple of City holdings to replace these properties, an economic development corporation needs access to financing in order to realize development potential. To

date, TEDCO has borrowed exclusively from the City as it lacks the corporate authority to borrow from third parties. In addition, modern development practice often involves a mix of commercial, industrial, and sometimes residential. TEDCO's mandate is limited by legislation to industrial lands.

It has become clear that there are too many players within the Waterfront area and there are often differing opinions of what strategies should take precedence. City shareholder declarations have been required to ensure that TEDCO takes the action necessary to implement the City's strategic direction on waterfront lands. A more workable model would have only one City-affiliated corporation, Waterfront Toronto, taking the lead in the waterfront. In addition, it is important that a City corporation is aligned with the City's objectives from a policy perspective, but is independent enough to implement under its own authority.

2.2 City and ABC Land Holdings

Facilities and Real Estate Division (FRED) manages shared office accommodation properties like City Hall, Metro Hall, and other Civic Centres. FRED also manages all Police buildings at Police cost. FRED manages many other facilities occupied by various programs, but not the entire capital asset portfolio. Very recently, a strategy to centralize facilities asset management and development has begun that will be phased in over the next several years.

Most properties used by City divisions and ABCs are owned by the City, but some properties are still registered to TTC and the Toronto Public Library. Much of the City parks system is owned by the Toronto Region Conservation Authority, including a large portion of the Zoo property.

The Fiscal Review Panel, while identifying land asset management as the key tool for improving the City's financial situation, observed:

“Realizing this opportunity, however, will not be easy as there are several distinct “owners” of real estate within the City structure, often with competing goals. For example, the TTC, the Toronto Parking Authority, TEDCO, Toronto Community Housing Corporation, the Toronto Zoo, and several other entities effectively control significant blocks of strategic real estate. Moreover, there has been very little incentive for the various groups to work jointly on projects or monetize non-strategic assets. The “turf wars” between departments are well documented.”

It is clear that to be successful any new model needs to have the following components:

- a central organization that has responsibility for developing an overall policy-based real estate strategy to optimize use and identify opportunities for shared space
- encouragement for divisions and ABCs to identify surplus or under-utilized lands under their care
- clear guidelines and policies on which to base individual decisions
- a focused, ambitious, and aggressive approach to engaging private sector partners in developing under-utilized program space to complement City uses

2.3 Marketing Toronto

Although there are many players who share some responsibility for marketing Toronto, there is no one clear voice for Toronto and no dedicated resource to focus on attracting new business investment.

Tourism Toronto focuses on destination marketing for the tourism industry. The Toronto Region Research Alliance is also activity specific. The Greater Toronto Marketing Alliance speaks for the entire region, but the City of Toronto does not have a focal point internally to act effectively as the City's participant in GTMA.

Although EDCT can play a strong role in representing the City's interests, it is important that Toronto business representatives participate in this activity. Businesses can best identify what barriers are met by potential investors and help the City devise ways to eliminate those barriers. Private business also needs to be engaged in organizing trade missions as they have the products and services that are being marketed. The private sector is also best positioned to develop promotional programs that will appeal to potential investors. It is essential that the new model provide an integrated approach where the private sector and the City work together in a coordinated fashion.

2.4 Incubators

TEDCO supports 3 incubators geared to assist new small business entrepreneurs getting started in specific industries. TEDCO also provides space for Artscape under its grants program. The program utilizes 2.7 FTEs plus a 2008 budget of \$767 thousand in cash grants and \$244 thousand in leased space plus other costs.

The Toronto Fashion Incubator (TFI) and Toronto Food Business Incubator (TFBI) are both independent not-for-profit corporations with their own boards of directors. They receive cash support from TEDCO and staff assistance in securing other funding, providing administrative support, and sharing in benefits packages. TFI currently leases space at Exhibition Place and TFBI leases its own space, not owned by TEDCO or the City. EDCT staff resources are engaged as well as TEDCO's.

The Toronto Business Development Centre (TBDC) is technically a City local board, but as such finds it difficult to secure funding from other sources. TEDCO holds the lease on the building that TBDC occupies. TBDC provides office space and advisory services to businesses in their start-up stage.

The consultant's report recommended that "TEDCO's incubator support role should be transferred into EDCT. This role is compatible with EDCT's sector development and business services work."

3.0 CITY OBJECTIVES FOR A NEW MODEL

3.1 Recommendations in previous studies

The Prosperity Agenda identified the need for a development agency

“Position, fund and provide appropriate tools and resources to a development agency ...”

and the need for a focused approach to “internationalization” and marketing efforts.

“Develop policies, including sustainable financial models to support and elevate Toronto’s international presence ...”

The EDCT Program Review identified two primary options for the placement of the international trade, international events and investment marketing functions:

*Add some or all of these functions to the Strategic Growth and Sector Services grouping
or*

Transfer some or all of these functions to a development agency

The Blueprint for Fiscal Stability and Economic Prosperity recommended:

“The City must have a new structure and strategy for managing, coordinating, and maximizing the real estate holdings (conservatively valued at \$17.9 billion) and the infrastructure of the City and the ABCCs.”

“The City should recognize the importance of planning and economic development for future regional economic growth and prosperity.”

3.2 TEDCO mandate

S. 9 of the *City of Toronto Act, 1985* prescribes the activities of TEDCO as follows:

“(a) the provision, operation and improvement of sites, buildings, and facilities for, and
(b) the making of grants or loans to any person upon such terms as may be agreed between the corporation and the person for the carrying on of promotional activities in relations to, the establishment and carrying on of industries and of industrial operations and uses incidental thereto.”

The legislation also puts constraints on TEDCO such as limitations that it can only borrow from the City and cannot make payments to the City. The combination of these limitations restricts the range of possible relationships between the City and TEDCO.

3.3 Outcomes Expected from any new model

A review of various policy documents and recent advice to the City suggests that Toronto’s future development agency or agencies should be designed to deliver on three key outcomes:

- Job creation through new business investment
- Urban regeneration
- Unlocking the value in City lands and underdeveloped assets

4.0 MODELS IN OTHER JURISDICTIONS

Greg Clark (www.citiesandregions.com) is an acknowledged global expert and advisor on city and regional development. His report, “International Review of Experience of City Development Companies and Similar Organizations” (August 2007), included a description of 26 models in different cities world-wide. This study was reviewed and the following conclusions drawn:

- in almost all models in the USA, the City Mayor plays a very prominent role in the Economic Development organization
- most of such organizations are City based, some are regional
- roughly half of the organization models are corporations, but some are positioned with City boards or within the City government
- 50% provide some form of financial support to business, either direct financial assistance or provision of other financial incentives
- 15 of the 26 involve land development
- only 1 besides Toronto manages an incubator program outside of the core government

5.0 ALTERNATIVES ASSESSED

The consultant interviewed stakeholders, other jurisdictions, and external experts and developed a range of options for the City to consider and assessed these as follows:

1. Options Considered For Real Estate Development Functions:
<p>1A. New Real Estate Division – Under this option, a new division with an expanded mandate, land portfolio and staff expertise could be established. This would result in more centralized authority for management and development of the real estate portfolio of lands to which the City holds title and a coordinating/facilitating role for lands held by ABCs.</p>
<p>1B. Focused External Real Estate Agency – Under this option, a focused external agency would be given authority for management and development of real estate with development potential or declared surplus by the City and ABCs. Under this option, the City would continue to have FRED involved in some real estate development</p>
<p>1C. External Real Estate Agency with Broader Mandate (somewhat similar to the Ontario Realty Corporation) – Under this option, an external agency would be given a broader range of responsibilities including authority for portfolio planning and strategy, real estate sales, leasing and acquisitions, property management and project development/ management for all real estate owned by the City and ABCs. Under this option, the City and potentially also its ABCs would not have significant in-house real estate services.</p>

2. Options Considered For Marketing and Promotion Functions:

2A.Expanded EDCT Role in Marketing & Promotion – Under this option, marketing and promotion functions would remain within EDCT but would be expanded.

2B.Focused External Agency – Under this option, a purpose-specific agency would be created.

2C.External Agency with Broader Mandate – Under this option, a regional agency which brings together other marketing and promotion organizations in the region would be created.

Overall Options

- **No agencies** – all functions performed by City divisions (i.e. 1A and 2A)
- **Two separate agencies** – one for each set of functions (i.e. 1B and 2B)
- **One super-agency** – combining both sets of functions (i.e. could begin with the combined mandates of 1B and 2B, and potentially evolve to take on broader mandates as in 1C and 2C)

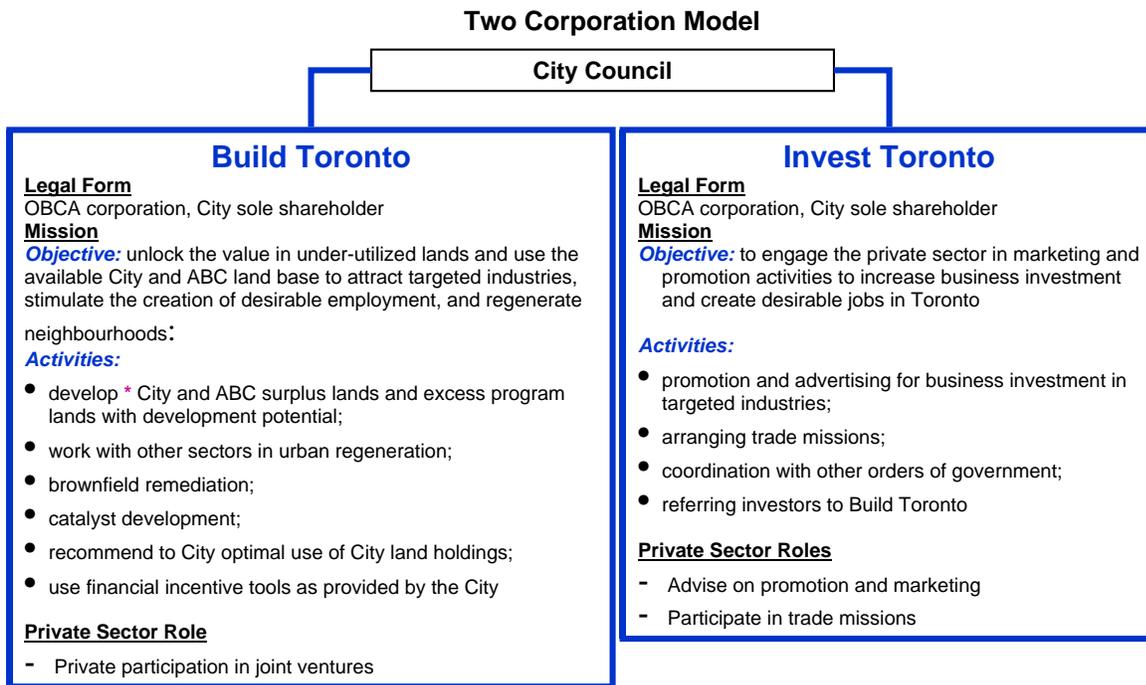
The overall assessment of the options led to the following conclusions:

- The **no agency model** (i.e. keeping all of these functions within the City) - does not support the necessary partner engagement and responsiveness needed for success in the future, and it may not be possible to attract/retain the core competencies required or effectively attract private investment.
- The **super-agency model** has many potential benefits, but Toronto may not be ready to entrust such a significant scope to one agency. Over the long term, it may be desirable for Toronto to move to a “super-agency” (somewhat comparable to the London Development Agency), which brings together under one Board a broad range of functions including real estate development, marketing and promotion, and possibly other functions.
- However in the short term it may be desirable to create **2 focused external agencies** to ensure clarity of purpose, highly skilled and specialized personnel, focused accountability relationships and development of appropriate partnerships with the private and public sectors. Once these agencies mature, they could potentially be integrated to facilitate enhanced capacity and achieve economies of scale in support functions.

6.0 PROPOSED MODEL

- 1) Divide TEDCO's main functions into 2 corporate structures and enhance each. The proposed structure will provide for more focused attention on narrower business activities by separating the land development and marketing functions and enhancing each of them.
- 2) Create a new corporation "Invest Toronto" to engage the private sector in marketing and promotion activities to increase business investment in Toronto including
 - Marketing Toronto as an investment opportunity, especially in targeted industries
 - Support for trade missions consistent with the City's economic development strategy
 - Coordinating with other orders of government, the Mayor's Office, Economic Development, GTMA, TRRA, Tourism Toronto, Ontario MEDT, and Ministry of Tourism
 - will assume TEDCO's economic development functions such as sponsorship of City-building symposia and speakers and grants to organizations for conducting promotional activities
- 3) Create a new corporation "Build Toronto" that manages development of all City surplus lands and program lands with private development potential. Build Toronto could take ownership of City surplus properties to develop in accordance with its objectives. For lands with a program interest, instead of Build Toronto owning these lands, Build Toronto will act on the City's behalf in a more focused, ambitious and entrepreneurial manner to unlock the value of City-owned lands. Build Toronto will have the power to borrow and sell property it owns (in accordance with any Transfer Agreements with the City) and recommend the use of City financial incentives to prospective investors. The City will maintain control of financial incentives. The GM of EDCT will serve as a Board member of Build Toronto. Build Toronto's mission is to use the available land base to attract desirable industries, stimulate the creation of desirable employment, and regenerate targeted neighbourhoods.
- 4) TEDCO's incubator program will be transferred to the City's EDCT since this role fits better within the sector development and business services mandate of EDCT and can only legally be delivered directly by the City, although an arms length organization could administer the program, but not develop it.
- 5) The City's Chief Corporate Officer (CCO) will be responsible for developing a comprehensive real estate strategy City-wide including lands currently managed by other divisions and City ABCs. This is consistent with the current initiative to centralize capital facility asset development for City program needs.

The following chart illustrates the corporate structures proposed.



* "Develop" is intended to imply a wide range of activities focused on unlocking value including acquisition and disposition of properties, project management, financing, environmental remediation, planning and rezoning and joint ventures with other private and public sector organizations.

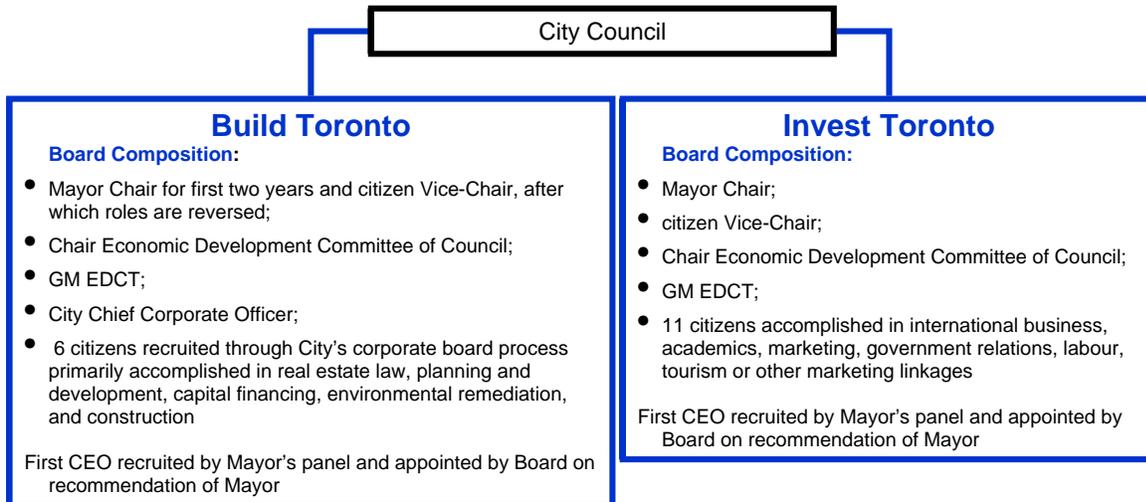
6.1 Governance Issues:

The 2 new corporations are intended to have a strong policy relationship with the City, but be able to implement initiatives quite independently of the City. It is therefore necessary to structure the Boards of Directors to have a significant although minority City presence on the Board. It is also important for the corporations to start off with strong leadership from the City. It is recommended that the Mayor act as Chair of both corporations initially to ensure that the corporations' mandates are aggressively pursued from the outset. In both cases, a private sector Vice-Chair should be appointed. In the longer term, it is desirable that Build Toronto be led by a private citizen with business acumen and it is recommended that the Chair and Vice-Chair reverse roles after the first 2 year term. The Mayor may elect to name a designate after the first 2 year term to act as Vice-Chair in his stead.

Since both corporations will have strong ties to Economic Development, it is also recommended that both the Chair of the City's Economic Development Committee and the General Manager of EDCT serve as voting members on both boards. The General Manager's role with Build Toronto will be to provide advice on City programs available to attract private investment; his/her role with Invest Toronto is to provide liaison with EDCT staff that will set the strategic direction and will coordinate City staff initiatives that inter-lock with Invest Toronto.

The CCO will be charged with developing the City’s real estate strategy. FRED will provide coordination and real estate and development services for program space for all divisions and ABCs. Where land is declared surplus or where an opportunity exists within program space to develop under-utilized properties for private use, Build Toronto will assume responsibility for the development or disposition. There are therefore a number of significant linkages between FRED and Build Toronto. It is recommended that the City CCO also serve as a voting member of the Board of Build Toronto.

The following board compositions are recommended.



It is acknowledged that the Board of Directors for both of these corporations will be responsible for overseeing the management of the corporation’s workforce. However, the CEOs will play a very significant role in maintaining good relationships with the City that are vital to making these corporations successful. As the intended Chair of both corporations initially, it is recommended that the Mayor lead the recruitment and selection of the CEO for both corporations and recommend appointment to the Board.

6.2 Property Issues

All advisors on this issue agree that the City needs to optimize use of its vast inventory of real estate and take advantage of the development potential of both surplus lands and lands currently being used by programs which may have significant potential for intensification through private development in and around the program space.

The City has notable expertise in implementing Council’s strategic goals in acquiring and developing program space. However, the City’s conflicting goals tend to hamper FRED’s ability to effectively deal with private interests in development opportunities. An arms length agency can engage the private sector on a business to business basis.

The basic principle behind the distribution of responsibilities between FRED and Build Toronto is that FRED will continue to acquire, build and manage program space on behalf of City

programs and Build Toronto will take on development activity that engages the private sector in development opportunities whether on surplus lands or on properties currently used by programs with opportunities for intensification.

In order to engage the private sector successfully, Build Toronto needs the ability to borrow against assets that it owns. Rather than compete with the private sector, it will engage private interests in joint ventures where both private objectives and City objectives can be pursued. Where City program space is involved, programs will identify their needs and constraints and their preference for the kind of business that will complement the program space. Build Toronto will work with the private sector to work out a relationship that meets both program and private sector needs.

Build Toronto may also work with a variety of stakeholders to rejuvenate neighbourhoods through strategically placed development that will act as a catalyst for other private, not-for-profit, and government initiatives.

6.3 Marketing for Investment

Firms choose to invest in a place based on labour force attributes and sector makeup and secondarily because they can find suitable space to locate. Separating the marketing and promotion functions from the real estate development function recognizes this fact and moves toward a more focussed attention on marketing for investment.

The intent of this new model is to retain the responsibility for developing the City's economic development strategy within EDCT and to engage the private sector in a fulsome way in carrying out implementation activities.

For instance, EDCT will continue to conduct market research and engage sector specialists and other sector stakeholders to identify and prioritize geographic markets and determine Toronto's market appeal. Invest Toronto will organize trade missions to these target markets by engaging appropriate industry leaders interested in establishing foreign contacts. EDCT will continue to engage and support local business, especially in the start-up phase and Invest Toronto will focus its efforts on marketing Toronto and advertising in foreign markets to entice businesses to locate and invest in Toronto.

Marketing, outreach and trade missions provide leads and contacts then need to be nurtured to become real business projects. EDCT will play a key role in providing custom research and analysis. Invest Toronto and Build Toronto can work closely at this stage to use their contacts and resources to meet potential investors' needs. Invest Toronto can work locally to ensure needs like a capable workforce can be met and Build Toronto will be able to work with potential investors to meet their physical plant needs such as space and amenities.

7.0 FINANCIAL ASSESSMENT OF MODEL

According to the Blueprint for Fiscal Stability and Economic Prosperity, the final report of the Mayor's Fiscal Review Panel, developing under-utilized City and ABC properties could realize substantial revenue for the City. It is therefore important to invest sufficient resources to achieve the full potential of City assets. Until these corporations are established and operational and the CCO completes his review of land holdings, it is difficult to determine the amount of resources needed.

Over the long term, Build Toronto will be self financing from lease revenues and development management fees. Invest Toronto, on the other hand, will initially have no substantive revenue streams and will require funding from other sources. It is expected that the leasing revenues from TEDCO lands can be used to subsidize activities of Invest Toronto, under its permissible grants program. There may be a number of opportunities in the future, once Invest Toronto establishes a track record of attracting foreign investment, to take advantage of private contributions from enterprises that benefit from the marketing efforts of Invest Toronto. Invest Toronto could also provide Build Toronto with front-end marketing and lead-development service on a contract basis.

While it is true that there are increased costs to operating two distinct corporations, the expected long term economic benefits to both the City and the Toronto community are eminently worth the investment of a marginal increase in operating costs.

8.0 IMPACTS

In addition to establishing the 2 new corporations, changes must also occur within the City to make the new organization structure work effectively.

Key vacant positions in EDCT are being staffed and the recent re-organization following the recommendations of the Randolph Group are being implemented. Assuming responsibility for the incubator program complements the successful small business assistance programs in EDCT.

Both the new GM of EDCT and the Chair of the City's Economic Development Committee will serve on both corporate boards of Invest Toronto and Build Toronto. These individuals will provide the necessary vital linkages between the strategic direction within the City and the operations of Invest Toronto and Build Toronto.

The most substantial impact however will be the change in the way the City manages its own real estate assets. The new model will be most successful when the City takes a more aggressive approach to optimizing the use of its strategic land assets and institutes a process that requires and encourages programs to identify surpluses.

In structuring the new model, care must be taken to minimize payment of unnecessary taxes and to mitigate any environmental risk exposure.

9.0 GUIDING PRINCIPLES

Experience in other jurisdictions and perspectives from key leaders within Toronto suggest that if Toronto is to achieve the expected outcomes it should establish structures that fulfil the following guiding principles:

Guiding Principles for Agency Structures	
Accountability:	Proposed structure must provide for clear accountability to shareholders
Clarity of Purpose:	Proposed structure must enable clear, focused mandates that do not duplicate the work of others
Key Competencies:	Proposed structure must be able to attract and retain managers with a high level of skills, expertise and specific competencies
Partner Engagement:	Proposed structure must support the ability to attract and engage private sector as well as non-profit and governments sectors
Responsiveness:	Proposed structure must enable agencies to be “nimble” and have the tools to respond quickly to market opportunities
Strategic Alignment:	Proposed structure must enable strategic alignment with the City’s policy objectives
Strong Leadership:	Proposed structure must have strong credible leadership to engender trust and support from partners and potential investors

The model itself addresses a number of these issues, but the following actions will ensure that the model is implemented in accordance with these principles:

- Finalizing a shareholder direction that clearly articulates purpose and expectations
- Clearly articulating the reporting requirements for each corporation
- Recruiting expert boards that bring a variety of perspectives and skill sets to decision-making
- Recruiting skilled employees displaying key competencies
- Establishing a strong policy link between the corporations and the City
- Ensuring the corporations have the financial and decision-making independence to be nimble and self-reliant
- Establishing core performance metrics

Base Terms to be Included in Turnover Agreements

- 1.** Proceeds of Development – Turnover Agreements will provide for the distribution of the proceeds of transactions entered into by Build Toronto.
- 2.** No Disposal Without Council Authority – Build Toronto may not sell or otherwise dispose of City lands (including leases of 21 years or more), or mortgage or charge City lands, without the prior consent of Council.
- 3.** Appraisals – Build Toronto will cause an appraisal of the property to be prepared, on terms satisfactory to the City, and will deliver a copy of such appraisal to the City within 6 months of the turnover of the property.
- 4.** Financial Incentives – Build Toronto may not enter into agreements that provide for the delivery of financial incentives without the prior consent of Council or as delegated from time to time.
- 5.** Acknowledgments – Build Toronto acknowledges: **(i)** properties are turned over on an "as is" basis, including their environmental condition; **(ii)** the City has no liability or obligation with respect to the value, state, or condition of the property; **(iii)** Build Toronto assumes all responsibilities and liabilities arising out of the property; **(iv)** Build Toronto releases the City from any claim relating to the property and will obtain the same release from every tenant, occupier or joint-venturer in respect of the property.
- 6.** Application of City Policies - Build Toronto will comply (and will require any third party with which it deals, to comply) with all City policies, as amended from time to time, governing City-owned lands.
- 7.** Concurrence of ABCDs – Where a portion of an operating/programming site has been declared surplus to the operating needs of a City ABCD and is subsequently turned over to Build Toronto, in managing, marketing and/or developing such lands Build Toronto shall consult with the operating ABCD and shall obtain the concurrence of such ABCD to those components of any proposed transaction which affect the operations or costs of such ABCD prior to entering into any transaction with a third party in respect of such lands.
- 8.** Rights in Favour of the City and Others – In considering any lease or other agreement in respect of a property, Build Toronto will provide for the rights and interests required by or at the direction of the City.
- 9.** Confidentiality – Build Toronto will not disclose to anyone or use for any purpose other than the purposes contemplated by the Turnover Agreement information concerning the property.
- 10.** Taxes – Build Toronto will pay all taxes, if any, payable in respect of or resulting from the turnover of a property.
- 11.** No Assignment – Build Toronto may not assign a Turnover Agreement without the prior consent of the City.

- 12.** City as Municipal Authority – Build Toronto acknowledges that the City will not be prejudiced by any Turnover Agreement in carrying out its statutory rights and responsibilities. The City acts in its capacity as a land owner only under the Turnover Agreement, and nothing in any Turnover Agreement fetters the exercise by the City of all of its rights as a municipality and as a shareholder in Build Toronto, or imposes any obligation on the City in its role as a municipality or as a shareholder in Build Toronto.
- 13.** Consents – The City consents, in its capacity as land owner only (and not in its capacity as a planning/regulatory authority), to the submission by Build Toronto of documents required in connection with any required planning approvals and to the submission of any documents within the Ministry of Environment’s process under the *Environmental Protection Act*.
- 14.** Exercise of Rights – Any of the rights and obligations of the City under a Turnover Agreement may be exercised and performed by the Chief Corporate Officer from time to time, or by his or her successors and designate(s) from time to time.
- 15.** Taxes Payable by Third Parties – Build Toronto will include in any transaction with a third party in respect of a property a requirement to pay all taxes (including, but not limited to, realty and sales taxes and GST) resulting from such transaction.
- 16.** Payment of City Solicitor’s Fees – Build Toronto will include in every agreement with any tenant, occupier or joint-venturer a requirement to pay the City Solicitor’s fees, as approved by Council from time to time, for processing requests for documents related to the property.
- 17.** Additional Terms – Such other terms as are required by the City Manager, in consultation with the City Solicitor, in form satisfactory to the City Solicitor.

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 TEDCO owns real property and interests in real property throughout the City;

AND WHEREAS the Shareholder, in the public interest, has determined that it will establish two new OBCA corporations pursuant to paragraph 1 of subsection 148(1) of the *City of Toronto Act, 2006* and City Services Corporations regulation to the *City of Toronto Act, 2006* with the operating names Build Toronto and Invest Toronto;

AND WHEREAS the establishment of those corporations will have an impact on the role of TEDCO;

AND WHEREAS pursuant to subsection 108(3) of the OBCA, this declaration shall be, and be deemed to be, a unanimous shareholder declaration 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.

3. nothing contained in this Declaration and the resolution attached as Schedule "A" should derogate from restrictions established pursuant to any prior Declaration respecting the Corporation.

IN WITNESS WHEREOF the undersigned has executed this declaration this ■ of October, 2008.

CITY OF TORONTO

by _____

Deputy City Manager and Chief
Financial Officer

SCHEDULE “A”

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 “Shareholder”);

AND WHEREAS TEDCO owns real property and interests in real property throughout the City;

AND WHEREAS the Shareholder, in the public interest, has determined that it will establish two new corporations pursuant to the City Services Corporations regulation to the *City of Toronto Act, 2006, O. Reg. 609/06*;

AND WHEREAS the establishment of those corporations will have an impact on the role of TEDCO;

IT IS RESOLVED THAT:

1. In this Resolution wherever there is a reference to a decision being made or an action being taken by a particular City official, that decision may be made by the official, the person acting in the capacity of the official, or any person the City official has designated in writing to make the decision or take the action.
2. Effective immediately, TEDCO shall carry out those activities and limit its activities as follows:
 - (a) Prudently managing all of TEDCO’s lands, leases, other interests in lands, and other assets on and subject to the limits set out in this resolution.
 - (b) Without limiting TEDCO’s activities in paragraph (a), prudently managing environmental conditions on all of its lands and complying with any reporting and all agreements, commitments, memoranda of understanding and obligations with the Ministry of the Environment and complying with all environmental laws, directions, orders and mandatory requirements relating thereto.
 - (c) Carrying out the management and disposition of the TEDCO-owned lands in the waterfront planning area (the “Waterfront Lands”) in accordance with decisions made respecting such management and disposition, and the terms thereof, from time to time in accordance with the Council Decisions (as defined in subparagraph (r) below).
 - (d) Except as provided in subparagraph (c), TEDCO’s operations shall be limited to leasing and maintenance of properties within the Central Waterfront.

- (e) Transfer to the corporation referred to as Build Toronto such TEDCO development projects and land holdings (or portions of development projects and land holdings) in the Central Waterfront, other than the Retained Projects, that the CFO, following completion of a review of such projects and land holdings by the Mayor, the City's Waterfront Project Director and the City's Chief Corporate Officer, determines should be transferred, and completing those transfers in such manner and on such terms as the CFO determines are appropriate.
- (f) Transfer to the corporation referred to as Build Toronto such TEDCO lands and projects, or portions of lands and projects outside the Central Waterfront as shall be determined by the CFO, together with such resources as the CFO determines are appropriate.
- (g)
 - (i) Ensuring that TEDCO's subsidiaries prudently manage the lands and projects owned by those subsidiaries and that such subsidiaries limit their operations in a manner consistent with the provisions contained in this resolution respecting TEDCO;
 - (ii) Making unanimous shareholder declarations for TEDCO's subsidiaries to effect the provisions of this resolution as the provisions hereof relate to such subsidiaries in form and substance determined by CFO;
 - (iii) For the purposes of this resolution, where reference is made to TEDCO, such reference shall be deemed to include a reference to all of TEDCO's subsidiaries unless expressly provided herein to the contrary or unless inconsistent with the context of any provision herein.
- (h) Providing the City with a list of all real property and real property interests owned by TEDCO and its subsidiaries within a period of ten (10) business days from the date of this resolution.
- (i) Permitting access to all of TEDCO's records, including but not limited to its financial, lease, development, environment, employee and property management records.
- (j) Not making any Major Decisions (as defined and enumerated in Schedule "1" to this resolution) or taking any action or refraining from taking any action which action or restraint would constitute a matter included within a Major Decision without the prior written approval of the CFO.
- (k) Where lands are retained by TEDCO (and/or its subsidiaries) and managed by Build Toronto, or Build Toronto acts as an asset manager on behalf of TEDCO, as shall be determined by the CFO from time to time, to enter into such management agreements or asset management agreements as the CFO determines are appropriate, and on such terms and conditions as determined by the CFO.
- (l) Transfer management of the Toronto Business Development Centre at 1071 King Street West and its assets to the City, or in the discretion of the CFO, transfer all or a portion of such project and the assets thereof to the City and use all reasonable efforts to obtain any landlord or other consents required to permit to that transfer.

- (m) Transfer to the City management of TEDCO's other incubators, and subsequently transfer any or all other incubator projects, as determined by the CFO from time to time, and using all reasonable efforts to obtain any landlord or other consents required to permit to such transfer, where appropriate, and on such terms and conditions as shall be determined by the CFO.
- (n) With respect to incubator projects, the management of which is turned over to the City, as shall be determined by the CFO from time to time, to enter into such management agreements or asset management agreement as the CFO determines are appropriate, and on such terms and conditions as the CFO determines are appropriate.
- (o) With respect to such projects or matters in which the corporation known as Invest Toronto provides advice or consulting services to TEDCO, as determined by the CFO from time to time, or provides advice respecting promotional activities or conducts promotional activities on behalf of or related to TEDCO, as determined by the CFO from time to time (collectively, "Promotional Matters") to enter into such management agreements on such terms and conditions as the CFO determines are appropriate, or in the case of Promotional Matters, to make grants relating thereto on such terms and conditions as the CFO determines are appropriate.
- (p) With respect to properties transferred to Build Toronto as contemplated in accordance with this resolution, to obtain and provide such letters of credit as may be required for the purpose of obtaining land transfer tax exemptions, if determined to be appropriate as directed by the CFO.
- (q) The CFO is hereby appointed an officer of TEDCO with powers of such office to include matters relating to Major Decisions and other matters and powers of the CFO referred to in this resolution.
- (r) Take such other action and refrain from taking such action not otherwise specifically provided for in this resolution, as shall comply and be consistent with the decisions made by City Council following consideration of the recommendations contained in the Report dated September 22, 2008 by the City Manager to the City's October 6, 2008 Executive Committee respecting a New Model to Enhance Toronto's Economic Competitiveness adopted by Council at its meeting on October ●, 2008 (the "Council Decisions").
- (s) Any one officer or director of TEDCO, or the following officers of the City: the City Manager or CFO (the "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 have been directed by Council, in order to carry out the intention of the foregoing resolutions.

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 October ●, 2008 and pursuant to the *Business Corporations Act* (Ontario).

Further, given that the City of Toronto is making a unanimous shareholder's declaration to TEDCO directing TEDCO to pass the foregoing resolution to ●, the City shall 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.

DATED Oct., 2008.

CITY OF TORONTO

By:

City Clerk

Deputy City Manager and Chief Financial
Officer

APPROVED AS TO FORM

For Anna Kinastowski

SCHEDULE "1"

MAJOR DECISIONS

Major Decisions

1. For the purposes of the foregoing Resolution, "**Major Decisions**" shall be as follows:
 - (a) an Acquisition or Disposition;
 - (b) an appointment to fill a vacancy on the board of directors;
 - (c) an amendment to the by-laws of the corporation;
 - (d) entering into of a joint venture, co-owners agreement, partnership, limited partnership, or other business entity or arrangement;
 - (e) approval of an operating or capital budget;
 - (f) any amendment to any existing operating or capital budget the effect of which is that any line item is exceeded by 10% or the total budget is exceeded by 5%;
 - (g) entering into any Material Contract or Material Lease;
 - (h) any material change in the terms of employment or engagement with any employee, officer or consultant or the entering into or terminating of a contract of employment or consulting arrangement;
 - (i) the incorporation of a corporation or the acquisition or disposition of any shares of any corporation.
2. For the purposes hereof:
 - (a) "**Acquisition**" means the acquisition, purchase or lease for a term in excess of one year or more, an agreement or acquiring an option with respect to any of the foregoing.
 - (b) "**Disposition**" means by operation of law or otherwise, voluntarily or involuntarily, the sale, assignment, conveyance, gift, exchange, transfer, lease for a term in excess of one year or otherwise directly or indirectly, the disposition of the whole or part or any undivided interest in the legal or beneficial ownership of any real property interest or with respect to property or property interest that is not real property, or agreement for or grant an option with respect to any of the foregoing.
 - (c) "**Material Contract**" means:

- (i) subject to subparagraph (ii), a contract (other than a matter included in an Acquisition or Disposition) having a term in excess of one year or involving total liabilities, obligations and expenditures totalling in excess of an amount determined by the CFO;
 - (ii) with respect to a Retained Project, a contract (other than a matter included in an Acquisition or Disposition) having a term in excess of such period of time determined by the CFO or involving total liabilities, obligations and expenditures totalling in excess of an amount determined by the CFO.
- (d) “**Material Lease**” means a lease (other than a matter included in an Acquisition or Disposition) having a term in excess of one year.

Authority: Executive Committee Item **x**, adopted
by City of Toronto Council on _____, 2008
Enacted by Council: October **x**, 2008

CITY OF TORONTO

BY-LAW No. **x-2008**

To amend City of Toronto Municipal Code Chapter 213, Real Property, Sale of.

The Council of the City of Toronto HEREBY ENACTS as follows:

1. City of Toronto Municipal Code, Chapter 213, Sale of Real Property, be amended by adding to § 213-6, the words “and in so doing, the Chief Corporate Officer shall give consideration to the potential turnover or transfer of such land to Build Toronto”.
2. This by-law shall come into force on the day of its enactment.

ENACTED AND PASSED this _____ day of October, A.D. 2008

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. Those portions of Recommendations (1) and (2) dealing with the properties known as 301 Rockcliffe Boulevard, 411 Victoria Park Avenue and 1035 Sheppard Avenue West contained in 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.