

**THE TORONTO PAN AM SPORTS CENTRE:  
Operating Challenges of a 4P Project**

By

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## **ABSTRACT**

The Toronto Pan Am Sports Centre: Operating Challenges of a 4P Project

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The purpose of this study was to determine the optimal method of uniformly operating a facility co-owned by two large public institutions. In 2014, the City of Toronto (“City”) and the University of Toronto – Scarborough Campus (“University”) will co-own the Toronto Pan Am Sports Centre (“TPASC”), a facility currently under construction for the 2015 Pan/Parapan American Games (“Games”) which, post-Games will serve the community-at-large, the University community and the high performance sport community and will house the Canadian Sport Institute - Ontario. As a Games capital project, the TPASC construction is project managed by Ontario’s 3P (public private partnership) agency Infrastructure Ontario, and is arguably a public-public private partnership (4P) project due to its two public owners. Four operating options for the TPASC are identified: (1) City and University operating programs separately under one roof; (2) City or University operating the facility on behalf of both entities; (3) City and University contracting out to an unrelated third party; and (4) City and University jointly creating a corporation for the purpose of operating the TPASC. These options are applied to an evaluation framework consisting of five critical factors (vision alignment, financial viability, customer service orientation, egalitarian owner focus and labour alignment). Option #4 (City and University jointly creating a corporation to operate TPASC) received the highest score and is the recommended option. Challenges related the recommended option are discussed.

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# **1. INTRODUCTION**

## **1.1 Background**

### **Hosting the 2015 Pan/Parapan American Games**

In November 2009, Toronto was named as the successful bidder to host the 2015 Pan/Parapan American Games (the “Games”). The Pan/Parapan American Games are international multi-sport games organized under the ultimate auspices of the International Olympic Committee and the immediate auspices of the Pan American Sports Association (“PASO”). Forty-one member countries will send athletes to the Games; all countries are located in North, South or Central America or in the Caribbean. The Pan Am Games will run from July 10 – 26, 2015 and the Parapan Am Games will run from August 7 – 14, 2015.

One unique aspect about this bid is that it was driven by the Government of Ontario (the “Province”) rather than by a specific city, as is customary. In fact, it was initially touted as “Golden Horseshoe Games” since several municipalities will host at least one Games event. Nonetheless, the overwhelming majority of the Games events will take place in Toronto. Therefore, Toronto is officially named the Host City.

The City of Toronto (the “City”) signed a Multi-Party Agreement (“MPA”) with the Government of Canada (the “Federal Government”), Government of Ontario (the “Province”), Canadian Paralympic Committee, Canadian Olympic Committee, and Ontario 2015 Pan Am Bid Corporation immediately prior to the winning bid announcement (see Appendix A). Under the MPA, the City agreed to a number of capital projects, both building as well as renovating certain specified facilities. One such project is the building of an aquatics centre and field house that would be co-owned by



the City and the University of Toronto Scarborough Campus (the “University”). It was also agreed that this facility will house a high performance training centre (the Canadian Sport Institute – Ontario (“CSIO”). The facility is currently referred to as the Toronto Pan Am Sports Centre (the “TPASC”); however, earlier documents, including those found in the Appendices, refer to it as the PAAC (the Pan Am Aquatic Centre).

### **TPASC Project Partners**

For its part, in accordance with the MPA, the Federal Government will contribute 56% to the costs of every 2015 Games-related capital project, leaving the respective organizations/institutions to pay the remaining 44%. The Province agreed to “backstop” any and all capital project budget overages. Not surprisingly then, unless otherwise stated, all Games-related capital projects must be project managed by Infrastructure Ontario (“IO”), an agency of the Province that oversees and manages public private partnership (“P3”) capital projects in Ontario.

The City and University will co-own the TPASC and, through mutual conveyances finalized in 2012, these institutions now co-own the land upon which the facility will be located. Because of this co-ownership, both the City and the University are each responsible for paying 22% of the costs associated with building the facility (i.e. 44% divided in half). The Federal Government’s 56% contribution is funneled through the Toronto 2015 Pan/Parapan American Games Organizing Committee (“TO2015”).

On December 1, 2010, the City and the University signed a Master Agreement setting out the legal relationship between the parties as it relates to the TPASC. The

Master Agreement is a temporary document, drafted to guide the parties until a permanent agreement (referred to as the “Shared Ownership and Facilities Management Agreement”) is completed and executed. Among other things, the Master Agreement addresses “Post Games Operations & Legacy”, directs the parties to develop a Shared Ownership and Facilities Management Agreement “as soon as possible”, and, dictates some of the substance of that future agreement.

The TPASC is a Design Build Finance (“DBF”) project under IO’s Alternative Financing & Procurement (“AFP”) model. As such, the extensive, highly confidential process of selecting a Preferred Proponent from the three pre-qualified bidders spanned over 12 months. In July 2012, PCL Constructors Inc. (“PCL”) was announced as the Preferred Proponent. With a guaranteed “Substantial Completion” (stage at which the building can be occupied and used for its intended use) date of July 15, 2014, construction of the TPASC is well under way.

### **Conventional P3 Project Partnerships**

The P3 model is an increasingly common method for procuring large and complex public infrastructure projects in Canada and in much of the Western World. Three major benefits offered by P3 projects by comparison to conventional projects are: (1) better cost and delay controls; (2) optimization of risk and resources, in favour of the taxpayer; and (3) more innovation (P3 Canada, March 15, 2013). The “risk transfer from the public to the private sector is a critical element of all P3s. The goal is to combine the best capabilities of the public and private sectors for mutual benefit” (Partnerships British Columbia, 2003, p. 1).

On its website, P3 Canada, a federal crown corporation, notes that “P3s provide on-time, on-budget projects which deliver effective infrastructure over their useful lives.” (P3 Canada, *op.cit.*) The website also states (P3 Canada, *Ibid.*):

P3 contracts are typically long-term engagements which use specific financial structures to leverage performance and innovation from the private-sector and divest the taxpayer of risks associated with the design, construction, maintenance and operation of the infrastructure.

In light of the “on time, on budget projects” that P3s offer, such an arrangement is ideal for the Games-related capital projects that have an immoveable delivery date: Games Time. In recent memory are the images from Delhi of the unfinished Athletes’ Village when athletes arrived to compete in the 2010 Commonwealth Games as well as those of barely finished competition venues for the 2004 Olympic Games in Athens. Furthermore, starting with the 1976 Olympics in Montreal, cost overruns for games capital projects continue to be media fodder and have led to reduced public support for hosting international games. Hence, the “on time, on budget” promise of P3 projects is indeed appealing for a games host city.

### **The TPASC’s Unconventional P4 Project Partnerships**

As is customary, in winning the TPASC bid, PCL is responsible for designing, building and financing the TPASC until Substantial Completion. However, PCL is not responsible for the maintenance and operations of the facility upon completion, the City and University are. Therefore, as a DBF project, the TPASC project differs significantly from DBFM (Design, Build, Finance and Manage) projects.

Furthermore, because the co-owners are operating the facility and because of the specialized nature of the building's use (hosting international competition), the "template" for the customary Project Agreement ("PA") between IO and the construction company required revision. One example of this related to the building's specifications. Since the facility will require inspection by technical staff from the International Governing Bodies to obtain sanctions to host international events in specific disciplines, wording regarding precise delivery on certain of the building's specifications was added to the PA. In addition, although the City, University and TO2015 are not signatories to the PA, they were added to the document as "interested parties". These and other proposed revisions led to significant negotiation between the clients (City, University and TO2015) and IO as well as ultimately between IO and PCL.

Thus far in Ontario, all P3 projects managed by IO have been for provincial departments and agencies. The Games capital projects are the first projects with non-provincial government clientele. This has led to the noted changes in IO agreements and to changes in the way IO conducts itself. Usually the client group is somewhat involved in the process. With the Pan Am projects, since the owners are entrusting their project to a third party over which they had no choice, the clients in all of the projects have been very involved in every aspect of the process.

In the case of the TPASC, the facility owners are two large and established public institutions: the City and the University. Consequently, the TPASC can accurately be characterized as a 4P project: a public-public private partnership.

## **TPASC Construction and Operations Phases**

### ***Construction Phases***

In order to avoid the embarrassment of unfinished venues and to facilitate Games venue test events, all Games capital projects are slated to be completed during the summer of 2014: approximately one year prior to Opening Ceremonies for the Games.

In accordance with a Facility Agreement negotiated between the TO2015, the City, the University and IO, TO2015 will have exclusive use of the facility from May 15, 2015 to September 15, 2015. This exclusive use period is referred to as the *Game/Overlay* period. During this period, Games-related Overlay (construction related to creating the “look and feel of the Games” and to transitioning venues into Games venues) will be completed. This work will not be completed by PCL; TO2015 will oversee the Games/Overlay construction.

The period between Substantial Completion and the Games Exclusive Use period is referred to as the *Pre-Games* period.

As was the case with Aquatics facilities for the 2012 Olympics in London, the TPASC will have temporary seating that will be brought in for the Games as part of Games Overlay. In order to accommodate the additional Games seating, a portion of the building will be temporarily shelled from Substantial Completion until the end of the Games. After the Games, the temporary shell will be removed and a permanent wall will be installed, reducing the size of the building. Consequently, there will be continued construction for a 16-week period following the Games. This period is referred to as the *Post-Games Work* period.

In all, there are three construction phases following Substantial Completion:

- **Pre-Games:** July 16, 2014 – May 14, 2015
- **Games/Overlay:** May 15, 2015 – September 15, 2015
- **Post-Games Work:** September 16, 2015 – December 31, 2015

*Operations Phases*

As can be seen at Figure 1, below, there are four operations phases: Pre Start-up, Start-up, Games Year and Legacy/Normal Operations. These are separate from, yet dictated by, the construction phases.

**FIGURE 1: TPASC Operations Phases**



As part of the TPASC Business Plan<sup>1</sup>, the City and the University developed an organizational chart for TPASC operations (refer to Appendix B). During the *Pre Start-*

<sup>1</sup> The TPASC Business Plan remains a highly confidential document as of today's date.

*up* phase (starting July 2013 and continuing to Substantial Completion), the CEO and core staff (e.g. Executive Assistant, Manager of Building Operations, etc.) will be hired in 2013 and the staff complement will grow to and through Substantial Completion.

The *Start-up* phase is the period of operations between Substantial Completion and the Games exclusive use period (July 2014 – May 2015) the City and University will be offering reduced and truncated programming in the building. In addition, the CSIO will move into the facility in September 2014 and a number of test events will be hosted in the facility, by their respective National Sport Organizations (“NSOs”).

The fiscal<sup>2</sup> *Games Year* operational phase (from May 2015 – April 2016) includes the Games exclusive use period, the Post-Games Works construction period as well as the first few months of the building operating without foreseeable interruption.

Finally, the first full fiscal year of *Legacy/Normal Operations* begins May 2016.

## **1.2 Statement of the Research Question**

As noted above, the TPASC project is atypical in that it is a P4 project and that the construction company is not managing the facility upon completion. Instead, the co-owners are operating the TPASC. Although both the City and the University have agreed on a facility opening date on or about September 1, 2014, the question of facility operations has remained unanswered. The specific question is: *what is the optimal method of uniformly operating a facility co-owned by two large public institutions?*

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<sup>2</sup> The University’s fiscal year (May 1 – April 30) was used for all budget calculations.

### **1.3 Purpose and Scope of the Project**

The TPASC is still under construction and final decisions regarding its operations have not yet been made. Therefore, while some aspects of this project will be a report on decisions made, other aspects will propose a course of action not yet agreed to, taken or even proposed, in some instances.

The purpose of this project is multi-fold: to identify the optimal method of operating the TPASC; to identify key challenges related to that method; to propose solutions to those challenges; and to propose ways of evaluating some of the proposed solutions.

The TPASC will be a highly complex facility with many complicated facets of its operations. This project has been limited to addressing concerns surrounding the TPASC's operations in light of its co-ownership by the City and the University. Other matters, such as creating user agreements with high performance sport and developing a long-term hosting strategy, are beyond the scope of this project.

### **1.4 Report Overview**

The remainder of this paper is organized in the following manner. Chapter 2 will discuss the TPASC's features, goals and funding partnerships. Chapter 3 will discuss the options for operating the TPASC, introduce an evaluation framework and will apply the framework to determine the best option. Chapter 4 will discuss the key challenges related to the preferred operating option. Finally, Chapter 5 will provide conclusions based on this case study in its entirety.



## **2. TORONTO PAN AM SPORTS CENTRE**

### **2.1 Critical Roles of the TPASC**

The TPASC will be the first of its kind in Canada and, in many ways, will be unique in North America. The facility will house:

- Two, 10-lane 50m pools (one with a moveable floor)
- One dedicated 25m x 21m x 5m deep dive tank
- A two storey dedicated diving dry-land training centre
- A field house containing four full-size gymnasia and a running track
- A three-storey climbing wall
- A two-storey fitness centre
- A sports medicine clinic
- The Canadian Sport Institute of Ontario
- The University's Department of Athletics offices
- The City's Community Recreation offices

The building's above-noted contents make it unique and its planned mixed-use is also very unique. In addition to meeting the needs of the co-owners' respective communities (i.e. the general public and the university community), the facility will also serve the high performance sport community. Those high performance athletes using the facility will be supported by the CSIO, which will be the anchor tenant in the building. Above all, it is critical that the legacy of the Games not be merely "bricks and mortar". Post international games "white elephants" are no longer acceptable. The Games legacy must be enhanced community programming, enhanced university opportunities and enhanced training facilities for developing and elite athletes.

### **Community Needs**

The TPASC is located in Scarborough. As a result of pre-Amalgamation funding priority differences, Scarborough, particularly the area where the TPASC will be located, is woefully deficient of recreational facilities. Since many of the residents in the community surrounding the TPASC are of lower socio-economic status, the fact that a state-of-the-art facility will be at their disposal and within walking distance for certain residents is unbelievable for some. As a result, it will be important for the City to ensure that residents fully understand that the TPASC is not a University-only facility. It will also be critical that “front line” staff are trained to ensure that every patron or potential patron feels welcome in the facility.

### **University Community Needs**

With the University of Toronto’s (“UofT”) Kinesiology Program and its Varsity Teams housed in the Downtown Campus, the University has both sparse and aging athletics facilities. The University is in need of new and varied athletic facilities.

Recognizing their need for the TPASC and seeing the potential impact of world class facilities on their campus, the University’s students agreed by referendum, to pay increased fees for the four school years prior to Substantial Completion and increased fees for the life of the building. This is particularly impressive given that the students who voted for the facility would no longer be students once it is completed.

The University administration hopes that the TPASC will lead to Varsity Teams training at the facility, even if they are not housed there and that the Kinesiology Program would be expanded to include coursework and research located at the Scarborough Campus.

## **High Performance Sport Needs**

Although Ontario is Canada's most populous province, very few of the nation's top athletes come from the province. They tend to come from Quebec, Alberta and British Columbia. Ontario has surprisingly few high performance training facilities. In Canada, high performance facilities tend only to be built if a city is a host city to an international sporting event. The last international multi-sport event held in Southern Ontario was the 1932 Empire Games (now referred to as the Commonwealth Games). Therefore, having hosted Olympics, Commonwealth and University Games as well as sport-specific world championships and other international events, Quebec, Alberta and British Columbia are rich in world class training and competitions facilities across a number of sports.

In Toronto, the national sprint team trains at international calibre facilities at York University. Not surprisingly, Canada's best sprinters from Ben Johnson to Donovan Bailey to Perdita Felicien have come from the Toronto area. In contrast, there are only two 50m competition pools in Toronto: one City-owned facility that was built in 1975 (the Etobicoke Olympium) and the pool at the UofT's Downtown Campus.

The high performance goal for the TPASC is to level the playing field for Ontario athletes by providing state-of-the-art training and competition facilities. Sport Canada and Own the Podium are working toward the TPASC being a national training centre for: swimming, diving, synchronized swimming, water polo and wheelchair basketball. The parties are in the process of discussing the substance of user agreements addressing rates and preferred access times. While things are not yet finalized, they look promising.

## **2.2 Games-driven Operating Impacts**

As noted above, there are four construction phases and four operations phases that are largely driven by the TPASC being a competition venue during the Games.

Although the building will begin operations in September 2014, it will not be fully operational until 2016. Paradoxically then, while the much needed TPASC would not be possible for the co-owners to build without the Pan Am Games capital funding, the business disruptions resulting from hosting the Games will undoubtedly leave the facility in a deficit situation for the first two years of operations. This will raise questions regarding long-term viability of the facility.

During the four-month Games construction period, the Games will use the Fitness Centre as a warm-up area for fencers; the Sport Medicine Clinic will be used as the media centre; and the food vending kiosks will be filled by merchandisers selling Games paraphernalia and by food vendors that are Games sponsors. Because of the Games period and the Post-Games Works period, the first year in which the facility will be able to run full programming and to fully engage in its revenue generating activities will be the 2016 fiscal year. For example, since food vendors would have to vacate the premises for the four-month Games Exclusive Use period plus relinquish their space to Games-related vendors, it is simply unreasonable to have facility vendors move onto the premises until after the Games. Similarly, if a sports medicine tenant begins its tenancy before the Games, it would have to vacate the premises and store its equipment and furnishings for four months. Likewise, if the fitness centre fully opens before the Games, the equipment would need to be removed and stored for the four-months Games period, likely affecting equipment warranties and definitely wasting four months of

warranty. Most of the revenue-generating aspects of the TPASC's business will not be operationalized until September 2015, at the earliest.

Another revenue generating opportunity that is significantly affected by the Games is obtaining naming rights for the building. CIBC is the marquee Games sponsor and, as such, was granted by TO2015 the right to have its name associated with the facility. Since TO2015 is not a building owner, it did not possess the right to grant such naming rights. Ultimately, a deal was struck between the owners and TO2015 that allowed TO2015 to meet the needs of its largest sponsor but not thwart the naming efforts of the City and University. The end result is still problematic for the owners as they likely will not be able to find a naming sponsor until after the Games and, by then, the building will be closely associated with CIBC – thereby, devaluing the brand.

### **2.3 TPASC's Fifth "P": The Federal Government**

Although the Federal Government is not a co-owner, it is a significant funding partner regarding the TPASC's construction as well as the first 20 years of the facility's operations. In effect, the Federal Government is the "Fifth 'P'" relating to the TPASC.

#### **Capital Project Funding Partner**

As noted above, the Federal Government is contributing 56% of the capital project costs to build the TPASC; the City and University are contributing 22% respectively. This created a very interesting dynamic from the outset. Since the City and the University are each paying only 22 cents of every capital project dollar, both institutions have attempted to characterize as many expenses as possible as project

expenses. For its part, the Federal Government, through TO2015 has understandably “pushed-back” where possible.

Furthermore, where the City and University have wanted to install energy-saving innovations, such as solar power, which will reduce the facility’s environmental impact and reduce its operating costs, the Federal Government has advised it might not fund it since such a system is not critical to the Games themselves.

Interestingly, in any discussions where the co-owners and the Federal Government have been at odds, the Federal Government has used its 56% contribution like a percentage shareholder, ultimately resulting in veto power. This, as one can imagine, has been very challenging for the co-owners.

The greatest example of this is the name of the facility. Cumbersome as it is, the TPASC name is the result of hours of discussions between the City and the University. The process outlined in the MPA is that facility owners will send proposed names to the Federal Government, via TO2015. Provided the name is reasonable, it will be accepted. The MPA does not grant the Government discretion regarding facility names; the standard is reasonableness. Unfortunately, the Federal Government’s application of the MPA is not consistent with the wording of the MPA.

The parties could not agree on a name in time for the building’s September 27, 2012 Groundbreaking Ceremony. Consequently, in all speeches and printed matter relating to the event, the facility was called what it had been called in the 2009 Bid Book. Furthermore, no construction hoarding promoting the building was around the site in time for the Groundbreaking. More importantly, although the parties have very recently agreed on a name, as of the date of drafting this report, there still is no

promotional hoarding surrounding the site. Nearly one-year of construction-related promotion has been lost by the Federal Government “flexing muscles” it did not legally have. In the end, the parties have agreed to a facility full name of: Toronto Pan Am Sport Centre: Legacy Facility of the Pan/Parapan Am Games.

### **Ongoing Operations Funding Partner**

In addition to the contribution to capital projects, the Federal Government is also a long-term funding partner of the facility through the TO2015 Legacy Fund (the “Legacy Fund”). The establishment of the \$70 million Legacy Fund is mandated by the MPA and is capitalized by both the Government of Canada and the Province.

The Legacy Fund is created under the MPA which designates three Games capital projects as Legacy Facilities that will receive monies through the Fund, to operate and maintain the facilities at a world class competition level. The designated facilities are: the Velodrome (located in the Town of Milton); the Track & Field Stadium (located at York University); and the Aquatic Centre and Field House (the TPASC).

Throughout 2012-13, a subcommittee of the TO2015 Board of Directors has developed criteria and a matrix for determining the facility allotments. In addition, representatives from each facility presented their respective business plans to large group of representatives from the Federal Government, the Province and the TO2015 Board and senior staff. Based on the matrix and the presentations, it was determined that the TPASC will receive approximately 80% of the Legacy Fund proceeds (approximately \$4 million dollars) on an annual basis.

Based on the above, the Federal Government is a TPASC partner.

## **2.4 TPASC's Sixth "P": The Province**

The Province can also be characterized as a funding partner regarding the TPASC both in terms of construction and the long term operations of the building. Similar to the Federal Government, the Province is the "Sixth 'P'" relating to the TPASC.

### **Capital Project Partner**

As noted above, the MPA mandates that IO, an agency of the Province, project manage all of the Pan Am capital projects unless other arrangements have been approved. As the largest capital project of the Games, there was never a question whether IO would project manage its construction. The imposition of IO as project manager is the Province's only specific role in relation to the Games capital projects; the projects are billed for IO services.

### **Ongoing Operations Funding Partner**

Over the long-term, the Province will remain involved in the facility. The Province funds 100% of the CSIO's operations. Since the CSIO is the TPASC's anchor tenant, the partnership between the Province and the organization is also a partnership with the co-owners. Furthermore, the Province is a contributor to the Legacy Fund. As previously mentioned, the Legacy Fund will be in place over the first 20 years of the TPASC's life.

Based on the above, the Province is a TPASC partner and therefore is arguably the sixth "P" in this project.



### **3. PROBLEM AND ANALYSIS**

#### **3.1 Two Public Co-owners, One Facility**

Although the co-ownership of TPASC has made the facility feasible for both owners, the co-ownership also makes things very challenging.

Both the City and the University have been in existence for over 150 years. They both have their own policies and procedures that have been tried and finessed over the decades. They both have unions with which they have bargained for many decades. The question for the co-owners and the research question for this project remains: what is the optimal method of uniformly operating a facility co-owned by two large public institutions?

#### **3.2 Options for TPASC Operations**

There are a number of ways in which the TPASC could be operated; however the four key options identified are as follows:

1. The City and University run their own operations, respectively, within the facility;
2. Either the City or the University operates the facility on behalf of both institutions;
3. The City and University develop a Request for Proposals (“RFP”) and put it out to the marketplace with the ultimate goal of finding a third party to operate the TPASC; or
4. The City and University create a new entity (“Newco”) for the sole purpose of operating the TPASC on a contractual basis.

### **3.3 Framework for Evaluating Options**

Five factors have been identified as critical to the TPASC's operations (the "Critical Factors") and therefore form the core of the evaluation matrix:

1. Vision Alignment
2. Financial Viability
3. Diverse Patron Orientation
4. Egalitarian Co-Owner Focus
5. Labour Alignment

Each of these Critical Factors will be discussed, in turn.

#### ***1. Vision Alignment***

The primary vision for the TPASC is that all of its diverse users from diverse backgrounds and communities will feel that it is their home facility. In order to achieve this, it is critical that the operations for the facility are founded on an integrated approach to the buildings users, rather than a compartmentalized one. All users must feel equally valued.

#### ***2. Financial Viability***

It is a truism to state that financial viability is critical to any operations model selected. Given the size and complexity of the building, both physically and operationally, operating finances could easily and quickly get out of control. Therefore, it is particularly critical that any operational model embarked upon is as financially sound and efficient as possible.

### ***3. Customer Service Orientation***

The TPASC will have a very broad range of users: from children to seniors, from those accessing “learn to” programming to those training for Olympic competition, from very low socio-economic strata to very highly socio-economic strata and from ethnic backgrounds originating all over the globe. It is absolutely critical the operating model is sufficiently robust yet sufficiently nimble/adaptable to meet the varied needs of such diverse users. As noted above, all users must feel equally valued.

### ***4. Egalitarian Co-Owner Focus***

Given that the building will be co-owned by two large institutions, it is critical that the needs of both institutions are considered in the operating model selected and that no one owner is in a position to exert more pressure of influence on the operator than the other owner.

### ***5. Labour Alignment***

As previously noted, both the City and the University have their own, well-established relationships with their unions. It is critical that, to the greatest extent possible, the operations at the TPASC not disrupt the relationships these institutions have with their respective unions. Operating models that have the greatest potential for the least disruption will be the most appealing in this regard.

### 3.4 Application of Options to Evaluation Framework

As each of the above named Critical Factor is equally important, all five were given a value of 20 points, totaling 100 points. Then, each option was scored in relation to each criterion. Tables 1 – 4, below, show the scores of each option individually and Table 5 provides a summary of all scores:

<b>TABLE 1: Evaluation of Option #1 (Separate Owner Operations)</b>		
<b>CRITICAL FACTOR</b>	<b>SCORE</b>	<b>RATIONALE</b>
<b>Vision Alignment</b>	5	<ul style="list-style-type: none"> <li>• This is a marked departure from the user-integrated facility that was envisioned.</li> <li>• High performance program could suffer as a result of over emphasis on City and University.</li> <li>• Impossible to maintain consistently applied standards throughout facility if each institution used own.</li> </ul>
<b>Financial Viability</b>	5	<ul style="list-style-type: none"> <li>• Likely result: duplication of services, wasting human and financial resources.</li> </ul>
<b>Customer Service Orientation</b>	5	<ul style="list-style-type: none"> <li>• Confusing for users to navigate between two parties in one building without one central conduit.</li> </ul>
<b>Egalitarian Owner Focus</b>	5	<ul style="list-style-type: none"> <li>• Highly unlikely that either party would consider anything other than their own needs</li> </ul>
<b>Labour Alignment</b>	5	<ul style="list-style-type: none"> <li>• Problematic: different locals of same union (eg. CUPE) with employees under one roof earning different rates of pay.</li> </ul>
<b>TOTAL (100 points)</b>	25	

<b>TABLE 2: Evaluation of Option #2 (One Owner-Operator)</b>		
<b>CRITICAL FACTOR</b>	<b>SCORE</b>	<b>RATIONALE</b>
<b>Vision Alignment</b>	5	<ul style="list-style-type: none"> <li>• This is a marked departure from the user-integrated facility that was envisioned.</li> <li>• High performance program could suffer as a result of over emphasis on City or University.</li> </ul>

<b>Financial Viability</b>	5	<ul style="list-style-type: none"> <li>Extremely high, and likely debilitating, financial burden for the sole owner-operator.</li> <li>City not in business of operating non-public programs (eg. Intramurals).</li> </ul>
<b>Customer Service Orientation</b>	10	<ul style="list-style-type: none"> <li>University has no experience in operating aquatics programs nor in community-focused facilities.</li> <li>Members from non-operator’s community would likely feel differential treatment.</li> </ul>
<b>Egalitarian Owner Focus</b>	5	<ul style="list-style-type: none"> <li>Highly unlikely that either party would consider anything other than their own needs.</li> </ul>
<b>Labour Alignment</b>	20	<ul style="list-style-type: none"> <li>Merely an extension of the owner’s workplace from elsewhere: no labour concerns provided owner wishes to consider the TPASC an extension</li> </ul>
<b>TOTAL (100 points)</b>	45	

<b>TABLE 3: Evaluation of Option #3 (Third Party Operator)</b>		
<b>CRITICAL FACTOR</b>	<b>SCORE</b>	<b>RATIONALE</b>
<b>Vision Alignment</b>	15	<ul style="list-style-type: none"> <li>Could be consistent with the user-integrated facility that was envisioned.</li> <li>All three target communities could be well-served</li> <li>Not-for-profit owners could be fundamentally at odds with for-profit operators</li> </ul>
<b>Financial Viability</b>	15	<ul style="list-style-type: none"> <li>Assume it will make good business sense</li> </ul>
<b>Customer Service Orientation</b>	12.5	<ul style="list-style-type: none"> <li>Community programming could be sacrificed for more lucrative programing (eg. event hosting).</li> <li>Certain customers could be emphasized over others is it made good business sense.</li> </ul>
<b>Egalitarian Owner Focus</b>	15	<ul style="list-style-type: none"> <li>Since both would be paying the operator, operator would likely listen to both equally.</li> </ul>
<b>Labour Alignment</b>	10	<ul style="list-style-type: none"> <li>Contract with operator could be considered “contracting out” or operations could be considered sufficiently “arms length” from owners – 50/50</li> </ul>
<b>TOTAL (100 points)</b>	67.5	

<b>TABLE 4: Evaluation of Option #4 (Separate Owner Operations)</b>		
<b>CRITICAL FACTOR</b>	<b>SCORE</b>	<b>RATIONALE</b>
<b>Vision Alignment</b>	20	<ul style="list-style-type: none"> <li>• Consistent with and supports the user-integrated facility that was envisioned.</li> <li>• All three target-communities could be well-served.</li> </ul>
<b>Financial Viability</b>	15	<ul style="list-style-type: none"> <li>• Assume it will make good business sense; offloads risk from owners directly.</li> <li>• Tax implications possible, depending on the type of corporation created.</li> </ul>
<b>Customer Service Orientation</b>	18	<ul style="list-style-type: none"> <li>• Uniform policies and procedures eliminate confusion for users.</li> <li>• Optimal for broad user focus as it is equally owned by both institutions and can operate on a break-even, versus profit-only, basis.</li> <li>• Will be far more agile and able to meet the needs of user than either of owners would</li> </ul>
<b>Egalitarian Owner Focus</b>	20	<ul style="list-style-type: none"> <li>• Since both are equal shareholders and have equal membership on Newco’s board, both likely could exert virtually identical influence on Newco.</li> </ul>
<b>Labour Alignment</b>	10	<ul style="list-style-type: none"> <li>• Possibility that Newco would lose a “related employer” challenge by union as it may not be sufficiently “arms length” in arbitrator’s eyes</li> </ul>
<b>TOTAL (100 points)</b>	83	

<b>TABLE 5: Operating Options Evaluation Summary Score Sheet</b>				
<b>Critical Factors</b>	<b>Option #1: Separate Operations</b>	<b>Option #2: One Owner-Operator</b>	<b>Option #3: Third Party Operator</b>	<b>Option #4: Jointly Owned Operator</b>
<b>Vision Alignment</b>	5	5	15	20
<b>Financial Viability</b>	15	5	15	15
<b>Customer Service Orientation</b>	5	10	12.5	18

<b>Egalitarian Owner Focus</b>	5	5	15	20
<b>Labour Alignment</b>	5	20	10	10
<b>TOTAL (100 points)</b>	25	45	67.5	83

### 3.5 Recommended Option for TPASC Operations

Applying the identified options to the Evaluation Framework, the highest scoring operating model, as noted above, is that the TPASC co-owners create an entity, referred to initially as Newco, to operate the facility (Option #4). This is the option both co-owners prefer and this is the option that the co-owners are pursuing.

It is important to note that Regulation 609/06 under the *City of Toronto Act* sets out the conditions and restrictions that apply to the establishment of a corporation by the City. As the Regulation currently reads, the City is prohibited from forming a corporation with a non “public sector entity”. As currently defined, the term “public sector entity” would not include the University. As a result, the Regulation must be amended before the City can legally form a corporation with the University.

Amending the applicable Regulation(s) can be done through the Lieutenant Governor in Council rather than through Provincial Parliament, as a statute amendment would require. In order for the Province to consider an amendment, Toronto City Council is required to pass a Resolution seeking such an amendment.

As a result, in order for the City to form Newco along with the University, the following must first occur:

- City Council endorsement of the formation of Newco, with the University, for the purposes of operating the TPASC;
- City Council authorization of City staff to enter into negotiations with the University regarding the formation of Newco;
- City Council resolution to go to the Province, seeking the necessary regulatory amendment;
- City Council authorization of City staff to go to the Province to seek the amendment; and
- Granting, by the Province, of the requested regulatory amendment.

On November 27, 2012, a Staff Report (see Appendix C) was submitted to City Council, seeking those matters noted above that require action by City Council. The Report received unanimous approval from Council. Before the end of the calendar year, the City approached the Province seeking the regulatory amendment. On March 14, 2013 the City was advised by the Province that the regulatory amendment is under way.

Although the co-owners remain convinced that creating Newco for the purposes of operating and managing the TPASC is the best option, the following are additional challenges that arise by taking this course of action:

- Forming Newco will require forming a Board of Directors. Customarily, City Councilors sit on the Boards of corporations established by the City. This is problematic in the eyes of the University.
- In order to complete necessary “start-up” functions, Newco will require a Board of Directors and key senior staff to be in place earlier than approval for them (from Toronto City Council) can be sought and acquired.



- The regulatory amendment that was sought, allowing the City to form a corporation with the University, was under the City Services Corporations provisions; the University has indicated its discomfort with forming an entity that can be characterized as a “City Services Corporation”.
- A “snap” election may be called in Ontario before the regulatory amendment is finalized. This would delay the amendment until Fall of 2013.
- Newco can be seen as a “related employer” to either the City or the University and become a unionized workplace from the outset.
- As noted above, the TPASC is one of three Pan Am Games capital projects that is a designated recipient of Legacy Fund funding in order to subsidize high performance usage and to maintain the facilities at a “world class” calibre. Once as yet unresolved question is whether forming Newco affect the TPASC’s ability to receive Legacy Fund dollars (approximately \$4.0 million/year) on a non-taxable basis.
- Another currently unresolved question is whether forming Newco and allowing it to operate the TPASC trigger tax consequences for either or both co-owners.

As can be seen by the above, the TPASC is a highly layered facility with many interacting and intersecting parts resulting in many challenges. The most critical of those challenges will be addressed in the following Chapter.

## **4. CHALLENGES RELATED TO RECOMMENDED OPTION**

### **4.1 Choosing a Hybrid Governance Model**

While creating Newco remains the highly preferred operations methodology, the creation does not avoid all points of conflict between the two co-owners. The process of creating a Shareholders' Agreement regarding Newco has demonstrated this. Based on their respective experiences, both the University and the City have differing perspectives on the ideal number of board members to serve on the board of Newco. Also, all University board terms are four years, with a possibility to renew for one additional term. Tying their board terms to Council, the City corporations have three-year terms with two opportunities for consecutive renewal. These are merely a couple of the challenges that have arisen in trying to “marry” even the smallest details regarding these two well established organizations. These questions remain as yet unresolved.

Another example is the proposed mandatory amendment that is currently before the Province. If successful in seeking an amendment to the City of Toronto Act Regulation, the City will be permitted to form a City Services Corporation with the University. However, the University has very recently advised of its discomfort in creating a University corporation that could be characterized as a City Services Corporation. In fact, the University is experiencing “sober second thought” and is in the process of determining whether they will go to the Province to seek additional amendments to the initially proposed amendment in order to insulate the University from a “blanket” application of all provisions relating to City Services Corporation. If the University does this, it is highly unlikely that Newco will be formed in time to hire staff or do much of the work that has been anticipated it would do leading-up to

Substantial Completion of the facility. The Province only Proclaims legislative changes twice per year: January and July. Therefore, if the University's new position delays that amendment past the July Proclamation deadline, the amendment will not be finalized until January 2014.

#### **4.2 Timely Start-up**

The co-owners are facing challenges creating the necessary organizational infrastructure for Newco to be operationalized and commence the Pre Start-up phase by July 2013, as planned. Although the Toronto City Council authorized City staff to seek regulatory amendment to create Newco and to enter into negotiations with the University regarding Newco, City Council must approve the contents of the Shareholders' Agreement forming Newco. As a result, once the terms are negotiated, the substance must be submitted to City "machinery" to ultimately make its way on to the City Council floor. This can be a fairly lengthy process. However, it cannot be commenced until a Staff Report is 100% complete. The Staff Report, in this instance, requires the Shareholders' Agreement to be 100%. Unfortunately, since the parties have not finalized a number of rather simple matters (i.e. board size and board term) the likelihood of finishing these documents in time to go before Council prior to the summer break, seems slim.

Without Council approval, an interim board cannot be created to hire Newco staff to complete the critical work necessary for this facility to be ready for a September 2014 opening.

## **4.3 Financial Obligations**

### **Financial Operating Projections**

As noted above, capital funding for the \$205 million TPASC construction projects is as follows:

- 56% Federal via TO2015
- 22 % University of Toronto
- 22 % City of Toronto

On completion, the City and University will co-own the facility in equal 50% shares. Although the owners have agreed on differing usage within the facility, resulting in differing annual obligatory financial contributions to the facility, they have agreed to split any cost over-runs in equal 50% parts. The owners are targeting annual break-even operations; however, in the event that net revenue is realized, it will go back to the facility, 100%.

The co-owners developed a financial operating model for the facility in 2011. The annual operating projections have been reviewed by the Government of Canada and the Province and have been validated by two external reviewers. As Figure 2, below, demonstrates, the cost model includes (see Appendix D):

- Base Facility Staffing
- Utilities
- Annual Maintenance
- Contracted Services
- Major Maintenance reserves
- Replacement Major Equipment Reserves

It is important to note that the cost model (\$14.1 million per year) does not include program delivery as programming is currently anticipated to be provided by the respective institutions running their own programs and not by Newco.

**FIGURE 2: TPASC Direct Operating Expenses in 2015-16**

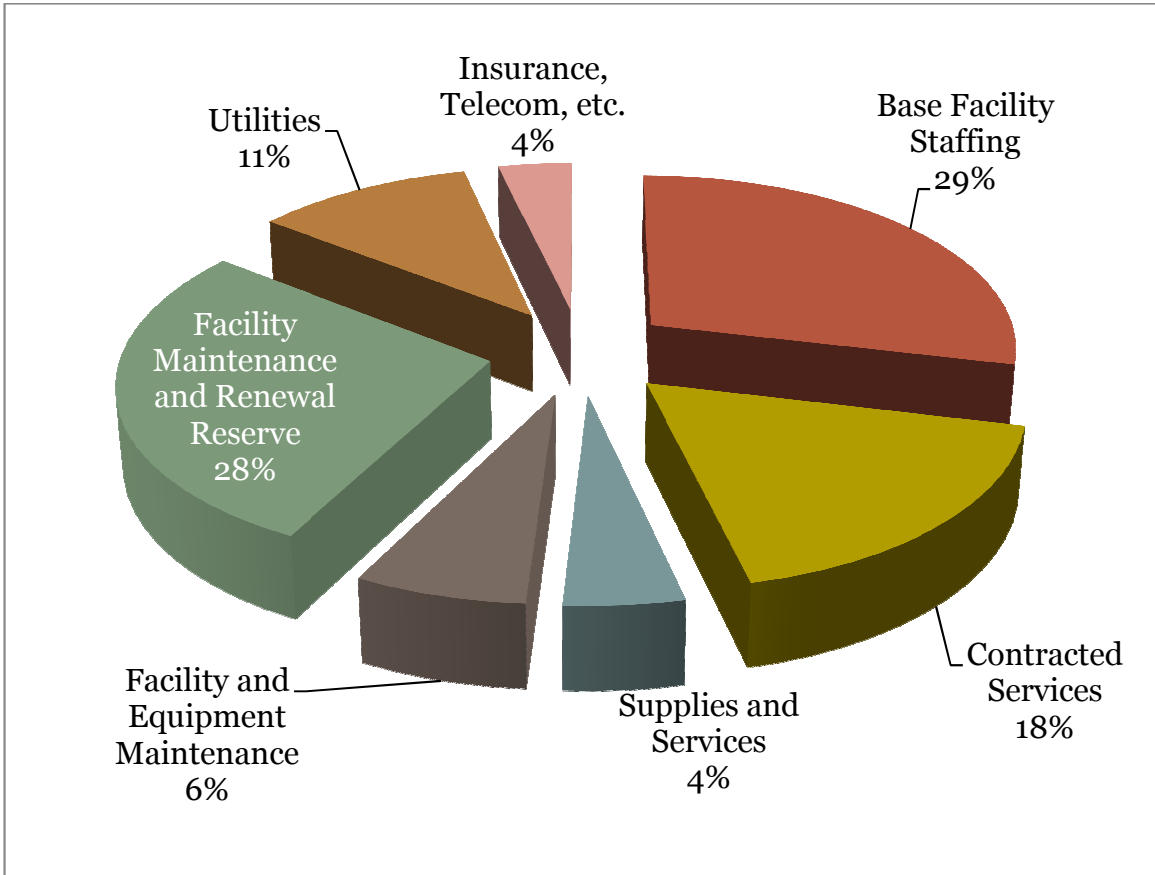
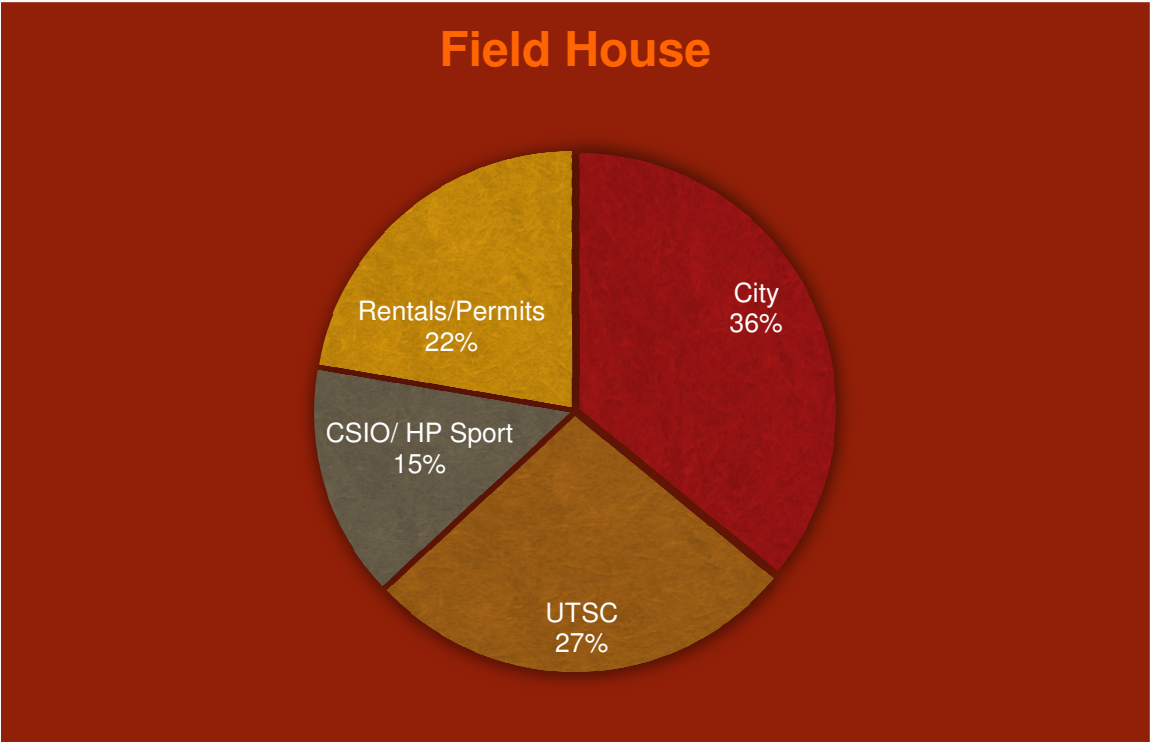
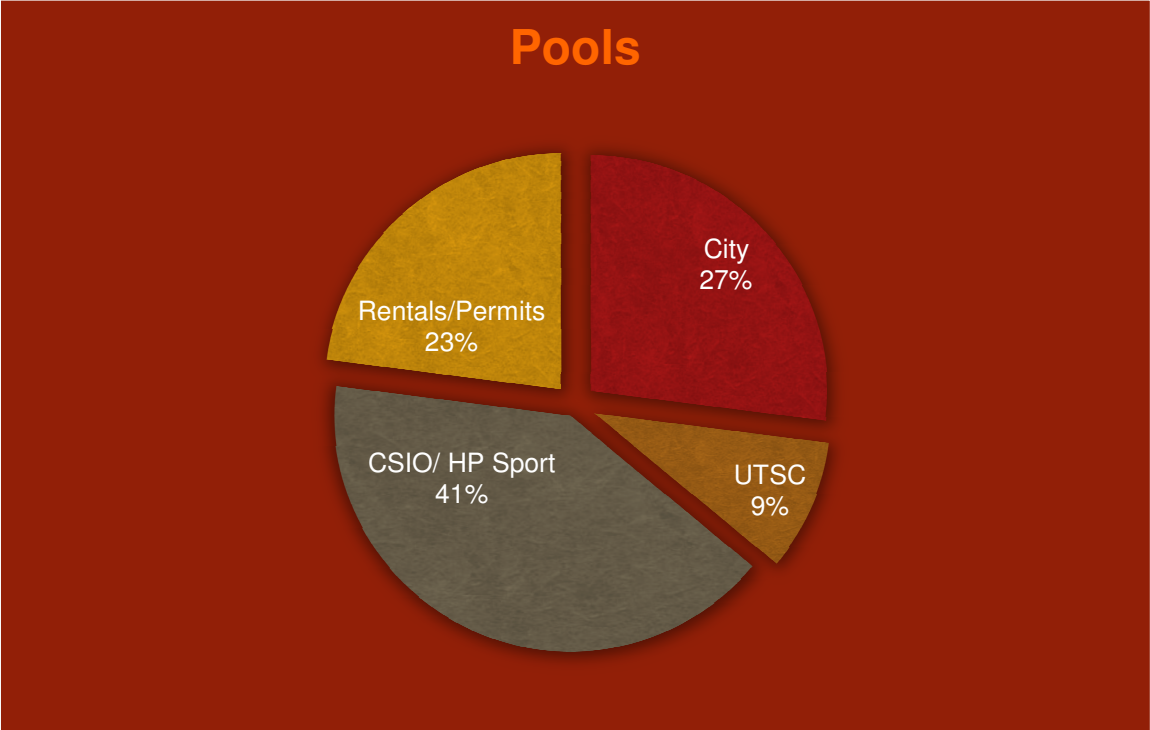


Table 6 shows how the annual operating costs are attributed, in 2015 dollars, whereas Figures 3 and 4 show the usage breakdowns relating to the attributions.

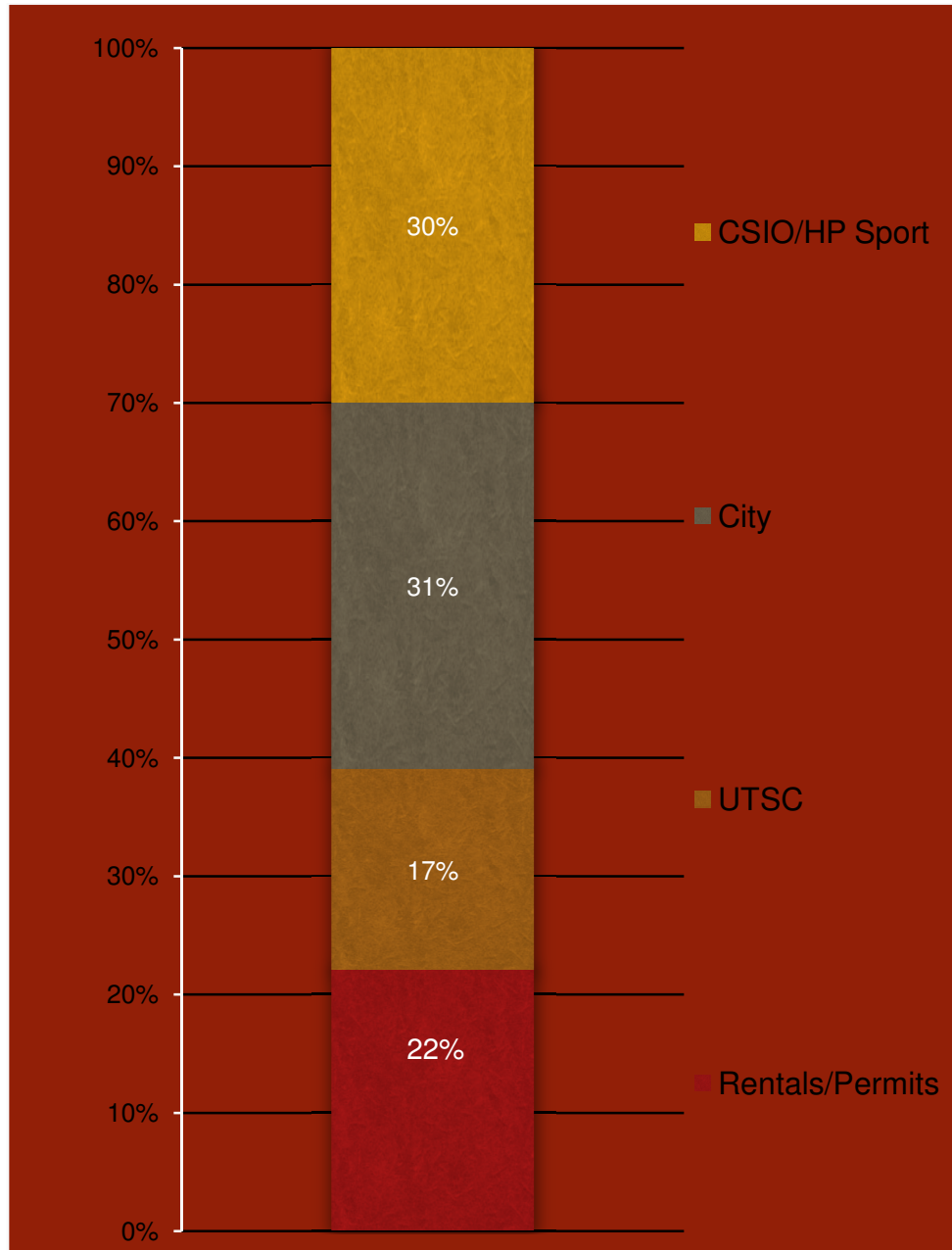
**TABLE 6: TPASC Total Annual Operating Costs (\$2015)**

<b>Total Annual Facility Operating Costs (\$2015)</b>	
<b>Attributed as:</b>	<b>Attributed to:</b>
\$1.85M	UTSC (17% usage) ( <i>owner committed</i> )
\$3.65M	City (31% usage) ( <i>owner committed</i> )
\$2.83M	Rentals (22% usage) ( <i>owners' committed and accepted risk</i> )
\$4.28M	CSIO and HPS usage (30% usage) ( <i>need Federal/ Provincial, HPS funding commitments</i> )
\$1.50M	Legacy Fund offset for major maintenance
\$14.1M (total)	

**FIGURE 3: TPASC Facility Usage Breakdown by User**



**FIGURE 4: Overall TPASC Usage Breakdown by User**



Despite the fact that the building will be using “green technologies” such as geothermal heating and solar power, the building will be very expensive to operate. In addition to the expense of heating and maintaining the three large and deep pools, the

building itself is extremely large. As the financial documents found at Appendix D show, the TPASC is an expensive building.

Combined with the financial challenges of operating a large building containing more water than any other such facility in the nation are financial challenges inherent in operating a facility with so many “moving parts”: Legacy Funding, permit holders, a government-dependent anchor tenant, anchor clubs, etc. Even with the \$4.0 million per year Legacy Fund, there is still a \$1.78 million shortfall in high performance sport funding. The Province and Federal Government have not advised how they plan to address the shortfall.

## **5. CONCLUSIONS**

Despite the challenges of implementing the recommended operating option, all parties remain steadfast in their belief that creating a corporation for the purpose of operating the TPASC is, by far, the optimal method of operating the facility. The scores through the evaluation framework to which the operating options were applied in this study, reinforces this contention. Furthermore, because the partnerships surrounding the TPASC are essential, the many challenges related to those partnerships are considered worthwhile. It is a matter of resource dependency. Neither the City nor the University could afford to build this critical facility on its own. Moreover, even joining forces, the City and University could not afford to build the TPASC, nor could they afford to operate the facility without support from the Federal Government and the Province. Consequently, while operating a 4P/5P/6P project like the TPASC is an enormous undertaking with numerous issues, the benefits far outweigh the costs.



## **REFERENCES**

Partnerships British Columbia, An Introduction to Public Private Partnerships, 2003.

P3 Canada, website, March 2013. Retrieved from: <http://www.p3canada.ca>.

## **APPENDICES**