

**CC26.8 – Confidential Appendix A to Confidential Attachment 1 - made public on July 11, 2019**

**Major Terms of Purchase & Sale Agreement**

**Sale and Purchase**

Each of BPC and the City will sell its shares of Enwave and its unsecured subordinated loan to Enwave to 2343240 Ontario Inc. - a partnership sponsored by Brookfield Asset Management. The purchaser will pay \$222,691,426 to BPC and \$167,995,286 to the City, subject to final post closing adjustments as described below ("Working Capital"). The purchaser's obligations are guaranteed by Brookfield Americas Infrastructure Fund, L.P.

**Working Capital**

The purchase price has been determined on the basis that Enwave will have minus \$2,000,000 of working capital on the date the transaction closes. The purchase price paid on closing will be adjusted for any changes in the estimate prior to closing, and be subject to a final adjustment after closing.

**Representations and Warranties of the Vendors to the Purchaser**

As the sellers of both their ownership shares and unsecured subordinated debt, both the City and BPC make representations and warranties. These include (but are not limited to):

Contracts and Commitments - the purchaser has been provided with a list of all material contracts and a representation that Enwave is not in material breach or material default of any of them, or has disclosed them to the purchaser.

Environmental Matters – Enwave has complied with matters related to environmental laws including monitoring and reporting requirements, and that except as disclosed, no remedial orders have been issued and that there are no undisclosed storage tanks or releases of hazardous substances.

Other representations and warranties by the sellers cover issues such as financial statements, title to assets and real property, and employee arrangements.

If material defaults or misrepresentations are discovered, the purchaser will have recourse to seek indemnification. The obligation of the City to indemnify the purchaser is limited in most cases to claims made within 18 months of closing that are not less than a \$500,000 minimum aggregate claim threshold. Further, except in the case of certain fundamental matters (such as ownership of shares), the City's maximum indemnification amount is 20% of the purchase price.

## **Consents**

The purchaser will obtain the consent of the senior debt holder to take over and assume the City's unsecured subordinated loan to Enwave as purchaser of Enwave. The parties must also comply with the requirements under the *Competition Act* (Canada).

## **Termination**

The purchase agreement may be terminated:

- a) by notice given prior to or at the completion of the sale of Enwave only in the event of a material breach of any representation, warranty, covenant, obligation or other provision of the purchase agreement;
- b) if any of the conditions on closing have not been satisfied;
- c) by written agreement of the parties; or
- d) by either vendor or the purchaser if the completion of the sale and purchase of Enwave has not occurred by December 31, 2012.

## **Confidentiality**

Both the vendors and the purchaser are subject to confidentiality undertakings. For a period of five years following the closing date, the City is required to maintain as confidential all confidential information in its possession regarding Enwave subject to its overriding disclosure obligations pursuant to the *Municipal Freedom of Information and Protection of Privacy Act*.

## **Public Announcements**

Except as required by applicable law (including MFIPPA) or stock exchange regulation, no public announcement or press release concerning the sale and purchase of the shares and the unsecured subordinated loans may be made by any of the parties without the prior consent and joint approval of the others. Where applicable laws or stock exchange regulation requires the release of any such public statement, the releasing party shall use reasonable efforts to provide a copy of such release or statement to the other parties in advance of such release and to incorporate such other parties' reasonable comments thereon.

## **Non-Interference Agreement**

The City and its divisions will not engage in the business of generating steam or chilled water for sale to third parties within a specified downtown and waterfront area or in respect of hospitals in the City of Toronto, nor solicit Enwave customers for a period of five years. The Better Buildings Partnership, Toronto Hydro Corporation, its subsidiaries, the Toronto Waterfront Revitalization Corporation, and any City agency, board, commission or wholly-owned corporation are not subject to this limitation, nor is the City for the purposes of servicing its own buildings or for the operation of its waste water treatment plants. This also allows the City to guarantee, loan, or otherwise financially support any of these allowable initiatives.

**Other Terms**

Other terms are as deemed necessary and appropriate by the City's Deputy City Manager and Chief Financial Officer, in consultation with the City Solicitor.