

### **Strategic Development of Low-Carbon Thermal Energy Networks (District Energy)**

**Date:** March 8, 2018

**To:** Executive Committee

**From:** Deputy City Manager, Internal Corporate Services

**Wards:** All

#### **SUMMARY**

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This report responds to City Council's direction provided in December 2017 to advance the City's development of low-carbon thermal energy networks ("LCTEN") in Toronto as part of the implementation of goals of the Council-adopted TransformTO initiative.

The Council direction included the following: negotiating a joint development agreement with the Enwave Energy Corporation ("Enwave"), the preferred proponent from a solicitation process conducted earlier in 2017 at the direction of Executive Committee, based on a set of principles; developing an appropriate governance structure and operational framework for the City and Enwave's relationship; and reporting back on near term LCTEN opportunities.

#### **RECOMMENDATIONS**

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**The Deputy City Manager, Internal Corporate Services recommends that:**

1. City Council authorize the Deputy City Manager, Internal Corporate Services, to enter into the Joint Development Agreement between the City and Enwave on the terms set out in Attachment 1, and such other terms as may be satisfactory to the Deputy City Manager, Internal Corporate Services, and in a form satisfactory to the City Solicitor.
2. City Council approve the governance approach and operational framework described in this report and in the Joint Development Agreement terms in Attachment 1 that together envision, among other things.
  - a. that the Deputy City Manager, Internal Corporate Services, or designate, acting as the Project Coordinator for the City shall, in accordance with the Joint Development Agreement, review potential low-carbon thermal energy network projects with Enwave's Project Coordinator and recommend such potential projects to City Council, as required; and

- b. the undertaking of such projects in limited partnership (or similar structure) with Enwave, on such terms as may be determined and approved for each low-carbon thermal energy network project, including utilizing Build Toronto or a Build Toronto subsidiary as the City's contracting party, as appropriate.
3. City Council authorize the City Manager and direct Build Toronto, with the administrative support of CreateTO, to undertake the necessary steps to hold the City's interest in low-carbon thermal energy networks project delivery limited partnerships (or similar structures) as required.
4. City Council request City agencies and corporations that may be involved with low-carbon thermal energy network projects to work with the Deputy City Manager, Internal Corporate Services on potential low-carbon thermal energy network projects as envisioned by the Joint Development Agreement.
5. City Council direct the Deputy City Manager, Internal Corporate Services, to include a discussion of the progress on this low-carbon thermal energy networks effort in the required periodic reporting to Council on TransformTO.

## **FINANCIAL IMPACT**

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There is no financial impact arising from the recommendations of this report.

Going forward, as viable projects/development opportunities are identified, City staff will report back to Committee and Council with project business cases, detailing financial implications to the City and budgetary impacts, if any, for the requisite Council authorities. Council authorities will be sought for a potential City financial contribution to the project, which may be made in cash through grants received from other orders of government, through City "in-kind" contributions such as easements or other arrangements permitting the use of City assets for project purposes, or through other means.

Reporting will also address potential revenue generation opportunities for the City arising from the recommended projects, which may include royalties, fees, or other arrangements.

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

## DECISION HISTORY

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On December 5, 2017, City Council directed the Deputy City Manager Internal Corporate Services to negotiate with Enwave the necessary agreements, determine an appropriate governance and operational framework, work with Enwave on a portfolio of near-term opportunities including applying for grants, and report back to Council for approval of the proposed agreement and framework in the first quarter of 2018.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.EX29.7>

On June 27, 2017, the Executive Committee directed the Deputy City Manager Internal Services (then Chief Corporate Officer) or designate to negotiate with Enwave the necessary agreements, in a form satisfactory to the City Solicitor and report back to Council for approval of the proposed agreement and terms in the fourth quarter of 2017.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.EX26.22>

On October 26, 2016 the Executive Committee adopted the staff report entitled 'Development of Low-carbon Thermal Energy Networks (District Energy)' which set out the rationale, value proposition, and three stage process to choose a partner(s) with whom to evaluate the opportunity and create a path to move forward.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.EX18.15>

At its meeting on May 24, 25, 26, 2017 City Council adopted TransformTO: Climate Action for a Healthy, Equitable and Prosperous Toronto - Report 2 - The Pathway to a Low Carbon Future to the year 2050. Development of low-carbon thermal energy networks is a fundamental component for the City to meet its 2050 GHG reduction target.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.PE19.4>

On December 13, 2016 City Council adopted TransformTO: Climate Action for a Healthy Equitable, and Prosperous Toronto - Report 1 - Low Carbon Short Strategies to the year 2020. Development of low-carbon thermal energy networks is a fundamental component towards achieving City Council adopted 2020 GHG reduction target.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.PE15.1>

## COMMENTS

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### Background

Development of low-carbon thermal energy networks is a TransformTO strategy, which is fundamental to meeting climate change targets adopted by City Council, while attracting significant investments to the benefit of the local economy, generating revenue, ensuring energy does not become a limiting factor for growth, and improving energy resilience.

- Working with a private sector entity like Enwave to develop low-carbon thermal energy networks provides the necessary scale and long-range planning and the potential to secure investment as opposed to the City undertaking separate projects each on their own.

- Revenue generation opportunities for the City include, return on investment, leases, royalties, fees, etc.
- The City will consult with Toronto Hydro as the electricity company, at the time specific projects are evaluated for the development of LCTENs.

Technologies for local low-carbon/renewable energy supply for thermal energy networks may include:

- sewer heat recovery,
- ground-source heat pumps,
- solar thermal collectors,
- waste heat recovery,
- urban biogas utilization, and
- urban biomass utilization.

### **Open and Competitive Process**

Enwave was selected to negotiate with the City as the result of an open and competitive 3-stage process, consisting of a (1) Request for pre-Qualification; (2) Request for Proposal issued by the City of Toronto on the MERX bid system; and (3) Direct negotiation with the City for the creation of the development framework. The open competitive process was carried out as directed by the Executive Committee on October 26, 2016. Enwave demonstrated customer relationships and the capability to develop, design, and construct new LCTEN, as well as proven capacity to make the necessary financial investments.

The key objectives identified for the development of LCTEN in partnership with Enwave are:

- Reduce greenhouse gas emissions, and improve energy resilience;
- Achieve speed to market, scalability, and ability to fund projects identified for development; including attracting grants from external parties;
- Foster economic development, City building, and new revenue opportunities;
- Mitigate risks associated with project development and operation; and
- Create balance between long term project development and the capability to initiate projects that are ready for development now.

### **Recommended Governance Approach**

City staff, in consultation with the City's Legal Services Division, Corporate Finance, the City Manager's Office, and outside legal and business advisors, have considered a number of options for the City's governance approach to develop LCTEN projects. See the recommend governance approach and structure below, as well as a table summarizing the governance options that were reviewed.

The recommended governance approach is as follows:

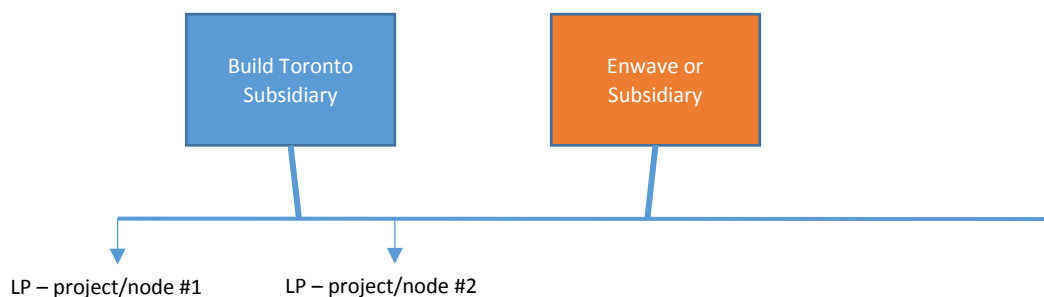
**Joint Development Agreement ("JDA")** -- Project Coordinators for the City and for Enwave review the work of a Development Team in order to move from a potential project to a project that can be recommended to Council and the Enwave Board for approval, subject to the JDA terms set out in Attachment 1.



**Approval of Recommended Projects:** City Council and Enwave Board decide whether a recommended project becomes an actual project for implementation



**Actual Project Implementation:** limited partnership arrangement between separate City entity and Enwave entity involving a Project Agreement and related instruments framed according to the direction provided by Council and the Enwave Board. City staff will most often recommend that Council direct that a Build Toronto subsidiary be formed to act as the limited partner or general partner for the project.



## BuildTO and CreateTO roles

As part of the preferred governance approach summarized above, City staff have identified Build Toronto Inc. as an appropriate existing City entity to develop some, if not all, LCTEN projects. LCTEN projects fit within Build Toronto Inc.'s mandate as set out in Build Toronto Inc.'s Shareholder Direction, to act as a catalyst for the development of infrastructure and sustainable services in the City.

City staff recommend that Council approve a governance structure whereby after the decision making process in the JDA results in the City pursuing a LCTEN project with Enwave, Council would provide direction to Build Toronto Inc. to incorporate a subsidiary corporation pursuant to Ontario Regulation 295/09 to act as a special purpose vehicle and enter into a limited partnership agreement with an Enwave entity.

This limited partnership would be formed between a Build Toronto Inc. subsidiary and an Enwave entity in order to develop, and own the LCTEN project. The subsidiary corporation of Build Toronto Inc. would have the flexibility to act as the general or limited partner in the limited partnership with an Enwave entity on a project by project basis.

As the sole shareholder of Build Toronto Inc., Council can unilaterally provide this direction to Build Toronto Inc. without the need to amend Municipal Code Chapter 215, modify Build Toronto Inc.'s Shareholder Direction, or obtain prior approval from Build Toronto Inc.'s board of directors. While incorporated by Build Toronto Inc., the cross appointment of the board of directors of Build Toronto Inc. and CreateTO allows for CreateTO to administratively oversee the LCTEN projects.”

## **BENEFITS OF LIMITED PARTNERSHIPS**

Enwave and City can work together on LCTEN by using/forming project-specific entities designed to limit liability and then have those entities enter into project level delivery partnerships on terms appropriate to each project (i.e. as to governance, operational responsibility, valuing of contributions, revenue sharing, etc.).

After examining several governance structures set forth in the table below, City staff are recommending a limited partnership arrangement due to its many advantages, including: limited liability for the limited partners, flexible ownership, beneficial tax structuring and separation of assets. A limited partnership facilitates a governance structure that enables passive investment by limited partners, with management and control of the limited partnership conducted by the general partner alone.

Each limited partnership must have at least one general partner and one limited partner. The limited partner maintains its limited liability status by refraining from engaging in the management or control of the limited partnership. Separating the limited partner's equity interest from any management role minimizes any liability associated with the general partner's activities. By contrast, the general partner has unlimited liability for the debts and obligations of the limited partnership.

In sum, this approach provides:

- Flexible ownership: LPs are flexible and allow changes in equity ownership percentages depending upon changing equity contributions to the partnership over time. The process to adjust partnership interests can be agreed to up front in the LP agreement. This process can be simpler than the corporate process to issue shares which requires approvals from the board of directors each time shares are issued.

- Tax structuring: In an LP structure, income is distributed to the partners before corporate-level taxation whereas income earned by a corporation is distributed to shareholders after corporate-level taxation.
- Limited Liability: LPs limit the liability of limited partners to third parties for the obligations of the LP if they do not participate in the management of the partnership.

**REVIEW OF GOVERNANCE OPTIONS**

See table below for governance options reviewed and conclusions of the review.

<b>Governance Options Reviewed</b>	<b>Conclusion</b>
<p>Enwave and City can work together on LCTEN by using/forming project-specific entities designed to limit liability and then have those entities enter into project level delivery partnerships on terms appropriate to each project (i.e. as to governance, operational responsibility, valuing of contributions, revenue sharing, etc.).</p>	<p><b>Actionable:</b></p> <p>Flexible ownership: LPs are flexible and allow changes in equity ownership percentages depending upon changing equity contributions to the partnership over time. The process to adjust partnership interests can be agreed to up front in the LP agreement. This process can be simpler than the corporate process to issue shares which requires approvals from the board of directors each time shares are issued.</p> <p>Tax structuring: In an LP structure, income is distributed to the partners before corporate-level taxation whereas income earned by a corporation is distributed to shareholders after corporate-level taxation.</p> <p>Limited Liability: LPs limit the liability of limited partners to third parties for the obligations of the LP if they do not participate in the management of the partnership</p>
<p>Creating a Joint Venture Corporation owned by the City and a private sector entity</p>	<p><b>Not actionable:</b></p> <p>Creating a joint venture corporation with a private sector entity is not permitted under either the City of Toronto Act, 2006 or under the Electricity Act, 1998 without first obtaining a legislative change from the Province. Given that time is of the essence to develop near-term projects, this options is not feasible.</p>

<b>Governance Options Reviewed</b>	<b>Conclusion</b>
City creating a corporation and immediately selling 50% of its interest to Enwave	<p><b>Not advisable:</b></p> <p>Although creating such a corporation might be possible if the City were to first establish the corporation (instead of the private sector entity establishing it), this approach is still not advisable because the City could lose control over City assets, could have significant financial obligations imposed on it to avoid dilution of the value of the share, and/or could lose certain grant or other funding opportunities that can be awarded only to a municipally-owned tax-exempt entity (which might be lost with the 50/50 ownership split). Instead, having a Joint Development Agreement and a series of limited partnerships between a City entity and an Enwave entity is preferred because it better mitigates these risks.</p>
Procurement, in the form of a City issued tender or P3 process	<p><b>Not applicable:</b></p> <p>The City is not procuring goods and services. These are not solely City-owned projects. The development of LCTEN projects are usually joint development opportunities in a voluntary market place situation.</p>

**Partnership Arrangement**

City staff, in consultation with the City's Legal Services Division, Corporate Finance, the City Manager's Office, outside legal counsel, and outside business advisor, have negotiated with Enwave a Joint Development Agreement that provides an operational framework for the above-mentioned governance approach.

The JDA defines the relationship between the City and Enwave. Once the JDA is in place, a joint development team will identify and propose potential projects for the City's Project Coordinator and Enwave's Project Coordinators to each recommend to Council and to the Enwave Board, respectively. Council approval will be required before the City can commit resources or access to City assets to any project. See Attachment 2 for Project Development Stages and Decision Points.

The terms of the JDA presented in Attachment 1 include preferential development rights to both parties for an initial period of five (5) years, with three renewal options of five (5) years each. Progress reviews will be conducted against pre-established milestones with off-ramps that could be exercised by either party with appropriate supporting rationale.



For proposals by third parties for the development of LCTEN opportunities, outside of the identified nodes, the City will retain the ability to assist other energy developers to develop LCTEN in Toronto. The assistance may include information, analysis, and access to City assets, including rights of way, and facilities. The City will charge appropriate fees for the provision of these services.

The JDA does not affect the City carrying out its municipal functions required by applicable laws (i.e. regulatory obligations) and policies unless the City were to misuse that authority to impair or derail a City/Enwave project.

The City will share in the benefits derived from each approved project implementation, which may include the receipt of royalties, lease payments, or other revenues, along with reductions in greenhouse gas emissions, retaining carbon credits, and the acknowledgement of the City's leadership in this area.

Preferential development rights will be limited to certain geographic nodes and may include access to City assets, such as:

- Sewers - for heat recovery, and other low-carbon energy sources;
- Access to subsurface energy on City property;

See Attachment 2 for typical project stages and decision points.

## **Next steps**

The proposed next steps, subject to Council direction, are to:

- Authorize the Deputy City Manager, Internal Corporate Services to enter into a Joint Develop Agreement with Enwave for LCTEN project development, as per the negotiated terms in Attachment 1.
- Endorse the proposal that Deputy City Manager, Internal Corporate Services, or designate, act as project coordinator, potential projects are recommended to Council, and each project once authorized may take the form of a limited partnership with Build Toronto or a Build Toronto subsidiary as the City's contracting party.
- Continue to work with Enwave and key City divisions, agencies and corporations on the near-term LCTEN project development opportunities.

## CONCLUSIONS

The development of low-carbon thermal energy networks is a TransformTO strategy approved by Council in June 2017. The development of these opportunities with a private-sector partner is an innovative approach to achieving scale and momentum. The combination of significant new developments/redevelopments, the availability of grant monies from other levels of government and Council's direction to create low carbon neighbourhoods makes this an appropriate time for the City to move forward with this approach.

## CONTACT

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## SIGNATURE

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Josie Scioli  
Deputy City Manager, Internal Corporate Services

## ATTACHMENTS

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Attachment 1 - Joint Development Agreement Negotiated Terms  
Attachment 2 - Project Development Stages and Gates (Decision Points)

## ATTACHMENT 1

### Joint Development Agreement - TERMS & CONDITIONS

The City of Toronto and Enwave Energy Corporation have negotiated a joint development agreement (the “JDA”) between themselves as parties to the JDA (the City and Enwave, each as “Parties”). The JDA includes the following key provisions:

- **Purpose:** the JDA sets forth the terms and conditions pursuant to which the Parties intend to cooperate, collaborate and reach decisions on whether to proceed with the development, finance, construction, ownership, operation and maintenance (collectively referred to as “Development” or to “Develop” a Potential Project or Project, as applicable) of various potential low-carbon thermal energy network (“LCTEN”) projects located within the Nodes (each a “Potential Project”).
- **Initial Term and Extension Terms:** the JDA,
  - has an initial term of five (5) years (the “Initial Term”) with three additional terms of five (5) years (each an “Extension Term”, together with the Initial Term is the “Term”) subject to earlier termination as contemplated in the JDA; and
  - requires that the Parties conduct a strategic review of this arrangement every five (5) years prior to the expiration of the Initial Term or an Extension Term.
- **Preferential Development Rights:**
  - Both Parties will be granted certain preferential development rights which will require each Party to offer the other Party the right to participate in any Potential Project and shall not permit the undertaking of that Potential Project independently until that right has been waived or terminated (“Preferred Rights”). The Preferred Rights will not prevent or impair the City from discharging its obligation to perform its municipal functions or in relation to any LCTEN projects (including Declined Projects) being developed by third parties as required by applicable laws. The City agrees to use commercially reasonable efforts, subject to applicable law, to perform its municipal function in a manner that minimizes any adverse impact on Enwave’s Preferred Rights.
  - Preferred Rights will be dependent on and subject to a Party meeting certain Project Development stages (“Stages”).
  - Preferred Rights will be limited to specific geographic locations within the City of Toronto (“Nodes”). Each Node may contain one or more Projects.
  - Each Party will have the ability to add Nodes and Potential Projects within Nodes upon mutual agreement.
- **Termination of a Party’s Preferred Rights:** each Party may terminate the other Party’s Preferred Right to Develop a Potential Project upon a material breach (which shall include but not be limited to a Party’s failure to perform its obligations with regards to a particular Stage) that has not been cured within a certain time period. Termination of a Party’s Preferred Rights for a particular Potential Project will not affect a Party’s Preferred Rights to Develop any other Potential Project and will not be considered an event of default (cross-default) under any of the executed Project Governance Agreements or Material Contracts relating to other Projects (unless the Parties mutually agree).

- **Termination for Default:** each Party may terminate the JDA upon a material breach that has not been cured within ninety (90) days' of receipt of notice of such material breach from the other Party. If the JDA is terminated:
  - both Parties lose their Preferred Rights;
  - the Project Governance Agreements and Material Contracts that have been entered into prior to the date of termination of the JDA will be unaffected;
  - each Party shall return the other Party's Confidential Information; and
  - the Parties agree to discuss the return of ownership of assets and work products.
- **Termination for Convenience:** upon expiry of the Initial Term, each Party shall have the right to terminate the JDA by providing the other Party with at least twelve (12) months' prior written notice.
- **Project Coordinators:** The Parties will each appoint a senior executive to the role of project coordinator ("Project Coordinator") who will govern the implementation of the terms and conditions of the JDA and meet no less than four (4) times per year. The Project Coordinators will have the following duties:
  - receiving and reviewing reports on the status of Potential Projects at each Stage or on other issues relevant to the JDA;
  - approving whether or not Potential Projects proceed to the next Stage;
  - approving whether or not Potential Projects are submitted to City Council and the Enwave board of directors (the "Board") for approval;
  - reaffirming their approval for Potential Projects that are approved by City Council and the Enwave Board subject to additional conditions imposed by City Council and/or the Enwave Board ("Conditions");
  - approving the financing and funding of Potential Projects; and
  - receiving and reviewing reports on the status of the Development of Projects.
- **Development Team:** the Parties will also establish a working group development team (the "Development Team") composed of six (6) members and each Party shall have rights to appoint three (3) professional staff members each (the City's members will be qualified City staff) who will actively source, identify and report on the Development of Potential Projects to the Project Coordinators. The Development Team will meet monthly and will submit formal reports to the Project Coordinators.
- **Process for Approving Potential Projects:** the JDA contains a process that the Parties agree to adhere to in connection with the approval of Potential Projects including how the Development Team identifies Potential Projects and submits applications to the Project Coordinators to advance the Potential Project to each Stage in the Development process.
- **Declined Projects:** Potential Projects may not be Developed by the Parties if any of the follow occurs:
  - the Project Coordinators do not approve the advancement of the Potential Project to the next Stage;
  - the Development Team choose to not seek approval of the Project Coordinators to move a Potential Project to the next Stage;
  - the Project Coordinators choose to not submit the Potential Project to City Council and Enwave's Board for approval;
  - City Council or Enwave's Board do not approve the Development of a Potential Project;
  - the Project Coordinators do not confirm their approval of a Potential Project that is subject to Conditions; or

- as a result of an unsettled dispute.
- If the Parties decline to jointly Develop a Potential Project pursuant to any of the above mentioned reasons, the Potential Project becomes a declined project (“Declined Project”) and the Parties may pursue the Development of the Declined Project on their own accord, outside of the terms of the JDA. If a Potential Project is deemed to be a Declined Project, all other Potential Projects within a Node will continue to remain subject to the Preferred Rights. In the event of a conflict between a Declined Project and a Potential Project, the Potential Project will take precedence.

**Approved Projects:** once a Potential Project has progressed through the Stages and (i) City Council and the Enwave Board approve the Potential Project subject to no Conditions; or (ii) City Council and the Enwave Board approve the Potential Project subject to Conditions and the Project Coordinators reaffirm their approval of the Potential Project in light of the Conditions, then the Potential Project becomes a “Project”.

**Decision making and Transferring the Project to a Project LP:** Once a Potential Project becomes a Project, the Parties will cause their affiliates to form a limited partnership (“Project LP”) formed under the laws of the Province of Ontario that will be tasked with Developing the Project. The partners of each Project LP (e.g. the City may establish a Build Toronto subsidiary to act as a limited partner) will enter into agreements (e.g. limited partnership agreement) which will govern each Project LP (“Project Governance Agreement”).

- Once the Project LP is formed, the Project LP will enter into various Material Contracts (as listed in Exhibit E) and other related agreements required to develop the Project.
- Each Party will have a right to acquire a fifty percent (50%) interest in each Project LP if it makes the requisite cash or in-kind equity contributions to purchase a fifty percent (50%) interest. The cash and in-kind equity contributions of each Party shall be determined by mutual agreement on a Project by Project basis. The Parties agree to retain their own valuers to assist in determining the value of each Party’s in-kind contributions and shall use such valuation to help guide their negotiations with respect to the allocation of equity interests in the Project LP among the City and Enwave.
- **Tax Planning:** The Parties agree to structure each Project LP and its general partner as well as all Project Governance Agreements having regard to tax efficiency, minimization or limitation of liability, the third party financing requirements (if applicable) and compliance with applicable law.
- **Appointment of Development Manager:** the Parties may appoint one of the general partners of a Project LP (if there are multiple general partners) to act as a managing general partner of the Project LP (the “Development Manager”). The Development Manager shall manage, control, administer and operate the Project LP and its business and affairs, including the Development of its Project in accordance with a management services agreement (the “Management Agreement”) to be entered into between the Project LP and the Development Manager in a form approved by the Project Coordinators.

- **Dispute Resolution:** the JDA contains two dispute resolution mechanisms: (i) one mechanism to settle disputes arising between the Project Coordinators with respect to the approval or rejection of Potential Projects – which will first be settled by an executive of Enwave and the City Manager and if such dispute cannot be resolved, the Potential Project to which the dispute relates will be deemed to be a Declined Project; and (ii) another mechanism whereby the Parties agree to settle all other disputes by way of mediation, arbitration or litigation, as the Parties mutually agree.

**Exhibits A and B - Initial list of Nodes:** Exhibit A sets out the list of Nodes and Exhibit B sets out the current list of Potential Projects:

- Westwood/Six Points Interchange
- East Bay Front/Lower Yonge
- Canada Square/Yonge and Eglinton
- Port Lands
- Scarborough Centre
- Don Mills Crossing: Celestica/Wynford Green + Build Toronto site
- Liberty Village
- Other Build Toronto sites, including Markham & Dunelm.

#### **Exhibit C – Development Stages**

- Exhibit C describes the anticipated Stages that each Potential Project will be subject to including: due diligence, planning and design.

#### **Exhibit D - Project Governance Agreement Principles**

- As required by the JDA, each Project Governance Agreement for each Project LP is to be negotiated in good faith and will reflect the following preliminary list of principles and provisions:
  - each Project LP, through its general partner or Development Manager, as applicable, will have the authority to negotiate, settle and execute all Material Contracts;
  - the limited partners will meet during regularly-scheduled meetings;
  - day to day decision-making will be handled by the General Partner or Development Manager;
  - certain key decisions will require limited partner approval;
  - information reporting requirements to limited partners;
  - standstill and right of first refusal (the limited partners will have a right of first refusal to acquire the other partners' interest in a Project LP in the event that a limited partner is seeking to divest its equity interest in the Project LP);
  - events of default and dispute resolution provisions;
  - rights of audit;
  - valuation of assets for project expansions; and

- ownership of environmental attributes and public grants: one of the drivers for the City to enter into the JDA is the need to reduce its greenhouse gas emissions. Subject to a governmental authority's right to environmental attributes pursuant to the terms of a grant or funding arrangement, the City will retain ownership of a portion of greenhouse gas emission reductions or other reductions necessary to establish environmental attributes, in accordance with the City's bylaws, policies and applicable laws. The City however agrees to use commercially reasonable efforts to allow such environmental attributes to be granted to the Project LP.

#### **Exhibit E – List of Material Contracts**

- Exhibit E contains a preliminary list of material contracts that each Project LP may enter into in connection with a Project ("Material Contracts"). These include:
  - Management agreements;
  - Real property agreements;
  - Agreements pertaining to access to City infrastructure;
  - Energy supply agreements;
  - Equipment supply agreements
  - Engineering, procurement and construction contracts;
  - Financing documents; and
  - Operation and maintenance agreements.
- The actual Material Contracts will be determined on a Project by Project basis.

## Attachment 2

### Project Development Stages and Gates (for illustration purposes)

STAGE / GATE	DESCRIPTION / DECISION	ACTOR
Stage 1	<b>Scoping</b> Determine if development opportunity exists.	
<b>GATE</b>	<b>Initial scope review and approval</b> - review and approval to proceed to next stage - seek/allocate budget and resources for stage 2	City Project Coordinator  Enwave Project Coordinator
Stage 2	<b>Determine the magnitude of the opportunity and key metrics</b> - business case - preliminary design - letter of intent from potential energy customers	City professional and technical staff  Enwave professional and technical staff
<b>GATE</b>	<b>Approve project for development</b> (Access to City assets, budgets) - City staff to seek approval from City Council - Enwave staff to seek approval from their Board	<b>City Council</b>  <b>Enwave Board</b>
Stage 3	<b>Detailed design and Construction</b> - create LP - sign-up customers - tender and construction	Limited Partnership
<b>GATE</b>	<b>Commission and hand-over</b>	Under contract with Limited Partnership
Stage 4	<b>Operation</b>	Under contract with Limited Partnership