

ATTACHMENT 1

DRAFT WASTE TRANSFER AGREEMENT dated [insert date]

B E T W E E N

CITY OF TORONTO (“City”)

- and -

THE REGIONAL MUNICIPALITY OF PEEL (“Peel”)

WHEREAS:

- (1) The City owns and operates the Disco Transfer Station located at 120 Disco Road, in the City of Toronto;
- (2) Peel requires transfer station capacity to receive, compact and load its Waste for transportation by its waste hauler for disposal;
- (3) The City and Peel entered into an agreement dated March 30, 2004, which was extended and amended by agreement dated February 20, 2008, for the transfer station services required by Peel;
- (4) Pursuant to authority contained in Item **[insert Council committee reference]** adopted by Toronto’s Council at its meeting on June 8 and 9, 2010 the City agreed to enter into a further agreement with the Region of Peel to provide transfer station capacity on the terms and conditions set out herein;
- (5) Peel is authorized to enter into this Agreement pursuant to Peel Council Resolution number **[insert Peel Council authority reference]**.

THE PARTIES AGREE AS FOLLOWS:

1. Definitions

For the purposes of this Agreement, including the Schedules, the following words have the following meanings:

1. “Hazardous Waste” has the meaning attributed to such term in Ontario Regulation 347, R.R.O. 1990, as amended;
2. “Unacceptable Waste” means waste that is not municipal waste as defined in Regulation 347 R.R.O. 1990, as amended;

3. “Waste” means all municipal waste as defined in Ontario Regulation 347, R.R.O. 1990, as amended;
4. “Uncontrollable Circumstances” means any of the following and any other event or condition beyond the reasonable control of the parties including, without limitation: riots, wars, civil disturbances, civil disobedience, insurrections, acts of terrorism, interference by third parties, epidemics, landslides, volcanic eruptions, tornadoes, earthquakes, explosion, floods, fire, collapse, underground damage or lightning; a strike, work slowdown, labour disturbance or other labour unrest; the adoption or change, including a change in interpretation or enforcement that has the effect of a change of law of any provincial, federal, state, county or local law, rule, permit, regulation or ordinance, after the date of this agreement, adversely affecting a party’s ability to carry out its obligations hereunder; the institution of a legal or administrative action, or similar proceeding, by any person; and closure of any transportation route that materially restricts the transport of Waste as required by this agreement.

2. Services

The City will provide the following services at the Disco Transfer Station (“Disco”):

- receipt and inspection of Peel’s Waste;
- loading of Peel’s acceptable Waste onto trailers provided by Peel's transportation contractor.

3. Price

The base price for 2010 for the services performed hereunder by the City is thirteen dollars and sixteen cents (\$13.16) per tonne of Peel’s Waste received at Disco, plus any applicable Federal or Provincial Taxes adjusted annually from and after January 1, 2011 in accordance with the changes during the preceding year or applicable part thereof in the Consumer’s Price Index (All Items, Toronto) (the “Annual Price Adjustment”). The parties may mutually agree to extraordinary price increases should the need arise, provided, however, that no extraordinary price increase shall apply unless it is included in this Agreement or the parties enter into and execute a written amendment to this Agreement, in accordance with section 15 of this Agreement. The Annual Price Adjustment shall be calculated as follows:

Step 1

$$- \frac{\text{Current Year CPI Index (January, All Item, Toronto)}}{\text{Previous (January, All Item, Toronto)}} \\ \text{CPI Index Change}$$

Step 2

$$\frac{\text{CPI Index Change}}{\text{Previous Year CPI Index}} \times 100\% \times \text{Previous Year Rate} = \text{Previous Year Rate Change}$$

Step 3

$$\text{Previous Year Rate} + \text{Previous Year Rate Change} = \text{New Rate}$$

Example:**Step 1**

$$\begin{array}{r} 110.7 \\ - 108.2 \\ \hline 2.5 \end{array}$$

Step 2

$$\frac{2.5}{108.2} \times 100\% \times 13.16 = \$0.30$$

Step 3

$$\$13.16 + \$0.30 = \$13.46$$

All numbers will be rounded to the nearest two decimal places.

Each year the City shall submit to Peel the new current year price for review prior to using that price. Peel shall, within two (2) weeks of receipt of the new price, approve or advise of any inaccuracies in the price calculation. The City shall then advise Peel of the final current year price.

The Annual Price Adjustment shall continue to be made annually as of January 1 of each year.

4. Term

The term of this Agreement is from July 12, 2010 to December 31, 2015. Either party may, however, terminate this Agreement at any time during the term by providing a minimum twelve months advance notice in writing.

In the event that Peel is at any time without a contract with a licensed transportation contractor or landfill operator, the City may terminate this Agreement upon providing twenty-four (24) hours advance written notice to Peel and neither of the parties shall have any further obligations with respect to this Agreement.

5. Estimated Tonnage and Daily Tonnage Limits

The estimated tonnages of Waste to be received from Peel at Disco over the term are as follows:

July 12, 2010	to	December 31, 2010	17,500 tonnes
January 1, 2011	to	December 31, 2011	35,000 tonnes
January 1, 2012	to	December 31, 2012	35,000 tonnes
January 1, 2013	to	December 31, 2013	35,000 tonnes
January 1, 2014	to	December 31, 2014	35,000 tonnes
January 1, 2015	to	December 31, 2015	35,000 tonnes

Peel will provide an updated estimate to the City in August of each year during the term of its estimated Waste tonnage for the next calendar year to assist the City in its budgeting process.

It is acknowledged and agreed that the estimated tonnages set out above, and the estimates to be provided by Peel in August of each year during the term of this Agreement, are estimates only, and there shall be no penalty for failing to achieve or exceeding the estimated tonnages. Notwithstanding the estimated tonnages as shown above or as provided to the City by Peel in August of each year, Peel's daily tonnage received at Disco shall not exceed 380 tonnes per day, unless Peel receives prior approval from the City to deposit daily tonnages in excess of 380 tonnes. Peel acknowledges that the City cannot accommodate excess daily tonnages where no approval has been granted, and the City may turn away any excess daily tonnage over 380 tonnes if such prior approval has not been granted. In addition, if at any time the City in its sole judgement believes that Disco Transfer Station capacity will be exceeded, and gives notice of that decision to Peel, Peel agrees to limit its inbound flow of waste to an amount determined by the City and the City may close its gates to Peel collection contractors after the limit determined by Toronto has been reached.

Peel shall be invoiced by the City, and shall be required to pay a fee per tonne, calculated in accordance with section 3, for the actual number of tonnes of Peel's Waste received at Disco.

6. Invoicing by the City

The City will invoice Peel for its services on a weekly basis. Payment is due within thirty (30) days of receipt of an invoice from the City. The City will invoice based on the records from the inbound scale at Disco. The City will provide Peel with daily electronic reports for both inbound and outbound loads. If the inbound scale is out of service, the outbound scale at Disco is to be used for the purpose of generating records for invoicing. If both scales at Disco are out of service, appropriate and reasonable off-site scales are to be used, as agreed upon between the parties. At the request of either party, the City and Peel will meet quarterly to reconcile any billing issues or concerns pursuant to this agreement. Peel will bear its own costs should it be necessary at any time to use an alternative weighscale because both of the Disco weighscopes are out of service.

7. Unacceptable Waste

The cost of removal and disposal at an acceptable disposal site of any waste loaded at Disco that is rejected by the City or Peel's transportation or disposal contractor as being Unacceptable Waste, will be:

- a) shared on a four-fifths (City) and one-fifth (Peel) basis in the absence of clear evidence that the Unacceptable Waste in question originated in either the City or Peel; or
- b) 100% charged to the municipality of origin where clear evidence supports the conclusion that the Unacceptable Waste originated in either the City or Peel.

In the event that subsection 7a) above applies, the City shall remove and dispose of the Unacceptable Waste, with the costs to be shared in the manner as set out in subsection 7a).

8. Rejected Waste

The City may reject Unacceptable Waste at the time a vehicle is unloading. Any such rejected waste originating from Peel will be the sole responsibility of Peel. The cost of removal and disposal of such rejected Unacceptable Waste originating from Peel will be entirely borne by Peel. The City may reject Unacceptable Waste at the time of unloading or, in the case of loads containing radioactivity, the vehicle will be denied entry to the transfer station.

9. Hours of Operation

The hours during which Disco will be open to receive Peel's Waste are 6:00 a.m. to 6:00 p.m. Monday to Friday, with the exception of the following statutory holidays, when the Transfer Station will be closed.

- Family Day
- Good Friday
- Victoria Day holiday
- Canada Day holiday
- August statutory holiday (Simcoe Day)
- Labour Day holiday
- Thanksgiving holiday
- Christmas
- New Year's Day

The City will inform Peel in writing of any changes in opening/closing times or days of operations two (2) weeks prior to a change.

Any change or extension to hours of operation required by Peel will be submitted in writing to the City seventy-two (72) working hours prior to the required change or

extension. The City is required to respond back to Peel in writing within forty-eight (48) working hours from the time the request is made. If extra charges to Peel are required the City will make a formal declaration of such charges in the response back to Peel.

10. Insurance and Indemnity from Peel

Peel shall indemnify and save harmless the City, its officers, elected officials, contractors, agents, servants and employees as well as occupiers of and invitees to Disco, from any and all claims, demands, losses, costs, charges, damages, liability, actions and other proceedings whatsoever (“Claims”) arising out of the negligent acts or omissions of Peel, its agents, contractors, servants or employees, or anyone for whom at law Peel is responsible, relating to its attendance and activities at Disco, and in fulfilment of Peel’s obligations under this Agreement.

Peel shall, at all times during the currency of the term of this Agreement, at its own expense and with the City noted as an additional insured, maintain in force Commercial General Liability insurance coverage with respect to its attendance and activities at Disco in a form and content satisfactory to the City, and shall provide the City with certificates of a policy or policies for inclusive coverage for legal liability for bodily injury, death or property damage in the amount of Five Million (\$5,000,000.00) Dollars. Peel shall also maintain or cause to be maintained Automobile Liability insurance covering all licensed motorized vehicles that are owned or leased by Peel or are attributable to Peel’s use or activities under this agreement with a minimum limit of Two Million (\$2,000,000.00) Dollars per accident. Every policy of insurance maintained by Peel under this Agreement shall provide cross-liability coverage and contain a clause providing that Peel shall not change or cancel the insurance without first giving the City thirty (30) days written notice of such change or cancellation.

11. Insurance and Indemnity from the City

The City shall indemnify and save harmless Peel, its officers, elected officials, contractors, agents, servants and employees as well as occupiers of and invitees to Disco, from any and all Claims arising out of the negligent acts or omissions of the City, its agents, contractors, servants or employees, or anyone for whom at law the City is responsible, relating to the City’s operations and activities at Disco, and in fulfilment of the City’s obligations under this Agreement.

The City shall, at all times during the currency of the term of this Agreement, at its own expense and with Peel noted as an additional insured, maintain in force Commercial General Liability insurance coverage with respect to its operations and activities at Disco and its obligations under this Agreement, in a form and content satisfactory to Peel, and shall provide Peel with certificates of a policy or policies for inclusive coverage for legal liability for bodily injury, death or property damage in the amount of Five Million (\$5,000,000.00) Dollars. Every policy of insurance maintained by the City under this Agreement shall provide cross-liability coverage and contain a clause providing that the City shall not change or cancel the insurance without first giving Peel thirty (30) days written notice of such change or cancellation.

12. Compliance with Laws

Both parties will comply with all applicable laws, regulations, approvals and enforceable guidelines, policies and standards pertaining to their respective obligations hereunder and pertaining to the operation of and activities at Disco.

13. Uncontrollable Circumstances

In the event that either party is prevented or rendered unable, wholly or substantially, by Uncontrollable Circumstances to carry out any of its obligations hereunder, then such obligations may be suspended during the continuation of any inability so caused by the Uncontrollable Circumstances, but for no longer period. If either party intends to rely upon Uncontrollable Circumstances to suspend obligations under this Agreement, such party will notify the other party in writing forthwith, describing in reasonable detail the Uncontrollable Circumstances and a plan of resolution. The party relying upon Uncontrollable Circumstances will have the duty and obligation to use all reasonable efforts to promptly cure or eliminate such Uncontrollable Circumstances. In the event that a party is unable to perform its obligations hereunder for a period of fifteen (15) consecutive days as a result of Uncontrollable Circumstances, the other party will be entitled to terminate this Agreement upon five (5) days written notice, such termination to take effect only if the party has continued to be unable to perform its obligations as a result of Uncontrollable Circumstances during such five-day notice period.

14. Notice

All notices, requests and other communications under this Agreement will be in writing and will be given to the parties at the following addresses, or such other addresses as either party may hereafter designate by written notice to the other party:

If to the City:

City of Toronto
25th Floor, East Tower
City Hall, 100 Queen Street West
Toronto, Ontario M5H 2N2

Attention: General Manager, Solid Waste Management Services
Telecopier No.: 416-392-4754

If to Peel:

The Regional Municipality of Peel
10 Peel Centre Drive, Suite A 4th Floor
Brampton, Ontario L6T 4B9

Attention: Commissioner of Public Works
Telecopier No.: 905-791-0564

15. Amendment and Waiver

This Agreement may not be changed, modified, amended or waived except by written document signed by the parties.

16. Entire Agreement

This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof. There are no warranties, conditions or representations and there are no agreements in connection with such subject matter except as specifically set forth herein.

17. Construction of Terms

Unless otherwise specified herein, words that have a well-known technical or trade meaning will be construed in accordance with the well-known meaning generally recognized by solid waste professionals, transportation professionals, engineers and trades.

18. Counterparts

This Agreement may be signed in counterparts and by facsimile and each of such counterparts will constitute an original document and such counterparts, taken together, will constitute one and the same instrument.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

CITY OF TORONTO

By: _____
Title: City Clerk

By _____
Title: General Manager, Solid Waste
Management Services

**THE REGIONAL MUNICIPALITY OF
PEEL**

By: _____
Name:

Title: Regional Clerk

By _____

Name:

Title: CFO and Commissioner of
Corporate Services