



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Designated Facility Agreement

METRO CONTRACT NO. 936517

This Designated Facility Agreement (“Agreement”) is between Metro, a metropolitan service district organized under ORS Chapter 268 and the Metro Charter (“Metro”), located at 600 NE Grand Avenue, Portland, Oregon 97232-2736, and Hillsboro Landfill, Inc. doing business as Hillsboro Landfill (the “landfill”) located at 3205 SE Minter Bridge Road, Hillsboro, Oregon 97123, (collectively, the “parties”) and is entered into under the authority of ORS 268.317 and Metro Code Section 5.05.

RECITALS

WHEREAS, the Metro area has limited land and resources for solid waste disposal, transfer, and resource recovery;

WHEREAS, Metro may authorize generators of Metro area waste to make use of a disposal site or solid waste facility designated by Metro;

WHEREAS, a non-system license is not required to transport Metro area waste to a designated facility of the solid waste system if the facility is designated to accept the waste;

WHEREAS, the Metro Code authorizes the Chief Operating Officer (“COO”) to execute an agreement between Metro and a designated facility located outside Metro’s jurisdictional boundary to receive, process, transfer or dispose of Metro area waste;

WHEREAS, entering into a designated facility agreement allows Metro to manage the disposal of Metro area waste while increasing material recovery by establishing terms and conditions under which a landfill may receive Metro area waste; and

WHEREAS, the Metro Council has included Hillsboro Landfill as a designated facility of the system authorized to accept Metro area waste.

NOW THEREFORE, in exchange for the promises set forth below, the landfill and Metro agree as follows:

1. Acceptable Metro Area Waste.

The landfill may accept the following types of Metro area waste:

- Processing residual
- Cleanup material
- Inert waste
- Special waste
- Built-up roofing
- Useful material
- Disaster debris if authorized in writing by Metro.

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The landfill may accept Metro area waste other than that permitted by this Agreement only if Metro authorizes acceptance under a non-system license.

2. Prohibited Metro Area Waste.

Except as provided in Sections 1 or otherwise authorized in writing by Metro, the landfill must not accept:

- Metro area waste not identified in Section 1
- Source-separated recyclable material
- Non-putrescible waste that has not undergone material recovery at a Metro Designated Facility
- Any material or wastes prohibited by the Oregon Department of Environmental Quality (“DEQ”) or Washington County.

3. Regional System Fee and Excise Tax.

- a. Each month the landfill must collect and remit to Metro the regional system fee, as set forth in Metro Code Chapter 5.02, for each ton of Metro area waste the landfill receives (unless the waste is subject to an exemption as described in Section 8). The landfill must pay all fees by a Metro-approved method in accordance with Metro Code Section 5.02.
- b. Each month the landfill must collect and remit to Metro the excise tax, as set forth in Metro Code Chapter 7.01, for each ton of Metro area waste the landfill receives. The landfill must pay all taxes by a Metro-approved method in accordance with Metro Code Section 7.01.
- c. The landfill must properly classify Metro area waste for the purpose of collecting regional system fee and excise tax from the landfill’s customers.

4. Term of Agreement.

The term of this Agreement is from January 1, 2020 through December 31, 2025, unless terminated earlier.

5. Landfill Operating Plan.

- a. The landfill must submit to Metro, for Metro’s review and written approval, an operating plan (“Metro Plan”) that describes the landfill’s procedures for managing Metro area waste. The Metro Plan must describe how the landfill will comply with the requirements of this Agreement. The landfill must maintain a copy of the Metro Plan on its premises and at a location where landfill personnel and Metro have access to it.



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- b. The Metro Plan must describe how the landfill will identify whether Metro area waste is acceptable under Section 1 and must include the criteria used for identification. This includes without limitation:
 - (1) Procedures for establishing whether incoming waste is Metro area waste;
 - (2) A set of objective criteria for accepting and rejecting loads;
 - (3) Procedures for inspecting incoming loads for the presence of Metro area waste prohibited under Section 2;
 - (4) Procedures for managing and transporting to the appropriate facilities any prohibited Metro area waste discovered at the landfill;
 - (5) Procedures for assessing and reporting each incoming load to verify the type of Metro area waste and to classify the Metro area waste for the purposes of assessing regional system fee and excise tax; and
 - (6) Any other measures to ensure compliance with this Agreement.
- c. The landfill must submit changes to the Metro Plan to Metro for review and written approval before implementing the changes. Metro will review the Metro Plan to ensure compliance with this Agreement.
- d. The landfill must comply with the provisions of the Metro Plan. Those provisions are incorporated into this Agreement by reference as if specifically set forth in this Agreement. The landfill's failure to comply with the Metro Plan is a breach of this Agreement.

6. Record Keeping and Audits.

- a. The landfill must maintain complete and accurate records of all Metro area waste received, processed, transferred, or disposed at the site. The landfill must make these records available to Metro for inspection, auditing, and copying. The landfill must use sequentially numbered transaction tickets and must retain voided or canceled tickets for three years.
- b. The records the landfill must maintain, at a minimum, records of all Metro area waste that include the information specified in the document entitled *Reporting Requirements and Data Standards for Metro Solid Waste Licensees, Franchisees, and Parties to Designated Facility Agreements*. This reporting requirement document is subject to revision by Metro at any time and the landfill must comply with the latest requirements.
- c. The landfill must maintain waste profiles, waste analysis plans, special waste permits,



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Safety Data Sheets, or other documents that identify waste for the following types of Metro area waste: special waste, cleanup material, and useful Material. The landfill must maintain these records on the premises and make these records available to Metro for inspection, auditing, and copying upon request.

- d. Metro may require, at Metro's expense, that the landfill submit to an independent audit conducted by an auditor chosen by Metro. The audit must address only those matters reasonably related to this Agreement.

7. Reports and Obligations.

- a. The landfill must report information in the form, format, and the schedule specified in the document entitled *Reporting Requirements and Data Standards for Metro Solid Waste Licensees, Franchisees, and Parties to Designated Facility Agreements*. In addition to these reporting requirements, the landfill must include the fields titled Special Waste Permit Number, for all special waste transactions received by the landfill, as designated in the above referenced document.
- b. The landfill must provide the records required under Section 7 in a format prescribed by Metro to Metro, together with a signed *Regional System Fee and Excise Tax Report* and remittance, no later than 15 days following the end of each month.
- c. The landfill must post a sign at the scale house directing all persons disposing of Metro area waste to declare the origin of the solid waste. The landfill must post the sign so that it is readily visible and legible to persons upon arrival at the scale house. The landfill must provide a map of the Metro Area to persons accessing the landfill upon request.
- d. The landfill must notify Metro regarding all permits relating to operations at the landfill, including without limitation, land use applications, appeals, or modifications. The landfill must provide copies of revisions to existing permits and newly issued permits to Metro within seven business days of Metro's request. The landfill also must provide, within seven business days of issuance, a copy of any official enforcement action regarding the landfill or its operation, including without limitation, a notice of violation or noncompliance with a statute, regulation, or permit condition.
- e. The landfill must provide, upon request by Metro, a list of account numbers and material codes and corresponding customer and material names for each load of Metro area waste.
- f. The landfill must provide Metro with copies of each quarterly *Solid Waste Disposal Report/Fee Calculation Form* within two business days of providing the information to DEQ.

8. Useful Material Exemption from the Regional System Fee and Excise Tax.



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- a. A useful material exemption that is approved in writing by Metro before the term of this Agreement does not need to be resubmitted unless Metro asks the landfill to resubmit it. Before allowing a customer to claim a useful material exemption from the regional system fee under Metro Code Title V and from excise tax under Metro Code Title VII, the landfill must submit a written request for the exemption to Metro for review and written approval. The landfill must receive written Metro approval before allowing an exemption under this section. The landfill's request must include a useful material management plan that incorporates the following information:
- (1) A description of the useful material and where it was generated;
 - (2) Documentation demonstrating that the landfill intends to use and will use the useful material productively in the operation of the landfill;
 - (3) Documentation demonstrating that the landfill will accept the useful material at no charge;
 - (4) If the landfill intends to use the useful material as alternative daily cover, documentation demonstrating that the DEQ has approved use of the material as alternative daily cover at the landfill;
 - (5) A description of how the landfill will manage the useful material, including without limitation an explanation, if applicable, of how the landfill will store the useful material before use; and
 - (6) An estimate of the proposed tons of useful material the landfill expects to accept.
- b. It is a breach of this Agreement if the landfill fails to comply with its useful material management plan.

9. Reduced Regional System Fee and Excise Tax Rate for Cleanup Material.

- a. The landfill may collect and remit a reduced regional system fee and a reduced excise tax rate, approved in writing by Metro for cleanup material if the material consists of:
- (1) Soils contaminated with hazardous substances, including petroleum contaminated soils, from environmental cleanups;
 - (2) Soils that do not qualify as clean fill; or
 - (3) Contaminated debris resulting from an emergency cleanup event.
- b. Except as provided above in Section 9, the landfill must not allow a reduced regional system fee or a reduced excise tax rate for cleanup material unless Metro has approved in writing that the waste is subject to the reduced fee and tax rate. The landfill may



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seek approval from Metro by submitting a written request that includes the following information:

- (1) A description of the proposed cleanup material and the project site where it was generated;
- (2) Documentation demonstrating that the cleanup material is derived from an environmental cleanup;
- (3) Documentation demonstrating that the DEQ has authorized the landfill to accept cleanup material;
- (4) A description of the method in which the landfill will manage the cleanup material; and
- (5) An estimate of the number of tons of cleanup material from the project site.

10. Compliance with Law.

The landfill must fully comply with all applicable provisions of the Metro Code. Those provisions are incorporated into this Agreement by reference as if specifically set forth in this Agreement. Any finding that the landfill is in violation of applicable federal, state, regional and local laws, rules, regulations, ordinances, orders, and permits constitutes a breach of this Agreement and constitutes good cause for termination of this Agreement under Section 16. DEQ termination or failure to renew the landfill's Solid Waste Disposal Site Permit constitutes good cause for termination of this Agreement under Section 16.

11. Right of Inspection.

- a. The landfill must allow Metro access to the landfill at all reasonable times to inspect and carry out other necessary functions under this Agreement. The landfill authorizes Metro access to inspect:
 - (1) Without notice during hours when the landfill accepts, processes or disposes solid waste;
 - (2) At other reasonable times upon written notice given by Metro to the landfill; and
 - (3) At any time without notice when, in the reasonable opinion of the COO, notice would defeat the purpose of the entry.
- b. Metro's right to inspect and audit includes the right to review all information from which all required Metro reports are derived. The review may take place at an office of the landfill or affiliated company located in or near the Metro area.



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- c. The landfill must cooperate with Metro regarding Metro's investigation of possible infractions of the Metro Code or of this Agreement, including without limitation infractions related to misidentification of solid waste or false claims that solid waste is not Metro area waste. The landfill's cooperation must include, without limitation, providing Metro with requested information in the landfill's possession regarding matters under investigation and making landfill representatives available to testify in deposition, in court, at a contested case hearing, and in any subsequent appeals.
- d. The landfill must cooperate with Metro regarding Metro's determination of whether processing residual accepted at the landfill meets the recovery standard required by the Metro Code. The landfill's cooperation must include providing Metro with access to all areas of the landfill where it receives and manages solid waste, including without limitation untopping stations, trailer tippers, and the working face, for Metro to inspect the processing residual. The landfill must provide means to segregate individual loads of processing residual and a safe location away from the working face where Metro can conduct analysis of the processing residual.

12. Indemnification.

- a. The landfill must indemnify, defend, and hold harmless Metro and Metro's agents, employees, and elected officials from any and all claims, demands, damages, actions, losses, and expenses, including attorney fees, arising out of or in any way connected with, the landfill's performance under this Agreement.
- b. Metro will indemnify, defend, and hold harmless the landfill, its officers, employees, and agents from all claims, suits, actions, or expenses of any nature resulting from or arising out of the acts, errors, or omissions of Metro or its assignees acting pursuant to the terms of this Agreement, subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution.

13. Confidentiality.

- a. Metro acknowledges the confidential and proprietary nature of the names of persons or entities generating or delivering waste to the landfill and the types and quantities of waste generated or delivered by such persons or entities which the landfill is required to submit to Metro. Metro acknowledges that, although the landfill is not obligated by law to submit this information, the landfill is voluntarily obligating itself to do so pursuant to this Agreement. Metro also acknowledges that the confidential information may be a "trade secret" and exempt from public disclosure under Oregon law because it is currently known only by the landfill, is used by the landfill in its business, has commercial value, and gives the landfill a business advantage over competitors not possessing this information. The ability of competitors of the landfill to obtain the confidential information specified in this Agreement is not in the public interest because it detracts from a relationship of trust that is necessary for Metro to effectively carry out



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its solid waste management functions. Metro obligates itself in good faith not to disclose confidential information to any person outside of Metro except as specified in this Agreement. Access to, and use of, confidential information must only be as specified in this section.

- b. At any time during and after the term of this Agreement, Metro will not, either directly or indirectly, divulge, disclose, or communicate confidential information to any person, partnership, firm, association, corporation, or other entity, or to any person at Metro who does not have a reasonable need to obtain confidential information for Metro's solid waste management purposes. Neither Metro nor any person at Metro will use the confidential information specified in this section for personal benefit.
- c. Notwithstanding Sections 13a and 13b of this Agreement, Metro may use confidential information for solid waste management purposes. Those purposes include solid waste tracking and forecasting, enforcement of the Metro Code, or assistance to other jurisdictions in regulatory enforcement or other law enforcement. Metro may also use confidential information in aggregations or summaries that may be released to the public, so long as it is not possible to identify from these aggregations or summaries the persons or other entities generating and delivering waste to the landfill or the types and quantities of waste that specific persons or other entities generate or deliver to the landfill. Metro will notify the landfill within six business days of Metro's receipt of any other type of request for confidential information from a third party. If it becomes necessary for Metro to release confidential information to any person outside of Metro other than as provided above, Metro will notify the landfill in writing at least five business days before releasing the information.
- d. When submitting to Metro the confidential information specified in this agreement, the landfill must mark these materials "CONFIDENTIAL." If the landfill provides Metro with information that is not marked "CONFIDENTIAL," Metro has no obligation to treat this information as confidential information. Metro will keep confidential information separate from other records and materials so that it will not be available to members of the public or persons at Metro who do not have a reasonable need to obtain access to the information relative to Metro's solid waste management responsibilities.
- e. If Oregon law is modified that the confidential information referenced in this section is no longer exempt from public disclosure, or if an Oregon District Attorney or a court of competent jurisdiction requires release of information, the landfill is no longer be required to submit this information to Metro. In this instance, upon request, the landfill nevertheless agrees to provide to Metro the names of specific generators or transporters, and the types and quantities of waste delivered by persons or entities, for Metro's use in enforcing the Metro Code against persons or entities, when Metro has a reasonable suspicion that a violation has occurred.

14. Dispute Resolution.



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Both parties will attempt in good faith to negotiate resolutions to all disputes arising out of this Agreement. The parties will resolve any controversy or claim arising out of or relating to this Agreement as follows:

- a. If the COO finds that the landfill has breached this Agreement:
 - (1) The COO will provide the landfill with a written notice of breach that describes the alleged breach and that includes a date by which the landfill must respond to the COO's notice.
 - (2) Within the period specified by the COO, the landfill must demonstrate that the landfill has not breached this Agreement, that the breach has been corrected, or that the landfill is making diligent efforts to correct the breach and is likely to succeed in a reasonable period of time.
 - (3) If the COO determines that the landfill has failed to remedy a breach of this Agreement, the landfill must pay Metro liquidated damages in the amount of \$500 per day until the landfill has remedied the breach. These liquidated damages are not a penalty, but the parties agree that for certain breaches the amount of damage would be difficult to determine. Metro is entitled to recover its actual damages during all periods of breach in lieu of liquidated damages if actual damage amounts can be determined.
- b. The parties must resolve any dispute arising under this Agreement using any appropriate and available legal remedy. This may include arbitration if both parties agree to arbitration.

15. Modification and Suspension.

The COO may modify or suspend this Agreement without notice as follows:

- a. If necessary in the reasonable opinion of the COO to protect the public health, safety, or welfare, and in the case of an emergency;
- b. If Metro discovers that the landfill knowingly accepted prohibited Metro area waste or misrepresented the nature or identification of Metro area waste; or
- c. If, due to a binding decision by an arbitrator or court of competent jurisdiction, Metro:
 - (1) May be liable for damages for allowing waste of a type specified in this Agreement to be disposed of at the landfill; or
 - (2) May no longer allow a waste type to be received, processed or disposed at the landfill.



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16. Termination.

- a. Metro may terminate this Agreement for good cause upon passage of a resolution specifying the action taken and the effective date. Further, any Metro Council action to delete the landfill from the list of designated facilities constitutes good cause for termination of this Agreement.
- b. The landfill may terminate this Agreement for good cause provided that termination must commence no sooner than 30 days after the landfill provides Metro with written notice of the landfill's intent to terminate.

17. General Conditions.

- a. The landfill is responsible for ensuring that its contractors and agents operate in complete compliance with the terms and conditions of this Agreement.
- b. This Agreement does not confer a property right to the landfill, nor vest any right or privilege in the landfill to receive specific quantities of Metro area waste during the term of this Agreement.
- c. The landfill may not transfer or assign this Agreement without the prior written approval of Metro. Metro will not unreasonably withhold consent to assignment.
- d. The landfill must inform Metro of any change in ownership.
- e. A waiver of any term or condition of this Agreement must be in writing. If Metro is making the waiver, it will be approved in writing by Metro. If the Landfill is making the waiver, it must be signed by a legally authorized representative of the Landfill. Waiver of a term or condition of this Agreement by either party must neither waive nor prejudice that party's right otherwise to require performance of the same term or condition or any other term or condition.
- f. This Agreement is to be construed, applied, and enforced in accordance with the laws of the State of Oregon.
- g. If any provision of this Agreement is invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this Agreement are not affected.
- h. If any deadline required to be computed under any provision of this Agreement falls on a Saturday, Sunday, or legal holiday, then the deadline must be the next day which is not a Saturday, Sunday, or legal holiday. As used in this subsection, "legal holiday" means legal holiday as defined in ORS 187.010 and 187.020, as amended.
- i. This Agreement is the entire agreement between the parties.



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18. Definitions.

Unless otherwise specified, all terms are as defined in Metro Code.

“Alternative daily cover” means material for cover over the exposed solid waste at a landfill that provides performance equivalent to six inches of earthen soil and that is approved by the DEQ.

“Built-up roofing” means roofing that consists of alternating layers of roofing felt and asphalt. Built-up roofing wastes may include residential, commercial, or industrial tear-offs, including but not limited to base sheets, coatings, felt, fabric, metal flashing, tar, mastics, or roof insulation.

“Disaster debris” means solid waste generated by a natural or human disaster.

“Metro area waste” means solid waste generated from the Metro area, including solid waste generated from outside the Metro area if mixed in the same vehicle or container with solid waste generated from the Metro area, unless the landfill is provided with documentation establishing the weight of the solid waste generated from the Metro Area.

HILLSBORO LANDFILL

METRO

By: 
Name: ADAM C. WINSTON
Title: DIRECTOR
Date: 12/3/19

By: 
Name: ROY BROWER
Title: INTERIM DIRECTOR - PES
Date: 12/4/19