

**Metro**600 NE Grand Ave.
Portland, OR 97232-2736

Designated Facility Agreement

METRO CONTRACT NO. 937054

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 Canby Transfer & Recycling, Inc. (the “facility”) located at 1600 SE 4th Avenue, Canby, Oregon 97013, (collectively, the “parties”) and is entered into under the authority of ORS 268.317 and Metro Code Chapter 5.05.

RECITALS

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

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

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; and

WHEREAS, Metro may allocate Metro area putrescible waste tonnage to a transfer station that is designated under Metro Code Chapter 5.05; and

WHEREAS, Metro prohibits the disposal of Metro area waste in a limited capacity landfill or new landfill as defined in Metro Code Chapter 5.00; and

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; and

WHEREAS, Metro may execute a designated facility agreement and establish terms and conditions necessary to ensure that Metro area waste is properly managed and disposed in accordance with the Metro Code and Regional Waste Plan; and

WHEREAS, the Metro Council has included Canby Transfer & Recycling, Inc. as a designated facility of the system authorized to accept Metro area waste.

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

1. Acceptable Metro Area Waste.
 - a. The facility may accept putrescible waste generated from within franchised collection areas located within the Metro jurisdictional boundary served by waste collection companies affiliated with Kahut Waste Services, Inc.



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- b. The facility may not exceed the putrescible waste tonnage allocation described in Section 4.
- c. The facility may not accept Metro area waste other than that permitted by this agreement unless Metro authorizes that acceptance under a non-system license.

2. Prohibited Metro Area Waste.

The facility may not accept any Metro area waste other than that identified in Section 1 or otherwise authorized in writing by Metro.

3. Prohibited Disposal Sites.

The facility must transport all Metro area waste that it receives to a disposal site that is designated by Metro and authorized to accept the waste. The disposal site must be in compliance with all applicable local, state, and federal laws, rules, regulations, ordinances, orders, and permits.

4. Putrescible Waste Tonnage Allocation

- a. By January 1 of each year, Metro will establish an annual putrescible waste tonnage allocation for the facility.
- b. Metro will determine the tonnage allocation in accordance with Metro Code and applicable administrative rules.
- c. Metro will notify the facility in writing of the amount of Metro area putrescible waste that it may accept during the calendar year. The annual tonnage amount will be incorporated into this Agreement by reference as if specifically set forth in this Agreement.
- d. The facility must not exceed the calendar year tonnage allocation determined by Metro.
- e. Upon a minimum of 24 hours written notice, Metro may amend, suspend, terminate or otherwise adjust the calendar year tonnage allocation described in this section if:
 - (1) It is in the public interest and necessary to address a significant disruption as defined in Metro Code Chapter 5.00; or
 - (2) To maintain Metro's minimum reservation of tonnage as set forth in Metro Code Title V.

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5. Regional System Fee and Excise Tax.

- a. Each month, the facility 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 facility receives. The facility must pay all fees by a Metro-approved method in accordance with Metro Code Chapter 5.02.
- b. Each month, the facility 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 facility receives. The facility must pay all taxes by a Metro-approved method in accordance with Metro Code Chapter 7.01.
- c. The facility must properly classify all waste received at the facility for the purpose of collecting regional system fee and excise tax for Metro area waste.

6. Term of Agreement.

The term of this agreement is from January 1, 2021 through December 31, 2025, unless terminated earlier.

7. Facility Operating Plan.

- a. The facility must submit to Metro, for Metro's review and written approval, an operating plan ("Metro Plan") that describes the facility's procedures for managing Metro area waste, controlling and minimizing nuisances (including noise, vectors, dust, litter, and odor); and responding to a fire or other emergency. The facility must maintain a copy of the Metro Plan on its premises and at a location where facility personnel and Metro have access to it.
- b. The Metro Plan must describe how the facility will identify whether Metro area waste is acceptable under Section 1 and must include the criteria used for that 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 that is prohibited under Section 2;
 - (4) Procedures for managing and transporting to appropriate facilities any prohibited Metro area waste discovered at the facility;



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- (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 the regional system fee and excise tax;
 - (6) Procedures for processing, storage, reload, and transfer of Metro area waste; and
 - (7) Any other measure necessary to comply with this Agreement.
 - c. The facility must submit changes to the Metro Plan to Metro for review and written approval before implementing changes. Metro will review the Metro Plan to ensure compliance with this Agreement.
 - d. The facility 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 facility's failure to comply with the Metro Plan is a breach of this Agreement.
- 8. Record Keeping and Audits.
 - a. The facility must maintain complete and accurate records of all solid waste transported to the site. These records include the information specified in Metro's reporting instructions document titled, *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 facility must comply with all revised reporting requirements upon being notified in writing by Metro.
 - b. The facility must make these records available to Metro for inspection, auditing, and copying. The facility must use sequentially numbered transaction tickets and must retain voided or canceled tickets for three years.
 - c. The facility must record each inbound and outbound transaction electronically based on actual and accurate scale weights using the facility's on-site scales.
 - d. The facility must keep and maintain accurate records of any unusual occurrences (such as fires or any other significant disruption) encountered during operation, and methods used to resolve problems arising from these events, including details of all incidents that required implementing emergency procedures.
 - e. Metro may require, at Metro's expense, that the facility submit to an independent audit conducted by an auditor chosen by Metro. The audit will address only those matters directly related to this Agreement.

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9. Reports and Obligations.
- a. The facility must report information in the form, format, and the schedule specified in *Reporting Requirements and Data Standards for Metro Solid Waste Licensees, Franchisees, and Parties to Designated Facility Agreements*.
 - b. The facility must report to Metro the records required under Section 8a in a format prescribed by 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. Notwithstanding Section 9b, Metro may require the facility to report the records required under Section 8a on a weekly or daily basis in the event of a significant disruption to the solid waste system.
 - d. The facility must notify Metro within 24 hours of any breakdown of the facility's equipment if the breakdown will substantially impact the facility's ability to comply with this agreement, with Metro Code or which will create off-site impacts.
 - e. The facility must report any facility fires, accidents, emergencies, and other significant incidents to Metro within 12 hours of the discovery of their occurrence.
 - f. The facility must notify Metro of any short term (duration of time that is more than two consecutive business days but less than 120 days in length) or long term closure (duration of time that is more than 120 consecutive business days in length) of the facility.
 - g. The facility must notify Metro regarding all permits relating to operations at the facility, including without limitation, land use applications, appeals, or modifications. The facility must provide copies of revisions to existing permits and newly issued permits to Metro within seven business days of issuance. The facility must also provide, within seven business days of issuance, a copy of any official enforcement action regarding the facility or its operation, including without limitation, a notice of violation or noncompliance with a statute, regulation, or permit condition.
 - h. The facility must provide Metro with copies of each annual *Solid Waste Transport Report* within two business days of providing this information to the Oregon Department of Environmental Quality ("DEQ").

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10. Compliance with Law.

- a. The facility must fully comply with all provisions of Metro Code Chapter 5.01 and related administrative rules as applicable to a solid waste facility located within the Metro jurisdictional boundary. Those provisions are incorporated into this Agreement by reference as if specifically set forth in this Agreement. Any finding that the facility is in violation of any provision of Chapter 5.01 is a breach of this Agreement.
- b. Any finding that the facility is in violation of any applicable federal, state, regional and local laws, rules, regulations, ordinances, orders, and permits is a breach of this Agreement and constitutes good cause for termination under Section 16. DEQ termination or failure to renew the facility's Solid Waste Disposal Site Permit constitutes good cause for termination of this Agreement under Section 16.

11. Right of Inspection.

- a. The facility must allow Metro access to the facility at all reasonable times to inspect and carry out other necessary functions under this Agreement. The facility authorizes Metro access to inspect:
 - (1) Without notice during hours when the facility accepts solid waste;
 - (2) At other reasonable times upon written notice given by Metro to the facility; 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 reports required pursuant to this Agreement are derived. The review may take place at an office of the facility or at the office of an affiliate of the facility located in or near the Metro area.
- c. The facility 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 facility's cooperation must include, without limitation, providing Metro with requested information in the facility's possession regarding matters under investigation and making facility representatives available to testify in deposition, in court, at a contested case hearing, and in any subsequent appeals.

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12. Indemnification.

- a. The facility 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 facility's performance under this Agreement.
- b. Metro may indemnify, defend, and hold harmless the facility, 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 facility and the types and quantities of waste generated or delivered by those persons or entities which the facility is required to submit to Metro (collectively, "confidential information"). Metro acknowledges that, although the facility is not obligated by law to submit this information, the facility 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 facility, is used by the facility in its business, has commercial value, and gives the facility a business advantage over competitors not possessing this information. The ability of competitors of the facility 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 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, the confidential information is only as specified in this section.
- b. At any time during and after the term of this Agreement, Metro may 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 may use the confidential information specified in this section for personal benefit.
- c. Notwithstanding Sections 13a and 13b, 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



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use confidential information in aggregations or summaries that may be released to the public, so long as it is not possible to identify from the aggregations or summaries the persons or other entities generating and delivering waste to the facility or the types and quantities of waste that specific persons or other entities generate or deliver to the facility. Metro must notify the facility 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 facility in writing at least five business days before releasing the information.

- d. When submitting to Metro the confidential information specified in this Agreement, the facility must mark those materials "CONFIDENTIAL." If the facility provides Metro with information that is not marked or designated "CONFIDENTIAL," Metro has no obligation to treat that 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 such that the confidential information referenced in this section is no longer exempt from public disclosure, or if an Oregon district attorney or court of competent jurisdiction requires release of such information, the facility is no longer required to submit this information to Metro. In this instance, upon request, the facility nevertheless agrees to provide to Metro the names of specific generators or transporters, and the types and quantities of waste delivered by those persons or entities, for Metro's use in enforcing the Metro Code against those persons or entities, when Metro has reasonable suspicion that a violation has occurred.

14. Dispute Resolution.

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 facility has breached this Agreement:
 - (1) The COO will provide the facility with a written notice of breach that describes the alleged breach and that includes a date by which the facility must respond to the COO's notice;
 - (2) Within the period specified by the COO, the facility must demonstrate that the facility has not breached this Agreement, that the breach has been



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corrected, or that the facility is making diligent efforts to correct the breach and is likely to succeed in a reasonable period of time; and

- (3) If the COO determines that the facility has failed to remedy a breach of this Agreement, the facility must pay Metro liquidated damages in the amount of \$500 per day until the facility remedies 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 will 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 facility 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 transported to the facility; or
 - (2) May no longer allow a waste type to be transported to the facility.

16. Termination.

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

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17. General Conditions.

- a. The facility 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 facility, nor vest any right or privilege in the facility to receive specific quantities of Metro area waste during the term of this Agreement.
- c. The facility may not transfer or assign this Agreement without the prior written approval of Metro. Metro may not unreasonably withhold consent to assignment.
- d. The facility must inform Metro of any change in ownership of the facility.
- 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 facility is making the waiver, it must be signed by a legally authorized representative of the facility. Waiver of a term or condition of this Agreement by either party does not 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 is 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. Metro may seek to amend this agreement to include requirements applicable to a transfer station that holds a Metro franchise pursuant to Metro Code Chapter 5.01.
- j. This Agreement is the entire agreement between the parties.

18. Definitions.

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

- a. "Metro area waste" means solid waste generated from within the Metro jurisdictional boundary, including solid waste generated from outside the



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boundary if mixed in the same vehicle or container with solid waste generated from inside the boundary, unless the facility is provided with documentation establishing the weight of the solid waste generated from inside the boundary.

CANBY TRANSFER & RECYCLING, INC.

METRO

By: DocuSigned by:
Andrew Kahut
D35430D4DE954CB...

Name: Andrew Kahut

Title: President

Date: November 9, 2020

By: DocuSigned by:
Roy Brower
8224FD6101684FC...

Name: Roy W. Brower

Title: Waste Prevention and Environmental Services Director

Date: November 9, 2020
