



Designated Facility Agreement

METRO CONTRACT No. 936521

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 Cowlitz County, a political subdivision of the State of Washington (the "County"), and operator of the Cowlitz County Headquarters Landfill (the "landfill") located at 3434 Silverlake Road, Castle Rock, Washington 98611, (collectively, the "parties") and is entered into under the authority of ORS 268.317 and Metro Code Section 5.05, and under the authority of RCW 39.34 and RCW 36.58, and Chapters 173-304, 173-350 and 173-351 WAC.

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 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 Cowlitz County Headquarters 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 County and Metro agree as follows:

1. Acceptable Metro Area Waste.
 - a. The County may accept the following types of Metro area waste:
 - (1) Putrescible waste
 - (2) Processing residual
 - (3) Cleanup material

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- (4) Disaster debris if authorized in writing by Metro
 - (5) Inert waste
 - (6) Special waste
 - (7) Built-up roofing
 - (8) Useful material.
- b. The County may not accept Metro area waste other than that permitted by this Agreement unless Metro authorizes the acceptance under a non-system license.

2. Prohibited Metro Area Waste.

- a. Except as provided in Section 1 of this Agreement or otherwise authorized in writing by Metro, the County must not accept:
- (1) Metro area waste not identified in Section 1
 - (2) Source-separated recyclable material
 - (3) Non-putrescible waste that has not undergone material recovery at a Metro designated facility
 - (4) Any material or waste prohibited by the Washington State Department of Ecology or Cowlitz County.

3. Regional System Fee and Excise Tax.

- a. Each month the County 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 County receives (unless the waste is subject to an exemption as described in Section 8). The County must pay all fees by a Metro-approved method in accordance with Metro Code Section 5.02.
- b. Each month the County 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 County receives (unless the waste is subject to an exemption as described in Section 8). The County must pay all taxes by a Metro-approved method in accordance with Metro Code Section 7.01.
- c. The County must properly classify Metro area waste for the purpose of collecting regional system fee and excise tax from the persons utilizing County's landfill.

4. Term of Agreement.

The term is from January 1, 2021 through December 31, 2025, unless terminated earlier

5. County Operating Plan.



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- a. The County must submit to Metro, for Metro's review and written approval, an operating plan ("Metro Plan") that describes the County's procedures for managing Metro area waste. The Metro Plan must describe how the County will comply with the requirements of this Agreement. The County must maintain a copy of the Metro Plan on its premises and at a location where County personnel and Metro have access to it.
 - b. The Metro Plan must describe how the County will identify whether Metro area waste is acceptable under Section 1 and must include the criteria used for the 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 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;
 - (5) Procedures for managing and transporting to appropriate facilities any prohibited Metro area waste discovered at the County's landfill; and
 - (6) Any other measures to ensure compliance with this Agreement.
 - c. The County 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 County 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 County's failure to comply with a material provision of the Metro Plan is a breach of this Agreement.
6. Record Keeping and Audits.
- a. The County must maintain complete and accurate records of all waste received, processed, transported or disposed at the site. The County must make these records available to Metro for inspection, auditing, and copying. The County must use sequentially numbered transaction tickets and must archive voided or canceled tickets for three years or as required by the Washington Secretary of State,



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whichever is longer.

- b. the County must maintain records of all Metro area waste that include the information specified in *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 County must comply with the latest requirements.
- c. The County must maintain waste profiles, waste analysis plans, special waste permits, Safety Data Sheets, or other documents that identify waste on the premises for the following types of Metro area waste: special waste, cleanup material, and useful material. The County must maintain these records on the premises and make these records available to Metro for inspection, auditing, and copying upon request. The County shall maintain such records for three (3) years or as required under document retention schedules of Washington Secretary of State, whichever is longer.
- d. Metro may require, at Metro's expense, that the County submit to an independent audit conducted by an auditor chosen by Metro. The audit will address only those matters reasonably related to this Agreement and shall be subject to the confidentiality conditions set forth in Section 13.

7. Reports and Obligations.

- a. The County must report information to Metro 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*. In addition to these reporting requirements, the County must include the field titled Special Waste Permit Number for all special waste transactions received by the County as designated in the above referenced document.
- b. The County must report to Metro the records required under Section 7 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. The County must post a sign at the landfill scale house directing all persons and businesses disposing of Metro area waste to declare the origin of the solid waste. The County must post the sign so that it is readily visible and legible to persons upon arrival at the scale house. The County must provide a map of the Metro area to persons accessing the landfill upon request.
- d. The County must notify Metro regarding all permits relating to operations at the



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landfill, including without limitation, land use applications, appeals, or modifications. The County must provide copies of revisions to existing permits and newly issued permits to Metro within seven business days of Metro's request. The County also must provide, within seven business days of issuance, a copy of any official enforcement action regarding the County's landfill or its operation, including without limitation, a notice of violation or noncompliance with a statute, regulation, or permit condition.

- e. Upon request, the County must provide Metro with available information for Metro to complete a quarterly *Solid Waste Disposal Report/Fee Calculation* form within two working days of providing the information to the Washington Department of Ecology.

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

- 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 useful material exemption from the regional system fee under Metro Code Title VII, the County must submit a written request for the exemption to Metro for review and written approval. The County must receive written Metro approval before allowing an exemption under this section. The County'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 County intends to use and will use the useful material productively in the operation of the County;
 - (3) Documentation demonstrating that the County will accept the useful material at no charge;
 - (4) If the County intends to use the useful material as alternative daily cover, documentation demonstrating that Washington State Department of Ecology or County has approved use of the material as alternative daily cover at the County's landfill;
 - (5) A description of how the County will manage the useful material, including without limitation an explanation, if applicable, of how the County will store the useful material before use; and
 - (6) An estimate of the proposed tons of useful material the County expects to accept.
- b. It is a breach of this Agreement if the County fails to comply with its useful material management plan.



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

a. The County may collect and remit a reduced regional system fee and excise tax rate, as 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 in Section 9a, the County must not allow a reduced regional system fee and a reduced excise tax rate for any Metro area waste unless Metro has approved in writing that the waste is subject to the reduced fee and tax rate. The County may 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 Washington State Department of Ecology or Cowlitz County has authorized the landfill to accept the 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 County 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 by a court of competent jurisdiction or an authorized regulatory agency that the County is in violation of applicable federal, State of Washington, regional and local laws, rules, regulations, ordinances, orders,



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and permits constitutes a breach of this Agreement and constitutes good cause for termination of this Agreement under Section 16. Washington State Department of Ecology or County termination or failure to renew the County's Solid Waste Handling Operating Permit constitutes good cause for termination of this Agreement under Section 16.

11. Right of Inspection.

- a. The County must allow Metro access to the County's landfill, during normal business hours, to inspect and subject to Section 11(e) of this Agreement, at all reasonable times to inspect and carry out other necessary functions under this Agreement. The County 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 County; 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 reports under this Agreement are derived. The review may take place at an office of the County's Department of Public Works.
- c. The County 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 County's cooperation must include, without limitation, providing Metro with requested information in the County's possession regarding matters under investigation and making County representatives available to testify in deposition, in court, at a contested case hearing, and in any subsequent appeals.
- d. The County 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 County'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 County must provide a reasonable means to segregate individual loads of processing residual at a safe location away from the working face where Metro can conduct analysis



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of the processing residual.

- e. Metro, in conducting its inspections, shall at all times comply with all federal, Washington state, regional and local laws, and the County's safety rules and procedures, and be accompanied by a County employee. The County shall have an employee available to accompany Metro on its inspection, in accordance with the notification procedures, above.

12. Indemnification.

- a. The County shall 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 attorneys' fees, to the extent resulting from or arising out of the acts, errors, or omissions of County or its assignees acting pursuant to the terms of this Agreement. No liability shall attach by reason of entering into this contract, except as expressly provided herein.
- b. Metro shall indemnify, defend, and hold harmless the County, its officers, employees, and agents from all claims, demands, suits, actions, losses or expenses of any nature, including attorneys' fees, 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. No liability shall attach by reason of entering into this contract, except as expressly provided herein.

13. Confidentiality.

- a. Metro acknowledges the confidential and proprietary nature of the names of persons or entities generating or delivering waste to the County and the types and quantities of waste generated or delivered by the persons or entities (or "confidential information") which the County is required to submit to Metro under section 7, above. Metro acknowledges that, although the County is not obligated by law to submit this information, the County is voluntarily obliging itself to do so pursuant to this Agreement. Metro also acknowledges that the confidential information may involve a "trade secret" or other exemption from public disclosure under Oregon law because it is currently known only by the County, is used by the County in its business, has commercial value, involves protected legal interests of the County, and gives the County a business advantage over competitors not possessing the 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 its solid waste



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management functions. Metro hereby 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 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 unless required to do so to fulfill a public disclosure request for documents under the laws of Oregon, or to any person at Metro who does not have a reasonable need to obtain confidential information for Metro's solid waste management purposes and who acknowledges that it is confidential information. 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, including 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 the aggregations or summaries the persons or other entities generating and delivering waste to the County or the types and quantities of waste that specific persons or other entities generate or deliver to the County. Metro will notify the County 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 shall endeavor to notify the landfill in writing at least ten (10) business days before releasing the information.
- d. When submitting to Metro the confidential information specified in this Agreement, the landfill must mark the materials "CONFIDENTIAL." If the County provides Metro with information that is not marked "CONFIDENTIAL," Metro has no obligation to treat the 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 a court of competent jurisdiction requires release of this information, the County is no longer required to submit the information to Metro. In this



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instance, upon request, the County nevertheless agrees to provide to Metro the names of specific generators or transporters, and the types and quantities of waste delivered by the persons or entities, for Metro's use in enforcing the Metro Code against the persons or entities, when Metro has a 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 either Party finds that the other Party has breached this Agreement:
 - (1) The claiming Party shall provide the breaching Party with a written notice of breach that describes the alleged breach and that includes a reasonable date by which the breaching Party must respond to the notice of breach.
 - (2) Within the reasonable period specified by the claiming Party, the breaching Party shall demonstrate that it has not breached this Agreement, that the breach has been corrected, or that it is making diligent efforts to correct the breach and is likely to succeed in a reasonable period of time.
 - (3) If the claiming Party determines that the breaching Party has failed to remedy a breach or diligently pursue effective remediation of the breach, the breaching Party may seek to terminate the Agreement.
 - (4) The Parties shall attempt resolve any dispute arising under this section by informal mediation before a panel comprised of a mediator chosen by each Party and a third mediator agreed upon by the two Parties. The panel shall attempt to resolve the dispute between the Parties through discussion and negotiation among the panel members. There shall be no formal presentation of evidence or argument to the panel. Decisions of the panel shall not be binding. All discussions and negotiations among the panel members shall be considered "mediation confidential privileged" to the maximum extent permissible under ORS Chapter 36 and OAR 731-001-720, and RCW 42.56, and other applicable laws of Washington and Oregon.

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



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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 a state or federal administrative agency or board, or 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, transferred or disposed at the landfill.

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 must constitute good cause for termination of this Agreement.
- b. The County may terminate this Agreement for good cause provided that the termination must commence no sooner than (30) days after the County provides Metro with written notice of the County's intent to terminate.
- c. Either Party may terminate this Agreement for any reason after providing 180-day prior written notice to the other Party, with the Agreement continuing through the end of the calendar year in which the right to terminate became effective after the 180-day notification period.

17. General Conditions.

- a. The landfill must be 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 County, nor vest any right or privilege in the County to receive specific quantities of Metro area waste during the term of this Agreement.
- c. Neither party may transfer or assign this Agreement without the prior written approval of the other party, which may not unreasonably withhold consent to assignment.

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- d. The County must inform Metro of any change in ownership of its landfill.
- 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 by a legally authorized representative. If the County is making the waiver, it must be signed by a legally authorized representative of the County. 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. All issues of law relating to the governmental authority, and the sovereign and governmental immunities and liabilities of the County shall be resolved and enforced according to the laws of the State of Washington, without resort to any jurisdiction's conflict of law rules or doctrines. Further, County and its officers, agents and employees shall be subject to no liability or obligation arising out of this Agreement that would not be recognized and enforced against them by the courts of the State of Washington. All issues of law relating to the governmental authority, and the sovereign and governmental immunities and liabilities of METRO shall be resolved and enforced according to the laws of the State of Oregon, without resort to any jurisdiction's conflict of law rules or doctrines. Further, Metro and its officers, agents and employees shall be subject to no liability or obligation arising out of this Agreement that would not be recognized and enforced against them by the courts of the State of Oregon.
- g. In the event of any controversies arising under this Agreement, the matter shall be resolved by giving precedence in the following order:
 - (1) Metro Code Sections specifically noted within the agreement;
 - (2) Applicable state laws; and
 - (3) Any other provision of the agreement, including materials incorporated by reference.
- h. 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.
- i. 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 RCW 1.16.050, and ORS 187.010 and 187.020, as amended.
- j. This Agreement is the entire agreement between parties, and supersedes all prior agreements between them related to the subject matter hereof.



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18. Definitions.

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

- a. "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 Washington State Department of Ecology or Cowlitz County.
- b. "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.
- c. "Disaster debris" means solid waste generated by a natural or human disaster.
- d. "Metro area waste" means solid waste generated from within the Metro jurisdictional boundary, including solid waste generated from outside the boundary if mixed in the same vehicle or container with solid waste generated from inside the boundary, unless the County is provided with documentation establishing the weight of the solid waste generated from the Metro boundary.

19. Notices.

- a. Any notice required or permitted to be given under this agreement by one Party to the other shall be in writing and shall be given and deemed to have been given immediately if delivered in person to the address and to the contact person set forth in this section for the respective party to whom the notice is given, or on the fifth day following mailing if placed in the United States Mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the respective contact party at the address set forth below. After the notifying Party gives notice to the other party, this other party will immediately give notice to any of its assignees if affected by the notice.
- b. The address and contact, legal representative for County for all purposes under this agreement and for all notices hereunder shall be:

Public Works Director
Cowlitz County Public Works
1600 13th Ave. S.
Kelso, WA 98626

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- c. The address and contact, legal representative for Metro for all purposes under this agreement and for all notices hereunder shall be:


Metro, Waste Prevention and Environmental Services Dept.
Standards and Compliance Manager
600 NE Grand Ave.
Portland, OR 97232

- d. Each Party may seek to change the address and contact party for notices by giving (30) days advance written notice of the change(s) to the other Party.

COWLITZ COUNTY, WASH.
BOARD OF COMMISSIONERS

METRO

By: 
Joe Gardner, Chair of the Board
(Pursuant to RCW 36.32.100 and approval of Board)

By: 
Roy W. Brower
Waste Prevention and Environmental
Services Director
Date: 10/7/2020

Date: 9-29-2020

Attest: 
Tiffany Ostreim
Clerk of the Board

