

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

# Designated Facility Agreement

---

METRO CONTRACT NO. 937410

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 Chemical Waste Management of the Northwest, Inc. (“ChemWaste”) located at 17629 Cedar Springs Lane, Arlington, Oregon 97812, (each a “Party” and collectively, the “Parties”) and is entered into under the authority of ORS 268.317 and Metro Code Chapter 5.05.

## RECITALS

WHEREAS, the territory within the jurisdictional boundary of Metro (“Metro Area”) has limited land and resources for solid waste disposal, transfer, and resource recovery; and

WHEREAS, under ORS 268.317, Metro may require generators of Metro Area Waste to make use of a solid waste system facility, as that term is defined in Metro Code Section 5.00.010, “Definitions”; and

WHEREAS, under Metro Code Chapter 5.05, no person may transport Metro Area Waste to a solid waste facility or disposal site unless it is a designated facility of the solid waste system or the person has obtained a non-system license; and

WHEREAS, a non-system license is not required to transport Metro Area Waste to a designated facility if the facility is designated by Metro to accept the waste and is in compliance with all applicable local, state, federal, and Metro regulations; and

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

WHEREAS, under Metro Code, 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 Metro Code and Metro’s Regional Waste Plan; and

WHEREAS, via Resolution No. 21-5167, the Metro Council has added ChemWaste to the list of designated facilities of the system authorized to accept Metro Area Waste.

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

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

# Designated Facility Agreement

---

## 1. Definitions.

Unless otherwise defined in this Agreement, 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 Oregon Department of Environmental Quality (“DEQ”).
- b. “Metro Area Waste” means solid waste generated from within 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 inside the Metro Area, unless ChemWaste is provided with documentation establishing the weight of the solid waste generated from inside the Metro Area.

## 2. Acceptable Metro Area Waste.

- a. ChemWaste may accept the following types of Metro Area Waste:
  - (1) Cleanup material;
  - (2) Special waste including, but not limited to, industrial solid waste, sludge, leachate, asbestos, and asbestos-containing material; and
  - (3) Useful material.
- b. ChemWaste may not accept Metro Area Waste other than that permitted by this Agreement unless Metro authorizes acceptance under a non-system license.
- c. Hazardous waste is not subject to the terms of this Agreement.

## 3. Prohibited Metro Area Waste.

- a. ChemWaste may not accept any Metro Area Waste other than that described in Section 2 or otherwise authorized in writing by Metro.
- b. ChemWaste may not accept any Metro Area Waste prohibited by DEQ or Gilliam County.

## 4. Regional System Fee and Excise Tax.

- a. Each month, ChemWaste 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 ChemWaste receives (unless the waste is subject to an exemption as described in



**Metro**

600 NE Grand Ave.  
Portland, OR 97232-2736

## Designated Facility Agreement

---

Section 9 of this Agreement). ChemWaste must remit all fees by a Metro-approved method in accordance with Metro Code Chapter 5.02.

- b. Each month, ChemWaste 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 ChemWaste receives (unless the waste is subject to an exemption as described in Section 9 of this Agreement). ChemWaste must remit all taxes by a Metro-approved method in accordance with Metro Code Chapter 7.01.
- c. ChemWaste must remit the accumulated regional system fee and excise tax to Metro by the last day of each month for the Metro Area Waste that it received in the preceding month in accordance with this Agreement and the applicable provisions of Metro Code. Metro will assess a finance charge on all delinquent regional system fee and excise tax payments as set forth in Metro Code Chapters 5.02 and 7.01.
- d. ChemWaste must properly classify all solid waste received at ChemWaste for the purpose of collecting regional system fee and excise tax for Metro Area Waste.

### 5. Term of Agreement.

The term of this Agreement is from October 1, 2022 through December 31, 2026, unless terminated earlier.

### 6. Metro Area Waste Operating Plan.

- a. ChemWaste must submit to Metro, for Metro's review and written approval, an operating plan ("Metro Plan") that describes ChemWaste's procedures for managing Metro Area Waste. The Metro Plan must describe how ChemWaste will comply with the requirements of this Agreement. ChemWaste must maintain a copy of the Metro Plan on its premises and at a location(s) where ChemWaste personnel and Metro have access to it.
- b. The Metro Plan must describe how ChemWaste will identify whether Metro Area Waste is acceptable under Section 2 of this Agreement 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 3 of this Agreement;

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

## Designated Facility Agreement

---

- (4) Procedures for managing and transporting to appropriate facilities any Metro Area Waste prohibited under Section 3 of this Agreement discovered at ChemWaste's facility;
      - (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. ChemWaste 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. ChemWaste 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. ChemWaste's failure to comply with the Metro Plan is a breach of this Agreement.
7. Record Keeping and Audits.
  - a. ChemWaste must maintain complete and accurate records of all solid waste received, processed, transferred, or disposed at the site, regardless of the point of generation. 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 ChemWaste must comply with all revised reporting requirements upon notification in writing by Metro.
  - b. ChemWaste must make all of the records specified in subsection (a) above available to Metro for inspection, auditing, and copying. ChemWaste must use sequentially numbered transaction tickets and must retain voided or canceled tickets for three years for all solid waste received, processed, transferred, or disposed at the site, regardless of the point of generation. Failure to comply with subsections (a) and/or (b) of this Section constitutes a breach of this Agreement.
  - c. ChemWaste must maintain waste profiles, waste analysis plans, special waste permits, safety data sheets, or other documents that identify waste for the following types of Metro Area Waste: special waste, cleanup material, and useful material. ChemWaste must maintain these records on the premises, and make the records available to Metro for inspection, auditing, and copying upon request.



**Metro**

600 NE Grand Ave.  
Portland, OR 97232-2736

## Designated Facility Agreement

---

- d. Metro may require, at Metro's expense, that ChemWaste submit to an independent audit conducted by a consultant chosen by Metro. The audit must address only those matters reasonably related to this Agreement.
8. Reports and Obligations.
- a. ChemWaste must report information required by Section 7 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, ChemWaste must include the field titled Special Waste Permit Number, for all special waste transactions received by ChemWaste, as designated in the above referenced document.
  - b. ChemWaste must report to Metro the records required under Section 7a in a format prescribed by Metro, no later than 15 days following the end of each month.
  - c. ChemWaste must notify Metro regarding all permits relating to its operations at the landfill, including without limitation, land use applications, appeals, or modifications. ChemWaste must provide copies of revisions to existing permits and newly issued permits to Metro within seven business days of receipt. ChemWaste also must provide, within seven business days of receipt, a copy of any official enforcement action regarding ChemWaste or its operation, including without limitation, a notice of violation or noncompliance with a statute, regulation, or permit condition.
  - d. ChemWaste 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.
  - e. ChemWaste must provide Metro with copies of all DEQ tonnage reports that document the amount of solid waste received or disposed at the facility within two business days of providing this information to DEQ.
9. Useful Material Exemption from the Regional System Fee and Excise Tax.
- a. Before allowing a customer to claim a useful material exemption from the regional system fee under Metro Code Chapter 5.02 and from excise tax under Metro Code Chapter 7.02, ChemWaste must submit a written request for the exemption to Metro for review and written approval. ChemWaste must receive written Metro approval before allowing an exemption under this Section. ChemWaste's request must include a useful material management plan that incorporates the following information:



**Metro**

600 NE Grand Ave.  
Portland, OR 97232-2736

## Designated Facility Agreement

---

- (1) A description of the useful material and where it was generated;
  - (2) Documentation demonstrating that ChemWaste intends to use and will use the useful material productively in the operation of the landfill;
  - (3) Documentation demonstrating that ChemWaste will accept the useful material at no charge;
  - (4) If ChemWaste intends to use the useful material as Alternative Daily Cover, documentation demonstrating that DEQ has approved use of the material as Alternative Daily Cover at the landfill;
  - (5) A description of how ChemWaste will manage the useful material, including without limitation an explanation, if applicable, of how ChemWaste will store the useful material before use; and
  - (6) An estimate of the proposed tons of useful material ChemWaste expects to accept.
- b. It is a breach of this Agreement if ChemWaste fails to comply with its useful material management plan.
10. Reduced Regional System Fee and Excise Tax Rate for Cleanup Material.
- a. ChemWaste may collect and remit a reduced regional system fee and a reduced excise tax rate, as approved in writing by Metro, for cleanup material originating from within the Metro Area if the cleanup 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 10a, ChemWaste must not allow a reduced regional system fee or 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. ChemWaste 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;

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

## Designated Facility Agreement

---

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

### 11. Compliance with Law.

- a. ChemWaste must fully comply with all applicable provisions of Metro Code. Those provisions are incorporated into this Agreement by reference as if specifically set forth in this Agreement. Any finding that ChemWaste is in violation of any provision of Metro Code is a breach of this Agreement and may disqualify ChemWaste from participation in other Metro programs.
- b. Any finding that ChemWaste is in violation of applicable federal, state, regional, or local laws, rules, regulations, ordinances, orders, or permits constitutes a breach of this Agreement. DEQ's termination of or failure to renew ChemWaste's Hazardous Waste Permit constitutes cause for immediate termination of this Agreement under Section 17b.

### 12. Right of Inspection.

- a. ChemWaste must allow Metro access to its premises at all reasonable times to inspect and carry out other necessary functions under this Agreement. ChemWaste authorizes Metro access to inspect:
  - (1) Without notice during hours when ChemWaste accepts, processes, or disposes solid waste;
  - (2) At other reasonable times upon written notice given by Metro to ChemWaste; 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

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

## Designated Facility Agreement

---

may take place at an office of ChemWaste or affiliated company located in or near the Metro Area.

- c. ChemWaste must cooperate with Metro regarding Metro's investigation of possible infractions of 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. ChemWaste's cooperation must include, without limitation, providing Metro with requested information in ChemWaste's possession regarding matters under investigation and making ChemWaste representatives available to testify in deposition, in court, at a contested case hearing, and in any subsequent appeals.

### 13. Indemnification.

- a. ChemWaste must indemnify, defend, and hold harmless Metro and Metro's agents, employees, and elected officials from and against any and all liabilities, claims, demands, damages, actions, costs, penalties, losses, and expenses (including any attorney's fees in defense of Metro or any attorney's fees incurred in enforcing this provision) arising out of or in any way connected with, ChemWaste's performance under this Agreement.
- b. Metro may indemnify, defend, and hold harmless ChemWaste, 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.

### 14. Confidentiality.

- a. Metro acknowledges the confidential and proprietary nature of the names of persons or entities generating or delivering waste to ChemWaste and the types and quantities of waste generated or delivered by persons or entities which ChemWaste is required to submit to Metro. Metro acknowledges that, although ChemWaste is not obligated by law to submit such information, ChemWaste 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 ChemWaste, is used by ChemWaste in its business, has commercial value, and gives ChemWaste a business advantage over competitors not possessing such information. The ability of competitors of ChemWaste 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



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

## Designated Facility Agreement

---

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, 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 14a and 14b, Metro may use confidential information obtained under this Agreement for solid waste management purposes. Those purposes include solid waste tracking and forecasting, enforcement of 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 aggregations or summaries the persons or other entities generating and delivering waste to ChemWaste or the types and quantities of waste that specific persons or other entities generate or deliver to ChemWaste. Metro will notify ChemWaste within five business days of Metro's receipt of a request for confidential information from a third party.
- d. When submitting to Metro the confidential information specified in this Agreement, ChemWaste must mark such materials "CONFIDENTIAL." If ChemWaste provides Metro with information that is not marked "CONFIDENTIAL" as such through this Agreement, Metro has no obligation to treat that information as confidential information. Metro will treat as confidential any information so marked and will make a good faith effort not to disclose such information unless Metro's refusal to disclose such information would be contrary to applicable Oregon law, including, without limitation, ORS Chapter 192. 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 obtained from this Agreement is no longer exempt from public disclosure, or if an Oregon district attorney or a court of competent jurisdiction requires release of such information, ChemWaste is no longer required to submit this information to Metro. In this instance, upon request, ChemWaste 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 Metro Code against persons or entities, when Metro has reasonable

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

## Designated Facility Agreement

---

suspicion that a violation has occurred. Metro will comply with the required release unless ChemWaste directs that it will appeal the required release at its own expense.

### 15. Breach and 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 ChemWaste has breached this Agreement:
  - (1) The COO will provide ChemWaste with a written notice of breach that describes the alleged breach and that includes a date by which ChemWaste must respond to the COO's notice;
  - (2) Within the period specified by the COO, ChemWaste must demonstrate that ChemWaste has not breached this Agreement, that the breach has been corrected, or that ChemWaste 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 ChemWaste has failed to remedy a breach of this Agreement, ChemWaste must pay Metro liquidated damages in the amount of \$500 per day until ChemWaste 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 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.

### 16. Agreement Amendment and Suspension.

The COO may amend 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 ChemWaste knowingly accepted prohibited Metro Area Waste or misrepresented the nature or identification of Metro Area Waste; or

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

## Designated Facility Agreement

---

- 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 ChemWaste's facilities; or
  - (2) May no longer allow a waste type to be received, processed, transferred or disposed at ChemWaste.

### 17. Termination.

This Agreement may be terminated as provided in this Section.

- a. At any point after Metro begins to assess liquidated damages under Section 15, Metro may terminate this Agreement immediately in its sole discretion.
- b. Any Metro Council action to remove ChemWaste from the designated facilities list, or DEQ's termination of or failure to renew ChemWaste's Hazardous Waste Permit, constitutes cause for immediate termination of this Agreement.
- c. Either Party may terminate this Agreement upon 30 days' written notice of the intent to terminate.

### 18. General Conditions.

- a. ChemWaste 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 landfill, nor vest any right or privilege to receive specific quantities of Metro Area Waste during the term of this Agreement.
- c. ChemWaste may not transfer or assign this Agreement without the prior written approval of Metro. Metro will not unreasonably withhold consent to assignment.
- d. ChemWaste 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 ChemWaste is making the waiver, it must be signed by a legally authorized representative of ChemWaste. 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.



**Metro**

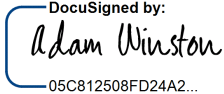
600 NE Grand Ave.  
Portland, OR 97232-2736

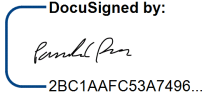
# Designated Facility Agreement

- 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. This Agreement is the entire agreement between the Parties on the subject.

**CHEMICAL WASTE  
MANAGEMENT OF THE  
NORTHWEST INC.**

**METRO**

By:   
 Name: Adam Winston  
 Title: Director  
 Date: September 6, 2022

By:   
 Name: Pamela C Peck  
 Title: Policy & Compliance Program Director  
 Date: September 7, 2022