

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ISSUING A
DESIGNATED FACILITY AGREEMENT TO
USA WASTE SERVICES, INC.,
FOR THE RIVERBEND LANDFILL

) RESOLUTION NO. 99-2854
)
) Introduced by Mike Burton
) Executive Officer

WHEREAS, Section 5.05.030(b) of Metro Code authorizes the Council to add facilities to the list of designated facilities set forth in Section 030(a) of Metro Code Chapter 5.05; and

WHEREAS, The owner of Riverbend Landfill has made application to Metro requesting designated facility status for Riverbend Landfill, located in Yamhill County Oregon; and

WHEREAS, Based on information in the staff report accompanying this Ordinance, the Metro Council finds that the nine criteria set forth in Metro Code Chapter 5.05.030(b) for determining whether to add a designated facility have been met; and

WHEREAS, the Ordinance was submitted to the Executive Officer for consideration and was forwarded to the Council for approval; now, therefore,

THE METRO COUNCIL RESOLVES AS FOLLOWS:

That the Executive Officer shall be authorized to enter into a designated facility agreement with USA Waste Services for Riverbend Landfill and that such agreement shall be in a form substantially similar to the attached "Exhibit A."

ADOPTED by the Metro Council this _____ day of _____, 1999

Rod Monroe, Presiding Officer

ATTEST:

Approved as to Form:

Recording Secretary

Daniel B. Cooper, General Counsel

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STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 99-2854 FOR THE PURPOSE OF ISSUING A DESIGNATED FACILITY AGREEMENT TO USA WASTE SERVICES, INC., FOR THE RIVERBEND LANDFILL

Date: October 06, 1999

Presented by: Terry Petersen
Leann Linson

Except under the authority of non-system licenses, solid waste generated within the boundaries of Metro must be disposed of at Metro designated facilities. The current list of designated facilities is set forth in section 5.05.030(a) of the Code. The Code provides for the designation of additional solid waste facilities by the Council. Ordinance 92-476 set forth the criteria to be considered in determining whether to designate additional facilities. Each of these criteria are addressed in this staff report with findings specific to the Riverbend Landfill:

(1): The degree to which prior users of the facility and waste types accepted at the facility are known and the degree to which such wastes pose future risk of environmental contamination.

Riverbend Landfill is a general purpose landfill that has operated under a license agreement with Yamhill County since October 1994. Prior to that time, Riverbend operated under a County Franchise Agreement. Since its inception, Riverbend has operated under the authority of a solid waste disposal permit issued by the Oregon Department of Environmental Quality (DEQ).

Under Riverbend's license agreement with Yamhill County, Riverbend provides the County with monthly reports outlining the following information: tonnage of acceptable waste from within the county, tonnage of acceptable waste from outside the county, tonnage of industrial waste from within the county, tonnage of beneficial use material from within the county, tonnage of beneficial use material from outside the county, and monthly license fee payment information.

The landfill contains approximately 11 acres of unlined cells that pre-date 1991 federal Subtitle D requirements. While bag-house dust was disposed of in some of these unlined cells, DEQ is not aware of the disposal of any other materials that might pose potential future risks of environmental contamination. In 1994, the unlined cells were capped with a composite cover system including an HDPE membrane.

The majority of waste delivered to the Riverbend facility is municipal solid waste, primarily from Yamhill, Tillamook, Clatsop, Columbia, Washington and Clackamas Counties. The landfill also receives special wastes, primarily petroleum contaminated soils, from all over the state of Oregon.

(2): The record of regulatory compliance of the facility's owner and operator with federal, state and local requirements.

Riverbend Landfill is currently in compliance with its license agreement with Yamhill County and has filed reports and paid appropriate license fees to Yamhill County in a timely manner. According to Yamhill County, Riverbend Landfill has provided necessary information to the County in response to complaints and has been proactive in modifying operations to reduce nuisances. Riverbend Landfill has a DEQ Solid Waste Disposal Permit, and is operating in conformance with the terms and conditions of its permit.

For a short time on one night in April 1997, harmonic vibrations caused by excess air entering the landfill's gas collection flare system disturbed a number of residents who live near the landfill. The incident occurred during an upgrade of the system, and is not expected to recur. The landfill operators responded quickly to remedy the situation.

During the last six years, four notices of non-compliance have been issued to the facility by the DEQ. All of these notices were for minor violations, and all were quickly resolved. The facility operators have consistently cooperated with the DEQ and Yamhill County. Riverbend Landfill meets or exceeds all Subtitle D requirements. Regulatory staff at the DEQ describe the landfill as well-built and environmentally-sound.

(3): The record of the facility regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement.

Riverbend Landfill is outside the jurisdiction of Metro ordinances, and has not been party to an agreement with Metro.

(4): The adequacy of operational practices and management controls at the facility.

Riverbend Landfill is authorized by the Department of Environmental Quality to receive municipal mixed solid waste for disposal. The facility has gone through a rigorous permitting process and demonstrated that it is in conformance with state and federal regulations. The site is equipped with surface water run-on/run-off control systems, liners, leak detection systems, leachate collection and treatment systems, and landfill gas measurement systems.

Elevated concentrations of volatile organic compounds (VOCs) were recorded in a single groundwater well at the landfill in 1993. Installation of a landfill gas collection system after this incident caused the levels of VOCs within the groundwater monitored by this well to be reduced to legally acceptable limits.

DEQ performs unannounced inspections at least bi-monthly to determine whether the landfill is being operated in accordance with the conditions of its DEQ Solid Waste Disposal Permit. There are no outstanding violations at the facility.

Willow Creek Associates, a consulting firm hired by Metro to assess options available to Metro concerning the disposition of waste from the Forest Grove Transfer Station (September 16, 1997), reviewed Riverbend Landfill's environmental strengths and weaknesses. The Willow Creek project team visited the landfill and observed its operations. They concluded that the landfill is operated by a large national company that has specialized expertise in the construction and operation of solid waste landfills; that the site has a competent and experienced site manager that is responsible for its operation; and that on the day of their visit, in the opinion of the Willow Creek Associates project team, the site was well run and operating efficiently. No items were observed that threatened public health or the environment.

(5): The expected impact on the region's recycling and waste reduction efforts.

The approval of this Designated Facility Agreement is not expected to have an impact on recycling and waste reduction efforts.

(6): The expected impact on Metro's revenue.

No revenue impacts are expected, since present Metro region users of the landfill are currently paying user fees to Metro under non-system licenses.

(7): The consistency of the designation with Metro's existing contractual arrangements.

Designated Facility Status for Riverbend Landfill is not inconsistent with any existing contractual arrangements.

(8): The need for additional disposal capacity and the effect on existing designated facilities.

Unless specific additional authority is granted by Metro, the proposed Designated Facility Agreement authorizes only the receipt of dry waste except for putrescible waste delivered from the Forest Grove Transfer Station. The Riverbend Landfill may receive a greater tonnage of putrescible waste tonnage as a result of Change Order 8 to the Metro Solid Waste Disposal Contract and an associated amendment to the Forest Grove Transfer Station Franchise. However, REM staff do not foresee a significant change in the volume of waste received by this facility solely as a result of granting it designated facility status. For this reason, approval of designated facility status for Riverbend Landfill is not expected to have an effect on existing designated facilities.

(9): Other benefits or detriments accruing to residents of the region from Council action in designation of a facility.

Vehicle emissions from transporting waste from the Forest Grove Transfer Station to Riverbend and Columbia Ridge Landfills were calculated by the DEQ using an EPA highway vehicle emission factor model. Their conclusion was that truck emissions were generally three times greater to transport refuse to Columbia Ridge Landfill than to Riverbend Landfill. However, they concluded that the difference in emissions was not significant when compared to the large volume of motor vehicle emissions already being released into the airsheds along these routes (Willow Creek Associates, Assessment of Metro Options for Disposition of FGTS Waste, 1997).

The primary benefit anticipated from designation of this facility is that REM would obtain tonnage data previously unavailable to the department. Access to this data will strengthen REM's forecasting and modeling capacities, allowing REM to better manage the regional solid waste disposal system.

EXECUTIVE OFFICER RECOMMENDATION:

The Executive Officer recommends the issuance of a Designated Facility Agreement to USA Waste Services, Inc., for the Riverbend Landfill.

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AGREEMENT

This Agreement is between Metro, a municipal corporation organized under ORS Chapter 268 and the 1992 Metro Charter, referred to herein as "Metro", located at 600 NE Grand Avenue, Portland, Oregon 97232-2736, and USA Waste Services, Inc., located at 3205 SE Minter Bridge Road, Hillsboro, Oregon 97213, referred to herein as "Company."

This Agreement is entered into by Metro under the authority of ORS 268.317, and Metro Code Chapter 5.05. Company enters into this Agreement in recognition of the "Designated Facility" status conferred upon Riverbend Landfill in Yamhill County, Oregon by Metro Resolution No. 99-2854

In exchange for the promises set forth below, the parties agree as follows:

1. Purpose and Authority. The purpose of this Agreement is to establish the terms under which Company may receive, at its Riverbend Landfill (herein "Facility"), the types of waste specified in Section 3 of this Agreement that were generated within Metro boundaries.
2. Duration. Unless terminated sooner as specified herein, this Agreement shall remain in effect for eighteen (18) months from the date of execution by both parties. Subsequent renewals will be for a term of two years. To avoid unnecessary disruption while Metro considers possible renewal of this Agreement, if Company has not received written notice of termination from Metro on or before the eighteen month term of this Agreement, this Agreement shall continue in effect until such notice is provided to Company.
3. Waste That May be Accepted at the Facility.
 - a. Pursuant to this Agreement, and to the extent that the Facility has legal authority to accept such waste, the Facility may accept only the following types of waste generated within Metro boundaries:
 - (1) Construction, demolition, land-clearing debris and dry commercial waste.
 - (2) Non-hazardous industrial dust.
 - (3) Asbestos.

- (4) Contaminated soil and other non-putrescible debris from clean-up of petroleum or other non-hazardous chemical spills.
 - (5) Special waste as defined in Section 5.02.015(s) of the Metro Code. In all instances, Section 5.02.015(s) shall be construed by both parties as limited to waste that requires special handling or testing prior to disposal at a Metro facility or at a landfill.
 - (6) All solid waste transferred from the Forest Grove Transfer Station.
 - (7) Disaster debris as may be specifically authorized by the Metro Council.
 - (8) Other waste as described in any future addendum to this Agreement and approved by the Metro Council.
- b. This Agreement shall not be construed to allow disposal at the Facility of other types of waste not listed in Section 3.a., generated within Metro boundaries.

4. Record keeping and Audits.

Company shall maintain complete and accurate records regarding all solid waste transported, treated, disposed of, or otherwise processed pursuant to this Agreement, and shall make such records available to, or send copies to, the Metro Regional Environmental Department or its duly designated agents for inspection, auditing and copying upon not less than seven days written notice from Metro. Pre-numbered tickets shall be used for all transactions, in numerical sequence, and voided or canceled tickets shall be retained.

5. Reports and Information.

- a. Company shall report in the form of electronic records encoded on 3.5" data diskettes, the following information:
- (1) Record numbers designating individual incoming loads.
 - (2) Customer account numbers.
 - (3) Date each load is received at the Facility.
 - (4) Time each load is received at the Facility.
 - (5) Net weight of each load.

- (6) Designation of each load in to one of the categories listed in Section 3.
 - (7) Whether each load originated from inside or outside the Metro boundary.
 - (8) Whether the material is used for alternative daily cover, road base, or other purposes beneficial to the maintenance of the facility.
- b. Records required under Section 5a shall be reported to Metro no later than fifteen (15) days following the end of each month, in the format prescribed by Metro. Transaction data shall be in electronic form compatible with Metro's data processing equipment.
 - c. Company shall post a sign at the scalehouse directing all customers disposing of waste generated within the Metro boundary to declare the origin of the waste. The Company shall provide a map of the Metro region to any customer that requests one.
 - d. Company shall provide to Metro copies of all permits covering the Facility of operations at the Facility. Copies of revisions to existing permits and newly issued permits shall be provided to Metro within seven (7) business days of receipt. Company shall also provide, within ten (10) business days, a copy of any official enforcement action regarding the Facility or its operation, including, but not limited to, a notice of violation or non-compliance with a statute, regulation, or permit condition.
6. System Fee/Excise Tax.
- a. Company shall collect System Fees as specified in Section 5.02 of the Metro Code and Excise Taxes as specified in Section 7.01 of the Metro Code and make payment to Metro no later than fifteen (15) days after the last day of each month. Company shall use reasonable business judgment in allowing generators or transporters of waste to dispose of waste at its Facility on a credit basis, and shall use reasonable legal means to collect disposal charges, including all fees and taxes owed to Metro. If Company is unable to collect disposal charges, Company may deduct uncollectable Metro fees and taxes, when an affidavit explaining the status of the uncollectable account is provided that sufficiently documents good faith collection efforts conducted by Company. If Company receives a partial payment and the remainder of the account is uncollectable, the payment received shall be pro-rated between Company's disposal charges and Metro's fees and taxes. All amounts owing to Metro that are deemed "uncollectable" and are ultimately collected shall be remitted to Metro within thirty (30) days of receipt by Company.
 - b. Excise taxes shall be due for disposal of waste at the Facility, but shall not be due for transport to the Facility, even if Company arranges that transport.

- c. Credit terms shall be as specified in the Metro Code as now in effect, or as amended.
- d. Company shall not pay the system fees and excise taxes described in this paragraph on waste received at the Facility which:
 - (1) Is accepted without charge or fee; and
 - (2) Is intended to be used for a beneficial purpose and which is, in fact, used for a beneficial purpose.

7. Modification, Suspension, and Termination.

- a. If Company fails to fully and promptly comply with a term of condition of this Agreement, the Executive Officer shall issue to Company a written notice of noncompliance briefly describing such failure. The notice shall state that, within a period specified by the Executive Officer of at least twenty (20) days, Company must demonstrate to the satisfaction of the Executive Officer either that company has not violated a term or condition of this Agreement, that the violation has been corrected, or that Company is making diligent efforts to correct the violation and is likely to succeed in a reasonable period of time. Company shall also, within the same period, pay all fines owing as a result of noncompliance or make arrangements for payment satisfactory to the Executive Officer. Failure to comply with the notice of noncompliance shall be grounds for suspension of this Agreement by the Executive Officer, effective as of 5:00 p.m. on the last day of the compliance period specified by the Executive Officer, until such time as the Executive Officer issues a written finding to Company that the violation has been cured. The Executive Officer may extend the compliance period to a total of no more than sixty (60) days from the date of the notice of noncompliance, upon determining that Company is making good faith efforts to comply and is capable of complying within the extended compliance period.
- b. Metro's Executive Officer may suspend this Agreement without prior notice, as follows:
 - (1) As specified in subsection a. of this section;
 - (2) If necessary in the reasonable opinion of the Executive Officer to protect the public health, safety or welfare, and in the case of an emergency;
 - (3) If, due to a binding decision by an arbitrator or court of competent jurisdiction, Metro may be liable for damages for allowing waste of the quantity or type specified in this Agreement to be disposed of at Company's Facility, or Metro may no longer allow such waste to be disposed of at Company's Facility.

- c. The Metro Council may modify, suspend or terminate this Agreement for good cause or substantial change of circumstances, upon passage of a resolution specifying the action taken and the effective date. If this Agreement is modified by Council resolution, Company shall have thirty (30) days from the date of the resolution to acknowledge the modification by signing a written instrument containing the terms of the modification. Failure of Company to acknowledge the modification within the 30-day period, unless otherwise excused by Metro's Executive Officer, shall result in suspension of the Agreement at the close of business on the 30th day, until the modification is acknowledged in writing by Company.
- d. If the Metro Council adopts a resolution to modify, suspend, or terminate this Agreement without providing Company with reasonable notice and an opportunity to be heard prior to Council action, Company shall be entitled to a contested case hearing related to the action taken, as specified in Metro Code Chapter 2.05.
- e. Nothing in this section shall be interpreted to hinder or prevent Metro from making and enforcing policy judgments related to the flow of solid waste out of Metro boundaries, regardless of the perceived or actual impact of such decisions on Company's business. A policy judgment by Metro to limit or prevent waste generated within Metro boundaries from entering the Facility shall under no circumstances be the basis for payment of compensation by Metro to Company.

8. Compliance with Law.

Company shall fully comply with the Metro Code, as amended, and with all federal, state, regional, and local laws, as amended, rules, regulations, ordinances, orders, and permits pertaining in any manner to this Agreement. All conditions imposed on the operation of the Facility by federal, state, or local governments, or agencies having jurisdiction over the Facility are part of this Agreement by reference as if specifically set forth herein. Such conditions and permits include those attached as exhibits to this Agreement, as well as any existing at the time of issuance of this Agreement and not attached, and permits or conditions issued or modified during the term of this Agreement.

9. Right of Inspection.

- a. Authorized representatives of Metro shall be permitted access to the premises of the Facility at all reasonable times for the purpose of making inspections and carrying out other necessary functions related to this Agreement. Access to inspect is authorized:
 - (1) During all working hours;
 - (2) At other reasonable times with notice; and

- (3) At any time without notice when, in the reasonable opinion of the Metro Regional Environmental Management Director, such notice would defeat the purpose of the entry.
- b. Company shall cooperate with Metro investigations of waste haulers suspected of fraudulently claiming waste as having originated from outside the Metro boundary.
10. Indemnification. Company shall indemnify, defend, and hold Metro and Metro's agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses, and expenses, including attorney's fees, arising out of, or in any way connected with, Company's performance under this Agreement.
11. Confidentiality.
- a. Metro recognizes and 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 such persons or entities herein, ("confidential information"), which Company is required to submit to Metro under Section 5.a. of this Agreement. Metro recognizes that the confidential information specified herein is a "trade secret" and exempt from public disclosure under Oregon law because it is currently known only by Company, is used by Company in its business, and gives Company a business advantage over others not possessing such information. The ability of competitors of Company to obtain the confidential information specified herein 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 hereby obligates itself in good faith not to disclose such confidential information to any person outside of Metro except as specified herein. Access to, and use of, such information shall only be as specified in this section.
- b. At any time during and after the term of this Agreement, Metro shall not, in any manner whatsoever, either directly or indirectly, divulge, disclose, or communicate 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, or use for the personal benefit of such party, the confidential information specified in this section.
- Metro may, nevertheless, use such information for solid waste management purposes, including solid waste tracking and forecasting, enforcement of the Metro Code, or assistance to other jurisdictions in regulatory or other law enforcement. Metro may also use such confidential information in aggregations or summaries that may be released to the public, so long as it is not possible to identify from such aggregations

or summaries the persons or other entities generating and delivering waste to the Facility or the types and quantities of waste that such persons or other entities generate or deliver to the Facility. Metro shall notify Company within three (3) business days of Metro's receipt of a request for confidential information from a third party. If it becomes necessary for Metro to release confidential information to any person outside of Metro, Metro shall so notify Company in writing, at least fifteen (15) days prior to releasing such information.

- c. When submitting to Metro the confidential information specified herein, Company shall mark such materials as confidential. Metro shall keep all such material separate from its other records and materials, in the custody and control of the Metro Office of General Counsel, such 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.
- d. If Oregon law is modified such that the confidential information referenced in this section is no longer exempt from public disclosure, or if a court of competent jurisdiction requires release of such information, Company shall no longer be required to submit such information to Metro. In such instance, upon request, Company nevertheless agrees to provide to Metro the names of specific generators or transporters, and the types and quantities of waste delivered by such persons or entities, for Metro's use in enforcing the Metro Code against such persons or entities, when Metro demonstrates a reasonable suspicion that a violation has occurred.

12. General Conditions.

- a. The power and right to regulate, in the public interest, the exercise of the privileges granted by this Agreement shall at all times be vested in Metro. Metro reserves the right to establish or amend rules, regulations, or standards regarding matters within Metro's authority, and to enforce all such legal requirements against Company.
- b. Company shall be responsible for ensuring that its contractors and agents operate in complete compliance with the terms and conditions of this Agreement.
- c. The granting of this Agreement shall not confer a property right to Company, nor vest any right or privilege in Company to receive specific quantities of solid waste during the term of this Agreement.
- d. This Agreement may not be transferred or assigned without the prior written approval of Metro. Consent to assignment or transfer shall not be unreasonably withheld.
- e. To be effective, a waiver of any term or condition, or amendment to this Agreement must be in writing, signed by either the Executive Officer or an authorized officer of

the Company, as the case may be. Waiver of a term or condition of this Agreement by either party shall 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 shall be construed, applied, and enforced in accordance with the laws of the State of Oregon.
- g. If any provision of this Agreement shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this Agreement shall not be affected.
- h. This Agreement is the entire agreement between the parties. This Agreement does not allow receipt of solid waste from within the boundaries of Metro for any purpose other than disposal in accordance with this Agreement.

USA WASTE SERVICES, INC.

METRO

By: _____

By: _____

Print name and title

Print name and title

Date: _____

Date: _____

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