

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF TERMINATING THE) RESOLUTION NO. 08-4009
DESIGNATED FACILITY AGREEMENT)
ENTERED INTO BETWEEN METRO AND) Introduced by Chief Operating Officer
LAKESIDE RECLAMATION LANDFILL) Michael J. Jordan, with the concurrence of
) Council President David Bragdon

WHEREAS, Lakeside Reclamation Landfill ("Lakeside") is a designated facility of the Metro Solid Waste Flow Control system pursuant to Metro Code 5.05.030;

WHEREAS, in April 1993, Metro entered into a designated facility agreement ("Agreement") with Lakeside (Metro Contract No. 902857);

WHEREAS, the Metro Council may terminate the Agreement for good cause or a substantial change of circumstances upon passage of a resolution specifying the action taken and the effective date;

WHEREAS, the Metro Code provides that no later than November 1, 2008, the Chief Operating Officer ("COO") and Lakeside shall establish a modified designated facility agreement ("Modified Agreement") that ensures substantial compliance with the Metro Code;

WHEREAS, the COO and Lakeside failed to establish a Modified Agreement by November 1, 2008;

WHEREAS, the failure of the COO and Lakeside to establish a Modified Agreement by November 1, 2008 constitutes good cause for termination of the Agreement; and


WHEREAS, the Metro Council provided Lakeside with reasonable notice and an opportunity to be heard before taking action; now therefore

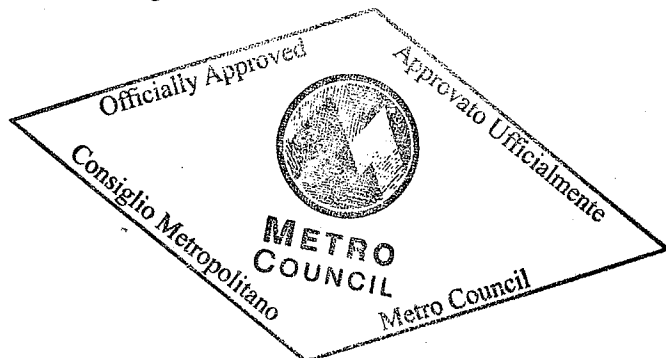
BE IT RESOLVED that the Metro Council terminates the Agreement with Lakeside effective December 31, 2008.

ADOPTED by the Metro Council this 18th day of December 2008.


David Bragdon, Council President

Approved as to Form:


Daniel B. Cooper, Metro Attorney



Resolution No. 08-4009

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STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 08-4009, FOR THE PURPOSE OF TERMINATING THE DESIGNATED FACILITY AGREEMENT ENTERED INTO BETWEEN METRO AND LAKESIDE RECLAMATION LANDFILL

Date: December 2, 2008

Prepared by: Bill Metzler

The proposed Resolution, if approved by Council, will terminate the existing designated facility agreement for the Lakeside Reclamation landfill (“Lakeside”) effective December 31, 2008.

BACKGROUND

The Metro Code describes the designated facilities of the system.¹ Lakeside is located outside the Metro Region in Washington County, Oregon and is owned by Grabhorn Inc. and has been a designated facility of the system since 1993.² Metro and Grabhorn, Inc. previously entered into a designated facility agreement (“DFA”) in which Lakeside receives certain types of solid waste generated in the Metro Region and agrees to collect and remit Regional System Fee and Excise Tax on that waste.³

In 2007, the Metro Council amended the Metro Code to require existing designated facilities, including Lakeside, to notify Metro of its intent to seek an agreement to recover non-putrescible waste from the Region or to take only processed non-putrescible waste from authorized facilities. The Chief Operating Officer (“COO”) must modify existing DFAs to ensure substantial compliance with these requirements by December 31, 2008. If the COO and a designated facility were unable to reach an agreement by November 1, 2008, the COO must terminate the existing DFA no later than December 31, 2008.⁴

In June 2008, Metro received a certification of intent from Lakeside that it would not accept only processed non-putrescible waste from the Metro Region and that it would not operate a material recovery facility. On August 29, 2008, Metro received a request for a variance from Lakeside from specific Enhanced Dry Waste Recovery Program (“EDWRP”) code provisions. On October 23, 2008, the Metro Council adopted Resolution No. 08-3990 For the Purpose of Denying a Variance Request Submitted by Lakeside Reclamation Landfill. On or about October 27, 2008, Lakeside certified its intent to enter into a new DFA.

The COO and Lakeside did not reach an agreement by November 1, 2008 to modify the existing DFA for Lakeside to ensure substantial compliance with the EDWRP Code requirements. Therefore, in accordance with Metro Code Section 5.05.030(c), the COO must terminate the existing DFA (Metro Contract No. 902857) between Metro and Lakeside as provided in the DFA. On November 26, 2008 Metro received notice of Lakeside’s intent to contest the Council’s decision to deny Lakeside’s variance request (Resolution No. 08-3990).

Under the terms of the existing DFA with Lakeside, the Metro Council may terminate the agreement by passage of a resolution specifying the action taken and effective date. Accordingly, Resolution No. 08-4009 will terminate the existing DFA with Lakeside (Metro Contract No. 902857) effective December 31,

¹ Metro Code Section 5.05.030

² Metro Code Section 5.05.030(a)(5).

³ Metro Code Section 5.05.030(a)(5) & (c); Metro Contract No. 902857

⁴ Metro Code Section 5.05.030(c). This code change is part of the Enhanced Dry Waste Recovery Program (“EDWRP”). See Ordinance No. 07-1147B.

2008. In early 2009, the Council will also consider removing Lakeside Reclamation landfill from the list of Designated Facilities of the System in Metro Code Section 5.05.030.

ANALYSIS/INFORMATION

1. **Known Opposition.** In their letter dated November 26, 2008, Lakeside requests that Metro not terminate the existing DFA.
2. **Legal Antecedents.** Chapter 5.01 and Chapter 5.05 of the Metro Code. Ordinance No. 07-1147B. Metro Contract No. 902857. Resolution No. 08-3990.
3. **Anticipated Effects.** Adoption of Resolution No. 08-4009 will terminate the existing designated facility agreement (Metro Contract No. 902857) entered into between Metro and Lakeside effective December 31, 2008.
4. **Budget Impacts.** There are no budget impacts associated with the adoption of this Resolution. Adoption of this Resolution will help enable implementation of EDWRP, whose budget impacts have already been considered by the Metro Council in its adoption of Ordinance No. 07-1147B and is not expected to alter the budget impact projection contained in the EDWRP Ordinance staff report.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Resolution No. 08-4009.