

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF ENTERING INTO)
A CONTRACT WITH THE CITY OF OREGON)
CITY PROVIDING FOR THE PAYMENT OF A)
50 CENT A TON MITIGATION AND EN-)
HANCEMENT FEE, AND REVISING THE)
TONNAGE LIMITATION AT THE)
CLACKAMAS TRANSFER & RECYCLING)
CENTER)

RESOLUTION NO. 88-938

Introduced by Rena Cusma,
Executive Officer

WHEREAS, The Metropolitan Service District has been engaged in a dispute with the city of Oregon City regarding the operation of the Clackamas Transfer & Recycling Center; and

WHEREAS, Metro and the city of Oregon City desire to resolve their dispute; and

WHEREAS, The attached Agreement between the Metropolitan Service District and city of Oregon City provides for the resolution of this dispute; now, therefore,

BE IT RESOLVED,

That the Council of the Metropolitan Service District authorizes the Executive Officer to enter into a contract in a form substantially similar with the attached Exhibit A with the city of Oregon City.

ADOPTED by the Council of the Metropolitan Service District
this 9th day of June, 1988.



Mike Ragsdale, Presiding Officer

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9656C/545
06/03/88

AGREEMENT

THIS AGREEMENT is entered into by and between the CITY OF OREGON CITY, OREGON, ("OREGON CITY"), and the METROPOLITAN SERVICE DISTRICT ("METRO"). The parties agree as follows:

A. METRO agrees to:

1. Subject to the limitations expressed elsewhere in this Agreement, pay to OREGON CITY an amount equal to 50¢ per ton for all solid waste received at the facility known as the Clackamas Transfer & Recycling Center (hereinafter "the FACILITY"), except for source separated recyclable materials. This amount shall be referred to as the "total amount." Payments to OREGON CITY shall be made according to the following provisions and shall be made on a quarterly basis.

(a) As part of the total amount paid to OREGON CITY by METRO, an amount equal to the current millage rate assessed by OREGON CITY against all property located within the boundaries of OREGON CITY times the true cash value of the FACILITY, shall be paid by METRO directly to the OREGON CITY General Fund and be subject to expenditure at the discretion of the Oregon City Commission for general governmental purposes. Such amount shall be credited against the total amount payable by METRO. The true cash value of the FACILITY shall be determined by mutual agreement of the parties. If the parties fail to agree on what the true cash value is the question of true cash value shall be determined by binding arbitration pursuant to the rules of the American Arbitration Association. For the purpose of this section "FACILITY" shall include the entire real property and all improvements thereon.

(b) The balance of the total amount payable by METRO shall be deposited in a separate, dedicated fund for the purpose of rehabilitation and enhancement of the area around the transfer station within the city limits of Oregon City as determined by OREGON CITY pursuant to the terms of this Agreement.

2. Deliver to OREGON CITY monthly reports of activity at the FACILITY including data on the gross weight of solid waste received in vehicles that are weighed as they enter the FACILITY, the number of other vehicles assessed fees on an estimated volume basis, and the tonnage of solid waste transferred from the FACILITY.

3. Not exceed the volume limitation provided for in section B(5) hereof and to take every measure feasible to reduce tonnage at the FACILITY to 700 tons per day on a monthly average by January 1, 1991.

4. Request that the Court of Appeals dismiss METRO's appeal of the decision of the Circuit Court for Clackamas County in Case No. 87-5-295.

B. OREGON CITY will:

1. Appoint a citizens' advisory committee to recommend to the City Commission plans, programs and projects for the rehabilitation and enhancement of the area around the FACILITY. The committee shall include as members a member of the HOPP community, a member of the Oregon City Planning Commission, a member of the Oregon City Commission, and the Metro Council member representing the district which includes Oregon City.

2. The City Commission after receiving a recommendation from the citizens' committee shall determine the boundary of the area eligible for rehabilitation and enhancement.

3. Create a special fund and ensure that only plans, projects and programs determined by the City Commission to be suitable for the rehabilitation and enhancement are authorized for funding from such special fund.

4. Report annually to METRO on the expenditures of the special fund and fund balance no later than September 1 of each year.

5. Acting in its role as a quasi-judicial body, consider and process METRO's request consistent with applicable provisions of the Oregon City zoning ordinance the following request by METRO:

METRO requests that the current tonnage limitation at the FACILITY be increased effective July 1, 1988, to a monthly average of 1,200 tons per day for the months of July, August, September, October, May and June of each year, and 1,000 tons per day for the months of November, December, January, February, March and April. METRO further requests that upon the commencement date of this Agreement the tonnage limitations for each month shall be cumulative so that any amounts by which METRO does not meet or exceed the monthly tonnage allowance in any given month may be carried over and credited to the tonnage limitation in any future month at METRO's discretion during the term of this Agreement. METRO further requests that it not be in violation of the tonnage limitation if the total tonnage by which METRO may have exceeded the allowed tonnage during any one month (taking into account METRO's allowance for previous underutilized monthly tonnage as described above) does not exceed one-half the total monthly tonnage allowed for the month in which the excess has occurred; provided, however, that such excess tonnage shall not cumulatively exceed 18,600 tons over the life of this Agreement.

OREGON CITY may review the conditions contained in the Conditional Use permit other than the tonnage limitations on an annual basis.

6. Remove from current consideration the proposed ordinance imposing a 50¢ per ton tax on commercial haulers

of solid waste using the FACILITY. Further OREGON CITY agrees if during the term of this Agreement it adopts such a proposed tax or any similar tax or charge that imposes a fee on haulers of commercial solid waste or other users of the FACILITY except as may be imposed by any tax duly adopted by OREGON CITY of general applicability to all persons doing business in Oregon City, then METRO shall have no further obligation to pay the sums provided for in paragraphs A 1. and 2. above and the tonnage limitations provided for in B 5. shall continued.

C. The parties shall jointly request remand of METRO's application to OREGON CITY for use of the FACILITY with unlimited tonnage which was disallowed by OREGON CITY by final order entered October 7, 1987, and appealed to LUBA by METRO and further appealed to the Court of Appeals by METRO (LUBA Case No. 87-093) (Court of Appeals Case No. 847965) to the City Commission and vacation of the LUBA order.

D. Term. The term of this Agreement is for the thirty (30) months commencing on July 1, 1988, except that the provision for payment of the 50¢ per ton fee to OREGON CITY shall not take effect until such time as OREGON CITY shall enter its final order revising the tonnage levels to the limits provided for in section B 5. above and further provided that in the event that the tonnage limitations and 50¢ per ton fee shall not take effect until after July 1, 1988, then this Agreement shall continue for the thirty (30) month period commencing on the date that the tonnage limitation requested by METRO is adopted by OREGON CITY. Payments to OREGON CITY, however, shall be made on all tonnage received at the FACILITY after May 31, 1988, on a retroactive basis.

E. Notice. Any notice required pursuant to this Agreement shall be delivered as follows:

If to OREGON CITY:

Thomas Fender III
City Manager
City Hall
320 Warner-Milne Road
Oregon City, OR 97045

Copy to:

Edward Sullivan
City Attorney
c/o Mitchell, Lang & Smith
2000 One Main Place
101 S. W. Main Street
Portland, OR 97204

If to METRO:

Rena Cusma, Executive Officer
Metropolitan Service District
2000 S. W. First Avenue
Portland, OR 97201-5398

Copy to:

Daniel B. Cooper
General Counsel
Metropolitan Service District
2000 S. W. First Avenue
Portland, OR 97201-5398

Or as to such individuals as the parties may designate in writing in the future.

G: This Agreement sets forth the entire obligation of the parties to each other in connection with the FACILITY herein described except for further conditions not inconsistent with this Agreement have previously been provided for in the Conditional Use approval entered by OREGON CITY in 1981 as has been amended from time to time.

H. This Agreement is subject to specific enforcement by the courts at the request of either party.

I. Remedies.

1. A default of this Agreement by METRO shall result in reinstatement of the 700 ton per day limitation on operation of the FACILITY contained in the Conditional Use permit conditions in effect on June 1, 1988. In addition, METRO shall continue to be liable for the payment of the fees provided for in section A 1. and A 2. above.

2. Default by OREGON CITY for failure to comply with its obligations in section B above (excepting those quasi-judicial actions which METRO is requesting of OREGON CITY), shall be grounds for METRO to seek specific enforcement of the terms of this Agreement allowing utilization of the FACILITY subject to the tonnage limitation provided herein and further shall be grounds for METRO withholding any further payments due to OREGON CITY pursuant to the terms of paragraph A above and OREGON CITY shall not be entitled to any payment from METRO for tonnage received during the period which the default exists. If at any time during the term of this Agreement, OREGON CITY, acting in a quasi-judicial or legislative capacity, changes any of the terms of the request by METRO contained in section B 5. above, then for the duration of any such change METRO shall not be obligated to make any payments under section A 1. of this Agreement.

3. Each party agrees to give thirty (30) days written notice to the other in the event that it determines a default exists specifying the nature of the default and giving the other party the opportunity during said 30-day period to cure the default before taking any further action.

J. This Agreement shall become effective upon execution by the parties after prior approval of the terms of this Agreement by the Metro Council and Oregon City Commission.

DATED this 16th day of June, 1988.

CITY OF OREGON CITY

METROPOLITAN SERVICE DISTRICT

By: Kenneth M. Mitchell
Kenneth Mitchell

By: Rena Cusma
Rena Cusma

Title: Mayor

Title: Executive Officer

APPROVED AS TO FORM:

[Signature]
Oregon City City Attorney

APPROVED AS TO FORM:

[Signature]
General Counsel

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9653C/519

Councilors Waker, Knowles and Ragsdale thanked Mr. Wilson for his excellent and dedicated work on the Convention Center project. Councilor Knowles noted that Mr. Wilson had assembled a top-knotch project team and commended his public service.

Vote: A vote on the motion resulted in all eleven Councilors voting aye.

The motion carried and Resolution No. 88-923 was adopted.

7.2 Consideration of Resolution No. 88-937, for the Purpose of Granting a Franchise to Wastech, Inc. for the Purpose of Operating a Solid Waste Processing Facility

The resolution was considered at the beginning of the meeting.

7.3 Consideration of Resolution No. 88-938, for the Purpose of Entering Into a Contract with the City of Oregon City Providing for the Payment of a 50 Cent per Ton Mitigation and Enhancement Fee, and Revising the Tonnage Limitation at the Clackamas Transfer & Recycling Center (CTRC)

The Presiding Officer acknowledged a letter to the Council from Estle Harlan, Consultant to the Tri-County Council and Oregon Sanitary Service Institute. The letter stated the "solid waste industry reluctantly requests the approval of Resolution No. 88-938. It is difficult for us to embrace any action that is going to increase disposal fees. But in this instance, we see the fee as a way to cut our losses. The settlement . . . is less disruptive to our operations and less costly to both us and our customers than bans or diversions of selected loads or classes of trucks in order to reach an arbitrary limit of 21,000 tons per month."

Councilor Hansen, Chair of the Council Solid Waste Committee, reported the committee recommended adoption of the resolution. He thought it the best way out of a difficult situation and less costly than other proposed solutions.

Motion: Councilor Hansen moved to adopt Resolution No. 88-938 and Councilor DeJardin seconded the motion.

Councilor Knowles explained he had initially opposed payments to the City of Oregon City in lieu of taxes. He was very reluctant to set this precedent, explaining he would have supported an agreement if the funds were used strictly for enhancements.

Councilor Waker said he would not support the resolution for reasons similar to the ones stated by Councilor Knowles.

- Vote: A vote on the motion resulted in:
- Ayes: Councilors Collier, Cooper, DeJardin, Gardner, Hansen, Kelley, Van Bergen and Ragsdale
- Nays: Councilors Kirkpatrick, Knowles and Waker

The motion carried and resolution No. 88-938 was adopted.

7.4 Consideration of Resolution No. 88-931, for the Purpose of Confirming the Appointment of Richard H. Carson to the Position of Director of Planning and Development

Intergovernmental Relations Committee Chair Councilor Waker reported the Committee had tentatively approved Mr. Carson's appointment subject to investigations into background references. Those investigations had been performed and he recommended the candidate's confirmation.

- Motion: Councilor Waker moved, seconded by Councilor DeJardin, to adopt Resolution No. 88-931.
- Vote: A vote on the motion resulted in all eleven Councilors present voting aye.

The motion carried and Resolution No. 88-931 was unanimously adopted.

7.5 Consideration of Resolution No. 88-924, for the Purpose of Authorizing Transfer of 1.4 Acres of Metro Washington Park Zoo Lands to the Oregon Department of Transportation

Councilor Waker, Chair of the Intergovernmental Relations Committee, explained the Committee had unanimously recommended adoption of the resolution. The City of Portland was in agreement with the transfer.

- Motion: Councilor Waker moved to adopt Resolution No. 88-924 and Councilor Gardner seconded the motion.
- Vote: A vote on the motion resulted in all eleven Councilors present voting aye.

The motion carried and Resolution No. 88-924 was unanimously adopted.