

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF APPROVING AN)	RESOLUTION NO. 90-1219
AGREEMENT WITH MARION COUNTY)	
FOR THE DISPOSAL OF UP TO)	Introduced by Rena Cusma,
40,000 TONS PER YEAR OF SOLID)	Executive Officer
WASTE AT THE MARION COUNTY)	
WASTE TO ENERGY FACILITY)	

WHEREAS, The Metropolitan Service District (METRO), and Marion County, Oregon, (COUNTY), have had a mutually satisfactory relationship for the disposal of METRO solid waste at the Marion County Waste to Energy Facility, (WTEF), most recently evidenced by an agreement dated December 11, 1986, (ATTACHMENT A to the Staff Report); and

WHEREAS, The agreement referred to above expired on January 1, 1990; and

WHEREAS, METRO and COUNTY consider it to be in their mutual best interest to enter into a new agreement for disposal of up to 40,000 tons per year of METRO solid waste at the WTEF; and

WHEREAS, Disposal at a waste to energy facility is higher on the state hierarchy than landfilling; and

WHEREAS, A new agreement has been negotiated between METRO and COUNTY and is attached to the staff report as ATTACHMENT B; and

WHEREAS, The new agreement is mutually beneficial to METRO and COUNTY; and

WHEREAS, The new agreement provides that Metro deliver up to 40,000 tons of solid waste per year to the WTEF by its contractor or allows delivery by a third party hauler; and

WHEREAS, Putting the transportation services out to bid will likely generate competition and result in lower hauling costs and provide an opportunity for Oregon businesses to bid; and

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

BE IT RESOLVED,

1. The new agreement between METRO and COUNTY, (ATTACHMENT B to the Staff Report) is hereby approved.
2. The transportation services for hauling solid waste to the Marion County Waste to Energy Facility shall be put out to bid.
3. The METRO Executive Officer is hereby authorized to execute the new agreement with County.

ADOPTED by the Council of the Metropolitan Service District this 22nd day of February, 1990.



Tanya Collier, Presiding Officer

PN:sg
JW:RB:pa
A:\90-1219.RES

SOLID WASTE COMMITTEE REPORT

RESOLUTION NO. 90-1219, FOR THE PURPOSE OF APPROVING AN AGREEMENT WITH MARION COUNTY FOR THE DISPOSAL OF UP TO 40,000 TONS PER YEAR OF SOLID WASTE AT THE MARION COUNTY WASTE TO ENERGY FACILITY

Date: February 9, 1990

Presented by: Councilor
Gary Hansen

Committee Recommendation: The Solid Waste Committee voted 5 to 0 to recommend Council adoption of Resolution No. 90-1219. Voting: Councilors Hansen, Bauer, Buchanan, DeJardin and Wyers. This action taken February 6, 1990.

Committee Discussion/Issues: It is proposed that Metro enter into another agreement with Marion County for disposal of up to 40,000 tons per year of solid waste at the Marion County Waste to Energy Facility (WTEF). The previous agreement expired January 1, 1990.

The new agreement is proposed to cover a period of approximately one year, with rolling renewals for one year periods if notice of non-renewal is not given.

The Solid Waste staff pointed out differences in the new agreement and the old agreement. These differences are shown in the Staff Report dated January 29, 1990.

The Committee asked for a cost comparison for disposing of solid waste at the WTEF and at the landfill in Arlington. According to the Solid Waste staff, the tipping fee at Arlington is \$20.37 per ton and \$23.00 at the Marion County facility. The hauling costs, however, are greater to the Arlington Landfill.

The Solid Waste staff stated that the Marion County agreement does not affect the agreement with Oregon Waste Systems, Inc., because the "90 percent clause" is for refuse going to a general purpose landfill and the Marion County facility is a waste to energy facility. Use of the WTEF is higher on the State solid waste hierarchy than landfilling.

Councilor Wyers asked who was hauling the solid waste to the Marion County facility before and who would haul it now? The Solid Waste staff said the waste was previously transported by Wastech, Inc., using a private trucking company. Metro could put the transport services out for bid or could execute a change order with Jack Gray Transport (JGT) to add the Marion County hauling to the JGT contract. Councilor Wyers indicated a preference to put the services out to bid.

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STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 90-1219 FOR THE PURPOSE
OF APPROVING AN AGREEMENT WITH MARION COUNTY FOR THE
DISPOSAL OF UP TO 40,000 TONS PER YEAR OF SOLID WASTE
AT THE MARION COUNTY WASTE TO ENERGY FACILITY

Date: January 29, 1990

Presented by: Bob Martin
Phil North

FACTUAL BACKGROUND AND ANALYSIS

On January 1, 1990 an existing agreement with Marion County expired which had provided for the disposal of up to 40,000 tons per year of solid waste at the Marion County Waste to Energy Facility (WTEF). A copy of the expired agreement is attached to this staff report as ATTACHMENT A.

A new agreement is proposed to be entered into by Metro and Marion County for disposal of up to 40,000 tons per year of solid waste at the WTEF. The proposed agreement is attached to this staff report as ATTACHMENT B. The new agreement is proposed to cover a period of approximately one year, with rolling renewals for one year periods if notice of non-renewal is not given. The key areas where the new agreement differs from the old agreement are summarized as follows:

1. Definitions for "Process Residue" and "Solid Waste" have been added.
2. The definition of Hazardous Waste has been amended to exclude household hazardous waste.
3. Delivery to the WTEF can be done by a Metro contractor, a third party authorized by Metro, or by Marion County.
4. The Tipping Fee will be \$23.00 through June 30, 1990 and thereafter adjusted by the CPI in the same manner as the OWS and Jack Gray contracts (see Section 2.7, ATTACHMENT B).
5. A delivery schedule will be agreed to by Metro and Marion County.
6. Marion County will use "due diligence" to accommodate requests by Metro to accelerate waste deliveries in the event of weather or uncontrollable disruptions of Metro's waste transport system.
7. Marion County warrants that it will be in compliance with federal, state and local requirements for disposal

of Process Residue and will hold Metro harmless and indemnify it except for liability caused by Metro's negligence in failing to exclude Unacceptable Waste from deliveries to the WTEF from the Metro South Station.

8. Marion County will hold Metro harmless and indemnify Metro from actions between Marion County and Ogden Martin Systems except for cause due to Metro's negligence in failing to exclude Unacceptable Waste from deliveries to the WTEF from the Metro South Station.

9. Either party may terminate the agreement upon ninety (90) days written notice of intent to terminate.

Before execution of the agreement, it must first be approved by Marion County as well as by the Metro Council. The new agreement with Marion County will serve two purposes. It provides additional flexibility in Metro's waste processing and disposal system and it can act as a "safety valve" in the event of waste transport disruption caused by weather or other unforeseen or uncontrollable circumstance. Further, waste to energy is higher on the State Hierarchy than landfilling.

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends passage of Resolution No. 90-1219.

PN:sg
January 30, 1990
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ATTACHMENT A

AGREEMENT BETWEEN
MARION COUNTY
AND
METROPOLITAN SERVICE DISTRICT
FOR SOLID WASTE DELIVERY

THIS AGREEMENT, made this 11TH day of DECEMBER, 1986, by and between Marion County, a municipal corporation, herein called the "County," and Metropolitan Service District, a municipal corporation, herein called "Metro," to provide for waste delivery from the Metro service area to the County.

Metro and the County agree as follows:

Definitions:

"Acceptable Waste" means that portion of Solid Waste which has characteristics such as that collected and disposed of as part of normal collection of Solid Waste in the County, such as, but not limited to: garbage, trash, rubbish, refuse, offal, food waste, papers, as well as processible portions of commercial (including cannery) and industrial Solid Waste, and logs if no more than four (4) feet long and/or six (6) inches in diameter, branches, twigs, plant cuttings, excepting, however, Unacceptable and Hazardous Waste.

"Hazardous Waste" means that portion of Solid Waste which by reason of its composition or characteristics is (1) hazardous waste as defined in the Solid Waste Disposal Act, 42 U.S.C. Sections 6901 et seq., of the Oregon Revised Statutes and Oregon Administrative Rules, and any similar or substituted legislation or regulations or amendments to the foregoing; (2) any other materials which any governmental agency or unit having appropriate jurisdiction shall determine from time to time is harmful, toxic or dangerous, or otherwise ineligible for disposal through the Facility; and (3) any material which would result in Process Residue being Hazardous Waste under (1) or (2) above.

"Unacceptable Waste" means that portion of Solid Waste exclusive of Hazardous Waste, such as, but not limited to: explosives, pathological and biological waste, radioactive materials, ashes, foundry sand, sewage sludge unless processed to permit incinerations, cesspool and other human waste, human and animal remains, motor vehicles, including such major motor vehicle parts as automobile transmissions, rear ends, springs, fenders, agricultural and farm machinery and equipment, marine vessels and major parts thereof, any other large type of machinery or equipment, liquid wastes, or nonburnable construction materials and/or demolition debris.

Agreement and Conditions:

The parties agree that if the DEQ does not increase the permitted tonnage to 180,000 (or greater) tons/year for the facility, the County is required to accept up to 20,000 tons of acceptable waste in any calendar year, at a tipping fee reflecting the average of the rates stipulated in Sections 1.5 A. and 1.5 B.

1. Metro Duties

- 1.1 Metro agrees to deliver up to 40,000 tons of solid waste per calendar year to the Marion County Waste-to-Energy Facility, or as directed by the County, after receiving at least 24 hours notice from the County of the disposal location.
- 1.2 Metro shall provide all transportation materials and labor for delivery of solid waste in item 1.1.
- 1.3 Metro shall deliver acceptable waste which typically has an energy content (HHV) between 4300 and 4700 BTU per pound.
- 1.4 Metro shall pay a tipping fee to the County of \$12.00 per ton until March 1, 1987.
- 1.5 A. After March 1, 1987, and in each succeeding calendar year, the first 20,000 tons of waste delivered shall be paid to the County at the lesser of:
 1. \$26.00 per ton, less a haul credit of \$7.25 per ton, escalated per Section 1.6; or
 2. The tipping fee charged the County-franchised haulers)(exclusive of the benefit from the Oregon State Pollution Tax Credit), less a haul credit of \$7.25 per ton, escalated per Section 1.6.
- B. The additional waste in excess of 20,000 tons, shall be charged at a tipping fee of \$12.00 per ton plus escalation per Section 1.6, with no haul credit.
- 1.6 Beginning January 1, 1988, and each succeeding year the tipping fee paid by Metro and the haul credit shall escalate at a rate equal to the Portland area CPI for all urban consumers for the previous year.

ever waste throughout the year, based on an agreed schedule between the County and Metro. Metro shall not deliver waste during scheduled maintenance down times to the mass burn.

1.8 Metro shall require its hauler to maintain in effect during the terms of this agreement:

- A. Automobile liability insurance in the amount of \$500,000 per occurrence, combined single limit personal injury and property damage;
- B. Comprehensive general liability in the amount of \$500,000 per occurrence.

Such amounts shall be minimum and may be a greater amount if so directed by the County, pursuant to requirements of public bodies by ORS 30.270. The County shall be named as an additional named insured on all such insurance and receive a certificate of such insurance.

1.9 Monthly billings by the County, shall be paid by Metro within 30 days of date of billing.

2. County Duties

2.1 County agrees to accept up to 40,000 tons of acceptable solid waste per calendar year.

2.2 If the County receives waste by direct haul from Metro-area haulers, the County will provide Metro with waste quantity hauled by each hauler.

2.3 Metro shall not be liable in any dispute between Ogden Martin Systems of Marion, Inc. and Marion County. Metro shall deliver typical waste from Clackamas Transfer Recycling Center (CTRC). However, if Unacceptable Waste is found, Marion County may request Metro to take back such waste. If so, the County will give Metro a full credit for disposal of an equal amount of waste at no extra cost.

3. This agreement shall commence on September 26, 1986. Between then and December 31, 1986, Metro will deliver a prorated amount of solid waste, based on 40,000 tons annually, or about 10,000 tons.

4. The parties agree that if the facility is not in compliance with DEQ permits (i.e., the Air Contaminant Discharge permit, Solid Waste Disposal permit, etc.), the County may terminate the agreement upon 30 days written notice.

This agreement may be terminated by mutual agreement of both parties with 30 days written notice.

This agreement will terminate on December 31, 1989.

IN WITNESS WHEREOF the parties have caused this Agreement to be signed by their duly appointed representatives as of this 11TH day of DECEMBER, 1986.

Metropolitan Service District

Title

Marion County Board of Commissioners

Gary Heer
Chairman
Frank Frank
Commissioner

Commissioner

Approved as to Form:

Robert H. Cannon
Marion County Legal Counsel

Recommended by:

M. J. Hansen
Director of Public Works

AGREEMENT BETWEEN
MARION COUNTY
AND
METROPOLITAN SERVICE DISTRICT
FOR SOLID WASTE DELIVERY

THIS AGREEMENT, made this _____, day of _____, 1990, by and between Marion County, a municipal corporation, herein called the "County" and Metropolitan Service District, a municipal corporation, herein called "Metro," to provide for waste delivery from the Metro service area to the County.

1. Definitions

- 1.1 "Acceptable Waste" means that portion of Solid Waste which has characteristics like that collected and disposed of as part of normal collection of Solid Waste in the County, such as, but not limited to: garbage, trash, rubbish, refuse, offal, food waste, papers, as well as processible portions of commercial (including cannery) and industrial Solid Waste, and logs if no more than four (4) feet long and/or six (6) inches in diameter, branches, twigs, plant cuttings, excepting, however, Unacceptable and Hazardous Waste.
- 1.2 "Hazardous Waste" means that portion of Solid Waste which by reason of its composition or characteristics is (1) hazardous waste as defined in the Solid Waste Disposal Act, 42 U.S.C. Sections 6901 et seq., of Oregon Revised Statutes and Oregon Administrative Rules, and any similar or substituted legislation or regulations or amendments to the foregoing; (2) any other materials which any governmental agency or unit having appropriate jurisdiction shall determine from time to time is harmful, toxic or dangerous, or otherwise ineligible for disposal through the Facility; and (3) any material which would result in Process Residue being Hazardous Waste under (1) or (2) above; however, materials lawfully sold for household use which are placed in the waste stream by household users in quantities normally associated with household use shall not constitute Hazardous Waste, but are deemed to be Acceptable Waste.
- 1.3 "Process Residue" means bottom ash, fly ash, grate siftings and other material derived from Acceptable

Waste which remains after the combustion of Acceptable Waste.

1.4 "Solid Waste" means all materials or substances discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection, including but not limited to garbage, refuse, industrial and commercial waste (including cannery waste), sludges from air or water pollution control facilities or water supply treatment facilities, rubbish, ashes, contained gaseous materials, incinerator residue, demolition and construction debris and offal, but not including sewage and other highly diluted water-carried materials or substances and those in gaseous form, special nuclear or by-product materials within the meaning of the Atomic Energy Act of 1954, as amended.

1.5 "Unacceptable Waste" means Unacceptable Waste and Solid Waste such as: explosives, pathological and biological waste, radioactive materials, ashes, foundry sand, sewage sludge unless processed to permit incineration, cesspool and other human waste, human and animal remains, motor vehicles, including such major motor vehicle parts as automobile transmissions, rear ends, springs, fenders, agricultural and farm machinery and equipment, liquid wastes, or nonburnable construction materials and/or demolition debris or other wastes of a similar nature and composition that have an adverse impact on the WTEF.

2. Metro Duties

2.1 Metro agrees to deliver by its contractor or to allow delivery by a third party hauler (such third party hauler being subject to the terms of a Non-System License or other written authority by Metro) to the Marion County Waste-to-Energy Facility (WTEF), in Brooks, Oregon, up to 40,000 tons of solid waste per fiscal year from the Metro South Station in Oregon City or other Metro-area Facility(ies).

2.2 Metro shall use best efforts to deliver Acceptable Waste to the WTEF which typically has an energy content (HHV) between 4300 and 4700 BTU per pound of solid waste.

2.3 If Unacceptable Waste is delivered to the WTEF the County may require Metro's contractor or other hauler to take such waste back. If so, such waste will not

be considered as waste delivered for disposal to the WTEF.

2.4 Metro shall provide for all labor and materials required to transport solid waste in item 2.1 if waste is hauled by Metro's contractor, but Metro shall not be responsible for such costs for hauling by a non-Metro contractor or hauler as provided in Section 3.4.

2.5 Metro shall pay a fee (Tipping Fee) to the County for disposal of waste at the WTEF only for waste transported from the Metro South Station to the WTEF.

2.6 The Tipping Fee (TF) per ton shall be calculated as follows: Through June 30, 1990;

Tipping Fee.....\$23.00 per ton

2.7 The Tipping Fee calculated in 2.6 shall be adjusted at the beginning of each fiscal year (July 1) for the term of this Agreement. The Consumer Price Index will be based on the index entitled "West A" from the U. S. Department for labor, Bureau of Labor Statistics' publication entitled "Consumer Price Indexes", Pacific Cities and U. S. City Average/All Urban Consumers." The index will be a twelve (12) month average for the current year minus a twelve month average for the previous year divided by the previous years average.

The calculation will be as follows:

$$\left(\frac{CIX - CIP}{CIP} + 1 \right) (TF) = \text{Adjusted Tipping Fee}$$

CIX = Consumer Price Index current year (average)
CIP = Consumer Price Index previous year (average)
TF = Tipping Fee for current year

2.8 Metro shall deliver waste throughout the fiscal year, based on an agreed schedule between the County and Metro. Due to the variation of waste flow at the WTEF this schedule will be flexible and may be modified upon mutual consent of the County and Metro.

2.9 Metro shall require its contractor, which is hauling solid waste to the WTEF, to maintain in effect during the term of this agreement:

A. Automobile liability insurance in the amount of \$500,000 per occurrence, combined single limit personal injury and property damage;

- B. Comprehensive general liability insurance in the amount of \$500,000 per occurrence.

Such amounts shall be minimum and may be a greater amount if so directed by the County, pursuant to requirements of public bodies by ORS 30.270. The County shall be named as an additional named insured on all such insurance and receive a certificate of such insurance.

- 2.10 Monthly billings by the County, shall be paid by Metro within thirty (30) days of the date of the billing.
- 2.11 Metro shall require its contractor, which is hauling Solid Waste to the WTEF, to use walking floor trailers for delivery of Solid Waste to the WTEF.

3. County Duties

- 3.1 The County wishes to operate the WTEF at or near its physical capacity. The maximum unused capacity is anticipated to be up to 40,000 tons per fiscal year. The County agrees to accept Acceptable Waste from Metro, up to 40,000 tons per fiscal year, to use any unused capacity available at the WTEF.
- 3.2 If Metro approves and the County receives solid waste from garbage haulers in the Metropolitan Service District, the County will provide Metro with waste quantities hauled by each hauler. In addition, the County will collect all Metro fees and excise taxes as if County was subject to a franchise pursuant to the Metro Code (unless directed otherwise by Metro) and pay such fees and excise taxes to Metro based on the tons received by direct haulers at the WTEF.
- 3.3 The County shall bill Metro at the end of each month for waste disposed at the WTEF by Metro or its contractor for waste originating from the Metro South Station. Disposal fees for waste delivered by third party haulers authorized by Metro to haul waste to the WTEF shall be billed directly to such haulers and not to Metro.
- 3.4 The County or its contractor, with the consent of Metro, (consent not to be unreasonably withheld), may provide for the hauling of waste from the Metro South Station. Such hauling will be limited to periods when Metro or its contractor cannot deliver sufficient amounts of waste to the WTEF to meet the WTEF unused

capacity. Metro agrees to use best efforts and due diligence to prevent and avoid any unreasonable delay in the loading of the County's or its contractor's vehicles in the event of hauling being carried on by the County or its contractor.

- 3.5 The County agrees to exercise due diligence in fulfilling requests by Metro for delivery of wastes in excess of the agreed schedule, providing the WTEF has unused capacity available to meet the request and the total fiscal year tonnage of up to 40,000 tons is not exceeded during such times as Metro may encounter disruption of its waste transport system to the Gilliam County Landfill because of weather or unforeseen or uncontrollable circumstances.

4. General Provisions

- 4.1 The parties agree that if for some reason the WTEF is not in compliance with Department of Environmental Quality permits (i.e., the Air Contaminant Discharge permit, Solid Waste Disposal permit, etc.), the County may terminate this agreement upon thirty (30) days written notice.

- 4.2 The County warrants to Metro that with respect to disposal of Process Residue that it is and shall continue to be in compliance with all federal, state and local standards for disposal of such Process Residue. Furthermore, the County will hold Metro harmless, indemnify and defend Metro from any liability or claim of liability arising out of any alleged failure by the County to comply with federal, state or local standards for disposal of Process Waste unless it is due to Metro's negligence failing to exclude Unacceptable Waste from deliveries to the WTEF from the Metro South Station.

- 4.3 The County shall hold Metro harmless, indemnify and defend Metro from any action or claim arising out of any dispute between Ogden Martin Systems and the County unless it is due to Metro's negligence in failing to exclude Unacceptable Waste or Hazardous Waste from deliveries to the WTEF from the Metro South Station.

- 4.4 The County shall hold Metro harmless, indemnify and defend Metro from any action or claim arising out of deliveries of waste made by third parties authorized by Metro to direct haul from facilities other than Metro South Station.

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- 4.5 This agreement may be terminated by mutual consent of both parties with thirty (30) days written notice.
- 4.6 Either the County or Metro may terminate this agreement by giving the other party ninety (90) days written notice of intent to terminate.
- 4.7 This agreement will expire on March 1, 1991 if either party provides notice in writing to the other party of non-renewal by December 31, 1990. If notice of non-renewal is not given, this agreement shall automatically renew for successive one year periods, subject to non-renewal notices to be given by December 31 prior to the annual expiration date of March 1.

IN WITNESS WHEREOF the parties have caused this Agreement to be signed by their duly appointed representatives.

METROPOLITAN SERVICE DISTRICT

MARION COUNTY
BOARD OF COMMISSIONERS

Chairman

Title

Commissioner

Commissioner

Approved as to Form:

Marion County Legal Counsel

Recommended by:

Director of Solid Waste

PEN: aey
MARIONCO.CNT
January 31, 1990