



METRO

600 NE Grand Ave.
Portland, OR 97232-2736
(503) 797-1700

Designated Facility Agreement

METRO CONTRACT NO. 933507

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 Cowlitz County, a political subdivision of the State of Washington (the “County”), and operator of the Cowlitz County Headquarters Landfill (the “landfill”) located at 3434 Silverlake Road, Castle Rock, Washington 98611, (collectively, the “Parties”) and is entered into under the authority of ORS 268.317 and Metro Code Section 5.05.030, and under the authority of RCW 39.34 and RCW 36.58, and Chapters 173-304, 173-350 and 173-351 WAC.

RECITALS

WHEREAS, the Metro Area has limited land and resources for the disposal, transfer, and recovery of resources from solid waste;

WHEREAS, Metro may require generators of Metro Area Waste to make use of disposal, transfer, or resource recovery sites or facilities designated by Metro;

WHEREAS, a license is not required to transport Metro Area Waste to a designated facility of the system;

WHEREAS, the Metro Code authorizes the Chief Operating Officer (“COO”) to execute an agreement between Metro and a facility located outside the region for the disposal of non-putrescible Metro Area Waste;

WHEREAS, entering into a designated facility agreement allows Metro to manage the disposal of Metro Area Waste while increasing material recovery by establishing terms and conditions under which a landfill may receive Metro Area Waste; and

WHEREAS, the Metro Council amended the list of designated facilities of the system to add Cowlitz County Headquarters Landfill as a designated facility of the system authorized to accept Metro Area Waste;

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

1. Acceptable Metro Area Waste.

The County may accept the following types of Metro Area Waste: Processing Residual, Cleanup Material, Disaster Debris if authorized in writing by the COO, Inert Waste, Special Waste, Built-up Roofing, and Useful Material. The County may accept Metro Area Waste other than that permitted by this Agreement only if Metro authorizes such acceptance under a non-system license.



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2. Prohibited Metro Area Waste.

Except as provided in Section 1 of this Agreement, the County shall not accept Metro Area Waste, including without limitation Putrescible Waste, Source-Separated Recyclable Material, Non-Putrescible Waste that has not undergone material recovery by a Metro Designated Facility, and any materials and waste prohibited by the Washington State Department of Ecology or Cowlitz County.

3. Regional System Fee and Excise Tax.

- a. Each month the County shall 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 the County receives. The County shall make the payment by check, cash, or other Metro-approved method of any fees collected by County in accordance with Metro Code Section 5.02.055.
- b. Each month the County shall collect and remit to Metro any Excise Tax, as set forth in Metro Code Chapter 7.01, for each ton of Metro Area Waste paid to the County. The County shall make the payment by check, cash, or other Metro-approved method of any taxes collected by County in accordance with Metro Code Section 7.01.070.
- c. The County shall properly classify Metro Area Waste for the purpose of collecting Regional System Fee and Excise Tax from the persons and businesses utilizing County's landfill.

4. Term of Agreement.

Unless terminated earlier, the term of this Agreement shall be from July 1, 2015 through December 31, 2019.

5. County Operating Plan.

- a. The County shall submit to Metro, for Metro's review and written approval, an operating plan ("Plan") that describes the County's procedures for managing Metro Area Waste. The Plan shall address how the County intends to comply with the requirements of this Agreement. The County shall maintain a copy of the Plan on its premises and at a location where County personnel and Metro have access to it.
- b. The Plan shall describe how the County will identify whether Metro Area Waste is acceptable under Section 1 of this Agreement and shall include the criteria used for such identification, including without limitation:

- (1) Procedures for establishing whether incoming waste is Metro Area Waste;



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- (2) A set of objective criteria for accepting and rejecting loads;
 - (3) Procedures, in accordance with recognized industry practices, for inspecting incoming loads for the presence of Metro Area Waste prohibited under Section 2 of this Agreement;
 - (4) Procedures, in accordance with recognized industry practices, for assessing 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
 - (5) Other measures to ensure compliance with this Agreement.
 - c. The Plan shall establish procedures for managing and transporting to appropriate facilities any prohibited Metro Area Waste discovered at the County's landfill.
 - d. The County shall submit changes to the Plan to Metro for review and written approval before implementing the changes. Metro shall review the Plan to ensure compliance with this Agreement.
 - e. The County shall comply with the provisions of the Plan, which provisions are incorporated into this Agreement by reference as if specifically set forth herein. The County's failure to comply with a material provision of the Plan shall constitute a breach of this Agreement.
6. Record Keeping and Audits.
- a. The County shall maintain complete and accurate records of all Metro Area Waste received, treated, recovered, transported, disposed, or otherwise processed pursuant to this Agreement. The records the Landfill shall maintain, at a minimum shall include the information specified in Reporting Requirements and Data Standards for Metro Solid Waste Licensees, Franchisees, and Parties to Designated Facility Agreements. The County shall make these records available to Metro for inspection, auditing, and copying. The County shall use sequentially numbered transaction tickets and shall archive voided or canceled tickets for three (3) years or as required by the Washington Secretary of State, whichever is longer.
 - b. The County shall maintain waste profiles, waste analysis plans, special waste permits, Safety Data Sheets, or other documents that identify waste on the premises for the following types of Metro Area Waste: Special Waste, Cleanup Material, and Useful Material. The County shall make these records available to Metro for inspection, auditing, and copying.



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- c. Metro may require, at Metro's expense, that the County submit to an independent audit conducted by an auditor chosen by Metro. The audit shall address only those matters reasonably related to this Agreement and shall be subject to the confidentiality conditions set forth in paragraph 12.

7. Reports and Obligations.

- a. The County shall report information to Metro 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, the County shall include the field titled "Special Waste Permit Number," for all special waste transactions received by the County, as designated in the above referenced document.
- b. The County shall make available the records required under Section 7a of this Agreement, in a format prescribed by Metro to Metro, together with a signed Regional System Fee and Excise Tax Report and remittance, no later than 15th day of each month.
- c. The County shall post a sign at the landfill scale house directing all persons and businesses disposing of Metro Area Waste to declare the origin of the Solid Waste. The County shall post the sign so that it is readily visible and legible to persons and businesses upon arrival at the scale house. The County shall provide a map of the Metro Area to persons and businesses using the landfill upon request.
- d. The County shall provide, upon request by Metro, copies of all permits relating to operations at the County, including without limitation, land use applications, appeals, or modifications. If requested by Metro, the County shall provide copies of revisions to existing permits and newly issued permits to Metro within seven (7) working days of Metro's request. The County also shall provide, within seven (7) working days of issuance, a copy of any official enforcement action regarding the County's landfill or its operation, including without limitation, a notice of violation or noncompliance with a statute, regulation, or permit condition.
- e. The County shall provide, upon request by Metro, a list of account numbers and material codes and corresponding material names for each load of Metro Area Waste.
- f. Upon request, the County shall provide Metro with available information for Metro to complete a quarterly *Solid Waste Disposal Report/Fee Calculation* form within two working days of providing such information to the Washington Department of Ecology.



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8. Useful Material Exemption from the Regional System Fee and Excise Tax.
- a. Except as provided below in Section 8b, the County shall not allow a customer disposing of Metro Area Waste to claim a Useful Material exemption from the Regional System Fee under Metro Code Section 5.02.045 and from Excise Tax under Metro Code Section 7.01.050(a)(10) until the County submits a written request for the exemption, including a Useful Material management plan, to Metro for review and written approval. Metro's approval shall not be unreasonably withheld. The County must receive written Metro approval before allowing an exemption under Section 8 of this Agreement.
 - b. The County may allow a person or business disposing of Metro Area Waste to claim an exemption for a particular type of waste under Section 8 of this Agreement without prior Metro approval provided that the County accepted and used such waste as Useful Materials before July 1, 2015, and it complies with Section 8c below.
 - c. The County shall submit a Useful Material management plan that incorporates the following information:
 - (1) A description of the Useful Material and where it was generated;
 - (2) Documentation demonstrating that the County intends to use and will use the Useful Material productively in the operation of the County;
 - (3) Documentation demonstrating that the County will accept the Useful Material at no charge;
 - (4) If the County intends to use the Useful Material as Alternative Daily Cover, documentation demonstrating that Washington State Department of Ecology or County has approved use of the material as Alternative Daily Cover at the County's landfill;
 - (5) A description of how the County will manage the Useful Material, including without limitation an explanation, if applicable, of how the County will store the Useful Material before use; and
 - (6) An estimate of the proposed tons of Useful Material the County expects to accept.
 - d. The County's failure to manage Useful Material in compliance with its Useful Material management plan shall constitute a breach of this Agreement.



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9. Regional System Fee Credits and Excise Tax Rate for Cleanup Material.

- a. The County may allow a credit against the Regional System Fee, as provided under Metro Code Section 5.02.047, and a reduced Excise Tax rate, as provided under Metro Code Section 7.01.020(e)(2), for Cleanup Material originating from the Metro Area if the 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 9a above, the County shall not allow a credit against the Regional System Fee or a reduced Excise Tax rate for Cleanup Material originating from the Metro Area unless Metro has approved in writing that such waste constitutes Cleanup Material under this Agreement. The County 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;
 - (2) Documentation demonstrating that the Cleanup Material is derived from an environmental cleanup of a nonrecurring event;
 - (3) Documentation demonstrating that Washington State Department of Ecology or Cowlitz County has authorized the Landfill to accept such Cleanup Material;
 - (4) A description of the method in which the Landfill will manage the Cleanup Material; and
 - (5) An estimate of the number of tons of Cleanup Material that may be subject to a Regional System Fee credit and a reduced Excise Tax rate.

10. Compliance with Law.

The County shall fully comply with all applicable provisions of the Metro Code federal, Washington state, regional and local laws. Any finding by a court of competent jurisdiction or a regulatory agency that the County is in violation of applicable federal, Washington state, regional and local laws, rules, regulations, ordinances, orders, and permits shall constitute a breach of this Agreement and shall constitute good cause for termination of this Agreement under Section 16a. Washington State Department of Ecology or County termination or failure to renew the County's Solid Waste Handling Operating Permit shall constitute good cause for termination of this Agreement under Section 16a.



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11. Right of Inspection.

- a. The County shall allow Metro reasonable access to the County's landfill, upon reasonable notice and during normal business hours, to inspect, subject to Section 11(e) of this Agreement, and carry out other necessary functions under this Agreement. The County specifically authorizes reasonable Metro access to inspect:
 - (1) Without notice during hours when the Landfill accepts Solid Waste;
 - (2) At other reasonable times upon two (2) working days prior written notice given by Metro to the County during hours when the County is not accepting Solid Waste, which notice may be made via email sent to Don Olson, at olsond@co.cowlitz.wa.us, or his designee; and
 - (3) At any time without notice when, in the reasonable opinion of the COO, such notice would defeat the purpose of the entry.
- b. Metro's right to inspect and audit shall include the right to review, at an office of the County's Department of Public Works, all non-privileged information from which all Reports required by Metro from the County under this agreement are derived.
- c. The County shall cooperate with Metro regarding Metro's investigation of possible infractions of the 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. The County's cooperation may include providing Metro with requested information in the County's possession regarding matters under investigation and making County representatives available to testify in deposition, in court, at a contested case hearing, and in any subsequent appeals, subject to court ordered witness fees and costs.
- d. The County shall cooperate with Metro regarding Metro's determination of whether Processing Residual accepted at the Landfill meets the recovery standard required by the Metro Code. The County's cooperation shall include providing Metro with access to all areas of the Landfill where it receives and manages Solid Waste, including without limitation untarping stations, trailer tipplers, and the working face, for Metro to inspect the Processing Residual. The County shall provide a commercially reasonable means to segregate individual loads of Processing Residual at a safe location away from the working face where Metro can conduct analysis of the Processing Residual.
- e. Metro, in conducting its inspections, shall at all times comply with all federal, Washington state, regional and local laws, and the County's safety rules and



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procedures, and be accompanied by a County employee. The County shall have an employee available to accompany Metro on its inspection, in accordance with the notification procedures, above.

12. Indemnification.

- a. The County 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 reasonable attorneys' fees, to the extent resulting from or arising out of the acts, errors, or omissions of County or its assignees acting pursuant to the terms of this Agreement. No liability shall attach by reason of entering into this contract, except as expressly provided herein.
- b. Metro shall indemnify, defend, and hold harmless the Landfill, its officers, employees, and agents from all claims, suits, actions, or expenses of any nature, including reasonable attorneys' fees, to the extent resulting from or arising out of the acts, errors, or omissions of Metro or its assignees acting pursuant to the terms of this Agreement, within the limits of the Oregon Tort Claims Act and the Oregon Constitution. No liability shall attach by reason of entering into this contract, except as expressly provided herein.

13. Confidentiality.

- a. Metro recognizes and acknowledges the confidential and proprietary nature of the names of persons or entities generating or delivering waste to the County and the types and quantities of waste generated or delivered by such persons or entities ("Confidential Information") which the County agrees to submit to Metro under Section 7 of this Agreement. Metro also recognizes that the Confidential Information may involve a "trade secret" or other exemption from public disclosure under Oregon law because it is currently known only by the County, is used by the County in its business, has commercial value, involves protected legal interests of the County, and gives the County a business advantage over competitors not possessing such information. The ability of competitors of the Landfill 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 Confidential Information to any person outside of Metro except as specified herein. Access to, and use of, such Confidential 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 Confidential Information to any person, partnership, firm, association, corporation, or other entity, or to any person unless required to do so



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to fulfill a public disclosure request for documents under the laws of Oregon. If it becomes necessary for Metro to release Confidential Information to any person outside of Metro, under the laws of Oregon, Metro shall so notify the County at least ten (10) working days before releasing such information. Neither Metro nor any person at Metro shall use the Confidential Information specified in this section for personal benefit.

- c. Notwithstanding Sections 13a and 13b of this Agreement, Metro may use Confidential Information for solid waste management purposes, including solid waste tracking and forecasting, enforcement of the 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 such aggregations or summaries the persons or other entities generating and delivering waste to the County or the types and quantities of waste that specific persons or other entities generate or deliver to the County. Metro shall notify the County within six (6) days of Metro's receipt of any other type of request for Confidential Information from a third party. If it becomes necessary for Metro to release Confidential Information to any person outside of Metro other than as provided above, Metro shall so notify the Landfill in writing at least ten (10) days before releasing such information.
- d. When submitting to Metro the Confidential Information specified herein, the Landfill shall mark such materials "CONFIDENTIAL." If the County provides Metro with information that is not marked "CONFIDENTIAL," Metro shall have no obligation to treat such information as Confidential Information. Metro shall keep Confidential Information separate from other records and materials 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.
- e. 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, the County shall no longer be required to submit such information to Metro. In such instance, upon request, the County 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 has a reasonable suspicion that a violation has occurred.

14. Dispute Resolution.

Both Parties shall, in good faith, attempt to negotiate resolutions to all disputes arising out of this Agreement. Any controversy or claim arising out of or relating to this Agreement shall be exclusively resolved as follows:



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- a. If the either Party finds that the other Party has breached this Agreement:
 - (1) The claiming Party shall provide the breaching Party with a written notice of breach that describes the alleged breach and that includes a reasonable date by which the breaching Party must respond to the notice of breach.
 - (2) Within the reasonable period specified by the claiming Party, the breaching Party shall demonstrate that it has not breached this Agreement, that the breach has been corrected, or that it is making diligent efforts to correct the breach and is likely to succeed in a reasonable period of time.
 - (3) If the claiming Party determines that the breaching Party has failed to remedy a breach or diligently pursue effective remediation of the breach, the breaching Party may seek to terminate the Agreement.
 - (4) The Parties shall attempt resolve any dispute arising under this section by informal mediation before a panel comprised of a mediator chosen by each Party and a third mediator agreed upon by the two Parties. The panel shall attempt to resolve the dispute between the Parties through discussion and negotiation among the panel members. There shall be no formal presentation of evidence or argument to the panel. Decisions of the panel shall not be binding. All discussions and negotiations among the panel members shall be considered "mediation confidential privileged" to the maximum extent permissible under ORS Chapter 36 and OAR 731-001-720, and RCW 42.56, and other applicable laws of Washington and Oregon.

15. Modification and Suspension.

The COO may modify 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 the Landfill knowingly accepted Prohibited Metro Area Waste or misrepresented the nature or identification of Metro Area Waste; or
- c. If due to a binding decision by a state or federal administrative agency or board, or 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 the Landfill; or
 - (2) May no longer allow such waste to be disposed of at the Landfill.



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16. Termination.

- a. Metro's Chief Operating Officer may terminate this Agreement for good cause provided that such termination shall commence no sooner than (30) days after Metro provides County with written notice of Metro's intent to terminate. The Metro Council's adoption of a resolution to delete the Landfill from the list of designated facilities shall constitute good cause for termination of this Agreement.
- b. The County may terminate this Agreement for good cause provided that such termination shall commence no sooner than (30) days after the County provides Metro with written notice of the County's intent to terminate.
- c. Either Party may terminate this Agreement for any reason after providing 180-day prior written notice to the other Party, with the Agreement continuing through the end of the calendar year in which the right to terminate became effective after the 180-day notification period.

17. General Conditions.

- a. The Landfill shall be responsible for ensuring that its contractors and agents operate in complete compliance with the terms and conditions of this Agreement.
- b. This Agreement shall not confer a property right to upon any Party, nor vest any right or privilege in the County to receive specific quantities of Metro Area Waste during the term of this Agreement.
- c. Neither Party may transfer or assign this Agreement without the prior written approval of the other Party, which approval shall not be unreasonably withheld.
- d. The County shall inform Metro of any change in ownership of its landfill.
- e. A waiver of any term or condition of this Agreement must be in writing, signed by a legally authorized representative of Metro, and by a legally authorized representative of the County. 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. All issues of law relating to the governmental authority, and the sovereign and governmental immunities and liabilities of the County shall be resolved and enforced according to the laws of the State of Washington, without resort to any jurisdiction's conflict of law rules or doctrines. Further, County and its officers, agents and employees shall be subject to no liability or obligation arising out of this Agreement that would not be recognized and enforced against them by the courts of the State of Washington. All issues of law relating to the governmental authority, and the sovereign and governmental immunities and liabilities of



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In the event of any controversies arising under this Agreement, the matter shall be resolved by giving precedence in the following order:

- 1) Metro Code Sections specifically noted within the agreement;
 - 2) applicable state laws; and
 - 3) any other provision of the agreement, including materials incorporated by reference.
- 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. If any deadline required to be computed under any provision of this Agreement falls on a Saturday, Sunday, or legal holiday, then the deadline shall be 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 RCW 1.16.050, ORS 187.010 and 187.020, as amended.
- i. Unless otherwise specified, all terms are as defined in Metro Code Chapter 5.00.
- j. This Agreement is the entire agreement between the Parties and supersedes all prior agreements between them related to the subject matter hereof.
- k. Metro will not unreasonably withhold or delay any review or approval required under this Agreement.

18. Definitions.

- a. "Alternative Daily Cover" means material for cover over the exposed Solid Waste at a landfill that provides performance equivalent to six (6) inches of earthen soil and that is approved by the Washington State Department of Ecology or Cowlitz County.
- b. "Built-up Roofing" means roofing that consists of alternating layers of roofing felt and asphalt. Built-up Roofing wastes may include residential, commercial, or industrial tear-offs, including but not limited to base sheets, coatings, felt, fabric, metal flashing, tar, mastics, or roof insulation.



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- c. “Cleanup Material” shall have the meaning assigned to the term “Cleanup Material Contaminated By Hazardous Substances” in Metro Code Section 5.00.010.
- d. “Disaster Debris” means Solid Waste generated by a natural or human disaster.
- e. “Metro Area” shall have the meaning assigned in Metro Code Section 1.01.040.
- f. “Metro Area Waste” means Solid Waste generated from 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 the Metro Area, unless the County provides documentation establishing the weight of the Solid Waste generated from the Metro Area.
- g. “Processing Residual” shall have the meaning assigned in Metro Code Section 5.00.010, provided that such Processing Residual results from material recovery of Non-Putrescible Waste by a Metro Designated Facility.
- h. “Useful Material” shall have the meaning assigned in Metro Code Section 5.00.010.

19. Notices.

- a. Any notice required or permitted to be given under this agreement by one Party to the other shall be in writing and shall be given and deemed to have been given immediately if delivered in person to the address and to the contact person set forth in this section for the respective party to whom the notice is given, or on the fifth day following mailing if placed in the United States Mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the respective contact party at the address set forth below. After the notifying Party gives notice to the other party, this other party will immediately give notice to any of its assignees if affected by the notice.
- b. The address and contact, legal representative for County for all purposes under this agreement and for all notices hereunder shall be:
- c. The address and contact, legal representative for Metro for all purposes under this agreement and for all notices hereunder shall be:
- d. Each Party may seek to change the address and contact party for notices by giving (30) days advance written notice of the change(s) to the other Party.



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**BOARD OF COUNTY COMMISSIONERS
OF COWLITZ COUNTY, WASHINGTON**

METRO

Michael A. Karnofski By: Scott Robinson

Michael Karnofski, Chairman

Scott Robinson

Deputy Chief Operating Officer

Dennis P. Weber

Date: 6/29/15

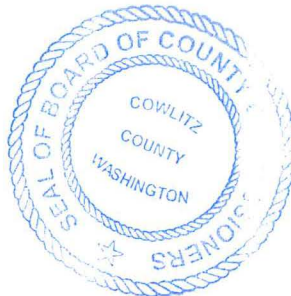
Dennis P. Weber, Commissioner

Joe Gardner
Joe Gardner, Commissioner

Dated this 23rd day of June, 2015

ATTEST:

Tiffany Ostreim
Tiffany Ostreim, Clerk of the Board



APPROVED AS TO FORM:

Douglas E. Jensen
Douglas E. Jensen, Chief Civil Deputy