

BEFORE THE METRO COUNCIL

AMENDING METRO CODE CHAPTER 5.05)	ORDINANCE NO. 05-1083
TO INCLUDE THE WEYERHAEUSER)	
REGIONAL LANDFILL ON THE LIST OF)	Introduced by Michael Jordan, Chief
DESIGNATED FACILITIES; AND)	Operating Officer with the concurrence of
DECLARING AN EMERGENCY)	David Bragdon, Council President
)	

WHEREAS, Metro Code Section 5.05.030 authorizes the Metro Council to add and delete facilities from the list of designated facilities set forth in that Section; and,

WHEREAS, Weyerhaeuser, Inc. is the owner of the Weyerhaeuser Regional Landfill located in Castle Rock, Washington, and has made application to Metro seeking designated facility status for the Weyerhaeuser Regional Landfill by requesting that Metro add the Weyerhaeuser Regional Landfill to the list of designated facilities set forth in Metro Code Section 5.05.030; and,

WHEREAS, as set forth in the staff report accompanying this Ordinance, the Chief Operating Officer analyzed the criteria set forth in Metro Code section 5.05.030(b) that the Metro Council must consider when it determines whether to add a facility to the list of designated facilities in Section 5.05.030(a); and,

WHEREAS, the Chief Operating Officer, recommends approval of this Ordinance; now therefore,

THE METRO COUNCIL HEREBY ORDAINS AS FOLLOWS:


1. Metro Code Section 5.05.030(a) is amended to add the following provision as subsection 11:
 - (11) Weyerhaeuser Regional Landfill. The Weyerhaeuser Regional Landfill, located in Castle Rock, Washington, and the Weyerhaeuser Material Recovery Facility, located in Longview, Washington. The Weyerhaeuser Material Recovery Facility is hereby designated only for the purpose of accepting solid waste for transfer to the Weyerhaeuser Regional Landfill. The Weyerhaeuser Regional Landfill and the Weyerhaeuser Material Recovery Facility may accept solid waste generated within the District only as follows:
 - (A) As specified in an agreement entered into between Metro and Weyerhaeuser, Inc. authorizing receipt of such waste; or

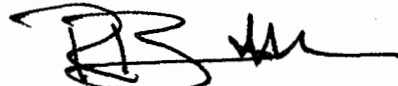
- (B) Subject to a non-system license issued to a person transporting to the Weyerhaeuser Regional Landfill or the Weyerhaeuser Material Recovery Facility solid wastes not specified in the agreement.

2. This ordinance is necessary for the immediate preservation of public health, safety and welfare by providing for more effective and comprehensive management and regulation of the regional solid waste system through the timely implementation of the designated facility agreement related to the Weyerhaeuser Regional Landfill. An emergency is therefore declared to exist, and this ordinance shall take effect immediately, pursuant to Metro Charter section 39(1).

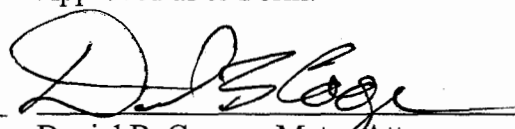
ADOPTED by the Metro Council this 2nd day of June, 2005.

Attest:


Christina Billington, Recording Secretary


David Bragdon, Council President

Dep. Council President
Approved as to Form:


Daniel B. Cooper, Metro Attorney

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 05-1083, AMENDING METRO CODE CHAPTER 5.05 TO INCLUDE THE WEYERHAEUSER REGIONAL LANDFILL ON THE LIST OF METRO DESIGNATED FACILITIES

May 2, 2005

Prepared by: Steve Kraten

BACKGROUND

On December 29, 2004, Metro received a request from Weyerhaeuser, Inc. for Metro to recognize the Weyerhaeuser Regional Landfill as a “Designated Facility” under the provisions of Metro Code 5.05.030. The Weyerhaeuser Regional Landfill, located at 3434 S. Silverlake Road, Castle Rock, Washington, began operations in 1993. Though built to RCRA Subtitle D standards, the landfill accepts no putrescible wastes and is permitted for the disposal of forest products manufacturing wastes, construction/demolition wastes, contaminated soils, and other miscellaneous industrial solid wastes.

At present, no solid waste is delivered directly to the landfill by truck. Rather, solid waste is delivered first to Weyerhaeuser’s Material Recovery Facility (MRF). Though referred to as a MRF by Weyerhaeuser, it is essentially a paved staging area at Weyerhaeuser’s Industrial Complex, located at 3401 Industrial Way, Longview, Washington. This is where solid waste is reloaded into railcars for the 16-mile trip to the landfill on the Weyerhaeuser-owned Woods Railroad. Weyerhaeuser representatives have informed Metro staff that, at some time in the future, Weyerhaeuser will seek approval from Cowlitz County to accept up to 15 loads of solid waste per day by truck in addition to the waste delivered by rail. Pursuant to Metro Code section 5.05.030(c), the Chief Operating Officer is authorized to execute a designated facility agreement (DFA) between Metro and a designated facility to authorize the acceptance of non-putrescible waste generated or originated from within the Metro region. (The Council amended the Code in October 2003 to provide this authorization for non-putrescible waste DFAs. Previously all DFAs required Council approval.) Metro staff has drafted a non-putrescible waste DFA that is acceptable to both parties, a copy of which is attached as Attachment 1 to this staff report.



Location of Weyerhaeuser Regional Landfill and MRF

The primary purpose of the DFA is to allow special waste and non-putrescible waste generated from within the Metro region to be received at the landfill for disposal, either directly by truck or by rail via the MRF. The proposed DFA authorized the receipt of construction/demolition residual from debris that has been already processed for material recovery (either at a recovery facility or source separated at a construction site), cleanup material contaminated by hazardous substances, and special wastes that lack

material recovery potential. Wastewater treatment solids and paper recycling reject wastes are currently received by the landfill from Weyerhaeuser's own in-region recycling and manufacturing facilities through a non-system license that will no longer be needed if the DFA is approved. The applicant estimates that it will initially receive about 5,000 tons of non-putrescible solid waste from the region during the first year ramping up gradually to a potential range of 30,000 to 50,000 tons annually.



Rail Siding At Landfill



Tipper At Working Face



Cell With HDPE Cover



MRF

Metro Code 5.05.030(a) contains a list of designated facilities. Metro Code 5.05.030(b) states that, pursuant to a duly enacted ordinance, the Metro Council may add (or remove) facilities to the list. In deciding whether to designate an additional facility, the Council shall consider several factors listed in the Code. Below are the factors that must be considered followed by a brief analysis.

- (1) *The degree to which prior users of the facility and waste types accepted at the non-system facility are known and the degree to which such wastes pose a future risk of environmental contamination;*

The proposed disposal site is a Weyerhaeuser owned and operated limited-purpose landfill located near Castle Rock, Washington in Cowlitz County. The landfill began operations in 1993 and primarily serves as a disposal site for wastes generated by Weyerhaeuser's own forest products and manufacturing operations. The permit was renewed in 2003, and again in 2004, by the Cowlitz County Dept. of Building and Planning under authority of a Memorandum of Agreement with the DOE. The landfill is permitted to accept wood chips and fines, log sort yard debris, boiler ash, pulp mill lime waste, wastewater treatment solids, paper recycling reject wastes, polyethylene waste, construction, demolition, and land clearing debris, petroleum contaminated soils, and other miscellaneous industrial solid wastes. Staff research did not uncover any evidence of any wastes accepted at the landfill that are likely to pose a risk of environmental contamination.

- (2) *The record of regulatory compliance of the facility's owner and operator with federal, state and local requirements including but not limited to public health, safety and environmental rules and regulations;*

With respect to its landfill operations, Weyerhaeuser is considered by the Cowlitz County Department of Building and Planning to be a well run facility that is in compliance with all federal, state and local requirements including those related to public health, safety and environmental rules and regulations.

- (3) *The adequacy of operational practices and management controls at the facility;*

Metro staff inspected the landfill in the course of its evaluation of this application. The landfill's operational practices and management controls are judged by Metro staff and Cowlitz County staff to be adequate and consistent with the other similar facilities. The landfill uses operational practices and management controls that are typical of limited-purpose landfills and considered adequate for the protection of health, safety and the environment.

- (4) *The expected impact on the region's recycling and waste reduction efforts;*

The waste authorized for disposal under the proposed DFA includes only solid wastes that do not have a potential for recycling. Such wastes include special wastes and processing residue from recycling facilities. Thus, approval of the proposed DFA is not anticipated to have an impact on the region's recycling and waste reduction efforts.

- (5) *The consistency of the designation with Metro's existing contractual arrangements;*

As noted above, the Weyerhaeuser Regional Landfill is permitted by Cowlitz County to accept only limited types of waste. Therefore, because the solid waste is being sent to a limited purpose landfill, it does not implicate Metro's contract requirements under Change Order No. 8 to the Metro Waste Disposal contract. The requested agreement does not conflict with Metro's disposal contract or any other of its existing contractual arrangements.

- (6) *The record of the applicant regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement and with federal, state and local requirements including but not limited to public health, safety and environmental rules and regulations; and*

The waste subject to the proposed license was previously delivered to the landfill by the applicant without benefit of a non-system license and without payment of the required Metro fees and taxes. The applicant was cooperative with Metro's investigation into this matter and a final settlement for back fees and taxes was negotiated. The applicant paid the agreed amount for back fees and taxes and has complied with the terms of the settlement agreement since it was entered into on August 13, 2004.

- (7) *Such other factors as the Chief Operating Officer deems appropriate for purposes of making such determination.*

The Chief Operating Officer is not aware of any additional factors that are appropriate for making such a determination.

ANALYSIS/INFORMATION

1. Known Opposition

Staff is not aware of any opposition to the proposed DFA.

2. Legal Antecedents

Metro Code Section 5.05.030(b) provides that the Metro Council may, from time to time, through a duly enacted ordinance, add a facility to the list of designated facilities described in Code Section 5.05.030(a).

3. Anticipated Effects

- More efficient administration through the replacement of multiple NSLs with a single DFA;
- Enhanced regulatory authority by Metro at the facility;
- Potential for increased materials recovery as the facility will be prohibited from accepting unrecovered construction/demolition debris.

4. Budget Impacts

It is anticipated that the Weyerhaeuser Landfill will only receive non-recoverable waste and MRF residual that is presently being disposed at other non-Metro facilities. Thus, approval of the proposed designated facility agreement is not expected to have a budget impact.

RECOMMENDATION

The Chief Operating Officer recommends adoption of Ordinance No. 05-1083.

METRO CONTRACT NO. _____

DESIGNATED FACILITY AGREEMENT

This Agreement is between Metro, a metropolitan service district organized under ORS Chapter 268 and the Metro Charter, located at 600 NE Grand Avenue, Portland, Oregon 97232-2736, ("Metro") and Weyerhaeuser, Inc., doing business as Weyerhaeuser Regional Landfill ("the Landfill") located at 3434 S. Silverlake Road, Castle Rock, Washington 98611 and the Weyerhaeuser Material Recovery Facility (the "MRF"), located at 3401 Industrial Way, Longview, Washington (collectively, "the Facility") and is entered under the authority of ORS 268.317, and Metro Code section 5.05.030. The Facility enters into this Agreement in recognition of the "Designated Facility" status conferred upon the Facility by Metro Ordinance No. 05-1083.

In exchange for the promises set forth below, the Facility and Metro agree as follows:

1. Purpose and Authority.

The purposes of this agreement are to manage effectively the disposal of certain solid wastes from within the Metro region while concurrently increasing material recovery by establishing the terms and conditions under which the Facility may receive the wastes specified in Section 3 of this agreement.

2. Duration.

Unless terminated sooner as specified herein, this Agreement shall remain in effect for five years from the date of execution by both Parties.

3. Waste from the Metro Region that may be accepted at the Facility.

Provided that the Facility has any required separate and appropriate legal authority, the Facility may accept only the following types of materials generated from within the Metro region:

- a. Processing residual resulting from material recovery of non-putrescible waste, provided that such processing residual has been generated (a) by a person licensed or franchised by Metro to conduct material recovery of non-putrescible waste, (b) by a person with whom Metro has executed a designated facility agreement which requires the facility to conduct material recovery of non-putrescible waste, or (c) by Weyerhaeuser-owned manufacturing facilities;
- b. "Cleanup Material Contaminated By Hazardous Substances" as defined in Metro Code section 5.01.010;

- c. “Special waste” as defined in Metro Code 5.02.015, provided that such special wastes are not eligible or amenable to material recovery;
 - d. “Inert” materials as defined in Metro Code section 5.01.010;
 - e. Disaster debris as may be specifically authorized by the Director of the Metro Solid Waste and Recycling Department; and
 - f. Other waste as described in any future addendum to this Agreement or authorized by Metro’s Chief Operating Officer (“the COO”) under a non-system license.
4. Waste from the Metro Region that May Not be accepted at the Facility.

Except as provided in Section 3.a., above, the Facility agrees that no other types of wastes generated or originating within the Metro region shall be accepted or disposed at the facility, including but not limited to the following types of wastes: putrescible wastes; putrescible source-separated recyclable material; non-putrescible waste that has not undergone material recovery by a person licensed or franchised by Metro to perform material recovery on non-putrescible waste including waste generated at construction and demolition sites, or with whom Metro has executed a designated facility agreement to perform such processing; source separated recyclable material; and any materials and wastes prohibited by the solid waste handling permit issued by the Cowlitz County Department of Building and Planning.

5. Delivery of Waste Via Weyerhaeuser Material Recovery Facility.

Solid waste authorized by this agreement may be first delivered to the Weyerhaeuser Material Recovery Facility located at 3401 Industrial Way, Longview, WA. All solid waste received from the Metro region at the MRF must subsequently be transported by rail to the Landfill for disposal.

6. Facility Operating Plan.

- a. The Facility shall submit to Metro, for its review and approval, an operating plan for the management of solid wastes generated from within the Metro region. The plan shall address how the Facility intends to comply with the requirements of this Agreement. The Facility shall maintain copies of the operating plan at both the Facility’s premises (the landfill and the MRF) and at a location where facility personnel and Metro representatives have ready access to it.
- b. The plan shall describe how incoming solid wastes from the Metro region will be identified as appropriate for the Facility and the criteria used for such identification, including:

- (1) Procedures for inspecting incoming loads for the presence of prohibited wastes;
 - (2) A set of objective criteria for accepting and rejecting loads;
 - (3) Procedures for establishing whether incoming waste was generated or originated within the Metro boundary; and
 - (4) Measures to ensure compliance with this section of the Agreement, including the provision of at least one person at the tipping floor of the MRF or the working face of the Landfill whose responsibility shall include identification and removal of waste that is not authorized under Section 3 above. If solid waste is delivered under the terms of this Agreement directly to the Landfill, then the person required by this provision shall be at the working face of the Landfill.
- c. The operating plan shall establish procedures for managing and transporting to appropriate facilities any prohibited wastes discovered at the Facility. The plan shall include procedures for managing:
- (1) Hazardous wastes;
 - (2) Recovery of any source separated recyclable materials that might be received at the facility; and
 - (3) Other prohibited solid wastes.
- d. Amendments to the operating plan shall be submitted to Metro for review and approval by the COO prior to implementation. Metro's review shall be limited to compliance with this Agreement and shall not be unreasonably withheld.
- e. The Facility shall adhere to the policies and procedures contained in its operating plan. Failure to ensure such compliance with the operating plan shall be considered a default of this Agreement.

7. Record Keeping and Audits.

- a. The Facility shall maintain complete and accurate records regarding all solid waste transported, received, treated, disposed or otherwise processed pursuant to this Agreement. The Facility shall make such records available to, or send copies to, the COO or his duly designated agents for inspection, auditing, and copying upon not less than seven (7) days written notice from Metro. Sequentially numbered tickets shall be used for all transactions and voided or canceled tickets shall be retained.
- b. The Facility shall maintain waste profiles, waste analysis plans, or Material Safety Data Sheets ("MSDS") at either the MRF or the Landfill for all special waste and

cleanup material delivered for disposal under the authority of this Agreement. Such profiles and MSDS sheets shall be made available to the COO (or his designated agent) at either facility for examination and copying upon not less than seven (7) days written notice from Metro for examination and copying during inspections conducted pursuant to Section 11a(1) of this agreement.

- c. At Metro's option, the Facility shall have an independent audit conducted by a firm acceptable to Metro, no more than once a year, at Metro's expense. The audit report provided to Metro following an independent audit shall address matters reasonably related to this Agreement, as specified in an audit program approved by Metro and provided to the Facility prior to the audit.

8. Reports and Information.

- a. The Facility shall report the following information to Metro on a monthly basis for waste originating in Washington, Clackamas and Multnomah counties of Oregon:
 - (1) Record numbers designating individual incoming loads;
 - (2) Customer account numbers (using separate account numbers to differentiate waste received from a person or facility authorized to perform material or resource recovery, transfer or reload as those terms are defined in Metro Code 5.01.010, pursuant to a Metro Solid Waste Franchise, Designated Facility Agreement, License or Non-System License);
 - (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 into one of the categories listed in Section 3, above;
 - (7) Whether each load originated from inside or outside the Metro boundary (each load consisting of waste from both inside and outside the Metro boundary shall be counted as originating from inside the Metro boundary if more than 10% of the weight of the waste in the load was collected from inside the Metro boundary or if more than 10% of the locations where the load was collected are within the Metro boundary);
 - (8) Whether each load was delivered to the Landfill via the MRF or delivered directly to the Landfill without being transshipped through the MRF;
 - (9) The Facility shall submit to Metro a record of all unauthorized wastes initially received from within the Metro boundary but ultimately disposed at a site other than the Landfill. Such information shall include a copy of the disposal

site's billing to the Facility for such disposal. Such billing must include the tonnage of each load.

- b. Records required under Section 8a. of this Agreement shall be reported to Metro no later than fifteen (15) days following the end of each month, via E-mail, electronic records encoded on 3.5" data diskettes or CD, and in a format prescribed by Metro that is compatible with Metro's data processing equipment.
- c. The Facility 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 Facility shall provide a map of the Metro region to any customer that requests one.
- d. The Facility shall provide to Metro copies of all permits relating to operations at the Facility, including any new land use applications, appeals or modifications. Copies of revisions to existing permits and newly issued permits shall be provided to Metro within seven (7) business days of receipt. The Facility 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 noncompliance with a statute, regulation, or permit condition.
- e. On a quarterly basis the Facility shall provide Metro a listing of account numbers and material codes and corresponding material names for incoming loads covered by this Agreement.

9. Regional System Fee and Excise Tax.

- a. The Facility shall pay monthly to Metro an amount equal to the Regional System Fee for which provision is made in Metro Code Section 5.02.045 for each ton of waste accepted at the facility under this Agreement. Such payment shall be made in accordance with Metro Code Section 5.02.055, and shall be in the form of check or cash or other payment method as approved by the COO.
- b. The Facility shall also pay monthly to Metro an amount equal to the Excise Tax for which provision is made in Metro Code Section 7.01.020(e) for each ton of waste listed in section 3a disposed at the facility under this Agreement. Such payment shall be made in accordance with Metro Code Sections 7.01.070 and 7.01.080, and shall be in the form of check or cash or other payment method as approved by the COO.

10. Compliance with Law.

The Facility shall fully comply with all provisions of Metro Code Chapter 5.01 applicable to disposal sites, which provisions are incorporated by this reference as if set forth in full. The Facility shall also fully comply with all applicable federal, state, regional and local laws, rules, regulations, ordinances, orders, and permits, as amended. All conditions imposed on the operation of the Facility, whether 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. This Agreement shall terminate at any time that Cowlitz County may terminate or decline to renew the Landfill's Solid Waste Handling Permit.

11. Right of Inspection; Enforcement of Metro Code.

- a. Authorized representatives of Metro shall be permitted access to the Landfill and the MRF area of the industrial complex 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 regular working hours that the Facility accepts waste deliveries, with 30 minutes advance notice;
 - (2) At other reasonable times if written notice is given during regular working hours that the Facility accepts waste deliveries, which notice may be made via facsimile sent to the Facility, attention Larry Fulcher at (360) 430-1806; 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. Access to the MRF area of the industrial complex shall be permitted through the entrance typically used by vehicles for delivery of solid waste to the MRF.
- c. The Facility shall cooperate with Metro regarding Metro's investigation of waste haulers suspected of fraudulently claiming waste as having originated from outside the Metro boundary or otherwise violating the provisions of this Agreement or the Metro Code. Such cooperation shall include, without limitation, providing Metro with requested information in the Facility's possession regarding waste haulers under investigation and providing appropriate Facility representatives to testify in deposition, in court, at a contested case hearing, and in any subsequent appeals thereto regarding such waste haulers.
- d. If Metro asserts that the Facility has violated any requirement of this agreement or any provision of the Metro Code applicable to disposal sites as applied to the Facility under Paragraph 10 of this agreement, the Facility hereby expressly agrees to submit to all enforcement proceedings that are applicable to disposal sites within Metro's boundaries and to accept the jurisdiction of Metro for the purpose of providing notice of, commencing and conducting enforcement proceedings as provided in Metro Code Chapters 2.03 and 2.05 and Metro Code Sections 5.01.180, 5.01.200, and 5.05.070.
- e. Subject to the confidentiality provisions of this license, Metro's right to inspect and audit shall include the right to review, at an office of the Facility located in or near the

Portland metropolitan area, all information from which all required reports are derived, adequate to ensure compliance with this agreement.

12. Indemnification.

The Facility 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, the Facility's performance under this Agreement.

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 Facility and the types and quantities of waste generated or delivered by such persons or entities ("Confidential Information") which the Facility is required to submit to Metro under Section 8a of this Agreement. Metro acknowledges that, although the Facility is not obligated by law to submit such information, the Facility is voluntarily obligating itself to do so pursuant to this Agreement. Metro also 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 the Facility, is used by the Facility in its business, has commercial value, and gives the Facility a business advantage over competitors not possessing such information. The ability of competitors of the Facility 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 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 at Metro who does not have a reasonable need to obtain Confidential Information for Metro's solid waste management purposes. Neither Metro nor any person at Metro shall use the Confidential Information specified in this section for personal benefit.
- c. Notwithstanding subsections 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 Facility

or the types and quantities of waste that specific persons or other entities generate or deliver to the Facility. Metro shall notify the Facility within six (6) business 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 Facility in writing at least ten (10) days prior to releasing such information.

- d. When submitting to Metro the Confidential Information specified herein, the Facility shall mark such materials as confidential. If the Facility provides Metro with information that is not marked as confidential, then 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 Facility shall no longer be required to submit such information to Metro. In such instance, upon request, the Facility 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. Modification, Suspension, and Termination.

- a. If the Facility fails to fully and promptly comply with a term or condition of this Agreement, the COO shall issue to the Facility a written notice of violation briefly describing such failure. The notice shall state that, within a period specified by the COO of at least twenty (20) days, the Facility must demonstrate to the satisfaction of the COO either that the Facility has not violated a term or condition of this Agreement, that the violation has been corrected, or that the Facility is making diligent efforts to correct the violation and is likely to succeed in a reasonable period of time. The Facility shall also, within the same twenty (20) day period, pay all fines owing as a result of violation per Metro Code 5.05.070 or make arrangements for payment satisfactory to the COO. Failure to comply with the notice of violation shall be grounds for suspension of this Agreement by the COO, effective as of 5:00 p.m. on the last day of the compliance period specified by the COO, until such time as the COO issues a written finding to the Facility that the violation has been cured. The COO may extend the compliance period to a total of no more than sixty (60) days from the date of the notice of violation, upon determining that the Facility is making good faith efforts to comply and is capable of complying within the extended compliance period.
- b. The COO may suspend this Agreement without prior notice only as follows:

- (1) If necessary in the reasonable opinion of the COO to protect the public health, safety, or welfare, and in the case of an emergency;
- (2) If Metro discovers that the facility knowingly accepted prohibited wastes from within the Metro region or misrepresented the nature of wastes received from the Metro region; or
- (3) If, due to a binding decision by an arbitrator or court of competent jurisdiction, Metro:
 - (a) May be liable for damages for allowing waste of a type specified in this Agreement to be disposed of at the Facility; or
 - (b) May no longer allow such waste to be disposed of at the Facility.
- c. The Metro Council ("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, the Facility 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 the Facility to acknowledge the modification within the 30-day period, unless otherwise excused by the COO, shall result in suspension of the Agreement effective as of 5:00 p.m. on the 30th day, until the modification is acknowledged in writing by the Facility.
- d. The Facility may terminate this Agreement for good cause provided that such termination shall commence no sooner than thirty (30) days after the Facility provides Metro with written notice of the Facility's intent to terminate.

15. 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 the Facility.
- b. The Facility 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 the Facility, nor vest any right or privilege in the Facility 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 of this Agreement must be in writing, signed by either the COO, if Metro is making the waiver, or by an authorized representative of the Facility, if the Facility is making the waiver. 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. 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 Oregon Revised Statutes 187.010 and 187.020, as amended.
- i. Unless otherwise specified, all terms are as defined in Metro Code Chapter 5.01.
- j. This Agreement is the entire agreement between the Parties.

WEYERHAEUSER, INC.

METRO

By: _____

By: _____

Print name and title

Print name and title

Date: _____

Date: _____

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