

INTERGOVERNMENTAL AGREEMENT

Metro Contract No. 930896
Amendment No. 1

This Intergovernmental 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 the City of West Linn, located at 22500 Salamo Road, West Linn, Oregon 97068 ("the City"). The Agreement between Metro and the City is entered into under the authority of ORS Chapter 190 and Metro Code Chapter 5.01.

RECITALS

WHEREAS, the City is a political subdivision of the State of Oregon and is a unit of local government authorized to enter into intergovernmental agreements pursuant to ORS 190.010, et seq.; and

WHEREAS, Metro is an Oregon municipal corporation formed and operating under state law and the Metro Charter, and is a unit of local government authorized to enter into intergovernmental agreements pursuant to ORS 190.010, et seq.; and

WHEREAS, the City owns the Dan Davis Recycling Center, a yard debris facility, as defined by Metro Code Section 5.01.010, located at 4001 Willamette Falls Drive, West Linn, Oregon ("DDRC"); and

WHEREAS, Metro Code Section 5.01.050(a)(3) provides that a local government that owns or operates a yard debris facility may enter into an intergovernmental agreement with Metro under which the local government will administer and enforce yard debris facility standards in lieu of compliance with Metro yard debris facility regulations; and

WHEREAS, the parties anticipate that code updates to Metro Code Chapter 5.01 will take effect in 2017 that will remove the local government option of entering into an intergovernmental agreement with Metro in lieu of obtaining a solid waste license for the City's DDRC yard debris facility; and

WHEREAS, until Metro Code requires a solid waste license for DDRC, Metro desires to contract with the City for the administration and enforcement of yard debris facility standards at DDRC;

NOW THEREFORE, in exchange for the promises and the terms and conditions set forth hereafter, and pursuant to the provisions of ORS Chapter 190, the parties agree to be bound as follows:

1. Term of Agreement.

The term of this Agreement shall commence on January 1, 2012, and will expire on the earlier of either (i) midnight on December 31, 2017, or (ii) the date upon which Metro issues a valid solid waste facility license for DDRC. However, either party may terminate this Agreement early as provided Section 5.



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2. Administration of Facility Standards.

The City shall administer and enforce at DDRC the yard debris facility standards set forth in Exhibit A to this Agreement and ensure that its employees, agents and contractors operate DDRC in compliance with such standards, and DDRC may operate consistent with such standards in lieu of compliance with Metro Code Chapter 5.01.

3. Insurance.

The City agrees to maintain insurance levels, or self-insurance in accordance with ORS 30.282, for the duration of this Agreement to levels necessary to protect against public body liability as specified in ORS 30.270. The City also agrees to maintain for the duration of this Agreement, Workers' Compensation Insurance coverage for all its employees as a self-insured employer, as provided by ORS chapter 656, or disability coverage under its Disability, Retirement and Death Benefits Plan.

4. Indemnification.

- (a) Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, the City shall indemnify, defend, and hold harmless Metro and Metro's officers, employees, contractors, and agents from and against all liability, loss, and costs arising out of or resulting from the acts of the City, its officers, employees, and agents in the performance of this Agreement.
- (b) Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, Metro shall indemnify, defend, and hold harmless the City from and against all liability, loss, and costs arising out of or resulting from the acts of Metro's, its officers, employees, and agents in the performance of this Agreement.

5. Termination.

- (a) This Agreement may be terminated by either party without cause upon giving 30 days written notice of intent to terminate.
- (b) This Agreement may be terminated with less than 30 days notice if a party is in default of the terms of this Agreement. Termination in less than 30 days under this subsection shall only occur if, in the case of a default, the party alleging the default gives the other party written notice that the Agreement will be terminated if the default is not cured within a period of not less than 20 days.
- (c) Any obligations arising prior to the date of termination survive the termination, including any obligation to defend and indemnify any other jurisdictions.

6. Adherence to Law.

Each party must comply with all federal, state, and local laws and ordinances applicable to this Agreement. All terms and conditions necessary to be inserted into public contracts in the state of Oregon are hereby incorporated as if such provisions were a part of this



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(503) 797-1700

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Agreement. Specifically, it is a condition of this Agreement that the City and all employers working under this Agreement are subject employers that will comply with ORS 656.017.

7. Notices.

Legal notice provided under this Agreement shall be delivered personally or by certified mail to the following individuals:

For the City:

Eileen Stein, City Manager
City of West Linn
22500 Salamo Road
West Linn, OR 97068

For Metro:

Paul Slyman, Director
Metro Property & Environmental
Services
600 NE Grand Avenue
Portland, OR 97232-2736

The following designated Project Managers will conduct informal coordination of this Agreement:

For the City:

Jeffrey Randall, Transportation Supervisor
City of West Linn Public Works
4100 Norfolk Street
West Linn, OR 97068
Tel: (503) 742-8616
Fax: (503) 657-3237
Email: jrandall@westlinnoregon.gov

For Metro:

Warren Johnson, Compliance Manager
Metro Property & Environmental
Services
600 NE Grand Avenue
Portland, OR 97232-2736
Tel: (503) 797-1836
Fax: (503) 813-7544
Email: warren.johnson@oregonmetro.gov

8. Entire Agreement.

This Agreement and Exhibit A constitute the entire agreement between the parties. This Agreement may be modified or amended only by the written agreement of the parties.

9. Severability.

The parties agree that, if any term of this Agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms will not be affected.

10. Right of Inspection.

(a) The City shall allow Metro access to DDRC at all reasonable times to inspect and carry out other necessary functions under this Agreement. The City authorizes Metro access to inspect:

- i. Without notice during hours when DDRC accepts solid waste; and
- ii. At other reasonable times upon written notice given by Metro to the City during hours when the Facility accepts Solid Waste, which notice may be made via facsimile sent to the City, attention Transportation Supervisor at (503) 657-3237.



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- (b) Metro's right to inspect and audit shall include the right to review, at an office of the City, all information from which all required reports are derived.

11. Dispute Resolution.

- (a) If a claim, controversy, or dispute arises out of this Agreement, the complaining party shall give written notification to the other party of the nature of the claim and the remedy requested within 10 days of the incident that forms the basis of the dispute.
- (b) Oregon law shall govern this Agreement. The parties shall resolve all claims, controversies, or disputes that arise out of this Agreement by arbitration in accordance with the arbitration rules of the Arbitration Service of Portland or the American Arbitration Association. The party who first initiates arbitration shall designate an arbitration service by filing a claim in accordance with the rules of the organization selected. Such arbitration shall take place in Portland, Oregon, and any judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof.

12. Contract Administration.

- (a) The designated representative of the City of West Linn will represent the City in all matters pertaining to administration of this Agreement.
- (b) Metro designates its Property & Environmental Services Director or his designee to represent Metro in all matters pertaining to administration of this agreement.

13. Third Party Rights.

This Agreement shall not be deemed to vest in any third party any rights, nor shall it be deemed to be enforceable by any third party in any legal, equitable, or administrative proceeding whatsoever.

14. Assignment.

This Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any condition, be assigned or transferred by either party without prior written approval by the other party.



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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly appointed officers on the date written below.

City of West Linn:

Metro:

Eileen Stein
Signature

[Signature]
Paul Slyman,
Property & Environmental Services Director

Eileen Stein, City Manager
Print name and title

11/22/16
Date

11-15-16
Date

Approved as to form:
City of West Linn Attorney

Approved as to form:
Metro Attorney

[Signature]
Signature

[Signature]
Shane Abma,
Senior Metro Attorney

Megan Thornton, Assistant City Attorney
Print name and title

11-21-16
Date

November 15, 2016
Date

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EXHIBIT A

General Standards for Yard Debris Reload Facilities

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EXHIBIT A
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1.0	SECTION 1.0: AUTHORIZATIONS	
1.1	Purpose of Section 1.0	Section 1.0 describes the wastes that the facility is authorized to accept and the waste-related activities the facility is authorized to perform.
1.2	General conditions on solid waste	The facility is authorized to accept only the solid wastes described in this section. The facility is prohibited from knowingly receiving any solid waste not authorized in this section.
1.3	General conditions on activities	The facility is authorized to perform only those waste-related activities that are described below.
1.4	Acceptance and management of yard debris	The facility is authorized to accept source-separated yard debris that has not reached a state of decomposition sufficient to produce malodors detectable beyond the boundaries of the facility. The facility may accept yard debris for grinding and reloading to authorized facilities for composting, use as hogged fuel, or other useful purposes as approved in writing by Metro Finance and Regulatory Services Director (the "Director").
1.5	Acceptance and management of land clearing debris	The facility is authorized to accept source-separated land clearing debris (e.g. brush and stumps). The facility may accept land clearing debris for grinding and reloading to authorized facilities for composting, use as hogged fuel, or other useful purposes as approved in writing by the Director.
1.6	Acceptance and management of untreated wood	The facility is authorized to accept source-separated, untreated and unpainted ("clean") wood waste (e.g. untreated lumber and wood pallets). The facility may accept clean wood waste for grinding and reloading to authorized facilities for composting, use in paper production, use as hogged fuel, or other useful purposes as approved in writing by the Director.
1.7	Acceptance and management of painted and treated wood	<ol style="list-style-type: none"> 1. The facility is authorized to accept painted and treated wood waste, other than creosote-treated wood waste, for grinding and reloading to authorized facilities for use as hogged fuel or other useful purposes as approved in writing by the Director. 2. The facility shall not use or incorporate painted and treated wood into mulch, animal bedding, compost feedstock, or any other landscaping or agricultural products unless otherwise

		<p>approved in writing by the Director.</p> <p>3. The facility shall post signs that clearly designate the different locations for painted and treated wood waste from that of composting feedstock.</p>
1.8	Acceptance of source-separated recyclable materials	The facility is authorized to accept non-putrescible source-separated recyclable materials for the purpose of sorting, classifying, consolidating, baling, temporary storage, transfer or other similar functions related to preparing these materials for reuse or recycling.

2.0	SECTION 2.0: LIMITATIONS AND PROHIBITIONS	
2.1	Purpose of Section 2.0	Section 2.0 describes limitations and prohibitions on the wastes handled at the facility and waste-related activities performed at the facility.
2.2	Prohibited waste	The facility shall not knowingly receive, process, reload or dispose of any solid waste not authorized in these standards.
2.3	No disposal of recyclable materials	The facility shall not transfer source-separated recyclable materials to a disposal site.
2.4	Composting prohibited	This facility shall not keep yard debris on site long enough for more than negligible biological decomposition to begin. Yard debris shall not be stored on-site for more than seven days.
2.5	Limits not exclusive	These standards shall not be construed to limit, restrict, curtail, or abrogate any limitation or prohibition contained elsewhere in this document, Intergovernmental Agreement, Metro Code, or any federal, state, regional or local government law, rule, regulation, ordinance, order or permit.

3.0	SECTION 3.0: OPERATING CONDITIONS	
3.1	Purpose of Section 3.0	Section 3.0 describes criteria and standards for the operation of the facility.
3.2	Qualified operator	<ol style="list-style-type: none"> 1. The facility shall, during all hours of operation, provide an operating staff qualified and competent to carry out the functions required by these standards. 2. Facility personnel, as relevant to their job duties and responsibilities, shall be familiar with the relevant provisions of these standards. 3. A qualified operator must have training and authority to reject

		prohibited waste that is discovered during load checks and to properly manage prohibited waste that is inadvertently received.
3.3	Fire prevention	The facility shall provide fire prevention, protection, and control measures, including but not limited to, adequate water supply for fire suppression, and the isolation of potential heat sources and/or flammables from the processing area.
3.4	Managing prohibited wastes	<ol style="list-style-type: none"> 1. The facility shall reject prohibited waste upon discovery and shall properly manage and dispose of prohibited waste when inadvertently received. 2. The facility shall implement a load-checking program to prevent the acceptance of waste that is prohibited by the license. This program must include at a minimum: <ol style="list-style-type: none"> a) Visual inspection. As each load is tipped, a qualified operator shall visibly inspect the load to prevent acceptance of waste that is prohibited by the license; b) Containment area. A secured or isolated containment area for the storage of prohibited wastes that are inadvertently received. Containment areas shall be covered and enclosed to prevent leaking and contamination; and c) Records maintenance. Records of the training of personnel in the recognition, proper handling, and disposition of prohibited waste shall be maintained in the operating record and be available for review by Metro.
3.5	Storage and exterior stockpiles	<ol style="list-style-type: none"> 1. The facility shall manage, contain, and remove at sufficient frequency stored materials and solid waste to avoid creating nuisance conditions, vector or bird attraction or harborage, or safety hazards. 2. The facility shall maintain storage areas in an orderly manner and keep the areas free of litter. 3. Except as provided in Section 2.4, the facility shall not stockpile source-separated recyclable materials for longer than 180 days (6 months).
3.6	Dust, airborne debris and litter	<p>The facility shall operate in a manner that minimizes and mitigates the generation of dust, airborne debris and litter, and shall prevent its migration beyond property boundaries. The facility shall:</p> <ol style="list-style-type: none"> a) Take reasonable steps to notify and remind persons delivering yard debris and wood wastes to the facility that all loads must be suitably secured to prevent any material

		<p>from blowing off the load during transit;</p> <p>b) Maintain and operate all vehicles and devices transferring or transporting yard debris and wood wastes from the facility to prevent leaking, spilling or blowing of such material on-site or while in transit; and</p> <p>c) Maintain and operate all access roads and receiving, processing, storage, and reload areas in such a manner as to minimize dust and debris generated on-site and prevent such dust and debris from blowing or settling off-site.</p>
3.7	Odor	The facility shall operate in a manner that prevents the generation of odors that are detectable off-site.
3.8	Vectors (e.g. birds, rodents, insects)	The facility shall operate in a manner that is not conducive to the harborage of rodents, birds, insects, or other vectors capable of transmitting, directly or indirectly, infectious diseases to humans or from one person or animal to another.
3.9	Noise	The facility shall operate in a manner that prevents the creation of noise sufficient to cause adverse off-site impacts and to the extent necessary to meet applicable regulatory standards and land-use regulations.
3.10	Water quality	<ol style="list-style-type: none"> 1. The facility shall be operated and maintained to minimize contact of solid wastes with storm water runoff and precipitation. 2. The facility shall manage, treat, or dispose of water contaminated by solid waste generated on-site in a manner complying with local, state, and federal laws and regulations.
3.11	Access control	<ol style="list-style-type: none"> 1. The facility shall control access to the site as necessary to prevent unauthorized entry and dumping. 2. The facility shall maintain a gate or other suitable barrier at potential vehicular access points to prevent unauthorized access to the site when an attendant is not on duty.
3.12	Signage	<p>The facility shall post signs at all public entrances to the site, and in conformity with local government signage regulations. These signs shall be easily and readily visible, and legible from off-site during all hours and shall contain at least the following information:</p> <ol style="list-style-type: none"> a) Name of the facility b) Address of the facility; c) Emergency telephone number for the facility; d) Operating hours during which the facility is open for the receipt of authorized waste;

		<p>e) Fees and charges;</p> <p>f) A list of authorized and prohibited wastes; and</p> <p>g) Metro's name and telephone number (503) 234-3000.</p>
3.13	Nuisance Complaints	<p>1. The facility shall respond to all nuisance complaints in a timely manner (including, but not limited to, blowing debris, fugitive dust, odors, noise, traffic and vectors), and shall keep a record of such complaints and any action taken to respond to the complaints, including actions to remedy the conditions that caused the complaint.</p> <p>2. If the facility receives a complaint, the facility shall attempt to respond to that complaint within one business day or sooner as circumstances may require, and retain documentation of its attempts (whether successful or unsuccessful).</p>
3.14	Access to general standards	The facility shall maintain a copy of these standards on the facility's premises, and in a location where facility personnel and Metro representatives have ready access to it.

4.0	SECTION 4.0: RECORD KEEPING AND REPORTING	
4.1	Purpose of Section 4.0	Section 4.0 describes the facility's record keeping and reporting requirements. The facility shall effectively monitor its operation and maintain accurate records of the information described in this section.
4.2	Record keeping requirements	The facility shall keep and maintain complete and accurate records of the amount and ultimate disposition of all materials the facility receives, reloads, and disposes.
4.3	Reporting requirements	The facility shall provide the information described under Section 4.2 to Metro on a quarterly basis. The facility shall submit a report to Metro in the form and format prescribed by Metro no later than 15 days following the end of each quarter.
4.4	Copies of enforcement actions provided to Metro	The facility shall ensure Metro receives copies of any notice of violation or non-compliance, citation, or any other similar enforcement actions issued to the facility by any federal, state, or local government other than Metro, and related to the operation of the facility.
4.5	Unusual occurrences	The facility shall keep and maintain accurate records of any unusual occurrences (such as fires or any other significant disruption) encountered during operation and methods used to resolve problems arising from these events, including details of all incidents that required implementing emergency procedures.

5.0	SECTION 5.0: GENERAL OBLIGATIONS	
5.1	Deliver waste to appropriate destinations	The facility shall ensure that solid waste transferred from the facility goes to the appropriate destination under Metro Code Chapters 5.01 and 5.05, and under applicable local, state and federal laws, rules, regulations, ordinances, orders and permits.
5.2	Compliance by agents	The Licensee shall be responsible for ensuring that its agents and contractors operate in compliance with these standards.

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