



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Agenda

MEETING: Joint Meeting of Solid Waste Policy and Technical Committees

DAY: Thursday, January 28

TIME: 9:00 A.M.

PLACE: Room 335

- | | |
|-----------------------------------|-------------|
| 1. Approval of January 14 minutes | Buchanan |
| 2. Metro Staff Updates | Martin |
| 3. Designated Facilities | Metro Staff |
| 4. Other Committee Communications | Buchanan |
| 5. Adjourn | |

Attachments:

The January 14 Minutes and the Staff Report on designated facilities are not complete. They will be sent to you as soon as possible.

TP:clk

/share/peto/comm/swsc0120.agd

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 93-1749 FOR THE PURPOSE OF ESTABLISHING A NEW METRO SOLID WASTE ADVISORY COMMITTEE

Date: January 15, 1993

Presented by: Terry Petersen

PROPOSED ACTION

Create a new Metro Solid Waste Advisory Committee that performs the functions of the existing Solid Waste Policy and Technical Committees. The Policy and Technical Committees would cease to exist after adoption of this resolution.

BACKGROUND

In 1987 the Council established the Solid Waste Policy and Technical Committees. The Committees have played an important role in evaluating solid waste policy and technical issues and in developing the Regional Solid Waste Management Plan.

There is an ongoing need for the Metro Council, Executive Officer, and Solid Waste Department Staff to receive advice on solid waste planning and management. Because of the changing nature of issues being addressed, however, the Committees recently reviewed opportunities for reorganization that would make their work more effective.

At a joint meeting of the Committees on January 14, 1993, a unanimous recommendation was adopted that the Policy and Technical Committees be combined into a single Metro Solid Waste Advisory Committee. Key elements concerning membership, appointment process, officers, and subcommittees are included as Exhibit A of the Resolution.

The new Metro Solid Waste Advisory Committee would:

1. Evaluate policy options and present policy recommendations to the Metro Council and Executive Officer regarding regional solid waste management and planning.
2. Advise Metro on the implementation of existing solid waste plans and policies.
3. Provide recommendations concerning the solid waste planning process to ensure adequate consideration of regional values such as land use, economic development, and other social, economic and environmental factors.
4. Provide recommendations on the compliance of regional solid waste management and planning with applicable state requirements.

5. Provide recommendations on alternative solid waste policies and practices developed by subcommittees of the Solid Waste Advisory Committee.
6. Recommend needs and opportunities for involving citizens in solid waste issues.
7. Recommend measures to build regional consensus for the management of solid waste.

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 93-1749.

TP:clk
SHARE/PETE/COMM/STAF0115.RPT

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ESTABLISHING)	RESOLUTION NO. 93-1749
A NEW METRO SOLID WASTE)	
ADVISORY COMMITTEE)	Introduced by Rena Cusma
)	Executive Officer

WHEREAS, Resolution No. 87-785-A established a Solid Waste Policy Committee and a Solid Waste Technical Committee to advise the Council on solid waste policy issues; and

WHEREAS, Many of the significant issues related to facility siting and consistency with local government plans have now been addressed by the Council and the Policy and Technical Committees; and

WHEREAS, There is a continuing need for a Metro solid waste advisory committee to review implementation of existing plans and evaluate new policies; and

WHEREAS, The Solid Waste Technical and Policy Committees have recommended that the solid waste advisory function can better be performed by a single advisory committee; and

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

BE IT RESOLVED, That the Metro Council

- 1. That a Metro Solid Waste Advisory Committee be established. Once the new Committee is established by this Resolution, the Solid Waste Policy and Technical Committees shall no longer exist.**
- 2. That the members of the Metro Solid Waste Advisory Committee be appointed as described in Exhibit A.**

3. That the Metro Solid Waste Advisory Committee shall adopt by-laws that include elements described in Exhibit A concerning Committee responsibilities, membership, officers, and subcommittees.

ADOPTED by the Metro Council this _____ day of _____, 1993.

Judy Wyers, Presiding Officer

EXHIBIT A

ELEMENTS TO BE INCLUDED IN BY-LAWS OF THE METRO SOLID WASTE ADVISORY COMMITTEE

Committee Responsibilities

1. Evaluate policy options and present policy recommendations to the Metro Council and Executive Officer regarding regional solid waste management and planning.
2. Advise Metro on the implementation of existing solid waste plans and policies.
3. Provide recommendations concerning the solid waste planning process to ensure adequate consideration of regional values such as land use, economic development, and other social, economic and environmental factors.
4. Provide recommendations on the compliance of regional solid waste management and planning with applicable state requirements.
5. Provide recommendations on alternative solid waste policies and practices developed by subcommittees of the Solid Waste Advisory Committee.
6. Recommend needs and opportunities for involving citizens in solid waste issues.
7. Recommend measures to build regional consensus for the management of solid waste.

Membership

Voting members:

Metro Council (1)
Clackamas County (1)
Multnomah County (1)
Washington County (1)
Clackamas County Cities (1)
Multnomah County Cities (1)
Washington County Cities (1)
City of Portland (1)
Solid Waste Hauling Industry (4)
Recycling Industry (1)
Solid Waste Facilities (3)
Citizens (3)

Non-Voting Associate Members:

Metro Solid Waste Department Director (1)
Department of Environmental Quality (1)
Port of Portland (1)
Clark County (1)
Marion County (1)
Yamhill County (1)

Additional associate members without a vote may serve on the Committee at the pleasure of the Committee.

Appointment of Members

1. Representatives from the Counties shall be appointed by the Chairperson of the County Board.
2. The representative from the City of Portland shall be appointed by the Mayor of Portland.
3. Representatives of Cities within a County shall be appointed by consensus of those Cities.
4. A pool of candidates for the citizen representatives shall be nominated by the participating jurisdictions and the Metro Executive Officer shall appoint one citizen member for each County.
5. Industry candidates shall be solicited from the industry and appointed by the Metro Executive Officer. Solid waste hauling industry representatives shall include one from each of the three Counties.

Officers

1. The permanent Chairperson of the Committee shall be the Metro Council Solid Waste Committee Chairperson.
2. In the absence of the Chairperson, the Committee shall be chaired by the Metro Council Solid Waste Committee Vice-Chairperson.

Subcommittees

Working groups may be established by the Chairperson as necessary upon request of the Committee. Membership composition shall be determined according to mission and may include individuals who are not members of the Committee. All such sub-committees shall report to the Committee.



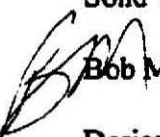
METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

DATE: January 26, 1993

TO: Solid Waste Policy and Technical Committees

FROM:  Bob Martin, Solid Waste Director

Re: Designated Facilities

The attached Ordinance No. 93-483, will amend the Metro Code to modify the designated facility status of Columbia Ridge Landfill, Hillsboro Landfill and Lakeside Reclamation for purposes of flow control and will add the Roosevelt Regional Landfill and Finley Buttes Landfill to the list of designated facilities.

Based on the input we received at the last joint meeting of the Policy and Technical Committees, Metro staff has now completed the attached Staff Report on designated facilities. As directed by the Metro Council, facilities applying for "Designated Facility" status must be evaluated in terms of nine criteria related to regulatory compliance, waste reduction, revenues, and other benefits or detriments to the region.

The staff report accompanying the ordinance concludes that:

- Given the proposed restrictions on the type of waste that will be allowed to go to designated facilities and the proposed enforcement procedures, there is not likely to be any negative impact on the region's recycling.
- In a "worst case" scenario, the proposed facilities are expected to have a neutral impact on Metro's revenues and rates.
- If new facilities are able to capture "new" waste through better disposal service and more aggressive marketing there could be major benefits in terms of reducing illegal disposal and increasing Metro revenues. Because of competition, designated facilities will need to aggressively market their facilities and track and report to Metro when they lose business due to illegal disposal activities. This will help supplement Metro's enforcement efforts and may result in significant quantities of waste now escaping the system being recaptured.
- While disposal capacity at existing landfills is currently adequate, there is a need for additional capacity in terms of: (1) encouraging price competition among landfills to the benefit of the region's rate payers, (2) improving Metro's ability to enforce flow control by entering into formal agreements with out-of-region landfills, and (3)

providing alternative disposal options in case of unexpected loss of capacity at existing landfills.

- Local governments that assess fees at in-region landfills could lose revenue when waste shifts to new out-of-region landfills. However, local governments are also "generators" of special waste and would benefit from lower cost disposal caused by greater competition among landfills.
- All of the proposed facilities are in compliance with environmental and regulatory requirements.

Based on these conclusions, I recommend that Metro enter into designated facility agreements with the following landfills: Columbia Ridge Landfill, Hillsboro Landfill, Lakeside Landfill, Roosevelt Landfill, and Finley Buttes Landfill. In addition, Metro is in the process of negotiating an agreement with Riverbend Landfill for the continued transfer of waste from Forest Grove.

Draft agreements with these facilities are also attached. Key components of these agreements are:

- The Metro Council may modify, suspend or terminate the agreement upon passage of a resolution specifying the action taken and the effective date.
- The facility shall maintain complete and accurate records regarding all solid waste transported, treated, disposed of, or otherwise processed and shall make such records available to Metro. Further, each facility is required at Metro's option to have an independent audit conducted by a firm acceptable to Metro once each year at the facility's expense.
- The facility may accept only certain types of wastes generated within Metro boundaries to include residue from the processing of construction, demolition, and land clearing waste received from a Metro franchised facility and/or other wastes not suitable for going through a regular transfer station.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING)	ORDINANCE NO. 93-483
METRO CODE SECTION 5.05.030 TO MODIFY)	
THE DESIGNATED FACILITY STATUS OF)	
COLUMBIA RIDGE LANDFILL, HILLSBORO)	Introduced by Rena Cusma,
LANDFILL AND LAKESIDE RECLAMATION)	Executive Officer
FOR PURPOSES OF FLOW CONTROL, TO)	
ADD ROOSEVELT REGIONAL LANDFILL AND)	
FINLEY BUTTES LANDFILL TO THE LIST)	
OF DESIGNATED FACILITIES, AND)	
DECLARING AN EMERGENCY)	

WHEREAS, Columbia Ridge Landfill is a "designated facility" for purposes of Metro solid waste flow control; and

WHEREAS, Columbia Ridge is currently allowed to accept solid waste as specified in its existing contract with Metro, and pursuant to duly issued non-system licenses; and

WHEREAS, Oregon Waste Systems (OWS), the owner of Columbia Ridge, was issued a non-system license on May 23, 1991, allowing it to accept special waste from the Metro area under certain conditions; and

WHEREAS, It is more appropriate, under the solid waste flow control chapter of the Metro Code, to "designate" facilities located outside of the District that are appropriate to receive waste from the Metro service area; and

WHEREAS, Hillsboro Landfill is a "designated facility" for purposes of Metro solid waste flow control; and

WHEREAS, Hillsboro Landfill is now owned and operated by Sanifill, Inc., with its home office located at 1225 N. Loop West, Suite 550, Houston, Texas 77008; and

WHEREAS, Hillsboro Landfill is currently allowed to accept solid waste generated within Metro boundaries as specified in its existing agreement with Metro; and

WHEREAS, increased complexity of the solid waste disposal and recycling system

has resulted in the need for a comprehensive revision of the existing agreement with Hillsboro Landfill; and

WHEREAS, revision of the agreement with Hillsboro Landfill requires amendment of the designated facility status of Hillsboro Landfill under the Metro Code, because the existing code language references the earlier agreement; and

WHEREAS, Lakeside Reclamation, owned and operated by Grabhorn, Inc., with its home office address of Route 1, Box 849, Beaverton, Oregon 97005, is a "designated facility" for purposes of Metro solid waste flow control; and

WHEREAS, Lakeside Reclamation is currently allowed to accept solid waste as specified in its existing agreement with Metro; and

WHEREAS, increased complexity of the solid waste disposal and recycling system has resulted in the need for a comprehensive revision of the existing agreement with Lakeside Reclamation; and

WHEREAS, revision of the agreement for Lakeside Reclamation requires amendment of the designated facility status of Lakeside Reclamation under the Metro Code, because the existing code language references the earlier agreement; and

WHEREAS, Regional Disposal Company (RDC), a Washington joint venture, with its home office at 4730 32nd Avenue South, Seattle, Washington 98118, owns and operates the Roosevelt Regional Landfill located in Klickitat County, Washington; and

WHEREAS, Columbia Resource Company (CRC), whose parent company is Tidewater Barge Lines, Inc., with its home office at 6 S. E. Beach Drive, Vancouver, Washington 98661, owns and operates Finley Buttes Landfill located in Morrow County, Oregon; and

WHEREAS, OWS, RDC and CRC have requested from Metro authority to accept special waste generated within the Metro service area; and

WHEREAS, Sanifill Inc. and Grabhorn Inc. have requested continued designated facility status for Hillsboro Landfill and Lakeside Reclamation respectively, and are willing to enter into a new agreement with Metro; and

WHEREAS, Based on information contained in the staff report accompanying this Ordinance and additional information provided during the hearing on this Ordinance, the Council has determined that it is appropriate to designate the Columbia Ridge Landfill, Roosevelt Regional Landfill and Finley Buttes Landfill for receipt of special waste from the District; and

WHEREAS, Based on information contained in the staff report accompanying this Ordinance and additional information provided during the hearing on this Ordinance, the Council has determined that it is appropriate to continue the designated facility status of Hillsboro Landfill and Lakeside Reclamation as amended to reference new agreements; and

WHEREAS, OWS, RDC and CRC are willing to enter into agreements with Metro establishing the terms under which each of their named facilities may receive special waste from the Metro region, and Sanifill Inc. and Grabhorn Inc. are willing to enter into new agreements establishing the terms under which each of their named facilities may receive solid waste from the District, now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1. Metro Code Section 5.05.030 is amended to read:

5.05.030 Use of Designated Facilities:

- (a) Designated Facilities. The following described facilities shall constitute the designated facilities to which Metro may direct solid waste pursuant to a Required Use Order:

- (1) Metro South Station. The Metro South Station located at 2001 Washington, Oregon City, Oregon 97045.
- (2) MSW (Municipal Solid Waste) Compost Facility. The MSW Compost Facility located at 5611 N.E. Columbia Boulevard, Portland, Oregon 97217.
- (3) Metro Central Station. The Metro Central Station located at 6161 N.W. 61st Avenue, Portland, Oregon 97210.
- (4) St. Johns Landfill. The St. Johns Landfill located at 9363 N. Columbia Boulevard, Portland, Oregon 97203.
- (5) Franchise Facilities. All disposal sites, transfer stations, processing facilities and resource recovery facilities within the District which operate pursuant to a Metro franchise under Chapter 5.01 of the Metro Code.
- (6) Lakeside Reclamation (limited purpose landfill). The Lakeside Reclamation limited purpose landfill, Route 1, Box 849, Beaverton, Oregon 97005, ~~subject to the terms of the agreement in existence on November 14, 1989 authorizing the receipt of solid waste generated within the service area.~~ subject to the terms of an agreement between Metro and Grabhorn, Inc. authorizing receipt of solid waste generated within the service area.
- (7) Hillsboro Landfill (limited purpose landfill). The Hillsboro Landfill, 3205 S.E. Minter Bridge Road, Hillsboro, Oregon 97123, ~~subject to the terms of the agreement in existence on November 14, 1989 authorizing the receipt of solid waste generated within the service area.~~ subject to the terms of an agreement between Metro and Sanifill, Inc. authorizing

receipt of solid waste generated within the service area.

- (8) Columbia Ridge Landfill. The Columbia Ridge Landfill owned and operated by Oregon Waste Systems, Inc. subject to the terms of the agreements in existence on November 14, 1989 between Metro and Oregon Waste Systems and between Metro and Jack Gray Transport, Inc.;~~provided that except as otherwise provided pursuant to a duly issued non-system license, no waste hauler or other person (other than Jack Gray Transport, Inc. as provided in the aforementioned agreement) shall be permitted to transport solid waste generated within the service area directly to, or to otherwise dispose of such solid waste at, said Columbia Ridge Landfill unless such solid waste has first been processed at another designated facility.~~ In addition, Columbia Ridge Landfill may accept special waste generated within the service area:

(A) As specified in an agreement entered into between Metro and Oregon Waste Systems authorizing receipt of such waste; or

(B) Subject to a non-system license issued to a person transporting to the facility special waste not specified in the agreement.

- (9) Roosevelt Regional Landfill. The Roosevelt Regional Landfill, owned and operated by Regional Disposal Company of Seattle and located in Klickitat County, Washington. Roosevelt Regional Landfill may accept special waste generated within the service area only as follows:

(A) As specified in an agreement entered into between Metro and Regional Disposal Company authorizing receipt of such waste; or

(B) Subject to a non-system license issued to a person transporting to the facility special waste not specified in the agreement.

(10) Finley Buttes Landfill The Finley Buttes Landfill owned and operated by Columbia Resource Company of Vancouver, Washington and located in Morrow County, Oregon. Finley Buttes Landfill may accept special waste generated within the service area only as follows:

(A) As specified in an agreement entered into between Metro and Columbia Resource Company authorizing receipt of such waste, or

(B) Subject to a non-system license issued to a person transporting to the facility special waste not specified in the agreement.

(b) Changes to Designated Facilities to be Made by Council. From time to time, the Council, acting pursuant to a duly enacted ordinance, may remove from the list of initial designated facilities any one or more of the facilities described in Metro Code Section 5.05.030(a). In addition, from time to time, the Council, acting pursuant to a duly enacted ordinance, may add to or delete a facility from the list of designated facilities. In deciding whether to designate an additional facility, or amend or delete an existing designation, the Council shall consider:

- (1) The degree to which prior users of the facility and waste types accepted at the facility are known and the degree to which such wastes pose a future risk of environmental contamination;
 - (2) The record of regulatory compliance of the facility's owner and operator with federal, state, and local requirements;
 - (3) The record of the facility regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement;
 - (4) The adequacy of operational practices and management controls at the facility;
 - (5) The expected impact on the region's recycling and waste reduction efforts;
 - (6) The expected impact on Metro's revenue;
 - (7) The consistency of the designation with Metro's existing contractual arrangements;
 - (8) The need for additional disposal capacity and the effect on existing designated facilities; and
 - (9) Other benefits or detriments accruing to residents of the region from Council action in designating a facility, or amending or deleting an existing designation.
- (c) An agreement, or amendment to an agreement between Metro and a designated facility, shall be subject to approval by the Metro Council prior to execution by the Executive Officer.
- (d) An agreement between Metro and a designated facility shall specify the types of wastes from within Metro boundaries that may be delivered to, or accepted at, the facility.

- (e) Use of Non-System Facilities Prohibited. Except to the extent that solid waste generated within the service area is transported, disposed of or otherwise processed in accordance with the terms and conditions of a non-system license issued pursuant to Metro Code Section 5.05.035, no waste hauler or other person shall transport solid waste generated within the service area to, or utilize or cause to be utilized for the disposal or other processing of any solid waste generated within the service area, any non-system facility.

Section 2. This Ordinance being necessary for the immediate preservation of the public health, safety and welfare, an emergency is declared to exist, and this Ordinance takes effect upon passage. Immediate action is warranted in this instance to offset long delays in establishing appropriate regulatory arrangements for receipt of waste from within Metro boundaries by the facilities named herein.

ADOPTED by the Metro Council this _____ day of _____, 1993.

Judy Wyers, Presiding Officer

ATTEST:

Clerk of the Council

PN:clk
(c:\franch\desigfac.ord) (1/26/93)

STAFF REPORT

CONSIDERATION OF ORDINANCE NO. 93-483, FOR THE PURPOSE OF AMENDING THE METRO CODE TO MODIFY THE DESIGNATED FACILITY STATUS OF COLUMBIA RIDGE LANDFILL, LAKESIDE RECLAMATION LANDFILL AND HILLSBORO LANDFILL; AND TO ADD ROOSEVELT REGIONAL LANDFILL AND FINLEY BUTTES LANDFILL TO THE LIST OF DESIGNATED FACILITIES, AND DECLARING AN EMERGENCY

Date: January 26, 1993

Presented by: Roosevelt Carter
Terry Petersen

FACTUAL BACKGROUND AND ANALYSIS

Comment on format

This staff report is comprised of six distinct sections, the first of which is an overview of the Metro "system". Following that will be five separate subsections which will address the following specific facilities:

1. Columbia Ridge Landfill;
2. Roosevelt Regional Landfill;
3. Finley Buttes Landfill;
4. Hillsboro Landfill; and,
5. Lakeside Reclamation Landfill.

Each subsection describes the facility, provides a history and examines the nine criteria as required by Ordinance 92-471C. This ordinance amended Metro Code Section 5.05.030 regarding the addition of facilities to the list of "Designated Facilities" under Metro's flow control ordinance.

With respect to Columbia Ridge Landfill, Hillsboro Landfill and Lakeside Reclamation Landfill, the reports address modification of their existing facility designation status. With respect to

Roosevelt Regional Landfill and Finley Buttes Landfill, the focus is upon designation of these facilities as new additions to the list of designated facilities.

With each subsection is a draft agreement proposed for each facility discussed.

System Overview

The Metro system is the collection of disposal and processing facilities, that provide opportunities for recycling, processing and disposal. These facilities serve the residents of the greater Portland metropolitan region, and rural Multnomah, Clackamas and Washington counties. Included in the system are other facilities that are neither Metro owned nor franchised such as recycling drop centers, yard debris processors and source separated recyclable processors.

The focus of this report is the facilities owned or franchised by Metro, or which Metro has otherwise designated to receive waste from within Metro boundaries. Excluded from discussion are non-franchised facilities, inactive franchises, reload facilities, recycling drop centers, source separated recyclable processors and buyback centers.

For ease of reference, a map of the current system facilities (as defined above) accompanies this report as ATTACHMENT No. 1. ATTACHMENT No. 2 is the system of facilities as it will exist if all amended facility designations and the two proposed new designated facilities are added.

METRO SYSTEM FACILITIES (franchised or otherwise designated)

Columbia Ridge Landfill

Columbia Ridge Landfill is currently listed as a designated facility under Metro's flow control ordinance. The ordinance pending before the Council will amend this facility's designation. Details of this proposal will be addressed in the subsection on Columbia Ridge following the System Overview.

This is a modern landfill located near the City of Arlington, Oregon. Encompassing an area of 2000 acres (700 acres of active landfill), it is owned by Waste Management Disposal Services of Oregon, Inc. dba Oregon Waste Systems, Inc., (OWS). OWS has a twenty year contract with Metro. Waste shipments commenced in January, 1990. This contract calls for Metro to deliver to the Columbia Ridge Landfill, "ninety percent (90%) of the total tons of Acceptable Waste (other than ash) which Metro delivers to any general purpose landfill(s) during that calendar year." (Acceptable Waste as defined in the contract with OWS.)

In 1992 this facility received 661,011 tons of solid waste from Metro's transfer stations and 6,000 tons of direct haul waste under a Non-system license. The direct haul waste was primarily petroleum contaminated soil, asbestos and industrial process waste.

Metro Central Station

Metro Central Station is currently listed as a designated facility under Metro's flow control ordinance.

Located on a 10.5 acre site at 6161 NW 61st Avenue in Portland, Metro Central is the largest and newest of the two transfer stations owned by Metro. Encompassing a 170,000 square foot shell structure, the facility opened for business in 1991. The facility is operated by Trans Industries under an operations contract with Metro. This contract will be in effect until October 1994 with Metro having the option of rebidding the contract at that time or retaining the present contractor for an additional two years.

Metro Central has the capacity to transfer/process in excess of 500,000 tons per year. The facility handled approximately 325,000 tons in 1992. This is one of Metro's two transshipment points for solid waste being transported to the Columbia Ridge Landfill at Arlington, Oregon.

Metro South Station

Metro South Station is currently listed as a designated facility under Metro's flow control ordinance.

This transfer station, the older of two transfer stations owned by Metro, began operations in 1983. Located at 2001 Washington Street in Oregon City, Oregon this facility is on an 11.5 acres site adjacent to the old Rossman's Landfill. It is operated under a contract from Metro by Waste Management of Oregon (WMO), a subsidiary of Waste Management of North America, Inc. This contract, which commenced January 1, 1990 will be in effect until December 31, 1994. This facility received 357,451 tons of solid waste in 1992.

This facility was originally built as a transshipment point for commercial haulers and the public. The solid waste was dumped into a pit, then loaded into transfer trailers for transport to St. Johns Landfill for disposal. With the closure of St. Johns Landfill and the beginning of transport of Metro's solid waste to Columbia Ridge Landfill, modifications were necessary at Metro South. The principal changes were the addition of two waste compactors to create efficient loads for transfer trailers and a staging yard for the transfer trailers.

In conjunction with Metro South Station, Metro has established a state-of-the-art household hazardous waste facility located on the station grounds. This heavily patronized facility has been successful in diverting substantial volumes of harmful material from the landfill.

Hillsboro Landfill

Hillsboro Landfill is an existing designated facility under Metro's flow control ordinance. The pending ordinance before the Council will amend the facility designation for this facility. Details regarding this proposal will be found in the subsection on Hillsboro Landfill that follows the System Overview.

This limited-purpose landfill is privately owned and operated by Sanifill, Inc. Previously owned and operated by Mr. Gary Clapshaw, the facility was acquired by Sanifill as of December 31, 1992. The facility is located at 3205 SE Minter Bridge Road south of the City of Hillsboro.

Located just outside of the Metro boundary, this facility received over 200,000 tons of solid waste in 1992. This waste received by Hillsboro Landfill is direct hauled by commercial and private parties. The waste accepted by the facility is comprised of construction and demolition debris, yard debris, stumps and land clearing debris and miscellaneous non-hazardous, non-putrescible household waste. The facility also is permitted by DEQ to receive some special wastes such as asbestos and petroleum contaminated soil.

Lakeside Reclamation Landfill

Lakeside Reclamation landfill is currently listed as a designated facility under Metro's flow control ordinance. The pending ordinance before the Council will amend this facility's designation. Details on this amendment are in the subsection for this facility following the System Overview.

Lakeside Reclamation Landfill, often referred to as the Grabhorn Landfill, is a long-standing construction debris and demolition landfill which also does recycling. Owned by Howard and Debbie Grabhorn, the facility is located at 15000 Vandermost Road a few miles southwest of the City of Beaverton.

This facility received 76,398 tons of solid waste in 1992. It accepts mostly construction and demolition debris as well as land clearing debris. An unlined facility, it is more restricted than the Hillsboro Landfill as to the types of materials that it is authorized by the DEQ to receive. For example, Lakeside reclamation may not accept any special wastes such as asbestos and petroleum contaminated soils that are permitted to be taken to Hillsboro Landfill.

Forest Grove Transfer Station

Forest Grove Transfer Station (FGTS) is currently listed as a designated facility under Metro's flow control ordinance. Privately owned and operated by Mr. Ambrose Calcagno under the corporate name of A. C. Trucking, this facility is located at 1525 B Street in the City of Forest Grove, Oregon.

This transfer station accepts mixed solid waste. It is open both to commercial haulers and the general public. The facility is authorized under its franchise to accept up to 70,000 tons per year of putrescible and non-putrescible waste. The facility services generally the cities of Forest Grove, Cornelius and surrounding area, with small amounts of solid waste being received from areas outside the Metro boundaries.

FGTS has historically disposed of its waste at the Riverbend Landfill in Yamhill County and currently does so under a Non-system license. No amendment to FGTS's facility designation is

being proposed at this time. However, please note that a separately pending resolution and facility agreement is being proposed for the Riverbend Landfill.

Wastech

Wastech, Inc. is a presently designated facility under Metro's flow control ordinance. No current modification is proposed to the existing franchise which Wastech has with Metro.

This facility, privately owned and operated by Columbia Resource Company, does waste processing of "high grade waste" for materials recovery. It is located at 701 Hunt St. (just East of I-5 and just North of Columbia Blvd.) in the City of Portland. Wastech's Metro franchise was amended in 1989 to authorize the facility to expand to a capacity of 100,000 tons per year. Facility expansion has not yet occurred.

In 1992 this facility processed 5,804 tons of material, primarily recyclable paper products. Recycling is done by a combination of mechanical and manual methods. Residue is disposed off premises pursuant to a Non-System License under Metro's flow control ordinance.

East County Recycling

Located at 1209 NE San Rafael St. at 122 Avenue in the City of Portland, East County Recycling (ECR) is a privately owned and operated materials processing facility. The owner, Mr. Ralph Gilbert, holds a Metro franchise. ECR is presently a designated facility under Metro's flow control ordinance. No current amendment to its facility designation is under consideration.

ECR is authorized to accept various types of mixed waste for processing. The materials accepted are primarily mixed commercial waste, demolition debris, yard debris and other mixed non-putrescible solid waste. Under a 1991 amendment to its franchise, ECR was authorized to accept up to 60,000 tons per year of solid waste, provided that the residue generated for disposal does not exceed 25,000 tons per year. This facility received 38,467 tons of waste in 1992, and generated 22,179 tons of residue.

Processing at ECR relies heavily upon hand picking for the first sort of materials. Corrugated cardboard is compacted, appliances and metal are hand sorted and/or disassembled. Scrap aluminum is melted into ingots in a "sweat furnace". Yard debris and wood are processed in a high volume heavy duty chipper which produces chipped wood for hog fuel. Residue is disposed off premises at the Northern Wasco County Landfill near The Dalles, pursuant to a Non-System license issued under the flow control ordinance.

ECR is operated on the site of a former gravel pit. The facility also accepts inert materials which remain on the site. Disposal of inert materials are not regulated by Metro.

Marine Dropbox

Marine Dropbox is a privately owned and operated materials processor and recycling company which holds a Metro Franchise. It is a designated facility under the franchise section of Metro's flow control ordinance. The owner-operator is Paul Pietrzyk. No amendments to its franchise are recommended at the present time.

This facility services marine accounts and recovers material; primarily wood and metals from the shipping business. Examples are pallets, wood packing material, metal banding and other metals. Its recovery rate is high as there is little non-recoverable content in the material it receives. Its recovery rates are in the range of 95-97%. Material processing is primarily a hand picking operation with some assist with small power equipment. In the second quarter of 1992 Marine Dropbox recovered 5,960 tons of material for a 97% recovery rate.

K. B. Recycling

K. B. Recycling is a designated facility under the franchise section of the flow control ordinance which collectively designates Metro franchises. No amendment to its franchise or facility designation is presently under consideration.

This Metro franchised recycling drop and buy back center is privately owned and operated by Mr. Fred Kahut. This facility is located at 8277 SE Deer Creek Lane in the City of Milwaukie, Oregon near the junction of Highways 224 and I-205.

While not presently engaged in processing activities under its franchise, this facility is authorized to process limited amounts of mixed high grade waste (primarily paper and corrugated). While markets have not been sufficient to justify the operation of this element of the facility capacity, the authorized limit is 18,000 tons per year.

Marion County Energy Recovery Facility

The Marion County Energy Facility is a waste-to-energy facility owned and operated by the Ogden Martin Corporation. Ogden Martin has a contract with Marion County for disposal of solid waste for the county.

This facility is not a designated facility under Metro's ordinance nor is it under consideration for such designation. It is noted in the context of our System facilities because Metro has an agreement with Marion County wherein Metro has agreed to supply solid waste to this facility on an as needed basis up to 40,000 tons per fiscal year. By mutual agreement, this amount can be exceeded, however, historically this facility has taken less than 20,000 tons per year from Metro. Tonnage which is sent to alternative technology facilities such as this are exempt from Metro's disposal contract with Oregon Waste Systems.

This facility also receives small amounts of direct haul tonnage from hauling routes on the southern boundary of Metro which mix waste from in and out of the district. Marion County accounts for and remits user fees and excise taxes on this tonnage. The 1992 tonnage for direct haul was 6,371 tons.

Oregon Hydrocarbon, Inc.

This facility is a Metro franchise devoted solely to the processing of petroleum contaminated soils (PCS). The processing method is by thermodestruction (high heat with no flames). Essentially, soil is sterilized by the process and then may be recycled for non-food chain uses. As a franchise it is a designated facility under Metro's flow control ordinance. No amendment to the facility franchise is under consideration at this time.

Oregon Hydrocarbon, Inc. is located at 9333 North Harbortgate Street in Portland, Oregon. This is in the Rivergate industrial area of North Portland. It is owned and operated by TPST Soil Recyclers of Oregon, Inc. This is a subsidiary of TPS Technologies, which is in turn owned by Thermo Electron Corporation of Boston, Massachusetts, a Fortune 500 firm. This is a recent acquisition by Thermo Electron and franchise transition is in process.

No specific processing limit has been placed on the operating capacity of this facility. Metro has sought to encourage processing of PCS as preferable to landfilling. No Metro user fees are presently assessed for PCS processors. User fees are assessed for landfilled PCS. Equipment limitations are in the 100,000 tons + category. In operation since Spring 1992, this facility has processed approximately 41,000 tons of PCS to date.

PEMCO Inc.

Like Oregon Hydrocarbon, Inc., this Metro franchise is solely devoted to processing of PCS. Like Oregon Hydrocarbon, it too, sterilizes soil by thermodestruction. It too, is a designated facility under Metro's flow control ordinance. There is no consideration at present to amend or modify its designated facility status.

Owned and operated by PEMCO, Inc., the company business address is 437 N. Columbia Blvd. in the City of Portland. The principal difference between PEMCO and Oregon Hydrocarbon is that PEMCO utilizes a mobile unit. Its franchise is not subject to a preset limit on volumes of soil that it may process. The capacity of its mobile unit is approximately 15-20 tons per hour. The exemption from user fees from soil processing applies to PEMCO. PEMCO processed a total of 19,450 tons of PCS in 1992.

EVALUATION OF CRITERIA

The following section will address Ordinance 92-471C, criteria numbers: 5, 6, 7, 8 and 9. The analysis of these criteria are considered common to all of the facilities under consideration for new designated facility status or for amended designated facility status.

REVIEW OF DESIGNATED FACILITY CRITERIA NUMBERS 5, 6, 7, 8, AND 9 FOR:

Columbia Ridge Landfill;

Roosevelt Regional Landfill;

Finley Buttes Landfill;

Hillsboro Landfill; and,

Lakeside Reclamation Landfill.

Staff analysis has indicated that with respect to these criteria relating primarily to waste reduction and revenue issues that they should be treated in the same fashion for all of the following facilities: Columbia Ridge Landfill, Roosevelt Regional Landfill, Finley Buttes Landfill, Hillsboro Landfill and, Lakeside Reclamation Landfill. In order to avoid replication of information, please refer to the following criteria analyses for each facility. Criteria No's 1, 2, 3 and 4 will be referred to and analyzed in each facility subsection. Criteria No. 7 relates to an Office of General Counsel Memorandum regarding consistency of the designation with Metro's existing contractual arrangements. This memorandum is included as Attachment No. 3 following review of Criterion No. 9.

Criteria No. 5. The expected impact on the region's recycling and waste reduction efforts

Staff has concluded that if, through a designated facility agreement, certain restrictions are placed on the types of waste transported to the new designated facilities, the potential impacts on the region's recycling will be minimal.

The following table summarizes expected changes in tonnages currently recovered at existing facilities (including Petroleum Contaminated Soils (PCS) facilities) if: (1) no restrictions are placed on construction and demolition debris and post-industrial waste allowed to go to the new facilities, and (2) construction and demolition debris is restricted to residue from recovery facilities and industrial waste is restricted to loads without significant quantities of recoverable material (as described below in the proposed definitions of acceptable waste).

		Change In Current Recovery	
		No Restrictions	Restrictions
	Current Recovery (tons/year)		
Metro Facilities	10,900	(2,900)	0
Non-Metro Facilities	2,200	(600)	0
Existing PCS Processors	68,000	(27,200)	(27,200)
Total	81,100	(30,700)	(27,200)

The restrictions on acceptable waste and reporting requirements described below are intended to eliminate negative impact on waste reduction. However, not every load will be inspected by Metro to determine waste composition. Therefore, even with these procedures in place, some waste with high recovery potential may eventually be transported to the designated facilities. The tons listed in the above table with and without restrictions should be viewed as upper and lower bounds on the potential negative impacts of new designated facilities on the region's waste recovery efforts.

The upper bound would occur if restrictions on acceptable waste were totally ineffective and the new designated facilities were an option for all construction and demolition debris and industrial waste regardless of recovery potential. The lower bound of no impact (excluding PCS) would occur if restrictions were exactly enforced and diversion from existing recovery facilities was not an option open to generators and haulers of mixed waste currently going to recovery facilities.

Currently, about 600,000 tons of material (excluding PCS) are recycled each year by the Metro region and 1,000,000 tons are disposed. A maximum loss of 3,500 tons, therefore, would represent a decline of 0.2% in the regional recycling rate of 38%.

Staff proposals concerning the type of waste that may be accepted at new designated facilities are:

1. Residue from the processing of construction, demolition, and land clearing waste received from a Metro franchised facility.
2. Non-hazardous industrial dust.
3. Asbestos (special requirements for packaging and unloading would apply).
4. Contaminated soil and other non-putrescible debris from cleanup of petroleum or other non-hazardous chemical spills.

5. Special waste as defined in section 5.02.01(s) of the Metro Code.
6. Outdated or defective non-putrescible commercial or industrial raw materials not suited for market conditions or consumer use.
7. Other waste as described in any future addendum to this agreement or as authorized by Metro in a non-system license.

The list of waste types in Metro agreements with each facility will be consistent with the types of wastes authorized by the DEQ Solid Waste Disposal Permits issued (where applicable) to each facility and existing Metro disposal contracts.

To ensure that acceptable waste standards are enforced, designated facility agreements should contain adequate requirements for record keeping, auditing, and reports. Proposed wording for such requirements is as follows:

1. Company shall maintain complete and accurate records regarding all solid waste transported, treated, disposed of, or otherwise processed pursuant to this Agreement, and shall make such records available to, or send copies to, the Metro Solid Waste Department or its duly designated agents for inspection, auditing and copying upon not less than seven days written notice from Metro. Pre-numbered tickets shall be used for all transactions, in numerical sequence, and voided or canceled tickets shall be retained.
2. At Metro's option, Company shall have an independent audit conducted by a firm acceptable to Metro, no more than once each year, at Company'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 Company prior to the audit.
3. Company shall report in writing to the Metro Solid Waste Department no later than the 10th day of each month, for the duration of this Agreement, the number of tons of solid waste transported, disposed of or otherwise processed pursuant to this Agreement during the preceding month. The reports shall provide sufficient detail to adequately identify the waste profile of the various materials transported, treated, and disposed of, and include the names of persons or entities generating and delivering waste to the Facility, and the types and quantities of waste generated or delivered by such persons or entities. To the extent such information is available in electronic form, Company shall make such information available to Metro on computer disk. Metro shall maintain the confidentiality of all records submitted by Company to the extent public disclosure is not required by ORS Chapter 192, and otherwise in conformance with section 12 of this Agreement.

4. Company shall complete a cumulative status review of the waste types and profiles covering each six months of operations under this Agreement and shall provide such report to Metro within 45 days of the expiration of the six-month period covered by the report. The first report shall cover the period of operations from the date of execution of this Agreement through December 31, 1993.
5. Company shall provide to Metro copies of all permits covering the Facility or operations at the Facility. Copies of revisions to existing permits and newly issued permits shall be provided to Metro within seven business days of receipt. Company shall also provide, within ten 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 non-compliance with a statute, regulation, or permit condition.

While most of the "waste reduction" impact is likely to be petroleum-contaminated soils (PCS), it should be noted that PCS is not considered as a "recyclable" in regional or state recycling and waste reduction goals. Also, Metro does not currently place any restrictions on the ability of Hillsboro Landfill or other existing designated facilities to compete with PCS processors by offering lower disposal fees if they choose to do so.

Higher disposal costs encourage investment in new recycling technology. If Metro policies concerning designated facilities result in lower disposal costs, the incentive to develop innovative recycling options for waste listed as "acceptable" in the agreements would be reduced. However, total disposal costs (including transport and user fees) at new designated facilities are not expected to be significantly lower than existing in-region disposal options at other designated facilities. Therefore, the risk of future "lost opportunities" concerning new recycling would appear to be minimal.

Criteria No. 6. The expected impact on Metro's revenue

Given the current Metro rate structure, Metro staff estimates the *net* impact of these tonnage shifts would be approximately revenue neutral. There would be a slight increase in revenue collected through the Tier 1 User Fee at non-Metro facilities and a slight decrease in revenue collected at Metro facilities.

One way to evaluate revenue impacts is to compare what the current fees would be with and without the new designated facilities given the current revenue levels. Such a comparison is estimated as follows:

	Current Rates	With New Facilities
Regional User Fee (Tier 1)	\$19.00	\$18.53
Total Metro Fee	\$75.00	\$75.06
Average Disposal Cost for "acceptable" waste	\$64.28	\$60.72

As described below, the Tier 1 User Fee would be collected on more tons while the full \$75.00 would be collected on more tons at Metro facilities. Given the current spending levels and rate structure, this would result in a decrease in the Tier 1 fee and a negligible increase (\$0.06) in the fee charged at Metro facilities.

As suggested above, adding the new facilities to the existing system is expected to have a combination of neutral, positive, and negative impacts on Metro's revenue. The expected revenue impacts can be summarized as follows:

Tonnage shifts that will have neutral revenue impacts. Acceptable waste could shift from existing non-Metro facilities that pay the Metro Tier 1 User Fee (currently \$19.00) to designated facilities that would also pay the same Metro fee. This represents a neutral impact on Metro revenues. Among existing designated facilities, Hillsboro Landfill will likely experience the greatest diversion of waste. Large industrial users of Hillsboro Landfill may be able to negotiate lower disposal costs with new designated facilities. Metro staff estimate that a maximum of 6,600 tons of special waste, 4,800 tons of PCS, 9,700 tons of industrial waste, and 7,300 tons of construction/demolition debris could eventually shift from Hillsboro Landfill to the designated facilities. Lakeside Landfill and other facilities are receiving much smaller quantities of waste that would be acceptable at new designated facilities.

Tonnage shifts that will have negative revenue impacts. Metro's current rate structure is not "revenue neutral". Waste that shifts from Metro facilities that pay all Metro fees to non-Metro facilities that pay only the Metro Tier 1 User Fee represent a loss in revenue that is not entirely balanced by avoided costs. Given the proposed restrictions on the types of waste the facilities will be allowed to accept, Metro staff estimate that 26,000 tons of waste currently being delivered to Metro transfer stations could eventually shift to designated facilities. We emphasize that these are wastes that can currently be disposed of at the Hillsboro landfill.

Tonnage shifts that will have positive revenue impacts. By offering lower disposal costs or other desirable services, designated facilities could potentially capture waste from four sources that are not currently paying Metro fees: (1) illegal dumping, (2) illegal disposal, (3) industrial "mono-fills", and (4) PCS diverted from existing processing facilities. It is difficult to estimate what the total available tonnage might be from these sources.

Because staff wanted to estimate the "worst case" revenue impacts, the analysis described in this report did not assume that any new revenue would be obtained from the first three sources.

Staff concludes that no single facility considered for designation under Ordinance 93-483, nor all of the facilities together, will impact the gross revenues generated by the Metro System in a manner that would impede Metro's ability to meet its bond financing obligations under the Solid Waste Master Ordinance. The anticipated impact on Metro revenue is not significant.

Criteria No. 7: The consistency of the designation with Metro's existing contractual arrangements.

Office of General Counsel Memorandum dated January 26, 1993, is shown as Attachment No. 3. In order to present the waste reduction commentary for criteria no's 5, 6, 8 and 9, as a contiguous piece, the Office of General Counsel Memorandum will be found immediately following commentary for Criteria No. 9.

Criteria No. 8. The need for additional disposal capacity and the effect on existing designated facilities

Most of the special waste under discussion is currently either being disposed of at Hillsboro Landfill, Lakeside Landfill, processed by franchised PCS facilities, or illegally transported outside Metro's system. Hillsboro Landfill and PCS facilities have the capacity to handle the current quantities of special waste being generated in the region.

Hillsboro Landfill has been issued a DEQ solid waste disposal permit that expires October 31, 1994. While Metro is assuming that Hillsboro Landfill will continue operation past this date, it is dependent on obtaining proper permits. If Hillsboro Landfill was required to close or significantly reduce tonnages, it would be necessary for the region to develop alternative disposal options. The need for additional disposal capacity should consider the value to the region of

having alternative disposal options for the kinds of waste being considered for new designated facilities, even if capacity is not currently needed. New designated facilities included in the proposed agreements would help ensure that the region has adequate disposal capacity for the types of waste proposed above.

The expected effects of the proposed agreements in terms of tonnages are summarized below. These tonnages are only the types of waste listed above as being acceptable for new designated facilities. They do not include all waste delivered to a facility. Two key assumptions were made in these estimates: (1) total disposal cost (transport plus tipping fee) will be \$50 per ton at new designated facilities, and (2) tonnage will shift to lower cost options at the rate of 0.8% for every 1.0% difference in cost. This response is consistent with historical data in the Metro region. The exact disposal cost that new facilities might negotiate with waste generators is unknown. If they offer disposal at more than \$50 per ton, less waste would be expected to shift from existing facilities.

Lower disposal costs at designated facilities could encourage new recovery operations that could eventually compete with existing facilities. Metro would need to evaluate these potential impacts at the time applications are made for any new recovery facilities.

	Current Quantity of Special Waste (tons/year)	Expected Change Due To New Designated Facilities (tons/year)
Forest Grove Transfer Station	7,400	(2,000)
Hillsboro Landfill (excludes Tualatin Valley Recovery Co.)	121,000	(28,400)
Lakeside Reclamation Landfill (Grabhorn)	51,100	(5,400)
East County Recycling	4,800	(1,300)
Wastech (OPRC)	700	(100)
Metro Central	54,700	(14,600)
Metro South	41,700	(11,200)
Columbia Ridge Landfill	11,200	0
PCS Processors	68,000	(27,200)
TOTAL	360,600	(90,200)

Criteria No. 9. Other benefits or detriments accruing to residents of the region from Council action in designating a facility

Other potential benefits include:

1. There are significant potential benefits to certain groups of rate payers within the region. Industries, local governments, and others that generate special waste are currently restricted to relatively few disposal options. Existing facilities negotiate disposal rates with these generators with minimal competition. Several public and private generators of large quantities of non-recyclable special waste have stated that they expect competition among new and existing designated facilities to lower their disposal costs. Metro staff have estimated that the average disposal cost for acceptable waste (including PCS) would decrease from \$64.28 to \$60.72 per ton. This represents a significant economic benefit to certain residents of the region.
2. The analysis in this report did not assume that designated facilities would capture any "new" waste that is not currently part of the fee-paying system. If new facilities are able to capture waste through better disposal service and more aggressive marketing, as they have stated, there could be benefits in terms of reducing illegal disposal and increasing Metro revenues.

Other potential detriments include:

1. Some local governments assess fees on waste delivered to facilities within their boundaries. For example, Washington County's solid waste program is supported by fees assessed at Hillsboro Landfill. Given this fee collection system, new designated facilities that divert waste from local facilities would cause a loss in revenue for some local government programs.
2. The analysis in this report assumed that existing non-Metro facilities would not increase rates as a result of new designated facilities. If rates are increased as a consequence of reduced tonnage, there could be negative economic impacts on those users who must continue to deliver waste to the existing facilities.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Ordinance No. 93-483.




METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503 221-1646

Memorandum

Attachment 3

Date: January 26, 1993
To: Metro Councilors
From: Todd Sadlo, Senior Assistant Counsel 
Regarding: ANNUAL WASTE DELIVERY GUARANTEE,
OREGON WASTE SYSTEMS CONTRACT
Our file: 9.84.D

Oregon Waste Systems (OWS) has claimed that designation of general purpose landfills for receipt of "Special Wastes" from the service area may violate the Annual Waste Delivery Guarantee in Metro's contract with OWS. This memo discusses the issues raised by OWS and the contract provisions upon which they are based.

Conclusion

It is the conclusion of this Office that the Metro/OWS contract requires that Metro deliver to OWS 90 percent of the "Acceptable Waste" (generally mixed municipal solid waste) that Metro delivers to any general purpose landfill. Waste delivered from the Metro franchised transfer station in Forest Grove to Riverbend Landfill is included in this calculation, but no waste delivered by any other private entity, whether franchised or not, is included.

The 90 percent clause was intended to give OWS reasonable assurances that Metro would not procure capacity in another general purpose landfill for mixed, municipal solid waste received by Metro at its transfer stations. Neither the clause nor the contract as a whole can be interpreted to limit Metro's options for regulation of waste that does not enter Metro facilities. Metro retains the authority to establish a program of regulatory control over "special" and other "limited purpose" waste that does not include delivery of the waste to a Metro facility and subsequent delivery to OWS.

Contract Analysis

The OWS contract was entered into on April 11, 1988, based on a bid received on December 21, 1987. It is an agreement to purchase landfill capacity for 16,923,000 tons of mixed (residential, commercial, and industrial) solid waste.¹ The contract terminates once

¹Bid Schedule, p. 1; Invitation to Bid, p. 1; Spec., Section 1.

the stated capacity is reached, or on December 31, 2009, if the capacity is not reached. Metro can extend the term for an additional five-year period if the capacity has not been reached by 2009.² Section 1 of the Contract Specifications includes the following guarantee:

"Metro makes the following guarantee...: each calendar year Metro agrees to deliver to the Contractor's Disposal Site a minimum of ninety percent (90%) of the total tons of Acceptable Waste (other than ash) which Metro delivers to any general purpose landfill(s) during that calendar year."

This clause contains the following clauses that should be analyzed separately:

- "total tons of Acceptable Waste"
- "which Metro delivers"
- "to any general purpose landfill"

The issue of whether Metro would be 'delivering' waste to a general purpose landfill if it allows private individuals or franchisees to deliver such waste is the predominant issue, and will be discussed first. Each conclusion is numbered, underlined, and followed by a detailed explanation.

1. The Annual Guarantee only covers waste accepted at Metro facilities and delivered to a disposal facility by Metro. It does not cover waste delivered to a disposal facility by private individuals or franchisees even if Metro allows such deliveries through a grant of regulatory authority.

The Annual Guarantee requires Metro to deliver 90 percent of all Acceptable Waste "which Metro delivers" to any general purpose landfill. This portion of the 90 percent guarantee clause is, on its face, unambiguous.³ OWS has nevertheless indicated that the phrase "Metro delivers" has an exceedingly broad meaning, and should be interpreted as applying to "all Acceptable Waste generated in the Metro region and disposed in a general purpose landfill."⁴ This interpretation cannot be sustained.

²Bid submittal form, p. 2.

³See letter from J. Laurence Cable, Schwabe, Williamson, Wyatt, Moore & Roberts to Daniel B. Cooper, August 31, 1989, p. 1: " 'Delivery' is not an ambiguous term. It will be given its plain meaning in the context in which it is employed." See also, memo from James S. Kincaid to Laurence Cable, September 5, 1989, p. 3, also stating that the clause is unambiguous.

⁴Memo from James S. Kincaid, *supra*, p. 12.

In normal usage, the term "deliver" means "to take and hand over or leave for another."⁵ In the view of this Office, the term means just that; of all the waste that Metro takes physical possession of and delivers to a general purpose landfill, 90 percent shall be delivered to OWS. If Metro provides a regulatory framework in which private companies, even if they hold a regulatory franchise from Metro, are allowed to deliver waste to a general purpose landfill and not deliver it to Metro in the first place, the clause is not violated.

This position is supported by other language in the agreement suggesting that the only waste that would be "delivered" to the disposal site would be waste received at Metro's transfer stations. Article 1 E. of the General Conditions defines "disposal site" as a landfill "to which 'Acceptable Waste' is transferred and disposed." Payment is said to be based on the quantity of waste "actually transferred and disposed of."⁶ Coordination under the Specifications is oriented to coordination with "transfer vehicle operators."⁷ Under the Specifications, payment "will be made based on weighing tickets issued at Metro facilities," which shall "accompany each transfer vehicle."⁸ Indeed, if there is a payment discrepancy, OWS may request "recalibration of Metro scales," which is hardly a remedy if the waste was delivered by a franchised operator or private party. "Metro" is a defined term in the agreement, and does not include Metro franchisees or private generators in the Metro region. Furthermore, the only requirement for operating hours is that they "allow transfer vehicles to properly unload."⁹ The contractor is only required to coordinate the unloading of "transfer vehicles."¹⁰

In addition, the Specification for "Type of Wastes Accepted" states pointedly that "The Contractor shall accept and dispose of all Acceptable Waste which is delivered by Metro's Contractors to the disposal site."¹¹ This provision emphasizes exactly what is meant by

⁵Webster's Ninth New Collegiate Dictionary, 1990.

⁶Gen. Cond., Article 19A., paragraph 2. (Emphasis added.)

⁷Spec., Section 3.

⁸Spec., Section 5.

⁹Spec., Section 12.

¹⁰Spec., Section 13.

¹¹Spec., Section 14. (Emphasis added.)

"Metro delivers" in the 90 percent guarantee clause. Metro's contractors can hardly be expected to deliver something that Metro never takes possession of in the first place.

Finally, the "Unacceptable Waste" and "Special Waste" provisions in the contract¹², refer to Metro contracts for "transfer and transport" of waste. OWS was aware at the time of the bid that Metro does not make transport arrangements for privately-owned facilities operating under Metro franchise, or any other private entity.

The contract as a whole is designed to arrange for disposal of mixed municipal solid waste received by Metro at its transfer stations and delivered from there to the disposal site by Metro contractors. OWS has no reasonable expectation from reading the contract that it would be entitled to 90 percent of all waste, even if it is not mixed municipal waste, that is delivered by any entity in the region to a general purpose landfill.

This position is strongly supported by the history of adoption of the 90 percent guarantee. In late 1987, when Metro solicited bids for landfill capacity, it was in the process of configuring a system for disposing of the region's solid waste. St. Johns Landfill was scheduled to close no later than early 1991, and Metro South was receiving mixed municipal solid waste for transfer to St. Johns or its replacement.

The original bid documents contained no guarantees to the successful bidder that Metro would deliver any quantity of waste to the facility. Addendum No. 1 added a limited guarantee against waste flow fluctuations, but OWS was still concerned that it was unprotected. In a letter dated November 30, 1987, Jim Benedict, attorney for OWS, demanded that Metro provide a "meaningful guarantee of exclusiveness and a counterpart minimum flow," or OWS would not bid on the contract. Addendum No. 4 contained the 90 percent guarantee, which was as much of a guarantee as Metro was willing to provide. On its face it is clearly not a guarantee of exclusivity. It does not, as OWS would now have it, state that OWS is entitled to 90 percent of all waste generated in the region that is disposed of in a general purpose landfill.¹³ It is nevertheless a substantial guarantee that Metro will

¹²Spec., Section 14; detailed discussion below.

¹³James S. Kincaid memo, supra, p. 5. The contract does not expressly require Metro to impose flow control. If the intent of the parties was that Metro prevent private parties from delivering waste to other general purpose landfills, the absence of a mechanism to carry out such a requirement is conspicuous. Metro did not adopt flow control until 1989, as part of a pledge made for bonding purposes (Ord. No. 89-319).

not contract for delivery of waste from its own facilities to other general purpose landfills.¹⁴ By providing the guarantee, Metro established a commitment to deliver waste to the landfill, not to prevent other general purpose landfills from accepting waste from the Metro region.

OWS puts a great deal of emphasis on evidence in the record that the 10 percent "reserve" in the 90 percent guarantee includes waste being "delivered" to Riverbend Landfill from the A.C. Trucking Transfer Station in Forest Grove, a Metro franchised facility.¹⁵ OWS then infers that, under the contract, any waste that is delivered by any Metro franchised facility (or anyone else) has been "delivered" by Metro. From here OWS jumps to its ultimate conclusion that because Metro has regulatory authority over all waste in the region, any waste generated in the Metro region that ends up anywhere was "delivered" there by Metro.¹⁶

The record supports a conclusion that waste delivered from the region to Riverbend through the A.C. Trucking Transfer Station is part of the 10 percent reserve. Metro's relationship with both Riverbend and Forest Grove has historically been very close. The A.C. Trucking facility is currently Metro's only franchised facility accepting mixed municipal solid waste. Metro has had arrangements with Yamhill County to allow waste deliveries to extend the life

¹⁴Indeed, a statement by Richard Owings, Metro Solid Waste Director, that OWS claims supports its position makes clear that the annual waste guarantee is directed solely at procurement contracts entered into by Metro. "The vendors are also concerned that if they step up and bid and let the world know what they are willing to do this for, they don't think its fair for other private vendors to come in at a later date and say I'll provide it for \$2.00 less. Seems to be a fair argument. So what we've said is if Metro is going to contract for a general purpose landfill, it will be through this bid...." Statement to Metro Council, Dec. 11, 1987.

¹⁵Memo to Solid Waste Planning Technical Committee from Rich Owings, Solid Waste Director, November 13, 1987. Mr. Owings made clear in this memo and elsewhere that Riverbend was viewed at the time of the bid as an important part of Metro's mixed municipal waste disposal system. See also letter from Rich Owings to James E. Benedict, Dec. 3, 1987.

¹⁶James S. Kincaid memo, supra. See also, Draft Memo, James E. Benedict to Metro Council Solid Waste Committee, January 22, 1993. Although subject to modification prior to delivery to the Metro Solid Waste Committee, the referenced draft conspicuously ignores the presence of the word "delivers" in the 90-10 clause, and changes it to "disposes" in most references. Even as modified by OWS, the clause does not include the actions of private haulers choosing alternative facilities for wastes that Metro has not traditionally accepted for delivery at its facilities.

of St. Johns, and has been negotiating with Riverbend Landfill to establish a direct contractual relationship for delivery of waste from the Metro region.¹⁷

These facts do not support the very broad interpretation of "Metro delivers" suggested by OWS. To the contrary, this evidence shows only that the A.C. Trucking "deliveries" of mixed municipal waste to Riverbend are included in the 10 percent reserve due to an historical anomaly in existence at the time Metro entered into the contract with OWS. Metro's agreement that the mixed municipal solid waste transferred through the Forest Grove facility to Riverbend would be included in the 10 percent reserve limited the value of the reservation to Metro and is clearly to OWS's benefit. The clause cannot, however, be stretched to include all waste generated in the region that ends up in a general purpose landfill. There is nothing in the record to support a flow control commitment of this scope, no mechanism described in the agreement to carry out, and no pledge by the Metro Council to encumber its future legislative authority in such a manner.

2. The contract definition of "Acceptable Waste" specifically excludes many "Special Wastes." OWS is not entitled to any of the listed special wastes as part of the 90 percent guarantee.

If OWS were to prevail in its claim of entitlement to 90 percent of all Acceptable Waste generated in the region and delivered by anyone to a general purpose landfill, it faces a second hurdle in the contract definition of "Acceptable Waste." This second hurdle is important because the general purpose landfills requesting designated facility status are not requesting authority to receive all wastes, but only "special wastes" and other "limited purpose" wastes. Most of the wastes now being sought by such landfills are "special wastes" under the OWS contract, with the most notable exception being the residue from construction/demolition debris processing facilities, which is sometimes referred to as "limited purpose" waste, because it can be disposed of in a "limited purpose" landfill.

"Acceptable Waste" is defined in the contract as "any and all waste that is solid waste, as the latter term is defined in ORS 459.005(18) except Unacceptable Waste, as defined below." "Unacceptable Waste" is defined as "any and all waste that is...(3) special waste without an approved special waste permit." "Special Waste" is defined as:

"any waste, (even though it may be part of a delivered load of waste), which is:

¹⁷The agreement contemplated is for procurement of landfill capacity.

- (a) containerized waste (e.g., a drum, barrel, portable tank, box, pail, etc.) of a type listed in (c)-(h) of this definition, below; or
- (b) waste transported in a bulk tanker; or
- (c) liquid waste; or
- (d) sludge waste; or
- (e) waste from an industrial process; or
- (f) waste from a pollution control process; or
- (g) residue or debris from the cleanup of a spill or release of chemical substances, commercial products or wastes listed in (a)-(f) or (h) of this definition; or
- (h) soil, water, residue, debris or articles which are contaminated from the cleanup of a site or facility formerly used for the generation, storage, treatment, recycling, reclamation, or disposal of wastes listed in (a)-(g) of this definition; or
- (i) residential wastes listed in (a)-(h) of this definition only if a change in law, statute, regulation, rule, code, ordinance, permit, or permit condition occurs after December 21, 1987, that requires special or additional management that differs from the requirements applicable on December 21, 1987."¹⁸

The contract also states that:

"Metro shall include, in all contracts by contract (sic) for the transfer or transport of waste for disposal to the disposal site a requirement that such transfer and transport contractors use all reasonable measures to prevent Unacceptable Waste from being delivered to the disposal site."¹⁹

In the next clause, the contract states:

"Metro shall include in all contracts for the transfer and transport of waste for disposal to the disposal site a requirement that such transfer and transport contractors use all reasonable measures necessary to exclude special waste from being delivered to the disposal site, unless Metro has issued a special

¹⁸Spec., Section 14.

¹⁹Id.

waste permit. Metro will consult with Contractor in developing a special waste permit program."²⁰

Read together, these clauses provide that the listed special wastes are not considered to be Acceptable Waste, and thus part of the 90 percent guarantee, unless they are approved by Metro under a special waste permit. Metro no longer has a special waste permit program, nor is it required to have such a program under the contract.²¹ Metro is required to consult with OWS regarding the development of a special waste permit program, but the consultation requirement cannot logically be interpreted to require Metro to accept special waste at its facilities for shipment to OWS in Jack Gray vehicles. Metro is entitled to do so, just as it is entitled to establish a policy for private disposal options at Metro-approved facilities. OWS therefore has no contractual claim to the wastes listed as special wastes in the contract.

Recently, OWS claimed that the definition of "Special Waste Permit" is ambiguous and should be construed against Metro.²² This argument appears in essence to be that "Special Waste Permit" should be construed to mean "Designated Facility Agreement" because Metro will permit such facilities to receive special waste under the agreements.

The designated facility agreements contemplated do not resemble the special waste permit program that Metro operated at St. Johns, nor the program advanced by OWS prior to bidding on the contract. The purpose of a special waste permit is, generally, to impose a testing and pre-approval regimen on the party delivering the waste, to ensure that the waste is not hazardous and to make arrangements for special handling. The designated facility agreements simply arrange for the collection of Metro fees on waste that Metro has never accepted at its transfer stations. Testing and pre-approval are not even discussed in the agreements, because Metro will play no role in deciding whether a particular waste may be landfilled, or the cost of disposal. There is no evidence that "Special Waste Permit" as used in the agreement was intended to refer to anything other than a program of the type Metro had in effect, or that OWS proposed, at the time of the bid. Again, "consultation" cannot be construed to require that Metro accept a program for receipt of special wastes at its facilities, imposed by OWS.

Because the definition of "Acceptable Waste" in the 90 percent clause is also unambiguous, it is unlikely that evidence regarding the intent of the parties in developing it would be relevant

²⁰*Id.*

²¹Metro's policy has never been to accept special wastes at its transfer stations. When Metro operated a permit program, it accepted such waste only at the St. Johns Landfill.

²²Draft Memo from James E. Benedict, *supra*, note 16.

to the decision of an arbitrator or judge as to whether Metro must provide 90 percent of such wastes to OWS. It is interesting to note, however, that provisions for exclusion of special wastes from the materials being shipped to the landfill were proposed by OWS prior to the bid date, in a letter from Jim Benedict, attorney for OWS, to Dennis O'Neil dated November 6, 1987. In that letter, OWS stated:

"A landfill operator needs assurances that hazardous and special wastes have been excluded from material that will arrive at the gate of the remote landfill. The remote landfill is not the place to attempt to exclude such wastes. These wastes are most effectively excluded at the source and at the transfer stations. Such wastes are difficult to detect or exclude at the landfill. To the extent they are detected at the landfill the costs of managing them at that point increases substantially."²³

An enclosure to the same letter also states that: "Waste Management will be willing to undertake (significant liabilities inherent in owning and operating a landfill) only if it is assured that unacceptable, hazardous and special wastes are excluded at the source."²⁴

During the bid process, OWS submitted a document entitled "Summary of Hazardous and Special Waste Program."²⁵ The document describes a detailed system for handling special wastes at Metro facilities that Metro has chosen not to implement. The list of special wastes in the contract was apparently taken from this document, and much larger portions of the document were not included. The document states that: "In general, the terms (sic) 'special waste' refers to wastes which may be hazardous wastes or having characteristics that could

²³Pp. 3-4. (Emphasis added.)

²⁴Enclosure "Waste Management's Comments and Requests for Clarification, Metro-Waste Disposal Services Contract Documents, November 6, 1986 (sic)," p. 3. (Emphasis added.) The enclosure also states: "Metro must provide assurances that Metro will implement a satisfactory waste hazardous (sic) and special waste exclusion program," and states that the contract should include a provision to the effect that "Metro warrants that it will implement for all waste sent to the landfill at the receiving stations for such waste a hazardous and special waste exclusion program that is acceptable to contractor. Metro will indemnify contractor for any damages attributable to Metro's failure to properly implement and perform the agreed upon exclusion program." *Id.* (Emphasis added.)

²⁵"Oregon Waste Systems' first supplemental comments and Request for Clarification of Metro Waste Disposal Services Contract Documents," November 30, 1987, Attachment A and Appendix 1.

create hazards to human health or the environment, if the waste is mismanaged."²⁶ It is reasonable to interpret the list of special wastes in the contract consistent with this definition, and thus to include only waste that requires special handling and additional testing prior to disposal at a Metro facility or at a landfill. Generally, such materials are not now delivered to Metro facilities.

At the request of OWS, Metro promised to implement a program for excluding "special wastes" from shipments to the disposal facility. Metro may still ship such wastes, if necessary, under a special waste permit program developed in consultation with OWS. "Special Wastes" are nevertheless excluded from the definition of "Acceptable Waste" for all purposes in the contract, including the Annual Guarantee. After demanding that such waste be excluded from delivery to its disposal facility, OWS cannot now demand that Metro somehow deliver to that facility 90 percent of such waste destined for a general purpose landfill.

3. Because the Annual Guarantee relates only to waste delivered "to any general purpose landfill(s)," OWS's interpretation of the clause does not provide any assurance that any "Special Waste" or "limited purpose" waste will be delivered to Columbia Ridge Landfill.

Metro and OWS appear to be in agreement that a general purpose landfill is one capable of accepting mixed municipal waste and other putrescible waste, along with a wide variety of special wastes. A limited purpose landfill is one that is constrained with regard to the types of wastes that it is allowed to accept. Even though a portion of Hillsboro Landfill is currently lined and has a leachate collection system, it is not allowed to receive putrescibles or other mixed municipal solid waste, and is therefore a "limited purpose landfill."

OWS claims that Metro cannot allow more than 10 percent of the region's "special wastes" and "limited purpose" wastes (construction/demolition debris) from going to general purpose landfills. OWS is apparently not concerned that Hillsboro Landfill (and perhaps other limited purpose facilities) can accept many types of wastes included in these categories. Furthermore, a general purpose landfill could conceivably establish a limited purpose cell on the site of its general purpose landfill and thereby be a limited purpose landfill for the purpose of this clause.

This demonstrates the absurdity of the approach being taken by OWS. The purpose of the clause was clearly to give OWS reasonable assurances that Metro would not purchase capacity in another general purpose landfill for more than 10 percent of the mixed municipal waste that Metro delivers to general purpose landfills. The designated facility proposal

²⁶Id., p. 1.

currently under consideration conforms to that basic purpose, and allows OWS to compete for the "special" waste in question. Even if OWS prevailed in asserting its interpretation of the contract, Metro could direct that all the wastes in question will be disposed of at Hillsboro Landfill or other "limited purpose" facilities.

4. The contract as a whole does not support OWS's claim that Metro promised to deliver to OWS 90 percent of all waste generated in the region that anyone delivers to a general purpose landfill.

In an earlier dispute, OWS simplified its argument as follows: Metro requested bids for a replacement for the St. Johns Landfill and based its flow estimates on St. Johns flow. The St. Johns Landfill was, other than Riverbend, the region's only general purpose landfill. Metro therefore promised not to allow any waste to go from the Metro region to any general purpose landfill other than Riverbend, and would only allow 10 percent to go there.²⁷

Fortunately for Metro, the contract does not say that, nor does the record. The contract says that Metro has reserved space in a general purpose landfill for 16,923,000 tons of mixed municipal solid waste, and that it may deliver that waste over a 25-year period. The record shows that Metro intended to retain maximum flexibility to establish sound, economical solid waste disposal policy for the region, and provided a set of limited waste delivery guarantees upon a request by OWS for an exclusive arrangement. The 90 percent clause, and the contract as a whole, function very well to ensure that Metro will not begin delivering waste from its facilities to a competing landfill to the detriment of OWS.

The contract also allows Metro to establish alternative management programs for wastes that Metro does not want delivered to its facilities. Metro South, the only Metro facility in operation at the time of the bid, was never suited to receive many of the special wastes being discussed, and did not traditionally receive such wastes. There are sound public policy reasons for excluding materials that require special handling, from transfer stations designed for mixed, municipal solid waste. Such materials often require testing and special handling, and cannot simply be tipped onto the floor and compacted into transport trailers designed to carry mixed municipal waste.

²⁷See James S. Kincaid memo, cited in footnote 3. The memo heavily emphasizes waste flow projections contained in the agreement that were based on waste deliveries to St. Johns Landfill. Section 1 of the Specifications states that the purpose of the projections is "...to aid the Contractor in scheduling. The flows are estimates only, and Metro reserves the right to vary the quantities without limit." (Emphasis added.)

Metro Councilors

Page 12

January 26, 1993

OWS cannot now rewrite the disposal services contract to apply to all waste generated in the region and disposed of in a general purpose landfill. Neither the contract language, the history of its adoption, nor the contract as a whole supports the broad interpretation now proffered by OWS.

dr

1180

**cc: Daniel B. Cooper
Bob Martin
John Houser**

COLUMBIA RIDGE LANDFILL

Designated Facility Criteria Review (Criteria Numbers 1, 2, 3 and 4)

COLUMBIA RIDGE LANDFILL

A Non-System License (since expired) was previously issued to the Columbia Ridge Landfill under Metro's Flow Control Ordinance, Chapter 5.05 of the Metro Code. This license authorized various special wastes to be transported and disposed at the facility. This request for Designated Facility status for the Columbia Ridge Landfill is being processed given the determination that it is more appropriate that Non-System Licenses be issued only to waste generators or haulers and that a landfill desiring authority to receive certain types of waste be established as a designated facility under the Flow Control Ordinance. Columbia Ridge has already been designated to receive waste under its contract with Metro. Modification of the designation will allow the facility to continue to receive the same materials that the facility was allowed to receive under the Non-System License.

In deciding whether to amend the designated facility status of Columbia Ridge Landfill to accept special waste from private generators and haulers in the region, the Council should consider the following:

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

Metro has on file copies of the following permits and/or evaluations pertaining to the Columbia Ridge Landfill:

- ◀ Oregon Department of Environmental Quality Permit Evaluation Report dated January 21, 1988.
- ◀ Conditional Use Permit, Order Nos. 87-1 and 87-2, dated June 8, 1987 by Gilliam County, Oregon.
- ◀ Oregon Department of Environmental Quality Solid Waste Disposal Facility Permit dated May 18, 1988.

The above Solid Waste Disposal Facility Permit specifies the types of waste that may be received at the facility and the conditions under which they may be received. The Columbia Ridge Landfill's Conditional Use Agreement with Gilliam County requires a weight control system that "... ensure(s) that there is proper accounting for all waste disposed of at the landfill." Further, the agreement requires the landfill to "... keep daily records, including video taped records of the weight and volume of the waste received at the landfill and the number and type of vehicles transporting waste to the landfill." The County also maintains the right to inspect the landfill records insofar as they pertain to the weight and volume of the waste received at the landfill or vehicles transporting waste to the landfill.

Conditions contained in the landfill's Solid Waste Disposal Facility Permit along with the above positive controls outlined in the Conditional Use Permit minimize Metro's risks in allowing the District's Special Wastes to be deposited in this landfill.

(2) The record of regulatory compliance of the facility's owner and operator with federal, state and local requirements.

Metro has received no notice/s of violations of any regulatory requirements. Regulatory compliance by the facility has been characterized as excellent by the Gilliam County Planning Department and by the Eastern Region office of the DEQ. Metro has not had any compliance problems with CRL with respect to Metro ordinance enforcement or with other regulatory requirements of Metro.

(3) The record of the facility regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement.

Under separate agreement, Metro has shipped 90 percent of the region's general purpose waste to the Columbia Ridge Landfill via Jack Gray Trucking since January 1990. To date, Oregon Waste Systems has fully complied with all Metro ordinances and agreements and provided assistance as requested.

(4) The adequacy of operational practices and management controls at the facility.

Staff has visited the facility on numerous occasions and inspected its operational and management practices. Given Metro's contractual relationship with the landfill, reports are reviewed on a routine basis. To date all aspects of the landfill's operational practices and management controls are satisfactory.

(5) The expected impact on the region's recycling and waste reduction efforts.

This item has been researched by Metro staff and is included in the material in the system overview immediately preceding the factual background.

(6) The expected impact on Metro's revenue.

This item has been researched by Metro staff and is included in the material in the system overview immediately preceding the factual subsection.

(7) The consistency of the designation with Metro's existing contractual arrangements.

This item has been researched by the Office of General Counsel and the analysis is contained in a separate memorandum as noted on page 13 of the Staff Report. OWS believes that it is already entitled to receive 90% of all special waste generated in the region, without entering into a designated facility agreement.

- (8) The need for additional disposal capacity and the effect on existing designated facilities.**

This item has been researched by Metro staff and is included in the material in the system overview immediately preceding the factual subsection.

- (9) Other benefits or detriments accruing to residents of the region from Council action in designating a facility.**

This item has been researched by Metro staff and is included in the material in the system overview immediately preceding the factual subsection.

Designated Facility Agreement for Columbia Ridge Landfill follows as Attachment No. 4.

METRO CONTRACT NO. 902859

AGREEMENT

This Agreement is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, referred to herein as "Metro," located at 2000 S.W. First Avenue, Portland, Oregon 97201-5398, and Waste Management Disposal Services of Oregon, Inc., dba Oregon Waste Systems, Inc., located at P.O. Box 55188, Portland, Oregon 97238-5188, referred to herein as "Company."

This Agreement is entered into by Metro under the authority of ORS 268.317, and Metro Code Chapter 5.05. Company enters into this Agreement in recognition of the "Designated Facility" status conferred upon the Columbia Ridge Landfill in Gilliam County, Oregon, by Metro Ordinance No. _____.

In exchange for the promises set forth below, the parties agree as follows:

1. **Purpose and Authority.** The purpose of this Agreement is to establish the terms under which Company may receive, at its Columbia Ridge Landfill in Gilliam County, Oregon (herein "Facility"), the types of waste specified in section 3 of this Agreement that were generated within Metro boundaries.
2. **Duration.** Unless terminated sooner as specified herein, this Agreement shall remain in effect for two years from the date of execution by both parties. To avoid unnecessary disruption while Metro considers possible renewal of this Agreement, if Company has not received written notice of termination from Metro on or before the two year anniversary of this Agreement, this Agreement shall continue in effect until such notice is provided to Company.
3. **Wastes That May be Accepted at the Facility.**
 - a. Pursuant to this Agreement, and to the extent the Facility has legal authority to accept such waste, the Facility may accept only the following types of waste generated within Metro boundaries:
 - (1) Residue from the processing of construction, demolition, and land clearing waste received from a Metro franchised facility.
 - (2) Non-hazardous industrial dust.
 - (3) Asbestos (special requirements for packaging and unloading would apply).

- (4) Outdated or defective non-putrescible commercial or industrial raw materials not suited for market conditions or consumer use.
 - (5) Contaminated soil and other non-putrescible debris from cleanup of petroleum or other non-hazardous chemical spills.
 - (6) Special waste as defined in section 5.02.015(s) of the Metro Code. A copy of this section of the code is attached as Attachment A, and is incorporated herein by this reference.
 - (7) Other waste as described in any future addendum to this Agreement or as authorized by Metro in a non system license.
- b. This Agreement shall not be construed to allow disposal at the Facility of mixed municipal solid waste, or other types of waste not listed in Section 3.a., generated within Metro boundaries.

4. Recordkeeping and Audits.

- a. Company shall maintain complete and accurate records regarding all solid waste transported, treated, disposed of, or otherwise processed pursuant to this Agreement, and shall make such records available to, or send copies to, the Metro Solid Waste Department or its duly designated agents for inspection, auditing and copying upon not less than seven days written notice from Metro. Pre-numbered tickets shall be used for all transactions, in numerical sequence, and voided or canceled tickets shall be retained.
- b. At Metro's option, Company shall have an independent audit conducted by a firm acceptable to Metro, no more than once each year, at Company'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 Company prior to the audit.

5. Reports and Information.

- a. Company shall report in writing to the Metro Solid Waste Department no later than the 10th day of each month, for the duration of this Agreement, the number of tons of solid waste transported, disposed of or otherwise processed pursuant to this Agreement during the preceding month. The reports shall provide sufficient detail to adequately identify the waste profile of the various materials transported, treated, and disposed of, and include the names of persons or entities generating and delivering waste to the Facility, and the types and quantities of waste

generated or delivered by such persons or entities. To the extent such information is available in electronic form, Company shall make such information available to Metro on computer disk. Metro shall maintain the confidentiality of all records submitted by Company to the extent public disclosure is not required by ORS ch 192, and otherwise in conformance with section 12 of this Agreement.

- b. Company shall complete a cumulative status review of the waste types and profiles covering each six months of operations under this Agreement and shall provide such report to Metro within 45 days of the expiration of the six-month period covered by the report. The first report shall cover the period of operations from the date of execution of this Agreement through December 31, 1993.
- c. Company shall provide to Metro copies of all permits covering the Facility or operations at the Facility. Copies of revisions to existing permits and newly issued permits shall be provided to Metro within seven business days of receipt. Company shall also provide, within ten 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 non-compliance with a statute, regulation, or permit condition.

6. User Fee/Excise Tax.

- a. Upon receipt of the reports described in section 5.a., Metro shall transmit an invoice to Company for a fee equal to Metro's Regional User Fee multiplied by the number of tons (or fractions thereof) of solid waste disposed of or processed pursuant to this Agreement during the preceding month. Company shall make payment to Metro in the invoiced amount, not later than 30 days after the date of the invoice. Company shall use reasonable business judgment in allowing generators or transporters of waste to dispose of waste at its Facility on a credit basis and shall use reasonable legal means to collect disposal charges, including all fees and taxes owed to Metro. If Company is unable to collect disposal charges, Company may deduct uncollectible Metro fees and taxes, when an affidavit explaining the status of the uncollectible account is provided that sufficiently documents good faith collection efforts conducted by Company. If Company receives a partial payment and the remainder of the account is uncollectible, the payment received shall be pro-rated between Company's disposal charges and Metro's fees and taxes. All amounts owing to Metro that are deemed "uncollectible" and are ultimately collected, shall be remitted to Metro within 30 days of receipt by Company.
- b. Upon receipt of the reports described in section 5.a., Metro shall transmit an invoice to Company for a fee equal to all excise taxes required to be paid under Metro Code Chapter 7.01, as a result of Company's activities during the preceding

month. Company shall make payment to Metro in the invoiced amount, not later than 30 days after the date of the invoice. Excise taxes shall be due for disposal of waste at the Facility, but shall not be due for transport to the Facility, even if Company arranges that transport.

- c. A finance charge of one and one-half percent per month (18 percent per annum), computed from the date fees and taxes become 30 days past due, will be assessed on all fees and taxes which become 60 days past due and will be added to the oldest months charges past due. Finance charges will continue to be assessed on negotiated repayment schedules.
- d. Company shall not pay the user fees and excise taxes described in this paragraph on waste received at the Facility:
 - (1) which is accepted without charge or fee; and
 - (2) which is intended to be used for a beneficial purpose and which is in fact used for a beneficial purpose.

7. Modification, Suspension, and Termination.

- a. If Company fails to fully and promptly comply with a term or condition of this Agreement, the Executive Officer shall issue to Company a written notice of noncompliance briefly describing such failure. The notice shall state that, within a period specified by the Executive Officer of at least 20 days, Company must demonstrate to the satisfaction of the Executive Officer either that Company has not violated a term or condition of this Agreement, or that the violation has been corrected. Company shall also, within the same period, pay all fines owing as a result of noncompliance or make arrangements for payment satisfactory to the Executive Officer. Failure to comply with the notice of noncompliance shall be grounds for suspension of this Agreement by the Executive Officer, effective as of 5:00 p.m. on the last day of the compliance period specified by the Executive Officer. The Executive Officer may extend the compliance period to a total of no more than 60 days from the date of the notice of noncompliance, upon determining that Company is making good faith efforts to comply and is capable of complying within the extended compliance period.
- b. Metro's Executive Officer may suspend this Agreement without prior notice, as follows:
 - (1) As specified in subsection a. of this section;
 - (2) If necessary to protect the public health, safety or welfare, and in the case of an emergency;

- (3) If, due to a binding decision by an arbitrator or court of competent jurisdiction, Metro may be liable for damages for allowing waste of the quantity or type specified in this Agreement to be disposed of at Company's Facility or Metro may no longer allow such waste to be disposed of at Company's Facility.

The Executive Officer's decision to suspend this Agreement shall be reviewable under the contested case procedures of Metro Code Chapter 2.05. Filing of a contested case shall not stay the Executive Officer's decision to suspend this Agreement, unless the Executive Officer agrees to such a stay in writing.

- c. The Metro 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, Company shall have 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 Company to acknowledge the modification within the 30-day period, unless otherwise excused by Metro's Executive Officer, shall result in suspension of the Agreement at the close of business on the 30th day, until the modification is acknowledged in writing by Company.
- d. If the Metro Council adopts a resolution to modify, suspend, or terminate this Agreement without providing Company with reasonable notice and an opportunity to be heard prior to Council action, Company shall be entitled to a contested case hearing related to the action taken, as specified in Metro Code Chapter 2.05.
- e. Nothing in this section shall be interpreted to hinder or prevent Metro from making and enforcing policy judgments related to the flow of solid waste out of Metro boundaries, regardless of the perceived or actual impact of such decisions on Company's business. A policy judgment by Metro to limit or prevent waste generated within Metro boundaries from entering the Facility shall under no circumstances be the basis for payment of compensation by Metro to Company.

8. Compliance With Law.

Company shall fully comply with the Metro Code and with all federal, state, regional and local laws, rules, regulations, ordinances, orders and permits pertaining in any manner to this Agreement. All conditions imposed on the operation of the Facility 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.

9. Right of Inspection.

Authorized representatives of Metro shall be permitted access to the premises of the Facility 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:

- a. During all working hours;
- b. At other reasonable times with notice; and
- c. At any time without notice when, in the opinion of the Metro Solid Waste Department Director, such notice would defeat the purpose of the entry.

10. Indemnification. Company 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 Company's performance under this Agreement.

11. 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 (herein, "confidential information"), which Company is required to submit to Metro under section 6.a. of this Agreement. Metro 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 Company, is used by Company in its business, and gives Company a business advantage over others not possessing such information. The ability of competitors of Company 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 such 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 11.
- 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 to any person, partnership, firm, association, corporation, or other entity, or use

for the personal benefit of such party, the confidential information specified in this section 11. Metro may nevertheless use such information for solid waste management purposes, including solid waste tracking and forecasting, enforcement of the Metro Code, or assistance to other jurisdictions in regulatory or other law enforcement. Metro may also use such 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 such persons or other entities generate or deliver to the Facility. Metro shall notify Company within 3 business days of Metro's receipt of a request for confidential information from a third party. If it becomes necessary for Metro to release confidential information to any person outside of Metro, Metro shall so notify Company in writing, at least 15 days prior to releasing such information.

- c. When submitting to Metro the confidential information specified herein, Company shall mark such materials as confidential. Metro shall keep all such material separate from its other records and materials, in the custody and control of the Metro Office of General Counsel, 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.
- d. If Oregon law is modified such that the confidential information referenced in this section 11 is no longer exempt from public disclosure, or if a court of competent jurisdiction requires release of such information, Company shall no longer be required to submit such information to Metro. In such instance, upon request, Company 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 demonstrates a reasonable suspicion that a violation has occurred.

12. Relation to Waste Delivery Guarantee.

For purposes of the Waste Disposal Service Agreement ("Disposal Agreement") between Metro and OWS, dated April 11, 1988, as amended, waste disposed of by OWS at the Columbia Ridge Landfill pursuant to this Disposal Agreement shall not be considered either (1) "acceptable waste which Metro delivers to a general purpose landfill" for purposes of the 90 percent annual waste delivery guarantee (Specifications paragraph 1); or (2) "acceptable waste delivered to OWS during any calendar year quarter" for purposes of the limited guarantee against waste flow fluctuations (Specifications, paragraph 1).

13. 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 Company.
- b. Company 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 Company, nor vest any right or privilege in Company 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 or amendment to this Agreement must be in writing, signed by the Executive Officer. Waiver of a term or condition of this Agreement shall not waive nor prejudice Metro'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. This Agreement is the entire agreement between the parties. This Agreement does not allow receipt of solid waste from within the boundaries of the Metropolitan Service District for any purpose other than disposal in accordance with this Agreement.

WASTE MANAGEMENT DISPOSAL
SERVICES OF OREGON, INC., dba
OREGON WASTE SYSTEMS, INC.

METRO

By: _____

By: _____

Print name and title

Print name and title

Date: _____

Date: _____

CL:clk
c:\clark\new\contract\ows.d8 1.26.93.1

**ATTACHMENT A
TO
DESIGNATED FACILITIES AGREEMENT**

(s) "Special Waste" means any waste (even though it may be part of a delivered load of waste) which is:

- (1) Containerized waste (e.g., a drum, barrel, portable tank, box, pail, etc.) of a type listed in 3 through 9 and 11 of this definition below; or
- (2) Waste transported in a bulk tanker; or
- (3) Liquid waste including outdated, off spec liquid food waste or liquids of any type when the quantity and the load would fail the paint filter liquid (Method 9095, SW-846) test or is 25 gallons of free liquid per load, whichever is more restrictive.
- (4) Containers (or drums) which once held commercial products or chemicals are included unless the container is empty. A container is empty when:
 - (A) All wastes have been removed that can be removed using the practices commonly employed to remove materials from the type of container, e.g., pouring, pumping, crushing, or aspirating.
 - (B) The ends have been removed (for containers in excess of 25 gallons); and
 - (C) No more than one inch thick (2.54 centimeters) of residue remains on the bottom of the container or inner liner; or
 - (D) No more than 1% by weight of the total capacity of the container remains in the container (for containers up to 110 gallons); or
 - (E) No more than 0.3% by weight of the total capacity of the container remains in the container for containers larger than 110 gallons.

Containers which once held acutely hazardous wastes must be triple rinsed with an appropriate solvent or cleaned by an equivalent alternative method. Containers which once held substances regulated under the Federal Insecticide, Fungicide, and Rodenticide Act must be empty according to label instructions or triple rinsed with an appropriate solvent or cleaned by an equivalent method. Plastic containers larger than five (5) gallons that hold any regulated

waste must be cut in half or punctured, dry and free of contamination to be accepted as refuse; or

- (5) Sludge waste from septic tanks, food service, grease traps, wastewater from commercial laundries, laundromats or car washes; or
- (6) Waste from an industrial process; or
- (7) Waste from a pollution control process; or
- (8) Residue or debris from the cleanup of a spill or release of chemical substances, commercial products or wastes listed in 1 through 7 or 9 of this definition; or
- (9) Soil, water, residue, debris, or articles which are contaminated from the cleanup of a site or facility formerly used for the generation, storage, treatment, recycling, reclamation, or disposal of wastes listed in 1 through 8 of this definition; or
- (10) Chemical containing equipment removed from service (for example - filters, oil filters, cathode ray tubes, lab equipment, acetylene tanks, CFC tanks or any other chemical containing equipment); or
- (11) Waste in waste containers that are marked with a National Fire Protection Association identification label that has a hazard rating of 2, 3, or 4 but not empty containers so marked; or
- (12) Any waste that requires extraordinary management.

Examples of special wastes are: chemicals, liquids, sludge and dust from commercial and industrial operations; municipal waste water treatment plant grits, screenings and sludge; contaminated soils; tannery wastes, empty pesticide containers, and dead animals or by-products.

ROOSEVELT REGIONAL LANDFILL

Designated Facility Criteria Review (Criteria Numbers 1, 2, 3 and 4)

ROOSEVELT REGIONAL LANDFILL

Metro has also received a request from the Regional Disposal Company with its home office at 4730 32nd Avenue South, Seattle, Washington that it be permitted to receive certain types of special waste from the District to be disposed at its Roosevelt Regional Landfill located in Klickitat County, Washington.

Criteria to be reviewed pursuant to Council requirements are:

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

Regional Disposal Company (RDC) has submitted copies of the following permits and certifications as a part of its application for designated facility status:

- < Conditional Use Permit No. CU-89-13, dated January 22, 1990 from the Klickitat County, Washington Board of Adjustment and subsequent Conditional Use Permit No. CU-92-14, dated September 8, 1992 for modification and expansion of the landfill.
- < Solid Waste Handling Facility (Operating) Permit No. 20-001, issued by the Southwest Washington Health District, Division of Environmental Health dated June 1, 1990 with annual renewals through March 1, 1993.
- < ORDER No. DE 90-C153 (Air Quality Permit) from the Washington State Department of Ecology dated April 5, 1990.
- < RDC has also submitted a copy of its Final Supplemental Environmental Impact Statement containing the landfill's Operations Plan which sets out general operating procedures dated August 1992.

Additionally, Solid Waste staff visited the Roosevelt Regional Landfill on August 25, 1992 to view firsthand its control and operational practices.

The degree to which prior users of the facility and waste types accepted at the facility are known is very high given the short operating history of the landfill and the positive control procedures contained in the landfill's operations plan. The facility design criteria contained in the aforementioned permits, particularly regarding either meeting or exceeding Subtitle D federal regulations minimizes Metro's risk of allowing waste from the District to be deposited in the Roosevelt Regional Landfill.

- (2) The record of regulatory compliance of the facility's owner and operator with federal, state and local requirements.**

RDC has submitted its certification (dated November 24, 1992) that the Roosevelt Regional Landfill is a fully permitted facility which meets all State of Washington Minimal Functional Standards and Federal Subtitle D requirements and that there have been no regulatory enforcement actions and none are pending.

- (3) The record of the facility regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement.**

The Roosevelt Regional Landfill does not have a formal relationship with Metro given its short operating history and the fact that it is located outside Metro's jurisdictional boundaries. RDC has reported to Metro that the landfill received petroleum contaminated soils(PCS) from the Metro District as a result of its contracts with national petroleum marketing companies and prior to its knowledge of Metro's flow control requirements. RDC has submitted payment of applicable Metro fees on this material and has stated, in writing, that it will submit any future payments should its audits reveal further receipt of material from the Metro District. Other payments considered due by Metro will be billed appropriately.

Metro is undertaking a separate review of DEQ permits for excavation and disposal of PCS from the District to verify RDC's reported figures.

- (4) The adequacy of operational practices and management controls at the facility.**

The Roosevelt Regional Landfill's operations plan provides for positive monitoring and control of wastes being deposited. The plan provides for weighing and recording of the weight, waste type and waste source. The plan also provides for special handling of materials such as; asbestos, excavated soils, dredge spoils, construction and demolition debris and sewage sludges. The plan further provides for screening and management of unacceptable wastes.

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

This item has been researched by Metro staff and is included in the material in the system overview immediately preceding the factual subsection.

- (6) The expected impact on Metro's revenue.**

This item has been researched by Metro staff and is included in the material in the system overview immediately preceding the factual subsection.

(7) The consistency of the designation with Metro's existing contractual arrangements.

This item has been researched by the Office of General Counsel and the analysis is contained in a separate memorandum as noted on page 13 of the Staff Report. OWS believes that Metro cannot allow significant quantities of special waste to be delivered to Roosevelt landfill by private individuals because it is a general purpose landfill.

(8) The need for additional disposal capacity and the effect on existing designated facilities.

This item has been researched by Metro staff and is included in the material in the system overview immediately preceding the factual subsection.

(9) Other benefits or detriments accruing to residents of the region from Council action in designating a facility.

This item has been researched by Metro staff and is included in the material in the system overview immediately preceding the factual subsection.

Designated Facility Agreement for Roosevelt Landfill follows as Attachment No. 5.

METRO CONTRACT NO. 902861

AGREEMENT

This Agreement is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, referred to herein as "Metro," located at 2000 S.W. First Avenue, Portland, Oregon 97201-5398, and Regional Disposal Company, a Washington joint venture, with its home office at 4730 32nd Avenue South, Seattle, Washington 98118, referred to herein as "Company."

This Agreement is entered into by Metro under the authority of ORS 268.317, and Metro Code Chapter 5.05. Company enters into this Agreement in recognition of the "Designated Facility" status conferred upon the Roosevelt Regional Landfill Facility in Klickitat County, Washington, by Metro Ordinance No. _____.

In exchange for the promises set forth below, the parties agree as follows:

1. Purpose and Authority. The purpose of this Agreement is to establish the terms under which Company may receive, at its Roosevelt Regional Landfill Facility in Klickitat County, Washington (herein "Facility"), the types of waste specified in section 3 of this Agreement that were generated within Metro boundaries.
2. Duration. Unless terminated sooner as specified herein, this Agreement shall remain in effect for two years from the date of execution by both parties. To avoid unnecessary disruption while Metro considers possible renewal of this Agreement, if Company has not received written notice of termination from Metro on or before the two year anniversary of this Agreement, this Agreement shall continue in effect until such notice is provided to Company.
3. Wastes That May be Accepted at the Facility.
 - a. Pursuant to this Agreement, and to the extent the Facility has legal authority to accept such waste, the Facility may accept only the following types of waste generated within Metro boundaries:
 - (1) Residue from the processing of construction, demolition, and land clearing waste received from a Metro franchised facility.
 - (2) Non-hazardous industrial dust.

- (3) Asbestos (special requirements for packaging and unloading would apply).
 - (4) Outdated or defective non-putrescible commercial or industrial raw materials not suited for market conditions or consumer use.
 - (5) Contaminated soil and other non-putrescible debris from cleanup of petroleum or other non-hazardous chemical spills.
 - (6) Special waste as defined in section 5.02.015(s) of the Metro Code. A copy of this section of the code is attached as Attachment A, and is incorporated herein by this reference.
 - (7) Other waste as described in any future addendum to this Agreement or as authorized by Metro in a non system license.
- b. This Agreement shall not be construed to allow disposal at the Facility of mixed municipal solid waste, or other types of waste not listed in Section 3 a., generated within Metro boundaries.
4. Recordkeeping and Audits.
- a. Company shall maintain complete and accurate records regarding all solid waste transported, treated, disposed of, or otherwise processed pursuant to this Agreement, and shall make such records available to, or send copies to, the Metro Solid Waste Department or its duly designated agents for inspection, auditing and copying upon not less than seven days written notice from Metro. Pre-numbered tickets shall be used for all transactions, in numerical sequence, and voided or canceled tickets shall be retained.
 - b. At Metro's option, Company shall have an independent audit conducted by a firm acceptable to Metro, no more than once each year, at Company'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 Company prior to the audit.
5. Reports and Information.
- a. Company shall report in writing to the Metro Solid Waste Department no later than the 10th day of each month, for the duration of this Agreement, the number of tons of solid waste transported, disposed of or otherwise processed pursuant to this Agreement during the preceding month. The reports shall provide sufficient detail to adequately identify the waste profile of the various materials transported,

treated, and disposed of, and include the names of persons or entities generating and delivering waste to the Facility, and the types and quantities of waste generated or delivered by such persons or entities. To the extent such information is available in electronic form, Company shall make such information available to Metro on computer disk. Metro shall maintain the confidentiality of all records submitted by Company to the extent public disclosure is not required by ORS ch 192, and otherwise in conformance with section 11 of this Agreement.

- b. Company shall complete a cumulative status review of the waste types and profiles covering each six months of operations under this Agreement and shall provide such report to Metro within 45 days of the expiration of the six-month period covered by the report. The first report shall cover the period of operations from the date of execution of this Agreement through December 31, 1993.
- c. Company shall provide to Metro copies of all permits covering the Facility or operations at the Facility. Copies of revisions to existing permits and newly issued permits shall be provided to Metro within seven business days of receipt. Company shall also provide, within ten 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 non-compliance with a statute, regulation, or permit condition.

6. User Fee/Excise Tax.

- a. Upon receipt of the reports described in section 5.a., Metro shall transmit an invoice to Company for a fee equal to Metro's Regional User Fee multiplied by the number of tons (or fractions thereof) of solid waste disposed of or processed pursuant to this Agreement during the preceding month. Company shall make payment to Metro in the invoiced amount, not later than 30 days after the date of the invoice. Company shall use reasonable business judgment in allowing generators or transporters of waste to dispose of waste at its Facility on a credit basis and shall use reasonable legal means to collect disposal charges, including all fees and taxes owed to Metro. If Company is unable to collect disposal charges, Company may deduct uncollectible Metro fees and taxes, when an affidavit explaining the status of the uncollectible account is provided that sufficiently documents good faith collection efforts conducted by Company. If Company receives a partial payment and the remainder of the account is uncollectible, the payment received shall be pro-rated between Company's disposal charges and Metro's fees and taxes. All amounts owing to Metro that are deemed "uncollectible" and are ultimately collected, shall be remitted to Metro within 30 days of receipt by Company.

- b. Upon receipt of the reports described in section 5.a., Metro shall transmit an invoice to Company for a fee equal to all excise taxes required to be paid under Metro Code Chapter 7.01, as a result of Company's activities during the preceding month. Company shall make payment to Metro in the invoiced amount, not later than 30 days after the date of the invoice. Excise taxes shall be due for disposal of waste at the Facility, but shall not be due for transport to the Facility, even if Company arranges that transport.
- c. A finance charge of one and one-half percent per month (18 percent per annum), computed from the date fees and taxes become 30 days past due, will be assessed on all fees and taxes which become 60 days past due and will be added to the oldest months charges past due. Finance charges will continue to be assessed on negotiated repayment schedules.
- d. Company shall not pay the user fees and excise taxes described in this paragraph on waste received at the Facility:
 - (1) which is accepted without charge or fee; and
 - (2) which is intended to be used for a beneficial purpose and which is in fact used for a beneficial purpose.

7. Modification, Suspension, and Termination.

- a. If Company fails to fully and promptly comply with a term or condition of this Agreement, the Executive Officer shall issue to Company a written notice of noncompliance briefly describing such failure. The notice shall state that, within a period specified by the Executive Officer of at least 20 days, Company must demonstrate to the satisfaction of the Executive Officer either that Company has not violated a term or condition of this Agreement, or that the violation has been corrected. Company shall also, within the same period, pay all fines owing as a result of noncompliance or make arrangements for payment satisfactory to the Executive Officer. Failure to comply with the notice of noncompliance shall be grounds for suspension of this Agreement by the Executive Officer, effective as of 5:00 p.m. on the last day of the compliance period specified by the Executive Officer. The Executive Officer may extend the compliance period to a total of no more than 60 days from the date of the notice of noncompliance, upon determining that Company is making good faith efforts to comply and is capable of complying within the extended compliance period.
- b. Metro's Executive Officer may suspend this Agreement without prior notice, as follows:

- (1) As specified in subsection a. of this section;**
- (2) If necessary to protect the public health, safety or welfare, and in the case of an emergency;**
- (3) If, due to a binding decision by an arbitrator or court of competent jurisdiction, Metro may be liable for damages for allowing waste of the quantity or type specified in this Agreement to be disposed of at Company's Facility or Metro may no longer allow such waste to be disposed of at Company's Facility.**

The Executive Officer's decision to suspend this Agreement shall be reviewable under the contested case procedures of Metro Code Chapter 2.05. Filing of a contested case shall not stay the Executive Officer's decision to suspend this Agreement, unless the Executive Officer agrees to such a stay in writing.

- c. The Metro 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, Company shall have 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 Company to acknowledge the modification within the 30-day period, unless otherwise excused by Metro's Executive Officer, shall result in suspension of the Agreement at the close of business on the 30th day, until the modification is acknowledged in writing by Company.**
- d. If the Metro Council adopts a resolution to modify, suspend, or terminate this Agreement without providing Company with reasonable notice and an opportunity to be heard prior to Council action, Company shall be entitled to a contested case hearing related to the action taken, as specified in Metro Code Chapter 2.05.**
- e. Nothing in this section shall be interpreted to hinder or prevent Metro from making and enforcing policy judgments related to the flow of solid waste out of Metro boundaries, regardless of the perceived or actual impact of such decisions on Company's business. A policy judgment by Metro to limit or prevent waste generated within Metro boundaries from entering the Facility shall under no circumstances be the basis for payment of compensation by Metro to Company.**

8. Compliance With Law.

Company shall fully comply with the Metro Code and with all federal, state, regional and local laws, rules, regulations, ordinances, orders and permits pertaining in any manner to this Agreement. All conditions imposed on the operation of the Facility 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.

9. Right of Inspection.

Authorized representatives of Metro shall be permitted access to the premises of the Facility 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:

- a. During all working hours;
- b. At other reasonable times with notice; and
- c. At any time without notice when, in the opinion of the Metro Solid Waste Department Director, such notice would defeat the purpose of the entry.

10. Indemnification. Company 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 Company's performance under this Agreement.

11. 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 (herein, "confidential information"), which Company is required to submit to Metro under section 6.a. of this Agreement. Metro 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 Company, is used by Company in its business, and gives Company a business advantage over others not possessing such information. The ability of competitors of Company 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 such 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 11.

- 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 to any person, partnership, firm, association, corporation, or other entity, or use for the personal benefit of such party, the confidential information specified in this section 11. Metro may nevertheless use such information for solid waste management purposes, including solid waste tracking and forecasting, enforcement of the Metro Code, or assistance to other jurisdictions in regulatory or other law enforcement. Metro may also use such 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 such persons or other entities generate or deliver to the Facility. Metro shall notify Company within 3 business days of Metro's receipt of a request for confidential information from from a third party. If it becomes necessary for Metro to release confidential information to any person outside of Metro, Metro shall so notify Company in writing, at least 15 days prior to releasing such information.
- c. When submitting to Metro the confidential information specified herein, Company shall mark such materials as confidential. Metro shall keep all such material separate from its other records and materials, in the custody and control of the Metro Office of General Counsel, 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.
- d. If Oregon law is modified such that the confidential information referenced in this section 11 is no longer exempt from public disclosure, or if a court of competent jurisdiction requires release of such information, Company shall no longer be required to submit such information to Metro. In such instance, upon request, Company 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 demonstrates a reasonable suspicion that a violation has occurred.

12. 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 Company.
- b. Company 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 Company, nor vest any right or privilege in Company 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 or amendment to this Agreement must be in writing, signed by the Executive Officer. Waiver of a term or condition of this Agreement shall not waive nor prejudice Metro'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. This Agreement is the entire agreement between the parties. This Agreement does not allow receipt of solid waste from within the boundaries of the Metropolitan Service District for any purpose other than disposal in accordance with this Agreement.

REGIONAL DISPOSAL COMPANY,
a Washington Joint Venture,
By: WJR ENVIRONMENTAL, INC.,
Managing Partner

METRO

By: _____

By: _____

Print name and title

Print name and title

Date: _____

Date: _____

CL:clk
s:\share\new\contract\roosvit.dfs 1.26.93.2

**ATTACHMENT A
TO
DESIGNATED FACILITIES AGREEMENT**

(s) "Special Waste" means any waste (even though it may be part of a delivered load of waste) which is:

- (1) Containerized waste (e.g., a drum, barrel, portable tank, box, pail, etc.) of a type listed in 3 through 9 and 11 of this definition below; or
- (2) Waste transported in a bulk tanker; or
- (3) Liquid waste including outdated, off spec liquid food waste or liquids of any type when the quantity and the load would fail the paint filter liquid (Method 9095, SW-846) test or is 25 gallons of free liquid per load, whichever is more restrictive.
- (4) Containers (or drums) which once held commercial products or chemicals are included unless the container is empty. A container is empty when:
 - (A) All wastes have been removed that can be removed using the practices commonly employed to remove materials from the type of container, e.g., pouring, pumping, crushing, or aspirating.
 - (B) The ends have been removed (for containers in excess of 25 gallons); and
 - (C) No more than one inch thick (2.54 centimeters) of residue remains on the bottom of the container or inner liner; or
 - (D) No more than 1% by weight of the total capacity of the container remains in the container (for containers up to 110 gallons); or
 - (E) No more than 0.3% by weight of the total capacity of the container remains in the container for containers larger than 110 gallons.

Containers which once held acutely hazardous wastes must be triple rinsed with an appropriate solvent or cleaned by an equivalent alternative method. Containers which once held substances regulated under the Federal Insecticide, Fungicide, and Rodenticide Act must be empty according to label instructions or triple rinsed with an appropriate solvent or cleaned by an equivalent method. Plastic containers larger than five (5) gallons that hold any regulated

waste must be cut in half or punctured, dry and free of contamination to be accepted as refuse; or

- (5) Sludge waste from septic tanks, food service, grease traps, wastewater from commercial laundries, laundromats or car washes; or
- (6) Waste from an industrial process; or
- (7) Waste from a pollution control process; or
- (8) Residue or debris from the cleanup of a spill or release of chemical substances, commercial products or wastes listed in 1 through 7 or 9 of this definition; or
- (9) Soil, water, residue, debris, or articles which are contaminated from the cleanup of a site or facility formerly used for the generation, storage, treatment, recycling, reclamation, or disposal of wastes listed in 1 through 8 of this definition; or
- (10) Chemical containing equipment removed from service (for example - filters, oil filters, cathode ray tubes, lab equipment, acetylene tanks, CFC tanks or any other chemical containing equipment); or
- (11) Waste in waste containers that are marked with a National Fire Protection Association identification label that has a hazard rating of 2, 3, or 4 but not empty containers so marked; or
- (12) Any waste that requires extraordinary management.

Examples of special wastes are: chemicals, liquids, sludge and dust from commercial and industrial operations; municipal waste water treatment plant grits, screenings and sludge; contaminated soils; tannery wastes, empty pesticide containers, and dead animals or by-products.

FINLEY BUTTES LANDFILL

Designated Facility Criteria Review (Criteria Numbers 1, 2, 3 and 4)

FINLEY BUTTES LANDFILL

Finley Buttes Landfill requested that it be granted Designated Facility status under Metro's flow control ordinance. Finley Buttes Landfill (FBL) is a subsidiary of Columbia Resource Company. Columbia Resource Company, an affiliate of Tidewater Barge Company, owns and operates Wastech as well as FBL. FBL received Permit Number 394 from the Oregon DEQ in February 1989. FBL is located off Bombing Range Road, approximately 10 miles south of the Port of Morrow in Morrow County, Oregon. The facility is approximately 180 miles East of Portland.

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

FBL began receiving waste November 1, 1990. The facility design meets or exceeds all Federal Subtitle D requirements. Complete records have been maintained since the opening of the facility. Standard operating procedure is that all materials received are logged in by customer, origin and material type. Additionally, the daily fill area is logged to provide location information if there should be future questions as to the location of material.

- (2) The record of regulatory compliance of the facility's owner and operator with federal, state and local requirements.**

FBL received Notice of Non-Compliance from the DEQ in early 1990, 1991 and early 1992. These notices involved an on-site sewage disposal system permit, failure to collect groundwater and failure to submit detailed engineering plans prior to construction activities, leachate monitoring, the fill plan, O & M manual and other conditions.

Contact with DEQ officials and documentation provided by DEQ confirmed that FBL also received a Notices of Violation and Intent to Assess Civil Penalty relative to the groundwater monitoring notice referred to above. A subsequent comprehensive compliance inspection was conducted in November 1992 and FBL was found to be in full compliance with its operating permit at that time according to DEQ.

- (3) The record of the facility regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement.**

There is no record of noncompliance by FBL with Metro's ordinances and agreements. FBL has been cooperative in providing information and has responded in a timely manner to any requests that Metro has submitted for information or for opportunities to visit and inspect its facility.

FBL's owner/operator, Columbia Resources Company, runs a transfer station in Orchards, Washington that was used illegally by waste haulers from the Metro area in 1991. Metro eventually collected past due user fees, penalties and interest from one such hauler in the amount of \$75,572.00. In October of 1991, the Office of General Counsel wrote to Gail Mathers of CRC

and requested detailed assistance from Mr. Mathers in identifying persons who might be violating the Metro Code by using the Orchards facility, and the letter was ignored. CRC subsequently answered questions by phone regarding use of the facility by one other commercial hauler from Oregon, but chose not to identify the hauler, and still did not agree to provide any of the assistance requested in the earlier letter. The Office of General Counsel considers the assistance provided by CRC in enforcing the Metro Code in this stated incident to have been wholly inadequate. Reasonable assistance by CRC may have confirmed significant lost district revenue due to numerous individuals hauling waste from the district, to the Orchards facility.

(4) The adequacy of operational practices and management controls at the facility.

A personal inspection and tour of the FBL facility was conducted by Metro staff in September 1992. Physical inspection revealed a well run operation with no evidence of inappropriate waste handling or operation. Photos were taken and are part of the facility file. Further, FBL has subsequently provided Metro with a copy of its OPERATION AND MAINTENANCE MANUAL, VOL. I AND II. The manuals provide detailed information on facility procedures to ensure safe and efficient operation of the facility and to ensure the physical integrity of the landfill, its equipment and buildings.

(5) The expected impact on the region's recycling and waste reduction efforts.

This item has been researched by Metro staff and is included in the material in the system overview immediately preceding the factual subsection.

(6) The expected impact on Metro's revenue.

This item has been researched by Metro staff and is included in the material in the system overview immediately preceding the factual subsection.

(7) The consistency of the designation with Metro's existing contractual arrangements.

This item has been researched by the Office of General Counsel and the analysis is contained in a separate memorandum as noted on page 13 of the Staff Report. OWS believes that Metro cannot allow significant quantities of special waste to be delivered to FBL by private individuals because it is a general purpose landfill.

(8) The need for additional disposal capacity and the effect on existing designated facilities.

This item has been researched by Metro staff and is included in the material in the system overview immediately preceding the factual subsection.

(9) Other benefits or detriments accruing to residents of the region from Council action in designating a facility.

This item has been researched by Metro staff and is included in the material in the system overview immediately preceding the factual subsection.

Designated Facility Agreement for Finley Buttes Landfill follows as Attachment No. 6

METRO CONTRACT NO. 902860

AGREEMENT

This Agreement is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, referred to herein as "Metro," located at 2000 S.W. First Avenue, Portland, Oregon 97201-5398, and Finley Buttes Landfill Company, located at P.O. Box 61726, Vancouver, Washington 98666, referred to herein as "Company."

This Agreement is entered into by Metro under the authority of ORS 268.317, and Metro Code Chapter 5.05. Company enters into this Agreement in recognition of the "Designated Facility" status conferred upon the Finley Buttes Landfill in Morrow County, Oregon, by Metro Ordinance No. _____.

In exchange for the promises set forth below, the parties agree as follows:

1. **Purpose and Authority.** The purpose of this Agreement is to establish the terms under which Company may receive, at its Finley Buttes Landfill in Morrow County, Oregon (herein "Facility"), the types of waste specified in section 3 of this Agreement that were generated within Metro boundaries.
2. **Duration.** Unless terminated sooner as specified herein, this Agreement shall remain in effect for two years from the date of execution by both parties. To avoid unnecessary disruption while Metro considers possible renewal of this Agreement, if Company has not received written notice of termination from Metro on or before the two year anniversary of this Agreement, this Agreement shall continue in effect until such notice is provided to Company.
3. **Wastes That May be Accepted at the Facility.**
 - a. Pursuant to this Agreement, and to the extent the Facility has legal authority to accept such waste, the Facility may accept only the following types of waste generated within Metro boundaries:
 - (1) Residue from the processing of construction, demolition, and land clearing waste received from a Metro franchised facility.
 - (2) Non-hazardous industrial dust.
 - (3) Asbestos (special requirements for packaging and unloading would apply).

- (4) Outdated or defective non-putrescible commercial or industrial raw materials not suited for market conditions or consumer use.
 - (5) Contaminated soil and other non-putrescible debris from cleanup of petroleum or other non-hazardous chemical spills.
 - (6) Special waste as defined in section 5.02.015(s) of the Metro Code. A copy of this section of the code is attached as Attachment A, and is incorporated herein by this reference.
 - (7) Other waste as described in any future addendum to this Agreement or as authorized by Metro in a non system license.
- b. This Agreement shall not be construed to allow disposal at the Facility of mixed municipal solid waste, or other types of waste not listed in Section 3.a., generated within Metro boundaries.

4. Recordkeeping and Audits.

- a. Company shall maintain complete and accurate records regarding all solid waste transported, treated, disposed of, or otherwise processed pursuant to this Agreement, and shall make such records available to, or send copies to, the Metro Solid Waste Department or its duly designated agents for inspection, auditing and copying upon not less than seven days written notice from Metro. Pre-numbered tickets shall be used for all transactions, in numerical sequence, and voided or canceled tickets shall be retained.
- b. At Metro's option, Company shall have an independent audit conducted by a firm acceptable to Metro, no more than once each year, at Company'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 Company prior to the audit.

5. Reports and Information.

- a. Company shall report in writing to the Metro Solid Waste Department no later than the 10th day of each month, for the duration of this Agreement, the number of tons of solid waste transported, disposed of or otherwise processed pursuant to this Agreement during the preceding month. The reports shall provide sufficient detail to adequately identify the waste profile of the various materials transported, treated, and disposed of, and include the names of persons or entities generating and delivering waste to the Facility, and the types and quantities of waste

generated or delivered by such persons or entities. To the extent such information is available in electronic form, Company shall make such information available to Metro on computer disk. Metro shall maintain the confidentiality of all records submitted by Company to the extent public disclosure is not required by ORS ch 192, and otherwise in conformance with section 11 of this Agreement.

- b. Company shall complete a cumulative status review of the waste types and profiles covering each six months of operations under this Agreement and shall provide such report to Metro within 45 days of the expiration of the six-month period covered by the report. The first report shall cover the period of operations from the date of execution of this Agreement through December 31, 1993.
- c. Company shall provide to Metro copies of all permits covering the Facility or operations at the Facility. Copies of revisions to existing permits and newly issued permits shall be provided to Metro within seven business days of receipt. Company shall also provide, within ten 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 non-compliance with a statute, regulation, or permit condition.

6. User Fee/Excise Tax.

- a. Upon receipt of the reports described in section 5.a., Metro shall transmit an invoice to Company for a fee equal to Metro's Regional User Fee multiplied by the number of tons (or fractions thereof) of solid waste disposed of or processed pursuant to this Agreement during the preceding month. Company shall make payment to Metro in the invoiced amount, not later than 30 days after the date of the invoice. Company shall use reasonable business judgment in allowing generators or transporters of waste to dispose of waste at its Facility on a credit basis and shall use reasonable legal means to collect disposal charges, including all fees and taxes owed to Metro. If Company is unable to collect disposal charges, Company may deduct uncollectible Metro fees and taxes, when an affidavit explaining the status of the uncollectible account is provided that sufficiently documents good faith collection efforts conducted by Company. If Company receives a partial payment and the remainder of the account is uncollectible, the payment received shall be pro-rated between Company's disposal charges and Metro's fees and taxes. All amounts owing to Metro that are deemed "uncollectible" and are ultimately collected, shall be remitted to Metro within 30 days of receipt by Company.
- b. Upon receipt of the reports described in section 5.a., Metro shall transmit an invoice to Company for a fee equal to all excise taxes required to be paid under

Metro Code Chapter 7.01, as a result of Company's activities during the preceding month. Company shall make payment to Metro in the invoiced amount, not later than 30 days after the date of the invoice. Excise taxes shall be due for disposal of waste at the Facility, but shall not be due for transport to the Facility, even if Company arranges that transport.

- c. A finance charge of one and one-half percent per month (18 percent per annum), computed from the date fees and taxes become 30 days past due, will be assessed on all fees and taxes which become 60 days past due and will be added to the oldest months charges past due. Finance charges will continue to be assessed on negotiated repayment schedules.
- d. Company shall not pay the user fees and excise taxes described in this paragraph on waste received at the Facility:
 - (1) which is accepted without charge or fee; and
 - (2) which is intended to be used for a beneficial purpose and which is in fact used for a beneficial purpose.

7. Modification, Suspension, and Termination.

- a. If Company fails to fully and promptly comply with a term or condition of this Agreement, the Executive Officer shall issue to Company a written notice of noncompliance briefly describing such failure. The notice shall state that, within a period specified by the Executive Officer of at least 20 days, Company must demonstrate to the satisfaction of the Executive Officer either that Company has not violated a term or condition of this Agreement, or that the violation has been corrected. Company shall also, within the same period, pay all fines owing as a result of noncompliance or make arrangements for payment satisfactory to the Executive Officer. Failure to comply with the notice of noncompliance shall be grounds for suspension of this Agreement by the Executive Officer, effective as of 5:00 p.m. on the last day of the compliance period specified by the Executive Officer. The Executive Officer may extend the compliance period to a total of no more than 60 days from the date of the notice of noncompliance, upon determining that Company is making good faith efforts to comply and is capable of complying within the extended compliance period.
- b. Metro's Executive Officer may suspend this Agreement without prior notice, as follows:
 - (1) As specified in subsection a. of this section;

- (2) If necessary to protect the public health, safety or welfare, and in the case of an emergency;
- (3) If, due to a binding decision by an arbitrator or court of competent jurisdiction, Metro may be liable for damages for allowing waste of the quantity or type specified in this Agreement to be disposed of at Company's Facility or Metro may no longer allow such waste to be disposed of at Company's Facility.

The Executive Officer's decision to suspend this Agreement shall be reviewable under the contested case procedures of Metro Code Chapter 2.05. Filing of a contested case shall not stay the Executive Officer's decision to suspend this Agreement, unless the Executive Officer agrees to such a stay in writing.

- c. The Metro 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, Company shall have 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 Company to acknowledge the modification within the 30-day period, unless otherwise excused by Metro's Executive Officer, shall result in suspension of the Agreement at the close of business on the 30th day, until the modification is acknowledged in writing by Company.
- d. If the Metro Council adopts a resolution to modify, suspend, or terminate this Agreement without providing Company with reasonable notice and an opportunity to be heard prior to Council action, Company shall be entitled to a contested case hearing related to the action taken, as specified in Metro Code Chapter 2.05.
- e. Nothing in this section shall be interpreted to hinder or prevent Metro from making and enforcing policy judgments related to the flow of solid waste out of Metro boundaries, regardless of the perceived or actual impact of such decisions on Company's business. A policy judgment by Metro to limit or prevent waste generated within Metro boundaries from entering the Facility shall under no circumstances be the basis for payment of compensation by Metro to Company.

8. Compliance With Law.

Company shall fully comply with the Metro Code and with all federal, state, regional and local laws, rules, regulations, ordinances, orders and permits pertaining in any manner to this Agreement. All conditions imposed on the operation of the Facility 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.

9. Right of Inspection.

Authorized representatives of Metro shall be permitted access to the premises of the Facility 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:

- a. During all working hours;
- b. At other reasonable times with notice; and
- c. At any time without notice when, in the opinion of the Metro Solid Waste Department Director, such notice would defeat the purpose of the entry.

10. Indemnification. Company 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 Company's performance under this Agreement.

11. 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 (herein, "confidential information"), which Company is required to submit to Metro under section 5.a. of this Agreement. Metro 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 Company, is used by Company in its business, and gives Company a business advantage over others not possessing such information. The ability of competitors of Company 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 such 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 11.

- 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 to any person, partnership, firm, association, corporation, or other entity, or use for the personal benefit of such party, the confidential information specified in this section 11. Metro may nevertheless use such information for solid waste management purposes, including solid waste tracking and forecasting, enforcement of the Metro Code, or assistance to other jurisdictions in regulatory or other law enforcement. Metro may also use such 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 such persons or other entities generate or deliver to the Facility. Metro shall notify Company within 3 business days of Metro's receipt of a request for confidential information from from a third party. If it becomes necessary for Metro to release confidential information to any person outside of Metro, Metro shall so notify Company in writing, at least 15 days prior to releasing such information.
- c. When submitting to Metro the confidential information specified herein, Company shall mark such materials as confidential. Metro shall keep all such material separate from its other records and materials, in the custody and control of the Metro Office of General Counsel, 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.
- d. If Oregon law is modified such that the confidential information referenced in this section 11 is no longer exempt from public disclosure, or if a court of competent jurisdiction requires release of such information, Company shall no longer be required to submit such information to Metro. In such instance, upon request, Company 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 demonstrates a reasonable suspicion that a violation has occurred.

12. 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 Company.
- b. Company 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 Company, nor vest any right or privilege in Company 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 or amendment to this Agreement must be in writing, signed by the Executive Officer. Waiver of a term or condition of this Agreement shall not waive nor prejudice Metro'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. This Agreement is the entire agreement between the parties. This Agreement does not allow receipt of solid waste from within the boundaries of the Metropolitan Service District for any purpose other than disposal in accordance with this Agreement.

FINLEY BUTTES LANDFILL COMPANY

METRO

By: _____

By: _____

Print name and title

Print name and title

Date: _____

Date: _____

CL:clk
s:\share\envr\contract\finbutte.dfa 1.26.93.2

**ATTACHMENT A
TO
DESIGNATED FACILITIES AGREEMENT**

(s) "Special Waste" means any waste (even though it may be part of a delivered load of waste) which is:

- (1) Containerized waste (e.g., a drum, barrel, portable tank, box, pail, etc.) of a type listed in 3 through 9 and 11 of this definition below; or
- (2) Waste transported in a bulk tanker; or
- (3) Liquid waste including outdated, off spec liquid food waste or liquids of any type when the quantity and the load would fail the paint filter liquid (Method 9095, SW-846) test or is 25 gallons of free liquid per load, whichever is more restrictive.
- (4) Containers (or drums) which once held commercial products or chemicals are included unless the container is empty. A container is empty when:
 - (A) All wastes have been removed that can be removed using the practices commonly employed to remove materials from the type of container, e.g., pouring, pumping, crushing, or aspirating.
 - (B) The ends have been removed (for containers in excess of 25 gallons); and
 - (C) No more than one inch thick (2.54 centimeters) of residue remains on the bottom of the container or inner liner; or
 - (D) No more than 1% by weight of the total capacity of the container remains in the container (for containers up to 110 gallons); or
 - (E) No more than 0.3% by weight of the total capacity of the container remains in the container for containers larger than 110 gallons.

Containers which once held acutely hazardous wastes must be triple rinsed with an appropriate solvent or cleaned by an equivalent alternative method. Containers which once held substances regulated under the Federal Insecticide, Fungicide, and Rodenticide Act must be empty according to label instructions or triple rinsed with an appropriate solvent or cleaned by an equivalent method. Plastic containers larger than five (5) gallons that hold any regulated

waste must be cut in half or punctured, dry and free of contamination to be accepted as refuse; or

- (5) Sludge waste from septic tanks, food service, grease traps, wastewater from commercial laundries, laundromats or car washes; or
- (6) Waste from an industrial process; or
- (7) Waste from a pollution control process; or
- (8) Residue or debris from the cleanup of a spill or release of chemical substances, commercial products or wastes listed in 1 through 7 or 9 of this definition; or
- (9) Soil, water, residue, debris, or articles which are contaminated from the cleanup of a site or facility formerly used for the generation, storage, treatment, recycling, reclamation, or disposal of wastes listed in 1 through 8 of this definition; or
- (10) Chemical containing equipment removed from service (for example - filters, oil filters, cathode ray tubes, lab equipment, acetylene tanks, CFC tanks or any other chemical containing equipment); or
- (11) Waste in waste containers that are marked with a National Fire Protection Association identification label that has a hazard rating of 2, 3, or 4 but not empty containers so marked; or
- (12) Any waste that requires extraordinary management.

Examples of special wastes are: chemicals, liquids, sludge and dust from commercial and industrial operations; municipal waste water treatment plant grits, screenings and sludge; contaminated soils; tannery wastes, empty pesticide containers, and dead animals or by-products.

HILLSBORO LANDFILL

Designated Facility Criteria Review (Criteria Numbers 1, 2, 3 and 4)

HILLSBORO LANDFILL

Hillsboro Landfill (HL) is a long-standing limited purpose landfill located in south central Washington County, Oregon off Minterbridge Road, south of the City of Hillsboro. It is an existing designated facility under Metro's flow control ordinance. This facility has recently changed ownership, having been purchased by Sanifill, Inc. as of December 31, 1992. Prior to this transfer Metro has been in the process of revising its agreement with this facility. The existing 1984 agreement is inadequate to address the current relationship between Metro and HL in the context of the waste disposal/recycling system now in existence.

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

This facility was originally established in the 1960's as a "demolition waste landfill" and was issued its first DEQ solid waste permit in 1972. The prior owner, (until 12-31-92), Mr. Gary Clapshaw, acquired the facility in 1983. For the eleven years prior to Mr. Clapshaw's ownership the facility was operated as a "modified landfill for demolition and construction debris, rubbish and similar nonputrescible waste" (DEQ Permit and conceptual Plan Review Report, 8-22-89). The current HL Solid Waste Disposal Permit Number 112 was issued October 19, 1989. The expiration date is October 31, 1994. No comprehensive record of materials disposed nor comprehensive list of prior users is known for this facility. However, with respect to the operational practices of the last ten years, the DEQ has rated the facilities environmental compliance as "good" (see #2 below) and the DEQ had issued a series of short term disposal permits to the prior owner from 1972 through 1982. Nevertheless, Metro does have exposure to future risk of environmental contamination, though there is no way to quantify the degree of risk.

- (2) The record of regulatory compliance of the facility's owner and operator with federal, state and local requirements.**

Under its permit, HL is permitted to receive "...only landclearing debris (tree stumps, branches and brush), building construction and demolition debris (concrete rubble, asphaltic concrete, asphalt shingles, tar paper, bricks, plaster, linoleum, carpeting, glass, ceramic tile, timbers, lumber, gypsum board, piping, plumbing fixtures, electrical wiring, and similar building material) and inert material (soil, rocks and gravel)."

HL is prohibited under its permit from accepting "... food wastes, garbage, dead animals, sewage sludges, septic tank pumpings, chemical or vault toilet pumpings and other putrescible wastes, automobile bodies, infectious wastes, oil, chemicals, bulk quantities of liquid wastes, explosives and soils contaminated by hazardous materials." Exceptions must be "approved in writing by the Department prior to acceptance of the wastes by the permittee."

DEQ's Plan Review Report indicated that Mr. Clapshaw's environmental compliance record from 1983 to 8-22-89 (the date of the report) had been "good". Also, Permit Number 112 required the installation of leachate collection, groundwater monitoring and other environmental compliance requirements. Contact with a representative of the new owner, Sanifill, Inc., confirms that leachate collection is in place for the new cell and that "toe drains were installed for the original cell(s)". All leachate is pumped to the United Sewage Agency facility for treatment. Metro has documentation that in the past three years, there have been three Notices of Non-compliance issued to Hillsboro Landfill; January 1990, June 1990 and December 1991. These notices were in regard to a compliance schedule for submission of a groundwater monitoring plan and engineering plan; acceptance of tires; and failure to remit the DEQ \$.50 cent-per-ton surcharge on solid wastes in a timely manner. Records indicate that these matters appear to have been resolved satisfactorily.

(3) The record of the facility regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement.

There have been two compliance audits of the HL facility since 1989, the most recent having been completed in the latter half of 1992. Both audits revealed areas of Metro concern over proper reporting of categories of materials that are received by the facility. The issues raised have not been as to the acceptability of the waste at the facility, but rather as to whether certain materials should have been subject to Metro User Fees and excise taxes. Underlying these issues are issues of appropriate internal controls to ensure the accuracy of the data being used to generate the User Fee and excise tax reports.

The financial issues from the 1989 audit and a subsequent issue over the inauguration of scale weights being used for charge calculations relative to petroleum contaminated soils have been satisfactorily addressed. The financial issues from the 1992 audit have not yet been resolved. The new owner, Sanifill, Inc. was aware of the pending financial issues during its acquisition process and has pledged full cooperation in bringing the matter to a mutually satisfactory conclusion.

The financial concerns that recurred with HL underscored the need to replace the existing HL agreement with a more comprehensive agreement for that landfill. This coupled with the increased complexity of the waste disposal/recycling system over the past several years made it imperative that an up to date agreement be put in place. The new agreement will establish the new relationship between Metro and the new owner in proper context with other regional facilities.

(4) The adequacy of operational practices and management controls at the facility.

This criteria was to some degree addressed in the discussion of Criterion Number 3. There have been various issues raised by Metro as to internal control practices at HL related to proper characterization of materials being received at the facility. The issues have not been environmental (see discussion of Criterion 1), but rather, financial. The new owner, Sanifill Inc., is also the owner of Riverbend Landfill and Northern Wasco County Landfill. Metro has had an

acceptable relationship with Sanifill in the past and fully expects to receive the same level of cooperation in inaugurating the new agreement with Hillsboro Landfill under Sanifill's ownership.

(5) The expected impact on the region's recycling and waste reduction efforts.

This item has been researched by Metro staff and is included in the material in the system overview immediately preceding the factual subsection.

(6) The expected impact on Metro's revenue.

This item has been researched by Metro staff and is included in the material in the system overview immediately preceding the factual subsection.

(7) The consistency of the designation with Metro's existing contractual arrangements.

This item has been researched by the Office of General Counsel and the analysis is contained in a separate memorandum as noted on page 13 of the Staff Report.

(8) The need for additional disposal capacity and the effect on existing designated facilities.

This item has been researched by Metro staff and is included in the material in the system overview immediately preceding the factual subsection.

(9) Other benefits or detriments accruing to residents of the region from Council action in designating a facility.

This item has been researched by Metro staff and is included in the material in the system overview immediately preceding the factual subsection.

Designated Facility Agreement for Hillsboro Landfill follows as Attachment No. 7.

METRO CONTRACT NO. 902858

AGREEMENT

This Agreement is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, referred to herein as "Metro," located at 2000 S.W. First Avenue, Portland, Oregon 97201-5398, and Sanifill, located at 300 Drake's Landing, Suite 155, Greenbrae, California 94904, referred to herein as "Company."

This Agreement is entered into by Metro under the authority of ORS 268.317, and Metro Code Chapter 5.05. Company enters into this Agreement in recognition of the "Designated Facility" status conferred upon the Hillsboro Landfill Facility in Washington County, Oregon, by Metro Ordinance No. _____.

In exchange for the promises set forth below, the parties agree as follows:

1. **Purpose and Authority.** The purpose of this Agreement is to establish the terms under which Company may receive, at its Hillsboro Landfill in Washington County, Oregon (herein "Facility"), the types of waste specified in section 3 of this Agreement that were generated within Metro boundaries.
2. **Duration.** Unless terminated sooner as specified herein, this Agreement shall remain in effect for two years from the date of execution by the parties. To avoid unnecessary disruption while Metro considers possible renewal of this Agreement, if Company has not received written notice of termination from Metro on or before the two year anniversary of this Agreement, this Agreement shall continue in effect until such notice is provided to Company.
3. **Wastes That May be Accepted at the Facility.**
 - a. Pursuant to this Agreement, and to the extent the Facility has legal authority to accept such waste, the Facility may accept only the following types of waste generated within Metro boundaries:
 - (1) Construction, demolition, and land clearing waste.
 - (2) Non-hazardous industrial dust.
 - (3) Asbestos (special requirements for packaging and unloading would apply).

- (4) Outdated or defective non-putrescible commercial or industrial raw materials not suited for market conditions or consumer use.
 - (5) Contaminated soil and other non-putrescible debris from cleanup of petroleum or other non-hazardous chemical spills.
 - (6) Special waste as defined in section 5.02.015(s) of the Metro Code. A copy of this section of the code is attached as Attachment A, and is incorporated herein by this reference.
 - (7) Other waste as described in any future addendum to this Agreement or as authorized by Metro in a non system license.
 - (8) Any other waste Company can accept at the Facility consistent with the authority granted by DEQ and with the Facility's status as a limited purpose landfill.
- b. This Agreement shall not be construed to allow disposal at the Facility of mixed municipal solid waste, or other types of waste not listed in Section 3.a., generated within Metro boundaries.

4. Recordkeeping and Audits.

- a. Company shall maintain complete and accurate records regarding all solid waste transported, treated, disposed of, or otherwise processed pursuant to this Agreement, and shall make such records available to, or send copies to, the Metro Solid Waste Department or its duly designated agents for inspection, auditing and copying upon not less than seven days written notice from Metro. Pre-numbered tickets shall be used for all transactions, in numerical sequence, and voided or canceled tickets shall be retained.
- b. At Metro's option, Company shall have an independent audit conducted by a firm acceptable to Metro, no more than once each year, at Company'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 Company prior to the audit.

5. Reports and Information.

- a. Company shall report in writing to the Metro Solid Waste Department no later than the 10th day of each month, for the duration of this Agreement, the number of tons of solid waste transported, disposed of or otherwise processed pursuant to this Agreement during the preceding month. The reports shall provide sufficient

detail to adequately identify the waste profile of the various materials transported, treated, and disposed of, and include the names of persons or entities generating and delivering waste to the Facility, and the types and quantities of waste generated or delivered by such persons or entities. To the extent such information is available in electronic form, Company shall make such information available to Metro on computer disk. Metro shall maintain the confidentiality of all records submitted by Company to the extent public disclosure is not required by ORS ch 192, and otherwise in conformance with section 12 of this Agreement.

- b. Company shall complete a cumulative status review of the waste types and profiles covering each six months of operations under this Agreement and shall provide such report to Metro within 45 days of the expiration of the six-month period covered by the report. The first report shall cover the period of operations from the date of execution of this Agreement through December 31, 1993.
- c. Company shall provide to Metro copies of all permits covering the Facility or operations at the Facility. Copies of revisions to existing permits and newly issued permits shall be provided to Metro within seven business days of receipt. Company shall also provide, within ten 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 non-compliance with a statute, regulation, or permit condition.

6. User Fee/Excise Tax.

- a. Upon receipt of the reports described in section 5.a., Metro shall transmit an invoice to Company for a fee equal to Metro's Regional User Fee multiplied by the number of tons (or fractions thereof) of solid waste disposed of or processed pursuant to this Agreement during the preceding month. Company shall make payment to Metro in the invoiced amount, not later than 30 days after the date of the invoice. Company shall use reasonable business judgment in allowing generators or transporters of waste to dispose of waste at its Facility on a credit basis and shall use reasonable legal means to collect disposal charges, including all fees and taxes owed to Metro. If Company is unable to collect disposal charges, Company may deduct uncollectible Metro fees and taxes, when an affidavit explaining the status of the uncollectible account is provided that sufficiently documents good faith collection efforts conducted by Company. If Company receives a partial payment and the remainder of the account is uncollectible, the payment received shall be pro-rated between Company's disposal charges and Metro's fees and taxes. All amounts owing to Metro that are deemed "uncollectible" and are ultimately collected, shall be remitted to Metro within 30 days of receipt by Company.

- b. Upon receipt of the reports described in section 5.a., Metro shall transmit an invoice to Company for a fee equal to all excise taxes required to be paid under Metro Code Chapter 7.01, as a result of Company's activities during the preceding month. Company shall make payment to Metro in the invoiced amount, not later than 30 days after the date of the invoice. Excise taxes shall be due for disposal of waste at the Facility, but shall not be due for transport to the Facility, even if Company arranges that transport.
- c. A finance charge of one and one-half percent per month (18 percent per annum), computed from the date fees and taxes become 30 days past due, will be assessed on all fees and taxes which become 60 days past due and will be added to the oldest months charges past due. Finance charges will continue to be assessed on negotiated repayment schedules.
- d. Company shall not pay the user fees and excise taxes described in this paragraph on waste received at the Facility:
 - (1) which is accepted without charge or fee; and
 - (2) which is intended to be used for a beneficial purpose and which is in fact used for a beneficial purpose.
- e. Company shall continue to use a \$1.00 surcharge on sand and soils to pay down the past due user fees until all such fees are paid in full.

7. Modification, Suspension, and Termination.

- a. If Company fails to fully and promptly comply with a term or condition of this Agreement, the Executive Officer shall issue to Company a written notice of noncompliance briefly describing such failure. The notice shall state that, within a period specified by the Executive Officer of at least 20 days, Company must demonstrate to the satisfaction of the Executive Officer either that Company has not violated a term or condition of this Agreement, or that the violation has been corrected. Company shall also, within the same period, pay all fines owing as a result of noncompliance or make arrangements for payment satisfactory to the Executive Officer. Failure to comply with the notice of noncompliance shall be grounds for suspension of this Agreement by the Executive Officer, effective as of 5:00 p.m. on the last day of the compliance period specified by the Executive Officer. The Executive Officer may extend the compliance period to a total of no more than 60 days from the date of the notice of noncompliance, upon determining that Company is making good faith efforts to comply and is capable of complying within the extended compliance period.

- b. Metro's Executive Officer may suspend this Agreement without prior notice, as follows:
- (1) As specified in subsection a. of this section;
 - (2) If necessary to protect the public health, safety or welfare, and in the case of an emergency;
 - (3) If, due to a binding decision by an arbitrator or court of competent jurisdiction, Metro may be liable for damages for allowing waste of the quantity or type specified in this Agreement to be disposed of at Company's Facility or Metro may no longer allow such waste to be disposed of at Company's Facility.

The Executive Officer's decision to suspend this Agreement shall be reviewable under the contested case procedures of Metro Code Chapter 2.05. Filing of a contested case shall not stay the Executive Officer's decision to suspend this Agreement, unless the Executive Officer agrees to such a stay in writing.

- c. The Metro 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, Company shall have 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 Company to acknowledge the modification within the 30-day period, unless otherwise excused by Metro's Executive Officer, shall result in suspension of the Agreement at the close of business on the 30th day, until the modification is acknowledged in writing by Company.
- d. If the Metro Council adopts a resolution to modify, suspend, or terminate this Agreement without providing Company with reasonable notice and an opportunity to be heard prior to Council action, Company shall be entitled to a contested case hearing related to the action taken, as specified in Metro Code Chapter 2.05.
- e. Nothing in this section shall be interpreted to hinder or prevent Metro from making and enforcing policy judgments related to the flow of solid waste out of Metro boundaries, regardless of the perceived or actual impact of such decisions on Company's business. A policy judgment by Metro to limit or prevent waste generated within Metro boundaries from entering the Facility shall under no circumstances be the basis for payment of compensation by Metro to Company.

8. Compliance With Law.

Company shall fully comply with the Metro Code and with all federal, state, regional and local laws, rules, regulations, ordinances, orders and permits pertaining in any manner to this Agreement. All conditions imposed on the operation of the Facility 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.

9. Right of Inspection.

Authorized representatives of Metro shall be permitted access to the premises of the Facility 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:

- a. During all working hours;
- b. At other reasonable times with notice; and
- c. At any time without notice when, in the opinion of the Metro Solid Waste Department Director, such notice would defeat the purpose of the entry.

10. Indemnification. Company 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 Company's performance under this Agreement.

11. 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 (herein, "confidential information"), which Company is required to submit to Metro under section 6.a. of this Agreement. Metro 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 Company, is used by Company in its business, and gives Company a business advantage over others not possessing such information. The ability of competitors of Company 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 such 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 11.

- 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 to any person, partnership, firm, association, corporation, or other entity, or use for the personal benefit of such party, the confidential information specified in this section 11. Metro may nevertheless use such information for solid waste management purposes, including solid waste tracking and forecasting, enforcement of the Metro Code, or assistance to other jurisdictions in regulatory or other law enforcement. Metro may also use such 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 such persons or other entities generate or deliver to the Facility. Metro shall notify Company within 3 business days of Metro's receipt of a request for confidential information from from a third party. If it becomes necessary for Metro to release confidential information to any person outside of Metro, Metro shall so notify Company in writing, at least 15 days prior to releasing such information.
- c. When submitting to Metro the confidential information specified herein, Company shall mark such materials as confidential. Metro shall keep all such material separate from its other records and materials, in the custody and control of the Metro Office of General Counsel, 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.
- d. If Oregon law is modified such that the confidential information referenced in this section 11 is no longer exempt from public disclosure, or if a court of competent jurisdiction requires release of such information, Company shall no longer be required to submit such information to Metro. In such instance, upon request, Company 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 demonstrates a reasonable suspicion that a violation has occurred.

12. Other Facility Business.

- a. Company shall not permit or allow any person or firm to handle, process or dispose of any waste generated within Metro boundaries (such a person or firm shall be referred to as "Other Facility Business"), if the Other Facility Business operates either (1) on the site of the Facility, or (2) in a manner that affects any waste which has come to the Facility, without prior, written Metro approval. If Company wants to permit or allow any Other Facility Business, Company must submit a written request to Metro. Such request shall include the name, business address and principal business of the Other Facility Business and its owners, and shall also include the contractual or other relationship between Company and the Other Facility Business; all documents describing this relationship, including without limitation contracts and joint venture or partnership agreements, shall be included with Company's request. Company shall notify Metro if at any time there is any change in the ownership of any Other Facility Business. Any Other Facility Business shall comply with each and every term of this Agreement, and shall so indicate in a written agreement which may or may not be an amendment of this Agreement.
- b. Metro and Company agree that Tualatin Valley Waste Recovery ("TVWR") has been operating on the site of the Facility, and Metro will permit such operations to continue under the terms of this paragraph 12. Company shall identify the owners of TVWR, and shall notify Metro if at any time there is any change in the ownership of TVWR. TVWR may accept only source separated recyclable loads. With respect to all such loads, TVWR shall follow all procedures and requirements, except for payment of user fees and excise taxes, set forth in this Agreement. With respect to all contamination which is removed from source separated loads, TVWR or Company shall treat such waste as newly arrived loads and follow all procedures and requirements set forth in this Agreement, including payment of user fees and excise taxes.

13. 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 Company.
- b. Company 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 Company, nor vest any right or privilege in Company 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 or amendment to this Agreement must be in writing, signed by the Executive Officer. Waiver of a term or condition of this Agreement shall not waive nor prejudice Metro'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. This Agreement is the entire agreement between the parties and supersedes all prior and other agreements and understandings between the parties. This

Agreement does not allow receipt of solid waste from within the boundaries of the Metropolitan Service District for any purpose other than disposal or processing in accordance with this Agreement.

SANIFILL

METRO

By: _____

By: _____

Print name and title

Print name and title

Date: _____

Date: _____

TUALATIN VALLEY WASTE RECOVERY

By: _____

Print name and title

Date: _____

CL:slk
s:\share\lew\contract\hills.d5 1.26.93.2

**ATTACHMENT A
TO
DESIGNATED FACILITIES AGREEMENT**

(s) "Special Waste" means any waste (even though it may be part of a delivered load of waste) which is:

- (1) Containerized waste (e.g., a drum, barrel, portable tank, box, pail, etc.) of a type listed in 3 through 9 and 11 of this definition below; or
- (2) Waste transported in a bulk tanker; or
- (3) Liquid waste including outdated, off spec liquid food waste or liquids of any type when the quantity and the load would fail the paint filter liquid (Method 9095, SW-846) test or is 25 gallons of free liquid per load, whichever is more restrictive.
- (4) Containers (or drums) which once held commercial products or chemicals are included unless the container is empty. A container is empty when:
 - (A) All wastes have been removed that can be removed using the practices commonly employed to remove materials from the type of container, e.g., pouring, pumping, crushing, or aspirating.
 - (B) The ends have been removed (for containers in excess of 25 gallons); and
 - (C) No more than one inch thick (2.54 centimeters) of residue remains on the bottom of the container or inner liner; or
 - (D) No more than 1% by weight of the total capacity of the container remains in the container (for containers up to 110 gallons); or
 - (E) No more than 0.3% by weight of the total capacity of the container remains in the container for containers larger than 110 gallons.

Containers which once held acutely hazardous wastes must be triple rinsed with an appropriate solvent or cleaned by an equivalent alternative method. Containers which once held substances regulated under the Federal Insecticide, Fungicide, and Rodenticide Act must be empty according to label instructions or triple rinsed with an appropriate solvent or cleaned by an equivalent method. Plastic containers larger than five (5) gallons that hold any regulated

waste must be cut in half or punctured, dry and free of contamination to be accepted as refuse; or

- (5) Sludge waste from septic tanks, food service, grease traps, wastewater from commercial laundries, laundromats or car washes; or
- (6) Waste from an industrial process; or
- (7) Waste from a pollution control process; or
- (8) Residue or debris from the cleanup of a spill or release of chemical substances, commercial products or wastes listed in 1 through 7 or 9 of this definition; or
- (9) Soil, water, residue, debris, or articles which are contaminated from the cleanup of a site or facility formerly used for the generation, storage, treatment, recycling, reclamation, or disposal of wastes listed in 1 through 8 of this definition; or
- (10) Chemical containing equipment removed from service (for example - filters, oil filters, cathode ray tubes, lab equipment, acetylene tanks, CFC tanks or any other chemical containing equipment); or
- (11) Waste in waste containers that are marked with a National Fire Protection Association identification label that has a hazard rating of 2, 3, or 4 but not empty containers so marked; or
- (12) Any waste that requires extraordinary management.

Examples of special wastes are: chemicals, liquids, sludge and dust from commercial and industrial operations; municipal waste water treatment plant grits, screenings and sludge; contaminated soils; tannery wastes, empty pesticide containers, and dead animals or by-products.

LAKESIDE RECLAMATION

Designated Facility Criteria Review (Criteria Numbers 1, 2, 3 and 4)

LAKESIDE RECLAMATION

Lakeside Reclamation (LR) is a limited purpose landfill located Southwest of the City of Beaverton off Beef Bend Road, North of and adjacent to the Tualatin River to the South. This landfill has been in operation for over thirty years and is owned and operated by Howard and Debbie Grabhorn. It operates under DEQ Solid Waste Disposal Permit Number 214 issued July 8, 1982 with an expiration date of 2-28-92. Though past the expiration date, an application for renewal was filed prior to expiration. Under DEQ rules, the old permit continues to operate during the review period for the new application.

LR's Solid Waste Disposal Permit authorizes the permittee to accept "...only building and construction debris, rubbish, land clearing debris, wood products, metals, chipped tires; and similar nonputrescible material. No other wastes shall be accepted unless specifically authorized in writing by the Department supplementary to this permit." Further, the permittee is prohibited "... from allowing use of the facility by individual, private citizens delivering their own household wastes." LR is prohibited also from accepting any hazardous wastes.

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

This facility is open only to commercial accounts only. The public may not use this facility in the fashion that is authorized for Hillsboro Landfill. This has been the operational standard for many years. To this extent, the customers of the facility are known, however, a detailed listing of the specific waste delivered by the customers is unknown. This facility presents some unique considerations since it is not a lined facility. The risk, therefore, of contamination in the event of inappropriate disposal of materials at this facility is greater than at those facilities incorporating advanced landfill technology including liners and leachate collection systems. At the present time, there is no quantifiable risk of future contamination by the wastes accepted at the facility to-date is unacceptable. DEQ has indicated that LR's permit review is continuing and did not indicate substantial risk of non-renewal. Metro would nonetheless have some risk of exposure.

- (2) The record of regulatory compliance of the facility's owner and operator with federal, state and local requirements.**

Metro has documentation that Lakeside Reclamation has one outstanding Notice of Noncompliance issued by the DEQ in November 1992. This notice is related to acceptance of prohibited materials, (household materials) surface water run-off, and proper cover over closed areas. This matter is currently under review and will be addressed during the permit renewal process. Since the facility is unlined, DEQ has taken the position that a more restrictive view as to acceptable materials for the facility must be considered. It should be stressed that this is a pending matter and that issuance of a Notice of Noncompliance is not conclusive as to the matters raised in the notice.

(3) The record of the facility regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement.

To date, Metro has made no determination that LR has ever been out of compliance with Metro ordinances or agreements. The facility has always made timely submission of its User Fee and excise tax reports and payments. Further, LR representatives have always cooperated in any requests that Metro has made for information or for opportunities to visit and inspect the facility.

(4) The adequacy of operational practices and management controls at the facility.

To the extent that the DEQ issues related to its Notice of Noncompliance are indicative of concerns over operational practices and management controls at the landfill, there is some concern as to the need to address modifications in these practices and controls. In general, however, the owners have a reputation for innovative waste recycling and recovery techniques, including the design and construction of specialized equipment designed to enhance and expand the facility's ability to recycle materials, notably large stumps and wood materials. Also, experiments with vegetation that draw large volumes of groundwater have been put into place to assist in environmental impact mitigation.

In the same fashion that concerns over the suitability of the Hillsboro agreement arose, so did concerns arise over the existing LR agreement. These are being addressed in the proposed new agreement that has been prepared for this facility. In like fashion with the new Hillsboro agreement, the new LR agreement should go a significant distance in providing a background for sound operational practices and management controls during the facilities future relationship with Metro.

(5) The expected impact on the region's recycling and waste reduction efforts.

This item has been researched by Metro staff and is included in the material in the system overview immediately preceding the factual subsection.

(6) The expected impact on Metro's revenue.

This item has been researched by Metro staff and is included in the material in the system overview immediately preceding the factual subsection.

(7) The consistency of the designation with Metro's existing contractual arrangements.

This item has been researched by the Office of General Counsel and the analysis is contained in a separate memorandum as noted on page 13 of the Staff Report.

(8) The need for additional disposal capacity and the effect on existing designated facilities.

This item has been researched by Metro staff and is included in the material in the system overview immediately preceding the factual subsection.

(9) Other benefits or detriments accruing to residents of the region from Council action in designating a facility.

This item has been researched by Metro staff and is included in the material in the system overview immediately preceding the factual subsection.

Designated Facility Agreement for Lakeside Landfill follows as Attachment No. 8.

RCP:elt
e:\asrt\franchistal\127.rpt (1/26/93)

METRO CONTRACT NO. 902857

AGREEMENT

This Agreement is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, referred to herein as "Metro," located at 2000 S.W. First Avenue, Portland, Oregon 97201-5398, and Grabhorn, Inc., located at Route 1, Box 849, Beaverton, Oregon 97005, referred to herein as "Company."

This Agreement is entered into by Metro under the authority of ORS 268.317, and Metro Code Chapter 5.05. Company enters into this Agreement in recognition of the "Designated Facility" status conferred upon Lakeside Reclamation in Washington County, Oregon, by Metro Ordinance No. _____.

In exchange for the promises set forth below, the parties agree as follows:

1. Purpose and Authority. The purpose of this Agreement is to establish the terms under which Company may receive, at its Lakeside Reclamation facility in Washington County, Oregon (herein "Facility"), the types of waste specified in section 3 of this Agreement that were generated within Metro boundaries.
2. Duration. Unless terminated sooner as specified herein, this Agreement shall remain in effect for two years from the date of execution by both parties. To avoid unnecessary disruption while Metro considers possible renewal of this Agreement, if Company has not received written notice of termination from Metro on or before the two year anniversary of this Agreement, this Agreement shall continue in effect until such notice is provided to Company.
3. Wastes That May be Accepted at the Facility.
 - a. Pursuant to this Agreement, and to the extent the Facility has legal authority to accept such waste, the Facility may accept only the following types of waste generated within Metro boundaries:
 - (1) Construction, demolition, and land clearing waste.
 - (2) Non-hazardous industrial dust.
 - (3) Asbestos (special requirements for packaging and unloading would apply).

- (4) Outdated or defective non-putrescible commercial or industrial raw materials not suited for market conditions or consumer use.
 - (5) Contaminated soil and other non-putrescible debris from cleanup of petroleum or other non-hazardous chemical spills.
 - (6) Special waste as defined in section 5.02.015(s) of the Metro Code. A copy of this section of the code is attached as Attachment A, and is incorporated herein by this reference.
 - (7) Other waste as described in any future addendum to this Agreement or as authorized by Metro in a non system license.
- b. This Agreement shall not be construed to allow disposal at the Facility of mixed municipal solid waste, or other types of waste not listed in Section 3.a., generated within Metro boundaries.

4. Recordkeeping and Audits.

- a. Company shall maintain complete and accurate records regarding all solid waste transported, treated, disposed of, or otherwise processed pursuant to this Agreement, and shall make such records available to, or send copies to, the Metro Solid Waste Department or its duly designated agents for inspection, auditing and copying upon not less than seven days written notice from Metro. Pre-numbered tickets shall be used for all transactions, in numerical sequence, and voided or canceled tickets shall be retained.
- b. At Metro's option, Company shall have an independent audit conducted by a firm acceptable to Metro, no more than once each year, at Company'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 Company prior to the audit.

5. Reports and Information.

- a. Company shall report in writing to the Metro Solid Waste Department no later than the 10th day of each month, for the duration of this Agreement, the number of tons of solid waste transported, disposed of or otherwise processed pursuant to this Agreement during the preceding month. The reports shall provide sufficient detail to adequately identify the waste profile of the various materials transported, treated, and disposed of, and include the names of persons or entities generating and delivering waste to the Facility, and the types and quantities of waste generated or delivered by such persons or entities. To the extent such information

is available in electronic form, Company shall make such information available to Metro on computer disk. Metro shall maintain the confidentiality of all records submitted by Company to the extent public disclosure is not required by ORS ch 192, and otherwise in conformance with section 11 of this Agreement.

- b. Company shall complete a cumulative status review of the waste types and profiles covering each six months of operations under this Agreement and shall provide such report to Metro within 45 days of the expiration of the six-month period covered by the report. The first report shall cover the period of operations from the date of execution of this Agreement through December 31, 1993.
- c. Company shall provide to Metro copies of all permits covering the Facility or operations at the Facility. Copies of revisions to existing permits and newly issued permits shall be provided to Metro within seven business days of receipt. Company shall also provide, within ten 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 non-compliance with a statute, regulation, or permit condition.

6. User Fee/Excise Tax.

- a. Upon receipt of the reports described in section 5.a., Metro shall transmit an invoice to Company for a fee equal to Metro's Regional User Fee multiplied by the number of tons (or fractions thereof) of solid waste disposed of or processed pursuant to this Agreement during the preceding month. Company shall make payment to Metro in the invoiced amount, not later than 30 days after the date of the invoice. Company shall use reasonable business judgment in allowing generators or transporters of waste to dispose of waste at its Facility on a credit basis and shall use reasonable legal means to collect disposal charges, including all fees and taxes owed to Metro. If Company is unable to collect disposal charges, Company may deduct uncollectible Metro fees and taxes, when an affidavit explaining the status of the uncollectible account is provided that sufficiently documents good faith collection efforts conducted by Company. If Company receives a partial payment and the remainder of the account is uncollectible, the payment received shall be pro-rated between Company's disposal charges and Metro's fees and taxes. All amounts owing to Metro that are deemed "uncollectible" and are ultimately collected, shall be remitted to Metro within 30 days of receipt by Company.
- b. Upon receipt of the reports described in section 5.a., Metro shall transmit an invoice to Company for a fee equal to all excise taxes required to be paid under Metro Code Chapter 7.01, as a result of Company's activities during the preceding month. Company shall make payment to Metro in the invoiced amount, not later

than 30 days after the date of the invoice. Excise taxes shall be due for disposal of waste at the Facility, but shall not be due for transport to the Facility, even if Company arranges that transport.

- c. A finance charge of one and one-half percent per month (18 percent per annum), computed from the date fees and taxes become 30 days past due, will be assessed on all fees and taxes which become 60 days past due and will be added to the oldest months charges past due. Finance charges will continue to be assessed on negotiated repayment schedules.
- d. Company shall not pay the user fees and excise taxes described in this paragraph on waste received at the Facility:
 - (1) which is accepted without charge or fee; and
 - (2) which is intended to be used for a beneficial purpose and which is in fact used for a beneficial purpose.

7. Modification, Suspension, and Termination.

- a. If Company fails to fully and promptly comply with a term or condition of this Agreement, the Executive Officer shall issue to Company a written notice of noncompliance briefly describing such failure. The notice shall state that, within a period specified by the Executive Officer of at least 20 days, Company must demonstrate to the satisfaction of the Executive Officer either that Company has not violated a term or condition of this Agreement, or that the violation has been corrected. Company shall also, within the same period, pay all fines owing as a result of noncompliance or make arrangements for payment satisfactory to the Executive Officer. Failure to comply with the notice of noncompliance shall be grounds for suspension of this Agreement by the Executive Officer, effective as of 5:00 p.m. on the last day of the compliance period specified by the Executive Officer. The Executive Officer may extend the compliance period to a total of no more than 60 days from the date of the notice of noncompliance, upon determining that Company is making good faith efforts to comply and is capable of complying within the extended compliance period.
- b. Metro's Executive Officer may suspend this Agreement without prior notice, as follows:
 - (1) As specified in subsection a. of this section;
 - (2) If necessary to protect the public health, safety or welfare, and in the case of an emergency;

- (3) If, due to a binding decision by an arbitrator or court of competent jurisdiction, Metro may be liable for damages for allowing waste of the quantity or type specified in this Agreement to be disposed of at Company's Facility or Metro may no longer allow such waste to be disposed of at Company's Facility.

The Executive Officer's decision to suspend this Agreement shall be reviewable under the contested case procedures of Metro Code Chapter 2.05. Filing of a contested case shall not stay the Executive Officer's decision to suspend this Agreement, unless the Executive Officer agrees to such a stay in writing.

- c. The Metro 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, Company shall have 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 Company to acknowledge the modification within the 30-day period, unless otherwise excused by Metro's Executive Officer, shall result in suspension of the Agreement at the close of business on the 30th day, until the modification is acknowledged in writing by Company.
- d. If the Metro Council adopts a resolution to modify, suspend, or terminate this Agreement without providing Company with reasonable notice and an opportunity to be heard prior to Council action, Company shall be entitled to a contested case hearing related to the action taken, as specified in Metro Code Chapter 2.05.
- e. Nothing in this section shall be interpreted to hinder or prevent Metro from making and enforcing policy judgments related to the flow of solid waste out of Metro boundaries, regardless of the perceived or actual impact of such decisions on Company's business. A policy judgment by Metro to limit or prevent waste generated within Metro boundaries from entering the Facility shall under no circumstances be the basis for payment of compensation by Metro to Company.

8. Compliance With Law.

Company shall fully comply with the Metro Code and with all federal, state, regional and local laws, rules, regulations, ordinances, orders and permits pertaining in any manner to this Agreement. All conditions imposed on the operation of the Facility 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.

9. Right of Inspection.

Authorized representatives of Metro shall be permitted access to the premises of the Facility 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:

- a. During all working hours;
- b. At other reasonable times with notice; and
- c. At any time without notice when, in the opinion of the Metro Solid Waste Department Director, such notice would defeat the purpose of the entry.

10. Indemnification. Company 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 Company's performance under this Agreement.

11. 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 (herein, "confidential information"), which Company is required to submit to Metro under section 6.a. of this Agreement. Metro 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 Company, is used by Company in its business, and gives Company a business advantage over others not possessing such information. The ability of competitors of Company 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 such 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 11.
- 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 to any person, partnership, firm, association, corporation, or other entity, or use for the personal benefit of such party, the confidential information specified in this section 11. Metro may nevertheless use such information for solid waste management purposes, including solid waste tracking and forecasting, enforcement

of the Metro Code, or assistance to other jurisdictions in regulatory or other law enforcement. Metro may also use such 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 such persons or other entities generate or deliver to the Facility. Metro shall notify Company within 3 business days of Metro's receipt of a request for confidential information from from a third party. If it becomes necessary for Metro to release confidential information to any person outside of Metro, Metro shall so notify Company in writing, at least 15 days prior to releasing such information.

- c. When submitting to Metro the confidential information specified herein, Company shall mark such materials as confidential. Metro shall keep all such material separate from its other records and materials, in the custody and control of the Metro Office of General Counsel, 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.
- d. If Oregon law is modified such that the confidential information referenced in this section 11 is no longer exempt from public disclosure, or if a court of competent jurisdiction requires release of such information, Company shall no longer be required to submit such information to Metro. In such instance, upon request, Company 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 demonstrates a reasonable suspicion that a violation has occurred.

12. 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 Company.

- b. Company 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 Company, nor vest any right or privilege in Company 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 or amendment to this Agreement must be in writing, signed by the Executive Officer. Waiver of a term or condition of this Agreement shall not waive nor prejudice Metro'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. This Agreement is the entire agreement between the parties and supersedes all prior and other agreements and understandings between the parties. This Agreement does not allow receipt of solid waste from within the boundaries of the Metropolitan Service District for any purpose other than disposal or processing in accordance with this Agreement.

GRABHORN, INC.

METRO

By: _____

By: _____

Print name and title

Print name and title

Date: _____

Date: _____

CL:clk
s:\share\new\contract\gabibona.dfl 1.26.93.2

**ATTACHMENT A
TO
DESIGNATED FACILITIES AGREEMENT**

(s) "Special Waste" means any waste (even though it may be part of a delivered load of waste) which is:

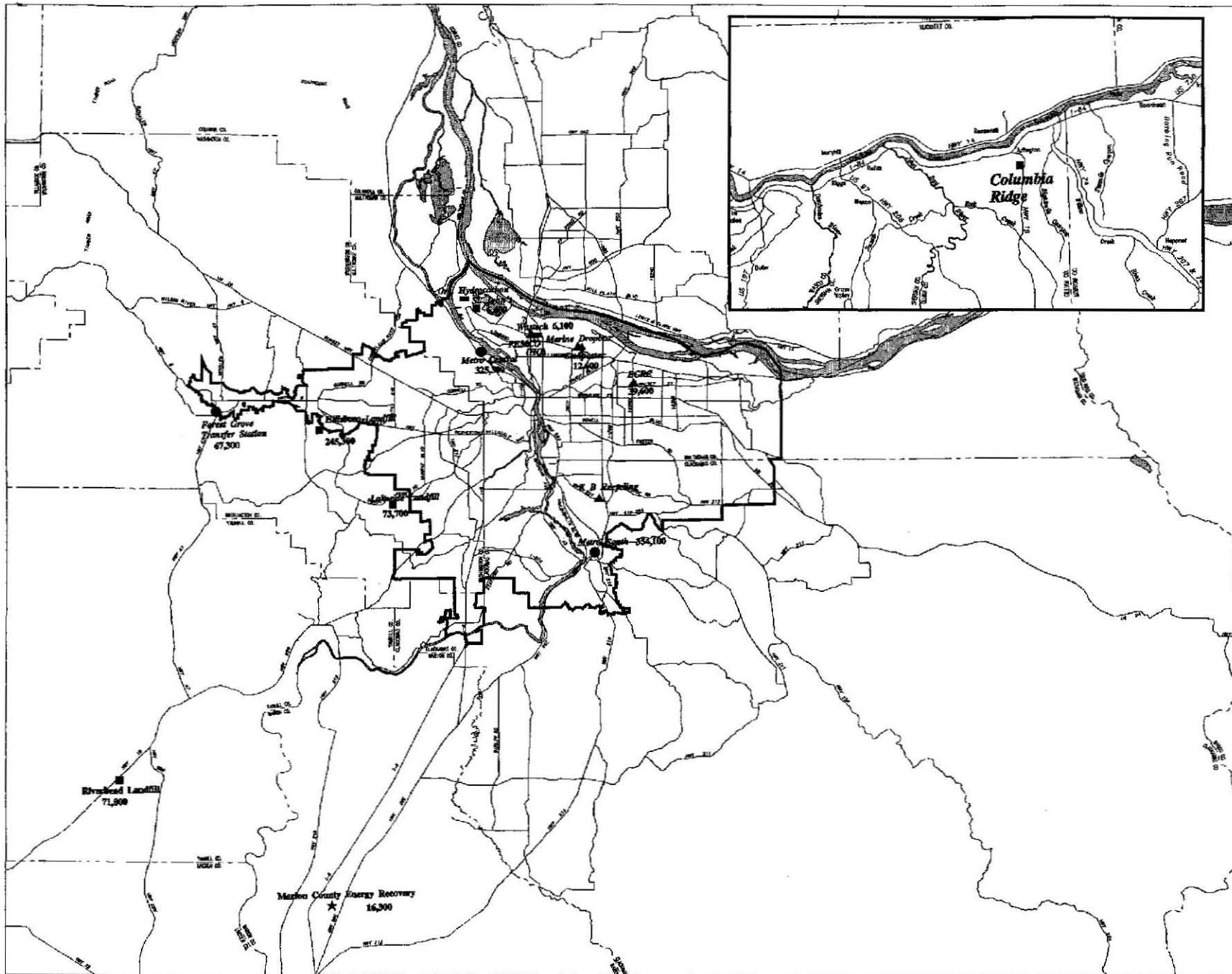
- (1) Containerized waste (e.g., a drum, barrel, portable tank, box, pail, etc.) of a type listed in 3 through 9 and 11 of this definition below; or
- (2) Waste transported in a bulk tanker; or
- (3) Liquid waste including outdated, off spec liquid food waste or liquids of any type when the quantity and the load would fail the paint filter liquid (Method 9095, SW-846) test or is 25 gallons of free liquid per load, whichever is more restrictive.
- (4) Containers (or drums) which once held commercial products or chemicals are included unless the container is empty. A container is empty when:
 - (A) All wastes have been removed that can be removed using the practices commonly employed to remove materials from the type of container, e.g., pouring, pumping, crushing, or aspirating.
 - (B) The ends have been removed (for containers in excess of 25 gallons); and
 - (C) No more than one inch thick (2.54 centimeters) of residue remains on the bottom of the container or inner liner; or
 - (D) No more than 1% by weight of the total capacity of the container remains in the container (for containers up to 110 gallons); or
 - (E) No more than 0.3% by weight of the total capacity of the container remains in the container for containers larger than 110 gallons.

Containers which once held acutely hazardous wastes must be triple rinsed with an appropriate solvent or cleaned by an equivalent alternative method. Containers which once held substances regulated under the Federal Insecticide, Fungicide, and Rodenticide Act must be empty according to label instructions or triple rinsed with an appropriate solvent or cleaned by an equivalent method. Plastic containers larger than five (5) gallons that hold any regulated

waste must be cut in half or punctured, dry and free of contamination to be accepted as refuse; or

- (5) Sludge waste from septic tanks, food service, grease traps, wastewater from commercial laundries, laundromats or car washes; or
- (6) Waste from an industrial process; or
- (7) Waste from a pollution control process; or
- (8) Residue or debris from the cleanup of a spill or release of chemical substances, commercial products or wastes listed in 1 through 7 or 9 of this definition; or
- (9) Soil, water, residue, debris, or articles which are contaminated from the cleanup of a site or facility formerly used for the generation, storage, treatment, recycling, reclamation, or disposal of wastes listed in 1 through 8 of this definition; or
- (10) Chemical containing equipment removed from service (for example - filters, oil filters, cathode ray tubes, lab equipment, acetylene tanks, CFC tanks or any other chemical containing equipment); or
- (11) Waste in waste containers that are marked with a National Fire Protection Association identification label that has a hazard rating of 2, 3, or 4 but not empty containers so marked; or
- (12) Any waste that requires extraordinary management.

Examples of special wastes are: chemicals, liquids, sludge and dust from commercial and industrial operations; municipal waste water treatment plant grits, screenings and sludge; contaminated soils; tannery wastes, empty pesticide containers, and dead animals or by-products.



Current System

Attachment 1

Operating Facilities Receiving Waste From Public or Metro

Type of Facility

- ▲ Reuse & Recycle
- ◆ Compost
- Transfer Station
- ★ Energy Recovery
- Landfills
- PCS Treatment
- ↗ Metro Boundary

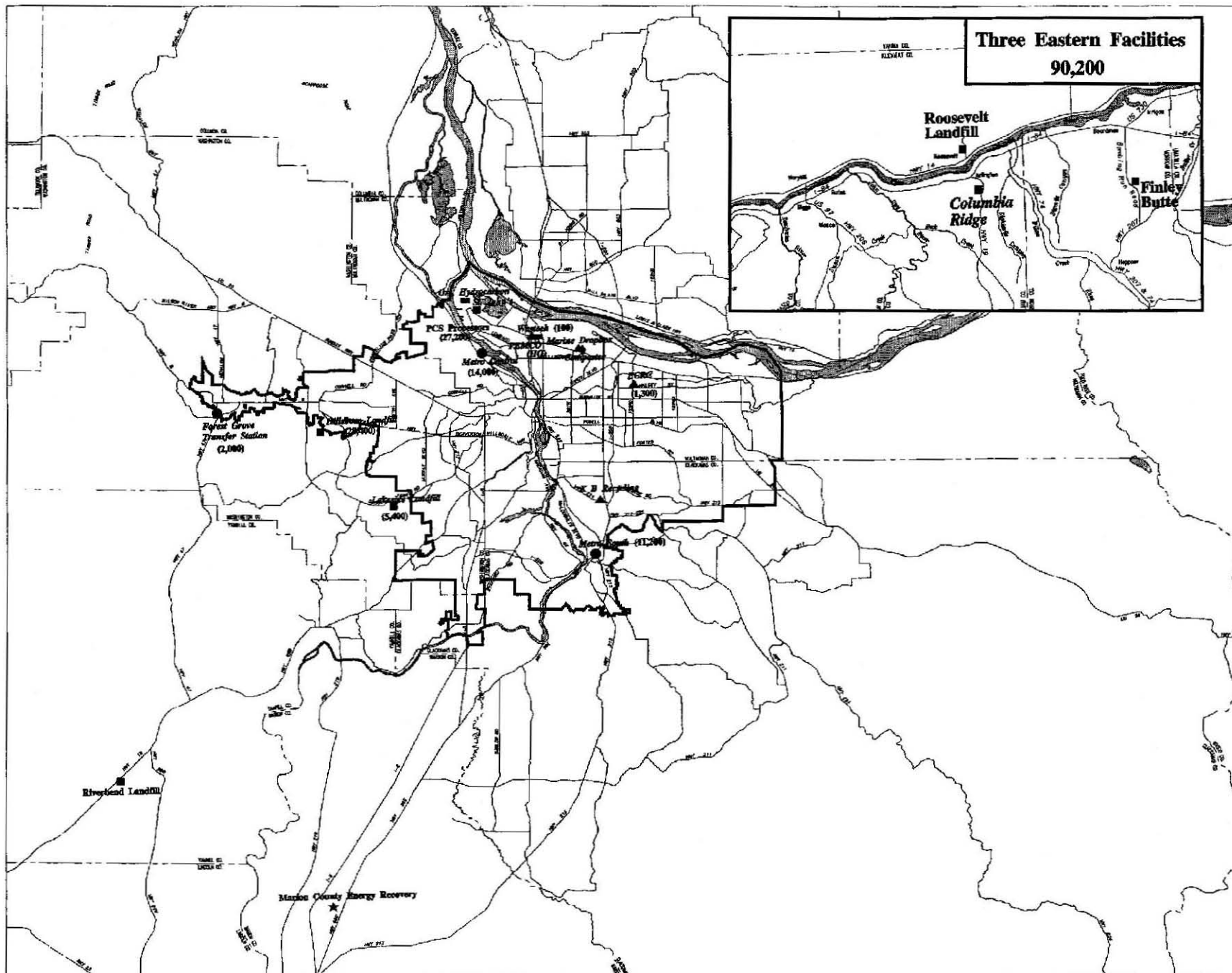
Current Designated Facilities are in italics.

Annual tonnages shown are from the Nov. 1992 SWIS Report.

Metro
 2000 SW First Avenue
 Portland, OR 97201-5398
 (503) 221-1646

METRO

Plot date: January, 1993



R L I S

Proposed System

Attachment 2

Facilities Projected To Receive Waste From Public or Metro

Type of Facility

- ▲ Reuse & Recycle
- ◆ Compost
- Transfer Station
- ★ Energy Recovery
- Landfills
- PCS Treatment
- ∨ Metro Boundary

Current Designated Facilities are in italics.

Change in annual tonnage is shown.

Source: Designated Facility Analysis (1/93).

Metro
2000 SW First Avenue
Portland, OR 97201-5398
(503) 221-1646

METRO

Plot date: January, 1993