

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF TERMINATING THE	)	RESOLUTION NO. 08-4008
DESIGNATED FACILITY AGREEMENT	)	
ENTERED INTO BETWEEN METRO AND	)	Introduced by Chief Operating Officer
HILLSBORO LANDFILL	)	Michael J. Jordan, with the concurrence of
	)	Council President David Bragdon

WHEREAS, Hillsboro Landfill ("Hillsboro") is a designated facility of the Metro Solid Waste Flow Control system pursuant to Metro Code 5.05.030;

WHEREAS, in April 1993, Metro entered into a designated facility agreement ("Agreement") with Hillsboro (Metro Contract No. 902858);

WHEREAS, the Metro Council may terminate the Agreement for good cause or a substantial change of circumstances upon passage of a resolution specifying the action taken and the effective date;

WHEREAS, the Metro Code provides that no later than November 1, 2008, the Chief Operating Officer ("COO") and Hillsboro shall establish a modified designated facility agreement ("Modified Agreement") that ensures substantial compliance with the Metro Code;

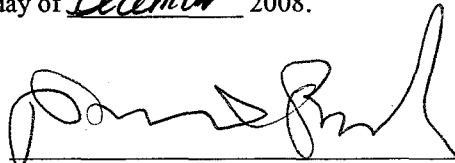
WHEREAS, the COO and Hillsboro established a Modified Agreement by November 1, 2008;

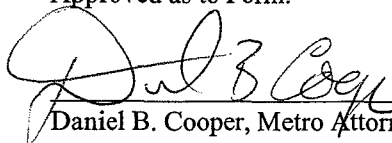
WHEREAS, the Modified Agreement between Metro and Hillsboro supersedes the Agreement and constitutes good cause for termination of the Agreement; and

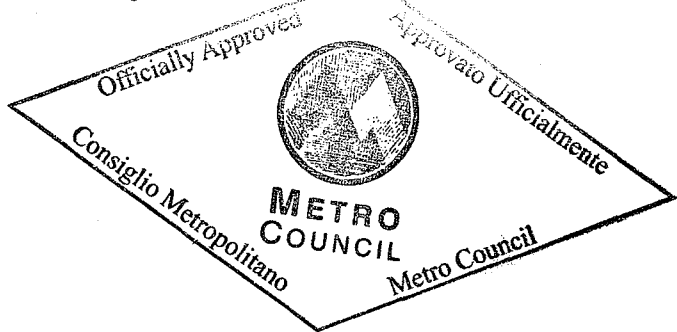
WHEREAS, the Metro Council provided Hillsboro with reasonable notice and an opportunity to be heard before taking action; now therefore

BE IT RESOLVED that the Metro Council terminates the Agreement with Hillsboro effective December 31, 2008.

ADOPTED by the Metro Council this 18<sup>th</sup> day of December 2008.

  
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 David Bragdon, Council President

Approved as to Form:  
  
 Daniel B. Cooper, Metro Attorney



## STAFF REPORT

### IN CONSIDERATION OF RESOLUTION NO. 08-4008, FOR THE PURPOSE OF TERMINATING THE DESIGNATED FACILITY AGREEMENT ENTERED INTO BETWEEN METRO AND HILLSBORO LANDFILL

Date: December 2, 2008

Prepared by: Bill Metzler

The proposed Resolution, if approved by Council, will terminate the existing designated facility agreement for the Hillsboro Landfill on December 31, 2008 because the modified designated facility agreement, effective January 1, 2009, supercedes the existing agreement.

## BACKGROUND

The Metro Code describes the designated facilities of the system.<sup>1</sup> The Hillsboro Landfill is located outside the Metro Region in Washington County, Oregon and is owned by Waste Management of Oregon (“WMO”) and has been a designated facility of the system since 1993.<sup>2</sup> Metro and WMO have entered into a designated facility agreement (“DFA”) in which the Hillsboro Landfill receives certain types of solid waste generated in the Metro Region and agrees to collect and remit Regional System Fee and Excise Tax on that waste.<sup>3</sup>

In 2007, the Metro Council amended the Metro Code to require existing designated facilities, including the Hillsboro Landfill, to notify Metro of its intent to seek an agreement to recover non-putrescible waste from the Region or to take only processed non-putrescible waste from authorized facilities. The Chief Operating Officer (“COO”) must modify existing DFAs to ensure substantial compliance with these requirements by December 31, 2008. If the COO and a designated facility were unable to reach an agreement by November 1, 2008, the COO must terminate the existing DFA no later than December 31, 2008.<sup>4</sup>

In June 2008, WMO certified its intent to operate Tualatin Valley Waste Recovery (“TVWR”), a new material recovery facility (“MRF”) that is currently under construction, at the location of the Hillsboro Landfill. WMO also certified that the Hillsboro Landfill, operating as an entity separate from TVWR, would accept only processed non-putrescible waste from the Metro Region in accordance with the Metro Code. On September 25, 2008, the Metro Council adopted Ordinance No. 08-1195, For the Purpose of Amending Metro Code Chapter 5.05 to Include Tualatin Valley Waste Recovery on the List of Designated Facilities.

On September 3, 2008, Metro received WMO’s request for a variance from specific Enhanced Dry Waste Recovery Program (“EDWRP”) code provisions at the Hillsboro Landfill until the TVWR MRF is constructed and operational.<sup>5</sup> On October 23, 2008, the Metro Council adopted Resolution No. 08-3989 For the Purpose of Granting a Variance Request Submitted by Waste Management of Oregon for the Hillsboro Landfill. Granting this variance allows WMO to receive unprocessed non-putrescible waste at the Hillsboro Landfill. Under the terms of the approved variance, a condition of approval requires, that effective January 1, 2009 until the TVWR MRF is operational, WMO must conduct some level of

<sup>1</sup> Metro Code Section 5.05.030

<sup>2</sup> Metro Code Section 5.05.030(a)(5).

<sup>3</sup> Metro Code Section 5.05.030(a)(5) & (c); Metro Contract No. 902858

<sup>4</sup> Metro Code Section 5.05.030(c). This code change is part of the Enhanced Dry Waste Recovery Program (“EDWRP”). See Ordinance No. 07-1147B.

<sup>5</sup> The estimated construction completion date for the TVWR MRF is July 1, 2009.

recovery on non-putrescible Metro Region waste loads that contain a significant amount of wood, metal, and cardboard in accordance with an interim material recovery plan submitted by WMO to the COO.<sup>6</sup>

By November 1, 2008, the COO and WMO agreed to modify the existing DFA for the Hillsboro Landfill to ensure substantial compliance with the EDWRP code requirements and the terms and conditions of the approved variance. The modified DFA (Metro Contract No. 928984) for the Hillsboro Landfill will be effective on January 1, 2009. Therefore, the existing DFA (Metro Contract No. 902858) between Metro and Hillsboro Landfill must be terminated because it is no longer valid.

Under the terms of the existing Hillsboro Landfill DFA (Metro Contract No. 902858), the Metro Council may terminate the agreement by passage of a resolution specifying the action taken and effective date. Accordingly, Resolution No. 08-4008 will terminate the Hillsboro Landfill DFA effective December 31, 2008, so that the new DFA (Metro Contract No. 08-928984) can lawfully take effect on January 1, 2009.

### **ANALYSIS/INFORMATION**

1. **Known Opposition.** Staff is not aware of any opposition to the proposed Resolution.
2. **Legal Antecedents.** Chapter 5.01 and Chapter 5.05 of the Metro Code. Ordinance No. 07-1147B. Metro Contract No. 902858. Ordinance No. 08-1195. Resolution No. 08-3989.
3. **Anticipated Effects.** Adoption of Resolution No. 08-4008 will terminate the existing designated facility agreement (Metro Contract No. 902858) entered into between Metro and Hillsboro Landfill, effective December 31, 2008.
4. **Budget Impacts.** There are no budget impacts associated with the adoption of this Resolution. Adoption of this Resolution will help enable implementation of EDWRP, whose budget impacts have already been considered by the Metro Council in its adoption of Ordinance No. 07-1147B and is not expected to alter the budget impact projection contained in the EDWRP Ordinance staff report.

### **RECOMMENDED ACTION**

The Chief Operating Officer recommends approval of Resolution No. 08-4008.

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<sup>6</sup> WMO's interim material recovery plan for the Hillsboro Landfill was submitted to the COO on November 14, 2008, as provided by Resolution No. 08-3989 that approved the WMO variance request.