

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF CONSIDERING A) RESOLUTION NO. 02-3238
DESIGNATED FACILITY AGREEMENT WITH)
VALLEY LANDFILLS, INC., FOR THE COFFIN) Introduced by Mike Burton, Executive Officer
BUTTE LANDFILL

WHEREAS, Valley Landfills, Inc., ("Valley") owns the Coffin Butte Landfill in Corvallis, Oregon; and,

WHEREAS, Valley has requested that Metro name the Coffin Butte Landfill to the list of designated facilities set forth under the provisions of Metro Code Chapter 5.05 and has further requested that Metro enter into a designated facility agreement with it for the Coffin Butte Landfill; and,

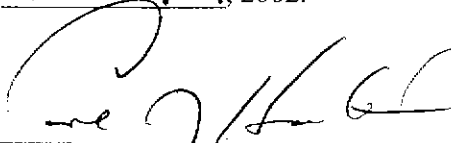
WHEREAS, for the reasons set forth in the accompanying staff report, the Metro Council has found that it is in the public interest to grant such designated facility status to the Coffin Butte Landfill because such designation is likely to contribute to increased material recovery of waste from the Metro Region; will reduce the number of non-system licenses that Metro must administer, and will ensure the collection of Metro Regional System Fees and solid waste excise taxes on solid waste generated within the Metro Region; and,

WHEREAS, the Metro Council, having considered the factors contained in Metro Code Section 5.05.030 accordingly has designated the Coffin Butte Landfill as a designated facility and has placed the Coffin Butte Landfill on the list of designated facilities in Metro Code 5.05.030; and,

WHEREAS, the Executive Officer has recommended the terms and conditions of a designated facility agreement with Valley for the Coffin Butte Landfill, and the Metro Council finds that the proposed terms are in the public interest and consistent with the policies and practices of Metro in the management of the Region's solid waste; now therefore,


BE IT RESOLVED that the Metro Council authorizes the Executive Officer to execute with Valley Landfills, Inc., a designated facility agreement for the Coffin Butte Landfill in a form substantially similar to that set forth on the attached Exhibit A.

ADOPTED by the Metro Council this 14th day of November, 2002.



Carl Hosticka, Presiding Officer

Approved as to Form:



Daniel B. Cooper, General Counsel

EXHIBIT A
Resolution No. 02-3238

METRO CONTRACT NO. _____

DESIGNATED FACILITY AGREEMENT

This Agreement is between Metro, a metropolitan service district organized under ORS Chapter 268 and the Metro Charter, located at 600 NE Grand Avenue, Portland, Oregon 97232-2736, ("Metro") and Valley Landfills, Inc. doing business as the Coffin Butte Landfill located at 28972 Coffin Butte Road, Corvallis, OR 97330 (the "Facility") and is entered under the authority of ORS 268.317, and Metro Code section 5.05.030. The Facility enters into this Agreement in recognition of the "Designated Facility" status conferred upon it by Metro Resolution No. 02-3238.

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

1. Purpose and Authority. The purposes of this Agreement are to manage effectively the disposal of certain solid wastes from within the Metro Region while concurrently increasing material recovery by establishing the terms and conditions under which the Facility may receive the wastes specified in Section 3 of this Agreement.
2. Duration. Unless terminated sooner as specified herein, this Agreement shall remain in effect for five years from the date of execution by both Parties.
3. Waste That May be Accepted at the Facility.
 - a. Provided that the Facility has any required separate and appropriate legal authority, the Facility may accept only the following types of materials generated from within the Metro Region:
 - (1) Processing residual, as that term is used in Metro Code Section 5.01.010, that has been (1) generated by any person certified, licensed or franchised by Metro to perform material recovery on non-putrescible wastes as defined in Metro Code Section 5.01.010 including waste generated at construction and demolition sites, or (2) generated by any person with whom Metro has executed a designated facility agreement to perform such processing;
 - (2) "Cleanup Material Contaminated By Hazardous Substances" as that term is defined in Metro Code Chapter 5.01.010;
 - (3) "Special waste" as defined in Metro Code 5.02.015, provided that such special wastes are specifically required in the Oregon Department of Environmental Quality ("DEQ") solid waste disposal permit for the Facility to have special handling or testing prior to disposal, and are not eligible or amenable to material recovery;

- (4) Useful Material as defined in Metro Code section 5.01.010 , including but not limited to Alternative Daily Cover Material as approved by DEQ, but only for those quantities demonstrated to be equivalent to 6-inches of earthen materials in accordance with OAR 340-97-120(5) or (6);
 - (5) Inert materials as approved by DEQ in accordance with the solid waste permit exemption process as authorized by OAR 340-93-080(2);
 - (6) Waste other than that permitted by this Agreement, provided it is authorized by Metro under a non-system license;
 - (7) Disaster debris as may be specifically authorized by the Director.
 - (8) Other waste as described in any future addendum to this Agreement approved by the Director of the Regional Environmental Management Department (“the Director”); and
- b. Except as provided in section 3a., the Facility agrees that no other types of wastes generated within the Metro boundary shall be accepted or disposed at the Facility, including but not limited to the following types of wastes: putrescible wastes; putrescible source-separated recyclable material; non-putrescible waste that has not undergone material recovery at by a person certified, licensed or franchised by Metro to perform material recovery on non-putrescible waste including waste generated at construction and demolition sites, or with whom Metro has executed a designated facility agreement to perform such processing; source separated recyclable material; and any other materials prohibited by the DEQ solid waste disposal site permit.

4. Facility Operating Plan.

- a. The Facility shall submit to Metro, for its review and approval, an operating plan for the Facility. The plan shall address how the Facility intends to comply with the requirements of this Agreement. The Facility shall maintain a copy of the operating plan on the Facility’s premises and in a location where Facility personnel and Metro representatives have ready access to it.
- b. The plan shall demonstrate how incoming solid wastes will be identified as appropriate for the Facility and the criteria used for such identification, including:
 - (i) Procedures for inspecting incoming loads for the presence of prohibited wastes;
 - (ii) A set of objective criteria for accepting and rejecting loads;
 - (iii) The provision of sufficient personnel to ensure compliance with Section 3 above, including the provision of at least one person on the ground at the working face of the landfill where the waste is disposed whose

primary responsibility shall include identification and removal of waste that is not authorized under Section 3 above; and

- (iv) Procedures for establishing whether the waste originated within the Metro boundary.

c. The operating plan shall establish procedures for managing and transporting to appropriate facilities any prohibited wastes discovered at the Facility. The plan shall include procedures for managing:

- (i) Hazardous wastes;
- (ii) Recovery of any source separated materials that might be received at the Facility
- (iii) Other prohibited solid wastes in accordance with the provisions of Section 3b. above.

d. Amendments to the operating plan shall be submitted to Metro for review and approval by the Director prior to implementation. Metro's review shall be limited to compliance with this Agreement and shall not be unreasonably withheld.

e. The Facility shall adhere to the policies and procedures contained in its operating plan. Failure to ensure such compliance with the operating plan shall be considered a default of this Agreement.

5. Record keeping and Audits.

a. The Facility shall maintain complete and accurate records regarding all solid waste transported, received, treated, disposed of, or otherwise processed pursuant to this Agreement. The Facility shall make such records available to, or send copies to, the Director or his duly designated agents for inspection, auditing, and copying upon not less than seven (7) days written notice from Metro. Sequential, pre-numbered tickets shall be used for all transactions and voided or canceled tickets shall be retained.

b. The Facility shall maintain waste profiles, waste analysis plans, or Material Safety Data Sheets (MSDS) at Keller Drop Box, Inc.'s Wilsonville office and at the Coffin Butte Landfill for all special waste and cleanup material delivered for disposal under the authority of this Agreement. Such profiles and MSDS sheets shall be made available to the Director (or his designated agent) at both locations for its examination or copying during routine inspections without advance notice.

c. At Metro's option, the Facility shall have an independent audit conducted by a firm acceptable to Metro, no more than once a year, at Metro's expense. The audit report provided to Metro following an independent audit shall address matters reasonably

related to this Agreement, as specified in an audit program approved by Metro and provided to the Facility prior to the audit.

6. Reports and Information.

- a. The Facility shall report the following information to Metro on a monthly basis for waste originating in Washington, Clackamas and Multnomah counties of Oregon:
- (1) Record numbers designating individual incoming loads;
 - (2) Customer account numbers (using separate account numbers to differentiate waste received from a person or facility authorized to perform material or resource recovery, transfer or reload as those terms are defined in Metro Code 5.01.010, pursuant to a Metro Solid Waste Franchise, Certificate, Designated Facility Agreement, License or Non-System License);
 - (3) Date each load is received at the Facility;
 - (4) Time each load is received at the Facility;
 - (5) Net weight of each load;
 - (6) Designation of each load into one of the categories listed in Section 3a.;
 - (7) Whether each load originated from inside or outside the Metro boundary (each load consisting of waste from both inside and outside the Metro boundary shall be counted as originating from inside the Metro boundary if more than 10% of the weight of the waste in the load was collected from inside the Metro boundary or if more than 10% of the locations where the load was collected are within the Metro boundary);
 - (8) Whether the material in each load was used for alternative daily cover, or other "Useful material" as defined in Metro Code Chapter 5.01.
 - (9) The Facility shall submit to Metro a record of all waste received from within the Metro boundary disposed at a site other than the Coffin Butte Landfill. Such information shall include a copy of the disposal site's billing to the Facility for such disposal. Such billing must include the tonnage of each load.
- b. Records required under Section 6a. shall be reported to Metro no later than fifteen (15) days following the end of each month, via E-mail, electronic records encoded on 3.5" data diskettes or CD, and in a format prescribed by Metro that is compatible with Metro's data processing equipment.

- c. The Facility shall post a sign at the scalehouse directing all customers disposing of waste generated within the Metro boundary to declare the origin of the waste. The Facility shall provide a map of the Metro region to any customer that requests one.
- d. The Facility shall provide to Metro copies of all permits relating to operations at the Facility, including any new land use applications, appeals or modifications. Copies of revisions to existing permits and newly issued permits shall be provided to Metro within seven (7) business days of receipt. The Facility shall also provide, within ten (10) business days, a copy of any official enforcement action regarding the Facility or its operation, including, but not limited to, a notice of violation or non-compliance with a statute, regulation, or permit condition.
- e. The Facility shall provide to Metro a copy of the Facility's disposal rate schedule. The Facility shall provide to Metro a copy of any revised or updated disposal rate schedule within seven (7) days of the date such revised or updated rates become effective.
- f. On a quarterly basis the Facility shall provide Metro a listing of account numbers and corresponding customer names and material codes and corresponding material names for incoming loads covered by this Agreement.

7. Regional System Fee and Excise Tax.

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

8. Compliance with Law. The Facility shall fully comply with all provisions of Metro Code Chapter 5.01 applicable to disposal sites, which provisions are incorporated by this reference as if set forth in full. The Facility shall also fully comply with all applicable federal, state, regional, and local laws, rules, regulations, ordinances, orders, and permits, as amended. All conditions imposed on the operation of the Facility, whether by federal, state, or local governments or agencies having jurisdiction over the Facility, are part of this Agreement by reference as if specifically set forth herein. Such conditions and permits include those

attached as exhibits to this Agreement, as well as any existing at the time of issuance of this Agreement and not attached, and permits or conditions issued or modified during the term of this Agreement.

9. Right of Inspection; Enforcement of Metro Code.

- a. 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:
 - (1) At any time without notice, during all regular working hours that the Facility accepts waste deliveries;
 - (2) At other reasonable times if written notice is given during regular working hours that the Facility accepts waste deliveries, which notice may be made via facsimile sent to the Facility, attention Brian Stone at (541)745-3826; and
 - (3) At any time without notice when, in the reasonable opinion of the Director, such notice would defeat the purpose of the entry.
- b. The Facility shall cooperate with Metro regarding Metro's investigation of waste haulers suspected of fraudulently claiming waste as having originated from outside the Metro boundary or otherwise violating the provisions of this Agreement or the Metro Code. Such cooperation shall include, without limitation, providing Metro with requested information in the Facility's possession regarding waste haulers under investigation and providing appropriate Facility representatives to testify in deposition or at a contested case hearing regarding such waste haulers.
- c. If Metro asserts that the Facility has violated any requirement of this Agreement or any provision of the Metro Code applicable to disposal sites as applied to the Facility under Paragraph 8 of this Agreement, the Facility hereby expressly agrees to submit to all enforcement proceedings that are applicable to disposal sites within Metro's boundaries and to accept the jurisdiction of Metro for the purpose of providing notice of, commencing and conducting enforcement proceedings as provided in Metro Code Chapters 2.03 and 2.05 and Metro Code Sections 5.01.180 and 5.01.200.
- d. Subject to the confidentiality provisions of this license, Metro's right to inspect and audit shall include the right to review, at an office of the Facility located in or near the Portland metropolitan area, all information from which all required reports are derived, adequate to ensure compliance with this Agreement.

10. Indemnification. The Facility shall indemnify, defend, and hold Metro and Metro's agents, employees, and elected officials harmless from any and all claims, demands, damages,

actions, losses, and expenses, including attorney's fees, arising out of, or in any way connected with, the Facility's performance under this Agreement.

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 the Facility is required to submit to Metro under Section 6a. of this Agreement. Metro acknowledges that, although the Facility is not obligated by law to submit such information, the Facility is voluntarily obligating itself to do so pursuant to this Agreement. Metro also recognizes that the Confidential Information specified herein is a "trade secret" and exempt from public disclosure under Oregon law because it is currently known only by the Facility, is used by the Facility in its business, has commercial value, and gives the Facility a business advantage over competitors not possessing such information. The ability of competitors of the Facility to obtain the Confidential Information specified herein is not in the public interest because it detracts from a relationship of trust that is necessary for Metro to effectively carry out its solid waste management functions. Metro hereby obligates itself in good faith not to disclose Confidential Information to any person outside of Metro except as specified herein. Access to, and use of, such information shall only be as specified in this section.
- b. At any time during and after the term of this Agreement, Metro shall not, in any manner whatsoever, either directly or indirectly, divulge, disclose, or communicate Confidential Information to any person, partnership, firm, association, corporation, or other entity, or to any person at Metro who does not have a reasonable need to obtain Confidential Information for Metro's solid waste management purposes. Neither Metro nor any person at Metro shall use the Confidential Information specified in this section for personal benefit.
- c. Notwithstanding subsections 11.a and 11.b. of this Agreement, Metro may use Confidential Information for solid waste management purposes, including solid waste tracking and forecasting, enforcement of the Metro Code, or assistance to other jurisdictions in regulatory enforcement or other law enforcement. Metro may also use Confidential Information in aggregations or summaries that may be released to the public, so long as it is not possible to identify from such aggregations or summaries the persons or other entities generating and delivering waste to the Facility or the types and quantities of waste that specific persons or other entities generate or deliver to the Facility. Metro shall notify the Facility within six (6) business days of Metro's receipt of 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 the Facility in writing at least ten (10) days prior to releasing such information.

- d. When submitting to Metro the Confidential Information specified herein, the Facility shall mark such materials as confidential. Metro shall keep all such material separate from other records and materials such that it will not be available to members of the public or persons at Metro who do not have a reasonable need to obtain access to the information relative to Metro's solid waste management responsibilities.
- e. If Oregon law is modified such that the Confidential Information referenced in this section is no longer exempt from public disclosure, or if a court of competent jurisdiction requires release of such information, the Facility shall no longer be required to submit such information to Metro. In such instance, upon request, the Facility nevertheless agrees to provide to Metro the names of specific generators or transporters, and the types and quantities of waste delivered by such persons or entities, for Metro's use in enforcing the Metro Code against such persons or entities, when Metro has a reasonable suspicion that a violation has occurred.

12. Modification, Suspension, and Termination.

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

- (2) If, due to a binding decision by an arbitrator or court of competent jurisdiction, Metro:
- (a) May be liable for damages for allowing waste of a type specified in this Agreement to be disposed of at the Facility; or
 - (b) May no longer allow such waste to be disposed of at the Facility.
- c. The Metro Council ("Council") may modify, suspend, or terminate this Agreement for good cause or substantial change of circumstances upon passage of a resolution specifying the action taken and the effective date. If this Agreement is modified by Council resolution, the Facility shall have thirty (30) days from the date of the resolution to acknowledge the modification by signing a written instrument containing the terms of the modification. Failure of the Facility to acknowledge the modification within the 30-day period, unless otherwise excused by the Director, shall result in suspension of the Agreement effective as of 5:00 p.m. on the 30th day, until the modification is acknowledged in writing by the Facility.
- d. The Facility may terminate this Agreement for good cause provided that such termination shall commence no sooner than thirty (30) days after the Facility provides Metro with written notice of the Facility's intent to terminate.
- 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 the Metro boundary, regardless of the perceived or actual impact of such decisions on the Facility's business. A policy judgment by Metro to limit or prevent waste generated within the Metro boundary from entering the Facility shall under no circumstances be the basis for payment of compensation by Metro to the Facility.
- f. To be effective, the amendment or modification of this Agreement must be in writing, signed by both the Director and by an authorized representative of the Facility.

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 the Facility.
- b. The Facility shall be responsible for ensuring that its contractors and agents operate in complete compliance with the terms and conditions of this Agreement.

- c. The granting of this Agreement shall not confer a property right to the Facility, nor vest any right or privilege in the Facility to receive specific quantities of solid waste during the term of this Agreement.
- d. This Agreement may not be transferred or assigned without the prior written approval of Metro. Consent to assignment or transfer shall not be unreasonably withheld.
- e. To be effective, a waiver of any term or condition of this Agreement must be in writing, signed by either the Director, if Metro is making the waiver, or by an authorized representative of the Facility, if the Facility is making the waiver. Waiver of a term or condition of this Agreement by either party shall neither waive nor prejudice that party's right otherwise to require performance of the same term or condition or any other term or condition.
- f. This Agreement shall be construed, applied, and enforced in accordance with the laws of the State of Oregon.
- g. If any provision of this Agreement shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this Agreement shall not be affected.
- h. If any deadline required to be computed under any provision of this Agreement falls on a Saturday, Sunday, or legal holiday, then the deadline shall be the next day which is not a Saturday, Sunday, or legal holiday. As used in this subsection, "legal holiday" means legal holiday as defined in Oregon Revised Statutes 187.010 and 187.020, as amended.
- i. Unless otherwise specified, all terms are as defined in Metro Code Chapter 5.01.
- j. This Agreement is the entire agreement between the Parties.

COFFIN BUTTE LANDFILL

METRO

By: _____

By: _____

Print name and title

Print name and title

Date: _____

Date: _____

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SOLID WASTE AND RECYCLING COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 02-3238, FOR THE PURPOSE OF CONSIDERING A DESIGNATED FACILITY AGREEMENT WITH VALLEY LANDFILLS, INC., FOR THE COFFIN BUTTE LANDFILL

Date: November 12, 2002

Presented by: Councilor McLain

Committee Recommendation: At its November 6 meeting, the Solid Waste and Recycling Committee voted 3-0 to recommend Council adoption of Resolution No. 02-3238. Voting in favor: Councilors McLain, Monroe and Chair Atherton. Voting against: None. Absent: Councilors Bragdon and Park.

Background: Metro Code Chapter 5.05 authorizes certain disposal facilities to receive waste from the region under the terms of a designated facility agreement (DFA) that outlines the types of waste that may be received and any other conditions or limitations that may be placed on the receipt of such waste. DFA's have been established with several disposal facilities that are geographically located outside of Metro's boundaries. A DFA generally applies the same regulatory criteria to the facility that would be applied to a facility within the region. For example, a DFA facilitates the collection of Metro fees and taxes, requires the submission of certain information related to receiving of waste from the region and permit Metro to audit the facility to ensure that all applicable fees and taxes have been paid.

Chapter 5.05 lists those facilities that currently have DFA's. These include the Hillsboro Landfill, Lakeside Landfill, Columbia Ridge Landfill, Roosevelt Landfill, and Finley Butte Landfill. Several factors are considered in reviewing any request for a DFA. These include: 1) the environmental suitability of the disposal facility, compliance with federal, state and local rules and regulations, operational practices and controls, the impact on the region's recycling and waste reduction efforts, and the relationship with existing Metro contractual arrangements.

Committee Issues/Discussion: Roy Brower, REM Regulatory Affairs Manager, presented the staff report. He explained that the proposed resolution requests Council approval of a DFA for the Coffin Butte Landfill in Benton County, near Corvallis. He indicated that the operator of the landfill approached Metro with a request to obtain a DFA in late 2001. The principal purpose of the request was to address the disposal of special waste and MRF dry waste residual generated at the Willamette Resources facility in Wilsonville. Such waste was being disposed of at Coffin Butte under the terms of a non-system license. BFI/Allied operates both the landfill and the Wilsonville facility.

Brower indicated that a total of about 69,000 tons of material would be sent to Coffin Butte, about 40,000 tons of residual and special waste under the DFA, and 29,000 tons of putresible waste under the terms of an existing non-system license. This will represent about 16% of the material received at the landfill.

Councilor McLain asked how the proposed DFA differed from the existing ones. Brower responded that it was to the other "Title D" landfills such as Columbia Ridge and Roosevelt, but different from facilities such as Lakeside and Hillsboro that can accept only dry waste.

Councilor McLain also asked how the agreement would relate to Metro's existing disposal contract with Waste Management. Marv Fjordbeck, Senior Assistant Counsel responded that waste being sent to Coffin Butte under the terms of the DFA was not subject to the 10% requirement in Waste Management contract.

Councilor McLain asked about the enforcement provisions of the agreement and staff responded by referencing the specific provisions of the contract in Sections 6 and 9 that grant Metro the same enforcement authority that would apply to an in-region facility.

Key Public Testimony: None.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 02-3238, FOR THE PURPOSE OF APPROVING A DESIGNATED FACILITY AGREEMENT WITH VALLEY LANDFILLS, INC., FOR THE COFFIN BUTTE LANDFILL

October 3, 2002

Prepared by: Chuck Geyer

BACKGROUND

In November 2001, Metro received a request from Valley Landfills, Inc., for Metro to recognize its Coffin Butte Landfill as a "Designated Facility" under the provisions of Metro Code 5.05.030. The Coffin Butte Landfill is located at 28972 Coffin Butte Road in Benton County, north of Corvallis, Oregon (see attachments for additional site information.) Following this request, Regional Environmental Management staff entered into negotiations with the firm to draft an agreement acceptable to both parties. The Designated Facility Agreement that is Exhibit "A" is the result of these negotiations.

The primary purpose of the agreement is to allow special waste and non-putrescible waste generated from within the Metro to be received at the facility. The waste must have been already processed for material recovery, or be a type of dry wastes such as cleanup materials and special waste that lack material recovery potential. Such waste is currently received by the facility through Non System Licenses (NSLs) that would no longer be needed. Approximately 100,000 tons of non-putrescible waste is currently authorized under the NSLs that would be replaced by this agreement. NSLs would still be required for putrescible waste received by the facility (up to 45,000 tons/year is currently authorized). The facility received approximately 69,000 tons of waste from the Metro region in FY2001-02. This represents about 16% of the total waste (426,000) received at the facility.

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

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

The Coffin Butte Landfill (CBLF) first came into use during the 1940s or 50s when it served as the landfill for the nearby Adair Village Military base. Later, the landfill accepted industrial wastes from the Wah Chang facility located in Albany, Oregon. When the CBLF became a Subtitle D landfill in 1992, the original unlined cells were capped. However, there remains a problem of leachate contamination of groundwater that is presently being monitored by the DEQ. Since 1992, the landfill has been filling only lined cells and operating with the required environmental controls required by the DEQ.

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

The Coffin Butte Landfill is permitted by the Oregon Department of Environmental Quality (DEQ) to take unlimited amounts of authorized wastes (putrescible, non-putrescible, special and cleanup wastes).

The facility was issued a NON by DEQ in 1998 for failure to immediately report a landfill fire. Another NON was issued in July 2001 when too high a level of non-methane gasses was detected in the landfill gas power generation system. The problem was promptly remedied. These are considered to be relatively minor violations, both DEQ and Benton County considers the landfill to be a well run facility that is in compliance with federal, state and local requirements. Benton County and the landfill executed an agreement in December 2000 establishing the parameters to be monitored by the Benton County Environmental Health Division, and authorizing the landfill to accept quantities of waste consistent with the DEQ permit. The facility has a good compliance record with public health, safety and environmental rules and regulations.

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

The Coffin Butte Landfill uses operational practices and management controls that are typical of Subtitle D landfills and considered by the DEQ to be adequate for the protection of health, safety, and the environment.

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

The region's recycling and waste reduction efforts should be enhanced (or at least stay the same) because only non-putrescible waste from within the region that has been processed can be received at the facility. This should act as an incentive for additional material recovery, particularly at other subsidiaries of the facility's parent corporation.

Waste is currently going to the facility from the subsidiaries such as WRI and Keller Drop Box. It includes putrescible, special, and dry processing residual wastes. Putrescible waste will not be authorized under the designated facility agreement and must continue to be delivered under a non-system license (NSL). Special waste has no recovery potential and therefore should not affect waste reduction efforts. Since individual NSL's will not be required for dry processing residual, it may encourage additional processing at WRI, which may increase regional recovery.

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

The waste subject to the proposed agreement is non-putrescible waste and therefore, under Change Order No. 8, not included within the definition of "Metro Solid Waste Tonnage" for purposes of Metro's disposal contract. The requested agreement does not appear to conflict with Metro's disposal contract or any other of its existing contractual arrangements.

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

The applicant is Valley Landfills, Inc. doing business as the Coffin Butte Landfill. The applicant had not been subject to Metro ordinances since it is located outside the Metro boundary. The applicant has assisted Metro with enforcement actions when waste was illegally hauled to its facilities. The applicant is a subsidiary of Allied Waste Systems, Inc. Other subsidiaries of the parent (such as River City Disposal, WRI, Keller Drop Box, United Disposal Services) that are active in the Metro solid waste system have a good record of compliance with Metro ordinances and agreements and have assisted Metro in their enforcement. The DFA would also allow third party contractor other than the subsidiaries to haul waste

directly from generator sites, if the waste fell into the categories permitted by the DFA such as special waste that does not require processing.

- (7) *Such other factors as the executive officer deems appropriate for purposes of making such determination.*

The agreement will enhance the collection of fees and taxes due Metro as they are required by the agreement. The agreement also makes the facility subject to Metro's regulatory requirements as if it were located within the Metro boundary.

ANALYSIS/INFORMATION

1. Known Opposition

None.

2. Legal Antecedents

Metro Code Sections 5.03.030 (a) and (b) as described above; and section (c) requiring the agreement be adopted be approved by the Metro Council; and section (d) that requires the agreement to specify waste types.

3. Anticipated Effects

Reduce the number of NSLs serving the facility.

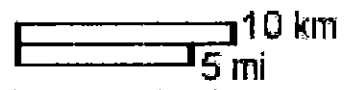
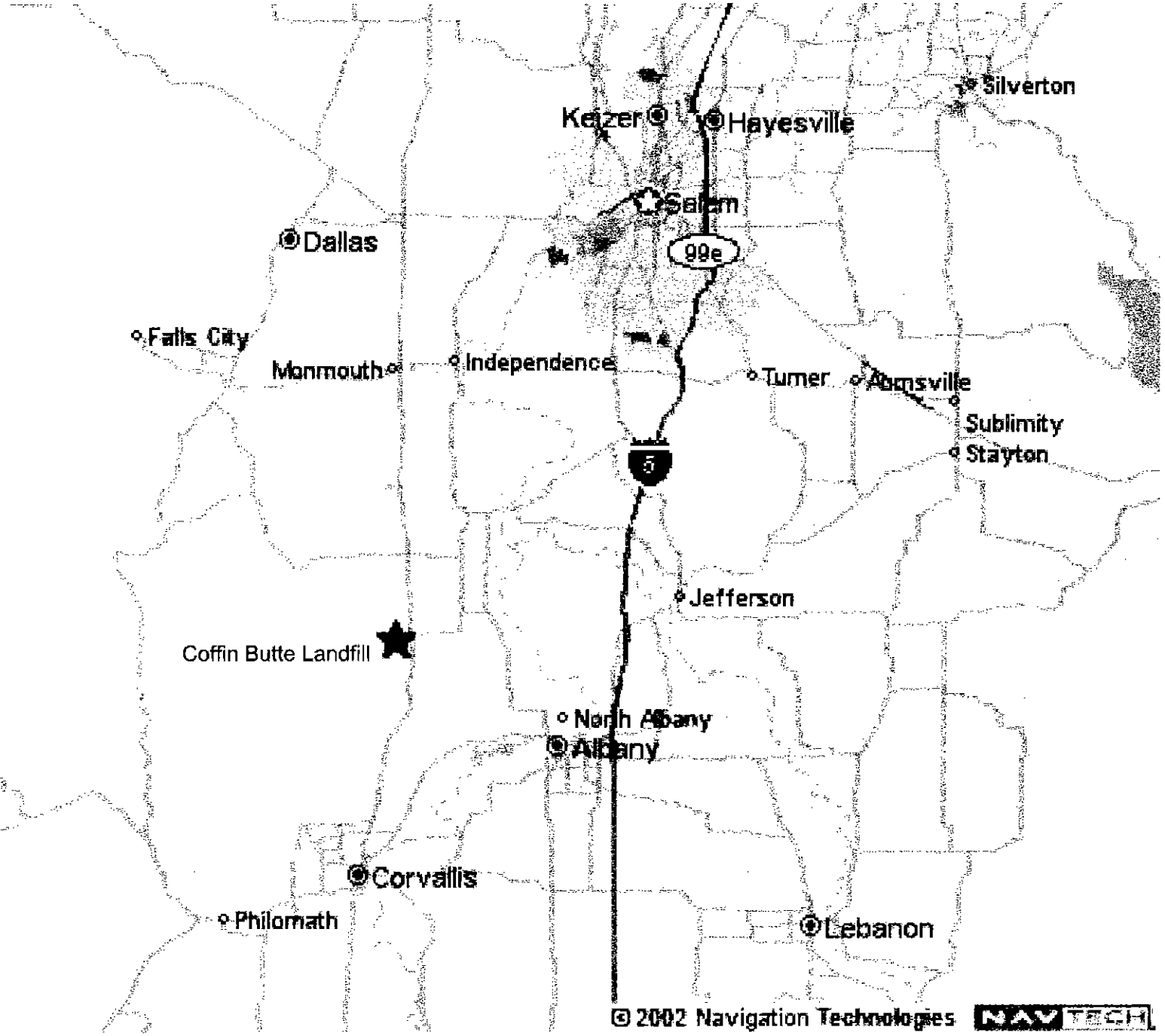
4. Budget Impacts

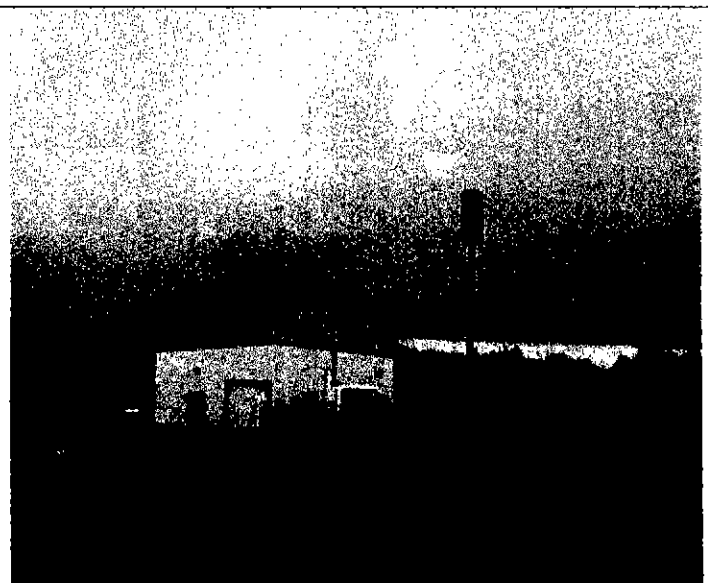
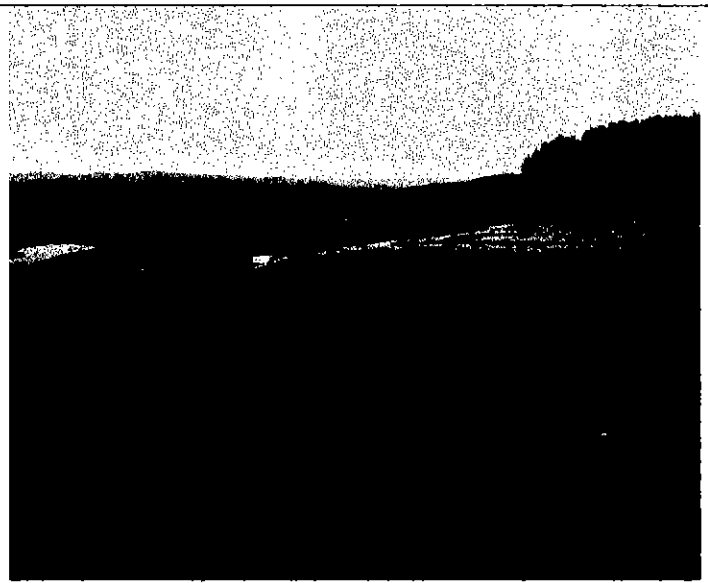
No immediate budget impact is anticipated.

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends adoption of Resolution No. 02-3238.

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Leachate recycling facility and flare