

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF APPROVING AN
INTERGOVERNMENTAL AGREEMENT
TO ASSUME CUSTODY OF CERTAIN
PUBLIC MONIES AND OWNERSHIP
OF THE ST. JOHNS LANDFILL
AND CERTAIN ADJACENT LAND FROM
THE CITY OF PORTLAND

) RESOLUTION NO. 90-1314
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Introduced by Rena Cusma,
Executive Officer

WHEREAS, The Metropolitan Service District can best
fulfill its solid waste management responsibilities by accepting
authority and responsibility for the St. Johns Landfill; and

WHEREAS, The Metropolitan Service District can best
fulfill its role in regional cooperative efforts to establish
urban natural areas by accepting authority and responsibility for
implementing the Smith and Bybee Lakes Management Plan; and

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

BE IT RESOLVED,

That the Council of the Metropolitan Service District
approves the execution of Intergovernmental Agreement No. 901-438
with the City of Portland to assume custody of certain public
monies and ownership of the St. Johns Landfill and certain
adjacent land from the City of Portland.

ADOPTED by the Council of the Metropolitan Service
District this 8th day of November, 1990.


Tanya Collier, Presiding Officer

AGREEMENT

THIS AGREEMENT is entered into by and between the CITY OF PORTLAND, OREGON ("City") and the METROPOLITAN SERVICE DISTRICT ("METRO").

RECITALS:

A. City is a municipal corporation of the State of Oregon. METRO is a METROpolitan Service District, established under ORS Chapter 268.

B. City owns the St. Johns Sanitary Landfill (the "Landfill"). The Landfill is located within the boundaries of METRO and is currently used by residents and commercial refuse haulers from METRO's solid waste planning area, both within and without the City limits.

C. ORS 268.310 (a) authorizes METRO to provide facilities for the disposal of solid waste.

D. Pursuant to an agreement effective June 1, 1980, and amended October 19, 1983, the City transferred operational responsibility, rate regulation, and control of the landfill operations to METRO subject to the terms of the prior agreement. That agreement was terminated and replaced with a new agreement adopted on May 21, 1986 by City Ordinance No. 158522.

E. Subject to terms and conditions set forth herein, METRO is willing to assume ownership of City owned properties described in Section 1 below which include the Landfill site. METRO is further willing to continue to lease Parcel A from the City until

such time as METRO no longer needs Parcel A for reasons other than access.

F. City adopted the St. Johns Landfill End Use Plan (End Use Plan) on June 10, 1987 by Resolution No. 34295. The End Use Plan, developed cooperatively with representatives of the St. Johns community, proposed ultimate development facilities for the Landfill. However, the proposed Closure Plan developed in 1989 requires features such as a geomembrane cover which prohibit most end uses of the Landfill for 20 years or more. Therefore, the End Use Plan is superseded by this Agreement and the Smith & Bybee Lakes Management Plan, 1990 (Lakes Plan).

G. METRO is willing to accept custody and responsibility as Trust Fund Manager of the Smith & Bybee Lakes Trust Fund (Lakes Fund) which is to be established as part of the Lakes Plan. Such responsibilities shall include conducting periodic audits of the Lakes Fund as required by State Law and METRO Council review of budgets implementing the Lakes Plan, proposed by the Smith & Bybee Lakes Management Committee established in the Lakes Plan.

H. This Agreement is entered into pursuant to ORS 190.010.110 and ORS 268.300(2) and supersedes all previous Agreements between METRO and the City regarding the ownership and operation of the Landfill.

THE PARTIES AGREE AS FOLLOWS:

1. Transfer. City hereby transfers to METRO and METRO accepts ownership of the Incinerator Road Bridge (hereinafter Landfill Bridge), Tax Lot (2), Section 36, T2N, R1W, W.M. (221.62 acres) except for that portion of Tax Lot (2) lying southwesterly of the south bank of Columbia Slough (about 40.2 acres), Tax Lot (5), Section 31, T2N, R1E, W.M. (213.22 acres) except for that separate portion of Tax Lot (5) in section 32, T2N, R1B, W.M. and in Section 5, T1N, R1E, W.M. (about 119 acres), Tax Lot (6), Section 31, T2N, R1E, W.M. (108 acres) and Tax Lot (30), Section 36, T2N, R1W, W.M. (273.6 acres) (net acreage of transferred parcels being about 657 acres) for the sale price of \$1.00. With ownership of the landfill, METRO accepts the authority and responsibility to implement the St. Johns Landfill Revised Closure and Financial Assurance Plan (hereinafter Closure Plan) as approved by the Oregon State Department of Environmental Quality (DEQ) pursuant to OAR 340-61-033, 034. The City shall not be responsible for any closure costs, including any long term operations and maintenance costs except as provided in Sections 8 and 12, below. The City agrees that METRO may fill the St. Johns Landfill to elevations necessary to comply with the Closure Plan, state, or federal requirements. METRO agrees that the property hereby transferred shall be used for park and open space purposes consistent with the Lakes Plan. The City further transfers to METRO and METRO accepts the monies contributed from METRO to the City and designated by the City for use in implementing the End Use Plan including monies in the City's "Refuse Disposal Fund",

ity "End Use Fund", and any other City funds with revenues related to Landfill closure and Lakes Plan implementation and the interest these monies have accrued. The monies to be transferred are itemized in Exhibit C attached and incorporated herein. The City shall effect the transfer of real property described in Section 1 through the execution and delivery of the deeds in the form of attached Exhibit A on or before December 31, 1990. The monies intended for the End Use Plan, as itemized in this Agreement, shall be deposited in the Smith & Bybee Lakes Trust Fund (Lakes Fund) and used for the Lakes Plan which includes projects on the landfill site.

2. Road and Utility Easement and Planning Designation.

a. The parties recognize that permanent easements for access and utilities are necessary for ownership of the landfill and related properties transferred in this Agreement. The City shall maintain for the benefit of METRO, a right of access through Parcel A to Parcels B and C to all existing roads, and the City shall maintain utilities for electricity, sewer, potable water, natural gas, and any other utility currently in use or needed for the Closure Plan so long as METRO leases Parcel A or until permanent easements have been executed. During or after closure of the landfill, the City shall execute documents granting permanent easements across Parcel A and connecting to the Landfill Bridge providing for access consistent with development of the Smith-Bybee Lakes Management Plan. Upon

receipt of each permanent easement METRO shall be responsible for maintenance of that facility.

b. METRO will actively seek any planning designation of Landfill property needed for recreational purposes proposed in the Lakes Plan.

c. The City shall, if needed to implement the Lakes Plan, provide at least 40,000 square feet of Parcel A adjacent to the Landfill Bridge for a parking area.

3. Term. This Agreement shall be effective upon execution and shall continue in effect until all conditions contained herein have been satisfied by both parties or December 31, 2020, whichever comes first.

4. Alternative Solid Waste Management Unit Boundary.
In the event that the DEQ permits an alternative solid waste management unit boundary for the Landfill the City shall not withhold land under City ownership from inclusion in the boundary and City shall allow all necessary access to that land and agrees not to take any action inconsistent with the Closure Plan as approved by DEQ.

5. Improvements. The City at its option may, when METRO no longer leases Parcel A, take ownership of any fixed structures on Parcel A or require their removal at METRO's expense, provided that METRO may remove any scale mechanisms and associated equipment which are the property of METRO. Any improvements or equipment currently located on Parcel A which are necessary for METRO's post-closure maintenance responsibilities shall remain and be operated and maintained by METRO until METRO no longer

leases Parcel A. METRO shall maintain the Landfill Bridge or other acceptable access to the Landfill consistent with the Lakes Plan.

6. City End Use Plan; METRO Contributions. Pursuant to Section 9 of the previous City/METRO Agreement dated May 21, 1986 METRO has contributed \$.40 per ton for all waste landfilled in the Landfill since January 1, 1987 for implementation of the End Use Plan. The City has deposited these monies received from METRO in the St. Johns Landfill End Use Fund where they have drawn interest. This Fund was estimated at \$908,070.48 on June 30, 1990. The entire contents of this Fund, including all interest accrued between January 1, 1987 and date of transfer, shall be transferred to METRO. Within 30 days after this Agreement has been adopted by both City and METRO Councils, the City shall pay from the End Use Fund to METRO \$160,000. Not later than June 30, 1991 the City shall consider through the Supplemental Budget process approval of the payment of all remaining monies in the End Use Fund to METRO consistent with the transfer of duties in this Agreement. Upon adoption of a duly authorized appropriation City shall pay the balance of the End Use Fund to METRO for deposit in the Lakes Fund.

The End Use Plan shows that, beginning in 1987, the City intended to use monies in the Refuse Disposal Fund which were obtained from Landfill lease payments for the End Use Plan. Exhibit C shows that these monies were estimated to total \$2,233,522 on June 30, 1990. The Office of the City Auditor shall issue a report verifying the actual balance and the

correctness of the calculations, accounting procedures and deposit and expense amounts used in Exhibit C on or before December 31, 1990. Within 30 days of the adoption of this Agreement by both City and METRO Councils, the City shall pay from the Refuse Disposal Fund to METRO for use in the Lakes Fund \$479,000. Not later than June 30, 1991 the city shall consider approval of payment of \$521,000 from the Refuse Disposal Fund to METRO through the Supplemental Budget process. Upon approval, City shall pay such amount. Subject to sufficient appropriations during the City's annual budget process the estimated \$1,233,522 remaining in the Refuse Disposal Fund (or corrected amount established by the independent audit described above), plus 40% of lease payments paid by METRO to the City subsequent to June 30, 1990, plus interest earned by the Refuse Disposal Fund on these amounts, shall be deposited by the City into the Lakes Fund on or before December 31, 1993.

For each ton of waste deposited in the St. Johns Landfill after December 31, 1989, for which METRO charges a tipping fee, METRO shall contribute \$.40 per ton to the Lakes Fund. After February 1, 1991 METRO shall contribute \$.50 per ton to the Lakes Fund if METRO continues to deposit solid waste in St. Johns Landfill. This contribution shall be made on or before January 31 of each year for the tonnage deposited in the Landfill during the preceding calendar year. Failure of either City or METRO to make any payment provided in this section shall be grounds for the declaration of a default.

7. Participation of City Parks Bureau in the Lakes Plan.

METRO shall afford to the City Bureau of Parks each year a right of first refusal for an intergovernmental contract by METRO to supervise, manage and operate recreation programs and projects recommended for Trust Fund expenditures in the Lakes Plan, subject to available funds, by requesting Bureau participation prior to implementing alternative means of operations. Bureau participation shall be based on a scope of work developed by Management Committee recommendation and METRO budget approval.

8. Environmental Risks. As between METRO and City, METRO accepts responsibility for all costs for correcting conditions resulting from the use of the property as a municipal solid waste disposal landfill, including both (i) costs incurred because of required amendments to the Closure Plan pursuant to either changes in state or federal law or a determination by the appropriate federal or state agency that additional measures and costs are required by applicable federal or state laws, and (ii) costs incurred to remove or remediate hazardous wastes or hazardous materials deposited into the landfill and released into the environment subject to the following provisions:

1. METRO's duty to protect the City from liability for additional measures and costs required by applicable state or federal law to remove or remediate hazardous wastes or hazardous materials deposited into the landfill and released into the environment is limited to holding the City harmless for claims or causes of action initiated pursuant to federal or state

environmental protection law pertaining to hazardous wastes and hazardous materials and shall be limited to an amount equivalent to the maximum per capita charges per local government mandated by ORS 459.311(1). If the costs of removal or remediation exceeds such amount, METRO and the City each shall be subject to such liability and have such rights to claim contribution or to make any and all claims against each other as the law may provide and this Agreement shall not constitute a waiver of any right or defense.

2. This Agreement is not a waiver of either party's right to pursue claims for environmental liability against any third parties who generated wastes deposited in the landfill including hazardous wastes.

3. This Agreement is not a release or waiver or agreement to hold harmless City for any costs necessitated by the deposit of wastes, including hazardous wastes, in the landfill by the City in its capacity as a generator of wastes including, but not limited to, deposit of sewage sludges or other wastes produced by City facilities.

9. Indemnity; Insurance.

a. Subject to statutory and constitutional restrictions on debt, if any, METRO shall hold harmless the City, its officers and employees and shall indemnify the City, its officers and employees, for any claims or damage to property or injury to persons which may be occasioned, in

whole or in part, by METRO's lease of Parcel A. operation of the Landfill.

b. METRO shall furnish and maintain such public liability and property damage insurance, either through a carrier or self insurance, including automotive coverage, as will protect the City from all claims for damage to property or bodily injury, including death, which may arise from operations under this Agreement or in connection herewith, including all operations of Subcontractors Such insurance shall provide coverage of not less than \$100,000 for bodily injury for each person, \$500,000 for each occurrence and not less than \$500,000 for property damage per occurrence. Such insurance shall be without prejudice to coverage otherwise existing therein, and shall name as additional insured the City, its officers and employees. The insurance shall further provide that the insurance shall not terminate or be canceled prior to the completion of METRO's lease of Parcel A without thirty (30) days written notice to the Auditor of the City of Portland. Notwithstanding the naming of additional insured, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insured on the policy. The limits of

the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon during the term of the Agreement.

c. METRO shall maintain on file with the City Auditor a certificate of insurance certifying the coverage required under subsection (b). The adequacy of the insurance shall be subject to the approval of the City Attorney. Failure to provide proof of adequate insurance, as required hereunder, or failure at any time to maintain such liability insurance shall be a default of the lease of Parcel A in this Agreement.

10. Workers' Compensation Insurance. METRO agrees that it and any subcontractor with whom it may contract during METRO's lease of Parcel A shall provide workers' compensation coverage in accordance with ORS Chapter 656, and maintain it for the duration of this lease. Failure to maintain workers' compensation insurance shall be a default of this Agreement. METRO shall assure that it and any subcontractor with whom it may contract in performance of this Agreement shall provide workers' compensation coverage for all persons employed in performing services during METRO's lease of Parcel A in accordance with ORS 656.001 to 656.794, either as:

- (1) A carrier-insured employer; or
- (2) A self-insured employer as provided by ORS 656.407,

Evidence of METRO's coverage shall be filed with the City and kept current during METRO's lease of Parcel A.

11. METRO Rental of Parcel A

a. Until December 31, 1996 or final cover has been placed on the entire solid waste disposal area, whichever comes first, METRO may at its option continue to rent Parcel A (described in Exhibit B, attached) including all roads and facilities from the City except that the public may not be permitted to dispose of mixed solid waste on Parcel A.

b. The rental amount shall be \$120,000 per year, payable in advance per invoice from the City on the anniversary date of the adoption of this agreement by METRO Council. The first year's rent shall be paid fifteen (15) days after the date of the adoption of this agreement by METRO Council. METRO shall give City 90 days notice prior to termination of the rental of Parcel A. Upon receipt of notice of termination City shall within 30 days refund to METRO the proportional part of the rent for that part of the rental year for which METRO did not rent Parcel A. For the month in which METRO Council adopts this Agreement METRO shall not be required to pay the Landfill rental payment required by the May 1986 City/METRO Agreement for any portion of the month.

12. Leachate Treatment Costs. If collection and treatment from Subareas 1, 2, or 3 is required by the Closure Permit or the DEQ the City agrees to transport and treat including pretreatment, at its own expense, all leachate from these subareas that is not prohibited from discharge into the City

sewer system and which is delivered to the City sewer at Columbia Boulevard. The City shall transport and treat, at METRO's expense, all leachate from the St. Johns Landfill expansion area (See Exhibit D) collection system that is not prohibited from discharge into the City sewer system and which is delivered to the City sewer at Columbia Boulevard. It is the intent of METRO and the City that leachate from the landfill will be regulated under the City's industrial waste pretreatment program on the same basis that industrial discharges from other sources are regulated. The City agrees not to impose more stringent pretreatment requirements on leachate than are imposed on wastewaters from other sources unless required by state or federal regulations. However, METRO and the City recognize that state and federal regulatory authorities have the authority to change industrial pretreatment requirements and that such changes could have an impact on pretreatment requirements.

If the City notifies METRO that pretreatment requirements for leachate are to be increased and it is agreed between the parties (or determined by an arbitrator if the parties do not agree) that the City is imposing industrial pretreatment requirements on METRO in a more stringent manner than it is imposing requirements on other industrial dischargers, then the City shall be responsible for any leachate pretreatment costs in excess of the costs METRO would incur if there were no differential treatment.

13. Delinquent Payments.

a. Payments due either party under this Agreement shall be considered delinquent if not paid before thirty (30) days after those dates when payment is due and an invoice is received. Delinquent payments shall be subject to interest calculated from the date the payment is due to the date the payment is received. Interest rates shall be the bank prime rate interest at First Interstate bank less two percent (2%) effective at the time the payment became delinquent.

b. Either party may, at any time in its discretion, declare a default after a payment has become delinquent. Acceptance of late payment(s) shall not constitute a waiver of the right to declare a default for any subsequent delinquent payment.

c. OFFSET: Either party may elect to offset against any delinquent amount owed to it.

14. Default; Remedies.

a. In the event METRO shall default on any of its obligations under this Agreement, the City shall give METRO written notice specifying the nature and the extent of the default. METRO shall have one hundred twenty (120) days from receipt of the notice to cure the default. If METRO is unable or unwilling to cure the default, the City may cure the default and bill METRO for the reasonable costs and expenses incurred in curing the default.

b. In the event City shall default on any of its obligations under this Agreement, METRO shall give City written notice specifying the nature and extent of the default. City shall have one hundred twenty (120) days from receipt of the notice to cure the default. If City is unable or unwilling to cure the default, METRO may cure the default and deduct the reasonable costs and expenses incurred in curing the default from the payments required to be made by METRO under Section 11, METRO Rental of Parcel A.

c. The remedies specified in subsections (a) and (b) shall be in addition to any other remedies available under applicable law. Other remedies may include specific performance and an action to recover all damages caused by the default, including but not limited to unpaid amounts and attorneys' fees relating to the default.

d. As an additional remedy for METRO if the City shall default in its obligation to make all payments contemplated to be made by City to METRO as contributions to be made into the Lakes Fund, METRO may, after giving City 180 days written notice of its intent to do so, terminate this Agreement by deeding to the City all property transferred by City to METRO pursuant to this Agreement. In such event, this Agreement shall be of no effect.

15. Termination. This Agreement shall terminate upon the occurrence of any of the following events:

(a) the natural expiration of the term of this Agreement pursuant to Section 3, Term;

(b) in the event that METRO dissolves or terminates its existence without a successor with Responsibility and authority for regional solid waste disposal.

16. Approvals. Any approval required of the City or METRO under this Agreement shall not be unreasonably withheld.

17. Prior Agreements Superseded. All prior agreements between the City and METRO relating to the operation and closure of the Landfill are hereby terminated and shall be entirely superseded by the terms of this Agreement.

This Agreement is authorized by City Ordinance No. _____

METROPOLITAN SERVICE DISTRICT

CITY OF PORTLAND, OREGON

By _____
Executive Officer

By _____
Commissioner of Public Works

By _____
City Auditor

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By _____
Metro General Counsel

By _____
City Attorney

DON:jc
November 8, 1990
CTYMETFI.AGR

Exhibit A

**PROPERTY DEEDS
TEMPORARILY REMOVED**

PARCEL "A"

A tract of land in Sec. 36, T2N, R1W, W.M. described as follows by Distances, Bearing and Coordinates on the Oregon Coordinate System North Zone. Beginning at a point (Coord. N 717565.1 E 1422412.5) on the Easterly line of the James Loomis D.L.C. S 20° 45' 07" E 466.8' from the N.E. Cor. of the James Loomis D.L.C. (Coord. N 718001.7, E 1422247.1) said beginning point being on the Southerly bank of the Columbia Slough, thence S 20° 45' 07" E 1216'.2 along the Easterly line of James Loomis D.L.C. and the Easterly line of Ramsey Villa Acres (a recorded Plat) to a point (Coord. N 716427.8, E 1422843.5), said point being the most Easterly Cor. of a 33' road on the Southeasterly line of Ramsey Villa Acres and apart of said Plat, thence S 61° 48' 04" W 659.4 along the Southerly line of said 33' road to a point on the Northeasterly Right of Way of Shipyard Access Road 1943 (Coord. N 716116.2, E 1422262.4), thence S 30° 8' 41" E 71.5' along the Northeasterly Right of Way line of Shipyard Access Road 1943 to a point (Coord. N 716054.4 E 1422298.3) at the beginning of a curve to the left, thence on a curve to the left along the Northerly Right of Way line of Shipyard Access Road 1943 (curve radius of 1392.7, central angle 17° 00', chord bearing S 38° 51' 34" E, arc length 413.6) to a point (Coord. N 715733.5, E 1422556.8), said point being the most Westerly Cor. of that tract of land transferred to Merta J. and Oscar F. Mason by Deed dated 3/26/47 and recorded in Book 1156, page 363, thence N 47° 45' 53" E 1376.2' along the Westerly line and the Westerly line extended of the said Mason Tract to a point (Coord. N 716658.5, E 1423575.8) on the South bank of Columbia Slough, thence Northwesterly along the South bank of Columbia Slough to the point of beginning. Tract contains 18.2 acres.

St. John Landfill End Use Fund

August 1990

City Council Resolution No. 34295, June 10, 1987, which adopted the St. Johns Landfill End Use Plan directed the Bureau of Environmental Services (BES) to "... pursue implementation of this [End Use] Plan including the establishment of a dedicated End Use Plan fund, ...". Ordinance No. 160973 (July 23, 1988) created the St. Johns Landfill End Use by adding Section 5.04.310 to the City Code.

Section 9 of the 1986 City/METRO contract requires that METRO contribute \$.40 per ton of waste placed in the Landfill from 1987 until closure (expected in 1991) for the End Use Plan. This tonnage fee is to be paid at the end of each calendar year. The correct amounts for 1987, 88 and 89 have been placed in the End Use fund and continue to draw interest. None of these monies have ever been spent and the June 30, 1990 balance was \$908,070.48. this the approved End Use Plan.

Since 1980 METRO has been making monthly Landfill lease payments to the City. These payments have been deposited in the Refuse Disposal Fund (RDF). The RDF which received almost all of its money from Landfill lease payments between 1980 and 1987 had grown to about \$1,660,000 in 1987. Pages S-8, S-9, B-15, B-16 and B-17 of the St. Johns Landfill End Use Plan, May 1987, show that \$1,500,000 of the 1987 RDF balance plus a portion of the lease payments from 1987 until closure were to be placed in the End Use Fund and draw interest. Calculation worksheets prepared for but not included in the published End Use Plan show that 40% of the lease payments from 1987 on were to be placed in the End Use Fund.

The majority of the 1987 End Use Plan is no longer feasible for technical and environmental reasons which will not be discussed here. The landfill gas project was not feasible so there is no gas revenue. However, the METRO CONTRIBUTIONS shown in the center column of the table on page B-16 have come in and have been somewhat larger than expected. These amounts are the sums of estimates of \$.40 per ton money (explained above) and 40% of lease payment money for each year (see above mentioned calculation worksheets).

All lease payment money has remained in and continues to be deposited in the RDF. Thus, there is no official accounting of the lease payment money intended for End Use. The RDF draws interest, receives monies from other sources and is used for other expenditures. However, with a few reasonable assumptions the amount of lease payment money that was intended for End Use purposes and the interest it has earned can be readily calculated.

Assumptions for calculation of lease payment money and interest intended for St. Johns Landfill End Use Plan:

1. \$1,500,000 deposited in fund on January 1, 1987.
2. 40% of each monthly lease payment deposited in the fund at the end of the month.
3. Interest for each month is calculated by taking 1/12th of monthly interest rate for all City funds (obtained from City Treasurer's office) and multiplying by previous month's balance.
5. End Use expenses (expenses charged to BES Project No. 4296 from 1986 to June 30, 1990 as shown in the City's Financial Management System (FMS) are accumulated for the fiscal year and subtracted from the fund balance on June 30 of each fiscal year.

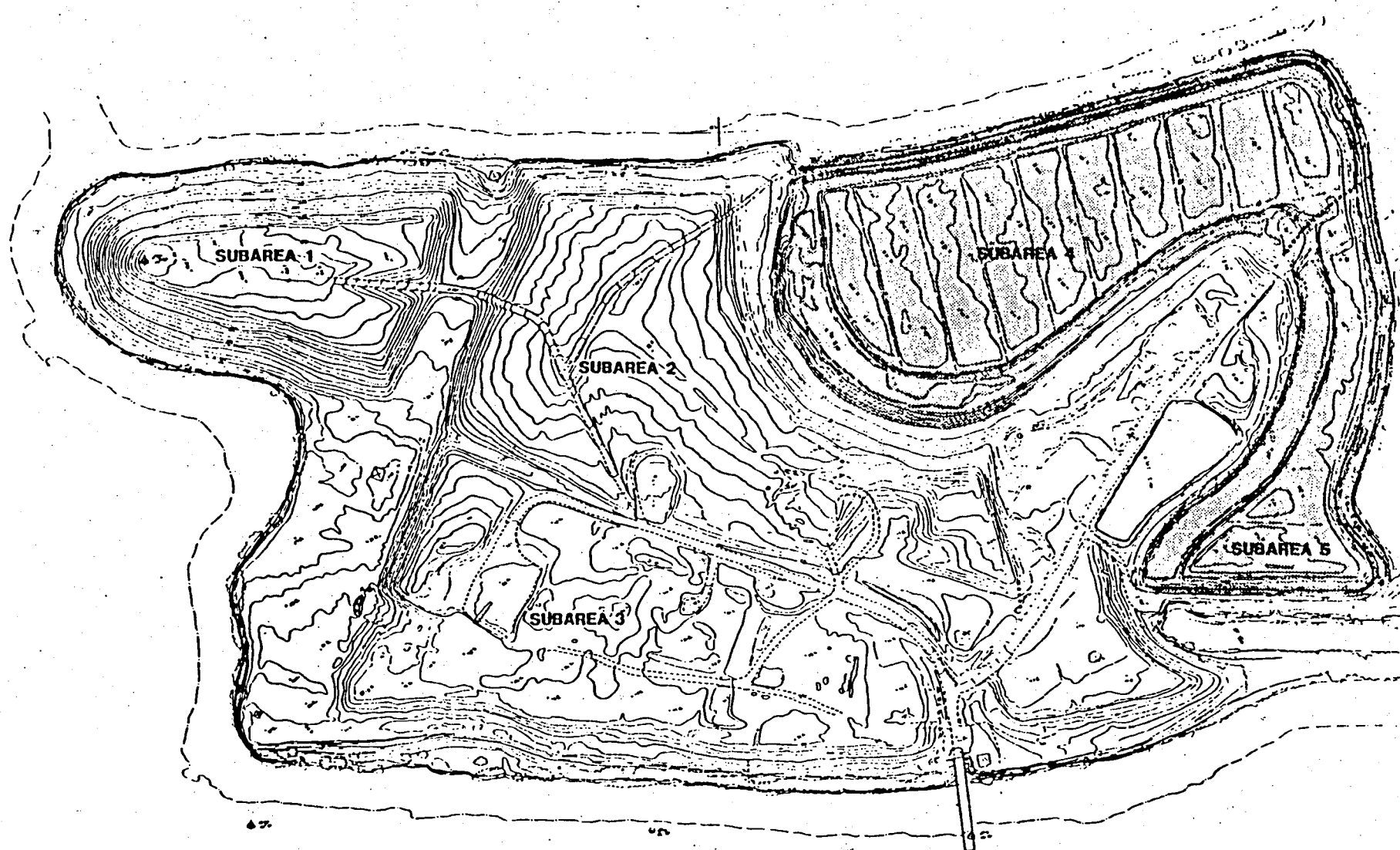
The table on the following page shows the results of the above assumptions with amount of lease payments plus interest intended for the St. Johns Landfill End Use Plan to be \$2,233,522.


Prepared by: Dan Miller
Bureau of Environmental Services
City of Portland

LEASE PAYMENT MONEY INTENDED FOR ST. JOHNS LANDFILL END USE PLAN
PLUS INTEREST.

1,500,000 DEPOSITED ON JAN 1, 1987

	SJL LEASE	40%	INT. RATE	INT. AMOUNT	END USE EXPENSE	FUND BAL BY MONTH
Jan-87	24,037	9,615	5.92%	7,400		1,517,015
Feb-87	24,037	9,615	5.90%	7,459		1,534,088
Mar-87	24,037	9,615	5.97%	7,632		1,551,335
Apr-87	24,037	9,615	6.08%	7,860		1,568,810
May-87	24,037	9,615	6.54%	8,550		1,586,975
Jun-87	25,755	10,302	6.86%	9,072	139,522	1,466,827
Jul-87	25,755	10,302	6.76%	8,263		1,485,392
Aug-87	25,755	10,302	6.79%	8,405		1,504,099
Sep-87	25,755	10,302	6.90%	8,649		1,523,050
Oct-87	25,755	10,302	7.27%	9,227		1,542,579
Nov-87	25,755	10,302	7.56%	9,718		1,562,599
Dec-87	25,755	10,302	7.54%	9,818		1,582,719
Jan-88	25,755	10,302	7.46%	9,839		1,602,861
Feb-88	25,755	10,302	7.53%	10,058		1,623,221
Mar-88	25,755	10,302	8.62%	11,660		1,645,183
Apr-88	25,755	10,302	6.88%	9,432		1,664,917
May-88	25,755	10,302	7.01%	9,726		1,684,945
Jun-88	27,711	11,084	7.32%	10,278	39,832	1,666,475
Jul-88	27,711	11,084	7.43%	10,318		1,687,878
Aug-88	27,711	11,084	7.73%	10,873		1,709,835
Sep-88	27,711	11,084	8.09%	11,527		1,732,446
Oct-88	27,711	11,084	8.16%	11,781		1,755,312
Nov-88	27,711	11,084	8.37%	12,243		1,778,639
Dec-88	27,711	11,084	8.72%	12,925		1,802,648
Jan-89	27,711	11,084	8.94%	13,430		1,827,163
Feb-89	27,711	11,084	9.08%	13,826		1,852,072
Mar-89	27,711	11,084	9.18%	14,168		1,877,325
Apr-89	27,711	11,084	9.43%	14,753		1,903,162
May-89	27,711	11,084	9.63%	15,273		1,929,520
Jun-89	27,259	10,904	9.64%	15,500	885	1,955,038
Jul-89	27,259	10,904	9.40%	15,314		1,981,256
Aug-89	27,259	10,904	9.07%	14,975		2,007,135
Sep-89	27,259	10,904	8.91%	14,903		2,032,942
Oct-89	27,259	10,904	8.84%	14,976		2,058,821
Nov-89	27,259	10,904	8.59%	14,738		2,084,463
Dec-89	27,259	10,904	8.55%	14,852		2,110,218
Jan-90	27,259	10,904	8.51%	14,965		2,136,087
Feb-90	27,259	10,904	8.43%	15,006		2,161,996
Mar-90	27,259	10,904	8.43%	15,188		2,188,088
Apr-90	27,259	10,904	8.48%	15,462		2,214,454
May-90	27,259	10,904	8.50%	15,686		2,241,043
Jun-90	27,500	11,000	8.61%	16,079	34,600	2,233,522



 Expansion area
St. Johns Landfill, 1983

SOLID WASTE COMMITTEE REPORT

RESOLUTION NO. 90-1314, FOR THE PURPOSE OF APPROVING AN INTERGOVERNMENTAL AGREEMENT TO ASSUME CUSTODY OF CERTAIN MONIES AND OWNERSHIP AT THE ST. JOHNS LANDFILL AND CERTAIN ADJACENT LAND FROM THE CITY OF PORTLAND

Date: October 18, 1990

Presented by: Councilor DeJardin

COMMITTEE RECOMMENDATION: The Committee considered the Resolution at its meetings on October 2 and October 16, 1990. The Committee voted unanimously to recommend approval of Resolution No. 90-1314. Voting yes were Councilors Buchanan, Collier, DeJardin, Saucy and Wyers.

COMMITTEE DISCUSSION/ISSUES: This resolution would authorize Metro to enter into an agreement with the City of Portland for ownership of the St. Johns Landfill. Bob Martin, Solid Waste Director, outlined key features of the proposed agreement negotiated between Metro and City staff:

- Metro will own the landfill and adjacent wetland property.
- Metro assumes responsibility for a trust fund made up of approximately \$3.1 million of Metro Lease and End-use payments originally intended by the City for implementation of the City's 1987 End-use Plan. The trust fund must be used to implement the 1990 Smith and Bybee Lakes Management Plan.
- Metro will continue to pay .40 to the trust fund for every ton of solid waste added to the landfill.
- Metro will rent City property for scalehouse operations until it is no longer needed for any purpose but access. At that point, the City will grant a permanent easement for access.
- The City will have right of first refusal to implement recreational programs on the site under the Smith and Bybee Lakes Management Plan.
- Metro assumes the responsibility and potential liability of ownership. If additional remediation is required, Metro's duty to protect the City from liability for possible hazardous material remedial action would be limited to the maximum per capita charges mandated by state law.

Mr. Martin listed the advantages to Metro of entering into this agreement. The agreement removes ambiguity in the existing landfill agreement regarding responsibility for closure costs. Metro ownership reduces the potential risks from uncoordinated management of closure, end use, and Smith/Bybee Lakes implementation. Ownership also facilitates monitoring the facility to comply with DEQ requirements. DEQ favors the agreement, because

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it reduces regulatory complexity. Another advantage is that the North Portland community will be working with one rather than two governments. With regard to risk, Mr. Martin stated that Metro already bears responsibility for remediation. In his view, transferring ownership to Metro reduces risk from lack of coordination.

In response to committee questions, Mr. Martin clarified that Metro could decide to operate recreational programs, but that if the programs were contracted, the City would have right of first refusal.

Mr. Martin indicated there was still some question about the property description of the noncontiguous parcel. The committee was willing to recommend approval contingent upon staff providing an accurate description when this matter is considered by Council.

Councilor Wyers noted that she had given considerable thought to the issue of liability, and had concluded that if remediation is required, it is an appropriate regional responsibility for Metro to assume.

Committee members stated that the agreement appeared fair and well-reasoned, and represented good work by all parties.

kf:a:\1314.res



METRO

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

Memorandum

DATE: November 8, 1990

TO: Metro Council

FROM: *BM* Bob Martin, Solid Waste Director

RE: Recent Changes in the Metro/City of Portland Agreement
Concerning St. Johns Landfill

Section 6 of the October 17 Draft Metro/City Agreement states that within 30 days after adoption of the Agreement, the City will transfer to Metro \$908,070.48 from its End Use Fund, and \$1,000,000 from its Refuse Disposal Fund. Because of timing constraints regarding the development of a budget supplement, the City cannot transfer most of this money by the above deadline. As a result, since review by the Solid Waste Committee, the Agreement was modified to transfer the above amounts (with accrued interest) in two increments at different times.

To protect Metro's interest, Section 14, Default, was modified so that Metro may terminate this Agreement and deed back all property to the City if the City fails to make all payments contemplated by the Agreement.

In addition to the above change, several other non-substantive changes were made by the Metro General Council to clarify the language of the Agreement.

BM:gbc
COUN1108.mmo

AGREEMENT

THIS AGREEMENT is entered into by and between the CITY OF PORTLAND, OREGON ("City") and the METROPOLITAN SERVICE DISTRICT ("METRO").

RECITALS:

A. City is a municipal corporation of the State of Oregon. METRO is a METROPOLITAN Service District, established under ORS Chapter 268.

B. City owns the St. Johns Sanitary Landfill (the "Landfill"). The Landfill is located within the boundaries of METRO and is currently used by residents and commercial refuse haulers from METRO's solid waste planning area, both within and without the City limits.

C. ORS 268.310 (a) authorizes METRO to provide facilities for the disposal of solid waste.

D. Pursuant to an agreement effective June 1, 1980, and amended October 19, 1983, the City transferred operational responsibility, rate regulation, and control of the landfill operations to METRO subject to the terms of the prior agreement. That agreement was terminated and replaced with a new agreement adopted on May 21, 1986 by City Ordinance No. 158522.

E. Subject to terms and conditions set forth herein, METRO is willing to assume ownership of City owned properties described in Section 1 below which include the Landfill site. METRO is further willing to continue to lease Parcel A from the City until

such time as METRO no longer needs Parcel A for reasons other than access.

F. City adopted the St. Johns Landfill End Use Plan (End Use Plan) on June 10, 1987 by Resolution No. 34295. The End Use Plan, developed cooperatively with representatives of the St. Johns community, proposed ultimate development facilities for the Landfill. However, the proposed Closure Plan developed in 1989 requires features such as a geomembrane cover which prohibit most end uses of the Landfill for 20 years or more. Therefore, the End Use Plan is superseded by this Agreement and the Smith & Bybee Lakes Management Plan, 1990 (Lakes Plan). ~~The monies intended for the End Use Plan, as itemized in this Agreement, shall be deposited in the Smith & Bybee Lakes Trust Fund (Lakes Fund) and used for the Lakes Plan which includes projects on the landfill site.~~

G. METRO is willing to accept custody and responsibility as Trust Fund Manager of the Smith & Bybee Lakes Trust Fund (Lakes Fund) which is to be established as part of the Lakes Plan. Such responsibilities shall include conducting periodic audits of the Lakes Fund as required by State Law and METRO Council review of budgets implementing the Lakes Plan, proposed by the Smith & Bybee Lakes Management Committee established in the Lakes Plan.

H. This Agreement is entered into pursuant to ORS 190.010.110 and ORS 268.300(2) and supersedes all previous Agreements between METRO and the City regarding the ownership and operation of the Landfill.

THE PARTIES AGREE AS FOLLOWS:

1. Transfer. City hereby transfers to METRO and METRO accepts ownership of the Incinerator Road Bridge (hereinafter Landfill Bridge), Tax Lot (2), Section 36, T2N, R1W, W.M. (221.62 acres) except for that portion of Tax Lot (2) lying southwesterly of the south bank of Columbia Slough (about 40.2 acres), Tax Lot (5), Section 31, T2N, R1E, W.M. (213.22 acres) except for that separate portion of Tax Lot (5) in section 32, T2N, R1B, W.M. and in Section 5, T1N, R1E, W.M. (about 119 acres), Tax Lot (6), Section 31, T2N, R1E, W.M. (108 acres) and Tax Lot (30), Section 36, T2N, R1W, W.M. (273.6 acres) (net acreage of transferred parcels being about 657 acres) for the sale price of \$1.00. With ownership of the landfill, METRO accepts the authority and responsibility to implement the St. Johns Landfill Revised Closure and Financial Assurance Plan (hereinafter Closure Plan) as approved by the Oregon State Department of Environmental Quality (DEQ) pursuant to OAR 340-61-033, 034. The City shall not be responsible for any closure costs, including any long term operations and maintenance costs except as provided in Sections 8 and 12, below. The City agrees that METRO may fill the St. Johns Landfill to elevations necessary to comply with the Closure Plan, state, or federal requirements. METRO agrees that the property hereby transferred shall be used for park and open space purposes consistent with the Lakes Plan. ~~and that permission to construct facilities on and use the property as described in the Lakes Plan shall not be unreasonably withheld.~~ The City further transfers to METRO and METRO accepts the monies contributed from METRO to

the City and designated by the City for use in implementing the End Use Plan including monies in the City's "Refuse Disposal Fund", City "End Use Fund", and any other City funds with revenues related to Landfill closure and Lakes Plan implementation and the interest these monies have accrued. The monies to be transferred are itemized in Exhibit C attached and incorporated herein. The City shall effect the transfer of real property described in Section 1 through the execution and delivery of the deeds in the form of attached Exhibit A on or before December 31, 1990. The monies intended for the End Use Plan, as itemized in this Agreement, shall be deposited in the Smith & Bybee Lakes Trust Fund (Lakes Fund) and used for the Lakes Plan which includes projects on the landfill site.

2. Road and Utility Easement and Planning Designation.

a. The parties recognize that permanent easements for access and utilities are necessary for ownership of the landfill and related properties transferred in this Agreement. The City shall maintain for the benefit of METRO, a right of access through Parcel A to Parcels B and C to all existing roads, and the City shall maintain utilities for electricity, sewer, potable water, natural gas, and any other utility currently in use or needed for the Closure Plan so long as METRO leases Parcel A or until permanent easements have been executed. During or after closure of the landfill, the City shall execute documents granting permanent easements across Parcel A and connecting to the

Landfill Bridge providing for access consistent with development of the Smith-Bybee Lakes Management Plan. Upon receipt of each permanent easement METRO shall be responsible for maintenance of that facility.

b. METRO will actively seek any planning designation of Landfill property needed for recreational purposes proposed in the Lakes Plan.

c. The City shall, if needed to implement the Lakes Plan, provide at least 40,000 square feet of Parcel A adjacent to the Landfill Bridge for a parking area.

3. Term. This Agreement shall be effective upon execution and ~~any term remaining after transfer of property ownership~~ shall continue in effect until all ~~remaining~~ conditions contained herein have been satisfied by both parties or December 31, 2020, whichever comes first.

4. Alternative Solid Waste Management Unit Boundary.

In the event that the DEQ permits an alternative solid waste management unit boundary for the Landfill the City shall not withhold land under City ownership from inclusion in the boundary and City shall allow all necessary access to that land and agrees not to take any action inconsistent with the Closure Plan as approved by DEQ.

5. Improvements. The City at its option may, when METRO no longer leases Parcel A, take ownership of any fixed structures on Parcel A or require their removal at METRO's expense, provided that METRO may remove any scale mechanisms and associated equipment which are the property of METRO. Any

improvements or equipment currently located on Parcel A which are necessary for METRO's post-closure maintenance responsibilities shall remain and be operated and maintained by METRO until METRO no longer leases Parcel A. METRO shall maintain the Landfill Bridge or other acceptable access to the Landfill consistent with the Lakes Plan.

6. City End Use Plan; METRO Contributions. Pursuant to Section 9 of the previous City/METRO Agreement dated May 21, 1986 METRO has contributed \$.40 per ton for all waste landfilled in the Landfill since January 1, 1987 for implementation of the End Use Plan. The City has deposited these monies received from METRO in the St. Johns Landfill End Use Fund where they have drawn interest. This Fund was estimated at \$908,070.48 on June 30, 1990. The entire contents of this Fund, including all interest accrued between January 1, 1987 and date of transfer, shall be transferred to METRO. Within 30 days after this Agreement has been adopted by both City and METRO Councils, the City shall pay from the End Use Fund to METRO \$160,000. Not later than June 30, 1991 the City shall consider through the Supplemental Budget process approval of the payment of all remaining monies in the End Use Fund to METRO consistent with the transfer of duties in this Agreement. Upon adoption of a duly authorized appropriation City shall pay the balance of the End Use Fund to METRO for deposit in the Lakes Fund.

The End Use Plan shows that, beginning in 1987, the City intended to use monies in the Refuse Disposal Fund which were

obtained from Landfill lease payments for the End Use Plan. Exhibit C shows that these monies were estimated to total \$2,233,522 on June 30, 1990. The Office of the City Auditor shall issue a report verifying the actual balance and the correctness of the calculations, accounting procedures and deposit and expense amounts used in Exhibit C on or before December 31, 1990. ~~The City shall deposit \$1,000,000 of these monies into the Lakes Fund~~ Within 30 days of the adoption of this Agreement by both City and METRO Councils, the City shall pay from the Refuse Disposal Fund to METRO for use in the Lakes Fund \$479,000. Not later than June 30, 1991 the city shall consider approval of payment of \$521,000 from the Refuse Disposal Fund to METRO through the Supplemental Budget process. Upon approval, City shall pay such amount. Subject to sufficient appropriations during the City's annual budget process the estimated \$1,233,522 remaining in the Refuse Disposal Fund (or corrected amount established by the independent audit described above), plus 40% of lease payments paid by METRO to the City subsequent to June 30, 1990, plus interest earned by the Refuse Disposal Fund on these amounts, shall be deposited by the City into the Lakes Fund on or before December 31, 1993.

For each ton of waste deposited in the St. Johns Landfill after December 31, 1989, for which METRO charges a tipping fee, METRO shall contribute \$.40 per ton to the Lakes Fund. After February 1, 1991 METRO shall contribute \$.50 per ton to the Lakes Fund if METRO continues to deposit solid waste in St. Johns Landfill. This contribution shall be made on or before January

31 of each year for the tonnage deposited in the Landfill during the preceding calendar year. Failure of either City of METRO to make any payment provided in this section shall be grounds for the declaration of a default.

7. Participation of City Parks Bureau in the Lakes Plan.

METRO shall afford to the City Bureau of Parks each year a right of first refusal for an intergovernmental contract by METRO to supervise, manage and operate recreation programs and projects recommended for Trust Fund expenditures in the Lakes Plan, subject to available funds, by requesting Bureau participation prior to implementing alternative means of operations. Bureau participation shall be based on a scope of work developed by Management Committee recommendation and METRO budget approval.

8. Environmental Risks. As between METRO and City, METRO accepts responsibility for all costs for correcting conditions resulting from the use of the property as a municipal solid waste disposal landfill, including both (i) costs incurred because of required amendments to the Closure Plan pursuant to either changes in state or federal law or a determination by the appropriate federal or state agency that additional measures and costs are required by applicable federal or state laws, and (ii) costs incurred to remove or remediate hazardous wastes or hazardous materials deposited into the landfill and released into the environment subject to the following provisions:

1. METRO's duty to protect the City from liability for additional measures and costs required by applicable state or federal law to remove or remediate hazardous

wastes or hazardous materials deposited into the landfill and released into the environment is limited to holding the City harmless for claims or causes of action initiated pursuant to federal or state environmental protection law pertaining to hazardous wastes and hazardous materials and shall be limited to an amount equivalent to the maximum per capita charges per local government mandated by ORS 459.311(1). If the costs of removal or remediation exceeds such amount, METRO and the City each shall be subject to such liability and have such rights to claim contribution or to make any and all claims against each other as the law may provide and this Agreement shall not constitute a waiver of any right or defense.

2. This Agreement is not a waiver of either party's right to pursue claims for environmental liability against any third parties who generated wastes deposited in the landfill including hazardous wastes.

3. This Agreement is not a release or waiver or agreement to hold harmless City for any costs necessitated by the deposit of wastes, including hazardous wastes, in the landfill by the City in its capacity as a generator of wastes including, but not limited to, deposit of sewage sludges or other wastes produced by City facilities.

9. Indemnity; Insurance.

a. Subject to statutory and constitutional restrictions on debt, if any, METRO shall hold harmless the City, its officers and employees and shall indemnify the City, its officers and employees, for any claims or damage to property or injury to persons which may be occasioned, in whole or in part, by METRO's lease of Parcel A. operation of the Landfill.

b. METRO shall furnish and maintain such public liability and property damage insurance, either through a carrier or self insurance, including automotive coverage, as will protect the City from all claims for damage to property or bodily injury, including death, which may arise from operations under this Agreement or in connection herewith, including all operations of Subcontractors Such insurance shall provide coverage of not less than \$100,000 for bodily injury for each person, \$500,000 for each occurrence and not less than \$500,000 for property damage per occurrence. Such insurance shall be without prejudice to coverage otherwise existing therein, and shall name as additional insured the City, its officers and employees. The insurance shall further provide that the insurance shall not terminate or be canceled prior to the completion of METRO's lease of Parcel A without thirty (30) days written notice to the Auditor of the City of Portland. Notwithstanding the naming of additional insured, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to

increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insured on the policy. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon during the term of the Agreement.

c. METRO shall maintain on file with the City Auditor a certificate of insurance certifying the coverage required under subsection (b). The adequacy of the insurance shall be subject to the approval of the City Attorney. Failure to provide proof of adequate insurance, as required hereunder, or failure at any time to maintain such liability insurance shall be a default of the lease of Parcel A in this Agreement.

10. Workers' Compensation Insurance. METRO agrees that it and any subcontractor with whom it may contract during METRO's lease of Parcel A shall provide workers' compensation coverage in accordance with ORS Chapter 656, and maintain it for the duration of this lease. Failure to maintain workers' compensation insurance shall be a default of this Agreement. METRO shall assure that it and any subcontractor with whom it may contract in performance of this Agreement shall provide workers' compensation coverage for all persons employed in performing services during METRO's lease of Parcel A in accordance with ORS 656.001 to 656.794, either as:

- (1) A carrier-insured employer; or
- (2) A self-insured employer as provided by ORS 656.407,

Evidence of METRO's coverage shall be filed with the City and kept current during METRO's lease of Parcel A.

11. METRO Rental of Parcel A

a. Until December 31, 1996 or final cover has been placed on the entire solid waste disposal area, whichever comes first, METRO may at its option continue to rent Parcel A (described in Exhibit B, attached) including all roads and facilities from the City except that the public may not be permitted to dispose of mixed solid waste on Parcel A.

b. The rental amount shall be \$120,000 per year; payable in advance per invoice from the City on the anniversary date of the adoption of this agreement by METRO Council. The first year's rent shall be paid fifteen (15) days after the date of the adoption of this agreement by METRO Council. METRO shall give City 90 days notice prior to termination of the rental of Parcel A. Upon receipt of notice of termination City shall within 30 days refund to METRO the proportional part of the rent for that part of the rental year for which METRO did not rent Parcel A. For the month in which METRO Council adopts this Agreement METRO shall not be required to pay the Landfill rental payment required by the May 1986 City/METRO Agreement for any portion of the month.

12. Leachate Treatment Costs. If collection and treatment from Subareas 1, 2, or 3 is required by the Closure Permit or the DEQ the City agrees to transport and treat including pretreatment, at its own expense, all leachate from these subareas that is not prohibited from discharge into the City sewer system and which is delivered to the City sewer at Columbia Boulevard. The City shall transport and treat, at METRO's expense, all leachate from the St. Johns Landfill expansion area (See Exhibit D) collection system that is not prohibited from discharge into the City sewer system and which is delivered to the City sewer at Columbia Boulevard. It is the intent of METRO and the City that leachate from the landfill will be regulated under the City's industrial waste pretreatment program on the same basis that industrial discharges from other sources are regulated. The City agrees not to impose more stringent pretreatment requirements on leachate than are imposed on wastewaters from other sources unless required by state or federal regulations. However, METRO and the City recognize that state and federal regulatory authorities have the authority to change industrial pretreatment requirements and that such changes could have an impact on pretreatment requirements.

If the City notifies METRO that pretreatment requirements for leachate are to be increased and it is agreed between the parties (or determined by an arbitrator if the parties do not agree) that the City is imposing industrial pretreatment requirements on METRO in a more stringent manner than it is imposing requirements on other industrial dischargers, then the

City shall be responsible for any leachate pretreatment costs in excess of the costs METRO would incur if there were no differential treatment.

13. Delinquent Payments.

a. Payments due ~~either party~~ City under this Agreement shall be considered delinquent if not paid before thirty (30) days after those dates when payment is due and an invoice is received. ~~by METRO.~~ Delinquent payments shall be subject to interest calculated from the date the payment is due to the date the payment is received. Interest rates shall be the bank prime rate interest at First Interstate bank less two percent (2%) effective at the time the payment became delinquent.

b. ~~City~~ ~~Either party~~ may, at any time in its discretion, declare ~~METRO in a~~ default after a payment has become delinquent. Acceptance of late payment(s) shall not constitute a waiver of ~~City's~~ ~~the~~ right to declare ~~METRO in a~~ default for any subsequent delinquent payment.

c. ~~OFFSET: Either party may elect to offset against any delinquent amount owed to it.~~

14. Default; Remedies.

a. In the event METRO shall default on any of its obligations under this Agreement, the City shall give METRO written notice specifying the nature and the extent of the default. METRO shall have one hundred twenty (120) days from receipt of the notice to cure the default. If METRO is unable or unwilling to cure the default, the City may cure

the default and bill METRO for the reasonable costs and expenses incurred in curing the default.

b. In the event City shall default on any of its obligations under this Agreement, METRO shall give City written notice specifying the nature and extent of the default. City shall have one hundred twenty (120) days from receipt of the notice to cure the default. If City is unable or unwilling to cure the default, METRO may cure the default and deduct the reasonable costs and expenses incurred in curing the default from the payments required to be made by METRO under Section 11, METRO Rental of Parcel A.

c. The remedies specified in subsections (a) and (b) shall be in addition to any other remedies available under applicable law. Other remedies may include specific performance and an action to recover all damages caused by the default, including but not limited to unpaid amounts and attorneys' fees relating to the default.

d. As an additional remedy for METRO if the City shall default in its obligation to make all payments contemplated to be made by City to METRO as contributions to be made into the Lakes Fund, METRO may, after giving City 180 days written notice of its intent to do so, terminate this Agreement by deeding to the City all property transferred by City to METRO pursuant to this Agreement. In such event, this Agreement shall be of no effect.

15. Termination. This Agreement shall terminate upon the occurrence of any of the following events:

(b) in the event that METRO dissolves or terminates its existence without a successor with Responsibility and authority for regional solid waste disposal.

16. Approvals. Any approval required of the City or METRO under this Agreement shall not be unreasonably withheld.

17. Prior Agreements Superseded. All prior agreements between the City and METRO relating to the operation and closure of the Landfill are hereby terminated and shall be entirely superseded by the terms of this Agreement.

This Agreement is authorized by City Ordinance No. _____
METROPOLITAN SERVICE DISTRICT CITY OF PORTLAND, OREGON

By _____
Executive Officer

By _____
Commissioner of Public Works

By _____
City Auditor

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By _____
Metro General Counsel

By _____
City Attorney

DON:JC
NOVEMBER 8, 1990
CTYMETFI.ACR

Exhibit A

**PROPERTY DEEDS
TEMPORARILY REMOVED**

PARCEL "A"

A tract of land in Sec. 36, T2N, R1W, W.M. described as follows by Distances, Bearing and Coordinates on the Oregon Coordinate System North Zone. Beginning at a point (Coord. N 717565.1 E 1422412.5) on the Easterly line of the James Loomis D.L.C. S $20^{\circ} 45' 07''$ E 466.8' from the N.E. Cor. of the James Loomis D.L.C. (Coord. N 718001.7, E 1422247.1) said beginning point being on the Southerly bank of the Columbia Slough, thence S $20^{\circ} 45' 07''$ E 1216'.2 along the Easterly line of James Loomis D.L.C. and the Easterly line of Ramsey Villa Acres (a recorded Plat) to a point (Coord. N 716427.8, E 1422843.5), said point being the most Easterly Cor. of a 33' road on the Southeasterly line of Ramsey Villa Acres and apart of said Plat, thence S $61^{\circ} 48' 04''$ W 659.4 along the Southerly line of said 33' road to a point on the Northeasterly Right of Way of Shipyard Access Road 1943 (Coord. N 716116.2, E 1422262.4), thence S $30^{\circ} 8' 41''$ E 71.5' along the Northeasterly Right of Way line of Shipyard Access Road 1943 to a point (Coord. N 716054.4 E 1422298.3) at the beginning of a curve to the left, thence on a curve to the left along the Northerly Right of Way line of Shipyard Access Road 1943 (curve radius of 1392.7, central angle $170^{\circ} 00'$, chord bearing S $38^{\circ} 51' 34''$ E, arc length 413.6) to a point (Coord. N 715733.5, E 1422556.8), said point being the most Westerly Cor. of that tract of land transferred to Merta J. and Oscar F. Mason by Deed dated 3/26/47 and recorded in Book 1156, page 363, thence N $47^{\circ} 45' 53''$ E 1376.2' along the Westerly line and the Westerly line extended of the said Mason Tract to a point (Coord. N 716658.5, E 1423575.8) on the South bank of Columbia Slough, thence Northwesterly along the South bank of Columbia Slough to the point of beginning. Tract contains 18.2 acres.

St. John Landfill End Use Fund

August 1990

City Council Resolution No. 34295, June 10, 1987, which adopted the St. Johns Landfill End Use Plan directed the Bureau of Environmental Services (BES) to "... pursue implementation of this [End Use] Plan including the establishment of a dedicated End Use Plan fund, ...". Ordinance No. 160973 (July 23, 1988) created the St. Johns Landfill End Use by adding Section 5.04.310 to the City Code.

Section 9 of the 1986 City/METRO contract requires that METRO contribute \$.40 per ton of waste placed in the Landfill from 1987 until closure (expected in 1991) for the End Use Plan. This tonnage fee is to be paid at the end of each calendar year. The correct amounts for 1987, 88 and 89 have been placed in the End Use fund and continue to draw interest. None of these monies have ever been spent and the June 30, 1990 balance was \$908,070.48. this the approved End Use Plan.

Since 1980 METRO has been making monthly Landfill lease payments to the City. These payments have been deposited in the Refuse Disposal Fund (RDF). The RDF which received almost all of its money from Landfill lease payments between 1980 and 1987 had grown to about \$1,660,000 in 1987. Pages S-8, S-9, B-15, B-16 and B-17 of the St. Johns Landfill End Use Plan, May 1987, show that \$1,500,000 of the 1987 RDF balance plus a portion of the lease payments from 1987 until closure were to be placed in the End Use Fund and draw interest. Calculation worksheets prepared for but not included in the published End Use Plan show that 40% of the lease payments from 1987 on were to be placed in the End Use Fund.

The majority of the 1987 End Use Plan is no longer feasible for technical and environmental reasons which will not be discussed here. The landfill gas project was not feasible so there is no gas revenue. However, the METRO CONTRIBUTIONS shown in the center column of the table on page B-16 have come in and have been somewhat larger than expected. These amounts are the sums of estimates of \$.40 per ton money (explained above) and 40% of lease payment money for each year (see above mentioned calculation worksheets).

All lease payment money has remained in and continues to be deposited in the RDF. Thus, there is no official accounting of the lease payment money intended for End Use. The RDF draws interest, receives monies from other sources and is used for other expenditures. However, with a few reasonable assumptions the amount of lease payment money that was intended for End Use purposes and the interest it has earned can be readily calculated.

Agreement 901-438 Exhibit C

Assumptions for calculation of lease payment money and interest intended for St. Johns Landfill End Use Plan:

1. \$1,500,000 deposited in fund on January 1, 1987.
2. 40% of each monthly lease payment deposited in the fund at the end of the month.
3. Interest for each month is calculated by taking 1/12th of monthly interest rate for all City funds (obtained from City Treasurer's office) and multiplying by previous month's balance.
5. End Use expenses (expenses charged to BES Project No. 4296 from 1986 to June 30, 1990 as shown in the City's Financial Management System (FMS) are accumulated for the fiscal year and subtracted from the fund balance on June 30 of each fiscal year.

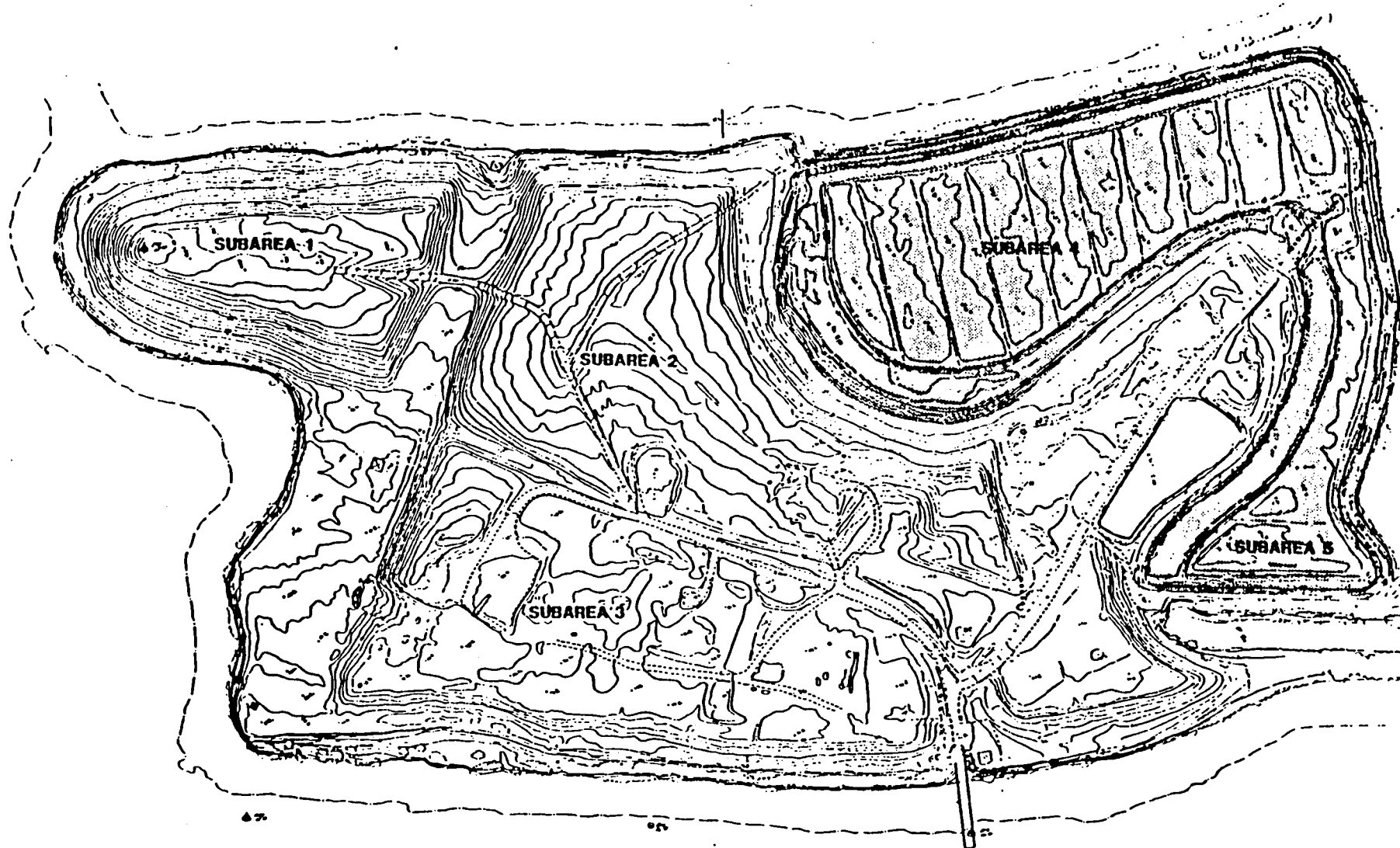
The table on the following page shows the results of the above assumptions with amount of lease payments plus interest intended for the St. Johns Landfill End Use Plan to be \$2,233,522.

Prepared by: Dan Miller
Bureau of Environmental Services
City of Portland

LEASE PAYMENT MONEY INTENDED FOR ST. JOHNS LANDFILL END USE PLAN
PLUS INTEREST.

1,500,000 DEPOSITED ON JAN 1, 1987

	SJL LEASE	40%	INT. RATE	INT. AMOUNT	END USE EXPENSE	FUND BAL BY MONTH
Jan-87	24,037	9,615	5.92%	7,400		1,517,015
Feb-87	24,037	9,615	5.90%	7,459		1,534,088
Mar-87	24,037	9,615	5.97%	7,632		1,551,335
Apr-87	24,037	9,615	6.08%	7,860		1,568,810
May-87	24,037	9,615	6.54%	8,550		1,586,975
Jun-87	25,755	10,302	6.86%	9,072	139,522	1,466,827
Jul-87	25,755	10,302	6.76%	8,263		1,485,392
Aug-87	25,755	10,302	6.79%	8,405		1,504,099
Sep-87	25,755	10,302	6.90%	8,649		1,523,050
Oct-87	25,755	10,302	7.27%	9,227		1,542,579
Nov-87	25,755	10,302	7.56%	9,718		1,562,599
Dec-87	25,755	10,302	7.54%	9,818		1,582,719
Jan-88	25,755	10,302	7.46%	9,839		1,602,861
Feb-88	25,755	10,302	7.53%	10,058		1,623,221
Mar-88	25,755	10,302	8.62%	11,660		1,645,183
Apr-88	25,755	10,302	6.88%	9,432		1,664,917
May-88	25,755	10,302	7.01%	9,726		1,684,945
Jun-88	27,711	11,084	7.32%	10,278	39,832	1,666,475
Jul-88	27,711	11,084	7.43%	10,318		1,687,878
Aug-88	27,711	11,084	7.73%	10,873		1,709,835
Sep-88	27,711	11,084	8.09%	11,527		1,732,446
Oct-88	27,711	11,084	8.16%	11,781		1,755,312
Nov-88	27,711	11,084	8.37%	12,243		1,778,639
Dec-88	27,711	11,084	8.72%	12,925		1,802,648
Jan-89	27,711	11,084	8.94%	13,430		1,827,163
Feb-89	27,711	11,084	9.08%	13,826		1,852,072
Mar-89	27,711	11,084	9.18%	14,168		1,877,325
Apr-89	27,711	11,084	9.43%	14,753		1,903,162
May-89	27,711	11,084	9.63%	15,273		1,929,520
Jun-89	27,259	10,904	9.64%	15,500	885	1,955,038
Jul-89	27,259	10,904	9.40%	15,314		1,981,256
Aug-89	27,259	10,904	9.07%	14,975		2,007,135
Sep-89	27,259	10,904	8.91%	14,903		2,032,942
Oct-89	27,259	10,904	8.84%	14,976		2,058,821
Nov-89	27,259	10,904	8.59%	14,738		2,084,463
Dec-89	27,259	10,904	8.55%	14,852		2,110,218
Jan-90	27,259	10,904	8.51%	14,965		2,136,087
Feb-90	27,259	10,904	8.43%	15,006		2,161,996
Mar-90	27,259	10,904	8.43%	15,188		2,188,088
Apr-90	27,259	10,904	8.48%	15,462		2,214,454
May-90	27,259	10,904	8.50%	15,686		2,241,043
Jun-90	27,500	11,000	8.61%	16,079	34,600	2,233,522



 Expansion area
St. Johns Landfill, 1983



METRO

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

Memorandum

SOLID WASTE COMMITTEE
October 16, 1990
Agenda Item No. 4

DATE: September 28, 1990

TO: Tom De Jardin, Chair
Council Solid Waste Committee

FROM: *BM* Bob Martin, Director of Solid Waste

RE: ST. JOHNS LANDFILL AGREEMENT

I am responding to Karla Forsythe's September 12, 1990 memorandum concerning council questions about the St. Johns Landfill agreement.

QUESTION: What is the timing relationship between the closure of the landfill and The Smith/Bybee Lakes Plan?

ANSWER: The Smith and Bybee Lakes Management Plan was approved in concept through Resolution No. 90-1282 on June 28, 1990. there will be a first reading of the ordinance to adopt the Smith and Bybee Lakes Management Plan on October 11th followed by a hearing with the Intergovernmental Relations Committee on October 23. Final adoption of the Lakes Management Plan is scheduled for November 8, 1990 in conjunction with adoption of the new METRO/City of Portland Landfill agreement. The Smith/Bybee Lakes Plan can be implemented when approved by the City and METRO Councils.

Although St. Johns Landfill would "close" i.e. stop accepting waste as a general purpose landfill in February 1991, the actual closure improvement construction process is not expected to be complete until 1995. Implementation of The Smith/Bybee Lake Plan can and should proceed concurrently with landfill closure.

QUESTION: What are the consequences for end-use management if METRO does not own the landfill?

ANSWER: Under the current agreement the City has responsibility for end-use management of the landfill. If the landfill ownership was retained by the City, METRO would have to obtain permission from the city to implement closure improvements, post closure maintenance and monitoring, and any changes to the above activities. Conflicts between closure, post closure needs and end-use desires could arise. In addition, METRO, not the City, is responsible to

DEQ for landfill closures so METRO could be caught between future conflicting policies of the City and DEQ. If METRO developed methane gas recovery there would be a three-way contract among the City, METRO, and the gas developer. This process is cumbersome, it could delay necessary actions, and could become entangled in changing political relationships between the City and METRO. Ownership of the landfill gives METRO the freedom to pursue prompt and effective steps to close the landfill and maintain and monitor the landfill after closure.

Finally, without adequate control of the property and the end-use plan it is conceivable that future property management decision might jeopardize the integrity of the closure structures resulting in increased liability for all involved.

QUESTION: Which METRO department ultimately will be taking the lead of post-closure uses?

ANSWER: The Solid Waste Department would be responsible for maintaining the landfill after closure and monitoring its impact on the environment. The Planning and Development Department would be responsible for coordination, implementation of the SMITH/BYBEE LAKE PLAN including the trust fund and end-use of the landfill.

QUESTION: How does the potential for disposal of hazardous waste impact the ownership decision? To what extent is METRO legally responsible for the landfill, independent of potential ownership?

ANSWER: Under the City/METRO agreement, METRO assumes the responsibility and potential liability of ownership of the St. Johns Landfill. Although the closure improvements currently under design are themselves intended to prevent ground and surface water contamination, it is possible that additional actions could be required in the future.

METRO already has responsibility for required future remedial action as operator of St. Johns Landfill. The U. S. Environmental Protection Agency (EPA) has published interim guidelines for Federally required remedial actions involving municipal solid waste disposal sites. The guidelines state that "All parties that are owners/operators of facilities will generally be notified as potentially responsible." Thus, EPA would consider METRO a potentially responsible party whether or not it owned the landfill. Our control of the property and its future uses can reduce the risk of encountering future remediation that can arise from use conflicts.

QUESTION: If METRO assumes ownership, is it possible to sever potential liability so that the City retains some legal responsibility?

ANSWER: Yes. Should additional remedial action be required, METRO intends to collect any necessary funds for additional remedial action from the solid waste disposal rates up to the maximum per capita charges per year allowed in ORS 459.311. METRO and the City agree that METRO's duty to protect the City from liability for possible hazardous material remedial action shall be limited to the maximum per capita charges mandated by ORS 459.311 (1).

QUESTION: Does the potential tax cap raise issues which impact the ownership decision, given the City's limited ability to raise money except through property taxes?

ANSWER: Under the agreement the City would not be protected by METRO from liability beyond the maximum per capita charges mandated by ORS 459.311 (1). If the city were unable to raise sufficient money for remedial action METRO would likely be expected by the region to collect the funds and carry out any future state or federally required remedial actions at the St. Johns Landfill whether or not METRO owned the landfill.

QUESTION: What is the likelihood that after closure, METRO would be required to take additional action to meet federal requirements?

ANSWER: The primary closure improvement is a cap over the landfill which will interfere with contaminated water (leachate) generation by blocking future rainwater percolation into the solid waste. This is recognized method being used both for many municipal landfill closures and also at federal superfund sites. There is a remote possibility that METRO could some day have to take additional action to control contamination if the cap is less effective than intended. Based on the large volume of information known so far, it is expected that the cost would be far less than the cost of the cap. Nothing known from the extensive testing which has been done so far has resulted in a hazard ranking score that would even come close to stimulating federally mandated remediation.

QUESTION: What are the implications of this decision for METRO's relationship with private landfills in the region?

ANSWER: It is not expected that METRO's ownership of St. Johns Landfill would cause any change in METRO's current relationship as a fellow landfill operator with private landfills in the region. Rossman's landfill in Oregon City

was never owned or operated by Metro so does not raise issues regarding Metro ownership or closure, which are the responsibility of the owner.

QUESTION: How can the review process be structured to allow the Council ample time to review the various ownership options in detail?

ANSWER: There are two options. Under the first option METRO continues to lease the landfill which is owned by the City of Portland, Under the second option METRO acquires ownership of the landfill and adjacent city property. It would appear that the Council's current review process is adequate to review these options. Currently a joint METRO Council/City Council Meeting is scheduled for November 8. there is time for at least two Solid Waste Committee meetings and at least one full Council Meeting before this date. Additional meetings could be scheduled by the Council.

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 90-1314 FOR THE PURPOSE
OF APPROVING AN INTERGOVERNMENTAL AGREEMENT TO ASSUME
CUSTODY OF CERTAIN PUBLIC MONIES AND OWNERSHIP OF THE
ST. JOHNS LANDFILL AND CERTAIN ADJACENT LAND FROM THE
CITY OF PORTLAND

Date: August 17, 1990

Presented by: Bob Martin
Jim Watkins

PROPOSED ACTION:

Approve Resolution No. 90-1314, which authorizes Metro to enter into Intergovernmental Agreement No. 901-438 (attached) between Metro and the City of Portland.

FACTUAL BACKGROUND AND ANALYSIS

Currently, Metro operates the St. Johns Landfill under a rental agreement with the City of Portland that was executed in May 1986. Metro must operate and close the landfill pursuant to an Operations Plan taken from the 1985 Metro/BFI Contract. Metro must pay a \$2 per ton penalty if it disposes of more than a specified quantity of waste per year. Metro must cease to accept solid waste at the St. Johns Landfill in February 1991. Metro pays rent to the City (currently approximately \$330,000 per year). Metro also pays \$0.40 per ton (approximately \$200,000 during the 1990 calendar year) for end use of the landfill. Metro must set aside funds for closure and post-closure maintenance.

The Agreement terminates December 31, 1991 or when the landfill is fully utilized. At termination, Metro must leave the site with control measures acceptable to the City. After termination, Metro is responsible for control and discharge of leachate from the 1980 expansion area of the landfill. The City is responsible for control and discharge of leachate from other areas of the landfill. The City is responsible for unacceptable conditions resulting from hazardous waste deposited while under City control. The Agreement states that Metro is responsible for unacceptable conditions resulting from hazardous waste deposited while under Metro control and City ownership.

The current City/Metro Agreement is no longer adequate because it is based upon a closure concept that is now obsolete in light of the Revised Closure and Financial Assurance Plan reviewed by the Metro Council in October 1989, and directives from the Oregon Department of Environmental Quality (DEQ). For example, the mandated final contours in the Agreement do not provide adequate slopes for drainage. Although Metro operates the landfill under a DEQ permit in Metro's name, the obsolete Agreement gives the City the power to delay or veto efforts by Metro to make changes

implementing the Revised Closure Plan or DEQ requirements. The present agreement also contains no clear statement concerning responsibility for post-closure maintenance costs. To remedy these inadequacies, Metro and the City began negotiations from which resulted the attached Metro/City of Portland Intergovernmental Agreement No. 901-438.

Under this Agreement, Metro assumes ownership of the 776 acre City-owned parcel, which includes the St. Johns Landfill site northeast of Columbia Slough, and the City property in the wetlands immediately adjacent to the landfill.

Metro assumes responsibility for a trust fund made up of approximately \$3.1 million of Metro Lease and End-use Payments which were originally intended by the City for implementation of the City's 1987 St. Johns Landfill End-use Plan. Metro takes custody of \$1.9 million 30 days after the Agreement is adopted. By January 31, 1993, Metro assumes custody of the remaining \$1.2 million plus interest. Under the proposed Agreement, this trust fund, including interest, must be used by Metro to implement the 1990 Smith and Bybee Lakes Management Plan, which is a land use plan for St. Johns Landfill end-use and management of the surrounding wetlands. Metro affords the City of Portland Parks Bureau a right of first refusal of a contract to implement recreation programs under the Smith and Bybee Lakes Management Plan. This Agreement supersedes the 1987 City End-Use Plan.

Metro would continue to contribute \$0.40 to the trust fund for every ton of solid waste incorporated into the St. Johns Landfill. This would add approximately \$200,000 to the trust fund as of February 1991. If limited purpose landfill waste is deposited after February 1, 1991, this contribution would increase to a minimum of \$0.50 per ton.

Metro would continue to rent for \$120,000 per year City property southwest of the Columbia Slough for scalehouse operation until this property is no longer needed for any purpose but access. As part of the Agreement, the City would grant to Metro at no cost a permanent easement through this property needed for access and utilities on Metro land.

Under this Agreement, Metro assumes the responsibility and potential liability of ownership of the St. Johns Landfill. Although the closure improvements currently under design are themselves intended to prevent ground and surface water contamination, it is possible that additional action could be required in the future.

In reality Metro already has responsibility for required future remedial action as operator of St. Johns Landfill. The U.S. Environmental Protection Agency (EPA) has published interim guidelines for federally-required remedial actions involving municipal solid waste disposal sites. The guidelines state that "All parties that are owners/operators of facilities will

generally be notified as potentially responsible." Thus, EPA would consider Metro a potentially responsible party whether or not it owned the landfill.

Should additional remedial action be required, Metro intends to collect any necessary funds for additional remedial action from the solid waste disposal rates up to the maximum per capita charges per year allowed in ORS 459.311. Metro and the City agree that Metro's duty to protect the City from liability for possible hazardous material remedial action shall be limited to maximum per capita charges mandated by ORS 459.311(1). As a practical matter, Metro would likely be expected by the region to collect the funds and carry out any future state- or federally-required remedial actions at the St. Johns Landfill whether or not Metro owned the landfill.

BUDGET IMPACT

By signing this Agreement Metro would be assuming the City's estimated \$5.5 million post-closure maintenance costs. Metro will acquire \$1.9 million within 30 days after the agreement is adopted by both parties, and \$1.2 million more plus interest by December 31, 1993. Under the Smith and Bybee Lakes Management Plan, this money would become an endowment fund from which all interest and principal would be used by Metro as Trust Fund Manager to implement the plan. Also, Metro would continue to allocate to this fund the amount per ton specified in the Agreement, as long as solid waste is disposed of in the landfill. Since the current budget and disposal rates are based on a \$0.40 per ton allocation, a budget adjustment and a rate increase adjustment may be required if the allocation increases to \$0.50 per ton. Metro would allocate money from the trust fund for projects recommended by a Management Committee of interested parties, including Metro.

When this Agreement is signed, Metro's rent for the St. Johns Landfill (Parcel A) drops to \$120,000 per year which is due within 15 days of the adoption of this Agreement. There is sufficient money budgeted for this purpose.

Whether or not this Agreement were signed, the St. Johns Landfill Reserve Account would continue to fund closure, post-closure care, and mitigation of environmental impacts caused by the St. Johns Landfill (Metro Ordinance No. 89-300).

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends adoption of Resolution No. 90-1314.



METRO

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

Memorandum

DATE: October 17, 1990

TO: Karla Forsythe, Council Analyst

FROM: Dennis O'Neil, Senior Solid Waste Planner *DO*

RE: Latest Draft of Metro/City of Portland Agreement Concerning St. Johns Landfill

Attached is the latest draft, dated October 17, 1990, of the Agreement between Metro and the City of Portland concerning St. Johns Landfill. This draft contains added language (highlighted) in Section 1, page 3. This language refers to a 119 acre parcel of City-owned wetland along the east edge of Smith Lake. This parcel is physically separate from the City-owned wetland surrounding the St. Johns Landfill. The City desires to retain ownership of this parcel. Metro negotiators agreed because it is not adjacent to the landfill. This language change makes it clear that this parcel is not included in the property transfer. Thus, the total acreage transferred to Metro is reduced from 776 acres (presented in the staff report) to 657 acres. This change was proposed by staff when the Council Solid Waste Committee discussed the Agreement on October 16, 1990.

Attachment

DON:jc

AGREEMENT

THIS AGREEMENT is entered into by and between the CITY OF PORTLAND, OREGON ("City") and the METROPOLITAN SERVICE DISTRICT ("METRO").

RECITALS:

A. City is a municipal corporation of the State of Oregon. METRO is a METROPOLITAN Service District, established under ORS Chapter 268.

B. City owns the St. Johns Sanitary Landfill (the "Landfill"). The Landfill is located within the boundaries of METRO and is currently used by residents and commercial refuse haulers from METRO's solid waste planning area, both within and without the City limits.

C. ORS 268.310 (a) authorizes METRO to provide facilities for the disposal of solid waste.

D. Pursuant to an agreement effective June 1, 1980, and amended October 19, 1983, the City transferred operational responsibility, rate regulation, and control of the landfill operations to METRO subject to the terms of the prior agreement. That agreement was terminated and replaced with a new agreement adopted on May 21, 1986 by City Ordinance No. 158522.

E. Subject to terms and conditions set forth herein, METRO is willing to assume ownership of City owned properties described in Section 1 below which include the Landfill site. METRO is further willing to continue to lease Parcel A from the City until

such time as METRO no longer needs Parcel A for reasons other than access.

F. City adopted the St. Johns Landfill End Use Plan (End Use Plan) on June 10, 1987 by Resolution No. 34295. The End Use Plan, developed cooperatively with representatives of the St. Johns community, proposed ultimate development facilities for the Landfill. However, the proposed Closure Plan developed in 1989 requires features such as a geomembrane cover which prohibit most end uses of the Landfill for 20 years or more. Therefore, the End Use Plan is superseded by this Agreement and the Smith & Bybee Lakes Management Plan, 1990 (Lakes Plan). The monies intended for the End Use Plan, as itemized in this Agreement, shall be deposited in the Smith & Bybee Lakes Trust Fund (Lakes Fund) and used for the Lakes Plan which includes projects on the landfill site.

G. METRO is willing to accept custody and responsibility as Trust Fund Manager of the Smith & Bybee Lakes Trust Fund (Lakes Fund) which is to be established as part of the Lakes Plan. Such responsibilities shall include conducting periodic audits of the Lakes Fund as required by State Law and METRO Council review of budgets implementing the Lakes Plan, proposed by the Smith & Bybee Lakes Management Committee established in the Lakes Plan.

H. This Agreement is entered into pursuant to ORS 190.010.110 and ORS 268.300(2) and supersedes all previous Agreements between METRO and the City regarding the ownership and operation of the Landfill.

THE PARTIES AGREE AS FOLLOWS:

1. Transfer. City hereby transfers to METRO and METRO accepts ownership of the Incinerator Road Bridge (hereinafter Landfill Bridge), Tax Lot (2), Section 36, T2N, R1W, W.M. (221.62 acres) except for that portion of Tax Lot (2) lying southwesterly of the south bank of Columbia Slough (about 40.2 acres), Tax Lot (5), Section 31, T2N, R1E, W.M. (213.22 acres) except for that separate portion of Tax Lot (5) in section 32, T2N, R1B, W.M. and in Section 5, T1N, R1E, W.M. (about 119 acres), Tax Lot (6), Section 31, T2N, R1E, W.M. (108 acres) and Tax Lot (30), Section 36, T2N, R1W, W.M. (273.6 acres) (net acreage of transferred parcels being about 657 acres) for the sale price of \$1.00. With ownership of the landfill, METRO accepts the authority and responsibility to implement the St. Johns Landfill Revised Closure and Financial Assurance Plan (hereinafter Closure Plan) as approved by the Oregon State Department of Environmental Quality (DEQ) pursuant to OAR 340-61-033, 034. The City shall not be responsible for any closure costs, including any long term operations and maintenance costs except as provided in Sections 8 and 12, below. The City agrees that METRO may fill the St. Johns Landfill to elevations necessary to comply with the Closure Plan, state, or federal requirements. METRO agrees that the property hereby transferred shall be used for park and open space purposes consistent with the Lakes Plan and that permission to construct facilities on and use the property as described in the Lakes Plan shall not be unreasonably withheld. The City further transfers

to METRO and METRO accepts the monies contributed from METRO to the City and designated by the City for use in implementing the End Use Plan including monies in the City's "Refuse Disposal Fund", City "End Use Fund", and any other City funds with revenues related to Landfill closure and Lakes Plan implementation and the interest these monies have accrued. The monies to be transferred are itemized Exhibit C attached and incorporated herein. The City shall effect the transfer of real property described in Section 1 through the execution and delivery of the deeds in the form of attached Exhibit A on or before December 31, 1990.

2. Road and Utility Easement and Planning Designation.

a. The parties recognize that permanent easements for access and utilities are necessary for ownership of the landfill and related properties transferred in this Agreement. The City shall maintain for the benefit of METRO, a right of access through Parcel A to Parcels B and C to all existing roads, and the City shall maintain utilities for electricity, sewer, potable water, natural gas, and any other utility currently in use or needed for the Closure Plan so long as METRO leases Parcel A or until permanent easements have been executed. During or after closure of the landfill, the City shall execute permanent easements across Parcel A and connecting to the Landfill Bridge providing for access consistent with development of the Smith-Bybee Lakes Management Plan. Upon receipt of each

permanent easement METRO shall be responsible for maintenance of that facility.

b. METRO will actively seek any planning designation of Landfill property needed for recreational purposes proposed in the Lakes Plan.

c. The City shall, if needed to implement the Lakes Plan, provide at least 40,000 square feet of Parcel A adjacent to the Landfill Bridge for a parking area.

3. Term. This Agreement shall be effective upon execution and any term remaining after transfer of property ownership shall continue until all remaining conditions contained herein have been satisfied by both parties or December 31, 2020, whichever comes first.

4. Alternative Solid Waste Management Unit Boundary. In the event that the DEQ permits an alternative solid waste management unit boundary for the Landfill the City shall not withhold land under City ownership from inclusion in the boundary.

5. Improvements. The City at its option may, when METRO no longer leases Parcel A, take ownership of any fixed structures on Parcel A or require their removal at METRO's expense, provided that METRO may remove any scale Mechanisms and associated equipment which are the property of METRO. Any improvements or equipment currently located on Parcel A which are necessary for METRO's post-closure maintenance responsibilities shall remain and be operated and maintained by METRO until METRO

no longer leases Parcel A. METRO shall maintain the Landfill Bridge or other acceptable access to the Landfill consistent with the Lakes Plan.

6. City End Use Plan; METRO Contributions. Pursuant to Section 9 of the previous City/METRO Agreement METRO has contributed \$.40 per ton for all waste landfilled in the Landfill since January 1, 1987 for implementation of the End Use Plan. The City has deposited these monies received from METRO in the St. Johns Landfill End Use Fund where they have drawn interest. This Fund was estimated at \$908,070.48 on June 30, 1990. The entire contents of this Fund, including all interest accrued between January 1, 1987 and date of transfer, shall be transferred to METRO within 30 days after this Agreement has been adopted by both City and METRO Councils. The End Use Plan shows that, beginning in 1987, the City intended to use monies in the Refuse Disposal Fund which were obtained from Landfill lease payments for the End Use Plan. Exhibit C shows that these monies were estimated to total \$2,233,522 on June 30, 1990. The Office of the City Auditor shall issue a report verifying the correctness of the calculations, accounting procedures and deposit and expense amounts used in Exhibit C on or before December 31, 1990. The City shall deposit \$1,000,000 of these monies into the Lakes Fund within 30 days of the adoption of this Agreement by both City and METRO Councils or within 30 days of the creation of the Lakes Fund whichever occurs later. Subject to sufficient appropriations during the City's

annual budget process the estimated \$1,233,522 remaining in the Refuse Disposal Fund (or corrected amount established by the independent audit described above), plus 40% of lease payments paid by METRO to the City subsequent to June 30, 1990, plus interest earned by the Refuse Disposal Fund on these amounts, shall be deposited by the City into the Lakes Fund on or before December 31, 1993.

For each ton of waste deposited in the St. Johns Landfill after December 31, 1989, for which METRO charges a tipping fee, METRO shall contribute \$.40 per ton to the Lakes Fund. After February 1, 1991 METRO shall contribute \$.50 per ton to the Lakes Fund if METRO continues to deposit solid waste in St. Johns Landfill. This contribution shall be made on or before January 31 of each year for the tonnage deposited in the Landfill during the preceding calendar year.

7. Participation of City Parks Bureau in the Lakes Plan.

METRO shall afford to the City Bureau of Parks each year a right of first refusal for an intergovernmental contract by METRO to supervise, manage and operate recreation programs and projects recommended for Trust Fund expenditures in the Lakes Plan, subject to available funds, by requesting Bureau participation prior to implementing alternative means of operations. Bureau participation shall be based on a scope of work developed by Management Committee recommendation and METRO budget approval.

8. Environmental Risks. As between METRO and City, METRO accepts responsibility for all costs for correcting conditions

resulting from the use of the property as a municipal solid waste disposal landfill, including both (i) costs incurred because of required amendments to the Closure Plan pursuant to either changes in state or federal law or a determination by the appropriate federal or state agency that additional measures and costs are required by applicable federal or state laws, and (ii) costs incurred to remove or remediate hazardous wastes or hazardous materials deposited into the landfill and released into the environment subject to the following provisions:

1. METRO's duty to protect the City from liability for additional measures and costs required by applicable state or federal law to remove or remediate hazardous wastes or hazardous materials deposited into the landfill and released into the environment is limited to holding the City harmless for claims or causes of action initiated pursuant to federal or state environmental protection law pertaining to hazardous wastes and hazardous materials and shall be limited to an amount equivalent to the maximum per capita charges per local government mandated by ORS 459.311(1). If the costs of removal or remediation exceeds such amount, METRO and the City each shall be subject to such liability and have such rights to claim contribution or to make any and all claims against each other as the law may provide and this Agreement shall not constitute a waiver of any right or defense.

2. This Agreement is not a waiver of either party's right to pursue claims for environmental liability against any third parties who generated wastes deposited in the landfill including hazardous wastes.
3. This Agreement is not a release or waiver or agreement to hold harmless City for any costs necessitated by the deposit of wastes, including hazardous wastes, in the landfill by the City in its capacity as a generator of wastes including, but not limited to, deposit of sewage sludges or other wastes produced by City facilities.

9. Indemnity; Insurance.

a. Subject to statutory and constitutional restrictions on debt, if any, METRO shall hold harmless the City, its officers and employees and shall indemnify the City, its officers and employees, for any claims or damage to property or injury to persons which may be occasioned, in whole or in part, by METRO's lease of Parcel A. operation of the Landfill.

b. METRO shall furnish and maintain such public liability and property damage insurance, either through a carrier or self insurance, including automotive coverage, as will protect the City from all claims for damage to property or bodily injury, including death, which may arise from operations under this Agreement or in connection herewith, including all operations of Subcontractors Such insurance shall provide coverage of not less than \$100,000 for bodily

injury for each person, \$500,000 for each occurrence and not less than \$500,000 for property damage per occurrence. Such insurance shall be without prejudice to coverage otherwise existing therein, and shall name as additional insured the City, its officers and employees. The insurance shall further provide that the insurance shall not terminate or be cancelled prior to the completion of METRO's lease of Parcel A without thirty (30) days written notice to the Auditor of the City of Portland. Notwithstanding the naming of additional insured, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insured on the policy. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon during the term of the Agreement.

c. METRO shall maintain on file with the City Auditor a certificate of insurance certifying the coverage required under subsection (b). The adequacy of the insurance shall be subject to the approval of the City Attorney. Failure to provide proof of adequate insurance, as required hereunder, or failure at any time to maintain such liability insurance

shall be a default of the lease of Parcel A in this Agreement.

10. Workers' Compensation Insurance. METRO agrees that it and any subcontractor with whom it may contract during METRO's lease of Parcel A shall provide workers' compensation coverage in accordance with ORS Chapter 656, and maintain it for the duration of this lease. Failure to maintain workers' compensation insurance shall be a default of this Agreement. METRO shall assure that it and any subcontractor with whom it may contract in performance of this Agreement shall provide workers' compensation coverage for all persons employed in performing services during METRO's lease of Parcel A in accordance with ORS 656.001 to 656.794, either as:

- (1) A carrier-insured employer; or
- (2) A self-insured employer as provided by ORS 656.407,

Evidence of METRO's coverage shall be filed with the City and kept current during METRO's lease of Parcel A.

11. METRO Rental of Parcel A

a. Until December 31, 1996 or final cover has been placed on the entire solid waste disposal area, whichever comes first, METRO may at its option continue to rent Parcel A including all roads and facilities from the City except that the public may not be permitted to dispose of mixed solid waste on Parcel A.

b. The rental amount shall be \$120,000 per year, payable in advance per invoice from the City on the anniversary date of the adoption of this agreement by METRO Council. The first year's rent shall be paid fifteen (15) days after the date of the adoption of this agreement by METRO Council. METRO shall give City 90 days notice prior to termination of the rental of Parcel A. Upon receipt of notice of termination City shall within 30 days refund to METRO the proportional part of the rent for that part of the rental year for which METRO did not rent Parcel A. For the month in which METRO Council adopts this Agreement METRO shall not be required to pay the Landfill rental payment required by the May 1986 City/METRO Agreement for any portion of the month.

12. Leachate Treatment Costs. If collection and treatment from Subareas 1, 2, or 3 is required by the Closure Permit or the DEQ the City agrees to transport and treat including pretreatment, at its own expense, all leachate from these subareas that is not prohibited from discharge into the City sewer system and which is delivered to the City sewer at Columbia Boulevard. The City shall transport and treat, at METRO's expense, all leachate from the St. Johns Landfill expansion area (See Exhibit D) collection system that is not prohibited from discharge into the City sewer system and which is delivered to the City sewer at Columbia Boulevard. It is the intent of METRO and the City that leachate from the landfill will be regulated

under the City's industrial waste pretreatment program on the same basis that industrial discharges from other sources are regulated. The City agrees not to impose more stringent pretreatment requirements on leachate than are imposed on wastewaters from other sources unless required by state or federal regulations. However, METRO and the City recognize that state and federal regulatory authorities have the authority to change industrial pretreatment requirements and that such changes could have an impact on pretreatment requirements.

If the City notifies METRO that pretreatment requirements for leachate are to be increased and it is agreed between the parties (or determined by an arbitrator if the parties do not agree) that the City is imposing industrial pretreatment requirements on METRO in a more stringent manner than it is imposing requirements on other industrial dischargers, then the City shall be responsible for any leachate pretreatment costs in excess of the costs METRO would incur if there were no differential treatment.

13. Delinquent Payments.

a. Payments due City under this Agreement shall be considered delinquent if not paid before thirty (30) days after those dates when payment is due and an invoice is received by METRO. Delinquent payments shall be subject to interest calculated from the date the payment is due to the date the payment is received. Interest rates shall be the bank prime rate interest at First Interstate bank less two

percent (2%) effective at the time the payment became delinquent.

b. City may, at any time in its discretion, declare METRO in default after a payment has become delinquent. Acceptance of late payment(s) shall not constitute a waiver of City's right to declare METRO in default for any subsequent delinquent payment.

14. Default; Remedies.

a. In the event METRO shall default on any of its obligations under this Agreement, the City shall give METRO written notice specifying the nature and the extent of the default. METRO shall have one hundred twenty (120) days from receipt of the notice to cure the default. If METRO is unable or unwilling to cure the default, the City may cure the default and bill METRO for the reasonable costs and expenses incurred in curing the default.

b. In the event City shall default on any of its obligations under this Agreement, METRO shall give City written notice specifying the nature and extent of the default. City shall have one hundred twenty (120) days from receipt of the notice to cure the default. If City is unable or unwilling to cure the default, METRO may cure the default and deduct the reasonable costs and expenses incurred in curing the default from the payments required to be made by METRO under Section 11, METRO Rental of Parcel A.

c. The remedies specified in subsections (a) and (b) shall be in addition to any other remedies available under applicable law. Other remedies may include specific performance and an action to recover all damages caused by the default, including but not limited to unpaid amounts and attorneys' fees relating to the default.

15. Termination. This Agreement shall terminate upon the occurrence of any of the following events:

(a) the natural expiration of the term of this Agreement pursuant to Section 3, Term;

(b) in the event that METRO dissolves or terminates its existence without a successor with Responsibility and authority for regional solid waste disposal.

16. Approvals. Any approval required of the City or METRO under this Agreement shall not be unreasonably withheld.

17. Prior Agreements Superseded. All prior agreements between the City and METRO relating to the operation and closure of the Landfill are hereby terminated and shall be entirely superseded by the terms of this Agreement.

This Agreement is authorized by City Ordinance No. _____

METROPOLITAN SERVICE DISTRICT

CITY OF PORTLAND, OREGON

By _____
Executive Officer

By _____
Commissioner of Public Works

By _____
City Auditor

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By _____
Metro General Counsel

By _____
City Attorney

DON:jc
October 17, 1990
CITYMETR.AGR

Exhibit A

**PROPERTY DEEDS
TEMPORARILY REMOVED**

PARCEL "A"

A tract of land in Sec. 36, T2N, R1W, W.M. described as follows by Distances, Bearing and Coordinates on the Oregon Coordinate System North Zone. Beginning at a point (Coord. N 717565.1 E 1422412.5) on the Easterly line of the James Loomis D.L.C. S $20^{\circ} 45' 07''$ E 466.8' from the N.E. Cor. of the James Loomis D.L.C. (Coord. N 718001.7, E 1422247.1) said beginning point being on the Southerly bank of the Columbia Slough, thence S $20^{\circ} 45' 07''$ E 1216'.2 along the Easterly line of James Loomis D.L.C. and the Easterly line of Ramsey Villa Acres (a recorded Plat) to a point (Coord. N 716427.8, E 1422843.5), said point being the most Easterly Cor. of a 33' road on the Southeasterly line of Ramsey Villa Acres and apart of said Plat, thence S $61^{\circ} 48' 04''$ W 659.4 along the Southerly line of said 33' road to a point on the Northeasterly Right of Way of Shipyard Access Road 1943 (Coord. N 716116.2, E 1422262.4), thence S $30^{\circ} 8' 41''$ E 71.5' along the Northeasterly Right of Way line of Shipyard Access Road 1943 to a point (Coord. N 716054.4 E 1422298.3) at the beginning of a curve to the left, thence on a curve to the left along the Northerly Right of Way line of Shipyard Access Road 1943 (curve radius of 1392.7, central angle $17^{\circ} 00'$, chord bearing S $38^{\circ} 51' 34''$ E, arc length 413.6) to a point (Coord. N 715733.5, E 1422556.8), said point being the most Westerly Cor. of that tract of land transferred to Merta J. and Oscar F. Mason by Deed dated 3/26/47 and recorded in Book 1156, page 363, thence S $47^{\circ} 45' 53''$ E 1376.2' along the Westerly line and the Westerly line extended of the said Mason Tract to a point (Coord. N 716658.5, E 1423575.8) on the South bank of Columbia Slough, thence Northwesterly along the South bank of Columbia Slough to the point of beginning. Tract contains 18.2 acres.

St. John Landfill End Use Fund

August 1990

City Council Resolution No. 34295, June 10, 1987, which adopted the St. Johns Landfill End Use Plan directed the Bureau of Environmental Services (BES) to "... pursue implementation of this [End Use] Plan including the establishment of a dedicated End Use Plan fund, ...". Ordinance No. 160973 (July 23, 1988) created the St. Johns Landfill End Use by adding Section 5.04.310 to the City Code.

Section 9 of the 1986 City/METRO contract requires that METRO contribute \$.40 per ton of waste placed in the Landfill from 1987 until closure (expected in 1991) for the End Use Plan. This tonnage fee is to be paid at the end of each calendar year. The correct amounts for 1987, 88 and 89 have been placed in the End Use fund and continue to draw interest. None of these monies have ever been spent and the June 30, 1990 balance was \$908,070.48. this the approved End Use Plan.

Since 1980 METRO has been making monthly Landfill lease payments to the City. These payments have been deposited in the Refuse Disposal Fund (RDF). The RDF which received almost all of its money from Landfill lease payments between 1980 and 1987 had grown to about \$1,660,000 in 1987. Pages S-8, S-9, B-15, B-16 and B-17 of the St. Johns Landfill End Use Plan, May 1987, show that \$1,500,000 of the 1987 RDF balance plus a portion of the lease payments from 1987 until closure were to be placed in the End Use Fund and draw interest. Calculation worksheets prepared for but not included in the published End Use Plan show that 40% of the lease payments from 1987 on were to be placed in the End Use Fund.

The majority of the 1987 End Use Plan is no longer feasible for technical and environmental reasons which will not be discussed here. The landfill gas project was not feasible so there is no gas revenue. However, the METRO CONTRIBUTIONS shown in the center column of the table on page B-16 have come in and have been somewhat larger than expected. These amounts are the sums of estimates of \$.40 per ton money (explained above) and 40% of lease payment money for each year (see above mentioned calculation worksheets).

All lease payment money has remained in and continues to be deposited in the RDF. Thus, there is no official accounting of the lease payment money intended for End Use. The RDF draws interest, receives monies from other sources and is used for other expenditures. However, with a few reasonable assumptions the amount of lease payment money that was intended for End Use purposes and the interest it has earned can be readily calculated.

Agreement 901-438 Exhibit C

Assumptions for calculation of lease payment money and interest intended for St. Johns Landfill End Use Plan:

1. \$1,500,000 deposited in fund on January 1, 1987.
2. 40% of each monthly lease payment deposited in the fund at the end of the month.
3. Interest for each month is calculated by taking 1/12th of monthly interest rate for all City funds (obtained from City Treasurer's office) and multiplying by previous month's balance.
5. End Use expenses (expenses charged to BES Project No. 4296 from 1986 to June 30, 1990 as shown in the City's Financial Management System (FMS) are accumulated for the fiscal year and subtracted from the fund balance on June 30 of each fiscal year.

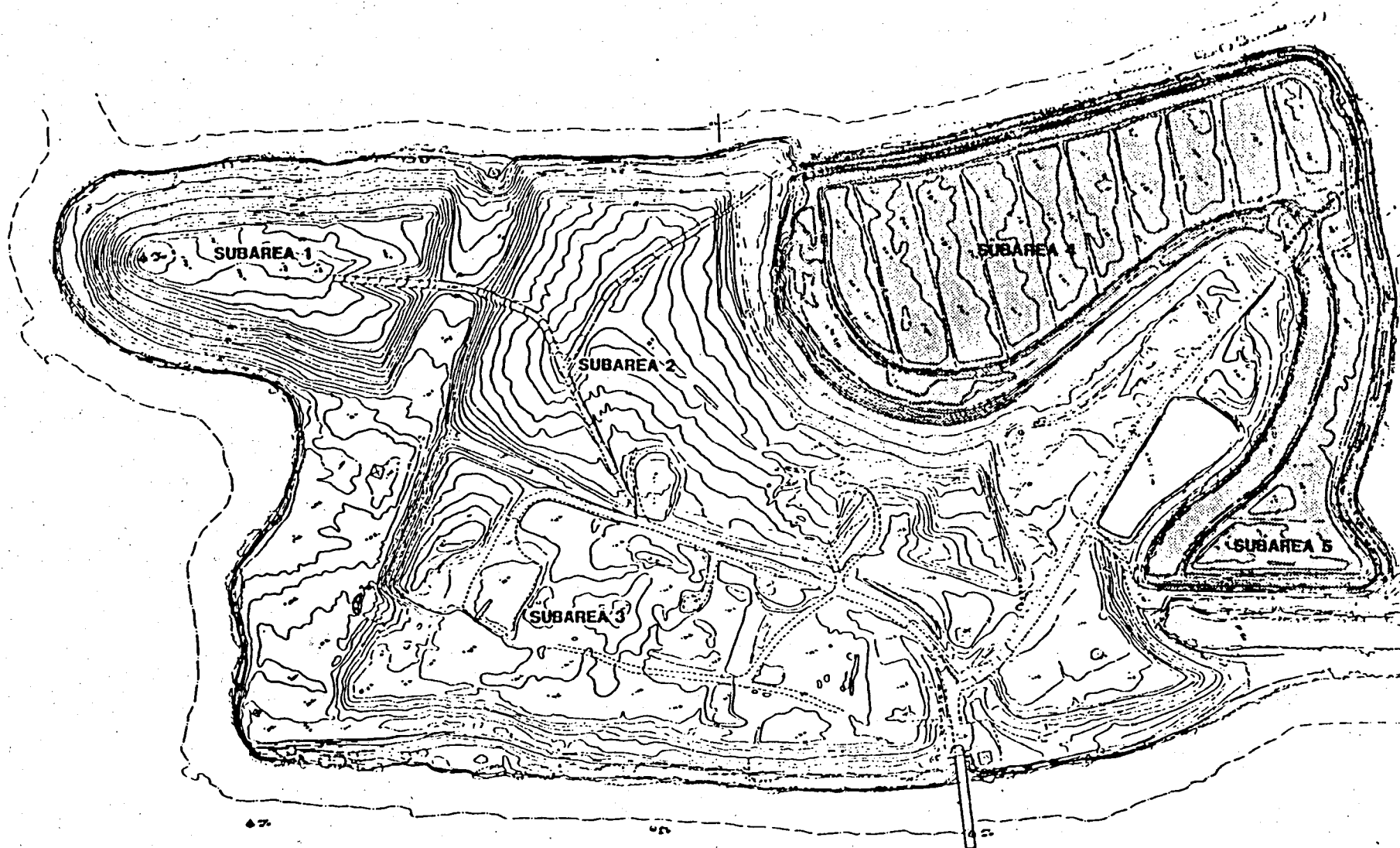
The table on the following page shows the results of the above assumptions with amount of lease payments plus interest intended for the St. Johns Landfill End Use Plan to be \$2,233,522.

Prepared by: Dan Miller
Bureau of Environmental Services
City of Portland

LEASE PAYMENT MONEY INTENDED FOR ST. JOHNS LANDFILL END USE PLAN
PLUS INTEREST.

1,500,000 DEPOSITED ON JAN 1, 1987

	SJL LEASE	40%	INT. RATE	INT. AMOUNT	END USE EXPENSE	FUND BAL BY MONTH
Jan-87	24,037	9,615	5.92%	7,400		1,517,015
Feb-87	24,037	9,615	5.90%	7,459		1,534,088
Mar-87	24,037	9,615	5.97%	7,632		1,551,335
Apr-87	24,037	9,615	6.08%	7,860		1,568,810
May-87	24,037	9,615	6.54%	8,550		1,586,975
Jun-87	25,755	10,302	6.86%	9,072	139,522	1,466,827
Jul-87	25,755	10,302	6.76%	8,263		1,485,392
Aug-87	25,755	10,302	6.79%	8,405		1,504,099
Sep-87	25,755	10,302	6.90%	8,649		1,523,050
Oct-87	25,755	10,302	7.27%	9,227		1,542,579
Nov-87	25,755	10,302	7.56%	9,718		1,562,599
Dec-87	25,755	10,302	7.54%	9,818		1,582,719
Jan-88	25,755	10,302	7.46%	9,839		1,602,861
Feb-88	25,755	10,302	7.53%	10,058		1,623,221
Mar-88	25,755	10,302	8.62%	11,660		1,645,183
Apr-88	25,755	10,302	6.88%	9,432		1,664,917
May-88	25,755	10,302	7.01%	9,726		1,684,945
Jun-88	27,711	11,084	7.32%	10,278	39,832	1,666,475
Jul-88	27,711	11,084	7.43%	10,318		1,687,878
Aug-88	27,711	11,084	7.73%	10,873		1,709,835
Sep-88	27,711	11,084	8.09%	11,527		1,732,446
Oct-88	27,711	11,084	8.16%	11,781		1,755,312
Nov-88	27,711	11,084	8.37%	12,243		1,778,639
Dec-88	27,711	11,084	8.72%	12,925		1,802,648
Jan-89	27,711	11,084	8.94%	13,430		1,827,163
Feb-89	27,711	11,084	9.08%	13,826		1,852,072
Mar-89	27,711	11,084	9.18%	14,168		1,877,325
Apr-89	27,711	11,084	9.43%	14,753		1,903,162
May-89	27,711	11,084	9.63%	15,273		1,929,520
Jun-89	27,259	10,904	9.64%	15,500	885	1,955,038
Jul-89	27,259	10,904	9.40%	15,314		1,981,256
Aug-89	27,259	10,904	9.07%	14,975		2,007,135
Sep-89	27,259	10,904	8.91%	14,903		2,032,942
Oct-89	27,259	10,904	8.84%	14,976		2,058,821
Nov-89	27,259	10,904	8.59%	14,738		2,084,463
Dec-89	27,259	10,904	8.55%	14,852		2,110,218
Jan-90	27,259	10,904	8.51%	14,965		2,136,087
Feb-90	27,259	10,904	8.43%	15,006		2,161,996
Mar-90	27,259	10,904	8.43%	15,188		2,188,088
Apr-90	27,259	10,904	8.48%	15,462		2,214,454
May-90	27,259	10,904	8.50%	15,686		2,241,043
Jun-90	27,500	11,000	8.61%	16,079	34,600	2,233,522



Expansion area
St. Johns Landfill, 1983



METRO

2000 S.W. First Avenue
Portland, OR 97201-5396
503 221-1646

Memorandum

SOLID WASTE COMMITTEE
October 16, 1990
Agenda Item No. 4

DATE: September 28, 1990

TO: Tom De Jardin, Chair
Council Solid Waste Committee

FROM: *BM* Bob Martin, Director of Solid Waste

RE: ST. JOHNS LANDFILL AGREEMENT

I am responding to Karla Forsythe's September 12, 1990 memorandum concerning council questions about the St. Johns Landfill agreement.

QUESTION: What is the timing relationship between the closure of the landfill and The Smith/Bybee Lakes Plan?

ANSWER: The Smith and Bybee Lakes Management Plan was approved in concept through Resolution No. 90-1282 on June 28, 1990. there will be a first reading of the ordinance to adopt the Smith and Bybee Lakes Management Plan on October 11th followed by a hearing with the Intergovernmental Relations Committee on October 23. Final adoption of the Lakes Management Plan is scheduled for November 8, 1990 in conjunction with adoption of the new METRO/City of Portland Landfill agreement. The Smith/Bybee Lakes Plan can be implemented when approved by the City and METRO Councils.

Although St. Johns Landfill would "close" i.e. stop accepting waste as a general purpose landfill in February 1991, the actual closure improvement construction process is not expected to be complete until 1995. Implementation of The Smith/Bybee Lake Plan can and should proceed concurrently with landfill closure.

QUESTION: What are the consequences for end-use management if METRO does not own the landfill?

ANSWER: Under the current agreement the City has responsibility for end-use management of the landfill. If the landfill ownership was retained by the City, METRO would have to obtain permission from the city to implement closure improvements, post closure maintenance and monitoring, and any changes to the above activities. Conflicts between closure, post closure needs and end-use desires could arise. In addition, METRO, not the City, is responsible to

DEQ for landfill closures so METRO could be caught between future conflicting policies of the City and DEQ. If METRO developed methane gas recovery there would be a three-way contract among the City, METRO, and the gas developer. This process is cumbersome, it could delay necessary actions, and could become entangled in changing political relationships between the City and METRO. Ownership of the landfill gives METRO the freedom to pursue prompt and effective steps to close the landfill and maintain and monitor the landfill after closure.

Finally, without adequate control of the property and the end-use plan it is conceivable that future property management decision might jeopardize the integrity of the closure structures resulting in increased liability for all involved.

QUESTION: Which METRO department ultimately will be taking the lead of post-closure uses?

ANSWER: The Solid Waste Department would be responsible for maintaining the landfill after closure and monitoring its impact on the environment. The Planning and Development Department would be responsible for coordination, implementation of the SMITH/BYBEE LAKE PLAN including the trust fund and end-use of the landfill.

QUESTION: How does the potential for disposal of hazardous waste impact the ownership decision? To what extent is METRO legally responsible for the landfill, independent of potential ownership?

ANSWER: Under the City/METRO agreement, METRO assumes the responsibility and potential liability of ownership of the St. Johns Landfill. Although the closure improvements currently under design are themselves intended to prevent ground and surface water contamination, it is possible that additional actions could be required in the future.

METRO already has responsibility for required future remedial action as operator of St. Johns Landfill. The U. S. Environmental Protection Agency (EPA) has published interim guidelines for Federally required remedial actions involving municipal solid waste disposal sites. The guidelines state that "All parties that are owners/operators of facilities will generally be notified as potentially responsible." Thus, EPA would consider METRO a potentially responsible party whether or not it owned the landfill. Our control of the property and its future uses can reduce the risk of encountering future remediation that can arise from use conflicts.

QUESTION: If METRO assumes ownership, is it possible to sever potential liability so that the City retains some legal responsibility?

ANSWER: Yes. Should additional remedial action be required, METRO intends to collect any necessary funds for additional remedial action from the solid waste disposal rates up to the maximum per capita charges per year allowed in ORS 459.311. METRO and the City agree that METRO's duty to protect the City from liability for possible hazardous material remedial action shall be limited to the maximum per capita charges mandated by ORS 459.311 (1).

QUESTION: Does the potential tax cap raise issues which impact the ownership decision, given the City's limited ability to raise money except through property taxes?

ANSWER: Under the agreement the City would not be protected by METRO from liability beyond the maximum per capita charges mandated by ORS 459.311 (1). If the city were unable to raise sufficient money for remedial action METRO would likely be expected by the region to collect the funds and carry out any future state or federally required remedial actions at the St. Johns Landfill whether or not METRO owned the landfill.

QUESTION: What is the likelihood that after closure, METRO would be required to take additional action to meet federal requirements?

ANSWER: The primary closure improvement is a cap over the landfill which will interfere with contaminated water (leachate) generation by blocking future rainwater percolation into the solid waste. This is recognized method being used both for many municipal landfill closures and also at federal superfund sites. There is a remote possibility that METRO could some day have to take additional action to control contamination if the cap is less effective than intended. Based on the large volume of information known so far, it is expected that the cost would be far less than the cost of the cap. Nothing known from the extensive testing which has been done so far has resulted in a hazard ranking score that would even come close to stimulating federally mandated remediation.

QUESTION: What are the implications of this decision for METRO's relationship with private landfills in the region?

ANSWER: It is not expected that METRO's ownership of St. Johns Landfill would cause any change in METRO's current relationship as a fellow landfill operator with private landfills in the region. Rossman's landfill in Oregon City

was never owned or operated by Metro so does not raise issues regarding Metro ownership or closure, which are the responsibility of the owner.

QUESTION: How can the review process be structured to allow the Council ample time to review the various ownership options in detail?

ANSWER: There are two options. Under the first option METRO continues to lease the landfill which is owned by the City of Portland, Under the second option METRO acquires ownership of the landfill and adjacent city property. It would appear that the Council's current review process is adequate to review these options. Currently a joint METRO Council/City Council Meeting is scheduled for November 8. there is time for at least two Solid Waste Committee meetings and at least one full Council Meeting before this date. Additional meetings could be scheduled by the Council.

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 90-1314 FOR THE PURPOSE OF APPROVING AN INTERGOVERNMENTAL AGREEMENT TO ASSUME CUSTODY OF CERTAIN PUBLIC MONIES AND OWNERSHIP OF THE ST. JOHNS LANDFILL AND CERTAIN ADJACENT LAND FROM THE CITY OF PORTLAND

Date: August 17, 1990

Presented by: Bob Martin
Jim Watkins

PROPOSED ACTION:

Approve Resolution No. 90-1314, which authorizes Metro to enter into Intergovernmental Agreement No. 901-438 (attached) between Metro and the City of Portland.

FACTUAL BACKGROUND AND ANALYSIS

Currently, Metro operates the St. Johns Landfill under a rental agreement with the City of Portland that was executed in May 1986. Metro must operate and close the landfill pursuant to an Operations Plan taken from the 1985 Metro/BFI Contract. Metro must pay a \$2 per ton penalty if it disposes of more than a specified quantity of waste per year. Metro must cease to accept solid waste at the St. Johns Landfill in February 1991. Metro pays rent to the City (currently approximately \$330,000 per year). Metro also pays \$0.40 per ton (approximately \$200,000 during the 1990 calendar year) for end use of the landfill. Metro must set aside funds for closure and post-closure maintenance.

The Agreement terminates December 31, 1991 or when the landfill is fully utilized. At termination, Metro must leave the site with control measures acceptable to the City. After termination, Metro is responsible for control and discharge of leachate from the 1980 expansion area of the landfill. The City is responsible for control and discharge of leachate from other areas of the landfill. The City is responsible for unacceptable conditions resulting from hazardous waste deposited while under City control. The Agreement states that Metro is responsible for unacceptable conditions resulting from hazardous waste deposited while under Metro control and City ownership.

The current City/Metro Agreement is no longer adequate because it is based upon a closure concept that is now obsolete in light of the Revised Closure and Financial Assurance Plan reviewed by the Metro Council in October 1989, and directives from the Oregon Department of Environmental Quality (DEQ). For example, the mandated final contours in the Agreement do not provide adequate slopes for drainage. Although Metro operates the landfill under a DEQ permit in Metro's name, the obsolete Agreement gives the City the power to delay or veto efforts by Metro to make changes

implementing the Revised Closure Plan or DEQ requirements. The present agreement also contains no clear statement concerning responsibility for post-closure maintenance costs. To remedy these inadequacies, Metro and the City began negotiations from which resulted the attached Metro/City of Portland Intergovernmental Agreement No. 901-438.

Under this Agreement, Metro assumes ownership of the 776 acre City-owned parcel, which includes the St. Johns Landfill site northeast of Columbia Slough, and the City property in the wetlands immediately adjacent to the landfill.

Metro assumes responsibility for a trust fund made up of approximately \$3.1 million of Metro Lease and End-use Payments which were originally intended by the City for implementation of the City's 1987 St. Johns Landfill End-use Plan. Metro takes custody of \$1.9 million 30 days after the Agreement is adopted. By January 31, 1993, Metro assumes custody of the remaining \$1.2 million plus interest. Under the proposed Agreement, this trust fund, including interest, must be used by Metro to implement the 1990 Smith and Bybee Lakes Management Plan, which is a land use plan for St. Johns Landfill end-use and management of the surrounding wetlands. Metro affords the City of Portland Parks Bureau a right of first refusal of a contract to implement recreation programs under the Smith and Bybee Lakes Management Plan. This Agreement supersedes the 1987 City End-Use Plan.

Metro would continue to contribute \$0.40 to the trust fund for every ton of solid waste incorporated into the St. Johns Landfill. This would add approximately \$200,000 to the trust fund as of February 1991. If limited purpose landfill waste is deposited after February 1, 1991, this contribution would increase to a minimum of \$0.50 per ton.

Metro would continue to rent for \$120,000 per year City property southwest of the Columbia Slough for scalehouse operation until this property is no longer needed for any purpose but access. As part of the Agreement, the City would grant to Metro at no cost a permanent easement through this property needed for access and utilities on Metro land.

Under this Agreement, Metro assumes the responsibility and potential liability of ownership of the St. Johns Landfill. Although the closure improvements currently under design are themselves intended to prevent ground and surface water contamination, it is possible that additional action could be required in the future.

In reality Metro already has responsibility for required future remedial action as operator of St. Johns Landfill. The U.S. Environmental Protection Agency (EPA) has published interim guidelines for federally-required remedial actions involving municipal solid waste disposal sites. The guidelines state that "All parties that are owners/operators of facilities will

generally be notified as potentially responsible." Thus, EPA would consider Metro a potentially responsible party whether or not it owned the landfill.

Should additional remedial action be required, Metro intends to collect any necessary funds for additional remedial action from the solid waste disposal rates up to the maximum per capita charges per year allowed in ORS 459.311. Metro and the City agree that Metro's duty to protect the City from liability for possible hazardous material remedial action shall be limited to maximum per capita charges mandated by ORS 459.311(1). As a practical matter, Metro would likely be expected by the region to collect the funds and carry out any future state- or federally-required remedial actions at the St. Johns Landfill whether or not Metro owned the landfill.

BUDGET IMPACT

By signing this Agreement Metro would be assuming the City's estimated \$5.5 million post-closure maintenance costs. Metro will acquire \$1.9 million within 30 days after the agreement is adopted by both parties, and \$1.2 million more plus interest by December 31, 1993. Under the Smith and Bybee Lakes Management Plan, this money would become an endowment fund from which all interest and principal would be used by Metro as Trust Fund Manager to implement the plan. Also, Metro would continue to allocate to this fund the amount per ton specified in the Agreement, as long as solid waste is disposed of in the landfill. Since the current budget and disposal rates are based on a \$0.40 per ton allocation, a budget adjustment and a rate increase adjustment may be required if the allocation increases to \$0.50 per ton. Metro would allocate money from the trust fund for projects recommended by a Management Committee of interested parties, including Metro.

When this Agreement is signed, Metro's rent for the St. Johns Landfill (Parcel A) drops to \$120,000 per year which is due within 15 days of the adoption of this Agreement. There is sufficient money budgeted for this purpose.

Whether or not this Agreement were signed, the St. Johns Landfill Reserve Account would continue to fund closure, post-closure care, and mitigation of environmental impacts caused by the St. Johns Landfill (Metro Ordinance No. 89-300).

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends adoption of Resolution No. 90-1314.



METRO

2000 SW First Avenue
Portland, OR 97201-5398
(503) 221-1646
Fax 241-7417

November 6, 1990

The Honorable Tanya Collier
Presiding Officer
Metropolitan Service District
2000 S. W. First Avenue
Portland, OR 97201-5398

Executive Officer
Rena Cusma
Metro Council

Tanya Collier
Presiding Officer
District 9

Gary Hansen
Deputy Presiding
Officer
District 12

David Saucy
District 1

Lawrence Bauer
District 2

Jim Gardner
District 3

Richard Devlin
District 4

Tom DeJardin
District 5

George Van Bergen
District 6

Ruth McFarland
District 7

Judy Wyers
District 8

Roger Buchanan
District 10

David Knowles
District 11

Dear Presiding Officer Collier:

Re: Ownership of St. Johns Landfill by Metro

At the Council meeting on October 25, 1990, the Office of General Counsel was asked to give a response to certain questions related to the proposed purchase of the St. Johns Landfill.

The questions that we have been asked to respond to are as follows:

1. To what extent is Metro legally responsible for the landfill, independent of potential ownership?
2. How does the potential for disposal of hazardous waste impact the ownership decision?
3. If Metro assumes ownership is it possible to sever potential liability so that the City retains some legal responsibility?

Question: 1. To what extent is Metro legally responsible for the landfill, independent of potential ownership?

Answer: Metro, as the holder of a permit for the operation of a solid waste disposal site at this location, has legal liability for closure costs including all measures required by DEQ necessary to protect the surrounding environment as authorized by ORS 459.268. This requirement is consistent with the provisions of the Federal Resource Conservation and Recovery Act (RCRA), Solid Waste Disposal Act

(SWDA), and regulations adopted by EPA pursuant thereto.

Question: 2. How does the potential for disposal of hazardous waste impact the ownership decision?

Answer: Both federal and state law impose liability for the costs of any environmental response, removal, or remediation resulting from the release or threatened release of hazardous waste into the environment. Strict joint and several liability is imposed on any person who owned or operated a site at the time the release or threatened release occurred, as well as upon the persons who generated or transported any of the hazardous waste released or threatened to be released into the environment from the site. 42 U.S.C. § 9601-9675 Comprehensive Environmental Response Compensation and Liability Act (CERCLA) as amended, and ORS 465.200-465.420.

As the operator of the St. Johns Landfill for a period of 10 years, Metro could be held legally liable for all of the costs of any required environmental cleanup resulting from the release or threatened release of hazardous waste located in the landfill. While others may be liable, as is discussed below, Metro's present liability for landfill cleanup under these statutes is probably undisputable given its status as the present permit-holder and operator of the facility. In order to have a defense to liability, Metro would have to establish that during the time it operated the landfill it did not accept any hazardous substance or waste, knowingly or unknowingly, and allow it to be deposited into the landfill. Further, Metro would have to establish that it was not responsible for the continued release into the environment of hazardous waste deposited into the landfill prior to the time Metro assumed operational responsibility. The federal statutes and state law do not preclude a finding of liability even though the hazardous wastes or substances released may have been accepted into the landfill in quantities small enough to escape either federal, state, or local regulations prohibiting their disposal in solid waste disposal facilities (small quantity generators and household hazardous waste).

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Question: 3. If Metro assumes ownership is it possible to sever potential liability so that the City retains some legal responsibility?

Answer: Separate from the question of Metro's liability, is a question of what parties may also be jointly and severally liable for any cleanup costs. The City of Portland as owner of the facility would, under federal and state law, be in the same position as Metro in the event that a response action is required under the provisions of CERCLA and ORS 465.200 to 465.420.

As between the City and Metro, the agreement as negotiated would have Metro assume liability up to a dollar amount to be calculated pursuant to the provisions of state law (ORS 459.311) which authorizes municipalities which have liability for cleanup of municipal landfill sites to collect certain fees from the residents thereof to pay such costs prior to being eligible for a contribution from a yet to be established state fund known as the "orphan site" fund.

Absent such a negotiated provision in the proposed agreement, the City and Metro would be both jointly and severally liable for any environmental cleanup of the St. Johns Landfill and have causes of action available as remedies against each other for contribution for costs incurred by either party. The resolution of the contribution claims could require extensive litigation revolving around issues of fact based on at what time and by whom certain materials contributing to the environmental problems were deposited into the St. Johns Landfill, and whether any of the persons who generated or transported those materials could also be held responsible. The existing lease agreement between the City of Portland and Metro, also has certain language in it which attempts to allocate the potential costs of an environmental cleanup between the City of Portland and Metro. This agreement purports to divide responsibility between the City for all materials deposited prior to Metro commencing operation, and Metro for any materials deposited in the landfill after Metro commenced operation. Given the complexities of the landfill location and the fact that Metro has deposited material in areas where the City had previously deposited materials, any attempt to allocate response costs based on the time that materials were deposited in the landfill would be very problematical.

The provisions of the negotiated agreement are one method for allocating between the City and Metro this potential

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responsibility. Other methods of allocation are, of course, possible. This response does not purport to pass judgment on the particular wisdom of the method of allocation contained in the proposed agreement.

Yours very truly,

A handwritten signature in blue ink, appearing to read "D. B. Cooper", written in a cursive style.

Daniel B. Cooper,
General Counsel

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