

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING	)	RESOLUTION NO. 93-1754B
DESIGNATED FACILITY AGREEMENTS	)	
UNDER METRO CODE SECTION 5.05.030	)	Introduced by Rena Cusma
FOR COLUMBIA RIDGE LANDFILL,	)	Executive Officer
ROOSEVELT REGIONAL LANDFILL,	)	
HILLSBORO LANDFILL, LAKESIDE	)	
RECLAMATION LANDFILL AND FINLEY	)	
BUTTES REGIONAL LANDFILL	)	

WHEREAS, The Metro Council amended Metro Code Section 5.05.030 by Ordinance No. 92-471C; and

WHEREAS, Ordinance No. 92-471C established a new process by which to evaluate and designate facilities under Code Section 5.05.030; and

WHEREAS, As amended, Metro Code Section 5.05.030(c) requires Council approval of agreements between Metro and a designated facility; and

WHEREAS, Ordinance No. 93-483 proposed new designated facility status for Roosevelt Regional Landfill and Finley Buttes Regional Landfill; and

WHEREAS, Ordinance No. 93-483 proposed new agreements for existing designated facilities, Columbia Ridge Landfill, Hillsboro Landfill and Lakeside Reclamation Landfill; and

WHEREAS, The Metro Council has adopted Ordinance No. 93-483 designating or amending the designation of each of the above-referenced facilities; and


WHEREAS, The Metro Council has reviewed the proposed agreements for Roosevelt Regional Landfill, Finley Buttes Regional Landfill, Columbia Ridge Landfill, Hillsboro Landfill and Lakeside Reclamation Landfill attached hereto as Exhibits A, B, C, D, and E; 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 approves the agreements for Roosevelt Regional Landfill, Finley Buttes Regional Landfill, Columbia Ridge Landfill, Hillsboro Landfill, and Lakeside Reclamation Landfill attached to this Resolution as Exhibits A, B, C, D and E, and authorizes the Executive Officer to execute the agreements.

ADOPTED by the Metro Council this 11th day of March, 1993.

  
\_\_\_\_\_  
Judy Wyers, Presiding Officer

## AGREEMENT

This Agreement is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the 1992 Metro Charter, located at 2000 S.W. First Avenue, Portland, Oregon 97201-5398, and Grabhorn, Inc., located at Route 1, Box 849, Beaverton, Oregon 97005, referred to herein as "Company."

This Agreement is entered into by Metro under the authority of ORS 268.317, and Metro Code Chapter 5.05. Company enters into this Agreement in recognition of the "Designated Facility" status conferred upon Lakeside Reclamation in Washington County, Oregon, by Metro Ordinance No. 93-483.

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

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

- (4) Contaminated soil and other non-putrescible debris from cleanup of petroleum or other non-hazardous chemical spills. .
  - (5) Special waste as defined in section 5.02.015(s) of the Metro Code. A copy of this section of the code is attached as Attachment A, and is incorporated herein by this reference. In all instances, section 5.02.015(s) shall be construed by both parties as limited to wastes that require special handling or testing prior to disposal at a Metro facility or at a landfill.
  - (6) Other waste as described in any future addendum to this Agreement or as authorized by Metro in a non system license. A modification or addendum to this Agreement that adds "other waste" shall not be effective unless approved by the Metro Council.
  - (7) Any other waste Company can accept at the Facility consistent with the authority granted by DEQ and with the Facility's status as a limited purpose landfill.
- b. This Agreement shall not be construed to allow disposal at the Facility of mixed municipal solid waste, or other types of waste not listed in Section 3.a., generated within Metro boundaries.

4. Recordkeeping and Audits.

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

5. Reports and Information.

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

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

- b. Company shall complete a cumulative status review of the waste types and profiles covering each six months of operations under this Agreement and shall provide such report to Metro within 45 days of the expiration of the six-month period covered by the report. The first report shall cover the period of operations from the date of execution of this Agreement through December 31, 1993.
- c. Company shall provide to Metro copies of all permits covering the Facility or operations at the Facility. Copies of revisions to existing permits and newly issued permits shall be provided to Metro within seven business days of receipt. Company shall also provide, within ten business days, a copy of any official enforcement action regarding the Facility or its operation, including but not limited to, a notice of violation or non-compliance with a statute, regulation, or permit condition.

6. User Fee/Excise Tax.

- a. Upon receipt of the reports described in section 5.a., Metro shall transmit an invoice to Company for a fee equal to per ton user fees assessed pursuant to Metro code chapter 5.02 multiplied by the number of tons (or fractions thereof) of solid waste disposed of or processed pursuant to this Agreement during the preceding month. Company shall make payment to Metro in the invoiced amount, not later than 30 days after the date of the invoice. Company shall use reasonable business judgment in allowing generators or transporters of waste to dispose of waste at its Facility on a credit basis and shall use reasonable legal means to collect disposal charges, including all fees and taxes owed to Metro. If Company is unable to collect disposal charges, Company may deduct uncollectible Metro fees and taxes, when an affidavit explaining the status of the uncollectible account is provided that sufficiently documents good faith collection efforts conducted by Company. If Company receives a partial payment and the remainder of the account is uncollectible, the payment received shall be pro-rated between Company's disposal charges and Metro's fees and taxes. All amounts owing to Metro that are deemed "uncollectible" and are ultimately collected, shall be remitted to Metro within 30 days of receipt by Company.

- b. Upon receipt of the reports described in section 5.a., Metro shall transmit an invoice to Company for a fee equal to all excise taxes required to be paid under Metro Code Chapter 7.01, as a result of Company's activities during the preceding month. Excise taxes shall be due for disposal of waste at the Facility, but shall not be due for transport to the Facility, even if Company arranges that transport.
- c. Credit terms shall be as specified in the Metro Code as now in effect or as amended.
- d. Company shall not pay the user fees and excise taxes described in this paragraph on waste received at the Facility:
  - (1) which is accepted without charge or fee; and
  - (2) which is intended to be used for a beneficial purpose and which is in fact used for a beneficial purpose.

7. Modification, Suspension, and Termination.

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

- (2) If necessary in the reasonable opinion of the Executive Officer to protect the public health, safety or welfare, and in the case of an emergency;

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

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

8. Compliance With Law.

Company shall fully comply with the Metro Code, as amended, and with all federal, state, regional and local laws, as amended, rules, regulations, ordinances, orders and permits pertaining in any manner to this Agreement. All conditions imposed on the operation of the Facility by federal, state or local governments or agencies having jurisdiction over the Facility are part of this Agreement by reference as if specifically set forth herein. Such conditions and permits include those attached as exhibits to this Agreement, as well as any existing at the time of issuance of this Agreement and not attached, and permits or conditions issued or modified during the term of this Agreement.

9. Right of Inspection.

Authorized representatives of Metro shall be permitted access to the premises of the Facility at all reasonable times for the purpose of making inspections and carrying out other necessary functions related to this Agreement. Access to inspect is authorized:

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

10. Indemnification. Company shall indemnify, defend, and hold Metro, and Metro's agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with Company's performance under this Agreement.

11. Confidentiality.

- a. Metro recognizes and acknowledges the confidential and proprietary nature of the names of persons or entities generating or delivering waste to the Facility and the types and quantities of waste generated or delivered by such persons or entities (herein, "confidential information"), which Company is required to submit to Metro under section 5.a. of this Agreement. Metro recognizes that the confidential information specified herein is a "trade secret" and exempt from public disclosure under Oregon law because it is currently known only by Company, is used by Company in its business, and gives Company a business advantage over others not possessing such information. The ability of competitors of Company to obtain the confidential information specified herein is not in the public interest because it detracts from a relationship of trust that is necessary for Metro to effectively carry out its solid waste management functions. Metro hereby obligates itself in good faith not to disclose such confidential information to any person outside of Metro except as specified herein. Access to, and use of, such information shall only be as specified in this section 11.
- b. At any time during and after the term of this Agreement, Metro shall not, in any manner whatsoever, either directly or indirectly, divulge, disclose, or communicate to any person, partnership, firm, association, corporation, or other entity, or to any person at Metro who does not have a reasonable need to obtain confidential information for Metro's solid waste management purposes, or use for the personal benefit of such party, the confidential information specified in this section 11. Metro may nevertheless use such information for solid waste management



purposes, including solid waste tracking and forecasting, enforcement of the Metro Code, or assistance to other jurisdictions in regulatory or other law enforcement. Metro may also use such confidential information in aggregations or summaries that may be released to the public so long as it is not possible to identify from such aggregations or summaries the persons or other entities generating and delivering waste to the Facility or the types and quantities of waste such persons or other entities generate or deliver to the Facility. Metro shall notify Company within 3 business days of Metro's receipt of a request for confidential information from a third party. If it becomes necessary for Metro to release confidential information to any person outside of Metro, Metro shall so notify Company in writing, at least 15 days prior to releasing such information.

- c. When submitting to Metro the confidential information specified herein, Company shall mark such materials as confidential. Metro shall keep all such material separate from its other records and materials, in the custody and control of the Metro Office of General Counsel, such that it will not be available to members of the public or persons at Metro who do not have a reasonable need to obtain access to the information relative to Metro's solid waste management responsibilities.
- d. If Oregon law is modified such that the confidential information referenced in this section 11 is no longer exempt from public disclosure, or if a court of competent jurisdiction requires release of such information, Company shall no longer be required to submit such information to Metro. In such instance, upon request, Company nevertheless agrees to provide to Metro the names of specific generators or transporters, and the types and quantities of waste delivered by such persons or entities, for Metro's use in enforcing the Metro Code against such persons or entities, when Metro demonstrates a reasonable suspicion that a violation has occurred.

12. General Conditions.

- a. The power and right to regulate, in the public interest, the exercise of the privileges granted by this Agreement shall at all times be vested in Metro. Metro reserves the right to establish or amend rules, regulations or standards regarding matters within Metro's authority, and to enforce all such legal requirements against Company.
- b. Company shall be responsible for ensuring that its contractors and agents operate in complete compliance with the terms and conditions of this Agreement.
- c. The granting of this Agreement shall not confer a property right to Company, nor vest any right or privilege in Company to receive specific quantities of solid waste during the term of this Agreement.

- d. This Agreement may not be transferred or assigned without the prior written approval of Metro. Consent to assignment or transfer shall not be unreasonably withheld.
- e. To be effective, a waiver of any term or condition of or amendment to this Agreement must be in writing, signed by either the Executive Officer or an authorized officer of the Company, as the case may be. Waiver of a term or condition of this Agreement by either party shall not waive nor prejudice that party's right otherwise to require performance of the same term or condition or any other term or condition.
- f. This Agreement shall be construed, applied, and enforced in accordance with the laws of the State of Oregon.
- g. If any provision of this Agreement shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this Agreement shall not be affected.
- h. This Agreement is the entire agreement between the parties and supersedes all prior and other agreements and understandings between the parties. This Agreement does not allow receipt of solid waste from within the boundaries of Metro for any purpose other than disposal or processing in accordance with this Agreement.

GRABHORN, INC.

METRO

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Print name and title

\_\_\_\_\_  
Print name and title

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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## AGREEMENT

This Agreement is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the 1992 Metro Charter, located at 2000 S.W. First Avenue, Portland, Oregon 97201-5398, and Hillsboro Landfill, Inc. (referred to herein as "Company"), located at 3205 SE Minter Bridge, Hillsboro, Oregon 97123, an Oregon corporation which is a wholly owned subsidiary of Sanifill, located at 300 Drake's Landing, Suite 155, Greenbrae, California 94904.

This Agreement is entered into by Metro under the authority of ORS 268.317, and Metro Code Chapter 5.05. Company enters into this Agreement in recognition of the "Designated Facility" status conferred upon the Hillsboro Landfill Facility in Washington County, Oregon, by Metro Ordinance No. 93-483.

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

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

- (4) Contaminated soil and other non-putrescible debris from cleanup of petroleum or other non-hazardous chemical spills.
  - (5) Special waste as defined in section 5.02.015(s) of the Metro Code. A copy of this section of the code is attached as Attachment A, and is incorporated herein by this reference. In all instances, section 5.02.015(s) shall be construed by both parties as limited to wastes that require special handling or testing prior to disposal at a Metro facility or at a landfill.
  - (6) Other waste as described in any future addendum to this Agreement or as authorized by Metro in a non system license. A modification or addendum to this Agreement that adds "other waste" shall not be effective unless approved by the Metro Council.
  - (7) Any other waste Company can accept at the Facility consistent with the authority granted by DEQ and with the Facility's status as a limited purpose landfill.
- b. This Agreement shall not be construed to allow disposal at the Facility of mixed municipal solid waste, or other types of waste not listed in Section 3.a., generated within Metro boundaries.

4. Recordkeeping and Audits.

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

5. Reports and Information.

- a. Company shall report in writing to the Metro Solid Waste Department no later than the 10th day of each month, for the duration of this Agreement, the number of tons of solid waste transported, disposed of or otherwise processed pursuant to this Agreement during the preceding month. The reports shall provide sufficient detail to adequately identify the waste profile of the various materials transported, treated, and disposed of, and include the names of persons or entities generating and delivering waste to the Facility, and the types and quantities of waste generated or delivered by such persons or entities. To the extent such information is available in electronic form, Company shall make such information available to Metro on computer disk. Metro shall maintain the confidentiality of all records submitted by Company to the extent public disclosure is not required by ORS ch 192, and otherwise in conformance with section 12 of this Agreement.
- b. Company shall complete a cumulative status review of the waste types and profiles covering each six months of operations under this Agreement and shall provide such report to Metro within 45 days of the expiration of the six-month period covered by the report. The first report shall cover the period of operations from the date of execution of this Agreement through December 31, 1993.
- c. Company shall provide to Metro copies of all permits covering the Facility or operations at the Facility. Copies of revisions to existing permits and newly issued permits shall be provided to Metro within seven business days of receipt. Company shall also provide, within ten business days, a copy of any official enforcement action regarding the Facility or its operation, including but not limited to, a notice of violation or non-compliance with a statute, regulation, or permit condition.

6. User Fee/Excise Tax.

- a. Upon receipt of the reports described in section 5.a., Metro shall transmit an invoice to Company for a fee equal to per ton user fees assessed pursuant to Metro code chapter 5.02 multiplied by the number of tons (or fractions thereof) of solid waste disposed of or processed pursuant to this Agreement during the preceding month. Company shall make payment to Metro in the invoiced amount, not later than 30 days after the date of the invoice. Company shall use reasonable business judgment in allowing generators or transporters of waste to dispose of waste at its Facility on a credit basis and shall use reasonable legal means to collect disposal charges, including all fees and taxes owed to Metro. If Company is unable to collect disposal charges, Company may deduct uncollectible Metro fees and taxes, when an affidavit explaining the status of the uncollectible account is provided that sufficiently documents good faith collection efforts conducted by Company. If

Company receives a partial payment and the remainder of the account is uncollectible, the payment received shall be pro-rated between Company's disposal charges and Metro's fees and taxes. All amounts owing to Metro that are deemed "uncollectible" and are ultimately collected, shall be remitted to Metro within 30 days of receipt by Company.

- b. Upon receipt of the reports described in section 5.a., Metro shall transmit an invoice to Company for a fee equal to all excise taxes required to be paid under Metro Code Chapter 7.01, as a result of Company's activities during the preceding month. Excise taxes shall be due for disposal of waste at the Facility, but shall not be due for transport to the Facility, even if Company arranges that transport.
- c. Credit terms shall be as specified in the Metro Code as now in effect or as amended.
- d. Company shall not pay the user fees and excise taxes described in this paragraph on waste received at the Facility:
  - (1) which is accepted without charge or fee; and
  - (2) which is intended to be used for a beneficial purpose and which is in fact used for a beneficial purpose.
- e. Company shall continue to use a \$1.00 surcharge on sand and soils to pay down the past due user fees until all such fees are paid in full.

7. Modification, Suspension, and Termination.

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

that Company is making good faith efforts to comply and is capable of complying within the extended compliance period.

b. Metro's Executive Officer may suspend this Agreement without prior notice, as follows:

- (1) As specified in subsection a. of this section;
- (2) If necessary in the reasonable opinion of the Executive Officer to protect the public health, safety or welfare, and in the case of an emergency;

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

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

8. Compliance With Law.

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

Facility are part of this Agreement by reference as if specifically set forth herein. Such conditions and permits include those attached as exhibits to this Agreement, as well as any existing at the time of issuance of this Agreement and not attached, and permits or conditions issued or modified during the term of this Agreement.

9. Right of Inspection.

Authorized representatives of Metro shall be permitted access to the premises of the Facility at all reasonable times for the purpose of making inspections and carrying out other necessary functions related to this Agreement. Access to inspect is authorized:

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

10. Indemnification. Company shall indemnify, defend, and hold Metro, and Metro's agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with Company's performance under this Agreement.

11. Confidentiality.

- a. Metro recognizes and acknowledges the confidential and proprietary nature of the names of persons or entities generating or delivering waste to the Facility and the types and quantities of waste generated or delivered by such persons or entities (herein, "confidential information"), which Company is required to submit to Metro under section 5.a. of this Agreement. Metro recognizes that the confidential information specified herein is a "trade secret" and exempt from public disclosure under Oregon law because it is currently known only by Company, is used by Company in its business, and gives Company a business advantage over others not possessing such information. The ability of competitors of Company to obtain the confidential information specified herein is not in the public interest because it detracts from a relationship of trust that is necessary for Metro to effectively carry out its solid waste management functions. Metro hereby obligates itself in good faith not to disclose such confidential information to any person outside of Metro except as specified herein. Access to, and use of, such information shall only be as specified in this section 11.
- b. At any time during and after the term of this Agreement, Metro shall not, in any manner whatsoever, either directly or indirectly, divulge, disclose, or communicate



to any person, partnership, firm, association, corporation, or other entity, or to any person at Metro who does not have a reasonable need to obtain confidential information for Metro's solid waste management purposes, or use for the personal benefit of such party, the confidential information specified in this section 11. Metro may nevertheless use such information for solid waste management purposes, including solid waste tracking and forecasting, enforcement of the Metro Code, or assistance to other jurisdictions in regulatory or other law enforcement. Metro may also use such confidential information in aggregations or summaries that may be released to the public so long as it is not possible to identify from such aggregations or summaries the persons or other entities generating and delivering waste to the Facility or the types and quantities of waste such persons or other entities generate or deliver to the Facility. Metro shall notify Company within 3 business days of Metro's receipt of a request for confidential information from a third party. If it becomes necessary for Metro to release confidential information to any person outside of Metro, Metro shall so notify Company in writing, at least 15 days prior to releasing such information.

- c. When submitting to Metro the confidential information specified herein, Company shall mark such materials as confidential. Metro shall keep all such material separate from its other records and materials, in the custody and control of the Metro Office of General Counsel, such that it will not be available to members of the public or persons at Metro who do not have a reasonable need to obtain access to the information relative to Metro's solid waste management responsibilities.
- d. If Oregon law is modified such that the confidential information referenced in this section 11 is no longer exempt from public disclosure, or if a court of competent jurisdiction requires release of such information, Company shall no longer be required to submit such information to Metro. In such instance, upon request, Company nevertheless agrees to provide to Metro the names of specific generators or transporters, and the types and quantities of waste delivered by such persons or entities, for Metro's use in enforcing the Metro Code against such persons or entities, when Metro demonstrates a reasonable suspicion that a violation has occurred.

12. Other Facility Business.

- a. Company shall not permit or allow any person or firm to handle, process or dispose of any waste generated within Metro boundaries (such a person or firm shall be referred to as "Other Facility Business"), if the Other Facility Business operates either (1) on the site of the Facility, or (2) in a manner that affects any waste which has come to the Facility, without prior, written Metro approval. If Company wants to permit or allow any Other Facility Business, Company must submit a written request to Metro. Such request shall include the name, business address and

principal business of the Other Facility Business and its owners, and shall also include the contractual or other relationship between Company and the Other Facility Business. All documents describing this relationship, including without limitation contracts and joint venture or partnership agreements, shall be included with Company's request. Company shall notify Metro if at any time there is any change in the ownership of any Other Facility Business. Any Other Facility Business shall comply with each and every term of this Agreement, and shall so indicate in a written agreement which may or may not be an amendment of this Agreement.

- b. Metro and Company agree that Tualatin Valley Waste Recovery ("TVWR") has been operating on the site of the Facility, and Metro will permit such operations to continue under the terms of this paragraph 12. Company shall identify the owners of TVWR, and shall notify Metro if at any time there is any change in the ownership of TVWR. TVWR may accept only source separated recyclable loads. With respect to all such loads, TVWR shall follow all procedures and requirements, except for payment of user fees and excise taxes, set forth in this Agreement. With respect to all contamination which is removed from source separated loads, TVWR or Company shall treat such waste as newly arrived loads and follow all procedures and requirements set forth in this Agreement, including payment of user fees and excise taxes.

13. General Conditions.

- a. The power and right to regulate, in the public interest, the exercise of the privileges granted by this Agreement shall at all times be vested in Metro. Metro reserves the right to establish or amend rules, regulations or standards regarding matters within Metro's authority, and to enforce all such legal requirements against Company.
- b. Company shall be responsible for ensuring that its contractors and agents operate in complete compliance with the terms and conditions of this Agreement.
- c. The granting of this Agreement shall not confer a property right to Company, nor vest any right or privilege in Company to receive specific quantities of solid waste during the term of this Agreement.
- d. This Agreement may not be transferred or assigned without the prior written approval of Metro. Consent to assignment or transfer shall not be unreasonably withheld.
- e. To be effective, a waiver of any term or condition of or amendment to this Agreement must be in writing, signed by either the Executive Officer or an authorized officer of the Company, as the case may be. Waiver of a term or

condition of this Agreement by either party shall not waive nor prejudice that party's right otherwise to require performance of the same term or condition or any other term or condition.

- f. This Agreement shall be construed, applied, and enforced in accordance with the laws of the State of Oregon.
- g. If any provision of this Agreement shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this Agreement shall not be affected.
- h. This Agreement is the entire agreement between the parties and supersedes all prior and other agreements and understandings between the parties. This Agreement does not allow receipt of solid waste from within the boundaries of Metro for any purpose other than disposal or processing in accordance with this Agreement.

HILLSBORO LANDFILL, INC.

METRO

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Print name and title

\_\_\_\_\_  
Print name and title

Date: \_\_\_\_\_

Date: \_\_\_\_\_

TUALATIN VALLEY WASTE RECOVERY

By: \_\_\_\_\_

\_\_\_\_\_  
Print name and title

Date: \_\_\_\_\_

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## AGREEMENT

This Agreement is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the 1992 Metro Charter, located at 2000 S.W. First Avenue, Portland, Oregon 97201-5398, and Waste Management Disposal Services of Oregon, Inc., dba Oregon Waste Systems, Inc., located at P.O. Box 55188, Portland, Oregon 97238-5188, referred to herein as "Company."

This Agreement is entered into by Metro under the authority of ORS 268.317, and Metro Code Chapter 5.05. Company enters into this Agreement in recognition of the "Designated Facility" status conferred upon the Columbia Ridge Landfill in Gilliam County, Oregon, by Metro Ordinance No. 93-483.

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

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

- (4) Contaminated soil and other non-putrescible debris from cleanup of petroleum or other non-hazardous chemical spills.
  - (5) Special waste as defined in section 5.02.015(s) of the Metro Code. A copy of this section of the code is attached as Attachment A, and is incorporated herein by this reference. In all instances, section 5.02.015(s) shall be construed by both parties as limited to wastes that require special handling or testing prior to disposal at a Metro facility or at a landfill.
  - (6) Other waste as described in any future addendum to this Agreement or as authorized by Metro in a non system license. A modification or addendum to this Agreement that adds "other waste" shall not be effective unless approved by the Metro Council.
- b. This Agreement shall not be construed to allow disposal at the Facility of mixed municipal solid waste, or other types of waste not listed in Section 3. a., generated within Metro boundaries.

4. Recordkeeping and Audits.

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

5. Reports and Information.

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

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

- b. Company shall complete a cumulative status review of the waste types and profiles covering each six months of operations under this Agreement and shall provide such report to Metro within 45 days of the expiration of the six-month period covered by the report. The first report shall cover the period of operations from the date of execution of this Agreement through December 31, 1993.
- c. Company shall provide to Metro copies of all permits covering the Facility or operations at the Facility. Copies of revisions to existing permits and newly issued permits shall be provided to Metro within seven business days of receipt. Company shall also provide, within ten business days, a copy of any official enforcement action regarding the Facility or its operation, including but not limited to, a notice of violation or non-compliance with a statute, regulation, or permit condition.

6. User Fee/Excise Tax.

- a. Upon receipt of the reports described in section 5.a., Metro shall transmit an invoice to Company for a fee equal to per ton user fees assessed pursuant to Metro code chapter 5.02 multiplied by the number of tons (or fractions thereof) of solid waste disposed of or processed pursuant to this Agreement during the preceding month. Company shall make payment to Metro in the invoiced amount, not later than 30 days after the date of the invoice. Company shall use reasonable business judgment in allowing generators or transporters of waste to dispose of waste at its Facility on a credit basis and shall use reasonable legal means to collect disposal charges, including all fees and taxes owed to Metro. If Company is unable to collect disposal charges, Company may deduct uncollectible Metro fees and taxes, when an affidavit explaining the status of the uncollectible account is provided that sufficiently documents good faith collection efforts conducted by Company. If Company receives a partial payment and the remainder of the account is uncollectible, the payment received shall be pro-rated between Company's disposal charges and Metro's fees and taxes. All amounts owing to Metro that are deemed "uncollectible" and are ultimately collected, shall be remitted to Metro within 30 days of receipt by Company.
- b. Upon receipt of the reports described in section 5.a., Metro shall transmit an invoice to Company for a fee equal to all excise taxes required to be paid under

Metro Code Chapter 7.01, as a result of Company's activities during the preceding month. Excise taxes shall be due for disposal of waste at the Facility, but shall not be due for transport to the Facility, even if Company arranges that transport.

- c. Credit terms shall be as specified in the Metro Code as now in effect or as amended.
- d. Company shall not pay the user fees and excise taxes described in this paragraph on waste received at the Facility:
  - (1) which is accepted without charge or fee; and
  - (2) which is intended to be used for a beneficial purpose and which is in fact used for a beneficial purpose.

7. Modification, Suspension, and Termination.

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

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

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

8. Compliance With Law.

Company shall fully comply with the Metro Code, as amended, and with all federal, state, regional and local laws, as amended, rules, regulations, ordinances, orders and permits pertaining in any manner to this Agreement. All conditions imposed on the operation of the Facility by federal, state or local governments or agencies having jurisdiction over the Facility are part of this Agreement by reference as if specifically set forth herein. Such conditions and permits include those attached as exhibits to this Agreement, as well as any existing at the time of issuance of this Agreement and not attached, and permits or conditions issued or modified during the term of this Agreement.

9. Right of Inspection.

Authorized representatives of Metro shall be permitted access to the premises of the Facility at all reasonable times for the purpose of making inspections and carrying out



other necessary functions related to this Agreement. Access to inspect is authorized:

- a. During all working hours;
  - b. At other reasonable times with notice; and
  - c. At any time without notice when, in the reasonable opinion of the Metro Solid Waste Department Director, such notice would defeat the purpose of the entry.
10. Indemnification. Company shall indemnify, defend, and hold Metro, and Metro's agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with Company's performance under this Agreement.
11. Confidentiality.
- a. Metro recognizes and acknowledges the confidential and proprietary nature of the names of persons or entities generating or delivering waste to the Facility and the types and quantities of waste generated or delivered by such persons or entities (herein, "confidential information"), which Company is required to submit to Metro under section 5.a. of this Agreement. Metro recognizes that the confidential information specified herein is a "trade secret" and exempt from public disclosure under Oregon law because it is currently known only by Company, is used by Company in its business, and gives Company a business advantage over others not possessing such information. The ability of competitors of Company to obtain the confidential information specified herein is not in the public interest because it detracts from a relationship of trust that is necessary for Metro to effectively carry out its solid waste management functions. Metro hereby obligates itself in good faith not to disclose such confidential information to any person outside of Metro except as specified herein. Access to, and use of, such information shall only be as specified in this section 11.
  - b. At any time during and after the term of this Agreement, Metro shall not, in any manner whatsoever, either directly or indirectly, divulge, disclose, or communicate to any person, partnership, firm, association, corporation, or other entity, or to any person at Metro who does not have a reasonable need to obtain confidential information for Metro's solid waste management purposes, or use for the personal benefit of such party, the confidential information specified in this section 11. Metro may nevertheless use such information for solid waste management purposes, including solid waste tracking and forecasting, enforcement of the Metro Code, or assistance to other jurisdictions in regulatory or other law enforcement. Metro may also use such confidential information in aggregations or summaries that may be released to the public so long as it is not possible to identify from such

aggregations or summaries the persons or other entities generating and delivering waste to the Facility or the types and quantities of waste such persons or other entities generate or deliver to the Facility. Metro shall notify Company within 3 business days of Metro's receipt of a request for confidential information from a third party. If it becomes necessary for Metro to release confidential information to any person outside of Metro, Metro shall so notify Company in writing, at least 15 days prior to releasing such information.

- c. When submitting to Metro the confidential information specified herein, Company shall mark such materials as confidential. Metro shall keep all such material separate from its other records and materials, in the custody and control of the Metro Office of General Counsel, such that it will not be available to members of the public or persons at Metro who do not have a reasonable need to obtain access to the information relative to Metro's solid waste management responsibilities.
- d. If Oregon law is modified such that the confidential information referenced in this section 11 is no longer exempt from public disclosure, or if a court of competent jurisdiction requires release of such information, Company shall no longer be required to submit such information to Metro. In such instance, upon request, Company nevertheless agrees to provide to Metro the names of specific generators or transporters, and the types and quantities of waste delivered by such persons or entities, for Metro's use in enforcing the Metro Code against such persons or entities, when Metro demonstrates a reasonable suspicion that a violation has occurred.

12. Relation to Waste Delivery Guarantee.

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

13. General Conditions.

- a. The power and right to regulate, in the public interest, the exercise of the privileges granted by this Agreement shall at all times be vested in Metro. Metro reserves the right to establish or amend rules, regulations or standards regarding matters within Metro's authority, and to enforce all such legal requirements against Company.
- b. Company shall be responsible for ensuring that its contractors and agents operate in complete compliance with the terms and conditions of this Agreement.
- c. The granting of this Agreement shall not confer a property right to Company, nor vest any right or privilege in Company to receive specific quantities of solid waste during the term of this Agreement.
- d. This Agreement may not be transferred or assigned without the prior written approval of Metro. Consent to assignment or transfer shall not be unreasonably withheld.
- e. To be effective, a waiver of any term or condition of or amendment to this Agreement must be in writing, signed by either the Executive Officer or an authorized officer of the Company, as the case may be. Waiver of a term or condition of this Agreement by either party shall not waive nor prejudice that party's right otherwise to require performance of the same term or condition or any other term or condition.
- f. This Agreement shall be construed, applied, and enforced in accordance with the laws of the State of Oregon.
- g. If any provision of this Agreement shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this Agreement shall not be affected.

- h. This Agreement is the entire agreement between the parties. This Agreement does not allow receipt of solid waste from within the boundaries of Metro for any purpose other than disposal in accordance with this Agreement.

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

METRO

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Print name and title

\_\_\_\_\_  
Print name and title

Date: \_\_\_\_\_

Date: \_\_\_\_\_

CL:clk  
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## AGREEMENT

This Agreement is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the 1992 Metro Charter, located at 2000 S.W. First Avenue, Portland, Oregon 97201-5398, and Regional Disposal Company, a Washington joint venture, with its home office at 4730 32nd Avenue South, Seattle, Washington 98118, referred to herein as "Company."

This Agreement is entered into by Metro under the authority of ORS 268.317, and Metro Code Chapter 5.05. Company enters into this Agreement in recognition of the "Designated Facility" status conferred upon the Roosevelt Regional Landfill Facility in Klickitat County, Washington, by Metro Ordinance No. 93-483.

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

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

- (4) Contaminated soil and other non-putrescible debris from cleanup of petroleum or other non-hazardous chemical spills.
  - (5) Special waste as defined in section 5.02.015(s) of the Metro Code. A copy of this section of the code is attached as Attachment A, and is incorporated herein by this reference. In all instances, section 5.02.015(s) shall be construed by both parties as limited to wastes that require special handling or testing prior to disposal at a Metro facility or at a landfill.
  - (6) Other waste as described in any future addendum to this Agreement or as authorized by Metro in a non system license. A modification or addendum to this Agreement that adds "other waste" shall not be effective unless approved by the Metro Council.
- b. This Agreement shall not be construed to allow disposal at the Facility of mixed municipal solid waste, or other types of waste not listed in Section 3.a., generated within Metro boundaries.

4. Recordkeeping and Audits.

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

5. Reports and Information.

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

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

- b. Company shall complete a cumulative status review of the waste types and profiles covering each six months of operations under this Agreement and shall provide such report to Metro within 45 days of the expiration of the six-month period covered by the report. The first report shall cover the period of operations from the date of execution of this Agreement through December 31, 1993.
- c. Company shall provide to Metro copies of all permits covering the Facility or operations at the Facility. Copies of revisions to existing permits and newly issued permits shall be provided to Metro within seven business days of receipt. Company shall also provide, within ten business days, a copy of any official enforcement action regarding the Facility or its operation, including but not limited to, a notice of violation or non-compliance with a statute, regulation, or permit condition.

6. User Fee/Excise Tax.

- a. Upon receipt of the reports described in section 5.a., Metro shall transmit an invoice to Company for a fee equal to per ton user fees assessed pursuant to Metro code chapter 5.02 multiplied by the number of tons (or fractions thereof) of solid waste disposed of or processed pursuant to this Agreement during the preceding month. Company shall make payment to Metro in the invoiced amount, not later than 30 days after the date of the invoice. Company shall use reasonable business judgment in allowing generators or transporters of waste to dispose of waste at its Facility on a credit basis and shall use reasonable legal means to collect disposal charges, including all fees and taxes owed to Metro. If Company is unable to collect disposal charges, Company may deduct uncollectible Metro fees and taxes, when an affidavit explaining the status of the uncollectible account is provided that sufficiently documents good faith collection efforts conducted by Company. If Company receives a partial payment and the remainder of the account is uncollectible, the payment received shall be pro-rated between Company's disposal charges and Metro's fees and taxes. All amounts owing to Metro that are deemed "uncollectible" and are ultimately collected, shall be remitted to Metro within 30 days of receipt by Company.
- b. Upon receipt of the reports described in section 5.a., Metro shall transmit an invoice to Company for a fee equal to all excise taxes required to be paid under

Metro Code Chapter 7.01, as a result of Company's activities during the preceding month. Excise taxes shall be due for disposal of waste at the Facility, but shall not be due for transport to the Facility, even if Company arranges that transport.

- c. Credit terms shall be as specified in the Metro Code as now in effect or as amended.
- d. Company shall not pay the user fees and excise taxes described in this paragraph on waste received at the Facility:
  - (1) which is accepted without charge or fee; and
  - (2) which is intended to be used for a beneficial purpose and which is in fact used for a beneficial purpose.

7. Modification, Suspension, and Termination.

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



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

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

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

8. Compliance With Law.

Company shall fully comply with the Metro Code, as amended, and with all federal, state, regional and local laws, as amended, rules, regulations, ordinances, orders and permits pertaining in any manner to this Agreement. All conditions imposed on the operation of the Facility by federal, state or local governments or agencies having jurisdiction over the Facility are part of this Agreement by reference as if specifically set forth herein. Such conditions and permits include those attached as exhibits to this Agreement, as well as any existing at the time of issuance of this Agreement and not attached, and permits or conditions issued or modified during the term of this Agreement.

9. Right of Inspection.

Authorized representatives of Metro shall be permitted access to the premises of the Facility at all reasonable times for the purpose of making inspections and carrying out other necessary functions related to this Agreement. Access to inspect is authorized:

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

10. Indemnification. Company shall indemnify, defend, and hold Metro, and Metro's agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with Company's performance under this Agreement.

11. Confidentiality.

- a. Metro recognizes and acknowledges the confidential and proprietary nature of the names of persons or entities generating or delivering waste to the Facility and the types and quantities of waste generated or delivered by such persons or entities (herein, "confidential information"), which Company is required to submit to Metro under section 5.a. of this Agreement. Metro recognizes that the confidential information specified herein is a "trade secret" and exempt from public disclosure under Oregon law because it is currently known only by Company, is used by Company in its business, and gives Company a business advantage over others not possessing such information. The ability of competitors of Company to obtain the confidential information specified herein is not in the public interest because it detracts from a relationship of trust that is necessary for Metro to effectively carry out its solid waste management functions. Metro hereby obligates itself in good faith not to disclose such confidential information to any person outside of Metro except as specified herein. Access to, and use of, such information shall only be as specified in this section 11.
- b. At any time during and after the term of this Agreement, Metro shall not, in any manner whatsoever, either directly or indirectly, divulge, disclose, or communicate to any person, partnership, firm, association, corporation, or other entity, or to any person at Metro who does not have a reasonable need to obtain confidential information for Metro's solid waste management purposes, or use for the personal benefit of such party, the confidential information specified in this section 11.

Metro may nevertheless use such information for solid waste management purposes, including solid waste tracking and forecasting, enforcement of the Metro Code, or assistance to other jurisdictions in regulatory or other law enforcement. Metro may also use such confidential information in aggregations or summaries that may be released to the public so long as it is not possible to identify from such aggregations or summaries the persons or other entities generating and delivering waste to the Facility or the types and quantities of waste such persons or other entities generate or deliver to the Facility. Metro shall notify Company within 3 business days of Metro's receipt of a request for confidential information from a third party. If it becomes necessary for Metro to release confidential information to any person outside of Metro, Metro shall so notify Company in writing, at least 15 days prior to releasing such information.

- c. When submitting to Metro the confidential information specified herein, Company shall mark such materials as confidential. Metro shall keep all such material separate from its other records and materials, in the custody and control of the Metro Office of General Counsel, such that it will not be available to members of the public or persons at Metro who do not have a reasonable need to obtain access to the information relative to Metro's solid waste management responsibilities.
- d. If Oregon law is modified such that the confidential information referenced in this section 11 is no longer exempt from public disclosure, or if a court of competent jurisdiction requires release of such information, Company shall no longer be required to submit such information to Metro. In such instance, upon request, Company nevertheless agrees to provide to Metro the names of specific generators or transporters, and the types and quantities of waste delivered by such persons or entities, for Metro's use in enforcing the Metro Code against such persons or entities, when Metro demonstrates a reasonable suspicion that a violation has occurred.

12. General Conditions.

- a. The power and right to regulate, in the public interest, the exercise of the privileges granted by this Agreement shall at all times be vested in Metro. Metro reserves the right to establish or amend rules, regulations or standards regarding matters within Metro's authority, and to enforce all such legal requirements against Company.
- b. Company shall be responsible for ensuring that its contractors and agents operate in complete compliance with the terms and conditions of this Agreement.

- c. The granting of this Agreement shall not confer a property right to Company, nor vest any right or privilege in Company to receive specific quantities of solid waste during the term of this Agreement.
- d. This Agreement may not be transferred or assigned without the prior written approval of Metro. Consent to assignment or transfer shall not be unreasonably withheld.
- e. To be effective, a waiver of any term or condition of or amendment to this Agreement must be in writing, signed by either the Executive Officer or an authorized officer of the Company, as the case may be. Waiver of a term or condition of this Agreement by either party shall not waive nor prejudice that party's right otherwise to require performance of the same term or condition or any other term or condition.
- f. This Agreement shall be construed, applied, and enforced in accordance with the laws of the State of Oregon.
- g. If any provision of this Agreement shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this Agreement shall not be affected.
- h. This Agreement is the entire agreement between the parties. This Agreement does not allow receipt of solid waste from within the boundaries of Metro for any purpose other than disposal in accordance with this Agreement.

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

METRO

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
 Print name and title

\_\_\_\_\_  
 Print name and title

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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**SOLID WASTE COMMITTEE REPORT**

CONSIDERATION OF RESOLUTION NO. 93-1754A, FOR THE PURPOSE OF APPROVING DESIGNATED FACILITY AGREEMENTS UNDER METRO CODE SECTION 5.05.030 FOR COLUMBIA RIDGE LANDFILL, ROOSEVELT REGIONAL LANDFILL, HILLSBORO LANDFILL, LAKESIDE RECLAMATION LANDFILL AND FINLEY BUTTES REGIONAL LANDFILL

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Date: March 3, 1993

Presented by: Councilor Buchanan

**Committee Recommendation:** At the March 2 meeting, the Committee unanimously voted to recommend Council adoption of Resolution No. 93-1754A. Voting in favor: Councilors Buchanan, McFarland, McLain, Washington and Wyers.

**Committee Issues/Discussion:** The Metro Code provides that all agreements with designated facilities be approved by the Council. This resolution is a companion to Ordinance No.93-483A. Passage of the resolution would approve agreements with each of the newly designated facilities and those whose agreements were in need of modification. The agreements related to the general purpose landfills are similar as are those relating to the limited purpose landfills.

The principal issue addressed by the committee related to these agreements involved the types of materials that could be disposed of at Finley Buttes and Roosevelt. An amendment was adopted to clarify the definition of special wastes to be limited to those requiring special treatment or handling. Additional amendments addressed technical changes recommended by Metro legal staff and attorneys representing the facilities (see attached memo from Todd Sadlo).

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING	)	RESOLUTION NO. 93-1754A
DESIGNATED FACILITY AGREEMENTS	)	
UNDER METRO CODE SECTION 5.05.030	)	Introduced by Rena Cusma
FOR COLUMBIA RIDGE LANDFILL,	)	Executive Officer
ROOSEVELT REGIONAL LANDFILL,	)	
HILLSBORO LANDFILL, LAKESIDE	)	
RECLAMATION LANDFILL AND FINLEY	)	
BUTTES <u>REGIONAL</u> LANDFILL	)	

WHEREAS, The Metro Council amended Metro Code Section 5.05.030 by Ordinance No. 92-471C; and

WHEREAS, Ordinance No. 92-471C established a new process by which to evaluate and designate facilities under Code Section 5.05.030; and

WHEREAS, As amended, Metro Code Section 5.05.030(c) requires Council approval of agreements between Metro and a designated facility; and

WHEREAS, Ordinance No. 93-483 proposed new designated facility status for Roosevelt Regional Landfill and Finley Buttes Regional Landfill; and

WHEREAS, Ordinance No. 93-483 proposed new agreements for existing designated facilities, Columbia Ridge Landfill, Hillsboro Landfill and Lakeside Reclamation Landfill; and

WHEREAS, The Metro Council has adopted Ordinance No. 93-483 designating or amending the designation of each of the above-referenced facilities; and

WHEREAS, The Metro Council has reviewed the proposed agreements for Roosevelt Regional Landfill, Finley Buttes Regional Landfill, Columbia Ridge Landfill, Hillsboro Landfill and Lakeside Reclamation Landfill attached hereto as Exhibits A, B, C, D, and E; 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 approves the agreements for Roosevelt Regional Landfill, Finley Buttes Regional Landfill, Columbia Ridge Landfill, Hillsboro Landfill, and Lakeside Reclamation Landfill attached to this Resolution as Exhibits A, B, C, D and E, and authorizes the Executive Officer to execute the agreements.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 1993.

---

Judy Wyers, Presiding Officer

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING	)	RESOLUTION NO. 93-1754
DESIGNATED FACILITY AGREEMENTS	)	
UNDER METRO CODE SECTION 5.05.030	)	Introduced by Rena Cusma
FOR COLUMBIA RIDGE LANDFILL,	)	Executive Officer
ROOSEVELT REGIONAL LANDFILL,	)	
HILLSBORO LANDFILL, LAKESIDE	)	
RECLAMATION LANDFILL AND FINLEY	)	
BUTTES LANDFILL	)	

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WHEREAS, The Metro Council has adopted Ordinance No. 93-483 designating or amending the designation of each of the above-referenced facilities; and

WHEREAS, The Metro Council has reviewed the proposed agreements for Roosevelt Regional Landfill, Finley Buttes Landfill, Columbia Ridge Landfill, Hillsboro Landfill and Lakeside Reclamation Landfill attached hereto as Exhibits A, B, C, D, and E; 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 approves the agreements for Roosevelt Regional Landfill, Finley Buttes Landfill, Columbia Ridge Landfill, Hillsboro Landfill, and Lakeside Reclamation Landfill attached to this Resolution as Exhibits A, B, C, D and E, and authorizes the Executive Officer to execute the agreements.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 1993.

\_\_\_\_\_  
Judy Wyers, Presiding Officer

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

4. Recordkeeping and Audits.

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

5. Reports and Information.

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

METRO CONTRACT No. 902860

## AGREEMENT

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

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

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

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

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

- b. Company shall complete a cumulative status review of the waste types and profiles covering each six months of operations under this Agreement and shall provide such report to Metro within 45 days of the expiration of the six-month period covered by the report. The first report shall cover the period of operations from the date of execution of this Agreement through December 31, 1993.
- c. Company shall provide to Metro copies of all permits covering the Facility or operations at the Facility. Copies of revisions to existing permits and newly issued permits shall be provided to Metro within seven business days of receipt. Company shall also provide, within ten business days, a copy of any official enforcement action regarding the Facility or its operation, including but not limited to, a notice of violation or non-compliance with a statute, regulation, or permit condition.

6. User Fee/Excise Tax.

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

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

7. Modification, Suspension, and Termination.

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

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

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

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

8. Compliance With Law.

Company shall fully comply with the Metro Code and with all federal, state, regional and local laws, rules, regulations, ordinances, orders and permits pertaining in any manner to this Agreement. All conditions imposed on the operation of the Facility by federal, state or local governments or agencies having jurisdiction over the Facility are part of this Agreement by reference as if specifically set forth herein. Such conditions and permits include those attached as exhibits to this Agreement, as well as any existing at the time of issuance of this Agreement and not attached, and permits or conditions issued or modified during the term of this Agreement.

9. Right of Inspection.

Authorized representatives of Metro shall be permitted access to the premises of the Facility at all reasonable times for the purpose of making inspections and carrying out other necessary functions related to this Agreement. Access to inspect is authorized:

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

10. Indemnification. Company shall indemnify, defend, and hold Metro, and Metro's agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with Company's performance under this Agreement.

11. Confidentiality.

- a. Metro recognizes and acknowledges the confidential and proprietary nature of the names of persons or entities generating or delivering waste to the Facility and the types and quantities of waste generated or delivered by such persons or entities (herein, "confidential information"), which Company is required to submit to Metro under section 5.a. of this Agreement. Metro recognizes that the confidential information specified herein is a "trade secret" and exempt from public disclosure under Oregon law because it is currently known only by Company, is used by Company in its business, and gives Company a business advantage over others not possessing such information. The ability of competitors of Company to obtain the confidential information specified herein is not in the public interest because it detracts from a relationship of trust that is necessary for Metro to effectively carry out its solid waste management

functions. Metro hereby obligates itself in good faith not to disclose such confidential information to any person outside of Metro except as specified herein. Access to, and use of, such information shall only be as specified in this section 11.

- b. At any time during and after the term of this Agreement, Metro shall not, in any manner whatsoever, either directly or indirectly, divulge, disclose, or communicate to any person, partnership, firm, association, corporation, or other entity, or use for the personal benefit of such party, the confidential information specified in this section 11. Metro may nevertheless use such information for solid waste management purposes, including solid waste tracking and forecasting, enforcement of the Metro Code, or assistance to other jurisdictions in regulatory or other law enforcement. Metro may also use such confidential information in aggregations or summaries that may be released to the public so long as it is not possible to identify from such aggregations or summaries the persons or other entities generating and delivering waste to the Facility or the types and quantities of waste such persons or other entities generate or deliver to the Facility. Metro shall notify Company within 3 business days of Metro's receipt of a request for confidential information from from a third party. If it becomes necessary for Metro to release confidential information to any person outside of Metro, Metro shall so notify Company in writing, at least 15 days prior to releasing such information.
- c. When submitting to Metro the confidential information specified herein, Company shall mark such materials as confidential. Metro shall keep all such material separate from its other records and materials, in the custody and control of the Metro Office of General Counsel, such that it will not be available to members of the public or persons at Metro who do not have a reasonable need to obtain access to the information relative to Metro's solid waste management responsibilities.
- d. If Oregon law is modified such that the confidential information referenced in this section 11 is no longer exempt from public disclosure, or if a court of competent jurisdiction requires release of such information, Company shall no longer be required to submit such information to Metro. In such instance, upon request, Company nevertheless agrees to provide to Metro the names of specific generators or transporters, and the types and quantities of waste delivered by such persons or entities, for Metro's use in enforcing the Metro Code against such persons or entities, when Metro demonstrates a reasonable suspicion that a violation has occurred.



12. General Conditions.

- a. The power and right to regulate, in the public interest, the exercise of the privileges granted by this Agreement shall at all times be vested in Metro. Metro reserves the right to establish or amend rules, regulations or standards regarding matters within Metro's authority, and to enforce all such legal requirements against Company.
- b. Company shall be responsible for ensuring that its contractors and agents operate in complete compliance with the terms and conditions of this Agreement.
- c. The granting of this Agreement shall not confer a property right to Company, nor vest any right or privilege in Company to receive specific quantities of solid waste during the term of this Agreement.
- d. This Agreement may not be transferred or assigned without the prior written approval of Metro. Consent to assignment or transfer shall not be unreasonably withheld.
- e. To be effective, a waiver of any term or condition of or amendment to this Agreement must be in writing, signed by the Executive Officer. Waiver of a term or condition of this Agreement shall not waive nor prejudice Metro's right otherwise to require performance of the same term or condition or any other term or condition.
- f. This Agreement shall be construed, applied, and enforced in accordance with the laws of the State of Oregon.
- g. If any provision of this Agreement shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this Agreement shall not be affected.

- h. This Agreement is the entire agreement between the parties. This Agreement does not allow receipt of solid waste from within the boundaries of the Metropolitan Service District for any purpose other than disposal in accordance with this Agreement.

**FINLEY BUTTES LANDFILL COMPANY**

**METRO**

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Print name and title

\_\_\_\_\_  
Print name and title

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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METRO CONTRACT NO. 902859

**AGREEMENT**

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

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

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

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

- (3) Asbestos (special requirements for packaging and unloading would apply).
- (4) Outdated or defective non-putrescible commercial or industrial raw materials not suited for market conditions or consumer use.
- (5) Contaminated soil and other non-putrescible debris from cleanup of petroleum or other non-hazardous chemical spills.
- (6) Special waste as defined in section 5.02.015(s) of the Metro Code. A copy of this section of the code is attached as Attachment A, and is incorporated herein by this reference.
- (7) Other waste as described in any future addendum to this Agreement or as authorized by Metro in a non system license.

b. This Agreement shall not be construed to allow disposal at the Facility of mixed municipal solid waste, or other types of waste not listed in Section 3.a., generated within Metro boundaries.

4. Recordkeeping and Audits.

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

5. Reports and Information.

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

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

- b. Company shall complete a cumulative status review of the waste types and profiles covering each six months of operations under this Agreement and shall provide such report to Metro within 45 days of the expiration of the six-month period covered by the report. The first report shall cover the period of operations from the date of execution of this Agreement through December 31, 1993.
- c. Company shall provide to Metro copies of all permits covering the Facility or operations at the Facility. Copies of revisions to existing permits and newly issued permits shall be provided to Metro within seven business days of receipt. Company shall also provide, within ten business days, a copy of any official enforcement action regarding the Facility or its operation, including but not limited to, a notice of violation or non-compliance with a statute, regulation, or permit condition.

6. User Fee/Excise Tax.

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

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

7. Modification, Suspension, and Termination.

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

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

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

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

8. Compliance With Law.

Company shall fully comply with the Metro Code and with all federal, state, regional and local laws, rules, regulations, ordinances, orders and permits pertaining in any manner to this Agreement. All conditions imposed on the operation of the Facility by federal, state or local governments or agencies having jurisdiction over the Facility are part of this Agreement by reference as if specifically set forth herein. Such conditions and permits include those attached as exhibits to this Agreement, as well as any existing at the time of issuance of this Agreement and not attached, and permits or conditions issued or modified during the term of this Agreement.

9. Right of Inspection.

Authorized representatives of Metro shall be permitted access to the premises of the Facility at all reasonable times for the purpose of making inspections and carrying out other necessary functions related to this Agreement. Access to inspect is authorized:

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

10. Indemnification. Company shall indemnify, defend, and hold Metro, and Metro's agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with Company's performance under this Agreement.

11. Confidentiality.

- a. Metro recognizes and acknowledges the confidential and proprietary nature of the names of persons or entities generating or delivering waste to the Facility and the types and quantities of waste generated or delivered by such persons or entities (herein, "confidential information"), which Company is required to submit to Metro under section 6.a. of this Agreement. Metro recognizes that the confidential information specified herein is a "trade secret" and exempt from public disclosure under Oregon law because it is currently known only by Company, is used by Company in its business, and gives Company a business advantage over others not possessing such information. The ability of competitors of Company to obtain the confidential information specified herein is not in the public interest because it detracts from a relationship of trust that is necessary for Metro to effectively carry out its solid waste management



functions. Metro hereby obligates itself in good faith not to disclose such confidential information to any person outside of Metro except as specified herein. Access to, and use of, such information shall only be as specified in this section 11.

- b. At any time during and after the term of this Agreement, Metro shall not, in any manner whatsoever, either directly or indirectly, divulge, disclose, or communicate to any person, partnership, firm, association, corporation, or other entity, or use for the personal benefit of such party, the confidential information specified in this section 11. Metro may nevertheless use such information for solid waste management purposes, including solid waste tracking and forecasting, enforcement of the Metro Code, or assistance to other jurisdictions in regulatory or other law enforcement. Metro may also use such confidential information in aggregations or summaries that may be released to the public so long as it is not possible to identify from such aggregations or summaries the persons or other entities generating and delivering waste to the Facility or the types and quantities of waste such persons or other entities generate or deliver to the Facility. Metro shall notify Company within 3 business days of Metro's receipt of a request for confidential information from from a third party. If it becomes necessary for Metro to release confidential information to any person outside of Metro, Metro shall so notify Company in writing, at least 15 days prior to releasing such information.
- c. When submitting to Metro the confidential information specified herein, Company shall mark such materials as confidential. Metro shall keep all such material separate from its other records and materials, in the custody and control of the Metro Office of General Counsel, such that it will not be available to members of the public or persons at Metro who do not have a reasonable need to obtain access to the information relative to Metro's solid waste management responsibilities.
- d. If Oregon law is modified such that the confidential information referenced in this section 11 is no longer exempt from public disclosure, or if a court of competent jurisdiction requires release of such information, Company shall no longer be required to submit such information to Metro. In such instance, upon request, Company nevertheless agrees to provide to Metro the names of specific generators or transporters, and the types and quantities of waste delivered by such persons or entities, for Metro's use in enforcing the Metro Code against such persons or entities, when Metro demonstrates a reasonable suspicion that a violation has occurred.

12. Relation to Waste Delivery Guarantee.

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

13. General Conditions.

- a. The power and right to regulate, in the public interest, the exercise of the privileges granted by this Agreement shall at all times be vested in Metro. Metro reserves the right to establish or amend rules, regulations or standards regarding matters within Metro's authority, and to enforce all such legal requirements against Company.
- b. Company shall be responsible for ensuring that its contractors and agents operate in complete compliance with the terms and conditions of this Agreement.
- c. The granting of this Agreement shall not confer a property right to Company, nor vest any right or privilege in Company to receive specific quantities of solid waste during the term of this Agreement.
- d. This Agreement may not be transferred or assigned without the prior written approval of Metro. Consent to assignment or transfer shall not be unreasonably withheld.
- e. To be effective, a waiver of any term or condition of or amendment to this Agreement must be in writing, signed by the Executive Officer. Waiver of a term or condition of this Agreement shall not waive nor prejudice Metro's right otherwise to require performance of the same term or condition or any other term or condition.
- f. This Agreement shall be construed, applied, and enforced in accordance with the laws of the State of Oregon.
- g. If any provision of this Agreement shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this Agreement shall not be affected.

- h. This Agreement is the entire agreement between the parties. This Agreement does not allow receipt of solid waste from within the boundaries of the Metropolitan Service District for any purpose other than disposal in accordance with this Agreement.

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

METRO

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Print name and title

\_\_\_\_\_  
Print name and title

Date: \_\_\_\_\_

Date: \_\_\_\_\_

CL:clk

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## AGREEMENT

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

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

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

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

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

4. Recordkeeping and Audits.

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

5. Reports and Information.

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

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

- b. Company shall complete a cumulative status review of the waste types and profiles covering each six months of operations under this Agreement and shall provide such report to Metro within 45 days of the expiration of the six-month period covered by the report. The first report shall cover the period of operations from the date of execution of this Agreement through December 31, 1993.
- c. Company shall provide to Metro copies of all permits covering the Facility or operations at the Facility. Copies of revisions to existing permits and newly issued permits shall be provided to Metro within seven business days of receipt. Company shall also provide, within ten business days, a copy of any official enforcement action regarding the Facility or its operation, including but not limited to, a notice of violation or non-compliance with a statute, regulation, or permit condition.

6. User Fee/Excise Tax.

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

are deemed "uncollectible" and are ultimately collected, shall be remitted to Metro within 30 days of receipt by Company.

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

7. Modification, Suspension, and Termination.

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

efforts to comply and is capable of complying within the extended compliance period.

b. Metro's Executive Officer may suspend this Agreement without prior notice, as follows:

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

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

c. The Metro Council may modify, suspend or terminate this Agreement, for good cause or substantial change of circumstances, upon passage of a resolution specifying the action taken and the effective date. If this Agreement is modified by Council resolution, Company shall have 30 days from the date of the resolution to acknowledge the modification by signing a written instrument containing the terms of the modification. Failure of Company to acknowledge the modification within the 30-day period, unless otherwise excused by Metro's Executive Officer, shall result in suspension of the Agreement at the close of business on the 30th day, until the modification is acknowledged in writing by Company.

d. If the Metro Council adopts a resolution to modify, suspend, or terminate this Agreement without providing Company with reasonable notice and an opportunity to be heard prior to Council action, Company shall be entitled to a contested case hearing related to the action taken, as specified in Metro Code Chapter 2.05.

e. Nothing in this section shall be interpreted to hinder or prevent Metro from making and enforcing policy judgments related to the flow of solid waste out of Metro boundaries, regardless of the perceived or actual impact of such decisions on Company's business. A policy judgment by Metro to limit or prevent waste



generated within Metro boundaries from entering the Facility shall under no circumstances be the basis for payment of compensation by Metro to Company.

8. Compliance With Law.

Company shall fully comply with the Metro Code and with all federal, state, regional and local laws, rules, regulations, ordinances, orders and permits pertaining in any manner to this Agreement. All conditions imposed on the operation of the Facility by federal, state or local governments or agencies having jurisdiction over the Facility are part of this Agreement by reference as if specifically set forth herein. Such conditions and permits include those attached as exhibits to this Agreement, as well as any existing at the time of issuance of this Agreement and not attached, and permits or conditions issued or modified during the term of this Agreement.

9. Right of Inspection.

Authorized representatives of Metro shall be permitted access to the premises of the Facility at all reasonable times for the purpose of making inspections and carrying out other necessary functions related to this Agreement. Access to inspect is authorized:

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

10. Indemnification. Company shall indemnify, defend, and hold Metro, and Metro's agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with Company's performance under this Agreement.

11. Confidentiality.

- a. Metro recognizes and acknowledges the confidential and proprietary nature of the names of persons or entities generating or delivering waste to the Facility and the types and quantities of waste generated or delivered by such persons or entities (herein, "confidential information"), which Company is required to submit to Metro under section 6.a. of this Agreement. Metro recognizes that the confidential information specified herein is a "trade secret" and exempt from public disclosure under Oregon law because it is currently known only by Company, is used by Company in its business, and gives Company a business advantage over others not possessing such information. The ability of

competitors of Company to obtain the confidential information specified herein is not in the public interest because it detracts from a relationship of trust that is necessary for Metro to effectively carry out its solid waste management functions. Metro hereby obligates itself in good faith not to disclose such confidential information to any person outside of Metro except as specified herein. Access to, and use of, such information shall only be as specified in this section 11.

- b. At any time during and after the term of this Agreement, Metro shall not, in any manner whatsoever, either directly or indirectly, divulge, disclose, or communicate to any person, partnership, firm, association, corporation, or other entity, or use for the personal benefit of such party, the confidential information specified in this section 11. Metro may nevertheless use such information for solid waste management purposes, including solid waste tracking and forecasting, enforcement of the Metro Code, or assistance to other jurisdictions in regulatory or other law enforcement. Metro may also use such confidential information in aggregations or summaries that may be released to the public so long as it is not possible to identify from such aggregations or summaries the persons or other entities generating and delivering waste to the Facility or the types and quantities of waste such persons or other entities generate or deliver to the Facility. Metro shall notify Company within 3 business days of Metro's receipt of a request for confidential information from from a third party. If it becomes necessary for Metro to release confidential information to any person outside of Metro, Metro shall so notify Company in writing, at least 15 days prior to releasing such information.
- c. When submitting to Metro the confidential information specified herein, Company shall mark such materials as confidential. Metro shall keep all such material separate from its other records and materials, in the custody and control of the Metro Office of General Counsel, such that it will not be available to members of the public or persons at Metro who do not have a reasonable need to obtain access to the information relative to Metro's solid waste management responsibilities.
- d. If Oregon law is modified such that the confidential information referenced in this section 11 is no longer exempt from public disclosure, or if a court of competent jurisdiction requires release of such information, Company shall no longer be required to submit such information to Metro. In such instance, upon request, Company nevertheless agrees to provide to Metro the names of specific generators or transporters, and the types and quantities of waste delivered by

such persons or entities, for Metro's use in enforcing the Metro Code against such persons or entities, when Metro demonstrates a reasonable suspicion that a violation has occurred.

12. Other Facility Business.

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

13. General Conditions.

- a. The power and right to regulate, in the public interest, the exercise of the privileges granted by this Agreement shall at all times be vested in Metro. Metro reserves the right to establish or amend rules, regulations or standards regarding matters within Metro's authority, and to enforce all such legal requirements against Company.
- b. Company shall be responsible for ensuring that its contractors and agents operate in complete compliance with the terms and conditions of this Agreement.
- c. The granting of this Agreement shall not confer a property right to Company, nor vest any right or privilege in Company to receive specific quantities of solid waste during the term of this Agreement.
- d. This Agreement may not be transferred or assigned without the prior written approval of Metro. Consent to assignment or transfer shall not be unreasonably withheld.
- e. To be effective, a waiver of any term or condition of or amendment to this Agreement must be in writing, signed by the Executive Officer. Waiver of a term or condition of this Agreement shall not waive nor prejudice Metro's right otherwise to require performance of the same term or condition or any other term or condition.
- f. This Agreement shall be construed, applied, and enforced in accordance with the laws of the State of Oregon.
- g. If any provision of this Agreement shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this Agreement shall not be affected.

- h. This Agreement is the entire agreement between the parties and supersedes all prior and other agreements and understandings between the parties. This Agreement does not allow receipt of solid waste from within the boundaries of the Metropolitan Service District for any purpose other than disposal or processing in accordance with this Agreement.

**SANIFILL**

**METRO**

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Print name and title

\_\_\_\_\_  
Print name and title

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**TUALATIN VALLEY WASTE RECOVERY**

By: \_\_\_\_\_

\_\_\_\_\_  
Print name and title

Date: \_\_\_\_\_

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**AGREEMENT**

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

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

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

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

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

4. Recordkeeping and Audits.

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

5. Reports and Information.

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

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

- b. Company shall complete a cumulative status review of the waste types and profiles covering each six months of operations under this Agreement and shall provide such report to Metro within 45 days of the expiration of the six-month period covered by the report. The first report shall cover the period of operations from the date of execution of this Agreement through December 31, 1993.
- c. Company shall provide to Metro copies of all permits covering the Facility or operations at the Facility. Copies of revisions to existing permits and newly issued permits shall be provided to Metro within seven business days of receipt. Company shall also provide, within ten business days, a copy of any official enforcement action regarding the Facility or its operation, including but not limited to, a notice of violation or non-compliance with a statute, regulation, or permit condition.

6. User Fee/Excise Tax.

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



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

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

7. Modification, Suspension, and Termination.

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

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

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

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

#### 8. Compliance With Law.

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

federal, state or local governments or agencies having jurisdiction over the Facility are part of this Agreement by reference as if specifically set forth herein. Such conditions and permits include those attached as exhibits to this Agreement, as well as any existing at the time of issuance of this Agreement and not attached, and permits or conditions issued or modified during the term of this Agreement.

9. Right of Inspection.

Authorized representatives of Metro shall be permitted access to the premises of the Facility at all reasonable times for the purpose of making inspections and carrying out other necessary functions related to this Agreement. Access to inspect is authorized:

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

10. Indemnification. Company shall indemnify, defend, and hold Metro, and Metro's agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with Company's performance under this Agreement.

11. Confidentiality.

- a. Metro recognizes and acknowledges the confidential and proprietary nature of the names of persons or entities generating or delivering waste to the Facility and the types and quantities of waste generated or delivered by such persons or entities (herein, "confidential information"), which Company is required to submit to Metro under section 6.a. of this Agreement. Metro recognizes that the confidential information specified herein is a "trade secret" and exempt from public disclosure under Oregon law because it is currently known only by Company, is used by Company in its business, and gives Company a business advantage over others not possessing such information. The ability of competitors of Company to obtain the confidential information specified herein is not in the public interest because it detracts from a relationship of trust that is necessary for Metro to effectively carry out its solid waste management functions. Metro hereby obligates itself in good faith not to disclose such confidential information to any person outside of Metro except as specified herein. Access to, and use of, such information shall only be as specified in this section 11.

- b. At any time during and after the term of this Agreement, Metro shall not, in any manner whatsoever, either directly or indirectly, divulge, disclose, or communicate to any person, partnership, firm, association, corporation, or other entity, or use for the personal benefit of such party, the confidential information specified in this section 11. Metro may nevertheless use such information for solid waste management purposes, including solid waste tracking and forecasting, enforcement of the Metro Code, or assistance to other jurisdictions in regulatory or other law enforcement. Metro may also use such confidential information in aggregations or summaries that may be released to the public so long as it is not possible to identify from such aggregations or summaries the persons or other entities generating and delivering waste to the Facility or the types and quantities of waste such persons or other entities generate or deliver to the Facility. Metro shall notify Company within 3 business days of Metro's receipt of a request for confidential information from from a third party. If it becomes necessary for Metro to release confidential information to any person outside of Metro, Metro shall so notify Company in writing, at least 15 days prior to releasing such information.
- c. When submitting to Metro the confidential information specified herein, Company shall mark such materials as confidential. Metro shall keep all such material separate from its other records and materials, in the custody and control of the Metro Office of General Counsel, such that it will not be available to members of the public or persons at Metro who do not have a reasonable need to obtain access to the information relative to Metro's solid waste management responsibilities.
- d. If Oregon law is modified such that the confidential information referenced in this section 11 is no longer exempt from public disclosure, or if a court of competent jurisdiction requires release of such information, Company shall no longer be required to submit such information to Metro. In such instance, upon request, Company nevertheless agrees to provide to Metro the names of specific generators or transporters, and the types and quantities of waste delivered by such persons or entities, for Metro's use in enforcing the Metro Code against such persons or entities, when Metro demonstrates a reasonable suspicion that a violation has occurred.

12. General Conditions.

- a. The power and right to regulate, in the public interest, the exercise of the privileges granted by this Agreement shall at all times be vested in Metro. Metro reserves the right to establish or amend rules, regulations or standards regarding matters within Metro's authority, and to enforce all such legal requirements against Company.
- b. Company shall be responsible for ensuring that its contractors and agents operate in complete compliance with the terms and conditions of this Agreement.
- c. The granting of this Agreement shall not confer a property right to Company, nor vest any right or privilege in Company to receive specific quantities of solid waste during the term of this Agreement.
- d. This Agreement may not be transferred or assigned without the prior written approval of Metro. Consent to assignment or transfer shall not be unreasonably withheld.
- e. To be effective, a waiver of any term or condition of or amendment to this Agreement must be in writing, signed by the Executive Officer. Waiver of a term or condition of this Agreement shall not waive nor prejudice Metro's right otherwise to require performance of the same term or condition or any other term or condition.
- f. This Agreement shall be construed, applied, and enforced in accordance with the laws of the State of Oregon.
- g. If any provision of this Agreement shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this Agreement shall not be affected.

- h. This Agreement is the entire agreement between the parties and supersedes all prior and other agreements and understandings between the parties. This Agreement does not allow receipt of solid waste from within the boundaries of the Metropolitan Service District for any purpose other than disposal or processing in accordance with this Agreement.

**GRABHORN, INC.**

**METRO**

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Print name and title

\_\_\_\_\_  
Print name and title

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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**ATTACHMENT A  
TO  
DESIGNATED FACILITIES AGREEMENT**

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

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

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



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

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

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