

FOR THE PURPOSE OF AUTHORIZING) RESOLUTION NO. 99-2746
AN INTERGOVERNMENTAL)
AGREEMENT WITH THE OREGON)
DEPARTMENT OF ENVIRONMENTAL) Introduced by Mike Burton,
QUALITY FOR KFD LANDFILL WORK) Executive Officer

WHEREAS, A solid waste disposal facility operated at 5700 NE 75th Avenue, Portland, Oregon as Killingsworth Fast Disposal (KFD landfill) under a permit issued by DEQ in 1980 and a franchise issued by Metro in 1984; and

WHEREAS, KFD landfill ceased operations as a limited purpose landfill in 1990, its operator, Riedel Waste Systems, Inc., went bankrupt in 1995, and DEQ has been appointed by the bankruptcy courts as escrow agent over a post-closure fund for ongoing site care and monitoring activities; and

WHEREAS, The closure fund has approximately \$150,000 remaining and will be depleted in two years at the current rate of expenditures; and

WHEREAS, DEQ has requested financial assistance from Metro to design and construct a new methane gas collection system to ensure the safety of the public at the landfill; and

WHEREAS, DEQ is willing to indemnify Metro from certain liabilities associated with the site; and

WHEREAS, the budget impact of this request is \$600,000, which the Metro Council approved in its 1998-99 budget; now, therefore,

BE IT RESOLVED,

1) That the Metro Council authorizes the Executive Officer to execute the attached Intergovernmental Agreement (Exhibit "A") with the Oregon Department of Environmental Quality.

ADOPTED by the Metro Council this ____ day of _____ 1999

WITHDRAWN
Jon Kvistad, Presiding Officer

ATTEST:

Approved as to Form:

Recording Secretary

Daniel B. Cooper, General Counsel

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT, dated this ___ day of _____, 1998, is by and between Metro, a metropolitan service district organized under the laws of the State of Oregon and the 1992 Metro Charter, located at 600 NE Grand Avenue, Portland, Oregon, 97232-2736, and the State of Oregon, by and through the Oregon Department of Environmental Quality ("DEQ").

RECITALS

1. From 1980 until 1990, Riedel Waste Systems operated a solid waste disposal facility known as Killingsworth Fast Disposal ("KFD" or the "KFD Landfill") and located at 5700 NE 75th Avenue, Portland, Oregon.
2. In 1980, DEQ issued KFD a solid waste disposal site permit.
3. In 1984, Metro issued KFD a solid waste franchise, which authorized KFD to accept certain materials as set forth in Solid Waste Franchise No. 03, dated December 13, 1984.
4. In 1990, KFD ceased operations as a limited purpose landfill.
5. In 1995, Columbia Western, Inc., the parent company of the operator of the facility, Riedel Waste Systems, Inc., sought protection from creditors under the United States Bankruptcy Code.
6. Pursuant to agreements between DEQ, Riedel Waste Systems, Inc., and Columbia Western, Inc., DEQ manages the post-closure fund for the KFD Landfill.
7. As of September 1, 1998, the post-closure fund had a remaining, unobligated balance of approximately \$147,912.00, which sum is estimated to be depleted before the year 2000, at the current rate of expenditures.
8. Metro is authorized under the 1992 Metro Charter to exercise the function of disposal of solid and liquid waste, and the maintenance of facilities for the disposal of solid and liquid wastes.
9. Metro and DEQ desire to assure continued funding for the management or cleanup of the KFD Landfill as necessary to protect human health and the environment.
10. The Metro Council has budgeted an appropriation of \$600,000 for Metro support of DEQ's activities on the KFD Landfill site as described in this Agreement.

Now, pursuant to authority granted in ORS 190.110, 268.300 and 459.025, and in recognition of the mutual interests of the parties and based upon the terms and conditions herein, it is mutually agreed that Metro shall provide funding to be used by DEQ to pursue and execute the design and construction of a new landfill gas collection system to replace the existing system, and to conduct necessary post-closure activities, as available funding allows.

AGREEMENT

1. Provision of Metro Funding. Metro hereby provides funding to DEQ in the sum of \$600,000 by transfer payable to "State of Oregon, Department of Environmental Quality." These funds shall first be used for the design and construction of a new landfill gas collection system, and removal of damaged or malfunctioning systems on the KFD property. Remaining funds may be used for necessary post-closure activities as determined by DEQ after consultation with Metro, including but not limited to, operation of the new gas collection system; operation of a leachate collection system; gas, leachate and groundwater monitoring; general site maintenance activities; and required site improvements.
2. DEQ's Obligations. DEQ shall perform and/or oversee all work necessary for the work described in the preceding paragraph. DEQ shall assign such personnel whose experience and expertise will facilitate and aid its performance of this Agreement.
3. Release of Metro Funds. Metro agrees to release the Metro funds to DEQ within 30 days of signing this Agreement.
4. Reporting Requirements.
 - a) DEQ shall provide written progress and expenditure reports quarterly to the Metro Regional Environmental Management Committee or other appropriate body as may be determined by the Metro Council Presiding Officer, and shall provide any existing records or reports as reasonably requested by the Director of the Metro Regional Environmental Management Department. This reporting requirement shall cease after the first quarter following expenditure of all Metro funds provided through this Agreement.
 - b) DEQ shall keep cost and site monitoring records for three years following the date of its receipt of funds transferred by this Agreement, available for inspection by representatives of Metro. DEQ shall provide such copies of records to Metro when requested.
 - c) DEQ authorizes Metro to review and inspect all its activities at the site.
5. Separate Governments. The parties hereby agree and acknowledge that DEQ is an agency of the State of Oregon and therefore is a separate and independent governmental body, and that the activities of DEQ, its officers, agents and employees shall not constitute actions of Metro for any purpose whatsoever.

6. Indemnification and Release. Upon receipt of the \$600,000 from Metro, and to the extent permitted by Article XI, Section 7, of the Oregon Constitution and by the Oregon Tort Claims Act, DEQ hereby agrees to indemnify and hold harmless Metro and its elected officials, officers, agents, and employees from and against any and all liability, damage, action, costs, loss, claims, and expenses (including attorneys fees) arising out of the activities of DEQ conducted pursuant to this Agreement at the KFD Landfill site, its officers, agents, employees, contractors, and invitees (which invitees shall exclude Metro). In addition, DEQ shall release Metro, its elected officers and employees, as well as any government successors, from any liability to the State of Oregon related to the KFD Landfill site, arising out of the provisions of state solid waste law and state hazardous waste law, including, but not limited to, the provisions of ORS Chapter 459, ORS 465.200 through 465.455 and 465.900, ORS 466.005 through 466.530, and ORS 466.900 through 466.995.
7. Waiver. By making this Agreement, the parties acknowledge and agree that Metro does not thereby admit any liability or violation of law, and that nothing in this Agreement shall affect any right of contribution, indemnification or cost recovery which Metro may now or in the future have against any third party. Metro waives any claim or cause of action it might have against the State of Oregon with respect to the KFD Landfill site, including a waiver of any right Metro might have under ORS 465.260(7) to seek reimbursement from the Hazardous Substance Remedial Action Fund or the Orphan Site Account for costs incurred under this Agreement. By making this Agreement, the parties also acknowledge and agree that DEQ does not waive any claim, cause of action, or enforcement authority it might have related to the KFD Landfill site as to any party other than Metro.
8. Reservation of Rights. Metro reserves any claim or remedy it might have against DEQ for a breach of this Agreement. Metro's failure to object to any breach of this Agreement shall not constitute a waiver of Metro's right to object to an additional breach or to require strict performance of the Agreement.
9. Situs of Agreement. The situs of this Agreement is Portland, Oregon, and any litigation hereto shall be governed by the laws of the State of Oregon and conducted in the Circuit Court for Multnomah County.
10. Non-Transferability. This Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstances, be assigned or transferred by either party.
11. Contacts. The Manager of this Agreement for Metro shall be (until such time as the Executive Officer may name a replacement): _____. Any and all correspondence and reports shall be addressed to the Manager.

DEQ shall assign a Project Coordinator to provide continuity and thorough administrative controls in all phases and performance of this Agreement. The Project Coordinator of

this Agreement for DEQ shall be: _____ . Any and all correspondence and payments shall be addressed to the Project Coordinator.

12. Entire Agreement. Notwithstanding and succeeding any prior agreements or practices, this Agreement constitutes the entire agreement between the parties and may be only expressly modified in writing signed by both parties.

In witness whereof, the parties have executed this Agreement on the dates hereinafter indicated as follows.

METRO

DEQ

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

kaj
i:\docs#09.sw\01franch\21kfd\finalcfn.doc
10/30/98

STAFF REPORT

RESOLUTION NO. 99-2746 FOR THE PURPOSE OF AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY FOR KFD LANDFILL WORK.

Date: December 29, 1998

Presented by: Bruce Warner

PROPOSED ACTION

Adopt Resolution No. 99-2746, which authorizes the Executive Officer to execute an intergovernmental agreement with the Oregon Department of Environmental Quality (DEQ), which transfers \$600,000 to DEQ for replacement of the methane gas collection system and indemnifies Metro.

FACTUAL BACKGROUND AND ANALYSIS

A solid waste disposal facility at 5700 NE 75th Avenue, Portland, Oregon known as Killingsworth Fast Disposal (KFD Landfill) operated as a limited purpose landfill from 1980 through 1990 under a permit issued by DEQ in 1980 and a franchise agreement issued by Metro in 1984. The operator, Riedel Waste Systems, Inc., went bankrupt in 1995 and closed operations. The court appointed DEQ to oversee a post-closure fund as escrow agent for ongoing site care and monitoring activities. The post-closure fund has approximately \$150,000 remaining, and will be depleted in approximately two years at the current rate of expenditures.

DEQ has hired an engineering firm to evaluate the methane gas collection system and the potential problem of offsite migration of gas. The firm has found high concentrations of methane gas outside the perimeter of the landfill that are above the lower explosive limit. Given that the water table in the area is very deep and below sand and gravel deposits, a high risk exists for offsite methane gas migration into high-density residential and industrial developments within ten feet of the landfill, and a popular golf course within one hundred fifty feet. Fortunately, the gas extraction system is currently working (but deteriorating) near the high-density residential and industrial developments, and no offsite gas migration is occurring in this area. However, further study is necessary to determine the extent of the offsite gas migration toward the golf course.

DEQ's engineering firm has determined that the system was poorly designed and has deteriorated to the point of needing to be fully replaced at an estimated cost of \$600,000. DEQ has requested Metro's financial assistance for the redesign and construction of a new methane gas collection system to ensure the safety of the public near the landfill. DEQ agrees to release Metro, its Councilors, officers, employees and successor governmental entities from any liability to the State of Oregon related to KFD landfill under the following statutes: the State solid waste law, ORS chapter 459; the State

environmental cleanup law, ORS 465.200 through 465.455 and 465.900; and the State hazardous waste law, ORS 466.005 through 466.530, 466.990 through 466.995.

DEQ is also in the process of determining whether the site will qualify for funds from the Solid Waste Orphan Site Account for post-closure and operating funds.

This site presents a problem for the whole community. The parties responsible for creating this situation no longer exist, and have left no assets behind.

BUDGET IMPACT

The budget impact to Metro is a one-time cost of \$600,000, which the Metro Council approved in its 1998-99 budget.

RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 99-2746.