



METRO

600 NE Grand Ave.
Portland, OR 97232-2736
(503) 797-1700

Designated Facility Agreement

METRO CONTRACT NO. 932398

This Designated Facility Agreement ("Agreement") is between Metro, a metropolitan service district organized under ORS Chapter 268 and the Metro Charter ("Metro"), located at 600 NE Grand Avenue, Portland, Oregon 97232-2736, and Finley-Buttes Limited Partnership doing business as Finley Buttes Landfill Company (the "Landfill") located at 73221 Bombing Range Road, Boardman, Oregon 97818, (collectively, the "Parties") and is entered into under the authority of ORS 268.317 and Metro Code Section 5.05.030.

RECITALS

WHEREAS, the Metro Area has limited land and resources for the disposal, transfer, and recovery of resources from solid waste;

WHEREAS, Metro may require generators of Metro Area Waste to make use of disposal, transfer, or resource recovery sites or facilities designated by Metro;

WHEREAS, a license is not required to transport Metro Area Waste to a designated facility of the system;

WHEREAS, the Metro Code authorizes the Chief Operating Officer ("COO") to execute an agreement between Metro and a facility located outside the region for the disposal of non-putrescible Metro Area Waste;

WHEREAS, entering into a designated facility agreement allows Metro to manage the disposal of Metro Area Waste while increasing material recovery by establishing terms and conditions under which a landfill may receive Metro Area Waste; and

WHEREAS, the Metro Council amended the Metro Code to add Finley Buttes Landfill Company as a designated facility of the system authorized to accept Metro Area Waste;

NOW THEREFORE, in exchange for the promises set forth below, the Landfill and Metro agree as follows:

1. Acceptable Metro Area Waste.

The Landfill may accept the following types of Metro Area Waste: Processing Residual, Cleanup Material, Disaster Debris if authorized in writing by the COO, Inert Waste, Special Waste, Built-up Roofing, whole tires of a type that are not suitable for processing, and Useful Material. The Landfill may accept Metro Area Waste other than that permitted by this Agreement only if Metro authorizes such acceptance under a non-system license.



METRO

600 NE Grand Ave.
Portland, OR 97232-2736
(503) 797-1700

Designated Facility Agreement

2. Prohibited Metro Area Waste.

Except as provided in Section 1 of this Agreement, the Landfill shall not accept Metro Area Waste, including without limitation Putrescible Waste, Source-Separated Recyclable Material, Non-Putrescible Waste that has not undergone material recovery by a Metro Designated Facility, and any materials and waste prohibited by the DEQ or Morrow County.

3. Regional System Fee and Excise Tax.

- a. Each month the Landfill shall collect and remit to Metro the Regional System Fee, as set forth in Metro Code Chapter 5.02, for each ton of Metro Area Waste the Landfill receives. The Landfill shall make the payment by check, cash, or other Metro-approved method in accordance with Metro Code Section 5.02.055.
- b. Each month the Landfill shall collect and remit to Metro the Excise Tax, as set forth in Metro Code Chapter 7.01, for each ton of Metro Area Waste the Landfill receives. The Landfill shall make the payment by check, cash, or other Metro-approved method in accordance with Metro Code Section 7.01.070.
- c. The Landfill shall properly classify Metro Area Waste for the purpose of collecting Regional System Fee and Excise Tax from the Landfill's customers.

4. Term of Agreement.

Unless terminated earlier, the term of this Agreement shall be from January 1, 2014 through December 31, 2019.

5. Landfill Operating Plan.

- a. The Landfill shall submit to Metro, for Metro's review and written approval, an operating plan ("Plan") that describes the Landfill's procedures for managing Metro Area Waste. The Plan shall address how the Landfill intends to comply with the requirements of this Agreement. The Landfill shall maintain a copy of the Plan on its premises and at a location where Landfill personnel and Metro have access to it.
- b. The Plan shall describe how the Landfill will identify whether Metro Area Waste is acceptable under Section 1 of this Agreement and shall include the criteria used for such identification, including without limitation:
 - (1) Procedures for establishing whether incoming waste is Metro Area Waste;
 - (2) A set of objective criteria for accepting and rejecting loads;



METRO

600 NE Grand Ave.
Portland, OR 97232-2736
(503) 797-1700

Designated Facility Agreement

- (3) Procedures, in accordance with recognized industry practices, for inspecting incoming loads for the presence of Metro Area Waste prohibited under Section 2 of this Agreement;
 - (4) Procedures, in accordance with recognized industry practices, for assessing each incoming load to verify the type of Metro Area Waste and to classify the Metro Area Waste for the purposes of assessing Regional System Fee and Excise Tax; and
 - (5) Other measures to ensure compliance with this Agreement.
- c. The Plan shall establish procedures for managing and transporting to appropriate facilities any prohibited Metro Area Waste discovered at the Landfill.
 - d. The Landfill shall submit changes to the Plan to Metro for review and written approval before implementing the changes. Metro shall review the Plan to ensure compliance with this Agreement.
 - e. The Landfill shall comply with the provisions of the Plan, which provisions are incorporated into this Agreement by reference as if specifically set forth herein. The Landfill's failure to comply with a material provision of the Plan shall constitute a breach of this Agreement.
6. Record Keeping and Audits.
- a. The Landfill shall maintain complete and accurate records of all Metro Area Waste received, treated, recovered, transported, disposed, or otherwise processed pursuant to this Agreement. The records the Landfill shall maintain, at a minimum shall include the information specified in Reporting Requirements and Data Standards for Metro Solid Waste Licensees, Franchisees, and Parties to Designated Facility Agreements. The Landfill shall make these records available to Metro for inspection, auditing, and copying. The Landfill shall use sequentially numbered transaction tickets and shall retain voided or canceled tickets for three (3) years.
 - b. The Landfill shall maintain waste profiles, waste analysis plans, special waste permits, Safety Data Sheets, or other documents that identify waste on the premises for the following types of Metro Area Waste: Special Waste, Cleanup Material, and Useful Material. The Landfill shall make these records available to Metro for inspection, auditing, and copying.
 - c. Metro may require, at Metro's expense, that the Landfill submit to an independent audit conducted by an auditor chosen by Metro. The audit shall address only those matters reasonably related to this Agreement.



METRO

600 NE Grand Ave.
Portland, OR 97232-2736
(503) 797-1700

Designated Facility Agreement

7. Reports and Obligations.

- a. The Landfill shall report information in the form, format, and the schedule specified in Reporting Requirements and Data Standards for Metro Solid Waste Licensees, Franchisees, and Parties to Designated Facility Agreements. In addition to these reporting requirements, the Landfill shall include the field titled "Special Waste Permit Number," for all special waste transactions received by the Landfill, as designated in the above referenced document.
- a. The Landfill shall make available the records required under Section 7a of this Agreement in a format prescribed by Metro to Metro, together with a signed Regional System Fee and Excise Tax Report and remittance, no later than 15 days following the end of each month.
- b. The Landfill shall post a sign at the scale house directing all customers disposing of Metro Area Waste to declare the origin of the Solid Waste. The Landfill shall post the sign so that it is readily visible and legible to customers upon arrival at the scale house. The Landfill shall provide a map of the Metro Area to customers upon request.
- c. The Landfill shall provide, upon request by Metro, copies of all permits relating to operations at the Landfill, including without limitation, land use applications, appeals, or modifications. If requested by Metro, the Landfill shall provide copies of revisions to existing permits and newly issued permits to Metro within seven (7) days of Metro's request. The Landfill also shall provide, within seven (7) days of issuance, a copy of any official enforcement action regarding the Landfill or its operation, including without limitation, a notice of violation or noncompliance with a statute, regulation, or permit condition.
- d. The Landfill shall provide, upon request by Metro, a list of account numbers and material codes and corresponding material names for each load of Metro Area Waste.
- e. The Landfill shall provide Metro with copies of each quarterly *Solid Waste Disposal Report/Fee Calculation* form within two business days of providing such information to the DEQ.

8. Useful Material Exemption from the Regional System Fee and Excise Tax.

- a. Except as provided below in Section 8b, the Landfill shall not allow a customer disposing of Metro Area Waste to claim a Useful Material exemption from the Regional System Fee under Metro Code Section 5.01.150(b)(3) and from Excise Tax under Metro Code Section 7.01.050(a)(10) until the Landfill submits a written request for the exemption, including a Useful Material management plan,



Designated Facility Agreement

to Metro for review and written approval. The Landfill must receive written Metro approval before allowing an exemption under Section 8 of this Agreement.

- b. The Landfill may allow a customer disposing of Metro Area Waste to claim an exemption for a particular type of waste under Section 8 of this Agreement without prior Metro approval provided that the Landfill accepted and used such waste as Useful Materials before January 1, 2009, and complies with Section 8c below.
 - c. The Landfill shall submit a Useful Material management plan that incorporates the following information:
 - (1) A description of the Useful Material and where it was generated;
 - (2) Documentation demonstrating that the Landfill intends to use and will use the Useful Material productively in the operation of the Landfill;
 - (3) Documentation demonstrating that the Landfill will accept the Useful Material at no charge;
 - (4) If the Landfill intends to use the Useful Material as Alternative Daily Cover, documentation demonstrating that the DEQ has approved use of the material as Alternative Daily Cover at the Landfill;
 - (5) A description of how the Landfill will manage the Useful Material, including without limitation an explanation, if applicable, of how the Landfill will store the Useful Material before use; and
 - (6) An estimate of the proposed tons of Useful Material the Landfill expects to accept.
 - d. The Landfill's failure to manage Useful Material in compliance with its Useful Material management plan shall constitute a breach of this Agreement.
9. Regional System Fee Credits and Excise Tax Rate for Cleanup Material.
- a. The Landfill may allow a credit against the Regional System Fee, as provided under Metro Code Section 5.02.047, and a reduced Excise Tax rate, as provided under Metro Code Section 7.01.020(e)(2), for Cleanup Material originating from the Metro Area if the material consists of (1) soils contaminated with hazardous substances, including petroleum contaminated soils, from environmental cleanups; (2) soils that do not qualify as clean fill; or (3) contaminated debris resulting from an emergency cleanup event.
 - b. Except as provided above in Section 9a above, the Landfill shall not allow a credit against the Regional System Fee or a reduced Excise Tax rate for Cleanup Material originating from the Metro Area unless Metro has approved in writing



Designated Facility Agreement

that such waste constitutes Cleanup Material under this Agreement. The Landfill may seek approval from Metro by submitting a written request that includes the following information:

- (1) A description of the proposed Cleanup Material and the project site where it was generated;
- (2) Documentation demonstrating that the Cleanup Material is derived from an environmental cleanup of a nonrecurring event;
- (3) Documentation demonstrating that the DEQ has authorized the Landfill to accept such Cleanup Material;
- (4) A description of the method in which the Landfill will manage the Cleanup Material; and
- (5) An estimate of the number of tons of Cleanup Material that may be subject to a Regional System Fee credit and a reduced Excise Tax rate.

10. Compliance with Law.

The Landfill shall fully comply with all applicable provisions of the Metro Code, which provisions are incorporated into this Agreement by reference as if specifically set forth herein. Any finding by a court of competent jurisdiction or a regulatory agency that the Landfill is in violation of applicable federal, state, regional and local laws, rules, regulations, ordinances, orders, and permits shall constitute a breach of this Agreement and shall constitute good cause for termination of this Agreement under Section 16a. DEQ termination or failure to renew the Landfill's Solid Waste Disposal Site Permit shall constitute good cause for termination of this Agreement under Section 16a.

11. Right of Inspection.

a. The Landfill shall allow Metro access to the Landfill at all reasonable times to inspect, subject to Section 11(e) of this Agreement, and carry out other necessary functions under this Agreement. The Landfill authorizes Metro access to inspect:

- (1) Without notice during hours when the Landfill accepts Solid Waste;
- (2) At other reasonable times upon written notice given by Metro to the Landfill during hours when the Landfill accepts Solid Waste, which notice may be made via e-mail sent to the Landfill, attention James Browning at jamesb@wcnx.org and Dean Large, regional office, at deanl@wcnx.org; and



METRO

600 NE Grand Ave.
Portland, OR 97232-2736
(503) 797-1700

Designated Facility Agreement

- (3) At any time without notice when, in the reasonable opinion of the COO, such notice would defeat the purpose of the entry.
- b. Metro's right to inspect and audit shall include the right to review, at an office of the Landfill or affiliated company located in or near the Metro Area, all information from which all required reports are derived.
- c. The Landfill shall cooperate with Metro regarding Metro's investigation of possible infractions of the Metro Code or of this Agreement, including without limitation infractions related to misidentification of Solid Waste or false claims that Solid Waste is not Metro Area Waste. The Landfill's cooperation shall include, without limitation, providing Metro with requested information in the Landfill's possession regarding matters under investigation and making Landfill representatives available to testify in deposition, in court, at a contested case hearing, and in any subsequent appeals.
- d. The Landfill shall cooperate with Metro regarding Metro's determination of whether Processing Residual accepted at the Landfill meets the recovery standard required by the Metro Code. The Landfill's cooperation shall include providing Metro with access to all areas of the Landfill where it receives and manages Solid Waste, including without limitation untarping stations, trailer tippers, and the working face, for Metro to inspect the Processing Residual. The Landfill shall provide a commercially reasonable means to segregate individual loads of Processing Residual at a safe location away from the working face where Metro can conduct analysis of the Processing Residual.
- e. Metro, in exercising its right of inspection, shall at all times comply with the Landfill's safety rules and procedures and be accompanied by a Landfill employee. The Landfill shall have an employee available to accompany Metro on its inspection during all hours that the Landfill accepts solid waste.

12. Indemnification.

- a. The Landfill 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 reasonable attorneys' fees, to the extent arising out of or in any way connected with, the Landfill's performance under this Agreement.
- b. Metro shall indemnify, defend, and hold harmless the Landfill, its officers, employees, and agents from all claims, suits, actions, or expenses of any nature, including reasonable attorneys' fees, to the extent resulting from or arising out of the acts, errors, or omissions of Metro or its assignees acting pursuant to the terms of this Agreement, within the limits of the Oregon Tort Claims Act and the Oregon Constitution.



METRO

600 NE Grand Ave.
Portland, OR 97232-2736
(503) 797-1700

Designated Facility Agreement

13. Confidentiality.

- a. Metro recognizes and acknowledges the confidential and proprietary nature of the names of persons or entities generating or delivering waste to the Landfill and the types and quantities of waste generated or delivered by such persons or entities ("Confidential Information") which the Landfill is required to submit to Metro under Section 7 of this Agreement. Metro acknowledges that, although the Landfill is not obligated by law to submit such information, the Landfill is voluntarily obligating itself to do so pursuant to this Agreement. Metro also recognizes that the Confidential Information may be a "trade secret" and exempt from public disclosure under Oregon law because it is currently known only by the Landfill, is used by the Landfill in its business, has commercial value, and gives the Landfill a business advantage over competitors not possessing such information. The ability of competitors of the Landfill to obtain the Confidential Information specified herein is not in the public interest because it detracts from a relationship of trust that is necessary for Metro to effectively carry out its solid waste management functions. Metro hereby obligates itself in good faith not to disclose Confidential Information to any person outside of Metro except as specified herein. Access to, and use of, such Confidential Information shall only be as specified in this section.
- b. At any time during and after the term of this Agreement, Metro shall not, in any manner whatsoever, either directly or indirectly, divulge, disclose, or communicate Confidential Information to any person, partnership, firm, association, corporation, or other entity, or to any person at Metro who does not have a reasonable need to obtain Confidential Information for Metro's solid waste management purposes. Neither Metro nor any person at Metro shall use the Confidential Information specified in this section for personal benefit.
- c. Notwithstanding Sections 13a and 13b of this Agreement, Metro may use Confidential Information for solid waste management purposes, including solid waste tracking and forecasting, enforcement of the Metro Code, or assistance to other jurisdictions in regulatory enforcement or other law enforcement. Metro may also use Confidential Information in aggregations or summaries that may be released to the public, so long as it is not possible to identify from such aggregations or summaries the persons or other entities generating and delivering waste to the Landfill or the types and quantities of waste that specific persons or other entities generate or deliver to the Landfill. Metro shall notify the Landfill within six (6) days of Metro's receipt of any other type of request for Confidential Information from a third party. If it becomes necessary for Metro to release Confidential Information to any person outside of Metro other than as provided above, Metro shall so notify the Landfill in writing at least ten (10) days before releasing such information.



METRO

600 NE Grand Ave.
Portland, OR 97232-2736
(503) 797-1700

Designated Facility Agreement

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

14. Dispute Resolution.

Both Parties shall, in good faith, attempt to negotiate resolutions to all disputes arising out of this Agreement. Any controversy or claim arising out of or relating to this Agreement shall be exclusively resolved as follows:

- b. If the COO finds that the Landfill has breached this Agreement:
 - (1) The COO shall provide the Landfill with a written notice of breach that describes the alleged breach and that includes a date by which the Landfill must respond to the COO's notice.
 - (2) Within the period specified by the COO, the Landfill shall demonstrate that the Landfill has not breached this Agreement, that the breach has been corrected, or that the Landfill is making diligent efforts to correct the breach and is likely to succeed in a reasonable period of time.
 - (3) If the COO determines that the Landfill has failed to remedy a breach of this Agreement, the Landfill shall pay Metro not more than \$500 per day until the Landfill has remedied the breach. As an additional remedy, Metro shall be entitled to recover its actual damages during all periods of breach.
 - (4) The Parties shall resolve any dispute arising under this section by following the procedure for contested cases set forth in Metro Code Chapter 2.05. The Order of the Metro Council is a final order that the Landfill may appeal by filing a petition for writ of review.



METRO

600 NE Grand Ave.
Portland, OR 97232-2736
(503) 797-1700

Designated Facility Agreement

- c. The Landfill shall resolve any claim that Metro has breached this Agreement by following the procedure for contested cases set forth in Metro Code Chapter 2.05. The Order of the Metro Council is a final order that the Landfill may appeal by filing a petition for writ of review.

15. Modification and Suspension.

The COO may modify or suspend this Agreement without notice as follows:

- a. If necessary in the reasonable opinion of the COO to protect the public health, safety, or welfare, and in the case of an emergency;
- b. If Metro discovers that the Landfill knowingly accepted Prohibited Metro Area Waste or misrepresented the nature or identification of Metro Area Waste; or
- c. If, due to a binding decision by an arbitrator or court of competent jurisdiction, Metro:
 - (1) May be liable for damages for allowing waste of a type specified in this Agreement to be disposed of at the Landfill; or
 - (2) May no longer allow such waste to be disposed of at the Landfill.

16. Termination.

- a. The Metro Council may terminate this Agreement for good cause upon passage of a resolution specifying the action taken and the effective date. The Metro Council's adoption of an ordinance under the Metro Code to delete the Landfill from the list of designated facilities shall constitute good cause for termination of this Agreement.
- b. The Landfill may terminate this Agreement for good cause provided that such termination shall commence no sooner than 30 days after the Landfill provides Metro with written notice of the Landfill's intent to terminate.

17. General Conditions.

- a. The Landfill shall be responsible for ensuring that its contractors and agents operate in complete compliance with the terms and conditions of this Agreement.
- b. This Agreement shall not confer a property right to the Landfill, nor vest any right or privilege in the Landfill to receive specific quantities of Metro Area Waste during the term of this Agreement.



METRO

600 NE Grand Ave.
Portland, OR 97232-2736
(503) 797-1700

Designated Facility Agreement

- c. The Landfill may not transfer or assign this Agreement without the prior written approval of Metro. Metro shall not unreasonably withhold consent to assignment.
- d. The Landfill shall inform Metro of any change in ownership.
- e. A waiver of any term or condition of this Agreement must be in writing, signed by either the COO, if Metro is making the waiver, or by an authorized representative of the Landfill, if the Landfill is making the waiver. Waiver of a term or condition of this Agreement by either party shall neither waive nor prejudice that party's right otherwise to require performance of the same term or condition or any other term or condition.
- f. This Agreement shall be construed, applied, and enforced in accordance with the laws of the State of Oregon.
- g. If any provision of this Agreement shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this Agreement shall not be affected.
- h. If any deadline required to be computed under any provision of this Agreement falls on a Saturday, Sunday, or legal holiday, then the deadline shall be the next day which is not a Saturday, Sunday, or legal holiday. As used in this subsection, "legal holiday" means legal holiday as defined in Oregon Revised Statutes 187.010 and 187.020, as amended.
- i. Unless otherwise specified, all terms are as defined in Metro Code Chapter 5.01.010.
- j. This Agreement is the entire agreement between the Parties and supersedes all prior agreements between them related to the subject matter hereof.
- k. Metro will not unreasonably withhold or delay any review or approval required under this Agreement.

18. Definitions.

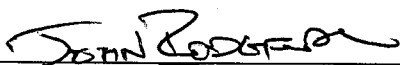
- a. "Alternative Daily Cover" means material for cover over the exposed Solid Waste at a Landfill that provides performance equivalent to six (6) inches of earthen soil and that is approved by the DEQ.
- b. "Built-up Roofing" means roofing that consists of alternating layers of roofing felt and asphalt. Built-up Roofing wastes may include residential, commercial, or industrial tear-offs, including but not limited to base sheets, coatings, felt, fabric, metal flashing, tar, mastics, or roof insulation.


Designated Facility Agreement

- c. "Cleanup Material" shall have the meaning assigned to the term "Cleanup Material Contaminated By Hazardous Substances" in Metro Code Section 501.010.
- d. "COO" shall have the meaning assigned to the term "Chief Operating Officer" in Metro Code Section 1.01.040.
- e. "Disaster Debris" means Solid Waste generated by a natural or human disaster.
- f. "Metro Area" shall have the meaning assigned in Metro Code Section 1.01.040.
- g. "Metro Area Waste" means Solid Waste generated from the Metro Area, including Solid Waste generated from outside the Metro Area if mixed in the same vehicle or container with Solid Waste generated from the Metro Area, unless the Landfill is provided with documentation establishing the weight of the Solid Waste generated from the Metro Area.
- h. "Processing Residual" shall have the meaning assigned in Metro Code Section
- i. "Useful Material" shall have the meaning assigned in Metro Code Section 5.01.010, provided that such processing residual results from material recovery of Non-Putrescible Waste by a Metro Designated Facility.

FINLEY-BUTTES LIMITED PARTNERSHIP
dba FINLEY BUTTES LANDFILL COMPANY

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By: 
Name: JOHN RODGERS
Title: DIVISION VICE PRESIDENT
Date: 12/12/13

By: 
Name: Scott Robinson
Title: Deputy Chief Operating Officer
Date: 12/18/13

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