

LANDFILL FRANCHISE AGREEMENT

This Landfill Franchise Agreement ("Agreement") is made this ___ day of December, 2020, between BENTON COUNTY ("County"), a political subdivision of the State of Oregon, and VALLEY LANDFILLS, INC. ("Franchisee"), a wholly owned subsidiary of WASTE CONTROL SYSTEMS, INC., both corporations duly authorized to do business in the State of Oregon.

RECITALS:

A. The State of Oregon, by statute, has given the County the authority to franchise solid waste management, including solid waste disposal facilities. The County is interested in the continued availability of an economical and environmentally safe landfill, which complies with all federal and state environmental rules, regulations and laws.

B. The County benefits from State authorization to franchise the disposal of solid waste within its jurisdiction by providing the flexibility to meet the changing needs and technology for the disposal of solid waste in the County.

C. Franchisee has operated the Coffin Butte Landfill ("Landfill") under permit from the State of Oregon for more than 45 years.

D. The availability of landfill sites in the State of Oregon has been substantially reduced, and the Coffin Butte landfill is a unique landfill resource to be developed for the primary benefit of the citizens of Benton County.

E. It is to the benefit of the County's residents, industry, and business to maintain the Landfill and continue the ability of Franchisee to operate the Landfill under the terms of this Agreement.

F. The federal, state and local rules, regulations and laws permit and authorize the operation of the Landfill.

G. The County requires periodic reporting and onsite review to ensure the Benton County Board of Commissioners has access to information concerning the operation of the Landfill and to monitor the Landfill's operation for compliance with the Agreement.

THE PARTIES AGREE:

1. Definitions. In this Agreement, capitalized terms are defined as follows:

"Board" means the Board of Commissioners for Benton County.

"County" means Benton County, Oregon.

"Effective Date" means 12:01 AM on January 1, 2021.

"Environmental Trust Fund" means the fund established under the Environmental Liability Trust Agreement ("the Trust Agreement") dated March 3, 1999 between Franchisee as Grantor, and Copper Mountain Trust Corp., as Trustee, for the benefit of the County and Waste Control Systems, Inc., each as a named beneficiary.

"Force Majeure" means acts of God, earthquake, landslides, and sudden soil movements, lightning, forest and brush fires, storms, floods, freezing, civil disturbances, acts of the public enemy, wars, blockades, epidemics or pandemics, public riots, explosions, materials shortages (other than shortage of solid waste), or damage to or destruction of the Landfill or its facilities as a result of events described herein, or other similar causes, events, or occurrences not reasonably within the control of the party whose ability to perform this Agreement is impaired or prevented by the event or occurrence of Force Majeure; provided, however, damage or destruction of the Landfill or its facilities as a result of improper design or negligent operation is not Force Majeure.

"Landfill" means the Coffin Butte Landfill owned and operated by Franchisee and located on property more particularly described on the attached Exhibit A.

"Permit" means the permit or other authorization issued to permit operation and regulating the operation of the Landfill granted by the Department of Environmental Quality, the Environmental Quality Commission, the Environmental Protection Agency or other authorized successor state or federal agency.

"Solid Waste" means all useless or discarded putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined in ORS 459.386. "Solid waste" does not include:

- (a) Hazardous waste as defined in ORS 466.005.
- (b) Materials used for fertilizer or for other productive purposes or which are salvageable as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of animals.
- (c) Materials used for the compacted six-inch soil layer required by the Permit (alternative daily cover).

"Special Waste" means any waste (even though it may be part of a delivered load of waste) that falls within one or more of the following categories:

- (a) Containerized waste (e.g., a drum, barrel, portable tank, box, pail, etc.) of a type listed in (b) through (m) of this definition below.
- (b) Waste transported in a bulk tanker, such as a tanker truck hauling leachate.

(c) 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 includes 25 or more gallons of free liquid per load, whichever is more restrictive.

(d) Containers (or drums) that once held commercial products or chemicals, unless the containers (or drums) are empty as provided in 40 CFR 261.7(b)(1).

(e) Sludge waste from septic tanks, food service or grease traps, or wastewater from commercial laundries, laundromats or car washes.

(f) Waste from an industrial process.

(g) Waste from a pollution control process.

(h) Residue or debris from the cleanup of a spill or release of chemical substances, commercial products or wastes listed in (b) through (m) of this definition.

(i) 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 (b) through (m) of this definition.

(j) Chemical-containing equipment removed from service (for example: filters, oil filters, cathode ray tubes, lab equipment, acetylene tanks, CFC tanks, refrigeration units, or any other chemical-containing equipment).

(k) 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.

(l) Any waste that requires extraordinary management or special handling. Examples of such 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.

(m) Medical waste.

"Uncontrollable Circumstances" means one and/or a combination of governmental action, law or regulations or loss of material municipal disposal contract utilizing the Landfill as of the date of this Agreement, making the Franchisee unable to accept Solid Waste for disposal at the Landfill, or that materially impacts the volume of Solid Waste coming into the Landfill such that Franchisee's revenue is decreased by an amount equal to or more than fifteen percent (15%) of the applicable annual base guaranteed Franchise Fee (as defined below) for a period of two consecutive years. Uncontrollable Circumstances also means Force Majeure.

"Tipping Fees" means any fee, rate, toll or other charge (including, but not limited to, environmental fees) that Franchisee charges for disposal of Solid Waste from customers, haulers, other franchisees or any third parties disposing of Solid Waste at the Landfill.

“*Waste Stream*” means flows of specific waste, from its source through to recovery, recycling or disposal. Together they make up the overall waste treated at the Landfill. Waste streams can be divided into two broad types: streams made of materials (such as metals or plastics) or streams made of certain products (such as electronic waste or end-of-life vehicles) which require specific treatment and ultimately feed into materials-related streams.

2. Grant of Franchise for Services to be Provided. For the consideration and under the terms and conditions of this Agreement, the County hereby grants to Franchisee a franchise (“Franchise”) to provide services at and in connection with the Landfill as follows:

(a) Operation of Landfill. Franchisee shall operate and maintain the Landfill as a sanitary landfill for disposal of Solid Waste under the terms and conditions of this Agreement so long as the Franchisee maintains a lawful Permit to do so, or until the earlier termination of this Agreement. Franchisee shall comply with Benton County's solid waste ordinance and all provisions for service as set forth in Exhibit B, which is attached hereto and incorporated herein by reference.

(b) Tipping Fees. Subject to the provisions of Section 2(d), Franchisee will accept Solid Waste for disposal at the Landfill and charge Tipping Fees. All fees collected under this Agreement by Franchisee shall be collectively designated as Tipping Fees for the purpose of calculating the Host Fee set forth in Section 4(b) below.

(c) Pacific Region Composting Facility. Franchisee shall continue to operate and promote the use of a Pacific Region Composting Facility (“PRCF”) in order to divert yard debris and compostable material from the Landfill and to maximize recovery of the natural resources inherent in these materials.

(d) Franchisee's Acceptance of Waste. Franchisee shall accept for disposal at the Landfill, Solid Waste created or generated within Benton County. Franchisee shall not accept any Solid Waste which it believes is not allowed under the Permit or that would, upon disposal, violate federal or state laws or regulations. Franchisee retains discretion to reject Solid Waste that it believes may present a significant risk to human health or the environment, or create or expose the Franchisee to potential liability, which Solid Waste does not violate federal or state laws or regulations. All persons holding a franchise to collect and transport municipal Solid Waste in Benton County will be permitted access to the Landfill and Franchisee shall accept such persons' waste for disposal provided that such persons remit the applicable Tipping Fee which shall be set in Franchisee's sole discretion pursuant to Section 2(b).

(e) Dump Stoppers Programs. During the period of January 1, 2021 through July 1, 2021, Franchisee and County will negotiate in good faith to establish a program to promote self-haulers and cease activities by illegal dumpers. The joint creation of a “dump stoppers” program is intended to discourage illegal dumping in the County and allow documented illegal dumps to be disposed of at the self-haul fee set forth below in Section 2(f). The parties shall present a joint report on this program to the Board after three (3) years, at which time the parties may consider alterations to the fee and/or program.

(f) Residential Self-Haul Access. It is the desire of both parties to provide safe and efficient access to the Landfill by self-haulers by promoting safety, reducing congestion at the scales, and imposing a self-hauler fee mutually agreeable to County and Franchisee. Self-haulers shall be charged a residential per-vehicle fee, not to exceed \$35.00 and to apply to any residential-sized vehicles. Self-haulers shall not be charged a per-ton fee or any other fee or charge, including any environmental fee or charge. After three years, the rate will increase by the CPI per Section 4(d).

(g) C&D Transfer Facility. It the intention of the parties that Construction and Demolition (C&D) material disposed of at the Landfill eventually be separated and not disposed of at the Landfill. Franchisee and County shall work together to monitor the flow of C&D material to the Landfill, and establish a mutually agreeable schedule during which to engage other stakeholders to discuss establishing a transfer facility that could serve as a regional collection point for C&D waste so that it may be transferred to appropriate recycling facilities in order to divert this material from the Landfill.

(h) Secured Loads/Litter Control. Franchisee shall require Landfill customers to secure loads and shall maintain litter control measures at the Landfill.

3. Term. Unless this Agreement is terminated pursuant to its provisions, the term of this Agreement shall begin on the Effective Date and shall continue until midnight December 31, 2040, at which time the Agreement shall end.

4. Franchise and Host Fees. In consideration of the grant of the Franchise under Section 2, Franchisee shall pay to the County the following:

(a) Franchise Fee. Franchisee shall pay to the County an annual base guaranteed Franchise fee as set forth below (“Franchise Fee”):

<u>Franchise Fee</u>	<u>Calendar Year</u>
\$2,000,000	2021
\$2,040,000	2022
\$2,080,800	2023
\$3,500,000	2024

The Franchise Fee shall be paid in twelve (12) equal monthly installments of each year with the first payment due in January 2021, or in installments as may be agreed upon by the parties. The Franchisee shall make a total of Two Hundred Forty (240) monthly payments to the County over the term of the Franchise Agreement. For the calendar year 2025 and all years thereafter, the Franchise Fee is subject to the annual CPI adjustment described in Section 4(d) below.

(b) Host Fee. In addition to the annual Franchise Fee due under Section 4(a), Franchisee shall pay an annual host fee to the County in an amount per ton for each ton of Solid Waste accepted at the Landfill as set forth below (“Host Fee”):

<u>Host Fee</u>	<u>Calendar Year</u>
\$2.87 per ton	2021
\$2.93 per ton	2022
\$2.99 per ton	2023
\$3.99 per ton	2024

The Host Fee shall be due on January 15 following the calendar year the Host Fee was collected. The Host Fee set forth in this Section 4(b) shall be a credit against the Franchise Fee paid in Section 4(a) above for any calendar year. By way of example, if the total Franchise Fee paid by Franchisee to the County in 2022 is \$2,040,000, and the total Host Fee collected by Franchisee for the calendar year 2022 is \$2,600,000, the Host Fee due on January 15, 2023 would be \$560,000. Conversely, if the total Franchise Fee paid by Franchisee to the County in 2022 is \$2,040,000, and the total Host Fee collected by Franchisee for the calendar year 2022 is \$2,000,000, the Host Fee due on January 15, 2023 would be zero. For calendar year 2025 and all years thereafter, the Host Fee will be subject to the annual CPI adjustment described in Section 4(d) below.

(c) Franchise Fee and Host Fee Adjustments Based on Timing of Landfill Expansion. As further referenced in Section 5(b), Franchisee intends to expand the Landfill onto the Expansion parcel by 2024. If Franchisee's Application (as defined in 5(b) below) is approved prior to 2024 or in 2025 or later, the following Franchise Fee and Host Fee adjustments will supersede the Franchise Fee and Host Fee calculations described in Sections 4(a) and 4(b):

(i) Landfill Expansion Occurs Prior to 2024. If Franchisee's Application is approved in 2023 or earlier, the Host Fee for 2023 will be \$3.91/ton and the Host Fee for 2024 will be \$3.99/ton. The Franchise Fee for 2023 and 2024 will remain as described in Section 4(a) above. For each calendar year thereafter, the Host Fee and the Franchise Fee shall be adjusted pursuant to Section 4(d).

(ii) Landfill Expansion Occurs 2025 or Later. If the Landfill Application is not approved by 2025, the Host Fee for 2025 will be \$3.43/ton and the Franchise Fee will be \$2,500,000. For each calendar year thereafter, provided that Franchisee's Application is not granted, the Host Fee and the Franchise Fee shall be adjusted pursuant to Section 4(d). If Franchisee's Application is subsequently granted in 2025 or later, the Host Fee for the year the Franchise Application is granted shall be \$3.99 and the Franchise Fee shall be \$3,500,000 starting in year 2024 plus for each calendar year thereafter, the Host Fee and the Franchise Fee will be adjusted pursuant to Section 4(d).

(d) CPI Adjustment. The Franchise Fee and the Host Fee (after the first four years of this Agreement) shall be adjusted annually on the first day of January of each successive year. The Franchise Fee and Host Fee shall be adjusted by the same percentage as the increase/decrease in the annual Consumer Price Index (CPI) for West Region as published by the United States Department of Labor, Bureau of Labor Statistics for the preceding calendar year. If the West Region Consumer Price Index (CPI) is not published in any year, the parties shall meet and agree upon an index to track the consumer price fluctuations and if the parties cannot agree upon

an index the issue shall be submitted to binding arbitration. Notwithstanding this provision, the total applied increase of CPI shall not exceed five percent (5%) in any given year.

(e) Extraction Fees Included. In the event the County enacts a fee, tax or other charge related to extraction of mineral and aggregate from the real property described in Exhibit A, the County acknowledges that the Host Fee includes any such fee, tax or other charge which may be attributable to Franchisee.

5. Impact of Solid Waste Volume; Limit on Solid Waste; Tonnage Cap.

(a) The parties acknowledge that there may be adverse effects to the County's infrastructure and environmental conditions due to increased annual volumes of Solid Waste accepted at the Landfill.

(b) Franchisee intends to seek governmental approval to expand the Landfill on the real property legally described on the attached Exhibit C and incorporated by reference herein ("Expansion Parcel"). The parties agree that until Franchisee's governmental applications to expand the Landfill onto the Expansion Parcel are granted (following any and all appeals to final judgment) (the "Application"), the total tonnage of Solid Waste deposited by Franchisee at the Landfill during any calendar year shall not exceed One Million One Hundred Thousand (1,100,000) tons, of which Franchisee shall limit the total tonnage of Solid Waste received at the Landfill to allow for Seventy-Five Thousand (75,000) tons of Solid Waste from the County exclusively (the "Tonnage Cap"). The County agrees that the Tonnage Cap shall not apply to any Solid Waste generated from fire, flood, other natural disaster or any Force Majeure event.

6. Environmental Trust Fund and Pollution Liability Insurance.

(a) Franchisee will guarantee the Environmental Trust Fund sustains a total balance, including principal, earnings, and interest, of at least \$5,000,000.00. As long as the Environmental Trust Fund sustains a total balance, including principal, earnings, and interest of at least \$5,000,000.00, no further contributions to the fund will be required. If the Environmental Trust Fund falls below \$5,000,000.00, Franchisee shall deposit funds adequate to raise the Environmental Trust Fund balance to at least \$5,000,000.00. Accrued earnings and interest will remain in the Environmental Trust Fund and with such earnings the Fund will continue to grow. The signatories to the Environmental Trust Fund will make all necessary amendments to the Trust instrument to implement this Section.

(b) Within 60 days of the Effective Date of this Agreement, Franchisee shall establish and maintain during the term of this Agreement pollution liability insurance and will provide a certificate of insurance coverage in a form acceptable to the County, with coverage of \$10,000,000.00 insuring operations at the Landfill and naming the County as an additional named insured. The pollution liability policy of insurance required under this Section 6(b) shall be issued by a company authorized to do business in Oregon, reasonably acceptable to the County. The insurance policy shall provide that it cannot be cancelled or reduced in scope or amount of coverage until 30 days after written notice to the County from the insurer. Not less than 30 days before the expiration of each such policy, a renewal policy or certificate of insurance evidencing the renewal shall be delivered to the County.

If pollution liability insurance is not available or is not available at a reasonable cost, Franchisee shall give County notice of this event and Franchisee shall not be in default under this Agreement. The parties shall meet, review the balance of the Environmental Trust Fund and negotiate a change in the Environmental Trust Fund and/or the pollution liability insurance, if necessary. If it is necessary to contribute an amount to the Environmental Trust Fund, the amount shall not exceed the cost of the pollution liability insurance at the time the last pollution liability insurance policy was in effect. If pollution liability insurance again becomes available, Franchisee may notify County and negotiate the level of the Environmental Trust Fund and pollution liability insurance, with the cost of the pollution liability insurance premium not to exceed the amount of the contribution to the Environmental Trust Fund. When the Landfill receives final regulatory approval for final closure, pollution liability insurance will no longer be required.

(c) If any money in the Environmental Trust Fund is used for Coffin Butte, as provided in the Trust Agreement, a copy of which is marked Exhibit D and attached hereto, and insurance is also available to cover the loss at Coffin Butte, then the parties agree that all insurance proceeds, money or other insurance funds shall be first used to repay the Environmental Trust Fund to the extent possible. It is the intent of the parties to use such insurance proceeds to restore the Environmental Trust Fund to the balance prior to the use of the funds, or as close to the full balance as possible.

(d) The Franchisee and County will meet and discuss whether a change in the pollution liability insurance coverage is required. The parties shall meet to discuss whether such a change is required every four (4) years from the Effective Date, or after each increment of two million (2,000,000) tons of Solid Waste is disposed of at the Landfill, whichever event occurs first. The determination of whether a change in pollution liability insurance coverage is required is only subject to binding arbitration pursuant to Section 10 if the total amount in the Environmental Trust Fund and pollution liability insurance coverage is less than ten million dollars (\$10,000,000.00). The contribution limitations specified in subsection 6(b) shall not apply to this subsection.

(e) At such time as the Landfill is closed or this Agreement terminates, County may, at its option, continue pollution liability insurance coverage at its own expense.

(f) Franchisee's general liability insurance duties and obligations are set forth in Section 9 of this Agreement.

7. Reports; Inspections; Annual Meetings of Parties.

(a) Operational Reports. Within 150 days after the first anniversary of the Effective Date, and every year thereafter, Franchisee shall furnish to the Board an Annual Report with respect to the environmental condition of the Landfill, covering air, water, Solid Waste Permits, pollution controls, and related issues as determined by both parties.

(b) Capacity Reports. Within 150 days after the second anniversary of the Effective Date, and every year thereafter, Franchisee shall provide the Board necessary data to

confirm the remaining capacity of the Landfill as determined by both parties. The data shall include the methods and calculations used in making this determination.

(c) Other Reports. Franchisee shall furnish copies of reports and other public information relative to the operation of the Landfill to the County at the time the reports are submitted to the regulating agencies. This information shall include, but not be limited to, reports required by state and federal agencies for Permit compliance.

(d) Inspections. For the purposes of making lawful inspections and determining Franchisee's compliance with this Agreement, Franchisee shall allow employees or representatives or agents of the County reasonable access to the Landfill during normal business hours. The County may perform any such inspections with or without prior notice, but the employees or representatives or agents of the County shall first report to the operations office at the Landfill and announce their presence before entering the Landfill. All representatives of the County shall comply with all applicable safety and other onsite rules of the Landfill.

(e) Other Meetings. Either the Franchisee or the County may request a meeting at any time to discuss how current or proposed changes in technology, public policy or other factors or developments might impact the operation of the Landfill or this Agreement. These discussions are not subject to the arbitration provisions of Section 10.

(f) Document Review and Disclosure. The parties agree that Franchisee's documents will be reviewed and inspected at the Corvallis, Oregon office of Franchisee. The parties further agree that any information submitted by Franchisee relating to Tipping Fees charged at Coffin Butte will be considered confidential business records required by County to be submitted for fee setting purposes and that County will not disclose such information except where required to do so under Oregon law or judicial order.

8. Indemnity. Franchisee shall indemnify and hold the County harmless from and against the following:

(a) Any and all claims arising from any (i) litigation involving the Franchisee's operation of the Landfill pursuant to this Agreement; (ii) negligence of Franchisee or any of its agents, contractors, servants, or employees in the operation of the Landfill pursuant to this Agreement; and (iii) accident, injury, or damage whatsoever caused to any person, firm, or corporation or the property of any person, firm, corporation, including Franchisee, or other entity arising from the operation of the Landfill and occurring during the term of this Agreement on the Landfill; and/or

(b) Any and all costs, including but not limited to attorneys' fees at trial or on appeal, expenses, and liabilities incurred in or about any such claim or action or proceeding that require indemnification pursuant to Section 8(a) above.

Nothing in this Agreement shall require Franchisee to indemnify the County for the negligence or willful conduct of the County's agents, representatives or employees.

9. General Liability Insurance.

(a) Liability Insurance. Franchisee shall pay for and maintain for the mutual benefit of the County and Franchisee commercial general liability insurance against claims for personal injury, death, or property damage occurring upon or in the vicinity of the Landfill or any part thereof, with limits of not less than \$10,000,000.00 per single occurrence for bodily injury and \$10,000,000.00 per single occurrence for property damage, or not less than the current amount of liability insurance carried by Franchisee, whichever is greater. The insurance shall name the County as an additional named insured.

(b) Policies and Certificates of Insurance. Each policy of insurance required under Section 9(a) shall be issued by companies properly admitted to do business in Oregon and acceptable to the County. The insurance policy shall provide that it cannot be cancelled or reduced in scope or amount of coverage until 30 days after written notice to the County from the insurer. Not less than 30 days before the expiration of each such policy, a renewal policy or certificate of insurance evidencing the renewal shall be delivered to the County. County understands that the parent corporation for Franchisee is Republic Services, Inc. ("Republic"), and Republic may self-insure for liability insurance.

10. Dispute Resolution.

(a) Any controversy or claim arising out of or relating to this Agreement, including the making, performance, or interpretation of this Agreement, shall be settled by arbitration. Unless otherwise agreed, the arbitration shall be conducted in Corvallis, Oregon by Arbitration Service of Portland, Inc., or its successor. Each party shall select an arbitrator within 20 days of the dispute being submitted to arbitration and notify the other party of the appointment. The two selected arbitrators shall meet within 20 days thereafter and appoint a third arbitrator. If either party fails to select an arbitrator or if the two arbitrators cannot agree upon a third arbitrator, then the Arbitration Service of Portland shall submit a list of five (5) arbitrators to the parties. The parties shall meet in person or by telephone (or other agreeable means of communication) within 20 days of the list being submitted and the parties shall select by lot which party shall strike the first name from the list. Then the other party shall strike a name and then alternately the parties shall strike a name until a single name is remaining and that person shall be the third designated arbitrator. If either party fails to act within the time prescribed in this Section, the other party has the right to refer the matter to a court of competent jurisdiction to force the other party to act. The arbitration shall be held before an arbitration panel of three persons (unless otherwise agreed by the parties). If arbitration is commenced, the parties shall permit discovery proceedings of the type provided by the Oregon Rules of Civil Procedure both in advance of, and during recesses of, the arbitration hearings. The arbitration panel may grant or deny an increase in fees. The arbitration panel has no authority to award money damages against either party, but may award retroactive fee increases, fees generated as a result of the fee increases and other contract remedies. The arbitration panel shall have no jurisdiction to consider evidence with respect to or render an award or judgment for punitive damages. At no time during the pendency of an arbitration proceeding shall Franchisee decrease or halt the level of services specified in this Agreement, including but not limited to Exhibit B. The parties shall pay their own arbitration expenses and shall divide equally the cost of the arbitrator and his or her costs and expenses.

(b) Remedies. The parties agree to first submit all disputes to arbitration under Section 10(a) in the first instance. The parties recognize, understand and agree that some disputes may not be included in the arbitration section under Section 10(a). The parties may agree to submit a dispute to arbitration under Section 10(a) or either party may assert to the arbitration panel that the issue is not subject to arbitration under Section 10(a). Both parties may agree in writing the dispute is not subject to arbitration and either party may then seek all other legal remedies available to it. The parties agree the Circuit Court of Marion County, Oregon, is the correct venue for any and all litigation which is not subject to arbitration under Section 10(a).

11. Compliance with Laws, Regulations and Uncontrollable Circumstances.

(a) This Agreement and Franchisee's operation of the Landfill are subject to the Permit and all federal and state laws and regulations as now in effect and as may be enacted or promulgated hereafter.

(b) If either party is, by reason of Uncontrollable Circumstances, force of any applicable law, regulation, court decision or order, including any change therein, required to do any act or made subject to any condition which could prohibit Solid Waste from being disposed of at the Landfill or impact the duties and obligations of either party under this Agreement, the party shall notify the other party. The County and the Franchisee shall meet and negotiate on the continuation of the Agreement and under what terms and conditions the Agreement should or should not be continued. If the Franchisee and County do not agree in writing to continue this Agreement within 90 days after Notice from the Franchisee or such additional time as the parties agree to in writing for negotiations, the Agreement shall terminate.

Nothing in this Section prevents the Franchisee or County (in their sole discretion) from obtaining or seeking modification or repeal of any such law, regulation, decision or order, or shall it restrict either party from contesting the validity thereof. The Agreement shall not terminate under this Section if the Franchisee is in good faith contesting or appealing, any law, regulation, decision or order.

(c) The obligations of Franchisee under this Agreement are subject to Uncontrollable Circumstances. If, as the result of any Uncontrollable Circumstance, Franchisee is unable to meet its obligations under this Agreement, in whole or in part, the Franchisee shall give notice to the County describing in reasonable detail the circumstances. So long as the requirements of this Section 11 are met, Franchisee shall not be considered in default under this Agreement to the extent that performance is prevented or impaired by the occurrence of any Uncontrollable Circumstance. The Franchisee shall use all reasonable efforts to resume its performance at the earliest practicable date and shall notify the County when the effect of the Uncontrollable Circumstance has ceased.

(d) During the period of nonperformance by reason of Uncontrollable Circumstances, Franchisee is not required to pay any fees. As soon as Franchisee resumes disposing of Solid Waste at Landfill, the fees will be required as provided in Section 4. If Franchisee disposes of waste at an alternative landfill for reasons other than those involving Uncontrollable Circumstances, then Franchisee will pay only the Franchise Fee set forth in Section 4(a).

(e) Notwithstanding any contrary provision of this Agreement, the settlement of strikes, lockouts, or other industrial disturbances, and litigation, including appeals, shall be entirely within the discretion of the Franchisee and the Franchisee may make any settlement thereof at any time, and on any terms and conditions, as it deems advisable.

(f) Except as provided in Section 2(d), if during the term of this Agreement the Franchisee is unable to accept Benton County Solid Waste for disposal at the Landfill, Franchisee shall make other permitted landfills available for the disposal of Benton County Solid Waste.

(i) The Tipping Fee for disposal of Benton County Solid Waste shall be no greater than the Tipping Fee charged by Franchisee under this Agreement prior to the Uncontrollable Circumstance that resulted in Landfill being unavailable for the disposal of Benton County Solid Waste.

(ii) If an event under Section 11(f)(i) occurs and has not been resolved within six (6) months of the date of occurrence, and if the Benton County Solid Waste is not taken to a Republic owned or controlled landfill by Republic owned or controlled collectors or haulers, the Tipping Fee charged by Franchisee under this Agreement may be increased to the actual cost to Franchisee for disposal of Benton County solid waste.

(g) In the event this Agreement terminates or the Landfill is unavailable for the disposal of Solid Waste, Franchisee shall notify all franchised haulers of the unavailability of the Landfill to accept Solid Waste. Such notification shall be in writing and shall be made within ninety (90) days of the date the decision is made to terminate this Agreement or from the date Franchisee knows the Landfill will be unavailable for disposal of Solid Waste.

12. Default. The occurrence of any of the following shall constitute a default by Franchisee under the terms of this Agreement.

(a) Failure to Make Any Payments Under Section 4. Payments due under Section 4 of this Agreement are to be made by the twentieth (20th) of each month unless otherwise agreed upon by the parties in writing. Franchisee shall make all payments without County being required to send invoice or notice of the Franchisee's obligation to make such payments.

(b) If Franchisee fails to make any payment due under Section 4 by the twentieth (20th) of each month for more than any two (2) months (consecutive months or nonconsecutive months) in any calendar year, Franchisee shall pay to County one and one-half percent (1.5%) of the payment due.

(c) Except for delays caused by events subject to Uncontrollable Circumstances, the Franchisee shall give County written notice of the failure to perform under any provision of this Agreement. If the failure to perform is not cured within 30 days after written notice of such default has been given by Franchisee, this Agreement shall be in default. If the default cannot reasonably be cured within 30 days, then the Franchisee shall not be in default as long as the Franchisee commences to cure the default within 30 days and diligently and in good faith continues to cure the default. If default cannot reasonably be cured within

six (6) months, the Franchisee and County shall meet and agree upon a termination date for this Agreement or Amendments to this Agreement that will continue the Agreement. If the parties cannot agree, the matter may be submitted to arbitration under Section 10.

13. Miscellaneous.

(a) Amendment. This Agreement may be amended only by a written instrument approved by, and executed by, all parties.

(b) Assignment; Succession. This Agreement binds and benefits the parties and their respective successors and Franchisee's assigns (subject to the following sentence). Franchisee may not sell, convey, transfer or assign the Landfill or any of its rights, interests, or obligations under this Agreement, including to subsidiaries and related parties, without the prior written approval of the Board, which such approval shall not be unreasonably withheld, but may be reasonably conditioned on financial or environmental considerations.

(c) Consent and Approval. Whenever in this Agreement a party's consent or approval is required, the consent or approval shall not be unreasonably withheld or delayed, or made subject to unreasonable conditions.

(d) Counterparts. The parties may execute this Agreement in separate counterparts or copies, each of which when executed and delivered shall be an original, but all of which together shall constitute one and the same instrument.

(e) Negotiated Agreement. The parties recognize, understand, and agree that their own retained attorneys at law have represented each party during the negotiation of this Agreement. Each party has submitted written material to the other. Neither party is deemed to have written this document. It is a negotiated Agreement. If disputes arise concerning the meaning of any word, term, sentence, paragraph, or section, neither party shall be deemed responsible for drafting of this Agreement.

(f) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

(g) Notices. All notices, consents, waivers, and other communications under this Agreement must be in writing and will be deemed to have been duly given when (i) delivered by hand (with written confirmation of receipt), (ii) sent by fax (with written confirmation of receipt), (iii) mailed by certified mail, return receipt requested, or (iv) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses and fax numbers set forth below (or to any other addresses and fax numbers a party may designate by notice to the other parties):

County: Benton County Board of Commissioners
Attention: Chairman of the Board of Commissioners
P.O. Box 3020
Corvallis, Oregon 97339-3020
Fax: (541) 766-6014

Copies to: Benton County Counsel
P.O. Box 3020
Corvallis, Oregon 97339-3020

Copies to: Kell, Alterman & Runstein L.L.P.
Attn: Thomas R. Rask, III
520 SW Yamhill Street, Suite 600
Portland, OR 97204

Franchisee: Valley Landfills, Inc.
Attention: President
P.O. Box 807
Corvallis, Oregon 97339
Fax: (541) 757-0219

Copies to: Valley Landfills, Inc.
Attention: Corporate Secretary
18500 N. Allied Way
Phoenix, Arizona 85054

(h) Section Headings: Construction. The headings of sections in this Agreement are for convenience only and will not affect its construction or interpretation. Any reference to parties in this Agreement is a reference to the parties named on the first page of this Agreement. All references to "section" or "sections" refer to the corresponding section or sections of this Agreement. All words used in this Agreement will be construed to be of the gender or number circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms.

(i) Severability. If any provision of this Agreement is invalid or unenforceable in any respect for any reason, the validity and enforceability of any such provision in any other respect and of the remaining provisions of this Agreement shall not be in any way impaired.

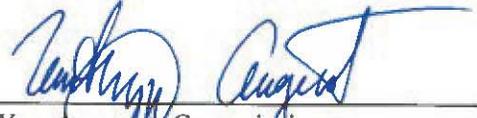
(j) Waiver of Compliance. Any failure of any party to comply with any obligation, covenant, agreement, or condition in this Agreement may be waived by the party entitled to the performance of the obligation, covenant, or agreement or who has the benefit of the condition, but the waiver or failure to insist upon strict compliance with the obligation, covenant, agreement, or condition will not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

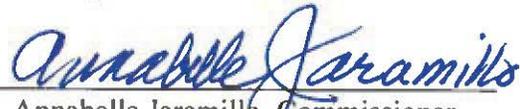
(k) Entire Agreement. This Agreement (including the documents referred to in this Agreement) constitutes the entire agreement between the parties and supersedes any prior understandings, agreements, or representations by or between the parties, written or oral, to the extent they related in any way to the subject matter of this Agreement.

COUNTY:

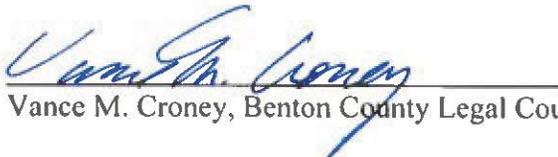
BENTON COUNTY
BOARD OF COMMISSIONERS

By: 
Pat Malone, Chair

By: 
Xan Augerot, Commissioner

By: 
Annabelle Jaramillo, Commissioner

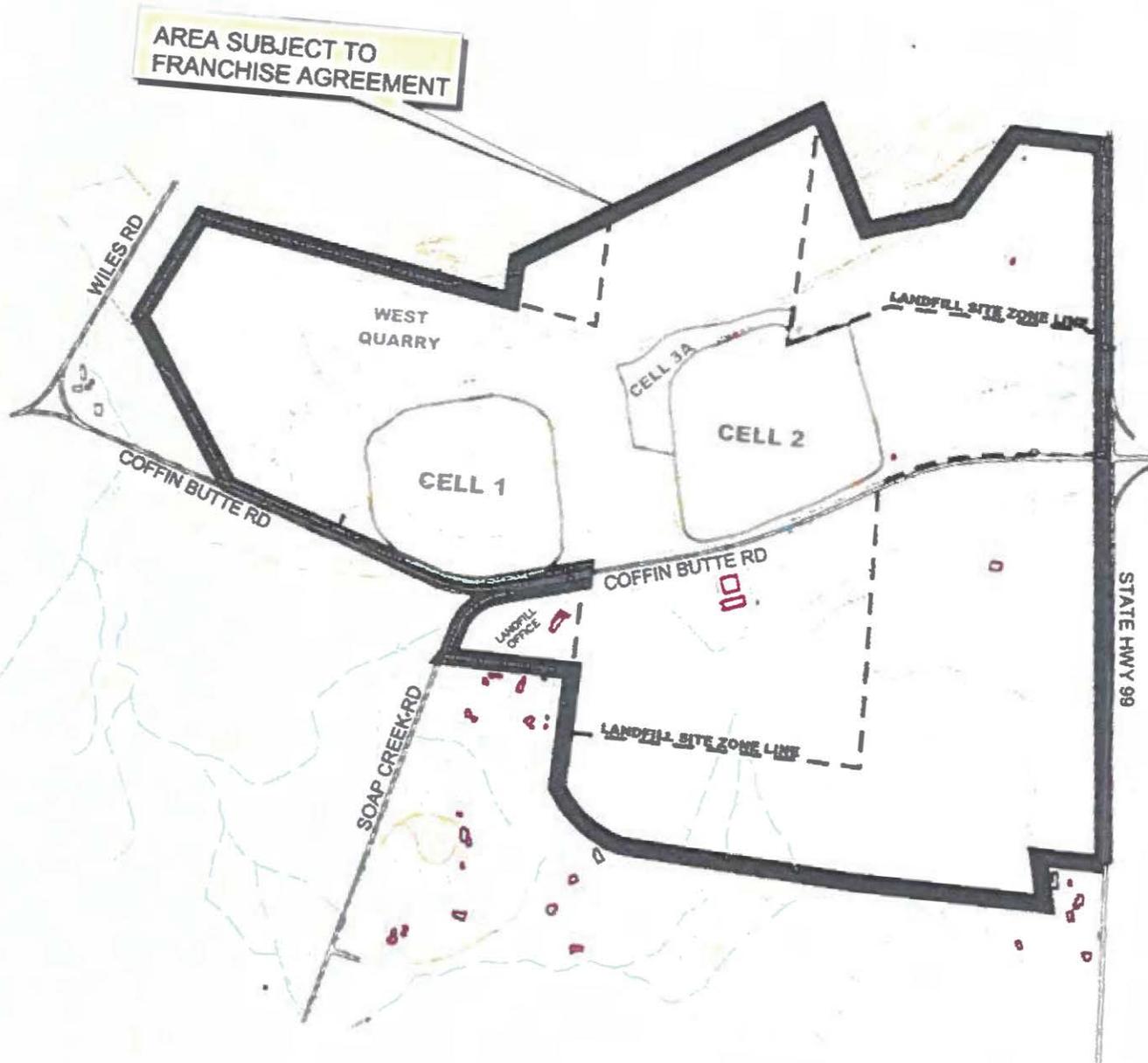
Reviewed as to Form:


Vance M. Croney, Benton County Legal Counsel

Landfill Franchise Agreement

Exhibit A

11/12/00



 AREA SUBJECT TO FRANCHISE AGREEMENT

 LANDFILL ZONE LINE

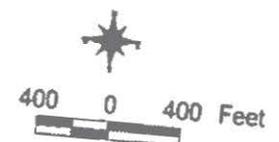
 CELL BOUNDARY

 25' CONTOUR

 INTERMITTENT STREAM

 PAVED EDGE

 BUILDINGS



The map represented by this map is not a warranty or guarantee of any kind. It is for informational purposes only and does not represent an offer of any kind. For more information, please contact the appropriate County Department.

CHAPTER 23

SOLID WASTE MANAGEMENT

ADMINISTRATION

23.005 Definitions. As used in BCC Chapter 23:

- (1) **"Council"** means the County Solid Waste Advisory Council established pursuant to this section.
- (2) **"Uncovered Load"** means a load which is:
 - (a) not completely covered on all sides and on the top and bottom and such cover is either a part of or securely fastened to the body of the motor vehicle or trailer,
 - (b) not securely tied to the body of the motor vehicle or trailer so that no piece, article, item or part of such solid waste or recyclable material is not fastened to the body of the motor vehicle or trailer, or
 - (c) not contained in the body of the motor vehicle or trailer, in such a way as to prevent any part of the solid waste or recyclable material from being deposited upon any private or public property, road, right-of-way or driveway within the County.
- (3) **"Department"** means the Benton County Health Department.
- (4) **"Discarded Vehicle"** means any vehicle which does not have a lawfully affixed unexpired license plate and is inoperative, wrecked, dismantled or partially dismantled, abandoned or junked. A "discarded vehicle" is a form of "Solid Waste".
- (5) **"Disposal Site"** means land and facilities used for the disposal, handling or transfer of, or energy recovery, material recovery and recycling from solid wastes, including but not limited to dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning service, transfer stations, energy recovery facilities, incinerators for solid waste delivered by the public or by a collection service, composting plants and land and facilities previously used for solid waste disposal at a land disposal site.
- (6) **"Franchise"** includes a franchise, certificate, contract or license issued by a local government unit authorizing a person to provide solid waste management services.
- (7) **"Hazardous Waste"** means any hazardous waste as defined by ORS 466.005 or wastes found by the franchisee to be hazardous to service workers, service equipment or facilities, or to the public. "Hazardous waste" shall also include "hazardous waste" as defined by other governmental units which have legislative or administrative jurisdiction.
- (8) **"Holder"** means a person to whom the Board has granted a franchise or permit.
- (9) **"Landfill"** means a facility for the disposal of solid waste involving the placement of solid waste on or beneath the land surface.
- (10) **"Permit"** means a limited license to provide only specified recycling or reuse services.
- (11) **"Person"** means any individual or other legal entity.

(12) **"Resource Recovery"** means the process of obtaining useful material or energy resources from solid waste, including source separation and materials or energy recovery.

(13) **"Service"** means the collection, transportation, and disposal of, or resource recovery from, solid waste. "Service area" is the geographic area in which service is provided.

(14) **"Solid Waste"** means all useless or discarded putrescible and nonputrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined in ORS 459.386.

(15) **"Solid Waste Management"** means the prevention or reduction of solid waste, management of the storage, collection, transportation, treatment, utilization, processing and final disposal of solid waste, recycling, reuse and material or energy recovery from solid waste and facilities necessary or convenient to such activities.

(16) **"Source Separation"** means the separation of waste materials by the generator in preparation for recycling.

(17) **"Waste"** means material that is no longer directly usable by the source, and which is to be disposed of or may be resource recovered by another person.

(a) The fact some materials have value and may be recovered, reconditioned or resold, does not exempt such materials from the definition of "waste".

(b) Separation of materials from other wastes by the source does not remove the materials from this definition. [Ord. 1, adopted March 31, 1971; Ord. 23, adopted December 17, 1980; Ord. 85-0023; Ord. 86-035; Ord. 94-0108; Ord. 2000-0165; Ord. 2003-0183]

23.010 Purpose. In order to protect the health, safety and welfare of the people of Benton County and to provide a solid waste management program, it is declared to be the public policy of Benton County to regulate solid waste management to:

(1) Provide for a coordinated solid waste management program and administration with cities within Benton County and with other counties or cities under existing and future regional programs.

(2) Provide for cooperation and agreements between Benton County and cities and other counties involving joint or regional franchising of solid waste service.

(3) Provide standards, regulations and franchising to insure the safe and sanitary accumulation, storage, collection, transportation and disposal or resource recovery of solid wastes and insure maintenance of solid waste collection, resource recovery and disposal service.

(4) Encourage research, studies, surveys and demonstration projects to develop a safe, sanitary, efficient, and economical solid waste management system.

(5) Provide research, development and promotion of and public education for technologically and economically feasible resource recovery including recycling and reuse, by and through the franchisees or permittees and other persons.

- (6) Eliminate duplication of service or routes to conserve energy and material resources, reduce air pollution, noise pollution, truck traffic, and increase efficiency, thereby minimizing consumer cost.
- (7) Encourage the use of the capabilities and expertise of private industry and encourage volunteer efforts in accomplishing the purposes of BCC Chapter 23.
- (8) Provide equitable classes of collection rates to classes or users of solid waste services that are just, fair, reasonable, and adequate to provide necessary services to the public, justify investment in solid waste management systems and provide for equipment and systems modernization to meet environmental service requirements and technology.
- (9) Minimize the cost and burden of regulation, administration and enforcement.
- (10) Provide for public input in solid waste management.
- (11) Carry out the local government responsibility and authority for solid waste management under ORS 459, and carry out the mandate for waste reduction under Chapter 773, Oregon Laws, 1979. [Ord. 1, adopted March 31, 1971; Ord. 23, adopted December 17, 1980; Ord. 85-0023; Ord. 86-035; Ord. 2000-0165]

23.015 Administration. Administration under the supervision of the Board shall be by the Benton County Health Department under the Administrator or his designee. The following persons and agencies shall assist the Department in carrying out its duties under BCC Chapter 23: The Planning Commission, Development Department (Planning, Zoning and Land Use.); Solid Waste Advisory Council (Solid Waste Management Planning.); Finance Division (Fiscal Management and Rates.); Public Works Department (Public and Private Facilities.); County Counsel, District Attorney and Sheriff (Enforcement). [Ord. 1, adopted March 31, 1971; Ord. 23, adopted December 17, 1980; Ord. 85-0023; Ord. 86-035; Ord. 2000-0165]

23.020 Solid Waste Advisory Council Established. The Board shall create a County Solid Waste Advisory Council in accordance with Benton County Code sections 23.025 through 23.035 and may create a Regional Solid Waste Advisory Council or Committee in cooperation with cities and other counties. [Ord. 1, adopted March 31, 1971; Ord. 23, adopted December 17, 1980; Ord. 85-0023; Ord. 86-035; Ord. 2003-0183]

23.025 County Solid Waste Advisory Council Membership.

- (1) The Council shall consist of ten (10) members. All members shall be appointed by the Board and shall be selected as follows:
 - (a) Three (3) members shall be residents of the City of Corvallis;
 - (b) One (1) member from each of the cities of Adair Village, Albany, Monroe, and Philomath. Each member shall be a resident of the represented city; and
 - (c) Three (3) members who reside in the unincorporated areas of Benton County.
- (2) The following persons may be appointed by the Board as ex officio members entitled to participate in proceedings of the Council, but not to vote: the Administrator of the Health Department or his designate; a collection franchise holder; a disposal site franchise holder; a person holding a permit; or a person lawfully engaged in providing recycling or reuse service or the promotion or education for such service. The Board may appoint additional ex officio

members as they see fit. [Ord. 1, adopted March 31, 1971; Ord. 23, adopted December 17, 1980; Ord. 85-0023; Ord. 86-035; Ord. 95-0115; Ord. 2003-0183]

23.030 County Solid Waste Advisory Council Terms. Members shall serve at the pleasure of the Board. The Council shall select its own chairperson and vice chairperson. [Ord. 1, adopted March 31, 1971; Ord. 23, adopted December 17, 1980; Ord. 85-0023; Ord. 2003-0183]

23.035 County Solid Waste Advisory Council Duties. The Council shall assist the Board in planning and implementation of solid waste management. First priority shall be given to those areas assigned by the Board including maintenance of County roads in the vicinity of Coffin Butte and to recycling and reuse and matters related to those areas. The County Solid Waste Advisory Council shall provide input or recommendations to the Board on the use of the host surcharge. [Ord. 1, adopted March 31, 1971; Ord. 23, adopted December 17, 1980; Ord. 85-0023; Ord. 86-035; Ord. 2000-0165; Ord. 2003-0183]

FRANCHISES AND PERMITS

23.105 Franchise or Permit Required to Provide Service. No person shall solicit for service customers or provide service in Benton County, without first acquiring a franchise or permit under BCC Chapter 23 unless specifically exempted pursuant to this section. BCC Chapter 23 shall not apply within the limits of an incorporated city, except as may be provided through an agreement with the city. [Ord. 1, adopted March 31, 1971; Ord. 23, adopted December 17, 1980; Ord. 85-0023; Ord. 86-035]

23.110 Exemptions to Requirement for Franchise or Permit.

(1) The following persons or practices are exempted from the requirements of BCC Chapter 23:

(a) A private charitable organization which regularly engages in the collection and reuse of repairable or cleanable discards, such as the Salvation Army, St. Vincent DePaul, Goodwill, and similar organizations.

(b) A religious, charitable, benevolent or fraternal organization, which organization is not organized for solid waste management purposes, and which is using the activity for fund raising, such as scouts and churches, and which collects and reuses or recycles totally source separated materials, or operates a collection center for totally source separated materials.

(c) The collection, transportation or redemption of returnable beverage containers under the "Bottle Bill" (ORS Chapter 459).

(d) A producer who transports and disposes of waste created as an incidental part of the regular operation of a licensed auto wrecking business or a janitorial service or a gardening or landscaping service, or a septic tank pumping or sludge collection or disposal service. "Janitorial service" does not include accumulation or collection of wastes produced by a property owner or occupant.

(e) The transportation by a person of solid waste produced by the person to a disposal site or resource recovery site or market. In the case of non-owner occupied property, the exemption applies only to waste which is produced and transported by the occupant of the premises and not by the landlord or property owner or his agent.

- (f) The collection by the County or other subordinate jurisdiction of leaves, street sweepings or similar wastes, and transportation to a disposal site, resource recovery site or market.
- (g) A person engaging in the practice or business of the purchase of totally source separated solid wastes for fair market value, provided, however, that the person shall obtain a certificate from the Department for this service prior to commencing business in the County. Application shall be on forms supplied by the Department, which shall require information sufficient to determine qualifications under this exemption. The application shall be accompanied by a certificate fee. A holder may obtain a certificate under this subsection.
- (h) A collection center for totally source separated materials operated by a nonprofit organization which was organized for one or more solid waste management purposes in addition to other purposes of the organization, provided that the operation has been continuous from January 16, 1981. This exemption terminates upon termination of collection center operations following January 16, 1981. The nonprofit corporate operator of an existing collection center shall apply for a permit from the County within 30 days after the effective date of BCC Chapter 23.
- (2) The following disposal sites are exempted from the requirements of this ordinance.
- (a) A landfill which is used by the owner or person in control of the premises to dispose of rock, soil, concrete or other similar nondecomposable material, unless the site is used by the public either directly or through a collection service.
- (b) A portion of land or a facility specifically possessing a waste water discharge permit pursuant to ORS Chapter 468B and in compliance with all Oregon Environmental Quality Commission regulations on solid waste management.
- (c) Land on which solid wastes are used for fertilizer or for other productive purposes or which are salvageable as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of animals. ORS 459.005(24)(b).
- (d) A facility authorized by a permit issued under ORS 466.005 to 466.385 to store, treat or dispose of both hazardous waste and solid waste.
- (e) A site operated by a wrecker issued a certificate under ORS 822.110. Ord. 1, adopted March 31, 1971; Ord. 23, adopted December 17, 1980; Ord. 85-0023; Ord. 86-035; Ord. 2003-0183]

23.115 Additional Exemptions Upon Application. In addition to the exemption listed above the Board may grant additional exemptions, as follows:

- (1) An applicant shall obtain an application for exemption from the Department. A completed application shall be filed with the Department.
- (2) Upon twenty (20) days written notice to the applicant and affected franchisees or permittees, a public hearing shall be held before the Board.
- (3) The Department shall review the application and provide information and recommendations to the Board to assist it in reaching a determination.

(4) At the conclusion of the hearing to consider the application, the Board shall make a decision, including written findings, based upon the following factors, among others:

- (a) The purpose stated in BCC 23.010.
- (b) The ability of the existing franchise holders or exemption holders to provide the required service.
- (c) Unnecessary or unreasonable hardships or practical difficulties which can be relieved only by granting an exemption.
- (d) Whether the granting of an exemption will be materially detrimental or have a substantial negative impact on service, consumer rates, or the holder of the service area or service.
- (e) The ability of the applicant to secure the necessary equipment and personnel to provide the service.

(5) The Board's decision shall be mailed to the applicant and affected holders by first class mail. The Board may attach any conditions or limitations to the granting or exercising of an exemption deemed necessary to carry out the purposes and policies of Chapter 23. The Board also may impose additional conditions on an existing holder in this regard. [Ord. 1, adopted March 31, 1971; Ord. 23, adopted December 17, 1980; Ord. 85-0023; Ord. 86-035; Ord. 2000-0165]

APPLICATION AND QUALIFICATIONS

23.205 Applications Required for Franchises and Permits. Applications for franchises and permits shall be on forms provided by the Department. In addition to information required on the forms, the Department may require the filing of any additional information it deems necessary to insure compliance with BCC Chapter 23. [Ord. 1, adopted March 31, 1971; Ord. 23, adopted December 17, 1980; Ord. 85-0023; Ord. 86-035]

23.210 Collection Franchise Requirements.

(1) An applicant for an original collection franchise or for a collection franchise transfer shall demonstrate to the satisfaction of the Board that the applicant:

- (a) Has a majority of the service accounts in the service area for which he has applied, as evidenced by a list of customers served; and
- (b) Has available collection vehicles, equipment, facilities and personnel sufficient to meet the standards established by BCC Chapter 23, ORS Chapter 459 and applicable administrative rules. If the applicant proposes to serve a service area which is wholly or in part under franchise to another person, or to replace such person upon expiration of the existing franchise, the applicant shall have available on the beginning date of the proposed franchise term collection vehicles, containers and other equipment equal to that presently used in service; and
- (c) Has sufficient experience to insure compliance with BCC Chapter 23. If the applicant does not have sufficient experience, the Board may require the applicant to submit a corporate surety bond, in the amount of not less than \$500,000.00, guaranteeing full and faithful performance by the applicant of the duties and obligations of a franchisee

under the provisions of BCC Chapter 23 and applicable federal, state and local laws and rules or regulations, and holding Benton County harmless from liability; and

(d) Has in force, or intends to provide for, public liability insurance in the amount of not less than \$2,500,000.00 for injury to a single person, or \$10,000,000.00 for injury to a group of persons and property damage insurance in the amount of not less than \$5,000,000.00, which shall be evidenced by a certificate of insurance or a letter of intent. Upon award of a franchise, any applicant providing only a letter of intent with the application shall provide a copy of a certificate of insurance prior to the effective date of the franchise. The certificate shall name Benton County as an additional insured. The Board may, by order, increase the minimum amount of required insurance to meet inflationary costs; and

(e) When requesting a transfer of franchise, the applicant must submit, as part of the application, a letter from the current franchisee requesting the transfer.

(2) If the applicant is not already serving the area proposed to be served, applicant shall show that:

(a) The defined service area has not been franchised to another person; or

(b) The defined service area is not being presently served by a holder pursuant to any schedule established as part of the franchise in accordance with BCC Chapter 23; or

(c) The defined service area is not being adequately served by a holder and there is a substantial demand from customers within the area for a change of service to that area. [Ord. 1, adopted March 31, 1971; Ord. 23, adopted December 17, 1980; Ord. 85-0023; Ord. 86-035; Ord. 2003-0183]

23.215 Disposal Site Franchise Requirements. An applicant for an original disposal site franchise or franchise transfer shall demonstrate, to the satisfaction of the Board:

(1) The type of disposal site and the transfer, disposal, processing or resource recovery method to be employed, together with any proposed special regulations dealing with hazardous wastes or concerning the types of waste that will be accepted at the disposal site; and

(2) That the applicant has available land, equipment, management, facilities and personnel to meet the standards established by BCC Chapter 23, ORS Chapter 459 and applicable rules, and has insurance equal to that required for a collection franchise; and

(3) That the applicant has sufficient experience to ensure compliance with BCC Chapter 23.

(a) If the applicant does not have sufficient experience, the Board may either deny the application or require the applicant to submit a corporate surety bond in the maximum amount of \$10,000,000.00, which guarantees full and faithful performance by the applicant of the duties and obligations of a franchise holder under provisions of Chapter 23, guarantees compliance with all applicable laws, and which holds Benton County harmless.

(b) In determining whether or not a bond is required and the amount necessary, the Board shall give due consideration to the size and type of the site, the solid waste handling methods proposed, the population or type of customers to be served, alternative sites, availability of the bond, cost to the ratepayer, adjacent or nearby land uses, the potential danger of failure of service and such other factors as the Board deems relevant.

(4) If the application is for a transfer of a disposal site franchise, the applicant must submit, as part of the application, a letter from the current holder requesting transfer. [Ord. 1, adopted March 31, 1971; Ord. 23, adopted December 17, 1980; Ord. 85-0023; Ord. 86-035; Ord. 2003-0183]

23.220 Recycling or Reuse Franchise or Permit Requirements. The Board shall specify which of the collection franchise requirements, as set forth in BCC 23.210, shall apply to specific permits. In addition:

(1) The Board may include recycling or reuse service or the education or promotion of such service in a collection franchise.

(2) In lieu of a franchise, the Board may issue a limited permit for specified service and subject to such terms and conditions as the Board may impose to carry out the policy, purpose and findings.

(3) Issuance of a recycling or reuse franchise or permit by the Board is discretionary. The grounds for issuance shall be compliance with the requirements specified by the Board. [Ord. 1, adopted March 31, 1971; Ord. 23, adopted December 17, 1980; Ord. 85-0023; Ord. 86-035]

23.225 Provisions in Addition to Zoning Code. The above franchise requirements are in addition to any provisions of the Benton County Zoning Code that may be applicable. [Ord. 1, adopted March 31, 1971; Ord. 23, adopted December 17, 1980; Ord. 85-0002; Ord. 86-035]

23.230 Investigation and Findings for Franchise or Permit.

(1) Generally applications shall be reviewed by the Department, which shall make such investigation as it deems appropriate. The Department shall give written notice of any application to affected holders. In addition, the following specific requirements apply where appropriate:

(a) Collection Franchises. Upon the basis of the collection franchise application, evidence submitted and results of investigation, the Department shall make a finding on the qualifications of the applicant and shall determine whether additional areas should be included or additional service or equipment should be provided.

(b) Disposal Site Franchises. Upon the basis of the disposal site application, evidence submitted, and results of any investigation, the Department shall make a finding on the qualifications of the applicant, whether additional service, land, equipment or facilities should be provided and what conditions of service should be imposed, including whether the site should be opened to the public and under what conditions, whether or not certain types of wastes, solid wastes or hazardous wastes should be excluded from the site or what types of wastes should be required to be accepted at the site, and shall make findings as to whether or not the site is economically feasible, whether or not the site may be integrated with existing private or County-owned or operated sites, and, further, whether the site complies with all rules and regulations adopted pursuant to BCC Chapter 23 or ORS Chapter 459. The Board may impose any conditions deemed necessary to carry out the purposes and policy of this Section.

(2) On the basis of these findings, the Department shall recommend to the Board whether or not an application should be granted, denied, or be modified. [Ord. 1, adopted March 31, 1971; Ord. 23, adopted December 17, 1980; Ord. 85-0023; Ord. 86-035]

23.235 Public Hearing on Franchise or Permit.

- (1) The Board shall conduct a public hearing to consider an application within 30 days of receipt of the Department's recommendation.
- (2) Notice shall be served on the applicant and any affected holder, and shall be published once in a newspaper of general circulation within the franchise area not more than ten (10) nor fewer than seven (7) days preceding the hearing.
- (3) The Board's decision shall be supported by written findings. The determination of the Board after conclusion of the public hearing shall be final.
- (4) If the Board order rejects all or part of the application for a franchise or permit, the applicant may not submit another application for the same service area, or a portion thereof, or the same disposal site, for a period of six (6) months, unless the Board finds that the public interest requires reconsideration within a shorter period of time.
- (5) Upon receipt of the order granting a franchise or permit, the applicant shall enter into a written franchise or permit with Benton County. [Ord. 1, adopted March 31, 1971; Ord. 23, adopted December 17, 1980; Ord. 85-023, Ord. 86-035; Ord. 2003-0183]

TERM; RENEWAL

23.305 Renewal of Franchise or Permit.

- (1) Renewal of any franchise or permit shall be based on an application filed with the Department. The procedure for review, renewal, approval and denial shall be as set forth above for the granting of the franchise or permit. [Ord. 1, adopted March 31, 1971; Ord. 23, adopted December 17, 1980; Ord. 85-0023; Ord. 86-035]

23.310 Term of Franchise or Permit. (1) Unless the Board finds in writing that a longer or shorter term is required in the public interest:

- (a) The term of a collection franchise shall be ten (10) years.
 - (b) The term of a disposal site franchise shall be determined by the Board upon recommendation of the Department. The recommendation shall be based upon site longevity, population to be served, and probable use, and shall not exceed twenty-five (25) years.
 - (c) The term of a permit shall be determined by the Board upon recommendation of the Department. The recommendation shall be based upon achieving the purposes in BCC 23.010.
- (2) The Board or holder may reopen a franchise or permit during its term for a change in provisions, or for negotiation of an early renewal. The change or renewal shall require the mutual approval of both the Board and the holder.
 - (3) The terms of a franchise or permit shall be binding upon a holder, its heirs, successors or assigns.
 - (4) A franchise or permit granted pursuant to BCC Chapter 23 shall be inoperative unless the holder files with Benton County a written acceptance within thirty (30) days of issuance. Upon the filing of such written acceptance, a franchise or permit and the written acceptance shall

constitute a contract between Benton County and the holder, terminable only as provided by BCC Chapter 23. [Ord. 1, adopted March 31, 1971; Ord. 23, adopted December 17, 1980; Ord. 85-0023; Ord. 86-035]

23.315 Transfer of Pledge for Franchise or Permit.

- (1) A franchise or permit shall not be sold, transferred or assigned to another person without prior written approval of the Board.
- (2) A person desiring a franchise or permit transfer shall submit an application to the Solid Waste Advisory Council on forms provided by the Department. The Council shall review the application at a public meeting and forward a recommendation to the Board of Commissioners. The Board shall then hold a public hearing and vote to approve or deny the request.
- (3) A pledge of a holder to secure financing shall be considered to be a transfer of the franchise or permit and shall be reviewed for approval as a transfer.
- (4) The term of the transferred franchise or permit shall continue for the same period as the original franchise or permit. [Ord. 1, adopted March 31, 1971; Ord. 23, adopted December 17, 1980; Ord. 85-0023; Ord. 86-0035]

DUTIES AND RESPONSIBILITIES OF HOLDER

23.405 Hold Harmless.

- (1) The privileges granted to a holder are upon the express condition that the holder shall be liable for all damages or injuries to persons or property caused by the negligence or mismanagement of the holder or any of its employees while engaged in the business under the terms of the franchise or permit. Should Benton County, or any of its officers, agents or employees in the scope of their employment be sued for damages caused wholly or in part by the operations of a holder under the terms of the franchise or permit, the holder shall be notified in writing of such suit and it shall be the holder's duty to defend or settle the suit. Should judgment go against Benton County, its officers, agents or employees, the holder shall further indemnify the County for costs and attorney's fees. The record of judgment against Benton County, or any of its officers, agents or employees, in such a case shall conclusively entitle Benton County, its officers, agents or employees to recover against the holder.
- (2) The holder shall covenant to purchase an indemnity insurance policy with a company licensed to do business in the State of Oregon with limits of liability specified in BCC 23.210(d) which policy shall name Benton County, its officers, agents and employees as the additional insured. [Ord. 1, adopted March 31, 1971; Ord. 23, adopted December 17, 1980; Ord. 85-0023; Ord. 86-0035]

23.410 Service to be Provided by Holder.

- (1) A collection franchise holder shall provide for solid waste collection at least once weekly unless otherwise authorized by the Board or Department. In addition to serving regular customers, the holder shall pick up and haul away all solid waste at the request of any resident of Benton County in holder's service area. The Board may specify when remote, sparsely populated areas will be served and the service frequency. A holder shall not, without good cause, as determined by the Department, refuse to provide service to any person living or conducting business within its area in Benton County; except under one or more of the following conditions:

- (a) Upon nonpayment or incomplete payment of a billing for service within the time provided in the bill, provided that holder sends a written ten day (10) notice to the customer that service will be terminated unless full payment is made.
 - (b) Upon refusal by a customer to pay any required advance payment for service, or, if provided in the rate schedule, a charge for reinstating service after discontinuance for nonpayment; or a charge for starting a new service. A holder may bill up to three (3) months in advance for service to reduce bad debt costs charged to ratepayers and to reduce administrative costs.
 - (c) Where street or road access is blocked.
 - (d) Where excessive weather conditions, as determined by a holder, render the providing of service hazardous to the persons actually providing the service or to the public.
 - (e) Where collection is prevented by an act of God, public enemy or vandal.
 - (f) Where a customer violates service standards in BCC 23.705.
- (2) A holder shall, where applicable: provide, maintain and use adequate equipment to handle and dispose of or resource recover solid waste; handle collected solid wastes in a good and workmanlike manner; transport all liquids in a watertight, drip-proof container; and provide equipment that meets all applicable laws, codes, regulations and standards.
- (3) A holder shall resource recover collected wastes or dispose of them in a disposal site approved by the Department of Environmental Quality.
- (4) The Board may require a collection franchise holder to contract with a disposal site for the right to dispose of wastes collected during the term of the franchise, including renewals.
- (5) Equipment and work supplied by any holder shall meet the reasonable satisfaction of the Department. The Department shall not make any unreasonable or arbitrary demands upon the holder.
- (6) The permit holder shall comply with service conditions imposed by their permits.
- (7) A disposal site franchise holder shall supply disposal services covered by its permit to those persons who contract for disposal, handling, or recovery of solid wastes collected under a franchise, license or permit; to those local government units and public agencies located within Benton County for wastes generated by activities of such units or agencies; and, subject to limitation by the Board, members of the general public hauling wastes generated by such person and not collected from other persons.
- (8) All service under a franchise or permit shall be subject to applicable laws and regulations, and to permit conditions and decisions of administrative, legislative and judicial agencies having jurisdiction.
- (9) A disposal site franchise holder shall not discontinue required service without ninety (90) days written notice to the Board and to any collection franchise or permit holders having a contract to use the site. Board approval shall be obtained before such discontinuance. This paragraph does not apply to discontinuation of service pursuant to subsections 1-8 of this section.

(10) No holder is required to store, collect, transport, dispose of or resource recover any hazardous waste. A holder may engage in one or more of those activities apart from BCC Chapter 23 as long as such activity is in compliance with all applicable local, state, and federal laws.

(11) Except as provided in subsection 8 above, where a governmental unit or agency is the landlord of any disposal site, the holder shall comply with all requirements imposed by such governmental unit or agency.

(12) A holder may subcontract with another person to provide service upon obtaining written permission from Benton County; provided, however, that the holder remains responsible for service.

(13) A holder shall make the payments as provided promptly as they become due. [Ord. 1, adopted March 31, 1971; Ord. 23, adopted December 17, 1980; Ord. 85-0023; Ord. 86-0035; Ord. 2003-0183]

23.415 Preventing Interruption of Service. Each holder shall agree in writing and it shall be a condition of the franchise or permit that whenever the Board determines that the failure of service, or threatened failure of service, would result in creation of an immediate and serious health hazard or serious public nuisance, the Board may, after a minimum of twenty-four (24) hours written notice to the holder authorize County personnel or other persons to temporarily provide the service or to use and operate the land, facilities or equipment of the holder. The Board may authorize whatever expenses are necessary to operate such land, facilities or equipment consistent with BCC Chapter 23. The Board shall return any seized property and business upon the abatement of the actual or threatened interruption of service. [Ord. 1, adopted March 31, 1971; Ord. 23, adopted December 17, 1980; Ord. 85-0023; Ord. 86-0035]

23.420 Fees.

(1) The holder of any franchise or permit granted pursuant to BCC Chapter 23 shall pay the following fees:

(a) Except as provided below, a collection franchise holder shall pay a fee not to exceed five (5) percent of the gross cash receipts from franchised collection service.

(b) A disposal site franchise holder shall pay an annual franchise fee. The franchise fee shall be set by agreement.

(c) A recycling or reuse permit holder shall pay an annual fee. The Board may waive this fee in order to promote reuse or recycling. Where recycling or reuse services are provided by a collection franchise, the collection franchise holder shall pay the same annual fee as for a recycling or reuse permit and such service shall not be included in the percentage of gross receipts established above for a collection franchise.

(2) The collection franchise fee shall be computed and be payable to Benton County quarterly within thirty (30) days from the end of the calendar quarter. The fee shall be accompanied by a sworn statement of gross receipts. Each collection franchisee shall maintain sufficient books and records to disclose the gross receipts from the service area and shall make such books and records available at reasonable times and places for audit by authorized personnel of Benton County. The Board may specify reasonable requirements for keeping such books and records.

(3) Where reasonably required by the Board, the holder of a disposal site franchise or a permit shall maintain books and records disclosing gross receipts at the disposal site or under the

permit, which books and records shall be available at reasonable times and places for audit by authorized personnel of Benton County, subject to the terms of the franchise agreement.

(4) Subject to the requirements of the local budget law and other applicable laws, fees, other than host surcharges, collected under this section shall be used for the administration of BCC Chapter 23, for solid waste nuisance abatement, or for promotion or provision of source reduction, recycling, reuse or resource recovery, or for other solid waste management expenses of Benton County. [Ord. 1, adopted March 31, 1971; Ord. 23, adopted December 17, 1980; Ord. 85-0023; Ord. 86-0035; Ord. 2000-0165]

RATES

23.505 Rate Structure.

(1) A holder may charge and collect reasonable compensation from persons to whom it furnishes services. The term "reasonable compensation" may be defined by the Board after a study and consideration of rates for similar service under similar conditions in other areas, and as affected by local conditions, and which allows a holder to earn a reasonable rate of return. This subsection shall not apply to disposal site franchise holders.

(2) Benton County reserves the right to examine the rate structure of a collection franchise holder only, at any time during the period or a franchise/permit and to make rate changes which, in the discretion of the Board, are reasonably required. [Ord. 1, adopted March 31, 1971; Ord. 23, adopted December 17, 1980; Ord. 85-0023; Ord. 86-0035; Ord. 2000-0165]

23.510 Procedure for Rate Change.

(1) A holder shall provide the Board with a certified copy of its published rate schedule, setting out the rates for all its operations. A holder shall file with the Board a new or revised rate schedule at least ninety (90) days prior to any contemplated change.

(2) The schedule shall be examined by the Board in a public hearing. The Board may either approve or deny the rate change, or may request additional information from the holder. It shall be approved by the Board thirty (30) days before the effective date, unless the delay is caused by failure of the Board to meet or obtain a quorum to conduct business.

(3) Notification of the decision of the Board shall be made to the holder by certified mail.

(4) In the event of disapproval, a holder shall not put the new rate schedule into effect, but may file with the Board further information to justify the rate schedule changes. Upon the receipt of the new information, the Board shall determine whether it will rehear the request.

(5) The Board may require annual statements and other records to be furnished to the Board to carry out the intentions of this section.

(6) In the event of approval of a revised rate schedule, the revised rate schedule shall not apply to persons and groups who have an advance payment agreement with the franchisee or permittee until the normal expiration of the advance payment agreement.

(7) The maximum approved rates in effect shall be subject to review and change only one time in a calendar year beginning January 1st; provided:

(a) Upon application and without prior notice, the Board may, by order, grant an interim or emergency rate for new, special or different service. The Board may specify

the duration of the rate or continue it until final determination by the Board on the next overall rate adjustment.

(b) In addition to an annual rate adjustment, a supplemental rate adjustment may be requested when the cost of service is increased due to compliance with governmental regulations; or when there is substantial increase in a single expense that was not anticipated at the time of the last rate adjustment; or when the total cost of service exceeds projected costs by five (5) percent or more.

(8) The Board shall support a decision to revise rates with findings of fact. In making its findings, the Board may consider rates charged by other persons performing the same or similar service. The Board shall give due consideration to current and projected revenue and expense; actual and overhead expense; the cost of acquiring and replacement of equipment; management costs; the cost of providing for future, added or different service; promotion and provision of source separation services; a reasonable return to holder for doing business; research and development; systems to avoid or recover the costs of bad debts; interest payments; and such other factors as the Board deems relevant.

(9) Subsections 1 through 8 shall not apply to disposal site franchise holders. [Ord. 1, adopted March 31, 1971; Ord. 23, adopted December 17, 1980; Ord. 85-0023; Ord. 86-0035; Ord. 2000-0165; Ord. 2003-0183]

23.515 Penalty Fee for Uncovered Loads. Disposal sites may apply a penalty fee for uncovered loads. [Ord. 2000-0165]

OVERSIGHT AND ENFORCEMENT

23.605 Accounting Records. The holder shall keep a complete and accurate set of books which shall reflect the gross receipts from service rendered inside Benton County outside the boundaries of incorporated cities. These books shall be balanced at least annually. A statement showing the basis for the quarterly fee payment shall be furnished to Benton County on each payment date. Benton County shall have the right to inspect the books and records of a holder at all reasonable times and places, and a holder shall render all reasonable assistance to Benton County, its officers, agents and employees when Benton County desires to audit or inspect the books and records. This section shall not apply to disposal site franchise holders. [Ord. 1, adopted March 31, 1971; Ord. 23, adopted December 17, 1980; Ord. 85-0023; Ord. 86-0035; Ord. 2000-0165]

23.610 Enforcement and Penalties.

(1) If the holder fails to promptly comply with any duty imposed, then Benton County may, after written notice to the holder and a reasonable opportunity to comply, proceed to perform the duty at the cost of the holder, which shall immediately become liable to Benton County for all expenses incurred by Benton County in fulfilling the obligation.

(2) The Board reserves the right to make further regulations as deemed necessary to protect the welfare of the public.

(3) A holder shall at all times be subject to applicable laws of the State of Oregon. A violation of state law if found by the Board to be substantial and material to the policy of this ordinance, may be deemed by the Board as a breach of the franchise or permit.

(4) A waiver by Benton County of a breach of any term of a franchise or permit or BCC Chapter 23 shall not operate as a waiver of a subsequent breach.

(5) If a holder breaches in any of the terms or payments required under the terms of BCC Chapter 23, and such default continues for a period of ten (10) days after receipt of written notification sent by certified mail by the Department, then Benton County may revoke the franchise or permit and the holder shall cease any solid waste service. This subsection shall not apply to disposal site franchise holders.

(6) Where a breach occurs for reasons not within the control of holder, such as lack of specialized equipment, personnel or similar reasons, the Board shall give a holder reasonable opportunity to comply before revoking the franchise or permit. This subsection shall not apply to disposal site franchise holders.

(7) Should a holder become insolvent, or acquire financial or legal encumbrances which materially affect its ability to comply with the terms of its permit or franchise or the requirements of BCC Chapter 23, Benton County may revoke the franchise or permit, and any other agreements entered into concerning solid waste management.

(8) Violation of BCC Chapter 23 shall be deemed to be a violation of County laws and is punishable upon conviction by a fine of not more than \$500.00; provided, however, that each day of continued violation is a separate offense and is separately punishable, but may be joined in a single prosecution. In addition, Benton County shall have the right to pursue any other remedy provided to it in law or in equity. [Ord. 1, adopted March 31, 1971; Ord. 23, adopted December 17, 1980; Ord. 85-0023; Ord. 86-0035; Ord. 2000-0165]

23.615 Appeals.

(1) An action of a holder under BCC Chapter 23 may be appealed to the Department.

(2) An action of the Department under BCC Chapter 23 may be appealed to the Board.

(3) Disputes arising under a collection franchise or permit or BCC Chapter 23 between Benton County and a holder or applicant shall be subject to judicial review in the Circuit Court of the State of Oregon for Benton County. [Ord. 1, adopted March 31, 1971; Ord. 23, adopted December 17, 1980; Ord. 85-0023; Ord. 86-0035; Ord. 2000-0165]

RESPONSIBILITIES OF SERVICE USERS

23.705 Public Responsibilities.

(1) No person shall place hazardous wastes out for collection or disposal by the collection franchise holder nor place it into any solid waste container supplied by the holder without prior notice to, and written approval from, the holder. Prior to the notice to the collection franchise holder, a person wishing to have such wastes collected shall obtain the approval of the disposal site franchise holder. Where required, an additional approval shall be obtained from the local governmental unit having jurisdiction over the disposal site. This disposal approval shall be in writing, signed by the person designated by the disposal site or local government unit affected. Either the holder or the disposal site or the local government unit having jurisdiction of the disposal site may require written authorization from the Oregon Department of Environmental Quality for the handling of hazardous wastes. This subsection does not apply to household waste generated by a single family residential dwelling unit.

(2) No person shall accumulate or store wastes in violation of the Benton County Nuisance Abatement Section or in violation of regulations of the Oregon Environmental Quality Commission.

(3) A franchisee is not required to service an underground container unless the person responsible for it places the can above ground prior to collection.

(4) No person shall, unless permitted by a holder, install or use any container of one yard or greater capacity for pickup by a holder, other than those supplied by a holder. The purpose of this subsection is to insure safe equipment, sizes and weights and facilitate holders utilizing the most efficient collection equipment and methods. Rates for use of a holder's containers and drop boxes shall be included in the adopted rate schedule.

(5) No person shall locate a solid waste container for residential collection service behind any locked or latched gate or inside of any structure unless authorized by the franchise holder. No person shall block the access to a receptacle.

(6) Each customer shall provide safe and reasonable access to the solid waste or solid waste container to a holder's employees.

(7) No container designed for mechanical pickup shall exceed safe loading weights or volumes as established by a holder to protect service workers, the customer, and collection equipment.

(8) No unauthorized person shall utilize, or remove material from, a solid waste collection container without permission of the owner of the container. For purposes of this section, a holder is the "owner" of containers supplied by the holder.

(9) No person shall remove solid waste disposed for collection and resource recovery except the disposer or a holder. This subsection does not apply to the purchase of materials for fair market value under a certificate issued pursuant to BCC 23.110(3), or by a person exempt under BCC 23.110(1) where placed out for collection by such person.

(10) Where a customer requires a large volume or special type of service requiring substantial investment in equipment, a holder may require a contract with the customer to finance such equipment. The purpose of this subsection is to assure that any specialized equipment not become a charge against other ratepayers. [Ord. 1, adopted March 31, 1971; Ord. 23, adopted December 17, 1980; Ord. 85-0023; Ord. 86-0035; Ord. 2003-0183]

23.710 Ownership of Wastes. Unless exempted under this ordinance, solid waste placed out for collection by another person is the property of the holder designated by the Board to provide service for that area. [Ord. 1, adopted March 31, 1971; Ord. 23, adopted December 17, 1980; Ord. 85-0023; Ord. 86-0035]

23.715 Responsibility for Payment for Service. A person who receives service shall be responsible for payment for the service. The landlord of any premises shall be responsible for payment for service provided to that premises if the tenant does not pay for the service. [Ord. 1, adopted March 31, 1971; Ord. 23, adopted December 17, 1980; Ord. 85-0023; Ord. 86-0035]

M 278438-99

AFTER RECORDING, RETURN TO:

Valley Landfills Inc.
P.O. Box 807
Corvallis, Oregon 97339

Until a change is requested,
all tax statements shall be sent to:

Valley Landfills Inc.
P.O. Box 807
Corvallis, Oregon 97339

STATUTORY WARRANTY DEED

Valley Landfills Inc., an Oregon Corporation, who took title as Valley Landfills Inc., an Oregon Corporation ("Grantor"), conveys and warrants to Valley Landfills Inc., an Oregon Corporation ("Grantee") the real property described on the attached Exhibit A, free of encumbrances except easements, covenants, conditions, restrictions and encumbrances of record.

The true consideration for this conveyance is the correction of vesting.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

DATED this 16th day of August, 1999.

Valley Landfills Inc.
By: [Signature]
Name/Title: Duane Sorensen, President

TICOR TITLE INSURANCE CO. 80-617

STATE OF OREGON
County of Benton

ss

The foregoing instrument was acknowledged before me this 16th day of August, 1999, by Duane Sorensen, ss President of Valley Landfills, on its behalf.

[Signature]
Notary Public for Oregon



EXHIBIT C

10-4-18

EXHIBIT A

Legal Description

Beginning at the point of intersection of the centerline of Benton County Road No. 642 and the West line of the Monroe Hodges Donation Land Claim No. 46 in Section 18, Township 10 South, Range 4 West, Willamette Meridian, Benton County, Oregon; running thence South 3°33' East along the West line of said Donation Land Claim No. 46, 1,778.33 feet, more or less, to an iron pipe; thence North 89°52' West 1,897.40 feet to a point which is South 89°52' East, 142.00 feet from the Southeast corner of the Joseph T. Hughart Donation Land Claim No. 61; thence due North 1,003.34 feet to the centerline of said County Road No. 642; thence Northeasterly along the centerline of said County Road No. 642, 1,966.00 feet, more or less, to the point of beginning, in the County of Benton and State of Oregon.

273799

STATE OF OREGON } ss.
County of Benton

I hereby certify that the within instrument
was received for record

'99DEC30 PM 1:22

AND
ASSIGNED

M278438

1999

In the microfilm records of said county

Witness My Hand and Seal of County Affixed

JOHN K. ANDERSON

County Administrative Officer

By

William Herring
38073 Deputy

7M-92809-87

Warranty Deed

KNOW ALL MEN BY THESE PRESENTS, That PHILLIP M. PROPHETT and EDITH

B. PROPHETT, husband and wife

, hereinafter designated as grantor

convey to VALLEY LAND FILLS, INC., an Oregon corporation,

all that real property situated in Benton County, State of Oregon, described as:

--Beginning at the point of intersection of the centerline of Benton County Road No. 642 and the West line of the Monroe Hodges Donation Land Claim No. 46 in Section 18, Township 10 South, Range 4 West, Willamette Meridian, Benton County, Oregon; running thence South 3°33' East, along the West line of said Donation Land Claim No. 46, 1,778.33 feet, more or less, to an iron pipe; thence North 89°52' West 1,897.40 feet to a point which is South 89°52' East, 142.00 feet from the Southeast corner of the Joseph T. Hugharts Donation Land Claim No. 61; thence due North, 1,003.34 feet to the centerline of said County Road No. 642; thence Northeasterly along the centerline of said County Road No. 642, 1,966.00 feet, more or less, to the point of beginning, in the County of Benton and State of Oregon.---

SUBJECT TO:

1. Rights of the public in roads and highways.
2. Grant of an easement to construct and maintain an electric transmission line from Jakob Rohner, Bertha Rohner, husband and wife, to Benton-Lincoln Electric Cooperative, Inc., a corporation, recorded August 4, 1941 in Book 98, Page 446(a) Deed Records.
3. Conditions and restrictions, including the terms and provisions thereof, in deed from U.S. of A. to Bernard W. Hanson, recorded February 25, 1949 in Book 125, Page 647, Deed Records.
4. Powerline easement, including the terms and provisions thereof, granted to Consumers Power, Inc., recorded in Book 171, Page 537, Benton County Deed Records.
5. Any encumbrances placed upon or suffered to be placed upon the above-described property after the date of execution of this Deed by any person or entity other than Grantor.

and covenant that grantor is the owner of the above described property free of all encumbrances except as above stated, and will warrant and defend the same against all persons who may lawfully claim the same, except as shown above.

The true and actual consideration for this transfer is \$70,000.00
Dated this 27th day of May, 1977.

Phillip M. Prophett (SEAL)
Phillip M. Prophett
Edith B. Prophett (SEAL)
Edith B. Prophett

CALIFORNIA
STATE OF ~~OREGON~~ } ss.
County of San Diego

Personally appeared before me the above-named and identified PHILLIP M. PROPHETT and EDITH B. PROPHETT, husband and wife,

and acknowledged the foregoing instrument to be their voluntary act.

James P. Snyder
NOTARY PUBLIC FOR ~~OREGON~~ California
My Commission Expires *May 4, 1981*

May 27, 1977.
Until a change is requested, all tax notices concerning the above-described property shall be sent to the Purchaser

THOMPSON SNYDER
ATTORNEY AT LAW
CORVALLIS, OREGON

at: P.O. Box 1
Corvallis, Or. 97330

Valley Landfills, Inc
PO Box 817
Creswell, OR 97339

STATE OF OREGON } 085377
County of Benton }

I hereby certify that the within
instrument was received for record

'87 AUG 14 AM 8 51

and assigned N^o 52809 1987

in the Microfilm records of said county

Witness My Hand and Seal of County Affixed

DANIEL G. BURK
DIRECTOR OF RECORDS & ELECTIONS

By *Margaret Armstrong*
DEPUTY

ENVIRONMENTAL LIABILITY TRUST AGREEMENT

TRUST AGREEMENT, entered into as of this 3rd day of March, 1999, by and between Valley Landfills, Inc., an Oregon corporation as grantor ("Grantor"), and Copper Mountain Trust Corp. an Oregon corporation, as trustee ("Trustee"), for the benefit of Waste Control Systems, Inc. and Subsidiaries, an Oregon corporation ("WCSI"), as a named Beneficiary; and BENTON COUNTY, OREGON, a political subdivision of the State of Oregon ("Benton County"), as a named Beneficiary.

RECITALS

A. Benton County is the governmental entity that has responsibility and authority to issue a franchise for any solid waste management facilities in Benton County, Oregon. Coffin Butte Landfill ("Facility") is a solid waste disposal site in Benton County, Oregon. Benton County awarded a franchise to Valley Landfills, Inc. to operate Facility, pursuant to BCC (Chapter 23, Solid Waste Management) and ORS 459.017.

B. Grantor desires to establish a trust fund in accordance with the provisions of this agreement for the purpose of providing financial resources to indemnify the Grantor and named Beneficiaries for environmental liability expenses that are not covered by insurance policies held by the Grantor and to assure the continued operation of the facilities for the disposal of solid waste in Benton County, Oregon.

C. Benton County desires to secure by this Agreement, Grantor's agreement to establish and fund an environmental liability trust pursuant to Benton County order of rate increase dated November 22, 1989.

A G R E E M E N T S

In consideration of the mutual covenants contained herein, Grantor and Trustee agree as follows:

1. Name of Trust. This Trust shall be called the Coffin Butte Landfill Environmental Liability Trust.

2. Establishment of Fund.

2.1 Grantor established this Trust for the purpose of complying with the Benton County order of rate increase dated November 22, 1989.

2.2 Grantor shall pay to the Trust One Dollar (\$1.00) per ton for all solid waste received at the Facility, and subject to a disposal fee charge. The amounts received, together with any other property or assets hereafter transferred by Grantor or others to Trustee and accepted by Trustee for administration as provided in this Agreement, the proceeds, investments and reinvestments of such property, and the accumulated income from such property, shall constitute the Fund as that term is used herein. Grantor, in collecting in the form of disposal fees and remitting to the Trust the above per ton amount, is acting as an agent of the Trust, and has no ownership in or right to use such funds for any other purpose. Such funds are due and payable to the Trust within 30 days of collection of such funds as disposal fees.

2.3 It is the intent of the Grantor to accumulate a Fund sufficient to carry out the purposes of this Trust Agreement. Pursuant to this intent, collections by Grantor, (or any successors or assigns) shall continue as prescribed in section 2.2. The Grantor shall provide the Beneficiaries of this Trust Agreement with a summary of the assets and liabilities of the Trust Agreement Fund annually, for the life of the Trust Agreement. If the Grantor, after consultation with the Beneficiaries, believes the Trust Agreement Fund is not sufficient to carry out the purpose of this Trust Agreement, the Grantor shall request an increase in the rate of disposal from the Benton County Board of Commissioners. If the Grantor, after consultation with the Beneficiaries, believes the Trust Agreement is sufficient to meet the purposes of this Trust Agreement, the Grantor shall request a decrease in the disposal rate from the Benton County of Board of Commissioners. If, at any time subsequent to a rate decrease pursuant to this Section 2.3, the Grantor believes the fund is not sufficient to carry out the purposes of this Agreement, the Grantor shall request an increase in the rate from the Benton Board of Commissioners. Nothing in this Section 2.3 shall be construed to alter the duties of the Trustee to maximize the fund at all times, pursuant to the requirements of this Agreement.

3. Purpose of Trust.

3.1 The purpose of this trust shall be to provide financial resources to the extent of the trust net assets solely to indemnify the Grantor and Beneficiaries of the Trust, regardless of fault but excluding intentionally harmful or fraudulent acts by the Grantor or Beneficiaries, from the following:

(1) Sums the Grantor or Beneficiaries become obligated to pay as damages or losses, damages incurred by the Beneficiaries, and sums authorized to be paid by Trustee in mitigation of damages or in settlement of claims made during the term of the Agreement, because of bodily injury or property damage arising out of the actual, alleged or threatened discharge, disposal, release or escape of pollutants at or from the Facility during or prior to the term of this Agreement, which claims are not otherwise covered by any insurance policies insuring the Grantor or Beneficiaries, and

(2) Sums the Grantor or Beneficiaries become obligated to pay as a result of a written order from the Oregon Department of Environmental Quality (DEQ) or its successor, due to actual, alleged or threatened discharge, disposal, release or escape of pollutants at or from the Facility during or prior to the term of this Agreement. Upon the issuance of a DEQ order, this Trust will become the mechanism for Grantor or Beneficiaries to meet any DEQ financial assurance requirements for Corrective Action as defined in OAR 340-94-140, and

(3) Reasonable attorneys' fees, as determined by Trustee, for retained outside counsel and costs, other than the salaries and out-of-pocket costs of Grantor and Beneficiaries and their employees, expended to defend any claim or suit for which payment would be required under Section 3.1 (1) of this Agreement, even if the claims or allegations are groundless or fraudulent.

This Trust and the Fund shall not be used to finance any other activities or for any other purpose. This Trust does not constitute, in any regard, an admission of Grantor or any Beneficiary of liability for claims arising out of the actual,

alleged or threatened discharge, disposal, release or escape of pollutants at or from the Facility during or prior to the term of this Agreement.

3.2 For the purposes of the Trust Agreement, the following definitions shall apply:

(1) "Bodily injury" means bodily injury, sickness or disease sustained by a person or animal, including death, for which the Grantor or Beneficiaries are obligated to pay damages by reason of the assumption of liability in a contract or settlement agreement, which has been approved in writing by Trustee, and which is otherwise an expense intended to be covered by this Trust. "Bodily injury" does not include bodily injury for which the Grantor or Beneficiaries are obligated to pay under any judgment or settlement agreement dated prior to the Effective Date of this Trust Agreement.

Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury."

(2) "Claim" means a written claim in which damages resulting from bodily injury or property damage to which this Trust applies are alleged, including, without limitation, any written demand, order or instruction from any government entity that Grantor or others test for, monitor, cleanup, remove, extract, contain, treat, detoxify, or neutralize pollutants. Testing and monitoring in the normal course of operations in accordance with Grantor's DEQ disposal permit is excluded from the meaning of claim under this paragraph.

(3) "Effective Date" means January 1, 1990.

(4) "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, odor, dust, vapor, soot, fumes, airborne particles, acids, alkalis, chemicals and waste.

(5) "Property damage" means: (a) Physical injury to tangible property, including all resulting loss of use of that property; (b) loss of use of tangible property that is not physically injured; (c) damage or decrease in value to real or personal property owned by the Grantor or Beneficiaries or others; and (d) any loss, cost, or expense arising out of any governmental direction or request or other independent determination that Grantor or others test for, monitor, clean up, remove, extract, contain, treat, detoxify or neutralize pollutants at or near the Facility, whether or not such action is taken voluntarily or pursuant to an order, and specifically includes property damage for which the Grantor or Beneficiaries are obligated to pay damages by reason of the assumption of liability in a contract or settlement agreement, which has been approved in writing by Trustee, and which is otherwise an expense intended to be covered by the Trust. "Property damage" does not include property damage for which the Grantor or Beneficiaries are obligated to pay under any judgment or settlement agreement dated prior to the Effective Date of this Trust Agreement.

(6) "Suit" means a civil proceeding in which damages because of bodily injury or property damage to which this Trust applies alleged, including an arbitration proceeding, alleging such damages to which the Beneficiaries must submit or submit with consent from Trustee.

(7) "Waste" means all materials specified in ORS 459.005(24) and includes, but is not limited to, debris and materials to be recycled, reconditioned or reclaimed.

(8) "Fund" means the amounts received from Valley Landfills, Inc. pursuant to section 2.1 of this Agreement, together with any other property hereafter transferred by Valley Landfills, Inc. or others to the Trustee and accepted by the Trustee for administration, as provided in this Agreement, the proceeds, investment and reinvestments of such property, and the accumulated income from such property.

4. Beneficiaries.

4.1 The Beneficiaries of this Trust and the Fund shall be:

(1) The Grantor, its present, past and future shareholders, officers, directors, employees, agents, and subcontractors, even though they may not be such at the time of the incident giving rise to a claim for indemnification or at the time of the claim of indemnification, and any company, its present, past and future officers, directors, shareholders, employees, agents and subcontractors, that acquires Grantor and its assets after the Effective Date of this Agreement, even though they may not be such at the time of the incident giving rise to a claim for indemnification or at the time of claim for indemnification.

(2) WCSI, its present, past and future shareholders, officers, directors, employees, agents and subcontractors, even though they may not be such at the time of the incident giving rise to a claim for indemnification or at the time of the claim for indemnification, and any company, its present, past

and future officers, directors, shareholders, employees' agents and subcontractors, that acquire WCSI and its assets after the Effective Date of this Agreement, even though they may not be such at the time of the incident giving rise to a claim for indemnification or at the time of the claim for indemnification.

(3) Benton County, its present, past and future elected and appointed officials, employees, agents, subcontractors and officers, even though they may not be such at the time of the incident giving rise to a claim for indemnification or at the time of the claim for indemnification.

All those identified by this Section shall be referred to collectively as the "Beneficiaries."

4.2 Any rights or duties specifically assigned in this Trust Agreement to the Beneficiaries applies as if each Beneficiary were the only Beneficiary and separately to each Beneficiary against whom claim is made or suit is brought.

5. Insurance Adjuster. Trustee may at it's option employ an insurance adjuster for the purpose of advising Trustee regarding requests for distributions during the term of the Trust. The insurance adjuster shall be experienced in evaluating insurance and/or self-insurance claims of the nature and kind for which this Trust was established. The insurance adjuster shall not be affiliated with or have any beneficial interest in any insurance company or any Beneficiary of this Trust. Trustee shall have sole discretion and authority to determine the amount, type, priority and allocation among the Beneficiaries of distributions made under this Trust Agreement and the Insurance adjuster shall only advise Trustee as to such matters. Trustee shall be fully protected in relying upon the advice of the insurance adjuster on questions concerning requests for

distributions during the term of the Trust and shall not be liable for any loss or damage caused by the insurance adjuster selected by Trustee, if Trustee exercised reasonable care in selecting and retaining such insurance adjuster.

6. Distribution During Term of Trust.

6.1 If any event occurs which gives rise to a claim which the Grantor or Beneficiaries believes are or may be subject to indemnification under this Agreement, such Grantor, or Beneficiaries, shall:

- (1) Give Trustee prompt notice of the event, including a description of how, when and where loss or damage, if any, occurred and a description of the property involved.
- (2) Take all reasonable steps to protect the described property from further damage. Maintain the damaged property in the best possible order for examination and, if feasible, set the damaged property aside.
- (3) Keep a record of the expenses for consideration in the settlement of the claim.
- (4) Permit Trustee to inspect the property and records proving the loss.
- (5) If requested, permit Trustee to seek information from the Grantor or Beneficiaries, or any elected or appointed official, officer, director, employee, subcontractor or agent of the Beneficiaries, at such times as may be reasonably required about any matter relating to the claim including the Grantor's or Beneficiaries' books and records. If such information is confidential or

privileged, the Grantor or Beneficiaries will not be required to produce such information to the Trustee.

(6) Cooperate with Trustee in the investigation and settlement of the claim.

(7) Provide to Trustee information satisfactory to Trustee regarding any insurance policy held by the Beneficiary which may be applicable to the claim.

(8) Make a good faith claim against any insurer or other responsible third party not a part of this agreement and prosecute such claim to the fullest extent.

(9) Provide to Trustee evidence satisfactory to Trustee that despite the Beneficiary's good faith effort to collect from and prosecution of the claim against the insurer or third party, the Beneficiary has not been indemnified for the claim in the full amount to which the Beneficiary may be indemnified under this Trust.

(10) Present to Trustee an itemized bill setting forth the amounts remaining due under the claim after being indemnified under any insurance policy, if any, along with a written request that such amounts be paid from the Fund.

6.2 Upon receiving the information provided for in Paragraph 6.1, Trustee shall promptly determine, with the advice of the insurance adjuster (if any), whether such claim is in accordance with the purpose of the Trust. If Trustee so determines, Trustee shall disburse to or for the benefit of such Beneficiary amounts from the Fund to pay the

amount of the claim in excess of Two Thousand Five Hundred Dollars (\$2,500.00).

Claims which arise from third-party suite shall be given priority by the Trustee in distributing payments from the Trust.

6.3 In determining the amount for disbursement to a Beneficiary under Paragraph 6.2 for claims representing the loss of property, the value of such property and the claim shall be the fair market value of the property at the time of the loss of the property as determined by an independent appraiser.

6.4 If any Beneficiary or if Trustee recovers any amounts from any source other than this Trust for damage or loss after payment of Beneficiaries' claims under this Paragraph 6, such amounts must be transferred to this Trust, less any recovery expenses.

6.5 Prior to disbursement from this Trust in accordance with this Paragraph 6, each Beneficiary shall execute an agreement which transfers to this Trust all rights the Beneficiary may have to recover the same amounts from another, including any insurer under any policy of insurance that may be applicable to the Beneficiary's claim.

6.6 Should any party to this agreement disagree with Trustee's determination as to amount, type, priority, and allocation of distributions under this Trust Agreement, which cannot be resolved by the parties and Trustee, the dispute shall be presented to Arbitration, as defined in section 11 of this agreement.

7. Termination.

7.1 This Trust shall remain in effect for thirty (30) years after the closure date of the Facility as evidenced by a DEQ final closure permit ("Termination Date"). No earlier termination of the Trust will be allowed without the mutual written agreement of all parties to this agreement. The Termination Date may be extended upon

mutual written agreement by all parties to this agreement. Any monies in the Trust at the Termination Date which are not subject to existing or pending claims shall be distributed as set forth in paragraph 7.2.

7.2 Any funds or other property remaining in the Trust upon termination under paragraph 7.1 or for any other reason shall revert to Benton County and be used solely to: (a) acquire and develop new waste disposal facilities, (b) reduce waste volumes to be disposed, (c) for any other purposes to which the Beneficiaries mutually agree. Following final distribution of the funds by the Trustee, Trustee will have no further obligation over the funds including whether the funds were used in accordance with this section 7.2.

8. Management of Fund. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single trust fund without distinction between principal and income. In investing, reinvesting, exchanging, selling and managing the Fund, Trustee shall discharge its duties with respect to the Fund solely in the interest of the Beneficiaries of this Trust, and with the care, skill, prudence and diligence under the circumstances then prevailing which persons of prudence, acting in like capacity and familiar with such matters would use in the conduct of an enterprise with like character and like aims, provided that Trustee shall at all times maintain all funds in cash or assets readily convertible to cash to meet the requirements for distribution under the terms of the Agreement.

9. Powers of Trustee. Trustee is empowered to do all things appropriate for the orderly administration of the Trust, subject to Trustee's power and control, unless otherwise specifically provided herein. Without limiting this general power, and without

limitation of other powers hereby granted or otherwise possessed by Trustee, including those specified in the Uniform Trustees' Powers Act in effect in Oregon as it may be amended from time to time, Trustee shall have the following powers and discretion which Trustee shall exercise in such manner and upon such terms and conditions as Trustee shall deem necessary, desirable or convenient:

9.1 To sell, exchange, convert, transfer or otherwise dispose of any property held by Trustee in the Trust, by public or private sale. No person dealing with Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of such sale or other disposition;

9.2 To retain any property for such period, as Trustee may deem desirable, whether or not such property produces any income and independent of any requirement of diversification.

9.3 To receive additions to the assets of the Fund from any source;

9.4 To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

9.5 To borrow, guaranty, or indemnify in the name of this Trust and to secure any such loan or obligation by mortgage, encumbrance, pledge, or other security interest, and to renew, modify, extend or amend any such obligation. No lender shall be bound to see to or be liable for the application of the proceeds of any obligations, and Trustee shall not be personally liable for any obligation;

9.6 To vote a security, in person or by general or limited proxy, to participate in or consent to any voting trust, and to deposit securities with and transfer title to a protective or other committee;

9.7 To register any securities held in the Fund in Trustee's own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of Trustee shall at all times show that all such securities are part of the Fund;

9.8 To insure the Fund, Grantor, WCSI and Benton County, against any risk or liability with respect to third persons, provided such insurance is obtained and purchased with the written consent of Grantor;

9.9 To prosecute, defend, contest, or otherwise litigate actions, suits, claims, or proceedings for the protection or benefit of this Trust; and

9.10 Except as otherwise provided herein, Trustee in the exercise of its duties is authorized to do all acts that might legally be done by an individual in absolute ownership and control of property.

10. Insurance. This Trust is not insurance and as to any Beneficiary does not cover loss or damage for which such Beneficiary is covered by any insurance policy.

If valid and collectible insurance is available to a Beneficiary making a claim under the terms of the Trust Agreement, the Trustee's obligations are limited as follows:

(1) This Trust will be regarded as excess indemnification over any insurance, whether primary, excess, umbrella, contingent or on any other basis, and shall apply only after the amount of the applicable limits of liability has been paid either by the said insurer or by the insured.

(2) This Trust will not pay for the defense of any claim or suit that any insurer has a duty to defend. If no insurer defends such claim or suit, this Trust will pay for the defense, but this Trust will be entitled to the insured's rights against all insurers that had a duty to defend such claim or suit.

(3) This Trust will pay only the amount of the loss, if any, that exceeds the sum of the total amount that all insurance has paid for the loss and the total of all deductible and self-insured amounts under all such insurance.

11. Arbitration. Any controversy arising out of or relating to this Agreement, including but not limited to the making, performance, or interpretation of this Agreement, shall be settled by arbitration between Grantor and Trustee. Unless otherwise agreed, the arbitration shall be conducted in Benton County, Oregon, by Arbitration Service of Portland, Inc. (or its successors or assigns), before a single arbitrator. If arbitration is commenced, the parties shall permit discovery proceedings of the type provided by the Oregon Rules of Civil Procedure both in advance of, and during recesses of, the arbitration hearings. The arbitrator may award the prevailing party reasonable attorney fees, expert and non-expert witness costs and expenses, and all other costs and expenses incurred directly or indirectly in connection with the proceedings. The

arbitrator shall have no jurisdiction to consider evidence with respect to or render an award or judgment for punitive damages (or any other amount awarded for the purpose of imposing a penalty). Judgment on the arbitration award may be entered in any court having jurisdiction over the subject matter of the controversy.

12. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by Trustee in connection with the administration of this Trust, including fees for legal services rendered to Trustee, the compensation of Trustee, and all other proper charges and disbursements of Trustee shall be paid from the Fund.

13. Agents and Attorneys. After consultation with, but not at the direction of Grantor, Trustee may employ such agents and attorneys as Trustee may deem necessary or desirable for the proper administration of this Trust, or in connection with any uncertainty, controversy or litigation which may arise with respect to this Agreement, and pay reasonable compensation to such agents and attorneys for their services, such compensation to be derived from the assets of the Fund. Trustee shall be fully protected in relying upon the advice of legal counsel on questions of law and shall not be liable for any loss or damage caused by any agent or attorney selected by Trustee, if reasonable care was exercised in selecting and retaining such agent or attorney.

14. Trustee Compensation. Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with Grantor, which compensation shall be paid from the Fund.

15. Trustee Selection; Successor Trustee.

15.1 Trustee shall be selected from among those qualified to serve as trustees in the State of Oregon and whose trust operations are regulated and examined by a federal or state agency. No person or entity who is a Beneficiary of this Trust shall be eligible for selection as Trustee. Grantor shall select Trustee in accordance with the terms of this Paragraph 15.1.

15.2 Trustee may resign or Grantor may replace Trustee, but such resignation or replacement shall not be effective until Grantor, and in accordance with the terms of Paragraph 15.1, has selected a successor trustee and the successor has accepted the appointment. The successor trustee shall have the same powers and duties as those conferred upon Trustee hereunder. Upon the successor trustee's acceptance of the appointment, Trustee shall assign, transfer, and pay over to the successor Trustee the funds and properties then constituting the Fund. If for any reason Grantor cannot or does not act in the event of the resignation of Trustee, Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to Grantor and the present Trustee by certified mail ten (10) days before such change becomes effective. Any expenses incurred by Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Paragraph 12.

16. Instructions to Trustee. All orders, requests, and instructions by Grantor to Trustee shall be in writing, and Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of Grantor

hereunder has occurred. Trustee shall have no duty to act in the absence of such orders, requests, and instructions from Grantor, except as provided for herein.

17. Immunity and Indemnification. Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by Grantor issued in accordance with the Trust Agreement. Trustee shall be indemnified and saved harmless by Grantor or from the Fund, or both, from and against any personal liabilities to which Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event Grantor fails to provide such defense, excluding acts by the Trustee which constitute willful misconduct, neglect or fraud.

18. Accounting. Trustee shall maintain adequate accounting procedures to ensure that the monies collected by Grantor and transferred to the Fund, the income, and the amounts paid out pursuant to the terms of this Trust Agreement are accurately recorded and described. Trustee shall provide to all Beneficiaries an annual accounting, on or before January 31st following each year during which this Trust Agreement is in effect, which shall include the status of the Fund and the disbursement history for the prior calendar year. Grantor shall be entitled to audit, and all Beneficiaries shall be entitled to examine, at their expense, all accounting records maintained by Trustee in connection with this Trust and the Fund at reasonable times during normal business hours upon ten (10) days' prior written notice to Trustee.

19. Provision Against Assignment and Alienation. No share or interest shall vest under this Trust until it is actually paid or delivered by Trustee in accordance

with the provisions of this Agreement. No Beneficiary shall have any power to sell, assign, transfer, encumber or in any other manner to anticipate or dispose of his, her or its interest in this Trust or the income produced thereby prior to its actual distribution by the Trustee to the Beneficiaries or to another for the benefit of the Beneficiaries in the manner authorized herein, unless mutually agreed by all parties to this agreement. No share or interest shall be liable for the debts of Grantor or any other Beneficiaries or be subject to the process of any seizure of any court or be an asset in any bankruptcy of Grantor under any circumstances whatever.

20. Merger With Similar Trusts. If at any time and from time to time, Trustee is trustee of two or more trusts under this or any other instrument which are to fulfill substantially similar purposes for Grantor and the other Beneficiaries any two or more of such trusts may, in the discretion of Trustee, be merged if the probable effect of such merger will not be to the substantial disadvantage of Grantor or Beneficiaries or otherwise frustrate the purposes of this Trust.

21. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each paragraph of this Agreement shall not affect the interpretation of the legal efficacy of this Agreement.

22. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Oregon.

23. Bankruptcy or Franchise Termination. Bankruptcy or insolvency of Grantor or the Beneficiaries or termination of Grantor's rights to operate the facility shall

not release the Trustee of its obligation to make distributions under the terms of this Trust Agreement.

24. Abandonment. There can be no abandonment of any real property to this Trust.

25. Amendment. This Trust Agreement may be amended by an agreement in writing between Grantor and Trustee, provided said amendment has been approved as to form and content by WCSI and Benton County.

EXECUTED as of the day and year first above written.

GRANTOR:

VALLEY LANDFILLS, INC.

By: 
Duane Sorensen
President

**AMENDMENT TO
ENVIRONMENTAL LIABILITY TRUST AGREEMENT**

This agreement is entered into as of the ____ day of _____, 2001, between VALLEY LANDFILLS, INC., an Oregon corporation ("Grantor"), and COPPER MOUNTAIN TRUST CORP., an Oregon corporation ("Trustee").

RECITALS

A. Grantor and Trustee entered into an Environmental Liability Trust Agreement (the "Trust Agreement") dated March 3, 1999, creating the Coffin Butte Landfill Environmental Liability Trust (the "Trust"). The purpose of the trust is to provide financial resources to indemnify Grantor, Waste Control Systems, Inc., an Oregon corporation ("WCSI"), and its subsidiaries, and Benton County, a political subdivision of the state of Oregon, for uninsured environmental liabilities in connection with Coffin Butte Landfill situated in Benton County, Oregon.

B. The Trust Agreement was amended by an Amendment to Environmental Liability Trust Agreement dated 2/19/01, ~~2000~~ (the "Trust Amendment"). The Trust Amendment amended the Trust Agreement to (i) ratify a supplemental agreement between WCSI and Benton County, under which Grantor's obligation under Section 2 of the Trust Agreement to pay to the Trust the sum of \$1 per ton for all solid waste received at Coffin Butte Landfill was suspended in favor of a 75¢ per ton payment from WCSI directly to Benton County, and (ii) provide for distributions to Grantor of such amounts as Trustee estimates to be necessary to permit Grantor to pay any federal and state taxes attributable to any Trust income, deductions, or credits directly reportable by Grantor under Internal Revenue Code sections 671 to 677.

C. Grantor and Benton County have entered into a Landfill Franchise Agreement dated December 31, 2000 (the "Franchise Agreement"). The Franchise Agreement provides in part that (i) from December 31, 2000, to December 31, 2002, Grantor will not be required to make additional contributions to the Trust, (ii) by December 31, 2002, Grantor will guarantee that the Trust reaches a total value of \$5,000,000, (iii) if the value of the Trust has not reached \$5,000,000 by December 31, 2002, Grantor will within 60 days thereafter make sufficient additional contributions to the Trust to bring the total value to \$5,000,000, and (iv) after the value of the Trust reaches a total of \$5,000,000, no further contributions will be required. The Franchise Agreement also include certain provisions relating to the existence and application of liability insurance. The parties wish to amend the Trust Agreement to ratify the terms of the Franchise Agreement.

D. Under Section 25 of the Trust Agreement, it may be amended by an agreement in writing between Grantor and Trustee, provided that the amendment has been approved as to form and content by WCSI and Benton County.

AGREEMENT

The parties agree that the terms of the Franchise Agreement are hereby ratified, effective as of December 31, 2000, and the Trust Agreement shall be deemed amended consistent with its terms.

VALLEY LANDFILLS, INC.

By: [Signature]
Name: Rick Waldren
Title: Controller

GRANTOR

COPPER MOUNTAIN TRUST CORP.

By: _____
Name: _____
Title: _____

TRUSTEE

APPROVED AS TO FORM AND CONTENT:

WASTE CONTROL SYSTEMS, INC.

By: [Signature]
Name: Jeff Andrews
Title: Vice President

BENTON COUNTY

By: [Signature]
Name: LINDA MODRELL
Title: COMMISSIONER

By: [Signature]
Name: Annabelle Taramello
Title: Commissioner

By: [Signature]
Name: JAY BIXON
Title: COMMISSIONER

Approved as to Form:

[Signature] 7-25-01
County Counsel



601 SW SECOND AVENUE • SUITE 1800
PORTLAND, OR 97204
(503) 295-3600 • (800) 343-5345 • FAX (503) 229-0561

June 18, 2001

Mr. Rick Waldron
Waste Control Systems, Inc.
P. O. Box 807
Corvallis, Oregon 97339

Dear Rick:

I asked the Miller Nash law firm to prepare an amendment to the Coffin Butte Landfill Environmental Liability Trust that reflects the Landfill Franchise Agreement dated December 31, 2000 between Valley Landfills, Waste Control Systems, Inc. (WCSI) and Benton County.

The purpose of this Trust Amendment is to ratify the 12/31/00 Franchise Agreement. The Trust Amendment is between Valley Landfills, Inc. (Grantor) and Copper Mountain Trust (Trustee). The Trust Amendment should also be signed by WCSI and Benton County reflecting their approval as to its form and content. I have enclosed duplicate originals and request that you obtain signatures from Valley Landfills, WCSI, and Benton County.

I am also sending a copy of the Trust's prior Amendment dated 2/19/01. Please note that it is missing a signature from WSCI. I would appreciate it if you would obtain a signature from WSCI on this amendment as you obtain the signatures on the new amendment?

Once you have obtained the appropriate signatures on each of the documents, please return them to me. I will then add Copper Mountain Trust's approval to the new Amendment and forward one complete set of originals back to you.

I also look forward to finalizing a new Investment Policy and Guidelines that takes into account the new Franchise Agreement terms. Jim Cheadle and I will give you a call next Friday regarding this item. Thank you for your assistance in all these matters. If you have any questions, please give me a call.

Take care,

A handwritten signature in black ink, appearing to read "Kathleen Baker", written over a horizontal line.

Kathleen Baker
Enclosures

Memorandum of Understanding
Relating to Land Use Issues

**Between: Benton County (Benton Co.), a
 Political Subdivision of the State of Oregon**

and

**Valley Landfills, Inc. (VLI),
an Oregon Corporation**

WHEREAS, there is an existing Franchise Agreement and an existing Environmental Trust Fund Agreement between Benton County, hereafter (Benton Co.), and Valley Landfills, Inc., hereafter (VLI); and

WHEREAS, over a period of years Benton County has reviewed various land use and solid waste applications submitted by VLI; and

WHEREAS, Benton Co., by and through its staff, and VLI, have been conducting a review of the operations of the Coffin Butte Landfill; and

WHEREAS, during the last review it became apparent that with the passage of time, there has been numerous changes in the personnel representing each party that has led to an uncertainty of prior Benton County approvals.

WHEREAS, both parties agree that it is in the mutual best interest of all parties and the public to form an understanding of the current status of the relationship and the legal responsibilities of each party;

NOW, THEREFORE, in consideration of the mutual terms, promises and conditions hereafter set forth, the parties agree as follows:

- (1) The above recitals are true, and by this reference incorporated herein.
- (2) VLI is the owner and operator of the landfill facility commonly known as the Coffin Butte Landfill, and was acquired by Allied Waste Industries in January of 2000.
- (3) The Coffin Butte Landfill has operated within the land use laws of Benton County prior to 1974.
- (4) In 1974, the Coffin Butte Landfill was operated by Corvallis Disposal Company. In 1974, Corvallis Disposal Company applied for and was

- granted a Conditional Use Permit. That permit was finally granted by action of the Benton County Board of Commissioners on May 15, 1974.
- (5) One of the conditions of the 1974 approval was that a "Solid Waste Management Plan for Benton County" be submitted for review to the Planning Commission. This condition was met on March 29, 1977. From then until 1983, Coffin Butte Landfill was operated in compliance with the approved Management Plan.
 - (6) In 1983, VLI applied to Benton Co. for the creation of a Landfill Zone, other amendments to the Comprehensive Plan and the application of the new Landfill Zone to the Coffin Butte Landfill within Benton County. After hearings before the Planning Commission and the Board of Commissioners, the requests were granted.
 - (7) The 1974 approval had allowed all landfill activities, including but not limited to the placement of solid waste, on 184 acres north of Coffin Butte Road.
 - (8) The 1983 approval added 10 more acres for landfill activities, including but not limited to the placement of solid waste, north of Coffin Butte Road, or a total of 194 acres. Non landfill activities such as leachate treatment and irrigation were allowed south of Coffin Butte Road. The 1983 approval specifically did not allow for the placement of solid waste south of Coffin Butte Road.
 - (9) Activities continued under the 1983 approval until 1995. In 1994 and 1995, VLI submitted applications to Benton Co. Those applications would have expanded the allowed activities south of Coffin Butte Road. Because of opposition at that time, VLI withdrew its applications.
 - (10) Benton County has a Solid Waste Advisory Council (SWAC) which reviews the operations of the landfill, and other matters of public interest. The Solid Waste Advisory Council, hereinafter referred to as (SWAC), has continually monitored the operations of VLI since 1980.
 - (11) All recommendations of SWAC requiring action by the Benton County Board of Commissioners have been forwarded to and acted upon by the Benton County Board of Commissioners.
 - (12) SWAC reviews and approves the Annual Operations Report on the Coffin Butte Landfill.
 - (13) The operations of a municipal landfill are regulated generally by ORS Chapter 459 and the National Resource Conservation and Recovery

Act of 1976. Specific activities within the landfill are governed by other sections of Oregon and Federal law.

- (14) Since 1996, Benton Co. has signed the Land Use Compatibility Statements, hereinafter referred to as (LUCS), indicating to DEQ that the landfill was being operated in compliance with Benton County Ordinances.
- (15) Based upon the LUCS statement, DEQ has reviewed and found that the operations of the landfill are in compliance with the state law. The last approval from DEQ was granted in 2000.
- (16) Based upon the changes in federal, state and local regulations, the inevitable turn over of personnel for both Benton Co. and VLI, the parties now agree that the permits previously granted by Benton Co. to VLI allow the following:
 - (a) VLI is entitled to conduct all forms of landfill activities, including but not limited to the placement of solid waste, consistent with State and local regulations, within the 194 acres as designated within the Landfill Zone which is north of Coffin Butte Road and further identified as the blue area on *Exhibit "1"* attached hereto.
 - (b) VLI agrees that it will not conduct, without the prior approval of Benton County and the State of Oregon, the placement of solid waste on the approximate 56 acres, within the landfill zone which it owns south of Coffin Butte Road, and is further identified as the yellow area on *Exhibit "1"* attached hereto.
 - (c) Benton Co. agrees that on the 56 acres designated within the Landfill Zone south of Coffin Butte Road, VLI may conduct related landfill activities which include, but is not limited to, the collection of leachate and management of leachate.
 - (d) VLI and Benton Co. agree that VLI owns 2 parcels of ground which abut the north line of the Landfill Zone but are not included within the Landfill Zone. These 2 parcels of land are identified on the attached *Exhibit "2"*. VLI agrees that within the immediate future, it will file a separate Conditional Use Application to allow landfill activities on each of the 2 parcels described on *Exhibit "2"*.
 - (e) Benton Co. agrees that the identification on previously filed maps indicating cell areas and locations were specifically for the purpose of identifying the location of the particular cell and was not for the purpose of limiting the area where landfill activities

could take place. The specific exception are for those maps which were filed by VLI in 1994 and 1995 which showed the location of cell 6 and cell 7 south of Coffin Butte Road. VLI withdrew the application. There is no approval for any landfill activity south of Coffin Butte Road except for the related landfill activity which does not include the placement of solid waste.

- (f) Benton Co. and VLI specifically agree that the term "landfill or landfilling activity" has the meaning as set forth in ORS Chapter 459.
- (g) VLI and Benton Co. agree that the preliminary review of this Memorandum of Understanding was conducted by SWAC during its regularly scheduled meetings held on August 27, 2002 and September 24, 2002.
- (h) VLI and Benton Co. agree that this Memorandum of Understanding was signed at the conclusion of a regular meeting of the Benton County Board of Commissioners where this matter will be placed on the agenda for November 5, 2002, for public discussion prior to signature.

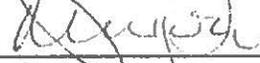
**VALLEY LANDFILLS, INC., an
Oregon corporation**

By 

**Merle Irvine
Vice President**

**BENTON COUNTY BOARD OF
COMMISSIONERS**

By 

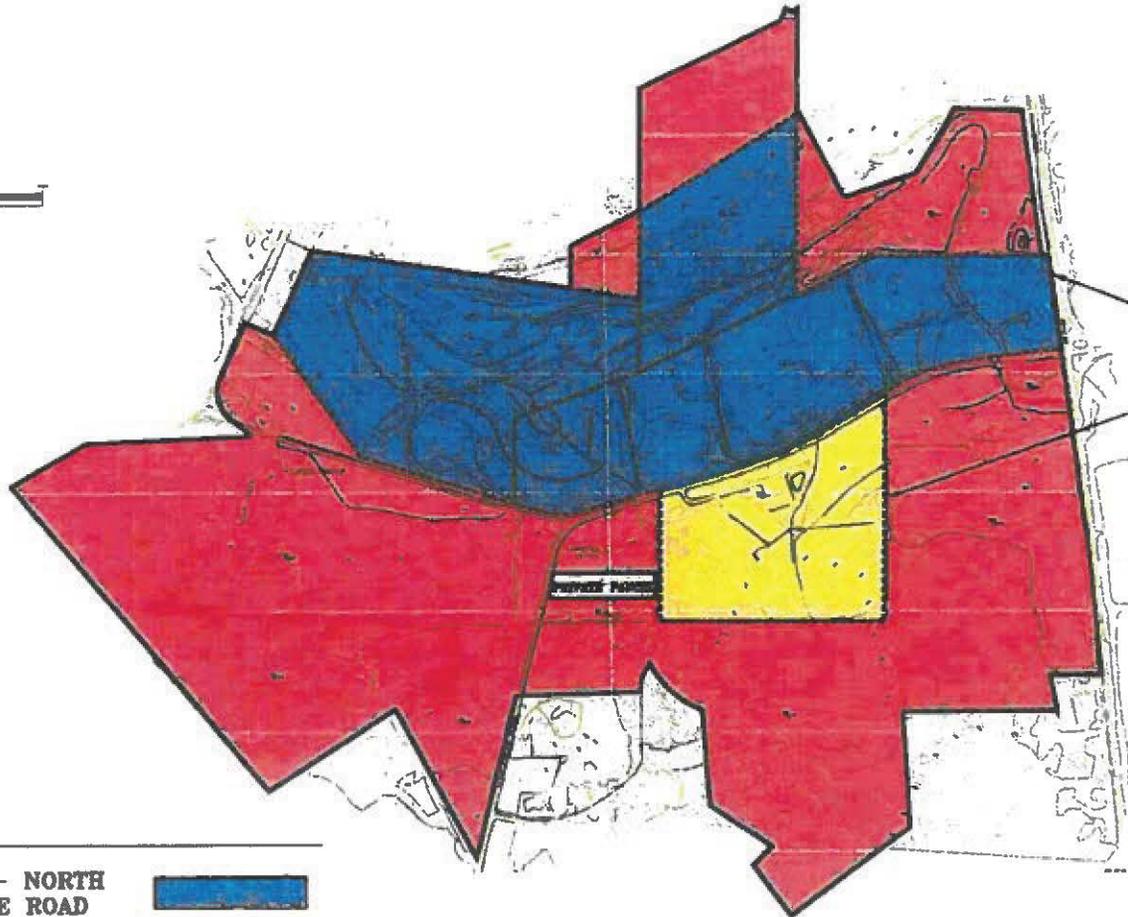
By 

By 

APPROVED AS TO FORM:


**VANCE CRONEY,
Benton County Legal Counsel**

N:\ATTY\EFSEFS Clients\WASTE CONTROL\Memorandum of Understanding.4.doc



VLI PROPERTY LINE

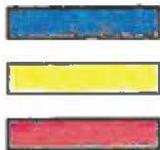
LANDFILL SITE (LS) ZONE LINE

LEGEND

LANDFILL ZONE - NORTH OF COFFIN BUTTE ROAD

LANDFILL ZONE - NON-DISPOSAL AREAS

OTHER LAND OWNED BY VALLEY LANDFILLS



DATE: 11/15/05 BY: J. B. BROWN, JR. FOR: VLI, INC. PROJECT: VALLEY LANDFILL, DC

VALLEY LANDFILL, INC.
 COFFIN BUTTE LANDFILL
 BENTON COUNTY, OREGON
 SITE DEVELOPMENT PLAN
 PROPERTY BOUNDARY AND LANDFILL ZONE LINE

SHEET
 1
 OF
 1

