

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF GRANTING)	ORDINANCE NO. 93-519
A FRANCHISE TO ENERGY)	
RECLAMATION INC. FOR THE)	INTRODUCED BY
PURPOSE OF OPERATING A SOLID)	RENA CUSMA,
WASTE PROCESSING FACILITY, AND)	EXECUTIVE OFFICER
DECLARING AN EMERGENCY)	

WHEREAS, Section 5.01.030 of the Metro Code requires a Metro franchise for any person to own or operate a facility for the processing of solid waste; and,

WHEREAS, Energy Reclamation, Inc. (ERI) has applied for a non-exclusive franchise to operate a facility for processing of non-putrescible mixed solid waste and construction and demolition debris at Portland, Oregon; and

WHEREAS, ERI has submitted evidence of compliance with Metro Code Section 5.01.060 requirements for franchise applications and operational plans; and

WHEREAS, The ERI facility will provide disposal services only to its own haulers or those of an affiliate corporation; and,

WHEREAS, Metro Code Section 5.01.170 establishing disposal rates is inapplicable because only ERI or affiliate company haulers will be permitted to use the facility and no gate rates will be charged at the facility; and

WHEREAS, The appropriate amount of a surety bond or conditional lien to be provided by the franchisee is determined to be \$65,000, and,

WHEREAS, Allowing this ordinance to take effect immediately is necessary for the public health, safety and welfare of the Metro area because:

1. The franchisee will be able to commence operation sooner than 90 days and will immediately begin to benefit the regional recycling effort;
2. This franchise will provide a prototype for similarly proposed facilities in the future; and
3. The franchisee would be unreasonably delayed in its ability to commence operation of its facility; and,

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

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. That the Metro Council authorizes the Metro Executive Officer to enter into the attached Franchise Agreement (Exhibit A) with ERI within ten (10) days of the adoption of this Ordinance.
2. This Ordinance being necessary for the public health, safety, and welfare of the Metro area, an emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Metro Council this 10th day of November, 1993.


Judy Wyers, Presiding Officer

ATTEST:


Clerk of the Council

AMENDED EXHIBIT A-ORDINANCE NO. 93-519

SOLID WASTE FRANCHISE
issued by
METRO
600 N.E. Grand Avenue
Portland, Oregon 97232-2736
(503) 797-1700

FRANCHISE NUMBER: 14

DATE ISSUED: _____

AMENDMENT DATE: N/A

EXPIRATION DATE: _____

ISSUED TO: ENERGY RECLAMATION, INC.

NAME OF FACILITY: ENERGY RECLAMATION, INC.

ADDRESS: 554 N. COLUMBIA BLVD, PORTLAND, OR

LEGAL DESCRIPTION: SEE ATTACHED

CITY, STATE, ZIP: 554 N. COLUMBIA BLVD., PORTLAND, OR

NAME OF OPERATOR: ENERGY RECLAMATION, INC.

PERSON IN CHARGE: JAMES COZZETTO, JR.

ADDRESS: PO BOX 11229

CITY, STATE, ZIP: PORTLAND, OR 97211

TELEPHONE NUMBER: (503) 285-0571

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FRANCHISE AGREEMENT

This Franchise is issued by Metro, a municipal corporation organized under ORS chapter 268, referred to herein as "Metro," to Energy Reclamation, Inc., referred to herein as "Franchisee."

In recognition of the promises made by Franchisee as specified herein, Metro issues this Franchise, subject to the following terms and conditions:

1. DEFINITIONS

As used in this Franchise:

- 1.1 "Code" means the Code of Metro.
- 1.2 "DEQ" means the Department of Environmental Quality of the State of Oregon.
- 1.3 "Executive Officer" means the Executive Officer of Metro or the Executive Officer's designee.
- 1.4 "Facility" means the facility described in section 3 of this Franchise.
- 1.5 "Processing Facility" means a place or piece of equipment where or by which solid wastes are processed. This definition does not include commercial and home garbage disposal units, which are used to process food wastes and are part of the sewage system, hospital incinerations, crematoriums, paper shredders in commercial establishments, or equipment used by a recycling drop center.

2. TERM OF FRANCHISE

This Franchise is issued for a term of five years from the date signed by Metro and the Franchisee, following approval by the Metro Council.

3. LOCATION OF FACILITY

- 3.1 The franchised Facility is located at 554 N Columbia Blvd, Portland. Attached as Exhibit 1 to this agreement is the legal description of the facility property.

4. OPERATOR, AND OWNER OF FACILITY AND PROPERTY

- 4.1 The owner of the Facility is CCYC, Inc., a Cozzetto family owned company. Franchisee shall submit to Metro any changes in ownership of the Facility in excess of five percent of ownership, or any change in partners if a partnership, within 10 days of the change.
- 4.2 The owner of the property underlying the Facility is CCYC, Inc. If Franchisee is not the owner of the underlying property, Franchisee warrants that owner has consented to Franchisee's use of the property as described in this Franchise.
- 4.3 The operator of the Facility is Energy Reclamation, Inc. Franchisee may contract with another person or entity to operate the Facility only upon ninety (90) days prior written notice to Metro and the written approval of the Executive Officer. Franchisee shall retain primary responsibility for compliance with this Franchise.

5. AUTHORIZED AND PROHIBITED SOLID WASTES

- 5.1 Franchisee is authorized to accept all such materials authorized by its DEQ Solid Waste Disposal Permit. The authorized materials include wood, corrugated cardboard, metals, sheetrock, plastics, rock and concrete, but specifically excluding any putrescible solid waste. After discharge to the tipping floor, a front-end loader or excavator fitted with a grapple will spread material for visual inspection and floor sorting.
- 5.2 All vehicles and devices transferring or transporting solid waste via public roads shall be constructed, maintained, and operated to prevent leaking, sifting, spilling, or blowing of solid waste while in transit.
- 5.3 This Franchise imposes no limitation on the amount of solid waste that may be processed each year at the Facility. Franchisee may process the amount of solid waste that the Facility is capable of processing consistent with applicable law, the terms of this Franchise and its permits and licenses.
- 5.4 Consistent with DEQ directives, Franchisee shall establish and follow procedures for determining what materials will be accepted at the Facility. The procedures must include a testing regimen sufficient to prevent hazardous or otherwise unacceptable materials from entering the Facility. These procedures shall be described in writing and submitted to Metro prior to any waste being accepted.

6. MINIMUM MONITORING AND REPORTING REQUIREMENTS

6.1 Franchisee shall effectively monitor Facility operation and maintain accurate records of the following information:

1. Franchisee Record Number (should be the same as the ticket number on the weight slips)
2. Incoming Hauler Account Number (on a semi-annual basis, provide Metro with a computer listing that cross-references this account number with the hauling company's name and address).
3. Name, Address and Phone Number (or a unique number which is cross referenced to applicable names, addresses and phone numbers) of firms receiving recyclables, inerts, and residue from the facility.
4. Generators Account Number or Name (if available). On a semi-annual basis, provide Metro with a computer listing that cross-references this number or name to the generator's full name and address.
5. Code Designating whether the load is:

incoming source-separated waste	(Code 1)
mixed waste	(Code 2)
outgoing recyclables	(Code 3)
outgoing inerts	(Code 4)
outgoing residue	(Code 5)
6. Date the Load was Received at or transmitted from your facility.
7. Time the load was received at or transmitted from your facility.
8. Material Type. Either spell out the type of material in the load or provide a code and a cross-reference listing of codes to material types.
9. Accept or Reject (indicate whether you accepted or rejected the load).
10. Inside or Outside Metro (indicate whether the load originated from inside or outside the Metro boundary).
11. Net Weight of the Load.
12. Volume of the Load (if applicable).
13. Fee (the fee you charged for the load to the generator).

- 6.2 Records required under section 6.1 shall be reported to Metro no later than ten (10) days following the end of each month, in the format prescribed by Metro. Transaction data shall be in electronic form compatible with Metro's data processing equipment. A cover letter shall accompany the data which certifies the accuracy of the data and signed by an authorized representative of franchisee. The hard copy of the report shall be signed and certified as accurate by an authorized representative of Franchisee.
- 6.3 Franchisee shall maintain complete and accurate records of all costs, revenues, rates, if applicable, and other information on a form suitable to Metro. These records shall be made available to Metro on request.
- 6.4 The Franchisee shall file an Annual Operating Report on or before each anniversary date of the Franchise, detailing the previous year operation of the Facility as outlined in this Franchise.
- 6.5 The Franchisee shall submit to Metro duplicate copies of any information submitted to the DEQ pertaining to the Facility, within 30 days of submittal to DEQ.
- 6.6 Authorized representatives of Metro shall be permitted to inspect information from which all required reports are derived during normal working hours or at other reasonable times with 24-hour notice. Metro's right to inspect shall include the right to review, at an office of Franchisee located in the Portland metropolitan area, all books, records, maps, plans, income tax returns, financial statements, and other like materials of the Franchisee that are directly related to the operation of the Franchisee.

7. OPERATIONAL REQUIREMENTS

- 7.1 A copy of this Franchise shall be displayed where it can be readily referred to by operating personnel.
- 7.2 If a breakdown of equipment, fire, or other occurrence results in a violation of any conditions of this Franchise or of the Metro Code, the Franchisee shall:
 - (a) Immediately notify Metro so that an investigation can be made to evaluate the impact and the corrective actions taken and determine additional action that must be taken.
 - (b) Take immediate action to correct the unauthorized condition or operation.
 - (c) Prepare a report describing all operational irregularities, accidents, and incidents of non-compliance and provide a copy of such report to Metro within ten (10) days of occurrence or sooner if circumstances warrant notification to Metro.

- 7.3 If the Processing Facility is to be closed permanently or for a protracted period of time during the term of this Franchise, Franchisee shall provide Metro with written notice, at least ninety (90) days prior to closure, of the proposed time schedule and closure procedures.
- 7.4 Franchisee shall provide a staff that is qualified to operate the Facility in compliance with this Franchise and to carry out the reporting functions required by this Franchise.
- 7.5 Recovery Requirements:
- (a) A minimum recovery rate of 45 percent must be maintained at the facility. The recovery rate will be calculated by use of a three month rolling average. (Example: March's recovery rate will be the average of months January, February and March; April's recovery rate will be the average of February, March and April, *etc.*). The ratio of tons recovered from tons received will constitute the recovery rate for the relevant time period.
 - (b) A ninety (90) day grace period for shakedown and operational testing will precede the commencement of official measurement of the recovery rate. The full 45 percent recovery rate must be attained in the sixth month following commencement of operations, with rates of 35 percent and 40 percent to be attained in months four and five respectively. The phased-in recovery rates for months four and five are due to the fact that month four will stand alone and month five will average the total tonnage rate for months four and five.
 - (c) For each percentage point below the specified recovery rate of 45 percent (or 40 percent and 35 percent for months four and five) ERI will pay to Metro a penalty in an amount equal to the current Metro Regional User Fee plus \$2.00 per ton for each percentage point below the specified recovery rate of 45 percent. (Example: 43 percent recovery = \$23.00 per ton [\$19.00 + (2 x \$2.00)]). Annually, as of July 1 (or the effective date of any new Metro User Fee rate) the penalty will be adjusted to the then current Regional User Fee, and the \$2.00 per ton incremental penalty rate will be indexed to reflect the current ratio of 19:2.

8. ANNUAL FRANCHISE FEES

Franchisee shall pay an annual franchise fee, as established under Metro Code Section 5.03.030. The fee shall be delivered to Metro within 30 days of the effective date of this Franchise and each year thereafter.

9. INSURANCE

- 9.1 Franchisee shall purchase and maintain the following types of insurance, covering Franchisee, its employees, and agents:
- (a) Broad form comprehensive general liability insurance covering personal injury, property damage, and personal injury with automatic coverage for premises, operations, and product liability. The policy must be endorsed with contractual liability coverage; and
 - (b) Automobile bodily injury and property damage liability insurance.
- 9.2 Insurance coverage shall be a minimum of \$500,000 per occurrence, \$100,000 per person, and \$50,000 property damage. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000.
- 9.3 Metro, its elected officials, departments, employees, and agents shall be named as **ADDITIONAL INSUREDS**. Notice of any material change or policy cancellation shall be provided to Metro 30 days prior to the change or cancellation.
- 9.4 Franchisee, its contractors, if any, and all employers working under this Franchise are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Franchisee shall provide Metro with certification of Workers' Compensation insurance including employer's liability.

10. INDEMNIFICATION

Franchisee shall indemnify and hold METRO, its agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with Franchisee's performance under this Franchise, including patent infringement and any claims or disputes involving subcontractors.

10.1 SURETY BOND OR CONDITIONAL LIEN

Franchisee shall provide a surety bond in the amount of Sixty-five Thousand Dollars (\$65,000), or at its option provide a conditional lien on the franchise property in a form satisfactory to Metro.

11. COMPLIANCE WITH LAW

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

12. METRO ENFORCEMENT AUTHORITY

- 12.1 The Executive Officer may, upon sixty (60) days prior written notice, direct solid waste away from the Franchisee or limit the type of solid waste that the Franchisee may receive. Such action, or other necessary steps, may be taken to abate a nuisance arising from operation of the Facility or to carry out other public policy objectives. Upon receiving such notice, the Franchisee shall have the right to a contested case hearing pursuant to Code Chapter 2.05. A request for a hearing shall not stay action by the Executive Officer. Prior notice shall not be required if the Executive Officer finds that there is an immediate and serious danger to the public or that a health hazard or public nuisance would be created by a delay.
- 12.2 Authorized representatives of Metro shall be permitted access to the premises of the Facility at all reasonable times for the purpose of making inspections and carrying out other necessary functions related to this Franchise. Access to inspect is authorized:
 - (a) During all working hours;
 - (b) At other reasonable times with notice; and
 - (c) At any time without notice when, in the opinion of the Metro Solid Waste Department Director, such notice would defeat the purpose of the entry.
- 12.3 The power and right to regulate, in the public interest, the exercise of the privileges granted by this Franchise shall at all times be vested in Metro. Metro reserves the right to establish or amend rules, regulations or standards regarding matters within Metro's authority, and to enforce all such legal requirements against Franchisee.

13. DISPOSAL RATES AND FEES

- 13.1 In accordance with the Metro Code, this Facility shall be exempt from Metro rate setting.

- 13.2 Franchisee is exempted from collecting and remitting Metro Fees on waste received at the Facility in conformance with this Agreement. Franchisee is fully responsible for paying all costs associated with disposal of residual material generated at the Facility. If Franchisee obtains authorization to dispose of residual material at a facility that has not been "Designated" by Metro, Franchisee shall remit to Metro the Tier 1 (one) User Fee on all waste disposed of at the non-designated facility.
- 13.3 Disposal of residue shall be at a designated facility under the Metro Code or under authority of a non-system license issued by Metro.

14. REVOCATION

- 14.1 This Franchise may be revoked at any time for any violation of the conditions of this Franchise or the Metro Code. This Franchise does not relieve Franchisee from responsibility for compliance with ORS chapter 459, or other applicable federal, state or local statutes, rules, regulations, codes, ordinances, or standards.
- 14.2 This Franchise Agreement is subject to suspension, modification, revocation, or nonrenewable upon finding that:
- (a) The Franchisee has violated the terms of this Franchise, the Metro Code, ORS chapter 459, or the rules promulgated thereunder or any other applicable law or regulation; or
 - (b) The Franchisee has misrepresented material facts or information in the Franchise Application, Annual Operating Report, or other information required to be submitted to Metro; or
 - (c) The Franchisee has refused to provide adequate service at the Facility, after written notification and reasonable opportunity to do so; or
 - (d) There has been a significant change in the quantity or character of solid waste received at the Facility, the method of processing solid waste at the Facility, or available methods of processing such waste.

15. GENERAL CONDITIONS

- 15.1 Franchisee shall be responsible for ensuring that its contractors and agents operate in complete compliance with the terms and conditions of this Franchise.
- 15.2 The granting of this Franchise shall not vest any right or privilege in the Franchisee to receive specific quantities of solid waste during the term of the Franchise.

- 15.3 This Franchise may not be transferred or assigned without the prior written approval of Metro.
- 15.4 To be effective, a waiver of any term or condition of this Franchise must be in writing, signed by the Executive Officer. Waiver of a term or condition of this Franchise shall not waive nor prejudice Metro's right otherwise to require performance of the same term or condition or any other term or condition.
- 15.5 This Franchise shall be construed, applied, and enforced in accordance with the laws of the State of Oregon.
- 15.6 If any provision of the Franchise shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this Franchise shall not be affected.

16. NOTICES

- 16.1 All notices required to be given to the Franchisee under this Franchise shall be delivered to:

James Cozzetto, Jr., General Manager
Energy Reclamation, Inc.
PO Box 11229
Portland, OR 97211

- 16.2 All notices required to be given to Metro under this Franchise shall be delivered to:

Solid Waste Director
Solid Waste Department
Metro
600 NE Grand Avenue
Portland, OR 97232-2736

16.3 Notices shall be in writing, effective when delivered, or if mailed, effective on the second day after mailed, postage prepaid, to the address for the party stated in this Franchise, or to such other address as a party may specify by notice to the other.

Facility Owner or
Owner's Representative

Rena Cusma, Executive Officer
Metro

Date: _____

Date: _____

PN:ek
NORTFRANCHISENERGREG.FRN
October 20, 1993

**EXHIBIT 1
TO FRANCHISE AGREEMENT**

SITE LEGAL DESCRIPTION

(Include tax lot(s) descriptions, Section, Township and Range):

A parcel of land situated in the Lewis Dove Donation, No. 41, Section 10, Township 1 North, Range 1 East of the Willamette Meridian in the City of Portland, County of Multnomah, and State of Oregon, described as follows:

Beginning at the northwest corner of block 16, Swinton, in the City of Portland, County of Multnomah and State of Oregon, said point being the intersection of the southerly line of North Columbia Boulevard (as said southerly line was located in 1951) and the east line of North Kerby Avenue (formerly North Kerby Street); thence south 90 degrees 8' 20" east along said southerly line of North Columbia Boulevard a distance of 162.39 feet to the true point of beginning, thence continuing south 80 degrees 8' 20" east along said southerly line of North Columbia Boulevard a distance of 193.95 feet thence south 0 degrees 26' 40" west a distance of 410.01 feet, thence north 89 degrees 5' 20" west a distance of 188.4 feet; thence north 0 degrees 4' 40" east a distance of 443.3 feet to the true point of beginning. Save and except that portion lying within North Columbia Boulevard.

PN:clk
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SOLID WASTE COMMITTEE REPORT

CONSIDERATION OF ORDINANCE NO. 93-519, FOR THE PURPOSE OF GRANTING A FRANCHISE TO ENERGY RECLAMATION, INC., FOR THE PURPOSE OF OPERATING A SOLID WASTE PROCESSING FACILITY, AND DECLARING AN EMERGENCY

Date: November 3, 1993

Presented by: Councilor McFarland

Committee Recommendation: At the November 2 meeting, the Committee voted 4-0 to recommend Council adoption of Ordinance No. 93-519. Voting in favor: Councilors McFarland, McLain, Washington, and Wyers. Chair Buchanan was excused.

Committee Issues/Discussion: Bob Martin, Solid Waste Director, reviewed the staff report. He noted that Energy Reclamation, Inc. is a subsidiary of Metropolitan Disposal Corporation, a major commercial and industrial hauler in the region. The proposed facility would sort construction and demolition debris collected by MDC and remove wood, metal and other recyclable materials. In addition, MDC drop boxes with high grade paper would be processed for recycling. The facility cannot accept putrescible waste and may only accept waste collected by MDC.

It is anticipated that the facility will process about 47,000 tons/yr, including 26,000 tons that is now processed at Metro Central and Metro South. Most of the remaining material is currently processed at Lakeside Reclamation (11,760 tons) or East County Recycling (7,800 tons).

Martin indicated that the franchise agreement contains provisions that mandate a high recycling rate to insure that the facility is not used as a means of bypassing the use of transfer station. Staff estimates that the recycling rate should be 45% and could possibly be even higher. This rate is somewhat higher than the recycling rate at Lakeside and East County Recycling and significantly higher than the rate at either Metro Central or Metro South. The agreement provides that if the facility does not reach a 45% rate (after a six-month startup period) that a per-ton penalty will be paid equal to Metro's Tier One User Fee (\$19) plus \$2/ton for each percentage point below the 45% rate.

Martin noted that because Metro will only receive its Tier One User Fee on the residual at the facility, we will incur an estimated net revenue loss of \$477,000. But, he contended that staff concluded that the recycling benefits provided by the facility outweigh any projected loss in revenue. He noted that the facility will result in significant increases in the recycling of construction and demolition debris which Metro has been promoting for some time. The agreement does not provide for rate regulation since the facility will only be processing waste collected by MDC.

Councilor Wyers asked Martin for his opinion about how the facility will fit into the current disposal facility system. Martin explained that the facility is probably only the first of many similar facilities that will seek to divert waste from the transfer stations as the recycling of specific wastestreams becomes more profitable. He noted that the timing of such additional facilities is uncertain, but that they will certainly impact the need for additional transfer station capacity.

Wyers asked about the nature of Metro's reporting and monitoring of the facility. Martin responded that Metro will receive certified scale records, conduct periodic audits, and receive records concerning the weight of the residual material that is not recycled. Wyers also asked whether the affected neighborhood associations and other affected parties had been contacted concerning the facility. Martin noted that the principal neighborhood association had been contacted and that they supported the facility.

Jim Cozzetto, Jr., representing MDC, Steve Donovan, an MDC consultant for the facility, and Bruce Broussard made a presentation concerning the facility. Donovan noted that there were several reasons to support the facility. These include: 1) it helps Metro meet its recycling goal, 2) the estimated annual recovery rate of 21,500 tons is greater than the entire annual waste production of Columbia County, 3) it will reduce mileage related to the disposal of the material by 60%, and 4) it will create 15-20 new jobs in the North Portland community.

Cozzetto reviewed the layout of the facility including the sorting and picking areas. He emphasized that MDC made a detailed presentation concerning the facility to the Piedmont Neighborhood Association and that the association supports the facility. He noted that the facility's business neighbors were contacted during the land use permit process and that they have no objection to the facility. He indicated that the 45% recycling rate was comparable to similar types of facilities. Cozzetto indicated that, if the Council approves the facility at its November 10 meeting, it will be operational by about mid-February.

Broussard expressed his appreciation for the work that MDC has done in the community concerning the facility and was encouraged that it would provide new job opportunities.

Mark McGregor, who operates a construction and demolition debris cleanup service, expressed support for the facility and noted that Metro's construction and demolition debris advisory group also endorsed the facility.

Tom Markgraf, Piedmont Neighborhood Association, testified in support of the facility. He noted that MDC had made a special effort to solicit the association's views and respond to questions about the facility.

AMENDED STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 93-519 FOR THE PURPOSE OF GRANTING A FRANCHISE TO ENERGY RECLAMATION INC. FOR THE PURPOSE OF OPERATING A SOLID WASTE PROCESSING FACILITY

Date: October 18, 1993

Presented by: Bob Martin
Roosevelt Carter

FACTUAL BACKGROUND AND ANALYSIS

The purpose of this report is to introduce and provide analysis regarding the application filed by Energy Reclamation Inc., (ERI), an affiliate corporation formed by Metropolitan Disposal and Recycling Corporation (MDC). The applicant has applied to Metro for a franchise to operate a solid waste processing facility at 554 N. Columbia Boulevard, Portland, Oregon. The application was accepted as complete on October 18, 1993. Metro, pursuant to Code Section 5.01.020 has the authority to grant franchises for private facilities accepting mixed solid waste. The facility is to recover and market recoverable materials from construction and demolition debris, and dry nonputrescible and non hazardous mixed wastes.

This facility will also process source-separated materials obtained from residential and commercial recycling programs. The source-separated portion of the operation does not require a Metro franchise, but will require monitoring since it utilizes the same area of the building and processing equipment as the mixed waste processing.

The facility may only accept loads of material from Metropolitan Disposal and Recycling Corporation, *i.e.*, no outside or third party haulers will be authorized to use the subject facility. Since the franchisee will not provide services to outside or third party haulers, this facility is exempt from Metro rate setting under Section 5.01.170 of the Metro Code. The facility may only dispose of residue from its operations at Metro-approved disposal facilities. Following is a summary description of the facility, the material processing and other pertinent details relative to the facility.

LOCATION OF PROPOSED FACILITY

554 North Columbia Blvd., Portland, Oregon.

SITE DESCRIPTION

The property is approximately three acres in size with slightly less than one half of the lot area comprised of building and improvements. The facility has a rail spur on premises and has easy access to Columbia Boulevard by truck. The building is a warehouse with two separate sections, one having 21,735 square feet and the other section having 42,336 square feet.

MATERIALS TO BE PROCESSED

Materials to be processed are limited to construction and demolition debris, and dry, nonputrescible and non hazardous mixed wastes. Recovered materials will be sorted, inventoried, baled and/or prepared for shipment to commodities markets with which ERI already has a working relationship. To assure that sufficient recovery and marketing of recoverable materials is performed at this facility, it is recommended that the following requirements be placed on its operations (these limitations are exclusive of operations involving source-separated recyclables):

1. A minimum recovery rate of 45 percent must be maintained at the facility. The recovery rate will be calculated by use of a three month rolling average. (Example: March's recovery rate will be the average of months January, February and March; April's recovery rate will be the average of February, March and April, etc.) The ratio of tons recovered from tons received will constitute the recovery rate for the relevant time period.
2. A ninety (90) day (three month) grace period for shakedown and operational testing will precede the commencement of official measurement of the recovery rate and imposition of phased in penalties for failure to achieve designated recovery rates. The full 45 percent recovery rate must be attained in the sixth months following commencement of operations, with rates of 35 percent and 40 percent to be attained in months four and five respectively. The phased-in recovery rates for months four and five are due to the fact that month four will stand alone and month five will average the total tonnage rate for months four and five. By illustration, the franchise obligations for material recovery are as follows:

Commencement of Operations	Recovery Rate Required
Month 1	-0-
Month 2	-0-
Month 3	-0-
Month 4	35%
Month 5	40%
Month 6	45%

"Commencement of Operations" is defined as the first day that mixed dry waste is delivered to the facility."

3. ERI will pay to Metro a penalty in a per ton amount equal to the current Metro Regional User Fee plus \$2.00 per ton for each percentage point below the specified recovery rate of 45 percent (or 40 percent and 35 percent for months four and five): (Example: 43 percent recovery = \$23.00 per ton [$\$19.00 + (2 \times \$2.00)$]). Annually, as of July 1 (or the effective date of any new Metro User Fee rate) the penalty will be adjusted to the then current Regional User Fee (or equivalent), and the \$2.00 per ton incremental penalty rate will be indexed to reflect the current ratio of 19:2.

4. There will be no pre-set limit upon the tons of processable materials that may be received at the ERI facility so long as ERI is operating in a manner consistent with other franchise conditions and its other permits and licenses.
5. The tonnage of source-separated materials received at the facility are to be excluded from any calculations done to establish the recovery rate because their inclusion would inflate the recovered tonnage for mixed waste. The activities from the source-separated operation will be included in the reporting requirements to ensure Metro's ability to track recoverable waste materials handled in the facility.
6. Inert materials will consist of all materials disposed of at a clean fill site (*i.e.*, not a solid waste landfill). The quantity of inert material disposed of at a clean fill site will be subtracted from the incoming waste tonnage and will not be included in the facility's recovery rate. (Example: A total of 100 tons of mixed waste are received. 10 tons are disposed of at a clean fill and 40 tons are recycled. The recovery rate is $40 \div (100-10) = 44$ percent).

EQUIPMENT

The applicant states that processing will be accomplished by use of a front end loader and picking line via belt conveyers. Large and heavy materials will be removed from the picking line by "grizzly screen" and residuals will be removed by vibrating conveyor. Progressive screening of fines will be done, with inert material being separated from residual.

RESIDUE DISPOSAL

Residue will be transported for disposal by truck, rail, or barge to a Metro-approved disposal facility.

PERMITS REQUIRED

The applicant requires:

1. City of Portland Conditional Use Permit (zoning is IHh -Heavy Industrial)
2. Oregon Department of Environmental Quality Class III Low risk Facility Permit
3. Metro Franchise

Status:

- City of Portland Conditional Use approved September 28, 1993 (appeal time expired and proof of grant of conditional use provided to Metro October 18, 1993)
- Department of Environmental Quality Solid Waste Permit pending.
- Metro franchise pending.

MISCELLANEOUS OPERATING DATA

The applicant proposes that the facility will only be open to the applicant's own vehicles. Operational receiving hours will be from 6:00 a.m. to 5:00 p.m., five days per week. Estimated vehicles per day is 50 (exclusive of vehicles entering the adjacent truck maintenance facility).

ISSUANCE OF A FRANCHISE

Staff has prepared a proposed franchise agreement to be issued to the applicant following Council approval of the franchise application. Metro Code Section 5.01.070 states in part "The Executive Officer shall formulate recommendations regarding whether the applicant is qualified; whether the proposed franchise complies with the district's solid waste management plan; whether the proposed franchise is needed considering the location and number of existing and planned disposal sites, transfer stations, processing facilities, and resource recovery facilities and their remaining capacities and whether or not the applicant has complied or can comply with all other applicable regulatory requirements."

Metro Code Section 5.02.070 (e) (2) provides that a corporate surety bond is required for this type of franchise. This however, is guided by Metro Resolution No. 86-672. The pertinent portions of the Resolution, Section 1 b. and c. read as follows:

"b. If continued operation of the processing or transfer facility is not considered necessary to the solid waste disposal system because of alternative disposal sites which may be available and potential clean-up and site maintenance costs* for the facility are estimated to be less than or equal to \$10,000, then the amount of the required surety bond is \$0."

*[Footnote 4 from the resolution stated: Clean-up and Site Maintenance Cost is dependent on the size and design of the facility.]

"c. If continued operation of the processing or transfer facility is not necessary to the solid waste disposal system because of alternative disposal sites which may be available and potential clean-up and site maintenance cost for the facility are estimated to be greater than \$10,000, then the amount of the required surety bond is to be equal to the amount of the estimated clean-up and site maintenance costs for the facility. If these conditions exist and the franchisee owns the site on which the facility operates, and the value of the site exceeds the amount required for the bond, the franchisee may elect to issue a conditional lien on the property to Metro guaranteeing performance by the operator in cleaning up the site in lieu of the required bond. The lien shall be in a form satisfactory to Metro."

Using the criteria outlined in Metro Resolution No. 86-672 for determining the amount of a surety bond that may be required pursuant to a facility franchise, it is recommended that the franchisee be required to provide a surety bond in the amount of \$65,000, or in the alternative provide a conditional lien if preferred by the franchisee. This recommendation is based on the availability of disposal or recycling facilities (Metro transfer stations, Hillsboro Landfill, East County Recycling

and Wastech) that would not make it necessary to continue operation of the facility. Clean up and site maintenance costs are estimated to be approximately Sixty-five Thousand Dollars (\$65,000). This estimate assumes the following:

1. 17,000 square feet of floor space available for storage of materials.
2. Waste stacked to a depth of six feet over the available floor space.
3. 3,800 cubic yards of waste stacked at 400 pounds per yard.
4. \$2,695 labor and equipment costs to load waste into drop boxes (\$3.50/ton).
5. \$60,800 for transport and disposal of 760 tons of waste.
6. The solid waste is consistent with the authorized materials for the facility; dry non-hazardous and nonputrescible mixed waste and construction and demolition debris.

NOTE: It should be emphasized that the forgoing is an order of magnitude estimate only of a "worst case scenario" where the franchisee would continue deliveries of waste to the facility until filled to capacity and then abandon the facility.

The following staff analysis is submitted to the Council for its review as required.

QUALIFICATIONS OF THE APPLICANT

Energy Reclamation Inc. (ERI) is an affiliate of Metropolitan Disposal and Recycling Corporation (MDC). MDC is a long established Portland hauling and recycling company having been in business in the City of Portland and the surrounding area for thirty-nine years. The company has been involved in all aspects of commercial and residential solid waste collection. Metro records indicate that MDC disposed of 99,000 tons of solid waste at Metro facilities in calendar year 1992.

The applicant is a well known and respected company within the City and region and has the apparent resources and experience to manage and operate a facility of the type being requested in the franchise application.

COMPLIANCE WITH THE SOLID WASTE MANAGEMENT PLAN

Given the conditions imposed by this franchise, this facility would fully comply with the goals, objectives and policies of the Regional Solid Waste Management Plan including the Waste Reduction Chapter adopted by the Metro Council in 1988. The Regional Solid Waste Management Plan (RSWMP) states in part "Purpose: To recover recyclable materials and reusable items from the waste stream through facilities that process waste that contains a high percentage of economically recoverable material." The applicant's proposed facility will

accomplish waste reduction by recovering materials that might otherwise go unprocessed or might ultimately be shipped for disposal at a regional landfill. The proposed facility will be privately owned and operated and will require no public investment in plant or equipment.

NEED AND COMPATIBILITY

The following lists annual tonnage into facilities which are expected to be affected by the proposed franchise:

TABLE 1

	Total 1992 Tonnage Received Mixed Dry Waste	Total Tonnage of Mixed Dry Waste Processed	Total 1992 Tonnage Recovered From Mixed Dry Waste	Percent Recovered from Processed Mixed Dry Waste	Proposed Tons Diverted to ERI	Normal Recovery of Diverted Tons (Status Quo)	45 Percent Recovery By ERI of Diverted Tons	Diverted Minus Status Quo
WASTECH ¹	8,418	8,418	4,041	48%	1,382 ²	1,382	1,382 ²	0
ECR ²	37,468	37,468	16,290	43%	7,800	3,354	3,510	156
Lakeside ³	71,000	35,000	7,100	20%	11,760	2,352	5,292	2,940
Metro Central ⁴	120,000	70,000	23,575	34%	20,440	6,950	9,198	2,248
Metro South ⁵	120,000	0	0	0%	6,460	0	2,907	2,907
Totals Re: Processed Waste		150,886	51,006	34%	47,900	14,038⁶	22,289⁷	8,251

¹The 37,509 tons reported by The Columbia Resource Company (parent company of WASTECH) on 07/30/93 are combined of 29,091 tons of source-separated loads and 8,418 of mixed loads. They report recovering 96% of the source-separated loads and 52% of the mixed loads. Mr. Donovan of MDC stated July 30, 1993 that the 1,440 tons currently being delivered by MDC to WASTECH are part of the 29,091 tons of separated loads. Therefore, the "status quo" recovery of the 1,440 tons is computed as $96\% \times 1,440 = 1,382$ tons and it is assumed that ERI will also recover 1,382 tons.

²Includes all mixed waste received but excluded inert material.

³Recovery from mixed loads is highly variable. Owner estimates that 10% by weight of all incoming mixed waste is recycled. Materials are recycled from about half of the incoming loads.

⁴The tonnage received of mixed dry waste includes 100% loose drop boxes 50% compacted drop boxes and 50% of the front loaders. This is considered to be the entire dry processable wastestream at the transfer station from which materials are recovered. Of this tonnage received, approximately 80% of the drop box loads are processed and 20% of compacted drop boxes and front loaders are processed which results in an effective recovery rate of 34%. ERI projected that they would divert a total of 26,900 tons from Metro facilities with 76 percent coming from Metro Central.

⁵Metro South has no mixed waste recovery.

⁶A "status quo" recovery rate of 34% is derived by dividing the 14,038 tons by 47,900 "Proposed Tons Diverted to ERI" minus the 6,460 tons diverted from Metro South.

⁷ERI's recovery rate of 47% is derived by dividing ERI's 22,318 tons recovered by 47,900.

The following questions and answers have been prepared by the Solid Waste Staff:

1. Will this facility increase the recovery level in the region?

Yes. The recovery rate for processed mixed waste is 34%. (See Table 1). As can be seen from Table 1, the rate of recovery varies by facility. The addition of ERI to the facilities shown in Table 1 is projected to result in a net increase of recycled materials of 8,251 tons per year. The projected effect on the overall mixed dry waste recovery rate (for the facilities shown in Table 1) is to increase the rate from 34% to 38%. This projection assumes that mixed dry waste that will be diverted from existing processors by ERI is presently being processed by the existing facilities. Secondly, it assumes that total mixed dry waste processed in the region rises to 157,352 tons based on tonnage to be diverted from Metro South Station that does not have processing capacity. (See Table 1)

ERI's facility recovery rate is projected to be 47%. This will place it in the upper echelon of the Region's mixed waste processors. The proposed franchise for ERI sets a minimum recovery rate of 45%, but this is considered a conservative number, based on staff analysis and input from the applicant.

Metro expects ERI to be able to improve its recovery over 45 percent since it has control over the materials entering the facility where none of the other recovery facilities have that advantage. It is also expected that ERI will be diverting the loads that are of higher recoverable content from the facilities listed. Also, the drop boxes currently arriving at Metro Central from MDC are considered by the facility operator to be some of the most recoverable loads.

Justification for Recovery Levels.

A minimum percent of recovery will be required for facilities that receive mixed waste. This is based on the experience of Wastech and East County Recycling both of whom have high recovery rates. East County accepts all loads and is able to recover 43 percent. Wastech has implemented a tipping fee structure which encourages delivery of cleaner loads. During 1992 Wastech recovered 96 percent of its source-separated loads and 52 percent of its mixed loads. The recovery rates at Metro Central and Lakeside Reclamation are low for the overall facility, however, when the recovery from the tonnage processed is calculated, it equals 20 percent and 34 percent respectively.

2. Will existing processors or haulers lose competitiveness and viability?

The effect on competitors should not be sufficient to cause them to significantly lose viability. The Lakeside Reclamation Landfill would be most affected, losing approximately 17% of the current tonnage.

- 3. Will an integrated hauling and processing operation discourage source-separation by construction demolition businesses?** Metro's Construction Waste Reduction Steering Committee is made up of representatives from building industry associations, haulers, and processors. They have reviewed the proposed operations of the facility. They felt that the facility would provide more recovery options to contractors. It may enhance recovery from projects where site limitations make source-separation impractical. The committee also believed that ERI's operations would not detract from source-separation on construction sites. Also, the level of recovery of dry, nonputrescible, non-hazardous wastes that may be processed at the facility is likely to be tied to the pricing structure to the generators for incoming waste.

- 4. How will Metro be assured that cost savings will be passed on to generators?** The price structure for incoming waste materials is not established in the franchise agreement. ERI stated that they will pass along the cost savings to the generators, but there is no guarantee. It seems reasonable to expect that there will be sufficient waste left for competitors to enter the field and thus keep rates to customers low.

REGULATORY COMPLIANCE

As noted on page 2 of this report, the applicant has obtained conditional use approval from the City of Portland and has made application to the Department Of Environmental Quality for a solid waste permit. Present information indicates that the Department of Environmental Quality application process is progressing on schedule. Nonetheless, any issuance of a Metro franchise would require the satisfactory issuance all required Department of Environmental Quality permits before actual operation of the facility could commence.

BUDGET IMPACT

As shown in Attachment A, which is based on tonnage data provided by MDC, staff projects that Metro may forego about \$477,000 per year in revenues. With system disposal at approximately one million tons per year, staff projects the effect of an ERI franchise on the system rate to be about \$.50 per ton.

SUMMARY

It is the conclusion of staff that:

- The applicant possesses sufficient qualifications to establish, operate and maintain the proposed facility in a manner consistent with the provisions of the Metro Code.

- That the facility complies with Metro's Regional Solid Waste Management Plan and should increase recovery within the district.

- The requirements of the City of Portland and the Oregon Department of Environmental Quality have been or will be complied with prior to operation of the proposed facility.
- Per the analysis shown in Attachment A, Metro may forego up to \$477,000 per year in revenues if the franchise is granted.

STAFF RECOMMENDATION

Based on the foregoing analysis it is the opinion of staff that Energy Reclamation Inc. should be granted a non-exclusive franchise in accord with the provisions of the draft franchise agreement shown as Exhibit A of Ordinance No. 93-519.

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Ordinance No. 93-519.

Attachment A

Effect On Metro's Revenues Of Granting A Franchise To ERI Assuming That ERI Recovers 45% Of Incoming Waste

Facility	Tons Diverted To ERI	Difference In Metro Revenue Tons	Loss Per Ton	Lost Revenues	Note
Lakeside	11,760	2,940	\$19.00	\$55,860	A
East County	7,800	156	\$19.00	\$2,964	B
Wastech	2,658	0	\$19.00	\$0	C
Metro	26,900	26,900	See Note D	\$418,295	D
Total Lost Revenues				\$477,119	

Notes:

- A = Under the current situation ("status quo") Metro estimates that Lakeside recovers 2,352 of the 11,760 tons which MDC would divert to the ERI facility. At a 45% recovery rate, ERI would recover 5,292 of the 11,760 tons. So, if the franchise is granted 2,940 more tons (5,292 minus 2,352) will be recovered and Metro will lose \$55,860 (2,940 tons times \$19 per ton) compared to the current situation.
- B = Under the current situation ("status quo") Metro estimates that East County recovers 3,354 of the 7,800 tons which MDC would divert to the ERI facility. At a 45% recovery rate, ERI would recover 3,510 of the 7,800 tons. So, if the franchise is granted 156 more tons (3,510 minus 3,354) will be recovered and Metro will lose \$2,964 (156 tons times \$19 per ton) compared to the current situation.
- C = It is estimated that ERI and Wastech would recover the same amount of tons from the waste MDC would divert from Wastech. Therefore, there would be no effect on Metro revenues of diverting the waste from Wastech to ERI.
- D = The 26,900 ton amount is estimated by adding 100% of MDC's loose drop box tonnage plus 45 tons per day from rerouted front loader trucks. It is assumed that MDC would divert the 26,900 tons from Metro facilities to the ERI facility.

Of the \$75 per ton it currently receives for waste received at its transfer stations, Metro pays \$49 for station operations, transportation, and disposal. This leaves \$26 per ton to pay for items such as debt service on bonds; items which are not "tonnage sensitive". Therefore, if NONE of the 26,900 tons resulted in revenues to Metro then Metro's net loss would be 26,900 tons times \$26/ton, or \$699,400.

However, Metro would receive \$19 per ton on each of the 26,900 tons ERI landfills. Assuming a 45% ERI recovery rate, ERI will thus landfill 55% of the 26,900 tons (14,795 tons) and landfills will pay Metro \$281,105 (14,795 tons times \$19 per ton). So, the financial effect of diverting 26,900 tons from Metro transfer stations to ERI will be \$418,295, which is the difference between \$699,400 and \$281,105.

At the present time it is contemplated that the "put or pay" tonnage level at Metro Central Station may be exceeded by the time that the ERI franchise is actively processing material. If the "put or pay" level is not reached at that time the fiscal impact will be higher than the estimated \$477,000 by approximately \$163,000.

INVITATION TO BID

Metro is requesting bids for furnishing one (1) tractor equipped with a front end loader and bucket to be used in establishing and maintaining vegetation at the St. Johns Landfill (RFB #93B-61-SW). Potential bidders may obtain bid documents by contacting the Solid Waste Department, 797-1650. Sealed bids must be delivered to the Solid Waste Department at Metro, 600 NE Grand, Portland, Oregon 97232-2736, to the attention of Ray Barker, Assistant Operations Manager, no later than 3:00 p.m. Pacific Standard Time (PST), November 29, 1993, at which time they will be publicly opened and read in the Council Chamber Annex.

INSTRUCTIONS TO BIDDERS

BID

Metro is requesting bids for furnishing one (1) tractor equipped with a front end loader and bucket to be used in establishing and maintaining vegetation at the St. Johns Landfill (RFB #93B-61-SW). Bids must be enclosed in a sealed envelope and mailed or delivered to the Metro Solid Waste Department, 600 NE Grand, Portland, Oregon 97232-2736, Attention, Ray Barker, Assistant Operations Manager, no later than 3:00 p.m. Pacific Standard Time (PST), November 29, 1993, at which time they will be publicly opened in the Metro Council Chamber Annex. A bid may not be submitted by Facsimile (FAX) transmittal.

The outside of the envelope shall plainly identify the subject of the Bid, the opening date, and the Bid number.

All bids must be clearly and distinctly typed or written with ink or indelible pencil. All blank spaces must be completed. No erasures are permitted. Mistakes must be crossed out and corrections typewritten or written in ink adjacent thereto, and initialed in ink by the party signing the Bid, or his authorized representative.

Written amounts shall be shown in both words and figures. Words shall govern in cases of discrepancy between the amounts stated in words and the amounts stated in figures.

All bids must be on the form furnished by Metro or they may be rejected by Metro. Where plans and specifications are attached to the bid, they must be returned by the Bidder with the bid.

COST OF BID

This invitation to Bid does not commit Metro to pay any costs incurred by any Bidder in the submission of a bid, or in making necessary studies or designs for the preparation thereof, or for procuring or contracting for the items to be furnished under the invitation to bid.

ERRORS/OMISSIONS

Any Bid may be deemed non-responsive by the Procurement Officer if it is: Not on the Bid forms provided; contains errors or omissions, erasures, alterations, or additions of any kind; proposes prices which are unsolicited or obviously unbalanced; not in complete conformance with any and all conditions of the bidding documents.



METRO

DATE: November 12, 1993

TO: Rena Cusma, Executive Officer

FROM: Paulette Allen, Clerk of the Council *PA*

RE: TRANSMITTAL OF ORDINANCE NO. 93-519

Attached for your consideration is a true copy of the ordinance referenced above adopted by the Council on November 10, 1993.

If you wish to veto the ordinance referenced above, I must receive a signed and dated written veto message from you no later than 5:00 p.m., Thursday, November 18, 1993. The veto message, if submitted, will become part of the permanent record. If no veto message is received by the time and date stated above, this ordinance will be considered finally adopted.

I, *Writte Harley*, received this memo and a true copy of Ordinance No. 93-519 from the Clerk of the Council on 11-12-93.