

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF TRANSFERRING THE) ORDINANCE NO. 99-815A
SOLID WASTE FRANCHISE FOR OPERATION)
OF THE RECYCLE AMERICA) Introduced by Mike Burton,
RELOAD/MATERIALS RECOVERY FACILITY) Executive Officer
FROM WASTE MANAGEMENT OF OREGON,)
INC. TO USA WASTE OF OREGON, INC.

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

WHEREAS, the Recycle America facility was granted a franchise by the Metro Council in November of 1998; and

WHEREAS, USA Waste of Oregon, Inc. is acquiring the Recycle America solid waste facility from Waste Management of Oregon, Inc.; and

WHEREAS, Section 5.01.090 of the Metro Code allows for the transfer of a franchise if an application has been filed in accordance with Metro Code Section 5.01.060; and

WHEREAS, USA Waste of Oregon, Inc. has filed an application in accordance with Section 5.01.060; and

WHEREAS, the applicant has met all the requirements set forth in Section 5.01.060; and

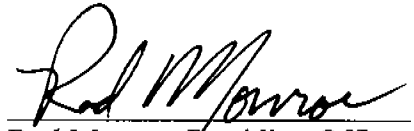
WHEREAS, the recent decline in recycling activity at the Recycle America facility may negatively affect Metro's ability to meet its adopted regional recycling rate goals, and

WHEREAS, Section 5.01.090 specifies that the Council shall not unreasonably deny an application for transfer of a franchise; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

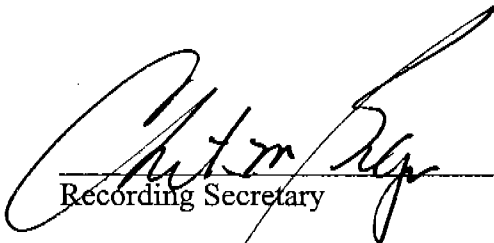
1. USA Waste of Oregon, Inc. shall be granted a Solid Waste Franchise in a form substantially similar to the attached "Exhibit A" to operate the Recycle America facility.
2. The Executive Officer shall continue to monitor the recycling rates at the Recycle America facility and other similar material recovery facilities.
3. The Executive Officer shall review the need for modifications to any material recovery facility licenses and franchises for the purpose of improving recycling rates at such facilities and report to the Council within six months of the need for any license and franchise modifications.

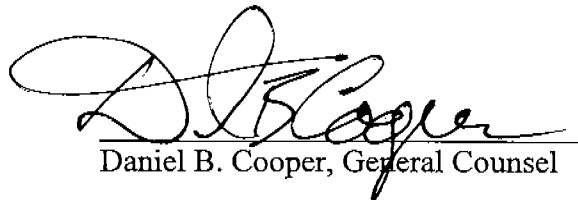
ADOPTED by the Metro Council this 30th day of September 1999.


Rod Monroe, Presiding Officer

ATTEST:

Approved as to Form:


Recording Secretary


Daniel B. Cooper, General Counsel

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ADOPTED by the Metro Council this ____ day of _____, 1999.

Rod Monroe, Presiding Officer

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Approved as to Form:

Recording Secretary

Daniel B. Cooper, General Counsel

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INC. TO USA WASTE OF OREGON, INC.

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WHEREAS, Section 5.01.090 specifies that the Council shall not unreasonably deny an application for transfer of a franchise; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

USA Waste of Oregon, Inc. shall be granted a Solid Waste Franchise in a form substantially similar to the attached "Exhibit A" to operate the Recycle America facility.

ADOPTED by the Metro Council this ____ day of _____, 1999.

Rod Monroe, Presiding Officer

ATTEST:

Approved as to Form:

Recording Secretary

Daniel B. Cooper, General Counsel

SOLID WASTE FACILITY FRANCHISE

Number F-001-99

Issued by

Metro

600 NE Grand Avenue

Portland, OR 97232

Telephone: (503) 797-1650

Issued in accordance with the provisions of Metro Code Chapter 5.01

<p>FRANCHISEE:</p> <p>USA of Waste Oregon, Inc. 7227 NE 55th Avenue Portland, Oregon 97218 (503) 331-2221</p>	<p>FACILITY NAME AND LOCATION:</p> <p>Recycle America 869 NW Eastwind Drive Troutdale, Oregon 97060</p>
<p>OPERATOR:</p> <p>USA Waste of Oregon, Inc. 7227 NE 55th Avenue Portland, Oregon 97218 (503) 331-2221</p>	<p>PROPERTY OWNER:</p> <p>TDK Corp. P.O. Box 566 Troutdale, Oregon 97060 (503) 666-2896</p>

This franchise is granted to the franchisee named above and is not transferable. Subject to the conditions stated in this franchise document, the franchisee is authorized to operate and maintain a solid waste facility, and to accept the solid wastes and perform the activities authorized herein.

Franchise begins: December 31, 1998
 (Replaces franchise F-001-98)

Expiration: December 31, 2003

Signed:

Acceptance & Acknowledgement of Receipt:

 Signature

 Signature of Franchisee

Mike Burton, Metro Executive Officer

 Print name and title

 Print name and title

 Date

 Date



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1.0 ISSUANCE

- 1.1 Franchisee** USA of Waste Oregon, Inc.
869 NW Eastwind Drive
Troutdale, OR 97060 (503) 667-5264
- 1.2 Contact** Adam Winston, District Manager
- 1.3 Franchise Number** When referring to this franchise, please cite:
Metro Solid Waste Facility Franchise Number F-001-98
- 1.4 Term** Franchise effective: December 31, 1998
Franchise expires: December 31, 2003
- 1.5 Facility name and mailing address** Recycle America
869 NW Eastwind Drive
Troutdale, OR 97060 (503) 667-5264
- 1.6 Operator** Waste Management
7227 NE 55th Avenue
Portland, OR 97218 (503) 331-2221
- 1.7 Facility legal description** Charles Fezett Donation Land Claim lying within Section 27,
Township 1N, Range 3E, Willamette Meridian
Multnomah County, State of Oregon
- 1.8 Facility owner** TDK Corp.
P.O. Box 566
Troutdale, OR 97060 (503) 666-2896
- 1.9 Permission to operate** Franchisee warrants that it has obtained the property owner's
consent to operate the facility as specified in this franchise.



2.0 CONDITIONS AND DISCLAIMERS

- 2.1 **Guarantees** The granting of this franchise shall not vest any right or privilege in the franchisee to receive specific quantities of solid waste at the direction of Metro during the term of the franchise.
- 2.2 **Non-exclusive franchise** The granting of this franchise shall not in any way limit Metro from granting other solid waste franchises within the District.
- 2.3 **Property rights** The granting of this franchise does not convey any property rights in either real or personal property, nor does it authorize any injury to private property or invasion of property rights.
- 2.4 **No recourse** The franchisee shall have no recourse whatsoever against the District or its officials, agents or employees for any loss, costs, expense or damage arising out of any provision or requirement of this franchise or because of the enforcement of the franchise or in the event the franchise or any part thereof is determined to be invalid.
- 2.5 **Release of liability** Metro, its elected officials, employees, or agents do not sustain any liability on account of the granting of this franchise or on account of the construction, maintenance, or operation of the facility pursuant to this franchise.
- 2.6 **Binding nature** The conditions of this franchise are binding on the franchisee. The franchisee is liable for all acts and omissions of the franchisee's contractors and agents.
- 2.7 **Waivers** To be effective, a waiver of any terms or conditions of this Franchise must be in writing and signed by the Metro Executive Officer.
- 2.8 **Effect of waiver** 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.
- 2.9 **Choice of law** The Franchise shall be construed, applied and enforced in accordance with the laws of the State of Oregon.
- 2.10 **Enforceability** If any provision of this Franchise is determined by a court of



competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity of the remaining provisions contained in this Franchise shall not be affected.

- 2.11 Franchise not a waiver** Nothing in this franchise shall be construed as relieving any owner, operator, or franchisee from the obligation of obtaining all required permits, licenses, or other clearances and complying with all orders, laws, regulations, reports or other requirements of other regulatory agencies.
- 2.12 Franchise not limiting** Nothing in this franchise is intended to limit the power of a federal, state, or local agency to enforce any provision of law relating to the solid waste facility that it is authorized or required to enforce or administer.
- 2.13 Inadvertent composting** Nothing in this franchise is intended to authorize or establish standards or otherwise approve of inadvertent composting resulting from the storage of organic materials.
- 2.14 Definitions** Unless otherwise specified, all other terms are as defined in Metro Code Chapter 5.01.

3.0 AUTHORIZATIONS

- 3.1 Purpose** This section of the franchise describes the wastes that the franchisee is authorized to accept at the facility, and the activities the franchisee is authorized to perform at the facility.
- 3.2 General conditions on solid wastes** The franchisee is authorized to accept at the facility only the solid wastes described in this section. The franchisee is prohibited from knowingly receiving any solid waste not authorized in this section.
- 3.3 General conditions on activities** The franchisee is authorized to perform at the facility only those activities that are described in this section.
- 3.4 Putrescible waste** The franchisee is authorized to accept putrescible waste for the purpose of delivering said putrescible waste to a disposal site authorized by this franchise; or for the purpose of transfer to a solid waste facility or disposal site designated by Metro Code Chapter 5.05 to accept putrescible waste.



- 3.5 Non-putrescible waste** The franchisee is authorized to accept “dry” non-putrescible solid wastes such as waste generated by non-residential generators and waste generated at construction and demolition sites, for the purpose of material recovery.
- 3.6 Source-separated recyclables** The franchisee is authorized to accept source-separated recyclable materials for purposes of sorting, classifying, consolidating, baling, temporary storage, transfer and other similar functions related to preparing these materials for marketing.
- 3.7 Inert materials** The franchisee is authorized to accept inert materials for purposes of classifying, consolidating, transfer, and other similar functions related to preparing these materials for useful purposes.
- 3.8 Source-separated yard debris** The franchisee is authorized to accept source-separated yard debris for transfer to a yard debris facility, a DEQ-permitted composting facility or other DEQ-permitted processing facility. The franchisee shall keep source-separated yard debris separate from other solid waste at the facility and shall provide records showing that source-separated yard debris is delivered to a composting or processing facility, and not disposed of.
- 3.9 Source-separated organic materials** The franchisee is authorized to accept organic materials for the purpose of transfer to a DEQ-permitted composting facility or other DEQ-permitted processing facility. Organic materials may be accepted only if they (a) have been separated from other solid waste by the generator prior to delivery to the facility, and (b) are suitable for controlled biological decomposition such as for making compost. The franchisee shall keep source-separated organic material separate from other solid waste at the facility and shall provide records showing that the source-separated organic materials are delivered to a composting or processing facility, and not disposed of.
- 3.10 Contaminated soils** The franchisee is authorized to accept contaminated soil for transfer to a DEQ permitted disposal site that is authorized to accept contaminated soil.
- 3.11 Special wastes and other wastes** The franchisee is authorized to accept various special wastes for transfer as authorized by DEQ Disposal Site Permit Number 459 including but not limited to filter cake, zircon sand and other sandblasting media, dewatered industrial sludge residue, waste from pollution control devices, charcoal air/water filters, ceramic



castings, metal shavings, and refractory brick and other wastes with similar characteristics; and other wastes such as street sweepings, catch basin residue, and similar clean-up wastes.

- 3.12 Direct haul** The franchisee is authorized to deliver putrescible waste directly from the facility to Metro's contract operator for disposal of putrescible waste, subject to any conditions, limitations or performance standards specified in this franchise document, in Metro Code or in administrative procedures adopted pursuant to Metro Code Chapter 5.01.
- 3.13 Incidental recovery** The franchisee is authorized to perform "low-level" material recovery on putrescible waste, provided that these material recovery efforts are incidental to the activity of transferring the putrescible waste, and are limited to the gleaning of easily-extractable recyclable or reusable materials from the waste.
- 3.14 Deliveries not limited** This franchise does not limit the quantity of authorized solid wastes or other materials that may be accepted at the facility.

4.0 LIMITATIONS AND PROHIBITIONS

- 4.1 Purpose** This section of the franchise describes limitations and prohibitions on the wastes handled at the facility and activities performed at the facility.
- 4.2 Limit on disposal** The franchisee shall dispose of no more than 50,000 tons of putrescible waste and processing residual, as a combined total, within each calendar year.
- 4.3 Prohibited waste** The franchisee shall not knowingly accept or retain any material amounts of the following types of wastes: materials contaminated with or containing friable asbestos; lead acid batteries; liquid waste for disposal; vehicles; infectious, biological or pathological waste; radioactive waste; hazardous waste; or any waste prohibited by the franchisee's DEQ Disposal Site Permit.
- 4.4 Material recovery required** The franchisee shall perform material recovery on "dry" non-putrescible wastes such as waste generated by non-residential generators and waste generated at construction and demolition sites, or deliver said "dry" non-putrescible wastes to a solid waste facility whose primary purpose is to recover useful materials from



solid waste.

- 4.5 Prohibition on mixing** The franchisee shall not mix any source-separated recyclable materials, yard debris or organic materials brought to the facility with any other solid wastes. Recyclable materials recovered at the facility may be combined with source-separated recyclable materials for transfer to markets, processors, or another solid waste facility that prepares such materials for reuse or recycling.
- 4.6 No disposal of recyclable materials** Source-separated recyclable materials, yard debris or organic materials accepted at the facility may not be disposed of by landfilling or incineration.
- 4.7 Origin of putrescible waste** The franchisee shall accept putrescible waste that originates within the Metro boundary only from persons who are franchised or permitted by a local government unit to collect and haul putrescible waste.
- 4.8 Limits not exclusive** Nothing in this section of the franchise shall be construed to limit, restrict, curtail, or abrogate any limitation or prohibition contained elsewhere in this franchise document, in Metro Code, or in any federal, state, regional or local government law, rule, regulation, ordinance, order or permit.

5.0 OPERATING CONDITIONS

- 5.1 Purpose** This section of the franchise describes criteria and standards for the operation of the facility.
- 5.2 Qualified Operator** The franchisee shall provide an operating staff qualified to carry out the functions required by this franchise and to otherwise ensure compliance with Metro Code Chapter 5.01.
- 5.3 Enclosed operations** All handling, processing, compaction or other forms of managing putrescible wastes shall occur inside facility buildings.
- 5.4 Operating plan** The franchisee shall establish and follow procedures for accepting, managing and processing loads of solid waste received at the facility. Such procedures must be in writing and in a location where facility personnel and the Executive Officer can readily reference them. The franchisee may, from time to time, modify such procedures. The procedures shall include at least the



following:

- a. Methods of notifying generators not to place hazardous wastes or other prohibited wastes in drop boxes or other collection containers destined for the facility;
- b. Methods of inspecting incoming loads for the presence of prohibited or unauthorized waste;
- c. Methods for managing and transporting for disposal at an authorized disposal site each of the prohibited or unauthorized wastes if they are discovered at the facility;
- d. Objective criteria for accepting or rejecting loads.

- | | | |
|------------|-----------------------------------|--|
| 5.5 | Managing prohibited wastes | Upon discovery, all prohibited or unauthorized wastes shall be removed or managed in accordance with procedures established in the Operating Plan. |
| 5.6 | Managing authorized wastes | All authorized solid wastes received at the facility must, within 24-hours from receipt, be either (a) processed, (b) appropriately stored, or (c) properly disposed of. |
| 5.7 | Storage | Stored materials and solid wastes shall be suitably contained and removed at sufficient frequency to avoid creating nuisance conditions or safety hazards. Storage areas must be maintained in an orderly manner and kept free of litter. |
| 5.8 | Litter and airborne debris | <p>The franchisee shall operate the facility in a manner that is not conducive to the generation of litter and airborne debris. The franchisee shall:</p> <ol style="list-style-type: none">a. Take reasonable steps to notify and remind persons delivering solid waste to the facility that all loads must be suitably secured to prevent any material from blowing off the load during transit.b. Construct, maintain, and operate all vehicles and devices transferring or transporting solid waste from the facility to prevent leaking, spilling or blowing of solid waste on-site or while in transit.c. Keep all areas within the site and all vehicle access roads within ¼ mile of the site free of litter and debris. |
| 5.9 | Odor | <p>The franchisee shall operate the facility in a manner that is not conducive to the generation of odors. The franchisee shall:</p> <ol style="list-style-type: none">a. Clean the areas and equipment that come into contact with solid waste on a regular basis.b. Establish and follow procedures for minimizing odor at the |



facility. Such procedures must be in writing and in a location

where facility personnel and Metro inspectors can readily reference them. The franchisee may modify such procedures from time to time. The procedures shall include at least the following: (1) methods that will be used to minimize, manage, and monitor all odors of any derivation including malodorous loads received at the facility, (2) procedures for receiving and recording odor complaints, and (3) procedures for immediately investigating any odor complaints in order to determine the cause of odor emissions, and promptly remedying any odor problem at the facility.

- 5.10 Vectors** The franchisee shall operate the facility in a manner that is not conducive to infestation of rodents, insects, or other animals capable of transmitting, directly or indirectly, infectious diseases to humans or from one person or animal to another.
- 5.11 Noise** The franchisee shall operate the facility in a manner that controls the creation of excessive noise to the extent necessary to meet applicable regulatory standards and land-use regulations.
- 5.12 Water quality** The franchisee shall:
- a. Operate and maintain the facility to prevent contact of solid wastes with stormwater runoff and precipitation.
 - b. Dispose of contaminated water and sanitary sewage generated onsite in a manner complying with local, state, and federal laws and regulations.
- 5.13 Public Access** Public access to the facility shall be controlled as necessary to prevent unauthorized entry and dumping.
- 5.14 Signage** The franchisee shall post signs at all public entrances to the facility, and in conformity with local government signage regulations. These signs shall be easily and readily visible, legible, and shall contain at least the following information:
- a. Name of the facility
 - b. Address of the facility;
 - c. Emergency telephone number for the facility;
 - d. Operating hours during which the facility is open for the receipt of authorized waste;
 - e. Fees and charges;
 - f. Metro's name and telephone number 797-1650; and



g. A list of all authorized and prohibited wastes.

- 5.15 Complaints** The franchisee shall respond to all written complaints on nuisances (including, but not limited to, blowing debris, fugitive dust or odors, noise, traffic, and vectors). If franchisee receives a complaint, franchisee shall:
- a. Attempt to respond to that complaint within one business day, or sooner as circumstances may require, and retain documentation of unsuccessful attempts; and
 - b. Log all such complaints by name, date, time and nature of complaint. Each log entry shall be retained for one year and shall be available for inspection by Metro.
- 5.16 Access to franchise document** The franchisee shall maintain a copy of this Metro Solid Waste Facility Franchise on the facility's premises, and in a location where facility personnel and Metro representatives have ready access to it.

6.0 PERFORMANCE STANDARDS FOR DIRECT HAULING

- 6.1 Purpose** This section of the franchise describes the standards with which the franchisee must comply for putrescible waste that is delivered directly from the facility to Metro's contract operator for disposal of putrescible waste.
- 6.2 Compliance with Arlington regulations** All solid waste transported through the city limits of Arlington, Oregon, shall be subject to any routing, timing, parking or other operational requirements established by the city of Arlington.
- 6.3 Compliance with other regulations** All equipment shall fulfill all federal, state, and local regulations. In addition, the use of exhaust brakes shall be prohibited altogether.



- 6.4 Transport in sealed containers** Pursuant to the authority granted as a variance to Metro Code Section 5.01.127(c)(3) by the Metro Council, the franchisee may conduct a six-month test of the use of tarped containers to transport authorized waste. Thereafter, unless the Franchisee is granted an additional variance or unless the Metro Council provides otherwise, all solid waste shall be transported in completely sealed containers with leak-proof design considered wind-, water-, and odor-tight, and shall be capable of withstanding arduous, heavy-duty, repetitive service associated with the long-haul transport of solid waste.
- 6.5 Average payloads** The average weight of solid waste payloads transported during each calendar month shall be no less than 25 tons.
- 6.6 Limits on staging areas** Any staging areas used shall be located in areas outside or excluded from the Columbia River Gorge National Scenic Area (NSA).
- 6.7 Limits on stopping points** All transport vehicles shall use only designated stopping points outside the Columbia River Gorge NSA except in cases of emergency.
- 6.8 Limits on use of public facilities** Use of rest areas, turnouts, scenic vista points, and state parks shall be limited to cases of emergency.
- 6.9 Limits on hours of transport** Transportation shall not be conducted in the Columbia River Gorge NSA during the following times:
- a. 4:00 p.m. to 10:00 p.m. Friday afternoons in June, July, August, and September.
 - b. Daylight hours on Saturdays in June, July, August, and September.
 - c. All hours on Sunday in June, July, August, and September.
- 6.10 Splash and spray suppression** All solid waste shall be transported by use of vehicles utilizing splash and spray suppressant devices behind each wheel, and utilizing rain suppressant side flaps on all non-turning axles.
- 6.11 Vehicle appearance** All solid waste shall be transported by use of vehicles and equipment that shall be suitably painted and present an acceptable appearance.



- 6.12 Public meetings** A representative of the franchisee and its transportation carrier shall annually meet with the gorge communities and interested parties to receive input and discuss issues related to transportation of solid waste.
- 6.13 Reporting requirements for carrier** The franchisee shall report to Metro any accidents, citations, and vehicle inspections involving vehicles of their transportation carrier during the transporting of solid waste on behalf of the Franchisee.
- 6.14 Meeting with Metro** A representative of the franchisee and its transportation carrier shall meet monthly with Metro to discuss operational problems, complaints and any extraordinary occurrences.
- 6.15 Other reporting requirements** The franchisee shall immediately report any violations of this section of the franchise to Metro.

7.0 FEES AND RATE SETTING

- 7.1 Purpose** This section of the franchise specifies fees payable by the franchisee, and describes rate regulation by Metro.
- 7.2 Annual fee** The franchisee shall pay an annual franchise fee, as established in Metro Code Chapter 5.01. Metro reserves the right to change the franchise fee at any time by action of the Metro Council.
- 7.3 Fines** Each violation of a franchise condition shall be punishable by fines as established in Metro Code Chapter 5.01. Each day a violation continues constitutes a separate violation. Metro reserves the right to change fines at any time by action of the Metro Council.
- 7.4 Rates not regulated** The tipping fees and other rates charged at the facility are exempt from rate regulation by Metro.
- 7.5 Metro fee imposed on disposal** The franchisee is liable for payment of the Metro Regional System Fee on any solid wastes delivered to a disposal site, unless these solid wastes are exempted by Metro Code Chapter 5.01.



- 7.6 Credit** Until the franchisee has made application for credit from Metro, and said application has been granted, the franchisee shall not transport putrescible waste directly from the facility to Metro's contract operator for disposal of putrescible waste.
- 7.7 Direct haul disposal charge** The franchisee shall remit to Metro the direct haul disposal charge as established in Metro Code Chapter 5.02 on each ton of putrescible waste that is transported directly from the facility to Metro's contract operator for disposal of putrescible waste, on the terms and conditions of the grant of credit from Metro.
- 7.8 Tax in lieu** The franchisee shall remit to Metro the "in lieu of" tax as established in Metro Code Chapter 7.01 on each ton of putrescible waste that is transported directly from the facility to Metro's contract operator for disposal of putrescible waste, on the terms and conditions of the grant of credit from Metro.

8.0 INSURANCE REQUIREMENTS

- 8.1 Purpose** The section describes the types of insurance that the franchisee shall purchase and maintain at the franchisee's expense, covering the franchisee, its employees, and agents.
- 8.2 General liability** The franchisee shall carry broad form comprehensive general liability insurance covering bodily injury and property damage, with automatic coverage for premises, operations, and product liability. The policy shall be endorsed with contractual liability coverage.
- 8.3 Automobile** The franchisee shall carry automobile bodily injury and property damage liability insurance.
- 8.4 Coverage** Insurance coverage shall be a minimum of \$500,000 per occurrence. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000.
- 8.5 Additional insureds** Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSUREDS.



- 8.6 Worker's Compensation Insurance** The franchisee, its subcontractors, if any, and all employers working under this franchise, are subject employers under the Oregon Workers' Compensation Law 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. If franchisee has no employees and will perform the work without the assistance of others, a certificate to that effect may be attached in lieu of the certificate showing current Workers' Compensation.
- 8.7 Notification** The franchisee shall give at least 30 days written notice to the Executive Officer of any lapse or proposed cancellation of insurance coverage.

9.0 ENFORCEMENT

- 9.1 Generally** Enforcement of this franchise shall be as specified in Metro Code.
- 9.2 Authority vested in Metro** 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 requirements against franchisee.
- 9.3 Inspections** The Executive Officer may make such inspection or audit as the Executive Officer deems appropriate, and shall be permitted access to the premises of the facility at all reasonable times during business hours with or without notice or at such other times with 24 hours notice to assure compliance with this franchise, Metro Code, and administrative procedures adopted pursuant to Metro Code Chapter 5.01.
- 9.4 No Enforcement Limitations** Nothing in this franchise shall be construed to limit, restrict, curtail, or abrogate any enforcement provision contained in Metro Code or administrative procedures adopted pursuant to Metro Code Chapter 5.01, nor shall this franchise be construed or interpreted so as to limit or preclude Metro from adopting ordinances that regulate the health, safety, or welfare of any person or persons within the District, notwithstanding any incidental impact that such



ordinances may have upon the terms of this franchise or the franchisee's operation of the facility.

10.0 MODIFICATIONS

- 10.1 Modification** At any time during the term of the franchise, either the Executive Officer or the franchisee may propose amendments or modifications to this franchise.
- 10.2 Modification, suspension or revocation by Metro** The Executive Officer may, at any time before the expiration date, modify, suspend, or revoke this franchise in whole or in part, in accordance with Metro Code Chapter 5.01, for reasons including but not limited to:
- a. Violation of the terms or conditions of this franchise, Metro Code, or any applicable statute, rule, or standard;
 - b. Changes in local, regional, state, or federal laws or regulations that should be specifically incorporated into this franchise;
 - c. Failure to disclose fully all relevant facts;
 - d. A significant release into the environment from the facility;
 - e. Significant change in the character of solid waste received or in the operation of the facility;
 - f. Any change in ownership or control, excluding transfers among subsidiaries of the franchisee or franchisee's parent corporation;
 - g. A request from the local government stemming from impacts resulting from facility operations.
 - h. Compliance history of the franchisee.

11.0 GENERAL OBLIGATIONS

- 11.1 Compliance with law** Franchisee shall fully comply with all applicable local, regional, state and federal laws, rules, regulations, ordinances, orders and permits pertaining in any manner to this franchise, including all applicable Metro Code provisions and administrative procedures adopted pursuant to Chapter 5.01 whether or not those provisions have been specifically mentioned or cited herein. All conditions



imposed on the operation of the facility by federal, state, regional or local governments or agencies having jurisdiction over the facility shall be deemed part of this franchise as if specifically set forth herein. Such conditions and permits include those cited within or attached as exhibits to the franchise document, as well as any existing at the time of the issuance of the franchise but not cited or attached, and permits or conditions issued or modified during the term of the franchise.

- 11.2 Indem-nification** The franchisee shall indemnify and hold Metro, its employees, agents and elected officials harmless from any and all claims, damages, actions, losses and expenses including attorney's fees, or liability related to or arising out of or in any way connected with the franchisee's performance or failure to perform under this franchise, including patent infringement and any claims or disputes involving subcontractors.
- 11.3 Deliver waste to appropriate destinations** The franchisee shall ensure that solid waste transferred from the facility goes to the appropriate destinations under Metro Code chapters 5.01 and 5.05, and under applicable local, state and federal laws, rules, regulations, ordinances, orders and permits;
- 11.4 Provide access** The franchisee shall allow the Executive Officer to have reasonable access to the premises for purposes of inspection and audit to determine compliance with this franchise, Metro Code, and the administrative procedures adopted pursuant to Metro Code Chapter 5.01.
- 11.5 Record-keeping and reporting.** The franchisee shall comply with the recordkeeping and reporting requirements as provided in Metro Code Chapter 5.01 and in administrative procedures adopted pursuant to Metro Code Chapter 5.01.
- 11.6 Compliance by agents** The franchisee shall be responsible for ensuring that its agents and contractors operate in compliance with this franchise.

**EXECUTIVE SUMMARY
ORDINANCE 99-815
TRANSFERRING A SOLID WASTE FRANCHISE FOR THE RECYCLE
AMERICA FACILITY**

PROPOSED ACTION

- Transfers the Recycle America Direct-Haul Solid Waste Franchise from Waste Management of Oregon (the “old” Waste Management) to USA Waste of Oregon (the “new” Waste Management).
- The new license replicates the authority granted by the existing franchise to process, perform materials recovery, and reload putrescible waste for direct-haul to the Columbia Ridge Landfill.

WHY NECESSARY

- The “old” Waste Management was the franchisee for the Recycle America direct-haul solid waste franchise. However, the merger of Waste Management into USA Waste created a new company and constituted a change in ownership of the facility.
- Section 5.01.090 of the Metro Code requires the proposed franchise transferee to submit a franchise transfer application and for the Metro Council to act on the application within 120 days after filing.

DESCRIPTION

- The facility conducts materials recovery from dry commercial solid waste. The residual from recovery operations, along with municipal solid waste unsuitable for sorting, is reloaded into transfer trailers for direct-haul to the Columbia Ridge Landfill.

ISSUES/CONCERNS

- None.

BUDGET/FINANCIAL IMPACTS

- Since the existing franchise would be transferred without a change in authorizations, it is not expected to have a financial impact on Metro.

REGIONAL ENVIRONMENTAL MANAGEMENT COMMITTEE REPORT

CONSIDERATION OF ORDINANCE NO. 99-815, FOR THE PURPOSE OF TRANSFERRING THE SOLID WASTE FRANCHISE FOR OPERATION OF THE RECYCLE AMERICA RELOAD/MATERIAL RECOVERY FACILITY FROM WASTE MANAGEMENT OF OREGON TO USA WASTE OF OREGON, INC.

Date: September 30, 1999

Presented by: Councilor Washington

Committee Recommendation: At its September 22 meeting, the Committee considered Ordinance No. 99-815 and voted 2-0 to send the ordinance to the Council with a do pass recommendation, subject to the drafting of a conceptual amendment requested by Councilor McLain for consideration by the full Council. Voting in favor: Councilor McLain and Chair Washington.

Committee Issues/Discussion: Terry Petersen, Acting REM Director, presented the staff report. Petersen explained that the purpose of the ordinance is to transfer the existing material recovery facility franchise for the Recycle America facility from Waste Management of Oregon to USA Waste of Oregon. Council approval of the proposed transfer is required by the Metro Code. The proposed transfer is needed to reflect the corporate restructuring that occurred following the merger of Waste Management and USA Waste.

Petersen explained that the only staff concern related to the franchise transfer was a recent drop in the facility's recycling rate to 19%. Councilor McLain expressed the same concern about the declining recycling rate as she did about the Wastech facility (see Ordinance No. 99-814) and asked if the amendment language added the Ordinance No. 99-814 could be added to this ordinance. Councilor Washington concurred and the committee recommended the ordinance to moved to the full Council subject to the drafting of the proposed amendment which would require the Executive Officer to review the need to amend any or all existing material recovery facility licenses or franchises to insure that they continue to strive for high recycling rates.

The amendment language has been drafted and an "A" version of the proposed ordinance will be moved by Councilor McLain at the September 30 Council meeting. If these amendments are adopted, it is likely that they will be held to be substantive amendments and, therefore, final Council action on the ordinance would be delayed until October 7.

IN CONSIDERATION OF ORDINANCE NO. 99-815, FOR THE PURPOSE OF TRANSFERRING THE SOLID WASTE FRANCHISE FOR OPERATION OF THE RECYCLE AMERICA RELOAD/MATERIALS RECOVERY FACILITY FROM WASTE MANAGEMENT OF OREGON, INC. TO USA WASTE OF OREGON, INC.

August 5, 1999

Presented by: Terry Petersen,
Leann Linson

I. Summary and Recommendation

A. Effect of Passage

Approval of Ordinance No. 99-815 will transfer a Solid Waste Franchise for operation of the Recycle America facility from Waste Management of Oregon Inc. (WMO) to USA Waste of Oregon, Inc. (USAO) following the merger of the two companies. The franchise authorizes the facility to accept solid waste, including putrescible waste, for recovery and direct-haul to the Columbia Ridge Landfill. The facility is authorized to dispose of up to 50,000 tons annually.

B. Executive Officer Recommendation

The Executive Officer recommends approval of Ordinance No. 99-815, transferring the Recycle America franchise from Waste Management of Oregon, Inc. to USA Waste of Oregon, Inc. subject to the terms and conditions that are incorporated into the franchise document attached as "Exhibit A" to Ordinance No. 99-815.

II. Background

A. History of the Facility

Recycle America is a materials recovery facility and reload located at 869 NW Eastwind Drive in Troutdale. The Metro Council originally granted the facility a Solid Waste Franchise on June 20, 1996 through the approval of Ordinance 96-644-B. The original franchise agreement authorized the facility to perform materials recovery on non-putrescible waste and to reload and transfer some special wastes. The franchise itself was issued on July 14, 1996. On August 14, 1998, the facility's Solid Waste Franchise was exchanged for a Solid Waste License under the provisions of section 5.01.400(b) of the newly adopted Solid Waste Facility Regulation chapter of the Code. Waste Management then applied for a direct-haul franchise to accept putrescible waste and deliver it directly to Columbia Ridge Landfill. The Council approved the direct-haul franchise on November 24, 1998.

B. The Applicant and the Applicant's Request

Waste Management, Inc. (the "old" Waste Management) was recently merged into USA Waste Services, Inc. The merged company then changed its name to Waste

Management, Inc. (the “new” Waste Management). However, USA Waste of Oregon, Inc. (USAO) is the name presently used by the new company within the state of Oregon.

In an application delivered on June 22, 1999, Frank Hammond, representing USAO requested that the facility’s franchise be transferred from Waste Management of Oregon, Inc. (the Oregon subsidiary of the “old” Waste Management) to USAO. During a later phase of the restructuring, the company will change its Oregon corporate name to Waste Management of Oregon, Inc. (the “new” Oregon Waste Management).

III. Application Procedure

A. Reason for the Ordinance and Metro Code Provisions Related to the Applicant’s Request

Section 5.01.090

Section 5.01.090 of the Metro Code governs transfer of franchises. Section 5.01.090 has three parts, as follows:

- (a) *A franchisee may not lease, assign, mortgage, sell or otherwise transfer, either in whole or in part, its franchise to another person unless an application therefor has been filed in accordance with section 5.01.060 and has been granted. The proposed transferee must meet the requirements of this chapter.*

On June 22, 1999, Metro received from USAO a formal franchise application. The application was determined to be in accordance with section 5.01.060. Details are presented below.

- (b) *The council shall not unreasonably deny an application for transfer of a franchise. If the council does not act on the application for transfer within 90 days after filing of a complete application, the application shall be deemed granted.*

The proposed ordinance is being presented to Council in a timely manner, and well within the 90-day limit.

- (c) *The term for any transferred Franchise shall be for the remainder of the original term unless the Council establishes a different term based on the facts and circumstances at the time of transfer.*

The current franchise has an expiration date of December 31, 2003. The proposed new franchise, presented as "Exhibit A," to Ordinance No. 99-815, has the same expiration date.

Section 5.01.060

Section 5.01.060 specifies eight items to be addressed in any franchise application.

- (a) *Applications for a franchise or license or for transfer of any interest in, modification, expansion, or renewal of an existing franchise or license shall be filed on forms provided by the executive officer. Franchises and licenses are subject to approval by the council.*

As mentioned above, on June 22, 1999, Metro received from USAO a formal application for transfer of the Recycle America franchise. The application was filed in the format prescribed by the Executive Officer.

- (b) *In addition to the information required on the forms, franchise applicants must submit the following to the executive officer:*
- (1) *Proof that the applicant can obtain and will be covered during the term of the franchise by a corporate surety bond guaranteeing full and faithful performance by the applicant of the duties and obligations of the franchise agreement. In determining the amount of bond to be required, the executive officer may consider the size of the site, facility or station, the population to be served, adjacent or nearby land uses, the potential danger of failure of failure of service, and any other factor material to the operation of the franchise;*

The applicant has obtained the necessary corporate surety bond.

- (2) *In the case of an application for a franchise transfer, a letter of proposed transfer from the existing franchisee;*

A letter and application for a franchise transfer was submitted by Frank Hammond, attorney for the new merged company, USAO.

- (3) *Proof that the applicant can obtain the liability insurance required by this chapter;*

The applicant has provided proof of insurance.

- (4) *If the applicant is not an individual, a list of stockholders holding more than 5 percent of a corporation or similar entity, or of the partners of a partnership. Any subsequent changes in excess of 5 percent of ownership thereof must be reported within 10 days of such changes of ownership to the executive officer;*

USA Waste of Oregon, Inc. is a wholly owned subsidiary of Waste Management of North America, Inc.

- (5) *A duplicate copy of all applications for necessary DEQ permits and any other information required by or submitted to DEQ;*

The Recycle America facility is fully permitted by the DEQ. The DEQ permit and all related information have been provided to Metro and are on file in the REM Department.

- (6) *Signed consent by the owner(s) of the property to the proposed use of the property. The consent shall disclose the property interest held by the franchisee, the duration of that interest and shall read and agree to be bound by the provisions of section 5.01.180(e) of this chapter if the franchise is revoked or franchise renewal is refused;*

The owner of the real property on which the Recycle America facility is built, TDK Corporation, has signed such a consent.

- (7) *Proof that the applicant has received proper land use approval;*

The City of Troutdale has granted the Recycle America facility a Conditional Use Permit (CUP). The CUP has been provided to Metro and is on file in the REM Department.

- (8) *and such other information as the executive officer deems necessary to determine an applicant's qualifications.*

The applicant is a major solid waste company that operates other authorized facilities in the Metro Region and is well known to the REM Department. No additional information is necessary to determine the applicant's qualifications.

B. Analysis of Application

The application is for a transfer of a solid waste franchise from Waste Management of Oregon to USA Waste of Oregon following the merger of the two companies. It is USAO's intent to continue to operate the facility in the same manner as presently authorized by the facility's Conditional Use Permit, DEQ permit and Metro franchise. USAO has filed a complete application in conformance with the Metro Code that has been found by staff to meet the requirements of Code chapter 5.01.

IV. Fiscal Impact

Ordinance No. 99-815 transfers an existing franchise to a new facility owner without any changes in authorizations. The facility will continue to process waste of the same type and in the same quantity as presently authorized by its existing franchise. Thus, it is anticipated that approval of Ordinance No. 99-815 will have no fiscal impact.