

BEFORE THE METRO COUNCIL

GRANTING THE SOLID WASTE FACILITY) ORDINANCE NO. 05-1092
FRANCHISE APPLICATION OF COLUMBIA)
ENVIRONMENTAL, LLC TO OPERATE A LOCAL) Introduced by Councilor Park
TRANSFER STATION)

WHEREAS, Columbia Environmental, LLC has filed an application to operate a regional transfer station at 14041 NE Sandy Boulevard in Portland; and

WHEREAS, Columbia Environmental seeks authority to accept 38,000 tons of putrescible solid waste per year and has offered to pay to Metro a fee of \$3.00 per ton of putrescible waste accepted in order to partially mitigate the cost impact that granting its application may have on the tip fee charged at Metro's two publicly-owned solid waste transfer stations; and

WHEREAS, Metro Code section 5.01.070 requires the Chief Operating Officer to review the application and other evidence submitted, to investigate as he deems appropriate, and to formulate recommendations regarding whether the applicant is qualified, whether the proposed franchise complies with the Regional Solid Waste Management Plan ("the Management Plan") whether the proposed franchise meets the requirements of Metro Code section 5.01.060, and whether or not the applicant has complied or can comply with all other applicable regulatory requirements; and

WHEREAS, Metro Code section 5.01.070(f) requires the Metro Council to consider: (1) whether the proposed franchise is consistent with the Management Plan (2) the effect that granting the franchise would have on the cost of solid waste services for the citizens of the region, (3) the effect of the franchise on the health, safety, and welfare of the region's residents, (4) whether the franchise would adversely affect nearby residents and surrounding neighborhoods, and (5) whether the applicant is likely to comply with all applicable franchise provisions and local, state and federal laws; and

WHEREAS, the Council may also consider any other factors it deems relevant; and

WHEREAS, the relevant factors of the Management Plan for consideration relate to the region's solid waste transfer capacity, access to transfer stations, effects on the region's material recovery, encouraging competition within the solid waste industry, and cost to ratepayers; and

WHEREAS, the Chief Operating Officer has concluded, and the Council agrees, that the applicant is qualified and can comply with all other applicable regulatory requirements; and

WHEREAS, on the basis of the application and the Chief Operating Officer's investigation, the Chief Operating Officer has recommended denial of the Columbia Environmental application for a solid waste franchise to operate a local transfer station; and

WHEREAS, the Council may analyze, weigh and balance its consideration of the issues of capacity, access, and cost to ratepayers differently than did the Chief Operating Officer; and now therefore;

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1. The Council finds:

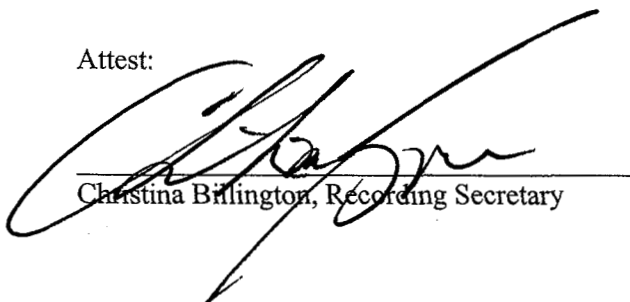
- a) Notwithstanding the recommendation of the Chief Operating Officer, the use of innovative material recovery strategies and increasing competition within the solid waste industry are the most important factors to consider to determine whether the application is consistent with the Management Plan; and
- b) Granting this application will improve access to transfer stations for affiliated haulers operating within a service area wasteshed that generates approximately 130,000 tons of putrescible waste per year, but which currently has one local transfer station that is authorized to accept only 65,000 tons of putrescible waste per year, leaving such service area underserved; and
- c) The region's material recovery capacity will likely benefit from the introduction and use of the innovative material recovery strategies that the applicant intends to implement if its application is granted which could likely help the applicant achieve higher than average recovery from both putrescible and non-putrescible waste; and
- d) Granting this application will improve competition within the solid waste industry by providing affiliated haulers within the Columbia Environmental partnership with their own transfer station within a reasonable travel distance, thereby allowing them to better compete with large, vertically integrated, national solid waste companies within the Metro region that own solid waste collection franchises and that also operate their own transfer stations; and
- e) The Chief Operating Officer's staff report analysis of the cost of granting this franchise on the region's solid waste ratepayers did not include the fact that Metro changed its ratemaking structure in 2004 in a manner that exacerbates the fiscal impact to Metro of having solid waste tonnage move away from Metro's transfer stations to private facilities; and
- f) When a cost analysis of the impacts of granting this application is performed to adjust for the 2004 change in the ratemaking structure, the cost savings to the customers of haulers that will use this facility are significantly increased, and the likely impact of this decision on both the Metro tip fee, and on the cost of solid waste transfer services throughout the rest of the region, will be partially mitigated by the \$3.00 per ton fee that the applicant has committed to pay to Metro; and
- g) It is also appropriate to consider that the total number of vehicle miles traveled by solid waste haulers is likely to decrease if this franchise is granted, and that such a decrease has many positive effects, including improving air quality within the metropolitan area; and
- h) For the reasons described in these recitals, granting the application (1) is consistent with the Management Plan, (2) is likely to decrease the cost of solid waste services for some of the region's residents, and that the effect of granting the franchise on other residents in the region will be partially mitigated, (3) will not adversely affect the health, safety, and welfare of the region's citizens, (4) will not adversely affect the facility's surrounding neighborhood, (5) is likely to result in a facility operator that will comply with the franchise and all other applicable laws, (6) will likely achieve higher waste recovery, and (7) is likely to result in other benefits for the region, such as reducing vehicle miles traveled and thereby improving the region's air quality; and
- i) The terms, conditions, and limitations contained in Exhibit A to this ordinance will ensure that the franchisee's operations are commensurate with the commitments it has made in its application and to the Council, and with the rationale provided in these recitals that support granting the franchise.

Section 2. The solid waste facility franchise application of Columbia Environmental, L.L.C., is hereby granted, subject to the terms, conditions, and limitations contained in Exhibit A to this ordinance, entitled "Solid Waste Facility Franchise." The Chief Operating Officer shall issue to Columbia Environmental a Solid Waste Facility Franchise substantially similar to the one attached as Exhibit A.

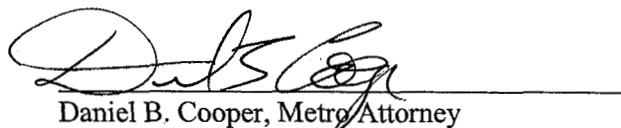
ADOPTED by the Metro Council this 22nd day of September, 2005.


David Bragdon, Council President

Attest:


Christina Billington, Recording Secretary

Approved as to Form:


Daniel B. Cooper, Metro Attorney

BM:bjl:sm
M:\rem\od\projects\Legislation\2005\051092 CE Approve Ord.doc





METRO

METRO SOLID WASTE FACILITY FRANCHISE Number F-057-05

FRANCHISEE:	FACILITY NAME AND LOCATION:
Name: Columbia Environmental, LLC Address: 14041 NE Sandy Blvd Portland, Or 97230 Contact: Bryan Engleson, General Mgr. Phone: (503) 255-0211 Fax: (503) 255-7731	Name: Columbia Environmental, LLC Address: 14041 NE Sandy Blvd Portland, Or 97230 Phone: (503) 255-0211
COMPANY OWNER:	PROPERTY OWNER:
Name: Columbia Environmental, LLC Address: 14041 NE Sandy Blvd Portland, Or 97230 Phone: (503) 255-0211 Fax: (503) 255-7731	Name: Columbia Environmental, LLC Address: 14041 NE Sandy Blvd Portland, Or 97230

FRANCHISED ACTIVITIES

This Franchise is granted to the Franchisee named above and may not be transferred. 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.

METRO

Franchisee's Acceptance & Acknowledgement of Receipt:

Signature

Signature of Franchisee

Michael Jordan, Metro Chief Operating Officer

Print name and title

Print name and title

Date

Date



TABLE OF CONTENTS

SECTION	TITLE	PAGE
1.0	Issuance	1
2.0	Conditions and Disclaimers	1
3.0	Completion of Facility Construction	3
4.0	Authorizations	4
5.0	Limitations and Prohibitions	5
6.0	Operating Conditions	7
7.0	Operating Plan	9
8.0	Fees and Rate Setting.	11
9.0	Record Keeping and Reporting	11
10.0	Insurance Requirements	14
11.0	Enforcement	15
12.0	Modifications and Termination	15
13.0	General Obligations	16



1.0	ISSUANCE	
1.1	Franchisee	Name: Columbia Environmental, LLC Address: 14041 NE Sandy Blvd. Portland, Or 97230
1.2	Contact	Name: Bryan Engleson, General Manager (englesonb@aol.com) Phone: (503) 255-0211 Fax: (503) 255-7731
1.3	Franchise Number	When referring to this Franchise, please cite: Metro Solid Waste Facility Franchise Number F-057-05.
1.4	Term of Franchise	The term of this Franchise will commence on December 31, 2005 and expire at midnight on December 31, 2010.
1.5	Facility name and mailing address	Name: Columbia Environmental, LLC Address: 14041 NE Sandy Blvd. Portland, OR 97230
1.6	Operator	Name: Columbia Environmental, LLC Address: 14041 NE Sandy Blvd. Portland, Or 97230
1.7	Facility legal description	Tax lots 100, 101, Section 23, Township 1N, Range 2E, Willamette Meridian, Multnomah County, State of Oregon
1.8	Property owner	Name: Columbia Environmental, LLC Address: 14041 NE Sandy Blvd. Portland, Or 97230
1.9	Basis for issuance	Issued in accordance with the provisions of Metro Code Chapter 5.01.

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 wastes or other materials 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 Metro, 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 Chief Operating 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 subsequent performance of the same term or condition or to require performance of 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, Franchises, 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	Definitions	Unless otherwise specified, all terms are as defined in Metro Code Title V. The Metro Code definition of "solid waste" includes, without limitation, source-separated yard debris, landscape wastes, and clean wood wastes. In the event that the Metro Code is amended, the latest amended version shall apply to this Franchise.



3.0 COMPLETION OF FACILITY CONSTRUCTION		
3.1	Acceptance of solid waste: Director's certification of the completion of facility construction	Franchisee may not accept any solid waste at the facility unless the Director of the Solid Waste & Recycling Department has certified that facility construction is complete according to plans submitted by Franchisee and approved by the DEQ and Metro. Such certification shall be based upon the Franchisee's compliance with the provisions of this Section 3.0 of this Franchise, including the Director's inspection of the facility and the documents submitted to the Director by the Franchisee.
3.2	Facility design	The transfer station facility must be designed and constructed in accordance with the plans submitted to Metro and the DEQ. Any amendments or alterations to such plans shall be approved by the Director of the Solid Waste & Recycling Department.
3.3	Vehicle access	Construction of the new vehicle access road via the easement to NE 138 th Avenue must be completed in accordance with the plans submitted to the City of Portland, Metro, and the DEQ.
3.4	Construction report	Within 30 days of the completion of construction of the facility, a report prepared by the project engineer must be submitted to the Director of the Solid Waste & Recycling Department verifying and certifying that the construction is in accordance with the approved plans. The engineer must report construction observations and identify any construction flaws or deviations from the approved plans.
3.5	"As constructed" documents	Within 30 days of the completion of construction of the facility, the Franchisee shall submit to the Director of the Solid Waste & Recycling Department "as constructed" facility plans which note any changes from the original DEQ and Metro approved plans.
3.6	Construction inspection	When construction is complete or nearly complete, the Franchisee shall notify the Director of the Solid Waste & Recycling Department so that an inspection can be made before the facility is placed into operation. The inspection shall occur after the Franchisee has provided Metro with the documents described in subsections 3.4 and 3.5 of this Franchise.
3.7	Demonstration of compliance with City development standards	Prior to, or at the time of the construction inspection, the Franchisee shall demonstrate compliance with all conditions imposed by the City of Portland and all applicable development standards, unless specifically exempted as part of the City's land use review. All building permits, occupancy permits or development permits must be submitted to the Director of the Solid Waste & Recycling Department within



		five business days of receipt by the Franchisee from the City of Portland.
--	--	--

4.0		AUTHORIZATIONS
4.1	Purpose	This section of the Franchise describes the wastes that the Franchisee is authorized to accept at the facility, and the waste-related activities the Franchisee is authorized to perform at the facility.
4.2	General conditions on acceptable materials	Upon the Franchisee's completion of the construction of the facility in accordance with the provisions of Section 3.0 of this Franchise, the Franchisee is authorized to accept at the facility only the solid wastes described in Section 4.0 of this Franchise. The Franchisee is prohibited from knowingly receiving any solid waste not authorized in this section.
4.3	General conditions on activities	The Franchisee is authorized to perform at the facility only those waste-related activities that are described in Section 4.0 of this Franchise. Additionally, the activities to be conducted in any facility building must be consistent with the activities identified in the Franchise application submitted to Metro and this Franchise. If the Franchisee proposes to modify its new or existing facility buildings or the activities to be conducted in those buildings in such a manner that they would not be consistent with the descriptions provided to Metro in its Franchise application, then, the Franchisee must submit a Change of Authorization application in accordance with Metro Code section 5.01.095. Such modifications and activities shall not commence until such time as the Change of Authorization application has been approved by Metro in writing.
4.4	Putrescible waste	The Franchisee is authorized to accept putrescible waste for the purpose of delivery or transfer of said putrescible waste to a disposal site authorized by a Metro designated facility agreement or a Metro non-system license; in accordance with Metro Code Chapter 5.05.
4.5	Non-putrescible waste	The Franchisee is authorized to accept for the purpose of material recovery non-putrescible solid wastes such as waste generated by non-residential generators and waste generated at construction and demolition sites.
4.6	Material recovery required	The Franchisee shall perform material recovery on non-putrescible wastes and putrescible wastes. The Franchisee shall achieve a recovery rate of no less than forty-five percent (45%) from non-putrescible wastes and no less than ten percent (10%) recovery of non-putrescible recyclable materials from putrescible wastes. The recovery rates shall be measured on a 12-month rolling average.



4.7	Source-separated recyclables	The Franchisee is authorized to accept loads of non-putrescible source-separated recyclable materials for purposes of sorting, classifying, consolidating, baling, temporary storage, transfer and performance of other similar functions related to preparing these materials for marketing.
4.8	Inert materials	The Franchisee is authorized to accept inert materials for purposes of recycling, recovery, sorting, classifying, consolidating, processing (including crushing and grinding), transfer, and other similar functions related to preparing these materials for useful purposes.
4.9	Source-separated yard debris	The Franchisee is authorized to accept source-separated yard debris for transfer to a Metro-licensed yard debris facility, a DEQ-permitted composting facility or other DEQ-permitted processing facility.
4.10	Clean wood	The Franchisee is authorized to accept source-separated, untreated and unpainted (“clean”) wood waste. Clean wood waste may be accepted only for grinding and reloading to authorized composting facilities or to facilities with industrial boilers for use as hogged fuel.
4.11	Painted and treated wood	The Franchisee is authorized to accept painted and treated wood wastes only for the production of hogged fuel or disposal. Painted and treated wood wastes shall be kept separate from yard debris and shall not be used in the production of compost feedstock. Painted and treated wood waste shall not be used as or incorporated into mulch, animal bedding or used for agricultural purposes. Painted and treated wood wastes also include manufactured wood and wood containing glue resins.

5.0	LIMITATIONS AND PROHIBITIONS	
5.1	Purpose	This section of the Franchise describes limitations and prohibitions on the wastes handled at the facility and waste-related activities performed at the facility.
5.2	Limit on putrescible waste accepted	The Franchisee shall accept no more than 38,000 tons of putrescible waste generated or originating inside the Metro region within each Metro fiscal year. The Franchisee shall not accept solid waste generated or originating outside the Metro region if to do so would limit the Franchisee from accepting 38,000 tons of putrescible waste, or any non-putrescible waste, generated or originating inside the Metro region.



5.3	Management of prohibited wastes	<p>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. The Franchisee also shall not knowingly accept or retain any material amounts of any other similar types of waste if:</p> <ul style="list-style-type: none">a. the handling of such types of waste at a solid waste transfer station could adversely impact public health and safety or create odor or nuisances; andb. the Metro Council identifies such types of waste in an ordinance adopted during the term of this Franchise.
5.4	Material recovery required	<p>The Franchisee shall perform material recovery on non-putrescible waste and putrescible waste accepted at the facility at the rate stipulated in Section 4.0 of this Franchise. The Franchisee also shall perform material recovery on other types of waste identified in an ordinance adopted by the Metro Council during the term of this Franchise.</p>
5.5	Prohibition on mixing	<p>The Franchisee shall not mix any source-separated recyclable materials or source-separated yard debris or wood waste 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</p>
5.6	No disposal of recyclable materials; other potential disposal bans	<p>Source-separated recyclable materials may not be disposed of by landfilling or incineration. The Franchisee also shall not dispose, by landfilling or incineration, any other wastes identified in an ordinance adopted by the Metro Council during the term of this Franchise.</p>
5.7	Origin of putrescible waste	<p>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.</p>
5.8	Limits not exclusive	<p>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.</p>



6.0 OPERATING CONDITIONS	
6.1	Purpose This section of the Franchise describes criteria and standards for the operation of the facility.
6.2	Qualified personnel 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. Facility personnel, as relevant to their job duties and responsibilities, shall be familiar with the provisions of this Franchise and the procedures contained within the facility's operating plan (see Section 7.0).
6.3	Fire prevention The operator shall provide fire prevention, protection, and control measures, including but not limited to, adequate water supply for fire suppression, and the isolation of potential heat sources and/or flammables from the processing area.
6.4	Adequate vehicle accommodation Vehicles containing solid wastes or source-separated recyclables shall not park or queue on public streets or roads except under emergency conditions. Adequate off-street parking and queuing for vehicles shall be provided.
6.5	Enclosed operations All handling, processing, compaction or other forms of managing solid wastes, other than inert wastes, shall occur inside facility buildings.
6.6	Managing prohibited wastes The Franchisee shall make reasonable efforts to identify prohibited and unauthorized wastes. Upon discovery, all prohibited or unauthorized wastes shall be removed or managed in accordance with the facility operating plan and DEQ procedures.
6.7	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.
6.8	Storage Stored materials shall be suitably contained and removed at sufficient frequency to avoid creating nuisance conditions or safety hazards. Storage and operating areas must be maintained in an orderly manner and kept free of litter.
6.9	Litter, fugitive emissions, dust and airborne debris The Franchisee shall operate the facility in a manner that is not conducive to the generation of litter, fugitive emissions, dust and airborne debris. The Franchisee shall: 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. Metro reserves the right to conduct monitoring and enforcement on uncovered loads arriving at the facility.



		<p>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.</p> <p>c. Keep all areas within the site and all vehicle access roads within ¼ mile of the site free of litter and debris.</p>
6.10	Odor prevention	<p>The Franchisee shall operate the facility in a manner that is not conducive to the generation of odors. The Franchisee shall:</p> <p>a. Clean the areas and equipment that come into contact with solid waste on a regular basis.</p> <p>b. Establish and follow procedures in the operating plan for minimizing odor at the facility.</p>
6.11	Vector prevention	<p>The Franchisee shall operate the facility in a manner that is not conducive to infestation of rodents, insects, birds, or other animals including animals capable of transmitting, directly or indirectly, infectious diseases to humans or from one person or animal to another.</p>
6.12	Noise minimization	<p>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.</p>
6.13	Water quality	<p>The Franchisee shall operate and maintain the facility to prevent contact of yard debris and solid waste with precipitation and stormwater runoff or shall:</p> <p>a. Operate in conformance with a DEQ-approved spill containment protocol; and</p> <p>b. Conduct frequent and thorough load inspections to assure that prohibited wastes are not accepted at the facility; and</p> <p>The Franchisee shall assure that stormwater runoff meets all requirements established by local, state, and federal laws and regulations. If the character of the wastes accepted at the facility changes or surface water quality or groundwater quality become impaired, Metro may amend the Franchise to include additional protective measures.</p>
6.14	Public access	<p>Public access to the facility shall be controlled as necessary to prevent unauthorized entry and dumping.</p>
6.15	Signage	<p>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:</p> <p>a. Name of the facility</p> <p>b. Address of the facility;</p>



		<p>c. Emergency telephone number for the facility;</p> <p>d. Operating hours during which the facility is open for the receipt of authorized waste;</p> <p>e. Fees and charges;</p> <p>f. Metro's name and telephone number (503) 797-1650; and</p> <p>g. A list of authorized and prohibited wastes.</p>
6.16	Complaints	<p>The Franchisee shall respond to all complaints of nuisances (including, but not limited to, blowing debris, fugitive dust, odors, noise, and vectors). If Franchisee receives a complaint, Franchisee shall:</p> <p>a. Attempt to respond to that complaint within one business day, or sooner as circumstances may require, and retain documentation of its attempts (whether successful or unsuccessful); and</p> <p>b. Log all such complaints as provided in Section 7 of the Franchise. Each log entry shall be retained for two years and shall be available for inspection by Metro.</p>
6.17	Access to Franchise document	<p>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.</p>

7.0	OPERATING PLAN	
7.1	Purpose	<p>This section lists the procedures that must be included in the required facility operating plan. The operating plan shall be submitted to the Director of the Solid Waste & Recycling Department for review and approval prior to acceptance of any solid waste other than non-putrescible source-separated recyclables. The operating plan must be an integrated operating plan that describes how the Franchisee's operations will interrelate with the operations of Franchisee's other tenants on the site, including the operations of Pacific PowerVac, LLC, an Oregon limited liability company, and Strategic Materials, Inc., a Texas corporation. The operating plan shall be amended from time to time to reflect facility operations, and the operations of all tenants, subject to approval by the Director of the Solid Waste & Recycling Department.</p>
7.2	Access to operating plan	<p>The Franchisee shall maintain a copy of the operating plan on the facility's premises and in a location where facility personnel and Metro representatives have ready access to it.</p>
7.3	Procedures for	<p>The operating plan shall establish:</p>



	inspecting and classifying loads	<ul style="list-style-type: none">a. Procedures for inspecting incoming loads for the presence of prohibited wastes;b. A set of objective criteria for accepting and rejecting loads; andc. An asbestos testing protocol for all material that appears as if it may contain asbestos.
7.4	Procedures for processing and storage of loads	The operating plan shall establish procedures for: <ul style="list-style-type: none">a. Processing authorized solid wastes,b. Storing authorized solid wastes; andc. Minimizing storage times, avoiding delay in processing and managing solid wastes, yard debris and landscape waste during all weather conditions.
7.5	Procedures for managing prohibited wastes	The operating plan shall establish procedures for managing and transporting to appropriate facilities or disposal sites each of the prohibited or unauthorized wastes if they are discovered at the facility. In addition, the operating plan shall establish procedures and methods for notifying generators not to place hazardous wastes or other prohibited wastes in drop boxes or other collection containers destined for the facility.
7.6	Procedures for odor prevention	The operating plan shall establish procedures for preventing all solid waste-related odors [We don't want to get into subjective arguments about whether or not an odor is objectionable] from being detected off the premises of the facility, including solid waste-related odors produced by other on-site tenants and businesses. The plan must include: <ul style="list-style-type: none">a. A management plan that will be used to monitor and manage all odors of any derivation including malodorous loads delivered to the facility; andb. Procedures for receiving and recording odor complaints, immediately investigating any odor complaints to determine the cause of odor emissions, and remedying promptly any odor problem at the facility.
7.7	Procedures for noise minimization	The operating plan shall establish procedures for minimizing the volume and duration of noise produced in the course of Metro-authorized activities.
7.8	Procedures for emergencies	The operating plan shall establish procedures to be followed in case of fire or other emergency.
7.9	Procedures for nuisance complaints	For every nuisance complaint (e.g. odor, dust, vibrations, litter) received, the Franchisee shall record: <ul style="list-style-type: none">a. The nature of the complaint;b. The date the complaint was received;



		<p>c. The name, address and telephone number of the person or persons making the complaint; and</p> <p>d. Any actions taken by the operator in response to the complaint (whether successful or unsuccessful).</p> <p>Records of such information shall be made available to Metro and local governments upon request. The Franchisee shall retain each complaint record for a period of not less than two years.</p>
7.10	Closure Protocol	The operator shall establish protocol for closure and restoration of the site in the event of a long-term cessation of operations.

8.0	FEES AND RATE SETTING	
8.1	Purpose	This section of the Franchise specifies fees payable by the Franchisee, and describes rate regulation by Metro.
8.2	Annual fee	The Franchisee shall pay an annual Franchise fee, as established in Metro Code. Metro reserves the right to change the Franchise fee at any time by action of the Metro Council.
8.3	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.
8.4	Rates not regulated	The tipping fees and other rates charged for the use of the facility are exempt from rate regulation by Metro.
8.5	Metro fees and taxes imposed on disposal	The Franchisee is liable for payment of the Metro Regional System Fee and the Metro Excise Tax on any solid wastes delivered to a disposal site, unless these solid wastes are exempted by Metro Code Chapters 5.01 and 7.01.
8.6	Other fees	The Franchisee shall pay a fee of \$3.00 per ton of putrescible waste received at the facility. The fee shall be payable to Metro monthly, no later than fifteen (15) days following the end of each month.

9.0	RECORD KEEPING AND REPORTING	
9.1	Purpose	This section of the Franchise describes record keeping and reporting requirements. The Franchisee shall effectively monitor facility operation and maintain accurate records of the information described in this section.



9.2	Reporting requirements of material received	<p>For all materials the Franchisee is authorized to receive under Section 4 of this Franchise, including all putrescible waste, non-putrescible waste, source-separated recyclables, wood waste, inert materials, yard debris and landscape waste, the Franchisee shall keep and maintain accurate records of the amount of such materials the Franchisee receives, recovers, recycles, and disposes. The Franchisee shall keep and maintain complete and accurate records of the following for all transactions:</p> <ul style="list-style-type: none">a. Ticket number (should be the same as the ticket number on the weight slips);b. Account number: Incoming hauler and outgoing destination;c. Material type: Code designating the following types of material (more detail, such as differentiating yard debris, is acceptable): (1) incoming source-separated recyclable materials by type; (2) incoming mixed waste; (3) outgoing recyclable materials; (4) outgoing mixed waste;d. Origin: Code designating the following origin of material: (1) public from inside Metro boundaries; (2) public from within Multnomah, Clackamas and Washington Counties but outside Metro boundaries; (3) commercial from inside Metro boundaries; (4) commercial from Multnomah, Clackamas and Washington Counties but outside Metro boundaries; and (5) commercial from out-of-state;<ul style="list-style-type: none">i. Any load containing any amount of waste from within the Metro region shall be reported as if the entire load was generated from inside the Metro region.ii. If the Franchisee elects to report all loads delivered to the facility as being generated from inside the Metro region, then the Franchisee is not required to designate the origin of loads in Section 9.2(d)(2) and (4) above.e. Date the load was received at or transmitted from the facility;f. Time the load was received at or transmitted from the facility;g. Indicate whether Franchisee accepted or rejected the load;h. Net weight of the load;
9.3	Record transmittals	<p>Records required under Section 9.2 shall be transmitted to Metro no later than fifteen (15) days following the end of each month in electronic format prescribed by Metro.</p>



9.4	Semi-annual computer listing	On a semi-annual basis, Franchisee shall provide Metro with a computer listing that cross references the Incoming Hauler Account Number with the hauling company's name and address.
9.5	DEQ submittals	Franchisee shall provide Metro with copies of all correspondence, exhibits, or documents submitted to the DEQ relating to the terms or conditions of the DEQ solid waste permit or this Franchise within two business days of providing such information to DEQ.
9.6	City of Portland submittals	Franchisee shall provide Metro with copies of all correspondence, exhibits, or documents submitted to or received from the City of Portland relating to the terms or conditions of the Franchisee's Conditional Use approval, building permits, occupancy permits or development permits within five business days of providing such information to, or receiving it from, the City of Portland.
9.7	Copies of enforcement actions provided to Metro	Franchisee shall send to Metro, upon receipt, copies of any notice of violation or non-compliance, citation, or any other similar enforcement actions issued to the Franchisee by any federal, state, or local government other than Metro, and related to the operation of the facility.
9.8	Unusual occurrences	The Franchisee shall keep and maintain accurate records of any unusual occurrences (such as fires or any other significant disruption) encountered during operation and methods used to resolve problems arising from these events, including details of all incidents that required implementing emergency procedures. Franchisee shall report any facility fires, accidents, emergencies, and other significant incidents to Metro at (503) 797-1650 within 12 hours of the discovery of their occurrence.
9.9	Changes in ownership	The Franchisee must, in accordance with Metro Code Section 5.01.090, submit a new Franchise application to Metro if the Franchisee proposes to transfer control or ownership of (1) the Franchise, (2) the Franchisee, (3) the facility property, or (4) the name and address of the operator. For purposes of this subsection, the phrase "transfer control or ownership" shall be interpreted to include: (a) any transfer of the beneficial ownership or controlling interest of the Franchisee between the two partners that own the Franchisee, Oregon Recycling Systems, L.L.C., an Oregon limited liability company ("ORS"), and KCDK, L.L.C., a Washington limited liability corporation ("KCDK"), and (b) any transfer of ten percent (10%) or more of the beneficial ownership of ORS or KCDK.
9.10	Reports on innovative recovery	Not later than 30 days following the end of the twelfth month after the Franchisee begins accepting solid waste at the facility pursuant to this Franchise, the Franchisee shall



	methods	submit a report to the Metro Council detailing the innovative recovery methods that were implemented during the previous year of the facility's operations. Thereafter, the Franchisee shall submit a biennial report to the Metro Council, not later than 30 days following the end of each biennial period following the first year of operations, detailing the innovative recovery methods that were implemented during the previous two years of the facility's operations.
--	----------------	--

10.0	INSURANCE REQUIREMENTS	
10.1	Purpose	This section describes the types of insurance that the Franchisee shall purchase and maintain at the Franchisee's expense.
10.2	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.
10.3	Automobile	The Franchisee shall carry automobile bodily injury and property damage liability insurance.
10.4	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.
10.5	Additional insureds	Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSURED.
10.6	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 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. If Franchisee has no employees and will perform the work without the assistance of others, a certificate to that effect may be provided in lieu of the certificate showing current Workers' Compensation.
10.7	Notification	The Franchisee shall give at least 30 days prior written notice to the Director of the Metro Solid Waste & Recycling Department of any lapse or proposed cancellation of insurance coverage.



11.0	ENFORCEMENT	
11.1	Generally	Enforcement of this Franchise shall be as specified in Metro Code and this Section of the Franchise.
11.2	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.
11.3	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.

12.0	MODIFICATIONS AND TERMINATION	
12.1	Proposals to amend Franchise	At any time during the term of the Franchise, either the Chief Operating Officer or the Franchisee may propose amendments or modifications to this Franchise. Except as provided in Section 11.2, no amendment or modification shall be effective unless it is approved by the Metro Council.
12.2	Modification, suspension or revocation by Metro	The Chief Operating 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: <ol style="list-style-type: none"> 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. A significant change in the character of the material received or in the operation of the facility; f. Any change in ownership or control, excluding transfers



		<p>among subsidiaries of the Franchisee or Franchisee's parent corporation;</p> <p>g. A request from the local government stemming from impacts resulting from facility operations; and</p> <p>h. Compliance history of the Franchisee.</p>
--	--	---

13.0	GENERAL OBLIGATIONS	
13.1	Compliance with the 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. Such applicable laws, rules, regulations, ordinances, orders and permits include, without limitation, all laws, rules, regulations, ordinances, orders and permits adopted or made applicable during the term of this Franchise. 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.
13.2	Indemnification	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.
13.3	Deliver waste to appropriate destinations	The Franchisee shall ensure that processed materials transferred from the facility go to 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
13.4	Right of inspection and audit	Authorized representatives of Metro may take photographs, make notes, and perform such inspection or audit as the Chief Operating 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 upon giving reasonable



		<p>advance notice (not less than 24 hours). Metro inspection reports, including site photographs, are public records subject to disclosure under the Oregon Public Records Law. Subject to the confidentiality provisions of Section 13.5 of this Franchise, Metro's right to inspect shall include the right to review all information from which all required reports are derived including all books, records, maps, plans, income tax returns, financial statements, contracts, and other similar written materials of Franchisee that are directly related to the operation of the Facility.</p>
<p>13.5</p>	<p>Confidential information</p>	<p>Franchisee may identify as confidential any reports, books, records, maps, plans, income tax returns, financial statements, contracts and other similar written materials of the Franchisee that are directly related to the operation of the Facility and that are submitted to or reviewed by Metro. Franchisee shall prominently mark any information that it claims confidential with the mark "CONFIDENTIAL" prior to submittal to or review by Metro, including, without limitation, the information provided to Metro pursuant to sections 8.2 and 8.4 of this Franchise. Metro shall treat as confidential any information so marked and will make a good faith effort not to disclose such information unless Metro's refusal to disclose such information would be contrary to applicable Oregon law, including, without limitation, ORS Chapter 192. Within five (5) days of Metro's receipt of any request for disclosure of information identified by Franchisee as confidential, Metro shall provide Franchisee written notice of the request. Franchisee shall have three (3) days within which time to respond in writing to the request before Metro determines, at its sole discretion, whether to disclose any requested information. Franchisee shall pay any costs incurred by Metro as a result of Metro's efforts to remove or redact, at the specific request of the Franchisee, any confidential information from documents that Metro produces in response to a public records request. Nothing in this Section 12.5 shall limit the use of any information submitted to or reviewed by Metro for regulatory purposes or in any enforcement proceeding. In addition, Metro may share any confidential information with representatives of other governmental agencies provided that, consistent with Oregon law, such representatives agree to continue to treat such information as confidential and make good faith efforts not to disclose such information.</p>
<p>13.6</p>	<p>Compliance by agents</p>	<p>The Franchisee shall be responsible for ensuring that its agents and contractors operate in compliance with this Franchise.</p>

EXECUTIVE SUMMARY

Ordinance No. 05-1092

Ordinance No. 05-1092 for the purpose of granting the solid waste facility franchise application of Columbia Environmental, LLC to operate a local transfer station

Notwithstanding the recommendations of the Chief Operating Officer, the Metro Council finds that transfer station access, the use of innovative material recovery strategies, and increasing competition within the solid waste industry are the most important factors to consider to determine whether Columbia Environmental's franchise application to operate a local transfer station is consistent with the Regional Solid Waste Management Plan.

Metro Council's approval of Ordinance No. 05-1092 would approve the application submitted by Columbia Environmental for a solid waste facility franchise to operate a local transfer station. The Council's approval would authorize the Chief Operating Officer to issue Columbia Environmental a Solid Waste Facility Franchise (Exhibit A to the ordinance).

Franchise Conditions for Columbia Environmental

The following is a summary of the special conditions included in the Solid Waste Facility Franchise that would be issued to Columbia Environmental, LLC:

1. Tonnage authorization for wet waste set at 38,000 tons per year, consistent with the application submitted to Metro. (*See proposed Franchise section 5.2*)
2. Establish material recovery rates for both non-putrescible waste and putrescible waste consistent with Columbia Environmental's franchise application. (*See proposed Franchise section 4.6*)
3. Provide the Metro Council with a biennial report detailing the franchisee's innovative recovery activities implemented during the previous two years. (*See proposed Franchise section 9.10*)
4. Require that any change in ownership or control of Columbia Environmental be subject to Council approval. This is a standard franchise condition, but will be clarified to ensure that it also applies to changes in ownership or control of either of the two partners that own Columbia Environmental, LLC. (*See proposed Franchise section 9.9*)
5. Require payment to Metro of \$3 per ton of wet waste received by Columbia Environmental. (*See proposed Franchise section 8.6*)
6. Ensure the proposed facility and activities are consistent with the franchise application submitted to Metro and plans submitted to the DEQ. (*See proposed Franchise section 3.0*)

Other Actions for Council Consideration

Extend the Moratorium on Transfer Stations. Under two separate ordinances, amend the RSWMP (Ordinance No. 05-1094) and the Metro Code Chapter 5.01 (Ordinance No. 05-1093), to extend the existing moratorium on new transfer stations until the conclusion of Disposal System Planning and the RSWMP update (December 2007).