

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING THE ) ORDINANCE NO. 08-1191  
TRANSFER STATION FRANCHISE RENEWAL )  
APPLICATION OF WASTE MANAGEMENT OF )  
OREGON, INC. AUTHORIZING THE CHIEF ) Introduced by Michael J. Jordan, Chief  
OPERATING OFFICER TO ISSUE A RENEWED ) Operating Officer, with the concurrence of  
FRANCHISE FOR FOREST GROVE TRANSFER ) David Bragdon, Metro Council President  
STATION )

WHEREAS, Metro Code Section 5.01.045(b)(2) stipulates that a Metro Solid Waste Facility Franchise shall be required for the person owning or controlling a facility that operates a Transfer Station; and

WHEREAS, Waste Management of Oregon, Inc. operates Forest Grove Transfer Station and holds a Metro Solid Waste Facility Franchise Number FR-004, which will expire on December 31, 2008; and

WHEREAS, Waste Management of Oregon, Inc. filed a completed application seeking a renewal of its franchise pursuant to Metro Code Section 5.01.087(b); and

WHEREAS, the moratorium on applications for new transfer stations pursuant to Metro Code Section 5.01.060(e) does not apply to this renewal application; and

WHEREAS, Metro Code Section 5.01.087(b) stipulates that the Council shall approve or deny renewals of solid waste facility franchises, that the Chief Operating Officer shall formulate recommendations regarding whether the renewal meets the criteria in Metro Code Section 5.01.070, and that the Council shall approve renewal of a Solid Waste Facility Franchise unless the Council determines that the proposed renewal is not in the public interest or does not meet the criteria contained in Metro Code Section 5.01.070; and

WHEREAS, the Chief Operating Officer formulated recommendations on the criteria listed in Metro Code Section 5.01.070 as required by Metro Code Section 5.01.087(b); and

WHEREAS, the Chief Operating Officer recommends that the franchise be renewed together with specific conditions as provided in Exhibit A to this Ordinance entitled "Solid Waste Facility Franchise;" and

WHEREAS, the Metro Council finds that the proposed renewal is in the public interest and meets the criteria contained in Metro Code Section 5.01.070; and

WHEREAS, the Metro Council finds that the terms, conditions, and limitations contained in Exhibit A to this Ordinance are appropriate; now therefore,


THE METRO COUNCIL ORDAINS AS FOLLOWS:

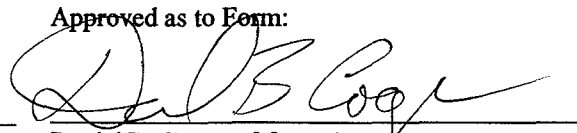
1. The transfer station renewal franchise application of Waste Management of Oregon, Inc. for Forest Grove Transfer Station is approved subject to the terms, conditions, and limitations contained in Exhibit A to this Ordinance entitled "Solid Waste Facility Franchise."

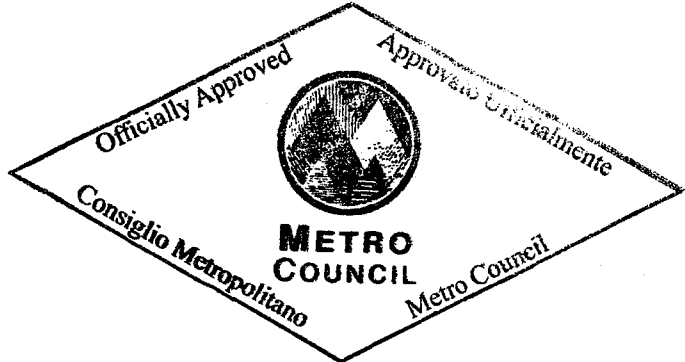
2. The Chief Operating Officer is authorized to issue to Waste Management of Oregon, Inc. a renewed Solid Waste Facility Franchise for Forest Grove Transfer Station substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this 25<sup>th</sup> day of September 2008.

  
David Bragdon, Council President

Attest:  
  
Christina Billington, Recording Secretary

Approved as to Form:  
  
Daniel B. Cooper, Metro Attorney



# Exhibit A to Ordinance No. 08-1191

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232-2736  
TEL 503-797-1650 | FAX 503-813-7544



**METRO**

## SOLID WASTE FACILITY FRANCHISE

### No. F-004-08

<b>FRANCHISEE:</b>	<b>FACILITY NAME AND LOCATION:</b>
Waste Management of Oregon, Inc. 7227 NE 55 <sup>th</sup> Avenue Portland, Oregon 97218 Tel. (503) 992-3015 Fax. (503) 357-4822	Forest Grove Transfer Station 1525 B Street Forest Grove, Oregon 97116 Tel. (503) 992-3015 Fax. (503) 357-4822
<b>OPERATOR:</b>	<b>PROPERTY OWNER:</b>
Waste Management of Oregon, Inc. 7227 NE 55 <sup>th</sup> Avenue Portland, Oregon 97218 Tel. (503) 992-3015 Fax. (503) 357-4822	Waste Management of Oregon, Inc. 7227 NE 55 <sup>th</sup> Avenue Portland, Oregon 97218 Tel. (503) 992-3015 Fax. (503) 357-4822

This franchise replaces and supersedes the provisions of Metro Solid Waste Facility Franchise No. FR-004. Metro grants this franchise to the Franchisee named above. The Franchisee is authorized to operate and maintain a solid waste facility and to accept the solid wastes and perform the activities authorized by and subject to the conditions stated in this franchise.

**ISSUED BY METRO:**

**FRANCHISEE'S  
ACKNOWLEDGEMENT OF RECEIPT:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature of Franchisee

\_\_\_\_\_  
Michael Jordan, Chief Operating Officer  
Print name and title

\_\_\_\_\_  
Print name and title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



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<b>1.0</b>	<b>ISSUANCE</b>	
<b>1.1</b>	<b>Franchisee</b>	Waste Management of Oregon, Inc. 7227 NE 55 <sup>th</sup> Avenue Portland, Oregon 97218 Tel. (503) 992-3015 Fax. (503) 357-4822
<b>1.2</b>	<b>Corporate affiliation</b>	Waste Management, Inc. 1001 Fannin, Suite 4000 Houston, Texas 77002
<b>1.3</b>	<b>Contact</b>	Steve Wolfe Phone: (503) 992-3015 Fax: (503) 357-4822 E-mail: <a href="mailto:swolfe2@wm.com">swolfe2@wm.com</a>
<b>1.4</b>	<b>Franchise number</b>	When referring to this franchise, please cite: Metro Solid Waste Facility Franchise No. F-004-08.
<b>1.5</b>	<b>Term</b>	The term commences on January 1, 2009, and shall terminate on December 31, 2013, unless amended, modified, suspended, or revoked under the provisions of Section 11.0 of this franchise.
<b>1.6</b>	<b>Renewal</b>	The Franchisee may apply for a franchise renewal as provided in Metro Code Section 5.01.087.
<b>1.7</b>	<b>Facility name and mailing address</b>	Forest Grove Transfer Station 1525 B Street Forest Grove, Oregon 97116 Tel. (503) 992-3015 Fax. (503) 357-4822
<b>1.8</b>	<b>Operator</b>	Waste Management of Oregon, Inc. 7227 NE 55 <sup>th</sup> Avenue Portland, Oregon 97218 Tel. (503) 992-3015 Fax. (503) 357-4822
<b>1.9</b>	<b>Facility premises description</b>	Tax Lot Identification No. 1S306BC09501, No. 1S306CB00500, and No. 1S306CB00600, City of Forest Grove, Washington County, State of Oregon



<b>1.10</b>	<b>Property owner</b>	Waste Management of Oregon, Inc. 7227 NE 55 <sup>th</sup> Avenue Portland, Oregon 97218 Tel. (503) 992-3015 Fax. (503) 357-4822
<b>1.11</b>	<b>Permission to operate</b>	The Franchisee is the property owner.

<b>2.0</b>	<b>CONDITIONS AND DISCLAIMERS</b>	
<b>2.1</b>	<b>Guarantees</b>	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.
<b>2.2</b>	<b>Non-exclusive franchise</b>	This franchise shall not in any way limit Metro from granting other solid waste franchises within Metro's boundaries.
<b>2.3</b>	<b>Property rights</b>	This franchise does not convey any property rights in either real or personal property.
<b>2.4</b>	<b>Amendment and modification</b>	Except as provided in Section 11.0 of this franchise, no amendment or modification shall be effective unless approved by the Metro Council.
<b>2.5</b>	<b>No recourse</b>	The Franchisee shall have no recourse whatsoever against Metro 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 Metro determines that the franchise or any part thereof is invalid.
<b>2.6</b>	<b>Indemnification</b>	The Franchisee shall indemnify Metro, the Council, the Chief Operating Officer (the "COO"), and any of their employees or agents and save them harmless from any and all loss, damage, claim, expense including attorney's fees, or liability related to or arising out of the granting of this franchise or the Franchisee's performance of or failure to perform any of its obligations under the Franchise or Metro Code Chapter 5.01, including without limitation patent infringement and any claims or disputes involving subcontractors.
<b>2.7</b>	<b>Binding nature</b>	This franchise is binding on the Franchisee. The Franchisee is liable for all acts and omissions of the Franchisee's contractors and agents.



<b>2.8</b>	<b>Waivers</b>	To be effective, a waiver of any terms or conditions of this franchise must conform with Section 11.0 and be in writing and signed by the COO.
<b>2.9</b>	<b>Effect of waiver</b>	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 any other term or condition.
<b>2.10</b>	<b>Choice of law</b>	The franchise shall be construed, applied, and enforced in accordance with the laws of the State of Oregon.
<b>2.11</b>	<b>Enforceability</b>	If a court of competent jurisdiction determines that any provision of this franchise is invalid, illegal or unenforceable in any respect, the validity of the remaining provisions contained in this franchise shall not be affected.
<b>2.12</b>	<b>Franchise not a waiver</b>	This franchise does not relieve any owner, operator, or the Franchisee from the obligation to obtain all required permits, franchises, or other clearances and to comply with all orders, laws, regulations, reports or other requirements of other regulatory agencies.
<b>2.13</b>	<b>Franchise not limiting</b>	This franchise does not limit the power of a federal, state, or local agency to enforce any provision of law relating to the facility.
<b>2.14</b>	<b>Definitions</b>	Unless otherwise specified, all other terms are as defined in Metro Code Chapter 5.01.

<b>3.0</b>	<b>AUTHORIZATIONS</b>	
<b>3.1</b>	<b>Purpose</b>	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.
<b>3.2</b>	<b>General conditions on solid waste</b>	The Franchisee is authorized to accept at the facility only the solid wastes described in Section 3.0 of this franchise. The Franchisee is prohibited from knowingly receiving any solid waste not authorized in this section.
<b>3.3</b>	<b>General conditions on activities</b>	The Franchisee is authorized to perform at the facility only those waste-related activities that are described in Section 3.0 of this franchise.



<b>3.4</b>	<b>Acceptance and management of putrescible solid waste</b>	<ol style="list-style-type: none"><li>1. The Franchisee is authorized to accept putrescible waste for reload and transfer to an appropriate destination as provided in Section 12.2 of this franchise. The Franchisee also is authorized to accept putrescible waste for material recovery.</li><li>2. The Franchisee shall receive, manage, store, reload, and transfer all putrescible waste on an impervious surface, for example asphalt or concrete, and inside a roofed building that is enclosed on at least three sides or alternatively, inside watertight covered or tarped containers or within covered or tarped transport trailers. Public self-haul customers may tip waste outside, provided that such waste is tipped directly into watertight containers that are covered or tarped within 12 hours of receipt, or by the end of the business day, whichever is earlier.</li></ol>
<b>3.5</b>	<b>Acceptance and management of mixed non-putrescible solid waste for reloading</b>	<ol style="list-style-type: none"><li>1. The Franchisee is authorized to accept loads of mixed non-putrescible solid waste for reload and transfer to a facility authorized by Metro to perform material recovery.</li><li>2. Except as provided below in Subsections (a) and (b), the Franchisee shall receive, sort, store, reload, and transfer all mixed non-putrescible solid waste on an impervious surface, for example asphalt or concrete, and inside a roofed building that is enclosed on at least three sides.<ol style="list-style-type: none"><li>a. Unusually large vehicles, for example 30-foot tippers, may tip wastes outside, provided the tipped wastes are moved under cover prior to processing, within 12 hours of receipt, or by the end of the business day, whichever is earlier.</li><li>b. Public self-haul customers may tip waste outside, provided that such waste is tipped directly into watertight containers that are covered or tarped within 12 hours of receipt, or by the end of the business day, whichever is earlier.</li></ol></li><li>3. The Franchisee shall reload and remove all mixed non-putrescible waste from the site within 48 hours of receipt.</li></ol>
<b>3.6</b>	<b>Origin of solid waste</b>	The Franchisee shall accept authorized solid waste generated within the Metro boundary from any person who delivers such waste to the facility.
<b>3.7</b>	<b>Household hazardous waste collection</b>	The Franchisee shall provide opportunities for Metro to hold household hazardous waste collection events on-site at regular intervals and shall set aside a suitable area for that





		purpose.
<b>3.8</b>	<b>Acceptance of source-separated recyclable materials</b>	<p>1. The Franchisee shall provide an area for collecting source-separated recyclable materials without charge at the facility premises, or at another location more convenient to the population being served by the facility, on the days and at the times that the facility is normally open to the public for disposal of solid waste. For purposes of this Section 3.8, said source-separated recyclable materials shall include newspaper, ferrous scrap metal, non-ferrous scrap metal, used motor oil, corrugated cardboard and kraft paper, aluminum, container glass, high grade office paper, tin cans, and any other material that is added by the COO based on a change to Oregon Administrative Rules Section 340-090-0070(1) subsequent to the effective date of this franchise.</p> <p>2. The Franchisee is authorized to accept source-separated recyclable materials for the purpose of sorting, classifying, consolidating, baling, temporary storage, transfer and other similar functions related to preparing these materials for reuse or recycling.</p>
<b>3.9</b>	<b>Acceptance of yard debris</b>	<p>The Franchisee is authorized to accept source-separated yard debris that has not reached a state of decomposition sufficient to produce malodors detectable beyond the boundaries of the facility. The Franchisee may accept yard debris for grinding and reloading to authorized facilities for composting, use as hogged fuel, or other useful purposes as described in an operating plan and approved in writing by the COO.</p>
<b>3.10</b>	<b>Acceptance of source-separated food waste</b>	<p>The Franchisee is authorized to accept source-separated food waste that has not reached a state of decomposition sufficient to produce malodors detectable beyond the boundaries of the facility. The Franchisee may accept source-separated food waste only for reloading to authorized facilities for composting or other useful purposes as described in an operating plan and approved in writing by the COO.</p>
<b>3.11</b>	<b>Acceptance of untreated wood</b>	<p>The Franchisee is authorized to accept for processing and reloading, source-separated, untreated and unpainted wood waste, for example untreated lumber and wood pallets. The Franchisee may accept clean wood waste for grinding and reloading to authorized facilities for composting, use in paper production, use as hogged fuel, or other useful purposes as described in an operating plan and approved in writing by the COO.</p>



3.12	<b>Acceptance of painted and treated wood</b>	The Franchisee is authorized to accept painted and treated wood waste for grinding and reloading to authorized facilities for use as hogged fuel or other useful purposes as described in an operating plan and approved in writing by the COO. The Franchisee shall not use or incorporate painted or treated wood into mulch, animal bedding, compost feedstock, or any other product unless otherwise described in an operating plan and approved in writing by the COO.
3.13	<b>Acceptance of electronics devices</b>	The Franchisee is authorized to accept source-separated electronic devices for the purpose of sorting, classifying, consolidating, baling, temporary storage, transfer, and other similar functions related to preparing these materials for reuse, recycling, or disposal as required by the Oregon Department of Environmental Quality (DEQ).
3.14	<b>Acceptance of inert material</b>	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.

<b>4.0</b>	<b>LIMITATIONS AND PROHIBITIONS</b>	
4.1	<b>Purpose</b>	This section of the franchise describes limitations and prohibitions on the wastes handled at the facility and activities performed at the facility.
4.2	<b>Tonnage authorization</b>	This franchise does not limit the amount of solid waste that the Franchisee may accept.
4.3	<b>Prohibited waste</b>	The Franchisee shall not knowingly receive, process, reload, or dispose of any solid waste not authorized by this franchise. The Franchisee shall not knowingly accept or retain any material amounts of the following types of waste: materials contaminated with or containing friable asbestos; lead acid batteries; liquid waste for disposal; vehicles; infectious, biological or pathological waste; radioactive waste; regulated hazardous waste; or any waste prohibited by the DEQ.
4.4	<b>Prohibition on mixing</b>	<ol style="list-style-type: none"> <li>1. The Franchisee shall not mix or commingle any source-separated recyclable materials, source-separated yard debris or wood wastes brought to the facility with any unprocessed solid wastes or solid wastes destined for disposal.</li> <li>2. The Franchisee shall not mix or commingle putrescible solid</li> </ol>



		<p>waste with non-putrescible solid waste or source-separated recyclable materials, including without limitation wood waste and yard debris.</p> <p>3. The Franchisee shall not mix or commingle non-putrescible solid waste with putrescible solid waste or source-separated recyclable materials, including without limitation wood waste and yard debris.</p>
4.5	<b>Prohibition of size reduction on non-putrescible waste</b>	The Franchisee shall not crush, grind or otherwise reduce the size of non-putrescible waste except when such size reduction constitutes a specific step in the facility's material recovery operations, reload operations, or processing residual consolidation or loading operations, and such size reduction is described and approved by the COO in an operating plan.
4.6	<b>No disposal of recyclable materials</b>	The Franchisee shall not transfer source-separated recyclable materials to a disposal site, including without limitation landfills and incineration facilities.
4.7	<b>Composting prohibited</b>	The Franchisee shall not keep yard debris on site long enough for more than negligible biological decomposition to begin.
4.8	<b>Limits not exclusive</b>	This franchise shall not 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.

<b>5.0</b>	<b>OPERATING CONDITIONS</b>	
5.1	<b>Purpose and general performance goals</b>	<p>This section of the franchise describes criteria and standards for the operation of the facility. The Franchisee shall operate in a manner that meets the following general performance goals:</p> <ul style="list-style-type: none"> <li>a) Environment. The Franchisee shall design and operate the facility to preclude the creation of undue threats to the environment including, but not limited to, stormwater or groundwater contamination, air pollution, and improper acceptance and management of hazardous waste, asbestos and other prohibited wastes.</li> <li>b) Health and safety. The Franchisee shall design and operate the facility to preclude the creation of conditions that may degrade public health and safety</li> </ul>



		<p>including, but not limited to, fires, vectors, pathogens and airborne debris.</p> <p>c) Nuisances. The Franchisee shall design and operate the facility to preclude the creation of nuisance conditions including, but not limited to, litter, dust, odors, and noise.</p>
<b>5.2</b>	<b>Qualified operator</b>	<ol style="list-style-type: none"><li>1. Except as described in an operating plan and approved in writing by the COO, the Franchisee shall, during all hours of operation, provide an operating staff employed by the facility and qualified and competent to carry out the functions required by this franchise and to otherwise ensure compliance with Metro Code Chapter 5.01.</li><li>2. Facility personnel, as relevant to their job duties and responsibilities, shall be familiar with the relevant provisions of this franchise and the relevant procedures contained within the facility's operating plan.</li><li>3. A qualified operator must be an employee of the facility with training and authority to reject prohibited waste that is discovered during load checks and to properly manage prohibited waste that is unknowingly received.</li></ol>
<b>5.3</b>	<b>Fire prevention</b>	<p>The Franchisee 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 processing and storage areas.</p>
<b>5.4</b>	<b>Adequate vehicle accommodation</b>	<p>The Franchisee shall:</p> <ol style="list-style-type: none"><li>a) Provide access roads of sufficient capacity to adequately accommodate all on-site vehicular traffic. Access roads shall be maintained to allow the orderly egress and ingress of vehicular traffic when the facility is in operation, including during inclement weather.</li><li>b) Take reasonable steps to notify and remind persons delivering solid waste to the facility that vehicles shall not park or queue on public streets or roads except under emergency conditions or as provided by local traffic ordinances.</li><li>c) Post signs to inform customers not to queue on public roadways.</li><li>d) Provide adequate off-street parking and queuing for vehicles, including adequate space for on-site tarping and untarping of loads.</li></ol>



<b>5.5</b>	<b>Managing prohibited wastes</b>	<ol style="list-style-type: none"><li>1. The Franchisee shall reject prohibited waste upon discovery and shall properly manage and dispose of prohibited waste when unknowingly received.</li><li>2. The Franchisee shall implement a load-checking program to prevent the acceptance of waste that is prohibited by the franchise. This program must include at a minimum:<ol style="list-style-type: none"><li>a) Visual inspection. As each load is tipped, a qualified operator shall visibly inspect the load to prevent the acceptance of waste that is prohibited by the franchise.</li><li>b) Containment area. A secured or isolated containment area for the storage of prohibited wastes that are unknowingly received. Containment areas shall be covered and enclosed to prevent leaking and contamination.</li><li>c) Record maintenance. Records of the training of personnel in the recognition, proper handling, and disposition of prohibited waste shall be maintained in the operating record and be available for review by Metro.</li></ol></li><li>3. Upon discovery, the Franchisee shall remove all prohibited or unauthorized wastes or manage the waste in accordance with DEQ requirements and procedures established in the operating plan. All such wastes the Franchisee unknowingly receives shall be removed from the site and transported to an appropriate destination within 90 days of receipt, unless required to be removed earlier by the DEQ or local government.</li></ol>
<b>5.6</b>	<b>Storage and exterior stockpiles</b>	<p>The Franchisee shall:</p> <ol style="list-style-type: none"><li>a) Manage, contain, and remove at sufficient frequency stored materials and solid wastes to avoid creating nuisance conditions, vector or bird attraction or harborage, or safety hazards;</li><li>b) Maintain storage areas in an orderly manner and keep the areas free of litter;</li><li>c) Position exterior stockpiles within footprints identified on the facility site plan or operating plan; and</li><li>d) Not stockpile recovered or source-separated materials for longer than 180 days (6 months).</li></ol>
<b>5.7</b>	<b>Dust, airborne debris and litter</b>	<p>The Franchisee shall operate the facility in a manner that minimizes and mitigates the generation of dust, airborne debris and litter, and shall prevent its migration beyond</p>



		<p>property boundaries. The Franchisee shall:</p> <ul style="list-style-type: none"><li>a) Take reasonable steps, including signage, 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;</li><li>b) 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;</li><li>c) Maintain and operate all access roads and receiving, processing, storage, and reload areas in such a manner as to minimize dust and debris generated on-site and prevent such dust and debris from blowing or settling off-site;</li><li>d) Keep all areas within the site and all vehicle access roads within ¼ mile of the site free of litter and debris generated directly or indirectly as a result of the facility's operation;</li><li>e) Maintain on-site facility access roads to prevent or control dust and to prevent or control the tracking of mud off-site; and</li><li>f) Provide access to the facility for the purpose of uncovered load enforcement. During all times that solid waste or recyclable materials are being accepted, authorized representatives of Metro, including law enforcement personnel on contract to Metro, shall be permitted access to the premises of the facility for the purpose of making contact with individuals they have observed transporting uncovered loads of solid waste or recyclable materials on a public road right-of-way in violation of Section 5.09.040 of the Metro Code.</li></ul>
<b>5.8</b>	<b>Odor</b>	<ol style="list-style-type: none"><li>1. The Franchisee shall operate the facility in a manner that prevents the generation of odors that are detectable off-site.</li><li>2. The Franchisee shall establish and follow procedures in the operating plan for minimizing odor at the facility.</li></ol>
<b>5.9</b>	<b>Vectors (e.g. birds, rodents, insects)</b>	<ol style="list-style-type: none"><li>1. The Franchisee shall operate the facility in a manner that is not conducive to the harborage of rodents, birds, insects, or other vectors capable of transmitting, directly or indirectly, infectious diseases to humans or from one person or animal to another.</li><li>2. If vectors are present or detected at the facility, the Franchisee shall implement vector control measures.</li></ol>



<b>5.10</b>	<b>Noise</b>	The Franchisee shall operate the facility in a manner that prevents the creation of noise sufficient to cause adverse off-site impacts and to the extent necessary to meet applicable regulatory standards and land-use regulations.
<b>5.11</b>	<b>Water contaminated by solid waste and solid waste leachate</b>	The Franchisee shall operate the facility consistent with an approved DEQ stormwater management plan or equivalent and shall: <ul style="list-style-type: none"><li>a) Operate and maintain the facility to prevent contact of solid wastes with storm water runoff and precipitation; and</li><li>b) Dispose of or treat water contaminated by solid waste generated on-site in a manner complying with local, state, and federal laws and regulations.</li></ul>
<b>5.12</b>	<b>Access control</b>	<ol style="list-style-type: none"><li>1. The Franchisee shall control access to the facility as necessary to prevent unauthorized entry and dumping.</li><li>2. The Franchisee shall maintain a gate or other suitable barrier at potential vehicular access points to prevent unauthorized access to the site when an attendant is not on duty.</li></ol>
<b>5.13</b>	<b>Signage</b>	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, and legible from off-site during all hours and shall contain at least the following information: <ul style="list-style-type: none"><li>a) Name of the facility;</li><li>b) Address of the facility;</li><li>c) Emergency telephone number for the facility;</li><li>d) Operating hours during which the facility is open for the receipt of authorized waste;</li><li>e) Fees and charges;</li><li>f) Metro's name and telephone number (503) 234-3000;</li><li>g) A list of authorized and prohibited wastes;</li><li>h) Vehicle / traffic flow information or diagram;</li><li>i) Covered load requirements; and</li><li>j) Directions not to queue on public roadways.</li></ul>
<b>5.14</b>	<b>Nuisance complaints</b>	<ol style="list-style-type: none"><li>1. The Franchisee shall respond to all nuisance complaints in timely manner (including, but not limited to, blowing debris, fugitive dust or odors, noise, traffic, and vectors), and shall</li></ol>



		<p>keep a record of such complaints and any action taken to respond to the complaints, including actions to remedy the conditions that caused the complaint.</p> <p>2. If the facility receives a complaint, the 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 by the operating plan. Each log entry shall be retained for one year and shall be available for inspection by Metro.</p>
<b>5.15</b>	<b>Operating hours</b>	<p>Metro may reasonably regulate the hours of facility operation as it finds necessary to ensure compliance with this franchise. Metro shall exercise best efforts to provide 90 days written notice prior to regulating hours of operation and shall not unreasonably increase the Franchisee's costs of operation of the facility.</p>
<b>5.16</b>	<b>Access to franchise document</b>	<p>The Franchisee shall maintain a copy of this franchise on the facility's premises, and in a location where facility personnel and Metro representatives have ready access to it.</p>

<b>6.0</b>	<b>OPERATING PLAN</b>	
<b>6.1</b>	<b>Purpose</b>	<p>This section lists the requirements associated with preparing and implementing a facility operating plan, and lists the procedures that must be included in the required facility operating plan.</p>
<b>6.2</b>	<b>Plan compliance</b>	<p>The Franchisee must operate the facility in accordance with an operating plan approved in writing by the COO. The operating plan must include sufficient detail to demonstrate that the facility will be operated in compliance with this franchise. The Franchisee may amend or revise the operating plan from time to time, subject to written approval by the COO.</p>
<b>6.3</b>	<b>Plan maintenance</b>	<p>The Franchisee shall submit an updated operating plan to the COO by February 2, 2009 as provided in Section 6.0 of this franchise. The Franchisee must revise the operating plan as necessary to keep it current with facility conditions, procedures, and requirements. The Franchisee must submit amendments and revisions of the operating plan to the COO for written approval prior to implementation.</p>





<b>6.4</b>	<b>Access to operating plan</b>	The Franchisee shall maintain a copy of the operating plan on the facility premises and in a location where facility personnel and Metro representatives have ready access to it.
<b>6.5</b>	<b>Procedures for inspecting loads</b>	The operating plan shall establish: <ul style="list-style-type: none"><li>a) Procedures for inspecting incoming loads for the presence of prohibited or unauthorized wastes;</li><li>b) Procedures for identifying incoming and outgoing loads for waste classifications;</li><li>c) A set of objective criteria for accepting and rejecting loads;</li><li>d) Procedures for providing reasonable notice and justification prior to refusing service to any customer of the facility; and</li><li>e) An asbestos testing protocol for all materials that appear to contain friable asbestos.</li></ul>
<b>6.6</b>	<b>Procedures for processing and storage of loads</b>	The operating plan shall establish procedures for: <ul style="list-style-type: none"><li>a) Processing authorized solid wastes;</li><li>b) Reloading and transfer of authorized solid wastes;</li><li>c) Managing stockpiles to ensure that they remain within the authorized weights, volumes and pile heights;</li><li>d) Storing authorized solid wastes; and</li><li>e) Minimizing storage times and avoiding delay in processing of authorized solid wastes.</li></ul>
<b>6.7</b>	<b>Procedures for managing prohibited wastes</b>	The operating plan shall establish procedures for managing, reloading, and transferring 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.
<b>6.8</b>	<b>Procedures for odor prevention</b>	The operating plan shall establish procedures for preventing objectionable odors generated at the facility from being detected off the premises of the facility. The plan must include: <ul style="list-style-type: none"><li>a) A management plan that will be used to monitor and manage odors of any derivation including malodorous loads delivered to the facility; and</li><li>b) Procedures for receiving and recording odor complaints, immediately investigating all odor</li></ul>



		complaints to determine the cause of odor emissions, and remedying promptly all odor problems at the facility.
<b>6.9</b>	<b>Procedures for dust prevention</b>	<p>The operating plan shall establish procedures for preventing dust from blowing off the premises of the facility. The plan must include:</p> <ul style="list-style-type: none"><li>a) A management plan that will be used to monitor and manage dust of any derivation; and</li><li>b) Procedures for receiving and recording dust complaints, immediately investigating all dust complaints to determine the cause of dust emissions, and remedying promptly all dust problems at the facility.</li></ul>
<b>6.10</b>	<b>Procedures for emergencies</b>	<p>The operating plan shall establish procedures to be followed in case of fire or other emergency.</p>
<b>6.11</b>	<b>Procedures for nuisance complaints</b>	<ul style="list-style-type: none"><li>1. For every nuisance complaint (for example odor, dust, vibrations, and litter) received, the Franchisee shall record:<ul style="list-style-type: none"><li>a) The nature of the complaint;</li><li>b) The date the complaint was received;</li><li>c) The name, address and telephone number of the person or persons making the complaint; and</li><li>d) Any actions taken by the operator in response to the complaint (whether successful or unsuccessful).</li></ul></li><li>2. The Franchisee shall make records of such information available to Metro upon request. The Franchisee shall retain each complaint record for a period of not less than one year.</li></ul>
<b>6.12</b>	<b>Closure protocol</b>	<p>The Franchisee shall establish protocol for closure and restoration of the site in the event of a cession of operations as provided in Metro Code Section 5.01.060(c)(3). The plan shall establish protocol for:</p> <ul style="list-style-type: none"><li>a) Short-term closure (duration of time that is more than two consecutive business days but less than 120 days in length); and</li><li>b) Long-term closure (duration of time that is 120 consecutive days or more in length).</li></ul>



6.13	<b>Financial assurance</b>	The Franchisee shall maintain financial assurance in the amount of \$100,000 for the cost of the facility's closure and maintain such financial assurance in a form approved by Metro for the term of this franchise.
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<b>7.0</b>	<b>FEES AND RATE SETTING</b>	
7.1	<b>Purpose</b>	This section of the franchise specifies fees payable by the Franchisee, and describes rate regulation by Metro.
7.2	<b>Annual fee</b>	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	<b>Rates</b>	<p>The rates charged to customers of the Franchisee for the acceptance of solid waste (including without limitation tip fees, acceptance fees, processing fees, transaction fees and environmental charges) are not subject to regulation by Metro; unless, pursuant to Section 11.1 or 11.2 of this franchise, the Council adopts an ordinance that:</p> <ul style="list-style-type: none"> <li>a) Extends Metro's rate regulation authority over the class of facilities of which this Franchisee is a member; and</li> <li>b) Amends this franchise to implement the regulations and process specified by said ordinance.</li> </ul>
7.4	<b>Access to financial records</b>	If during the term of this franchise, the Metro Council directs a review of the Franchisee's financial records that exceeds, or is not covered by, the requirements set forth in Section 12.3 of this franchise, then the Franchisee shall provide access for an independent auditor or financial analyst to these financial records, and access to said financial records shall not be unreasonably withheld.
7.5	<b>Metro fee and tax imposed on waste received</b>	The Franchisee shall collect and remit to Metro the Regional System Fee, as provided in Metro Code Title V, and the Excise Tax, as provided in Metro Code Title VII, on all solid wastes it receives.

<b>8.0</b>	<b>RECORD KEEPING AND REPORTING</b>	
8.1	<b>Purpose</b>	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.
<b>8.2</b>	<b>Reporting requirements</b>	<ol style="list-style-type: none"><li>1. For all solid waste and materials the Franchisee is authorized to receive under Section 3.0 of this franchise, the Franchisee shall keep and maintain accurate records of the amount of such materials the Franchisee receives, recovers, recycles, reloads, and disposes.</li><li>2. The Franchisee shall keep and maintain complete and accurate records of the following for all transactions:<ol style="list-style-type: none"><li>a) Ticket Number (should be the same as the ticket number on the weight slips);</li><li>b) Customer account numbers identifying incoming customers and outgoing destinations;</li><li>c) Description whether the load was incoming to the facility or outgoing from the facility;</li><li>d) Material Category: 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 non-putrescible waste; (3) incoming putrescible waste (4) outgoing recyclable materials by type; (5) outgoing non-putrescible waste; (6) outgoing putrescible waste;</li><li>e) Origin: Code designating the following origin of material: (1) from inside Metro boundaries; (2) from within Multnomah, Clackamas and Washington Counties but outside Metro boundaries; and (3) from another location outside Metro boundaries:<ol style="list-style-type: none"><li>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.</li><li>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 as described above in Subsections (e)(2) and (e)(3).</li></ol></li><li>f) Date the load was received at, transferred within, or transmitted from the facility;</li><li>g) Time the load was received at, transferred within, or transmitted from the facility;</li><li>h) Indicate whether Franchisee accepted or rejected the load;</li></ol></li></ol>



		<ul style="list-style-type: none"><li>i) Net weight of the load; and</li><li>j) The fee charged to the generator of the load.</li></ul>
8.3	<b>Record transmittals</b>	Franchisee shall transmit to Metro records required under Section 8.0 and the corresponding summary report derived from such records no later than fifteen days following the end of each month in a format prescribed by Metro.
8.4	<b>Account number listing</b>	Within five business days of Metro's request, Franchisee shall provide Metro with a listing that cross-references the account numbers used in the transaction database with the company's name and address.
8.5	<b>Transactions based on scale weights</b>	Except for minimum fee transactions for small, lightweight loads, the Franchisee shall record each inbound and outbound transaction electronically based on actual and accurate scale weights using the Franchisee's on-site scales.
8.6	<b>DEQ submittals</b>	The 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.
8.7	<b>Copies of enforcement actions provided to Metro</b>	The Franchisee shall ensure Metro receives copies of any notice of violation or noncompliance, 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.
8.8	<b>Unusual occurrences</b>	<ol style="list-style-type: none"><li>1. 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.</li><li>2. If a breakdown of the Franchisee's equipment occurs that will substantially impact the ability of the facility to remain in compliance, or create off-site impacts, the Franchisee shall notify Metro within 24 hours.</li><li>3. The Franchisee shall report any facility fires, accidents, emergencies, and other significant incidents to Metro within 12 hours of the discovery of their occurrence.</li><li>4. The Franchisee shall give at least 24-hour notice to the COO prior to the short-term closure of the facility. The Franchisee shall comply with the closure protocol provided</li></ol>



		<p>in Section 6.12 of this franchise.</p> <p>5. The Franchisee shall give at least 90 days written notice to the COO prior to the long-term closure of the facility. The Franchisee shall comply with the closure protocol provided in Section 6.12 of this franchise.</p>
<b>8.9</b>	<b>Changes in ownership</b>	<p>1. Any change in control of Franchisee or the transfer of a controlling interest of Franchisee shall require prior written notice to Metro. "Transfer of a controlling interest of Franchisee" includes without limitation the transfer of 10% or more of the ownership of Franchisee to or from a single entity. Metro may modify this franchise under Section 11.3 to require the new ownership of Franchisee to assume all the rights and obligations of this franchise.</p> <p>2. The Franchisee may not lease, assign, mortgage, sell, or otherwise transfer control of the franchise unless the Franchisee follows the requirements of Metro Code Section 5.01.090.</p>

<b>9.0</b>	<b>INSURANCE REQUIREMENTS</b>	
<b>9.1</b>	<b>Purpose</b>	This 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.
<b>9.2</b>	<b>General liability</b>	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.
<b>9.3</b>	<b>Automobile</b>	The Franchisee shall carry automobile bodily injury and property damage liability insurance.
<b>9.4</b>	<b>Coverage</b>	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.
<b>9.5</b>	<b>Additional insureds</b>	Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSUREDS.
<b>9.6</b>	<b>Worker's Compensation Insurance</b>	The Franchisee, its subcontractors, if any, and all employers working under this franchise, is 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. The



		Franchisee shall provide Metro with certification of Workers' Compensation insurance including employer's liability. If the 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.
<b>9.7</b>	<b>Notification</b>	The Franchisee shall give at least 30 days written notice to the COO of any lapse or proposed cancellation of insurance coverage.

<b>10.0</b>	<b>ENFORCEMENT</b>	
<b>10.1</b>	<b>Generally</b>	Enforcement of this franchise shall be as specified in Metro Code Chapter 5.01.
<b>10.2</b>	<b>Authority vested in Metro</b>	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.
<b>10.3</b>	<b>No enforcement limitations</b>	This franchise shall not 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.
<b>10.4</b>	<b>Penalties</b>	Each violation of a franchise condition shall be punishable by penalties as established in Metro Code Chapter 5.01. Each day a violation continues constitutes a separate violation.

<b>11.0</b>	<b>AMENDMENT, MODIFICATION, SUSPENSION, AND REVOCATION</b>	
<b>11.1</b>	<b>Amendment by agreement</b>	At any time during the term of the franchise, either the COO or the Franchisee may propose amendments to this franchise. If either the COO or the Franchisee proposes amendments to this franchise, both parties shall make good faith efforts to arrive at consensus on the intent and implementing language



		of said amendments.
<b>11.2</b>	<b>Amendment by Metro Council action</b>	<p>Except as provided in Section 11.3, the provisions of this franchise shall remain in effect unless the Metro Council:</p> <ul style="list-style-type: none"> <li>a) Amends the Metro Code, amends the Regional Solid Waste Management Plan, or implements other legislation of broad applicability that affects the class of facilities of which this Franchisee is a member; and</li> <li>b) Adopts an ordinance amending this franchise to implement the policy, code or process specified by said ordinance.</li> </ul> <p>If, in the course of considering an ordinance amending this franchise as provided in (b) above, the Franchisee provides evidence that the amendment will result in significant capital cost to the Franchisee, the Metro Council will include capital cost and the ability of the Franchisee to achieve a reasonable rate of return on any additional investment required as factors when considering whether to adopt the ordinance.</p>
<b>11.3</b>	<b>Modification, suspension or revocation by Metro for cause</b>	<p>The COO 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:</p> <ul style="list-style-type: none"> <li>a) Violation of the terms or conditions of this franchise, Metro Code, or any applicable statute, rule, or standard;</li> <li>b) Changes in local, regional, state, or federal laws or regulations that should be specifically incorporated into this franchise;</li> <li>c) Failure to disclose fully all relevant facts;</li> <li>d) A significant release into the environment from the facility;</li> <li>e) Significant change in the character of solid waste received or in the operation of the facility;</li> <li>f) Any change in ownership or control;</li> <li>g) A request from the local government stemming from impacts resulting from facility operations; and</li> <li>h) Compliance history of the Franchisee.</li> </ul>

<b>12.0</b>	<b>GENERAL OBLIGATIONS</b>	
<b>12.1</b>	<b>Compliance with law</b>	The Franchisee shall fully comply with all applicable local, regional, state and federal laws, rules, regulations,





		<p>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.</p>
<b>12.2</b>	<b>Deliver waste to appropriate destinations</b>	<p>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.</p>
<b>12.3</b>	<b>Right of inspection and audit</b>	<p>Authorized representatives of Metro may take photographs, collect samples of materials, and perform such inspection or audit as the COO 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 advance notice (not less than 24 hours). Metro inspection reports, including site photographs, are public records subject to disclosure under Oregon Public Records Law. Subject to the confidentiality provisions in Section 12.4 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, 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>
<b>12.4</b>	<b>Confidential information</b>	<p>The 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. The Franchisee shall prominently mark any information that it claims confidential with the mark "CONFIDENTIAL" prior to submittal to or review by Metro. 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</p>



		<p>Chapter 192. Within five (5) days of Metro's receipt of a request for disclosure of information identified by Franchisee as confidential, Metro shall provide Franchisee written notice of the request. The 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. The Franchisee shall pay any costs incurred by Metro as a result of Metro's efforts to remove or redact any such confidential information from documents that Metro produces in response to a public records request. This Section 12.0 shall not 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>
<b>12.5</b>	<b>Compliance by agents</b>	<p>The Franchisee shall be responsible for ensuring that its agents and contractors operate in compliance with this franchise.</p>

## STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 08-1191 FOR THE PURPOSE OF APPROVING THE TRANSFER STATION FRANCHISE RENEWAL APPLICATION OF WASTE MANAGEMENT OF OREGON, INC. AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED FRANCHISE FOR FOREST GROVE TRANSFER STATION

August 29, 2008

Prepared by: Warren Johnson

## BACKGROUND

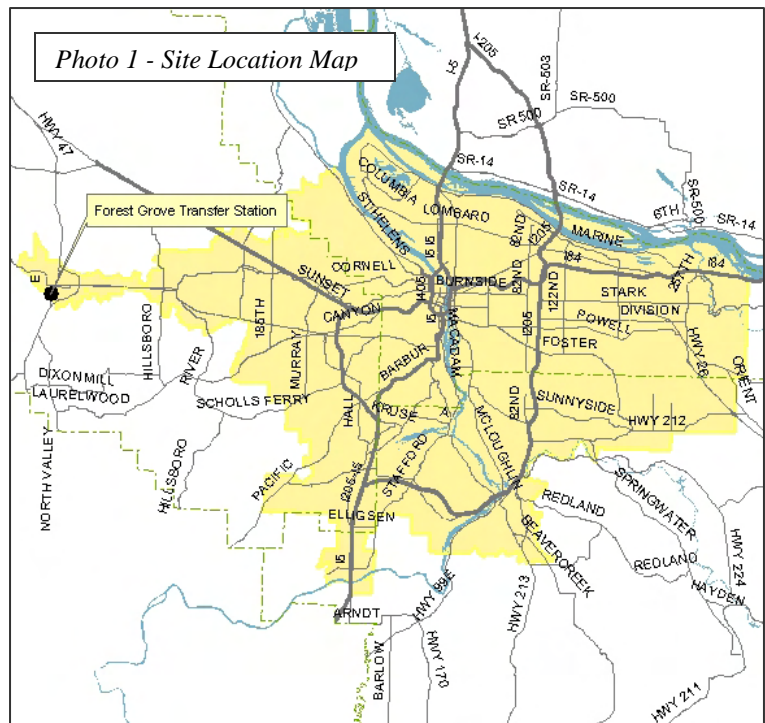
On August 7, 2008, Waste Management of Oregon, Inc. (WMO), dba Forest Grove Transfer Station (FGTS), submitted to Metro a solid waste facility franchise renewal application pursuant to Metro Code Section 5.01.087(b). The Metro Code specifies that the Council shall approve the renewal of a Solid Waste Facility Franchise unless it determines that the proposed renewal is not in the public interest or does not meet the criteria contained in Section 5.01.070. Metro Code Section 5.01.087(b) requires that the Chief Operating Officer formulate recommendations regarding whether the proposed renewal meets the issuance criteria provided in Section 5.01.070.

Approval of Ordinance No. 08-1191 will authorize the Chief Operating Officer to issue a renewed regional transfer station franchise to FGTS for a term of five years.

## THE APPLICANT

The applicant, WMO, is the owner and operator of FGTS, an existing solid waste facility located at 1525 B Street, in Forest Grove (Metro Council District 4). The FGTS is the only privately owned and operated regional transfer station located within the Metro region. The facility commenced operation and obtained its first Metro franchise in 1985.

On December 31, 1997, Metro issued Solid Waste Facility Franchise No. FR-004 to USA Waste of Oregon, Inc. (USA Waste), dba Metropolitan Disposal and Recycling Corporation. In July 1998, USA Waste merged with WMO. The applicant has been the owner and operator of the facility since that time.



The facility currently holds a Metro-issued franchise (No. FR-004) to operate a regional transfer station authorized to receive solid waste and accept source-separated recyclable materials. Due to spatial constraints within its operations building, the facility does not perform material recovery on waste. In addition, as a regional transfer station, the existing franchise (No. FR-004) does not limit the amount of waste that the facility is authorized to receive.



The term of the existing franchise (No. FR-004) was initially set for a five-year period (ending December 31, 2002) with an automatic extension for an additional five-year period (ending on December 31, 2007) unless there were significant compliance issues. On August 16, 2007, the Metro Council adopted Ordinance No. 07-1159 authorizing the Chief Operating Officer to extend the term of the franchise by one additional year to expire on December 31, 2008. The purpose of the one-year term extension was to align the expiration date of this franchise with that of three local transfer station franchises that are set to expire on December 31, 2008. Coordinating these expiration dates was intended to allow the Metro Council to consider and act on the four transfer station renewal applications concurrently.

In addition to its franchise, the applicant currently holds a Metro Non-System License (NSL) that authorizes the delivery of solid waste, directly to the Riverbend Landfill in Yamhill County, Oregon (NSL No. N-010-05). All of the waste received at FGTS is currently transferred to the Riverbend Landfill under authority of this NSL, the term of which is set to expire on December 31, 2008. On August 28, 2008, the applicant submitted an application to Metro requesting the renewal of this NSL.

Table 1 summarizes the annual amount of solid waste that the FGTS received from inside the region for each of the previous four Metro fiscal years. FGTS pays to Metro the Regional System Fee and Excise Tax on all waste it receives from within the region.

*Table 1. Amount of Solid Waste Received at the FGTS*

Fiscal Year (June 30 <sup>th</sup> through July 1 <sup>st</sup> )	Solid Waste Received (Tons)
2004-05	156,143
2005-06	165,160
2006-07	157,820
2007-08	151,886

The applicant has requested a renewal of its solid waste facility franchise (No. FR-004), which is set to expire on December 31, 2008. In its renewal application, the applicant requested authority to accept non-putrescible waste for the purpose of reloading and delivering it to a material recovery facility at either Pride Recycling in Sherwood or Tualatin Valley Waste Recovery in Hillsboro. With the exception of this new reloading activity, the applicant has not requested any further significant changes to its authorizations or activities.

## **Metro Code Provisions Related to Franchise Renewals**

### **1. Application**

Metro Code Section 5.01.087(b) stipulates that a franchisee seeking renewal of a solid waste facility franchise shall file a completed application for renewal accompanied by payment of an application fee of \$500 not less than 120 days prior to the expiration of the franchise term.

On August 7, 2008, WMO submitted to Metro a complete solid waste facility franchise renewal application accompanied by an application fee of \$500. The applicant filed its renewal application more than 120 days prior to the expiration date of its current franchise. The current franchise term expires on December 31, 2008. WMO filed its renewal application as required by Metro Code Section 5.01.087(b).

### **2. Compliance with the Criteria Contained in Metro Code Section 5.01.070**

Metro Code Section 5.01.087(b) stipulates that the Chief Operating Officer shall formulate recommendations regarding whether the franchise renewal meets the criteria contained in Metro Code Section 5.01.070 and the Metro Council shall approve renewal of a solid waste facility franchise unless it finds that the proposed renewal is not in the public interest or does not meet the criteria contained in that section. In addition, Section 5.01.087(b) stipulates that the Council may attach conditions or limitations to the renewed franchise.

Metro Code Section 5.01.070 governs the evaluation and issuance of franchises, and only subsections (c) and (f) of that section establish criteria for the approval of franchise applications.

A. Metro Code Section 5.01.070(c) criteria evaluation follows:

#### **i. Applicant Qualifications**

The applicant is well known to Metro as an operator of a Metro-franchised solid waste facility and as a long-standing solid waste management company in the Metro area. WMO has operated the FGTS for approximately ten years and has extensive experience in recycling, solid waste collection, transfer, and disposal. The applicant is fully qualified to operate and manage this facility in a competent and efficient manner. WMO serves as Metro's disposal contractor until 2019.

ii. Compliance with the Regional Solid Waste Management Plan (RSWMP)

On July 24, 2008, Council adopted Ordinance No. 07-1162A (for the purpose of adopting the RSWMP, 2008-2018 Update). The RSWMP 2008-2018 Update replaces the 1995-2005 RSWMP and becomes effective on October 22, 2008.

Regarding the new Plan (RSWMP 2008-2018), Chapter III entitled, *Future direction and regional policies*, includes the following regional policy statements:

**7.0 New facilities:** *The current system of transfer stations provides reasonable access for haulers and sufficient capacity for the consolidation and transfer of solid waste to disposal facilities.*

The rationale for providing access to transfer stations is to maintain service levels by reducing drive time for haulers, reducing congestion at existing facilities, and adding opportunity to recover materials. An efficient disposal system depends on both capacity and accessibility. The applicant's facility is part of the current system of transfer stations and, therefore, the proposed franchise renewal is consistent with this policy.

**8.0 Facility ownership:** *Transfer facilities in the regional solid waste system may be publicly or privately owned.*

The applicant's facility is a privately owned transfer station and is consistent with this policy.

**10.0 System regulation:** *Solid waste facilities accepting waste generated within the region will be regulated to ensure they are operated in an acceptable manner and are consistent with the policies of this Plan. All facilities performing post-collection material recovery shall meet minimum recovery requirements.*

The proposed franchise renewal will ensure that the facility is operated in an acceptable manner and consistent with policies of the RSWMP 2008-2018 Update. The proposed franchise requires the facility to reload non-putrescible waste to a material recovery facility as provided in Metro Code Chapter 5.01.

In addition to the above policies, Chapter V entitled, *Sustainable operations*, includes goals and objectives that are intended to guide evaluation and implementation of sustainable operations practices. In particular, Chapter V includes the following statement regarding monitoring and implementation methods:

*Metro will establish and coordinate a sustainable operations work group of policy and technical participants. The work group will develop priorities and strategies for achieving the objectives, and will report on progress annually to the Regional Solid Waste Advisory Committee and Metro Council.*

The proposed franchise renewal is neutral with regard to Chapter V and is not inconsistent with the sustainable operations goals.

The solid waste management activities to be renewed under this franchise at FGTS are consistent with the RSWMP.

iii. Meeting the Requirements of Metro Code Section 5.01.060

*(a) Applications for a Franchise or License or for renewal of an existing Franchise or License shall be filed on forms or in the format provided by the Chief Operating Officer.*

The applicant seeks a franchise renewal and, in accordance with Metro Code provisions, has filed a completed application for renewal accompanied by payment of the application fee of \$500. The application was properly filed.

*(b) In addition to any information required on the forms or in the format provided by the Chief Operating Officer, all applications shall include a description of the Activities proposed to be conducted and a description of Wastes sought to be accepted.*

This information was included in the franchise renewal application form and the application was properly filed.

*(c) In addition to the information required on the forms or in the format provided by the Chief Operating Officer, applications for a License or Franchise shall include the following information to the Chief Operating Officer:*

- (1) Proof of insurance;
- (2) A duplicate copy of all applications and permits required by the Oregon Department of Environmental Quality (DEQ);
- (3) A duplicate copy of any DEQ required closure plan or if not required by the DEQ then a closure document describing closure protocol;
- (4) Copies of DEQ required financial assurance documents or if not required by the DEQ proof of financial assurance for the cost of closure of the facility;
- (5) Signed consent by the property owner to the proposed use of the property;
- (6) Proof that the applicant has received proper land use approval; and
- (7) Copies of any other permits required from other governmental agencies.

All of the information described in Metro Code Section 5.01.060(c) is up to date and is included in the existing franchise file of the applicant. The required information has been submitted.

*(d) An application for a Franchise shall be accompanied by an analysis of the factors described in Section 5.01.070(f) if this chapter.*

An analysis of these factors is provided below in Section 2B of this document.

*(e) Notwithstanding any other provision in this section, the Chief Operating Officer shall not accept for filing any application for authority to operate a new Transfer Station until December 31, 2008.*

This proposed franchise renewal is not subject to the transfer station moratorium set forth in Metro Code Section 5.01.060(e). This provision pertains to a proposed facility making an initial application for a new franchise and does not limit a renewal request.

#### iv. Compliance with Regulatory Requirements

The applicant currently operates under authority of a Metro Solid Waste Facility Franchise (No. FR-004), a Metro NSL (No. N-010-05), a Solid Waste Disposal Site Permit (No. 368) issued by the DEQ, and a National Pollutant Discharge Elimination System Industrial Stormwater General Permit 1200-Z (No. 16843) issued by the DEQ. In addition, the applicant has received land use authorization from the City of Forest Grove.

According to recent communication with Paul Downey (City of Forest Grove), FGTS is currently in compliance with the City's code requirements and the facility has not received any notices of violation or enforcement actions within the last five years.

On April 13, 2007 the DEQ issued Solid Waste Disposal Site Permit No. 368 (the "Permit") to the applicant authorizing FGTS to operate a transfer station. The term of the Permit is set to expire on January 31, 2015. According to recent communication with Stephanie Rawson (DEQ), WMO is currently in compliance with its Permit and the facility has not received any notices of violation or enforcement actions from the DEQ within the last five years.

On December 31, 1997, Metro issued Solid Waste Facility Franchise No. FR-004 (the "Franchise") authorizing FGTS to accept solid waste for transfer. The term of the Franchise is set to expire on December 31, 2008.

Metro has conducted 32 site inspections at FGTS between the dates of January 1, 2004 and July 31, 2008. Staff has found the facility to be a well-run operation with no observable reason to suspect impending problems or issues. FGTS is currently in compliance with its NSL and Franchise. The facility has not received any notices of violation or enforcement actions from Metro within the last five years.



The applicant has sufficiently complied, and there is no reason to believe that the facility will not continue to comply, with all applicable regulatory requirements.

B. Metro Code Section 5.01.070(f) states:

*In determining whether to authorize the issuance of a Franchise, the Council shall consider, but not limited by, the following factors:*

*(1) Whether the applicant has demonstrated that the proposed Solid Waste Facility and authorized Activities will be consistent with the Regional Solid Waste Management Plan;*

This issue was examined above in Section 2A(ii) of this document entitled, Compliance with the Regional Solid Waste Management Plan (RSWMP). As previously discussed, the solid waste management activities to be renewed under this franchise are consistent with the RSWMP.

*(2) The effect that granting a Franchise to the applicant will have on the cost of solid waste disposal and recycling services for the citizens of the region;*

FGTS is an existing regional transfer station and has been in operation since 1985 and owned by the current operator since 1997. With the exception of accepting non-putrescible waste for the purpose of reloading to a material recovery facility, FGTS has not requested any significant change in authorizations or activities at its facility. The effect of granting a renewed franchise would be to maintain the status quo with regard to the cost of solid waste recycling and disposal services for the citizens of the region.

*(3) Whether granting a Franchise to the applicant would be unlikely to unreasonably adversely affect the health, safety and welfare of Metro's residents;*

Metro staff is not aware of any facility incidents or operating procedures that have adversely affected the health, safety and welfare of Metro's residents during the time that the facility has been operating. In addition, neither the DEQ nor Metro has issued any notices of violation to the facility within the last five years. The operator's experience and track record, together with the regulatory environment in which WMO operates, indicate that it is unlikely that the applicant will adversely affect the public health, safety and welfare.

*(4) Whether granting a Franchise to the applicant would be unlikely to unreasonably adversely affect nearby residents, property owners or the existing character or expected future development of the surrounding neighborhood;*

FGTS is an existing regional transfer station and has been in operation since 1985 and owned by the current operator since 1997. Within the last five years of operation, Metro has received one odor complaint and the DEQ has received noise complaints regarding FGTS. These complaints did not result in any formal findings of violation. WMO has demonstrated its responsiveness to

such complaints by implementing various site improvements to minimize the facility's impact on nearby residents. With the exception of a few infrequent complaints, staff is not aware of any other impacts reported by the surrounding neighborhood within the past five years. The operator's experience and track record indicate that it is unlikely that WMO would unreasonably adversely impact the surrounding neighborhood.

*(5) Whether the applicant has demonstrated the strong likelihood that it will comply with all the requirements and standards of this chapter, the administrative rules and performance standards adopted pursuant to Section 5.01.132 of this chapter and other applicable local, state and federal laws, rules, regulation, ordinances, orders or permits pertaining in any manner to the proposed Franchise.*

This issue was examined above in Section 2A(iv) of this document. As previously discussed, the applicant is likely to comply with regulations and standards if the franchise is renewed.

### **3. Compliance with the Criteria Contained in Metro Code Section 5.01.075(c)**

Metro Code Section 5.01.075(c) stipulates that a franchise authorizing the acceptance of mixed non-putrescible waste for the purpose of conducting reloading shall be subject to the performance standards, design requirements, and operating requirements adopted as administrative procedures pursuant to Metro Code Section 5.01.132, and the general performance goals related to the following: environment, health and safety, nuisances, material recovery, reloading, and record keeping.

On May 8, 2007, Metro adopted administrative procedures outlining new standards for material recovery facilities (Administrative Procedures No. 501 Section 7 – *Standards for Non-Putrescible Mixed Waste Material Recovery Facilities and Non-Putrescible Mixed Waste Reload Facilities*). The standards include design requirements and operating conditions that were specifically developed, and approved in administrative procedures, in order to meet the general performance goals specified in Metro Code Section 5.01.075(c).

FGTS is an existing facility that is designed and operated in a manner that currently meets or exceeds all of these standards and performance goals for the reloading of non-putrescible waste.

### **4. Chief Operating Officer's Recommendation and Recommended Franchise Conditions**

Based on the information presented above, the Chief Operating Officer finds that the franchise renewal application meets the criteria in Metro Code Section 5.01.070. The Chief Operating Officer also finds that the proposed franchise renewal is in the public interest. The Chief Operating Officer therefore recommends that the Metro Council approve a franchise renewal to FGTS subject to the requirements listed in Metro Code Chapter 5.01; and further subject to several new conditions and technical updates, which are incorporated into the draft franchise attached as Exhibit A to Ordinance No. 08-1191.

The substantive changes included in the proposed franchise are described below. In particular, Subsections C and D describe conditions that are based upon the direction that staff received during the Metro Council Work Session on August 12, 2008. The Council had agreed with staff recommendations to include these conditions in the franchises, based upon the *Wet Waste Allocation Project DRAFT Final Report*, dated August 4, 2008. Subsection E describes the new conditions that were included to reflect the Enhanced Dry Waste Recovery Program that was adopted by Metro Council via Ordinance No. 07-1147B on August 17, 2007. Subsection F describes the new conditions that were included in the proposed franchise to reflect the reload facility standards adopted by Metro Council via Ordinance No. 07-1138 on February 22, 2007 and the corresponding administrative procedures that were subsequently issued by the Chief Operating Officer on May 8, 2007.

Conditions:

- A. Technical Updates – The format of the proposed franchise has been updated from that of the existing franchise (No. FR-004). In particular, the layout of the proposed franchise and the content of its general provisions have been standardized with that of other Metro-issued authorizations. The proposed franchise also includes updated record keeping and reporting requirements and stipulates that all such records must be accessible and available to Metro upon request. Except as described below in Subsections G and H, the majority of FGTS’ existing franchise requirements are addressed in the proposed franchise.
- B. Term - The term of the proposed franchise is set for a five-year period (ending on December 31, 2013). Metro Code Section 5.01.0709(k) stipulates that the term of a renewed franchise shall not be more than five years
- C. Amendments – The proposed franchise includes provisions that provide general notice to the franchisee that the Metro Council may “reopen” and amend the conditions of the franchise via a duly adopted ordinance. Such ordinance adoption procedures include legal due process by providing a public review period, a public hearing, and an opportunity for a contested case hearing on the proposed amendments. This condition was included in the proposed franchise based upon the direction that staff received during the Metro Council Work Session on August 12, 2008.
- D. Access to Financial Records – The proposed franchise stipulates that, during the term of the franchise, the Metro Council may direct a review of the franchisee’s financial records by an independent auditor or financial analyst. In addition, the proposed franchise stipulates that the franchisee shall provide Metro with access to the above referenced financial records during this independent review. This condition was included in the proposed franchise based upon the direction that staff received during the Metro Council Work Session on August 12, 2008.
- E. Enhanced Dry Waste Recovery Program – The proposed franchise stipulates that the franchisee may accept non-putrescible solid waste only for reload and transfer to facilities that are authorized by Metro to perform material recovery. The applicant requested this

authority in order to meet the requirements of the Enhanced Dry Waste Recovery Program. The applicant has proposed accepting non-putrescible waste for the purpose of reloading it to either Pride Recycling or Tualatin Valley Waste Recovery.

- F. Reload Facility Standards - The proposed franchise includes conditions that require the franchisee to conduct reloading of non-putrescible waste in accordance with the performance standards, design requirements, and operating requirements adopted as administrative procedures pursuant to Metro Code Section 5.01.132 (Administrative Procedures No. 501 Section 7 – *Standards for Non-Putrescible Mixed Waste Material Recovery Facilities and Non-Putrescible Mixed Waste Reload Facilities*). The proposed franchise conforms with the above referenced material recovery standards and the general performance goals.
  
- G. Direct-Haul – This provision was not renewed. The proposed franchise no longer authorizes the delivery of solid waste directly to a general purpose landfill as specified in the existing franchise (Section 6.1.1 of Franchise No. FR-004). This provision has been omitted from the franchise renewal because it is no longer necessary. The franchisee is currently authorized, under NSL No. N-010-05, to deliver solid waste directly to the Riverbend Landfill. Putrescible waste NSLs are subject to Metro Council approval and, as such, any impact to the solid waste system can be considered during the renewal process.
  
- H. Annual Report and Review - These provisions were not renewed. The proposed franchise no longer requires that the franchisee submit annual operating reports or participate in annual review meetings with Metro as specified in the existing franchise (Sections 7.4 and 7.8 of Franchise No. FR-004 respectively). These provisions have been omitted from the franchise renewal because they are no longer necessary. Metro currently has full-time solid waste inspection staff that closely monitors site conditions for compliance with Metro regulations. Metro staff typically performs six to twelve inspections of the FGTS per year.

## **ANALYSIS / INFORMATION**

### **1. Known Opposition**

There is no known opposition.

### **2. Legal Antecedents**

Current provisions of Metro Code Chapter 5.01, entitled “Solid Waste Facility Regulation.” In particular:

- Metro Code Section 5.01.045(b) stipulates that a Solid Waste Facility Franchise shall be required for the person operating a transfer station.

- Metro Code Section 5.01.087(b) stipulates that the Metro Council shall approve or deny renewals of Solid Waste Facility Franchises.

### **3. Anticipated Effects**

Adoption of Ordinance No. 08-1191 would authorize the Chief Operating Officer to issue a renewed Solid Waste Facility Franchise to FGTS for a term of five years.

### **4. Budget Impacts**

Ordinance No. 08-1191 authorizes the renewal of an existing regional transfer station franchise without any significant changes in authorization, other than accepting non-putrescible waste for the purpose of reloading to a material recovery facility. As a regional transfer station, Metro does not limit the amount of waste that this facility may receive. It is expected that the FGTS will continue to accept the same quantity of waste as it has in the past. Thus, Metro's budget will not be affected by approval of Ordinance No. 08-1191.

## **RECOMMENDED ACTION**

The Chief Operating Officer recommends approval of Ordinance No. 08-1191.

WJ:bjl  
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