

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING THE) ORDINANCE NO. 08-1194
TRANSFER STATION FRANCHISE RENEWAL)
APPLICATION OF WILLAMETTE RESOURCES,)
INC., AUTHORIZING THE CHIEF OPERATING) Introduced by Michael J. Jordan, Chief
OFFICER TO ISSUE A RENEWED FRANCHISE) Operating Officer, with the concurrence of
David Bragdon, Metro Council President

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, Willamette Resources, Inc. operates a transfer station and holds a Metro Solid Waste Facility Franchise Number F-005-03, which will expire on December 31, 2008; and

WHEREAS, Willamette Resources, 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:

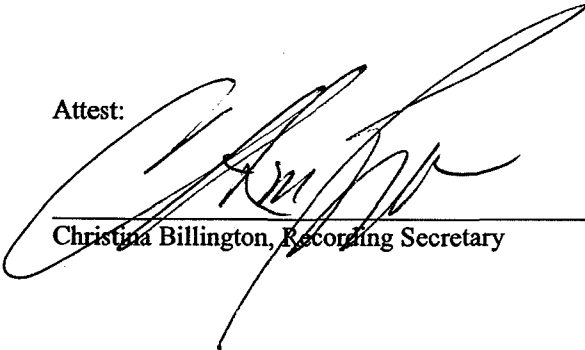
1. The transfer station renewal franchise application of Willamette Resources, Inc. is approved subject to the terms, conditions, and limitations contained in Exhibit A to this Ordinance entitled "Solid Waste Facility Franchise."

2. The Chief Operating Officer is authorized to issue to Willamette Resources, Inc. a renewed Solid Waste Facility Franchise substantially similar to the one attached as Exhibit A.

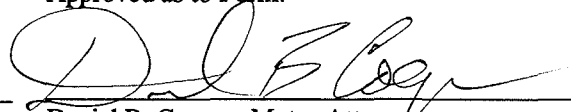
ADOPTED by the Metro Council this 25th day of September 2008.


David Bragdon, Council President

Attest:


Christina Billington, Recording Secretary

Approved as to Form:


Daniel B. Cooper, Metro Attorney

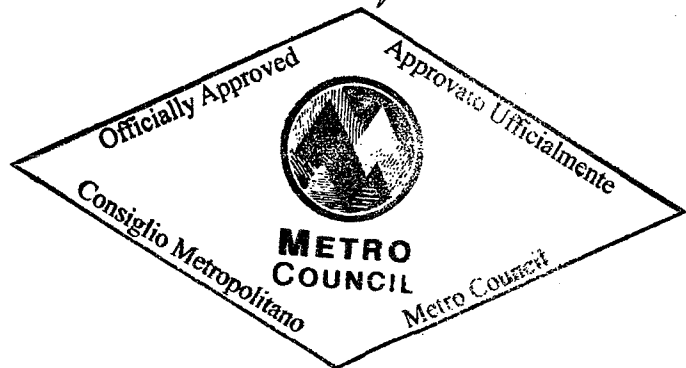


Exhibit A to Ordinance No. 08-1194

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



METRO

SOLID WASTE FACILITY FRANCHISE
No. F-005-08

FRANCHISEE:	FACILITY NAME AND LOCATION:
Willamette Resources, Inc. 10295 SW Ridder Road Wilsonville, Oregon 97070 Tel. (503) 570-0626 Fax. (503) 570-0523	Willamette Resources, Inc. 10295 SW Ridder Road Wilsonville, Oregon 97070 Tel. (503) 570-0626 Fax. (503) 570-0523
OPERATOR:	PROPERTY OWNER:
Willamette Resources, Inc. 10295 SW Ridder Road Wilsonville, Oregon 97070 Tel. (503) 570-0626 Fax. (503) 570-0523	Willamette Resources, Inc. 10295 SW Ridder Road Wilsonville, Oregon 97070 Tel. (503) 570-0626 Fax. (503) 570-0523

This franchise replaces and supersedes the provisions of Metro Solid Waste Facility Franchise No. F-005-03. 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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1.0	ISSUANCE	
1.1	Franchisee	Willamette Resources, Inc. 10295 SW Ridder Road Wilsonville, Oregon 97070 Tel. (503) 570-0626 Fax. (503) 570-0523
1.2	Corporate affiliation	Allied Waste Industries, Inc. 18500 North Allied Way Phoenix, AZ 85054
1.3	Contact	Todd Irvine, General Manager Phone: (503) 570-0626 Fax: (503) 570-0523 e-mail: todd.irvine@awin.com
1.4	Franchise number	When referring to this franchise, please cite: Metro Solid Waste Facility Franchise No. F-005-08.
1.5	Term	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.
1.6	Renewal	The Franchisee may apply for a franchise renewal as provided in Metro Code Section 5.01.087.
1.7	Facility name and mailing address	Willamette Resources, Inc. 10295 SW Ridder Road Wilsonville, Oregon 97070 Tel. (503) 570-0626 Fax. (503) 570-0523
1.8	Operator	Willamette Resources, Inc. 10295 SW Ridder Road Wilsonville, Oregon 97070 Tel. (503) 570-0626 Fax. (503) 570-0523
1.9	Facility premises description	Tax Lot Identification No. 3S102C001400 and No. 3S102C001500, City of Wilsonville, Washington County, State of Oregon



1.10	Property owner	Willamette Resources, Inc. 10295 SW Ridder Road Wilsonville, Oregon 97070 Tel. (503) 570-0626 Fax. (503) 570-0523
1.11	Permission to operate	The Franchisee is the property owner.

2.0	CONDITIONS AND DISCLAIMERS	
2.1	Guarantees	This franchise shall not vest any right or privilege in the Franchisee to receive specific quantities of solid waste at the direction of Metro during the term of the franchise.
2.2	Non-exclusive franchise	This franchise shall not in any way limit Metro from granting other solid waste franchises within Metro's boundaries.
2.3	Property rights	This franchise does not convey any property rights in either real or personal property.
2.4	Amendment and modification	Except as provided in Section 11.0 of this franchise, no amendment or modification shall be effective unless approved by the Metro Council.
2.5	No recourse	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.
2.6	Indemnification	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.
2.7	Binding nature	This franchise is binding on the Franchisee. The Franchisee is liable for all acts and omissions of the Franchisee's contractors and agents.



2.8	Waivers	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.
2.9	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 any other term or condition.
2.10	Choice of law	The franchise shall be construed, applied, and enforced in accordance with the laws of the State of Oregon.
2.11	Enforceability	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.
2.12	Franchise not a waiver	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.
2.13	Franchise not limiting	This franchise does not limit the power of a federal, state, or local agency to enforce any provision of law relating to the facility.
2.14	Definitions	Unless otherwise specified, all other terms are as defined in Metro Code Chapter 5.01.

3.0	AUTHORIZATIONS	
3.1	Purpose	This section of the franchise describes the wastes that the Franchisee is authorized to accept at the facility and the waste-related activities the Franchisee is authorized to perform at the facility.
3.2	General conditions on solid waste	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.
3.3	General conditions on activities	The Franchisee is authorized to perform at the facility only those waste-related activities that are described in Section 3.0 of this franchise.



3.4	Acceptance and management of putrescible solid waste	<ol style="list-style-type: none">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.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.3. The Franchisee is authorized to accept putrescible waste generated inside the Metro region only from persons who are franchised or permitted by a local government unit to collect and haul putrescible waste.
3.5	Acceptance and management of mixed non-putrescible solid waste	<ol style="list-style-type: none">1. The Franchisee is authorized to accept mixed non-putrescible solid waste for material recovery.2. 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. 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.3. The Franchisee is authorized to accept mixed non-putrescible waste from all customers including public self-haul.
3.6	Material recovery required	<ol style="list-style-type: none">1. The Franchisee shall perform material recovery on mixed non-putrescible wastes. The Franchisee shall ensure that the facility is designed and operated to assure materials are recovered in a timely manner and to protect the quality of non-putrescible waste that has not yet undergone material recovery. The Franchisee must perform recovery at no less than the minimum level stipulated in Metro Code Chapter 5.01.2. The Franchisee shall take quarterly samples of processing residual that are statistically valid and representative of the facility's residual. Each sample required by this section shall weigh at least 300 pounds.



3.7	Management of processing residual from material recovery	The Franchisee shall store, reload, and transfer all non-putrescible waste processing residual on an impervious surface 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.
3.8	Acceptance of source-separated recyclable materials	<ol style="list-style-type: none">1. The Franchisee shall provide a place for collecting source-separated recyclable materials on the facility premises.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.
3.9	Acceptance of yard debris	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.
3.10	Acceptance of source-separated food waste	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.
3.11	Acceptance of untreated wood	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.
3.12	Acceptance of painted and treated wood	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	Acceptance of electronics devices	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	Acceptance of inert material	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.

4.0	LIMITATIONS AND PROHIBITIONS	
4.1	Purpose	This section of the franchise describes limitations and prohibitions on the wastes handled at the facility and activities performed at the facility.
4.2	Tonnage authorization	The Franchisee is authorized to accept up to 70,000 tons of putrescible waste generated inside the Metro region within each calendar year. The Franchisee shall not accept solid waste generated outside the Metro region if to do so would limit the Franchisee from accepting 70,000 tons of putrescible waste, or any non-putrescible waste, generated inside the Metro region.
4.3	Tonnage authorization growth allowance	Effective January 1, 2011, the COO will amend Section 4.2 of this franchise to increase the tonnage authorization based on a growth allowance as established in Metro Code Chapter 5.01.
4.4	Prohibited waste	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; hazardous waste; or any waste prohibited by the



		DEQ.
4.5	Prohibition on mixing	<ol style="list-style-type: none"> 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. 2. The Franchisee shall not mix or commingle putrescible solid waste with non-putrescible solid waste or source-separated recyclable materials, including without limitation wood waste and yard debris. 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.
4.6	Prohibition of size reduction on non-putrescible waste	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.
4.7	No disposal of recyclable materials	The Franchisee shall not transfer source-separated recyclable materials to a disposal site, including without limitation landfills and incineration facilities.
4.8	Composting prohibited	The Franchisee shall not keep yard debris on site long enough for more than negligible biological decomposition to begin.
4.9	Limits not exclusive	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.

5.0	OPERATING CONDITIONS	
5.1	Purpose and general performance goals	<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> <ol style="list-style-type: none"> a) Environment. The Franchisee shall design and



		<p>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.</p> <p>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 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>
5.2	Qualified operator	<p>1. 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.</p> <p>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.</p> <p>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.</p>
5.3	Fire prevention	<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>
5.4	Adequate vehicle accommodation	<p>The Franchisee shall:</p> <p>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.</p> <p>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</p>



		<p>under emergency conditions or as provided by local traffic ordinances.</p> <ul style="list-style-type: none">c) Post signs to inform customers not to queue on public roadways.d) Provide adequate off-street parking and queuing for vehicles, including adequate space for on-site tarping and untarping of loads.
5.5	Managing prohibited wastes	<ol style="list-style-type: none">1. The Franchisee shall reject prohibited waste upon discovery and shall properly manage and dispose of prohibited waste when unknowingly received.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:<ul style="list-style-type: none">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.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.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.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.
5.6	Storage and exterior stockpiles	<p>The Franchisee shall:</p> <ul style="list-style-type: none">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;b) Maintain storage areas in an orderly manner and keep the areas free of litter;



		<ul style="list-style-type: none">c) Position exterior stockpiles within footprints identified on the facility site plan or operating plan; andd) Not stockpile recovered or source-separated materials for longer than 180 days (6 months).
5.7	Dust, airborne debris and litter	<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 property boundaries. The Franchisee shall:</p> <ul style="list-style-type: none">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;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;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;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;e) Maintain on-site facility access roads to prevent or control dust and to prevent or control the tracking of mud off-site; andf) 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.
5.8	Odor	<p>1. The Franchisee shall operate the facility in a manner that prevents the generation of odors that are detectable off-site.</p>



		<p>2. The Franchisee shall establish and follow procedures in the operating plan for minimizing odor at the facility.</p>
5.9	Vectors (e.g. birds, rodents, insects)	<p>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.</p> <p>2. If vectors are present or detected at the facility, the Franchisee shall implement vector control measures.</p>
5.10	Noise	<p>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.</p>
5.11	Water contaminated by solid waste and solid waste leachate	<p>The Franchisee shall operate the facility consistent with an approved DEQ stormwater management plan or equivalent and shall:</p> <ul style="list-style-type: none">a) Operate and maintain the facility to prevent contact of solid wastes with storm water runoff and precipitation; andb) Dispose of or treat water contaminated by solid waste generated on-site in a manner complying with local, state, and federal laws and regulations.
5.12	Access control	<p>1. The Franchisee shall control access to the facility as necessary to prevent unauthorized entry and dumping.</p> <p>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.</p>
5.13	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, and legible from off-site during all hours and shall contain at least the following information:</p> <ul style="list-style-type: none">a) Name of the facility;b) Address of the facility;c) Emergency telephone number for the facility;d) Operating hours during which the facility is open for the receipt of authorized waste;e) Fees and charges;



		<ul style="list-style-type: none"> f) Metro's name and telephone number (503) 234-3000; g) A list of authorized and prohibited wastes; h) Vehicle / traffic flow information or diagram; i) Covered load requirements; and j) Directions not to queue on public roadways.
5.14	Nuisance complaints	<ol style="list-style-type: none"> 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 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. 2. If the facility receives a complaint, the Franchisee shall: <ul style="list-style-type: none"> 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 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.
5.15	Access to franchise document	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.

6.0	OPERATING PLAN	
6.1	Purpose	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.
6.2	Plan compliance	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.
6.3	Plan maintenance	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.
6.4	Access to operating plan	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.
6.5	Procedures for inspecting loads	The operating plan shall establish: <ul style="list-style-type: none">a) Procedures for inspecting incoming loads for the presence of prohibited or unauthorized wastes;b) Procedures for identifying incoming and outgoing loads for waste classifications;c) A set of objective criteria for accepting and rejecting loads; andd) An asbestos testing protocol for all materials that appear to contain friable asbestos.
6.6	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) Reloading and transfer of authorized solid wastes;c) Managing stockpiles to ensure that they remain within the authorized weights, volumes and pile heights;d) Storing authorized solid wastes; ande) Minimizing storage times and avoiding delay in processing of authorized solid wastes.
6.7	Procedures for managing prohibited wastes	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.
6.8	Procedures for odor prevention	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">a) A management plan that will be used to monitor and manage odors of any derivation including malodorous loads delivered to the facility; andb) Procedures for receiving and recording odor



		complaints, immediately investigating all odor complaints to determine the cause of odor emissions, and remedying promptly all odor problems at the facility.
6.9	Procedures for dust prevention	<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">a) A management plan that will be used to monitor and manage dust of any derivation; andb) 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.
6.10	Procedures for emergencies	<p>The operating plan shall establish procedures to be followed in case of fire or other emergency.</p>
6.11	Procedures for nuisance complaints	<ol style="list-style-type: none">1. For every nuisance complaint (for example odor, dust, vibrations, and 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;c) The name, address and telephone number of the person or persons making the complaint; andd) Any actions taken by the operator in response to the complaint (whether successful or unsuccessful).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.
6.12	Closure protocol	<p>The Franchisee shall establish protocol for closure and restoration of the site in the event of a long-term cessation of operations as provided in Metro Code Section 5.01.060(c)(3).</p>
6.13	Financial assurance	<p>The Franchisee shall maintain financial assurance in the amount of \$25,000 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.</p>



7.0 FEES AND RATE SETTING	
7.1	Purpose This section of the franchise specifies fees payable by the Franchisee, and describes rate regulation by Metro.
7.2	Annual fee The Franchisee shall pay an annual franchise fee, as established in Metro Code Chapter 5.01. Metro reserves the right to change the franchise fee at any time by action of the Metro Council.
7.3	Rates not regulated The tipping fees and other rates charged at the facility are exempt from rate regulation by Metro.
7.4	Metro fee and tax imposed on disposal The Franchisee is liable for payment of the Metro Regional System Fee, as provided in Metro Code Title V, and the Metro Excise Tax, as provided in Metro Code Title VII, on all solid wastes delivered to a disposal site.

8.0 RECORD KEEPING AND REPORTING	
8.1	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.
8.2	Reporting requirements <ol style="list-style-type: none">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.2. The Franchisee shall keep and maintain complete and accurate records of the following for all transactions:<ol style="list-style-type: none">a) Ticket Number (should be the same as the ticket number on the weight slips);b) Customer account numbers identifying incoming customers and outgoing destinations;c) Description whether the load was incoming to the facility or outgoing from the facility;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



		<p>(4) outgoing recyclable materials by type; (5) outgoing non-putrescible waste; (6) outgoing putrescible waste;</p> <p>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:</p> <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 as described above in Subsections (e)(2) and (e)(3). <p>f) Date the load was received at, transferred within, or transmitted from the facility;</p> <p>g) Time the load was received at, transferred within, or transmitted from the facility;</p> <p>h) Indicate whether Franchisee accepted or rejected the load;</p> <p>i) Net weight of the load; and</p> <p>j) The fee charged to the generator of the load.</p>
8.3	Record transmittals	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	Material recovery reporting	The Franchisee shall provide the results of its quarterly sampling of processing residual, as provided in Section 3.6 of this franchise, to Metro as a component of its monthly report no later than fifteen days following the end of the each quarter in a format prescribed by Metro.
8.5	Account number listing	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.



8.6	Transactions based on scale weights	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.
8.7	DEQ submittals	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.
8.8	Copies of enforcement actions provided to Metro	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.
8.9	Unusual occurrences	<ol style="list-style-type: none">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.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.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.
8.10	Changes in ownership	<ol style="list-style-type: none">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.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.



9.0		INSURANCE REQUIREMENTS
9.1	Purpose	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.
9.2	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.
9.3	Automobile	The Franchisee shall carry automobile bodily injury and property damage liability insurance.
9.4	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.
9.5	Additional insureds	Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSUREDS.
9.6	Worker's Compensation Insurance	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.
9.7	Notification	The Franchisee shall give at least 30 days written notice to the COO of any lapse or proposed cancellation of insurance coverage.

10.0		ENFORCEMENT
10.1	Generally	Enforcement of this franchise shall be as specified in Metro Code Chapter 5.01.



10.2	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.
10.3	No enforcement limitations	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.
10.4	Penalties	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.

11.0	AMENDMENT, MODIFICATION, SUSPENSION, AND REVOCATION	
11.1	Amendment by agreement	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.
11.2	Amendment by Metro Council action	Except as provided in Section 11.3, the provisions of this franchise shall remain in effect unless the Metro Council: <ul style="list-style-type: none">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; andb) Adopts an ordinance amending this franchise to implement the policy, code or process specified by said ordinance. 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.
11.3	Modification, suspension or revocation by Metro for cause	<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"> a) Violation of the terms or conditions of this franchise, Metro Code, or any applicable statute, rule, or standard; b) Changes in local, regional, state, or federal laws or regulations that should be specifically incorporated into this franchise; c) Failure to disclose fully all relevant facts; d) A significant release into the environment from the facility; e) Significant change in the character of solid waste received or in the operation of the facility; f) Any change in ownership or control; g) A request from the local government stemming from impacts resulting from facility operations; and h) Compliance history of the Franchisee.

12.0	GENERAL OBLIGATIONS	
12.1	Compliance with law	<p>The Franchisee shall fully comply with all applicable local, regional, state and federal laws, rules, regulations, ordinances, orders and permits pertaining in any manner to this franchise, including all applicable Metro Code provisions and administrative procedures adopted pursuant to Chapter 5.01 whether or not those provisions have been specifically mentioned or cited herein. All conditions imposed on the operation of the facility by federal, state, regional or local governments or agencies having jurisdiction over the facility shall be deemed part of this franchise as if specifically set forth herein. Such conditions and permits include those cited within or attached as exhibits to the franchise document, as well as any existing at the time of the issuance of the franchise but not cited or attached, and permits or conditions issued or modified during the term of the</p>



		franchise.
12.2	Deliver waste to appropriate destinations	The Franchisee shall ensure that solid waste transferred from the facility goes to the appropriate destinations under Metro Code Chapters 5.01 and 5.05, and under applicable local, state and federal laws, rules, regulations, ordinances, orders and permits.
12.3	Right of inspection and audit	<ol style="list-style-type: none">1. 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 12.5 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, 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.2. The Franchisee shall permit access to the facility premises to authorized representatives of Metro, including personnel on contract to Metro, at all reasonable times during business hours with or without notice to determine whether the Franchisee meets the minimum level of recovery as provided in Section 3.6 of this franchise. The Franchisee shall provide:<ol style="list-style-type: none">a) Access to all areas where it generates, manages, stores, and reloads processing residual, including without limitation to transfer vehicles;b) Access to facility personnel and equipment to collect, segregate, contain, and weigh individual samples of processing residual; andc) A safe location away from working areas and vehicle traffic where authorized representatives of Metro may conduct an analysis of the Franchisee's processing residual.
12.4	Confidential information	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



		<p>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 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>
12.5	Compliance by agents	<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. 08-1194 FOR THE PURPOSE OF APPROVING THE TRANSFER STATION FRANCHISE RENEWAL APPLICATION OF WILLAMETTE RESOURCES, INC., AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED FRANCHISE

August 21, 2008

Prepared by: Warren Johnson

BACKGROUND

On July 17, 2008, Willamette Resources, Inc. (WRI) 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. 08-1194 will authorize the Chief Operating Officer to issue a renewed transfer station franchise to WRI for a term of five years.

THE APPLICANT

The applicant, WRI, is the owner and operator of an existing solid waste facility located at 10295 SW Ridder Road, in Wilsonville (Metro Council District 3). WRI commenced operation in 1994 as a material recovery facility. The facility currently holds a Metro-issued franchise (No. F-005-03) to operate a transfer station authorized to receive putrescible waste, perform material recovery on non-putrescible waste, and accept source-separated recyclable materials.

Under the terms of the existing franchise (No. F-005-03), WRI is authorized to accept up to 65,000 tons of putrescible waste generated from within the Metro region per fiscal year. In September 2004, the Chief Operating Officer authorized a temporary increase in the facility's tonnage authorization in accordance with Metro Code Section 5.01.131(c). In Metro fiscal years 2004-05 and 2005-06, the facility's annual tonnage limit was increased to 68,250 tons. The franchise tonnage limit then reverted back to 65,000 tons in fiscal year 2006-07.



In addition to its franchise, the applicant currently holds Metro Non-System Licenses (NSLs) that authorize the delivery of solid waste directly to Riverbend Landfill in Yamhill County, Oregon (NSL No. N-005-06); Coffin Butte Landfill in Benton County, Oregon (NSL No. N-005-005(3)); and the Covanta Waste-To-Energy Facility in Brooks, Oregon (NSL No. N-005-07(2)).

The applicant has requested a renewal of its solid waste facility franchise (No. F-005-03), which is set to expire on December 31, 2008. This is the second renewal of its transfer station franchise. The applicant has requested no new authorizations, tonnage increase, or changes to its current franchise provisions.



Table 1 summarizes the annual amount of solid waste that WRI received and the facility’s annual average recovery rate for each Metro fiscal year during the existing franchise period. The putrescible waste tonnage figures provided below include only the waste that the facility received from within the Metro region. In addition, the average facility recovery rate figures provided below were used in determining eligibility for the facility’s Regional System Fee and Excise Tax credits. These recovery rates are calculated differently than the minimum compliance rate stipulated in Metro Code Chapter 5.01.

Table 1. Amount of Solid Waste Received and Average Annual Recovery Rate for WRI

Fiscal Year (June 30 th through July 1 st)	Putrescible Waste Received (Tons)	Non-Putrescible Waste Received (Tons)	Average Facility Recovery Rate
2004-05	66,966	53,456	31.3%
2005-06	58,468	86,307	31.1%
2006-07	58,311	81,472	27.9%
2007-08	58,590	56,478	35.5%

WRI is a wholly owned subsidiary of Allied Waste Industries (AWI), based in Phoenix, Arizona. According to the applicant, on June 23, 2008, AWI announced that the company would merge with Republic Services by the end of 2008. AWI later announced, on July 14, 2008, that Waste Management, Inc. had submitted to Republic Services an unsolicited proposal to acquire the company. Metro staff understands that the status of the reported merger has not yet been resolved and it will likely not be resolved before a decision is made on the franchise renewal application. The applicant has indicated that its renewal application is a status quo submittal that

reflects the current status of WRI. The applicant also reported that it will keep Metro apprised of developments in this matter as pertinent information becomes available.

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 July 17, 2008, WRI 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. WRI 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. The applicant has operated its facility for over 13 years and has extensive experience in recycling, solid waste collection, transfer, and disposal. AWI also serves as the contract operator for the Metro transfer stations. Staff concludes that the applicant is fully qualified to operate and manage this facility in a competent and efficient manner.

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 perform material recovery at the minimum rate stipulated 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 WRI 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. Accordingly, staff finds that 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 accordingly, staff finds that 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; accordingly staff finds that 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 requirement 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, not a renewal.

iv. Compliance with Regulatory Requirements

The applicant currently operates under authority of a Metro Solid Waste Facility Franchise (No. F-005-03), three Metro NSLs (No. N-005-06, No. N-005-005(3), and No. N-005-07(2)), a Solid Waste Disposal Site Permit (No. 435) issued by the DEQ, and a National Pollutant Discharge Elimination System Industrial Stormwater General Permit 1200-Z (No. 14568) issued by the DEQ. In addition, the applicant has received land use authorization from the City of Wilsonville.

According to recent communication with Dan Pauly (City of Wilsonville), WRI 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 January 23, 1995, the DEQ issued Solid Waste Disposal Site Permit No. 435 (the "Permit") to WRI authorizing it to accept non-putrescible waste for the purpose of material recovery. On August 3, 1998, the DEQ amended the Permit authorizing the facility to also accept putrescible waste. The term of the Permit was set to expire on January 31, 2005. On October 3, 2004, WRI submitted a permit renewal application to the DEQ. The DEQ received this renewal application prior to the expiration date of the facility's Permit. Due to a significant backlog of applications, the DEQ has not yet reviewed WRI's renewal application. Although the Permit has expired, the DEQ has allowed WRI to continue operating under the terms of the Permit until a final decision is made on the renewal application. According to recent communication with Stephanie Rawson (DEQ), WRI 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, 2003, Metro issued Solid Waste Facility Franchise No. F-005-03 (the "Franchise") to WRI authorizing it to perform material recovery on non-putrescible waste and accept putrescible waste for transfer. The term of the Franchise is set to expire on December 31, 2008. During the term of the Franchise, WRI has received one Notice of Violation for exceeding its tonnage limitation in an NSL. On August 31, 2007, Metro issued Notice of Violation No. NOV-182-07 to WRI for violating the calendar year tonnage limitation stipulated in NSL No. N-005-015(3). WRI had exceeded its 45,000-ton limitation by 342 tons. There was no penalty associated with this minor tonnage cap violation. Metro afforded WRI an opportunity to abate the violation by submitting a letter describing the additional procedures that it would implement

to prevent a recurrence of the violation. WRI submitted the letter as requested and, subsequently, the violation was deemed abated.

Metro has conducted 40 site inspections at WRI 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. WRI is currently in compliance with its NSLs and Franchise. With the exception of the above referenced NSL violation, the facility has not received any notices of violation or enforcement actions from Metro during the term of the Franchise.

Staff concludes that the applicant has sufficiently complied, and staff has 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, staff concludes that 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;

Ordinance 08-1194 provides for a 5,000-ton increase in WRI's annual putrescible waste authorization. The tonnage shifts expected in response to this Ordinance (about 5,000 tons *from* Metro transfer stations *to* WRI) would cause a small increase in the cost of disposal and recycling services for the citizens of the region. A small increase in disposal charges around the region should be offset, at least in part, by reduced off-route transportation costs, resulting in a net increase to consumers of no more than about \$91,000 per year, equivalent to about 6-7¢ per ton disposed. This effect would be separate from (additive with) cost impacts that result from other tonnage shifts in the region (e.g., from an increase in Troutdale Transfer Station's tonnage authorization).

Metro's costs change as tonnage shifts away from Metro Central and Metro South transfer stations. These changes are reflected in the costs to operate the transfer stations and to transport and dispose of the waste. Generally these costs decline as tonnage shifts away, while Metro's unit (per-ton) costs increase due to cost recovery of fixed (and "sticky") costs from fewer tons.

Assuming that 5,000 tons will be diverted from Metro's transfer stations (2,000 tons from Metro Central, and 3,000 tons from Metro South), Metro could fully recover its costs with a 6-7¢ per ton increase in its tonnage charge. If Metro adopted such an increase, and if other privately-owned facilities matched this increase—as has been common practice in the past—then region wide, the cost of disposal would increase by the same 6-7¢ per ton. On about 1.4 million tons disposed, that amounts to about \$91,000 annually.

At the same time, some transportation efficiencies may be realized when the shifting tonnage seeks out a closer transfer station in WRI. If such transportation efficiencies are realized, then reduced transportation costs (for fuel, labor, etc.) could offset some of the increase in disposal costs. The value of these efficiencies is expected to be small relative to the increase in the cost of disposal.

Note that Metro's cost recovery for regional programs (e.g., the Regional System Fee) and per-ton cost of landfilling (e.g., contractual price at Columbia Ridge Landfill)—two common sources of fiscal impact when tonnage shifts—will be unaffected in this instance because no change is anticipated in regional disposal tonnage (the revenue base for regional programs), and all shifted tonnage is expected to be landfilled in a Waste Management-owned landfill, leaving Metro's price for disposal at Columbia Ridge Landfill unchanged.

If Metro's rate structure (i.e., cost and revenue allocations) and costs remain relatively constant, then additional tonnage shifts (e.g., in response to future increases in local transfer station allocations) can be expected to have proportionally about the same per-ton impact on the cost of solid waste disposal and recycling 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 in the 13 years that the facility has been operating. Likewise, the DEQ has not cited the facility for any violations within the last five years. The operator's experience and track record, together with the regulatory environment in which WRI operates, leads staff to conclude 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;

Metro staff is not aware of any complaints or excessive impacts on the surrounding neighborhood in the 13 years that the facility has been operating. The operator's experience and track record leads staff to conclude that it is unlikely that WRI 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, staff finds that, notwithstanding one NSL violation during the term of its existing Franchise, 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 material recovery 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).

WRI is an existing facility that is designed and operated in a manner that currently meets or exceeds all of these standards and performance goals.

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 WRI 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. 08-1194.

The substantive changes included in the proposed franchise are described below. In particular, Subsections A and B 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 C describes the new conditions that were included in the proposed franchise to reflect the material recovery 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. Subsection D 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.

New Conditions:

- A. Tonnage Authorization – The proposed franchise stipulates that the franchisee shall accept no more than 70,000 tons of putrescible waste within each calendar year. This is a 5,000-ton increase over the 65,000-ton limit that was previously established by Metro Council in October 2001 (Ordinance No. 01-916C). As drafted, this limitation is applicable to all putrescible waste generated or originating from within the Metro region. In addition to the increase, the tracking period for the tonnage limit has been adjusted from a fiscal year to a calendar year basis.

The applicant has requested no new authorizations. However, the Chief Operating Officer's recommendation to include a 70,000-ton limit in the proposed franchise is based upon the direction that staff received during the Metro Council Work Session on August 12, 2008.

- B. Tonnage Authorization Growth Allowance – The proposed franchise stipulates that effective January 1, 2011 the Chief Operating Officer may increase the tonnage authorization of the franchise based on a growth allowance for the disposal of putrescible waste as provided in Metro Code Chapter 5.01. The initial 5,000-ton increase, described above in Section 4A, is intended to address growth for the first two years of the franchise. As such, it is unlikely that the Chief Operating Officer will approve additional tonnage increases for this franchise until this growth allowance provision becomes effective on January 1, 2011. Metro will consider methods for assigning the annual growth allowance, as provided in this section, through a potential Code amendment and the development of administrative procedures.
- C. Material Recovery Facility Standards - The proposed franchise includes conditions that require the franchisee to conduct material recovery operations on 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.
- D. Enhanced Dry Waste Recovery Program – The proposed franchise requires the franchisee to perform material recovery on non-putrescible waste at the rate stipulated in Metro Code Chapter 5.01. Specifically, the franchisee's processing residual shall not contain more than 15 percent, by weight, of cardboard and wood pieces greater than 12 inches in size and metal pieces greater than eight inches in size. In addition, the proposed

franchise requires the franchisee to take quarterly samples of its processing residual and provide Metro with access to the site in order to analyze the waste.

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. 08-1194 would authorize the Chief Operating Officer to issue a renewed Solid Waste Facility Franchise to WRI for a term of five years.

4. **Budget Impacts**

Ordinance No. 08-1194 authorizes the renewal of an existing solid waste facility franchise with a 5,000-ton increase in its facility tonnage cap. The tonnage shifts expected in response to this Ordinance (about 5,000 tons *from* Metro transfer stations *to* WRI) would cause a decrease of approximately \$250,000 in the Solid Waste and Recycling budget because Metro would no longer incur the cost of transferring, transporting, and disposing of the 5,000 tons of solid waste diverted to WRI.

For a fuller discussion of the rate effects and ratepayer impacts, see the analysis provided above in Section 2B(2) of this document.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Ordinance No. 08-1194.