



METRO

Agenda

MEETING: METRO COUNCIL
DATE: September 25, 2008
DAY: Thursday
TIME: 2:00 PM
PLACE: Metro Council Chamber

CALL TO ORDER AND ROLL CALL

1. INTRODUCTIONS

2. CITIZEN COMMUNICATIONS

3. CONSENT AGENDA

3.1 Consideration of Minutes for the September 18, 2008 Metro Council Regular Meeting.

4. ORDINANCES - SECOND READING

- | | | |
|-----|---|------------|
| 4.1 | Ordinance No. 08-1191 , For the Purpose of Approving the Transfer Station Franchise Renewal Application for Waste Management of Oregon, Inc. Authorizing the Chief Operating Officer to Issue a Renewed Franchise For Forest Grove Transfer Station. | Harrington |
| 4.2 | Ordinance No. 08-1192 , 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 Troutdale Transfer Station. | Park |
| 4.3 | Ordinance No. 08-1193 , For the Purpose of Approving the Transfer Station Franchise Renewal Application of Pride Recycling Company Authorizing the Chief Operating Officer to Issue a Renewed Franchise. | Hosticka |
| 4.4 | 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. | Hosticka |
| 4.5 | Ordinance No. 08-1195 , For the Purpose of Amending Metro Code Chapter 5.05 to Include Tualatin Valley Waste Recovery on the List of Designated Facilities. | Harrington |
| 4.6 | Ordinance No. 08-1197 , For the Purpose of Amending Metro Code Chapter 5.05 to Include Riverbend Landfill on the List of Designated Facilities. | Harrington |

5. CHIEF OPERATING OFFICER COMMUNICATION

6. COUNCILOR COMMUNICATION

ADJOURN

Television schedule for September 25, 2008 Metro Council meeting

Clackamas, Multnomah and Washington counties, and Vancouver, Wash. Channel 11 – Community Access Network www.tvctv.org – (503) 629-8534 2 p.m. Thursday, September 25 (Live)	Portland Channel 30 (CityNet 30) – Portland Community Media www.pcmtv.org – (503) 288-1515 8:30 p.m. Sunday, September 28 2 p.m. Monday, September 29
Gresham Channel 30 – MCTV www.mctv.org – (503) 491-7636 2 p.m. Monday, September 29	Washington County Channel 30 – TVC-TV www.tvctv.org – (503) 629-8534 11 p.m. Saturday, September 27 11 p.m. Sunday, September 28 6 a.m. Tuesday, September 30 4 p.m. Wednesday, October 1
Oregon City, Gladstone Channel 28 – Willamette Falls Television www.wftvaccess.com – (503) 650-0275 Call or visit website for program times.	West Linn Channel 30 – Willamette Falls Television www.wftvaccess.com – (503) 650-0275 Call or visit website for program times.

PLEASE NOTE: Show times are tentative and in some cases the entire meeting may not be shown due to length. Call or check your community access station web site to confirm program times.

Agenda items may not be considered in the exact order. For questions about the agenda, call Clerk of the Council, Chris Billington, (503) 797-1542. Public hearings are held on all ordinances second read and on resolutions upon request of the public. Documents for the record must be submitted to the Clerk of the Council to be considered included in the decision record. Documents can be submitted by e-mail, fax or mail or in person to the Clerk of the Council. For additional information about testifying before the Metro Council please go to the Metro website www.oregonmetro.gov and click on public comment opportunities. For assistance per the American Disabilities Act (ADA), dial TDD 797-1804 or 797-1540 (Council Office).

Consideration of Minutes of the September 18, 2008 Metro Council
Regular Meeting

Consent Agenda

Metro Council Meeting
Thursday, September 25, 2008
Metro Council Chamber

Ordinance No. 08-1191, For the Purpose of Approving the Transfer Station Franchise Renewal Application for Waste Management of Oregon, Inc. Authorizing the Chief Operating Officer to Issue a Renewed Franchise For Forest Grove Transfer Station.

Second Reading

Metro Council Meeting
Thursday, September 25, 2008
Metro Council Chamber

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 _____ day of _____ 2008.

David Bragdon, Council President

Attest:

Approved as to Form:

Christina Billington, Recording Secretary

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

FRANCHISEE:	FACILITY NAME AND LOCATION:
Waste Management of Oregon, Inc. 7227 NE 55 th 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
OPERATOR:	PROPERTY OWNER:
Waste Management of Oregon, Inc. 7227 NE 55 th Avenue Portland, Oregon 97218 Tel. (503) 992-3015 Fax. (503) 357-4822	Waste Management of Oregon, Inc. 7227 NE 55 th 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

Michael Jordan, Metro Chief Operating Officer

Date



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1.0	ISSUANCE	
1.1	Franchisee	Waste Management of Oregon, Inc. 7227 NE 55 th Avenue Portland, Oregon 97218 Tel. (503) 992-3015 Fax. (503) 357-4822
1.2	Corporate affiliation	Waste Management, Inc. 1001 Fannin, Suite 4000 Houston, Texas 77002
1.3	Contact	Steve Wolfe Phone: (503) 992-3015 Fax: (503) 357-4822 E-mail: swolfe2@wm.com
1.4	Franchise number	When referring to this franchise, please cite: Metro Solid Waste Facility Franchise No. F-004-08.
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	Forest Grove Transfer Station 1525 B Street Forest Grove, Oregon 97116 Tel. (503) 992-3015 Fax. (503) 357-4822
1.8	Operator	Waste Management of Oregon, Inc. 7227 NE 55 th Avenue Portland, Oregon 97218 Tel. (503) 992-3015 Fax. (503) 357-4822
1.9	Facility premises description	Tax Lot Identification No. 1S306BC09501, No. 1S306CB00500, and No. 1S306CB00600, City of Forest Grove, Washington County, State of Oregon



1.10	Property owner	Waste Management of Oregon, Inc. 7227 NE 55 th Avenue Portland, Oregon 97218 Tel. (503) 992-3015 Fax. (503) 357-4822
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. 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.
3.5	Acceptance and management of mixed non-putrescible solid waste for reloading	<ol style="list-style-type: none">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.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">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.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.3. The Franchisee shall reload and remove all mixed non-putrescible waste from the site within 48 hours of receipt.
3.6	Origin of solid waste	<p>The Franchisee shall accept authorized solid waste generated within the Metro boundary from any person who delivers such waste to the facility.</p>
3.7	Household hazardous waste collection	<p>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</p>



		purpose.
3.8	Acceptance of source-separated recyclable materials	<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>
3.9	Acceptance of yard debris	<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>
3.10	Acceptance of source-separated food waste	<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>
3.11	Acceptance of untreated wood	<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	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	This franchise does not limit the amount of solid waste that the Franchisee may accept.
4.3	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; regulated hazardous waste; or any waste prohibited by the DEQ.
4.4	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



		<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	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.
4.6	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.
4.7	Composting prohibited	The Franchisee shall not keep yard debris on site long enough for more than negligible biological decomposition to begin.
4.8	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> <ul style="list-style-type: none"> 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. 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



		<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>
5.2	Qualified operator	<ol style="list-style-type: none">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 5.01.2. 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.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.
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> <ol style="list-style-type: none">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.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.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:<ol 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	The Franchisee shall: <ol 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;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	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>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	<ul style="list-style-type: none">1. The Franchisee shall operate the facility in a manner that prevents the generation of odors that are detectable off-site.2. The Franchisee shall establish and follow procedures in the operating plan for minimizing odor at the facility.
5.9	Vectors (e.g. birds, rodents, insects)	<ul style="list-style-type: none">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.2. If vectors are present or detected at the facility, the Franchisee shall implement vector control measures.



5.10	Noise	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.
5.11	Water contaminated by solid waste and solid waste leachate	The Franchisee shall operate the facility consistent with an approved DEQ stormwater management plan or equivalent and shall: <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	<ol style="list-style-type: none">1. The Franchisee shall control access to the facility as necessary to prevent unauthorized entry and dumping.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.
5.13	Signage	The Franchisee shall post signs at all public entrances to the facility, and in conformity with local government signage regulations. These signs shall be easily and readily visible, and legible from off-site during all hours and shall contain at least the following information: <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;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; andj) 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



		<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>
5.15	Operating hours	<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>
5.16	Access to franchise document	<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>

6.0	OPERATING PLAN	
6.1	Purpose	<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>
6.2	Plan compliance	<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>
6.3	Plan maintenance	<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>



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;d) Procedures for providing reasonable notice and justification prior to refusing service to any customer of the facility; ande) 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 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">a) Short-term closure (duration of time that is more than two consecutive business days but less than 120 days in length); andb) Long-term closure (duration of time that is 120 consecutive days or more in length).



6.13	Financial assurance	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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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	<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"> a) Extends Metro's rate regulation authority over the class of facilities of which this Franchisee is a member; and b) Amends this franchise to implement the regulations and process specified by said ordinance.
7.4	Access to financial records	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	Metro fee and tax imposed on waste received	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.

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 (4) outgoing recyclable materials by type; (5) outgoing non-putrescible waste; (6) outgoing putrescible waste;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">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).f) Date the load was received at, transferred within, or transmitted from the facility;g) Time the load was received at, transferred within, or transmitted from the facility;h) Indicate whether Franchisee accepted or rejected the load;



		<ul style="list-style-type: none">i) Net weight of the load; andj) The fee charged to the generator of the load.
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	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.
8.5	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.
8.6	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.
8.7	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.
8.8	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.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



		<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>
8.9	Changes in ownership	<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>

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	<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"> 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 b) Adopts an ordinance amending this franchise to implement the policy, code or process specified by said 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</p>



		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.
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	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.
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 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
12.5	Compliance by agents	The Franchisee shall be responsible for ensuring that its agents and contractors operate in compliance with this franchise.

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

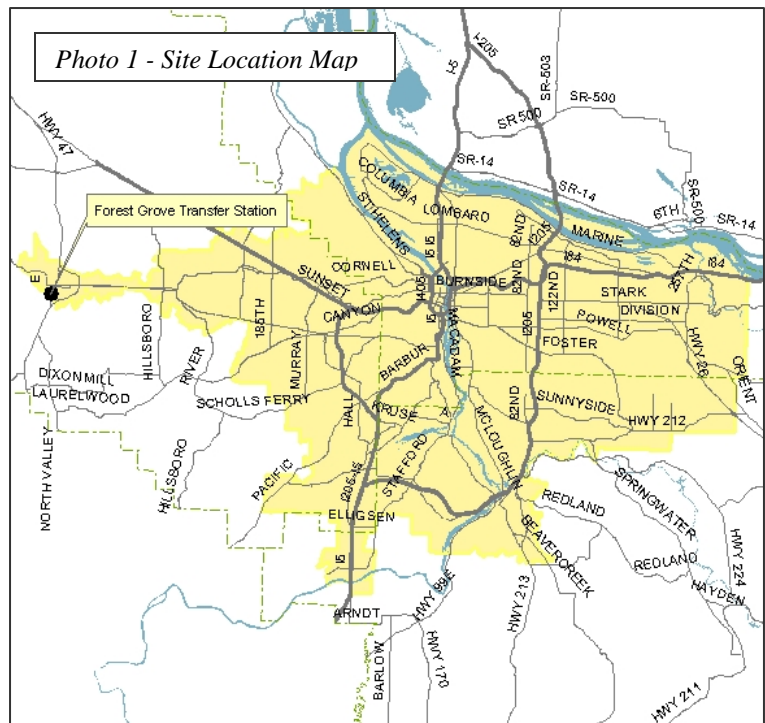
On August 7, 2008, Waste Management of Oregon, Inc. (WMO), dba Forest Grove Transfer Station (FGTS), submitted to Metro a solid waste facility franchise renewal application pursuant to Metro Code Section 5.01.087(b). The Metro Code specifies that the Council shall approve the renewal of a Solid Waste 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.



Photo 2 - Aerial photo of facility

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 th through July 1 st)	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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Agenda Item Number 4.2

Ordinance No. 08-1192, 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 Troutdale Transfer Station.

Second Reading

Metro Council Meeting
Thursday, September 25 , 2008
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING THE) ORDINANCE NO. 08-1192
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 TROUTDALE 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 Troutdale Transfer Station and holds a Metro Solid Waste Facility Franchise Number F-001-03, 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 Troutdale 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 Troutdale Transfer Station substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this _____ day of _____ 2008.

David Bragdon, Council President

Attest:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, Metro Attorney

Exhibit A to Ordinance No. 08-1192

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



METRO

SOLID WASTE FACILITY FRANCHISE

No. F-001-08

FRANCHISEE:	FACILITY NAME AND LOCATION:
Waste Management of Oregon, Inc. 869 NW Eastwind Drive Troutdale, Oregon 97060 Tel. (503) 640-9427 Fax. (503) 648-3942	Troutdale Transfer Station 869 NW Eastwind Drive Troutdale, Oregon 97060 Tel. (503) 667-5264 Fax. (503) 667-6237
OPERATOR:	PROPERTY OWNER:
Waste Management of Oregon, Inc. 3205 SE Minter Bridge Road Hillsboro, Oregon 97123 Tel. (503) 640-9427 Fax. (503) 648-3942	TDK Corp. 333 NE 3rd Gresham, Oregon 97030 Tel. (503) 665-3860

This franchise replaces and supersedes the provisions of Metro Solid Waste Facility Franchise No. F-001-03. 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

Michael Jordan, Metro Chief Operating Officer

Date



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1.0	ISSUANCE	
1.1	Franchisee	Waste Management of Oregon, Inc. 869 NW Eastwind Drive Troutdale, Oregon 97060 Tel. (503) 640-9427 Fax. (503) 648-3942
1.2	Corporate affiliation	Waste Management, Inc. 1001 Fannin, Suite 4000 Houston, Texas 77002
1.3	Contact	Dan Wilson, District Manager Phone: (503) 640-9427 Fax: (503) 648-3942 e-mail: danwilson@wm.com
1.4	Franchise number	When referring to this franchise, please cite: Metro Solid Waste Facility Franchise No. F-001-08.
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	Troutdale Transfer Station 869 NW Eastwind Drive Troutdale, Oregon 97060 Tel. (503) 667-5264 Fax. (503) 667-6237
1.8	Operator	Waste Management of Oregon, Inc. 3205 SE Minter Bridge Road Hillsboro, Oregon 97123 Tel. (503) 640-9427 Fax. (503) 648-3942
1.9	Facility premises description	Tax Lot Identification No. 1N3E27A -00103, City of Troutdale, Multnomah County, State of Oregon
1.10	Property owner	TDK Corp. 333 NE 3rd Gresham, Oregon 97030 Tel. (503) 665-3860



1.11	Permission to operate	Franchisee warrants that it has obtained the property owner's consent to operate the facility as specified in this franchise.
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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	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



		<p>waste for material recovery.</p> <ol style="list-style-type: none">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	<p>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.</p>



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 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 Franchise 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> <ul style="list-style-type: none"> 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. 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. 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.
5.2	Qualified operator	<ol style="list-style-type: none">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 5.01.2. 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.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.
5.3	Fire prevention	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.
5.4	Adequate vehicle accommodation	The Franchisee shall: <ol style="list-style-type: none">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.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.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



		<p>prohibited by the franchise. This program must include at a minimum:</p> <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. <p>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.</p>
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;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



		<p>prevent any material from blowing off the load during transit;</p> <ul style="list-style-type: none">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	<ul style="list-style-type: none">1. The Franchisee shall operate the facility in a manner that prevents the generation of odors that are detectable off-site.2. The Franchisee shall establish and follow procedures in the operating plan for minimizing odor at the facility.
5.9	Vectors (e.g. birds, rodents, insects)	<ul style="list-style-type: none">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.2. If vectors are present or detected at the facility, the Franchisee shall implement vector control measures.
5.10	Noise	<p>The Franchisee shall operate the facility in a manner that prevents the creation of noise sufficient to cause adverse</p>



		off-site impacts and to the extent necessary to meet applicable regulatory standards and land-use regulations.
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	<ul style="list-style-type: none">1. The Franchisee shall control access to the facility as necessary to prevent unauthorized entry and dumping.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.
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;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; andj) Directions not to queue on public roadways.
5.14	Nuisance complaints	<ul 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



		<p>complaint.</p> <p>2. If the facility receives a complaint, the Franchisee shall:</p> <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	<p>The operating plan shall establish:</p> <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



		<p>loads for waste classifications;</p> <p>c) A set of objective criteria for accepting and rejecting loads; and</p> <p>d) An asbestos testing protocol for all materials that appear to contain friable asbestos.</p>
6.6	Procedures for processing and storage of loads	<p>The operating plan shall establish procedures for:</p> <p>a) Processing authorized solid wastes;</p> <p>b) Reloading and transfer of authorized solid wastes;</p> <p>c) Managing stockpiles to ensure that they remain within the authorized weights, volumes and pile heights;</p> <p>d) Storing authorized solid wastes; and</p> <p>e) Minimizing storage times and avoiding delay in processing of authorized solid wastes.</p>
6.7	Procedures for managing prohibited wastes	<p>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.</p>
6.8	Procedures for odor prevention	<p>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:</p> <p>a) A management plan that will be used to monitor and manage odors of any derivation including malodorous loads delivered to the facility; and</p> <p>b) 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.</p>
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> <p>a) A management plan that will be used to monitor and manage dust of any derivation; and</p> <p>b) Procedures for receiving and recording dust</p>



		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	The operating plan shall establish procedures to be followed in case of fire or other emergency.
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: <ol 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; and d) 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	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).
6.13	Financial assurance	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.

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.
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8.0	RECORD KEEPING AND REPORTING	
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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.
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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 (4) outgoing recyclable materials by type; (5) outgoing non-putrescible waste; (6) outgoing putrescible waste; 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"> 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
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		<p>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> <ul style="list-style-type: none">f) Date the load was received at, transferred within, or transmitted from the facility;g) Time the load was received at, transferred within, or transmitted from the facility;h) Indicate whether Franchisee accepted or rejected the load;i) Net weight of the load; andj) The fee charged to the generator of the load.
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.



<p>8.9</p>	<p>Unusual occurrences</p>	<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.
<p>8.10</p>	<p>Changes in ownership</p>	<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.

<p>9.0</p>	<p>INSURANCE REQUIREMENTS</p>	
<p>9.1</p>	<p>Purpose</p>	<p>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.</p>
<p>9.2</p>	<p>General liability</p>	<p>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.</p>
<p>9.3</p>	<p>Automobile</p>	<p>The Franchisee shall carry automobile bodily injury and property damage liability insurance.</p>



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.
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11.0	AMENDMENT, MODIFICATION, SUSPENSION, AND REVOCATION	
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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.
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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.
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11.3	Modification, suspension or revocation by Metro for cause	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: <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
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		impacts resulting from facility operations; and h) Compliance history of the Franchisee.
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12.0	GENERAL OBLIGATIONS	
12.1	Compliance with law	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 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,



		<p>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:</p> <ul 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, covered 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	<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 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	The Franchisee shall be responsible for ensuring that its agents and contractors operate in compliance with this franchise.
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STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 08-1192 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 TROUTDALE TRANSFER STATION

August 21, 2008

Prepared by: Warren Johnson

BACKGROUND

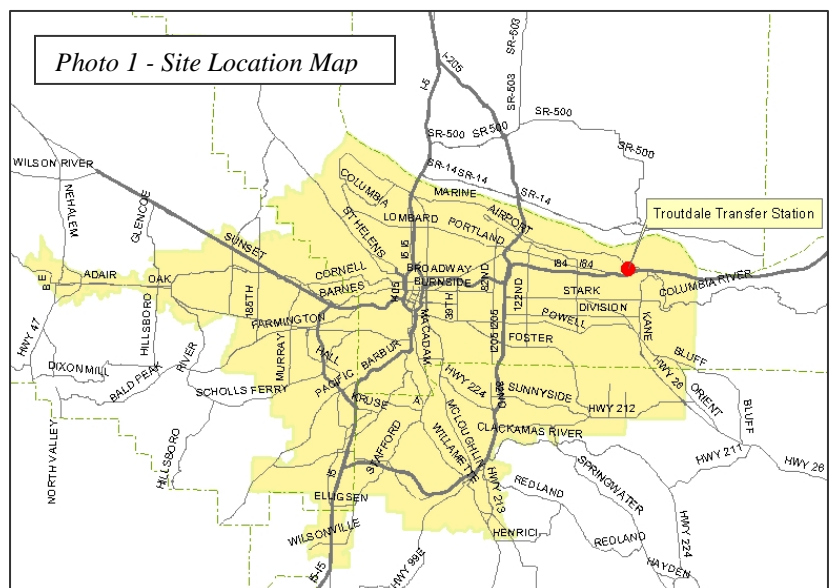
On August 11, 2008, Waste Management of Oregon, Inc. (WMO), dba Troutdale Transfer Station (TTS), submitted to Metro a solid waste facility franchise renewal application pursuant to Metro Code Section 5.01.087(b). The Metro Code specifies that the Council shall approve the renewal of a Solid Waste Facility 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. 08-1192 will authorize the Chief Operating Officer to issue a renewed transfer station franchise to TTS for a term of five years.

THE APPLICANT

The applicant, WMO, is the owner and operator of TTS, an existing solid waste facility located at 869 NW Eastwind Drive, in Troutdale (Metro Council District 1). TTS commenced operation in 1996 as a material recovery facility. The facility currently holds a Metro-issued franchise (No. F-001-03) 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-001-03), TTS is authorized to accept up to 65,000 tons of putrescible waste generated from within the Metro region per fiscal year. In May 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 2003-04 and 2004-05, 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 2005-06.



In addition to its franchise, the applicant currently holds a Metro Non-System License (NSL) that authorizes the delivery of putrescible solid waste directly to the Columbia Ridge Landfill in Gilliam County, Oregon and, under emergency conditions, to the Riverbend Landfill in Yamhill County, Oregon (NSL No. N-001-06).



The applicant has requested a renewal of its solid waste facility franchise (No. F-001-03), which is set to expire on December 31, 2008. This is the second renewal of its transfer station franchise.

The applicant requested a tonnage limit increase in its franchise renewal application. Specifically, WMO requested that Metro increase the tonnage limit authorized in the TTS franchise from 65,000 tons to 78,000 tons of putrescible waste per year. WMO reported that this 13,000-ton increase would benefit the Metro region by reducing the number vehicle miles traveled by waste collection vehicles. As discussed in Section 4 of this document, the proposed franchise renewal includes an increased tonnage authorization and a tonnage authorization growth allowance. With the exception of a tonnage increase, the applicant has not requested any other changes to its current franchise provisions.

Table 1 summarizes the annual amount of solid waste that the TTS 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 the TTS

Fiscal Year (June 30 th through July 1 st)	Putrescible Waste Received (Tons)	Non-Putrescible Waste Received (Tons)	Average Facility Recovery Rate
2004-05	67,997	18,893	31.8%
2005-06	64,995	14,694	29.4%
2006-07	64,532	18,795	30.8%
2007-08	64,722	13,840	36.3%

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 11, 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. The applicant has operated its facility for approximately 12 years and has extensive experience in recycling, solid waste collection, transfer, and disposal. 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-001-03), a Metro NSL (No. N-001-06), a Solid Waste Disposal Site Permit (No. 459) issued by the DEQ, and a National Pollutant Discharge Elimination System Industrial Stormwater General Permit 1200-COLS (No. 16467) issued by the DEQ. In addition, the applicant has received land use authorization from the City of Troutdale.

According to recent communication with Jack Hanna (City of Troutdale), TTS 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 October 4, 1996, the DEQ issued Solid Waste Disposal Site Permit No. 459 (the "Permit") to WMO 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 August 31, 2006. On March 3, 2006, WMO 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 WMO's renewal application. Although the Permit has expired, the DEQ has allowed WMO to continue operating TTS under the terms of the Permit until a final decision is made on the renewal application. 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, 2003, Metro issued Solid Waste Facility Franchise No. F-001-03 (the "Franchise") to WMO 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, WMO has received one Notice of Violation for failing to maintain the Metro-required recovery rate at the TTS. On September 23, 2005, Metro issued Notice of Violation No. NOV-148-05 to WMO for dropping slightly below 25-percent recovery for the month of August 2005. Metro calculated the recovery rate based on a 12-month rolling average. There was no penalty associated with this minor recovery rate violation. Metro afforded WMO an opportunity to abate the violation by taking immediate corrective action to improve material recovery operations at TTS.

Metro has conducted 41 site inspections at TTS 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. TTS is currently in compliance with its NSL and

Franchise. With the exception of the above referenced 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 08-1192 provides for a 5,000-ton increase in WMO's annual putrescible waste authorization. The tonnage shifts expected in response to this Ordinance (about 5,000 tons *from* Metro transfer stations *to* TTS) 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 Willamette Resources, Inc.'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 (3,000 tons from Metro Central, and 2,000 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 Troutdale. 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 12 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 WMO 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 12 years that the facility has been operating. The operator's experience and track record leads staff to conclude 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, staff finds that, notwithstanding one 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).

TTS 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 TTS 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. 08-1192.

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 requested authority to accept up to 78,000 tons of putrescible waste per year in its application. However, the applicant did not provide sufficient information to justify such a tonnage increase as provided in Metro Code Chapter 5.01. Therefore, 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. 08-1192 would authorize the Chief Operating Officer to issue a renewed Solid Waste Facility Franchise to TTS for a term of five years.

4. Budget Impacts

Ordinance No. 08-1192 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* TTS) 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 TTS.

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. 08-1192.

WJ:bjl
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Agenda Item Number 4.3

Ordinance No. 08-1193, For the Purpose of Approving the Transfer Station Franchise Renewal Application of Pride Recycling Company Authorizing the Chief Operating Officer to Issue a Renewed Franchise.

Second Reading

Metro Council Meeting
Thursday, September 25, 2008
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING THE) ORDINANCE NO. 08-1193
TRANSFER STATION FRANCHISE RENEWAL)
APPLICATION OF PRIDE RECYCLING)
COMPANY AUTHORIZING THE CHIEF) Introduced by Michael J. Jordan, Chief
OPERATING OFFICER TO ISSUE A RENEWED) Operating Officer, with the concurrence of
FRANCHISE) 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, Pride Recycling Company operates a transfer station and holds a Metro Solid Waste Facility Franchise Number F-002-03, which will expire on December 31, 2008; and

WHEREAS, Pride Recycling Company 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 Pride Recycling Company 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 Pride Recycling Company a renewed Solid Waste Facility Franchise substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this _____ day of _____ 2008.

David Bragdon, Council President

Attest:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, Metro Attorney

Exhibit A to Ordinance No. 08-1193

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



METRO

SOLID WASTE FACILITY FRANCHISE

No. F-002-08

FRANCHISEE:	FACILITY NAME AND LOCATION:
Pride Recycling Company PO Box 1150 Sherwood, Oregon 97140 Tel. (503) 625-0725 Fax. (503) 625-6179	Pride Recycling Company 13910 SW Tualatin-Sherwood Road Sherwood, Oregon 97140 Tel. (503) 625-0725 Fax. (503) 625-6179
OPERATOR:	PROPERTY OWNER:
Pride Recycling Company 13910 SW Tualatin-Sherwood Road Sherwood, Oregon 97140 Tel. (503) 625-0725 Fax. (503) 625-6179	Mike and Cindy Leichner PO Box 1150 Sherwood, Oregon 97140 Tel. (503) 625-0725 Fax. (503) 625-6179

This franchise replaces and supersedes the provisions of Metro Solid Waste Facility Franchise No. F-002-03. 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

Michael Jordan, Metro Chief Operating Officer

Date



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1.0	ISSUANCE	
1.1	Franchisee	Pride Recycling Company 13910 SW Tualatin-Sherwood Road Sherwood, Oregon 97140 Tel. (503) 625-0725 Fax. (503) 625-6179
1.2	Corporate affiliation	Pride Recycling Company 13910 SW Tualatin-Sherwood Road Sherwood, Oregon 97140 Tel. (503) 625-0725 Fax. (503) 625-6179
1.3	Contact	Mike Leichner, Tel. (503) 625-0725 Fax. (503) 625-6179 e-mail: mike@pridedisposal.com
1.4	Franchise number	When referring to this franchise, please cite: Metro Solid Waste Facility Franchise No. F-002-08.
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	Pride Recycling Company PO Box 1150 Sherwood, Oregon 97140 Tel. (503) 625-0725 Fax. (503) 625-6179
1.8	Operator	Pride Recycling Company 13910 SW Tualatin-Sherwood Road Sherwood, Oregon 97140 Tel. (503) 625-0725 Fax. (503) 625-6179
1.9	Facility premises description	Tax Lot Identification No. 2S128C000101 and No. 2S128C000105, City of Sherwood, Washington County, State of Oregon



1.10	Property owner	Mike and Cindy Leichner PO Box 1150 Sherwood, Oregon 97140 Tel. (503) 625-0725 Fax. (503) 625-6179
1.11	Permission to operate	Franchisee warrants that it has obtained the property owner's consent to operate the facility as specified in this franchise.

2.0	CONDITIONS AND DISCLAIMERS	
2.1	Guarantees	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	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.



		<p>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.</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>
4.6	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> <ul style="list-style-type: none"> 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. 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



		<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>
5.2	Qualified operator	<ol style="list-style-type: none">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 5.01.2. 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.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.
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> <ol style="list-style-type: none">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.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.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:<ol 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	The Franchisee shall: <ol 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;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	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>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	<ul style="list-style-type: none">1. The Franchisee shall operate the facility in a manner that prevents the generation of odors that are detectable off-site.2. The Franchisee shall establish and follow procedures in the operating plan for minimizing odor at the facility.
5.9	Vectors (e.g. birds, rodents, insects)	<ul style="list-style-type: none">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.2. If vectors are present or detected at the facility, the Franchisee shall implement vector control measures.



5.10	Noise	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.
5.11	Water contaminated by solid waste and solid waste leachate	The Franchisee shall operate the facility consistent with an approved DEQ stormwater management plan or equivalent and shall: a) Operate and maintain the facility to prevent contact of solid wastes with storm water runoff and precipitation; and 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.
5.12	Access control	1. The Franchisee shall control access to the facility as necessary to prevent unauthorized entry and dumping. 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.
5.13	Signage	The Franchisee shall post signs at all public entrances to the facility, and in conformity with local government signage regulations. These signs shall be easily and readily visible, and legible from off-site during all hours and shall contain at least the following information: a) Name of the facility; b) Address of the facility; c) Emergency telephone number for the facility; d) Operating hours during which the facility is open for the receipt of authorized waste; e) Fees and charges; f) Metro's name and telephone number (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	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



		<p>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>
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	<p>The operating plan shall establish:</p> <p>a) Procedures for inspecting incoming loads for the presence of prohibited or unauthorized wastes;</p> <p>b) Procedures for identifying incoming and outgoing loads for waste classifications;</p>



		<ul style="list-style-type: none">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	<p>The operating plan shall establish procedures for:</p> <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	<p>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.</p>
6.8	Procedures for odor prevention	<p>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:</p> <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	The operating plan shall establish procedures to be followed in case of fire or other emergency.
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: <ol 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; and d) 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	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).
6.13	Financial assurance	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.

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 (4) outgoing recyclable materials by type; (5) outgoing non-putrescible waste; (6) outgoing putrescible waste;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">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).f) Date the load was received at, transferred within, or transmitted from the facility;



		<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



		<p>compliance, or create off-site impacts, the Franchisee shall notify Metro within 24 hours.</p> <p>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.</p>
8.10	Changes in ownership	<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>

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	<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"> 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 b) Adopts an ordinance amending this franchise to implement the policy, code or process specified by said 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</p>



		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.
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, covered 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



		<p>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 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. 08-1193 FOR THE PURPOSE OF APPROVING THE TRANSFER STATION FRANCHISE RENEWAL APPLICATION OF PRIDE RECYCLING COMPANY AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED FRANCHISE

August 21, 2008

Prepared by: Warren Johnson

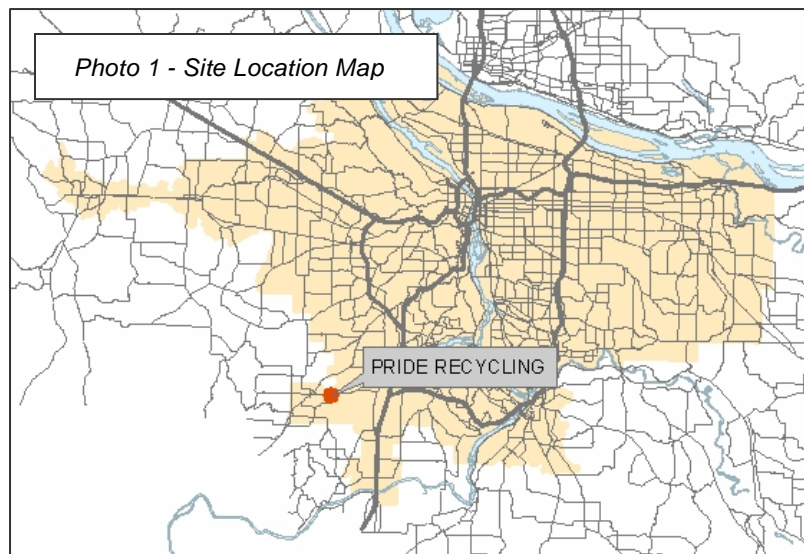
BACKGROUND

On July 24, 2008, Pride Recycling Company (Pride) 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. 08-1193 will authorize the Chief Operating Officer to issue a renewed transfer station franchise to Pride for a term of five years.

THE APPLICANT

The applicant, Pride, is the owner and operator of an existing solid waste facility located at 13910 SW Tualatin-Sherwood Road in Sherwood (Metro Council District 3). Pride commenced operation in 1991 as a reload and material recovery facility. The facility currently holds a Metro-issued franchise (No. F-002-03) 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-002-03), Pride is authorized to accept up to 65,000 tons of putrescible waste generated from within the Metro region per fiscal year.



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 Nos. N-002-05 and N-002-07(2)).

The applicant has requested a renewal of its solid waste facility franchise (No. F-002-03), 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 Pride 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 Pride

Fiscal Year (June 30 th through July 1 st)	Putrescible Waste Received (Tons)	Non-Putrescible Waste Received (Tons)	Average Facility Recovery Rate
2004-05	28,487	22,794	31.9%
2005-06	31,722	16,996	32.3%
2006-07	38,990	20,896	30.6%
2007-08	41,040	24,178	24.5%

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 24, 2008, Pride 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. Pride 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 17 years and has extensive experience in recycling, solid waste collection, transfer, and disposal. 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 Pride 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-002-03), two Metro NSLs (No. N-002-05 and No. N-002-07(2)), a Solid Waste Disposal Site Permit (No. 422) issued by the DEQ, and a National Pollutant Discharge Elimination System

Industrial Stormwater General Permit 1200-Z (No. 16983) issued by the DEQ. In addition, the applicant has received land use authorization from the City of Sherwood.

According to recent communication with Jim Reed (City of Sherwood), Pride 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 February 6, 2003 the DEQ issued Solid Waste Disposal Site Permit No. 422 (the "Permit") to the applicant authorizing Pride to operate a transfer station and material recovery facility. The term of the Permit is set to expire on January 31, 2013. According to recent communication with Stephanie Rawson (DEQ), Pride 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-002-03 (the "Franchise") to Pride 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.

Metro has conducted 44 site inspections at Pride 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. Pride is currently in compliance with its NSLs and Franchise. Pride has not received any notices of violation or formal 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 08-1193 provides for a 5,000-ton increase in Pride's annual putrescible waste authorization. The small tonnage shifts expected in response to this Ordinance (about 5,000 tons shifting *from* Forest Grove Transfer Station *to* Pride) should cause no material change in the cost of disposal and recycling for the citizens of the region. Metro's budget will not be affected, and any transportation efficiencies realized are expected to be small.

(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 18 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 Pride 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 17 years that the facility has been operating. The operator's experience and track record leads staff to conclude that it is unlikely that Pride 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 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).

Pride 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 Pride 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. 08-1193.

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. 08-1193 would authorize the Chief Operating Officer to issue a renewed Solid Waste Facility Franchise to Pride for a term of five years.

4. Budget Impacts

Ordinance No. 08-1193 authorizes the renewal of an existing solid waste facility franchise with a 5,000-ton increase in its facility tonnage cap. The small tonnage shifts expected in response to this Ordinance (about 5,000 tons shifting *from* Forest Grove Transfer Station *to* Pride) should cause no material change in the cost of disposal and recycling for the citizens of the region. Metro's budget will not be affected, and any transportation efficiencies realized are expected to be small.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Ordinance No. 08-1193.

WJ:bjl
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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.

Second Reading

Metro Council Meeting
Thursday, September 25, 2008
Metro Council Chamber

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 _____ day of _____ 2008.

David Bragdon, Council President

Attest:

Approved as to Form:

Christina Billington, Recording Secretary

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

Michael Jordan, Metro Chief Operating Officer

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.



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; andh) Compliance history of the Franchisee.
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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 franchise.</p>
12.2	Deliver waste to appropriate destinations	<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,</p>



		orders and permits.
12.3	Right of inspection and audit	<p>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.</p> <p>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:</p> <ul 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, covered 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	<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</p>



		<p>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.

WJ:bjl
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Queue

Ordinance No. 08-1195, For the Purpose of Amending Metro Code Chapter 5.05 to Include Tualatin Valley Waste Recovery on the List of Designated Facilities.

Second Reading

Metro Council Meeting
Thursday, September 25, 2008
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO)	ORDINANCE NO. 08-1195
CODE CHAPTER 5.05 TO INCLUDE)	
TUALATIN VALLEY WASTE RECOVERY ON)	Introduced by Michael J. Jordan, Chief
THE LIST OF DESIGNATED FACILITIES)	Operating Officer, with the concurrence of
)	David Bragdon, Metro Council President

WHEREAS, Metro Code Section 5.05.030 authorizes the Metro Council to add and delete facilities from the list of designated facilities set forth in that Section; and

WHEREAS, Waste Management, Inc., has made application to Metro seeking designated facility status for Tualatin Valley Waste Recovery by requesting that Metro add Tualatin Valley Waste Recovery to the list of designated facilities set forth in Metro Code Section 5.05.030; and

WHEREAS, as set forth in the staff report accompanying this Ordinance, the Chief Operating Officer analyzed the criteria set forth in Metro Code section 5.05.030(b) that the Metro Council must consider when it determines whether to add a facility to the list of designated facilities in Section 5.05.030(a); and

WHEREAS, the Chief Operating Officer recommends approval of this Ordinance; now therefore,

THE METRO COUNCIL HEREBY ORDAINS AS FOLLOWS:

Metro Code Section 5.05.030(a) is amended to add the following provision as subsection 13:

(13) Tualatin Valley Waste Recovery. The Tualatin Valley Waste Recovery facility, 3205 SE Minter Bridge Road, Hillsboro, Oregon, subject to the terms of an agreement between Metro and the owner of the Tualatin Valley Waste Recovery facility authorizing receipt of solid waste generated within Metro only as follows:

- (A) As specified in an agreement entered into between Metro and the owner of the Tualatin Valley Waste Recovery facility authorizing receipt of such waste; or
- (B) Subject to a non-system license issued to a person transporting to the facility solid wastes not specified in the agreement.

ADOPTED by the Metro Council this _____ day of _____ 2008.

David Bragdon, Council President

Attest:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, Metro Attorney

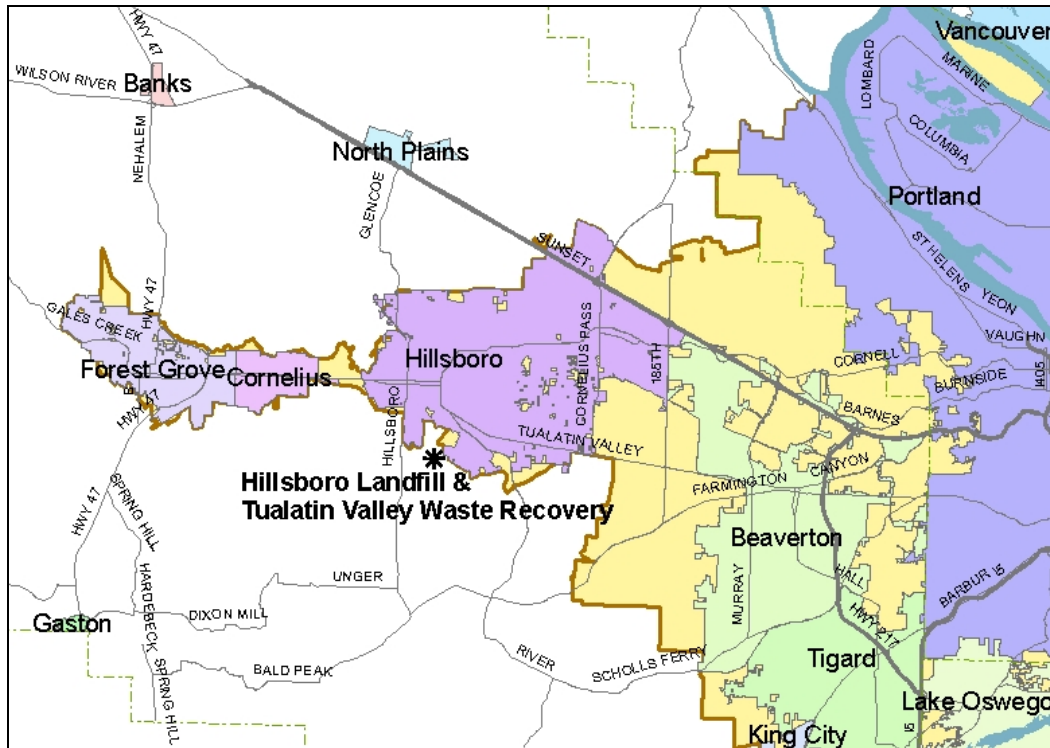
STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 08-1195, AMENDING METRO CODE CHAPTER 5.05 TO INCLUDE TUALATIN VALLEY WASTE RECOVERY ON THE LIST OF METRO DESIGNATED FACILITIES

August 20, 2008

Prepared by: Bill Metzler

The proposed Ordinance, if approved by Council, will list the Tualatin Valley Waste Recovery (“TVWR”) facility in Code as a designated facility authorized to receive non-putrescible waste generated from within the Metro boundary for the purpose of conducting material recovery. Upon listing, the Chief Operating Officer (COO) may then enter into a formal Designated Facility Agreement (“DFA”) with the facility on behalf of Metro. TVWR is located adjacent to the Hillsboro Landfill and is just outside the Metro boundary



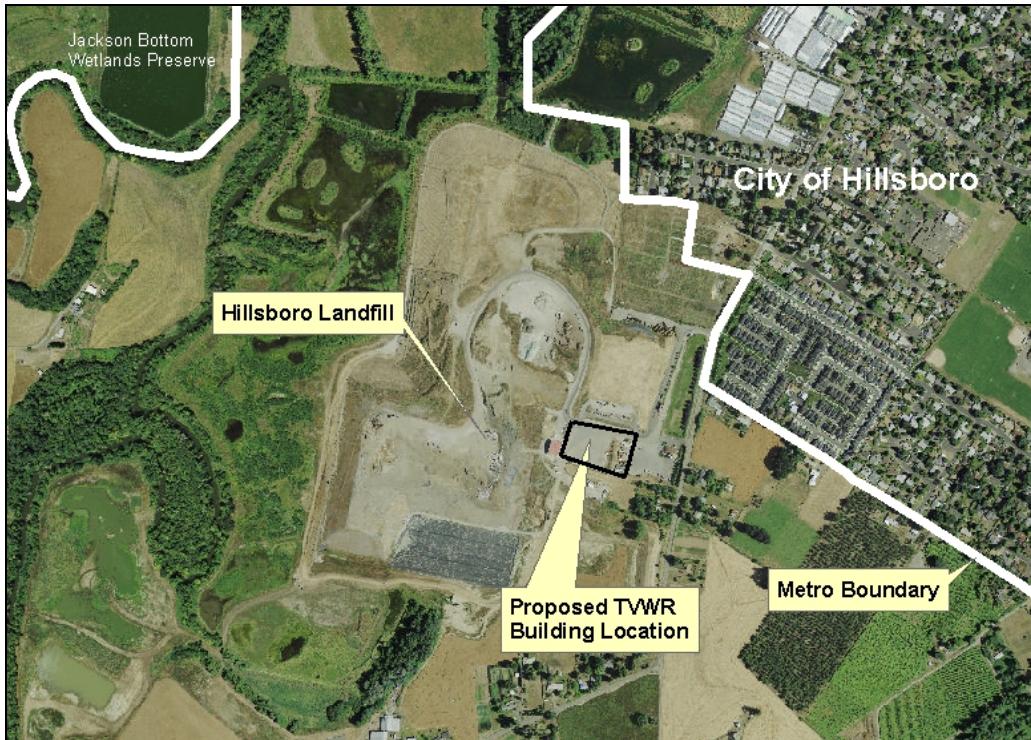
Site location map of Tualatin Valley Waste Recovery and Hillsboro Landfill

BACKGROUND

Tualatin Valley Waste Recovery (“TVWR”) is a Waste Management, Inc. owned material recovery facility located at 3205 SE Minter Bridge Road, Hillsboro, Oregon and borders the Metro jurisdictional boundary. TVWR is located adjacent to the Hillsboro Landfill, also owned by Waste Management, Inc.

TVWR currently operates only as a source-separated recycling depot accepting primarily source-separated loads of glass, metal, yard debris, wood waste and concrete. In 2004 TVWR was

issued a DEQ solid waste permit as a material recovery facility (Permit No. 1280) authorized to accept only select mixed loads of “dry” (non-putrescible) wastes generated at commercial, industrial, construction and demolition sites, and from the public, source-separated recyclable materials, and limited amounts of tires. However, TVWR has not operated as a mixed non-putrescible waste material recovery facility. TVWR currently operates only as a source-separated recycling depot.



Proposed TVWR building site location, Hillsboro Landfill and Metro Boundary (airphoto)

Proposed improvements at TVWR

According to information provided by Waste Management, Inc., TVWR is currently obtaining permits to undertake a substantial facility expansion with an estimated date of completion of April 22, 2009 (Earth Day). The proposed facility will be authorized by the DEQ to accept mixed non-putrescible waste and recyclables for the purpose of conducting material recovery. However, Waste Management, Inc. representatives have indicated to Metro that the proposed facility may not be finished until July 2009 or later pending issuance of local permits and availability of construction materials.

The proposed facility will include construction of a new, fully enclosed 65,000 square foot metal building with a translucent roof to lower energy consumption. In addition, the facility will collect rainwater from the roof to be stored for operational and fire suppression needs, and will be partially powered by solar cells. The proposed facility will be built following the guidelines from the Leadership in Energy and Environmental Design (LEED) Green Building Rating System, and intends to be certified under the “Gold Standard” for LEED rating.



Waste Management, Inc. illustration of proposed TVWR facility

Designated Facility Agreement to establish consistency with EDWRP

On August 16, 2007, in an effort to increase the recovery of solid waste, the Metro Council approved Ordinance No. 07-1147B adopting the Enhanced Dry Waste Recovery Program (EDWRP). The ordinance requires that by January 1, 2009 all mixed non-putrescible waste generated in the Metro region be delivered to a material recovery facility (“MRF”) for processing before disposal. In order to ensure compliance with EDWRP requirements, the residual from such processing must be delivered for disposal to landfills designated by Metro to only accept processing residual, which includes the Hillsboro Landfill. Upon entering into a DFA with Metro, NSLs will not be issued for non-putrescible waste deliveries to the TVWR facility.

In response to these changes, TVWR has requested designated facility status as a MRF so that it may accept and process non-putrescible waste generated from within the Metro region after December 31, 2008. The proposed ordinance, if approved by Council, will list TVWR in the Code as a designated facility authorized to accept non-putrescible waste for the purpose of conducting material recovery, along with other designated facilities already listed. If the Council lists TVWR as a designated facility, the COO will negotiate a DFA with Waste Management, Inc.

The DFA for the TVWR facility will include standard provisions included in other DFAs, and will also include provisions that ensure non-putrescible waste generated from the Metro region is managed in accordance with applicable EDWRP requirements established in Metro Code Section 5.05.030(g) for the operation of a material recovery facility as follows:

(g) An agreement between Metro and a designated facility that, after December 31, 2008, authorizes the facility to accept non-putrescible waste that has not yet undergone material recovery, is not comprised of processing residual, and originated or was generated within Metro boundaries shall:

- (1) Require such designated facility to perform material recovery on such waste; and*

- (2) *Demonstrate, in a manner that can be verified and audited, that such processing achieves material recovery substantially comparable to that required of in-region material recovery facilities by Metro Code subsections 5.01.125(a) and (b) by either:*
 - (A) *Meeting such material recovery requirements for all non-putrescible waste received at the facility, whether or not from within Metro boundaries; or*
 - (B) *Keeping all non-putrescible waste received from within Metro boundaries segregated from other waste throughout processing, keeping processing residual from such processing segregated from other solid waste after processing, and meeting such material recovery requirements for all such non-putrescible waste.*
- (3) *Demonstrate, in a manner that can be verified and audited, that such facility substantially complies with (A) the performance goals described in Metro Code Sections 5.01.067(i) (as amended by Section 1 of Metro Ordinance No. 07-1138) and 5.01.075(c) (as amended by Section 2 of Metro Ordinance No. 07-1138), and (B) the performance standards, design requirements, and operating requirements applicable to licensed and franchised material recovery facilities operating within the Metro region and adopted by Metro as administrative procedures pursuant to Metro Code Section 5.01.132 (as amended by Section 3 of Metro Ordinance No. 07-1138).*

Waste Management, Inc. to Seek a Variance

The Metro Code requirements in Chapter 5.05 implementing the EDWRP provisions go into effect on December 31, 2008. However, Waste Management, Inc. has indicated that the proposed TVWR facility will not likely be completed and fully operational until April 22, 2009 or perhaps even later in 2009 due to local permit timeframes and questionable availability of construction materials. Therefore, a DFA with Waste Management, Inc. cannot be developed that authorizes TVWR to accept non-putrescible waste from the Metro region until TVWR can either:

- 1) Meet the EDWRP requirements as specified in Metro Code Chapter 5.05, or
- 2) Obtain a variance from specific EDWRP Code provisions.

If Waste Management, Inc. pursues a variance request, then the Metro Council would decide whether or not to grant a variance, and a DFA would be developed by the COO to reflect the decision of the Council.

TVWR and the Hillsboro Landfill

TVWR is located adjacent to the Hillsboro Landfill, also owned by Waste Management, Inc. The Hillsboro Landfill operates under a DEQ Solid Waste Disposal Site Permit (No. 112) and was listed in Metro Code Chapter 5.05 as a designated facility of the system in 1993. Correspondingly, Metro and the Hillsboro Landfill entered in to a DFA on April 20, 1993 (Metro Contract No. 902858), and the COO is currently negotiating a new DFA with Waste Management, Inc. in compliance with EDWRP requirements.

In accordance with EDWRP requirements established in Metro Code Section 5.05.030(c), Metro's existing DFA with the Hillsboro Landfill will be amended by December 31, 2008 to ensure that all non-putrescible waste undergoes material recovery prior to disposal. In particular, the Hillsboro Landfill DFA will stipulate that after December 31, 2008, the Hillsboro Landfill can only accept processed non-putrescible waste (processing residual from a MRF) from authorized facilities for disposal in the landfill.

If TVWR is approved by the Council as a designated facility, then TVWR, in accordance with the provisions of its Metro DFA, will be able to accept unprocessed non-putrescible waste from the Metro region, where dry waste will be recovered at TVWR prior to disposal of the residual at the Hillsboro Landfill. The practical effect will be that some 80,000 tons of unprocessed non-putrescible waste delivered to the Hillsboro Landfill (based on tons reported for 2007), coming from the Metro region, must be diverted to one or more MRFs for processing. As a result of the waste recovery at TVWR, Waste Management, Inc. has indicated that the life of the Hillsboro Landfill could be extended by an additional 25-30 years.

ANALYSIS/INFORMATION

1. Known Opposition

Staff is not aware of any opposition to the proposed ordinance. Waste Management, Inc. held a public information meeting for neighbors to discuss the proposed new MRF on August 7, 2008 and received generally positive comments from the public that attended.

2. Legal Antecedents

Metro Code Section 5.05.030(a) contains a list of designated facilities. Metro Code Section 5.05.030(b) states that, pursuant to a duly enacted ordinance, the Metro Council may add facilities to the list. In deciding whether to designate an additional facility, the Council shall consider several factors listed in the Code. Below are the factors that must be considered, with each factor followed by a brief analysis.

- (1) *The degree to which prior users of the facility and waste types accepted at the facility are known and the degree to which such wastes pose a future risk of environmental contamination (Metro Code Section 5.05.030(b)(1));*

Metro staff have not found any evidence that TVWR has accepted wastes that were not permitted by the DEQ to accept, therefore the potential for future risk of environmental contamination at TVWR appears to be minimal. TVWR currently accepts source-separated loads of glass, metal, yard debris, wood waste and concrete, and operates under a DEQ solid waste permit. As a source separated material recovery facility accepting only limited types of non-putrescible and source-separated wastes, the facility has no known history of accepting wastes that pose a future risk of environmental contamination.

- (2) *The record of regulatory compliance of the facility's owner and operator with federal, state and local requirements, including but not limited to public health, safety and environmental rules and regulations (Metro Code Section 5.05.030(b)(2));*

The DEQ considers the current source-separated recycling depot operation to be well run, and in compliance with federal and state requirements. The facility is also reported to have a good compliance record with local (Washington County) public health, safety and environmental rules and regulations. TVWR is permitted by the DEQ, however, the current permit will need to be modified for the new facility.

Waste Management, Inc. also owns and operates the adjacent Hillsboro Landfill, which has a DEQ permit and a Metro DFA for disposal of non-putrescible waste. Hillsboro Landfill also has a good record of regulatory compliance with Metro, Washington County and the DEQ. Other Waste Management, Inc. facilities that are franchised by Metro include the Troutdale Transfer Station (Metro Franchise No. F-001-03), and Forest Grove Transfer Station (Metro Franchise No. FR-004). Both transfer stations have good records of substantive regulatory compliance with Metro ordinances and generally cooperate with Metro in enforcement of such ordinances. Waste Management, Inc. also owns and operates the Columbia Ridge Landfill, which is permitted by the DEQ, and is a Metro designated facility for certain wastes generated in the Metro region. The Columbia Ridge Landfill is also Metro's waste disposal contractor. Both the Hillsboro Landfill and the Columbia Ridge Landfill have good records of regulatory compliance and cooperation with Metro and the DEQ. Additionally, Waste Management, Inc. owns and operates the Riverbend Landfill which is located in Yamhill County, outside the Metro region, and has a good record of regulatory compliance and cooperation with Metro, Yamhill County and the DEQ.

- (3) *The adequacy of operational practices and management controls at the facility (Metro Code Section 5.05.030(b)(3));*

TVWR plans to use operational practices and management controls that are typical of material recovery facilities and considered by the DEQ to be adequate for the protection of health, safety, and the environment. Metro will review and approve TVWR's operating plan prior to operational start-up. Moreover, the proposed improvements at the facility that include constructing a new fully enclosed 65,000 square foot LEED certified

building will result in significant operating improvements and management controls at the facility.

(4) *The expected impact on the region's recycling and waste reduction efforts (Metro Code Section 5.05.030(b)(4));*

Listing a new designated facility to conduct material recovery on unprocessed non-putrescible waste - that was previously landfilled - will result in additional processing capacity for the region and will have a positive impact on the region's recovery rate and waste reduction efforts.

Based on Hillsboro Landfill tonnage reports from 2007, staff estimates that the effect of approving TVWR as a designated facility will likely result in some 80,000 tons per year of unprocessed non-putrescible waste from the Metro region will be diverted from Hillsboro Landfill to TVWR for processing. If TVWR maintains a 25% recovery rate, then an additional 20,000 tons of material will be recovered from Metro area waste, which translates into adding about two-thirds (2/3) of an additional percentage point¹ toward the regional recovery goal of 64%. The Metro region is achieving a 55.5% recovery rate based on 2006 data from the DEQ.

However, in its application to be listed as a designated facility, Waste Management, Inc. has indicated that TVWR anticipates accepting 160,000 tons of non-putrescible waste from the Metro region annually, and plans to recover 48,000 tons from that waste, resulting in a 30% recovery rate. These higher recovery numbers could add 1.5 percentage points to the regional recovery rate.

(5) *The consistency of the designation with Metro's existing contractual arrangements (Metro Code Section 5.05.030(b)(5));*

Approval of the proposed DFA will not conflict with Metro's disposal contract or any other of its existing contractual arrangements. Waste Management, Inc. is Metro's disposal contractor for putrescible waste. The waste authorized under the proposed DFA for TVWR is non-putrescible and not subject to the contract provisions, and therefore delivery of non-putrescible Metro area waste to TVWR is consistent with the disposal agreement.

(6) *The record of the facility regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement (Metro Code Section 5.05.030(b)(6));*

As an out-of-region non-designated facility, TVWR has not previously been subject to Metro ordinances or agreements, as it is a proposed new facility. However, the Hillsboro Landfill, which is a Metro designated facility (Metro DFA Contract No. 902858), has been generally cooperative with Metro's Regulatory Affairs Division.

¹ One additional percentage point would be the equivalent of an additional 22,000 tons of recovered material.

Waste Management, Inc. also owns and operates the adjacent Hillsboro Landfill, which has a DEQ permit and a Metro DFA for disposal of non-putrescible waste. Hillsboro Landfill also has a good record of regulatory compliance with Metro, Washington County and the DEQ. Other Waste Management, Inc. facilities that are franchised by Metro include the Troutdale Transfer Station (Metro Franchise No. F-001-03), and Forest Grove Transfer Station (Metro Franchise No. FR-004). Both transfer stations have good records of substantive regulatory compliance with Metro ordinances and generally cooperate with Metro in enforcement of Metro ordinances. Waste Management, Inc. also owns and operates the Columbia Ridge Landfill, which is permitted by the DEQ, and is a Metro designated facility for certain wastes generated in the Metro region. The Columbia Ridge Landfill is also Metro's waste disposal contractor. Both the Hillsboro Landfill and the Columbia Ridge Landfill have good records of regulatory compliance and cooperation with Metro and the DEQ. Additionally, Waste Management, Inc. owns and operates the Riverbend Landfill which is located in Yamhill County, outside the Metro region, and has a good record of regulatory compliance and cooperation with Metro, Yamhill County and the DEQ.

(7) *Other benefits or detriments accruing to residents of the region from Council action in designating a facility (Metro Code Section 5.05.030(b)(7));*

The potential benefits of listing TVWR as a designated facility are listed below under Anticipated Effects. Staff does not anticipate that any detriments will accrue to residents of the region as a result of the proposed listing.

3. Anticipated Effects

- Collection of Metro regional system fees and excise tax on processing residual that is landfilled.
- Enhanced implementation of EDWRP provisions and more efficient administration through a DFA.
- Significant additional material recovery from wastes previously landfilled - estimated to be between 20,000 tons per year to 40,000 tons per year, depending on operating capacity.
- Extend the life of the Hillsboro Landfill by 25-30 years.
- A "Gold Standard" LEED certified MRF. According to information provided by Waste Management, Inc., the proposed TVWR facility is designed to be certified by the Leadership in Energy and Environmental Design (LEED) Green Building Rating System to the Gold Standard. The facility will be built with minimal amounts of waste, energy efficiency, water savings and several other criteria in order to achieve LEED certification.

4. Budget impacts

Adopting this Ordinance will help enable implementation of EDWRP, whose budget impacts have already been considered by the Metro Council in its adoption of Ordinance 07-1147B. Designation of TVWR is consistent with EDWRP and is not expected to alter the budget impact projection contained in the EDWRP Ordinance staff report.

TVWR will receive only unprocessed non-putrescible waste for the purpose of conducting material recovery on waste generated in the Metro region under the authority of the proposed DFA. This wastestream is unlikely to be diverted from Metro transfer stations or other MRFs since it has typically been delivered to the Hillsboro Landfill. The processing residual resulting from material recovery at TVWR will be delivered to a designated facility (the Hillsboro Landfill) where regional system fees and excise tax will be collected and remitted to Metro.

RECOMMENDED ACTION

The Chief Operating Officer recommends adoption of Ordinance No. 08-1195.

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Agenda Item Number 4.6

Ordinance No. 08-1197, For the Purpose of Amending Metro Code Chapter 5.05 to Include Riverbend Landfill on the List of Designated Facilities.

Second Reading

Metro Council Meeting
Thursday, September 25, 2008
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO)	ORDINANCE NO. 08-1197
CODE CHAPTER 5.05 TO INCLUDE)	
RIVERBEND LANDFILL ON THE LIST OF)	Introduced by Michael J. Jordan, Chief
DESIGNATED FACILITIES)	Operating Officer, with the concurrence of
)	David Bragdon, Metro Council President

WHEREAS, Metro Code Section 5.05.030 authorizes the Metro Council to add and delete facilities from the list of designated facilities set forth in that Section; and

WHEREAS, Waste Management, Inc., has made application to Metro seeking designated facility status for Riverbend Landfill by requesting that Metro add Riverbend Landfill to the list of designated facilities set forth in Metro Code Section 5.05.030; and

WHEREAS, as set forth in the staff report accompanying this Ordinance, the Chief Operating Officer analyzed the criteria set forth in Metro Code section 5.05.030(b) that the Metro Council must consider when it determines whether to add a facility to the list of designated facilities in Section 5.05.030(a); and

WHEREAS, the Chief Operating Officer recommends approval of this Ordinance; now therefore,

THE METRO COUNCIL HEREBY ORDAINS AS FOLLOWS:

Metro Code Section 5.05.030(a) is amended to add the following provision as subsection 14:

- (14) Riverbend Landfill. Riverbend Landfill, 13469 SW Highway 18, McMinnville, Oregon, subject to the terms of an agreement between Metro and the owner of Riverbend Landfill authorizing receipt of solid waste generated within Metro only as follows:
 - (A) As specified in an agreement entered into between Metro and the owner of Riverbend Landfill authorizing receipt of such waste; or
 - (B) Subject to a non-system license issued to a person transporting to the facility solid wastes not specified in the agreement.

ADOPTED by the Metro Council this _____ day of _____ 2008.

David Bragdon, Council President

Attest:

Christina Billington, Recording Secretary

Daniel B. Cooper, Metro Attorney

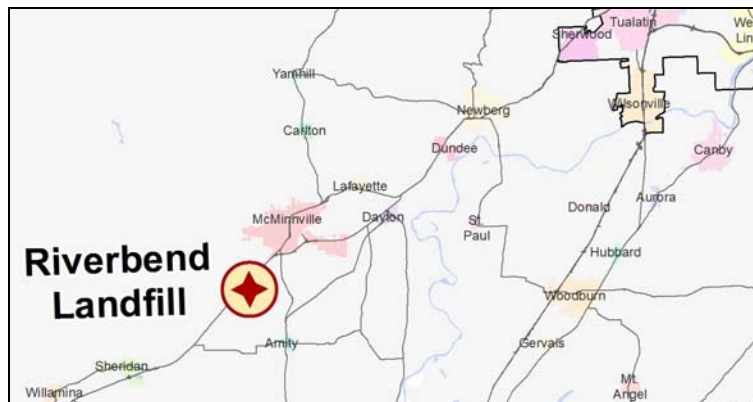
STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 08-1197, AMENDING METRO CODE CHAPTER 5.05 TO INCLUDE RIVERBEND LANDFILL ON THE LIST OF DESIGNATED FACILITIES

August 27, 2008

Prepared by: Steve Kraten

The proposed Ordinance, if approved by the Council, will list the Riverbend Landfill (“RLF”) in Code as a designated facility, authorized to receive non-putrescible waste and cleanup material generated from within the Metro boundary. The landfill would be responsible for collecting and remitting regional system fees and excise tax to Metro on this waste. Upon listing, the Chief Operating Officer (“COO”) may then enter into a formal Designated Facility Agreement (“DFA”) with the landfill on behalf of Metro. Metro Council will continue to allocate putrescible waste to the landfill via non-system licenses, as it does with other landfills.



BACKGROUND

RLF is permitted as a RCRA Subtitle D¹ landfill by the Oregon Department of Environmental Quality (“DEQ”). The landfill is owned by Waste Management, Inc. and located at 13469 SW Highway 18, four miles southwest of McMinnville, Oregon, and 44 miles from Metro Regional Center. Subtitle D disposal permits allow disposal of municipal solid waste and cleanup material. Permitting and monitoring of Subtitle D landfills is a state responsibility when a state has been approved by United States Environmental Protection Agency to implement a solid waste disposal permit program. RLF’s current Solid Waste Disposal Site Permit to operate the landfill was issued by the DEQ in 1999. It is scheduled to expire on December 1, 2009. The landfill is situated in a “Public Works/Safety District” zone in which landfills are a permitted use, and operates under a license agreement with Yamhill County, in addition to the DEQ permit.

¹ Subtitle D is a designation of the federal Resource Conservation and Recovery Act (“RCRA”) that establishes landfill standards for municipal solid waste (“MSW”).

Current Metro Non-System Licenses for Solid Waste Deliveries to Riverbend Landfill

Presently, 97,000 tons of non-putrescible waste and 442,160 tons of municipal solid waste² (putrescible and non-putrescible waste) are authorized to be delivered to RLF under non-system licenses (“NSLs”) issued directly to generators and haulers by Metro. During 2007, 90,183 tons of non-putrescible waste and 240,219 tons of municipal solid waste were actually delivered. During 2007, RLF accepted 686,631 tons of waste from all sources, with 238,023 tons reported as originating from within Yamhill County. Metro-area waste thus accounted for 48 percent of the waste delivered to RLF in 2007. The proposed designated facility listing and agreement does not include putrescible waste. Putrescible waste deliveries will continue to require authorization from the Metro Council under NSLs issued to the generators or haulers delivering the waste to the landfill.

Both Metro-owned transfer stations and the Troutdale Transfer Station, owned by Waste Management, Inc., have delivered small quantities of solid waste to RLF on an emergency basis. Examples of emergencies include closure of I-84 through the Columbia Gorge due to ice, and when equipment breaks down preventing compaction of waste into the type of transport trailers appropriate for the tippers used at the Columbia Ridge Landfill in Arlington, Oregon. Attachment A to this staff report is a list that details the current NSLs issued by Metro to generators and haulers authorizing delivery of non-putrescible and putrescible waste to the RLF. All the NSLs to RLF, except one³, are set to expire on December 31, 2008.



Riverbend Landfill – Leachate retention pond in the foreground; working face of the landfill in the distance

² The term Municipal Solid Waste (“MSW”) is used to denote general residential and commercial garbage picked up on hauling routes, usually in smaller containers, and collected together in a single truck without regard to putrescibility. This is in contrast to waste collected in large drop boxes or compactors which are dedicated specifically to either putrescible or non-putrescible waste.

³ An NSL issued to Pride Recycling Company for MRF residual has an expiration date of December 31, 2009. However, this NSL will be terminated if the proposed DFA is approved.

Designated Facility Agreement to Establish Consistency within the Solid Waste System

On June 16, 2008, RLF submitted certification of its intent to seek designated facility status so that it may accept non-putrescible MRF residual generated from within the Metro region after January 1, 2009. The landfill also seeks to accept Metro-area cleanup material. The proposed ordinance, if approved by the Council, will list RLF in the Code as a designated facility, along with the other designated facilities already listed.

If the Council decides to list RLF, the Chief Operating Officer will seek to negotiate a DFA with Waste Management. The DFA will include standard provisions included in other landfill DFAs. Metro is seeking to establish as much uniformity as possible among all of the designated facilities and ensure that similarly situated facilities manage Metro area waste in a consistent manner while collecting and remitting Metro regional system fees and excise taxes. In particular, the DFA will ensure consistency with the Enhanced Dry Waste Recovery Program (“EDWRP”)⁴ authorizing only the acceptance of non-putrescible processing residual from MRFs and cleanup material. The landfill must also assist Metro in its determination of whether processing residual accepted at the landfill meets the recovery standard required by the Metro Code and Administrative Procedures.

ANALYSIS/INFORMATION

1. Known Opposition

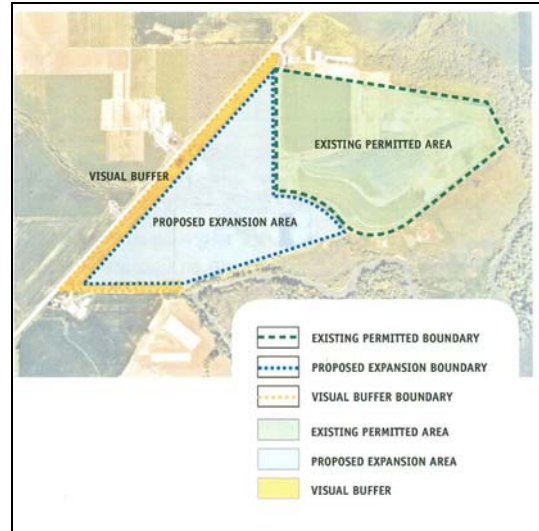
RLF has applied to Yamhill County for a permit to expand the landfill by 87 acres. Waste Management indicates that such an expansion would extend the useful life of the landfill from the current six years to 20 – 30 more years. Metro staff is aware that the owner of a property bordering the landfill is a leading opponent of the expansion and is seeking to mobilize others to oppose the landfill expansion by organizing under the title of the “Stop the Dump Expansion Committee” and pursuing a local ballot measure to stop the expansion. The measure⁵ will be on the Yamhill County November 4, 2008 ballot. If passed, it will prohibit future expansion of the landfill within 2,000 feet of a flood plain but will not affect the expansion for which RLF has already applied. This individual promotes his views about the expansion through a website (www.mcdumpville.com). Waste Management also has a website about the proposed expansion (www.riverbendlandfill.com/plans-expand.asp).

⁴ EDWRP requires that by January 1, 2009, all mixed non-putrescible waste generated in the Metro region be delivered to a material recovery facility for processing before disposal.

⁵ The title of the measure will be “Prohibits landfill expansion, new landfills within 2000 feet of flood plain”



Aerial View



Proposed Expansion

2. Legal Antecedents

Metro Code Section 5.05.030(a) contains a list of nine designated facilities located outside the Metro region. Metro Code Section 5.05.030(b) states that, pursuant to a duly enacted ordinance, the Metro Council may add facilities to the list. In deciding whether to designate an additional facility, the Council shall consider several factors listed in the Code. Below are the factors that must be considered, with each factor followed by a brief analysis.

- (1) *The degree to which prior users of the facility and waste types accepted at the facility are known and the degree to which such wastes pose a future risk of environmental contamination;* [Code Section 5.05.030(b)(1)]

RLF first opened in 1982 as a municipal solid waste landfill under the ownership of City Sanitation Service, McMinnville's local private hauler. At that time the landfill was clay-lined but without a synthetic liner. The landfill was purchased by Sanifill in 1992, which was acquired by USA Waste in 1994. USA Waste subsequently merged with Waste Management, Inc. in 1998. RLF became a Subtitle D landfill in 1993, at which time the original unlined cells were capped and closed. Since 1993, the landfill has been filling only lined cells and operating with the required environmental controls required by the DEQ.

The landfill accepted asbestos containing materials earlier in its operation but has not done so for the past ten years. In 2006 RLF inadvertently accepted and landfilled a load of bagged subflooring and tile containing asbestos in violation of its DEQ permit. Other than that, Metro staff have not found any evidence that the landfill has accepted wastes that it was not permitted by DEQ to accept. It appears that the future risk of environmental contamination is likely to be minimal, provided that the synthetic liner system remains intact, leachate is collected and properly treated, groundwater is monitored for contamination migration, and the DEQ is diligent in its oversight of the facility.

(2) *The record of regulatory compliance of the facility's owner and operator with federal, state and local requirements, including but not limited to public health, safety and environmental rules and regulations; [Code Section 5.05.030(b)(2)]*

The DEQ considers the landfill to be a well-run facility that is in compliance with federal and state requirements. In the past five years RLF has received one notice of non-compliance from DEQ for elevated levels of suspended solids in stormwater discharge. The facility is also reported to have a good compliance record with local (Yamhill County and the City of McMinnville) public health, safety and environmental rules and regulations.

Waste Management, Inc. also owns and operates the Hillsboro Landfill, which has a DEQ permit and a Metro DFA for disposal of non-putrescible waste. Hillsboro Landfill also has a good record of regulatory compliance with Metro, Washington County and the DEQ. Other Waste Management, Inc. facilities that are franchised by Metro include the Troutdale Transfer Station (Metro Franchise No. F-001-03), and Forest Grove Transfer Station (Metro Franchise No. 004). Both transfer stations have good records of substantive regulatory compliance with Metro ordinances and generally cooperate with Metro in enforcement of such ordinances. Waste Management, Inc. also owns and operates the Columbia Ridge Landfill, which is permitted by the DEQ and is a Metro designated facility for certain wastes generated in the Metro region. Hillsboro Landfill and Columbia Ridge Landfill both have good records of regulatory compliance and cooperation with Metro and the DEQ.

(3) *The adequacy of operational practices and management controls at the facility; [Code Section 5.05.030(b)(3)]*

RLF uses operational practices and management controls that are typical of a modern engineered Subtitle D landfill and considered by the DEQ to be adequate for the protection of health, safety, and the environment. In addition, the landfill has a 14-acre poplar plantation irrigated with leachate from the landfill. The uptake potential of the trees is estimated to exceed the amount of leachate. The landfill captures methane gas that is presently flared off. However, Waste Management, Inc. plans to install generators that will utilize landfill gas to supply electric power to the McMinnville PUD grid. Electricity generated in this manner is considered to be “green power.”

There has been an issue with litter blowing from the landfill into trees that border the neighboring property. The landfill has recently installed a taller litter fence in order to mitigate this problem. The landfill also mistakenly sank a ground water monitoring well on the neighbor's property but has offered to mitigate that situation.

(4) *The expected impact on the region's recycling and waste reduction efforts;* [Code Section 5.05.030(b)(4)]

Under the proposed DFA, the only dry waste⁶ RLF will accept is MRF processing residual and cleanup material. The landfill will not be eligible to accept unprocessed dry waste from the Metro region. Therefore, the proposed DFA is consistent with the implementation of the Enhanced Dry Waste Recovery Program (“EDWRP”) and will provide the region with a nearby disposal option for MRF residual. This is expected to have a positive impact on the region’s recycling and waste reduction efforts.

RLF’s most significant role in the region’s solid waste system will continue to be as a significant disposal site for the region’s putrescible waste. During 2007, 81 percent of the waste delivered to RLF from within Metro was putrescible, which is not subject to the recovery standard. Metro area dry waste accounted for the remaining 19 percent of waste delivered to RLF, which was largely processing residual from Metro-area MRFs.

(5) *The consistency of the designation with Metro's existing contractual arrangements;* [Code Section 5.05.030(b)(5)]

Metro has committed to deliver 90 percent of the total tons of putrescible waste that Metro delivers to general purpose landfills to facilities operated by Metro’s waste disposal contract operator, Waste Management, Inc. The majority of the Metro region waste delivered to RLF has been putrescible waste delivered under NSLs. Since RLF is a Waste Management facility, delivery of Metro-area waste to RLF is consistent with the disposal contract. The waste authorized under the proposed DFA is non-putrescible and not subject to this requirement, therefore approval of the proposed DFA will not conflict with Metro’s disposal contract or any other of its existing contractual arrangements.

(6) *The record of the facility regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement;* [Code Section 5.05.030(b)(6)]

As an out-of-region non-designated facility, RLF has not previously been subject to Metro ordinances or agreements. However, RLF has voluntarily cooperated and assisted Metro’s Regulatory Affairs Division in its investigations of haulers that have delivered waste to RLF in violation of Metro’s flow control ordinance.

(7) *Other benefits or detriments accruing to residents of the region from Council action in designating a facility....* [Code Section 5.05.030(b)(7)]

⁶ The terms “dry” and “non-putrescible” are used synonymously. Putrescible waste is often referred to as “wet waste.”

The potential benefits of listing RLF as a designated facility are listed below under Anticipated Effects. Staff does not anticipate that any detriments will accrue to residents of the region as a result of the proposed listing.

3. Anticipated Effects

- Collection of regional system fees and excise tax on processing residual that is landfilled.
- Enhanced implementation of EDWRP provisions and more efficient administration through a DFA;
- Enhanced ability to monitor waste classification at the facility;

4. Budget impacts

No budget impact is anticipated from the adoption of this Ordinance since most waste is already going under NSLs. The only dry waste RLF will receive under authority of the proposed DFA will be MRF processing residual and cleanup material. Therefore, construction and demolition debris (“C&D”) haulers will not be allowed to use the landfill for waste that has not been first processed at a MRF. The bulk of the Metro area waste accepted by RLF will likely be putrescible waste delivered under the authority of NSLs issued to transfer stations (see Attachment A). MRF residual and cleanup material is unlikely to flow to Metro transfer stations. However, it must be delivered to designated facilities where it will pay regional system fees and excise tax. Accordingly, Metro’s per-ton costs should not change as a result.

RECOMMENDED ACTION

The Chief Operating Officer recommends adoption of Ordinance No. 08-1197.

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ATTACHMENT A

**SOLID WASTE CURRENTLY AUTHORIZED BY METRO
FOR DELIVERY TO THE RIVERBEND LANDFILL UNDER NSLs**

Name of Non-System Licensee (All expire on Dec. 31, 2008)	Tons of Waste Authorized	Type of Waste Authorized	Tons Delivered in Calendar 2007
1. Forest Grove Transfer Station	175,000	putrescible waste	158,973
2. Gray & Company	1,000	putrescible wastes	568
3. Greenway Recycling LLC*	10,000	MRF processing residual	0
4. KB Recycling Inc.*	12,000	MRF processing residual.	8,546
5. Newberg Garbage Service Inc. via Newberg Transfer & Recycling Center.	160	putrescible waste	123
6. Pride Recycling Company*	65,000	MRF processing residual and putrescible solid waste	43,333
7. Pride Recycling Company ⁺	25,000	MRF processing residual.	64,149
8. Waste Management of Oregon*	50,000	non-hazardous special waste, construction debris and alternative daily cover	17,488
9. Troutdale Transfer Station*	65,000	putrescible and non- putrescible waste and special waste on an emergency basis	388
10. Willamette Resources, Inc.*	115,000	putrescible and non- putrescible waste and MRF processing residual	25,113
11. B&J Garbage via Canby Transfer Station	12,000	putrescible waste	4,629
12. West Linn Refuse & Recycling, Inc. via Canby Transfer Station	9,000	putrescible waste	7,092

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* NSLs will be modified or eliminated if the proposed DFA is approved. The remaining NSLs will be renewed to authorize the delivery of wet waste only.

⁺ This NSL has an expiration date of Dec. 31, 2009 but is for MRF residual and will be terminated if the proposed DFA is approved.