

Metro | Agenda

Meeting: Metro Council
Date: Thursday, August 1, 2013
Time: 2 p.m.
Place: Metro, Council Chamber

CALL TO ORDER AND ROLL CALL

1. **INTRODUCTIONS**
2. **CITIZEN COMMUNICATION**
3. **IT SOFTWARE CONTROLS FOLLOW-UP AUDIT** **Suzanne Flynn, Metro Auditor**
4. **CONSIDERATION OF THE COUNCIL MINUTES FOR JULY 25, 2013**
5. **ORDINANCES – SECOND READ**
 - 5.1 **Ordinance No. 13-1306**, For the Purpose of Amending Metro Code Chapter 5.01 Regarding Solid Waste Transfer Stations. **Roy Brower, Metro**
 - 5.1.1 Public Hearing on Ordinance No. 13-1306.
 - 5.2 **Ordinance No. 13-1307**, For Purpose of Approving a Transfer Station Franchise Extension and Authorizing the Chief Operating Officer to Issue a Modified Franchise For Willamette Resources, Inc. **Roy Brower, Metro**
 - 5.2.1 Public Hearing on Ordinance No. 13-1307.
 - 5.3 **Ordinance No. 13-1308**, For Purpose of Approving a Transfer Station Franchise Extension and Authorizing the Chief Operating Officer to Issue a Modified Franchise For Pride Recycling Company. **Roy Brower, Metro**
 - 5.3.1 Public Hearing on Ordinance No. 13-1308.
 - 5.4 **Ordinance No. 13-1309**, For Purpose of Approving a Transfer Station Franchise Extension and Authorizing the Chief Operating Officer to Issue a Modified Franchise For Troutdale Transfer Station. **Roy Brower, Metro**
 - 5.4.1 Public Hearing on Ordinance No. 13-1309.
 - 5.5 **Ordinance No. 13-1310**, For Purpose of Approving a Transfer Station Franchise Extension and Authorizing the Chief Operating Officer to Issue a Modified Franchise For Forest Grove Transfer Station. **Roy Brower, Metro**
 - 5.5.1 Public Hearing on Ordinance No. 13-1310.

Continued on back...

- 5.6 **Ordinance No. 13-1311**, For the Purpose of Amending Metro Code Chapter 5.09 Regarding Illegal Disposal of Solid Waste. **Roy Brower, Metro**
- 5.6.1 Public Hearing on Ordinance No. 13-1311.
6. **RESOLUTIONS**
- 6.1 **Resolution No. 13-4446**, For the Purpose Supporting the City of Beaverton’s Affordable Housing Tax Exemption Program for Non-Profit Housing Providers. **Gerry Uba, Metro**
7. **CHIEF OPERATING OFFICER COMMUNICATION**
8. **COUNCILOR COMMUNICATION**

ADJOURN

EXECUTIVE SESSION HELD PURSUANT WITH ORS 192.660 2(d). TO CONDUCT DELIBERATIONS WITH PERSONS DESIGNATED BY THE GOVERNING BODY TO CARRY ON LABOR NEGOTIATIONS.

Television schedule for August 1, 2013 Metro Council meeting

<p>Clackamas, Multnomah and Washington counties, and Vancouver, WA Channel 30 – Community Access Network <i>Web site:</i> www.tvctv.org <i>Ph:</i> 503-629-8534 <i>Date:</i> Thursday, August 1</p>	<p>Portland Channel 30 – Portland Community Media <i>Web site:</i> www.pcmtv.org <i>Ph:</i> 503-288-1515 <i>Date:</i> Sunday, August 4, 7:30 p.m. <i>Date:</i> Monday, August 5, 9 a.m.</p>
<p>Gresham Channel 30 - MCTV <i>Web site:</i> www.metroeast.org <i>Ph:</i> 503-491-7636 <i>Date:</i> Monday, August 5, 2 p.m.</p>	<p>Washington County Channel 30– TVC TV <i>Web site:</i> www.tvctv.org <i>Ph:</i> 503-629-8534 <i>Date:</i> Saturday, August 3, 11 p.m. <i>Date:</i> Sunday, August 4, 11 p.m. <i>Date:</i> Tuesday, August 6, 6 a.m. <i>Date:</i> Wednesday, August 7, 4 p.m.</p>
<p>Oregon City, Gladstone Channel 28 – Willamette Falls Television <i>Web site:</i> http://www.wftvmedia.org/ <i>Ph:</i> 503-650-0275 Call or visit web site for program times.</p>	<p>West Linn Channel 30 – Willamette Falls Television <i>Web site:</i> http://www.wftvmedia.org/ <i>Ph:</i> 503-650-0275 Call or visit web site for program times.</p>

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 the Metro Council Office at 503-797-1540. Public hearings are held on all ordinances second read. Documents for the record must be submitted to the Regional Engagement and Legislative Coordinator to be included in the meeting record. Documents can be submitted by e-mail, fax or mail or in person to the Regional Engagement and Legislative Coordinator. For additional information about testifying before the Metro Council please go to the Metro web site www.oregonmetro.gov and click on public comment opportunities.

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Agenda Item No. 3.0

IT Software Controls Follow-up Audit

Metro Council Meeting
Thursday, August 1, 2013
Metro, Council Chamber



Office of the Auditor

IT SOFTWARE CONTROLS AUDIT FOLLOW-UP

Progress made on recommendations

Michael Anderson
Senior Management Auditor

July 24, 2013

BACKGROUND

SUMMARY

Progress was made on the recommendations from the 2009 audit, **IT Software Controls: Agency-wide approach needed to ensure data accuracy.** We found that of the original six recommendations, one was implemented and the other five were in process.

Metro employees rely on information technology (IT) to do their jobs. The agency's work depends on creating, collecting and maintaining data. This data is used by the agency to inform decision making and provide effective and efficient governance.

In 2009, the Metro Auditor released an audit report with recommendations to improve Metro's management of IT resources. The audit found that Metro needed to define an IT framework and processes, clarify roles and responsibilities, and commit sufficient resources for these efforts. Six recommendations were included in the report (see Status of Recommendations on page 5). The recommendations focused on:

- creating a governance framework and establishing roles and responsibilities;
- moving the agency towards enterprise data management;
- standardizing the software development process;
- collecting data to evaluate the total cost of ownership for IT systems;
- developing employee training plans, and;
- implementing an agency information security policy.

In May 2011, the Auditor's Office completed an evaluation of Metro's management of its IT resources that used a modified version of the US Government Accountability Office's (GAO) high-risk criteria. The GAO developed criteria to identify weaknesses within the federal government that make programs particularly vulnerable to fraud, waste, abuse and mismanagement. The GAO's focus was to find the root causes of the weaknesses and to direct management to those problems. This office found that additional work was needed. It was unclear if Metro's management of its IT resources created a weakness across departments that increased the risk of fraud, waste, abuse and mismanagement.

This follow-up audit included steps to determine if an analysis based upon GAO's high-risk criteria should be applied to Information Services. Based upon the improvements we found, these steps were not completed.

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SCOPE AND METHODOLOGY

This audit had two objectives. The first objective was to determine the status of recommendations from the 2009 audit. We did not look at the status of the software controls for three IT systems evaluated in the original audit. We interviewed management and employees. We reviewed the department's strategic plan, employee training plans and information security policies. We reviewed IT project management materials including project proposals, work plans, status reports and closeout documents used by the department. We also reviewed charters, agendas, and meeting materials and minutes for committees which influence the department's priorities and work flow.

The second objective was to determine if the agency would benefit from a high-risk audit of the management of Metro's IT resources. A high-risk audit is a traditional performance audit that is focused on identifying areas that are especially vulnerable to fraud, waste, abuse or mismanagement. When high-risk areas are identified, actions to correct the problems are proposed and a formal monitoring process is implemented.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

RESULTS

Metro's recent IT improvements could enable the department to implement the recommendations from the 2009 audit of IT software controls. Metro created a governance structure that should improve the management of IT resources. The newly created Project Management Office has standardized software development, and a recent enterprise review has provided a structure that will help the agency move towards enterprise data management. More work can be done to develop training plans for IS staff, implement a security policy for the agency and track the total cost of ownership for IT systems. The department needs time to fully implement these changes. As a result, of the six recommendations in the original audit, we found one recommendation was implemented and the other five were in process.

Progress made, more work needed

Governance structure

Information Services implemented several improvements to enhance its management of IT resources. The department developed a draft, 5-year strategic plan that will be revised later this year. The plan provided a clear description of the values, mission and goals for Information Services. The plan also included a detailed list of work activities to implement the plan. The department already completed some of them and was in the process of completing the rest. Although it is still a draft, the Information Services strategic plan provides general guidance and includes a specific work plan to implement its strategy.

Information Services also improved the management of IT resources with the Project Management Office (PMO), which was created to help process and prioritize IT projects. The PMO used a Prioritization Committee to review and approve certain projects. The seven-member committee is made up of directors from several Metro departments. The committee is responsible for ensuring

that IT projects achieve the strategic goals of the agency. The committee took an active role in the review process. For example, it declined to prioritize projects when there was inadequate budget information or because a large proposal needed to be broken into smaller steps.

Information Services also uses Memorandums of Understanding (MOUs) to outline the service level roles, responsibilities and objectives of Information Services and client departments. We reviewed ten MOUs and found that each one included language describing the agreement's purpose, background and goals, as well as time tables and a description of what services were not covered under the agreement. The MOUs also described how resources will be allocated and included dispute resolution language for senior management.

While MOUs described the services that Information Services agreed to provide, a separate Roles and Responsibilities document described which employees are responsible for the services listed in the MOU. We reviewed three roles and responsibilities documents. Each one described who was specifically responsible for maintaining system hardware and software, ensuring staff were properly trained, interacting with customers and billing for services. Some of the MOUs and roles and responsibilities documents were still in draft form and additional work was required to complete them.

Software development

The PMO also implemented a framework standardizing the process used to create or modify new software or hardware systems. While many IT projects went through the PMO before they were approved, some did not. For example, some renewal and replacement IT projects may bypass the PMO, possibly undermining the software development framework used by the department.

For projects that were reviewed by the PMO, a standardized intake form was used to collect key project details from the project manager. The details included information on the project's manager, sponsor, objectives, deliverables, milestones, the problem to be addressed and an estimate of the resources needed to complete the project. Once the project was defined, it was reviewed by the Prioritization Committee, which approved or denied the project. If a project was approved, the project manager executed it with support from the PMO.

Enterprise data management

Metro recently completed a review of its key technology systems. The first step of the two-part review focused on evaluating Metro's current IT systems and needs. The second step was a discussion of system improvement recommendations and an implementation work plan. Some of the recommendations addressed issues identified in the 2009 audit. For example, the review included detailed enterprise data management recommendations to reduce side systems and enhance Metro's existing accounting system to satisfy unmet needs and track costs. The department is in the process of creating a capital budget to implement key aspects of the plan.

Training plans

The department made progress developing training plans, although additional work is needed. Management made an effort to assess employee skill gaps and provide training opportunities to address those gaps. However, the quality of these efforts varied and there was not a clear connection between skill gaps and training opportunities. Management could develop a more systematic and consistent human capital management system that identifies and addresses skill gaps.

Security policy

The department had an acceptable use policy with security controls, but it was a draft that was waiting final approval. The plan generally assigned standard setting responsibility to Information Services and individual departments were responsible for ensuring that employees followed the policy. In addition, some of the security issues identified in the 2009 audit, such as user management policies for the agency's grant management system or security improvements to the Zoo's attendance and revenue systems, have not been completed. The recently completed review included recommendations to address these security issues, and the department was in the process of developing a budget to fund security improvements.

Cost of ownership

Information Services improved its ability to track the time and money spent on IT investments. The department was in the process of developing tools to determine the impact that new technology projects will have on staff resources. Some costs for large IT projects were tracked by the agency's finance department and Information Services. The department needs to continue to develop and apply a standard approach to track the total cost of IT ownership.

STATUS OF METRO AUDITOR RECOMMENDATIONS

2009 Recommendations	Status
1. In order to improve management of IT resources, Metro should define processes, organization and relationships of IT management, which includes assigning leadership, creating a governance framework, establishing roles and responsibilities and committing sufficient resources.	<i>IN PROCESS</i>
2. In order to create a strategic plan to gradually improve the effectiveness and efficiency of IT management in each of five key management areas, Metro should:	
a. Take steps to move the agency toward enterprise data management.	<i>IN PROCESS</i>
b. Collect data to enable departments and IT governance to evaluate the total cost of ownership of IT systems.	<i>IN PROCESS</i>
c. Standardize software development processes and procedures.	<i>IMPLEMENTED</i>
d. Develop written procedures and training plans.	<i>IN PROCESS</i>
e. Update and implement the information security policy for the agency.	<i>IN PROCESS</i>



Metro | Memo

Date: Wednesday, July 17, 2013
To: Suzanne Flynn, Metro Auditor
From: Rachel Coe, Information Services Director *RC*
Scott Robinson, Deputy Chief Operating Officer *SR*
Subject: Management Response to Information Services Audit

This document contains management's response to the IT software controls follow-up audit that will be issued by your office in July of this year. The Information Services department (IS) is committed to creating an environment in which Metro's information assets are useful, protected and effectively managed and that public dollars are spent wisely. While we have made great strides in these areas, we will continue to work towards our values of public service and excellence.

We want to thank the Metro Auditor for following up on this important topic and appreciate the recognition of the improvements made in both our processes and the integrity of our systems. We have taken some big steps to ensure the agency has visibility into how the resources in IS are used and have given the agency the ability to align the department's projects with the goals of the agency. We will continue to refine our systems with the intent of creating even greater transparency and accountability.

Below are management's response to the six recommendations submitted by the Auditor.

- Governance Structure and Software Development (in process)

Response:

As is mentioned in the audit report update, Information Services has created a governance structure for the department that includes a Project Management Office (PMO), a Prioritization Committee comprised of directors from departments across the agency, a 5-year strategic plan that outlines our department's approach to technology and a 5-year tactical plan, as well as Memorandums of Understanding (MOU's) with many of the technology stakeholders to help clarify service levels and roles and responsibilities. The department also created a list of software development standards for use on the web re-design project. This was necessary to ensure consistency from vendors.

Next Steps:

Information Services will refine and adopt a final version of its strategic plan in the current fiscal year. This will include stakeholder input and a communication plan. The PMO will complete a contracted development process for applications to give departments the option of working with outside vendors, but in a way that ensures Metro's standards are followed. This process will include our not only software development standards, but also a list of standard application platforms. As projects near completion, IS will work with contractors and stakeholders to develop MOU's that describe roles and responsibilities for the software, security, data ownership and integrity.

- Enterprise Data Management (in process)

Response:

In December, the review of Metro's technology systems was completed. The final report recognized the value of both our event management system and our financial accounting package. The recommendation was that retain both systems, but upgrade the financial system to take advantage of a number of functionality enhancements, further implement unused functionality and improve integration and reporting. IS and the Finance and Regulatory Services department (FRS) are currently developing a project plan for moving forward on these recommendations in the current fiscal year. We anticipate the plan to include a fit/gap analysis to determine highest priority enhancements, followed by an upgrade. Functional training for end users and updated user documentation will also be included in the project plan.

Next Steps:

Metro is also continuing to move forward on the web update project. This project continues to standardize not only Metro's web platform, but development for software programs on the web. Each of the applications currently on the site are being re-written for the new platform. They will each follow the same software development standards.

Finally, the Application Development and Maintenance group will be creating a roadmap for the most significant applications within the agency. This roadmap will not only help the organization understand the maintenance needs for these products, but will also help us engage in a dialog with the agency about where the highest priority enhancements should occur.

- Training Plans (in process)

Response:

A major goal of the IS department this year will be to identify primary and secondary responsibilities for systems and applications and to identify gaps in coverage and skill sets. We will then create staff training plans to address those gaps. For some operational gaps, we may propose other methods of coverage, such as contracted services or the addition of temporary resources. This project addresses one of the eight focus areas within the IS strategic plan.

- Security Policy (in process)

Response:

The acceptable use policy drafted in 2011 is in the final stages of the approval process and is expected to be adopted in August 2013.

Next Steps:

To address security needs for applications, IS is taking a couple of approaches. The Zoo attendance and revenue as well as the grants management systems will be included in the project plan to move forward on the recommendations from the technology review completed earlier this year. That plan is currently being developed by IS and FRS for the current fiscal year.

For all other software systems, IS is drafting a framework for application security. The document will provide guidance on principles of least access and the need for segregation of duties as well as user management procedures, including the need to review access privileges on a regular basis and removal of privileges when an employee is terminated or no longer needs them. This framework can be applied to all applications, including applications not directly administered by IS.

- Cost of Ownership (in process)

Response:

Many improvements have been made in our ability to track time and money spent on IT investments. Larger projects are identified early on and are given a project code in the finance system. These codes are used for both expenses related to the project and staff time. Currently, only IS staff time is being tracked on a regular basis.

Next Steps:

IS is working in cooperation with the Construction Project Management Office (cPMO) to provide additional tracking of resource availability and staff time spent on projects. The new budget software should also provide additional reporting capabilities and visibility for the cost of IS-related projects.

We would like to thank the Auditor and her staff for their efforts in following up on the audit from 2009 and in helping the Information Services department in our efforts to attain the agency's goal of responsible operations:

cc: Martha Bennett, Chief Operating Officer

Agenda Item No. 4.0

Consideration of the Council Minutes for July 25, 2013

Metro Council Meeting
Thursday, August 1, 2013
Metro, Council Chamber

Agenda Item No. 5.1

Ordinance No. 13-1306, For the Purpose of Amending Metro
Code Chapter 5.01 Regarding Solid Waste Transfer Stations.

Ordinance – Second Reading

Metro Council Meeting
Thursday, August 1, 2013
Metro, Council Chamber

Exhibit "A" to Ordinance 13-1306

METRO CODE - TITLE V SOLID WASTE
CHAPTER 5.01 SOLID WASTE FACILITY REGULATION

APPLICATIONS FOR SOLID WASTE FACILITY LICENSES & FRANCHISES

5.01.070 Issuance of Franchise

(a) Applications for Franchises filed in accordance with Section 5.01.060 shall be reviewed by the Chief Operating Officer and are subject to approval or denial by the Metro Council.

(b) The Chief Operating Officer shall make such investigation concerning the application as the Chief Operating Officer deems appropriate, including the right of entry onto the applicant's proposed Franchise site.

(c) Upon the basis of the application, evidence submitted and results of the investigation, the Chief Operating Officer shall formulate recommendations regarding whether the applicant is qualified, whether the proposed Franchise complies with the Regional Solid Waste Management Plan, whether the proposed Franchise meets the requirements of Section 5.01.060, and whether or not the applicant has complied or can comply with all other applicable regulatory requirements.

(d) The Chief Operating Officer shall provide the recommendations required by subsection (c) of this section to the Council, together with the Chief Operating Officer's recommendation regarding whether the application should be granted or denied. If the Chief Operating Officer recommends that the application be granted, the Chief Operating Officer shall recommend to the Council specific conditions of the Franchise.

(e) Subsequent to receiving the recommendation of the Chief Operating Officer, the Council shall issue an order granting or denying the application. The Council may attach conditions to the order or limit the number of franchises granted. If the Council issues an order to deny the application, such order shall be effective immediately.

(f) In determining whether to authorize the issuance of a Franchise, the Council shall consider, but not be 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;

- (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;
- (3) Whether granting a Franchise to the applicant would be unlikely to unreasonably adversely affect the health, safety and welfare of Metro's residents;
- (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;
- (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, regulations, ordinances, orders or permits pertaining in any manner to the proposed Franchise.

(g) The Council shall act to grant or deny a Franchise application within 120 days after the filing of a complete application. The deadline for the Council to act to grant or deny an application may be extended as provided in this section. If the Council does not act to grant or deny an application by the deadline for such action, the Franchise shall be deemed granted for the Solid Waste Facility or Disposal Site requested in the application, and the Chief Operating Officer shall issue a Franchise containing the standard terms and conditions included in other comparable franchises issued by Metro.

(h) At any time after the filing of a complete Franchise application the deadline for the Council to act to grant or deny the application shall be extended if:

- (1) The Council acts to extend the deadline for up to an additional 60 days, which the Council may do one time for any single application;
- (2) The applicant substantially modifies the application during the course of the review, in which case the 120 days review period for the Council to act shall be restarted as of the date Metro receives the applicant's modifications; or

(3) The applicant and the Chief Operating Officer agree to extend the deadline for the Council to act for a specified period of time.

(i) An applicant may withdraw its application at any time prior to the Council's decision and may submit a new application at any time thereafter.

(j) If a request for a Franchise is denied, no new application for this same or substantially similar Franchise shall be filed by the applicant for at least six (6) months from the date of denial.

(k) The term of a new or renewed Franchise shall be not more than five (5) years.

(l) Notwithstanding any other provision in this section, Metro shall not accept an application for a new Franchise for authority to operate a Transfer Station until January 1, 2016.~~no application for authority to operate a Transfer Station that was received after August 19, 2004, shall be granted during the period commencing August 19, 2004, and continuing until December 31, 2007.~~

(Ordinance No. 81-111, Sec. 8. Amended by Ordinance No. 82-136, Sec. 3; Ordinance No. 98-762C, Sec. 18; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec.9; Ordinance No. 04-1056, Sec. 2; and Ordinance No. 05-1093, Sec. 2.)

Exhibit "B" to Ordinance 13-1306

METRO CODE - TITLE V SOLID WASTE
CHAPTER 5.01 SOLID WASTE FACILITY REGULATION

5.01.125 Obligations and Limits for Selected Types of Activities

(a) A holder of a License or Franchise for a Material Recovery facility or Transfer Station ~~issued after July 1, 2000~~, shall perform Material Recovery from Non-Putrescible Waste accepted at the facility as specified in this section or as otherwise specified in its license or franchise, or shall deliver such Non-Putrescible Waste to a Solid Waste facility authorized by Metro to recover useful materials from Solid Waste.

(b) A licensee or franchisee subject to subsection (a) of this section shall recover at least 25 percent by weight of Non-Putrescible waste accepted at the facility and waste delivered by public customers. For the purposes of calculating the amount of recovery required by this subsection, recovered waste shall exclude both waste from industrial processes and ash, inert rock, concrete, concrete block, foundry brick, asphalt, dirt, and sand. Failure to maintain the minimum recovery rate specified in this section shall constitute a violation enforceable under Metro Code Sections 5.01.180 and 5.01.200. After December 31, 2008, the requirements of this subsection will not be applicable to licensees or franchisees unless Metro Council determines that this standard should be reinstated to replace the processing residual standard established in 5.01.125(c).

(c) Effective January 1, 2009, a licensee or franchisee subject to subsection (a) of this section shall:

- (1) Process non-putrescible waste accepted at the facility and delivered in drop boxes and self-tipping trucks to recover cardboard, wood, and metals, including aluminum. Processing residual from such a facility shall not contain more than 15 percent, by total combined weight, of cardboard or wood pieces of greater than 12 inches in size in any dimension and metal pieces greater than eight (8) inches in size in any dimension.
- (2) Take quarterly samples of processing residual that are statistically valid and representative of the facility's residual (not less than a 300-pound sample) and provide results of such sampling to

Metro in the monthly report due the month following the end of that quarter.

(3) Based on observation, audits, inspections and reports, Metro inspectors shall conduct or require additional analysis of waste residual at the facility in accordance with Section 5.01.135(c). Failure to maintain the recovery level specified in subsection (c)(1) of this section shall constitute a violation enforceable under Metro Code. The first two violations of this subsection by a single licensee or franchisee shall not result in the imposition of a civil penalty.

(4) Failure to meet the reporting requirements in subsection (c)(2) of this section shall constitute a violation enforceable under Metro Code. ~~—after June 30, 2009.~~

(d) A holder of a Franchise for a ~~Local~~ Transfer Station:

(1) Shall accept Putrescible Waste originating within the Metro boundary only from persons who are franchised or permitted by a local government unit to collect and haul Putrescible Waste.

(2) Shall not accept hazardous waste unless the franchisee provides written authorization from the DEQ or evidence of exemption from such requirement.

(3) Shall be limited in accepting Putrescible Waste during any ~~fiscal~~ year to an amount of Putrescible Waste as established by the Metro Council in approving the ~~Local~~ Transfer Station Franchise application.

~~_(4) The Chief Operating Officer may authorize an increase in a tonnage authorization established pursuant to subsection 5.01.125(d)(3) of this chapter upon the Chief Operating Officer's finding that growth or other conditions affecting demand for disposal of Putrescible Waste cannot be served by said tonnage authorization. Any such increase in tonnage authorized pursuant to this subsection shall be limited to a maximum of five percent (5%) of any tonnage authorization or disposal limit approved by the Council, and shall be valid for a period not exceeding 24 months.~~

~~—(c) A holder of a Franchise for a Regional Transfer Station, in accordance with its franchise:~~

~~(1) Shall accept authorized Solid Waste originating within the Metro boundary from any person who delivers authorized waste to the facility, on the days and at the times established by Metro in approving the Franchise application.~~

~~(2) Shall provide an area for collecting Household Hazardous Waste from residential generators at the Franchised Solid Waste Facility, or at another location more convenient to the population being served by the Franchised Solid Waste Facility, on the days and at the times established by Metro in approving the Franchise application.~~

~~(4)(3) Shall provide an area for collecting source-separated recyclable materials without charge at the Franchised Solid Waste Facility, or at another location more convenient to the population being served by the franchised Solid Waste Facility, on the days and at the times established by Metro in approving the Franchise application.~~

~~(e)(f)~~ A holder of a license for a reload facility shall deliver all non-putrescible waste received at the facility to a solid waste facility authorized by Metro to recover useful materials from solid waste.

~~(f)(g)~~ A holder of a license or franchise for a solid waste facility 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 Metro in an operating plan.

(Ordinance No. 98-762C, Secs. 30-31. Amended by Ordinance No. 00-866, Sec. 5; Ordinance No. 01-916C, Sec. 4; Ordinance No. 02-952A, Sec. 1; Ordinance No. 03-1018A, Sec. 16; Ordinance No. 07-1147B, Sec. 3; and Ordinance No. 12-1272, Sec. 3.)

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 13-1306 AMENDING CODE CHAPTER 5.01 REGARDING SOLID WASTE TRANSFER STATIONS

July 16, 2013

Prepared by: Roy Brower
503-797-1657

Proposed Ordinance No. 13-1306 amends Metro's solid waste facility regulatory code (Metro Code Chapter 5.01) to clarify the obligations of privately-owned transfer stations and eliminate the distinction between "regional" and "local" facilities. The proposed ordinance also establishes a temporary moratorium on new transfer station applications and specifies the conditions under which a transfer station may accept regulated hazardous waste. These proposed code changes support the extension of privately-owned transfer station franchises until the end of 2015, which are also being considered by Council under separate ordinances.¹ In total, these proposals are intended to: 1) provide interim clarity for the region's solid waste system; 2) allow for general market continuity; and 3) create minimal disruption while the future course for the solid waste system is being considered.

BACKGROUND

Metro's major solid waste contracts (operations², transport and disposal) will expire at the end of 2019. In an effort to shape the future solid waste system to better attain public benefits and improved sustainability, Metro has undertaken an effort to plan for the future of the regional solid waste system known as the Solid Waste Roadmap. A major component of this effort is to take a broad look at the role, configuration and services offered by transfer stations in the system, including those owned by Metro (South and Central) and by private companies (Waste Management, Republic Services and Pride Disposal). This project is known as the Transfer Station Configuration Project (SW Roadmap Project #5).

This proposed ordinance, in conjunction with the term extensions for the franchises, is intended to create clear ground rules to maintain clarity, market continuity, and minimize system disruption over an interim two-year period. Together these ordinances largely maintain the status quo which will allow decision makers and stakeholders to focus their efforts on developing and evaluating long-term public goals and outcomes for the region's solid waste system.

Following is summary of the changes this legislation would accomplish. Adoption of this ordinance would result in the following changes to Metro Code Chapter 5.01:

1. Regional versus Local Transfer Stations

The putrescible (wet) waste disposal system currently consists of two classes of transfer facilities under Metro Code: 1) large-scale **regional** transfer stations, of which there is one privately-owned facility³ and two Metro-owned facilities⁴; and 2) limited-scale **local** transfer stations, of which there are three

¹ Willamette Resources, Inc. (Ord. No. 13-1307), Pride Recycling Company (Ord. No. 13-1308), Troutdale Transfer Station (Ord. No. 13-1309), and Forest Grove Transfer Station (Ord. No. 13-1310).

² Metro's transfer station operations contracts expire in March 2017 but can be extended until the end of 2019.

³ Forest Grove Transfer Station

⁴ Metro Central and Metro South

privately-owned facilities⁵. All privately-owned transfer stations located within the region are authorized and regulated by Metro through franchises that are approved by the Council. In general, Metro restricts the scale of operation and the number of activities allowed at local transfer stations and relaxes such restrictions for regional transfer stations.

One purpose of the proposed change to Chapter 5.01 is to eliminate the distinction between regional and local facilities. In reality, there is currently little practical difference among the current privately-owned transfer stations. Elimination of this distinction and clarification of standards allows the future policy discussion to be more directly focused on public and private roles and services at transfer stations.

Staff also recommends extending the term of the current franchises for two years. The current transfer stations franchises, which were approved by Council in 2008, are all set to expire at the end of 2013. Staff recommends that the term of the current franchises be extended until the end of 2015 in order to largely maintain the status quo of the system during this interim evaluation period. These proposed term extensions for the franchises will be considered by Council under separate ordinances.

In addition to eliminating the regional and local distinctions between transfer stations, adoption of this proposal will also establish a standard set of transfer station obligations in Code, eliminate administratively-issued tonnage increases without prior Council approval, and result in establishing a franchise tonnage limit on the Forest Grove Transfer Station.⁶ These Code changes will help ensure market continuity and minimize disruption by providing a clear, standard set of conditions for all transfer stations. Current conditions, roles and responsibilities of the privately-owned transfer stations will remain the same for the extension period thus improving clarity for the next two years. This will also allow future analysis to focus on the long term roles, services and configuration of the regional solid waste system and to what extent these roles can or should be satisfied by the public or private sector.

Table 1 provides a comparison of the size, scope, service level and operations of all transfer stations. The publicly-owned Metro transfer stations offer a full suite of public services, longer hours and more days of operation than do any of the privately-owned stations. The private transfer stations offer more limited services and hours of operation some of which may be specified in the Metro-issued franchises. Table 1 also provides a comparison of tonnage flowing through each facility, and number of customers using the facilities. The proposed changes to the transfer station designations, along with the term extensions, are intended to provide more clarity, continuity and minimize system disruption over the next two years while Metro evaluates the long-term roles of public and private operations.

⁵ Pride Recycling Company, Troutdale Transfer Station, and Willamette Resources, Inc.

⁶ See Ordinance No. 13-1310 for a fuller discussion of the Forest Grove proposed tonnage cap.

Table 1
**Transfer Station Comparison of
Operations, Tonnage, Services and Fees**

	Metro Central	Metro South	Forest Grove	Troutdale	Pride	WRI
Days open per year ⁷	362	362	306	260	260	260
On-site material recovery	Yes	Yes	No ⁸	No ⁹	Yes	Yes
Self haul service - business (#Loads/year 2012)	Yes	Yes (129,000)	Yes (1,100)	Yes	Yes	Yes
Self haul service – residential ¹⁰	Yes	Yes	Yes	No	No	No
Self haul proxy customers ¹¹ (#Loads/year in 2012)	71,000	129,000	1,100	NA	NA	NA
Permanent HHW facility	Yes	Yes	No ¹²	Metro does not allow ¹³		
Food waste accepted	Yes	Yes	No	Yes	Yes	Yes
Waste Tons Delivered (Total in 2012) ¹⁴	272,000	240,000	108,000	88,000	88,000	111,000
Tonnage Cap 2013 (Wet Waste)	None	None	None	70,000	70,000	70,000
Posted Tip Fee (as of 9/1/12)	\$93.84	\$93.84	\$95	\$92.95	\$92.83	\$93.84
Transaction Fee	\$3	\$3	\$10	0	0	\$3
Enhancement Fee	\$.50/ton	\$.50/ton	\$.50/ton	0	0	0

2. Temporary Moratorium

This proposed ordinance would prohibit Metro from accepting an application seeking a new franchise to operate a transfer stations until January 1, 2016. This would place a moratorium on new transfer capacity for this interim two-year period. This short-term moratorium helps to maintain the current market and system in place for at least two years and allows Metro to focus on the future of the system.

To staff's knowledge, the only potential applicant considering future transfer station operations is Oregon Recycling Systems (Columbia Development Enterprises), a company comprised of independent local haulers. However, the applicant is not actively pursuing such authority at this time and has indicated that it is not likely to seek a franchise for two to five years.

3. Tonnage adjustment

⁷ Under Code, Metro may set days and hours of operation at private transfer stations but has chosen not to do so.

⁸ Forest Grove Transfer Station directs recoverable non-putrescible waste loads to a Metro-authorized material recovery facility in Hillsboro (Tualatin Valley Waste Recovery - TVWR), owned by Waste Management.

⁹ Troutdale Transfer Station reloads recoverable non-putrescible waste loads to TVWR.

¹⁰ Metro restricts residential self-haul to non-putrescible waste at local transfer stations.

¹¹ These are loads paid by cash and, therefore, assumed to be self haul customers. Commercial haulers tend to establish an account.

¹² Metro has not authorized a permanent Household Hazardous Waste (HHW) facility at Forest Grove but requires they host Metro sponsored collection events at least twice a year.

¹³ Metro does not authorize permanent HHW facilities at private local transfer stations.

¹⁴ Includes wastes that do not count against the tonnage cap e.g. out-of-district waste and non-putrescible waste.

This proposed ordinance eliminates administratively-issued tonnage increases without prior Council approval as currently allowed in Metro Code.¹⁵ The Chief Operating Officer has granted tonnage increases under this Code provision on two occasions within the last five-years. By eliminating this provision in the Code, all franchise tonnage increases must be approved by Council. As part of this change, staff also recommends that the Council only consider such requests that can demonstrate an explicit public benefit for granting the tonnage increases (e.g., tip fee reduction, more efficient routing, etc.).

4. Hazardous Waste Acceptance

Under the current Code, solid waste transfer stations are not allowed to *intentionally* accept regulated hazardous waste. Solid waste facilities must separate and properly manage any hazardous waste that is inadvertently received.

Troutdale Transfer Station has indicated an interest in operating as a limited transfer facility for regulated hazardous waste. Metro does not regulate hazardous waste; however, the acceptance of such waste at transfer stations is currently prohibited under Code. The Oregon Department of Environmental Quality (DEQ) regulates the acceptance, transfer, and disposal of hazardous waste within the region. Such hazardous waste authority is delegated to the DEQ by the federal government. .

The proposed ordinance would amend the Code to remove the strict prohibitive language currently restricting such activity at transfer station. The amendment would allow transfer stations to accept and reload hazardous waste when written authorization is provided by the DEQ or evidence is provided that such activity is otherwise exempt under the federal hazardous program.

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition to the proposed ordinance.

2. Legal Antecedents

Current provisions of Metro Code Chapter 5.01.

3. Anticipated Effects

- Clarifies the system by eliminating the distinction between regional and local transfer stations as classes of facility and establishes new classes that consist of either publicly-owned or privately-owned transfer stations.
- Provides a single list of obligations for all privately-owned transfer station facilities that would be considered during franchise renewal.
- Maintains market continuity by limiting new transfer station entrants by prohibiting the acceptance of franchise applications for new transfer stations until January 1, 2016.
- Maintains minimal system disruption over two year period and allows decision-makers and stakeholders to focus on future transfer station configuration.

¹⁵ See Metro Code Chapter 5.01.125(d)(4) .

- Eliminates the strict prohibition of hazardous waste at transfer stations. Allows hazardous waste to be stored and reloaded at solid waste transfer stations if approved by DEQ or is otherwise exempt from the federal program.

4. Budget Impacts

The proposed ordinance is not anticipated to have an impact on the budget as it improves regulatory clarity.

RECOMMENDED ACTION

The Chief Operating Officer recommends adoption of Ordinance No. 13-1306.

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Agenda Item No. 5.2

Ordinance No. 13-1307, For Purpose of Approving a Transfer
Station Franchise Extension and Authorizing the Chief
Operating Officer to Issue a Modified Franchise For Willamette
Resources, Inc.

Ordinance – Second Reading

Metro Council Meeting
Thursday, August 1, 2013
Metro, Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING A	)	ORDINANCE NO. 13-1307
TRANSFER STATION FRANCHISE EXTENSION)	
AND AUTHORIZING THE CHIEF OPERATING	)	Introduced by Martha J. Bennett,
OFFICER TO ISSUE A MODIFIED FRANCHISE	)	Chief Operating Officer, with the concurrence
FOR WILLAMETTE RESOURCES, INC.	)	of Tom Hughes, 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 Metro Solid Waste Facility Franchise Number F-005-08B, which will expire on December 31, 2013; and

WHEREAS, Metro Code Section 5.01.070(k) stipulates that the term of a new or renewed franchise shall not be more than five years; and

WHEREAS, Metro is engaged in the Solid Waste Roadmap, which includes a project that will address the future role and configuration of solid waste facilities in the Metro region; and

WHEREAS, the Chief Operating Officer recommends that the franchise be extended two years, to maintain continuity in the transfer station system pending completion of the solid waste facility configuration project; and

WHEREAS, the Chief Operating Officer recommends additional modifications, including a revised insurance provision and a limit on the amount of solid waste accepted by the facility; and

WHEREAS, the Metro Council finds that the proposed amendments are in the public interest; 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 franchise amendments for Willamette Resources, Inc. is approved subject to the terms, conditions, and limitations contained in Exhibit A.
2. The Chief Operating Officer is authorized to issue to Willamette Resources, Inc. a modified Solid Waste Facility Franchise substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this [insert date] day of [insert month] 2013.

Tom Hughes, Council President

Attest:

Approved as to Form:

Kelsey Newell, Recording Secretary

Alison Kean Campbell, Metro Attorney

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



METRO

SOLID WASTE FACILITY FRANCHISE No. F-005-08C

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

This franchise replaces and supersedes the provisions of Metro Solid Waste Facility Franchise No. F-005-08B. Metro grants this franchise to the Franchisee named above. The Franchisee is authorized to operate and maintain a solid waste facility and to accept the solid wastes and perform the activities authorized by and subject to the conditions stated in this Franchise.

ISSUED BY METRO:

**FRANCHISEE'S
 ACKNOWLEDGEMENT OF RECEIPT:**

 Signature

 Signature of Franchisee

 Scott Robinson, Deputy Chief Operating Officer
 Print name and title

 Print name and title

 Date

 Date



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1.0	ISSUANCE	
1.1	Franchisee	Willamette Resources, Inc. 10295 SW Ridder Road Wilsonville, Oregon 97070 Tel. (503) 570-0626 Fax. (503) 570-0523
1.2	Corporate affiliation	Republic Services, Inc. 18500 North Allied Way Phoenix, AZ 85054
1.3	Contact	Derek Ruckman, General Manager Phone: (503) 570-0626 e-mail: drukman@republicservices.com
1.4	Franchise number	When referring to this franchise, please cite: Metro Solid Waste Facility Franchise No. F-005-08C.
1.5	Term	The term commences on January 1, 2009, and shall terminate on December 31, 2015, 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	<ol style="list-style-type: none">1. "Mixed Non-Putrescible Waste" means a mixture of more than one type of non-putrescible waste, including commingled recyclables other than residential curbside recyclable material. This category includes construction and demolition waste but excludes Cleanup Materials Contaminated by Hazardous Substances, Source-Separated Recyclable Material, special waste, land clearing debris and yard debris.2. 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



		<p>perform recovery at no less than the minimum level stipulated in Metro Code Chapter 5.01.</p> <p>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.</p>
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	<p>1. The Franchisee shall provide a place for collecting source-separated recyclable materials on the facility premises.</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</p>



		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.
3.15	Acceptance of infectious waste	The Franchisee is authorized to accept infectious waste for short-term storage up to 72 hours pending transport to an appropriate disposal location.
3.16	Acceptance of special waste	The Franchisee is authorized to accept non-hazardous special waste for short-term storage up to 48 hours pending transport to an appropriate disposal location.
3.17	Production of hogged fuel	<ol style="list-style-type: none">1. As authorized by Section 3.0 of this franchise, the Franchisee is authorized to accept and process only untreated wood, painted wood, and incidental quantities of treated wood for delivery to facilities with industrial boilers for use as hogged fuel.2. The Franchisee is prohibited from mixing any other solid waste with the wood wastes described above in Section 3.17.1 for the production of hogged fuel.



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	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; radioactive waste; 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 waste with unprocessed non-putrescible solid waste or processing residual except when such mixing is described in an operating plan and approved in writing by the COO.
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 in an operating plan and approved in writing by the COO.
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 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: <ul 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:<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



		<p>the operating record and be available for review by Metro.</p> <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 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



		<p>facility's operation;</p> <p>e) Maintain on-site facility access roads to prevent or control dust and to prevent or control the tracking of mud off-site; and</p> <p>f) Provide access to the facility for the purpose of uncovered load enforcement. During all times that solid waste or recyclable materials are being accepted, authorized representatives of Metro, including law enforcement personnel on contract to Metro, shall be permitted access to the premises of the facility for the purpose of making contact with individuals they have observed transporting uncovered loads of solid waste or recyclable materials on a public road right-of-way in violation of Section 5.09.040 of the Metro Code.</p>
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> <p>a) Operate and maintain the facility to prevent contact of solid wastes with storm water runoff and precipitation; and</p> <p>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.</p>
5.12	Access control	<p>1. The Franchisee shall control access to the facility as</p>



		<p>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;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	<p>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.</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); andb) 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	<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 March 1, 2013 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 <p>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.</p>
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 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 including, but not limited to;<ul style="list-style-type: none">i. Loading waste for delivery to disposal sites; andii. Record keeping and reporting procedures for mixed outbound loads.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	The operating plan shall establish procedures for preventing dust from blowing 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 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.
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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.



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	<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. The Franchisee shall provide Metro with documentation demonstrating that it holds all of the required insurance coverage described in Section 9.0 of this franchise.</p>
9.2	General liability	<p>The Franchisee shall carry the most recently approved ISO (Insurance Services Office) Commercial General Liability policy, or its equivalent, written on an occurrence basis, with limits not less than \$1,000,000 per occurrence and \$1,000,000 aggregate. The policy will include coverage for bodily injury, property damage, personal injury, death, contractual liability, premises and products/completed operations. Contractor's coverage will be primary as</p>



		respects Metro.
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 \$1,000,000 per occurrence and \$1,000,000 aggregate.
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, are subject employers under the Oregon Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. 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. <p>If, in the course of considering an ordinance amending this franchise as provided in (b) above, the Franchisee provides evidence that the amendment will result in significant capital cost to the Franchisee, the Metro Council will include capital cost and the ability of the Franchisee to achieve a reasonable rate of return on any additional investment required as factors when considering whether to adopt the ordinance.</p>
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



		<p>into this franchise;</p> <ul style="list-style-type: none"> 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.
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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



		<p>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 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</p>



		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. 13-1307 FOR THE PURPOSE OF APPROVING A TRANSFER STATION FRANCHISE EXTENSION AND AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A MODIFIED FRANCHISE FOR WILLAMETTE RESOURCES, INC.

July 16, 2013

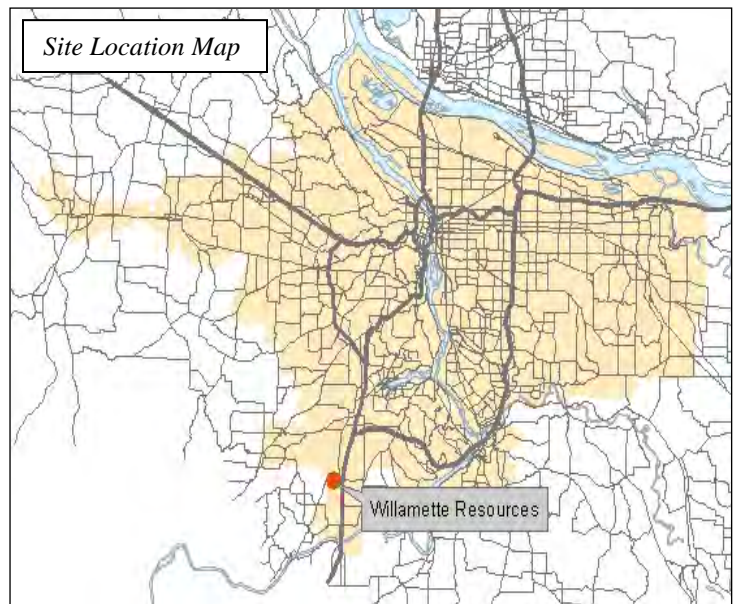
Prepared by:
Warren Johnson 503-797-1657

Adoption of Ordinance No. 13-1307 will authorize the Chief Operating Officer (COO) to issue a modified Solid Waste Facility Franchise, substantially similar to the proposed franchise attached to this ordinance as Exhibit A, to Willamette Resources, Inc. (WRI) which extends the franchise term, deletes the tonnage authorization growth allowance section, and updates the facility's insurance requirements.

This proposed ordinance is part of a package of ordinances to extend the term of the franchises for all of the privately-owned transfer stations¹ and modify certain transfer station provisions in Metro Code Chapter 5.01.² The Council is scheduled to consider this package of ordinances at its meetings on July 25 and August 1, 2013. In total, these proposed items are intended to: 1) provide interim clarity for the region's solid waste system; 2) allow for general market continuity; and 3) create minimal disruption while the future course for the solid waste system is being considered.

BACKGROUND

Metro's major solid waste contracts (operations,³ transport, and disposal) will expire at the end of 2019. In an effort to shape the future system to better attain public benefits and improved sustainability, Metro is undertaking an effort (known as the "Solid Waste Roadmap") to plan for the future of the regional solid waste system. A major component of this effort is to take a broad look at the role, configuration, and services offered by publically and privately-owned transfer stations (known as the "Transfer Station Configuration Project").



¹ Willamette Resources, Inc. (Ord. No. 13-1307), Pride Recycling Company (Ord. No. 13-1308), Troutdale Transfer Station (Ord. No. 13-1309), and Forest Grove Transfer Station (Ord. No. 13-1310).

² Metro Code Chapter 5.01 amendments (Ord. No. 13-1306)

³ Metro's transfer station operations contracts expire in March 2017, but can be extended until the end of 2019.

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 franchise⁴ to operate a transfer station authorized to receive putrescible waste, perform material recovery on non-putrescible waste, and accept source-separated recyclable materials. WRI is authorized to accept up to 70,000 tons of putrescible waste generated from within the Metro region per calendar year. The current franchise became effective on January 1, 2009 and it is set to expire on December 31, 2013.



FRANCHISE MODIFICATION

The proposed franchise (Exhibit A to Ordinance No. 13-1307) includes updated facility information and three modified conditions as described below. All of these proposed conditions are also included in all of the modified franchises for the other privately-owned transfer stations identified in this report.

1. Term Extension - Section 1.5 of the proposed franchise has been modified to extend the term of the franchise by two years to expire at midnight on December 31, 2015.
2. Tonnage Allowance - The “Tonnage Authorization Growth Allowance” condition (Section 4.3 of the current franchise) has been deleted from the proposed franchise to coincide with the proposed changes to Metro Code Chapter 5.01.⁵ The modified franchise for WRI would carry forward the facility’s current annual tonnage limit (70,000 tons) and continue it for each of the next two calendar years until December 31, 2015.
3. Insurance Requirements - Section 9.0 of the proposed franchise has been updated to include standardized insurance language and increased coverage requirements as required for all Metro-regulated facilities. Specifically, the proposed franchise requires that the facility maintain insurance coverage at a minimum of \$1,000,000 per occurrence (increased up from the \$500,000 per occurrence amount specified in the current franchise).

⁴ Metro Solid Waste Facility Franchise No. F-005-08B

⁵ Ord. No. 13-1306

ANALYSIS / INFORMATION

1. Known Opposition

There is no known opposition to the proposed franchise modifications.

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

This proposed franchise extension is one of several items currently under consideration by Metro Council. In total, these actions combined are intended to provide additional clarity, maintain market continuity, and minimize disruption to the region’s solid waste system for the next two years. These actions will allow industry, stakeholders, staff, and Council to focus attention on the Solid Waste Roadmap.

4. Budget Impacts

Ordinance No. 13-1307 authorizes a two-year term extension, deletes the tonnage growth allowance section, and updates certain insurance requirements in an existing solid waste facility franchise. Since this action largely extends the status quo for two years, the financial impact of this proposed franchise has already been factored into the budget.

RECOMMENDED ACTION

Based on the information provided above and the analysis provided in this report, the COO recommends that the Metro Council adopt Ordinance No. 13-1307. Approval of this ordinance will authorize the COO to issue a modified franchise to WRI extending the term until December 31, 2015 subject to conditions which are incorporated into the proposed franchise attached to the staff report for this ordinance as Exhibit A.

WJ:bjl
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Agenda Item No. 5.3

Ordinance No. 13-1308, For Purpose of Approving a Transfer
Station Franchise Extension and Authorizing the Chief
Operating Officer to Issue a Modified Franchise For Pride
Recycling Company.

Ordinance – Second Reading

Metro Council Meeting
Thursday, August 1, 2013
Metro, Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING A	)	ORDINANCE NO. 13-1308
TRANSFER STATION FRANCHISE EXTENSION)	
AND AUTHORIZING THE CHIEF OPERATING	)	Introduced by Martha J. Bennett,
OFFICER TO ISSUE A MODIFIED FRANCHISE	)	Chief Operating Officer, with the concurrence
FOR PRIDE RECYCLING COMPANY	)	of Tom Hughes, Council President

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

WHEREAS, Pride Recycling Company operates a transfer station and holds Metro Solid Waste Facility Franchise Number F-002-08A, which will expire on December 31, 2013; and

WHEREAS, Metro Code Section 5.01.070(k) stipulates that the term of a new or renewed franchise shall not be more than five years; and

WHEREAS, Metro is engaged in the Solid Waste Roadmap, which includes a project that will address the future role and configuration of solid waste facilities in the Metro region; and

WHEREAS, the Chief Operating Officer recommends that the franchise be extended two years, to maintain continuity in the transfer station system pending completion of the solid waste facility configuration project; and

WHEREAS, the Chief Operating Officer recommends additional modifications, including a revised insurance provision and a limit on the amount of solid waste accepted by the facility; and

WHEREAS, the Metro Council finds that the proposed amendments are in the public interest; 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 franchise amendments for Pride Recycling Company is approved subject to the terms, conditions, and limitations contained in Exhibit A.
2. The Chief Operating Officer is authorized to issue to Pride Recycling Company a modified Solid Waste Facility Franchise substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this [insert date] day of [insert month] 2013.

Tom Hughes, Council President

Attest:

Approved as to Form:

Kelsey Newell, Recording Secretary

Alison Kean Campbell, Metro Attorney

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METRO

SOLID WASTE FACILITY FRANCHISE No. F-002-08B

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

This franchise replaces and supersedes the provisions of Metro Solid Waste Facility Franchise No. F-002-08A. Metro grants this franchise to the Franchisee named above. The Franchisee is authorized to operate and maintain a solid waste facility and to accept the solid wastes and perform the activities authorized by and subject to the conditions stated in this Franchise.

ISSUED BY METRO:

**FRANCHISEE'S
 ACKNOWLEDGEMENT OF RECEIPT:**

 Signature

 Signature of Franchisee

Scott Robinson,
 Deputy Chief Operating Officer

 Print name and title

 Print name and title

 Date

 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-002-08B.
1.5	Term	The term commences on January 1, 2009, and shall terminate on December 31, 2015, 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	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.
4.4	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 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.
4.5	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 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	<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



		<p>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 prevent any material from blowing off the load during transit;b) Maintain and operate all vehicles and devices



		<p>transferring or transporting solid waste from the facility to prevent leaking, spilling or blowing of solid waste on-site or while in transit;</p> <ul style="list-style-type: none">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	<ol 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)	<ol 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 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	<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	<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	<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:



		<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> <p>c) A set of objective criteria for accepting and rejecting loads; and</p> <p>d) An asbestos testing protocol for all materials that</p>



		appear to contain friable asbestos.
6.6	Procedures for processing and storage of loads	The operating plan shall establish procedures for: 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; and e) 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: a) A management plan that will be used to monitor and manage odors of any derivation including malodorous loads delivered to the facility; and 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.
6.9	Procedures for dust prevention	The operating plan shall establish procedures for preventing dust from blowing off the premises of the facility. The plan must include: a) A management plan that will be used to monitor and manage dust of any derivation; and b) Procedures for receiving and recording dust complaints, immediately investigating all dust complaints to determine the cause of dust emissions, and remedying promptly all dust problems at the facility.



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. The Franchisee shall provide Metro with documentation demonstrating that it holds all of the required insurance coverage described in Section 9.0 of this franchise.
9.2	General liability	The Franchisee shall carry the most recently approved ISO (Insurance Services Office) Commercial General Liability policy, or its equivalent, written on an occurrence basis, with limits not less than \$1,000,000 per occurrence and \$1,000,000 aggregate. The policy will include coverage for bodily injury, property damage, personal injury, death, contractual liability, premises and products/completed operations. Contractor's coverage will be primary as respects Metro.
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 \$1,000,000 per occurrence and \$1,000,000 aggregate.
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, are subject employers under the Oregon Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. 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. <p>If, in the course of considering an ordinance amending this franchise as provided in (b) above, the Franchisee provides evidence that the amendment will result in significant capital cost to the Franchisee, the Metro Council will include capital cost and the ability of the Franchisee to achieve a reasonable rate of return on any additional investment required as factors when considering whether to adopt the ordinance.</p>
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



		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	<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</p>



		<p>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; and c) 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.
<p>12.4</p>	<p>Confidential information</p>	<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. 13-1308 FOR THE PURPOSE OF APPROVING A TRANSFER STATION FRANCHISE EXTENSION AND AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A MODIFIED FRANCHISE FOR PRIDE RECYCLING COMPANY

July 16, 2013

Prepared by:

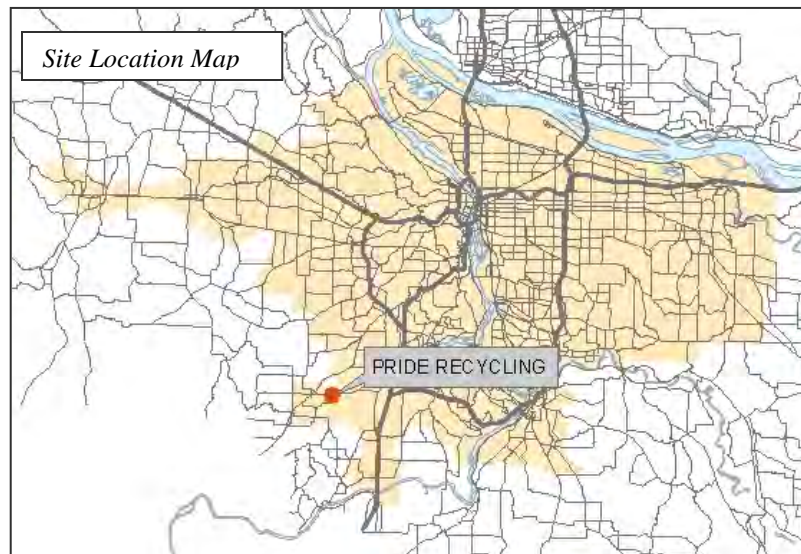
Warren Johnson 503-797-1657

Adoption of Ordinance No. 13-1308 will authorize the Chief Operating Officer (COO) to issue a modified Solid Waste Facility Franchise, substantially similar to the proposed franchise attached to this ordinance as Exhibit A, to Pride Recycling Company (Pride) which extends the franchise term, deletes the tonnage authorization growth allowance, and updates the facility's insurance requirements.

This proposed ordinance is part of a package of ordinances to extend the term of the franchises for all of the privately-owned transfer stations¹ and modify certain transfer station provisions in Metro Code Chapter 5.01.² The Council is scheduled to consider this package of ordinances at its meetings on July 25 and August 1, 2013. In total, these proposed items are intended to: 1) provide interim clarity for the region's solid waste system; 2) allow for general market continuity; and 3) create minimal disruption while the future course for the solid waste system is being considered.

BACKGROUND

Metro's major solid waste contracts (operations,³ transport, and disposal) will expire at the end of 2019. In an effort to shape the future system to better attain public benefits and improved sustainability, Metro is undertaking an effort (known as the "Solid Waste Roadmap") to plan for the future of the regional solid waste system. A major component of this effort is to take a broad look at the role, configuration, and services offered by publically and privately-owned transfer stations (known as the "Transfer Station Configuration Project").



¹ Willamette Resources, Inc. (Ord. No. 13-1307), Pride Recycling Company (Ord. No. 13-1308), Troutdale Transfer Station (Ord. No. 13-1309), and Forest Grove Transfer Station (Ord. No. 13-1310).

² Metro Code Chapter 5.01 amendments (Ord. No. 13-1306)

³ Metro's transfer station operations contracts expire in March 2017, but can be extended until the end of 2019.

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 franchise⁴ to operate a transfer station authorized



to receive putrescible waste, perform material recovery on non-putrescible waste, and accept source-separated recyclable materials. The current franchise became effective on January 1, 2009 and it is set to expire on December 31, 2013.

Pride was authorized to annually accept up to 70,000 tons of putrescible waste generated from within the Metro region during calendar years 2009 through 2011. Pride later applied for and obtained a five percent tonnage increase (3,500 tons) from Metro for calendar year 2012 – which increased its tonnage limit up to 73,500 tons for that year. However, Pride did not use any of the additional tonnage authorization that was granted.⁵ Pride’s tonnage limit subsequently reverted back to 70,000 tons for calendar year 2013.

FRANCHISE MODIFICATION

The proposed franchise (Exhibit A to Ordinance No. 13-1308) includes updated facility information and three modified conditions as described below. All of these proposed conditions are also included in all of the modified franchises for the other privately-owned transfer stations identified in this report.

1. Term Extension - Section 1.5 of the proposed franchise has been modified to extend the term of the franchise by two years to expire at midnight on December 31, 2015.
2. Tonnage Allowance - The “Tonnage Authorization Growth Allowance” condition (Section 4.3 of the current franchise) has been deleted from the proposed franchise to coincide with the proposed changes to Metro Code Chapter 5.01.⁶ The modified franchise for Pride would carry forward the facility’s current annual tonnage limit (70,000 tons) and continue it for each of the next two calendar years until December 31, 2015.

⁴ Metro Solid Waste Facility Franchise No. F-002-08A

⁵ Pride received 69,373 tons of Metro-area putrescible waste in 2012

⁶ Ord. No. 13-1306

3. **Insurance Requirements** - Section 9.0 of the proposed franchise has been updated to include standardized insurance language and increased coverage requirements as required for all Metro-regulated facilities. Specifically, the proposed franchise requires that the facility maintain insurance coverage at a minimum of \$1,000,000 per occurrence (increased up from the \$500,000 per occurrence amount specified in the current franchise).

ANALYSIS / INFORMATION

1. Known Opposition

There is no known opposition to the proposed franchise modifications.

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

This proposed franchise extension is one of several items currently under consideration by Metro Council. In total, these actions combined are intended to provide additional clarity, maintain market continuity, and minimize disruption to the region’s solid waste system for the next two years. These actions will allow industry, stakeholders, staff, and Council to focus attention on the Solid Waste Roadmap.

4. Budget Impacts

Ordinance No. 13-1308 authorizes a two-year term extension, deletes a tonnage growth allowance, and updates certain insurance requirements in an existing solid waste facility franchise. Since this action largely extends the status quo for two years, the financial impact of this proposed franchise has already been factored into the budget.

RECOMMENDED ACTION

Based on the information provided above and the analysis provided in this report, the COO recommends that the Metro Council adopt Ordinance No. 13-1308. Approval of this ordinance will authorize the COO to issue a modified franchise to Pride extending the term until December 31, 2015 subject to conditions which are incorporated into the proposed franchise attached to this ordinance as Exhibit A.

WJ:bjl
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Queue

Agenda Item No. 5.4

Ordinance No. 13-1309, For Purpose of Approving a Transfer Station Franchise Extension and Authorizing the Chief Operating Officer to Issue a Modified Franchise For Troutdale Transfer Station.

Ordinance – Second Reading

Metro Council Meeting
Thursday, August 1, 2013
Metro, Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING A	)	ORDINANCE NO. 13-1309
TRANSFER STATION FRANCHISE EXTENSION)	
AND AUTHORIZING THE CHIEF OPERATING	)	Introduced by Martha J. Bennett,
OFFICER TO ISSUE A MODIFIED FRANCHISE	)	Chief Operating Officer, with the concurrence
FOR TROUTDALE TRANSFER STATION	)	of Tom Hughes, Council President

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

WHEREAS, Waste Management of Oregon, Inc. operates the Troutdale Transfer Station and holds Metro Solid Waste Facility Franchise Number F-001-08B, which will expire on December 31, 2013; and

WHEREAS, Metro Code Section 5.01.070(k) stipulates that the term of a new or renewed franchise shall not be more than five years; and

WHEREAS, Metro is engaged in the Solid Waste Roadmap, which includes a project that will address the future role and configuration of solid waste facilities in the Metro region; and

WHEREAS, the Chief Operating Officer recommends that the franchise be extended two years, to maintain continuity in the transfer station system pending completion of the solid waste facility configuration project; and

WHEREAS, the Chief Operating Officer recommends additional modifications, including a revised insurance provision and a limit on the amount of solid waste accepted by the facility; and

WHEREAS, the Metro Council finds that the proposed amendments are in the public interest; 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 franchise amendments for Troutdale Transfer Station is approved subject to the terms, conditions, and limitations contained in Exhibit A.
2. The Chief Operating Officer is authorized to issue to Waste Management of Oregon, Inc. a modified Solid Waste Facility Franchise for Troutdale Transfer Station substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this [insert date] day of [insert month] 2013.

Tom Hughes, Council President

Attest:

Approved as to Form:

Kelsey Newell, Recording Secretary

Alison Kean Campbell, Metro Attorney



METRO

SOLID WASTE FACILITY FRANCHISE No. F-001-08C

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

This franchise replaces and supersedes the provisions of Metro Solid Waste Facility Franchise No. F-001-08B. Metro grants this franchise to the Franchisee named above. The Franchisee is authorized to operate and maintain a solid waste facility and to accept the solid wastes and perform the activities authorized by and subject to the conditions stated in this Franchise.

ISSUED BY METRO:

**FRANCHISEE'S
ACKNOWLEDGEMENT OF RECEIPT:**

Signature

Signature of Franchisee

Scott Robinson,
Deputy Chief Operating Officer

Print name and title

Print name and title

Date

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	Dale Zoucha Phone: (503) 640-9427 ext. 241 e-mail: dzoucha@wm.com
1.4	Franchise number	When referring to this franchise, please cite: Metro Solid Waste Facility Franchise No. F-001-08C.
1.5	Term	The term commences on January 1, 2009, and shall terminate on December 31, 2015, 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 at no less than the minimum level stipulated in Metro Code Chapter 5.01 or shall reload and transfer such waste to a facility authorized by Metro to perform material recovery.2. The Franchisee shall ensure that the facility is designed and operated so that materials are recovered in a timely manner and that the reloading and transfer of non-putrescible waste to a Metro-authorized material recovery facility is conducted rapidly and efficiently while protecting the quality of non-putrescible waste that has not yet undergone material recovery.3. The Franchisee shall take quarterly samples of processing residual, when generated at the facility, 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 as described in an operating plan and approved in writing by the COO. The Franchisee shall not use or incorporate



		<p>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.</p>
3.13	<p>Acceptance of electronics devices</p>	<p>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).</p>
3.14	<p>Acceptance of inert material</p>	<p>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.</p>

4.0	<p>LIMITATIONS AND PROHIBITIONS</p>	
4.1	<p>Purpose</p>	<p>This section of the franchise describes limitations and prohibitions on the wastes handled at the facility and activities performed at the facility.</p>
4.2	<p>Tonnage authorization</p>	<p>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.</p>
4.3	<p>Prohibited waste</p>	<p>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.</p>
4.4	<p>Prohibition on mixing</p>	<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



		<p>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>
4.5	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 including, but not limited to, fires, vectors,



		<p>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	<p>The Franchisee shall:</p> <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	<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	<ol 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)	<ol 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



		<p>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	<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; and



		j) Directions not to queue on public roadways.
5.14	Nuisance complaints	<p>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.</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	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	The operating plan shall establish procedures for preventing dust from blowing 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 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: <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	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



		<p>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. The Franchisee shall provide Metro with documentation demonstrating that it holds all of the required insurance coverage described in Section 9.0 of this franchise.
9.2	General liability	The Franchisee shall carry the most recently approved ISO (Insurance Services Office) Commercial General Liability policy, or its equivalent, written on an occurrence basis, with limits not less than \$1,000,000 per occurrence and \$1,000,000 aggregate. The policy will include coverage for bodily injury, property damage, personal injury, death, contractual liability, premises and products/completed operations. Contractor's coverage will be primary as respects Metro.
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 \$1,000,000 per occurrence and \$1,000,000 aggregate.
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, are subject employers under the Oregon Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. 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. <p>If, in the course of considering an ordinance amending this franchise as provided in (b) above, the Franchisee provides evidence that the amendment will result in significant capital cost to the Franchisee, the Metro Council will include capital cost and the ability of the</p>



		Franchisee to achieve a reasonable rate of return on any additional investment required as factors when considering whether to adopt the ordinance.
11.3	Modification, suspension or revocation by Metro for cause	<p>The COO may, at any time before the expiration date, modify, suspend, or revoke this franchise in whole or in part, in accordance with Metro Code Chapter 5.01, for reasons including but not limited to:</p> <ul style="list-style-type: none"> a) Violation of the terms or conditions of this franchise, Metro Code, or any applicable statute, rule, or standard; b) Changes in local, regional, state, or federal laws or regulations that should be specifically incorporated into this franchise; c) Failure to disclose fully all relevant facts; d) A significant release into the environment from the facility; e) Significant change in the character of solid waste received or in the operation of the facility; f) Any change in ownership or control; g) A request from the local government stemming from impacts resulting from facility operations; and h) Compliance history of the Franchisee.

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



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 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.



		<p>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. 13-1309 FOR THE PURPOSE OF APPROVING A TRANSFER STATION FRANCHISE EXTENSION AND AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A MODIFIED FRANCHISE FOR TROUTDALE TRANSFER STATION

July 16, 2013

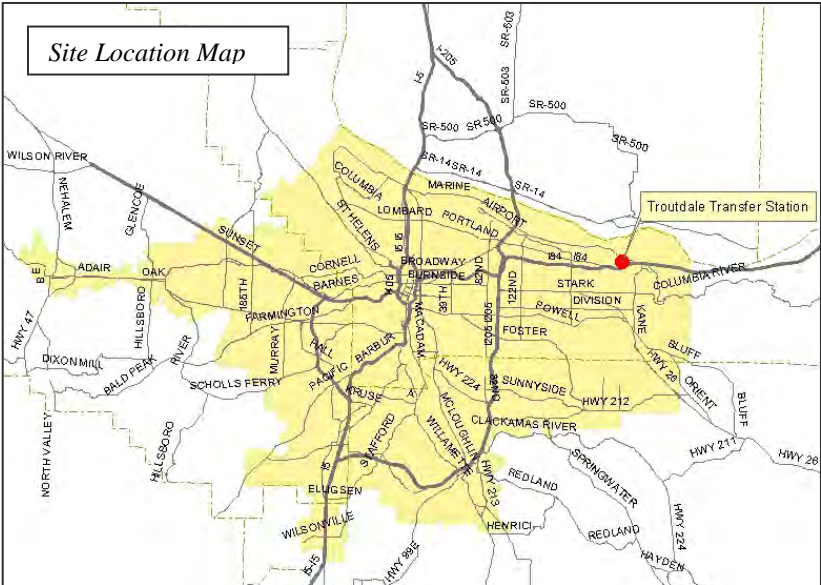
Prepared by:
Warren Johnson 503-797-1657

Adoption of Ordinance No. 13-1309 will authorize the Chief Operating Officer (COO) to issue a modified Solid Waste Facility Franchise, substantially similar to the proposed franchise attached to this ordinance as Exhibit A, to Waste Management of Oregon, Inc. (WMO) which extends the franchise term, deletes the tonnage authorization growth allowance section, and updates the insurance requirements for the Troutdale Transfer Station.

This proposed ordinance is part of a package of ordinances to extend the term of the franchises for all of the privately-owned transfer stations¹ and modify certain transfer station provisions in Metro Code Chapter 5.01.² The Council is scheduled to consider this package of ordinances at its meetings on July 25 and August 1, 2013. In total, these proposed items are intended to: 1) provide interim clarity for the region’s solid waste system; 2) allow for general market continuity; and 3) create minimal disruption while the future course for the solid waste system is being considered.

BACKGROUND

Metro’s major solid waste contracts (operations,³ transport, and disposal) will expire at the end of 2019. In an effort to shape the future system to better attain public benefits and improved sustainability, Metro is undertaking an effort (known as the “Solid Waste Roadmap”) to plan for the future of the regional solid waste system. A major component of this effort is to take a broad look at the role, configuration, and services offered by publically and privately-owned transfer stations (known as the “Transfer Station Configuration Project”).



¹ Willamette Resources, Inc. (Ord. No. 13-1307), Pride Recycling Company (Ord. No. 13-1308), Troutdale Transfer Station (Ord. No. 13-1309), and Forest Grove Transfer Station (Ord. No. 13-1310).
² Metro Code Chapter 5.01 amendments (Ord. No. 13-1306)
³ Metro’s transfer station operations contracts expire in March 2017, but can be extended until the end of 2019.

APPLICANT

The applicant, WMO, is the owner and operator of a waste facility located at 869 NW East Troutdale Transfer Station commenced operations in 1998. The facility currently holds a Metro-issued franchise to receive putrescible waste, reload and accept source-separated recyclable materials. The current franchise expires on January 1, 2009 and it is set to expire on January 1, 2012.

Troutdale Transfer Station was authorized to receive waste generated from within the Metro area in 1998. The applicant later applied for and obtained a five-year franchise for the calendar year 2012 – which increases the facility's tonnage limit subsequently.



FRANCHISE MODIFICATION

The proposed franchise (Exhibit A to Ordinance No. 13-1309) includes updated facility information and three modified conditions as described below. All of these proposed conditions are also included in all of the modified franchises for the other privately-owned transfer stations identified in this report.

1. Term Extension - Section 1.5 of the proposed franchise has been modified to extend the term of the franchise by two years to expire at midnight on December 31, 2015.
2. Tonnage Allowance - The “Tonnage Authorization Growth Allowance” condition (Section 4.3 of the current franchise) has been deleted from the proposed franchise to coincide with the proposed changes to Metro Code Chapter 5.01.⁶ The modified franchise for Troutdale Transfer Station would carry forward the facility's current annual tonnage limit (70,000 tons) and continue it for each of the next two calendar years until December 31, 2015.
3. Insurance Requirements - Section 9.0 of the proposed franchise has been updated to include standardized insurance language and increased coverage requirements as required for all Metro-regulated facilities. Specifically, the proposed franchise requires that the facility maintain insurance coverage at a minimum of \$1,000,000 per occurrence (increased up from the \$500,000 per occurrence amount specified in the current franchise).

ANALYSIS / INFORMATION

1. Known Opposition

⁴ Metro Solid Waste Facility Franchise No. F-001-08B

⁵ Troutdale Transfer Station received 72,487 tons of Metro-area putrescible waste in 2012

⁶ Ord. No. 13-1306

There is no known opposition to the proposed franchise modifications.

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

This proposed franchise extension is one of several items currently under consideration by Metro Council. In total, these actions combined are intended to provide additional clarity, maintain market continuity, and minimize disruption to the region’s solid waste system for the next two years. These actions will allow industry, stakeholders, staff, and Council to focus attention on the Solid Waste Roadmap.

4. Budget Impacts

Ordinance No. 13-1309 authorizes a two-year term extension, deletes the tonnage growth allowance section, and updates certain insurance requirements in an existing solid waste facility franchise. Since this action largely extends the status quo for two years, the financial impact of this proposed franchise has already been factored into the budget.

RECOMMENDED ACTION

Based on the information provided above and the analysis provided in this report, the COO recommends that the Metro Council adopt Ordinance No. 13-1309. Approval of this ordinance will authorize the COO to issue a modified franchise to WMO extending the term of the Troutdale Transfer Station franchise until December 31, 2015 subject to conditions which are incorporated into the proposed franchise attached to this ordinance as Exhibit A.

WJ:bjl
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Queue

Agenda Item No. 5.5

Ordinance No. 13-1310, For Purpose of Approving a Transfer Station Franchise Extension and Authorizing the Chief Operating Officer to Issue a Modified Franchise For Forest Grove Transfer Station.

Ordinance – Second Reading

Metro Council Meeting
Thursday, August 1, 2013
Metro, Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING A	)	ORDINANCE NO. 13-1310
TRANSFER STATION FRANCHISE EXTENSION)	
AND AUTHORIZING THE CHIEF OPERATING	)	Introduced by Martha J. Bennett,
OFFICER TO ISSUE A MODIFIED FRANCHISE	)	Chief Operating Officer, with the concurrence
FOR THE FOREST GROVE TRANSFER STATION	)	of Tom Hughes, 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, Waste Management of Oregon, Inc. operates Forest Grove Transfer Station and holds Metro Solid Waste Facility Franchise Number F-004-08, which will expire on December 31, 2013; and

WHEREAS, Metro Code Section 5.01.070(k) stipulates that the term of a new or renewed franchise shall not be more than five years; and

WHEREAS, Metro is engaged in the Solid Waste Roadmap, which includes a project that will address the future role and configuration of solid waste facilities in the Metro region; and

WHEREAS, the Chief Operating Officer recommends that the franchise be extended two years, to maintain continuity in the transfer station system pending completion of the solid waste facility configuration project; and

WHEREAS, the Chief Operating Officer recommends additional modifications, including a revised insurance provision and a limit on the amount of solid waste accepted by the facility; and

WHEREAS, the Metro Council finds that the proposed amendments are in the public interest; 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 franchise amendments for Forest Grove Transfer Station are approved subject to the terms, conditions, and limitations contained in Exhibit A.
2. The Chief Operating Officer is authorized to issue to Waste Management of Oregon, Inc. a modified Solid Waste Facility Franchise for Forest Grove Transfer Station substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this [insert date] day of [insert month] 2013.

Tom Hughes, Council President

Attest:

Approved as to Form:

Kelsey Newell, Recording Secretary

Alison Kean Campbell, Metro Attorney

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



METRO

SOLID WASTE FACILITY FRANCHISE
No. F-004-08A

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. F-004-08. Metro grants this franchise to the Franchisee named above. The Franchisee is authorized to operate and maintain a solid waste facility and to accept the solid wastes and perform the activities authorized by and subject to the conditions stated in this franchise.

ISSUED BY METRO:

**FRANCHISEE'S
 ACKNOWLEDGEMENT OF RECEIPT:**

 Signature

 Signature of Franchisee

Scott Robinson,
 Deputy Chief Operating Officer

 Print name and title

 Print name and title

 Date

 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	Kirk Duncan Phone: (503) 992-3015 Fax: (503) 357-4822 E-mail: kduncan2@wm.com
1.4	Franchise number	When referring to this franchise, please cite: Metro Solid Waste Facility Franchise No. F-004-08A.
1.5	Term	The term commences on January 1, 2009, and shall terminate on December 31, 2015, 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 purpose.</p>



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	Effective January 1, 2014, the Franchisee is authorized to accept up to 125,000 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 125,000 tons of putrescible waste, or any non-putrescible waste, generated inside the Metro region.
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 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.
4.5	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> <ol 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,



		<p>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	<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.



		<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	<ul 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;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	<ol 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)	<ol 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



		<p>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	<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	<p>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.</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	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</p>



		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;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; and



		<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> <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	<p>The Franchisee shall maintain financial assurance in the amount of \$100,000 for the cost of the facility's closure and</p>



		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	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: <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;i) Net weight of the load; andj) The fee charged to the generator of the load.
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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 in Section 6.12 of this franchise.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.
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. The Franchisee shall provide Metro with documentation demonstrating that it holds all of the required insurance coverage described in Section 9.0 of this franchise.
9.2	General liability	The Franchisee shall carry the most recently approved ISO (Insurance Services Office) Commercial General Liability policy, or its equivalent, written on an occurrence basis, with limits not less than \$1,000,000 per occurrence and \$1,000,000 aggregate. The policy will include coverage for bodily injury, property damage, personal injury, death, contractual liability, premises and products/completed operations. Contractor's coverage will be primary as respects Metro.
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 \$1,000,000 per occurrence and \$1,000,000 aggregate.
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, are subject employers under the Oregon Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide Workers'



		Compensation coverage for all their subject workers. 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. <p>If, in the course of considering an ordinance amending this franchise as provided in (b) above, the Franchisee provides evidence that the amendment will result in significant capital cost to the Franchisee, the Metro Council will include capital cost and the ability of the Franchisee to achieve a reasonable rate of return on any additional investment required as factors when considering whether to adopt the ordinance.</p>
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	The Franchisee shall fully comply with all applicable local, regional, state and federal laws, rules, regulations,



		<p>ordinances, orders and permits pertaining in any manner to this franchise, including all applicable Metro Code provisions and administrative procedures adopted pursuant to Chapter 5.01 whether or not those provisions have been specifically mentioned or cited herein. All conditions imposed on the operation of the facility by federal, state, regional or local governments or agencies having jurisdiction over the facility shall be deemed part of this franchise as if specifically set forth herein. Such conditions and permits include those cited within or attached as exhibits to the franchise document, as well as any existing at the time of the issuance of the franchise but not cited or attached, and permits or conditions issued or modified during the term of the franchise.</p>
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, orders and permits.</p>
12.3	Right of inspection and audit	<p>Authorized representatives of Metro may take photographs, collect samples of materials, and perform such inspection or audit as the COO deems appropriate, and shall be permitted access to the premises of the facility at all reasonable times during business hours with or without notice or at such other times upon giving reasonable advance notice (not less than 24 hours). Metro inspection reports, including site photographs, are public records subject to disclosure under Oregon Public Records Law. Subject to the confidentiality provisions in Section 12.4 of this franchise, Metro's right to inspect shall include the right to review all information from which all required reports are derived including all books, maps, plans, income tax returns, financial statements, contracts, and other similar written materials of Franchisee that are directly related to the operation of the facility.</p>
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</p>



		<p>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. 13-1310 FOR THE PURPOSE OF APPROVING A TRANSFER STATION FRANCHISE EXTENSION AND AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A MODIFIED FRANCHISE FOR THE FOREST GROVE TRANSFER STATION

July 16, 2013

Prepared by:
Warren Johnson 503-797-1657

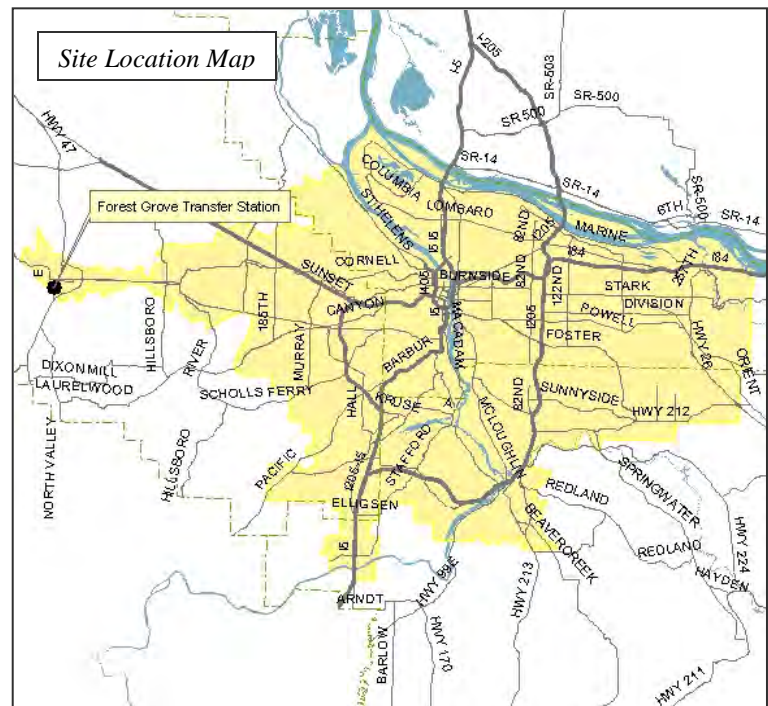
Adoption of Ordinance No. 13-1310 will authorize the Chief Operating Officer (COO) to issue a modified Solid Waste Facility Franchise, substantially similar to the proposed franchise attached to this ordinance as Exhibit A, to Waste Management of Oregon, Inc. (WMO) which extends the franchise term, updates insurance requirements, and establishes an annual 125,000-ton limit on putrescible waste for the Forest Grove Transfer Station.

This proposed ordinance is part of a package of ordinances to extend the term of the franchises for all of the privately-owned transfer stations¹ and modify certain transfer station provisions in Metro Code Chapter 5.01.² The Council is scheduled to consider this package of ordinances at its meetings on July 25 and August 1, 2013. In total, these proposed items are intended to: 1) provide interim clarity for the region's solid waste system; 2) allow for general market continuity; and 3) create minimal disruption while the future course for the solid waste system is being considered.

BACKGROUND

Metro's major solid waste contracts (operations,³ transport, and disposal) will expire at the end of 2019. In an effort to shape the future system to better attain public benefits and improved sustainability, Metro is undertaking an effort (known as the "Solid Waste Roadmap") to plan for the future of the regional solid waste system. A major component of this effort is to take a broad look at the role, configuration, and services offered by publically and privately-owned transfer stations (known as the "Transfer Station Configuration Project").

The putrescible waste disposal system currently consists of two classes of transfer facilities under Metro Code: 1) large-scale regional transfer stations, of which there is one privately-owned facility, Forest Grove Transfer Station, and two Metro-owned



¹ Willamette Resources, Inc. (Ord. No. 13-1307), Pride Recycling Company (Ord. No. 13-1308), Troutdale Transfer Station (Ord. No. 13-1309), and Forest Grove Transfer Station (Ord. No. 13-1310).

² Metro Code Chapter 5.01 amendments (Ord. No. 13-1306)

³ Metro's transfer station operations contracts expire in March 2017, but can be extended until the end of 2019.

facilities;⁴ and 2) limited-scale *local* transfer stations, of which there are three privately-owned facilities.⁵ All privately-owned transfer stations located within the region are authorized and regulated by Metro through franchises that are approved by the Council.

One purpose of the proposed change to Metro Code Chapter 5.01⁶ is to eliminate the distinction between regional and local facilities. In reality, there is currently little practical difference among the current privately-owned transfer stations. Each privately-owned station offer a different suite of services such as material recovery, servicing self-haul customers and providing a depot for public recycling. Elimination of this distinction and clarification of standards allows the future policy discussion to be more directly focused on public and private roles and services at transfer stations. Currently, no privately owned station offers the full suite of public services or days and hours of operation that is offered by Metro's publicly-owned stations e.g. permanent household hazardous waste collection depots, on-site material recovery, and food waste processing and reloading.

APPLICANT

The applicant, WMO, is the owner and operator of Forest Grove Transfer Station, an existing solid waste facility located at 1525 B Street, in Forest Grove (Metro Council District 4). Forest Grove Transfer Station commenced operation in 1985. The facility currently holds a Metro-issued franchise⁷ to operate a transfer station authorized to receive putrescible waste, reload non-putrescible waste to an authorized material recovery facility, and accept source-separated recyclable materials. Due to spatial constraints at the site, the facility does not perform material recovery. Non-putrescible waste is either diverted away from the facility or reloaded and delivered to WMO's material recovery facility for processing.⁸ The current franchise became effective on January 1, 2009 and it is set to expire on December 31, 2013.

As a regional transfer station, the current franchise does not limit the amount of waste that the facility is authorized to receive. Table 1 illustrates the annual amount of Metro-area putrescible waste that Forest Grove Transfer Station reported receiving during calendar years 2008 through 2012.



⁴ Metro Central and Metro South

⁵ Pride Recycling Company, Troutdale Transfer Station, and Willamette Resources, Inc.

⁶ Ord. No. 13-1306

⁷ Metro Solid Waste Facility Franchise No. F-004-08

⁸ Tualatin Valley Waste Recovery located in Hillsboro, Oregon

Table 1: Annual Amount of Metro-Area Putrescible Waste Received at Forest Grove Transfer Station from 2008 through 2012

Calendar Year	Tons
2008	139,425
2009	127,415
2010	114,152
2011	107,737
2012	105,007
Average Annual Tonnage	118,747

As described below, the information in Table 1 is provided to illustrate the basis for staff’s recommended tonnage limit for the proposed franchise in 2014 and 2015. No tonnage limit is recommended for 2013.

FRANCHISE MODIFICATION

The proposed franchise (Exhibit A to Ordinance No. 13-1310) includes updated facility information and three modified conditions as described below.

1. Term Extension - Section 1.5 of the proposed franchise has been modified to extend the term of the franchise by two years to expire at midnight on December 31, 2015. This proposed condition is also included in all of the modified franchises for the other privately-owned transfer stations identified in this report.
2. Tonnage Authorization – Section 4.2 of the proposed franchise has been modified to establish an annual tonnage limit for Forest Grove Transfer Station that authorizes it to accept up to 125,000 tons of putrescible waste generated from within the Metro region per calendar year. This proposed 125,000-ton limit is based upon the average annual tonnage of Metro-area putrescible waste that the facility reported receiving during the most recent five-year period (118,747 tons) with an additional five percent increase (5,937 tons) to ensure minimal operational disruption during this interim two-year period.

Staff recommends establishing the above-mentioned tonnage limit at Forest Grove Transfer Station to coincide with the proposed changes to Chapter 5.01⁹ and to begin to align the facility’s authorization with that of other privately-owned transfer stations. The proposed tonnage limit would be effective for calendar years 2014 and 2015.

Under the proposed franchise tonnage limit, the facility would be authorized to annually accept up to 125,000 tons of putrescible waste generated from within the Metro region during each of the next two calendar years (this limit would cover any Metro-area putrescible waste that is received at the facility regardless of whether it is delivered directly to the site or reloaded at another solid waste facility). However, the proposed franchise does not limit the amount of non-putrescible waste, special waste, clean-up waste, and out-of-region waste that can be received at the facility. These wastes would not count against the proposed tonnage limit.

⁹ Ord. No. 13-1306

3. **Insurance Requirements** - Section 9.0 of the proposed franchise has been updated to include standardized insurance language and increased coverage requirements as required for all Metro-regulated facilities. Specifically, the proposed franchise requires that the facility maintain insurance coverage at a minimum of \$1,000,000 per occurrence (increased up from the \$500,000 per occurrence amount specified in the current franchise). This proposed condition is also included in all of the modified franchises for the other privately-owned transfer stations identified in this report.

ANALYSIS / INFORMATION

1. Known Opposition

There is no known opposition to the proposed franchise modifications.

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

This proposed franchise extension is one of several items currently under consideration by Metro Council. In total, these actions combined are intended to provide additional clarity, maintain market continuity, and minimize disruption to the region’s solid waste system for the next two years. These actions will allow industry, stakeholders, staff, and Council to focus attention on the Solid Waste Roadmap.

4. Budget Impacts

Ordinance No. 13-1310 authorizes a two-year term extension, updates certain insurance requirements, and establishes a 125,000-ton annual tonnage limit for an existing solid waste facility franchise. Since this action largely extends the status quo for two years, the financial impact of this proposed franchise has already been factored into the budget.

RECOMMENDED ACTION

Based on the information provided above and the analysis provided in this report, the COO recommends that the Metro Council adopt Ordinance No. 13-1310. Approval of this ordinance will authorize the COO to issue a modified franchise to WMO which extends the franchise term, updates insurance requirements, and establishes an annual 125,000-ton limit on putrescible waste for the Forest Grove Transfer Station subject to conditions which are incorporated into the proposed franchise attached to the staff report for this ordinance as Exhibit A.

Agenda Item No. 5.6

Ordinance No. 13-1311, For the Purpose of Amending Metro
Code Chapter 5.09 Regarding Illegal Disposal of Solid Waste.

Ordinance – Second Reading

Metro Council Meeting
Thursday, August 1, 2013
Metro, Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO	)	ORDINANCE NO. 13-1311
CODE CHAPTER 5.09 REGARDING ILLEGAL)	
DISPOSAL OF SOLID WASTE	)	Introduced by Martha J. Bennett, Chief
	)	Operating Officer, with the concurrence of
	)	Tom Hughes, Council President
)	

WHEREAS, the Metro Council adopted Code Chapter 5.09 in order to effectively investigate and prosecute cases of illegal solid waste disposal while providing reasonable due process procedures; and

WHEREAS, Metro Code Chapter 5.09 has not been updated since 2006; and

WHEREAS, the Chapter presently requires updating in light of experience gained in enforcing the provisions of Chapter 5.09 since the last revision; and

WHEREAS, the Chief Operating Officer proposes these amendments to Chapter 5.09 to clarify and update the chapter; and

WHEREAS, the Metro Council finds that the amendments to Code Chapter 5.09 furthers the goals of the agency; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Metro Code Chapter 5.09 is amended in the form attached as Exhibit A.

ADOPTED by the Metro Council this [insert date] day of [insert month], 2013.

Tom Hughes, Council President

Attest:

Approved as to form:

Kelsey Newell, Recorder

Alison Kean Campbell, Metro Attorney

Exhibit A to Ordinance No. 13-1311

CHAPTER 5.09

ILLEGAL ~~DUMPING~~DISPOSAL

SECTIONS	TITLE
5.09.005	Title
5.09.010	Purpose
5.09.020	Definitions
5.09.030	Jurisdiction
5.09.040	Prohibitions
5.09.050	Civil Penalties <u>Fines</u> and Costs
5.09.060	Persons Authorized to Issue Citations
5.09.070	Procedure for Service of Citation
5.09.080	Issuance of Warnings
5.09.090	Citation Content
5.09.100	Representation at Hearing
5.09.110	Appearance by Cited Person
5.09.120	Prehearing Discovery
5.09.130	Procedures Before Hearings Officer
5.09.140	Failure to Appear by Cited Person
5.09.150	Review of Hearings Officer Decisions
5.09.160	Collection of Civil Penalties <u>Fines and Costs</u>
5.09.170	Administrative Policies and Procedures
5.09.180	Severability
<u>5.09.190</u>	<u>Authority to Settle</u>

5.09.005 Title

This chapter may be cited as the "Metro Illegal Disposal Ordinance."

(Ordinance No. 94-557.)

5.09.010 Purpose

The purposes of this chapter are:

(a) To carry out Metro's responsibility to manage the flow of solid waste in the Portland metropolitan area;

(b) To assist and coordinate with local governments in controlling illegal disposal throughout the Metro region;

(c) To carry out the provisions related to illegal ~~dumping~~ disposal in the Regional Solid Waste Management Plan; and

(d) To prevent fraudulent and unauthorized deliveries of hazardous waste to Metro transfer stations and household hazardous waste facilities.

(Ordinance No. 94-557. Amended by Ordinance No. 06-1107.)

5.09.020 Definitions

For the purposes of this chapter, unless the context requires otherwise, the following terms shall have the meaning indicated:

(a) "Authorized official" means a person authorized to issue citations under Section 5.09.070.

(b) "Conditionally exempt generator (CEG)" means a Conditionally Exempt Small Quantity Generator as defined in 40 CFR 261.5(2005).

(c) "Department" means the Metro ~~Solid Waste~~ Finance and Recycling Regulatory Services Department.

(d) "Hearings officer" means a person designated by Metro to hear and decide cases under this chapter.

(e) "Household hazardous waste" ~~means any discarded, useless or unwanted chemical, material substance or product that is or may be hazardous or toxic to the public or the environment and is generated by households which may include, but is not limited to, some cleaners, solvents, pesticides, and automotive and paint products~~ has the same meaning as in Code Section 5.01.010.

(f) "Person" has the same meaning as in Code Section 1.01.040. ~~means any individual, corporation, partnership, association, firm, trust, estate, or other legal entity.~~ For any person other than an individual, the acts of such person's employees, contractors, and authorized agents shall be considered the acts of the person. ~~.~~

(g) "Solid waste" ~~means all putrescible and non-putrescible waste, including, but not limited to, garbage,~~

~~rubbish, refuse, ashes, debris, waste paper and cardboard, commercial, industrial, demolition and construction waste, discarded or abandoned home and industrial appliances or parts thereof, and discarded or abandoned vehicles or parts thereof~~has the same meaning as in Code Section 5.01.010.

(h) ~~"Waste" means any material considered to be useless, unwanted or discarded by the person who last used the material for its intended and original purpose, and includes such material even if it is recoverable or recyclable~~has the same meaning as in Code Section 5.01.010. For the purposes of this chapter, "waste" includes such material even if it is broken, recoverable, or recyclable.

(Ordinance No. 94-557. Amended by Ordinance No. 06-1107.)

5.09.030 Jurisdiction

This chapter shall apply to all territory within the boundaries of Metro, as well as any additional area as may be established through an intergovernmental agreement.

(Ordinance No. 94-557.)

5.09.040 Prohibitions

(a) No person shall transport or carry, or direct another person to transport or carry, any solid waste, including rubbish, trash, garbage, debris or other refuse, or recyclable material, in or on a motor vehicle or trailer, upon a public road right-of-way within Metro, unless such solid waste or recyclable material is:

- (1) Completely covered on all sides and on the top and bottom and such cover is either a part of or securely fastened to the body of the motor vehicle or trailer; and
- (2) Contained in the body of the motor vehicle or trailer in such a way as to prevent any part of the solid waste or recyclable material from being deposited upon any private or public property, road, right-of-way or driveway within Metro.

(b) No person shall throw or place any solid waste, or direct another person to throw or place any solid waste, upon the private land or waters of another person, into a solid waste

receptacle of another person without the permission of the owner, upon public lands or waters, or upon any public place other than at a solid waste facility authorized to accept such waste by Oregon law and the Metro Code.

(c) No person who has generated or otherwise has possession or control of solid waste shall direct or permit another person to dispose of such solid waste if the person who has generated or otherwise has possession or control of such solid waste knows, or has reason to know, that the person directed or permitted to dispose of such solid waste will not dispose of such solid waste in compliance with all applicable local, state, and federal laws and regulations. No person whose solid waste was collected by a hauler that is franchised or otherwise authorized by a local government to collect waste shall be held in violation of this ~~section~~chapter for illegal disposal of such waste.

(d) No person shall deliver to a Metro ~~t~~Transfer ~~S~~Station any hazardous waste, other than hazardous waste delivered to a Metro household hazardous waste facility, that is ~~h~~Household hazardous waste or hazardous waste generated by a ~~c~~Conditionally exempt generator.

(e) No person shall deliver to a Metro household hazardous waste facility or collection event any hazardous waste other than Household hazardous waste or hazardous waste generated by a ~~c~~Conditionally exempt generator.

(f) No person shall make a false statement to Metro certifying that hazardous waste they have delivered to a Metro household hazardous waste facility or collection event for disposal or recovery is ~~h~~Household hazardous waste or hazardous waste generated by a ~~c~~Conditionally exempt generator.

(g) No person shall deliver non-putrescible solid waste generated within Metro that has not undergone material recovery, or direct another person to deliver such solid waste, to any facility other than a Metro-authorized material recovery facility.

(Ordinance No. 94-557. Amended by Ordinance No. 02-974, Sec. 1; Ordinance No. 06-1107.)

5.09.050 Civil ~~Penalties-Fines~~ and Costs

(a) Any person violating any provision of this chapter shall be subject to:

- (1) A civil fine of not more than \$500 for each ~~infraction~~violation; and
- (2) An award of costs to reimburse Metro for the following actual expenses:
 - (A) administrative costs of investigation, ~~adjudication,~~ and collection; and
 - (B) cleanup, management, and disposal costs incurred.

The fines and costs shall be included in the citation and a hearings officer shall not assess additional fines or costs except the hearings officer may assess an additional fee, not to exceed \$50, ~~fee~~ if a party fails to appear at a hearing that he or she requested, unless for good cause shown.

(~~e~~b) Payment of a civil fine imposed by a citation issued under this chapter does not relieve a violator of responsibility to remedy the violation.

(c) Nothing in this chapter is intended to prevent other legal action against a person alleged to have violated a provision enforceable under this chapter. Metro, or any person or governmental entity whose interest is or may be affected by violation of a provision enforceable under this chapter, may take whatever legal or equitable action necessary to abate a nuisance, impose criminal sanctions or collect damages, regardless of whether an action has been commenced under this chapter. Violation of Metro Code ~~Section~~ 5.09.040 is hereby declared to be a nuisance and subject to abatement or injunction as any other nuisance.

(Ordinance No. 94-557. Amended by Ordinance No. 94-581, Sec. 1; Ordinance No. 06-1107.)

5.09.060 Persons Authorized to Issue Citations

The following persons are authorized to issue citations under this chapter:

(a) The ~~Chief Operating Officer or designee~~~~Director of the Metro Solid Waste and Recycling Department or the Director's designee~~; and

(b) A police officer, deputy sheriff, or other designated enforcement agent operating under cooperative arrangement or contract with Metro.

(Ordinance No. 94-557. Amended by Ordinance No. 06-1107.)

5.09.070 Procedure for Service of Citation

(a) An authorized official shall serve a citation on a cited person in at least one of the following ways:

- (1) Personally;
- (2) By delivery to a person over 14 years of age residing at the cited person's abode, if the cited person is not available at the abode for service;
- (3) If the person to be issued a citation is a firm, corporation, or other organization other than an individual, by delivery to any employee, agent or representative thereof, including such cited person's registered agent; or
- (4) By certified or registered mail, return receipt requested. If the cited person is an individual, then such service shall be addressed to the person's abode. If the cited person is a corporation, firm, or other business entity, then such service shall be addressed to the person's registered agent or to any officer, director, general partner, or managing agent of such person.

(b) An authorized official may not arrest any person for violation of this chapter. An authorized official may detain any person reasonably believed to have committed a violation of this chapter, but only so long as is necessary to determine, for the purposes of issuing a citation, the identity of the violator and such additional information as is appropriate for law enforcement agencies in the state.

(Ordinance No. 94-557. Amended by Ordinance No. 06-1107.)

5.09.080 Issuance of Warnings

(a) A person authorized to issue a citation under this chapter may issue a warning of an alleged ~~infraction~~-violation under this chapter.

(b) If issued, a warning notice shall be in writing and shall be delivered to the person alleged to have committed the ~~infraction~~-violation in person or in any other manner reasonably calculated to give notice of the violation, including posting or regular mail.

(Ordinance No. 94-557. Amended by Ordinance No. 94-581, Sec. 2; Ordinance No. 06-1107.)

5.09.090 Citation Content

(a) A citation substantially conforming to the requirements of this section and approved by the Chief Operating Officer and the Metro Attorney shall be used for all ~~infractions~~ violations enforceable under this chapter.

(b) Each citation shall contain the following information:

- (1) Identification of Metro, as the public body in whose name the action is brought;
- (2) Hearings officer file number;
- (3) Name of the cited person;
- (4) The Metro Code section violated;
- (5) The date and time at which the ~~infraction~~ violation is alleged to have occurred, or the date the ~~infraction~~-violation was first observed by the authorized official issuing the citation or a complainant;
- (6) A short and plain statement of the ~~infraction~~violation of which the person is charged;
- (7) The place at which the ~~infraction~~violation is alleged to have occurred;

- (8) The date on which the citation was issued;
- (9) The name of the authorized official issuing the citation;
- (10) The amount of the civil fines and costs imposed for the ~~infraction~~violation;
- (11) An explanation that paying the civil fine assessed in the citation does not relieve the cited person of the responsibility to remedy the violation, and that failure to remedy the violation may result in additional citations;
- (12) The time by which the cited person must respond to the citation by either (a) requesting a hearing, (b) admitting responsibility and paying the civil fine and costs~~imposed~~, or (c) paying the civil fine and costs and submitting a written explanation of why the cited person should not be found in violation of the Metro Code or of any mitigating circumstances related to the violation, and requesting that a hearings officer reduce and refund all or part of the civil fine and costs paid on that basis;
- (13) The place where the cited person must direct his or her response;
- (14) A notice statement informing the cited person that failure to respond to the citation ~~, or to appear at a requested hearing,~~ could result in the entry of a default order against the cited person, including the imposition of a civil fine of up to \$500 per violation plus additional costs incurred to investigate ~~and adjudicate~~ the violation~~;~~ to cleanup, manage, and dispose of solid waste that is the subject of the violation~~;~~ and to collect all civil ~~penalties~~ fines and costs. The notice shall further inform the cited person that the failure to pay civil ~~penalties~~ fines and costs imposed by order of a hearings officer could result in entry of a judgment against the cited person for the unpaid civil ~~penalties~~ fines and costs, the county clerk recording the person's name and the amount of the ~~penalties~~ fines and costs in the county

clerk lien record, and Metro seeking other legal or equitable relief as provided by law;

(15) A certification by the authorized official issuing the citation, under penalty of ORS 153.990, that the authorized official issuing the citation has reasonable grounds to believe, and does believe, that the cited person committed a ~~an~~ infraction/ violation enforceable under this chapter. A certificate conforming to this subsection shall be deemed equivalent to a sworn citation; and

(16) The method of service and certification that service has been made. If service is made by certified or registered mail, return receipt requested, it shall be so stated on the citation and the required certification of service may be made upon receipt of the "return receipt." Service by certified or registered mail shall be as specified in Section 5.09.070(a)(4).

(c) An error in transcribing information into a citation, when determined by the hearings officer to be non-prejudicial to the defense of the cited person, may be corrected at the time of hearing or prior to time of hearing with notice to the cited person. Except as provided in this subsection, a citation that does not conform to the requirements of this section shall be set aside by the hearings officer upon motion of the cited person before any other proceedings at the hearing. Minor variations in the form of citation shall not be a basis for setting aside a citation.

(d) Nothing prohibits the hearings officer from amending a citation in the hearings officer's discretion.

(Ordinance No. 94-557. Amended by Ordinance No. 94-581, Sec. 3; Ordinance No. 06-1107.)

5.09.100 Representation at Hearing

(a) A cited person may ~~be represented by a retained attorney~~ retain an attorney, at the person's own expense, for representation at the hearing provided that written notice of such representation is received by the Metro Attorney five working days in advance of the hearing. The hearings officer

may waive this notice requirement in individual cases or reset the hearing for a later date.

(b) When a cited person is not represented by legal counsel at the hearing, then Metro shall not be represented by legal counsel at the hearing. In such case, Metro legal counsel may advise Metro staff in preparation of the case, ~~and may~~ be present at the hearing for the purpose of consulting with and advising Metro staff, and answer procedural questions posed by the hearings officer. Nothing prevents the unrepresented party from consenting to legal counsel representing Metro at the hearing.

(Ordinance No. 94-557. Amended by Ordinance No. 06-1107.)

5.09.110 Appearance by Cited Person

(a) The cited person shall either appear as specified in the citation on or before the close of business on the date indicated in the citation, or prior to such time deliver to the address noted in the citation:

- (1) A request for a hearing ~~and a check, cash or money order in the amount of \$25 hearing bond;~~
- (2) A statement of responsibility and a check, cash or money order in the amount of the civil fine set forth in the citation; or
- (3) A statement of explanation in mitigation of the offense charged with a request for a reduction in fines and costs and a check, cash, or money order in the amount of the civil fine set forth in the citation, which combined shall constitute a waiver of hearing and consent to judgment by the hearings officer; or.

~~(3) The executed appearance, waiver of hearing, and statement of responsibility appearing in the citation and a check, cash or money order in the amount of the civil fine set forth in the citation.~~

~~(b) A written statement of explanation submitted by a cited person shall constitute a waiver of hearing and consent to judgment by the hearings officer.~~

(be) If the cited person requests a hearing, the hearings officer shall fix a date and time for a hearing. Unless notice is waived, the hearings officer shall mail to the cited person a notice of the date and time of the hearing at least five working days prior to the hearing. The notice shall:

- (1) Be in the form of a "Notice to Appear" and contain a warning that if the cited person fails to appear, a finding of responsibility will be entered against that person; and
- (2) Be sent to the cited person at the person's last known address by regular mail.

(c) By agreement of all parties, the hearing may be conducted using technology such as the telephone or video conferencing equipment. If setting a hearing by telephone or video conference, the hearings officer shall set the date and time by which the parties must exchange documents, exhibits, and witness lists.

(Ordinance No. 94-557. Amended by Ordinance No. 94-581, Sec. 4; Ordinance No. 06-1107.)

5.09.120 Prehearing Discovery

The pretrial discovery rules in ORS 135.805 to 135.873 shall apply to infractionviolation cases under this chapter. As used in ORS 135.805 to 135.873, "district attorney" shall refer to a Metro attorney or authorized official, and "defendant" shall refer to a cited person under this chapter.

(Ordinance No. 94-557. Amended by Ordinance No. 06-1107.)

5.09.130 Procedures Before Hearings Officer

(a) An allegation of violation of any provision of this chapter shall, if not admitted by the cited person or settled by the department prior to or during the hearing, be resolved by a hearings officer.

(b) The hearings officer shall be independent of all Metro departments although, for administrative purposes, such officer or officers may be established as part of the ~~Solid Waste and~~

~~Recycling~~ Finance and Regulatory Services Department, Office of the Metro Attorney, or Office of the Auditor.

(c) Metro shall have the burden of proving the alleged ~~infraction~~ violation by a preponderance of the evidence.

(d) The hearings officer shall apply the following rules of evidence:

(1) All evidence, including hearsay evidence, of a type commonly relied upon by reasonably prudent persons in conducting their serious affairs shall be admissible.

(2) Evidence objected to may be admitted at the hearing officer's discretion and all evidence offered but not objected to shall be received. All evidence is subject to the hearings officer's discretion to exclude irrelevant, prejudicial, untimely or unduly repetitious evidence and to weigh all evidence received.

i. Relevant evidence. Relevant evidence means evidence having any tendency to make the existence of any material fact more or less probable than it would be without the evidence.

ii. Prejudicial evidence. Prejudicial evidence means evidence whose probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or considerations of undue delay, waste of time or needless presentation of cumulative evidence.

(3) Rulings on the admissibility or exclusion of evidence may be made at the hearing or at the time an order is issued.

(4) Upon reconsideration of an evidentiary ruling, a hearings officer shall preclude action only if the ruling was both erroneous and substantially prejudicial to the rights of a party.

(5) The hearings officer shall give effect to the rules of privilege recognized by law.

~~(1) All evidence, including hearsay evidence, of a type commonly relied upon by reasonably prudent persons in conducting their serious affairs shall be admissible;~~

~~(2) Irrelevant, immaterial, prejudicial, or unduly repetitious evidence shall be excluded at the discretion of the hearings officer. Erroneous rulings on evidence shall not preclude action by the hearings officer, unless shown on the record to have substantially prejudiced the rights of a party~~

~~(3) The hearings officer shall give effect to the rules of privilege recognized by law;~~

~~(4) All evidence offered but not objected to shall be received, subject to the hearings officer's authority to exclude irrelevant or unduly repetitious evidence and to weigh all evidence received; and~~

~~(5) Evidence objected to may be admitted at the discretion of the hearings officer. Rulings on the admissibility or exclusion of evidence may be made at the hearing or at the time an order is issued~~

(e) A name of a person found on solid waste in such a way that it denotes ownership of the items constitutes rebuttable evidence that the person has violated Metro Code ~~section~~ 5.09.040(b) or ~~section~~ 5.09.040(c). The hearings officer shall determine at the hearing whether the evidence in question is sufficient to give rise to a rebuttable presumption of responsibility against the cited person, and shall so notify the cited person following presentation of Metro's case.

(f) The hearings officer shall place on the record a statement of the substance of any written or oral ex parte communication made to the hearings officer on a fact in issue during the pendency of the proceedings. The hearings officer shall notify the parties of the communication and of their right to rebut such communication.

(g) The hearings officer shall have the authority to administer oaths and take testimony of witnesses. In response to a request by Metro or the cited person~~Upon the request of the~~

~~cited person~~, or upon the hearings officer's own motion, the hearings officer may issue subpoenas in accordance with the following provisions of this section, or if not addressed herein, in accordance with the Oregon Rules of Civil Procedure ~~to the extent that the matter is not otherwise addressed by this section~~:

(1) ~~If the cited person desires that witnesses be ordered to appear by subpoena, Metro or~~ the cited person shall ~~so~~ request that the hearings officer order witnesses to appear by subpoena in writing at any time at least five days prior to the scheduled hearing.

(2) A \$15 deposit for each witness shall accompany each request for a subpoena by a cited person. The deposit will be refunded, as appropriate, if the witness cost is less than the amount deposited.

~~(2) Subject to the same five day limitation, Metro may also request that certain witnesses be ordered to appear by subpoena.~~

~~(3) The hearings officer, for good cause, may waive the five day limitation.~~

(43) Witnesses ordered to appear by subpoena shall be allowed the same fees and mileage as allowed in civil cases.

(54) If a civil fine is imposed in the final order, the order shall include an order for payment of actual costs for any witness fees attributable to the hearing.

(ih) ~~The cited person~~The parties shall have the right to cross-examine witnesses who testify and shall have the right to submit evidence.

(i) The cited person may not be required to be a witness in the hearing of any ~~infraction~~violation under this chapter.

(j) Proof of a culpable mental state is not an element of an ~~infraction~~violation under this chapter.

(k) After due consideration of the evidence and arguments, the hearings officer shall determine whether the infractions violation alleged in the citation has been proven and enter an order as follows:

- (1) If the hearings officer determines that the infractions violation has not been proven, a final order dismissing the citation shall be entered.
- (2) If the hearings officer determines that the infractions violation has been proven, the hearings officer shall enter an appropriate final order that sets forth both findings of fact and conclusions of law, the amount of the civil fine and costs imposed, instructions regarding payment, and the appeal rights of the cited person.
- (3) A copy of the final order shall be served on the cited person, or on the cited person's attorney(s) of record, using one of the methods of service described in Section 5.09.070 by regular mail with certificate of service from the hearings officer.

(1) An audio tape-recording shall be made of the hearing unless waived by both parties. The tape recording or a written transcript shall be retained for at least 90 days following the hearing or final judgment on appeal, whichever is later.

(Ordinance No. 94-557. Amended by Ordinance No. 94-581, Sec. 5; Ordinance No. 02-974, Sec. 1; Ordinance No. 06-1107.)

5.09.140 Failure to Appear by Cited Person

If a cited person fails to appear at or prior if he or she does not respond by to the time specified on the citation, or if a cited person who has requested a hearing before a hearings officer he or she requests a hearing and does not appear at the time scheduled by the hearings officer, fails to appear at the scheduled hearing, then If the cited person fails to appear, the hearings officer shall review any evidence submitted and, if to determine if Metro has established the infractions violation by a preponderance of the evidence, and shall enter an appropriate final order that sets forth both findings of fact and conclusions of law, the amount of the civil fine and costs imposed, that includes instructions regarding payment, and the

process to appeal the decision. Where a cited person requests a hearing and fails to appear, the hearings officer may assess an additional fee not to exceed \$50-fee. A copy of the hearings officer's final order shall be served on the cited person using one of the methods of service described in Section Metro Code 5.09.070.

(Ordinance No. 94-557. Amended by Ordinance No. 94-581, Sec. 6; Ordinance No. 06-1107.)

5.09.150 Review of Hearings Officer Decisions

(a) ~~To be considered, a~~Any motion to reconsider the final order of the hearings officer must be filed within 10 days of the original order. The hearings officer may reconsider the final order with or without further briefing or oral argument. If allowed, reconsideration shall result in reaffirmance, modification, or reversal. Filing a motion for reconsideration does not toll the period for filing an appeal in court.

(b) A cited person may appeal a final order by Writ of Review as provided in ORS 34.010 through 34.100.

(Ordinance No. 94-557. Amended by Ordinance No. 06-1107.)

5.09.160 Collection of Civil ~~Penalties-Fines and Costs~~

(a) Fines and costs are payable upon receipt of ~~the-an~~ invoice from Metro pursuant to a written settlement or final order imposing fines and costs. Fines and costs under this chapter are a debt owing to Metro and may be collected in the same manner as any other debt.

(b) The Chief Operating Officer or designee may initiate appropriate legal action, in law or equity, in any court of competent jurisdiction to enforce the provisions of any written settlement or final order of the hearings officer.

(c) In addition to other remedies available in law or equity, when an order assessing civil ~~penalties-fines and costs~~ under this chapter becomes final by operation of law or on appeal and the amount of the ~~penalties-fines or costs~~ is not paid within 10 days after the order becomes final, the order may be recorded and enforced as provided in ORS 268.360(5).

(Ordinance No. 94-557. Amended by Ordinance No. 02-974, Sec. 1; Ordinance No. 06-1107.)

5.09.170 Administrative Policies and Procedures

The Chief Operating Officer or ~~the Chief Operating Officer's~~ designee may establish policies and procedures to carry out this chapter.

(Ordinance No. 94-557. Amended by Ordinance No. 02-974, Sec. 1.)

5.09.180 Severability

If any section, subsection, paragraph, sentence, clause, phrase, or other portion of this chapter is found to be invalid or unconstitutional by a court of competent jurisdiction, that portion of the chapter shall be deemed separate and distinct, and the remainder of this chapter shall continue in full force and effect.

(Ordinance No. 94-557.)

5.09.190 Authority to Settle

The Chief Operating Officer or designee is authorized to enter into negotiations with the parties or their legal representatives involving any provision of this chapter for the collection of fines and costs, to negotiate a settlement, or both.

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 13-1311 FOR THE PURPOSE OF AMENDING CODE CHAPTER 5.09 REGARDING ILLEGAL DISPOSAL OF SOLID WASTE

July 16, 2013

Prepared by:
Steve Kraten 503-797-1678

The proposed ordinance provides a procedural update of Metro's Illegal Disposal chapter (Metro Code Chapter 5.09). The changes are related to enforcement and contested cases and based largely on recommendations from Metro's contract hearing officers and the Office of Metro Attorney (OMA). Additional changes provide clarification resulting from experience gained during various types of hearings over the last several years.

BACKGROUND

The Metro Code's illegal disposal chapter has not been updated since 2006. During that time, many different situations have been encountered during hearings and in dealing with appeals for reconsideration of final orders. As a result of this experience, staff recommends the following changes, clarifications, and updates to this chapter of the Code.

Changes Recommended by Metro Hearings Officers and OMA

- The rules of evidence section has been re-organized in a more logical sequence in order to enhance readability.
- The Hearings Officer would be authorized to reduce, but not increase, the original fine and costs assessed in a citation. If the respondent requests a hearing and then fails to appear, the Hearings Officer may assess an additional fee not to exceed \$50.
- Final orders shall be served on the cited person by the Hearings Officer rather than by Metro.

Clarifications

- For the purposes of this chapter, the definition of "waste" has been expanded to include items that may be repairable but are not functional at the time they are illegally dumped.
- The term "penalties" is more clearly differentiated into "fines" and "costs."
- Respondents may be represented by an attorney, but it must be at their own expense.
- Provides clarification that the Metro Attorney may assist staff in the preparation of the contested cases and be present at hearings to answer any procedural questions the Hearing Officer may ask, even if the respondent is not represented. It also allows for the Metro Attorney to present Metro's case, with the consent of the respondent.
- A new section clarifies that the Chief Operating Officer or designee may negotiate the settlement of a contested case any time prior to the issuance of the Hearings Officer's decision.

- Prohibits delivery of unprocessed dry waste to any facility other than a Metro authorized material recovery facility.

Updates

- Definitions contained in Chapter 5.09 have been cross-referenced to those found in Chapter 5.01 to improve consistency.
- Terms used interchangeably such as “violation” and “infraction” have been made consistent throughout.
- Provides for the possibility of conducting hearings using teleconferencing technologies.

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition to the proposed ordinance.

2. Legal Antecedents

Current provisions of Metro Code Chapter 5.09.

3. Anticipated Effects

- Clarify contested case procedures.
- Uniform and consistent imposition of penalties for illegal disposal.
- Contested case hearings can be conducted using alternative and new technologies.

4. Budget Impacts

The proposed ordinance is not anticipated to have a negative budget impact and may produce some cost savings through more efficient hearings.

RECOMMENDED ACTION

The Chief Operating Officer recommends adoption of Ordinance No. 13-1311.

Agenda Item No. 6.1

Resolution No. 13-4446, For the Purpose Supporting the City of Beaverton's Affordable Housing Tax Exemption Program for Non-Profit Housing Providers.

Resolutions

Metro Council Meeting
Thursday, August 1, 2013
Metro, Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF SUPPORTING THE	)	RESOLUTION NO. 13-4446
CITY OF BEAVERTON’S AFFORDABLE)	
HOUSING TAX EXEMPTION PROGRAM	)	Introduced by Chief Operating Officer
FOR NON-PROFIT HOUSING PROVIDERS	)	Martha Bennett in concurrence with
	)	Council President Tom Hughes

WHEREAS, the Regional Framework Plan directs that the Urban Growth Management Functional Plan include policies for providing affordable housing opportunities through local and regional actions; and

WHEREAS, the Urban Growth Management Functional Plan requires local governments to adopt voluntary affordable housing production goals and ensure that their comprehensive plans and implementing ordinances include strategies for ensuring a diverse range of housing, maintaining existing supply of affordable housing, and increasing opportunities for households of all income levels to live within their jurisdictions in affordable housing; and

WHEREAS, ORS 307.540 to 307.548 authorize local governments to grant property tax exemptions for housing that is occupied by low-income persons and owned by non-profit corporations; and

WHEREAS, the Beaverton City Council is considering adoption of Ordinance No. 4619, which creates new city code provisions enabling the City of Beaverton to administer an affordable housing tax exemption program under ORS 307.541; and

WHEREAS, in order for the City of Beaverton to implement its affordable housing tax exemption program, ORS 307.543 requires the agreement of the governing bodies with taxing authority whose combined rate of taxation equals 51 percent of the total combined rate of taxation for the area to be exempted; now therefore

The Metro Council resolves that

1. As one of the affected taxing authorities, Metro hereby agrees to the policy proposed by the City of Beaverton in its Ordinance No. 4619 regarding providing tax exempt status to properties that qualify as affordable housing under ORS 307.540 through 307.548.

ADOPTED by the Metro Council this ____ day of August 2013.

Tom Hughes, Council President

Approved as to form:

Alison Kean Campbell, Metro Attorney

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 13-4446, FOR THE PURPOSE OF SUPPORTING THE CITY OF BEAVERTON'S AFFORDABLE HOUSING TAX EXEMPTION PROGRAM FOR NON-PROFIT HOUSING PROVIDERS

Date: July 23, 2013

Prepared by: Gerry Uba, x1737

BACKGROUND

Mayor Denny Doyle of the City of Beaverton sent a letter dated June 28, 2013 to Metro Council President, Tom Hughes (Attachment 1), requesting Metro support its effort to address the increasing need for affordable housing by exempting nonprofit developers that build and/or manage affordable housing in the city. Mayor Doyle informed Metro Council President Hughes that the city's adoption of the tax exemption is contingent upon 51 percent of the jurisdictions within the taxing authority agreeing to the tax exemption.

As stated in the letter, Washington County, the City of Tigard, Tualatin Valley Fire District, Tigard-Tualatin School District and Hillsboro School District has adopted the enabling state law (ORS 307.540-548) and are administering programs to increase affordable housing development in Washington County.

The City of Beaverton projects that 176 existing affordable housing units could potentially qualify for exemption at program adoption, and 32 could potentially be constructed in year one, bringing the total estimated number of affordable housing units eligible after the first year to 208. Based also on the city's calculation, the estimated foregone tax revenue by Metro for the 208 units will be \$2,179 at the end of the first year of the program.

Per city staff, the City Council held the first hearing on this subject on July 15, 2013 and a second hearing is scheduled on August 13, 2013.

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition to the proposed action.

2. Legal Antecedents

The Regional Framework Plan (RFP) stated the need to encourage local governments to: a) allow a diverse range of housing types; b) make housing choices available to households of all income levels; and c) allow affordable housing, particularly in centers and corridors and other areas well-served with public services. The RFP also directs that the Urban Growth Management Functional Plan (UGMFP) include policies for providing affordable housing opportunities through local and regional actions.

Title 7 of the UGMFP requires cities and counties to adopt voluntary affordable housing production goals and ensure that their comprehensive plans and implementing ordinances include strategies for ensuring diverse range of housing, maintaining existing supply of affordable housing, and increasing opportunities for households of all income levels to live within their jurisdictions in affordable housing

3. Anticipated Effects

Metro’s financial support for increase in affordable housing units in the City of Beaverton.

4. Budget Impacts

The City of Beaverton projects that the estimated forgone tax revenue by Metro for the approximately 208 units will be \$2,179 at the end of the first year of the program.

RECOMMENDED ACTION

Staff recommends that the Metro Council support the City of Beaverton’s effort to exempt nonprofit developers that build and/or manage affordable housing from paying property tax, recognizing that the impact on Metro will be minimal at this time.

Attachment



Mayor's Office

June 28, 2013

Tom Hughes
Council President
Metro
600 NE Grand Avenue
Portland, OR 97232-2736

RE: TAX EXEMPTION TO ENCOURAGE AFFORDABLE HOUSING

Dear Council President Hughes:

Earlier this year, as part of a multi-year effort to coordinate a county-wide tax exemption policy, Washington County Commissioners adopted an ordinance to exempt nonprofit developers that build and/or manage affordable housing in unincorporated Washington County from paying property taxes. This event marks a major achievement in Washington County's attempts to address the increasing need for affordable housing on the west side. It also marks a significant step in advancing the provision's Title 7 "Housing Choice" of Metro's Urban Growth Management Functional Plan. The City of Beaverton appreciates the leadership role that Washington County has taken and is considering a similar action. The purpose of this letter is to determine if Metro will support the City's efforts in this regard.

The Issue

Life in housing that is not affordable to residents in poverty can be detrimental to a family's health and wellbeing. These households are forced to forego what many would consider daily necessities just to ensure that their rent is paid. The subsequent tradeoffs often affect the quality of child care, sickness and disease prevention, building maintenance, neighborhood desirability, and commute distance. The prospect of living beyond one's means can also affect a child's ability to advance in school, prosper in their career, and contribute to society. Last year, the Oregon Department of Education determined that 1,809 (4.62 percent) of K-12 students attending Beaverton School District (BSD) schools were homeless. This figure placed Beaverton at the top of the list among Oregon school districts.

From a public service perspective, households that live beyond their means are more often victims of criminal activity, have a higher incidence of emergency response calls, and impose higher demands upon supportive services. Because affordable housing is often located quite a distance from their place of employment, they typically assume disproportionate transportation costs, add to greenhouse emissions, and contribute significantly to increased traffic congestion. As a result, public agencies throughout the country are coming to realize that addressing the need for affordable housing on the front end can significantly alleviate cost burdens that occur downstream.

The city of Beaverton has an abundance of low-wage jobs in both the retail and service sectors. The City wants to ensure that a sufficient inventory of affordable housing exists to accommodate these workers. In attempting to determine how well we fulfill this task, the City recently

commissioned a study, (the Beaverton Civic Plan), to measure the City's performance. The result confirmed what was many suspected.

While Beaverton has a shortage of housing affordable to very low-income households (defined as earning less than 30 percent of the area median income), Beaverton's corporate boundary contains a surplus of housing capable of housing residents that earn between 30 percent and 80 percent of the median area income. In effect, the Civic Plan demonstrated that many households who could afford to pay more for housing are occupying housing that might otherwise be affordable to lower income households.

While this may be a positive economic choice on the part of many middle-income households, it does impose unintended consequences upon those households of lesser means. Essentially, these households are either driven out of the local housing market to outlying areas where housing is more affordable, or are living in housing that is beyond their means. As indicated above, this choice requires tradeoffs that may be detrimental to a family's quality of life and burdensome to local governments and service providers who attend to the needs of these residents.

This Civic Plan finding underscores the interest that Beaverton has in encouraging the development of income-restricted housing that would not otherwise be available in a free market environment. Fortunately, this function is routinely performed by non-profit housing providers throughout the region. These organizations are experts in the art of financing projects at or near the breakeven point – an expertise that translates directly into lower rents. Most importantly, these organizations rely upon funding mechanisms to build and maintain their projects that carry income restrictions as a subsidy stipulation. These restrictions guarantee that the housing they build and maintain will be set aside specifically for low-income residents.

The Program

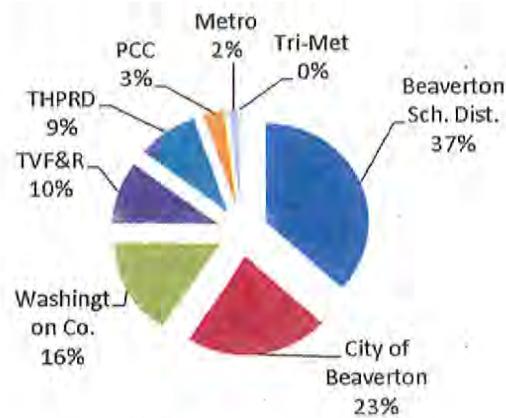
Among financial incentives, tax exemption is often cited among non-profit housing providers as the most effective instrument in addressing the needs of the low-income residents. As opposed to other financial incentives which tend to focus primarily on new construction, this tool offers a unique set of benefits. These include the following:

1. Annual savings resulting from the tax exemption reduces operating costs, and the savings can be passed on directly to renters in the form of lower rents.
2. A requirement that the housing provider meets an affordability target guarantees that encroachment from higher-income residents seeking a cost savings will not occur.
3. Annual cost savings helps ensure that property maintenance for low-income housing is sustained. This element is a crucial factor for projects that are proposed in areas where low-income housing is regarded as substandard.

ORS 307.540-548 is an enabling statute catering specifically to non-profit housing providers that develop and/or maintain housing affordable to populations earning below 60 percent of the area median income. This statute has been employed by the cities of Portland, Tigard, Eugene, and was recently adopted by Washington County for unincorporated areas. In essence, it allows eligible projects a 100-percent property tax exemption if 51 percent of the jurisdictions with taxing authority over that property agree to exempt it.

In seeking support from our public sector and service district partners, the City recognizes that participation in the program will entail costs on the part of those agencies. The City understands that the impacts imposed can be significant to an agency that functions on a thin operating budget. The city of Beaverton is not immune from these concerns. In considering the issue, there may be some consolation, however, in the fact that the majority of impact imposed is in the form of foregone revenue. In essence, excluding the value of pre-development land value for all new construction, no funds are removed from the tax rolls. To some this may make the prospect of subsidy somewhat more palatable.

As we consider the overall need for affordable housing, the city of Beaverton also appreciates the cooperative aspects inherent in this tool. Essentially, all participating jurisdictions assume a share of the fiscal obligation. If Beaverton were to administer such a program, a likely breakdown of expected tax forbearance would pan out in a manner reflected in the pie chart below. This chart depicts the distribution formula represented by the most commonly occurring tax code in the City of Beaverton as dictated by the Washington County Office of Assessment and Taxation, 2011-2012.



As for the specific costs that Metro may anticipate in supporting this program, my staff has prepared an estimate that we believe might be expected if Metro elects to participate. As the City of Tigard is the only jurisdiction within Washington County to administer an affordable housing tax exemption program under statute (ORS 307.540 to 307.548), we are basing our estimates upon the development activity and revenue effects that have occurred in Tigard. Our calculations pertaining to foregone revenue implications that Metro might expect are detailed on the following page.

PER UNIT REVENUE ESTIMATE

Based upon the valuation of eligible projects in place at the time that the exemption program is adopted.

Existing Projects that Could Potentially Qualify for Exemption in Year #1	Units	Taxable Property Value 2011-12	Yearly Foregone Rev @ Metro's Rate of \$0.4042/\$1,000 of Assessed Property Value (2012 dollars)	Annual \$ Per Unit Calculation
Spencer House	48	\$566,820	\$229	
Merlo Station*	128	\$4,001,850	\$1,617	
TOTAL	176	\$4,568,670	\$1,846	\$10.49

**Merlo Station is currently changing ownership and depending upon whether it meets the non-profit criteria, it may qualify for tax exemption.*

ANNUAL FOREGONE REVENUE CALCULATION BASED UPON CITY OF TIGARD'S PROGRAM

Years that Tigard's tax exemption program has been in place:	16
Number of units that have been built since adoption:	278
Average number of units receiving exemption in Tigard per year:	17.37
Scaling adjustment to account for City of Beaverton size difference:	1.83/1
Estimated number of units entering into the Beaverton program per year:	32
Estimated foregone revenue affecting Metro for units constructed each program year <i>(Calculated @ \$10.49/\$1000 of taxable property value)</i>	\$333

FOREGONE REVENUE ESTIMATE AT THE CLOSE OF PROGRAM YEAR #1

Existing projects that could potentially qualify for exemption at program adoption:	176
Units constructed in year #1 based upon previous calculation:	<u>32</u>
Total estimated number of units eligible for exemption after year #1	208
<i>(Existing and newly constructed)</i>	
Foregone tax revenue by Metro for new and existing units in program year #1:	\$2,179
<i>(Calculated @ \$10.49/\$1000 of taxable property value)</i>	

FOREGONE REVENUE ESTIMATE AT THE CLOSE OF PROGRAM YEAR #10

Total units estimated to qualify for exemption in year #10	496
Foregone revenue by Metro for all qualifying units in year #10:	\$5,202
<i>(Calculated @ \$10.49/\$1000 of taxable property value)</i>	


Washington County now bears the distinguished title as one of the fastest growing counties in the state of Oregon. With this title, residents, governments, and housing providers throughout the County are coming to realize that a shortage of affordable housing is no longer a big city problem limited to the city of Portland. As if to underscore the seriousness of this issue, a report was released just last week by the Brookings Institute revealing that poverty in Beaverton has effectively doubled within the last decade. I am concerned by these indicators and do not take them lightly.

With an abundance of low-paying jobs here in Washington County, we must recognize that Washington County's inventory of affordable units capable of housing our low-income work force is extremely limited. Add to this the fact that cities and counties throughout the U.S. face a diminishing federal funding stream (revenue that has traditionally supported public housing), and the need for alternative tools for affordable housing developments in Washington County becomes clear.

As it currently stands, Washington County, Tualatin Valley Fire District, the City of Tigard, the Tigard-Tualatin School District, and the Hillsboro School District have all signed ordinances adopting the provisions of ORS 307.540-548 and are administering programs to achieve the program's objectives. These jurisdictions recognize that a shared effort on the part of multiple organizations will diminish the likelihood that one local government will attract a disproportionate share of affordable housing providers seeking subsidy to that jurisdiction.

I hope that Metro will consider partnering with the City of Beaverton in administering the program described above. Thank you for your efforts in considering this topic, and we look forward to future discussion with you with regard to this issue.

Sincerely,



Denny Doyle
Mayor

c: Gerry Uba, Project Manager, Metro
Val Valfre, Executive Director, Department of Housing Services, Washington County
Don Mazziotti, Community and Economic Development Director, City of Beaverton
Patrick O'Claire, Finance Director, City of Beaverton

Materials following this page were distributed at the meeting.



METRO

Request to Testify

(Please print legibly)

Name: Ron Swaren Date: Aug 1, 2013

Affiliation (if any): _____

Street address: 15413 STE Markita

City: Porter State: DR Zip: 97202

Phone: (971) 223-5173 Race/ethnicity (optional*): _____

Email address: rswaren2002@aol.com *Metro uses this optional information to evaluate its public outreach.

Subject of testimony (include resolution or ordinance number where appropriate):

Milwaukee Light Rail without a primary address can the route
NO MAX or BRT in Sullivan. Express buses instead.

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