

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING THE	)	ORDINANCE NO. 03-1027C
TRANSFER STATION FRANCHISE RENEWAL)	
APPLICATION OF RECYCLE AMERICA,	)	Introduced by Michael Jordan, Chief
AUTHORIZING THE CHIEF OPERATING OFFICER	)	Operating Officer, with the
TO ISSUE A RENEWED FRANCHISE, AND	)	concurrence of David Bragdon, Metro
DECLARING AN EMERGENCY	)	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, Recycle America currently holds a Metro Solid Waste Facility Franchise Number F-001-99, which will expire on December 31, 2003; and,

WHEREAS, Metro Code Section 5.01.087(b) stipulates that franchise renewals shall be approved or denied by the Metro Council, and that a franchisee seeking renewal of a franchise shall file a completed application for renewal accompanied by payment of an application fee of five hundred dollars not less than 120 days prior to the expiration of the Franchise term, together with a statement of proposed material changes from its initial application for the franchise and any other information required by the Chief Operating Officer or by the Council. In addition, the Chief Operating Officer shall formulate recommendations regarding whether the renewal meets the criteria in Section 5.01.070, and that the Council shall approve renewal of a Solid Waste Facility Franchise unless the Council determines that the proposed renewal is not in the public interest or does not meet the criteria contained in Section 5.01.070; and,

WHEREAS, Recycle America filed an application for a renewed franchise pursuant to Metro Code Section 5.01.087(b); and,

WHEREAS, the Chief Operating Officer reviewed and investigated the application renewal for Recycle America as required by Metro Code Sections 5.01.087(b), and formulated recommendations on the criteria listed in Metro Code Section 5.01.070; and,

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

WHEREAS, the Chief Operating Officer forwards his recommendation and recommended conditions to the Council as required by Metro Code Section 5.01.087(b); and,

WHEREAS, the Council finds that the franchise renewal application meets the criteria contained in Metro Code Section 5.01.070; and,

WHEREAS, the Council finds that granting the applicant a renewed franchise is in the public interest; and,

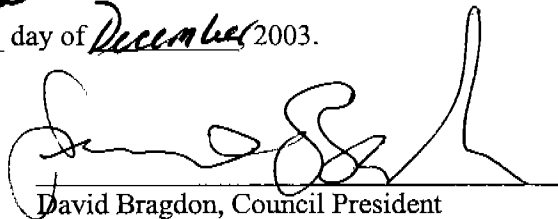
WHEREAS, the Council finds that the terms, conditions, and limitations contained in Second Amended Exhibit A to this Ordinance are appropriate; and,

WHEREAS, Council finds that this ordinance must take effect immediately upon adoption, so that the renewed franchise may be issued and effective upon expiration of the applicant's current franchise (No. F-001-99) on December 31, 2003; now therefore,

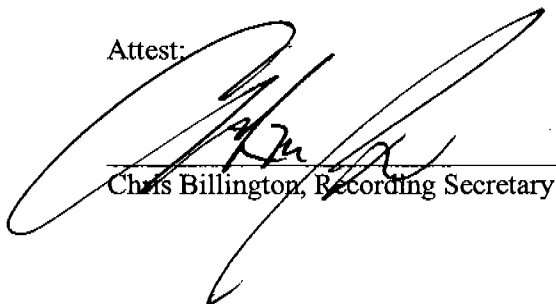
THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The transfer station renewal franchise application of Recycle America is approved, subject to the terms, conditions, and limitations contained in Second Amended Exhibit A to this Ordinance entitled, "Solid Waste Facility Franchise."
2. The Chief Operating Officer is authorized to issue to Recycle America a renewed Solid Waste Facility Franchise substantially similar to the one attached as Second Amended Exhibit A.
3. This ordinance is immediately necessary for the health, safety and welfare of the Metro region in order to ensure the efficient operation of the region's solid waste management system. An emergency is therefore declared to exist. This Ordinance shall take effect immediately, pursuant to Metro Charter Section 39(1).

ADOPTED by the Metro Council this 18th day of December 2003.


David Bragdon, Council President

Attest:


Chris Billington, Recording Secretary

Approved as to Form:


Daniel B. Cooper, Metro Attorney

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BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING THE)	ORDINANCE NO. 03-1027C
TRANSFER STATION FRANCHISE RENEWAL)	
APPLICATION OF RECYCLE AMERICA,	)	Introduced by Michael Jordan, Chief
AUTHORIZING THE CHIEF OPERATING OFFICER	)	Operating Officer, with the
TO ISSUE A RENEWED FRANCHISE, AND	)	concurrence of David Bragdon, Metro
DECLARING AN EMERGENCY	)	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, Recycle America currently holds a Metro Solid Waste Facility Franchise Number F-001-99, which will expire on December 31, 2003; and,

WHEREAS, Metro Code Section 5.01.087(b) stipulates that franchise renewals shall be approved or denied by the Metro Council, and that a franchisee seeking renewal of a franchise shall file a completed application for renewal accompanied by payment of an application fee of five hundred dollars not less than 120 days prior to the expiration of the Franchise term, together with a statement of proposed material changes from its initial application for the franchise and any other information required by the Chief Operating Officer or by the Council. In addition, the Chief Operating Officer shall formulate recommendations regarding whether the renewal meets the criteria in Section 5.01.070, and that the Council shall approve renewal of a Solid Waste Facility Franchise unless the Council determines that the proposed renewal is not in the public interest or does not meet the criteria contained in Section 5.01.070; and,

WHEREAS, Recycle America filed an application for a renewed franchise pursuant to Metro Code Section 5.01.087(b); and,

WHEREAS, the Chief Operating Officer reviewed and investigated the application renewal for Recycle America as required by Metro Code Sections 5.01.087(b), and formulated recommendations on the criteria listed in Metro Code Section 5.01.070; and,

WHEREAS, the Chief Operating Officer recommends that the franchise be renewed together with specific conditions as provided in Second Amended Exhibit A to this Ordinance entitled, "Solid Waste Facility Franchise;" ~~which includes a recommendation that the renewed franchise be issued for a term of four (4) years; and,~~

WHEREAS, the Chief Operating Officer forwards his recommendation and recommended conditions to the Council as required by Metro Code Section 5.01.087(b); and,

WHEREAS, the Council finds that the franchise renewal application meets the criteria contained in Metro Code Section 5.01.070; and,

WHEREAS, the Council finds that granting the applicant a renewed franchise is in the public interest; and,

WHEREAS, the Council finds that the terms, conditions, and limitations contained in Second Amended Exhibit A to this Ordinance are appropriate, ~~including the provision and that the renewed franchise shall be issued for a term of four (4) years; and,~~

WHEREAS, Council finds that this ordinance must take effect immediately upon adoption, so that the renewed franchise may be issued and effective upon expiration of the applicant's current franchise (No. F-001-99) on December 31, 2003; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The transfer station renewal franchise application of Recycle America is approved, subject to the terms, conditions, and limitations contained in Second Amended Exhibit A to this Ordinance entitled, "Solid Waste Facility Franchise."
2. The Chief Operating Officer is authorized to issue to Recycle America a renewed Solid Waste Facility Franchise substantially similar to the one attached as Second Amended Exhibit A.
3. This ordinance is immediately necessary for the health, safety and welfare of the Metro region in order to ensure the efficient operation of the region's solid waste management system. An emergency is therefore declared to exist. This Ordinance shall take effect immediately, pursuant to Metro Charter Section 39(1).

ADOPTED by the Metro Council this _____ day of _____, 2003.

David Bragdon, Council President

Attest:

Approved as to Form:

Chris Billington, Recording Secretary

Daniel B. Cooper, Metro Attorney

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BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING THE)	ORDINANCE NO. 03-1027B
TRANSFER STATION FRANCHISE RENEWAL)	
APPLICATION OF RECYCLE AMERICA,	)	Introduced by Michael Jordan, Chief
AUTHORIZING THE CHIEF OPERATING OFFICER	)	Operating Officer, with the
TO ISSUE A RENEWED FRANCHISE, AND	)	concurrence of David Bragdon, Metro
DECLARING AN EMERGENCY	)	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, Recycle America currently holds a Metro Solid Waste Facility Franchise Number F-001-99, which will expire on December 31, 2003; and,

WHEREAS, Metro Code Section 5.01.087(b) stipulates that franchise renewals shall be approved or denied by the Metro Council, and that a franchisee seeking renewal of a franchise shall file a completed application for renewal accompanied by payment of an application fee of five hundred dollars not less than 120 days prior to the expiration of the Franchise term, together with a statement of proposed material changes from its initial application for the franchise and any other information required by the Chief Operating Officer or by the Council. In addition, the Chief Operating Officer shall formulate recommendations regarding whether the renewal meets the criteria in Section 5.01.070, and that the Council shall approve renewal of a Solid Waste Facility Franchise unless the Council determines that the proposed renewal is not in the public interest or does not meet the criteria contained in Section 5.01.070; and,

WHEREAS, Recycle America filed an application for a renewed franchise pursuant to Metro Code Section 5.01.087(b); and,

WHEREAS, the Chief Operating Officer reviewed and investigated the application renewal for Recycle America as required by Metro Code Sections 5.01.087(b), and formulated recommendations on the criteria listed in Metro Code Section 5.01.070; and,

WHEREAS, the Chief Operating Officer recommends that the franchise be renewed together with specific conditions as provided in Second Amended Exhibit A to this Ordinance entitled, "Solid Waste Facility Franchise," which includes a recommendation that the renewed franchise be issued for a term of four (4) years; and,

WHEREAS, the Chief Operating Officer forwards his recommendation and recommended conditions to the Council as required by Metro Code Section 5.01.087(b); and,

WHEREAS, the Council finds that the franchise renewal application meets the criteria contained in Metro Code Section 5.01.070; and,

WHEREAS, the Council finds that granting the applicant a renewed franchise is in the public interest; and,

WHEREAS, the Council finds that the terms, conditions, and limitations contained in Second Amended Exhibit A to this Ordinance are appropriate, including the provision and that the renewed franchise shall be issued for a term of four (4) years; and,

WHEREAS, Council finds that this ordinance must take effect immediately upon adoption, so that the renewed franchise may be issued and effective upon expiration of the applicant's current franchise (No. F-001-99) on December 31, 2003; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The transfer station renewal franchise application of Recycle America is approved, subject to the terms, conditions, and limitations contained in Second Amended Exhibit A to this Ordinance entitled, "Solid Waste Facility Franchise."
2. The Chief Operating Officer is authorized to issue to Recycle America a renewed Solid Waste Facility Franchise substantially similar to the one attached as Second Amended Exhibit A.
3. This ordinance is immediately necessary for the health, safety and welfare of the Metro region in order to ensure the efficient operation of the region's solid waste management system. An emergency is therefore declared to exist. This Ordinance shall take effect immediately, pursuant to Metro Charter Section 39(1).

ADOPTED by the Metro Council this _____ day of _____, 2003.

David Bragdon, Council President

Attest:

Approved as to Form:

Chris Billington, Recording Secretary

Daniel B. Cooper, Metro Attorney

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SOLID WASTE FACILITY FRANCHISE

Number F-001-03

Issued by

Metro

600 NE Grand Avenue

Portland, OR 97232

Telephone: (503) 797-1650

Issued in accordance with the provisions of Metro Code Chapter 5.01

FRANCHISEE: Waste Management of Oregon, Inc. 7227 NE 55 th Avenue Portland, Oregon 97218 503-640-9427 FAX 503-648-3942 Contact: Dan Wilson, District Manager	FACILITY NAME AND LOCATION: Recycle America 869 NW Eastwind Drive Troutdale, Oregon 97060 Contact: Dan Wilson, District Manager
OPERATOR: Waste Management of Oregon, Inc. 7227 NE 55 th Avenue Portland, Oregon 97218 503-640-9427 FAX 503-648-3942 Contact: Dan Wilson, District Manager	PROPERTY OWNER: TDK Corp. P.O. Box 566 Troutdale, Oregon 97060 (503) 666-2896

This franchise is granted to the Franchisee named above and is not transferable. Subject to the conditions stated in this franchise document, the Franchisee is authorized to operate and maintain a solid waste facility, and to accept the solid wastes and perform the activities authorized herein.

Franchise begins: December 31, 2003

Expiration: December 31, 2007

Metro:

Acceptance & Acknowledgement of Receipt:

Signature

Signature of Franchisee

Michael Jordan, Chief Operating Officer

Print name and title

Print name and title

Date

Date



TABLE OF CONTENTS

SECTION	TITLE	PAGE
1.1	Issuance.....	3
2.0	Conditions and Disclaimers	3
3.0	Authorizations	5
4.0	Limitations and Prohibitions	7
5.0	Operating Conditions	8
6.0	Operating Plan	11
7.0	Fees and Rate Setting	12
8.0	Record Keeping and Reporting	13
9.0	Insurance Requirements	15
10.0	Enforcement	16
11.0	Modifications	17
12.0	General Obligations.....	17



1.0 ISSUANCE

- 1.1 Franchisee** Waste Management of Oregon, Inc.
869 NW Eastwind Drive
Troutdale, OR 97060 (503) 640-9427
- 1.2 Contact** Dan Wilson, District Manager (email: danwilson@wm.com)
- 1.3 Franchise Number** When referring to this franchise, please cite:
Metro Solid Waste Facility Franchise Number F-001-03
- 1.4 Term** Inception date: December 31, 2003
Expiration date: December 31, ~~2007~~2008
- 1.5 Facility name and mailing address** Recycle America
869 NW Eastwind Drive
Troutdale, OR 97060 (503) 667-5264
- 1.6 Operator** Waste Management of Oregon, Inc.
7227 NE 55th Avenue
Portland, OR 97218 (503) 640-9427
- 1.7 Facility legal description** Charles Fezett Donation Land Claim lying within Section 27,
Township 1N, Range 3E, Willamette Meridian
Multnomah County, State of Oregon
- 1.8 Facility owner** TDK Corp.
P.O. Box 566
Troutdale, OR 97060 (503) 666-2896
- 1.9 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** The granting of 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** The granting of this franchise shall not in any way limit Metro



- franchise** from granting other solid waste franchises within Metro boundaries.
- 2.3 Property rights** The granting of this franchise does not convey any property rights in either real or personal property, nor does it authorize any injury to private property or invasion of property rights.
- 2.4 No recourse** The Franchisee shall have no recourse whatsoever against Metro 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 the franchise or any part thereof is determined to be invalid.
- 2.5 Release of liability** Metro, its elected officials, employees, or agents do not sustain any liability on account of the granting of this franchise or on account of the construction, maintenance, or operation of the facility pursuant to this franchise.
- 2.6 Binding nature** The conditions of this franchise are binding on the Franchisee. The Franchisee is liable for all acts and omissions of the Franchisee's contractors and agents.
- 2.7 Waivers** To be effective, a waiver of any terms or conditions of this Franchise must be in writing and signed by the Metro Chief Operating Officer.
- 2.8 Effect of waiver** Waiver of a term or condition of this Franchise shall not waive nor prejudice Metro's right otherwise to require subsequent performance of the same term or condition or any other term or condition.
- 2.9 Choice of law** The Franchise shall be construed, applied and enforced in accordance with the laws of the State of Oregon.
- 2.10 Enforceability** If any provision of this Franchise is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity of the remaining provisions contained in this Franchise shall not be affected.
- 2.11 Franchise not a waiver** Nothing in this franchise shall be construed as relieving any owner, operator, or Franchisee from the obligation of obtaining all required permits, licenses, or other clearances and complying with all orders, laws, regulations, reports or other requirements of other regulatory agencies.



- | | | |
|-------------|-------------------------------|--|
| 2.12 | Franchise not limiting | Nothing in this franchise is intended to limit the power of a federal, state, or local agency to enforce any provision of law relating to the solid waste facility that it is authorized or required to enforce or administer. |
| 2.13 | Definitions | Unless otherwise specified, all other terms are as defined in Metro Code Chapter 5.01. In the event that the Metro Code is amended, the latest amended version shall apply to this franchise. |

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 wastes | The Franchisee is authorized to accept at the facility only the solid wastes described in this section. 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 activities that are described in this section. |
| 3.4 | Putrescible waste | The Franchisee is authorized to accept putrescible waste for the purpose of delivery or transfer of said putrescible waste to a disposal site authorized by a Metro designated facility agreement or a Metro non-system license in accordance with Metro Code Chapter 5.05. |
| 3.5 | Non-putrescible waste | The Franchisee is authorized to accept for the purpose of material recovery non-putrescible solid wastes such as waste generated by non-residential generators and waste generated at construction and demolition sites. |
| 3.6 | Source-separated recyclables | The Franchisee is authorized to accept source-separated recyclable materials for purposes of sorting, classifying, consolidating, baling, temporary storage, transfer and other similar functions related to preparing these materials for marketing. |



- 3.7 Inert materials** 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.
- 3.8 Source-separated yard debris** The Franchisee is authorized to accept source-separated yard debris for transfer to a Metro licensed yard debris facility, a DEQ-permitted composting facility or other DEQ-permitted processing facility. The Franchisee shall keep source-separated yard debris separate from other solid waste at the facility and shall provide records showing that source-separated yard debris is delivered to a composting or processing facility, and not disposed of.
- 3.9 Source-separated organic materials** In accordance with Metro Code Chapter 5.05, the Franchisee is authorized to accept source-separated organic materials for the purpose of transfer to a DEQ-permitted composting facility or other DEQ-permitted processing facility. Source-separated organic materials may be accepted only if they (a) have been separated from other solid waste by the generator prior to delivery to the facility, and (b) are suitable for controlled biological decomposition such as for making compost. The Franchisee shall keep source-separated organic material separate from other solid waste at the facility and shall provide records showing that the source-separated organic materials are delivered to a composting or processing facility, and not disposed of. The Franchisee also shall comply with any source-separated organic materials maximum contamination requirements identified in an ordinance adopted by the Metro Council during the term of this Franchise.
- 3.10 Contaminated soils** The Franchisee is authorized to accept contaminated soil for transfer to a DEQ permitted disposal site that is authorized to accept contaminated soil.
- 3.11 Special wastes and other wastes** The Franchisee is authorized to accept various special wastes for transfer as authorized by DEQ Disposal Site Permit Number 459 including but not limited to filter cake, zircon sand and other sandblasting media, dewatered industrial sludge residue, waste from pollution control devices, charcoal air/water filters, ceramic castings, metal shavings, and refractory brick and other wastes with similar characteristics; and other wastes such as street sweepings, catch basin residue, and similar clean-up wastes.
- 3.12 Incidental recovery** The Franchisee is authorized to perform “low-level” material recovery on putrescible waste, provided that these material recovery efforts are incidental to the activity of transferring the putrescible waste, and are limited to the gleaning of easily-



extractable recyclable or reusable materials from the waste.

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 Limit on waste accepted** The Franchisee shall accept no more than 65,000 tons of putrescible waste generated or originating inside the Metro region within each Metro fiscal year ~~irrespective of whether the waste originated inside or outside the Metro region.~~ The Franchisee shall not accept solid waste generated or originating outside the Metro region if to do so would limit Franchisee from accepting 65,000 tons of putrescible waste, or and non-putrescible waste, generated or originating inside the Metro region.
- 4.3 Prohibited waste** The Franchisee shall not knowingly accept or retain any material amounts of the following types of wastes: materials contaminated with or containing friable asbestos; lead acid batteries; liquid waste for disposal; vehicles; infectious, biological or pathological waste; radioactive waste; hazardous waste; or any waste prohibited by the Franchisee's DEQ Disposal Site Permit. The Franchisee also shall not knowingly accept or retain any material amounts of any other similar types of wastes if:
- (a) the handling of such types of waste at a solid waste transfer station could adversely impact public health and safety; and
 - (b) the Metro Council identifies such types of waste in an ordinance adopted by the Metro Council during the term of this Franchise.
- 4.4 Material recovery required** The Franchisee shall perform material recovery on nonputrescible waste accepted at the facility at the rate stipulated in Metro Code Chapter 5.01, as amended by an ordinance adopted by the Metro Council during the term of this Franchise, or deliver said non-putrescible wastes to a Metro authorized solid waste facility whose primary purpose is to recover useful materials from solid waste. The Franchisee also shall perform material recovery on other types of waste identified in an ordinance adopted by the Metro Council during the term of this Franchise.



- 4.5 Prohibition on mixing** The Franchisee shall not mix any source-separated recyclable materials, source-separated yard debris, or source-separated organic materials brought to the facility with any other solid wastes. Recyclable materials recovered at the facility may be combined with source-separated recyclable materials for transfer to markets, processors, or another solid waste facility that prepares such materials for reuse or recycling.
- 4.6 No disposal of recyclable materials; other potential disposal bans** Source-separated recyclable materials, source-separated yard debris, ~~or~~ and source-separated organic materials accepted at the facility may not be disposed of by landfilling or incineration. The Franchisee also shall not dispose, by landfilling or incineration, any other wastes identified in an ordinance adopted by the Metro Council during the term of this Franchise.
- 4.7 Origin of putrescible waste** The Franchisee shall accept putrescible waste that originates within the Metro boundary only from persons who are franchised or permitted by a local government unit to collect and haul putrescible waste.
- 4.8 Limits not exclusive** Nothing in this section of the franchise shall be construed to limit, restrict, curtail, or abrogate any limitation or prohibition contained elsewhere in this franchise document, in Metro Code, or in any federal, state, regional or local government law, rule, regulation, ordinance, order or permit.

5.0 OPERATING CONDITIONS

- 5.1 Purpose** This section of the franchise describes criteria and standards for the operation of the facility.
- 5.2 Qualified Operator** The Franchisee shall provide an operating staff qualified to carry out the functions required by this franchise and to otherwise ensure compliance with Metro Code Chapter 5.01. Facility personnel, as relevant to their job duties and responsibilities, shall be familiar with the relevant provisions of this franchise and the relevant procedures contained within the facility's operating plan.
- 5.3 Fire prevention** The operator shall provide fire prevention, protection, and control measures, including but not limited to, adequate water supply for fire suppression, and the isolation of potential heat sources and/or flammables from the processing area.



- 5.4 Adequate vehicle accommodation** Vehicles delivering solid waste to the facility shall not park or queue on public streets or roads except under emergency conditions. Adequate off-street parking and queuing for vehicles shall be provided.
- 5.5 Enclosed operations** All handling, processing, compaction or other forms of managing putrescible wastes shall occur inside facility buildings.
- 5.6 Managing prohibited wastes** Upon discovery, all prohibited or unauthorized wastes shall be removed or managed in accordance with procedures established in the Operating Plan.
- 5.7 Managing authorized wastes** All authorized solid wastes received at the facility must, within 24-hours from receipt, be either (a) processed, (b) appropriately stored, or (c) properly disposed of.
- 5.8 Storage** Stored materials and solid wastes shall be suitably contained and removed at sufficient frequency to avoid creating nuisance conditions or safety hazards. Storage areas must be maintained in an orderly manner and kept free of litter.
- 5.9 Litter and airborne debris** The Franchisee shall operate the facility in a manner that is not conducive to the generation of litter and airborne debris. The Franchisee shall:
- a. Take reasonable steps to notify and remind persons delivering solid waste to the facility that all loads must be suitably secured to prevent any material from blowing off the load during transit.
 - b. Construct, maintain, and operate all vehicles and devices transferring or transporting solid waste from the facility to prevent leaking, spilling or blowing of solid waste on-site or while in transit.
 - c. Keep all areas within the site and all vehicle access roads within ¼ mile of the site free of litter and debris.
- 5.10 Odor** The Franchisee shall operate the facility in a manner that is not conducive to the generation of odors. The Franchisee shall:
- a. Clean the areas and equipment that come into contact with solid waste on a regular basis.
 - b. Establish and follow procedures in the operating plan for minimizing odor at the facility. Such procedures must be in writing and in a location where facility personnel and Metro inspectors can readily reference them.
- 5.11 Vectors** The Franchisee shall operate the facility in a manner that is not



conductive to infestation of rodents, insects, or other animals capable of transmitting, directly or indirectly, infectious diseases to humans or from one person or animal to another.

- 5.12 Noise** The Franchisee shall operate the facility in a manner that controls the creation of excessive noise to the extent necessary to meet applicable regulatory standards and land-use regulations.
- 5.13 Water quality** The Franchisee shall:
- a. Operate and maintain the facility to prevent contact of solid wastes with stormwater runoff and precipitation.
 - b. Dispose of contaminated water and sanitary sewage generated onsite in a manner complying with local, state, and federal laws and regulations.
- 5.14 Public Access** Public access to the facility shall be controlled as necessary to prevent unauthorized entry and dumping.
- 5.15 Signage** The Franchisee shall post signs at all public entrances to the facility, and in conformity with local government signage regulations. These signs shall be easily and readily visible, legible, and shall contain at least the following information:
- a. Name of the facility
 - b. Address of the facility;
 - c. Emergency telephone number for the facility;
 - d. Operating hours during which the facility is open for the receipt of authorized waste;
 - e. Fees and charges;
 - f. Metro's name and telephone number (503) 797-1650; and
 - g. A list of authorized and prohibited wastes.
- 5.16 Complaints** The Franchisee shall respond to all written complaints on nuisances (including, but not limited to, blowing debris, fugitive dust or odors, noise, traffic, and vectors). If Franchisee receives a complaint, Franchisee shall:
- 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 in Section 9.8 of this franchise. Each log entry shall be retained for one year and shall be available for inspection by Metro.
- 5.17 Access to** The Franchisee shall maintain a copy of this Metro Solid Waste

**franchise
document**

Facility Franchise on the facility's premises, and in a location where facility personnel and Metro representatives have ready access to it.

**5.18 Access for
ODOT
inspectors**

~~The Franchisee shall allow Oregon Department of Transportation (ODOT) inspectors periodic access to the facility for the purpose of conducting truck weight compliance checks.~~

6.0 OPERATING PLAN

- 6.1 Purpose** This section lists the procedures that must be included in the required facility operating plan. The operating plan must be updated and submitted to Metro within 60 days of the issuance of this franchise and may be further amended from time to time. The operating plan is subject to approval by the Director of the Metro Solid Waste & Recycling Department.
- 6.2 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.
- 6.3 Procedures for inspecting loads** The operating plan shall establish:
- Procedures for inspecting incoming loads for the presence of prohibited or unauthorized wastes;
 - A set of objective criteria for accepting and rejecting loads; and
 - An asbestos testing protocol for all material that appears as if it may contain asbestos.
- 6.4 Procedures for processing and storage of loads** The operating plan shall establish procedures for:
- Processing authorized solid wastes,
 - Storing authorized solid wastes; and
 - Minimizing storage times and avoiding delay in processing of authorized solid wastes.
- 6.5 Procedures for managing prohibited wastes** The operating plan shall establish procedures for managing and transporting to appropriate facilities or disposal sites each of the prohibited or unauthorized wastes if they are discovered at the facility. In addition, the operating plan shall establish procedures



and methods for notifying generators not to place hazardous wastes or other prohibited wastes in drop boxes or other collection containers destined for the facility.

6.6 Procedures for odor prevention

The operating plan shall establish procedures for preventing all objectionable odors 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 all odors of any derivation including malodorous loads delivered to the facility; and
- b. Procedures for receiving and recording odor complaints, immediately investigating any odor complaints to determine the cause of odor emissions, and remedying promptly any odor problem at the facility.

6.7 Procedures for emergencies

The operating plan shall establish procedures to be followed in case of fire or other emergency.

6.8 Procedures for nuisance complaints

For every nuisance complaint (e.g. odor, dust, vibrations, litter) received, the Franchisee shall record:

- 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).

Records of such information shall be made available to Metro and local governments upon request. The Franchisee shall retain each complaint record for a period of not less than two years.

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 Fines** Each violation of a franchise condition shall be punishable by fines as established in Metro Code Chapter 5.01. Each day a violation continues constitutes a separate violation. Metro reserves the right to change fines at any time by action of the Metro Council.
- 7.4 Rates not regulated** The tipping fees and other rates charged at the facility are exempt from rate regulation by Metro.
- 7.5 Metro fee imposed on disposal** The Franchisee is liable for payment of the Metro Regional System Fee on any solid wastes delivered to a disposal site, unless these solid wastes are exempted by Metro Code Chapter 5.01.

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** For all solid waste and materials the Franchisee is authorized to receive under Section 3.0 of this franchise, including all non-putrescible waste, source-separated recyclables, inert materials, and yard debris and landscape waste, the Franchisee shall keep and maintain accurate records of the amount of such materials the Franchisee receives, recovers, recycles, and disposes. The Franchisee shall keep and maintain complete and accurate records of the following for all transactions:
- a. Ticket Number (should be the same as the ticket number on the weight slips);
 - b. Account Number: Incoming Hauler and Outgoing Destination;
 - c. Material type: Code designating the following types of material (more detail, such as differentiating yard debris, is acceptable): (1) incoming source-separated Recyclable Materials by type; (2) incoming mixed waste; (3) outgoing Recyclable Materials; (4) outgoing mixed waste;
 - d. Origin: Code designating the following origin of material: (1) public from inside Metro boundaries; (2) public from within Multnomah, Clackamas and Washington Counties



but outside Metro boundaries; (3) commercial from inside Metro boundaries; (4) commercial from Multnomah, Clackamas and Washington Counties but outside Metro boundaries; and (5) commercial from out-of-state;

- i. Any load containing any amount of waste from within the Metro region shall be reported as if the entire load was generated from inside the Metro region.
 - ii. If the Franchisee elects to report all loads delivered to the facility as being generated from inside the Metro region, then the Franchisee is not required to designate the origin of loads in Section 8.2(d)(2) and (4) above.
- e. Date the load was received at or transmitted from the Facility;
 - f. Time the load was received at or transmitted from the Facility;
 - g. Indicate whether Franchisee accepted or rejected the load;
 - h. Net weight of the load;
 - i. The fee charged to the generator of the load.

8.3	Record transmittals	Records required under Section 8.0 shall be transmitted to Metro no later than fifteen (15) days following the end of each month in electronic format prescribed by Metro.
8.4	Semi-annual computer listing	On a semi-annual basis, Franchisee shall provide Metro with a computer listing that cross references the Incoming Hauler Account Number with the hauling company's name and address.
8.5	DEQ submittals	Franchisee shall provide Metro with copies of all correspondence, exhibits, or documents submitted to the DEQ relating to the terms or conditions of the DEQ solid waste permit or this franchise within two business days of providing such information to DEQ.
8.6	Copies of enforcement actions provided to Metro	Franchisee shall send to Metro, upon receipt, copies of any notice of violation or non-compliance, citation, or any other similar enforcement actions issued to the Franchisee by any federal, state, or local government other than Metro, and related to the operation of the facility.
8.7	Unusual	The Franchisee shall keep and maintain accurate records of any



occurrences 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. The Franchisee shall report any facility fires, accidents, emergencies, and other significant incidents to Metro at (503) 797-1650 within 12 hours of the discovery of their occurrence.

8.8 Nuisance complaints ~~For every nuisance complaint (e.g. odor, dust, vibrations, litter) received, the Franchisee shall record:~~

~~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).~~

~~Records of such information shall be made available to Metro and local governments upon request. The Franchisee shall retain each complaint record for a period of not less than two years.~~

8.89 Changes in ownership The Franchisee must, in accordance with Metro Code Section 5.01.090, submit a new franchise application to Metro if the Franchisee proposes to transfer ownership or control of (1) the franchise, (2) the facility property, or (3) the name and address of the operator.

9.0 INSURANCE REQUIREMENTS

9.1 Purpose The section describes the types of insurance that the Franchisee shall purchase and maintain at the Franchisee's expense, covering the Franchisee, its employees, and agents.

9.2 General liability The Franchisee shall carry broad form comprehensive general liability insurance covering bodily injury and property damage, with automatic coverage for premises, operations, and product liability. The policy shall be endorsed with contractual liability coverage.

9.3 Automobile The Franchisee shall carry automobile bodily injury and property



damage liability insurance.

- 9.4 Coverage** Insurance coverage shall be a minimum of \$500,000 per occurrence. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000.
- 9.5 Additional insureds** Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSUREDS.
- 9.6 Worker's Compensation Insurance** The Franchisee, its subcontractors, if any, and all employers working under this franchise, 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. Franchisee shall provide Metro with certification of Workers' Compensation insurance including employer's liability. If Franchisee has no employees and will perform the work without the assistance of others, a certificate to that effect may be 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 Chief Operating Officer 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.
- 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** Nothing in this franchise shall be construed to limit, restrict, curtail, or abrogate any enforcement provision contained in Metro Code or administrative procedures adopted pursuant to Metro Code Chapter 5.01, nor shall this franchise be construed or interpreted so as to limit or preclude Metro from adopting ordinances that regulate the health, safety, or welfare of any person or persons within the District, notwithstanding any incidental impact that such ordinances may have upon the terms of this franchise or the Franchisee's operation of the facility.



11.0 MODIFICATIONS

- 11.1 Modification** At any time during the term of the franchise, either the Chief Operating Officer or the Franchisee may propose amendments or modifications to this franchise. Except as provided in Section 11.2, no modification shall be effective unless approved by the Metro Council.
- 11.2 Modification, suspension or revocation by Metro** The Chief Operating Officer may, at any time before the expiration date, modify, suspend, or revoke this franchise in whole or in part, in accordance with Metro Code Chapter 5.01, for reasons including but not limited to:
- 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, excluding transfers among subsidiaries of the Franchisee or Franchisee's parent corporation;
 - g. A request from the local government stemming from impacts resulting from facility operations.
 - h. Compliance history of the Franchisee.

12.0 GENERAL OBLIGATIONS

- 12.1 Compliance with law** Franchisee shall fully comply with all applicable local, regional, state and federal laws, rules, regulations, ordinances, orders and permits pertaining in any manner to this franchise, including all applicable Metro Code provisions and administrative procedures adopted pursuant to Chapter 5.01 whether or not those provisions have been specifically mentioned or cited herein. 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 Indemnification** The Franchisee shall indemnify and hold Metro, its employees, agents and elected officials harmless from any and all claims, damages, actions, losses and expenses including attorney's fees, or liability related to or arising out of or in any way connected with the Franchisee's performance or failure to perform under this franchise, including patent infringement and any claims or disputes involving subcontractors.
- 12.3 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;
- 12.4 Right of inspection and audit** Authorized representatives of Metro may take photographs and perform such inspection or audit as the Chief Operating Officer deems appropriate, and shall be permitted access to the premises of the facility at all reasonable times during business hours with or without notice or at such other times upon giving reasonable 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.
- 12.5 Confidential information** Franchisee may identify as confidential any reports, books, records, maps, plans, income tax returns, financial statements, contracts and other similar written materials of the Franchisee that are directly related to the operation of the facility and that are submitted to or reviewed by Metro. Franchisee shall prominently mark any information which 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, any request for disclosure of information identified by licensee as



confidential, Metro shall provide Franchisee written notice of the request. Franchisee shall have three (3) days within which time to respond in writing to the request before Metro determines, at its sole discretion, whether to disclose any requested information. Franchisee shall pay any costs incurred by Metro as a result of Metro's efforts to remove or redact any such confidential information from documents that Metro produces in response to a public records request. Nothing in this Section 12 shall limit the use of any information submitted to or reviewed by Metro for regulatory purposes or in any enforcement proceeding. In addition, Metro may share any confidential information with representatives of other governmental agencies provided that, consistent with Oregon law, such representatives agree to continue to treat such information as confidential and make good faith efforts not to disclose such information.

12.6 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. 03-1027 FOR THE PURPOSE OF APPROVING THE TRANSFER STATION FRANCHISE RENEWAL APPLICATION OF RECYCLE AMERICA, AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED FRANCHISE, AND DECLARING AN EMERGENCY

October 22, 2003

Prepared by: Bill Metzler

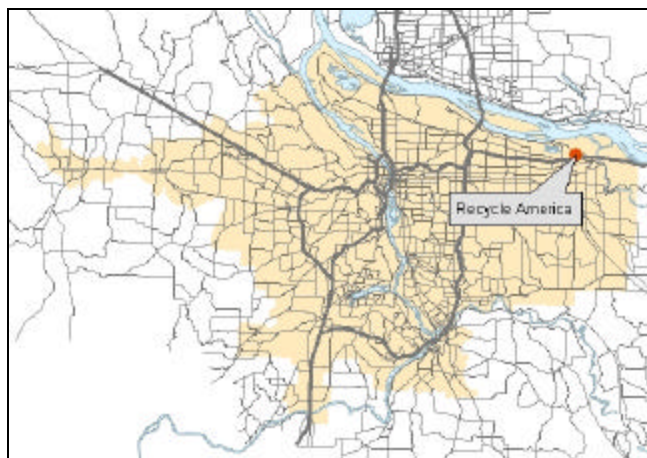
BACKGROUND

A. Reason for the Ordinance

Ordinance No. 03-1027 is a response to an application for a franchise renewal duly filed by Waste Management of Oregon, Inc., dba Recycle America pursuant to Metro Code chapter 5.01.087(b). Metro Code Section 5.01.087(b) requires that the Chief Operating Officer formulate recommendations regarding whether a renewal meets the criteria in Section 5.01.070. The Metro Code specifies that the Council shall approve a renewal of a Solid Waste Facility Franchise unless the Council determines that the proposed renewal is not in the public interest or does not meet the criteria contained in Section 5.01.070. The Council may attach conditions or limitations to the renewed franchise.

B. The Applicant and the Applicant's Request

Waste Management of Oregon, Inc., is the operator of Recycle America, an existing solid waste facility that is currently franchised by Metro as a transfer station to receive putrescible waste, perform material recovery on non-putrescible waste, and accept source-separated recyclable material. The applicant has requested a renewal of its solid waste facility franchise. The facility is located at 869 NW Eastwind Drive, in Troutdale (Metro Council District 1).



Site Location Map

The applicant has requested no new authorizations, tonnage increase, or changes to its current franchise provisions. Under separate authority of a Metro Non-System License, the franchisee is authorized to deliver putrescible waste directly to Columbia Ridge Landfill in Gilliam County, Oregon; and in the case of an emergency, to the Riverbend Landfill located in Yamhill County, Oregon (NSL# N-001-03).



Aerial photograph of the facility



Facility entrance

C. Issuance of a Renewed Franchise

Metro Code Section 5.01.087(b) governs the application and renewal of franchises. That section requires the franchisee to submit an application and a renewal fee, requires the Chief Operating Officer to formulate recommendations regarding whether the renewal meets the criteria in Section 5.01.070, provides that the Council shall renew an application unless it finds that renewal is not in the public interest or does not meet the criteria in Section 5.01.070, and gives the Council discretion to impose conditions or limitations on the franchise.

1. Renewal Application

Metro Code Section 5.01.087(b) requires the applicant to file a completed application for renewal accompanied by payment of an application fee of \$500 not less than 120 days prior to the expiration of the franchise term.

The applicant filed its application for renewal and application fee of \$500 on June 27, 2003. The current franchise term expires on December 31, 2003. The applicant filed a renewal application within 120 days prior to the expiration of its franchise term. Accordingly, staff finds that the application was properly filed.

2. Compliance With The Criteria in Metro Code Section 5.01.070

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

(a) *Metro Code section 5.01.070(c) requires that the Chief Operating Officer formulate recommendations regarding:*

i. *Applicant Qualifications.*

The applicant is well known to Metro as an operator of a Metro franchised solid waste facility and as a long-standing solid waste management company in the Portland Metro area. The applicant has operated its facility for over five years and has extensive experience in recycling, solid waste hauling, and disposal.

Staff concludes that the applicant is fully qualified to operate and manage the facility competently and efficiently.

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

The solid waste management activities to be renewed under this franchise are entirely consistent with the Regional Solid Waste Management Plan's section on *Solid Waste Facilities and Services: Transfer and Disposal System*.

Recommended Practice # 1: Allow additions to the existing system of three transfer stations as necessary to maintain solid waste transfer and disposal service levels that provide reasonable access for residents, businesses and haulers. New transfer stations may be authorized where they provide a net benefit to the regional solid waste system. New transfer stations shall perform material recovery subject to facility recovery rate standards.

Recommended Practice # 3: Maintain options for haulers to choose among disposal alternatives.

The rationale for transfer stations under the Plan is that they assist in maintaining service levels by reducing drive time for haulers, reducing congestion at existing facilities and adding opportunity to recover materials. An efficient disposal system depends on both capacity and accessibility. As an outright recommended practice, staff concludes that the applicant's request for renewal of its franchise complies with the Regional Solid Waste Management Plan.

iii. Meeting the Requirements of Metro Code Section 5.01.060.

Metro Code section 5.01.060(a) requires applications for renewal of an existing franchise to be filed on forms or in the format provided by the Chief Operating Officer. The applicant seeks a franchise renewal and, in accordance with Metro Code provisions, has filed a completed application for renewal accompanied by payment of the application fee of \$500. Accordingly, staff finds that the application was properly filed.

Metro Code section 5.01.060(b) requires all applications to include a description of the activities proposed to be conducted and a description of wastes to be accepted. This information was included in the franchise renewal application form and accordingly, staff finds that the application was properly filed.

Metro Code sections 5.01.060(c) requires that an application for a franchise include the following: 1) proof of insurance; 2) duplicate copies of all DEQ required applications and permits; 3) a duplicate copy of any DEQ required closure plan or if not required by the DEQ then a closure document describing closure protocol; 4) copies of DEQ required financial assurance documents or if not required by the DEQ proof of financial assurance for the cost of closure of the facility; 5) signed consent by the property owner to the proposed use of the property; 6) proof that the applicant has received proper land use approval; and, 7) copies of any other permits required from other governmental agencies. This information is included in the existing franchise file of the applicant; accordingly staff finds that the required information has been submitted.

Metro Code Section 5.01.060 (d) is a new provision for proposed facilities that was adopted by the Metro Council on October 9, 2003 (Ordinance No. 03-1018A). Since this provision pertains to a proposed facility making an initial application for a new franchise, not a renewal, the new provision is not applicable in this case.

iv. Compliance with Regulatory Requirements.

The applicant has land use authorization from the City of Troutdale, Oregon, a DEQ Solid Waste Disposal Permit, and for the past five-years has been operating under authority of a Metro Solid Waste Facility Franchise. In that time, the facility has not received, to Metro's knowledge, any notices of violation or non-compliance from either the City of Troutdale or the Oregon DEQ. No other violations, citations or letters of complaint of record have been issued to the applicant by Metro or any other regulatory agency or government in regard to the operation of Recycle America. Metro has conducted nine site inspections since January 2003, and staff has found a well-run operation with no observable reason to suspect impending problems or issues. The franchisee has never violated its franchise tonnage authorization. Staff therefore concludes that the applicant has sufficiently complied – and is likely to continue to comply – with all applicable regulatory requirements.

(b) *Metro Code section 5.01.070(f) lists five criteria for consideration by the Council (but notes that the Council is not limited to these criteria in making its decision):*

i. *Consistency with the Regional Solid Waste Management Plan.*

In examining this issue in Section (2)(a)(ii) above, staff found in the affirmative.

ii. *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.*

Recycle America is an existing facility and has been in operation for over five years. In addition, Recycle America has not requested any change in tonnage authorizations, or activities at the facility. The effect of granting a renewed franchise would be to maintain the status quo with regard to the cost of solid waste recycling and disposal services for the citizens of the region

iii. *Granting the franchise would be unlikely to adversely affect health, safety and welfare of Metro's residents.*

Metro staff is not aware of any facility incidents or operating procedures that have adversely affected the health, safety and welfare of Metro's residents in the five years that the facility has been operating. Likewise, the Oregon DEQ has not cited the facility for any violations. The operator's experience and track record, together with the regulatory environment in which Recycle America operates, leads staff to conclude that it is unlikely Recycle America will adversely affect the public health, safety and welfare.

iv. *Granting the franchise would be unlikely to unreasonably adversely affect nearby residents, property owners or the existing character or expected future development of the surrounding neighborhood.*

Metro staff is not aware of any complaints or excessive impacts on the surrounding neighborhood in the five years that the facility has been operating. The operator's experience and track record leads staff to conclude that it is unlikely Recycle America would unreasonably adversely impact the surrounding neighborhood.

v. *The applicant is likely to comply with regulations and standards.*

As discussed in Section 2(a)(iv), above, staff finds that the franchisee has never violated its franchise tonnage authorization, and is likely to comply with regulations and standards if the franchise is renewed.

3. Chief Operating Officer's Recommendation and Recommended Franchise Conditions

Based on the information presented in Section (C)(1) and (2) above, the Chief Operating Officer believes that the franchise renewal application meets the criteria in Metro Code Section 5.01.070. The Chief Operating Officer also believes that the proposed franchise renewal is in the public interest. The Chief Operating Officer therefore recommends that the Metro Council approve a franchise renewal to Recycle America subject to the requirements listed in Metro Code Chapter 5.01; and further subject to the following specific conditions, which are incorporated into the draft franchise attached as Exhibit A to Ordinance No. 03-1027:

Conditions:

- That the franchise be granted for four years, to expire on December 31, 2007. This condition will ensure that the term of the renewed franchise will coincide with future solid waste planning and policy decisions by the Metro Council.
- That the franchise include more specific record keeping and reporting requirements for the purpose of ensuring that Metro receive accurate transaction data for necessary accounting controls if the franchisee intends to not pay regional system fees on waste from outside Metro's boundaries. The franchisee shall accept no more than 65,000 tons of putrescible waste within each Metro fiscal year as established by Metro Council in October 2001 (Ordinance No. 01-916C). As drafted and currently enforced, this limitation is applicable to all putrescible waste accepted at the facility, irrespective of whether the waste originated within the Metro region.
- That the franchisee shall perform material recovery on non-putrescible waste at the rate stipulated in Metro Code Chapter 5.01. Currently, the required recovery rate is at least 25% by weight of non-putrescible waste accepted at the facility and waste delivered by public customers. This is an existing franchise condition. Recycle America has performed recovery at an average rate of 32.2% over the last 12 months (as calculated for the Metro Regional System Fee and Excise Tax Credit Program).
- That the franchisee allows the Oregon Department of Transportation (ODOT) inspectors periodic access to the facility to check truck weights for compliance with state and federal weight limitations and reporting requirements imposed upon trucks traveling on public highways. This is a new franchise condition requested by ODOT that will ensure that ODOT has access to all transfer stations for the purpose of checking vehicle weights to enhance the safety of our roads and reduce road maintenance costs. This new condition will assure a level playing field among private and public transfer stations.
- That the franchisee's authority to direct haul waste to the Columbia Ridge Landfill not be renewed, and that the performance standards for direct hauling in the renewed franchise be removed. These provisions are no longer necessary, because under separate authority of a Metro Non-System License, the franchisee is now authorized to deliver putrescible waste to Columbia Ridge Landfill, and in an emergency to Riverbend Landfill. Now that putrescible waste NSLs are subject to Council approval, any impact to the solid waste system can be considered when the NSLs are renewed.

ANALYSIS / INFORMATION

1. Known Opposition

There is no known opposition.

2. Legal Antecedents

Current provisions of Metro Code Chapter 5.01, "Solid Waste Facility Regulation".

3. Anticipated Effects

Adoption of Ordinance No. 03-1027 would grant a renewed Solid Waste Facility Franchise for Recycle America to continue to operate "status quo" as a local transfer station and perform material recovery for four years. Ordinance No. 03-1027 requires an emergency clause as Recycle America is an existing facility providing necessary solid waste services to citizens of the region and ensuring that its franchise is renewed effective January 1, 2004, upon expiration of its current franchise on December 31, 2003, is necessary for the immediate preservation of public health, safety and welfare. Pursuant to Metro Charter section 39(1), an emergency is declared to exist, and this ordinance shall take effect immediately upon adoption.

4. Budget Impacts

Ordinance No. 03-1027 authorizes the renewal of an existing solid waste facility franchise without any significant changes in authorizations other than the deletion of the franchisee's direct haul authority. The facility will continue to process waste of the same type and in the same quantity as presently authorized by its existing franchise. Thus, it is anticipated that approval of Ordinance No. 03-1027 will have no budget impact beyond the impact already absorbed after the facility first began its operations as a transfer station and has been factored into Metro's future projections.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Ordinance No. 03-1027.

BM:bjl
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BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING THE)	ORDINANCE NO. 03-1027A
TRANSFER STATION FRANCHISE RENEWAL)	
APPLICATION OF RECYCLE AMERICA,	)	Introduced by Michael Jordan, Chief
AUTHORIZING THE CHIEF OPERATING OFFICER	)	Operating Officer, with the
TO ISSUE A RENEWED FRANCHISE, AND	)	concurrence of David Bragdon, Metro
DECLARING AN EMERGENCY	)	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, Recycle America currently holds a Metro Solid Waste Facility Franchise Number F-001-99, which will expire on December 31, 2003; and,

WHEREAS, Metro Code Section 5.01.087(b) stipulates that franchise renewals shall be approved or denied by the Metro Council, and that a franchisee seeking renewal of a franchise shall file a completed application for renewal accompanied by payment of an application fee of five hundred dollars not less than 120 days prior to the expiration of the Franchise term, together with a statement of proposed material changes from its initial application for the franchise and any other information required by the Chief Operating Officer or by the Council. In addition, the Chief Operating Officer shall formulate recommendations regarding whether the renewal meets the criteria in Section 5.01.070, and that the Council shall approve renewal of a Solid Waste Facility Franchise unless the Council determines that the proposed renewal is not in the public interest or does not meet the criteria contained in Section 5.01.070; and,

WHEREAS, Recycle America filed an application for a renewed franchise pursuant to Metro Code Section 5.01.087(b); and,

WHEREAS, the Chief Operating Officer reviewed and investigated the application renewal for Recycle America as required by Metro Code Sections 5.01.087(b), and formulated recommendations on the criteria listed in Metro Code Section 5.01.070; and,

WHEREAS, the Chief Operating Officer recommends that the franchise be renewed together with specific conditions as provided in Amended Exhibit A to this Ordinance entitled, "Solid Waste Facility Franchise," which includes a recommendation that the renewed franchise be issued for a term of four (4) years; and,

WHEREAS, the Chief Operating Officer forwards his recommendation and recommended conditions to the Council as required by Metro Code Section 5.01.087(b); and,

WHEREAS, the Council finds that the franchise renewal application meets the criteria contained in Metro Code Section 5.01.070; and,

WHEREAS, the Council finds that granting the applicant a renewed franchise is in the public interest; and,

WHEREAS, the Council finds that the terms, conditions, and limitations contained in Amended Exhibit A to this Ordinance are appropriate, including the provision and that the renewed franchise shall be issued for a term of four (4) years; and,

WHEREAS, Council finds that this ordinance must take effect immediately upon adoption, so that the renewed franchise may be issued and effective upon expiration of the applicant's current franchise (No. F-001-99) on December 31, 2003; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The transfer station renewal franchise application of Recycle America is approved, subject to the terms, conditions, and limitations contained in Amended Exhibit A to this Ordinance entitled, "Solid Waste Facility Franchise."
2. The Chief Operating Officer is authorized to issue to Recycle America a renewed Solid Waste Facility Franchise substantially similar to the one attached as Amended Exhibit A.
3. This ordinance is immediately necessary for the health, safety and welfare of the Metro region in order to ensure the efficient operation of the region's solid waste management system. An emergency is therefore declared to exist. This Ordinance shall take effect immediately, pursuant to Metro Charter Section 39(1).

ADOPTED by the Metro Council this _____ day of _____, 2003.

David Bragdon, Council President

Attest:

Approved as to Form:

Chris Billington, Recording Secretary

Daniel B. Cooper, Metro Attorney

BM:bjl:mca
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SOLID WASTE FACILITY FRANCHISE

Number F-001-03

Issued by

Metro

600 NE Grand Avenue

Portland, OR 97232

Telephone: (503) 797-1650

Issued in accordance with the provisions of Metro Code Chapter 5.01

FRANCHISEE: Waste Management of Oregon, Inc. 7227 NE 55 th Avenue Portland, Oregon 97218 503-640-9427 FAX 503-648-3942 Contact: Dan Wilson, District Manager	FACILITY NAME AND LOCATION: Recycle America 869 NW Eastwind Drive Troutdale, Oregon 97060 Contact: Dan Wilson, District Manager
OPERATOR: Waste Management of Oregon, Inc. 7227 NE 55 th Avenue Portland, Oregon 97218 503-640-9427 FAX 503-648-3942 Contact: Dan Wilson, District Manager	PROPERTY OWNER: TDK Corp. P.O. Box 566 Troutdale, Oregon 97060 (503) 666-2896

This franchise is granted to the Franchisee named above and is not transferable. Subject to the conditions stated in this franchise document, the Franchisee is authorized to operate and maintain a solid waste facility, and to accept the solid wastes and perform the activities authorized herein.

Franchise begins: December 31, 2003

Expiration: December 31, 2007

Metro:

Acceptance & Acknowledgement of Receipt:

Signature

Signature of Franchisee

Michael Jordan, Chief Operating Officer

Print name and title

Print name and title

Date

Date



TABLE OF CONTENTS

SECTION	TITLE	PAGE
1.1	Issuance.....	3
2.0	Conditions and Disclaimers	3
3.0	Authorizations	5
4.0	Limitations and Prohibitions	7
5.0	Operating Conditions	8
6.0	Operating Plan	11
7.0	Fees and Rate Setting	12
8.0	Record Keeping and Reporting	13
9.0	Insurance Requirements	15
10.0	Enforcement	16
11.0	Modifications	17
12.0	General Obligations.....	17



1.0 ISSUANCE

- 1.1 Franchisee** Waste Management of Oregon, Inc.
869 NW Eastwind Drive
Troutdale, OR 97060 (503) 640-9427
- 1.2 Contact** Dan Wilson, District Manager (email: danwilson@wm.com)
- 1.3 Franchise Number** When referring to this franchise, please cite:
Metro Solid Waste Facility Franchise Number F-001-03
- 1.4 Term** Inception date: December 31, 2003
Expiration date: December 31, ~~2007~~2008
- 1.5 Facility name and mailing address** Recycle America
869 NW Eastwind Drive
Troutdale, OR 97060 (503) 667-5264
- 1.6 Operator** Waste Management of Oregon, Inc.
7227 NE 55th Avenue
Portland, OR 97218 (503) 640-9427
- 1.7 Facility legal description** Charles Fezett Donation Land Claim lying within Section 27,
Township 1N, Range 3E, Willamette Meridian
Multnomah County, State of Oregon
- 1.8 Facility owner** TDK Corp.
P.O. Box 566
Troutdale, OR 97060 (503) 666-2896
- 1.9 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** The granting of 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** The granting of this franchise shall not in any way limit Metro



- franchise** from granting other solid waste franchises within Metro boundaries.
- 2.3 Property rights** The granting of this franchise does not convey any property rights in either real or personal property, nor does it authorize any injury to private property or invasion of property rights.
- 2.4 No recourse** The Franchisee shall have no recourse whatsoever against Metro 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 the franchise or any part thereof is determined to be invalid.
- 2.5 Release of liability** Metro, its elected officials, employees, or agents do not sustain any liability on account of the granting of this franchise or on account of the construction, maintenance, or operation of the facility pursuant to this franchise.
- 2.6 Binding nature** The conditions of this franchise are binding on the Franchisee. The Franchisee is liable for all acts and omissions of the Franchisee's contractors and agents.
- 2.7 Waivers** To be effective, a waiver of any terms or conditions of this Franchise must be in writing and signed by the Metro Chief Operating Officer.
- 2.8 Effect of waiver** Waiver of a term or condition of this Franchise shall not waive nor prejudice Metro's right otherwise to require subsequent performance of the same term or condition or any other term or condition.
- 2.9 Choice of law** The Franchise shall be construed, applied and enforced in accordance with the laws of the State of Oregon.
- 2.10 Enforceability** If any provision of this Franchise is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity of the remaining provisions contained in this Franchise shall not be affected.
- 2.11 Franchise not a waiver** Nothing in this franchise shall be construed as relieving any owner, operator, or Franchisee from the obligation of obtaining all required permits, licenses, or other clearances and complying with all orders, laws, regulations, reports or other requirements of other regulatory agencies.



- 2.12 Franchise not limiting** Nothing in this franchise is intended to limit the power of a federal, state, or local agency to enforce any provision of law relating to the solid waste facility that it is authorized or required to enforce or administer.
- 2.13 Definitions** Unless otherwise specified, all other terms are as defined in Metro Code Chapter 5.01. ~~In the event that the Metro Code is amended, the latest amended version shall apply to this franchise.~~

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 wastes** The Franchisee is authorized to accept at the facility only the solid wastes described in this section. 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 activities that are described in this section.
- 3.4 Putrescible waste** The Franchisee is authorized to accept putrescible waste for the purpose of delivery or transfer of said putrescible waste to a disposal site authorized by a Metro designated facility agreement or a Metro non-system license in accordance with Metro Code Chapter 5.05.
- 3.5 Non-putrescible waste** The Franchisee is authorized to accept for the purpose of material recovery non-putrescible solid wastes such as waste generated by non-residential generators and waste generated at construction and demolition sites.
- 3.6 Source-separated recyclables** The Franchisee is authorized to accept source-separated recyclable materials for purposes of sorting, classifying, consolidating, baling, temporary storage, transfer and other similar functions related to preparing these materials for marketing.



- 3.7 Inert materials** 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.
- 3.8 Source-separated yard debris** The Franchisee is authorized to accept source-separated yard debris for transfer to a Metro licensed yard debris facility, a DEQ-permitted composting facility or other DEQ-permitted processing facility. The Franchisee shall keep source-separated yard debris separate from other solid waste at the facility and shall provide records showing that source-separated yard debris is delivered to a composting or processing facility, and not disposed of.
- 3.9 Source-separated organic materials** In accordance with Metro Code Chapter 5.05, the Franchisee is authorized to accept source-separated organic materials for the purpose of transfer to a DEQ-permitted composting facility or other DEQ-permitted processing facility. Source-separated organic materials may be accepted only if they (a) have been separated from other solid waste by the generator prior to delivery to the facility, and (b) are suitable for controlled biological decomposition such as for making compost. The Franchisee shall keep source-separated organic material separate from other solid waste at the facility and shall provide records showing that the source-separated organic materials are delivered to a composting or processing facility, and not disposed of. The Franchisee also shall comply with any source-separated organic materials maximum contamination requirements identified in an ordinance adopted by the Metro Council during the term of this Franchise.
- 3.10 Contaminated soils** The Franchisee is authorized to accept contaminated soil for transfer to a DEQ permitted disposal site that is authorized to accept contaminated soil.
- 3.11 Special wastes and other wastes** The Franchisee is authorized to accept various special wastes for transfer as authorized by DEQ Disposal Site Permit Number 459 including but not limited to filter cake, zircon sand and other sandblasting media, dewatered industrial sludge residue, waste from pollution control devices, charcoal air/water filters, ceramic castings, metal shavings, and refractory brick and other wastes with similar characteristics; and other wastes such as street sweepings, catch basin residue, and similar clean-up wastes.
- 3.12 Incidental recovery** The Franchisee is authorized to perform “low-level” material recovery on putrescible waste, provided that these material recovery efforts are incidental to the activity of transferring the putrescible waste, and are limited to the gleaning of easily-



extractable recyclable or reusable materials from the waste.

4.0 LIMITATIONS AND PROHIBITIONS

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| 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 Limit on waste accepted | The Franchisee shall accept no more than 65,000 tons of putrescible waste within each Metro fiscal year irrespective of whether the waste originated inside or outside the Metro region. |
| 4.3 Prohibited waste | The Franchisee shall not knowingly accept or retain any material amounts of the following types of wastes: materials contaminated with or containing friable asbestos; lead acid batteries; liquid waste for disposal; vehicles; infectious, biological or pathological waste; radioactive waste; hazardous waste; or any waste prohibited by the Franchisee's DEQ Disposal Site Permit. <u>The Franchisee also shall not knowingly accept or retain any material amounts of any other wastes identified in an ordinance adopted by the Metro Council during the term of this Franchise.</u> |
| 4.4 Material recovery required | The Franchisee shall perform material recovery on nonputrescible waste accepted at the facility at the rate stipulated in Metro Code Chapter 5.01, <u>as amended by an ordinance adopted by the Metro Council during the term of this Franchise,</u> or deliver said non-putrescible wastes to a Metro authorized solid waste facility whose primary purpose is to recover useful materials from solid waste. <u>The Franchisee also shall perform material recovery on other types of waste identified in an ordinance adopted by the Metro Council during the term of this Franchise.</u> |
| 4.5 Prohibition on mixing | The Franchisee shall not mix any source-separated recyclable materials, <u>source-separated yard debris,</u> or <u>source-separated organic materials</u> brought to the facility with any other solid wastes. Recyclable materials recovered at the facility may be combined with source-separated recyclable materials for transfer to markets, processors, or another solid waste facility that prepares such materials for reuse or recycling. |



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| 4.6 | No disposal of recyclable materials; <u>other potential disposal bans</u> | Source-separated recyclable materials, <u>source-separated</u> yard debris, or <u>and source-separated</u> organic materials accepted at the facility may not be disposed of by landfilling or incineration. <u>The Franchisee also shall not dispose, by landfilling or incineration, any other wastes identified in an ordinance adopted by the Metro Council during the term of this Franchise.</u> |
| 4.7 | Origin of putrescible waste | The Franchisee shall accept putrescible waste that originates within the Metro boundary only from persons who are franchised or permitted by a local government unit to collect and haul putrescible waste. |
| 4.8 | Limits not exclusive | Nothing in this section of the franchise shall be construed to limit, restrict, curtail, or abrogate any limitation or prohibition contained elsewhere in this franchise document, in Metro Code, or in any federal, state, regional or local government law, rule, regulation, ordinance, order or permit. |

5.0 OPERATING CONDITIONS

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| 5.1 | Purpose | This section of the franchise describes criteria and standards for the operation of the facility. |
| 5.2 | Qualified Operator | The Franchisee shall provide an operating staff qualified to carry out the functions required by this franchise and to otherwise ensure compliance with Metro Code Chapter 5.01. Facility personnel, <u>as relevant to their job duties and responsibilities</u> , shall be familiar with the <u>relevant</u> provisions of this franchise and the <u>relevant</u> procedures contained within the facility's operating plan. |
| 5.3 | Fire prevention | The operator shall provide fire prevention, protection, and control measures, including but not limited to, adequate water supply for fire suppression, and the isolation of potential heat sources and/or flammables from the processing area. |
| 5.4 | Adequate vehicle accommodation | Vehicles delivering solid waste to the facility shall not park or queue on public streets or roads except under emergency conditions. Adequate off-street parking and queuing for vehicles shall be provided. |
| 5.5 | Enclosed operations | All handling, processing, compaction or other forms of managing putrescible wastes shall occur inside facility buildings. |
| 5.6 | Managing | Upon discovery, all prohibited or unauthorized wastes shall be |



	prohibited wastes	removed or managed in accordance with procedures established in the Operating Plan.
5.7	Managing authorized wastes	All authorized solid wastes received at the facility must, within 24-hours from receipt, be either (a) processed, (b) appropriately stored, or (c) properly disposed of.
5.8	Storage	Stored materials and solid wastes shall be suitably contained and removed at sufficient frequency to avoid creating nuisance conditions or safety hazards. Storage areas must be maintained in an orderly manner and kept free of litter.
5.9	Litter and airborne debris	<p>The Franchisee shall operate the facility in a manner that is not conducive to the generation of litter and airborne debris. The Franchisee shall:</p> <ol style="list-style-type: none">Take reasonable steps to notify and remind persons delivering solid waste to the facility that all loads must be suitably secured to prevent any material from blowing off the load during transit.Construct, maintain, and operate all vehicles and devices transferring or transporting solid waste from the facility to prevent leaking, spilling or blowing of solid waste on-site or while in transit.Keep all areas within the site and all vehicle access roads within ¼ mile of the site free of litter and debris.
5.10	Odor	<p>The Franchisee shall operate the facility in a manner that is not conducive to the generation of odors. The Franchisee shall:</p> <ol style="list-style-type: none">Clean the areas and equipment that come into contact with solid waste on a regular basis.Establish and follow procedures in the operating plan for minimizing odor at the facility. Such procedures must be in writing and in a location where facility personnel and Metro inspectors can readily reference them.
5.11	Vectors	The Franchisee shall operate the facility in a manner that is not conducive to infestation of rodents, insects, or other animals capable of transmitting, directly or indirectly, infectious diseases to humans or from one person or animal to another.
5.12	Noise	The Franchisee shall operate the facility in a manner that controls the creation of excessive noise to the extent necessary to meet applicable regulatory standards and land-use regulations.



- 5.13 Water quality** The Franchisee shall:
- Operate and maintain the facility to prevent contact of solid wastes with stormwater runoff and precipitation.
 - Dispose of contaminated water and sanitary sewage generated onsite in a manner complying with local, state, and federal laws and regulations.
- 5.14 Public Access** Public access to the facility shall be controlled as necessary to prevent unauthorized entry and dumping.
- 5.15 Signage** The Franchisee shall post signs at all public entrances to the facility, and in conformity with local government signage regulations. These signs shall be easily and readily visible, legible, and shall contain at least the following information:
- Name of the facility
 - Address of the facility;
 - Emergency telephone number for the facility;
 - Operating hours during which the facility is open for the receipt of authorized waste;
 - Fees and charges;
 - Metro's name and telephone number (503) 797-1650; and
 - A list of authorized and prohibited wastes.
- 5.16 Complaints** The Franchisee shall respond to all written complaints on nuisances (including, but not limited to, blowing debris, fugitive dust or odors, noise, traffic, and vectors). If Franchisee receives a complaint, Franchisee shall:
- 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
 - Log all such complaints as provided in Section 9.8 of this franchise. Each log entry shall be retained for one year and shall be available for inspection by Metro.
- 5.17 Access to franchise document** The Franchisee shall maintain a copy of this Metro Solid Waste Facility Franchise on the facility's premises, and in a location where facility personnel and Metro representatives have ready access to it.
- 5.18 Access for ODOT inspectors** ~~The Franchisee shall allow Oregon Department of Transportation (ODOT) inspectors periodic access to the facility for the purpose of conducting truck weight compliance checks.~~



6.0 OPERATING PLAN

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| 6.1 Purpose | This section lists the procedures that must be included in the required facility operating plan. The operating plan must be updated and submitted to Metro within 60 days of the issuance of this franchise and may be further amended from time to time. The operating plan is subject to approval by the Director of the Metro Solid Waste & Recycling Department. |
| 6.2 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. |
| 6.3 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. A set of objective criteria for accepting and rejecting loads; andc. An asbestos testing protocol for all material that appears as if it may contain asbestos. |
| 6.4 Procedures for processing and storage of loads | <p>The operating plan shall establish procedures for:</p> <ul style="list-style-type: none">a. Processing authorized solid wastes,b. Storing authorized solid wastes; andc. Minimizing storage times and avoiding delay in processing of authorized solid wastes. |
| 6.5 Procedures for managing prohibited wastes | The operating plan shall establish procedures for managing and transporting to appropriate facilities or disposal sites each of the prohibited or unauthorized wastes if they are discovered at the facility. In addition, the operating plan shall establish procedures and methods for notifying generators not to place hazardous wastes or other prohibited wastes in drop boxes or other collection containers destined for the facility. |
| 6.6 Procedures for odor prevention | The operating plan shall establish procedures for preventing all <u>objectionable odors from being detected off the premises of the facility</u> . The plan must include: |



- a. A management plan that will be used to monitor and manage all odors of any derivation including malodorous loads delivered to the facility; and
- b. Procedures for receiving and recording odor complaints, immediately investigating any odor complaints to determine the cause of odor emissions, and remedying promptly any odor problem at the facility.

6.7 Procedures for emergencies The operating plan shall establish procedures to be followed in case of fire or other emergency.

6.8 Procedures for nuisance complaints For every nuisance complaint (e.g. odor, dust, vibrations, litter) received, the Franchisee shall record:

- 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).

Records of such information shall be made available to Metro and local governments upon request. The Franchisee shall retain each complaint record for a period of not less than two years.

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 Fines Each violation of a franchise condition shall be punishable by fines as established in Metro Code Chapter 5.01. Each day a violation continues constitutes a separate violation. Metro reserves the right to change fines at any time by action of the Metro Council.

7.4 Rates not The tipping fees and other rates charged at the facility are exempt



regulated from rate regulation by Metro.

- 7.5 Metro fee imposed on disposal** The Franchisee is liable for payment of the Metro Regional System Fee on any solid wastes delivered to a disposal site, unless these solid wastes are exempted by Metro Code Chapter 5.01.

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** For all solid waste and materials the Franchisee is authorized to receive under Section 3.0 of this franchise, including all non-putrescible waste, source-separated recyclables, inert materials, and yard debris and landscape waste, the Franchisee shall keep and maintain accurate records of the amount of such materials the Franchisee receives, recovers, recycles, and disposes. The Franchisee shall keep and maintain complete and accurate records of the following for all transactions:
- a. Ticket Number (should be the same as the ticket number on the weight slips);
 - b. Account Number: Incoming Hauler and Outgoing Destination;
 - c. Material type: Code designating the following types of material (more detail, such as differentiating yard debris, is acceptable): (1) incoming source-separated Recyclable Materials by type; (2) incoming mixed waste; (3) outgoing Recyclable Materials; (4) outgoing mixed waste;
 - d. Origin: Code designating the following origin of material: (1) public from inside Metro boundaries; (2) public from within Multnomah, Clackamas and Washington Counties but outside Metro boundaries; (3) commercial from inside Metro boundaries; (4) commercial from Multnomah, Clackamas and Washington Counties but outside Metro boundaries; and (5) commercial from out-of-state;
 - i. Any load containing any amount of waste from within the Metro region shall be reported as if the entire load



was generated from inside the Metro region.

- ii. If the Franchisee elects to report all loads delivered to the facility as being generated from inside the Metro region, then the Franchisee is not required to designate the origin of loads in Section 8.2(d)(2) and (4) above.
- e. Date the load was received at or transmitted from the Facility;
- f. Time the load was received at or transmitted from the Facility;
- g. Indicate whether Franchisee accepted or rejected the load;
- h. Net weight of the load;
- i. The fee charged to the generator of the load.

8.3	Record transmittals	Records required under Section 8.0 shall be transmitted to Metro no later than fifteen (15) days following the end of each month in electronic format prescribed by Metro.
8.4	Semi-annual computer listing	On a semi-annual basis, Franchisee shall provide Metro with a computer listing that cross references the Incoming Hauler Account Number with the hauling company's name and address.
8.5	DEQ submittals	Franchisee shall provide Metro with copies of all correspondence, exhibits, or documents submitted to the DEQ relating to the terms or conditions of the DEQ solid waste permit or this franchise within two business days of providing such information to DEQ.
8.6	Copies of enforcement actions provided to Metro	Franchisee shall send to Metro, upon receipt, copies of any notice of violation or non-compliance, citation, or any other similar enforcement actions issued to the Franchisee by any federal, state, or local government other than Metro, and related to the operation of the facility.
8.7	Unusual occurrences	The Franchisee shall keep and maintain accurate records of any unusual occurrences (such as fires or any other significant disruption) encountered during operation, and methods used to resolve problems arising from these events, including details of all incidents that required implementing emergency procedures. The Franchisee shall report any facility fires, accidents, emergencies, and other significant incidents to Metro at (503) 797-1650 within



12 hours of the discovery of their occurrence.

8.8 Nuisance complaints

~~For every nuisance complaint (e.g. odor, dust, vibrations, litter) received, the Franchisee shall record:~~

- ~~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).~~

~~Records of such information shall be made available to Metro and local governments upon request. The Franchisee shall retain each complaint record for a period of not less than two years.~~

8.89 Changes in ownership

The Franchisee must, in accordance with Metro Code Section 5.01.090, submit a new franchise application to Metro if the Franchisee proposes to transfer ownership or control of (1) the franchise, (2) the facility property, or (3) the name and address of the operator.

9.0 INSURANCE REQUIREMENTS

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| 9.1 Purpose | The section describes the types of insurance that the Franchisee shall purchase and maintain at the Franchisee's expense, covering the Franchisee, its employees, and agents. |
| 9.2 General liability | The Franchisee shall carry broad form comprehensive general liability insurance covering bodily injury and property damage, with automatic coverage for premises, operations, and product liability. The policy shall be endorsed with contractual liability coverage. |
| 9.3 Automobile | The Franchisee shall carry automobile bodily injury and property damage liability insurance. |
| 9.4 Coverage | Insurance coverage shall be a minimum of \$500,000 per occurrence. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000. |
| 9.5 Additional | Metro, its elected officials, departments, employees, and agents |



insureds shall be named as ADDITIONAL INSURED.

- 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. Franchisee shall provide Metro with certification of Workers' Compensation insurance including employer's liability. If Franchisee has no employees and will perform the work without the assistance of others, a certificate to that effect may be 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 Chief Operating Officer 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.
- 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** Nothing in this franchise shall be construed to limit, restrict, curtail, or abrogate any enforcement provision contained in Metro Code or administrative procedures adopted pursuant to Metro Code Chapter 5.01, nor shall this franchise be construed or interpreted so as to limit or preclude Metro from adopting ordinances that regulate the health, safety, or welfare of any person or persons within the District, notwithstanding any incidental impact that such ordinances may have upon the terms of this franchise or the Franchisee's operation of the facility.

11.0 MODIFICATIONS

- 11.1 Modification** At any time during the term of the franchise, either the Chief Operating Officer or the Franchisee may propose amendments or



modifications to this franchise. Except as provided in Section 11.2, no modification shall be effective unless approved by the Metro Council.

11.2 Modification, suspension or revocation by Metro

The Chief Operating Officer may, at any time before the expiration date, modify, suspend, or revoke this franchise in whole or in part, in accordance with Metro Code Chapter 5.01, for reasons including but not limited to:

- 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, excluding transfers among subsidiaries of the Franchisee or Franchisee's parent corporation;
- g. A request from the local government stemming from impacts resulting from facility operations.
- h. Compliance history of the Franchisee.

12.0 GENERAL OBLIGATIONS

12.1 Compliance with law

Franchisee shall fully comply with all applicable local, regional, state and federal laws, rules, regulations, ordinances, orders and permits pertaining in any manner to this franchise, including all applicable Metro Code provisions and administrative procedures adopted pursuant to Chapter 5.01 whether or not those provisions have been specifically mentioned or cited herein. 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 Indemnification

The Franchisee shall indemnify and hold Metro, its employees, agents and elected officials harmless from any and all claims,



damages, actions, losses and expenses including attorney's fees, or liability related to or arising out of or in any way connected with the Franchisee's performance or failure to perform under this franchise, including patent infringement and any claims or disputes involving subcontractors.

12.3 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;

12.4 Right of inspection and audit

Authorized representatives of Metro may take photographs and perform such inspection or audit as the Chief Operating Officer deems appropriate, and shall be permitted access to the premises of the facility at all reasonable times during business hours with or without notice or at such other times upon giving reasonable 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.

12.5 Confidential information

Franchisee may identify as confidential any reports, books, records, maps, plans, income tax returns, financial statements, contracts and other similar written materials of the Franchisee that are directly related to the operation of the facility and that are submitted to or reviewed by Metro. Franchisee shall prominently mark any information which 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, any request for disclosure of information identified by licensee as confidential, Metro shall provide Franchisee written notice of the request. Franchisee shall have three (3) days within which time to respond in writing to the request before Metro determines, at its sole discretion, whether to disclose any requested information. Franchisee shall pay any costs incurred by Metro as a result of Metro's efforts to remove or redact any such confidential information from documents that Metro produces in response to a



public records request. Nothing in this Section 12 shall limit the use of any information submitted to or reviewed by Metro for regulatory purposes or in any enforcement proceeding. In addition, Metro may share any confidential information with representatives of other governmental agencies provided that, consistent with Oregon law, such representatives agree to continue to treat such information as confidential and make good faith efforts not to disclose such information.

12.6 Compliance by agents

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

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING THE	)	ORDINANCE NO. 03-1027
TRANSFER STATION FRANCHISE RENEWAL)	
APPLICATION OF RECYCLE AMERICA,	)	Introduced by Michael Jordan, Chief
AUTHORIZING THE CHIEF OPERATING OFFICER	)	Operating Officer, with the
TO ISSUE A RENEWED FRANCHISE, AND	)	concurrence of David Bragdon, Metro
DECLARING AN EMERGENCY	)	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, Recycle America currently holds a Metro Solid Waste Facility Franchise Number F-001-99, which will expire on December 31, 2003; and,

WHEREAS, Metro Code Section 5.01.087(b) stipulates that franchise renewals shall be approved or denied by the Metro Council, and that a franchisee seeking renewal of a franchise shall file a completed application for renewal accompanied by payment of an application fee of five hundred dollars not less than 120 days prior to the expiration of the Franchise term, together with a statement of proposed material changes from its initial application for the franchise and any other information required by the Chief Operating Officer or by the Council. In addition, the Chief Operating Officer shall formulate recommendations regarding whether the renewal meets the criteria in Section 5.01.070, and that the Council shall approve renewal of a Solid Waste Facility Franchise unless the Council determines that the proposed renewal is not in the public interest or does not meet the criteria contained in Section 5.01.070; and,

WHEREAS, Recycle America filed an application for a renewed franchise pursuant to Metro Code Section 5.01.087(b); and,

WHEREAS, the Chief Operating Officer reviewed and investigated the application renewal for Recycle America as required by Metro Code Sections 5.01.087(b), and formulated recommendations on the criteria listed in Metro Code Section 5.01.070; and,

WHEREAS, the Chief Operating Officer recommends that the franchise be renewed together with specific conditions as provided in Exhibit A to this Ordinance entitled, "Solid Waste Facility Franchise," which includes a recommendation that the renewed franchise be issued for a term of four (4) years; and,

WHEREAS, the Chief Operating Officer forwards his recommendation and recommended conditions to the Council as required by Metro Code Section 5.01.087(b); and,

WHEREAS, the Council finds that the franchise renewal application meets the criteria contained in Metro Code Section 5.01.070; and,

WHEREAS, the Council finds that granting the applicant a renewed franchise is in the public interest; and,

WHEREAS, the Council finds that the terms, conditions, and limitations contained in Exhibit A to this Ordinance are appropriate, including the provision and that the renewed franchise shall be issued for a term of four (4) years; and,

WHEREAS, Council finds that this ordinance must take effect immediately upon adoption, so that the renewed franchise may be issued and effective upon expiration of the applicant's current franchise (No. F-001-99) on December 31, 2003; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The transfer station renewal franchise application of Recycle America is approved, subject to the terms, conditions, and limitations contained in Exhibit A to this Ordinance entitled, "Solid Waste Facility Franchise."
2. The Chief Operating Officer is authorized to issue to Recycle America a renewed Solid Waste Facility Franchise substantially similar to the one attached as Exhibit A.
3. This ordinance is immediately necessary for the health, safety and welfare of the Metro region in order to ensure the efficient operation of the region's solid waste management system. An emergency is therefore declared to exist. This Ordinance shall take effect immediately, pursuant to Metro Charter Section 39(1).

ADOPTED by the Metro Council this _____ day of _____, 2003.

David Bragdon, Council President

Attest:

Approved as to Form:

Chris Billington, Recording Secretary

Daniel B. Cooper, Metro Attorney

BM:bjl:mca
S:\REM\metzlerb\R. A. Franchise Renewal 2003\Ordinance\RA_Ord_Rev.DOC

SOLID WASTE FACILITY FRANCHISE
Number F-001-03

Issued by
Metro
600 NE Grand Avenue
Portland, OR 97232
Telephone: (503) 797-1650

Issued in accordance with the provisions of Metro Code Chapter 5.01

FRANCHISEE: Waste Management of Oregon, Inc. 7227 NE 55 th Avenue Portland, Oregon 97218 503-640-9427 FAX 503-648-3942 Contact: Dan Wilson, District Manager	FACILITY NAME AND LOCATION: Recycle America 869 NW Eastwind Drive Troutdale, Oregon 97060 Contact: Dan Wilson, District Manager
OPERATOR: Waste Management of Oregon, Inc. 7227 NE 55 th Avenue Portland, Oregon 97218 503-640-9427 FAX 503-648-3942 Contact: Dan Wilson, District Manager	PROPERTY OWNER: TDK Corp. P.O. Box 566 Troutdale, Oregon 97060 (503) 666-2896

This franchise is granted to the Franchisee named above and is not transferable. Subject to the conditions stated in this franchise document, the Franchisee is authorized to operate and maintain a solid waste facility, and to accept the solid wastes and perform the activities authorized herein.

Franchise begins: December 31, 2003

Expiration: December 31, 2007

Metro:

Acceptance & Acknowledgement of Receipt:

Signature

Signature of Franchisee

Michael Jordan, Chief Operating Officer
Print name and title

Print name and title

Date

Date



TABLE OF CONTENTS

SECTION	TITLE	PAGE
1.1	Issuance.....	3
2.0	Conditions and Disclaimers	3
3.0	Authorizations	5
4.0	Limitations and Prohibitions	7
5.0	Operating Conditions	8
6.0	Operating Plan	10
7.0	Fees and Rate Setting	12
8.0	Record Keeping and Reporting	12
9.0	Insurance Requirements	15
10.0	Enforcement	16
11.0	Modifications	16
12.0	General Obligations.....	17



1.0 ISSUANCE

- 1.1 Franchisee** Waste Management of Oregon, Inc.
869 NW Eastwind Drive
Troutdale, OR 97060 (503) 640-9427
- 1.2 Contact** Dan Wilson, District Manager (email: danwilson@wm.com)
- 1.3 Franchise Number** When referring to this franchise, please cite:
Metro Solid Waste Facility Franchise Number F-001-03
- 1.4 Term** Inception date: December 31, 2003
Expiration date: December 31, 2007
- 1.5 Facility name and mailing address** Recycle America
869 NW Eastwind Drive
Troutdale, OR 97060 (503) 667-5264
- 1.6 Operator** Waste Management of Oregon, Inc.
7227 NE 55th Avenue
Portland, OR 97218 (503) 640-9427
- 1.7 Facility legal description** Charles Fezett Donation Land Claim lying within Section 27,
Township 1N, Range 3E, Willamette Meridian
Multnomah County, State of Oregon
- 1.8 Facility owner** TDK Corp.
P.O. Box 566
Troutdale, OR 97060 (503) 666-2896
- 1.9 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** The granting of 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** The granting of this franchise shall not in any way limit Metro



- franchise** from granting other solid waste franchises within Metro boundaries.
- 2.3 Property rights** The granting of this franchise does not convey any property rights in either real or personal property, nor does it authorize any injury to private property or invasion of property rights.
- 2.4 No recourse** The Franchisee shall have no recourse whatsoever against Metro 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 the franchise or any part thereof is determined to be invalid.
- 2.5 Release of liability** Metro, its elected officials, employees, or agents do not sustain any liability on account of the granting of this franchise or on account of the construction, maintenance, or operation of the facility pursuant to this franchise.
- 2.6 Binding nature** The conditions of this franchise are binding on the Franchisee. The Franchisee is liable for all acts and omissions of the Franchisee's contractors and agents.
- 2.7 Waivers** To be effective, a waiver of any terms or conditions of this Franchise must be in writing and signed by the Metro Chief Operating Officer.
- 2.8 Effect of waiver** Waiver of a term or condition of this Franchise shall not waive nor prejudice Metro's right otherwise to require subsequent performance of the same term or condition or any other term or condition.
- 2.9 Choice of law** The Franchise shall be construed, applied and enforced in accordance with the laws of the State of Oregon.
- 2.10 Enforceability** If any provision of this Franchise is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity of the remaining provisions contained in this Franchise shall not be affected.
- 2.11 Franchise not a waiver** Nothing in this franchise shall be construed as relieving any owner, operator, or Franchisee from the obligation of obtaining all required permits, licenses, or other clearances and complying with all orders, laws, regulations, reports or other requirements of other regulatory agencies.
- 2.12 Franchise not limiting** Nothing in this franchise is intended to limit the power of a federal, state, or local agency to enforce any provision of law relating to



the solid waste facility that it is authorized or required to enforce or administer.

- 2.13 Definitions** Unless otherwise specified, all other terms are as defined in Metro Code Chapter 5.01. In the event that the Metro Code is amended, the latest amended version shall apply to this franchise.

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 wastes | The Franchisee is authorized to accept at the facility only the solid wastes described in this section. 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 activities that are described in this section. |
| 3.4 | Putrescible waste | The Franchisee is authorized to accept putrescible waste for the purpose of delivery or transfer of said putrescible waste to a disposal site authorized by a Metro designated facility agreement or a Metro non-system license in accordance with Metro Code Chapter 5.05. |
| 3.5 | Non-putrescible waste | The Franchisee is authorized to accept for the purpose of material recovery non-putrescible solid wastes such as waste generated by non-residential generators and waste generated at construction and demolition sites. |
| 3.6 | Source-separated recyclables | The Franchisee is authorized to accept source-separated recyclable materials for purposes of sorting, classifying, consolidating, baling, temporary storage, transfer and other similar functions related to preparing these materials for marketing. |



- 3.7 Inert materials** 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.
- 3.8 Source-separated yard debris** The Franchisee is authorized to accept source-separated yard debris for transfer to a Metro licensed yard debris facility, a DEQ-permitted composting facility or other DEQ-permitted processing facility. The Franchisee shall keep source-separated yard debris separate from other solid waste at the facility and shall provide records showing that source-separated yard debris is delivered to a composting or processing facility, and not disposed of.
- 3.9 Source-separated organic materials** In accordance with Metro Code Chapter 5.05, the Franchisee is authorized to accept organic materials for the purpose of transfer to a DEQ-permitted composting facility or other DEQ-permitted processing facility. Organic materials may be accepted only if they (a) have been separated from other solid waste by the generator prior to delivery to the facility, and (b) are suitable for controlled biological decomposition such as for making compost. The Franchisee shall keep source-separated organic material separate from other solid waste at the facility and shall provide records showing that the source-separated organic materials are delivered to a composting or processing facility, and not disposed of.
- 3.10 Contaminated soils** The Franchisee is authorized to accept contaminated soil for transfer to a DEQ permitted disposal site that is authorized to accept contaminated soil.
- 3.11 Special wastes and other wastes** The Franchisee is authorized to accept various special wastes for transfer as authorized by DEQ Disposal Site Permit Number 459 including but not limited to filter cake, zircon sand and other sandblasting media, dewatered industrial sludge residue, waste from pollution control devices, charcoal air/water filters, ceramic castings, metal shavings, and refractory brick and other wastes with similar characteristics; and other wastes such as street sweepings, catch basin residue, and similar clean-up wastes.
- 3.12 Incidental recovery** The Franchisee is authorized to perform “low-level” material recovery on putrescible waste, provided that these material recovery efforts are incidental to the activity of transferring the putrescible waste, and are limited to the gleaning of easily-extractable recyclable or reusable materials from the waste.



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 | Limit on waste accepted | The Franchisee shall accept no more than 65,000 tons of putrescible waste within each Metro fiscal year irrespective of whether the waste originated inside or outside the Metro region. |
| 4.3 | Prohibited waste | The Franchisee shall not knowingly accept or retain any material amounts of the following types of wastes: materials contaminated with or containing friable asbestos; lead acid batteries; liquid waste for disposal; vehicles; infectious, biological or pathological waste; radioactive waste; hazardous waste; or any waste prohibited by the Franchisee's DEQ Disposal Site Permit. |
| 4.4 | Material recovery required | The Franchisee shall perform material recovery on nonputrescible waste accepted at the facility at the rate stipulated in Metro Code Chapter 5.01, or deliver said non-putrescible wastes to a Metro authorized solid waste facility whose primary purpose is to recover useful materials from solid waste. |
| 4.5 | Prohibition on mixing | The Franchisee shall not mix any source-separated recyclable materials, yard debris or organic materials brought to the facility with any other solid wastes. Recyclable materials recovered at the facility may be combined with source-separated recyclable materials for transfer to markets, processors, or another solid waste facility that prepares such materials for reuse or recycling. |
| 4.6 | No disposal of recyclable materials | Source-separated recyclable materials, yard debris or organic materials accepted at the facility may not be disposed of by landfilling or incineration. |
| 4.7 | Origin of putrescible waste | The Franchisee shall accept putrescible waste that originates within the Metro boundary only from persons who are franchised or permitted by a local government unit to collect and haul putrescible waste. |



- 4.8 Limits not exclusive** Nothing in this section of the franchise shall be construed to limit, restrict, curtail, or abrogate any limitation or prohibition contained elsewhere in this franchise document, in Metro Code, or in any federal, state, regional or local government law, rule, regulation, ordinance, order or permit.

5.0 OPERATING CONDITIONS

- 5.1 Purpose** This section of the franchise describes criteria and standards for the operation of the facility.
- 5.2 Qualified Operator** The Franchisee shall provide an operating staff qualified to carry out the functions required by this franchise and to otherwise ensure compliance with Metro Code Chapter 5.01. Facility personnel shall be familiar with the provisions of this franchise and the procedures contained within the facility's operating plan.
- 5.3 Fire prevention** The operator shall provide fire prevention, protection, and control measures, including but not limited to, adequate water supply for fire suppression, and the isolation of potential heat sources and/or flammables from the processing area.
- 5.4 Adequate vehicle accommodation** Vehicles delivering solid waste to the facility shall not park or queue on public streets or roads except under emergency conditions. Adequate off-street parking and queuing for vehicles shall be provided.
- 5.5 Enclosed operations** All handling, processing, compaction or other forms of managing putrescible wastes shall occur inside facility buildings.
- 5.6 Managing prohibited wastes** Upon discovery, all prohibited or unauthorized wastes shall be removed or managed in accordance with procedures established in the Operating Plan.
- 5.7 Managing authorized wastes** All authorized solid wastes received at the facility must, within 24-hours from receipt, be either (a) processed, (b) appropriately stored, or (c) properly disposed of.
- 5.8 Storage** Stored materials and solid wastes shall be suitably contained and removed at sufficient frequency to avoid creating nuisance conditions or safety hazards. Storage areas must be maintained in an orderly manner and kept free of litter.



- 5.9 Litter and airborne debris** The Franchisee shall operate the facility in a manner that is not conducive to the generation of litter and airborne debris. The Franchisee shall:
- Take reasonable steps to notify and remind persons delivering solid waste to the facility that all loads must be suitably secured to prevent any material from blowing off the load during transit.
 - Construct, maintain, and operate all vehicles and devices transferring or transporting solid waste from the facility to prevent leaking, spilling or blowing of solid waste on-site or while in transit.
 - Keep all areas within the site and all vehicle access roads within $\frac{1}{4}$ mile of the site free of litter and debris.
- 5.10 Odor** The Franchisee shall operate the facility in a manner that is not conducive to the generation of odors. The Franchisee shall:
- Clean the areas and equipment that come into contact with solid waste on a regular basis.
 - Establish and follow procedures in the operating plan for minimizing odor at the facility. Such procedures must be in writing and in a location where facility personnel and Metro inspectors can readily reference them.
- 5.11 Vectors** The Franchisee shall operate the facility in a manner that is not conducive to infestation of rodents, insects, or other animals capable of transmitting, directly or indirectly, infectious diseases to humans or from one person or animal to another.
- 5.12 Noise** The Franchisee shall operate the facility in a manner that controls the creation of excessive noise to the extent necessary to meet applicable regulatory standards and land-use regulations.
- 5.13 Water quality** The Franchisee shall:
- Operate and maintain the facility to prevent contact of solid wastes with stormwater runoff and precipitation.
 - Dispose of contaminated water and sanitary sewage generated onsite in a manner complying with local, state, and federal laws and regulations.
- 5.14 Public Access** Public access to the facility shall be controlled as necessary to prevent unauthorized entry and dumping.
- 5.15 Signage** The Franchisee shall post signs at all public entrances to the facility, and in conformity with local government signage



regulations. These signs shall be easily and readily visible, legible, and shall contain at least the following information:

- a. Name of the facility
- b. Address of the facility;
- c. Emergency telephone number for the facility;
- d. Operating hours during which the facility is open for the receipt of authorized waste;
- e. Fees and charges;
- f. Metro's name and telephone number (503) 797-1650; and
- g. A list of authorized and prohibited wastes.

5.16 Complaints

The Franchisee shall respond to all written complaints on nuisances (including, but not limited to, blowing debris, fugitive dust or odors, noise, traffic, and vectors). If Franchisee receives a complaint, Franchisee shall:

- 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 in Section 9.8 of this franchise. Each log entry shall be retained for one year and shall be available for inspection by Metro.

5.17 Access to franchise document

The Franchisee shall maintain a copy of this Metro Solid Waste Facility Franchise on the facility's premises, and in a location where facility personnel and Metro representatives have ready access to it.

5.18 Access for ODOT inspectors

The Franchisee shall allow Oregon Department of Transportation (ODOT) inspectors periodic access to the facility for the purpose of conducting truck weight compliance checks.

6.0 OPERATING PLAN

6.1 Purpose

This section lists the procedures that must be included in the required facility operating plan. The operating plan must be updated and submitted to Metro within 60 days of the issuance of this franchise and may be further amended from time to time. The operating plan is subject to approval by the Director of the Metro Solid Waste & Recycling Department.

6.2 Access to

The Franchisee shall maintain a copy of the operating plan on the



- operating plan** facility premises and in a location where facility personnel and Metro representatives have ready access to it.
- 6.3 Procedures for inspecting loads** The operating plan shall establish:
- a. Procedures for inspecting incoming loads for the presence of prohibited or unauthorized wastes;
 - b. A set of objective criteria for accepting and rejecting loads; and
 - c. An asbestos testing protocol for all material that appears as if it may contain asbestos.
- 6.4 Procedures for processing and storage of loads** The operating plan shall establish procedures for:
- a. Processing authorized solid wastes,
 - b. Storing authorized solid wastes; and
 - c. Minimizing storage times and avoiding delay in processing of authorized solid wastes.
- 6.5 Procedures for managing prohibited wastes** The operating plan shall establish procedures for managing and transporting to appropriate facilities or disposal sites each of the prohibited or unauthorized wastes if they are discovered at the facility. In addition, the operating plan shall establish procedures and methods for notifying generators not to place hazardous wastes or other prohibited wastes in drop boxes or other collection containers destined for the facility.
- 6.6 Procedures for odor prevention** The operating plan shall establish procedures for preventing all odors. The plan must include:
- a. A management plan that will be used to monitor and manage all odors of any derivation including malodorous loads delivered to the facility; and
 - b. Procedures for receiving and recording odor complaints, immediately investigating any odor complaints to determine the cause of odor emissions, and remedying promptly any odor problem at the facility.
- 6.7 Procedures for emergencies** The operating plan shall establish procedures to be followed in case of fire or other emergency.



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 | Fines | Each violation of a franchise condition shall be punishable by fines as established in Metro Code Chapter 5.01. Each day a violation continues constitutes a separate violation. Metro reserves the right to change fines at any time by action of the Metro Council. |
| 7.4 | Rates not regulated | The tipping fees and other rates charged at the facility are exempt from rate regulation by Metro. |
| 7.5 | Metro fee imposed on disposal | The Franchisee is liable for payment of the Metro Regional System Fee on any solid wastes delivered to a disposal site, unless these solid wastes are exempted by Metro Code Chapter 5.01. |

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 | <p>For all solid waste and materials the Franchisee is authorized to receive under Section 3.0 of this franchise, including all non-putrescible waste, source-separated recyclables, inert materials, and yard debris and landscape waste, the Franchisee shall keep and maintain accurate records of the amount of such materials the Franchisee receives, recovers, recycles, and disposes. The Franchisee shall keep and maintain complete and accurate records of the following for all transactions:</p> <ul style="list-style-type: none">a. Ticket Number (should be the same as the ticket number on the weight slips);b. Account Number: Incoming Hauler and Outgoing Destination; |



- c. Material type: Code designating the following types of material (more detail, such as differentiating yard debris, is acceptable): (1) incoming source-separated Recyclable Materials by type; (2) incoming mixed waste; (3) outgoing Recyclable Materials; (4) outgoing mixed waste;
- d. Origin: Code designating the following origin of material: (1) public from inside Metro boundaries; (2) public from within Multnomah, Clackamas and Washington Counties but outside Metro boundaries; (3) commercial from inside Metro boundaries; (4) commercial from Multnomah, Clackamas and Washington Counties but outside Metro boundaries; and (5) commercial from out-of-state;
 - i. Any load containing any amount of waste from within the Metro region shall be reported as if the entire load was generated from inside the Metro region.
 - ii. If the Franchisee elects to report all loads delivered to the facility as being generated from inside the Metro region, then the Franchisee is not required to designate the origin of loads in Section 8.2(d)(2) and (4) above.
- e. Date the load was received at or transmitted from the Facility;
- f. Time the load was received at or transmitted from the Facility;
- g. Indicate whether Franchisee accepted or rejected the load;
- h. Net weight of the load;
- i. The fee charged to the generator of the load.

8.3 Record transmittals

Records required under Section 8.0 shall be transmitted to Metro no later than fifteen (15) days following the end of each month in electronic format prescribed by Metro.



- 8.4 Semi-annual computer listing** On a semi-annual basis, Franchisee shall provide Metro with a computer listing that cross references the Incoming Hauler Account Number with the hauling company's name and address.
- 8.5 DEQ submittals** Franchisee shall provide Metro with copies of all correspondence, exhibits, or documents submitted to the DEQ relating to the terms or conditions of the DEQ solid waste permit or this franchise within two business days of providing such information to DEQ.
- 8.6 Copies of enforcement actions provided to Metro** Franchisee shall send to Metro, upon receipt, copies of any notice of violation or non-compliance, citation, or any other similar enforcement actions issued to the Franchisee by any federal, state, or local government other than Metro, and related to the operation of the facility.
- 8.7 Unusual occurrences** The Franchisee shall keep and maintain accurate records of any unusual occurrences (such as fires or any other significant disruption) encountered during operation, and methods used to resolve problems arising from these events, including details of all incidents that required implementing emergency procedures. The Franchisee shall report any facility fires, accidents, emergencies, and other significant incidents to Metro at (503) 797-1650 within 12 hours of the discovery of their occurrence.
- 8.8 Nuisance complaints** For every nuisance complaint (e.g. odor, dust, vibrations, litter) received, the Franchisee shall record:
- 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).

Records of such information shall be made available to Metro and local governments upon request. The Franchisee shall retain each complaint record for a period of not less than two years.



- 8.9 Changes in ownership** The Franchisee must, in accordance with Metro Code Section 5.01.090, submit a new franchise application to Metro if the Franchisee proposes to transfer ownership or control of (1) the franchise, (2) the facility property, or (3) the name and address of the operator.

9.0 INSURANCE REQUIREMENTS

- 9.1 Purpose** The section describes the types of insurance that the Franchisee shall purchase and maintain at the Franchisee's expense, covering the Franchisee, its employees, and agents.
- 9.2 General liability** The Franchisee shall carry broad form comprehensive general liability insurance covering bodily injury and property damage, with automatic coverage for premises, operations, and product liability. The policy shall be endorsed with contractual liability coverage.
- 9.3 Automobile** The Franchisee shall carry automobile bodily injury and property damage liability insurance.
- 9.4 Coverage** Insurance coverage shall be a minimum of \$500,000 per occurrence. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000.
- 9.5 Additional insureds** Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSURED.
- 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. Franchisee shall provide Metro with certification of Workers' Compensation insurance including employer's liability. If Franchisee has no employees and will perform the work without the assistance of others, a certificate to that effect may be 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 Chief Operating Officer 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. |
| 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 | Nothing in this franchise shall be construed to limit, restrict, curtail, or abrogate any enforcement provision contained in Metro Code or administrative procedures adopted pursuant to Metro Code Chapter 5.01, nor shall this franchise be construed or interpreted so as to limit or preclude Metro from adopting ordinances that regulate the health, safety, or welfare of any person or persons within the District, notwithstanding any incidental impact that such ordinances may have upon the terms of this franchise or the Franchisee's operation of the facility. |

11.0 MODIFICATIONS

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|-------------|--|---|
| 11.1 | Modification | At any time during the term of the franchise, either the Chief Operating Officer or the Franchisee may propose amendments or modifications to this franchise. Except as provided in Section 11.2, no modification shall be effective unless approved by the Metro Council. |
| 11.2 | Modification, suspension or revocation by Metro | <p>The Chief Operating Officer may, at any time before the expiration date, modify, suspend, or revoke this franchise in whole or in part, in accordance with Metro Code Chapter 5.01, for reasons including but not limited to:</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, excluding transfers among subsidiaries of the Franchisee or Franchisee's parent corporation;
 - g. A request from the local government stemming from impacts resulting from facility operations.
 - h. Compliance history of the Franchisee.

12.0 GENERAL OBLIGATIONS

- | | | |
|-------------|--|---|
| 12.1 | Compliance with law | Franchisee shall fully comply with all applicable local, regional, state and federal laws, rules, regulations, ordinances, orders and permits pertaining in any manner to this franchise, including all applicable Metro Code provisions and administrative procedures adopted pursuant to Chapter 5.01 whether or not those provisions have been specifically mentioned or cited herein. 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 | Indemnification | The Franchisee shall indemnify and hold Metro, its employees, agents and elected officials harmless from any and all claims, damages, actions, losses and expenses including attorney's fees, or liability related to or arising out of or in any way connected with the Franchisee's performance or failure to perform under this franchise, including patent infringement and any claims or disputes involving subcontractors. |
| 12.3 | 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; |
| 12.4 | Right of inspection and audit | Authorized representatives of Metro may take photographs and perform such inspection or audit as the Chief Operating Officer deems appropriate, and shall be permitted access to the premises of the facility at all reasonable times during business hours with or without notice or at such other times upon giving reasonable |



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.

12.5 Confidential information

Franchisee may identify as confidential any reports, books, records, maps, plans, income tax returns, financial statements, contracts and other similar written materials of the Franchisee that are directly related to the operation of the facility and that are submitted to or reviewed by Metro. Franchisee shall prominently mark any information which 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, any request for disclosure of information identified by licensee as confidential, Metro shall provide Franchisee written notice of the request. Franchisee shall have three (3) days within which time to respond in writing to the request before Metro determines, at its sole discretion, whether to disclose any requested information. Franchisee shall pay any costs incurred by Metro as a result of Metro's efforts to remove or redact any such confidential information from documents that Metro produces in response to a public records request. Nothing in this Section 12 shall limit the use of any information submitted to or reviewed by Metro for regulatory purposes or in any enforcement proceeding. In addition, Metro may share any confidential information with representatives of other governmental agencies provided that, consistent with Oregon law, such representatives agree to continue to treat such information as confidential and make good faith efforts not to disclose such information.

12.6 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. 03-1027 FOR THE PURPOSE OF APPROVING THE TRANSFER STATION FRANCHISE RENEWAL APPLICATION OF RECYCLE AMERICA, AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED FRANCHISE, AND DECLARING AN EMERGENCY

October 22, 2003

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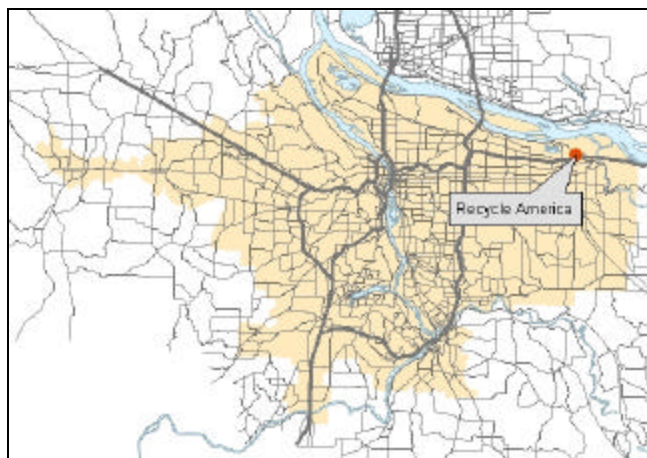
BACKGROUND

A. Reason for the Ordinance

Ordinance No. 03-1027 is a response to an application for a franchise renewal duly filed by Waste Management of Oregon, Inc., dba Recycle America pursuant to Metro Code chapter 5.01.087(b). Metro Code Section 5.01.087(b) requires that the Chief Operating Officer formulate recommendations regarding whether a renewal meets the criteria in Section 5.01.070. The Metro Code specifies that the Council shall approve a renewal of a Solid Waste Facility Franchise unless the Council determines that the proposed renewal is not in the public interest or does not meet the criteria contained in Section 5.01.070. The Council may attach conditions or limitations to the renewed franchise.

B. The Applicant and the Applicant's Request

Waste Management of Oregon, Inc., is the operator of Recycle America, an existing solid waste facility that is currently franchised by Metro as a transfer station to receive putrescible waste, perform material recovery on non-putrescible waste, and accept source-separated recyclable material. The applicant has requested a renewal of its solid waste facility franchise. The facility is located at 869 NW Eastwind Drive, in Troutdale (Metro Council District 1).



Site Location Map

The applicant has requested no new authorizations, tonnage increase, or changes to its current franchise provisions. Under separate authority of a Metro Non-System License, the franchisee is authorized to deliver putrescible waste directly to Columbia Ridge Landfill in Gilliam County, Oregon; and in the case of an emergency, to the Riverbend Landfill located in Yamhill County, Oregon (NSL# N-001-03).



Aerial photograph of the facility



Facility entrance

C. Issuance of a Renewed Franchise

Metro Code Section 5.01.087(b) governs the application and renewal of franchises. That section requires the franchisee to submit an application and a renewal fee, requires the Chief Operating Officer to formulate recommendations regarding whether the renewal meets the criteria in Section 5.01.070, provides that the Council shall renew an application unless it finds that renewal is not in the public interest or does not meet the criteria in Section 5.01.070, and gives the Council discretion to impose conditions or limitations on the franchise.

1. Renewal Application

Metro Code Section 5.01.087(b) requires the applicant to file a completed application for renewal accompanied by payment of an application fee of \$500 not less than 120 days prior to the expiration of the franchise term.

The applicant filed its application for renewal and application fee of \$500 on June 27, 2003. The current franchise term expires on December 31, 2003. The applicant filed a renewal application within 120 days prior to the expiration of its franchise term. Accordingly, staff finds that the application was properly filed.

2. Compliance With The Criteria in Metro Code Section 5.01.070

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

(a) *Metro Code section 5.01.070(c) requires that the Chief Operating Officer formulate recommendations regarding:*

i. *Applicant Qualifications.*

The applicant is well known to Metro as an operator of a Metro franchised solid waste facility and as a long-standing solid waste management company in the Portland Metro area. The applicant has operated its facility for over five years and has extensive experience in recycling, solid waste hauling, and disposal.

Staff concludes that the applicant is fully qualified to operate and manage the facility competently and efficiently.

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

The solid waste management activities to be renewed under this franchise are entirely consistent with the Regional Solid Waste Management Plan's section on *Solid Waste Facilities and Services: Transfer and Disposal System*.

Recommended Practice # 1: Allow additions to the existing system of three transfer stations as necessary to maintain solid waste transfer and disposal service levels that provide reasonable access for residents, businesses and haulers. New transfer stations may be authorized where they provide a net benefit to the regional solid waste system. New transfer stations shall perform material recovery subject to facility recovery rate standards.

Recommended Practice # 3: Maintain options for haulers to choose among disposal alternatives.

The rationale for transfer stations under the Plan is that they assist in maintaining service levels by reducing drive time for haulers, reducing congestion at existing facilities and adding opportunity to recover materials. An efficient disposal system depends on both capacity and accessibility. As an outright recommended practice, staff concludes that the applicant's request for renewal of its franchise complies with the Regional Solid Waste Management Plan.

iii. Meeting the Requirements of Metro Code Section 5.01.060.

Metro Code section 5.01.060(a) requires applications for renewal of an existing franchise to be filed on forms or in the format provided by the Chief Operating Officer. The applicant seeks a franchise renewal and, in accordance with Metro Code provisions, has filed a completed application for renewal accompanied by payment of the application fee of \$500. Accordingly, staff finds that the application was properly filed.

Metro Code section 5.01.060(b) requires all applications to include a description of the activities proposed to be conducted and a description of wastes to be accepted. This information was included in the franchise renewal application form and accordingly, staff finds that the application was properly filed.

Metro Code sections 5.01.060(c) requires that an application for a franchise include the following: 1) proof of insurance; 2) duplicate copies of all DEQ required applications and permits; 3) a duplicate copy of any DEQ required closure plan or if not required by the DEQ then a closure document describing closure protocol; 4) copies of DEQ required financial assurance documents or if not required by the DEQ proof of financial assurance for the cost of closure of the facility; 5) signed consent by the property owner to the proposed use of the property; 6) proof that the applicant has received proper land use approval; and, 7) copies of any other permits required from other governmental agencies. This information is included in the existing franchise file of the applicant; accordingly staff finds that the required information has been submitted.

Metro Code Section 5.01.060 (d) is a new provision for proposed facilities that was adopted by the Metro Council on October 9, 2003 (Ordinance No. 03-1018A). Since this provision pertains to a proposed facility making an initial application for a new franchise, not a renewal, the new provision is not applicable in this case.

iv. Compliance with Regulatory Requirements.

The applicant has land use authorization from the City of Troutdale, Oregon, a DEQ Solid Waste Disposal Permit, and for the past five-years has been operating under authority of a Metro Solid Waste Facility Franchise. In that time, the facility has not received, to Metro's knowledge, any notices of violation or non-compliance from either the City of Troutdale or the Oregon DEQ. No other violations, citations or letters of complaint of record have been issued to the applicant by Metro or any other regulatory agency or government in regard to the operation of Recycle America. Metro has conducted nine site inspections since January 2003, and staff has found a well-run operation with no observable reason to suspect impending problems or issues. The franchisee has never violated its franchise tonnage authorization. Staff therefore concludes that the applicant has sufficiently complied – and is likely to continue to comply – with all applicable regulatory requirements.

(b) *Metro Code section 5.01.070(f) lists five criteria for consideration by the Council (but notes that the Council is not limited to these criteria in making its decision):*

i. *Consistency with the Regional Solid Waste Management Plan.*

In examining this issue in Section (2)(a)(ii) above, staff found in the affirmative.

ii. *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.*

Recycle America is an existing facility and has been in operation for over five years. In addition, Recycle America has not requested any change in tonnage authorizations, or activities at the facility. The effect of granting a renewed franchise would be to maintain the status quo with regard to the cost of solid waste recycling and disposal services for the citizens of the region

iii. *Granting the franchise would be unlikely to adversely affect health, safety and welfare of Metro's residents.*

Metro staff is not aware of any facility incidents or operating procedures that have adversely affected the health, safety and welfare of Metro's residents in the five years that the facility has been operating. Likewise, the Oregon DEQ has not cited the facility for any violations. The operator's experience and track record, together with the regulatory environment in which Recycle America operates, leads staff to conclude that it is unlikely Recycle America will adversely affect the public health, safety and welfare.

iv. *Granting the franchise would be unlikely to unreasonably adversely affect nearby residents, property owners or the existing character or expected future development of the surrounding neighborhood.*

Metro staff is not aware of any complaints or excessive impacts on the surrounding neighborhood in the five years that the facility has been operating. The operator's experience and track record leads staff to conclude that it is unlikely Recycle America would unreasonably adversely impact the surrounding neighborhood.

v. *The applicant is likely to comply with regulations and standards.*

As discussed in Section 2(a)(iv), above, staff finds that the franchisee has never violated its franchise tonnage authorization, and is likely to comply with regulations and standards if the franchise is renewed.

3. Chief Operating Officer's Recommendation and Recommended Franchise Conditions

Based on the information presented in Section (C)(1) and (2) above, the Chief Operating Officer believes that the franchise renewal application meets the criteria in Metro Code Section 5.01.070. The Chief Operating Officer also believes that the proposed franchise renewal is in the public interest. The Chief Operating Officer therefore recommends that the Metro Council approve a franchise renewal to Recycle America subject to the requirements listed in Metro Code Chapter 5.01; and further subject to the following specific conditions, which are incorporated into the draft franchise attached as Exhibit A to Ordinance No. 03-1027:

Conditions:

- That the franchise be granted for four years, to expire on December 31, 2007. This condition will ensure that the term of the renewed franchise will coincide with future solid waste planning and policy decisions by the Metro Council.
- That the franchise include more specific record keeping and reporting requirements for the purpose of ensuring that Metro receive accurate transaction data for necessary accounting controls if the franchisee intends to not pay regional system fees on waste from outside Metro's boundaries. The franchisee shall accept no more than 65,000 tons of putrescible waste within each Metro fiscal year as established by Metro Council in October 2001 (Ordinance No. 01-916C). As drafted and currently enforced, this limitation is applicable to all putrescible waste accepted at the facility, irrespective of whether the waste originated within the Metro region.
- That the franchisee shall perform material recovery on non-putrescible waste at the rate stipulated in Metro Code Chapter 5.01. Currently, the required recovery rate is at least 25% by weight of non-putrescible waste accepted at the facility and waste delivered by public customers. This is an existing franchise condition. Recycle America has performed recovery at an average rate of 32.2% over the last 12 months (as calculated for the Metro Regional System Fee and Excise Tax Credit Program).
- That the franchisee allows the Oregon Department of Transportation (ODOT) inspectors periodic access to the facility to check truck weights for compliance with state and federal weight limitations and reporting requirements imposed upon trucks traveling on public highways. This is a new franchise condition requested by ODOT that will ensure that ODOT has access to all transfer stations for the purpose of checking vehicle weights to enhance the safety of our roads and reduce road maintenance costs. This new condition will assure a level playing field among private and public transfer stations.
- That the franchisee's authority to direct haul waste to the Columbia Ridge Landfill not be renewed, and that the performance standards for direct hauling in the renewed franchise be removed. These provisions are no longer necessary, because under separate authority of a Metro Non-System License, the franchisee is now authorized to deliver putrescible waste to Columbia Ridge Landfill, and in an emergency to Riverbend Landfill. Now that putrescible waste NSLs are subject to Council approval, any impact to the solid waste system can be considered when the NSLs are renewed.

ANALYSIS / INFORMATION

1. Known Opposition

There is no known opposition.

2. Legal Antecedents

Current provisions of Metro Code Chapter 5.01, "Solid Waste Facility Regulation".

3. Anticipated Effects

Adoption of Ordinance No. 03-1027 would grant a renewed Solid Waste Facility Franchise for Recycle America to continue to operate "status quo" as a local transfer station and perform material recovery for four years. Ordinance No. 03-1027 requires an emergency clause as Recycle America is an existing facility providing necessary solid waste services to citizens of the region and ensuring that its franchise is renewed effective January 1, 2004, upon expiration of its current franchise on December 31, 2003, is necessary for the immediate preservation of public health, safety and welfare. Pursuant to Metro Charter section 39(1), an emergency is declared to exist, and this ordinance shall take effect immediately upon adoption.

4. Budget Impacts

Ordinance No. 03-1027 authorizes the renewal of an existing solid waste facility franchise without any significant changes in authorizations other than the deletion of the franchisee's direct haul authority. The facility will continue to process waste of the same type and in the same quantity as presently authorized by its existing franchise. Thus, it is anticipated that approval of Ordinance No. 03-1027 will have no budget impact beyond the impact already absorbed after the facility first began its operations as a transfer station and has been factored into Metro's future projections.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Ordinance No. 03-1027.

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