

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING THE SOLID)	RESOLUTION NO. 19-5025
WASTE FACILITY FRANCHISE RENEWAL)	
APPLICATION OF WASTE MANAGEMENT OF)	Introduced by Acting Chief Operating
OREGON, INC., AND AUTHORIZING THE CHIEF)	Officer Andrew Scott in concurrence with
OPERATING OFFICER TO ISSUE A RENEWED)	Council President Lynn Peterson
SOLID WASTE FACILITY FRANCHISE TO)	
OPERATE TROUTDALE TRANSFER STATION)	

WHEREAS, Metro Code Section 5.01.150 states that a Metro Solid Waste Facility Franchise is required for any person owning or controlling a facility that operates a transfer station; and

WHEREAS, Waste Management of Oregon, Inc. holds Metro Solid Waste Facility Franchise Number F-001-08I to operate Troutdale Transfer Station, which will expire on December 31, 2019; and

WHEREAS, Waste Management of Oregon, Inc. filed a complete application seeking a renewal of its Metro Solid Waste Facility Franchise pursuant to Metro Code Section 5.01.210(a); and

WHEREAS, Metro Council adopted Resolution No. 18-1426 to establish a framework for allocating the region's putrescible waste tonnage to privately-owned transfer stations beginning in 2020; and

WHEREAS, beginning in 2020, Metro will allocate the region's putrescible waste tonnage to privately-owned transfer stations in accordance with Metro's tonnage allocation methodology; and

WHEREAS, Waste Management of Oregon, Inc.'s putrescible waste tonnage allocation amount may change during the term of the Metro Solid Waste Facility Franchise in accordance with Metro's tonnage allocation methodology; and

WHEREAS, Metro Council adopted the 2030 Regional Waste Plan via Ordinance No. 19-1431, which may require future amendments to the Metro Solid Waste Facility Franchise to implement the Plan; and

WHEREAS, Waste Management of Oregon, Inc. does not propose to alter any other activities that already occur at its transfer station site; and

WHEREAS, the Metro Council finds that the proposed Metro Solid Waste Facility Franchise renewal is in the public interest and meets the criteria set forth in Metro Code Section 5.01.180; now therefore

BE IT RESOLVED that the Metro Council:

1. Approves the Metro Solid Waste Facility Franchise application for Waste Management of Oregon, Inc. to operate Troutdale Transfer Station subject to the terms, conditions and limitations contained in Exhibit A.
2. Authorizes the Chief Operating Officer to issue to Waste Management of Oregon, Inc. a renewed Metro Solid Waste Facility Franchise for Troutdale Transfer Station substantially similar to the one attached as Exhibit A.
3. Authorizes the Chief Operating Officer to amend the Metro Solid Waste Facility Franchise as necessary without further Council action in order to allocate putrescible tonnage in accordance with Metro's tonnage allocation methodology based on Metro's solid waste tonnage forecast.

ADOPTED by the Metro Council this 31st day of October 2019.



Lynn Peterson, Council President

Approved as to Form:



Carrie MacLaren, Metro Attorney



600 NE Grand Ave.
 Portland, OR 97232-2736
 oregonmetro.gov

METRO SOLID WASTE FACILITY FRANCHISE

No. F-001-20

FRANCHISEE:	FACILITY NAME AND LOCATION:
Waste Management of Oregon, Inc. 7227 NE 55 th Avenue Portland, Oregon 97218 Phone: (503) 667-5264	Troutdale Transfer Station 869 NW Eastwind Drive Troutdale, Oregon 97060 Phone: (503) 667-5264
OPERATOR:	PROPERTY OWNER:
Waste Management of Oregon, Inc. 7227 NE 55 th Avenue Portland, Oregon 97218 Phone: (503) 667-5264	TDK Corp. 333 NE 3rd Gresham, Oregon 97030 Phone: (503) 665-3860

ISSUED BY METRO:

Roy W. Brower, Interim Property and Environmental Services Director

Date

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1.0	ISSUANCE	
1.1	Corporate affiliation	Waste Management, Inc. 1001 Fannin, Suite 4000 Houston, Texas 77002
1.2	Contact	Nicholas Godfrey Phone: (971) 261-4008 E-mail: NGodfrey@wm.com
1.3	Term	January 1, 2020 to December 31, 2024, unless amended, suspended or revoked as provided in this franchise.
1.4	Renewal	The franchisee may apply for a franchise renewal as provided in Metro Code Chapter 5.01.
1.5	Facility name and mailing address	Troutdale Transfer Station 869 NW Eastwind Drive Troutdale, Oregon 97060
1.6	Facility premises description	Tax Lot Identification No. 1N3E27A-00103, City of Troutdale, Multnomah County, State of Oregon. Metro may inspect the facility site and any areas directly related to the transfer station operations as per Section 13.3.
1.7	Permission to operate	The property owner consents to the use of the property as a transfer station by the franchisee.

2.0	CONDITIONS AND DISCLAIMERS	
2.1	Guarantees	This franchise does not vest any right or privilege in the franchisee to receive specific quantities of solid waste at the direction of Metro during the term of the franchise.
2.2	Non-exclusive franchise	This franchise does not limit Metro from granting other solid waste franchises within Metro’s jurisdictional boundary.
2.3	Property rights	This franchise does not convey any property rights in either real or personal property.
2.4	Amendment	Except as provided in Section 12.0, no amendment is effective unless approved by the Metro Council.
2.5	No recourse	The franchisee will have no recourse against Metro or its officials, agents or employees for any loss, costs, expense or damage arising out of any provision or requirement of this franchise or because of the enforcement

		of the franchise or in the event Metro determines that the franchise or any part thereof is invalid.
2.6	Indemnification	The franchisee must indemnify Metro, the Council, the Chief Operating Officer and any of Metro’s employees or agents and save them harmless from any and all loss, damage, claim, expense including attorney's fees, or liability related to or arising out of the granting of this franchise or the franchisee's performance of or failure to perform any of its obligations under the franchise or Metro Code Chapter 5.01, including without limitation patent infringement and any claims or disputes involving subcontractors.
2.7	Waivers	To be effective, a waiver of any terms or conditions of this franchise must conform with Section 12.0 and be in writing and signed by Metro.
2.8	Effect of waiver	Waiver of a term or condition of this franchise does 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	Enforceability	If a court of competent jurisdiction determines that any provision of this franchise is invalid, illegal or unenforceable in any respect, the validity of the remaining provisions contained in this franchise will not be affected.
2.10	Franchise not a waiver	This franchise does not relieve any owner, operator or the franchisee from the obligation to obtain all required permits, franchises or other clearances and to comply with all orders, laws, regulations, reports or other requirements of other regulatory agencies.
2.11	Franchise not limiting	This franchise does not limit the power of a federal, state or local agency to enforce any provision of law relating to the facility.
2.12	Definitions	<ol style="list-style-type: none"> 1. “Mixed Non-Putrescible Waste” means a mixture of more than one type of non-putrescible waste, including commingled recyclables other than residential curbside recyclable material. This category includes construction and demolition waste but excludes cleanup materials, source-separated recyclable material, special waste, land clearing debris and yard debris. 2. Unless otherwise specified, all other terms are as defined in Metro Code Chapter 5.00.

3.0	AUTHORIZATIONS	
3.1	General conditions on solid waste	The franchisee is authorized to accept at the facility only the solid wastes described in Section 3.0 of this franchise. The franchisee is prohibited from knowingly receiving any solid waste not authorized in this section.

3.2	General conditions on activities	The franchisee is authorized to perform at the facility only those waste-related activities that are described in Section 3.0 of this franchise.
3.3	Acceptance and management of putrescible solid waste	<ol style="list-style-type: none"> 1. The franchisee is authorized to accept putrescible waste for reload and transfer to an appropriate destination as provided in Section 13.2. The franchisee also is authorized to accept putrescible waste for material recovery. 2. The franchisee must receive, manage, store, reload and transfer all putrescible waste on an impervious surface, for example asphalt or concrete, and inside a roofed building that is enclosed on at least three sides or alternatively, inside watertight, covered containers or within covered transport trailers. 3. The franchisee is authorized to accept putrescible waste generated inside the Metro region only from persons who are franchised or permitted by a local government unit to collect and haul putrescible waste.
3.4	Acceptance and management of mixed non-putrescible solid waste	<ol style="list-style-type: none"> 1. The franchisee is authorized to accept mixed non-putrescible solid waste from all customers including public self-haul for material recovery. 2. The franchisee must receive, sort, store, reload and transfer all mixed non-putrescible solid waste on an impervious surface, for example asphalt or concrete, and inside a roofed building that is enclosed on at least three sides. Unusually large vehicles, for example 30-foot tippers, may tip wastes outside, provided the tipped wastes are moved under cover prior to processing, within 12 hours of receipt or by the end of the business day, whichever is earlier.
3.5	Material recovery required	<ol style="list-style-type: none"> 1. The franchisee must perform material recovery on mixed non-putrescible wastes at no less than the minimum level stipulated in Metro Code Chapter 5.01 or must reload and transfer such waste to a facility authorized by Metro to perform material recovery. 2. The franchisee must ensure that the facility is designed and operated so that materials are recovered in a timely manner and that the reloading and transfer of non-putrescible waste to a Metro-authorized material recovery facility is conducted rapidly and efficiently while protecting the quality of non-putrescible waste that has not yet undergone material recovery. 3. The franchisee must take quarterly samples of processing residual, when generated at the facility, that are statistically valid and representative of the facility’s residual. Each sample required by this section shall weigh at least 300 pounds.
3.6	Management of processing residual	The franchisee must store, reload and transfer all non-putrescible waste processing residual on an impervious surface and inside a roofed building

	from material recovery	that is enclosed on at least three sides or alternatively, inside watertight, covered containers or within covered transport trailers.
3.7	Acceptance of source-separated recyclable materials	<ol style="list-style-type: none"> 1. The franchisee must provide a place for collecting source-separated recyclable materials on the facility premises. 2. The franchisee is authorized to accept source-separated recyclable materials for the purpose of sorting, classifying, consolidating, baling, temporary storage, transfer and other similar functions related to preparing these materials for reuse or recycling.
3.8	Acceptance of yard debris	The franchisee is authorized to accept source-separated yard debris that has not reached a state of decomposition sufficient to produce odors detectable beyond the boundaries of the facility. The franchisee may accept yard debris for grinding and reloading to authorized facilities for composting, use as hogged fuel or other useful purposes as described in an operating plan and approved in writing by Metro.
3.9	Acceptance of source-separated food waste	<ol style="list-style-type: none"> 1. The franchisee is authorized to accept source-separated food waste for reloading to an authorized facility for composting, anaerobic digestion or other resource recovery process as described in an operating plan and approved in writing by Metro. 2. Notwithstanding subsection 3.9.1 above, the Chief Operating Officer may amend this franchise as described in section 12.0 to require the franchisee to accept source-separated food waste. 3. If the franchisee accepts source-separated food waste, then the franchisee must: <ol style="list-style-type: none"> (a) Reload and remove all source-separated food waste from the site in a timely manner so that it does not reach a state of decomposition sufficient to produce odors detectable beyond the boundaries of the facility; (b) Protect the quality of source-separated food waste such that it is suitable for composting, anaerobic digestion or other resource recovery process that is approved in writing by Metro; and (c) Transport all source-separated food waste to a Metro-authorized facility for recovery.
3.10	Acceptance of untreated wood	The franchisee is authorized to accept, for processing and reloading, source-separated, untreated and unpainted wood waste, for example untreated lumber and wood pallets. The franchisee may accept clean wood waste for grinding and reloading to authorized facilities for composting, use in paper production, use as hogged fuel or other useful purposes as described in an operating plan and approved in writing by Metro.

3.11	Acceptance of painted and treated wood	The franchisee is authorized to accept painted and treated wood waste for grinding and reloading to authorized facilities for use as hogged fuel or other useful purposes as described in an operating plan and approved in writing by Metro. The franchisee must not use or incorporate painted or treated wood into mulch, animal bedding, compost feedstock or any other product unless otherwise described in an operating plan and approved in writing by Metro.
3.12	Acceptance of electronics devices	The franchisee is authorized to accept source-separated electronic devices for the purpose of sorting, classifying, consolidating, baling, temporary storage, transfer and other similar functions related to preparing these materials for reuse, recycling or disposal as required by the Oregon Department of Environmental Quality (DEQ).
3.13	Acceptance of inert material	The franchisee is authorized to accept inert materials for purposes of classifying, consolidating, transfer and other similar functions related to preparing these materials for useful purposes.
3.14	Production of hogged fuel	<ol style="list-style-type: none"> 1. The franchisee is authorized to accept and process only untreated wood, painted wood and incidental quantities of treated wood for delivery to facilities with industrial boilers for use as hogged fuel. 2. The franchisee is prohibited from mixing any other solid waste with the wood wastes described above in subsection 3.14.1 for the production of hogged fuel.

4.0	LIMITATIONS AND PROHIBITIONS	
4.1	Tonnage allocation	<ol style="list-style-type: none"> 1. The franchisee is authorized to accept putrescible waste generated inside the Metro region as provided in this franchise. 2. By January 1 of each year, Metro will amend this franchise to establish an annual tonnage allocation amount for the franchisee. 3. Metro will determine the tonnage allocation amount in accordance with allocation methodology provided in Metro Code Chapter 5.01 and applicable administrative rules. 4. For calendar year 2020, beginning on January 1 and ending December 31, 2020, the franchisee is authorized to accept up to XX,XXX tons of putrescible waste generated inside the Metro region.
4.2	Waste hauler access	<p>It is in the public’s best interest that transfer stations located inside the Metro region maintain adequate capacity to accommodate solid waste generated within the region and provide adequate access to waste haulers. Therefore:</p> <ol style="list-style-type: none"> 1. The franchisee must not accept solid waste generated outside the Metro region if to do so would limit the franchisee from accepting

		<p>any putrescible or non-putrescible waste generated inside the Metro region;</p> <ol style="list-style-type: none"> 2. The franchisee must not deny access to any unaffiliated waste hauler without due cause or written notice 30-days in advance. Due cause includes, but is not limited to, load contamination, failure to pay or risk of exceeding the franchise tonnage allocation; and 3. Metro may require the franchisee to provide a written explanation of its rationale if the facility denies access or refuses service to a waste hauler.
4.3	Prohibited waste	The franchisee must not knowingly receive, process, reload or dispose of any solid waste not authorized by this franchise. The franchisee must not knowingly accept or retain any material amounts of the following types of waste: materials contaminated with or containing asbestos; lead acid batteries; liquid waste for disposal; vehicles; infectious, biological or pathological waste; radioactive waste; explosives; or any waste prohibited by DEQ.
4.4	Prohibition on mixing	The franchisee must not mix different waste types unless such mixing is described in an operating plan and approved in writing by Metro.
4.5	Prohibition of size reduction on non-putrescible waste	The franchisee must not crush, grind or otherwise reduce the size of non-putrescible waste except when such size reduction constitutes a specific step in the facility’s material recovery operations, reload operations, processing residual consolidation or loading operations, and such size reduction is described in an operating plan and approved in writing by Metro.
4.6	No disposal of recyclable materials	The franchisee must not transfer source-separated recyclable materials to a disposal site including, without limitation, landfills and incineration facilities, without written permission from Metro and DEQ.
4.7	Composting prohibited	The franchisee must not keep yard debris on site long enough for more than negligible biological decomposition to begin.
4.8	Limits not exclusive	This franchise will not be construed to limit, restrict, curtail or abrogate any limitation or prohibition contained elsewhere in this franchise document, in Metro Code or in any federal, state, regional or local government law, rule, regulation, ordinance, order or permit.

5.0	REGIONAL WASTE PLAN	
5.1	Regional Waste Plan	<ol style="list-style-type: none"> 1. Metro plans, manages and oversees the region’s solid waste system to achieve the goals and actions outlined in the 2030 Regional Waste Plan.

		<p>2. Metro may amend this franchise and establish new requirements for the franchisee to achieve the goals and actions of the 2030 Regional Waste Plan.</p>
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6.0	OPERATING CONDITIONS	
6.1	General performance standards	<p>The franchisee must operate in a manner that meets the following general performance standards:</p> <ol style="list-style-type: none"> 1. Environment. The franchisee must design and operate the facility to avoid undue threats to the environment including, but not limited to, stormwater or groundwater contamination, air pollution and improper acceptance and management of hazardous waste, asbestos and other prohibited wastes. 2. Health and safety. The franchisee must design and operate the facility to avoid conditions that may degrade public health and safety including, but not limited to, fires, vectors, pathogens and airborne debris. 3. Nuisances. The franchisee must design and operate the facility to avoid nuisance conditions including, but not limited to, litter, dust, odors and noise.
6.2	Qualified operator	<ol style="list-style-type: none"> 1. The franchisee must, during all hours of operation, provide an operating staff employed by the facility that is qualified and competent to carry out the functions required by this franchise and to otherwise comply with Metro Code Chapter 5.01. 2. Facility personnel, as relevant to their job duties and responsibilities, must be familiar with the relevant provisions of this franchise and the relevant procedures contained within the facility’s operating plan. 3. A qualified operator must be an employee of the facility with training and authority to reject prohibited waste that is discovered during load checks and to properly manage prohibited waste that is unknowingly received.
6.3	Fire prevention	<p>The franchisee must provide fire prevention, protection and control measures including, but not limited to:</p> <ol style="list-style-type: none"> 1. Adequate water supply for fire suppression; and 2. The isolation of potential heat sources and/or flammables from processing and storage areas.
6.4	Adequate vehicle accommodation	<p>The franchisee must:</p> <ol style="list-style-type: none"> 1. Provide access roads of sufficient capacity to adequately accommodate all on-site vehicular traffic. The franchisee must maintain access roads to allow the orderly egress and ingress of

		<p>vehicular traffic when the facility is in operation, including during inclement weather.</p> <ol style="list-style-type: none"> 2. Take reasonable steps to notify and remind persons delivering solid waste to the facility that vehicles must not park or queue on public streets or roads except under emergency conditions or as provided by local traffic ordinances. 3. Post signs to inform customers not to queue on public roadways. 4. Provide adequate off-street parking and queuing for vehicles, including adequate space for on-site covering and uncovering of loads.
<p>6.5</p>	<p>Managing prohibited wastes</p>	<ol style="list-style-type: none"> 1. The franchisee must reject prohibited waste upon discovery and must properly manage and dispose of prohibited waste when unknowingly received. 2. The franchisee must implement a load-check program to prevent the acceptance of prohibited waste. This program must include at a minimum: <ol style="list-style-type: none"> (a) Visual inspection. As each load is tipped, a qualified operator must visibly inspect the load to prevent the acceptance of waste that is prohibited by the franchise. (b) Containment area. A secured or isolated containment area for the storage of prohibited wastes that are unknowingly received. Containment areas must be covered and enclosed to prevent leaking and contamination. (c) Record maintenance. The franchisee must maintain records of the training of personnel in the recognition, proper handling and disposition of prohibited waste and make those records available for review by Metro. 3. Upon discovery, the franchisee must remove all prohibited or unauthorized wastes or manage the waste in accordance with DEQ requirements and procedures established in the operating plan. All such wastes the franchisee unknowingly receives must be removed from the site and transported to an appropriate destination within 90 days of receipt, unless required to be removed earlier by DEQ or local government.
<p>6.6</p>	<p>Storage and exterior stockpiles</p>	<p>The franchisee must:</p> <ol style="list-style-type: none"> 1. Manage, contain and remove at sufficient frequency stored materials and solid wastes to avoid creating nuisance conditions, vector or bird attraction or harborage, or safety hazards; 2. Maintain storage areas in an orderly manner and keep the areas free of litter; 3. Position exterior stockpiles within footprints identified on the facility site plan or operating plan; and

		<p>4. Not stockpile recovered or source-separated materials for longer than 180 days.</p>
<p>6.7</p>	<p>Dust, airborne debris and litter</p>	<p>The franchisee must operate the facility in a manner that controls and minimizes the generation of dust, airborne debris and litter, and must prevent its migration beyond property boundaries. The franchisee must:</p> <ol style="list-style-type: none"> 1. Take reasonable steps, including signage, to notify and remind persons delivering solid waste to the facility that all loads must be suitably secured to prevent any material from blowing off the load during transit; 2. 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; 3. Maintain and operate all access roads and receiving, processing, storage and reload areas in such a manner as to control and minimize dust and debris generated on-site and prevent such dust and debris from blowing or settling off-site; 4. Keep all areas within the site and all vehicle access roads within ¼ mile of the site free of litter and debris generated directly or indirectly as a result of the facility’s operation; 5. Maintain on-site facility access roads to prevent or control dust and to prevent or control the tracking of mud off-site; and 6. Provide access to the facility for the purpose of uncovered load enforcement. During all times that solid waste or recyclable materials are being accepted, authorized representatives of Metro, including law enforcement personnel on contract to Metro, must be permitted access to the premises of the facility for the purpose of making contact with individuals they have observed transporting uncovered loads of solid waste or recyclable materials on a public road right-of-way in violation of Metro Code Chapter 5.09.
<p>6.8</p>	<p>Odor</p>	<ol style="list-style-type: none"> 1. The franchisee must operate the facility in a manner that controls and minimizes the generation of odors that are detectable off-site. 2. The franchisee must establish and follow procedures in the operating plan for minimizing odor at the facility.
<p>6.9</p>	<p>Vectors (e.g. birds, rodents, insects)</p>	<ol style="list-style-type: none"> 1. The franchisee must operate the facility in a manner that is not conducive to harboring rodents, birds, insects or other vectors capable of transmitting, directly or indirectly, infectious diseases to humans or from one person or animal to another. 2. If vectors are present or detected at the facility, the franchisee must implement vector control measures.

6.10	Noise	The franchisee must operate the facility in a manner that avoids controls and minimizes any noise sufficient to cause adverse off-site impacts and meets applicable regulatory standards and land-use regulations.
6.11	Water contaminated by solid waste and solid waste leachate	The franchisee must operate the facility consistent with an approved DEQ stormwater management plan or equivalent and must: <ol style="list-style-type: none"> 1. Operate and maintain the facility to prevent contact of solid wastes with storm water runoff and precipitation; and 2. Dispose of or treat water contaminated by solid waste generated on-site in a manner complying with local, state and federal laws and regulations.
6.12	Access control	<ol style="list-style-type: none"> 1. The franchisee must control access to the facility as necessary to prevent unauthorized entry and dumping. 2. The franchisee must maintain a gate or other suitable barrier at potential vehicular access points to prevent unauthorized access to the site when an attendant is not on duty.
6.13	Signage	The franchisee must post signs at all public entrances to the facility. The signs must comply with local government signage regulations. These signs must be easily and readily visible and legible from off-site during all hours and must contain at least the following information: <ol style="list-style-type: none"> 1. Name of the facility; 2. Address of the facility; 3. Emergency telephone number for the facility; 4. Operating hours during which the facility is open for the receipt of authorized waste; 5. Fees and charges; 6. Metro’s name and telephone number (503) 234-3000; 7. A list of authorized and prohibited wastes; 8. Vehicle / traffic flow information or diagram; 9. Covered load requirements; and 10. Directions not to queue on public roadways.
6.14	Complaints	<ol style="list-style-type: none"> 1. The franchisee must respond to all complaints in timely manner including, but not limited to, blowing debris, fugitive dust or odors, noise, traffic and vectors, and must keep a record of such complaints and any action taken to respond to the complaints, including actions to remedy the conditions that caused the complaint. 2. If the facility receives a complaint, the franchisee must:

		<p>(a) Attempt to respond to that complaint within one business day, or sooner as circumstances may require, and retain documentation of its attempts, whether successful or unsuccessful; and</p> <p>(b) Log all such complaints as provided by the operating plan. The franchisee must retain each log entry for one year and it must be available for inspection by Metro.</p>
6.15	Access to franchise document	The franchisee must maintain a copy of this franchise on the facility’s premises in a location where facility personnel and Metro representatives have ready access to it.
6.16	Employment standard	The franchisee must be in compliance with Oregon’s “ban the box” law (ORS 659A.360) which makes it unlawful for an employer to inquire about criminal convictions before the interview stage of hiring. The franchisee must maintain a copy of the facility’s employment application on the facility premises and in a location where facility personnel and Metro representatives have ready access to it.

7.0	OPERATING PLAN	
7.1	Plan compliance	The franchisee must operate the facility in accordance with an operating plan approved in writing by Metro. The operating plan must include sufficient detail to demonstrate that the facility will be operated in compliance with this franchise. The franchisee may amend or revise the operating plan from time to time, subject to written approval by Metro.
7.2	Plan maintenance	The franchisee must revise the operating plan as necessary to keep it current with facility conditions, procedures and requirements. The franchisee must submit amendments and revisions of the operating plan to Metro for written approval prior to implementation.
7.3	Access to operating plan	The franchisee must 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.
7.4	Procedures for inspecting loads	<p>The operating plan must establish:</p> <ol style="list-style-type: none"> 1. Procedures for inspecting incoming loads for the presence of prohibited or unauthorized wastes; 2. Procedures for identifying incoming and outgoing loads for waste classifications; 3. A set of objective criteria for accepting and rejecting loads; and 4. An asbestos testing protocol for all materials that appear to contain asbestos.

7.5	Procedures for mixing waste types	<p>The operating plan must establish:</p> <ol style="list-style-type: none"> 1. Circumstances under which waste types will be mixed; and 2. Procedures for record keeping and reporting for mixed outbound loads.
7.6	Procedures for processing and storage of loads	<p>The operating plan must establish procedures for:</p> <ol style="list-style-type: none"> 1. Processing authorized solid wastes; 2. Reloading and transfer of authorized solid wastes; 3. Managing stockpiles to ensure that they remain within the authorized weights, volumes and pile heights; 4. Storing authorized solid wastes; and 5. Minimizing storage times and avoiding delay in processing of authorized solid wastes.
7.7	Procedures for managing prohibited wastes	<p>The operating plan must establish procedures for managing, reloading and transferring to appropriate facilities or disposal sites any prohibited or unauthorized wastes if they are discovered at the facility. In addition, the operating plan must establish procedures and methods for notifying generators not to place hazardous wastes or other prohibited wastes in drop boxes or other collection containers destined for the facility.</p>
7.8	Procedures for odor prevention	<p>The operating plan must establish procedures for controlling and minimizing odors generated at the facility from being detected off the premises of the facility. The plan must include:</p> <ol style="list-style-type: none"> 1. A management plan that the franchisee will use to monitor and manage odors of any derivation including odorous loads delivered to the facility; and 2. Procedures for receiving and recording odor complaints, immediately investigating all odor complaints to determine the cause of odor emissions and remedying promptly all odor problems at the facility.
7.9	Procedures for dust prevention	<p>The operating plan must establish procedures for controlling and minimizing dust from blowing off the premises of the facility. The plan must include:</p> <ol style="list-style-type: none"> 1. A management plan that the franchisee will use to monitor and manage dust of any derivation; and 2. Procedures for receiving and recording dust complaints, immediately investigating all dust complaints to determine the cause of dust emissions and remedying promptly all dust problems at the facility.
7.10	Procedures for emergencies	<p>The operating plan must establish procedures that the franchisee will follow in case of fire or other emergency.</p>

7.11	Procedures for complaints	<p>The operating plan must establish procedures for managing complaints.</p> <ol style="list-style-type: none"> 1. For every complaint received (for example odor, dust, vibrations and litter), the franchisee must record: <ol style="list-style-type: none"> (a) The nature of the complaint; (b) The date the complaint was received; (c) The name, address and telephone number of the person or persons making the complaint; and (d) Any actions taken by the operator in response to the complaint, whether successful or unsuccessful. 2. The franchisee must make records of such information available to Metro upon request. The franchisee must retain each complaint record for a period of not less than one year.
7.12	Closure protocol	<ol style="list-style-type: none"> 1. The franchisee must establish protocol for closure and restoration of the site in the event of a cessation of operations as provided in Metro Code Chapter 5.01. 2. The plan must include protocol for: <ol style="list-style-type: none"> (a) Short-term closure (duration of time that is more than two consecutive business days but less than 120 days in length); and (b) Long-term closure (duration of time that is 120 consecutive days or more in length). 3. The franchisee must give at least 24-hour notice to Metro prior to the short-term closure of the facility. 4. The franchisee must give at least 90 days written notice to Metro prior to the long-term closure of the facility.

8.0	FEES AND RATES	
8.1	Annual fee	The franchisee must 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.
8.2	Rates	<ol style="list-style-type: none"> 1. The rates charged by the franchisee for accepting solid waste are not subject to regulation by Metro unless the Metro Council adopts an ordinance that establishes Metro’s rate regulation authority. 2. Notwithstanding the provision above, the rates charged by the franchisee must not exceed the rates posted at the facility as described in Section 6.13.

8.3	Metro fee and tax imposed on disposal	The franchisee is liable for payment of the Metro Regional System Fee, as provided in Metro Code Title V, and the Metro Excise Tax, as provided in Metro Code Title VII, on all solid wastes delivered to a disposal site.
8.4	Metro community enhancement fee imposed on waste received	The franchisee must collect and remit to Metro a community enhancement fee, as provided in Metro Code Chapter 5.06, in an amount equal to \$1.00 per ton for all putrescible waste including food waste and residential yard debris mixed with food waste. The franchisee must remit the community enhancement fees to Metro on a monthly basis in conjunction with fees remitted in Section 8.3.

9.0	RECORD KEEPING AND REPORTING	
9.1	Record keeping requirements	For all solid waste and materials the franchisee is authorized to accept under Section 3.0, the franchisee must keep and maintain accurate records of the amount of authorized materials the franchisee accepts, recovers, recycles, reloads and disposes. These records must include the information specified in the Metro document titled, <i>Reporting Requirements and Data Standards for Metro Solid Waste Licensees, Franchisees and Parties to Designated Facility Agreements.</i>
9.2	Reporting requirements	The franchisee must transmit to Metro records required under Section 9.0 no later than fifteen days following the end of each month in a format prescribed by Metro.
9.3	Material recovery reporting	The franchisee must provide the results of its quarterly sampling of processing residual, as provided in Section 3.5, to Metro as a component of its monthly report no later than fifteen days following the end of the each quarter in a format prescribed by Metro.
9.4	Account number listing	Within five business days of Metro’s request, the franchisee must provide Metro with a listing that cross-references the account numbers used in the transaction database with the company’s name and address.
9.5	Transactions based on scale weights	Except for minimum fee transactions for small, lightweight loads, the franchisee must record each inbound and outbound transaction electronically based on actual and accurate scale weights using the franchisee’s on-site scales.
9.6	DEQ submittals	The franchisee must provide Metro with copies of all correspondence, exhibits or documents submitted to DEQ relating to the terms or conditions of DEQ solid waste permit or this franchise within two business days of providing such information to DEQ.
9.7	Copies of enforcement actions provided to Metro	The franchisee must ensure Metro receives copies of any notice of violation or noncompliance, citation or any other similar enforcement

		actions issued to the franchisee by any federal, state or local government (other than Metro) related to the operation of the facility.
9.8	Unusual occurrences	<ol style="list-style-type: none"> 1. The franchisee must keep and maintain accurate records of any unusual occurrences (such as fires or any other significant disruption) encountered during operation, and methods used to resolve problems arising from these events, including details of all incidents that required implementing emergency procedures. 2. The franchisee must notify Metro within 24 hours of any breakdown of the franchisee’s equipment if the breakdown will substantially impact the facility’s ability to comply with this franchise, with Metro Code or which will create off-site impacts. 3. The franchisee must report any facility fires, accidents, emergencies and other significant incidents to Metro within 12 hours of the discovery of their occurrence. 4. The franchisee must report any long term or short term closures as provided in Section 7.12.
9.9	Changes in ownership	<ol style="list-style-type: none"> 1. Any change in control of the franchisee or the transfer of a controlling interest of the franchisee requires prior written notice to Metro. “Transfer of a controlling interest of the franchisee” includes without limitation the transfer of 10% or more of the ownership of the franchisee to or from a single entity. Metro may amend this franchise under Section 12.2 to require the new ownership of the franchisee to assume all the rights and obligations of this franchise. 2. The franchisee may not lease, assign, mortgage, sell or otherwise transfer control of the franchise unless the franchisee follows the requirements of Metro Code Chapter 5.01.

10.0	INSURANCE REQUIREMENTS	
10.1	General liability	The franchisee must carry the most recently approved ISO (Insurance Services Office) Commercial General Liability policy, or its equivalent, written on an occurrence basis, with limits not less than \$1,000,000 per occurrence. The policy will include coverage for bodily injury, property damage, personal injury, death, contractual liability, premises and products/completed operations. The franchisee’s coverage will be primary as respects Metro.
10.2	Automobile	The franchisee must carry automobile insurance with coverage for bodily injury and property damage, and with limits not less than minimum of \$1,000,000 per accident or combined single limit.

10.3	Additional insureds	Metro, its elected officials, departments, employees, volunteers and agents must be named as ADDITIONAL INSUREDS on the Commercial General Liability policy. Franchisee must include the additional insured endorsement along with the certificate of insurance.
10.4	Workers' compensation insurance	<ol style="list-style-type: none"> 1. The franchisee, its subcontractors, if any, and all employers working under this franchise, are subject employers under the Oregon Workers' Compensation Law, and must comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. 2. The Workers' Compensation Insurance must meet Oregon statutory requirements including Employer's Liability with limits not less than \$1,000,000 per accident or disease. 3. The franchisee must provide Metro with certification of Workers' Compensation insurance including employer's liability. If the franchisee has no employees and will perform the work without the assistance of others, a certificate to that effect may be attached in lieu of the certificate showing current Workers' Compensation.
10.5	Certificate of insurance	<ol style="list-style-type: none"> 1. The franchisee must provide Metro with a Certificate of Insurance complying with this Section 10. 2. The franchisee must list Metro as the certificate holder. 3. Upon insurance renewal, the franchisee must submit an updated certificate of insurance and the additional insured endorsement to Metro via email (SWICC@oregonmetro.gov).
10.6	Notification	The franchisee must give at least 30 days written notice to Metro of any lapse or proposed cancellation of insurance coverage.

11.0	ENFORCEMENT	
11.1	Authority vested in Metro	The power and right to regulate, in the public interest, the exercise of the privileges granted by this franchise is at all times 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 the franchisee.
11.2	No enforcement limitations	This franchise may not be construed to and does not limit, restrict, curtail or abrogate any enforcement provision contained in Metro Code or administrative procedures adopted pursuant to Metro Code Chapter 5.01, nor does this franchise limit or preclude Metro from adopting ordinances that regulate the health, safety or welfare of any person or persons within the Metro jurisdictional boundary, notwithstanding any incidental impact that such ordinances may have upon the terms of this franchise or the franchisee's operation of the facility.

11.3	Penalties	Each violation of a franchise condition is punishable by penalties as established in Metro Code Chapter 5.01. Each day a violation continues constitutes a separate violation.
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12.0	AMENDMENT, SUSPENSION AND REVOCATION	
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12.1	Amendment by Metro Council	<p>Except as provided in Section 12.2, the provisions of this franchise will remain in effect unless the Metro Council:</p> <ol style="list-style-type: none"> 1. Amends the Metro Code, amends the 2030 Regional Waste Plan or implements other legislation of broad applicability that affects the class of facilities of which this franchisee is a member; or 2. Adopts an ordinance or resolution amending this franchise to implement policy, code or other requirements such as the 2030 Regional Waste Plan.
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12.2	Amendment, suspension or revocation by Metro	<p>The Chief Operating Officer may, at any time before the expiration date, amend, 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> <ol style="list-style-type: none"> 1. Violation of the terms or conditions of this franchise, Metro Code or any applicable statute, rule or standard; 2. Changes in local, regional, state or federal laws or regulations that should be specifically incorporated into this franchise, such as Metro actions to implement new requirements from the 2030 Regional Waste Plan; 3. Failure to disclose fully all relevant facts; 4. A significant release into the environment from the facility; 5. Significant change in the character of solid waste received or in the operation of the facility; 6. Any change in ownership or control; 7. A request from the local government stemming from impacts resulting from facility operations; 8. A change of authorization request received from the franchisee; 9. Compliance history of the franchisee; and 10. Changes in the tonnage allocation based on new information, or changes in methodology, administrative rule or Metro Code.
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13.0	GENERAL OBLIGATIONS	
13.1	Compliance with law	The franchisee must 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 rules adopted pursuant to Chapter 5.01, whether or not those provisions have been specifically mentioned or cited in this franchise. All conditions imposed on the operation of the facility by federal, state, regional or local governments or agencies having jurisdiction over the facility are deemed part of this franchise as if specifically set forth in this franchise. These conditions and permits include those cited within or attached as exhibits to the franchise document, any existing at the time the franchise is issued but not cited or attached, and any issued or amended during the term of the franchise.
13.2	Deliver waste to appropriate destinations	The franchisee must 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.
13.3	Right of inspection and audit	<ol style="list-style-type: none"> 1. The franchisee must allow Metro’s authorized representatives to access the facility and premises at any time during business hours, with or without advanced notice. For non-business hours, the franchise must allow access to Metro’s authorized representatives upon receiving advanced notice of not less than 24 hours. 2. Metro’s authorized representatives may take photographs, collect samples of materials and perform any inspection or audits as Metro considers appropriate. 3. Metro inspection reports, including site photographs, are public records subject to disclosure under Oregon Public Records Law. Subject to the applicable confidentiality provisions in Section 13.4, Metro’s right to inspect includes 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 the franchisee that are directly related to the facility’s operation and its rates. 4. The franchisee must permit access to the facility premises to authorized representatives of Metro, including personnel on contract to Metro, to perform research at all times during business hours, with or without notice. The franchisee must provide: <ol style="list-style-type: none"> (a) Access to all areas where it generates, manages, stores and reloads waste, including without limitation to transfer vehicles; (b) Access to facility personnel and equipment to collect, sort, store and weigh waste; and (c) Access to a safe, covered location away from working areas and

		vehicle traffic on site where authorized representatives of Metro analyze waste and record data.
13.4	Confidential information	<ol style="list-style-type: none"> 1. The franchisee may identify as confidential any reports, books, records, maps, plans, income tax returns, financial statements, contracts and other similar written materials of the franchisee that are directly related to the operation of the facility and that are submitted to or reviewed by Metro. The franchisee must prominently mark any information that it claims confidential with the mark "CONFIDENTIAL" prior to submittal to or review by Metro. Metro will 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. 2. If Metro receives a public records request seeking disclosure of information identified as confidential by the franchisee, Metro will provide the franchisee with a courtesy notice of that request within five days of receipt of the request. 3. This Section 13.0 does not limit the use of any information submitted to or reviewed by Metro for regulatory purposes or in any enforcement proceeding. 4. Metro may share any confidential information with representatives of other governmental agencies provided that, consistent with Oregon law, those representatives agree to continue to treat the information as confidential and make good faith efforts not to disclose the information.
13.5	Compliance by agents	The franchisee is responsible for ensuring that its agents and contractors comply with this franchise.

STAFF REPORT

FOR THE PURPOSE OF APPROVING THE SOLID WASTE FACILITY FRANCHISE RENEWAL APPLICATION OF WASTE MANAGEMENT OF OREGON, INC., AND AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED SOLID WASTE FACILITY FRANCHISE TO OPERATE TROUTDALE TRANSFER STATION

Date: October 17, 2019
Department: Property and Environmental Services (PES)
Meeting Date: October 31, 2019

Prepared by: Joanna Dyer, 503-813-7550, joanna.dyer@oregonmetro.gov
Presenters: Roy Brower and Joanna Dyer
Length: 15 minutes

ISSUE STATEMENT

Waste Management of Oregon Inc. seeks to renew its Metro solid waste facility franchise for Troutdale Transfer Station, a Metro-authorized transfer station located at 869 NW Eastwind Dr. in the city of Troutdale. Metro Code Section 5.01.210 requires the Metro Council to approve or deny a solid waste facility franchise renewal.

ACTION REQUESTED

Approve Resolution No. 19-5025 which will authorize the Chief Operating Officer to issue a renewed solid waste facility franchise to Waste Management of Oregon Inc. to operate Troutdale Transfer Station for a term of five years.

IDENTIFIED POLICY OUTCOMES

Approval of this resolution will support the goals of the 2030 Regional Waste Plan, the Business Food Waste Requirement and the Transfer System Configuration Policy. This staff report further describes these expected policy outcomes.

POLICY QUESTION

Should the Metro Council grant the Chief Operating Officer authority to renew the Metro solid waste facility franchise for Waste Management of Oregon Inc. to operate Troutdale Transfer Station according to the provisions of Metro Code Chapter 5.01.210 and as described in this resolution?

POLICY OPTIONS FOR COUNCIL TO CONSIDER

1. Approve the resolution as proposed to renew the Metro solid waste facility franchise for Waste Management of Oregon Inc. to operate Troutdale Transfer Station.
2. Amend the resolution to renew the franchise with different conditions other than those recommended by staff.
3. Do not approve Resolution No. 19-5025.

STAFF RECOMMENDATIONS

Staff recommends that Council adopt Resolution No. 19-5025 to approve the renewal of the solid waste facility franchise for Troutdale Transfer Station. If Council approves this resolution, the renewed franchise (F-001-20) will go into effect on January 1, 2020.

STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION

A franchise term is typically five years. The current franchise became effective on January 1, 2009 and was set to expire December 31, 2013. Due to projects impacting the solid waste system including the Solid Waste Road Map and the expiration of Metro's disposal contract with Waste Management (which required that 90 percent of the Metro region's putrescible waste be disposed at a Waste Management landfill), the franchise term was extended by the Metro Council three times since 2013 resulting in the current term end date of December 31, 2019.

This franchise renewal is an opportunity to update and better align existing language for increased consistency as well as incorporate additional requirements that implement policy decisions made since the last renewal, such as the adoption of the 2030 Regional Waste Plan (Ordinance No. 19-1431), the Metro Transfer Station Configuration Policy (Resolution No. 16-4716) and the adoption of a Business Food Waste Requirement (Ordinance No. 18-1418). Metro staff propose changes to eight areas of the franchise, which are outlined below. References to specific franchise sections have been included when applicable. Franchisees had the opportunity to provide verbal and written feedback on the proposed changes, some of which resulted in additional modifications to the proposed language.

1. Begin implementation of the 2030 Regional Waste Plan

The proposed franchise includes a new section, Section 5.0, which authorizes Metro's Chief Operating Officer to amend the franchise for the purpose of implementing Council's policies advancing progress on the 2030 Regional Waste Plan actions.

All solid waste facilities within the region, including transfer stations, must operate in a manner that helps to advance progress towards achieving goals of the 2030 Regional Waste Plan (Action 12.6). The 2030 Regional Waste Plan provides the region with long-term policy and program direction for materials management and solid waste system planning efforts. While Metro implements the 2030 Regional Waste Plan primarily through cooperative working relationships among Metro, the Oregon Department of Environmental Quality (DEQ), local governments and the private sector, the plan contains actions that must be implemented throughout Metro's solid waste system.

2. Incorporate new tonnage allocation methodology

The proposed franchise has been updated to reflect a new tonnage allocation methodology that begins in 2020. The new methodology uses a percentage based approach that determines allocations based on Metro's annual solid waste forecast. The solid waste forecast is being finalized; therefore, there are placeholders in the proposed franchise where the number of tons will be included later. The tonnage amount for 2020 will be available before the franchise term begins and will be inserted prior to issuing the franchise. The Chief Operating Officer will continue Metro's long-standing practice of amending franchises each November to update the number of tons allocated for the following year.

3. Clarify the nature of the franchise

The proposed franchise has been updated to clarify that a Metro franchise is the grant of authority given by the Council to operate a transfer station as specified under Metro Code Chapter 5.01. This is a distinction from that of local governments which issue solid waste franchises that grant the right and responsibility to provide collection service in a specific area. There are solid waste companies that hold a Metro franchise and a local government franchise, which can cause confusion because the nature of these separate franchises is different. A Metro franchise is a regulatory permit and not a negotiated agreement.

To help clarify this important distinction, this proposed franchise has been updated to remove contract-like language. Franchisees retain the opportunity to contest provisions of the franchise and seek amendments through a change of authorization process per Metro Code 5.01.230, but Metro determines whether to approve or deny any change of authorization.

4. Incorporate operations and performance standards that advance equity

The proposed franchise includes a new requirement to advance progress on the 2030 Regional Waste Plan and the Property and Environmental Services Diversity, Racial Equity and Inclusion Work Plan goals. The franchise requires the franchisee to comply with Oregon’s “ban the box” law (ORS 659A.360) (Section 6.16). Oregon’s “ban the box” law makes it illegal for an employer to inquire about criminal convictions before the interview stage of hiring. This law removes barriers to employment for people convicted of crimes. Additional existing federal, state, and local provisions that advance equity may be incorporated in future franchise amendments.

5. Align franchises with the Food Waste Framework

The proposed franchise includes a new requirement to advance progress on the Business Food Waste Requirement. In a 2014 work session, the Metro Council reviewed the region’s current commercial food waste recovery efforts and staff introduced potential paths forward to ensure that the region has a stable and sustainable commercial food waste transfer and processing system for the long term. The Council confirmed its desire to accelerate the region’s recovery of commercial food waste and its wish to process that waste in or as close to the region as possible. The Council determined that in order to increase commercial food waste recovery and attract stable, local processing capacity, Metro should:

1. Require certain businesses to separate their food waste for recovery and eventually prohibit the disposal of food from businesses;
2. Determine how to efficiently collect and deliver food waste for processing; and
3. Secure local and stable processing capacity.

Based on Council direction, staff developed policies and initiatives to fulfill these objectives. To address the first objective, the Metro Council adopted Ordinance No. 18-1418 in July 2018 which added the Business Food Waste Requirement to Metro Code 5.10. Under this ordinance, each local government must require certain businesses in its jurisdiction to separate and recover food waste to be delivered to a facility authorized by Metro. Businesses in the first group (largest generators) will be required to begin separating food waste in March 2020, the second group in March 2021, and the third in September 2022. The adoption and implementation of this policy was a major step forward in developing a stable and sustainable food waste recovery system. As of the date of this report, 16 of the 21 local governments required to adopt the Business Food Waste Requirement have done so, two have received extensions and three have received a notice of non-compliance from Metro for not meeting the policy requirements. The city of Troutdale has not adopted the Business Food Waste Requirement and has received an extension until the end of October.

To address the need for an adequate waste transfer system to allow growth in the collection of commercial food waste in the region and provide equitable access to transfer services, Metro is seeking to expand its facilities’ capacity to accept this material as well as determine the role that private transfer facilities should play in helping to also provide this capacity. In order to expand system capacity for commercial food waste, staff recommends that the Metro Council require a transfer station with current or pending infrastructure in place to accept food waste for reload and transfer to an approved recovery facility, whereas a facility that does not have the necessary

infrastructure in place will not be subject to the same requirement. Troutdale Transfer Station will not be required to accept food waste at this time, but the franchise authorizes the Chief Operating Officer to amend the franchise to require the facility to accept food waste if necessary to implement the Council's policies.

6. Align confidentiality language with public records law

Section 13.4, Confidential information, has been updated to align with current public records law which has more restrictive timelines for responding to a requestor. Metro will provide a franchisee with a courtesy notice of a public records request within five days of receiving such a request. Metro has the legal obligation to determine if any information marked "confidential" by the franchisee is objectively confidential according to public records law.

7. Clarify franchise amendment process

Current franchise language states that the franchise can be amended by the Metro Council adopting an ordinance. Proposed language in Section 12.1(b) expands this authority to include amendment by resolution.

8. Streamline franchise language for modernization and consistency

A suite of non-substantive updates have been made to clarify existing requirements and to streamline authorization language within and across facility classes.

KNOWN OPPOSITION / SUPPORT / COMMUNITY FEEDBACK

Metro posted notice and provided an opportunity for the public to review and submit comments on the franchise application. The public notice was posted on Metro's website, mailed to approximately 75 property owners and residents within one-quarter mile of the proposed facility, and emailed to local community groups, neighborhood associations and various other parties that are generally interested in solid waste issues. The 30-day public comment period began on August 1, 2019, and closed on August 30, 2019.

Metro provided the applicant with a redline copy of the franchise that outlined the proposed changes. On July 31, 2019, Metro staff met with Troutdale Transfer Station staff to discuss these changes and to listen to their feedback.

Metro received one comment during the public comment period. The Senior Legal Counsel of Waste Management submitted a written comment on behalf of Troutdale Transfer Station outlining questions and concerns with the proposed franchise language. A detailed description of this written comment is provided in the *Public Comment Report* included as Attachment 2 to this staff report. No comments were received regarding the operation of the facility. On October 31, 2019, the Metro Council will hold a public hearing on this proposed franchise renewal. Written and verbal public comments will be accepted at the meeting, prior to the Council voting on the resolution.

LEGAL ANTECEDENTS

Pursuant to Metro Code 5.01.180, the Council must consider the following factors when determining whether to issue a franchise:

- (1) *Whether the applicant has demonstrated that the proposed solid waste facility and authorized activities will be consistent with the Regional Waste Plan;*

Staff finds that the proposed activity is consistent with the regional values and policies outlined in the 2030 Regional Waste Plan and specifically aligns with many of the goals of the plan, including goals 12, 13 and 16:

- **Goal 12:** Manage all garbage and recycling operations to reduce their nuisance, safety and environmental impacts on workers and the public.
- **Goal 13:** Invest in communities that receive garbage and recyclables from the Metro region so that those communities regard solid waste facilities as assets.
- **Goal 16:** Maintain a system of facilities, from small recycling drop-off depots to larger full-service stations, to ensure equitable distribution of and access to services.

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

Troutdale Transfer Station requested an increase in tonnage authorization in its renewal application, but did not request any significant change in authorization or activities at this facility. The effect of granting a renewed franchise would be to minimize significant disruption to the solid waste system with regard to the cost of solid waste recycling and disposal services for the residents of the region in 2020.

- (3) *Whether granting a franchise is likely to adversely affect the health, safety and welfare of Metro's residents in an unreasonable manner;*

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 an unreasonable manner during the term of the current franchise. Staff finds it unlikely that the franchised operation will adversely affect the health, safety and welfare of Metro's residents due to the type of activity performed and the good compliance record of the operator. The facility is also regulated and monitored by Metro and DEQ.

- (4) *Whether granting a franchise is likely to adversely affect nearby residents, property owners, or the existing character or expected future development of the surrounding neighborhood in an unreasonable manner;*

Metro staff is not aware of any significant complaints or impacts on the surrounding neighborhood during the term of the current franchise. Staff finds it unlikely that Troutdale Transfer Station would unreasonably adversely impact the surrounding neighborhood due to the operator's experience and compliance record.

- (5) *Whether the applicant has demonstrated the strong likelihood that it will comply with all requirement and standards of this chapter, the administrative rules and performance standards adopted pursuant to Section 5.01.280 and other applicable local, state, and federal laws, rules, and regulations, ordinances, orders or permits pertaining in any manner to the proposed franchise.*

Metro has a long history with this facility and staff finds that the applicant is likely to comply with regulations and standards if the franchise is renewed.

ANTICIPATED EFFECTS

Approval of Resolution No. 19-5025 will authorize the Chief Operating Officer to renew the franchise for Waste Management of Oregon Inc. to operate Troutdale Transfer Station. In addition, the Metro Council authorizes the Chief Operating Officer to determine annual tonnage allocations using the tonnage allocation methodology adopted by administrative rule. The tonnage allocation for 2020 will be determined using a percentage based approach once the solid waste forecast is final in November. If approved, the proposed franchise becomes effective on January 1, 2020, and expires on December 31, 2024.

FINANCIAL IMPLICATIONS

As mentioned above, staff are developing administrative rules that will set forth a detailed process for determining and adjusting future tonnage allocations. Staff notes that this prescribed tonnage allocation process, beginning in 2020, may result in a different, to be determined, tonnage allocation for each of the region's transfer stations. Metro will adjust tonnage allocations for all privately-owned transfer stations and require that at least 40 percent of the region's wet waste tonnage flows to publicly-owned transfer stations (Metro Central and South). Therefore, approval of the proposed franchise is expected to have minimal impact to Metro's Solid Waste Fund operating costs and revenues.

As a result of future adjustments, individual Community Enhancement Committees might experience an increase or reduction in funds based on potential future tonnage shifts.

BACKGROUND

The applicant, Waste Management of Oregon Inc., is the owner and operator of Troutdale Transfer Station, an existing solid waste facility located at 869 NW Eastwind Drive in Troutdale (Metro Council District 1). Troutdale Transfer Station commenced operation in 1996 as a material recovery facility. The facility currently holds a Metro-issued franchise (F-001-08I) to operate a transfer station authorized to receive putrescible waste, perform material recovery on non-putrescible waste and accept source-separated recyclable materials. Under the terms of the existing franchise, Troutdale Transfer Station is authorized to accept up to 79,880 tons of putrescible waste generated from within the Metro region in calendar year 2019. Troutdale Transfer Station also holds a solid waste disposal site permit for a transfer station and material recovery facility issued by DEQ (Permit No. 459). The applicant is well known to Metro as an operator of a Metro-franchised solid waste facility and as a long-standing solid waste management company in the Metro area. The applicant has extensive experience in recycling, solid waste collection, transfer and disposal. Staff concludes that the applicant is fully qualified to operate and manage this facility in a competent and efficient manner.

In addition to its franchise, Troutdale Transfer Station has three non-system licenses that authorize it to transport Metro area waste to the following facilities outside of the region: Columbia Ridge Landfill in Arlington, Oregon and Coffin Butte Landfill in Corvallis, Oregon (N-001-17B), Dirt Hugger in Dallesport, Washington (N-001-17(2)) and Recology Oregon Compost in North Plains, Oregon (N-001-16(3)).

Metro has conducted 54 site inspections at Troutdale Transfer Station from January 1, 2009 to date. Staff has found the facility to be a well-run operation with no observable reason to suspect impending problems or issues. Metro issued two notices of violation during the current franchise term. On May 11, 2012, the facility delivered a 20.83 ton load of unprocessed mixed waste to the Riverbend Landfill where the load was disposed without processing for recovery (NOV-312-12). The facility violated its franchise when it failed to perform material recovery on unprocessed non-putrescible waste generated within the Metro region, violated its non-system license when it delivered non-putrescible waste to Riverbend Landfill and violated Code by failing to perform material recovery. The facility was issued a \$50 civil penalty, which was paid in full, and transfer station staff were retrained. Between December 26 and December 31, 2018 the facility exceeded its non-system license calendar year 2018 tonnage allocation for yard debris mixed with food waste delivered to Recology Oregon Compost by 191 tons (NOV-415-19). The facility was issued a \$289.20 civil penalty, which was paid in full. Troutdale Transfer Station is currently in compliance with its Metro issued non-system license and franchise.

On December 4, 2017, Troutdale Transfer Station was issued a Warning Letter with Opportunity to Correct from DEQ Stormwater for failing to fully implement a stormwater plan in accordance with its permit; failing to perform representative sampling; and causing waste to be placed in a location where

such wastes are likely to be carried to waters of the state. Troutdale Transfer Station took corrective actions and the enforcement action was considered closed as of September 10, 2019.

DEQ and City of Troutdale have reported that there are no current solid waste enforcement or compliance issues associated with this site.

On July 23, 2019, the applicant submitted to Metro a complete solid waste facility franchise application accompanied by payment of the appropriate application fee of \$500. The applicant requested an increase in tonnage authorization in its renewal application, but did not request any significant change in authorization or activities at this facility.

Tonnage Allocation

A major component of the 2030 Regional Waste Plan is to take a broad look at the role, configuration and services offered by publicly and privately-owned transfer stations. In 2016, under Council's direction, Metro established a transfer system configuration policy to:

1. Ensure that the region's transfer system provides maximum public benefit;
2. Maintain the current configuration of publicly and privately-owned transfer stations;
3. Ensure that an adequate amount of wet waste flows to publicly-owned stations (at least 40 percent of the region's wet waste);
4. Limit the amount of wet waste that any one company may accept for transfer within the region to no more than 40 percent of the tonnage reserved for private transfer stations; and
5. Improve rate transparency.

The configuration policy also seeks to promote more efficient off-route transport of waste to reduce greenhouse gas emissions and provide opportunities for small, locally-based businesses to participate in the region's solid waste system.

The transfer system configuration policy shifted Metro away from its historical "tonnage cap" approach, in which the Metro Council had established annual facility tonnage limits, to a more systematic and predictable "tonnage allocation" system, in which tonnage authority is proportionally allocated to privately-owned stations each year. Beginning in 2020, Metro will determine and adjust tonnage allocations for all privately-owned transfer stations in the region, including Troutdale Transfer Station, by applying a percentage-based allocation methodology currently being developed using the allocation framework that Metro Council adopted in November 2018 via Ordinance No. 18-1426.

This new approach to the wet waste tonnage allocation methodology includes reserving 40 percent of the region's wet waste tonnage for Metro's publicly-owned facilities and allowing the remaining 60 percent to be allocated in accordance with the finalized methodology. Staff is proposing a phased implementation of the new allocation methodology, where the 2020 allocations are intended to limit disruption to the system and help transition to full implementation of the new methodology in 2021.

Beginning in 2021, the allocation methodology will include a "base share" component for system stability and a "goal share" component to more directly support Metro's equity, service and environmental goals from the 2030 Regional Waste Plan. The goal shares will be determined by evaluating each transfer station's efforts to support and achieve Regional Waste Plan goals such as more efficient off-route travel, increased diversity of workers, paying living wages, addressing community concerns, providing reasonable, consistent and responsive rates and other goals that Council may deem to be important.

The forecasted tonnage for 2020 is projected to generally decrease relative to 2019. This projected decrease in tonnage, along with the addition of two new transfer stations in the region, make it infeasible to replicate current transfer station tonnage allocations in 2020 while maintaining Metro's 40 percent reserve.

ATTACHMENTS

- A. Exhibit A to Resolution No. 19-5023: Draft franchise F-001-20
- B. Attachment 1 to Staff Report: Images
- C. Attachment 2 to Staff Report: Public comment report

PUBLIC NOTICE:
Troutdale Transfer Station
Submit comments to Metro by 5 p.m. on August 30, 2019

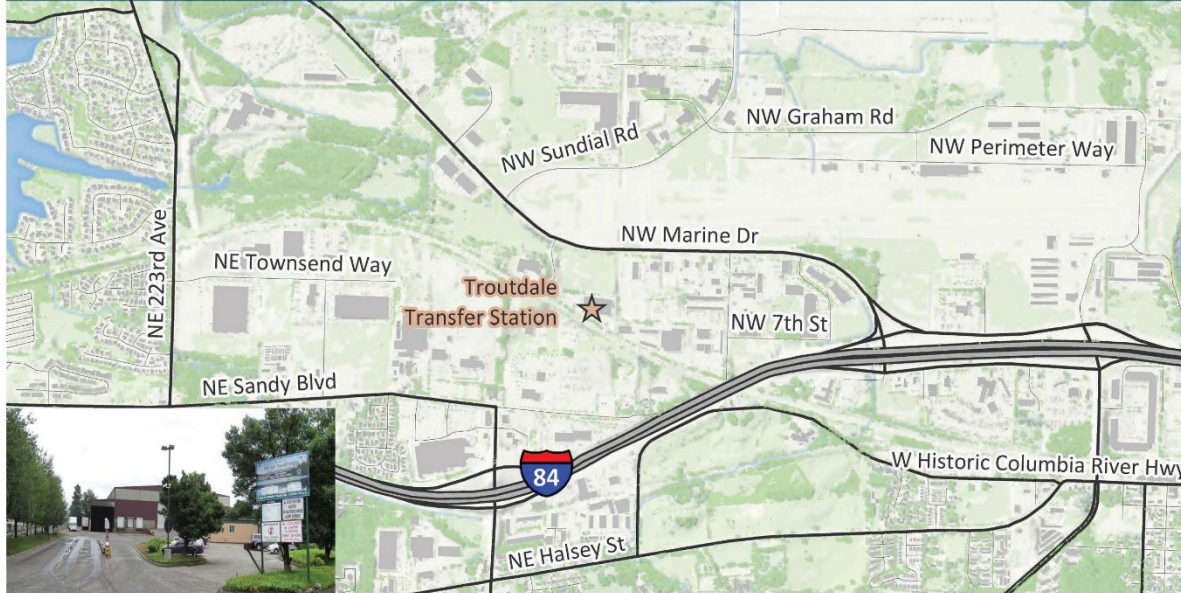


Photo 1: Public Notice post card, front

Troutdale Transfer Station submitted an application to Metro to renew its transfer station franchise to receive garbage and recyclable materials, including yard debris mixed with food waste, generated within the Metro region for reload and transport to a landfill for disposal or an approved facility for recovery. Waste Management of Oregon Inc. is the owner and operator of Troutdale Transfer Station. Current operations would not change under the proposed franchise renewal.

Facility Location: 869 NW Eastwind Dr, Troutdale, OR 97060

Written comments must be submitted by 5 p.m., August 30, 2019

Metro Solid Waste Information Compliance & Cleanup
600 NE Grand Ave., Portland, OR 97232

Fax: 503-813-7544 Email: SWICC@oregonmetro.gov

More information: oregonmetro.gov/solidwastepublicnotices

Esta es una notificación de su oportunidad para comentar sobre una solicitud para operar un establecimiento de desechos sólidos (basura o reciclado) en su comunidad. Si necesita asistencia con el idioma, llame al 503-797-1890 (de 8 a 5, lunes a viernes).

Настоящим уведомляем, что у вас есть возможность оставить свой отзыв относительно заявки на эксплуатацию учреждения по переработке твердых отходов (или вторсырья), расположенного в вашем районе. Языковую поддержку можно запросить по номеру 503-797-1890 в рабочие дни с 8:00 до 17:00.

Đây là thông báo về cơ hội của quý vị được trình bày ý kiến bằng đơn trong việc điều hành cơ sở quản lý rác thải (rác hoặc đồ tái chế) trong cộng đồng của quý vị. Nếu quý vị cần trợ giúp về ngôn ngữ, xin gọi số 503-797-1890 (từ 8 giờ sáng đến 5 giờ chiều vào những ngày thường).

本公告旨在通知您利用這個機會評論在您所在社區經營固體廢棄物(垃圾或回收服務)設施的申請。需要語言援助者請在撥打503-797-1890(工作日上午8點至下午5點)。

본 통지서는 지역사회 내 고품 폐기물(쓰레기 또는 재활용) 시설 운영 신청에 대해 귀하의 의견을 제시할 수 있는 기회를 알려 드리기 위한 것입니다. 언어 지원 서비스가 필요한 경우 전(근무일 기준) 503-797-1890으로 전화하십시오(주중 오전 8시 - 오후 5시).

Photo 2: Public Notice post card, back



Printed on recycled-content paper.

Attachment 1: Images

Attachment 1 to Staff Report for Resolution No. 19-5025



Photo 3: Aerial photo of Troutdale Transfer Station located at 869 NW Eastwind Dr. in Troutdale

Attachment 1: Images

Attachment 1 to Staff Report for Resolution No. 19-5025



Photo 4: Troutdale Transfer Station located at 869 NW Eastwind Dr. in Troutdale



Photo 5: Troutdale Transfer Station located at 869 NW Eastwind Dr. in Troutdale

Attachment 1: Images

Attachment 1 to Staff Report for Resolution No. 19-5025



Photo 6: Troutdale Transfer Station located at 869 NW Eastwind Dr. in Troutdale

Public comment report

Attachment 2 to Staff Report for Resolution No. 19-5025



October 17, 2019

Prepared by: Joanna Dyer
503-813-7550

Background

Adoption of Resolution No. 19-5025 will authorize the Chief Operating Officer to issue a renewed solid waste facility franchise to Waste Management of Oregon Inc. to operate Troutdale Transfer Station (TTS) for a term of five years.

On July 23, 2019, the applicant submitted to Metro a complete solid waste facility franchise application accompanied by payment of the appropriate application fee of \$500. The applicant requested an increase in its tonnage authorization in the renewal application, but did not request any other significant change in authorization or activities at this facility.

Public notice and opportunity to comment

Metro posted notice and provided an opportunity for the public to review and submit comments on the renewal application. The public notice was posted on Metro's website, mailed to 75 property owners and residents within one-quarter mile of the facility and emailed to local community groups, neighborhood associations and various other parties that are generally interested in solid waste issues. The 30-day public comment period began on August 1, 2019, and closed on August 30, 2019.

Summary of written public comments on application

Metro received one comment during the public comment period. The Senior Legal Counsel of Waste Management submitted a written comment on behalf of Troutdale Transfer Station outlining questions and concerns with the proposed franchise language that was provided to the applicant on July 30, 2019. This was the only comment received during the public comment period.

The letter includes 10 comments which are summarized below, and are included in full at the end of this document.

Metro response to comments:

Below is a summary of the 10 comments received from Waste Management. Metro's response follows each comment summary.

1. The franchise should not impose an obligation on TTS to accept source-separated food waste if Metro decides to amend the franchise. (Section 3.9)

- Waste Management is not aware of Metro's authority to unilaterally impose an obligation on a transfer station to accept a specific waste stream.
- There may be legitimate health, safety, environmental, financial and practical reasons why a transfer station would not willingly agree to accept source-separated food waste.
- Metro should work cooperatively with the transfer stations to determine whether accepting source-separated food waste makes sense for any particular transfer station.

Metro Response #1 – Food waste

As described in detail in the staff report, Metro is looking to address the need for an adequate transfer system to allow growth in the collection of commercial food waste in the region and provide equitable access to transfer services. Metro acknowledges the importance of the health, safety, environmental and financial factors that may impact the operation of a transfer station. Metro also has broad legal authority to regulate solid waste facilities generally. This authority is derived from the Oregon Constitution, Metro’s home rule Charter and explicit statutory powers in ORS Chapters 268, 459 and 459A.

Metro will continue to use an informed decision making process when imposing new requirements.

- 2. Insofar as Metro is now characterizing the franchise as a permit rather than an “agreement”, the franchise should establish and define the rights of a franchise holder to appeal any Metro decisions made concerning the franchise, including enforcement, amendments, suspension, revocation, denial of approvals, etc.**

Metro Response #2 – Rights of franchise holders

Metro has never considered franchises as agreements in practice. A Metro Solid Waste Facility Franchise is a grant of authority that the Metro Council may amend at any time by means of a duly adopted ordinance or resolution. During such adoption procedures, the Metro Council will provide due process by providing a public review period and an opportunity for a public hearing on the proposed amendments. Additionally, under Metro Code Chapter 5.01, franchisees have the right to request a contested case hearing regarding solid waste facility decisions made by Metro.

- 3. By replacing “COO” with “Metro” throughout, the franchise is ambiguous as to when something has been formally approved by Metro.**

Metro Response #3 – Chief Operating Officer vs. Metro

The majority of references to the Chief Operating Officer (COO) in the franchise have been changed to Metro, though the authority to amend, suspend or revoke a franchise remains with the COO and the Metro Council (Section 12.0). This change from COO to Metro is being made across all classes of Metro authorizations. When a franchisee receives written correspondence from a Metro employee, the franchisee should assume the sender has the authority over the content of the correspondence.

- 4. Metro should clarify its prohibition against mixing wastes in Section 4.4.**

Metro Response #4– Mixing of Waste

Metro revised this section of the franchise for increased clarity. Any mixing of waste types must be described in an operating plan and approved in writing by Metro so that Metro can ensure waste is going to the appropriate facility and that it is tracked and reported properly (Section 7.5).

5. Some of the proposed changes allowing for future amendments to the franchise are too open-ended and vague.

- Waste Management has concerns about Metro amending the franchise in the future to achieve future goals without allowances for parties to appeal such changes, specifically referencing future changes related to the implementation of the Regional Waste Plan (Section 5.0).

Metro Response #5 – Vague language

Metro added Section 5.0 Regional Waste Plan as a signal to solid waste facility operators that there will be future changes to the franchise resulting from the implementation of the 2030 Regional Waste Plan. The goals and actions of the [2030 Regional Waste Plan](#) are available to review for facility operators to gain a better understanding of the types of requirements that may be included in the franchise in the future. The 2030 Regional Waste Plan is the vision for the Metro Region’s solid waste system and the blueprint for achieving that vision. Metro has the responsibility to ensure that all solid waste generated in the region is managed in a manner that protects public health and safety and safeguards the environment. All programs, services and facilities related to solid waste management and disposal are addressed by the plan, including waste reduction, collection, transfer and disposal. This plan is designed to address the changes and challenges we face and to provide opportunities to innovate, invest and continue our efforts to protect people and quality of life in the region.

As outlined in Metro’s response to comment No. 1, Metro has broad legal authority over the Metro region’s solid waste system. Under Metro Code Chapter 5.01, franchisees have the right to request a contested case hearing regarding any decision made by the Chief Operating Officer.

6. Rather than set different standards, the franchise should incorporate Oregon DEQ’s stormwater best management practices for minimizing stormwater exposure.

- Waste Management proposed including DEQs best management practices from the Oregon DEQ’s 1200-Z stormwater permit.

Metro Response #6 – Stormwater

The current franchise language states that “watertight covered *or tarped* containers” are acceptable storage for putrescible waste and non-putrescible waste processing residual. Metro removed the words “or tarped” because a tarped container is also watertight and covered. The phrase now reads “watertight, covered containers” with the expectation the containers should be covered and watertight so that rain does not enter the container and that the container does not leak. Metro relies on DEQ to monitor and enforce ground water, storm water and air quality requirements at the site. Metro generally inspects Troutdale Transfer Station more frequently than DEQ, and will continue to refer applicable matters to other agencies when appropriate.

7. As the proposed revisions do not as yet specify the amount of waste TTS will be authorized to accept, WMO should be allowed to comment or challenge its allocation in the future when the waste allocation is announced. (Section 4.1)

Metro Response #7 – Franchisee right to contest a Metro decision

As mentioned in previous comment responses, Metro has broad legal authority to regulate solid waste facilities, including the types and amounts of waste a facility may receive. Additionally, under

Metro Code Chapter 5.01, franchisees have the right to request a contested case hearing regarding solid waste decisions made by Metro.

8. The franchise should not include reference to the “ban the box” law in Section 9.10.

Metro Response #8 – Ban the Box

Guidance for new language in the proposed franchises comes from the 2030 Regional Waste Plan that the Metro Council adopted earlier in 2019 and the Property and Environmental Services Diversity, Racial Equity and Inclusion Work Plan. The 2030 Regional Waste Plan provides direction for Metro’s regulation of the solid waste industry, including franchise provisions. By focusing on Oregon’s “ban the box” law, proposed Section 6.16 advances progress on Metro’s goals for the solid waste system. All the goals and actions that inform future franchise amendments can be found in the 2030 Regional Waste Plan. Please note that the provision that includes “ban the box” is now located in Section 6.16 of the proposed franchise.

9. The franchise cannot require WMO to list Metro as a certificate holder in Section 10.5.

Metro Response #9 – Insurance

Metro requires all Metro regulated solid waste facilities to name Metro as an insurance certificate holder. Standard certificate of insurance forms state at the top “This certificate is issued as a matter of information only and confers no rights upon the certificate holder.” Adding Metro as a certificate holder triggers the insurance company to issue the certificate of insurance to Metro upon renewal which cuts down on administrative burden on both parties as the issuance is automatic.

10. Metro’s right of inspection should be limited to “reasonable” times during business hours.

Metro Response #10 – Right of inspection

The word “reasonable” was removed from Section 13.3 because Metro considers it reasonable for any authorized Metro representative performing inspections of a franchised facility to access the site at any time during business hours. These inspections are necessary to ensure compliance with Metro Code, the franchise, administrative rules and performance standards.

Public comment report

Attachment 2 to Staff Report for Resolution No. 19-5025



The Senior Legal Counsel of Waste Management submitted this letter to Metro on August 30, 2019 Metro as part of the public comment period.



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Andrew M. Kenefick
Senior Legal Counsel
Admitted in Washington
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akenefick@wm.com

August 30, 2019

VIA E-MAIL ONLY

Metro Solid Waste Information, Compliance & Cleanup
600 NE Grand Avenue
Portland, OR 97232

SWICC@oregonmetro.gov

**RE: Transfer Station Franchise Renewal
Troutdale Transfer Station, 869 NW Eastwind Drive, Troutdale, OR**

Dear Metro:

As the owner and operator of the Troutdale Transfer Station ("TTS"), Waste Management of Oregon, Inc. ("WMO") is obviously very interested in the renewal of its franchise to continue operating TTS. While WMO very much appreciates Metro's willingness to renew the franchise agreement, WMO has a few suggestions and concerns. Our comments are below.

Comment 1. The franchise should not impose an obligation on TTS to accept source-separated food waste if Metro decides to amend the franchise.

In Section 3.9.2, Metro proposes to reserve for itself the right to amend the franchise to require TTS and other transfer stations to accept source-separated food waste. While WMO may agree to accept food waste in the future, WMO is not aware of Metro's authority to unilaterally impose an obligation on a transfer station to accept a specific waste stream. WMO recognizes that governments can often prohibit facilities from managing certain wastes streams; however, it would be surprising—and likely beyond its authority—for a government to require a franchisee to accept a specific waste stream that the business is not willing to accept.

Moreover, there may be legitimate health, safety, environmental, financial, and practical reasons why a transfer station would not willingly agree to accept source-separated food waste, even if Metro amended the franchise to require it. A facility's permits may not allow the transfer station to accept food wastes. Neighborhood or community opposition may make it difficult to do so. The design and configuration of the transfer station itself may make it impracticable to accept and manage food waste. There may not be enough room in the transfer station to handle food waste. And it might be financially unworkable to accept food waste.

Finally, Section 3.9.2 fails to provide any detail or information as to what the requirements would be if such an obligation were to be imposed.

While WMO understands and supports Metro's interest in better management and handling of food waste, WMO does not support Metro reserving to itself the unilateral right to impose the

August 30, 2019

requirement to accept food waste on transfer stations. Rather, Metro should work cooperatively with the transfer stations to determine whether accepting source-separated food waste makes sense for any particular transfer station.

Comment 2. Insofar as Metro is now characterizing the franchise as a permit rather than an “agreement”, the franchise should establish and define the rights of a franchise holder to appeal any Metro decisions made concerning the franchise, including enforcement, amendments, suspension, revocation, denial of approvals, etc.

Metro has stated that the franchise is intended to function be “more as a permit rather than an agreement.” If the franchise is in effect a permit to operate, then Metro should clarify and state what due process rights a franchise holder has to appeal any such “permit” decisions. Specifically, what right of appeal does a franchise holder have were Metro to decide unilaterally to amend or revoke the permit?

Comment 3. By replacing “COO” with “Metro” throughout, the franchise is ambiguous as to when something has been formally approved by Metro.

Apparently for the sake of simplifying and uniformity, the proposed franchise replaces almost all references to Metro’s Chief Operating Officer (COO) with “Metro”. While it may make sense to eliminate the requirement that the COO sign every approval, the change could create uncertainty and confusion as to what constitutes an actual “approval” from Metro. WMO recommends that the franchise clarify who or what positions in Metro are authorized to make approvals, such as waivers (§ 2.7), operating plan approvals (*e.g.*, §§3.8, 3.9, 4.4).

Comment 4. Metro should clarify its prohibition against mixing wastes in Section 4.4.

The proposed revisions include in Section 4.4 a prohibition against mixing any waste, unless approved by Metro. This section is vague and confusing. If read literally, it could prohibit the mixing of one load of residential waste with another load of residential waste. Obviously, this cannot be the intent of the revision. It is a fundamental aspect of operating a transfer station that loads of wastes collected in garbage trucks are dumped and transferred into larger containers, in which the wastes are obviously commingled – *i.e.*, mixed. Also, how does this prohibition address loads of wastes that arrive mixed? For example, residential solid waste typically includes both putrescible and non-putrescible waste – *i.e.*, putrescible wastes are already a mixture of wastes. Even putrescible waste consisting of mainly food waste might contain other non-food waste putrescible wastes. If these are already “mixed”, does the prohibition apply?

At a minimum, this provision must be revised to clarify that transfer stations cannot mix certain different waste **types**, and not imply that the transfer station cannot mix loads of wastes of the same type. But this would not be enough. This provision needs further revision to clarify its purpose. For example, does this provision prohibit mixing one load containing mostly putrescible non-food waste with another load containing mostly putrescible food waste? What about mixing of food waste and yard waste that are destined for the same composter? What purpose is served by prohibiting mixing processing residual with putrescible solid waste if both are destined for disposal into the same cell at a landfill?

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Comment 5. Some of the proposed changes allowing for future amendments to the franchise are too open-ended and vague.

WMO is concerned with proposed yet open-ended language in the franchise agreement that contemplates Metro amending the franchises in the future to achieve future goals. For example, Section 5.2 states, “Metro may amend this franchise and establish new requirements for the franchisee to achieve the goals and actions of the 2030 Regional Waste plan.” Likewise, Section 12.2 allow Metro to “amend, suspend, or revoke this franchise in whole or in part” While WMO understands the need to reserve the right to amend the franchise in the future, such authority cannot be open-ended and must make allowances for parties to appeal such changes. See Comment 2 above.

Comment 6. Rather than set different standards, the franchise should incorporate Oregon DEQ’s stormwater best management practices for minimizing stormwater exposure.

Several sections (§§ 3.3 & 3.6) of the franchise include requirements that materials be placed within “watertight covered containers.” This language is ambiguous in that it could mean that the covers must be watertight or that the containers must be watertight. Since the purpose of these provisions is to minimize exposure of waste materials to stormwater or snowmelt, the franchise should incorporate the stormwater “best management practices” (BMPs) from the Oregon DEQ 1200-Z stormwater permit. Specifically, WMO recommends the following language instead:

Minimize exposure of waste materials to rain, snow, snowmelt and runoff. To the extent technologically available and economically practicable and achievable in light of best industry practice, locate waste materials or containers indoors or protect them with storm-resistant covers if stormwater from affected areas may discharge to surface waters. Acceptable covers include, storage of bins or dumpsters under roofed areas and use of lids or temporary covers such as tarps.

See DEQ Permit No. 1200-Z (Aug. 1, 2017), Schedule A, §§ 1.a & 1.c.

Comment 7. As the proposed revisions do not as yet specify the amount of waste TTS will be authorized to accept, WMO should be allowed to comment or challenge its allocation in the future when the waste allocation is announced.

Section 4.1 of the franchise includes language setting TTS’s 2020 waste allocation, but does not specify the actual amount allocated. Insofar as it is not possible for WMO to comment on its allocation, WMO must reserve its right to comment on the proposed allocation once the allocation is known.

Comment 8. The franchise should not include reference to the “ban the box” law in Section 9.10.

While WMO does not dispute its obligation to comply with ORS 659A.360, WMO disagrees with inserting this requirement into the franchise. A franchise serves a specific purpose and is not intended to be a document that lists every local, state, and federal statute and regulation with which a franchisee must comply. What is the purpose of inserting this one requirement into the franchise when there are hundreds of other requirements that apply to WMO’s operations that are not included? Please delete Section 9.10.

Comment 9. The franchise cannot require WMO to list Metro as a certificate holder in Section 10.5.

If, as Metro has stated, the franchise is now viewed as a permit rather than an agreement, WMO is not aware of Metro’s authority to require WMO to name Metro as an insurance certificate holder

Public comment report

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under its insurance. If Metro has the legal authority for this requirement, WMO would appreciate the opportunity to review it.

Comment 10. Metro's right of inspection should be limited to "reasonable" times during business hours.

Section 13.3.1 states that the franchisee must allow Metro to have access to the TTS "at any time during business hours, with or without advanced notice." There is no mention of "reasonable" times. Yet, Section 13.3.4 then states that the franchisee must permit access "at all **reasonable** times during business hours, with or without notice." These two sections are inconsistent. Section 13.3.1 should be amended to insert "reasonable" into the access requirement.

* * *

Thank you for the opportunity to comment on the TTS franchise and for your attention to our comments. WMO looks forward to its continued role in managing solid waste and recyclables for Metro and its residents and businesses.

Sincerely,

A handwritten signature in cursive script that reads "Andrew M. Kenefick".

Handwritten signature

Andrew M. Kenefick

cc: Nicholas Godfrey – Waste Management