

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF GRANTING A)	ORDINANCE NO. 97-703
FRANCHISE TO K.B. RECYCLING INC.)	
SYSTEMS FOR OPERATING A SOLID)	Introduced by Mike Burton
WASTE PROCESSING AND RECOVERY)	Executive Officer
FACILITY)	

WHEREAS, Section 5.01.030 of the Metro Code requires a Metro franchise for any person to own and operate a facility for processing solid waste; and

WHEREAS, K.B. RECYCLING, INC. (KB) has applied for a non-exclusive franchise under which KB would operate a solid waste processing and recovery facility KB #1 at Clackamas County, Oregon; and

WHEREAS, KB has submitted a franchise application in compliance with Metro Code Section 5.01.060; and

WHEREAS, KB's Solid Waste Processing and Recovery Facility will provide recycling of dry mixed waste delivered by Affiliated Hauling Companies, Non-Affiliated Hauling Companies, Building Contractors and other Businesses, but not the general public; and

WHEREAS, Issuance of a franchise to KB is consistent with the policies set forth in the Regional Solid Waste Management Plan adopted November 1995 for removing recyclables from the mixed wastestream; and

WHEREAS, Metro Code Section 5.01.110 provides for the ability of Metro Council to grant variances pursuant to criteria contained therein; and

WHEREAS, KB has requested a variance from Metro rate setting requirements as detailed in the staff report to this ordinance; and

WHEREAS, KB has requested a variance from Metro Code Section 5.01.120(l) to allow it to retain ownership of its hauling companies and allow non-affiliated companies to use the Facility as detailed in the staff report to this ordinance;

and

WHEREAS KB has requested a variance from those portions of Metro Code sections 5.01.060(b)(6) and 5.01.180(e), requiring that the owner of a facility agree to allow Metro to place a new franchisee in the Facility, or force the sale of the Facility to a new franchisee, if the existing franchise is terminated; and

WHEREAS, based on information submitted by the franchise applicant, specified in the Staff Report or otherwise submitted, the Council has determined that it is appropriate to grant the variances requested; and

WHEREAS, KB will provide a surety bond in the amount of \$100,000 as determined by Metro staff to be appropriate; and

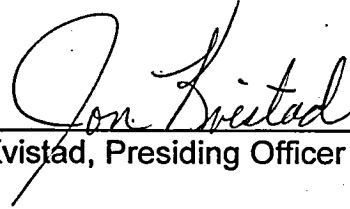
WHEREAS, the Executive Officer recommends that the Council grant the attached franchise to KB; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The Council authorizes the Executive Officer to enter into the attached franchise agreement within ten days of the effective date of this ordinance.
2. KB is granted a variance from rate setting under Metro Code Section 5.01.110.
3. KB is granted a variance from Metro Code section 5.01.120(l) to allow it to retain ownership of its hauling companies and allow non-affiliated companies to use the Facility.
4. KB is granted a variance from those portions of Metro Code sections 5.01.060(b)(6) and 5.01.180(e) requiring that the property owner agree to allow Metro to place a new franchisee in the Facility, if the existing franchise is vacated.

ADOPTED by the Metro Council this 26th day of June,

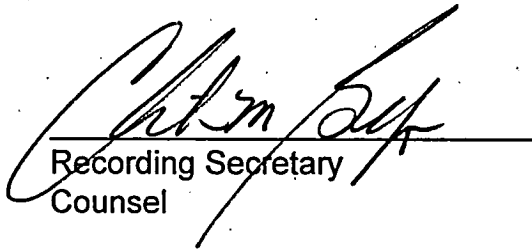
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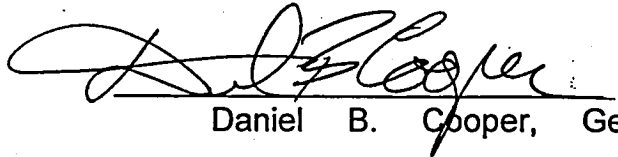
Jon Kvistad, Presiding Officer

ATTEST:

Approved as to Form:



Recording Secretary
Counsel



Daniel B. Cooper, General

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EXHIBIT A

SOLID WASTE FRANCHISE

issued by

METRO

600 NE Grand Avenue

Portland, Oregon 97232-2736

(503) 797-1700

FRANCHISE NUMBER: _____

DATE ISSUED: _____

AMENDMENT DATE: _____

EXPIRATION DATE: _____

ISSUED TO: _____ K.B. RECYCLING, Inc.

NAME OF FACILITY: _____ K.B. RECYCLING # 1

ADDRESS: _____ 8277 S.E. Deer Creek Lane

CITY, STATE, ZIP: _____ Milwaukie, Oregon 97222

LEGAL DESCRIPTION: _____ T2S, R2E Section 5 DA, Tax Lots 1700 and 1790 Willamette Meridian
_____ Section 5 Township 2S, Range 2E

NAME OF OPERATOR: _____ K.B. RECYCLING, Inc.

PERSON IN CHARGE: _____ Fred A. Kahut

ADDRESS: _____ Post Office Box 550.

CITY, STATE, ZIP: _____ Canby, Oregon 97013

TELEPHONE NUMBER: _____ (503) 226-3900

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FRANCHISE AGREEMENT

This Franchise is issued by Metro, a municipal corporation organized under ORS chapter 268 and the 1992 Metro Charter, referred to herein as "Metro," and to K.B. Recycling, Inc. an Oregon corporation organized as a "C" corporation and registered with the Secretary of State and referred to herein as "Franchisee."

In recognition of the promises made by Franchisee as specified herein, Metro issues this Franchise, subject to the following terms and conditions:

1. DEFINITIONS

The definitions in Metro Code Section 5.01.010 shall apply to this Franchise, as well as the following definitions. Defined terms are capitalized when used.

"Affiliated Hauling Companies" means hauling companies owned, either in whole or in part, or legally affiliated with, the Franchisee.

"Authorized Waste" or **"Authorized Wastes"** has the meaning set forth in Section 5.2 of this Franchise.

"Battery" means a portable container of cells for supplying electricity. This term includes, but is not limited to, lead-acid car batteries, as well as dry cell batteries such as nickel cadmium, alkaline, and carbon zinc.

"Building Contractor" means any business involved in any physical aspect of the construction and/or demolition of buildings that results in the generation of Construction and Demolition Wastes.

"Business" means a commercial enterprise or establishment licensed to do business in the state of Oregon.

"Clean Fill" means Inert material consisting of soil, rock, concrete, brick, building block, tile or asphalt paving, which do not contain contaminants which could adversely impact the waters of the State or public health. This term does not include Putrescible Wastes, Construction and Demolition Wastes or Industrial Solid Wastes.

"Commercial Solid Waste" or **"Commercial Waste"** means Solid Waste generated by stores, offices, including manufacturing and industry offices, restaurants, warehouses, schools, colleges, universities, hospitals, and other non-manufacturing entities, but does not include Solid Waste from manufacturing activities. Solid Waste from business, manufacturing or Processing activities in residential dwellings is also not included.

"Commingled Recyclables" means Source Separated Recyclables that have not been sorted by the generator (or have been only partially sorted) into individual material categories (e.g., cardboard, newsprint, ferrous metal) according to their physical characteristics.

"Conditionally Exempt Generator Waste" has the meaning specified in 40 C.F.R. § 261.

"Construction and Demolition Waste" means Solid Waste resulting from the construction, repair, or demolition of buildings, roads and other structures, and debris from the clearing of land, but does not include clean fill when separated from other Construction and Demolition Wastes and used as fill materials or otherwise land disposed. Such waste typically consists of materials including concrete, bricks, bituminous concrete, asphalt paving, untreated or chemically treated wood, glass, masonry, roofing, siding, plaster; and soils, rock, stumps, boulders, brush and other similar material. This term does not include Industrial Solid Waste, Residential Solid Waste or Commercial Solid Waste.

"Contaminated Soils" means soils resulting from the clean-up of a spill that are not Hazardous Waste.

“Contaminated Soils Reloading” means the activity of consolidating Contaminated Soils for transport to a Disposal Site, Processing Facility or Resource Recovery Facility.

“DEQ” means the Oregon Department of Environmental Quality, which includes the Oregon Environmental Quality Commission.

“Disposal Rate” has the meaning set forth in Section 7.5 of this Franchise.

“Disposal Site” has the meaning specified in ORS 459.005.

“Dry, Non-Putrescible, Mixed Solid Waste” means Commercial, Residential or Industrial Solid Waste, that does not contain food wastes or other Putrescible Wastes. Dry, Non-Putrescible Mixed Solid Waste includes only waste that does not require disposal at a municipal solid waste landfill (also referred to as a “general purpose landfill”), as that term is defined by the Oregon Administrative Rules. This category of waste excludes Source Separated Recyclables.

“Facility” means the site where one or more activities that the Franchisee is authorized to conduct occur.

“Fiber Based Fuel” means fuel derived through the Processing of Authorized Solid Waste.

“Fiber Based Fuel Processing” means the activity of mechanically Processing Authorized Solid Wastes for use as a fuel.

“Friable Asbestos” means the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, actinolite and tremolite, but only to the extent that such materials, when dry and subjected to hand-pressure, can be crumbled, pulverized or reduced to powder.

“General Purpose Landfill” means any land disposal facility that is required by law, regulation, or permit, to utilize a liner and leachate collection system equivalent to or more stringent than that required for municipal solid waste landfills under Subtitle D of the Resource Conservation and Recovery Act and is authorized by law to accept more than incidental quantities of Putrescible Waste.

“Hazardous Waste” has the meaning specified in ORS 466.005.

“Household Hazardous Waste” has the meaning specified in Metro Code Section 5.02.015(f).

“Industrial Solid Waste” or **“Industrial Waste”** means:

- (1) Solid Waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under ORS chapters 465 and 466 or under Subtitle C of the Federal Resource Conservation and Recovery Act. Such waste may include, but is not limited to, the following wastes or wastes resulting from the following processes:
 - (a) electric power generation;
 - (b) fertilizer/agricultural chemicals;
 - (c) food and related products and by-products;
 - (d) inorganic chemicals;
 - (e) iron and steel manufacturing;
 - (f) leather and leather products;
 - (g) nonferrous metals manufacturing/foundries;
 - (h) organic chemicals;
 - (i) plastics and resins manufacturing;
 - (j) pulp and paper industry;
 - (k) rubber and miscellaneous plastic products;
 - (l) stone, glass, clay and concrete products;

- (m) textile manufacturing;
- (n) transportation equipment;
- (o) water treatment;
- (p) timber products manufacturing;

(2) This term does not include :

- (a) Putrescible Waste, or office or lunch room waste from manufacturing or industrial facilities;
- (b) Construction and Demolition Waste
- (c) Contaminated Soils

“Inert” means containing only constituents that are biologically and chemically inactive and that, when exposed to biodegradation and/or leaching, will not adversely impact the waters of the state or public health.

“Inert Landfill” means a place for disposal of Inert Materials, other than a General Purpose Landfill or Limited Purpose Landfill.

“Infectious Medical Waste” or **“Infectious Waste”** has the meaning specified in ORS 459.386(2).

“Limited Purpose Landfill” means a landfill that is not a General Purpose Landfill but that is authorized by DEQ to accept Solid Waste.

“Metro Regional User Fee” has the meaning specified in Metro Code Section 5.02.015(e).

“Prohibited Wastes” has the meaning set forth in Section 5.3 of this Franchise.

“Putrescible Waste” means Solid Waste containing organic material that can be rapidly decomposed by microorganisms, and which may give rise to foul smelling, offensive products during such decomposition or which is capable of attracting or providing food for birds and potential disease vectors such as rodents and flies.

“Recoverable Material” means material that still has or retains useful physical, chemical, or biological properties after serving its original purpose(s) or function(s), and that can be reused or recycled for the same or other purpose(s).

“Recovered Material” means Recoverable Material that has been separated from Solid Waste at the Facility.

“Recovery Rate” has the meaning set forth in Section 7.5 of this Franchise.

“Recovery Rate Calculation Period” means the three-month period preceding each month of operations over which the Recovery Rate will be applied.

“Residential Solid Waste” means the garbage, rubbish, trash, and other Solid Wastes generated by the normal activities of households, including but not limited to, food wastes, ashes, and bulky wastes, but does not include Construction and Demolition Waste. This definition applies to multifamily structures of any size.

“Residue” means Solid Waste, resulting from Solid Waste Materials Recovery, that is transported from a franchised Solid Waste Processing and Recovery Facility to a Metro Designated Facility or under authority of a non-system license issued by Metro as specified in Metro Code Chapter 5.05.

“Sludge” means any solid or semi-Solid Waste and associated supernatant generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility or any other such waste having similar characteristics and effects.

“Solid Waste Materials Recovery” means the activity of manually or mechanically Processing Solid Wastes that separates materials for purposes of recycling or recovery.

“Solid Waste Processing and Recovery Facility” means a facility franchised by Metro as a Processing and/or Resource Recovery Facility and authorized to receive specific categories of Solid Waste and to conduct one or more of the following activities: (1) Source-Separated Recyclables Processing, (2) Solid Waste Material Recovery, (3) Yard Debris Reloading, (4) Fiber-Based Fuel Processing, and (5) Contaminated Soils Reloading.

“Source Separate” or “Source Separating” or “Source Separation” means

- (1) The setting aside of recyclable materials at their point of generation by the generator; or
- (2) That the person who last uses recyclable material separates the recyclable material from Solid Waste.

“Source-Separated Recyclables” means material that has been Source-Separated for the purpose of recycling, recovery, or reuse. This term includes recyclables that are Source-Separated by material type (i.e., source-sorted) and recyclables that are mixed together in one container (i.e., commingled).

“Source-Separated Recyclables Processing” means the activity of reloading, Processing or otherwise preparing Source-Separated Materials for transport to third parties for reuse or resale.

“Special Waste” has the meaning specified in Metro Code Section 5.02.015(s).

“Unacceptable Waste Incident Tracking Form” means the form attached to this Franchise as Attachment D.

“Yard Debris Reloading” means the activity of consolidating yard debris -- with or without compaction, chipping or grinding -- for transport to a Transfer Station, Processing Facility or Resource Recovery Facility. Reloading of yard debris specifically excludes Composting.

2. TERM OF FRANCHISE

- 2.1 This Franchise is issued for a term of five years from the date of execution by the Executive Officer and following approval by the Metro Council.

3. LOCATION OF FACILITY

The franchised Facility is located at 8277 S.E. Deer Creek Lane, Milwaukie, Oregon 97222. The legal description of the Facility's location appears on the front of this agreement.

4. OPERATOR AND OWNER OF FACILITY AND PROPERTY

- 4.1 The owner of the Facility is K.B. Recycling, Inc. The owners of the property upon which the Facility is located are Fred Kahut and Jerald Kahut. Franchisee warrants that it has obtained the owner's consent to operate the Facility as specified in the Franchise.
- 4.2 The operator of the Facility is Franchisee. Franchisee may contract with another person or entity to operate the Facility only upon 90 days prior written notice to Metro and the written approval of the Executive Officer.

5. AUTHORIZED AND PROHIBITED ACTIVITIES AND WASTES

5.1 Subject to the following conditions, Franchisee is authorized to operate and maintain a Solid Waste Processing and Recovery Facility and to conduct the following activities: (a) Source-Separated Recyclables Processing; and (b) Solid Waste Materials Recovery.

5.1.1 The Facility shall accept only Authorized Wastes. Franchisee are prohibited from receiving, Processing or disposing of any Solid Waste not authorized in this Franchise. Franchisee shall not knowingly accept loads of Solid Waste containing only incidental amounts of Recoverable Material or loads which Franchisee intends to landfill without first Processing for Recoverable Material.

5.1.2 This Franchise limits the amount and types of Authorized Waste that may be received each year at the Facility as listed in Section 5.2.1 of this Franchise. Upon written request from the Franchisee, the Executive Officer may increase the amount and add types of waste Franchisee is authorized to receive for activities authorized at the Facility. Franchisee may receive the designated amount of Solid Waste consistent with (1) applicable law, (2) the terms of this Franchise, and (3) any other applicable permits and licenses obtained from governmental or regulatory entities.

5.1.3 Franchisee may accept Authorized Waste for Solid Waste Materials Recovery from its own Affiliated Hauling Companies, Non-Affiliated Hauling Companies, Building Contractors and other Businesses, but not from the general public. Franchisee may accept Authorized Waste for Source-Separated Recyclables Processing from its own Affiliated Hauling Companies, Non-Affiliated Hauling Companies, Building Contractors and other Businesses, and the general public.

5.2 Authorized Activities, Waste Types and Waste Quantities

5.2.1 Franchisee is authorized to conduct the following activities and receive the following types and quantities of wastes:

5.2.1.1 Solid Waste Materials Processing of the following categories of Solid Waste as specified in Attachment A.

5.2.1.1.a Dry, Non-Putrescible, Mixed Commercial and Industrial Solid Waste.

5.2.1.1.b Construction and Demolition Wastes, excluding Source Separated Recyclables.

5.2.1.2 Source-Separated Recyclables Processing of the following categories of Solid Waste with no limit on the tonnage allowed:

5.2.1.2.b Source-Separated Recyclables excluding Yard Debris and used oil except as specified under 5.2.1.2.b.

5.2.1.2.a Used motor oil only if such motor oil is collected as a Source-Separated material in residential curbside programs by commercial hauling companies.

5.3 Prohibited Wastes

5.3.1 Franchisee shall not knowingly accept or retain any material amounts of the following types of waste, unless specifically authorized in Sections 5.3.2 or 7.3.2 of this Franchise

5.3.1.1 Materials contaminated with or containing Friable Asbestos;

5.3.1.2 Batteries;

5.3.1.3 Commercial or Industrial Waste loads that contain Putrescible Waste;

- 5.3.1.4 Residential Solid Waste;
 - 5.3.1.5 Liquid waste;
 - 5.3.1.6 Oil, unless authorized elsewhere within this Franchise;
 - 5.3.1.7 Putrescible Waste;
 - 5.3.1.8 Sludge;
 - 5.3.1.9 Tires;
 - 5.3.1.10 Vehicles;
 - 5.3.1.11 Infectious Waste;
 - 5.3.1.12 Special Waste or any sub-stream of Special Waste unless authorized elsewhere within this Franchise;
 - 5.3.1.13 Hazardous Waste;
 - 5.3.1.14 Conditionally Exempt Generator Waste;
 - 5.3.1.15 Household Hazardous Waste;
- 5.3.2 Prohibited Wastes received at the Facility shall be: (1) isolated from other materials at the Facility or (2) removed from the Facility. Franchisee shall transport any Prohibited Waste other than Hazardous Waste to a Disposal Site authorized to accept such waste, unless an alternate Disposal Site or method has been approved by DEQ. Non-hazardous Prohibited Wastes shall be managed pursuant to Section 7.3.2.3 of this Franchise. In the event that Franchisee determines or suspects that discovered waste constitutes Hazardous Waste, Franchisee shall immediately initiate procedures to identify the waste and the generator (see Section 7.3.2 herein) and shall, within 48 hours of receipt of the waste initiate procedures to remove the waste. Hazardous Waste must be removed from the Facility within 90 days after receipt unless an alternate disposal method and additional storage period has been approved by DEQ. Franchisee shall implement and conduct temporary storage and transportation procedures in accordance with DEQ rules. Franchisee shall record receipt of Prohibited Wastes on Metro's Unacceptable Waste Incident Tracking Form (Attached as Attachment D).

6. MINIMUM REPORTING REQUIREMENTS

- 6.1 For purposes of this section, materials authorized to be received at the Facility under Section 5. shall be referred to through the following categories:

Incoming Type A: Loads of Solid Waste received by the Facility as Source-Separated Recyclables.

Incoming Type B: Loads of Solid Waste received by the Facility and which the Facility is authorized to conduct Solid Waste Materials Recovery upon.

Outgoing Type D: Recovered material from Source-Separated Recyclables Processing and Solid Waste Materials Recovery -- excluding Outgoing Type E Material -- placed in inventory or marketed by the Franchisee as a useful commodity.

Outgoing Type E: Clean Fill recovered at the Facility and delivered to a Clean Fill Disposal Site.

Outgoing Type F: Material transported from the Facility to a General Purpose or Limited Purpose Landfill.

6.2 Franchisee shall collect and transmit to Metro, according to the timetable in Section 6.3, accurate records of the information described below.

6.2.2 For Incoming Type B and Outgoing Types E and F materials:

- 6.2.2.1 Transaction number designating an individual incoming or outgoing load.
- 6.2.2.2 Incoming load account number. Upon execution of this Franchise, and semi-annually thereafter, Franchisee shall provide to Metro a listing that cross-references this account number with the customer name, address, and telephone number.
- 6.2.2.3 Date the load was received at or transported from the Facility.
- 6.2.2.4 Time the load was received at or transported from the Facility.
- 6.2.2.5 Material type described according to the preponderant composition of material in the load (e.g. "waste paper", "construction \ demolition", etc.). Provide, upon execution of this Franchise and semi-annually thereafter, a code and a cross-referenced listing of codes to these material types.
- 6.2.2.6 Designation of the point of origin of the load and, in the event the load originated outside the Metro boundary, designation of the city or county of origin.
- 6.2.2.7 Net weight of the load.
- 6.2.2.8 The dollar amount Franchisee charged or paid the hauler for the incoming load.
- 6.2.2.9 Receipt of any materials encompassed by Section 5.3.2 of this Franchise, utilizing Metro's Unacceptable Waste Incident Tracking Form (Attached as Attachment D).

6.2.3 For Outgoing Type D materials

- 6.2.3.1 Tons leaving the facility- quarterly total.
- 6.2.3.2 Material type described according to the preponderant composition of material in the load (e.g. "cardboard", "metal", etc.). Provide, upon execution of this Franchise and semi-annually thereafter, a code and a cross-referenced listing of codes to these material types.

6.3 Records required under Section 6.2.2 shall be reported to Metro on 3.5" computer diskette no later than fifteen (15) days following the end of each month, in the format prescribed by Metro. All loads required to be weighed under Section 6.2.2. shall be weighed on the same scale, and the results shall be encoded in the same transaction set using the same software. All loads required to be weighed under Section 6.2.3 shall be weighed on a scale certified by the State of Oregon. Transaction data shall be in electronic form compatible with Metro's data processing equipment. Quarterly reports required under Section 6.2.3 shall be provided on the form in a format prescribed by Metro. A cover letter shall accompany the data which certifies the accuracy of the data and is signed by an authorized representative of Franchisee.

6.4 The Franchisee shall participate in an annual review with Metro of the Facility's performance. The review will include:

6.4.1 The Facility's performance in accomplishing waste reduction goals consistent with the adopted Regional Solid Waste Management Plan. This review shall include, without limitation, whether the Facility's operation is consistent with both local government and private sector efforts to expand source separation recycling programs for commercial and industrial generators and at construction and demolition sites;

6.4.2 Receipt or release of Hazardous Waste or Infectious Waste at the Facility; nuisance complaints as recorded in the log required under Section 7.4.1.2; changes to site equipment, hours of operation and/or staffing; and other significant changes in the Facility's operations that occurred during the previous year; and

6.4.3 Any modifications under Section 18 of this Franchise.

Within one year after the Facility begins operations, and each year thereafter, Metro will contact Franchisee to schedule the annual review meeting. Metro will provide at least three business weeks advance notice of this meeting. At least one business week prior to this meeting, Franchisee shall submit to the Franchise Administrator a summary, in letter format, addressing the above-listed topics.

6.5 Franchisee shall provide the Metro Regional Environmental Management Department copies of all correspondence, exhibits or documents submitted to the DEQ relating to the terms or conditions of the DEQ solid waste permit or this Franchise, within two business days of providing such information to DEQ. In addition, Franchisee shall send to Metro, upon receipt, copies of any notice of non-compliance, citation, or enforcement order received from any local, state or federal entity with jurisdiction over the Facility.

6.6 Authorized representatives of Metro shall be permitted to inspect information from which all required reports are derived during normal working hours or at other reasonable times with 24-hour notice. Metro's right to inspect shall include the right to review, at an office of Franchisee located in the Portland metropolitan area, records, receipts, books, maps, plans, and other like materials of the Franchisee that are directly related to the Facility's operation.

6.7 Fees and charges shall be levied and collected on the basis of tons of waste received. Either a mechanical or automatic scale approved by the National Bureau of Standards and the State of Oregon may be used for weighing waste.

6.8 Where a fee or charge is levied and collected on an accounts receivable basis, pre-numbered tickets shall be used in numerical sequence. The numbers of the tickets shall be accounted for daily and any voided or canceled tickets shall be retained for three years. The Executive Officer may approve use of an equivalent accounting method.

6.9 Any periodic modification by Metro of the reporting forms themselves shall not constitute any modification of the terms of Section 6.2 of this Franchise, nor shall Metro include within the reporting forms a request for data not otherwise encompassed within Section 6.2.

7. OPERATIONAL REQUIREMENTS

7.1 General Requirements

- 7.1.1 The Franchisee shall provide an operating staff which is qualified to perform the functions required by this Franchise and to otherwise ensure compliance with the conditions of this Franchise.
- 7.1.2 A copy of this Franchise shall be displayed on the Facility's premises, and in a location where it can be readily referenced by Facility personnel. Additionally, signs shall be erected at a location visible to all users of the Facility before unloading at the Facility, and in conformity with any local government signage regulations. These signs shall be easily and readily visible, legible, and shall contain at least the following information:
 - 7.1.2.1 Name of the Facility;
 - 7.1.2.2 Address of the Facility;
 - 7.1.2.3 Emergency telephone number for the Facility;
 - 7.1.2.4 Operational hours during which the Facility shall be open for the receipt of authorized waste;
 - 7.1.2.5 Rates and fees
 - 7.1.2.6 Metro's name and telephone number; and
 - 7.1.2.7 A list of all Authorized and Prohibited Wastes under this Franchise.

7.2 General Operating and Service Requirements

- 7.2.1 If Franchisee contemplates or proposes to close the Facility for 120 days or more, or proposes to close the Facility permanently, Franchisee shall provide Metro with written notice, at least 90 days prior to closure, of the proposed closure schedule and procedures.
- 7.2.2 If Franchisee contemplates or proposes a closure of the Facility for more than two business days but less than 120 days, Franchisee shall notify Metro and local government Solid Waste authorities of the closure and its expected duration at least 24 hours before the closure.
- 7.2.3 If any significant occurrence, including but not limited to equipment malfunctions, or fire, results in a violation of any conditions of this Franchise or of the Metro Code, the Franchisee shall:
 - 7.2.3.1 Immediately act to correct the unauthorized condition or operation;
 - 7.2.3.2 Immediately notify Metro; and
 - 7.2.3.3 Prepare, and submit to Metro within 10 days, a report describing the Franchise or Metro Code violation.
- 7.2.4 The Franchisee shall establish and follow procedures to give reasonable notice and justification prior to refusing service to any customer of the Facility authorized under this Franchise. Copies of notification and procedures for such action will be retained on file for three years.
- 7.2.5 Franchisee shall not, by act or omission, unlawfully discriminate against any person. Rates and disposal classifications established by Franchisee shall be applied reasonably and in a non-discriminatory manner.

- 7.2.6 Franchisee shall provide space and facilities for deposit of source-separated recyclable materials for members of the general public using the facility. Metro review and approval of plans and operating procedures for these services shall be conducted under provisions of Section 7.3 of this Franchise.

7.3 Operating Procedures

- 7.3.1 Unless otherwise allowed by this Franchise, all Processing of wastes shall occur inside Facility buildings. Storage may occur outside, in an orderly manner, as specified in the Facility's operating procedures.
- 7.3.2 Franchisee shall establish and follow procedures for accepting, managing and Processing loads of Solid Waste received at the Facility. These procedures shall demonstrate compliance with the Franchise, and shall be submitted to Metro in writing for review and approval. For new facilities, operating procedures shall be submitted prior to any waste being accepted. For existing facilities, operating procedures shall be submitted along with other required application materials. Franchisee may, from time to time, modify such procedures. All proposed modifications to Facility plans and procedures shall be submitted to the Metro Regional Environmental Management Department for review and approval. The Executive Officer shall have 10 business days from receipt of proposed modifications to object to such modifications. If the Executive Officer does not object, such modifications shall be considered approved following the 10-day period. Franchisee may implement proposed modifications to Facility plans and procedures on a conditional basis pending Metro review and notice from Metro that such changes are not acceptable. The procedures shall include at least the following:
- 7.3.2.1 Methods of notifying generators not to place Putrescible Wastes, Hazardous Wastes, or other Prohibited Wastes in drop boxes or other collection containers destined for the Facility;
 - 7.3.2.2 Methods of inspecting incoming loads for the presence of Prohibited Waste;
 - 7.3.2.3 Methods for managing and transporting for disposal at an authorized Disposal Site each of the Prohibited Wastes listed in Section 5 if they are discovered at the Facility; and
 - 7.3.2.4 Objective criteria and standards for accepting or rejecting loads.
 - 7.3.2.5 Methods (that may include rate disincentives) for discouraging Facility users from delivering Solid Waste that is not transported in compliance with Sections 7.3.6 and 7.3.9;
 - 7.3.2.6 Methods for addressing all other operating requirements of Section 7.
- 7.3.3 All Authorized Solid Wastes received at the Facility must, within two business days from receipt, be either (1) Processed or appropriately stored or (2) properly disposed.
- 7.3.4 Upon discovery, all Prohibited Wastes shall be removed or managed in accordance with Section 7.3.2.3 of this Franchise.
- 7.3.5 Sorting and Processing areas shall be cleaned on a regular basis, in compliance with plans and procedures required under Section 7.3.2.
- 7.3.6 All vehicles and devices transferring or transporting Solid Waste from the Facility shall be constructed, maintained, and operated to prevent leaking, spilling, or blowing of Solid Waste on-site or while in transit.

- 7.3.7 Franchisee shall not mix any Source-Separated Recyclable materials brought to the Facility with any other Solid Wastes. Materials recovered at the Facility may be combined with Source-Separated Recyclable Materials for Processing and shipment to markets.
- 7.3.8 The Franchisee shall reuse or recycle all uncontaminated Source-Separated Recyclable Materials brought to the Facility.
- 7.3.9 Franchisee shall take reasonable steps to notify and remind haulers that all loaded trucks coming to or leaving the Facility must be covered to prevent any material from blowing off the load during transit.
- 7.3.10 All recovered materials and processing residuals at the Facility must be stored in bales, drop boxes or otherwise suitably contained. Material storage areas must be maintained in an orderly manner and kept free of litter. Stored materials shall be removed at sufficient frequency to avoid creating nuisance conditions or safety hazards.
- 7.3.11 Contaminated water and sanitary sewage generated on-site shall be disposed of in a manner complying with local, state and federal laws and regulations..
- 7.3.12 Public access to the Facility shall be controlled as necessary to prevent- unauthorized entry and dumping.

7.4 Nuisance Prevention and Response Requirements

- 7.4.1 Franchisee shall respond to all citizen complaints on environmental issues (including, but not limited to, blowing debris, fugitive dust or odors, noise, traffic, and vectors). If Franchise receives a complaint, Franchisee shall:
 - 7.4.1.1 Attempt to respond to that complaint within one business day, or sooner as circumstances may require, and retain documentation of unsuccessful attempts; and
 - 7.4.1.2 Log all such complaints by name, date, time and nature of complaint. Each log entry shall be retained for one year.
- 7.4.2 To control blowing or airborne debris, Franchisee shall:
 - 7.4.2.1 Keep all areas within the site and all vehicle access roads within a 1/4 mile of the site free of litter and debris;
 - 7.4.2.2 Patrol the Facility and all vehicle access roads within a 1/4 mile of the site daily;
- 7.4.3 The Franchisee shall manage the Facility in a manner which controls the creation of excessive odor, dust and noise. If excessive odor, dust or noise becomes apparent, Franchisee shall initiate and implement supplemental control measures and bear the costs thereof.
- 7.4.4 With respect to vector control, the Franchisee shall manage the Facility in a manner that is not conducive to infestation of rodents or insects. If rodent or insect activity becomes apparent, Franchisee shall initiate and implement supplemental vector control, and bear all the costs thereof.
- 7.4.5 The Franchisee shall operate and maintain the Facility to prevent contact of Solid Wastes with stormwater runoff and precipitation.

7.5 Recovery Requirements

- 7.5.1 Franchisee shall attain and maintain a Recovery Rate of 45 percent for all Incoming Type B Material (as defined in Section 6.1.1) entering the Facility. If Franchisee's Recovery Rate is

between 35 percent and 45 percent, Franchisee shall pay an administrative fee, as set forth in Attachment C, incorporated by this reference as though set forth in full.

- 7.5.1.1 The Recovery Rate shall be calculated each month based upon the Recovery Rate Calculation Period. For purposes of this Franchise, the Recovery Rate expressed as a percentage amount shall be equal to one hundred minus the Disposal Rate. The Disposal Rate expressed as a percentage amount shall be the ratio of Type F Material to Type B material. A diagram illustrating the formula for computing the Recovery Rate is set forth as Attachment B.
- 7.5.1.2 Calculation of the Recovery Rate under Section 13.1 shall begin 120 days after commencement of operations at the Facility and enforcement of the Recovery Rate shall begin 210 days after commencement of operations at the Facility. For purposes of this section, operations shall be deemed to have commenced at the Facility on the date on which the first load of Type B material (as defined in Section 6.1.1) is delivered to the Facility.
- 7.5.1.3 Except as specified in Section 7.5.1.2, the recovery rate shall not be less than 35%. Failure to achieve this minimum recovery rate shall result in the issuance of a notice of non-compliance per Section 13.1 of this Franchise.

8. ANNUAL FRANCHISE FEES

Franchisee shall pay an annual franchise fee, as established under Metro Code Section 5.03.030. The fee shall be delivered to Metro within 30 days of the effective date of this Franchise and each year thereafter. Metro reserves the right to change its franchise fees at any time, by action of the Metro Council, to reflect franchise system enforcement and oversight costs.

9. INSURANCE

- 9.1 Franchisee shall purchase and maintain the following types of insurance, insuring Franchisee, its employees, and agents:
 - 9.1.1 Broad form comprehensive general liability insurance covering personal injury, property damage, and personal injury with automatic coverage for premises, operations, and product liability. The policy must be endorsed with contractual liability coverage; and
 - 9.1.2 Automobile bodily injury and property damage liability insurance.
- 9.2 Insurance coverage shall be a minimum of \$500,000 per occurrence, \$100,000 per person, and \$50,000 property damage. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000.
- 9.3 Metro, its elected officials, departments, employees, and agents shall be named as Additional Insureds. Notice of any material change or policy cancellation shall be provided to Metro 30 days prior to the change or cancellation.
- 9.4 Franchisee, its contractors, if any, and all employers working under this Franchise, are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Franchisee shall provide Metro with certification of Workers' Compensation insurance including employer's liability.

10. INDEMNIFICATION

Franchisee shall indemnify and hold METRO, its agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with Franchisee's performance under this Franchise, including patent infringement and any claims or disputes involving subcontractors.

11. SURETY BOND/CONDITIONAL LIEN

Franchisee shall provide a surety bond or letter of credit in the amount of One Hundred Thousand Dollars (\$100,000), in a form acceptable to Metro, or at its option may provide a conditional lien on the franchised property in a form satisfactory to Metro.

12. COMPLIANCE WITH LAW

Franchisee shall fully comply with all federal, state, regional and local laws, rules, regulations, ordinances, orders and permits pertaining in any manner to this Franchise, including all applicable Metro Code provisions whether or not those provisions have been specifically mentioned or cited herein. All conditions imposed on the operation of the Facility by federal, state or local governments or agencies having jurisdiction over the Facility are part of this Franchise by reference as if specifically set forth herein. Such conditions and permits include those attached as exhibits to this Franchise, as well as any existing at the time of issuance of this Franchise and not attached, and permits or conditions issued or modified during the term of this Franchise.

13. METRO ENFORCEMENT AUTHORITY

13.1 Enforcement of this Franchise shall be as specified in the Metro Code. In addition to the enforcement provisions of the Code, failure to achieve recovery rates specified in Section 7.5 of this Franchise shall be enforced as follows:

Recovery Rate	Violation	Penalty or Fee
Any three month average recovery rate below 45%	No violation	Pay administrative fee specified in Section 7.5
Failure to reach average 35% rate for three month period ("initial failure")	First violation	Increased monitoring and discussions with Franchisee
Failure to meet 35% rate for first successive calendar month following initial failure	Second violation	\$500 fine for each violation. Increased monitoring and discussions with Franchisee
Failure to meet 35% rate for second successive calendar month following initial failure	Third violation	
Failure to meet 35% rate for third successive calendar month following initial failure	Fourth violation	
Failure to meet 35% rate for any six individual calendar months in a 12-month period following initial failure.		\$500 fine for each violation plus suspension, modification or revocation of Franchise.
Failure to meet 25% rate for any two calendar months in a six-month period.		

- 13.2 Authorized representatives of Metro shall be permitted access to the premises of the Facility at all reasonable times for the purpose of making inspections and carrying out other necessary functions related to this Franchise. Access to inspect is authorized:
- (a) During all working hours;
 - (b) At other reasonable times with 24 hours notice;
 - (c) At any time without notice when, in the opinion of the Metro Regional Environmental Management Department Director, such notice would defeat the purpose of the entry. In such instance, the Director shall provide a written statement of the purpose for the entry.
- 13.3 The power and right to regulate, in the public interest, the exercise of the privileges granted by this Franchise shall at all times be vested in Metro. Metro reserves the right to establish or amend rules, regulations, fees, or standards regarding matters within Metro's authority, and to enforce all such legal requirements against Franchisee.
- 13.4 At a minimum, Metro may exercise the following oversight rights in the course of administering this Franchise: (1) perform random on-site inspections; (2) conduct an annual franchise audit to assess compliance with operating requirements in this Franchise; (3) conduct an annual audit of Franchisee's inventory and billing records; (4) analyze monthly transaction data; (5) invoice Franchisee for any fees or penalties arising under this Franchise; (6) perform noncompliance investigations; (7) inspect and visually characterize incoming and outgoing loads for the purpose of assessing Prohibited Waste and/or Recoverable Material received and disposed; (8) maintain regular contact with the Franchisee; and (9) review and approve Franchisee's operating plan and amendments to the plan. In all instances Metro shall take reasonable steps to minimize disruptions to operations at the Facility.
- 13.5 Nothing in this Franchise shall be construed to limit, restrict, curtail, or abrogate any enforcement provision contained in the Metro Code, nor shall this Franchise be construed or interpreted so as to limit or preclude Metro from adopting ordinances that regulate the health, safety, or welfare of any individual or group of individuals within its jurisdiction, notwithstanding any incidental impact that such ordinances may have upon the terms of this Franchise or the Franchisee's operation of the Facility.

14. DISPOSAL RATES AND FEES

- 14.1 Franchisee is exempted from collecting and remitting Metro Fees on waste received at the Facility in conformance with this Franchise.
- 14.2 Franchisee may dispose of Residue generated by Processing at the Facility only at a Metro designated facility or under authority of a non-system license issued by Metro as specified in Metro Code Chapter 5.05.
- 14.3 Franchisee shall establish uniform rates to be charged for all loads accepted at the Facility. To minimize potential customer conflicts regarding the recoverability of loads, the Franchisee shall minimize the number of rate categories and shall not change the rates during an operating day. Franchisee shall establish objective criteria and standards for acceptance of loads.

15. GENERAL CONDITIONS

- 15.1 Franchisee shall be responsible for ensuring that its contractors and agents operate in complete compliance with the terms and conditions of this Franchise.
- 15.2 Neither the parent company, if any, of the Franchisee nor its subsidiaries nor any other Solid Waste facilities under its control shall knowingly accept Metro area Solid Waste at their non-designated facilities, if any, except as authorized by a non-system license issued by Metro.
- 15.3 The granting of this Franchise shall not vest any right or privilege in the Franchisee to receive specific quantities of Solid Waste during the term of the Franchise.
- 15.4 Neither this Franchise nor the Franchisee may be conveyed, transferred or assigned without the prior written approval of Metro.
- 15.5 To be effective, a waiver of any term or condition of this Franchise must be in writing, signed by the Executive Officer. Waiver of a term or condition of this Franchise shall not waive nor prejudice Metro's right otherwise to require performance of the same term or condition or any other term or condition.
- 15.6 This Franchise shall be construed, applied, and enforced in accordance with the laws of the State of Oregon and all pertinent provisions of the Metro Code.
- 15.7 If any provision of the Franchise shall be found invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this Franchise shall not be affected.

16. NOTICES

- 16.1 All notices required to be given to the Franchisee under this Franchise shall be delivered to:

Fred A. Kahut
Canby, Oregon 97013
(503) 226-3900
Post Office Box 550

- 16.2 All notices required to be given to Metro under this Franchise shall be delivered to:

Metro Franchise Administrator
Regional Environmental Management Department
Metro
600 N.E. Grand Avenue
Portland, Oregon 97232-2736

- 16.3 Notices shall be in writing, effective when delivered, or if mailed, effective on the second day after mailed, postage prepaid, to the address for the party stated in this Franchise, or to such other address as a party may specify by notice to the other.

17. REVOCATION

Suspension, modification or revocation of this Franchise shall be as specified herein and in the Metro Code. (See especially Sections 12 and 13 and Metro Code Chapter 5.01.)

18. MODIFICATION

- 18.1 At any time during the life of this Franchise, either the Executive Officer or the Franchisee may propose amendments or modifications to this Franchise. Except as specified in the Metro Code and Section 5.1.2 of this Franchise, no amendment or modification shall be effective unless it is in writing, approved by the Metro Council, and executed by the Franchisee and the Executive Officer.
- 18.2 The Executive Officer shall review the Franchise annually, consistent with Section 6 of this Franchise, in order to determine whether the Franchise should be changed and whether a recommendation to that effect needs to be made to the Metro Council. While not exclusive, the following criteria and factors may be used by the Executive Officer in making a determination whether to conduct more than one review in a given year:
- 18.2.1 Franchisee's compliance history;
 - 18.2.2 Changes in waste volume, waste composition, or operations at the Facility;
 - 18.2.3 Changes in local, state, or federal laws or regulations that should be specifically incorporated into this Franchise;
 - 18.2.4 A significant release into the environment from the Facility;
 - 18.2.5 A significant change or changes to the approved site development plan and/or conceptual design;
 - 18.2.6 Any change in ownership that Metro finds material or significant.
 - 18.2.7 Community requests for mitigation of impacts to adjacent property resulting from Facility operations.

K.B. RECYCLING, INC.

METRO

Mike Burton, Metro Executive Officer

Date

Date

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**ATTACHMENT A
TYPE B WASTES
KB #1 FACILITY TONNAGE AUTHORIZATIONS**

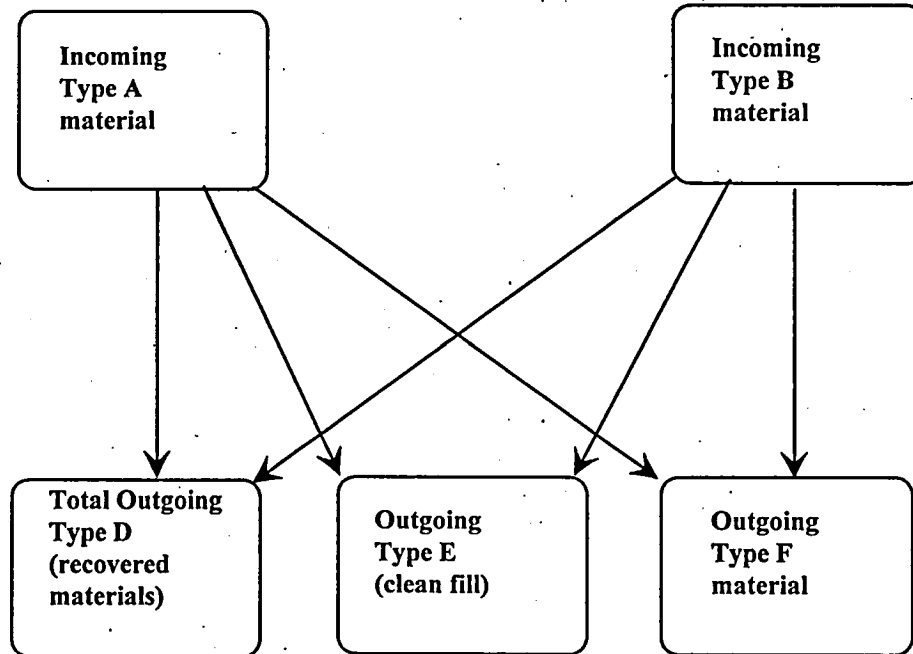
The following table displays the authorized tonnage of Type B materials under this franchise for the KB #1 Deer Creek facility. Information shown regarding projected tonnages for KB#1, the KB #2 Clackamas Road facility and the total received by both is provided for reference only. For the authorized levels for KB#2 refer to the franchise agreement for that facility.

FACILITY		KB #1	KB #1	KB #2	TOTAL
		Deer Creek	Deer Creek	Clackamas Road	Projected
		Authorized Tonnage	Projected Tonnage	Projected Tonnage	Tonnages
KB #1 Franchise 9/97 through 10/02					
Sept. - Dec.	1997	7,000	6,600	0	6,600
Jan. - Dec.	1998	35,000	31,400	13,200	44,600
Jan. - Dec.	1999	15,000	10,500	35,328	45,828
Jan. - Dec.	2000	0	0	37,171	37,171
Jan. - Dec.	2001	0	0	37,825	37,825
Jan. - Aug.	2002	0	0	24,229	24,229

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Attachment B

Formula for Computing Recovery Rates at KB Recycling



$$\text{Recovery Rate} = 100 - \text{Disposal Rate} = 100 - ((F/B) * 100)$$

Example

If B = Incoming Solid Waste = 2,000 Tons

and F = Outgoing Other Material = 1,155 Tons

then

$$\text{Recovery Rate} = 100 - [(1,155/2,000) * 100] = 100 - 57.75 = 42.25\% = 42.3\%$$

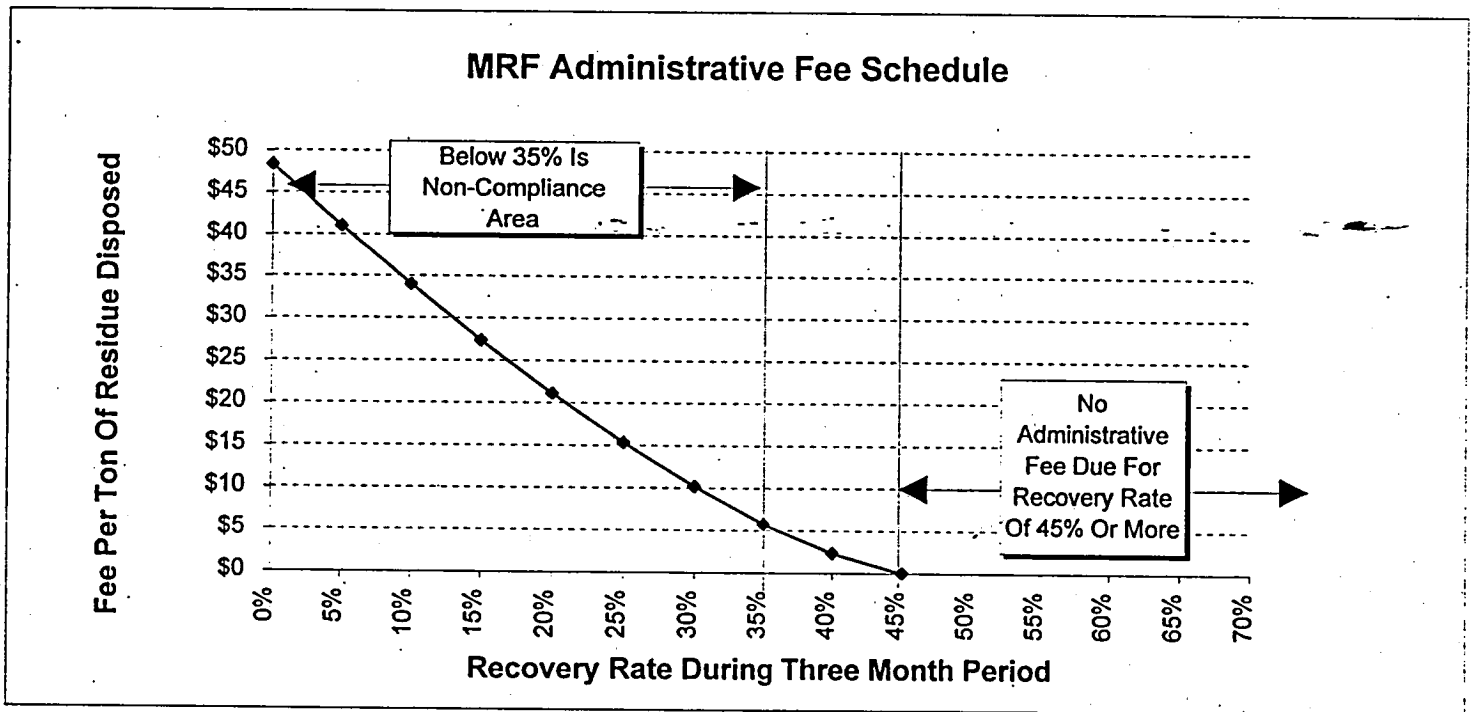
(Note: Recovery rates are rounded to the nearest 0.1%)

Attachment C

Fee Schedule For Administrative Fees

Recovery Rate	Administrative Fee Per Ton	Percent of Current (\$17.50/ton) Regional User Fee
0.00%	\$48.38	276.43%
5.00%	\$41.05	234.59%
10.00%	\$34.03	194.44%
15.00%	\$27.35	156.30%
20.00%	\$21.09	120.54%
25.00%	\$15.33	87.62%
30.00%	\$10.18	58.16%
35.00%	\$5.77	32.97%
40.00%	\$2.29	13.10%
45.00%	\$0.00	0.00%

No Administrative fee due if recovery rate exceeds 45%.
See Attachment B for derivation of recovery rate.





METRO

Regional Environmental
Management
600 NE Grand Ave.
Portland, OR 97232-2736
(503) 797-1650
Fax (503) 797-1795

Unacceptable Waste Incident Tracking Form

Item Number: _____ Date Discovered: _____

Description of Unacceptable Waste: _____

Generator (if known): _____


Waste Hauler: _____

Waste was determined to be: Hazardous Non-Hazardous

Disposition: _____

Date Disposed: _____

original = Franchise Administrator
yellow = Franchisee
pink = file

 Printed on recycled paper, please recycle! June 1996

STAFF REPORT**IN CONSIDERATION OF ORDINANCES NO. 97-703 AND NO. 97-704 FOR THE
PURPOSE OF GRANTING FRANCHISES TO K.B. RECYCLING, INC. FOR
OPERATING SOLID WASTE PROCESSING AND RECOVERY FACILITIES**

Date: May 27, 1997

Presented by: Scott Klag
Doug AndersonI. INTRODUCTION

The purpose of this report is to provide the information necessary for the Metro Council to evaluate the recommendation that K.B. Recycling, Inc. be awarded solid waste franchises to operate solid waste processing and recovery facilities (also referred to as material recovery facilities or MRFs) to be located in Clackamas County, Oregon. One franchise is for an existing facility on Deer Creek Lane (KB #1). The second franchise is for a new facility on Clackamas Street (KB #2) that eventually is to replace the existing facility. The proposed franchise agreements are attached.

The proposed franchises are consistent with the standards developed by Metro staff, local government staff, citizens, processors and franchise applicants for this type of processing facility. The last two MRF franchises approved by Metro Council, for Waste Management of Oregon and Oregon Recycling Systems, were developed under these same standards.

The report is divided into four main parts: (a) a description of the applicant, the facilities, operations and other relevant applicant information, including requests for variances to the franchise Code; (b) staff analysis of the application and whether the facilities meet the criteria for granting a franchise as specified in the Metro Code, including compliance with the Regional Solid Waste Management Plan; (c) specific conditions to be contained in the franchise agreement; and (d) an analysis of the budget impact of the facility. On the basis of this analysis and findings the Executive Officer recommends approval of the franchises.

Key findings:

- Metro staff finds that the proposed facilities will assist the region in accomplishing the goals and objectives of the Regional Solid Waste Management Plan (RSWMP). In September 1996, the applicant's proposal was discussed at Metro's Solid Waste Advisory Committee and was favorably received. The facilities are supported by Clackamas County waste management staff.
- KB #1, an existing facility currently handling only source separated materials, would be authorized to receive up to 35,000 tons per year of dry waste during the first years of the franchise. The franchise applicant then expects to move processing of dry waste to the new facility, KB #2. The authorization level for KB #2 will be 40,000 tons per year of dry waste. At the required recovery rate of 45%, the KB #2 would recover 18,000 tons per year.
- The proposed franchise maintains a "level playing field" regarding fees, recovery rate and other requirements with the two most recently franchised MRFs.

KB #2

The current plan for the Clackamas Street facility is for a single 120,000 square foot building located on 12.4 acres. The building will include both the MRF and source-separated processing activities. Also within the building will be offices, a small shop for servicing and repair of equipment, and employee facilities (lunchroom, restrooms and changing areas). All processing of both dry wastes and source separated materials will be conducted indoors. Materials will be mechanically dumped on the tipping floor and large recyclable items sorted out on the floor. The remaining materials will be conveyed to a picking line for recovery of smaller items. Targeted materials include wood, corrugated cardboard, metals and sheet rock. A system of screens will be located after the sorting platform to remove large and heavy materials such as stones, concrete and asphalt. Further screening of residuals will be done to sort materials into marketable commodities.

D. Zoning and Permitting

KB #1

The Deer Creek Lane facility is located in a C-3 General Commercial zone. The existing operation is a conforming use per the prior comprehensive plan zoning. The facility has a solid waste disposal permit from the DEQ.

KB #2

The Clackamas Street facility is located in an I-2 Light Industrial zone and has been awarded a Conditional Use Permit to develop on the site a materials recovery facility for processing dry wastes and source separated recyclables as required by Clackamas County. The facility has applied for and is expected to receive its solid waste disposal permit from the DEQ.

E. Customers and area served:

The applicant represents (and staff concurs) that both facilities are expected to receive most of their dry waste from haulers located in Clackamas County.

F. Facility Activities:

The applicant requests authorization to perform the following activities:

- Recovery of materials from dry, non-putrescible commercial and industrial wastes, and from construction and demolition wastes, with disposal of residual at a Metro designated facility.
- Processing of source-separated recyclables from residential and commercial customers.

G. Variances from Metro Code or other specific conditions requested by the applicant:

1. The applicant has requested a variance from Metro's rate setting authority. (Section 5.01.170)
2. The applicant has requested a variance from Metro Code restrictions on accepting waste from non-affiliated hauling companies. (Section 5.01.120(l))
3. The applicant has requested a variance from Metro Code requirement that would otherwise allow Metro, upon termination of the franchise, to force sale of the facility to a new franchisee, or require the owner to accept a new franchisee as his or her tenant. (Sec 5.01.06(b)(6), 5.01.180(e))

III. ANALYSIS OF FRANCHISE APPLICATION

A. Application

The applicant has supplied all required application information. The applicant was very open and cooperative in discussing and sharing information with staff on plans for the facilities. The discussions and information were important to establishing the specific conditions of the franchise documents.

B. Compliance with Code Requirements

In determining whether to recommend award of a franchise, Metro Code Section 5.01.070(b) requires the Executive Officer to find that:

- the applicant is qualified,
- the proposed facility and its operations comply with Metro's Regional Solid Waste Management Plan (RSWMP),
- the proposed facility and its operations are needed, considering the location and number of existing and planned disposal sites, transfer stations, processing facilities and resource recovery facilities and their remaining capacities, and
- the applicant has complied or can comply with all other applicable regulatory requirements

C. Applicant Qualifications

The facilities will be owned and operated by K.B. Recycling. Staff believes that the company is qualified to operate the proposed facilities, based on the company's track record at their existing facility and a consideration of their plans for the development of their new facility.

D. Compliance with the Regional Solid Waste Management Plan

In determining whether the applicant's facilities are in compliance with the Regional Solid Waste Management Plan, staff considered the following questions:

- Part I: Are plans for the facility consistent with RSWMP goals, objectives, and recommended practices?
- Part II: Are plans for the facility in conflict with any RSWMP goals, objectives or recommended practices?

Staff finds that the activities authorized by the franchises would be consistent with and not in conflict with the goals, objectives and recommended practices in RSWMP.

Part I. Analysis of consistency with RSWMP

In finding that the applicant's proposals are consistent with the Plan, staff considered the following:

1. RSWMP goals for Regional Facilities and Services, specifically:

Goal 8 -- Opportunity to Reduce Waste. Participation in waste prevention and recycling is convenient for all households and businesses in the urban portions of the region.

The close-in SE portion of the Metro region in which these facilities will operate, currently lacks convenient access to mixed dry waste processing. Franchising these facilities will increase the ability of haulers in this area to offer this recycling and recovery service to their business and household customers and the franchises will, therefore, assist in achieving Goal 8.

Goal 12 -- Recovery Capacity. A regionally balanced system of cost-effective solid waste recovery facilities provides adequate service to all waste generators in the region.

The addition of dry waste processing capacity to this part of the region will strongly aid in the development of a more regionally balanced level of this type of service. The facilities will, therefore, assist in achieving Goal 12.

Goal 15 -- Facility Regulation. Metro's methods for regulatory control of solid waste facilities will include a system of franchising, contracting, owning and/or licensing to ensure that disposal and processing facilities are provided and operated in an acceptable manner.

The facilities operator has agreed to conditions in the franchise agreement that will ensure that the facilities' processing and handling of residuals are conducted in an acceptable manner. The facilities will, therefore, assist in achieving Goal 15.

2. RSWMP goals and objectives for Waste Reduction:

Goal 7 -- Regional Waste Reduction Goal. *The regional waste reduction goal is to achieve at least a 50 percent recycling rate by the year 2005. Per-capita disposal rates and reductions in waste generated attributable to waste prevention programs are also acknowledged to be key waste reduction indicators. The region's interim goal for the year 2000 is the 52 percent recovery rate as defined by state statute.*

To reach these targets, RSWMP estimates are that about additional 250,000 tons of waste material will need to be diverted from disposal by the year 2000, and another 150,000 tons by the year 2005. By recovering least 18,000 tons per year that would otherwise likely be landfilled, the proposed franchises would be significant contributors to achievement of the regional goals.

Goal 9 -- Sustainability, Objective 9.3. *Support an environment that fosters development and growth of reuse, recycling and recovery enterprises.*

In franchising recent MRFs, Metro communicated to the local business community that it values these types of facilities and wishes to encourage their development. Granting franchises for the proposed facilities would continue development of this supportive environment consistent with Objective 9.3.

3. RSWMP Recommended Waste Reduction Practices for Business Waste and Building Waste both call for the addition of these types of facilities. (In the Plan they are referred to as "Regional processing facilities for mixed dry waste".) Development of MRF capacity is necessary to achieve recovery from business and building waste.

Part II. Analysis of potential conflicts with RSWMP

In assessing whether granting franchises for the facilities would be inconsistent with or in conflict with any provisions in the Plan, staff addressed the following:

1. Potential conflicts with source separation recycling programs

RSWMP Recommended Waste Reduction Practices for Business Waste and Building Waste both call for the implementation of source separated recycling programs. Under the recommended practices, the purpose of dry waste processing facilities is to capture what remains in the wastestream "downstream" from these programs. Goal 10 in the Plan also emphasizes the importance of source separation while similarly acknowledging a role for post-collection processing.

Staff has had concerns that the general growth of dry waste processing capacity might adversely impact source-separation programs. During the annual review of the Plan conducted earlier this year, staff held discussion with local governments, facility owners, haulers and recycling advocates on this issue. Two important conclusions emerged from these discussions: (1) a reaffirmation of the RSWMP's recommendation that the role of MRFs was to be complementary to, and not substitutes for, source-separation programs; and (2) agreement that there were sufficient procedures in place to forestall MRF's from

adversely impacting upstream programs (e.g. franchise agreements and review of local government waste reduction work plans).

Specific provisions in the franchise agreement (for example, requiring an annual review of this issue) will ensure there are no conflicts with RSWMP recommendations. Staff notes that the operator is widely recognized as an industry innovator on source-separation issues. The applicant has represented that the source-separated recyclable stream will continue to be a critical element of their operations even after their entry into the dry waste processing business. Staff believes the applicant's representations for the following reasons. It is in KB's business interests to continue to attract these materials from franchised haulers. Furthermore, because KB is not currently affiliated with any franchised haulers, they are not able to work directly with generators in a manner that could affect the "up-stream" source-separated programs. (Based on the applicant's track record as an industry leader, staff also believes KB would continue to support source-separated programs even if they were in a position to work directly with generators.) When coupled with assurances under the franchise agreement, staff believes that the applicant will operate the facilities consistent with the Plan recommendations regarding the importance of source-separation. Finally, the KB facilities will also operate in an area where "curbside" recycling programs are well-established, and the local government waste reduction program managers remain committed to source-separation strategies. Staff believes that these are sufficient protections of the RSWMP emphasis on source-separation over post-collection recovery.

2. Potential impacts from vertical integration

Objective 4.6 of RSWMP requires that potential negative impacts of increasing vertical integration in the solid waste system be considered when making decisions about the regulation of facilities. These negative impacts could include: unfair competitive advantages that could affect prices, service to customers, or market power to diminish competition over time. RSWMP directs these issues to be considered on a case-by-case basis.

KB does not currently operate as a refuse hauler within the Metro boundary or have any affiliations with disposal companies operating within the Metro boundaries. Although KB is requesting a Metro Code variance allowing operation as a commercial waste hauler in the Metro region, this request has previously been granted to MRF operators who have both ties to disposal and large collection services. The arguments favoring granting the variance are presented in more detail below (see *G. Variance Requests #2*, below) In addition, their hauling activities would be expected to be primarily in Clackamas County, where that county's franchising system would provide additional protection against potential negative impacts. Staff, therefore, finds that granting these franchises would not result in any negative vertical integration effects.

3. Potential for facility to operate as a transfer station

There are specific recommendations in the Plan regarding transfer stations and reload facilities. The Plan intends that any facility, such as that proposed by the applicant, is franchised to operate as a processing and recovery facility and not as a transfer and reload facility.

Staff believes that the proposed franchise agreement will effectively ensure that the proposed facility will operate as a processing facility and not a transfer station. Provisions in the agreement designed to accomplish this result include explicit definitions of authorized wastes that can be received at the facilities, prohibitions against intentional receipt of loads that the franchisee knows have minimal or no recovery potential, and the setting of recovery rate requirements.

E. Need for facility

This facility is being franchised as a marketplace competitor for the processing of mixed dry waste and not as an exclusive franchise. This approach is consistent with RSWMP policies to promote private initiative in developing solid waste processing facilities and to use transfer stations (such as Metro South) as recovery facilities of last resort.

F. Compliance with Regulatory Requirements

Staff finds that the applicant will be able to comply with all other regulatory requirements for both facilities.

G. Variance Requests

The applicant has requested the following three variances in both of the franchises. All recent MRF operators have requested these variances and Council has granted them.

1. The applicant has requested a variance from Metro's rate setting authority. (Section 5.01.170)

Under the Metro franchise Code, the Council sets the rates charged by a franchisee. Metro Code Section 5.01.110 allows a variance to be granted to this policy if the intent of the requirement can be otherwise achieved and if strict compliance with the requirement: "(1) Is inappropriate because of conditions beyond the control of person(s) requesting the variance; or (2) Will be rendered extremely burdensome or highly impractical due to special physical conditions or causes; or (3) Would result in substantial curtailment or closing down of a business, plant, or operation that furthers the objectives of the district."

Metro Council has consistently interpreted the intent of the rate setting provision of the Code to prevent franchisees from exercising monopoly power in the marketplace resulting from being a holder of a franchise.

In staff's opinion the intent of the Code will be achieved by competition in the marketplace. Competition will be maintained because this franchise will not be exclusive, and other franchises have been, and others are expected to be granted, that will compete with this franchise. (Competing facilities have been previously granted this variance.) In addition, strict compliance with the rate setting requirement is inappropriate since all competing facilities set their own rates. Without freedom to set its own rates, the facility would be unable to effectively compete with other processors. This would result in the facility not opening or failing to stay open. Therefore, staff recommends granting the variance to the rate setting requirement.

2. The applicant has requested a variance from Metro Code restrictions on accepting mixed dry waste from non-affiliated hauling companies. (Section 5.01.120(I)) Under Section 5.01.120(I), a franchised processor cannot maintain a business relationship with hauling companies. (A franchisee who accepts waste only from affiliated haulers is exempt from this restriction.) The applicant has requested to be able to receive mixed dry waste from several types of hauler: (1) K.B. Recycling, Inc. fleet vehicles; (2) franchised or permitted residential or commercial haulers from within the Metro region; (3) other commercial accounts or businesses such as construction contractors but not the general public. (Under the proposed franchise, the facility would also maintain a drop center open to the public for source separated recyclables.) For the franchise to receive mixed dry wastes from the first group, a variance must be granted. Metro Code Section 5.01.110 (quoted above) allows a variance to be granted to this policy.

Staff believes that the intent of the Metro Code restriction is to prevent franchisees who also have hauling companies from being able to promote their own haulers and treating unfairly competing haulers who must use the facility. While the applicant does not currently conduct any regular hauling of residential or commercial mixed waste within the Metro boundary, it is requesting the variance to provide it with the option to do so.

Staff opinion is that the intent of the Code requirement will be achieved because there will be alternatives to this proposed MRF for competing haulers were the applicant to begin to engage in hauling in the Metro region. In a competitive market, no competing hauler will be forced to use the facility. Competition will be maintained because this franchise will not be exclusive, and other franchises have been, and others are expected to be granted, that will offer additional competition with this franchise. The franchise also contains provisions to ensure fair treatment of all customers using the facility. Strict compliance with this requirement would be unduly burdensome due to the franchisee's need to be able to compete for wastes to process at the facility and the fact that other companies that want to use the facility would be denied access were the franchisee to use its own vehicles to bring in wastes. Staff, therefore, recommends granting the variance to the restriction on non-affiliated haulers using the facility.

3. The Franchisee has also requested a variance from a Code requirement that would allow Metro, upon termination of the franchise, to force sale of the facility to a new franchisee, or require the owner of the facility to accept a new franchisee as its tenant. (Section 5.01.180(e) see also Section 5.01.060(b)(6)) Under Section 5.01.110 (quoted above) staff is recommending that this variance be granted. The purpose and intent of this provision is to ensure that an essential franchised facility is not closed due to termination of a franchise, causing system disruptions. By granting franchises for numerous competing recovery facilities, Metro is achieving its goal of system stability without the need for strict compliance with this provision. Strict compliance is inappropriate (in the sense of Metro Code) in this instance because it would require the facility owner to agree to sell, or accept as a tenant, an unspecified new franchisee, and potentially impact material market agreements, tax credits, residual disposal agreements, and insurance agreements. If the provision is applied, it would be extremely burdensome for the reasons stated, and would cause delay that could result in termination of the project. In any respect, Metro retains the right of eminent domain with regard to the facility, as specified in state statutes.

IV. CONDITIONS OF THE FRANCHISE

The proposed franchise agreements ensure that the facilities will continue to operate in accordance with the purposes of Metro's franchise system to protect public health and safety and maintain consistency with the RSWMP.

The franchise documents were drafted to be consistent with previous MRF franchise agreements and maintain a "level playing field" regarding fees, recovery rate and other requirements. Conditions of the franchises include:

- A required recovery rate of 45%
- Tonnage authorizations. The amount of the authorizations are based on staff determination of the amount of dry wastes the applicant expects to receive plus an increment for to allow for economic growth. To allow flexibility in meeting changing market conditions without causing undue impacts on facility operations, these authorization levels would be administered by the Executive Officer.
- A surety bond of \$100,000.

V. BUDGET IMPACT

A. Rate Impacts

Metro fees would be exempted on waste accepted at the KB facilities, consistent with Metro Code. The Regional User Fee would be collected on residuals that are delivered to disposal facilities.

The applicant has represented that all mixed waste to the facility will be diverted from waste that otherwise would have gone to Metro South. The adopted FY 1997-98 budget assumes that 27,000 tons of waste will be diverted to KB from Metro South, thereby avoiding the \$70 Metro Tip Fee. Half that amount, 13,500 tons, will be "returned" to a Metro Designated Facility as dry process residue, thereby incurring the \$15 Regional User Fee. (The 50% processing residual is based on a recovery rate of 45%, and 5% inert shaker screen residue.)

Because of the method for setting solid waste fees, REM does not lose any revenues from anticipated MRF activity. Rather, the Metro Tip Fee and Regional User Fee rise on the waste that continues to be disposed. However, because of the method for levying the Metro excise tax, Metro loses excise tax revenue from MRF activity. Rehabilitation and Enhancement Fund revenues are also affected. The effects of the KB facilities on these rates are shown below.

Solid Waste Rates. REM does not lose revenues from anticipated MRF activity because the same amount of fixed costs (e.g., debt service, enforcement costs, etc.) are collected, regardless of the tonnage base. When tonnage falls, the tip fee and user fee rise in order to collect the same revenue. The impact of the KB facilities on REM solid waste rates is:

<u>Fee</u>	<u>Impact</u>	<u>Explanation</u>
Regional User Fee.....	\$0.16	Fee exemptions on 13,500 tons recovered
Metro Tip Fee		
<i>Metro fixed portion (Tier 2).....</i>	<i>\$0.27</i>	<i>Diversion of 27,000 tons from transfer station</i>
<i>Regional portion (Tier 1).....</i>	<i>\$0.16</i>	<i>Regional User Fee portion of tip fee (above)</i>
Total effect on Metro Tip Fee.....	\$0.43	

That is, in the absence of the KB facilities, the Regional User Fee could be 16¢ lower, and the Metro Tip Fee 43¢ lower. As the impact of the KB facilities has been anticipated for FY 1997-98, these effects are already reflected in the FY 1997-98 Regional User Fee and Metro Tip Fee.

Metro Excise Tax. The Metro excise tax is levied as a percentage of solid waste revenues collected. The diversion of waste from Metro transfer stations means that revenues will not be collected—and thus, variable costs will not be incurred—on the 27,000 tons diverted. This translates into \$96,600 in foregone Metro excise tax.^{1*} As the impact of the KB facilities has

¹ Calculations assume an excise tax rate of 8½%. Based on Metro's FY 1997-98 cost of \$42.08 per ton for transfer, transport and disposal, Metro's variable cost for 27,000 tons is \$1,136,160. Eight and one-half percent of this amount is \$96,574. These calculations assume that the diversion of 27,000 tons does not move Metro to different steps in the contractual rate schedules for disposal or operation of the transfer stations.

been anticipated for FY 1997-98, these effects are already reflected in revenue anticipation for the FY 1997-98 Metro budget.

Rehabilitation and Enhancement Fees. The Rehabilitation and Enhancement (R&E) Fund will forego \$13,500 in revenues, based on 27,000 tons diverted from Metro transfer stations at an R&E rate of 50¢ per ton. As the impact of the KB facilities has been anticipated for FY 1997-98, these effects are already reflected in revenue anticipation for the FY 1997-98 R&E budget.

Comment

If the facilities do not come on line as expected, then REM would receive \$186,000 in unanticipated revenues from the Regional User Fee, and \$200,000 in unanticipated revenues from the Metro Tip Fee. Furthermore, the Metro excise tax revenues would increase \$33,000 over FY 1997-98 amounts (as opposed to the indicated loss of \$96,000); and the Rehabilitation and Enhancement Fund would not incur the indicated loss of \$13,500.

Summary. The KB facilities are anticipated to have the following fiscal effects on Metro:

Regional User Fee	16¢ higher
Metro Tip Fee.....	43¢ higher
Metro excise tax revenue	\$96,000 less
Rehabilitation & Enhancement Fund revenue.....	\$13,500 less

These impacts are already reflected in the FY 1997-98 Metro budget.

B. Staffing Requirements

The adopted 1997-98 budget includes adequate staffs resources for the administration and enforcement of these franchise agreements.

VI. STAFF RECOMMENDATIONS

Based on the forgoing analysis, it is the opinion of staff that K.B. Recycling, Inc. should be granted non-exclusive franchises in accord with the provisions of the franchises attached to Ordinance No. 97-703 as Exhibit A and Ordinance 97-704 as Exhibit A.

VII. EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Ordinance No. 97-703 and Ordinance No. 97-704.