

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF GRANTING)	ORDINANCE NO. 94-527 A
A FRANCHISE RENEWAL TO AMBROSE)	
CALCAGNO, JR., D/B/A A. C. TRUCKING)	INTRODUCED BY
FOR THE PURPOSE OF OPERATING A)	RENA CUSMA,
SOLID WASTE TRANSFER STATION AND)	EXECUTIVE OFFICER
DECLARING AN EMERGENCY)	

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

WHEREAS, Ambrose Calcagno, Jr., d/b/a A. C. Trucking has applied for renewal of a non-exclusive franchise to operate a transfer station (Forest Grove Transfer Station) for mixed solid waste at Forest Grove, Oregon; and,

WHEREAS, A. C. Trucking has submitted evidence of compliance with Metro Code Section 5.01.060 requirements for franchise applications and operational plans; and

WHEREAS, A. C. Trucking will provide disposal services to its own haulers and to other commercial haulers and the public at the Forest Grove Transfer Station; and,

WHEREAS, The appropriate amount of a surety bond or conditional lien to be provided by the franchisee is determined to be \$100,000; and,

WHEREAS, Allowing this ordinance to take effect immediately is necessary for the public health, safety and welfare of the Metro area because:

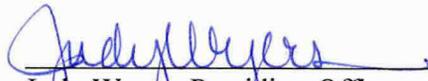
1. The franchise continues to be an important component of the regional solid waste disposal system; and,
2. No system benefits would be derived by delaying the effective date of this ordinance, and such delay is likely to cause significant system disruption; and,

WHEREAS, The ordinance and attached Franchise was submitted to the Executive Officer for consideration and was forwarded to the Council for approval; now, therefore

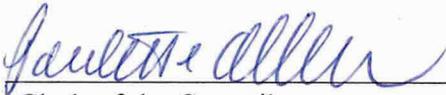
THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. That the Metro Council authorizes the Metro Executive Officer to issue the attached Franchise (Exhibit A) to Ambrose Calcagno Jr., d/b/a A. C. Trucking within ten (10) days of the adoption of this Ordinance.
2. This Ordinance being necessary for the public health, safety, and welfare of the Metro area, an emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Metro Council this 13th day of January, 1994.



Judy Wyers, Presiding Officer

ATTEST: 

Clerk of the Council

PN:clk

S:\NORTH\FRANCHISE\SW94-527.ORD

Exhibit A - Amended

SOLID WASTE FRANCHISE

issued by

METRO

600 N.E. Grand Avenue

Portland, Oregon 97232-2736

(503) 797-1700

FRANCHISE NUMBER: _____
DATE ISSUED: _____
AMENDMENT DATE: N/A
EXPIRATION DATE: _____
ISSUED TO: AMBROSE CALCAGNO, JR., dba A. C. TRUCKING
NAME OF FACILITY: FOREST GROVE TRANSFER STATION
ADDRESS: 1525 "B" STREET, P.O. BOX 8
CITY, STATE, ZIP: FOREST GROVE, OREGON 97116
NAME OF OPERATOR: AMBROSE CALCAGNO, JR.
PERSON IN CHARGE: AMBROSE CALCAGNO, JR.
TELEPHONE NUMBER: (503) 357-9222

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FRANCHISE AGREEMENT

This Franchise is issued by Metro, a municipal corporation organized under Oregon Law and the 1992 Metro Charter, referred to herein as "Metro," to Ambrose Calcagno, Jr., dba A. C. Trucking, 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

As used in this Franchise:

"Acceptable Waste" means solid waste, as defined in ORS 459.005(24) except solid waste that is:

- (a) prohibited from disposal at a sanitary landfill by state, local or federal law;
- (b) Hazardous Waste;
- (c) Special Waste without a Metro approved special waste permit;
- (d) Infectious Medical Waste; or
- (e) Conditionally Exempt Generator Waste.

Latex paints are an Acceptable Waste if they are completely dried out and solidified with lids off. Caulk, construction putty and other construction adhesives must be dry to be Acceptable Waste.

"City of Forest Grove Community Enhancement Fee" means those fees payable to the City of Forest Grove under an agreement with Metro for community enhancement money related to the operation of the Forest Grove Transfer Station

"Code" means the Code of Metro.

"Conditionally Exempt Generator Waste" means waste as defined in 40 CFR 261.5, as amended or replaced, such waste to be handled by Contractor as if it were a fully regulated Hazardous Waste.

"DEQ Fees" mean such fees assessed by the Oregon Department of Environmental Quality related to operation of a solid waste facility

"DEQ" means the Department of Environmental Quality of the State of Oregon.

"Disposal Fee" means those payments to be made to Metro by the Franchisee for disposal of solid waste at the Columbia Ridge Landfill (and as they may be amended from time to time)

"Excise Taxes" mean excise taxes due to Metro from the Franchisee as determined by using the formulas contained on Metro's User Fee and Excise Tax Form (and as it may be amended from time to time)

"Executive Officer" means the Executive Officer of Metro or the Executive Officer's designee.

"Facility" means the facility described in section 3 of this Franchise.

"Hazardous Waste" means any waste (even though it may be part of a delivered load of waste) which:

- (a) is required to be accompanied by a written manifest or shipping document describing the waste as 'hazardous waste,' pursuant to any state or federal law, including, but not limited to the Resource Conservation and Recovery Act, 42 USC 9601, et seq. as amended and the regulations promulgated thereunder;
- (b) contains polychlorinated biphenyls or any other substance whose storage, treatment or disposal is subject to regulation under the Toxic Substance Control Act, 15 USC 2601, et seq. as amended and the regulations promulgated thereunder;
- (c) contains a 'reportable quantity' of one or more 'hazardous substances' (typically identified by the nine hazard classes labeled as explosives, non-flammable gas, flammable, flammable solid, oxidizer, poison, corrosive, radioactive, or dangerous), as identified in the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC 9601, et seq. as amended and the regulations promulgated thereunder and as defined under Oregon Law, ORS 466.605 et seq. and the regulations promulgated thereunder;
- (d) contains a radioactive material the storage or disposal of which is subject to state or federal regulation; or
- (e) is otherwise classified as hazardous pursuant to federal or Oregon law, rule or regulation.

"Infectious Medical Waste" means waste resulting from medical procedures which may cause or is capable of causing disease such as:

- (a) biological waste, including blood and blood products, excretions, exudates, secretions, suctionings and other body fluids that can not be directly discarded into a municipal sewer system, including solid or liquid waste from renal dialysis and waste materials reasonably contaminated with blood or body fluids;
- (b) cultures and stocks of etiological agents and associated biologicals, including specimen cultures and dishes and devices used to transfer, inoculate, and mix cultures; wastes from production of biologicals; and serums and discarded live and attenuated vaccines (cultures under this subsection do not include throat and urine cultures);
- (c) pathological waste, including biopsy materials and all human tissues and anatomical parts that emanate from surgery, obstetrical procedures, autopsy and laboratory procedures; animal carcasses exposed to pathogens in research; and the bedding of the animals and other waste from such animals (pathological waste does not include formaldehyde and other such preservative agents); or
- (d) sharps, (which are otherwise regulated as "Special Waste") including needles, IV tubing with needles attached, scalpel blades, lancets, glass tubes that could be broken during handling and syringes.

"Metro Regional User Fee" means the Metro User Fee determined to be due to Metro by the Franchisee by using the formulas contained on Metro's User Fee and Excise Tax Form (and as it may be amended from time to time)

"Processing Facility" means a place or piece of equipment where or by which solid wastes are processed. This definition does not include commercial and home garbage disposal units, which are used to process food wastes and are part of the sewage system, hospital incinerations, crematoriums, paper shredders in commercial establishments, or equipment used by a recycling drop center.

"Special Waste" shall have the meaning set forth for that term in Metro Code Section 5.02.015;

"Transfer Fee" means that amount of money determined by Metro as compensation for the owner/operator of the Facility for operation of the Facility and for associated compensation related to ownership of the Facility.

"Transport Fee" means that amount of money to be paid to Metro by the Franchisee for transport of solid waste from the Facility to a disposal site.

"Unacceptable Waste" means any waste that is not "Acceptable Waste."

2. TERM OF FRANCHISE

This Franchise is issued for a term of five years from the date signed by Metro and the Franchisee, following approval by the Metro Council.

3. LOCATION OF FACILITY

3.1 The franchised Facility is located at 1525 "B" Street, Forest Grove, Oregon. Attached as Exhibit 1 to this agreement is the legal description of the Facility property.

4. OPERATOR, AND OWNER OF FACILITY AND PROPERTY

4.1 The owner of the Facility is Ambrose Calcagno, Jr. dba A. C. Trucking. Franchisee shall submit to Metro any changes in ownership of the Facility in excess of five percent of ownership, or any change in partners if a partnership, within 10 days of the change.

4.2 The owner of the property underlying the Facility is Ambrose Calcagno, Jr. and Virginia Calcagno, husband and wife. If Franchisee is not the owner of the underlying property, Franchisee warrants that owner has consented to Franchisee's use of the property as described in this Franchise.

4.3 The operator of the Facility is Ambrose Calcagno, Jr. dba A. C. Trucking. Franchisee may contract with another person or entity to operate the Facility only upon ninety (90) days prior written notice to Metro and the written approval of the Executive Officer. Franchisee shall retain primary responsibility for compliance with this Franchise.

5. AUTHORIZED AND PROHIBITED SOLID WASTES

5.1 Franchisee is authorized to accept all materials authorized by its DEQ Solid Waste Disposal Permit, from the public and from commercial collection vehicles, for delivery to a Metro-designated disposal facility (or transport and disposal as may be directed by Metro, pursuant to section 7.4) and to separate out recyclable materials such as, but not limited to, wastepaper, cardboard and newspaper. Discarded vehicles, sewage sludge, septic tank and cesspool pumpings, or other sludge shall not be accepted at the Facility.

5.2 All Franchisee vehicles and devices transferring or transporting solid waste via public roads shall be constructed, maintained, and operated to prevent leaking, sifting, spilling, or blowing of solid waste while in transit.

5.3 Franchisee may accept no more than 300 tons of solid waste per operating day (a day in which the Facility accepts solid waste) on a monthly average, with the added condition

that Franchisee may not accept more than 70,000 tons of waste in any twelve consecutive months or as this amount may otherwise be limited by Metro's current agreement with Oregon Waste Systems, Inc. Upon assumption by Metro of responsibility for transport of solid waste from the Facility, Franchisee may accept up to 120,000 tons of solid waste at the Facility. However, for each ton of waste transported from the Facility or disposed of by Metro in excess of 70,000 tons, from inside or outside of the District, Franchisee shall pay increased transport and disposal fees as specified in section 14 of this Franchise.

- 5.4 Nothing in this Franchise prohibits Franchisee from accepting waste from outside the Metro District so long as Franchisee keeps accurate records of the waste accepted from outside of the District.

6. MINIMUM MONITORING AND REPORTING REQUIREMENTS

- 6.1 Franchisee shall effectively monitor Facility operation and maintain accurate records of the following information for all transactions:
- (a) Ticket Number (should be the same as the ticket number on the weight slips)
 - (b) Incoming Hauler Account Number. On a semi-annual basis, provide Metro with a computer listing that cross-references this account number with the hauling company's name and address.
 - (c) Generator's Account Number or Name (if available). On a semi-annual basis, provide Metro with a computer listing that cross-references this number or name to the generator's full name and address.
 - (d) Code designating type of material (more detail, such as differentiating yard debris, is acceptable):
 - (1) Incoming source-separated recyclable
 - (2) Mixed waste
 - (3) Outgoing recyclables
 - (4) Outgoing mixed waste
 - (e) Code designating origin of material:
 - (1) Public from inside Metro boundaries
 - (2) Public from outside Metro boundaries
 - (3) Commercial from inside Metro boundaries
 - (4) Commercial from outside Metro

- (f) Date the load was received at or transmitted from your Facility.
 - (g) Time the load was received at or transmitted from your Facility.
 - (h) Indicate whether you accepted or rejected the load.
 - (i) Net Weight of the Load.
 - (j) Volume of the Load (if applicable).
 - (k) The fee you charged for the load to the generator (excludes transportation charges).
- 6.2 Records required under section 6.1 shall be reported to Metro no later than fifteen (15) days following the end of each month, in the format prescribed by Metro. Transaction data shall be in electronic form compatible with Metro's data processing equipment. A cover letter shall accompany the data which certifies the accuracy of the data and is signed by an authorized representative of Franchisee. The hard copy of the report shall be signed and certified as accurate by an authorized representative of Franchisee.
- 6.3 Franchisee shall maintain complete and accurate records of all costs, revenues, rates, if applicable, and other information on a form suitable to Metro. These records shall be made available to Metro on request.
- 6.4 The Franchisee shall file an Annual Calendar Year Operating Report detailing the previous year operation of the Facility as outlined in this Franchise, on or before March 30 of each year.
- 6.5 The Franchisee shall submit to Metro duplicate copies of any information submitted to the DEQ pertaining to the Facility, within 30 days of submittal to DEQ.
- 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, all books, records, maps, plans, income tax returns, financial statements, and other like materials of the Franchisee that are directly related to the operation of the Franchisee.

7. OPERATIONAL REQUIREMENTS

7.1 General Requirements

- 7.1.1 A copy of this Franchise shall be displayed where it can be readily referred to by Facility operating personnel.
- 7.1.2 If a breakdown of equipment, fire, or other occurrence results in a violation of any conditions of this Franchise or of the Metro Code, the Franchisee shall:
- (a) Take immediate action to correct the unauthorized condition or operation.
 - (b) Immediately notify Metro so that an investigation can be made to evaluate the impact and the corrective actions taken and determine additional action that must be taken.
 - (c) Prepare a report describing all operational irregularities, accidents, and incidents of non-compliance and provide a copy of such report to Metro within ten days of occurrence or sooner if circumstances warrant notification to Metro.
- 7.1.3 If the Facility is to be closed permanently or for a protracted period of time during the term of this Franchise, Franchisee shall provide Metro with written notice, at least 90 days prior to closure, of the proposed time schedule and closure procedures.
- 7.1.4 The Facility shall be in strict compliance with the Metro Code requirements regarding storage, collection, transportation, recycling and disposal of solid waste.
- 7.1.5 The Franchisee shall provide an adequate operating staff which is duly qualified to carry out the reporting functions required to ensure compliance with the conditions of this Franchise.
- 7.1.6 Metro may reasonably regulate the hours of site operation as it finds necessary to ensure compliance with this Franchise. Metro will attempt to provide 90 days written notice prior to regulating hours of operation, and shall not unreasonably increase Franchisee's costs of operation. If Metro is transporting solid waste from the Facility, Franchisee shall not change its hours of operation in a manner that would increase Metro's transport costs.
- 7.1.7 The Franchisee shall establish and follow procedures designed to give reasonable notice prior to refusing service to any person. Copies of notification and procedures for such action will be retained on file for three years for possible review by the District.

7.1.8 The Franchisee shall not, by act or omission, unlawfully discriminate against any person, treat unequally or prefer any user of the Facility through application of fees or the operation of the Facility.

7.1.9 At least one sign shall be erected at the entrance to the Facility. This sign shall be easily visible, legible, and shall contain at least the following:

- (a) Name of facility;
- (b) Emergency phone number;
- (c) Operational hours during which wastes will be received for disposal;
- (d) Disposal rates and fees;
- (e) Metro information phone number; and
- (f) Acceptable materials.

7.2 Litter, Odor, Dust, Noise and Vector Control

7.2.1 Control of Blowing Debris. The Franchisee shall police all areas within the site and along the road frontage of the site as indicated on the map attached as Exhibit 2 and shall:

- (a) patrol the Facility daily;
- (b) patrol Highway 47 ("B" Street) from its intersection with the relocated Tualatin Valley Highway to its intersection with Pacific Avenue on a weekly basis;
- (c) respond to citizen's complaints on an "on call" basis within 12 hours, or sooner as circumstances may require;
- (d) log all citizen complaints by name, date, time and nature of complaint;
- (e) Apply to the State for approval for signage to direct traffic to the Facility using Highway 47.

7.2.2 Odor, Dust and Noise Control. The Franchisee shall control odor and dust on the site by use of installed dust control and odor systems whenever excessive dust and odor occur or at the direction of Metro. Alternative dust and odor control measures may be performed by the Franchisee with the approval of Metro.

7.2.3 Vector Control. The Franchisee shall conduct the operation of the transfer station in such a manner so as to ensure unfavorable conditions for production of rodents and insects. If rodent and insect activity become apparent to Metro, supplemental vector control measures shall be initiated by the Franchisee at Franchisee's own cost, with the approval of DEQ and Metro.

- 7.3 Franchisee shall meet with representatives of Metro and the City of Forest Grove on a schedule to be determined by Metro and the City of Forest Grove to discuss operational impacts of the transfer station on the City of Forest Grove and any corrective measures that may be necessary to address such impacts. The meetings will be scheduled no more often than once every six months. The Metro Solid Waste Director may call a meeting on a shorter schedule if specific operational issues require immediate attention.**
- 7.4 Metro Transport and Disposal Option.**
- 7.4.1 Metro reserves the right, at any time during the term of this Franchise, to assume responsibility for transport from the Facility and/or disposal of all Acceptable Waste generated within the district that is to be disposed of in a general purpose landfill. Notice of Metro's intent to assume such responsibility shall be by written notice to Franchisee. The notice shall establish the date, not less than six months from the date of the notice, upon which Metro will begin transporting and/or disposing of solid waste from the Facility. Nothing herein prohibits Franchisee from disposing of waste received at the Facility that was generated outside of the District at any licensed processing or disposal facility.**
- 7.4.2 Prior to the date established for Metro to assume transport and/or disposal responsibilities, Metro may direct Franchisee to install a compactor at the Facility meeting Metro specifications. If Metro so requires, Franchisee shall submit to Metro within 60 days from the date of notice specified in 7.4.1, its detailed plans for installation of a compactor, including installation and compactor specifications. Metro shall review such plans and notify Franchisee of any objections or proposed revisions within 10 business days of receipt. If Metro does not comment within the time specified, the plans shall be deemed approved, and Franchisee shall commence installation. If Metro objects or proposes revisions, the parties shall in good faith attempt to resolve all issues related to compactor installation such that deliveries to Metro's transport contractor can begin on the date specified in the notice provided under section 7.4.1.**
- 7.4.3 As soon as practicable following the notice from Metro specified in section 7.4.1, Franchisee and Metro shall begin making arrangements for Metro assumption of transport and/or ultimate disposal responsibilities. Such arrangements may include planning and coordination meetings between Franchisee, Metro, and Metro's transport and/or disposal contractor.**
- 7.4.4 Along with, or at any time following the notice specified in section 7.4.1, Metro may direct Franchisee to begin delivering all solid waste specified in section 7.4.1 to Metro Central Station. The notice shall specify a date, not less than 10 business days from the date of the notice, upon which Franchisee shall begin such deliveries. For each ton of waste generated within the district delivered by Franchisee to Metro Central Station, Franchisee shall pay the disposal fee**

specified in sections 14.4.1(b) and 14.4.2(b), as applicable, as well as the Regional User Fee and Metro Excise Tax. The deliveries specified in this section 7.4.4 shall continue until the date upon which Metro assumes responsibility for transport of solid waste from the Facility.

7.4.5 If Franchisee fails to install a compactor as required by this section 7.4 by the date established under section 7.4.1, and the Executive Officer does not grant an extension, which extension shall not be unreasonably withheld, Franchisee shall deliver all solid waste specified in section 7.4.1 to Metro Central Station, and shall pay to Metro the current tip fee at Metro Central on all tons delivered.

7.5 Metro Transport and Disposal Requirements. The requirements of this section 7.5 shall be effective on the date Metro begins transporting Waste from the Facility:

7.5.1 General Metro Requirements

- (a) Franchisee shall weigh each commercial hauling vehicle as it enters the Facility. The empty or tare weight of each commercial vehicle shall be established and recorded so that the vehicles will not be required to re-weigh each time after unloading. The tare weights must be determined at least twice each year without advance notice to the vehicle owners or drivers.
- (b) Franchisee shall weigh all Recovered Materials, Source-Separated Recyclables, compacted waste and Unacceptable Waste prior to removing them from the Facility.

7.5.2 Compaction, Transport, and Loading of Waste.

- (a) Franchisee is responsible for extruding an untied bale of waste from the compactor into the transfer trailer, installing a seal on the transfer trailer door handle and returning the sealed transfer trailer to the staging area with applicable documentation.
- (b) Franchisee is responsible for producing road legal weights, and for unloading and balancing loads which are found to be out of compliance with appropriate regulations. Certified scales will be used to make such a determination.
- (c) Each seal shall be marked with three letters identifying the Facility, Franchisee, and a sequentially increasing set of at least four digits.

Example: FGS-CON-0000

- (d) Franchisee shall also record the transfer trailer I.D. number. The transfer trailer seal will be inspected by both Metro's waste transport contractor and Franchisee prior to removal of the trailer from the Facility.
- (e) It is the responsibility of Metro's waste transport services contractor to ensure that the seal was properly installed before the transfer trailer leaves the Facility. Metro's waste transport services contractor shall be responsible for inspecting the empty transfer trailers for damage before release to Franchisee, inspecting the loaded transfer trailers for damage and verifying that the seal was installed properly before removing the transfer trailer from the Facility, transporting the load of waste from the Facility to the disposal site, and then unloading it.
- (f) If Franchisee improperly installs the seal, Metro's waste transport services contractor is required to notify Franchisee prior to leaving the Facility Site and request a new seal. Franchisee shall comply with any such requests. Failure to request a new seal will preclude Metro's waste transport services contractor from any recovery for damages arising out of any improperly installed seal. Metro's waste transport services contractor and Franchisee shall use an interchange agreement for inspection of transfer trailers, or a similar agreement as approved by Metro. In addition, Metro's waste transport services contractor can request removal of the seal to inspect the interior of the transfer trailer, and its contents, and request and receive a new seal from Franchisee.
- (g) Once the transporter has verified that the seal is properly installed, the waste contained within the transfer trailer is the responsibility of the transporter until the seal is broken by Metro's disposal site operator. If the seal is broken by other than disposal site personnel, the transporter will be responsible for all associated costs and liabilities involved with managing any waste contained within the transfer trailer, above and beyond normal disposal costs.
- (h) Metro reserves the right to contract with parties other than Metro's waste transport services contractor, for the transport of all waste specified in section 7.4.1. All such contracts shall include a requirement that the transport contractor carry insurance in commercially reasonable amounts.

7.5.3 Maximizing the Compacted Load.

- (a) Franchisee shall use best faith efforts to maximize the transporter's payload, without overloading the transfer trailer or the individual road-legal axle combinations. Maximum payload shall be no more than 32 tons

at a density of 900 lbs/cu. yd. The weights should be verified with axle scales available at the Facility.

- (b) Franchisee shall pay to Metro an additional per ton transport amount, for failing to maximize Metro's waste transport services contractor's payloads. The additional payment is to ensure that Franchisee is diligent in fully loading transport trailers at average densities of at least 29 tons or the combined yearly average at Metro owned transfer stations, whichever is less. The formula for determining additional transport payments to Metro is as follows:

- (1) Base Tonnage (BT) = (Loads/calendar year) x 29 tons (or combined yearly average)
- (2) Tons Transported (TT) = Tons transported/calendar year
- (3) Tons on which additional payment is due (APT)
(APT)=(TT-BT) + (Positive APTs from previous year)

If APT is less than zero, Franchisee shall make an additional per ton transport payment of \$6.75 for each APT for that year, unless (following the first calendar year) the cumulative APT's from the previous year is greater than zero. If the cumulative APT's from previous years is greater than zero, those positive APT's shall serve as a credit against APT's accumulated in a subsequent year. The cost of an APT shall be adjusted beginning in January, 1994, and each January thereafter at the same rate as the CPI adjustment to Metro's waste transport services contract for transporting waste from the Facility, and shall remain effective for the calendar year.

7.5.4 Load Check Program/Unacceptable Waste

- (a) Franchisee shall inspect all waste delivered to the Facility in a manner that is reasonably calculated to determine whether the waste is Unacceptable Waste. Franchisee shall establish procedures for inspecting loads of waste and for excluding Unacceptable Waste from compaction and extrusion into transfer trailers.
- (b) Franchisee's load check program shall, at a minimum, include screening of all incoming loads by personnel trained to spot Unacceptable Waste, and more thorough random load checks, occurring at least once each week.

- (c) Franchisee shall keep accurate records regarding all Unacceptable Waste received, including the following information regarding a known party that unloaded the waste: date, time, vehicle license number, company and/or the individual's name and address, conversation regarding waste, and approximate volume.
- (d) Franchisee shall be responsible for all costs associated with the cleanup and management of Unacceptable Waste that has been loaded into a transfer trailer, properly sealed and transported to a disposal site. If the seal is unbroken upon arrival at the disposal site, Franchisee shall reimburse Metro for any cost associated with the cleanup of the Unacceptable Waste or any material contaminated by it at the disposal site for which Metro is properly billed by its disposal site contractor. Upon billing Franchisee for such costs, Metro shall provide to Franchisee all documentation related to the incident for which Franchisee is being billed.

7.5.5 Materials Excluded from Compaction. It is the responsibility of Franchisee to utilize the compactor to develop loads that do not cause above normal wear and tear on the transfer trailers during the transfer of waste from the compactor to the transfer trailer. Franchisee shall be liable for damage to a transfer trailer caused by Franchisee.

7.6 Franchisee Transport/Metro Disposal Option

- 7.6.1** At any time during the term of this Franchise, Franchisee may submit to Metro a detailed proposal for Franchisee to deliver all waste specified in section 7.4.1 to a disposal facility specified by Metro.
- 7.6.2** By written acknowledgment delivered to Franchisee, the Executive Officer may grant to Franchisee permission to transport solid waste specified in section 7.4.1 to a disposal facility specified by Metro. The acknowledgment shall specify Metro's intent not to exercise its option to transport waste from the Facility, to cease transporting waste from the Facility, or to cease requiring Franchisee to deliver waste to Metro Central, whichever the case may be. The notice shall also acknowledge acceptance of Franchisee's proposal for delivery of such waste, as that proposal may have been amended following discussions with Metro. Upon countersignature by Franchisee, the acknowledgment shall serve as an amendment to this Franchise.
- 7.6.3** If Metro allows Franchisee to transport waste as specified in this section 7.6, Franchisee shall not be required to pay transport fees to Metro. Franchisee shall pay to Metro the disposal charge specified in section 14.4, as well as all fees specified in section 14.3, for each ton of waste generated within the district that is disposed of at Columbia Ridge Landfill.

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.

9. SURETY BOND OR CONDITIONAL LIEN

Franchisee shall provide a surety bond in the amount of One Hundred Thousand Dollars (\$100,000), or at its option provide a conditional lien on the franchise property in a form satisfactory to Metro. Without limiting the use to which the proceeds from a bond or from lien foreclosure may be put, such proceeds may be used to clean up or otherwise mitigate damage to the Facility upon closure or resulting from the condition of the Facility upon closure.

10. INSURANCE

10.1 Franchisee shall purchase and maintain the following types of insurance, covering Franchisee, its employees, and agents:

- (a) 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
- (b) Automobile bodily injury and property damage liability insurance.

10.2 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.

10.3 Metro, its elected officials, departments, employees, and agents shall be named as **ADDITIONAL INSURED**S. Notice of any material change or policy cancellation shall be provided to Metro 30 days prior to the change or cancellation.

10.4 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.

11. 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.

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. 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 Metro's authority to direct the flow of solid waste away from the Facility and/or take enforcement action against the Facility shall be as specified in the Metro Code.

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 or surveys; collecting samples; obtaining data; examining books, papers, records and equipment; performing any investigation as may be necessary to verify the accuracy of any return made, or if no return is made by the Franchisee, to ascertain and determine the amount required to be paid; and carrying out other necessary functions related to this Franchise and the Metro Code. Access to inspect is authorized:

- (a) during all working hours;
- (b) at other reasonable times with notice;
- (c) at any time without notice, at the discretion of the Metro Solid Waste Division Director, when such notice would defeat the purpose of 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 or standards regarding matters within Metro's authority, and to enforce all such legal requirements against Franchisee.

14. DISPOSAL RATES AND FEES

- 14.1** Franchisee shall be responsible for collecting all fees for disposal at the Facility and remitting fees, charges and taxes to Metro as specified in this agreement. All waste specified in section 7.4.1 shall be charged the same rate. To the extent that Franchisee charges different rates for different categories of waste, such rates shall be included in a published rate schedule, which shall be made available to Metro when adopted or amended. Franchisee shall maintain accounts on wastes received and amounts billed to each commercial hauler as required by Metro Code Section 5.01.130.
- 14.2** All charges shall be calculated on an outbound tonnage basis using certified scale weights at the Facility. If an emergency or malfunction temporarily prevents the use of certified scale weights at the Facility and it is not feasible to use weights obtained at the disposal site, the yardage/tonnage conversion shall be based on the assumption that compacted waste has a density of 600 pounds per cubic yard and that non-compacted waste has a density of 250 pounds per cubic yard.
- 14.3** At all times during this Franchise, Franchisee shall be responsible for payment of the following fees, to the extent those fees are required by law:
- (a) Local enhancement fees, by remitting to Metro;
 - (b) DEQ fees for operation of the Facility, by remitting directly to DEQ;
 - (c) Metro regional user fee, as specified in the Metro Code; and
 - (d) Metro excise tax, as specified in the Metro Code.
- 14.4** Metro Transport and Disposal Charges
- 14.4.1** If transport of waste from the Facility and/or ultimate waste disposal is provided by Metro, Franchisee shall remit to Metro the following additional charges, for each ton of waste generated within the District transported and disposed of by Metro up to 70,000 tons per year:
- (a) Per ton transport fee of \$7.50; and
 - (b) Per ton disposal fee of \$25.83.
- 14.4.2** For each ton of waste transported from the Facility and/or disposed of by Metro in excess of 70,000 tons per year and all waste transported from the Facility and/or disposed of by Metro that was generated outside of the District, Franchisee shall remit to Metro:

- (a) Per ton transport fee of \$15.46; and
- (b) Per ton disposal fee of \$28.57.

- 14.4.3 The transport and disposal charges specified in section 14.4.1 shall be annually adjusted on each anniversary of the Franchise renewal date for use during the forthcoming year, based on 100 per cent of the change in the Consumer Price Index entitled "West-A" from the U.S. Department of Labor, Bureau of Labor Statistics' publication entitled "Consumer Price Indexes, Pacific Cities and U.S. City Average/All Urban Consumers" or by the actual increase in the transport or disposal fee charged by Metro's contractor, whichever is greater. The transport and disposal charges specified in section 14.4.2 shall be automatically adjusted to reflect, at all times, the per ton fixed and variable transport and disposal fees being remitted by Metro to its transport and disposal contractors, without offset or credit to Franchisee of any kind.
- 14.4.4 All charges specified in this section 14.4 shall be remitted as specified in Metro Code Section 5.02.055, and subject to the credit terms of that section.
- 14.5 Franchisee is authorized to charge no more than \$75 per ton for each ton of solid waste disposed of at the Facility, until such time as Franchisee obtains a different rate through the rate review process of the Metro Code. Franchisee may automatically pass through any increase in Metro fees or DEQ fees without rate review, subject to the \$75 per ton cap. Beginning in 1995, Franchisee shall submit to rate review annually, following or at the time of Metro's adoption of disposal rates for Metro owned facilities.
- 14.6 The Franchisee is authorized to charge a minimum fee of \$15.00 per load for public self-haulers, provided however that if a self-hauler shall bring in one-half (1/2) cubic yard of recyclable material (as defined in ORS 459.005) they shall receive a \$3.00 credit toward their disposal charge.
- 14.7 A surcharge shall be levied against a person who disposes of waste at the transfer station, if when entering the Facility any portion of the waste is visible to Facility scalehouse personnel, unless the waste is only visible through a secure covering. The surcharge shall be \$100.00 for a load delivered by a vehicle greater than three-quarter ton capacity, and \$25.00 for a load delivered by a vehicle of three-quarter ton capacity or less, and shall be collected in the same manner as other disposal fees are collected at the Facility. Franchisee may retain all such surcharges collected.

15. REVOCATION

- 15.1 This Franchise may be revoked at any time for any violation of the conditions of this Franchise or the Metro Code, as specified in the Metro Code. This Franchise does not relieve Franchisee from responsibility for compliance with ORS chapter 459, or other applicable federal, state or local statutes, rules, regulations, codes, ordinances, or standards.
- 15.2 This Franchise is subject to suspension, modification, revocation, or nonrenew upon Metro finding that:
- (a) The Franchisee has violated the terms of this Franchise, the Metro Code, ORS chapter 459, or the rules promulgated thereunder or any other applicable law or regulation and has failed to cure in a timely manner;
 - (b) The Franchisee has misrepresented material facts or information in the Franchise Application, Annual Operating Report, or other information required to be submitted to Metro;
 - (c) The Franchisee has refused to provide adequate service at the Facility, after written notification and reasonable opportunity to do so; or
 - (d) There has been a significant change in the quantity or character of solid waste received at the Facility, the method of processing solid waste at the Facility, or available methods of processing such waste.

16. GENERAL CONDITIONS

- 16.1 Franchisee shall be responsible for ensuring that its contractors and agents operate in complete compliance with the terms and conditions of this Franchise.
- 16.2 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.
- 16.3 This Franchise may not be transferred or assigned without the prior written approval of Metro.
- 16.4 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.
- 16.5 This Franchise shall be construed, applied, and enforced in accordance with the laws of the State of Oregon.

16.6 If any provision of the Franchise shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this Franchise shall not be affected.

17. NOTICES

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

Ambrose Calcagno, Jr.
Forest Grove Transfer Station
1525 "B" Street, P.O. Box 8
Forest Grove, Oregon 97116

with a copy to:

Thompson, Adams, DeBast & Helzer
Attorneys at Law
4500 SW Hall Boulevard
Beaverton, OR 97005

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

Solid Waste Director
Solid Waste Department
Metro
600 NE Grand Avenue
Portland, OR 97232-2736

17.3 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.

Ambrose Calcagno, Jr.,
dba A. C. Trucking

Date: _____

Rena Cusma, Executive Officer
Metro

Date: _____

1187a

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 94-527 FOR THE PURPOSE OF GRANTING A FRANCHISE RENEWAL TO AMBROSE CALCAGNO, JR., D/B/A A. C. TRUCKING FOR THE PURPOSE OF OPERATING A SOLID WASTE TRANSFER STATION AND DECLARING AN EMERGENCY

Date: December 29, 1993

Presented by: Bob Martin

FACTUAL BACKGROUND AND ANALYSIS

The purpose of this report is to introduce and provide analysis regarding the application filed by Ambrose Calcagno, d/b/a A. C. Trucking for renewal of his franchise to own and operate the Forest Grove Transfer Station (FGTS) located in the City of Forest Grove, Oregon. The application was accepted as complete on November 1, 1993. Metro, pursuant to Code Section 5.01.020 has the authority to grant franchises for private facilities accepting mixed solid waste. As previously approved by the Metro Council, the facility is to transfer mixed solid waste delivered to the facility by commercial haulers and the public.

A key element of the proposed franchise renewal for the Forest Grove Transfer Station is a contemplated shift for the ultimate disposal of waste from the Riverbend Landfill to the Columbia Ridge Landfill. This proposed transition is contingent on a number of factors including, most particularly, the successful implementation of a contract amendment between Metro and Oregon Waste Systems. The franchise is designed to allow Metro the option of transporting and/or disposing of waste delivered to the facility.

In summary, the proposed franchise includes the following:

1. Transitional language accommodates an arrangement between Metro and Oregon Waste Systems providing for the Forest Grove Transfer Station tonnage to be disposed of at Columbia Ridge Landfill.
2. Franchisee will continue to operate the scalehouse at the Forest Grove facility.
3. Franchisee will continue to pay Metro User Fees and Excise Taxes as required by the Metro Code.
4. Franchisee will pay Metro for transport and disposal (as applicable) if Metro assumes transport or disposal responsibilities.
5. Franchisee will continue to remit community enhancement money to Metro for disbursement to the City of Forest Grove.
6. Franchisee will pay its own DEQ fees associated with operation of the Transfer Station and other associated fees (other DEQ fees are paid as part of the disposal fee).

7. Franchisee will retain compensation for transfer station operations.
8. A compactor will be installed at the Forest Grove facility by the franchisee to accommodate transfer of materials to the Columbia Ridge Facility, if Metro assumes disposal responsibility.
9. Franchisee has not requested any increase in rates as approved by the Metro Council in 1992. The franchise provides for rate review for the facility in 1995, or earlier if the franchisee requests a new rate.

LOCATION OF FACILITY

1525 "B" Street, Forest Grove, Oregon

SITE DESCRIPTION

All or portions of tax lots 9500, 9501, and 9700; assessor's map 1S-36-BC located in the City of Forest Grove, Oregon.

MATERIALS TO BE ACCEPTED

Franchisee is authorized to accept all materials authorized by its DEQ Solid Waste Disposal Permit; from the public and from commercial collection vehicles, for delivery to a Metro-designated disposal facility (or transport and disposal as may be directed by Metro, pursuant to section 7.4 of the franchise) and to separate out recyclable materials such as, but not limited to, wastepaper, cardboard and newspaper. Discarded vehicles, sewage sludge septic tank and cesspool pumpings, or other sludge shall not be accepted at the facility.

Franchisee may accept no more than 300 tons of solid waste per operating day (a day in which the facility accepts solid waste) on a monthly average, with the added condition that franchisee may not accept more than 70,000 tons of waste in any twelve consecutive months or as this amount may otherwise be limited by Metro's agreement with Oregon Waste Systems, Inc. Upon assumption by Metro of responsibility for transport of solid waste from the facility, franchisee may accept an unlimited quantity of solid waste at the facility. However, for each ton of waste transported from the facility or disposed of by Metro in excess of 70,000 tons, from inside or outside of the District, franchisee shall pay increased transport and disposal fees as specified in section 14 of the franchise.

PERMITS REQUIRED

The applicant requires:

1. City of Forest Grove Business License
2. Oregon Department of Environmental Quality Solid Waste Disposal Permit
3. Metro Franchise

Status:

1. Has current City of Forest Grove Business License
2. Department of Environmental Quality Solid Waste Permit No. 368 received April 10, 1990.
3. Metro franchise pending.

MISCELLANEOUS OPERATING DATA

Metro may reasonably regulate the hours of site operation as it finds necessary to ensure compliance with the franchise. Metro will attempt to provide 90 days written notice prior to regulating hours of operation, and shall not unreasonably increase franchisee's costs of operation. If Metro is transporting solid waste from the facility, franchisee shall not change its hours of operation in a manner that would increase Metro's transport costs.

ISSUANCE OF A FRANCHISE

Staff has prepared a proposed franchise to be issued to the applicant following Council approval of the franchise application. Metro Code Section 5.01.070 states in part "The Executive Officer shall formulate recommendations regarding whether the applicant is qualified; whether the proposed franchise complies with the district's solid waste management plan; whether the proposed franchise is 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 whether or not the applicant has complied or can comply with all other applicable regulatory requirements."

Metro Code Section 5.02.070 (e) (2) provides that a corporate surety bond is required for this type of franchise. This however, is guided by Metro Resolution No. 86-672. The pertinent portions of the Resolution, Section 1 b. and c. read as follows:

"b. If continued operation of the processing or transfer facility is not considered necessary to the solid waste disposal system because of alternative disposal sites which may be available and potential clean-up and site maintenance costs* for the facility are estimated to be less than or equal to \$10,000, then the amount of the required surety bond is \$0."

**[Footnote 4 from the resolution stated: Clean-up and Site Maintenance Cost is dependent on the size and design of the facility.]*

"c. If continued operation of the processing or transfer facility is not necessary to the solid waste disposal system because of alternative disposal sites which may be available and potential clean-up and site maintenance cost for the facility are estimated to be greater than \$10,000, then the amount of the required surety bond is to be equal to the amount of the estimated clean-up and site maintenance costs for the facility. If these conditions exist and the franchisee owns the site on which the facility operates, and the value of the site exceeds the amount required for the bond, the franchisee may elect to issue a conditional lien on the property to Metro guaranteeing performance by the operator in cleaning up the site in lieu of the required bond. The lien shall be in a form satisfactory to Metro."

Using the criteria outlined in Metro Resolution No. 86-672 for determining the amount of a surety bond that may be required pursuant to a facility franchise, it is recommended that the franchisee be required to provide a surety bond in the amount of \$100,000, or in the alternative provide a conditional lien if preferred by the franchisee. This recommendation is based on the availability of disposal facilities (Metro transfer stations), that would not make it necessary to continue operation of the facility. Clean up and site maintenance costs are estimated to be approximately One Hundred Thousand Dollars (\$100,000). This estimate is based on:

- Disposal of one weeks' waste (1,350 tons) will cost about \$100,000 for loading, hauling and disposal.

The following staff analysis is submitted to the Council for its review as required.

QUALIFICATIONS OF THE APPLICANT

Metro Solid Waste Franchise No. 4 was originally issued to Ambrose Calcagno Jr. on March 22, 1984 to operate the Forest Grove Transfer Station. Operation of the facility began in October 1985 and it was used at that time solely to transfer waste from compactor trucks to transfer trailers, the trucks and trailers all of which were owned by Mr. Calcagno. Final destination of waste from the FGTS was the Riverbend Landfill in Yamhill County.

On August 14, 1986 the Metro Council approved variances requested by Mr. Calcagno and also renewed the franchise for the FGTS to a new expiration date of August 14, 1991. The variances approved by the Council authorized the transfer station to accept wastes from collection companies other than from companies owned by Mr. Calcagno and further relieved Mr. Calcagno from payment of the Regional Transfer Charge. A further Council renewal of the Franchise in September 1988 extended the Franchise to September 22, 1993 and authorized provision of service to public self-haulers. The applicant has successfully operated the facility since its original approval by Metro in 1984.

COMPLIANCE WITH THE SOLID WASTE MANAGEMENT PLAN

Given the conditions imposed by this franchise, this facility will comply with the goals, objectives and policies of the Regional Solid Waste Management Plan. The Regional Solid Waste Management Plan (RSWMP) states in part:

IMPLEMENTATION

9.0 Franchising, contracting, licensing policy for solid waste facilities.

The Solid Waste Management Plan shall include methods for regulatory control of solid waste facilities. Such regulatory methods may include a system of franchising, contracting

and/or licensing to ensure that needed disposal facilities are provided and are operated in an acceptable manner.

NEED AND COMPATIBILITY

As this is a continuation of an existing franchise, no other system facilities are expected to be impacted by the proposed franchise. This facility has been in continuous operation since 1985 and has demonstrated its utility and compatibility with the system.

REGULATORY COMPLIANCE

As noted on page 2 of this report, the applicant possesses a Department of Environmental Quality solid waste permit and a City of Forest Grove Business License. The transfer station is a permitted use under City of Forest Grove zoning regulations for the facility property.

BUDGET IMPACT

No direct budget impact is anticipated by renewal of this franchise. If Metro assumes responsibility for transport and disposal of waste delivered to the facility, a budget amendment may be required. It is unlikely that Metro would assume such responsibility until the 1994-95 fiscal year. For information related to Metro exercise of its option to dispose of waste delivered to the facility please refer to fiscal analysis provided by staff related to proposed Amendment No. 4 to Metro's agreement with Oregon Waste Systems.

SUMMARY

It is the conclusion of staff that:

- The applicant possesses sufficient qualifications to establish, operate and maintain the proposed facility in a manner consistent with the provisions of the Metro Code.
- That the facility complies with Metro's Regional Solid Waste Management Plan.

STAFF RECOMMENDATION

Based on the foregoing analysis it is the opinion of staff that Ambrose Calcagno, d/b/a A. C. Trucking should be granted a non-exclusive franchise in accord with the provisions of the franchise agreement shown as Exhibit A of Ordinance No. 94-527.

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Ordinance No. 94-527.

s:\north\franchise\staff\229.rpt

SOLID WASTE COMMITTEE REPORT

CONSIDERATION OF ORDINANCE NO. 94,527A, FOR THE PURPOSE OF GRANTING A FRANCHISE RENEWAL TO AMBROSE CALCAGNO, JR DBA A.C TRUCKING FOR THE PURPOSE OF OPERATING A SOLID WASTE TRANSFER STATION AND DECLARING AN EMERGENCY

Date: January 12, 1994

Presented by: Councilor McLain

Committee Recommendation: At the January 11 meeting, the Committee voted 4-0 to recommend Council adoption of Resolution 93-1871. Voting in favor: Councilors Hansen, McFarland, McLain and Monroe. Councilors Buchanan and Wyers were excused.

Committee Issues/Discussion: Bob Martin and Jim Watkins explained that the purpose of the ordinance is to renew the franchise with A.C. Trucking for the operation of the Forest Grove Transfer Station. The renewal period is for five years. Martin explained that the existing agreement expired in September, but that both parties had agreed the terms of the existing agreement would remain in effect until a new franchise was approved. The ordinance contains an emergency clause that will permit immediate implementation of the new agreement.

Martin and Watkins reviewed the two major differences between the new and existing agreements. The first major change would give Metro the authority to determine how, and to where, waste from the station would be transported for final disposal. Under the present agreement, the franchisee was responsible for transportation and final disposal.

Martin explained that this change could allow Metro to pursue other disposal options. These could include: 1) sending the waste to Columbia Ridge if the proposed amendment to the Oregon Waste Systems (OWS) contract is executed, 2) conducting an open bidding process for transportation and disposal services, or 3) maintaining the status quo and continue to have the waste disposed of at the Riverbend Landfill. Martin noted that the franchise agreement was not directly tied to the OWS contract amendment. The franchise agreement and the contract amendment were negotiated separately and the agreement is only permissive in allowing the waste to be directed to Columbia Ridge.

Watkins noted that Metro must give the franchisee six month prior notice of intent to change the transportation and disposal of the waste. The principal purpose of such notice would be to give the franchisee time to make any operational or equipment changes needed to accommodate the change. For example, if the waste were to be sent to Columbia Ridge, the franchisee would have to install a compactor at the facility (at no cost to Metro).

The second major change would be the elimination of the 70,000 ton/year cap on waste that could be accepted from inside Metro's boundaries. The agreement, however, does provide that the franchisee would pay Metro an additional transport and disposal fees totalling \$10.70/ton for all waste over 70,000 tons. Martin noted that the facility currently annually processes about 65,500 tons of in district waste and that growth in tonnage from existing in-district haulers may cause tonnage to increase to over 70,000 during the next five years.

Councilor McLain expressed concern about Metro's ability to accurately forecast future tonnage changes at the facility. She noted the potential for acquiring new business and Metro did not have a specific forecast for the Forest Grove station.

Councilor Van Bergen asked about agreement provisions related to moving the facility and assignment of ownership to other persons. Todd Sadlo noted the wording of the agreement would not permit to facility to be moved. He also noted that the franchisee must notify Metro if more than a five percent interest is transferred and Metro must approve any transfer of a majority interest in the facility.

Watkins provided a chart which outlined the transfer station, transport, disposal and other charges that would be collected at the facility under various disposal and tonnage scenarios. For the first 70,000 tons the various charges would be the same regardless of whether the waste is transported and disposed of at the Riverbend or the Columbia Ridge. As noted earlier, Metro would receive an additional \$10.70/ton for tonnage over 70,000 that goes to Columbia Ridge and all out of district tonnage sent to Columbia Ridge.

Councilor Devlin noted that the out-of-district waste still would not pay the \$19/ton user fee and that this had been an issue for some time.

Watkins proposed and reviewed several minor amendments that staff had negotiated with the franchisee. He noted that they were largely designed to correct errors or clarify intent. These include: 1) deleting an incorrect reference defining the station as a processing facility, 2) clarifying that the franchisee can determine the disposal site for out of district waste, 3) clarifying how and when Metro would request installation of a compactor, and 4) clarifying the applicability of the various fees.

Councilor Monroe asked about scalehouse monitoring, since the franchisee will be retaining control of gatehouse operations. Martin noted that Metro will be annually auditing the station and that the state tests the accuracy of the scales.

Councilor Devlin asked if the 14% rate of return estimated by staff included the cost of installing a compactor. Martin

indicated that installation of a compactor would likely decrease the projected rate of return.

Councilor McLain expressed concern about the possible route that trucks might use to transport the waste to Columbia Ridge. Martin explained that they would be using a designated truck route and would not be going through downtown Forest Grove. He also noted that the number of transport trucks would be reduced from 12-14 to 8-10/day.

Councilor Monroe asked about transportation alternatives to Jack Gray Trucking, if the waste is sent to Columbia Ridge. Martin noted that he had assumed that Gray would be used, but that transportation of the waste could be bid. He indicated that there are no rail lines that are convenient to the facility.

The amendments offered by staff were approved. Councilor McLain indicated that she had two amendments drafted: 1) to set a 70,000 ton cap on waste processed at the station and 2) allow the franchisee to determine the ultimate disposal site for the waste. She indicated that she would not introduce the amendments at this time since these issues had been thoroughly discussed.



METRO

DATE: January 13, 1994
TO: Metro Council
Interested Persons
FROM: Paulette Allen, Clerk of the Council
RE: AGENDA ITEM NO. 6.1; ORDINANCE NO. 94-527A

Attached are a variety of documents distributed at the Council Solid Waste Committee meeting January 11, 1994. Please note the last document is Ordinance No. 94-527A as recommended by the Solid Waste Committee on January 11, 1994.

January 2, 1994

Merle Irvine
Willamette Resources, Inc.
2215 N. Front Street
Woodburn, OR 97971

Dear Merle:

In the attachment, I have posed and answered a series of questions related to Metro's March 1993 forecast and the outlook for tonnage through 2000. As I indicated early in this project, the deficiencies in Metro's March 1993 forecasting methodology and forecast were such that there appeared to be no way to "repair" the March 1993 forecast by passing more appropriate assumptions through the model used to produce this forecast. Instead, I developed an independent outlook for Metro's tonnages through the end of the decade, described appropriate approaches to waste forecasting, and then used this information as a framework for illustrating the deficiencies in Metro's approach and forecast.

In the attached materials, I have repeatedly made the point that developing accurate forecasts of receipts/disposal in the 1990's really translates to developing accurate forecasts of recycling. This principle applies to my work as well. For this reason, the outlook that I have presented here should be regarded as a sketch of the future rather than a detailed picture. And this is as it should be. Developing such forecasts is not your responsibility but rather Metro's.

This outlook is built around the following key assumptions: that employment will grow at the rate specified in the forecast produced for Tri-Met by ECO Northwest, which is very reasonable by historical standards; that population and household grow in accordance with the historical relationships between population and employment in the Portland area; and, that the relationship of Metro's current prices to the competition remain relatively constant.

That said, the following seems clear -- tonnages will start climbing once again and will continue to do so through the end of the decade, barring a significant recession. The exact growth rate depends on the efficacy of recycling and on the actual rate of growth in the economy. Metro's share of this tonnage depends on their pricing and location vis-a-vis Hillsboro and other competitors. The system will probably hit capacity in the next three-five years. In the meantime, TST tonnages originating in the south end will be (and already are) beyond the rated capacity of the system.

Metro's March 1993 forecast misses the elements of this outlook completely, for the many reasons I have described in the document. The realization of a no TST-growth scenario (as suggested by Metro's forecast) would require the adoption of a number of additional policy measures, most of which are regarded as draconian (e.g., mandatory food waste recycling, cardboard bans, etc.).

Merle Irvine
Metro 1993 Forecast Review
January 2, 1994

Please call me if you have any questions.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Paul D. Reiter". The signature is fluid and cursive, with the first name "Paul" being the most prominent.

Paul D. Reiter
Reiter Northwest

cc: Carl Batten, ECO Northwest (with attachments)

1. What Factors Led to the Recent Declines in Metro Tonnages? Should We Expect More Declines in the Near Term?

Synopsis

As Figure 1-A illustrates, the recent slowdown in the receipts of system-wide and transfer station waste can be attributed to three primary factors:

- o the slowdown/recession in the Portland economy;
- o the ramp-up of residential curbside and hauler-based commercial recycling;
- o the substitution of lower priced non-Metro facilities and services for Metro operated facilities.

In combination, these factors produced declines in Metro's receipts and the region's overall disposal volumes over the 1991 to mid-1993 period. Beginning in 1993, tonnage began to grow sufficiently to overcome the effects of recycling. This growth in disposal volumes will accelerate in 1994-95 as the economy recovers, the growth in curbside volumes slows, and the relative price of Metro disposal stabilizes.

Over the 1994-2000 period, Metro's receipts of solid wastes should grow between 1.4 and 1.7 percent per year, once the affects of hauler-based and market-based recycling have been accounted for. This compares with a 3 percent rate of growth in receipts prior to the downturn in 1991.

How the Slowdown Affected Waste Generation

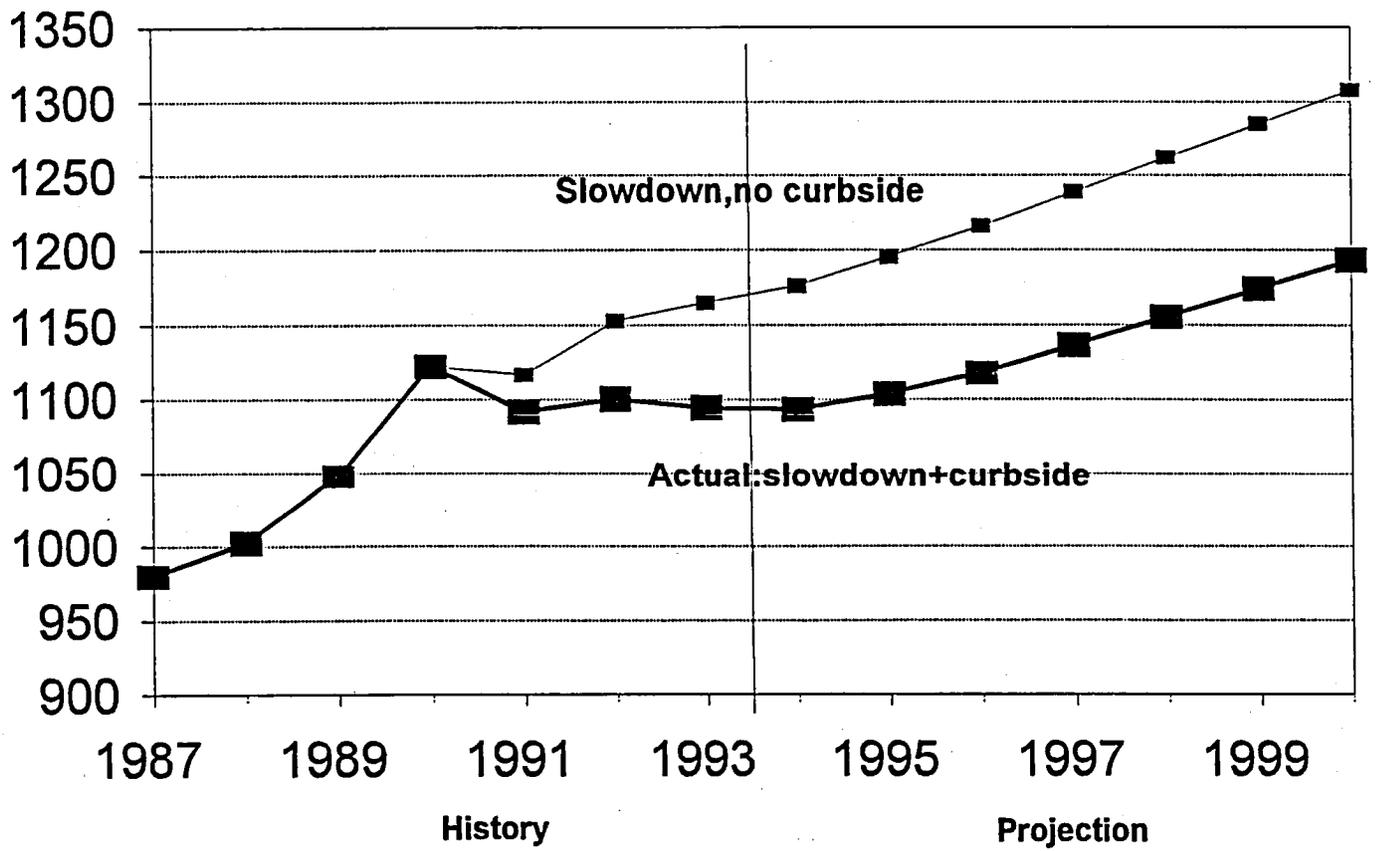
Metro's wastes are produced as a by-product of the activities of three broad classes of generators: residences, business/government/industry, and construction. Fluctuations in the activity level of any of these generators produces fluctuations in waste volumes.

By relating historical measures of the activity variables (e.g., restaurant employment) to waste generation factors (e.g., waste per restaurant employee), one can estimate how the downturn affected Metro receipts independent of recycling and the effects of rate differences between Metro and non-Metro facilities.

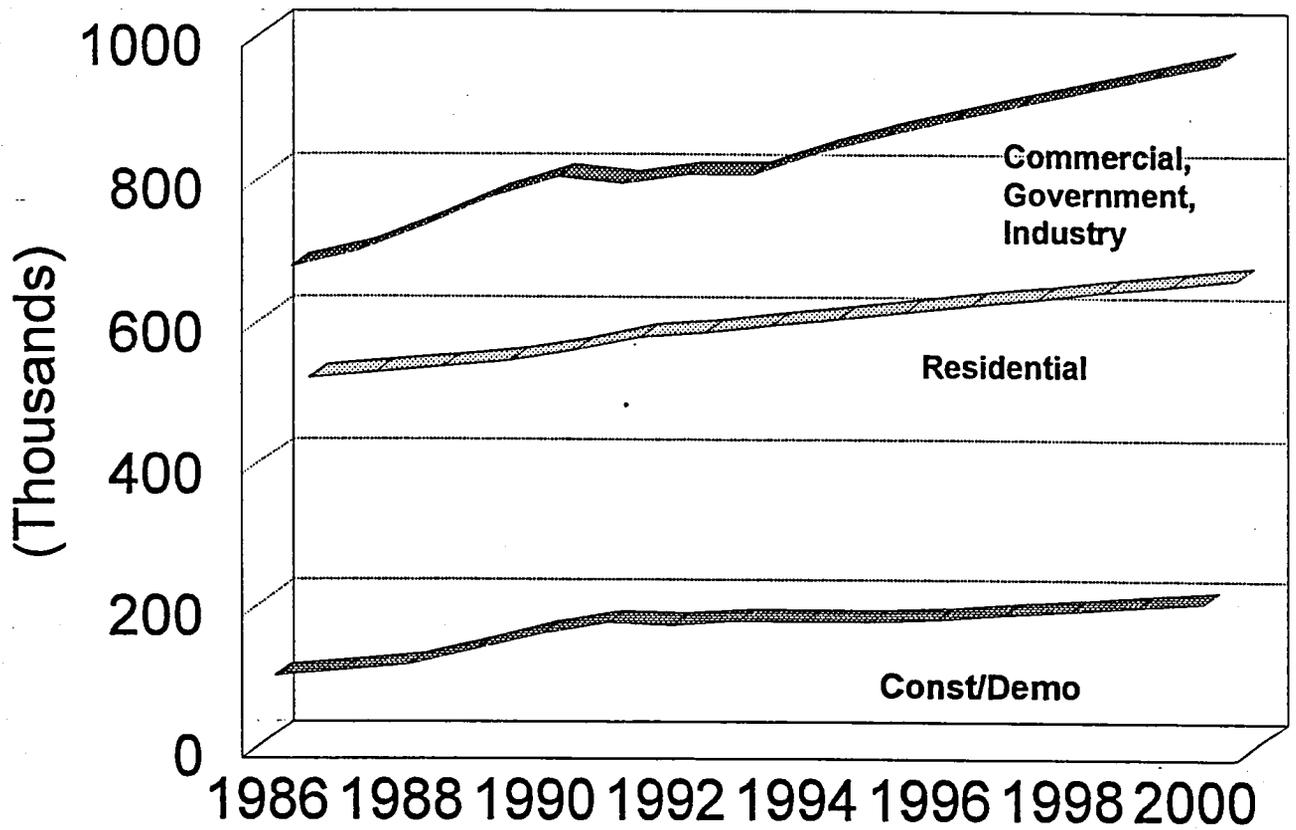
Using these concepts, it is clear that the economic slowdown in the Portland area resulted in a significant slowing of the patterns of rapid growth evident in the late 1980's. Of the three waste producing classes, the commercial/industrial class appears to have been the largest contributor to the slowdown in waste generation growth, as shown in Figure 1-B. The manufacturing sub-sector was actually in a recession during this period.

Overall, total waste generation grew less by only 1% per year between 1990 and 1993, after growing by more than 4% per year between 1986 and 1990.

Figure 1-A - Metro System-Wide Disposal Tonnage Under Two Scenarios



**Figure 1-B - Metro System-Wide
Waste Generation by Class**



The Impact of Curbside Recycling

Many of the hauler-based recycling activities were coincidentally introduced and at their period of maximum increase at precisely the same time (1990-92) as the Portland area economy was slowing. Curbside programs typically display a logarithmic pattern of growth in tonnage following their introduction. Examples from Seattle and Snohomish County in Washington State are illustrated in Figure 1-C.

Accordingly, during the period 1991-92, the growth in recycling volumes actually exceeded the growth in generated wastes. Not surprisingly then, Metro system-level receipts slowed to a trickle over this period, as the affects of "upstream" recycling began to drive a wedge between generation and disposal, as shown in Figure 1-A. In 1993, the growth in generation appears to have exceeded recycling-related decline in disposal, as the economy began to recover and as the recycling program tonnages began to level out.

The Role of Rising Relative Prices

Coincident with the slowdown in the growth of waste generation and the loss of tonnage to curbside recycling was a 63% increase in the Metro's nominal tip fee prices between January, 1990 and January, 1993. The significance of these price increases were a result of Metro's relative price position vis-a-vis competitive non-Metro suppliers of recycling and disposal services.

Figure 1-D compares disposal prices at Metro's facilities with prices for comparable services at the Hillsboro landfill over the 1988-93 time period. As Figure 1-D illustrates, following the 1991 rate increase, Metro's prices *exceeded* the price of its major competitor, the Hillsboro landfill. Thereafter, Metro's share of system wide receipts fell. Unfortunately, these price changes coincided with the closure of St. John's landfill, making it difficult to disentangle the effects of the price changes.

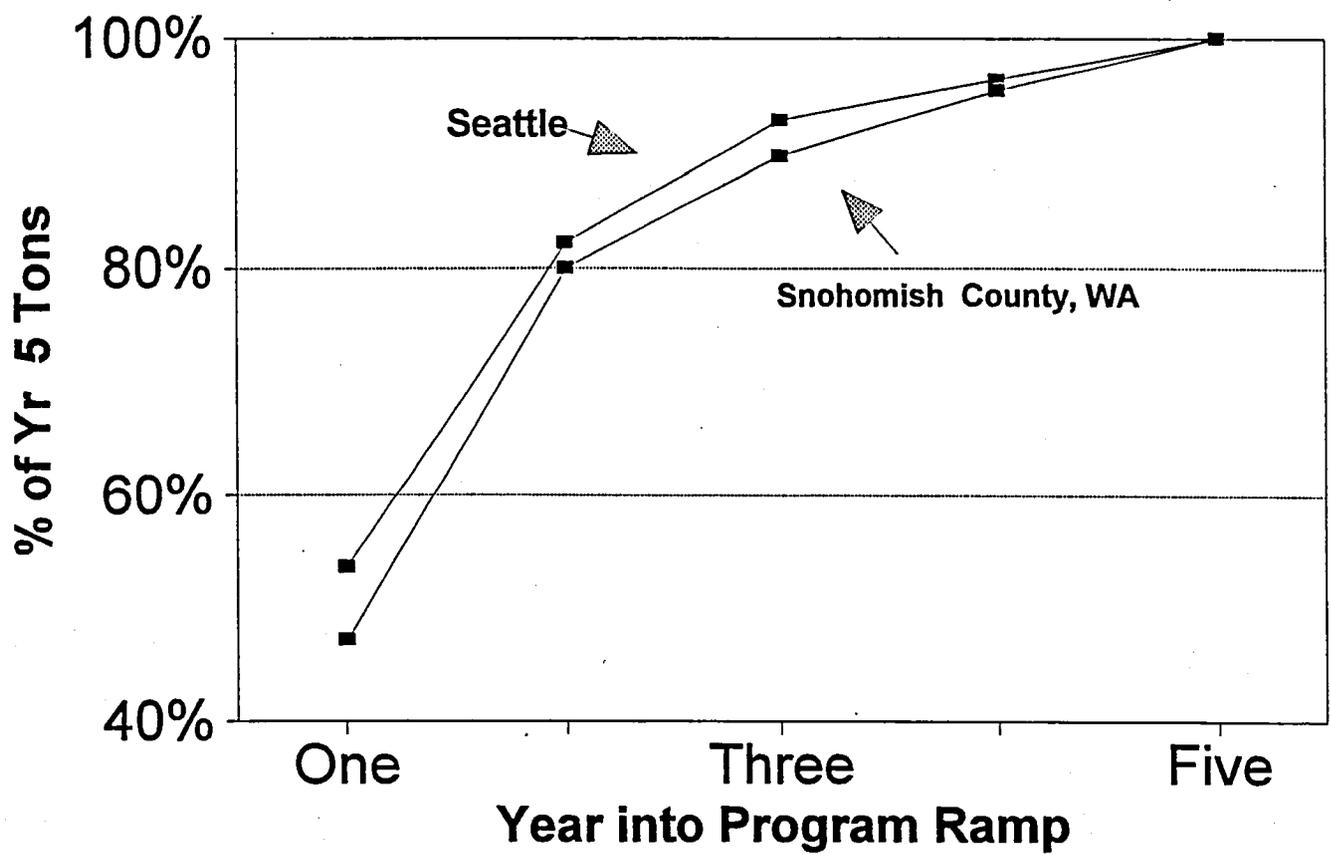
The gap between Metro's prices and Hillsboro prices narrowed in mid-1992., and stabilized in 1993. Subsequently, Metro's share of regional receipts stabilized and appears to have grown in 1993.

The Comparable Experience of Snohomish County, Washington

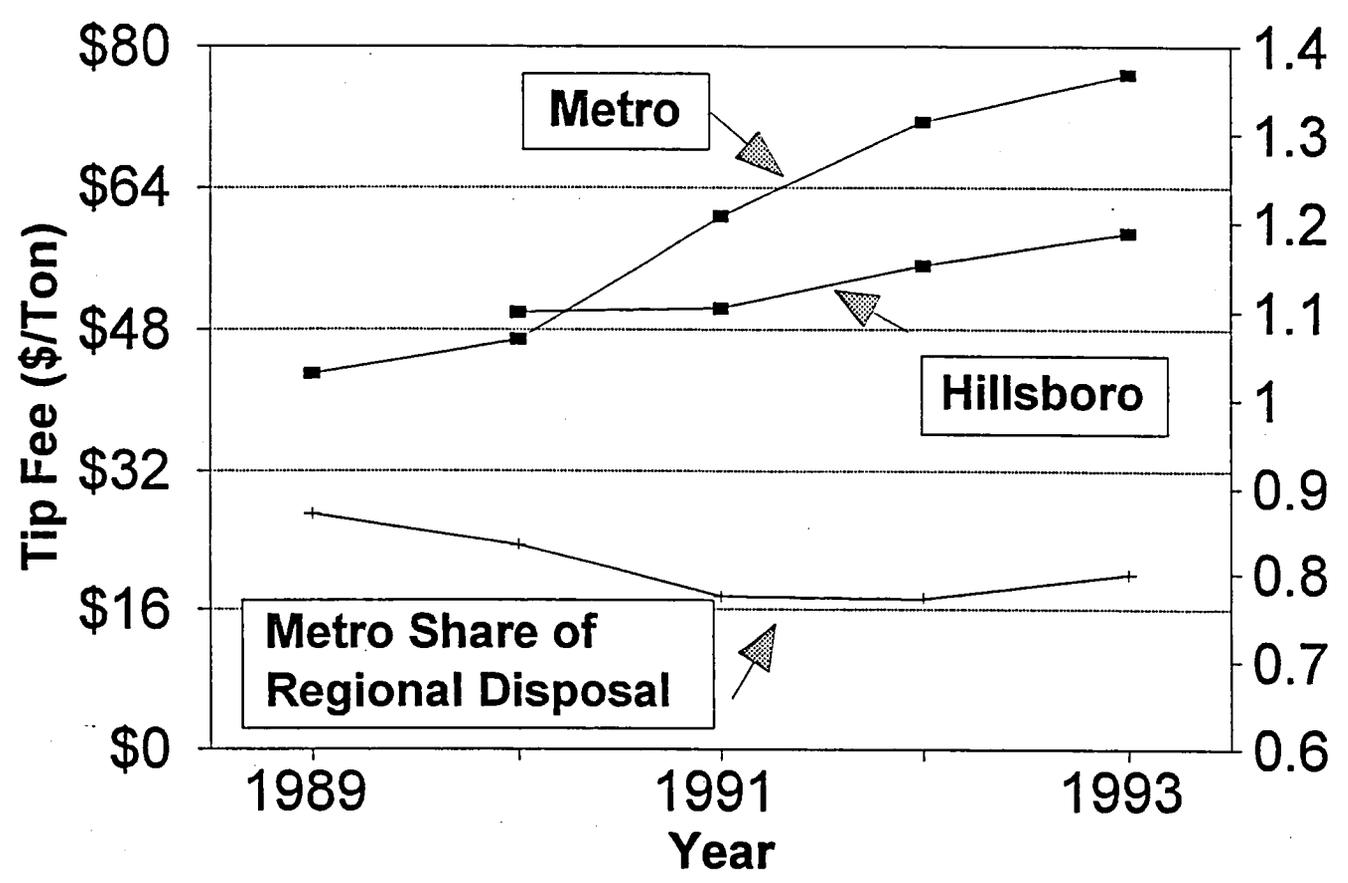
These oscillations in tonnage are not unique to Metro. Snohomish County, Washington had a very similar experience to Metro, as illustrated in Figure 1-E -- rapid growth in disposal volumes followed by declining tonnages that were the consequence of steep relative price increases, the introduction of curbside recycling, and policies that discouraged CD-type wastes.

Tonnages bottomed out in 1992/93 as the curbside programs matured and a new supply/demand equilibrium was realized in the market. Disposal tonnages are projected to grow over the 1994-2000 period, but at a slower rate than in the pre-curbside recycling era, both due to continuing growth in market recycling and due to slower economic growth.

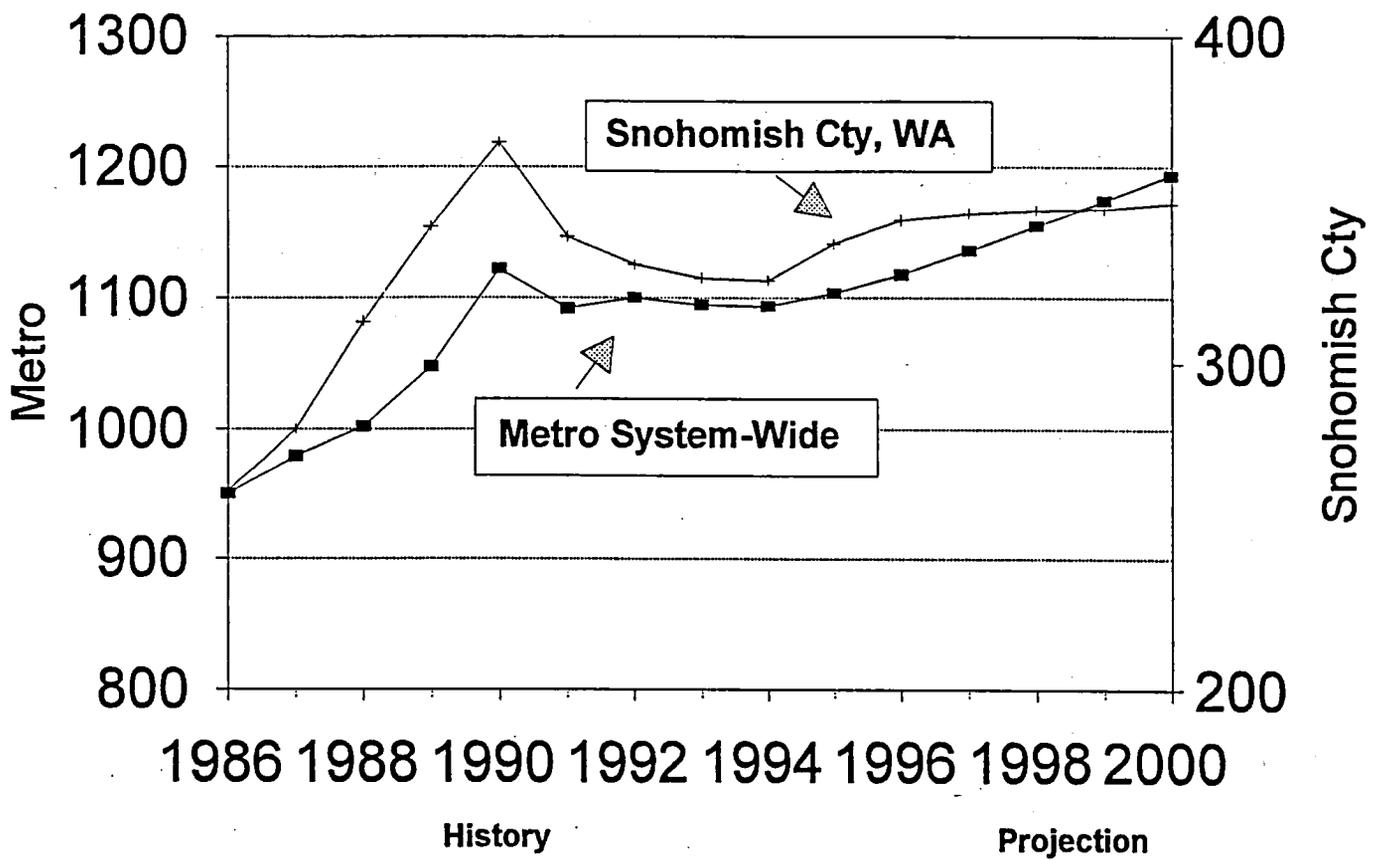
Figure 1-C - Residential Curbside Program Ramp Rates



**Figure 1-D - Relative Prices
and Metro Facility Share of Disposal**



**Figure 1-E - Metro and Snoho Cty, WA
Historic/Projected Disposal Patterns**



2. What is the Outlook for Regional and TST Tonnage through 2000? When will Metro Reach Capacity for Handling TST wastes?

Synopsis

Regional deliveries should grow between 1.4 and 1.7% per year between 1994 and 2000. The range in growth rates is dependent primarily on two factors: the success of curbside/hauler based recycling, and the performance of the economy over this period.

Transfer Station type tonnage (TST) levels should exceed system capacity between 1996 and 1998, as illustrated in Figure 2-A. This assuming that the capacity for Transfer Station type tonnage (TST) is 871,000 tons through the year 2000, and that Metro's prices maintain their current relationship with alternative suppliers of recycling and disposal services.

Projections based on the new forecasting model produced for Metro by Synergic Resources Corporation also suggests that Metro will reach TST capacity in the next five years, perhaps as early as 1996. However, the impacts of curbside recycling are not fully incorporated into this model.

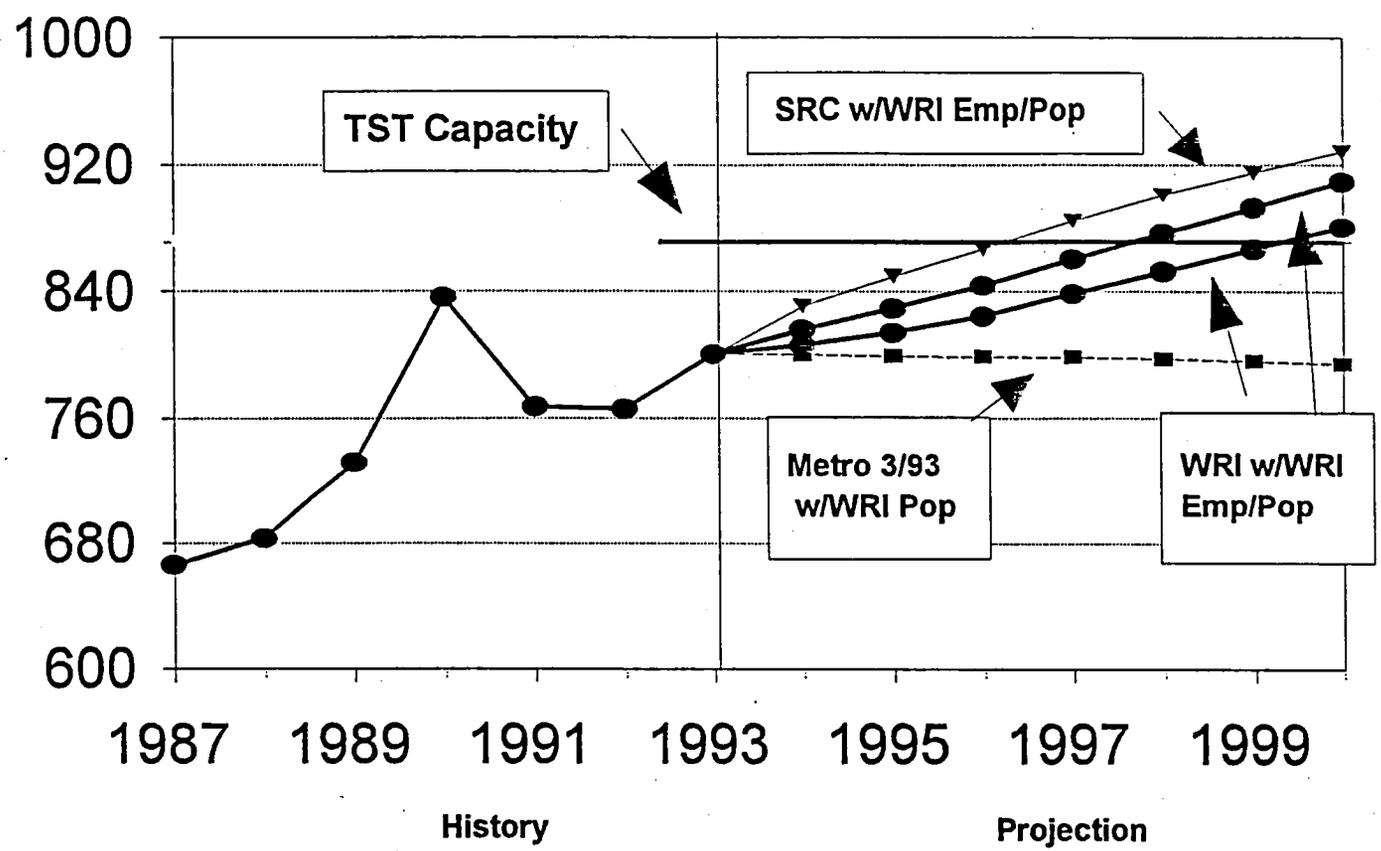
Expectations for Regional Deliveries

Regional deliveries are projected to grow between 1.4 and 1.7% per year between 1994 and 2000. During this same period, waste generation is projected to grow at approximately 2% per annum. The lower rate of growth in deliveries is attributable to growth in curbside/hauler based recycling and other market-driven recycling activities, particularly through 1994/95.

Optimistically, the curbside/hauler based programs will achieve results comparable with Seattle, which has a municipally-based system and is therefore capable of aligning rate and collection policies. In this case, total recycling would grow approximately at a rate of approximately 4% per annum. Disposal would grow approximately 1.4% per annum. Conversely, if the curbside/hauler based programs achieve 60-70% of Seattle's recovery rates, the growth in disposal would obviously be higher – in the range of 1.7% per annum.

The new model developed for Metro by SRC suggests higher growth rates for regional deliveries over the 1994-2000 period. Although Metro has not formally developed a forecast using this model, application of the equations documented in SRC's report to Metro suggests growth in regional deliveries in excess of 3% per annum between 1994 and 2000. This model does not fully incorporate the impacts of curbside recycling and thus overstates the likely growth in deliveries through 2000.

Figure 2-A - Alternative Outlooks for Metro TST Tonnage



Projected Tonnage and TST Capacity

The capacity for TST-type tonnage is assumed to be 871,000 tons through 2000. This capacity figure is comprised of the following elements:

Facility	Capacity
Metro Central	548,000 TPY
Metro South	255,000 TPY
Forest Grove	68,000 TPY
All Facilities	871,000 TPY

The Metro South capacity level conforms to the legal operating level for the facility, per agreement with the City of Oregon City.

Given these capacity assumptions, and assuming that waste could be shuttled throughout the region, Metro will likely reach its capacity for handling TST waste between 1996 and 1998, as illustrated in Figure 2-A.

It is important to note however, that it is not costless to move tonnage around the region, either by haulers, or in a consolidated form. Such movements will need to be an essential part of the Metro system well before 1996, because the majority of the growth in tonnage will originate in the southern crescent of Metro's service area. To illustrate this point, note that growth in the number of households throughout the 1980's was almost 5 times higher in Washington County than in Multnomah County.

3. What are the Key Factors to Consider in Forecasting Waste Volumes?

Synopsis

The two measures of waste that are of crucial importance to projecting revenues -- deliveries and disposal - are simply the residual of waste generation and recycling, as shown below:

Generated Waste - Pre-Delivery Recycling - Out Migration = Deliveries

Deliveries - Post-Delivery Recycling = Disposal

Accurate projections of waste deliveries and disposal are thus entirely dependent of well specified and detailed representations of the process by which waste is generated and recycled. The fact that recycling volumes are entirely dependent on the type and quantity of waste generated makes the waste generation modelling process crucial to the forecasting process.

From a causal standpoint, recycling activities are the product of both market and legislative/policy forces. Therefore, in projecting recycling activities and the waste diverted through this process, one must consider both market and non-market forces. Until recycling matures, the process of projecting recycling volumes will remain difficult.

A Conceptual Framework for Waste Forecasting

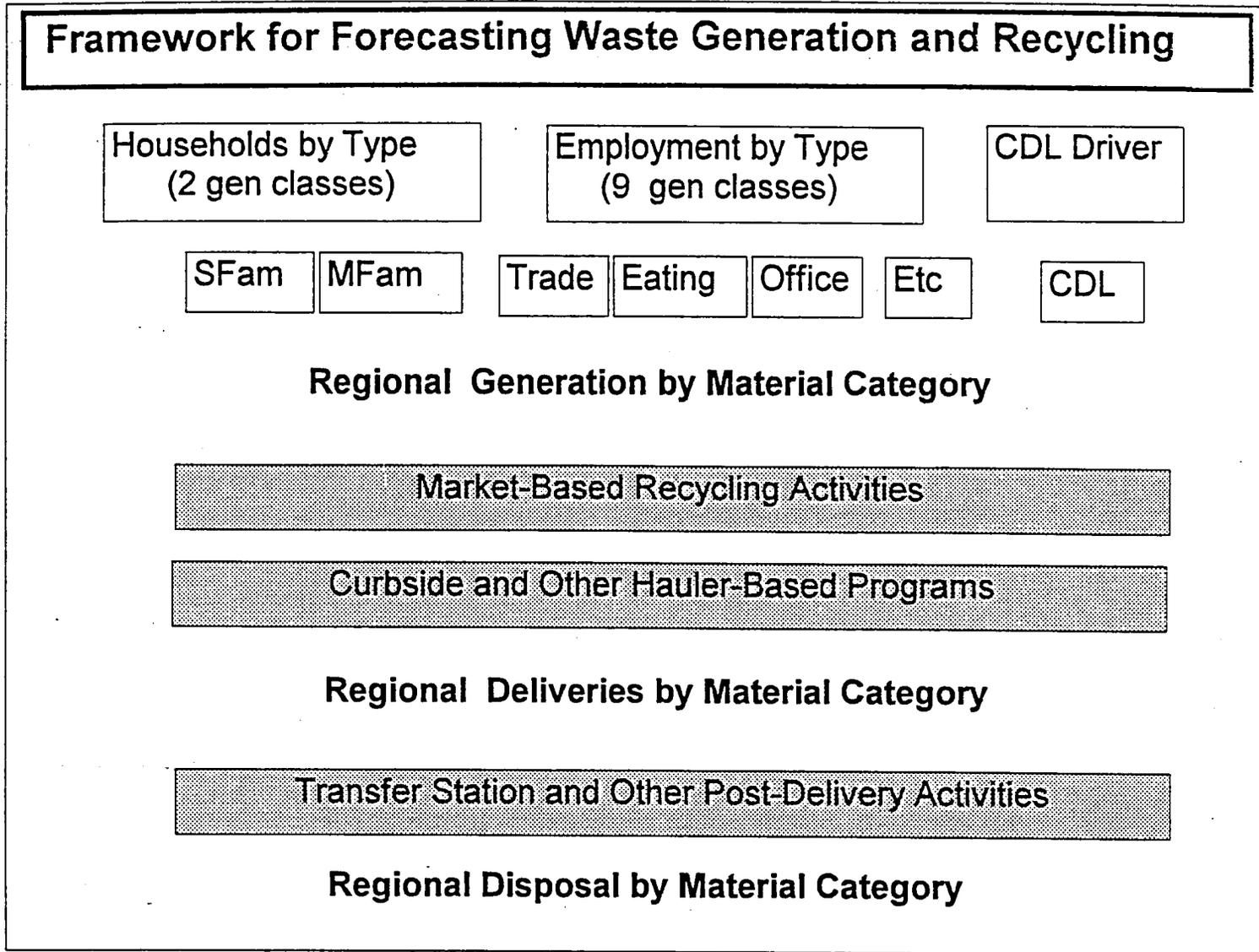
Figure 3-A illustrates a simplified conceptual framework for considering the flow of waste from cradle to grave. The basic waste concepts within this framework are generation, pre-delivery (curbside/hauler and market) recycling, waste deliveries, post-delivery recycling and finally, disposal. Each of these concepts is briefly described below.

Waste Generation

Waste is ultimately the by-product of residential, commercial, industrial and construction activities. In order to anticipate how changes in the level of residential, business and construction activities affect waste volumes, a model is used which relates a standard measure of activity for each class of waste generator to waste volumes.

The standard measure of residential activity is the number of households of the single and multi-family type. The standard measure of business/government/industry activities is employment, distinguishing between different types of businesses (e.g., restaurants, office, hospitals). The standard measures of construction activity are either construction employment or building permits.

FIGURE 3-A



In this process, distinguishing between different types of businesses and households is important. Both the material composition and per employee/household waste quantities are known to vary substantially between these sub-classes (e.g., restaurants vs. offices, single family vs. multi-family dwellings). Because these sub-classes grow at different rates over time, making the distinction allows overall unit waste volumes and material compositions to evolve. In addition, these distinctions are crucial to the assessment of recycling volumes.

Pre-Delivery Recycling

A variety of recycling activities are "positioned" to capture generated waste prior to disposal. The first tier of these activities are market-based recycling vendors (a.k.a. high graders). They handle traditionally recycled materials such as scrap metal, cardboard and newsprint and often pick up these materials. Both the vendor and recycler are motivated by economic forces.

The second tier of recycling, which represents the dominant force in the *growth of recycling* in the Metro area over the 1990-94 time period (Figure 3-B), is "curbside" and other hauler-based programs. These programs are often legislatively prescribed and from the consumers standpoint, provide convenient and costless options for recycling.

Projecting pre-delivery recycling volumes in general, requires a detailed picture of waste volumes by material, for each of the sub-classes described above. This is true because the type and quantity of materials that could be recycled and the feasibility/cost of recycling these materials vary enormously across different classes and sub-classes.

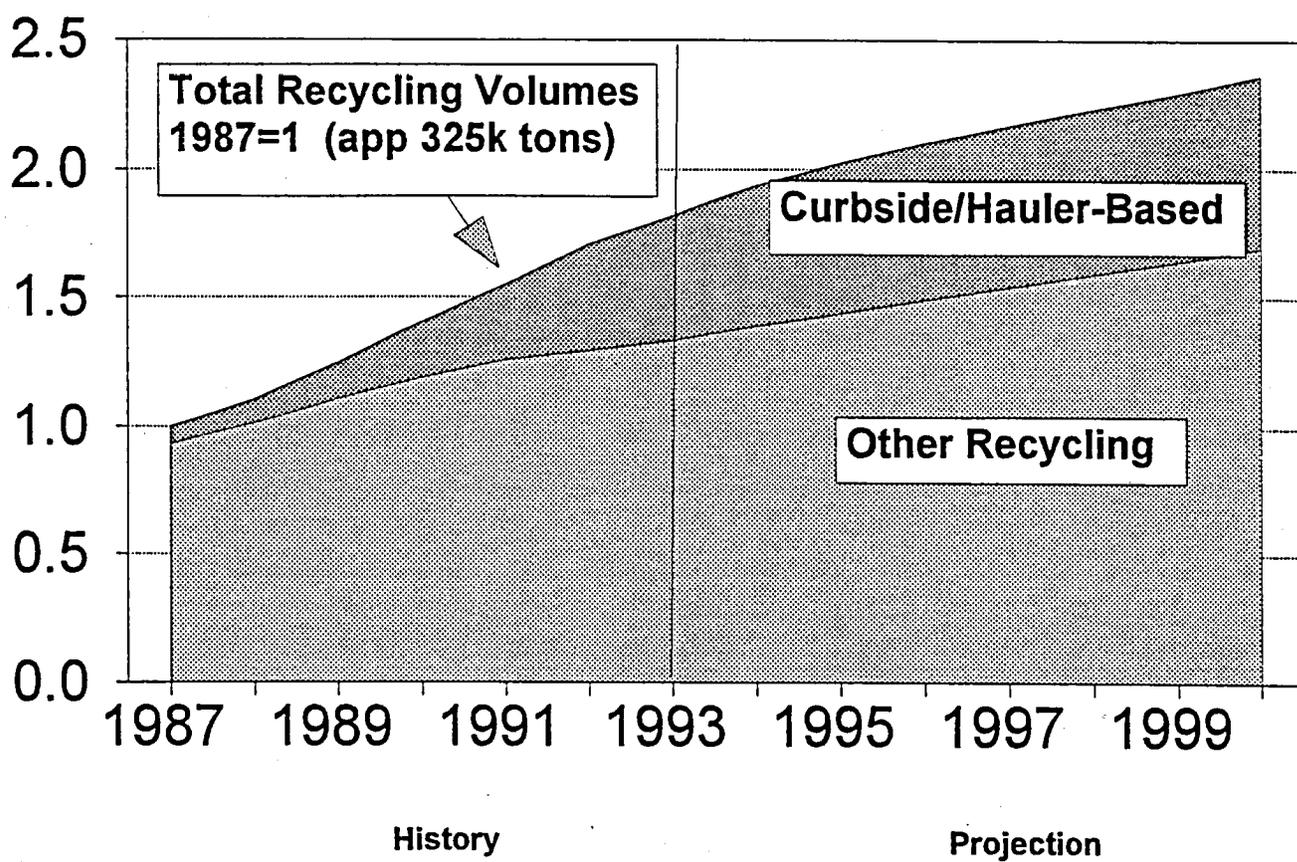
Estimating curbside/hauler based program impacts entails projecting the rate at which individuals will sign up for these programs, and the share of various materials that will be set out for recycling. Note that the curbside programs compete with, and often supplant some market-based activities (e.g., residential newspaper collection activities). The failure to recognize this interaction can lead to double counting of recycling tonnages for affected materials.

Deliveries

Absent the migration of waste to unauthorized disposal facilities, "deliveries" are simply what is left over after generated waste passes through the various pre-delivery recycling activities. The great majority of deliveries are made by haulers who have limited choices about where these wastes can be taken. Haulers carrying construction wastes, self-haulers, and producers of special wastes can choose amongst a variety of facilities, some of which provide recycling services in addition to disposal services.

For those that can choose between facilities, the choice appears to be based on two primary factors: the comparative price of one facility versus another facility, and travel cost. Thus modelling this choice process necessitates inclusion of both of these factors. Convenience, including queuing times, is also frequently cited as a variable in the facility choice decision process.

Figure 3-B - Recycling Volumes by Source



The fact that one facility achieves it lower prices through recycling or through some other mechanism does not appear to be a significant factor in the decision process. Therefore, the facility choice process does not appear to be bound to the post-delivery recycling options outside of price.

Post-Delivery Recycling

Post-delivery recycling is conducted in the course of delivering/processing materials for disposal. Dump and pick lines and MRFs provide examples of post-delivery recycling activities.

Reliable projections of the types and quantity of materials that can be recovered as a percentage of receipts are dependent both on a careful accounting of the sources of waste delivered to the facility, and accurate assessments of pre-delivery recycling.

Disposal

Disposal is simply the residual or left-over of the process described above.

In an era of rapid advances in the practice of recycling, the disposal forecast is only as good as the generation and recycling forecast. Yet suprisingly, many still attempt to project disposal volumes using simplistic models which relate historical disposal volumes to tip fees, and to population or employment.

4. What Went Wrong with Metro's March 1993 Forecast?

Synopsis

In developing the March 1993 waste forecasts, Metro appears to have confused correlation with causality, and short-run changes with long run expectations. While this confusion may be understandable in the aftermath of the revenue shortfalls of the late 1980's and falling tonnages of the early 1990's, the forecasts and underlying methodology predict a highly improbable path for Metro waste volumes.

The methodology that was used to develop the March 1993 waste projections is flawed in two fundamental ways. First, the causal model underlying the projections is overly simplistic, omitting many *fundamental* determinants of waste generation, recycling, and facility choice. Second, the model was estimated using only four years of historical data (FY89/90-FY92/93)..a four year period which was characterized by an economic slowdown, the ramp-up of curbside recycling, and rapid increases in Metro's price via a vis competitors.

In combination, the misspecified model and the inadequate/inappropriate estimation period lead to projections that are theoretically indefensible and intuitively implausible. These projections are believed to underestimate future TST delivery quantities by approximately 60,000 tons 1996 and by 120,000 tons in 2000.

The Regional Deliveries (Step One) Forecast

The first step in Metro's waste forecasting process is to project deliveries to regional facilities that are either Metro-operated or Metro-franchised. To accomplish this objective, it is necessary to first describe the causal relationships which results in waste deliveries to regional facilities.

As we described above, waste is ultimately the by-product of residential, commercial, industrial and construction activities. These wastes are then subjected to a variety of recycling activities including curbside recycling, and commercial high grade recycling prior to delivery to a facility for further recycling and disposal.

Given this causal framework and the dramatic expansion of recycling mandates, experience has proven that the only reliable method for modelling waste deliveries is to:

- o estimate waste generation quantities for each class of generator;
- o estimate pre-delivery recycling quantities for each class;
- o compute deliveries as the difference between generation and recycling.

If Metro's model was of the nature described above, it would have led to a better understanding of how changes in the economy, recycling practice and Metro tip fees

were affecting regional delivery volumes between 1990 and 1993. Unfortunately, in the absence of this knowledge, Metro appears to have confused correlation with causality, and short-run changes with long run expectations.

In developing the regional delivery projections Metro appears to have greatly oversimplified the causal relationships described above and in so doing, developed a "reduced form" equation which will not provide reliable projections of regional deliveries, either in the short run or in the long run for the reason described below.

The equation used by Metro to project regional deliveries is as follows:

$$\text{Deliveries} = f(\text{Population, Const Emp, Metro Price})$$

The causal assumptions implied by this equation are that generation quantities can be predicted by population alone and that Metro's price, coupled with construction employment, acts as a surrogate for pre-delivery recycling quantities. Both of these premises are unfortunately inaccurate.

First, as Figure 4-A illustrates, population responds only very slowly to economic fluctuations, such as the recent slowdown in the Portland economy. For example, while trade, manufacturing and construction activities slowed between 1990 and 1993 (as did the waste generation associated with these activities), population continued to grow at a faster pace.

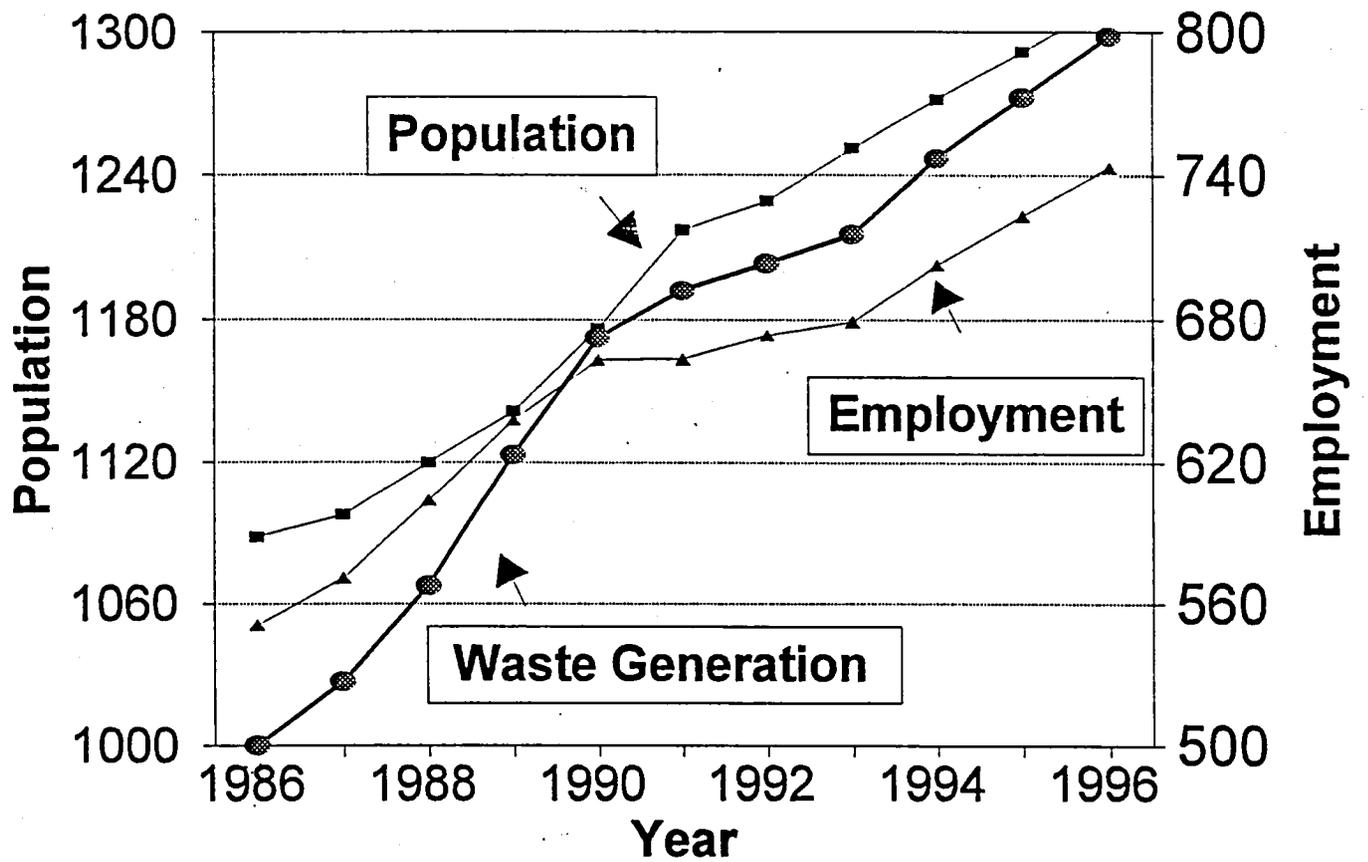
Thus if population is used to predict the overall quantity of waste generated, the short run predictions are likely to be too high going into a recession (as was the case in 1991/92 when Metro experienced budget shortfalls), and too low coming out of a recession (as will be the case in 1993/94). In the long run, this equation will under forecast tonnage growth because employment will grow in the Portland area even after the Metro service area begins to reach capacity in its ability to accommodate more population.

Second, the ramp-up of curbside recycling was obviously not "caused" by the fact that Metro increasing its rates from \$45 to \$75. As discussed above, the quantity of tons recycled through curbside and market activities is the product of a myriad of market, legislative and social forces, producing the growth pattern illustrated in Figure 4-B.

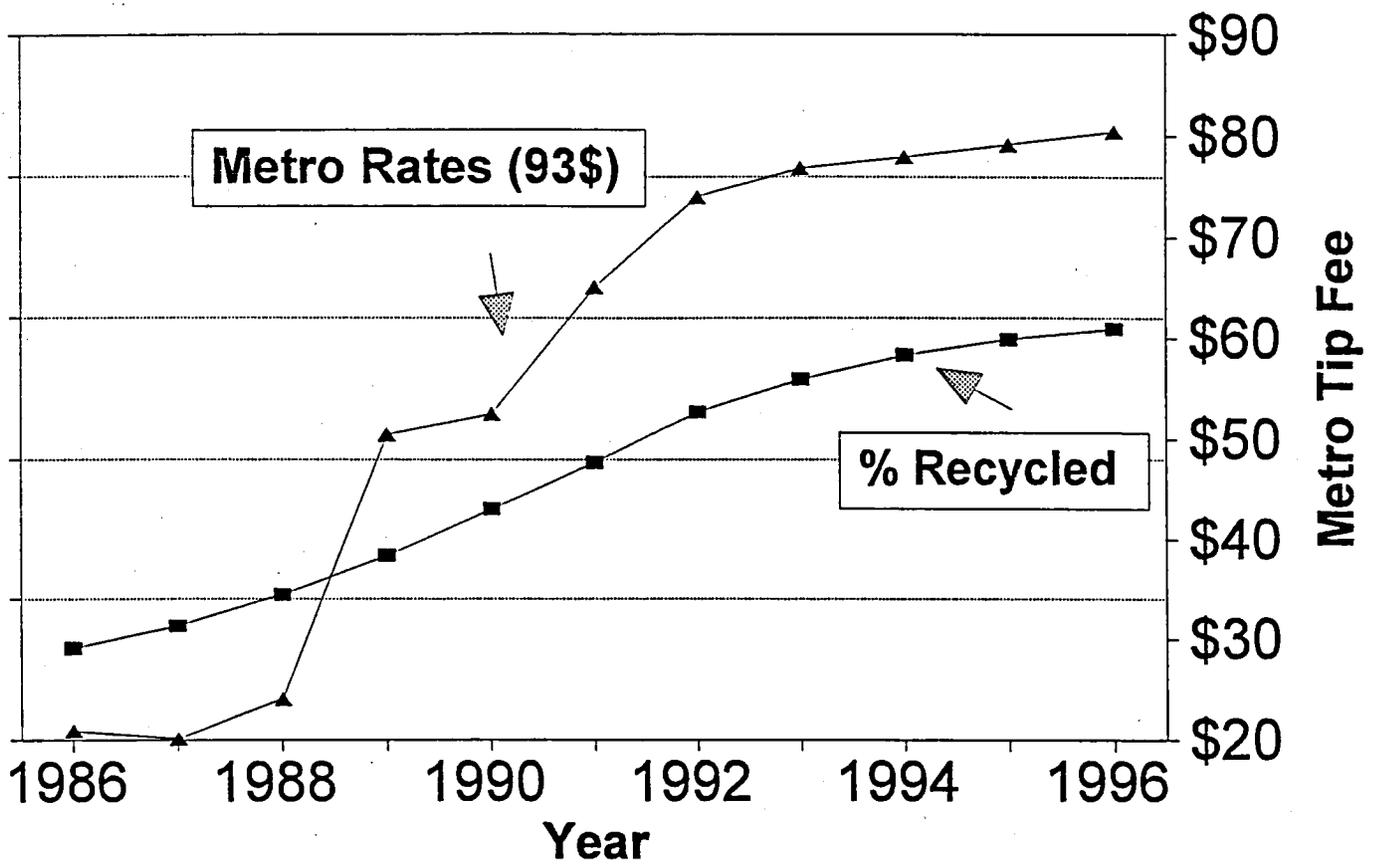
However, given the parameters used in Metro's specification, the equation produces forecasts of future tonnage as though future Metro price increases *are the sole determinant* of further increases in recycling tonnage. Thus, if Metro's prices fell next year, this equation would suggest that recycling would decrease immediately.

All other things being equal, this specification leads to an underestimate of recycling as curbside ramps up, and an overestimate of recycling after curbside is in place. In the long run, this specification will lead to substantial underestimates of delivery tonnages in the post-ramp period, beginning in 1995.

**Figure 4-A - Metro Area
Population and Employment Growth**



**Figure 4-B - Historical Comparison
of Recycling Rates and Metro Tip Fee**



While it is laudable that construction employment was included as an explanatory variable in the equation (presumably to capture variations in waste associated with construction activity), it is equally unfortunate that this variable has a negatively-signed coefficient in the estimated form of the equation. Simply put, the delivery equation predicts that increases in construction employment/activity will produce *decreases* in waste volumes. And since construction employment slowly increases over the entire horizon of Metro's forecast, waste volumes keep decreasing as a result.

The wrong sign of the construction employment coefficient represents one symptom of the most troubling aspect of Metro's delivery forecast, and the source of many of the aberrant results noted above -- that is, the selection and length of the period used to estimate the first and second stage forecast equations.

Only 4 years of historical data (FY89/90 through FY92/93) were used to estimate an equation used to project regional deliveries for 25 years..four years in which the economy was in a slide and curbside recycling was being introduced through legislative mandate. During these years of declining or nearly declining deliveries, the omission of key predictor variables such as recycling volumes in the equation meant that the those variables that *were* included had to "explain" the declines in tonnage. This accounts for aberrant results, such as rising construction activities leading to a decline in tonnages. If the estimation period had been expanded, these chance correlations would have disappeared.

The Transfer Station Tonnage Share (Step Two) Forecast

The second step in Metro's waste forecasting process is to project the share of regional deliveries that are in the category of transfer station tonnage (TST). Stated another way, the transfer station tonnage share forecast describes the share of regional deliveries ending up at Metro South, Metro Central and Forest Grove..

Many of the haulers are not free to select a facility other than a Metro operated facility or Forest Grove, because of the type of waste they carry. Others with certain types of special wastes cannot use Metro facilities or Forest Grove, at all. This leaves a pool of generator/haulers who *can* "shop" for disposal and recycling options amongst the regional alternatives. These generators/haulers include self-haulers, and firms hauling construction and demolition wastes.

Clearly, for those who are free to choose between recycling and disposal facilities, the decision process of where to go and whether to recycle or dispose involves many considerations. Travel time, the cost of sorting materials for recycling, and the cost of disposal and recycling are all important factors in this decision process.

Experience in Snohomish County, Washington has revealed the importance of two factors in this decision process. First, it appears that generator/haulers choose between equivalent services based on relative prices (i.e., Facility A's prices compared with Facility B's prices). The absolute price of either facility alone appears to be of tertiary importance. Second, that convenience, including factors such as travel time and queing, is also an important consideration in this choice process.

While the Snohomish County experience is both intuitive and consistent with economic theory, these concepts are not included in Metro's specification for the TST share projection. Instead, Metro's TST equation includes only one predictor variable..Metro's own price, as shown below.

$$\text{TST Share} = f(\text{Metro Price})$$

While it is understandable that the specification does not include factors such as travel time, convenience, etc., it seems highly problematic that the independent variable is not expressed as a relative price. For example, the price of Metro versus the price of the Hillsboro landfill, expressed as a ratio.

As we discussed earlier in the context of the regional delivery model, the omission of important variables from an equation used to forecast can lead to non-sensical results. The direction and magnitude of the bias is dependent on the estimation period.

This equation, like the Step One Regional Delivery equation was estimated over a four year period between FY89/90 and FY92/93. During this period , Metro's prices were rising while the TST share was falling. Thus the equation dictates that whenever Metro increases its price in the future, the TST share will fall regardless of what prices the competition charges.

Year end evaluation of actual TST shares suggests that TST shares will increase in 1993 relative to 1992, not decrease. Future TST shares will depend on the relationship of Metro's prices to its competitors. For example, if Metro's prices fall relative to Hillsboro, the TST share will rise. Conversely, sharp relative increases in Metro's prices relative to recycling and disposal alternatives will cause the TST share to fall..

Willamette Resources, Inc.

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Woodburn, Oregon 97071
(503) 981-1278
Fax: 982-7930

January 7, 1994

Metro Council
Metro
600 N.E. Grand Avenue
Portland, Oregon 97232

Dear Metro Councilor:

Metro's Executive Officer recommended that the Eastern Washington County Transfer Station not be built because tonnage had declined in the early 1990's and staff predicted this trend to continue or at best to level out. She stated that the system had sufficient existing capacity for the foreseeable future.

As you know, we questioned Metro's conclusions particularly since waste received at transfer stations in 1993 did not decline as Metro predicted but rather increased more than 37,700 tons over 1992. It is interesting to note that this increase resulted in more than 2.8 million dollars of additional revenue to Metro.

To better understand Metro's forecast, Willamette Resources, Inc. retained ECO Northwest who, in cooperation with Reiter Northwest, a Seattle consulting firm specializing in waste forecasting, reviewed and critiqued Metro's model. Based on their analysis, Metro grossly underestimated waste flows. The following are some highlights of their review:

BEFORE 1991, THE AMOUNT OF SOLID WASTE DISPOSED AT METRO FACILITIES HAD CONSISTENTLY GROWN. BETWEEN 1990 AND 1992, THAT GROWTH STOPPED BECAUSE OF EVENTS THAT WERE TEMPORARY AND UNLIKELY TO REPEAT THEMSELVES. TONNAGE DISPOSED IN THE METRO REGION WILL ALMOST CERTAINLY GROW FOR THE FORESEEABLE FUTURE.

The slowdown in tonnage received at transfer stations resulted primarily from three factors:

- * A slowdown in the Portland economy.
- * The introduction and initial effectiveness of curbside recycling and hauler-based commercial recycling.
- * An increase in Metro rates relative to rates at non-Metro facilities.

In combination, these factors caused the decline of tonnage received at Metro facilities and of the region's overall disposal

volumes between 1990 and 1992. Beginning in 1993, however, tonnage began to grow sufficiently to overcome the effects of recycling. This growth in disposal volumes will accelerate as the economy recovers, as curbside participation and volumes approach their per capita equilibrium, and as the price of Metro disposal stabilizes relative to Metro's competitors.

METRO'S FORECAST FAILED TO CONSIDER SOME OF THE FUNDAMENTAL RELATIONSHIPS OF WASTE GENERATION AND DISPOSAL.

Metro's revenues from waste handling depend on how much waste is delivered to its transfer stations based on the relationship between the amount generated and recycled. Forecasts of waste deliveries (and, hence, revenues) depend on well specified and detailed representations of these relationships. One must consider both market and non-market forces.

FUTURE TONNAGES ARE VERY LIKELY TO GROW AND EXCEED THE CAPACITY OF METRO'S TRANSFER STATIONS IN THE NEXT FIVE YEARS OR EARLIER.

Applying the same tested relationships of population, employment and recycling growth in the Seattle, Snohomish County and Marion County forecast models, Metro area tonnages delivered to Metro facilities will grow between 1.4% and 1.7% per year between 1994 and 2000. The actual growth rate depends on two factors: the performance of curbside and hauler-based recycling programs, and the behavior of the economy over this period. These results are consistent with those of Metro's own consultant, Synergic Resources Corporation, contained in a report to Metro staff dated June 30, 1993.

Given this growth, transfer station tonnage will exceed system capacity between 1996 and 1999, assuming Metro's total transfer capacity is 871,000 tons per year through the year 2000, and that Metro's prices relative to those of alternative suppliers of recycling and disposal services do not increase substantially.

In contrast to this forecast, Metro's forecast in March 1993-which was used as the basis for the Wilsonville decision in September 1993-predicts a continuous decline in tonnages of 0.7% per year through 2000 and beyond. In December 1993, only nine months after Metro developed these 20-year forecast, they were already approximately 40,000 tons below actual 1993 tonnages. The forecast and underlying methods predict a highly improbable path for Metro waste volumes.

Metro's method for its March forecast has two fundamental flaws. First, the model underlying the forecast is overly simplistic, omitting many fundamental determinants of waste generation, recycling, and facility choice. Second, Metro estimated the equations for a 20 year forecast using only four years of data (mid-1989 to mid-1993)-a four-year period characterized by an economic slowdown, the ramp-up of recycling, the rapid increases in Metro's prices relative to competitors and the closure of the St. Johns Landfill.

An example of the consequences of poor specification and an inappropriately short estimation period is found in the delivery equation. Metro's model predicts that increases in construction employment and activity will result in decreases in waste volumes. Since Metro's forecast of construction employment increases slowly over the entire horizon of Metro's forecast, waste volumes keep decreasing as a result.

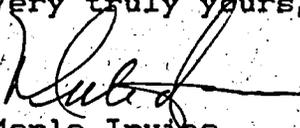
Another example is that if Metro increases its tip fee by \$1.00 and Hillsboro Landfill increases its tip fee by \$15.00, Metro's forecast would show waste leaving Metro facilities and flowing to Hillsboro even though Hillsboro's tip fee was \$14.00 more than Metro.

In combination, these and other shortcomings lead to forecasts that are technically indefensible and intuitively implausible. Compared to more reasonable models of waste generation, delivery, and disposal, Metro's model probably underestimates future tonnages delivered to its facilities by about 60,000 tons in 1996 and by 120,000 tons in 2000.

METRO'S FORECASTS SHOULD NOT BE USED FOR MAKING A DECISION ABOUT THE FUTURE NEED FOR TRANSFER STATIONS.

In summary, the Executive Officer's recommendation is based on information that does not properly consider past trends, accurately reflect current conditions or realistically predict future flows. An objective review of the attached Executive Summary and report prepared by Reiter Northwest documents the problems with Metro's forecast and demonstrates the need for the Wilsonville facility.

Very truly yours,


Merle Irvine
Vice President

Attachments



CITY OF TUALATIN

PO BOX 369
TUALATIN, OREGON 97062-0369
(503) 692-2000

FAX TRANSMITTAL MEMO

DATE: Jan. 10, 1994

TO: Judy Moore, Ruth McFarland
and Rod Monroe

FAX # 797-1793

FROM: Steve Stolze
Mayor

FAX # (503) 692-5421 CITY CENTER

DOCUMENT: Solid Waste Comparison
& report

TOTAL PAGES TRANSMITTED (including this cover): 5

NOTES:

05-Jan-94

(2)

COMPARISON OF ACTUAL TONNAGE RECEIVED
TRANSFER STATION TYPE WASTE
JANUARY THROUGH NOVEMBER 1992 AND 1993

	JAN	FEB	MARCH	APRIL	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	TOTAL	% INCREASE
METRO SOUTH														
Actual - 1993	26,625	24,510	30,416	31,886	23,059	34,887	33,833	34,265	32,232	29,992	28,435	31,070	372,210	4.2%
Actual - 1992	22,760	25,733	31,684	31,062	30,330	32,433	33,228	31,357	31,432	29,917	28,921	28,796	357,263	
METRO CENTRAL														
Actual - 1993	25,723	24,390	31,657	30,281	31,093	32,376	31,875	32,175	31,539	30,453	28,966	30,148	360,896	5.9%
Actual - 1992	24,476 ¹	24,641	28,303	27,330	27,768	28,314	29,622	28,194	28,380	28,649	27,320	27,099	340,096	
FOREST GROVE														
Actual - 1993	5,107	4,966	6,145	6,289	6,310	6,613	6,260	5,629	6,182	5,865	5,963		65,325	4.5%
Actual - 1992	5,707	4,907	5,706	5,988	5,684	6,031	6,104	5,395	5,661	5,709	5,724		62,536	
TOTAL														
Actual - 1993	57,455	53,666	67,618	68,456	70,462	73,876	71,988	72,065	69,953	66,310	64,364	61,218	797,631	5.0%
Actual - 1992	62,943	55,301	65,693	64,298	63,782	66,778	68,954	64,946	65,073	64,275	61,965	55,895	737,895	
Difference	(5,488) -8.7%	(1,635) -2.6%	1,925 2.9%	4,156 6.5%	6,680 10.5%	7,098 10.6%	3,034 4.4%	7,119 11.0%	4,880 7.5%	2,035 3.2%	2,399 3.9%	5,323 9.3%	37,736 5.0%	

1 - Includes 12,628 tons from compost facility which was open only in Jan 1992

JAN-10-1994 14:44
01-07-1994 15:32
FROM CITY OF TUALATIN
503 982 7250
TO
7971793 P.02

3

WILSONVILLE TRANSFER STATION

**Rena Cusma
Metro Executive Officer
June 15, 1993**

I WOULD LIKE TO THANK THE COUNCIL SOLID WASTE COMMITTEE FOR THIS OPPORTUNITY TO GIVE YOU MY PRELIMINARY VIEWS ON ONE OF THE MOST DIFFICULT POLICY DECISIONS METRO HAS FACED IN IMPLEMENTING OUR REGIONAL SOLID WASTE STRATEGY. THE ISSUES REGARDING HOW MANY TRANSFER STATIONS WE NEED, AND WHERE THEY SHOULD BE LOCATED, GO BACK ALMOST TWENTY YEARS. THE VISION ADOPTED IN THE REGIONAL SOLID WASTE PLAN HAS LONG CONTEMPLATED TRANSFER STATIONS IN EACH OF THE MAJOR "WASTESHEDS" OF THE REGION, ROUGHLY CORRESPONDING TO THE THREE COUNTIES. AS WE SET OUT TO IMPLEMENT THIS VISION, THE FIRST FACILITY WAS PROVIDED IN CLACKAMAS COUNTY, THE PRESENT DAY METRO SOUTH. INITIALLY HOWEVER, THIS FACILITY WAS ENVISIONED TO WORK IN CONJUNCTION WITH AN INCINERATOR AT THE SAME LOCATION.

SUBSEQUENTLY, METRO CENTRAL, ORIGINALLY "METRO EAST", CAME ON LINE IN 1991, IN CONJUNCTION WITH CLOSURE OF THE ST. JOHNS LANDFILL. AGAIN, SITING CONSIDERATIONS AND THE LOOMING ST. JOHNS CLOSURE DEADLINE, RESULTED IN CONSIDERABLE MODIFICATION OF ORIGINAL PLANS REGARDING CONFIGURATION, LOCATION, AND CONTRACTUAL ARRANGEMENTS FOR THIS FACILITY.

IN THE MEANTIME, AWARD OF THE DISPOSAL AND TRANSPORTATION CONTRACTS, AFTER MUCH DISCUSSION AND REFINEMENT OF INTENT, BROUGHT US TO THE POINT OF HAVING IMPLEMENTED OUR ORIGINAL PLAN IN ALL ESSENTIAL ELEMENTS EXCEPT FOR THE FINAL TRANSFER STATION. BY THIS TIME, SITING CONCERNS WERE NO REAL SURPRISE, HOWEVER, IN WASHINGTON COUNTY ADDITIONAL VALID LOCAL CONCERNS REGARDING NUMBER OF FACILITIES, OWNERSHIP, AND FINANCING AROSE. A PRIVATE TRANSFER STATION IN FOREST GROVE WAS DEVELOPED AS AN INITIAL STEP. AFTER LENGTHY REVIEW AND DEBATE, WHICH I DO NOT PROPOSE TO REVIEW HERE TONIGHT, AN AGREED UPON PLAN FOR THIS FINAL SYSTEM ELEMENT WAS ADOPTED. THE BASIC ELEMENTS OF THIS PLAN INCLUDE:

- * TWO TRANSFER STATIONS
- * PRIVATELY OWNED AND OPERATED FACILITIES
- * FACILITIES COVERED BY LONG TERM METRO FRANCHISES

ADDITIONALLY, EARLY POLICY DEVELOPMENT FOR THIS PLAN INCLUDED THE CONCEPT THAT ANY OPERATING COSTS SUBSTANTIALLY IN EXCESS OF METRO SYSTEM COSTS TO BE BORNE LOCALLY RATHER THAN SPREAD ACROSS THE ENTIRE REGION.

I REVIEW THIS HISTORY, NOT BECAUSE I THINK YOU ARE UNFAMILIAR WITH IT, BUT RATHER TO MAKE A POINT. AT EACH STEP OF THE WAY AS WE IMPLEMENTED OUR OVERALL PLAN OF CLOSING ST. JOHNS, FINDING A NEW LANDFILL, SITING TRANSFER STATIONS, AND AWARDING A TRANSPORT CONTRACT, IT HAS BEEN NECESSARY TO EXHIBIT FLEXIBILITY IN ADAPTING TO CHANGING CIRCUMSTANCES. I SUSPECT THIS CURRENT DECISION FACING US REGARDING THE WILSONVILLE TRANSFER STATION WILL PROVE NO DIFFERENT.

SINCE ADOPTION OF THE TRANSFER STATION PLAN FOR WASHINGTON COUNTY, METRO HAS COME HARD AGAINST SOME IMPORTANT NEW REALITIES: THE DECLINE IN WASTE FLOW, LARGELY UNFORESEEN EVEN THREE YEARS AGO, HAS IMPACTED OUR NEED FOR ADDITIONAL TRANSFER CAPACITY; SYSTEM OPERATING COSTS ARE HIGHER THAN WAS ASSUMED EARLIER; MEASURE FIVE HAS HEIGHTENED PUBLIC AWARENESS OF USER FEES, AS WELL AS PROPERTY TAXES, STIMULATING A VERY STRONG MESSAGE FROM OUR MUTUAL CONSTITUENTS FOR FISCAL RESTRAINT; AND FINALLY, LATER TONIGHT YOU WILL BE CONSIDERING A RESOLUTION TO ADDRESS SOME NECESSARY FUNDAMENTAL CHANGES IN OUR RATE STRUCTURE TO HEAD OFF WHAT LOOMS AS A SERIOUS FINANCIAL PROBLEM IN FUNDING OUR SOLID WASTE SYSTEM IN A SUSTAINABLE MANNER. THESE ARE CHANGED CIRCUMSTANCES WITH A VENGEANCE, AND MUST BE CONSIDERED IN CONJUNCTION WITH THE TRANSFER STATION CONTRACT FOR WHICH NEGOTIATIONS ARE NOW CONCLUDED.

WHAT ABOUT THIS CONTRACT? THE NEGOTIATED AGREEMENT WILL BE DISTRIBUTED TO COUNCIL AS SOON AS WE CAN GET IT COPIED. IN THE MEANTIME WE HAVE DISTRIBUTED A SUMMARY OF THE MAJOR FEATURES. IF WE WERE FACING THIS DECISION IN A STABLE ENVIRONMENT (THAT IS WITHOUT THE UNCERTAINTIES I HAVE JUST MENTIONED) OUR COURSE OF ACTION WOULD BE AN EASY ONE. STAFF HAS DONE AN EXCELLENT JOB COMING UP WITH AN AGREEMENT THAT, WITHOUT A DOUBT, IS THE BEST WAY TO IMPLEMENT THE PLAN AS IT NOW STANDS. I CAN ALSO SAY THAT W.R.I. HAS NEGOTIATED WITH US IN GOOD FAITH AND IN A HIGHLY PROFESSIONAL MANNER.

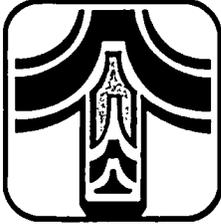
I ALSO RECOGNIZE AND RESPECT THE HARD WORK AND EFFORT BY OFFICIALS AND CONCERNED PARTIES IN WASHINGTON COUNTY.

CERTAINLY THERE IS VALUE IN DEMONSTRATING THE CAPACITY TO ADOPT A PLAN AND STICK WITH IT THROUGH IMPLEMENTATION. NEVERTHELESS, DOGGED PURSUIT OF AN ADOPTED COURSE, IN DISREGARD OF SIGNIFICANTLY CHANGED REALITIES, AT SOME POINT BECOMES FOOLISH.

THEREFORE MY DILEMMA (AND YOURS!) IS TO JUDGE WHETHER OUR CURRENT UNCERTAINTIES, ARE SO SIGNIFICANT THAT WE OUGHT TO CONSIDER REFINING OUR PLAN, AS WE HAVE SO SUCCESSFULLY DONE IN THE PAST, OR WHETHER WE THINK THAT THIS NEGOTIATED AGREEMENT, IN CONJUNCTION WITH A SITE THAT IS APPROVED, AND A CONTRACTOR THAT IS CAPABLE, IS WORTH THE NECESSARY \$4.15 PER TON INCREASE IN THE TIP FEE ASSESSED REGION WIDE. I AM AT PRESENT DOUBTFUL.

THE TIPPING FEE IS ALREADY HIGH AND WE ARE CURRENTLY SUBSIDIZING THE RATE OUT OF RESERVES. AND WE ARE WORKING WITH THE SWPAC TO FIND A WAY TO STABILIZE THE FINANCIAL BASE OF THE SYSTEM. I HAVE INSTRUCTED THE STAFF TO DEVELOP AN IMPACT ANALYSIS ASSUMING THIS FACILITY IS NOT BUILT. CLEARLY WE WOULD NEED TO REDIRECT SOME WASTE FLOW TO METRO CENTRAL WHICH HAS CAPACITY AND PERHAPS TO SOME EXTENT TO FOREST GROVE. WE WOULD ALSO NEED TO REVISIT OUR SOLID WASTE MASTER PLAN AND REVISE OUR PAST POLICIES AND ASSUMPTIONS. GIVEN THE RADICAL DECREASE IN TONNAGE OVER THE LAST TWO YEARS, THIS NEEDS TO BE DONE UNDER ANY CIRCUMSTANCES.

ADDITIONALLY, I WILL BE VISITING WITH OUR LOCAL GOVERNMENT PARTNERS IN WASHINGTON, CLACKAMAS AND MULTNOMAH COUNTIES AND THE AFFECTED CITIES AND THE HAULING INDUSTRY ABOUT THE IMPACT OF NOT BUILDING THE FACILITY. I WILL BE PREPARED TO GIVE YOU A FINAL RECOMMENDATION WHEN THIS MATTER COMES BEFORE THIS COMMITTEE FOR A HEARING ON JULY 6.



CITY OF TUALATIN

PO BOX 369
TUALATIN, OREGON 97062-0369
(503) 692-2000

DATE: January 11, 1994

TO: Metro Council Solid Waste Committee

FROM: Steve Stolze, Mayor of Tualatin and
Member of the Washington County Solid Waste
Systems Design Steering Committee

SUBJECT: Delay Forwarding Solid Waste Issues to Full Council

As I understand, the Metro Solid Waste Committee is considering forwarding some solid waste issues tonight to the full Metro Council for its action on Thursday, January 13th. These issues may include decisions about the Wilsonville Transfer Station, the contract negotiations with the Forest Grove Transfer Station and Resolution No. 93-1892 (revising Chapter 5 of the Regional Solid Waste Management Plan). I am requesting that the Solid Waste Committee delay any action to forward these issues to the full Metro Council until after the Washington County Solid Waste System Design Steering Committee has had a chance to discuss these issues.

There are a variety of reasons for this request. The most important reason I feel is that the Washington County committee has been working for several years with Metro on developing the Solid Waste Management Plan. To make any sudden decision on any of these issues would go against the partnership we have firmly worked to establish.

The Washington Council Solid Waste Systems Design Steering Committee will meet on Friday, January 14th at 1:30 p.m. at Beaverton City Hall. You are all welcome to attend.

Please give me a call at 692-2000 if you wish to discuss this further.



WASHINGTON
COUNTY,
OREGON

January 11, 1994

Presiding Officer Judy Wyers
Councilor Ruth McFarland, Chair of Council Solid Waste Committee
Metro
600 NE Grand Ave.
Portland, OR 97232

Dear Presiding Officer Wyers and Councilor McFarland:

I am here-by requesting that the Washington County Solid Waste System Design Steering Committee be allowed to meet, as per our regular schedule, prior to your council acting upon a number of important solid waste issues.

The steering committee has a January 14 meeting scheduled at 1:30 pm. On Tuesday, January 4, our staff received, for the first time, copies of the Metro Solid Waste department's proposed changes to Oregon Waste Systems landfill contract, the franchise agreement for the Forest Grove Transfer Station, and the resolution to prohibit the construction of any new transfer stations for a five year period. All of these documents have a major impact on the Washington County chapter of the Regional Solid Waste Management Plan. Further, we have recently received the report from Reiter Northwest which analyzes the merits of Metro's current waste forecasting model. We need at least a few days to review this information and to prepare our testimony to the council.

The steering committee is very concerned that, after more than five years of a deliberative process in which information was transmitted and discussed with the steering committee before it was acted on by the council, the committee will be completely cut out of that process if the council proceeds with this process at the January 13 meeting.

Should the council decide to proceed on January 13, please be assured that the steering committee stands solidly behind the Washington County plan, including specifically a Forest Grove Transfer Station with tonnage limitations and a second station in Wilsonville.

Sincerely,

Bonnie L. Hays^{KL}

Bonnie Hays, Chair
Washington County Board of Commissioners

cc: Metro Councilors



WASHINGTON
COUNTY,
OREGON

January 11, 1994

Bob Martin, Solid Waste Director
Metro
600 NE Grand Ave.
Portland, OR 97232

Dear Mr. Martin:

As you know, the Washington County Systems Design Committee will be meeting at 1:30 pm on Friday, January 14. You and your staff are always invited to these meetings. It will be particularly important for your department to be represented at this meeting as we will be very interested to hear your rational for the proposed Forest Grove Transfer Station franchise as it relates to the Washington County chapter of the Regional Solid Waste Management Plan and any comments you may have on the recently completed report by Reiter Northwest.

I look forward to seeing you at the meeting.

Sincerely,

Bonnie L. Hays ^{KS}

Bonnie Hays, Chair
Washington County Board of Directors

cc: Metro Councilors

**METRO**

To: Solid Waste Committee Members

From: John Houser, Council Analyst

Date: January 10, 1994

Re: Ordinance 94-527 -- Relating to Renewal of the Franchise Agreement For the Forest Grove Transfer Station

Background

Historically the Forest Grove Transfer Station has been franchised by Metro, though the existing franchise expired in September 1993. The purpose of this ordinance is to provide for a five-year renewal of the franchise. The renewal is coming forward at this time because of the concern that issues such as tonnage limits, fees, and disposal of material from the station could affect the Council's final decision concerning the Wilsonville Transfer Station. In the past the facility has processed 60,000+/tons of waste annually and charged a disposal fee that has ranged from a few cents to several dollars per ton below the prevailing Metro fee. Under the new agreement, the fee would be the same as Metro's current fee.

The principal change in the new agreement would be to permit Metro's control of the transportation and ultimate disposal of material from the station. The intent of this change would be to allow Metro to send the waste to another landfill, such as Columbia Ridge.

Issues and Questions

The committee may wish to examine the following issues and questions related to the agreement:

- 1) What would have been the effective total disposal fee proposed in the original proposal submitted by the franchisee vs. the final rate of \$75/ton in the proposed agreement?
- 2) Data from the original proposal appears to include a rate of return of about 25% on transfer operations (Schedule 1-6). Could staff please provide the rate of return under the existing franchise and the final rate of return negotiated in the new agreement?
- 3) The franchisee will pay Metro a total fee of \$33.23/ton for the transport and final disposal of up to 70,000/tons of material per year. How were these numbers calculated? The disposal fee of

\$25.83 appears to be over \$1/ton less than the disposal fee Metro pays to Columbia Ridge, could staff please provide a justification for this differential? What is the basis for the transport fee of \$7.50/ton? Is this fee less than the current fee paid to Jack Gray for transport from other Metro facilities?

4) It appears that the franchisee would pay an additional \$10.70/ton in disposal and transfer fees for tonnage over 70,000 tons/year. Could the franchisee still make a profit on this tonnage?

5) The agreement provides that if the waste is sent to Columbia Ridge that the franchisee will install a compactor at the facility. What impact will such an installation have on the operator's rate of return? Is Metro responsible for offering financing for the compactor?

6) Will there be any changes in operating procedures that would increase material recovery at the facility?

7) Staff had originally indicated that Metro might seek to operate the gatehouse at the station. Under the agreement, the franchisee retains gatehouse control, what was the basis for the decision?

8) Has staff examined potential transportation, noise and environmental issues that might result from transporting material to Columbia Ridge vs. Riverbend Landfill? Has the city of Forest Grove been consulted concerning this possible change?



METRO

DATE: January 11, 1993
TO: Council Solid Waste Committee
FROM:  Bob Martin, Solid Waste Department
RE: Forest Grove Franchise

The following are responses to the questions relating to the Forest Grove Transfer Station Franchise proposed by John Houser in his memo to the Solid Waste Committee, dated January 10, 1994.

1. *What would have been the effective total disposal fee proposed in the original proposal submitted by the franchisee vs. the final rate of \$75/ton in the proposed agreement?*

The franchisee had proposed an increase of \$3.73 per ton to the currently approved transfer and transport rate of \$25.50 per ton. For tonnages between 65,000 and 70,000 tons per year, the rate would have been \$29.23 per ton. Of this, \$23.93 was for transfer station operation and \$5.30 per ton for trucking the waste to the Riverbend Landfill.

The current agreement calls for no rate increase. Staff conducted an analysis and determined that of the current rate of \$25.50, transfer station operation accounts for \$18.00 per ton of the rate and transportation is \$7.50 per ton, which was accepted by the franchisee.

No total disposal fee was proposed in the original franchise application. The \$75.00 per ton noted in the franchise agreement is a cap on the total rate that can't be exceeded without rate review. The fee at the transfer station will be \$74.35. This includes the recent rate increase of \$0.73 in the Riverbend Rate. The franchise requires rate review in 1995 and annually thereafter.

2. *Data from the original proposal appears to include a rate of return of about 25% on transfer operations (Schedule 1-6). Could staff please provide the rate of return under the existing franchise and the final rate of return negotiated in the new agreement?*

The agreed upon rate will produce a return, before taxes, of about 14% on transfer operations. There is no proposed rate change, therefore the rate of return for the existing franchise is about the same.

- 3. The franchisee will pay Metro a total fee of \$33.33/ton for the transport and final disposal of up to 70,000/tons of material per year. How were these numbers calculated? The disposal fee of \$25.83 appears to be over \$1/ton less than the disposal fee Metro pays to Columbia Ridge, could staff please provide a justification for this differential? What is the basis for the transport fee of \$7.50/ton? Is this fee less than the current fee paid to Jack Gray for transport from other Metro facilities?*

The franchisee will pay Metro \$33.33 per ton for transportation and disposal on the first 70,000 tons of waste from within the District. This is equal to the \$25.83 disposal rate at the Riverbend Landfill and the \$7.50 that the franchisee currently receives for transporting the waste to the landfill. The above fees are less than Metro's cost for these services.

These rates reflect Metro's uniform rate policy and our proposal to offset this differential with disposal cost savings resulting from modifications to our disposal contract with Oregon Waste Systems. They also reflect compensation to the franchisee for installation of a compactor and shuttle operations.

- 4. It appears that the franchisee would pay an additional \$10.70/ton in disposal and transfer fees for tonnage over 70,000 tons/year. Could the franchisee still make a profit on this tonnage?*

When the tonnage disposed of through Metro exceeds 70,000 tons, the disposal and transportation rate increases to equal Metro's actual cost of disposal plus a proportionate share of fixed costs. Staff estimates that the profit on tonnages above 70,000 tons will be similar to the return at lower tonnages since the rates are designed to recover the fixed costs of operation at tonnages below 70,000 tons.

- 5. The agreement provides that if the waste is sent to Columbia Ridge that the franchisee will install a compactor at the facility. What impact will such an installation have on the operator's rate of return? Is Metro responsible for offering financing for the compactor?*

Installation of a compactor may reduce the rate of return. Based on preliminary estimates, the franchisee has indicated that a compactor can be installed within the proposed rate structure. Metro is not responsible for financing the improvements at the transfer station.

- 6. Will there be any changes in operating procedures that would increase material recovery at the facility?*

The financial structure of the agreement provides increased material recovery since the franchisee does not pay transportation, disposal or user fees on the recovered material. The proposed franchise does not require changes in procedures to increase material recovery. Some of the potential methods for feeding waste to the proposed compactor would facilitate material recovery.

7. *Staff had originally indicated that Metro might seek to operate the scalehouse at the station. Under the agreement, the franchisee retains scalehouse control, what was the basis for the decision?*

It was determined that it was not cost effective for Metro to operate the scalehouse at the transfer station due to the relatively small tonnage involved.

8. *Has staff examined potential transportation, noise and environmental issues that might result from transporting material to Columbia Ridge vs. Riverbend Landfill? Has the city of Forest Grove been consulted concerning this possible change?*

Yes, staff has evaluated the environmental issues associated with transporting material from Forest Grove to Columbia Ridge. This proposal will actually decrease the number of transfer trucks leaving the station from between 12 to 14 per day to between 8 and 10 per day. The route from to Columbia Ridge will not go through downtown Forest Grove.

No significant increase in tonnage is expected at the transfer station.

Metro staff has discussed this matter with representatives of the City of Forest Grove.

BM:PE:ay

Forest Grove Transfer Rate Analysis

Disposal Site Tonnage	Metro Waste			Non-Metro Waste
	Riverbend Under 70,000	Col. Ridge Under 70,000	Col. Ridge Over 70,000	Col. Ridge
Transfer Rate*	\$18.00	\$18.00	\$7.30	\$18.00
Transportation Rate	\$7.50	\$7.50	\$15.46	\$15.46
Disposal Cost	\$25.83	\$25.83	\$28.57	\$28.57
Metro User Fee	\$19.00	\$19.00	\$19.00	\$0.00
Forest Grove Enhancement	\$0.50	\$0.50	\$0.50	\$0.50
Estimated Excise Tax**	\$3.52	\$3.52	\$3.52	\$3.52
Estimated Rate	\$74.35	\$74.35	\$74.35	\$66.05

* Computed Transfer Rate Based on Identical Rates for All Metro Waste

** 7% of Transfer + Transport + Disposal - DEQ Fees

ADDITIONAL PROPOSED AMENDMENT #1: 70,000 TON CAP

5.3 Franchisee may accept no more than 300 tons of solid waste per operating day (a day in which the Facility accepts solid waste) on a monthly average, with the added condition that Franchisee may not accept more than 70,000 tons of waste in any twelve consecutive months or as this amount may otherwise be limited by Metro's current agreement with Oregon Waste Systems, Inc, ~~whichever is less.~~ Upon assumption by Metro of responsibility for transport of solid waste from the Facility, Franchisee may accept an unlimited quantity of solid waste at the Facility. However, for each ton of waste transported from the Facility or disposed of by Metro in excess of 70,000 tons, from inside or outside of the District, Franchisee shall pay increased transport and disposal fees as specified in section 14 of this Franchisee.

7.4.4 Along with, or at any time following the notice specified in section 7.4.1, Metro may direct Franchisee to begin delivering all solid waste specified in section 7.4.1 to Metro Central Station. The notice shall specify a date, not less than 10 business days from the date of the notice, upon which Franchisee shall begin such deliveries. For each ton of waste generated within the district delivered by Franchisee to Metro Central Station, Franchisee shall pay the disposal fee specified in sections- 14.4.1(b) and 14.4.2(b), as applicable, as well as the Regional User Fee and Metro Excise Tax. For each ton of waste generated outside of the district delivered by Franchisee to Metro Central Station, Franchisee shall pay the disposal fee specified in sections- 14.4.1(b) and 14.4.2(b), as applicable, and Metro Excise Tax. The deliveries specified in this section 7.4.4 shall continue until the date upon which Metro assumes responsibility for transport of solid waste from the Facility.

~~14.4.2 For each ton of waste transported from the Facility and/or disposed of by Metro in excess of 70,000 tons per year, Franchisee shall remit to Metro:~~

~~(a) Per ton transport fee of \$15.46; and~~

~~(b) Per ton disposal fee of \$28.57.~~

14.4.3 The transport and disposal charges specified in section 14.4.1 shall be annually adjusted on each anniversary of the Franchise renewal date for use during the forthcoming year, based on 100 per cent of the change in the Consumer Price Index entitled "West-A" from the U.S. Department of Labor, Bureau of Labor Statistics' publication entitled "Consumer Price Indexes, Pacific Cities and U.S. City Average/All Urban Consumers" or by the actual increase in the transport or disposal fee charged by Metro's contractor, whichever is greater. ~~The transport and disposal charges specified in section 14.4.2 shall be automatically adjusted to reflect, at all times, the per ton fixed and variable transport and disposal fees being remitted by Metro to its transport and disposal contractors, without offset or credit to Franchisee of any kind.~~

ADDITIONAL PROPOSED AMENDMENT #2: FRANCHISEE TO DETERMINE ULTIMATE DISPOSAL SITE

7.4 Franchisee assumes full responsibility for properly disposing of all solid waste delivered to the Facility at one or more fully licensed processing or disposal facilities.

~~7.4 Metro Transport and Disposal Option.~~

~~7.4.1 Metro reserves the right, at any time during the term of this Franchise, to assume responsibility for transport from the Facility and/or disposal of all Acceptable Waste generated within the district that is to be disposed of in a general purpose landfill. Notice of Metro's intent to assume such responsibility shall be by written notice to Franchisee. The notice shall establish the date, not less than six months from the date of the notice, upon which Metro will begin transporting and/or disposing of solid waste from the Facility.~~

~~7.4.2 Prior to the date established for Metro to assume transport and/or disposal responsibilities, Franchisee shall install a compactor at the Facility meeting Metro specifications. Franchisee shall submit to Metro within 60 days from the date of notice specified in 7.4.1, its detailed plans for installation of a compactor, including installation and compactor specifications. Metro shall review such plans and notify Franchisee of any objections or proposed revisions within 10 business days of receipt. If Metro does not comment within the time specified, the plans shall be deemed approved, and Franchisee shall commence installation. If Metro objects or proposes revisions, the parties shall in good faith attempt to resolve all issues related to compactor installation such that deliveries to Metro's transport contractor can begin on the date specified in the notice provided under section 7.4.1.~~

~~7.4.3 As soon as practicable following the notice from Metro specified in section 7.4.1, Franchisee and Metro shall begin making arrangements for Metro assumption of transport and/or ultimate disposal responsibilities. Such arrangements may include planning and coordination meetings between Franchisee, Metro, and Metro's transport and/or disposal contractor.~~

~~7.4.4 Along with, or at any time following the notice specified in section 7.4.1, Metro may direct Franchisee to begin delivering all solid waste specified in section 7.4.1 to Metro Central Station. The notice shall specify a date, not less than 10 business days from the date of the notice, upon which Franchisee shall begin such deliveries. For each ton of waste generated within the district delivered by Franchisee to Metro Central Station, Franchisee shall pay the disposal fee specified in~~

ADDITIONAL PROPOSED AMENDMENT #2

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~~sections 14.4.1(b) and 14.4.2(b), as applicable, as well as the Regional User Fee and Metro Excise Tax. For each ton of waste generated outside of the district delivered by Franchisee to Metro Central Station, Franchisee shall pay the disposal fee specified in sections 14.4.1(b) and 14.4.2(b), as applicable, and Metro Excise Tax. The deliveries specified in this section 7.4.4 shall continue until the date upon which Metro assumes responsibility for transport of solid waste from the Facility.~~

~~7.4.5 If Franchisee fails to install a compactor as required by this section 7.4 by the date established under section 7.4.1, and the Executive Officer does not grant an extension, which extension shall not be unreasonably withheld, Franchisee shall deliver all solid waste specified in section 7.4.1 to Metro Central Station, and shall pay to Metro the current tip fee at Metro Central on all tons delivered.~~

~~7.5 Metro Transport and Disposal Requirements. The requirements of this section 7.5 shall be effective on the date Metro begins transporting Waste from the Facility:~~

~~7.5.1 General Metro Requirements~~

~~(a) Franchisee shall weigh each commercial hauling vehicle as it enters the Facility. The empty or tare weight of each commercial vehicle shall be established and recorded so that the vehicles will not be required to re-weigh each time after unloading. The tare weights must be determined at least twice each year without advance notice to the vehicle owners or drivers.~~

~~(b) Franchisee shall weigh all Recovered Materials, Source Separated Recyclables, compacted waste and Unacceptable Waste prior to removing them from the Facility.~~

~~7.5.2 Compaction, Transport, and Loading of Waste.~~

~~(a) Franchisee is responsible for extruding an untied bale of waste from the compactor into the transfer trailer, installing a seal on the transfer trailer door handle and returning the sealed transfer trailer to the staging area with applicable documentation.~~

~~(b) Franchisee is responsible for producing road legal weights, and for unloading and balancing loads which are found to be out of~~

ADDITIONAL PROPOSED AMENDMENT #2

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~~compliance with appropriate regulations. Certified scales will be used to make such a determination.~~

- ~~(c) Each seal shall be marked with three letters identifying the Facility, Franchisee, and a sequentially increasing set of at least four digits.~~

~~Example: _____ FGS-CON-0000~~

- ~~(d) Franchisee shall also record the transfer trailer I.D. number. The transfer trailer seal will be inspected by both Metro's waste transport contractor and Franchisee prior to removal of the trailer from the Facility.~~

- ~~(e) It is the responsibility of Metro's waste transport services contractor to ensure that the seal was properly installed before the transfer trailer leaves the Facility. Metro's waste transport services contractor shall be responsible for inspecting the empty transfer trailers for damage before release to Franchisee, inspecting the loaded transfer trailers for damage and verifying that the seal was installed properly before removing the transfer trailer from the Facility, transporting the load of waste from the Facility to the disposal site, and then unloading it.~~

- ~~(f) If Franchisee improperly installs the seal, Metro's waste transport services contractor is required to notify Franchisee prior to leaving the Facility Site and request a new seal. Franchisee shall comply with any such requests. Failure to request a new seal will preclude Metro's waste transport services contractor from any recovery for damages arising out of any improperly installed seal. Metro's waste transport services contractor and Franchisee shall use an interchange agreement for inspection of transfer trailers, or a similar agreement as approved by Metro. In addition, Metro's waste transport services contractor can request removal of the seal to inspect the interior of the transfer trailer, and its contents, and request and receive a new seal from Franchisee.~~

- ~~(g) Once the transporter has verified that the seal is properly installed, the waste contained within the transfer trailer is the responsibility of the transporter until the seal is broken by Metro's disposal site operator. If the seal is broken by other~~

ADDITIONAL PROPOSED AMENDMENT #2

Page 4

~~than disposal site personnel, the transporter will be responsible for all associated costs and liabilities involved with managing any waste contained within the transfer trailer, above and beyond normal disposal costs.~~

- ~~(h) Metro reserves the right to contract with parties other than Metro's waste transport services contractor, for the transport of all waste specified in section 7.4.1. All such contracts shall include a requirement that the transport contractor carry insurance in commercially reasonable amounts.~~

~~7.5.3 Maximizing the Compacted Load.~~

- ~~(a) Franchisee shall use best faith efforts to maximize the transporter's payload, without overloading the transfer trailer or the individual road legal axle combinations. Maximum payload shall be no more than 32 tons at a density of 900 lbs/cu. yd. The weights should be verified with axle scales available at the Facility.~~
- ~~(b) Franchisee shall pay to Metro an additional per ton transport amount, for failing to maximize Metro's waste transport services contractor's payloads. The additional payment is to ensure that Franchisee is diligent in fully loading transport trailers at average densities of at least 29 tons or the combined yearly average at Metro owned transfer stations, whichever is less. The formula for determining additional transport payments to Metro is as follows:~~

~~(1) Base Tonnage (BT) = (Loads/calendar year) x 29 tons
(or combined yearly average)~~

~~(2) Tons Transported (TT) = Tons transported/calendar year~~

~~(3) Tons on which additional payment is due (APT)
(APT) = (TT - BT) + (Positive APTs from previous year)~~

~~If APT is less than zero, Franchisee shall make an additional per ton transport payment of \$6.75 for each APT for that year, unless (following the first calendar year) the cumulative APT's from the previous year is greater than zero. If the cumulative APT's from previous years~~

ADDITIONAL PROPOSED AMENDMENT #2

Page 5

~~is greater than zero, those positive APT's shall serve as a credit against APT's accumulated in a subsequent year. The cost of an APT shall be adjusted beginning in January, 1994, and each January thereafter at the same rate as the CPI adjustment to Metro's waste transport services contract for transporting waste from the Facility, and shall remain effective for the calendar year.~~

~~7.5.4 Load Check Program/Unacceptable Waste~~

- ~~(a) Franchisee shall inspect all waste delivered to the Facility in a manner that is reasonably calculated to determine whether the waste is Unacceptable Waste. Franchisee shall establish procedures for inspecting loads of waste and for excluding Unacceptable Waste from compaction and extrusion into transfer trailers.~~
- ~~(b) Franchisee's load check program shall, at a minimum, include screening of all incoming loads by personnel trained to spot Unacceptable Waste, and more thorough random load checks, occurring at least once each week.~~
- ~~(c) Franchisee shall keep accurate records regarding all Unacceptable Waste received, including the following information regarding a known party that unloaded the waste: date, time, vehicle license number, company and/or the individual's name and address, conversation regarding waste, and approximate volume.~~
- ~~(d) Franchisee shall be responsible for all costs associated with the cleanup and management of Unacceptable Waste that has been loaded into a transfer trailer, properly sealed and transported to a disposal site. If the seal is unbroken upon arrival at the disposal site, Franchisee shall reimburse Metro for any cost associated with the cleanup of the Unacceptable Waste or any material contaminated by it at the disposal site for which Metro is properly billed by its disposal site contractor. Upon billing Franchisee for such costs, Metro shall provide to Franchisee all documentation related to the incident for which Franchisee is being billed.~~

~~7.5.5 Materials Excluded from Compaction. It is the responsibility of Franchisee to utilize the compactor to develop loads that do not cause above~~

ADDITIONAL PROPOSED AMENDMENT #2

Page 6

~~normal wear and tear on the transfer trailers during the transfer of waste from the compactor to the transfer trailer. Franchisee shall be liable for damage to a transfer trailer caused by Franchisee.~~

~~7.6 Franchisee Transport/Metro Disposal Option~~

~~7.6.1 At any time during the term of this Franchise, Franchisee may submit to Metro a detailed proposal for Franchisee to deliver all waste specified in section 7.4.1 to a disposal facility specified by Metro.~~

~~7.6.2 By written acknowledgment delivered to Franchisee, the Executive Officer may grant to Franchisee permission to transport solid waste specified in section 7.4.1 to a disposal facility specified by Metro. The acknowledgment shall specify Metro's intent not to exercise its option to transport waste from the Facility, to cease transporting waste from the Facility, or to cease requiring Franchisee to deliver waste to Metro Central, whichever the case may be. The notice shall also acknowledge acceptance of Franchisee's proposal for delivery of such waste, as that proposal may have been amended following discussions with Metro. Upon countersignature by Franchisee, the acknowledgment shall serve as an amendment to this Franchise.~~

~~7.6.3 If Metro allows Franchisee to transport waste as specified in this section 7.6, Franchisee shall not be required to pay transport fees to Metro. Franchisee shall pay to Metro the disposal charge specified in section 14.4, as well as all fees specified in section 14.3, for each ton of waste generated within the district that is disposed of at Columbia Ridge Landfill.~~

EXHIBIT A

SOLID WASTE FRANCHISE

issued by

METRO

600 N.E. Grand Avenue

Portland, Oregon 97232-2736

(503) 797-1700

FRANCHISE NUMBER: _____
DATE ISSUED: _____
AMENDMENT DATE: N/A
EXPIRATION DATE: _____
ISSUED TO: AMBROSE CALCAGNO, JR., dba A. C. TRUCKING
NAME OF FACILITY: FOREST GROVE TRANSFER STATION
ADDRESS: 1525 "B" STREET, P.O. BOX 8
CITY, STATE, ZIP: FOREST GROVE, OREGON 97116
NAME OF OPERATOR: AMBROSE CALCAGNO, JR.
PERSON IN CHARGE: AMBROSE CALCAGNO, JR.
TELEPHONE NUMBER: (503) 357-9222

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FRANCHISE AGREEMENT

This Franchise is issued by Metro, a municipal corporation organized under Oregon Law and the 1992 Metro Charter, referred to herein as "Metro," to Ambrose Calcagno, Jr., dba A. C. Trucking, 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

As used in this Franchise:

"Acceptable Waste" means solid waste, as defined in ORS 459.005(24) except solid waste that is:

- (a) prohibited from disposal at a sanitary landfill by state, local or federal law;
- (b) Hazardous Waste;
- (c) Special Waste without a Metro approved special waste permit;
- (d) Infectious Medical Waste; or
- (e) Conditionally Exempt Generator Waste.

Latex paints are an Acceptable Waste if they are completely dried out and solidified with lids off. Caulk, construction putty and other construction adhesives must be dry to be Acceptable Waste.

"City of Forest Grove Community Enhancement Fee" means those fees payable to the City of Forest Grove under an agreement with Metro for community enhancement money related to the operation of the Forest Grove Transfer Station

"Code" means the Code of Metro.

"Conditionally Exempt Generator Waste" means waste as defined in 40 CFR 261.5, as amended or replaced, such waste to be handled by Contractor as if it were a fully regulated Hazardous Waste.

"DEQ Fees" mean such fees assessed by the Oregon Department of Environmental Quality related to operation of a solid waste facility

"DEQ" means the Department of Environmental Quality of the State of Oregon.

"Disposal Fee" means those payments to be made to Metro by the Franchisee for disposal of solid waste at the Columbia Ridge Landfill (and as they may be amended from time to time)

"Excise Taxes" mean excise taxes due to Metro from the Franchisee as determined by using the formulas contained on Metro's User Fee and Excise Tax Form (and as it may be amended from time to time)

"Executive Officer" means the Executive Officer of Metro or the Executive Officer's designee.

"Facility" means the facility described in section 3 of this Franchise.

"Hazardous Waste" means any waste (even though it may be part of a delivered load of waste) which:

- (a) is required to be accompanied by a written manifest or shipping document describing the waste as 'hazardous waste,' pursuant to any state or federal law, including, but not limited to the Resource Conservation and Recovery Act, 42 USC 9601, et seq. as amended and the regulations promulgated thereunder;
- (b) contains polychlorinated biphenyls or any other substance whose storage, treatment or disposal is subject to regulation under the Toxic Substance Control Act, 15 USC 2601, et seq. as amended and the regulations promulgated thereunder;
- (c) contains a 'reportable quantity' of one or more 'hazardous substances' (typically identified by the nine hazard classes labeled as explosives, non-flammable gas, flammable, flammable solid, oxidizer, poison, corrosive, radioactive, or dangerous), as identified in the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC 9601, et seq. as amended and the regulations promulgated thereunder and as defined under Oregon Law, ORS 466.605 et seq. and the regulations promulgated thereunder;
- (d) contains a radioactive material the storage or disposal of which is subject to state or federal regulation; or
- (e) is otherwise classified as hazardous pursuant to federal or Oregon law, rule or regulation.

"Infectious Medical Waste" means waste resulting from medical procedures which may cause or is capable of causing disease such as:

- (a) biological waste, including blood and blood products, excretions, exudates, secretions, suctionings and other body fluids that can not be directly discarded into a municipal sewer system, including solid or liquid waste from renal dialysis and waste materials reasonably contaminated with blood or body fluids;
- (b) cultures and stocks of etiological agents and associated biologicals, including specimen cultures and dishes and devices used to transfer, inoculate, and mix cultures; wastes from production of biologicals; and serums and discarded live and attenuated vaccines (cultures under this subsection do not include throat and urine cultures);
- (c) pathological waste, including biopsy materials and all human tissues and anatomical parts that emanate from surgery, obstetrical procedures, autopsy and laboratory procedures; animal carcasses exposed to pathogens in research; and the bedding of the animals and other waste from such animals (pathological waste does not include formaldehyde and other such preservative agents); or
- (d) sharps, (which are otherwise regulated as "Special Waste") including needles, IV tubing with needles attached, scalpel blades, lancets, glass tubes that could be broken during handling and syringes.

"Metro Regional User Fee" means the Metro User Fee determined to be due to Metro by the Franchisee by using the formulas contained on Metro's User Fee and Excise Tax Form (and as it may be amended from time to time)

"Processing Facility" means a place or piece of equipment where or by which solid wastes are processed. This definition does not include commercial and home garbage disposal units, which are used to process food wastes and are part of the sewage system, hospital incinerations, crematoriums, paper shredders in commercial establishments, or equipment used by a recycling drop center.

"Special Waste" shall have the meaning set forth for that term in Metro Code Section 5.02.015;

"Transfer Fee" means that amount of money determined by Metro as compensation for the owner/operator of the Facility for operation of the Facility and for associated compensation related to ownership of the Facility.

"Transport Fee" means that amount of money to be paid to Metro by the Franchisee for transport of solid waste from the Facility to a disposal site.

"Unacceptable Waste" means any waste that is not "Acceptable Waste."

2. TERM OF FRANCHISE

This Franchise is issued for a term of five years from the date signed by Metro and the Franchisee, following approval by the Metro Council.

3. LOCATION OF FACILITY

3.1 The franchised Facility is located at 1525 "B" Street, Forest Grove, Oregon. Attached as Exhibit 1 to this agreement is the legal description of the Facility property.

4. OPERATOR, AND OWNER OF FACILITY AND PROPERTY

4.1 The owner of the Facility is Ambrose Calcagno, Jr. dba A. C. Trucking. Franchisee shall submit to Metro any changes in ownership of the Facility in excess of five percent of ownership, or any change in partners if a partnership, within 10 days of the change.

4.2 The owner of the property underlying the Facility is Ambrose Calcagno, Jr. and Virginia Calcagno, husband and wife. If Franchisee is not the owner of the underlying property, Franchisee warrants that owner has consented to Franchisee's use of the property as described in this Franchise.

4.3 The operator of the Facility is Ambrose Calcagno, Jr. dba A. C. Trucking. Franchisee may contract with another person or entity to operate the Facility only upon ninety (90) days prior written notice to Metro and the written approval of the Executive Officer. Franchisee shall retain primary responsibility for compliance with this Franchise.

5. AUTHORIZED AND PROHIBITED SOLID WASTES

5.1 Franchisee is authorized to accept all materials authorized by its DEQ Solid Waste Disposal Permit, from the public and from commercial collection vehicles, for delivery to a Metro-designated disposal facility (or transport and disposal as may be directed by Metro, pursuant to section 7.4) and to separate out recyclable materials such as, but not limited to, wastepaper, cardboard and newspaper. Discarded vehicles, sewage sludge, septic tank and cesspool pumpings, or other sludge shall not be accepted at the Facility.

5.2 All Franchisee vehicles and devices transferring or transporting solid waste via public roads shall be constructed, maintained, and operated to prevent leaking, sifting, spilling, or blowing of solid waste while in transit.

5.3 Franchisee may accept no more than 300 tons of solid waste per operating day (a day in which the Facility accepts solid waste) on a monthly average, with the added condition

that Franchisee may not accept more than 70,000 tons of waste in any twelve consecutive months or as this amount may otherwise be limited by Metro's current agreement with Oregon Waste Systems, Inc. Upon assumption by Metro of responsibility for transport of solid waste from the Facility, Franchisee may accept an unlimited quantity of solid waste at the Facility. However, for each ton of waste transported from the Facility or disposed of by Metro in excess of 70,000 tons, from inside or outside of the District, Franchisee shall pay increased transport and disposal fees as specified in section 14 of this Franchise.

- 5.4 Nothing in this Franchise prohibits Franchisee from accepting waste from outside the Metro District so long as Franchisee keeps accurate records of the waste accepted from outside of the District.

6. MINIMUM MONITORING AND REPORTING REQUIREMENTS

- 6.1 Franchisee shall effectively monitor Facility operation and maintain accurate records of the following information for all transactions:
- (a) Ticket Number (should be the same as the ticket number on the weight slips)
 - (b) Incoming Hauler Account Number. On a semi-annual basis, provide Metro with a computer listing that cross-references this account number with the hauling company's name and address.
 - (c) Generator's Account Number or Name (if available). On a semi-annual basis, provide Metro with a computer listing that cross-references this number or name to the generator's full name and address.
 - (d) Code designating type of material (more detail, such as differentiating yard debris, is acceptable):
 - (1) Incoming source-separated recyclable
 - (2) Mixed waste
 - (3) Outgoing recyclables
 - (4) Outgoing mixed waste
 - (e) Code designating origin of material:
 - (1) Public from inside Metro boundaries
 - (2) Public from outside Metro boundaries
 - (3) Commercial from inside Metro boundaries
 - (4) Commercial from outside Metro

- (f) Date the load was received at or transmitted from your Facility.
 - (g) Time the load was received at or transmitted from your Facility.
 - (h) Indicate whether you accepted or rejected the load.
 - (i) Net Weight of the Load.
 - (j) Volume of the Load (if applicable).
 - (k) The fee you charged for the load to the generator (excludes transportation charges).
- 6.2 Records required under section 6.1 shall be reported to Metro no later than fifteen (15) days following the end of each month, in the format prescribed by Metro. Transaction data shall be in electronic form compatible with Metro's data processing equipment. A cover letter shall accompany the data which certifies the accuracy of the data and is signed by an authorized representative of Franchisee. The hard copy of the report shall be signed and certified as accurate by an authorized representative of Franchisee.
- 6.3 Franchisee shall maintain complete and accurate records of all costs, revenues, rates, if applicable, and other information on a form suitable to Metro. These records shall be made available to Metro on request.
- 6.4 The Franchisee shall file an Annual Calendar Year Operating Report detailing the previous year operation of the Facility as outlined in this Franchise, on or before March 30 of each year.
- 6.5 The Franchisee shall submit to Metro duplicate copies of any information submitted to the DEQ pertaining to the Facility, within 30 days of submittal to DEQ.
- 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, all books, records, maps, plans, income tax returns, financial statements, and other like materials of the Franchisee that are directly related to the operation of the Franchisee.

7. OPERATIONAL REQUIREMENTS

7.1 General Requirements

- 7.1.1 A copy of this Franchise shall be displayed where it can be readily referred to by Facility operating personnel.
- 7.1.2 If a breakdown of equipment, fire, or other occurrence results in a violation of any conditions of this Franchise or of the Metro Code, the Franchisee shall:
- (a) Take immediate action to correct the unauthorized condition or operation.
 - (b) Immediately notify Metro so that an investigation can be made to evaluate the impact and the corrective actions taken and determine additional action that must be taken.
 - (c) Prepare a report describing all operational irregularities, accidents, and incidents of non-compliance and provide a copy of such report to Metro within ten days of occurrence or sooner if circumstances warrant notification to Metro.
- 7.1.3 If the Processing Facility is to be closed permanently or for a protracted period of time during the term of this Franchise, Franchisee shall provide Metro with written notice, at least 90 days prior to closure, of the proposed time schedule and closure procedures.
- 7.1.4 The Facility shall be in strict compliance with the Metro Code requirements regarding storage, collection, transportation, recycling and disposal of solid waste.
- 7.1.5 The Franchisee shall provide an adequate operating staff which is duly qualified to carry out the reporting functions required to ensure compliance with the conditions of this Franchise.
- 7.1.6 Metro may reasonably regulate the hours of site operation as it finds necessary to ensure compliance with this Franchise. Metro will attempt to provide 90 days written notice prior to regulating hours of operation, and shall not unreasonably increase Franchisee's costs of operation. If Metro is transporting solid waste from the Facility, Franchisee shall not change its hours of operation in a manner that would increase Metro's transport costs.
- 7.1.7 The Franchisee shall establish and follow procedures designed to give reasonable notice prior to refusing service to any person. Copies of notification and procedures for such action will be retained on file for three years for possible review by the District.

7.1.8 The Franchisee shall not, by act or omission, unlawfully discriminate against any person, treat unequally or prefer any user of the Facility through application of fees or the operation of the Facility.

7.1.9 At least one sign shall be erected at the entrance to the Facility. This sign shall be easily visible, legible, and shall contain at least the following:

- (a) Name of facility;
- (b) Emergency phone number;
- (c) Operational hours during which wastes will be received for disposal;
- (d) Disposal rates and fees;
- (e) Metro information phone number; and
- (f) Acceptable materials.

7.2 Litter, Odor, Dust, Noise and Vector Control

7.2.1 Control of Blowing Debris. The Franchisee shall police all areas within the site and along the road frontage of the site as indicated on the map attached as Exhibit 2 and shall:

- (a) patrol the Facility daily;
- (b) patrol Highway 47 ("B" Street) from its intersection with the relocated Tualatin Valley Highway to its intersection with Pacific Avenue on a weekly basis;
- (c) respond to citizen's complaints on an "on call" basis within 12 hours, or sooner as circumstances may require;
- (d) log all citizen complaints by name, date, time and nature of complaint;
- (e) Apply to the State for approval for signage to direct traffic to the Facility using Highway 47.

7.2.2 Odor, Dust and Noise Control. The Franchisee shall control odor and dust on the site by use of installed dust control and odor systems whenever excessive dust and odor occur or at the direction of Metro. Alternative dust and odor control measures may be performed by the Franchisee with the approval of Metro.

7.2.3 Vector Control. The Franchisee shall conduct the operation of the transfer station in such a manner so as to ensure unfavorable conditions for production of rodents and insects. If rodent and insect activity become apparent to Metro, supplemental vector control measures shall be initiated by the Franchisee at Franchisee's own cost, with the approval of DEQ and Metro.

- 7.3 Franchisee shall meet with representatives of Metro and the City of Forest Grove on a schedule to be determined by Metro and the City of Forest Grove to discuss operational impacts of the transfer station on the City of Forest Grove and any corrective measures that may be necessary to address such impacts. The meetings will be scheduled no more often than once every six months. The Metro Solid Waste Director may call a meeting on a shorter schedule if specific operational issues require immediate attention.
- 7.4 Metro Transport and Disposal Option.
- 7.4.1 Metro reserves the right, at any time during the term of this Franchise, to assume responsibility for transport from the Facility and/or disposal of all Acceptable Waste generated within the district that is to be disposed of in a general purpose landfill. Notice of Metro's intent to assume such responsibility shall be by written notice to Franchisee. The notice shall establish the date, not less than six months from the date of the notice, upon which Metro will begin transporting and/or disposing of solid waste from the Facility.
- 7.4.2 Prior to the date established for Metro to assume transport and/or disposal responsibilities, Franchisee shall install a compactor at the Facility meeting Metro specifications. Franchisee shall submit to Metro within 60 days from the date of notice specified in 7.4.1, its detailed plans for installation of a compactor, including installation and compactor specifications. Metro shall review such plans and notify Franchisee of any objections or proposed revisions within 10 business days of receipt. If Metro does not comment within the time specified, the plans shall be deemed approved, and Franchisee shall commence installation. If Metro objects or proposes revisions, the parties shall in good faith attempt to resolve all issues related to compactor installation such that deliveries to Metro's transport contractor can begin on the date specified in the notice provided under section 7.4.1.
- 7.4.3 As soon as practicable following the notice from Metro specified in section 7.4.1, Franchisee and Metro shall begin making arrangements for Metro assumption of transport and/or ultimate disposal responsibilities. Such arrangements may include planning and coordination meetings between Franchisee, Metro, and Metro's transport and/or disposal contractor.
- 7.4.4 Along with, or at any time following the notice specified in section 7.4.1, Metro may direct Franchisee to begin delivering all solid waste specified in section 7.4.1 to Metro Central Station. The notice shall specify a date, not less than 10 business days from the date of the notice, upon which Franchisee shall begin such deliveries. For each ton of waste generated within the district delivered by Franchisee to Metro Central Station, Franchisee shall pay the disposal fee specified in sections 14.4.1(b) and 14.4.2(b), as applicable, as well as the Regional User Fee and Metro Excise Tax. For each ton of waste generated

outside of the district delivered by Franchisee to Metro Central Station, Franchisee shall pay the disposal fee specified in sections 14.4.1(b) and 14.4.2(b), as applicable, and Metro Excise Tax. The deliveries specified in this section 7.4.4 shall continue until the date upon which Metro assumes responsibility for transport of solid waste from the Facility.

7.4.5 If Franchisee fails to install a compactor as required by this section 7.4 by the date established under section 7.4.1, and the Executive Officer does not grant an extension, which extension shall not be unreasonably withheld, Franchisee shall deliver all solid waste specified in section 7.4.1 to Metro Central Station, and shall pay to Metro the current tip fee at Metro Central on all tons delivered.

7.5 Metro Transport and Disposal Requirements. The requirements of this section 7.5 shall be effective on the date Metro begins transporting Waste from the Facility:

7.5.1 General Metro Requirements

- (a) Franchisee shall weigh each commercial hauling vehicle as it enters the Facility. The empty or tare weight of each commercial vehicle shall be established and recorded so that the vehicles will not be required to re-weigh each time after unloading. The tare weights must be determined at least twice each year without advance notice to the vehicle owners or drivers.
- (b) Franchisee shall weigh all Recovered Materials, Source-Separated Recyclables, compacted waste and Unacceptable Waste prior to removing them from the Facility.

7.5.2 Compaction, Transport, and Loading of Waste.

- (a) Franchisee is responsible for extruding an untied bale of waste from the compactor into the transfer trailer, installing a seal on the transfer trailer door handle and returning the sealed transfer trailer to the staging area with applicable documentation.
- (b) Franchisee is responsible for producing road legal weights, and for unloading and balancing loads which are found to be out of compliance with appropriate regulations. Certified scales will be used to make such a determination.
- (c) Each seal shall be marked with three letters identifying the Facility, Franchisee, and a sequentially increasing set of at least four digits.

Example: FGS-CON-0000

- (d) Franchisee shall also record the transfer trailer I.D. number. The transfer trailer seal will be inspected by both Metro's waste transport contractor and Franchisee prior to removal of the trailer from the Facility.
- (e) It is the responsibility of Metro's waste transport services contractor to ensure that the seal was properly installed before the transfer trailer leaves the Facility. Metro's waste transport services contractor shall be responsible for inspecting the empty transfer trailers for damage before release to Franchisee, inspecting the loaded transfer trailers for damage and verifying that the seal was installed properly before removing the transfer trailer from the Facility, transporting the load of waste from the Facility to the disposal site, and then unloading it.
- (f) If Franchisee improperly installs the seal, Metro's waste transport services contractor is required to notify Franchisee prior to leaving the Facility Site and request a new seal. Franchisee shall comply with any such requests. Failure to request a new seal will preclude Metro's waste transport services contractor from any recovery for damages arising out of any improperly installed seal. Metro's waste transport services contractor and Franchisee shall use an interchange agreement for inspection of transfer trailers, or a similar agreement as approved by Metro. In addition, Metro's waste transport services contractor can request removal of the seal to inspect the interior of the transfer trailer, and its contents, and request and receive a new seal from Franchisee.
- (g) Once the transporter has verified that the seal is properly installed, the waste contained within the transfer trailer is the responsibility of the transporter until the seal is broken by Metro's disposal site operator. If the seal is broken by other than disposal site personnel, the transporter will be responsible for all associated costs and liabilities involved with managing any waste contained within the transfer trailer, above and beyond normal disposal costs.
- (h) Metro reserves the right to contract with parties other than Metro's waste transport services contractor, for the transport of all waste specified in section 7.4.1. All such contracts shall include a requirement that the transport contractor carry insurance in commercially reasonable amounts.

7.5.3 Maximizing the Compacted Load.

- (a) Franchisee shall use best faith efforts to maximize the transporter's payload, without overloading the transfer trailer or the individual road-legal axle combinations. Maximum payload shall be no more than 32 tons

at a density of 900 lbs/cu. yd. The weights should be verified with axle scales available at the Facility.

- (b) Franchisee shall pay to Metro an additional per ton transport amount, for failing to maximize Metro's waste transport services contractor's payloads. The additional payment is to ensure that Franchisee is diligent in fully loading transport trailers at average densities of at least 29 tons or the combined yearly average at Metro owned transfer stations, whichever is less. The formula for determining additional transport payments to Metro is as follows:

- (1) Base Tonnage (BT) = (Loads/calendar year) x 29 tons (or combined yearly average)
- (2) Tons Transported (TT) = Tons transported/calendar year
- (3) Tons on which additional payment is due (APT)
 $(APT) = (TT - BT) + (\text{Positive APTs from previous year})$

If APT is less than zero, Franchisee shall make an additional per ton transport payment of \$6.75 for each APT for that year, unless (following the first calendar year) the cumulative APT's from the previous year is greater than zero. If the cumulative APT's from previous years is greater than zero, those positive APT's shall serve as a credit against APT's accumulated in a subsequent year. The cost of an APT shall be adjusted beginning in January, 1994, and each January thereafter at the same rate as the CPI adjustment to Metro's waste transport services contract for transporting waste from the Facility, and shall remain effective for the calendar year.

7.5.4 Load Check Program/Unacceptable Waste

- (a) Franchisee shall inspect all waste delivered to the Facility in a manner that is reasonably calculated to determine whether the waste is Unacceptable Waste. Franchisee shall establish procedures for inspecting loads of waste and for excluding Unacceptable Waste from compaction and extrusion into transfer trailers.
- (b) Franchisee's load check program shall, at a minimum, include screening of all incoming loads by personnel trained to spot Unacceptable Waste, and more thorough random load checks, occurring at least once each week.

- (c) Franchisee shall keep accurate records regarding all Unacceptable Waste received, including the following information regarding a known party that unloaded the waste: date, time, vehicle license number, company and/or the individual's name and address, conversation regarding waste, and approximate volume.
- (d) Franchisee shall be responsible for all costs associated with the cleanup and management of Unacceptable Waste that has been loaded into a transfer trailer, properly sealed and transported to a disposal site. If the seal is unbroken upon arrival at the disposal site, Franchisee shall reimburse Metro for any cost associated with the cleanup of the Unacceptable Waste or any material contaminated by it at the disposal site for which Metro is properly billed by its disposal site contractor. Upon billing Franchisee for such costs, Metro shall provide to Franchisee all documentation related to the incident for which Franchisee is being billed.

7.5.5 Materials Excluded from Compaction. It is the responsibility of Franchisee to utilize the compactor to develop loads that do not cause above normal wear and tear on the transfer trailers during the transfer of waste from the compactor to the transfer trailer. Franchisee shall be liable for damage to a transfer trailer caused by Franchisee.

7.6 Franchisee Transport/Metro Disposal Option

- 7.6.1** At any time during the term of this Franchise, Franchisee may submit to Metro a detailed proposal for Franchisee to deliver all waste specified in section 7.4.1 to a disposal facility specified by Metro.
- 7.6.2** By written acknowledgment delivered to Franchisee, the Executive Officer may grant to Franchisee permission to transport solid waste specified in section 7.4.1 to a disposal facility specified by Metro. The acknowledgment shall specify Metro's intent not to exercise its option to transport waste from the Facility, to cease transporting waste from the Facility, or to cease requiring Franchisee to deliver waste to Metro Central, whichever the case may be. The notice shall also acknowledge acceptance of Franchisee's proposal for delivery of such waste, as that proposal may have been amended following discussions with Metro. Upon countersignature by Franchisee, the acknowledgment shall serve as an amendment to this Franchise.
- 7.6.3** If Metro allows Franchisee to transport waste as specified in this section 7.6, Franchisee shall not be required to pay transport fees to Metro. Franchisee shall pay to Metro the disposal charge specified in section 14.4, as well as all fees specified in section 14.3, for each ton of waste generated within the district that is disposed of at Columbia Ridge Landfill.

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.

9. SURETY BOND OR CONDITIONAL LIEN

Franchisee shall provide a surety bond in the amount of One Hundred Thousand Dollars (\$100,000), or at its option provide a conditional lien on the franchise property in a form satisfactory to Metro. Without limiting the use to which the proceeds from a bond or from lien foreclosure may be put, such proceeds may be used to clean up or otherwise mitigate damage to the Facility upon closure or resulting from the condition of the Facility upon closure.

10. INSURANCE

10.1 Franchisee shall purchase and maintain the following types of insurance, covering Franchisee, its employees, and agents:

- (a) 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
- (b) Automobile bodily injury and property damage liability insurance.

10.2 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.

10.3 Metro, its elected officials, departments, employees, and agents shall be named as **ADDITIONAL INSURED**S. Notice of any material change or policy cancellation shall be provided to Metro 30 days prior to the change or cancellation.

10.4 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.

11. 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.

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. 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 Metro's authority to direct the flow of solid waste away from the Facility and/or take enforcement action against the Facility shall be as specified in the Metro Code.
- 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 or surveys; collecting samples; obtaining data; examining books, papers, records and equipment; performing any investigation as may be necessary to verify the accuracy of any return made, or if no return is made by the Franchisee, to ascertain and determine the amount required to be paid; and carrying out other necessary functions related to this Franchise and the Metro Code. Access to inspect is authorized:
- (a) during all working hours;
 - (b) at other reasonable times with notice;
 - (c) at any time without notice, at the discretion of the Metro Solid Waste Division Director, when such notice would defeat the purpose of 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 or standards regarding matters within Metro's authority, and to enforce all such legal requirements against Franchisee.

14. DISPOSAL RATES AND FEES

- 14.1 Franchisee shall be responsible for collecting all fees for disposal at the Facility and remitting fees, charges and taxes to Metro as specified in this agreement. All waste specified in section 7.4.1 shall be charged the same rate. To the extent that Franchisee charges different rates for different categories of waste, such rates shall be included in a published rate schedule, which shall be made available to Metro when adopted or amended. Franchisee shall maintain accounts on wastes received and amounts billed to each commercial hauler as required by Metro Code Section 5.01.130.
- 14.2 All charges shall be calculated on an outbound tonnage basis using certified scale weights at the Facility. If an emergency or malfunction temporarily prevents the use of certified scale weights at the Facility and it is not feasible to use weights obtained at the disposal site, the yardage/tonnage conversion shall be based on the assumption that compacted waste has a density of 600 pounds per cubic yard and that non-compacted waste has a density of 250 pounds per cubic yard.
- 14.3 At all times during this Franchise, Franchisee shall be responsible for payment of the following fees, to the extent those fees are required by law:
- (a) Local enhancement fees, by remitting to Metro;
 - (b) DEQ fees for operation of the Facility, by remitting directly to DEQ;
 - (c) Metro regional user fee, as specified in the Metro Code; and
 - (d) Metro excise tax, as specified in the Metro Code.
- 14.4 Metro Transport and Disposal Charges
- 14.4.1 If transport of waste from the Facility and/or ultimate waste disposal is provided by Metro, Franchisee shall remit to Metro the following additional charges, for each ton of waste transported and disposed of by Metro up to 70,000 tons per year:
- (a) Per ton transport fee of \$7.50; and
 - (b) Per ton disposal fee of \$25.83.
- 14.4.2 For each ton of waste transported from the Facility and/or disposed of by Metro in excess of 70,000 tons per year, Franchisee shall remit to Metro:
- (a) Per ton transport fee of \$15.46; and
 - (b) Per ton disposal fee of \$28.57.

- 14.4.3 The transport and disposal charges specified in section 14.4.1 shall be annually adjusted on each anniversary of the Franchise renewal date for use during the forthcoming year, based on 100 per cent of the change in the Consumer Price Index entitled "West-A" from the U.S. Department of Labor, Bureau of Labor Statistics' publication entitled "Consumer Price Indexes, Pacific Cities and U.S. City Average/All Urban Consumers" or by the actual increase in the transport or disposal fee charged by Metro's contractor, whichever is greater. The transport and disposal charges specified in section 14.4.2 shall be automatically adjusted to reflect, at all times, the per ton fixed and variable transport and disposal fees being remitted by Metro to its transport and disposal contractors, without offset or credit to Franchisee of any kind.
- 14.4.4 All charges specified in this section 14.4 shall be remitted as specified in Metro Code Section 5.02.055, and subject to the credit terms of that section.
- 14.5 Franchisee is authorized to charge no more than \$75 per ton for each ton of solid waste disposed of at the Facility, until such time as Franchisee obtains a different rate through the rate review process of the Metro Code. Franchisee may automatically pass through any increase in Metro fees or DEQ fees without rate review, subject to the \$75 per ton cap. Beginning in 1995, Franchisee shall submit to rate review annually, following or at the time of Metro's adoption of disposal rates for Metro owned facilities.
- 14.6 The Franchisee is authorized to charge a minimum fee of \$15.00 per load for public self-haulers, provided however that if a self-hauler shall bring in one-half (1/2) cubic yard of recyclable material (as defined in ORS 459.005) they shall receive a \$3.00 credit toward their disposal charge.
- 14.7 A surcharge shall be levied against a person who disposes of waste at the transfer station, if when entering the Facility any portion of the waste is visible to Facility scalehouse personnel, unless the waste is only visible through a secure covering. The surcharge shall be \$100.00 for a load delivered by a vehicle greater than three-quarter ton capacity, and \$25.00 for a load delivered by a vehicle of three-quarter ton capacity or less, and shall be collected in the same manner as other disposal fees are collected at the Facility. Franchisee may retain all such surcharges collected.

15. REVOCATION

- 15.1 This Franchise may be revoked at any time for any violation of the conditions of this Franchise or the Metro Code, as specified in the Metro Code. This Franchise does not relieve Franchisee from responsibility for compliance with ORS chapter 459, or other applicable federal, state or local statutes, rules, regulations, codes, ordinances, or standards.

- 15.2 This Franchise is subject to suspension, modification, revocation, or nonrenew upon Metro finding that:
- (a) The Franchisee has violated the terms of this Franchise, the Metro Code, ORS chapter 459, or the rules promulgated thereunder or any other applicable law or regulation and has failed to cure in a timely manner;
 - (b) The Franchisee has misrepresented material facts or information in the Franchise Application, Annual Operating Report, or other information required to be submitted to Metro;
 - (c) The Franchisee has refused to provide adequate service at the Facility, after written notification and reasonable opportunity to do so; or
 - (d) There has been a significant change in the quantity or character of solid waste received at the Facility, the method of processing solid waste at the Facility, or available methods of processing such waste.

16. GENERAL CONDITIONS

- 16.1 Franchisee shall be responsible for ensuring that its contractors and agents operate in complete compliance with the terms and conditions of this Franchise.
- 16.2 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.
- 16.3 This Franchise may not be transferred or assigned without the prior written approval of Metro.
- 16.4 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.
- 16.5 This Franchise shall be construed, applied, and enforced in accordance with the laws of the State of Oregon.
- 16.6 If any provision of the Franchise shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this Franchise shall not be affected.

17. NOTICES

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

Ambrose Calcagno, Jr.
Forest Grove Transfer Station
1525 "B" Street, P.O. Box 8
Forest Grove, Oregon 97116

with a copy to:

Thompson, Adams, DeBast & Helzer
Attorneys at Law
4500 SW Hall Boulevard
Beaverton, OR 97005

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

Solid Waste Director
Solid Waste Department
Metro
600 NE Grand Avenue
Portland, OR 97232-2736

17.3 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.

Ambrose Calcagno, Jr.,
dba A. C. Trucking

Date: _____

Rena Cusma, Executive Officer
Metro

Date: _____

1187a

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF GRANTING)	ORDINANCE NO. 94-527A
A FRANCHISE RENEWAL TO AMBROSE)	
CALCAGNO, JR., D/B/A A. C. TRUCKING)	INTRODUCED BY
FOR THE PURPOSE OF OPERATING A)	RENA CUSMA,
SOLID WASTE TRANSFER STATION AND)	EXECUTIVE OFFICER
DECLARING AN EMERGENCY)	

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

WHEREAS, Ambrose Calcagno, Jr., d/b/a A. C. Trucking has applied for renewal of a non-exclusive franchise to operate a transfer station (Forest Grove Transfer Station) for mixed solid waste at Forest Grove, Oregon; and,

WHEREAS, A. C. Trucking has submitted evidence of compliance with Metro Code Section 5.01.060 requirements for franchise applications and operational plans; and

WHEREAS, A. C. Trucking will provide disposal services to its own haulers and to other commercial haulers and the public at the Forest Grove Transfer Station; and,

WHEREAS, The appropriate amount of a surety bond or conditional lien to be provided by the franchisee is determined to be \$100,000; and,

WHEREAS, Allowing this ordinance to take effect immediately is necessary for the public health, safety and welfare of the Metro area because:

1. The franchise continues to be an important component of the regional solid waste disposal system; and,
2. No system benefits would be derived by delaying the effective date of this ordinance, and such delay is likely to cause significant system disruption; and,

WHEREAS, The ordinance and attached Franchise was submitted to the Executive Officer for consideration and was forwarded to the Council for approval; now, therefore

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. That the Metro Council authorizes the Metro Executive Officer to issue the attached Franchise (Exhibit A, amended) to Ambrose Calcagno Jr., d/b/a A. C. Trucking within ten (10) days of the adoption of this Ordinance.
2. This Ordinance being necessary for the public health, safety, and welfare of the Metro area, an emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Metro Council this ____ day of _____, 1994.

Judy Wyers, Presiding Officer

ATTEST: _____
Clerk of the Council

PN:clk
S:\NORTH\FRANCHISE\SW94-527.ORD

Exhibit A - Amended

SOLID WASTE FRANCHISE

issued by

METRO

600 N.E. Grand Avenue

Portland, Oregon 97232-2736

(503) 797-1700

FRANCHISE NUMBER: _____
DATE ISSUED: _____
AMENDMENT DATE: N/A
EXPIRATION DATE: _____
ISSUED TO: AMBROSE CALCAGNO, JR., dba A. C. TRUCKING
NAME OF FACILITY: FOREST GROVE TRANSFER STATION
ADDRESS: 1525 "B" STREET, P.O. BOX 8
CITY, STATE, ZIP: FOREST GROVE, OREGON 97116
NAME OF OPERATOR: AMBROSE CALCAGNO, JR.
PERSON IN CHARGE: AMBROSE CALCAGNO, JR.
TELEPHONE NUMBER: (503) 357-9222

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FRANCHISE AGREEMENT

This Franchise is issued by Metro, a municipal corporation organized under Oregon Law and the 1992 Metro Charter, referred to herein as "Metro," to Ambrose Calcagno, Jr., dba A. C. Trucking, 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

As used in this Franchise:

"Acceptable Waste" means solid waste, as defined in ORS 459.005(24) except solid waste that is:

- (a) prohibited from disposal at a sanitary landfill by state, local or federal law;
- (b) Hazardous Waste;
- (c) Special Waste without a Metro approved special waste permit;
- (d) Infectious Medical Waste; or
- (e) Conditionally Exempt Generator Waste.

Latex paints are an Acceptable Waste if they are completely dried out and solidified with lids off. Caulk, construction putty and other construction adhesives must be dry to be Acceptable Waste.

"City of Forest Grove Community Enhancement Fee" means those fees payable to the City of Forest Grove under an agreement with Metro for community enhancement money related to the operation of the Forest Grove Transfer Station

"Code" means the Code of Metro.

"Conditionally Exempt Generator Waste" means waste as defined in 40 CFR 261.5, as amended or replaced, such waste to be handled by Contractor as if it were a fully regulated Hazardous Waste.

"DEQ Fees" mean such fees assessed by the Oregon Department of Environmental Quality related to operation of a solid waste facility

"DEQ" means the Department of Environmental Quality of the State of Oregon.

"Disposal Fee" means those payments to be made to Metro by the Franchisee for disposal of solid waste at the Columbia Ridge Landfill (and as they may be amended from time to time)

"Excise Taxes" mean excise taxes due to Metro from the Franchisee as determined by using the formulas contained on Metro's User Fee and Excise Tax Form (and as it may be amended from time to time)

"Executive Officer" means the Executive Officer of Metro or the Executive Officer's designee.

"Facility" means the facility described in section 3 of this Franchise.

"Hazardous Waste" means any waste (even though it may be part of a delivered load of waste) which:

- (a) is required to be accompanied by a written manifest or shipping document describing the waste as 'hazardous waste,' pursuant to any state or federal law, including, but not limited to the Resource Conservation and Recovery Act, 42 USC 9601, et seq. as amended and the regulations promulgated thereunder;
- (b) contains polychlorinated biphenyls or any other substance whose storage, treatment or disposal is subject to regulation under the Toxic Substance Control Act, 15 USC 2601, et seq. as amended and the regulations promulgated thereunder;
- (c) contains a 'reportable quantity' of one or more 'hazardous substances' (typically identified by the nine hazard classes labeled as explosives, non-flammable gas, flammable, flammable solid, oxidizer, poison, corrosive, radioactive, or dangerous), as identified in the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC 9601, et seq. as amended and the regulations promulgated thereunder and as defined under Oregon Law, ORS 466.605 et seq. and the regulations promulgated thereunder;
- (d) contains a radioactive material the storage or disposal of which is subject to state or federal regulation; or
- (e) is otherwise classified as hazardous pursuant to federal or Oregon law, rule or regulation.

"Infectious Medical Waste" means waste resulting from medical procedures which may cause or is capable of causing disease such as:

- (a) biological waste, including blood and blood products, excretions, exudates, secretions, suctionings and other body fluids that can not be directly discarded into a municipal sewer system, including solid or liquid waste from renal dialysis and waste materials reasonably contaminated with blood or body fluids;
- (b) cultures and stocks of etiological agents and associated biologicals, including specimen cultures and dishes and devices used to transfer, inoculate, and mix cultures; wastes from production of biologicals; and serums and discarded live and attenuated vaccines (cultures under this subsection do not include throat and urine cultures);
- (c) pathological waste, including biopsy materials and all human tissues and anatomical parts that emanate from surgery, obstetrical procedures, autopsy and laboratory procedures; animal carcasses exposed to pathogens in research; and the bedding of the animals and other waste from such animals (pathological waste does not include formaldehyde and other such preservative agents); or
- (d) sharps, (which are otherwise regulated as "Special Waste") including needles, IV tubing with needles attached, scalpel blades, lancets, glass tubes that could be broken during handling and syringes.

"Metro Regional User Fee" means the Metro User Fee determined to be due to Metro by the Franchisee by using the formulas contained on Metro's User Fee and Excise Tax Form (and as it may be amended from time to time)

"Processing Facility" means a place or piece of equipment where or by which solid wastes are processed. This definition does not include commercial and home garbage disposal units, which are used to process food wastes and are part of the sewage system, hospital incinerations, crematoriums, paper shredders in commercial establishments, or equipment used by a recycling drop center.

"Special Waste" shall have the meaning set forth for that term in Metro Code Section 5.02.015;

"Transfer Fee" means that amount of money determined by Metro as compensation for the owner/operator of the Facility for operation of the Facility and for associated compensation related to ownership of the Facility.

"Transport Fee" means that amount of money to be paid to Metro by the Franchisee for transport of solid waste from the Facility to a disposal site.

"Unacceptable Waste" means any waste that is not "Acceptable Waste."

2. TERM OF FRANCHISE

This Franchise is issued for a term of five years from the date signed by Metro and the Franchisee, following approval by the Metro Council.

3. LOCATION OF FACILITY

3.1 The franchised Facility is located at 1525 "B" Street, Forest Grove, Oregon. Attached as Exhibit 1 to this agreement is the legal description of the Facility property.

4. OPERATOR, AND OWNER OF FACILITY AND PROPERTY

4.1 The owner of the Facility is Ambrose Calcagno, Jr. dba A. C. Trucking. Franchisee shall submit to Metro any changes in ownership of the Facility in excess of five percent of ownership, or any change in partners if a partnership, within 10 days of the change.

4.2 The owner of the property underlying the Facility is Ambrose Calcagno, Jr. and Virginia Calcagno, husband and wife. If Franchisee is not the owner of the underlying property, Franchisee warrants that owner has consented to Franchisee's use of the property as described in this Franchise.

4.3 The operator of the Facility is Ambrose Calcagno, Jr. dba A. C. Trucking. Franchisee may contract with another person or entity to operate the Facility only upon ninety (90) days prior written notice to Metro and the written approval of the Executive Officer. Franchisee shall retain primary responsibility for compliance with this Franchise.

5. AUTHORIZED AND PROHIBITED SOLID WASTES

5.1 Franchisee is authorized to accept all materials authorized by its DEQ Solid Waste Disposal Permit, from the public and from commercial collection vehicles, for delivery to a Metro-designated disposal facility (or transport and disposal as may be directed by Metro, pursuant to section 7.4) and to separate out recyclable materials such as, but not limited to, wastepaper, cardboard and newspaper. Discarded vehicles, sewage sludge, septic tank and cesspool pumpings, or other sludge shall not be accepted at the Facility.

5.2 All Franchisee vehicles and devices transferring or transporting solid waste via public roads shall be constructed, maintained, and operated to prevent leaking, sifting, spilling, or blowing of solid waste while in transit.

5.3 Franchisee may accept no more than 300 tons of solid waste per operating day (a day in which the Facility accepts solid waste) on a monthly average, with the added condition

that Franchisee may not accept more than 70,000 tons of waste in any twelve consecutive months or as this amount may otherwise be limited by Metro's current agreement with Oregon Waste Systems, Inc. Upon assumption by Metro of responsibility for transport of solid waste from the Facility, Franchisee may accept an unlimited quantity of solid waste at the Facility. However, for each ton of waste transported from the Facility or disposed of by Metro in excess of 70,000 tons, from inside or outside of the District, Franchisee shall pay increased transport and disposal fees as specified in section 14 of this Franchise.

- 5.4 Nothing in this Franchise prohibits Franchisee from accepting waste from outside the Metro District so long as Franchisee keeps accurate records of the waste accepted from outside of the District.

6. MINIMUM MONITORING AND REPORTING REQUIREMENTS

- 6.1 Franchisee shall effectively monitor Facility operation and maintain accurate records of the following information for all transactions:
- (a) Ticket Number (should be the same as the ticket number on the weight slips)
 - (b) Incoming Hauler Account Number. On a semi-annual basis, provide Metro with a computer listing that cross-references this account number with the hauling company's name and address.
 - (c) Generator's Account Number or Name (if available). On a semi-annual basis, provide Metro with a computer listing that cross-references this number or name to the generator's full name and address.
 - (d) Code designating type of material (more detail, such as differentiating yard debris, is acceptable):
 - (1) Incoming source-separated recyclable
 - (2) Mixed waste
 - (3) Outgoing recyclables
 - (4) Outgoing mixed waste
 - (e) Code designating origin of material:
 - (1) Public from inside Metro boundaries
 - (2) Public from outside Metro boundaries
 - (3) Commercial from inside Metro boundaries
 - (4) Commercial from outside Metro

- (f) Date the load was received at or transmitted from your Facility.
 - (g) Time the load was received at or transmitted from your Facility.
 - (h) Indicate whether you accepted or rejected the load.
 - (i) Net Weight of the Load.
 - (j) Volume of the Load (if applicable).
 - (k) The fee you charged for the load to the generator (excludes transportation charges).
- 6.2 Records required under section 6.1 shall be reported to Metro no later than fifteen (15) days following the end of each month, in the format prescribed by Metro. Transaction data shall be in electronic form compatible with Metro's data processing equipment. A cover letter shall accompany the data which certifies the accuracy of the data and is signed by an authorized representative of Franchisee. The hard copy of the report shall be signed and certified as accurate by an authorized representative of Franchisee.
- 6.3 Franchisee shall maintain complete and accurate records of all costs, revenues, rates, if applicable, and other information on a form suitable to Metro. These records shall be made available to Metro on request.
- 6.4 The Franchisee shall file an Annual Calendar Year Operating Report detailing the previous year operation of the Facility as outlined in this Franchise, on or before March 30 of each year.
- 6.5 The Franchisee shall submit to Metro duplicate copies of any information submitted to the DEQ pertaining to the Facility, within 30 days of submittal to DEQ.
- 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, all books, records, maps, plans, income tax returns, financial statements, and other like materials of the Franchisee that are directly related to the operation of the Franchisee.

7. OPERATIONAL REQUIREMENTS

7.1 General Requirements

- 7.1.1 A copy of this Franchise shall be displayed where it can be readily referred to by Facility operating personnel.
- 7.1.2 If a breakdown of equipment, fire, or other occurrence results in a violation of any conditions of this Franchise or of the Metro Code, the Franchisee shall:
- (a) Take immediate action to correct the unauthorized condition or operation.
 - (b) Immediately notify Metro so that an investigation can be made to evaluate the impact and the corrective actions taken and determine additional action that must be taken.
 - (c) Prepare a report describing all operational irregularities, accidents, and incidents of non-compliance and provide a copy of such report to Metro within ten days of occurrence or sooner if circumstances warrant notification to Metro.
- 7.1.3 If the ~~Processing~~ Facility is to be closed permanently or for a protracted period of time during the term of this Franchise, Franchisee shall provide Metro with written notice, at least 90 days prior to closure, of the proposed time schedule and closure procedures.
- 7.1.4 The Facility shall be in strict compliance with the Metro Code requirements regarding storage, collection, transportation, recycling and disposal of solid waste.
- 7.1.5 The Franchisee shall provide an adequate operating staff which is duly qualified to carry out the reporting functions required to ensure compliance with the conditions of this Franchise.
- 7.1.6 Metro may reasonably regulate the hours of site operation as it finds necessary to ensure compliance with this Franchise. Metro will attempt to provide 90 days written notice prior to regulating hours of operation, and shall not unreasonably increase Franchisee's costs of operation. If Metro is transporting solid waste from the Facility, Franchisee shall not change its hours of operation in a manner that would increase Metro's transport costs.
- 7.1.7 The Franchisee shall establish and follow procedures designed to give reasonable notice prior to refusing service to any person. Copies of notification and procedures for such action will be retained on file for three years for possible review by the District.

7.1.8 The Franchisee shall not, by act or omission, unlawfully discriminate against any person, treat unequally or prefer any user of the Facility through application of fees or the operation of the Facility.

7.1.9 At least one sign shall be erected at the entrance to the Facility. This sign shall be easily visible, legible, and shall contain at least the following:

- (a) Name of facility;
- (b) Emergency phone number;
- (c) Operational hours during which wastes will be received for disposal;
- (d) Disposal rates and fees;
- (e) Metro information phone number; and
- (f) Acceptable materials.

7.2 Litter, Odor, Dust, Noise and Vector Control

7.2.1 Control of Blowing Debris. The Franchisee shall police all areas within the site and along the road frontage of the site as indicated on the map attached as Exhibit 2 and shall:

- (a) patrol the Facility daily;
- (b) patrol Highway 47 ("B" Street) from its intersection with the relocated Tualatin Valley Highway to its intersection with Pacific Avenue on a weekly basis;
- (c) respond to citizen's complaints on an "on call" basis within 12 hours, or sooner as circumstances may require;
- (d) log all citizen complaints by name, date, time and nature of complaint;
- (e) Apply to the State for approval for signage to direct traffic to the Facility using Highway 47.

7.2.2 Odor, Dust and Noise Control. The Franchisee shall control odor and dust on the site by use of installed dust control and odor systems whenever excessive dust and odor occur or at the direction of Metro. Alternative dust and odor control measures may be performed by the Franchisee with the approval of Metro.

7.2.3 Vector Control. The Franchisee shall conduct the operation of the transfer station in such a manner so as to ensure unfavorable conditions for production of rodents and insects. If rodent and insect activity become apparent to Metro, supplemental vector control measures shall be initiated by the Franchisee at Franchisee's own cost, with the approval of DEQ and Metro.

- 7.3 Franchisee shall meet with representatives of Metro and the City of Forest Grove on a schedule to be determined by Metro and the City of Forest Grove to discuss operational impacts of the transfer station on the City of Forest Grove and any corrective measures that may be necessary to address such impacts. The meetings will be scheduled no more often than once every six months. The Metro Solid Waste Director may call a meeting on a shorter schedule if specific operational issues require immediate attention.
- 7.4 Metro Transport and Disposal Option.
- 7.4.1 Metro reserves the right, at any time during the term of this Franchise, to assume responsibility for transport from the Facility and/or disposal of all Acceptable Waste generated within the district that is to be disposed of in a general purpose landfill. Notice of Metro's intent to assume such responsibility shall be by written notice to Franchisee. The notice shall establish the date, not less than six months from the date of the notice, upon which Metro will begin transporting and/or disposing of solid waste from the Facility. ~~Nothing herein prohibits Franchisee from disposing of waste received at the Facility that was generated outside of the District at any licensed processing or disposal facility.~~
- 7.4.2 Prior to the date established for Metro to assume transport and/or disposal responsibilities, ~~Metro may direct~~ Franchisee shall ~~to~~ install a compactor at the Facility meeting Metro specifications. ~~If Metro so requires,~~ Franchisee shall submit to Metro within 60 days from the date of notice specified in 7.4.1, its detailed plans for installation of a compactor, including installation and compactor specifications. Metro shall review such plans and notify Franchisee of any objections or proposed revisions within 10 business days of receipt. If Metro does not comment within the time specified, the plans shall be deemed approved, and Franchisee shall commence installation. If Metro objects or proposes revisions, the parties shall in good faith attempt to resolve all issues related to compactor installation such that deliveries to Metro's transport contractor can begin on the date specified in the notice provided under section 7.4.1.
- 7.4.3 As soon as practicable following the notice from Metro specified in section 7.4.1, Franchisee and Metro shall begin making arrangements for Metro assumption of transport and/or ultimate disposal responsibilities. Such arrangements may include planning and coordination meetings between Franchisee, Metro, and Metro's transport and/or disposal contractor.
- 7.4.4 Along with, or at any time following the notice specified in section 7.4.1, Metro may direct Franchisee to begin delivering all solid waste specified in section 7.4.1 to Metro Central Station. The notice shall specify a date, not less than 10 business days from the date of the notice, upon which Franchisee shall begin such deliveries. For each ton of waste generated within the district delivered by Franchisee to Metro Central Station, Franchisee shall pay the disposal fee

specified in sections 14.4.1(b) and 14.4.2(b), as applicable, as well as the Regional User Fee and Metro Excise Tax. ~~For each ton of waste generated outside of the district delivered by Franchisee to Metro Central Station, Franchisee shall pay the disposal fee specified in sections 14.4.1(b) and 14.4.2(b), as applicable, and Metro Excise Tax.~~ The deliveries specified in this section 7.4.4 shall continue until the date upon which Metro assumes responsibility for transport of solid waste from the Facility.

7.4.5 If Franchisee fails to install a compactor as required by this section 7.4 by the date established under section 7.4.1, and the Executive Officer does not grant an extension, which extension shall not be unreasonably withheld, Franchisee shall deliver all solid waste specified in section 7.4.1 to Metro Central Station, and shall pay to Metro the current tip fee at Metro Central on all tons delivered.

7.5 Metro Transport and Disposal Requirements. The requirements of this section 7.5 shall be effective on the date Metro begins transporting Waste from the Facility:

7.5.1 General Metro Requirements

- (a) Franchisee shall weigh each commercial hauling vehicle as it enters the Facility. The empty or tare weight of each commercial vehicle shall be established and recorded so that the vehicles will not be required to re-weigh each time after unloading. The tare weights must be determined at least twice each year without advance notice to the vehicle owners or drivers.
- (b) Franchisee shall weigh all Recovered Materials, Source-Separated Recyclables, compacted waste and Unacceptable Waste prior to removing them from the Facility.

7.5.2 Compaction, Transport, and Loading of Waste.

- (a) Franchisee is responsible for extruding an untied bale of waste from the compactor into the transfer trailer, installing a seal on the transfer trailer door handle and returning the sealed transfer trailer to the staging area with applicable documentation.
- (b) Franchisee is responsible for producing road legal weights, and for unloading and balancing loads which are found to be out of compliance with appropriate regulations. Certified scales will be used to make such a determination.
- (c) Each seal shall be marked with three letters identifying the Facility, Franchisee, and a sequentially increasing set of at least four digits.

Example:

FGS-CON-0000

- (d) Franchisee shall also record the transfer trailer I.D. number. The transfer trailer seal will be inspected by both Metro's waste transport contractor and Franchisee prior to removal of the trailer from the Facility.
- (e) It is the responsibility of Metro's waste transport services contractor to ensure that the seal was properly installed before the transfer trailer leaves the Facility. Metro's waste transport services contractor shall be responsible for inspecting the empty transfer trailers for damage before release to Franchisee, inspecting the loaded transfer trailers for damage and verifying that the seal was installed properly before removing the transfer trailer from the Facility, transporting the load of waste from the Facility to the disposal site, and then unloading it.
- (f) If Franchisee improperly installs the seal, Metro's waste transport services contractor is required to notify Franchisee prior to leaving the Facility Site and request a new seal. Franchisee shall comply with any such requests. Failure to request a new seal will preclude Metro's waste transport services contractor from any recovery for damages arising out of any improperly installed seal. Metro's waste transport services contractor and Franchisee shall use an interchange agreement for inspection of transfer trailers, or a similar agreement as approved by Metro. In addition, Metro's waste transport services contractor can request removal of the seal to inspect the interior of the transfer trailer, and its contents, and request and receive a new seal from Franchisee.
- (g) Once the transporter has verified that the seal is properly installed, the waste contained within the transfer trailer is the responsibility of the transporter until the seal is broken by Metro's disposal site operator. If the seal is broken by other than disposal site personnel, the transporter will be responsible for all associated costs and liabilities involved with managing any waste contained within the transfer trailer, above and beyond normal disposal costs.
- (h) Metro reserves the right to contract with parties other than Metro's waste transport services contractor, for the transport of all waste specified in section 7.4.1. All such contracts shall include a requirement that the transport contractor carry insurance in commercially reasonable amounts.

7.5.3 Maximizing the Compacted Load.

- (a) Franchisee shall use best faith efforts to maximize the transporter's payload, without overloading the transfer trailer or the individual road-

legal axle combinations. Maximum payload shall be no more than 32 tons at a density of 900 lbs/cu. yd. The weights should be verified with axle scales available at the Facility.

- (b) Franchisee shall pay to Metro an additional per ton transport amount, for failing to maximize Metro's waste transport services contractor's payloads. The additional payment is to ensure that Franchisee is diligent in fully loading transport trailers at average densities of at least 29 tons or the combined yearly average at Metro owned transfer stations, whichever is less. The formula for determining additional transport payments to Metro is as follows:

- (1) Base Tonnage (BT) = (Loads/calendar year) x 29 tons (or combined yearly average)
- (2) Tons Transported (TT) = Tons transported/calendar year
- (3) Tons on which additional payment is due (APT)
(APT)=(TT-BT) + (Positive APTs from previous year)

If APT is less than zero, Franchisee shall make an additional per ton transport payment of \$6.75 for each APT for that year, unless (following the first calendar year) the cumulative APT's from the previous year is greater than zero. If the cumulative APT's from previous years is greater than zero, those positive APT's shall serve as a credit against APT's accumulated in a subsequent year. The cost of an APT shall be adjusted beginning in January, 1994, and each January thereafter at the same rate as the CPI adjustment to Metro's waste transport services contract for transporting waste from the Facility, and shall remain effective for the calendar year.

7.5.4 Load Check Program/Unacceptable Waste

- (a) Franchisee shall inspect all waste delivered to the Facility in a manner that is reasonably calculated to determine whether the waste is Unacceptable Waste. Franchisee shall establish procedures for inspecting loads of waste and for excluding Unacceptable Waste from compaction and extrusion into transfer trailers.
- (b) Franchisee's load check program shall, at a minimum, include screening of all incoming loads by personnel trained to spot Unacceptable Waste, and more thorough random load checks, occurring at least once each week.

- (c) Franchisee shall keep accurate records regarding all Unacceptable Waste received, including the following information regarding a known party that unloaded the waste: date, time, vehicle license number, company and/or the individual's name and address, conversation regarding waste, and approximate volume.
- (d) Franchisee shall be responsible for all costs associated with the cleanup and management of Unacceptable Waste that has been loaded into a transfer trailer, properly sealed and transported to a disposal site. If the seal is unbroken upon arrival at the disposal site, Franchisee shall reimburse Metro for any cost associated with the cleanup of the Unacceptable Waste or any material contaminated by it at the disposal site for which Metro is properly billed by its disposal site contractor. Upon billing Franchisee for such costs, Metro shall provide to Franchisee all documentation related to the incident for which Franchisee is being billed.

7.5.5 Materials Excluded from Compaction. It is the responsibility of Franchisee to utilize the compactor to develop loads that do not cause above normal wear and tear on the transfer trailers during the transfer of waste from the compactor to the transfer trailer. Franchisee shall be liable for damage to a transfer trailer caused by Franchisee.

7.6 Franchisee Transport/Metro Disposal Option

- 7.6.1** At any time during the term of this Franchise, Franchisee may submit to Metro a detailed proposal for Franchisee to deliver all waste specified in section 7.4.1 to a disposal facility specified by Metro.
- 7.6.2** By written acknowledgment delivered to Franchisee, the Executive Officer may grant to Franchisee permission to transport solid waste specified in section 7.4.1 to a disposal facility specified by Metro. The acknowledgment shall specify Metro's intent not to exercise its option to transport waste from the Facility, to cease transporting waste from the Facility, or to cease requiring Franchisee to deliver waste to Metro Central, whichever the case may be. The notice shall also acknowledge acceptance of Franchisee's proposal for delivery of such waste, as that proposal may have been amended following discussions with Metro. Upon countersignature by Franchisee, the acknowledgment shall serve as an amendment to this Franchise.
- 7.6.3** If Metro allows Franchisee to transport waste as specified in this section 7.6, Franchisee shall not be required to pay transport fees to Metro. Franchisee shall pay to Metro the disposal charge specified in section 14.4, as well as all fees specified in section 14.3, for each ton of waste generated within the district that is disposed of at Columbia Ridge Landfill.

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.

9. SURETY BOND OR CONDITIONAL LIEN

Franchisee shall provide a surety bond in the amount of One Hundred Thousand Dollars (\$100,000), or at its option provide a conditional lien on the franchise property in a form satisfactory to Metro. Without limiting the use to which the proceeds from a bond or from lien foreclosure may be put, such proceeds may be used to clean up or otherwise mitigate damage to the Facility upon closure or resulting from the condition of the Facility upon closure.

10. INSURANCE

10.1 Franchisee shall purchase and maintain the following types of insurance, covering Franchisee, its employees, and agents:

(a) 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

(b) Automobile bodily injury and property damage liability insurance.

10.2 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.

10.3 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.

10.4 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.

11. 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.

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. 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 Metro's authority to direct the flow of solid waste away from the Facility and/or take enforcement action against the Facility shall be as specified in the Metro Code.
- 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 or surveys; collecting samples; obtaining data; examining books, papers, records and equipment; performing any investigation as may be necessary to verify the accuracy of any return made, or if no return is made by the Franchisee, to ascertain and determine the amount required to be paid; and carrying out other necessary functions related to this Franchise and the Metro Code. Access to inspect is authorized:
- (a) during all working hours;
 - (b) at other reasonable times with notice;
 - (c) at any time without notice, at the discretion of the Metro Solid Waste Division Director, when such notice would defeat the purpose of 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 or standards regarding matters within Metro's authority, and to enforce all such legal requirements against Franchisee.

14. DISPOSAL RATES AND FEES

- 14.1** Franchisee shall be responsible for collecting all fees for disposal at the Facility and remitting fees, charges and taxes to Metro as specified in this agreement. All waste specified in section 7.4.1 shall be charged the same rate. To the extent that Franchisee charges different rates for different categories of waste, such rates shall be included in a published rate schedule, which shall be made available to Metro when adopted or amended. Franchisee shall maintain accounts on wastes received and amounts billed to each commercial hauler as required by Metro Code Section 5.01.130.
- 14.2** All charges shall be calculated on an outbound tonnage basis using certified scale weights at the Facility. If an emergency or malfunction temporarily prevents the use of certified scale weights at the Facility and it is not feasible to use weights obtained at the disposal site, the yardage/tonnage conversion shall be based on the assumption that compacted waste has a density of 600 pounds per cubic yard and that non-compacted waste has a density of 250 pounds per cubic yard.
- 14.3** At all times during this Franchise, Franchisee shall be responsible for payment of the following fees, to the extent those fees are required by law:
- (a) Local enhancement fees, by remitting to Metro;
 - (b) DEQ fees for operation of the Facility, by remitting directly to DEQ;
 - (c) Metro regional user fee, as specified in the Metro Code; and
 - (d) Metro excise tax, as specified in the Metro Code.
- 14.4** Metro Transport and Disposal Charges
- 14.4.1** If transport of waste from the Facility and/or ultimate waste disposal is provided by Metro, Franchisee shall remit to Metro the following additional charges, for each ton of waste generated within the District transported and disposed of by Metro up to 70,000 tons per year:
- (a) Per ton transport fee of \$7.50; and
 - (b) Per ton disposal fee of \$25.83.
- 14.4.2** For each ton of waste transported from the Facility and/or disposed of by Metro in excess of 70,000 tons per year and all waste transported from the Facility and/or disposed of by Metro that was generated outside of the District, Franchisee shall remit to Metro:

- (a) Per ton transport fee of \$15.46; and
- (b) Per ton disposal fee of \$28.57.

14.4.3 The transport and disposal charges specified in section 14.4.1 shall be annually adjusted on each anniversary of the Franchise renewal date for use during the forthcoming year, based on 100 per cent of the change in the Consumer Price Index entitled "West-A" from the U.S. Department of Labor, Bureau of Labor Statistics' publication entitled "Consumer Price Indexes, Pacific Cities and U.S. City Average/All Urban Consumers" or by the actual increase in the transport or disposal fee charged by Metro's contractor, whichever is greater. The transport and disposal charges specified in section 14.4.2 shall be automatically adjusted to reflect, at all times, the per ton fixed and variable transport and disposal fees being remitted by Metro to its transport and disposal contractors, without offset or credit to Franchisee of any kind.

14.4.4 All charges specified in this section 14.4 shall be remitted as specified in Metro Code Section 5.02.055, and subject to the credit terms of that section.

14.5 Franchisee is authorized to charge no more than \$75 per ton for each ton of solid waste disposed of at the Facility, until such time as Franchisee obtains a different rate through the rate review process of the Metro Code. Franchisee may automatically pass through any increase in Metro fees or DEQ fees without rate review, subject to the \$75 per ton cap. Beginning in 1995, Franchisee shall submit to rate review annually, following or at the time of Metro's adoption of disposal rates for Metro owned facilities.

14.6 The Franchisee is authorized to charge a minimum fee of \$15.00 per load for public self-haulers, provided however that if a self-hauler shall bring in one-half (1/2) cubic yard of recyclable material (as defined in ORS 459.005) they shall receive a \$3.00 credit toward their disposal charge.

14.7 A surcharge shall be levied against a person who disposes of waste at the transfer station, if when entering the Facility any portion of the waste is visible to Facility scalehouse personnel, unless the waste is only visible through a secure covering. The surcharge shall be \$100.00 for a load delivered by a vehicle greater than three-quarter ton capacity, and \$25.00 for a load delivered by a vehicle of three-quarter ton capacity or less, and shall be collected in the same manner as other disposal fees are collected at the Facility. Franchisee may retain all such surcharges collected.

15. REVOCATION

- 15.1 This Franchise may be revoked at any time for any violation of the conditions of this Franchise or the Metro Code, as specified in the Metro Code. This Franchise does not relieve Franchisee from responsibility for compliance with ORS chapter 459, or other applicable federal, state or local statutes, rules, regulations, codes, ordinances, or standards.
- 15.2 This Franchise is subject to suspension, modification, revocation, or nonrenew upon Metro finding that:
- (a) The Franchisee has violated the terms of this Franchise, the Metro Code, ORS chapter 459, or the rules promulgated thereunder or any other applicable law or regulation and has failed to cure in a timely manner;
 - (b) The Franchisee has misrepresented material facts or information in the Franchise Application, Annual Operating Report, or other information required to be submitted to Metro;
 - (c) The Franchisee has refused to provide adequate service at the Facility, after written notification and reasonable opportunity to do so; or
 - (d) There has been a significant change in the quantity or character of solid waste received at the Facility, the method of processing solid waste at the Facility, or available methods of processing such waste.

16. GENERAL CONDITIONS

- 16.1 Franchisee shall be responsible for ensuring that its contractors and agents operate in complete compliance with the terms and conditions of this Franchise.
- 16.2 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.
- 16.3 This Franchise may not be transferred or assigned without the prior written approval of Metro.
- 16.4 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.
- 16.5 This Franchise shall be construed, applied, and enforced in accordance with the laws of the State of Oregon.

16.6 If any provision of the Franchise shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this Franchise shall not be affected.

17. NOTICES

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

Ambrose Calcagno, Jr.
Forest Grove Transfer Station
1525 "B" Street, P.O. Box 8
Forest Grove, Oregon 97116

with a copy to:

Thompson, Adams, DeBast & Helzer
Attorneys at Law
4500 SW Hall Boulevard
Beaverton, OR 97005

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

Solid Waste Director
Solid Waste Department
Metro
600 NE Grand Avenue
Portland, OR 97232-2736

17.3 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.

Ambrose Calcagno, Jr.,
dba A. C. Trucking

Rena Cusma, Executive Officer
Metro

Date: _____

Date: _____

1187a

**METRO**

DATE: January 20, 1994
TO: Rena Cusma, Executive Officer
FROM: Paulette Allen, Clerk of the Council
RE: TRANSMITTAL OF ORDINANCE NOS. 94-521A and 94-527A

Attached for your consideration are true copies of the ordinances referenced above adopted by the Council on January 13, 1994.

If you wish to veto any of the ordinances referenced above, I must receive a signed and dated written veto message from you no later than 5:00 p.m., Thursday, January 20, 1994. The veto message, if submitted, will become part of the permanent record. If no veto message is received by the time and date stated above, these ordinances will be considered finally adopted.

I, Unetha Shorley, received this memo and true copies of Ordinance Nos. 94-521A and 94-527A from the Clerk of the Council on 1-20-94.