

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF GRANTING	)	ORDINANCE NO. 94-567
A FRANCHISE TO WILLAMETTE	)	
RESOURCES INC. FOR THE PURPOSE	)	INTRODUCED BY
OF OPERATING A SOLID WASTE	)	RENA CUSMA,
PROCESSING FACILITY	)	EXECUTIVE OFFICER

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

WHEREAS, Willamette Resources, Inc. (WRI) has applied for a non-exclusive franchise to operate a facility for processing of non-putrescible mixed solid waste and commercial, industrial, construction and demolition debris at Wilsonville, Oregon; and

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

WHEREAS, The WRI facility will provide disposal services to affiliate company haulers and to other commercial haulers and contractors; and,

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

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

WHEREAS, WRI has requested a variance from the restriction on service to non-affiliated company haulers as detailed in the Staff Report in this Ordinance, and,

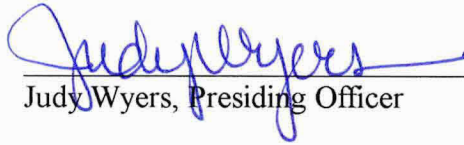
WHEREAS, The appropriate amount of a surety bond or conditional lien to be provided by the franchisee is determined to be \$100,000, and,

WHEREAS, The ordinance 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 enter into the attached Franchise Agreement (Exhibit A) with WRI within ten (10) days of the adoption of this Ordinance.
2. That WRI shall be granted a variance from Metro rate setting as permitted under Section 5.01.110 of the Metro Code.
3. That WRI shall be granted a variance from the restriction on service to non-affiliated company haulers in Metro Code Section 501.120(l).

ADOPTED by the Metro Council this 22 day of September, 1994.

  
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Judy Wyers, Presiding Officer

## SOLID WASTE COMMITTEE REPORT

CONSIDERATION OF ORDINANCE NO. 94-567, FOR THE PURPOSE OF GRANTING A FRANCHISE TO WILLAMETTE RESOURCES INC. FOR THE PURPOSE OF OPERATING A SOLID WASTE PROCESSING FACILITY

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Date: September 14, 1994

Presented by: Councilor McLain

**Committee Recommendation:** At the September 13 meeting, the Committee voted 4-1 to recommend Council adoption of Ordinance No. 94-567. Voting in favor: Councilors Buchanan, Hansen, McLain, and Monroe. Voting No: Councilor McFarland. Councilor Wyers was absent.

**Committee Issues/Discussion:** The purpose of this ordinance is to approve a franchise for Willamette Resources Inc. (WRI) to operate a "pick-and-sort" recycling processing facility on the same site that would have been used for the WRI- proposed Wilsonville Transfer Station.

Roosevelt Carter, Solid Waste Budget and Finance Manager, summarized factual background information on the proposed facility contained in the staff report and reviewed the major provisions of the proposed franchise. He noted that the facility would be authorized to process up to 35,000 tons of dry, non-putrescible waste and source-separated materials annually. Initially, it is anticipated that the facility will annually handle about 20,000 tons of commercial, industrial, construction, demolition and other dry wastes primarily from firms with a corporate affiliation with WRI (United Disposal Service and Keller Drop Box).

The terms of the franchise require that WRI achieve a 45% recycling rate by its eighth month of operation, based on a three-month rolling average. Source-separated materials received at the facility would not be counted as recycled material.

Staff estimates that initially about 4,000 tons of material would come from material currently sent to the Lakeside (Grabhorn) Reclamation facility and that about 16,000 would be diverted from Metro South Station. The negative effect on the Lakeside facility would be offset through WRI's use of Lakeside for final disposal of an estimated 11,000 of residual material from the WRI facility. At its initial operating tonnage, staff estimates that Metro will lose about \$275,000 in revenue annually, including about \$7,000 in excise tax revenues. If the facility were to operate at its maximum permitted capacity, Metro's lost revenue would increase to an estimated \$520,000 annually. Staff estimates that operation of the facility will result in the recycling of about 7,760 additional tons of material.

Carter explained that the franchise contains two variances from existing Metro Code provisions. First, an exemption from Metro's

ratesetting authority would be granted. Historically, Metro has not chosen to exercise its ratesetting authority with recycling processing facilities. Rates charged at such facilities are driven by rapidly changing prices in the recycling marketplace and delays resulting from the need to go through a ratesetting process at Metro would put such facilities at a competitive disadvantage.

The second Code variance relates to a request from WRI that it be allowed to accept material from haulers and others not directly associated with WRI. Metro Code Section 5.01.120(1) was adopted to reduce the potential for "vertical integration" within the system by prohibiting franchisees who operate facilities from having an interest in any hauling business. The Code does permit such franchisees to process that the franchisee collects. WRI contends that other similar processing facilities are not located in the southern portion of the region and that providing its services to haulers and others in this area will encourage recycling of additional material. WRI estimates that only five percent of the material processed at the facility will come from outside sources.

Merle Irvine, WRI, testified in favor of the ordinance. He noted that the Council had passed a resolution calling for the annual diversion of up to 60,000 tons of material from Metro South. The diversion of 16,000 tons annually to the proposed WRI facility would help meet this goal. He noted that most of the recycling processing capacity is in the northern portion of the region. The WRI facility will make it easier for haulers in the southern portion of the region to recycle. He contended that the facility also will offer recycling opportunities to smaller haulers that do not have sufficient volume to operate their own processing facilities.

He argued that the existing Code provisions related to vertical integration were established to insure that facility operators did not discriminate or charge higher disposal rates to non-affiliated facility users. He contended that such a prohibition is outmoded for processing facilities due to increased competition among facilities and specific provisions in the franchise that prohibit rate discrimination.

Councilor McFarland expressed several concerns about the proposed franchise. She noted that granting the code variance to allow WRI to receive materials from others constituted a major change in policy, particularly if future applicants for similar types of facilities also receive a variance. She argued that the effects of such a policy change on the entire system should be reviewed prior to making such a change. Roosevelt Carter responded that some of these issues will be addressed in a revised franchise code that will be submitted for Council review prior to the end of the year.

Councilor McFarland also expressed concern about the fiscal impact of the facility on Metro revenues. She noted that as more facilities of this type are granted franchises the cumulative effect on revenues and the operation of existing transfer stations

will be significant.

Councilors Hansen, McLain and Buchanan spoke in favor of the ordinance. McLain noted her support for any facility that would provide additional recycling opportunities and that the proposed facility would fill a need for a processing facility in the southern portion of the region. Hansen noted that WRI had met all existing franchising requirements and that approval should be granted.

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 94-567 FOR THE PURPOSE OF GRANTING A FRANCHISE TO WILLAMETTE RESOURCES, INC. FOR THE PURPOSE OF OPERATING A SOLID WASTE PROCESSING FACILITY

Date: August 12, 1994

Presented by: Bob Martin  
Roosevelt Carter

FACTUAL BACKGROUND AND ANALYSIS

The purpose of this report is to introduce and provide analysis regarding the application filed by Willamette Resources, Inc. (WRI), a wholly owned subsidiary of Waste Control Systems, Inc.. The applicant has applied to Metro for a franchise to operate a solid waste processing facility at Wilsonville, Oregon. The site location near the intersection of Ridder Road and Garden Acres Road will be assigned a street address when a building permit is issued. The application was accepted as complete on July 11, 1994. Metro, pursuant to Code Section 5.01.020 has the authority to grant franchises for private facilities accepting mixed solid waste. The facility is to recover and market recoverable materials from commercial, industrial, construction and demolition debris, and dry non-putrescible and non-hazardous mixed wastes.

This facility will also process source-separated materials obtained from residential and commercial recycling programs. The source-separated portion of the operation does not require a Metro franchise, but will require monitoring since it will utilize the same area of the building and processing equipment as the mixed waste processing.

The facility will accept loads of material primarily from United Disposal Service Inc. and Keller Dropbox. United Disposal Service Inc. is wholly owned by Waste Control Systems. Waste control Systems, Inc. is a major stockholder of Keller Dropbox. The franchisee will provide services to outside commercial refuse haulers and contractors, but this is expected to be only a minor element of the franchisee's business. Historically, Metro has exempted processing facilities from rate setting due to the need to be able to respond to markets. It is proposed that this facility be exempt from Metro rate setting by variance under Section 5.01.110 of the Metro Code. The facility may only dispose of residue from its operations at Metro-approved disposal facilities. Following is a summary description of the facility, the material processing and other pertinent details relative to the facility.

LOCATION OF PROPOSED FACILITY

Near the intersection of Ridder Road and Garden Acres Road in the City of Wilsonville, Oregon.

SITE DESCRIPTION

The site is approximately nine acres in size and is located 1/2 mile west of the Stafford Road exit - Interstate 5 Freeway Interchange, Wilsonville, Oregon. The site is currently zoned for industrial uses and has been approved by the Wilsonville Planning Commission for a Stage II, Phase I Development Plan for use as a solid waste transfer and recycling facility. The site is the same one originally proposed as the Washington County transfer station site. Metro, in early 1994, determined to terminate negotiations for a Washington County transfer station at this site. The site presently is vacant.

MATERIALS TO BE PROCESSED

Materials to be processed are limited to commercial, industrial, construction and demolition debris, and dry, non-putrescible and non hazardous mixed wastes. Recovered materials will be sorted, inventoried, baled and/or prepared for shipment to commodities markets with which WRI has a working relationship. To assure that sufficient recovery and marketing of recoverable materials is performed at this facility, it is recommended that the following requirements be placed on its operations (these limitations are exclusive of operations involving source-separated recyclables):

1. A minimum recovery rate of 45 percent must be maintained at the facility. The recovery rate will be calculated by use of a three month rolling average. (Example: March's recovery rate will be the average of months January, February and March; April's recovery rate will be the average of February, March and April, etc.) The ratio of tons recovered from tons received will constitute the recovery rate for the relevant time period. See EXHIBIT 2 of the franchise.
2. A ninety (90) day (three month) grace period for shakedown and operational testing will precede the commencement of official measurement of the recovery rate and imposition of phased in penalties for failure to achieve designated recovery rates. The full 45 percent recovery rate must be attained in the eighth month following commencement of operations. Months four and five will be phased-in recovery rates of 35 percent and 40 percent with both months a stand alone average. By illustration, the franchise obligations for material recovery are as follows:

Commencement of Operations	Recovery Rate Required
Month 1	-0-
Month 2	-0-
Month 3	-0-
Month 4	35% (stand alone)
Month 5	40% (stand alone)
Month 6	40% (3-mth average)
Month 7	43.3% (3-mth average)
Month 8	45% (3-mth average)

"Commencement of Operations" is defined as the first day that mixed dry waste is delivered to the facility."

3. WRI will pay to Metro a penalty in a per ton amount equal to the current Metro Regional User Fee plus \$2.00 per ton for each percentage point below the specified recovery rate of 45 percent (or 35 percent and 40 percent for months four and five): (Example: If 1,000 tons were processed in a month with a three month average recovery rate of 42.3%, the penalty would equal: (1,000 tons) (0.450 - 0.423) ((\$17.50 + (45.0 - 42.3) (\$2.00)) = \$618.30. Annually, as of July 1 (or the effective date of any new Metro User Fee rate) the per ton penalty will be adjusted to the then current Regional User Fee (or equivalent), and the \$2.00 per ton incremental penalty rate will be indexed to reflect the current ratio of 17.5:2.
4. There is a 35,000 ton limit upon the tons of processable materials that may be received at the WRI facility. That limit can be increased upon approval by Metro.
5. The tonnage of source-separated materials received at the facility are to be excluded from any calculations done to establish the recovery rate because their inclusion would inflate the recovered tonnage for mixed waste. The activities from the source-separated operation will be included in the reporting requirements to ensure Metro's ability to track recoverable waste materials handled in the facility.
6. Inert materials will consist of all materials disposed of at a clean fill site (i.e., not a solid waste landfill). The quantity of inert material disposed of at a clean fill site will be subtracted from the incoming waste tonnage and will not be included in the facility's recovery rate. See EXHIBIT 2 of the franchise for the methodology for calculating the recovery rate.

#### EQUIPMENT

The applicant states that processing will be accomplished by use of:

- a front end loader with a specially equipped bucket for initial floor sorting,
- conveyors with a vibratory screen,
- picking line adjacent to the belt conveyers,
- sorting platform,
- storage bunkers, and
- a baler.

Large and heavy materials will be removed before the picking line. The remaining large material will pass over a vibratory screen and fall off the end onto a sorting conveyor. Residuals will be removed from the sort conveyor and pushed by the front end loader to be top loaded into a transfer trailer.



## RESIDUE DISPOSAL

Residue will be transported for disposal by truck to a Metro-approved disposal facility.

## PERMITS REQUIRED

The applicant requires:

1. City of Wilsonville land use approval(zoning is industrial)
2. Oregon Department of Environmental Quality Class III Low risk Facility Permit
3. Metro Franchise

## Status:

- City of Wilsonville land use approval has been granted
- Department of Environmental Quality Solid Waste Permit pending.
- Metro franchise pending.

## MISCELLANEOUS OPERATING DATA

The applicant proposes that the facility will be open to the applicant's own vehicles as well as other commercial haulers and contractors. Operational receiving hours will be from 8:00 a.m. to 5:00 p.m., five days per week (Monday through Friday). Estimated vehicles per day is 18 (exclusive of vehicles entering the adjacent United Disposal Service operations center to be relocated to the site).

## ISSUANCE OF A FRANCHISE

Staff has prepared a proposed franchise agreement 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 or recycling facilities (Metro transfer stations, Hillsboro Landfill, Lakeside Reclamation Landfill, East County Recycling and WASTECH) that would not make it necessary to continue operation of the facility. Clean up and site maintenance costs are estimated to be approximately \$100,000. This estimate assumes the following:

1. 26,745 square feet of floor space available for storage of materials.
2. Waste stacked to a depth of six feet over the available floor space.
3. Waste density of 400 pounds per cubic yard.
4. Load and haul costs are estimated to be \$8.50 per ton for 1189 tons or \$10,100
5. Disposal costs are estimated at \$75.00 per ton, for a cost of \$89,175
6. The solid waste is consistent with the authorized materials for the facility; dry non-hazardous and non-putrescible mixed waste and construction and demolition debris.

**NOTE: It should be emphasized that the forgoing is an order of magnitude estimate only of a "worst case scenario" where the franchisee would continue deliveries of waste to the facility until filled to capacity and then abandon the facility.**

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

## REQUEST FOR RATE SETTING VARIANCE

The applicant has requested a variance from Metro rate setting. This request is based on the nature of the facility, the need to respond rapidly to marketplace requirements and the contributions being made to Metro's objective of enhancing the amount of materials recovered from the regional wastestream.

The Council may grant a variance in the interest of protecting the public health and welfare if the purpose and intent of the requirement (*e.g.*, setting rates) can be achieved without strict compliance and that strict compliance:

- "(1) Is inappropriate because of conditions beyond the control of the persons(s) requesting the variance; or
- (2) Will be extremely burdensome or highly impractical due to special physical conditions or causes; or
- (3) Would result in substantial curtailment or closing down of a business plant, or operation which furthers the objectives of the District."

Staff opinion is that the applicant's variance request is consistent with the spirit, intent and variance criteria (1), (2) and (3) requirements. Staff recommendation is that the following findings be incorporated into the franchise if approved by the Council:

- A. Strict compliance with Metro Code provisions regarding rate-setting (Section 5.01.180) is not necessary to protect the public interest, health or welfare with respect to processors of dry, non-putrescible, non-hazardous mixed waste.
- B. That the applicant (franchisee) will be performing a processing and recycling function by recovering materials from the wastestream for reuse or recycling.
- C. Solid waste materials processors operate in a highly competitive marketplace which will require the need for rapid response to market demands.
- D. Metro's policy has been to promote recovery of material from the wastestream by not imposing user fees on incoming waste, but only on disposed residue from processing.
- E. Metro has not to date regulated the rates for any processor of mixed dry waste.
- E. That the objectives of Metro to encourage recovery of material from the wastestream can be met without regulating the rates for this facility.
- F. That regulation of rates at the applicant's facility can result in curtailment or closing down of the franchised facility to the detriment of the region's objectives to recover increasing amounts of materials from the mixed wastestream.

The interest and number of processors and competing landfills assure a competitive marketplace, and adequate processing and/or disposal capacity to meet District needs. Furthermore, the substantial capital investment and required permits to commence materials processing provides assurance of the commitment of processors to remain in the marketplace.

#### UNIFORMITY OF RATES

Even though staff recommends that the facility be exempt from rate setting, this needs to be distinguished from "uniformity of rates". Since the franchisee will be serving vehicles from both affiliated hauling companies as well as companies that are not affiliated with WRI, it is necessary to assure that non-affiliated companies that deliver waste to the facility are not discriminated against. The franchise provides that WRI shall establish criteria for equal application of rates, subject to Metro approval, and that approval shall not be unreasonably withheld.

#### REQUEST FOR VARIANCE TO ALLOW THE USE OF THE FACILITY BY HAULERS NOT OWNED BY THE FRANCHISEE.

The three criteria for allowing a variance from Metro Code conditions are noted above. The applicant desires to provide access to the processing facility by commercial haulers and contractors not owned by the franchisee. The applicant has indicated that it expects only a small amount of material to be delivered by contractors not owned by the franchisee. Section 5.01.120(l) states that a franchisee:

"(l) Shall not, either in whole or in part, own, operate, maintain, have a propriety interest in, be financially associated with or subcontract the operation of the site to any individual, partnership or corporation involved in the business of collecting residential, commercial, industrial or demolition refuse within the District. A transfer station or processing center franchisee who only receives waste collected by the franchisee shall be exempt from this subsection."

The applicant would be exempt from this provision if it denied access to the facility by non-affiliated companies. Since the applicant has requested the authority to accept material from non-affiliated companies, to do so requires a variance from the terms of Code Section 5.01.120(l). In reviewing the exemption criteria, Section 5.01.110(a)(3) appears to apply in this case.

"The Council may grant a variance in the interest of protecting the public health and welfare if the purpose and intent of the requirement can be achieved without strict compliance and that strict compliance:

- 1) or, *(not applicable)*
- 2) or, *(not applicable)*

"3) Would result in substantial curtailment or closing down of a business, plant, or operation which furthers the objectives of the district."

With respect to the purpose and intent of the code provision, the constraint on non-affiliated haulers access to franchises has largely been based on concerns over the issue of 'vertical integration'. This could manifest itself in unfair and unequal treatment by the franchisee of non-affiliated companies. This could come in several forms, but the most prominent form would be in administration of gate rates. The staff report in the analysis of the rate variance issue makes note of the concern over fair administration of rates. The draft franchise contains conditions requiring equal administration of rates. Also, facility rates may not be changed during the course of a calendar day. These requirements coupled with the fact that alternative facilities would be available to non-affiliated haulers mitigates against the risk of unfair treatment by the franchisee of non-affiliated haulers.

The applicant has indicated that a "minor amount of material" may be received from other commercial haulers. The question then is; if only a minor amount of material is to be received from other haulers, would denial of authority to accept this material amount to a "substantial curtailment . . . of . . . (an) operation which further the objectives of the district"?

It is clear that the ability to receive waste and process it to recover material is furthering an objective of the district. The issue then is whether denial of facility access for the incremental amount of waste to be received from other commercial haulers is considered to be "substantial" in the context the applicant's request. On balance, staff opinion is that there would be "substantial curtailment" within the meaning of this Code provision.

Assuming a natural increase in tonnage growth from its own hauling companies (*no acquisitions etc.*), a significant element of the applicant's anticipated growth would likely come from other haulers using the facility. While tonnage estimates for non-affiliated company haulers are small at first, denial of facility access to them would be a deterrent to planning for growth and for attracting other recoverable material to the facility. This would conflict with the district's interest in facilitating greater material recovery in the region. Given the balancing of the concepts of "curtailment" and "objectives", it is reasonable to favor the "objectives" while not interpreting "substantial" so narrowly that facility growth is inhibited and district objectives are diminished.

For the forgoing reasons, it is recommended that the applicant be granted a variance to Metro Code Section 5.01.120(I).

#### QUALIFICATIONS OF THE APPLICANT

WRI was originally created for the purpose of submitting a proposal to Metro for a Washington County transfer station. Principals of WRI and its affiliate companies have been active in the solid waste industry in the Metro region for over 35 years. Merle Irvine, Vice-President of WRI has served as Solid Waste Director for Metro (at that time Metropolitan Service District) and as one of the owner/operators of WASTECH (formerly O.P.R.C.) His former company also had the

contract to operator the Metro South Station from 1983 to 1990. United Disposal Services, Inc. has been involved in all aspects of commercial and residential solid waste collection since 1955.

The applicant and its staff have an established record of having operated similar facilities to the one presently being proposed. This coupled with the affiliate companies experience in solid waste hauling and disposal provide a reasonable level of assurance that the proposed facility will be operated and managed competently and efficiently.

#### COMPLIANCE WITH THE SOLID WASTE MANAGEMENT PLAN

Given the conditions imposed by this franchise, this facility would fully comply with the goals, objectives and policies of the Regional Solid Waste Management Plan including the Waste Reduction Chapter adopted by the Metro Council in 1988. The Regional Solid Waste Management Plan (RSWMP) states in part "Purpose: To recover recyclable materials and reusable items from the waste stream through facilities that process waste that contains a high percentage of economically recoverable material." The applicant's proposed facility will accomplish waste reduction by recovering materials that might otherwise go unprocessed or might ultimately be shipped for disposal at a regional landfill. The proposed facility will be privately owned and operated and will require no public investment in plant or equipment.

NEED AND COMPATIBILITY

The following lists annual tonnage into facilities which are expected to be affected by the proposed franchise:

TABLE 1

	Total 1993 Tonnage Received Mixed Dry Waste	Total Tonnage of Mixed Dry Waste Processed	Total 1993 Tonnage Recycled From Mixed Dry Waste	Percent Recycled of Processed <u>Mixed</u> <u>Dry Waste</u>	Proposed Tons Diverted to WRI	Normal Recovery of Diverted Tons (Status Quo)	45 Percent Recovery By WRI of Diverted Tons	Diverted Minus Status Quo
Lakeside <sup>1</sup>	66,267	33,135	10,118	31%	4,000	1,240	1,800	560
Metro South	126,000	-0-	-0-	0%	16,000	-0-	7,200	7,200
Metro Central <sup>2</sup>	133,000	77,000	24,528	32%	The granting of a franchise to WRI is not anticipated to affect current tonnage flows to Metro Central, WASTECH, ERI, ECR, or TVWR.			
WASTECH <sup>3</sup>	13,257	13,257	9,545	72%				
ERI <sup>4</sup>	47,900	47,900	22,318	47%				
ECK	39,681	39,681	17,009	43%				
TVWR <sup>5</sup>	See Footnote Number 5							
<b>Totals Re: Processed Waste</b>	<b>426,105</b>	<b>210,923</b>	<b>83,518</b>	<b>40%<sup>6</sup></b>	<b>20,000<sup>7</sup></b>	<b>1,240</b>	<b>9,000</b>	<b>7,760</b>

<sup>1</sup>Recovery from mixed loads is highly variable. Owner estimates that 10% by weight of all incoming mixed waste is recycled. Materials are recycled from about half of the incoming loads..

<sup>2</sup>The tonnage received of mixed dry waste includes 100% loose drop boxes 50% compacted drop boxes and 59% of the front loaders. This is considered to be the entire dry processable wastestream at the transfer station from which materials are recovered. Of this tonnage received, approximately 80% of the drop box loads are processed and 20% of compacted drop boxes and front loaders are processed which results in an effective recovery rate of 32%. The data shown represents Metro Central recovery prior to operation of the Energy Reclamation Inc. (ERI) franchise. ERI began operations in June 1994 and data for calendar year 1994 will reflect the effect of the ERI operations.

<sup>3</sup>During 1993 WASTECH reported 4,717 tons of residue resulting from the processing of 18,837 tons of incoming source separated waste and 13,257 tons of mixed dry waste. By assuming that 5% (942 tons) of the incoming source-separated waste resulted in residue it is concluded that 3,775 tons (4,717 minus 942) of residue resulted from processing the mixed dry waste. Dividing 3,775 by 13,257 results in an imputed residue rate of 28% (recovery rate of 72%).

<sup>4</sup>Energy Reclamation Inc. (ERI) began operations in June 1994. In order to address all existing franchised processing facilities on this table, annual projections from the October 18, 1993 Metro Staff Report on ERI are shown as if they pertained to 1993.

<sup>5</sup>Tualatin Valley Waste Recovery (TVWR) is owned by Sanifill and co-located with Hillsboro Landfill. The owner responded that 99.4% of the 17,496 tons of source separated waste coming into TVWR during 1993 were recovered. Because the owner declares all TVWR incoming waste is source-separated, no tonnage is shown in this table relating to mixed waste. The purposes for incoming TVWR in this table are to highlight its high rate of recovering source-separated material and to document that WRI does not foresee affecting TVWR's supply of waste.

<sup>6</sup>Excludes Metro South's mixed dry waste and the portion of Metro Central's mixed dry waste which is not processed.

<sup>7</sup>WRI's recovery rate is derived by dividing WRI's 9,000 tons recovered by 20,000.



The following questions and answers have been prepared by the Solid Waste Staff:

**1. Will this facility increase the recovery level in the region?**

Yes. The recovery rate for processed mixed waste is 40%. (See Table 1). As can be seen from Table 1, the rate of recovery varies by facility. The addition of WRI to the facilities shown in Table 1 is projected to result in a net increase of recovered materials of 7,760 tons per year.

WRI's facility recovery rate is projected to be at least 45%. This is consistent with the actual performance of other mixed processors in the region. The proposed franchise for WRI sets a minimum recovery rate of 45%, but this is considered a conservative number, based on staff analysis.

Metro expects WRI to be able to improve its recovery over 45 percent since it has substantial control over the materials entering the facility in the same manner as the Energy Reclamation Inc. franchise previously approved by Metro. While WRI will allow other commercial haulers and contractors to use the facility, WRI has projected these to be in small numbers. Further, WRI load acceptance criteria will allow the facility to prohibit loads that do not contain a satisfactory amount of recoverable material.

*Justification for Recovery Levels.*

A minimum percent of recovery will be required for facilities that receive mixed waste. This is based on the experience of WASTECH and East County Recycling both of whom have high recovery rates. East County accepts all loads and is able to recover 43 percent. WASTECH has implemented a tipping fee structure which encourages delivery of cleaner loads. During 1992 WASTECH recovered 50 percent of its mixed loads and in 1993 recovered 72% of its mixed loads. Furthermore, early data from the Energy Reclamation Inc. (ERI) facility indicates that it will be able to achieve its required 45% recovery rate. However, this data is from less than two months of facility operation.

**2. Will existing processors or haulers lose competitiveness and viability?**

The effect on competitors should not be sufficient to cause them to significantly lose viability. The Lakeside Reclamation Landfill will lose some potentially processable material but, will in fact receive increased tonnage because it will receive residue generated from processing at WRI.

**3. Will an integrated hauling and processing operation discourage source-separation by construction demolition businesses? Metro's Construction Waste Reduction Steering Committee is made up of representatives from building industry associations, haulers, and processors. They reviewed the proposed operations of the previously approved ERI facility. They felt that the facility would provide more recovery options to contractors. They felt that it could enhance recovery from projects where site limitations make source-separation impractical. The committee also believed that ERI's operations would not detract from**

source-separation on construction sites. Also, they felt that the level of recovery of dry, non-putrescible, non-hazardous wastes that may be processed at the facility is likely to be tied to the pricing structure to the generators for incoming waste. Because of the similarity of the ERI and WRI facility operations, these comments are still considered valid for the WRI proposal.

**4. How will Metro be assured that cost savings will be passed on to generators?**

The price structure for incoming waste materials is not established in the franchise agreement. It is estimated that WRI may pass along some cost savings to the generators, particularly if WRI seeks to enhance the richness of the loads, but there is no guarantee that it will do so. It is reasonable to expect that there will be sufficient waste left for competitors to enter the field and thus keep rates to customers low.

REGULATORY COMPLIANCE

As noted in this report, the applicant has obtained land use approval from the City of Wilsonville and has made application to the Department of Environmental Quality for a solid waste permit. Present information indicates that the Department of Environmental Quality application process is progressing on schedule. Nonetheless, any issuance of a Metro franchise would require the satisfactory issuance all required Department of Environmental Quality permits before actual operation of the facility could commence.

BUDGET IMPACT

As shown in Attachment A, which is based on the pro-forma tonnage data provided by WRI of 20,000 tons per year, staff projects that Metro may forego about \$275,000 per year in revenues. With system disposal at approximately one million tons per year, staff projects the effect of an WRI franchise on the system rate to be about \$.25 per ton. WRI anticipates opening the facility in July 1995 therefore the budget impacts will not occur until FY 95/96. A separate analysis was conducted to evaluate the high side risk to Metro by assuming an additional 15,000 tons were processed from Metro South for a total of 35,000 tons per year. Staff projects that, Metro may forego about \$520,000 per year in revenues compared to the \$275,000 loss at 20,000 tons.

## 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 and should increase recovery within the district.
- The requirements of the City of Wilsonville and the Oregon Department of Environmental Quality have been or will be complied with prior to operation of the proposed facility.
- Per the analysis shown in Attachment A, Metro may forego up to \$275,000 per year in revenues at the proposed tonnage levels if the franchise is granted.

## STAFF RECOMMENDATIONS

Based on the foregoing analysis it is the opinion of staff that Willamette Resources, Inc. should be granted a non-exclusive franchise in accord with the provisions of the draft franchise shown as Exhibit A of Ordinance No. 94-567.

## EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Ordinance No. 94-567.

## Attachment A

### Effect On Metro's Revenues Of Granting A Franchise To WRI Assuming That WRI Recovers 45% Of Incoming Waste And WRI Remits Metro User Fee On The Remaining 55% Of Incoming Waste

Facility	Tons Diverted To WRI	Difference In Metro Revenue Tons	Loss Per Ton	Annual Revenue Effects		Total Lost Revenues	Note
				User Fees	Excise Tax (7.5%)		
Lakeside	4,000	560	\$17.50	(9,116)	(684)	(\$9,800)	A,B
Metro South	16,000	See Note B	See Note C	(258,604)	(19,396)	(\$278,000)	C
Subtotal Lost Revenues				(267,720)	(20,080)	(\$287,800)	
Increased Excise Tax			See Note D		\$13,000		D
<b>Total Lost Revenues</b>				<b>(267,720)</b>	<b>(7,080)</b>	<b>(\$274,800)</b>	

**Notes:**

A = A higher area recovery rate at WRI will result in less disposal and thus less revenue to Metro. Under the current situation ("status quo") Metro estimates that Lakeside recovers 1,240 of the 4,000 tons which WRI assumes it will divert from Lakeside to its facility. At a 45% recovery rate, WRI would recover 1,800 of the 4,000 tons. So, if the franchise recovers 560 more tons (1,800 minus 1,240) then Metro will lose \$9,800 (560 tons times \$17.50 per ton) compared to the current situation.

B = While the applicant has stated that 4,000 tons of waste will be diverted to WRI, the applicant has stated that it expects to send approximately 11,000 tons of residue to Lake.

C = Of the \$75 per ton it currently receives for waste received at its transfer stations, Metro pays \$48 for station operations, transportation, and disposal, and DEQ fees. This leaves \$27 per ton to pay for items such as debt service on bonds; items which are not "tonnage sensitive". Therefore, if NONE of the 16,000 tons resulted in revenues to Metro then Metro's net loss would be 16,000 tons times \$27/ton, or \$432,000.

However, it is assumed Metro will receive \$17.50 per ton on each of the 8,800 tons WRI landfills of residue resulting from processing waste diverted from Metro South. Assuming a 45% WRI recovery rate, WRI will thus landfill 55% of the 16,000 tons (8,800 tons) and landfills will pay Metro \$154,000 (8,800 tons times \$17.50 per ton). So, the financial effect of diverting 16,000 tons from Metro South to WRI will be \$278,000, which is the difference between \$432,000 and \$154,000.

D = The 7,000 ton net increase at Lakeside will result in increased gross revenues subject to the excise tax. This will increase Excise Taxes by \$13,000, however, the net loss in Excise Tax is \$7,080.

EXHIBIT A  
TO ORDINANCE NO. 94-567

**SOLID WASTE FRANCHISE**  
issued by  
**METRO**  
600 NE Grand Avenue  
Portland, Oregon 97232-2736  
(503) 797-1700

FRANCHISE NUMBER: 16

DATE ISSUED: Actual Issue Date

AMENDMENT DATE: N/A

EXPIRATION DATE: \_\_\_\_\_

ISSUED TO: WILLAMETTE RESOURCES, INC. (WRI)

NAME OF FACILITY: WILLAMETTE RESOURCES, INC. (WRI)

ADDRESS: 2215 North Front Street, WOODBURN, OR 97071

LEGAL DESCRIPTION: SEE ATTACHED

\_\_\_\_\_

CITY, STATE, ZIP: Wilsonville, Oregon 97071

NAME OF OPERATOR: WILLAMETTE RESOURCES, INC.

PERSON IN CHARGE: MERLE IRVINE

ADDRESS: 2215 NORTH FRONT STREET

CITY, STATE, ZIP: Woodburn, OR 97071

TELEPHONE NUMBER: (503) 222-6565

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## **FRANCHISE AGREEMENT**

This Franchise is issued by Metro, a municipal corporation organized under ORS chapter 268, referred to herein as "Metro," to Willamette Resources, Inc. (WRI), 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:

- 1.1 "Code" means the Code of Metro.
- 1.2 "DEQ" means the Department of Environmental Quality of the State of Oregon.
- 1.3 "Executive Officer" means the Executive Officer of Metro or the Executive Officer's designee.
- 1.4 "Facility" means the facility described in section 3 of this Franchise.
- 1.5 "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.

### **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 near intersection of Ridder Road and Garden Acres Road, Wilsonville, 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 WILLAMETTE RESOURCES, INC. 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 Peltier Real Estate Company. 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 Willamette Resources, Inc. 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, which approval shall not be unreasonably withheld. Franchisee shall retain primary responsibility for compliance with this Franchise.

#### **5. AUTHORIZED AND PROHIBITED SOLID WASTES**

- 5.1 Franchisee is authorized to accept all such materials authorized by its DEQ Solid Waste Disposal Permit. The authorized materials include commercial, industrial, construction and demolition materials such as wood, corrugated cardboard, metals, sheetrock, plastics, rock and concrete, but specifically excluding any putrescible solid waste. After discharge to the tipping floor, a loader with a specially equipped bucket will spread the load for visual inspection and floor sorting. The remaining material will be pushed onto a feed conveyor that will move the materials to the conveyor processing system.
- 5.2 All 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 This Franchise limits the amount of solid waste that may be processed each year at the Facility to 35,000 tons. Any increases in the yearly tonnage limitations shall be approved by Metro. Franchisee may process the amount of solid waste that the Facility is capable of processing consistent with applicable law, the terms of this Franchise and its permits and licenses.
- 5.4 Consistent with DEQ directives, Franchisee shall establish and follow procedures for determining what materials will be accepted at the Facility. The procedures must include a testing regimen sufficient to prevent hazardous or otherwise unacceptable materials from entering the Facility. These procedures shall be described in writing and submitted to Metro prior to any waste being accepted.



- 5.5 Franchisee may accept loads from its own affiliated hauling companies and other non-affiliated commercial haulers and contractors per the variance from the Metro Code granted in Ordinance No. 94-567.

**6. MINIMUM MONITORING AND REPORTING REQUIREMENTS**

- 6.1 Franchisee shall effectively monitor Facility operation and maintain accurate records of the following information:

1. Franchisee Record Number (should be the same as the ticket number on the weight slips).
2. 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).
3. Name, Address and Phone Number (or a unique number which is cross referenced to applicable names, addresses and phone numbers) of firms receiving recyclables, inerts, and residue from the facility.
4. Code Designating whether the load is:

incoming source-separated waste	(Code 1)
mixed waste	(Code 2)
outgoing recyclables	(Code 3)
outgoing inerts	(Code 4)
outgoing residue	(Code 5)
outgoing beneficial use	(Code 6)
outgoing landfill cover	(Code 7)
5. Date the Load was Received at or transmitted from your facility.
6. Time the load was received at or transmitted from your facility.
7. Material Type. Either spell out the type of material in the load or provide a code and a cross-reference listing of codes to material types.
8. Accept or Reject (indicate whether you accepted or rejected the load).

9. Inside or Outside Metro (indicate whether the load originated from inside or outside the Metro boundary) using the following origin codes:

Multnomah County - In Metro  
Multnomah County - Out Metro  
Clackamas County - In Metro  
Oregon - Outside tri-county region  
Outside the state of Oregon

Washington County - In Metro  
Washington County - Out Metro  
Clackamas County - Out Metro

10. Net Weight of the Load.

11. Fee (the fee charged the hauler for the load).

- 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 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 directly related to the Facility of rates charged for mixed material received, incoming and outgoing tonnages, source separated and mixed incoming materials, markets receiving recovered materials and disposal facilities receiving residue from the Facility. These records shall be made available to Metro on request. In the event of any conflict between the provisions of 6.3 and 6.1, the provisions of 6.1 shall prevail.
- 6.4 The Franchisee shall file an Annual Operating Report on or before each anniversary date of the Franchise, detailing the previous year operation of the Facility as outlined in this Franchise.
- 6.5 The Franchisee shall submit to Metro duplicate copies of any regulatory matters pertaining to the Facility, within 30 days of filing with regulatory agency.
- 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, and other like materials of the Franchisee that are directly related to the operation of the Franchisee.
- 6.7 Fees and charges shall be charged on the basis of tons of waste received. Either a mechanical or automatic scale approved by the National Bureau of Standards and State of Oregon may be used for weighing waste.

- 6.8 Where a fee or charge is levied and collected on an accounts receivable basis, pre-numbered tickets shall be used in numerical sequence. The numbers of the tickets shall be accounted for daily and any voided or canceled tickets shall be retained.

## 7. OPERATIONAL REQUIREMENTS

- 7.1 A copy of this Franchise shall be displayed where it can be readily referred to by operating personnel.
- 7.2 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) 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.
  - (b) Take immediate action to correct the unauthorized condition or operation.
  - (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 (10) days of occurrence or sooner if circumstances warrant notification to Metro.
- 7.3 If the Processing Facility is to be closed at least 120 days or permanently, Franchisee shall provide Metro with written notice, at least ninety (90) days prior to closure, of the proposed time schedule and closure procedures.
- 7.4 Franchisee shall provide a staff that is qualified to operate the Facility in compliance with this Franchise and to carry out the reporting functions required by this Franchise.
- 7.5 Recovery Requirements:
- (a) A minimum recovery rate of 45 percent must be maintained at the facility. The recovery rate will be calculated by use of a three month rolling average. (Example: March's recovery rate will be the average of months January, February and March; April's recovery rate will be the average of February, March and April, *etc.*). The ratio of tons recovered from tons received will constitute the recovery rate for the relevant time period. A more specific explanation of the calculations is shown in EXHIBIT 2.
  - (b) A ninety (90) day (three month) grace period for shakedown and operational testing will precede the commencement of official measurement of the recovery rate and imposition of phased in penalties for failure to achieve designated recovery rates. The full 45 percent recovery rate must be attained in the eighth

month following commencement of operations. Months four and five will be phased-in recovery rates of 35 percent and 40 percent with both months a stand alone average. By illustration, the franchise obligations for material recovery are as follows:

Commencement of Operations	Recovery Rate Required
Month 1	-0-
Month 2	-0-
Month 3	-0-
Month 4	35% (stand alone)
Month 5	40% (stand alone)
Month 6	40% (3-mth average)
Month 7	43.3% (3-mth average)
Month 8	45% (3-mth average)

- (c) For each percentage point below the specified recovery rate of 45 percent (or 35 percent and 40 percent for months four and five) WRI will pay to Metro a penalty in an amount equal to the current Metro Regional User Fee plus \$2.00 per ton for all tons representing the recovery tonnage shortfall for each percentage point below the specified recovery rate of 45 percent. (Example: If 1,000 tons were processed in a month with a three month average recovery rate of 42.3%, the penalty would equal:  $(1,000 \text{ tons}) (0.450 - 0.423) ((\$17.50 + (45.0 - 42.3) (\$2.00)) = \$618.30$ . Annually, as of July 1 (or the effective date of any new Metro User Fee rate) the penalty will be adjusted to the then current Regional User Fee, and the \$2.00 per ton incremental penalty rate will be indexed to reflect the current ratio of 17.5:2.

## 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. INSURANCE

9.1 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.
- 9.2 Insurance coverage shall be a minimum of \$500,000 per occurrence, \$100,000 per person, and \$50,000 property damage. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000.
- 9.3 Metro, its elected officials, departments, employees, and agents shall be named as **ADDITIONAL INSUREDS**. Notice of any material change or policy cancellation shall be provided to Metro 30 days prior to the change or cancellation.
- 9.4 Franchisee, its contractors, if any, and all employers working under this Franchise are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Franchisee shall provide Metro with certification of Workers' Compensation insurance including employer's liability.

## **10. INDEMNIFICATION**

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

### **10.1 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.

## **11. 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.

## **12. METRO ENFORCEMENT AUTHORITY**

- 12.1 The Executive Officer may, upon sixty (60) days prior written notice, direct solid waste away from the Franchisee or limit the type of solid waste that the Franchisee may receive. Such action, or other necessary steps, may be taken to abate a nuisance arising from operation of the Facility or to carry out other public policy objectives. Upon receiving such notice, the Franchisee shall have the right to a contested case hearing pursuant to Code Chapter 2.05. A request for a hearing shall not stay action by the Executive Officer. Prior notice shall not be required if the Executive Officer finds that there is an immediate and serious danger to the public or that a health hazard or public nuisance would be created by a delay.
- 12.2 Authorized representatives of Metro shall be permitted access to the premises of the Facility at all reasonable times for the purpose of making inspections and carrying out other necessary functions related to this Franchise. Access to inspect is authorized:
- (a) During all working hours;
  - (b) At other reasonable times with notice; and
  - (c) At any time without notice when, in the opinion of the Metro Solid Waste Department Director, such notice would defeat the purpose of the entry.
- 12.3 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.

## **13. DISPOSAL RATES AND FEES**

- 13.1 In accordance with the Metro Code, this Facility shall be exempt from Metro rate setting.
- 13.2 Franchisee is exempted from collecting and remitting Metro Fees on waste received at the Facility in conformance with this Agreement. Franchisee is fully responsible for paying all costs associated with disposal (including Metro User Fees and Excise Taxes) of residual material generated at the Facility. If Franchisee obtains authorization to dispose of residual material at a facility that has not been "Designated" by Metro, Franchisee shall remit to Metro the Tier 1 (one) User Fee on all waste disposed of at the non-designated facility as well as applicable Excise Taxes.
- 13.3 Disposal of residue shall be at a designated facility under the Metro Code or under authority of a non-system license issued by Metro.

- 13.4 Franchisee shall establish uniform rates to be charged for all loads accepted at the Facility. To minimize potential customer conflicts regarding the recoverability of loads, the Franchisee shall minimize the number of rate categories and shall not change the rates during an operating day. Franchisee shall establish objective criteria and standards for acceptance of loads. The Franchisee shall submit these standards, criteria and an appeals procedure to Metro for Metro approval prior to operation of the Facility. Metro approval shall not be unreasonably withheld.

#### **14. REVOCATION**

- 14.1 This Franchise may be revoked at any time for any violation of the conditions of this Franchise or 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.
- 14.2 This Franchise Agreement is subject to suspension, modification, revocation, or nonrenewable upon 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; or
  - (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; or
  - (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.

#### **15. GENERAL CONDITIONS**

- 15.1 Franchisee shall be responsible for ensuring that its contractors and agents operate in complete compliance with the terms and conditions of this Franchise.
- 15.2 The granting of this Franchise shall not vest any right or privilege in the Franchisee to receive specific quantities of solid waste during the term of the Franchise.
- 15.3 This Franchise may not be transferred or assigned without the prior written approval of Metro.

- 15.4 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.
- 15.5 This Franchise shall be construed, applied, and enforced in accordance with the laws of the State of Oregon.
- 15.6 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.

**16. NOTICES**

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

Merle Irvine, Vice President  
 Willamette Resources, Inc.  
 2215 North Front Street  
 Woodburn, OR 97071

- 16.2 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

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

\_\_\_\_\_  
 Facility Owner or  
 Owner's Representative

\_\_\_\_\_  
 Rena Cusma, Executive Officer  
 Metro

Date: \_\_\_\_\_

Date: \_\_\_\_\_



EXHIBIT 1

Legal Description  
United Disposal Service  
Parcel One

A tract of land located in the Southwest one-quarter of Section 2, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Washington County, Oregon, being more particularly described as follows:

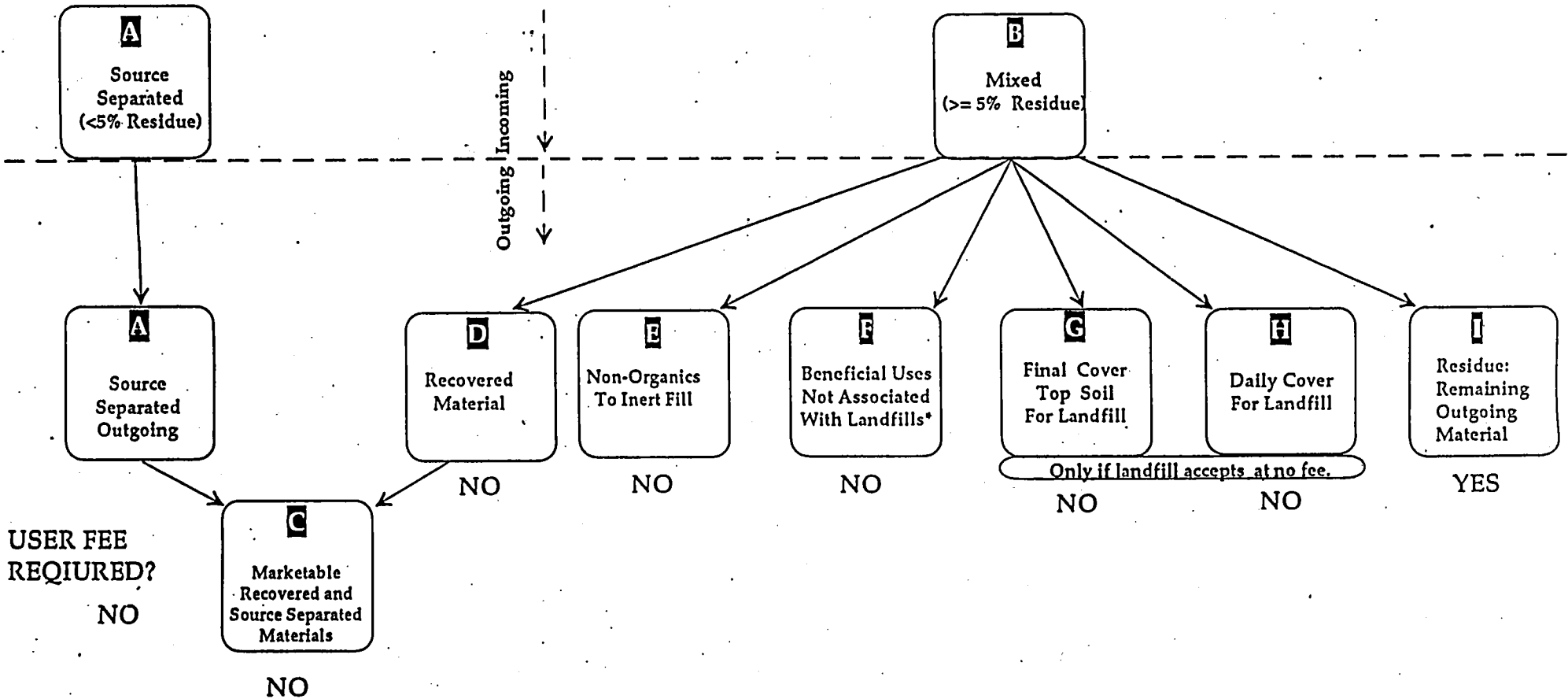
Commencing at the Southwest corner of said Section 2; thence along the West line of said section North 0°18'35" West 661.21 feet; thence North 89°28'37" West 1119.74 feet to a 3-1/2" brass disk stamped "BONNEVILLE POWER ADMINISTRATION", said brass disk being the point of beginning; thence South 0°20'02" East 631.29 feet; thence South 89°28'53" West 420.49 feet; thence along the arc of a curve to the right 416.74 feet, whose radius equals 600.00 feet, whose central angle equals 39°47'44" and whose chord bears North 70°37'15" West 408.41 feet; thence North 0°20'02" West 162.25 feet; thence North 89°28'53" East 250.00 feet; thence North 0°29'02" West 330.00 feet; thence North 89°28;37" East 555.00 feet to the point of beginning.

Contains 9.38 acres, more or less.

PN:clk  
NORTFRANCHISWRI.FRN  
08/16/94 11:41:24 AM

# Exhibit 2

## Metro's Existing Policy For Assessing Fees And Computing Recovery Rates



Note that additional fees may be charged as penalties for not achieving 45% recovery percentage.

Equation For Calculating Recovery Rate =

$$= \frac{\text{Marketable Recovered and Source Separated Materials minus .95 Source Separated Materials}}{\text{Mixed Incoming minus ( Non-Organics To Inert Landfill + Beneficial Other Than At Landfills)*}}$$

$$= \frac{C - .95A}{B - (E+F*)}$$

Beneficial Uses Must Meet With Prior Metro Approval

\*If approved by Metro in advance.



METRO

DATE: September 26, 1994

TO: Rena Cusma, Executive Officer

FROM: Susan Lee, Acting Clerk of the Council *SL*

RE: TRANSMITTAL OF ORDINANCE NOS. 94-562B, 94-564, 94-565B, 94-570B, and 94-567

Attached for your consideration are true copies of the ordinances referenced above adopted by the Council on September 22, 1994.

If you wish to veto any of the above referenced ordinances, I must receive a signed and dated written veto message from you no later than 5:00 p.m., Thursday, September 29, 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, *Rena Cusma*, received this memo and true copies of Ordinance Nos. 94-562B, 94-564, 94-565B, 94-570B, and 94-567 from the Clerk of the Council on September 26, 1994.