

A G E N D A

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METRO

MEETING: METRO COUNCIL REGULAR MEETING - REVISED
DATE: September 12, 1996
DAY: Thursday
TIME: 2:00 PM
PLACE: Council Chamber

Approx.
Time*

Presenter

- | | | |
|--------------------|--|--|
| 2:00 PM | CALL TO ORDER AND ROLL CALL | |
| (5 min.) | 1. INTRODUCTIONS | |
| (5 min.) | 2. CITIZEN COMMUNICATIONS | |
| (5 min.) | 3. EXECUTIVE OFFICER COMMUNICATIONS | |
| (10 min) | 4. METRO AUDITOR'S FRANCHISE
MANAGEMENT REPORT | |
| | 5. CONSENT AGENDA | |
| 2:25 PM
(5 min) | 5.1 Consideration of Minutes for the September 5, 1996
Metro Council Regular Meeting and Work
Session. | |
| | 6. ORDINANCES -FIRST READING | |
| 2:30 PM
(5 min) | 6.1 Ordinance No. 96-653 , An Ordinance Amending the
FY 96-97 Budget and Appropriation Schedule for the
Purpose of Transferring \$73,798 from the General
Fund to the Construction Account of the General
Revenue Bond Fund for Building Improvements
necessary to Accommodate Additional Office Space
Needs of the Open Space Program and the
Transportation and Growth Management Departments
and Declaring an Emergency. | |

7. ORDINANCES - SECOND READING

2:35 PM
(5 min)

- 7.1 Ordinance No. 96-649**, For the Purpose of Granting a Franchise to Oregon Recycling Systems for Operating a Solid Waste Processing and Recovery Facility. McCaig

8. RESOLUTIONS

2:40 PM
(5 min)

- 8.1 Resolution No. 96-2382**, For the Purpose of Confirming Appointments to the Employee Salary Savings Plan Advisory Committee. Monroe

2:45 PM
(10 min)

9. COUNCILOR COMMUNICATION

(Council recess until 5:20 pm for Functional Plan Public Hearing)

5:30 PM
(approx
3 hours)

- 10. Ordinance No. 96-647A**, For the Purpose of Adopting a Functional Plan for Early Implementation of the 2040 Growth Concept.

PUBLIC HEARING

8:30 PM

ADJOURN

CABLE VIEWERS: This meeting is shown live on Channel 30 the first Sunday after the meeting at 8:30 pm. The entire meeting is also shown again on the second Monday after the meeting at 2:00 pm on Channel 30.

Approval of Minutes - Minutes are unavailable at this time due to computer problems.

For the September 5, 1996 Metro Council Meeting and Work Session

**Metro Council Meeting
Thursday, September 12, 1996
2:00 PM - Council Chamber**

Agenda Item Number 6.1

Ordinance No. 96-653, An Ordinance Amending the FY 1996-97 Budget and Appropriations Schedule for the Purpose of Transferring \$73,798 from the General Fund to the Construction Account of the General Revenue Bond Fund for Building Improvements necessary to Accommodate Additional Office Space Needs of the Open Space Program and the Transportation and Growth Management Departments and Declaring an Emergency.

**Metro Council Meeting
Thursday, September 12, 1996
2:00 PM - Council Chamber**

BEFORE THE METRO COUNCIL

AN ORDINANCE AMENDING THE FY 1996-97)	ORDINANCE NO. 96-653
BUDGET AND APPROPRIATIONS)	
SCHEDULE FOR THE PURPOSE OF)	Introduced by Mike Burton
TRANSFERRING \$73,798 FROM THE)	Executive Officer
GENERAL FUND CONTINGENCY TO THE)	
CONSTRUCTION ACCOUNT IN THE)	
GENERAL REVENUE BOND FUND FOR)	
BUILDING IMPROVEMENTS NECESSARY TO)	
ACCOMMODATE ADDITIONAL OFFICE)	
SPACE NEEDS OF THE OPEN SPACES)	
PROGRAM AND THE TRANSPORTATION)	
AND GROWTH MANAGEMENT)	
DEPARTMENTS; AND DECLARING AN)	
EMERGENCY)	

WHEREAS, The Metro Council has reviewed and considered the need to transfer appropriations with the FY 1996-97 Budget; and

WHEREAS, The need for a transfer of appropriation has been justified; and

WHEREAS, Adequate funds exist for other identified needs; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS;

1. That the FY 1996-97 Budget and Schedule of Appropriations are hereby amended as shown in the column titled "Revision" of Exhibits A and B to this Ordinance for the purposes of transferring \$73,798 from the General Fund Contingency to the Construction Account in the General Revenue Bond Fund for the purpose of building improvements necessary to accommodate additional office space needs of the Open Spaces Program and the Transportation and Growth Management Departments.

2. This Ordinance being necessary for the immediate preservation of the public health, safety or welfare of the Metro area in order to meet obligations and comply with Oregon Budget Law, an emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Metro Council this ____ day of _____, 1996.

Jon Kvistad, Presiding Officer

ATTEST:

Approved as to Form:

Recording Secretary

Daniel B. Cooper, General Counsel

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08/22/96 1:35 PM

Exhibit A
Ordinance No. 96-653

FISCAL YEAR 1995-96		CURRENT BUDGET		REVISION		PROPOSED BUDGET	
ACCT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
General Fund							
Total Personal Services		21.00	1,070,990	0.00	0	21.00	1,070,990
Total Materials & Services			267,228		0		267,228
Total Capital Outlay			37,400		0		37,400
Interfund Transfers							
581513	Trans. Indirect Costs to Bldg. Fund-Regional Center		345,813		0		345,813
581610	Trans. Indirect Costs to Support Svcs. Fund		458,097		0		458,097
581615	Trans. Indirect Costs to Risk Mgmt. Fund-Gen'l		3,381		0		3,381
581615	Trans. Indirect Costs to Risk Mgmt. Fund-Workers' Comp		7,506		0		7,506
Excise Tax Transfers							
582120	Trans. Res. to Zoo Operating Fund		61,990		0		61,990
582140	Trans. Res. to Planning Fund		3,689,624		0		3,689,624
582413	Trans. Res. to Gen'l Revenue Bond Fund		0		73,798		73,798
582554	Trans. Res. to Spectator Facilities fund		250,000		0		250,000
582610	Trans. Res. to Support Svcs. Fund		65,000		0		65,000
582160	Trans. Res. to Reg. Parks/Expo Fund		679,073		0		679,073
582160	Trans. Res. to Reg. Parks/Expo Fund (landbanking)		97,277		0		97,277
582160	Trans. Res. to Reg. Parks/Expo Fund (earned on facilities)		291,271		0		291,271
Total Interfund Transfers			5,949,032		73,798		6,022,830
Contingency and Unappropriated Balance							
599999	Contingency		608,541		(73,798)		534,743
599990	Unappropriated Fund Balance		200,000		0		200,000
Total Contingency and Unappropriated Balance			808,541		(73,798)		734,743
TOTAL FUND REQUIREMENTS		21.00	8,133,191	0.00	0	21.00	8,133,191

Exhibit A
Ordinance No. 96-653

FISCAL YEAR 1995-96		CURRENT BUDGET		REVISION		PROPOSED BUDGET	
ACCT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
General Revenue Bond fund							
Resources							
	<u>Resources</u>						
	METRO REGIONAL CENTER						
305000	Fund Balance						
	* Construction Account		47,070		(3,868)		43,202
	* Debt Service Account		125,000		0		125,000
	* Debt Service Reserve Account		1,794,020		0		1,794,020
	* Renewal & Replacement Account		235,979		0		235,979
361100	Interest on Investments						
	* Construction Account		2,470		(2,470)		0
	* Debt Service Reserve Account		89,700		0		89,700
	* Renewal & Replacement Account		11,800		0		11,800
391010	Trans. Resources from General Fund		0		73,798		73,798
391513	Trans. Resources from Building Fund						
	* from Metro Regional Center Account		1,159,036		0		1,159,036
	* from Parking Garage Account		302,957		0		302,957
	WASHINGTON PARK PARKING LOT						
385300	OEDD Loan		2,575,064		0		2,575,064
TOTAL RESOURCES			6,343,096		67,460		6,410,556

Construction Account

	<u>Capital Outlay</u>						
	METRO REGIONAL CENTER						
571500	Purchases-Office Furniture & Equipment		49,540		(49,540)		0
574520	Const. Work/Materials-Bldgs, Exhibits & Rel.		0		117,000		117,000
	Total Capital Outlay		49,540		67,460		117,000
TOTAL CONSTRUCTION ACCOUNT			49,540		67,460		117,000

Project Account

TOTAL PROJECT ACCOUNT	2,375,000	0	2,375,000
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Debt Service Account

TOTAL DEBT SERVICE ACCOUNT	1,787,057	0	1,787,057
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General Expenses

	<u>Contingency and Unappropriated Balance</u>						
599999	Contingency						
	Renewal & Replacement Account (Metro Reg. Center)		247,779		0		247,779
599990	Unappropriated Balance						
	Debt Reserve (Metro Regional Center)		1,883,720		0		1,883,720
Total Contingency and Unapp. Balance			2,131,499		0		2,131,499
TOTAL FUND REQUIREMENTS			6,343,096		67,460		6,410,556

EXHIBIT B
FY 1996-97 SCHEDULE OF APPROPRIATIONS
ORDINANCE NO. 96-653

	Current Appropriation	Revision	Proposed Appropriation
GENERAL FUND			
Council			
Personal Services	753,119	0	753,119
Materials & Services	104,320	0	104,320
Capital Outlay	31,500	0	31,500
Subtotal	888,939	0	888,939
Executive Management			
Personal Services	317,871	0	317,871
Materials & Services	37,908	0	37,908
Capital Outlay	5,900	0	5,900
Subtotal	361,679	0	361,679
Special Appropriations			
Materials & Services	125,000	0	125,000
Subtotal	125,000	0	125,000
General Expenses			
Interfund Transfers	5,949,032	73,798	6,022,830
Contingency	608,541	(73,798)	534,743
Subtotal	6,557,573	0	6,557,573
Unappropriated Balance	200,000	0	200,000
Total Fund Requirements	\$8,133,191	\$0	\$8,133,191
GENERAL REVENUE BOND FUND			
Construction Account			
Capital Outlay	49,540	67,460	117,000
Subtotal	49,540	67,460	117,000
Project Account			
Capital Outlay	2,375,000	0	2,375,000
Subtotal	2,375,000	0	2,375,000
Debt Service Account			
Debt Service	1,787,057	0	1,787,057
Subtotal	1,787,057	0	1,787,057
General Expenses			
Contingency	247,779	0	247,779
Subtotal	247,779	0	247,779
Unappropriated Balance	1,883,720	0	1,883,720
Total Fund Requirements	\$6,343,096	\$67,460	\$6,410,556

All other appropriations remain as previously adopted

STAFF REPORT

CONSIDERATION OF ORDINANCE NO. 96-653 AMENDING THE FY 1996-97 BUDGET AND APPROPRIATIONS SCHEDULE TRANSFERRING \$ 73,798 FROM THE GENERAL FUND TO THE CONSTRUCTION ACCOUNT IN THE GENERAL REVENUE BOND FUND FOR THE PURPOSE OF BUILDING IMPROVEMENTS NECESSARY TO ACCOMMODATE ADDITIONAL OFFICE SPACE NEEDS OF THE OPEN SPACES PROGRAM AND THE TRANSPORTATION AND GROWTH MANAGEMENT DEPARTMENTS; AND DECLARING AN EMERGENCY

Date: September 5, 1996

Presented By: Bill Potter
Berit Stevenson

PROPOSED ACTION

This Ordinance amends the FY 1996-97 Budget to transfer \$73,798 from the General Fund to the General Revenue Bond Fund, Construction Account to accommodate the office space demands of the legal staff of the Open Spaces program and the staff of both the Transportation and Growth Management Departments. This short term space project will consist primarily of design and renovation of previously leased space on the first floor of the Metro Regional Center.

FACTUAL BACKGROUND AND ANALYSIS

The Property Services Division within the Administrative Services Department conducted a space needs analysis of all departments and offices housed at the Metro Regional Center. This analysis covered both short term and long term space needs. During the course of this study, immediate short term needs of the legal staff of the Open Spaces program and the Transportation and Growth Management Departments were identified.

The legal staff of the Open Spaces Department consists of an attorney, an appraiser and two legal assistants. Currently these staff are occupying open work cubicles within the Open Spaces area located on the first floor. The confidential nature of the work requirements of the attorney and the appraiser have made the open work cubicles unsuitable. Enclosed offices would allow these staff members to conduct real estate negotiations and other confidential discussions with prospective sellers and others. In addition, currently two staff of the Open Spaces Program are occupying space within the Regional Parks and Greenspaces area due to a lack of available space in the Open Spaces area. The proposed project provides for the relocation of all four legal staff of the Open Spaces Program thereby making space available for all members of the Open Spaces staff.

The Transportation Department FTE's working within Metro Regional Center have increased by 10.58 from FY 1994-95 to the current fiscal year. Metro's Growth Management Department has experienced an increase in FTE of 4.17 within the same time period. As a result of these increases, the third floor area of the Metro Regional Center where these Departments are

located are over crowded. As interim measures, staff have been assigned to meeting room and library space, common work areas have been eliminated and support space functions have been relocated to hallways.

Property Services staff have developed a three-faceted plan for responding to these immediate space needs. The primary element of the plan is to remodel the former American Advertising Museum space and current security office located along Grand Avenue on the first floor into office space suitable for relocation of the Growth Management Department.¹ The remodeled space will provide work area for 21 persons, a small departmental meeting room and a public entrance located adjacent to the base of the stairway at the existing Grand Avenue entrance. Construction activities which are necessary to make the space suitable for office use include minor demolition and reconstruction, acoustical treatment, re-wiring for both electrical and data/voice needs, lighting, and carpet patching. To contain construction costs and to maintain the future flexibility of the space, minimal new construction of interior walls will occur.

Secondarily, a previously open work area in the legal office area will be remodeled to provide an enclosed office. The support staff assigned to this area currently will be relocated to a nearby underutilized waiting area. The new office will be available for the Open Spaces attorney, providing her with the type of work space necessary for her to perform her work assignments and proximity to the other staff attorneys. Lastly, additional movable partitions will be purchased and installed in the area to be vacated by Growth Management staff. These new panels will be identical to the existing panel system in the building and will provide for two additional work stations.

As stated above, Growth Management staff would relocate to the former Advertising Museum space. Transportation Department will move into 15 work spaces (one office and 14 cubicles) being vacated by Growth Management. The Open Spaces appraiser and two legal assistants would relocate into an office and two work cubicles also vacated by Growth Management. The Open Spaces attorney would relocate to the newly remodeled office within the legal offices area. The Open Spaces legal staff will be vertically proximate to the rest of the Open Spaces staff; the Open Spaces Program area is located in the south end of the building on the first floor. The new location for the Open Spaces legal staff will be the south side of the building on the third floor.

Upon completion of all staff moves and remodeling described above, five cubicles will be vacant and available for future use. These will be grouped together in the south east quadrant of the building. In addition, the crowded conditions which currently exist in the Transportation, Open Spaces and Parks areas will be remedied. Conference rooms and common work areas will be restored. Lastly, the Open Spaces attorney and appraiser will be relocated to offices.

The costs of all remodeling and procurement has been estimated at \$117,000. A detailed estimate follows:

¹ The security office would be relocated to a vacant office located on the second floor and adjacent to the vending machines and kitchenette. This new location offers better proximity to the loading dock and main security/reception desk.

Advertising Museum Space			
	Construction Costs	\$64,000	
	Design Fees	\$ 4,000	
	Permits	\$ 2,500	
	Data/Telecom. Wiring	\$ 7,500	
	Furniture - Panels	\$30,000	
	Misc.	\$ 1,000	
	Total		\$109,000
Legal Office			
	Construction Costs	\$ 6,000	
	Design Fees	\$ 500	
	Total		\$6,500
Additional Panels			
	Furniture - Panels		\$1,500
	Project Total		\$117,000

The Development Services staff investigated alternative options for meeting the space requirements of Metro staff. The only viable alternative to this project is leasing additional off-site space. The cost to lease nearby office space for a five year period is estimated to be \$384,000 based on a lease rate of \$18.00 per square foot and \$30.00 per square foot for tenant improvements.

BUDGET IMPACT

Development Services staff have identified a source of funds which could be applied to this project. At the end of FY 1995-96, the construction account of the General Revenue Bond Fund has a balance of \$43,202. These funds remain from the Metro Headquarters project and have been carried over from the project's completion in 1993. Since that time, the funds have been earmarked for the Council Chamber closed circuit camera project which would install four closed circuit cameras and fully automated production capabilities. The cost estimate for the camera project was \$190,000 in 1993. Two grant applications have been unsuccessfully submitted in the past which would have provided the additional funds needed to complete the camera project. Based on the uncertainty of the camera project and the immediate needs of the short term space project, Development Services staff is recommending that the funds remaining in the General Revenue Bond Fund construction account be used for this project. If the construction account funds are used towards this short term space project, the net project costs remaining to be funded are estimated at \$73,798.

During FY 1995-96, Metro's legal counsel determined that remodeling or construction costs to Metro Regional Center were not a legal expenditure of the Open Spaces bond proceeds. The benefits of such remodel or construction accrue to the building's value and have a useful life that is much longer than the life of the Open Spaces program. As a result, remodeling costs resulting from staffing needs of the Open Spaces Program must be funded with general discretionary funding. In addition, construction and remodeling expenditures are not an allowable cost to grants. The Transportation Department's primary source of funding is grants. The Transportation department's contingency is primarily grant funded and is not available as funding for their share of the project. Finally, the Growth Management Department is funded through a combination of grants, contract revenue and General Fund transfer. The building remodel costs are not an allowable charge against the grants or contract revenue, leaving only the General Fund as a funding source.

For the above reasons, this action requests the transfer of \$73,798 from the General Fund contingency to the General Revenue Bond Fund, Construction Account. The amount transferred from the General Fund will be combined with the residual balance remaining from the original Metro Regional Center construction project to provide the full amount of funding needed for this project, \$117,000.

The FY 1996-97 fund balance estimate for the General Revenue Bond Fund, Construction Account has been revised downward to reflect the actual fund balance for the account at the end of FY 1995-96. In addition, the anticipated interest earnings during FY 1996-97 on the account have been eliminated to reflect the expenditure of the fund balance during the first part of FY 1996-97.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of Ordinance No. 96-653.

Agenda Item Number 7.1

**Ordinance No. 96-649, For the Purpose of Granting Franchise to Oregon Recycling Systems for
Operating a Solid Waste Processing and Recovery Facility.**

**Metro Council Meeting
Thursday September 12, 1996
2:00 PM - Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF GRANTING A)	ORDINANCE NO. 96-649
FRANCHISE TO OREGON RECYCLING)	
SYSTEMS FOR OPERATING A SOLID)	Introduced by Mike Burton
WASTE PROCESSING AND RECOVERY)	Executive Officer
FACILITY)	

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

WHEREAS, OREGON RECYCLING SYSTEMS, L.L.C. (OrRS) has applied for a non-exclusive franchise under which OrRS would operate a solid waste processing and recovery facility at Portland, Oregon; and

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

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

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

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

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

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

and

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

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

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

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

THE METRO COUNCIL ORDAINS AS FOLLOWS:

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

ADOPTED by the Metro Council this _____ day of _____
1996.

Jon Kvistad, Presiding Officer

ATTEST:

Approved as to Form:

Recording Secretary
Counsel

Daniel B. Cooper, General

AS

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STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 96-649 FOR THE PURPOSE OF GRANTING A FRANCHISE TO OREGON RECYCLING SYSTEMS FOR OPERATING A SOLID WASTE PROCESSING AND RECOVERY FACILITY

Date: July 26, 1996

Presented by: Andy Sloop
Scott Klag

INTRODUCTION

The purpose of this report is to provide the information necessary for the Metro Council to evaluate the recommendation that Oregon Recycling Systems (OrRS) be awarded a solid waste franchise to operate a solid waste processing and recovery facility (also referred to as a material recovery facility or MRF) to be located in northwest Portland, Oregon. The proposed franchise agreement is attached.

The proposed franchise is consistent with the standards developed over the past several months by Metro staff, local government staff, citizens, processors and franchise applicants for this type of processing facility. These standards were the basis of the Waste Management of Oregon's (WMO) MRF franchise issued in June of this year.

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

Key finding and recommendations include:

- The proposed facility will assist the region in accomplishing the goals and objectives of the Regional Solid Waste Management Plan (RSWMP).
- The proposed facility would be authorized to receive up to 38,000 tons per year of dry waste for the first two years of the franchise. If that amount of dry wastes is received, the authorization would be increased to 43,000 tons per year. At 43,000 tons at the required 45% recovery rate, the facility would recover 19,000 tons per year. The applicant projects higher recovery rates or 65%-70% that would result in a recovery of about 31,000 tons at the 43,000 tons per year authorization level.
- Metro staff, City of Portland staff and the applicant have met to discuss the importance of commercial source-separation programs in meeting the goals and objectives of the RSWMP. All parties have committed to ensuring that this MRF complements and does not undermine such efforts.
- The proposed franchise will maintain a "level playing field" regarding fees, recovery rate and other requirements with the three other most recently franchised MRFs. Staff continues to recommend that any significant change in MRF requirements be made simultaneously to all Metro franchised MRFs.

- This is the second of 4 or more franchise applications for processing and recovery facilities currently or anticipated to be submitted to Metro. While each application is to be individually reviewed on its own merits, the cumulative impact of all these facilities is important to consider.
- The major differences between this facility and the recently franchised WMO MRF are:
 1. The applicant believes that by working with generators it will be able to achieve recovery rates of 65-70% on the dry wastes it receives.
 2. The land use requirements for the City of Portland require that residuals from the facility represent no more than 20% of the materials entering the facility - that is, residuals from both source separated recycling and mixed dry waste processing. While Metro will report to the City relevant information on the facilities operations, the City will be responsible for taking any enforcement action if their standards are not met.
 3. The facility will house "sub-franchisees" who will be engaged in additional recycling activities. At the present time these include: source separated plastics and source separated fiber recycling. The franchise would permit making cubes for fiber based fuel in the future if the franchisee requested it and the Executive Officer granted approval. All "sub-franchisees" are to be bound to the terms of the franchise.

I. FACILITY AND APPLICANT INFORMATION

Location:

2345 NW Nicolai, 2825 and 2829 NW Yeon

Franchise Ownership and Operation

Oregon Recycling Systems (OrRS) is an Oregon limited liability corporation (L.L.C.) owned by a consortium of 58 local refuse and recycling haulers primarily operating in Portland but also in other parts of the region including portions of Multnomah and Washington Counties. OrRS will operate the facility on a site under a lease purchase agreement.

General Facility Description:

The franchised operation will consist of four buildings on a 10.5 acre site. The building in which the solid waste processing and recovery will occur is 115,000 square feet. The site also contains a 6,400 square foot pole barn, a 24,000 square foot multipurpose building that also has 3,000 square feet of office space, a 10,000 square foot office building and two small block buildings of 800 and 500 square feet, respectively. The ancillary buildings will be used for offices, vehicle maintenance, and other supporting functions. In the future, some of them also could be used for additional solid waste processing and recovery activities.

The processing building will be occupied by OrRS and tenant businesses. OrRS will recover marketable materials from source separated recyclables collected from households and businesses, as well as mixed, dry, non-putrescible wastes collected from businesses and construction and demolition job-sites. The tenant businesses will process source separated fiber and plastics.

Zoning and Permitting:

The site is in the City of Portland and is zoned heavy industrial (IH). Under Portland's zoning guidelines, the proposed facility is considered a recycling operation (not a waste related facility that would require a conditional use) provided the total waste residue from the site does not exceed 20 percent of the total solid waste delivered to the site. Recycling operations are an allowed use in an industrial zone.

Customers and area served:

OrRS is proposing that the facility accept waste and recyclables from all participants in the OrRS venture as well as from other commercial haulers wanting to use the facility. It is expected that most of the facility users will be only those haulers who have invested in OrRS. Most of the waste will come from haulers with routes in the City of Portland.

Facility Activities:

The applicant requests authorization to perform the following activities:

- Recovery of materials from dry, non-putrescible commercial and industrial wastes, and from construction and demolition wastes, with disposal of residual at a Metro designated facility.
- Processing of source-separated recyclables from residential and commercial customers.
- Processing of recovered materials into fiber based fuel cubes. Commencing operations will require administrative approval by Metro's Executive Officer.

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

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

II. ANALYSIS OF FRANCHISE APPLICATION

Completeness and Sufficiency of Application

Applicants for franchises are required to complete the application form and provide additional information as requested. The applicant submitted its franchise request on December 20, 1995 and was notified that its application was administratively complete on June 12, 1996.

The applicant was very open and cooperative in discussing and sharing information with staff on a number of additional questions regarding plans for the facility. The discussions and supplied information were important to establishing the specific conditions of the franchise document negotiated with the applicant.

Compliance with Code Requirements

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

- whether the applicant is qualified,
- whether the proposed franchise complies with Metro's Regional Solid Waste Management Plan (RSWMP),
- 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

Applicant Qualifications

The facility will be operated by Oregon Recycling Systems. The company is owned by 58 local haulers many of whom also participate in the Eastside Recycling residential recycling collection cooperative. The same individual is general manager for both companies. The company has also retained the engineering, operations, regulatory compliance and marketing personnel necessary to operate the company. The company appears to be qualified to operate the proposed facility.

Compliance with the Regional Solid Waste Management Plan

In determining whether the applicant's facility is in compliance with the Regional Solid Waste Management Plan, staff asked the following questions:

- Are plans for the facility consistent with RSWMP goals and objectives or recommended practices?
- Are plans for the facility in conflict with any RSWMP goals and objectives or recommended practices ?

If approved, the franchise will be consistent with and not in conflict with the goals, objectives and recommended practices in the RSWMP.

Analysis of consistency with the RSWMP

In assessing the facility for consistency with the Plan, staff determined the following:

1. The addition of this proposed facility and consequent increase in recovery capacity in the region is broadly consistent with the RSWMP goals for Regional Facilities and Services:

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

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

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

2. Addition of the facility will increase the level of recovery in the region and contribute to achieving the following goals in the Plan's Waste Reduction Goals and Objectives:

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

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

3. RSWMP Recommended Waste Reduction Practices for Business Waste and Building Waste both call for the addition of these types of facilities. (In the Plan they are referred to as "Regional processing facilities for mixed dry waste".) They are expected to contribute a significant amount of recovery to the region over the next 10 years.

Analysis of conflicts with the RSWMP

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

1. **Potential conflicts with source separation recycling programs**

RSWMP Recommended Waste Reduction Practices for Business Waste and Building Waste both call for the implementation of source separated recycling programs. Under the recommended practices, the purpose of dry waste processing facilities is to capture what remains in the wastestream "downstream" from these programs. Goal 10 in the Plan also

emphasizes the importance of source separation while similarly acknowledging a role for post-collection processing.

Staff has been concerned that the growth of dry waste processing facilities could undermine the incentive of haulers and business to invest in source separation programs before such programs had the opportunity to be fully implemented throughout the region. While materials would be recovered, staff believes that the amount and value of materials from post collection recovery facilities is lower than what can be achieved in source separation programs.

However, staff determined that local governments are aware of these issues and can be counted on to ensure that this or other similar franchisees do not negatively impact their investments in source separation programs. Local governments were strongly involved in the development of the RSWMP and are committed to the implementation of the RSWMP's recommended practices. Metro staff, City of Portland staff and the applicant have met to ensure that all parties are aware of each others activities and to mutually acknowledge that the proposed MRF is intended to complement and not supplant other recycling and waste prevention efforts. Staff also believes that specific provisions in the franchise agreement requiring Metro and the franchisee to annually review this issue will help avoid conflicts with RSWMP recommendations.

2. Potential impacts from vertical integration

Objective 4.6 of the RSWMP requires that consideration of the potential negative impacts of increasing vertical integration in the solid waste system be considered when making decisions about the regulation of facilities. These negative impacts could include: unfair competitive advantages that could effect prices; service to customers; or market power to diminish competition over time.

Because of the structure of the ownership of this franchise, staff believes that granting the franchise would not result in any negative vertical integration effects. OrRS has represented to Metro that they do not have any interest in, or financial connection to, any disposal facility. While the involved haulers will become in some degree more "vertically integrated" because they will have a direct relation with a processor, staff believes this will only permit them to be more efficient market competitors and not grant to them any significant market power that could be used to anti-competitive ends.

The negotiated franchise document also contains a provision requiring Metro approval of a change in ownership of the facility that includes a complete buyout of the current ownership - a provision that has not been part of franchise agreements to date.

It should also be emphasized that the RSWMP says that these issues will be considered on a case-by-case basis. Staff will therefore continue to assess the effects of vertical integration as applications are processed over time.

3. Potential for facility to operate as a transfer station

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

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

Need for facility

The proposed facility will improve the competitive position of a large number of small to moderate size haulers with commercial and industrial accounts that are not currently associated with a MRF. Much of the tonnage expected to be received at the facility will be taken from Metro facilities - particularly Metro Central. Although the proposed facility is close to Metro Central, staff believes that even if the facility had been located in, for example, east Portland, OrRS haulers would still choose their facility over Metro Central.

This facility is being franchised as a marketplace competitor not as an exclusive franchise. Staff believes that this approach is consistent RSWMP policies to promote private initiative in developing solid waste processing facilities and to use transfer stations (such as Metro Central) as recovery facilities of last resort.

An additional concern regarding the facility is whether there would be negative impacts on Metro Central's fiber based fuel operation if an FBF line were established at the franchise site. There are at least two important factors to consider. First, Metro does not currently own the FBF line at Metro Central. Under the draft RFP for the rebidding of the operations contract for Metro Central the bidders can propose buying the FBF line. Second, under the RSWMP, FBF operations are to be considered on a case by case basis. If the FBF line does not continue at Metro Central, there may be benefits to there being one at this franchise. Based on these considerations, staff is recommending that under the franchise agreement the Executive Officer would retain final approval over any FBF operations at the franchise.

Compliance with Regulatory Requirements

Staff believes that the applicant will be able to obtain its DEQ Solid Waste Disposal Permit and comply with all other regulatory requirements before beginning its operations.

Variance Requests

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

Under the Metro franchise Code, the Council sets the rates charged by a franchisee. Metro Code Section 5.01.110 allows a variance to be granted to this policy if the intent of the requirement can be otherwise achieved and if strict compliance with the requirement: "(1) Is inappropriate because of conditions beyond the control of person(s) requesting the

variance; or (2) Will be rendered extremely burdensome or highly impractical due to special physical conditions or causes; or (3) Would result in substantial curtailment or closing down of a business, plant, or operation that furthers the objectives of the district. "

Staff believes that the intent of the rate setting provision of the Code is to prevent franchisees from exercising monopoly power in the marketplace resulting from being a holder of a franchise.

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

2. The applicant has requested a variance from Metro Code restrictions on accepting waste from non-affiliated hauling companies. (Section 5.01.120(l)) Under Section 5.01.120(l), a franchised processor cannot own hauling companies. (A franchisee who accepts waste only from affiliated haulers is exempt from this restriction.) The franchisee has requested to be able to receive waste from several types of hauler: (1) OrRS vehicles (potentially, as they currently do not have any of their own collection trucks); (2) haulers who make up OrRS (these haulers are only investors in OrRs not wholly owned or affiliates); and (3) other commercial accounts or businesses such as construction contractors but not the general public. For the franchise to receive wastes from all these groups a variance must be granted. Metro Code Section 5.01.110 (quoted above) allows a variance to be granted to this policy.

Staff believes that the intent of the Metro Code restriction is to prevent franchisees who also have hauling companies from being able to promote their own haulers and treating competing haulers who must use the facility unfairly.

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

3. The Franchisee has also requested a variance from a Code requirement that would allow Metro, upon termination of the franchise, to force sale of the facility to a new franchisee, or require the owner of the facility to accept a new franchisee as its tenant. (Section 5.01.180(e) see also Section 5.01.060(b)(6)) Under Section 5.01.110 (quoted above) staff is recommending that this variance be granted. The purpose and intent of this provision is

to ensure that an essential franchised facility is not closed due to termination of a franchise, causing system disruptions. By granting franchises for numerous competing recovery facilities, Metro is achieving its goal of system stability without the need for strict compliance with this provision. Strict compliance is inappropriate in this instance because it would require the facility owner to agree to sell, or accept as a tenant, an unspecified new franchisee, and potentially impact material market agreements, tax credits, residual disposal agreements, and insurance agreements. If the provision is applied, it would be extremely burdensome for the reasons stated, and would cause delay that could result in termination of the project. As stated above, operation of the facility will further the objectives of Metro as specified in the RSWMP. In any respect, Metro retains the right of eminent domain with regard to the facility, as specified in state statutes.

III. CONDITIONS OF THE FRANCHISE

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

The franchise document was drafted to be generally consistent with previous franchise agreements. The proposed franchise will maintain a "level playing field" regarding fees, recovery rate and other requirements with the three other most recently franchised MRFs. Staff continues to recommend that any significant change in MRF requirements be made simultaneously to all facilities.

This franchise continues the clarifications and improvements made in the WMO franchise that will make for better administration and enforcement of the agreement. These include:

- Clearer definitions of the types of activities and wastes that are authorized and prohibited at the facility.
- Procedures for managing prohibited wastes.
- A required recovery rate of 45% (the same as three previously franchised MRFs - Willamette Resources Inc., Energy Recovery Inc. and Waste Management of Oregon) Council members have requested this rate be examined in the future to determine if it is the most appropriate.
- Close coordination of the agreement with the DEQ Solid Waste Disposal Permit process.
- Tonnage authorizations are based on staff's determination of the amount of dry wastes the applicant will be able to draw in from its members plus an increment for to allow for economic growth. (The growth factor is calculated consistent with staff's regional waste forecasting.) To allow flexibility in meeting changing market conditions without causing undue impacts on facility operations, staff recommends that these authorizations be administered by the Executive Officer.

Other significant conditions of this agreement include:

- "Source separated materials processing" is defined as an authorized activity of the franchise.

There have been concerns raised, particularly by operators of facilities conducting only source separated materials processing, that this franchise language represents a change

from previous Metro policy. This is not the case. Facilities engaging in only source-separated processing continue to be exempt under the Metro franchise Code.

However, the source-separation portion of operations at a franchised MRF requires monitoring since it will utilize the same the building and processing equipment as the mixed waste processing. These activities could potentially be the source of nuisance or environmental problems. Because the franchise is for the entire facility site, the agreement will provide the means for addressing potential problems associated with any activities at the site.

The applicant's facility represents a new variation on this issue in that other companies engaging in source separated recycling will be operating at the site. The franchise agreement will regulate through the franchisee the activities of these "sub-franchisees." The franchise will require the franchisee to obtain written assent to franchise conditions from all sub-franchisees.

- A surety bond of \$100,000 was calculated to be required.

IV. BUDGET IMPACT

This fiscal analysis provides an order of magnitude estimate of the impact on Metro fee and excise tax revenues of the proposed facility.

ASSUMPTIONS

These assumptions apply to both the analysis of the proposed WMO facility alone and to the aggregate impact of all new MRFs that have been proposed. The analysis is in the form of a "what if" exercise that assumes:

- The franchisees are operating at expected FY 1999-2000 tonnage levels with recovery levels of 45% on mixed dry waste. These estimates have been made consistent with assumptions of the current REM SWIS report forecasts.
- Impact is measured by the net change in Metro revenues at both Metro and Non-Metro facilities, less savings from lower transfer and disposal expenses.
- The calculated result is for a single year.
- Values used for costs and savings are based on the FY 1996-97 budget.
- No change to the solid waste rate structure or excise tax.

This analysis does not take into account the following factors that would spread or mitigate the impact of revenue decreases:

- The franchises may not come on line in the projected time frame.
- Increases in tonnages, and fees paid, to both Metro and Non-Metro facilities due to unprojected changes in population or economic growth.
- Decreases in the costs of transfer and or disposal services for waste received at Metro South and Central Transfer Stations. (e.g., as the result of rebidding of the operations contracts)

RESULTS OF ANALYSIS

Cumulative Impact of All Anticipated Franchises

This proposed franchise for OrRS is the second of six franchise applications and renewals expected to be brought to Council in FY 96-97. Staff believes that it is useful to view the effects on the solid waste system of these proposed facilities to help put the proposed OrRS franchise into context. In the staff report for the last franchise staff projected that if all the proposed facilities come on line, they will process approximately 140,000 more tons of material each year than are currently being processed and that the cumulative solid waste revenue impact on Metro was estimated to be a net loss of \$1,300,000 to \$1,500,000 per year. The net excise tax loss was estimated to be \$250,000 to \$350,000 per year.

Final technical discussions and negotiations with OrRS have slightly changed this overall assessment. Compared to the previous system assessment: (1) OrRS will be receiving more tonnage; (2) more tonnage will be coming from Metro as opposed to Non-Metro facilities; and (3) revenue impacts from source separated residual tonnages shifting from Metro to Non-Metro facilities have now been included in calculations. The effects of these changes are that the cumulative solid waste revenue impact on Metro is now estimated to be a net loss of: (a) \$1,700,000 if OrRS recovers materials from mixed waste at their high stated rates (65-70%); and (b) \$1,500,000 if they recover only at the required rate of 45%. Excise tax impacts are similarly affected - a net loss of \$350,000 at high recovery rates and \$320,000 at the lower required rate.

Impact of Proposed OrRS Facility

Impact at Required Recovery Rate of 45%

Tonnages at Metro Central and South Transfer Stations would decline approximately 41,000 tons per year resulting in a net loss of \$970,000 in solid waste revenues and a loss of \$210,000 per year in excise taxes.

However, tonnages at Non-Metro Facilities would increase by about 24,000 tons per year resulting in a net gain to Metro of \$390,000 per year in solid waste revenues and a gain of \$80,000 per year in excise taxes

The total net loss to Metro would therefore be \$750,000 in solid waste revenues and \$160,000 in excise taxes.

Impact at Applicant's Projected Recovery Rates of 65-70%

Tonnages at Metro Central and South Transfer Stations would decline approximately 41,000 tons per year resulting in a net loss of \$970,000 in solid waste revenues and a loss of \$210,000 per year in excise taxes.

However, tonnages at Non-Metro Facilities would increase by about 14,000 tons per year resulting in a net gain to Metro of \$220,000 per year in solid waste revenues and a gain of \$50,000 per year in excise taxes

The total net loss to Metro would therefore be \$750,000 in solid waste revenues and \$160,000 in excise taxes.

The results of this analysis indicate that adding processing facilities to the system has a measurable impact on both solid waste revenues and excise tax receipts. REM is aware of the implications of these and other changes in the regional solid waste system and has developed initiatives such as the rate restructuring process in response. The Council may wish to consider the broader financial impacts of proposed MRFs, and particularly their effect on the excise tax.

STAFFING REQUIREMENTS

Administration and enforcement of this franchise agreement during fiscal year 1996-97 is expected to be handled with existing staff resources. However, the Department is currently assessing the overall need for staff resources required to effectively administer the regulatory system of franchises and licenses. This assessment will be brought forward during the 1997-98 budget process.

V. STAFF RECOMMENDATIONS

Based on the forgoing analysis it is the opinion of staff that OrRS Inc. should be granted a non-exclusive franchise in accord with the provisions of the draft franchise attached to Ordinance No. 96-649 as Exhibit A.

VI. EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Ordinance No. 96-649

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SOLID WASTE FRANCHISE

issued by

METRO

600 NE Grand Avenue

Portland, Oregon 97232-2736

(503) 797-1700

FRANCHISE NUMBER: _____

DATE ISSUED: _____ See Section 2

AMENDMENT DATE: _____ N/A

EXPIRATION DATE: _____ See Section 2

ISSUED TO: _____ OREGON RECYCLING SYSTEMS (OrRS) L.L.C

NAME OF FACILITY: _____ OrRS Solid Waste Processing and Recovery Facility

ADDRESS: _____ 2345 NW Nicolai, 2825 & 2829 NW Yeon

CITY, STATE, ZIP: _____ Portland, OR 97210

LEGAL DESCRIPTION: _____ Tax Account #R-941280390

_____ (see attached application)

NAME OF OPERATOR: _____ OREGON RECYCLING SYSTEMS

PERSON IN CHARGE: _____ Bryan Engelson

ADDRESS: _____ 9817 A East Burnside St.

CITY, STATE, ZIP: _____ Portland, OR 97216

TELEPHONE NUMBER: _____ 503-261-7300

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FRANCHISE AGREEMENT

This Franchise is issued by Metro, a municipal corporation organized under ORS chapter 268 and the 1992 Metro Charter, referred to herein as "Metro," to Oregon Recycling Systems, L.L.C., an Oregon Limited Liability Corporation, referred to herein as "Franchisee."

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

1. DEFINITIONS

The definitions in Metro Code Section 5.01.010 shall apply to this Franchise, as well as the following definitions. Defined terms are capitalized when used. Where Metro Code, State or Federal law definitions are referenced herein, reference is to the definition as amended or replaced. Such terms, as defined at the time this Franchise is executed, are included in Exhibit A.

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

"Authorized Waste" or "Authorized Wastes" means those wastes defined as such in Section 5.2 of this Franchise.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) Solid Waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under ORS chapters 465 and 466 or under Subtitle C of the Federal Resource Conservation and Recovery Act. Such waste may include, but is not limited to, the following wastes or wastes resulting from the following processes:
 - (a) electric power generation;
 - (b) fertilizer/agricultural chemicals;
 - (c) food and related products and by-products;
 - (d) inorganic chemicals;
 - (e) iron and steel manufacturing;
 - (f) leather and leather products;
 - (g) nonferrous metals manufacturing/foundries;
 - (h) organic chemicals;
 - (i) plastics and resins manufacturing;
 - (j) pulp and paper industry;
 - (k) rubber and miscellaneous plastic products;
 - (l) stone, glass, clay and concrete products;
 - (m) textile manufacturing;
 - (n) transportation equipment;
 - (o) water treatment;
 - (p) timber products manufacturing;
- (2) This term does not include :
 - (a) Putrescible Waste, or office or lunch room waste from manufacturing or industrial facilities;
 - (b) Construction and Demolition Waste
 - (c) Contaminated Soils

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

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

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

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

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

“Prohibited Wastes” has the meaning set forth in Section 5.3.1 of this Franchise.

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

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

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

“Recovery Rate” means the percentage amount expressed by dividing the amount of Recovered Material deemed to have resulted from Processing Incoming Type B Wastes by the sum of Recovered Materials deemed to have resulted from Processing of Incoming Type B Waste plus the Residue deemed to have resulted from Processing Incoming Type B Waste.

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

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

“Residue” means Solid Waste, resulting from Solid Waste Materials Recovery, that is transported from a franchised Solid Waste Processing and Recovery Facility to a Disposal Site.

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

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

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

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

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

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

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

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

“Subfranchisee” means any business co-located with Franchisee at the Facility and engaged in Processing Solid Waste.

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

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

2. TERM AND APPLICABILITY OF FRANCHISE

- 2.1 This Franchise is issued for a term of five years from the date of execution by the Executive Officer and following approval by the Metro Council.
- 2.2 Unless otherwise specified in this Franchise, the provisions and obligations of this Franchise shall apply to the Franchisee and all Subfranchisees of the Facility. Prior to any Subfranchisee commencing Processing at the Facility, Franchisee shall provide to Metro written agreements from that Subfranchisee acknowledging that the Subfranchisee is bound by and will comply with all terms of this Franchise.

3. LOCATION OF FACILITY

The franchised Facility is located at 2345 NW Nicolai, 2825 and 2829 NW Yeon, Portland, Oregon. The legal description of the Facility's location appears in Exhibit B to this agreement.

4. OPERATOR AND OWNER OF FACILITY AND PROPERTY

- 4.1 The owner of the Facility and the property upon which the Facility is located is Sidney F. Woodbury. Franchisee warrants that it has obtained the owner's consent to operate the Facility as specified in the Franchise.
- 4.2 The operator of the Facility is Franchisee. Franchisee may contract with another person or entity to operate the Facility only upon 90 days prior written notice to Metro and the written approval of the Executive Officer.

5. AUTHORIZED AND PROHIBITED ACTIVITIES AND WASTES

- 5.1 Subject to the following conditions, Franchisee is authorized to operate and maintain a Solid Waste Processing and Recovery Facility and to conduct the following activities: (a) Source-Separated Recyclables Processing; (b) Solid Waste Materials Recovery; and (c) subject to the prior written approval of the Executive Officer, Fiber Based Fuel Processing:
 - 5.1.1 The Facility shall accept only Authorized Wastes. Franchisee and Subfranchisees are prohibited from receiving, Processing or disposing of any Solid Waste not authorized in this Franchise. Neither Franchisee nor Subfranchisees shall knowingly accept loads of Solid Waste containing only incidental amounts of Recoverable Material or loads which Franchisee or Subfranchisee intend to landfill without first Processing for Recoverable Material.
 - 5.1.2 This Franchise limits the amount and types of Authorized Waste that may be received each year at the Facility as listed in Section 5.2.1 of this Franchise. Upon written request from the Franchisee, the Executive Officer may increase the amount and add types of waste Franchisee or Subfranchisees are authorized to receive for activities authorized at the Facility. Franchisee and Subfranchisees may receive the designated amount of Solid Waste consistent with (1) applicable law, (2) the terms of this Franchise, and (3) any other applicable permits and licenses obtained from governmental or regulatory entities.
 - 5.1.3 Franchisee may accept Authorized Waste from its own Affiliated Hauling Companies, Non-Affiliated Hauling Companies, Building Contractors and, other Businesses, but not from the general public. Subfranchisees may accept Source Separated Recyclables from any source.

5.2 Authorized Activities, Waste Types and Waste Quantities

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

5.2.1.1 Solid Waste Materials Recovery of Solid Waste up to a combined total of 38,000 tons per year during each of the first two years of the term of this Franchise. Thereafter, Franchisee shall be authorized to receive Solid Waste equal to the actual tons of Solid Waste received at the Facility during the second year of this agreement, multiplied by a factor of 1.125. This authorization applies to the combined totals of the following categories of Solid Waste:

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

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

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

5.2.1.2.a Used oil collected as a Source-Separated Material from residential curbside programs operated by commercial refuse haulers.

5.2.1.2.b Source-Separated Recyclables excluding Yard Debris.

5.2.2 Subfranchisees are authorized to conduct Source-Separated Recyclables Processing of Source Separated Recyclables, excluding yard debris, with no limit on the tonnage allowed.

5.3 Prohibited Wastes

5.3.1 Neither Franchisee nor Subfranchisees shall knowingly accept or retain any material amounts of the following types of waste, unless specifically authorized in Sections 5.3.2 or 7.3.2 of this Franchise:

5.3.1.1 Materials contaminated with or containing Friable Asbestos;

5.3.1.2 Batteries;

5.3.1.3 Commercial or Industrial Waste loads that contain Putrescible Waste;

5.3.1.4 Residential Solid Waste;

5.3.1.5 Liquid waste;

5.3.1.6 Oil, other than as specified in 5.2.1.2.a.

5.3.1.7 Putrescible Waste;

5.3.1.8 Sludge;

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

6. MINIMUM REPORTING REQUIREMENTS

- 6.1 Franchisee shall collect and transmit to Metro, according to the timetable in Section 6.2, accurate records of the following information:
 - 6.1.1 Transaction number designating an individual incoming or outgoing load.
 - 6.1.2 Incoming load account number. Upon execution of this Franchise, and semi-annually thereafter, Franchisee shall provide to Metro a listing that cross-references this account number with the customer name, address, and telephone number.
 - 6.1.3 Identity of Franchisee or Subfranchisee receiving or shipping the incoming or outgoing load.
 - 6.1.3.1 If the load was delivered or shipped to or by a Subfranchisee, specify which Subfranchisee.

6.1.4 Designation of the load in one of the following categories:

Incoming Type A Waste: Loads of Solid Waste received by the Facility of which, on a weight basis, less than five percent is eventually transported to a General Purpose or Limited Purpose Landfill, excluding Incoming Type B and C Waste as set forth in this section.

Incoming Type B Waste: Loads of Solid Waste received by the Facility of which, on a weight basis, at least five percent is eventually transported to a General Purpose or Limited Purpose Landfill, excluding Incoming Type A and C Waste

Type C Waste: Loads of Contaminated Soils and Yard Debris received at the Facility for consolidation and shipment off-site for final Processing. By notice to Franchisee, Metro may request that other materials be moved from Incoming Type A or B to this category.

Outgoing Type D Material: Recovered material -- excluding Outgoing Type E Material -- placed in inventory or marketed by the Franchisee or a Subfranchisee as a useful commodity.

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

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

6.1.5 Date the load was received at or transported from the Facility.

6.1.6 Time the load was received at or transported from the Facility.

6.1.7 Material type described according to the physical characteristics of the material in the load or by providing, upon execution of this Franchise and semi-annually thereafter, a code and a cross-referenced listing of codes to material types.

6.1.8 Designation of the point of origin of the load and, in the event the load originated outside the Metro boundary, designation of the city or county of origin.

6.1.9 Net weight of the load.

6.1.10 The fee Franchisee charged or paid the hauler for incoming loads.

6.1.11 Receipt of any materials encompassed by Section 5.3.2 of this Franchise, utilizing Metro's Unacceptable Waste Incident Tracking Form (Attached as Exhibit F).

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. All loads of Solid Waste received at or transported from the Facility shall be weighed on the same scale, and the results shall be encoded in the same transaction set using the same software. Transaction data shall be in electronic form compatible with Metro's data processing equipment. In addition to the transaction data required under Section 6.1, Franchisee shall provide: (1) a summary of the previous month's incoming and outgoing tonnage by origin/destination and type of material, but not including destination information for outgoing recovered materials; and (2) a report showing, by type of material, tons in Franchisee's inventory at the beginning of the month, tons placed in Franchisee's inventory during the month, and tons remaining in Franchisee's inventory at the end of the month. Subfranchisees are specifically exempted from providing inventory information to Metro. A cover letter shall accompany the data which certifies the accuracy of the data and is signed by an authorized representative of Franchisee.

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

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

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

6.3.3 Any modifications under Section 18 of this Franchise.

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

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

- 6.5 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 or Subfranchisee located in the Portland metropolitan area, records, receipts, books, maps, plans, and other like materials of the Franchisee or Subfranchisee that are directly related to the Facility's operation.
- 6.6 Fees and charges shall be levied and collected on the basis of tons of waste received. Either a mechanical or automatic scale approved by the National Bureau of Standards and the State of Oregon may be used for weighing waste.
- 6.7 Where a fee or charge is levied and collected on an accounts receivable basis, pre-numbered tickets shall be used in numerical sequence. The numbers of the tickets shall be accounted for daily and any voided or canceled tickets shall be retained for three years. The Executive Officer may approve use of an equivalent accounting method.
- 6.8 Any periodic modification by Metro of the reporting forms themselves shall not constitute any modification of the terms of Section 6.1 of this Franchise, nor shall Metro include within the reporting forms a request for data not otherwise encompassed within Section 6.1.

7. OPERATIONAL REQUIREMENTS

7.1 General Requirements

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

7.1.2.6 Metro's name and telephone number; and

7.1.2.7 A list of all Authorized and Prohibited Wastes under this Franchise.

7.2 General Operating and Service Requirements

7.2.1 If Franchisee or any Subfranchisee contemplates or proposes to close the Facility for 120 days or more, or proposes to close the Facility permanently, Franchisee shall provide Metro with written notice, at least 90 days prior to closure, of the proposed closure schedule and procedures.

7.2.2 If Franchisee or any Subfranchisee contemplates or proposes a closure of the Facility for more than two business days but less than 120 days, Franchisee shall notify Metro and local government Solid Waste authorities of the closure and its expected duration at least 24 hours before the closure.

7.2.3 If any significant occurrence, including but not limited to equipment malfunctions, or fire, results in a violation of any conditions of this Franchise or of the Metro Code, the Franchisee shall:

7.2.3.1 Immediately act to correct the unauthorized condition or operation;

7.2.3.2 Immediately notify Metro; and

7.2.3.3 Prepare, and submit to Metro within 10 days, a report describing the Franchise or Metro Code violation.

7.2.4 The Franchisee shall establish and follow procedures to give reasonable notice and justification prior to refusing service to any customer of the Facility authorized under this Franchise. Copies of notification and procedures for such action will be retained on file for three years.

7.2.5 Neither the Franchisee nor any Subfranchisee shall, by act or omission, unlawfully discriminate against any person. Rates and disposal classifications established by Franchisee and Subfranchisees shall be applied reasonably and in a non-discriminatory manner.

7.3 Operating Procedures

7.3.1 Unless otherwise allowed by this Franchise, all Processing of wastes shall occur inside Facility buildings. Storage may occur outside, in an orderly manner, as specified in the Facility's operating procedures.

7.3.2 Franchisee shall establish and follow procedures for accepting, managing and Processing loads of Solid Waste received at the Facility. These procedures shall demonstrate compliance with the Franchise, and shall be submitted to Metro in writing for review and approval. For new facilities, operating procedures shall be submitted prior to any waste being accepted. For existing facilities, operating

procedures shall be submitted along with other required application materials. Franchisee may, from time to time, modify such procedures. All proposed modifications to Facility plans and procedures shall be submitted to the Metro Regional Environmental Management Department for review and approval. The Executive Officer shall have 10 business days from receipt of proposed modifications to object to such modifications. If the Executive Officer does not object, such modifications shall be considered approved following the 10-day period. Franchisee may implement proposed modifications to Facility plans and procedures on a conditional basis pending Metro review and notice from Metro that such changes are not acceptable. The procedures shall include at least the following:

- 7.3.2.1 Methods of notifying generators not to place Putrescible Wastes, Hazardous Wastes, or other Prohibited Wastes in drop boxes or other collection containers destined for the Facility;
- 7.3.2.2 Methods of inspecting incoming loads for the presence of Prohibited or Unauthorized Waste;
- 7.3.2.3 Methods for managing and transporting for disposal at an authorized Disposal Site each of the Prohibited Wastes listed in Section 5 if they are discovered at the Facility; and
- 7.3.2.4 Objective criteria and standards for accepting or rejecting loads.
- 7.3.2.5 Methods (that may include rate disincentives) for discouraging Facility users from delivering Solid Waste that is not transported in compliance with Sections 7.3.6 and 7.3.9.
- 7.3.2.6 Methods for addressing all other operating requirements of Section 7.
- 7.3.3 All Authorized Solid Wastes received at the Facility must, within two business days from receipt, be either (1) Processed or appropriately stored or (2) properly disposed.
- 7.3.4 Upon discovery, all Prohibited Wastes shall be removed or managed in accordance with Section 7.3.2.3 of this Franchise.
- 7.3.5 Sorting and Processing areas shall be cleaned on a regular basis, in compliance with plans and procedures required under Section 7.3.2.
- 7.3.6 All vehicles and devices transferring or transporting Solid Waste from the Facility shall be constructed, maintained, and operated to prevent leaking, spilling, or blowing of Solid Waste on-site or while in transit.
- 7.3.7 Neither the Franchisee nor any Subfranchisee shall mix any Source-Separated Recyclable materials brought to the Facility with any other Solid Wastes. Materials recovered at the Facility may be combined with Source-Separated Recyclable Materials for Processing and shipment to markets.

- 7.3.8 The Franchisee and Subfranchisees shall reuse or recycle all uncontaminated Source-Separated Recyclable Materials brought to the Facility.
- 7.3.9 Franchisee shall take reasonable steps to notify and remind haulers that all loaded trucks coming to or leaving the Facility must be covered, or suitably cross-tied to prevent any material from blowing off the load during transit.
- 7.3.10 All recovered materials and processing residuals at the Facility must be stored in bales, drop boxes or otherwise suitably contained. Material storage areas must be maintained in an orderly manner and kept free of litter. Stored materials shall be removed at sufficient frequency to avoid creating nuisance conditions or safety hazards.
- 7.3.11 Contaminated water and sanitary sewage generated on-site shall be disposed of in a manner complying with local, state and federal laws and regulations..
- 7.3.12 Public access to the Facility shall be controlled as necessary to prevent unauthorized entry and dumping.

7.4 Nuisance Prevention and Response Requirements

- 7.4.1 Franchisee shall respond to all citizen complaints on environmental issues (including, but not limited to, blowing debris, fugitive dust or odors, noise, traffic, and vectors). If Franchise receives a complaint, Franchisee shall:
 - 7.4.1.1 Attempt to respond to that complaint within one business day, or sooner as circumstances may require, and retain documentation of unsuccessful attempts; and
 - 7.4.1.2 Log all such complaints by name, date, time and nature of complaint. Each log entry shall be retained for one year.
- 7.4.2 To control blowing or airborne debris, Franchisee shall:
 - 7.4.2.1 Keep all areas within the site and all vehicle access roads within a 1/4 mile of the site free of litter and debris;
 - 7.4.2.2 Patrol the Facility and all vehicle access roads within a 1/4 mile of the site daily;
- 7.4.3 To control odor, dust and noise, the Franchisee shall:
 - 7.4.3.1 Install 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 established by the Franchisee with Metro approval.
 - 7.4.3.2 Take specific measures to control odors in order to avoid or prevent any violation of this Franchise, which measures include (but are not limited

to) adherence to the contents of the odor minimization plan set forth in Section 7.4.3.3.

7.4.3.3 Before the Facility begins operating, submit an odor minimization plan to Metro. This plan shall include (but not be limited to): (1) methods that will be used to minimize, manage, and monitor all odors of any derivation including malodorous loads received at the Facility; (2) procedures for receiving and recording odor complaints; and (3) procedures for immediately investigating any odor complaints in order to determine the cause of odor emissions, and promptly remedying any odor problem at the Facility.

7.4.4 With respect to vector control, the Franchisee shall manage the Facility in a manner that is not conducive to infestation of rodents or insects. If rodent or insect activity becomes apparent, Franchisee shall initiate and implement supplemental vector control measures as specified in the Facility operating procedures or as a modification to such procedures, at and bear all the costs thereof.

7.4.5 The Franchisee shall operate and maintain the Facility to prevent contact of Solid Wastes with stormwater runoff and precipitation.

7.5 Recovery Requirements

7.5.1 Franchisee shall attain and maintain a Recovery Rate of 45 percent for all Incoming Type B Material (as defined in Section 6.1.3) entering the Facility. If Franchisee's Recovery Rate is between 35 percent and 45 percent, Franchisee shall pay an administrative fee, as set forth in Exhibit C, incorporated by this reference as though set forth in full..

7.5.1.1 The Recovery Rate shall be calculated each month based upon the Recovery Rate Calculation Period and upon quantities of Recovered Material and Residue deemed to have resulted from Processing Solid Waste. For purposes of this Franchise, the amount of Recovered Material deemed to have resulted from Processing Incoming Type B Waste shall equal the total amount of Recovered Material resulting from Processing Incoming Type A Waste and Incoming Type B Waste, minus ninety-five percent of the Incoming Type A Waste Processed. The Residue resulting from Processing Incoming Type B Waste shall equal total Outgoing Type F Material generated by the Franchisee minus five percent of Incoming Type A Waste Processed. A diagram illustrating the formula for computing the Recovery Rate is set forth as Exhibit D.

7.5.1.2 Calculation of the Recovery Rate under Section 13.1 shall begin 120 days after commencement of operations at the Facility and enforcement of the

Recovery Rate shall begin 210 days after commencement of operations at the Facility. For purposes of this section, operations shall be deemed to have commenced at the Facility on the date on which the first load of Dry, Non-Putrescible, Mixed Solid Waste is delivered to the Facility.

- 7.5.1.3 Except as specified in Section 7.5.2.2, the recovery rate shall not be less than 35%. Failure to achieve this minimum recovery rate shall result in the issuance of a notice of non-compliance per Section 13.1 of this Franchise.

8. ANNUAL FRANCHISE FEES

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

9. INSURANCE

- 9.1 Franchisee shall purchase and maintain the following types of insurance, insuring Franchisee, its employees, and agents, and naming all Subfranchisees as additional insureds:
- 9.1.1 Broad form comprehensive general liability insurance covering personal injury, property damage, and personal injury with automatic coverage for premises, operations, and product liability. The policy must be endorsed with contractual liability coverage; and
 - 9.1.2 Automobile bodily injury and property damage liability insurance.
- 9.2 Insurance coverage shall be a minimum of \$500,000 per occurrence, \$100,000 per person, and \$50,000 property damage. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000.
- 9.3 Metro, its elected officials, departments, employees, and agents shall be named as Additional Insureds. Notice of any material change or policy cancellation shall be provided to Metro 30 days prior to the change or cancellation.
- 9.4 Franchisee, Subfranchisees, and contractors of Franchisee or Subfranchisees, 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 or the operations of the Facility under this Franchise, including patent infringement claims and any claims or disputes involving subcontractors or Subfranchisees.

11. SURETY BOND/CONDITIONAL LIEN

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

12. COMPLIANCE WITH LAW

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

13. METRO ENFORCEMENT AUTHORITY

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

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

- 13.2 Authorized representatives of Metro shall be permitted access to the premises of the Facility at all reasonable times for the purpose of making inspections and carrying out other necessary functions related to this Franchise. Access to inspect is authorized:
- (a) During all working hours;
 - (b) At other reasonable times with 24 hours notice;
 - (c) At any time without notice when, in the opinion of the Metro Regional Environmental Management Department Director, such notice would defeat the purpose of the entry. In such instance, the Director shall provide a written statement of the purpose for the entry.
- 13.3 The power and right to regulate, in the public interest, the exercise of the privileges granted by this Franchise shall at all times be vested in Metro. Metro reserves the right to establish or amend rules, regulations, fees, or standards regarding matters within Metro's authority, and to enforce all such legal requirements against Franchisee.
- 13.4 At a minimum, Metro may exercise the following oversight rights in the course of administering this Franchise: (1) perform random on-site inspections; (2) conduct an annual franchise audit to assess compliance with operating requirements in this Franchise; (3) conduct an annual audit of Franchisee's inventory and billing records; (4) analyze monthly transaction data; (5) invoice Franchisee for any fees or penalties arising under this Franchise; (6) perform noncompliance investigations; (7) inspect and visually characterize incoming and outgoing loads for the purpose of assessing Prohibited Waste and/or Recoverable Material received and disposed; (8) maintain regular contact with the

Franchisee; and (9) review and approve Franchisee's operating plan and amendments to the plan. In all instances Metro shall take reasonable steps to minimize disruptions to operations at the Facility.

- 13.5 Nothing in this Franchise shall be construed to limit, restrict, curtail, or abrogate any enforcement provision contained in the Metro Code, nor shall this Franchise be construed or interpreted so as to limit or preclude Metro from adopting ordinances that regulate the health, safety, or welfare of any individual or group of individuals within its jurisdiction, notwithstanding any incidental impact that such ordinances may have upon the terms of this Franchise or the Franchisee's operation of the Facility.

14. DISPOSAL RATES AND FEES

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

15. GENERAL CONDITIONS

- 15.1 Franchisee shall be responsible for ensuring that its contractors, agents and Subfranchisees operate in complete compliance with the terms and conditions of this Franchise.
- 15.2 Neither the parent company, if any, of the Franchisee or any Subfranchisee, nor their subsidiaries nor any other Solid Waste facilities under their control shall knowingly accept Metro area Solid Waste at their non-designated facilities, if any, except as authorized by a non-system license issued by Metro.
- 15.3 The granting of this Franchise shall not vest any right or privilege in the Franchisee or Subfranchisee to receive specific quantities of Solid Waste during the term of the Franchise.
- 15.4 Neither this Franchise nor the Franchisee may be conveyed, transferred or assigned without the prior written approval of Metro.

- 15.5 To be effective, a waiver of any term or condition of this Franchise must be in writing, signed by the Executive Officer. Waiver of a term or condition of this Franchise shall not waive nor prejudice Metro's right otherwise to require performance of the same term or condition or any other term or condition.
- 15.6 This Franchise shall be construed, applied, and enforced in accordance with the laws of the State of Oregon and all pertinent provisions of the Metro Code.
- 15.7 If any provision of the Franchise shall be found invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this Franchise shall not be affected.

16. NOTICES

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

Bryan Engelson
Oregon Recycling Systems
9817 A East Burnside St.
Portland, OR 97216

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

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

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

17. REVOCATION

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

18. MODIFICATION

- 18.1 At any time during the life of this Franchise, either the Executive Officer or the Franchisee may propose amendments or modifications to this Franchise. Except as specified in the

Metro Code and Section 5.1.2 of this Franchise, no amendment or modification shall be effective unless it is in writing, approved by the Metro Council, and executed by the Franchisee and the Executive Officer.

18.2 The Executive Officer shall review the Franchise annually, consistent with Section 6 of this Franchise, in order to determine whether the Franchise should be changed and whether a recommendation to that effect needs to be made to the Metro Council. While not exclusive, the following criteria and factors may be used by the Executive Officer in making a determination whether to conduct more than one review in a given year:

18.2.1 Franchisee's compliance history;

18.2.2 Changes in waste volume, waste composition, or operations at the Facility;

18.2.3 Changes in local, state, or federal laws or regulations that should be specifically incorporated into this Franchise;

18.2.4 A significant release into the environment from the Facility;

18.2.5 A significant change or changes to the approved site development plan and/or conceptual design; or

18.2.6 Any change in ownership that Metro finds material or significant.

18.2.7 Community requests for mitigation of impacts to adjacent property resulting from Facility operations.

OREGON RECYCLING SYSTEMS, INC.

METRO

Mike Burton, Metro Executive Officer

Date

Date

PAS:aeY

S:\SHARE\DEPT\MRFTSKF\OrRS\orrs06.cln

EXHIBIT A

SUPPLEMENTARY DEFINITIONS

These definitions are attached strictly for the convenience of the reader, are taken directly from the Metro Code, or State or Federal law, as they were in effect at the time this Agreement was executed.

“Conditionally Exempt Generator” means a generator who generates less than 2.2 pounds of acute hazardous waste as defined within 40 C.F.R. § 261, or who generates less than 220 pounds of hazardous waste in one calendar month.

“Disposal Site” means the land and facilities used for the disposal of Solid Wastes, whether or not open to the public, but does not include Transfer Stations or processing facilities. [Source: Metro Code Section 5.01.010 (g)]

“Executive Officer” means the Metro Executive Officer or the Executive Officer’s designee.

“Franchise” means the authority given by the Council to operate the Facility in accordance with this Franchise Agreement.

“Franchise Fee” means the “Annual Franchise Fee” described and defined in Metro Code § 5.03.030.

“Hazardous Waste” does not include radioactive material or the radioactively contaminated containers and receptacles used in the transportation, storage, use or application of radioactive waste, unless the material, container or receptacle is classified as hazardous waste under paragraph (a), (b) or (c) of this subsection on some basis other than the radioactivity of the material, container or receptacle. Hazardous waste does include all of the following which are not declassified by the commission under ORS 466.015 (3):

(a) Discarded, useless or unwanted materials or residues resulting from any substance or combination of substances intended for the purpose of defoliating plants or for the preventing, destroying, repelling or mitigating of insects, fungi, weeds, rodents or predatory animals, including but not limited to defoliants, desiccants, fungicides, herbicides, insecticides, nematocides and rodenticides.

(b) Residues resulting from any process of industry, manufacturing, trade or business or government or from the development or recovery of any natural resources, if such residues are classified as hazardous by order of the commission, after notice and public hearing. For purposes of classification, the commission must find that the residue, because of its quantity, concentration, or physical, chemical or infectious characteristics may:

(A) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(B) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

(c) Discarded, useless or unwanted containers and receptacles used in the transportation, storage, use or application of the substances described in paragraphs (a) and (b) of this subsection. [Source: ORS 466.005 (7)]

“Infectious Waste” includes:

(a) "Biological waste," which includes blood and blood products, excretions, exudates, secretions, suctionings and other body fluids that cannot be directly discarded into a municipal sewer system, and waste materials saturated with blood or body fluids, but does not include diapers soiled with urine or feces.

(b) "Cultures and stocks," which includes etiologic 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" does not include throat and urine cultures.

(c) "Pathological waste," which includes biopsy materials and all human tissues, anatomical parts that emanate from surgery, obstetrical procedures, autopsy and laboratory procedures and animal carcasses exposed to pathogens in research and the bedding and other waste from such animals. "Pathological waste" does not include teeth or formaldehyde or other preservative agents.

(d) "Sharps," which includes needles, IV tubing with needles attached, scalpel blades, lancets, glass tubes that could be broken during handling and syringes that have been removed from their original sterile containers.

“Metro Regional User Fee” means those fees which pay for fixed costs associated with administrative, financial and engineering services and waste reduction activities of the Metro waste management system. Contingency fees on all costs and general transfers of Solid Waste funds to other Metro departments for direct services are included in this fee. This fee is collected on all Solid Waste originating or disposed of within the region. Metro Code § 5.02.015(o).

“Petroleum Contaminated Soil” means soil into which hydrocarbons, including gasoline, diesel fuel, bunker oil or other petroleum products have been released. Soil that is contaminated with petroleum products but also contaminated with a hazardous waste as defined in ORS 466.005, or a radioactive waste as defined in ORS 469.300, is not included in the term.

“Processing” means the use of any process, mechanism, device, or technique in order to obtain from Solid Waste materials that still have useful physical or chemical properties and can be reused or recycled for some purpose.

“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. [Source: Metro Code Section 5.01.010 (s)]

“Resource Recovery Facility” means an area, building, equipment, process or combination thereof where or by which useful material or energy resources are obtained from Solid Waste.. [Source: Metro Code Section 5.01.010 (v)]

“Solid Waste” means all useless or discarded putrescible and nonputrescible materials, including but not limited to garbage, rubbish, refuse, ashes, waste paper and cardboard, discarded or abandoned vehicles or parts thereof, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals, and infectious waste as defined in ORS 459.386.;

Solid Waste does not include:

- (1) hazardous waste as defined in ORS 466.005;
- (2) materials used for fertilizer or for other similar productive purposes or which are salvageable as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals;

“Special Waste” means any waste (even though it may be part of a delivered load of waste) which comprises:

- (1) containerized waste (e.g., a drum, barrel, portable tank, box, pail, etc.) of a type listed in below; or
- (2) waste transported in a bulk tanker; or
- (3) liquid waste, including (1) outdated, off spec liquid food waste or liquids of any type when the quantity and the load would fail the paint filter liquid (Method 9095, SW-846) test, or (2) more than 25 gallons of free liquid per load;
- (4) any container that once held commercial products or chemicals, unless the container is empty. A container is “empty” for purposes of the preceding clause when:
 - (a) all wastes have been removed that can be removed using the practices commonly employed to remove materials from the type of container, e.g., pouring, pumping, crushing, or aspirating; and
 - (b) one end has been removed (for containers in excess of 25 gallons); and
 - (c) no more than one inch thick (2.54 centimeters) of residue remains on the bottom of the container or inner liner; or
 - (d) no more than 1 percent by weight of the total capacity of the container remains in the container (for containers up to 110 gallons); or

- (e) no more than 0.3 percent by weight of the total capacity of the container remains in the container for containers larger than 110 gallons. Containers that once held acutely hazardous wastes must be triple rinsed with an appropriate solvent or cleaned by an equivalent alternative method. Containers that once held substances regulated under the Federal Insecticide, Fungicide, and Rodenticide Act must be empty according to label instructions or triple rinsed with an appropriate solvent or cleaned by an equivalent method. Plastic containers larger than five gallons that hold any regulated waste must be cut in half or punctured, dry and free of contamination to be accepted as refuse; or
- (5) sludge waste from septic tanks, food service, grease traps, wastewater from commercial laundries, laundromats or car washes; or
 - (6) waste from an industrial process; or
 - (7) waste from a pollution control process; or
 - (8) residue or debris from the cleanup of a spill or release of chemical substances, commercial products or wastes listed in the other parts of this definition; or
 - (9) soil, water, residue, debris, or articles which are contaminated from the cleanup of a site or facility formerly used for the generation, storage, treatment, recycling, reclamation, or
 - (10) chemical containing equipment removed from service (for example – filters, oil filters, cathode ray tubes, lab equipment, acetylene tanks, CFC tanks, refrigeration units, or any other chemical containing equipment); or

“Transfer Station” means a fixed or mobile facilities including but not limited to drop boxes and gondola cars normally used as an adjunct of a Solid Waste collection and disposal system or Resource Recovery system, between a collection route and a processing facility or a Disposal Site. This definition does not include Solid Waste collection vehicles. [Source: Metro Code Section 5.01.010 (z)]

“Yard Debris” means vegetative and woody material generated from residential property or from commercial landscaping activities. "Yard debris" includes landscape waste, grass clippings, leaves, hedge trimmings, stumps and other similar vegetative waste, but does not include demolition debris, painted or treated wood. [Source: Metro Code Section 5.01.010 (cc)].

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LEGAL DESCRIPTION

PARCEL I:

A tract of land in the Peter Guild Donation Land Claim and in Sections 28 and 29; Township 1 North, Range 1 East of the Willamette Meridian, in the County of Multnomah and State of Oregon, described as follows:

Beginning at a point on the South line of the Peter Guild Donation Land Claim, South 80°0'40" West, 75.13 feet from a stone monument in the center of the Nicolai Street on said South line which monument is North 80°00'40" East 2,523.05 feet from the Northwest corner of the William Blackstone Donation Land Claim and in the Southeast corner of Tract E of the division of the South half of the Peter Guild Donation Land Claim among the heirs of Peter Guild; thence North 47° West 920.88 feet; thence South 43° West 30.00 feet to a point on the Southeasterly line of N.W. Yeon Avenue and the true point of beginning of the tract to be described; thence South 43° West along the Northeasterly line of that certain tract of land conveyed to United States Steel Products Company by deed recorded June 11, 1927 in Book 1081, Page 401, Deed Records of Multnomah County, 381.56 feet to the most Westerly corner of said tract; thence North 44°35'20" West 459.10 feet; thence North 43° East 361.55 feet to the Southwesterly line of N.W. Yeon Avenue; thence South 47° East 468.69 feet to the place of beginning.

PARCEL II:

A tract of land in the Peter Guild Donation Land Claim in Section 28, Township 1 North, Range 1 East of the Willamette Meridian, in the County of Multnomah and State of Oregon, described as follows:

Beginning at a point on the South line of the Peter Guild Donation Land Claim distance South 80°0'40" West 75.13 feet from a stone monument in the center of Nicolai Street on said South line, which monument is North 80°00'40" East 2,523.05 feet from the Northwest corner of the William Blackstone Donation Land Claim and is the Southeast corner of Tract "E" of the division of the South half of the Peter Guild Donation Land Claim among the heirs of Peter Guild; thence North 47°00' West 920.88 feet to an iron pipe at the most northerly corner of land conveyed to United States Steel Supply Company by Columbia Steel Company by deed recorded May 11, 1949 in Book 1335, Page 157, Deed Records and also re-recorded October 18, 1949 in Book 1364, Page 567, Deed Records, and also re-recorded May 24, 1950 in Book 1406, Page 137, Deed Records; thence south 43°00' West 23.04 feet to a 5/8 inch iron rod on the Northwesterly line of the dividing line between property of United States Steel Supply Company (now United States Steel Supply Division of United States Steel Corporation) and land now or formerly of Pierce Freight Lines, said 5/8 inch iron rod being the true point of beginning of land to be described; thence from said true point of beginning

along the dividing line aforesaid South 43°00' West 378.52 feet to the most Westerly corner of property of United States Steel Supply Company aforesaid; thence along the Southwesterly line of said property South 44°36'20" East 90.08 feet to a 5/8 inch iron rod; thence North 43°00' East 373.67 feet to a 5/8 inch iron rod; thence North 41°36' West 90.40 feet to a 5/8 inch iron rod and true point of beginning.

PARCELS III:

A tract of land situated in the Northwest one-quarter of Section 28, Township 1 North, Range 1 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, described as follows, to-wit:

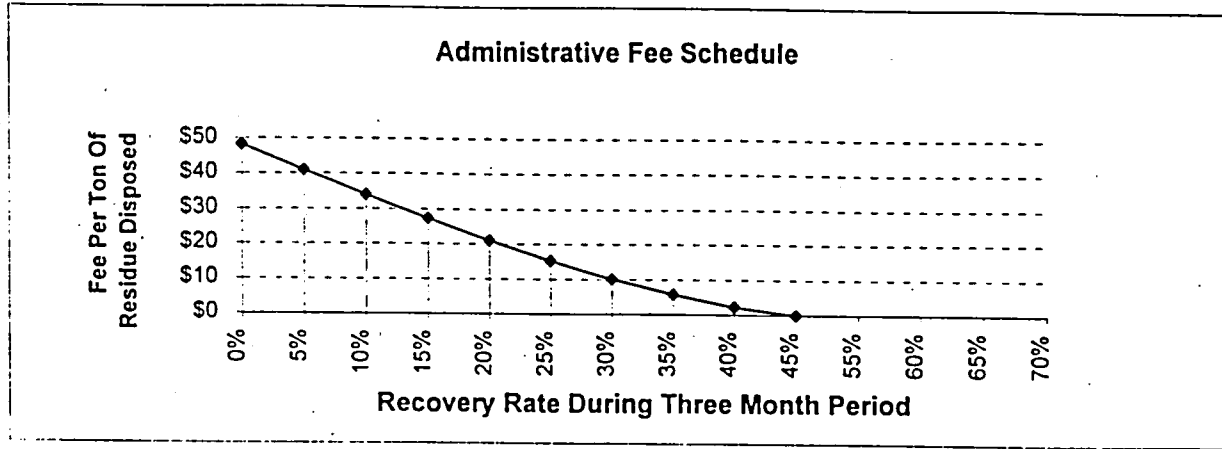
Beginning at a point on the South line of the Peter Guild Donation Land Claim distant South 80°00'40", West 79.13 feet from a stone monument in the center of Nicolai Street on said South line, which monument is North 80°00'40" East 2,523.05 feet from the Northwest corner of the William Blackstone Donation Land Claim and is the Southeast corner of Tract E of the Division of the South half of the Peter Guild Donation Land Claim among the heirs of Peter Guild; thence North 47° West 920.88 feet to an iron pipe at the most Northerly corner of the tract herein described; thence South 43° West 401.46 feet to an iron pipe at the most Westerly corner of the tract herein described which is on the Southwesterly boundary of Tract E above mentioned; thence South 44°36'20" East 600 feet to the South line of the Guild Donation Land Claim in the center of Nicolai Street; thence North 80°00'40" East 534.07 feet to the beginning point of this tract;

EXCEPTING THEREFROM that portion conveyed to the State of Oregon, by and through its State Highway Commission, by deed recorded December 2, 1943 in Book 798; Page 171, Records of Multnomah County, Oregon.

ALSO EXCEPTING THEREFROM that portion conveyed to United States National Bank of Oregon by deed recorded May 18, 1964 in Book 43, Page 241, Records of Multnomah County, Oregon.

ALSO EXCEPTING THEREFROM that portion conveyed to State of Oregon by and through its Department of Transportation, Highway Division, recorded May 22, 1986 in Book 1908, Page 436.

Schedule For Administrative Fees



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

No Administrative fee due if recovery rate exceeds 45%. See Exhibit D for Recovery Rate Calculation Formula.

If the Recovery Rate is less than forty-five percent, Metro will issue Franchisee an invoice for the dollar amount calculated by the following formula:

$$(X*F)+((W-X)*(Y-Z))/5)*F, \text{ where}$$

Z = The Recovery Rate;

Y = The next higher Recovery Rate than Z on the above schedule;

X = The administrative fee on the above schedule corresponding to Y;

W = The administrative fee on the above schedule corresponding to the Recovery Rate that is five percent less than Y; and

F = Tons of Outgoing Type F Material for the third month in the Recovery Rate Calculation Period.

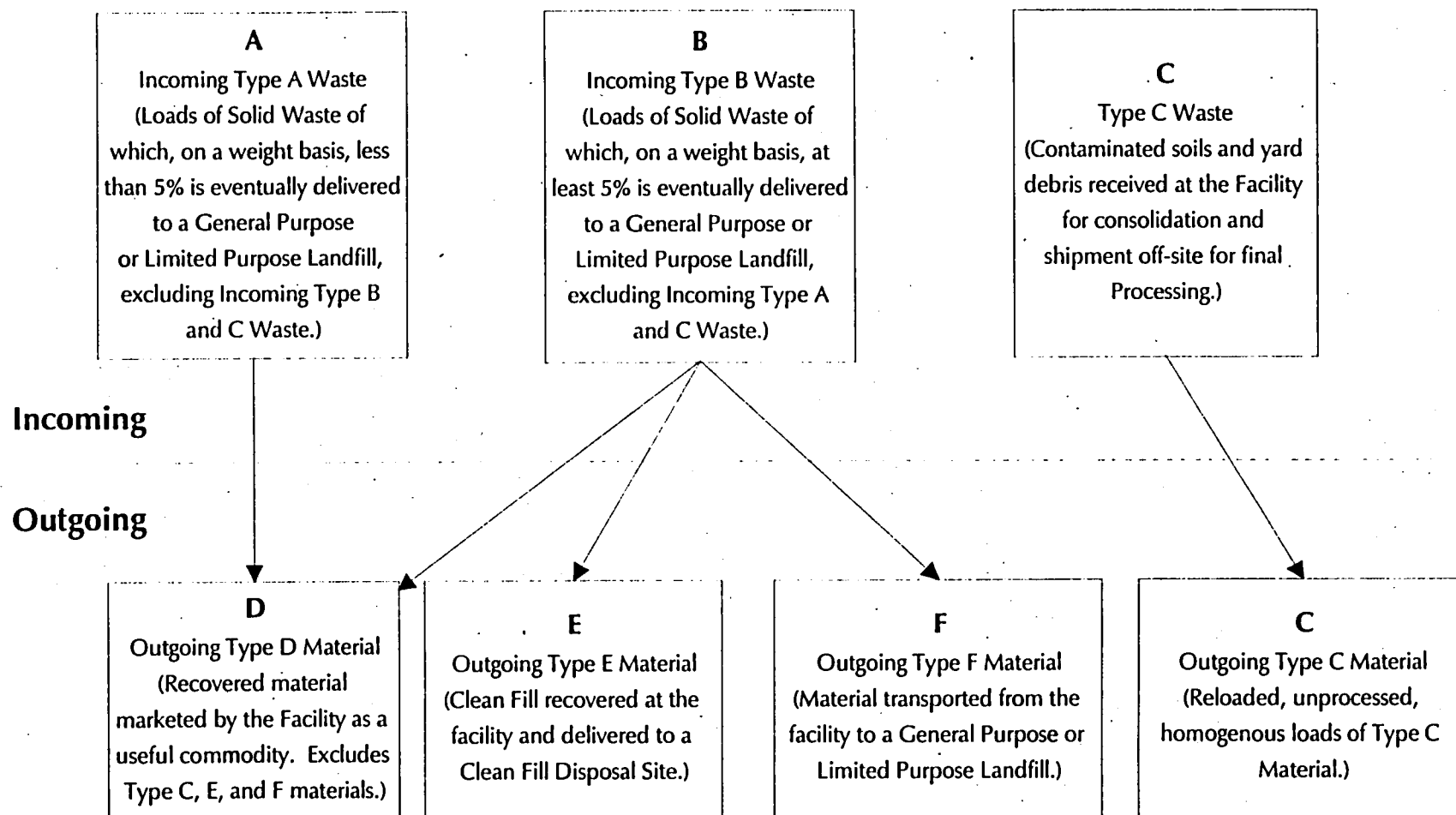
For illustrative purposes only, the table below shows by example how the Recovery Rate and administrative fee are calculated.

Material Type	Tonnages			
	Month 8	Month 9	Month 10	All Three Months
Incoming Type A Waste	1,482.00	1,644.00	1,860.00	4,986.00
Incoming Type B Waste	2,951.00	3,059.00	1,918.00	7,928.00
Type C Waste	0.00	0.00	0.00	0.00
Outgoing Type D Material	2,437.00	2,753.00	2,234.00	7,424.00
Outgoing Type E Material	196.00	350.00	944.00	1,490.00
Outgoing Type F Material	1,800.00	1,600.00	600.00	4,000.00
Mass Balance: Total tons of Solid Waste received at the Facility minus total tons of Residue from the Facility.	0.00	0.00	0.00	0.00
Recovery Rate = (D - 95%A)/(D + F - A)	37.35%	43.97%	47.95%	41.74%

$$\text{Administrative fee} = (X*F)+((W-X)*(Y-Z))/5)*F = (0*600)+((\$2.29 - 0) * (45 - 41.74))/5)*600 = \$895.85$$

Exhibit D

Formula for Computing Recovery Rates from Type B Waste



Recovery Rate for
Type B Waste

$$= \frac{\text{Amount of Type B Recovered}}{\text{Amount of Type B Recovered} + \text{Amount of Type B Disposed}} = \frac{(D-.95A)}{(D-.95A) + (F-.05A)} = \frac{D-.95A}{D + F - A}$$



METRO

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

EXHIBIT E

Unacceptable Waste Incident Tracking Form

Item Number: _____ Date Discovered: _____

Description of Unacceptable Waste: _____

Generator (if known): _____

Waste Hauler: _____

Waste was determined to be: ☐ Hazardous ☐ Non-Hazardous

Disposition: _____

Date Disposed: _____

original = Franchise Administrator

copy = Franchisee

pick = file



June 1996

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Agenda Item Number 8.1

Resolution No. 96-2382, For the Purpose of Confirming Appointments to the Employee Salary Savings Plan Advisory Committee..

**Metro Council Meeting
Thursday, September 12, 1996
2:00 PM - Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF CONFIRMING)
APPOINTMENTS TO THE EMPLOYEE)
SALARY SAVINGS PLAN ADVISORY)
COMMITTEE)

RESOLUTION NO. 96-2382

Introduced by
Mike Burton, Executive Officer

WHEREAS, Metro has established an Employee Salary Savings Plan and Trust originally effective July 1, 1981; and

WHEREAS, the Metro Council adopted Resolution No. 92-1596 on March 26, 1992, authorizing the Executive Officer to appoint a five-person Advisory Committee to give instructions to the trustee with respect to all matters concerning the Plan; and

WHEREAS, the Metro Council adopted Resolution No. 94-1596 on December 22, 1994 requiring the Executive Officer to file a resolution naming the five appointees to the Advisory Committee for confirmation by the Council no later than January 31, 1995; and

WHEREAS, the Executive Officer advised the Council that he wished to review the appointment process and report back in the future to the Council; and

WHEREAS, the Executive Officer has been serving in the capacity of the Advisory Committee on an interim basis; and

WHEREAS, the Executive Officer has requested that interested applicants submit their names for consideration; and

WHEREAS, the Executive Officer has reviewed applicants who have expressed interest in serving on the Employee Salary Savings Plan and has determined who should serve on the Advisory Committee; now therefore,

BE IT RESOLVED,

That the Council confirms the following five members of the Salary Savings Advisory Committee appointed by the Executive Officer:

Kathie Brodie, Administrative Secretary, Metro Washington Park Zoo
Bruce Burnett, Box Office Manager, Civic Stadium and Oregon Convention
Center
Andy Cotugno, Director, Transportation Department
Howard Hansen, Investment Manager, Administrative Services Department
Gerry Uba, Emergency Planning Supervisor, Growth Management Services

ADOPTED by the Metro Council this _____ day of _____, 1996.

Jon Kvistad, Presiding Officer

Approved as to form:

Daniel B. Cooper, General Counsel

STAFF REPORT

RESOLUTION NO. 96-2382, FOR THE PURPOSE OF CONFIRMING APPOINTMENTS TO THE EMPLOYEE SALARY SAVINGS PLAN ADVISORY COMMITTEE

Date: August 2, 1996

Presented by: Mike Burton
Judy Gregory

Background:

Metro established an Employee Salary Savings Plan and Trust which was originally effective on July 1, 1981. The Metro Council adopted Resolution No. 92-1956 on March 26, 1992, authorizing the Executive Officer to appoint a five-person Advisory Committee to give instructions to the trustee with respect to all matters concerning the Plan.

The Metro Council adopted Resolution No. 94-1596 on December 22, 1994 requiring the Executive Officer to file a resolution naming the five appointees to the Advisory Committee for confirmation by the Council no later than January 31, 1995. The Executive Officer advised the Council that he wished to review the appointment process and report back to the Council. During the interim, the Executive Officer has been serving in the capacity of the Advisory Committee.

This review process has been completed and the Executive Officer has requested that interested 401(k) participants indicate their interest and qualifications to him. That process has been completed. The Executive Officer has made the following appointments to the Committee and is forwarding the appointments for Council confirmation:

Kathie Brodie, Administrative Secretary, Metro Washington Park Zoo
Bruce Burnett, Box Office Manager, Civic Stadium & Oregon Convention
Center
Andy Cotugno, Director, Transportation Department
Howard Hansen, Investment Manager, Administrative
Services Department
Gerry Uba, Emergency Planning Supervisor, Growth
Management Services

The employee members of the Committee will oversee the administration of the Plan. The Executive Officer will continue to provide oversight, and Nancy

Meyer, Benefits Manager and Mark Williams, Senior Assistant Counsel, will continue to provide advice, information and counsel to the Committee.

Fiscal Impact: None

Recommendation: The appointees to the Committee include a broad spectrum of 401(k) participants that represent a vertical slice of the organization and a variety of Metro departments. Recommended appointees include both represented and non-represented employees who bring diverse backgrounds, cultures and experience to the Committee. The Executive Officer recommends Council confirmation of the employee appointees to the Employee Salary Savings Plan Advisory Committee.

PLEASE NOTE:

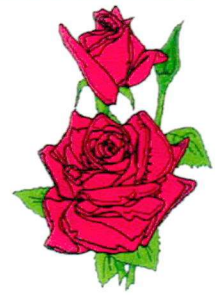
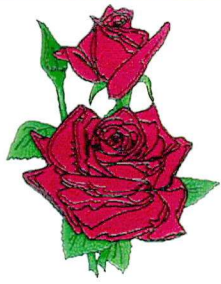
THE DOCUMENTS (ORIGINALS)
RECEIVED INTO THE PUBLIC RECORD
AT THE METRO COUNCIL MEETING
HELD ON SEPTEMBER 12, 1996 ARE
LOCATED IN THE :

FUNCTIONAL PLAN RECORD:
SUPPLEMENTAL DOCUMENTATION

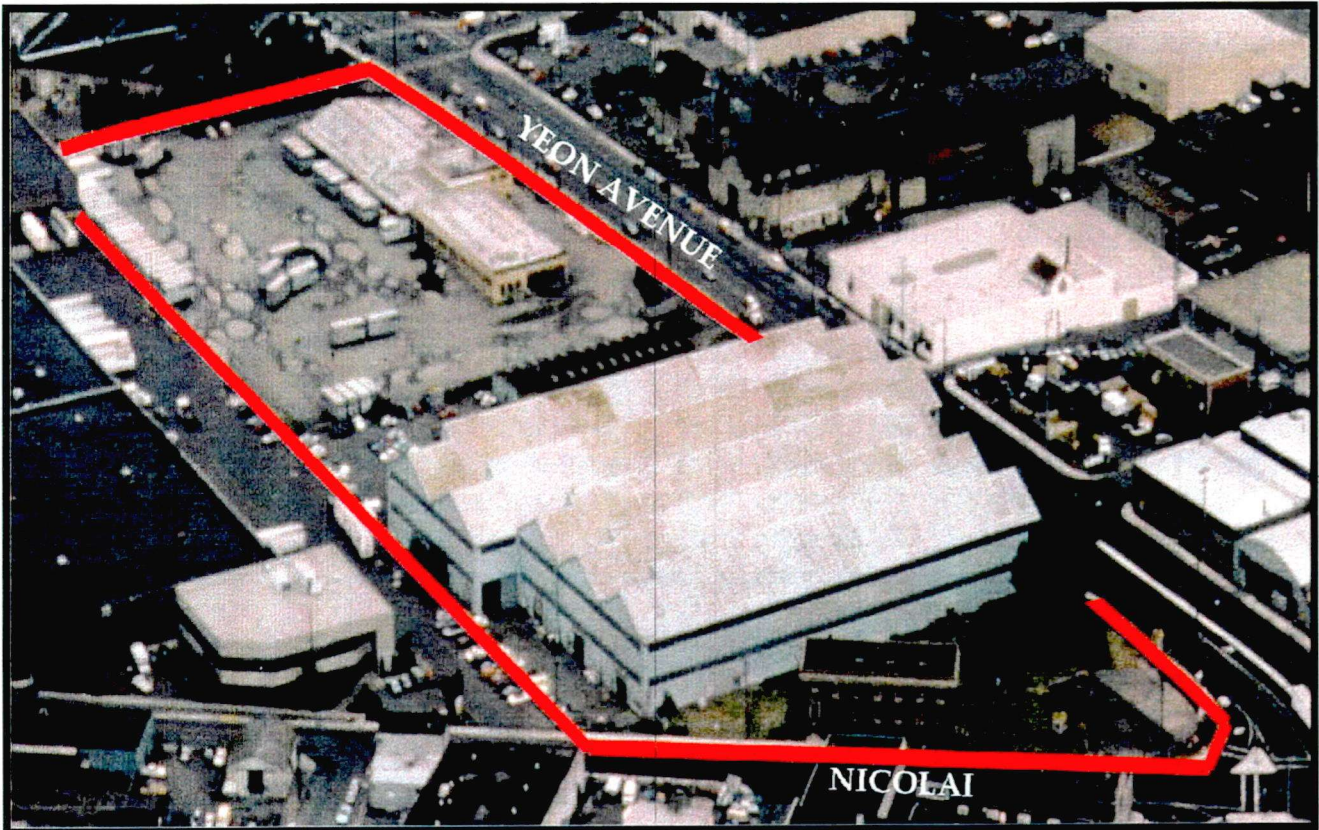
~~LOCATED IN THE COUNCIL RECORD ROOM~~

(Doc. Nos. 091296-34 TO
091296-104)

~ BECKY SHOEMAKER
COUNCIL ARCHIVIST
12/15/98



PORTLAND RECYCLING SERVICE CENTER



PRESENTED BY:



**Oregon
Recycling
Systems, LLC.**

PORTLAND RECYCLING SERVICE CENTER

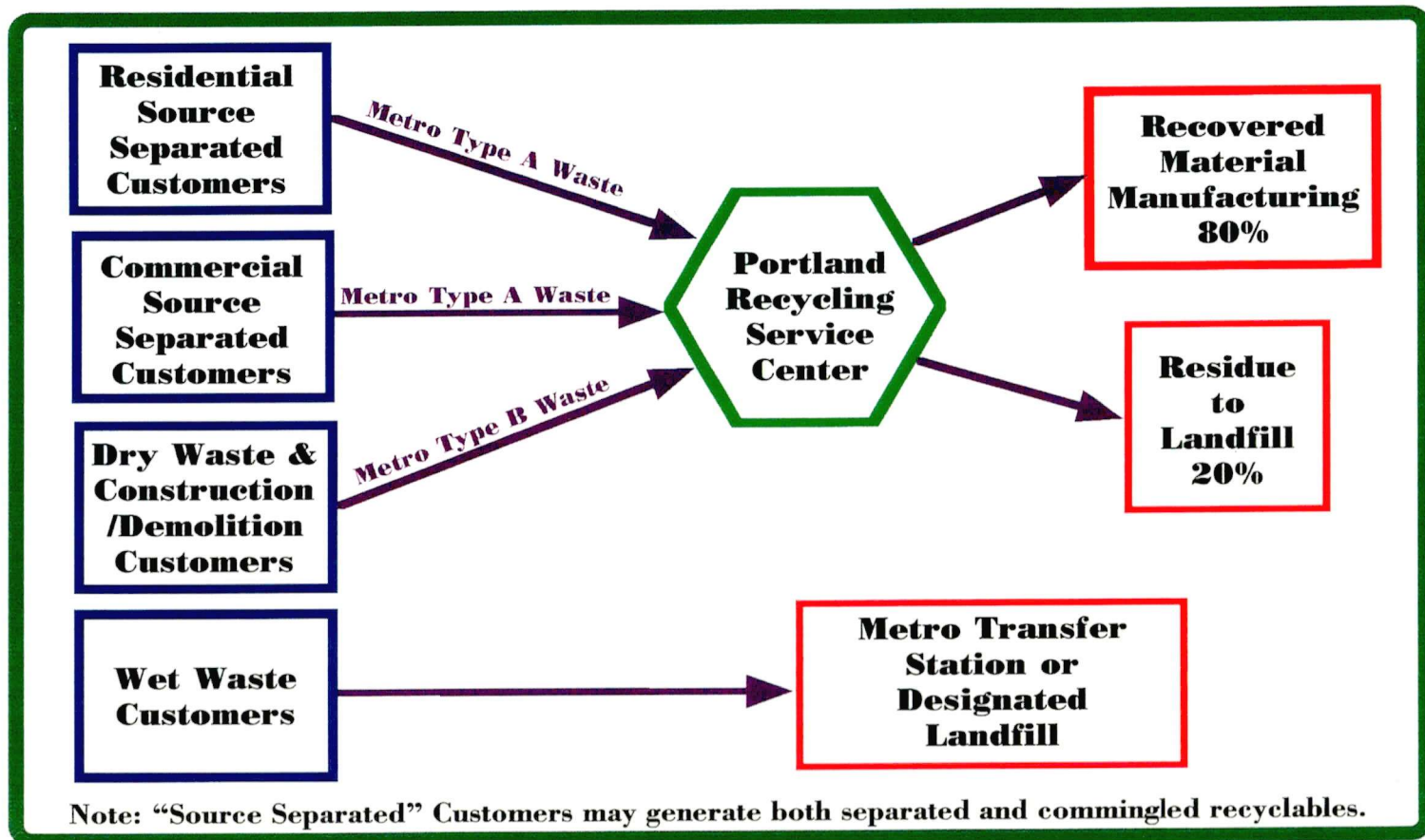
The Portland Recycling Service Center is the result of the collective efforts of Portland's neighborhood solid waste and recycling collection companies during the last few years. The concept has been to create a flexible "one stop" recycling center that will be able to offer the most aggressive recycling programs in the area. This facility will do that. The facility is actually several recycling centers combined into one site. First and foremost, the site will be one of Portland's largest source separated recycling market centers. In addition, the facility will provide aggressive recycling processing for commingled recyclables and dry waste.

The site has been developed to be the center for most traditional recycling programs as well as an "incubator" site for new and innovative recycling approaches. This facility offers the opportunity for the local collection companies to provide state of the art recycling services as well as the environment to develop new and more effective programs in the future. The primary emphasis of the facility is the "one stop" market approach for recycled materials and dry waste processing. With this approach Oregon Recycling Systems will maximize the value and efficiency of existing and

future source separated and dry waste recovery programs. Beyond the source separated programs and dry waste recycling operations the facility will be able to function as a recycling technology and program development center for new ideas and innovations.

Oregon Recycling Systems has solicited proposals from a number of businesses that utilize recovered materials in the manufacture of their products. The first major result of that effort is the agreement with the Jefferson Smurfit Corporation to move their primary Northwest recycling operations onto the site. Oregon Recycling Systems hopes to add a plastics recycling company and a wood recycling company to their list of tenants in the near future as a part of the envisioned "Incubator" program.

Oregon Recycling Systems member companies previously have had only limited access to a recycling facility for their commercial customers. As a result they have been at a competitive disadvantage in the unfranchised commercial collection and service marketplace in the City of Portland and Multnomah County.



OPERATIONS

Material Collection

ORS will solicit and receive primarily two material streams. The first and primary one is the source separated material stream from commercial businesses and franchised residential customers. This will include separated and commingled recyclables. The second material stream consists of dry waste from commercial businesses and construction/demolition projects.

Our customers will be directed to set out material in two or three containers. One container for wet waste and one for segregated recyclables and one for dry waste. The wet waste will be delivered to a separate Metro transfer station. The source separated recyclables and the dry waste will be delivered to the Portland Recycling Service Center. ORS member company commercial customers will be directed to place any of the following materials into the recyclable containers:

- Paper Fiber
- Wood (Not Yard Debris)
- Metal
- Glass
- Plastic

Construction demolition loads - the customers will be directed to put the following into the loads:

- Wood
- Paper Fiber
- Metal
- Plastic
- Glass
- Drywall
- Inert rubble such as brick, tile or other materials that can be ground for aggregate value.

In both cases the commingled materials or the dry waste loads containing recyclable materials on the lists above will be sorted into the various market categories and prepared either by consolidation or baling for shipment to the appropriate markets. The commingled recyclables are expected to be dry and readily sorted on one of two sorting belts. Based on the operations of other facilities we expect that there will be residue that will require disposal, however, it will be our goal to minimize that as it is an expense.

General Operations

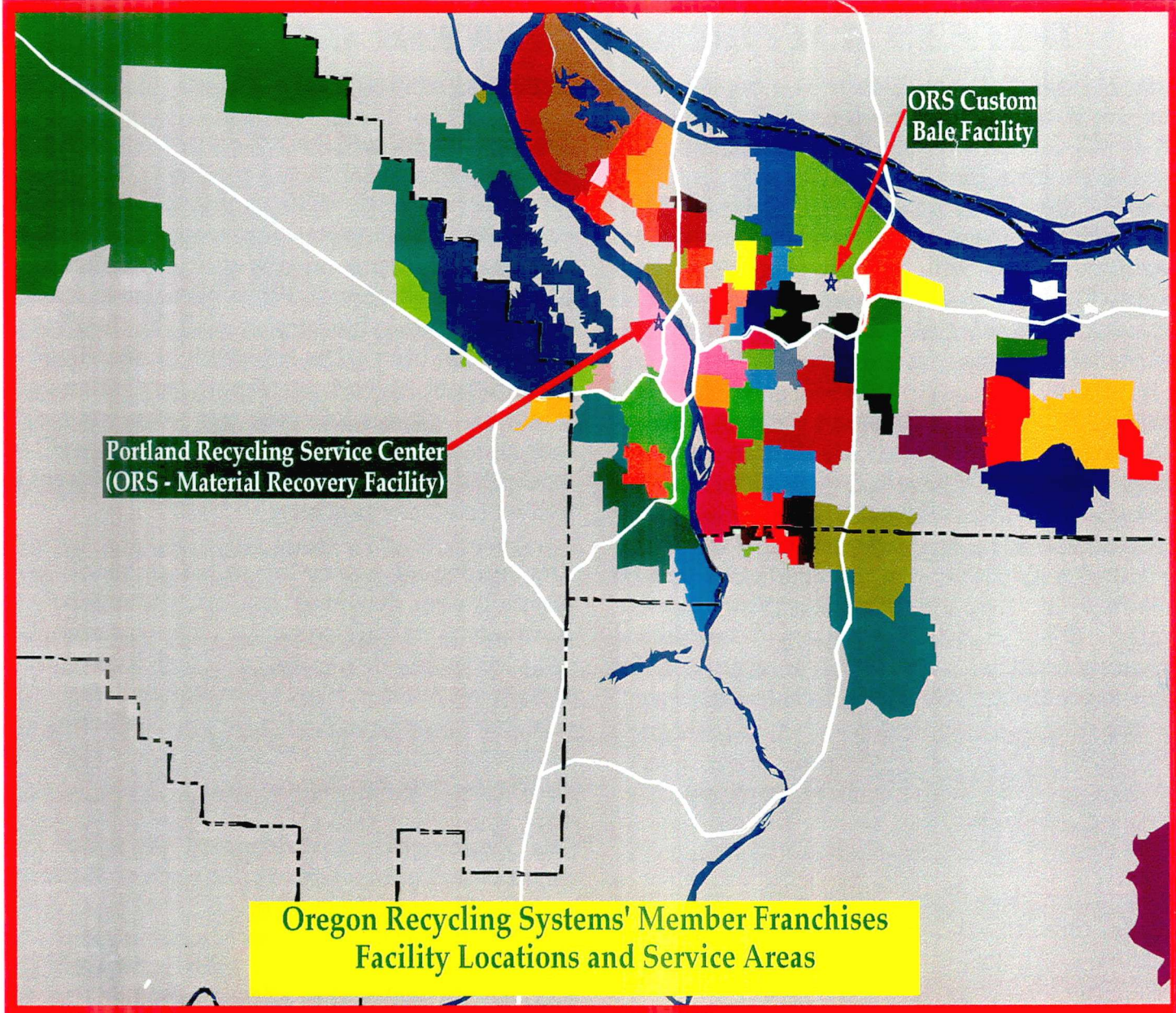
The operations will be conducted according to the type of material that is received. The source separated materials will be unloaded directly into baling or consolidation bunkers or delivered to end user processors on site, such as the Jefferson Smurfit Corporation. When there is sufficient material in the bunkers it will be batch fed through the baler. The bales will be warehoused for shipment to markets. For materials like used motor oil, glass, aggregate and other materials that are not suitable for baling, they will be stockpiled until there is enough for a truckload to deliver to off site markets.

The residential source separated materials will normally be delivered by compartmentalized commercial collection trucks. The commingled recyclables and dry waste will be delivered by a variety of vehicles ranging from front, rear and side loader garbage trucks that are collecting on dedicated routes to roll off trucks that are delivering drop boxes.

The commingled recyclables and dry waste will be unloaded onto a tipping floor where the large recoverable materials will be removed first. After this, the material will be sent to the screens and sorting belts where the remainder of the recoverable material is sorted into bunkers for baling or consolidation. Any residue will be loaded into containers that will be removed from the site within a 24 hour period.

At no time do the operators of the facility intend to solicit material that would include yard debris or other decomposable material other than paper. The primary operations design of the facility emphasizes the collection of source separated recyclables. In addition, the operations will handle a "wet/dry" collection system, where the "dry" recyclables and waste are collected separate from the "wet" garbage.

The facility design is a flexible one that allows the operations to adjust to respond to changes in materials and markets as well as government regulations. In addition, ORS is soliciting co-tenants that will be able to utilize recovered materials in their processes.



ORS is a limited liability company owned by 58 people and companies who are involved in the collection of recyclables and solid waste throughout the Portland Area. Above is a color map that indicates the residential franchised areas served by the member companies. At the heart of the motivation behind the formation of this project is the desire for the member companies to be able to offer state of the art recycling programs to the commercial customers located in their residential franchises at competitive prices. Currently, commercial collection in Portland and much of Multnomah County is not franchised. Most of the large commercial accounts require their collection service vendor to provide aggressive recycling options. ORS member companies will be able to respond with a competitive and responsive offering with the completion of this facility.

Please Contact Oregon Recycling Systems at 261-7300 with any questions or comments.

**Oregon Recycling
Systems, L.L.C.
Business Members**

AA Recycling, L.L.C.
Alberta Sanitary Service
Alpine Sanitary Service
American Sanitary Service
Argay Disposal
Baldwin Sanitary
Blaine's Sanitary
Borgens Disposal Service
City Sanitary
Cloudburst Recycling
Progressive Recycling
Columbia Sanitary
Moreland Sanitary

Dave's Sanitary
DeYoung Sanitary
Deines Bros Sanitary
Eastside Recycling
Eastside Waste & Recycling
Eckert Sanitary
Egger Sanitary
Elmer's Sanitary
Fleming Sanitary
Gresham Sanitary
Heiberg Sanitary
Hohnstein Garbage & Recycling
Irvington Sanitary

Kiltow Sanitary
Multnomah Disposal
Peter Walker & Son Garbage
Portland Disposal & Recycling
Refuse Removal
Rockwood Solid Waste
Schnell, Inc.
Sunset Garbage Collection
Swatco Sanitary
Trashco Sanitary
Twelve Mile Disposal
Vogel Brothers
Wacker Sanitary

Walker Garbage & Recycling
Weber Disposal Service
Weisenfluh Sanitary Service
Weitzel's Garbage & Recycling
Westside Recycling
West Slope Garbage Service
Wooten Sanitary Service
Jack Young Sanitary Inc.
Toudt Brothers Sanitary Service
Cedar Mill Disposal
Dee's Sanitary Service
Dunthorpe Sanitary Service
Lehl Disposal

Metro
Regional Environmental
Management Department

Franchise Management

August 1996

A Report by the Office of the Auditor



METRO

Alexis Dow, CPA
Metro Auditor



METRO

OFFICE OF THE AUDITOR

August 27, 1996

**Mike Burton, Executive Officer
Councilor Jon Kvistad, Presiding Officer
Councilor Patricia McCaig
Councilor Ruth McFarland**

**Councilor Susan McLain
Councilor Rod Monroe
Councilor Don Morissette
Councilor Ed Washington**

Re: Review of Regional Environmental Management Department's Franchise Management

Dear Mr. Burton and Councilors:

The accompanying report covers our review of solid waste franchise management.

Metro is responsible for managing solid waste within Metro boundaries. Although most solid waste is hauled to Metro-owned transfer stations, approximately 15% of solid waste is taken to facilities franchised by Metro. These facilities play a key role in reducing the amount of solid waste that needs to be transported and stored in the region's general purpose landfill.

Our review of solid waste franchise management was undertaken as part of Metro's overall annual auditing program. Its purpose was: to evaluate how well franchise and license provisions of Metro's Code serve its policies, identify any changes needed in the provisions to correct inconsistencies, and evaluate administration of franchises and licenses by the various Metro departments and divisions.

We identified areas for improvements, including:

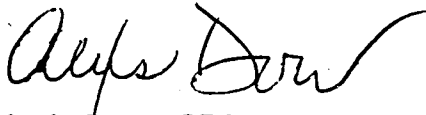
- overhauling the Metro Code provisions regulating franchises and licenses for solid waste processing,**
- clarifying a number of policies affecting primary functions of the solid waste system, and**
- regulating Metro-authorized solid waste facilities.**

Mr. Burton and Council
August 27, 1996
Page Two

The Executive Officer agrees with our recommendations and has begun implementing them. The last section of this report presents his written response.

We appreciate the cooperation and assistance provided by staff from the several departments included in this audit.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Alexis Dow", with a long horizontal flourish extending to the right.

Alexis Dow, CPA
Metro Auditor

Auditor: Leo Kenyon

Metro
Regional Environmental
Management Department

Franchise Management

August 1996

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METRO

Alexis Dow, CPA
Metro Auditor

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Executive Summary

Metro's Regional Environmental Management Department currently administers franchises or licenses for 21 privately owned solid waste processing facilities. These facilities receive solid waste, process it for recovery and recycling, and transfer the unusable remainder to landfills for disposal. Franchise or license applications from additional facilities are pending. As part of our annual audit plan, we reviewed Metro's solid waste franchise and license program to:

- evaluate how well the franchise and license provisions of Metro's Code serve Metro's policies and identify any changes needed in the provisions to correct existing inconsistencies, and
- evaluate the administration of franchises and licenses by the various Metro departments and divisions.

We found several areas requiring improvement. In brief, we recommend that the Executive Officer, assisted by Regional Environmental Management Department staff:

- comprehensively revise the franchise provisions of Metro's Code,
- promptly request the Council to reaffirm or modify the franchise provisions of Metro's Code relating to vertical integration of facilities, and
- strengthen the regulation system for Metro-authorized solid waste facilities and develop oversight procedures for them.

The Franchise Provisions in Metro's Code Need to be Overhauled

The franchise provisions in Metro's Code regulating solid waste processing facilities were adopted in 1981 and many of them remain unchanged. Metro officials have recognized for more than five years that the Code provisions covering these facilities need major revisions to be in line with changes that have occurred since that time. The existing Code provisions are probably sufficient for approving current applications, provided that the Council is

willing to grant variances from the provisions, but a comprehensive update is in order.

Regional Environmental Management Department staff have committed to revising the franchise provisions and have estimated the resources that may be required for a comprehensive Code revision to regulate all of the existing, proposed and potential solid waste facilities. Department staff advised us that they intend to develop such provisions while discussing a number of policy issues with the Council and affected parties. We recommended that the Executive Officer, assisted by Regional Environmental Management Department staff, ask the Council to resolve a number of policy issues; then thoroughly identify and document the Code changes needed. The Executive Officer should then present these needed changes to the Council with sufficient lead time to permit the Council to review and approve them.

**Questions
Regarding
Vertical
Integration Need
Prompt
Resolution**

A long-standing Metro policy concern has been the potential negative effects of vertical integration on the solid waste system. Vertical integration is the control by a private firm of two or more of the primary functions of a solid waste system—collection, processing, transfer, hauling, and disposal. There was a fear that one company could dominate other sectors of the solid waste industry, resulting in adverse effects on the public through higher-than-market prices, deteriorated services, or both.

The advisability of continuing such a policy has more recently been called into question. The new Regional Solid Waste Management Plan, issued in January 1996, suggests that the policy may need to be changed so as not to impede the development of mixed dry waste recycling facilities. Several Metro officials agree with this observation and question whether the reasons for the policy are still valid, and whether the provisions of the Code concerning vertically integrated facilities should be modified or eliminated. Two variances to this Code provision have been granted in the past, and several franchise applications currently under review contain requests for the same variances. There are some concerns

about granting these variances because of the potential adverse effect vertically integrated facilities may have on prices and services as well as on the solid waste system and Metro's revenues.

We recommend that the Executive Officer, assisted by Department staff, promptly present findings, conclusions and recommendations to the Council seeking a resolution to this question of whether variances to the Code provision should be continued.

**Franchise
Transfer
Provisions in the
Code Need
Clarification**

A company that owns landfills and collection and hauling companies purchased the controlling interests of a Metro-franchised material recovery facility. The franchisee continued to exist and had undergone only a change in control or ownership. According to Metro's General Counsel, the franchise between Metro and the franchisee had not been transferred or assigned; therefore the revamped company was not required to file an application for a new franchise to be reviewed and approved by the Council.

After the purchase, the revamped company still conformed to the Code provisions because it continued to receive wastes only from its own haulers, not non-affiliated ones. The company, however, became much more vertically integrated because it controlled all of the primary functions of the solid waste system. Metro's General Counsel and several Regional Environmental Management Department staff told us that it may be desirable to review any changes in ownership of a franchise in order to prevent harmful aspects of vertical integration. The General Counsel said that franchise agreements could contain requirements that a change in ownership would require Council approval.

We recommended that Metro's General Counsel, after consulting with the Council, determine whether franchise agreements should require that changes in franchisee ownership be treated as transfers under the Code and subject to the review and approval of the Council. If that

is the decision, both the franchise agreements and the Code should be clarified.

**Franchise
Oversight
Procedures Need
Revision**

Oversight of existing franchises and licenses is inconsistent. Problems include (1) insufficient levels of review, lessening assurance that franchisees and licensees are complying with requirements, and (2) inattention to administrative detail, causing some franchise agreements to lapse inadvertently and bills for franchise fees to be submitted late. Regional Environmental Management Department staff are currently considering extensive efforts to correct this problem including several field inspections and investigations of facilities each year as well as analysis of financial data and an annual audit. Department staff advised us that they do not yet have a definite program for this oversight. However, the recently appointed franchise administrator is developing an operating plan for administration of Metro's solid waste facility regulation program.

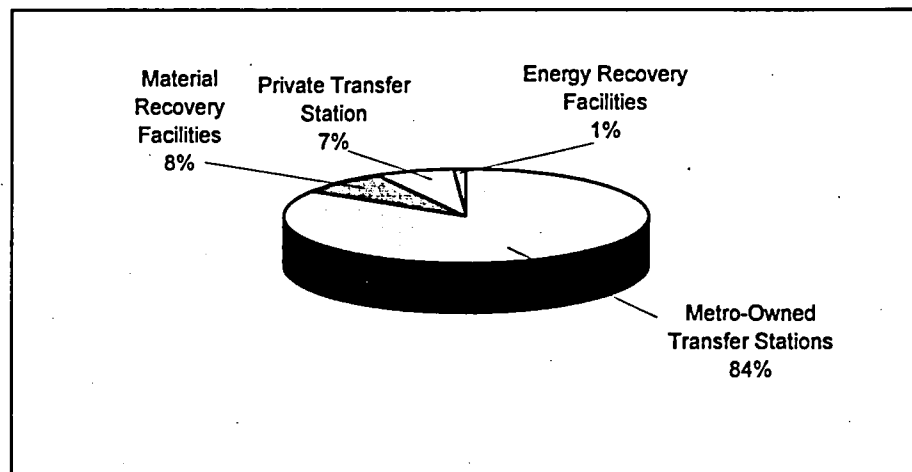
We recommend several measures that should be included in this operating plan to assure that each facility is adequately inspected. We also recommend that the responsibilities of each Metro department performing the inspections be clearly defined and documented so that changes in staff or other matters will not adversely affect coordination of the inspections.

Chapter 1

Introduction

Metro is the local government unit responsible for planning and overseeing the operation of solid waste management in the urban and suburban areas of Multnomah, Clackamas and Washington Counties. In calendar year 1995, the entire tri-county area generated slightly more than 2 million tons of waste. Slightly more than half of it was mixed solid waste¹, much of which was hauled to Metro-owned transfer stations, but a significant part was taken to franchised facilities, which were of three main types:

Chart 1-1: Disposition of Mixed Solid Waste in Calendar Year 1995



Material recovery facilities receive mixed solid waste from haulers, process it to recycle and recover usable materials, and dispose of the unusable materials by placing them in, or transporting them to, a landfill.

Private transfer station. The third transfer station in the Metro area (Forest Grove) is owned by a private company. As a transfer station, it does not recycle or recover wastes.

Energy recovery facilities recover mixed solid wastes and process them to utilize the heat content or other forms of energy derived from the material.

¹The remainder was special waste, source-separated recycling waste, and source-separated fuel/energy waste.

**Franchise and
Licensing
Responsibilities**

As of July 1996, Metro's Regional Environmental Management Department is responsible for ten active franchises and three others that have expired and are in the process of renewal. The Department is also reviewing applications for two new franchises, and a third application is expected. Appendix A lists all of the existing and expired franchises and the new applicants as of July 1996.

Also as of July 1996, Metro administers eight licenses to transport solid wastes generated inside Metro's service area to disposal, recycling, or other facilities outside Metro's solid waste system. These are called "non-system licenses." Appendix A also lists these eight non-system license holders.

All franchisees are exempt from having their rates set by Metro except for the Forest Grove transfer station². The exempt franchisees have variances that allow them to (1) more readily adjust to market changes for recycled products and (2) provide prices that encourage haulers to bring recyclable materials to their facilities. While these franchisees are exempt from collecting and remitting Metro fees on incoming waste received, they must pay all Metro charges associated with disposing of the residues as well as excise taxes where applicable. Non-system licensees also pay Metro charges, including excise taxes, on wastes hauled out of the Metro area.

The Regional Environmental Management Department formed a special franchise review team to process pending applications. The team is currently reviewing the applications, as well as existing franchise agreements, and developing procedures for authorizing and managing them. The team decided the most expeditious and fair approach was to first develop a "franchise template" which would establish a format for all current and future franchisees. The template addresses basic operational requirements and

² The forest Grove facility's rates are set by Metro. Since it is a transfer station and does not recycle or recover wastes, Metro's Code requires the transfer station to pay Metro's user fees and excise taxes, Oregon State Department of Environmental Quality fees, and local enhancement fees on wastes received from the Metro area and hauled out of the facility.

a regulatory mechanism for monitoring each franchise. The template will also address problems encountered in previous franchise agreements.

These templates have been reviewed extensively by the Regional Environmental Management Department staff, local governments, the Oregon State Department of Environmental Quality, current franchisees, franchise applicants, individual members of the Regional Environmental Management Committee and the Executive Officer's staff. The concepts were also reviewed with the Solid Waste Advisory Committee. The most recently granted franchise application was submitted and approved by the Council in June 1996 using the template format.

The Regional Environmental Management Department recognized that the increasing number and type of solid waste processing facilities called for (1) an improved regulatory system including code refinements and operating procedures, as well as (2) a strong system for regulating them once they were authorized. This report presents our assessment of the existing systems and suggestions for improving them.

**Objectives,
Scope and
Methodology**

We undertook this review in accordance with our annual audit plan. Our objective was to assess compliance with the franchise and non-system license provisions of the Metro Code, as well as compliance with the specific provisions of each franchise and non-system license. To do this, we reviewed pertinent Code sections, Metro documents and reports relating to solid waste systems, other audit reports, prior solid waste management ordinances and resolutions, excerpts from Metro's 5-year financial plan, the Regional Solid Waste Management Plan, and other miscellaneous sources of information on franchises and non-systems licenses.

We also prepared a risk assessment (Appendix B) describing what might result from deviating from the Code provisions and asked the Regional Environmental Management Department to:

- identify the individuals responsible for administering each of the pertinent Code sections,
- tell us what each of these individuals did to minimize the identified risks, and
- provide the documentation we needed to test compliance.

Using this information, we then interviewed the responsible individuals in various divisions of the Regional Environmental Management Department and Metro's Accounting Division, the Office of General Counsel as well as the Council's staff.

This audit was done in accordance with generally accepted government auditing standards. Field work took place between January and July 1996.

Chapter 2

Franchise Provisions of Metro Code Need Comprehensive Revision

In fiscal year 1991-92, Metro had scheduled an overhaul of the franchise provisions of the Metro Code. To date, this has not been done. While greatly in need of revision, the current franchise provisions of the Code are probably adequate for approving current applications, provided the Council grants the needed variances. The Council has rejected previous proposals for changing franchise provisions of the Code, finding them to be insufficiently supported or presented prematurely. These missteps, together with the substantial amount of effort needed to revise the franchise provisions, point to a need for obtaining policy guidance from the Council on a number of issues before proceeding with the necessary revisions.

Need for Code Revision Has Long Been Acknowledged

Many of the Metro Code's regulatory franchise provisions remain unchanged since they were first authorized in 1981. Since that time, however, considerable change has occurred in the region's solid waste management system, including development of new types of facilities, decidedly different funding arrangements, and substantially more private initiative than originally anticipated.

Comprehensive reviews of the franchise provisions have been recommended for years but have not been conducted. As early as 1991, Metro officials recognized that the existing Code's franchise provisions contained unclear and ambiguous language and were "in need of an overhaul." That overhaul, scheduled for fiscal year 1991-92, was not done.

In November 1994, a former Solid Waste Director reported a continued need to develop "a logically consistent franchise code that defines the relationships that Metro needs to establish with the increasing number and variety of private sector processing and disposal facilities." Other

Metro officials agreed, citing the changes Metro is proposing for franchises for material recovery facilities and organic waste demonstration facilities.

Regional Environmental Management Department staff advised us that the current solid waste industry apparently is moving toward more diverse, privately owned and operated waste handling facilities. The facilities now being proposed and operated by the private sector require a different management approach than that provided in the current Code. The staff said the new environment suggests that Metro's Code should probably reflect more of a "regulatory" approach to managing Metro's solid waste responsibilities than it does now..

**Current Code
Provisions Are
Probably
Adequate if
Council Grants
Variances**

Metro will need to take action on several franchise applications before any comprehensive review of the Code's franchise provisions can be undertaken. One new franchise for a material recovery facility was granted in June 1996 and contained several variances to the Code. Another application being considered by the Council contains requests for identical variances. Other pending applications are also expected to request similar variances.

The Regional Environmental Management Department's material recovery facility franchise review team, as well as other Metro officials, believe the existing franchise provisions in the Code, as far as they go, are probably adequate for franchising proposed facilities. The team intends to review pending applications under the existing Code provisions and ask the Council to grant certain variances. However, the team has identified several policy issues needing resolution by the Council. These include:

- Should Metro's Code provisions prohibiting vertically integrated operating structures involving franchised facilities be eliminated or modified, and/or should Metro continue to grant variances to this provision in the Code? (This provision is discussed more fully in chapter 3).

- What is a reasonable and achievable recovery rate for material recovery facilities?

Regional Environmental Management staff believe that efforts to revise the Code should proceed simultaneously with Council discussion on these and several other policy issues discussed elsewhere in this chapter. They said some of the issues have already been addressed in the Regional Solid Waste Management Plan and in discussions with individual members of the Council who provided good direction.

**Council Has
Rejected Past
Code Revisions
as Premature or
Incomplete**

Regional Environmental Management Department staff have sometimes asked the Council to approve changes in the Code's franchise provisions before the proposed changes have been thoroughly reviewed, discussed, and approved. In those instances Department staff had not provided sufficient lead time and documentation to the Council to allow adequate deliberation of the issues.

The most recent example occurred in November 1995, when the Department submitted a proposed ordinance to the Council's Regional Environmental Management Committee. The most substantive change in this proposed ordinance authorized Metro's Executive Officer to approve "demonstration facilities" for up to 18 months of operation. Council staff who reviewed the proposal told us that it did not include sufficient information to allow the Committee to decide on the request and had not been reviewed and endorsed by appropriate advisory committees, the public, or affected processors. The Committee rejected the proposed ordinance and requested more documentation. Subsequently, the Department withdrew the request for the ordinance.

An exception—and one that was successfully completed—was a proposed change authorizing a licensing program for yard debris processors. The documentation and proposed ordinance were developed by a regional work group which included representatives from local yard debris processors, local governments, Metro, and the Oregon State Department of Environmental Quality. The proposals were

unanimously approved by Metro's Solid Waste Advisory Committee and discussed far enough in advance to permit their thorough discussion before the Council had to decide on their adoption. The Council promptly adopted the changes and they have been included in the Code.

**Policy Matters
Need
Clarification
Before Franchise
Provisions of the
Code Can Be
Successfully
Revised**

Revising the Code's franchise provisions will require considerable effort. The team currently reviewing franchise applications for material recovery facilities estimates it will take 2,000 staff hours to comprehensively revise the Code provisions.

Department staff have said they cannot successfully complete revising the Code until the Council has provided guidance on a number of policy issues affecting how the Code would be revised. We think seeking such clarification is an important first step. Besides the two issues raised above with regard to the current applications, other policy issues have been raised by the review team and other Metro officials including:

- How should Metro obtain its revenue requirements from solid waste processing facilities?
- How should Metro guarantee a sufficient flow of solid waste to ensure that its transfer stations remain viable?
- What should Metro's role be in regulating site and environmental factors in solid waste processing facilities?
- What number and type of solid waste processing facilities should be encouraged by Metro?
- Where should specific recoverable materials be directed?
- What should be the role of Metro's transfer stations in recovering solid wastes?
- Should Metro continue to allow non-system licenses when their use to transfer wastes to undesignated

facilities may significantly adversely affect Metro's transfer stations and revenues?

- Should the user fee component in Metro's fees be raised to recover revenues now being lost by Metro to undesignated landfills?
- Is the Metro Code too generous with respect to material recovery facilities, thus allowing them to divert too large a share of Metro's current revenues?
- Should Metro's franchise fees be set at levels which will reimburse the costs of approving and monitoring the franchises?

Conclusion A thorough revision of the Metro Code's franchise provisions is clearly needed. Although the current provisions can probably be used to approve the material recovery facility applications now pending, consideration of these applications represents an opportunity to improve the process. More specifically, in making recommendations to the Council about the pending franchise applications, the Regional Environmental Management Department and Metro's Executive Officer could provide a complete description and justification of the actions needed to franchise each facility. Providing sufficient lead time to the Council to study and deliberate this information is vitally important. Doing so would allow the Council a better opportunity to provide guidance on the policy issues regarding applications as well as the more comprehensive revision of the franchise provisions of the Metro Code.

Chapter 3

Metro Code Provisions Related to Vertically Integrated Franchises Should Be Reconsidered

Currently, Metro's stated policy is to avoid negative impacts from vertical integration in solid waste collection and processing.

Table 3-1: Vertical Integration in the Solid Waste System

collection	<i>Vertical integration is the control by a private firm of two or more of the primary functions of a solid waste system.</i>
↓	
processing	<i>The potential negative effects of vertical integration in this situation are above market prices and/or service deterioration.</i>
↓	
transfer and hauling	
↓	
disposal	

We understand the policy of avoiding such arrangements was intended to prevent vertically integrated companies from discriminating against competing haulers. Metro's Code contains a specific provision that prohibits franchisees who are also haulers from receiving wastes from other haulers.

In September 1994 and again in June 1996 the Council granted variances to the Code provision and approved franchises for two vertically integrated material recovery facilities. A third Metro-franchised facility became vertically integrated in the broader sense in May 1995 when a company owning a landfill and collection and hauling businesses purchased the outstanding stock of a material recovery facility. Regional Environmental Management Department staff are currently reviewing and considering several franchise renewals and new applications for material recovery facilities, some of which

may require variances to the Code provision or Council guidance on the broader vertical integration issue.

Arguments can be made both for discontinuing and for keeping the current policy and the Code provision.

Table 3-2: Vertical Integration Arguments

	<u>Allow</u>	<u>Prohibit</u>
	<ul style="list-style-type: none"> • Changes in industry have lessened the possibility that vertically integrated operators can exercise an unfair competitive advantage. • May encourage and expand recycling and recovery services. 	<ul style="list-style-type: none"> • Franchisees send more waste to their own facilities, bypassing Metro transfer stations and reducing Metro revenues as a result. • May provide vertically integrated facilities competitive advantages over those that cannot feasibly integrate.
Metro Code Restricts Some Vertically Integrated Franchise Operating Structures	Subsection 5.01.120(l) of the Metro Code states that a franchisee "Shall not, either in whole or in part, own, operate, maintain, have a proprietary 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."	
Three Existing Operations Are Vertically Integrated	<p>Three exceptions to the Code provision already exist—two through variances granted by the Council, and one from a purchase of one company's outstanding stock by another company.</p> <ul style="list-style-type: none"> • <u>Variances granted by the Council.</u> One company applied for a franchise in July 1994 for a facility to recover and market recoverable materials from dry mixed solid wastes. The facility was to handle wastes 	

primarily from two affiliated collection/hauling companies but wanted the flexibility of receiving wastes from other unaffiliated companies. The company asked for, and was granted, a variance from the Code provision to allow it to accept materials from haulers and others not directly associated with the company. The Council granted a second company a variance to this Code provision in June 1996.

- Purchase of one company's outstanding stock by another company. The third instance of vertical integration involved a subsidiary that originally processed mixed solid wastes it received from its parent company—a degree of vertical integration specifically allowed under Subsection 5.01.120 (I) of the Code. In May 1995, a company that owns landfills and other collection and hauling companies purchased the parent company's outstanding stock. Metro's General Counsel determined that the sale was not a transfer under the provisions of Metro's Code, and therefore Regional Environmental Management Department staff did not require the franchisee (the subsidiary) to file a new franchise application for review and approval by the Council.³ The resultant company's operating structure conforms to the Code provision because it continues to receive waste only from its own haulers, not non-affiliated ones. However, the company became much more vertically integrated because it now controlled all of the primary functions of the solid waste system—collection, processing, transfer, and hauling and disposal. The General Counsel advised us that it may be desirable to have a mechanism by which Metro can review any change of ownership of a franchisee in order to determine whether vertical integration as well as other policy concerns are satisfied. He said it would be

³The General Counsel said, "It is possible for a corporate entity to be acquired, in whole or in part, by another individual or corporation pursuant to a purchase of the controlling interest in the stock of the corporation. In that case, the franchisee continues to exist and has undergone a change in control or ownership. However, the franchise between Metro and the franchisee [has] not in itself been transferred or assigned."

possible to do so by inserting a stipulation in the franchise agreement that Council approval would be needed in the case of a change of ownership.

**Metro Has
Been Asked to
Grant More
Variances to the
Code Provision**

Several of the applications for new or renewed material recovery facility franchises now being reviewed by the Regional Environmental Management Department involve requests for the Council to waive the Code's vertical integration franchise provision. As of July 1996, the Department had pending applications for 3 franchise renewals and 2 new franchises for material recovery facilities. An additional application (for a new franchise in Washington County) is also expected. Two of these applicants have already asked Metro for variances to the provision, and two have stated that they also will request variances.

Table 3-2: Requests for Variances to Vertical Integration Code Provision as of July 1996

	Applications	Waiver	
		Requested	Request Anticipated
Franchise renewals pending	3		1
New material recovery facilities applications pending	2	2	
Anticipated applications	<u>1</u>	<u> </u>	<u>1</u>
Total	<u>6</u>	<u>2</u>	<u>2</u>

Source: Metro Regional Environmental Management Department staff

Concerns:

- *Will a precedent be inferred?*
- *Has a precedent been inferred by waivers already granted?*

The material recovery facility franchise review team is currently reviewing the franchise applications. The team

was concerned that a precedent may be falsely inferred by granting the two material recovery facilities waivers to the Code provision. The team said, however, that prior to entering negotiation with the companies the team will make policy recommendations to the Council, the Executive Officer and the Regional Solid Waste Advisory Committee relating to the facilities, including those relating to the vertical integration question. This has already been done in work sessions with some Councilors.

**Need for
Vertical
Integration
Policy and Code
Provision
Questioned on
Several Fronts**

The Regional Solid Waste Management Plan, issued in January 1996, suggests that, in order to expand the availability of mixed dry waste recovery services, current Code restrictions against certain vertically integrated operating structures may need to be changed. The Plan calls for a flexible solid waste system and for Metro to encourage competition when making decisions about regulating solid waste facilities in order to promote efficient and effective solid waste services. The Plan also said Metro should consider whether doing so would increase the degree of vertical integration in the regional solid waste system and whether that increase would adversely affect the public.⁴

Several Metro officials told us that the policy and the Metro Code provisions are probably no longer needed. They said that the Code provision was written to prevent large landfill owners from establishing monopolies that could give their own garbage collectors and haulers lower prices and better accommodations than were allowed independent collectors and haulers. They said that these concerns no longer seem valid because there are now a number of landfills available competing for the collecting and hauling business. This competition should prevent anyone from setting up a monopoly.

⁴According to the plan, Metro's Solid Waste Advisory Committee recommended in a June 21, 1995, meeting that the Metro Council reconsider its policy on vertical integration but made no recommendation as to what the policy should be.

Metro's General Counsel told us that in today's environment, vertical integration should probably be allowed as suggested by the Regional Solid Waste Management Plan. He said that a major Metro goal is to encourage recycling, and allowing vertical integration of the material recovery facilities should help accomplish that goal.

**Metro
Revenues Could
Be Adversely
Affected**

Allowing vertical integration of franchises may diminish Metro's revenues. As these integrated businesses increase, franchisees will send increasingly more wastes to their own facilities. None of the franchisees is expected to dispose of the residue from their processing activities at Metro transfer stations. As a result, Metro's revenues from fees on solid waste disposed at Metro South and Central transfer stations may drop substantially.

In anticipation of granting additional franchises, Regional Environmental Management Department staff estimated the potential impact 4 additional facilities might have on Metro's transfer stations. This estimate included the facility franchised in June 1996, 2 others whose applications are pending, and a fourth that is anticipated. All 4 of the companies have asked or are expected to ask for variances to the Code to allow them to vertically integrate. The staff estimates for fiscal year 1999-2000 are shown in the following table.

Table 3-3: Estimated Delivered Tonnage to Metro Transfer Stations With and Without New Material Recovery Facilities in Fiscal Year 1999-2000

	<u>Delivered Tons</u>	<u>Tonnage Increase/ (Decrease)</u>
Calendar Year 1995	752,300	
Fiscal Year 1999-2000:		
without new facilities	791,000	38,700
with new facilities	734,500	(56,500)

Source: Metro Regional Environmental Management Department staff

The review team calculates that this reduction in tonnage would result in a gross revenue loss to Metro of about \$4.2 million. The estimated net loss to Metro, after deducting Metro's costs for transporting and landfilling that tonnage and adding lost excise tax revenues is expected to be approximately \$2 million, as shown in the next table.

Table 3-4: Projected Revenue Loss to Metro With Four Additional Material Recovery Facilities

Gross Revenue Loss from Tipping Fees	\$4,200,000	
Less Avoided Costs	<u>-2,600,000</u>	
Net Loss Resulting from Reduced Volume	1,600,000	± \$100,000
Lost Excise Taxes	<u>335,000</u>	± \$15,000
Total Net Revenue Loss	<u>\$1,935,000</u>	± \$115,000

Source: Metro Regional Environmental Management Department staff

Conclusion The pros and cons of changing Metro's policy and Code provisions relating to vertically integrated solid waste collections and processing facilities are legitimate concerns that need careful attention. Since two of the applications requesting variance from the Code provision are in their final phases of review, we believe the Executive Officer, assisted by Regional Environmental Management Department staff, should promptly present findings, conclusions and recommendations with respect to the vertical integration policy and Code provisions to the Council so that the Council can review and resolve the matter—both for these applications and for the larger revision of the Code. We also believe that Metro's General Counsel, after consultation with the Council, should decide whether franchise agreements should require that changes in ownership of franchisees be treated as transfers under the Code and subject to the review and approval of the Council.

Chapter 4

Franchise and License Holder Oversight Should Be Improved

A second key management tool, after an updated franchise code, is effective oversight of franchise and license holders. This oversight has been inconsistent. Among the problems are the following:

- Franchise reviews have been limited, with a number of facilities receiving little or no review at all and with insufficient coordination of review responsibilities between Metro units. Other documentation that franchisees and licensees were complying with requirements is largely absent.
- Three franchise agreements were inadvertently allowed to expire, and some franchises were not billed in a timely manner for fee payment.
- Warnings were not followed up regarding franchises exceeding the tonnage they were authorized to receive or ship, and in at least one instance, a franchise exceeded its limit.

Regional Environmental Management Department's management recently became aware of the nature and extent of these problems and is addressing their causes. Included in these efforts, Department management instructed its material recovery facilities franchise review team to identify the procedures and resources needed to oversee the solid waste facilities Metro administers. The Department is now working on this task.

Reviews of Franchises and Non-System Licenses Has Been Limited

Financial reviews of franchisees, licensees and designated facilities (landfills) often were not done. The number of franchisees, licensees and designated facilities has generally numbered close to 25 in recent years, but prior to fiscal year 1993-94, Metro's Accounting Division had been

doing only 2 to 4 audits of such facilities a year. That year, the Solid Waste Department (now Regional Environmental Management Department) asked the Accounting Division to audit each disposal site annually. The Accounting Division asked for—and received—one additional full-time employee to meet this goal. That year the Division conducted 8 audits—5 of designated facilities (landfills) and 3 of franchises (recycling and recovery facilities). Five franchises were not audited.

After fiscal year 1993-94, review coverage decreased, both in scope and number⁵.

Table 4-1: History of Oversight Reviews of Franchised and Licensed Facilities by Metro's Accounting Division

<u>Type of Reviews Done</u> (in descending order of scope)	Prior to 1993 -1994	1993 -1994 (A)	1994 -1995	1995 -1996
Audits	2 to 4	8		
Full reviews			7	6
Limited reviews				3
Internal control analysis				2
Total facilities and licenses reviewed	2 to 4	8	7	11
Facilities and licenses not reviewed	<u>varies</u>	<u>5</u>	<u>11</u>	<u>13</u>
	<u>varies</u>	<u>13</u>	<u>18</u>	<u>24</u>

(A) Staffing increased to complete audit of all franchise and license holders annually.

⁵ Metro's Accounting Division dropped the term "audit" because it indicated a much wider and more comprehensive scope of work than was actually done. The terms "full review" and "limited review" were substituted and indicate work generally centered around an in-depth analysis of data contained in the user fee and excise tax reports. See Appendix C for an explanation of these terms.

In all, 6 of the current franchises and 3 of the non-system licenses have never received a full or limited review. These franchises and licenses are small and have not been subjected to any user fee or excise tax questions. Metro's Accounting Division staff advised us that they have concentrated on facilities that pay user fees and excise taxes, and have not actively set out to test compliance with the Code or operating requirements included in the franchises. Metro's Accounting Division staff said that they believed this latter activity is the responsibility of the Regional Environmental Management Department.

**Review
Responsibilities
Were Not Well
Coordinated**

The two primary Metro units with oversight responsibility, the Metro's Accounting Division and the Regional Environmental Management Department, have not been coordinating their reviews sufficiently. The two units have a task force which discusses review needs for franchised, licensed and designated facilities. This task force meets several times near the start of the calendar year to establish a review schedule for the year. It also meets to discuss the results of the reviews as they are completed. However, statements made by the staffs of the two units indicate that better coordination of their duties is needed. For example:

- The Accounting Division staff responsible for the reviews have not always been sure who is responsible for various duties needed to manage franchises and non-system licenses. The staff said this knowledge would be valuable in determining where to seek advice and assistance. The staff also said that the Accounting Division and Regional Environmental Management Department division managers often cannot attend the task force meetings, making it difficult to make decisions regarding the desired audit coverage and other matters.
- The Regional Environmental Management Department division manager responsible for franchise administration said he was under the impression that all franchises and licenses had been audited. He said his misimpression was an indication that coordination could

be better. Department staff have reviewed franchises on an exception basis to resolve questions that had been raised, with some of the reviews done only by telephone.

**No
Documentation
Showing
Compliance with
Code and
Franchise
Requirements**

To determine what effects might result from not reviewing all facilities, we conducted a risk assessment that examined the Regional Environmental Management Department's files for all of the active franchises and non-system licenses. We looked for documentary evidence demonstrating that Code requirements had been complied with. For most of the franchises, we could not find evidence showing that the Department had confirmed compliance with such Code requirements as:

- the amount of liability insurance coverage held by the franchisees and whether it was in force;
- whether surety bonds, when required, were in force and of the proper amount;
- whether facilities had been periodically reviewed to determine if they were practicing discriminatory pricing with customers;
- whether facilities had been periodically reviewed to assure that franchisees were providing adequate and reliable service; and
- that facilities had provided annual operating reports.

We also reviewed each file looking for documentary evidence of compliance with the franchise agreement provisions. Again, we found almost nothing showing that periodic reviews were being made by Regional Environmental Management Department staff to assure, among other things, that unallowable materials were not being accepted and that the facilities were operating in conformance with the numerous provisions of their operating plans. Furthermore, all but one of the franchised facilities had been exempted by the Council from Metro rate-setting. Although Metro did not establish rates for those franchisees, the franchisees must adhere to several

conditions including (1) limiting rate adjustments to specified monthly or quarterly intervals, (2) limiting the frequency of those adjustments, and (3) notifying Metro within 10 days prior to any rate change. We found evidence of only one franchisee providing this information and on only one occasion.

**Agreements
with Three
Franchisees
Inadvertently
Expired**

In May 1995, the Regional Environmental Management Department informed one franchised facility that its franchise had expired in 1987 and inadvertently had never been renewed. The expiration was discovered when the Department's Solid Waste Enforcement Unit found violations of the original franchise. The division manager responsible for franchise administration said a staff member neglected to renew the franchise when it expired. When it discovered the error, the Department allowed the franchisee to continue to accept and process materials allowed under the original agreement but ordered the franchisee to cease its unauthorized activities and submit a new application. The franchise has not yet been renewed because the company's application is being reviewed for authorization as one of the new material recovery facilities.

Two other franchises recently expired. One company holding a franchise which expired in January 1996 had sent the Regional Environmental Management Department a renewal application in June 1995. A Department staff member was told to renew the franchise but did not do so. The other franchise expired in March 1996. Neither franchise has yet been renewed, but the Department has allowed the franchisees to continue to accept and process materials under the originally approved franchises. Both of these franchises are being reviewed for material recovery facility designation.

**Franchise Fees
Not Billed on
Time**

Although Metro's Code requires annual franchise fees to be paid by January 1, fees for 1996 totaling \$2,700 were not billed until February 21, 1996. Accounting Division staff told us the Regional Environmental Management Department must initiate the request to bill, and we

confirmed that the Accounting Division had not received this request until February 16.

The amount involved is relatively inconsequential. However, in our opinion, failure to bill the franchisees in a timely manner is further evidence of the Regional Environmental Management Department's inconsistency in administering the franchises.

**Franchise
Tonnage
Authorization
Ignored**

Several of the franchises and non-system licenses limit the number of tons of waste that can be taken into the facilities to be processed and/or the amount of residues that can be shipped to landfills for disposal. In 1995, the Accounting Division warned the Regional Environmental Management Department that 2 facilities that had been reviewed were very close to exceeding their tonnage authorizations and would probably exceed them in the next year. We found no evidence that the Department responded to these warnings.

In May 1996 the Department discovered that one of the facilities had indeed exceeded its authorization. Department staff also learned that the second facility, as well as two others, did not send transaction data needed by the Department to follow the origin, destination, volume and type of material. This data is necessary for the Department's enforcement, planning and forecasting activities. The staff told us that the franchise agreements did not require the companies to provide this information.

**Regional
Environmental
Management
Department Is
Addressing
Franchise
Administration
Problems**

As part of its study of how better to administer franchises and licenses, the material recovery facilities franchise review team has prepared preliminary estimates of the oversight procedures and resources that may be needed for solid waste facilities now administered, or to be administered, by Metro. For all types of facilities, the estimate totals more than 7,900 staff hours. As shown in the following table, this oversight is significant and is substantially greater than that exercised in the past.

Table 4.2: Estimated Number of Staff Hours Needed for Oversight of Franchises and Non-System Licenses

Type of facility/permit	In-house ^a	Field ^b	Financial ^c	Total	Permits	Total
Transfer Station	36	72	80	188	1	188
Reloads	36	72	75	183	4	732
Material Recovery Facilities	36	72	75	183	12	2,196
Yard Debris	36	72	0	108	18	1,944
Petroleum Contaminated Soils	8	36	50	94	3	282
Organic	36	72	80	188	4	752
Designated Facility	16	36	80	132	7	924
Non-System License	8	8	75	91	10	910
TOTAL					<u>59</u>	<u>7,928</u>

^aEstimate covers the hours necessary for review, client contact, franchise modification, monitoring compliance and occasional visits.

^bEstimate includes six inspections per year with reports, follow-up, investigations and non-compliance inspections.

^cEstimate includes monthly data input, analysis, invoicing, and annual audit.

Source: Metro Regional Environmental Management Department staff

No action on this proposal is currently planned. The material recovery facilities franchise review team told us that these are estimates only and that no definite program for administering the facilities has been defined. They said that as soon as they finish implementing the regulation system discussed in Chapter 2, they will be able to continue developing the oversight system.

The review team believes that the Regional Environmental Management Department can not only finish implementing the regulation system but can also fulfill the Department's responsibilities for maintaining the system with current staffing levels. Metro's Accounting Division may require the equivalent of one more staff member to do financial reviews because of the increase in the number of facilities.

Regional Environmental Management staff have taken one other action, but its success appears limited. After learning of the expired franchises and other problems, Department staff developed a database which was intended to contain essential information for each designated, franchised and licensed facility. The purpose of the database was to provide easy reference to the agreements with the various facilities. The database, however, did not include one non-system license and one franchise, but did include two canceled franchises. Furthermore, there were no provisions for automated "tickler files," or preliminary notifications, to warn database readers of actions needed to avoid such problems as franchise expirations.

Several Metro officials indicated that they support greater review efforts. They said franchises have been handled too casually, leaving the impression that Metro does not care how the facilities are managed. These officials suggested that each franchised facility be physically reviewed—that Metro should not rely on telephone interviews, paper reviews or desk audits for oversight. These physical reviews should be done at least annually using a team consisting of an accounting staff member, a landfill specialist, an enforcement person and possibly someone from the General Counsel's office. This team should develop a review or inspection program that delegates the tasks of its various members, thus enabling a comprehensive evaluation of each facility. The team could efficiently and effectively review the franchises if it coordinated its work and included the appropriate managers to ensure that everyone understood what needed to be done.

Conclusions We believe the Regional Environmental Management Department's proposed efforts to provide more oversight over Metro-regulated privately-owned facilities are ambitious, but necessary. We also agree with the suggestions made by other Metro officials for improved review. Oversight would be greatly improved if the Regional Environmental Management Department, assisted by other appropriate Metro departments, developed oversight programs tailored to each facility and followed a formal inspection schedule to assure that each facility is physically visited and reviewed at

appropriate intervals each year. It would also be important for a team of inspectors to clearly define the responsibilities of each Metro department in reviewing the various aspects of the franchises and reduce these agreements to writing so that changes in staff and other matters will not adversely affect coordination. A small team of knowledgeable staff should be able to complete most of the inspections quickly and efficiently.

Chapter 5

Recommendations

The Council, the Executive Officer, the Regional Environmental Management Department and Metro's Accounting Division should take a number of steps to provide guidance for and improved management of solid waste franchises.

1. Metro should comprehensively overhaul the existing franchise provisions of the Metro Code. When revising the Code, the Executive Officer and Regional Environmental Management Department staff should (1) obtain and incorporate the Council's views on the policy issues listed below, (2) consult with members of the public, pertinent governmental agencies, and other affected parties, and (3) provide the Council sufficient time and information to permit it to adopt up-to-date franchise provisions in the Code. Policy issues needing the Council's consideration include the following:
 - a) Should Metro's official policy prohibiting "vertical integration" be eliminated or modified, and/or should Metro continue to grant variances to that section in the Code?
 - b) What is a reasonable and achievable recovery rate for material recovery facilities?
 - c) Should Metro continue to allow non-system licenses when their use to transfer waste to undesignated facilities may significantly adversely affect Metro's transfer stations and revenues?
 - d) Should the user fee component of Metro's fees be raised to recover revenues Metro is now losing to undesignated landfills?
 - e) Is the Metro Code too generous with respect to material recovery facilities; thus allowing them to

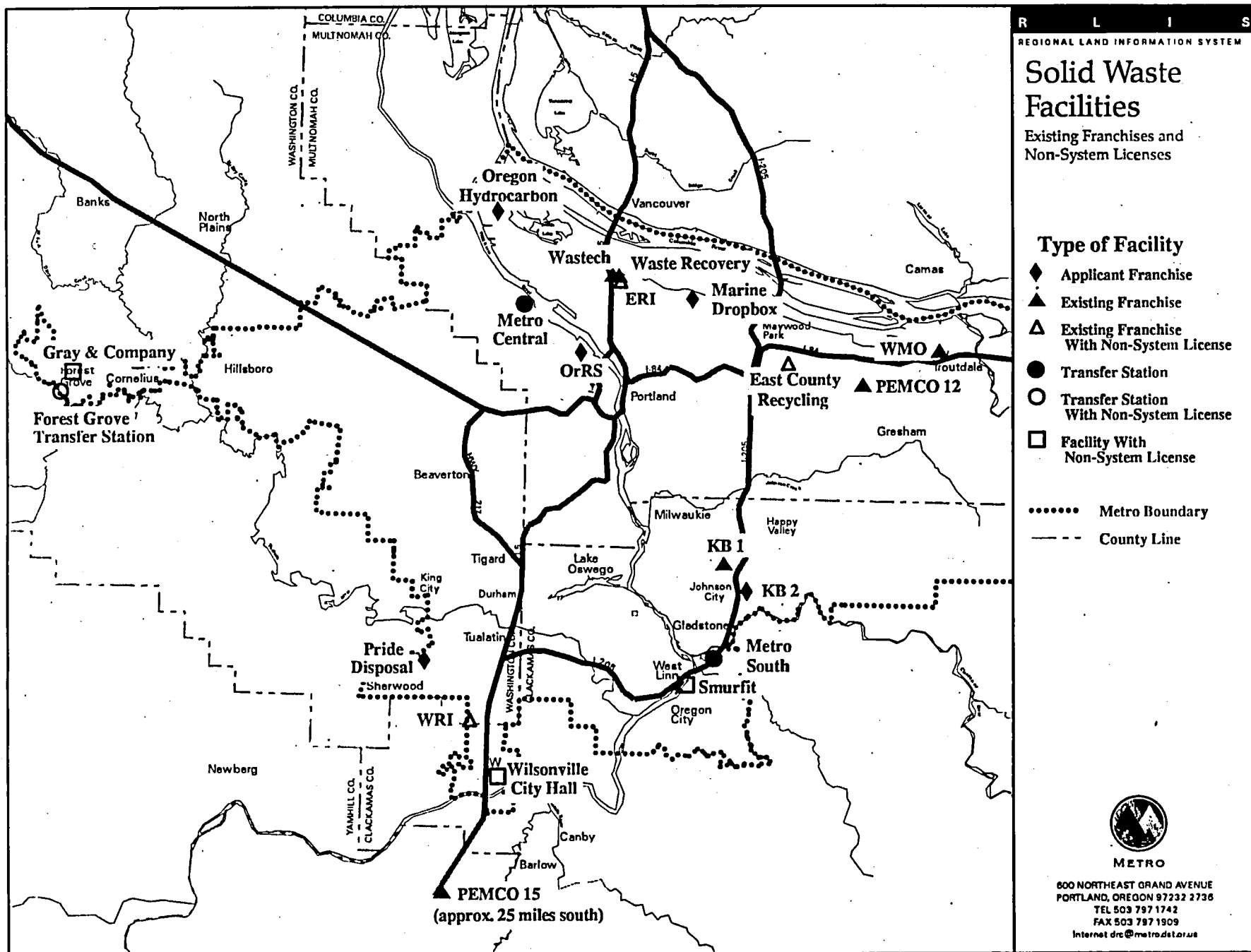
divert too large a share of Metro's current revenues?

- f) Should Metro's franchise fees be set at levels which will reimburse the costs of approving and monitoring the franchises?
- g) How should Metro obtain its required revenue from solid waste processing facilities?
- h) How should Metro guarantee a sufficient flow of solid waste to ensure that its transfer stations remain viable?
- i) What should Metro's role be in regulating site and environmental factors in solid waste processing facilities?
- j) What number and type of solid waste processing facilities should Metro encourage?
- k) Where should specific recoverable materials be directed?
- l) What should be the role of Metro's transfer stations in recovering solid wastes?

2. The Executive Officer, assisted by Regional Environmental Management Department staff, should promptly request the Council to clarify the policy contained in the Metro Code restricting relationships between franchised processors and solid waste collection and hauling companies.

3. Metro's General Counsel, after consultation with the Council, should decide whether franchise agreements should require that franchisee ownership changes be treated as transfers under the Code and subject to the Council's review and approval. If that is the decision, both the franchise agreements and the Code should be clarified.

- 4. After the Regional Environmental Management Department has developed its regulation system for Metro-authorized solid waste facilities, it should develop an oversight system for those facilities that will ensure they are thoroughly inspected at least once a year. In doing so, the Department, assisted by other Metro units as needed, should develop oversight programs tailored to each facility and should follow a formal inspection schedule to assure that each facility is physically visited and reviewed at appropriate intervals each year. The responsibilities of each Metro department in reviewing the various aspects of the franchises should be clearly defined so that changes in staff and other matters will not adversely affect coordination of the inspections.**



Appendix A

Status of Metro's Franchises and Non-System Licenses

(July 1996)

Franchises Currently in Effect:

Forest Grove Transfer Station
East County Recycling, Inc.
Oregon Processing and Recovery
Center (Wastech)
Oregon Hydrocarbon, Inc.
PEMCO #12
PEMCO #15
Energy Reclamation, Inc. (ERI)
Willamette Resources, Inc. (WRI)
Waste Recovery, Inc.
Waste Management of Oregon
(WMO)

Franchises Currently Being Renewed:¹

Pride Disposal Reload/Recycling,
Inc.
K.B. Recycling, Inc. #1
Marine Drop Box

Franchises—New Applications:

K.B. Recycling, Inc. #2
Oregon Recycling Systems
(OrRS)

Franchises—New Application Anticipated:

Washington County

Non-System Licenses Currently in Effect:

Energy Reclamation, Inc.²
Smurfit
East County Recycling
A. C. Trucking (Forest Grove
Transfer Station)
Pride Disposal Company
Willamette Resources, Inc.
City of Wilsonville
Gray and Company

¹These franchises have expired, but have been permitted to continue to operate under their original agreements until they are renewed as material recovery facilities.

²This license has expired and the Department anticipates that the company will not request renewal.

Appendix B

Regional Environmental Management Department's Franchise Program Risk Assessments

<u>Code section</u>	<u>Code provision deviations</u>
<u>5.01.020</u>	Franchisee's rates are not fair, reasonable or adequate to provide necessary public service. Rate preferences and other discriminatory practices are permitted.
<u>5.01.030</u>	Persons are allowed to operate facilities without proper franchises or exemptions. Franchisees receive, process or dispose of solid wastes not specified in the franchise agreement. Persons take wastes to other than franchised facilities. Franchisees charge rates that are not approved by council or executive officer.
<u>5.01.060</u>	Franchisee cannot or will not get corporate security bond sufficient to clean up site if necessary. Application for franchisee transfer to a new ownership is not preceded by a letter from the existing franchisee. Franchisee cannot or will not obtain sufficient public liability and other insurance (\$500,000). Franchisee ownership becomes made up of undesirable persons initially or subsequently if changes in excess of 5 percent occur. Franchisee fails to obtain required and necessary DEQ permits and authorizations.

Code Section **Code Provision Deviations (continued)**

The physical facility does not have proper ownership of the property.

The facility failed to obtain proper land use approvals.

5.01.070

Franchisee did not sign an agreement with Metro within 10 days of receipt of the order granting the franchise as required.

The corporate security bond in the necessary amount (according to Metro's guidelines) has not been obtained and/or is no longer in effect.

Proof of insurance has not been obtained and/or is no longer in effect (\$300,000).

Metro has not been named as an additional insured.

The franchisee has received rights or privileges to receive specific types or quantities of solid waste.

5.01.080

The franchise term is longer than 5 years or the site longevity, whichever is less.

5.01.090

The franchisee has leased, assigned, mortgaged, sold or otherwise transferred part or all of its franchise to another party without an application filed in accordance with 5.01.060 and the franchise has been granted.

The term of the transferred franchise is greater than the original term of the franchise.

5.01.120

The franchisee does not provide adequate and reliable service.

The franchisee discontinued service without 90 days prior written notice and written approval.

The franchisee contracted with another person to operate the site without 90 days prior written notice and written approval.

Code Section **Code Provision Deviations (continued)**

The franchisee does not establish and follow procedures designed to give reasonable notice prior to refusing service to any person.

The franchisee has not maintained public liability insurance in the amount set forth in section 5.01.070.

The franchisee has not given 30-day notice to the executive officer of lapses or proposed cancellation of insurance coverage or performance bond.

The franchisee has not provided an annual operating report.

The franchisee does not submit to Metro all correspondence and data submitted to the DEQ within 2 days of submission to DEQ.

The franchisee does not have a program for reducing the amount of solid waste being accepted from members of the general public and commercial haulers other than the franchisee.

The franchisee owns, operates, maintains, has a propriety interest in, is financially associated with, or subcontracts operations of the site to an individual, partnership, or corporation involved in the business of collecting residential, commercial, industrial, or demolition refuse within the district (not applicable if franchisee only receives waste collected by the franchisee or its affiliates.)

5.01.130

The franchisee's fees and charges were not based on tons or volume of waste received and/or shipped to landfills.

The franchisee's tonnage of waste was unweighed or weighed on unapproved scales.

Franchisee's fees and charges received in cash have not:

- been separately recorded on multi-total cash registers,
- totaled the fees and charges recorded on cash register and reconciled them with the actual cash in the register drawer,
- been deposited daily in the bank account and the bank account reconciled each month.

Franchisee's cash receipts of payments on accounts receivable have not been recorded as mail is opened and reconciled to the daily bank deposit.

Code Section **Code Provision Deviations (continued)**

Franchisees fail to use pre-numbered tickets in numerical sequence to collect fees and charges levied and collected on an accounts receivable basis or:

- the numbers of the tickets have not been accounted for daily
- voided or canceled tickets have not been retained.

When the franchisee was to pay its monthly payment to Metro, the franchisee did not file with the executive officer a statement showing:

- the name and address of the franchisee,
- the district registration number,
- the month and year of each report,
- the number of truckloads received daily,
- the daily number of cars, pickups, trailers, and other small hauling vehicles,
- the total number of cubic yards/tons of solid waste received during the month, classified among compacted, non-compacted, minimum loads, and special loads,
- the detailed explanation of any adjustments made to the amount of uncollectable user fees,
- signature and title of the franchisee or its agent.

The franchisee failed to pay excise taxes and finance charges on excise taxes owing to Metro in accordance with 7.01.

Franchisee has not paid user fees, finance charges on user fees and other charges owing to Metro as specified in 5.02.055.

5.01.140

The annual franchise fee has been established, but has not been paid or has been disputed.

The franchise fee has not been imposed on the franchisee in addition to other fees, taxes and charges.

The franchisee failed to pay the franchise fee in the manner and at the time required by Metro.

Code Section **Code Provision Deviations (continued)**

5.01.150

Franchisee that is not accomplishing materials recycling and recovery as a primary operation failed to pay user fees.

Franchisee that is not treating petroleum contaminated soils to applicable DEQ standards failed to pay user fees.

User fees are not separately stated on the records of the franchisee.

Franchisee failed to pay user fees in the form of remittance payable to Metro.

5.01.160

Metro does not receive periodic reports from solid waste collection services.

5.01.210

Franchisee capable of processing tires has not met the volume reduction standards of 5.01.210 (b) and (c).

5.01.220

Franchisee for a facility processing petroleum contaminated soil has not met the standards of this section.

5.02.055

Franchisee designated to receive waste under 5.05.030 (5) have not remitted user fees and charges other than excise taxes to Metro.

Franchisee has not remitted user fees to Metro by the 15th day of the month for waste disposed of in the preceding month.

Delinquent franchisees failed to pay finance charges 30 days after they first came due.

5.03.020

Franchisee did not pay the \$200 application fee for issuance of a solid waste disposal franchise

Franchisee did not pay the annual fee before January 1 of the calendar year.

Code Section **Code Provision Deviations (continued)**

Franchisee did not pay the \$300 solid waste disposal franchise (\$100 per site for each franchised site that only receives waste from the franchisee or its financial affiliates).

5.05.030

Franchisee has transported solid waste generated within the district to, or utilized or caused to be utilized for the disposal or other processing of any solid waste generated within the service area, any non-system facility without a non-system license.

5.05.035

Non-system licensee did not apply for a non-system license accompanied by a non-refundable \$500 application fee.

Non-system licensee did not set forth the information needed in the non-system license application (5.05.035(a))

Non-system licensee did not pay \$500 issuance fee when granted license.

Non-system licensee did not set forth required information in license.

Non-system licensee did not meet the requirements required of the holder.

Appendix C

Explanation of Content and Scope of Reviews for Franchises and Licenses

Full Review - indicates a physical on-site visit with:

- in-depth analysis of detail data as compared to the User Fee Reports
- trending analysis
- comparison of outside reporting (i.e. DEQ)
- full review of source documentation (on site/selected months)
- full review of revenue cycle documentation (selected months)
- internal control documentation and review
- contract compliance review
- other emphasis as appropriate

Limited Review - may or may not involve an on-site visit and focuses primarily on:

- in-depth analysis of detail data as compared to the User Fee Reports
- trending analysis (limited)
- internal control documentation and review (limited)
- contract compliance review (limited)
- other emphasis as appropriate

Initial Internal Control Write-Ups -

- analysis of detail data as compared to the User Fee Reports
- internal control documentation and review including informal suggestions to facility

Source: Regional Environmental Management Department and Metro Accounting Division staff

Regional Environmental Management Division's Franchise Management

Response to the Report



METRO

DATE: August 23, 1996

TO: Alexis Dow, CPA, Metro Auditor

FROM: Mike Burton, Executive Officer *Mike Burton*

RE: Response to REM Department's Franchise Management Examination

Thank you for the opportunity to review and comment on your examination of the REM Department's management of its franchise function. Your findings and recommendations are stated in bold text immediately followed by my response in normal text.

1. Metro should comprehensively overhaul the existing franchise provisions of the Metro Code. When revising the Code, the Executive Officer and Regional Environmental Management Department staff should (1) obtain and incorporate the Council's views on the policy issues listed below, (2) consult with members of the public, pertinent governmental agencies, and other affected parties, and (3) provide the Council sufficient time and information to permit it to adopt up-to-date franchise provisions in the Code. Policy issues needing the Council's consideration include the following:
 - a) Should Metro's official policy prohibiting "vertical integration" be eliminated or modified, and/or should Metro continue to grant variances to that section in the Code?
 - b) What is a reasonable and achievable recovery rate for material recovery facilities?
 - c) Should Metro continue to allow non-system licenses when their use to transfer waste to undesignated facilities may significantly adversely affect Metro's transfer stations and revenues?
 - d) Should the user fee component of Metro's fees be raised to recover revenues Metro is now losing to undesignated landfills?
 - e) Is the Metro Code too generous with respect to material recovery facilities; thus allowing them to divert too large a share of Metro's current revenues?
 - f) Should Metro's franchise fees be set at levels which will reimburse the costs of approving and monitoring the franchises?
 - g) How should Metro obtain its required revenue from solid waste processing facilities?
 - h) How should Metro guarantee a sufficient flow of solid waste to ensure that its transfer stations remain viable?
 - i) What should Metro's role be in regulating site and environmental factors in solid waste processing facilities?

- j) **What number and type of solid waste processing facilities should Metro encourage?**
- k) **Where should specific recoverable materials be directed?**
- l) **What should be the role of Metro's transfer stations in recovering solid wastes?**

We concur with your recommendation that the franchise provisions of the Code be revised. We expect to complete a draft, suitable for Council consideration by June 30, 1997.

2. **The Executive Officer, assisted by Regional Environmental Management Department staff, should promptly request the Council to clarify the policy contained in the Metro Code restricting relationships between franchised processors and solid waste collection and hauling companies.**

We also agree with this recommendation. This recommendation will be incorporated into the Code rewrite to be presented to the Council at the end of June 1997. Since policy questions may be addressed and implemented as the Code rewriting process moves along, it is possible that this particular could be addressed early.

3. **Metro's General Counsel, after consultation with the Council, should decide whether franchise agreements should require that franchise ownership changes be treated as transfers under the Code and subject to the Council's review and approval. If that is the decision, both the franchise agreements and the Code should be clarified.**

The REM Department, in consultation with the Office of General Counsel, will prepare and propose means to regulate changes in ownership of franchises as well as transfers of franchises as part of the Code revision proposal for Council consideration. This item will be completed at the same time as the entire Code rewrite.

4. **After the Regional Environmental Management Department has developed its regulation system for Metro-authorized solid waste facilities, it should develop an oversight system for those facilities that will ensure they are thoroughly inspected at least once a year. In doing so, the Department, assisted by other Metro units as needed, should develop oversight programs tailored to each facility and should follow a formal inspection schedule to assure that each facility is physically visited and reviewed at appropriated intervals each year. The responsibilities of each Metro department in reviewing the various aspects of the franchises should be clearly defined so that changes in staff and other matters will not adversely affect coordination of the inspections.**

We also concur in this recommendation and expect that a working oversight plan encompassing all the above issues will be completed by October 1, 1996. Several corrective actions to strengthen Metro's management and oversight capabilities have already been initiated as the Department recognized these deficiencies several months ago.

MB:RC:gbc

cc: Dan Cooper, General Council
Jennifer Sims, Chief Financial Officer
John Houser, Council Analyst
Roosevelt Carter, REM Budget and Finance Manager



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Regional Environmental Management Franchise Management

Findings

- Franchise provisions in Metro's Code need to be overhauled
- Questions regarding vertical integration need prompt resolution
- Franchise transfer provisions in the Code need clarification
- Franchise oversight procedures need revision

Recommendations

- Comprehensively revise the franchise provisions of Metro's Code
- Council reaffirm or modify franchise provisions relating to vertical integration of facilities
- Strengthen regulation system including oversight procedures for Metro-authorized solid waste facilities