

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF GRANTING A) ORDINANCE NO. 96-634
FRANCHISE TO WASTE RECOVERY, INC. TO)
OPERATE A SOLID WASTE PROCESSING) INTRODUCED BY MIKE BURTON,
FACILITY, AND AMENDING CODE) EXECUTIVE OFFICER
SECTION 7.01.050 REGARDING EXCISE)
TAX EXEMPTIONS)

WHEREAS, Waste Recovery, Inc. has applied for a non-exclusive franchise to operate a facility for processing of waste tires at Portland, Oregon; and

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

WHEREAS, The Waste Recovery, Inc. facility will provide disposal services to affiliate company haulers and to other commercial haulers and contractors; and,

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

WHEREAS, Waste Recovery, Inc. has requested a variance from Metro Bond requirements as detailed in the staff report to this Ordinance; and,

WHEREAS, Waste Recovery, Inc. has requested a variance from Metro rate setting requirements as detailed in the staff report to this Ordinance; and,

WHEREAS, Waste Recovery, Inc. has requested a variance from certain Metro Administrative procedures 5.01.130(a)(1)(2), (b)(1-8), (c), (d), and (e) as detailed in the staff report to this Ordinance; and,

WHEREAS, Waste Recovery, Inc. has requested a variance from Metro restrictions on non-franchisee owned hauling companies as detailed in the staff report to this Ordinance; and,

WHEREAS, Waste Recovery, Inc. has requested a variance from Metro's authority to divert waste away from the franchised facility as detailed in the staff report to this Ordinance; and,

WHEREAS, Waste Recovery, Inc. has requested a variance from payment of Metro user fees except as provided in the franchise agreement (Exhibit A) as detailed in the staff report to this ordinance; and,

WHEREAS, It is recommended that Waste Recovery, Inc. be exempted from payment of Metro excise taxes pursuant to the franchise agreement (Exhibit A) and the proposed amendment to Chapter 7.01 of the Metro Code as detailed in the staff report to this Ordinance; and

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

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1

The Metro Council authorizes the Metro Executive Officer to enter into the attached Franchise Agreement with Waste Recovery, Inc. attached as (Exhibit A), within ten days of the adoption of this Ordinance.

Section 2

Waste Recovery, Inc. is granted the following variances pursuant to Metro Code Section 5.01.110:

- (a) A variance from Metro bond requirements;
- (b) A variance from Metro rate setting;

- (c) A variance from Metro administrative procedures specified in Code Sections 5.01.130(a)(1)(2), (b)(1-8), (c), (d), and (e);
- (d) A variance from Metro restrictions on use of the facility by non-franchisee owned hauling companies;
- (e) A variance from Metro's authority to divert waste away from the franchised facility;
- (f) A variance from the requirement that franchisee pay user fees except as specified in the Franchise.

Section 3. Metro Code Section 7.01.050 is amended to read:

7.01.050 Exemptions

(a) The following persons, users and operators are exempt from the requirements of this chapter:

- (1) Persons, users and operators whom the district is prohibited from imposing an excise tax upon under the Constitution or Laws of the United States or the Constitution or Laws of the State of Oregon.
- (2) Persons who are users and operators of the Portland Civic Stadium or the Portland Center for the Performing Arts.
- (3) Persons whose payments to the district or to an operator constitute a donation, gift or bequest for the receipt of which neither the district nor any operator is under any contractual obligation related thereto.
- (4) Any persons making payment to the district for a business license pursuant to ORS 701.015.
- (5) Any person which is a state, a state agency or a municipal corporation to the extent of any payment made directly to the district for any purpose other than solid waste disposal, use of a Metro ERC facility, or use of the Metro Washington Park Zoo.
- (6) An operator of a franchised processing center that accomplishes material recovery and recycling as a primary operation.
- (7) Persons making payments to the district on behalf of the Metro Washington Park Zoo for the following purposes:

- (A) Contributions, bequests, and grants received from charitable trusts, estates, nonprofit corporations, or individuals regardless of whether the district agrees to utilize the payment for a specific purpose including all payments to the Zoo Parents program;
 - (B) Corporate sponsorships or co-promotional efforts for events that are open to the general public, or for specific capital improvements, educational programs, publications, or research projects conducted at the zoo;
 - (C) Payments that entitle a person to admission to a fund-raising event benefiting the zoo that is not held on the grounds of the zoo;
 - (D) Payments that entitle a person to admission to a special fund-raising event held at the zoo where the event is sponsored and conducted by a nonprofit organization approved by the council and the primary purpose of which is to support the zoo and the proceeds of the event are contributed to the zoo;
 - (E) Notwithstanding the provisions of subsection (A) through (D) above, all payments received by the district for admission to the zoo, or which entitle individuals to receipt of food, beverages, goods, or rides on the zoo train shall be subject to tax regardless of whether payment is received from an individual or otherwise on behalf of special groups including but not limited to employee and family member picnics, corporate or family parties, or similar events.
- (8) Users and operators paying compensation to any person who is operating and lease property at the Glendoveer Golf Course pursuant to a long-term agreement entered into with Multnomah County prior to January 1, 1994.
- (9) A tire processor operating pursuant to a Metro franchise, which processes used tires into fuel and/or other products, shall be exempt from payment of excise tax on disposal of residual material produced directly as a result of such process. This exemption is only granted to the extent, and under the terms, specified in the franchise.

(b) Any person, user or operator that is exempt for the payment of an excise tax pursuant to this section shall nonetheless be liable for compliance with this chapter and the

payment of all taxes due pursuant to any activity engaged in by such person which is subject to this chapter and not specifically exempted from the requirements hereof. Any operator whose entire compensation from others for use of a district facility is exempt from the provisions of this chapter shall be deemed to be a user and not an operator.

ADOPTED by the Metro Council this 29th day of February, 1996.




Jon Kvistad, Presiding Officer

ATTEST:

Approved as to Form:



Recording Secretary



Daniel B. Cooper, General Counsel

Staff Report
EXECUTIVE SUMMARY

ORDINANCE NO. 96-634
FRANCHISE TO WASTE RECOVERY, INC.

PURPOSE

Metro staff and Waste Recovery Incorporated (WRI) negotiated the franchise agreement that is the subject of this staff report. Metro's basic objective is to encourage recovery of waste tires by the private sector. This supports recycling and waste recovery goals and minimizes the risk that public capital will be required to ensure proper management of the waste tire stream. WRI seeks a business environment in which it can compete effectively with environmentally less desirable tire disposal options, and which provides a measure of cost-certainty for the future.

SUMMARY

The waste tire stream and its management have unique attributes. These include: (a) a landfill ban; (b) a collection system that operates independently from the system for mixed solid waste; (c) a source-separated waste stream; (d) generation of significant residuals—even from state-of-the-art technology; and (e) extremely price-sensitive markets for disposal/recovery services and for recycled tire products.

The private sector recovers a significant portion of the waste tires generated in the Metro area. This helps to fulfill a solid waste management function that would otherwise require public planning efforts and perhaps public capital.

The agreement described in this staff report is a model for Metro's relationship with tire processors generally. It helps to create an environment where recyclers can compete with disposal operations, while effectively managing a waste stream that is banned from landfills. This agreement provides economic incentives which encourage recycling, reduce disposal in landfills, and help maintain and enhance local recycling capacity.

FACTUAL BACKGROUND AND ANALYSIS

Both Metro and the State of Oregon have worked extensively over the past 20 years to develop effective methods for managing waste tires.

According to the state solid waste management hierarchy, recovery is preferable to other waste tire management options such as stockpiling, landfilling or illegal dumping.

Collection of used tires traditionally has been outside the commercial solid waste system. As a result, Metro fees and excise taxes have not historically been collected on any tires regardless of their disposition.

Waste Recovery, Inc. has applied to Metro for a franchise to operate a tire processing facility at 8501 N. Borthwick in Portland. This is a unique franchise application since Waste Recovery is not required by Metro Code to obtain a franchise. WRI has been processing tires on this site since 1982. WRI proposes to continue its current activities which include recovering materials from waste tires via a mechanical process, and marketing the resulting chip products for a variety of uses.

Waste Recovery proposes that the facility be open to its own vehicles and other commercial haulers. The facility would receive material 16 hours per day, 7 days per week. Other commercial haulers would be limited to 8.5 hours per day, five days per week. Estimated vehicles per day is 32 Waste Recovery, Inc. vehicles and 20 other commercial vehicles.

WRI obtains waste tires from: (a) specialized firms permitted by DEQ to haul tires, (b) individual drop-offs, and (c) collection routes using trucks owned by WRI.

Tire processing generates approximately 20 percent waste residual that requires landfilling. Under current Metro code, a tire processor may dispose of its residual at a designated Metro facility, or at a non-designated facility if a non-system license is granted. Imposition of full Metro fees on WRI would either: a.) make this company unprofitable; or b.) force a pass-through of the fee which would drive tires to less desirable disposal options such as landfilling, stockpiling, or illegal dumping.

WRI's process residual has historically been disposed at an out-of-area landfill that is licensed by DEQ to accept such wastes.

Under Metro Code, the Executive Officer shall formulate recommendations regarding whether: a.) the applicant is qualified; b.) the proposed franchise complies with the district's solid waste management plan; c.) 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; d.) the applicant has complied or can comply with all other applicable regulatory requirements. Staff finds the applicant meets all of these requirements.

CONDITIONS OF THE FRANCHISE

The essence of the proposed franchise agreement is that Metro will forego collection of certain fees for a period of time to allow WRI to invest these fees in residual-reducing technology. If successful, this technology will diminish the amount of process residual to a point where disposal charges are not an issue. The foregone fees would normally accrue to Metro for waste reduction and other activities. This agreement allows these fees to be invested directly in recycling and waste reduction.

WRI has committed to measurable benchmarks and oversight which allow Metro to determine that re-directed fees are invested as intended. It should be emphasized that the principles and the agreement described here would be considered for any private waste tire processor operating in the Metro area.

The implementing mechanism for this agreement is the proposed franchise. Although WRI is not required to be franchised, there are no restrictions on entering into *voluntary* franchises under Metro Code. Staff recommends this path in order to avoid developing an entirely new vehicle for implementing this agreement. However, because of the voluntary nature of the franchise, a number of provisions in Metro Code are not relevant. Accordingly, a number of variances from Metro Code have been requested.

FRANCHISE VARIANCES

WRI has requested variances from sections of the Metro Code relating to: surety bonding, rate setting, administrative procedures, Metro user fees, restriction of haulers using franchised facilities, and Metro's ability to divert waste. It also is requesting exemption from the Metro excise tax.

The principal reason behind the variance requests is that waste tire processors in general, and WRI in particular, cannot effectively operate under the current regulatory scheme.

WRI is searching for a new site on which to relocate its North Borthwick facility to allow room for expansion. WRI strongly favors remaining in the Metro region. However, it also has stated that user fees, excise taxes and added administrative expenses and requirements such as additional bonding costs would be serious impediments to remaining here. Staff accepts these reasons for the requested variances.

RECOMMENDATION TO AMEND METRO CODE SECTION 7.01.050

Staff recommends that an additional exemption be added to Section 7.01.050 to the effect that: Subject to the terms of the franchise agreement, tire processors that are franchised by Metro and that accomplish material recovery and recycling as a primary operation shall not be liable for Metro excise tax on disposal of residual materials that arise as a direct consequence of processing tires for material recovery or recycling.

Metro Code contains several exemptions to excise taxes but these do not extend to process residual that is landfilled. Exemption from the excise tax is recommended for several reasons, including (but not limited to) the following: 1.) the voluntary nature of this agreement which has been developed to ensure foregone fees are invested as intended; 2.) the financial impact on WRI would likely lead to a loss of regional tire recovery capacity, requiring public planning efforts and perhaps public capital to replace lost capacity; 3.) WRI is the only scrap tire processor serving the Pacific Northwest; and 4.) exemption from the excise tax will not affect Metro's revenue since Metro has not received excise tax revenue from WRI in the past.

BUDGET IMPACT

This franchise will increase user fee receipts by the FOUR THOUSAND DOLLAR (\$4,000) per year. It will not affect excise tax receipts since Metro has not received excise tax revenue from WRI. This franchise will have no direct costs to Metro.

STAFF RECOMMENDATIONS

Based on the foregoing analysis, it is the opinion of staff that Waste Recovery, Inc. be granted a non-exclusive franchise in accord with the provisions of the draft franchise shown as Exhibit A of Ordinance No. 96-634.

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Ordinance No. 96-634

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STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 96-634 FOR THE PURPOSE OF GRANTING A FRANCHISE TO WASTE RECOVERY, INC. FOR THE PURPOSE OF OPERATING A SOLID WASTE PROCESSING FACILITY AND AMENDING CODE SECTION 7.01.050 REGARDING EXCISE TAX EXEMPTIONS

Date: February 1, 1996

Presented by: Bern Shanks
Roosevelt Carter

PURPOSE

Metro staff and Waste Recovery, Inc. (WRI) negotiated the franchise agreement that is the subject of this staff report. Metro's basic objective is to encourage recovery of waste tires by the private sector. This supports recycling and waste recovery goals and minimizes the risk that public capital will be required to ensure proper management of the waste tire stream. WRI seeks a business environment in which it can compete effectively with environmentally less desirable tire disposal options, and which provides a measure of cost-certainty for the future.

SUMMARY

The waste tire stream and its management have unique attributes. These include: (a) a landfill ban; (b) a collection system that operates independently from the system for mixed solid waste; (c) a source-separated waste stream; (d) generation of significant residuals—even from state-of-the-art technology; and (e) extremely price-sensitive markets for disposal/recovery services and for recycled tire products. At present, the private sector recovers a significant portion of the waste tires generated in the Metro area. This helps to fulfill a solid waste management function that would otherwise require public planning efforts and perhaps public capital. Because landfilling tires is banned, Metro would have to develop alternative disposal options if private-sector options did not exist. Accordingly, it is in Metro's interest to foster an environment that encourages private-sector solutions and, in particular, solutions that fulfill waste recovery and recycling goals over and above landfilling.

The agreement described in this staff report is a model for Metro's relationship with tire processors generally. It helps to create an environment where recyclers can compete with disposal operations, while effectively managing a waste stream that is banned from landfills. This agreement provides economic incentives which encourage recycling, reduce disposal in landfills, and help maintain and enhance local recycling capacity.

FACTUAL BACKGROUND AND ANALYSIS

WRI has applied to Metro for a franchise to operate its existing tire processing facility in the City of Portland. This is a unique franchise application since Waste Recovery is not required by Metro Code to obtain a franchise. However, there are a number of compelling reasons to consider their application. To fully understand these reasons, it is necessary to review the history and

status of waste tire management options in the Metro area, as well as the specific circumstance of WRI. This staff report does this through four sections: 1) Background of the waste tire system in the Metro Area; 2) Background of Waste Recovery, Inc. 3) The need for the franchise; 4) Conditions of the franchise.

1. Background of the waste tire system in the Metro Area

Both Metro and the State of Oregon have worked extensively over the past 20 years to develop effective methods for managing waste tires. At the state level, efforts have included a fee on new tires that funded a tire cleanup program (now sunsetted), and development of a regulatory program. Among the most powerful regulatory actions is a ban on landfill disposal of whole tires (ORS 459.710).

The state ban on disposal of whole tires is also mirrored in Metro Code (5.01.210). Through its transfer station inspection program, Metro has ensured that tires are not landfilled. Metro has worked to reduce illegal dumping of tires through its enforcement program and assistance to organizations such as SOLV. Through grants and staff time, Metro also has fostered the development of industries that process used tires.

According to the state solid waste management hierarchy, recovery is preferable to other waste tire management options such as stockpiling, landfilling (shredded tires in state or whole tires out of state) or illegal dumping. The presence of firm(s) to process tires into marketable products helps to fulfill a solid waste management function that would otherwise require public planning efforts and perhaps expenditure of public capital. Because landfilling of whole tires is banned, Metro would have to develop tire disposal options if a private processor did not serve this region. Accordingly, the continued existence of private-sector option(s) for tire processing is in Metro's financial and regulatory interest.

Collection of used tires has traditionally been outside the commercial solid waste system. It was not until Metro instituted an enforcement arm that it became aware of the extent of the tire processing, stockpiling and disposal system. As a result, Metro fees and excise taxes have not historically been collected on any tires regardless of their disposition.

Current tire processing technology generates a significant quantity of waste residual (approximately 20 percent of incoming material by weight) that requires landfilling. Under current Metro code, a tire processor may dispose of its residual at a designated Metro facility, or at a non-designated facility if a non-system license is granted. The imposition of full Metro fees would have a significant impact on the ability of any private waste tire processor to compete with disposal alternatives. A tire processor has two basic options for handling Metro fees: pass them along in its gate rate, or absorb them. Neither is feasible. The Metro Regional User Fee (\$17.50 per ton) and excise tax (7½ percent of disposal costs), would add between 4¢ and 18¢ per tire to WRI's gate rate—depending on how much of the tire is recovered. Even the low amount is sufficient to shift the flow of waste tires to environmentally less desirable options such as stockpiling. (Note: stockpiled tires would be subject to Metro fees, but their remote or out-of-state locations make collecting fees difficult). Attempts to pass fees on would reduce feedstock to processors, thereby reducing material recovery. Likewise, the second option—absorbing

Metro fees—is not practical. The tire processing industry operates on thin profits. Tire recyclers must compete head-to-head with less desirable disposal or stockpiling operations which have lower investment and operation costs.

2. Background on Waste Recovery, Inc.

Waste Recovery, Inc. has applied to Metro for a franchise to operate a tire processing facility at Portland, Oregon. The site location is 8501 N. Borthwick in Portland. This site is located one block north of Columbia Blvd. on property adjacent to Wastech, Inc.'s franchise facility. WRI has been processing tires on this site (zoned HI heavy industrial) since 1982. WRI proposes to continue its current activities which include recovering materials from waste tires via a multi-stage mechanical process, and marketing the resulting chip products for a variety of uses including fuel, feedstock for making rubber mats, and civil engineering fill material.

WRI obtains waste tires from: (a) specialized firms permitted by DEQ to haul tires, (b) individual drop-offs, and (c) collection routes using trucks owned by WRI. Disposal of residue from WRI's process shall be at a designated facility under the Metro Code, or under authority of a non-system license issued by Metro.

Waste Recovery proposes that the facility be open to its own vehicles and other commercial haulers. The facility would receive material 16 hours per day, 7 days per week. Other commercial haulers would be limited to 8.5 hours per day, five days per week. Estimated vehicles per day is 32 Waste Recovery, Inc. vehicles and 20 other commercial vehicles.

3. Need for the Franchise

Metro Code Section 5.01.070 states in part that the Executive Officer shall formulate recommendations regarding whether:

- a) the applicant is qualified
- b) the proposed franchise complies with the district's solid waste management plan
- c) 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
- d) the applicant has complied or can comply with all other applicable regulatory requirements.

3.a Waste Recovery is qualified.

The presence of Waste Recovery, Inc.—a stable, large-scale tire processor that provides accessible and cost competitive processing of tires—has contributed significantly to the effectiveness of Oregon's waste tire management system. WRI has been operating continuously since 1982, during which time other tire processors have come and gone. More than 37 million tires have passed through the facility during this time. WRI currently processes over three-quarters of the waste tires generated annually within the Metro region, plus four times this amount from other areas of the Pacific Northwest. (The balance of tires generated in the Metro

region are presumed to be stockpiled, shredded and landfilled, or illegally dumped by other parties.)

3.b Waste Recovery complies with the district's solid waste management plan

Given the conditions imposed by this franchise, this facility would fully comply with the goals, objectives and policies of the Regional Solid Waste Management Plan (RSWMP) adopted by Metro Council in 1995. One goal listed in the RSWMP is to support an environment that fosters development and growth of reuse, recycling, and recovery enterprises. [pg. 5-7] WRI's facility recovers materials that otherwise would go unprocessed, become stockpiled or ultimately be landfilled. The facility is privately owned and operated and requires no public investment in plant or equipment.

3.c Waste Recovery is needed

Markets for used tires operate on a regional scale. In this area, the market is the Pacific Northwest (Oregon, Washington, and parts of Idaho). It is the only significant recycler of whole tires serving the Pacific Northwest. As a result of uncoordinated state policies in the Northwest, this market contains low-cost alternatives to recycling (e.g., stockpiling). Moreover, tire derived fuel (WRI's primary product) is a relatively low value-added product. In this industry environment, suppliers' loyalties tend to be low, profit margins thin, and incentives for unscrupulous or illegal behavior (e.g., abandoning stockpiles or illegal dumping) strong.

3.d Waste Recovery complies with applicable regulatory requirements

The applicant requires the following permits :

1. National Pollution Discharge Elimination System (NPDES) (permit No. 1200-L issued 9/24/91; expires 9/30/96.)
2. Oregon Department of Environmental Quality (tire carrier and storage site permit issued 5/05/95; expires 1/1/2000).
3. City of Portland Land Use compatibility statement (renewed 1/26/95)
4. Metro franchise(voluntary).

4. Conditions of the franchise

Overview

As a processor of source-separated material, WRI is not required to obtain a Metro franchise. However, process residual that is disposed is subject to the Metro Regional User Fee and excise tax. Thus, unlike other processors of source-separated material, WRI incurs significant disposal costs and is liable for Metro fees under current Metro Code. WRI had interpreted its status as a processor of source-separated solid waste as exempting it from Metro fee requirements. When informed by the Solid Waste Director in 1994 that it had to get a non-system license to dispose its residual outside the Metro area, WRI complied.

WRI's process residual has historically been disposed at an out-of-area landfill that is licensed by DEQ to accept such wastes.

Annual charges to WRI's Portland plant for Metro's Regional User Fee and excise tax alone would exceed the total 1994 profits of WRI—a publicly-traded firm with four locations nationally. Full imposition of Metro fees would push this marginally profitable enterprise into the red.

The essence of the proposed franchise agreement is that Metro will forego collection of certain fees for a period of time, and to allow WRI to invest these fees in residual-reducing technology. If successful, this technology will diminish the amount of process residual to a point where disposal charges are not an issue. The foregone fees would normally accrue to Metro for waste reduction and other activities. This agreement allows these fees to be invested directly in recycling and waste reduction.

WRI has committed to measurable benchmarks and oversight which allow Metro to determine that re-directed fees are invested as intended. It should be emphasized that the principles and the agreement described here would be considered for any private waste tire processor operating in the Metro area.

Detailed Description of Agreement

WRI will remit to Metro a fixed user fee of \$4,000 per year for three years from initiation of the franchise, or until it abandons its residual-reducing experiments, whichever comes first. The residual-reducing technology is expected to be operational in approximately three years. If successful, WRI's disposal costs—including Metro fees—will be significantly minimized. If implementation is delayed or if the technology does not work as planned, *and* if certain implementation benchmarks have been met, then WRI can obtain up to three more years of operation under the fixed charge of \$4,000 per year.

The agreement grants oversight to Metro to ensure that foregone fees are being invested as intended. WRI will make regular reports to Metro on incoming waste tires and materials that are recovered. WRI is committed to report on progress toward design, procurement, installation, and testing of its residue reduction technology and development of markets for its finished products. In particular, if WRI meets three key benchmarks during the first three years of the agreement, but implementation is delayed or the technology does not work as planned, it may extend its period of fixed payments to Metro one year for each of the benchmarks. The three benchmarks are: (1) ordering of wire recovery equipment; (2) installation of wire recovery equipment; and, (3) initial operation of wire recovery equipment.

A modified schedule for the Regional User Fee (see Exhibit A, Franchise Agreement) takes effect after the period during which WRI would pay the \$4,000 flat fee to Metro. This schedule is intended to apply to any tire processing facility (in the sense of Metro Code 5.01.010[o]) in the Metro area. The schedule ties the user fee to the recovery rate. For example, if no recovery is accomplished (*e.g.*, if tires are simply split and landfilled), then 100 percent of the prevailing Regional User Fee would be due on outgoing material. At 80 percent recovery, 10 percent of the

user fee would be due; and so forth. The fees apply to all tires processed by an in-region tire processor, independent of the origin of the tires.

The implementing mechanism for this agreement is the proposed franchise. Although WRI is not required to be franchised, there are no restrictions on entering into *voluntary* franchises under Metro Code. Staff recommends this path in order to avoid developing an entirely new vehicle for implementing this agreement. However, because of the voluntary nature of the franchise, a number of provisions in Metro Code are not relevant. Accordingly, a number of variances from Metro Code have been requested.

FRANCHISE VARIANCES

WRI has requested variances from several sections of the Metro Code. It also is requesting exemption status from the Metro excise tax. The excise tax issue will be discussed in this report following analysis of the requested variances because the excise tax exemption is recommended as a change to Metro Code Chapter 7.01, rather than a variance.

The number and nature of the requested variances are due in part to the unusual circumstance of this voluntary franchise. It is in Metro's financial, regulatory, and planning interests to retain this recycling and recovery facility. The Code sections and nature of the variance requests are as follow:

1. Section 5.01.060(b)(1) and Section 5.01.070(e)(2) relating to surety bonds
2. Section 5.01.170 relating to rate setting
3. Section 5.01.130(a)(1)(2),(b)(1-8),(c),(d),(e). relating to Metro administrative procedures for:
 - weighing incoming material
 - record keeping and reporting;
 - excise taxes
 - payment schedules
4. Section 5.01.150(a),(b),&(c).relating to Metro's user fee
5. Section 5.01.120(1).relating to restriction of haulers using franchised facility
6. Section 5.01.070(f)(1)(2)&(g).relating to Metro's ability to divert waste

The Metro Council may grant a variance to provisions of the Code under Section 5.01.110 in the interest of protecting the public health and welfare if the purpose and intent of the requirement (e.g., setting rates) can be achieved without strict compliance, and that strict compliance:

"(1) Is inappropriate because of conditions beyond the control of the persons(s) requesting the variance; or

(2) Will be extremely burdensome or highly impractical due to special physical conditions or causes; or

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

The principal reason behind the variance requests is that waste tire processors in general, and WRI in particular, cannot effectively operate under the current regulatory scheme. If WRI were subjected to the strict requirements of the Metro Code, it would likely close its local facility, and Metro's waste reduction objectives would be undermined.

WRI is searching for a new site on which to relocate its North Borthwick facility to allow room for expansion. WRI strongly favors remaining in the Metro region. However, it also has stated that user fees, excise taxes and added administrative expenses and requirements such as additional bonding costs would be serious impediments to remaining here. Staff accepts these reasons for the requested variances.

Additionally, staff find that imposition of Metro's full Regional User Fee would result in significant shifts of tires away from reuse, recycling, and recovery and to stockpiling, landfilling, and illegal dumping. Therefore, staff recommends the variance be subject to the agreed schedule in the franchise, Exhibit A.

RECOMMENDATION TO AMEND METRO CODE SECTION 7.01.050

Metro Code Section 7.01.050 established eight categories of persons and entities that are exempt from the requirements of Chapter 7.01 of the Metro Code relating to excise taxes. It is proposed that an additional exemption be added to Section 7.01.050 to the effect that: Subject to the terms of the franchise agreement, tire processors that are franchised by Metro and that accomplish material recovery and recycling as a primary operation shall not be liable for Metro excise tax on disposal of residual materials that arise as a direct consequence of processing tires for material recovery or recycling.

Section 5.01.050 (7) already exempts operators of franchised processing centers that accomplish material recovery as a primary operation. However, this exemption does not extend to residue that is landfilled. The proposed additional exemption for franchised tire processors is recommended because:

1. Exemptions for critical facilities that further waste reduction and recycling in the region should be considered on a case by case basis.
2. By making the exemption subject to the terms of the franchise agreement (rather than a general exemption in code), any termination or violation of the franchise agreement may result in disqualification of the franchisee's excise tax exemption.
3. The exemption has no budget impact because excise taxes are not currently being collected from this class of processor.

4. The processor would normally be exempt from franchising under Section 5.01.050 (7). The proposed franchise establishes an arrangement that allows WRI to invest fees, which otherwise would go to Metro for waste reduction and other related activities, in residual reducing technologies. The primary purpose of this franchise is to provide Metro oversight to ensure that foregone fees are invested as intended.
5. Imposition of the full excise tax on WRI would likely lead to a loss of regional tire recovery capacity, requiring public planning efforts and perhaps public capital to replace lost capacity. The rationale described in 4. above also applies to the excise tax (*i.e.*, the highly competitive and price-sensitive scrap tire market can shift radically with small fluctuations in facility fees).
6. The applicant is a "one-of-a-kind" facility in the Northwest. Foregone excise tax revenues would be outweighed by the significance of the applicant's contribution to the waste reduction, materials recovery and recycling in the region.

Based on the foregoing, staff recommends that Metro Code Section 7.01.050 be amended as described above.

BUDGET IMPACT

This franchise will increase user fee receipts by the FOUR THOUSAND DOLLAR (\$4,000) annual payment. It will not affect excise tax receipts since Metro has not relied on excise tax revenue from WRI. This franchise will have no direct costs to Metro. There are contingent elements to this franchise that require additional payments in the event that residue levels rise beyond those agreed to. They are specified in the Franchise Agreement, Exhibit A.

STAFF RECOMMENDATIONS

Based on the foregoing analysis, staff recommends that Waste Recovery, Inc. be granted a non-exclusive franchise in accord with the provisions of the draft franchise shown as Exhibit A of Ordinance No. 96-634.

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Ordinance No. 96-634.

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Updated: 02/02/96 11:55 AM



METRO

EXHIBIT A

SOLID WASTE FRANCHISE

issued by

METRO

600 NE Grand Avenue

Portland, Oregon 97232-2736

(503) 797-1700

FRANCHISE NUMBER: 17

DATE ISSUED: See Section 2

AMENDMENT DATE: N/A

EXPIRATION DATE: See Section 2

ISSUED TO: WASTE RECOVERY, INC.

NAME OF FACILITY: WASTE RECOVERY, INC.

ADDRESS: 8501 N. BORTHWICK, PORTLAND, OR 97217

LEGAL DESCRIPTION: SEE ATTACHED

CITY, STATE, ZIP: Portland, OR 97217

NAME OF OPERATOR: WASTE RECOVERY, INC.

PERSON IN CHARGE: MARK W. HOPE

ADDRESS: 8501 N. BORTHWICK

CITY, STATE, ZIP: Portland, OR 97217

TELEPHONE NUMBER: (503) 283-2261

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FRANCHISE AGREEMENT

This Franchise is issued by Metro, a municipal corporation organized under ORS chapter 268, referred to herein as "Metro," to Waste Recovery, Inc. referred to herein as "Franchisee."

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

1. DEFINITIONS

As used in this Franchise:

- 1.1 "Code" means the Code of Metro.
- 1.2 "DEQ" means the Department of Environmental Quality of the State of Oregon.
- 1.3 "Executive Officer" means the Executive Officer of Metro or the Executive Officer's designee.
- 1.4 "Facility" means the facility described in section 3 of this Franchise.
- 1.5 "Processed" means method(s) or system(s) of altering the form or condition of vehicle tires including but not limited to grading for retreading/reuse, shredding, milling, or pulverizing. "Processed" excludes tires received and held in inventory during the reporting period.
- 1.6 "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.
- 1.7 "Recovery Rate" is 100 minus "residual rate" as defined in 1.8, expressed as a percentage.
- 1.8 "Residual Rate" is the ratio of: tons of process residual disposed to: tons of tires processed, expressed as a percentage.

2. TERM OF FRANCHISE

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

3. LOCATION OF FACILITY

3.1 The franchised Facility is located at 8501 N. Borthwick, Portland, Oregon. Attached as Exhibit 1 to this agreement is the legal description of the facility property.

4. OPERATOR, AND OWNER OF FACILITY AND PROPERTY

4.1 The owner of the Facility is Waste Recovery, Inc. Franchisee shall notify Metro of any changes in ownership of the Facility in excess of five percent of ownership, or any change in partners if a partnership, within 10 days of the change.

4.2 The owner of the property underlying the Facility is Wayne Easley. If Franchisee is not the owner of the underlying property, Franchisee warrants that owner has consented to Franchisee's use of the property as described in this Franchise.

4.3 The operator of the Facility is Waste Recovery, Inc. Franchisee may contract with another person or entity to operate the Facility only upon ninety (90) days prior written notice to Metro and the written approval of the Executive Officer, which approval shall not be unreasonably withheld. Franchisee shall retain primary responsibility for compliance with this Franchise.

5. AUTHORIZED AND PROHIBITED SOLID WASTES

5.1 Franchisee is authorized to accept all such materials authorized by its DEQ authorization. The authorized materials include waste tires for storage and processing. Tires will be processed via a multi-stage mechanical process to include coarse shredding, granulization and wire liberation, and wire removal via magnetic separation. Tires will also be graded for retreading and reuse.

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

5.3 Consistent with DEQ directives, Franchisee shall establish and follow procedures for tire storage, disposal and/or removal. Also a fire prevention plan and emergency fire response plan shall be implemented. These procedures shall be described in writing and submitted to Metro prior to any waste being accepted.

5.4 Franchisee may accept loads from its own affiliated hauling companies and other non-affiliated commercial haulers and contractors.

6. MINIMUM MONITORING AND REPORTING REQUIREMENTS

- 6.1 The Franchisee shall file an operating report commencing on the first six-month anniversary date of the Franchise and every six months thereafter, summarizing the previous six month's operation of the Facility as outlined in this Franchise. A sample reporting form is shown as Exhibit 1.

Exhibit 1 -- METRO FRANCHISE FACILITY REPORTING FORM

<p style="text-align: center;">METRO FRANCHISE FACILITY REPORTING FORM For WASTE RECOVERY, INC.</p> <p>1. Reporting Period (write in year for appropriate six-month period): Jan. 1 - June 30 _____ July 1 - Dec. 31 _____</p> <p>2. Tons of tires processed¹ during reporting period _____</p> <p>3. Tons of process residue disposed during reporting period _____</p> <p>4. Wire Recovery Plan milestones accomplished during reporting period (check appropriate milestones below to certify that they have been accomplished): ____ Wire recovery equipment ordered ____ Wire recovery equipment installed ____ Initial operation and debugging of wire recovery system completed</p> <p><small>¹"Processed" means method(s) or system(s) of altering the form or condition of vehicle tires including but not limited to grading for retreading/reuse, shredding, milling, or pulverizing. "Processed" excludes tires received and held in inventory during the reporting period.</small></p>

- 6.2 The Franchisee shall submit to Metro duplicate copies of any regulatory matters pertaining to the Facility, within 30 days of filing with regulatory agency.
- 6.3 Authorized representatives of Metro shall be permitted to inspect information from which all required reports are derived during normal working hours or at other reasonable times with 24-hour notice. Metro's right to inspect shall include the right to review, at an office of Franchisee located in the Portland metropolitan area, all books, records, maps, plans, and other like materials of the Franchisee that are directly related to the operation of the Franchisee. This will include transaction records that establish at the minimum, the following:
- a) Name and account number if credit account (or cash if a cash transaction);
 - b) Quantity of tires received and processed;

- c) Geographic origin of the tires; and,
 - d) Quantity of process residue disposed.
- 6.4 Tires received at the facility shall be reported to Metro based on industry accepted standards for weight per tire of 20 pounds per passenger tire equivalent or on information submitted by the Franchisee to Metro for approval. Unless and until modified, the standard for reporting under this franchise shall be twenty (20) pounds per passenger tire equivalent. .
- 6.5 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. If transactions are electronically recorded, information shall be in a form that can be audited and shall be approved by Metro.

7. OPERATIONAL REQUIREMENTS

- 7.1 A copy of this Franchise shall be displayed where it can be readily referred to by operating personnel.
- 7.2 If a breakdown of equipment, fire, or other occurrence results in a violation of any conditions of this Franchise or of the Metro Code, the Franchisee shall:
- a) Immediately notify Metro so that an investigation can be made to evaluate the impact and the corrective actions taken and determine additional action that must be taken.
 - b) Take immediate action to correct the unauthorized condition or operation.
 - c) Prepare a report describing all operational irregularities, accidents, and incidents of non-compliance and provide a copy of such report to Metro within ten (10) days of occurrence or sooner if circumstances warrant notification to Metro.
- 7.3 If the Processing Facility is to be closed more than 120 days, Franchisee shall provide Metro with written notice, at least ninety (90) days prior to closure, of the proposed time schedule and closure procedures.
- 7.4 Franchisee shall provide a staff that is qualified to operate the Facility in compliance with this Franchise and to carry out the reporting functions required by this Franchise.

8. ANNUAL FRANCHISE FEES

Franchisee shall pay an annual franchise fee, as established under Metro Code Section 5.03.030. The fee shall be delivered to Metro within 30 days of the effective date of this Franchise and each year thereafter.

9. INSURANCE

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

10. INDEMNIFICATION

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

- 10.1 SURETY BOND OR CONDITIONAL LIEN -- None is required.

11. COMPLIANCE WITH LAW

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

12. METRO ENFORCEMENT AUTHORITY

- 12.1 The franchisee shall not be subject to Metro's authority to divert waste under Metro Code.
- 12.2 Authorized representatives of Metro shall be permitted access to the premises of the Facility at all reasonable times for the purpose of making inspections and carrying out other necessary functions related to this Franchise. Access to inspect is authorized:
 - a) During all working hours;
 - b) At other reasonable times with notice; and
 - c) At any time without notice when, in the opinion of the Metro Regional Environmental Management Department Director, such notice would defeat the purpose of the entry.
- 12.3 The power and right to regulate, in the public interest, the exercise of the privileges granted by this Franchise shall at all times be vested in Metro. Metro reserves the right to establish or amend rules, regulations or standards regarding matters within Metro's authority, and to enforce all such legal requirements against Franchisee.

13. DISPOSAL RATES AND FEES

- 13.1 Franchisee is exempt from Metro rate setting.
- 13.2 Franchisee is exempted from collecting and remitting Metro Fees on waste received at the Facility in conformance with this Agreement.
- 13.3 Franchisee is responsible for paying all costs associated with disposal of residual material generated at the Facility. User Fees shall be paid as follows:
 - a. Notwithstanding sections 13.3 b and 13.3 c below, Franchisee shall pay a User Fee based on a percentage of the prevailing Regional User Fee. Such

percentage shall be based on Franchisee's Residual Rate during the previous calendar year. The rate schedule is:

Residual Rate	Percentage of Regional User Fee	Residual Rate	Percentage of Regional User Fee
60% to 100%	100%	30%	30%
55%	95%	25%	20%
50%	90%	20%	10%
45%	80%	15%	7.5%
40%	60%	10%	5%
35%	40%	5%	2.5%

For purposes of determining the percentage of the Regional User Fee, the terms "tons of process residual" and the "tons of tires processed," as used in Definition 1.1.8 (Residual Rate) of this agreement, shall be the total of these quantities during a calendar year, from January 1 to December 31. The Residual Rate shall be calculated by Metro, based on data submitted by Franchisee to Metro in accordance with Section 6 of this agreement. Inventory adjustments may be incorporated in calculation of the Residual Rate if Franchisee submits beginning and ending inventories, and if such data meet the data standards in Section 6 of this agreement. If Franchisee elects to submit data for inventory adjustments in any particular year, then inventory adjustments shall be incorporated in calculations of Franchisee's residual rates in all years thereafter. The Residual Rate shall be the basis for determining Franchisee's user fee during the subsequent calendar year.

Franchisee's residual rate during the previous year shall be rounded up to the next highest residual rate in the fee schedule above. The indicated percentage of Regional User Fee shall be multiplied by the prevailing Regional User Fee, and this result shall be multiplied by the total tonnage of tires and tire processing residual for which Franchisee paid to dispose.

For example, under this section of the agreement, if Franchisee had achieved a 22% residual rate in the previous year, then the 22% residual rate would be rounded to 25% and the indicated percentage of Regional User Fee would be 20%, according to the schedule above. If the prevailing Regional User Fee is \$17.50 per ton, Franchisee would pay to Metro an amount equal to $.20 \times \$17.50 = \3.50 per ton for each ton of tires and tire processing residual disposed for a fee.

- b. For a period of three years beginning from the initial date of this franchise and while Franchisee implements new wire recovery technology, Franchisee shall pay to Metro a flat User Fee per year. If during this three year period the residual rate exceeds 25%, the terms and conditions of the rate schedule as defined in 13.3a shall apply.
- c. During this three year period, Franchisee shall provide Metro with evidence sufficient to determine that new wire recovery technology is being implemented. Franchisee shall notify Metro in a timely manner when each of the following milestones have been reached:
 - 1. Ordering of Wire Recovery Equipment
 - 2. Installation of Wire Recovery Equipment
 - 3. Initial Operation of Wire Recovery Equipment

In the event that Franchisee abandons implementation of wire recovery technology during the three year period, the flat User Fee per year shall be extended for one year for each of the milestones (13.3 c.1, 2, and 3 above) that have been achieved, for a maximum of three additional years at the flat rate.

- 13.4 Franchisee shall pay the agreed User Fee on an annual basis, the first payment to be due and payable within ten days of receipt of the signed Franchise Agreement.
- 13.5 Disposal of residue shall be at a designated facility under the Metro Code or under authority of a non-system license issued by Metro.
- 13.6 Franchisee shall establish uniform rates to be charged for all loads accepted at the Facility. Franchisee shall establish objective criteria and standards for acceptance of tires and will submit a copy to Metro within 10 days of execution of this agreement. 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, but rates may be charged on a continuing basis as market demands may dictate. Public rates charged at the facility shall be posted on a sign near where fees are collected.

14. REVOCATION

- 14.1 This Franchise may be revoked at any time for any violation of the conditions of this Franchise or the Metro Code. This Franchise does not relieve Franchisee from responsibility for compliance with ORS chapter 459, or other applicable federal, state or local statutes, rules, regulations, codes, ordinances, or standards.
- 14.2 This Franchise Agreement is subject to suspension, modification, revocation, or nonrenewal upon finding that:

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

15. GENERAL CONDITIONS

- 15.1 Franchisee shall be responsible for ensuring that its contractors and agents operate in complete compliance with the terms and conditions of this Franchise.
- 15.2 The granting of this Franchise shall not vest any right or privilege in the Franchisee to receive specific quantities of solid waste during the term of the Franchise.
- 15.3 This Franchise may not be transferred or assigned without the prior written approval of Metro.
- 15.4 To be effective, a waiver of any term or condition of this Franchise must be in writing, signed by the Executive Officer. Waiver of a term or condition of this Franchise shall not waive nor prejudice Metro's right otherwise to require performance of the same term or condition or any other term or condition.
- 15.5 This Franchise shall be construed, applied, and enforced in accordance with the laws of the State of Oregon.
- 15.6 If any provision of the Franchise shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this Franchise shall not be affected.

16. NOTICES

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

Mark W. Hope, President
Waste Recovery, Inc.

8501 N. Borthwick
Portland, OR 97217

- 16.2 All notices except Franchise Facility Reporting For (Exhibit 1) are required to be given to Metro under this Franchise shall be delivered to:

Director, Regional Environmental Management
Regional Environmental Management
Metro
600 NE Grand Avenue
Portland, OR 97232-2736

The Franchise Facility Reporting Form shall be delivered to the attention of: Solid Waste Information System (SWIS) Coordinator, at the address above.

- 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.

Mark W. Hope, President
Waste Recovery, Inc.

Mike Burton, Executive Officer
Metro

Date: _____

Date: _____

EXHIBIT 1

Legal Description.

Swinton Addition, Block 5, Lots 1-36, in the City of Portland, Oregon.

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