

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

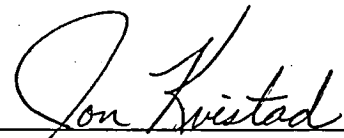
WHEREAS, the Executive Officer recommends that the Council grant the attached franchise to OrRS; now therefore,

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 12th day of September

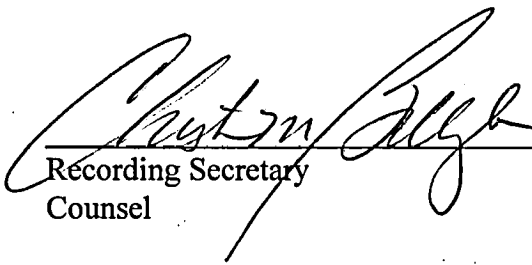
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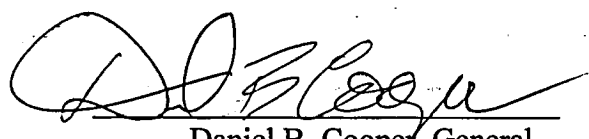
Jon Kvistad, Presiding Officer

ATTEST:

Approved as to Form:



Recording Secretary
Counsel



Daniel B. Cooper, General

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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(I))
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 Franchisee 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:zey

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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 20.00 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 1091, Page 401, Deed Records of Multnomah County, 381.56 feet to the most Westerly corner of said tract; thence North 44°36'20" West 469.10 feet; thence North 43° East 361.96 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.

PARCEL 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 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° 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;

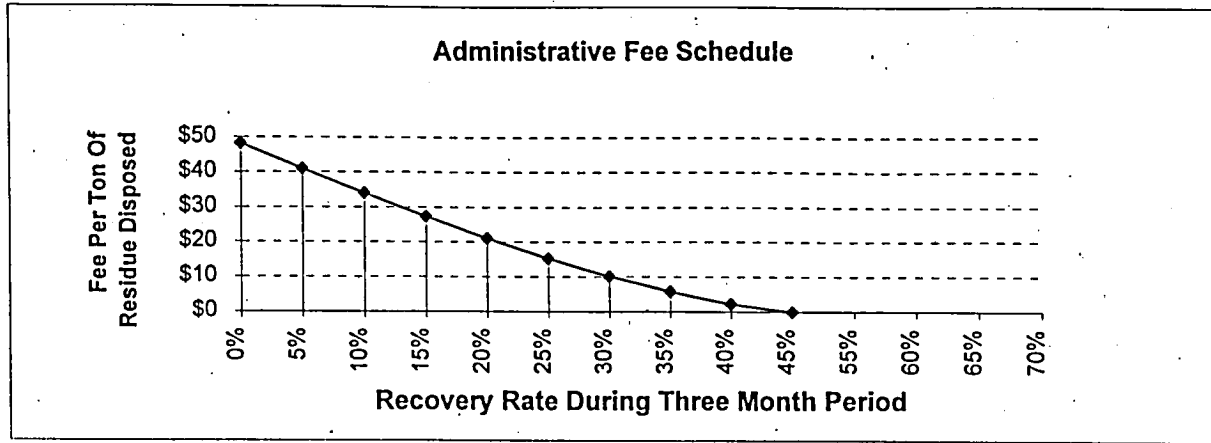
EXCEPTING THEREFROM that portion conveyed to the State of Oregon, by and through its State Highway Commission, by deed recorded December 2, 1943 in Book 798; Page 171, Records of Multnomah County, Oregon.

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.

FILE:304-0501/

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.

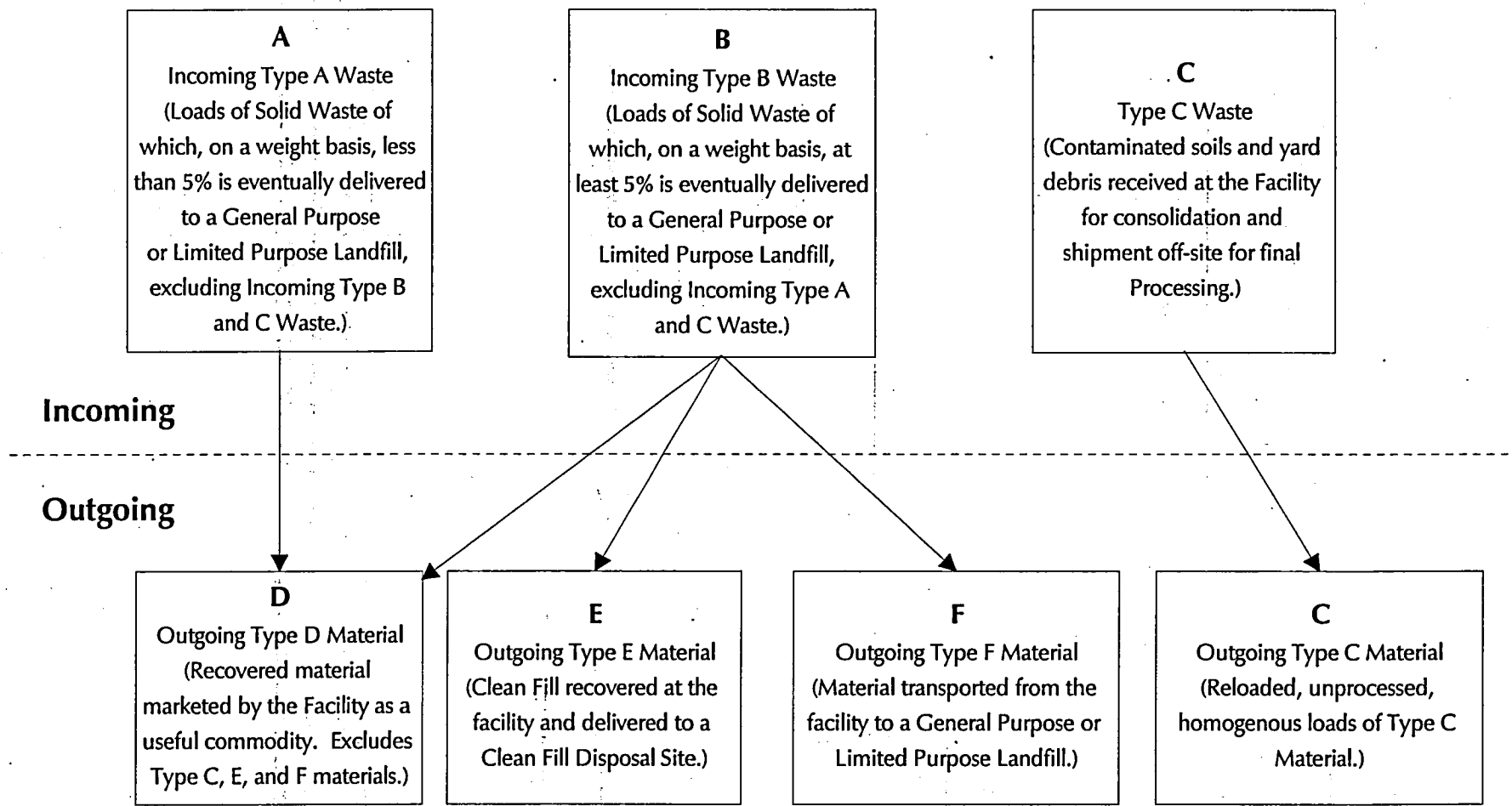
For illustrative purposes only, the table below shows by example how the Recovery Rate and administrative fee are calculated.

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.
yellow = Franchisee
pink = file

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