

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF GRANTING A ) ORDINANCE NO. 98-745  
FRANCHISE TO CITISTICS INCORPORATED )  
FOR THE PURPOSE OF OPERATING A COMBINED ) Introduced by Mike Burton,  
TRANSFER STATION AND SOLID WASTE MATERIALS ) Executive Officer  
RECOVERY FACILITY )

WHEREAS, Section 5.01.030 of the Metro Code requires a Metro franchise for any person to own and operate a processing facility, transfer station or resource recovery facility; and

WHEREAS, Citistics, Incorporated has applied for a non-exclusive franchise to own and operate a combined solid waste reload facility and materials recovery facility located at 5350 SW Alger Ave., Beaverton, Oregon for the purpose of consolidating and processing solid waste from collection vehicles for transport of putrescible wastes to the Metro South and Central Transfer Stations and nonputrescible wastes to Metro Designated Facilities; and

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

WHEREAS issuance of a franchise to Citistics, Incorporated is consistent with the policies set forth in the Regional Solid Waste Management Plan adopted November 1995 for solid waste reload and material recovery facilities; and

WHEREAS, Citistics Incorporated will accept solid wastes at the facility only from Citistics Incorporated and Miller's Sanitary Services Incorporated and not from any other commercial haulers or the general public; and

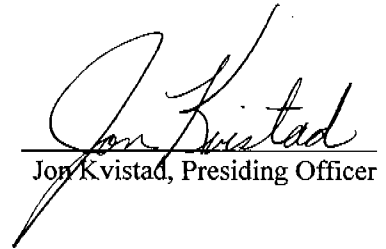
WHEREAS, since Miller's Sanitary Service's rates are regulated by local governments, and since Metro User Fees will be collected at the time of disposal at the Metro South and Central Transfer Stations or other Metro Designated Facilities, regulation of rate-setting requirements and collection of Metro User Fees pursuant to Section 5.01.150 is unnecessary; and

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

THE METRO COUNCIL ORDAINS AS FOLLOWS:

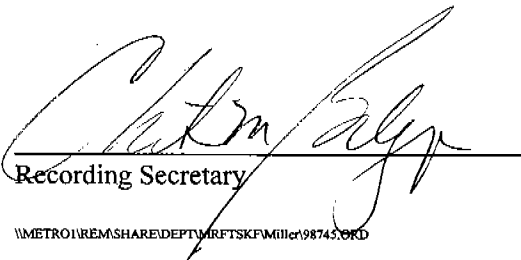
1. Citistics, Incorporated is granted a franchise in a form substantially similar to the attached "Exhibit A."
2. Citistics, Incorporated's operation of the franchised solid waste reload facility shall be exempt from Metro rate regulation and collection of User Fees at the facility because Citistics, Incorporated will accept solid wastes at the facility only from Citistics Incorporated and Miller's Sanitary Services Incorporated and not from any other commercial haulers or the general public; and because Miller's Sanitary Services rates are regulated by local governments.

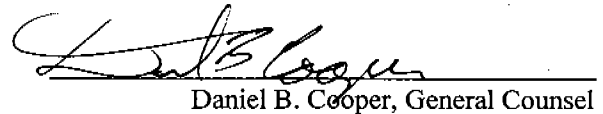
ADOPTED by the Metro Council this 6<sup>th</sup> day of August, 1998.

  
Jon K. Vistad, Presiding Officer

ATTEST:

Approved as to Form:

  
Recording Secretary

  
Daniel B. Cooper, General Counsel

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

FRANCHISE NUMBER: \_\_\_\_\_  
DATE ISSUED: \_\_\_\_\_  
AMENDMENT DATE: \_\_\_\_\_ N/A \_\_\_\_\_  
EXPIRATION DATE: \_\_\_\_\_  
ISSUED TO: \_\_\_\_\_ CITISTICS INC. \_\_\_\_\_  
NAME OF FACILITY: \_\_\_\_\_ CITISTICS INC. \_\_\_\_\_  
ADDRESS: \_\_\_\_\_ 5350 S.W. ALGER AVENUE \_\_\_\_\_  
CITY, STATE, ZIP: \_\_\_\_\_ BEAVERTON, OR 97005 \_\_\_\_\_  
LEGAL DESCRIPTION: \_\_\_\_\_ WASHINGTON COUNTY TAX LOT 400. \_\_\_\_\_  
\_\_\_\_\_ SECTION 15DB TOWNSHIP 1S RANGE 1W \_\_\_\_\_  
NAME OF OPERATOR: \_\_\_\_\_ CITISTICS INC. \_\_\_\_\_  
PERSON IN CHARGE: \_\_\_\_\_ TOM MILLER \_\_\_\_\_  
ADDRESS: \_\_\_\_\_ 5350 SW ALGER AVENUE \_\_\_\_\_  
CITY, STATE, ZIP: \_\_\_\_\_ BEAVERTON, OR 97005 \_\_\_\_\_  
TELEPHONE NUMBER: \_\_\_\_\_ (503) 671-9048 \_\_\_\_\_

## REGIONAL ENVIRONMENTAL MANAGEMENT COMMITTEE REPORT

CONSIDERATION OF ORDINANCE NO. 98-745, FOR THE PURPOSE OF GRANTING A FRANCHISE TO CITISTICS, INCORPORATED FOR THE PURPOSE OF OPERATING A COMBINED TRANSFER STATION AND SOLID WASTE MATERIALS RECOVERY

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Date: July 30, 1998

Presented by: Councilor Morissette

**Committee Recommendation:** The Committee considered Ordinance No. 98-745 at its June 2 and 16 meetings. A motion by the Chair to send the ordinance to the Council with a do pass recommendation failed on a 2-1 vote. Voting in favor: Chair Morissette. Voting against: Councilors McFarland and Washington. Following the committee decision, the Office of General Counsel indicated that the Metro Code (Section 5.01.070(c)) requires that "the Council shall issue an order granting, denying or modifying the application". Given the need for final Council action on the ordinance and the Committee Chair's decision that further committee action would not be taken, the Presiding Officer exercised his authority to place the ordinance directly on a full Council agenda. The delay between final committee action and scheduling before the full Council resulted from the Council's heavy July workload and the unavailability of the franchise applicant for much of July. The full Council will have the option of approving the proposed franchise, amending it or adopting a denial order.

### **Background**

In recent years, several privately built and operated material recovery facilities have been franchised by Metro. These facilities have generally targeted single components of the region's wastestream, such as dry waste, paper, yard debris or petroleum contaminated soil. More recently, the private sector has expressed interest in the development of reload facilities which would consolidate smaller loads into larger containers for transport to the transfer stations or other final disposal site. In addition, some haulers have proposed the development of facilities that would be combined reload and material recovery facilities. The facility proposed by Citistics is the first of these "combined" facilities to seek a Metro franchise.

Local solid waste processing facilities in the Metro region are required to obtain three levels of governmental approval prior to beginning operation. First, they must obtain local land use approval from the appropriate city or county. Such approval generally involves the need to obtain a conditional land use permit. For several years Metro has encouraged the region's local governments to adopt provisions in their local codes that would permit the siting of such facilities. The local process generally requires a hearing before the city council or county commission.

A potential facility operator also must obtain necessary operating permit or permits from the state Department of Environmental Quality (DEQ). These permits focus on the environmental aspects of the operation of the facility. A hearing is generally not held, unless requested. Cististics obtained its DEQ solid waste facility permit in May 1998.

Obtaining a franchise or license from Metro is generally the last step in the governmental approval process. Metro requires that local and state approval of the facility must occur prior to the issuance of a Metro franchise. In addition, Metro has generally deferred to the local governments and DEQ to address land use and environmental issues related to the facility. The Metro Code does provide several specific criteria that must be examined concerning any proposed franchise. These include: 1) qualifications of the applicant, 2) compliance with the Regional Solid Waste Management Plan (RSWMP), 3) the need for the facility, and 4) compliance with all other regulatory requirements.

The RSWMP has encouraged the establishment of reload facilities as means of reducing traffic from solid waste collection and disposal vehicles and reducing the number of transactions and waiting times at the transfer stations. The RSWMP also has encouraged the development of material recovery facilities to assist the region in meeting its recycling goals.

As the private sector has begun to explore the potential for combined reload/material recovery facilities, REM staff recognized that Metro's existing regulatory code was not suited to providing effective oversight of existing and potential new facilities. As a result a revised code was recently presented to, and adopted by the Council (Ordinance No. 98-762C).

### **Proposed Facility**

Cististics is a new company formed by the principals of Miller Sanitary Service for the purpose of constructing and operating the proposed reload/material recovery facility. The proposed facility would be sited on land zoned for light industry and is near the intersection of Highway 217 and Allen Blvd. in Beaverton. The facility would consist of one large building that would include a truck wash, offices and a processing line. The processing area would include a tipping area, an elevated picking line and drop boxes into which the recovered material and residual would be deposited. The processing and tipping areas would be accessed through several large rolling doors. Recovered materials would be taken to various local facilities, the dry residual would be taken to Lakeside Landfill and the "wet" residual would be taken to a Metro transfer station. The facility's hours of operation would be from 8:30 A.M. to 5:00 P.M. on weekdays.

The facility is located about 200 feet from the Sequoia Condominium Park. It's remaining adjacent neighbors are other light industrial facilities.

The applicant is proposing to process only waste generated from Miller Sanitary Service's collection routes. Miller's will have three different types of routes: 1) dry waste routes (generally drop boxes), 2) residential routes (a mixture of dry and wet waste) and 3) routes serving restaurants and other customers that generate a higher percentage of wet, putrescible waste. It is the applicant's intent to run the dry waste and most of the residential waste through the material recovery processing line at the facility. The maximum daily limit is 100 tons. The applicant estimates that about 15 tons per day will be wet waste. The applicant estimates that when the facility becomes fully operational, it will process about 22,500 tons annually, with material recovery of up to 8,500 tons.

### **Local Approval Process**

The applicant initially sought approval for the facility from the city of Beaverton in 1996. Approval was granted in January 1997, but the facility opponents appealed the decision to the Land Use Board of Appeals (LUBA) and successfully argued that the local process had been flawed because adequate notice had not been given to the surrounding neighborhood. LUBA remanded the decision back to the city.

The city reprocessed the application with broader notice. At the city Council's hearing, over 100 persons testified in opposition. The city council approved the application, but only after attaching conditions related operating hours, compliant procedures, and the handling of nuisances such as odors and rodents. In addition, the city limited the amount of putrescible waste that can be processed on a daily basis to 25% of the total weight of all processed waste. The conditional land use permit was issued on March 2, 1998

### **Fiscal Impact**

REM staff indicated the adopted FY 98-99 assumed that the Citistics would be franchised and process about 10,500 tons and that about 4,900 of these tons would be diverted from Metro's transfer stations as dry waste residue or recovered recyclables. The estimated fiscal impact of this diverted tonnage is \$79,800 (\$69,700 from the Regional User Fee and \$10,100 from the Metro Tip Fee). In addition, Metro would lose about \$18,200 in excise tax revenue and \$2,450 in rehabilitation and enhancement funds.

Some have expressed concern that as more facilities like Citistics become operational, the cumulative effect on Metro's transfer station operations could be substantial. Though Citistics will continue to haul its residual wet waste to a transfer station, REM staff estimates that for FY 98-99 approximately 66,700 tons of wet waste could be diverted from the Metro transfer stations by other additional new reload/material recovery facilities.

**Committee Issues/Discussion:** During the two hearings that the REM committee held on the proposed ordinance, considerable testimony was received from the REM staff, the applicant, opponents of the facility and attorneys representing the applicant and the opponents. The testimony focused on several issues. These included:

- \* nuisance and environmental (including noise, odor, rodents, air contaminants, damage to nearby wetlands, and impaired views from nearby residences),
- \* potential for flooding at the proposed facility site,
- \* damage to nearby property values,
- \* need for the facility,
- \* legal issues (including a code prohibition against vertical integration, the holder of the local conditional use permit and whether it would be advisable to delay action on the proposed franchise until the pending LUBA appeals are settled), and
- \* Metro's role in the regulation of the proposed facility

**Nuisance and Environmental Issues.** Opponents of the facility cited several environmental and nuisance issues in their testimony before the committee. These include noise, odors, rodents and the potential for rodent-carried diseases, air contaminants, potential damage to nearby wetland areas, and blockage of the views of neighboring residences. They indicated that it was their belief that, as originally proposed the facility would not have processed wet, putrescible waste, but that the current proposal would allow such waste to be processed. They expressed concern that if putrescible waste is run through the facility it would be virtually impossible to insure that odors, rodents and air contaminants would not occur. The issue of whether an area adjacent to the proposed facility could be considered a wetland was also raised. While it has not been defined as a wetland it was noted that it appeared to be in a 100 year floodplain.

The opponents environmental and nuisances concerns are clearly related to the proximity of the facility to the nearby Sequoia Condominium Park. The nearest residence building in the park is about 200 feet from the closest portion of the processing building and the actual processing line is about 300 feet from the building. Opponents also argued that the height of the building (greater than two stories) obscures the traditional views of the west hills from the nearby residences and that the wall designed to shield the building from the nearby condominium units is not high enough to shield the second story units.

The applicant and the REM staff responded to the issues raised by the opponents. The applicant noted that the facility had always been planned to process wet waste. He noted that the city of Beaverton had placed several operational requirements on the operation of the facility designed to address noise, odor, rodent and air contamination. He explained that the facility can only operate from 8:30 to 5:00 on weekdays and that the number of vehicles using the facility will not be significantly greater than the number that use it now. He indicated that all residual and recovered materials removed from the processing line would be stored in enclosed containers until they were removed from the site and that the processing line would have to be completely cleaned at the end of each

day's operations.. In addition, he noted that the processing line would operate with the doors closed whenever practicable and that the facility would have a self-contained wastewater collection and processing system. Finally, he noted that the site had been used for the processing of source-separated recyclables for many years and that wet waste had been transferred from one vehicle to another at the site without any complaints from the neighborhood.

REM staff noted that the applicant has prepared an operations plan that has been approved by REM and the DEQ. The staff indicated that the plan was so comprehensive that it would consider it to be an excellent model against which the plans of other similar facilities could be evaluated. They also expressed satisfaction that the operational restrictions placed on the facility by Beaverton and the DEQ would protect the neighborhood from environmental hazards and odors. Staff also noted that the applicant must meet very strict requirements concerning the handling complaints. In addition, staff noted that the franchise would allow Metro to require even stricter operational requirements should odor or other nuisance-related complaints not be successfully alleviated. If operational problems persisted Metro, Beaverton or DEQ could revoke their permits or franchise and force the closure of the facility.

**Flooding.** Opponents expressed concern that the site is near locations that have flooded in recent years. They noted that flood water contaminated with wet waste could pose a health risk to the neighborhood. The applicant responded that the site has not flooded since the company purchased it in 1977. He did note that during the recent floods there was some standing water at the far end of the property which is currently used by a local car dealer to store excess inventory. He explained that the site will have an excellent drainage system. In addition, if a flooding threat existed, the facility could be temporarily used and the waste sent directly to a Metro transfer station.

**Damage to Property Values.** Several owners in the condominium park expressed concern that the facility could affect the resale value of their residences. They noted that several units are currently on the market with little interest being shown. They attributed this to the local knowledge that the proposed processing may soon become operational.

**Need for the Facility.** One of the criteria that REM staff is required to examine in considering the issuance of a franchise is the need for the facility. REM staff and the applicant testified that the facility is needed to assist the region in meeting its recycling goals and will serve a portion of the region not readily served by existing material recovery facilities. They noted that the development of reload and material processing facilities throughout the region will improve the system's efficiency and provide savings for local garbage ratepayers.

Opponents of the facility noted that they do support the need for reload and material processing facilities. They noted that they would not be opposed to a facility that processed only dry waste, but questioned whether it was appropriate to locate a facility that would process wet waste in a residential area. They also questioned that extent to



which materials would be recovered from the mixed wet waste that would be processed at the facility.

**Potential Legal Issues.** Facility opponents also raised several potential legal issues concerning the issuance of a franchise. One opponent noted that the city conditional use permit is in the name of Miller Sanitary Service, not Citistics. Therefore, he questioned whether the applicant had met the Metro Code requirement of obtaining all other legally-required permits prior to obtaining a Metro franchise. Attorneys for both the applicant and the Metro Office of General Counsel responded that the permit was for the use of the land and that the right to use the permit could be easily transferred from Miller Sanitary to Citistics.

Attorneys for the opponents also noted that the Metro Code contains a prohibition against vertical integration in the granting of franchises. They noted that Miller Sanitary and Citistics would be owned by the same principles and therefore would violate the prohibition against a franchisee owning hauling, processing or disposal facilities.

REM staff and the Metro Office of General Counsel responded that the vertical integration prohibition was initiated to insure that large national or international solid waste companies could not gain a competitive advantage in the region through the ownership of hauling, processing and disposal facilities. They noted that variances from this prohibition have been frequently granted to facilities operated by smaller companies that pose no threat to maintaining competition in the region. They concluded by noting that Miller Sanitary and Citistics are small, family owned businesses that operate in only a small portion of the region.

Some opponents urged that Metro take no final action on the proposed franchise until after the appeals pending before LUBA are resolved. REM staff responded that Metro would be assuming no risk by issuing the franchise, if LUBA overturned the issuance of the local conditional use permit. The franchisee would be assuming all of the financial and legal risk if he chooses to complete and operate the facility prior to the resolution of the LUBA appeals.

**Metro's Regulatory Role.** REM staff and the attorney for the applicant contended that Metro's regulatory role related to the facility should be limited to the consideration of the specific franchise criteria set forth in the Metro Code. As noted earlier, these include the applicant's qualifications, compliance with the RSWMP, the need for the facility and meeting all other regulatory requirements. REM staff noted that it has generally deferred to the affected local government and DEQ to consider and address land use and environmental issues related to the issuance of franchises or licenses. In the case of the Citistics application, staff noted that it had reviewed the operating conditions that Beaverton and DEQ had placed on the proposed facility and were satisfied that they addressed all of the environmental and land use issues raised by the opponents.

Attorneys for the opponents noted that the Metro Code was intended to guide the staff by requiring that certain issues be considered in making a recommendation on a proposed franchise. They noted that , while the Council should consider these issues, as elected policymakers they should be free to consider all evidence related to a proposed franchise.

Following the completion of the public and staff testimony, each of the committee members expressed their views on the proposed ordinance.

Chair Morissette noted that the franchise application had been reviewed based on the specific franchise criteria found in the Metro Code. He noted the applicant had meet all of these criteria and therefore the committee should approve the franchise application. He supported the contention that land use and environmental issues should and have been addressed through the local and DEQ permit process. He concluded by noting that, if the LUBA appeals are successful, Metro, Beaverton and DEQ can revoke any of the operating franchises or permits related to the facility.

Councilor McFarland expressed her opposition to the granting of the franchise. She cited the breadth of the local opposition, the relative lack of a need for the facility, and the potential for odor and other environmental problems as the justification for her decision. She also expressed concern that if several facilities of this type become operational, there would be a significant financial impact on the Metro transfer stations.

Councilor Washington also indicated that he would oppose the proposed franchise. He expressed concern about the ability of the regulatory agencies, including Metro, to insure that odor, rodent and other environmental problems would not occur at the facility.

**EXECUTIVE SUMMARY**  
**ORDINANCE 98-745**  
**CITISTICS FRANCHISE FOR A COMBINED TRANSFER STATION**  
**AND SOLID WASTE MATERIALS RECOVERY FACILITY**

**PROPOSED ACTION**

- Issue Citistics, Inc. a franchise to operate a combined transfer station and solid waste materials recovery facility
- Set a 100-ton per day limit, consistent with the Conditional Use Permit (CUP) issued by the City of Beaverton
- The facility will accept residential waste and commercial loads known to contain minimal amounts of putrescible waste. Commercial waste known to contain a high proportion of putrescibles, such as restaurant and grocery store waste, will not be processed at this facility.

**WHY NECESSARY**

- The proposed facility will perform recovery that will help the region to meet its recycling goals.
- Reloading will increase transport efficiency and reduce the number of vehicles at Metro transfer stations.

**ISSUES/CONCERNS**

- Residents who live on property neighboring the Citistics facility are concerned about the possibility of nuisances and other negative impacts resulting from the facility's operation. Citistics has submitted an Operations Plan detailing procedures to prevent nuisance problems. The plan has been reviewed and approved by REM.
- Two appeals have been filed with the Land Use Board of Appeals (LUBA) challenging the facility's CUP. The City has reviewed and reaffirmed the CUP.

**BUDGET/FINANCIAL IMPACTS**

- Wet residual will be disposed of at Metro transfer stations, where the normal tip fee will be collected.
- Dry residual will be disposed of at Designated Facilities, where the Regional User Fee and Excise Tax will be paid.
- The anticipated effect of the 5,250 tons the facility may recover in its first year of operation has already been factored into the FY 1998-99 tip fee, and accounts for six cents of the tip fee.
- It is estimated that \$18,200 of excise tax will be foregone as a result of tonnage recovered rather than disposed of.

## STAFF REPORT

### IN CONSIDERATION OF ORDINANCE NO. 98-745 FOR THE PURPOSE OF GRANTING A FRANCHISE TO CITISTICS, INCORPORATED FOR THE PURPOSE OF OPERATING A COMBINED TRANSFER STATION AND SOLID WASTE MATERIALS RECOVERY FACILITY

Date: April 23, 1998

Presented by: Bruce Warner,  
Steve Kraten

#### I. INTRODUCTION

The purpose of this report is to provide the information necessary for the Metro Council to act on the recommendation that Citistics, Incorporated be awarded a solid waste franchise to operate a Transfer Station and Solid Waste Materials Recovery Facility located in Beaverton, Oregon. The proposed franchise agreement is attached to Ordinance No. 98-745 as Exhibit A.

Citistics is requesting a Metro franchise for a combined transfer station and solid waste materials recovery facility. The facility will be open only to Miller's Sanitary Services, Inc (Miller's Sanitary) and vehicles operated by Citistics. Citistics is a separate company from Miller's Sanitary, but was established by principals of Miller's Sanitary to provide materials recovery facility services for its customers. Miller's Sanitary is franchised by the City of Beaverton to collect solid waste and source-separated recyclables. Miller's Sanitary is also franchised to collect in portions of the City of Tigard, unincorporated Washington County and the City of Portland. The facility will process solid waste to recover recyclable materials and reload the residual into vehicles for disposal at the Metro South Transfer Station or other Metro Designated Facilities as appropriate. The facility is also used to store and prepare for market recyclables from Miller's Sanitary's collection programs.

This report is divided into three main parts as follows: (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 Metro Code in order to be awarded a franchise; and (c) staff's recommendations and specific conditions to be contained in the franchise agreement.

#### Summary:

- Miller's Sanitary has operated at the site since 1977, using it for staging of collection vehicles, storage of recyclables and some truck-to-truck reloading of solid wastes. The Citistics facility is an expansion of those operations to include materials recovery.
- The facility is expected to receive about 22,500 tons per year of mixed solid waste only from Miller's Sanitary commercial, industrial and residential customers. The applicant has stated that once the facility is fully operational, up to 8,500 tons of materials could be recovered that would otherwise be landfilled.
- The franchise includes several conditions to ensure the facility operates properly within the Metro solid waste system. These conditions should also assist in ensuring that other regulatory requirements, including the conditional use requirements of the City of Beaverton, are complied with. The conditions include:
  - ⇒ A limit on the amount of mixed solid wastes that can be accepted at the facility to 100 tons per day.
  - ⇒ A requirement to submit and follow an operations plan designed to ensure that the facility does not adversely impact its neighbors.
  - ⇒ Complaint and nuisance abatement procedures to ensure any nuisance problems are dealt with quickly and effectively.

- Metro staff finds the facility will assist the region in accomplishing the goals and objectives of the Regional Solid Waste Management Plan. These objectives include both siting of reloads to reduce traffic and reduce transactions at Metro Transfer Stations, as well as to increase materials recovery from post-collection processing.

## **II. FACILITY AND APPLICANT INFORMATION**

### **A. Location:**

Address: 5353 S.W. Alger Avenue, Beaverton, Oregon, 97005

Legal Description: Washington County Tax Lot 400, Section 15DB Township 1S Range 1W

### **B. Zoning and Permitting:**

The site is zoned Light Industrial (LI). A conditional use permit (CUP 96006 (modified)) was issued by the City of Beaverton on March 2, 1998 for approval to construct a new materials recovery equipment building to replace an existing sorting building.

The applicant has applied for a DEQ Solid Waste Disposal Permit.

### **C. Customers and Area Served:**

The facility will accept loads of commercial and residential solid waste only from Miller's Sanitary Services, Inc. Miller's Sanitary is franchised by the City of Beaverton to collect solid waste and source-separated recyclables. Miller's Sanitary is also franchised to collect in portions of the City of Tigard, unincorporated Washington County and the City of Portland.

### **D. General Facility Description:**

The site is approximately 5.5 acres in size. Waste handling and processing operations will be conducted in an enclosed 9,600 square foot building. Solid waste is brought to the facility primarily in vehicles operated by Miller's Sanitary Service. Citistics reload vehicles and drop boxes may occasionally be utilized for collection during peak periods. Commercial and industrial loads containing putrescibles will not be brought to the facility but taken directly to Metro transfer stations. Residential loads, which may have putrescibles as a component, will be accepted at the facility. All loads will be weighed on a truck scale on arrival.

The processing system includes, in the following sequence: 1) a walking floor tipping area, 2) incline conveyor, 3) bag opener, 4) vibratory screen separator and 5) an elevated belt conveyor with manual picking stations. There is also an overhead bridge and trolley crane for removing large bulky items.

Loads will be tipped on the walking floor and travel up an incline conveyor to a first sort, where wood and cardboard will be removed. Remaining materials will spill onto the vibratory screen either directly or through the bag opener. The bag breaker can be selectively used, depending on waste composition. The screens will then separate out the large materials for manual sorting. What falls through the screens or remains after the picking line will be reloaded for transport to an appropriate disposal facility.

Loads of residual containing putrescible waste will be taken to Metro South or Central Transfer Station (Metro South is the expected choice). Loads of residual without putrescibles may go to a Metro Designated Facility such as Lakeside Reclamation Landfill or Hillsboro Landfill.

### **E. Facility Activities:**

The applicant requests authorization to perform the following activities:

- Materials recovery from dry non-putrescible commercial and industrial solid wastes and low level recovery from residential wastes containing some putrescible wastes.

- Solid waste reloading of residuals from materials recovery operations. Any loads containing putrescible wastes will be transferred to Metro South or Metro Central Transfer Stations. Loads with no putrescible materials will be disposed of at a Metro Designated Facility.
- Storage and/or preparation of source-separated recyclables from Miller's Sanitary Service's customers.

#### **F. Variances from the Metro Code**

- The applicant has requested a variance from Metro Code rate-setting requirements.

### **III. ANALYSIS OF FRANCHISE APPLICATION**

#### **A. Application**

Applicants for franchises are required to complete the application form and provide additional information as requested. The applicant submitted an application for a franchise on January 31, 1997. The application was determined to be complete upon the issuance of a Conditional Use Permit by the City of Beaverton on March 2, 1998.

#### **B. 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 the district's solid waste management plan,
- Whether the proposed franchise is needed considering the location and number of existing and planned disposal sites, transfer stations, processing facilities and resource recovery facilities and their remaining capacities; and
- Whether or not the applicant has complied or can comply with all other applicable regulatory requirements.

#### **C. Applicant Qualifications**

Thomas C. Miller, owner and President of Citistics, has been active in the solid waste industry in the Metro region for over 30 years.

The applicant and its staff have an established record of operation. This, coupled with the applicant's experience in recycling, solid waste hauling, and disposal provides assurance that the facility will be operated and managed competently and efficiently.

#### **D. 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 (RSWMP), staff examined whether the facility and its operations will be consistent or in conflict with the RSWMP goals and objectives or recommended practices.

Staff finds that the activities authorized by the franchises would be consistent and not in conflict with the goals, objectives and recommended practices in RSWMP.

In reaching this conclusion, staff considered the following:

##### **1. Waste Reduction Goals and Objectives**

*Goal 7 - Regional Waste Reduction Goal. The regional waste reduction goal is to achieve at least a 53 percent recycling rate by the year 2005.*

To reach this target, in the RSWMP it was estimated that about additional 250,000 tons of waste material

will need to be diverted from disposal by the year 2000, and another 150,000 tons by the year 2005. The applicant believes that once the facility is fully operational, up to 8,500 tons of materials per year will be recovered that would have otherwise been landfilled. This recovery would be an important contribution to reaching regional goals.

***Goal 10 – Integration*** *Develop an integrated system of waste reduction techniques with emphasis on source-separation, not to preclude the need for other forms of recovery such as post-collection material recovery.*

Over the past two years, SWAC has considered whether dry waste processing might adversely impact source-separation programs. Two conclusions have emerged from these discussions as follows: (1) a reaffirmation of the RSWMP's recommendation that the role of processing facilities is to complement, and not substitute for, source-separation programs; and (2) agreement that there were sufficient procedures in place to forestall processing facilities from adversely impacting upstream programs. These procedures include franchise agreements and the annual review process for local government waste reduction work plans.

Staff believes that both Miller's Sanitary and the local governments franchising Miller's collection services are committed to maintaining strong source-separation programs. Thomas Miller of Miller's Sanitary participated in the SWAC discussion on this matter where he was strongly supportive of source-separation programs. Staff works closely with local governments during the yearly development of waste reduction programs. Staff is confident that the jurisdictions in which Miller's Sanitary operates will continue to maintain and develop their source-separation programs after the Citistics facility begins operation. Therefore, staff finds that the proposed Franchisee will not adversely impact upstream programs and that specific provisions in the franchise agreement (for example, requiring an annual review of facility operations) will ensure that the proposed franchisee will operate the facility consistent with RSWMP goals.

## 2. Facilities and Services Goals and Recommended Practices

**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.

The addition of dry waste processing capacity to this part of the region will aid in the development of a more regionally-balanced level of this type of service. The facilities will, therefore, assist in achieving Goal 12.

### **Solid Waste Facilities and Services - Transfer and Disposal System**

**Practice No. 4: Allow reload facilities sited, owned and operated by haulers for consolidation of loads for hauling to Metro transfer stations to serve areas distant from transfer stations.**

Staff finds that the proposed franchise is consistent with RSWMP recommendations to allow haulers to develop reload facilities for hauling to Metro transfer stations. The facility will also provide, consistent with RSWMP recommendations, some additional material recovery processing capacity that will benefit the region.

## 3. Facility Regulation Goals

***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.*

This RSWMP goal addresses the need to ensure mitigation of potential offsite migration of nuisances and

unsafe substances, site abatement if the operation is abandoned, and personal safety and environmental conditions within the operation itself.

Under the proposed franchise, the franchisee is required to establish and follow an Operating Procedures Plan for accepting, managing, reloading, and conducting recovery from solid waste received at the facility. The plan will include procedures designed to minimize hazards to human health and the environment associated with manually and mechanically sorting through mixed solid waste.

These procedures will include the following: limiting the kinds of solid waste that can be brought on-site, limiting the time solid waste can remain on-site, and related regimens such as daily cleaning of equipment. The plan avoids duplication but ensures coordination with regulatory oversight by other agencies (for example, OSHA for personal safety and environmental conditions within the operation itself). The franchise agreement also requires that the franchisee operate the facility in an essentially nuisance-free manner. The franchisee must have procedures in place for handling complaints, notification if complaints or violations occur, and agrees to increase nuisance abatement procedures if standard procedures are not effective.

The proposed Franchisee has agreed to conditions in the franchise agreement that will ensure that the facilities' processing and handling of residuals are conducted in an acceptable manner. The proposed franchise will, therefore, assist in achieving Goal 15.

#### **E. Need for Facility**

The RSWMP provision for reload facilities is to allow them to be owned and operated by haulers for consolidation of loads for hauling to Metro transfer stations to serve areas distant from transfer stations. Moreover, reload facilities are to be evaluated by Metro on a case-by-case basis and Metro will review service levels to determine need.

The facility would assist in maintaining and improving existing service levels at the Metro South Transfer Station (*i.e.*, time spent waiting in line and time required to drive to a facility). By conducting reload services, the applicant has reported that the facility will help reduce the number of packer trucks traveling to Metro South Transfer Station by approximately 12 trips per day.

The Facility also assists in meeting regional recycling and recovery goals. The facility is expected to receive about 22,500 tons per year of mixed solid waste only from Miller's Sanitary commercial, industrial and residential customers. The applicant has stated that once the facility is fully operational up to 8,500 tons of materials could be recovered that would otherwise be landfilled.

#### **F. Compliance with Regulatory Requirements**

The applicant has land use approval from the City of Beaverton and has applied for, and expects to receive a DEQ Solid Waste Disposal Permit.

#### **G. Variance Requests and Exemptions**

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."

The Metro Council has consistently interpreted the intent of the rate-setting provision of the Code to prevent franchisees from exercising monopoly power in the marketplace resulting from being a holder of a



franchise. In staff's opinion, the intent of the Code will be still be achieved if a variance is granted, because only Miller's Sanitary will serve the facility, and their collection services are already franchised and rate-regulated by other local governments. Strict compliance with the rate-setting requirement would be inappropriate for the same reason.

## 2. Exemption from User Fees

The proposed franchise ordinance grants the Franchisee an exemption from collection of User Fees at the facility because all waste disposed of from the facility will go to Metro Transfer Stations or other Metro Designated Facilities where User Fees will be collected.

## 3. Vertical integration

Under Metro Code (Sec. 5.01.120 (l) ) a variance is required for a franchise to receive wastes from other haulers. Under the proposed franchise, the facility will be open only to Miller's Sanitary Services, Inc. (Miller's Sanitary) and vehicles operated by Citistics. While Citistics is a separate company from Miller's Sanitary, it was established by principals of Miller's Sanitary to provide materials recovery services only to Miller's Sanitary. Therefore, staff believes that a variance to the Code is not required.

## **IV. CONDITIONS OF THE FRANCHISE**

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

Specific conditions of the franchise include:

- Limitations on types and quantities of wastes received.
- A surety bond or letter of credit of \$25,000. (Franchisee also has the option of a conditional lien on the franchised property in a form satisfactory to Metro.)

## **V. BUDGET IMPACT**

### **A. Rate Impacts**

Under the proposed franchise, Metro fees would be exempted on waste accepted at the Citistics facility. The Regional User Fee would be collected on residuals that are delivered to designated disposal facilities.

The applicant has represented that solid waste delivered to the Citistics facility is waste that otherwise would have gone to Metro South and Central Transfer Stations and Lakeside Reclamation Landfill. The proposed FY 1998-99 budget assumed that the Citistics facility would process 10,500 tons of waste.<sup>1</sup> Staff estimates that in the absence of the Citistics facility, 4,900 of these tons would have gone to Metro South and Central, where the Metro Tip Fee would have been paid. The other 5,600 tons would have gone to Lakeside where the \$14 Regional User Fee would have been paid. For the proposed FY 1998-99 budget, it was estimated that half the waste will "return" to a Metro Designated Facility as process residue, thereby incurring the \$14 Regional User Fee.

The effect of the Citistics facility on the Metro Tip Fee, Regional User Fee, Metro excise tax revenues and Rehabilitation and Enhancement Fund revenues is shown below.

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<sup>1</sup> The proposed FY 1998-99 budget assumes a yearly recovery of 5,250 tons. While the applicant's long term recovery target is 8,500, the lower rate is an estimate for the first year of facility operation.

**Solid Waste Rates.** Each year, REM establishes its rates for the following year by spreading the system's fixed costs (e.g. debt service, enforcement costs, etc.) across all solid waste tonnage it anticipates receiving. When tonnage is anticipated to fall, the tip fee and user fee must be increased in order to collect the same revenue. Conversely, higher tonnage results in lower fees.

The rates proposed for FY 1998-1999 assumed that the Citistics facility would be up and running. The table below shows what the proposed rates could have been in the absence of the Citistics facility:

<u>Fee</u>	<u>Impact</u>	<u>Explanation</u>
Regional System Fee .....	\$0.05	Fee exemptions on 5,250 tons recovered
 Metro Tip Fee		
Metro fixed portion (Tier 2) .....	\$0.01	Diversion of 4,900 tons from transfer station
Regional portion (Tier 1) .....	\$0.05	Regional User Fee portion of tip fee (above)
Total effect on Metro Tip Fee .....	\$0.06	

In sum, if the Citistics facility did not operate, the proposed FY 1998-99 Regional User Fee could be 5¢ lower, and the Metro Tip Fee 6¢ lower.

**Metro Excise Tax.** The Metro Excise Tax is levied as a percentage of solid waste revenues collected. The diversion of waste from Metro transfer stations means that revenues will not be collected—and variable costs will not be incurred—on the 4,900 tons diverted. The diversion of an additional 350 tons from Lakeside also means that excise tax will not be collected on those transactions. This translates into \$18,200 in foregone Metro excise tax.<sup>2</sup> As the impact of the Citistics facility has been anticipated for FY 1998-99, these effects are already reflected in revenue anticipation in the proposed FY 1998-99 Metro budget.

**Rehabilitation and Enhancement Fees.** The Rehabilitation and Enhancement (R&E) Fund will forego \$2,450 in revenues, based on 4,900 tons diverted from Metro transfer stations at an R&E rate of 50¢ per ton. As the impact of the Citistics facility has been anticipated for FY 1998-99, these effects are already reflected in revenue anticipation for the FY 1998-99 R&E budget.

**Comment.** If the facility does not come on line as expected, then REM will receive \$69,700 in unanticipated revenues from the Regional User Fee, and \$10,100 in unanticipated net revenues from the Metro Tip Fee (including transactions fees). Furthermore, the Metro excise tax revenues will increase \$6,800 over FY 1998-99 amounts (as opposed to the indicated loss of \$18,200); and the Rehabilitation and Enhancement Fund will not incur the indicated loss of \$2,450.

**Summary.** The Citistics facility is anticipated to have the following fiscal effects on Metro:

Regional User Fee .....	5¢ higher
Metro Tip Fee .....	6¢ higher
Metro excise tax revenue .....	\$18,200 less
Rehabilitation & Enhancement Fund revenue .....	\$2,400 less

These impacts are already reflected in the proposed FY 1998-99 Metro budget.

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<sup>2</sup> Calculations assume an excise tax rate of 8½%. Based on Metro's FY 1998-99 cost of \$41.93 per ton for transfer, transport and disposal, Metro's variable cost for 4,900 tons is \$205,000. Eight and one-half percent of this amount is \$17,464. These calculations assume that the diversion of 4,900 tons does not move Metro to different steps in the contractual rate schedules for disposal or operation of the transfer stations. Based on an estimate of \$25 per ton for disposal at a designated facility, the amount of revenues subject to Metro's excise tax for 350 tons is \$8,750. Eight and one-half percent of this amount is \$774.

The proposed FY 1998-99 budget includes adequate staff resources for the administration and enforcement of this franchise agreement.

#### **VI. STAFF RECOMMENDATIONS**

Based on the forgoing analysis, it is staff's opinion that Citistics should be granted a non-exclusive franchise in accord with the provisions of the draft franchise attached to Ordinance No. 98-745.

#### **VII. EXECUTIVE OFFICER RECOMMENDATION**

The Executive Officer recommends approval of Ordinance No. 98-745.

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