

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER ) RESOLUTION NO. 05-3614  
TO RENEW A NON-SYSTEM LICENSE ISSUED TO )  
WILLAMETTE RESOURCES, INC., FOR DELIVERY ) Introduced by Michael Jordan,  
OF PUTRESCIBLE SOLID WASTE TO THE COFFIN ) Chief Operating Officer, with the  
BUTTE LANDFILL ) concurrence of David Bragdon,  
 ) Council President

WHEREAS, the Metro Code requires a non-system license of any person that delivers solid waste generated from within the Metro boundary to a non-system disposal facility; and,

WHEREAS, Willamette Resources, Inc., (WRI) currently has a non-system license to deliver mixed solid waste, including putrescible waste, to the Coffin Butte Landfill, which license will expire on December 31, 2005; and,

WHEREAS, WRI has applied for a renewed non-system license under the provisions of Metro Code Chapter 5.05; and,

WHEREAS, the application is in conformance with the requirements of Chapter 5.05 of the Code; and,

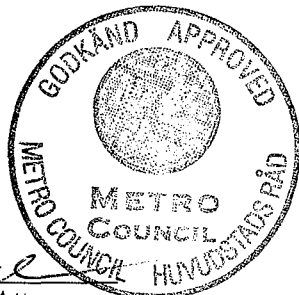
WHEREAS, the Chief Operating Officer has analyzed the application and recommended approval of the applicant's request for a non-system license with the conditions and in the form attached to this resolution as Exhibit A; and,


WHEREAS, this resolution was submitted to the Chief Operating Officer for consideration and was forwarded to the Council for approval; now therefore,

THE METRO COUNCIL RESOLVES AS FOLLOWS:

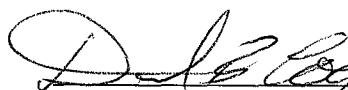
The Chief Operating Officer is authorized and directed to issue a non-system license to WRI in a form substantially similar to the license attached as Exhibit A.

ADOPTED by the Metro Council this 8<sup>th</sup> day of December 2005.



  
David Bragdon, Council President

Approved as to Form:

  
Daniel B. Cooper, Metro Attorney

**Exhibit A to Resolution No. 05-3614**

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736  
TEL 503 797 1650 | FAX 503 797 1795



**METRO**

**METRO SOLID WASTE FACILITY  
NON-SYSTEM LICENSE**

Number N-005-005(3)

<b>LICENSEE:</b>
Willamette Resources, Inc. 10295 SW Ridder Rd. Wilsonville, OR 97070
<b>CONTACT PERSON:</b>
Contact person: Mike Huycke Phone: (503) 570-0626 Fax: (503) 570-0523 E-Mail: mike.huycke@awin.com
<b>MAILING ADDRESS:</b>
10295 SW Ridder Rd. Wilsonville, OR 97070

**METRO**

**Licensee's Acceptance &  
Acknowledgement of Receipt:**

\_\_\_\_\_  
Signature

Michael Jordan, Solid Waste & Recycling  
Director

\_\_\_\_\_  
Print name and title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Licensee

\_\_\_\_\_  
Print name and title

\_\_\_\_\_  
Date

<b>1</b>	<b>NATURE OF WASTE COVERED BY LICENSE</b>
	Solid waste, including putrescible waste, generated within the boundaries of Metro.

<b>2</b>	<b>CALENDAR YEAR TONNAGE LIMITATION</b>
	This license grants the Licensee the authority to dispose of up to 45,000 tons per calendar year of the waste described in section 1 of this license.

<b>3</b>	<b>NON-SYSTEM FACILITY</b>
	The Licensee hereunder may deliver the solid waste specified to the following facility only, which is a non-system facility for the disposal of putrescible waste:  Coffin Butte Landfill 28972 Coffin Butte Road Corvallis, OR 97330

<b>4</b>	<b>TERM OF LICENSE</b>
	The term of this license will commence on January 1, 2006 and expire on December 31, 2007.

<b>5</b>	<b>REPORTING OF ACCIDENTS AND CITATIONS</b>
	Licensee shall report to Metro any significant incidents (such as fires), accidents, and citations involving vehicles of its transportation carrier during the loading and transporting of solid waste on behalf of the Licensee.

<b>6</b>	<b>ADDITIONAL LICENSE CONDITIONS</b>
	<p>This non-system license shall be subject to the following conditions:</p> <ul style="list-style-type: none"><li>(a) The permissive transfer of solid waste to the Coffin Butte Landfill authorized by this license shall be subordinate to any subsequent decision by Metro to direct the solid waste described in this license to another facility.</li><li>(b) Reporting of tonnage delivered under the authority of this license at frequency intervals to be determined by Metro. Such reporting may be required on a weekly or daily basis should the Licensee approach the tonnage limit stipulated in section 2 of this license or the combined tonnage of all NSLs issued by Metro approach the tonnage not obligated under Metro's disposal contract. Likewise, Metro reserves the right to direct the Licensee's waste flow to system facilities with a minimum of 24 hours notice.</li><li>(c) This license shall be subject to amendment, modification or termination by Metro's Chief Operating Officer in the event that the Chief Operating Officer determines, at his or her sole discretion, that<ul style="list-style-type: none"><li>(i) there has been sufficient change in any circumstances under which Metro issued this license, or in the event that Metro amends or modifies its Regional Solid Waste Management Plan in a manner that justifies modification or termination of this license,</li><li>(ii) the provisions of this license are actually or potentially in conflict with any of Metro's contractual obligations under the terms of a contract that became effective before the effective date of this license, or</li><li>(iii) Metro's solid waste system or the public will benefit from, and will be better served by, an order directing that the waste described in section 1 be transferred to, and disposed of at, a facility other than the facility described in section 3, above.</li></ul></li><li>(d) This license shall, in addition to subsections (i) through (iii), above, be subject to amendment, modification, termination, or suspension pursuant to the Metro Code.</li><li>(e) No later than the fifteenth (15th) day of each month, beginning with the next month following the signature date below, Licensee shall:<ul style="list-style-type: none"><li>(i) submit to Metro's Solid Waste &amp; Recycling Department a Regional System Fee and Excise Tax Report, that covers the preceding month, and</li><li>(ii) remit to Metro the requisite Regional System Fees and Excise Taxes in accordance with the Metro Code provisions applicable to the collection, payment, and accounting of such fees and taxes.</li></ul></li><li>(f) Licensee shall make all records from which (e) above are derived available to Metro (or Metro's designated agent) for its inspection or copying, as long as Metro provides no less than three (3) calendar days</li></ul>

	<p>written notice of an intent to inspect or copy documents. Licensee shall, in addition, sign or otherwise provide to Metro any consent or waiver necessary for Metro to obtain information or data from a third party, including the non-system facility named in section 3, above.</p> <p>(g) This license authorizes delivery of solid waste to the Coffin Butte Landfill. Transfer of waste generated from within the Metro boundary to any non-system facility other than the Coffin Butte Landfill is prohibited unless authorized in writing by Metro.</p> <p>(h) Licensee shall not transfer or assign any right or interest in this license without prior written notification to, and approval of, Metro.</p>
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<b>7</b>	<b>COMPLIANCE WITH LAW</b>
	<p>Licensee shall fully comply with all applicable local, regional, state and federal laws, rules, regulations, ordinances, orders, and permits pertaining in any manner to this license, including all applicable Metro Code provisions and administrative procedures adopted pursuant to Chapter 5.05 whether or not those provisions have been specifically mentioned or cited herein. All conditions imposed on the collection and hauling of the Licensee's solid waste by federal, state, regional or local governments or agencies having jurisdiction over solid waste generated by the Licensee shall be deemed part of this license as if specifically set forth herein.</p>

<b>8</b>	<b>INDEMNIFICATION</b>
	<p>Licensee shall defend, indemnify and hold harmless Metro, its elected officials, officers, employees, agents and representatives from any and all claims, demands, damages, causes of action, or losses and expenses, or including all attorneys' fees, whether incurred before any litigation is commenced, during any litigation or on appeal, arising out of or related in any way to the issuance or administration of this non-system license or the transport and disposal of the solid waste covered by this license.</p>

## STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 05-3614 AUTHORIZING THE CHIEF OPERATING OFFICER TO RENEW A NON-SYSTEM LICENSE ISSUED TO WILLAMETTE RESOURCES, INC., FOR DELIVERY OF PUTRESCIBLE SOLID WASTE TO THE COFFIN BUTTE LANDFILL

November 4, 2005

Prepared by: Steve Kraten

## BACKGROUND

### Description of the Resolution

Approval of Resolution No. 05-3614 will authorize the Chief Operating Officer to renew a two-year non-system license (NSL) to Willamette Resources, Inc. ("WRI"), to annually deliver up to a maximum of 45,000 tons of mixed solid waste, including putrescible waste, to the Coffin Butte Landfill located in Corvallis, Oregon. The WRI facility is located in Wilsonville, Oregon (Metro District 3). WRI's current two-year NSL to deliver mixed solid waste to the Coffin Butte Landfill expires on December 31, 2005. Metro first issued such a two-year NSL to WRI in 2000. The license was renewed in 2002 and renewed again in 2004.

## ANALYSIS/INFORMATION

### 1. Known Opposition

There is no known opposition to the proposed license.

### 2. Legal Antecedents

The issuance of NSLs for putrescible waste is subject to approval by the Council. Section 5.05.035(c) of the Metro Code provides that, when determining whether or not to approve an NSL application, the Council shall consider the following factors to the extent relevant to such determination.

- (1) *The degree to which prior users of the non-system facility and waste types accepted at the non-system facility are known and the degree to which such wastes pose a future risk of environmental contamination;*

The Coffin Butte Landfill (CBLF) first came into use during the 1940s or 50s when it served as the landfill for the nearby Adair Village Military base. Later, the landfill accepted industrial wastes from the Wah Chang facility located in Albany, Oregon. When the CBLF became a Subtitle D landfill in 1992, the original unlined cells were capped. However, there remains a problem of leachate contamination of groundwater that is presently being monitored by the DEQ. Since 1992, the landfill has been filling only lined cells and operating with the required environmental controls required by the Oregon Department of Environmental Quality (DEQ). (The Coffin Butte Landfill is a Metro designated facility authorized to receive non-putrescible solid waste without the need for haulers to obtain non-system licenses.)

- (2) *The record of regulatory compliance of the non-system facility's owner and operator with federal, state and local requirements including but not limited to public health, safety and environmental rules and regulations;*

The Coffin Butte Landfill is permitted by the DEQ to take unlimited amounts of authorized wastes (putrescible, non-putrescible, special and cleanup wastes). DEQ issued a NON to the facility in July

2001 when high levels of non-methane gases were detected in the landfill gas power generation system. The landfill promptly remedied the problem. This was considered to be relatively minor violation; both DEQ and Benton County consider the landfill to be a well-run facility that is in compliance with federal, state and local requirements. Benton County and the landfill executed an agreement in December 2000 establishing the parameters to be monitored by the Benton County Environmental Health Division, and authorizing the landfill to accept quantities of waste consistent with the DEQ permit. The facility has a good compliance record with public health, safety and environmental rules and regulations. The Coffin Butte Landfill became a designated facility for acceptance of non-putrescible waste in November of 2002.

(3) *The adequacy of operational practices and management controls at the non-system facility;*

The Coffin Butte Landfill uses operational practices and management controls that are required by the DEQ for a Subtitle D landfill<sup>1</sup> and considered by the DEQ to be adequate for the protection of health, safety, and the environment.

(4) *The expected impact on the region's recycling and waste reduction efforts;*

The waste to be covered by the proposed license is putrescible waste and post-recovery residual. WRI already performs recovery on non-putrescible commercial and industrial waste at an average recovery rate higher than 25 percent. Approval of the license is not expected to impact the region's recycling and waste reduction efforts.

(5) *The consistency of the designation with Metro's existing contractual arrangements;*

Metro has committed to deliver 90 percent of the total tons of "acceptable waste" that Metro delivers to general purpose landfills to landfills operated by Metro's waste disposal contract operator, Waste Management of Oregon, Inc. WRI seeks authority to transfer waste that meets the definition of "acceptable waste" as used in Metro's waste disposal contract. WRI's current NSL is one of several that expire at the end of 2005

For the current calendar year, the total amount of "acceptable waste" authorized under NSLs for delivery to non-Waste Management landfills is estimated to be less than ten percent of Metro waste delivered to general purpose landfills based on a projection of the total amount of "acceptable waste" that will be delivered to general purpose landfills this year. The NSLs contain provisions that can be used to increase the frequency of tonnage reports and amend tonnage authorizations should projections indicate a likelihood of a conflict or potential conflict with Metro's waste disposal contract. WRI has applied for a renewal at its existing tonnage.

Metro has previously granted tonnage authorizations to NSL applicants on a first-come, first-served basis as a method for allocating the portion of the wastestream not obligated under Metro's disposal contract with Waste Management. So far, NSL tonnage requests have never exceeded the tonnage available. If it were to become necessary to reduce existing NSL tonnage allocations in order to remain in compliance with Metro's disposal contract, Metro would rescind such allocations in the reverse order with the last allocation granted being the first withdrawn.

Staff tracks the tonnage "trajectory" of each licensee on an ongoing basis and believes there are sufficient "triggers" to enable Metro to adjust NSL tonnage allocations, if necessary, toward the end of each calendar year should there be a potential for exceeding the ten percent contractual limitation.

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<sup>1</sup> RCRA (Resource Conservation and Recovery Act) is the federal law that regulates hazardous and solid waste in the U.S.

- (6) *The record of the applicant regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement and with federal, state and local requirements including but not limited to public health, safety and environmental rules and regulations; and*

WRI and United Disposal Service have a joint NSL authorizing delivery of a maximum of 5,500 tons of waste to the Covanta waste-to-energy facility located in Marion County, Oregon. In FY 2002-03 the tonnage cap on this NSL was exceeded by 3,531 tons. Metro did not issue a formal Notice of Violation. In FY 2003-04 the cap on this NSL was exceeded again, this time by 243 tons. For the second incident WRI was issued a formal notice of violation but no fine was imposed.

In addition, WRI has twice violated its solid waste facility franchise tonnage cap. The first time was in calendar year 1999 when WRI exceeded its 50,000-ton cap by 2,219 tons. For this violation, WRI was issued a formal notice of violation and fined \$2,219. WRI contested the penalty, which was upheld by a hearings officer and the Metro Council, and WRI paid the fine. The second violation occurred in fiscal year 2002-03 after the tonnage cap had been increased to 65,000 tons and changed from a calendar year to a fiscal year basis. In this incident WRI exceeded its cap by 1,246 tons. Metro responded by issuing a formal notice of violation and imposing a fine of \$6,000. WRI paid the second penalty without contesting Metro's decision.

- (7) *Such other factors as the Chief Operating Officer deems appropriate for purposes of making such determination.*

WRI has another NSL to deliver the same type of waste to the Riverbend Landfill. In 2002, WRI shifted its waste flow to the Rivebend Landfill toward the end of the year after reaching the cap on its Coffin Butte Landfill NSL. WRI has indicated to Metro staff that it intends to do so again this year.

### Conclusion

The Chief Operating Officer finds that the proposed license satisfies the requirements of Metro Code Section 5.05.035 for the requested Solid Waste Facility License.

### **3. Anticipated Effects**

The effect of Resolution No. 05-3614 will be to issue an NSL for delivery of up to 45,000 tons per calendar year of solid waste, including putrescible waste, to the Coffin Butte Landfill. This would be a replication of WRI's current NSL with no changes. However, by submitting its application so early, WRI has reduced the Council's window of opportunity to consider all applications together by more than seven weeks.

Based on NSL tonnage trends for the current year, staff presumes that the 90 percent obligation under Metro's disposal contract will be met. However, if trends were to change such that Metro's ability to meet this obligation comes into question, the COO would reduce the authorized tonnages of all NSLs in order to assure that the contract provisions are not violated.



#### **4. Budget Impacts**

The regional system fee and excise tax will continue to be collected on waste delivered under authority of the proposed NSL. Approval of all this NSL will result in a total tonnage authorization identical to the current authorization and is expected to maintain the status quo.

#### **RECOMMENDED ACTION**

Despite receiving the application 172 days prior to the current NSL's expiration date (52 days early), the Chief Operating Officer recommends approval of Resolution No. 05-3614, and issuance of an NSL substantially similar to the NSL attached to the resolution as Exhibit A.

SK:bjl  
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