

# Metro | Agenda

Meeting: Metro Council  
Date: Thursday, Dec. 8, 2011  
Time: 2 p.m.  
Place: Metro Council Chambers

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## CALL TO ORDER AND ROLL CALL

1. **INTRODUCTIONS**
2. **CITIZEN COMMUNICATIONS**
3. **ZOO YOUTH AMAZON AMBASSADOR TRIP PRESENTATION** **Greenvoss**
4. **CONSENT AGENDA**
  - 4.1 Consideration of the Minutes for Dec. 1, 2011
  - 4.2 **Resolution No. 11-4298**, For the Purpose of Authorizing the Chief Operating Officer to Issue a Renewed Non-System License to American Sanitary Service, Inc. for Delivery of Putrescible Waste to the West Van Materials Recovery Center and the Central Transfer and Recycling Center.
  - 4.3 **Resolution No. 11-4299**, For the Purpose of Authorizing the Chief Operating Officer to Issue a Renewed Non-System License to Arrow Sanitary Service, Inc. For Delivery of Putrescible Waste to the West Van Materials Recovery Center and the Central Transfer and Recycling Center.
  - 4.4 **Resolution No. 11-4300**, For the Purpose of Authorizing the Chief Operating Officer to Issue a Renewed Non-System License to Crown Point Refuse, Inc. For Delivery of Putrescible Waste to the Wasco County Landfill for Disposal.
  - 4.5 **Resolution No. 11-4301**, For the Purpose of Authorizing the Chief Operating Officer to Issue a Renewed Non-System License to Willamette Resources, Inc. For Delivery of Putrescible Waste to the Coffin Butte Landfill for Disposal.
  - 4.6 **Resolution No. 11-4307**, For the Purpose of Authorizing the Chief Operating Officer to Issue a Renewed Non-System License to Recology Portland, Inc. for Delivery of Source-Separated Food Waste to the Nature's Needs Compost Facility for Composting.
  - 4.7 **Resolution No. 11-4308**, For the Purpose of Authorizing the Chief Operating Officer to Issue a Renewed Non-System License Jointly to Willamette Resources, Inc. and Allied Waste of Clackamas and Washington Counties For Delivery of Source-Separated Food Waste to the Pacific Region Compost Facility for Composting.
  - 4.8 **Resolution No. 11-4309**, For the Purpose of Authorizing the Chief Operating Officer to Issue a Renewed Non-System License to Garbarino Disposal & Recycling Service, Inc. For Delivery of Source-Separated Food Waste to the Nature's Needs Compost Facility for Composting.

*Continued on back...*

- 4.9 **Resolution No. 11-4310**, For the Purpose of Authorizing the Chief Operating Officer to Issue a Non-System License Jointly to Waste Management of Oregon, Inc. and Troutdale Transfer Station For Delivery of Source-Separated Food Waste to the Nature’s Needs and Pacific Region Compost Facilities for Composting.
5. **ORDINANCES – FIRST READING**
- 5.1 **Ordinance No. 11-1267**, For the Purpose of Amending the FY 2011-12 Budget and Appropriations Schedule Increasing 0.25 FTE in the Pioneer Cemetery Program, and Declaring an Emergency.
6. **ORDINANCES – SECOND READING**
- 6.1 **Ordinance No. 11-1266**, For the Purpose of Amending the FY 2011-12 Budget and Appropriations Schedule, Recognizing New Capital Project Sponsorship Contributions, Providing Capital Project Appropriation and Declaring an Emergency. **Craddick**

*Public Hearing*

7. **CHIEF OPERATING OFFICER COMMUNICATION**
8. **COUNCILOR COMMUNICATION**

**ADJOURN**

**Television schedule for Dec. 8, 2011 Metro Council meeting**

<p><b>Clackamas, Multnomah and Washington counties, and Vancouver, WA</b>  Channel 11 – Community Access Network  <i>Web site:</i> <a href="http://www.tvctv.org">www.tvctv.org</a>  <i>Ph:</i> 503-629-8534  <i>Date:</i> Thursday, Dec. 8</p>	<p><b>Portland</b>  Channel 11 – Portland Community Media  <i>Web site:</i> <a href="http://www.pcmtv.org">www.pcmtv.org</a>  <i>Ph:</i> 503-288-1515  <i>Date:</i> 8:30 p.m. Sunday, Dec. 11  <i>Date:</i> 2 p.m. Monday, Dec. 12</p>
<p><b>Gresham</b>  Channel 30 - MCTV  <i>Web site:</i> <a href="http://www.metroeast.org">www.metroeast.org</a>  <i>Ph:</i> 503-491-7636  <i>Date:</i> 2 p.m. Monday, Dec. 12</p>	<p><b>Washington County</b>  Channel 30– TVC TV  <i>Web site:</i> <a href="http://www.tvctv.org">www.tvctv.org</a>  <i>Ph:</i> 503-629-8534  <i>Date:</i> 11 p.m. Saturday, Dec. 10  <i>Date:</i> 11 p.m. Sunday, Dec. 11  <i>Date:</i> 6 a.m. Tuesday, Dec. 13  <i>Date:</i> 4 p.m. Wednesday, Dec. 14</p>
<p><b>Oregon City, Gladstone</b>  Channel 28 – Willamette Falls Television  <i>Web site:</i> <a href="http://www.wftvmedia.org/">http://www.wftvmedia.org/</a>  <i>Ph:</i> 503-650-0275  Call or visit web site for program times.</p>	<p><b>West Linn</b>  Channel 30 – Willamette Falls Television  <i>Web site:</i> <a href="http://www.wftvmedia.org/">http://www.wftvmedia.org/</a>  <i>Ph:</i> 503-650-0275  Call or visit web site for program times.</p>

**PLEASE NOTE: Show times are tentative and in some cases the entire meeting may not be shown due to length. Call or check your community access station web site to confirm program times.**

Agenda items may not be considered in the exact order. For questions about the agenda, call the Metro Council Office at 503-797-1540. Public hearings are held on all ordinances second read. Documents for the record must be submitted to the Regional Engagement Coordinator to be included in the decision record. Documents can be submitted by e-mail, fax or mail or in person to the Regional Engagement Coordinator. For additional information about testifying before the Metro Council please go to the Metro web site [www.oregonmetro.gov](http://www.oregonmetro.gov) and click on public comment opportunities. For assistance per the American Disabilities Act (ADA), dial TDD 503-797-1804 or 503-797-1540 (Council Office).

Agenda Item No. 3.0

**Zoo Youth Amazon Ambassador Trip Presentation**

Metro Council Meeting  
Thursday, Dec. 8, 2011  
Metro Council Chamber



## Mission Statement:

Using the knowledge and passion gained from the Amazon Ambassador experience, we hope to create a sense of global community in order to inspire action and enact change.



*"The spelling of 'Amazon' and 'amazing' are really close, and I think there's a reason."*

-Serena



*"It's a dream to be here."*

-Ayan



*"All of these people have changed my life"*

-Haley



*"I haven't smiled so much in my whole entire life. I feel so at peace here."*

-Tiesha



*"20 times a day I ask myself, is this trip real? I woke up this morning and walked out my door and a parrot said 'Hola!' "*

-Wave



*"You can point to any plant or animal you see and the guides know what it is and can describe it in their second language."*

-Adreanna

Agenda Item No. 4.1

**Consideration for the Minutes for Dec. 1, 2011**

*Consent Agenda*

Metro Council Meeting  
Thursday, Dec. 8, 2011  
Metro Council Chamber

Agenda Item No. 4.2

**Resolution No. 11-4298**, For the Purpose of Authorizing the Chief Operating Officer to Issue a Renewed Non-System License to American Sanitary Service, Inc. for Delivery of Putrescible Waste to the West Van Materials Recovery Center and the Central Transfer and Recycling Center.

*Consent Agenda*

Metro Council Meeting  
Thursday, Dec. 8, 2011  
Metro Council Chamber

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A ) RESOLUTION NO. 11-4298  
RENEWED NON-SYSTEM LICENSE TO AMERICAN SANITARY )  
SERVICE, INC. FOR DELIVERY OF PUTRESCIBLE WASTE TO ) Introduced by Martha J. Bennett,  
THE WEST VAN MATERIALS RECOVERY CENTER AND THE ) Chief Operating Officer, with the  
CENTRAL TRANSFER AND RECYCLING CENTER ) concurrence of Tom Hughes,  
 ) Council President

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

WHEREAS, American Sanitary Service, Inc. ("American") holds Metro Solid Waste Facility Non-System License No. N-020-11A, which expires on December 31, 2011; and

WHEREAS, American has filed a complete application seeking renewal of the non-system license to deliver putrescible waste to the West Van Materials Recovery Center and the Central Transfer and Recycling Center for disposal under the provisions of Metro Code Chapter 5.05, "Solid Waste Flow Control;" and

WHEREAS, Metro Code Chapter 5.05 provides that applications for non-system licenses for putrescible waste shall be reviewed by the Chief Operating Officer and are subject to approval or denial by the Metro Council; and

WHEREAS, the Chief Operating Officer has analyzed the application and considered the relevant factors under the Metro Code; and

WHEREAS, the Chief Operating Officer recommends that the non-system license be renewed together with specific conditions as provided in Exhibit A to this Resolution; now therefore,

THE METRO COUNCIL RESOLVES AS FOLLOWS:

1. The non-system license renewal application of American is approved subject to the terms, conditions, and limitations contained in Exhibit A to this Resolution.
2. The Chief Operating Officer is authorized to issue to American a renewed Solid Waste Facility Non-System License substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Tom Hughes, Council President

Approved as to Form:

\_\_\_\_\_  
Daniel B. Cooper, Metro Attorney

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736  
TEL 503 797 1835 | FAX 503 813 7544



**METRO**

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

**No. N-020-12**

<b>LICENSEE:</b>		
American Sanitary Service, Inc. 12820 NE Marx Street Portland, OR 97230		
<b>CONTACT PERSON:</b>		
	Jason Craft	Dean Large
Phone:	(503) 251-1308	(360) 695-4858
Fax:	(503) 257-8699	(360) 695-5091
E-Mail:	<a href="mailto:jasoncr@wcnx.org">jasoncr@wcnx.org</a>	<a href="mailto:deanl@wcnx.org">deanl@wcnx.org</a>
<b>MAILING ADDRESS:</b>		
American Sanitary Service, Inc. 12820 NE Marx Street Portland, OR 97230		

**ISSUED BY METRO:**

\_\_\_\_\_  
Scott Robinson, Deputy Chief Operating Officer

\_\_\_\_\_  
Date





<b>1</b>	<b>NATURE OF WASTE COVERED BY LICENSE</b>
	Putrescible solid waste that is generated by residential and commercial customers within the Metro region and collected by American Sanitary Service, Inc.
<b>2</b>	<b>CALENDAR YEAR TONNAGE LIMITATION</b>
	<p>(a) Licensee is authorized to deliver to the non-system facilities described in Section 3 of this license up to 2,321 tons per calendar year of the waste described in Section 1.</p> <p>(b) By no later than November 2, 2012, Metro's Chief Operating Officer ("COO") may release additional reserve tonnage and amend this license to adjust the calendar year tonnage limitation as established by Metro Council and described in the staff report to Resolution No. 11-4298.</p>
<b>3</b>	<b>NON-SYSTEM FACILITIES</b>
	<p>The Licensee hereunder is authorized to deliver the waste described above in Section 1 to the following non-system facilities:</p> <p style="padding-left: 40px;">West Van Materials Recovery Center 6601 NW Old Lower River Road Vancouver, WA 98660</p> <p style="padding-left: 40px;">Central Transfer and Recycling Center 11034 NE 117<sup>th</sup> Avenue Vancouver, WA 98661</p> <p>This license is issued on condition that the non-system facilities named in this section are authorized to accept the type of waste described in Section 1. If Metro receives notice from Clark County or other appropriate regulatory authority that these non-system facilities are not authorized to accept such waste, Metro may immediately terminate this license pursuant to Section 7 of this license.</p>
<b>4</b>	<b>TERM OF LICENSE</b>
	The term of this license will commence on January 1, 2012 and expire at midnight on December 31, 2012, unless terminated sooner under Section 7 of this license.



<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 transporting the solid waste authorized by this license.

<b>6</b>	<b>Record Keeping and Reporting</b>
	<p>(a) The Licensee shall keep and maintain accurate records of the amount of all solid waste that the Licensee delivers to the non-system facilities described in Section 3 of this license. The Licensee shall keep and maintain complete and accurate records of the following for all transactions with the authorized non-system facilities:</p> <ul style="list-style-type: none"><li>i. Ticket or weight slip number from the non-system facility;</li><li>ii. Material category designating the type of material transferred to the non-system facility;</li><li>iii. Date the load was transferred to the non-system facility;</li><li>iv. Time the load was transferred to the non-system facility;</li><li>v. Net weight of the load; and</li><li>vi. Fee charged by the non-system facility</li></ul> <p>(b) No later than the fifteenth (15th) day of each month, beginning with the first month following the commencement date of this license, Licensee shall:</p> <ul style="list-style-type: none"><li>i. Transmit the records required under Section 6(a) above to Metro in an electronic format prescribed by Metro;</li><li>ii. Submit to Metro a Regional System Fee and Excise Tax Report, that covers the preceding month; and</li><li>iii. Remit to Metro the requisite Regional System Fees and Excise Tax in accordance with the Metro Code provisions applicable to the collection, payment, and accounting of such fees and taxes.</li></ul> <p>(c) Licensee shall make all records from which Sections 6(a) and 6(b) 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) business days 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 facilities named in Section 3, above.</p> <p>(d) Metro may require the Licensee to report the information required by this Section on a weekly or daily basis.</p>



	<p>(e) At least once during the first half of the calendar year and once during the second half of the year, Licensee shall review its collection routes to determine which of its accounts are within the Metro region. Any adjustments are to be implemented in the next month's Regional System Fee and Excise Tax Report. Reports confirming the reviews and summarizing changes shall be submitted to Metro by May 31 and November 30, 2012.</p>
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<b>7</b>	<b>ADDITIONAL LICENSE CONDITIONS</b>
	<p>This 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 non-system facilities, listed in Section 3, authorized by this license shall be subordinate to any subsequent decision by Metro to direct the solid waste described in this license to any other facility.</li><li>(b) In addition to the amendments by the COO authorized by Section 2 of this license, this license shall be subject to amendment, modification, or termination by the COO in the event that the COO determines that:<ul style="list-style-type: none"><li>i. There has been sufficient change in any circumstances under which Metro issued this license;</li><li>ii. The provisions of this license are actually or potentially in conflict with any provision in Metro's disposal contract with Waste Management Disposal Services of Oregon, Inc., dba Oregon Waste Systems, Inc.;</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 of this license be transferred to, and disposed of at, a facility other than the facilities listed in Section 3; or</li><li>iv. There has been sufficient change in the amount of tonnage available for allocation during the term of the license. In the event that additional tonnage becomes available for allocation, the COO may amend Section 2(a) of this license to increase the calendar year tonnage limitation by up to five percent in addition to the reserve tonnage amount described in Section 2(b).</li></ul></li><li>(c) This license shall, in addition to subsections (b)(i) through (b)(iv), above, be subject to amendment, modification, suspension, or termination pursuant to the Metro Code.</li><li>(d) The Licensee shall not transfer or assign any right or interest in this license without prior written notification to, and approval of, Metro.</li><li>(e) This license shall terminate upon the execution of designated facility agreements with the facilities listed in Section 3 that authorizes the facilities to accept the waste described in Section 1 of this license.</li><li>(f) This license authorizes the delivery of solid waste to the facilities listed in</li></ul>



	<p>Section 3. Transfer of waste generated from within the Metro boundary to any non-system facility other than that specified in this license is prohibited unless authorized in writing by Metro.</p> <p>(g) The COO may direct the Licensee's waste flow under this non-system license to Metro Central Transfer Station or Metro South Transfer Station with a minimum of 24 hours written notice. Any redirection of the waste flow by the COO is effective immediately.</p> <p>(h) If the Licensee exceeds the calendar year limitation set forth in Section 2 of this license, each ton or portion thereof by which the Licensee exceeds the limitation constitutes a separate violation subject to a penalty of up to \$500.</p>
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<b>8</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>9</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. 11-4298 AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED NON-SYSTEM LICENSE TO AMERICAN SANITARY SERVICE, INC. FOR DELIVERY OF PUTRESCIBLE WASTE TO THE WEST VAN MATERIALS RECOVERY CENTER AND THE CENTRAL TRANSFER AND RECYCLING CENTER

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November 9, 2011

Prepared by: Warren Johnson

Approval of Resolution No. 11-4298 will authorize the Chief Operating Officer (COO) to issue a one-year non-system license (NSL), substantially similar to the proposed license attached to this resolution as Exhibit A, to American Sanitary Service, Inc. (American). The NSL will authorize the delivery of up to 2,321 tons of putrescible waste to either the West Van Materials Recovery Center (WVAN) or the Central Transfer and Recycling Center (CTRC), located in Clark County, Washington, during calendar year 2012. The applicant (American), the destination facilities (WVAN and CTRC), as well as the ultimate disposal site (Finley Buttes Landfill) are all owned by Waste Connections, Inc. (WCI), a waste management company headquartered in Folsom, California.

### 1. INTRODUCTION

#### A. Background

##### (1) Overview

NSLs are the main vehicles by which Metro manages its contractual obligation to deliver a minimum of 90 percent of the region's putrescible waste, which is delivered to general purpose landfills during the calendar year, to landfills owned by Waste Management. NSLs allow Metro to closely monitor and potentially guide waste flows to authorized facilities in order to comply with the contract. This approach provides for a high level of control and fast response to changing conditions. Resolution No. 11-4298 would grant an NSL to American to deliver Metro-area putrescible waste to facilities owned by WCI located in Clark County, Washington. That is, this NSL controls a portion of the 10 percent of uncommitted waste not guaranteed to Waste Management under Metro's disposal contract. Metro Council is scheduled to consider four such NSL resolutions controlling the uncommitted 10 percent. In addition to this action for American, the Council is scheduled to consider resolutions for Arrow Sanitary Service, Inc. (Res. No. 11-4299), Crown Point Refuse, Inc. (Res. No. 11-4300), and Willamette Resources, Inc. (Res. No. 11-4301) at its meeting on December 8, 2011.

In November 2010, the Metro Council granted one-year NSLs to each of the above referenced licensees. The Council approved a maximum tonnage allocation for the calendar year which, summed across all licenses, did not exceed 9.5 percent of the total forecasted tonnage subject to the flow guarantee based on Metro's tonnage forecast for 2011. Upon issuance of the NSLs, each licensee immediately received 85 percent of its portion of the total tonnage allocation as an upfront annual limit. The remaining amount was held in reserve for the COO to "release" as available by November 2, 2011. On October 7, 2011, the COO released additional tonnage to each of the licensees, reflecting the revised, downward tonnage forecast. Table 1 illustrates the initial and adjusted annual tonnage authorizations for each licensee in 2011.

**Table 1: Summary of Annual Tonnage Authorizations for existing NSLs in 2011**

Licensee	Licensee's Portion of Allocable Tonnage for 2011 (Percent)	Initial Tonnage Authorization for 2011	Additional Tonnage Released in October 2011	Total Adjusted Tonnage Authorization for 2011
American Sanitary Service, Inc. NSL No. N-020-11A	6.0	3,799	516	4,315
Arrow Sanitary Service, Inc. NSL No. N-029-11A	42.4	26,710	3,627	30,337
Crown Point Refuse, Inc. NSL No. N-108-11A	0.3	202	27	229
Willamette Resources, Inc. NSL No. N-005-11(3)A	51.3	32,343	4,392	36,735
<b>TOTAL</b>	<b>100</b>	<b>63,054</b>	<b>8,562</b>	<b>71,616</b>

As discussed in the "Budget/Rate Impact" section of this staff report, the current policy of allocating the uncommitted tonnage increases Metro's tip fee by \$0.78 per ton. At current throughput levels, Metro's transfer station customers will pay approximately \$370,000 more for disposal in calendar year 2012 than if 100 percent of the waste were delivered to a landfill owned by Waste Management. Last year, staff assumed these NSLs would be renewed and incorporated their effects into the January – June 2012 portion of the FY 2011-12 solid waste rates and budget. The financial impact of granting the proposed NSLs will be factored into the July – December 2012 portion of the FY 2012-13 solid waste rates and budget.

(2) Design of the 2012 NSLs

For the 2012 renewal period, staff is proposing the same approach for evaluating the applications and determining the annual tonnage authorizations that was used for 2011. In particular, staff recommends that the Metro Council again grant one-year NSLs allocating 9.5 percent of the available forecasted tonnage to those applicants that have applied to renew their existing licenses. The limitation for each NSL will be based on a share of the tonnage that is projected to be available for allocation in 2012. The available tonnage is based on Metro's preliminary tonnage forecast completed in October 2011. This same forecast was used in the five-year financial outlook prepared for Council; and when finalized will be used to develop the FY 2012-13 budget and solid waste rates.

If the Metro Council allocates the full 9.5 percent as proposed, then, based on the current Code requirement to consider the impact of Metro's contractual obligations when granting NSLs, staff would recommend that the Council not allow tonnage limit increases under these licenses, except as described in this report. Furthermore, should Metro receive new applications for these types of NSLs during 2012, it would be difficult for the Council to adopt findings approving such NSLs unless additional solid waste tonnage becomes available during the year (e.g., a significant economic upturn, a new diversion program that substantially under-performs on expectations, or a current license-holder no longer using its entire tonnage allocation).

In the proposed NSLs for 2012, each licensee will initially receive 85 percent of its portion of the total tonnage allocation as an upfront annual tonnage limit. The remaining 15 percent would then be held in reserve for the COO to potentially release, as available, by no later than November 2, 2012. The COO

may adjust the licensee’s annual tonnage limit as necessary as described in this report without seeking further Council action. Metro would enforce the annual tonnage limit stipulated in the license.

(3) Tonnage Allocation Methodology

The tonnage allocations are based on Metro’s preliminary forecast of future waste that is subject to the flow guarantee under its disposal contract with Waste Management, and the share of such waste that each licensee controlled in the most recent 12-month period (October 2010 through September 2011). The details of the allocation are as follows:

- *Total Tonnage.* Metro projects that 750,690 tons will be subject to the flow guarantee in calendar year 2012. The amount of new food waste diversion expected in 2012 (20,510 tons) is accounted for in this forecast. These numbers are derived from Metro’s latest econometric forecasting model of the solid waste system. This model is used for all of Metro’s major decisions involving solid waste tonnage including planning, budgeting, rate setting and revenue projections. The allocation numbers are based on the projections completed in October 2011 for the five-year budget planning outlook for all of Metro.
- *Reservation Tonnage.* Metro reserves a portion of the total tonnage to meet its contractual obligations under the disposal contract. For these allocations, Metro reserved 90.5 percent, which is comprised of the 90 percent flow guarantee plus a management allowance of 0.5 percent for the tonnage that would flow during a 2.6 week cycle should the redirection of the waste have to be implemented. The 2.6 weeks is comprised of a 2-week reporting lag, plus four days for notification and redirection logistics.
- *Allocable Tonnage.* 71,316 tons comprise the 9.5 percent of the total tonnage (750,690 tons) that are not reserved and therefore initially available to allocate among the applicants.
- *Licensee’s Portion.* Each licensee is allocated a share of the 71,316 tons in the same proportion as the tonnage subject to the flow guarantee that the licensee controlled (as measured by actual deliveries to all solid waste facilities) during the most recent 12-month period, October 2010 through September 2011. Table 2 illustrates the amount of solid waste that each licensee delivered to all solid waste facilities during the above referenced period.

**Table 2: Amount of Solid Waste that Licensees Delivered to All Solid Waste Facilities (October 2010 through September 2011)**

Licensee	Tons	Percent
American Sanitary Service, Inc.	4,098	3.8
Arrow Sanitary Service, Inc.	44,951	42.0
Crown Point Refuse, Inc.	324	0.3
Willamette Resources, Inc.	57,631	53.9
<b>TOTAL</b>	<b>107,004</b>	<b>100</b>

Table 3 illustrates the proposed 2012 authorizations for each licensee based upon its share of the allocable tonnage. For American, the share was 3.8 percent, leading to the initial recommended license authorization of up to 2,321 tons in 2012.

**Table 3: Comparison of Proposed 2012 Allocations by NSL Applicant**

Licensee	Initial Annual Tonnage Authorization (85%)	Tonnage Reserve for 2012 (15%)	Total Tonnage Allocation for 2012
American Sanitary Service, Inc. Res. No. 11-4298	2,321	410	2,731
Arrow Sanitary Service, Inc. Res. No. 11-4299	25,465	4,494	29,959
Crown Point Refuse, Inc. Res. No. 11-4300	184	32	216
Willamette Resources, Inc. Res. No. 11-4301	32,649	5,761	38,410
<b>TOTAL</b>	<b>60,619</b>	<b>10,697</b>	<b>71,316</b>

**B. The Applicant**

American is a solid waste hauler that is franchised to collect solid waste within the cities of Portland and Gresham. The applicant has been a holder of NSLs since 2002.

The term of American’s existing NSL No. N-020-11A commenced on January 1, 2011 and is set to expire on December 31, 2011. The calendar year tonnage limitation that Metro initially established for the NSL (3,799 tons) was based on Metro’s forecast, issued October 2010, of the waste that was subject to its disposal contract with Waste Management. However, based on tonnage information through August 2011, the COO subsequently amended American’s NSL to release an additional 516 tons, resulting in a total adjusted tonnage authorization of 4,315 tons for 2011. Table 1 illustrates American’s initial and adjusted annual tonnage authorizations for 2011.

On September 1, 2011, American submitted an NSL application requesting that Metro renew its NSL in 2012 with a tonnage authorization of 6,000 tons. However, under the proposed NSL, American would receive an initial tonnage authorization of 2,321 tons for use in 2012 with the potential for additional tonnage to be released by the COO as explained in Section 1C of this report.

**C. Special Provisions of the NSL for Managing Risk**

The proposed license includes five conditions that are intended to further minimize Metro’s risk of noncompliance with its disposal contract by providing Metro with additional controls for monitoring and managing the flow guarantee against fluctuating waste tonnage in the system. All five conditions were carried forward from the existing license and are included in all of the proposed NSLs for all licensees identified in Section 1A(1) of this report. These conditions are unique to the NSLs that control the 10 percent of putrescible waste that is not committed under Metro’s disposal contract.



(1) Calendar Year Tonnage Authorization

The proposed NSL authorizes the COO to release additional tonnage to the licensee if available during the term of the license.

Section 2 of the proposed NSL authorizes American to initially deliver up to 2,321 tons of putrescible waste to WVAN and CTRC during calendar year 2012. Effective January 1, 2012, this annual tonnage limit is available for use throughout the term of the license. The license also stipulates that, by no later than November 2, 2012, the COO may release reserved tonnage and increase the licensee's limit by up to an additional 15 percent (410 tons) as available. If the COO were to release the full reserve amount provided under this proposed license, then American's annual tonnage limit would be increased up to a total of 2,731 tons. This condition allows the COO to adjust the annual tonnage authorization as necessary to meet Metro's contractual obligations and allows the maximum use of the licensee's available tonnage. By adopting this resolution, the Metro Council authorizes the COO to release the reserve tonnage as described above.

(2) Tonnage Authorization Growth Allowance

Should economic conditions improve during the upcoming calendar year such that solid waste tonnage increases significantly above the level that was forecasted by Metro, the proposed NSL includes a provision to allow for additional tonnage allocation when a clear public benefit can be demonstrated.

Section 6 of the proposed NSL stipulates that in addition to the 15 percent reserve tonnage allocation described above, the COO may increase the annual tonnage authorization of the licensee by up to an additional five percent of its total tonnage allocation (137 tons) if such tonnage is available during the term of the license. If the COO were to grant the maximum growth allowance and release the licensee's full reserve amount (as described above), then American's initial annual tonnage limit could be increased up to a total of 20 percent (i.e., maximum tonnage authorization of 2,868 tons). The COO's decision whether to grant such a growth allowance will be based on Metro's actual experience with flows of waste that are subject to the flow guarantee during 2012. The COO will also consider whether there is a sufficient public benefit by granting more tonnage. This means that through the combination of the reserve tonnage and growth allowance conditions described above, the COO is authorized to increase the annual tonnage limit of the proposed license by up to 20 percent without seeking further Council action. Any tonnage increases greater than 20 percent (i.e., the combined growth allowance and reserve tonnage amounts) would require Council approval. By adopting this resolution, the Metro Council authorizes the COO to determine and allocate a growth allowance as described above.

(3) Term of License

The proposed NSL has a one-year term due to continuing economic uncertainty and other factors that could reduce the amount of tonnage available for the upcoming year. (The term of a standard NSL renewal is generally two years). Section 4 of the proposed NSL stipulates that the license commences on January 1, 2012, and terminates on December 31, 2012.

(4) Redirection of Waste Flow

In the event of further declines in system-wide putrescible waste, the proposed NSL authorizes the COO to immediately redirect the licensee's waste to Metro Central or South Transfer Stations if necessary to prevent a violation of the disposal contract flow guarantee.

Section 7 of the proposed NSL stipulates that the COO may redirect the licensee's waste flow with a minimum of 24 hours written notice. By adopting this resolution, the Metro Council authorizes the COO to redirect the licensee's waste, as described above, if necessary to comply with the disposal contract flow guarantee.

(5) Weekly and Daily Reporting Requirement

The proposed NSL allows the COO to require the licensee to report tonnage information to Metro on a weekly or daily basis if necessary. (NSLs generally specify that required information must be transmitted to Metro on a monthly basis).

Section 6 of the proposed NSL stipulates that the COO may determine when more frequent reporting is necessary. By adopting this resolution, the Metro Council authorizes the COO to immediately implement more frequent reporting requirements as needed.

**D. Special Provision of the NSL Unique to American**

As in 2011, the proposed NSL carries forward a condition that allows the licensee to perform a semi-annual collection route audit to implement reporting adjustments. (NSLs generally include scale-based reporting requirements for all transactions). However, the applicant has hauling accounts that lie outside the Metro region. In order to route its trucks efficiently, American trucks must cross the Metro jurisdictional boundary and co-mingle in-Metro waste with a small amount of out-of-Metro waste on one collection route. In order to determine the appropriate fees and taxes owed to Metro, American and Metro have mutually agreed to a procedure whereby American performs a semi-annual review of its collection routes to determine which accounts are located within the Metro region.

Section 7 of the proposed NSL stipulates that the licensee must perform an audit of its collection routes at least twice during the calendar year and implement all necessary tonnage adjustments for reporting and the remittance of fees and taxes. Staff finds this to be a reasonable and verifiable procedure for the small amount of waste that the applicant collects from outside of the Metro region.

**2. ANALYSIS/INFORMATION**

**A. Known Opposition**

There is no known opposition to the proposed license renewal.

**B. Legal Antecedents**

Metro Code Section 5.05.025 prohibits any person from utilizing non-system facilities without an appropriate license from Metro. Additionally, Code Section 5.05.035(c) provides that, when

determining whether or not to approve an NSL application, the Metro 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 applicant (American) is well known to Metro regulatory staff and is owned by a major, national integrated solid waste company. The environmental risks from the use of the non-system facilities are minimal as both the transfer stations and landfill destinations are fully regulated by the appropriate local and state authorities.

- (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;*

Metro staff's investigation of WCI revealed a good record of compliance with local and state agencies responsible for health, safety, and environmental regulations.

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

WVAN and CTRC use operational practices and management controls that are typical of transfer stations and that Metro considers adequate for the protection of health and the environment. In addition, the Finley Buttes Landfill uses operational practices and management controls that are typical of Subtitle D landfills. Staff at DEQ, the landfill's regulator, consider the operational practices and management controls in place at the landfill to be appropriate for the protection of health and the environment.

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

The proposed license covers putrescible solid waste, which currently has limited recovery potential. The one-year duration of the license puts no long-term constraint or commitment on the waste should recovery alternatives emerge for the region. Thus, approval of the proposed license renewal 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;*

NSLs are the main vehicles by which Metro manages its contractual obligation to deliver a minimum of 90 percent of the region's putrescible waste, which is delivered to general purpose landfills during the calendar year, to landfills owned by Waste Management. This proposed NSL controls a portion of the 10 percent of uncommitted waste not guaranteed to Waste Management under the disposal contract. This proposed NSL renewal is one of four similar licenses that will expire at the end of 2012. Provisions in the NSL allow Metro to monitor compliance with its disposal contract, as was covered in Section 1A of this report.

- (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;*

American exceeded its NSL tonnage limitation for the first half of calendar year 2009 by 42.53 tons. Metro issued a Notice of Violation to American for exceeding its tonnage authorization, imposing a penalty of \$888.38. In addition to the imposition of a penalty, Metro reduced American's subsequent third quarter tonnage limit by 43 tons. American has since paid its penalty, as part of a settlement agreement that was approved by Council, and remained in compliance with its tonnage authorizations since that time.

The applicant is currently in compliance with its Metro-issued NSL. With the exception of the above referenced violation, the applicant has not had any significant compliance issues with regard to Metro regulations within the last two years. Additionally, American has had no violations related to public health, safety or environmental regulations during the term of the existing license.

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

This criterion was examined above in Sections 1A and 1C of this report.

### **C. Anticipated/Potential Effects**

This proposed NSL is one of many action items currently under consideration by Metro which is affected by potential declines in the amount of solid waste subject to the flow guarantee. Some decisions could have the effect of shrinking the pool of waste available for allocation. The forecast of waste subject to the flow guarantee, which is the basis for the NSL tonnage authorizations in 2012, incorporates the best available information as of this writing.

### **D. Budget/Rate Impacts**

The price that Metro pays for disposal at Columbia Ridge Landfill is a "declining block rate" — meaning that the more waste that is delivered to any landfill owned by Waste Management, the lower the per-ton cost paid by Metro. Based on projected tonnage and contract prices, allocating the uncommitted 71,316 tons to non-Waste Management landfills increases the Metro tip fee by \$0.78 per ton. At current throughput of approximately 450,000 tons per year, Metro customers will pay approximately \$370,000 more for disposal than if all of the uncommitted waste were to flow to Waste Management landfills. This is a conservative estimate, as it is based on the assumption that none of these tons would have been handled directly through Metro transfer stations. Had that been the case there would be additional fiscal impacts from loss of transaction revenue and higher per-ton revenue required to cover fixed costs. The practice of issuing these types of NSLs and absorbing these fiscal impacts has been occurring under the Council's direction for the past 11 years.

The Metro Regional System Fee and Excise Tax will continue to be collected on all waste delivered under authority of the proposed NSL. The application under consideration is the renewal of an existing NSL (No. N-020-11A). Therefore, the financial impact has already been factored into the budget.

### **3. RECOMMENDED ACTION**

Based on the information provided above and the analysis provided in this report, the COO recommends that the Metro Council adopt Resolution No. 11-4298. Approval of this resolution will authorize the COO to issue an NSL to American subject to the requirements listed in Metro Code Chapter 5.05; and further subject to special conditions which are incorporated into the proposed NSL attached to this resolution as Exhibit A.

WJ:bjl  
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Agenda Item No. 4.3

**Resolution No. 11-4299**, For the Purpose of Authorizing the Chief Operating Officer to Issue a Renewed Non-System License to Arrow Sanitary Service, Inc. For Delivery of Putrescible Waste to the West Van Materials Recovery Center and the Central Transfer and Recycling Center.

*Consent Agenda*

Metro Council Meeting  
Thursday, Dec. 8, 2011  
Metro Council Chamber

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A ) RESOLUTION NO. 11-4299  
RENEWED NON-SYSTEM LICENSE TO ARROW SANITARY )  
SERVICE, INC. FOR DELIVERY OF PUTRESCIBLE WASTE TO ) Introduced by Martha J. Bennett,  
THE WEST VAN MATERIALS RECOVERY CENTER AND THE ) Chief Operating Officer, with the  
CENTRAL TRANSFER AND RECYCLING CENTER ) concurrence of Tom Hughes,  
 ) Council President

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

WHEREAS, Arrow Sanitary Service, Inc. ("Arrow") holds Metro Solid Waste Facility Non-System License No. N-029-11A, which expires on December 31, 2011; and

WHEREAS, Arrow has filed a complete application seeking renewal of the non-system license to deliver putrescible waste to the West Van Materials Recovery Center and the Central Transfer and Recycling Center for disposal under the provisions of Metro Code Chapter 5.05, "Solid Waste Flow Control;" and

WHEREAS, Metro Code Chapter 5.05 provides that applications for non-system licenses for putrescible waste shall be reviewed by the Chief Operating Officer and are subject to approval or denial by the Metro Council; and

WHEREAS, the Chief Operating Officer has analyzed the application and considered the relevant factors under the Metro Code; and

WHEREAS, the Chief Operating Officer recommends that the non-system license be renewed together with specific conditions as provided in Exhibit A to this Resolution; now therefore,

THE METRO COUNCIL RESOLVES AS FOLLOWS:

1. The non-system license renewal application of Arrow is approved subject to the terms, conditions, and limitations contained in Exhibit A to this Resolution.
2. The Chief Operating Officer is authorized to issue to Arrow a renewed Solid Waste Facility Non-System License substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Tom Hughes, Council President

Approved as to Form:

\_\_\_\_\_  
Daniel B. Cooper, Metro Attorney

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736  
TEL 503 797 1835 | FAX 503 813 7544



**METRO**

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

**No. N-029-12**

<b>LICENSEE:</b>	
Arrow Sanitary Service, Inc. 12820 NE Marx Street Portland, OR 97230	
<b>CONTACT PERSON:</b>	
Phone:	Jason Craft (503) 251-1308      Dean Large (360) 695-4858
Fax:	(503) 257-8699      (360) 695-5091
E-Mail:	<a href="mailto:jasoncr@wcnx.org">jasoncr@wcnx.org</a> <a href="mailto:deanl@wcnx.org">deanl@wcnx.org</a>
<b>MAILING ADDRESS:</b>	
Arrow Sanitary Service, Inc. 12820 NE Marx Street Portland, OR 97230	

**ISSUED BY METRO:**

\_\_\_\_\_  
Scott Robinson, Deputy Chief Operating Officer

\_\_\_\_\_  
Date





<b>1</b>	<b>NATURE OF WASTE COVERED BY LICENSE</b>
	Putrescible solid waste that is generated by residential and commercial customers within the Metro region and collected by Arrow Sanitary Service, Inc.
<b>2</b>	<b>CALENDAR YEAR TONNAGE LIMITATION</b>
	<p>(a) Licensee is authorized to deliver to the non-system facilities described in Section 3 of this license up to 25,465 tons per calendar year of the waste described in Section 1.</p> <p>(b) By no later than November 2, 2012, Metro's Chief Operating Officer ("COO") may release additional reserve tonnage and amend this license to adjust the calendar year tonnage limitation as established by Metro Council and described in the staff report to Resolution No. 11-4299.</p>
<b>3</b>	<b>NON-SYSTEM FACILITIES</b>
	<p>The Licensee hereunder is authorized to deliver the waste described above in Section 1 to the following non-system facilities:</p> <p style="padding-left: 40px;">West Van Materials Recovery Center 6601 NW Old Lower River Road Vancouver, WA 98660</p> <p style="padding-left: 40px;">Central Transfer and Recycling Center 11034 NE 117<sup>th</sup> Avenue Vancouver, WA 98661</p> <p>This license is issued on condition that the non-system facilities named in this section are authorized to accept the type of waste described in Section 1. If Metro receives notice from Clark County or other appropriate regulatory authority that these non-system facilities are not authorized to accept such waste, Metro may immediately terminate this license pursuant to Section 7 of this license.</p>
<b>4</b>	<b>TERM OF LICENSE</b>
	The term of this license will commence on January 1, 2012 and expire at midnight on December 31, 2012, unless terminated sooner under Section 7 of this license.



<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 transporting the solid waste authorized by this license.

<b>6</b>	<b>Record Keeping and Reporting</b>
	<p>(a) The Licensee shall keep and maintain accurate records of the amount of all solid waste that the Licensee delivers to the non-system facilities described in Section 3 of this license. The Licensee shall keep and maintain complete and accurate records of the following for all transactions with the authorized non-system facilities:</p> <ul style="list-style-type: none"><li>i. Ticket or weight slip number from the non-system facility;</li><li>ii. Material category designating the type of material transferred to the non-system facility;</li><li>iii. Date the load was transferred to the non-system facility;</li><li>iv. Time the load was transferred to the non-system facility;</li><li>v. Net weight of the load; and</li><li>vi. Fee charged by the non-system facility</li></ul> <p>(b) No later than the fifteenth (15th) day of each month, beginning with the first month following the commencement date of this license, Licensee shall:</p> <ul style="list-style-type: none"><li>i. Transmit the records required under Section 6(a) above to Metro in an electronic format prescribed by Metro;</li><li>ii. Submit to Metro a Regional System Fee and Excise Tax Report, that covers the preceding month; and</li><li>iii. Remit to Metro the requisite Regional System Fees and Excise Tax in accordance with the Metro Code provisions applicable to the collection, payment, and accounting of such fees and taxes.</li></ul> <p>(c) Licensee shall make all records from which Sections 6(a) and 6(b) 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) business days 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 facilities named in Section 3, above.</p> <p>(d) Metro may require the Licensee to report the information required by this Section on a weekly or daily basis.</p>



<b>7</b>	<b>ADDITIONAL LICENSE CONDITIONS</b>
	<p>This 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 non-system facilities, listed in Section 3, authorized by this license shall be subordinate to any subsequent decision by Metro to direct the solid waste described in this license to any other facility.</li><li>(b) In addition to the amendments by the COO authorized by Section 2 of this license, this license shall be subject to amendment, modification, or termination by the COO in the event that the COO determines that:<ul style="list-style-type: none"><li>i. There has been sufficient change in any circumstances under which Metro issued this license;</li><li>ii. The provisions of this license are actually or potentially in conflict with any provision in Metro's disposal contract with Waste Management Disposal Services of Oregon, Inc., dba Oregon Waste Systems, Inc.;</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 of this license be transferred to, and disposed of at, a facility other than the facilities listed in Section 3; or</li><li>iv. There has been sufficient change in the amount of tonnage available for allocation during the term of the license. In the event that additional tonnage becomes available for allocation, the COO may amend Section 2(a) of this license to increase the calendar year tonnage limitation by up to five percent in addition to the reserve tonnage amount described in Section 2(b).</li></ul></li><li>(c) This license shall, in addition to subsections (b)(i) through (b)(iv), above, be subject to amendment, modification, suspension, or termination pursuant to the Metro Code.</li><li>(d) The Licensee shall not transfer or assign any right or interest in this license without prior written notification to, and approval of, Metro.</li><li>(e) This license shall terminate upon the execution of designated facility agreements with the facilities listed in Section 3 that authorizes the facilities to accept the waste described in Section 1 of this license.</li><li>(f) This license authorizes the delivery of solid waste to the facilities listed in Section 3. Transfer of waste generated from within the Metro boundary to any non-system facility other than that specified in this license is prohibited unless authorized in writing by Metro.</li><li>(g) The COO may direct the Licensee's waste flow under this non-system license to Metro Central Transfer Station or Metro South Transfer Station with a minimum of 24 hours written notice. Any redirection of the waste</li></ul>



	<p>flow by the COO is effective immediately.</p> <p>(h) If the Licensee exceeds the calendar year limitation set forth in Section 2 of this license, each ton or portion thereof by which the Licensee exceeds the limitation constitutes a separate violation subject to a penalty of up to \$500. For every ton by which the licensee violates the annual tonnage limitation, Metro will assess a base penalty of \$50. This \$50 base penalty can only be contested upon issuance of this license and will be assessed in addition to any penalty calculated by Metro in the normal course of its enforcement action.</p>
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<b>8</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>9</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. 11-4299 AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED NON-SYSTEM LICENSE TO ARROW SANITARY SERVICE, INC. FOR DELIVERY OF PUTRESCIBLE WASTE TO THE WEST VAN MATERIALS RECOVERY CENTER AND THE CENTRAL TRANSFER AND RECYCLING CENTER

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November 9, 2011

Prepared by: Warren Johnson

Approval of Resolution No. 11-4299 will authorize the Chief Operating Officer (COO) to issue a one-year non-system license (NSL), substantially similar to the proposed license attached to this resolution as Exhibit A, to Arrow Sanitary Service, Inc. (Arrow). The NSL will authorize the delivery of up to 25,465 tons of putrescible waste to either the West Van Materials Recovery Center (WVAN) or the Central Transfer and Recycling Center (CTRC), located in Clark County, Washington, during calendar year 2012. The applicant (Arrow), the destination facilities (WVAN and CTRC), as well as the ultimate disposal site (Finley Buttes Landfill) are all owned by Waste Connections, Inc. (WCI), a waste management company headquartered in Folsom, California.

### 1. INTRODUCTION

#### A. Background

##### (1) Overview

NSLs are the main vehicles by which Metro manages its contractual obligation to deliver a minimum of 90 percent of the region's putrescible waste, which is delivered to general purpose landfills during the calendar year, to landfills owned by Waste Management. NSLs allow Metro to closely monitor and potentially guide waste flows to authorized facilities in order to comply with the contract. This approach provides for a high level of control and fast response to changing conditions. Resolution No. 11-4299 would grant an NSL to Arrow to deliver Metro-area putrescible waste to facilities owned by WCI located in Clark County, Washington. That is, this NSL controls a portion of the 10 percent of uncommitted waste not guaranteed to Waste Management under Metro's disposal contract. Metro Council is scheduled to consider four such NSL resolutions controlling the uncommitted 10 percent. In addition to this action for Arrow, the Council is scheduled to consider resolutions for American Sanitary Service, Inc. (Res. No. 11-4298), Crown Point Refuse, Inc. (Res. No. 11-4300), and Willamette Resources, Inc. (Res. No. 11-4301) at its meeting on December 8, 2011.

In November 2010, the Metro Council granted one-year NSLs to each of the above referenced licensees. The Council approved a maximum tonnage allocation for the calendar year which, summed across all licenses, did not exceed 9.5 percent of the total forecasted tonnage subject to the flow guarantee based on Metro's tonnage forecast for 2011. Upon issuance of the NSLs, each licensee immediately received 85 percent of its portion of the total tonnage allocation as an upfront annual limit. The remaining amount was held in reserve for the COO to "release" as available by November 2, 2011. On October 7, 2011, the COO released additional tonnage to each of the licensees, reflecting the revised, downward tonnage forecast. Table 1 illustrates the initial and adjusted annual tonnage authorizations for each licensee in 2011.

**Table 1: Summary of Annual Tonnage Authorizations for existing NSLs in 2011**

Licensee	Licensee's Portion of Allocable Tonnage for 2011 (Percent)	Initial Tonnage Authorization for 2011	Additional Tonnage Released in October 2011	Total Adjusted Tonnage Authorization for 2011
American Sanitary Service, Inc. NSL No. N-020-11A	6.0	3,799	516	4,315
Arrow Sanitary Service, Inc. NSL No. N-029-11A	42.4	26,710	3,627	30,337
Crown Point Refuse, Inc. NSL No. N-108-11A	0.3	202	27	229
Willamette Resources, Inc. NSL No. N-005-11(3)A	51.3	32,343	4,392	36,735
<b>TOTAL</b>	<b>100</b>	<b>63,054</b>	<b>8,562</b>	<b>71,616</b>

As discussed in the "Budget/Rate Impact" section of this staff report, the current policy of allocating the uncommitted tonnage increases Metro's tip fee by \$0.78 per ton. At current throughput levels, Metro's transfer station customers will pay approximately \$370,000 more for disposal in calendar year 2012 than if 100 percent of the waste were delivered to a landfill owned by Waste Management. Last year, staff assumed these NSLs would be renewed and incorporated their effects into the January – June 2012 portion of the FY 2011-12 solid waste rates and budget. The financial impact of granting the proposed NSLs will be factored into the July – December 2012 portion of the FY 2012-13 solid waste rates and budget.

(2) Design of the 2012 NSLs

For the 2012 renewal period, staff is proposing the same approach for evaluating the applications and determining the annual tonnage authorizations that was used for 2011. In particular, staff recommends that the Metro Council again grant one-year NSLs allocating 9.5 percent of the available forecasted tonnage to those applicants that have applied to renew their existing licenses. The limitation for each NSL will be based on a share of the tonnage that is projected to be available for allocation in 2012. The available tonnage is based on Metro's preliminary tonnage forecast completed in October 2011. This same forecast was used in the five-year financial outlook prepared for Council; and when finalized will be used to develop the FY 2012-13 budget and solid waste rates.

If the Metro Council allocates the full 9.5 percent as proposed, then, based on the current Code requirement to consider the impact of Metro's contractual obligations when granting NSLs, staff would recommend that the Council not allow tonnage limit increases under these licenses, except as described in this report. Furthermore, should Metro receive new applications for these types of NSLs during 2012, it would be difficult for the Council to adopt findings approving such NSLs unless additional solid waste tonnage becomes available during the year (e.g., a significant economic upturn, a new diversion program that substantially under-performs on expectations, or a current license-holder no longer using its entire tonnage allocation).

In the proposed NSLs for 2012, each licensee will initially receive 85 percent of its portion of the total tonnage allocation as an upfront annual tonnage limit. The remaining 15 percent would then be held in reserve for the COO to potentially release, as available, by no later than November 2, 2012. The COO

may adjust the licensee’s annual tonnage limit as necessary as described in this report without seeking further Council action. Metro would enforce the annual tonnage limit stipulated in the license.

(3) Tonnage Allocation Methodology

The tonnage allocations are based on Metro’s preliminary forecast of future waste that is subject to the flow guarantee under its disposal contract with Waste Management, and the share of such waste that each licensee controlled in the most recent 12-month period (October 2010 through September 2011). The details of the allocation are as follows:

- *Total Tonnage.* Metro projects that 750,690 tons will be subject to the flow guarantee in calendar year 2012. The amount of new food waste diversion expected in 2012 (20,510 tons) is accounted for in this forecast. These numbers are derived from Metro’s latest econometric forecasting model of the solid waste system. This model is used for all of Metro’s major decisions involving solid waste tonnage including planning, budgeting, rate setting and revenue projections. The allocation numbers are based on the projections completed in October 2011 for the five-year budget planning outlook for all of Metro.
- *Reservation Tonnage.* Metro reserves a portion of the total tonnage to meet its contractual obligations under the disposal contract. For these allocations, Metro reserved 90.5 percent, which is comprised of the 90 percent flow guarantee plus a management allowance of 0.5 percent for the tonnage that would flow during a 2.6 week cycle should the redirection of the waste have to be implemented. The 2.6 weeks is comprised of a 2-week reporting lag, plus four days for notification and redirection logistics.
- *Allocable Tonnage.* 71,316 tons comprise the 9.5 percent of the total tonnage (750,690 tons) that are not reserved and therefore initially available to allocate among the applicants.
- *Licensee’s Portion.* Each licensee is allocated a share of the 71,316 tons in the same proportion as the tonnage subject to the flow guarantee that the licensee controlled (as measured by actual deliveries to all solid waste facilities) during the most recent 12-month period, October 2010 through September 2011. Table 2 illustrates the amount of solid waste that each licensee delivered to all solid waste facilities during the above referenced period.

**Table 2: Amount of Solid Waste that Licensees Delivered to All Solid Waste Facilities (October 2010 through September 2011)**

Licensee	Tons	Percent
American Sanitary Service, Inc.	4,098	3.8
Arrow Sanitary Service, Inc.	44,951	42.0
Crown Point Refuse, Inc.	324	0.3
Willamette Resources, Inc.	57,631	53.9
<b>TOTAL</b>	<b>107,004</b>	<b>100</b>

Table 3 illustrates the proposed 2012 authorizations for each licensee based upon its share of the allocable tonnage. For Arrow, the share was 42 percent, leading to the initial recommended license authorization of up to 25,465 tons in 2012.

**Table 3: Comparison of Proposed 2012 Allocations by NSL Applicant**

Licensee	Initial Annual Tonnage Authorization (85%)	Tonnage Reserve for 2012 (15%)	Total Tonnage Allocation for 2012
American Sanitary Service, Inc. Res. No. 11-4298	2,321	410	2,731
Arrow Sanitary Service, Inc. Res. No. 11-4299	25,465	4,494	29,959
Crown Point Refuse, Inc. Res. No. 11-4300	184	32	216
Willamette Resources, Inc. Res. No. 11-4301	32,649	5,761	38,410
<b>TOTAL</b>	<b>60,619</b>	<b>10,697</b>	<b>71,316</b>

**B. The Applicant**

Arrow is a solid waste hauler that is franchised to collect solid waste within the cities of Portland, Gresham, and unincorporated Clackamas County. The applicant has been a holder of NSLs since 2000.

The term of Arrow’s existing NSL No. N-029-11A commenced on January 1, 2011 and is set to expire on December 31, 2011. The calendar year tonnage limitation that Metro initially established for the NSL (26,710 tons) was based on Metro’s forecast, issued October 2010, of the waste that was subject to its disposal contract with Waste Management. However, based on tonnage information through August 2011, the COO subsequently amended Arrow’s NSL to release an additional 3,627 tons, resulting in a total adjusted tonnage authorization of 30,337 tons for 2011. Table 1 illustrates Arrow’s initial and adjusted annual tonnage authorizations for 2011.

On September 1, 2011, Arrow submitted an NSL application requesting that Metro renew its NSL in 2012 with a tonnage authorization of 45,000 tons. However, under the proposed NSL, Arrow would receive an initial tonnage authorization of 25,465 tons for use in 2012 with the potential for additional tonnage to be released by the COO as explained in Section 1C of this report.

**C. Special Provisions of the NSL for Managing Risk**

The proposed license includes five conditions that are intended to further minimize Metro’s risk of noncompliance with its disposal contract by providing Metro with additional controls for monitoring and managing the flow guarantee against fluctuating waste tonnage in the system. All five conditions were carried forward from the existing license and are included in all of the proposed NSLs for all licensees identified in Section 1A(1) of this report. These conditions are unique to the NSLs that control the 10 percent of putrescible waste that is not committed under Metro’s disposal contract.



(1) Calendar Year Tonnage Authorization

The proposed NSL authorizes the COO to release additional tonnage to the licensee if available during the term of the license.

Section 2 of the proposed NSL authorizes Arrow to initially deliver up to 25,465 tons of putrescible waste to WVAN and CTRC during calendar year 2012. Effective January 1, 2012, this annual tonnage limit is available for use throughout the term of the license. The license also stipulates that, by no later than November 2, 2012, the COO may release reserved tonnage and increase the licensee's limit by up to an additional 15 percent (4,494 tons) as available. If the COO were to release the full reserve amount provided under this proposed license, then Arrow's annual tonnage limit would be increased up to a total of 29,959 tons. This condition allows the COO to adjust the annual tonnage authorization as necessary to meet Metro's contractual obligations and allows the maximum use of the licensee's available tonnage. By adopting this resolution, the Metro Council authorizes the COO to release the reserve tonnage as described above.

(2) Tonnage Authorization Growth Allowance

Should economic conditions improve during the upcoming calendar year such that solid waste tonnage increases significantly above the level that was forecasted by Metro, the proposed NSL includes a provision to allow for additional tonnage allocation when a clear public benefit can be demonstrated.

Section 7 of the proposed NSL stipulates that in addition to the 15 percent reserve tonnage allocation described above, the COO may increase the annual tonnage authorization of the licensee by up to an additional five percent of its total tonnage allocation (1,498 tons) if such tonnage is available during the term of the license. If the COO were to grant the maximum growth allowance and release the licensee's full reserve amount (as described above), then Arrow's initial annual tonnage limit could be increased up to a total of 20 percent (i.e., maximum tonnage authorization of 31,457 tons). The COO's decision whether to grant such a growth allowance will be based on Metro's actual experience with flows of waste that are subject to the flow guarantee during 2012. The COO will also consider whether there is a sufficient public benefit by granting more tonnage. This means that through the combination of the reserve tonnage and growth allowance conditions described above, the COO is authorized to increase the annual tonnage limit of the proposed license by up to 20 percent without seeking further Council action. Any tonnage increases greater than 20 percent (i.e., the combined growth allowance and reserve tonnage amounts) would require Council approval. By adopting this resolution, the Metro Council authorizes the COO to determine and allocate a growth allowance as described above.

(3) Term of License

The proposed NSL has a one-year term due to continuing economic uncertainty and other factors that could reduce the amount of tonnage available for the upcoming year. (The term of a standard NSL renewal is generally two years). Section 4 of the proposed NSL stipulates that the license commences on January 1, 2012, and terminates on December 31, 2012.

(4) Redirection of Waste Flow

In the event of further declines in system-wide putrescible waste, the proposed NSL authorizes the COO to immediately redirect the licensee's waste to Metro Central or South Transfer Stations if necessary to prevent a violation of the disposal contract flow guarantee.

Section 7 of the proposed NSL stipulates that the COO may redirect the licensee's waste flow with a minimum of 24 hours written notice. By adopting this resolution, the Metro Council authorizes the COO to redirect the licensee's waste, as described above, if necessary to comply with the disposal contract flow guarantee.

(5) Weekly and Daily Reporting Requirement

The proposed NSL allows the COO to require the licensee to report tonnage information to Metro on a weekly or daily basis if necessary. (NSLs generally specify that required information must be transmitted to Metro on a monthly basis).

Section 6 of the proposed NSL stipulates that the COO may determine when more frequent reporting is necessary. By adopting this resolution, the Metro Council authorizes the COO to immediately implement more frequent reporting requirements as needed.

**D. Special Provision of the NSL Unique to Arrow**

As in 2011, the proposed NSL carries forward the condition that, based on the licensee's past compliance record, for every ton by which the licensee violates the annual tonnage authorization stipulated in the license, Metro will assess a base penalty of \$50 for each ton in excess of the tonnage limit. This \$50 base penalty would be assessed, in addition to any penalty calculated by Metro, as part of an enforcement action. Furthermore, Arrow's opportunity to contest such a minimum penalty is only available at the time that Resolution No. 11-4299 is adopted and the license is issued.

This provision was enacted after Arrow exceeded its NSL tonnage authorization on two occasions in 2009. Although Arrow has remained in compliance with its NSLs since that time, staff recommends that this condition be carried forward to manage potential risk due to Arrow's previous compliance record with regard to NSL tonnage limit violations. This proposed condition provides ongoing incentive for Arrow to maintain compliance with its NSL authorization in the future. A fuller discussion of the licensee's compliance record is provided in Section 2B(6) of this report.

By adopting this resolution, if Arrow exceeds its annual tonnage limit, it is immediately subject to a \$50 per ton penalty and does not have further opportunity to contest such an action by Metro. Metro also retains its right to pursue additional penalties, subject to due process, of up to \$450 per ton for such tonnage limit violations, and as informed by circumstances related to the violation.

**2. ANALYSIS/INFORMATION**

**A. Known Opposition**

There is no known opposition to the proposed license renewal.

## B. Legal Antecedents

Metro Code Section 5.05.025 prohibits any person from utilizing non-system facilities without an appropriate license from Metro. Additionally, Code Section 5.05.035(c) provides that, when determining whether or not to approve an NSL application, the Metro 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 applicant (Arrow) is well known to Metro regulatory staff and is owned by a major, national integrated solid waste company. The environmental risks from the use of the non-system facilities are minimal as both the transfer stations and landfill destinations are fully regulated by the appropriate local and state authorities.

- (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;*

Metro staff's investigation of WCI revealed a good record of compliance with local and state agencies responsible for health, safety, and environmental regulations.

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

WVAN and CTRC use operational practices and management controls that are typical of transfer stations and that Metro considers adequate for the protection of health and the environment. In addition, the Finley Buttes Landfill uses operational practices and management controls that are typical of Subtitle D landfills. Staff at DEQ, the landfill's regulator, consider the operational practices and management controls in place at the landfill to be appropriate for the protection of health and the environment.

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

The proposed license covers putrescible solid waste, which currently has limited recovery potential. The one-year duration of the license puts no long-term constraint or commitment on the waste should recovery alternatives emerge for the region. Thus, approval of the proposed license renewal 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;*

NSLs are the main vehicles by which Metro manages its contractual obligation to deliver a minimum of 90 percent of the region's putrescible waste, which is delivered to general purpose landfills during the calendar year, to landfills owned by Waste Management. This proposed NSL controls a portion of the 10 percent of uncommitted waste not guaranteed to Waste Management under the disposal contract. This proposed NSL renewal is one of four similar licenses that will expire at the end of 2012. Provisions in the

NSL allow Metro to monitor compliance with its disposal contract, as was covered in Section 1A of this report.

- (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;*

Since 2009, Arrow has violated the tonnage authorizations stipulated in its licenses on two occasions as described below:

Arrow exceeded its NSL tonnage limitation for the first half of calendar year 2009 by 3,269.16 tons. Metro issued a Notice of Violation (NOV) to Arrow for exceeding its tonnage authorization, imposing a penalty of \$36,891.74. In addition to the imposition of a penalty, Metro reduced Arrow's third quarter tonnage authorization by 3,269 tons. Arrow contested the penalty and the matter was brought to a hearing. The Hearings Officer subsequently found in favor of Metro.

Arrow again exceeded its NSL tonnage authorization for the third quarter of calendar year 2009 by 4,819.34 tons. Metro issued an NOV to Arrow for exceeding its tonnage authorization, imposing a penalty of \$36,851.86. Metro reduced Arrow's fourth quarter tonnage authorization by the amount that it was estimated to exceed its limit through the end of the calendar year. Arrow and Metro then agreed to settle both matters of the 2009 tonnage limit violations for the sum of \$44,500 which was approved by Council. WCI, as part of the settlement, indicated its intent to remain in compliance with future tonnage authorizations established by Metro. Arrow has since paid the settlement amount and remained in compliance with its tonnage authorizations since that time.

The applicant is currently in compliance with its Metro-issued NSL. However, as discussed in Section 1C of this report, in consideration of the applicant's past compliance record, staff recommends that a special condition be added to the proposed license in order for Metro to take sufficient and appropriate enforcement actions to manage the potential risk of Arrow exceeding its NSL tonnage authorization in the future.

With the exception of the above referenced violations, the applicant has not had any significant compliance issues with regard to Metro regulations within the last two years. Additionally, Arrow has had no violations related to public health, safety or environmental regulations during the term of the existing license.

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

This criterion was examined above in Sections 1A and 1C of this report.

### **C. Anticipated/Potential Effects**

This proposed NSL is one of many action items currently under consideration by Metro which is affected by potential declines in the amount of solid waste subject to the flow guarantee. Some decisions could have the effect of shrinking the pool of waste available for allocation. The forecast of waste subject to

the flow guarantee, which is the basis for the NSL tonnage authorizations in 2012, incorporates the best available information as of this writing.

#### **D. Budget/Rate Impacts**

The price that Metro pays for disposal at Columbia Ridge Landfill is a “declining block rate” — meaning that the more waste that is delivered to any landfill owned by Waste Management, the lower the per-ton cost paid by Metro. Based on projected tonnage and contract prices, allocating the uncommitted 71,316 tons to non-Waste Management landfills increases the Metro tip fee by \$0.78 per ton. At current throughput of approximately 450,000 tons per year, Metro customers will pay approximately \$370,000 more for disposal than if all of the uncommitted waste were to flow to Waste Management landfills. This is a conservative estimate, as it is based on the assumption that none of these tons would have been handled directly through Metro transfer stations. Had that been the case there would be additional fiscal impacts from loss of transaction revenue and higher per-ton revenue required to cover fixed costs. The practice of issuing these types of NSLs and absorbing these fiscal impacts has been occurring under the Council’s direction for the past 11 years.

The Metro Regional System Fee and Excise Tax will continue to be collected on all waste delivered under authority of the proposed NSL. The application under consideration is the renewal of an existing NSL (No. N-029-11A). Therefore, the financial impact has already been factored into the budget.

### **3. RECOMMENDED ACTION**

Based on the information provided above and the analysis provided in this report, the COO recommends that the Metro Council adopt Resolution No. 11-4299. Approval of this resolution will authorize the COO to issue an NSL to Arrow subject to the requirements listed in Metro Code Chapter 5.05; and further subject to special conditions which are incorporated into the proposed NSL attached to this resolution as Exhibit A.

WJ:bjl  
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Agenda Item No. 4.4

**Resolution No. 11-4300**, For the Purpose of Authorizing the Chief Operating Officer to Issue a Renewed Non-System License to Crown Point Refuse, Inc. For Delivery of Putrescible Waste to the Wasco County Landfill for Disposal.

*Consent Agenda*

Metro Council Meeting  
Thursday, Dec. 8, 2011  
Metro Council Chamber

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A ) RESOLUTION NO. 11-4300  
RENEWED NON-SYSTEM LICENSE TO CROWN POINT )  
REFUSE, INC. FOR DELIVERY OF PUTRESCIBLE WASTE TO ) Introduced by Martha J. Bennett,  
THE WASCO COUNTY LANDFILL FOR DISPOSAL ) Chief Operating Officer, with the  
 ) concurrence of Tom Hughes,  
 ) Council President

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

WHEREAS, Crown Point Refuse, Inc. ("Crown Point") holds Metro Solid Waste Facility Non-System License No. N-108-11A, which expires on December 31, 2011; and

WHEREAS, Crown Point has filed a complete application seeking renewal of the non-system license to deliver putrescible waste to the Wasco County Landfill for disposal under the provisions of Metro Code Chapter 5.05, "Solid Waste Flow Control;" and

WHEREAS, Metro Code Chapter 5.05 provides that applications for non-system licenses for putrescible waste shall be reviewed by the Chief Operating Officer and are subject to approval or denial by the Metro Council; and

WHEREAS, the Chief Operating Officer has analyzed the application and considered the relevant factors under the Metro Code; and

WHEREAS, the Chief Operating Officer recommends that the non-system license be renewed together with specific conditions as provided in Exhibit A to this Resolution; now therefore,

THE METRO COUNCIL RESOLVES AS FOLLOWS:

1. The non-system license renewal application of Crown Point is approved subject to the terms, conditions, and limitations contained in Exhibit A to this Resolution.
2. The Chief Operating Officer is authorized to issue to Crown Point a renewed Solid Waste Facility Non-System License substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Tom Hughes, Council President

Approved as to Form:

\_\_\_\_\_  
Daniel B. Cooper, Metro Attorney

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736  
TEL 503 797 1835 | FAX 503 813 7544



**METRO**

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

**No. N-108-12**

<b>LICENSEE:</b>
Crown Point Refuse, Inc. 2430 NW Marine Drive Troutdale, OR 97060
<b>CONTACT PERSON:</b>
Randall Burbach Phone: (503) 695-3239 Fax: (503) 661-7216 E-mail: <a href="mailto:crownpointrefuse@verizon.net">crownpointrefuse@verizon.net</a>
<b>MAILING ADDRESS:</b>
Crown Point Refuse, Inc. PO Box 360 Corbett, OR 97019

**ISSUED BY METRO:**

\_\_\_\_\_  
Scott Robinson, Deputy Chief Operating Officer

\_\_\_\_\_  
Date





<b>1</b>	<b>NATURE OF WASTE COVERED BY LICENSE</b>
	Putrescible solid waste that is generated by residential and commercial customers within the Metro region and collected by Crown Point Refuse, Inc.
<b>2</b>	<b>CALENDAR YEAR TONNAGE LIMITATION</b>
	<p>(a) Licensee is authorized to deliver to the non-system facility described in Section 3 of this license up to 184 tons per calendar year of the waste described in Section 1.</p> <p>(b) By no later than November 2, 2012, Metro's Chief Operating Officer ("COO") may release additional reserve tonnage and amend this license to adjust the calendar year tonnage limitation as established by Metro Council and described in the staff report to Resolution No. 11-4300.</p>
<b>3</b>	<b>NON-SYSTEM FACILITY</b>
	<p>The Licensee hereunder is authorized to deliver the waste described above in Section 1 to the following non-system facility:</p> <p style="text-align: center;">Wasco County Landfill 2550 Steele Road The Dalles, OR 97058</p> <p>This license is issued on condition that the non-system facility named in this section is authorized to accept the type of waste described in Section 1. If Metro receives notice from the Oregon Department of Environmental Quality or local regulatory authority that this non-system facility is not authorized to accept such waste, Metro may immediately terminate this license pursuant to Section 7 of this license.</p>
<b>4</b>	<b>TERM OF LICENSE</b>
	The term of this license will commence on January 1, 2012 and expire at midnight on December 31, 2012, unless terminated sooner under Section 7 of this license.



<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 transporting the solid waste authorized by this license.

<b>6</b>	<b>Record Keeping and Reporting</b>
	<p>(a) The Licensee shall keep and maintain accurate records of the amount of all solid waste that the Licensee delivers to the non-system facility described in Section 3 of this license. The Licensee shall keep and maintain complete and accurate records of the following for all transactions with the authorized non-system facility:</p> <ul style="list-style-type: none"><li>i. Ticket or weight slip number from the non-system facility;</li><li>ii. Material category designating the type of material transferred to the non-system facility;</li><li>iii. Date the load was transferred to the non-system facility;</li><li>iv. Time the load was transferred to the non-system facility;</li><li>v. Net weight of the load; and</li><li>vi. Fee charged by the non-system facility</li></ul> <p>(b) No later than the fifteenth (15th) day of each month, beginning with the first month following the commencement date of this license, Licensee shall:</p> <ul style="list-style-type: none"><li>i. Submit to Metro 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 Tax in accordance with the Metro Code provisions applicable to the collection, payment, and accounting of such fees and taxes.</li></ul> <p>(c) Licensee shall make all records from which Sections 6(a) and 6(b) 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) business days 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>(d) Metro may require the Licensee to report the information required by this Section on a weekly or daily basis.</p> <p>(e) At least once per calendar year, Licensee shall sample the weight of the waste it collects from within the Metro region for at least two consecutive weeks. The samples will be used as a basis for reporting the tonnage on</p>



the Licensee's Regional System Fee and Excise Tax Report.

<b>7</b>	<b>ADDITIONAL LICENSE CONDITIONS</b>
	<p>This 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 non-system facility, listed in Section 3, authorized by this license shall be subordinate to any subsequent decision by Metro to direct the solid waste described in this license to any other facility.</li><li>(b) In addition to the amendments by the COO authorized by Section 2 of this license, this license shall be subject to amendment, modification, or termination by the COO in the event that the COO determines that:<ul style="list-style-type: none"><li>i. There has been sufficient change in any circumstances under which Metro issued this license;</li><li>ii. The provisions of this license are actually or potentially in conflict with any provision in Metro's disposal contract with Waste Management Disposal Services of Oregon, Inc., dba Oregon Waste Systems, Inc.;</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 of this license be transferred to, and disposed of at, a facility other than the facility listed in Section 3; or</li><li>iv. There has been sufficient change in the amount of tonnage available for allocation during the term of the license. In the event that additional tonnage becomes available for allocation, the COO may amend Section 2(a) of this license to increase the calendar year tonnage limitation by up to five percent in addition to the reserve tonnage amount described in Section 2(b).</li></ul></li><li>(c) This license shall, in addition to subsections (b)(i) through (b)(iv), above, be subject to amendment, modification, suspension, or termination pursuant to the Metro Code.</li><li>(d) The Licensee shall not transfer or assign any right or interest in this license without prior written notification to, and approval of, Metro.</li><li>(e) This license shall terminate upon the execution of a designated facility agreement with the facility listed in Section 3 that authorizes the facility to accept the waste described in Section 1 of this license.</li><li>(f) This license authorizes the delivery of solid waste to the facility listed in Section 3. Transfer of waste generated from within the Metro boundary to any non-system facility other than that specified in this license is prohibited unless authorized in writing by Metro.</li><li>(g) The COO may direct the Licensee's waste flow under this non-system license to Metro Central Transfer Station or Metro South Transfer Station</li></ul>



	<p>with a minimum of 24 hours written notice. Any redirection of the waste flow by the COO is effective immediately.</p> <p>(h) If the Licensee exceeds the calendar year limitation set forth in Section 2 of this license, each ton or portion thereof by which the Licensee exceeds the limitation constitutes a separate violation subject to a penalty of up to \$500.</p>
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<b>8</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>9</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. 11-4300 AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED NON-SYSTEM LICENSE TO CROWN POINT REFUSE, INC. FOR DELIVERY OF PUTRESCIBLE WASTE TO THE WASCO COUNTY LANDFILL FOR DISPOSAL

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November 9, 2011

Prepared by: Warren Johnson

Approval of Resolution No. 11-4300 will authorize the Chief Operating Officer (COO) to issue a one-year non-system license (NSL), substantially similar to the proposed license attached to this resolution as Exhibit A, to Crown Point Refuse, Inc. (Crown Point). The NSL will authorize the delivery of up to 184 tons of putrescible waste to the Wasco County Landfill (WCL) during calendar year 2012.

### 1. INTRODUCTION

#### A. Background

##### (1) Overview

NSLs are the main vehicles by which Metro manages its contractual obligation to deliver a minimum of 90 percent of the region's putrescible waste, which is delivered to general purpose landfills during the calendar year, to landfills owned by Waste Management. NSLs allow Metro to closely monitor and potentially guide waste flows to authorized facilities in order to comply with the contract. This approach provides for a high level of control and fast response to changing conditions. Resolution No. 11-4300 would grant an NSL to Crown Point to deliver Metro-area putrescible waste to a disposal site owned by Waste Connections, Inc. located in Wasco County, Oregon. That is, this NSL controls a portion of the 10 percent of uncommitted waste not guaranteed to Waste Management under Metro's disposal contract. Metro Council is scheduled to consider four such NSL resolutions controlling the uncommitted 10 percent. In addition to this action for Crown Point, the Council is scheduled to consider resolutions for American Sanitary Service, Inc. (Res. No. 11-4298), Arrow Sanitary Service, Inc. (Res. No. 11-4299), and Willamette Resources, Inc. (Res. No. 11-4301) at its meeting on December 8, 2011.

In November 2010, the Metro Council granted one-year NSLs to each of the above referenced licensees. The Council approved a maximum tonnage allocation for the calendar year which, summed across all licenses, did not exceed 9.5 percent of the total forecasted tonnage subject to the flow guarantee based on Metro's tonnage forecast for 2011. Upon issuance of the NSLs, each licensee immediately received 85 percent of its portion of the total tonnage allocation as an upfront annual limit. The remaining amount was held in reserve for the COO to "release" as available by November 2, 2011. On October 7, 2011, the COO released additional tonnage to each of the licensees, reflecting the revised, downward tonnage forecast. Table 1 illustrates the initial and adjusted annual tonnage authorizations for each licensee in 2011.

**Table 1: Summary of Annual Tonnage Authorizations for existing NSLs in 2011**

Licensee	Licensee's Portion of Allocable Tonnage for 2011 (Percent)	Initial Tonnage Authorization for 2011	Additional Tonnage Released in October 2011	Total Adjusted Tonnage Authorization for 2011
American Sanitary Service, Inc. NSL No. N-020-11A	6.0	3,799	516	4,315
Arrow Sanitary Service, Inc. NSL No. N-029-11A	42.4	26,710	3,627	30,337
Crown Point Refuse, Inc. NSL No. N-108-11A	0.3	202	27	229
Willamette Resources, Inc. NSL No. N-005-11(3)A	51.3	32,343	4,392	36,735
<b>TOTAL</b>	<b>100</b>	<b>63,054</b>	<b>8,562</b>	<b>71,616</b>

As discussed in the "Budget/Rate Impact" section of this staff report, the current policy of allocating the uncommitted tonnage increases Metro's tip fee by \$0.78 per ton. At current throughput levels, Metro's transfer station customers will pay approximately \$370,000 more for disposal in calendar year 2012 than if 100 percent of the waste were delivered to a landfill owned by Waste Management. Last year, staff assumed these NSLs would be renewed and incorporated their effects into the January – June 2012 portion of the FY 2011-12 solid waste rates and budget. The financial impact of granting the proposed NSLs will be factored into the July – December 2012 portion of the FY 2012-13 solid waste rates and budget.

(2) Design of the 2012 NSLs

For the 2012 renewal period, staff is proposing the same approach for evaluating the applications and determining the annual tonnage authorizations that was used for 2011. In particular, staff recommends that the Metro Council again grant one-year NSLs allocating 9.5 percent of the available forecasted tonnage to those applicants that have applied to renew their existing licenses. The limitation for each NSL will be based on a share of the tonnage that is projected to be available for allocation in 2012. The available tonnage is based on Metro's preliminary tonnage forecast completed in October 2011. This same forecast was used in the five-year financial outlook prepared for Council; and when finalized will be used to develop the FY 2012-13 budget and solid waste rates.

If the Metro Council allocates the full 9.5 percent as proposed, then, based on the current Code requirement to consider the impact of Metro's contractual obligations when granting NSLs, staff would recommend that the Council not allow tonnage limit increases under these licenses, except as described in this report. Furthermore, should Metro receive new applications for these types of NSLs during 2012, it would be difficult for the Council to adopt findings approving such NSLs unless additional solid waste tonnage becomes available during the year (e.g., a significant economic upturn, a new diversion program that substantially under-performs on expectations, or a current license-holder no longer using its entire tonnage allocation).

In the proposed NSLs for 2012, each licensee will initially receive 85 percent of its portion of the total tonnage allocation as an upfront annual tonnage limit. The remaining 15 percent would then be held in reserve for the COO to potentially release, as available, by no later than November 2, 2012. The COO

may adjust the licensee’s annual tonnage limit as necessary as described in this report without seeking further Council action. Metro would enforce the annual tonnage limit stipulated in the license.

(3) Tonnage Allocation Methodology

The tonnage allocations are based on Metro’s preliminary forecast of future waste that is subject to the flow guarantee under its disposal contract with Waste Management, and the share of such waste that each licensee controlled in the most recent 12-month period (October 2010 through September 2011). The details of the allocation are as follows:

- *Total Tonnage.* Metro projects that 750,690 tons will be subject to the flow guarantee in calendar year 2012. The amount of new food waste diversion expected in 2012 (20,510 tons) is accounted for in this forecast. These numbers are derived from Metro’s latest econometric forecasting model of the solid waste system. This model is used for all of Metro’s major decisions involving solid waste tonnage including planning, budgeting, rate setting and revenue projections. The allocation numbers are based on the projections completed in October 2011 for the five-year budget planning outlook for all of Metro.
- *Reservation Tonnage.* Metro reserves a portion of the total tonnage to meet its contractual obligations under the disposal contract. For these allocations, Metro reserved 90.5 percent, which is comprised of the 90 percent flow guarantee plus a management allowance of 0.5 percent for the tonnage that would flow during a 2.6 week cycle should the redirection of the waste have to be implemented. The 2.6 weeks is comprised of a 2-week reporting lag, plus four days for notification and redirection logistics.
- *Allocable Tonnage.* 71,316 tons comprise the 9.5 percent of the total tonnage (750,690 tons) that are not reserved and therefore initially available to allocate among the applicants.
- *Licensee’s Portion.* Each licensee is allocated a share of the 71,316 tons in the same proportion as the tonnage subject to the flow guarantee that the licensee controlled (as measured by actual deliveries to all solid waste facilities) during the most recent 12-month period, October 2010 through September 2011. Table 2 illustrates the amount of solid waste that each licensee delivered to all solid waste facilities during the above referenced period.

**Table 2: Amount of Solid Waste that Licensees Delivered to All Solid Waste Facilities (October 2010 through September 2011)**

Licensee	Tons	Percent
American Sanitary Service, Inc.	4,098	3.8
Arrow Sanitary Service, Inc.	44,951	42.0
Crown Point Refuse, Inc.	324	0.3
Willamette Resources, Inc.	57,631	53.9
<b>TOTAL</b>	<b>107,004</b>	<b>100</b>

Table 3 illustrates the proposed 2012 authorizations for each licensee based upon its share of the allocable tonnage. For Crown Point, the share was 0.3 percent, leading to the initial recommended license authorization of up to 184 tons in 2012.

**Table 3: Comparison of Proposed 2012 Allocations by NSL Applicant**

Licensee	Initial Annual Tonnage Authorization (85%)	Tonnage Reserve for 2012 (15%)	Total Tonnage Allocation for 2012
American Sanitary Service, Inc. Res. No. 11-4298	2,321	410	2,731
Arrow Sanitary Service, Inc. Res. No. 11-4299	25,465	4,494	29,959
Crown Point Refuse, Inc. Res. No. 11-4300	184	32	216
Willamette Resources, Inc. Res. No. 11-4301	32,649	5,761	38,410
<b>TOTAL</b>	<b>60,619</b>	<b>10,697</b>	<b>71,316</b>

**B. The Applicant**

The applicant, Crown Point, collects waste at a residential area located east of Troutdale, Oregon (along the eastern boundary of the Metro region). The applicant has been a holder of NSLs since 2004.

The term of Crown Point’s existing NSL No. N-108-11A commenced on January 1, 2011 and is set to expire on December 31, 2011. The calendar year tonnage limitation that Metro initially established for the NSL (202 tons) was based on Metro’s forecast, issued October 2010, of the waste that was subject to its disposal contract with Waste Management. However, based on tonnage information through August 2011, the COO subsequently amended Crown Point’s NSL to release an additional 27 tons, resulting in a total adjusted tonnage authorization of 229 tons for 2011. Table 1 illustrates Crown Point’s initial and adjusted annual tonnage authorizations for 2011.

On September 1, 2011, Crown Point submitted an NSL application requesting that Metro renew its NSL in 2012 with a tonnage authorization of 500 tons. However, under the proposed NSL, Crown Point would receive an initial tonnage authorization of 184 tons for use in 2012 with the potential for additional tonnage to be released by the COO as explained in Section 1C of this report.

**C. Special Provisions of the NSL for Managing Risk**

The proposed license includes five conditions that are intended to further minimize Metro’s risk of noncompliance with its disposal contract by providing Metro with additional controls for monitoring and managing the flow guarantee against fluctuating waste tonnage in the system. All five conditions were carried forward from the existing license and are included in all of the proposed NSLs for all licensees identified in Section 1A(1) of this report. These conditions are unique to the NSLs that control the 10 percent of putrescible waste that is not committed under Metro’s disposal contract.



(1) Calendar Year Tonnage Authorization

The proposed NSL authorizes the COO to release additional tonnage to the licensee if available during the term of the license.

Section 2 of the proposed NSL authorizes Crown Point to initially deliver up to 184 tons of putrescible waste to WCL during calendar year 2012. Effective January 1, 2012, this annual tonnage limit is immediately available for use throughout the term of the license. The license also stipulates that, by no later than November 2, 2012, the COO may release reserved tonnage and increase the licensee's limit by up to an additional 15 percent (32 tons) as available. If the COO were to release the full reserve amount provided under this proposed license, then Crown Point's annual tonnage limit would be increased up to a total of 216 tons. This condition allows the COO to adjust the annual tonnage authorization as necessary to meet Metro's contractual obligations and allows the maximum use of the licensee's available tonnage. By adopting this resolution, the Metro Council authorizes the COO to release the reserve tonnage as described above.

(2) Tonnage Authorization Growth Allowance

Should economic conditions improve during the upcoming calendar year such that solid waste tonnage increases significantly above the level that was forecasted by Metro, the proposed NSL includes a provision to allow for additional tonnage allocation when a clear public benefit can be demonstrated.

Section 7 of the proposed NSL stipulates that in addition to the 15 percent reserve tonnage allocation described above, the COO may increase the annual tonnage authorization of the licensee by up to an additional five percent of its total tonnage allocation (11 tons) if such tonnage is available during the term of the license. If the COO were to grant the maximum growth allowance and release the licensee's full reserve amount (as described above), then Crown Point's initial annual tonnage limit could be increased up to a total of 20 percent (i.e., maximum tonnage authorization of 227 tons). The COO's decision whether to grant such a growth allowance will be based on Metro's actual experience with flows of waste that are subject to the flow guarantee during 2012. The COO will also consider whether there is a sufficient public benefit by granting more tonnage. This means that through the combination of the reserve tonnage and growth allowance conditions described above, the COO is authorized to increase the annual tonnage limit of the proposed license by up to 20 percent without seeking further Council action. Any tonnage increases greater than 20 percent (i.e., the combined growth allowance and reserve tonnage amounts) would require Council approval. By adopting this resolution, the Metro Council authorizes the COO to determine and allocate a growth allowance as described above.

(3) Term of License

The proposed NSL has a one-year term due to continuing economic uncertainty and other factors that could reduce the amount of tonnage available for the upcoming year. (The term of a standard NSL renewal is generally two years). Section 4 of the proposed NSL stipulates that the license commences on January 1, 2012, and terminates on December 31, 2012.

(4) Redirection of Waste Flow

In the event of further declines in system-wide putrescible waste, the proposed NSL authorizes the COO to immediately redirect the licensee's waste to Metro Central or South Transfer Stations if necessary to prevent a violation of the disposal contract flow guarantee.

Section 7 of the proposed NSL stipulates that the COO may redirect the licensee's waste flow with a minimum of 24 hours written notice. By adopting this resolution, the Metro Council authorizes the COO to redirect the licensee's waste, as described above, if necessary to comply with the disposal contract flow guarantee.

(5) Weekly and Daily Reporting Requirement

The proposed NSL allows the COO to require the licensee to report tonnage information to Metro on a weekly or daily basis if necessary. (NSLs generally specify that required information must be transmitted to Metro on a monthly basis).

Section 6 of the proposed NSL stipulates that the COO may determine when more frequent reporting is necessary. By adopting this resolution, the Metro Council authorizes the COO to immediately implement more frequent reporting requirements as needed.

**D. Special Provision of the NSL Unique to Crown Point**

As in 2011, the proposed NSL carries forward a condition that allows the licensee to report to Metro an average monthly tonnage amount. (NSLs generally include scale-based reporting requirements for all transactions). The majority of the applicant's hauling accounts lie outside the Metro region. In order to route its trucks efficiently, Crown Point's trucks must cross the Metro jurisdictional boundary and co-mingle Metro area waste with out-of-Metro waste. In order to determine the appropriate fees and taxes owed to Metro, Crown Point and Metro have mutually agreed to a procedure whereby Crown Point reports an average monthly tonnage amount determined by weight studies it performs on an annual basis.

Section 6 of the proposed NSL stipulates that the licensee must sample the weight of the waste it collects from inside the Metro region for a period of two consecutive weeks in order to determine a monthly average tonnage amount to use for reporting and the remittance of fees and taxes. Staff finds this to be a reasonable and verifiable procedure for the small amount of Metro area waste that the applicant collects from within the region.

**2. ANALYSIS/INFORMATION**

**A. Known Opposition**

There is no known opposition to the proposed license renewal.

## B. Legal Antecedents

Metro Code Section 5.05.025 prohibits any person from utilizing non-system facilities without an appropriate license from Metro. Additionally, Code Section 5.05.035(c) provides that, when determining whether or not to approve an NSL application, the Metro 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 applicant (Crown Point) and the disposal site (WCL) are well known to Metro regulatory staff. The landfill is owned by a major, national integrated solid waste company. The environmental risks from the use of the disposal site are minimal as the landfill is fully regulated by the appropriate local and state authorities.

- (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;*

WCL is owned and operated by Waste Connections, Inc (WCI). Metro staff's investigation of WCI revealed a good record of compliance with local and state agencies responsible for health, safety, and environmental regulations.

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

WCL uses operational practices and management controls that are typical of Subtitle D landfills. Staff at DEQ, the landfill's regulator, consider the operational practices and management controls in place at the landfill to be appropriate for the protection of health and the environment.

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

The proposed license covers putrescible solid waste, which currently has limited recovery potential. The one-year duration of the license puts no long-term constraint or commitment on the waste should recovery alternatives emerge for the region. Thus, approval of the proposed license renewal 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;*

NSLs are the main vehicles by which Metro manages its contractual obligation to deliver a minimum of 90 percent of the region's putrescible waste, which is delivered to general purpose landfills during the calendar year, to landfills owned by Waste Management. This proposed NSL controls a portion of the 10 percent of uncommitted waste not guaranteed to Waste Management under the disposal contract. This proposed NSL renewal is one of four similar licenses that will expire at the end of 2012. Provisions in the

NSL allow Metro to monitor compliance with its disposal contract, as was covered in Section 1A of this report.

- (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;*

The applicant is currently in compliance with its Metro-issued NSL and has not had any significant compliance issues with regard to Metro regulations within the last two years. Additionally, Crown Point has a good record of compliance with local and state agencies responsible for health, safety, and environmental regulations.

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

This criterion was examined above in Sections 1A and 1C of this report.

### **C. Anticipated/Potential Effects**

This proposed NSL is one of many action items currently under consideration by Metro which is affected by potential declines in the amount of solid waste subject to the flow guarantee. Some decisions could have the effect of shrinking the pool of waste available for allocation. The forecast of waste subject to the flow guarantee, which is the basis for the NSL tonnage authorizations in 2012, incorporates the best available information as of this writing.

### **D. Budget/Rate Impacts**

The price that Metro pays for disposal at Columbia Ridge Landfill is a “declining block rate” — meaning that the more waste that is delivered to any landfill owned by Waste Management, the lower the per-ton cost paid by Metro. Based on projected tonnage and contract prices, allocating the uncommitted 71,316 tons to non-Waste Management landfills increases the Metro tip fee by \$0.78 per ton. At current throughput of approximately 450,000 tons per year, Metro customers will pay approximately \$370,000 more for disposal than if all of the uncommitted waste were to flow to Waste Management landfills. This is a conservative estimate, as it is based on the assumption that none of these tons would have been handled directly through Metro transfer stations. Had that been the case there would be additional fiscal impacts from loss of transaction revenue and higher per-ton revenue required to cover fixed costs. The practice of issuing these types of NSLs and absorbing these fiscal impacts has been occurring under the Council’s direction for the past 11 years.

The Metro Regional System Fee and Excise Tax will continue to be collected on all waste delivered under authority of the proposed NSL. The application under consideration is the renewal of an existing NSL (No. N-108-11A). Therefore, the financial impact has already been factored into the budget.

### **3. RECOMMENDED ACTION**

Based on the information provided above and the analysis provided in this report, the COO recommends that the Metro Council adopt Resolution No. 11-4300. Approval of this resolution will authorize the COO to issue an NSL to Crown Point subject to the requirements listed in Metro Code Chapter 5.05; and further subject to special conditions which are incorporated into the proposed NSL attached to this resolution as Exhibit A.

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Agenda Item No. 4.5

**Resolution No. 11-4301**, For the Purpose of Authorizing the Chief Operating Officer to Issue a Renewed Non-System License to Willamette Resources, Inc. For Delivery of Putrescible Waste to the Coffin Butte Landfill for Disposal.

*Consent Agenda*

Metro Council Meeting  
Thursday, Dec. 8, 2011  
Metro Council Chamber

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A ) RESOLUTION NO. 11-4301  
RENEWED NON-SYSTEM LICENSE TO WILLAMETTE )  
RESOURCES, INC. FOR DELIVERY OF PUTRESCIBLE WASTE ) Introduced by Martha J. Bennett,  
TO THE COFFIN BUTTE LANDFILL FOR DISPOSAL ) Chief Operating Officer, with the  
 ) concurrence of Tom Hughes,  
 ) Council President

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

WHEREAS, Willamette Resources, Inc. ("WRI") holds Metro Solid Waste Facility Non-System License No. N-005-11(3)A, which expires on December 31, 2011; and

WHEREAS, WRI has filed a complete application seeking renewal of the non-system license to deliver putrescible waste to the Coffin Butte Landfill for disposal under the provisions of Metro Code Chapter 5.05, "Solid Waste Flow Control;" and

WHEREAS, Metro Code Chapter 5.05 provides that applications for non-system licenses for putrescible waste shall be reviewed by the Chief Operating Officer and are subject to approval or denial by the Metro Council; and

WHEREAS, the Chief Operating Officer has analyzed the application and considered the relevant factors under the Metro Code; and

WHEREAS, the Chief Operating Officer recommends that the non-system license be renewed together with specific conditions as provided in Exhibit A to this Resolution; now therefore,

THE METRO COUNCIL RESOLVES AS FOLLOWS:

1. The non-system license renewal application of WRI is approved subject to the terms, conditions, and limitations contained in Exhibit A to this Resolution.
2. The Chief Operating Officer is authorized to issue to WRI a renewed Solid Waste Facility Non-System License substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Tom Hughes, Council President

Approved as to Form:

\_\_\_\_\_  
Daniel B. Cooper, Metro Attorney

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736  
TEL 503 797 1835 FAX 503 813 7544



**METRO**

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

**No. N-005-12(3)**

<b>LICENSEE:</b>	
Willamette Resources, Inc. 10295 SW Ridder Road Wilsonville, OR 97070	
<b>CONTACT PERSON:</b>	
Carol Dion	Ray Phelps
Phone: (503) 570-0626	(503) 784-3516
Fax: (503) 570-0523	(503) 570-0523
E-Mail: <a href="mailto:CDion@republicservices.com">CDion@republicservices.com</a>	<a href="mailto:RPhelps@republicservices.com">RPhelps@republicservices.com</a>
<b>MAILING ADDRESS:</b>	
Willamette Resources, Inc. 10295 SW Ridder Road Wilsonville, OR 97070	

**ISSUED BY METRO:**

\_\_\_\_\_  
Scott Robinson, Deputy Chief Operating Officer

\_\_\_\_\_  
Date





<b>1</b>	<b>NATURE OF WASTE COVERED BY LICENSE</b>
	Putrescible solid waste generated within the Metro boundary and received at Willamette Resources, Inc. in accordance with Metro Solid Waste Facility Franchise No. F-005-08A.

<b>2</b>	<b>CALENDAR YEAR TONNAGE LIMITATION</b>
	<p>(a) Licensee is authorized to deliver to the non-system facility described in Section 3 of this license up to 32,649 tons per calendar year of the waste described in Section 1.</p> <p>(b) By no later than November 2, 2012, Metro's Chief Operating Officer ("COO") may release additional reserve tonnage and amend this license to adjust the calendar year tonnage limitation as established by Metro Council and described in the staff report to Resolution No. 11-4301.</p> <p>(c) This license does not increase the total tonnage that the Licensee is authorized to accept under Metro Solid Waste Facility Franchise No. F-005-08A.</p>

<b>3</b>	<b>NON-SYSTEM FACILITY</b>
	<p>The Licensee hereunder is authorized to deliver the waste described above in Section 1 to the following non-system facility:</p> <p style="padding-left: 40px;">Coffin Butte Landfill 28972 Coffin Butte Road Corvallis, OR 97330</p> <p>This license is issued on condition that the non-system facility named in this section is authorized to accept the type of waste described in Section 1. If Metro receives notice from the Oregon Department of Environmental Quality or local regulatory authority that this non-system facility is not authorized to accept such waste, Metro may immediately terminate this license pursuant to Section 7 of this license.</p>

<b>4</b>	<b>TERM OF LICENSE</b>
	The term of this license will commence on January 1, 2012 and expire at midnight on December 31, 2012, unless terminated sooner under Section 7 of this license.



<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 transporting the solid waste authorized by this license.

<b>6</b>	<b>Record Keeping and Reporting</b>
	<p>(a) The Licensee shall keep and maintain accurate records of the amount of all solid waste that the Licensee delivers to the non-system facility described in Section 3 of this license. The Licensee shall keep and maintain complete and accurate records of the following for all transactions with the authorized non-system facility:</p> <ul style="list-style-type: none"><li>i. Ticket or weight slip number from the non-system facility;</li><li>ii. Material category designating the type of material transferred to the non-system facility;</li><li>iii. Date the load was transferred to the non-system facility;</li><li>iv. Time the load was transferred to the non-system facility;</li><li>v. Net weight of the load; and</li><li>vi. Fee charged by the non-system facility</li></ul> <p>(b) No later than the fifteenth (15th) day of each month, beginning with the first month following the commencement date of this license, Licensee shall:</p> <ul style="list-style-type: none"><li>i. Transmit the records required under Section 6(a) above to Metro in an electronic format prescribed by Metro;</li><li>ii. Submit to Metro a Regional System Fee and Excise Tax Report, that covers the preceding month; and</li><li>iii. Remit to Metro the requisite Regional System Fees and Excise Tax in accordance with the Metro Code provisions applicable to the collection, payment, and accounting of such fees and taxes.</li></ul> <p>(c) Licensee shall make all records from which Sections 6(a) and 6(b) 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) business days 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>(d) Metro may require the Licensee to report the information required by this Section on a weekly or daily basis.</p>



<b>7</b>	<b>ADDITIONAL LICENSE CONDITIONS</b>
	<p>This 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 non-system facility, listed in Section 3, authorized by this license shall be subordinate to any subsequent decision by Metro to direct the solid waste described in this license to any other facility.</li><li>(b) In addition to the amendments by the COO authorized by Section 2 of this license, this license shall be subject to amendment, modification, or termination by the COO in the event that the COO determines that:<ul style="list-style-type: none"><li>i. There has been sufficient change in any circumstances under which Metro issued this license;</li><li>ii. The provisions of this license are actually or potentially in conflict with any provision in Metro's disposal contract with Waste Management Disposal Services of Oregon, Inc., dba Oregon Waste Systems, Inc.;</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 of this license be transferred to, and disposed of at, a facility other than the facility listed in Section 3; or</li><li>iv. There has been sufficient change in the amount of tonnage available for allocation during the term of the license. In the event that additional tonnage becomes available for allocation, the COO may amend Section 2(a) of this license to increase the calendar year tonnage limitation by up to five percent in addition to the reserve tonnage amount described in Section 2(b).</li></ul></li><li>(c) This license shall, in addition to subsections (b)(i) through (b)(iv), above, be subject to amendment, modification, suspension, or termination pursuant to the Metro Code.</li><li>(d) The Licensee shall not transfer or assign any right or interest in this license without prior written notification to, and approval of, Metro.</li><li>(e) This license shall terminate upon the execution of a designated facility agreement with the facility listed in Section 3 that authorizes the facility to accept the waste described in Section 1 of this license.</li><li>(f) This license authorizes the delivery of solid waste to the facility listed in Section 3. Transfer of waste generated from within the Metro boundary to any non-system facility other than that specified in this license is prohibited unless authorized in writing by Metro.</li><li>(g) The COO may direct the Licensee's waste flow under this non-system license to any system facility with a minimum of 24 hours written notice. Any redirection of the waste flow by the COO is effective immediately.</li><li>(h) If the Licensee exceeds the calendar year limitation set forth in Section 2</li></ul>



	of this license, each ton or portion thereof by which the Licensee exceeds the limitation constitutes a separate violation subject to a penalty of up to \$500.
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<b>8</b>	<b>COMPLIANCE WITH LAW</b>
	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.

<b>9</b>	<b>INDEMNIFICATION</b>
	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.

## STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 11-4301 AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED NON-SYSTEM LICENSE TO WILLAMETTE RESOURCES, INC. FOR DELIVERY OF PUTRESCIBLE WASTE TO THE COFFIN BUTTE LANDFILL FOR DISPOSAL

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November 9, 2011

Prepared by: Warren Johnson

Approval of Resolution No. 11-4301 will authorize the Chief Operating Officer (COO) to issue a one-year non-system license (NSL), substantially similar to the proposed license attached to this resolution as Exhibit A, to Willamette Resources, Inc. (WRI). The NSL will authorize the delivery of up to 32,649 tons of putrescible waste to the Coffin Butte Landfill (CBLF), located in Benton County, during calendar year 2012. The applicant (WRI) and the disposal site (CBLF) are both owned by Allied Waste Industries, Inc. (Allied), a wholly owned subsidiary of Republic Waste Systems, Inc. headquartered in Phoenix, Arizona.

### 1. INTRODUCTION

#### A. Background

##### (1) Overview

NSLs are the main vehicles by which Metro manages its contractual obligation to deliver a minimum of 90 percent of the region's putrescible waste, which is delivered to general purpose landfills during the calendar year, to landfills owned by Waste Management. NSLs allow Metro to closely monitor and potentially guide waste flows to authorized facilities in order to comply with the contract. This approach provides for a high level of control and fast response to changing conditions. Resolution No. 11-4301 would grant an NSL to WRI to deliver Metro-area putrescible waste to a disposal site owned by Allied located in Benton County, Oregon. That is, this NSL controls a portion of the 10 percent of uncommitted waste not guaranteed to Waste Management under Metro's disposal contract. Metro Council is scheduled to consider four such NSL resolutions controlling the uncommitted 10 percent. In addition to this action for WRI, the Council is scheduled to consider resolutions for American Sanitary Service, Inc. (Res. No. 11-4298), Arrow Sanitary Service, Inc. (Res. No. 11-4299), and Crown Point Refuse, Inc. (Res. No. 11-4300) at its meeting on December 8, 2011.

In November 2010, the Metro Council granted one-year NSLs to each of the above referenced licensees. The Council approved a maximum tonnage allocation for the calendar year which, summed across all licenses, did not exceed 9.5 percent of the total forecasted tonnage subject to the flow guarantee based on Metro's tonnage forecast for 2011. Upon issuance of the NSLs, each licensee immediately received 85 percent of its portion of the total tonnage allocation as an upfront annual limit. The remaining amount was held in reserve for the COO to "release" as available by November 2, 2011. On October 7, 2011, the COO released additional tonnage to each of the licensees, reflecting the revised, downward tonnage forecast. Table 1 illustrates the initial and adjusted annual tonnage authorizations for each licensee in 2011.

**Table 1: Summary of Annual Tonnage Authorizations for existing NSLs in 2011**

Licensee	Licensee's Portion of Allocable Tonnage for 2011 (Percent)	Initial Tonnage Authorization for 2011	Additional Tonnage Released in October 2011	Total Adjusted Tonnage Authorization for 2011
American Sanitary Service, Inc. NSL No. N-020-11A	6.0	3,799	516	4,315
Arrow Sanitary Service, Inc. NSL No. N-029-11A	42.4	26,710	3,627	30,337
Crown Point Refuse, Inc. NSL No. N-108-11A	0.3	202	27	229
Willamette Resources, Inc. NSL No. N-005-11(3)A	51.3	32,343	4,392	36,735
<b>TOTAL</b>	<b>100</b>	<b>63,054</b>	<b>8,562</b>	<b>71,616</b>

As discussed in the “Budget/Rate Impact” section of this staff report, the current policy of allocating the uncommitted tonnage increases Metro’s tip fee by \$0.78 per ton. At current throughput levels, Metro’s transfer station customers will pay approximately \$370,000 more for disposal in calendar year 2012 than if 100 percent of the waste were delivered to a landfill owned by Waste Management. Last year, staff assumed these NSLs would be renewed and incorporated their effects into the January – June 2012 portion of the FY 2011-12 solid waste rates and budget. The financial impact of granting the proposed NSLs will be factored into the July – December 2012 portion of the FY 2012-13 solid waste rates and budget.

(2) Design of the 2012 NSLs

For the 2012 renewal period, staff is proposing the same approach for evaluating the applications and determining the annual tonnage authorizations that was used for 2011. In particular, staff recommends that the Metro Council again grant one-year NSLs allocating 9.5 percent of the available forecasted tonnage to those applicants that have applied to renew their existing licenses. The limitation for each NSL will be based on a share of the tonnage that is projected to be available for allocation in 2012. The available tonnage is based on Metro’s preliminary tonnage forecast completed in October 2011. This same forecast was used in the five-year financial outlook prepared for Council; and when finalized will be used to develop the FY 2012-13 budget and solid waste rates.

If the Metro Council allocates the full 9.5 percent as proposed, then, based on the current Code requirement to consider the impact of Metro’s contractual obligations when granting NSLs, staff would recommend that the Council not allow tonnage limit increases under these licenses, except as described in this report. Furthermore, should Metro receive new applications for these types of NSLs during 2012, it would be difficult for the Council to adopt findings approving such NSLs unless additional solid waste tonnage becomes available during the year (e.g., a significant economic upturn, a new diversion program that substantially under-performs on expectations, or a current license-holder no longer using its entire tonnage allocation).

In the proposed NSLs for 2012, each licensee will initially receive 85 percent of its portion of the total tonnage allocation as an upfront annual tonnage limit. The remaining 15 percent would then be held in reserve for the COO to potentially release, as available, by no later than November 2, 2012. The COO

may adjust the licensee’s annual tonnage limit as necessary as described in this report without seeking further Council action. Metro would enforce the annual tonnage limit stipulated in the license.

(3) Tonnage Allocation Methodology

The tonnage allocations are based on Metro’s preliminary forecast of future waste that is subject to the flow guarantee under its disposal contract with Waste Management, and the share of such waste that each licensee controlled in the most recent 12-month period (October 2010 through September 2011). The details of the allocation are as follows:

- *Total Tonnage.* Metro projects that 750,690 tons will be subject to the flow guarantee in calendar year 2012. The amount of new food waste diversion expected in 2012 (20,510 tons) is accounted for in this forecast. These numbers are derived from Metro’s latest econometric forecasting model of the solid waste system. This model is used for all of Metro’s major decisions involving solid waste tonnage including planning, budgeting, rate setting and revenue projections. The allocation numbers are based on the projections completed in October 2011 for the five-year budget planning outlook for all of Metro.
- *Reservation Tonnage.* Metro reserves a portion of the total tonnage to meet its contractual obligations under the disposal contract. For these allocations, Metro reserved 90.5 percent, which is comprised of the 90 percent flow guarantee plus a management allowance of 0.5 percent for the tonnage that would flow during a 2.6 week cycle should the redirection of the waste have to be implemented. The 2.6 weeks is comprised of a 2-week reporting lag, plus four days for notification and redirection logistics.
- *Allocable Tonnage.* 71,316 tons comprise the 9.5 percent of the total tonnage (750,690 tons) that are not reserved and therefore initially available to allocate among the applicants.
- *Licensee’s Portion.* Each licensee is allocated a share of the 71,316 tons in the same proportion as the tonnage subject to the flow guarantee that the licensee controlled (as measured by actual deliveries to all solid waste facilities) during the most recent 12-month period, October 2010 through September 2011. Table 2 illustrates the amount of solid waste that each licensee delivered to all solid waste facilities during the above referenced period.

**Table 2: Amount of Solid Waste that Licensees Delivered to All Solid Waste Facilities (October 2010 through September 2011)**

Licensee	Tons	Percent
American Sanitary Service, Inc.	4,098	3.8
Arrow Sanitary Service, Inc.	44,951	42.0
Crown Point Refuse, Inc.	324	0.3
Willamette Resources, Inc.	57,631	53.9
<b>TOTAL</b>	<b>107,004</b>	<b>100</b>

Table 3 illustrates the proposed 2012 authorizations for each licensee based upon its share of the allocable tonnage. For WRI, the share was 53.9 percent, leading to the initial recommended license authorization of up to 32,649 tons in 2012.

**Table 3: Comparison of Proposed 2012 Allocations by NSL Applicant**

Licensee	Initial Annual Tonnage Authorization (85%)	Tonnage Reserve for 2012 (15%)	Total Tonnage Allocation for 2012
American Sanitary Service, Inc. Res. No. 11-4298	2,321	410	2,731
Arrow Sanitary Service, Inc. Res. No. 11-4299	25,465	4,494	29,959
Crown Point Refuse, Inc. Res. No. 11-4300	184	32	216
Willamette Resources, Inc. Res. No. 11-4301	32,649	5,761	38,410
<b>TOTAL</b>	<b>60,619</b>	<b>10,697</b>	<b>71,316</b>

**B. The Applicant**

The applicant, WRI, is the owner and operator of a Metro-franchised solid waste facility located at 10295 SW Ridder Road, in Wilsonville. The applicant has been a holder of NSLs since 2000.

The term of WRI’s existing NSL No. N-005-11(3)A commenced on January 1, 2011 and is set to expire on December 31, 2011. The calendar year tonnage limitation that Metro initially established for the NSL (32,343 tons) was based on Metro’s forecast, issued October 2010, of the waste that was subject to its disposal contract with Waste Management. However, based on tonnage information through August 2011, the COO subsequently amended WRI’s NSL to release an additional 4,392 tons, resulting in a total adjusted tonnage authorization of 36,735 tons for 2011. Table 1 illustrates WRI’s initial and adjusted annual tonnage authorizations for 2011.

On September 1, 2011, WRI submitted an NSL application requesting that Metro renew its NSL in 2012 with a tonnage authorization of 35,000 tons. However, under the proposed NSL, WRI would receive an initial tonnage authorization of 32,649 tons for use in 2012 with the potential for additional tonnage to be released by the COO as explained in Section 1C of this report.

**C. Special Provisions of the NSL for Managing Risk**

The proposed license includes five conditions that are intended to further minimize Metro’s risk of noncompliance with its disposal contract by providing Metro with additional controls for monitoring and managing the flow guarantee against fluctuating waste tonnage in the system. All five conditions were carried forward from the existing license and are included in all of the proposed NSLs for all licensees identified in Section 1A(1) of this report. These conditions are unique to the NSLs that control the 10 percent of putrescible waste that is not committed under Metro’s disposal contract.



(1) Calendar Year Tonnage Authorization

The proposed NSL authorizes the COO to release additional tonnage to the licensee if available during the term of the license.

Section 2 of the proposed NSL authorizes WRI to initially deliver up to 32,649 tons of putrescible waste to CBLF during calendar year 2012. Effective January 1, 2012, this annual tonnage limit is available for use throughout the term of the license. The license also stipulates that, by no later than November 2, 2012, the COO may release reserved tonnage and increase the licensee's limit by up to an additional 15 percent (5,761 tons) as available. If the COO were to release the full reserve amount provided under this proposed license, then WRI's annual tonnage limit would be increased up to a total of 38,410 tons. This condition allows the COO to adjust the annual tonnage authorization as necessary to meet Metro's contractual obligations and allows the maximum use of the licensee's available tonnage. By adopting this resolution, the Metro Council authorizes the COO to release the reserve tonnage as described above.

(2) Tonnage Authorization Growth Allowance

Should economic conditions improve during the upcoming calendar year such that solid waste tonnage increases significantly above the level that was forecasted by Metro, the proposed NSL includes a provision to allow for additional tonnage allocation when a clear public benefit can be demonstrated.

Section 7 of the proposed NSL stipulates that in addition to the 15 percent reserve tonnage allocation described above, the COO may increase the annual tonnage authorization of the licensee by up to an additional five percent of its total tonnage allocation (1,921 tons) if such tonnage is available during the term of the license. If the COO were to grant the maximum growth allowance and release the licensee's full reserve amount (as described above), then WRI's initial annual tonnage limit could be increased up to a total of 20 percent (i.e., maximum tonnage authorization of 40,331 tons). The COO's decision whether to grant such a growth allowance will be based on Metro's actual experience with flows of waste that are subject to the flow guarantee during 2012. The COO will also consider whether there is sufficient public benefit by granting more tonnage. This means that through the combination of the reserve tonnage and growth allowance conditions described above, the COO is authorized to increase the annual tonnage limit of the proposed license by up to 20 percent without seeking further Council action. Any tonnage increases greater than 20 percent (i.e., the combined growth allowance and reserve tonnage amounts) would require Council approval. By adopting this resolution, the Metro Council authorizes the COO to determine and allocate a growth allowance as described above.

(3) Term of License

The proposed NSL has a one-year term due to continuing economic uncertainty and other factors that could reduce the amount of tonnage available for the upcoming year. (The term of a standard NSL renewal is generally two years). Section 4 of the proposed NSL stipulates that the license commences on January 1, 2012, and terminates on December 31, 2012.

(4) Redirection of Waste Flow

In the event of further declines in system-wide putrescible waste, the proposed NSL authorizes the COO to immediately redirect the licensee's waste to any system facility if necessary to prevent a violation of the disposal contract flow guarantee.

Section 7 of the proposed NSL stipulates that the COO may redirect the licensee's waste flow with a minimum of 24 hours written notice. By adopting this resolution, the Metro Council authorizes the COO to redirect the licensee's waste, as described above, if necessary to comply with the disposal contract flow guarantee.

(5) Weekly and Daily Reporting Requirement

The proposed NSL allows the COO to require the licensee to report tonnage information to Metro on a weekly or daily basis if necessary. (NSLs generally specify that required information must be transmitted to Metro on a monthly basis).

Section 6 of the proposed NSL stipulates that the COO may determine when more frequent reporting is necessary. By adopting this resolution, the Metro Council authorizes the COO to immediately implement more frequent reporting requirements as needed.

**2. ANALYSIS/INFORMATION**

**A. Known Opposition**

There is no known opposition to the proposed license renewal.

**B. Legal Antecedents**

Metro Code Section 5.05.025 prohibits any person from utilizing non-system facilities without an appropriate license from Metro. Additionally, Code Section 5.05.035(c) provides that, when determining whether or not to approve an NSL application, the Metro 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 applicant (WRI) is well known to Metro regulatory staff and is owned by a major, national integrated solid waste company. The environmental risks from the use of the disposal site are minimal as the landfill is fully regulated by the appropriate local and state authorities.

- (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;*

Allied owns and operates both WRI and CBLF. Metro staff's investigation of Allied revealed a good record of compliance with local and state agencies responsible for health, safety, and environmental regulations.

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

CBLF uses operational practices and management controls that are typical of Subtitle D landfills. Staff at DEQ, the landfill's regulator, consider the operational practices and management controls in place at the landfill to be appropriate for the protection of health and the environment.

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

The proposed license covers putrescible solid waste, which currently has limited recovery potential. The one-year duration of the license puts no long-term constraint or commitment on the waste should recovery alternatives emerge for the region. Thus, approval of the proposed license renewal 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;*

NSLs are the main vehicles by which Metro manages its contractual obligation to deliver a minimum of 90 percent of the region's putrescible waste, which is delivered to general purpose landfills during the calendar year, to landfills owned by Waste Management. This proposed NSL controls a portion of the 10 percent of uncommitted waste not guaranteed to Waste Management under the disposal contract. This proposed NSL renewal is one of four similar licenses that will expire at the end of 2012. Provisions in the NSL allow Metro to monitor compliance with its disposal contract, as was covered in Section 1A of this report.

- (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;*

WRI is currently in compliance with its Metro-issued NSL and it has not had any significant compliance issues with regard to Metro regulations within the last two years. Additionally, WRI has a good record of compliance with local and state agencies responsible for health, safety, and environmental regulations.

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

This criterion was examined above in Sections 1A and 1C of this report.

### **C. Anticipated/Potential Effects**

This proposed NSL is one of many action items currently under consideration by Metro which is affected by potential declines in the amount of solid waste subject to the flow guarantee. Some decisions could have the effect of shrinking the pool of waste available for allocation. The forecast of waste subject to

the flow guarantee, which is the basis for the NSL tonnage authorizations in 2012, incorporates the best available information as of this writing.

#### **D. Budget/Rate Impacts**

The price that Metro pays for disposal at Columbia Ridge Landfill is a “declining block rate” — meaning that the more waste that is delivered to any landfill owned by Waste Management, the lower the per-ton cost paid by Metro. Based on projected tonnage and contract prices, allocating the uncommitted 71,316 tons to non-Waste Management landfills increases the Metro tip fee by \$0.78 per ton. At current throughput of approximately 450,000 tons per year, Metro customers will pay approximately \$370,000 more for disposal than if all of the uncommitted waste were to flow to Waste Management landfills. This is a conservative estimate, as it is based on the assumption that none of these tons would have been handled directly through Metro transfer stations. Had that been the case there would be additional fiscal impacts from loss of transaction revenue and higher per-ton revenue required to cover fixed costs. The practice of issuing these types of NSLs and absorbing these fiscal impacts has been occurring under the Council’s direction for the past 11 years.

The Metro Regional System Fee and Excise Tax will continue to be collected on all waste delivered under authority of the proposed NSL. The application under consideration is the renewal of an existing NSL (No. N-005-11(3)A). Therefore, the financial impact has already been factored into the budget.

### **3. RECOMMENDED ACTION**

Based on the information provided above and the analysis provided in this report, the COO recommends that the Metro Council adopt Resolution No. 11-4301. Approval of this resolution will authorize the COO to issue an NSL to WRI subject to the requirements listed in Metro Code Chapter 5.05; and further subject to special conditions which are incorporated into the proposed NSL attached to this resolution as Exhibit A.

WJ:bk;  
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Agenda Item No. 4.6

**Resolution No. 11-4307**, For the Purpose of Authorizing the Chief Operating Officer to Issue a Renewed Non-System License to Recology Portland, Inc. for Delivery of Source-Separated Food Waste to the Nature's Needs Compost Facility for Composting.

*Consent Agenda*

Metro Council Meeting  
Thursday, Dec. 8, 2011  
Metro Council Chamber

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A ) RESOLUTION NO. 11-4307  
RENEWED NON-SYSTEM LICENSE TO RECOLOGY )  
PORTLAND, INC. FOR DELIVERY OF SOURCE-SEPARATED ) Introduced by Martha J. Bennett,  
FOOD WASTE TO THE NATURE'S NEEDS COMPOST ) Chief Operating Officer, with the  
FACILITY FOR COMPOSTING ) concurrence of Tom Hughes,  
 ) Council President

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

WHEREAS, Recology Portland, Inc. ("RPI"), formerly known as "AGG Recology, Inc.," holds Metro Solid Waste Facility Non-System License No. N-131-10, which expires on December 31, 2011; and

WHEREAS, RPI has filed a complete application seeking renewal of the non-system license to deliver source-separated food waste to the Nature's Needs Compost Facility under the provisions of Metro Code Chapter 5.05, "Solid Waste Flow Control;" and

WHEREAS, Metro Code Chapter 5.05 provides that applications for non-system licenses for putrescible waste shall be reviewed by the Chief Operating Officer and are subject to approval or denial by the Metro Council; and

WHEREAS, the Chief Operating Officer has analyzed the application and considered the relevant factors under the Metro Code; and

WHEREAS, the Chief Operating Officer recommends that the non-system license be renewed together with specific conditions as provided in Exhibit A to this Resolution; now therefore,

THE METRO COUNCIL RESOLVES AS FOLLOWS:

1. The non-system license renewal application of RPI is approved subject to the terms, conditions, and limitations contained in Exhibit A to this Resolution.
2. The Chief Operating Officer is authorized to issue to RPI a renewed Solid Waste Facility Non-System License substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Tom Hughes, Council President

Approved as to Form:

\_\_\_\_\_  
Daniel B. Cooper, Metro Attorney

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736  
TEL 503 797 1835 | FAX 503 813 7544



**METRO**

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

**No. N-132-12**

**LICENSEE:**

Recology Portland, Inc.  
9345 North Harborside Street  
Portland, OR 97203

**CONTACT PERSON:**

Blaine Polendey  
Phone: (503) 283-2015  
Fax: (503) 283-2070  
E-Mail: [bpolendey@recology.com](mailto:bpolendey@recology.com)

**MAILING ADDRESS:**

9345 North Harborside Street  
Portland, OR 97203

**ISSUED BY METRO:**

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Margo Norton,  
Finance and Regulatory Services Director

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Date

<b>1</b>	<b>NATURE OF WASTE COVERED BY LICENSE</b>
	Source-separated food waste that is generated by commercial customers within the Metro region and collected by Recology Portland, Inc.

<b>2</b>	<b>CALENDAR YEAR TONNAGE LIMITATION</b>
	Licensee is authorized to deliver to the non-system facility listed in Section 3 of this license up to 1,000 tons per calendar year of the waste described in Section 1 of this license.

<b>3</b>	<b>NON-SYSTEM FACILITY</b>
	<p>The Licensee hereunder is authorized to deliver the waste described above in Section 1 to the following non-system facility for the purpose of processing and composting:</p> <p style="text-align: center;">Nature's Needs 9570 NW 307th Avenue North Plains, Oregon 97133</p> <p>This license is issued on the condition that the non-system facility listed in this section is authorized to accept the type of waste described in Section 1. If Metro receives notice from the Oregon Department of Environmental Quality or from Washington County that this non-system facility is not authorized to accept such waste, Metro may immediately terminate this license pursuant to Section 10 of this license.</p>

<b>4</b>	<b>TERM OF LICENSE</b>
	The term of this license will commence on January 1, 2012 and expire at midnight on December 31, 2013, unless terminated sooner under Section 10 of this license.

<b>5</b>	<b>COVERED LOADS</b>
	Licensee shall suitably contain and cover, on all sides, all loads of source-separated food waste that is delivered under authority of this license to prevent spillage of waste while in transit to the non-system facility listed in Section 3.



<b>6</b>	<b>MATERIAL MANAGEMENT</b>
	<p>The Licensee is authorized to deliver the waste described in Section 1 of this license to the non-system facility listed in Section 3 under the following conditions:</p> <ul style="list-style-type: none"><li>(a) The non-system facility shall accept all solid waste that is delivered under authority of this license for the sole purpose of processing and composting on-site. The Licensee shall not dispose of any source-separated recyclable material, except as provided in Section 7; and</li><li>(b) The non-system facility shall receive, manage, process, and compost all solid waste that is delivered under authority of this license in accordance with all applicable local, state and federal laws, rules, regulations, ordinances, orders, and permits.</li></ul>

<b>7</b>	<b>REGIONAL SYSTEM FEE AND EXCISE TAX</b>
	<p>The Licensee shall be subject to the following conditions:</p> <ul style="list-style-type: none"><li>(a) Source-separated food waste that is delivered under authority of this license and is accepted and composted, in accordance with all applicable regulations, at the non-system facility listed in Section 3 is exempt from Regional System Fees and Excise Tax.</li><li>(b) If the Licensee delivers waste under this license to the non-system facility listed in Section 3 but the material does not meet the facility's acceptance criteria (for example, the material is too contaminated for processing or composting) or the non-system facility fails to process and compost the material as required as a condition of this license, the Licensee shall pay to Metro an amount equal to the Regional System Fee, as provided in Metro Code Title V, for each ton or portion thereof of waste delivered to the non-system facility that is ultimately delivered to a disposal site.</li><li>(c) If the Licensee delivers waste under this license to the non-system facility listed in Section 3 but the material does not meet the facility's acceptance criteria (for example, the material is too contaminated for processing or composting) or the non-system facility fails to process and compost the material as required as a condition of this license, the Licensee shall pay to Metro an amount equal to the Excise Tax, as provided in Metro Code Title VII, for each ton or portion thereof of waste delivered to the non-system facility that is ultimately delivered to a disposal site.</li></ul>

<b>8</b>	<b>REPORTING OF ACCIDENTS AND CITATIONS</b>
	Licensee shall report to Metro any significant incidents (such as fires), accidents, and citations involving vehicles transporting the solid waste authorized by this license.

<b>9</b>	<b>RECORD KEEPING AND REPORTING</b>
	<p>(a) The Licensee shall keep and maintain accurate records of the amount of all solid wastes that the Licensee delivers to the non-system facility listed in Section 3 of this license. The Licensee shall keep and maintain complete and accurate records of the following for all transactions with the authorized non-system facility:</p> <ul style="list-style-type: none"><li>i. Ticket or weight slip number from the non-system facility;</li><li>ii. Material category designating the type of material transferred to the non-system facility;</li><li>iii. Date the load was transferred to the non-system facility;</li><li>iv. Time the load was transferred to the non-system facility;</li><li>v. Net weight of the load; and</li><li>vi. Fee charged by the non-system facility.</li></ul> <p>(b) No later than the fifteenth (15th) day of each month, beginning with the first month following the commencement date of this license, Licensee shall transmit the records required under Section 9(a) above, that covers the preceding month, to Metro's Finance and Regulatory Services Department in an electronic format prescribed by Metro.</p> <p>(c) Licensee shall make all records from which Section 9(a) 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) business days 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 listed above in Section 3.</p>

<b>10</b>	<b>ADDITIONAL LICENSE CONDITIONS</b>
	<p>This non-system license shall be subject to the following conditions:</p> <p>(a) The permissive transfer of solid waste to the non-system facility, listed in Section 3, authorized by this license shall be subordinate to any subsequent</p>

	<p>decision by Metro to direct the solid waste described in this license to any other facility.</p> <p>(b) This license shall be subject to amendment, modification, or termination by Metro’s Chief Operating Officer (the “COO”) in the event that the COO determines that:</p> <ul style="list-style-type: none"> <li>i. There has been sufficient change in any circumstances under which Metro issued this license;</li> <li>ii. The provisions of this license are actually or potentially in conflict with any provision in Metro’s disposal contract with Waste Management Disposal Services of Oregon, Inc., dba Oregon Waste Systems, Inc;</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 of this license be transferred to, and disposed of at, a facility other than the facility listed in Section 3;</li> <li>iv. The non-system facility listed in Section 3 fails to manage the waste subject to this license in accordance with the material management requirements described in Section 6; or</li> <li>v. The non-system facility listed in Section 3 generates malodors that are detectable off-site.</li> </ul> <p>(c) This license shall, in addition to subsections (b)(i) through (b)(v), above, be subject to amendment, modification, termination, or suspension pursuant to the Metro Code.</p> <p>(d) Licensee shall not transfer or assign any right or interest in this license without prior written notification to, and approval of, Metro.</p> <p>(e) This license shall terminate upon the execution of a designated facility agreement with the facility listed in Section 3 that authorizes the facility to accept the waste described in Section 1 of this license.</p> <p>(f) This license authorizes delivery of solid waste only to the facility listed in Section 3. Transfer of waste generated from within the Metro boundary to any non-system facility other than that specified in this license is prohibited unless authorized in writing by Metro.</p>
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<b>11</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 Metro Code Chapter 5.05 whether or not those provisions have been specifically mentioned or cited</p>

	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.
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<b>12</b>	<b>INDEMNIFICATION</b>
	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.

## STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 11-4307 FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED NON-SYSTEM LICENSE TO RECOLOGY PORTLAND, INC. FOR DELIVERY OF SOURCE-SEPARATED FOOD WASTE TO THE NATURE'S NEEDS COMPOST FACILITY FOR COMPOSTING

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November 18, 2011

Prepared by: Warren Johnson

Approval of Resolution No. 11-4307 will authorize the Chief Operating Officer (COO) to issue a two-year non-system license (NSL) to Recology Portland, Inc. (RPI) to annually deliver a maximum of 1,000 tons of commercially-generated source-separated food waste to the Nature's Needs Compost Facility (NN) located at 9570 NW 307<sup>th</sup> Avenue in North Plains, Oregon. The proposed NSL is a renewal of an existing license that is set to expire on December 31, 2011.

## BACKGROUND

### 1. Overview

The applicant (RPI) seeks to renew its NSL to transport source-separated food waste generated within Metro to a non-system facility (NN) located outside of the region. Metro Code Section 5.05.025 prohibits any person from transporting solid waste to non-system facilities without an appropriate license from Metro. The proposed NSL renewal is subject to Metro Council approval because it involves putrescible waste (food waste).

### 2. The Applicant

In November 2010, the Metro Council granted RPI, formerly known as "AGG Recology, Inc.," an NSL (No. N-131-10) to annually deliver a maximum of 3,400 tons of source-separated, commercial food waste to NN. The license commenced on November 15, 2010 and will expire on December 31, 2011. The term of the license was aligned with the expiration date of a Washington County-approved food waste composting demonstration project at NN that is also set to expire on December 31, 2011. A fuller discussion of the NN's demonstration project with the County is provided below in Item 2(1) of the "Analysis/Information" section.

On September 2, 2011, RPI submitted to Metro an application requesting that Metro renew its existing NSL (No. N-131-10) with a tonnage authorization of 1,000 tons per calendar year - which represents a 2,400-ton reduction from its current authorization. The reduced limit is likely due to the applicant shifting some portion of its commercial food waste tonnage to the Metro Central Transfer Station (as opposed to delivering the material directly to NN under an NSL). Despite the reduced tonnage, the applicant's request for authorization is substantially similar to that of the existing NSL.

## ANALYSIS/INFORMATION

### 1. Known Opposition

There is no known opposition to RPI hauling food waste to NN. However, there has been some local opposition to NN due to a history of off-site malodors generated at the facility. The facility's odor issues have primarily occurred in the past under previous ownership and some of those previous odor events

have been traced to other businesses and agricultural activities in the area. Nevertheless, there continues to be some local concerns regarding NN's ongoing operation and its potential to create off-site malodors. In consideration of the site's history and to address potential future odor issues at the facility, the proposed NSL stipulates that the COO may amend, modify, or terminate the license as necessary if Metro determines that NN generates malodors that are detectable off-site based on findings or actions taken by either the County or the Oregon Department of Environmental Quality (DEQ). The County and DEQ have regulatory authority over the facility and may take enforcement action to control odors if necessary.

## **2. Legal Antecedents**

Metro Code Section 5.05.035(c) provides that, when determining whether or not to approve an NSL application, the Metro 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 non-system facility identified in this proposed license is well known to Metro. NN is an established yard debris and vegetative food waste composting facility rather than a landfill and thus does not pose the same potential environmental risk from wastes being delivered. Until the demonstration project began, the facility accepted only wood waste, yard debris, and vegetative waste for composting. Most of the food waste accepted at the facility during the demonstration project consisted of source-separated commercial food waste that was mixed with yard debris and wood chips at the Metro Central Transfer Station. No other wastes are currently accepted at NN that could pose a risk of environmental contamination. The environmental risk from the use of this non-system facility is minimal because the facility is fully regulated and monitored by the appropriate local and state authorities.

In July 2010, the County allowed NN to accept non-green feedstock (e.g. meats and dairy products) for composting in order to determine whether the facility can properly manage and successfully process various food wastes on an ongoing basis without creating undue off-site malodors or nuisance conditions. Most of the food waste accepted at the facility during the demonstration project consisted of source-separated commercial food waste that was mixed with yard debris and wood chips at the Metro Central Transfer Station. The above-mentioned materials were mixed together at Metro Central for the purpose of odor mitigation and optimum composting at NN. NN also received food waste that was delivered directly to the facility by local haulers. The facility is located outside the Metro boundary, in unincorporated Washington County near North Plains.

If the demonstration project is deemed to be a success and the County grants NN long-term approval to accept food waste, then the facility intends to continue its current food waste processing operations on a regular basis. The County is expected to make a final decision about the NN franchise, including a determination about the success of the demonstration project in December 2011. County staff intends to recommend to the Washington County Board of Commissioners that NN be allowed to continue its food waste composting operations. On November 10, 2011, the Washington County Solid Waste Advisory Committee unanimously recommended granting the NN franchise.

Metro and County solid waste staff have conferred and coordinated throughout NN's demonstration project and the subsequent approval process. Although this NSL will be issued prior to the County's final

decision on the demonstration project, the proposed NSL includes conditions that authorize the COO to modify or terminate the license should the County restrict or prohibit further food waste composting at NN. The County has generally been supportive of food waste feedstock being delivered to NN from the Metro region.

- (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;*

Recology, Inc., a waste management company headquartered in San Francisco, California, is the parent company of the applicant (RPI) and the destination facility (NN). Recology, Inc. is also the parent company for Recology Oregon Material Recovery, Inc. (ROMR) which is the contract operator for the Metro Central Transfer Station and the owner and operator of three Metro-licensed material recovery facilities that accept mixed non-putrescible waste: 1) Suttle Road Recovery Facility, 2) Foster Road Recovery Facility, and 3) Oregon City Recovery Facility.

In June 2010, Metro issued Notices of Violation (NOVs) to the Oregon City and Suttle Road Recovery Facilities for, respectively, failure to properly maintain required documents on site and failure to inspect loads in accordance with the Metro-approved operating plan. These matters have since been resolved and the above-mentioned facilities are currently in compliance with Metro's regulations.

NN holds a DEQ-issued solid waste permit which was issued in April 2011. The facility also holds a County franchise which was approved by the Washington County Board of Commissioners on July 10, 2010. Metro staff's investigation of NN revealed a good record of compliance with regard to local and state agencies responsible for health, safety or environmental regulations. The County and DEQ have periodically received complaints from neighboring businesses and residents regarding odors at NN. During the course of the demonstration project, the County confirmed two instances in which malodors were detected at the facility. However, the facility quickly implemented corrective action and the County did not take any enforcement action in response to the above-mentioned incidents.

Accordingly, the County and DEQ require NN to implement reasonable and practical measures to control and minimize odors through site design improvements and operational procedures. The primary odor control measures that are currently used by the facility include accepting food waste that has been pre-mixed with bulking material (such as yard debris or wood chips), processing feedstock in a timely manner, adhering to good housekeeping practices, and implementing adequate moisture and temperature monitoring procedures. The facility also uses a forced negative aeration system which pulls air through the compost piles and discharges it through a biofilter consisting of organic material such as wood chips or compost overs. A biofilter is a useful odor control measure because it functions as a media for supporting microorganisms that help convert odorous air into carbon dioxide and water. In addition to the above, NN has implemented stormwater collection system improvements and has paved a significant portion of its site in an effort to reduce malodors caused by water pooling on-site.

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

Metro, the County, and DEQ consider the operational practices and management controls in place at NN to be adequate and consistent with other similar facilities. NN manages the food waste it receives in accordance with the requirements of its County-issued franchise and DEQ-issued permit.

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

The waste subject to the proposed NSL will be delivered to NN for the purpose of composting rather than disposal. Based on the waste management hierarchy, composting is considered to be a higher and better management option than land disposal. As such, approval of the proposed NSL is likely to have a positive impact on the region's recycling and waste reduction efforts.

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

Metro is contractually obligated to deliver a minimum of 90 percent of the region's putrescible waste that is delivered to general purpose landfills during the calendar year, to landfills owned by Metro's disposal contractor, Waste Management. The waste subject to the proposed license will not be disposed at a general-purpose landfill. Approval of the proposed license will not conflict with Metro's disposal contract; however, increased diversion of organic material from disposal shrinks the amount of waste committed under the flow guarantee and the amount available for allocation to NSLs that control the remaining 10 percent.

In addition, ROMR currently serves as Metro's contractor for processing organic waste received at the Metro Central Transfer Station – including commercial food waste. The contract covering the processing of this waste is set to expire on December 31, 2011. Metro solicited proposals for a new service contract and the evaluation committee recently selected ROMR as the top-ranked firm. Negotiations on the new contract are pending.

*(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*

RPI is currently in compliance with its Metro-issued NSL and has not had any compliance issues with regard to Metro regulations within the last two years. Additionally, the applicant has a good record of compliance with local and state agencies responsible for health, safety, and environmental regulations.

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

The proposed NSL is a renewal of an existing license with a reduced tonnage authorization. The applicant is seeking this NSL renewal in order to provide a closer alternative for the delivery of food waste collected for composting. NN is located at the edge of North Plains (unincorporated Washington County), approximately seven miles outside of the Metro boundary. NN provides important processing and composting capacity for the region that supports Metro's goal of diverting organics away from disposal and into recovery outlets.

### **3. Anticipated Effects**

This proposed NSL is one of many organics-related action items currently under consideration by Metro and other local jurisdictions which contributes to a decline in the amount of solid waste disposed in landfills. The decisions on this and other similar items will have the effect of further shrinking the pool of waste available for allocation to certain non-system licensees by increasing the availability of non-disposal options i.e. recycling and composting.



The effect of Resolution No. 11-4307 will be to authorize RPI to deliver up to 1,000 tons per calendar year of food waste from commercial food retail or wholesale outlets in Washington County directly to NN for composting.

#### **4. Budget/Rate Impacts**

Metro's Regional System Fee and Excise Tax (RSF and ET) rates depend on the amount of waste that is disposed. Any waste that is diverted from the disposal stream, such as the composting of food waste, will in general increase those RSF and ET rates. Waste diversion will also affect other disposal prices (tip fees) at Metro transfer stations and other solid waste facilities due to fixed and capital costs, etc. being spread over less tonnage. The effects of these individual price changes will depend on facility-specific factors. However, the effect on the RSF and ET is universal across all ratepayers and waste disposed. Specifically, diversion of each 10,000 tons of food waste from disposal would result in approximately an 18¢ per ton increase in the RSF and a 12¢ increase in the ET rate – or a total increase of 30¢ per ton charged on all waste generated inside the region and ultimately disposed. (For reference, the current RSF is \$17.64 and the ET rate is \$11.80 – \$29.44 per ton total). The exact amount of this financial impact would vary from year to year depending on specific circumstances, such as Metro's annual budget, but the change would generally be in the neighborhood of 30¢ per ton.

In general, approval of any new license or change of authority in an existing license during a fiscal year will have an actual impact on Metro's revenues, but would be factored into the fee and tax rates during the next budget-and-rates cycle.

In the case of the specific NSL application under consideration, RPI has requested the renewal of its existing NSL with a reduced tonnage limit (2,400-ton reduction). As previously explained, the reduced limit is likely due to the applicant shifting some portion of its commercial food waste tonnage to Metro Central. There is no change in existing commercial food waste diversion expected as a result of the proposed NSL. The financial impact of the food waste proposed to be delivered under this NSL renewal has already been factored into the budget and rates.

#### **RECOMMENDED ACTION**

The COO recommends approval of Resolution No. 11-4307 finding that the license renewal satisfies the requirements of Metro Code Section 5.05.035, and issuance of an NSL substantially similar to the proposed NSL attached to the resolution as Exhibit A.

Wl:bjl  
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Agenda Item No. 4.7

**Resolution No. 11-4308**, For the Purpose of Authorizing the Chief Operating Officer to Issue a Renewed Non-System License Jointly to Willamette Resources, Inc. and Allied Waste of Clackamas and Washington Counties For Delivery of Source-Separated Food Waste to the Pacific Region Compost Facility for Composting.

*Consent Agenda*

Metro Council Meeting  
Thursday, Dec. 8, 2011  
Metro Council Chamber

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A ) RESOLUTION NO. 11-4308  
RENEWED NON-SYSTEM LICENSE JOINTLY TO WILLAMETTE )  
RESOURCES, INC. AND ALLIED WASTE OF CLACKAMAS AND ) Introduced by Martha J. Bennett,  
WASHINGTON COUNTIES FOR DELIVERY OF SOURCE- ) Chief Operating Officer, with the  
SEPARATED FOOD WASTE TO THE PACIFIC REGION ) concurrence of Tom Hughes,  
COMPOST FACILITY FOR COMPOSTING ) Council President

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

WHEREAS, Willamette Resources, Inc. ("WRI") and Allied Waste of Clackamas and Washington Counties ("Allied") jointly hold Metro Solid Waste Facility Non-System License No. N-005-09(4), which expires on December 31, 2011; and

WHEREAS, WRI and Allied have filed a complete application seeking renewal of the non-system license to deliver source-separated food waste to the Pacific Region Compost Facility under the provisions of Metro Code Chapter 5.05, "Solid Waste Flow Control;" and

WHEREAS, Metro Code Chapter 5.05 provides that applications for non-system licenses for putrescible waste shall be reviewed by the Chief Operating Officer and are subject to approval or denial by the Metro Council; and

WHEREAS, the Chief Operating Officer has analyzed the application and considered the relevant factors under the Metro Code; and

WHEREAS, the Chief Operating Officer recommends that the non-system license be renewed together with specific conditions as provided in Exhibit A to this Resolution; now therefore,

THE METRO COUNCIL RESOLVES AS FOLLOWS:

1. The non-system license renewal application of WRI and Allied is approved subject to the terms, conditions, and limitations contained in Exhibit A to this Resolution.
2. The Chief Operating Officer is authorized to issue to WRI and Allied a renewed Solid Waste Facility Non-System License substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Tom Hughes, Council President

Approved as to Form:

\_\_\_\_\_  
Daniel B. Cooper, Metro Attorney

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736  
TEL 503 797 1835 | FAX 503 813 7544



METRO

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

**No. N-005-12(4)**

<b>LICENSEE:</b>	
Willamette Resources, Inc. 10295 SW Ridder Road Wilsonville, OR 97070	Allied Waste of Clackamas and Washington Counties 10295 SW Ridder Road Wilsonville, OR 97070
<b>CONTACT PERSON:</b>	
Phone: Carol Dion (503) 404-2128	Ray Phelps (503) 404-2131
Fax: (503) 570-0523	(503) 570-0523
E-Mail: <a href="mailto:CDion@republicservices.com">CDion@republicservices.com</a>	<a href="mailto:RPhelps@republicservices.com">RPhelps@republicservices.com</a>
<b>MAILING ADDRESS:</b>	
10295 SW Ridder Road Wilsonville, OR 97070	

**ISSUED BY METRO:**

\_\_\_\_\_  
Margo Norton,  
Finance and Regulatory Services Director

\_\_\_\_\_  
Date

<b>1</b>	<b>NATURE OF WASTE COVERED BY LICENSE</b>
	<p>(a) Source-separated food waste generated within the Metro boundary and received at Willamette Resources, Inc. in accordance with Metro Solid Waste Facility Franchise No. F-005-08A; and</p> <p>(b) Source-separated food waste that is generated within the Metro region and collected by Allied Waste of Clackamas and Washington Counties.</p>
<b>2</b>	<b>CALENDAR YEAR TONNAGE LIMITATION</b>
	<p>Licensee is authorized to deliver to the non-system facility listed in Section 3 of this license up to 12,000 tons per calendar year of the waste described in Section 1 of this license.</p>
<b>3</b>	<b>NON-SYSTEM FACILITY</b>
	<p>The Licensee hereunder is authorized to deliver the waste described above in Section 1 to the following non-system facility for the purpose of processing and composting:</p> <p style="text-align: center;">Pacific Region Compost Facility        29969 Camp Adair Road        Monmouth, Oregon 97361</p> <p>This license is issued on the condition that the non-system facility listed in this section is authorized to accept the type of waste described in Section 1. If Metro receives notice from the Oregon Department of Environmental Quality that this non-system facility is not authorized to accept such waste, Metro may immediately terminate this license pursuant to Section 10 of this license.</p>
<b>4</b>	<b>TERM OF LICENSE</b>
	<p>The term of this license will commence on January 1, 2012 and expire at midnight on December 31, 2013, unless terminated sooner under Section 10 of this license.</p>

<b>5</b>	<b>COVERED LOADS</b>
	Licensee shall suitably contain and cover, on all sides, all loads of source-separated food waste that is delivered under authority of this license to prevent spillage of waste while in transit to the non-system facility listed in Section 3.

<b>6</b>	<b>MATERIAL MANAGEMENT</b>
	<p>The Licensee is authorized to deliver the waste described in Section 1 of this license to the non-system facility listed in Section 3 under the following conditions:</p> <p>(a) The non-system facility shall accept all solid waste that is delivered under authority of this license for the sole purpose of processing and composting on-site. The Licensee shall not dispose of any source-separated recyclable material, except as provided in Section 7; and</p> <p>(b) The non-system facility shall receive, manage, process, and compost all solid waste that is delivered under authority of this license in accordance with all applicable local, state and federal laws, rules, regulations, ordinances, orders, and permits.</p>

<b>7</b>	<b>REGIONAL SYSTEM FEE AND EXCISE TAX</b>
	<p>The Licensee shall be subject to the following conditions:</p> <p>(a) Source-separated food waste that is delivered under authority of this license and is accepted and composted, in accordance with all applicable regulations, at the non-system facility listed in Section 3 is exempt from Regional System Fees and Excise Tax.</p> <p>(b) If the Licensee delivers waste under this license to the non-system facility listed in Section 3 but the material does not meet the facility's acceptance criteria (for example, the material is too contaminated for processing or composting) or the non-system facility fails to process and compost the material as required as a condition of this license, the Licensee shall pay to Metro an amount equal to the Regional System Fee, as provided in Metro Code Title V, for each ton or portion thereof of waste delivered to the non-system facility that is ultimately delivered to a disposal site.</p> <p>(c) If the Licensee delivers waste under this license to the non-system facility listed in Section 3 but the material does not meet the facility's acceptance criteria (for example, the material is too contaminated for processing or</p>

	<p>composting) or the non-system facility fails to process and compost the material as required as a condition of this license, the Licensee shall pay to Metro an amount equal to the Excise Tax, as provided in Metro Code Title VII, for each ton or portion thereof of waste delivered to the non-system facility that is ultimately delivered to a disposal site.</p>
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<b>8</b>	<b>REPORTING OF ACCIDENTS AND CITATIONS</b>
	<p>Licensee shall report to Metro any significant incidents (such as fires), accidents, and citations involving vehicles transporting the solid waste authorized by this license.</p>

<b>9</b>	<b>RECORD KEEPING AND REPORTING</b>
	<p>(a) The Licensee shall keep and maintain accurate records of the amount of all solid wastes that the Licensee delivers to the non-system facility listed in Section 3 of this license. The Licensee shall keep and maintain complete and accurate records of the following for all transactions with the authorized non-system facility:</p> <ul style="list-style-type: none"> <li>i. Ticket or weight slip number from the non-system facility;</li> <li>ii. Material category designating the type of material transferred to the non-system facility;</li> <li>iii. Date the load was transferred to the non-system facility;</li> <li>iv. Time the load was transferred to the non-system facility;</li> <li>v. Net weight of the load; and</li> <li>vi. Fee charged by the non-system facility.</li> </ul> <p>(b) No later than the fifteenth (15th) day of each month, beginning with the first month following the commencement date of this license, Licensee shall transmit the records required under Section 9(a) above, that covers the preceding month, to Metro’s Finance and Regulatory Services Department in an electronic format prescribed by Metro.</p> <p>(c) Licensee shall make all records from which Section 9(a) 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) business days 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 listed above in Section 3.</p>

<b>10</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 non-system facility, listed in Section 3, authorized by this license shall be subordinate to any subsequent decision by Metro to direct the solid waste described in this license to any other facility.</li><li>(b) This license shall be subject to amendment, modification, or termination by Metro's Chief Operating Officer (the "COO") in the event that the COO determines that:<ul style="list-style-type: none"><li>i. There has been sufficient change in any circumstances under which Metro issued this license;</li><li>ii. The provisions of this license are actually or potentially in conflict with any provision in Metro's disposal contract with Waste Management Disposal Services of Oregon, Inc., dba Oregon Waste Systems, Inc;</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 of this license be transferred to, and disposed of at, a facility other than the facility listed in Section 3;</li><li>iv. The non-system facility listed in Section 3 fails to manage the waste subject to this license in accordance with the material management requirements described in Section 6; or</li></ul></li><li>(c) This license shall, in addition to subsections (b)(i) through (b)(iv), above, be subject to amendment, modification, termination, or suspension pursuant to the Metro Code.</li><li>(d) Licensee shall not transfer or assign any right or interest in this license without prior written notification to, and approval of, Metro.</li><li>(e) This license shall terminate upon the execution of a designated facility agreement with the facility listed in Section 3 that authorizes the facility to accept the waste described in Section 1 of this license.</li><li>(f) This license authorizes delivery of solid waste only to the facility listed in Section 3. Transfer of waste generated from within the Metro boundary to any non-system facility other than that specified in this license is prohibited unless authorized in writing by Metro.</li></ul>



<b>11</b>	<b>COMPLIANCE WITH LAW</b>
	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 Metro Code 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.

<b>12</b>	<b>INDEMNIFICATION</b>
	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.

## STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 11-4308 FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED NON-SYSTEM LICENSE JOINTLY TO WILLAMETTE RESOURCES, INC. AND ALLIED WASTE OF CLACKAMAS AND WASHINGTON COUNTIES FOR DELIVERY OF SOURCE-SEPARATED FOOD WASTE TO THE PACIFIC REGION COMPOST FACILITY FOR COMPOSTING

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November 21, 2011

Prepared by: Warren Johnson

Approval of Resolution No. 11-4308 will authorize the Chief Operating Officer (COO) to issue a two-year non-system license (NSL) jointly to Willamette Resources, Inc. (WRI) and Allied Waste of Clackamas and Washington Counties (Allied) to annually deliver a maximum of 12,000 tons of source-separated food waste to the Pacific Region Compost Facility (PRC) located at 29969 Camp Adair Road in Monmouth, Oregon. The proposed NSL is a renewal of an existing license that is set to expire on December 31, 2011.

## BACKGROUND

### 1. Overview

The applicant seeks to renew its NSL to transport source-separated food waste generated within Metro to a non-system facility (PRC) located outside of the region. Metro Code Section 5.05.025 prohibits any person from transporting solid waste to non-system facilities without an appropriate license from Metro. The proposed NSL renewal is subject to Metro Council approval because it involves putrescible waste (food waste).

### 2. The Applicant

Allied Waste Industries, Inc. (AWI) is the parent company of WRI, Allied, and PRC. AWI is a wholly-owned subsidiary of Republic Services, Inc., a waste management company headquartered at 18500 N. Allied Way in Phoenix, Arizona. AWI is also the contract operator for the Metro South Transfer Station

In November 2009, the Metro Council granted NSL No. N-005-09(4) jointly to WRI and Allied to annually deliver a maximum of 12,000 tons of source-separated food waste to PRC. The NSL commenced on November 6, 2009, and will expire on December 31, 2011. The license authorizes the delivery of source-separated food waste that is either received and reloaded at WRI or collected at the site of generation and directly-hauled by Allied. The purpose of the jointly issued NSL is to provide greater flexibility for the Licensee and improve administrative efficiency.

On September 1, 2011, the applicant submitted to Metro an application requesting that Metro renew its existing NSL (No. N-005-09(4)) with a tonnage authorization of 12,000 tons per calendar year. This is the same annual tonnage limit that the applicant is currently authorized to transport under the existing NSL. The proposed license renews the existing authorization that WRI and Allied have held since 2009.

## ANALYSIS/INFORMATION

### 1. Known Opposition

There is no known opposition to the proposed NSL.

## 2. Legal Antecedents

Metro Code Section 5.05.035(c) provides that, when determining whether or not to approve an NSL application, the Metro 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 non-system facility identified in this proposed license is well known to Metro. PRC is an established yard debris and food waste composting facility rather than a landfill and thus does not pose the same potential environmental risk from wastes being delivered. PRC began accepting food waste for composting in November 2009. PRC initially began accepting food waste from its affiliated haulers located in the Willamette Valley (i.e., Corvallis, Albany and Salem). In early 2010, PRC began accepting Metro-area food waste under authority of NSLs and in 2011 began accepting commercial food waste directly from Metro South Transfer Station. Prior to that time, the facility accepted only wood waste and yard debris for composting. No other wastes are currently accepted at PRC that could pose a risk of environmental contamination. The environmental risk from the use of this non-system facility is presumed to be minimal because the facility is fully regulated and monitored by the appropriate local and state authorities.

- (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;*

Metro staff's investigation of the applicant, destination facility, and parent company revealed a good record of compliance with local and state agencies responsible for health, safety, and environmental regulations.

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

Metro and DEQ consider the operational practices and management controls in place at PRC to be adequate and consistent with other similar facilities. PRC manages the food waste it receives in accordance with the requirements of its DEQ-issued permit.

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

The waste subject to the proposed NSL will be delivered to PRC for the purpose of composting rather than disposal. Based on the waste management hierarchy, composting is considered to be a higher and better management option than land disposal. As such, approval of the proposed NSL is likely to have a positive impact on the region's recycling and waste reduction efforts.

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

Metro is contractually obligated to deliver a minimum of 90 percent of the region's putrescible waste that is delivered to general purpose landfills during the calendar year, to landfills owned by Metro's

disposal contractor, Waste Management. The waste subject to the proposed license will not be disposed at a general-purpose landfill. Approval of the proposed license will not conflict with Metro's disposal contract; however, increased diversion of organic material from disposal shrinks the amount of waste committed under the flow guarantee and the amount available for allocation to NSLs that control the remaining 10 percent.

In addition, AWI currently serves as Metro's contractor for processing organic waste received at the Metro South Transfer Station – including commercial food waste.

- (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*

The applicant is currently in compliance with its Metro-issued NSL and has not had any compliance issues with regard to Metro regulations within the last two years. Additionally, the applicant has a good record of compliance with local and state agencies responsible for health, safety, and environmental regulations.

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

The proposed NSL is a renewal of an existing license. PRC provides important processing and composting capacity for the region that supports Metro's goal of diverting organics away from disposal and into recovery outlets.

### **3. Anticipated Effects**

This proposed NSL is one of many organics-related action items currently under consideration by Metro and other local jurisdictions which contributes to a decline in the amount of solid waste disposed in landfills. The decisions on this and other similar items will have the effect of further shrinking the pool of waste available for allocation to certain non-system licensees by increasing the availability of non-disposal options i.e. recycling and composting.

The effect of Resolution No. 11-4308 will be to jointly authorize WRI and Allied to deliver up to 12,000 tons per calendar year of source-separated food waste directly to PRC for composting.

### **4. Budget/Rate Impacts**

Metro's Regional System Fee and Excise Tax (RSF and ET) rates depend on the amount of waste that is disposed. Any waste that is diverted from the disposal stream, such as the composting of food waste, will in general increase those RSF and ET rates. Waste diversion will also affect other disposal prices (tip fees) at Metro transfer stations and other solid waste facilities due to fixed and capital costs, etc. being spread over less tonnage. The effects of these individual price changes will depend on facility-specific factors. However, the effect on the RSF and ET is universal across all ratepayers and waste disposed. Specifically, diversion of each 10,000 tons of food waste from disposal would result in approximately an 18¢ per ton increase in the RSF and a 12¢ increase in the ET rate – or a total increase of 30¢ per ton charged on all waste generated inside the region and ultimately disposed. (For reference, the current RSF is \$17.64 and the ET rate is \$11.80 – \$29.44 per ton total). The exact amount of this financial impact

would vary from year to year depending on specific circumstances, such as Metro's annual budget, but the change would generally be in the neighborhood of 30¢ per ton.

In general, approval of any new license or change of authority in an existing license during a fiscal year will have an actual impact on Metro's revenues, but would be factored into the fee and tax rates during the next budget-and-rates cycle.

In this case, the application under consideration is the renewal of an existing NSL (No. N-005-09(4)) with no change in tonnage requested. The financial impact of this NSL has already been factored into the budget.

### **RECOMMENDED ACTION**

The COO recommends approval of Resolution No. 11-4308 finding that the license renewal satisfies the requirements of Metro Code Section 5.05.035, and issuance of an NSL substantially similar to the proposed NSL attached to the resolution as Exhibit A.

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Agenda Item No. 4.8

**Resolution No. 11-4309**, For the Purpose of Authorizing the Chief Operating Officer to Issue a Renewed Non-System License to Garbarino Disposal & Recycling Service, Inc. For Delivery of Source-Separated Food Waste to the Nature's Needs Compost Facility for Composting.

*Consent Agenda*

Metro Council Meeting  
Thursday, Dec. 8, 2011  
Metro Council Chamber

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A ) RESOLUTION NO. 11-4309  
RENEWED NON-SYSTEM LICENSE TO GARBARINO )  
DISPOSAL & RECYCLING SERVICE, INC. FOR DELIVERY OF ) Introduced by Martha J. Bennett,  
SOURCE-SEPARATED FOOD WASTE TO THE NATURE’S ) Chief Operating Officer, with the  
NEEDS COMPOST FACILITY FOR COMPOSTING ) concurrence of Tom Hughes,  
 ) Council President

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

WHEREAS, Garbarino Disposal & Recycling Service, Inc. (“GDRS”) holds Metro Solid Waste Facility Non-System License No. N-135-11, which expires on December 31, 2011; and

WHEREAS, GDRS has filed a complete application seeking renewal of the non-system license to deliver source-separated food waste to the Nature’s Needs Compost Facility under the provisions of Metro Code Chapter 5.05, “Solid Waste Flow Control;” and

WHEREAS, Metro Code Chapter 5.05 provides that applications for non-system licenses for putrescible waste shall be reviewed by the Chief Operating Officer and are subject to approval or denial by the Metro Council; and

WHEREAS, the Chief Operating Officer has analyzed the application and considered the relevant factors under the Metro Code; and

WHEREAS, the Chief Operating Officer recommends that the non-system license be renewed together with specific conditions as provided in Exhibit A to this Resolution; now therefore,

THE METRO COUNCIL RESOLVES AS FOLLOWS:

1. The non-system license renewal application of GDRS is approved subject to the terms, conditions, and limitations contained in Exhibit A to this Resolution.
2. The Chief Operating Officer is authorized to issue to GDRS a renewed Solid Waste Facility Non-System License substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Tom Hughes, Council President

Approved as to Form:

\_\_\_\_\_  
Daniel B. Cooper, Metro Attorney

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736  
TEL 503 797 1835 | FAX 503 813 7544



**METRO**

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

**No. N-135-12**

**LICENSEE:**

Garbarino Disposal & Recycling Service, Inc.  
30966 NW Hillcrest St.  
North Plains, OR 97133

**CONTACT PERSON:**

Jeff Garbarino  
Phone: (503) 647-2335  
Fax: (503) 647-9049  
E-Mail: [jeffgarbdisp@qwestoffice.net](mailto:jeffgarbdisp@qwestoffice.net)

**MAILING ADDRESS:**

P.O. Box 250  
North Plains, OR 97133

**ISSUED BY METRO:**

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Margo Norton,  
Finance and Regulatory Services Director

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Date



<b>1</b>	<b>NATURE OF WASTE COVERED BY LICENSE</b>
	Source-separated food waste that is generated by commercial customers within the Metro region and collected by Garbarino Disposal & Recycling Service, Inc.

<b>2</b>	<b>CALENDAR YEAR TONNAGE LIMITATION</b>
	Licensee is authorized to deliver to the non-system facility listed in Section 3 of this license up to 600 tons per calendar year of the waste described in Section 1 of this license.

<b>3</b>	<b>NON-SYSTEM FACILITY</b>
	<p>The Licensee hereunder is authorized to deliver the waste described above in Section 1 to the following non-system facility for the purpose of processing and composting:</p> <p style="text-align: center;">Nature's Needs 9570 NW 307th Avenue North Plains, Oregon 97133</p> <p>This license is issued on the condition that the non-system facility listed in this section is authorized to accept the type of waste described in Section 1. If Metro receives notice from the Oregon Department of Environmental Quality or from Washington County that this non-system facility is not authorized to accept such waste, Metro may immediately terminate this license pursuant to Section 10 of this license.</p>

<b>4</b>	<b>TERM OF LICENSE</b>
	The term of this license will commence on January 1, 2012 and expire at midnight on December 31, 2013, unless terminated sooner under Section 10 of this license.

<b>5</b>	<b>COVERED LOADS</b>
	Licensee shall suitably contain and cover, on all sides, all loads of source-separated food waste that is delivered under authority of this license to prevent spillage of waste while in transit to the non-system facility listed in Section 3.

<b>6</b>	<b>MATERIAL MANAGEMENT</b>
	<p>The Licensee is authorized to deliver the waste described in Section 1 of this license to the non-system facility listed in Section 3 under the following conditions:</p> <ul style="list-style-type: none"><li>(a) The non-system facility shall accept all solid waste that is delivered under authority of this license for the sole purpose of processing and composting on-site. The Licensee shall not dispose of any source-separated recyclable material, except as provided in Section 7; and</li><li>(b) The non-system facility shall receive, manage, process, and compost all solid waste that is delivered under authority of this license in accordance with all applicable local, state and federal laws, rules, regulations, ordinances, orders, and permits.</li></ul>

<b>7</b>	<b>REGIONAL SYSTEM FEE AND EXCISE TAX</b>
	<p>The Licensee shall be subject to the following conditions:</p> <ul style="list-style-type: none"><li>(a) Source-separated food waste that is delivered under authority of this license and is accepted and composted, in accordance with all applicable regulations, at the non-system facility listed in Section 3 is exempt from Regional System Fees and Excise Tax.</li><li>(b) If the Licensee delivers waste under this license to the non-system facility listed in Section 3 but the material does not meet the facility's acceptance criteria (for example, the material is too contaminated for processing or composting) or the non-system facility fails to process and compost the material as required as a condition of this license, the Licensee shall pay to Metro an amount equal to the Regional System Fee, as provided in Metro Code Title V, for each ton or portion thereof of waste delivered to the non-system facility that is ultimately delivered to a disposal site.</li><li>(c) If the Licensee delivers waste under this license to the non-system facility listed in Section 3 but the material does not meet the facility's acceptance criteria (for example, the material is too contaminated for processing or composting) or the non-system facility fails to process and compost the material as required as a condition of this license, the Licensee shall pay to Metro an amount equal to the Excise Tax, as provided in Metro Code Title VII, for each ton or portion thereof of waste delivered to the non-system facility that is ultimately delivered to a disposal site.</li></ul>

<b>8</b>	<b>REPORTING OF ACCIDENTS AND CITATIONS</b>
	Licensee shall report to Metro any significant incidents (such as fires), accidents, and citations involving vehicles transporting the solid waste authorized by this license.

<b>9</b>	<b>RECORD KEEPING AND REPORTING</b>
	<p>(a) The Licensee shall keep and maintain accurate records of the amount of all solid wastes that the Licensee delivers to the non-system facility listed in Section 3 of this license. The Licensee shall keep and maintain complete and accurate records of the following for all transactions with the authorized non-system facility:</p> <ul style="list-style-type: none"> <li>i. Ticket or weight slip number from the non-system facility;</li> <li>ii. Material category designating the type of material transferred to the non-system facility;</li> <li>iii. Date the load was transferred to the non-system facility;</li> <li>iv. Time the load was transferred to the non-system facility;</li> <li>v. Net weight of the load; and</li> <li>vi. Fee charged by the non-system facility.</li> </ul> <p>(b) No later than the fifteenth (15th) day of each month, beginning with the first month following the commencement date of this license, Licensee shall transmit the records required under Section 9(a) above, that covers the preceding month, to Metro's Finance and Regulatory Services Department in an electronic format prescribed by Metro.</p> <p>(c) Licensee shall make all records from which Section 9(a) 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) business days 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 listed above in Section 3.</p>

<b>10</b>	<b>ADDITIONAL LICENSE CONDITIONS</b>
	<p>This non-system license shall be subject to the following conditions:</p> <p>(a) The permissive transfer of solid waste to the non-system facility, listed in Section 3, authorized by this license shall be subordinate to any subsequent</p>

	<p>decision by Metro to direct the solid waste described in this license to any other facility.</p> <p>(b) This license shall be subject to amendment, modification, or termination by Metro’s Chief Operating Officer (the “COO”) in the event that the COO determines that:</p> <ul style="list-style-type: none"> <li>i. There has been sufficient change in any circumstances under which Metro issued this license;</li> <li>ii. The provisions of this license are actually or potentially in conflict with any provision in Metro’s disposal contract with Waste Management Disposal Services of Oregon, Inc., dba Oregon Waste Systems, Inc;</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 of this license be transferred to, and disposed of at, a facility other than the facility listed in Section 3;</li> <li>iv. The non-system facility listed in Section 3 fails to manage the waste subject to this license in accordance with the material management requirements described in Section 6; or</li> <li>v. The non-system facility listed in Section 3 generates malodors that are detectable off-site.</li> </ul> <p>(c) This license shall, in addition to subsections (b)(i) through (b)(v), above, be subject to amendment, modification, termination, or suspension pursuant to the Metro Code.</p> <p>(d) Licensee shall not transfer or assign any right or interest in this license without prior written notification to, and approval of, Metro.</p> <p>(e) This license shall terminate upon the execution of a designated facility agreement with the facility listed in Section 3 that authorizes the facility to accept the waste described in Section 1 of this license.</p> <p>(f) This license authorizes delivery of solid waste only to the facility listed in Section 3. Transfer of waste generated from within the Metro boundary to any non-system facility other than that specified in this license is prohibited unless authorized in writing by Metro.</p>
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<b>11</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 Metro Code Chapter 5.05 whether or not those provisions have been specifically mentioned or cited</p>

	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.
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<b>12</b>	<b>INDEMNIFICATION</b>
	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.

## STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 11-4309 FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED NON-SYSTEM LICENSE TO GARBARINO DISPOSAL & RECYCLING SERVICE, INC. FOR DELIVERY OF SOURCE-SEPARATED FOOD WASTE TO THE NATURE'S NEEDS COMPOST FACILITY FOR COMPOSTING

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November 18, 2011

Prepared by: Warren Johnson

Approval of Resolution No. 11-4309 will authorize the Chief Operating Officer (COO) to issue a two-year non-system license (NSL) to Garbarino Disposal & Recycling Service, Inc. (GDRS) to annually deliver a maximum of 600 tons of commercially-generated source-separated food waste to the Nature's Needs Compost Facility (NN) located at 9570 NW 307<sup>th</sup> Avenue in North Plains, Oregon. The proposed NSL is a renewal of an existing license that is set to expire on December 31, 2011.

## BACKGROUND

### 1. Overview

The applicant (GDRS) seeks to renew its NSL to transport source-separated food waste generated within Metro to a non-system facility (NN) located outside of the region. Metro Code Section 5.05.025 prohibits any person from transporting solid waste to non-system facilities without an appropriate license from Metro. The proposed NSL renewal is subject to Metro Council approval because it involves putrescible waste (food waste).

### 2. The Applicant

The applicant, GDRS, is a solid waste hauler that is franchised to collect residential and commercial solid waste within Washington County.

In June 2011, the Metro Council granted the applicant a six-month NSL (No. N-135-11) to annually deliver a maximum of 500 tons of source-separated, commercial food waste to NN. The license commenced on July 1, 2011 and will expire on December 31, 2011. The term of the license was aligned with the expiration date of a Washington County-approved food waste composting demonstration project at NN that is also set to expire on December 31, 2011. A fuller discussion of the NN's demonstration project with the County is provided below in Item 2(1) of the "Analysis/Information" section.

On August 24, 2011, GDRS submitted to Metro an application requesting that Metro renew its existing NSL (No. N-135-11) with a tonnage authorization of 600 tons per calendar year - which represents a 100-ton increase from its current authorization. Despite the slight increased tonnage, the applicant's request for authorization is substantially similar to that of the existing NSL.

## ANALYSIS/INFORMATION

### 1. Known Opposition

There is no known opposition to GDRS hauling food waste to NN. However, there has been some local opposition to NN due to a history of off-site malodors generated at the facility. The facility's odor issues

have primarily occurred in the past under previous ownership and some of those previous odor events have been traced to other businesses and agricultural activities in the area. Nevertheless, there continues to be some local concerns regarding NN's ongoing operation and its potential to create off-site malodors. In consideration of the site's history and to address potential future odor issues at the facility, the proposed NSL stipulates that the COO may amend, modify, or terminate the license as necessary if Metro determines that NN generates malodors that are detectable off-site based on findings or actions taken by either the County or the Oregon Department of Environmental Quality (DEQ). The County and DEQ have regulatory authority over the facility and may take enforcement action to control odors if necessary.

## **2. Legal Antecedents**

Metro Code Section 5.05.035(c) provides that, when determining whether or not to approve an NSL application, the Metro 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 non-system facility identified in this proposed license is well known to Metro. NN is an established yard debris and vegetative food waste composting facility rather than a landfill and thus does not pose the same potential environmental risk from wastes being delivered. Until the demonstration project began, the facility accepted only wood waste, yard debris, and vegetative waste for composting. Most of the food waste accepted at the facility during the demonstration project consisted of source-separated commercial food waste that was mixed with yard debris and wood chips at the Metro Central Transfer Station. No other wastes are currently accepted at NN that could pose a risk of environmental contamination. The environmental risk from the use of this non-system facility is minimal because the facility is fully regulated and monitored by the appropriate local and state authorities.

In July 2010, the County allowed NN to accept non-green feedstock (e.g. meats and dairy products) for composting in order to determine whether the facility can properly manage and successfully process various food wastes on an ongoing basis without creating undue off-site malodors or nuisance conditions. Most of the food waste accepted at the facility during the demonstration project consisted of source-separated commercial food waste that was mixed with yard debris and wood chips at the Metro Central Transfer Station. The above-mentioned materials were mixed together at Metro Central for the purpose of odor mitigation and optimum composting at NN. NN also received food waste that was delivered directly to the facility by local haulers such as GDRS. The facility is located outside the Metro boundary, in unincorporated Washington County near North Plains.

If the demonstration project is deemed to be a success and the County grants NN long-term approval to accept food waste, then the facility intends to continue its current food waste processing operations on a regular basis. The County is expected to make a final decision about the NN franchise, including a determination about the success of the demonstration project in December 2011. County staff intends to recommend to the Washington County Board of Commissioners that NN be allowed to continue its food waste composting operations. On November 10, 2011, the Washington County Solid Waste Advisory Committee unanimously recommended granting the NN franchise.

Metro and County solid waste staff have conferred and coordinated throughout NN's demonstration project and the subsequent approval process. Although this NSL will be issued prior to the County's final decision on the demonstration project, the proposed NSL includes conditions that authorize the COO to modify or terminate the license should the County restrict or prohibit further food waste composting at NN. The County has generally been supportive of food waste feedstock being delivered to NN from the Metro region.

- (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;*

Recology, Inc., a waste management company headquartered in San Francisco, California, is the parent company of NN. Recology, Inc. is also the parent company for Recology Oregon Material Recovery, Inc. (ROMR) which is the contract operator for the Metro Central Transfer Station and the owner and operator of three Metro-licensed material recovery facilities that accept mixed non-putrescible waste: 1) Suttle Road Recovery Facility, 2) Foster Road Recovery Facility, and 3) Oregon City Recovery Facility.

In June 2010, Metro issued Notices of Violation (NOVs) to the Oregon City and Suttle Road Recovery Facilities for, respectively, failure to properly maintain required documents on site and failure to inspect loads in accordance with the Metro-approved operating plan. These matters have since been resolved and the above-mentioned facilities are currently in compliance with Metro's regulations.

NN holds a DEQ-issued solid waste permit which was issued in April 2011. The facility also holds a County franchise which was approved by the Washington County Board of Commissioners on July 10, 2010. Metro staff's investigation of NN revealed a good record of compliance with regard to local and state agencies responsible for health, safety or environmental regulations. The County and DEQ have periodically received complaints from neighboring businesses and residents regarding odors at NN. During the course of the demonstration project, the County confirmed two instances in which malodors were detected at the facility. However, the facility quickly implemented corrective action and the County did not take any enforcement action in response to the above-mentioned incidents.

Accordingly, the County and DEQ require NN to implement reasonable and practical measures to control and minimize odors through site design improvements and operational procedures. The primary odor control measures that are currently used by the facility include accepting food waste that has been pre-mixed with bulking material (such as yard debris or wood chips), processing feedstock in a timely manner, adhering to good housekeeping practices, and implementing adequate moisture and temperature monitoring procedures. The facility also uses a forced negative aeration system which pulls air through the compost piles and discharges it through a biofilter consisting of organic material such as wood chips or compost overs. A biofilter is a useful odor control measure because it functions as a media for supporting microorganisms that help convert odorous air into carbon dioxide and water. In addition to the above, NN has implemented stormwater collection system improvements and has paved a significant portion of its site in an effort to reduce malodors caused by water pooling on-site.

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

Metro, the County, and DEQ consider the operational practices and management controls in place at NN to be adequate and consistent with other similar facilities. NN manages the food waste it receives in accordance with the requirements of its County-issued franchise and DEQ-issued permit.



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

The waste subject to the proposed NSL will be delivered to NN for the purpose of composting rather than disposal. Based on the waste management hierarchy, composting is considered to be a higher and better management option than land disposal. As such, approval of the proposed NSL is likely to have a positive impact on the region's recycling and waste reduction efforts.

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

Metro is contractually obligated to deliver a minimum of 90 percent of the region's putrescible waste that is delivered to general purpose landfills during the calendar year, to landfills owned by Metro's disposal contractor, Waste Management. The waste subject to the proposed license will not be disposed at a general-purpose landfill. Approval of the proposed license will not conflict with Metro's disposal contract; however, increased diversion of organic material from disposal shrinks the amount of waste committed under the flow guarantee and the amount available for allocation to NSLs that control the remaining 10 percent.

In addition, ROMR currently serves as Metro's contractor for processing organic waste received at the Metro Central Transfer Station – including commercial food waste. The contract covering the processing of this waste is set to expire on December 31, 2011. Metro solicited proposals for a new service contract and the evaluation committee recently selected ROMR as the top-ranked firm. Negotiations on the new contract are pending.

(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*

The applicant is currently in compliance with its Metro-issued NSL and has not had any compliance issues with regard to Metro regulations within the last two years. Additionally, the applicant has a good record of compliance with local and state agencies responsible for health, safety, and environmental regulations.

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

The proposed NSL is a renewal of an existing license with a small increase in tonnage authorization. The applicant is seeking this NSL renewal in order to provide a closer alternative for the delivery of food waste collected for composting. NN is located at the edge of North Plains (unincorporated Washington County), approximately seven miles outside of the Metro boundary. NN provides important processing and composting capacity for the region that supports Metro's goal of diverting organics away from disposal and into recovery outlets.

### **3. Anticipated Effects**

This proposed NSL is one of many organics-related action items currently under consideration by Metro and other local jurisdictions which contributes to a decline in the amount of solid waste disposed in landfills. The decisions on this and other similar items will have the effect of further shrinking the pool

of waste available for allocation to certain non-system licensees by increasing the availability of non-disposal options i.e. recycling and composting.

The effect of Resolution No. 11-4309 will be to authorize GDRS to deliver up to 600 tons per calendar year of food waste from commercial food retail or wholesale outlets in Washington County directly to NN for composting.

#### **4. Budget/Rate Impacts**

Metro's Regional System Fee and Excise Tax (RSF and ET) rates depend on the amount of waste that is disposed. Any waste that is diverted from the disposal stream, such as the composting of food waste, will in general increase those RSF and ET rates. Waste diversion will also affect other disposal prices (tip fees) at Metro transfer stations and other solid waste facilities due to fixed and capital costs, etc. being spread over less tonnage. The effects of these individual price changes will depend on facility-specific factors. However, the effect on the RSF and ET is universal across all ratepayers and waste disposed. Specifically, diversion of each 10,000 tons of food waste from disposal would result in approximately an 18¢ per ton increase in the RSF and a 12¢ increase in the ET rate – or a total increase of 30¢ per ton charged on all waste generated inside the region and ultimately disposed. (For reference, the current RSF is \$17.64 and the ET rate is \$11.80 – \$29.44 per ton total). The exact amount of this financial impact would vary from year to year depending on specific circumstances, such as Metro's annual budget, but the change would generally be in the neighborhood of 30¢ per ton.

In general, approval of any new license or change of authority in an existing license during a fiscal year will have an actual impact on Metro's revenues, but would be factored into the fee and tax rates during the next budget-and-rates cycle.

In the case of the specific NSL application under consideration, GDRS has requested the renewal of its existing NSL with a slight tonnage limit increase (100-ton increase). Since Metro received GDRS' renewal application after the FY 2011-12 rates were adopted, Metro will have to absorb the fiscal impact of the proposed 100-ton increase for the remainder of the current fiscal year. This was also the case with the applicant's existing NSL (No. N-135-11) which was considered by Council in June 2011.

The financial impact to Metro resulting from the diversion of an additional 100 tons under the proposed NSL will be less than \$1,200 (RSF and ET combined) for the remainder of the current fiscal year. The effect on Metro's fee and tax rates in the long run is less than a penny per ton.

#### **RECOMMENDED ACTION**

The COO recommends approval of Resolution No. 11-4309 finding that the license renewal satisfies the requirements of Metro Code Section 5.05.035, and issuance of an NSL substantially similar to the proposed NSL attached to the resolution as Exhibit A.

Wj:bjl  
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Queue

Agenda Item No. 4.9

**Resolution No. 11-4310**, For the Purpose of Authorizing the Chief Operating Officer to Issue a Non-System License Jointly to Waste Management of Oregon, Inc. and Troutdale Transfer Station For Delivery of Source-Separated Food Waste to the Nature's Needs and Pacific Region Compost Facilities for Composting.

*Consent Agenda*

Metro Council Meeting  
Thursday, Dec. 8, 2011  
Metro Council Chamber

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A ) RESOLUTION NO. 11-4310  
NON-SYSTEM LICENSE JOINTLY TO WASTE MANAGEMENT )  
OF OREGON, INC. AND TROUTDALE TRANSFER STATION ) Introduced by Martha J. Bennett,  
FOR DELIVERY OF SOURCE-SEPARATED FOOD WASTE TO ) Chief Operating Officer, with the  
THE NATURE’S NEEDS AND PACIFIC REGION COMPOST ) concurrence of Tom Hughes,  
FACILITIES FOR COMPOSTING ) Council President

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

WHEREAS, Waste Management of Oregon, Inc. (“WMO”) and Troutdale Transfer Station (“TTS”) jointly hold Metro Solid Waste Facility Non-System License Nos. N-113-10(2) and N-010(2)-11, which expire on December 31, 2011; and

WHEREAS, WMO and TTS have filed complete applications seeking non-system licenses to deliver source-separated food waste to the Nature’s Needs Compost Facility and Pacific Region Compost Facility under the provisions of Metro Code Chapter 5.05, “Solid Waste Flow Control;” and

WHEREAS, Metro Code Chapter 5.05 provides that applications for non-system licenses for putrescible waste shall be reviewed by the Chief Operating Officer and are subject to approval or denial by the Metro Council; and

WHEREAS, the Chief Operating Officer has analyzed the applications and considered the relevant factors under the Metro Code; and

WHEREAS, the Chief Operating Officer recommends that Metro consider the applicants’ combined applications as a single request and issue a new, consolidated non-system license together with specific conditions as provided in Exhibit A to this Resolution; now therefore,

THE METRO COUNCIL RESOLVES AS FOLLOWS:

1. The non-system license applications of WMO and TTS are approved subject to the terms, conditions, and limitations contained in Exhibit A to this Resolution.
2. The Chief Operating Officer is authorized to issue to WMO and TTS a Solid Waste Facility Non-System License substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Tom Hughes, Council President

Approved as to Form:

\_\_\_\_\_  
Daniel B. Cooper, Metro Attorney

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736  
TEL 503 797 1835 | FAX 503 813 7544



METRO

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

**No. N-010-12(2)**

<b>LICENSEE:</b>	
Troutdale Transfer Station 869 NW Eastwind Drive Troutdale, OR 97060	Waste Management of Oregon, Inc. 7227 NE 55 <sup>th</sup> Av. Portland, OR 97218
<b>CONTACT PERSON:</b>	
Doug Vermillion Phone: (503) 667-5264 ext.410 Fax: (503) 667-6237 E-Mail: <a href="mailto:dvermill@wm.com">dvermill@wm.com</a>	Dean Kampfer (503) 493-7831 (503) 493-7824 <a href="mailto:dkampfer@wm.com">dkampfer@wm.com</a>
<b>MAILING ADDRESS:</b>	
Troutdale Transfer Station 869 NW Eastwind Drive Troutdale, OR 97060	Waste Management of Oregon, Inc. 7227 NE 55 <sup>th</sup> Av. Portland, OR 97218

**ISSUED BY METRO:**

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Margo Norton,  
Finance and Regulatory Services Director

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Date

<b>1</b>	<b>NATURE OF WASTE COVERED BY LICENSE</b>
	<p>(a) Source-separated food waste generated within the Metro boundary and received at Troutdale Transfer Station in accordance with Metro Solid Waste Facility Franchise No. F-001-08A; and</p> <p>(b) Source-separated food waste that is generated within the Metro region and collected by Waste Management of Oregon, Inc.</p>

<b>2</b>	<b>CALENDAR YEAR TONNAGE LIMITATION</b>
	<p>Licensee is authorized to deliver to the non-system facilities listed in Section 3 of this license up to 30,000 tons per calendar year of the waste described in Section 1 of this license.</p>

<b>3</b>	<b>NON-SYSTEM FACILITIES</b>
	<p>The Licensee hereunder is authorized to deliver the waste described above in Section 1 to the following non-system facilities for the purpose of processing and composting:</p> <p style="padding-left: 40px;">Nature's Needs  9570 NW 307th Avenue  North Plains, Oregon 97133</p> <p style="padding-left: 40px;">Pacific Region Compost Facility  29969 Camp Adair Road  Monmouth, Oregon 97361</p> <p>This license is issued on the condition that the non-system facilities listed in this section are authorized to accept the type of waste described in Section 1. If Metro receives notice from the Oregon Department of Environmental Quality or local regulatory authority that these non-system facilities are not authorized to accept such waste, Metro may immediately modify or terminate this license pursuant to Section 10 of this license.</p>

<b>4</b>	<b>TERM OF LICENSE</b>
	<p>The term of this license will commence on January 1, 2012 and expire at midnight on December 31, 2013, unless terminated sooner under Section 10 of this license.</p>

<b>5</b>	<b>COVERED LOADS</b>
	Licensee shall suitably contain and cover, on all sides, all loads of source-separated food waste that are delivered under authority of this license to prevent spillage of waste while in transit to the non-system facilities listed in Section 3.

<b>6</b>	<b>MATERIAL MANAGEMENT</b>
	<p>The Licensee is authorized to deliver the waste described in Section 1 of this license to the non-system facilities listed in Section 3 under the following conditions:</p> <p>(a) The non-system facilities shall accept all solid waste that is delivered under authority of this license for the sole purpose of processing and composting on-site. The Licensee shall not dispose of any source-separated recyclable material, except as provided in Section 7; and</p> <p>(b) The non-system facilities shall receive, manage, process, and compost all solid waste that is delivered under authority of this license in accordance with all applicable local, state and federal laws, rules, regulations, ordinances, orders, and permits.</p>

<b>7</b>	<b>REGIONAL SYSTEM FEE AND EXCISE TAX</b>
	<p>The Licensee shall be subject to the following conditions:</p> <p>(a) Source-separated food waste that is delivered under authority of this license and is accepted and composted, in accordance with all applicable regulations, at the non-system facilities listed in Section 3 is exempt from Regional System Fees and Excise Tax.</p> <p>(b) If the Licensee delivers waste under this license to the non-system facilities listed in Section 3 but the material does not meet the facilities' acceptance criteria (for example, the material is too contaminated for processing or composting) or the non-system facilities fail to process and compost the material as required as a condition of this license, the Licensee shall pay to Metro an amount equal to the Regional System Fee, as provided in Metro Code Title V, for each ton or portion thereof of waste delivered to the non-system facilities that is ultimately delivered to a disposal site.</p> <p>(c) If the Licensee delivers waste under this license to the non-system facilities listed in Section 3 but the material does not meet the facilities' acceptance</p>

	<p>criteria (for example, the material is too contaminated for processing or composting) or the non-system facilities fail to process and compost the material as required as a condition of this license, the Licensee shall pay to Metro an amount equal to the Excise Tax, as provided in Metro Code Title VII, for each ton or portion thereof of waste delivered to the non-system facilities that is ultimately delivered to a disposal site.</p>
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<b>8</b>	<b>REPORTING OF ACCIDENTS AND CITATIONS</b>
	<p>Licensee shall report to Metro any significant incidents (such as fires), accidents, and citations involving vehicles transporting the solid waste authorized by this license.</p>

<b>9</b>	<b>RECORD KEEPING AND REPORTING</b>
	<p>(a) The Licensee shall keep and maintain accurate records of the amount of all solid wastes that the Licensee delivers to the non-system facilities listed in Section 3 of this license. The Licensee shall keep and maintain complete and accurate records of the following for all transactions with the authorized non-system facilities:</p> <ul style="list-style-type: none"> <li>i. Ticket or weight slip number from the non-system facility;</li> <li>ii. Material category designating the type of material transferred to the non-system facility;</li> <li>iii. Date the load was transferred to the non-system facility;</li> <li>iv. Time the load was transferred to the non-system facility;</li> <li>v. Net weight of the load; and</li> <li>vi. Fee charged by the non-system facility.</li> </ul> <p>(b) No later than the fifteenth (15th) day of each month, beginning with the first month following the commencement date of this license, Licensee shall transmit the records required under Section 9(a) above, that covers the preceding month, to Metro’s Finance and Regulatory Services Department in an electronic format prescribed by Metro.</p> <p>(c) Licensee shall make all records from which Section 9(a) 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) business days 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 facilities listed above in Section 3.</p>



<b>10</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 non-system facilities, listed in Section 3, authorized by this license shall be subordinate to any subsequent decision by Metro to direct the solid waste described in this license to any other facility.</li><li>(b) This license shall be subject to amendment, modification, or termination by Metro's Chief Operating Officer (the "COO") in the event that the COO determines that:<ul style="list-style-type: none"><li>i. There has been sufficient change in any circumstances under which Metro issued this license;</li><li>ii. The provisions of this license are actually or potentially in conflict with any provision in Metro's disposal contract with Waste Management Disposal Services of Oregon, Inc., dba Oregon Waste Systems, Inc;</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 of this license be transferred to, and disposed of at, a facility other than the facilities listed in Section 3;</li><li>iv. The non-system facilities listed in Section 3 fail to manage the waste subject to this license in accordance with the material management requirements described in Section 6; or</li><li>v. The non-system facilities listed in Section 3 generate malodors that are detectable off-site.</li></ul></li><li>(c) This license shall, in addition to subsections (b)(i) through (b)(v), above, be subject to amendment, modification, termination, or suspension pursuant to the Metro Code.</li><li>(d) Licensee shall not transfer or assign any right or interest in this license without prior written notification to, and approval of, Metro.</li><li>(e) This license shall be subject to modification or termination by the COO upon the execution of a designated facility agreement with a facility listed in Section 3 that authorizes the facility to accept the waste described in Section 1 of this license.</li><li>(f) This license authorizes delivery of solid waste only to the facilities listed in Section 3. Transfer of waste generated from within the Metro boundary to any non-system facility other than that specified in this license is prohibited unless authorized in writing by Metro.</li></ul>

<b>11</b>	<b>COMPLIANCE WITH LAW</b>
	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 Metro Code 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.

<b>12</b>	<b>INDEMNIFICATION</b>
	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.

## STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 11-4310 FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A NON-SYSTEM LICENSE JOINTLY TO WASTE MANAGEMENT OF OREGON, INC. AND TROUTDALE TRANSFER STATION FOR DELIVERY OF SOURCE-SEPARATED FOOD WASTE TO THE NATURE'S NEEDS AND PACIFIC REGION COMPOST FACILITIES FOR COMPOSTING

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November 28, 2011

Prepared by: Warren Johnson

Approval of Resolution No. 11-4310 will authorize the Chief Operating Officer (COO) to issue a two-year non-system license (NSL) jointly to Waste Management of Oregon, Inc. (WMO) and Troutdale Transfer Station (TTS) to annually deliver a maximum of 30,000 tons of source-separated food waste to either the Nature's Needs Compost Facility (NN) located at 9570 NW 307<sup>th</sup> Avenue in North Plains, Oregon; or the Pacific Region Compost Facility (PRC) located at 29969 Camp Adair Road in Monmouth, Oregon.

## BACKGROUND

### 1. Overview

The applicants seek authorization to transport source-separated food waste generated within Metro to non-system facilities (NN and PRC) located outside of the region. Metro Code Section 5.05.025 prohibits any person from transporting solid waste to non-system facilities without an appropriate license from Metro. The proposed NSL is subject to Metro Council approval because it involves putrescible waste (food waste).

### 2. The Applicant

Waste Management, Inc., a company headquartered in Houston, Texas, is the parent company of WMO. WMO owns and operates TTS, a Metro-franchised transfer station located at 869 NW Eastwind Drive in Troutdale. WMO is also franchised/permitted by several local governments within the region to collect residential and commercial solid waste and WMO is Metro's disposal contractor.

The applicants currently hold two jointly issued NSLs that authorize the delivery of source-separated food waste to NN and PRC. Specifically, WMO and TTS jointly hold the following:

- NSL No. N-113-10(2), issued on April 5, 2010, which authorizes the delivery of up to 10,000 tons of source-separated food waste to PRC per calendar year; and
- NSL No N-010(2)-11, issued on March 21, 2011, which authorizes the delivery up to 6,000 tons of source-separated food waste to NN per calendar year.

Both of the above licenses, which expire on December 31, 2011, authorize the delivery of food waste that is either received and reloaded at TTS or collected at the site of generation and directly hauled by WMO. The purpose of this joint authority was to provide greater flexibility for the Licensees and to improve administrative efficiency.

On September 2, 2011, WMO and TTS submitted applications to Metro requesting the renewal of the existing NSLs (Nos. N-113-10(2) and N-010(2)-11) and sought to increase the tonnage authorization of each up to 30,000 tons per calendar year (for a combined total of 60,000 tons of authorization). The applicants have acknowledged that, although they have requested the combined amount of 60,000 tons

between both applications, they actually expect to deliver no more than 30,000 tons of food waste to either facility during a calendar year. The applicants explained that they requested the additional 30,000 tons as a redundant measure to allow greater flexibility in delivery options based on cost conditions between the two destination facilities.

The applicants have requested a substantial increase in tonnage authorization. As such, the applications submitted by the applicants are deemed to be requests for new authorization and do not constitute requests for license renewals as provided in Metro Code Section 5.05.035(d)(2)(B).

Based on the information provided by the applicants, staff recommends that Metro consider the applicants' combined applications as a single request and issue a new, consolidated NSL that jointly authorizes WMO and TTS to annually deliver a maximum of 30,000 tons of source-separated food waste to either NN or PRC. Staff notified the applicants of this recommendation and the applicants expressed no opposition to the issuance of a single, consolidated NSL as described above.

## **ANALYSIS/INFORMATION**

### **1. Known Opposition**

There is no known opposition to the applicants hauling food waste to NN or PRC. However, there has been some local opposition to NN due to a history of off-site malodors generated at the facility. The facility's odor issues have primarily occurred in the past under previous ownership and some of those previous odor events have been traced to other businesses and agricultural activities in the area. Nevertheless, there continues to be some local concerns regarding NN's ongoing operation and its potential to create off-site malodors. In consideration of the site's history and to address potential future odor issues at the facility, the proposed NSL stipulates that the COO may amend, modify, or terminate the license as necessary if Metro determines that NN generates malodors that are detectable off-site based on findings or actions taken by either the County or the Oregon Department of Environmental Quality (DEQ). Washington County and DEQ have regulatory authority over NN and may take enforcement action to control odors if necessary.

### **2. Legal Antecedents**

Metro Code Section 5.05.035(c) provides that, when determining whether or not to approve an NSL application, the Metro 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 proposed NSL authorizes the delivery of food waste to either NN or PRC, both of which are well known to Metro. Since both facilities are engaged in composting rather than landfill disposal, neither poses the same potential environmental risk from wastes being delivered and processed.

- PRC is an established yard debris and food waste composting facility that began accepting food waste for composting in November 2009. PRC initially began accepting food waste from its affiliated haulers located in the Willamette Valley (i.e., Corvallis, Albany and Salem). In early 2010, PRC began accepting Metro-area food waste under authority of NSLs and in 2011 began

accepting commercial food waste directly from Metro South Transfer Station. Prior to that time, the facility accepted only wood waste and yard debris for composting. There is no known evidence of any other wastes currently being accepted at PRC that could pose a risk of environmental contamination. The environmental risk from the use of this non-system facility is presumed to be minimal because the facility is fully regulated and monitored by the appropriate local and state authorities.

- NN is an established yard debris and vegetative food waste composting facility that began accepting food waste for composting in a Washington County-approved demonstration project in July 2010. Until the demonstration project began, the facility accepted only wood waste, yard debris, and vegetative waste for composting. Most of the food waste accepted at the facility during the demonstration project consisted of source-separated commercial food waste that was mixed with yard debris and wood chips at the Metro Central Transfer Station. There is no known evidence of any other wastes currently being accepted at NN that could pose a risk of environmental contamination. The environmental risk from the use of this non-system facility is minimal because the facility is fully regulated and monitored by the appropriate local and state authorities.

**NN Demonstration Project.** In July 2010, Washington County allowed NN to accept non-green feedstock (e.g. meats and dairy products) for composting in order to determine whether the facility can properly manage and successfully process various food wastes on an ongoing basis without creating undue off-site malodors or nuisance conditions. Most of the food waste accepted at the facility during the demonstration project consisted of source-separated commercial food waste that was mixed with yard debris and wood chips at the Metro Central Transfer Station. The above-mentioned materials were mixed together at Metro Central for the purpose of odor mitigation and optimum composting at NN. NN also received food waste that was delivered directly to the facility by local haulers. If the demonstration project is deemed to be a success and the County grants NN long-term approval to accept food waste, then the facility intends to continue its current food waste processing operations on a regular basis. The County is expected to make a final decision about the NN franchise, including a determination about the success of the demonstration project in December 2011. County staff intends to recommend to the Washington County Board of Commissioners that NN be allowed to continue its food waste composting operations. On November 10, 2011, the Washington County Solid Waste Advisory Committee unanimously recommended granting the NN franchise.

Metro and County solid waste staff have conferred and coordinated throughout NN's demonstration project and the subsequent approval process. Although this NSL will be issued prior to the County's final decision on the demonstration project, the proposed NSL includes conditions that authorize the COO to modify or terminate the license should the County restrict or prohibit further food waste composting at NN. The County has generally been supportive of food waste feedstock being delivered to NN from the Metro region.

- (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;*

Metro staff's investigation of the applicants, destination facilities, and parent company revealed a good record of compliance with local and state agencies responsible for health, safety, and environmental regulations.

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

Metro and DEQ consider the operational practices and management controls in place at NN and PRC to be adequate and consistent with other similar facilities. Both facilities manages the food waste they receives in accordance with the requirements of their DEQ-issued permit.

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

The waste subject to the proposed NSL will be delivered to compost facilities for the purpose of composting rather than disposal. Based on the waste management hierarchy, composting is considered to be a higher and better management option than land disposal. As such, approval of the proposed NSL is likely to have a positive impact on the region's recycling and waste reduction efforts.

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

Metro is contractually obligated to deliver a minimum of 90 percent of the region's putrescible waste that is delivered to general purpose landfills during the calendar year, to landfills owned by Metro's disposal contractor, WMO. The waste subject to the proposed license will not be disposed at a general-purpose landfill. Approval of the proposed license will not conflict with Metro's disposal contract; however, increased diversion of organic material from disposal shrinks the amount of waste committed under the flow guarantee and the amount available for allocation to NSLs that control the remaining 10 percent.

Allied Waste currently serves as Metro's contractor for processing organic waste received at the Metro South Transfer Station – including commercial food waste. In addition, Recology currently serves as Metro's contractor to processing organic waste received at Metro's Central Transfer Station.

- (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*

The applicants are currently in compliance with their Metro-issued NSL and have not had any compliance issues with regard to Metro regulations within the last two years. Additionally, the applicants have a good record of compliance with local and state agencies responsible for health, safety, and environmental regulations.

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

The applicants currently hold two jointly issued NSLs that authorize the delivery of source-separated food waste to NN and PRC. The proposed NSL combines such authorization into a single NSL with a maximum authorization of 30,000 tons. The purpose of the single NSL is to provide greater flexibility for the Licensees and to improve administrative efficiency.

NN and PRC provide important processing and composting capacity for the region that supports Metro's goal of diverting organics away from disposal and into recovery outlets.

### **3. Anticipated Effects**

This proposed NSL is one of many organics-related action items currently under consideration by Metro and other local jurisdictions which contributes to a decline in the amount of solid waste disposed in landfills. The decisions on this and other similar items will have the effect of further shrinking the pool of waste available for allocation to certain non-system licensees by increasing the availability of non-disposal options i.e. recycling and composting.

The effect of Resolution No. 11-4310 will be to authorize WMO and TTS jointly to deliver up to 30,000 tons per calendar year of source-separated food waste to either NN or PRC for composting.

### **4. Budget/Rate Impacts**

Waste diversion has a number of effects on Metro's fiscal system. First, Metro's Regional System Fee and Excise Tax (RSF and ET) rates depend on the amount of waste that is disposed. Any waste that is diverted from disposal, such as the composting of food waste, will in general increase those RSF and ET rates which in turn are paid by all generators. Second, because the price that Metro pays for disposal at Columbia Ridge Landfill depends on volume, recycling and recovery will increase Metro's unit (per-ton) disposal costs for users of Metro's transfer stations. Third, under current policy, diversion from disposal at Metro's transfer stations reduces the amount of revenue collected for local rehabilitation and enhancement grants. Fourth, waste diversion will also affect other unit costs at Metro transfer stations and other solid waste facilities due to fixed and capital costs, etc. being spread over less tonnage. Because the size and effects of these individual price changes will depend on facility-specific factors, this fourth class of impacts is not addressed in this fiscal analysis.

#### Assumptions for the Analysis

The applicants are seeking authorization to deliver 30,000 tons per year of source-separated compostable materials from residential and commercial generators to NN or PRC.

- Residentially generated feedstocks. The applicants have represented that 20,000 tons (two-thirds of the requested annual authorization) is for food waste combined with yard debris that will be collected by WMO under the city of Portland's new residential organics program. Of the 20,000 tons, Metro staff believes that only 5 to 15 percent (1,000 to 3,000 tons) will actually be food waste; and the balance, yard debris. Only the 1,000 to 3,000 tons of food waste is subject to this fiscal analysis, as the yard debris is already exempt from RSF, ET, and the host (rehabilitation and enhancement) fee.
- Commercially generated food waste. The applicants have represented that 10,000 tons (one-third of the requested annual authorization) represents new food waste diversion from commercial generators. All 10,000 tons of commercial food waste are currently disposed as mixed putrescible waste and therefore subject to this fiscal analysis.
- Although both Metro staff and the applicants are skeptical that the whole 30,000-ton authorization will be used in either of the next two years, this fiscal analysis is based on diversion of the entire amount in order to provide readers with an estimate of the full possible impact.
- Specifically, this analysis is based on the diversion of 12,000 tons of food waste – 10,000 tons

from commercial generators and 2,000 tons from residential generators (the balance, 18,000 tons of residential yard debris, are already exempt). All fiscal effects are roughly proportional. Therefore, if for example, the applicants use only half of their authorization, the fiscal impacts would be about half of those reported here.

### Regional System Fee and Excise Tax

Because this proposed license would take effect halfway through the current fiscal year, the exemption of tons from the RSF translates to a revenue loss to the Solid Waste Fund of approximately \$125,000 for the 7 months from January 2012 to August 1, 2012 when new solid waste rates would normally take effect. Historically Metro has raised the system fee to cover the effect of tonnage lost to the recovery exemption in the long run. In this case, that impact would be an increase of about 19 cents per ton in August 2012 – the exact amount depends on the adopted budget at the time. This increase would be charged on all solid waste that continues to be disposed, including the waste delivered to Metro transfer stations and privately-owned landfills. (For reference, the current RSF is \$17.64 per ton.)

As with the RSF, approval of the proposed NSL would remove tonnage from the revenue base for the ET. However, unlike the RSF, the ET rate is driven entirely by previous-calendar year tonnage. Therefore, it will take two years for the reduction of the tonnage base to work its way into the rate calculation. Until that happens, approval of this NSL would reduce General Fund revenue by about \$142,000 in the first full year and about half of that in the second year. By the third year the rate will have increased by 14 cents per ton to absorb the revenue impact. (For reference, the current ET rate is \$11.80 per ton.)

Metro's Disposal Cost. Diverting 12,000 tons of food waste would increase the price that Metro pays to WMO for disposal at Columbia Ridge Landfill under its contractual declining block rate. The 12,000-ton reduction would result in a 19 cent per ton increase in price for the tons that continue to flow to Columbia Ridge. This translates to a 14 cent increase in the "tonnage charge" component of Metro's tip fee. (Because Metro charges the tip fee on inbound tonnage but pays on outbound tonnage, the tip fee effect is less than the contract cost effect.) In dollars, the diversion of 12,000 tons means Metro's customers will pay about \$80,000 per year more on the waste that continues to be disposed at Columbia Ridge Landfill.

Because this proposed license would take effect halfway through the current fiscal year, Metro would have to absorb about \$47,000 in additional disposal costs between January 2012 and August 1, 2011 when the new solid waste rates take effect.

### Rehabilitation & Enhancement Fund Revenue

Based on current patterns of tonnage flow, Metro staff estimates that 9,500 of the 12,000 tons of food waste would be diverted from the Metro transfer stations. At 50 cents per ton, this translates to a direct loss of \$4,750 in host fee revenue. About \$2,100 of this loss would be borne by Oregon City, and \$2,650 by the Metro Central Rehabilitation & Enhancement account.

### Summary

Analysis is provided for the impact on three Metro funds. These impacts would be the same for any waste diverted from disposal.

- Solid Waste Fund. The diversion of tonnage from disposal to recovery would reduce the dollar



amount that Metro budgets for disposal operations, but the per-ton cost would rise on the waste that continues to be disposed. The diversion would also reduce the amount of RSF, which is used to pay for solid waste programs such as waste reduction and hazardous waste. Historically, Metro has covered such changes by raising solid waste rates. Under the proposed NSL, the Metro tip fee would rise by 33 cents (14 cents for disposal + 19 cents for the RSF), excluding ET changes.

- General Fund. Approval of the NSL will not affect General Fund costs, but the ET rate will have to rise 14 cents to recover the revenue lost to the diversion of tonnage. It will take two years for the rate to adjust fully under the current rate mechanism in Metro Code. There will be approximately \$210,000 loss of revenue to the General Fund during the adjustment period of two years.
- Rehabilitation & Enhancement Fund. Approval of the NSL will reduce “host fee” revenue by about \$4,750 per year, split roughly \$2,100 and \$2,650 between Oregon City and NW Portland.

### **RECOMMENDED ACTION**

The COO recommends approval of Resolution No. 11-4310 finding that the license applications satisfy the requirements of Metro Code Section 5.05.035, and issuance of an NSL substantially similar to the proposed NSL attached to the resolution as Exhibit A.

WJ:bjl  
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Queue

Agenda Item No. 5.1

**Ordinance No. 11-1267**, For the Purpose of Amending the FY 2011-12 Budget and Appropriations Schedule Increasing 0.25 FTE in the Pioneer Cemetery Program, and Declaring an Emergency.

*Ordinances – First Reading*

Metro Council Meeting  
Thursday, Dec. 8, 2011  
Metro Council Chamber

BEFORE THE METRO COUNCIL

AMENDING THE FY 2011-12 BUDGET AND	)	ORDINANCE NO. 11-1267
APPROPRIATIONS SCHEDULE INCREASING	)	
0.25 FTE IN THE PIONEER CEMETERY	)	Introduced by Martha Bennett, Chief
PROGRAM, AND DECLARING AN	)	Operating Officer, with the concurrence of
EMERGENCY	)	Council President Tom Hughes

WHEREAS, Metro Code chapter 2.02.040 requires Metro Council approval to add any new position to the budget; and

WHEREAS, the Metro Council has reviewed and considered the need to add FTE within the FY 2011-12 Budget; and

WHEREAS, the need for the additional FTE has been justified; and

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

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. That the FY 2011-12 Budget and Schedule of Appropriations are hereby amended as shown in the column entitled "Revision" of Exhibits A and B to this Ordinance for the purpose of increasing 0.25 FTE in the Pioneer Cemetery Program.
2. This Ordinance being necessary for the immediate preservation of the public health, safety or welfare of the Metro area in order to meet obligations and comply with Oregon Budget Law, an emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_ 2011.

\_\_\_\_\_  
Tom Hughes, Council President

Attest:

Approved as to Form:

\_\_\_\_\_  
Kelsey Newell, Recording Secretary

\_\_\_\_\_  
Daniel B. Cooper, Metro Attorney

**Exhibit A**  
**Ordinance No. 11-1267**

ACCT	DESCRIPTION	Current Budget		Revision		Amended Budget	
		FTE	Amount	FTE	Amount	FTE	Amount
<b>General Fund</b>							
<b>Parks &amp; Environmental Services</b>							
<i>Personal Services</i>							
<i>SALWGE Salaries &amp; Wages</i>							
5010	Reg Employees-Full Time-Exempt						
	Administrative Specialist IV	1.00	52,573	-	0	1.00	52,573
	Assistant Management Analyst	6.40	339,977	1.00	43,884	7.40	383,861
	Director	1.00	141,750	-	0	1.00	141,750
	Manager I	3.15	278,143	-	0	3.15	278,143
	Principal Regional Planner	1.00	89,745	-	0	1.00	89,745
	Program Director	1.00	105,363	-	0	1.00	105,363
	Property Management Specialist	0.80	59,113	-	0	0.80	59,113
	Service Supervisor III	1.00	62,663	-	0	1.00	62,663
5015	Reg Empl-Full Time-Non-Exempt						
	Administrative Specialist I	1.00	32,063	-	0	1.00	32,063
	Administrative Specialist II	2.00	88,452	-	0	2.00	88,452
	Arborist	1.00	58,260	-	0	1.00	58,260
	Building Service Worker	1.00	45,260	-	0	1.00	45,260
	Building Services Technician	1.00	60,611	-	0	1.00	60,611
	Maintenance Worker 2	1.00	52,872	-	0	1.00	52,872
	Park Ranger	8.00	387,060	-	0	8.00	387,060
	Park Ranger Lead	1.00	58,260	-	0	1.00	58,260
	Printing/Mail Services Clerk	1.00	43,181	-	0	1.00	43,181
	Program Assistant 3	1.00	49,859	-	0	1.00	49,859
	Safety and Security Officer	1.75	66,184	-	0	1.75	66,184
5020	Reg Emp-Part Time-Exempt						
	Assistant Management Analyst	0.75	35,789	(0.75)	(35,789)	-	0
5025	Reg Employees-Part Time-Non-Exempt						
	Program Assistant 1	0.55	22,583	-	0	0.55	22,583
5030	Temporary Employees		334,002		0		334,002
5080	Overtime		33,567		0		33,567
5089	Salary Adjustments						
	Merit/COLA Adjustment (non-rep)		7,519		0		7,519
	Step Increases (AFSCME)		14,882		0		14,882
	COLA (represented employees)		21,878		0		21,878
	Other Adjustments (AFSCME)		7,393		0		7,393
<i>FRINGE Fringe Benefits</i>							
5100	Fringe Benefits						
	Base Fringe (variable & fixed)		1,192,436		1,858		1,194,294
<b>Total Personal Services</b>		<b>38.00</b>	<b>\$3,905,560</b>	<b>0.25</b>	<b>\$9,953</b>	<b>38.25</b>	<b>\$3,915,513</b>
<i>Materials &amp; Services</i>							
<i>GOODS Goods</i>							
5201	Office Supplies		103,556		0		103,556
5205	Operating Supplies		124,638		0		124,638
5210	Subscriptions and Dues		5,594		0		5,594
5214	Fuels and Lubricants		79,444		0		79,444
5215	Maintenance & Repairs Supplies		196,767		0		196,767
5225	Retail		9,316		0		9,316
<i>SVCS Services</i>							
5240	Contracted Professional Svcs		440,876		(9,953)		430,923
5250	Contracted Property Services		212,031		0		212,031
5251	Utility Services		434,323		0		434,323
5255	Cleaning Services		169,886		0		169,886
5260	Maintenance & Repair Services		361,388		0		361,388

**Exhibit A**  
**Ordinance No. 11-1267**

ACCT	DESCRIPTION	<u>Current Budget</u>		<u>Revision</u>		<u>Amended Budget</u>	
		FTE	Amount	FTE	Amount	FTE	Amount
<b>General Fund</b>							
<b>Parks &amp; Environmental Services</b>							
	5265 Rentals		52,755		0		52,755
	5280 Other Purchased Services		44,847		0		44,847
	<i>CAPMNT Capital Maintenance</i>						
	5262 Capital Maintenance - Non-CIP		11,000		0		11,000
	<i>IGEXP Intergov't Expenditures</i>						
	5300 Payments to Other Agencies		138,747		0		138,747
	5310 Taxes (Non-Payroll)		259,248		0		259,248
	<i>OTHEXP Other Expenditures</i>						
	5450 Travel		5,290		0		5,290
	5455 Staff Development		30,918		0		30,918
<b>Total Materials &amp; Services</b>			<b>\$2,680,624</b>		<b>(\$9,953)</b>		<b>\$2,670,671</b>
<b>TOTAL REQUIREMENTS</b>		<b>38.00</b>	<b>\$6,586,184</b>	<b>0.25</b>	<b>\$0</b>	<b>38.25</b>	<b>\$6,586,184</b>

**Exhibit B**  
**Ordinance 11-1267**  
**Schedule of Appropriations**

	<u>Current</u> <u>Appropriation</u>	<u>Revision</u>	<u>Revised</u> <u>Appropriation</u>
<b>GENERAL FUND</b>			
Communications	2,484,577	0	2,484,577
Council Office	3,694,550	0	3,694,550
Finance & Regulatory Services	3,877,640	0	3,877,640
Human Resources	2,304,931	0	2,304,931
Information Services	3,626,474	0	3,626,474
Metro Auditor	686,452	0	686,452
Office of Metro Attorney	2,067,885	0	2,067,885
Oregon Zoo	28,541,635	0	28,541,635
Parks & Environmental Services	6,586,184	0	6,586,184
Planning and Development	16,561,877	0	16,561,877
Research Center	4,489,582	0	4,489,582
Sustainability Center	5,022,941	0	5,022,941
Former ORS 197.352 Claims & Judgments	100	0	100
Special Appropriations	4,566,055	0	4,566,055
Non-Departmental			
Debt Service	1,588,215	0	1,588,215
Interfund Transfers	5,007,479	0	5,007,479
Contingency	3,657,142	0	3,657,142
Unappropriated Balance	14,722,489	0	14,722,489
<b>Total Fund Requirements</b>	<b>\$109,486,208</b>	<b>\$0</b>	<b>\$109,486,208</b>

*All other appropriations remain as previously adopted*

**NOTES:**

- (1) The current budget and appropriations columns reflected in Exhibits A and B to this ordinance assume adoption of Ordinance 11-1265 anticipated for Council action on December 1, 2011 and Ordinance 11-1266 scheduled for action concurrent with this ordinance.
- (2) This action requests approval of the changes identified in the column titled "Revision" on each of the exhibits and will not be affected by modifications to ordinance 11-1265
- (3) This action seeks only additional FTE authority. No additional appropriation authority is necessary.

## STAFF REPORT

FOR THE PURPOSE OF AMENDING THE FY 2011-12 BUDGET AND APPROPRIATIONS  
SCHEDULE INCREASING 0.25 FTE IN THE PIONEER CEMETERY PROGRAM, AND  
DECLARING AN EMERGENCY

---

Date: November 17, 2011

Prepared by: Brian Kennedy 503-797-1908

### BACKGROUND

#### *Pioneer Cemeteries Sales & Service Staff*

The Sales & Service function for the Pioneer Cemetery program is currently staffed with 1.75 FTE. That staff is responsible for burial sales, service management, and records management. With the recent completion of the cemetery business plan and ongoing operational issues, it has been determined that the current staffing is inadequate to meet the growing demands from customers.

As part of improving the service Metro provides for burials, staff has determined that Metro personnel should observe all grave openings and closings that are performed by Metro contractors. That additional demand on staff has reduced the availability of personnel to respond to sales inquiries, perform recordkeeping duties, and provide assistance to families. Staff from the cemetery program is available to customers six days a week, and often manages several burial services in one day. Staff also responds to customer requests for interment right sales. Currently the program's sales are reactionary to Metro's customers and current staff workloads make it difficult to provide additional time in proactive sales.

In addition, to meet increased sales expectations and demands, additional staff resources are needed. Current staff spend approximately 50% of their time in records management and the other 50% attending graveside funeral services for customers at need. Those demands do not allow staff time to proactively work to increase sales. Staff is proposing to increase the total program staffing to 2.0 FTE, a net increase of 0.25 FTE. These additional hours will not only stabilize the current operations but will also help set the program on the course of increased sales in the following fiscal year. The cost in the current fiscal year will be \$9,953 and will be funded through a reduction in Materials & Services. In future years, it is anticipated that increased revenues due to the recent fee increases and sales activity will fund the additional FTE.

### ANALYSIS/INFORMATION

- 1. Known Opposition:** None known.
- 2. Legal Antecedents:** ORS 294.450(1) provides for transfers of appropriations within a fund, including transfers from contingency, if such transfers are authorized by official resolution or ordinance of the governing body for the local jurisdiction. Metro code chapter 2.02.040 requires the Metro Council to approve the addition of any position to the budget.
- 3. Anticipated Effects:** This action provides for changes in operations as described above and requests FTE increases to bring one part-time position to full time.

4. **Budget Impacts:** This action requests a 0.25 FTE increase to improve sales and service in the Pioneer Cemeteries program. The increase in salary expenses will be funded through materials and services savings in the current year and increased cemetery revenues in future years. Recent increases raised grave fees 30%, grave opening and closing fee 40%, and outer burial container fees 40%.

**RECOMMENDED ACTION**

The Chief Operating Officer recommends adoption of this Ordinance.



Agenda Item No. 6.1

**Ordinance No. 11-1266**, For the Purpose of Amending the FY 2011-12 Budget and Appropriations Schedule, Recognizing New Capital Project Sponsorship Contributions, Providing Capital Project Appropriation and Declaring an Emergency.

*Ordinances – Second Reading*

Metro Council Meeting  
Thursday, Dec. 8, 2011  
Metro Council Chamber

BEFORE THE METRO COUNCIL

AMENDING THE FY 2011-12 BUDGET AND ) ORDINANCE NO. 11-1266  
APPROPRIATIONS SCHEDULE, RECOGNIZING )  
NEW CAPITAL PROJECT SPONSORSHIP ) Introduced by Martha Bennett, Chief  
CONTRIBUTIONS, PROVIDING CAPITAL ) Operating Officer, with the concurrence of  
PROJECT APPROPRIATION AND DECLARING ) Council President Tom Hughes  
AN EMERGENCY )

WHEREAS, the Metro Council has reviewed and considered the need to increase appropriations within the FY 2011-12 Budget; and

WHEREAS, Oregon Budget Law ORS 294.326 allows for the expenditure in the year of receipt of grants, gifts, bequests, and other devices received by a municipal corporation in trust for a specific purpose; and

WHEREAS, the need for the increase of appropriation has been justified; and

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

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. That the FY 2011-12 Budget and Schedule of Appropriations are hereby amended as shown in the column entitled "Revision" of Exhibits A and B to this Ordinance for the purpose of recognizing new capital project sponsorship contributions and providing capital project appropriation.
2. This Ordinance being necessary for the immediate preservation of the public health, safety or welfare of the Metro area in order to meet obligations and comply with Oregon Budget Law, an emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_ 2011.

\_\_\_\_\_  
Tom Hughes, Council President

Attest:

Approved as to Form:

\_\_\_\_\_  
Kelsey Newell, Recording Secretary

\_\_\_\_\_  
Daniel B. Cooper, Metro Attorney

**Exhibit A**  
**Ordinance No. 11-1266**

ACCT	DESCRIPTION	Current Budget		Revision		Amended Budget	
		FTE	Amount	FTE	Amount	FTE	Amount
<b>General Fund</b>							
<b>General Expenses</b>							
<i><b>Interfund Transfers</b></i>							
<i>INDTEX</i>	<i>Interfund Reimbursements</i>						
5800	Transfer for Indirect Costs						
	* to Risk Mgmt Fund-Liability		344,916		0		344,916
	* to Risk Mgmt Fund-Worker Comp		382,344		0		382,344
<i>INTCHG</i>	<i>Internal Service Transfers</i>						
<i>EQTCHG</i>	<i>Fund Equity Transfers</i>						
5810	Transfer of Resources						
	* to General Revenue Bond Fund-Zoo		404,408		0		404,408
	* to General Asset Mgmt Fund-General Acct		10,000		0		10,000
	* to Gen'l Revenue Bond Fund-Debt Serv Acct		1,500,920		0		1,500,920
	* to MERC Fund (Tourism Opp. & Compt. Accou		480,000		0		480,000
	* to Renewal & Replacement Fund-General R&R		647,978		0		647,978
	* to Renewal & Replacement Fund-IT Renewal &		255,000		0		255,000
	* to General Asset Management Fund		140,000		57,915		197,915
	* to Renewal & Replacement Fund-Regional Cen		322,540		0		322,540
	* to Renewal & Replacement Fund-Parks R&R		323,000		0		323,000
	* to Solid Waste Revenue Fund		148,458		0		148,458
<b>Total Interfund Transfers</b>			<b>\$4,959,564</b>		<b>\$57,915</b>		<b>\$5,017,479</b>
<i><b>Contingency &amp; Unappropriated Balance</b></i>							
<i>CONT</i>	<i>Contingency</i>						
5999	Contingency						
	* Contingency		2,978,646		0		2,978,646
	* Opportunity Account		211,411		(57,915)		153,496
	* Reserved for Streetcar LID (RRSR)		500,000		0		500,000
<i>UNAPP</i>	<i>Unappropriated Fund Balance</i>						
5990	Unappropriated Fund Balance						
	* Stabilization Reserve		2,364,296		0		2,364,296
	* PERS Reserve		6,238,195		0		6,238,195
	* Planning grants funds held in reserve		14,993		0		14,993
	* Recovery Rate Stabilization reserve		1,396,943		0		1,396,943
	* Reserved for Community Investment Initiativ		812,000		0		812,000
	* Reserved for Future Natural Areas Operator		204,460		0		204,460
	* Reserved for Local Gov't Grants (CET)		1,165,574		0		1,165,574
	* Reserve for Future Debt Service		2,526,028		0		2,526,028
<b>Total Contingency &amp; Unappropriated Balance</b>			<b>\$18,412,546</b>		<b>(\$57,915)</b>		<b>\$18,354,631</b>
<b>TOTAL REQUIREMENTS</b>		<b>455.56</b>	<b>\$109,486,208</b>	<b>0.00</b>	<b>\$0</b>	<b>455.56</b>	<b>\$109,486,208</b>

**Exhibit A**  
**Ordinance No. 11-1266**

ACCT	DESCRIPTION	Current Budget		Revision		Amended Budget	
		FTE	Amount	FTE	Amount	FTE	Amount
<b>General Asset Management Fund</b>							
<b><u>Resources</u></b>							
BEGBAL	Beginning Fund Balance						
3500	* Prior year ending balance		6,689,948		0		6,689,948
GRANTS	Grants						
4110	State Grants-Direct		63,334		0		63,334
GVCNTB	Gov't Contributions						
4145	Government Contributions		70,000		0		70,000
INTRST	Interest Earnings						
4700	Interest on Investments		33,298		0		33,298
DONAT	Contributions from Private Sources						
4750	Donations and Bequests		825,000		16,180		841,180
EQTREV	Fund Equity Transfers						
4970	Transfer of Resources						
	* from Solid Waste Revenue Fund		53,163		0		53,163
	* from General Fund (Regional Parks)		323,000		0		323,000
	* from General Fund-IT R&R		255,000		0		255,000
	* from General Fund-MRC R&R		322,540		0		322,540
	* from General Fund-Gen'l R&R		647,978		0		647,978
	* from MERC		10,824		0		10,824
	* from Gen'l Revenue Bond Fund		216,821		0		216,821
	* from General Fund		150,000		57,915		207,915
<b>TOTAL RESOURCES</b>			<b>\$9,660,906</b>		<b>\$74,095</b>		<b>\$9,735,001</b>
<b>Total Materials &amp; Services</b>			<b>\$1,005,061</b>		<b>\$0</b>		<b>\$1,005,061</b>
<b><u>Capital Outlay</u></b>							
5710	Improve-Oth thn Bldg		1,267,709		74,095		1,341,804
5720	Buildings & Related		257,956		0		257,956
5730	Exhibits and Related		825,000		0		825,000
5740	Equipment & Vehicles		1,128,879		0		1,128,879
5745	Licensed Vehicles		564,276		0		564,276
5750	Office Furniture & Equip		650,833		0		650,833
5760	Railroad Equip & Facil		49,610		0		49,610
<b>Total Capital Outlay</b>			<b>\$4,744,263</b>		<b>\$74,095</b>		<b>\$4,818,358</b>
<b>Total Contingency &amp; Unappropriated Balance</b>			<b>\$3,911,582</b>		<b>\$0</b>		<b>\$3,911,582</b>
<b>TOTAL REQUIREMENTS</b>		-	<b>\$9,660,906</b>	-	<b>\$74,095</b>	-	<b>\$9,735,001</b>

**Exhibit B**  
**Ordinance 11-1266**  
**Schedule of Appropriations**

	<u>Current</u> <u>Appropriation</u>	<u>Revision</u>	<u>Revised</u> <u>Appropriation</u>
<b>GENERAL FUND</b>			
Communications	2,484,577	0	2,484,577
Council Office	3,694,550	0	3,694,550
Finance & Regulatory Services	3,877,640	0	3,877,640
Human Resources	2,304,931	0	2,304,931
Information Services	3,626,474	0	3,626,474
Metro Auditor	686,452	0	686,452
Office of Metro Attorney	2,067,885	0	2,067,885
Oregon Zoo	28,541,635	0	28,541,635
Parks & Environmental Services	6,586,184	0	6,586,184
Planning and Development	16,561,877	0	16,561,877
Research Center	4,489,582	0	4,489,582
Sustainability Center	5,022,941	0	5,022,941
Former ORS 197.352 Claims & Judgments	100	0	100
Special Appropriations	4,566,055	0	4,566,055
Non-Departmental			
Debt Service	1,588,215	0	1,588,215
Interfund Transfers	4,949,564	57,915	5,007,479
Contingency	3,715,057	(57,915)	3,657,142
Unappropriated Balance	14,722,489	0	14,722,489
<b>Total Fund Requirements</b>	<b>\$109,486,208</b>	<b>\$0</b>	<b>\$109,486,208</b>
<b>GENERAL ASSET MANAGEMENT FUND</b>			
Asset Management Program	5,739,324	74,095	5,813,419
Non-Departmental			
Contingency	3,911,582	0	3,911,582
<b>Total Fund Requirements</b>	<b>\$9,650,906</b>	<b>\$74,095</b>	<b>\$9,725,001</b>

*All other appropriations remain as previously adopted*

**NOTES:**

- (1) The current budget and appropriations columns reflected in Exhibits A and B to this ordinance assume adoption of Ordinance 11-1265 anticipated for Council action on December 1, 2011.
- (2) This action requests approval of the changes identified in the column titled "Revision" on each of the exhibits and will not be affected by modifications to ordinance 11-1265

## STAFF REPORT

### FOR THE PURPOSE OF AMENDING THE FY 2011-12 BUDGET AND APPROPRIATIONS SCHEDULE, RECOGNIZING NEW CAPITAL PROJECT SPONSORSHIP CONTRIBUTIONS, PROVIDING CAPITAL PROJECT APPROPRIATION, AND DECLARING AN EMERGENCY

---

Date: November 17, 2011

Prepared by: Brian Kennedy 503-797-1908

## BACKGROUND

### Blue Lake Disc Golf Course

In December 2010, staff presented preliminary plans for constructing a disc golf course at Blue Lake Regional Park. Since the December work session, staff has finalized the course layout, construction plans, and development costs. Staff also obtained land use approvals from the City of Fairview. The City of Fairview has been a very supportive partner on the project. Metro issued a Request for Proposals seeking sponsorships for the course development. One proposal was received, and the sponsorship is providing resources of \$16,180 in project costs. The total project cost is projected to be \$74,095. After sponsorships, the Metro share will be \$57,915.

This action requests the recognition of \$16,180 in project sponsorship revenue and seeks \$57,915 from the General Fund to allow this project to go forward. Funding alternatives include: offsetting reductions in the parks budget; use of the Opportunity Account of the General Fund contingency; or the general contingency. As was reported in the first quarter, the parks budget continues to see strained resources with revenues expected to be about 5 percent below budget, making this an unrealistic funding choice. The Opportunity Fund is the recommended choice because this project meets the opportunity account definition: one-time cost, leveraging other partners and participation now and in the future, and presenting an opportunity to increase revenues. In the alternative the general contingency could be used for a one-time project.

It is anticipated that in the first full year of operation, the disc golf course will generate approximately \$20,000 - \$30,000 in revenue. This assumption is very conservative, and based on estimates of 6-8 cars per day in the fall and winter, and as many as 100 cars per day in the spring and summer. Individual cars will pay the standard Blue Lake admission fee of \$5. Frequent users of the course may elect to purchase a Metro Annual Pass for \$40. It is unknown how many users will choose to purchase annual passes, but at the individual user rate listed above, Metro's investment will have a payback of 2-3 years.

Additional appropriation authority of \$74,095 is requested in the Regional Parks account of the General Asset Management Fund to provide funding for the construction of the disc golf course at Blue Lake Regional Park. Maintenance costs for the disc golf course are not expected to be substantially higher than the current maintenance activities on the property, and any additional costs can be absorbed in the existing maintenance budget.

## ANALYSIS/INFORMATION

1. **Known Opposition:** None known.
2. **Legal Antecedents:** ORS 294.450(1) provides for transfers of appropriations within a fund, including transfers from contingency, if such transfers are authorized by official resolution or

ordinance of the governing body for the local jurisdiction. ORS 294.450(3) provides for transfers of appropriations or of appropriations and a like amount of budget resources between funds of the municipal corporation when authorized by an official resolution or ordinance of the governing body.

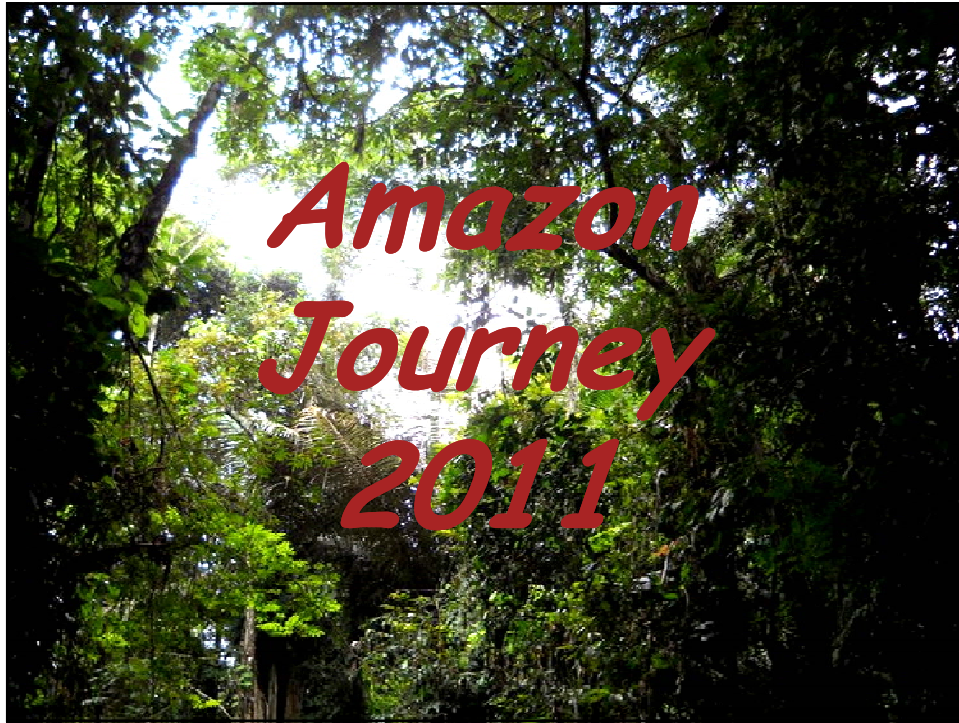
3. **Anticipated Effects:** This action provides appropriation authority necessary to construct and implement the disc golf course at Blue Lake Regional Park.
4. **Budget Impacts:** This action adds \$74,095 to the capital outlay budget for Parks and Environmental Services in the General Asset Management Fund. Funding will be provided by a transfer from the Opportunity Account in the contingency of the General Fund, and is partially offset by a sponsorship from a local recreation company.

### **RECOMMENDED ACTION**

The Chief Operating Officer recommends adoption of this Ordinance.

Materials following this page were distributed at the meeting.







Events:

- Yard Sale: \$1,040
- Halloween Party: \$1,100
- Craft and Bake Sales: \$900

**Please Attend the Zoo's 1st Annual Teen Halloween Dance Party!**

**Where:** Oregon Zoo Banquet Room  
**When:** Saturday, October 30th from 7-11pm  
**What:** Dance Party with snacks, drinks, costume contest  
**Who:** All ZAP, ZooTeens and non-Zoo friends are welcome! (limit 2 non-Zoo friends per Zoo person)  
**COST:** \$6 in advance, \$8 at the door  
 (Cost is per person, all proceeds support the Amazon Ambassadors program)



**Total: ~\$15,540**

**Yummy + Crafty Fundraiser at dec all staff**

dec 15 12:30-2:30 • bring cash  
 all donations go to amazon ambassadors program

Donations:

- ZooGuide Council: \$500
- JFR Foundation Grant: \$3,000
- Individual Donations: \$9,000



## Goals

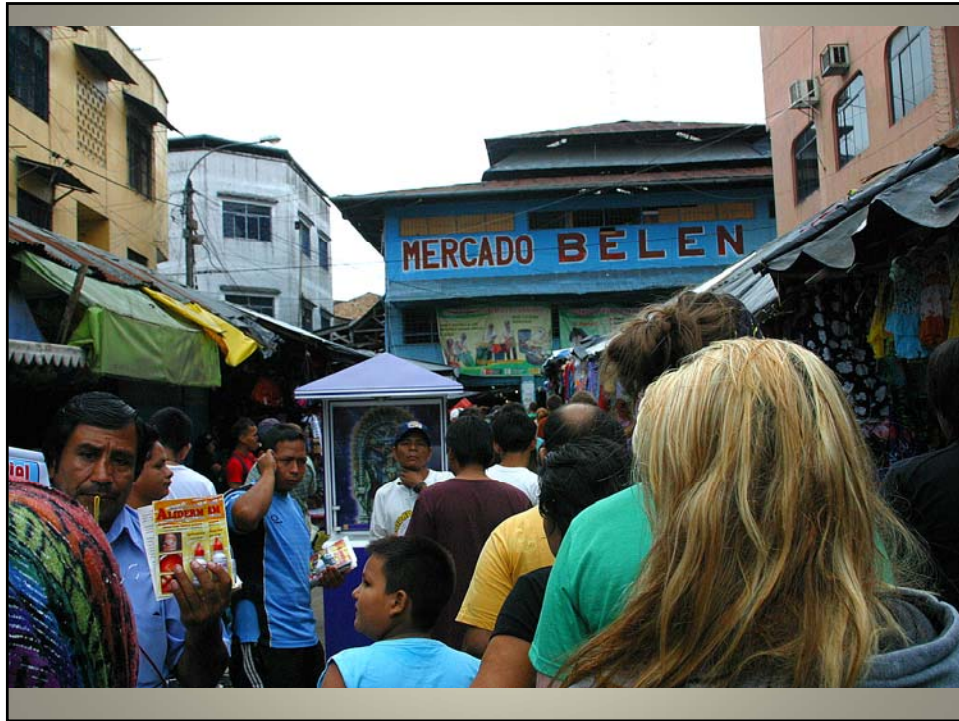
- **Greater understanding** of the people, animals and plants of the Amazon.
- **Deepen our appreciation** for the amazing biodiversity of the planet.
- **Gain a renewed dedication** to the Oregon Zoo and its conservation efforts.



## Goals

- **Make cultural connections-** deepen our understanding of the places we visit and the people we meet.
- **Post-trip presentations** - bring home the knowledge and experiences acquired in the Amazon and share with our peers and the public.



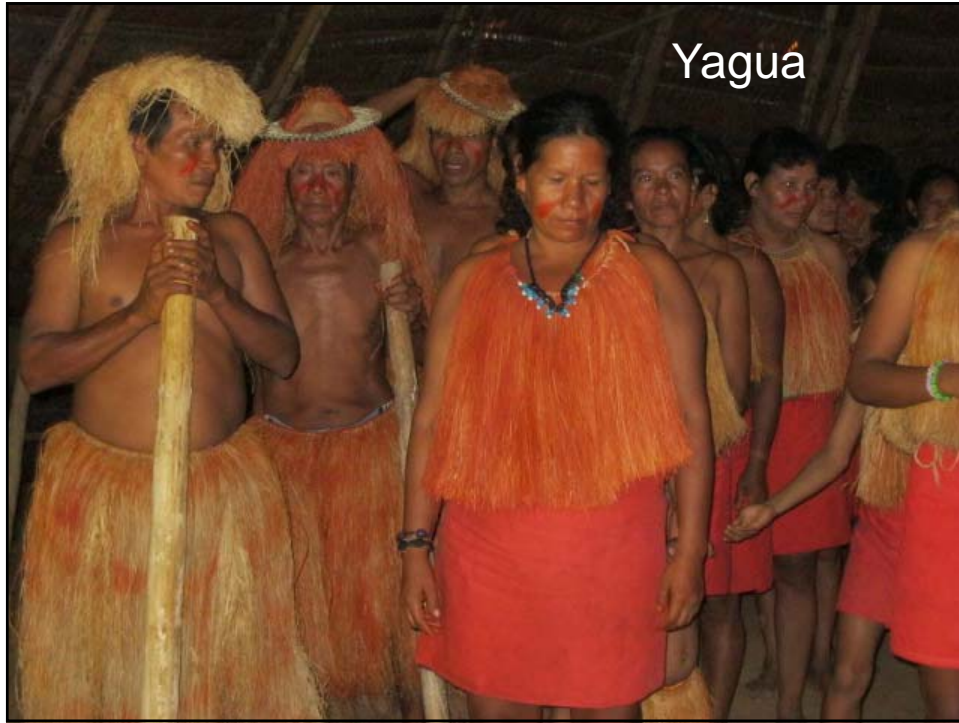






























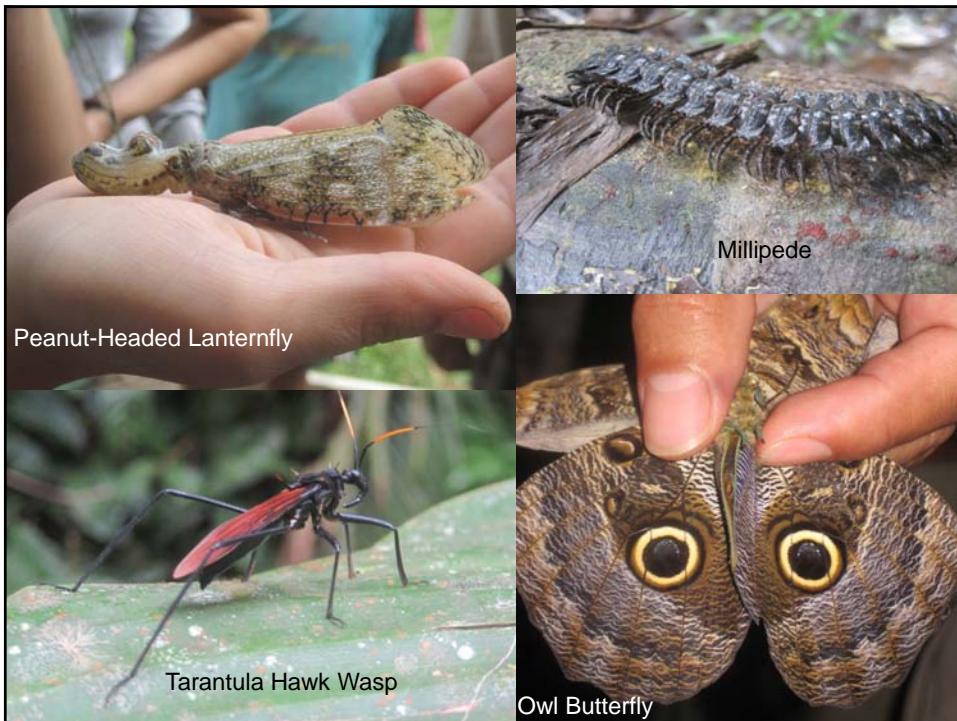








Raul  
Trumpeter Bird



Peanut-Headed Lanternfly

Millipede

Tarantula Hawk Wasp

Owl Butterfly



*"You don't have to be in the Amazon to make a difference here."*

*-Cliver Rioja*

*Our guide (who grew up on the Amazon )*





*Using the knowledge and passion gained from the Amazon Ambassador experience, we hope to create a sense of global community in order to inspire action and enact change.*

A photograph of a sunset over a body of water. The sun is low on the horizon, creating a golden glow that reflects on the water's surface. The sky is filled with soft, golden clouds. The image is split vertically, with the sunset on the left and a white text box on the right.

## Our Ideas

- 1) Support CONAPAC
- 2) Bring awareness through:
  - Presentations
  - On-grounds education at the Oregon Zoo
  - Amazon Ambassadors trip every 2 years

*"This isn't just our job, it's our passion. We are happy to know these creatures are still around even though there is deforestation, degradation, and pollution.*

*Things I used to see very often, I don't see them anymore. **Animals are very sensitive, they are sponges. They soak up the problems we create.***

*-Cliver Rioja, our guide*









## **METRO COUNCIL MEETING**

Meeting Summary

Dec. 1, 2011

Metro, Council Chamber

Councilors Present: Council President Tom Hughes and Councilors Carl Hosticka, Barbara Roberts, Kathryn Harrington, Shirley Craddick, Carlotta Collette and Rex Burkholder

Councilors Excused: None

Council President Hughes convened the regular Council meeting at 2 p.m.

### **1. INTRODUCTIONS**

There were none.

### **2. CITIZEN COMMUNICATIONS**

Ray Phelps, Wilsonville Area Chamber of Commerce: Mr. Phelps invited the Council to attend the Chamber's Government Affairs Committee meeting scheduled for Dec. 7. He indicated that Mr. Dave Kotansky of Colliers International and Mr. Michael Williams of Business Oregon are scheduled to present and participated in a discussion around commercial industrial land trends, land survey, and land development. In addition, he stated that the Chamber is working on a new effort to develop a comprehensive economic strategy.

Council inquired as to if the industrial land presentation would be provided to the Clackamas County's economic development group. Mr. Phelps was uncertain that the presentation would be provided to the economic development commission.

### **3. AUDITOR'S OFFICE FY 2010-11 ANNUAL REPORT**

Metro Auditor Suzanne Flynn provided a presentation on the Office of the Auditor's Annual Report for FY 2010-11. Her presentation included information on the Office's:

- FY 2010-11 accomplishments;
- Performance measures and results;
- Audits released in FY 2010-11, including full and follow-up audits;
- The Auditor's Office materials and service expenditures, and staffing available in FY 2010-11;
- Results from a local jurisdictional survey on which topics should be audited for the upcoming year; and
- A summary of the Metro Ethnic Line.

The Office has an aggressive audit schedule for FY 2011-12. Scheduled audits include, but are not limited to: transportation outcomes – case study (currently underway), recruitment and hiring process, and sustainability management follow-up.

Council thanked the Auditor and staff for their work. Discussion included how performance measures are selected, cross-jurisdictional audits, and the need to also track hours Metro staff invest during audits.

**4. CONSIDERATION OF THE MINUTES FOR NOV. 17 2011**

Motion:	Councilor Shirley Craddick moved to adopt the Nov. 17, 2011 Council minutes.
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Vote:	Council President Hughes and Councilors Hosticka, Roberts, Craddick, Harrington, Burkholder, and Collette voted in support of the motion. The vote was 7 ayes, the motion <u>passed</u> .
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**5. ORDINANCES – FIRST READING**

5.1 **Ordinance No. 11-41266**, For the Purpose of Amending the FY 2011-12 Budget and Appropriations Schedule, Recognizing New Capital Project Sponsorship Contributions, Providing Capital Project Appropriation and Declaring an Emergency.

Second read, public hearing, and Council consideration and vote are scheduled for Thursday, Dec. 8. Councilor Craddick has been assigned carrier for the legislation.

**6. ORDINANCES – SECOND READING**

6.1 **Ordinance No. 11-1265A**, For the Purpose of Amending the FY 2011-12 Budget and Appropriations Schedule, Recognizing New Grants, Donations and Other Contributions, Authorizing New FTE, Amending the FY 2011-12 through 2015-16 Capital Improvement Plan, and Declaring an Emergency.

Council President Hughes passed the gavel to Deputy Council President Carl Hosticka to chair the meeting while he carried the legislation.

Motion:	Council President Hughes moved to adopt Ordinance No. 11-1265A.
Second:	Councilor Kathryn Harrington seconded the motion.

Council President Hughes introduced Ordinance No. 11-1265A. Each year the adopted budget provides the financial plan for Metro for the coming year. As the year progresses, changing circumstances require staff and Council to adjust the plan. The adjustments come in the form of budget amendments, some of which may be technical or housekeeping in nature while others are more substantive. Ordinance No. 11-1265A, a consolidated amendment, included a combination of both. Council President Hughes overviewed both the technical and substantive elements of the purposed amendment:

1. Technical/housekeeping:
  - Implementation of AFSCME Contract section 12.8 regarding FY 2006-07 Opt Out money
2. New projects:
  - Washington Park Parking Lot Study
  - Closed Captioning of Council

3. Items with no budgetary appropriations, but modify the 5-year Capital Improvement Plan:
  - Oregon Zoo Aviary Capital Projects
  - OCC Coffee Retail Store Renovation Project
  
4. Substantive amendments related to positions and/or FTE within the following areas:
  - Metro Regional Center Front Desk Reception
  - Greater Portland Pulse
  - Regional Active Transportation Program
  - Communications Administrative Support
  - Oregon Zoo Animal Nutritionist

The "A" version of the legislation excluded two items related to a GIS support specialist and a project manager position in the Office of the Chief Operating Officer. Council consideration and vote on these two elements has been postponed to a later date.

Deputy Council President Hosticka opened a public hearing on Ordinance No. 11-1265A. Seeing no members of the public who wished to testify, the public hearing was closed.

Vote:

Council President Hughes and Councilors Hosticka, Roberts, Craddick, Harrington, Burkholder, and Collette voted in support of the motion. The vote was 7 ayes, the motion <u>passed</u> .
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**7. CHIEF OPERATING OFFICER COMMUNICATION**

There was none.

**8. COUNCILOR COMMUNICATION**

Council updates addressed the recent Executive Council for Active Transportation meeting, the nearly complete new Oregon Zoo Veterinary Hospital, and the release of the McLoughlin Area Plan for public comment.

**9. ADJOURN**

There being no further business, Council President Hughes adjourned the regular meeting at 2:47 p.m. The Metro Council will reconvene the next regular council meeting on Thursday, Dec. 8 at 2 p.m. at the Metro Council Chamber.

**10. EXECUTIVE SESSION HELD PURSUANT WITH ORS 192.660(2)(e). TO CONDUCT DELIBERATIONS WITH PERSONS DESIGNATED BY THE GOVERNING BODY TO NEGOTIATE REAL PROPERTY TRANSACTIONS.**

**EXECUTIVE SESSION HELD PURSUANT WITH ORS 192.660(2)(h). TO CONSULT WITH COUNSEL CONCERNING THE LEGAL RIGHTS AND DUTIES OF A PUBLIC BODY WITH REGARD TO CURRENT LITIGATION OR LITIGATION LIKELY TO BE FILED.**

The Council recessed to the Council Annex for two executive sessions.



Kelsey Newell, Regional Engagement Coordinator

**ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF DEC. 1, 2011**

<b>Item</b>	<b>Topic</b>	<b>Doc. Date</b>	<b>Document Description</b>	<b>Doc. Number</b>
	Agenda	11/29/11	Revised 12/1/11 Council agenda	120111c-01
3.0	PowerPoint	N/A	FY 2010-11 Annual Report	120111c-02
5.1	Legislation/ Staff Report	N/A	Revised Ordinance No. 11-1266, Staff Report	120111c-03
6.1	Legislation	N/A	Ordinance No. 11-1265A	120111c-04

**STAFF REPORT—REVISED 12/1/1, THIS REPLACES THE VERSION IN YOUR ORIGINAL PACKET.**

FOR THE PURPOSE OF AMENDING THE FY 2011-12 BUDGET AND APPROPRIATIONS SCHEDULE, RECOGNIZING NEW CAPITAL PROJECT SPONSORSHIP CONTRIBUTIONS, PROVIDING CAPITAL PROJECT APPROPRIATION, AND DECLARING AN EMERGENCY

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Date: November 17, 2011

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**BACKGROUND**

*Blue Lake Disc Golf Course*

In December 2010, staff presented preliminary plans for constructing a disc golf course at Blue Lake Regional Park. Since the December work session, staff has finalized the course layout, construction plans, and development costs. Staff also obtained land use approvals from the City of Fairview. The City of Fairview has been a very supportive partner on the project. Metro issued a Request for Proposals seeking sponsorships for the course development. One proposal was received, and the sponsorship is providing resources of \$16,180 in project costs. The total project cost is projected to be \$74,095. After sponsorships, the Metro share will be \$57,915.

This action requests the recognition of \$16,180 in project sponsorship revenue and seeks \$57,915 from the General Fund to allow this project to go forward. Funding alternatives include: offsetting reductions in the parks budget; use of the Opportunity Account of the General Fund contingency; or the general contingency. As was reported in the first quarter, the parks budget continues to see strained resources with revenues expected to be about 5 percent below budget, making this an unrealistic funding choice. The Opportunity Fund is the recommended choice because this project meets the opportunity account definition: one-time cost, leveraging other partners and participation now and in the future, and presenting an opportunity to increase revenues. In the alternative the general contingency could be used for a one-time project.

It is anticipated that in the first full year of operation, the disc golf course will generate approximately \$20,000 - \$30,000 in revenue. This assumption is very conservative, and based on estimates of 6-8 cars per day in the fall and winter, and as many as 20-30 cars per day in the spring and summer. Individual cars will pay the standard Blue Lake admission fee of \$5. Frequent users of the course may elect to purchase a Metro Annual Pass for \$40. It is unknown how many users will choose to purchase annual passes, but at the individual user rate listed above, Metro's investment will have a payback of 2-3 years.

Additional appropriation authority of \$74,095 is requested in the Regional Parks account of the General Asset Management Fund to provide funding for the construction of the disc golf course at Blue Lake Regional Park. Maintenance costs for the disc golf course are not expected to be substantially higher than the current maintenance activities on the property, and any additional costs can be absorbed in the existing maintenance budget.

**ANALYSIS/INFORMATION**

**1. Known Opposition:** None known.

2. **Legal Antecedents:** ORS 294.450(1) provides for transfers of appropriations within a fund, including transfers from contingency, if such transfers are authorized by official resolution or ordinance of the governing body for the local jurisdiction. ORS 294.450(3) provides for transfers of appropriations or of appropriations and a like amount of budget resources between funds of the municipal corporation when authorized by an official resolution or ordinance of the governing body.
3. **Anticipated Effects:** This action provides appropriation authority necessary to construct and implement the disc golf course at Blue Lake Regional Park.
4. **Budget Impacts:** This action adds \$74,095 to the capital outlay budget for Parks and Environmental Services in the General Asset Management Fund. Funding will be provided by a transfer from the Opportunity Account in the contingency of the General Fund, and is partially offset by a sponsorship from a local recreation company.

#### **RECOMMENDED ACTION**

The Chief Operating Officer recommends adoption of this Ordinance.