

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A ) RESOLUTION NO. 12-4370  
NON-SYSTEM LICENSE TO NEW EARTH FARM FOR )  
DELIVERY OF SOURCE-SEPARATED FOOD WASTE TO ITS ) Introduced by Martha J. Bennett,  
PROCESSING FACILITY LOCATED IN WASHINGTON ) Chief Operating Officer, with the  
COUNTY, OREGON ) 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 facility; and

WHEREAS, New Earth Farm has filed a complete application seeking a non-system license to deliver source-separated food waste to its own 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

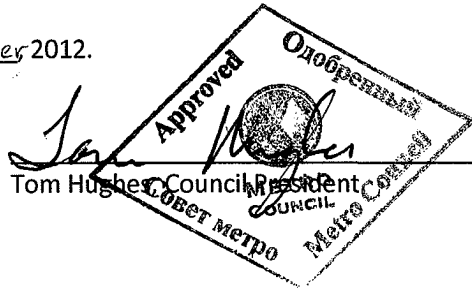
WHEREAS, the Chief Operating Officer has analyzed the applications and considered the relevant factors under the Metro Code; and

WHEREAS, the Chief Operating Officer recommends that Metro issue a non-system license to New Earth Farm with specific conditions as provided in Exhibit A to this Resolution; now therefore,

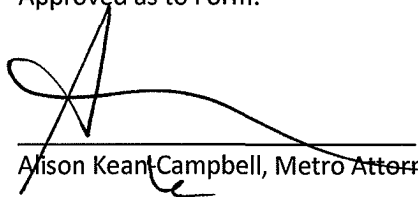
THE METRO COUNCIL RESOLVES AS FOLLOWS:

1. The non-system license application of New Earth Farm 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 New Earth Farm a Solid Waste Facility Non-System License substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this 11 day of October 2012.



Approved as to Form:

  
Alison Keant Campbell, 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-137-12**

<b>LICENSEE:</b>
New Earth Farm 11000 NW Jackson Quarry Road Hillsboro, OR 97124
<b>CONTACT PERSON:</b>
Scott Olsen Phone: (503) 913-2641 E-Mail: scott@newearthfarm.net
<b>MAILING ADDRESS:</b>
11000 NW Jackson Quarry Road Hillsboro, OR 97124

**ISSUED BY METRO:**

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Scott Robinson,  
Deputy Chief Operating Officer

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Date

<b>1</b>	<b>NATURE OF WASTE COVERED BY LICENSE</b>
	Source-separated food waste that is generated by businesses and schools within the Metro boundary and collected by New Earth Farm.
<b>2</b>	<b>CALENDAR YEAR TONNAGE LIMITATION</b>
	<p>(a) Licensee is authorized to deliver to the non-system facility listed in Section 3 of this license up to 264 tons per calendar year of the waste described in Section 1 of this license.</p> <p>(b) Notwithstanding subsection (a) above, the COO may amend this license to decrease the calendar year tonnage limitation based on:</p> <ul style="list-style-type: none"><li>(i) A permit issued by DEQ that authorizes a calendar year tonnage limitation lower than that authorized in subsection (a) above; and</li><li>(ii) The Licensee's compliance with the terms of this license.</li></ul>
<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 land application at an agronomic rate allowed by DEQ:</p> <p style="text-align: center;">New Earth Farm 11000 NW Jackson Quarry Road Hillsboro, OR 97124</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 DEQ or Washington County that this non-system facility is 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>
	The term of this license will commence on October 15, 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 are 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 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 and process 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 processed, 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 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 the non-system facility fails to process and compost the material as required as</p>

	<p>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 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 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 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;</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;</li><li>v. The non-system facility listed in Section 3 generates malodors that are detectable off-site; or</li><li>vi. The non-system facility listed in Section 3 fails to meet the specific criteria for qualification as an agricultural operation as established by Washington County in a letter dated April 26, 2012, and attached to this license as Exhibit A.</li></ul></li><li>(c) This license shall, in addition to subsections (b)(i) through (b)(vi), 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 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>
	<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 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>12</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>



# WASHINGTON COUNTY

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## Oregon

April 26, 2012

Randall Scott Olsen  
New Earth Farm  
11000 NW Jackson Quarry Rd.  
Hillsboro, OR 97124

**RE: Determination on Franchise Requirement**

Dear Mr. Olsen,

I have reviewed your Washington County Department of Land Use and Transportation application for a Farm Compost Review, and the attachments that you submitted, in response to our meeting on April 18, 2012.

After reviewing the material provided, the County has determined that your operation qualifies as an agricultural operation under the provisions of Washington County Code Section 8.08.070 Accumulation prohibition – Exemptions, based on the seven (7) criteria outlined below.

1. New Earth Farm shall not accept more than 264 tons of composting feedstock per year.
2. Finished compost shall be used on-site, at New Earth Farm, for agricultural application. Incidental amounts may be sold in bulk to neighboring agricultural operations.
3. In the event that material cannot be process into New Earth Farm's agricultural operation, and accumulation occurs, New Earth Farm shall reduce incoming feedstock so to avoid the creation of a nuisance as defined by Washington County Code Chapter 8.20.
4. New Earth Farm shall apply for, and obtain, all applicable permits from other regulatory agencies with jurisdiction, including Metro Regional Government and the Oregon Department of Environmental Quality.
5. New Earth Farm shall develop an Odor Minimization Plan, outlining what measures will be taken to reduce odors from the composting operation, and attach the plan to the application for Farm Compost Review.
6. New Earth Farm shall receive a Land Use Compatibility Statement from the Washington County Department of Land Use and Transportation approving Farm Compost.



7. Accumulation of Solid Waste at New Earth Farm shall be performed in accordance with Washington County Code Chapter 8.08, as required by Washington County Code Section 8.08.070 Accumulation prohibition – Exemptions.

Accordingly, provided these seven (7) criteria are met, you are not required to obtain a County franchise for this operation.

Thank you for your cooperation. Should you have any questions concerning this determination, or the County's requirements in general as they relate to the franchising of compost operations in the County, please feel free to contact me.

Sincerely,



Thomas Egleston  
Program Coordinator  
Solid Waste and Recycling Program

## **STAFF REPORT**

IN CONSIDERATION OF RESOLUTION NO. 12-4370 FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A NON-SYSTEM LICENSE TO NEW EARTH FARM FOR DELIVERY OF SOURCE-SEPARATED FOOD WASTE TO ITS PROCESSING FACILITY LOCATED IN WASHINGTON COUNTY, OREGON

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October 1, 2012

Prepared by: Will Ennis  
(503) 797-1667

Approval of Resolution No. 12-4370 will authorize the Chief Operating Officer (COO) to issue a non-system license (NSL) to New Earth Farm (NEF) to annually deliver a maximum of 264 tons of source-separated food waste to its processing facility located at 11000 NW Jackson Quarry Road in Hillsboro, Oregon.

### **BACKGROUND**

#### **1. Overview**

The applicant seeks authorization to transport source-separated food waste generated by businesses and schools within the Metro region to a non-system facility (NEF) 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**

NEF, which is owned and operated by Scott Olsen, is comprised of a two-acre farmed plot that is part of a larger, ten-acre site. NEF serves as a Farmer's Market and Community Supported Agriculture (CSA) operation. CSAs are a way for consumers to buy local, seasonal food directly from a farmer. In a CSA, the consumers purchase shares from the farm. In exchange, each week during the farming season the consumer receives a box portion of seasonal produce. Produce grown at NEF is also sold to area restaurants and business cafeterias. Post-consumer vegetative food waste generated at these facilities, in addition to some meat and dairy waste, is then returned to NEF for processing.

NEF uses the bokashi method to process the food waste. Bokashi is an in-vessel anaerobic fermentation process and converts the majority of food waste delivered to the facility into liquid and solid soil amendments. The liquid component resulting from the process is land applied at NEF and neighboring farms. The remaining solid materials are tilled into the soil at NEF. The facility processes a smaller amount of food waste using vermicomposting and black soldier fly larvae. Solids from these processes are also used at NEF.

#### **3. History of the Application**

NEF accepts and processes a relatively small amount of food waste at its site (125 tons in 2010 and 142 tons in 2011). In November 2010, Metro discovered that NEF has been accepting source-separated food waste from the Metro region without having obtained an NSL. Due to its small-scale operation, Metro deferred taking immediate action in order to allow sufficient time for Washington County and the Oregon Department of Environmental Quality (DEQ) to determine whether the facility required specific authorizations for its operation.

### Washington County

In a letter to Mr. Olsen dated April 26, 2012, Washington County provided a determination that NEF qualifies as an agricultural operation and is not required to obtain a County-issued franchise provided that NEF meet specific the criteria outlined below:

1. NEF does not accept more than 264 tons of composting feedstock per year;
2. Finished compost is to be used on-site, at NEF, for agricultural application. Incidental amounts may be sold in bulk to neighboring agricultural operations;
3. In the event that material cannot be processed into NEF's agricultural operation, and accumulation occurs, NEF must reduce incoming feedstock so as to avoid the creation of a nuisance;
4. NEF must apply for, and obtain, all applicable permits from other regulatory agencies with jurisdiction, including Metro and DEQ;
5. NEF must develop an Odor Minimization Plan, outlining what measures will be taken to reduce odors from the composting operation, and include the plan along with an application for Farm Compost Review;
6. NEF must receive a Land Use Compatibility statement from the Washington County Department of Land Use and Transportation approving Farm Compost; and
7. Accumulation of Solid Waste at NEF must be performed in accordance with Washington County Code in order to avoid paying the county franchise fees.

NEF has applied for, and is in the process of obtaining, the needed authorizations from Metro and DEQ. The facility has provided Metro with its Odor Minimization Plan and a Land Use Compatibility statement from Washington County approving Farm Compost.

### Oregon Department of Environmental Quality

DEQ recently determined that NEF must obtain a composting facility permit. NEF submitted a compost permit application to DEQ on June 8, 2012. At this time DEQ is considering options for NEF in regard to whether it meets an agricultural exemption or requires environmental screening for the composting facility permit. NEF's processing operation must obtain DEQ's approval to maintain compliance with the conditions of Washington County's agricultural operation determination. According to DEQ staff, any authorization to be issued by DEQ to NEF may contain specific conditions to mitigate potential nuisances related to the processing of food waste including, possibly, a tonnage limitation lower than that authorized by Metro in the NSL. In this case, the proposed NSL includes a condition that authorizes the COO to amend the license to align its annual tonnage limitation with that of the DEQ.

### Metro

On June 18, 2012, NEF submitted an application to Metro requesting authorization to transport up to 264 tons of source-separated food waste to its own facility, which is the maximum amount allowed by Washington County. DEQ is unlikely to have made a final determination on an annual tonnage limitation or special conditions for NEF at the time the proposed NSL is presented to Metro Council. As such, staff recommends issuing the proposed NSL with special conditions that are responsive to the concerns and conditions imposed or likely to be imposed by Washington County and DEQ.

## **4. Special conditions included in the Non-System License**

### Section 2: Calendar Year Tonnage Limitation

The applicant, NEF, requested authorization to transport up to 264 tons annually of source-separated food waste generated in the Metro region to its processing facility, which is the maximum amount allowed by Washington County. However, DEQ may determine that a lower annual tonnage limitation is appropriate for NEF. In that case, Section 2 of the NSL includes a provision that the licensee shall be

subject to any lower annual tonnage limitation established by DEQ. Additionally, this section authorizes the COO to amend the NSL's tonnage limitation to align it with that of DEQ if a lower limit is established by that agency.

Section 10: Additional License Conditions

This section of the license includes allowances for the COO to amend, modify or terminate the license should NEF generate malodors that are detectable off-site or if the facility fails to meet the criteria for qualification as an agricultural operation as established by Washington County.

**ANALYSIS/INFORMATION**

**1. Known Opposition**

There is no known opposition to NEF hauling food waste to its own facility. Washington County and the DEQ have received odor complaints from residents in the vicinity of NEF regarding operations at the nearby Nature's Needs Composting Facility. Nature's Needs is located approximately two miles away. However, the County has not received any odor complaints specifically attributed to NEF.

**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;*

Metro staff has visited NEF and is aware of how feedstocks are managed at the facility. Since NEF accepts only limited amounts food waste for processing, the waste does not pose the same potential environmental risk as waste being delivered for landfill disposal. There is no known evidence of any other wastes currently being accepted at NEF 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 will be 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 revealed a good record of compliance with local and state agencies responsible for health, safety, and environmental regulations. DEQ reports that the agency has not taken enforcement action against the NEF or received complaints regarding the facility's operation. Washington County also reports that no enforcement actions have been taken against NEF.

- (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 NEF to be adequate and consistent with other food waste processing facilities. Waste accepted at NEF is delivered in sealed containers and the majority of processing at NEF takes place in-vessel. NEF has provided

Metro with a copy of its Odor Minimization Plan required by Washington County. NEF has applied for and is currently in the process of obtaining a DEQ permit for its processing operation.

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

Approval of the proposed NSL is likely to have a positive impact on the region's recycling and waste reduction efforts because the waste will be delivered to NEF for the purpose of agricultural application rather than disposal. Approval of the NSL would result in organics processing capacity for the region, providing a benefit to the regional organics recovery program.

(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 of Oregon. The waste subject to the proposed license will be delivered to a processing facility rather than disposed at a general-purpose landfill. Thus, approval of the proposed license will not conflict with Metro's disposal contract or any other of its existing contractual arrangements.

(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 has a good record of compliance with local and state agencies responsible for health, safety, and environmental regulations. In November 2010, Metro discovered that NEF has annually accepted a small amount of source-separated food waste from the Metro region without obtaining an NSL. Metro has since notified the facility of the applicable Metro Code requirements and the operator has submitted an NSL application as required.

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

NEF will provide processing capacity for the region that supports Metro's goal of diverting organics away from disposal and into recovery outlets and is providing an innovative approach to processing organics (the bokashi method).

### **3. Anticipated Effects**

The effect of Resolution No. 12-4370 will be to authorize NEF to deliver up to 264 tons per calendar year of source-separated food waste to its own facility for processing. Should DEQ authorize a lesser annual tonnage limitation, the NSL will be modified to reflect the lesser amount.

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.

#### **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 processing 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.

Granting this non-system license would have no material fiscal impact on Metro because the *maximum* amount of food waste authorized under this license is negligible – less than two-hundredths of one percent of regional revenue tonnage. Furthermore, the historical diversion has already been factored into Metro's rates and budget – which further reduces any fiscal impact of granting this license.

#### **RECOMMENDED ACTION**

The COO recommends approval of Resolution No. 12-4370 finding that the license application 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.

WE":bjl  
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