

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A ) RESOLUTION NO. 15-4661  
RENEWED NON-SYSTEM LICENSE JOINTLY TO WILLAMETTE )  
RESOURCES, INC. AND REPUBLIC SERVICES OF CLACKAMAS AND ) Introduced by Martha J. Bennett,  
WASHINGTON COUNTIES FOR THE DELIVERY OF SOURCE- ) Chief Operating Officer, with the  
SEPARATED FOOD WASTE TO THE PACIFIC REGION COMPOST ) concurrence of Tom Hughes,  
FACILITY LOCATED NEAR CORVALLIS, OREGON ) 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, Willamette Resources, Inc. and Republic Services of Clackamas and Washington Counties hold Metro Solid Waste Facility Non-System License No. N-005-14(4)A which expires on December 31, 2015; and

WHEREAS, Willamette Resources, Inc. and Republic Services of Clackamas and Washington Counties have filed a complete application seeking a renewed non-system license to deliver source-separated food waste to 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 Metro issue a renewed non-system license to Willamette Resources, Inc. and Republic Services of Clackamas and Washington Counties with specific conditions as provided in Exhibit A to this Resolution; now therefore,

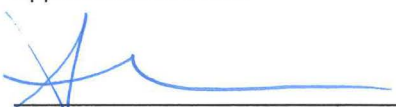
THE METRO COUNCIL RESOLVES AS FOLLOWS:

1. The non-system license renewal application of Willamette Resources, Inc. and Republic Services of Clackamas and Washington Counties 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 Willamette Resources, Inc. and Republic Services of Clackamas and Washington Counties a renewed Solid Waste Facility Non-System License substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this 3rd day of December, 2015.

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

Approved as to Form:

  
\_\_\_\_\_  
Alison R. Kean, Metro Attorney

Resolution No. 15-4661

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-005-16(4)**

<b>LICENSEE:</b>		
Willamette Resources, Inc. 10295 SW Ridder Road Wilsonville, OR 97070	Republic Services of Clackamas and Washington Counties 10295 SW Ridder Road Wilsonville, OR 97070	
<b>CONTACT PERSON:</b>		
Jason Jordan Phone: (503) 570-0626 ex. 228 Fax: (503) 682-9505 E-mail: <a href="mailto:jjordan4@republicservices.com">jjordan4@republicservices.com</a>	Brian May (503) 404-2131 (503) 570-0523 <a href="mailto:bmay@republicservices.com">bmay@republicservices.com</a>	Frank Lonergan (503) 404-2135 (503) 682-9505 <a href="mailto:flonergan@republicservices.com">flonergan@republicservices.com</a>
<b>MAILING ADDRESS:</b>		
Willamette Resources, Inc. 10295 SW Ridder Road Wilsonville, OR 97070	Republic Services of Clackamas and Washington Counties 10295 SW Ridder Road Wilsonville, OR 97070	

**ISSUED BY METRO:**

\_\_\_\_\_  
Paul Slyman,  
Property and Environmental Services Director

\_\_\_\_\_  
Date

<b>1</b>	<b>NATURE OF WASTE COVERED BY LICENSE</b>
	<p>(a) Source-separated, commercial food waste generated within the Metro boundary and received at Willamette Resources, Inc. in accordance with its Metro Solid Waste Facility Franchise; and</p> <p>(b) Source-separated, commercial food waste that is generated within the Metro region and collected by Republic Services 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 20,000 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, 2016 and expire at midnight on December 31, 2017, 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 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</p>

	<p>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.</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 waste that the Licensee delivers to the non-system facility described in Section 3 of this license. These records include the information specified in <u>Reporting Requirements and Data Standards for Metro Solid Waste Licensees, Franchisees, and Parties to Designated Facility Agreements.</u></p> <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 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; or</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> </ul> <p>(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.</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 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</p>

	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. 15-4661 FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED NON-SYSTEM LICENSE JOINTLY TO WILLAMETTE RESOURCES, INC. AND REPUBLIC SERVICES OF CLACKAMAS AND WASHINGTON COUNTIES FOR DELIVERY OF SOURCE-SEPARATED FOOD WASTE TO THE PACIFIC REGION COMPOST FACILITY LOCATED NEAR CORVALLIS, OREGON

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November 20, 2015

Prepared by: Will Ennis  
503-797-1667

Approval of Resolution No. 15-4661 will authorize the Chief Operating Officer (COO) to issue a two-year non-system license (NSL) jointly to Willamette Resources, Inc. (WRI) and Republic Services of Clackamas and Washington Counties (Republic) to annually deliver a maximum of 20,000 tons of source-separated, food waste to the Pacific Region Compost Facility (PRC) located at 29969 Camp Adair Road near Corvallis, Oregon. The proposed NSL is a renewal of an existing license that is set to expire on December 31, 2015.

## BACKGROUND

### 1. Overview

The applicant seeks to renew its NSL to transport source-separated food waste generated within the Metro region to PRC. PRC is a non-system composting facility 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).<sup>1</sup>

### 2. The Applicant

Republic Services, Inc., (RSI) is the parent company of WRI, Republic, and PRC. RSI is a waste management company headquartered in Phoenix, Arizona. RSI is also the contract operator for the Metro South Transfer Station.

In December 2013, the Metro Council granted an NSL<sup>2</sup> jointly to WRI and Republic to annually deliver up to 12,000 tons of source-separated commercial food waste to PRC. The NSL commenced on January 1, 2014, and will expire on December 31, 2015. In October 2015, the applicant requested a change of authorization to increase its annual tonnage limitation up to 14,000 tons (a 2,000-ton increase) due to increased customer demand. Metro subsequently approved the increase and amended the NSL<sup>3</sup> in November 2015. The amended NSL, which authorizes a 14,000-ton limit, will expire on December 31, 2015. Under the current NSL, the Licensee delivered about 8,800 tons of food waste to PRC in calendar year 2014 and approximately 10,400 tons through September of calendar year 2015.

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<sup>1</sup> Metro Code Section 5.05.040

<sup>2</sup> Non-System License No. N-005-14(4)

<sup>3</sup> Non-System License No. N-005-14(4)A



On October 8, 2015, the applicant submitted an application to Metro seeking the renewal of its current NSL and requested a 6,000-ton increase in tonnage authorization (for a total of 20,000 tons per calendar year). The requested increase is in response to greater amounts of commercial food waste resulting from increased company outreach and education.

## **ANALYSIS/INFORMATION**

### **1. Known Opposition**

There is no known opposition to the proposed NSL.

### **2. Legal Antecedents**

Metro Code Section 5.05.043 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 an established yard debris and food waste composting facility that is well known to Metro staff. The facility accepts composting feedstock that consists primarily of source-separated food waste, yard debris, and wood waste.

The facility initially began accepting food waste from its affiliated haulers within the Willamette Valley (i.e., Corvallis, Albany and Salem) in November 2009. In early 2010, PRC began accepting Metro-area food waste that was delivered under authority of NSLs. In 2011, the facility began accepting commercial food waste from the Metro South Transfer Station. Prior to the end of 2009, PRC accepted only wood waste and yard debris for composting.

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 as described below.

- (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;*

PRC is permitted by the Oregon Department of Environmental Quality (DEQ). DEQ staff report that the facility is currently in compliance with the terms of its solid waste permit. 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 during the term of the current NSL.

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

PRC operates under the authority of a Solid Waste Disposal Site Permit: Composting Facility issued by DEQ. The facility manages all of the waste it receives, including commercial food waste, 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 continue having a positive impact on the region's recycling and waste reduction efforts.

*(5) The consistency of issuing the license 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, RSI 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*

Metro issued Notices of Violation (NOVs) to the applicant in October 2014 and April 2015.<sup>4</sup> The violations were cited for operational issues at WRI and were unrelated to the requirements of NSL No. N-005-14(4)A. The violations have since been resolved and the applicant is currently in compliance with all of Metro's solid waste regulations. Notwithstanding the above-referenced NOVs, 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.

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

The proposed NSL will renew the applicant's current authorization and grant a 6,000-ton increase in the tonnage limit to account for greater amounts of food waste. 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.

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<sup>4</sup> NOV Nos. NOV-360-14 and NOV-377-15.

### **3. Anticipated Effects**

The effect of Resolution No. 15-4661 will be to issue a renewed NSL jointly to WRI and Republic to deliver up to 20,000 tons per calendar year of source-separated commercial food waste to PRC for composting. This proposed NSL is one of three organics-related action items currently under consideration by Metro Council which contributes to reducing the amount of solid waste disposed in landfills.

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

The source-separated food waste that will be delivered to PRC under authority of this proposed NSL is exempt from the Metro Regional System Fee and Excise Tax (RSF and ET). Metro's 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 recovery of food waste, will in general increase those RSF and ET rates. Waste diversion will also affect other disposal prices (i.e., 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.

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 financial impact of the previously-authorized 12,000 tons has already been factored into the budget. The effect of the additional 8,000 tons (including the 2015 tonnage increase) will be factored into the FY 2016-17 budget and rates next spring.

### **RECOMMENDED ACTION**

The COO recommends approval of Resolution No. 15-4661 finding that the license renewal satisfies the requirements of Metro Code Section 5.05.043, and issuance of an NSL substantially similar to the proposed NSL attached to the resolution as Exhibit A.

WE:bjl  
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