

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING ) RESOLUTION NO. 17-4802  
OFFICER TO AMEND A NON-SYSTEM LICENSE TO FOREST )  
GROVE TRANSFER STATION FOR TRANSPORT AND DISPOSAL ) Introduced by Chief Operating  
OF PUTRESCIBLE WASTE AT THE COFFIN BUTTE LANDFILL ) Officer Martha Bennett with the  
LOCATED IN BENTON COUNTY OR THE COLUMBIA RIDGE ) concurrence of Council President  
LANDFILL LOCATED IN GILLIAM COUNTY ) Tom Hughes

WHEREAS, the Metro Code Chapter 5.05 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, Forest Grove Transfer Station holds Metro Solid Waste Facility Non-System License No. N-010-16A, which currently expires on June 30, 2017; and which authorizes Forest Grove Transfer Station to transport putrescible waste for disposal to Coffin Butte Landfill or Columbia Ridge Landfill; and

WHEREAS, Forest Grove Transfer Station's current non-system license had also authorized transport of putrescible waste to Riverbend Landfill in certain unusual circumstances, but only through April 1, 2017; and

WHEREAS, references to Riverbend Landfill should be removed from the non-system license because it is not accepting waste from the Metro region for the term of this non-system license; and

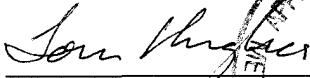
WHEREAS, Metro Code Chapter 5.05 provides that the Chief Operating Officer will review an amendment for a non-system license for putrescible waste and that Metro Council has authority to approve or deny the amendment; and

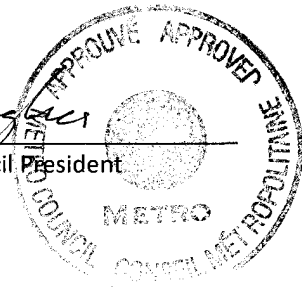
WHEREAS, the Chief Operating Officer recommends that Metro Council approve amendment of the non-system license to extend the term through December 31, 2018 and remove references to Riverbend Landfill, together with specific conditions as provided in this Resolution and Exhibit A; now therefore,

THE METRO COUNCIL RESOLVES AS FOLLOWS:


1. The non-system license amendment of Forest Grove Transfer Station non-system license is approved subject to the terms, conditions, and limitations contained in this Resolution and Exhibit A.
2. The Chief Operating Officer is authorized to amend a Solid Waste Facility Non-System License substantially similar to the one attached as Exhibit A which replaces and supersedes the current non-system license.

ADOPTED by the Metro Council this 15 day of June, 2017.

  
Tom Hughes, Council President



Approved as to Form:

  
Alison R. Kean, Metro Attorney



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

**No. N-010-16B**

<b>LICENSEE:</b>	
Waste Management of Oregon, Inc. dba Forest Grove Transfer Station 1525 B Street Forest Grove, OR 97116	
<b>CONTACT PERSON:</b>	
	Kirk W. Duncan
Phone:	(503) 992-3015
Fax:	(503) 357-4822
E-mail:	<a href="mailto:kduncan2@wm.com">kduncan2@wm.com</a>
<b>MAILING ADDRESS:</b>	
Waste Management of Oregon, Inc. dba Forest Grove Transfer Station 1525 B Street Forest Grove, OR 97116	

This non-system license replaces and supersedes the provisions of Metro Solid Waste Facility Non-System License No. N-010-16A.

**ISSUED BY METRO:**

\_\_\_\_\_  
Martha Bennett  
Chief Operating Officer

\_\_\_\_\_  
Date



<b>1</b>	<b>NATURE OF WASTE COVERED BY LICENSE</b>
	Putrescible solid waste that is generated within the Metro region and received at Forest Grove Transfer Station in accordance with its Metro solid waste facility franchise.

<b>2</b>	<b>CALENDAR YEAR TONNAGE ALLOCATION</b>
	The licensee is authorized to transport to the non-system facilities described in Section 3 up to 125,000 tons per calendar year of the waste described in Section 1. This license does not increase the total tonnage that the licensee is authorized to accept under its Metro solid waste facility franchise.

<b>3</b>	<b>NON-SYSTEM FACILITIES</b>
	<p>(a) Effective December 16, 2016, through December 31, 2018, the licensee is authorized to transport the waste described above in Section 1 to the following non-system facilities:</p> <ul style="list-style-type: none"><li>i. <u>Columbia Ridge Landfill</u> located at 18177 Cedar Springs Lane in Arlington, Oregon;</li><li>ii. <u>Coffin Butte Landfill</u> located at 28972 Coffin Butte Road in Corvallis, Oregon;</li></ul> <p>and</p> <p>(b) 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 the Oregon Department of Environmental Quality that these non-system facilities are not authorized to accept such waste, Metro may immediately terminate this license pursuant to Section 7.</p> <p>(c) Metro’s Chief Operating Officer (the “COO”) may amend this section and any other applicable section to authorize an alternate non-system facility if the COO determines that the solid waste system or the public will benefit from, and will be better served by, transporting the waste described in this license to a facility other than those listed in this section.</p>

<b>4</b>	<b>TERM OF LICENSE</b>
	The term of this license originally commenced on December 16, 2016, and expires on December 31, 2018, unless terminated sooner under Section 7.



<b>5</b>	<b>REPORTING OF ACCIDENTS AND CITATIONS</b>
	The licensee must 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 must keep and maintain accurate records of the amount of all waste that the licensee transports to the non-system facilities described in Section 3. These records include the information specified in the Metro document titled, <u>Reporting Requirements and Data Standards for Metro Solid Waste Licensees, Franchisees, and Parties to Designated Facility Agreements</u>.</p> <p>(b) The licensee must perform the following no later than fifteen days following the end of each month:</p> <ul style="list-style-type: none"><li>i. Transmit to Metro the records required under Section 6(a) above 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 Taxes in accordance with the Metro Code provisions applicable to the collection, payment, and accounting of such fees and taxes.</li></ul> <p>(c) The licensee must make available to Metro (or Metro's designated agent) all records from which Sections 6(a) and 6(b) above are derived for its inspection or copying, as long as Metro provides at least three business days written notice of an intent to inspect or copy documents. The licensee must, 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.</p>

<b>7</b>	<b>ADDITIONAL LICENSE CONDITIONS</b>
	<p>This license is subject to the following conditions:</p> <p>(a) The permissive transport of solid waste to the non-system facilities, listed in Section 3, authorized by this license is subordinate to any subsequent decision by Metro to direct the solid waste described in this license to any other facility.</p> <p>(b) The COO may amend or terminate this license 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></ul>



	<ul style="list-style-type: none"> <li>ii. The provisions of this license are actually or potentially in conflict with any provision in Metro’s disposal contract with 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 be transported to, and disposed of at, a facility other than the facilities listed in Section 3; or</li> <li>iv. There has been a change in the amount of tonnage that the licensee is authorized to accept under its Metro solid waste facility franchise. In the event that Metro amends the tonnage authorization provided in the facility’s franchise, the COO may amend Section 2 of this license to match the same calendar year tonnage limitation in the franchise.</li> </ul> <ul style="list-style-type: none"> <li>(c) This license, in addition to subsections (d)(i) through (d)(iv), above, is subject to amendment, suspension, or termination pursuant to the Metro Code.</li> <li>(d) The licensee must 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 will terminate upon the execution of a designated facility agreement with any of the facilities listed in Section 3 that authorizes the acceptance of the waste described in Section 1.</li> <li>(f) This license authorizes the transport of solid waste to the facilities listed in Section 3. Transport of waste generated from within the Metro boundary to any non-system facility other than those specified in this license is prohibited unless authorized in writing by Metro.</li> <li>(g) If the licensee exceeds the calendar year limitation set forth in Section 2, each ton or portion thereof by which the licensee exceeds the limitation constitutes a separate violation subject to a penalty of up to \$500.</li> </ul>
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<b>8</b>	<b>COMPLIANCE WITH LAW</b>
	<p>The licensee must 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 rules 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 is deemed part of this license as if specifically set forth herein.</p>



<b>9</b>	<b>INDEMNIFICATION</b>
	<p>The licensee must 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. 17-4802 FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO AMEND A NON-SYSTEM LICENSE TO FOREST GROVE TRANSFER STATION FOR TRANSPORT AND DISPOSAL OF PUTRESCIBLE WASTE AT THE COFFIN BUTTE LANDFILL LOCATED IN BENTON COUNTY OR THE COLUMBIA RIDGE LANDFILL LOCATED IN GILLIAM COUNTY

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June 1, 2017

Prepared by: Roy W. Brower  
503-797-1657

Approval of Resolution No. 17-4802 will authorize the Chief Operating Officer (COO) to amend an existing non-system license (NSL),<sup>1</sup> similar to the proposed amended license attached to this resolution as Exhibit A, to Forest Grove Transfer Station (FGTS). The proposed amendments would extend the term of the NSL until December 31, 2018, and remove the use of Riverbend Landfill (Riverbend) as a disposal option. The proposed amended NSL will authorize FGTS to transport up to 125,000 tons per calendar year of putrescible waste from the Metro region to the Coffin Butte Landfill (Coffin Butte) located in Benton County or the Columbia Ridge Landfill (Columbia Ridge) located in Gilliam County, Oregon. The licensee will no longer be authorized to transport putrescible waste to Riverbend located in Yamhill County, Oregon for the remaining term of the license. The proposed NSL becomes effective immediately upon issuance, and expires on December 31, 2018. It is one of five similar amendments for Metro Council consideration.<sup>2</sup>

FGTS is a Metro-franchised<sup>3</sup> solid waste transfer station located at 1525 B Street in Forest Grove (Metro Council District 4). FGTS and Columbia Ridge are owned and operated by Waste Management of Oregon, Inc. (Waste Management) headquartered in Houston, Texas. Coffin Butte is owned by Republic Services headquartered in Phoenix, Arizona.

## BACKGROUND

On December 13, 2016, the Metro Council approved an NSL that authorized FGTS to transport putrescible waste to either Columbia Ridge or Riverbend.<sup>4</sup> Effective February 1, 2017, the NSL required the licensee to send its waste primarily to Columbia Ridge and use Riverbend only in certain unusual circumstances that would otherwise prevent the licensee from transporting waste to Columbia Ridge. This requirement was included in the NSL in response to limited disposal capacity and legal uncertainty regarding future expansion at Riverbend.

The NSL included a provision that authorized the Chief Operating Officer to direct each licensee to transport its waste to an alternate landfill, if necessary, to better serve the public and minimize disruption to the solid waste system. At the end of January 2017, Metro was notified that Waste Management and Republic Services had entered into a “waste swap” agreement in another part of the United States. This swap enabled Waste Management to send all of its Riverbend Metro-area customers to Coffin Butte upon Metro’s approval.

Therefore effective February 1, 2017, the COO amended the FGTS license to authorize the use of Coffin Butte, as well as Columbia Ridge. After a transition period, on April 1, 2017, Riverbend was only to be

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<sup>1</sup> NSL No. N-010-16A.

<sup>2</sup> Resolution No. 17-4803, Resolution No. 17-4804, Resolution No. 17-4805, Resolution No. 17-4806

<sup>3</sup> Metro Solid Waste Facility Franchise No. F-004-08D

<sup>4</sup> Forest Grove Transfer Station (Resolution No. 16-4739).

used under unusual circumstances and emergency situations that would otherwise prevent FGTS from transporting waste to Coffin Butte or Columbia Ridge – provided timely and appropriate notice was given to Metro.

Adoption of Resolution No. 17-4802 would authorize the COO to amend the NSL to remove Riverbend as a disposal option and extend the NSL term an additional 18 months. The proposed NSL would authorize FGTS to transport Metro-area putrescible waste to either Coffin Butte or Columbia Ridge. The proposed NSL includes a 125,000-ton limit to align it with FGTS's 2017 franchise tonnage allocation, but the NSL also authorizes the COO to make additional adjustments to the tonnage amount if necessary to align it with the franchise tonnage allocation in the future.

## **ANALYSIS/INFORMATION**

### **1. Known Opposition**

There is no known opposition to the issuance of an NSL authorizing the delivery of waste to Coffin Butte or Columbia Ridge. Metro staff met with Benton County officials on February 14, 2017 to discuss the waste shift from Riverbend to Coffin Butte. The county's staff has reported that the landfill is in compliance with local requirements and the county does not object to solid waste being received from the Metro region at the landfill during the term of the NSL.

Although approval of Resolution No. 17-4802 would authorize FGTS to transport waste to two landfills, the proposed NSL does not obligate either landfill to accept Metro-area waste. Additionally, adoption of the proposed resolution does not limit Metro's ability to terminate the NSL if either landfill is unable or unwilling to accept this waste in the future.

### **2. Legal Antecedents**

Metro Code Section 5.05.040 prohibits any person from utilizing non-system facilities without an appropriate license from Metro. Additionally, Metro Code Section 5.05.140 provides that, when determining whether or not to approve an NSL application, the Metro Council will 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 disposal sites (Columbia Ridge and Coffin Butte) are well known to Metro. The disposal sites are owned and operated by major, nationally-integrated solid waste companies: one of which serves as Metro's disposal contractor and one serves as Metro's contract operator of the Metro South Transfer Station in Oregon City. Columbia Ridge is a permitted RCRA Subtitle D<sup>5</sup> landfill since 1993. Coffin Butte first came into use during the 1940s and became a permitted RCRA Subtitle D landfill in 1993.

The environmental risk associated with the use of these disposal sites is regulated by the appropriate local and state authorities. It has been Metro's practice to rely on the local land use authority and the state environmental agency to determine whether environmental or human health risks posed are known, reasonable and appropriate.

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<sup>5</sup> Subtitle D landfill standards are established nationally under the Resource Conservation and Recovery Act (RCRA).



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

Waste Management owns and operates Columbia Ridge and Republic Services owns and operates Coffin Butte. Metro staff's investigation of both Waste Management and Republic Services has revealed a good record of compliance with local and state agencies responsible for health, safety, and environmental regulations.

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

Both Coffin Butte and Columbia Ridge use operational practices and management controls that are typical of RCRA Subtitle D landfills. Staff at the DEQ considers the operational practices and controls in place at these landfills to be appropriate for the proper management of waste disposal and adequate for the protection of health and the environment.

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

The proposed license authorizes the transport and disposal of putrescible solid waste, which currently has limited recovery potential. The license puts no long-term constraint 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 proposed non-system license's effect with Metro's existing contractual arrangements;*

Through 2019, Metro has a contractual agreement 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 Waste Management. The proposed NSL covers putrescible waste that will be delivered to either Columbia Ridge (which is owned and operated by Waste Management) or Coffin Butte. Waste Management and Metro agreed that the waste diverted to Coffin Butte under this NSL would count toward the 90 percent flow guarantee and be calculated in determining Metro's disposal rate.<sup>6</sup> Thus, approval of this NSL will not conflict with Metro's disposal contract or any other of its existing contractual arrangements.

- (6) *The applicant's record 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*

FGTS was issued a notice of noncompliance by Metro on April 8, 2017 for continuing to send solid waste to Riverbend after April 1, 2017, in violation of the NSL conditions. FGTS has paid the penalty and is currently in compliance with its Metro-issued franchise and NSL. FGTS has had no violations related to public health, safety or environmental regulations during the term of the existing license.

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<sup>6</sup> Amendment No. 10 to disposal contract between Metro and Waste Management, April 21, 2017.

(7) *Any other factor the Chief Operating Officer considers appropriate.*

The proposed NSL authorizes the transport of up to 125,000 tons per year of putrescible waste to Coffin Butte and Columbia Ridge for the remainder of 2017 and calendar year 2018. In the event that Metro later amends the franchise tonnage authorization, the COO may also amend Section 2 of the NSL as necessary to make it the same as the annual tonnage authorization in the franchise. This provision, which is carried forward from the current NSL, allows for the COO to administratively match the NSL tonnage authorization with that of the franchise when necessary.

### **3. Anticipated Effects**

The effect of Resolution No. 17-4802 will be to amend an NSL authorizing FGTS to transport up to 125,000 tons per calendar year of putrescible waste to either Coffin Butte or Columbia Ridge for disposal. The proposed NSL would extend the current termination date from June 30, 2017 to December 31, 2018.

### **4. Budget Impacts**

Coffin Butte is owned and operated by Republic Services and, for the term of this license, waste delivered to the landfill under this NSL will be treated as though it was delivered to a Waste Management landfill.<sup>7</sup> Columbia Ridge is owned and operated by Waste Management and this NSL will not impact Metro's obligations under its disposal contract. The regional system fee and excise tax will continue to be collected on Metro-area waste delivered to Columbia Ridge and Coffin Butte under the proposed NSL.

## **RECOMMENDED ACTION**

The COO recommends approval of Resolution No. 17-4802, finding that the license extension and amendment satisfies the requirements of Metro Code Chapter 5.05. Approval of Resolution No. 17-4802 will authorize the COO to issue an NSL, similar to the one attached to the resolution as Exhibit A, to FGTS for an 18 month period commencing immediately upon issuance and expiring on December 31, 2018.

RB/HR

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<sup>7</sup> Amendment No. 10 to disposal contract between Metro and Waste Management, April 21, 2017.