

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE CHIEF) RESOLUTION NO. 18-4919
OPERATING OFFICER TO EXTEND THE TERM OF THE NON-)
SYSTEM LICENSE TO ARROW SANITARY SERVICE, INC. FOR) Introduced by Chief Operating
TRANSPORT OF PUTRESCIBLE WASTE TO THE WEST VAN) Officer Martha Bennett in
MATERIALS RECOVERY CENTER AND THE CENTRAL) concurrence with Council
TRANSFER AND RECYCLING CENTER LOCATED IN CLARK) President Tom Hughes
COUNTY, WASHINGTON)

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. holds Metro Solid Waste Facility Non-System License No. N-029-17A, which expires on December 31, 2018; and

WHEREAS, Arrow Sanitary Service, Inc.'s non-system license authorizes the transport of putrescible waste to the West Van Materials Recovery Center and the Central Transfer and Recycling Center for the purpose of transfer and disposal at Finley Buttes Landfill and Wasco County Landfill; 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, 2019, and carry forward specific conditions as provided in this Resolution and Exhibit A; now therefore,

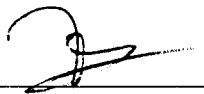
BE IT RESOLVED that (1) the amendment of Arrow Sanitary Service, Inc.'s non-system license is approved subject to the terms, conditions, and limitations contained in this Resolution and Exhibit A, (2) the Chief Operating Officer is authorized to issue an amended Solid Waste Facility Non-System License substantially similar to the one attached as Exhibit A which replaces and supersedes the current non-system license for Arrow Sanitary Service, Inc.

ADOPTED by the Metro Council this 15th day of November, 2018.



Tom Hughes, Council President

Approved as to Form:



Nathan A. S. Sykes, Acting Metro Attorney



600 NE Grand Ave.
Portland, OR 97232-2736
oregonmetro.gov

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

No. N-029-17B

LICENSEE:	
	Arrow Sanitary Service, Inc. 12820 NE Marx Street Portland, OR 97230
CONTACT PERSON:	
	Josh Brown
Phone:	(406) 210-8639
Fax:	(503) 257-8699
E-mail:	joshb@wcnx.com
MAILING ADDRESS:	
	Arrow Sanitary Service, Inc. 12820 NE Marx Street Portland, OR 97230

This non-system license replaces and supersedes the provisions of Metro Solid Waste Facility Non-System License No. N-029-17A.

ISSUED BY METRO:

Martha Bennett,
Chief Operating Officer

Date

1	NATURE OF WASTE COVERED BY LICENSE
	Putrescible solid waste that is generated by residential and commercial customers within the Metro region and collected by Arrow Sanitary Service, Inc.
2	CALENDAR YEAR TONNAGE ALLOCATION
	<p>The licensee is authorized to transport the waste described in Section 1 to the non-system facilities described in Section 3 as follows:</p> <ul style="list-style-type: none">(a) For calendar year 2018, beginning January 1, 2018, and ending December 31, 2018, the licensee is authorized to transport up to 25,601 tons; and(b) For calendar year 2019, beginning January 1, 2019, and ending December 31, 2019, the licensee is authorized to transport up to 25,601 tons.
3	NON-SYSTEM FACILITIES
	<p>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">West Van Materials Recovery Center 6601 NW Old Lower River Road Vancouver, WA 98660Central Transfer and Recycling Center 11034 NE 117th Avenue Vancouver, WA 98661 <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.</p>
4	TERM OF LICENSE
	The term of this license originally commenced on January 1, 2017 and will expire on December 31, 2019, unless terminated sooner under Section 7.

5	REPORTING OF ACCIDENTS AND CITATIONS
	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.

6	RECORD KEEPING AND REPORTING
	<p>(a) The licensee must keep and maintain accurate records of the amount of all solid waste that the licensee transports to the non-system facilities described in Section 3. These records must 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">i. Transmit to Metro the records required under Section 6(a) above in an electronic format prescribed by Metro;ii. Submit to Metro a Regional System Fee and Excise Tax Report, that covers the preceding month; andiii. Remit to Metro the requisite Regional System Fee and Excise Tax in accordance with the Metro Code provisions applicable to the collection, payment, and accounting of such fees and taxes. <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> <p>(d) Metro may require the licensee to report the information required by this section on a weekly or daily basis.</p>

7	ADDITIONAL LICENSE CONDITIONS
	<p>This license is subject to the following conditions:</p> <ul style="list-style-type: none">(a) The permissive transfer 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.(b) This COO may amend or terminate this license in the event that the COO

	<p>determines that:</p> <ul style="list-style-type: none"> i. There has been sufficient change in any circumstances under which Metro issued this license; 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.; or iii. Metro’s solid waste system or the public will benefit from, and will be better served by, an order directing that the waste described in Section 1 be transferred to, and disposed of at, a facility other than the facilities listed in Section 3. <p>(c) This license is, in addition to subsections (b)(i) through (b)(iii), above, subject to amendment, suspension, or termination pursuant to the Metro Code.</p> <p>(d) The licensee must 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 will terminate upon the execution of a designated facility agreement with either of the facilities listed in Section 3 that authorizes the acceptance of the waste described in Section 1.</p> <p>(f) This license authorizes the transport of solid waste to the facilities listed in Section 3. The transport 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 authorization 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.</p>
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8	COMPLIANCE WITH LAW
	<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 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 is deemed part of this license as if specifically set forth herein.</p>

9	INDEMNIFICATION
	<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>

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STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 18-4919 AUTHORIZING THE CHIEF OPERATING OFFICER TO EXTEND THE TERM OF THE NON-SYSTEM LICENSE TO ARROW SANITARY SERVICE, INC. FOR TRANSPORT OF PUTRESCIBLE WASTE TO THE WEST VAN MATERIALS RECOVERY CENTER AND THE CENTRAL TRANSFER AND RECYCLING CENTER LOCATED IN CLARK COUNTY, WASHINGTON

October 31, 2018

Prepared by: Warren Johnson
(503) 797-1836

If the Metro Council approves Resolution No. 18-4919, it will authorize the Chief Operating Officer (COO) to issue an amended non-system license (NSL) to Arrow Sanitary Service, Inc. (Arrow) to (1) extend the term of its NSL by one year to expire on December 31, 2019, and (2) to authorize Arrow to transport up to 25,601 tons per calendar year of putrescible waste to either the West Van Materials Recovery Center (West Van) or the Central Transfer and Recycling Center (Central Transfer), located in Clark County, Washington. The proposed license carries forward the current license conditions and continues to authorize Arrow to transport putrescible waste from the Metro region to West Van and Central Transfer for the purpose of transfer and disposal at the Finley Buttes Landfill (Finley Buttes) located in Morrow County, Oregon, and the Wasco County Landfill (Wasco) located in Wasco County, Oregon.

Arrow is a solid waste hauler that is franchised to collect solid waste within the cities of Portland and Gresham, and in unincorporated Clackamas County. Arrow, West Van, Central Transfer, Finley Buttes, and Wasco are all owned by Waste Connections, Inc., a waste management company headquartered in The Woodlands, Texas.

BACKGROUND

NSLs are the main vehicles by which Metro manages the flow of solid waste transported to facilities located outside the Metro regional boundary because they allow Metro to closely monitor and potentially guide waste flows to authorized facilities for a higher level of control and faster response to changing conditions. Metro and Waste Management are parties to a disposal contract through the end of 2019 that requires Metro to deliver 87 percent of the region's putrescible waste, that is delivered to a general purpose landfill during the calendar year, to a landfill owned by Waste Management (the "flow guarantee").¹ This proposed NSL covers a portion of the 13 percent of uncommitted waste not guaranteed to Waste Management under the disposal contract.

Metro has a longstanding policy of allocating its uncommitted putrescible waste tonnage to applicants that request it. Over the last several years, Metro has allocated its uncommitted tonnage to licensees based on Metro's solid waste tonnage forecast and the amount of waste that each licensee controlled during the previous 12-month period. Metro would allocate a proportional share of the uncommitted tonnage to each licensee and release it during the year. Under that methodology, each licensee initially received 85 percent of its tonnage allocation at the beginning of the calendar year and Metro would hold the remaining 15 percent in reserve for potential release by the COO later if it was in the public's interest and the uncommitted tonnage was actually available as forecasted.

¹ Change Order No. 11 to Metro Contract No. 900607, October 1, 2018.

In 2017, Arrow received an initial tonnage authorization of 25,601 tons for the calendar year. However, the COO did not release any reserve tonnage to the licensee that year because Arrow did not demonstrate a need for any additional tonnage. In 2018, the COO carried forward the same 25,601 tonnage allocation that Arrow initially received in 2017 and notified the licensee that Metro did not intend to release additional tonnage to current licensees during the year unless tonnage was available and there was a demonstrated need.

The COO recommends that the Metro Council maintain the status quo and extend the term of the NSL until December 31, 2019, and carry forward the same annual tonnage authorization of 25,601 tons for calendar year 2019.

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition to the proposed license extension. Although approval of Resolution No. 18-4919 would extend Arrow's authorization to transport waste to West Van and Central Transfer, the proposed NSL does not obligate either facility to accept Metro-area waste. Additionally, the proposed resolution does not limit Metro's ability to terminate the NSL if the transfer stations or landfills are 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 to approve an NSL, the Metro Council will consider the following factors to the extent relevant.

- (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;*

Arrow, West Van, Central Transfer, Finley Buttes, and Wasco are well known to Metro. All of the above are owned and operated by a major, nationally-integrated solid waste company. Both landfills are permitted Subtitle D landfills under the Resource Conservation and Recovery Act (RCRA), which establishes national landfill standards.

The environmental risk associated with the use of these transfer stations and 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.

- (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 Connections operates West Van, Central Transfer, Finley Buttes, and Wasco. Metro staff's investigation of this company 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;*

West Van and Central Transfer use operational practices and management controls that are typical of transfer stations and that Metro considers adequate to protect health and the environment. Finley Buttes and Wasco use operational practices and management controls that are typical of RCRA Subtitle D landfills. DEQ staff considers the operational practices and controls in place at these landfills appropriate for the proper management and disposal of waste and adequate to protect health and the environment.

Clark County is the jurisdictional authority that oversees operations at West Van and Central Transfer. It is agreeable to allowing Arrow to continue transporting Metro-area waste to the above-mentioned facilities during the term of this license. The County intends to evaluate its solid waste system over the next two years to determine if there is adequate capacity to continue accepting out-of-county waste in the future. The County will continue to monitor West Van and Central Transfer and will notify Metro if it has any issues or concerns with the Metro-area waste covered under the proposed NSL.

(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 if recovery alternatives emerge for the region. Thus, approval of the proposed license extension 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;*

As previously explained above, Metro and Waste Management are parties to a disposal contract that includes a flow guarantee. NSLs are the main vehicles by which Metro manages this contractual obligation. This proposed NSL controls a portion of the uncommitted waste not guaranteed to Waste Management under the disposal contract. Metro's contract with Waste Management expires at the end of 2019. Provisions in the NSL allow Metro to monitor compliance with its disposal contract.

(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*

Arrow is currently in compliance with its Metro-issued NSL. Arrow has not had any compliance issues with regard to Metro requirements or other regulations related to public health, safety, or the environment during the term of the current license.

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

The COO finds that it is in the public's interest to extend the term of the current NSL by one year in order to align it with the term of Metro's disposal contract which expires on December 31, 2019, and to establish an annual tonnage authorization of 25,601 tons per calendar year. With the exception of the above-mentioned amendments, the proposed license carries forward the current license conditions.

3. Anticipated/Potential Effects

Approval of Resolution No. 18-4919 will authorize the COO to issue an amended NSL to Arrow to extend the term of the license by one year to expire on December 31, 2019. The proposed NSL would authorize Arrow to transport up to 25,601 tons per calendar year of putrescible waste to either the West Van or the Central Transfer for consolidation and transfer to either Finley Buttes or Wasco for disposal.

4. 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. In general, Metro's longstanding practice of allocating the uncommitted tonnage to a non-Waste Management landfill increases the tip fee at Metro's transfer stations more than if all of the uncommitted waste were to flow to a landfill owned by Waste Management. As previously explained, the proposed NSL covers a portion of the uncommitted waste that is not guaranteed under Metro's disposal contract (i.e., 25,601 tons per year transported to West Van and Central Transfer).

Metro's longstanding practice of granting NSLs for the uncommitted waste has already been factored into the budget. Additionally, all of the waste authorized under the proposed NSL will continue to be subject to Metro's regional system fee and excise tax.

RECOMMENDED ACTION

The COO recommends that the Metro Council approve Resolution No. 18-4919, finding that the proposed amendments to the NSL are in the public's interest and satisfies the requirements of Metro Code Chapter 5.05. Approval of Resolution No. 18-4919 will authorize the COO to issue an amended NSL to Arrow as attached to the resolution as Exhibit A.

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