

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE CHIEF	)	RESOLUTION NO. 18-4923
OPERATING OFFICER TO EXTEND THE TERM OF THE NON-	)	
SYSTEM LICENSE TO WEST LINN REFUSE AND RECYCLING,	)	Introduced by Chief Operating
INC. FOR TRANSPORT OF PUTRESCIBLE WASTE TO CANBY	)	Officer Martha Bennett in
TRANSFER AND RECYCLING, INC. FOR THE PURPOSE OF	)	concurrence with Council
TRANSFER AND DISPOSAL AT THE COLUMBIA RIDGE	)	President Tom Hughes
LANDFILL LOCATED IN GILLIAM COUNTY, OREGON, AND	)	
COFFIN BUTTE LANDFILL LOCATED IN BENTON COUNTY,	)	
OREGON	)	

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, West Linn Refuse and Recycling, Inc. holds Metro Solid Waste Facility Non-System License No. N-119-16B, which expires on December 31, 2018; and

WHEREAS, West Linn Refuse and Recycling, Inc.'s non-system license authorizes the transport and disposal of putrescible waste generated from within the Metro boundary to Canby Transfer and Recycling, Inc. for the purpose of transfer and disposal at Columbia Ridge Landfill and Coffin Butte 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 West Linn Refuse and Recycling, 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 West Linn Refuse and Recycling, Inc.

ADOPTED by the Metro Council this 15<sup>th</sup> day of November 2018.

  
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 Tom Hughes, Council President

Approved as to Form:

  
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 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-119-16C**

<b>LICENSEE:</b>	
West Linn Refuse and Recycling, Inc. 1600 SE 4 <sup>th</sup> Avenue Canby, OR 97013	
<b>CONTACT PERSON:</b>	
Andy Kahut	
Phone:	(503) 936-3743
Fax:	(503) 263-6477
E-mail:	<a href="mailto:akahut@kahutwasteservices.com">akahut@kahutwasteservices.com</a>
<b>MAILING ADDRESS:</b>	
West Linn Refuse and Recycling, Inc. P.O. Box 550 Canby, OR 97013	

This non-system license replaces and supersedes the provisions of Metro Solid Waste Facility Non-System License No. N-119-16B.

**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 by residential and commercial customers within the Metro region and collected by West Linn Refuse and Recycling, Inc.
<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 9,000 tons per calendar year of the waste described in Section 1.
<b>3</b>	<b>NON-SYSTEM FACILITIES</b>
	<p>The licensee is authorized to transport the waste described above in Section 1 to Canby Transfer and Recycling, Inc. (located at 1600 SE 4<sup>th</sup> Avenue in Canby, Oregon) for the purpose of transfer and disposal as provided below:</p> <ul style="list-style-type: none"><li>(a) The licensee is authorized to transport the waste described above in Section 1 to the following non-system facilities:<ul style="list-style-type: none"><li>i. <u>Columbia Ridge Landfill</u> located at 18177 Cedar Springs Lane in Arlington, Oregon; and</li><li>ii. <u>Coffin Butte Landfill</u> located at 28972 Coffin Butte Road in Corvallis, Oregon.</li></ul></li><li>(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.</li><li>(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.</li></ul>
<b>4</b>	<b>TERM OF LICENSE</b>
	The term of this license originally commenced on December 16, 2016, and expires on December 31, 2019, 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> <ul style="list-style-type: none"><li>(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.</li><li>(b) The COO may amend or terminate this license in the event that the COO determines that:</li></ul>

	<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 Oregon Waste Systems, Inc.; or</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.</li> </ul> <p>(c) This license, in addition to subsections (b)(i) through (b)(iii), above, is 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 any 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. 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.</p> <p>(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.</p>
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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,</p>

	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.
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## STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 18-4923 AUTHORIZING THE CHIEF OPERATING OFFICER TO EXTEND THE TERM OF THE NON-SYSTEM LICENSE TO WEST LINN REFUSE AND RECYCLING, INC. FOR TRANSPORT OF PUTRESCIBLE WASTE TO CANBY TRANSFER AND RECYCLING, INC. FOR THE PURPOSE OF TRANSFER AND DISPOSAL AT THE COLUMBIA RIDGE LANDFILL LOCATED IN GILLIAM COUNTY, OREGON, AND COFFIN BUTTE LANDFILL LOCATED IN BENTON COUNTY, OREGON

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October 31, 2018

Prepared by: Warren Johnson  
(503) 797-1836

If the Metro Council approves Resolution No. 18-4923, it will authorize the Chief Operating Officer (COO) to issue an amended non-system license (NSL) to West Linn Refuse and Recycling, Inc. (WLRR) to extend the term of its NSL by one year to expire on December 31, 2019. The amended license carries forward all of the current license conditions and continues to authorize WLRR to transport putrescible waste from the Metro region to Canby Transfer and Recycling, Inc. (Canby Transfer) for the purpose of transfer and disposal at the Columbia Ridge Landfill (Columbia Ridge) located in Gilliam County, Oregon, and the Coffin Butte Landfill (Coffin Butte) located in Benton County, Oregon.

WLRR and Canby Transfer are both affiliated with KB Recycling, Inc. headquartered in Canby, Oregon. KB Recycling also owns and operates a Metro-licensed material recovery facility located at 9602 SE Clackamas Road, in Clackamas (Metro Council District 2).<sup>1</sup>

## BACKGROUND

In December 2016, the Metro Council approved a short-term NSL that authorized WLRR to transport putrescible waste to Canby Transfer for consolidation and transfer to either Columbia Ridge or Riverbend Landfill (Riverbend).<sup>2</sup> The term began on December 16, 2016, and was initially set to expire on June 30, 2017. 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. The NSL included this requirement due to limited disposal capacity and legal uncertainty regarding future expansion at Riverbend. The NSL also authorized the COO to direct the 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, Waste Management notified Metro that it had entered into a “waste swap” agreement with Republic Services. As a result, Waste Management sought Metro’s approval to allow its current Riverbend customers to transport Metro area waste to Coffin Butte (owned by Republic Services) instead of Riverbend during the term of its waste swap agreement. The COO subsequently amended WLRR’s NSL to include Coffin Butte as an additional disposal site option.

In June 2017, the Metro Council amended WLRR’s NSL to remove Riverbend as a disposal site option and extend the license term until December 31, 2018.<sup>3</sup> The current NSL authorizes WLRR to transport up to 9,000 tons per calendar year of Metro-area putrescible waste to either Columbia Ridge or Coffin Butte for disposal.

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<sup>1</sup> Metro Solid Waste Facility License No. L-007-17

<sup>2</sup> Metro Resolution No. 16-4743

<sup>3</sup> Metro Resolution No. 17-4806

## ANALYSIS/INFORMATION

### 1. Known Opposition

There is no known opposition to issuing an NSL authorizing the transport and disposal of Metro-area waste at Columbia Ridge or Coffin Butte. Metro and Benton County staff have discussed the waste shifts from Riverbend to Coffin Butte. The County has not raised any objections to Metro area waste being disposed at Coffin Butte through 2019.

Although approval of Resolution No. 18-4923 would extend WLRR's authorization to transport waste to two landfills, the proposed NSL does not obligate either landfill to accept Metro-area waste. Additionally, 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, 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;*

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. 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 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;*

KB Recycling owns and operates Canby Transfer, Waste Management owns and operates Columbia Ridge, and Republic Services owns and operates Coffin Butte. Metro staff's investigation of these companies 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;*

Canby Transfer, Columbia Ridge, and Coffin Butte are permitted by DEQ. Canby Transfer uses operational practices and management controls that are typical of transfer stations. Columbia Ridge and Coffin Butte 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 sites appropriate for the proper management and disposal of waste and adequate to protect 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 if 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;*

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").<sup>4</sup> Metro and Waste Management have agreed that the waste transported to Coffin Butte under this NSL would count toward the flow guarantee and be used in the calculation for determining Metro's disposal rate. The proposed NSL covers putrescible waste that will be transported to either Columbia Ridge (which is owned and operated by Waste Management) or Coffin Butte. 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*

WLRR is currently in compliance with its Metro-issued NSL. WLRR has not had any compliance issues with regard to Metro requirements or other regulations related to public health, safety, or the environmental 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. With the exception of the proposed one-year term extension, the amended license carries forward all of the current license conditions and authorizes WLRR to transport putrescible waste from the Metro region to Canby Transfer for consolidation and transfer to Columbia Ridge and Coffin Butte for disposal.

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<sup>4</sup> Change Order No. 11 to Metro Contract No. 900607, October 1, 2018.

### **3. Anticipated Effects**

Approval of Resolution No. 18-4923 will authorize the COO to issue an amended NSL to WLRR to extend the term of the license by one year to expire on December 31, 2019. The proposed NSL would authorize WLRR to transport up to 9,000 tons per calendar year of putrescible waste to Canby Transfer for consolidation and transfer to either Columbia Ridge or Coffin Butte for disposal.

### **4. Budget Impacts**

As previously explained in this staff report, the waste that the licensee transports to either Columbia Ridge or Coffin Butte under this NSL will be considered as though it was delivered to a Waste Management-owned landfill for purposes of Metro's disposal contract. Therefore, the proposed one-year extension of the NSL term will not impact Metro's obligations under its disposal contract. In addition, 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. 18-4923, finding that the proposed one-year term extension of the NSL is in the public's interest and satisfies the requirements of Metro Code Chapter 5.05. Approval of Resolution No. 18-4923 will authorize the COO to issue an amended NSL to WLRR as attached to the resolution as Exhibit A.

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