

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE CHIEF	)	RESOLUTION NO. 18-4924
OPERATING OFFICER TO EXTEND THE TERM OF THE NON-	)	
SYSTEM LICENSE TO COR TRANSFER, LLC. FOR TRANSPORT	)	Introduced by Chief Operating
AND DISPOSAL OF PUTRESCIBLE WASTE AT THE WASCO	)	Officer Martha Bennett in
COUNTY LANDFILL LOCATED IN WASCO COUNTY, OREGON	)	concurrence with Council
AND UNDER CERTAIN UNUSUAL CIRCUMSTANCES TO	)	President Tom Hughes
COWLITZ COUNTY HEADQUARTERS LANDFILL LOCATED IN	)	
CASTLE ROCK, 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, COR Transfer, LLC holds Metro Solid Waste Facility Non-System License No. N-134-16B, which expires on December 31, 2018; and

WHEREAS, COR Transfer, LLC's non-system license authorizes the transport and disposal of putrescible waste generated from within the Metro boundary at Wasco County Landfill and, under certain unusual circumstances and emergency conditions, Cowlitz County Headquarters 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 COR Transfer, LLC'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 COR Transfer, LLC.

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-134-16C**

<b>LICENSEE:</b>
COR Transfer, LLC. 5726 NE 109 <sup>th</sup> Ave Portland, OR 97220
<b>CONTACT PERSON:</b>
Alando Simpson Phone: (503) 285-9940 E-mail: <a href="mailto:alando@cityofrosesdisposal.com">alando@cityofrosesdisposal.com</a>
<b>MAILING ADDRESS:</b>
COR Transfer, LLC. P.O. Box 301427 Gresham, OR 97220

This non-system license replaces and supersedes the provisions of Metro Solid Waste Facility Non-System License No. N-134-16B.

**ISSUED BY METRO:**

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

\_\_\_\_\_  
Date

<b>1</b>	<b>NATURE OF WASTE COVERED BY LICENSE</b>
	Putrescible solid waste and non-recoverable mixed non-putrescible waste generated by commercial customers within the Metro region and collected by City of Roses Disposal & Recycling.

<b>2</b>	<b>CALENDAR YEAR TONNAGE ALLOCATION</b>
	<p>The licensee is authorized to deliver the waste described in Section 1 to the non-system facilities described in Section 3 as follows:</p> <ul style="list-style-type: none"><li>(a) For calendar year 2018, beginning January 1, 2018, and ending December 31, 2018, the licensee is authorized to transport up 472 tons; and</li><li>(b) For calendar year 2019, beginning January 1, 2019, and ending December 31, 2019, the licensee is authorized to transport up 472 tons.</li></ul>

<b>3</b>	<b>NON-SYSTEM FACILITY</b>
	<p>The licensee is authorized to transport the waste described above in Section 1 to the following non-system facility:</p> <p style="padding-left: 40px;">Wasco County Landfill 2550 Steele Road The Dalles, OR 97058</p> <p>And, during certain unusual circumstances and emergency situations as described in Section 7, the licensee is authorized to deliver the above referenced waste to the following non-system facility:</p> <p style="padding-left: 40px;">Cowlitz County Landfill 3434 South Silver Lake Road Castle Rock, WA 98611</p> <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 the Oregon Department of Environmental Quality, Wasco County, Washington Environmental Health Unit, or Cowlitz County that either of these non-system facilities are not authorized to accept such waste, Metro may immediately terminate this license pursuant to Section 7.</p>

<b>4</b>	<b>TERM OF LICENSE</b>
	The term of this license originally commenced on July 1, 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 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"><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> <p>(d) Metro may require the licensee to report the information required by this section on a weekly or daily basis.</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:<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.; 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 transferred to, and disposed of at, a facility other than the facilities listed in Section 3.</li></ul></li><li>(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.</li><li>(d) The licensee must not transfer or assign any right or interest in this license without prior written approval of Metro.</li><li>(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.</li><li>(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.</li><li>(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.</li><li>(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.</li><li>(i) The licensee is authorized to transport putrescible waste to the Cowlitz County Landfill only during certain unusual circumstances and emergency situations, such as the closure of Interstate 84, which would prevent the licensee from transporting waste to the Wasco County Landfill.</li></ul>

	<p>(j) If the licensee transports putrescible waste to the Cowlitz County Landfill as provided above in Section 7(i), the licensee must:</p> <ul style="list-style-type: none"><li>i. Report the unusual circumstance or emergency situation to Metro within 12 hours of its discovery; and</li><li>ii. Notify Metro in writing if such delivery of waste to the Cowlitz County Landfill continues for more than three consecutive business days. The written notification required by this section shall include a detailed description of the particular circumstance resulting in such deliveries and its expected duration.</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, 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. Expenses include, but are not limited to all attorneys' fees, whether incurred before any litigation is commenced, during any litigation or on appeal.</p>

## STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 18-4924 AUTHORIZING THE CHIEF OPERATING OFFICER TO EXTEND THE TERM OF THE NON-SYSTEM LICENSE TO COR TRANSFER, LLC. FOR TRANSPORT AND DISPOSAL OF PUTRESCIBLE WASTE AT THE WASCO COUNTY LANDFILL LOCATED IN WASCO COUNTY, OREGON AND UNDER CERTAIN UNUSUAL CIRCUMSTANCES TO COWLITZ COUNTY HEADQUARTERS LANDFILL LOCATED IN CASTLE ROCK, WASHINGTON

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October 31, 2018

Prepared by: Warren Johnson  
(503) 797-1836

If the Metro Council approves Resolution No. 18-4924, it will authorize the Chief Operating Officer (COO) to issue an amended non-system license (NSL) to COR Transfer, LLC (COR) to (1) extend the term of its NSL by one year to expire on December 31, 2019, and (2) authorize COR to transport and dispose up to 472 tons per calendar year of putrescible waste at the Wasco County Landfill (Wasco) located in Wasco County, Oregon and, under certain unusual circumstances and emergency conditions, Cowlitz County Headquarters Landfill (Cowlitz) located in Castle Rock, Washington. The proposed license carries forward the current license conditions.

COR is a locally-owned company whose parent company is City of Roses Disposal and Recycling. City of Roses owns and operates two Metro-licensed material recovery facilities located at 5726 NE 109<sup>th</sup> Ave in Portland (Metro Council District 5) and 4580 NE 138<sup>th</sup> Ave in Portland (Metro Council District 1).<sup>1</sup> City of Roses also operates a drop box hauling company that collects commercial non-putrescible waste within the city of Portland.

## 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").<sup>2</sup> 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

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<sup>1</sup> Metro Solid Waste Facility License Nos. L-134-16 and L-057-18 respectively.

<sup>2</sup> Change Order No. 11 to Metro Contract No. 900607, October 1, 2018.

for potential release by the COO later if it was in the public's interest and the uncommitted tonnage was actually available as forecasted.

In 2017, COR received an initial tonnage authorization of 472 tons for the calendar year. However, the COO did not release any reserve tonnage to the licensee that year because COR did not use the NSL and did not demonstrate the need for any additional tonnage. In 2018, the COO carried forward the same 472 tonnage allocation that COR 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.

Although COR has not used its NSL, it holds the license because it seeks authorization to accept and transfer putrescible waste in the future. The COO recommends that the Metro Council maintain the status quo and extend the term of COR's NSL until December 31, 2019, and carry forward the same annual tonnage authorization of 472 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. 18-4924 would extend COR'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 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;*

Wasco and Cowlitz are well known to Metro. Wasco is owned and operated by Waste Connections, Inc., a nationally-integrated solid waste company headquartered in The Woodlands, Texas. Cowlitz is publically-owned and operated by Cowlitz County. Both landfills are permitted Subtitle D disposal sites under the Resource Conservation and Recovery Act (RCRA), which establishes national landfill standards.

The environmental risk associated with the use of this disposal site 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, Inc. owns and operates Wasco and Cowlitz County owns and operates Cowlitz. Metro staff's investigation of these entities 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;*

Wasco and Cowlitz use operational practices and management controls that are typical of RCRA Subtitle D landfills. The regulatory agencies that oversee these disposal sites consider the operational practices and controls in place at the landfills appropriate for the proper management and disposal of waste 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 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*

City of Roses, the parent company of COR, is currently in compliance with its Metro-issued facility licenses and NSL. It 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, and to establish an annual tonnage authorization of 472 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. 18-4924 will authorize the COO to issue an amended NSL to COR to extend the term of the license by one year to expire on December 31, 2019. The proposed NSL would authorize COR to transport and dispose of up to 472 tons per calendar year of putrescible waste at Wasco and, under certain unusual circumstances and emergency conditions, Cowlitz.

### **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., 472 tons per year transported and disposed at Wasco or Cowlitz).

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. 18-4924, 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. 18-4924 will authorize the COO to issue an amended NSL to COR as attached to the resolution as Exhibit A.

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