

BEFORE THE METRO COUNCIL

|   |   |                                    |
|---|---|------------------------------------|
| FOR THE PURPOSE OF AMENDING THE NON-SYSTEM LICENSE FOR CITY OF ROSES DISPOSAL & RECYCLING, INC. TO INCREASE THE TONNAGE LIMIT FOR TRANSPORT AND DISPOSAL OF PUTRESCIBLE WASTE AT THE WASCO COUNTY LANDFILL AND, UNDER CERTAIN UNUSUAL CIRCUMSTANCES, COWLITZ COUNTY HEADQUARTERS LANDFILL | ) | RESOLUTION NO. 19-4981             |
|   | ) |                                    |
|   | ) | Introduced by Acting Chief         |
|   | ) | Operating Officer Andrew Scott in  |
|   | ) | concurrence with Council President |
|   | ) | Lynn Peterson                      |

WHEREAS, the Metro Code requires a non-system license of any person that transports solid waste generated from within the Metro Region to a non-system disposal facility; and

WHEREAS, City of Roses Disposal & Recycling filed a solid waste facility franchise application seeking to operate a transfer station and accept up to 15,000 tons of putrescible waste in calendar year 2019; and

WHEREAS, City of Roses Disposal & Recycling holds Metro Solid Waste Facility Non-System License No. N-134-16C, which authorizes City of Roses Disposal & Recycling to transport and dispose of up to 472 tons of putrescible waste per calendar year at Wasco County Landfill and, during certain unusual circumstances and emergency situations, at Cowlitz County Headquarters Landfill; and


WHEREAS, City of Roses Disposal & Recycling seeks to amend the current non-system license to increase the tonnage authorization up to 15,000 tons in calendar year 2019 to align it with the proposed franchise tonnage allocation; and

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

WHEREAS, the Chief Operating Officer recommends that Metro Council approve amendment of City of Roses Disposal & Recycling's non-system license to increase the non-system license tonnage authorization to align that waste amount with the facility's franchise tonnage allocation; now therefore,

BE IT RESOLVED that (1) the requested amendment of City of Roses Disposal & Recycling'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 City of Roses Disposal & Recycling.

ADOPTED by the Metro Council this 16<sup>th</sup> day of May, 2019.



\_\_\_\_\_  
Lynn Peterson, Council President

Approved as to Form:



\_\_\_\_\_  
Nathan A. S. Sykes, Acting Metro Attorney

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

WHEREAS, the Chief Operating Officer recommends that Metro Council approve amendment of City of Roses Disposal & Recycling’s non-system license to increase the non-system license tonnage authorization to align that waste amount with the facility’s franchise tonnage allocation; now therefore,

BE IT RESOLVED that (1) the requested amendment of City of Roses Disposal & Recycling’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 City of Roses Disposal & Recycling.

ADOPTED by the Metro Council this \_\_\_\_ day of May, 2019.

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Lynn Peterson, 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-057-16D**

|                         |  |
|-------------------------|--|
| <b>LICENSEE:</b>        |  |
|                         | City of Roses Disposal & Recycling, Inc.<br>4530 NE 138 <sup>th</sup> Ave.<br>Portland, OR 97230 |
| <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> |  |
|                         | City of Roses Disposal & Recycling, Inc.<br>P.O. Box 301427<br>Portland, OR 97294                |

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

**ISSUED BY METRO:**

\_\_\_\_\_  
Andrew Scott,  
Acting Chief Operating Officer

\_\_\_\_\_  
Date

|          |   |
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| <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> <p>For calendar year 2019, beginning January 1, 2019, and ending December 31, 2019, the licensee is authorized to transport up to 15,000 tons.</p>  |
| <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<br/>2550 Steele Road<br/>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 Headquarters Landfill<br/>3434 South Silver Lake Road<br/>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> |

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| <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> |

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| <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> |

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|  | <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> |

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| <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. 19-4981 FOR THE PURPOSE OF AMENDING THE NON-SYSTEM LICENSE FOR CITY OF ROSES DISPOSAL & RECYCLING, INC. TO INCREASE THE TONNAGE LIMIT FOR TRANSPORT AND DISPOSAL OF PUTRESCIBLE WASTE AT THE WASCO COUNTY LANDFILL AND, UNDER CERTAIN UNUSUAL CIRCUMSTANCES, COWLITZ COUNTY HEADQUARTERS LANDFILL.

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Date: May 2, 2019  
Department: Property and Environmental Services  
Meeting Date: May 16, 2019

Prepared by: Hila Ritter, 503-797-1862,  
[hila.ritter@oregonmetro.gov](mailto:hila.ritter@oregonmetro.gov)  
Presenters: Staff is available for questions

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### ISSUE STATEMENT

City of Roses Disposal & Recycling, Inc. (partner company of CORE Recycling) a Metro-licensed non-putrescible (dry) waste material recovery facility located at 4580 NE 138<sup>th</sup> Avenue in Portland, (Metro District 1), has applied to Metro for authorization (a solid waste facility franchise) to operate a transfer station and accept putrescible waste at its existing facility. The Metro Council will consider the transfer station franchise application (Ordinance No. 19-1435) at its meeting on May 16, 2019. If that transfer station franchise is approved, then City of Roses Disposal & Recycling seeks to also increase the amount of putrescible waste that it is authorized to transport and dispose at the Wasco County Landfill and the Cowlitz County Headquarters Landfill, as a backup disposal site option during certain unusual circumstances and emergency situations that would otherwise prevent the facility from transporting waste to the Wasco County Landfill. This resolution addresses the transport and disposal of putrescible waste received at City of Roses Disposal & Recycling's proposed transfer station (COR Transfer Station).

Metro Code Section 5.05.110(c) states that the Metro Council may approve or deny a non-system license (NSL) to transport putrescible waste.

### ACTION REQUESTED

Review applicable code criteria and Metro policies to determine whether Council should grant an amended NSL for City of Roses Disposal & Recycling to align the license tonnage limit with the tonnage allocation authorized in its proposed franchise. If Metro Council adopts this resolution and companion Ordinance No. 19-1435, then City of Roses Disposal & Recycling's NSL would also be amended increase the tonnage authorization from 472 tons to 15,000 tons for calendar year 2019.



## **IDENTIFIED POLICY OUTCOMES**

This proposed resolution addresses the transport and disposal of waste that the Metro Council will consider under companion Ordinance No. 19-1435 at its meeting on May 16, 2019. These proposed decisions align with the goals of the 2030 Regional Waste Plan and help achieve the transfer system configuration policy objectives that Council adopted in 2016.

## **POLICY QUESTION**

Should the Metro Council approve amending the NSL for City of Roses Disposal & Recycling to increase the amount of putrescible waste that the licensee may transport to a landfill in order to align that waste amount with its proposed franchise tonnage allocation according to the provisions of Metro Code Chapter 5.05.140 and as described in the resolution?

## **POLICY OPTIONS FOR COUNCIL TO CONSIDER**

1. Approve the resolution as proposed to amend the NSL to increase the tonnage authorization up to 15,000 tons for calendar year 2019 or otherwise align the limit with the franchise tonnage allocation.
2. Amend the resolution to grant a different tonnage authorization and disposal site other than that requested by the applicant.
3. Do not approve the resolution.

## **STAFF RECOMMENDATIONS**

Provided Metro Council approves the solid waste facility franchise application in Ordinance No. 19-1435, staff recommends adoption of Resolution No. 19-4981 to increase the non-system license tonnage limit to align that amount with the franchise tonnage allocation. If Council approves this resolution, then the effective date will be aligned with that of the transfer station franchise.

## **STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION**

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 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"). This proposed NSL covers a portion of the 13 percent of uncommitted waste not guaranteed to Waste Management under the disposal contract because neither Wasco County Landfill nor Cowlitz County Headquarters Landfill are Waste Management owned landfills. Over the last several years, Metro has allocated proportional shares of its uncommitted tonnage to licensees based on Metro's solid waste tonnage forecast.

On July 21, 2016, the Metro Council adopted a transfer system configuration policy. the configuration policy shifts Metro away from its current "tonnage cap" approach, in which the Metro Council establishes annual facility tonnage limits as described above, to a more

systematic and predictable “tonnage allocation” system, in which tonnage authority is proportionally allocated to privately owned stations each year beginning in 2020. Staff is developing the detailed methodology for future tonnage allocations for adoption as administrative rules later this year, which will be effective in 2020. The proposed increase to authorize City of Roses Disposal & Recycling to transport up to 15,000 tons is intended only for calendar year 2019. In the future, Metro will determine and adjust tonnage allocations for all privately-owned transfer stations in the region, including City of Roses Disposal & Recycling, by applying a percentage-based allocation methodology currently being developed using the allocation framework that Metro Council adopted in November 2018. This tonnage allocation methodology will inform any future non-system license authorizations.

This resolution is complimentary to the proposed Ordinance No. 19-1435, which is consistent with Metro’s transfer system configuration policy and the 2030 Regional Waste Plan (goals 12, 13, 16, and 18) because it promotes efficient off-route travel which reduces environmental impacts (goal 12), supports investment in the host community by way of the Community Enhancement Grant program (goal 13), implements the configuration policy (goal 16.7), and supports a small, locally-based business that is part of the region’s solid waste system (goal 18).

### **Known Opposition/Support/Community Feedback**

There is no known opposition to the proposed amendments to the NSL.

### **Legal Antecedents**

Metro Code Chapter 5.05, entitled “Solid Waste Flow Control.” Specifically, section 5.05.140 states the factors to consider regarding NSL issuance:

- (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 those wastes pose a future risk of environmental contamination;*

Wasco County Landfill and Cowlitz County Headquarters Landfill are well known to Metro. They are both 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 regulations;*

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;*

The landfills use operational practices and management controls that are typical of RCRA Subtitle D landfills. DEQ and Cowlitz County staff consider the operational practices and controls in place at these 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 regulations;*

City of Roses Disposal & Recycling is currently in compliance with its Metro-issued solid waste facility license 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.*

Staff finds that it is in the public's interest to increase the tonnage authorization in order to align it with City of Roses Disposal & Recycling's proposed franchise tonnage allocation and to the facility with flexibility to use alternate disposal sites if it is otherwise unable to transport waste to Wasco County Landfill. With the exception of the above-mentioned amendments, the proposed NSL carries forward the current NSL conditions.

### **Anticipated Effects**

Adoption of Resolution No. 19-4981 will amend the NSL for City of Roses Disposal & Recycling to align its NSL tonnage authorization with that of its proposed franchise tonnage allocation. If Council approves this resolution as proposed, the facility will be authorized to transport up to 15,000 tons of putrescible waste for calendar year 2019 to Wasco County Landfill and, under certain unusual circumstances, Cowlitz County Headquarters Landfill. If Council approves this resolution, then the effective date will be aligned with that of the transfer station franchise.

### **Financial Implications (current year)**

As set forth in Metro's contract for disposal of solid waste with Waste Management, the more solid waste that Metro directs to a Waste Management-owned landfill, the cheaper the disposal price is per ton for Metro's transfer stations (aka the "declining block rate"). As mentioned earlier, the Waste Management disposal contract mandates that Metro allocate *at least* 87 percent of the region's putrescible waste to a Waste Management landfill (primarily Columbia Ridge Landfill). Thus, Metro may allocate up to 13 percent to a non-Waste Management landfill. This 13 percent is sometimes referred to as the "uncommitted" waste because it is not committed to a Waste Management landfill, and Metro allocates this waste to other disposal sites via a NSL.

When Metro authorizes the transport of waste to a non-Waste Management owned landfill, this increases the tip fee at Metro's transfer stations because Metro must pay more, per ton, to dispose of Metro South and Metro Central's waste at a Waste Management landfill. As previously explained, the proposed City of Roses Disposal & Recycling's license allocates a portion of the 13 percent uncommitted waste to Wasco County Landfill and Cowlitz County Headquarters Landfill, which are not owned by Waste Management.

Metro generally factors the uncommitted waste allocated by NSLs into its budget when setting Metro transfer station rates. Staff understands that the putrescible waste that City of Roses Disposal & Recycling will initially partner with Waste Connections to receive the uncommitted waste that it currently transports to affiliated disposal sites. Metro's cost and rate model already takes into account that this uncommitted waste will be disposed at a landfill that is not owned by Waste Management. Additionally, all of the waste authorized under the proposed NSL will continue to be subject to Metro's regional system fee and excise tax.

### **BACKGROUND**

The applicant, City of Roses Disposal & Recycling, Inc. is a locally-owned company that has operated a waste hauling service and a Metro-licensed dry waste material recovery facility (CORE Recycling) on NE 109<sup>th</sup> since 2013. City of Roses Disposal & Recycling applied for and obtained Metro and DEQ authorization to operate a dry waste material recovery facility at its current location, 4530 NE 138<sup>th</sup> Ave in Portland.

On November 28, 2018, City of Roses Disposal & Recycling submitted to Metro an application seeking authorization to operate a transfer station and accept putrescible waste at its current site. The applicant also requested that Metro amend its NSL (N-134-16C) to authorize the new transfer station to transport putrescible waste to a disposal site and align the NSL tonnage authorization with that of the proposed franchise tonnage allocation. NSL No. N-134-16C was initially issued to City of Roses Disposal & Recycling when it was located at its previous site on NE 109<sup>th</sup> Avenue in Portland. If approved, the proposed NSL will be amended to cover putrescible waste accepted under the proposed franchise at the current site located at NE 138<sup>th</sup> Avenue in Portland.

**ATTACHMENTS**

- A. Exhibit A to Resolution No. 19-4981: Draft Non-System License No. N-057-16D