

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 18-4922 AUTHORIZING THE CHIEF OPERATING OFFICER TO EXTEND THE TERM OF THE NON-SYSTEM LICENSE TO FOREST GROVE TRANSFER STATION FOR TRANSPORT AND DISPOSAL OF PUTRESCIBLE WASTE AT THE COLUMBIA RIDGE LANDFILL LOCATED IN GILLIAM COUNTY, OREGON, AND COFFIN BUTTE LANDFILL LOCATED IN BENTON COUNTY, OREGON

October 31, 2018

Prepared by: Warren Johnson
(503) 797-1836

If the Metro Council approves Resolution No. 18-4922, it will authorize the Chief Operating Officer (COO) to issue an amended non-system license (NSL) to Forest Grove Transfer Station (FGTS) 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 FGTS to transport putrescible waste from the Metro region to the Columbia Ridge Landfill (Columbia Ridge) located in Gilliam County, Oregon, and the Coffin Butte Landfill (Coffin Butte) located in Benton County, Oregon.

FGTS is a Metro-franchised solid waste transfer station located at 1525 B Street in Forest Grove (Metro Council District 4).¹ FGTS and the Columbia Ridge Landfill are owned and operated by Waste Management of Oregon, Inc. (Waste Management) headquartered in Houston, Texas. The Coffin Butte Landfill is owned by Republic Waste headquartered in Phoenix, Arizona.

BACKGROUND

In December 2016, the Metro Council approved a short-term NSL that authorized FGTS to transport putrescible waste to either Columbia Ridge or Riverbend Landfill (Riverbend).² 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 FGTS’s NSL to include Coffin Butte as an additional disposal site option.

In June 2017, the Metro Council amended FGTS’s NSL to remove Riverbend as a disposal site option and extend the license term until December 31, 2018.³ The NSL also authorizes the COO to periodically adjust the license tonnage authorization if necessary to align it with FGTS’s franchise tonnage allocation. The current NSL authorizes FGTS to transport up to 125,000 tons per calendar year of Metro-area putrescible waste to either Columbia Ridge or Coffin Butte for disposal.

¹ Metro Solid Waste Facility Franchise No. F-004-08E

² Metro Resolution No. 16-4739

³ Metro Resolution No. 17-4802

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. 18-4922 would extend FGTS'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;*

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

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

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 landfills appropriate for the proper management of waste disposal 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").⁴ 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*

In April 2017, Metro issued a notice of violation and imposed a civil penalty on FGTS for transporting solid waste to Riverbend without adequately notifying Metro of the emergency or unusual circumstances necessitating such deliveries.⁵ FGTS subsequently paid the penalty and is currently in compliance with its Metro-issued franchise and NSL. FGTS has had no violations related to public health, safety or environmental regulations during the term of the 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 FGTS to transport putrescible waste from the Metro region to Columbia Ridge and Coffin Butte for disposal.

⁴ Change Order No. 11 to Metro Contract No. 900607, October 1, 2018.

⁵ Metro Notice of Violation No. NOV-401-17

3. Anticipated Effects

Approval of Resolution No. 18-4922 will authorize the COO to issue an amended NSL to FGTS to extend the term of the license by one year to expire on December 31, 2019. The proposed NSL would authorize FGTS to transport up to 125,000 tons per calendar year of putrescible waste (or as otherwise authorized by the COO to align it with FGTS's franchise tonnage allocation) 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. 18-4922, 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. 18-4922 will authorize the COO to issue an amended NSL to FGTS as attached to the resolution as Exhibit A.

wj