

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE) RESOLUTION NO. 03-3296
CHIEF OPERATING OFFICER TO EXECUTE)
AMENDMENT NO. 1 TO METRO CONTRACT)
NO. 902860, A DESIGNATED FACILITY)
AGREEMENT BETWEEN METRO AND THE) Introduced by Michael Jordan, Chief
FINLEY BUTTES LANDFILL COMPANY) Operating Officer, with the concurrence of
David Bragdon, Council President

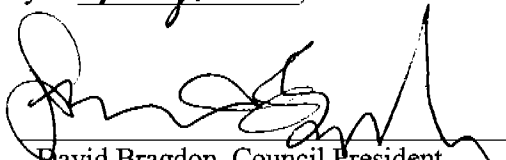
WHEREAS, the Finley Buttes Landfill is a Metro designated disposal facility; and,

WHEREAS, the Finley Buttes Landfill Company has formally requested that its designated facility agreement be amended to authorize Waste Connections to accept waste tires generated from within the Metro region and divert the tires for processing and recovery at a rate of at least 25 percent; and,

WHEREAS, the Chief Operating Officer has recommended the terms and conditions of a modified designated facility agreement with the Finley Buttes Landfill Company, and the Metro Council finds that the proposed terms are in the public interest and consistent with the policies and practices of Metro in the management of the Region's solid waste; now therefore,

BE IT RESOLVED that the Metro Council authorizes the Chief Operating Officer to execute with the Finley Buttes Landfill Company a designated facility agreement for the Finley Buttes Landfill in a form substantially similar to that set forth on the attached Exhibit A.

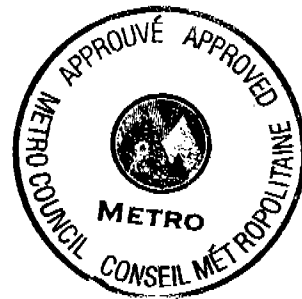
ADOPTED by the Metro Council this 14th day of August, 2003.


David Bragdon, Council President

Approved as to Form:


Daniel B. Cooper, Metro Attorney

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METRO CONTRACT NO. _____

DESIGNATED FACILITY AGREEMENT

This Agreement is between Metro, a metropolitan service district organized under ORS Chapter 268 and the Metro Charter, located at 600 NE Grand Avenue, Portland, Oregon 97232-2736, ("Metro") and Finley Buttes Landfill Company located at 73221 Bombing Range Road, Morrow County, OR 97818 (the "Facility") and is entered under the authority of ORS 268.317, and Metro Code section 5.05.030. Designated facility status was originally conferred upon Finley Buttes Landfill through contract No. 902860 approved by the Metro Council in 1993.

In exchange for the promises set forth below, the Facility and Metro agree as follows:

1. Purpose and Authority. The purposes of this agreement are to manage effectively the disposal of certain solid wastes from within the Metro Region while concurrently increasing material recovery by establishing the terms and conditions under which the Facility may receive the wastes specified in Section 3 of this agreement.
2. Duration. Unless terminated sooner as specified herein, this Agreement shall remain in effect for five years from the date of execution by both Parties.
3. Waste That May be Accepted at the Facility.
 - a. Provided that the Facility has any required separate and appropriate legal authority, the Facility may accept only the following types of materials generated from within the Metro Region:
 - (1) Processing residual resulting from material recovery of non-putrescible waste, provided that such processing residual has been generated (a) by a person certified, licensed or franchised by Metro to conduct material recovery of non-putrescible waste, (b) by a person with whom Metro has executed a designated facility agreement which requires the facility to conduct material recovery of non-putrescible waste, or (c) at a construction or demolition site;
 - (2) "Cleanup Material Contaminated By Hazardous Substances" as that term is defined in Metro Code Chapter 5.01.010;
 - (3) "Special waste" as defined in Metro Code 5.02.015, provided that such special wastes are specifically required in the Oregon Department of Environmental Quality ("DEQ") solid waste disposal permit for the Facility to have special handling or testing prior to disposal, and are not eligible or amenable to material recovery;
 - (4) Useful Material as defined in Metro Code section 5.01.010 , including but not limited to Alternative Daily Cover Material as approved by DEQ, but only for

those quantities demonstrated to be equivalent to 6-inches of earthen materials in accordance with OAR 340-97-120(5) or (6);

- (5) Inert materials as approved by DEQ in accordance with the solid waste permit exemption process as authorized by OAR 340-93-080(2);
 - (6) Tires, provided that at least 25 percent by weight of tires (off the rim) accepted from within the Metro boundary by Waste Connections, Inc. subsidiary companies are recovered for DEQ-approved uses;
 - (7) Disaster debris as may be specifically authorized by the Chief Operating Officer (“the COO”); and
 - (8) Other waste as described in any future addendum to this Agreement or authorized by Metro under a non-system license.
- b. Except as provided in Section 3.a., above, the Facility agrees that no other types of wastes generated within the Metro boundary shall be accepted or disposed at the Facility, including but not limited to the following types of wastes: putrescible wastes; putrescible source-separated recyclable material; non-putrescible waste that has not undergone material recovery by a person certified, licensed or franchised by Metro to perform material recovery on non-putrescible waste including waste generated at construction and demolition sites, or with whom Metro has executed a designated facility agreement to perform such processing; source separated recyclable material; and any other materials prohibited by the DEQ solid waste disposal site permit.

4. Facility Operating Plan.

- a. The Facility shall submit to Metro, for its review and approval, an operating plan for the Facility. The plan shall address how the Facility intends to comply with the requirements of this Agreement. The Facility shall maintain a copy of the operating plan on the Facility’s premises and in a location where facility personnel and Metro representatives have ready access to it.
- b. The plan shall describe how incoming solid wastes will be identified as appropriate for the Facility and the criteria used for such identification, including:
 - (1) Procedures for inspecting incoming loads for the presence of prohibited wastes;
 - (2) A set of objective criteria for accepting and rejecting loads;
 - (3) Measures to ensure compliance with Section 2 above, including the provision of at least one person at the working face whose responsibility shall include

identification and removal of waste that is not authorized under Section 2 above; and

- (4) Procedures for establishing whether the waste originated within the Metro boundary.
- c. The operating plan shall establish procedures for managing and transporting to appropriate facilities any prohibited wastes discovered at the Facility. The plan shall include procedures for managing:
 - (1) Hazardous wastes;
 - (2) Recovery of any source separated materials that might be received at the Facility; and
 - (3) Other prohibited solid wastes.
- d. Amendments to the operating plan shall be submitted to Metro for review and approval by the COO prior to implementation. Metro's review shall be limited to compliance with this Agreement and shall not be unreasonably withheld.
- e. The Facility shall adhere to the policies and procedures contained in its operating plan. Failure to ensure such compliance with the operating plan shall be considered a default of this Agreement.

5. Record keeping and Audits.

- a. The Facility shall maintain complete and accurate records regarding all solid waste transported, received, treated, disposed of, or otherwise processed pursuant to this Agreement. The Facility shall make such records available to, or send copies to, the COO or his duly designated agents for inspection, auditing, and copying upon not less than seven (7) days written notice from Metro. Sequential, pre-numbered tickets shall be used for all transactions and voided or canceled tickets shall be retained.
- b. The Facility shall maintain waste profiles, waste analysis plans, or Material Safety Data Sheets (MSDS) at Waste Connections, Inc.'s Vancouver office and at the Finley Buttes Landfill for all special waste and cleanup material delivered for disposal under the authority of this Agreement. Such profiles and MSDS sheets shall be made available to the COO (or his designated agent) at Waste Connections, Inc.'s Vancouver office for examination and copying upon not less than seven (7) days written notice from Metro and at the Finley Buttes Landfill for examination and copying during inspections conducted pursuant to Section 9.a.(1) of this agreement.
- c. At Metro's option, the Facility shall have an independent audit conducted by a firm acceptable to Metro, no more than once a year, at Metro's expense. The audit report provided to Metro following an independent audit shall address matters reasonably

related to this Agreement, as specified in an audit program approved by Metro and provided to the Facility prior to the audit.

6. Reports and Information.

- a. The Facility shall report the following information to Metro on a monthly basis for waste originating in Washington, Clackamas and Multnomah counties of Oregon:
- (1) Record numbers designating individual incoming loads;
 - (2) Customer account numbers (using separate account numbers to differentiate waste received from a person or facility authorized to perform material or resource recovery, transfer or reload as those terms are defined in Metro Code 5.01.010, pursuant to a Metro Solid Waste Franchise, Certificate, Designated Facility Agreement, License or Non-System License);
 - (3) Date each load is received at the Facility;
 - (4) Time each load is received at the Facility;
 - (5) Net weight of each load;
 - (6) Designation of each load into one of the categories listed in Section 3.a.;
 - (7) Whether each load originated from inside or outside the Metro boundary (each load consisting of waste from both inside and outside the Metro boundary shall be counted as originating from inside the Metro boundary if more than 10% of the weight of the waste in the load was collected from inside the Metro boundary or if more than 10% of the locations where the load was collected are within the Metro boundary);
 - (8) Whether the material in each load was used for alternative daily cover, or other "Useful material" as defined in Metro Code Chapter 5.01.
 - (9) The Facility shall submit to Metro a record of all unauthorized wastes initially received from within the Metro boundary but ultimately disposed at a site other than the Finley Buttes Landfill. Such information shall include a copy of the disposal site's billing to the Facility for such disposal. Such billing must include the tonnage of each load.
 - (10) Regarding waste tires received from within the Metro boundary, the Facility shall report the:
 - (i) Tonnage of tires received;
 - (ii) Method by which such tires are processed;

- (iii) Tonnage of tires landfilled;
 - (iv) Tonnage of tires recovered; and
 - (v) The uses of recovered tires.
- b. Records required under Section 6a. of this agreement shall be reported to Metro no later than fifteen (15) days following the end of each month, via E-mail, electronic records encoded on 3.5" data diskettes or CD, and in a format prescribed by Metro that is compatible with Metro's data processing equipment.
- c. The Facility shall post a sign at the scalehouse directing all customers disposing of waste generated within the Metro boundary to declare the origin of the waste. The Facility shall provide a map of the Metro region to any customer that requests one.
- d. The Facility shall provide to Metro copies of all permits relating to operations at the Facility, including any new land use applications, appeals or modifications. Copies of revisions to existing permits and newly issued permits shall be provided to Metro within seven (7) business days of receipt. The Facility shall also provide, within ten (10) business days, a copy of any official enforcement action regarding the Facility or its operation, including, but not limited to, a notice of violation or non-compliance with a statute, regulation, or permit condition.
- e. The Facility shall provide to Metro a copy of the Facility's posted disposal rate schedule. The Facility shall provide to Metro a copy of any revised or updated disposal rate schedule within seven (7) days of the date such revised or updated rates become effective.
- f. On a quarterly basis the Facility shall provide Metro a listing of account numbers and material codes and corresponding material names for incoming loads covered by this Agreement.

7. Regional System Fee and Excise Tax.

- a. The Facility shall pay monthly to Metro an amount equal to the Regional System Fee for which provision is made in Metro Code Section 5.02.045 for each ton of waste accepted at the Facility under this Agreement. Such payment shall be made in accordance with Metro Code Section 5.02.055, and shall be in the form of check or cash or other payment method as approved by the COO. Notwithstanding this section, Regional System Fees shall not apply to residual from the Facility's tire processing operation in accordance with Code Section 5.01.150, and Excise taxes shall not apply in accordance with Code Section 7.01.050 (6)(d), provided that the recovery rate for tires collected within the Metro boundary under the terms of this agreement remains at 25 percent or greater. Should the recovery rate fall below 25

percent, Regional System Fees and Excise Taxes shall be due on all residual from in-region tires processed at the facility's tire processing operation.

- b. The Facility shall also pay monthly to Metro an amount equal to the Excise Tax for which provision is made in Metro Code Section 7.01.020(e) for each ton of waste listed in section 3a disposed at the Facility under this Agreement. Such payment shall be made in accordance with Metro Code Sections 7.01.070 and 7.01.080, and shall be in the form of check or cash or other payment method as approved by the COO.

8. Compliance with Law.

The Facility shall fully comply with all provisions of Metro Code Chapter 5.01 applicable to disposal sites, which provisions are incorporated by this reference as if set forth in full. The Facility shall also fully comply with all applicable federal, state, regional, and local laws, rules, regulations, ordinances, orders, and permits, as amended. All conditions imposed on the operation of the Facility, whether by federal, state, or local governments or agencies having jurisdiction over the Facility, are part of this Agreement by reference as if specifically set forth herein. Such conditions and permits include those attached as exhibits to this Agreement, as well as any existing at the time of issuance of this Agreement and not attached, and permits or conditions issued or modified during the term of this Agreement.

9. Right of Inspection; Enforcement of Metro Code.

- a. Authorized representatives of Metro shall be permitted access to the premises of the Facility at all reasonable times for the purpose of making inspections and carrying out other necessary functions related to this Agreement. Access to inspect is authorized:
 - (1) At any time without notice, during all regular working hours that the Facility accepts waste deliveries;
 - (2) At other reasonable times if written notice is given during regular working hours that the Facility accepts waste deliveries, which notice may be made via facsimile sent to the Facility, attention James Browning at (541) 481-2234 and to Eric Merrill, Regional Office, at (360) 695-5091; and
 - (3) At any time without notice when, in the reasonable opinion of the COO, such notice would defeat the purpose of the entry.
- b. The Facility shall cooperate with Metro regarding Metro's investigation of waste haulers suspected of fraudulently claiming waste as having originated from outside the Metro boundary or otherwise violating the provisions of this Agreement or the Metro Code. Such cooperation shall include, without limitation, providing Metro with requested information in the Facility's possession regarding waste haulers under investigation and providing appropriate Facility representatives to testify in deposition or at a contested case hearing regarding such waste haulers.

- c. If Metro asserts that the Facility has violated any requirement of this agreement or any provision of the Metro Code applicable to disposal sites as applied to the Facility under Paragraph 8 of this agreement, the Facility hereby expressly agrees to submit to all enforcement proceedings that are applicable to disposal sites within Metro's boundaries and to accept the jurisdiction of Metro for the purpose of providing notice of, commencing and conducting enforcement proceedings as provided in Metro Code Chapters 2.03 and 2.05 and Metro Code Sections 5.01.180 and 5.01.200.
- d. Subject to the confidentiality provisions of this license, Metro's right to inspect and audit shall include the right to review, at an office of the Facility located in or near the Portland metropolitan area, all information from which all required reports are derived, adequate to ensure compliance with this agreement.

10. Indemnification.

The Facility shall indemnify, defend, and hold Metro and Metro's agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses, and expenses, including attorney's fees, arising out of, or in any way connected with, the Facility's performance under this Agreement.

11. Confidentiality.

- a. Metro recognizes and acknowledges the confidential and proprietary nature of the names of persons or entities generating or delivering waste to the Facility and the types and quantities of waste generated or delivered by such persons or entities ("Confidential Information") which the Facility is required to submit to Metro under Section 6.a. of this Agreement. Metro acknowledges that, although the Facility is not obligated by law to submit such information, the Facility is voluntarily obligating itself to do so pursuant to this Agreement. Metro also recognizes that the Confidential Information specified herein is a "trade secret" and exempt from public disclosure under Oregon law because it is currently known only by the Facility, is used by the Facility in its business, has commercial value, and gives the Facility a business advantage over competitors not possessing such information. The ability of competitors of the Facility to obtain the Confidential Information specified herein is not in the public interest because it detracts from a relationship of trust that is necessary for Metro to effectively carry out its solid waste management functions. Metro hereby obligates itself in good faith not to disclose Confidential Information to any person outside of Metro except as specified herein. Access to, and use of, such information shall only be as specified in this section.
- b. At any time during and after the term of this Agreement, Metro shall not, in any manner whatsoever, either directly or indirectly, divulge, disclose, or communicate Confidential Information to any person, partnership, firm, association, corporation, or other entity, or to any person at Metro who does not have a reasonable need to obtain Confidential Information for Metro's solid waste management purposes. Neither

Metro nor any person at Metro shall use the Confidential Information specified in this section for personal benefit.

- c. Notwithstanding subsections 11.a. and 11.b. of this agreement, Metro may use confidential information for solid waste management purposes, including solid waste tracking and forecasting, enforcement of the Metro Code, or assistance to other jurisdictions in regulatory enforcement or other law enforcement. Metro may also use confidential information in aggregations or summaries that may be released to the public, so long as it is not possible to identify from such aggregations or summaries the persons or other entities generating and delivering waste to the Facility or the types and quantities of waste that specific persons or other entities generate or deliver to the Facility. Metro shall notify the Facility within six (6) business days of Metro's receipt of a request for confidential information from a third party. If it becomes necessary for Metro to release confidential information to any person outside of Metro, Metro shall so notify the Facility in writing at least ten (10) days prior to releasing such information.
- d. When submitting to Metro the confidential information specified herein, the Facility shall mark such materials as confidential. Metro shall keep all such material separate from other records and materials such that it will not be available to members of the public or persons at Metro who do not have a reasonable need to obtain access to the information relative to Metro's solid waste management responsibilities.
- e. If Oregon law is modified such that the confidential information referenced in this section is no longer exempt from public disclosure, or if a court of competent jurisdiction requires release of such information, the Facility shall no longer be required to submit such information to Metro. In such instance, upon request, the Facility nevertheless agrees to provide to Metro the names of specific generators or transporters, and the types and quantities of waste delivered by such persons or entities, for Metro's use in enforcing the Metro Code against such persons or entities, when Metro has a reasonable suspicion that a violation has occurred.

12. Modification, Suspension, and Termination.

- (a) If the Facility fails to fully and promptly comply with a term or condition of this Agreement, the COO shall issue to the Facility a written notice of noncompliance briefly describing such failure. The notice shall state that, within a period specified by the COO of at least twenty (20) days, the Facility must demonstrate to the satisfaction of the COO either that the Facility has not violated a term or condition of this Agreement, that the violation has been corrected, or that the Facility is making diligent efforts to correct the violation and is likely to succeed in a reasonable period of time. The Facility shall also, within the same twenty (20) day period, pay all fines owing as a result of noncompliance per Metro Code 5.05.070 or make arrangements for payment satisfactory to the COO. Failure to comply with the notice of noncompliance shall be grounds for suspension of this Agreement by the COO, effective as of 5:00 p.m. on the last day of the compliance period specified by the

COO, until such time as the COO issues a written finding to the Facility that the violation has been cured. The Director may extend the compliance period to a total of no more than sixty (60) days from the date of the notice of noncompliance, upon determining that the Facility is making good faith efforts to comply and is capable of complying within the extended compliance period.

- (b) The COO may suspend this Agreement without prior notice only as follows:
- (1) If necessary in the reasonable opinion of the COO to protect the public health, safety, or welfare, and in the case of an emergency; or
 - (2) If, due to a binding decision by an arbitrator or court of competent jurisdiction, Metro:
 - (a) May be liable for damages for allowing waste of a type specified in this Agreement to be disposed of at the Facility; or
 - (b) May no longer allow such waste to be disposed of at the Facility.
 - (c) The Metro Council ("Council") may modify, suspend, or terminate this Agreement for good cause or substantial change of circumstances upon passage of a resolution specifying the action taken and the effective date. If this Agreement is modified by Council resolution, the Facility shall have thirty (30) days from the date of the resolution to acknowledge the modification by signing a written instrument containing the terms of the modification. Failure of the Facility to acknowledge the modification within the 30-day period, unless otherwise excused by the COO, shall result in suspension of the Agreement effective as of 5:00 p.m. on the 30th day, until the modification is acknowledged in writing by the Facility.
 - (d) The Facility may terminate this Agreement for good cause provided that such termination shall commence no sooner than thirty (30) days after the Facility provides Metro with written notice of the Facility's intent to terminate.

13. General Conditions.

- a. The power and right to regulate, in the public interest, the exercise of the privileges granted by this Agreement shall at all times be vested in Metro. Metro reserves the right to establish or amend rules, regulations, or standards regarding matters within Metro's authority, and to enforce all such legal requirements against the Facility.
- b. The Facility shall be responsible for ensuring that its contractors and agents operate in complete compliance with the terms and conditions of this Agreement.

- c. The granting of this Agreement shall not confer a property right to the Facility, nor vest any right or privilege in the Facility to receive specific quantities of solid waste during the term of this Agreement.
- d. This agreement, approved by Metro Resolution No. 03-3296, replaces and supercedes Contract No. 902860.
- e. This Agreement may not be transferred or assigned without the prior written approval of Metro. Consent to assignment or transfer shall not be unreasonably withheld.
- f. To be effective, a waiver of any term or condition of this Agreement must be in writing, signed by either the COO, if Metro is making the waiver, or by an authorized representative of the Facility, if the Facility is making the waiver. Waiver of a term or condition of this Agreement by either party shall neither waive nor prejudice that party's right otherwise to require performance of the same term or condition or any other term or condition.
- g. This Agreement shall be construed, applied, and enforced in accordance with the laws of the State of Oregon.
- h. If any provision of this Agreement shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this Agreement shall not be affected.
- i. If any deadline required to be computed under any provision of this Agreement falls on a Saturday, Sunday, or legal holiday, then the deadline shall be the next day which is not a Saturday, Sunday, or legal holiday. As used in this subsection, "legal holiday" means legal holiday as defined in Oregon Revised Statutes 187.010 and 187.020, as amended.
- j. Unless otherwise specified, all terms are as defined in Metro Code Chapter 5.01.
- k. This Agreement is the entire agreement between the Parties.

FINLEY BUTTES LANDFILL

METRO

By: _____

By: _____

Print name and title

Print name and title

Date: _____

Date: _____

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STAFF REPORT

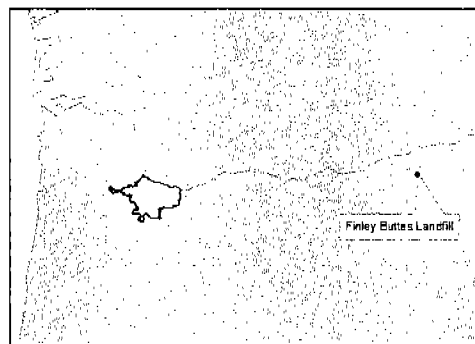
IN CONSIDERATION OF RESOLUTION NO. 03-3296 FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO EXECUTE AMENDMENT NO. 1 TO METRO CONTRACT NO. 902860, A DESIGNATED FACILITY AGREEMENT BETWEEN METRO AND THE FINLEY BUTTES LANDFILL COMPANY

June 9, 2003

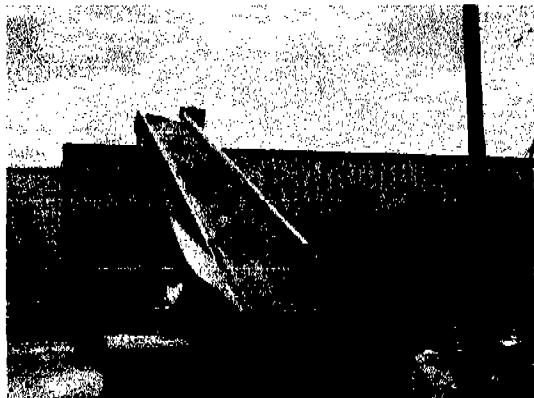
Prepared by: Steve Kraten

BACKGROUND

The Finley Buttes Landfill (FBLF), located on Bombing Range Road in Morrow County, Oregon, was originally granted designated facility status by Metro on April 19, 1993. In the original designated facility agreement (DFA), unprocessed tires were not listed among the wastes authorized for acceptance from within the Metro boundary. On August 9, 2002, Metro received a letter from the Finley Buttes Landfill Company requesting that the DFA be amended to authorize the acceptance of tires that have not been processed through a recovery facility. The Finley Buttes Landfill Company is a subsidiary of Waste Connections. The landfill has a good history of compliance with both DEQ and Metro regulations. The facility received approximately 35,000 tons of waste from within the Metro region in calendar 2002. This represents about nine percent of the total waste received at the facility (approximately 380,000 tons).



Location of Finley Buttes Landfill



Tire Processing Operation



Working Face with Tipper

Approval of Resolution No. 03-3296 will authorize the Chief Operating Officer to amend the existing designated facility agreement (Contract No. 902860) with Finley Buttes Landfill Company by replacing the existing DFA. The new, modified DFA will authorize Waste Connections to accept tires provided that 25 percent from the Metro region are diverted to recovery. It also requires the landfill to implement more affirmative measures to ascertain whether waste received at the landfill has originated within the Metro boundary, and generally updates the agreement to conform more closely to the DFAs developed for facilities that have recently become designated facilities.

ANALYSIS/INFORMATION

1. Known Opposition

Staff is not aware of any opposition to the proposed resolution.

2. Legal Antecedents

Metro Code Section 5.05.030 stipulates that a DFA shall specify the types of wastes that may be accepted from within the Metro boundary by a designated facility and that any amendment to a DFA shall be subject to approval by the Metro Council.

3. Anticipated Effects

Waste Connections will recover at least 25 percent of the tires it receives from within the Metro boundary. Provided that Waste Connections is able to demonstrate, through appropriately documented monthly reports, that at least 25 percent of the waste tires it collects within the Metro boundary are diverted to recovery, the landfill will be allowed to take unprocessed tires from the Metro region. The landfill will process the tires in accordance with DEQ standards prior to disposal. Should the recovery rate fall below 25 percent, regional system fees and excise taxes shall be due on all residual from in-region tires processed at the facility's tire processing operation. As a result of updated provisions in the new agreement, it will also begin implementing more affirmative measures to assure that any of its customers delivering waste from within Metro are aware of their obligation to declare the origin of the waste and to pay the appropriate fees.

4. Budget Impacts

The applicant anticipates that, if the requested DFA amendment is approved, it will process from 2,000 to 3,000 tons of Metro region tires annually. Since tire residual is exempt from paying Metro fees and taxes, there is no budget impact.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Resolution No. 03-3296.