

RESOLUTION NO. 28-85
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMAN Charles Taylor ON THE 18th DAY
OF November, 1985.

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A CONTRACT BETWEEN THE COUNTY OF MONTGOMERY AND THE CITY OF CENTERVILLE, OHIO, FOR THE RECEIPT AND DISPOSAL OF SOLID WASTE THROUGH THE MONTGOMERY COUNTY GARBAGE AND REFUSE DISPOSAL DISTRICT.

WHEREAS, the County of Montgomery has established the Montgomery County Garbage and Refuse Disposal District pursuant to Ohio Revised Code Chapter 343, for the purpose of receiving and disposing of Disposable Solid Waste, and

WHEREAS, the disposal of solid waste, garbage, and refuse vitally affects the public health, safety, and welfare, and

WHEREAS, the County and the City of Centerville are desirous of entering into an Agreement to provide for this disposal.

NOW THEREFORE,

THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

SECTION 1. That the City Manager is hereby authorized and directed to enter into a Waste Delivery and Disposal Agreement between the County of Montgomery and the City of Centerville, for the disposal of solid waste, garbage and refuse, a copy of the Contract being attached hereto, marked Exhibit "A" and made a part hereof.

SECTION 2. This Resolution shall be in full force and effect at the earliest date allowed by law.

PASSED this 18th day of November, 1985.

Shirley F. Heints
Mayor of the City of Centerville, Ohio

ATTEST:

Maile J. Sauls
Clerk of the Council of the
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of the Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Resolution Number 28-85, passed by the Council of the City of Centerville, Ohio, on the 18th day of November, 1985.

Maile J. Sauls
Clerk of the Council

Approved as to form, consistency with existing ordinances, the charter and constitutional provisions.

Robert N. Farquhar
Municipal Attorney
Department of Law

**WASTE DELIVERY
AND
DISPOSAL AGREEMENT**

between

COUNTY OF MONTGOMERY

AND

Dated as of _____, 1985

WASTE DELIVERY
AND
DISPOSAL AGREEMENT

This Waste Delivery and Disposal Agreement (the "Agreement") is made as of the _____ day of _____, 1985 pursuant to Chapter 343 of the Ohio Revised Code between the County of Montgomery, Ohio (the "County"), acting by and through its Board of County Commissioners (the "Board") and on behalf of the Montgomery County Garbage and Refuse Disposal District created by the Board under Section 343 Ohio Revised Code (the "District"), and the _____ of _____ (the "District Member").

ARTICLE I

RECITALS

1.1 The County has established the Montgomery County Garbage and Refuse Disposal District pursuant to Ohio Revised Code Chapter 343, for the purpose of receiving and disposing of Disposable Solid Waste (as hereinafter defined).

1.2 The disposal of solid waste, garbage, and refuse vitally affects the public health, safety, and welfare of the inhabitants of the District.

1.3 [This Article to be modified for Riverside] The County and the District Member have heretofore entered into an agreement or agreements with respect to the provision of disposal services by the County on behalf of the District.

1.4 It is essential for the health, safety and welfare of the inhabitants of the District that the County maintain control of Disposable Solid Waste in coordination and

cooperation with the District Members (as hereinafter defined).

1.5 Such cooperation and coordination between the County and the District Members is intended to aid in preserving the environment.

1.6 The County and the District Member are desirous of entering into this Agreement to set forth their relative rights and obligations.

1.7 This Agreement supercedes all other agreements between the County and the District Member relating to the disposal of Disposable Solid Waste and such agreements are hereby terminated as of the effective date of this Agreement.

ARTICLE II

DEFINITIONS

"Additional Coverage Requirements" means any payments or deposits of funds in excess of operation and maintenance expenses and Debt Service Requirements required under any documents securing or authorizing Debt Obligations.

"Debt Obligations" means any bonds, notes, certificates of indebtedness, or other obligations of indebtedness of the County heretofore issued for the District or hereafter issued for the purpose of funding the Project, and any obligations or portions of obligations issued to refinance or refund any such obligations heretofore or hereafter issued, provided that such refunding or refinancing obligations shall only be Debt Obligations as to any Debt Service due not later than the final Debt Service Payment Date on the refunded or refinanced obligations.

"Debt Service" means any installments of principal, including mandatory sinking fund requirements, of and premium and interest on Debt Obligations.

"Debt Service Payment Date" means the date on which any installment of principal, including mandatory sinking fund requirements, or interest on Debt Obligations is due.

"Disposal Charges" means the annual charge levied upon the owner of each improved lot, or lots in the process of being improved, with at least one permanent, portable, or temporary building thereon, in the District.

"Disposable Solid Waste" means all trash or rubbish ordinarily produced by a family at their private home and similar general municipal wastes generated in offices, restaurants, hospitals, retail establishments, and similar wastes from businesses and industry. In addition, other wastes may be deemed acceptable Disposable Solid Waste by the County.

"District Members" means any political subdivision, other than the County, contracting with the County for the delivery and disposal of Disposable Solid Waste pursuant to an agreement with all terms substantially similar to those in this Agreement.

"Financing Requirements" means, with respect to Debt Obligations, the Debt Service on such obligations due and payable as of any Debt Service Payment Date, plus prorated fees representing financing costs (either initial or ongoing, including but not limited to the following types of fees and/or costs; any letter of credit, bond insurance or other credit enhancement fees, liquidity fees, trustee fees, rating agency fees, printing costs, notice publication costs, counsel fees and underwriter fees) of the County and the funding of any reserve, replacement, working capital or similar funds required by any documents securing or authorizing the Debt Obligations.

"Incinerators" means the two (North and South) existing Montgomery County Reduction Plants as they exist and will exist after completion of the Project.

"Project" means the addition of one burning unit (a "line") at each of the Incinerators and the installation of an electric generation system for one line and the acquisition and/or installation and maintenance of all necessary equipment and appurtenances therefor.

"Solid Waste Disposal Facilities" means the Incinerators, their buildings, property, and supporting appurtenances, and such recovery equipment as may be installed to recover and/or recycle any materials or energy or other such valuables from the Disposable Solid Waste delivered to the Incinerators, and such equipment as may be required to transport Disposable Solid Wastes and residues to landfill and other disposal sites.

"Tipping Fees" means any per unit charges charged to the delivering entity upon each delivery of Disposable Solid Waste to the County.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

3.1 The County represents and warrants to the District Member that the execution and delivery of this Agreement has been duly authorized by all appropriate actions of its governing body and that this Agreement constitutes a legal, valid and binding obligation of the County in accordance with its terms.

3.2 The District Member represents and warrants to the County that the execution and delivery of this Agreement has been duly authorized by all appropriate actions of its governing body and that this Agreement constitutes a legal, valid and binding obligation of the District Member in accordance with its terms.

3.3 The County represents and warrants to the District Member, and the District Member represents to the County, that to the best of each of their knowledge there is no pending or threatened litigation or government proceeding which would adversely affect the performance of their respective obligations under this Agreement.

ARTICLE IV

OBLIGATIONS OF COUNTY

4.1 During the term of this Agreement, the County shall:

(a) use its best efforts to dispose of Disposable Solid Waste in an environmentally sound manner;

(b) accept Disposable Solid Waste generated from within the boundaries of the District Member and delivered to the Solid Waste Disposal Facilities for disposal;

(c) set and collect such Disposal Charges and Tipping Fees as it reasonably deems necessary, in its discretion, from time to time to provide for the costs of disposing of the Disposable Solid Waste, the costs of Financing Requirements and Additional Coverage Requirements on the Debt Obligations, and for the costs of replacing the Solid Waste Disposal Facilities;

(d) establish, amend from time to time, and enforce rules for the delivery and disposal of solid waste.

4.2 The recommendations of the Solid Waste Advisory Committee referred to in Article VII hereof shall be considered by the County prior to its adoption of the Disposal Charges and Tipping Fees authorized by Article 4.1(c) hereof and the rules authorized by Article 4.1(d) hereof.

ARTICLE V

OBLIGATIONS OF DISTRICT MEMBERS

5.1 During the term of this Agreement, the District Member shall:

(a) deliver or cause to be delivered to the County, at the Solid Waste Disposal Facilities all Disposable Solid Waste generated and/or collected within the District Member's borders.

5.2 The District Member acknowledges that, by this Agreement, it obligates its citizens to the payment of Disposal Charges, and obligates itself and/or private waste collectors within the District Member to payment of Tipping Fees, both as established from time to time by the County.

5.3 The District Member therefore agrees to pay such Tipping Fees as are from time to time established by the County for all Disposable Solid Waste delivered to the Solid Waste Disposal Facilities by the District Member during the term of this Agreement.

5.4 The District Member further agrees to take such steps as are necessary to cause the payment by private collectors and haulers of such Tipping Fees as are from time to time established by the County for all Disposable Solid Waste delivered to the Solid Waste Disposal Facilities by private collectors and haulers of Disposable Solid Waste generated within the District Member's borders; provided, however, that nothing herein shall be construed to require the District Member to pay any fees owed to the District by a private collector and hauler or to guarantee payment by any private collector and hauler.

ARTICLE VI

TERM OF AGREEMENT; TERMINATION

6.1 The term of this Agreement shall commence on the latest date that any of the District Members listed in Exhibit B to the resolution of the Board authorizing this Agreement have executed their respective agreement in a form substantially similar in all respects to this Agreement, and shall continue until the payment in full of the Debt Obligations under the terms of any instrument authorizing and/or securing the Debt Obligations. This Agreement shall continue automatically beyond the payment in full of the Debt Obligations unless either the County or the District Member elects to terminate this Agreement after the final payment of the Debt Obligations upon not less than one year's prior written notice of such election to the other party hereto.

ARTICLE VII

SOLID WASTE ADVISORY COMMITTEE

7.1 The Solid Waste Advisory Committee (the "Advisory Committee") provided for in Resolution #79-1254 adopted March 27, 1979, is hereby reaffirmed and shall remain in existence throughout this Agreement. The Advisory Committee shall be comprised of members whose appointment and duties are provided for by Resolution #79-1295, passed April 2, 1979 by the Board, as may be amended from time to time.

7.2 The Advisory Committee shall propose rules concerning the delivery and disposal of solid waste and shall recommend the establishment and/or modification of Disposal Charges and Tipping Fees under this Agreement. Such Disposal Charges and Tipping Fees are those needed to meet the cost of operation, maintenance, Financing Requirements, Additional Coverage Requirements, and debt service charges on any other indebtedness of the District, including any prorated fees representing financing costs of the County in connection with such indebtedness, the funding of any reserve, replacement, working capital or similar funds or compliance with of any rate covenants of any documents securing or authorizing such indebtedness.

7.3 It shall be a requirement by adoption of this Agreement that the Board shall request, in advance of any change in Disposal Charges or Tipping Fees or rule changes, a

review, opinion and/or recommendation from the Advisory Committee on all matters related to solid waste management policy, including, but not limited to, Disposal Charges and Tipping Fees, rules and regulations for disposal, and method of disposal. Said Advisory Committee shall be permitted a reasonable time to respond after receiving a request and being provided all relevant information. (A reasonable time shall be construed to be no less than 30 days.) Similarly when a matter is initiated or communicated to the Board by the Advisory Committee the Board shall be permitted a reasonable period of time to take appropriate action or communicate in writing to the Advisory Committee the reason for failure to do so. (A reasonable period of time in this instance shall be construed to be no more than 60 days.)

ARTICLE VIII

FORCE MAJEURE

8.1 For the purposes of this Article VIII, the term Force Majeure shall mean any cause beyond the reasonable control of the party whose performance is affected, including, but not limited to, acts of God, war, riot, fire, explosion, wind storm, flood, labor disputes, inability to obtain or use fuel, power or raw materials, shortage or failure of the usual means of transportation, injunction, governmental action (except where the unit of government is a party hereto), accident or breakdown of machinery or equipment.

8.2 In fulfilling the obligations hereunder, except with regard to the payment of Disposal Charges and Tipping Fees, neither party shall be liable for delay or failure to perform caused by reason of Force Majeure. Notice of same by one party shall be promptly delivered to the other. The District Member's obligations to deliver Disposable Solid Waste, as required hereunder, and the County's obligations to accept Disposable Solid Waste in accordance with the terms and conditions hereof, respectively, shall be suspended for a period of any delay occasioned by any such delay or failure to perform and the respective parties' time for performance shall be extended accordingly. The obligation to pay Disposal Charges and Tipping Fees shall not be effected in any way by reason of Force Majeure.

8.3 In the event of any delay in performance resulting from a cause described in Paragraph 8.1 hereof, the party affected shall promptly notify the other in writing of the nature, cause, date of commencement thereof, and the anticipated expense of such delay and so indicate whether it is

anticipated that any of the mutual goals or requirements contained in this Agreement would be materially affected thereby.

8.4 If the County or the District Member shall have been excused for a period of time from the performance of its obligations under this Agreement and is able to commence or resume performance in accordance with the provisions hereof, the County shall cooperate with the District Member and endeavor to accept at the District Solid Waste Disposal Facilities all of the District Member's Disposable Solid Waste which shall have accumulated during any such period until the accumulated Disposable Solid Waste for such period has been disposed of, provided that said disposal (i) is within the design limitation of the District Solid Waste Disposal Facilities; (ii) can be performed in an efficient and sanitary manner consistent with the rules and regulations of the Board of Health [precise name and statutory authority to be supplied]; and (iii) is not contrary to or in violation of any law, regulation, ordinance, or order of any federal, state or local authority or agency thereof (except for any law, regulation, ordinance or order of the District Member), or any judicial decision, now or hereafter applicable.

ARTICLE IX

NON-WAIVER

9.1 Any waiver, whether in writing or by failure of the waiving party to timely act, of any requirement within this Agreement or of any breach of any requirement within this Agreement:

(a) shall not constitute a waiver of any subsequent requirement herein or of any subsequent breach of any requirement herein; and

(b) shall not otherwise affect the rights of the waiving party under this Agreement with respect to any said subsequent requirement or subsequent breach of said requirement.

ARTICLE X

SEVERABILITY

10.1 Should any provision or any part of any provision within this Agreement be held unconstitutional or otherwise null or void by a tribunal of competent jurisdiction, said provision or part thereof shall be severed from this Agreement, and the remainder of this Agreement shall continue to be in full force and effect as agreed to by the parties.

ARTICLE XI

NOTICES AND CORRESPONDENCE

11.1 All notices pertaining to or affecting the provisions of this Agreement shall be in writing and either delivered in person or sent by registered mail or certified mail return receipt requested to the parties at the following addresses:

(1) Correspondence to the County:

mailed: [mailing address of the County]

delivered: [delivery address of the County]

(2) Correspondence to the District Member:

mailed: [mailing address of the District Member]

delivered: [delivery address of the District Member]

11.2 Either of the parties shall be entitled to specify as its proper address for the purposes of this Agreement any other address located within the County upon ten (10) days prior written notice to the other party.

ARTICLE XII

ASSIGNMENT

12.1 Except as otherwise provided in this Article 12.1, the rights and obligations of the County or the District Member under this Agreement may be assigned by the County or the District Member. Notwithstanding any such assignment, the County or the District Member, respectively, shall remain liable under the terms of this Agreement unless released of all or certain of its obligations hereunder by the other party. No assignment hereunder shall be permitted in any case where such an assignment adversely affects the tax-exempt status of any Debt Obligations or violates any provision of any instrument authorizing or securing any Debt Obligation. In addition, no assignment by a District Member is permitted where such assignment would result in a lowering of the rating assigned to any Debt Obligations by any nationally recognized credit rating service.

ARTICLE XIII

CAPTIONS

13.1 Captions in this Agreement are inserted for convenience of reference only and shall in no way be construed to be interpretations of text.

ARTICLE XIV

APPLICABLE STATE LAW

14.1 The rights, obligations, and remedies of the parties as specified under this Agreement shall be interpreted and governed in all respects by the laws of the State of Ohio.

ARTICLE XV

BINDING EFFECT

15.1 This Agreement shall inure to the benefit of and shall be binding upon the County and the District Member and their respective legal successors. Any obligations of the County

created by or arising out of this Agreement shall be payable out of Disposal Charges and Tipping Fees and, in the complete discretion of County, from any other source deemed legal and appropriate by the County. Any obligations of the District Member created by or arising out of this Agreement shall be payable from whatever source deemed legal and appropriate by the District Member.

ARTICLE XVI

COUNTERPARTS

16.1 This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which collectively shall constitute one and the same instrument.

ARTICLE XVII

AMENDMENTS, CHANGES AND MODIFICATIONS

17.1 Except as otherwise provided herein, this Agreement shall not be effectively amended, changed, or terminated except in writing signed on behalf of the County and the District Member. Such amendments, changes or termination shall become effective only upon the execution of substantially similar amendments, changes or termination by every District Member listed in Exhibit B to the resolution of the Board authorizing the execution of this Agreement.

17.2 It is the intent of this Article that all parties in the District shall be treated similarly.

17.3 The Board shall not finance or construct (a) new and/or innovative methods for solid waste management, such as, but not limited to, resource recovery facilities or (b) facilities and/or additional facilities to replace or supplement the Solid Waste Disposal Facilities the capital cost of which would exceed more than 20% of the undepreciated value of all of the Solid Waste Disposal Facilities, as of the date of the most recent financial statement of the County for the most recent completed fiscal year of the County.

17.4 No amendment or modification to this Agreement shall be effective in the absence of a certificate of the appropriate trustees under any indentures securing any Debt Obligations to the effect that no covenants in such indentures will be violated by reason of such amendment or modification.

IN WITNESS WHEREOF, the parties have hereunto set their hands on

this _____ day of _____, 19____.

WITNESS:

BOARD OF COMMISSIONERS OF
MONTGOMERY COUNTY, OHIO

By _____

By _____

By _____

or

By _____

Claude D. Malone, Jr.
County Administrator

CITY/VILLAGE

or _____

By _____

Its _____

APPROVED AS TO FORM
LEE C. FALKE, Prosecuting Attorney

By _____
Assistant Prosecuting Attorney

EXHIBIT A

CITIES IN SOLID WASTE DISTRICT

Centerville	Moraine
Clayton	Oakwood
Dayton	Riverside
Englewood	Trotwood
German town	Union
Huber Heights	Vandalia
Kettering	West Carrollton
Miamisburg	

TOWNSHIPS IN SOLID WASTE DISTRICT

Butler	Mad River
Clay	Miami
German	Perry
Harrison	Randolph
Jackson	Washington
Jefferson	Wayne
Madison	

7/25/85