

RESOLUTION NO. 44-81
CITY OF CENTERVILLE, OHIO

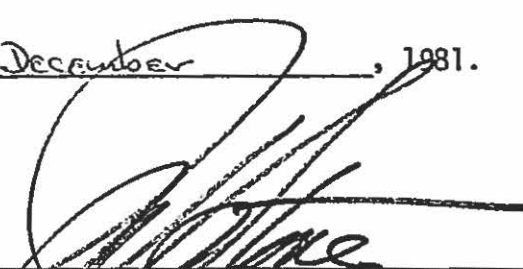
SPONSORED BY COUNCILMAN Russell Sweetman ON THE 7th
DAY OF December, 1981.

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH THE BOARD OF COUNTY COMMISSIONERS OF MONTGOMERY COUNTY, OHIO, FOR WASTE DISPOSAL SERVICES THROUGH THE CITY OF CENTERVILLE'S MEMBERSHIP IN THE MONTGOMERY COUNTY GARBAGE AND REFUSE DISPOSAL DISTRICT.


THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

SECTION 1. That the City Manager is hereby authorized and directed to enter into a contract with the Board of County Commissioners of Montgomery County, Ohio relating to the City of Centerville's Membership in the Montgomery County Garbage and Refuse Disposal District, for the disposal of solid waste originating in the City of Centerville, Ohio; a copy of the contract is attached hereto, marked Exhibit "A" and made a part thereof.

PASSED this 7th day of December, 1981.


Mayor of the City of Centerville, Ohio

ATTEST:


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 that the foregoing is a true and correct copy of a Resolution passed by the Council of the City of Centerville, Ohio, on the 7th day of December, 1981.


Clerk of the Council

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

Department of Law
Robert N. Farquhar
Municipal Attorney

CONTRACT FOR DISPOSAL SERVICES

This Contract is entered into as of _____ pursuant to Section 343.02 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 343.01 of the Ohio Revised Code (the "District"), and the _____ of _____ a municipal corporation whose territory is included within the District (the "Municipality").

WHEREAS, the County and the Municipality have heretofore entered into an agreement or agreements with respect to the provision of disposal services by the County at its two existing incinerators, and

WHEREAS, the County, in order to comply with applicable state and federal pollution control laws and regulations, expects to cease operations at either or both of such incinerators by July 1, 1979; and before, on or after such date, expects to arrange for one or more alternative methods for the disposal of solid waste originating within the District, pending further negotiations with the Municipality and other municipal corporations within the District regarding additional contractual arrangements for implementation of a new solid waste disposal facility to serve the District; and

WHEREAS, the County and the Municipality are desirous of entering into this Contract to set forth their relative rights and obligations until the date which shall be the earliest of the following: (a) until alternative contractual arrangements between the County and the Municipality are concluded to facilitate the financing of a new facility referred to in Section 4 or, (b) until payment in full of bonds heretofore issued by the County to finance the Facilities hereinafter defined.

THE COUNTY AND THE MUNICIPALITY HEREBY COVENANT AND AGREE AS FOLLOWS:

SECTION 1. Delivery of Solid Waste. The Municipality agrees to deliver or cause to be delivered to such facility or facilities (the "Facilities"), currently referred to as the North and/or South Incinerator sites (but which does not necessarily require that the waste be incinerated) such solid waste as shall be described in rules promulgated by the Board, acting upon recommendations made by the Solid Waste Advisory Committee provided for in Section 3 hereof (the "Advisory Committee"). The Municipality is not bound by this Section during such time as it may be prevented from doing so by circumstances beyond its control,

including but not limited to, labor disturbances and natural disasters. Further, such rules which may be enacted by the Board shall not impose upon the Municipality any specific method of waste collection.

SECTION 2. Acceptance and Disposal of Solid Waste. The County agrees to accept such solid waste at the Facilities and dispose of same in accordance with rules promulgated by the Board, acting upon recommendations made by the Advisory Committee; unless prevented from doing so by circumstances beyond the County's control, including, but not limited to, labor disturbances and natural disasters.

SECTION 3. Solid Waste Advisory Committees. The Solid Waste 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 of County Commissioners.

The Advisory Committee shall propose rules concerning the delivering and disposal of solid waste and shall recommend the establishment and/or modification of disposal user charges under this contract. Such user charges are those needed to meet the cost of operation, maintenance, and debt service charges of the Facilities.

It shall be a requirement by adoption of this agreement that the "Board" shall request a review, opinion and/or recommendation from the "Advisory Committee" on all matters related to solid waste management policy, including, but not limited to, rates and charges, 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 relative 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.)

Nothing in this agreement shall preclude either the "Advisory Committee" from recommending, nor the "Board" from adopting a financial subsidy of the solid waste disposal system.

SECTION 4. Future Solid Waste Disposal Program Negotiations. The Board and the Municipality, in cooperation with other municipal corporations whose territory is included within the District, agree to discuss, review and negotiate in good faith the financing, construction, and operation of new and innovative methods for solid waste management, such as, but not limited to, resource recovery facilities to replace or supplement the Facilities referred to in Section 1. The Board and the Municipality mutually covenant that they will cooperate fully with each other and with such other municipal corporations to implement such new and innovative methods which are economically feasible, ecologically sound, and in compliance with applicable laws and regulations.

In the event of any dispute concerning the fact or extent of such cooperation by either the County or the Municipality, they shall present the matter to the Advisory Committee.

SECTION 4.A. Termination. By notice in writing to the County in accordance with SECTION 7 hereof, the Municipality, acting pursuant to an ordinance of its legislative authority (a certified copy of which, accompanied by certified evidence of its passage or adoption, shall be attached to such notice), may terminate its obligations under SECTIONS 1, 3, 4, 5, 6, 7 and 8 hereof, and its concomitant obligation to pay the rates and charges for disposal services established from time to time by the Board, subject, however, to the following conditions:

- (1) Such notice shall be effective on the second January 1 next following the date of its receipt by the Board.
- (2) Notwithstanding termination of the obligations described herein, the Municipality shall be and remain fully responsible for its proportionate share (calculated and payable as provided below) of the principal, interest and premium due and to become due with respect to (a) the outstanding principal amount of the County's Incinerator Revenue Bonds, dated October 1, 1967, and (b) the general obligation bonds of the County issued to finance the North and South incinerators (herein, together, the "Debt Service").
- (3) Any notice given by the Municipality under this SECTION 4A may be revoked, at or prior to its effective date, by a writing delivered by the Municipality to the County, consented to by the Board, provided that the Municipality shall agree, in writing, to pay to the County the actual direct and indirect damages sustained by the County by reason of the giving of such notice and the County's action or failure to act thereon or in reliance thereon, all as calculated by the Board or with its approval.

In the event that notice in accordance with this Section 4.A. shall have been given by the Municipality or by any municipality which is a party to a contract of similar purport to this Contract, and shall not have been effectively revoked in accordance with this Section 4.A., the County, at its option, may terminate its obligations under this Contract and all such similar contracts by notice in writing

Notwithstanding the giving of any such notice by the Municipality, or termination as aforesaid by the County, the Municipality shall pay to the County's respective debt retirement funds, following the effective date of such notice, its proportionate share of the debt service for both revenue and general obligation bonds then outstanding to their respective final maturities or other obligations approved by the parties hereto, calculated as follows:

- (A) Annual Debt Service requirements to final maturity of the obligations with respect to which such Debt Service is payable shall be calculated by the County Auditor of the County of Montgomery, and a schedule of such Debt Service requirements certified to the County and the Municipality.
- (B) The Municipality's proportionate share of Debt Service in each year, payable semiannually in equal amounts as provided above, shall bear the same proportion to total Debt Service for such year as the average annual tonnage of residential solid waste delivered or caused to be delivered to the Facilities "from within" the Municipality during the three (3) calendar years preceding the effective date of such notice bears to the total average annual tonnage of solid waste processed by the County for such three calendar years. Such tonnage shall be the tonnage shown on the records maintained by the County, and in the event of any dispute with respect thereto, or with respect to the aforesaid schedule of Debt Service requirements, such dispute shall be finally decided (without right of appeal to any courts) by a panel of three (3) arbitrators, one of whom shall be appointed by the County, one by the Municipality, and the third by the two appointed by the County and the Municipality. The arbitrators shall act in accordance with the rules of the American Arbitration Association. In the event of failure of the County or the Municipality to appoint an arbitrator within ten (10) days after notice from the other of the existence of a dispute hereunder, the arbitrator shall be appointed by the Presiding Judge of the Montgomery County Court of Common Pleas. The expenses of arbitration shall be borne equally by the County and the Municipality, unless the arbitrators shall determine that the dispute was substantially frivolous on the part of one or the other, in which case such party shall pay all expenses. The arbitrators shall act by majority vote.
- (C) The Municipality shall elect to provide written notice to the County if the Municipality is to be billed for the Debt Service for the average annual tonnage of residential solid waste delivered or caused to be delivered to the facilities as described in (B) above, or whether the County is to bill each owner of improved property falling under the definition of producing residential solid waste, once the termination provisions would take effect for any solid waste district member.
- (D) The Municipality which invokes the termination clause described in this Section shall remain a member of the Solid Waste District and the County shall continue to recover Debt Service payments for the average annual tonnage of non-residential solid waste delivered or caused to be delivered to the facilities as described in (B) and (C) above by billing each commercial and industrial enterprise producing non-residential solid waste in that Municipality.

- (E) In the event any Municipality exercises this termination provision, the County reserves the right to timely invoice and collect the Debt Service payments in order to assure payment of Debt Service when due. The Municipality shall make payment within thirty days of invoice date.
- (F) In the event the Municipality exercises its right of termination, said Municipality's liability is expressly limited to the Debt Service payments outlined above, and the County agrees to indemnify and save harmless the Municipality from any and all liability arising from any action of the District after termination.

SECTION 5. Preambles. The preambles to this Contract are agreed to be necessary and operative portions hereof for all purposes.

SECTION 6. Severability. To the extent of any inconsistency between the County and the Municipality with respect to disposal of solid waste, this Contract shall be deemed controlling, provided that in the event that this Contract shall be rescinded by mutual consent or held void in any respect material to the substance hereof, such prior agreement or agreements shall be effectual for all purposes except to the extent that either party is prevented from performing thereunder by operation of law.

SECTION 7. Notices. All notices, certificates, requests or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, postage prepaid, addressed to the Board at County of Montgomery, Ohio, Montgomery County Administration Building, 451 West Third Street, Dayton, Ohio 45422, Attention: County Administrator, and to the Municipality at the address set forth in Exhibit A hereto. The Board and the Municipality may, by notice given hereunder, designate a different or additional address to which communications shall be sent.

SECTION 8. Binding Effect. This Contract shall inure to the benefit of and shall be binding upon the County and the Municipality and their respective legal successors. Any obligations of the County and the Municipality created by or arising out of this Contract shall be payable out of disposal service charges and other monies collected by the County pursuant to Section 343.08 of the Ohio Revised Code, in the case of the County, and from whatever source deemed legal and appropriate by the Municipality; The County may, if it chooses, Pursuant to Section 3 regarding a subsidy, pay such subsidy from any source it deems legal and appropriate.

SECTION 9. Amendments, Changes and Modifications. Except as otherwise provided herein, this Contract shall not be effectively amended, changed, or terminated except by a writing signed on behalf of the County and the Municipality. The Board shall not amend or modify any contract with any Municipality in the District without the knowledge and consent of all other Municipalities in the District. Such consent shall not be unreasonably withheld. It is the intent of this Section that all parties in the District shall be treated similarly.

SECTION 10. Counterparts. This Contract may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same Contract.

SECTION 11. Captions. The captions or headings in this Contract are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Contract.

SECTION 12. Governing Law. This Contract shall be deemed to be a Contract made under the laws of the State of Ohio and for all purposes shall be governed by and construed in accordance with the laws of the State of Ohio.

IN WITNESS WHEREOF, the County and the Municipality have caused this Contract to be signed by their duly authorized officers as of the date first above written.

City of _____

By _____

APPROVED AS TO FORM

By _____

Assistant County Prosecutor

COUNTY OF MONTGOMERY, OHIO,
acting by and through it
Board of County Commissioners
and on behalf of the MONTGOMERY
COUNTY GARBAGE AND REFUSE DISPOSAL
DISTRICT

By _____

By _____

By _____