

MONTGOMERY COUNTY-INTERMUNICIPAL WASTE SERVICES AGREEMENT

Between the
COUNTY OF MONTGOMERY
And
[District Member]

Dated as of _____, 2019

MONTGOMERY COUNTY-INTERMUNICIPAL WASTE SERVICES AGREEMENT

INTRODUCTION

This Montgomery County-Intermunicipal Waste Services Agreement (the "Agreement") is entered as of _____, 2019 by 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 Waste District (the "District"), and _____, a political subdivision of the State of Ohio and a member of the District (the "District Member"). This Agreement arises in the following context:

The Board and the District Members entered into the previous Waste Delivery and Disposal Agreement in 1985, which was subsequently amended. With the desire to replace the 1985 Waste Delivery and Disposal Agreement, and the intent to be legally bound, the County and District Member agree as follows:

ARTICLE I

PRIOR AGREEMENTS SUPERCEDED

1.1 This Agreement supersedes the 1985 Waste Delivery and Disposal Agreement, as amended, and all other agreements between the County and the District Member relating to the management of Disposable Solid Waste. Said agreements are hereby terminated as of the Effective Date of this Agreement, which is the date specified in Section 8.1 of this Agreement.

ARTICLE II

DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below:

Annual Property Charge means the charge established by the Board and assessed annually with respect to the cost of the County's solid waste management infrastructure and services upon the owner of each lot within the County insofar as the lot currently has, or is in the process of being improved with, at least one permanent, portable, or temporary building.

Debt Obligations means any bond, note, certificate of indebtedness, or other indebtedness of the County issued prior to or subsequent to the date of this Agreement with respect to the Solid Waste Processing and Transfer Facilities, including any obligation or portion thereof issued to refinance or refund any previously issued indebtedness of the County with respect to the Solid Waste Processing and Transfer Facilities.

Debt Service means the required installment payments of the principal amount of Debt Obligations, together with interest on Debt Obligations and any premium.

Disposable Solid Waste means all trash or rubbish ordinarily produced by a family or other household at its private residence, including without limitation single- and multiple-household dwellings as well as waste from any commercial, agricultural or industrial activity conducted on those premises insofar as the waste is similar in composition and quantity to domestic waste from a household, and similar general municipal wastes generated in offices, restaurants, hospitals, retail establishments, and other businesses and industry insofar as such trash, rubbish or waste is similar to household waste and generated from a source within the political boundaries of the County. Disposable Solid Waste includes Yardwaste and White Goods, as defined herein, but excludes Unacceptable Waste and "source separated recyclable materials," as that term is defined Section 343.01(M)(1) of the Ohio Revised Code, including source separated Yardwaste. Disposable Solid Waste includes other wastes if deemed acceptable by the County under this Agreement.

District Member means each political subdivision, other than the County, that obligates itself to deliver Disposable Solid Waste to the Solid Waste Processing and Transfer Facilities pursuant to this Agreement or another agreement with terms substantially similar to those in this Agreement.

Financing Requirements means, with respect to Debt Obligations, the Debt Service on such obligations as it is due and payable on specified dates and, insofar as they are not otherwise included in Debt Service, each of the following: (a) prorated fees representing financing costs (either initial or ongoing) of the County; and (b) the funding of any reserve, replacement, working capital or similar funds required by any instrument that specifies the County's duties with respect to the Debt Obligations. "Financing Requirements" also includes any payments or deposits of

funds in addition to operation and maintenance expenses and Debt Service that are required under any indenture or other instrument issued in conjunction with the Debt Obligations.

Operational Rules means the Montgomery County Solid Waste District Operational Rules adopted by the Board, as they may change from time-to-time, for the operation and management of the District including without limitation operation and management of the Solid Waste Processing and Transfer Facilities.

Solid Waste Management Plan means the Plan adopted in accordance with Section 3734.54 *et seq.* of the Ohio Revised Code.

Solid Waste Processing and Transfer Facilities means all facilities, buildings, property, and supporting appurtenances owned, operated, managed, identified, designated or otherwise approved by rule or resolution of the Board, as they may change from time-to-time, for management, processing or other disposition of Disposable Solid Waste, and includes, by way of example and without limitation, such equipment as may be required to transport Disposable Solid Waste to processing and recycling facilities, landfills and other disposal sites, all supporting equipment and appurtenances, combustion equipment and supporting appurtenances, as well as such recovery equipment as may be installed to recover or recycle any materials or energy from Disposable Solid Waste.

Tipping Fee means the per unit charge or charges (such as a per ton amount) levied by and assessed by the County for Disposable Solid Waste delivered to the Solid Waste Processing and Transfer Facilities.

Unacceptable Waste has the meaning set forth in the Operational Rules.

White Goods means articles of Disposable Solid Waste that may require special handling and management, including stoves, ranges, refrigerators (including refrigerants contained therein such as chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs)), dishwashers, and other appliances similar to those listed above.

Yardwaste means discarded organic material such as wood chips, branches, leaves, flowers, shrubs, grass and other similar organic material.

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 the County's governing body and that the 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 the District Member's governing body, is fully consistent with the laws, rules and ordinances of the District Member, 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 and warrants to the County, that to the best of each of their knowledge there is no pending or threatened litigation or government proceeding that would adversely affect the performance of their respective obligations under this Agreement.

ARTICLE IV

OBLIGATIONS OF THE COUNTY

4.1 The County shall accept or cause to be accepted from the District Member at the Solid Waste Processing and Transfer Facilities all Disposable Solid Waste generated from within the boundaries of the District Member, and shall arrange for environmentally sound and otherwise proper processing, disposal or other management of all of the Disposable Solid Waste that is delivered to the Solid Waste Processing and Transfer Facilities.

4.2 (a) To the extent the District Member's performance under this Agreement results in the District Member or the District incurring liability and associated costs under the

Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601-9675 (commonly known as "Superfund liability"), all such costs, including all expenses of litigation or settlement, shall be treated, subject to Section 4.2(b) hereof, as obligations of the District on the same basis as other obligations of the District under this Agreement.

(b) Pursuant to Ohio Revised Code Section 5705.44, funds for satisfaction of the obligations described in Section 4.2(a) shall be expended only from earnings of the District as currently deposited into Montgomery County Treasury Sub-Fund 559, a sub-fund of Montgomery County Treasury Fund 299, or a successor or substitute fund or sub-fund used for a similar purpose. These obligations shall be limited to earnings of the District that have been deposited in Sub-Fund 559 or successor or substitute fund or sub-fund used for a similar purpose, and the obligations shall not exceed the amount of earnings of the District that have been deposited into the above-referenced fund(s) or sub-fund(s).

4.3 The County shall establish and collect, and from time-to-time revise and update as necessary, Annual Property Charges and Tipping Fees sufficient to recover all of the costs incurred and expenditures made to operate and maintain the Solid Waste Processing and Transfer Facilities. The cost recovered through the Annual Property Charges and Tipping Fees include without limitation: (a) all costs for operation and maintenance for the Solid Waste Processing and Transfer Facilities; (b) the Financing Requirements; (c) and sufficient reserves, as determined by the County in its sole discretion, for future maintenance, repair and replacement of the Solid Waste Processing and Transfer Facilities including all associated equipment and structures.

4.4 The County shall maintain and enforce the Operational Rules.

4.5 The recommendations of the Solid Waste Advisory Committee ("SWAC"), which has been established by various Board resolutions, shall be considered by the County prior to its adoption of Annual Property Charges and Tipping Fees to which Section 4.3 refers and the Operational Rules to which Section 4.4 refers.

4.6 In the unlikely event that the Solid Waste Processing and Transfer Facilities are not available to receive Disposable Solid Waste, the District Member, as directed by the County, shall undertake reasonable efforts to deliver or cause delivery of such Disposable Solid Waste to an alternative facility (or facilities) designated by the County for waste processing and transportation. In the circumstances described in the preceding sentence, the following shall apply:

- (a) If the District Member collects Disposable Solid Waste generated within the District Member's political boundaries, it shall continue to pay the applicable Tipping Fees and the County shall (i) pay the applicable charges with respect to such alternative facility and (ii) credit a subsequent invoice to the District Member for Tipping Fees with the substantiated amount of unavoidable costs or expenses, if any, the District Member incurred for waste transportation due to use of such alternative facility.
- (b) Alternatively, if the District Member contracts with a commercial hauling company for collection of Disposable Solid Waste generated within the District Member's political boundaries, and use of the alternative facility causes the hauler to incur substantiated and unavoidable costs or expenses that it would not otherwise have incurred, the County will reimburse the District Member insofar as it is contractually obligated to reimburse the hauler for such costs.

ARTICLE V

OBLIGATIONS OF DISTRICT MEMBERS

5.1 The District Member shall deliver or cause to be delivered to the Solid Waste Processing and Transfer Facilities, or other such facilities as the County may designate as set forth in Section 4.6 of this Agreement, all Disposable Solid Waste generated or collected within the District Member's political boundaries. The District Member, however, shall not deliver or cause the delivery of any Unacceptable Waste or other types of solid waste, refuse or garbage for which delivery to the Solid Waste Processing and Transfer Facilities is prohibited pursuant to the Operational Rules.

5.2 The District Member agrees to pay the Tipping Fees established by the County, which may be modified by the County from time-to-time, for all Disposable Solid Waste delivered to the Solid Waste Processing and Transfer Facilities by or on behalf of the District Member.

5.3 The District Member further agrees to take such steps as are necessary to cause private collectors and haulers of Disposable Solid Waste operating within the District Member's political boundaries to deliver to the Solid Waste Processing and Transfer Facilities, or such other facilities as the County may reasonably designate in the event that the Solid Waste Processing and Transfer Facilities are unavailable, all Disposable Solid Waste the private collectors and haulers collect within the political boundaries of the District Member and to pay the Tipping Fees established by the County, as the Tipping Fees may be modified by the County from time-to-time. The above-stated obligation for delivery of Disposable Solid Waste and payment of the associated Tipping Fees shall be included as a contract term if the District Member contracts with a private hauler or collector for collection of Disposable Solid Waste generated within the District Member's political boundaries. In the event that a District Member does not contract with a private hauler or collector for collection of Disposable Solid Waste, nothing in this Agreement is intended to depart from the restriction in Ohio Revised Code § 343.01(I)(2) on the applicability of designation authority with respect to source separated recyclable materials. Payment of Tipping Fees by a private collector and hauler shall satisfy the obligation of the District Member to pay Tipping Fees as required by Section 5.2.

5.4 If at any time during the term of this Agreement (i) a District Member does not have a fully operative contract with a private hauler or collector for collection of all Disposable Solid Waste generated within the District Member's political boundaries and (ii) the County's Director of Environmental Services (or another County representative with comparable responsibility for administration of this Agreement) advises the District Member that a private hauler or collector collecting Disposable Solid Waste generated within the District Member's political boundaries is not delivering all such Disposable Solid Waste to the Solid Waste Processing and Transfer Facilities, the District Member shall within 120 days thereafter, unless otherwise agreed to in writing by the County, enter a contract with a private hauler or collector for collection of all Disposable Solid Waste generated within the District Member's political

boundaries and delivery of that Disposable Solid Waste to the Solid Waste Processing and Transfer Facilities.

5.5 The County and the District Member expressly recognize that the County is a third party beneficiary of the District Member's agreement with each private hauler or collector for collection of Disposable Solid Waste, and the County is entitled to enforce the delivery requirements of those agreements on the same basis as the District Member as if the County would be a party to the agreements.

ARTICLE VI

FORCE MAJEURE

6.1 For the purposes of this Article VI, the term Force Majeure shall mean any cause beyond the reasonable control of the party whose performance is affected, including without limitation acts of God, war, riot, fire, explosion, wind storm, flooding, labor disputes, military or usurped power, sabotage, inability to obtain or use fuel, power or raw materials, shortage or failure of the usual means of transportation, court injunction, accident or breakdown of machinery or equipment, or action taken by any governmental authority which prevents or hinders performance of the parties' obligations under this Agreement (except insofar as the governmental action in question was taken by the County or the District Member).

6.2 In fulfilling the obligations hereunder, except with regard to the payment of Tipping Fees by the District Member, neither the County nor the District Member shall be liable for delay or failure to perform caused by reason of Force Majeure. 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, shall be suspended, respectively, for the period of the Force Majeure event and the respective party's time for performance shall be extended accordingly. The obligation to pay Tipping Fees shall not be affected in any way by reason of Force Majeure.

6.3 In the event of any delay in performance caused by Force Majeure, the affected party shall notify the other by telephone within 2 business days of the onset of the Force Majeure event and provide written confirmation within 7 business day of the onset of the Force Majeure event. The telephone notification and written confirmation shall identify: (i) the date on which the Force Majeure event commenced; (ii) its estimated duration; and (iii) its estimated impact, including cost impact, on the party's respective obligations under this Agreement.

6.4 If, due to Force Majeure, either the County or a District Member shall have been excused for a period of time from 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 use its best efforts to accept at the Solid Waste Processing and Transfer Facilities all of the Disposable Solid Waste the District Member accumulated during the period of the excused performance, provided that receipt and processing of the accumulated Disposable Solid Waste at the Solid Waste Processing and Transfer Facilities can be implemented in a manner that is: (i) within the design limitations of the Solid Waste Processing and Transfer Facilities; (ii) efficient, sanitary and consistent with the contractual obligations of the County to others with respect to availability of the Solid Waste Processing and Transfer Facilities; and (iii) is not contrary to or in violation of any permit, 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 applicable and legally binding judicial decision or order.

ARTICLE VII

DISPUTE RESOLUTION

7.1 If any dispute arises between the County and the District Member concerning this Agreement, they shall use their best efforts to resolve the dispute by mutual agreement.

7.2 In the event of such claim, controversy or other dispute between the County and the District Member arising out of or relating to this Agreement, representatives of the County and the District Member authorized to resolve the dispute shall meet in person and make a good faith effort to negotiate a settlement of such dispute. Unless otherwise agreed by the parties, the meeting shall take place within 5 business days of the adverse party's receipt from the other party of a written notice of the dispute. If the dispute is not resolved at the meeting, and absent an agreement

by both parties to continue the informal dispute resolution process, either party can declare the informal dispute resolution process ended with respect to the matters at issue. No statement, written or oral, made by any representative of either party during the informal dispute resolution process shall be admitted into evidence for any purpose during any subsequent litigation, regardless of whether the litigation is in court or before an arbitrator.

7.3 Notwithstanding the foregoing, the informal process for dispute resolution shall not prevent either party from pursuing limited judicial remedies where immediate action is necessary to prevent irreparable injury.

7.4 Absent informal resolution of a dispute, the County and the District Member can agree to arbitrate any dispute arising out of this Agreement. Unless otherwise agreed in writing, the County and the District Member shall continue to perform their respective obligations under this Agreement during any arbitration proceeding.

7.5 Subject to Sections 7.1 and 7.2, nothing in this Agreement restricts the rights of the County or the District Member to pursue all remedies available at law or equity for protection and enforcement of their respective rights under this Agreement.

7.6 The rights, obligations, and remedies of the parties under this Agreement shall be interpreted and governed in all respects by the laws of the State of Ohio. Any litigation concerning any dispute that arises out of or relates to this Agreement or the breach thereof, whether arising at law or in equity, based upon statutory or common law, or asserting claims based on contract, tort or otherwise, shall be brought and conducted exclusively in a court of the State of Ohio in Montgomery County, Ohio.

ARTICLE VIII

TERM OF AGREEMENT

8.1 The term of this Agreement shall commence on the date that it is executed by the Board on behalf of the County ("the Effective Date") and shall continue until the following, which

is referred to below as the "Termination Date": 20 years from the date that the County executes this Agreement. This Agreement shall continue automatically beyond the Termination Date unless either the County or the District Member elects to terminate this Agreement after having provided to the other not less than one year's prior written notice of the election.

ARTICLE IX

NON-WAIVER

9.1 The waiver by either party of any default or breach of any provision of this Agreement by the other party, regardless of whether the waiver is agreed to in writing or the result of inaction by the non-defaulting (non-breaching) party, shall not operate or be construed to operate as a waiver of any subsequent default or breach or otherwise affect the rights of the waiving party with respect to any subsequent default or subsequent breach of this Agreement.

ARTICLE X

AMENDMENTS, CHANGES AND MODIFICATIONS

10.1 This Agreement shall not be amended except in writing signed on behalf of the County and the District Member. No amendment shall become effective except upon the execution of substantially similar amendments by each District Member listed in the resolution of the Board authorizing the execution of this Agreement.

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

10.3 The Board shall not finance or construct capital improvements, including new or additional facilities to replace or supplement the Solid Waste Processing and Transfer Facilities, prior to submitting to the Financial Advisory Committee ("FAC") and SWAC the Board's plans for those capital improvements and requesting recommendations from the FAC and SWAC with

respect to the planned capital improvements, which follows the current established procedure as of the Effective Date.

ARTICLE XI
NOTICES AND CORRESPONDENCE

11.1 All notices pertaining to or affecting performance under this Agreement shall be in writing. While email is encouraged, all notifications shall also be delivered in person or sent by certified mail return receipt requested to the parties as shown below:

For the County:

Email: _____

Postal address: _____

Address for hand-delivery: _____

For the District Member:

Email: _____

Postal address: _____

Address for hand-delivery: _____

The parties are free to change the preceding information by providing notice of the change (or changes) by certified mail. The changes shall become effective 5 days from the other party's receipt of the notice.

ARTICLE XII
ASSIGNMENT

12.1 Except as otherwise provided in this Section 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 and the District Member, respectively, shall remain liable for all of their obligations under this Agreement except insofar as,

and only to the extent that, either may be expressly released of a portion or all of its obligations hereunder by the other party. No assignment hereunder shall be permitted in any case where doing so 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 downgrading the credit rating assigned to any Debt Obligations by any nationally recognized credit rating agency.

ARTICLE XIII

INTEGRATED AGREEMENT

13.1 This Agreement, including the recitals hereto, constitutes the entire understanding of the parties with respect to the subject matter and supersedes all prior agreements and negotiations. The parties hereby affirm that the terms, conditions and provisions of this Agreement, and any amendments that may be entered in accordance with its terms, conditions and provisions, shall govern the obligations of the parties.

ARTICLE XIV

BINDING EFFECT

14.1 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 revenue received from payment of Annual Property Charges and Tipping Fees and, in the sole 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 is deemed legal and appropriate by the District Member.

ARTICLE XV

SEVERABILITY

15.1 In the event that any provision of this Agreement be held invalid, illegal or unenforceable in any respect, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated. With respect to any invalidated provision of this Agreement, the parties hereto shall negotiate and in good faith agree to such amendments, modifications or supplements to this Agreement and shall, to the maximum extent practicable, implement and give effect to the intentions of the parties herein.

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.

IN WITNESS WHEREOF, the parties have hereunto set their hands on this __ day of _____,
2019

BOARD OF COMMISSIONERS OF MONTGOMERY COUNTY, OHIO

Carolyn Rice, County Commissioner

Deborah A. Lieberman, County Commissioner

Judy Dodge, County Commissioner

By _____
Michael Colbert, County Administrator

APPROVED AS TO FORM

Mathias H. Heck, Jr., Prosecuting Attorney

By _____
Assistant Prosecuting Attorney

DISTRICT MEMBER

By: _____

Title: _____

Dated: _____

APPROVED AS TO FORM:

Title: _____

Certification

This shall certify that the funds required to meet the municipality's (or township's) obligations set forth herein during the fiscal year in which this contract is made or obligation incurred, have been lawfully appropriated for such purpose and are in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrance. Ref. R.C. 5705.41.

(Municipality/Township)

Signature

Title: _____

Dated: _____

