

The City Council of

08-158

Exhibit A

North Royalton, Ohio

ORDINANCE NO. 93 - 179

INTRODUCED BY: Westbrook, Barna,
D. Jacobs, Stables, Monteleone,
J. Jacobs, Watkins

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH KURTZ BROS., INC. FOR THE OPERATION OF A YARD WASTE COMPOSTING SITE, AND DECLARING AN EMERGENCY.

WHEREAS: The City of North Royalton desires to provide for the construction and operation of a recycling and composting complex on 26 acres of city-owned property; and

WHEREAS: The City of North Royalton desires to accept the proposal of Kurtz Bros., Inc. as the designated operator of the recycling complex; and

WHEREAS: It is therefore necessary to authorize the Mayor to enter into an agreement with Kurtz Bros., Inc. setting forth the terms and conditions for the recycling and composting complex.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NORTH ROYALTON, COUNTY OF CUYAHOGA AND STATE OF OHIO:

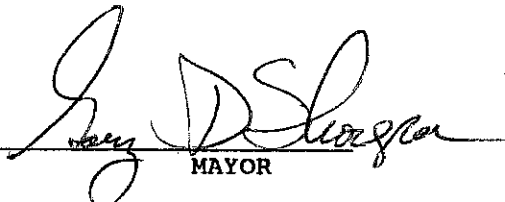
Section 1. That Council hereby authorizes the Mayor to enter into a long-term professional service contract for the operation of a yard waste recycling and composting complex with Kurtz Bros., Inc., the terms and conditions of said agreement being set forth in the attached Exhibit "A" incorporated herein as if fully rewritten.

Section 2. That the Law Director may negotiate such minor contract changes as he deems necessary.

Section 3. That this Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety and welfare of the City, and for the further reason that it is immediately necessary to authorize this agreement in order to immediately provide for the operation of a recycling and yard waste composting site for the City of North Royalton.


THEREFORE, provided this Ordinance receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.


PRESIDENT OF COUNCIL

APPROVED: 
MAYOR

DATE PASSED: July 20, 1993

DATE APPROVED: July 21, 1993

ATTEST: 
CLERK OF COUNCIL

First reading July 6, 1993
Second reading suspended
Third reading July 20, 1993
Amended July 20, 1993

YEAS: Westbrook, Barna, D. Jacobs, Stables,
Monteleone, Watkins

NAYS: none

ABSENT: J. Jacobs

CERTIFICATE OF POSTING

I, Clerk of Council of the City of North Royalton, Ohio, do hereby certify the Ordinance/Resolution No. 93-179 was duly posted on 7-23, 19 93, and remained posted for a period of fifteen days thereafter, in not less than five of the most public places in the city as determined by the Council of said City.


Clerk of Council

Dated: 8-9 19 93

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AGREEMENT

THIS AGREEMENT (the "Agreement") is made this 19 day of OCTOBER, 1993, by and between Kurtz Bros., Inc. ("Kurtz") and The City of North Royalton ("The City").

1. The City is in need of an economical and environmentally sound approach to achieve recycling goals and meet statewide waste compliance schedules.
2. The City desires to construct a recycling and composting complex on 26-acres of City-owned Property that will provide recycling and composting services to North Royalton and other area communities.
3. By serving as the "host community" in this regional effort, the City wishes to obtain these services at the least cost to The City of North Royalton.
4. Kurtz Bros., Inc. desires to be the designated operator of the composting facility.

NOW, THEREFORE, in consideration of the foregoing recitals, Kurtz and The City agree as follows:

1. Kurtz hereby agrees to furnish all materials and perform all labor necessary to manage and operate The City's yard waste composting facility (the "Work"), to be constructed on City-owned property. Specific services provided by Kurtz under this Agreement shall be as follows:
 - A. Kurtz shall manage the composting operations and operate the site and facility in compliance with all applicable Ohio EPA regulations. The City shall at all times maintain ownership of the site.
 - B. Kurtz shall provide all equipment and labor necessary for the composting of grass, leaves, brush, clean wood chips, and other source-separated vegetative and wood waste materials.
 - C. Kurtz shall provide the site design and technical assistance during construction of the facility.
 - D. Kurtz shall provide finished product screening, marketing, and distribution. Kurtz Bros. shall take ownership of all finished products manufactured at the facility by Kurtz and will be responsible for all expenses and revenues associated with marketing and distribution efforts.
 - E. Kurtz shall seek other area communities and businesses to deposit yard waste at the facility in order to maximize operational economies of scale at the facility. Kurtz shall be entitled to all tip fees collected.
2. The City shall be responsible for providing the following:
 - A. The City shall allocate \$293,871 for the construction (including engineering costs) of the first phase of the composting facility. The City shall allocate additional funds for expansion of the facility as necessary to accommodate increases in the volume of yard waste flow as permitted through the availability of Issue 2 funding.
 - B. The City shall ensure that only source-separated city generated yard waste materials are delivered to the facility by the City of North Royalton. All material shall be free of solid waste contamination and plastic bags.
 - C. The City shall allow Kurtz to produce and distribute topsoil and other products from the facility that are related to the marketing of finished compost. The City shall have the right of first refusal to accept free of charge all topsoil accumulated at the site as a result of the facility's construction.
3. Kurtz shall operate the facility for a period of ten (10) years, with the right to renew for one additional ten (10) year period at the option of Kurtz, to commence upon completion of the facility's construction.

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4. Kurtz shall allow The City to deposit yard waste, free of charge, at its Rockside Road Composting Facility in Valley View in the interim period until completion of the facility. Free yard waste tipping shall be allowed for the period of time from the execution date of this Agreement through completion of the facility's construction, but no later than September 15, 1993.
5. The City agrees to pay to Kurtz a tip fee based on the following sliding scale:

<u>Rate per Cubic Yard</u>	<u>Total Cubic Yards of waste deposited annually</u>
\$4.00	0 - 25,000
\$3.00	25,001 - 50,000
\$2.00	50,001 - 75,000
\$1.00	75,001 - 100,000
-0-	100,001 and over

As more material is received at the facility from surrounding areas, the City of North Royalton's per cubic yard tipping fee shall be reduced according to the above schedule. Once total annual yard waste receipts, from the City as well as surrounding areas, exceed 100,000 cubic yards, the City of North Royalton may deposit yard waste at the facility free of charge.

6. Payment terms shall be net 30 days from date of invoice. Subject to any limitations provided by Ohio law, payments remaining unpaid on the due date shall bear interest from and after the date the same was due at the rate of 1½% per month.
7. Kurtz shall pay to The City \$.75 per cubic yard for all finished compost produced and sold at the compost facility. Annual payment shall be due on September 1 of each contract year beginning in September 1994, as product becomes available.
8. The City agrees to negotiate a service contract with Kurtz for the operation of the planned in-vessel composting system and MRF building as Issue 2 Funds are granted.
9. The City hereby agrees to save and indemnify and keep harmless Kurtz against all liabilities, claims, judgments, demands, or damages, including attorneys' fees, arising from any injury to persons or property caused by The City, its agents, employees, or third-party contractors, and against all claims or demands for damages arising from injuries to The City, its agents or employees, occasioned by any cause or condition, by The City or its employees, or any other person. Kurtz shall provide a certificate of liability in the amount of \$1,000,000 and name the City as "additional insured."
10. Kurtz hereby agrees to save and indemnify and keep harmless The City against all liabilities, claims, judgments, demands, or damages, including attorneys' fees, arising from any injury to persons or property caused by Kurtz, its agents, employees, or third-party contractors, and against all claims or demands for damages arising from injuries to Kurtz, its agents or employees, occasioned by any cause or condition, by Kurtz or its employees, or any other person. Kurtz shall indemnify and keep harmless The City against all liabilities, claims, judgments, demands, or damages, including attorneys' fees, for claims or demands made by or actions brought by any governmental or regulatory agency or other person for any violation of any applicable federal, state, or local law, rule, or ordinance or regulation in connection with environmental contamination arising out of Kurtz's obligations in the management and operation of the facility.
11. This Agreement may be terminated by either party upon thirty days prior written notice if the other fails to fulfill any of its obligations under this Agreement. If the breach is not corrected within thirty days receipt of written notice, the breaching party shall assume and become liable for obligations, commitments, and

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unsettled claims previously undertaken or incurred in good faith in connection with this Agreement, and the terminating party, if applicable, may recover payment for Work executed.

- 12. The City and Kurtz hereby waive all rights of subrogation which may arise hereafter against the other for any damage caused by perils covered by fire and extended coverage, building, contents and business interruption insurance, or for which either party may be reimbursed as a result of insurance coverage affecting any loss suffered by it. The foregoing waiver shall apply only to the extent of any recovery made by the parties hereto under any policy of insurance now or hereafter issued and, further provided that the foregoing waivers do not invalidate any policy of insurance of the parties hereto, now or hereafter issued.
- 13. Any claim or controversy arising out of or relating to this Agreement or the breach or non-performance of any provision hereof, shall be resolved by the submission of such claim or controversy to arbitration. Such arbitration shall be governed by the Commercial Arbitration Rules of the American Arbitration Association in effect at the time the claim or controversy arises. Judgment upon the award rendered by the Arbitrator(s) may be entered in any Court having competent jurisdiction.
- 14. Kurtz shall make finished compost available to City residents at a discounted rate on a pickup bases. The City shall be entitled to 200 cubic yards of compost each year, free of charge, for park maintenance, beautification programs, and residents.
- 15. The City's Administration and Council at any time shall have the right to examine, inspect, visit, or audit the facility. The City shall maintain the right to question the operations or request a reporting to the City, via written report or in person at a periodic Council or committee meeting.
- 16. Kurtz shall maintain comprehensive records of all activities related to day-to-day operations of the facility. These records are to include such items as yard waste volumes of both in and out products, identification of origin, amount of sales, contamination (if any), etc. These records shall be made available at any time for examination by City officials upon request.

THE UNDERSIGNED HEREBY WARRANT AND ACKNOWLEDGE that they have been duly authorized to execute this Agreement on behalf of their respective companies.

The City of North Royalton

Gary D. Storer
By

Mayor
Title

10-13-93
Date

Date

Kurtz Bros., Inc.

[Signature]
By

Treasurer
Title

10/4/93
Date

Date

Approved as to form:

[Signature]

Law Director, City of
North Royalton

10-19-93
Date

Date