

Sponsor: Ondera/Foster

ORDINANCE NO. 56-19

A ORDINANCE OF THE LEGISLATIVE AUTHORITY OF THE CITY OF JACKSON, OHIO AUTHORIZING THE MAYOR OF THE CITY OF JACKSON TO EXECUTE THE TOLLING AGREEMENT WITH THE GOODYEAR TIRE & RUBBER CO. AND DECLARING AN EMERGENCY.

WHEREAS, the City of Jackson has been notified by the Goodyear Tire & Rubber Co. of its intent to proceed with a civil lawsuit related to the former Jackson County Landfill site to recover funds spent by it for cleaning and maintenance of the landfill and that the City of Jackson, Ohio will be made a party of that civil lawsuit; and

WHEREAS, the date of the running of the statute of limitations by which a lawsuit must be filed is believed to be December 16, 2019; and

WHEREAS, in order to avoid the filing of a lawsuit on or before December 16, 2019, and to allow the City of Jackson and Goodyear Tire & Rubber Co. and other parties to explore alternative resolutions, the parties may agree to toll the date by which a lawsuit may be filed to December 1, 2020; and

WHEREAS, this matter constitutes an emergency necessary for the preservation of the health, safety and welfare of the City as there is deadline by which the tolling agreement must be entered and the additional time will be beneficial to the City to determine its responsibility, if any, in regards to the Jackson County Landfill.

NOW, THEREFORE, BE IT ORDAINED THAT THE LEGISLATIVE AUTHORITY OF THE CITY OF JACKSON GRANTS ITS APPROVAL AND CONSENT TO THE MAYOR TO EXECUTE THE TOLLING AGREEMENT, ATTACHED HERETO, WITH GOODYEAR TIRE & RUBBER CO. EXTENDING THE DATE BY WHICH SUIT MUST BE FILED TO DECEMBER 1, 2020, AND DECLARING AN EMERGENCY.

This Ordinance is hereby declared to be an emergency Ordinance necessary to maintain the public health, safety and welfare for the reasons set forth above. Therefore, this Ordinance shall go into effect upon passage and as provided in Ohio Revised Code Section 731.30.

In the event this Ordinance receives a majority vote for passage but fails to receive the required number of votes to pass as an emergency, then this Ordinance shall be deemed to have passed but with no emergency clause, and shall take effect at the earliest time permitted by law.

It is hereby found and determined that all formal acts of this council concerning and relating to adoption of this Ordinance were adopted in an open meeting of this council and that the deliberations of the council and any of its committees resulted in such formal action, where in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

PASSED AND ADOPTED by the Legislative Authority of the Political Subdivision on this 9th
day of December, 2019.

E. A. Brown
President of Council

ATTEST:

Cindi R. Kuhn
Clerk of the Legislative Authority

Approved this 9th day of December, 2019.

Randy Hest
Mayor

**TOLLING AGREEMENT BETWEEN
THE GOODYEAR TIRE & RUBBER COMPANY
AND THE CITY OF JACKSON, OHIO
FOR THE JACKSON COUNTY LANDFILL SITE**

This Tolling Agreement ("Agreement") is hereby made by and between The Goodyear Tire & Rubber Company ("Goodyear") and the City of Jackson, Ohio ("Tolling Party") with respect to the Jackson County Landfill Site ("JCL Site"). The parties to this Agreement may also be referred to herein collectively as the "Parties," or singularly as a "Party."

Section 1. DEFINITIONS. As used in this Agreement:

"Claims" or "Claim" means all claims, lawsuits, arbitrations, actions, causes of action, and other legal actions and proceedings of whatever nature (whether by way of direct action, counterclaim, cross-claim, or interpleader), whether arising from Environmental Laws (as defined below) or common law, whether known or unknown, now or hereafter existing, related to the JCL Site, so long as the claim, lawsuit, arbitration, action, cause of action, or other legal action or proceeding is not barred by applicable statutes of limitation as of the date of this Agreement.

"Effective Date" shall mean December 1, 2019.

"Environmental Laws" means:

- a. The Comprehensive Environmental Response, Compensation, and Liability Act, referred to as "CERCLA," in Sections 9601 et seq. of Title 42 of the United States Code.
- b. The Hazardous Materials Transportation Act, in sections 1801 et seq. of Title 49 of the United States Code.
- c. The Resource Conservation and Recovery Act, referred to as "RCRA," in Sections 69801 et seq. of Title 42 of the United States Code.
- d. The Hazardous Substances Act, referred to as "HSA," in Section 1261 et seq. of Title 15 of the United States Code.
- e. The Toxic Substances Control Act, section 2601 et seq. of Title 15 of the United States Code.
- f. The Clean Water Act, Sections 1251 et seq. of Title 33 of the United States Code, as amended by the Oil Pollution Act of 1990, Pub.L. No. 101-380, 104 Stat. 484 (1990).
- g. The Safe Drinking Water Act, Sections 300f-300j, inclusive, of Title 42 of the United States Code.

- h. Ohio State Environmental Law, ORC Chapter 3745.
- i. Any other applicable statutes, laws, regulations or ordinances, whether local, state or federal, affecting the environment.

“JCL Site” means the former Jackson County Landfill located at 1841 Smith Bridge Road (County Road 60) in Jackson, Ohio.

“Losses” or “Loss” means any losses, injuries, costs, damages, expenses, judgments, and liabilities of whatever nature (including, but not limited to, attorneys’, accountants’, and other professionals’ fees, litigation, and court costs and expenses, amounts paid in settlement, amounts paid to discharge judgments, and amounts payable by any indemnified party to any other person or entity) directly or indirectly resulting from, arising out of or relating to or based on one or more Claims.

“Termination Date” shall mean December 1, 2020.

Section 2. TOLLING AGREEMENT. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

2.1 Beginning on the Effective Date of this Agreement, this Agreement suspends the running of all statutes of limitations applicable to any Claim or Loss which the Parties have or claims to have, against each other related to the JCL Site, and that may be prosecuted in any court, board, bureau, commission, department, or other agency of government, whether such action or proceeding, or the right or privilege to institute such action or proceeding, accrued prior to or after the signing of this Agreement, until the Termination Date (“Tolling Period”). This Agreement shall not revive any claim or cause of action that was time-barred as of the Effective Date. Also, this Agreement shall not be construed as a waiver of any statute of limitations defense that is cognizable as of the Effective Date of this Agreement or which matures after the termination of this Agreement, excluding the Tolling Period.

2.2 Any defenses of laches, estoppel, or waiver, or other similar equitable defenses based upon the running or expiration of any time period shall not include the Tolling Period for the Claims or Losses.

2.3 The running of all applicable statutes of limitations shall recommence on the termination of this Agreement unless there is an extension of this Agreement executed in writing by and on behalf of the Parties.

2.4 Until the Termination Date, the Parties agree to take no action, directly or indirectly, to file or cause to be filed any suit, or institute or cause to be instituted any procedure in any court, board, bureau, commission, department, or other agency of government against each other, for or in connection with any Claim or Loss referred to in subsection 2.1 above.

2.5 During the Tolling Period, the Parties shall preserve all records of any

kind related the JCL Site.

Section 3. MISCELLANEOUS.

3.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio and the applicable laws of the United States of America, if applicable.

3.2 The Parties represent that each has the authority to execute this Agreement in the capacity in which the Agreement is executed by each said Party and that each Party understands and acknowledges the consequences of this Agreement.

3.3 It is understood that by entering into this Agreement neither Party is waiving any claims, rights or defenses that may have accrued up to the Effective Date or thereafter, to the extent not suspended by this Agreement. Further, the execution, agreement to enter and delivery of this Agreement shall not constitute an admission of fact, responsibility, or liability regarding the subject matter of this Agreement by any Party hereto nor shall this Agreement create rights in favor of, or obligations to, any person other than the Parties hereto. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, survivors, executors, successors and assigns.

3.4 This Agreement and any extension may be signed in any number of counterparts, and when each Party has signed and delivered at least one such counterpart, each of which shall be deemed an original for all purposes, but all of which taken together shall constitute only one agreement, and each of which shall be sufficient for all purposes without producing or accounting for the other counterparts hereof.

3.5 This Agreement constitutes the entire agreement between and among the Parties with respect to the subject matter hereof, and any prior oral or written statements concerning same are merged herein for all purposes and shall be of no further force and effect; provided, however, this Agreement may be extended or modified by subsequent written Agreement executed by the Parties hereto intending to be bound thereby, or by their respective legal counsel as authorized.

3.6 Each Party has had ample opportunity to review this Agreement and consult with legal counsel and, accordingly, the rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement.

3.7 No provision herein may be waived unless in writing and signed by the Party whose rights are thereby waived. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein. This Agreement may be modified or amended only by written agreement executed by all of the Parties.

IN WITNESS WHEREOF, the Parties hereto enter into this Tolling Agreement. Each person signing this Tolling Agreement represents and warrants that he or she has been duly authorized to enter into this Tolling Agreement by the Party on whose behalf it is indicated that the person is signing.

The Goodyear Tire & Rubber Company

By: Daniel T. Young
Daniel T. Young
Secretary and Associate General Counsel

Dated: _____

Authorized Representative for Notice:

Gary D. Justis
The Justis Law Firm LLC
10955 Lowell Ave.
Suite 520
Leawood, KS 66210-2336

City of Jackson, Ohio

By: William R. Shewart

Dated: 12 9 19

Authorized Representative for Notice:

