

ORDINANCE NO. 2-2008

**AN ORDINANCE AUTHORIZING AND SUPPORTING REVENUES FROM
LANDFILL GATE FEE TO BE USED TO RETIRE LAND ACQUISITION DEBT
(NUNN LITIGATION)**

WHEREAS, The Board of Commissioners ("Board") is the County Executive under I.C. 36-2-2-2 and, I.C. 36-1-2-9 the Board the Legislative body of the county authorized to enact Ordinances for the creation of local Funds;

WHEREAS, pursuant to I.C. 36-2-2-23, the Board is authorized to act as franchisor for the use of County property, and in this regard, the Board has entered into a comprehensive and detailed agreement with the Clark-Floyd Landfill, LLC, as Franchisee, for that facility, which is located in Clark County, Indiana;

WHEREAS, the Board has heretofore commenced eminent domain litigation with respect to real estate owned by Fred W. Nunn and Anita Nunn under Case No. 10C001-0704-PL-179 wherein court-appointed appraisers have affixed a sum certain to be paid to these defendants, which sum is \$835,000.00 in damages for the taking by the County for such public purposes;

WHEREAS, the Indiana State Board of Accounts and Indiana statutory law, particularly including I.C. 36-1-3-6(c)(3), requires that certain home-rule functions of the County Executive be conducted by ordinance, inclusive of this ordinance see also The County Bulletin, January 1991, Vol. 283, p. 7;

WHEREAS, Clark-Floyd Landfill, LLC is required by the *Clark County Sanitary Landfill Franchise and License Supplemental Agreement No. 1*, ("Franchise Agreement") executed on December 15, 2006 to meet all legal obligations for operation of the Landfill and to make periodic payments, from time to time, to certain Landfill reserve and usage funds, including the Landfill Improvement Fund. The Improvement Fund exists to provide means by which to meet these legal obligations and to expand the Landfill so as to provide services to the public consistent with the said Franchise Agreement;

WHEREAS, the Franchise Agreement reflects a highly complex and detailed series of services agreed by both Clark and Floyd County to be expected from the said Franchisee during its term;

WHEREAS, the said Franchisee, in order to assist in the development, growth and expansion of the Clark-Floyd Landfill, and to maintain its operation within requirements of law, is authorized to adjust certain payments made to the extent it is necessary to assist in the procurement of the real estate described in the foregoing litigation. To that end, the said Franchisee has made financing arrangements to provide monies, through its own efforts, to further the goals of the above litigation and for expansion of the Landfill;

**NOW THEREFORE BE IT ORDAINED BY THE BOARD AS
FOLLOWS:**

1. The Board hereby adopts each and every recital set forth above as a part of this Ordinance;
2. The Board hereby, acting within the authority of the foregoing statutes, opinions and publications now hereby authorizes an adjustment in the payments made to the Landfill Improvement Fund, on a quarterly basis, to reflect the usage of gate revenues to retire indebtedness not to the \$835,000.00 loan borrowed by the said Franchisee, over a 20-year term, from the New Washington State Bank;
3. The Board hereby commits and pledges, additionally, that it will not permit the balance of the combined Landfill reserve funds, including closure/post-closure and Improvement funds, to reach a level below \$835,000.00 or the remaining indebtedness, whichever is lesser, during the duration of the financing period between the Franchisee and the said bank;
4. That the adjustment authorized hereby shall only remain in effect until such time as the Franchisee fully retires the \$835,000.00 loan made by it to pay court-ordered damages in the above Nunn litigation. The Franchisee's lender bank, identified above, may rely upon this Ordinance as a measure of the Board's commitment to assist the Franchisee in retiring said loan indebtedness for landfill expansion. The Board does not consent to any type of pre-payment penalty should the financing obligation be retired earlier than its original term ;
5. The Franchisee agrees, as evidenced by signature hereon, that upon receipt of said loan proceeds, it shall be responsible for payment of all loan closing expenses and shall immediately remit said proceeds to the Clerk of the Court, in the above-described litigation, to meet obligations imposed upon the Board in said litigation, and to legally make the subject real estate available for Landfill work, usage and improvement. By signature hereon the Franchisee expressly agrees to timely close the said loan transaction, to remit the proceeds to the Clerk as aforesaid and to make all required payments upon such loan, when due, so as not to impair any operation of the Landfill, any obligation to its source or any obligation or record of the county ;

6. The President of the Board is authorized by this Ordinance to, hereafter, execute any documents necessary to affirm this home rule decision of the Board, upon which the said bank may rely, as a form of pledge so that the bank's loan may not be at risk. However, this instrument shall not be construed to create new debt in the name of the Board, or in the name of the County. Rather, this instrument is executed within the authority of the Franchise statute set forth above, as well as other statutes cited for the conducting of county business by the Board;

SO ORDAINED THIS 7 DAY OF FEBRUARY, 2008.

Members voting Aye:

Mr. Stephen J. Ryan
Robert E. Lee
John M. Moore

Members voting Nay:

ATTEST:

Heidi G. Groll
Auditor of Clark County

AGREED, ACCEPTED AND
APPROVED
CLARK-FLOYD LANDFILL, LLC

By: Robert E. Lee
Robert E. Lee, President/Manager

Date: 2-7-08