

ACADIA DISPOSAL DISTRICT
INTERLOCAL AGREEMENT

MAY 2003

Acadia Disposal District Interlocal Agreement

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Introduction

This agreement is made by and between the towns of Trenton, Mount Desert, and Cranberry Isles (The "Charter Municipalities"), all political subdivisions of the State of Maine, and located within the County of Hancock, in accordance with 38 M.R.S.A. & 1304-B and 30-A M.R.S.A. &&2201 – 2207.

Article I: Purpose

The purpose of this agreement is to provide for the cost-effective, environmentally friendly, efficient and lawful management, disposal and recycling of waste materials.

It is the participating Charter Municipalities intention to use this Interlocal Agreement as an efficient means of meeting the above –stated goals and the requirement of the State of Maine relative to waste disposal facilities. This agreement will allow the participating Charter Municipalities, and any subsequently admitted Municipalities to cooperate with each other on a fair and equitable basis and with shared responsibility through the formation of a quasi-municipal waste disposal district to be named Acadia Disposal District which shall provide for a coordinated system of solid waste management for it's participating members.

Article II: Organizational Structure

A. Corporation.

There is hereby established and created a quasi-municipal corporation under the name of Acadia Disposal District (the "District") which shall conduct the cooperative undertaking contemplated by this Agreement and exercise, through it's Board of Directors (the "Directors") and on behalf of the Member Municipalities, the powers herein delegated to it for the operation of a regional waste disposal and management system. The Corporation shall forthwith cause to be filed with the Maine Secretary of State a "Certificate of Organization" substantially in the form set forth on IX - Certification incorporated by reference and made a part hereof.

B. Board of Directors.

The District shall be organized and governed by a Board of Directors consisting of one representative from each Member Municipality by appointment of the municipal officers of that Member Municipality. The terms of the initial Board of Directors shall be assigned to allow for equally staggered expiration dates. Thereafter, all Directors shall hold office for three years and until their successors are duly appointed and qualified. The Directors shall be responsible for the general management of the business of the Corporation and shall adopt by-laws and regulations for the conduct of the affairs of the District. Any By-laws adopted must be consistent with the provisions of this Interlocal agreement.

C. Meetings. -

Regular meetings of the Directors shall be open to the public (subject to the ability of the Board to go into Executive Session for legally permitted reasons) held at least 10 times per year at a time and place to be determined and announced by the Directors. A quorum shall, consist of a simple majority of the Directors. Upon the effective date of this Agreement or as soon thereafter as possible, the Directors shall hold an organizational meeting and sign all necessary corporate papers.

D. Officers.

The Directors shall annually elect a Chairman, Treasurer and a Clerk to serve for one year and until their successors are duly elected and qualified. The requirement of these offices and the officers' duties shall be those specified in the by-laws or, if no specific duties have been established, those usually appertaining to these offices.

Article III: Powers

Except as otherwise provided or limited herein, the District shall have all of the powers provided by law, including, but not limited to, the following powers:

- a. to promote cooperative arrangements and coordinated action among its member municipalities;**
- b. to serve an advisory role to its member municipalities and, other public agencies within its member municipalities on solid waste issues;**
- c. to establish a budget and determine the prorated assessments of member municipalities for the expenses of the District;**

- d. to appropriate and expend money from its funds, regardless of whether those funds come from assessments, sales of recyclables, or grants;
- e. to establish reserve funds for improvements and furtherance of its purposes;
- f. to enact and enforce any and all necessary and desirable rules and regulations for the orderly conduct of the activities of the District and for the carrying out of purposes in the District;
- g. to acquire, hold, own, lease, and dispose of property, real and personal;
- h. to accept and administer gifts, grants, and bequests in trust or otherwise for the purposes of the District;
- i. to sue and be sued; without thereby waiving any of the protections and immunities afforded by law to quasi-municipal corporations;
- j. to hire employees, to employ legal counsel, auditors, and to contract with other persons, corporations, municipalities, organizations or solid waste contractors as may be necessary;
- k. to issue, in order to finance any facilities, revenue obligation securities issued in accordance with 10 M.R.S.A. & 1061 et seq. and any other bonds, notes or debt obligations that municipalities are authorized to issue.
- l. To borrow money, and to apply for and receive grants and appropriations from federal and state governmental agencies;
- m. To apply for and obtain all local, state, and federal permits or licenses necessary, to serve its purpose;
- n. If so authorized, to become a participant in the Maine State Retirement System;
- o. To do any and all other things necessary or incidental for the exercise of its powers to the accomplishment of the purposes of the District.

Article IV: Finance

A. Budget.

- A. (1) The Directors shall prepare an annual budget for each fiscal year of the District, itemizing anticipated revenues and expenses. Costs of capital improvements over \$10,000 shall require a two-thirds (2/3) vote of all Directors present. Before adopting the budget, the Directors shall make copies of the draft budget available for review and comment by the municipal officers of the Member Municipalities and shall hold a public hearing.
- B. (2) The District may establish reserve and capital funds, as deemed necessary by the Directors, both by budget item duly approved and from unencumbered surplus funds for improvements and furtherance of the District's purposes. The Directors shall be the trustees of the reserve fund.

C.

B. Annual Report and Financial Statement.

The District shall make an annual report of its affairs including statement of the income and expenses for the previous year that shall be submitted to each of the Member Municipalities prior to the annual meeting of the District. To the extent required by law, such financial statements shall be audited.

C. Fees.

The District's operations shall be funded by formula based upon the best available evidence of that Municipality's proportionate share of MSW waste generated for the preceding year. Such fees, or the basis for such fees, shall be established in advance of the municipal budgetary cycle, and may not be retrospectively changed except for actual fraud.

The assessment formula shall be based on the previous year gross MSW tonnages, without regard to any grant, benefit or rebate. It may be adjusted by vote of the Directors, but only based upon evidence that actual tonnage figures historically, or future tonnage figures by reasonable projection, are not adequately or accurately divided between Member Towns. Under no circumstances may the formula be based upon property valuation.

In the first fiscal year, each Member Municipality shall make an initial capital contribution (otherwise known as start-up funds) to cover the District's initial operating costs, not to exceed \$5,000 in the aggregate. The share of the initial contribution provided by each Member Municipality shall be in proportion to its share of the total tonnage of MSW generated by all Member Municipalities during the preceding calendar year, based upon the available documentation. Each Member Municipality shall include an estimate of the contributions and fees payable to the District for a given year in its annual budget and shall make provisions through the assessment of taxes or otherwise to raise sufficient revenues to pay any and all contributions, fees and charges assessed by the District, including but not limited to:

(1) Any costs incurred by the District in connection with the handling of solid waste, whether performed at any waste facility referred to in subparagraph (1) or at another such facility differently owned and operated; and

(2) Costs associated with financing, developing, constructing, repairing, maintaining and operating waste facilities owned or operated by the District, including, but not limited to, the payment of debt; and

(3) Any deficiencies arising by virtue of the failure of any Member Municipality so agreeing to meet its obligations to pay the costs set forth in subparagraphs (1) and (2) in accordance with this Interlocal Agreement.

D. In-Kind Contribution.

Subject to prior approval of the Directors, credit may be given to Member Municipalities for in-kind contributions, not to exceed the Member Municipality's proportional share of its overall contribution. In-kind contributions shall be valued at fair market value as determined by the Directors.

Article V: Breach

A member Municipality shall be deemed to be in breach of this agreement if it fails to appropriate or make timely payment of its share of costs, or if it fails to perform or comply with any terms, provisions or conditions of this Agreement or of the by-laws of the corporation. The Directors shall give the Member Municipality written notice of specific acts or omissions that constitute breach and the specific time to correct the breach. If a Member Municipality fails to correct the breach within the time period required above, the Directors may take any legal action available under Maine law, if it shall have first participated in alternate dispute resolution.

At their discretion, the Directors may determine that the District will cease to handle the waste of any Member Municipality that is in breach of this Agreement. All costs, including without limitation legal and litigation expenses incurred by the District as a result of a breach by a Member Municipality shall be borne by the breaching municipality.

A. Admission of New Members

The Charter Municipal Municipalities contemplate that additional municipalities may wish to become members. Any municipality or plantation is eligible to apply for membership. In order to be accepted:

(1) An applying member must have sought and received the approval of its legislative body to become a member and to be bound by this Interlocal Agreement, the by-laws;

(2) Have provided to the District satisfactory evidence of its existing waste disposal program, facilities, tonnage, recycling programs, and existing contracts;

(3) Agreed to assume its proportionate share of any existing debt of the District;

(4) Agreed to make an initial contribution, consisting of what would have been their share of all start-up costs, capital expenditures and any interest paid by the District thereon, from the beginning of the District as if they had been a charter member (not to include other operating costs) – such amount to be determined by the Board of Directors in advance of membership;

(5) To have agreed to a starting date for membership which will enable the entering municipality to have either appropriated the funds to meet its assessment, or to have made other arrangements satisfactory to the board to ensure that the assessments can and will be paid upon acceptance.

The Board of Directors may, by majority vote at a public meeting, accept the application of the applicant municipality outright or conditional upon fulfillment of one or more of the requirements set forth above. The Board shall, as part of its vote of acceptance, enter an assessment for the entering town for the ensuing year the assessment for the new member shall be in the same fashion as for Charter Municipalities.

Article VI: Withdrawal

A Member Municipality may withdraw from this agreement subject to the following:

1. Withdrawal shall be authorized by an affirmative vote of the withdrawing Member Municipality's legislative body.

2. The withdrawing Member Municipality shall give written notice of its intent to withdraw to the Directors at least 120 days prior to the commencement of the next budgetary year. The effective date of such withdrawal shall be the first day of the following budgetary year. The Member Municipality shall continue to pay its assessments during the period of advance notice.

3. At or prior to the time of the withdrawal, the withdrawing Member Municipality shall pay to the District the entire amount of its share of any outstanding debts including without limitation long-term debts, liabilities and commitments and its share of the obligation of any outstanding duration leases. If a debt or obligation is contingent and uncertain, and if the parties are unable to agree upon an amount, then withdrawal is conditioned upon

agreement by the withdrawing municipality to pay its proportionate share of such debt when it becomes determinable. If it was a debt or obligation incurred or arising entirely prior to withdrawal, then the withdrawing municipality's obligation shall be the same proportionate share of the debt as its assessment for the last year prior to withdrawal bore as a relation to the entire assessment on all municipalities.

Article VII: Dissolution

The district shall dissolve upon the affirmative vote of the legislative bodies of at least two-thirds (2/3) of the Member Municipalities. Such dissolution shall be subject to the following:

- 1. Each Member Municipality shall assume its proportional share of the outstanding indebtedness and of an assessed value of the outstanding duration of any lease entered into by the District.**
- 2. All real and personal property acquired by the District during the duration of this Agreement shall be disposed of in accordance with Title 13-B M.R.S.A. & 1104(I)(D) and all applicable rules and/or regulations of the Maine Department of Environmental Protection.**
- 3. After compliance with Sections 1 and 2 of this Article VII and payment of all outstanding liabilities, any remaining funds shall be divided among the Member Municipalities consistent with the proportions established by the contribution and fees assessment formula outlined in the District's by-laws.**

Article VIII: Adoption and Amendment

A. Duration.

This Agreement shall remain in force from its effective date for a period of five years or until it's essential terms have been incorporated in the by-laws of the not-for-profit corporation to be formed pursuant to this agreement. If the corporation does not adopt by-laws incorporating the essential terms of this agreement, this Agreement will expire at the end of the five-year period, and may be renewed, although it will not be automatically renewed. If such by-laws are adopted, this Agreement will remain in force until such time as the Corporation is dissolved.

B. Adoption.

This Agreement shall not take effect until the following occur:

- (1) This Agreement has been approved by the legislative bodies of all Charter Municipalities and two thirds (2/3) of their municipal officers have affixed their signatures to this Agreement;**
- (2) It has been filed with the Town Clerk of each Member Municipality and the Secretary of State; and**
- (3) The Department of Environmental Protection has approved the Agreement pursuant to 30-A M.R.S.A. & 2205 and any other applicable statute or rule.**

C. Amendment.

Substantive amendments to this agreement must be made pursuant to the adoption procedure outlined in Article VIII (B).

Non-substantive amendments to the Agreement may be made through approval of the respective municipal officers of at least two-thirds of the Member Municipalities. An amendment shall be considered to be effective upon approval of the last of the approving Member Municipalities, unless some other date is named in the amending action.

Upon admission of a new member in accordance with Article V, Section A, The representative of the newly admitted Member Municipality will be automatically accepted as a Director of the corporation, and the number of Directors, constituting the Board shall be deemed increased by one.

Article IX: Certification

We, the undersigned Inhabitants and duly elected officials of the _____, this _____ day of _____, 2003, approve this Interlocal Agreement establishing the Acadia Disposal District.

Board of Selectmen/Council Member:

Name: _____

Witness: _____

