

AMENDED INTERLOCAL AGREEMENT TO ESTABLISH A SOLID WASTE TRANSFER FACILITY FOR THE MUNICIPALITIES OF OWLS HEAD, SOUTH THOMASTON, AND THOMASTON, AMENDED 2017, AND TO ALLOW FOR THE FORMATION OF THE CO-OPERATIVE SOLID WASTE TRANSFER FACILITY, A PUBLIC DISPOSAL CORPORATION

WHERE AS, the parties of this agreement have the duty to provide solid waste disposal facilities for domestic and commercial solid waste generated within the borders, pursuant to Title 38 M.R.S.A. § 130S (1);

WHERE AS, the municipalities of Owls Head, South Thomaston, and Thomaston, had entered into an agreement entitled, *Agreement for a Co-operative Solid Waste Transfer Facility for the Municipalities of Owls Head, South Thomaston, and Thomaston*, dated November 17, 1983;

WHERE AS, the municipalities of Owls Head, South Thomaston, and Thomaston, seek to amend their Interlocal Agreement dated March 2006, so as to allow the operation of the facility greater flexibility in its operation, financing, and maintenance of the facility, including the ownership of land, and the ability to finance debt;

WHERE AS, the Town of Thomaston, pursuant to the original interlocal agreement leased and still leases the transfer station site containing approximately one acre owned by the Town of Thomaston, located off Buttermilk Drive to the Co-operative, i.e. the towns of Owls Head, South Thomaston, and Thomaston, for the sum of \$1.00 per year;

WHERE AS, the towns of Owls Head, South Thomaston, and Thomaston, have recently purchased parcels of land adjoining the transfer station site. This land is held in trust by the representatives of the towns of Owls Head, South Thomaston, and Thomaston, so as to provide a legal entity to take title to the property;

WHERE AS, the towns of Owls Head, South Thomaston, and Thomaston, since at least November 17, 1983, have operated a transfer station facility off Buttermilk Drive in Thomaston, which facility constitutes a licensed transfer station for the transfer of "acceptable solid waste" to an approved solid waste disposal facility;

WHERE AS, the towns of Owls Head, South Thomaston, and Thomaston, provide for the recycling of "recyclables" at this facility;

WHERE AS, the towns of Owls Head, South Thomaston, and Thomaston, have entered into a cooperative agreement for the purposes of operating a transfer facility;

WHERE AS, the towns of Owls Head, South Thomaston, and Thomaston, in order to effectively manage a transfer station and recycling facility, require that the towns enter into a more formal agreement to provide for the operation of this facility and to better define the rights and obligations of the towns of Owls Head, South Thomaston, and Thomaston, with respects to this facility; and

WHERE AS, the parties are authorized pursuant to the Interlocal Cooperation Act, Title 30-A M.R.S.A. Chapter 115, §2201 et seq., to contract and to organize pursuant to Title 38 M.R.S.A. § 1304-B (S), a public waste management facility; and

NOW, THEREFORE, the towns of Owls Head, South Thomaston, and Thomaston, for and in consideration of the mutual promises and agreements contained herein, do hereby promise and agree as follows:

PART 1. Purpose

The purpose of this agreement is to establish a public waste disposal corporation, pursuant to Title 38 M.R.S.A. § 1304-B (S) and Title 13-B (S) M.R.S.A. and to provide for the planning, development, acquisition, operation and closure of a cost effective, environmentally sound, and reliable solid waste transfer facility for the collection, transportation, storage, processing, salvaging, and disposal of acceptable solid waste.

It is also the purpose of this public solid waste disposal corporation to enter into contracts with other member municipalities for the disposal of recyclables at the site or some other site, and the power to enter into agreements with the State of Maine, or any agency thereof, to accept recyclables at this site. The public waste disposal corporation will continue to receive acceptable solid waste from the Maine State Prison in Warren, Maine under such terms and conditions as the Joint Board of Directors deem appropriate.

PART 2. Definitions

2.1 Definitions

As used in the Agreement

- a) **“Construction/demolition debris”** means debris resulting from construction, remodeling, repair, and demolition of structures. It includes, but is not limited to, building materials, asphalt, wall board, pipes, metal conduits, mattresses, household furniture, fish nets, rope, wire and cable, fencing, carpeting and underlay; it excludes asbestos and other special waste.
- b) **“Dredge spoils”** means earthen materials removed from beneath any surface water.
- c) **“Inert fill”** means clean soil material, rocks, bricks, and cured concrete, which are not mixed with other solid or liquid waste, and which are not derived from an ore mining activity.
- d) **“Land clearing debris”** means solid wastes resulting from the clearing of land and consisting solely of brush, stumps, soil materials, and rocks.
- e) **“Member municipalities”** means those municipalities that are parties to this Agreement or that subsequently become parties to the Agreement and that appoint representative members of the Joint Board of Directors of the public waste disposal corporation.
- f) **“Municipal solid waste disposal facility”** means any waste facility used for the landfilling or the final placement of municipal solid waste, construction/demolition

debris, dredge spoils, inert fill, land clearing debris, vegetation waste, wood waste, and asbestos.

- g) **"Municipal solid waste transfer facility"** means any waste facility used for purposeful, systematic and unified control of the collection, storage, processing, salvaging and transportation for disposal of acceptable municipal solid waste.
- h) **"Vegetative wastes"** means wastes consisting of plant matter from farms, homes, plant nurseries, and greenhouses. These shall include plant stalks, hulls, leaves, and tree waste processed through a wood chipper or a grinder.
- i) **"Wood waste"** means logs, pulp, tops, branches, brush, stumps, lumber, bark, wood, shavings, slabs, edgings, slash, and saw dust, which are not mixed with other solid waste.
- j) **"Acceptable Municipal Solid Waste"** means solid waste, including all ordinary household municipal, institutional, and industrial wastes which consists of combustible materials.

PART 3. ADMINISTRATION

3.1 Waste Disposal Corporation

The actions of the municipalities pursuant to this Agreement shall be undertaken by and through a public waste disposal corporation incorporated by the Joint Board of Directors as representatives of the member municipalities under 39 M.R.S.A. § 1304-B (S) ("the corporation").

3.2 Joint Board of Directors

The Directors of the Corporation shall be designated the "Joint Board". The Joint Board will be appointed by the Municipal Officers of the member municipalities. Each participating member municipality shall have two directors.

Directors of each member municipality shall be entitled to the number of votes which shall be determined as follows: The percent that the total population, based upon the most recent U.S. Census of their municipality bears to the total population of all member municipalities. The term of each director and alternate director shall be three years, which terms may be staggered in accordance with the Bylaws of the corporation to be adopted upon incorporation.

To the extent possible, the Joint Board shall be composed of two representatives for each of the three towns, chosen by the Boards of Selectmen of each town, to serve as Directors. At least one Director from each town shall be a serving Selectman. If any town cannot find two representatives to serve, then the Board of Selectmen may designate other individuals with sufficient managerial, technical, financial or business experience to execute their duties effectively and efficiently.

Appointments shall be by vote of the Municipal Officers and attested by the Municipal Clerks. The Municipal Officers, by majority vote, may remove their appointed representatives during their terms for stated reasons. The appointed Directors shall keep the Municipal Officers of their municipalities informed of the financial and technical condition of the solid waste disposal facility.

The day-to-day operations of the solid waste facility will remain under the authority of the Joint Board.

The Directors may, from time to time, adopt, establish and amended the bylaws, consistent with the laws of the State of Maine, reasonable for their own convenience and the proper management of this solid waste facility. No member of the Joint Board may be employed, for compensation, as an employee of this solid waste disposal facility of this public waste disposal corporation.

Upon the effective date of this Agreement, or as soon thereafter as possible, the Directors shall hold an organizational meeting to incorporate the public waste disposal corporation, elect officers, and perform all other actions necessary, appropriate or convenient to this Agreement.

3.3 Meetings

- a) Joint Board meetings may be called by any Director.
- b) A quorum for any meeting shall consist of at least a majority of Directors and at least one member representing each of the member municipalities.

3.4 Powers

The Joint Board shall have all necessary and incidental powers granted to Directors of non-capital stock corporations under Title 13-B M.S.R.A., subject to such limitations as are required by law, this Agreement and the Bylaws of the public waste disposal corporation to be incorporated by the Directors.

PART 3-A. CONTRACTS

In order to encourage and facilitate the financing and development of this solid waste facility, the Directors may recommend, by majority vote, that long term contracts be entered into by and between this public waste disposal facility corporation and other municipalities for acceptance, processing, salvaging and disposal of acceptable solid waste. Such contracts may be for a term up to five years. If such contracts exceed five years, then the Directors shall obtain the approval of the Municipal Officers of each of the member municipalities, i.e. Owls Head, South Thomaston, Thomaston, before entering into contracts longer than five years. The Board of Directors shall determine the fees to be charged to the municipalities for use of its facility.

Also, the Co-operative currently contracts to receive acceptable solid waste from the Maine State Prison in Warren, Maine, and the Joint Board is authorized to continue to do so under such terms and conditions as they deem appropriate.

PART 4. FINANCE

4.1 Initial Capitalization

The initial capitalization of the public waste disposal corporation, to be incorporated by the Directors, shall be funded by the transfer of all of the real estate owned by the Co-operative or leased by the Co-operative and all of the assets and liabilities of the present transfer station operation at the

Buttermilk Drive site, and all funds deposited by the towns of Owls Head, South Thomaston, and Thomaston pursuant to the operation of the transfer station at the site, which shall constitute the initial capital of the corporation.

4.2 Apportionment

The initial capitalization for each member municipality will be their share contributed to the corporation for the fiscal year. Monies in this account will simply be transferred to the public waste disposal corporation.

A municipality's share of indebtedness incurred by the corporation shall be determined by its population percentage, to determine its share of any indebtedness of the corporation. Each municipality's share of indebtedness of the corporation shall be fixed as of the date the debt is authorized.

The Corporation shall have the assessment authority and shall use the assessment procedures set forth in Title 20-A M.R.S.A. § 1310 as amended, but no collection action shall be initiated until 90 days after the date of the municipality's Annual Town Meeting.

Appropriations from member municipalities shall be determined by the annual budget each year and such emergency expenditures that may be required from time to time.

In order to defray the cost of maintaining the transfer station facility, and to defray the cost to comply with all laws and regulations pertaining to solid waste, the Municipal Officers of each member town may jointly establish a user-fee schedule and any regulations necessary to implement such fees, that result in a significant revenue source to help pay for costs associated with the operation, maintenance, reserve funds, debt repayment and cost of compliance for the solid waste facility located off Buttermilk Drive in Thomaston, and for all costs associated with the municipalities requirement to provide disposal services for domestic and commercial solid waste generated within each member municipality.

This fee schedule can include a pay-as-you-throw program and the imposition of a per-ton fee for the disposal of solid waste delivered by commercial haulers to the solid waste facility in Thomaston. The fee schedule can include fees for all types of waste, including recyclable waste, and any waste requiring segregation. The fee structure can be changed annually by the Municipal Officers or sooner if circumstances require such a fee change. No fee change can occur without 30 days advance notice to the public by newspaper advertisement. Unless otherwise stated, all fees shall be implemented the day after the vote of the Municipal Officers to approve or amend the fee schedule.

4.3 Financial Procedures

- a) **Budget.** During the first year of activities hereunder, the Joint Board shall prepare a budget, determine recommended shares of costs and transmit the same to the member municipalities on or prior to May 1; thereafter, the budget and cost allocations shall be transmitted on or prior to January 1 of each year. This shall be the assessment for debt service and operating expenses for each member municipality.
- b) **Fiscal year.** The fiscal year shall be from January 1 to December 31.

- c) **Audit.** The Joint Board shall engage a qualified public accountant to conduct an annual audit of the corporation's accounts. The audit shall be conducted on the basis of auditing standards and procedures prescribed by the State Auditor for municipalities.

4.4 Finance

The corporation shall have the power through its Joint Board to incur indebtedness for any purpose under Section 1304-B of Title 38 of the Maine Revised Statutes, as amended, in a principal amount not to exceed at any time outstanding Four Hundred Thousand Dollars (\$400,000). The full faith and credit of each member municipality shall be pledged to the payment of such indebtedness and the periodic assessments necessary to pay installments of principal and interest thereon, and further the corporation shall cause each such municipality to levy upon and raise from the taxable estates within each municipality by general tax amounts required to pay each municipality's share of the indebtedness of the corporation pursuant to Section 1304-B of Title 38, Maine Revised Statutes, as amended, which share shall be determined for each municipality in accordance with the appropriation assessment procedures set forth in Part 4.2 of the Agreement, as amended.

PART 5. PROPERTY

5.1 Title

With exception of the parcel of land leased from the Town of Thomaston, the corporation shall hold title to all real and personal property acquired pursuant to the purpose for which it is established, subject to the following:

- a) In the event a site for any facility is acquired through the exercise of the power of eminent domain by any one of the member municipalities, then the municipality taking such property may retain title to the property taken and lease the property to the corporation, or may transfer title to the corporation. If the municipality decides to lease such property, the term of the lease shall be the term of this Agreement of the useful life of the site as a solid waste disposal facility, whichever is shorter. The lessor municipality may elect to receive in-kind contribution and/or credit for the cost of the acquisition. If the lessor municipality does not so elect, the other municipalities shall pay sums equivalent to the cost of the taking reduced by the lessor municipality's proportionate share, or such other method as the Joint Board shall prescribe.

5.2 Improvements

The corporation shall develop and construct all improvements, keep the same in good repair, and insure all properties owned or leased by it. The corporation may lease any such property, or any portion thereof, to persons other than the parties to this Agreement.

5.3 Distribution of Assets

Assets of the corporation remaining at the time of termination of this Agreement, or liquidation of the corporation, whichever is earlier, shall be divided among the municipalities in accordance with their proportional payments or contributions to the corporation during the full term of this Agreement subject to the following:

- a) Upon termination of this Agreement, and after final closure of the solid waste disposal facility, all real property owned by the corporation and located within the Town of Thomaston shall be offered back to the Town of Thomaston at its fair market value. The Town of Thomaston is free to accept all of this real estate or any portion thereof. If and in the event the Town of Thomaston decides not to accept the transfer of this real estate, or if the Town of Thomaston decides to accept only a portion of this real estate, then this real estate, or any remaining portion thereof shall be sold or transferred as set forth below.
- b) The real estate not accepted by the Town of Thomaston and all personal property acquired by the corporation shall be offered for sale to the municipalities at the market value of such property. Property not purchased by the municipalities shall be sold at public auction and the proceeds thereof shall be distributed in accordance with the distribution procedure described above.

PART 6. AGENCIES AND CONSULTANTS

6.1 Consulting Services

The Joint Board may employ such agencies or consultants as it deems necessary to accomplish the purposes of this Agreement and to conduct the activities of the corporation.

Staff time may be contributed without compensation to the corporation by the member municipalities. Persons performing work under such contribution arrangements shall be under the supervision of the Joint Board or its designated supervisory personnel, but shall otherwise retain the status of an employee of the contributing municipality.

PART 7. REMEDIES

7.1 Default

A municipality shall be deemed to be in default 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 of the terms, provisions, or conditions of this Agreement. The Joint Board shall give any member municipality written notice of default, specifying the acts or omissions which constitute the default. The municipality so notified shall have 30 days to remedy the default. If the member municipality fails to remedy the default within the specified time period, then the Joint Board shall have the power to submit the question of default to the arbitration panel established pursuant to Section 7.2 below.

7.2 Arbitration

In the event the Joint Board and/or any party to the notice of the default elects to submit a question of default to arbitration, the following provisions shall govern:

- a) The Joint Board and the party given notice of default shall each select a representative and the two persons so selected shall choose a third neutral arbitrator; the three persons so selected shall constitute the arbitration board. If either party does not select its representative, or if the two representatives fail to agree upon, select, and name a third neutral person within fourteen (14) days, either the Joint Board or the party given notice of default may request the American Arbitration Association to utilize its procedures to make any such selection.
- b) The arbitration board's jurisdiction shall be limited to the interpretation or application of the terms of this Agreement.
- c) As soon as it is feasible, after selection of the third neutral person, the three arbitrators shall meet with the parties or their representatives, or both, either jointly or separately; make inquiries and investigations; hold hearings; or take such other steps as they deem appropriate. Hearings shall be informal, and rules of evidence prevailing in judicial proceedings shall not be binding.
- d) The arbitration board shall, by majority vote, make written findings and render a decision which, with the exception of fraud, shall be binding upon the Joint Board and the party given notice of default. In the event the arbitration board finds the breaching party to have made a withdrawal, the remedy shall be as provided in Section 7.3 below.
- e) The cost of arbitration proceedings shall be shared equally by the Joint Board and the party given notice of default.

7.3 Withdrawal

Any party may withdraw from this Agreement subject to the following:

- a) The withdrawing party shall give written notice of its intent to withdraw from this Agreement to the Joint Board 180 days prior to the date of proposed withdrawal. The effective date of such withdrawal shall be 180 days from the date of such written notice. The member municipality shall make any payments due during such period.
- b) In the event the withdrawing party fails to comply with Subsection (a) above, it shall pay to the Joint Board an amount equal to its share of costs due through the following year.
- c) The withdrawing party shall pay to the corporation the entire amount of its share of any outstanding debts of the corporation and any outstanding lease payments dues to any lessor municipality.

7.4 Indemnification in Case of Liability to Third Parties

The municipalities agree to indemnify each other for any liability which a party or parties may incur over and above any applicable insurance coverage as a result of a suit or settlement against the corporation arising out of activities performed by it for the benefit of the member municipalities. The corporation agrees to indemnify any municipality that takes a site proposed for the solid waste facility by eminent domain and thereafter leases such site to the corporation, in an amount necessary to protect the lessor municipality from any liability for the costs of any removal, clean-up, or closure of the solid waste disposal facility, pursuant to State and Federal laws.

PART 8. ADOPTION AMENDMENT

8.1 Duration

This Agreement shall continue in force until either of the following, whichever is later, occurs:

- a) All parties withdraw or mutually agree to dissolve the corporation;
- b) Any and all solid waste disposal facilities establish and operated by or on behalf of the corporation are properly closed in accordance with applicable state and federal laws and regulations.

8.2 Adoption

This Agreement shall not take effect with respect to the signing municipalities unless the following occurs:

- a) It has been approved by the legislative bodies of all member municipalities, authorizing each of their respective Municipal Officers to enter into this Agreement, and the majority of the Municipal Officers thereof have affixed their signatures below; and
- b) It has been approved by the state or regional agency with constitutional or statutory powers of control over the services or facilities that are the subject of this Agreement; and
- c) It has been filed with the Clerk of each of the member municipalities and with the office of the Maine Secretary of State.

8.3 Amendment

This Agreement may be amended by the parties in the same manner as that provided in Section 8.2 above, provided however, that additional parties may be admitted to this Agreement if 2/3 of the Joint Board votes to admit such additional parties, and the legislative bodies of the additional parties accept, by appropriate legislative action, the terms and conditions placed upon such entry by the Joint Board.

IN WITNESS THERE OF, the duly authorized officers of the member municipalities hereof have caused this Interlocal Agreement to establish a solid waste transfer facility, to be executed this ___ day of _____, 2017.

By the Town of Owls Head:

1.) _____
Signature

Title

2.) _____
Signature

Title

3.) _____
Signature

Title

By the Town of South Thomaston:

1.) _____
Signature

Title

2.) _____
Signature

Title

3.) _____
Signature

Title

By the Town of Thomaston:

1.) _____
Signature

Title

2.) _____
Signature

Title

3.) _____
Signature

Title

4.) _____
Signature

Title

5.) _____
Signature

Title