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BRENDA DESHIELDS
CLERK AND RECORDER
BENTON COUNTY, AR.

IN THE CIRCUIT COURT OF BENTON COUNTY, ARKANSAS
CIVIL DIVISION

BENTON COUNTY REGIONAL SOLID WASTE
MANAGEMENT DISTRICT

PLAINTIFF

vs.

NO. 04CV-2016- 629-5

BOSTON MOUNTAIN REGIONAL SOLID
WASTE MANAGEMENT DISTRICT

DUNCAN

DEFENDANT

COMPLAINT

Comes now, Plaintiff, Benton County Regional Solid Waste Management District ("Benton County District"), by and through its attorney, Curtis E. Hogue, and for its Complaint against Boston Mountain Regional Solid Waste Management District ("Boston Mountain District"), states and alleges as follows:

Parties

1. Benton County District is a regional solid waste management district established pursuant to Ark. Code Ann. § 8-6-701, *et seq.* Benton County District maintains its principal place of business in Benton County, Arkansas.

2. Boston Mountain District is a regional solid waste management district established pursuant to Ark. Code Ann. § 8-6-701, *et seq.* Boston Mountain District maintains its principal place of business in Washington County, Arkansas.

Jurisdiction and Venue

3. This Court has jurisdiction over the parties and subject matter of this case and venue is proper in this Court.

Factual Allegations

4. Effective March 8, 2011, and pursuant to Act 209 of 2011, regional solid waste management districts may fix, charge, or collect fees or charges for solid waste generated within or without the district.

5. Pursuant to Act 209 of 2011, regional solid waste management districts may determine by interlocal agreement how to divide fees for, among other things, solid waste generated within one district and delivered to another district.

6. On May 19, 2011, the Board of Directors of Boston Mountain District passed Resolution 2011-13, allowing Boston Mountain District to enter into an agreement with Benton County District for the division of certain waste assessment fees.

7. On May 26, 2011, Benton County District and Boston Mountain District each executed an Interlocal Agreement ("Agreement"). A true copy of the Agreement is attached hereto and fully incorporated herein as Exhibit A.

8. Pursuant to the Agreement, Benton County District and Boston Mountain District each agreed to charge \$1.50 per ton ("Waste Assessment Fee") on all solid waste generated within their respective district, or solid waste brought into their district from another district.

9. Pursuant to the Agreement, the parties each further agreed to divide the Waste Assessment Fee between the two districts when waste is generated in one of the districts and deposited in the other district. In such circumstance, the entirety of the Waste Assessment Fee is paid to the generating district.

10. The Agreement expressly provides that it will terminate May 1, 2016.

11. On May 9, 2013, the Board of Directors of Boston Mountain District passed Resolution 2013-04, declaring the Agreement void, and withdrawing from said Agreement. Said

action by the Board of Directors of Boston Mountain District necessitated the filing of a Complaint by Benton County District to recover monies lost as a result of the breach of Agreement by Boston Mountain District.

12. On July 1, 2013, Benton County District caused to be filed a Complaint in the Circuit Court of Benton County alleging breach of contract and demanding recovery of fees lost as a result of the breach of the Agreement by Boston Mountain District. By order of the Circuit Court of Benton County, Arkansas, filed for record February 24, 2014, the Court made a specific finding that Benton County District and Boston Mountain District entered into the aforementioned Agreement which was authorized by Act 209 of 2011 as well as Ark. Code Ann. § 8-6-701, *et seq.*; that the Agreement was valid and binding on both parties; that the Agreement contained provisions required by statute and that Boston Mountain District breached the Agreement when it refused to pay a portion of fees to Benton County District as contemplated by the Agreement. Furthermore, in the aforementioned Order, the Court did order and direct the Boston Mountain District to specifically perform the terms of the Agreement through the termination date of May 1, 2016, and further ordered Boston Mountain District to pay to Benton County District fees being held in escrow at that time.

13. On February 22, 2016, Robyn Reed, Director of Boston Mountain District, notified Benton County District that it would not renew the Interlocal Agreement and would in turn provide Benton County District with a new agreement.

14. On March 23, 2016, Robyn Reed, Director of Boston Mountain District, provided to Benton County District a proposed Interlocal Agreement regarding division of the assessment fee for waste delivered from Benton County District to a landfill located in the Boston Mountain

District. Said proposed Interlocal Agreement is attached hereto and fully incorporated herein as Exhibit B.

15. The Interlocal Agreement proposed by Boston Mountain District proposes a fee which has not been agreed to by Benton County District.

16. Benton County District will be damaged as a result of Boston Mountain District's proposed Interlocal Agreement in that Boston Mountain District will collect fees for which no service has been provided and such fees should be paid to Benton County District.

Count I - Declaratory Judgment

17. Benton County District incorporates by reference all preceding paragraphs as if set forth word for word herein.

18. The Arkansas Constitution provides that "any citizen of any country, city or town may institute suit, on behalf of himself and all others interested, to protect the inhabitants thereof against the enforcement of any illegal exactions whatever." Ark. Const. art. 16, § 13.

19. Ark. Code Ann. § 16-111-103 provides the courts of record are granted the power to declare rights, status and other legal relations between parties, and furthermore, Rule 57 of the Arkansas Rules of Civil Procedure incorporates the declaratory judgment procedure as more particularly stated in Ark. Code Ann. § 16-111-101, *et seq.* and further provides that a court order a speedy hearing on the declaratory judgment action and advance the same on the calendar.

20. Pursuant to the rules and regulations codified in Ark. Code Ann. § 8-6-701, *et seq.*, Benton County District collects solid waste in Benton County, assesses a fee to the citizens of Benton County for collection of the waste, delivers the waste to Washington County and thereafter, Boston Mountain District receives a portion of the fees which were paid by citizens in

Benton County for services rendered by Benton County District wherein Boston Mountain District provided no services for the fees being paid.

21. Ark. Code Ann. § 8-6-704 provides that regional solid waste management boards have the power and duty to enter into an agreement with another solid waste management district to allow a district or any person within that district to transfer solid waste into another district and further provides that regional solid waste management boards have the power and duty to authorize a disposal facility within a district to accept the receipt of solid waste from an adjoining district upon request by the generator of the solid waste, provided that the request specifies the disposal facility and the nature as well as estimated annual volume of solid waste to be received. See Ark. Code Ann. § 8-6-704(a)(13)(A) as well as (a)(14)(A). Furthermore, based on the foregoing, Boston Mountain District is required to enter into an agreement with Benton County District as required by statute.

22. The Defendant did not dispose of, treat, or handle any of the waste on which the Plaintiff paid fees and the Defendant did not provide any services on which the Plaintiff is required to pay fees.

23. Boston Mountain District will be unjustly enriched by collection of fees absent providing services.

24. Benton County District is entitled to collect and hold any and all fees paid pursuant to services provided by Plaintiff as required by Ark. Code Ann. § 8-6-701, *et seq.*

25. Benton County District prays that the Court declare the rights and status of the parties hereto and specifically declare that Boston Mountain District is not entitled to collect and hold fees paid pursuant to services provided solely by Benton County District and that such constitutes unjust enrichment.

26. Benton County District prays that the Court declare the rights and status of the parties hereto and specifically declare that Ark. Code Ann. § 8-6-714 is unconstitutional in that said statutory provision allows Boston Mountain District to receive fees paid by citizens of a county outside its district for statutorily required services not provided by Boston Mountain District but, in fact, provided by Benton County District.

Count II - Request for Injunctive Relief

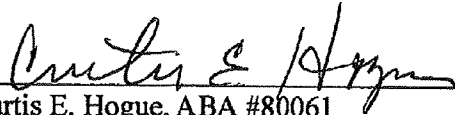
27. Benton County District incorporates by reference all preceding paragraphs as if set forth herein word for word.

28. Benton County District will be irreparably harmed after May 1, 2016, if Boston Mountain District is allowed to collect fees in accordance with Ark. Code Ann. § 8-6-701, *et seq.*, inasmuch as such will constitute unjust enrichment and therefore prays that this Court enjoin Boston Mountain District and alternatively order and direct that the receiving disposal facility collect said fees and escrow and hold said fees in an interest bearing account until final disposition of the pending matter.

WHEREFORE, PREMISES CONSIDERED, the Plaintiff herein, Benton County Regional Solid Waste Management District, prays for an Order from this Court declaring the rights and obligations of the parties in regard to fees paid and collected in accordance with Ark. Code Ann. § 8-6-701, *et seq.*, and further, that the Court declare that Boston Mountain District shall not be entitled to any fees paid on account of services provided solely by Benton County District as such would constitute unjust enrichment to Boston Mountain District, and further, that on or after May 1, 2016, the Court order and direct the receiving disposal facility to collect and hold any and all disputed fees and hold and escrow said fees in an interest-bearing account until final disposition of this matter or until further ordered by the Court; prays that the Court declare

the rights and status of the parties hereto and specifically declare that Ark. Code Ann. § 8-6-714 is unconstitutional in that said statutory provision allows Boston Mountain District to receive fees paid by citizens of a county outside its district for statutorily required services not provided by Boston Mountain District but, in fact, provided by Benton County District; for reasonable attorney's fees incurred by Plaintiff; and any and all further relief to which Plaintiff may prove itself entitled.

Respectfully submitted,



Curtis E. Hogue, ABA #80061

**HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.**

75 N. East Avenue, Suite 402

Fayetteville, AR 72701-5388

Telephone (479) 973-5200

Facsimile (479) 973-0520

**ATTORNEYS FOR PLAINTIFF,
BENTON COUNTY REGIONAL SOLID
WASTE MANAGEMENT DISTRICT**

Final Version

**AN INTER LOCAL AGREEMENT BETWEEN
BENTON COUNTY SOLID WASTE MANAGEMENT DISTRICT
OF BENTON COUNTY, ARKANSAS
AND THE
BOSTON MOUNTAIN SOLID WASTE MANAGEMENT DISTRICT
OF MADISON COUNTY AND WASHINGTON COUNTY, ARKANSAS**

WHEREAS, pursuant to A.C.A. 8-6-709; A.C.A. §25-20-101 et. seq.; and Act 209 of 2011, the parties are authorized to enter into this agreement; and,

WHEREAS, the parties feel that it would be to their mutual benefit in light of Act 209 of 2011, to set forth the Waste Assessment Fees structure in these districts; have an understanding on the division of these fees on comingled solid waste; and define which fees each Regional Solid Waste Management District may collect on solid waste generated in their districts under commercial or municipal contracts.

NOW, THEREFORE, IT IS AGREED:

ARTICLE 1. It is the intention of the parties to create a long standing relationship to serve their individual Regional Solid Waste Management Districts through the use of Waste Assessment Fees to support many of their programs pursuant to the qualifications set forth in Act 209 of 2011.

ARTICLE 2. Both parties, - at present have a \$1.50 per ton Waste Assessment Fee for all solid waste generated in their District; or solid waste brought into their District from outside their District; or solid waste generated within their District and transported outside their District or the State of Arkansas for disposal.

ARTICLE 3. Both parties, under this agreement, must agree to leave the Waste Assessment Fee at \$1.50 for the terms of this contract. Should an increase be economically necessary, both District boards must approve the increase after a public notice in each District has published in the legal sections of the newspapers, and a public hearing held in each District for public comment as pursuant to the Arkansas Administrative Procedures Act.



ARTICLE 4. Both parties shall encourage the proper management of all solid waste within the approved landfills in the area as regulated by the State of Arkansas. This encouragement of cities, counties, industry and individuals to use the local state approved and District approved landfill, will better assist each District in collecting Waste Assessment Fees and control their economic futures by said fees being assessed and collected within the borders of Arkansas.

ARTICLE 5. Both parties agree that this term of the inter local agreement is for 5 (five) years with an additional one-year "roll over" provision. This agreement, commencing on or about May 1, 2011, shall be binding until May 1, 2016, and can be extended, by a vote of each board, for an additional one-year, or until May 1, 2017. Prior to May 1, 2017, a new inter local agreement shall be again drafted and entered into by both Districts regarding Waste Assessment Fee Collection and Distribution.

ARTICLE 6: Both parties shall agree to be in full compliance with the Arkansas Department of Environmental Quality (ADEQ) on the following, each year of this agreement, or risk this agreement being held invalid.

- All previous year's District audits must be in compliance with Regulation 22 and be received by in the ADEQ by Sept. 28 of the following year (as set by Statute);
- All previous year Recycling Funds expenditure reports must be current, and not in arrears;
- All Solid Waste Management Plans must be up to date and current for each District.

ARTICLE 7. Both parties shall agree to track, compute and assess these Waste Assessment Fees on all solid waste known to be taken out of the District boundaries or out of the State of Arkansas, to landfills, incinerators, and other types of solid waste final stage processes. Only the exemptions allowed in Act 209 of 2011 shall apply. Each District shall, by the 16th day of the preceding calendar quarter, submit to the other District, forms attached hereto (this document, showing the tonnage of solid waste taken outside the District, or outside the State; the location of that disposal and the amount paid by the hauler or disposer of that Solid Waste. These same forms shall be forwarded to the ADEQ.

ARTICLE 8: Both parties shall, on Feb. 1st of each year of this agreement, in accordance with Act 209 of 2011, supply each - District - with the following statistics and assurances, in order to justify the assessment and collection of a Waste Assessment Fee, to wit:

- 1- Verify in writing, the number of Illegal Dumps Control and Litter Enforcement officers employed by the District, or those in use from other agencies;
 - a. This report shall include the following for each individual:
 - i. Name
 - ii. Licensing certification number
 - iii. Employer
 - iv. Employer address
 - b. also submit a written plan updated annually to prevent and identify and eliminate illegal dump sites within the District; and,
- 2- Verify in writing the tons and types of Household Hazardous Wastes collected for disposal within the District; - also stipulate the amount of funds spent on the proper disposal of the HHW collected and the final/end-of-life destination of said HHW; and;

- 3- Verify in writing the program and results for recycling that includes rural areas of the District
 - a. Including:
 - i. Actual tons of bulky waste collected,
 - ii. Costs of such collection
 - iii. Methods of disposal of that bulky waste.


ARTICLE 9: Both parties shall notify the other party should a hauler refuse, neglect or be late in filing their quarterly reporting for the Waste Assessment Fee. By this agreement, both parties have the right to assess a fine for late reporting of any hauler not making timely or correctly reporting the solid waste hauled within or without these District. The reports are due to the District on the 15th day following the end of the previous quarter. After the 16th, following the end of the quarter, the hauler shall be fined \$100 and then additional \$50 per day until the reports are filed with the District. Both Districts shall hold these fines and penalty until May 1st of the next year. The Districts jointly will decide the use of these accumulated fine/fines/penalties for various programs. If one of the parties to this agreement fails, declines or refuses to fine a late filing hauler, that District shall be responsible for the fines.


ARTICLE 10: Per this agreement here are the standards for existing Solid Waste generating/hauling practices already underway at \$1.50 per ton for the generating District. *If either District breaches this agreement, the solid waste generating district and the district with the disposal at the landfill, in accordance of Act 209 of 2011, shall equally and evenly split the fee(s).*

- (a) Any City, County or Municipal Solid Waste Collection contract, already in force, in the District of generation, prior to this inter local agreement at \$1.50 per ton, shall remain in place. The fee of \$1.50 a ton going to the generating District.

- (b) Any large-scale construction project ongoing, or a new construction project, that uses a hauler, the District must verify thru the hauler, the District of origination. The \$1.50 per ton fee shall go to the generating District.
- (c) Any hauler taking solid waste out of state to another disposal facility shall identify the District of generation, and then pay the \$1.50 per ton fee to that District.
- (d) Any industry handling its own transportation, out- of- the- District(s) to another public or private disposal facility, shall identify the District of generation, and then pay the \$1.50 per ton fee to that District.
- (e) Any hauler, bringing in solid waste from outside either District(s) for disposal in the local landfill shall identify where the solid waste came from, and pay the \$1.50 per ton to the District where the disposal facility is located.
- (f) Any transfer station, (publicly or privately owned) that is bringing in loads to the disposal facility in the District, shall state which county the load is coming from. If the transfer station cannot say which District the solid waste was generated from, the load shall be split evenly between the two districts at 75 cents each, as a co-mingled load.
- (g) Any rural hauler who crosses back-and-forth across the District(s) lines, the entire load(s) shall be split evenly, at 75 cents to each as a co-mingled load.

NOW, THEREFORE: This agreement is signed by the following officials and shall be enforced as of this date: 5-26-2011


Chair of Benton County
Solid Waste District Board


Chair of Boston Mountain
Solid Waste District Board



RESOLUTION 2011-13

A RESOLUTION OF THE BOSTON MOUNTAIN SOLID WASTE MANAGEMENT DISTRICT BOARD ENTERING INTO AN INTER LOCAL AGREEMENT WITH THE BENTON COUNTY SOLID WASTE MANAGEMENT DISTRICT CONCERNING WASTE ASSESSMENT FEES AND OTHER CONSIDERATIONS UNDER ACT 209 OF 2011.

Whereas, The Boston Mountain Solid Waste Management District has a responsibility to provide the public health, welfare and safety of the residents of Madison and Washington Counties when it comes to solid waste management, recycling, and the proper disposal of household hazardous waste and;

Whereas, Under Act 209 of 2011, that law encourages Districts which will share a common landfill site to cooperate on the topic of Waste Assessment Fees, and;

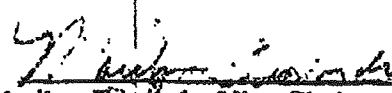
Whereas, Both boards have been studying a proposed Inter local Agreement drawn up and reviewed by each District board to ensure fairness and financial stability for both adjoining districts, or the Districts will have to rely upon the wording in Act 209 of 2011 for a equal division of the fee between the generating district and the disposing district of the solid waste.

Now Therefore be It Resolved;

Section 1: The Boston Mountain Solid Waste Management District by a vote of the Board hereby enters into the Inter local Agreement with Benton County Solid Waste Management District Board upon the terms and conditions of the agreement attached to this document. The signatures of both chairmen being affixed to the final copy of the Inter local Agreement, a copy being provided to each board chair and the District offices.

Approved this 19 day of May, 2011


Larry Gelrich, Chair


Judge Marilyn Edwards, Vice Chair

AN INTERLOCAL AGREEMENT BETWEEN
BOSTON MOUNTAIN REGIONAL SOLID WASTE MANAGEMENT DISTRICT
AND THE
BENTON COUNTY REGIONAL SOLID WASTE MANAGEMENT DISTRICT

This Interlocal Agreement ("Agreement") is entered into this ____ day of _____, 2016, to be effective on the date and for the term herein provided, by and between the Boston Mountain Solid Waste Management District, a regional solid waste management board with its principal place of business located in _____, Washington County, Arkansas, (hereinafter "Boston Mountain"), and the Benton County Solid Waste Management District, a regional solid waste management board with its principal place of business located in _____, Benton County, Arkansas (hereinafter "Benton County SWD").

WHEREAS, Boston Mountain and Benton County SWD are districts (hereinafter "District" or "Districts") as set forth in Ark. Code Ann. § 8-6-701 et seq;

WHEREAS, the Interlocal Cooperation Act, codified at Ark. Code Ann. §25-20-101 et. seq., permits local government units to enter into agreements for joint cooperation and provide for efficiency;

WHEREAS, pursuant to Ark. Code Ann. §§ 8-6-709; and 8-6-714, solid waste management boards are further authorized to enter into agreements to provide for the disposal of solid wastes and other refuse; and

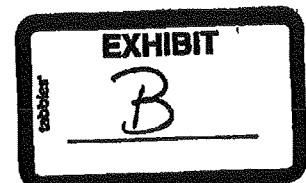
WHEREAS, pursuant to these authorities, and what the parties believe would be to their mutual benefit, Boston Mountain and Benton County SWD desire to set forth a Waste Assessment Fees structure in the Benton County SWD and to provide for the appropriate division of these fees on comingled solid waste, defining which fees each regional solid waste management district may collect on solid waste generated in Benton County under commercial or municipal contracts.

NOW, THEREFORE, IT IS AGREED:

ARTICLE 1. It is the intention of the parties to create a long standing relationship to serve their individual Regional Solid Waste Management Districts through the use of Waste Assessment Fees to support many of their programs pursuant to the qualifications set forth in Ark. Code Ann. § 8-6-714.

ARTICLE 2. Both parties shall encourage the proper management of all solid waste within the approved landfills in the area as regulated by the State of Arkansas. This encouragement of cities, counties, industry, and individuals to use the local state approved and District approved landfill, will better assist each District in collecting Waste Assessment Fees and control their economic futures by said fees being assessed and collected within the borders of Arkansas.

ARTICLE 3. Both parties agree that this term of this Agreement is for five (5) years with an additional one (1) year "roll-over" provision. This Agreement commencing on or about May 1, 2016, shall be binding until May 1, 2021, and can be renewed, by a vote of each District board, for an additional one (1) year through May 1, 2022. Prior to May 1, 2022, a new Interlocal Agreement shall, in good faith, negotiated, and if acceptable to both parties, shall be entered into by both Districts regarding Waste Assessment Fee Collection and Distribution.



ARTICLE 4. Benton County SWD District shall agree to be in full compliance with the Arkansas Department of Environmental Quality (ADEQ) of the following, each year of this agreement, or risk this agreement being held invalid.

- All previous year's audits must be in compliance with Regulation 22 and be submitted to ADEQ by September 30 of the following year (as set by statute);
- All previous year Recycling Fund expenditure reports must be current, and not in arrears; and
- All Solid Waste Management Plans must be up to date and current.

ARTICLE 5. Benton County SWD shall agree to track, compute and assess the Waste Assessment Fees on all solid waste known to be taken out of the District boundaries or out of the State of Arkansas, to landfills, incinerators, and other types of solid waste final state processes. Only those specific exemptions permitted in Ark. Code Ann. § 8-6-714 shall apply. Benton County SWD shall, the 16th day of the preceding calendar quarter (beginning in January of each year), submit to Boston Mountain, forms attached hereto this document, showing the tonnage of solid waste taken outside the District, or outside the State; the location of that disposal and the amount paid by the hauler or disposer of that Solid Waste. These same forms shall be forward to the ADEQ by Benton County SWD.

ARTICLE 6. Benton County SWD, by February 1st of each year of this Agreement shall supply Boston Mountain SWD with the following statistics and assurances, in order to justify the assessment and collection of a Waste Assessment Fee, to wit:

1. Verify in writing, the number of Illegal Dumps Control Officers employed by Benton County SWD, or those in use from other agencies;
 - a. This report shall include the following for each individual:
 - i. Name
 - ii. Licensing certification number
 - iii. Employer
 - iv. Employer address,
 - b. Any interlocal agreements, or similar agreements, related to Illegal Dump Control Officers, and
 - c. Also submit a written plan updated annual to prevent and identify and eliminate illegal dump sites within the Benton County SWD;
2. Verify in writing the tons and types of Household Hazardous Wastes collected for disposal within the Benton County SWD, location(s) and hours of operation of collection facilities and/or events, and the final/ end-of-life destination of said HHW; and
3. Verify in writing the program and results for bulky waste and recycling collection that includes rural areas of Benton County SWD
 - a. Including:
 - i. Actual tons of bulky waste collected,
 - ii. Costs of such collection
 - iii. Methods of disposal of that bulky waste
 - iv. Recyclable items accepted
 - v. Tonnages
 - vi. Locations and hours of operation.

ARTICLE 7. Benton County SWD shall notify Boston Mountain should a solid waste hauler refuse, neglect or be late in filling their quarterly reporting for the Waste Assessment Fee. By this Agreement, both parties have

the right to assess a fine for late reporting of any hauler not making timely or correctly reporting the solid waste hauled within or without these District. The reports are due to Benton County SWD on the 15th day following the end of the previous quarter. After the 16th, following the end of the quarter, the solid waste hauler shall be fined \$100 and then an additional \$50 per day until the reports are filed with the Benton County SWD. Both of the Districts shall hold these fines and penalties until May 1st of the next year. The Districts shall jointly decide the use of these accumulated fee/ fines/ penalties for various programs. If either of the parties to this agreement fails, declines or refuses to fine a late filing hauler, that District shall be responsible for the fines.

ARTICLE 8. The standards for existing solid waste generating/ hauling practices already underway for the generating District as set forth:

1. Any large-scale construction project ongoing, or a new construction project, that uses a hauler, the District must verify thru the hauler, the District of origination. If the hauler originates from Benton County, a \$1.00 per ton fee shall go to Boston Mountain SWD if the waste is taken to a solid waste disposal facility in Washington or Madison Counties for disposal. The remainder of the assessment fee shall thereafter go to Benton County SWD.
2. Any hauler taking solid waste out-of-state to another disposal facility shall identify the District of generation, and then pay the waste assessment fee to the District of generation.
3. Any industry handling its own transportation out-of-the-District(s) to another public or private disposal facility shall identify the District of generation, and then pay the per ton waste assessment fee to that District.
4. Any hauler, bringing in solid waste from outside either District(s) for disposal in the local landfill, shall identify where the solid waste came from, and pay the per ton assessment fee to the District where the disposal facility is located.
5. Any transfer station, public or privately owned, that is bringing in loads to the local landfill, shall state the county of origination. If the transfer station cannot provide the county of origination, the load shall be split between the two districts at a rate of \$1.00 per ton to Boston Mountain SWD and the remaining per ton assessment fee to Benton County SWD as a co-mingled load.
6. For rural haulers who traverse back-and-forth across the Districts' lines, the entire load shall be split at a rate of \$1.00 per ton to Boston Mountain SWD and the remaining per ton assessment fee to Benton County SWD as a co-mingled load.

ARTICLE 9. Termination. Either District may terminate this Agreement for good cause at any time upon 60 day prior written notification to the other party. Boston Mountain extends permission to Benton County SWD to use the landfill for as long as this Agreement is in effect. Termination of this Agreement, for any reason, shall constitute the termination of permission for Benton County SWD to use the landfill of Boston Mountain.

ARTICLE 10. Miscellaneous.

a. Legislative/Regulatory Change. If there is a change in any applicable statute, rule or regulation or a change in the manner in which the applicable rules and regulations are enforced, such that it affects the continuing legality of some or all of this Agreement, the parties agree to negotiate in good faith to amend this Agreement to conform to existing laws or regulations. If a mutually acceptable agreement that conforms to such changed rules and/or regulations cannot be reached within thirty (30) days (or such earlier time as may be required by such changed rules or regulations), this Agreement may be terminated immediately by either party by written notice to the other.

Commented [J61]: Double negative -- not sure what is being said here?

b. Binding Agreement. The rights and obligations of the parties under this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the parties. However, unless otherwise agreed to in writing by the parties, neither this Agreement or any benefits thereof or any interest herein or claim or duties hereunder, shall be assigned, transferred or delegated by either party to any third party or parties.

c. Severability. If any part, term, clause, section or provision of this Agreement shall contravene or be invalid under the laws of the particular jurisdiction where used, construed or enforced, such contravention or invalidity shall not invalidate the whole Agreement, but instead this Agreement shall be construed as if not containing the particular provision or provisions held to be invalid in the particular jurisdiction, the validity of the remaining portions or provisions not being affected thereby, and the rights of the parties hereto shall be construed and enforced accordingly.

d. Expenses in Event of Default. In the event of any default under or breach of all or any provisions of this Agreement by either party, the other party shall be entitled to any and all expenses and costs incurred by such party in enforcing this Agreement. Such expenses shall include, but shall not be limited to, any reasonable attorneys' fees incurred by the non-defaulting party.

e. Modification. No modification or amendment of any of the terms, conditions or provisions hereby may be made unless by written agreement signed by the parties hereto.

f. Authority. Both parties represent and warrant that (a) the provisions of this Agreement required to be approved by their governing body have been so approved and authorized, (b) the execution and delivery of this Agreement has been duly authorized, and (c) the individuals executing and delivering this Agreement on behalf of the respective parties have the authority and legal capacity to do so.

g. Entire Agreement. This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof. There are no representations, warranties, conditions or obligations except as herein specifically provided.

h. Notices. Any and all notices, demands, requests, consents, approvals, or communications required or permitted to be given hereunder, shall be in writing and shall be delivered by overnight delivery, or via United States certified or registered mail. Irrespective of the manner of delivery used, all such notices shall be properly addressed and directed, with postage or delivery charges prepaid, to the parties at their respective addresses or facsimile numbers set forth below or to such other address which the parties may from time to time designate in writing delivered in accordance with this provision:

If to Boston Mountain: Boston Mountain Solid Waste District
Attn: Current Director

If to Benton County SWD: Benton County Solid Waste District
Attn: Current Director

i. Consent or Waiver of Breach. The consent to any act or the waiver of a breach of any provision of this Agreement by any party hereto, shall not operate or be construed as a consent or waiver of act or breach by any party or as a waiver or modification of the provisions of this Agreement.

j. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which taken together shall be deemed one instrument.

k. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Arkansas.

Benton County SWD Board Chair

Boston Mountain SWD Board Chair

Date: _____

Date: _____