

**AUGUSTA SANITARY DISTRICT AND AUGUSTA WATER DISTRICT  
INTERLOCAL AGREEMENT**

<b><u>CONTENTS</u></b>	<b><u>Page</u></b>
<b>INTRODUCTION.....</b>	<b>2</b>
<b>ARTICLE I - PURPOSE.....</b>	<b>2</b>
<b>ARTICLE II - ORGANIZATIONAL STRUCTURE .....</b>	<b>3</b>
A. CONSOLIDATED BOARD.....	3
B. BOARD OF DIRECTORS.....	3
C. MEETINGS.....	4
D. OFFICERS OF THE CONSOLIDATED BOARD.....	4
E. VOTING.....	4
<b>ARTICLE III - POWERS .....</b>	<b>5</b>
<b>ARTICLE IV - FINANCE.....</b>	<b>6</b>
A. BUDGET.....	6
B. ANNUAL REPORT.....	6
C. CONTRIBUTION.....	6
D. IN-KIND CONTRIBUTION.....	7
<b>ARTICLE V - DURATION AND BREACH.....</b>	<b>7</b>
A. DURATION.....	7
B. BREACH.....	7
<b>ARTICLE VI - WITHDRAWAL .....</b>	<b>7</b>
<b>ARTICLE VII - DISSOLUTION.....</b>	<b>8</b>
<b>ARTICLE VIII - ADOPTION AND AMENDMENT .....</b>	<b>8</b>
A. ADOPTION.....	8
B. AMENDMENT.....	8
<b>IX - CERTIFICATION .....</b>	<b>8</b>

## **INTRODUCTION**

This Agreement is made by and between the Augusta Sanitary District ("ASD" and "Member") and the Augusta Water District ("AWD" and "Member") both political subdivisions of the State of Maine, and located within the County of Kennebec, in accordance with 30-A M.R.S.A. §§ 2201 - 2207.

## **ARTICLE I - PURPOSE**

At the beginning of 2003, the Augusta City Council set as one of its goals an examination of the organizational structure, workings and finances of the Augusta Sanitary District and the Augusta Water District. The purpose of the examination was to determine if costs savings could be realized through consolidation of services or a merger of the Districts, including an option to bring district services into the operations of city government. At the same time the Commissioners of the ASD and the Trustees of the AWD were independently reviewing various alternative organizational structures and considering consolidation of their respective services, both together and with other quasi municipal providers of water and sewer services, in addition to considering other cost savings initiatives. Due to the loss of manufacturing base in the Kennebec Valley and the departure of several large commercial and industrial users, metered water sales have declined significantly in recent years.

Both Boards, and the managers and employees of each District, have historically been committed to the aggressive management of rates through reduction in operating expenses. The Boards are committed to examining every opportunity for further reductions in operating costs and capital costs and to stabilize rates for the benefit of ratepayers. The Boards and the respective managers and employees of both the ASD and AWD have expended substantial efforts to investigate and complete a successful merger or consolidation of the ASD and AWD into a single entity to provide efficiencies and savings for the respective ratepayers, and will continue to expend effort to identify and resolve various issues necessary in the judgment of the Boards to realize the benefits of a merger and consolidation of services of the ASD and AWD. A merged utility district provides great potential for a better-planned and more efficient system of water and sewer facilities and services to better serve customers, protect public health and to accommodate anticipated growth and development. Overall economic and community development opportunity will improve with stabilization of water and sewer rates; particularly to the extent such development opportunity continues to be done in conjunction and in coordination with, to the extent practical, related municipal interests and services.

## ARTICLE II - ORGANIZATIONAL STRUCTURE

### **A. CONSOLIDATED BOARD.**

There is hereby established and created a joint board of directors for the AWD and the ASD (the "Consolidated Board") which shall conduct and direct the cooperative undertaking contemplated by this Agreement and exercise, through the consolidated board of directors (the "Directors") and on behalf of the ASD and AWD respectively. All of the powers of each of the existing Boards of the ASD and the AWD are herein delegated and shall be shared by the Directors to the extent delegable for the purpose of directing the policies and operations of ASD and the AWD. The ASD and the AWD shall maintain their separate existing legal status and maintain their separate assets, liabilities, income streams and expenditures. The Consolidated Board shall derivatively direct the actions of the ASD and the AWD jointly, and, hereafter, no powers shall be exercised independently by either the Commissioners of the ASD or the Trustees of the AWD, except as provided or required by Section E, below.

### **B. BOARD OF DIRECTORS.**

The Board of Directors of the Consolidated Board shall consist of six (6) Directors. Each of the duly appointed Commissioners of the ASD and the Trustees of the AWD shall serve on the Consolidated Board in the dual capacity as Commissioner or Trustee of the ASD and the AWD, and serve jointly as a Director of the Consolidated Board. The terms of the Directors of the Consolidated Board shall be coincident with and mirror and be identical to the terms of their respective appointments to the ASD and AWD. All Directors shall hold office for the same term as their respective existing terms and any additional terms as may be established by the duly authorized and existing procedures which govern the existing ASD and AWD Boards. The status of service as a Director of the Consolidated Board shall be entirely derivative through the status of appointment as a Board member of the existing ASD and AWD Boards. To the extent service as a Commissioner or Trustee of the existing Boards of the ASD or AWD expires or any appointment is otherwise lawfully terminated, the derivative status as a Director of the Consolidated Board, shall likewise be extinguished. Vacancies on the existing Boards of the ASD or AWD shall create vacancies on the Consolidated Board. Any new Commissioner or Trustee of the ASD or AWD appointed to such Board shall automatically under the terms of this agreement be installed as a Director of the Consolidated Board. The Directors shall be responsible for and direct the general management of the business of the ASD and the AWD in the same manner and to the same extent that the Commissioners of the ASD and the Trustees of the AWD have heretofore been responsible for and directed the general management of the business of the ASD and the AWD. The Commissioners of the ASD and the Trustees of the AWD shall retain and not delegate only those powers which may not be delegated as a matter of law, if any.

### **C. MEETINGS.**

Meetings of the Directors shall be held monthly at a time and place to be determined by the Directors. A quorum shall consist of a simple majority of the Directors, meaning not less than four (4) Directors. The meetings of the Directors shall constitute meetings of both the Consolidated Board and meetings for the existing ASD and AWD Boards respectively for all lawful purposes. The Consolidated Board and the respective Directors in their dual capacities shall act jointly and severally as Directors of the Consolidated Board and as Commissioners of the ASD and Trustees of the AWD, respectively, in their dual capacities. Special meetings of the Consolidated Board shall be permissible subject to the same notice requirements as apply to special meetings of the ASD and AWD Board. To the extent any notice requirement differs between the Members, the greater required notice period shall control.

### **D. OFFICERS OF THE CONSOLIDATED BOARD.**

1. The Directors shall annually elect Co-Chairs. Each of the ASD and AWD Boards shall all at times have not less than one Commissioner and one Trustee serving as a Co-Chair of the Consolidated Board. There shall be no other officers for the Consolidated Board.

2. The Commissioners and Trustees shall continue to hold such office, if any, as may be appointed to them to assist with the management of the ASD and the AWD, respectively, and such officers of the ASD and the AWD shall continue to be appointed by the Commissioners of the ASD and Trustees of the AWD as currently authorized and provided.

### **E. VOTING.**

Each Director in good standing shall be entitled to one vote. The act of a majority of the Directors present at any meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a greater number is required by law or required by this Agreement. Votes relating to any of the following items shall require the affirmative vote of not less than four (4) Directors, with not less than two (2) Directors serving on the Board of the AWD and two (2) Directors serving on the Board of the ASD:

1. Entry into contractual obligations including, without limitation, acquisition and sale of assets, payments of liabilities and contracts with employees or managers;

2. Legislative functions of the ASD or AWD, including without limitation, authorization and approval of budgets; and

3. Such other votes as may be prohibited by law to be delegated by the Commissioners of the ASD and Trustees of the AWD to the Consolidated Board shall require the affirmative vote of not less than four (4) Directors, with not less than two (2) Directors serving on the Board of the AWD and Two Directors serving on the Board of the ASD.

### **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 the ASD and AWD;
- b. to direct the policies and operations of the ASD and AWD regarding issues related to delivery of water and sewer services;
- c. to review and approve the separate budgets for the ASD and the AWD and to determine, where required, the prorated contributions or allocation of services or in kind services provided by either Member for the benefit of the other;
- d. to direct the ASD and AWD to respectively appropriate and expend money;
- e. to direct the establishment of reserve funds for improvements and furtherance of its purposes, to be held by the ASD or AWD;
- f. to enact and enforce any and all necessary and desirable rules and regulations and policies and procedures for the orderly conduct of the activities of the ASD and AWD and for the carrying out of the chartered purposes of the ASD and AWD;
- g. to direct the management of any claims or rights to sue, or the defense of claims or suits by or in favor of the ASD or the AWD;
- h. to direct that the ASD or the AWD, as their interests may appear, or severally to the extent their interests are joint, contract with other persons, corporations, municipalities, organizations or contractors as may be deemed appropriate;
- i. to direct the negotiation and receipt of loans and grants for the ASD and AWD in their separate capacities;

j. to direct the application for and acquisition of all local, state and federal permits or licenses, in the name of the ASD or the AWD, as may be required;

k. to direct and do any or all other things necessary or incidental for the exercise of its joint powers to accomplish the purposes of the ASD and the AWD, either severally or jointly, by and through the Consolidated Board during the term of this Agreement; and

l. to enter into executive session as permitted by law to the extent permissible for the ASD or AWD.

#### **ARTICLE IV - FINANCE**

##### **A. BUDGET.**

The Directors shall direct the managers of the ASD and the AWD to prepare separate annual budgets for each fiscal year of the ASD and AWD, itemizing revenues and expenses.

The Directors may direct the ASD and AWD to establish reserve funds, or establish a budget for costs and expenses for conducting the business of the Consolidated Board, or to provide funding for any projects which the Consolidated Board may deem prudent in its independent capacity as the Consolidated Board. The Consolidated Board shall have no obligation to hold any assets or enter into any contracts for obligations and may at its election merely direct the governance of the Member Boards.

##### **B. ANNUAL REPORT AND FINANCIAL STATEMENT.**

The Directors may make an annual report, or interim reports, of its affairs and the status of its efforts to complete a merger and consolidation of the ASD and the AWD, in such form and in such manner as the Directors determine prudent in their reasonable discretion, and may disseminate such report to such persons as the Consolidated Board deems appropriate.

##### **C. CONTRIBUTION.**

Contributions and fees for expenditures of the Consolidated Board may be assessed to the ASD and AWD respectively in such manner and based upon such formula as the Directors determine reasonable and necessary.

**D. IN-KIND CONTRIBUTION.**

Subject to prior approval of the Directors, credit may be given to ASD or AWD for in-kind contributions. In-kind contributions shall be valued at fair market value as determined by the Directors.

**ARTICLE V - DURATION AND BREACH**

**A. DURATION.**

This Agreement shall remain in force from its effective date for a period of five (5) years, if not sooner terminated by a legislatively authorized merger or consolidation of the ASD and the AWD. Absent a legislative authorized merger or consolidation, this Agreement will expire at the end of the five-year period, unless renewed by mutual agreement of the ASD and AWD.

**B. BREACH.**

ASD or AWD shall be deemed to be in breach of this Agreement if either fails to appropriate or make timely payment of its share of costs, or if either fails to perform or comply with any terms, provisions or conditions of this Agreement. The Directors shall give the ASD and AWD written notice of specific acts or omissions which constitute breach and the specific time to correct the breach, which shall not be less than thirty (30) days. If ASD or AWD 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 or invited the Member to participate in alternate dispute resolution.

**ARTICLE VI - WITHDRAWAL**

The ASD or AWD may withdraw from this Agreement subject to the following:

1. Withdrawal shall be authorized by an affirmative vote of the Board of the withdrawing Member.

2. The withdrawing Member shall give written notice of its intent to withdraw to the Directors of not less than 120 days. The effective date of such withdrawal shall be the first day of the month following the end of the notice period. The Member shall continue to be fully obligated hereunder during the notice period.

3. At the time of the withdrawal, the withdrawing Member shall pay to the other Member the entire amount of all and any damages including without limitation reasonable attorneys fees and costs as may be allowable under Maine Law.

**VII - DISSOLUTION**

The District shall dissolve upon the affirmative vote of five Directors. In the event of dissolution, each Member shall assume its proportional share of any pending expenditures.

**VIII - ADOPTION AND AMENDMENT**

**A. ADOPTION.**

This Agreement shall not take effect until the following occur:

1. This Agreement has been approved by the unanimous consent of the Commissioners of the ASD and Trustees of the AWD;

2. It has been filed with and, to the extent necessary, approved by the Public Utilities Commission, the Department of Human Services, Drinking Water Program and the Department of Environmental Protection pursuant to 30-A M.R.S.A. § 2205 and any other applicable statute or rule.

**B. AMENDMENT.**

Substantive amendments to this Agreement must be made by a vote of not less than five (5) of the Directors.

**IX - CERTIFICATION**

On this 13<sup>th</sup> day of April 2005, we the undersigned approve this Interlocal Agreement establishing the Consolidated Board.

AUGUSTA SANTARY DISTRICT  
BOARD OF COMMISSIONERS

By Diane Hastings  
Diane Hastings, Chair

By William Bridgeo  
William Bridgeo, Commissioner

By Kenneth Knight  
Kenneth Knight, Commissioner

AUGUSTA WATER DISTRICT  
BOARD OF TRUSTEES

By David Smith  
David Smith, Chair

By Beverly Beaugage  
Beverly Beaugage, Trustee

By Paul McClay  
Paul McClay, Trustee