


ORDINANCE NO. 204-4-215

AN ORDINANCE APPROVING THE PARTICIPATION BY THE CITY OF TONTITOWN IN THE NORTHWEST ARKANSAS CONSERVATION AUTHORITY; APPROVING THE THIRD AMENDED AGREEMENT BETWEEN THE MEMBER CITIES OF THE NORTHWEST ARKANSAS CONSERVATION AUTHORITY; APPROVING THE POWERS THEREIN CREATED; AND AUTHORIZING THE MAYOR AND CLERK TO EXECUTE AND DELIVER SAID AGREEMENT AND RELATED DOCUMENTS; AND DECLARING AN EMERGENCY.


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Fee Amt: \$63.00 Page 1 of 16
Washington County, AR
Bette Stamps Circuit Clerk
File 2005-00014472

WHEREAS, Title 14, Chapter 233 of the Arkansas Code as amended, permits any two or more Arkansas municipalities, any two or more counties, or any one or more Arkansas municipalities together with any one or more Arkansas counties to create, establish, and become a member of a solid waste disposal authority for the purpose of controlling, collecting, storing, removing, handling, reducing, disposing of, treating, and otherwise dealing in and concerning solid waste as that term is defined in the Joint County and Municipal Solid Waste Disposal Act, Ark. Code Ann. §§14-233-101 et seq. (hereinafter the "Act") and for the purposes stated in the Act; and,

WHEREAS, pursuant to Title 14, Chapter 233 of the Arkansas Code, the Cities of Rogers and Springdale, Arkansas, did enter into an agreement and thereby created and established the Northwest Arkansas Conservation Authority (herein referred to as the "Authority") pursuant to the Act and for the purposes stated in the Agreement and permitted by the Act, both as currently stated and as may from time to time be amended or supplemented; and,

WHEREAS, the Cities of Bentonville, Rogers and Springdale entered into an Amended Agreement whereby Bentonville was then considered a member of the Authority; and,

WHEREAS, the Cities of Bentonville, Bethel Heights, Cave Springs, Elm Springs, Lowell, Rogers and Springdale entered into a Second Amended Agreement whereby Bethel Heights, Cave Springs, Elm Springs and Lowell were then considered members of the Authority; and,

WHEREAS, pursuant to Title 14, Chapter 233 of the Arkansas Code, the Cities of Bentonville, Bethel Heights, Cave Springs, Elm Springs, Lowell, Rogers, Springdale and Tontitown, Arkansas, (herein referred to as the "Members") desire to amend the Agreement and hereby expand the membership of the Authority pursuant to the Act, so as to include the City of Tontitown; and,

WHEREAS, the Northwest Arkansas Conservation Authority Third Amended Agreement (herein referred to as the "Third Amended Agreement") in the form attached hereto as Exhibit A is submitted to the City Council; and,

WHEREAS, pursuant to Article X of the Agreement, the obligations of the Authority, including revenue bonds issued by the Authority, shall be payable from and secured by the revenues and property of the Authority, and shall not constitute a general or limited obligation of any Member;

and,

WHEREAS, pursuant to Article XI of the Agreement, all amendments or modification to the Third Amended Agreement must be in writing; and,

WHEREAS, agreeing to participate does not bind the City to any particular service and that, pursuant to the Act and the Third Amended Agreement, a Member may withdraw from participation.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TONTITOWN, ARKANSAS;

Section 1. The City of Tontitown has determined that it is in its best interest to become a member of the Northwest Arkansas Conservation Authority. The cities of Bentonville, Bethel Heights, Cave Springs, Elm Springs, Lowell, Rogers, Springdale and Tontitown are proposed to be members of the Authority under the Third Amended Agreement. The powers granted to the Authority are those contained in the Act and the Third Amended Agreement. There are no limitations on the exercise of the powers granted, except those limitations contained in the constitutions of the United States and the State of Arkansas, and the statutes of Arkansas. The Board of Directors of the Authority shall be constituted as provided in the Third Amended Agreement. Each participating city shall appoint the person(s) to the Board of Directors as enumerated in the Third Amended Agreement, which appointment shall become effective upon approval by the City Council.

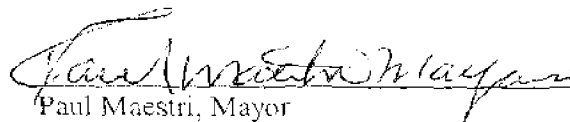
Section 2. The Third Amended Agreement and the terms and conditions thereof are hereby approved.

Section 3. The Mayor and Recorder are authorized to approve and sign an amended application, to be filed with the Secretary of State, to reflect the current membership of the Authority.

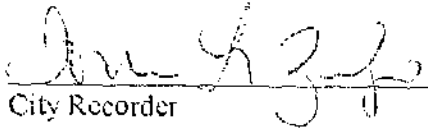
Section 4. The Mayor and Recorder are hereby authorized to execute and deliver the Third Amended Agreement.

Section 5. Emergency Clause. It is hereby declared that an emergency exists, and this Ordinance being necessary for the preservation of the health, safety, and welfare of the citizens of Tontitown, Arkansas shall be effective immediately upon its passage, approval and publication.

PASSED AND APPROVED this 5th day of April, 2005.


Paul Maestri, Mayor

ATTEST:


City Recorder

APPROVED AS TO FORM:

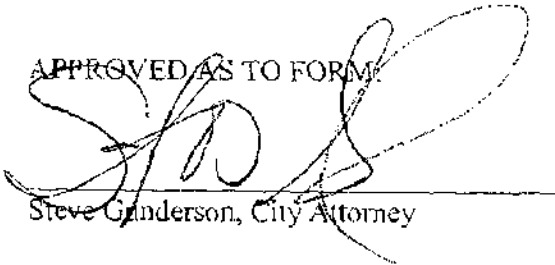

Steve Ganderson, City Attorney

EXHIBIT A

**NORTHWEST ARKANSAS CONSERVATION AUTHORITY
THIRD AMENDED AGREEMENT**

This Third Amended Agreement (herein referred to as the "Agreement") entered into as of the _____ day of _____, 2005, but actually executed by the respective parties hereto on the dates indicated for such parties on the signature pages hereto, by and among the City of Bentonville, the City of Bethel Heights, the City of Cave Springs, the City of Elm Springs, the City of Lowell, the City of Rogers, the City of Springdale, and the City of Tontitown, all of which parties are situated in the State of Arkansas (the "State").

WHEREAS, Title 14, Chapter 233 of the Arkansas Code as amended, permits any two or more Arkansas municipalities, any two or more counties, or any one or more Arkansas municipalities together with any one or more Arkansas counties to create, establish, and become a member of a solid waste disposal authority for the purpose of controlling, collecting, storing, removing, handling, reducing, disposing of, treating, and otherwise dealing in and concerning solid waste as that term is defined in the Joint County and Municipal Solid Waste Disposal Act, Ark. Code Ann. §§14-233-101 et seq. (hereinafter the "Act") and for the purposes stated in the Act; and,

WHEREAS, pursuant to Title 14, Chapter 233 of the Arkansas Code, the Cities of Rogers and Springdale, Arkansas, did enter into an agreement and thereby created and established the Northwest Arkansas Conservation Authority (herein referred to as the "Authority") pursuant to the Act and for the purposes stated in the Agreement and permitted by the Act, both as currently stated and as may from time to time be amended or supplemented; and,

WHEREAS, the Cities of Rogers, Springdale and Bentonville entered into an amended agreement whereby Bentonville was then considered a member of the Authority; and,

WHEREAS, the Cities of Bentonville, Bethel Heights, Cave Springs, Elm Springs, Lowell, Rogers and Springdale entered into a second amended agreement whereby Bethel Heights, Cave Springs, Elm Springs and Lowell were then considered members of the Authority; and,

WHEREAS, pursuant to Title 14, Chapter 233 of the Arkansas Code, the Cities of Bentonville, Bethel Heights, Cave Springs, Elm Springs, Lowell, Rogers, Springdale and Tontitown, Arkansas, (herein referred to as the "Members") desire to amend the Agreement and hereby expand the membership of the Authority pursuant to the Act, so as to include the City of Tontitown; and,

WHEREAS, the governing bodies of the Cities of Bentonville, Bethel Heights, Cave Springs, Elm Springs, Lowell, Rogers, Springdale and Tontitown, Arkansas, respectively, have each enacted an ordinance (collectively, the "Ordinances") authorizing the participation of each of the respective Members in such an authority (a certified copy of each of such Ordinance being filed with the Board of Directors of the Authority); and

NOW, THEREFORE, in consideration of the mutual covenants contained herein and pursuant to the statutes which permit this authority, it is hereby agreed by the Members as follows:

ARTICLE I- DEFINITIONS

1.01 Definitions and Interpretations.

(A) All defined terms contained in this Agreement shall have the same meaning, respectively, in this Agreement as such terms are given in Section 14-233-102 of the Arkansas Code, as the same may be amended from time to time.

(B) In addition, as used in this Agreement, unless the context shall otherwise require, the following terms shall have the following respective meanings:

(1) "Act" means the Joint County and Municipal Solid Waste Disposal Act, constituted as Title 14, Chapter 233 of the Arkansas Code, as amended;

(2) "Agreement" means this Northwest Arkansas Conservation Authority Agreement, as the same may from time to time be amended or supplemented;

(3) "Authority" means the Northwest Arkansas Conservation Authority created in Article II hereof;

(4) "Authorized Officer" means, with respect to the Authority, its Chairman and any other person duly authorized by the Bylaws or resolution of the Authority to perform the act or sign the document in question, and with respect to a City, the Mayor and any other person duly authorized by ordinance or resolution of the Governing Body of the applicable City to perform the act or sign the document in question;

(5) "Board of Directors" or "Board" means the governing board of the Authority established in Section 6.01 hereof;

(6) "City" means each of the Cities of Bentonville, Bethel Heights, Cave Springs, Elm Springs, Lowell, Rogers, Springdale and Tontitown, Arkansas;

Words of the masculine gender shall be deemed and construed to include correlative words of the feminine gender. Unless the context shall otherwise indicate, words importing the singular number shall include the plural number and vice versa.

The terms "hereby," "hereto," "herein," and "hereunder," and any similar terms, as used in this Agreement, refer to this Agreement.

ARTICLE II - CREATION

The cities signatory hereto hereby create the Northwest Arkansas Conservation Authority and constitute it as a public body and a body corporate and politic for the purposes and under the terms herein stated pursuant to the authority of Act 699 of 1979, Act 678 of 1985, Act 960 of 1991, Act 962 of 1991, Act 170 of 1993, Act 163 of 1995, Act 472 of 1999, and Act 611 of 2001, all as codified in Arkansas Code Annotated, Title 14, Chapter 233 and as such may be amended or supplemented from time to time.

ARTICLE III - AUTHORIZATION

The parties to the Agreement are the Members. The Members have agreed to join cooperatively in establishing the Authority and do hereby agree to the continued operation of the Authority.

ARTICLE IV - DURATION

The Authority shall have a perpetual existence or its existence shall be of such duration as there are no longer two cities who desire to be Members of the Authority. This is subject to the provisions contained in Section 12.01.

ARTICLE V - MEMBERS

5.01 Adding Members. After creation of the Authority, any other municipality or county may become a member upon application and with the unanimous consent of the Members, pursuant to the procedure set forth in Ark. Code Ann. § 14-233-106. Representation on the Board of Directors for new Members shall be as provided in Article VI.

5.02 Withdrawal. Subject only to the provisions of Section 12.01, any Member may withdraw from the Authority at any time without the consent of the other Members. All contractual rights acquired and obligations incurred while the municipality was a member shall remain in full force and effect.

ARTICLE VI - ORGANIZATION

6.01 Board of Directors. The Authority shall be governed by a Board of Directors consisting of eleven (11) persons appointed by the Members. Consistent with the procedures established by the ordinances of the Member City, each City shall appoint its representatives to serve on the Board of Directors, each of such appointments to become effective upon ratification by a majority vote of the applicable Governing Body of such City. The Members shall be entitled to make the following number of appointments:

City of Bentonville	Two Directors, both of whom shall be entitled to vote
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City of Rogers	Two Directors, both of whom shall be entitled to vote
City of Springdale	Two Directors, both of whom shall be entitled to vote
City of Bethel Heights	One Director, who shall be entitled to vote
City of Cave Springs	One Director, who shall be entitled to vote
City of Elm Springs	One Director, who shall be entitled to vote
City of Lowell	One Director, who shall be entitled to vote
City of Tontitown	One Director, who shall be entitled to vote

Any new Member shall initially be entitled to one Director upon joining the Authority. If the population of such Member shall reach forty thousand (40,000) persons according to the most recent federal decennial census, that Member shall then be entitled to a second Directorship.

6.02 Term of Office. The terms of the Directors shall be six (6) years; provided, however, that the initial Board of Directors, having drawn lots at the creation of the Board to provide for staggered terms, and their successors shall continue to serve as Directors as provided for in the Agreement. Terms of the Directors shall expire on December 31. The initial terms shall be staggered so that no Member City shall have its two directors' terms expire the same year or in consecutive years. Lots shall be drawn by City and the combination of initial terms for each City shall be as follows: four (4) and six (6) years; and three (3) and five (5) years. Lots shall be drawn by the two directors appointed by each City to determine the assignment of the initial terms drawn by that City. With the addition of new members terms may be adjusted as deemed appropriate by the Board of Directors.

6.03 Removal. A Director, once qualified, shall not be removed during his or her appointment except for cause by the Governing Body which appointed said Director and after a hearing before said Governing Body as may be required by law, conducted in accordance with the rules of administrative procedure applicable to or recognized by such Governing Body. If a Member City votes to withdraw from the Authority, the Directors appointed by that Member City shall automatically be removed from the Board of Directors, the size of the Board shall be reduced accordingly and all officer positions and committee assignments held by those Directors shall be immediately vacant until the Board meets to fill those positions.

6.04 Qualifications. A member of the Board of Directors shall be a citizen, who is a qualified elector of the municipality appointing him/her or a qualified elector of the area served by that municipality. A member of the Board of Directors shall be eligible for reappointment. The Directors shall file the oath of public officials required by law in the State of Arkansas.

6.05 Compensation of Board Members. The members of the Board of Directors shall receive no compensation, whether in the form of salary or per-diem or otherwise, for or in connection with his or her services as a Board member. The members of the Board of Directors shall be entitled to reimbursement of actual necessary travel and out-of-pocket expenses incurred on behalf of the Authority as authorized by the Board. Such expenses shall be reimbursed in accordance with procedures established by the Board of Directors.

ARTICLE VII - OFFICERS, BY-LAWS AND MEETINGS

7.01 Officers. (A) At the first regular meeting of each calendar year, the Board shall elect one of its members as Chairman, one as Vice Chairman, one as Secretary, and one as Treasurer. The offices of Secretary and Treasurer may be held by one person at the discretion of the Board of Directors.

(B) The Chairman, Vice Chairman, Secretary and Treasurer shall compose the Executive Committee of the Authority. The Board of Directors may, by a two-thirds (2/3) majority vote, delegate to the Executive Committee such powers and duties as the Board may deem proper.

(C) The Board of Directors may create such committees as it deems necessary for the proper exercise of its functions. The Board shall keep a complete record of its activities and business, which shall be a public record.

7.02 Bylaws. The Board of Directors may adopt such Bylaws for the governance of the affairs of the Authority so long as the Bylaws are not inconsistent with the provisions of this Agreement or State law.

7.03 Meetings. (A) The Board of Directors shall, upon reasonable notice, meet not less than quarterly at dates, times, and places to be established by the Board. All meetings shall be open to the public as provided by State law. A meeting may be called by any Board officer or upon the direction of a majority of the members of the Board.

(B) A quorum shall consist of one half (1/2) of the total Board membership, plus one member, and no vacancy in the membership of the Authority shall restrict the rights of a quorum to exercise all the rights and privileges or the duties of the Authority.

7.04 Conflicts of Interest. No member of the Board of Directors or any officer, employee, or agent of the Authority shall have a personal interest in any business of the Authority or in any contract with the Authority, or in any property or other assets in which the Authority is interested. No person shall be employed by the Authority who is related to a Board member or officer of the Authority by blood or marriage within the fourth degree. For purposes of this provision, any corporation or other business in which a person has a substantial interest shall be prohibited from doing business with the Authority if the owner of the substantial interest would have been so prohibited.

ARTICLE VIII - PURPOSES, POWERS, AND DUTIES

8.01 Purposes. The purpose of the Authority shall be to accomplish projects which may include controlling, collecting, storing, removing, handling, reducing, disposing of, treating, and otherwise dealing in and concerning solid waste as that term is defined in the Act as presently stated or as it is amended from time to time. This general purpose may be pursued in such manner as may

be deemed desirable from time to time by the Board of Directors. The authority may acquire, equip, construct, maintain, and operate facilities and offer such services as the Board of Directors deems appropriate and which may include but not be limited to operate facilities to process and dispose of sludge, to operate waste water treatment plants, to operate laboratory facilities, or to share other functions and resources so as to best serve the members of the Authority. Such services and facilities may be located on the property of the Authority or by arrangement at any other location.

8.02 Powers and Duties. In addition to other powers and duties elsewhere conferred and imposed, the Authority shall have all powers and duties conferred and imposed by the Act, including, but not limited to, those powers enumerated in Ark. Code Ann. § 14-233-107, as currently written and as may be hereafter amended, which powers include the following:

(A) To have perpetual succession as a body politic and corporate, and to adopt bylaws for the regulation of the affairs and the conduct of its business, and to prescribe rules, regulations, and policies in connection with the performance of its functions and duties;

(B) To adopt an official seal and alter it at pleasure;

(C) To maintain an office at such places as it may determine;

(D) To sue and be sued in its own name and to plead and be impleaded;

(E) To make and execute contracts and other instruments necessary or convenient in the exercise of the powers and functions of the authority under the Act including contracts with persons, firms, corporations, and others;

(F) To apply to the appropriate agencies of the state, the United States, or any state thereof, and to any other proper agency for such permits, licenses, certificates, or approvals as may be necessary, and to construct, maintain, and operate projects in accordance with, and to obtain, hold and use licenses, permits, certificates, or approvals in the same manner as any other person or operating unit of any other person;

(G) To employ such engineers, architects, attorneys, real estate counselors, appraisers, financial advisors, and other consultants and employees as may be required in the judgment of the authority and to fix and pay their compensation from funds available to the authority therefor;

(H) To purchase all kinds of insurance including, but not limited to, insurance against tort liability, business interruption, and risks of damage to property;

(I) To fix, charge, and collect rents, fees, and charges for the use of any project or portion thereof or for steam produced therefrom;

(J) To accomplish projects as authorized by the Act and the ordinances creating the authority;

(K) To distribute steam produced by a project to any person, municipality, or county;

(L) To do any and all other acts and things necessary, convenient, or desirable to carry out the purposes and to exercise the powers granted to the Authority by the Act;

(M) To contract for the sale of electric energy produced by any such project, or to consume electric energy produced by any project.

8.03 Additional Powers and Duties. There are no limitations on the exercise of the powers granted, except those limitations contained in the constitutions of the United States and the State of Arkansas, and the statutes of Arkansas. In addition to the foregoing, the Authority shall specifically have the following powers and duties:

(A) To make and adopt all necessary Bylaws, rules, and regulations for its organization and operations not inconsistent with law;

(B) To elect its own officers, to appoint committees, and to employ and fix the compensation for personnel necessary for its operation;

(C) To enter into contracts with any person, governmental entity or department, firm, or corporation, including both public and private corporations, and generally to do any and all things necessary or convenient for the purpose of acquiring, equipping, constructing, maintaining, improving, extending, financing, and operating facilities to process and dispose of sludge, to operate waste water treatment plants, to operate laboratory facilities, or to share other functions and resources so as to best serve the members of the Authority;

(D) To delegate any authority given to it by law to any of its officers, committees, agents, or employees;

(E) To apply for, receive, and use grants-in-aid, donations, and contributions from any source, including but not limited to, the federal government, or any agency thereof, and the State, or any agency thereof, and to accept and use bequests, devises, gifts, and donations from any person, firm, or corporation;

(F) To acquire lands and hold title thereto in its own name;

(G) To acquire, own, hold, lease as lessor or as lessee, sell, encumber, dispose of, or otherwise deal in and with any facilities or real, personal or mixed property, wherever located;

(H) To borrow money and execute and deliver negotiable notes, mortgage bonds, other

ARTICLE X - LIMITATION OF LIABILITY

None of the Members has herewith obligated itself to expend any of its individual funds nor has it authorized the use of its individual bonding capacity. The obligations of the Authority, including revenue bonds issued by the Authority under the Act, shall be payable from and secured by the revenues and property of the Authority, and shall not constitute a general or limited obligation of any Member. Bonds issued by the Authority shall not constitute an indebtedness of any Member within any constitutional or statutory limitation.

ARTICLE XI - AMENDMENT

This Agreement may be modified or amended upon the unanimous written consent of all of the Members who are then members. Such consent shall be evidenced by (i) the enactment of an ordinance by the Governing bodies of each Member approving the substance of any such modification or amendment and (ii) the duly attested manual signature of an Authorized Officer of each of the Members affixed to the amendatory document.

ARTICLE XII - TERMINATION

12.01 This Agreement shall continue in full force and effect subsequent to its adoption by all the Members. Once this Agreement has been approved and executed by the Members, this Agreement may not be terminated until the expiration of the period of any financial commitment made by the Authority and the payment, termination, or defeasance of any such bonds, notes or other obligations of the Authority payable solely from revenues of the Authority.

12.02 In the event the Authority shall be dissolved or for any reason the Authority shall cease to function, and no successor entity shall assume the power, duties and obligations of the Authority, upon due satisfaction of all financial debts and obligations of the Authority, the properties and assets of the Authority shall be liquidated and distributed to the Members in direct proportion to the funds contributed to the Authority by said Members, respectively. For the purposes of carrying out this provision, the Board of Directors shall appoint a Trustee, who shall be paid reasonable compensation and who shall serve until the property and assets of the Authority have been fully liquidated and distributed.

ARTICLE XIII - AGREEMENT CONTROLLING; RATIFICATION OF PRIOR AGREEMENT AND ACTS

The Members, by the execution of this Agreement, ratify, validate, approve, and confirm the creation and establishment of the Authority. The Members acknowledge that this Agreement controls the actions of the Authority and the Members' rights related thereto.

CITY OF CAVE SPRINGS, ARKANSAS

By: _____
Thekla Wallis, Mayor

Date

ATTEST:

Nicole Hart, City Recorder

Date

CITY OF ELM SPRINGS, ARKANSAS

By: _____
Jane Waters, Mayor

Date

ATTEST:

Glenda Pettus, City Recorder

Date

CITY OF TONTITOWN, ARKANSAS

By: Paul Maestri
Paul Maestri, Mayor

4/5/05
Date

ATTEST:

Don K. Zife
City Recorder

4/5/05
Date