

## AMENDED HOST COMMUNITY AGREEMENT

The parties to this amended Agreement are the Town of Lewiston, a municipal corporation in Niagara County, New York ("the Town"); and Modern Landfill, Inc. ("Modern"), a New York business corporation engaged in the business of solid waste management in the Town of Lewiston.

### Recitals

1. The Town of Lewiston and Modern entered into a Host Community Agreement and Host Community Agreement Modification dated October 23, 1995 and December 28, 1995, respectively (collectively, "Original Agreement"), under which the Town would serve as the host community for the continued operation of Modern's sanitary landfill on Harold Road in the Town of Lewiston. In addition, the Town of Lewiston enacted an amendment to Local Law No. 2 of 1988 on or about September 11, 1995 to allow Modern's continued landfill operations.

2. Thereafter, DEC and the Town of Lewiston issued permits authorizing Modern to construct and operate its landfill in accordance with the terms and conditions established in the Original Agreement and the Local Law No. 2 as amended on September 11, 1995.

3. The Town of Lewiston and Modern now recognize that the Original Agreement would have caused Modern to reduce and eventually terminate its landfill business in the Town of Lewiston. However, the Town of Lewiston now wishes to preserve and extend the important employment base which Modern has established within the Town as well as the substantial host community benefits which Modern provides to the Town of Lewiston and its residents. In addition, the Town of Lewiston wishes to encourage Modern to facilitate the growth of the community's employment base in non-solid waste industries.

4. Modern is also committed to fostering the economic prosperity of the Town of Lewiston by, among other things, working in cooperation with the Town to develop and expand the community's employment base and enhance job creation in non-solid waste related activities, particularly within the Model City Industrial corridor.

5. The Town of Lewiston and Modern now wish to amend the Original Agreement to allow Modern to expand its facility and to extend its site life as hereinafter described.

## **TERMS AND CONDITIONS**

### **A. General Terms**

1. **Effective date of agreement.** This amended Agreement ("Agreement") and each of its terms and provisions shall become effective on the date when :

(a) the Lewiston Town Board has passed a resolution approving this Agreement and authorized the Supervisor to execute this Agreement on behalf of the Town, and has enacted a further amendment to Local Law No. 2 of 1988 in substantially the form attached as Exhibit A, and has complied with all requirements of the State Environmental Quality Review Act ("SEQRA") applicable to the approval of the Agreement and the enactment of the amendment of Local Law No. 2 of 1988.

(b) both the Town of Lewiston and DEC have issued permits to Modern for the construction and operation of its landfill in accordance with the terms and conditions of the Local Law No. 2 of 1988 and the amendment referred to in section A(1)(a) above (hereinafter jointly referred to as "the Landfill Law"), this Agreement, and Modern has received all other necessary permits or approvals required for it to construct and operate the landfill ("Required Approvals"); and

(c) there has been a non-appealable judicial determination (i) that judicial approval of this Agreement is not required, or (ii) that the Agreement is approved in accordance with applicable provisions of the New York Town Law.

2. **Application of Terms Until the Effective Date.** Modern and the Town shall use their best efforts to satisfy all of the conditions precedent to the effectiveness of this Agreement, including, but not limited to, obtaining Town of Lewiston and DEC permits or other Required Approvals for the construction and operation of the landfill expansion in accordance with this Agreement. Upon the execution of this Agreement, the parties shall comply with all of the terms and conditions of this Agreement, including, but not limited to, Modern's obligation to make all payments and provide all in-kind services set forth herein. However, in the event Modern is unable to satisfy all of the conditions precedent in Section (A)(1)(b) and (c) within five (5) years from the execution of this Agreement, this Agreement may be cancelled at the option of Modern. In that event, the Original Agreement between the parties, dated December 23, 1995, shall remain in full force and effect and all Host Community Benefits provided by Modern pursuant to Section (E)(1)(a) of this Agreement shall be adjusted to return the parties to their status under the Original Agreement.

3. **Superceding Agreement.** Upon the effective date of this Agreement, it shall supercede in all respects the Original Agreement.

4. **Term of Agreement.** The term of this Agreement shall be from its effective date through December 31, 2040, unless the Agreement terminates earlier as provided in paragraph F(5) below. Although the parties are stipulating as to a "term" of this Agreement, various provisions of this Agreement specifically relate to the period after December 31, 2040. Those provisions will survive that date in full force and effect.

5. **Release.** The parties release one another, and the parties' respective heirs, executors, administrators, successors, and assigns, from any and all actions, causes of action, suits, debts, or claims of any kind, including but not limited to, each and every claim that

was asserted, or might have been asserted, in the action entitled "Modern Landfill, Inc. vs. Town of Lewiston," pending in Supreme Court, Niagara County, Index No. 69836. In particular, but without limitation, Modern releases the Town from all claims that the Landfill Law is invalid or unconstitutional or was enacted in violation of SEQRA or other state laws; and the Town releases Modern from all of the Town's counterclaims for injunctive relief and civil penalties for violation of local legislation.

**6. Mutual covenants not to sue**

a. Modern hereby stipulates and agrees that the Landfill Law, as it is proposed to be amended (see Exhibit A), was enacted validly and consistently with the laws and Constitution of the State of New York and the laws and Constitution of the United States, and that its terms and provisions are likewise lawful and constitutional.

b. Modern hereby expressly waives any claim or argument that there were legal or constitutional defects in the manner in which the Landfill Law was enacted, or that the Town lacked authority to enact the Landfill Law, or that substantive provisions of the law violate Modern's rights under the laws and Constitution of the State of New York or the laws and Constitution of the United States.

c. Modern agrees and covenants that it will bring no action, make no claim, and make no argument that would be inconsistent with the stipulations, agreements, and waivers in this section.

d. The Town agrees and covenants that it will bring no action and make no claim against Modern based on prior agreements or understandings between the Town and Modern or the Landfill Law, or arising out of activities and conduct of Modern prior to the execution of this Agreement.

**7. Covenant to comply with the Landfill Law.** Modern agrees and covenants that it will comply with all applicable provisions of the Landfill Law, as it is proposed to be amended.

8. **Covenant not to disturb.** The Town hereby acknowledges that upon the issuance of permits by the Town pursuant to section 24C-7(c) of the Landfill Law and by the Department of Environmental Conservation pursuant to 6 NYCRR Part 360, certain fundamental rights will vest in Modern to own and operate a solid waste disposal and recycling business within the Town of Lewiston. Modern acknowledges that its rights are expressly limited by the terms and conditions of this Agreement, by the Landfill Law of the Town of Lewiston, and by the New York Environmental Conservation Law. The Town stipulates and agrees that it will not take any action to prohibit or abridge Modern's permitted activities, including any initiative that might control the flow of waste or limit the source of waste, so long as Modern possesses valid permits from the Town and DEC, and provided Modern has complied with the terms and conditions of this Agreement, the Landfill Law of the Town of Lewiston, and the New York Environmental Conservation Law, and 6 NYCRR Part 360.

9. **Renewal permits during the term of this Agreement.**

a. Modern acknowledges that, pursuant to section 24C-6 of the Landfill Law, it will, as a condition of this Agreement, apply to the Town Board for a permit to expand, construct and operate its landfilling facility. The permit issued to Modern by the Town shall be co-extensive with permits issued by DEC. In addition, Modern shall, with the filing of its annual operating reports with DEC and the Town, also file a statement with the Town acknowledging that no substantial changes or variances from the Town's existing permits have occurred in Modern's construction and/or operation during the preceding calendar year except as authorized by this Agreement and the Landfill Law, as it may be amended from time to time. In the event Modern seeks to substantially modify, vary, or expand the scope or nature of its landfilling facility as authorized by the Town in this Agreement, Modern must first apply for and obtain a permit from the Town Board for the proposed modification, variance, or expansion.

b. Upon application by Modern pursuant to section 24C-7 of the Landfill Law and during the term of this Agreement, the Town Board will promptly review and grant Modern's permit applications, provided that Modern is in compliance with the minimum standards of operation set forth in the 6 NYCRR Part 360 regulations in effect as of the effective date of this Agreement or variances granted by DEC and so long as Modern's proposed operations are consistent with the requirements and restrictions of the Landfill Law, as amended, and this Agreement.

**B. Operations after December 31, 2040**

**1. Cessation of activities as of December 31, 2040**

a. Barring the making of a new, successor Host Community Agreement (see subsections (b) and (c) below), Modern agrees and covenants that, as of December 1, 2040, it will cease all landfilling operations within the Town of Lewiston, and will immediately undertake formal closure of its landfill facility in accordance with applicable state or federal regulations. Under no circumstances whatsoever will Modern be entitled to engage in landfill construction or landfilling operations in the Town of Lewiston after December 31, 2040, unless Modern has successfully negotiated and entered into a new, successor Host Community Agreement with the Town that expressly contemplates and authorizes the continuation of landfilling operations within the Town after that date, and unless the operations for which permits are sought are consistent in every respect with the terms of the successor Host Community Agreement.

b. However, even if Modern's application or applications are ultimately approved and state or federal permits are issued, Modern will not be deemed to have any vested right to build or operate a landfill facility in the Town after December 31, 2040 (or any earlier termination date that may result if the Town terminates the agreement as provided in paragraph F(5) below). The Town will be under no greater obligation to entertain a request for a new Host Community Agreement by reason of the issuance of any such permits. Modern will not claim or assert in any legal proceeding or otherwise that it is entitled to engage in landfill

operations after December 31, 2040 (or any earlier termination date that may result if the Town terminates the agreement as provided in paragraph F(5) below) as a result of "vested rights" arising under this agreement, under the terms of the Landfill Law, as amended, or under any permit that may be issued by any state or federal authority. If Modern applies to state or federal authorities before December 31, 2040 for permission to engage in landfill operations after that date, it will do so at its own risk, since the Town of Lewiston may decline to negotiate a new Host Community Agreement with Modern. Modern acknowledges that if the Town declines to make a new Host Community Agreement for any period after December 31, 2040, Modern will be prohibited from proceeding with landfill construction or operation, even though it may have been issued a valid permit from DEC to do so.

c. The Town shall have no obligation under any circumstances either to enter into any successor Host Community Agreement or to entertain proposals from Modern or enter into negotiations regarding terms for a possible successor agreement with Modern. The Town may, in its unilateral discretion, choose not to negotiate with Modern and to permit the instant Agreement to expire in accordance with its terms on December 31, 2040, in which event all landfilling operations at Modern's facility will cease, as provided in subparagraph (a) above.

## **2. Closure and final disposition of the site.**

a. When landfilling operations cease at its facility, Modern will cause the facility to be closed in accordance with DEC regulations and section 24C-8 of the Town of Lewiston Landfill Law. The final disposition and reuse of the landfill site will be as open space. It will include final grading and landscaping plans that are physically and visually compatible with the natural landscape and will further mitigate the visual impact of the final landform.

b. The final closure plan for the landfill will be subject to approval by the Town Engineer and the Town Board for compliance with DEC regulations, section 24C-8 of the Town of Lewiston Landfill Law, and all applicable terms of this Agreement.

### 3. Perpetual care fund.

a. The parties desire to ensure that the Town and its residents and neighbors are protected against the possibility of leakage, contamination, or other presently unforeseeable environmental damage from the landfill after it is closed, and to ensure leachate collection and other maintenance at the closed facility for the indefinite future.

b. The parties acknowledge that Modern will be required under state and/or federal regulations to obtain a post-closure bond or to establish a cash fund or a combination of bonds and cash funds, consistent with the minimum requirements of state and/or federal regulations as of the effective date of this agreement, whose income will be used for maintenance of the closed facility and to indemnify against environmental damage for a period of 30 years after formal closure of the landfill.

c. Modern covenants and guarantees that the principal amount of this cash fund will be no less than \$7.5 million on December 31, 2040.

d. Modern will cause the Town of Lewiston to be named as the sole payee of the proceeds of this cash fund, together with all accumulated income, upon the expiration of the 30 year post-closure period (or any other different post-closure period that may at that time be specified by state regulations) for which the fund will be required by law to be maintained, so that upon the expiration of 30 years after final closure of the landfill, the Town will be the sole owner of the cash fund of \$7.5 million. Upon the expiration of the 30-year post-closure period, the Town shall refund any amounts in excess of \$7.5 million to Modern or its designee(s).

e. During the 30 year post-closure period, Modern may withdraw cash from the cash fund for the purpose of landfill maintenance or remediation, provided that the fund, after the withdrawal, equals or exceeds the greater of \$7.5 million or the amount required by applicable state and/or federal regulations.

f. Thereafter, the proceeds and income from this fund will be held in a designated fund of the Town of Lewiston. Modern or its designee will continue to perform all required maintenance and repairs at the closed facility, including without limitation collection and disposal of leachate, maintenance of appropriate ground cover, and repairs of leachate control systems. Modern will be entitled to reimbursement of its reasonable costs and expenses for maintenance and repair out of the income of the fund.

g. Following the 30-year post-closure period, the Town Board may, by resolution, designate assets of the fund (principal and income) to be used for the purposes of compensating and indemnifying persons for tangible damage to private or public property reasonably demonstrated to be attributable to the landfill or any other lawful purpose.

h. The existence of this fund and its ownership by the Town will not relieve Modern from the legal responsibility it might otherwise bear for damage to persons or to private or public property attributable to the landfill, or from its responsibility to maintain the facility in good repair or to remediate contamination or other adverse effects attributable to the facility. Neither Modern nor any successor will have any right, title, or interest in the designated fund.

i. The Town hereby acknowledges and agrees that this perpetual care fund satisfies all bonding provisions of section 24C-9 of the Landfill Law.

**C. Limitations on operations at Modern's facility.**

**1. Annual tonnage.**

a. Modern may not accept for landfilling more than 182,400 tons of solid waste per quarter or more than 608,000 tons per year at its facility, exclusive of all waste received pursuant to Section E of this agreement.

b. During the term of this Agreement, the Town will not oppose any application by Modern for a DEC permit or other Required Approvals that would authorize waste to be accepted within the tonnage limits specified in this subparagraph. The parties acknowledge that Modern may apply to DEC for a permit for an additional 7,000 tons per year, more or less, which is intended to reflect the tonnage from the Town of Lewiston, the Village of Lewiston, and the Lew-Port School Campus that is exempt from the waste tonnage limitations set forth in this section (C)(1)

## **2. Lateral expansion.**

a. The Town hereby consents to allow Modern to laterally expand its existing landfill footprint to include an additional 122 acres of land contiguous to the facility. Modern will not, either during the term of this Agreement or at any time thereafter; (a) deposit waste or fill beyond its existing landfill footprint or the 122 acre lateral expansion authorized by this Agreement or (b) submit any application for a permit, either from the Town or from DEC or any other authority, that contemplates lateral expansion beyond the existing footprint and the additional 122 acre expansion authorized by this Agreement.

b. During the term of this Agreement, the Town will not oppose any application by Modern for a DEC permit or other Required Approvals that is consistent with the terms of the Landfill Law and this Agreement, including a permit that would authorize Modern to construct a 122 acre lateral expansion of its existing landfill footprint.

c. Modern will be deemed to have a vested right, to the extent expressly provided in this Agreement and in the Landfill Law, to construct a 122 acre lateral expansion of its existing landfill footprint and to operate the landfill until December 31, 2040.

### **3. Vertical expansion.**

a. The Town hereby consents to allow Modern to expand its landfill vertically to a maximum height of 155 feet above the existing mean elevation of 321 NGVD 29 datum. Modern will not, either during the term of this Agreement or at any time thereafter, (a) deposit waste, fill, or cover at a height more than 155 feet above ground level (i.e., 155 feet above the existing mean elevation of 321 NGVD 29 datum) or (b) submit any application for a permit, either from the Town or from DEC or any other authority, that contemplates vertical expansion above 155 feet above ground level.

b. During the term of this Agreement, the Town will not oppose any application by Modern for a DEC permit or other Required Approvals that is consistent with the terms of the Landfill Law and this Agreement, including a permit that would authorize waste to be deposited to a height that would result in a final grade height of up to 155 feet above the existing mean elevation of 321 NGVD 29 datum.

c. Modern will be deemed to have a vested right, to the limited extent expressly provided in this Agreement and in the Landfill Law, to deposit waste, fill, or cover at its facility up to 155 feet above the existing mean elevation of 321 NGVD 29 datum within the permitted landfill footprint and to operate the landfill until December 31, 2040.

### **4. Limitation on slope of landfill facility.**

a. Modern will not, either during the term of this Agreement or at any time thereafter, (a) deposit waste, fill, or cover so as to result in a side slope for the landfill steeper than 1 foot of vertical rise to 3 feet of horizontal distance (1:3), or (b) submit any application for a permit, either from the Town or from DEC or other authority, that contemplates depositing waste, fill, or cover so as to result in a side slope for the landfill steeper than 1:3.

## 5. Truck traffic.

a. The Town has a particular interest in regulating Modern's truck traffic in the Town of Lewiston. Because of the difficulty and impracticability of imposing inflexible daily or weekly limitations on Modern's truck traffic, and because there is a direct correlation between the volume of waste accepted at Modern's landfill and the level of truck traffic, the Town has sought in section C(1) of this Agreement to manage the effect of truck traffic by requiring Modern to limit the total volumes of waste which it is permitted to receive for disposal per year and per quarter. In addition, Modern will make all reasonable efforts to mitigate the effect of truck traffic associated with its landfill by utilizing appropriately sized vehicles. The parties anticipate that the continual limit on the volume of waste Modern may receive during the term of this Agreement, as provided in section C(1), will result in a corresponding effect on truck traffic.

b. So long as Modern's landfill is in operation, Modern will not employ trucks longer or wider than those in service as of the effective date of this agreement.

c. All trucks or other means of transportation for solid waste or town-approved cover material to Modern's facility, except local collection service, shall use only the following local routes when traveling in the Town of Lewiston: Model City Road traveling in a northerly or southerly direction from its southerly intersection with State Route 104, commonly known at this juncture as Ridge Road, to its northerly intersection with Swann Road; thence travelling in an easterly or westerly direction on Swann Road between its intersection with Model City Road to the west and Harold Road to the east; thence traveling in a northerly or southerly direction on Harold Road between its intersection with Swann Road to the south and Pletcher Road to the north; thence traveling easterly or westerly on Pletcher Road between its intersection with Harold Road to the west and Castle Garden Road to the east; thence travelling northerly or southerly on Castle Garden Road between its intersection with Pletcher Road to the south and the entrance to Modern Landfill to the north. Modern trucks will not use Creek Road north of Route 104 or other Town roads, except for local service.

d. Modern will design its truck schedule in such a way that no trucks will pass down Creek Road past the Lew-Port campus during student drop-off and pick-up hours.

e. Modern will carry out a program of inspection for all its vehicles in accordance with standards established by New York Department of Transportation regulations.

f. Modern will establish an 800 number to receive input from the Lewiston community throughout the year concerning truck traffic to its business. In addition, the volume of truck traffic and traffic patterns will be subject to annual review at the request of the Town. The parties will use their best efforts to mitigate any problems identified in the review process to the extent reasonably practicable. Participating in the review will be representatives of Modern and the Town, and interested residents of the Town of Lewiston to be designated by the Town Board.

**6. Odor control review and 24 hour hotline for odor control and other environmental concerns.** Modern will review its odor control strategy with the Town Board or its designee as needed and as requested by the Town Board. Immediately after this agreement becomes effective, Modern will establish and maintain a 24 hour telephone line (which may be the same line as the truck traffic line) on which Town residents can report environmental concerns, including but not limited to odor and noise. Modern will respond in writing to all residents who make such reports or inquiries and will forward copies to the Town.

**7. Contents of waste stream.** Modern will not accept at its facility ash in any form that has hazardous characteristics as defined under 40 CFR Part 261. Modern will utilize standard protocol for testing of any ash brought to Modern's facility to ensure that it is non-hazardous.

## **8. Verification and inspection.**

a. Upon request and reasonable notice, Modern will afford the Town or its representatives access to its scale and volume reports for the purpose of permitting the Town to verify Modern's compliance with the tonnage limitations and tipping fee provisions of this agreement.

b. Modern will permit site inspection by the Town's authorized representatives without prior notice for purposes of verifying Modern's compliance with the provisions of this agreement and the terms and provisions of the Landfill Law, subject to Modern's obligation under its insurance contracts to assign appropriate Modern personnel to accompany persons visiting its facility. Modern will afford the Town or its representatives an opportunity to review and copy any documents reasonably needed for the Town to carry out an adequate investigation.

## **D. Deed Restrictions.**

Contemporaneously with the execution of this Agreement, Modern will execute the Termination of Restrictions and Covenants for the purpose of canceling the existing restrictive covenants executed and delivered by Modern pursuant to the terms of the Original Agreement. The Termination of Restrictions and Covenants shall be filed by the Town or by Modern on or after the effective date of this Agreement.

## **E. Host Community Benefits**

### **1. Collection and disposal of local waste (based on Modern's current contractual relations).**

a. From the effective date of this Agreement through December 31, 2006, Modern will make pickup and disposal of residential household waste available to residents of the Town of Lewiston (other than residents of the Village of Lewiston) and the Lew-Port School Campus without charge. Modern will make disposal of residential household waste available to residents of the

Village of Lewiston at the Modern gate without charge, but Modern will not be obligated for collection of trash or recyclables within the Village of Lewiston. During this period Modern may at its option phase in the use of mobile one-cubic-yard toters, which it will supply at its own expense, for residential households in the Town of Lewiston.

b. From January 1, 2007 through December 31, 2011, Modern will make pickup and disposal of residential household waste available to residents of the Town of Lewiston (other than residents of the Village of Lewiston) for \$35.00 per year per household; Modern will make disposal of residential household waste available at the gate to residents of the Village of Lewiston for the amount of \$12.50 per ton and collection and disposal of the Lew-Port School Campus waste for the amount of \$3050 per year.

c. From January 1, 2012 through the balance of this Agreement, Modern will make pickup and disposal of residential household waste available to residents of the Town of Lewiston (other than residents of the Village of Lewiston) at the base fee of \$70.00 per year per household adjusted annually by the Waste Price Index annexed as Exhibit B. Modern will make disposal of residential household waste available at the gate to residents of the Village of Lewiston for the base fee of \$25.00 per ton and collection and disposal of the Lew-Port School Campus waste for the base fee of \$6,100, each adjusted annually by the Waste Price Index.

d. The Town of Lewiston desires to make similar Modern collection and disposal services available for the Niagara-Wheatfield School District. Commencing on July 1, 2000, through December 31, 2006, Modern shall reimburse the Niagara-Wheatfield School District the amount of \$9.90 for each Town of Lewiston resident enrolled as a full-time student of that district. From January 1, 2007 through December 31, 2011, Modern shall reimburse the Niagara-Wheatfield School District the amount of \$7.425 for each Town of Lewiston resident enrolled as a full-time student of that district. From January 1, 2012 through the balance of this Agreement, Modern shall reimburse the Niagara-Wheatfield School District the amount of \$4.95 divided by the Waste Price

Index for each Town of Lewiston resident enrolled as a full-time student of that district. Modern also agrees to provide waste collection and disposal services without charge to Saint Peter's School, Stella Niagara and the Sacred Heart and Villa School during the term of this Agreement.

e. The recycling or disposal of residential household waste of the residents of the Town and Village of Lewiston and the Lew-Port School Campus and other schools referred to in this Agreement shall not be considered for the purpose of determining the limitations of waste Modern may accept, pursuant to section C(1) of this agreement, nor for the purpose of calculating tipping fees payable to the Town of Lewiston, pursuant to section E(4) of this agreement.

f. For purposes of this paragraph, the term "residential household waste" excludes all industrial or commercial wastes.

**2. Operation of recycling program.** Through December 31, 2040, Modern will operate, without charge, the waste recycling program, including pick-up without charge, for the Town of Lewiston (other than residents of the Village of Lewiston) and the Lew-Port School Campus. Modern will accept tipping of recycled material from the Village of Lewiston without charge.

**3. Host community annual fee.**

a. From the date of this Agreement, as amended, until December 31, 2012, Modern will pay to the Town a base annual host community fee of \$500,000. Thereafter, on January 1, 2013, the base annual host community fee shall be adjusted once for the subsequent ten (10) year period by the Waste Price Index and Modern shall pay that fee, as adjusted, on January 1, 2013 and for each year thereafter through December 31, 2022. On January 1, 2023, the base annual host community fee shall again be adjusted once for the subsequent ten (10) year period by the Waste Price Index and Modern shall pay that annual fee, as adjusted, on January 1, 2023 and for each year thereafter through December 31, 2032. On January 1, 2033, the base annual host community fee

shall again be adjusted once for the remaining term of the Agreement by the Waste Price Index and Modern shall pay that annual fee, as adjusted, on January 1, 2033 and for each year thereafter during the remaining term of this Agreement. The host community fee for each year will be payable on January 1 of each subsequent year during the term of this Agreement.

b. In the event state or federal legislation is passed which imposes a gross receipts tax, or substantially equivalent levy, on solid waste management operations, that would result in a tax or levy payable from Modern to the United States, the State of New York, County of Niagara, or Town of Lewiston, the amount of the host community annual fee that would otherwise be owing and payable under this section for any given year will be reduced by the amount of any such tax or levy actually paid by Modern and received by the Town, either directly or indirectly, in the previous year.

c. Amounts paid by Modern as host community annual fees will be credited to Modern against the annual permit fees otherwise owing under section 24C-8(I) of the Landfill Law.

4. **Tipping fees.** Commencing on the effective date of this Agreement and through December 31, 2040, the following tipping fees will apply to all waste landfilled or brought to Modern's facility for the purpose of recycling operations, exclusive of residential waste from the Town of Lewiston, Village of Lewiston, and the schools received pursuant to section E(1) and (2):

a. Modern will pay to the Town of Lewiston a tipping fee equal to a minimum of \$1.047 per ton for all solid waste that is landfilled - i.e., buried - at Modern's facility.

b. In addition, Modern will pay to the Town of Lewiston a tipping fee equal to a minimum of \$.792 per ton for all waste that enters Modern's facility for the purpose of composting or recycling operations, including without limitation the recycling of tire products, newsprint, and construction and demolition debris. The first 60,000 tons of such waste that enter Modern's facility each year will not be subject to this tipping fee.

c. In addition, Modern will pay to the ArtPark Performing Arts Center a tipping fee equal to a minimum of \$.133 per ton for all solid waste that is landfilled - i.e., buried - at Modern's facility.

d. In addition, Modern will pay to the ArtPark Performing Arts Center a tipping fee equal to a minimum of \$.0994 per ton for all waste that enters Modern's facility for the purpose of composting or recycling operations, including without limitation the recycling of tire products, newsprint, and construction and demolition debris. The first 60,000 tons of such waste that enter Modern's facility each year will not be subject to this tipping fee.

e. All moneys paid by Modern to the ArtPark Performing Arts Center will be used solely and exclusively for children's programming. If at any time the ArtPark children's program should cease to be operated, all amounts otherwise payable to ArtPark will instead be paid to the general fund of the Town of Lewiston.

f. In addition, Modern will pay to the Recreation Department Fund of the Town of Lewiston a tipping fee equal to a minimum of \$.133 per ton for all solid waste that is landfilled - i.e., buried at Modern's facility.

g. In addition, Modern will pay to the Recreation Department Fund of the Town of Lewiston a tipping fee equal to a minimum of \$.0994 per ton for all waste that enters Modern's facility for the purpose of composting or recycling operations, including without limitation the recycling of tire products, newsprint, and construction and demolition debris. The first 60,000 tons of such waste that enter Modern's facility each year will not be subject to this tipping fee.

h. The tipping fee amounts set forth in subparagraphs a, b, c, d, f, and g of section E(4) will apply through December 31, 1999 only. Thereafter, all tipping fees payable to the Town of Lewiston or ArtPark or the Recreation Department under this paragraph will be adjusted annually in accordance with the Waste

Price Index. However, the amounts set forth in subparagraphs a, b, c, and d of this paragraph will constitute minimum amounts; if in any year the amount of the tipping fees, as adjusted by the Waste Price Index, would fall below the minimum amounts, the amounts payable in that year will be the minimum amounts instead.

i. Tipping fees will be computed on the basis of quarterly tonnage figures certified and reported to DEC in accordance with DEC regulations.

j. Tipping fees will be payable on a quarterly basis. Payment will be due within 45 days after the end of each quarter.

k. The Town may, at its option, direct Modern to pay the tipping fees set forth in Section E(4) of this Agreement to such accounts of the Town of Lewiston as the Town may lawfully direct.

#### **5. Waste source reduction.**

a. The parties acknowledge that since the effective date of the original Host Community Agreement, Modern has invested a minimum of \$2 million in aggressively investigating technologies, developing and instituting programs, or constructing facilities by which wastes of its customers or potential customers, such as municipal solid waste, sludge, and other recyclable waste, can be diverted from the burial waste stream and recycled or otherwise converted to beneficially reusable or recycled product, consistent with technological availability and market conditions. In addition, Modern will cooperate with the Town to examine the feasibility of composting of the Town's yard waste.

b. Modern will continue to report to the Town Board in writing on an annual basis on its progress and activities toward the goals and objectives of this provision.

c. In the event Modern proposes to construct and operate an environmentally sound recycling facility and/or a municipal solid waste/sludge compost facility at its facility, and so

long as Modern has received all required permits and approvals from the Town, the Town will support a part 360 application by Modern to DEC for a permit for such a facility.

**6. Expense of closure of old Town landfill.**

The Town and Modern had agreed in the Original Agreement that Modern would assume responsibility for the costs and expenses for the closure of the old Town landfill in accordance with state regulations in an amount not to exceed \$3 million. However, the Town would have remained legally and financially responsible for the long term operation and maintenance of the old Town landfill. The Town now wishes to be relieved of its future legal or financial responsibility for the long term operation or maintenance of the old Town landfill.

Subject to the approval and issuance of a permit from DEC and the receipt of other Required Approvals, Modern will accept the conveyance of the fee interest and title to the Town's old landfill site, identified in Exhibit C hereto, for the sum of \$1. Modern further agrees, subject to the issuance of all necessary state and town permits and other Required Approvals, to remove the waste from the Town's old landfill and to dispose of that waste in Modern's existing double composite liner landfill facility. The waste from the Town's existing facility which is disposed of in Modern's existing landfill shall be excluded from all waste limitations and Modern shall not be required to pay any tipping fees for such waste. Modern will thereafter assume all future responsibility for the maintenance and long term monitoring of the site.

**7. Expense of reconstruction and maintenance of Model City and Harold Roads.**

a. On or before January 1, 2015, Modern shall provide the Town, at Modern's expense, with the analytical report from a qualified professional engineer concerning the then existing conditions of Model City and Harold Roads located in the Town of Lewiston. The analytical report shall indicate whether those Town roads require either replacement or resurfacing. If resurfacing

and/or reconstruction is determined to be necessary at that time, Modern shall reimburse the Town for one-half (1/2) of the costs incurred by the Town to reconstruct or resurface Model City and/or Harold Roads.

b. At the option of Modern and so as to minimize the ultimate cost to the Town and to Modern of accomplishing the improvements, the Town will take all necessary steps to issue municipal bonds or obtain Industrial Development Agency or other available low-cost financing in an amount or amounts sufficient for the Town to meet its contractual obligations for accomplishing the improvements, including engineering costs for design plans and specification and construction observation. Modern will bear all fees and expenses incurred in connection with any such applications or bond offerings.

8. **Community education.** To further reduce the likelihood that hazardous substances will be landfilled at Modern's facilities, Modern will offer to carry out a community awareness education program in all municipalities, including the Town of Lewiston, in which it has contracts for the collection or disposal of waste, for the purpose of instructing residents and users in proper hazardous waste disposal and recycling and of increasing public participation in hazardous waste collection and disposal programs.

9. **Community leadership.** Modern will continue serving in a leadership role in assisting the Lewiston community in developing projects at no or reduced costs and supporting community groups in attaining their goals.

**F. Enforcement of Agreement and Rights of the Town in the Event of Breach.**

1. **Availability of injunctive relief.** The Town may seek enforcement of any provision of this agreement, or of any term or provision of the Landfill Law, as it is to be amended contemporaneously with the effective date of this agreement, in a legal or equitable proceeding in State Supreme Court seeking appropriate injunctive relief, which relief may include either an

order and judgment affirmatively directing Modern to comply with obligations imposed by this agreement, an order and judgment directing Modern to refrain from conduct prohibited by this agreement, an order and judgment directing Modern to pay monetary sums required under this agreement, or a judgment declaring the rights of the parties under this agreement.

**2. Waiver of certain defenses to permanent or preliminary injunctive relief.** For purposes of any application for preliminary or permanent injunctive relief that the Town may seek, Modern hereby stipulates that the Town will sustain "irreparable harm" from any failure by Modern to perform any non-monetary term or provision of this agreement. Modern expressly waives any argument that the Town is required to establish irreparable harm as a condition to relief. Modern further stipulates that it will not contend, upon any application by the Town for preliminary injunctive relief, that the Town's application is improper or should not be granted because it seeks affirmative or mandatory relief instead of prohibitory injunctive relief, or because it would grant the ultimate relief sought in the action; Modern hereby expressly waives any such contention or defense.

**3. Standing of residents.** This agreement is intended to benefit not only the Town of Lewiston, but also each of its residents. Accordingly, any resident of the Town will have standing to institute legal or equitable proceedings against Modern to obtain appropriate injunctive or declaratory relief to enforce the following, but only the following, provisions of this agreement:

- a. Section B(1)(a) (cessation of landfill activities as of December 31, 2040 and formal closure of landfill)
- b. Section B(2)(a) (closure of landfill)
- c. Section C(1) (maximum permitted tonnage)
- d. Section C(2)(a) and (d) (lateral expansion)
- e. Section C(2)(b) and (d) (application for lateral expansion)

- f. Section C(3)(a) (vertical expansion)
- g. Section C(4)(a) and (b) (limitation on slope)
- h. Section C(5)(c) and (d) (truck routes and hours)
- i. Section C(7) (prohibition on ash with hazardous characteristics)
- j. Section E(1)(a), (b), and (c) (waste collection services)
- k. Section E(2) (recycling services)

4. **Expenses of enforcement.** In the event that the Town prevails in an action against Modern alleging a violation of any provision of this Agreement and a right to relief, the Town will be entitled to recover reasonable attorneys' fees, filing fees, and other expenses and disbursements reasonably incurred in connection with the prosecution of the action or proceeding. A resident who brings such an action will be entitled to recover such fees, expenses, and disbursements only in the event of a breach of the conditions set forth in section F(3) of this Agreement and only in the discretion of the court upon a finding that the violation established was significant, material, and willful.

5. **Acceleration of expiration date of agreement and penalty for excess tonnage.**

- a. If Modern violates this Agreement by
  - i. exceeding the annual tonnage limitations imposed by this Agreement by more than ten percent;
  - ii. exceeding the quarterly tonnage limitations imposed by this Agreement by more than twenty percent;

- iii. exceeding the height or vertical expansion restrictions imposed by this agreement to such an extent that it is impractical or, by DEC standards, inadvisable, to rectify the violation by removing excess waste deposits;
- iv. expanding its landfill laterally;
- v. exceeding the side slope restrictions imposed by this agreement to such an extent that it is impractical or, by DEC standards, inadvisable, to rectify the violation by removing excess waste deposits; or
- vi. knowingly and willfully violating the restrictions of the Agreement with respect to contents of waste stream (see section C(7)),

the Town will be entitled, by written notice to Modern following a resolution of the Town Board, to elect to accelerate the termination date of this Agreement.

b. If the Town elects to accelerate the termination date of this Agreement, Modern will immediately cease all landfilling operations within the Town of Lewiston and will immediately undertake formal closure of its landfill facility in accordance with applicable state or federal regulations and in accordance with the provisions of this Agreement regarding closure, and the rights of the parties will in all respects be as if the Agreement had terminated on January 1, 2041.

c. If Modern fails to cease landfilling operations or to close its facility upon the Town's election to accelerate the termination date of this Agreement, the Town will be entitled, in an appropriate action or proceeding, to an injunction prohibiting further landfilling operations and directing Modern to undertake closure of its facility. In any such action or proceeding, the

provisions of this article of this Agreement regarding "Waiver of certain defenses to permanent or preliminary injunctive relief" and "Expenses of Enforcement" will be applicable.

d. If Modern violates this Agreement by exceeding the annual tonnage limitations, the annual permissible tonnage for the year following will be reduced by double the amount of any waste accepted in excess of the permissible tonnage. During the final year of this Agreement, if Modern violates this Agreement by exceeding the annual tonnage limitations, Modern will be obligated to pay, by way of a penalty applicable to all waste in excess of the permitted tonnage, an additional tipping fee equal to 5 times the otherwise applicable tipping fees.

e. If Modern's landfilling operations cease as a result of the Town's election to accelerate the termination date of this Agreement, or if Modern elects to discontinue its landfilling operations, Modern will have no further obligation to pay host community annual fees pursuant to section E(3) of this Agreement will cease. Modern will not be entitled to recover any portion of fees already paid.

#### **G. Miscellaneous Provisions**

1. This written Amended Host Community Agreement, with its written attachments and exhibits, reflects the entire agreement of the parties with respect to resolution of the outstanding disputes between the parties and the terms and conditions on which Modern will conduct waste management operations in the Town of Lewiston in the future. It supersedes all prior discussions, agreements, and understandings between the parties. There are no agreements or understandings between the parties, written or unwritten, that are not expressed in this agreement.

2. The construction and interpretation of this Agreement shall be governed by New York law, and any action to enforce this agreement or any or its terms or provisions will be commenced in New York Supreme Court, Niagara County.

3. Severability. If any provision of this Agreement is invalid or unenforceable, the remaining provisions shall, to the extent possible, be enforced, taking into account the purposes and spirit of this Agreement. To the extent any provision is held invalid or unenforceable for being too broad or extensive, it is the intention of the parties that the court enforce such provision to the limits of proper scope or breadth. The parties agree to replace any invalid provision with a valid provision which most closely approximates the intent and economic effect of the invalid provision.

4. This Agreement may be executed in one or more counterparts; all of which shall be considered one and the same agreement.

Dated: 7/15, 1999

TOWN OF LEWISTON

By: *Richard F. Dennis*

MODERN LANDFILL, INC.

By: *Mary E. Smith*

Approved as  
to form:

*Timothy J. Toohy*  
Timothy J. Toohy

**EXHIBIT A – Town of Lewiston Local Law No. 2 of 1999  
Waste Disposal and Landfills**

**TOWN OF LEWISTON LOCAL LAW NO. 2 OF 1999**

**WASTE DISPOSAL AND LANDFILLS**

**Chapter 24C**

**WASTE DISPOSAL AND LANDFILLS**

- § 24C-1. Title.
- § 24C-2. Purpose; findings; intent.
- § 24C-3. Applicability.
- § 24C-4. Definitions.
- § 24C-5. Coordination with state law.
- § 24C-6. Permit required; transferability.
- § 24C-7. Permit application procedures.
- § 24C-8. Permit application contents; fees.
- § 24C-9. Bonds.
- § 24C-10. Variances.
- § 24C-11. Reissuance of permit.
- § 24C-12. Modification, suspension and revocation of permits.
- § 24C-13. Transportation routes.
- § 24C-14. Penalties for offenses.
- § 24C-15. Procedural restrictions.
- § 24C-16. Repealer; effect on other law.
- § 24C-17. Severability.
- § 24C-18. When effective.

[HISTORY: Adopted by the Lewiston Town Board 2-6-1979 as L.L. No. 1-1979; amended in its entirety 9-11-1995 by L.L. No. 2-1995. Subsequent amendments noted where applicable.]

TOWN OF LEWISTON LOCAL LAW NO. 2 OF 1999

§ 24C-1

LEWISTON CODE

§ 24C-2

GENERAL REFERENCES

Discarded refrigerators - See Ch. 7.  
Disposal of garbage, rubbish and refuse - See Ch. 7A.  
Garbage, rubbish and refuse - See Ch. 12.  
Hazardous wastes - See Ch. 13B.  
Junkyards - See Ch. 17.  
Littering - See Ch. 18.  
Recycling - See Ch. 20A.

§ 24C-1. Title.

This local law shall be known as and may be cited as the "Waste Disposal and Landfills Law of the Town of Lewiston."

§ 24C-2. Purpose; findings; intent.

A. The Town of Lewiston finds that solid waste management facilities, particularly landfills, are by their very nature potentially dangerous to both the town citizenry and the surrounding natural environment. The contamination of groundwater tables, nearby creeks and streams, the Niagara River and Lake Ontario and the pollution of the air are very real threats which are posed by such operations.

B. It is the duty and intent of the Town Board to protect the inhabitants of the Town of Lewiston through an exercise of its police powers by restricting and regulating solid waste management facilities, including landfills, and by requiring maximum utilization of safety and health factors to ensure the continued well-being of the town citizenry.

C. The Town Board finds that landfill operations within the Town of Lewiston are producing or threaten to produce undesirable environmental conditions in the Town of Lewiston that require the further regulation of landfill operations. These undesirable conditions include, but are not limited to:

- (1) Heavy truck traffic to and from landfill operations within the Town of Lewiston generates noise, dust,

litter and odors. Such traffic also causes a need for substantially increased road repair and maintenance costs and may pose traffic safety hazards.

- (2) Landfills have been constructed to such a height or at such a slope so as to become visually prominent; landfilling operations have become visible to the community; and the landscape of the town has been permanently, undesirably and unattractively altered.
- (3) The operation of landfills in a business and residential community such as the town makes residential living less desirable, makes the town less attractive for other businesses and adversely affects property values and the tax base of the town.
- (4) Environmental science remains unable to completely evaluate and control pollution from sanitary landfill operations. The inability to precisely ascertain the existence and flow of groundwaters and to map subterranean geology makes it impossible to determine the extent to which landfill operations may be contaminating groundwater supplies.
- (5) The accumulated extent of hazardous waste or substances in landfills cannot be measured or accurately determined because of state and federal regulations permitting disposal of industrial wastes and of residential and/or small user quantities of hazardous wastes.
- (6) Future correction of pollution from sanitary landfills may be very expensive or impossible to achieve.
- (7) Portions of landfill areas in the Town of Lewiston have been constructed under regulatory requirements that are less exacting than current state laws and regulations, presenting a greater risk of environmental damage from leachates.

(8) Landfill operations are a matter of legitimate community concern and interest, and current, accurate information regarding landfill operations should be available to public officials of the Town of Lewiston and its citizens.

(9) Existing landfill operations within the town were approved with specific understandings of limits on such landfilling as to source of wastes, volume of wastes, volumes of truck traffic and height of landfill. Unfortunately, such prior understandings have not always been adhered to.

D. Solid waste regulation under the New York Environmental Conservation Law (ECL) is inadequate to relieve the foregoing concerns.

E. The Town Board, intends by this local law, to:

(1) Regulate and restrict the operation of solid waste management facilities within the Town of Lewiston in order to promote a clean, wholesome and attractive environment for the community.

(2) Reduce the risk of pollution from solid waste disposal operations by restricting the scope and size of such activities.

(3) Ensure that accurate, current information about solid waste disposal operations within the town is available to public officials and citizens.

(4) Protect the residents of the town from undesirable effects of landfill operations, including:

(a) Unaesthetic results, including odors, blowing litter, excessive traffic, dust and noise.

(b) Deterioration in property values associated with adjacent or proximate landfill operations that may interfere with the orderly development of properties.

(c) Excessive height, scope or duration of landfilling.

(5) Exercise the town's police powers under the Municipal Home Rule Law and §§ 130 and 136 of the Town Law for the physical and mental wellbeing and safety of its citizens and to regulate and restrict sanitary landfill operation within the town pursuant to the specific authority of § 27-0711 of the Environmental Conservation Law which authorizes towns to impose stricter controls on sanitary landfill operations than state law requires.

**§ 24C-3. Applicability.**

This local law shall apply to all territory within the confines of the Town of Lewiston, excepting any incorporated village.

**§ 24C-4. Definitions.**

A. Unless defined below or the context otherwise requires, the terms and words used in this local law shall have the same meanings as those defined in Article 27 of the Environmental Conservation Law and Title 6, Parts 360 and 617, of the New York Codes Rules and Regulations.

B. As used in this local law, these terms and words shall be defined as follows:

ACTIVE LIFE - That period of time during which solid waste is or will be routinely and regularly received.

ACTIVE PORTION - That portion of a solid waste management facility where treatment, storage or disposal operations are being or have been conducted.

APPLICANT - The person or persons applying for a permit under this local law. An "applicant" must be the owner of the solid waste management facility and the site upon which it is located; however, if the site and the facility are owned by separate persons, then both persons constitute the "applicant."

APPROVED DESIGN CAPACITY - The maximum average daily tonnage to be received at the solid waste management facility during any quarter, as approved by the town.

APPROVED DESIGN VOLUME - The maximum in-place volume of solid waste, including cover material to be received at the solid waste management facility during its active life, as approved by the town.

AQUIFER - A consolidated or unconsolidated geologic formation, group of formations or part of a formation capable of yielding groundwater to wells or springs.

ASBESTOS WASTE - Friable solid waste that contains more than one percent (1%) asbestos by weight and can be crumbled, pulverized or reduced to powder, when dry, by hand pressure. "Asbestos waste" also includes any asbestos containing solid waste that is collected in a pollution control device designed to remove asbestos.

ASH or ASH RESIDUE - All the solid residue and any entrained liquids resulting from the combustion of solid waste at a solid waste incinerator, including bottom ash, boiler ash, fly ash and the solid residue of any air pollution control device used at a solid waste incinerator.

AUTHORIZED REPRESENTATIVE - The individual responsible for the overall operation of a solid waste management facility or an operational unit of a facility, such as the plant manager, superintendent or individual of equivalent responsibility, who has authority and knowledge to make and implement decisions regarding operating conditions at the facility.

BOTTOM ASH - The ash residue remaining after combustion of solid waste in a solid waste incinerator that is discharged through and from the grates or stoker.

**CLOSED PORTION** - That portion of a solid waste management facility which has been closed in accordance with the approved closure plan for such facility and all applicable closure requirements.

**COMBINED ASH** - The mixture of bottom ash and fly ash.

**CONSTRUCTION** - Any physical modification to the site at which a potential or proposed solid waste management facility is to be located, including, but not limited to, site preparation (e.g., clearing and grading, excavation of borrow material for daily cover, etc.).

**CONSTRUCTION AND DEMOLITION DEBRIS** - Uncontaminated, inert solid waste resulting from the construction, remodeling, repair and demolition of structures and from road building and land clearing. Such waste includes, but is not limited to, bricks, concrete and other masonry materials, soil, rock, wood, wall coverings, plaster, drywall, plumbing fixtures, nonasbestos insulation, roofing shingles, asphaltic pavement, glass, plastics that are not sealed in a manner that conceals other wastes and metals that are incidental to any of the above. Solid waste that is not "construction and demolition debris" (even if resulting from the construction, remodeling, repair and demolition of structures and from road building and land clearing) includes, but is not limited to, asbestos waste, garbage, corrugated container board, electrical fixtures and components, carpeting, furniture, appliances, tires, drums and containers and fuel tanks. Specifically excluded from the definition of "construction and demolition debris" is solid waste (including what otherwise would be construction and demolition debris) resulting from any processing technique that renders individual waste components unrecognizable, such as pulverizing or shredding.

**CONSTRUCTION PERMIT** - That permit, issued by the Town Board of the Town of Lewiston, which allows a

person to construct or modify a solid waste management facility.

**CONTAMINATION** (as applied to surface water and groundwater) - An exceedance of water quality standards specified in Parts 701, 702 and 703 or a statistically significant rise in the concentration of measured parameters attributable to the site using statistical tests.

**CONTINGENCY PLAN** - A document describing organized, planned and technically coordinated and financially feasible courses of action to be followed in case of emergency or other special conditions, including, but not limited to, accidents, equipment breakdowns, fire, odor, vectors, explosion, spills, receipt or release of hazardous or toxic materials or substances, groundwater, surface water or air contamination attributable to a solid waste management facility and other incidents that could threaten human health or safety or the environment.

**COVER MATERIAL** - Soil or other authorized material that is used to cover compacted solid waste in a landfill.

**DAILY COVER** - A compacted layer of at least six (6) inches of cover material that is placed on all exposed solid waste at the end of each working day of operation at a landfill.

**DEC** - The New York State Department of Environmental Conservation.

**DISPOSAL** - The placement, distribution, storage, removal or transportation of solid wastes.

**FACILITY** - Any solid waste management facility.

**FINAL COVER** - A layer of cover material that is placed on any surface of a landfill where no additional solid waste will be deposited within one (1) year, which serves to restrict infiltration, support vegetation, control landfill gas and promote surface drainage.

FLOODPLAIN - The land susceptible to being inundated by a flood that has a one-percent or greater chance of recurring in any given year.

FLY ASH - The ash residue from the combustion of solid waste that is entrained in the gas stream of the solid waste incinerator, which includes, but is not limited to, particulates, boiler ash, cinders, soot and solid waste from air pollution control equipment.

INDUSTRIAL WASTE - Any liquid, gaseous, solid or waste substance, or combination thereof, resulting from any process of industry, manufacturing, trade or business or from the development or recovery of any natural resource. It shall include, but not be limited to, pesticides, lime, acids, chemicals, petroleum products, tar and dyestuffs. "Industrial waste" shall be no less thus if it occurred or was produced naturally or otherwise and is to be the subject of disposal methods. This term does not include sewage or sewage sludge from the Lewiston Water Pollution Control Center.

LANDFILL or SANITARY LANDFILL - Any disposal area for solid wastes in or upon the ground.

OPERATION PERMIT - That permit, issued by the Town Board of Lewiston, which allows a person to operate a solid waste management facility.

PERSON - Any individual, partnership, firm, association, business, industry enterprise, public or private corporation, political subdivision of the state, government agency, municipality, estate, trust or any other legal entity whatsoever.

RECYCLING - The reuse of solid waste recovered from the solid waste stream into goods or materials suitable for reuse in original or changed form.

SERVICE AREA - The geographical area serviced by a solid waste management facility from which solid waste is generated and collected for delivery to that facility.

SITE - The geographically contiguous property of a solid waste management facility which includes, at a minimum, the land area of that facility and its access roads, appurtenances and land buffer areas.

6 NYCRR - Title 6 of the New York Codes, Rules and Regulations.

SOLID WASTE - All putrescible and nonputrescible materials or substances that are discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection, including, but not limited to, garbage, refuse, industrial and commercial waste, sludges from air or private waste water treatment facilities, rubbish, tires, ashes, contained gaseous material, incinerator residue, construction and demolition debris, discarded automobiles and offal. The term "solid waste" does not include sewage or sewage sludge from the Lewiston Water Pollution Control Center. In addition:

- (1) A material is "discarded" if it is abandoned by being:
  - (a) Disposed of;
  - (b) Burned or incinerated, including being burned as a fuel for the purpose of recovering usable energy; or
  - (c) Accumulated, stored or physically, chemically or biologically treated (other than burned or incinerated) instead of or before being disposed of.
- (2) A material is "disposed of" if it is discharged, deposited, injected, dumped, spilled, leaked or placed into or on any land or water so that such material or any constituent thereof may enter the environment or be emitted into the air or discharged into groundwater or surface water.

SOLID WASTE MANAGEMENT FACILITY - Any facility employed beyond the initial solid waste collection

process and managing solid waste, including, but not limited to, storage areas or facilities, transfer stations, rail-haul or barge-haul facilities, processing facilities, landfills, disposal facilities, solid waste incinerators, landspreading facilities, composting facilities, surface facilities, recycling facilities and waste tire storage facilities.

**§ 24C-5. Coordination with state law.**

A. All relevant sections of Article 27 of the New York State Environmental Conservation Law and Title 6 of the New York Codes Rules and Regulations, Parts 360 to 364, are deemed to be included within and as part of this local law, and any violation thereof shall be considered to constitute a violation of this local law.

B. The provisions of this local law shall be interpreted in such a manner as being consistent with state law, except that the more stringent requirements of local law shall apply.

**§ 24C-6. Permit required; transferability.**

A. No person shall construct or operate a solid waste management facility without first obtaining a permit issued by the Town Board pursuant to the provisions of this local law. Prior to any modification or expansion of any previously permitted facility, the operator shall apply for and obtain a revised permit.

B. No person shall construct, modify or expand a solid waste management facility without a permit issued by the Town Board pursuant to the provisions of this local law. The term or period of any such permit shall be determined by the Town Board. The Town Board may, in its discretion, also designate such permits to be coextensive with permits issued by the DEC for the same facility.

C. No permit issued pursuant to the provisions of this local law shall be transferable to any other person without the prior, express, written consent of the Town Board. The Town Board may refuse to consent to any given transfer or may, in its discretion, require further financial or other assurances as a condition of any such consent.

**§ 24C-7. Permit application procedures.**

A. Existing facilities.

(1) The operator of any industrial waste disposal, recycling or sanitary landfill facility which is operative on the original effective date of this local law (February 1979) or on the effective date of any amendment to this local law shall submit an application for an operation permit prior to or within ninety (90) days after the effective date of this local law or amendment thereof.

(2) A complete application which is timely submitted shall be deemed an operation permit until such application is acted upon.

(3) If a submitted application is deemed incomplete by the Town Board, the subject applicant shall be notified of such defect within sixty (60) days and shall have an additional thirty-day period to complete the application. Failure to do so within such thirty-day extension period shall result in an automatic denial of the application.

(4) In addition to the application content requirements hereinafter enumerated in § 24C-8, all applications submitted under this subsection shall include:

(a) A detailed report describing the plan of operation and a contingency plan.

- (b) A demonstration that the facility will satisfy all applicable standards of operation as enumerated in 6 NYCRR 360 and that the facility will meet the requirements and not exceed the restrictions of this local law.
  - (c) Specific written assurances that the facility will not exceed the restrictions set forth in § 24C-15 of this local law.
- B. Proposed facilities and modification to existing facilities.
- (1) Any person who proposes to construct or operate a solid waste management facility or who proposes to expand or modify any phase of an existing facility shall first determine if such new facility, modification or expansion would be compatible with the restriction of § 24C-15. If the proposal is incompatible, it cannot be permitted. If the proposal is compatible, the applicant shall submit a complete application for a construction permit to the Town Board not less than ninety (90) days in advance of the date on which it is proposed to commence such construction, modification or expansion and shall submit a complete application for an operation permit not less than ninety (90) days in advance of the proposed date of operation.
  - (2) The following acts are deemed to be modifications which require construction permits:
    - (a) Expansion of the facility by acquisition (by purchase, lease or otherwise) of additional land which was not the subject of or included in any application previously submitted and approved under this local law.
    - (b) Movement of the disposal, recycling or landfill operation to a portion of property already owned, leased or otherwise held by the facility which was not the subject of or included in any

previously submitted and approved application under this local law.

(c) Receipt of solid waste per quarter or per year greater than that designated in any previously submitted and approved application; greater than the Town Board has approved in its permit; or as may be allowed under § 24C-15 herein, whichever is lowest.

(d) Any vertical or horizontal expansion of the facility beyond the limits contained in an approved application under this local law.

(3) In addition to the application content requirements hereinafter enumerated in § 24C-8, all applications submitted under this subsection shall also include the following:

(a) A detailed engineering plan and specifications reflecting the construction of the proposed facility.

(b) A detailed report describing the proposed plan of operation, including a demonstration of the specific means to be utilized for satisfying all applicable standards of operation.

(c) A contingency plan.

C. Town Board action.

(1) Within ninety (90) days after receipt of any completed application, or such longer period as may be agreed upon, in writing, by the Town Board and the applicant, the Town Board shall act on the application.

(2) The Town Board shall grant an application and issue a construction permit or an operation permit if, and only if:

(a) The application complies with the provisions of § 24C-8 below;

(b) The applicant has demonstrated that, after construction and/or during the proposed term of the permit, the facility will be operated in compliance both with the standards of operation set forth in 6 NYCRR Part 360 or variances granted by the DEC and with all requirements and restrictions of this local law; and

(c) With respect to an application for an operation permit for which a construction permit has previously been issued, the applicant has demonstrated that the facility was constructed in accordance with the previously approved plan of construction.

(3) If a permit is denied, the Town Board shall notify the applicant, in writing, of its decision, stating its reasons. In an appropriate case, the Town Board may approve the application on the condition that the applicant take specified steps to ensure that operations are conducted in compliance with all requirements and restrictions set forth in this local law.

(4) If a permit is denied with respect to a facility which was already in operation at the time application was made, the facility shall thereafter accept no new wastes, but shall cease operations and commence closure and/or restorative measures within ninety (90) days from the date of the Town Board's written notice.

(5) The Town Board shall determine whether or not to conduct a public hearing concerning any application. Any hearing shall be scheduled within sixty (60) days after receipt of a complete application.

**§ 24C-8. Permit application contents; fees.**

- A. All applications for a permit for the construction, modification or expansion of a facility shall include an application to the Town Board on a form prescribed by the Board by resolution.

- B. All applications for a permit for the operation of a facility shall include an application to the Town Board upon a form prescribed by said Board by resolution.
- C. The Town Clerk shall make available those application forms.
- D. All applications shall be accompanied by any other data that the Town Board reasonably requires to responsibly determine whether to issue or deny a permit.
- E. All applications shall fulfill the following requirements:
- (1) Engineering plans, reports and specifications submitted for approval shall be prepared by a person or firm registered to practice professional engineering in New York State.
  - (2) The location of all property boundaries and existing contours (five-foot intervals) shall be certified by a person or firm legally qualified to practice land surveying in New York State.
  - (3) The applicant shall survey and record and include in his application background sound-level data in the vicinity of the facility at the time of application.
  - (4) The applicant shall include a proposed detailed program for closure of the facility, to be implemented when use of the facility or a part of the facility permanently terminates. Such program shall include a restoration plan which must satisfy, but not be limited to, the following criteria:
    - (a) For all facilities not existing on the effective date of this local law, no slope shall be left with a grade steeper than one (1) foot of vertical rise to four (4) feet of horizontal distance, and the normal angle of repose shall not be exceeded in any case. For all facilities existing prior to the effective date of this local law as amended in

1988, including expansions of existing facilities, no side slope shall be left with a side slope steeper than one (1) foot of vertical rise to three (3) feet of horizontal distance. In no event shall any slope be left with a grade steeper than one (1) foot of vertical rise to three (3) feet of horizontal distance.

(b) All stumps, boulders and other debris resulting from the excavations, appurtenant activities or related operations shall be disposed of by approved methods. If disposed of on the site, such debris shall be covered with a minimum of two (2) feet of soil.

(c) Topsoil shall be spread over the excavated area to a minimum depth of six (6) inches.

(d) The restoration area shall be planted with trees, shrubs, grass or other vegetation so as to provide for screening, natural beauty and soil stability. The planting shall follow acceptable conservation practices.

(e) Restoration shall be undertaken in such a way that natural and storm drainage, where it enters and leaves the premises, shall be altered only to the minimal degree necessary to carry out excavations and appurtenant activities. Any alterations of natural and storm drainage shall not adversely affect public roads or neighboring property owners.

(f) Restoration shall be a continuous operation, subject to review and approval at each inspection and at the termination of the permit period. Topsoil grading and planting of the area designated for restoration during the permit period shall have been completed before a permit renewal is granted.

(g) Within six (6) months after final closure, all equipment, buildings, structures and other unsightly evidence of the operation, except for structures associated with ongoing permitted recycling and/or composting activities, or structures necessary for post-closure landfill maintenance and monitoring, shall be removed from the premises or disposed of by approved methods, and all restoration shall have been completed.

(5) The proposed maximum life of the facility shall be stated.

(6) An enumerated list of wastes to be received, treated or disposed of, the quantities of such waste to be received, their point of origin, method of transportation to be utilized for their shipment to and from the facility and the proposed method for their recycling or disposal shall be provided.

(7) A proposed program shall be stated for the monitoring of all activities of the facility by personnel of the Town of Lewiston or persons authorized by the Town of Lewiston, whereby such personnel or persons shall be allowed access to the facility at any time deemed necessary by the Town Board.

(8) All methods and actions to be utilized must satisfy the dictates of all applicable standards of operations.

F. All applications shall be accompanied by evidence of authority to sign the application and shall be signed as follows:

(1) Corporation: by a duly authorized principal executive officer, at least the level of vice president, accompanied by a certified copy of the authorizing corporate resolution.

- (2) Partnership: by a general partner.
- (3) Sole proprietorship: by the proprietor.
- (4) Municipal, state or governmental entity: by a duly authorized principal executive officer or elected official, accompanied by a certified copy of the authorizing resolution.

G. Applications shall be sworn to by or on behalf of the applicant in respect to all statements of fact therein or shall bear an executed statement on behalf of the applicant, pursuant to New York State Penal Law § 210.45, to the effect that false statements made therein are made under penalty of perjury.

H. Each permit application shall be accompanied by an application fee of five thousand dollars (\$5,000.) to defray the cost of review thereof.

**§ 24C-9. Bonds.**

A. All applications shall also be accompanied by the following bonds, in an amount set by the Town Board, issued by a bonding or surety company acceptable to the Town Board:

- (1) Performance bond, to ensure the proper performance of the work pursuant to the details of the application, the dictates of this local law and any other applicable local law or state law.
- (2) Restoration bond, to ensure that all restoration work is completed pursuant to the plan submitted with the application, the dictates of this local law and any other local law or state law.

(3) Penalty bond, to ensure that all fines and penalties levied and the judgments secured pursuant to this local law are promptly tendered and satisfied.

B. The terms and conditions of all such bonds, including the amounts of such bonds, shall be clearly set forth in detail.

C. The Town Board may, in its discretion, accept other suitable forms of financial assurance in lieu of one (1) or more of the provisions of this section. Likewise, the Town Board may require other bonds or financial assurance to protect the public.

#### § 24C-10. Variances.

A. The Town Board, upon written application from any person who is subject to the dictates of this local law, may (but is not required to) grant a variance from one (1) or more specific provisions of this local law, only if said applicant:

(1) Identifies the specific provisions from which a variance is sought.

(2) Demonstrates that compliance with said provisions would, on the basis of the conditions unique and peculiar to the applicant's particular situation (not self-imposed by the applicant), tend to impose a substantial financial, technological or safety burden on the applicant or public.

(3) Demonstrates that the proposed activity which is the basis of the requested variance will have no significant adverse impact on the health, safety, welfare, natural resources or environment of the people of the Town of Lewiston; will not violate any of the specific restrictions set forth in § 24C-15; and will be consistent with the purpose of this local law, the provisions of the New York Environmental Conservation Law and any rules and regulations promulgated thereunder.

B. In granting a variance, the Town Board may impose specific conditions to ensure that the subject activity will not have an adverse impact on the health, safety, welfare, natural resources or environment of the citizenry of the Town of Lewiston.

C. No variance shall be granted unless at least four (4) Town Board members approve the same.

#### § 24C-11. Reissuance of permit.

A. Any permit holder who intends to continue construction or operation beyond the period of time covered in such permit must file for reissuance of such permit at least ninety (90) days prior to its expiration. Filing for reissuance shall be made by the permit holder on forms prescribed by resolution of the Town Board and available from the Town Clerk or, if no such forms are prescribed, then by letter executed and sworn as specified in § 24C-8E and F above. The provisions of this local law relative to submitting and processing initial applications shall apply to reissuance applications under this section.

B. Upon review of a reissuance application, the Town Board shall determine whether the permittee is in compliance with or has substantially complied with all terms, conditions and requirements of the expiring permit and of this local law.

(1) Upon an affirmative determination, the permit shall be reissued.

(2) Upon a negative determination or upon a finding that other circumstances exist which indicate noncompliance within any provisions of this local law, the Town Board shall take appropriate action to secure compliance, including, but not limited to, a denial of reissuance.

**§ 24C-12. Modification, suspension and revocation of permits.**

- A. After notice and opportunity for a hearing, any permit issued pursuant to this local law may be modified, suspended or revoked, in whole or in part, during its term, for cause, including, but not limited to, the following:
- (1) The permit was obtained by willful misrepresentation or willful failure to fully disclose all relevant facts; or
  - (2) Materially false or inaccurate statements or information willfully made in an application for a permit.
- B. By written notice to a permit holder following a resolution of the Town Board, any permit issued pursuant to this local law may be modified, suspended or revoked, in whole or in part, during its term, on the ground that:
- (1) The permit holder has exceeded the annual tonnage limitations established in the permit issued by the Town by more than ten percent (10%);
  - (2) The permit holder has exceeded the quarterly tonnage limitation established in the permit issued by the Town by more than twenty percent (20%);
  - (3) The permit holder has exceeded the height or vertical expansion restrictions set forth in § 24C-15C(2) to such an extent that it is impractical or, by DEC standards, inadvisable to rectify the violation by removing excess waste deposits;

- (4) The permit holder has expanded the landfill laterally without a permit issued by the Town authorizing such expansion; or
- (5) The permit holder has exceeded the side slope restrictions set forth in § 24C-15C(3) to such an extent that it is impractical or, by DEC standards, inadvisable to rectify the violation by removing excess waste deposits.

**§ 24C-13. Transportation routes.**

A. All trucks or other means of transporting solid waste or town-approved cover material approved to and from solid waste disposal facilities in the Town of Lewiston, except local collection services, shall utilize only the following routes when traveling in the Town of Lewiston.

- (1) State Highway No.18, commonly known as "Creek Road" and the "Creek Road Extension," traveling in a northerly and southerly direction from the northern boundary of the Town of Lewiston to said highway's southerly intersection with State Highway No. 104, commonly known at this juncture as "Lewiston Road"; State Highway No. 104, commonly known at this juncture as "Lewiston Road," traveling in an easterly and westerly direction from said highway's easterly intersection with State Highway No.18, commonly known as the "Creek Road" and "Creek Road Extension," to said highway's westerly intersection with State Highway No. 265, commonly known as "Military Road"; State Highway No. 265, commonly known as "Military Road," traveling in a northerly and southerly direction from said highway's northerly intersection with State Highway No. 104, commonly known at this Juncture as "Lewiston Road," to said highway's southerly intersection with the southern boundary of the Town of Lewiston; State Highway No. 31, commonly known as "Sounders Settlement Road,"

traveling in an easterly and westerly direction from said highway's westerly intersection with the southern boundary of the Town of Lewiston to said highway's easterly intersection with State Highway No. 429, commonly known at that juncture as "Town Line Road"; State Highway No. 429, at this point commonly known as "Ward Road," and "Buffalo Street" in the Hamlet of Sanborn, traveling in a northerly and southerly direction from said highway's southerly intersection with the southern boundary of the Town of Lewiston to said highway's northerly intersection with State Highway No. 31, commonly known as "Saunders Settlement Road"; State Highway No. 429, commonly known at this point as "Town Line Road," traveling in a northerly and southerly direction from said highway's southerly intersection with State Highway No. 31, commonly known as "Saunders Settlement Road," to said highway's northerly intersection with State Highway No. 104, commonly known at this juncture as "Ridge Road," traveling in an easterly and westerly direction from said road's easterly intersection with State Highway No. 429, commonly known at this juncture as "Town Line Road," to said highway's westerly intersection with State Highway No. 18, commonly known as the "Creek Road Extension."

(2) Model City Road traveling in a northerly or southerly direction from its southerly intersection with State Highway No. 104, commonly known at this juncture as "Ridge Road," to its northerly intersection with Swann Road; thence traveling in an easterly or westerly direction on Swann Road between its intersection with Model City Road to the west and Harold Road to the east; thence traveling in a northerly or southerly direction on Harold Road between its intersection with Swann Road to the south and Pletcher Road to the north; thence traveling easterly or westerly on Pletcher Road

between its intersection with Harold Road to the west and Castle Garden Road to the east; thence traveling northerly or southerly on Castle Garden Road between its intersection with Pletcher Road to the south and the entrance to Modern Landfill to the north.

B. The Town Board may, subject to the consent of any permittee, restrict or designate town roads or other accessways between the above routes and the facility.

C. Checkpoints may be established from time to time at various locations along said routes for the purpose of ensuring that all trucks and other means of transporting solid wastes are in compliance with all pertinent local state and federal laws.

D. In the event that the Town Board shall enter into a host community agreement with any person proposing to operate a landfill within the Town of Lewiston that includes a stipulation and agreement as to highway routes within the town that will be used for landfill truck traffic, the terms and conditions of that agreement shall control in lieu of the provisions of § 24C-13.

#### §. 24C-14. Penalties for offenses.

A. All violations of this local law or any of its regulations or provisions, including, but not limited to, a false statement or exhibit submitted as part of an application to construct or operate a facility, shall be deemed Class A misdemeanors, punishable by a fine not exceeding one thousand dollars (\$1,000.) or imprisonment not exceeding one (1) year, or both. Each and every day that a violation of this local law is permitted to exist shall constitute a separate offense.

B. Any violation of this local law or regulations or provisions thereof shall create a liability to the people of the town for a civil penalty not to exceed five thousand dollars (\$5,000.), to be assessed after a hearing or opportunity to be heard, upon due notice and with the right to specification of the charges and representation by counsel at such hearing. Each and every day that a violation of this local law occurs or continues shall constitute a separate violation for purposes of civil liability.

**§ 24C-15. Procedural restrictions.**

A. No commercial hazardous waste treatment, storage or disposal facility shall hereafter be permitted to locate or expand within the Town of Lewiston. Any such facility existing prior to the effective date of this local law may continue to operate (but not expand) for the unexpired duration of any permit it possesses.

B. No solid waste incineration facility, whether incinerating municipal, commercial or industrial waste, shall hereafter be permitted to locate or expand within the Town of Lewiston.

C. The following restrictions and limitations shall apply to all presently permitted landfills and proposed solid waste landfills within the Town of Lewiston:

(1) Acreage limitation.

(a) No more than ( two hundred thirty-nine (239) acres of land in the town shall be permitted or used for sanitary landfill purposes. Land currently in use in permitted sanitary landfill operations shall continue to be included in determining acreage available for sanitary landfill operations after active operations cease and the landfill, or portions of it, are closed. The old Modern landfill, located west of Model City Road and adjacent to Modern's truck maintenance facility (as distinguished from the Modern Landfill, Inc.

facility that was in operation as of the date of this local law as amended in 1988), shall not be included in this acreage determination. The term "in use" shall include, without limitation, all land where solid waste is no longer being deposited but which is closed or is awaiting closure in accordance with the regulations of the DEC. The purpose of this restriction is to limit the maximum scope and extent of landfilling operations within the town to a total of two hundred thirty-nine (239) acres.

(b) No more than twenty-six (26) acres of land in the town shall be used in active landfill operations not subject to final or intermediate closure at any given time. The purpose of this restriction is to limit the scope of landfilling activities at any given time so as to minimize environmental impacts.

(2) Height restriction. No person operating a sanitary landfill within the Town of Lewiston as of the date of the enactment of the 1988 amendments to the Waste Disposal and Landfills Law of the Town of Lewiston shall conduct sanitary landfill operations in the town in such a manner that the height of the resulting landfill, after completion of operations and after the application of cover, exceeds one hundred fifty-five (155) feet above the mean elevation on the property prior to the commencement of landfill construction.

(3) Slope restriction. No person operating a sanitary landfill within the Town of Lewiston as of the date of the enactment of the 1988 amendments to the Waste Disposal and Landfills Law of the Town of Lewiston shall deposit waste in a manner that the side slope of the resulting landfill after the completion of the operations and after the application of final cover is

greater than one (1) foot of vertical rise for every three (3) feet of horizontal distance. This provision shall not be construed to require any permitted facility to reduce side slopes that exceed the limits of this subsection on the effective date of this local law, as amended in 1995.

(4) Buffer requirement.

(a) No person shall hereafter expand, modify or construct a sanitary landfill in the town unless there exists a buffer area not less than ( ) one hundred (100) feet wide at all points between the toe of the proposed slope of the final covered landfilling area and each adjacent property. No person shall sell, transfer, convey or devise any real property in the town if a violation of this section would result. Any such transfer shall be null and void. The town shall be entitled to a judicial declaration of the nullity of any transfer of real property in violation of this section and to an appropriate order setting it aside or directing a reconveyance. Such a declaration and order, together with any additional relief required to restore the status quo, may be obtained by the town in an action in a court of competent jurisdiction naming the vendor, the vendee and any other person claiming as of record any interest in the property illegally conveyed. The town shall be entitled to a further award and judgment against the seller, transferor, conveyor or devisor for its costs, expenses, disbursements and reasonable attorneys' fees in connection with such an action.

(b) To the limited extent that a violation of this subsection (Buffer requirement) may exist at any facility operating within the town under permit from the New York Department of Environmental Conservation as of the date of enactment of this local law, as amended in 1995, or such facility has been previously permitted, this subsection shall not apply.

(5) Restrictions on type and source of cover material.

(a) No person operating a sanitary landfill within the town shall hereafter utilize ash or any similar industrial waste materials that has hazardous characteristics as defined under 40 CFR Part 261 to be utilized as daily, intermediate and/or final cover at the approved landfilling area. [Amended 2-3-1997 by L.L.No. 1-1997]

(6) Tonnage/volume limitations.

(a) No landfill operator shall dispose or allow disposal in a sanitary landfill of solid waste in excess of the lesser of the annual tonnage or volume limitations contained in any town permit granted to the operator or in the operator's approved application.

(b) Notwithstanding the provisions of Subsection C(6)(a), no landfill operator already operating within the town under permit from the New York Department of Environmental Conservation as of the effective date of this law, as amended in 1995, shall accept, dispose of or allow disposal in a sanitary landfill of more than six hundred eight thousand (608,000) tons of solid waste per year one hundred eighty-two thousand four hundred (182,000) tons of solid waste per calendar quarter. No other landfill operator

shall accept, dispose of or allow disposal of more than one hundred thousand (100,000) tons of solid waste per calendar quarter.

(c) For the calendar year in which this provision is enacted, amounts of solid waste disposed of prior to the effective date of this provision shall be disregarded. However, the permissible tonnage for disposal in a sanitary landfill for the balance of such year shall be reduced by the ratio of days remaining in the year to the total numbers of days in the year.

(d) Unless otherwise specifically agreed by the Town Board, tonnage shall be determined by incoming scale weights certified to by the operator; in the absence of scales, tonnage shall be determined by applying a factor of two and five-tenths (2.5) cubic yards per ton.

(7) Reporting.

(a) Every operator of a solid waste management facility in the town shall file with the town, on or before the fifth day of the quarter, a report, on such forms as the Town Board may designate, setting forth:

- [1] The total tonnage of solid waste disposed of at the facility in the previous calendar quarter.
- [2] The specific sources of all waste by county or out-of-state and/or out-of-country.
- [3] The amount of such tonnage from sources outside the boundaries of the town by county or out-of-state and/or out of country.
- [4] The total tonnage of solid waste disposed of by the operator since commencement of the current permit term.

[5] The number of truck trips (categorized either as trucks delivering solid waste to the facility for landfilling or as other truck traffic) into the landfill each day during the previous calendar quarter.

[a] Within three (3) days of receiving or sending any reports or correspondence to or from the DEC or the County of Niagara concerning the operation of the sanitary landfill, every operator shall file copies of any such reports or correspondence with the town.

[b] The Town Clerk shall maintain all filed reports and correspondence in the town offices for public inspection at all reasonable hours.

(8) Hours of operation. No landfill shall be permitted to accept delivery of waste except during the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday, and 7:00 a.m. to 6:00 p.m., on Saturday.

(9) Bottles and cans. No bottles or cans may knowingly be disposed of in any landfill within the town, and every landfill operator shall use all commercially reasonable and practicable means to prevent the disposal of bottles or cans in its facility.

**§ 24C-16. Repealer; effect on other law.**

All ordinances and local laws or parts thereof in conflict herewith are preempted by this local law; provided, however, that the provisions of this law shall not be interpreted as obviating any requirements or restrictions whenever it is possible to conform to the provisions of both this law and any other law or ordinance.

**§ 24C-17. Severability.**

If any part or provisions of this local law shall be adjudged by any court of competent jurisdiction to be unconstitutional or invalid, the remainder of this local law or the application thereof to other persons and circumstances shall not be affected thereby, and the Town Board hereby declares that it would have enacted this law without the invalid provision or application, as the case may be, had such invalidity been apparent

**§ 24C-18. When effective.**

This local law shall constitute part of the Code of the Town of Lewiston, New York, and shall take effect immediately upon filing in accordance with § 27 of the Municipal Home Rule Law.

**EXHIBIT B – Waste Price Index**

# WASTE PRICE INDEX

**DESCRIPTION** – The Modern Landfill, Inc. Waste Price Index (Index) is used to adjust certain fees referred to in the Host Community Agreement between the Town of Lewiston (Town) and Modern Landfill, Inc. (Modern) dated 7/15/99 1999. The base year shall be 1999 for all fees that are subject to adjustment pursuant to this Waste Price Index.

**DATA SOURCES** - Data will be extracted from all active Niagara County and selected Erie County municipal contracts. These contracts can include full services such as waste collection, recyclable processing and waste disposal or a combination thereof, except collection only contracts. In addition, the basis of contract payments such as \$/ton or \$/collection stop can vary. Contracts do not have to be in existence for a full year to be included in that year's calculation.

The following Erie County municipalities will be used:

Town of Amherst

City of Buffalo

Town of Cheektowaga

Town of Grand Island

Town of Orchard Park

Town of Tonawanda

Single contracts involving multiple municipalities including one of the named municipalities above are eligible contracts.

**DATA SOURCE EXCLUSIONS** - The following types and sources of contracts will not be eligible for inclusion in the Index:

- Collection only contacts
- Non-municipal or privately negotiated contracts

## **BASE YEAR INDEX**

1999 is the base year for the Index. The Index for this year is set at 1.000 and is based on the attached BASE YEAR INDEX CALCULATON. The base year per ton waste disposal fees are \$1.047 to the Town of Lewiston, \$0.133 to ArtPark and \$0.133 to the Recreation Department Fund and the base year per ton recycling fees are \$0.792 to the Town of Lewiston, \$0.0994 to ArtPark and \$0.0994 to the Recreation Department Fund.

**INDEX** - The Index is calculated through December 31<sup>st</sup> of each year. The change in the Index, expressed as a multiplier of the base year index, is applied to the quarterly payments of the year following the newest calculation. For example, to determine the adjustment to payments made in 2003, the change in the Index from the base year to 2002 is used.

The Index is based on weighted average revenues for groups of services where ultimately a solid waste management facility receives wastes for recycling, processing or disposal. The average revenue per contract unit (ton, stop, etc.) for each group is calculated, and is compared to the average revenues for each group in the base year, 1999. The yearly change in each group is then weighted again by the group's relative contribution to the total revenue stream of all of the relevant contracts and added together to provide the net Index. The groupings currently can include:

**Collection, Disposal & Recycling**  
**Collection & Disposal**  
**Collection & Recycling**  
**Disposal only**  
**Recycling only**

In the event there are no contracts for a group in any one year, then that group is omitted from the calculation of Index until there is renewed activity in that group. For example, if there are no recycling only contracts for year 2005 but there were in the base year, then the Index simply will not include the recycling only group for the 2006 calculation. If later on, however, a recycling only contract is entered into in 2009, then it will be included in the calculation of the Index to be applied to 2010.

On the other hand, if a new grouping emerges after the base year calculation has been made, the first year that group appears becomes the base year for that group. Thus, if recycling only contracts do not exist in the Index until 2005, for example, then 2005 becomes the base year only for that group. Its **BASE Group Average Revenue per Unit of Service** is then included with the others calculated in the base year, 1999, for subsequent comparison in later years.

**CALCULATION** – The following steps are utilized to determine the Index.

- Group all eligible contracts by similar service and list the quantity of materials, stops or units serviced and the total revenue from each contract (**contract revenue**) for the year. Calculate the **total revenue for all groups**.

Working in one group at a time:

- Determine the **average revenue per unit of service** (\$/ton, \$/stop, etc.) for each contract.
- Determine the **group revenue** for the group.
- Calculate a **contract-weighting factor** for each contract based on the percentage of its revenue to the **group revenue** as follows:

$$\frac{\text{contract revenue}}{\text{group revenue}} = \text{contract-weighting factor}$$

- Multiply the **contract-weighting factor** and the **average revenue per unit of service** to obtain a **weighted average revenue per unit of service**.
- Add the **weighted average revenue per unit of service** together to obtain a **group average revenue per unit of service**.
- Compare the current year and prior year **group average revenue per unit of service (GARUS)** and determine the **current year group index** as follows:

$$\frac{\text{Current year GARUS}}{\text{Prior year GARUS}} = \text{current year group index}$$

- Calculate a **group-weighting factor** for the current year based on the percentage of the group's **group revenue** versus the **total revenue for all groups** as follows:

$$\frac{\text{group revenue}}{\text{total revenue for all groups}} = \text{group-weighting factor}$$

- Multiply the **group-weighting factor** to the **current year group index** to obtain the **current year weighted group index**.

After calculations in all groups have been completed:

- Sum up the **current year weighted group index** figures for all groups. This value is the **Index** that is to be applied to the upcoming year's payments as specified in the Host Community Agreement.

**APPLYING THE INDEX** - When the Index is greater than 1.00, it represents an increase to be applied to the various payments. On the other hand, the Index may be less than 1.00, which indicates that Modern's competitive pricing structure has experienced deflation rather than inflation. In the event of an Index

value less than 1.00, however, the payments to the Town will be based on the base year rates rather than be reduced below those historical rates.

For example, in the 1999 base year, the waste disposal tipping fee to the Town is \$1.047 per ton. However, the Index calculated at the end of 2001 is 0.976, which translates to a tip fee of \$1.022. As stipulated above, since the Index fell below 1.00, The tip fee rate for 2002 remains at the base year rate of \$1.047 for payment purposes to the Town. In 2003, the Index climbs above 1.00 to 1.028. The Index is applied to the base rate of \$1.047 for a new rate of \$1.076.

**SAMPLE INDEX CALCULATION** - An example Index calculation follows. A spreadsheet portraying theoretical Indexes and associated tip fees is also attached.

**SAMPLE INDEX CALCULATION FOR YEAR 2002**

<u>Municipality</u>	<u>Service</u>	1999 BASE YEAR			BASE YEAR			
		<u>Quantity</u>	<u>Units</u>	<u>Contract Revenue per Unit of Service</u>	<u>Average Revenue per Unit of Service</u>	<u>Contract Weighting Factor</u>	<u>Weighted Average Revenue per Unit of Service</u>	<u>Group Average Revenue per Unit of Service</u>
Town A	Collection & Recycling	*	Stops	\$0.00				
Town B	Collection & Recycling	*	Stops	\$0.00				
Town C	Collection & Recycling	2200.0	Stops	\$46,200.00	\$84.00	0.82	\$68.87	\$71.48
Town D	Collection & Recycling	700	Stops	\$10,150.00	\$14.50	0.18	\$2.61	
	<b>Group Revenue</b>			<b>\$56,350.00</b>				
	<b>Group Weighting Factor</b>			<b>0.008</b>				
Town E	Collection, Disposal & Recycling	18000.0	Stops	\$900,000.00	\$50.00	0.31	\$15.43	
Town F	Collection, Disposal & Recycling	7349.0	Stops	\$870,000.00	\$118.38	0.30	\$35.32	
Town G	Collection, Disposal & Recycling	1810.0	Stops	\$266,975.00	\$147.50	0.09	\$13.50	
Town H	Collection, Disposal & Recycling	2212.0	Stops	\$340,648.00	\$154.00	0.12	\$17.99	
Town I	Collection, Disposal & Recycling	1596.0	Stops	\$242,592.00	\$152.00	0.08	\$12.64	
Town J	Collection, Disposal & Recycling	190.0	Stops	\$28,350.00	\$149.21	0.01	\$1.45	
Town K	Collection, Disposal & Recycling	1335.0	Stops	\$204,900.00	\$153.48	0.07	\$10.78	
Town L	Collection, Disposal & Recycling	*	Stops	\$0.00	NA	0.00		\$109.96
Town M	Collection, Disposal & Recycling	475.0	Stops	\$62,645.00	\$131.88	0.02	\$2.83	
	<b>Group Revenue</b>			<b>\$2,916,110.00</b>				
	<b>Group Weighting Factor</b>			<b>0.424</b>				
City A	Disposal	127000.0	Tons	\$3,302,000.00	\$26.00	0.84	\$21.95	
City B	Disposal	15782.7	Tons	\$608,732.35	\$38.57	0.16	\$6.00	\$27.96
	<b>Group Revenue</b>			<b>\$3,910,732.35</b>				
	<b>Group Weighting Factor</b>			<b>0.568</b>				
<b>15 Municipalities</b>	<b>Total Revenues for All Groups</b>			<b>\$6,883,192.35</b>			<b>BASE TIPPING FEE DISPOSAL</b>	<b>\$1,047</b>
							<b>BASE TIPPING FEE RECYCLING</b>	<b>\$0.7920</b>



EXAMPLE MULTI-YEAR INDEX

SERVICE	BASE YEAR Group Average Revenue Per Unit of Service	Current Year Group Index	Group Weighting Factor	2000		2001		2002		2003		2004		2005		2006		2007		2008		
				Weighted Group Index	Weighted Current Year Group Index	Weighted Group Index	Weighted Current Year Group Index	Weighted Group Index	Weighted Current Year Group Index	Weighted Group Index	Weighted Current Year Group Index	Weighted Group Index	Weighted Current Year Group Index	Weighted Group Index	Weighted Current Year Group Index	Weighted Group Index	Weighted Current Year Group Index	Weighted Group Index	Weighted Current Year Group Index	Weighted Group Index	Weighted Current Year Group Index	
COLLECTION, DISPOSAL & RECYCLING	\$109.96	1.000	0.035	0.035	0.049	0.381	0.171	0.057	NA	0.100	0.100	0.060	0.060	0.060	0.060	0.060	0.060	0.060	0.060	0.060	0.136	
COLLECTION & DISPOSAL	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	0.105	
COLLECTION & RECYCLING	\$71.43	1.000	0.350	0.350	0.343	0.037	0.343	0.245	0.195	0.245	0.195	0.245	0.195	0.178	0.178	0.178	0.178	0.178	0.178	0.178	0.119	
DISPOSAL ONLY	\$27.96	1.000	0.615	0.615	0.633	0.605	0.483	0.728	0.483	0.805	0.676	0.805	0.676	0.964	0.964	0.964	0.964	0.964	0.964	0.964	0.878	
RECYCLING ONLY	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	
INDEX		1.000	1.000	1.016	1.034	1.034	0.996	1.028	1.028	1.050	1.172	1.222	1.222	1.222	1.222	1.222	1.222	1.222	1.222	1.222	1.237	
WASTE DISPOSAL FEE				\$1,047.0	\$1,083.3	\$1,082.4	\$1,047.0	\$1,076.1	\$1,273.0	\$1,098.0	\$1,273.3	\$1,273.0	\$1,273.0	\$1,273.0	\$1,273.0	\$1,273.0	\$1,273.0	\$1,273.0	\$1,273.0	\$1,273.0	\$1,294.0	
RECYCLING FEE				\$0,792.0	\$0,804.3	\$0,816.9	\$0,792.0	\$0,814.0	\$0,974.1	\$0,811.3	\$0,974.1	\$0,965.1	\$0,965.1	\$0,965.1	\$0,965.1	\$0,965.1	\$0,965.1	\$0,965.1	\$0,965.1	\$0,965.1	\$0,965.1	\$0,979.0

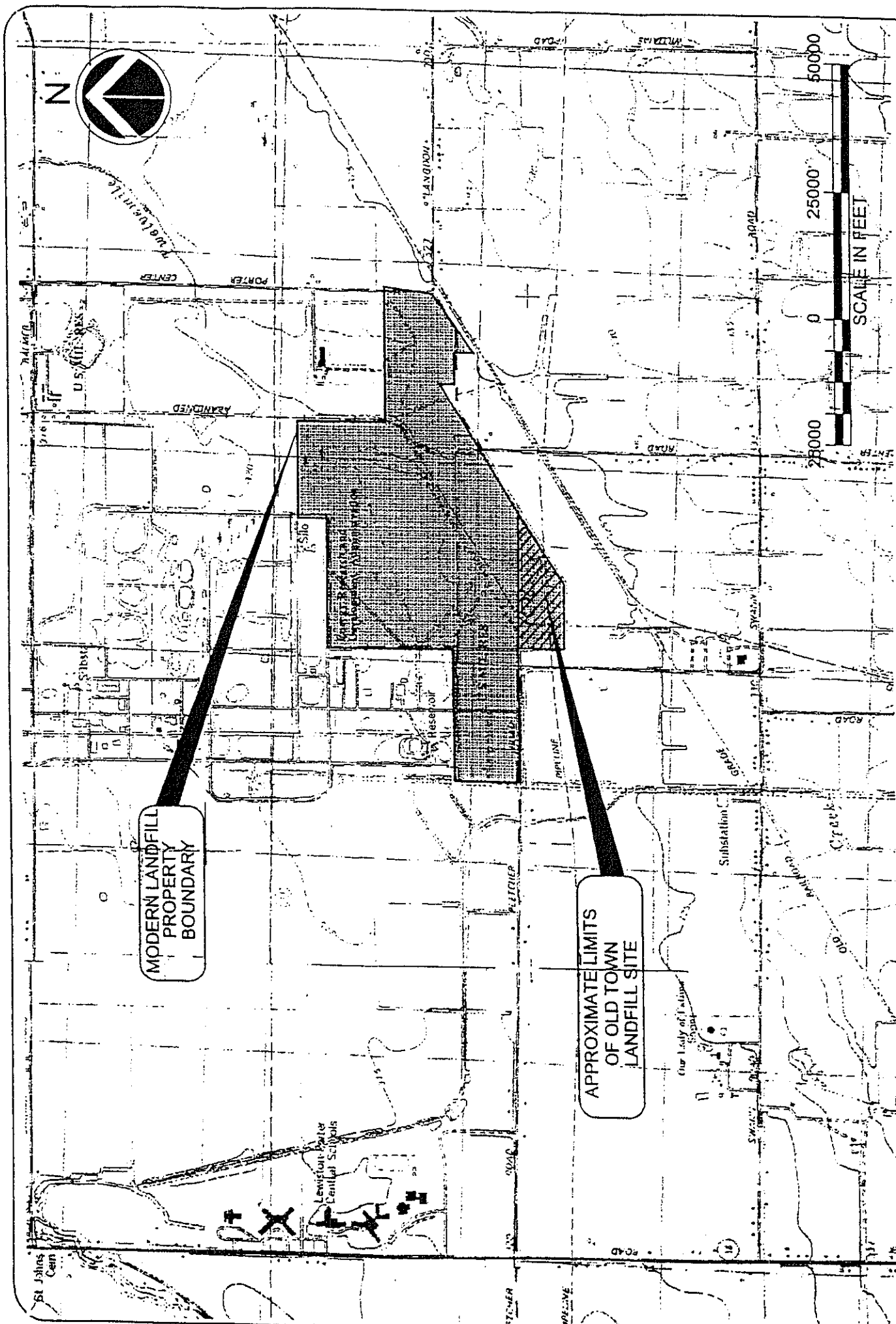
BASE YEAR FOR  
COLLECTION & DISPOSAL

**EXHIBIT C – Lewiston Town Landfill Description**

Generalized Description of the old Lewiston Town Landfill  
July 12, 1999

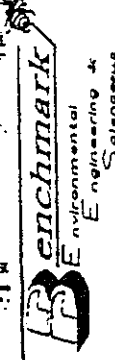
The old Lewiston Town Landfill ("Landfill") is part of a larger 136.16 acre parcel owned by the Town of Lewiston ("Town"), within the Town and east of Harold Road. The landfill parcel that is the subject of the Host Community Agreement between Modern Landfill, Inc. ("Modern") and the Town, is bounded by the Modern Landfill, Inc. property line to the north, the Niagara Recycling, Inc. property line to the east and southeast, a line parallel to and approximately 800 feet south of the Modern property line from Harold Road to its intersection with the Niagara Recycling, Inc. property line, and by Harold Road to the west, and consists of approximately 35 acres more or less. The general location and configuration of the landfill parcel is depicted on the attached Figure 1-1 of the Draft Generic Environmental Impact Statement for the Amendment to Town Law Section 24C and the Host Community Agreement Between the Town of Lewiston and Modern Landfill, Inc., dated March 1999 and revised May 1999.

Prior to Modern accepting the conveyance of the fee interest and title to the Town's old landfill site of 35+/- acres, a survey will be performed and an appropriate legal description of the property will be prepared.



MODERN LANDFILL  
PROPERTY  
BOUNDARY

APPROXIMATE LIMITS  
OF OLD TOWN  
LANDFILL SITE



MODERN LANDFILL, INC.  
MODEL CITY, NIAGARA COUNTY, NEW YORK  
MODERN LANDFILL DGEIS

LOCATION MAP

FIG 1-1  
MAY 2010