

HOST COMMUNITY AGREEMENT

The parties to this 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. In March, 1983 Modern received permits from both the New York Department of Conservation and the Town for the construction and operation of a sanitary landfill, having certain specifications, on real property owned by Modern on Harold Road in the Town of Lewiston. Modern subsequently built and commenced landfill operations on its site.

2. In 1986, Modern applied for and obtained what was termed a renewal permit from DEC, but which had the effect of authorizing Modern to materially expand the size of its facilities and the scope of its operations. Modern did not seek a new permit from the Town.

3. The DEC permit obtained by Modern in 1986 was subsequently determined to be invalid in state court litigation to which the Town was a party. Modern thereafter applied to DEC for ratification of its activities under the 1986 permit, and Modern also submitted an application to DEC for lateral expansion of its existing landfill facility by an additional 82 acres and vertical expansion to a height of 95 feet. These applications are currently pending before DEC.

4. On October 17, 1988, the Lewiston Town Board adopted Local Law No. 2 of 1988, which regulated landfill operations within the Town of Lewiston. Local Law No. 2 included provisions requiring landfill operators within the Town to obtain annual permits, imposing fees on landfill operators, limiting the side slope angles and heights of landfills in the Town, limiting the total acreage of lands to be used in the Town for

sanitary landfills, restricting the sources of garbage and waste allowed to be landfilled in the Town to sources within Niagara County, limiting the volume of waste to be received, and regulating other matters.

5. Modern thereupon commenced an action against the Town of Lewiston for declaratory and injunctive relief in Supreme Court, Niagara County, Index No. 69836, claiming among other things that Local Law No. 2 was unlawful and unconstitutional as applied to Modern and that it was enacted in violation of the State Environmental Quality Review Act ("SEQRA").

6. By way of counterclaim, the Town asserted that Modern was operating in violation of Local Law No. 2 and sought substantial civil penalties under Local Law No. 2. The Town has obtained a preliminary injunction restraining Modern from acting in contravention of certain provisions of Local Law No. 2.

7. During the course of the action, Residents Organized For Lewiston-Porter's Environment (R.O.L.E.) obtained an order permitting it to intervene in the action as a party defendant.

8. Modern Landfill, Inc. and the Town of Lewiston now desire to resolve the issues raised in the action and to agree on terms under which the Town will serve as a host community for continued operations by Modern.

TERMS AND CONDITIONS

A. General Terms

1. **Effective date of agreement.** This agreement and each of its terms and provisions shall become effective on the date when all of the following events shall have occurred:

(a) the Lewiston Town Board has passed a resolution approving this agreement and authorizing the Supervisor to execute this Agreement on behalf of the Town, has enacted an 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;

(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"), and this agreement;

(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; and

(d) the parties have filed with the Niagara County Clerk a stipulation discontinuing the pending lawsuit on the merits, with prejudice.

2. **Term of Agreement.** The term of this agreement shall be from its effective date through December 31, 2011, 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, 2011. Those provisions will survive that date in full force and effect.

3. **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.

4. 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.

5. **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.

6. **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.

7. 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 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. In the event Modern seeks to substantially modify, vary, or expand the scope or nature of its landfilling facility as authorized by the Town permit, 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(c) 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 currently in effect, or variances that have been proposed by Modern in its applications to DEC dated April, 1991, as revised in March, 1992 and August, 1993, or any variances that result from DEC's review of Modern's pending application, 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, 2011

1. Cessation of activities as of January 1, 2012

a. Barring the making of a new, successor Host Community Agreement (see subsections (d), (e), and (f) below), Modern agrees and covenants that, as of January 1, 2012, 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, 2011, 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. Modern agrees and covenants, moreover, that until January 1, 2007, it will not submit an application for any permit, either from the Town or from DEC or other authority, for the purpose of engaging in landfilling operations at its facility for any period after December 31, 2011.

c. In consideration of the fact that the process of applying to DEC for landfill-related permits typically occupies several years, after January 1, 2007 Modern may apply to state or federal authorities for a permit or permits that contemplate landfill construction or landfilling operations at its site for a period after December 31, 2011.

d. 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, 2011 (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, 2011 (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, 2011 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, 2011, 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.

e. 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, 2011, in which event all landfilling operations at Modern's facility will cease, as provided in subparagraph a above.

f. Modern agrees and covenants that, after December 31, 2011, Modern will not, under any circumstances and regardless of the terms of any successor Host Community agreement, engage in landfilling operations within the Town at a volume greater than 231,191 tons of waste per year. Modern agrees, moreover, that if it does seek to negotiate a successor Host Community Agreement with the Town, it will neither propose nor seek terms that would contemplate landfilling operations at a volume greater than 231,191 tons of waste per year.

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 \$2.5 million on December 31, 2011.

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.

e. If any amounts are withdrawn or paid from the cash fund during the 30-year post-closure period for the purpose of maintenance or remediation which Modern has failed to perform, Modern will immediately indemnify and replenish the fund in the amount withdrawn, so that the value of the bond or cash fund when it is paid to the Town of Lewiston will be the same as if no withdrawals or payments from the fund were ever made.

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.

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. During 1995, Modern may not accept for landfilling more than 137,270 tons of solid waste per quarter or more than 549,079 tons per year at its facility, exclusive of all waste received pursuant to Section E of this agreement.

b. The maximum tonnage of waste that Modern may accept annually in succeeding years, through the term of this

Agreement, will decline by one percent per year of the preceding year's maximum permitted tonnage. Accordingly, the maximum permitted tonnage for each year during the term of this agreement, exclusive of all waste received pursuant to Section E of this agreement, will be as follows:

1995 -- 549,079 tons
1996 -- 543,588 tons
1997 -- 538,152 tons
1998 -- 532,771 tons
1999 -- 527,443 tons
2000 -- 522,169 tons
2001 -- 516,947 tons
2002 -- 511,778 tons
2003 -- 506,660 tons
2004 -- 501,593 tons
2005 -- 496,577 tons
2006 -- 491,612 tons
2007 -- 486,695 tons
2008 -- 481,828 tons
2009 -- 477,010 tons
2010 -- 472,240 tons
2011 -- 467,518 tons

c. For any given quarter in any given year, Modern may not accept more than 20 percent more than an amount equal to one-quarter of the maximum permitted annual tonnage for that

year. The sum of all quarterly tonnage figures may not exceed the maximum annual permitted tonnage amount.

d. During the term of this Agreement, the Town will not oppose any application by Modern for a DEC permit 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 prohibited.

a. During the term of this Agreement, Modern will not expand its landfill facility laterally from its present permitted dimensions.

b. Except to the extent expressly permitted under section B(1)(c) of this agreement, Modern will not submit any application for any permit, either from the Town or from DEC or any other governmental authority, that contemplates lateral expansion of the landfill during the term of this Agreement.

c. Modern will modify its pending DEC expansion application to reflect that it is not seeking lateral expansion.

d. Subject to the provisions of section B(1)(c) above, Modern may apply during the term of this agreement for permits to expand its landfill facility laterally after the expiration of the term of this Agreement only if Modern has negotiated and entered into a new, successor Host Community Agreement with the Town, as provided in section B(1) of this Agreement. Lateral expansion of the landfill will ultimately be limited to no more than 40 acres of the 82-acre parcel which was the subject of

Modern's application to DEC for lateral expansion. In addition, Modern will establish a 15-acre buffer zone, as provided in section D of this Agreement.

e. Modern hereby waives and covenants that it will not advance, in any administrative or legal proceeding, any contention or argument that it has "vested rights" or any comparable legal right or status with respect to lateral expansion of its landfill facility by reason of any provision of this agreement, or by reason of any application that it has filed or may hereinafter file during the term of the agreement with any state, federal, or local authority.

3. Vertical expansion.

a. 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 95 feet above ground level (i.e., 95 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 95 feet above ground level.

b. During the term of this agreement, the Town will not oppose any application by Modern for a DEC permit 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 95 feet above the existing mean elevation of 321 NGVD 29 datum.

c. Modern hereby represents that the portion of its landfill facility that was built up to an elevation of approximately 416 NGVD 29 datum, pursuant to a 1988 DEC permit that was subsequently judicially declared to be invalid, will be finally closed in accordance with applicable DEC standards and that a

methane gas recovery system for this portion of the landfill has been installed and placed into operation.

d. 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 95 feet above the existing mean elevation of 321 NGVD 29 datum within the currently permitted landfill footprint.

4. Limitation on slope of landfill facility.

a. This provision shall not be construed as to require Modern to reduce presently existing slopes from 1:3 to 1:4.

b. With respect to deposits of waste, fill, or cover up to a height more than 37 feet above ground level (i.e., 37 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 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.

c. With respect to deposits of waste, fill, or cover from a height more than 37 feet above ground level (i.e., 37 feet above the existing mean elevation of 321 NGVD 29 datum), to 95 feet above ground level (i.e., 95 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 so as to result in a side slope for the landfill steeper than 1 foot of vertical rise to 4 feet of horizontal distance (1:4), 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 1:4.

5. Truck traffic.

a. The Town has a particular interest in regulating and reducing 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 achieve truck traffic reduction by requiring Modern to reduce the total volumes of waste which it is permitted to receive for disposal per year and per quarter. The parties anticipate that the continual decrease in the volume of waste Modern may receive during the term of this agreement, as provided in section C(1), will result in a corresponding reduction of truck traffic, as illustrated in the graph appended to this agreement as Exhibit B.

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 restrictive covenants in the forms attached as Exhibit C, D, and E, for the purpose of (a) perpetually restricting and prohibiting Modern and its successors and assigns from using a certain portion of Modern's property, consisting of

Garbage Collection Fees

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approximately 27 acres, for landfilling operations, (b) perpetually restricting Modern and its successors and assigns from using a certain portion of Modern's property, consisting of approximately 15 acres, for any commercial, industrial, or residential purposes, and (c) perpetually restricting Modern and its successors and assigns from using any portion of Modern's property whatsoever above the height of 95 feet for landfilling or for any other commercial, industrial, or residential purpose. These covenants may be filed by the Town 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, 2000, 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 totes, which it will supply at its own expense, for residential households in the Town of Lewiston.

b. From January 1, 2001 through December 31, 2005, Modern will make pickup and disposal of residential household waste available to residents of the Town 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, 2006 through the balance of the term of this Agreement, Modern will make pickup and disposal of residential household waste available to residents of the Town of Lewiston for \$70.00 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 \$25.00 per ton and collection and disposal of the Lew-Port School Campus waste for the amount of \$6100 per year.

d. The recycling or disposal of residential household waste of the residents of the Town and Village of Lewiston and the Lew-Port Campus 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.

e. For purposes of this paragraph, the term "residential household waste" excludes all industrial or commercial wastes as well as yard wastes other than grass clippings. Beginning on January 1, 1998, the term "residential household waste" will also exclude grass clippings.

2. Operation of recycling program. Through December 31, 2011, Modern will operate, without charge, the waste recycling program, including pick-up and disposal without charge, for the Town of Lewiston and the Lew-Port campus. Modern will accept tipping of recycled material from the Village of Lewiston without charge.

3. Host community annual fee.

a. Modern will pay to the Town as a host community fee the amount of \$750,000 on the effective date of this agreement. For each subsequent year during the life of this Agreement, Modern will pay to the Town as a host community fee the amount of \$500,000. The host community fee for subsequent years 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(l) of the Landfill Law.

4. Tipping fees. Commencing on the effective date of this agreement and through December 31, 2011, the following tipping fees will apply to all waste landfilled or brought to Modern's facility for the purpose of composting or recycling operations, exclusive of residential waste from the Town of Lewiston, Village of Lewiston, and the Lew-Port Campus 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 \$1.00 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 \$.75 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 \$.125 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 \$.09375 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 \$.125 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 \$.09375 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, 1995 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 changes in the consumer price index (BLS Consumer Price Index (CPI-W, All Cities, 1982-84 = 100)), with January 1, 1995 serving as a reference point. 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 consumer 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.

5. Waste source reduction.

a. During the first ten years of the term of this agreement, Modern will invest 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.

b. Modern will report to the Town Board in writing on an annual basis, beginning with the first anniversary of the effective date of this agreement, 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.

a. To the extent provided in this paragraph, Modern will assume ultimate responsibility for the costs and expenses of closing the old Town landfill in accordance with state regulations.

b. The measures necessary to close the old Town landfill will be initiated at such time as Modern may elect by giving written notice to the Town Board. However, if DEC orders the Town to close the landfill, measures to close the old Town landfill will be initiated at that time. Notwithstanding the foregoing, measures to close the old Town landfill will in all events be initiated in time to ensure that closure will be completed no later than the end of the year 2005.

c. The Town Board will then solicit requests for proposals for a contract to design/build the closure of the old Town landfill, in accordance with applicable provisions of municipal law. Modern will be entitled to bid for the proposed contract in the same manner as other potential contractors.

d. At the option of Modern and so as to minimize the ultimate cost to the Town and to Modern of accomplishing closure of the landfill, the Town will take all necessary steps, at the earliest advisable time, to apply for state grants or other financing that may be available under state programs, in an amount or amounts sufficient to enable the Town to meet its contractual obligations for the engineering plans and specifications and the work required in connection with the closure of the old Town landfill. Modern will bear all fees and expenses incurred in connection with any such applications or bond offerings.

e. Before the Town incurs any indebtedness in any form for the purpose of financing the closure of the old Town landfill, Modern will execute and deliver to the Town a promissory note or other instrument obligating Modern to retire the indebtedness, principal and interest, according to its terms, up to a maximum principal amount of \$3,000,000. The costs incurred by the Town and reimbursed by Modern under the design/build agreement shall be credited against the amount of the indebtedness of the Town that Modern is required to retire pursuant to section E(6) of this agreement. The maximum principal amount for which Modern will be obligated under this subparagraph will be adjusted in accordance with changes in the consumer price index (BLS Consumer Price Index (CPI-W, All Cities, 1982-84 = 100)), with January 1, 1995 serving as a reference point.

f. To secure payment of the promissory note, Modern will execute and deliver to the Town a pledge agreement and other documents reasonably necessary to give the Town of Lewiston a primary security interest in Modern's machinery, equipment, vehicles, and other capital assets at its facility, or other such liquid collateral as Modern may propose, of an

appraised value in the aggregate sufficient to secure payment of the amount of the note in accordance with reasonable commercial practices.

g. In the event that Modern proposes to mine clay from the site of the old town landfill for the purpose of capping the old Town landfill, the Town will support an application by Modern to DEC for mining permits and approvals necessary for that limited purpose. The Town agrees that Modern may engage in any such permitted mining operations for the limited purpose of obtaining clay cover for the old Town landfill.

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

a. To the extent provided in this paragraph, Modern will assume ultimate responsibility for the costs of engineering and the capital costs for the intersection geometry improvements, drainage improvements, and the reconstruction of Model City and Harold Roads, which are primary approaches for truck traffic in and out of Modern's facility.

b. Immediately after this agreement becomes effective, the Town Board will have its engineer perform all work required in connection with the improvements to Model City and Harold Roads, in accordance with terms and specifications to be provided by the Town of Lewiston.

c. 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.

d. Before the Town incurs any indebtedness in any form for the purpose of financing the improvements and engineering costs, Modern will execute and deliver to the Town a promissory note or other instrument obligating Modern to retire the indebtedness, principal and interest, according to its terms, up to a maximum principal amount of indebtedness of \$1,500,000.

e. To secure payment of the promissory note, Modern will execute and deliver to the Town a pledge agreement and other documents reasonably necessary to give the Town of Lewiston a primary security interest in Modern's machinery, equipment, vehicles, and other capital assets at its facility, or other such liquid collateral as Modern may offer, of an appraised value sufficient to secure payment of the amount of the note in accordance with reasonable commercial practices.

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 nonmonetary 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 January 1, 2012 and formal closure of landfill)
- b. Section B(1)(b) (covenant not to apply for landfill permit)
- c. Section B(1)(f) (covenant not to landfill at volume greater than 231,191 tons per year after December 31, 2011 and not to propose contrary terms for a successor host agreement)
- d. Section B(2)(a) (closure of landfill)
- e. Section C(1) (maximum permitted tonnage)
- f. Section C(2)(a) and (d) (lateral expansion)
- g. Section C(2)(b) and (d) (application for lateral expansion)
- h. Section C(3)(a) (vertical expansion)
- i. Section C(4)(a) and (b) (limitation on slope)

- j. Section C(5)(c) and (d) (truck routes and hours)
- k. Section C(7) (prohibition on ash with hazardous characteristics)
- l. Section D (restrictive covenants)
- m. Section E(1)(a), (b), and (c) (waste collection services)
- n. 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, 2012.

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. However, in all other respects Modern's obligations shall be as if the agreement had terminated on January 1, 2012.

G. MISCELLANEOUS PROVISIONS

1. This written 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 of its terms or provisions will be commenced in New York Supreme Court, Niagara County.

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

Dated: 10/23, 1995

TOWN OF LEWISTON

By: Thomas E. Sharp
Thomas E. Sharp, Supervisor

MODERN LANDFILL, INC.

By: Harry E. Smith

TO: BOB GALUCY
FROM: PETER BURKE
4/22/98 3 pages

HOST COMMUNITY AGREEMENT MODIFICATION

The parties to this Host Community Agreement Modification ("Modification") 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.

WHEREAS, the Town and Modern entered into a Host Community Agreement ("Agreement") dated October 23, 1995 which established the terms and conditions of Modern's future landfill operations in the Town of Lewiston and set forth certain host community benefits that would be provided or paid by Modern to or for the Town's benefit; and

WHEREAS, the Agreement provides that it will not become effective unless and until various conditions precedent have been satisfied, including the issuance of a permit by the New York State Department of Environmental Conservation ("DEC") to Modern for the construction and operation of its Landfill in the Town of Lewiston; and

WHEREAS, the Agreement obligates Modern to pay a first year host community fee of \$750,000.00 to the Town on the effective date of the Agreement, pursuant to Section E(3)(a) of the Agreement; and

WHEREAS, the Town acknowledges that DEC may not issue a permit to Modern until 1996, that the Agreement may not become effective until 1996 and that host community payments by Modern, including the first year host community fee, will not be due and payable until the year in which all contingencies had been satisfied and the Agreement becomes effective; and

WHEREAS, the Town had budgeted the payment and receipt of the first year host community fee from Modern in 1995 and has requested that Modern pay the first year host community fee of \$750,000.00 for the 1995 calendar year; and

WHEREAS, Modern is willing to pay the first year host community fee of \$750,000.00 for the 1995 calendar year in recognition of the fact that the Town issued its permit during the 1995 calendar year; and

WHEREAS, the Town has proposed that all dates and timetables set forth in the Agreement should each be deferred for one year.

THEREFORE, the parties mutually agree that:

1. The effective date of the Agreement shall be deemed December 31, 1995.
2. Modern shall pay to the Town on or before December 31, 1995 the sum of \$750,000.00 as its first year host community fee for the 1995 calendar year in satisfaction of Section E(3)(a) of the Agreement.
3. The annual payment due in the final year of the Agreement, pursuant to Section E(3)(a), shall be canceled and no annual fee shall be paid in the final year of this Agreement, as extended and deferred in this Modification. However, all other fees that would be due in the final year of the Agreement shall remain due and payable by Modern to the Town, including tipping fees set forth in Section E(3)(b) of the Agreement.
4. All dates, schedules and timetables set forth in the Agreement shall be deferred for a period of one year. Accordingly, all dates referred to in Sections A(2), B(1) and (3), C(1), E(1), (2), (3), (4), (5) and (6), F(3) and (5) of the Agreement are hereby modified and deferred for a period of exactly one year. By way of illustration but not limitation, cessation of activities referred to in Section B shall be deferred for a period of one calendar year, from January 1, 2012 to January 1, 2013.

E(1)(e) pg 20 is gross clippings

5. If any provision in this Modification is invalid or unenforceable, it is the intention of the parties that the entire Modification be deemed void, the original Agreement between the parties, dated October 23, 1995, shall be given full force and effect and the parties returned to the status quo ante in all respects.

TOWN OF LEWISTON

MODERN LANDFILL, INC.

By: Thomas E. Sharp
Title: Town Supervisor
12/28/95

By: Gary E. Smith
Title: V.P.
12/28/95

On this date, Dec. 28, 1995, the above agreement between Modern Landfill, Inc. and the Town of Lewiston, was signed in my presence by Thomas E. Sharp, Supervisor of the Town of Lewiston, and Gary E. Smith, vice-president of Modern Landfill, Inc., with full authorization for signing given by unanimous approval of the Lewiston Town Board.

Date: 12/28/95 Lily C. Taddeo

LILY C. TADDEO
Notary Public, State of New York
Qualified in Niagara County
My Commission Expires 4 30. 19 96