

#1197

THIS AGREEMENT made in quadruplicate this 23rd day of June, 1988.

B E T W E E N :

THE CORPORATION OF THE TOWN OF GRIMSBY  
Hereinafter called "Grimsby"

OF THE FIRST PART;

- and -

THE CORPORATION OF THE TOWN OF LINCOLN  
Hereinafter called "Lincoln"

OF THE SECOND PART;

- and -

THE CORPORATION OF THE TOWN OF PELHAM  
Hereinafter called "Pelham"

OF THE THIRD PART;

- and -

THE CORPORATION OF THE TOWNSHIP OF WEST LINCOLN  
Hereinafter called "West Lincoln"

OF THE FOURTH PART.

1. RECITALS:

1.1 WHEREAS the Municipal Act, R.S.O. 1980, c.302, S.208, paragraph 5, provides, inter alia, that by-laws may be passed by the councils of all municipalities for entering into agreement with one or more municipalities to provide for the joint management and operation of garbage collection and disposal systems and for the establishment of joint boards of management thereof;

1.2 AND WHEREAS the said Municipal Act, S.210, paragraph 84, provides, inter alia, that by-laws may be passed by the councils of local municipalities for acquiring land in any local municipality for any of the purposes of paragraph 83;

1.3 AND WHEREAS the said Municipal Act, S.210, paragraph 83, provides, inter alia, that by-laws may be passed by the councils of local municipalities for establishing and maintaining a system for the collection, removal and disposal of garbage or of garbage and other refuse;

1.4 AND WHEREAS the said Municipal Act, Section 208, Paragraph 8, provides, inter alia, that by-laws may be passed by the councils of all municipalities for providing in any agreement that may be lawfully made with another municipality that any dispute arising out of such agreement may be determined by the Municipal Board as sole arbitrator;

1.5 AND WHEREAS the parties hereto have, by Agreement dated the 1st day of June 1971, amended by Agreement dated the 1st day of July, 1974, operated a waste disposal site in the Town of Grimsby, hereinafter referred to as the "Park Road Site";

1.6 AND WHEREAS the Park Road Site will shortly be filled to capacity thereby necessitating the creation of a new disposal site to serve the needs of the parties hereto;

1.7 AND WHEREAS the parties hereto have agreed to a joint effort in the acquisition of a suitable site for a waste disposal site and in the acquisition of all approvals necessary for the creation and operation of such a waste disposal site;

1.8 AND WHEREAS this agreement sets forth the terms of the agreement between the parties hereto with respect to the acquisition of the waste disposal site and the acquisition of all necessary approvals;

1.9 AND WHEREAS this agreement is authorized by By-Law #88-75 of The Corporation of The Town of Grimsby, by By-Law #88-86 of The Corporation of The Town of Lincoln, by By-Law #1197 (1988) of The Corporation of The Town of Pelham and by By-law #88-47 of The Corporation of The Township of West Lincoln.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual terms and conditions herein contained the parties hereto hereby covenant and agree as follows:

2. DEFINITIONS

2.1 In this agreement,

(a) "host municipality" means,

(i) until the site of the proposed waste disposal site has been selected and approved by the parties hereto, The Town of Grimsby;

- (ii) after the approval by the parties herein to the final Phase II, Volume II Report, Landfill Site Selection, the municipality within which the proposed waste disposal site recommended by the said final Phase II, Volume II Report, Landfill Site Selection and contemplated by the terms of this agreement, is proposed to be located;
- (b) "waste" means domestic, commercial and non-hazardous solid industrial waste;
- (c) "waste disposal site" means lands upon, into, in or through which waste is deposited or processed which land is selected and acquired in accordance with the provisions of this agreement;

3. TERM

3.1 This agreement shall come into force and effect, upon the date hereof, subject to the approval of the Ontario Municipal Board and shall be irrevocable except upon the joint agreement of all of the parties hereto.

4. TERMINATION

4.1 The term described in paragraph 3.1 hereof shall not be subject to termination by any party unless:

- (a) A party to this agreement wishing to have the agreement terminated has given written notice to all other parties;
- (b) All parties to this agreement have agreed in writing to the termination of this agreement; and,
- (c) The termination of this agreement occurs no earlier than the 31st day of December in the year subsequent to the year in which agreement by all parties to terminate this agreement is achieved.

4.2 Upon the fulfillment of the following events:

- (a) Acquisition of the lands herein contemplated;

(b) Acquisition of all approvals necessary for the acquisition, creation and operation of the waste disposal site contemplated herein; and

(c) The construction of the waste disposal site;

This Agreement shall terminate and the Operating Agreement, a copy of which is attached hereto as Schedule "A", as may be amended by any decision of a tribunal granting approval for the creation and operation of the site, shall be signed by the parties hereto and shall come into force and effect.

5. BOARD OF MANAGEMENT

5.1 The parties hereto hereby establish a Board of Management which shall be responsible to administer and implement in an orderly and proper fashion the terms of this agreement and to advise the councils of the parties hereto with respect to waste disposal. All actions of the Board shall be subject to the ratification of the Councils of the parties hereto.

5.2 The Board of Management shall be composed of one member of the council of each of the parties hereto, each member to be chosen by the respective councils of the parties hereto. Each member shall be appointed for a term to coincide with the term of the council appointing such member.

5.3 The chairman of the Board of Management shall be elected by the members of the Board of Management, annually, from among its members. The chairman shall serve for a term of One (1) year from the date of his election, provided that any person may be re-elected to serve in subsequent terms.

5.4 Notwithstanding paragraph 5.3 above, the first chairman of the Board of Management for the year in which it is anticipated the proposed landfill site will be open for operation shall be the representative of the host municipality.

5.5 The "disposal site committee" created pursuant to the provisions of the Agreement dated the 1st day of June 1971 as amended by the provisions of the Agreement dated the 1st day of July 1974 shall constitute the Board of Management herein created.

5.6 The parties hereto hereby appoint the Board of Management to be the agent of the host municipality and authorize

the Board of Management to bring all applications and to take all actions necessary to acquire a site for the construction and operation of a waste disposal site, and to acquire all approvals necessary for the creation and operation of such a waste disposal site. Such actions shall be taken and such applications shall be made in the name of the host municipality and the Board of Management is hereby specifically authorized so to do. The costs incurred in carrying out the actions authorized by this agreement shall be borne by the parties in accordance with the terms and provisions of this agreement as hereinafter set out.

5.7               The Town of Grimsby shall provide to the Board of Management such services and staff as may be required by the Board of Management to carry out its responsibilities in accordance with the terms of this agreement. All costs incurred by the Town of Grimsby in providing such services and staff will be apportioned between the parties hereto in accordance with the provisions of paragraph 6.2, below. All agreements entered into by the Town of Grimsby, with the approval of the Board of Management, before or during the currency of this Agreement, with respect to the retention of personnel, consultants or contractors, shall remain in full force and effect and shall continue to be administered by the Town of Grimsby until such time as the contracts expire in accordance with the terms thereof.

5.8               The Board of Management is hereby authorized and directed to retain, in the name of the host municipality, consultants, advisors and legal counsel to prepare studies and reports, to make representations and to appear before boards and tribunals in order to obtain the approvals contemplated by the terms of this agreement.

5.9               The Board of Management is hereby authorized and directed to retain, in the name of the Host Municipality, upon receipt of all necessary approvals, contractors for the construction and establishment of the waste disposal site contemplated by this Agreement.

5.10.             The Board of Management shall meet not less than once each month in order to properly manage those matters which have been delegated to it by the terms of this agreement.

5.11 The Board of Management shall keep minutes of its meetings, which minutes shall be circulated in a timely manner to the Municipal Clerk of each of the parties hereto, for distribution to members of the councils of each of the parties hereto. Further, the Board of Management shall take such further steps as the Board considers necessary or as the councils of the parties hereto shall jointly direct, in order to ensure that the said councils are fully informed of the actions being taken by the Board of Management.

5.12 The Board of Management shall prepare a budget of the anticipated revenues and expenditures for each year and shall include therein the estimated contribution, if any, to be made to the Board during the course of the year. Such budget shall be submitted to each of the councils of the parties hereto on or before the 31st day of January of each and every year. The budget shall be subject to ratification and acceptance by the councils of the parties hereto.

5.13 The Board of Management shall maintain books, records and accounts of all actions, proceedings and matters within its delegated authority, which books, records and accounts shall be available to the councils of the parties hereto upon the request of any such council.

## 6. APPORTIONMENT OF COSTS

6.1 "Proportionate share of a party", in this paragraph, shall be calculated using the following formula: The equalized assessment of the party for the previous year expressed as a percentage of the total equalized assessment of the four parties, for the previous year, added to the total tonnage billed to the party for the previous year, expressed as a percentage of the total tonnage billed to the four parties for the previous year, divided by Two (2).

Equalized Assessment of the Party as a % + Tonnage billed to the party as a %

2

The term "equalized assessment" is that equalized assessment employed by the Regional Municipality of Niagara, applicable to the parties hereto, for the apportionment of the Regional Tax Levy for the previous year.

6.2 Each of the parties hereto shall pay to the Board of Management its proportionate share of all costs incurred by the Board of Management with respect to the acquisition of the proposed site, the obtaining of all necessary approvals, the development of the site and the administration of the Board of Management in accordance with the authorizations contained in this agreement. "Development of the Site" in this paragraph shall mean the development and preparation of the site contemplated by this agreement so that it is capable of being used, in accordance with Provincial statutes and regulations, conditions imposed with respect to any approval required for the creation and operation of the landfill site, for the disposal of waste by the parties hereto.

6.3 Each of the parties hereto shall pay to the Board of Management its proportionate share of all costs incurred or to be incurred by the host municipality for the provision of municipal services, which have been approved by the Board of Management, which services would not otherwise have been provided by the host municipality if the waste disposal site was not acquired, constructed and operated. Costs in this paragraph are to be calculated without regard to Provincial grants or subsidies payable to the host municipality for the provision of such municipal services. For example, grants payable by the Ministry of Transportation and Communications to the host municipality for highway purposes will not be deducted from the cost of any highway project before calculating the proportionate share of each of the municipalities. The provincial grants and subsidies referred to in this paragraph shall not include any grant, subsidy or other provincial payment with respect to the disposal or recycling of waste.

6.4 All costs shall be paid to the Board of Management forthwith upon demand by the Board. Those costs paid to the Board by the parties hereto in accordance with paragraphs 6.2 and 6.3 above, shall be paid by the Board.

6.5 The apportionment of costs as herein provided for shall be made by the Board of Management.

6.6 Any dispute between the parties with respect to the necessity for incurring such costs or the apportionment of such costs described in this paragraph, which the parties are unable or unwilling to resolve shall be resolved in accordance with the provisions of this agreement with respect to resolution of disputes.

7. OPERATION OF WASTE DISPOSAL SITES

7.1 The parties hereto shall not operate nor seek approval to own or operate any waste disposal site save and except the following:

- (1) The Park Road Site;
- (2) The Caistor Road Site, West Lincoln, for non-putrescible waste only;
- (3) The Quarry Road Site, Lincoln, for non-putrescible waste only;
- (4) Telephone City Gravel Site, Pelham, for non-putrescible waste only;
- (5) The site contemplated by the provisions of this agreement.

7.2 The parties hereto shall not discontinue the use of the sites described in Paragraph 7.1 above unless such action has been agreed to by the Board of Management.

7.3 The parties hereto shall dispose of waste only in the sites referred to in paragraph 7.1 above, provided that, should the Board of Management determine to dispose of all or any part of the waste generated within the municipal boundaries of the four parties, in a site or in a manner other than described above, such waste shall be disposed of in accordance with the directions of the Board of Management. Each of the parties shall pay its proportionate share of the cost of such disposal in accordance with the following formula:

"Proportionate Share of a party", in this paragraph, means that fraction which has as its numerator the total tonnage of waste, billed by the Board of Management, to the Party, as established in the annual summary of the Board of Management, for the current

year in which the cost is incurred, and has as its denominator the total tonnage of waste, billed by the Board of Management to the four parties, as established in the annual summary of the Board of Management for the current year in which the cost is incurred.

7.4                Nothing herein contained shall prevent the parties hereto or any one or more of them from investigating alternatives to waste disposal, which, without restricting the generality of the foregoing, may include recycling. The implementation of such alternatives will be carried out after receiving the advice of the Board of Management and in such a manner as to maintain the intended joint responsibility of the parties hereto for the disposal of waste within their jurisdiction.

7.5                The parties hereto are committed to the recycling of waste.

8.                        ENVIRONMENTAL ASSESSMENT ACT APPLICATION

8.1                The parties hereto hereby authorize, ratify and confirm the actions taken by the Board of Management, prior to the date of this agreement, with respect to the commencement and completion of studies made pursuant to the Environmental Assessment Act, including the Site Selection Report.

8.2                The parties hereto hereby authorize the Board of Management to prepare an Environmental Assessment with respect to the contemplated waste disposal site, to be submitted to the Minister of the Environment pursuant to the provisions of the Environmental Assessment Act.

8.3                The Environmental Assessment shall be presented by the Board of Management to the councils of the parties for the ratification by the said councils.

8.4                Upon the ratification of the Environmental Assessment by the Councils of all of the parties, the Board of Management shall submit the Environmental Assessment, on behalf of the host municipality, to the Minister of the Environment for acceptance of the Environmental Assessment and approval to proceed.

8.5 The Board of Management shall take all steps necessary to obtain the acceptance of the Environmental Assessment and the approval to proceed from the Minister of the Environment and from the Environmental Assessment Board or from a joint board established under the Consolidated Hearings Act, 1981.

9. ENVIRONMENTAL PROTECTION ACT APPLICATION AND  
ONTARIO WATER RESOURCES ACT APPLICATION

9.1 The parties hereto hereby authorize the Board of Management to prepare and to submit an application, in the name of the host municipality, pursuant to the provisions of Part V of the Environmental Protection Act seeking a certificate for the operation of a waste disposal site upon the site contemplated herein.

9.2 The Board of Management shall take all steps necessary to obtain the Certificate of Approval.

9.3 The parties hereto hereby authorize the Board of Management to prepare and submit applications as may be necessary, in the name of the host municipality pursuant to the provisions of the Ontario Water Resources Act.

10. OFFICIAL PLAN AND ZONING BY-LAW

10.1 Upon the acceptance by all of the parties of the location of the preferred site of the contemplated waste disposal site, the host municipality shall forthwith take all steps necessary to determine whether its official plan and zoning by-law permit the construction and operation of a waste disposal site upon the preferred site.

10.2 If the host municipality determines that its official plan and/or the applicable zoning by-law will not permit the construction and operation of a waste disposal site, the host municipality shall forthwith advise the Board of Management. The host municipality hereby authorizes the Board of Management to make application as agent for the host municipality, as the owner of the site, seeking an Official Plan Amendment and/or Zoning By-law Amendment and to take all steps necessary to initiate the consideration of such Official Plan Amendment and Zoning By-law Amendment in order to permit the construction and operation of a waste disposal site upon the preferred site.

10.3            Nothing herein contained shall fetter the discretion of the host municipality, to be exercised pursuant to the provisions of the Planning Act.

10.4            A determination made pursuant to the provisions of this paragraph shall be subject to the provisions hereinafter contained with respect to dispute resolution, it being the intention of the parties that should there be any dispute as to the interpretation of the official plan and zoning by-law, the interpretation of the Ontario Municipal Board will govern.

11.            SITE PLAN

11.1            Upon the acceptance by all of the parties of the location of the preferred site of the contemplated waste disposal site the host municipality shall determine whether the preferred site has been designated a site plan control area by by-law passed pursuant to the Planning Act S.O. 1983, c.1, S.40.

11.2            If the host municipality determines that the preferred site has been designated a site plan control area it shall forthwith advise the Board of Management. The host municipality hereby authorizes the Board of Management to apply for a Site Plan Agreement and to take all steps to ensure that the provisions of the site plan control by-law and of the Planning Act are complied with.

11.3            A determination made pursuant to the provisions of this paragraph shall be subject to the provisions hereinafter contained with respect to dispute resolution, it being the intention of the parties that should there be any dispute as to the interpretation of the site plan control by-law or the Planning Act, the interpretation of the Ontario Municipal Board will govern.

12.            ACQUISITION OF THE SITE

12.1            Upon the ratification by all of the parties of the location of the preferred site of the contemplated waste disposal site, the host municipality shall forthwith take all

steps necessary to expeditiously acquire access to the preferred site for testing purposes and to expeditiously acquire the preferred site in accordance with the statutes and regulations of the Province of Ontario.

12.2           It shall be the responsibility of the host municipality to ensure that such acquisition complies with all applicable laws, including, without limiting the generality of the foregoing, the Environmental Assessment Act, the Municipal Act and the Planning Act.

12.3           The host municipality hereby authorizes and directs the Board of Management to conduct negotiations on behalf of the host municipality with respect to the acquisition of the preferred site and with respect to any claims for injurious affection arising out of the acquisition of the preferred site. If, in the opinion of the Board of Management, it is necessary to expropriate access to the preferred site for testing purposes or to expropriate some or all of the lands comprising the preferred site, such expropriation proceedings shall be commenced by the Board of Management in the name of the host municipality and the host municipality hereby authorizes the Board of Management to carry out such proceedings in the name of the host municipality.

12.4           Notwithstanding anything herein contained the acquisition of the site (including the expropriation thereof) shall be subject to the ratification and acceptance of the councils of the parties hereto.

12.5           It is understood and agreed by the parties that the host municipality, in acquiring the lands pursuant to the provisions of this Agreement, holds the lands as trustee for the parties hereto in contemplation of the execution of the Agreement, the form of which is attached hereto as Schedule "A".

### 13.           ROADS AND ROAD ALLOWANCES

13.1           In the event that the site is traversed by any road, street, highway or road allowance, the host municipality hereby authorizes the Board of Management to make application,

as agent for the host municipality to the appropriate authority, seeking the stopping up and closing of such road, street, highway or road allowance.

13.2            Nothing herein contained shall fetter the discretion of the host municipality in considering an application to stop up and close such road, street, highway or road allowance within the jurisdiction of the host municipality.

14.            DEVELOPMENT OF THE SITE

14.1            Upon acquisition of the site and upon the acquisition of all necessary approvals the Board of Management, on behalf of the parties hereto shall forthwith take all steps necessary to develop the site for use as a waste disposal site, including the placement or erection of equipment and buildings. Without limiting the generality of the foregoing, the Board of Management shall call for tenders for the construction of all works necessary for a landfill site as required by the Ministry of the Environment and by the various approvals hereinbefore referred to, and shall enter into contracts for the construction of the said works on behalf of the parties hereto. All such contracts shall be subject to the ratification and approval of the councils of the parties hereto.

15.            INSURANCE

15.1            The host municipality shall obtain and keep in good standing at all times insurance in accordance with the recommendation of the Board of Management, from time to time, or as directed by the councils of the four parties jointly. Such insurance shall name those parties, other than the host municipality, as co-insureds.

16.            COMPENSATION TO HOST MUNICIPALITY

16.1            The parties hereto recognize the special duties imposed upon the host municipality by the terms of this agreement. In recognition therefore the host municipality shall be paid compensation as follows:

- (a) The three parties other than the host municipality shall make a single, one time, payment of TWENTY-FIVE THOUSAND (\$25,000.00) DOLLARS to the host municipality upon receipt of all necessary approvals required in law to permit the establishment and operation of the landfill site contemplated by this agreement.
- (b) The three parties, other than the host municipality, shall pay to the host municipality the sum of ONE THOUSAND (\$1,000.00) DOLLARS per annum as compensation for reduced municipal assessment due to property acquisition for the landfill site. This payment shall commence in the taxation year for which the assessment roll has been amended to show the lands acquired for the purpose of the landfill site to be exempt from taxation.

Each of the parties other than the host municipality shall pay its proportionate share of the compensation described in paragraphs (a) and (b) above. "Proportionate share of a party", in this paragraph, means that fraction which has as its numerator the total tonnage of the municipally contracted waste component of waste collected within the municipal boundaries of the party, disposed of in accordance with the agreement then outstanding between the parties, as established in the annual summary of the Board of Management, for the year prior to the year in which the compensation is paid, and has as its denominator the total tonnage of the municipally contracted waste component of waste collected within the boundaries of the three parties other than the host municipality, disposed of in accordance with the agreement then outstanding between the parties, as established in the annual summary of the Board of Management for the year prior to the year in which the compensation is paid.

17. INDEMNIFICATION

17.1 The parties hereto shall indemnify the host municipality against all liabilities, costs, fines, suits, claims,

demands, action and causes of action of any kind for which the host municipality may become liable by reason of this agreement or any action taken hereunder, each party to bear its proportionate share of such indemnification as defined in paragraph 6.1 above. The parties hereto shall be jointly liable for all such liabilities, costs, fines, suits, claims, demands, actions and causes of action.

18. RESPONSIBILITIES OF THE HOST MUNICIPALITY

18.1 The host municipality shall act expeditiously and in good faith with respect to all of its obligations in accordance with the terms and provisions of this agreement.

18.2 The council of the host municipality shall authorize the proper signing officers to execute all documents, agreements, and applications which have been authorized and agreed to by the Board of Management and by the councils of each of the parties hereto in accordance with the terms and provisions of this agreement.

19. RESOLUTION OF DISPUTES

19.1 Where a disagreement or dispute arises between two or more parties to this agreement with respect to the interpretation, construction, meaning or effect of this agreement, which the parties are unable to resolve, such disagreement or dispute shall be submitted to the Ontario Municipal Board which shall act as sole arbitrator pursuant to the provisions of the Municipal Act, R.S.O. 1980, c.302, S.208, paragraph 9.

19.2 Each of the parties hereto shall be a party to each such arbitration brought before the Ontario Municipal Board pursuant to the provisions of this agreement.

19.3 The provisions of the Ontario Municipal Board Act and Regulations passed thereunder shall, with necessary modifications, apply to proceedings brought under this paragraph.

19.4 Each decision of the Ontario Municipal Board with respect to matters placed before it for resolution pursuant to this paragraph shall be final and binding upon all of the

parties and the provisions of the Ontario Municipal Board Act, R.S.O. 1980, c.347, S.94 and S.95 shall not apply.

20. AGREEMENT CONDITIONAL

20.1 This agreement shall be subject to the approval of the Ontario Municipal Board pursuant to S.64 of the Ontario Municipal Board Act, R.S.O. 1980, c.347.

21. NOTICE

21.1 Any notice which is permitted or required pursuant to the provisions of this agreement shall be in writing and shall be served personally or by registered mail upon the Municipal Clerk of each of the parties hereto at the addresses hereinafter set forth:

- (1) Town of Grimsby  
Attention: Town Clerk  
160 Livingston Avenue  
P.O. Box 159  
Grimsby, Ontario  
L3M 4G3
- (2) Town of Lincoln  
Attention: Town Clerk  
206 King Street West  
P.O. Box 1030  
Beamsville, Ontario  
LOR 1B0
- (3) Town of Pelham  
Attention: Town Clerk  
20 Pelham Town Square  
P.O. Box 400  
Fonthill, Ontario  
LOS 1E0
- (4) Township of West Lincoln  
Attention: Township Clerk  
318 Canboro Street  
P.O. Box 400  
Smithville, Ontario  
LOR 2A0

21.2 Where notice is served by registered mail the notice shall be effective on the fifth day after the document is mailed.

IN WITNESS WHEREOF the parties have hereunto affixed their corporate seals duly attested by their proper officers in that behalf.

SIGNED SEALED AND DELIVERED )

in the presence of:- )

THE CORPORATION OF THE  
TOWN OF GRIMSBY

Per:

Ross E. Hall

MAYOR

W. A. Buler

Town Administrator

THE CORPORATION OF THE  
TOWN OF LINCOLN

Per:

Ray A. Konkle Mayor.

Yulian P. P. Clerk

THE CORPORATION OF THE  
TOWN OF PELHAM

Per:

Mayor E.S. Bergenstein

M. H. Hubert

CLERK

THE CORPORATION OF THE  
TOWNSHIP OF WEST LINCOLN

ALLARD COLYN  
MAYOR

Per:

Colyn

CORPORATION OF  
THE TOWNSHIP OF  
WEST LINCOLN

Admin

ADMINISTRATOR

