

THIS AGREEMENT made as of the 1st day of April, 1995.

B E T W E E N:

**THE CORPORATION OF THE CITY OF WELLAND
THE CORPORATION OF THE TOWN OF GRIMSBY
THE CORPORATION OF THE CITY OF PORT COLBORNE
THE CORPORATION OF THE CITY OF NIAGARA FALLS
THE CORPORATION OF THE TOWN OF LINCOLN
THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE
THE CORPORATION OF THE TOWN OF PELHAM
THE CORPORATION OF THE TOWNSHIP OF WAINFLEET
THE CORPORATION OF THE CITY OF ST. CATHARINES
THE CORPORATION OF THE TOWN OF FORT ERIE**

(hereinafter collectively referred to as "Area Municipalities")

- and -

NIAGARA EMPLOYMENT AGENCY INC., a corporation duly incorporated pursuant to the laws of the Province of Ontario, operating as Niagara Recycling

(hereinafter referred to as "Niagara")

WHEREAS the Area Municipalities recognize the requirement to divert materials from landfill sites within the Region of Niagara through the reduction, reuse and recycling of waste;

AND WHEREAS the Area Municipalities have determined that in order to divert materials from landfill sites, Niagara shall be engaged to perform certain processing and marketing services, as hereinafter defined;

AND WHEREAS Niagara has agreed to perform such services on and subject to the terms and conditions contained in this Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual

H. "Items of a Capital Nature" shall include the following:

Capital expenditure is defined as any significant expenditure incurred to acquire or improve land, buildings, engineering structures, machinery and equipment used in providing municipal services. It includes vehicles, office furniture and equipment. This expenditure normally confers benefit lasting beyond one year and results in the acquisition of, or extends the life of a fixed asset.

Capital outlay is determined by the nature of the transaction, not by the method of financing. Financing from the sale of debentures, provincial or federal subsidies, reserves or reserve funds, the revenue fund or from whatever source - is entirely irrelevant in determining whether the transaction is a capital expenditure.

A capital lease is defined as a lease that, from the point of view of the lessee, transfers substantially all the benefits and risks incident to ownership of property to the lessee.

A capital lease is to be reported as part of the capital outlay to be recovered in future years and as a long-term liability on the balance sheet.

The term "significant" when used in this definition, shall mean any amount in excess of \$1,000.

- I. "Municipal Recycling Facility" shall mean the premises together with all equipment and fixtures located at 55 Oakdale Avenue, St. Catharines, leased by the Area Municipalities and subleased to Niagara.
- J. "Recycling Program" shall mean those activities required to provide the residents of the Area Municipalities with processing and marketing of Recyclable Materials.
- K. "Recycling Service" shall include but not be limited to:
 - 1. The operation of the Municipal Recycling Facility.
 - 2. The processing of:
 - (i) all Recyclable Materials delivered to the Municipal Recycling Facility by the Area Municipalities;
 - (ii) all Recyclable Materials which Niagara Municipal Recycling Board directs to the Municipal Recycling Facility.

2. Weighing:
 - (a) To weigh all Recyclable Materials which are delivered to or shipped from the Municipal Recycling Facility.
3. Development:
 - (a) To actively develop and implement, in co-operation with the Area Municipalities, expansion of the Recycling Program.
4. Local Office:
 - (a) To maintain an office and telephone within the Regional Municipality of Niagara at all times during normal business hours so that complaints and inquiries may be received and processed by Niagara. Specifically, the Area Municipalities and Niagara agree that for the purpose of this Agreement, the hours of 9 a.m. to 5 p.m., Monday through Friday, constitute "normal business hours". Further, Niagara agrees that telephone inquiries during normal business hours will be answered directly by its staff and not by mechanical means, at Niagara's published number. The telephone number of Niagara will be published on all applicable promotional material produced by the Area Municipalities.
5. Processing:
 - (a) To handle, sort and prepare all Recyclable Materials for shipment to end users in compliance with end user requirements for quality control, transportation subsidies and handling and to ship said Recyclable Materials to end users.
6. Preparation:
 - (a) To prepare Recyclable Materials in a manner that is intended to maximize revenues and minimizes costs. Preparation of Recyclable Materials includes, but is not limited to, the following:
 - (i) removal of contaminants;
 - (ii) magnetic separation;
 - (iii) manual and mechanical sorting; and
 - (iv) baling.

No Recyclable Materials will be landfilled. When Recyclable Materials delivered to end users are rejected due to contamination beyond the end users' acceptable standards, Niagara will rework the rejected Recyclable

10. Worker's Compensation Board:

- (a) To comply with the provisions of the Worker's Compensation Act and to provide the Area Municipalities with a Certificate of Clearance upon execution of this Agreement.

11. Assignment:

- (a) Not to assign or subcontract in part or in whole this Agreement.

12. Expansion:

- (a) To participate with the Area Municipalities in the continuing expansion and development of the Recycling Program in the Regional Municipality of Niagara accommodating the addition of other Recyclable Materials.

13. Insurance:

- (a) To purchase and maintain in force, at its own expense, and to pay all deductibles, payable in relation to claims during the currency of the agreement, the following policies of insurance which policies shall be in a form acceptable to the Area Municipalities and with the Area Municipalities named as additional Insured Parties and to deliver to the Area Municipalities, upon the execution of this Agreement, a certificate of these policies originally signed by an authorized agent of the insurance company being delivered to the Area Municipalities upon execution of this Agreement:

- (1) Commercial General Liability in the amount of not less than Two Million (\$2,000,000.00) Dollars per claim or occurrence with:

- (i) Provisions for blanket contractual liability, owner's/contractor's protective liability; completed operations liability; contingent employer's liability, premises and operations liability; Broad Form Property Damage; Occurrence Property Damage; and personal injury liability arising out of false prosecution, libel, slander, defamation of character, invasion of privacy or wrongful eviction;

- (ii) Not less than thirty (30) days' prior written notice to the Area Municipalities of any cancellation, termination, expiry or amendment of or change to the policy.

VI. Responsibility of Area Municipalities

A. The Area Municipalities covenant and agree as follows:

1. Delivery of Recyclable Materials:

- (a) The Area Municipalities agree that during the term of this Agreement any and all Recyclable Materials collected by the Area Municipalities or any of its employees, servants, agents, successors or assigns or by any independent contractor on behalf of the Area Municipalities shall be delivered to Niagara for processing pursuant to this Agreement.

2. Promotion:

- (a) To promote citizen participation in the Recycling Program and to consult with Niagara in the development and distribution of effective promotional materials and strategies.

3. Initiation:

- (a) To initiate expansion of the Recycling Program to include new Recyclable Materials.

4. Marketing:

- (a) To assist Niagara with marketing activities.

5. Research:

- (a) To conduct research and provide input into the adoption of additional Recyclable Materials into the Recycling Program and to advise and confer with Niagara as to the feasibility and practicality of adding new Recyclable Materials.

6. Enforcement:

- (a) To enforce recycling policies and procedures adopted by the Area Municipalities.

7. Quality:

- (a) To exercise quality control at the point of collection. Quality control may include, but is not limited, to the following:

VIII. Compensation

- A. Compensation shall be only for services as defined by Articles III and V of this Agreement or expenses incurred as a result of expansion of services beyond those defined herein, at the request of the Area Municipalities and agreed to by Niagara. Niagara assumes responsibility for expenses incurred as a result of activities other than those contained herein.

Contract Fee

- B. During each year of the term of this Agreement, the area municipalities shall pay to Niagara a contract fee equal to the greater sum of \$175,000.00 or 3 % of the Net Income for that year (as defined in Section I(G)).
- C. The sum of \$175,000.00 shall be payable in twelve (12) equal monthly payments, payable on the 30th day of each month commencing April 30th, 1995.
- D. Within sixty (60) days of the end of each year of the term of this Agreement, the Area Municipalities shall provide a report to Niagara confirming the amount of the Net Revenues for the immediately preceding year. In the event that 3 % of the Net Revenues for that period exceeds the sum of \$175,000.00, the Area Municipalities shall pay the excess amount to Niagara. In the event that 3 % of the Net Revenues for that period is less than \$175,000.00 no adjustment will be made.

Payroll Costs

- E. On the first business day of each month, the Area Municipalities shall pay to Niagara, Niagara's payroll costs for that month.

Operations Costs

- F. Niagara shall submit its annual operating budget for each year, on or before the 31st day of January of the year immediately preceding the year for which the annual operating budget is to be applied or such other date as the Area Municipalities may direct. The annual operating budget shall set out the estimated operating budget for the period from April 1st of each year to March 31st of the subsequent year and shall be subject to approval by the Area Municipalities. The Area Municipalities shall deposit monthly into an operations account in the name of the Niagara Municipal Recycling Board, upon which the General Manager of Niagara shall have signing authority, one-twelfth of the estimated annual operating budget, less payroll costs. The annual operating budget shall be readjusted on a quarterly basis.

the provision itself.

2. That the entire terms of this Agreement are set out herein and no verbal representations or agreements, shall alter, change or modify the terms and provisions of this Agreement. No change or modification of this Agreement shall be valid unless it is in writing and signed by each party hereto.
3. This Agreement is the entire Agreement between the parties hereto and is intended to replace and supersede any and all previous agreements whether written or oral between Niagara and any of the other parties hereto.
4. Subject to Article XIV, this Agreement shall enure to the benefit of and be binding upon the respective heirs, executors, administrators, successors, subcontractors and assigns of each of the parties hereto.
5. All amounts received from the sale of Recyclable Materials shall be the property of the Area Municipalities. In the event that any cheques or payments are received by Niagara, Niagara shall forthwith deliver all funds received and shall endorse and deliver any cheques received to the Area Municipalities.

X. Notice

- A. Any notice required or contemplated by any provision of this Agreement must be written and shall be deemed sufficiently given if delivered in person to either party or if posted in a sealed envelope in the Province of Ontario by registered mail addressed as follows:

1. If to the Area Municipalities:

The Corporation of the Township of Wainfleet
19M43 Hwy. No. 3, P.O. Box 40
Wainfleet, Ontario. L0S 1V0

Attention: Albert Guiler

and to:

Sullivan, Mahoney
Barristers and Solicitors
40 Queen Street, P.O. Box 1360

the right of either party to bring an application to set aside the award.

- G. Each party shall pay its cost of the arbitration, including all witnesses and counsel fees. Each party shall be responsible for fifty (50%) percent of the arbitrators fee.
- H. Except as provided herein, the provisions of the Arbitrations Act, R.S.O. 1990, chapter A-24, as amended from time to time, shall apply to the arbitration.

XII. Early Termination

- A. The parties hereto agree that the Area Municipalities may, in its sole discretion, terminate this Agreement without notice or delay upon the happening of any of the following events:
 - 1. Niagara becomes insolvent or generally unable to pay its debts as they become due.
 - 2. Niagara makes an assignment in bankruptcy.
 - 3. The Area Municipalities receive written notice from Niagara of its inability to perform its responsibilities and obligations under this Agreement.
 - 4. Niagara commences procedures to wind-up the corporation or surrender its Letters Patent.
- B. The parties hereto agree that the Area Municipalities shall have the exclusive option of terminating this Agreement at any time by reason of:
 - 1. Any fraud or dishonesty of any officer, employee, agent or servant of Niagara for which there has been no satisfactory remedial action taken by Niagara within seven (7) days of being notified thereof in writing by the Area Municipalities.
 - 2. Any substantial breach of this Agreement by Niagara that continues unremedied after the expiry of thirty (30) days from the receipt of written notice from the Area Municipalities of the substantial breach of this Agreement by Niagara.

upon giving Niagara at least thirty (30) days prior written notice of the Area Municipalities' exercise of this option to terminate.

Niagara and the Area Municipalities will make all reasonable efforts to direct said Recyclable Materials to alternate market outlets. The Area Municipalities may also direct Niagara to arrange for interim storage, additional baling or compaction, long distance haulage to appropriate market outlets, or disposal of the Recyclable Materials. The Area Municipalities will be responsible for shipping, storage or operating costs incurred beyond those which will form part of Niagara's approved Annual Operating Budget.

In extreme cases, where the Area Municipalities deem it necessary, the Area Municipalities may direct Niagara to curtail its activities. If activities are so curtailed, the Area Municipalities and Niagara shall agree upon an adjustment of the contract and enact such adjustment accordingly, during the curtailment period.

- C. In the event that no reasonable alternate market outlet exists, the Area Municipalities shall determine the appropriate means of final disposition of the Recyclable Materials. The Area Municipalities will be responsible for the related disposition costs incurred beyond those which form part of Niagara's approved Annual Operating Budget.

XVIII Headings

- A. Headings of articles and sections hereof are inserted for a convenience of reference only and shall not affect the construction and interpretation of this Agreement.

XIX. Formalities

- A. It is agreed that this Agreement shall be read with such changes of gender, number, and corporate status as context may require.

XX. Further Assurances

- A. Each of the parties shall, from time to time, and at the request of the party requesting the same do all such further acts and things and execute and deliver such further instruments and documents as may be necessary or desirable to give effect to this Agreement.

IN WITNESS WHEREOF the parties have duly executed this Agreement by their proper authorized officers in that behalf as of the date first above written.

Per:

Abstract

Per:

Michael M. Dietsch - Mayor

Robert G. Howse - Clerk

Per:

Mary Hackett

SCHEDULE "A"

RECYCLABLE MATERIALS:

Newspaper
Magazines and Catalogues
Junk Mail
Household Fine Paper
Plastic Film (LDPE)

Clear Glass

Coloured Glass

Polycoat Containers
PET Plastic
HDPE Plastic
PP Plastic
PS Plastic

Aluminum Cans
- Aluminum Foil Products
- Steel Cans

Old Corrugated Cardboard
Boxboard