

AMENDED INTERLOCAL AGREEMENT TO ESTABLISH
A JOINT SOLID WASTE FACILITY FOR THE MUNICIPALITIES
OF CAMDEN, ROCKPORT, LINCOLNVILLE, and HOPE
AMENDED MARCH, 2002

WHEREAS, the parties to this Agreement have the duty to provide solid waste disposal facilities for domestic and commercial solid wastes generated within their limits under 38 M.R.S.A. § 1305(1); and

WHEREAS, the Town of Rockport now owns a parcel of land which is used for a solid waste disposal facility, said land being known as Jacob's Quarry and described in a deed from the Rockland-Rockport Lime Company, Inc., to the Town of Rockport by deed recorded at Book 533, Page 531, in the Knox County Registry of Deeds; and

WHEREAS, the Towns of Camden, Rockport, Lincolnville and Hope have, for quite some period of time, used Jacob's Quarry as a licensed transfer station for the transfer of "acceptable solid waste" to approved solid waste disposal facilities. Presently, the approved facility is the Penobscot Energy Recovery plant located in Orrington, Maine; and

WHEREAS, the Towns of Camden, Rockport, Lincolnville and Hope, together, have provided for the disposal of construction debris and for the recycling of "recyclables" at this facility; and

WHEREAS, the Towns of Camden, Rockport, Lincolnville and Hope have entered into a Joint Municipal Agreement for the purposes of the operation of a transfer station facility; and

WHEREAS, there is a remediation and closure program for solid waste landfills established by the D.E.P. The purpose of this program is to accomplish the prompt closure of certain solid waste landfills and to accomplish remediation activities to eliminate any threats to the environment.

WHEREAS, Jacob's Quarry has been used by the Towns of Camden, Rockport, Lincolnville and Hope for the deposit of construction debris generated within the borders of these four Towns. Jacob's Quarry is filled with water and the overflowing waters of Jacob's Quarry discharge via a brook into Lilly Pond.

WHEREAS, the Towns of Camden, Rockport, Lincolnville and Hope have entered into an Administrative Consent and Enforcement Agreement with the Department of Environmental Protection and the Attorney General of the State of Maine. That Consent Agreement provides for the elimination of leachate traveling from Jacob's Quarry to Lilly Pond, the application for a license to dispose of construction debris in Jacob's Quarry and the resolution of certain alleged D.E.P. violations. This

Administrative Consent Agreement and Enforcement Order also provides for the Four Towns to provide for a closure plan for Jacob's Quarry and to provide for the possible treatment of the waters in Jacob's Quarry in the Camden sewer treatment facility, provided that the Town of Camden authorizes such an agreement and such an agreement meets the approval of the Department of Environmental Protection; and

WHEREAS, the cost to comply with this Administrative Consent Agreement and Enforcement Order constitutes a considerable investment of the capital of the Towns of Camden, Rockport, Lincolnville and Hope; and

WHEREAS, the member municipalities, in order to effectively manage a transfer station, a recycling facility, and the possible licensing of Jacob's Quarry for the landfilling of construction debris require that the municipalities enter into a more formal agreement to provide for the operation of this facility and to better define the rights and obligations of the Towns of Camden, Rockport, Lincolnville and Hope, with respects to this facility; and

WHEREAS, the parties are authorized, pursuant to the Maine Interlocal Cooperation Act, Title 30-A M.R.S.A., Chapter 115, to contract and to organize pursuant to Title 38 M.R.S.A., Section 1304-B(5), a public waste disposal corporation under Title 13-B M.R.S.A., to own and operate such solid waste management facility; and

NOW, THEREFORE, the municipalities of Camden, Rockport, Lincolnville and Hope, for and in consideration of the mutual promises and agreements herein stated, do hereby promise and agree as follows:

PART 1. PURPOSE.

The purpose of this Agreement is to establish a public waste disposal corporation, pursuant to 38 M.R.S.A. § 1304-B(5) and Title 13-B, M.R.S.A. to provide for the planning, development, acquisition, operation, and closure of a cost-effective, environmentally sound, and reliable solid waste management and/or disposal facility and for the collection, transportation, storage, processing, salvaging and disposal of solid waste.

It is also the purpose of this public waste disposal corporation to enter into contracts with other member municipalities for the disposal of construction debris and "recyclables" at the site, and the power to enter into agreements with the State of Maine or any agency thereof to accept construction debris and "recyclables" at the site. Any Agreement for the acceptance of municipal solid waste,

other than from the member municipalities, must comply with all rules and regulations of the State of Maine, the United States of America, and must have the prior approval of the joint Board of Directors.

PART 2. DEFINITIONS.

2.1 Definitions.

As used in this Agreement:

(a) "Construction/demolition debris" means debris resulting from construction, remodeling, repair, and demolition of structures. It includes, but is not limited to, building materials, asphalt, wall board, pipes, metal conduits, mattresses, household furniture, fish nets, rope, hose, wire and cable, fencing, carpeting and underlay; it excludes asbestos and other special waste.

(b) "Dredge spoils" means earthen materials removed from beneath any surface water.

(c) "Inert fill" means clean soil material, rocks, bricks, and cured concrete, which are not mixed with other solid or liquid waste, and which are not derived from an ore mining activity.

(d) "Land clearing debris" means solid wastes resulting from the clearing of land and consisting solely of brush, stumps, soil material, and rocks.

(e) "Member municipalities" means those municipalities that are parties to this Agreement or that subsequently become parties to this Agreement and that appoint representative members of the Joint Board of Directors of the public waste disposal corporation.

(f) "Municipal solid waste disposal facility" means any waste facility used for the landfilling or the final placement of construction/demolition debris, dredge spoils, inert fill, land clearing debris, vegetative waste, wood waste and asbestos.

(g) "Municipal solid waste management facility" means any waste facility used for purposeful, systematic and unified control of the collection, storage, transportation, processing, salvaging

and disposal of construction/demolition debris, dredge spoils, inert fill, land clearing debris, vegetative waste, wood waste and asbestos.

(h) "Vegetative wastes" means wastes consisting of plant matter from farms, homes, plant nurseries, and greenhouses. These shall include plant stalks, hulls, leaves, and tree waste processed through a wood chipper.

(i) "Wood waste" means brush, stumps, lumber, bark, wood chips, shavings, slabs, edgings, slash, and sawdust, which are not mixed with other solid waste.

PART 3. ADMINISTRATION.

3.1 Waste Disposal Corporation.

The actions of the member municipalities pursuant to this Agreement shall be undertaken by and through a public waste disposal corporation incorporated by the Joint Board as representatives of the member municipalities under 38 M.R.S.A. § 1304-B(5) ("the Corporation")

3.2 Joint Board of Directors.

The directors of the Corporation shall be designated the "Joint Board." The Joint Board of Directors will be appointed by the municipal officers of the member municipalities. Each participating member municipality shall have two directors. Directors of each member municipality shall be entitled to the number of votes which shall be determined as follows: The percent that the total population, based upon the most recent U.S. Census of their municipality bears to the total population of all member municipalities, plus the percent that the total of the most recent State valuation of their municipality bears to the total valuation of all member municipalities. The population percentage and the valuation percentage will then be added together and divided by two to determine the number of votes that each Director shall have. In the event only one director or one alternate director is present at a meeting, that director may cast all votes allocated to the municipality. The term of each director and alternate director shall be three years, which term may be staggered in accordance with the bylaws of the corporation to be adopted upon incorporation.

To the extent possible, the Board of Directors shall be composed of two municipal officers for each of the four Towns, chosen by the Boards of Selectmen of each Town, to serve as Directors. If two municipal officers cannot be found to serve, then the Boards of Selectmen may designate other individuals with sufficient managerial, technical, financial or business experience to execute their duties effectively and efficiently.

Appointments shall be by vote of the municipal officers and attested to by municipal clerks. The municipal officers, by majority vote, may remove their appointed representatives during their terms for stated reasons. The appointed Directors shall keep the municipal officers of their municipalities informed of the financial and technical condition of the solid waste disposal facility.

The day-to-day operations of the solid waste facility may be run by an executive committee, if the Directors so choose. The executive committee shall be composed of the Town Manager of the Town of Camden, the Town Manager of the Town of Rockport, the Town Administrator of the Town of Lincolnville, a Selectman from the Town of Hope and the acting Director of Solid Waste.

The general supervision of the day-to-day affairs of the solid waste corporation may be delegated to the executive committee, and policy decisions shall be made by the Board of Directors. The Directors may, from time to time, adopt, establish and amend by-laws, consistent with the laws of the State of Maine, reasonable for their own convenience and the proper management of this solid waste facility. No member of the Board of Directors may be employed, for compensation, as an employee of this solid waste disposal facility or this public waste disposal corporation.

Upon the effective date of this Agreement, or as soon thereafter as possible, the Directors shall hold an organizational meeting to incorporate the public waste disposal corporation, elect officers, and perform all other actions necessary, appropriate or convenient to this Agreement.

3.3 Meetings.

(a) Joint Board meetings may be called by any Director.

(b) A quorum for any meeting shall consist of at least a majority of directors representing the member municipalities.

3.4 Powers.

The Joint Board shall have all necessary and incidental powers granted to directors of non-capital stock corporations under Title 13-B, M.R.S.A., subject to such limitations as are required by law, this Agreement and the bylaws of the public waste disposal corporation to be incorporated by the Directors.

PART 3-A. CONTRACTS.

In order to encourage and facilitate the financing and development of this solid waste facility, including but not limited to resource recovery and deposits of demolition debris, the Directors may recommend, by majority vote, that long-term contracts be entered into by and between this public waste disposal corporation and other municipalities for the acceptance, processing, salvaging and disposal of certain waste. Such contracts may be for a term of up to three years. If such contracts exceed three years, then the Directors shall obtain the approval of the municipal officers of each of the member municipalities, i.e., Camden, Rockport, Lincolnville and Hope, before entering into contracts longer than three years. The Board of Directors shall determine the fees to be charged to the municipalities for use of its facility.

PART 4. FINANCE.

4.1 Initial Capitalization.

The initial capitalization of the public waste disposal corporation, to be incorporated by the Directors, shall be funded by the transfer of all the assets of the real estate known as Jacob's Quarry and all of the assets and liabilities of the present transfer station operation at the Jacob's Quarry site and all funds deposited by the Towns of Camden, Rockport, Lincolnville and Hope, pursuant to the operation of the transfer station at the site, shall be the initial capital of the corporation. All rights and obligations described in a certain "Administrative Consent Agreement and Enforcement Order" with the Four Towns and the Attorney General of the State of Maine with respect to Jacob's Quarry shall also be transferred to this Public Disposal Corporation.

4.2 Apportionment.

The initial capitalization for each member municipality will be their budget share contributed to the Four Town Cooperative for the fiscal year 1992. Monies in this account will simply be transferred to the public waste disposal corporation. It is anticipated that the initial capitalization of this Public Waste Disposal Corporation will provide sufficient funds to complete Phase I of the leachate elimination program, the extension of sewer lines from their present location in Camden into the facility and to provide a closing plan. It is also anticipated that the initial capitalization will be sufficient to permit the acquisition of additional lands at the site so as to improve ingress and egress there. Completion of Phase I of the closure plan described in the Consent Agreement with the Department of Environmental Protection will require that this Corporation hire engineers, environmental consultants and attorneys to perform environmental tests, acquire data, design a plan and draft contracts, etc.

To the extent that the cost of such activities are not covered by grants and the initial capitalization, all costs incurred by this Corporation, including costs incurred for compliance with any administrative consent orders with the Department of Environmental Protection shall be paid for by appropriations from the member municipalities. Appropriations shall be allocated among member municipalities and shall be determined as follows: The percent that the total population, based upon the most recent U.S. Census of their municipality bears to the total population of all member municipalities, plus the percent that the total of the most recent State valuation of their municipality bears to the total valuation of all member municipalities. The population percentage and the valuation percentage will then be added together and divided by two to determine the share of each municipality for all operating expenses.

A municipality's share of indebtedness incurred by the Corporation shall be determined by adding its valuation and population percentage, and dividing by two as set forth above, to determine its share of any indebtedness of the Corporation. Each municipality's share of indebtedness of the Corporation shall be fixed as of the date the debt is authorized.

The Corporation shall have the assessment authority and shall use the assessment procedures set forth in Title 20-A M.R.S.A. § 1310 as amended, but no collection action shall be initiated until 90 days after the date of the municipality's Annual Town Meeting.

Appropriations from member municipalities shall be determined by the annual budget each year and such emergency expenditures that may be required from time to time.

In order to defray the cost of maintaining the Mid Coast Solid Waste Facility, and to defray the cost to comply with all laws and regulations pertaining to solid waste, the municipal officers of each member town shall jointly establish a user-fee schedule and any regulations necessary to implement such fees, that will result in a significant revenue source to help pay for costs associated with the operation, maintenance, reserve funds, debt repayment and cost of compliance for the solid waste facility located off Union Street in Rockport and for all costs associated with the municipalities' requirement to provide disposal services for domestic and commercial solid waste generated within each member municipality.

This fee schedule can include a pay-as-you-throw program and the imposition of a per-ton fee for the disposal of solid waste delivered by commercial haulers to the solid waste facility in Rockport. The fee schedule can include fees for all types of waste, including recyclable waste, construction debris, yard waste and any waste requiring segregation. The fee structure can be changed annually by the municipal officers or sooner if circumstances require such a fee change. No fee change can occur without 30 days advance notice to the public by newspaper advertisement. Unless otherwise stated, all fees shall be implemented the day after the vote of the municipal officers to approve or amend the fee schedule.

4.3 Financial Procedures.

(a) Budget. During the first year of activities hereunder, the Joint Board shall prepare a budget, determine recommended shares of costs and transmit the same to the member municipalities on or prior to May 1, 1994; thereafter, the budget and cost allocations shall be transmitted on or prior to January 1 of each year. This shall be

the assessment for debt service and operating expenses for each member municipality.

(b) Fiscal Year. The fiscal year shall be from July 1 to June 30th.

(c) Audit. The Board shall engage a qualified public accountant to conduct an annual audit of the corporation's accounts. The audit shall be conducted on the basis of auditing standards and procedures prescribed by the State Auditor for municipalities.

4.4 Finance.

The Corporation shall have the power through its Joint Board, to incur indebtedness for any purpose under Section 1304-B of Title 38 of the Maine Revised Statutes, as amended, in a principal amount not to exceed at any time outstanding Nine Hundred Fifty Thousand Dollars (\$950,000). The full faith and credit of each member municipality shall be pledged to the payment of such indebtedness and the periodic assessments necessary to pay installments of principal and interest thereon, and further the Corporation shall cause each such municipality to levy upon and raise from the taxable estates within each municipality by general taxes amounts required to pay each municipality's share of the indebtedness of the Corporation pursuant to Section 1304-B of Title 38, Maine Revised Statutes, as amended, which share shall be determined for each municipality in accordance with the appropriation assessment procedures set forth in Part 4.2 of the Agreement, as amended.

PART 5. PROPERTY.

5.1 Title.

The corporation shall hold title to all real and personal property acquired pursuant to the purposes for which it is established, subject to the following:

(a) In the event a site for any facility is acquired through the exercise of the power of eminent domain by any one of the member municipalities, then the municipality taking such property may retain title to the property taken and lease the property to the corporation, or may transfer title to the corporation. If the municipality decides to lease such property, the term of the lease shall be the term of this

Agreement or the useful life of the site as a solid waste disposal facility, whichever is shorter. The lessor municipality may elect to receive in-kind contributions and/or credit for the cost of acquisition. If the lessor municipality does not so elect, the other municipalities shall pay sums equivalent to the cost of the taking reduced by the lessor municipality's proportionate share, or such other method as the Joint Board shall prescribe.

5.2 Improvements.

The corporation shall develop and construct all improvements, keep the same in good repair, and insure all properties owned or leased by it. The corporation may lease any such property, or any portions thereof, to persons other than the parties to this Agreement.

5.3 Distribution of Assets.

Assets of the corporation remaining at the time of termination of this Agreement, or liquidation of the corporation, whichever is earlier, shall be divided among the municipalities in accordance with their proportional payments or contributions to the corporation during the full term of this Agreement, subject to the following:

(a) Upon termination of this Agreement, and after final closure of the solid waste disposal facility, all real property located within the Town of Rockport shall be offered back to the Town of Rockport without cost. The Town of Rockport is free to accept all of this real estate or any portion thereof. If and in the event the Town of Rockport decides not to accept the free transfer of this real estate, or if Rockport decides to accept only a portion of this real estate, then this real estate, or any remaining portion thereof shall be sold or transferred as set forth below.

(b) The real estate not accepted by Rockport and all personal property acquired by the corporation shall be offered for sale to the municipalities at the market value of such property. Property not purchased by the municipalities shall be sold at public auction and the proceeds thereof shall be distributed in accordance with the distribution procedure described above.

(c) Upon termination of any lease under Section 5.1(a) of this Agreement, member municipalities shall retain a claim against the lessor municipality for a share of the proceeds of any resale of such land, or, should the lessor municipality elect to retain land for other public or non-public uses, it shall pay the other municipalities for their proportionate interest in the land as appraised by a qualified appraiser or appraisers accepted by the corporation according to a payment schedule as established by some readily available third party chosen by the Joint Board.

PART 6. AGENCIES AND CONSULTANTS.

6.1 Consulting Services.

The Joint Board may employ such agencies or consultants as it deems necessary to accomplish the purposes of this Agreement and to conduct the activities of the corporation.

Staff time may be contributed without compensation to the corporation by the member municipalities. Persons performing work under such contribution arrangements shall be under the supervision of the Joint Board or its designated supervisory personnel, but shall otherwise retain the status of an employee of the contributing municipality.

PART 7. REMEDIES.

7.1 Default.

A municipality shall be deemed to be in default of this Agreement if it fails to appropriate or make timely payment of its share of costs, or if it fails to perform or comply with any of the terms, provisions, or conditions of this Agreement. The Joint Board shall give any member municipality written notice of default, specifying the acts or omissions which constitute the default. The municipality so notified shall have 30 days to remedy the default. If the member municipality fails to remedy the default within the specified time period, then the Joint Board shall have the power to submit the question of default to the arbitration panel established pursuant to Section 7.2 below.

7.2 Arbitration.

In the event the Joint Board and/or any party to the notice of default elects to submit a question of default to arbitration, the following provisions shall govern:

(a) The Joint Board and the party given notice of default shall each select a representative and the two persons so selected shall choose a third neutral arbitrator; the three persons so selected shall constitute the arbitration board. If either party does not select its representative, or if the two representatives fail to agree upon, select, and name a third neutral person within fourteen (14) days, either the Joint Board or the party given notice of default may request the American Arbitration Association to utilize its procedures to make any such selection.

(b) The arbitration board's jurisdiction shall be limited to the interpretation or application of the terms of this Agreement.

(c) As soon as it is feasible, after selection of the third neutral person, the three arbitrators shall meet with the parties or their representatives, or both, either jointly or separately; make inquiries and investigations; hold hearings; or take such other steps as they deem appropriate. Hearings shall be informal, and rules of evidence prevailing in judicial proceedings shall not be binding.

(d) The arbitration board shall, by majority vote, make written findings and render a decision which, with the exception of fraud, shall be binding upon the Joint Board and the party given notice of default. In the event the arbitration board finds the breaching party to have made a withdrawal, the remedy shall be as provided in Section 7.3 below.

(e) The cost of arbitration proceedings shall be shared equally by the Joint Board and the party given notice of default.

7.3 Withdrawal.

Any party may withdraw from this Agreement subject to the following:

(a) The withdrawing party shall give written notice of its intent to withdraw from this Agreement to the Joint Board 180 days prior to the date of the proposed withdrawal. The effective date of such withdrawal shall be 180 days from the date of such written notice. The member municipality shall make any payments due during such period.

(b) In the event the withdrawing party fails to comply with Subsection (a) above, it shall pay to the Joint Board an amount equal to its share of costs due through the following year.

(c) The withdrawing party shall pay to the corporation the entire amount of its share of any outstanding debts of the corporation and any outstanding lease payments due to any lessor municipality.

7.4 Indemnification in Case of Liability to Third Parties.

The municipalities agree to indemnify each other for any liability which a party or parties may incur over and above any applicable insurance coverage as a result of a suit or settlement against the corporation arising out of activities performed by it for the benefit of the member municipalities. The corporation agrees to indemnify any municipality that takes a site proposed for the solid waste facility by eminent domain and thereafter leases such site to the corporation, in an amount necessary to protect the lessor municipality from any liability for the costs of any removal, clean-up, or closure of the solid waste disposal facility, pursuant to State and federal laws.

PART 8. ADOPTION, AMENDMENT.

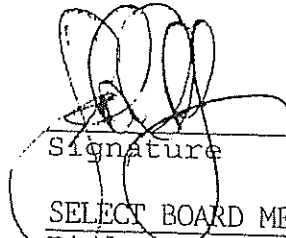
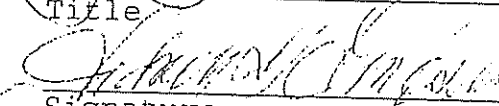
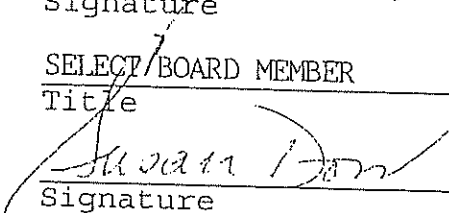
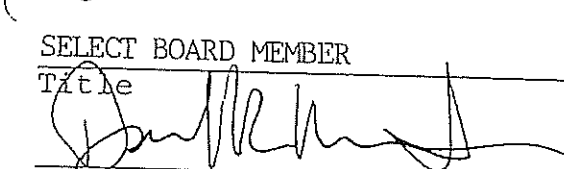
8.1 Duration.

This Agreement shall continue in force until either of the following, whichever is later, occurs:

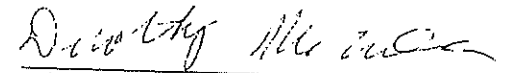
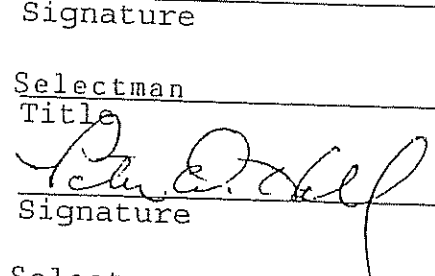
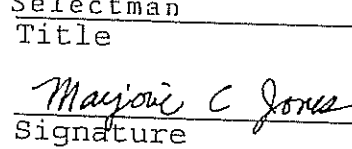
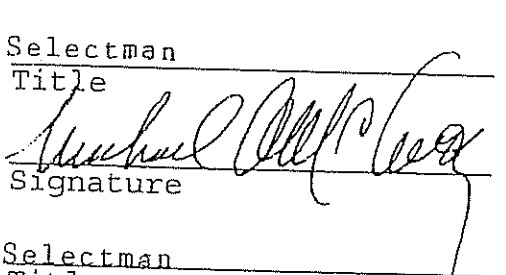
(a) All parties withdraw or mutually agree to dissolve the corporation;

(b) Any and all solid waste disposal facilities established and operated by or on behalf of the corporation are properly closed in accordance

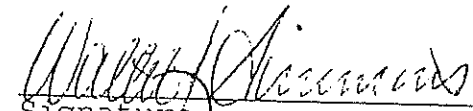
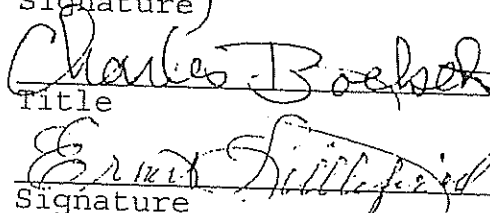
By the Town of Camden


Signature
SELECT BOARD MEMBER
Title

Signature
SELECT BOARD MEMBER
Title

Signature
SELECT BOARD MEMBER
Title

Signature
SELECT BOARD MEMBER
Title


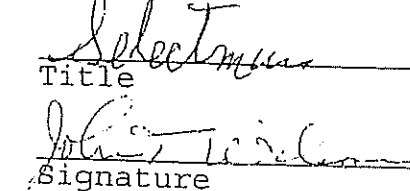
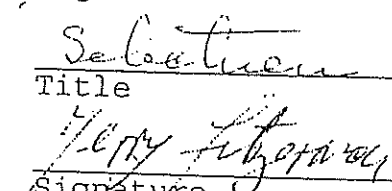
By the Town of Rockport
(Continued)


Signature
Selectman
Title

Signature
Selectman
Title

Signature
Selectman
Title

Signature
Selectman
Title

By the Town of Lincolnville


Signature
Charles Boesher
Title

Signature
V.C.
Title
Signature
Title

By the Town of Hope


Signature
Selectman
Title

Signature
Selectman
Title

Signature
1st Selectman
Title

with applicable state and federal laws and regulations.

8.2 Adoption.

This Agreement shall not take effect with respect to the signing municipalities unless the following occurs:

(a) It has been approved by the legislative bodies of all member municipalities, authorizing each of their respective municipal officers to enter into this Agreement, and the majority of the municipal officers thereof have affixed their signatures below; and

(b) It has been approved by the State or regional agency with constitutional or statutory powers of control over the services or facilities that are the subject of this Agreement; and

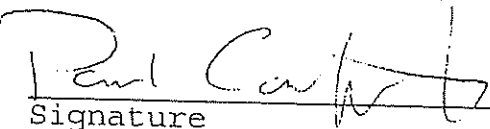
(c) It has been filed with the Clerk of each of the member municipalities and with the Office of the Maine Secretary of State.

8.3 Amendment.

This Agreement may be amended by the parties in the same manner as that provided in Section 8.2 above, provided however, that additional parties may be admitted to this Agreement if 2/3 of the Joint Board votes to admit such additional parties, and the legislative bodies of the additional parties accept, by appropriate legislative action, the terms and conditions placed upon such entry by the Joint Board.

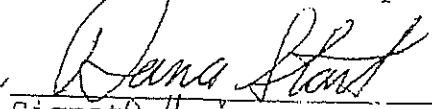
IN WITNESS WHEREOF, the duly authorized officers of the member municipalities hereof have caused this Interlocal Agreement to Establish a Solid Waste Management Facility, to be executed this _____ day of _____, 2002.

By the Town of Camden


Signature

SELECT BOARD MEMBER
Title

By the Town of Rockport


Signature

SELECTMAN
Title

By the Town of Lincolnville

By the Town of Hope
(Continued)

Signature

William L. Campbell

Signature

Title

selectmen
~~*W. L. Campbell*~~

Title

Signature

Signature

Title

Title

APPROVED:

Department of Environmental Protection

State Planning Office

Regional Planning Commission

H:\00190\MCSWC\Agreement\Amended Interlocal Agree 3-6-02