

ORDINANCE NO. 8485-83

AN ORDINANCE
APPROVING AND AUTHORIZING THE EXECUTION OF
THE INTERGOVERNMENTAL AGREEMENT REGARDING SOLID WASTE DISPOSAL

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF
URBANA, ILLINOIS, as follows:

Section 1. That the Solid Waste Disposal Agreement by
and among the City of Champaign, Illinois, the City of Urbana,
Illinois, and the Champaign-Urbana Solid Waste Disposal System,
a copy of which Agreement is attached hereto and incorporated
herein by reference, be and the same is hereby approved.

Section 2. That the Mayor of the City of Urbana,
Illinois, be and the same is hereby authorized to execute and
deliver and the City Clerk of the City of Urbana, Illinois, be
and the same is hereby authorized to attest to said execution of
said Agreement for and on behalf of the City of Urbana,
Illinois.

This Ordinance is hereby passed by the affirmative
vote, the "ayes" and "nays" being called, of a majority of the
members of the Council of the City of Urbana, Illinois, at a
regular meeting of said Council.

PASSED by the City Council this 20th day of May,
1985.

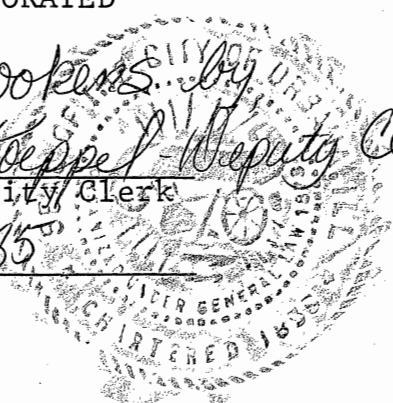
Ruth S. Brookens by
Ruth S. Brookens, City Clerk
Walter K. Koessel Deputy Clerk

APPROVED by the Mayor this 28th day of May,
1985.

Jeffrey T. Markland
Jeffrey T. Markland, Mayor

THIS IS THE ATTACHMENT WHICH IS REFERRED TO IN
ORDINANCE NO. 8485-83 AND IS INCORPORATED
THEREIN BY REFERENCE.

Ruth S. Brookens
Deborah K. Koeppe Deputy Clerk
Ruth S. Brookens, City Clerk
May 23, 1985
Date



SOLID WASTE DISPOSAL AGREEMENT

by and among the

CITY OF CHAMPAIGN, ILLINOIS

and the

CITY OF URBANA, ILLINOIS

and the

**CHAMPAIGN-URBANA SOLID WASTE DISPOSAL
SYSTEM, A CONTRACTUAL ASSOCIATION OF
CHAMPAIGN AND URBANA, ILLINOIS**

Dated as of May 22, 1985

**This Agreement Prepared By:
KURT P. FROEHLICH
EVANS & FROEHLICH
44 MAIN STREET
P.O. BOX 737
CHAMPAIGN, ILLINOIS 61820**

SOLID WASTE DISPOSAL AGREEMENT

This Solid Waste Disposal Agreement is made as of the twenty-second day of May, 1985 by and among the City of Champaign, Illinois ("Champaign"), the City of Urbana, Illinois ("Urbana") and the Champaign-Urbana Solid Waste Disposal System (the "System").

W I T N E S S E T H:

WHEREAS, Champaign and Urbana desire to engage jointly in the acquisition, planning and development of future solid waste disposal facilities and in providing for the continued maintenance of previous landfill sites operated and maintained by and through the System; and

WHEREAS, Champaign and Urbana are home rule units as provided in the 1970 Illinois Constitution (Art. VII, Sec. 6); and

WHEREAS, the 1970 Illinois Constitution (Art. VII, Sec. 10) and the Illinois Revised Statutes, 1983, Ch. 127, Sec. 741-749, as supplemented and amended, provide authority for intergovernmental cooperation as contemplated by this Agreement; and

WHEREAS, the System, a contractual association of Champaign and Urbana under and pursuant to the hereinafter described System Agreement has operated and maintained solid waste disposal facilities serving Champaign and Urbana.

NOW, THEREFORE, in consideration of the representations, promises, covenants, agreements and undertakings set forth in this Agreement, Champaign, Urbana and the System hereby agree, as follows:

ARTICLE I

Definitions and Representations

Section 1.1. Definitions. Unless the context hereof clearly indicates otherwise, certain words and terms used herein shall have the meanings given them above and otherwise in this Agreement, and in this Section 1.1, as follows:

"Agreement" means this Solid Waste Disposal Agreement, as supplemented and amended from time to time.

"Allocation of Costs Ratio" means a fraction, the numerator of which is the population of each city and the denominator of which is the total population of the two cities, based upon the most current census data at the time such fraction is determined.

"EPA" means the Environmental Protection Agency of the United States or of the State of Illinois, or other agency having jurisdiction or authority in connection with environmental and other operational matters, including permits, in respect of landfill sites, and its or their respective successors and assigns from time to time.

"Future Solid Waste Disposal Facilities" means sanitary landfills, transfer stations, energy conversion facilities or other means of disposing of solid waste beginning at such time as the useful life of the Ten Acre Landfill Site has been exhausted, consistent with the long term disposal technology selected in the Long Range Solid Waste Plan, to be prepared and approved by the Intergovernmental Task Force on Solid Waste Management of Champaign, Urbana and Champaign County, Illinois.

"Governing Body" means the respective City Councils of Champaign and Urbana and the Management Group of the System.

"Proposed Landfill Site" means the landfill site to be acquired, owned, operated and maintained as set forth in Article IV of this Agreement.

"Proposed Transfer Station Site" means the solid waste disposal transfer site to be acquired, owned, operated and maintained as set forth in Article V of this Agreement.

"Seventeen Acre Landfill Site" means the landfill site of such approximate size, owned, operated and/or maintained by the System under and pursuant to the System Agreement.

"System Agreement" means the Champaign-Urbana Solid Waste Disposal System Agreement, as supplemented and amended, by and between Champaign and Urbana, a contractual association between Champaign and Urbana, pursuant to which, among other things, the System was created and established and the Management Group, as therein defined, was created and established as the System's Governing Body.

"Ten Acre Landfill Site" means the landfill site of such approximate size, owned by Urbana, operated and/or maintained by the System under and pursuant to the System Agreement and this Agreement, described on Exhibit A hereto.

"Twenty-four Acre Landfill Site" means the landfill site of such approximate size, owned by Urbana, operated and/or maintained by the System under and pursuant to the System Agreement.

Section 1.2. Certain Words Used Herein. The words "hereof," "herein," "hereunder," and other words of similar import refer to this Agreement as a whole and not solely to the particular portion thereof in which any such word is used. The defined terms used herein include both singular and plural. Whenever used herein, any pronoun shall be deemed to include both singular and plural and to cover all genders.

Section 1.3. References to Articles, Etc. References to articles, sections, and other subdivisions of this Agreement are to the designated articles, sections, and other subdivisions of this Agreement as originally executed.

Section 1.4. Headings. The headings of this Agreement are for convenience only and shall not define or limit the provisions hereof.

Section 1.5. Representations. Champaign, Urbana and the System make the following representations concerning this Agreement:

(a) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the terms and conditions of this Agreement, conflicts with or results in a breach of any of the terms, conditions or provisions of any agreement or instrument to which Champaign, Urbana or the System are now respec-

tively a party or by which they are respectively bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien whatsoever upon any of their respective properties under the terms of any such instrument or agreement (other than this Agreement).

(b) The execution of this Agreement, and performance hereunder, has been duly authorized by each of the parties hereto by appropriate and binding action of each of their respective Governing Bodies.

(c) No approval, consent or withholding of objection on the part of any regulatory body, federal, state or local (not previously obtained, other than the permits described in Section 2.1 and Article IV hereof) is required in connection with the execution or delivery of or compliance by Champaign, Urbana or the System with the terms and provisions and full and timely performance of this Agreement, and the consummation and full and timely performance of the terms, conditions and transactions set forth herein. Champaign, Urbana and the System will comply with the provisions of any and all applicable state, local or federal laws and any rules and related regulations of any regulatory authority or agency, including the EPA.

(d) There are no actions at law or in equity pending or threatened against Champaign, Urbana or the System, and there are no proceedings of any kind or nature, at law or in equity or before or by any federal, state or local governmental administrative authority or agency which are pending or, to the knowledge of Champaign, Urbana or the System, threatened, other than permit proceedings described in Section 2.1 and Article IV hereof, which affect or question their respective rights to own and operate their respective properties or conduct their respective businesses in the manner in which the same are now operated and conducted, or to do or perform any of the acts and things contemplated to be done and performed by them respectively under this Agreement.

[End of Article I]

ARTICLE II

Joint Use of Ten Acre Landfill Site

Section 2.1. Joint Use and Permit. Solid waste of a type that may be disposed of in accordance with the EPA or other operational permit in effect from time to time in connection with the Ten Acre Landfill Site, having its source or origination in or from or from outside of the corporate limits of Champaign and Urbana, as the System shall determine, may be disposed of in the Ten Acre Landfill Site. Urbana shall diligently and continuously proceed on a best efforts basis to obtain all applicable permits for use of the Ten Acre Landfill site for landfill purposes consistent with this Agreement. Urbana makes no representation, express or implied, that such permits in fact may be obtained.

Section 2.2. System Operation and Maintenance. In accordance with and pursuant to the System Agreement and this Agreement, the System shall operate and maintain the Ten Acre Landfill Site, including the application of its usual and regular rate and operating policies previously used. The foregoing shall not be a limit on the authority of the System under the System Agreement to determine, set or revise any applicable rate structure.

Section 2.3. Development Costs. Urbana has paid or otherwise incurred development fees and costs (including but not limited to engineering fees and related costs in connection with EPA permits necessary and sufficient to use the Ten Acre Landfill Site for landfill purposes as contemplated by this Agreement) with respect to the Ten Acre Landfill Site. The System shall assume, and does hereby assume and agree to pay and to reimburse Urbana for, the development fees and costs concerning the Ten Acre Landfill Site as described in the preceding sentence. To give full effect to the foregoing provisions of this Section 2.3, Champaign, Urbana and the System hereby agree to execute and deliver, and hereby authorize the Mayors and Clerks of Champaign and Urbana, the Chairman of the System, and all other appropriate officers thereof, such notes, bonds, loan agreements or other

agreements and evidences of indebtedness as shall be necessary or desirable, including to effect the refinancing of any existing debt incurred by Urbana in that connection.

Section 2.4. Use Adjustment Payment. Recognizing that the Ten Acre Landfill Site will have an enhanced value by reason of its permitting as a landfill site and that Urbana as the owner thereof should be compensated for such enhancement, Champaign shall pay to Urbana a use adjustment payment as provided for in this Section 2.4. Such use adjustment payment shall be in an amount equal to the number of cubic yards of solid waste disposed of at the Ten Acre Landfill Site multiplied by the Allocation of Costs Ratio (utilizing only the population of Champaign in the numerator thereof) and multiplied by \$.39 per cubic yard. The determination of such use adjustment payment shall be on the basis of a calendar month, or such other accounting frequency as shall be in effect at the time, which shall be immediately due and payable within 30 days of the determination thereof.

[End of Article II]

ARTICLE III

Escrow Fund

Section 3.1. Landfill Site Long Term Maintenance. The Ten, Seventeen and Twenty-four Acre Landfill Sites are situated within the corporate limits of Urbana; and existing EPA permits for such sites have been issued or have been applied for. Upon the exhaustion of the Ten, Seventeen and Twenty-four Acre Landfill Sites, expenses of long term care and maintenance will be incurred. Changing EPA regulation in connection with such long term care and maintenance make preparation for such expenses difficult, but it is still necessary. The purpose of this Article III is to create and establish an escrow fund, and to pledge the moneys in such fund, to pay the costs of such long term maintenance.

Section 3.2. Landfill Site Long Term Maintenance Escrow Fund. There be and is hereby created and established a Landfill Site Long Term Maintenance Escrow Fund (the "Escrow Fund"), to be funded and maintained by the System in the manner and for the purposes set forth in this Article III. In accordance with EPA regulations and sound engineering principles and practices, but in any event in the System's reasonable discretion, including with a reasonable view to the availability of moneys for such purposes and the reasonableness of the rates in effect at the time and from time to time for use of the System's facilities for solid waste disposal, the System shall pay into the Escrow Fund at the times and in the manner as the System shall determine moneys sufficient, together with reasonably anticipated investment proceeds thereof, which are also to be paid into the Escrow Fund, to pay such long term maintenance expenses of the Ten, Seventeen and Twenty-four Acre Landfill Sites. The moneys in the Escrow Fund from time to time be and they are hereby pledged for such purposes. The System may borrow for its authorized purposes

moneys in the Escrow Fund subject to having prior thereto made reasonable provisions for the repayment thereof. In the event moneys in the Escrow Fund are insufficient for such purposes, the System, if existing at the time of disbursal or application of such funds for their intended purposes, shall pay or cause to be paid the deficiencies in that connection, and if the System is not existing or is unable to pay or cause to be paid such deficiencies then Champaign and Urbana shall pay such deficiencies in an amount equal to the costs thereof times the Allocation of Costs Ratio. In the event there are any excess moneys in the Escrow Fund after payment of all costs and expenses for which the Escrow Fund was created and established, such excess moneys shall be paid to Champaign and Urbana according to the Allocation of Costs Ratio.

[End of Article III]

ARTICLE IV

Proposed Landfill Site Option(s)

Section 4.1. Direction to Obtain Landfill Site Option(s); Costs. The System be and is hereby directed to obtain in its name and in the names of Champaign and Urbana, jointly and severally, one or more options for the purpose of the development, including the related permitting, of a new landfill site for the disposal of solid waste, such site being the Proposed Landfill Site as defined in Section 1.1 hereof. The costs of obtaining such option(s), together with preliminary geological and engineering studies, as hereinafter provided in this Section 4.1, shall be initially paid by the System subject to reimbursement therefor upon demand by the System according to the Allocation of Costs Ratio. The System (or Champaign or Urbana if the System does not act, but not subject to reimbursement or payment rights as set forth in the preceding sentence) shall engage in such preliminary geological and engineering studies as may be reasonably necessary to determine the usefulness of such optioned site or sites for their intended purposes. The foregoing shall not foreclose or limit in any way the right of Champaign or Urbana to seek or obtain options for the same or other purposes, and not subject to this Agreement.

Section 4.2. Landfill Site Option Terms. The option(s) to be obtained, as described in Section 4.1 above, shall have terms consistent with their objects and purposes under this Agreement, including as follows:

(a) The option terms shall be from the date or dates thereof to a date or dates not earlier than March 31, 1986.

(b) Subject to appropriate provisions to compensate the optionor(s) for damages related to any preliminary work, including appraisals and exploratory and preliminary geological and engineering studies and surveys, such option(s) shall allow the System, Champaign and Urbana, jointly and severally, to perform such preliminary work.

(c) Such option(s) shall be to the System, Champaign and Urbana, jointly and severally.

(d) Such option(s) shall provide for execution thereof, if at all, prior to December 6, 1985 only by the System or by Champaign and Urbana jointly; and from and after December 6, 1985 to the termination thereof by either Champaign or Urbana, on the basis of the first to exercise.

[End of Article IV]

ARTICLE V

Proposed Transfer Station Site Option(s)

Section 5.1. Direction to Obtain Transfer Station Site Option(s); Costs. The System be and is hereby directed to obtain in its name and in the names of Champaign and Urbana, jointly and severally, one or more options for the purpose of the development, including the related permitting, of a Proposed Transfer Station Site for the disposal of solid waste, such site being the Proposed Transfer Station Site as defined in Section 1.1 hereof. The costs of obtaining such option(s), together with preliminary engineering and feasibility studies, as hereinafter provided in this Section 5.1, shall be initially paid by the System subject to reimbursement therefor upon demand by the System according to the Allocation of Costs Ratio. The System (or Champaign or Urbana if the System does not act, but not subject to reimbursement or payment rights as set forth in the preceding sentence) shall engage in such preliminary engineering and feasibility studies as may be reasonably necessary to determine the appropriateness of such optioned site or sites for their intended purposes. The foregoing shall not foreclose or limit in any way the right of Champaign or Urbana to seek or obtain options, whether or not the System is simultaneously so acting, for the same or other purposes, and not subject to this Agreement.

Section 5.2. Proposed Transfer Station Site Option Terms. The option(s) to be obtained, as described in Section 5.1 above, shall have terms consistent with their objects and purposes under this Agreement, including as follows:

(a) The option terms shall be from the date or dates thereof to a date or dates not earlier than March 31, 1986.

(b) Subject to appropriate provisions to compensate the optionor(s) for damages related to any preliminary work, including appraisals and exploratory and preliminary engineering and feasibility studies and surveys, such option(s) shall allow the System, Champaign and Urbana, jointly and severally, to perform such preliminary work.

(c) Such option(s) shall be to the System, Champaign and Urbana, jointly and severally.

(d) Such option(s) shall provide for execution thereof, if at all, prior to December 6, 1985 only by the System or by Champaign and Urbana jointly; and from and after December 6, 1985 to the termination thereof by either Champaign or Urbana, on the basis of the first to exercise.

[End of Article V]

ARTICLE VI

Miscellaneous Terms and Provisions

Section 6.1. Term. If, as and when duly executed by Champaign, Urbana and the System, this Agreement shall be effective from and after May 22, 1985 to and including June 1, 1986; provided, however, that in the event that Urbana is not able to obtain the operational EPA or other applicable permits for the Ten Acre Landfill Site as contemplated by Section 2.1 and Article IV of this Agreement on or before June 20, 1985, then this Agreement shall be null and void as of such date, subject in any event to the right of Urbana to be reimbursed for its costs and expenses in connection with development of the Ten Acre Landfill Site, as set forth in Section 2.3 hereof. Provided, however, this Agreement shall be automatically extended from June 1, 1986 until exhaustion of the Ten Acre Landfill Site if, and only if, Champaign and Urbana on or before December 6, 1985 have executed a development agreement to finance and develop Future Solid Waste Disposal Facilities. Such development agreement, among other things, shall identify the proposed technology and nature of the facilities to be employed; identify the actual parcel of land, in connection with which appropriate options or other contracts for acquisition shall have been entered into, on which such facilities are to be developed and operated; specifies the agency which shall operate and maintain such facilities and identifies the means by which such facilities shall be financed, operated and maintained. The selection of the proposed technology and the nature of the Future Solid Waste Disposal Facilities shall be consistent with the findings of the Long Range Solid Waste Plan hereinabove mentioned.

Section 6.2. Agreements and Binding Effect. This Agreement shall be binding upon Champaign, Urbana and the System, and their respective successors and assigns, according to its tenor and import. When any term or provision of this Agreement directs that any party hereto perform or undertake a particular action, such party hereby covenants and agrees to timely and fully perform. Where a party is not specifically identified with

respect to any such provision, it is hereby understood and agreed that first, the System, second, Champaign and Urbana, jointly, and, third, Champaign and Urbana, severally, shall assume the performance or undertaking in connection therewith.

Section 6.3. Amendments. This Agreement may be amended from time to time, but only in writing duly approved by the City Councils of Champaign and Urbana and by the System's Management Group.

Section 6.4. Instruments of Further Assurance. Each of the parties hereto covenants and agrees that each will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such agreements, ordinances and resolutions supplemental hereto and such further acts, instruments, pledges and transfers as may be reasonably required for the better assuring, transferring, conveying, pledging, assigning and confirming unto the appropriate parties hereto all and singular the rights and revenues covenanted, agreed and pledged hereby; and covenants and agrees that, except as in this Agreement provided, each has not and will not assign, pledge, encumber or otherwise dispose of any part of the income and revenues herein described or of their respective rights under this Agreement. Without any other direction than provided in this Agreement, Champaign, Urbana and the System hereby agree to duly authorize and direct each of its appropriate officers, attorneys and employees to timely and fully effect the objects and purposes of this Agreement, according to its tenor and import.

Section 6.5. Limitation of Rights. With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Agreement is intended or shall be construed to give to any person other than the parties hereto any legal or equitable right, remedy or claim under or in respect to this Agreement, any terms, agreements, covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto as herein provided and not otherwise.

Section 6.6. Severability. If any provision of this Agreement shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case or in all cases because it conflicts with any other provision or provisions hereof or any Constitution or statute or rule of law or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstances, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or sections in this Agreement contained shall not affect the remaining portions of this Agreement, or any other part hereof.

Section 6.7. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 6.8. Laws Governing Agreement. The effect and meanings of this Agreement and the rights of all parties hereunder shall be governed by, and construed according to, the laws of the State of Illinois.

[End of Article X]

IN WITNESS WHEREOF, the City of Champaign, Illinois and the City of Urbana, Illinois have caused this Agreement to be duly executed by their respective Mayors in their respective municipal names and their respective seals to be impressed hereon and attested by their respective City Clerks, and the Champaign-Urbana Solid Waste Disposal System has caused this Agreement to be executed by its Chairman and attested by its Vice-Chairman, all as of the date first above written.

CITY OF CHAMPAIGN, ILLINOIS

(SEAL)

By _____
MAYOR

ATTEST:

By _____
CITY CLERK

CITY OF URBANA, ILLINOIS

(SEAL)

By _____
MAYOR

ATTEST:

By _____
CITY CLERK

CHAMPAIGN-URBANA SOLID WASTE
DISPOSAL SYSTEM

By _____
CHAIRMAN

ATTEST:

By _____
VICE-CHAIRMAN

EXHIBIT A TO SOLID WASTE DISPOSAL AGREEMENT
DATED AS OF MAY 22, 1985 BY AND AMONG
CHAMPAIGN, URBANA AND THE SYSTEM

Ten Acre Landfill Site

Beginning at the Northeast corner of the Northeast Quarter of the Southeast Quarter of Section 9, Township 19 North, Range 9 East of the Third Principal Meridian, Champaign County, Illinois said point also being the Northeast corner of Lot 5 of the JACOB M. SMITH ESTATE SUBDIVISION of part of the Southeast Quarter of said Section 9; thence S 89° 35' 23" W along the North line of the Southeast Quarter of said Section 9, said line also being the North line of Lots 5 and 6 of said JACOB M. SMITH ESTATE SUBDIVISION, 1449.13 feet to the Northwest corner of Lot 6 of said JACOB M. SMITH ESTATE SUBDIVISION; thence S 00° 49' 32" E along the West line of Lot 6 of said JACOB M. SMITH ESTATE SUBDIVISION, 627.00 feet to the Northeast corner of BUTZOW INDUSTRIAL SUBDIVISION; thence N 66° 07' 40" E, 1574.78 feet, more or less, to the place of beginning all as shown on the accompanying plat of survey, said tract containing 10.43 acres, more or less, all situated in Champaign County, Illinois.