

ORDINANCE NO. 9293-61

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH CHAMPAIGN COUNTY REGARDING THE INTERGOVERNMENTAL SOLID WASTE DISPOSAL ASSOCIATION

WHEREAS, the City of Champaign ("Champaign"), the City of Urbana ("Urbana") and the County of Champaign ("County") entered into a Revised Agreement and General Plan for Development of Solid Waste Disposal Facilities and Programs and the Creation of the Intergovernmental Solid Waste Disposal Association ("Association Agreement"); and

WHEREAS, Champaign, Urbana, and the County entered into a Second Addendum to the Association Agreement which provided for the payment or release of various financial obligations and the suspension of certain provisions of the Association Agreement until December 31, 1992; and

WHEREAS, Champaign has passed and approved Council Bill No. 92-329 entitled "A Resolution Withdrawing From Membership In The Intergovernmental Solid Waste Disposal Association" which provides that the City of Champaign withdraws from the Intergovernmental Solid Waste Disposal Association (Association) effective December 31, 1992; and

WHEREAS, pursuant to Section 7.6 of the Association Agreement Champaign shall no longer be a Member of the Association effective December 31, 1992; and

WHEREAS, Urbana and the County believe it is desirable to meet to discuss areas of continued cooperation regarding solid waste management and the future of the Association; and

WHEREAS, it is desirable and in the best interests of the City of Urbana, Illinois to enter into an agreement with Champaign County regarding the Intergovernmental Solid Waste Disposal Association; and

WHEREAS, a written copy of such an agreement entitled "AN AGREEMENT BETWEEN THE CITY OF URBANA AND CHAMPAIGN COUNTY REGARDING REVISIONS TO THE REVISED AGREEMENT AND GENERAL PLAN FOR DEVELOPMENT OF SOLID WASTE DISPOSAL FACILITIES AND PROGRAMS AND THE CREATION OF THE INTERGOVERNMENTAL SOLID WASTE DISPOSAL ASSOCIATION (THIRD ADDENDUM)" has been presented to and is now before this meeting.

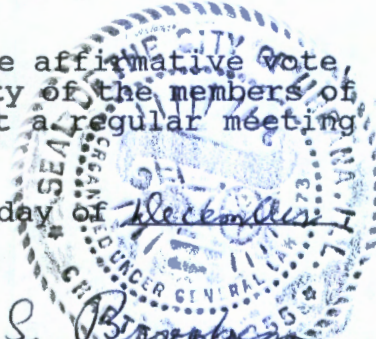
NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1. That the Council hereby approves the City entering into an agreement with with Champaign County regarding the Intergovernmental Solid Waste Disposal Association.

Section 2. That the Mayor is hereby authorized to execute and deliver such an agreement on behalf of the City. The agreement shall be in substantially the form of the Agreement which is before this Council, a copy of which is attached hereto and incorporated herein. The City Clerk is authorized to attest to such execution thereof.

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 21st day of December, 1992.

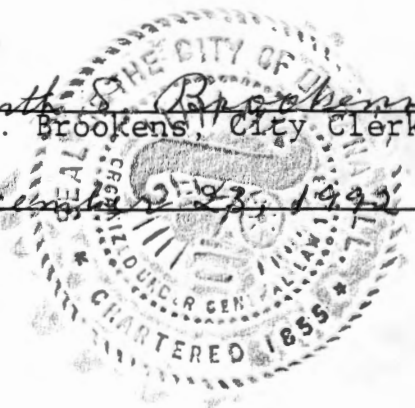
A circular seal of the City of Urbana, Illinois, featuring a central emblem and the text "SEAL OF THE CITY OF URBANA, ILLINOIS" around the perimeter.
Ruth S. Brookens
Ruth S. Brookens, City Clerk

APPROVED by the Mayor this 21st day of December, 1992.

Jeffrey T. Markland
Jeffrey T. Markland, Mayor

THIS IS THE ATTACHMENT WHICH IS REFERRED TO IN
ORDINANCE NO. 9293-61 AND IS INCORPORATED
THEREIN BY REFERENCE.

Ruth S. Brookens
Ruth S. Brookens, City Clerk
December 27, 1992
Date



AN AGREEMENT
BETWEEN THE CITY OF URBANA AND CHAMPAIGN COUNTY
REGARDING REVISIONS TO THE REVISED AGREEMENT AND
GENERAL PLAN FOR DEVELOPMENT OF SOLID WASTE DISPOSAL
FACILITIES AND PROGRAMS AND THE CREATION OF THE
INTERGOVERNMENTAL SOLID WASTE DISPOSAL ASSOCIATION
(THIRD ADDENDUM)

THIS AGREEMENT is made and entered into by and between the City of Urbana, Illinois, and the County of Champaign, Illinois.

WHEREAS, the City of Champaign ("Champaign"), the City of Urbana ("Urbana") and the County of Champaign ("County") entered into a Revised Agreement and General Plan for Development of Solid Waste Disposal Facilities and Programs and the Creation of the Intergovernmental Solid Waste Disposal Association ("Association Agreement"); and

WHEREAS, Champaign, Urbana, and the County entered into a Second Addendum to the Association Agreement which provided for the payment or release of various financial obligations and the suspension of certain provisions of the Association Agreement until December 31, 1992; and

WHEREAS, Champaign has passed and approved Council Bill No. 92-329 entitled "A Resolution Withdrawing From Membership In The Intergovernmental Solid Waste Disposal Association" which provides that the City of Champaign withdraws from the Intergovernmental Solid Waste Disposal Association (Association) effective December 31, 1992; and

WHEREAS, pursuant to Section 7.6 of the Association Agreement Champaign shall no longer be a Member of the Association effective December 31, 1992; and

WHEREAS, Urbana and the County believe it is desirable to meet to discuss areas of continued cooperation regarding solid waste management and the future of the Association; and

WHEREAS, it is in the best interest of Urbana and the County to readopt and reincorporate certain provisions of the Second Addendum into a Third Addendum, including the suspension of certain provisions of the Association Agreement until January 31, 1993; and

WHEREAS, the County and Urbana desire to amend certain provisions of the Association Agreement.

NOW, THEREFORE, in consideration of the understandings set forth in the preamble and the following provisions, it is agreed by Urbana and the County as follows:

Section 1. Flow Control and Non-Competition.

a) The parties agree that Section 7.6 of the Association Agreement does not require a withdrawing member to impose flow control after withdrawal if the Association has no request for flow control to be imposed outstanding under Section 5.5.1 or if the effectiveness of Section 5.5.1 has been suspended by agreement of the parties.

b) Additionally, the parties agree that Section 7.6 of the Association Agreement does not require a member under Section 5.5.2 to refrain from any activities competing with the Association after withdrawal of such member.

Section 2. Costs of Recycling Programs.

a) Notwithstanding Sections 3.5 (Reimbursement of Costs), 5.6.5 (User Fees for Recycling Programs) or any other provision of the Association Agreement, Urbana and the County shall forego payment and hereby release any obligation under the Association Agreement of the other party to this Agreement and the Association to pay for any past or future costs they have incurred or will incur for material recycling programs, including the costs of collection, processing or marketing recyclables under the aforementioned provisions of the Association Agreement.

b) Appropriate officials of Urbana and the County shall execute any release necessary to effectuate this undertaking and provide such release to each other and the Association with respect to the release provided for in Subsection a) of this Section.

Section 3. Other Reimbursables.

a) Notwithstanding the following sections of the Association Agreement: Section 5.4.6 ("Hazardous Waste") regarding Hazardous Waste studies, Section 5.6.2 ("Initial Financial Contributions") or 5.6.6(b) ("Budget") regarding certain administrative costs for the Association's Fiscal year 1990-91 and 1991-92; Urbana and the County shall forego payment and hereby release the obligation of the party to this Agreement or the Association to pay under the Association Agreement for any amounts (including interest) due to the parties under the foregoing provisions of the Association Agreement.

b) Appropriate officials of Urbana and County shall execute any releases necessary to effectuate this undertaking and provide such release to each other and the Association with respect to the release provided for in Subsection a) of this Section.

Section 4. Amounts Currently Due.

a) Notwithstanding Section 5.6.3.3 concerning reimbursement of certain costs, Urbana and the County acknowledge that current amounts were owed to Urbana relating to certain facilities costs prior to 1988 under 5.6.3.2. Urbana hereby releases the County from its obligations to pay the amounts owed under Section 5.6.3.3.

b) Appropriate officials of Urbana shall execute any releases necessary to effectuate this undertaking and provide such release to the County and the Association with respect to the release provided for in Subsection a) of this Section.

Section 5. Future Revenues. Urbana and County agree that if the Association owns, operates, leases, or is otherwise in control of a facility and generates revenues in excess of expenses then Urbana and the County shall share equally in such revenues provided, however, that such revenues shall be utilized solely in the area of solid waste management programs including, but not limited to the costs of collection, processing, or marketing of recyclables by any entity receiving the revenues.

Section 6. Budget. Notwithstanding any other provision of that Agreement, including but not limited to 5.6.1, 5.6.3.2, 5.6.3.3, 5.6.4, 5.6.5, 5.6.7 and 6.2, unless Urbana and the County expressly agree otherwise in writing, evidenced by resolutions of the governing bodies of each party, all obligations of the Association incurred after the date of this Agreement shall be payable solely out of annual cash contributions by the Members of the Association and not with debt financing. "Facilities Costs" as defined in Section 5.6.3.1 may be debt financed after the effective date of this Agreement in accordance with 5.6.7 of the Association Agreement, but only after such debt is approved by resolutions of the governing bodies of the parties to this Agreement.

Section 7. Liability for Outstanding Obligations. Notwithstanding Sections 4.2, 5.6.3.2, 5.6.3.3, 5.6.4, 5.6.6, or 6.2 or any other provision of the Association Agreement, Urbana and the County agree that any outstanding financial obligation of the Association to the entity commonly known as the XL Disposal Corporation of Crestwood, Illinois, if any, shall be paid by the parties in the following proportions:

a) The first 50% of the obligation:

City of Champaign-	1/3
City of Urbana-	1/3
Champaign County-	1/3

b) The remaining 50% of the obligation:

City of Champaign-	1/2
City of Urbana-	1/4
Champaign County-	1/4

Section 8. Suspended Performance. The parties agree that the following sections of the Association Agreement shall be suspended for a period of time from July 1, 1992, until January 31, 1993, unless Urbana and the County shall, by action of their governing bodies, agree to take other action. "Suspension" shall mean that the actions required to be performed by the parties to the Association Agreement or the Association under the sections listed below shall not apply or be enforced or taken during this time period:

1. Section 2.1 (Securing of Future Landfill Site Options), provided however that during the period of suspension, neither the Association nor the Members shall take any action to terminate a landfill option commonly known as the Fisher Option, in the Association's possession which requires no future payments.
2. Section 2.2 (Cooperation in Selection and Siting of Site)
3. Section 3.4 (Recycling Center Assistance)
4. Section 5.4.1 (Permitting, Design, and Development)
5. Section 5.5.1 (Flow Control)
6. Section 5.5.2 (Competition Among Members)
7. Section 5.6.4 (Land Acquisition Costs)
8. Section 5.6.7 (Debt)
9. Section 5.7.1 (Selection of Manager)
10. Section 5.7.3 (Vacancy in Position)

Section 9. Planning Activities.

a) During the month of January, 1993, representatives of the County and Urbana shall meet and discuss areas where agreement exists or may be reached with respect to continued cooperation regarding solid waste management. The planning committee shall finalize a report for consideration by each of the governing bodies which suggests areas of intergovernmental cooperation and methods of implementing such cooperation.

b) The governing bodies shall, during the month of January, 1993, consider and take official action upon such report.

Section 10. Events of Default. If any one or more of the following events occur, such is or are hereby defined and declared to be and to constitute an "event of default" under this Agreement.

The failure by the Association, the County, or Urbana to

observe or perform any agreement, promise, representation, warranty, covenant or undertaking of this Agreement on its respective part to be observed or performed at the times, in the manner and with the effect herein or therein set forth for a period of fourteen (14) days after delivery to the Party in default of a resolution by the Governing Body of the other party, as the case may be, specifying such failure and requesting that it be remedied, (the "Default Resolution"). it shall not constitute an event of default if corrective action is instituted by such Party or Association within such fourteen (14) day period and diligently pursued until the default is corrected.

Section 11. Remedies.

a) General. If the occurrence and continuation of any event of default occurs or is continuing hereunder on the part of any Party to this Agreement, the other Party not so in default shall have any or all of the rights and remedies provided herein, in addition to other rights or remedies available or in law or in equity, including, but not limited to, specific performance.

b) Delay or Omission Not a Waiver. No delay or omission of any Part to exercise any right or power accruing upon any event of default shall impair any such right or power except as specifically provided for herein, or shall be construed to be a waiver of any such event of default or an acquiescence therein. Every power and remedy given by this Agreement to any Party may be exercised from time to time and as often as may be deemed expedient.

c) Remedies Cumulative. No remedy herein conferred upon or reserved to either of the Parties is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter at law or in equity or by statute.

Section 12. No Set-Off. No set-off, counterclaim, reduction, or diminution of any obligation, or any defense of any kind or nature which Urbana or the County have or may have against or among themselves in whole or in part, shall be available hereunder to the County or Urbana in respect of the obligations, agreements, promises, and undertakings on their respective parts under this Agreement except as specifically provided for in this Agreement.

Section 13. Effective Date. Notwithstanding any other provision hereof to the contrary, by inference or implication, the undertakings under this Agreement shall arise absolutely and unconditionally upon the execution of this Agreement by the County and Urbana and the withdrawal of Champaign from the Association.

Section 14. Delay. No delay or omission to exercise any right or power accruing upon any default, omission or failure of performance hereunder or mentioned herein shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as

often as may be deemed expedient. In order to entitled th parties to exercise any right or remedy reserved to it in this Agreement, it shall not be necessary to give any notice or make any demand, other than such notice or demand as may be herein expressly required. In the event any provision contained in this Agreement or herein mentioned should be breached and thereafter duly waived, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other such breach. No waiver, amendment, release or modification of this Agreement shall be established by conduct, custom or course of dealing, but solely by an instrument in writing duly executed.

Section 15. Complete Agreement. This Agreement constitutes the entire agreement, and there are no oral understandings other than as set forth herein.

Section 16. Severability. The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections in this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement, or any part hereof.

Section 17. Payment of Costs and Expenses. In the event any of the parties should default under any provisions of this Agreement and the other parties incur expenses, including but not limited to court costs, witness fees and other litigation expenses, reasonable attorney fees (regardless of whether the parties' attorneys in any litigation are full time employees of the party or not) for the collection of payments due or for enforcement of performance or observance of any obligation or agreement of any of the parties contained herein related to the payment of the loan, such defaulting party agrees to pay to the non-defaulting party on demand all such expenses from the date due at the maximum rate payable on judgments in Illinois.

Section 18. Further Actions. To give full effect to the foregoing provisions of this Agreement, the Governing Bodies of Urbana and of the County hereby authorize and direct the Mayor and Clerk of urbana and the Chairman of the County Board and the /clerk of the County, and all other appropriate officers thereof, to execute and deliver all papers, documents and other instruments that may be required for the carrying out of the obligations of Urbana and the County under this Agreement or to evidence such obligations and to exercise and otherwise take all necessary action to the full realization of the duties, rights, accomplishments and purposes of Urbana and the County under this Agreement and to discharge all the obligations of Urbana and the County hereunder.

Section 19. Interpretation of Agreement.

It is the intent of the parties in entering into this Agreement to resolve all financial obligations under the Association Agreement. The parties are unaware of any outstanding financial obligations not covered by this Agreement. It is the

further intent of the parties that during the next month that the parties will attempt in good faith and in the spirit of intergovernmental cooperation to resolve the differences that have arisen between the parties.

It is the intention of the parties that each of the parties' representatives will remain open to information and persuasion in all future discussions.

At the conclusion of the process, it is the intention of the parties that the parties will have reached a new consensus with respect to solid waste management activities in the future. It is recognized by the parties that such consensus may entail the continuation of the present Association Agreement, the further modification of the Association Agreement, the dissolution of the Association, or the withdrawal of one member from the Association. If the parties are unable to reach consensus at the conclusion of the planning process, no further financial or regulatory obligations under the Association Agreement are intended to be imposed on any of the parties except my mutual agreement hereinafter made or existing obligations referred to in this paragraph.

All provisions of this Agreement and the Association Agreement shall be interpreted to give full effect to the intention of the parties as expressed in this Agreement.

Section 20. Precedence of Agreement. The provisions herein shall be construed as amendments to the Association Agreement and shall supersede any provisions in such Agreement which conflict with the express provisions of this Agreement or with the effect of such provisions.

Section 21. General Release. Each of the parties hereby releases each of the other parties from debts arising under the Association Agreement presently owed by any of the parties to the other parties, except as specifically provided for herein and except for claims from third parties.

Section 22. Notices. For purposes of this Agreement, notices shall be deemed given as of the date notices are deposited by first class mail addressed to the other party to each of the parties representatives listed below at the addresses specified herein or such other addresses specified by the party in writing:

Notices to the County
shall be sent to the
following 3 addresses:

County Board Chair
204 East Elm
Urbana, IL 61801
and

Notices to Urbana
shall be sent to the
following 3 addresses:

Chief Administrative Officer
P.O. Box 219
Urbana, IL 61801
and

County Administrator
204 East Elm
Urbana, IL 61801
and

City Attorney
P.O. Box 219
Urbana, IL 61801
and

State's Attorney
101 East Main
Urbana, IL 61801

City Clerk
P.O. Box 219
Urbana, IL 61801

IN WITNESS WHEREOF, Urbana and the County have caused this Agreement to be executed and delivered as of the date set forth beneath their respective signatures.

CITY OF URBANA, ILLINOIS

COUNTY OF CHAMPAIGN, ILLINOIS

By: _____
Mayor

By: _____
County Board Chairman

Date: _____

Date: _____

ATTEST: _____
City Clerk

ATTEST: _____
County Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

City Attorney

State's Attorney