

RESOLUTION NO. 8889-R13

A RESOLUTION

APPROVING A GUARANTY AND ASSUMPTION AGREEMENT BY AND AMONG THE INTERGOVERNMENTAL SOLID WASTE DISPOSAL ASSOCIATION, THE CITY OF CHAMPAIGN, THE CITY OF URBANA AND CHAMPAIGN COUNTY, ILLINOIS

WHEREAS, the City of Champaign ("Champaign"), the City of Urbana ("Urbana") and the County of Champaign (the "County"), Illinois (collectively, the "Members"), have entered into an Agreement and General Plan for Development of Solid Waste Disposal Facilities and Programs and the Creation of the Intergovernmental Solid Waste Disposal Association, dated July 22, 1986 (the "Agreement" and the Intergovernmental Solid Waste Disposal Association, the "Association"); and

WHEREAS, the Association's Board of Directors (the "Board") has undertaken a process to select a Future Landfill Site, as defined in the Agreement, sufficient to meet the Members' solid waste disposal needs for at least twenty (20) years, and in that connection the Board will consider the acquisition of a site for such purposes (subject to selection and site suitability determinations and proceedings, the "Site"); and

WHEREAS, on July 23, 1987, the Association issued its \$645,000 maximum principal amount Solid Waste Disposal Revenue Bonds, Series 1987 (to the extent actually drawn against and outstanding, the "Prior Bonds" authorized pursuant to RESOLUTION NO. 87-6-1, A RESOLUTION authorizing and providing for the issuance of up to \$645,000 Solid Waste Disposal Revenue Bonds, Series 1987, of the Intergovernmental Solid Waste Disposal Association, a contractual association of the City of Champaign, Illinois, the City of Urbana, Illinois, and the County of Champaign, Illinois, for the purpose of defraying certain costs of operations and of expenses preliminary to acquiring, constructing, improving and extending its solid waste disposal facilities, prescribing the details of such bonds and providing for the collection, segregation and distribution of the revenues of the Association, adopted June 17, 1987 (the "Prior Bond Resolution"), by the Board; and

WHEREAS, Section 5.6.4 of the Agreement contemplates that each of the Members of the Association, and, in the case of the County, subject to a prior appropriation under Section 952 of Chapter 34 of the Illinois Revised Statutes, would provide a guaranty or other credit facility to secure the Association's \$1,600,000 Solid Waste Disposal Revenue Bonds, Series 1988 (including as a single Bond, the "Bonds") to be issued pursuant to the Association's Resolution No. 88-9-1, A Resolution authorizing and providing for the issuance of up to \$1,600,000 Solid Waste Disposal Revenue Bonds, Series 1988, of the Intergovernmental Solid Waste Disposal Association, a contractual association of the City of Champaign, Illinois, the City of Urbana, Illinois, and The County of Champaign, Illinois, for the

purpose of prepaying certain prior bonds prior to maturity and defraying certain costs of operations and of expenses preliminary to acquiring, constructing, improving and extending its solid waste disposal facilities, prescribing the details of such bonds and providing for the collection, segregation and distribution of the revenues of the Association, adopted September 7, 1988 (as supplemented and amended, including by Resolution No. 88-11-1, A Resolution Amending Resolution No. 88-9-1 Concerning the Authorization of up to \$1,600,000 Solid Waste Disposal Revenue Bonds, adopted November 9, 1988, the "Bond Resolution").

NOW, THEREFORE, be it resolved by the City Council of the City of Urbana, Illinois as follows:

1. That the Guaranty and Assumption Agreement (the "Guaranty") by and among the City of Champaign, Illinois, the City of Urbana, Illinois, The County of Champaign, Illinois, the Intergovernmental Solid Waste Disposal Association, an inter-governmental contractual association of the City of Champaign, Illinois, the City of Urbana, Illinois, and The County of Champaign, Illinois, and First Federal Savings and Loan Association, Champaign, Illinois in substantially the form thereof as presented before this meeting, is in all respects approved, and all actions taken and things done by the appropriate officers of the City of Urbana preliminary to and in connection with the preparation thereof be and are hereby ratified, confirmed and approved.

2. That the Mayor and the City Clerk be and they are hereby authorized and directed to execute and deliver the Guaranty for and on behalf of the City of Urbana. The Guaranty as executed and delivered shall be in substantially the form thereof now before this meeting and hereby approved, or with such changes therein as shall be approved by the officers of the City of Urbana executing it, their execution thereof to constitute conclusive evidence of their approval and of the City Council's approval of any and all changes or revisions therein from the form thereof now before this meeting. The City of Urbana hereby expressly waives the application of Sections 8-1-7 and 8-2-9 et seq. of the Illinois Municipal Code to the Guaranty.

3. That from and after the execution and delivery of the Guaranty the officers, attorneys, agents and employees of the City of Urbana are hereby authorized, empowered and directed to do all such acts and things and to execute and deliver all such documents, certificates and instruments as may be desirable or necessary to carry out, effect and comply with the provisions of the Guaranty as executed and delivered. The Mayor and City Clerk, and other appropriate officers of the City of Urbana, for and on behalf of the City of Urbana, be and they are hereby authorized and directed to do any and all things necessary to effect the execution and delivery of the Guaranty by the other parties thereto, the performance of all obligations of the City of Urbana under and pursuant to the Guaranty and the performance

of all acts and things of whatever nature necessary to fully effect and carry out the provisions of the Guaranty.

1988. PASSED by the City Council this 19th day of December,

Ruth S. Brookens
Ruth S. Brookens, City Clerk

1988. APPROVED by the Mayor this 21st day of December,

Jeffrey T. Markland
Jeffrey T. Markland, Mayor

GUARANTY AND ASSUMPTION AGREEMENT

By and Among the

INTERGOVERNMENTAL SOLID WASTE DISPOSAL ASSOCIATION

and the

CITY OF CHAMPAIGN, CHAMPAIGN COUNTY, ILLINOIS

and the

CITY OF URBANA, CHAMPAIGN COUNTY, ILLINOIS

and the

THE COUNTY OF CHAMPAIGN, ILLINOIS

and

**FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION,
CHAMPAIGN, ILLINOIS**

Dated as of November __, 1988

This instrument prepared by:

**KURT P. FROEHLICH
EVANS & FROEHLICH
44 Main Street
Post Office Box 737
Champaign, Illinois 61820**

THIS GUARANTY AND ASSUMPTION AGREEMENT (the "Guaranty") made and entered into as of November __, 1988, although possibly executed on different dates, by and among the Intergovernmental Solid Waste Disposal Association, an intergovernmental contractual association of the City of Champaign, Illinois, the City of Urbana, Illinois and the County of Champaign, Illinois (the "Association"), the City of Champaign, Champaign County, Illinois ("Champaign"), the City of Urbana, Champaign County, Illinois ("Urbana"), the County of Champaign, Illinois (the "County") and First Federal Savings and Loan Association, Champaign, Illinois (including its successors, assigns and participants, "First Federal") in connection with and related to the design, permitting and development of certain solid waste disposal facilities and the Association's operations, financed through the issuance by the Association of its \$1,600,000 maximum principal amount Solid Waste Disposal Revenue Bonds, Series 1988 (the "Bonds"), and the sale and delivery thereof to and payment therefor by First Federal authorized by the Association's Resolution No. 88-9-1, A Resolution authorizing and providing for the issuance of up to \$1,600,000 Solid Waste Disposal Revenue Bonds, Series 1988, of the Intergovernmental Solid Waste Disposal Association, a contractual association of the City of Champaign, Illinois, the City of Urbana, Illinois, and the County of Champaign, Illinois, for the purpose of prepaying certain prior bonds to maturity and defraying certain costs of operations and of expenses preliminary to acquiring, constructing, improving and extending its solid waste disposal facilities, prescribing the details of such bonds and providing for the collection, segregation and distribution of the revenues of the Association, adopted by the Association's Board of Directors (the "Board") on September 14, 1988 (as supplemented and amended, including by Resolution No. 88-11-1, A Resolution Amending Resolution No. 88-9-1 Concerning the Authorization of up to \$1,600,000 Solid Waste Disposal Revenue Bonds, adopted November __, 1988, the "Bond Resolution").

W I T N E S S E T H:

WHEREAS, Champaign, Urbana and the County (collectively, the "Members") have entered into an Agreement and General Plan for Development of Solid Waste Disposal Facilities and Programs and the Creation of the Intergovernmental Solid Waste Disposal Association, dated July 22, 1986 (the "Agreement"); and

WHEREAS, the Association's Board of Directors (the "Board") has undertaken a process to select a Future Landfill Site, as defined in the Agreement, sufficient to meet the Members' solid waste disposal needs for at least twenty (20) years, and in that connection the Board will consider the acquisition of a site for such purposes (subject to selection and site suitability determinations and proceedings, the "Site"); and

WHEREAS, Section 5.6.4 of the Agreement contemplates that each of the Members of the Association, and, in the case of

the County, subject to a prior appropriation under Section 2101 et seq. of Chapter 34 of the Illinois Revised Statutes, will provide a guaranty or other credit facility to secure the Association's \$1,600,000 Solid Waste Disposal Revenue Bonds, Series 1988 (the "Bonds"), issued and to be issued pursuant to the Bond Resolution;

WHEREAS, on July 23, 1987, the Association issued its \$645,000 maximum principal amount Solid Waste Disposal Revenue Bonds, Series 1987 (to the extent actually drawn against and outstanding, the "Prior Bonds"), authorized pursuant to RESOLUTION NO. 87-6-1, A RESOLUTION authorizing and providing for the issuance of up to \$645,000 Solid Waste Disposal Revenue Bonds, Series 1987, of the Intergovernmental Solid Waste Disposal Association, a contractual association of the City of Champaign, Illinois, the City of Urbana, Illinois and the County of Champaign, Illinois, for the purpose of defraying certain costs of operations and of expenses preliminary to acquiring, constructing, improving and extending its solid waste disposal facilities, prescribing the details of such bonds and providing for the collection, segregation and distribution of the revenues of the Association, adopted June 17, 1987 (the "Prior Bond Resolution"), by the Board; and

WHEREAS, concurrently with the delivery hereof the Bonds will be purchased by First Federal; and

WHEREAS, it is desirable in the best interests of Champaign, Urbana, the County and the Association that the Members guaranty and assume certain of the Association's agreements, obligations and undertakings under and in connection with the Bonds and the Bond Resolution.

NOW, THEREFORE, in consideration of the matters set forth above and of the agreements, promises, covenants, warranties, representations and undertakings herein contained and in order to effect cost savings and other savings to the Association, Champaign, Urbana and the County, First Federal, the Association, Champaign, Urbana and the County do hereby, subject to the terms hereof, agree, promise, covenant, warrant, represent and undertake, as follows:

ARTICLE I
Definitions, Representations and Warranties

Section 1.1. Definitions. Unless the context clearly indicates otherwise, the words, terms and phrases above defined and the words, terms and phrases defined in the Bonds and the Bond Resolution and the Agreement, and not otherwise herein defined, shall have the same meanings in this Guaranty. In addition certain other words, terms and phrases used in this Agreement shall have the meanings as follows:

"Transaction Documents" means the Bonds and the Bond Resolution, the Agreement and all related and incidental agreements, documents, instruments, certificates, receipts and opinions.

Section 1.2. Certain Phrases. The words "hereof," "herein," "hereunder," "hereto," and other words of similar import refer to this Guaranty as a whole and not solely to the particular portion thereof in which any such word is used. The defined words and 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. Subdivisions. References to articles, sections, and other subdivisions of this Guaranty are to the designated articles, sections, and other subdivisions of this Guaranty as originally executed.

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

Section 1.5. Representations. Each of the parties hereto, as applicable to each, hereby represents and warrants that each has the power and authority to enter into this Guaranty, has duly authorized the execution and delivery of this Guaranty, and neither this Guaranty nor the agreements herein contained contravene or constitute a default under any agreement, instrument or indenture or any other requirement of law as the same respectively concern them; and, in addition, as applicable to each, they make the following representations and/or warranties:

(a) Upon request of any other party to this Guaranty, each will execute, deliver and fully perform, or cause to be executed, delivered and fully performed, all incidental, supplemental and related agreements, documents, instruments, opinions and certificates necessary to give full effect to and realize the objects and purposes of this Guaranty. The matters set forth in the preambles and recitals hereto are true and correct as far as they concern a summary of the transactions contemplated hereby or in respect hereof.

(b) Each hereby certifies that it is not in material default under and is not violating any term or provision of any of the above described Transaction Documents to which each is respectively a party, or any indenture, mortgage, lien, agreement, contract, deed, lease, loan agreement, note, bond, evidence of debt, order judgment, decree or other instrument or restriction of any kind or character to which each is a party or by which each is bound, or to which each or any of their respective assets is subject, and no event has occurred and is continuing which with the passage of time, the giving of notice, or both, would constitute a default or an event of default thereunder. The Association, Champaign, Urbana and the County are not in default in the payment of the principal of or interest on any of their respective indebtedness for borrowed money and are not in default under any instrument or instruments or agreement under and subject to which any indebtedness for borrowed money has been incurred and no event has occurred and is continuing under the provisions of any such instrument or agreement which with the lapse of time or the giving of notice, or both, would constitute an event of default thereunder; and there is no action, suit, proceeding or investigation, at law or in equity, or before or by any public board or body, pending, or to their knowledge threatened, against or affecting them, respectively, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by this Guaranty, the Agreement, the Bonds or any other of the above described Transaction Documents to which each is respectively a party, or which would materially affect their respective abilities to comply with the terms of this Guaranty, the Agreement, the Bonds or any other of the above described Transaction Documents to which they are respectively a party, and all incidental, supplemental and related documents and instruments.

(c) The Association, Champaign, Urbana and the County each represent that they have received no notice of an event of default under or in respect of the Bonds, the Bond Resolution or any other of the above described Transaction Documents to which they are respectively a party or are bound, and they have no knowledge of any basis therefor.

(d) Champaign and Urbana, as home rule units, expressly waive application of Section 8-1-7 and Sections 8-2-9 et seq. of the Illinois Municipal Code. The County is subject to the prior appropriation rule of Section 2101 et seq. of Chapter 34 of the Illinois Revised Statutes, with respect to which, to the extent lawful, it is so waived and otherwise this Guaranty constitutes a moral obligation of the County.

(End of Article I)

ARTICLE II

Guaranty, Covenants and Agreements

Section 2.1. Guaranty. Champaign, Urbana and the County, jointly and severally, hereby assume and agree to pay and unconditionally guarantee to First Federal, including its successors, assigns and participants in the Bonds, as follows:

(1) the full and prompt payment of the principal of, interest on, and premium, if any, on the Bonds when and as the same shall mature or come due.

(including any installment), by acceleration, call for prepayment or otherwise;

(2) the full and prompt performance under or in respect of the Bonds and the Bond Resolution and all other amounts under the Bonds and the Bond Resolution required to be paid and all acts and other things required to be done or performed in connection therewith.

Provided, however, that any payments by the Champaign, Urbana, or the County, as the case may be, of any sums hereunder or under or in respect of the Bonds and the Bond Resolution shall fully discharge Champaign, Urbana or the County, as the case may be, hereunder for such sums, it being the intent hereof that Champaign, Urbana or the County shall not be liable for a failure to duly apply such sums towards payment of principal, interest and premium, if any, on the Bonds, or otherwise as required by the Bond Resolution. All payments hereunder by Champaign, Urbana or the County shall be paid in lawful money of the United States of America. The Association hereby covenants and agrees and assumes the repayment of any amounts hereunder paid by Champaign, Urbana or the County, and Champaign, Urbana and the County each hereby covenants and agrees, and assumes contribution to each of the others of an amount such that any payments made hereunder are ultimately shared on an equal 1/3 basis. Champaign, Urbana and the County each covenant that a failure to perform hereunder constitutes a default under Section 5.6.4 of the Agreement.

Section 2.2. Absolute and Unconditional. Unless otherwise in writing agreed among the parties hereto, the agreements, obligations and undertakings of Champaign, Urbana and the Association under Section 2.1 of this Guaranty shall be absolute and unconditional and shall remain in full force and effect until the entire principal of, premium, if any, and interest on the Bonds shall have been duly paid or provided for and all other amounts in connection herewith have been paid, according to the Bonds, the Bond Resolution and this Guaranty, and such agreements, obligations and undertakings shall not be affected, modified or impaired upon the happening from time to time of any event, including without limitation any of the following, whether or not with notice to, or the consent of, the

Association:

(1) the compromise, settlement, release or termination of any or all of the obligations, covenants or agreements of the respective parties to the Transaction Documents;

(2) the failure to give notice to the Association, Champaign, Urbana, and the County of the occurrence of an event of default under the terms and provisions of this Guaranty, the Bonds or the Bond Resolution;

(3) the assignment, pledging or mortgaging or the purported assignment, pledging or mortgaging of all or any part of the interest of the respective parties to any of the Transaction Documents;

(4) the waiver of the payment, performance or observance by the applicable parties of any of the obligations, covenants or agreements of any of them contained in any of the Transaction Documents or in this Guaranty;

(5) the extension of the time for payment of any principal of, premium, if any, or interest on the Bonds or under this Guaranty or the time for performance of any other obligations, undertakings, covenants or agreements under or arising out of the Transaction Documents or this Guaranty, or any extension or the renewal thereof;

(6) the modification or amendment (whether material or otherwise) of any obligation, covenant or agreement set forth in any of the Transaction Documents;

(7) the taking, suffering or omitting to take any of the actions referred to in any of the Transaction Documents, and any actions under this Guaranty;

(8) any failure, omission, delay or lack on the part of First Federal or its successors and assigns for any reason whatsoever to enforce, assert or exercise any right, power or remedy conferred upon it in the Transaction Documents or in this Guaranty;

(9) to the extent permitted by law, the release or discharge of the Association from the performance or observance of any obligation, covenant or agreement contained in any of the Transaction Documents or in this Guaranty by operation of law; or

(10) the default or failure of the Association fully to perform, or cause to be performed, any obligations assumed in or set forth in the Bonds, the Bond Resolution or in any of the other Transaction Documents to which it is a party.

Section 2.3. No Set-Off. No set-off, counterclaim, reduction, or diminution of any obligation, or any defense of any

kind or nature which the Association, Champaign, Urbana or the County have or may have against or among themselves or against or with respect to First Federal or any other registered owner of any Bond, in whole or in part, shall be available hereunder to the Association, Champaign, Urbana or the County in respect of the obligations, agreements, promises, and undertakings on their respective parts under this Guaranty.

(End of Article II)

ARTICLE III

Miscellaneous

Section 3.1. Effective. Notwithstanding any other provision hereof to the contrary, by inference, implication or otherwise, the covenants, agreements, obligations and undertakings under Section 2.1 hereof shall arise absolutely and unconditionally upon the full execution and delivery hereof and the purchase of the Bonds by First Federal.

Section 3.2. 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 entitle First Federal, the Association, Champaign, Urbana or the County to exercise any right or remedy reserved to them in this Guaranty, 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 provisions contained in this Guaranty 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 Guaranty shall be established by conduct, custom or course of dealing, but solely by an instrument in writing duly executed.

Section 3.3. Complete Agreement. This Guaranty constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof.

Section 3.4. Severability. The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections in this Guaranty shall not affect the validity or enforceability of the remaining portions of this Guaranty, or any part hereof.

Section 3.5. Further Assurances. 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, and other financing statements, agreements, instruments and documents supplemental hereto and such further acts, instruments, pledges and transfers as may be reasonably required for the better assuring, mortgaging, conveying, pledging, assigning and confirming unto the appropriate parties hereto all and singular the rights, property and revenues covenanted, agreed, conveyed, assigned, transferred and pledged hereby and under or in respect of the Bonds and Bond Resolution.

Section 3.6. Binding Effect. This Guaranty shall inure to the benefit only of First Federal, and its successors, assigns and participants in respect of the Bonds, the Association and its successors and assigns, and Champaign, Urbana and the County, as their interests appear. This Guaranty shall not abrogate, diminish or impair the effectiveness of the Bonds or the Bond Resolution. First Federal may (but shall not be required to) enforce this Guaranty without possession of the Bonds. The registered owner of any Bond, or an interest therein, may enforce this Guaranty with the same effect as if such registered owner had executed this Guaranty.

Section 3.7. 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 3.8. Illinois Law. 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 III]

IN WITNESS WHEREOF, First Federal, the Association, Champaign, Urbana and the County have caused this Agreement to be executed and delivered as of the date first set forth above and on the cover page hereof.

CITY OF CHAMPAIGN, ILLINOIS

By _____
MAYOR

(SEAL)

ATTEST:

CITY CLERK

CITY OF URBANA, ILLINOIS

By _____
MAYOR

(SEAL)

ATTEST:

CITY CLERK

THE COUNTY OF CHAMPAIGN,
ILLINOIS

By _____
CHAIRMAN

(SEAL)

ATTEST:

COUNTY CLERK AS EX OFFICIO
CLERK OF THE COUNTY BOARD

Accepted:

First Federal Savings and Loan
Association, Champaign, Illinois

By _____
Its _____ President

INTERGOVERNMENTAL SOLID WASTE
DISPOSAL ASSOCIATION

By _____
CHAIRPERSON

ATTEST:

VICE-CHAIRPERSON