



## DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

*Planning and Economic Development Division*

### **m e m o r a n d u m**

**TO:** Bruce K. Walden, CAO

**FROM:** Reed A. Berger, AICP, Economic Development Coordinator

**DATE:** November 14, 2001

**SUBJECT:** An annexation agreement with United Fuel Co. to annex 1802 N. Cunningham Ave. with a zoning designation of B-3, General Business (Plan Case No. 1800-A-01)

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### **Introduction**

The City of Urbana has proposed to annex the United Fuel Co.'s bulk fuel storage facility of approximately 3.15 acres of property located just south of Interstate 74 at 1802 N. Cunningham Avenue (see Exhibit "A"). The requested zoning designation upon annexation is B-3, General Business. The current Champaign County zoning designation for the site is B-3, Highway Business. A copy of the proposed Annexation Agreement is attached to this memorandum.

On October 18, 2001 the Urbana Plan Commission conducted a public hearing on the case. Since a zoning change from County B-3, Highway Business to City B-3, General Business was proposed, consideration from the Plan Commission was required. The Plan Commission recommended approval of the case as recommended by City staff. Additional background into this agreement is provided in the Plan Commission Memorandum dated October 11, 2001.

### **Background**

City staff has pursued annexation of the commercial corridor along N. Cunningham Avenue near the Interstate 74 interchange over the past several years in an effort to increase the City's tax base and improve the quality of a major entry into the community. United Fuel, a local family-owned business, is one of the few commercial properties south of Interstate 74 that remains outside the City limits along U.S. Route 45. United Fuel is also considered a key parcel in the proposed N. Cunningham Avenue Redevelopment Plan to be considered for adoption by City Council next month. Staff has to date received no communication from adjacent property owners or the general public regarding the proposed annexation agreement.

### **Issues and Discussion**

1. In addition to assuring that the property has the the appropriate zoning consistent with other commercial properties along Cunningham Avenue, there is an opportunity through the potential use of economic development programs like tax increment financing (TIF) and the enterprise

zone program to encourage United Fuel to consider relocation of their bulk oil storage facility to an area more compatible with the surrounding land uses and redevelop the subject property for a more intensive retail use. To that end there are provisions in the attached annexation agreement to include the property within the boundaries of a proposed TIF district and, when warranted by redevelopment, the enterprise zone boundaries.

2. Three significant concerns United Fuel Co. has about annexation are the financial hardship issues imposed by the higher property tax rate, sales tax rate, and code compliance requirements. The annexation agreement provides for the reimbursement of the portion of the property tax and sales tax the City will receive from United Fuel for a period of five and ten years, respectively. The agreement also provides for a \$5,000 development fund to offset some of the more immediate costs associated with meeting the City's minimum building and life safety codes. Documented costs for work performed to comply with municipal codes will be reimbursed up to the \$5,000 limit. An ordinance for this budget amendment is attached for Council's consideration if, and after, the annexation agreement is approved.
3. Because of the pending timetable to approve the proposed TIF District for this area and the fact that United Fuel must be annexed prior to adoption of the proposed TIF district to be included, the City Council is also requested to consider approval of the attached annexation ordinance if, and after, the annexation agreement is approved.
4. The annexation of United Fuel will cause the surrounding of an area of more than 12 acres along N. Cunningham Avenue and Willow Road. Because the surrounded unincorporated territory comprises less than 60 acres the City may consider the involuntary annexation of this area on December 3, 2001 if United Fuel is annexed on November 19, 2001. The commercial lots having frontage on Cunningham Avenue are proposed to be included in the proposed TIF district mentioned earlier in this memorandum if they are annexed prior to final adoption of the TIF district. The annexation of the area would also contribute significant sales tax revenues to the City in addition to adding over \$650,000 in assessed valuation to Urbana's tax base.

### **Summary of Staff Findings**

1. Annexation of the site with a zoning designation of B-3, General Business is consistent with the Comprehensive Plan designation of the site as Commercial.
2. Annexation of the site with a zoning designation of B-3, General Business would help meet a number of the goals, objectives, and policies of the Urbana Comprehensive Plan.
3. The proposed B-3 zoning for the site would be consistent with existing and planned land uses in the vicinity.
4. The proposed zoning designation appears to generally meet the LaSalle Case criteria.
5. The proposed annexation will provide an opportunity for the City and United Fuel to work together on a mutually agreeable redevelopment project in the future.

6. The proposed annexation will promote building and life safety code improvements which benefit the health, safety and welfare of the surrounding businesses and residents and the general public.
7. The proposed annexation will provide a significant source of revenue for the City when considering the potential revenues from other properties that may be annexed as a result of the United Fuel annexation.

## Options

The City Council has the following options for this case. In Plan Case 1800-A-01, the City Council may:

- a. Approve the proposed annexation agreement.
- b. Delay or modify the proposed annexation agreement.
- c. Deny the approval of the proposed annexation agreement.

## Staff Recommendation

Based on the evidence presented in the discussion above, and considering testimony and discussion of the Urbana Plan Commission hearing, **staff recommends that the Urbana City Council approve the attached annexation agreement ordinance, the annexation ordinance, and the budget amendment ordinance.**

Prepared by:

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Reed A. Berger, AICP  
Economic Development Coordinator

c: Janet Warner

Attachments:           Annexation Agreement and Ordinance  
                              Annexation Petition and Ordinance  
                              Budget Amendment Ordinance  
                              Plan Commission Memorandum and Minutes  
  ORDINANCE NO. 2001-11-148

**AN ORDINANCE APPROVING AN ANNEXATION AGREEMENT  
WITH UNITED FUEL CO., INC.**

**(1802 N. Cunningham Avenue)**

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

Section 1. That an agreement by and between the City of Urbana and the United Fuel Co., Inc., in the form of the copy of said Agreement attached hereto and hereby incorporated by reference, be and the same is hereby authorized and 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 authorized to attest to said execution of said Agreement as so authorized and approved for and on behalf of the City of Urbana, Illinois.

PASSED by the City Council this \_\_\_\_\_ day of

\_\_\_\_\_, \_\_\_\_\_.

AYES:

NAYS:

ABSTAINS:

\_\_\_\_\_  
Phyllis Clark, City Clerk

APPROVED by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_.

\_\_\_\_\_  
Tod Satterthwaite, Mayor

## ANNEXATION AGREEMENT

THIS Agreement, made and entered into by and between the City of Urbana, Illinois, (herein after sometimes referred to collectively as the "Corporate Authorities" or the "City") and the United Fuel Company (hereinafter referred to as the "Owner"). The effective date of this Agreement shall be as provided in Article III, Section 6.

### WITNESSETH:

WHEREAS, this Agreement is made pursuant to and in accordance with the provisions of Section 11-15.1-1 et seq., of the Illinois Municipal Code (65 ILCS 5/11-15.1-1); and

WHEREAS, the United Fuel Company is the Owner of record of a certain approximately 3.15 acre parcel of real estate located at 1802 N. Cunningham Avenue, and having permanent index number 30-21-04-352-013, the legal description of which real estate is set forth Exhibit A attached hereto and referenced herein as the "tract."

WHEREAS, the attached map, labeled Exhibit B, is a true and accurate representation of the tract to be annexed to the City of Urbana under the provisions of this agreement.

WHEREAS, said Owner finds that in order to best utilize the Owner's property, it is desirous to annex the tract to the City of Urbana pursuant to, and as provided for in this Annexation Agreement; and

WHEREAS, the tract is currently zoned B-3 Highway Business in Champaign County; and

WHEREAS, the parties agree that the tract shall be best utilized if rezoned to City B-3 General Business; and

WHEREAS, the Urbana City Council finds annexing said tract as described herein as B-3 General Business reflect the goals, objectives and policies set forth in the 1982 Urbana Comprehensive Plan, as amended from time to time; and

WHEREAS, such annexation will ensure that the City of Urbana will receive real estate taxes and other revenues and will enable the City to continue to enhance its tax base; and

WHEREAS, the Owner desires to have the aforementioned real estate annexed to the City of Urbana upon certain terms and conditions hereinafter set forth in this Agreement.

**NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES SET FORTH HEREIN, THE PARTIES AGREE AS FOLLOWS:**

**ARTICLE I. REPRESENTATIONS AND OBLIGATIONS OF THE OWNER**

The Owner agrees to the following provisions:

**Section 1. Annexation:** The Owner represents that it is the sole record Owner of the tract described in Exhibit A and that the Owner agrees to annexation of said tract immediately after the City Council's approval of this Agreement, in accordance with this Agreement and the signed annexation petition attached herein as Exhibit C, all in accordance with Illinois Statutes.

Owner further agrees that the substance of this Section of the Annexation Agreement shall be included in any sales contract for the sale of any portion of the subject tract. If the subject tract is to be platted for subdivision, the Owner agrees that the substance of these provisions regarding annexation shall be included in the subdivision covenants and such will constitute a covenant running with the land.

**Section 2. Zoning:** The Owner agrees and acknowledges that upon annexation, the tract will be converted from County B-3 Highway Business to City B-3 General Business. Furthermore, the Owner agrees to abide by all applicable development regulations, except as otherwise provided herein.

**Section 3. Redevelopment:** The Owner agrees and acknowledges that it is in the best interests of the City and the Owner to cooperate in an effort to consider future relocation of the existing storage tanks and redevelopment of the tract for a use that is more compatible in the B-3 General Business district and provides economic benefit for all parties.

**Section 4. Code Compliance:** The Owner agrees that all buildings and structures existing at the time of annexation shall conform with the City of Urbana codes in a time frame agreed to by the City of Urbana's Community Development Director.

**Section 5. Amendments Required:** The Owner shall take no action or omit to take action during the term of this Agreement which action or omission, as applied to the tract, would be a breach of this Agreement, without first procuring a written amendment to this Agreement duly executed by both the Owner and the City.

**Section 6. Disconnection:** The Owners agree and hereby stipulate that the Owners shall not take any action to disconnect the tract from the City once it is annexed during the 20 year term of this agreement.

## ARTICLE II. REPRESENTATIONS AND OBLIGATIONS OF THE CORPORATE AUTHORITIES

The Corporate Authorities agree to the following provisions:

**Section 1. Annexation:** The Corporate Authorities agree to immediately annex said tract subject to the terms and conditions outlined in this Agreement and the attached signed annexation petition from the Owner attached herein as Exhibit C.

**Section 2. Zoning:** The Corporate Authorities agree that the tract will be zoned City B-3 General Business upon annexation to the City of Urbana.

**Section 3. Enterprise Zone:** Upon annexation and receiving a letter of intent and financial commitment from an individual or entity proposing to cause a significant industrial project on the tract or portion therein, the City agrees to immediately apply to the State of Illinois to include said tract, or applicable portion therein, within the Urbana Enterprise Zone, and agrees to assist the Owner in obtaining all benefits to which the Owners and/or the tract is entitled and eligible to receive under the Urbana Enterprise Zone Program and the State of Illinois Enterprise Zone Act, so long as the Urbana Enterprise Zone remains in effect.

**Section 4. Tax Increment Financing District:** Upon annexation, the City agrees to include the tract within the proposed tax increment financing (TIF) district (a.k.a. Cunningham Avenue Corridor Redevelopment Plan).

**Section 5. Redevelopment:** Upon annexation, the City will work with the Owner to review the economic feasibility of relocation of the existing business and redevelopment of the tract. The City will identify financial incentives that could assist the Owner in said relocation and redevelopment.

**Section 6. Code Compliance Fund:** Upon annexation, the City will make available five thousand dollars (\$5,000) for direct reimbursement to the Owner for documented costs directly incurred by the Owner for the repair, replacement, or installation of electrical, plumbing, mechanical, building, or structural materials necessary to comply with local and State building, fire safety, and environmental laws. This fund will be made available until June 30, 2003 after which time this reimbursement offer will expire. In such case where there is a remaining fund balance, said remainder shall be transferred to the general fund on or after July 1, 2003, unless directed otherwise by the Corporate Authorities.

**Section 7. Sales Tax Reimbursement:** The City shall reimburse to the Owner an amount equal to the difference between the total sales tax rate in the unincorporated area of Champaign County and the total sales tax rate in the City of Urbana. Upon presentation of evidence by the Owner to the City Comptroller that sales tax was paid to the State of Illinois (the City Comptroller shall pay) within thirty (30) days of receiving evidence from the Owner of said payment to the State of Illinois) the amount equal to the difference between the sales tax rate in the unincorporated area of Champaign County and the sales tax rate in the City of Urbana that was in effect for the period of time said . This sales tax

reimbursement shall be available to the Owner for ten (10) years after the date of annexation after which time the City shall no longer be obligated to reimburse the Owner as stated in this Section.

**Section 8. Real estate tax reimbursement:** Upon annexation of said tract, the City of Urbana shall reimburse to the Owner an amount equal to increase in real estate taxes as a result of annexation for a period of five (5) years from the date of annexation based on the assessed value and tax rates in existence at the time this agreement is executed. The annual reimbursement amount shall be paid to the Owner on or before October 1 of each respective year the real estate tax is paid in full. It is further understood that this refund amount is offered by the Corporate Authorities in careful consideration of the following findings:

- a. Annexation of said Tract is necessary to annex other Tracts of unincorporated territory in order to promote the orderly, planned, and controlled growth of the City, and further to promote the safety, health and general welfare of the public.
- b. Annexation of said Tract will have a significantly positive impact on the tax base of the City of Urbana.
- c. But for the reimbursement of property taxes, annexation of said Tract would not otherwise occur in a timely manner.

### **ARTICLE III: GENERAL PROVISIONS**

**Section 1. Term of this Agreement:** This Agreement shall be binding upon the parties hereto, and their respective successors and assigns, for a full term of twenty (20) years commencing as of the effective date of this Agreement as provided by the Illinois State Statutes, unless other provisions of this Agreement specifically apply a different term. To the extent permitted thereby, it is agreed that, in the event the annexation of subject tracts under the terms and conditions of this Agreement is challenged in any court proceeding, the period of time during which such litigation is pending shall not be included in calculating said twenty-year term.

If this Agreement imposes any obligation, restraint, or burden (hereinafter called collectively "obligation") on the Owners, their successors or assigns, which obligation extends beyond the termination date of this Agreement, such obligation may be released by the Urbana City Council enacting an Ordinance releasing such obligation by a majority vote of all Alderpersons then holding office and the recording of such Ordinance in the Champaign County Recorder's Office, Champaign County, Illinois.

**Section 2. Covenant running with the land:** The terms of this Agreement constitute a covenant running with the land for the life of this Agreement unless specific terms are expressly made binding beyond the life of this Agreement. Furthermore, the terms herein are hereby expressly made binding upon all heirs, grantees, lessees, executors, assigns and successors in interest of the Owner as to all or any part of the tracts, and are further expressly made binding upon said city and the duly elected or appointed successors in office of its Corporate Authorities.



**Section 3. Binding Agreement upon parties:** The Corporate Authorities and Owner agree that neither party will take no action or omit to take action during the term of this Agreement which act or omission as applied to the tracts would be a breach of this Agreement without first procuring a written amendment to this Agreement duly executed by both the Owner and the city.

**Section 4. Enforcement:** The Owner and Corporate Authorities agree and hereby stipulate that any party to this Agreement may, by civil action, mandamus, action for writ of injunction or other proceeding, enforce and compel performance of this Agreement or declare this Agreement null and void in addition to other remedies available. Upon breach by the Owner, the city may refuse the issuance of any permits or other approvals or authorizations relating to development of the tract.

**Section 5. Severability:** If any provision of this Agreement is rendered invalid for any reason, such invalidation shall not render invalid other provisions of this Agreement which can be given effect even without the invalid provision.

**Section 6. Effective Date:** The Corporate Authorities and Owner intend that this Agreement shall be recorded in the Office of the Champaign County Recorder with any expenses for said recording to be paid by the Corporate Authorities. The effective date of this Agreement shall be the date it is recorded; or if not recorded for any reason, the effective date shall be the date the Mayor signs the agreement on behalf of the City.

**Section 7. Notices:** Notices under the terms of this Agreement shall be considered given when deposited in the U.S. Mail, postage prepaid, first class certified, or delivered personally to:

**Owner:**

United Fuel Company  
c/o Janet Warner  
1802 N. Cunningham Avenue  
Urbana, Illinois 61802  
Urbana, Illinois 61801

**City:**

Bruce K. Walden  
Chief Administrative Officer  
City of Urbana  
400 S. Vine Street

**IN WITNESS WHEREOF**, the Corporate Authorities and Owner have hereunto set their hands and seals, and have caused this instrument to be signed by their duly authorized officials and the corporate seal affixed hereto, all on the day and year written below.

**Corporate Authorities  
City of Urbana:**

**Owner:**  
United Fuel Company  
an Illinois Corporation

\_\_\_\_\_  
Tod Satterthwaite, Mayor

\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**ATTEST:**

**ATTEST:**

\_\_\_\_\_  
Phyllis D. Clark  
City Clerk

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Exhibits attached and made a part of this Agreement:

Exhibit A: Legal Description

Exhibit B: Location Map

Exhibit C: Annexation Petition

**Exhibit A**  
Legal Description

**A tract lying in the Southwest Quarter of the Southwest Quarter of Section Four, Township Nineteen North, Range Nine ( 9) East of the Third Principal Meridian conveyed in a Warranty Deed, dated September 12, 1985, and recorded October 4, 1988 in Book 1606, at page 440, in the Office of Recorder of Deeds, Champaign County, Illinois, more particularly described as follows:**

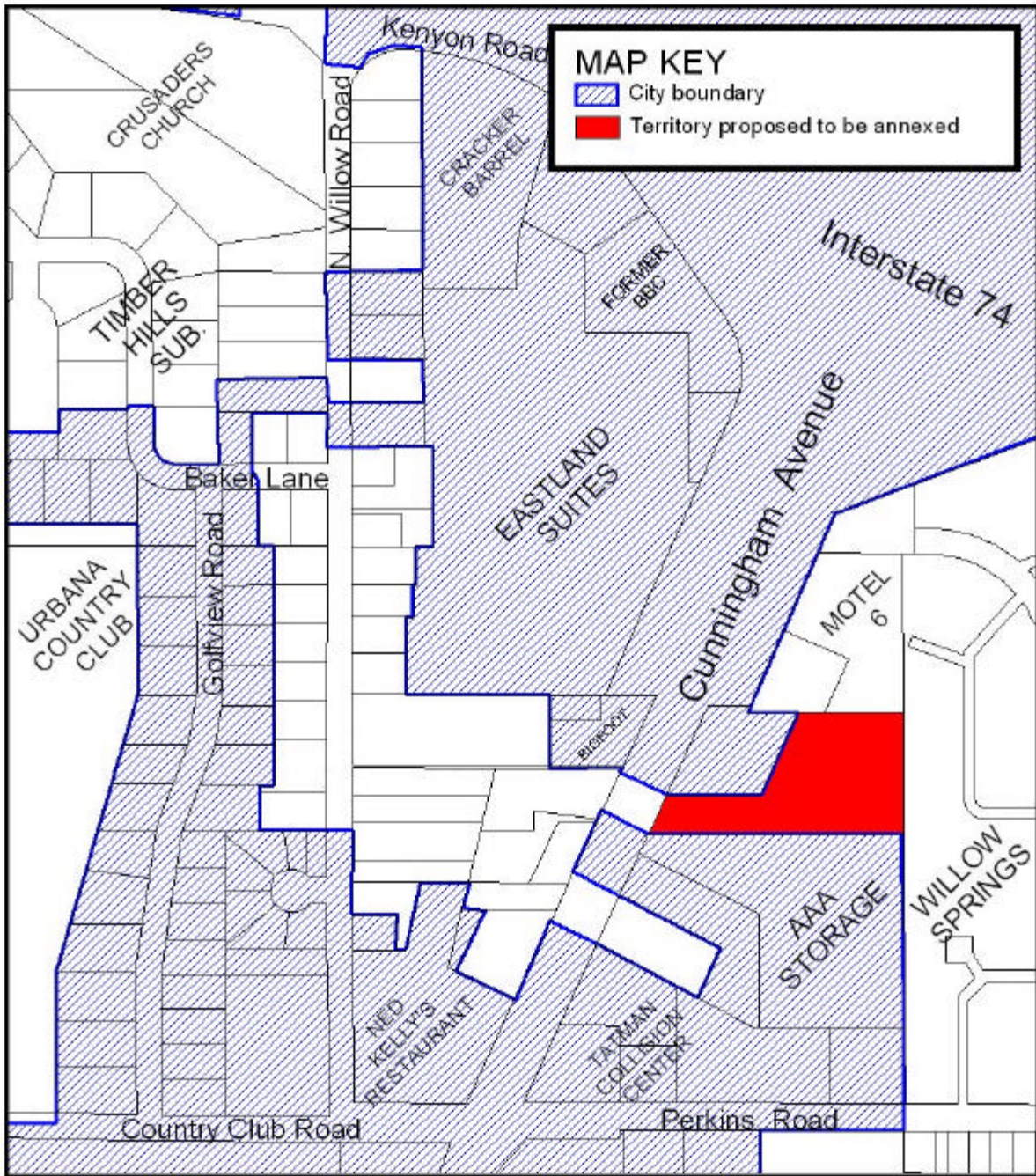
**The South 4 acres of the North 4.063 acres of Lot Two (2) of a Subdivision of Lot One (1) of a Subdivision of the Southwest Quarter (SW 1/4) of the Southwest Quarter (SW 1/4) of Section Four (4), Township Nineteen (19) North, Range Nine ( 9) East of the Third Principal Meridian, per plat recorded in Deed Record Book 32, at page 622, in the Office of Recorder of Deeds, Champaign County, Illinois, situated in Champaign County, Illinois, except the following described tract of ground:**

**Beginning at the Northwest corner of the above described tract; thence East along the north line of the above described tract 65.72 feet to a tubeco pipe monument No. 1723 [sic] said point being on the East right-of-way line of U.S. Route 45; thence East along said North line 200.00 feet to an iron rod monument; thence Southwesterly parallel with said right-of-way 200.00 feet to an iron rod monument; thence West parallel with said North line 200.00 feet to an iron rod monument said point being on the East right-of-way line of U.S. Route 45; thence West parallel with said North line 66.67 feet to the West line of the above described tract; thence Northeasterly along said west line 200.38 feet to the point of beginning.**

**Except that part of the Right-of-Way for S.B.I. 25 (U.S. Route 45 and Cunningham Avenue) lying within the above described tract.**

**All situated in Urbana Township, Champaign County, Illinois and encompassing 3.15 acres, more or less.**

**Exhibit B**  
**Location Map**



 **United Fuel Annexation**  
**1802 N. Cunningham Avenue**

prepared September 10, 2001 by RAB - Community Development Services



**Exhibit C**  
**Petition for Annexation**  
to  
**THE CITY COUNCIL OF THE CITY OF URBANA**  
**CHAMPAIGN COUNTY, ILLINOIS**

The Petitioner, **United Fuel Company**, respectfully states under oath:

1. Petitioner is the sole owner of record of the following legally described land (hereinafter sometimes referred to as the Tract), except any public right-of-way property to wit:

**A tract lying in the Southwest Quarter of the Southwest Quarter of Section Four, Township Nineteen North, Range Nine ( 9) East of the Third Principal Meridian conveyed in a Warranty Deed, dated September 12, 1985, and recorded October 4, 1988 in Book 1606, at page 440, in the Office of Recorder of Deeds, Champaign County, Illinois, more particularly described as follows:**

**The South 4 acres of the North 4.063 acres of Lot Two (2) of a Subdivision of Lot One (1) of a Subdivision of the Southwest Quarter (SW 1/4) of the Southwest Quarter (SW 1/4) of Section Four (4), Township Nineteen (19) North, Range Nine ( 9) East of the Third Principal Meridian, per plat recorded in Deed Record Book 32, at page 622, in the Office of Recorder of Deeds, Champaign County, Illinois, situated in Champaign County, Illinois, except the following described tract of ground:**

**Beginning at the Northwest corner of the above described tract; thence East along the north line of the above described tract 65.72 feet to a tubeco pipe monument No. 1723 [sic] said point being on the East right-of-way line of U.S. Route 45; thence East along said North line 200.00 feet to an iron rod monument; thence Southwesterly parallel with said right-of-way 200.00 feet to an iron rod monument; thence West parallel with said North line 200.00 feet to an iron rod monument said point being on the East right-of-way line of U.S. Route 45; thence West parallel with said North line 66.67 feet to the West line of the above described tract; thence Northeasterly along said west line 200.38 feet to the point of beginning.**

**Except that part of the Right-of-Way for S.B.I. 25 (U.S. Route 45 and Cunningham Avenue) lying within the above described tract.**

**All situated in Urbana Township, Champaign County, Illinois and encompassing 3.15 acres, more or less.**

Commonly known as 1802 N. Cunningham Avenue and also identified as Parcel Index Number 30-21-04-352-013.

2. Said territory is not situated within the corporate limits of any municipality, but is contiguous to the City of Urbana, Illinois.

3. There are no electors residing in said Tract.

**PETITIONER’S CONDITIONS PRIOR TO ANNEXATION**

This signed and valid petition for annexation is subject to the petitioner and the City of Urbana first executing the annexation agreement to which this petition is attached. If the Urbana City Council does not pass an ordinance approving said annexation agreement prior to January 1, 2002 this petition shall be null and void.

**PETITIONER RESPECTFULLY REQUESTS:**

1. That said Tract described above herein be annexed to the City of Urbana, Illinois in accordance with all of the aforesaid conditions herein and pursuant to Section 5/7-1-8 of the Municipal Code of the State of Illinois, as amended (65 ILCS 5/7-1-8).
2. That said Tract be annexed immediately after and in accordance with the terms of the annexation agreement to which this annexation petition is attached.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2001

**PETITIONER:**

**United Fuel Company**

\_\_\_\_\_

Subscribed and sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 2001

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires: \_\_\_\_\_