

ORDINANCE NO. 9798-28

AN ORDINANCE  
APPROVING AN ANNEXATION AND DEVELOPMENT AGREEMENT WITH FLEX-N-  
GATE CORPORATION

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 Flex-N-Gate Corporation, 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 2nd day of September, 1997.

AYES: Hayes, Huth, Kearns, Patt, Taylor, Whelan, Wyman, and  
Mayor Satterthwaite

NAYS:

ABSTAINED:

Phyllis D. Clark  
Phyllis D. Clark, City Clerk  
*by Robert J. Robit, Deputy Clerk*

APPROVED by the Mayor this 10<sup>th</sup> day of September, 1997.

Tod Satterthwaite  
Tod Satterthwaite, Mayor

**Annexation and Development Agreement Between the City of Urbana and Flex-N-Gate Corporation**

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 **Flex-N-Gate Corporation** (hereinafter referred to as the "Developer"). 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 Developer has secured options for the following described property and will purchase said property immediately after the City Council of the City of Urbana approves this agreement and will be signing said agreement as owner of the subject properties; and

WHEREAS, the subject properties consists of a certain 15.43 acre parcel of real estate located at the eastern terminus of Butzow Drive, and having permanent index number 91-21-09-426-007, the legal description of which real estate is set forth in Exhibit A attached hereto and referenced herein as "Tract A " and of a certain 8.63 acre parcel of real estate located at 505 North Smith Road, and having permanent index number 30-21-09-426-012, the legal descriptions of which real estate is set form in Exhibit B attached hereto and referenced herein as "Tract B"; and

WHEREAS, Flex-N-Gate Corporation is the optionor of said Tract A and B for the purpose of constructing a new manufacturing facility; and

WHEREAS, although Tract A is currently within the City of Urbana limits, provisions of this agreement also affect the development of said Tract; and

WHEREAS, Tract B is contiguous to the City of Urbana; Developer finds that in order to best utilize the Developer's property for the development proposed herein, it is desirous to annex the tract to the City of Urbana, pursuant to, and as provided for in this Annexation and Development Agreement; and

WHEREAS, the attached map, labeled Exhibit C, is a true and accurate representation of Tracts A and B; and

WHEREAS, Tract A's future land use is designated on the City of Urbana Comprehensive Plan as Medium Density Multiple Family and a petition to amend that designation to Industrial has been submitted to the City of Urbana;

WHEREAS, Tract A is currently zoned R-4 Medium Density Multiple Family Residential in the City of Urbana but a petition to amend Tract A's zoning to IN Industrial has been submitted to the City of Urbana; and

WHEREAS, each of the parties recognize that although the decision on such rezoning of Tract A is independent of this Agreement, this Agreement is contingent upon approval of such rezoning of Tract A because the development plan is premised upon development of both tracts together; and

WHEREAS, Tract B is currently zoned R-4 Multiple Family Residence in Champaign County and would directly convert to City R-4 Medium Density Multiple Family Residential upon annexation under the terms and provisions of the Urbana Zoning Ordinance; and

WHEREAS, the Developer finds that the best use of Tract B would be as City B-3 General Business zoning in conformance with the City of Urbana's Comprehensive Plan; and

WHEREAS, Flex-N-Gate, as Developer, is proposing to construct a new, stand-alone manufacturing facility of approximately 100,000 square feet; and

WHEREAS, Flex-N-Gate anticipates the new plant will lead to the creation of 275 new full time equivalent positions over two years; and

WHEREAS, the Urbana City Council finds that said job creation will benefit the City of Urbana; and

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

WHEREAS, the Urbana City Council finds that entering into a development agreement as provided herein, for Tract A also reflects 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, other revenues, new jobs and will enable the City to continue to enhance its tax base; and

WHEREAS, the Developer desires to have the aforementioned real estate annexed to the City of Urbana and develop both Tracts A and B 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 DEVELOPER**

The Developer agrees to the following provisions:

**Section 1. Annexation:** The Developer represents that it will acquire said Tracts as soon as practical after the City Council's approval of this Agreement and will execute this Agreement as owner of the Tracts. If the City Council's action on the petition to rezone Tract A to IN Industrial is favorable and an ordinance so rezoning Tract A is enacted and approved by the Mayor, then the Developer will, within thirty (30) days, cause Tract B to be annexed to the City of Urbana by filing a legally sufficient annexation petition with all required signatures thereon, all in accordance with Illinois Statutes.

**Section 2. Zoning:** The Developer agrees and acknowledges that upon annexation, Tract B will be converted from County R-4 Multiple Family Residence to City B-3 General Business. The Developer further agrees that said zoning will remain in effect for the term of this Agreement, as it may be amended from time to time. Furthermore, the Developer agrees to abide by all applicable development regulations existing at the time of annexation.

**Section 3. Agreement Amendments:** The Developer shall take no action or omit to take action during the term of this Agreement which action or omission, as applied to Tract A or Tract B would be a breach of this Agreement, without first procuring a written amendment to this Agreement duly executed by the Developer and the City. Said action includes petitioning for a county rezoning of said Tract B without a written amendment to this Agreement.

**Section 4. Code Compliance:** The Developer agrees to cause all new development, subdivision, construction, or additions on said tracts to be in conformance with all City of Urbana building, electrical, fire, and plumbing codes, orders or regulations in effect at the time of construction. The Developer agrees that no construction shall commence on Tract B until it is properly annexed to the City of Urbana.

**Section 5. Sales Tax Information:** The Developer agrees to provide the City with sales tax information reasonably necessary for the City to determine payments owed by the City to Champaign County, if any, as the result of annexation of Tract B.

**Section 6. Street Improvements:** The Developer agrees and acknowledges that they will cooperate with the City of Urbana in extending Butzow Drive and Smith Road improvements as illustrated on Exhibit D in order to assist the City in receiving a grant for a portion of the costs of said construction from the Illinois Department of Transportation (IDOT). Said cooperation includes the dedication of any necessary right-of-ways at no cost to the City of Urbana. Further, if said grant is not authorized by IDOT, the Developer agrees to either pay that portion of the costs otherwise attributable to the IDOT grant for the improvements of Butzow Drive and Smith Road or that this Agreement shall be null and void.

**Section 7. Facility Construction.** The Developer agrees to develop Tracts A and B including

the extension of gas, electrical, and water utilities to serve Tracts A and B, and to substantially complete the construction of a 100,000 square foot manufacturing facility on Tract A within one year of the date the City Council approves this Agreement.

In addition the Developer will be responsible for the extension of any sanitary sewer, water, electricity or other utilities from adjoining properties to serve Tract A and Tract B. Said utilities will be extended to the eastern most portion of said tracts upon their development.

**Section 8. Job Creation:** The Developer agrees that the new manufacturing facility will employ 275 full time equivalents within two (2) years of its opening.

**Section 9. Development of Tract B:** The Developer agrees that they will make their best effort to develop Tract B commercially within five years of the date of this Agreement. If Tract B is sold to a tax-exempt entity within five years of the date the City Council approves this Agreement, the Developer shall reimburse the City \$25,000 within sixty (60) days of the sale of Tract B for a portion of the street improvements the City constructed to advance this project.

**Section 10. Landscaping.** The Developer agrees to construct and install landscaping in substantial conformance with the attached site plan and subject to the City Arborist's approval.

## **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 annex Tract B subject to the terms and conditions outlined in this Agreement, when properly and effectively requested to do so, by submission of a legally sufficient petition from the Developer, by enacting such ordinances as may be necessary and sufficient to legally and validly annex said tract to the City.

**Section 2. Zoning and Special Use Permit:** The Corporate Authorities agree that Tract B will be zoned City B-3 General Commercial as defined in the City of Urbana Ordinance as such exists at the time of annexation of tracts. The Corporate Authorities agree that all applicable development regulations existing at the time of annexation will apply to said tract. Furthermore, the Corporate Authorities agree not to rezone the property during the term of this Agreement without a rezoning petition executed by the Developer requesting said change.

The Corporate Authorities further agree that a Special Use is hereby granted for the construction of the new manufacturing facility on Tract A and its future expansion, in substantial conformance to the conceptual site plan attached hereto, including future expansion of the facility in conformance with the City of Urbana codes and ordinances. The Urbana City Council hereby

waives the following items:

- a. Enclosure by a wire mesh fence of no less than six (6) feet in height;
- b. Side and rear yards of twenty-five (25) feet.

Minor changes in parking or driveway location or other changes required as a result of further architectural or engineering planning and shall not constitute a significant change in the site plan.

**Section 3. Enterprise Zone:** The Corporate Authorities agree to immediately initiate a request for an extension of the City of Urbana Enterprise Zone from the State of Illinois to include Tract A. If said extension is not granted, the parties agree that this Agreement will become null and void.

**Section 4. Infrastructure Improvement Costs:** The Corporate Authorities agree to apply to the Illinois Department of Transportation (IDOT) for funding participation in the construction of the improvement and extension of Butzow Drive and Smith Road as illustrated on Exhibit D. The parties agree, however, that if IDOT does not approve said funding, this Agreement shall be null and void unless the Developer chooses to pay for the costs of IDOT's share as noted in Exhibit E. In any case, the City of Urbana will not be liable for costs which exceed \$300,000. The City will be responsible for the construction of sidewalks along said streets, which will be deferred. In addition the Developer will be responsible for the extension of any sanitary sewer, water, electricity or other utilities from adjoining property lines to serve Tract A and Tract B. Said utilities will be extended to the eastern most portion of said Tracts upon their development.

**Section 5. Conditions Precedent.** Prior to the City of Urbana authorizing the engineering design and construction of said street improvements, the following must occur:

- a. The City of Urbana will not authorize the engineering design of said street improvements until this Agreement is approved by the Urbana City Council.
- b. The City of Urbana will not commence or authorize construction, except for grading, of said street improvements unless:
  1. The Developer provides the City evidence that they have obtained all necessary construction and other governmental agency permits to commence construction of the facility;
  2. The Developer provides the City evidence of acquisition of Tract A and B by submitting recorded deeds or other acceptable documentation of property acquisition;
  3. The Developer provides the City of evidence that the Developer has entered into a contract for the construction of a manufacturing facility of approximately 100,000 square feet;
  4. The Developer accomplishes substantial construction of footings and site development;

5. The City of Urbana executes appropriate agreements and/or contracts with IDOT for the construction and improvement of Butzow Drive and Smith Road as illustrated on Exhibit C with cost shares agreed to as noted on Exhibit E.

### **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 Tract B 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 Developer, 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 Council Members 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 Developer 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, Developer agrees that neither party will take any 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 the Developer, and the city.

**Section 4. Enforcement** -- The Developer 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 Developer, the City may refuse the issuance of any permits or other approvals or authorizations relating to development of the tracts.

**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 the Developer 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.

**IN WITNESS WHEREOF**, the Corporate Authorities and the Developer 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.

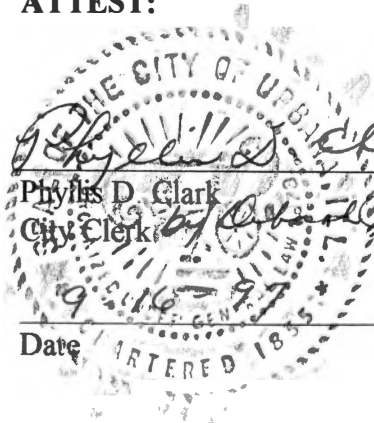
**Corporate Authorities**  
**City of Urbana:**

Tod Satterthwaite  
Tod Satterthwaite, Mayor

9/16/97  
Date

**ATTEST:**

Phyllis D. Clark  
Phyllis D. Clark  
City Clerk  
by Robert, Deputy Clerk  
Date 9-16-97



**Developer:**  
Flex-N-Gate Corporation

William M. Goldstein

William M. Goldstein  
General Counsel/Corporate  
Secretary

September 15, 1997  
Date

**ATTEST:**

Carolyn Ann Schmidt

9-15-97  
Date

**OFFICIAL SEAL**  
**CAROLYN ANN SCHMIDT**  
NOTARY PUBLIC, STATE OF ILLINOIS  
MY COMMISSION EXPIRES 8/9/99



**Exhibits attached and made a part of this Agreement:**

**Exhibit A: Legal Description of Tract A**

**Exhibit B: Legal Description of Tract B**

**Exhibit C: Location Map**

**Exhibit D: Schematic of Butzow Drive and Smith Road Improvements**

**Exhibit E: Cost share of street improvements**

EXHIBIT A

Commencing at the Northeast corner of the Southeast Quarter of Section 9, Township 19 North, Range 9 East of the Third Principal Meridian, Champaign County, Illinois, said point being the Northeast Corner of Lot 5 of the Jacob M. Smith Estates, being a subdivision of the Southeast Quarter of Section 9, Township 19 North, Range 9 East of the Third Principal Meridian, Champaign County, Illinois; Thence S 66° 01' 06" W, along the South line of the property described in File No. 73-L-270 in the Circuit Clerk's office of the Champaign County Court House, being that property described in a Condemnation Suite of Wilson vs. The City of Urbana, 663.17 feet for a true place of beginning; Thence S 01° 14' 23" W, 920.04 feet; thence S 87° 41' 27" E, 17.58 feet to a point on the North right-of-way line of FA Route 11; Thence S 03° 52' 48" W, along the right-of-way line of FA Route 11, 143.63 feet to the Northeast Corner of Wilson Trailer Park; thence S 89° 48' 10" W, along the North line of Wilson Trailer Park, 697.87 feet; thence S 89° 36' 52" W, 111.10 feet to the West line of Lot 6 of a Subdivision of Jacob M. Smith Estates; Thence N 00° 56' 49" W, along the West line of said Lot 6, 696.75 feet to the Southwest Corner of the property described in File No. 73-L-270 in the Circuit Clerk's office of the County Court House, being that property described in a Condemnation Suite of Wilson vs The City of Urbana; thence N 66° 01' 06" E, along the Southerly line of the property described in File No. 73-L-270 in the Circuit Clerk's office of the County Court House, 911.19 feet to the place of beginning, said tract containing 16.87 acres, more or less, and situated in Champaign County, Illinois, except Tract II of the following combined described Tracts (Tract I being shown for reference only):

Tract I

Beginning at the Northeast corner 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, being a subdivision of the Southeast Quarter of Section 9, Township 19 North, Range 9 East of the Third Principal Meridian, Champaign County, Illinois; Thence South 01° 07' 43" E, along the East line of said Section 9, being also the East line of said Lot 5, 609.36 feet; Thence N 89° 33' 49" E, 155.29 feet to the Northwest corner of the Carriage Estates Mobile Home Park; Thence S 00° 07' 46" E, along the West line of the Carriage Estates Mobile Home Park, 512.68 feet, to the Northerly right-of-way line of FA Route 11; thence Southwesterly along the Northerly right-of-way line of FA Route 11, being a curve concave to the Northwest having a radius of 4428.66 feet, an arc distance of 232.66 feet, said curve having a chord distance of 232.64 feet and a chord bearing of S 69° 03' 41" W; Thence N 87° 41' 27" W, along the Northerly right-of-way of FA Route 11, 563.51 feet; Thence S 03° 52' 48" W, along the right-of-way of FA Route 11, 112.05 feet; Thence N 89° 35' 42" W, 396.27

feet; Thence N 00° 16' 06" W, 45.00 feet; thence S 89° 43' 54" W, 415.97 feet to the West line of Lot 6 of a subdivision of said Jacob M. Smith Estate; Thence N 00° 56' 49" W, along the West line of said Lot 6, 616.22 feet to the Southwest corner of the property described in file number 73-L-270 in the Circuit Clerks office of the County Court House, being that property described in a condemnation suit of Wilson vs City of Urbana; Thence N 66° 01' 06" E, along the Southerly line of the property described in File number 73-L-270 in the Circuit Clerks office of the County Court House 1574.36 feet to the place of beginning, said tract containing 32.67 acres more or less and situated in Champaign County, Illinois. Said parcel subject to an easement, 20 feet in width, 10 feet each side of existing storm sever across the Southwest corner of said parcel, said easement reserved to Janice Hoesman, and the centerline of which is described as follows:

Commencing at the Southwest corner of the above described Tract I, being on the West line of Lot 6 of a subdivision of Jacob M. Smith Estate, being a subdivision of the Southeast Quarter of Section 9, Township 19 North, Range 9 East of the Third Principal Meridian, Champaign County, Illinois; Thence N 00° 56' 49" W, along the West line of said Lot 6, 52.41 feet for a true place of beginning; Thence S 70° 57' 21" E, 158.42 feet to the South line of the above described Tract I; Thence S 89° 43' 54" W, 151.05 feet to the place of beginning.

#### Tract II

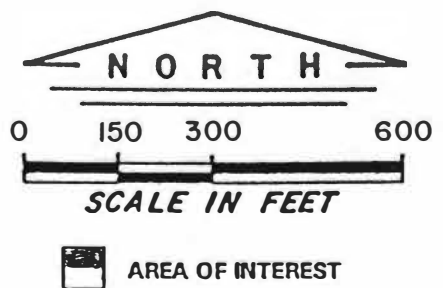
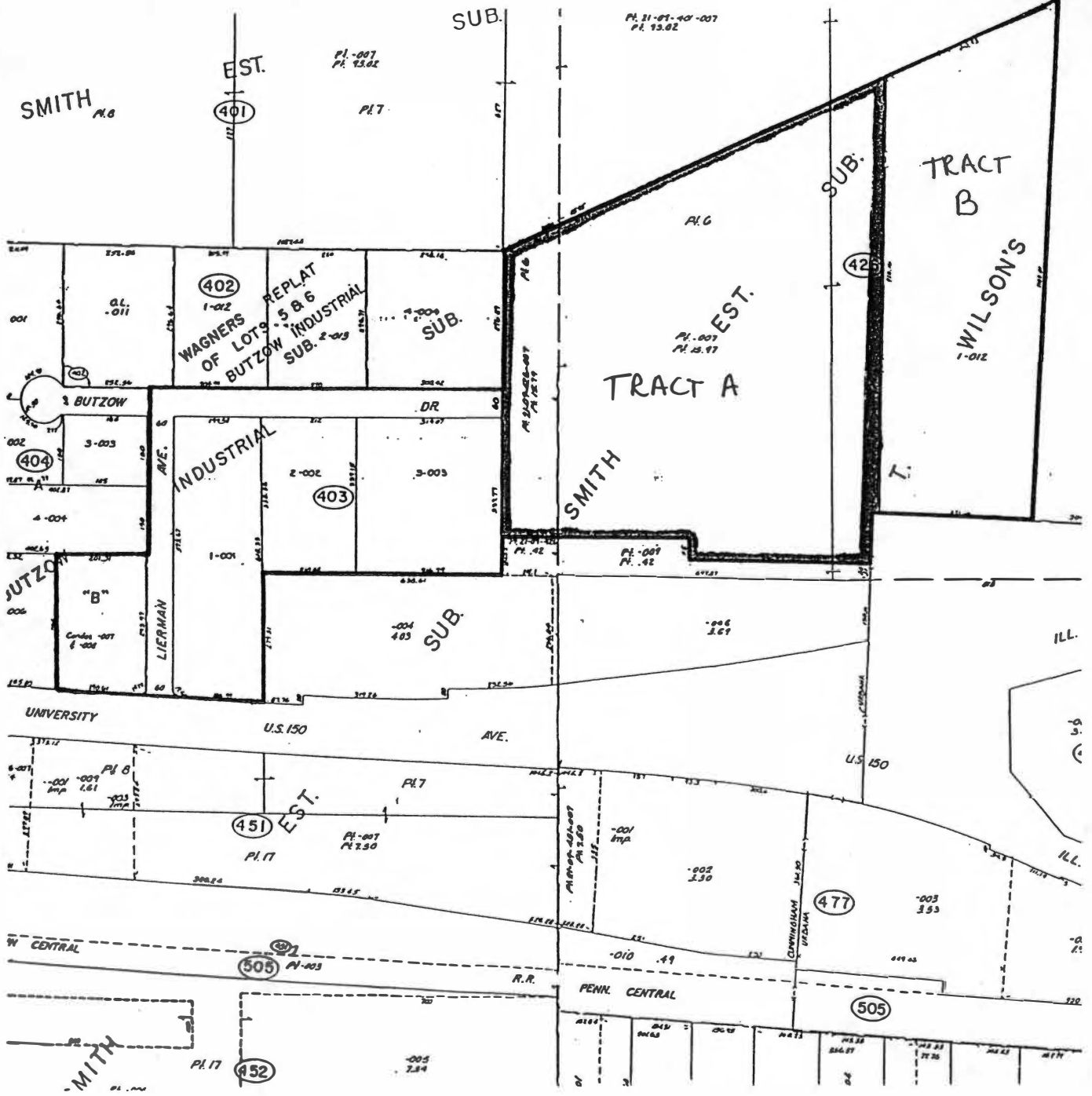
Beginning at the Southwest corner of the above described Tract I, being on the West line of Lot 6 of a subdivision of Jacob M. Smith Estate, being a subdivision of the Southeast Quarter of Section 9, Township 19 North, Range 9 East of the Third Principal Meridian, Champaign County, Illinois; Thence N 89° 43' 53" E, 415.97 feet; Thence S 00° 16' 06" E, 45.00 feet; Thence S 89° 35' 42" E, 396.27 feet to the North and Westerly right-of-way line of FA Route 11; Thence S 03° 52' 48" W, along the right-of-way line of FA Route 11, 31.58 feet to the Northeast corner of Wilson Trailer Park; Thence S 89° 48' 10" W, along the North line of Wilson Trailer Park, 697.87 feet; Thence S 89° 36' 52" W, 110.10 feet to the West line of Lot 6 of a subdivision of Jacob M. Smith Estates; Thence N 00° 56' 49" W, along the West line of said Lot 6, 80.53 feet to the place of beginning, said Tract containing 1.08 acres more or less and situated in Champaign County, Illinois.

**Exhibit B**

**Legal Description of Tract B**

Lot 1 of T. Wilson Subdivision, in Champaign County, Illinois.

EXHIBIT A C



BASE DATA FROM THE CHAMPAIGN COUNTY  
 LAND ATLAS SHEET 21-9G AND 21-9H  
 REVISED JANUARY 1, 1997

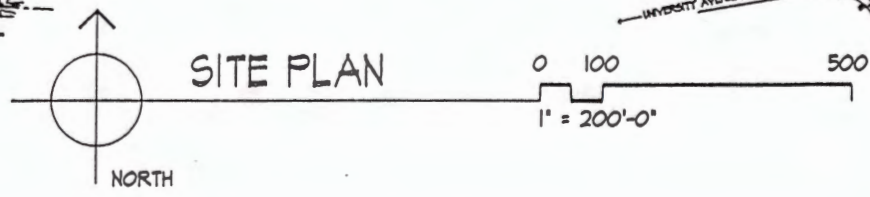
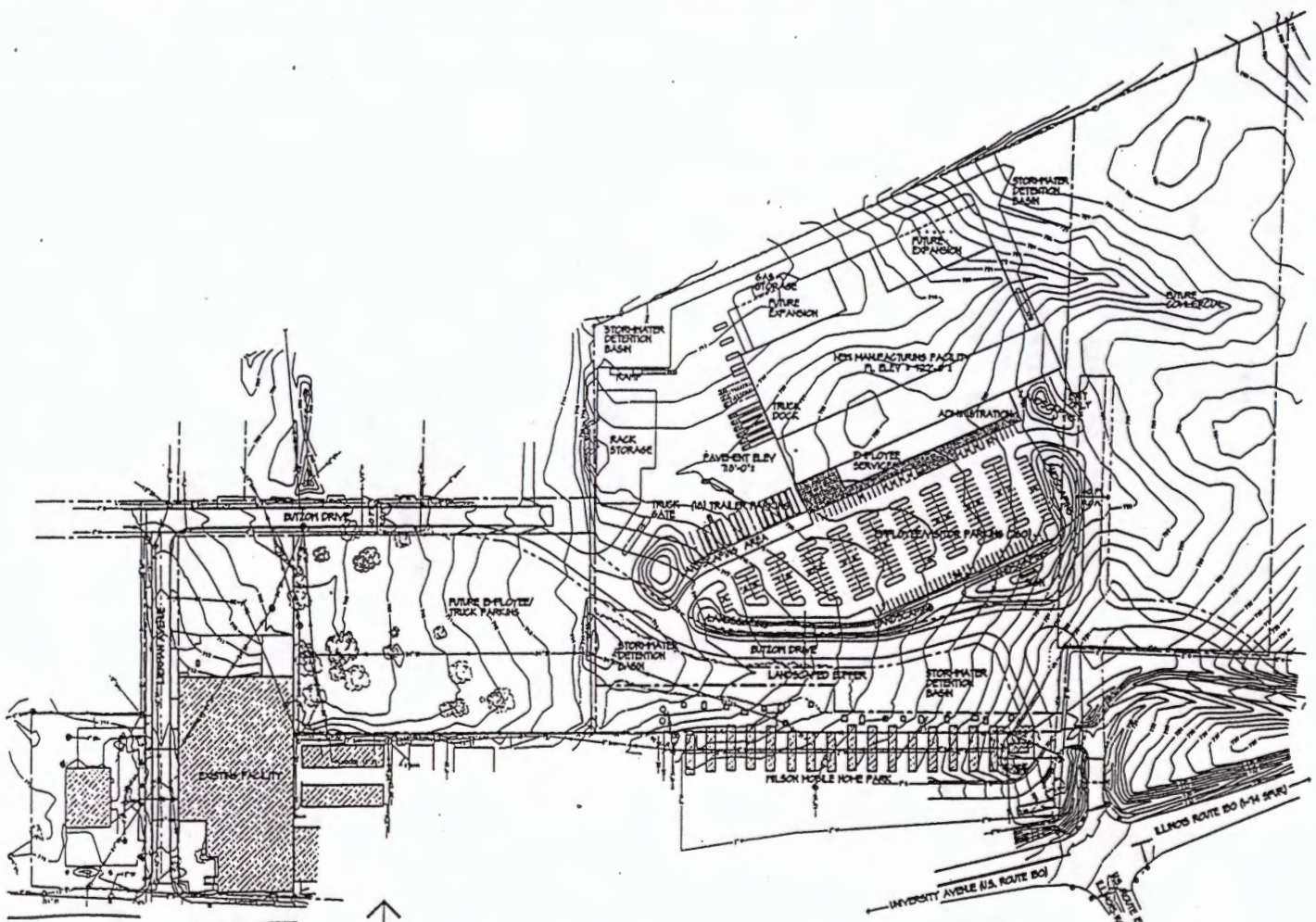
**LOCATION MAP**  
**CITY OF URBANA**  
**CHAMPAIGN COUNTY, ILLINOIS**  
**FLEX-N-GATE DEVELOPMENT**



**BERNS, CLANCY AND ASSOCIATES, P.C.**  
 ENGINEERS • SURVEYORS • PLANNERS  
 405 EAST MAIN STREET - POST OFFICE BOX 755  
 URBANA, ILLINOIS 61803-0755  
 PHONE 217/384-1144 - FAX: 217/384-3356



Exhibit D



**BERNS, CLANCY AND ASSOCIATES, P.C.**  
 ENGINEERS • SURVEYORS • PLANNERS  
 406 EAST MAIN STREET • POST OFFICE BOX 766  
 URBANA, ILLINOIS 61803-0766  
 PHONE 217/384-1144 • FAX 217/384-3366

SHEET 1 of 1 DATE 08/08/97 JOB: 3521-17

**gic**  
**ISAKSEN • GLERUM PC ARCHITECTS**  
 1164 WEST MAIN STREET URBANA, ILLINOIS (217) 328-1381

**FLEX-N-GATE**  
 URBANA ILLINOIS

714355ATEC  
 08.07.97  
 RKT

714355ATEC-3521-17-17

**Exhibit E**  
**Cost Shares of Street Improvements**

<b>Segment</b>	<b>IDOT Contribution in \$'s</b>	<b>IDOT %</b>	<b>City Contribution in \$'s</b>	<b>City %</b>	<b>Total Cost</b>
Segment I	\$75,500	50%	\$75,500	50%	\$151,000
Segment II	\$108,000	50%	\$108,000	50%	\$216,000
Segment III	\$403,000	100%	\$0	0%	\$403,000
Segment IIIA	\$15,000	50%	\$15,000	50%	\$30,000
Segment IV	\$36,500	50%	\$36,500	50%	\$73,000
Engineering Costs	\$94,000	73%	\$35,000	27%	\$129,000
<b>Totals</b>	<b>\$732,000</b>		<b>\$270,000</b>		<b>\$1,002,000</b>

The above costs are estimates subject to final design and engineering.



1-22-98

Ms. Kallio did not  
need Council approval.

We found that her  
subdivision was City-  
approved but not on  
the UCSD list. So Council  
repealed the ordinance. Jay G.