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2005R34419

# Recording Cover Sheet

ORDINANCE NO. 2005-09-141

AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF AN ANNEXATION AGREEMENT (A TRACT OF LAND CONTIGUOUS TO THE NORTHWEST CORNER OF THE CITY LIMITS ADJACENT TO THE CANADIAN NATIONAL RAILWAY / PLAN CASE NO. 2005-A-05a, EMULSICOAT, INC.)

RECORDED ON  
11/10/2005 04:12:28PM  
CHAMPAIGN COUNTY  
RECORDER  
BARBARA A. FRASCA  
REC FEE: 34.00  
RHSPS Fee:  
REV FEE:  
PAGES 13  
PIAT ACT: 0  
PIAT PAGE:

Prepared for recording by:

Deborah J. Roberts, Deputy City Clerk

400 S. Vine Street, Urbana, IL 61801

Return to:

Phyllis D. Clark, City Clerk  
City of Urbana  
400 S. Vine Street  
Urbana, IL 61801

**FILED**

NOV 09 2005

ORDINANCE NO. 2005-09-141

*Mark Sheldon*  
CHAMPAIGN COUNTY CLERK

**AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION  
OF AN ANNEXATION AGREEMENT**

(A Tract of Land Contiguous to the Northwest Corner  
Of the City Limits, Adjacent to the Canadian National Railway,  
Plan Case 2005-A-05a, Emulsicoat, Inc.)

WHEREAS, an Annexation Agreement between the City of Urbana, Illinois and Emulsicoat, Inc has been submitted for the Urbana City Council's consideration, a copy of which is attached; and,

WHEREAS, said agreement governs a tract of land totaling approximately 13.89 acres located approximately 825 feet west of Saline Court, and runs along the east edge of the Canadian National / Illinois Central railroad right of way, northward for approximately 2,500 feet and is legally described as follows:

TRACT "A"

PART OF THE EAST ½ OF SECTION 31 AND PART OF THE SE ¼ OF SECTION 30, T. 20 N., R. 9 E. OF THE 3RD P.M., CHAMPAIGN COUNTY, ILLINOIS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 201 OF NORTH LINCOLN AVENUE INDUSTRIAL PARK SUBDIVISION NO. 2, RECORDED MAY 30, 2002 AS DOCUMENT NUMBER 2002R17213 IN THE OFFICE OF THE RECORDER, CHAMPAIGN COUNTY, ILLINOIS, SAID CORNER LYING 500.00 FEET NORMAL DISTANCE EASTERLY OF THE CENTERLINE SOUTHBOUND MAIN TRACK OF THE CN-IC RAILROAD, SAID POINT ALSO LYING ON THE EASTERLY RIGHT-OF WAY LINE OF SAID RAILROAD; THENCE N. 89°46'39" W., (URBANA HORIZONTAL CONTROL BEARING), ALONG THE EXTENDED NORTH LINE OF SAID LOT 201, 267.80 FEET TO A POINT LYING 244.50 FEET NORMAL DISTANCE EASTERLY OF SAID CENTERLINE OF THE SOUTHBOUND MAIN TRACK; THENCE N. 17°39'30" E., PARALLEL WITH SAID CENTERLINE, 2414.15 FEET; THENCE N. 70°29'17" E., 164.94 FEET TO A POINT LYING 375.94 FEET NORMAL DISTANCE EASTERLY OF SAID CENTERLINE, SAID POINT ALSO LYING ON THE EASTERLY RIGHT-OF WAY LINE OF SAID RAILROAD; THENCE S. 01°13'35" E., ALONG SAID EASTERLY RIGHT-OF-WAY LINE, 383.31 FEET TO A POINT LYING 500.00 FEET NORMAL DISTANCE EASTERLY OF SAID CENTERLINE; THENCE S. 17°39'30" W., ALONG SAID

EASTERLY RIGHT-OF-WAY LINE, PARALLEL WITH SAID CENTERLINE, 2070.89 FEET TO THE POINT OF BEGINNING, CONTAINING 602,981 SQUARE FEET OR (13.843 ACRES), MORE OR LESS, ALL SITUATED IN CHAMPAIGN COUNTY, ILLINOIS.

WHEREAS, the City Planner of Urbana, Illinois, duly published notice on the 12<sup>th</sup> day of September, 2005 in the News-Gazette, a newspaper of general circulation in the City of Urbana, that a public hearing would be held with the City Council of Urbana on the matter of the proposed Annexation Agreement and the proposed rezoning of the tract; and

WHEREAS, the City of Urbana, Illinois also mailed notice of the public hearing to each of the Trustees of the Eastern Prairie Fire Protection District on the matter; and

WHEREAS, on the 26<sup>th</sup> day of September, 2005, the Urbana City Council held a public hearing on the proposed Annexation Agreement; and

WHEREAS, prior to the aforesaid public hearing held by the Urbana City Council, after due and proper notice, a public hearing was held before the Urbana Plan Commission on the 8th day of September, 2005, to consider the proposed Annexation Agreement and the rezoning from Champaign County AG-2, Agriculture to the City IN, Industrial Zoning District upon annexation in Plan Case No. 2005-A-12a and 1954-M-05; and

WHEREAS, The Urbana City Council has determined that the proposed Annexation Agreement is in conformance with the goals and objectives of the City of Urbana's Official Comprehensive Plan; and,

WHEREAS, the Urbana City Council, having duly considered all matters pertaining thereto, finds and determines that the proposed annexation agreement will not negatively impact the City of Urbana and would be in the best interests of the City of Urbana and its citizens.

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

Section 1. That the Annexation Agreement between the City of Urbana and the Emulsicoat, Inc., a copy of which is attached and hereby incorporated by reference, is hereby authorized and approved.

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

Section 3. The City Clerk is directed to record a certified copy of this Ordinance and the Annexation Agreement herein approved, as amended, with the Recorder of Deeds of Champaign County, Illinois.

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called of two-thirds of the members of the Corporate Authorities of the City of Urbana, Illinois, then holding office, at a special meeting of said Council.

PASSED by the City Council this 26th day of September,  
2005 .


AYES: Barnes, Bowersox, Chynoweth, Lewis, Roberts, Smyth,  
Stevenson, and Mayor Prussing

NAYS:

ABSTAINS:

APPROVED by the Mayor

2005 .



*Stephen D. Clark*  
Stephen D. Clark, City Clerk  
*D. Roberts*  
Deputy Clerk  
September\*  
*Laurel Lunt Prussing*  
Laurel Lunt Prussing, Mayor

\*Special meeting

## Annexation Agreement

(Emulsicoat Incorporated / Tract "A" at CN Railway)

THIS Agreement is made and entered into by and between the **City of Urbana, Illinois**, (hereinafter sometimes referred to as the "Corporate Authorities" or the "City") and **Emulsicoat Incorporated** (hereinafter referred to as the "Owners"). 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, Emulsicoat Incorporated is the Owner of record of a certain parcel of real estate located along the east edge of the Canadian National / Illinois Central railroad right-of-way, the legal description of which real estate is set forth in Exhibit "A" attached hereto and referenced herein as Tract "A" or "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, the tract is contiguous to the City of Urbana, and both the Owner and the City determine that annexation of the tract is in the best interest of all parties; and

WHEREAS, the tract is currently zoned AG-2, Agricultural in Champaign County and the City and the Owners find it necessary and desirable that the tract be annexed to the City with a zoning classification of IN, Industrial, under the terms and provisions of the Urbana Zoning Ordinance in effect upon the date of annexation, as amended, and subject to the terms and conditions set forth in this Agreement; and

WHEREAS, the Corporate Authorities find annexation of the tract as described herein with the city zoning district designation of IN, Industrial reflects the goals, objectives and policies set forth in the City's 2005 Comprehensive Plan, as amended from time to time; and

WHEREAS, the Owners desire 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 COVENANTS AND AGREEMENTS SET FORTH HEREIN, THE PARTIES AGREE AS FOLLOWS:**

## ARTICLE I. REPRESENTATIONS AND OBLIGATIONS OF THE OWNERS

The Owner agrees to the following provisions:

### Section 1:

- (a) The Owner represents that the Owner is the sole record Owner of the tract described in Exhibit A and that the Owner shall, within thirty (30) days of the approval of this agreement cause the tract 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. Until annexation of the subject tract occurs, the Owners shall require that any persons intending to reside thereon, whether as tenants or owners, shall, prior to residing thereon, irrevocably agree in writing to sign, join in, and consent to any petition for annexation of the subject tract. The Owners shall file such written agreement with the City Clerk within thirty (30) days of the signing of such.
- (b) The 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. The Owner agrees that the substance of this provision regarding annexation shall be included in the subdivision covenants and such will constitute a covenant running with the land.
- (c) The Owner agrees that if the Owner fail to include the substance of Section 1(a) of this Agreement in sales contracts or subdivision covenants, as provided herein, and if said annexation is delayed or contested by subsequent owner(s) as a result, the Owner shall be liable to the City for all real estate taxes and other taxes that would have been due to the City had annexation been able to proceed as outlined herein. The Owner agrees for themselves, successor and assigns, and all other persons intended herein to be obligated to consent to annexation, to cooperate in signing or joining in any petition for annexation for the subject tract and that mandamus would be an appropriate remedy in the event of refusal so to do, and, if the City has to resort to Court proceedings to enforce this obligation, the City shall be entitled to recover reasonable attorney's fees. The parties agree that nothing in this section shall preclude the voluntary annexation of the subject tract or any portion thereof earlier than would otherwise be required.

**Section 2:** The Owner accepts the City of Urbana zoning classification of IN, Industrial, as provided for in Article IV of the Urbana Zoning Ordinance. The Owner agrees that, unless changed upon the initiative of the Owner the said City zoning classifications for said tract shall remain in effect for the term of this Agreement, subject to the right of the Corporate Authorities to amend the Zoning Ordinance text even if such amendment affects the tract. The Owner agrees to use the tract only in compliance with the regulations and provisions of the Urbana Zoning Ordinance and this agreement as each may be amended from time to time.

**Section 3. Special Use Permit:** The Owner agrees to the following conditions of a Special Use Permit granted by Article II Section 3 of this Agreement, which will allow an asphalt blending, storage and distribution plant in the IN, Industrial zoning district as an "Other Industrial Use" which is permitted by Urbana Zoning Ordinance Table IV-1.

1. This Special Use Permit shall be applicable only to the confines of Tract "A" as depicted in the attached Exhibit "B" Map, and legally described in Exhibit "A"
2. The Special Use Permit is applicable only to the asphalt blending, storage, and distribution plant proposed in the application and depicted in the attached Exhibit "C" Site Diagram.
3. The layout of the site shall be in substantial conformity with Exhibit "C" Site Diagram. Any significant deviation from this Site Diagram shall require an amendment to the Special Use Permit granted herein and shall include review by the Urbana Plan Commission and approval by the Urbana City Council.
4. The Owner agrees that all operations, development, construction, or additions to its asphalt blending, storage and distribution plant on Tract "A" as depicted in the attached Exhibit "B" Map, and legally described in Exhibit "A" shall be in conformity with all applicable State and Federal regulations including Illinois Environmental Protection Agency regulations pertaining to chemical emissions, particulate emissions, dust, noise, odor, and ground water protection.

**Section 4. Building Code Compliance:** The Owner agrees to cause any new development, construction, or additions on said tract to be in conformance with all City of Urbana building, electrical, fire, and plumbing codes, orders or regulations in effect at the time of such construction. The Owner agrees to submit all building construction plans to the City of Urbana for review and further agrees to pay the required permit fees. The Owner further agrees to correct any deficiencies identified in said plan review.

**Section 5. Subdivision:** The Owner agrees to prepare and submit a minor subdivision plat per the Urbana Subdivision and Land Development Code to combine Tract "A" with Lot 204 of North Lincoln Avenue Industrial Subdivision #2A as shown on Exhibit B within 45 days of the approval of this agreement.

**Section 6. School District Petition:** The Owner agrees to petition for the disconnection of said Tract "A" from Champaign School District Unit #4 and request annexation to Urbana School District #116 per the Illinois State Statute, within 60 days of the approval of this agreement.

**Section 7. Amendments:** 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. Said action includes petitioning for a county rezoning of said tract without a written amendment to this Agreement.

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

The Corporate Authorities agree to the following provisions:

**Section 1:** The Corporate Authorities agree to annex said tract 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 Owner, by enacting such ordinances as may be necessary and sufficient to legally and validly annex said tract to the City.

**Section 2:** The Corporate Authorities agree that the tract will be zoned IN, Industrial, in accordance with Article IV of the Urbana Zoning Ordinance upon annexation and as defined in the City of Urbana Zoning Ordinance as such exists at the time of annexation of tract. The Corporate Authorities agree that all applicable development regulations existing at the time of construction will apply to said tract.

**Section 3. Special Use Permit:** The Corporate Authorities agree with this annexation agreement to grant a Special Use Permit to allow the Owners to establish an asphalt blending, storage and distribution plant on Tract "A" under the "*All Other Industrial Uses*" land use category in the IN, Industrial Zoning District. The Corporate Authorities further agree that the granting of the Special Use Permit is consistent with the established criteria identified in Section VII-6 of the Urbana Zoning Ordinance in that the use of an asphalt plant:

- a. will be conducive to the public convenience at this location;
- b. will be designed, located, and proposed to be operated so that it will not be unreasonably injurious or detrimental to the district in which it will be located, or otherwise injurious or detrimental to the public welfare; and
- c. will conform to the applicable regulations and standards of, and preserves the essential character of, the district in which is shall be located.

**Section 4. Enterprise Zone:** The Corporate Authorities agree that upon annexation of said tract into Urbana School District #116, the Corporate Authorities shall request that the State of Illinois approve an amendment of the Urbana Enterprise Zone boundaries to include said tract.

## **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 tract 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, his/her (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 term of this Agreement unless specific terms are expressly made binding beyond the term 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 Owners as to all or any part of the tract, 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 Owners agree 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 tract would be a breach of this Agreement without first procuring a written amendment to this Agreement duly executed by both the Owners and the City.

**Section 4. Enforcement** -- The Owners and Corporate Authorities agree and hereby stipulate that either 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 Owners, 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 Owners 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 Owners 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:**

*Laurel Lunt Prussing*  
Laurel Lunt Prussing, Mayor

9/27/05  
Date

**Owners:**

*Rick Beyers*  
Rick Beyers, VP & General Manager  
Emulsicoat Incorporated

9/28/05  
Date

**ATTEST:**

*Phyllis D. Clark*  
Phyllis D. Clark  
City Clerk  
9/27/05  
Date

**ATTEST:**

*Evelyn Matthews*  
Notary Public  
9/28/05  
Date

**"OFFICIAL SEAL"**  
Evelyn Matthews  
Notary Public, State of Illinois  
My Commission Exp. 04/15/2006

Exhibits attached and made a part of this Agreement:

- Exhibit A: Legal Description
- Exhibit B: Location Map
- Exhibit C: Site Plan

**Exhibit "A"**  
**Legal Description**

PART OF THE EAST ½ OF SECTION 31 AND PART OF THE SE ¼ OF SECTION 30, T. 20 N., R. 9 E. OF THE 3<sup>RD</sup> P.M., CHAMPAIGN COUNTY, ILLINOIS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 201 OF NORTH LINCOLN AVENUE INDUSTRIAL PARK SUBDIVISION NO. 2, RECORDED MAY 30, 2002 AS DOCUMENT NUMBER 2002R17213 IN THE OFFICE OF THE RECORDER, CHAMPAIGN COUNTY, ILLINOIS, SAID CORNER LYING 500.00 FEET NORMAL DISTANCE EASTERLY OF THE CENTERLINE SOUTHBOUND MAIN TRACK OF THE CN-IC RAILROAD, SAID POINT ALSO LYING ON THE EASTERLY RIGHT-OF-WAY LINE OF SAID RAILROAD; THENCE N. 89°46'39" W., (URBANA HORIZONTAL CONTROL BEARING), ALONG THE EXTENDED NORTH LINE OF SAID LOT 201, 267.80 FEET TO A POINT LYING 244.50 FEET NORMAL DISTANCE EASTERLY OF SAID CENTERLINE OF THE SOUTHBOUND MAIN TRACK; THENCE N. 17°39'30" E., PARALLEL WITH SAID CENTERLINE, 2414.15 FEET; THENCE N. 70°29'17" E., 164.94 FEET TO A POINT LYING 375.94 FEET NORMAL DISTANCE EASTERLY OF SAID CENTERLINE, SAID POINT ALSO LYING ON THE EASTERLY RIGHT-OF-WAY LINE OF SAID RAILROAD; THENCE S. 01°13'35" E., ALONG SAID EASTERLY RIGHT-OF-WAY LINE, 383.31 FEET TO A POINT LYING 500.00 FEET NORMAL DISTANCE EASTERLY OF SAID CENTERLINE; THENCE S. 17°39'30" W., ALONG SAID EASTERLY RIGHT-OF-WAY LINE, PARALLEL WITH SAID CENTERLINE, 2070.89 FEET TO THE POINT OF BEGINNING, CONTAINING 602,981 SQUARE FEET OR (13.843 ACRES), MORE OR LESS, ALL SITUATED IN CHAMPAIGN COUNTY, ILLINOIS.

**Exhibit "B  
Location Map**

# Site Diagram

(annotations by City of Urbana staff - pal)

