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DAHLGREN TOWNSHIP RESOLUTION NO. 61-09

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CITY OF CARVER RESOLUTION NO. 102-09

ADMINISTRATIVE HEARINGS

MUNICIPAL BOUNDARY ADJUSTMENTS DOCKET NO. _____

REC'D BY DMM FEB 17 2009

**JOINT RESOLUTION FOR ORDERLY ANNEXATION BETWEEN
THE TOWN OF DAHLGREN
AND THE CITY OF CARVER,
CARVER COUNTY, MINNESOTA**

WHEREAS, the City of Carver (hereinafter referred to as the "City") and the Township of Dahlgren (hereinafter referred to as the "Town" or "Township"), both located entirely within Carver County, in the State of Minnesota, desire to accommodate growth in the most orderly fashion; and

WHEREAS, the Town Board and City Council have expressed their desire to encourage future development of selected properties near the City so as to avail such development of municipal services as much as is practical; and

WHEREAS, a joint orderly annexation agreement between the parties hereto is beneficial to both parties from the standpoint of orderly planning and orderly transition of government within the area proposed to be annexed, and provides the guidelines under which such annexation shall take place.

NOW, THEREFORE, BE IT RESOLVED, in consideration of the mutual terms and conditions that follow, the City and Town enter into this Joint Resolution for Orderly Annexation (sometimes hereinafter referred to as the "Agreement") and the property herein described is proposed to be annexed by the City and shall be annexed subject to the following terms and conditions:

1. **Designation of Orderly Annexation Area.**

The Township and the City hereby designate the areas legally described on **Exhibit 1** attached hereto and incorporated herein by reference (hereinafter referred to as the "Orderly Annexation Area") for orderly annexation pursuant to Minnesota Statutes Section 414.0325.

A boundary map showing the Orderly Annexation Area legally described on **Exhibit 1** is attached hereto as **Exhibit 2** and incorporated herein by reference. The parties agree that **Exhibit 1** and **Exhibit 2** will be modified to provide that the boundary of the Orderly Annexation Area is adjusted so when the final alignment for CSAH No. 11 (currently Guernsey Avenue) in the northeast corner of the Orderly Annexation Area is determined by Carver County, the area to the west of the centerline of CSAH No. 11 is included in the Orderly Annexation Area.

The Township and City agree that the Orderly Annexation Area legally described on **Exhibit 1** and designated for orderly annexation pursuant to Minnesota Statutes Section 414.0325 is approximately 6,400 acres.

2. **Office of Administrative Hearings, Municipal Boundary Adjustments.**

Upon adoption by the Town Board and the City Council, this Agreement shall confer jurisdiction upon the State of Minnesota Office of Administrative Hearings, Municipal Boundary Adjustments (hereinafter referred to as the "MBA") or its successor pursuant to Minnesota Statutes.

3. **No Alterations of Boundaries.**

The Township and City mutually agree and state that the MBA may review and comment, but no alterations by the MBA of the stated boundaries of the area designated for orderly annexation is appropriate absent the MBA taking action following a petition for annexation and a hearing pursuant to Chapter 414.

4. **Review and Comment by Municipal Boundary Adjustments.**

The Township and City mutually agree and state that this Agreement sets forth all the conditions for annexation of the areas designated on **Exhibit 1** and that no consideration by the MBA is necessary. At such time as the conditions for annexation of the areas set forth on **Exhibit 1** or a portion thereof as described in this Agreement have been met, upon receipt of a Resolution for Annexation from the City of Carver, the Office of Administrative Hearings, Municipal Boundary Adjustments, may review and comment, but shall, within 30 days, order the annexation in accordance with the terms of the Resolution.

5. **Planning and Land Use Control Authority.**

A. The Township and City mutually agree and state that all land use authority within the Orderly Annexation Area shall remain with Carver County and the Township (if the Township chooses to exercise planning, zoning and subdivision authority pursuant to Minnesota law) while such properties remain in the Township subject to implementation of the transition area provisions of the Carver County zoning ordinance. The City shall have exclusive planning, zoning and subdivision authority over all properties annexed under the authority of this Agreement.

B. The Township agrees that the current zoning requirement of no more than one residential dwelling unit per 40 acres within the Orderly Annexation Area shall not change without City consent. The Township shall not support any amendments to current ordinances that would allow any feed lot expansion within the Orderly Annexation Area and expansion of any non-conforming commercial or industrial uses within the Orderly Annexation Area. Nothing in this paragraph shall obligate the Township to establish a zoning ordinance within the Orderly Annexation Area.

C. The Township agrees to notify the City of any requests for conditional use permits, land use changes, subdivision, rezoning or grading and filling within the Orderly Annexation Area and allow the City to review and comment on same.

6. **Taxation Reimbursement.**

A. Tax Reimbursement. Unless otherwise agreed, to allow the Township to be reimbursed for the permanent loss of taxable property (determined by Carver County's GIS system net of existing roads) from Township tax rolls for property in the Orderly Annexation Area, the City agrees that it will not initiate annexation or forward a resolution for annexation of any portion of the property described on **Exhibit 1** to the Office of Administrative Hearings, or its successor agency, until such time as the Township has received reimbursement for the loss of such taxable property in the amount of \$500 for each acre described in the City resolution to be annexed to the City. Tax exempt property at time of annexation is not subject to tax reimbursement.

B. Delinquent Taxes. The City agrees that it shall remit all delinquent taxes, charges and assessments collected from any portion of the Orderly Annexation Area after annexation of such property if such taxes or charges were originally payable while the delinquent property remained in the Township. Additionally, when a property no longer qualifies for special tax treatment through Green Acres or other applicable programs such as Ag Preserves, CRP, This Old House, and taxes that were deferred under one of these programs is paid to the City, the City shall remit to Township the amount which was deferred during the time the property was in the Township.

C. Assumption of Liability for Public Improvements. The City does not assume by this annexation any liability or responsibility for the payment of any obligations issued to finance public improvements constructed by the Township or for which special assessments were levied by the Township. In the event that the City annexes land under this Agreement upon which outstanding special assessments levied by the Township remain at the time of annexation, the City shall forward to the Township upon receipt all special assessment payments which the City receives as a result of special assessments levied by the Township.

Other than the reimbursement outlined above in paragraphs B and C, no other reimbursement or taxes shall be owed to the Township from the City.

7. **Incremental Imposition of City Tax Rates.**

The City agrees that it will increase the property taxes imposed on annexed land in Platted Residential Subdivision from the Town rate to the City rate in substantially equal proportions over a period of four years.

8. **Conditions for Orderly Annexation.**

The City and the Town mutually state and agree that properties in the Orderly Annexation Area described on **Exhibit 1** and as shown on **Exhibit 2**, or any portion thereof, shall be annexed to the City by the MBA upon receipt of a resolution from the City requesting such annexation. The City may submit such resolution to the MBA not sooner than 31 days after submitting notice to the Township (the Township may waive the 31 day period) and only when all of the following conditions are met:

- A. The property must be within the area described on **Exhibit 1** and shown on **Exhibit 2**.
- B. If the property to be annexed is part of a rural residential area with lots which are part of a recorded plat ("Platted Residential Subdivision"), the petition must be signed by the owner of record of more than 50% of the platted lots and the City must annex the entire subdivision or none of the subdivision. If the property to be annexed is part of a non-platted residential subdivision, the petition must be signed by the owner of record of more than 50% of the lots, parcels or properties contained within the residential area and the City must annex the entire subdivision or none of the subdivision. A non-platted residential subdivision area is defined as lots, parcels or properties of record used for residential purposes containing five acres or less that are contiguous to each other.
- C. A petition for property to be annexed that is not part of a platted residential subdivision must be signed by the owner of the property proposed to be annexed.
- D. The Township has received tax reimbursement as provided by paragraph 6A above for the acres described in the notice.

9. **Township Representative to the City Planning Commission.**

The City shall grant the Township one seat on its Planning Commission so as to advise the City. The City shall provide the Township's appointed representative all notice and materials that it provides its other planning commission members.

10. **Roads Within Area Designated for Orderly Annexation.**

The parties agree as follows with regard to the roads located within the Orderly Annexation Area:

- A. Roads Serving New Plats. Other than for plats abutting Dahlgren Road, the City shall require that all roadways abutting or serving new developments which have been annexed to the City shall be improved by the developer and/or property owner with bituminous surfacing from the access of the development to the nearest County, City or state road. All said road improvements shall be constructed to City standard street requirements.

B. Maintenance of Roads. Except as specifically set out herein or unless otherwise agreed by the parties, the Township shall maintain all roads in the Orderly Annexation Area not annexed to the City and the City shall maintain all roads annexed to the City. If the City annexes only one side of the property adjacent to a Township road, such road shall be deemed a line road pursuant to Minnesota Statutes Section 164.14.

C. Dahlgren Road. So long as Dahlgren Road is not a county highway, as property adjacent to Dahlgren Road is annexed, the City shall become responsible to maintain the portion of Dahlgren Road adjacent to annexed parcel(s), even if the property on the other side of Dahlgren Road from the annexed parcels remains in the Township.

D. Undue Burden on Town Roads. The Township and City recognize that there may be instances where it is appropriate for the City to assume responsibility to maintain additional portions of Town roads because City development imposes an undue burden on Town roads that serve the annexed property. The City shall, at the Township's request, maintain the entire road (i.e. both sides of the road) where the City has annexed property abutting one side of the road. The length of road required to be maintained shall be limited to the length of road directly abutting the property annexed under this Agreement from the access point to the development to the nearest county, city or state road.

E. Use of Township Roads. For all properties annexed under this Agreement, the City shall require in its developer's agreements that during plat development (including construction of residences) all construction traffic use state trunk highways, Carver County highways or Carver city streets, and that Township roads be used only when no state trunk highway, Carver County highway or Carver city street is available. The City's developer's agreements shall also require that the developer pay the Township for the cost to repair any road damage that may occur as a result of construction traffic using Township roads.

11. **Provision of Municipal Utility Service.**

A. Extension of Services. Extension of sanitary sewer service to annexed properties requesting sewer service will be a high priority by the City.

B. Assessment Rates. Assessment or connection charges to annexed properties will be at the City's customary rates for improvements of a similar type at the time of benefit and/or connection to said service.

C. Time-line for Connection. Annexed properties for which municipal services are available must connect to municipal services as required by the City Code.

D. Provision of Other Municipal Services. The City shall be responsible for the provision of all normal and customary municipal services to annexed properties.

E. Siting of Municipal Services in Township. In order to facilitate orderly development of the Orderly Annexation Area and to avoid the annexation of land in the Orderly Annexation Area merely for the purpose of installation of roadway, utilities and drainage improvements (collectively, the "Municipal Services"), the Township consents to the construction of Municipal Services prior to annexation provided the City has obtained fee title or easements necessary. The City shall reimburse the Township for the cost to repair any road damage that may occur as a result of City construction of said Municipal Services within the Township right of way.

12. **Deferred Assessment Policy.**

With respect to road, sewer and water improvements to be constructed within the Orderly Annexation Area, the City's policy for deferred, delayed, or future assessments for such improvements shall be as follows:

A. Sanitary Sewer and Water Utilities. The City shall not specially assess any properties in the Township related to the cost of construction of sanitary sewer and water utilities located within the Orderly Annexation Area. However, the City may impose connection charges or spread a deferred assessment as permitted by law on properties within the Orderly Annexation Area that are to become due and payable at such time as the properties are: 1) annexed to the City; and 2) connect to municipal water or sewer service.

B. Street Curb and Gutter and Storm Sewer Utilities. The City shall not specially assess any properties in the Township related to the cost of construction of streets, curb, gutter or storm sewer within the Orderly Annexation Area. However, the City may, if it chooses, and to the extent permitted by law, impose charges or spread a deferred assessment upon such properties for such properties' proportionate share of such improvements as a condition of annexation to the City. However, such deferred assessment shall not bear interest until such time as the property is annexed into the corporate limits of the City.

C. Reservation of Rights. The City reserves the right to enter into development agreements with the developer of any specific parcels of property within the Orderly Annexation Area, or other Township properties, that vary from the terms of this paragraph 12 with respect to such parcel.

13. **Periodic Review.**

The City and Town mutually agree and state that upon request of either party a joint periodic review of this agreement may be conducted 5 years after the effective date of this agreement and every 5 years thereafter upon the request of either party.

14. **Authorization.**

The appropriate officers of the City and Town are hereby authorized to carry the terms of this Agreement into effect.

15. **Severability and Repealer.**

A determination that a provision of this Agreement is unlawful or unenforceable shall not affect the validity or enforceability of the other provisions herein. However, should any element of paragraph 6 relating to "Taxation Reimbursement" be deemed unlawful or unenforceable, the Township at its discretion may terminate this Agreement. Any prior agreement or joint resolution existing between the parties and affecting the property described in the attached Exhibits shall be considered repealed upon the effective date of this Agreement.

16. **Effective Date and Termination.**

This Agreement shall be effective upon adoption by the governing bodies of the City and Town and approved by the MBA. Unless the parties have agreed to an extension, this Agreement shall terminate on December 31, 2030. Notwithstanding the termination of this Agreement, the provisions of paragraphs 5, 6, 10, 11 and 12 of this Agreement shall remain binding after the termination of this Agreement for all properties annexed under the terms of this Agreement prior to its termination.

17. **Disputes and Remedies.**

The City and Township agree as follows:

A. **Direct Negotiation.** When a disagreement over interpretation of any provision of this Agreement shall arise, the City and the Township shall direct staff members, as they deem appropriate, to meet at least one time at a mutually convenient time and place to attempt to resolve the dispute through direct negotiation.

B. **Mediation/Arbitration.** When the parties to this Agreement are unable to resolve the disputes through direct negotiation, the parties shall submit their respective grievances either to mediation and/or, with the consent of both parties, binding arbitration.

C. **Adjudication.** When the parties to this Agreement are unable to resolve their respective grievances either through direct negotiation or through mediation either party may seek relief through initiation of an action in a court of competent jurisdiction. In addition to the remedies provided for in this Agreement and any other available remedies at law or equity, in the case of a violation, default, or breach of any provision of this Agreement, the non-violating, non-defaulting, or non-breaching party may bring an action for specific performance to compel the performance of this Agreement in accordance with its terms.

18. **Amendment.**

Both parties reserve the right to initiate an amendment or revision to this Agreement at any time. Upon initiation, the parties agree to meet and discuss the proposed amendment or revision, but neither party shall be required to approve such amendment or revision.

19. **Costs Associated with Orderly Annexation Agreement.**

Each party shall pay its own costs incurred in the negotiation, development and implementation of this Agreement, but the City shall pay any filing fees required by the State of Minnesota.

20. **Venue.**

The venue for all actions concerning this Agreement shall be Carver County, Minnesota.

21. **Entire Agreement.**

With respect to the Orderly Annexation Area legally described on **Exhibit 1** and shown on **Exhibit 2**, respectively, which are attached hereto and incorporated herein by reference, the terms, covenants, conditions, and provisions of this Agreement shall constitute the entire agreement between the parties hereto superseding all prior agreements and negotiations between the parties.

22. **Notice.**

Any notices required under the provisions of this Agreement shall be in writing and sufficiently given if delivered in person or sent by U.S. Mail, postage prepaid, to the Dahlgren Township Clerk and the Carver City Administrator at their official addresses.

23. **Legal Description and Mapping.**

The Township and City agree that in the event there are errors, omissions or any other problems with the legal description provided on **Exhibit 1**, or mapping provided on **Exhibit 2**, in the judgment of the MBA, the City and Township agree to make such corrections and file any additional documentation including a new **Exhibit 1 or Exhibit 2** making the corrections requested or required by the MBA as necessary to make effective the annexation of said Orderly Annexation Area in accordance with the terms of this Agreement.

24. **Waiver.**

The Board of Supervisors of Dahlgren Township may, with the written consent of the City, waive any provision of this Agreement that it deems appropriate for a particular situation but only by written resolution duly adopted by the Town Board.

25. **Other Annexations Limited.**

During the term of this Agreement, unless otherwise agreed, the City shall not annex any property from the Township except as set out in this Agreement. It is the intent of the parties that this Agreement set the exclusive geographical boundaries of land which may be annexed and set the exclusive procedures under which annexation from the Township to the City may occur during the term of this Agreement.

The parties recognize that Property owners continue to maintain those options available by law at the time of their action to pursue municipal boundary adjustments. However, during the term of this Agreement, the City will not support any property owner initiated annexation petition for areas proposed for development that are located outside of the Orderly Annexation Area.

In the event an incorporation proceeding is initiated by the Township, the City then shall have the right to oppose the incorporation and to initiate an annexation action for any part of the Township provided that right is available to it under law at the time of the action. In the event the Township initiates an incorporation proceeding, the City may immediately annex the properties in the Orderly Annexation Area without the consent of the property owner.

PASSED, ADOPTED AND APPROVED by the Dahlgren Town Board of Supervisors, Carver County, Minnesota, this 11th day of February, 2009.

DAHLGREN TOWNSHIP




Gene Miller, Chair



Mary Olson, Clerk

I, the undersigned, Mary Olson, being duly qualified and Clerk for the Town of Dahlgren, Carver County, Minnesota, hereby certify that I have carefully compared the attached and foregoing excerpt Resolution No. _____ Authorizing Execution of a Joint Annexation Agreement Between the City of Carver and Dahlgren Township, with the original Resolution on file in my office and the excerpt is a full, true and exact copy of the Resolution.

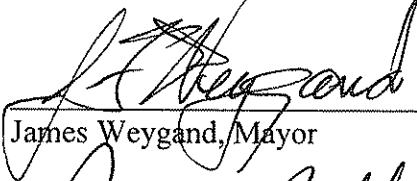
WITNESS my hand as Clerk of the Town of Dahlgren, Carver County, Minnesota, this 11 day of February, 2009.




Mary Olson, Clerk
Town of Dahlgren, Minnesota

PASSED, ADOPTED AND APPROVED by the Carver City Council, Carver County, Minnesota, this 11th day of February, 2009.

CITY OF CARVER


James Weygand, Mayor


Patricia Plekkenpol, City Clerk

I, the undersigned, Patricia Plekkenpol, being duly qualified and Clerk of the City of Carver, Carver County, Minnesota, hereby certify that I have carefully compared the attached and foregoing excerpt Resolution No. 102-09 Authorizing Execution of a Joint Annexation Agreement Between the City of Carver and Dahlgren Township, with the original Resolution on file in my office and the excerpt is a full, true and exact copy of the Resolution.

WITNESS my hand as City Clerk of the City of Carver this 12th day of February, 2009.

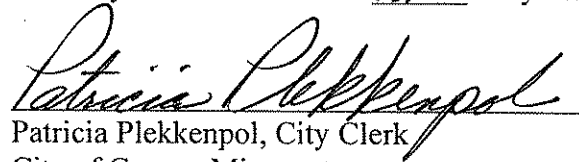

Patricia Plekkenpol, City Clerk
City of Carver, Minnesota

EXHIBIT 1
City of Carver and Dahlgren Township Orderly Annexation Agreement
Property Description

The Orderly Annexation Agreement contains all properties located within the following descriptions:

1. That part of Section 1, Township 115 Range 24 lying westerly of the centerline of Carver County State Aid Highway 11 following the realignment to be completed by 2020
2. All of Section 2, Township 115 Range 24
3. That part of Section 3, Township 115 Range 24 lying easterly of the centerline of Carver County Road 43
4. The E ½ of the SE ¼ of Section 10, Township 115, Range 24
5. All of Section 11, Township 115, Range 24
6. That part of Section 12, Township 115, Range 24 lying westerly of the centerline of Carver County State Aid Highway 11 following the realignment to be completed by 2020
7. All of Section 13, Township 115, Range 24
8. All of Section 14, Township 115, Range 24
9. The E ½ of the NE ¼ of Section 15, Township 115, Range 24 and that portion of the E ½ of the SE ¼ of Section 15, Township 115, Range 24 lying northerly of Dahlgren Road
10. All of Section 23, Township 115, Range 24
11. That part of Section 24, Township 115, Range 24 not already a part of the City of Carver
12. That part of Section 25, Township 115, Range 24 not already a part of the City of Carver
13. All of Section 26, Township 115, Range 24 excepting therefrom all property contained in the subdivision platted as Forest Glen Estates located in the SW ¼ of the SW ¼ of Section 26, Township 115, Range 24
14. The NE ¼ of Section 35, Township 115, Range 24 excepting therefrom the approximately 4.5 acres owned by East Union Evangelical Lutheran Church located in the NW ¼ of the NE ¼ of Section 35, Township 115, Range 24

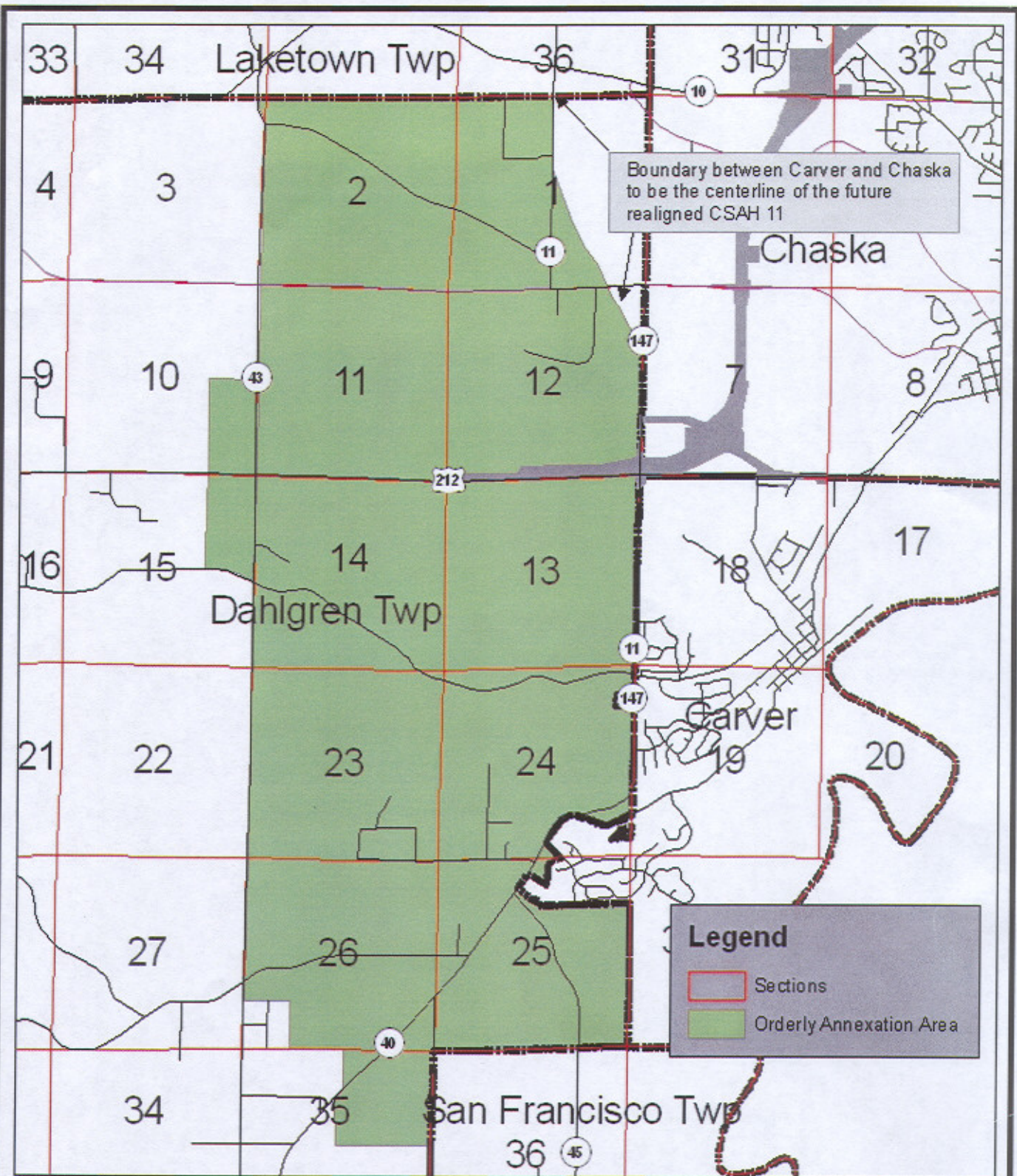


Exhibit 2
Orderly Annexation Area
City of Carver and Dahlgren Township

1:45,500



REC'D BY
 2/11/09

FEB 17 2009



Collaborative Planning, LLC
 145 Hamel Road, Suite D
 Medina, MN 55340
 763-473-0569