

A-7214 Winona/Wilson Township
A-7215 Winona/Wilson Township

STATE OF MINNESOTA

OFFICE OF ADMINISTRATIVE HEARINGS

IN THE MATTER OF THE PETITION FOR)
THE ANNEXATION OF CERTAIN LAND) **JOINT RESOLUTION**
TO THE CITY OF WINONA PURSUANT TO)
MINNESOTA STATUTES, SECTION 414.031)

JOINT RESOLUTION FOR ORDERLY ANNEXATION
BY AND BETWEEN WILSON TOWNSHIP AND
THE CITY OF WINONA IN SETTLEMENT OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS FILE NOS.
A-7214 AND A-7215 WINONA/WILSON TOWNSHIP

WHEREAS, a property owner, Phillips Development, Inc., with property located within Wilson Township (hereinafter the "Township") and legally described herein, (hereinafter referred to as the "Phillips Property") approached and petitioned the City of Winona (hereinafter the "City") requesting annexation to the City and extension of City services; and

WHEREAS, the owner of the Phillips Property seeks to develop this property for urban or suburban residential purposes needing municipal services; and

WHEREAS, the Phillips Property does not currently abut the City but is in close proximity to the City and has requested municipal services available from the City; and

WHEREAS, a county road, Winona County State Aid Highway (CSAH) No. 17, currently abuts and serves the Phillips Property; and

WHEREAS, another property owner, Sweetwater Development, LLP, with property located within the Township and legally described herein, (hereinafter referred to as the "Sweetwater Property") also approached and petitioned the City requesting annexation to the City and extension of City services; and

WHEREAS, the owners of the Sweetwater Property seek to develop this property for urban or suburban residential purposes needing municipal services; and

WHEREAS, the Sweetwater Property does not currently abut the City but is in close proximity to the City and has requested municipal services available from the City; and

WHEREAS, a county road, Winona County State Aid Highway (CSAH) No. 44, currently abuts and serves the Sweetwater Property; and

WHEREAS, the City on December 21, 2004, having been unable to negotiate an agreement with the Township for annexation of said properties, filed two contested annexation petitions, dated December 6, 2004, with the Minnesota Department of Administration (now the Office of Administrative Hearings) Municipal Boundary Adjustments Office seeking annexation of said properties located within Wilson Township pursuant to Minnesota Statutes, Section 414.031; and

WHEREAS, the above-referenced Phillips Property is the subject of City Resolution No. 2004-164, dated December 6, 2004 and filed with the Department of Administration and referenced as File No. A-7215 Winona/Wilson Township; and

WHEREAS, the above-referenced Sweetwater Property is the subject of City Resolution No. 2004-165, dated December 6, 2004 and filed with the Department of Administration and referenced as File No. A-7214 Winona/Wilson Township; and

WHEREAS, the Township and the City have been working toward settlement of their boundary dispute and have reached a settlement agreement believed to be in the mutual best interests of both parties and the property owners of the subject areas; and

WHEREAS, the Township and City desire to enter into an agreement allowing for the orderly annexation of the above-mentioned properties, pursuant to Minnesota Statutes, Section 414.0325; and

WHEREAS, the Township and City, both located entirely within Winona County, in the State of Minnesota, desire to accommodate growth in the most orderly fashion and agree that a joint orderly annexation agreement between the parties hereto is beneficial from the standpoint of orderly planning and orderly transition of government within the area proposed to be annexed; and

WHEREAS, the City has available capacity to provide services to the above-mentioned areas designated herein following annexation thereof; and

WHEREAS, for the areas designated herein, the Township and City desire to accomplish the orderly annexation of said areas in a mutually acceptable and beneficial manner and without the need for a hearing; and

WHEREAS, the parties hereto desire to set forth the terms and conditions of such orderly annexation by means of this Joint Resolution in settlement of the above-referenced contested case matters.

NOW, THEREFORE, BE IT RESOLVED, the Town Board of Supervisors of Wilson Township and the City Council of the City of Winona, in consideration of the mutual terms and conditions contained herein, agree as follows:

1. Designation of Orderly Annexation Areas. The Township and the City hereby designate the area legally described in Exhibit A, attached hereto and incorporated herein by reference, including the Philips Property and Sweetwater Property (hereinafter referred to as the "Subject Area") for immediate orderly annexation pursuant to Minnesota Statutes, Section 414.0325.

In addition, the Township and City also hereby designate the area legally described in Exhibit C, attached hereto and incorporated herein by reference (hereinafter referred to as the "Orderly Annexation Area" or "OAA") for orderly annexation pursuant to Minnesota Statutes, Section 414.0325.

2. Acreage. The Township and City agree that the Subject Area (Phillips Property and Sweetwater Property) legally described in Exhibit A and designated as in need of immediate orderly annexation is approximately 313.73 acres (Phillips Property, 270.43 acres; Sweetwater Property, 43.30 acres).

The Township and City agree that the Orderly Annexation Area or OAA legally described in Exhibit C and designated for orderly annexation pursuant to Minnesota Statutes, Section 414.0325 is approximately 1,749.01 acres.

3. Population. The Township and City agree that the population of the Subject Area legally described in Exhibit A and designated as in need of immediate orderly annexation is zero.
4. Map of Areas to be Immediately Annexed. A boundary map showing the Subject Area (Phillips Property and Sweetwater Property) legally described in Exhibit A is attached hereto as Exhibit B and incorporated herein by reference.
5. Map of Designated Orderly Annexation Area (OAA). A boundary map showing the OAA legally described in Exhibit C is attached hereto as Exhibit D and incorporated herein by reference.
6. No Hearing Required for Annexation. Pursuant to Minnesota Statutes, Section 414.0325, the Township and City agree that no alteration of the boundaries stated herein is appropriate, that all conditions for annexation of the Subject Area legally described in Exhibit A (the area designated herein for immediate annexation) are contained in this Joint Resolution, and that no consideration by the Office of Administrative Hearings, or its successor agency, is necessary. Upon the execution and filing of this Joint Resolution, the Office of Administrative Hearings, or its successor agency, may review and comment thereon, but shall, within 30 days of receipt of this Joint Resolution, order the annexation of the Subject Area legally described in Exhibit A in accordance with the terms and conditions contained in this Joint Resolution.

Pursuant to Minnesota Statutes, Section 414.0325, the Township and City further agree that no alteration of the boundaries stated herein is appropriate, that all conditions for annexation of the orderly annexation area legally described in Exhibit C (the OAA) are contained in this Joint Resolution, and that no consideration by the Office of Administrative Hearings, or its

successor agency, is necessary. Upon the execution and filing of this Joint Resolution, the Office of Administrative Hearings, or its successor agency, may review and comment thereon, but shall, within 30 days of receipt of an annexation resolution filed in accordance with Paragraph 7 of this Joint Resolution, order the annexation of the OAA or portions thereof, legally described in Exhibit C, in accordance with the terms and conditions contained in this Joint Resolution.

7. Conditions for Annexation Within OAA. Unless otherwise provided herein, with respect to property located within the designated OAA legally described in Exhibit C and shown on Exhibit D, the City may annex lands located within the OAA following receipt of a petition from 100% of the property owner(s) of a parcel(s) of land within the OAA. With respect to the Springbrook Subdivision only, as located within the OAA and as recorded in Winona County Recorders Office as of the effective date of this Joint Resolution, the triggering event for annexation of said subdivision, as provided herein, shall be upon receipt by the City of a property owner petition from at least 51% of the lots of record located within the Springbrook Subdivision as said subdivision is recorded in the Winona County Recorders Office. In the event of receipt of a petition, as provided in this paragraph, the City shall provide a copy of the property owner petition to the Township at least 30 days prior to taking action as provided in this Paragraph. Pursuant to Minnesota Statutes, Section 414.0325, the City may thereafter adopt a resolution (referred to as the "Annexation Resolution") describing such area and file the same, along with a copy of this Joint Resolution, with the Office of Administrative Hearings or its successor agency; who may thereafter review and comment thereon, but shall within thirty (30) days of receipt of the Annexation Resolution and a copy of this Joint Resolution, order the annexation of the area designated in the Annexation Resolution in accordance with the terms and conditions of this Joint Resolution. The City and Township agree that no alteration of the stated boundaries as described in the Annexation Resolution is appropriate, that no consideration by the Office of Administrative Hearings, or its successor agency, is necessary, and that all terms and conditions for annexation are provided for in this Joint Resolution.
8. Tax Reimbursement. The City and Township agree that following annexation of either the Subject Area described in Exhibit A or any portion of the OAA legally described in Exhibit C, the City shall reimburse the Township for the loss of taxes from the property so annexed as follows:
- For annexed property that is proposed to be developed, the City shall, within ninety (90) days of final plat approval by the City of the proposed development or within 3 years of the effective date of annexation, whichever comes first, pay the Township a per-acre amount of one hundred and fifty dollars (\$150.00) for each acre thereby annexed pursuant to this Joint Resolution.
 - For annexed property that is not proposed to be developed with a development which would otherwise require plat approval by the City, or for annexed property that contains existing development, the City shall pay the Township, in two equal installments, a per-acre amount of one hundred and fifty dollars (\$150.00) for each acre annexed pursuant to this Joint Resolution. The first installment shall be paid to the Township within ninety

(90) days of the effective date of annexation. The second installment shall be paid to the Township within one hundred and eighty (180) days of the effective date of annexation.

- c. As an alternative to receiving the per acre amount as outlined above in Paragraph 8.b. for annexed property that contains existing residential or commercial development, the Township may elect to have the City reimburse the Township for taxes lost on the developed property annexed in accordance with the following schedule: 1) In the first year following the year the City could first levy on the annexed area, an amount equal to ninety (90) percent of the property taxes distributed to the Township in regard to the annexed area in the last year that property taxes from the annexed area were payable to the Township; 2) In the second year, an amount equal to seventy (70) percent; 3) In the third year, an amount equal to fifty (50) percent; 3) In the fourth year, an amount equal to thirty (30) percent; and 4) In the fifth and final year, an amount equal to ten (10) percent.

In order to act under this Paragraph 8.c., the Township shall make an election and provide written notice thereof to the City, by resolution adopted at a meeting of the Township Board, within thirty (30) days of the City's annexation of the developed property. Should the Township fail to make an election within the time period specified herein, the Township may only seek tax reimbursement as provided in Paragraph 8.b.

Should the Township elect to receive the per-acre amount in Paragraph 8.b., the first installment thereof shall be paid to the Township within ninety (90) days of the effective date of annexation. The second installment shall be paid to the Township within one hundred and eighty (180) days of the effective date of annexation.

For purposes of Paragraphs 8.a. and 8.b. above, in the event that the acreage of a property annexed under this Joint Resolution contains less than an acre or contains a portion of an acre in the total acreage annexed, the amount of reimbursement to the Township as provided above shall be calculated by prorating the per acre reimbursement amount to the actual acreage annexed. For example, if Property A was annexed and contains .5 acres, the reimbursement to the Township would be \$75.00 (.5 acres x \$150/acre); or if Property B is annexed and contains 4.75 acres, the reimbursement to the Township would be \$712.50 (4.75 acres x \$150/acre).

Following annexation, the City shall remit to the Township all delinquent taxes, charges and assessment collected from any portion of the OAA 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.

The City does not assume by any annexation pursuant to this Joint Resolution any liability or responsibility for the payment of any obligations issued to finance public improvements constructed by the Township or for which the Township levied special assessments. 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, no other reimbursement or taxes shall be owed to the Township by the City following annexation.

9. Conditions Following Orderly Annexation. The conditions contained in this paragraph shall apply: a) following annexation of the Subject Area, and b) following annexation by the City of land located within the OAA that is proposed for development:
- a. In accordance with the timing specified in paragraph 8 above, the City shall pay the Township the per-acre amount pursuant to the provisions of paragraph 8 of the "Tax Reimbursement" section of this Joint Resolution.
 - b. Upon receipt by the City of a preliminary plat submission from a Developer of land annexed pursuant to this Joint Resolution, the City shall forward to the Town Clerk such preliminary plat submissions. Upon receipt by the City, the City shall send the Town Clerk notice of all City Council meetings for concept plan approval, preliminary plat approval and final plat approval for the property so annexed to the City under this Joint Resolution. The City agrees, as part of the mailing process for public hearing notice of the preliminary plat, to mail notice to property owners within a quarter mile of the proposed plat. The preliminary plat should show the location of municipal water and/or sanitary sewer or other City services for the property annexed including, but not limited to, other properties that may be burdened or affected by the provision of municipal services to the annexing property. The preliminary plat must be of sufficient detail to show that it will meet the standards and requirements of the City's zoning and subdivision ordinances.
 - c. If requested by the Township prior to preliminary plat approval by the City Planning Commission, the Developer and/or Property Owner of the Subject Area or of annexed property located within the OAA, if such property is proposed for development, shall attend a Town Board meeting. The Township may submit written comments to the City Planning Commission stating the opinion of the Town Board for the development. The Township's comments, if any, on a preliminary plat must be submitted in writing to the City Planning Commission at least five days prior to final plat approval by the City Planning Commission for the development or the Township shall be deemed not to have comments thereon for consideration by the City Planning Commission or City Council.
 - d. The City agrees to require an Environmental Assessment Worksheet (EAW) be prepared prior to the preliminary plat being granted for the Phillips Property and Sweetwater Property, respectively.
 - e. Unless otherwise agreed by the parties hereto, the City agrees that no road will be extended through the Springbrook development to serve the Phillips Property or used during the development of said property, except that an emergency access easement will

apply following annexation, and in the event of additional development contiguous to Springbrook or the Phillips Property, the Township, City and/or County may at that time need to address additional roads or access issues for purposes of public safety and efficiency that could include Springbrook.

- f. The City agrees that its "Sensitive Land Development Ordinance" in force as of the effective date of this Agreement will apply to the Subject Area and other property in the OAA following annexation thereof. The Township may review and comment upon any variance requests to said ordinance from a property so annexed pursuant to this Joint Resolution in accordance with the City's procedure for considering such variances. The Township agrees to submit any comments in writing relating to this item to the City Council at least five days prior to the date of the public hearing on a variance request.

10. Requirements for Developer's Agreement. The City shall require the following in a developer's agreement, if applicable, for development of the Phillips Property, Sweetwater Property, or property in the OAA that is proposed to be developed, requires final plat approval by the City, and has been annexed pursuant to this Joint Resolution:

- a. That any EAW prepared for the development of the Phillips Property, Sweetwater Property, or property annexed in the OAA be presented to the Township for review and comment. The Township agrees to submit any comments thereon in writing to the City within 30 days of receipt of the EAW materials or the Township shall be deemed to not have comments thereon for consideration by the City Council.
- b. That the Developer meet all of the requirements for Storm Water Management under applicable Federal and State law and City ordinances including, but not limited to, the City's Storm Water Management Plan and require that any and all tile and waterways currently within the Subject Area or property annexed in the OAA either remain the same or be improved and that any functioning drain tile lines located during development of any parcel be reconnected to the existing system or connected to the City's storm sewer system.
- c. That the Developer comply with the following requirements if there is a tributary river segment located within the proposed development:
 - i. Lot width shall be a minimum of seventy-five (75) feet for single and one hundred fifteen (115) feet for duplex residential developments.
 - ii. Structures shall have a setback of fifty (50) feet from the nearest bank of the tributary river segment.
 - iii. Public and private roads and parking areas must be designed to take advantage of natural vegetation and topography to achieve maximum screening from view from public waters. Documentation must be provided by a qualified individual that all roads and parking areas are designed and constructed to minimize and control erosion to public waters.

- iv. That portion of the development, including outlots, but excluding any streets or roads, located within three hundred (300) feet of the top of the bank on either side of the tributary river segment shall not contain impervious surface areas in excess of twenty-five percent (25%) of said defined area.
- v. Alterations of vegetation and topography will be completed with appropriate safeguards to prevent erosion into public waters, fixed nutrients, preserve shoreland aesthetics, prevent bank slumping and protect fish and wildlife habitat. Intensive vegetation clearing within the fifty (50) foot setback area referenced in Paragraph ii above will not be permitted except if necessary to provide for utility, vehicle and/or pedestrian crossings of the tributary river segment. Areas of vegetation which are disturbed during construction of said crossings shall be restored to the prior natural state as soon as practical.
 - 1. Alterations must be designed and conducted in a manner that ensures only the smallest amount of bare ground is exposed for the shortest time possible.
 - 2. Mulches or similar materials must be used, where necessary, for temporary bare soil coverage and a permanent vegetation cover must be established as soon as possible.
 - 3. Methods to minimize soil erosion and to trap sediments before they reach any surface water feature must be used.
 - 4. Altered areas must be stabilized to acceptable erosion control standards consistent with the field office technical guides of the local soil and water conservation districts and the Natural Resources Conservation District.
 - 5. Fill or excavated material must not be placed in a manner that creates an unstable slope.
- d. That during development of a property in the Subject Area or OAA (including construction of all residences) all construction traffic shall use State Trunk Highways, Winona County Highways or Winona City streets, and that Township roads be used only when no State Trunk Highway, Winona County Highway or Winona City street is available.
- e. That Developer maintains any township roads used during construction including, but not limited to, dust control coating, grading, and repair of any damage caused when construction traffic uses Township roads. Unless otherwise agreed by the Township, Developer shall repair any township roads damaged during construction within thirty (30) days of being notified by the Township. In the event that the Developer fails to repair any township roads damaged during construction within the time frame specified, the Township may cause the necessary repairs to be completed and bill the Developer; provided however, that the Township shall notify the Developer before taking such action and give the Developer an opportunity to remedy the problem or to state the reasons for not repairing the road while construction of the development is ongoing and when the Developer expects such repairs to be completed. The Developer agrees that upon being billed by the Township, Developer will pay within thirty (30) days of the mailing of said billing the said amount. Prior to construction, the Developer and Township will assess and

determine the existing condition of a potentially impacted Township road in order to establish a baseline for possible repairs that may result from construction activity with respect to the development. For paved roads, the Developer is required to repair that damage to a Township road caused by the Developer. For gravel roads, the Developer is required to restore the gravel road to Township standards for that portion of the road damaged by the Developer.

- f. That the Developer warrant to the Township for a period of two years from the date the Township accepts the finished repairs to any Township roads repaired under the terms of this Agreement that all such repairs have been constructed to their condition for the type of road that existed prior to construction of the development and shall suffer no significant impairments, either to the structure or to the surface or other usable areas due to improper construction, said warranty to apply both to poor materials and faulty workmanship.
 - g. That the City shall not accept a future petition for annexation from the property owner of the Phillips Property, Sweetwater Property, or the property owner of property that has been annexed within the OAA and is proposed for development, until all conditions in this Joint Resolution and in the development agreement with the City that apply to the property owner, except any road warranty period provided herein, have been complied with.
11. Provision of Services. After annexation of the Subject Area or lands located within the OAA, the City shall be responsible for providing municipal governmental services to the respective annexed areas.

Unless otherwise agreed to by the parties hereto, municipal sanitary sewer service shall be provided to an area annexed pursuant to this Joint Resolution within three (3) years of either; 1) the date of final plat approval by the City Council for development of the annexed area for annexed property that is proposed to be developed, or 2) the effective date of annexation of the annexed area for property containing existing development. A failure on the part of the City, not due to circumstances beyond the City's control, to provide sanitary sewer service within the time period specified herein, may subject the area annexed to be deemed null and void by resolution of the Township adopted at a regular meeting of the Township. In such event, the Township, with the support of the affected property owners, may thereafter petition the Office of Administrative Hearings Municipal Boundary Adjustments Office, or its successor agency, for detachment of the area annexed in accordance with Minnesota Statutes, Section 414.06. Nothing in this paragraph prevents the City from contesting the detachment procedure initiated by the affected property owners pursuant to Minnesota Statutes, Section 414.06.

As an alternative to initiating a detachment proceeding and notwithstanding the provisions of Paragraph 8, the Township may elect, by resolution adopted at a Township Board meeting, to have the City reimburse the Township for taxes lost by the Township on the applicable property annexed by the City. Said taxes shall be calculated at the Township's tax rate applicable in the year the Township elects to seek additional tax reimbursement as provided

in this paragraph multiplied by the taxable tax capacity of such property in each year in which the reimbursement is paid. Said additional tax reimbursement shall be paid to the Township within thirty (30) days of the Township electing to seek such additional tax reimbursement and continuing on the same day every year thereafter until the services required under this Paragraph are provided to the annexed property by the City or the termination of this Joint Resolution, whichever comes first.

In order to act under this Paragraph, the Township shall make an election and provide notice thereof to the City, by resolution adopted at a meeting of the Township Board, within one hundred and eighty (180) days of the City's failure to provide said service as required under this Paragraph. The Township shall elect to either: 1) initiate a detachment proceeding with the support of the affected property owners pursuant to Minnesota Statutes, Section 414.06, or 2) seek tax reimbursement as provided in this Paragraph. Should the Township fail to make an election within the time period specified herein, the Township may only seek tax reimbursement as provided in this Paragraph and waives the election to initiate a detachment proceeding under Section 414.06.

For purposes of this Paragraph, the City will be deemed to have met the obligation to provide sanitary sewer service to the applicable annexed area if within the timeframe specified above in this paragraph, the City awards a contract to a contractor to construct a sewer service project making municipal sanitary sewer service available to the annexed area.

Every Annexation Resolution adopted under Paragraph 7 of this Joint Resolution resulting in the annexation of land located within the OAA shall be treated separately for purposes of the Township initiating a detachment proceeding or seeking additional tax reimbursement as provided herein.

The Township shall not unreasonably withhold any applicable approvals, including permits and/or easements, necessary for the City to construct, install, operate and maintain sanitary sewer, storm sewer and/or water lines or appurtenances through the orderly annexation area for the provision of services to properties annexed pursuant to this Joint Resolution. Further, notwithstanding any provision to the contrary contained in this Joint Resolution, the City and Township agree that in the event that Township or County does not provide the required approvals or permits necessary for the City to construct, install, operate and maintain sanitary sewer, storm sewer and/or water lines or appurtenances through the orderly annexation area for the provision of services to properties annexed pursuant to this Joint Resolution, the City may initiate, in its discretion, a contested annexation proceeding pursuant to section 414.031 to annex such right-of-way area as needed to provide said services.

12. Bluffland Protection. The Township agrees that it will work with the County to develop a bluffland protection ordinance to protect bluffland areas located within the Township.
13. Prohibition on Future Annexations. Unless otherwise agreed to by the parties, the City agrees not to initiate, support, or accept a property owner petition for annexation of property located in Wilson Township and abutting the Phillips Property on the south, east, or west sides of said property, until such time as at least 50% of the property within that portion of

the orderly annexation area shown on Exhibit D located generally northerly of the Phillips Property is annexed. The City further agrees not to initiate, support, or accept a property owner petition for annexation of property located on the west side of and abutting the Sweetwater Property until such time as at least 50% of the property within the portion of the OAA shown on Exhibit D surrounding the Sweetwater Property is annexed.

The City and Township agree that the City will not initiate a contested case annexation proceeding (Section 414.031) pursuant to Minnesota Statutes, Chapter 414 within the remainder of the Township located outside the OAA during the term of this Joint Resolution for land proposed for residential or commercial use. Further, the City and Township agree that the City will not initiate a contested case annexation proceeding (Section 414.031) pursuant to Minnesota Statutes, Chapter 414 within the remainder of the Township located outside the OAA for a period of three years following the effective date of this Joint Resolution for land proposed for "industrial" use. The above prohibitions are not otherwise intended to preclude proceedings under Minn. Stat. §§ 414.02, 414.033, or 414.0335. For purposes of this paragraph, a proposed "residential" or "commercial" use includes the permitted uses in the following districts as defined in the Winona City Code of Ordinances, Chapter 43 (Zoning), as it exists on the effective date of this Joint Resolution: R-S Residential Suburban District, R-1 One-family Residence District, R-1.5 One to Four-Family, Medium Density, R-2 One to Four-Family Residence District, R-3 Multiple-Family Residence District, R-MHP Residential Mobile Home Park, R-R Rural Residential District, B-1 Neighborhood Business District, B-2 Central Business District, and B-3 General Business District. For purposes of this paragraph, a proposed "industrial use" includes the following: a City industrial or business park, M-1 Light Manufacturing and Warehouse District permitted uses, M-2 General Manufacturing District permitted uses, and Airport Industrial Park District permitted uses, as of the effective date of this Joint Resolution.

14. Roads Within the Designated Area. The parties agree that the City shall require that all roads within and that will serve newly platted developments in the designated Subject Area or OAA as legally described in Exhibits A and C be improved with bituminous surface by the Developer and/or property owner from the access of the development to the nearest County, City or State road. The City shall at the Township's request, annex the entire road (i.e. both sides of the road) where the City has annexed property abutting one side of the road and has approved a final plat for any portion of the annexed property. With respect to the Phillips Property, the City shall if requested by the Township, and may if it deems necessary, annex that portion of Wilson Township Road No. 1 (Echodale Road) located within the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 13, Township 106, Range 7, Winona County, Minnesota. The length of road required to be annexed shall be limited to the length of road directly abutting the property annexed under this Agreement, unless otherwise agreed in writing by the City and Township. With respect to that portion of Echodale Road not otherwise annexed hereby that is located generally southwesterly of the Phillips Property, and that property abutting the Phillips Property served by said portion of Echodale Road located generally southwesterly of the Phillips Property, all located within the SW $\frac{1}{4}$ of Section 13, Township 106, Range 7, Winona County, Minnesota, said property shall continue to have comparable road access to the now existing road access through the Phillips Property.

15. Impact of Development on County Roads. The parties hereto acknowledge that development of the Subject Area and/or OAA may have impacts on County roads. The County may review and comment upon development proposals to the City that may impact County roads prior to approval of such developments by the City. The City will in good faith consider the County's comments and concerns. The County shall be deemed not to have comments on a development proposal if such comments are not submitted in writing to the City at least fifteen (15) days prior to consideration of a preliminary plat by the City Council. The City, Township, and County shall remain responsible for the proper repair, maintenance and improvement of those roads that are within their respective jurisdictions.
16. Existing Rural Uses. The parties acknowledge that certain agricultural uses may exist within close proximity to the Subject Area and OAA that may lead to conflict as residential properties are developed adjacent to these uses. The City and the Township acknowledge that Minnesota Statutes, Section 462.357 Subd. 1c (2004) provides that except as otherwise provided in this subdivision, a municipality must not enact, amend, or enforce an ordinance providing for the elimination or termination of a use by amortization, which use was lawful at the time of its inception. In addition, the City and Township agree to work in good faith to address issues that may arise as anticipated property use conflicts arise.
17. Notification of Rural Uses. The City and Township shall each adopt a policy, which requires that developers seeking to develop land within the Township that is annexed, provide notice to potential builders and homeowners, within the area proposed for development, that the land may be located in or near an agricultural area and as such is potentially subject to sounds and smells associated with agricultural production. Implementation of this policy will require that this notification be incorporated into each party's developer's agreements and recorded with the plat. The City and the Township must approve those notifications for land development within their respective jurisdictions.
18. Zoning and Planning Within the OAA. The Township and City agree that within ninety (90) days of the effective date of the Office of Administrative Hearings order establishing the OAA, a Joint Planning Board (JPB) will be established to exercise planning and land use control authority within the designated orderly annexation area pursuant to Minnesota Statutes, Section 414.0325 and Section 471.59, Subdivisions 2 through 8, inclusive. Prior to annexation, the zoning and subdivision ordinance of Winona County or Wilson Township, whichever is more restrictive, will control the properties in the area designated for orderly annexation; following annexation, the ordinances of the City shall control. For any areas of the Township in the OAA that have not been annexed pursuant to this Joint Resolution, planning and zoning authority as specified herein within the OAA shall be governed by a 5-member Joint Planning Board (JPB) described as follows:
 - a. The JPB shall be made up of two members appointed by the Township Board, two members appointed by the City Council, and one member of the Winona County Board appointed jointly by the City Council and Township Board. If the City and Township cannot agree on the County commissioner member to serve on the JPB, the City and Township shall alternately strike members serving on the County Board until only one County Board member remains. The remaining County Board member not stricken shall

be the member appointed to serve on the JPB. If the City and Township are unable to agree who strikes first, the parties hereto shall flip a coin to make the determination.

- b. Prior to annexation, the JPB shall serve as the “governing body” and “board of appeals and adjustments” for purposes of Minnesota Statutes, sections 462.357 and 462.358 within the OAA and shall have all of the powers contained in sections 462.351 to 462.364, except as otherwise provided by this Joint Resolution. Following annexation, the City shall have exclusive land use control authority and jurisdiction over the annexed area.
- c. City staff shall serve as staff and advisors to the JPB unless otherwise determined by the JPB. The costs of administration of the JPB during the time that the City staff serves as staff and advisors to the JPB shall be solely the City’s cost. The JPB may, at any time, also consult with the County staff as it deems necessary to effectively carry out its duties and responsibilities. In the event that the JPB changes staff to other than City staff, the costs of administration of the JPB shall be paid equally by the City and Township. Any remuneration (per diem) paid to members serving on the JPB or retaining consultants to provide services to the JPB shall be approved and equally paid by the respective governing bodies of the City and Township.
- d. The JPB will set the schedules for necessary zoning and planning fees in the OAA. Fees that are collected will go to the City as the governing jurisdiction staffing the JPB. If staffing for the JPB changes to other than City staff, fees collected shall be divided equally between the City and Township.
- e. Except as otherwise provided, any action of the JPB to exercise its authority as specified herein must be preceded by a majority vote (at least 3 out of the 5 members) of the members of the JPB voting on the prevailing side.
- f. The JPB shall require that the existing Township zoning ordinance or Winona County zoning ordinance, whichever is applicable and more restrictive, in effect within the OAA on the effective date of this Joint Resolution, remain in full force and effect and unchanged during the term of this Joint Resolution, unless said area or portion thereof is either first annexed or said zoning change is otherwise approved by a supermajority vote (4 out of 5 members) of the JPB. Any decision by the JPB to zone or rezone portions of the OAA shall be subject to review and comment by the City and Township prior to such zoning or rezoning becoming effective. The JPB shall give the City and Township at least 30 days to review and comment before making a zoning or rezoning decision. The City or Township shall waive its right to review and comment if it fails to review and comment within the specified period provided herein.
- g. The JPB shall not otherwise approve a plat or subdivision within the OAA unless first approved by a supermajority vote (4 out of 5 members) of the JPB. For the purposes of this paragraph, “subdivision” shall not include building entitlement transfers for agricultural lot splits and property transfers between family members under the current Winona County Zoning Ordinance, as adopted by the Township.

- h. The Township shall not zone, rezone, plat, re-plat, subdivide, or re-subdivide within the OAA between the time of development of this Joint Resolution and the effective date of this Joint Resolution, unless otherwise agreed to in writing by the City.
 - i. Failure of the JPB to exercise any of its authority as described herein shall not render this Joint Resolution or any other provisions contained herein invalid or unenforceable, and the terms and conditions contained in this Joint Resolution shall otherwise remain in full force and effect and binding upon the parties hereto.
 - j. Each member serving on the JPB shall serve a period of one year ending December 31. Members shall serve at the discretion of their respective governing bodies and members may be removed at any time prior to the expiration of their term, or alternatively a term on the JPB may be extended, by action of a member's respective governing body. Notwithstanding the foregoing, the selection of the county commissioner member serving on the JPB remains subject to Paragraph 18.a. of this Joint Resolution.
 - k. The JPB shall meet monthly on a day and time determined by the JPB or shall meet a lesser or greater amount as needed and as determined by the JPB members.
 - l. Pursuant to Minnesota Statutes, Section 471.59, Subd. 5, any property or funds retained by the JPB at the time this Joint Resolution is terminated shall be divided equally between the City and Township after all expenses have been paid pursuant to the terms of this Joint Resolution.
19. Deferred Assessment Policy. With respect to improvements to be constructed for the benefit of the Subject 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 will not specially assess any properties in the Township related to the cost of construction of sanitary sewer and/or municipal water utilities constructed to serve the Subject Area. However, the City may impose connection and trunk charges as permitted by law on properties within the Township 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 sanitary sewer service.
 - b. *Street and 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 to serve the Subject Area. However, the City may, if it chooses, impose charges upon such properties for such properties' proportionate share of such improvements as a condition of annexation to the City.
 - c. *Reservation of Rights.* Notwithstanding the terms of this Joint Resolution, the City reserves the right to enter into a development agreement with the developers of the property annexed hereby that may vary from the terms of this Paragraph with respect to such development.

20. Township Maintenance of Services. The Township agrees that it will be responsible for normal and regular maintenance of all Township roads, streets, bridges, drainage facilities and other public rights-of-way that it is currently maintaining within the designated OAA prior to annexation thereof. Maintenance of Township infrastructure within the designated OAA by the Township shall be consistent with other standard maintenance practices employed by the Township elsewhere in the Township.
21. Line Roads. For any Township roads that become the boundary line for the City and Township as a result of an annexation, the City shall assume responsibility for road maintenance and improvement for the entire section of the Township road that becomes the boundary line adjacent to the City.
22. AUAR. The City, as the responsible governmental unit ("RGU"), shall prepare for public review an alternative urban areawide review ("AUAR") in accordance with Minnesota Rules, Part 4410.3610 within three years of the effective date of this Joint Resolution. Nothing in this Paragraph 22 shall prevent any annexation and/or development otherwise provided for in this Joint Resolution. The requirement for an AUAR does not apply to the Phillips or Sweetwater properties or the City project for extension of sewer or water infrastructure thereto or to the Winona Country Club.
23. Disputes and Remedies. The City and Township agree as follows:
- a. Negotiation. When a disagreement over interpretation of any provision of this Joint Resolution shall arise, the City and the Township will direct staff members, as they deem appropriate, to meet at least one (1) time at a mutually convenient time and place to attempt to resolve the dispute through negotiation.
 - b. Mediation/Arbitration. When the parties to this Joint Resolution are unable to resolve disputes, claims or counterclaims, or are unable to negotiate an interpretation of any provision of this Joint Resolution, the parties may mutually agree in writing to seek relief by submitting their respective grievances to mediation and/or binding arbitration.
 - c. Adjudication. When the parties to this Joint Resolution are unable to resolve disputes, claims or counterclaims, are unable to negotiate an interpretation of any provision of this Joint Resolution or are unable to agree to submit their respective grievances to mediation or binding arbitration, or such action has not otherwise resolved the matter in dispute, 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 Joint Resolution and any other available remedies at law or equity, in the case of a violation, default, or breach of any provision of this Joint Resolution, the non-violating, non-defaulting, or non-breaching party may bring an action for specific performance to compel the performance of this Joint Resolution in accordance with its terms.
24. Termination. This Joint Resolution shall remain in full force and effect until one of the following conditions take place, whichever occurs first: 1) Termination by mutual written joint resolution of the City and Township; or 2) The remainder of the OAA is annexed by the

City pursuant to the terms of this Joint Resolution; or 3) ten (10) years from the effective date of the Joint Resolution.

25. Withdraw Contested Case Petitions. The City agrees to withdraw its pending annexation petitions, File Nos.A-7214 and A-7215, as soon as practicable after execution and filing of this Joint Resolution with the State.
26. Filing. The Township and City agree that upon adoption and execution of this Joint Resolution, the City shall file the same with the Office of Administrative Hearings Municipal Boundary Adjustments Office, or its successor agency, and pay the required filing fee.
27. Governing Law. The Township and City agree that this Joint Resolution is made pursuant to, and shall be construed in accordance with the laws of the State of Minnesota.
28. Headings and Captions. The Township and City agree that the headings and captions contained in this Joint Resolution are for convenience only and are not intended to alter any of the provisions of this Joint Resolution.
29. Entire Agreement. With respect to the Subject Area and OAA legally described in Exhibit A and Exhibit C and shown on Exhibit B and Exhibit D, respectively, which are attached hereto and incorporated herein by reference, the terms, covenants, conditions, and provisions of this Joint Resolution shall constitute the entire agreement between the parties hereto superseding all prior agreements and negotiations between the parties.
30. Notice. Any notices required under the provisions of this Joint Resolution shall be in writing and sufficiently given if delivered in person or sent by U.S. mail, postage prepaid, as follows:

If to the City:

City Manager
Winona City Hall
207 Lafayette Street
Winona, MN 55987-0378

If to the Township:

Township Clerk
Wilson Township
Winona, MN

31. Legal Description and Mapping. The Township and City agree that in the event there are errors, omissions or any other problems with the legal descriptions provided in Exhibit A and/or Exhibit C or mapping provided in Exhibit B and/or Exhibit D, in the judgment of the Office of Administrative Hearings, or its successor agency, the City and Township agree to make such corrections and file any additional documentation, including a new Exhibit A, B, C, or D making the corrections requested or required by the Office of Administrative Hearings, or its successor agency, as necessary to make effective the annexation of said Subject Area in accordance with the terms of this Joint Resolution.

MAY 24 2005

Passed, adopted, and approved by the Town Board of Supervisors of Wilson Township, Winona County, Minnesota, this 18 day of May, 2005.

WILSON TOWNSHIP

By: Michael Kirschmann
Michael Kirschmann, Chairman

ATTEST:

Laurene Babler
Laurene Babler, Town Clerk

Passed, adopted, and approved by the City Council of the City of Winona, Winona County, Minnesota, this 23 day of May, 2005.

CITY OF WINONA

By: Jerry Miller
Jerry Miller, Mayor

ATTEST:

Monica Hennessy Mohan
Monica Hennessy Mohan, City Clerk

EXHIBIT A
Legal Description – Subject Area

The Subject Area including the Phillips Property and Sweetwater Property annexed in the attached Joint Resolution is legally described as follows:

PHILLIPS PROPERTY

Parcel A

Outlot L; Spring Brook Subdivision Number 2, according to the recorded plat thereof, Winona County, Minnesota.

Also that part of the Southeast Quarter of the Southeast Quarter of Section 12, and that part of the North Half of the Northeast Quarter of Section 13, all in Township 106, Range 7, Winona County, Minnesota, described as follows:

Beginning at the northeasterly corner of said Outlot L; thence North 63 degrees 00 minutes 00 seconds East, along the southerly line of Block 1, Spring Brook Subdivision, according to the recorded plat thereof, said Winona County, 380.00 feet to the southeasterly corner of Lot 4, said Block 1; thence North 73 degrees 30 minutes 00 seconds East, along said southerly line of Block 1, a distance of 255.00 feet to the southeasterly corner of Lot 2, said Block 1; thence continue North 73 degrees 30 minutes 00 seconds East, 71.23 feet, more or less, to the westerly line of the property described in Book 163 of Deeds, Page 533, said Winona County; thence southerly along said westerly line of the property described in Book 163 of Deeds, Page 533 to the southwest corner thereof; thence easterly along the southerly line of said property described in Book 163 of Deeds, Page 533 and its easterly extension, 379.50 feet, more or less, to the east line of said Southeast Quarter of the Southeast Quarter of Section 12; thence southerly along said east line of the Southeast Quarter of the Southeast Quarter, 33.00 feet, more or less, to the southeast corner thereof; thence southerly along the east line of said North Half of the Northeast Quarter of Section 13, a distance of 221.49 feet to the center line of Wilson Township Road No. 1; thence southwest along said center line to the south line of said North Half of the Northeast Quarter of Section 13; thence westerly along said south line of the North Half of the Northeast Quarter to the intersection of the southerly extension of the easterly Line of Block 4, said Spring Brook Subdivision Number 2; thence North 14 degrees 22 minutes 53 seconds East, along Said southerly extension and along said easterly line of Block 4 to the northeasterly corner of Lot 5, said Block 4; thence North 53 degrees 01 minutes 59 seconds East, along said easterly line of Block 4, a distance of 456.82 feet to the northeasterly corner of Lot 3, said Block 4; thence North 04 degrees 02 minutes 52 seconds East, along said easterly line of Block 4, a distance of 310.63 feet to the southeasterly corner of said Outlot L; thence North 10 degrees 53 minutes 51 seconds East, along the easterly line of said Outlot L, 399.51 feet to the point of beginning.

Subject to the right of way of Winona County State Aid Highway No. 17, and subject to the right of way of said Wilson Township Road No. 1

And Also Parcel B

The South Half of the Northeast Quarter (S $\frac{1}{2}$ of NE $\frac{1}{4}$), the North Half of the Southeast Quarter (N $\frac{1}{2}$ of SE $\frac{1}{4}$), the Northeast Quarter of the Southwest Quarter (NE $\frac{1}{4}$ of SW $\frac{1}{4}$), the Southwest Quarter of the Southeast Quarter (SW $\frac{1}{4}$ of SE $\frac{1}{4}$) of Section Thirteen (13), Township One Hundred Six (106) North, of Range Seven (7), West of the Fifth Principal Meridian, Winona County, Minnesota.

SWEETWATER PROPERTY

The South Half of the Southeast Quarter of the Northwest Quarter (S $\frac{1}{2}$ of SE $\frac{1}{4}$ of NW $\frac{1}{4}$) of Section Five (5), Township One Hundred Six (106) North, of Range Seven (7), West of the Fifth Principal Meridian, Winona County, Minnesota.

Also, the South Half of the South Half of the Northeast Quarter (S $\frac{1}{2}$ of S $\frac{1}{2}$ of NE $\frac{1}{4}$) of Section Five (5), Township One Hundred Six (106) North, of Range Seven (7), West of the Fifth Principal Meridian, Winona County, Minnesota, lying Westerly of the centerline of County State Aid Highway 44.

Also, That part of the North Half of the Southeast quarter (N $\frac{1}{2}$ of SE $\frac{1}{4}$) and that part of the Northeast Quarter of the Southwest Quarter (NE $\frac{1}{4}$ of SW $\frac{1}{4}$) of Section Five (5), Township One Hundred Six (106) North, of Range Seven (7), West of the Fifth Principal Meridian, Winona County, Minnesota, described as follows:

Commencing at the Northeast corner of said N $\frac{1}{2}$ of the SE $\frac{1}{4}$; thence South 01° 26' 34" East, assumed bearing along the East line of said N $\frac{1}{2}$ of the SE $\frac{1}{4}$ 156.00 feet; thence North 87° 20' 31" West 1265.41 feet to the point of beginning of the land to be described; thence continue North 87° 20' 31" West 2725.32 feet to the West line of said NE $\frac{1}{4}$ of the SW $\frac{1}{4}$; thence North 01° 04' 33" West 4.80 feet to the Northwest corner of said NE $\frac{1}{4}$ of the SW $\frac{1}{4}$; thence South 89° 30' 44" East along the North line of said NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ and the North line of said N $\frac{1}{2}$ of SE $\frac{1}{4}$ 2736.88 feet; thence South 07° 33' 04" West 108.82 feet to the point of beginning.

Excepting therefrom, that part of the North Half of the Southeast Quarter (N $\frac{1}{2}$ of SE $\frac{1}{4}$) and that part of the South Half of the South Half of the Northeast Quarter (S $\frac{1}{2}$ of S $\frac{1}{2}$ of NE $\frac{1}{4}$) of Section Five (5), Township One Hundred Six (106) North, of Range Seven (7), West of the Fifth Principal Meridian, Winona County, Minnesota, described as follows:

Commencing at the Northeast corner of said N $\frac{1}{2}$ of the SE $\frac{1}{4}$; thence South 01° 26' 34" East, assumed bearing along the East line of said N $\frac{1}{2}$ of the SE $\frac{1}{4}$ 156.00 feet; thence North 87° 20' 31" West 1265.41 feet to the point of beginning of the land to be described; thence continue North 87° 20' 31" West 486.00 feet; thence North 07° 33'

04" East 200.00 feet; thence South $87^{\circ} 20' 31''$ East 486.00 feet; thence South $07^{\circ} 33' 04''$ West 200.00 feet to the point of beginning.

EXHIBIT B
Boundary Map – Subject Area

The municipal boundary map referenced in the attached Joint Resolution, showing the current City of Winona and its relation to the Subject Area (Phillips Property and Sweetwater Property), legally described in Exhibit A, is attached hereto.

Winona
STREET & CITY
February 23, 2005

Exhibit B

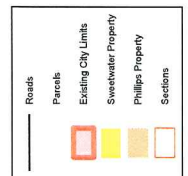
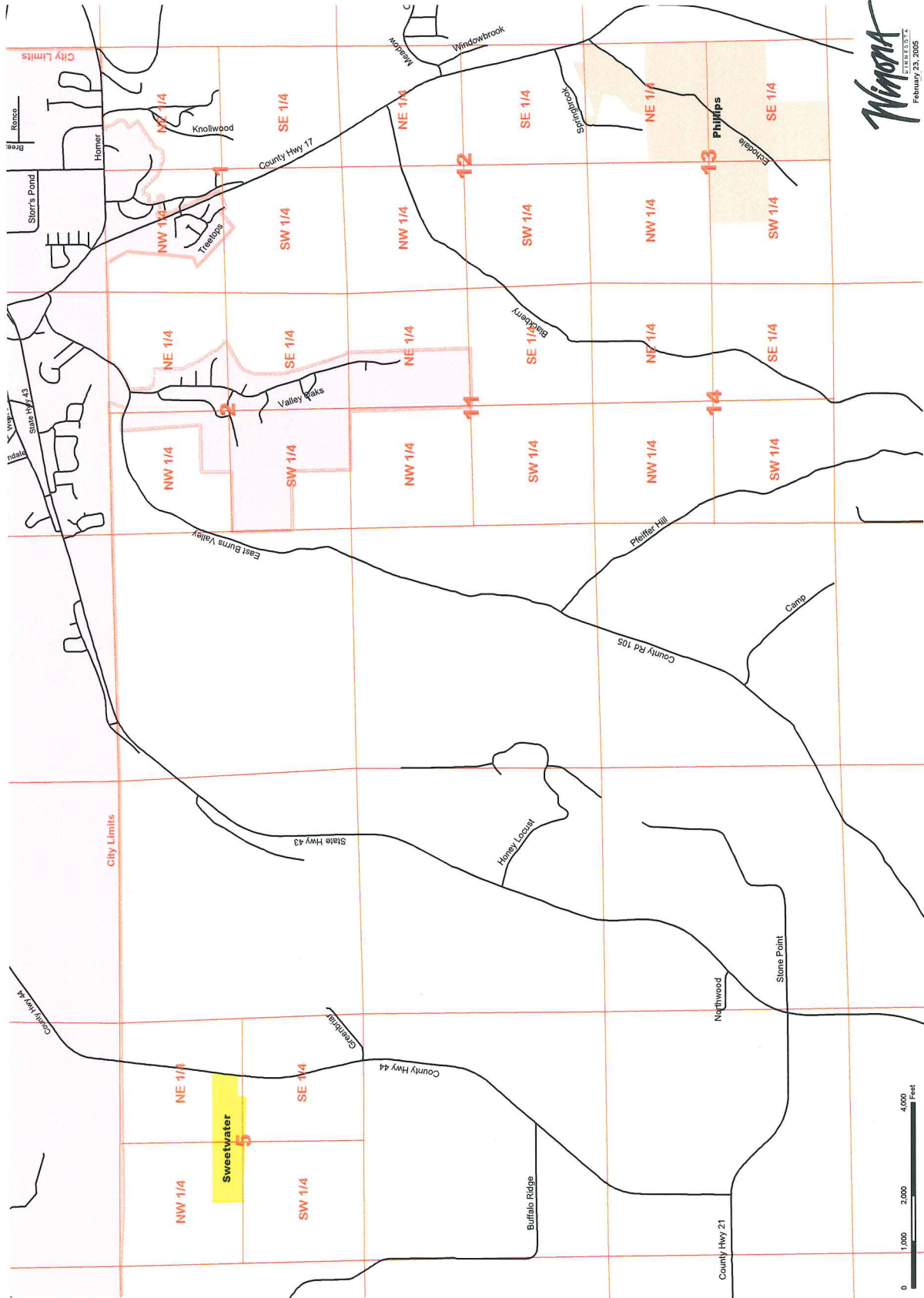


EXHIBIT C
Legal Description – OAA

The OAA designated in the attached Joint Resolution is legally described as follows:

Lands in Township 106 North, Range 7 West, Winona County, Minnesota

All of that part of **Section 1**, Township 106 North, Range 7, West of the 5th Principal Meridian, Winona County, Minnesota, except that part of Section 1 that is located within the existing City of Winona corporate limits.

And also all of that part of the Northeast Quarter (NE $\frac{1}{4}$), and the Southeast Quarter (SE $\frac{1}{4}$) of **Section 2**, Township 106 North, Range 7, West of the 5th Principal Meridian, Winona County, Minnesota, except that part located within the existing City of Winona corporate limits.

And also the East Half (E $\frac{1}{2}$) of the Northwest Quarter (NW $\frac{1}{4}$), the Northeast Quarter (NE $\frac{1}{4}$), the Southeast Quarter (SE $\frac{1}{4}$), and the East Half (E $\frac{1}{2}$) of the Southwest Quarter SW $\frac{1}{4}$ of **Section 5**, Township 106 North, Range 7, West of the 5th Principal Meridian, Winona County, Minnesota, except the Sweetwater Property as legally described in Exhibit A attached to this Joint Resolution.

And also all of that part of the Northeast Quarter (NE $\frac{1}{4}$) of **Section 11**, Township 106 North, Range 7, West of the 5th Principal Meridian, Winona County, Minnesota, except that part of the Northeast Quarter (NE $\frac{1}{4}$) of **Section 11** that is located within the existing City of Winona corporate limits.

And also the North Half (N $\frac{1}{2}$) and the Southeast Quarter (SE $\frac{1}{4}$) of **Section 12**, Township 106 North, Range 7, West of the 5th Principal Meridian, Winona County, Minnesota, except that portion of the Phillips Property located in the Southeast Quarter (SE $\frac{1}{4}$) of **Section 12** as legally described in Exhibit A attached to this Joint Resolution.

And also the North Half (N $\frac{1}{2}$) of the Northeast Quarter (NE $\frac{1}{4}$) of **Section 13**, Township 106 North, Range 7, West of the 5th Principal Meridian, Winona County, Minnesota, except the Phillips Property as legally described in Exhibit A attached to this Joint Resolution.

EXHIBIT D
Boundary Map – OAA

The municipal boundary map referenced in the attached Joint Resolution, showing the current City of Winona and its relation to the OAA, legally described in Exhibit C, is attached hereto.

MAY 24 2005

Winona
STREET & CITY
February 23, 2005

Exhibit D

