

RESOLUTION

#049-02

WHEREAS, on December 20, 1999, the Common Council of the City of Rochester and the Town of Marion executed a Joint Resolution for Orderly Annexation for Marion Area #4 (a copy of which is attached and incorporated herein); and

WHEREAS, paragraph 7 of the Joint Resolution allows land contained in the orderly annexation area to be annexed to the City whenever a landowner whose property abuts the City limits files a petition for annexation with the City and when the City adopts a resolution in compliance with paragraph 4 of the Joint Resolution; and,

WHEREAS, Gary Hayden has filed a petition to annex approximately 66.7 acres of land located south of College View Road, east of Sunnydale Subdivision and north of Sunnydale Number Two (located in the northeast quarter of section 5 of the Marion Township; and,

WHEREAS, the legal description for the petitioned property is as follows:

That part of the Northeast Quarter of Section 5, Township 106 North, Range 13 West, Olmsted County, Minnesota, which lies easterly of SUNNYDALE SUBDIVISION, easterly and northerly of SUNNYDALE NO. TWO and southerly of County State Aid Highway No. 9.

Containing 66.1 acres more or less.

WHEREAS, the petitioned property abuts the City limits; and,

WHEREAS, the Council wishes to invoke the procedure described in paragraph 7 of the Joint Resolution and annex the petitioned property; and,

WHEREAS, the petitioned property satisfies paragraph 7 (b) of the Joint Resolution; and,

WHEREAS, the City's estimate of the population and number of households contained in the area is zero; and,

WHEREAS, the City's estimate of electrical service cost at the time of annexation is (a) .07096 per kilowatt-hour from January through May and October through December, and (b) .08574 per kilowatt-hour from June through September.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Rochester that the petitioned property described above is hereby annexed, added to and made a part of the City of Rochester, Minnesota, as if it had originally been a part thereof.

REC'D BY
MMB

FEB 27 2002

BE IT FURTHER RESOLVED that this resolution shall take effect and be in force from and after its filing of a certified copy hereof with the Minnesota Municipal Board, or its successor, the Town of Marion and the Olmsted County Auditor/Treasurer.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF
ROCHESTER, MINNESOTA, THIS 23rd DAY OF JANUARY, 2002.

John Hanzlich
PRESIDENT OF SAID COMMON COUNCIL

ATTEST: Judy Kay Shrew
CITY CLERK

APPROVED THIS 24th DAY OF JANUARY, 2002.

Clayton Field
MAYOR OF SAID CITY

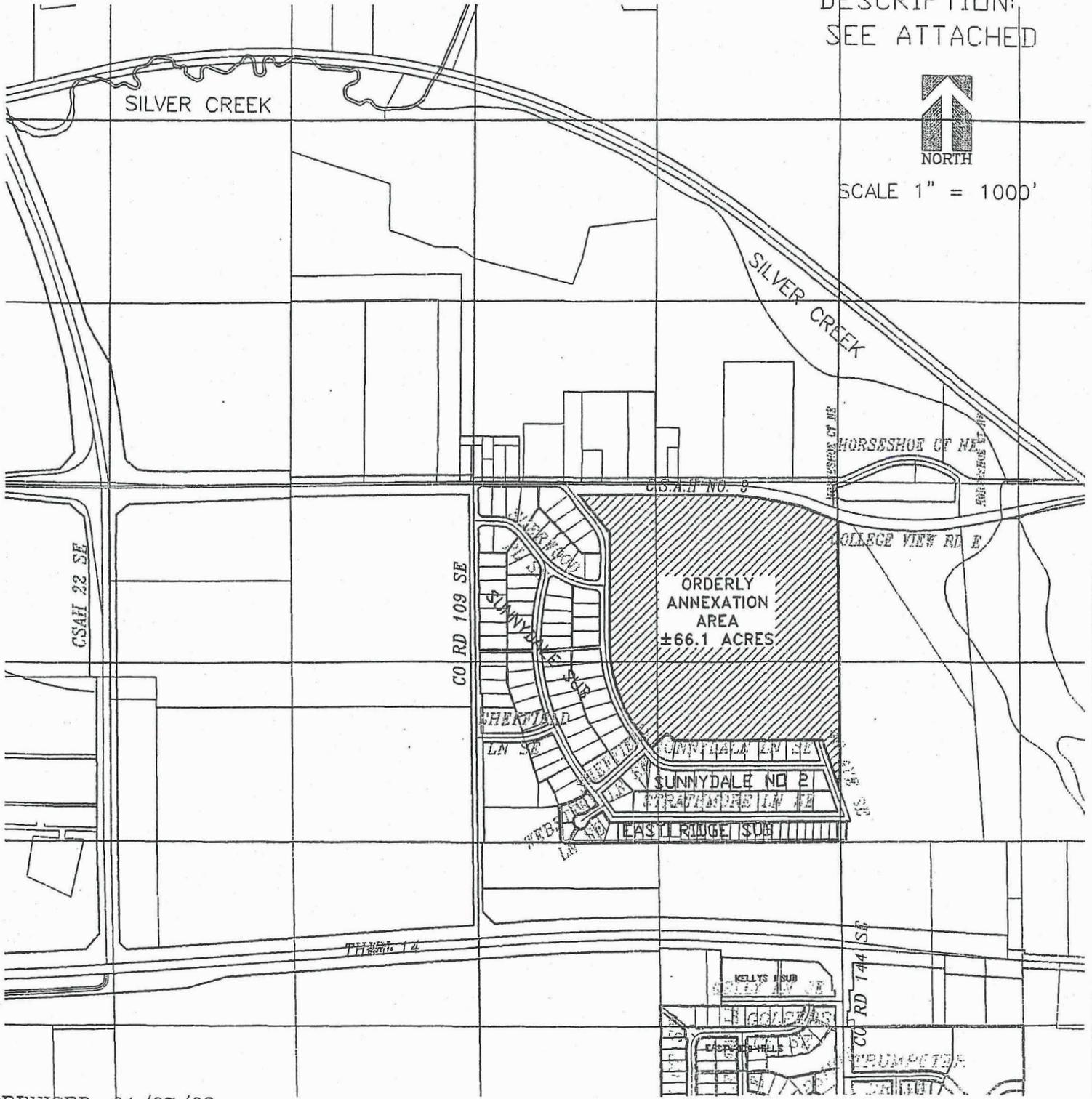
(Seal of the City of
Rochester, Minnesota)

ANNEXATION EXHIBIT

DESCRIPTION:
SEE ATTACHED



SCALE 1" = 1000'



REVISED: 01/07/02

FOR:
GARY HAYDEN
5420 31ST AVE. SW
ROCHESTER, MN
55902

Land Surveying
Urban-Land
Planning
Consulting - Civil
Engineering



Geotechnical
Engineering
Construction Material
Testing
Landscape
Architecture

1648 Third Avenue S.E.
Rochester, MN 55904
Telephone 507.280.3916
Facsimile 507.280.7333

em-01
mm@mcginnis.com

SCALE: 1" = 1000'

DRAWN BY: JJJ

DATE: 12/03/01

ACCT. NO.: 7106/0119

Contd. No. 0119AH11E

FILE NO.: R#

PG

MINNESOTA MUNICIPAL BOARD OR ITS SUCCESSOR

IN THE MATTER OF THE DESCRIPTION OF)	
AN UNINCORPORATED AREA IN MARION)	
TOWNSHIP AS IN NEED OF ORDERLY)	JOINT RESOLUTION FOR
ANNEXATION AND CONFERRING JURISDICTION)	ORDERLY ANNEXATION
OVER SAID AREA IN THE MINNESOTA)	(MARION AREA #4)
MUNICIPAL BOARD OR ITS SUCCESSOR)	
PURSUANT TO MINNESOTA)	
STATUTES §414.0325, Subd. 1)	

WHEREAS, the City of Rochester (hereinafter "City") and Town of Marion (hereinafter "Town") agree that given the potential health threat from individual sewage treatment systems within the area designated in Exhibit A, there is a need for municipal sanitary sewer and water services; and

WHEREAS, the City and Town agree that orderly annexation and extension of municipal sanitary sewer or water services to areas needing such service would benefit the public health, safety and welfare of the entire community, and the City currently has authority to collect local sales tax funds to pay a portion of the costs for the extension of sewer or water services to developed areas within the Town; and

WHEREAS, the City and Town agree that there is a public need for the coordinated, efficient and cost effective extension of City sewer and water in accordance with existing and future needs to promote the public health and safety by protecting the region's ground water supply and surface waters; and

WHEREAS, the property described in the attached Exhibit A lies within the Urban Service Area of Rochester, is presently urban or suburban in nature or about to become so and the City is capable of providing public sanitary sewer, water and storm water facilities within a reasonable time; and

WHEREAS, the extension of public sanitary sewer and water by the City can only be provided in prioritized phases if the process and timing of annexation is clearly identified and jointly agreed upon in advance of the capital planning, commitment and expenditure necessary on the part of the City; and

WHEREAS, the establishment of a process of orderly annexation of said lands will be of benefit to the residents and owners of said lands, and permit the City to extend necessary municipal services in a planned and efficient manner; and

WHEREAS, for the areas designated in Exhibit A, the City and the Town desire to accomplish the orderly annexation of said areas and the extension of municipal services in a mutually acceptable and beneficial manner without the need for a hearing before the Minnesota Municipal Board and, with the purpose of avoiding a dispute over the annexation of the property described in said Exhibit A, enter into this joint resolution for orderly annexation pursuant to Minnesota Statutes §414.0325, Subd. 1.

NOW, THEREFORE, BE IT RESOLVED by the City of Rochester and the Town of Marion as follows:

1. The City and Town hereby designate that property situated in the Town of Marion, County of Olmsted, State of Minnesota, which is legally described on the attached Exhibit A, which is incorporated herein by reference, as in need of orderly annexation pursuant to Minnesota Statutes §414.0325. For ease of reference, the area legally described in Exhibit A is shown on the attached map, Exhibit B.
2. The Town of Marion hereby withdraws any objections filed and agrees to not file any objections with the Minnesota Municipal Board, or such other agency which may undertake those duties and responsibilities currently held by the Minnesota Municipal Board ("successor"), concerning the City's desire or request to annex any of the property described on the attached Exhibit A. The Town of Marion further agrees that if it has filed any objections with the Minnesota Municipal Board, or its successor, to the annexation to the City of any of the property described in attached Exhibit A, the filing of this Joint Resolution with the Minnesota Municipal Board or statutory equivalent, shall constitute sufficient notice of the withdrawal of the objections.
3. The lands designated in Exhibit A attached hereto shall be subject to future annexation to the City pursuant to the terms and conditions of this joint resolution and shall constitute the "orderly annexation area" otherwise described in this joint resolution. The City and Town agree that the area legally described in Exhibit A is designated as in need of orderly annexation and contains approximately 137 acres.
4. Any part or all of the lands described in Exhibit A may, except as otherwise provided, be annexed to the City no earlier than January 1 of the year five years after the substantial completion of a water or sewer project providing water or sewer service to the area. The determination of substantial completion shall be made by the City's Department of Public Works who shall provide written notice of its determination to the Town Board.
5. Annexation under this joint resolution shall be initiated by the adoption of a resolution by the City. No review by or recommendation from the City of Rochester Planning and Zoning Commission regarding the adoption of a specific annexation resolution is necessary, except as is hereinafter provided.
6. The City and Town agree that upon the occurrence of any event triggering annexation as provided in this Joint Resolution of the area designated in Exhibit A or any portion thereof, any signatory to this Joint Resolution may initiate annexation of any area designated in Exhibit A by submitting a resolution so providing, along with a copy of this Joint Resolution, to the Minnesota Municipal Board, or its successor, the Town of Marion, and the Olmsted County Auditor/Treasurer. The resolution for annexation shall contain the boundary description of the area to be annexed and, pursuant to Minnesota Statutes Section 414.01, subd. 14 and Section 414.0325, subd. 1a, shall contain the City's estimates of the population and number of households contained in the area to be annexed and the estimate of electrical service cost differences at the time of annexation.

The City and Town agree that no alteration of the stated boundaries is appropriate, that no consideration by the Minnesota Municipal Board is necessary, and that all terms and conditions for annexation of the area legally described in Exhibit A, or any portion thereof, are provided for in this Joint Resolution. Pursuant to Minnesota Statutes Section 414.0325, upon receipt of a resolution of any signatory to the Joint Resolution for annexation of the area described in Exhibit A, or any portion thereof, the Minnesota Municipal Board may review and comment, but shall, within thirty (30) days of receipt of said resolution, order the annexation of the area described in the resolution in accordance with the terms and conditions of this Joint Resolution.

7. Notwithstanding the annexation time line set forth in paragraph 4, any lands contained in the orderly annexation area may be annexed to the City prior thereto upon adoption by the City of a resolution following the procedures as prescribed in paragraph 6 and whenever:

- (a) a majority of the property owners submit a petition for annexation or otherwise indicate their interest to the City or Town in being annexed and receiving sanitary sewer or water service. The City may consider annexation of said lands after first having the proposal reviewed by the City Planning and Zoning Commission and receiving a recommendation from that body;
- (b) a landowner abuts the City limits and said landowner files a petition for annexation with the City. In such instance, review by the Rochester Planning and Zoning Commission shall not be required prior to the City acting upon said petition;
- (c) a landowner seeks to develop a residential, commercial, industrial, or governmental use on land which is platted or subdivided or which is proposed to be platted or subdivided for development at a density of more than one unit per 40 acres. In such instances, the City may immediately annex the area proposed to be developed and the adjacent necessary land which, in the City's discretion, is needed to extend municipal sewer or water service to the area to be annexed; or
- (d) the land is owned by a private person but is completely surrounded by land within the City. In these events the land may be annexed immediately by the City.

Provided further, that the parties hereto may revise the annexation schedule otherwise set forth in paragraph (4) upon the recommendation of the Olmsted County Health and Planning Departments that the continued use of private sewer systems in the orderly annexation area present an immediate threat to public or private water supplies.

8. Pursuant to the provisions of Minnesota Statutes §414.0325, Subd. 5, the parties agree that the City may, after the effective date of this Joint Resolution, extend its municipal planning and land use controls to the property described in Exhibit A prior to annexation. To establish its municipal planning and land use controls, the City shall adopt a resolution identifying the boundaries of the real property subject to municipal controls and the specific zoning district(s) classification(s) of the subject lands as defined under the Rochester Zoning Ordinance and Land Development Manual. A copy of the resolution shall be filed with the Town, the Olmsted County Administrator, and the Olmsted County Recorder's Office.

9. Lands ordered annexed pursuant to this joint resolution shall not be subject to any differential taxation as referenced in Minnesota Statutes §414.035. Property taxes payable on annexed land shall continue to be paid to the Town for the entire year in which the annexation becomes effective. If an annexation becomes effective on or before August 1 of a levy year, based on the date specified in the order from the Minnesota Municipal Board, the City may levy on the annexed area beginning with that same levy year. If the annexation becomes effective after August 1 of a levy year, the Town may continue to levy on the annexed area for that levy year. Thereafter property taxes on the annexed land shall be paid to the City.

10. The City shall, in appropriate circumstances, provide notification that the cost of electric utility service to the customers on the property subject to this joint resolution may change when the land is annexed to the City if and when the provider of electrical service is transferred from People's Cooperative Power Association to Rochester Public Utilities. As of the date of this joint resolution, the estimate of the difference in overall electrical service costs between the two providers is minimal. A resolution of the City to annex certain property subject to this joint resolution, as referenced in paragraph 7, shall contain a cost estimate of any change in electric utility services, including rate changes and assessments resulting from the annexation.

11. It is the City's intention to provide only sanitary sewer and/or water service to developed lands in the annexation area prior to annexation pursuant to this joint resolution. Thereafter, any other or additional local improvements may be installed by the City in an annexed area:

- (a) upon a petition brought pursuant to Minnesota Statutes, Chapter 429, by the benefited property owner or owners; or,
- (b) when three-fourths (3/4) of the City Council determine that it is in the public interest of the residents of the City and of any lands to be assessed to construct such local improvement; or,
- (c) when the City and Town enter into an Intergovernment Agreement providing for the sharing of costs for the local improvement where the sharing of costs is based on the number of years the improvement shall be in the Town as compared to the improvement's life expectancy.

12. The City shall have exclusive control over the nature and extent of the installation of municipal sewer or water. This includes the design and construction of any sewer or water system serving an area of the Township prior to annexation. The Town, by this agreement, does hereby authorize the City to enter upon the Town roads for the purpose of constructing, installing, and maintaining any and all sewer and water facilities, without the need for any further permit or easement. The City shall reimburse itself for the cost of installing municipal services by entering into connection agreements with individual property owners. The City and Town recognize that the connection agreements will require payments by the property owners prior to annexation of the property into the city, and that the payments are appropriately levied as unpaid charges pursuant to Minn. Stat. Chapters 429 and 444. The City shall furnish to Town by November 15th of each appropriate year a list of properties subject to connection agreements and the amount of special assessments to be collected from each property. The City shall also provide a list of those properties for which delinquent water and sewer bills are outstanding. The Town shall certify, on behalf of the City, these amounts to the Olmsted County Auditor/Treasurer for inclusion in the Real Property Tax Statement due and payable in the following calendar year. The certification shall direct the Olmsted County Auditor/Treasurer, to collect and disburse the assessment amounts directly to the City of Rochester. In the event the County Auditor/Treasurer is unwilling to disburse the funds to the City, the Town shall remit these funds to the City within 30 days of its receipt of the funds from the County. The City shall assume the responsibility for certification of the special assessments and service charges upon annexation of the properties into the City.

13. Nothing in this joint resolution shall relieve the Town of its responsibilities for the regular and normal maintenance of the existing infrastructure of roads, drainage facilities, and street signs until the property described in the attached Exhibit A has been annexed into the City.

14. 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 respective City and Township will 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 negotiation.
- b. **Mediation.** 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 non-binding mediation.

- 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 non-binding 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 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.

15. **Modification/Amendment.** This Joint Resolution shall not be modified, amended, or altered except upon the written joint resolution of the City and the Township duly executed and adopted by the City Council and Township Board of Supervisors and filed with the Minnesota Municipal Board or its successor.

16. **Governing Law; Severability.** This Joint Resolution for Orderly Annexation is made pursuant to, and shall be construed in accordance with the laws of the State of Minnesota. In the event any provision of this Joint Resolution is determined and adjudged to be unconstitutional, invalid, illegal or unenforceable by a court of competent jurisdiction, the remaining provisions of this Joint Resolution shall remain in full force and effect, and the parties hereto shall negotiate in good faith and agree to such amendments or modifications of or to this Joint Resolution or other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties hereto.

17. **Entire Agreement.** The terms, covenant, conditions, and provisions of this Joint Resolution, including the present and all future attachments, shall constitute the entire agreement between the parties, superseding all prior agreement and negotiations, regarding the annexation area. This Joint Resolution shall be binding upon and inure to the benefit of the respective successors and assigns of the City and Town.

18. **Effective Date; Termination.** This resolution shall be effective immediately upon its adoption by the parties and its filing, by the City and Town, with the Minnesota Municipal Board. The obligations of the parties to one another according to the terms of this resolution shall terminate at such time that the entire area designated in Exhibit A has been annexed to the City, or at such time that the City and Town mutually agree in writing that this joint resolution shall be terminated.

19. **Notices.** Any notices required to be sent under the terms of this agreement shall be considered sufficient notice if mailed by first class U.S. mail to the City of Rochester, City Administrator's Office, 201 4th Street SE, Rochester, MN 55904, and to the Town of Marion, Marion Town Clerk, 2850 Oakview Court SE, Rochester, MN 55904.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF ROCHESTER,
MINNESOTA THIS 20TH DAY OF SEPTEMBER, 1999.

John H. ...
PRESIDENT OF SAID COMMON COUNCIL

ATTEST: *Judy Kay ...*
CITY CLERK

APPROVED THIS 21ST DAY OF SEPTEMBER, 1999.

Ed ...
MAYOR OF SAID CITY

(Seal of the City of
Rochester, Minnesota)

PASSED AND ADOPTED BY THE TOWN OF MARION, MINNESOTA, THIS 14TH
DAY OF SEPT., 1999.

Leid ...
CHAIRMAN OF TOWN BOARD

ATTEST: *Janet Hoggman*
TOWN CLERK

REC'D BY
MMB FEB 27 2002

COLLEGE VIEW RD E

HORSE CT
COLLEGE VIE

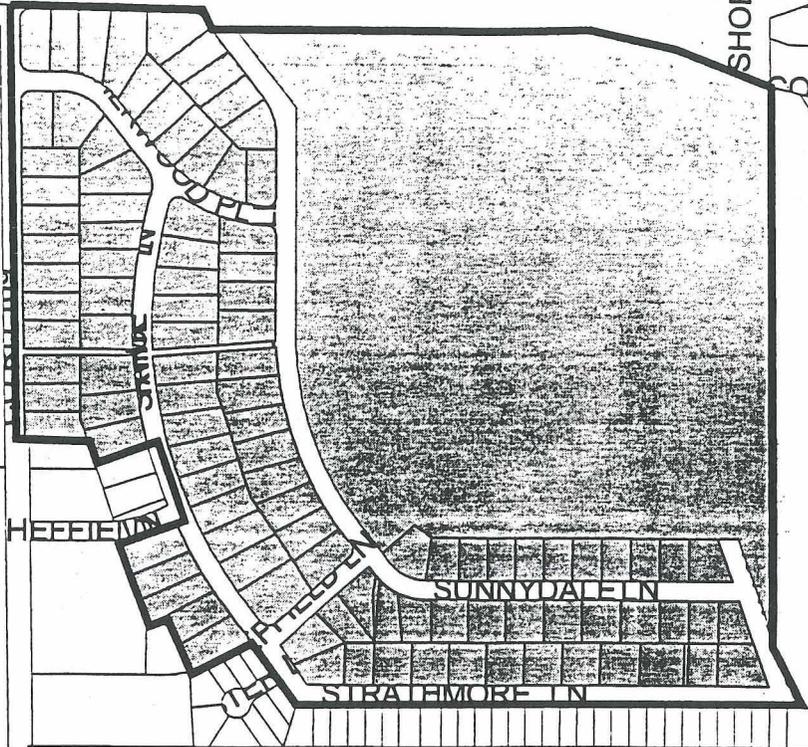
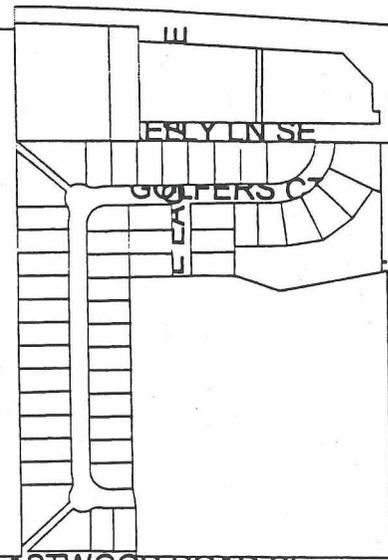


Exhibit "A"

Marion Township
Orderly Annexation
Area #4

Legend

- Currently in City
- Annexation Area
- Marion Township



GO RD 144

EASTWOOD ROAD SE

SEE SOURCE

Exhibit "A"

Marion Township Orderly Annexation Area #4

REC'D BY
MMB

FEB 27 2002



-  Annexation Area
-  City Parcel
-  Marion Township Parcel



Map Date: 1/5/2002
 Map Source: 1998 Clinton County Parcel Data
 Map P: 2000-01-001
 Map Prepared by: City of Rochester

1648 Third Avenue S.E., Rochester, MN 55904 507-289-3919 Fax 507-289-7333
1604 Riverview Lane, Northfield, MN 55057 507-645-0964 Fax 507-645-2842

ORDERLY ANNEXATION DESCRIPTION (AREA 4)

FOR: ROCHESTER PUBLIC WORKS

DATE: OCTOBER 4, 1999

All that part of the Northeast Quarter of Section 5; and a part of the Northwest Quarter of Section 4; and a part of SUNNYDALE SUBDIVISION, BLOCKS ONE, TWO AND THREE; and all of SUNNYDALE NO. TWO; all being in Township 106 North, Range 13 West, Olmsted County, Minnesota and described as follows:

Beginning at the northwest corner of the Northeast Quarter of said Section 5; thence North 89 degrees 29 minutes 20 seconds East, assumed bearing, along the north line of said Northeast Quarter, 2637.95 feet to the northeast corner thereof; thence South 01 degree 19 minutes 23 seconds East, along the east line of said Northeast Quarter, 2230.17 feet to the easterly line of said SUNNYDALE NO. TWO (the next 4 courses are along the easterly and southerly lines of said SUNNYDALE NO. TWO); thence South 19 degrees 41 minutes 04 seconds East, 148.87 feet; thence South 00 degrees 29 minutes 04 seconds East, 77.39 feet; thence South 89 degrees 30 minutes 56 seconds West, 1710.00 feet; thence North 34 degrees 50 minutes 46 seconds West, 200.07 feet to the southerly line of vacated 7th Street Southeast; thence North 34 degrees 49 minutes 37 seconds West, 101.35 feet to the easterly line of Lot 32, Block 2, of said SUNNYDALE SUBDIVISION, BLOCKS ONE, TWO AND THREE; thence southwesterly 54.36 feet along said easterly line and along a non-tangential curve, concave westerly, central angle of 88 degrees 59 minutes 24 seconds, radius of 35.00 feet, and the chord of said curve bears South 06 degrees 14 minutes 40 seconds West, 49.06 feet; thence southwesterly 208.20 feet along the southerly line of said Lot 32 and along a non-tangential curve, concave northwesterly, central angle of 22 degrees 05 minutes 32 seconds, radius of 539.96 feet, and the chord of said curve bears South 64 degrees 37 minutes 21 seconds West, 206.91 feet to the southeast corner of Lot 33 in said Block 2; thence North 23 degrees 27 minutes 30 seconds West, along the east line of said Lot 33, a distance of 100.40 feet; thence North 32 degrees 23 minutes 12 seconds West, along said east line, 110.00 feet to the northeast corner thereof; thence South 60 degrees 30 minutes 55 seconds West, along the northwesterly line of said Lot 33, a distance of 65.00 feet to the northwest corner thereof; thence North 18 degrees 43 minutes 52 seconds West, along the easterly line of Lot 25 in said Block 2, a distance of 311.91 feet to the south line of Sheffield Lane Southeast; thence easterly 171.82 feet along said south line and along a non-tangential curve, concave northerly, central angle of 20 degrees 22 minutes 56 seconds, radius of 483.00 feet, and the chord of said curve bears North 72 degrees 36 minutes 05 seconds East, 170.92 feet; thence North 62 degrees 24 minutes 37 seconds East, along said south line, 40.70 feet to the westerly line of 37th

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Avenue Southeast; thence northerly 288.04 feet along said westerly line and along a non-tangential curve, concave easterly, central angle of 09 degrees 52 minutes 55 seconds, radius of 1670.02 feet, and the chord of said curve bears North 20 degrees 23 minutes 47 seconds West, 287.68 feet to the southeast corner of Lot 22 in said Block 2; thence South 73 degrees 02 minutes 49 seconds West, along the south line of said Lot 22, a distance of 202.98 feet to the southwest corner thereof; thence North 18 degrees 45 minutes 43 seconds West, along the westerly line of said Lot 22, a distance of 70.13 feet to the northeast corner of Lot 24 in said Block 2; thence South 89 degrees 30 minutes 07 seconds West, along the north line of said Lot 24, a distance of 252.37 feet to the west line of said Northeast Quarter of Section 5; thence North 01 degree 29 minutes 23 seconds West, along said west line, 1535.64 feet to the point of beginning.

Containing 137 acres, more or less.

This annexation is to include all public right-of-ways and easements within the above described area.