

RECEIVED

by OAH on March 30, 2017

BEFORE THE

MINNESOTA BOUNDARY ADJUSTMENTS OFFICE
OF THE DEPARTMENT OF ADMINISTRATION

IN THE MATTER OF THE DESCRIPTION OF)	
AN UNINCORPORATED AREA IN KALMAR)	SECOND AMENDMENT TO
TOWNSHIP AS IN NEED OF ORDERLY)	JOINT RESOLUTION FOR
ANNEXATION AND CONFERRING JURISDICTION)	ORDERLY ANNEXATION
OVER SAID AREA ON MINNESOTA)	
BOUNDARY ADJUSTMENTS OFFICE)	
OF THE DEPARTMENT OF ADMINISTRATION)	
PURSUANT TO MINNESOTA STATUTES)	
SECTION 414.0325, Subd. 1)	

JOINT RESOLUTION / ORDERLY ANNEXATION AGREEMENT

THIS SECOND AMENDMENT TO ORDERLY ANNEXATION AGREEMENT is entered into this 18th of January, 2017, by and between the CITY OF ROCHESTER, MINNESOTA (the "City") and KALMAR TOWNSHIP (the "Township").

WHEREAS, Minn. Stat. § 414.0325 authorizes townships and municipalities to provide for the orderly annexation of unincorporated areas that are in need of orderly annexation; and,

WHEREAS, the City and the Township executed a Joint Resolution for Orderly Annexation (orderly annexation agreement) dated September 3, 2003, amended January 20, 2016, that describes the unincorporated area in Kalmar Township intended to be subject to the terms of the orderly annexation agreement, the legal description of the property listed on Exhibit A and depicted on Exhibit B; and,

WHEREAS, paragraph 29 of the orderly annexation agreement states that the Agreement may not be modified, amended, or altered except upon 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 MBA (now Municipal Boundary Adjustment Unit of the Officer of Administrative Hearings); and,

WHEREAS, the Township requested and the City agrees to amend Exhibit B to the extent that all lands in the annexation area located west of County Road 3 shall be included in the area described as 11-25 years.

NOW, THEREFORE, BE IT RESOLVED by the City of Rochester and the Kalmar Township that the Joint Resolution for Orderly Annexation between the parties dated September 3, 2003, and amended January 20, 2016, is amended by replacing Exhibit B with the Exhibit B attached hereto. All other provisions of the Joint Resolution for Orderly Annexation shall remain in full force and effect.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF
ROCHESTER, MINNESOTA, THIS 18th DAY OF January, 2017.

Randy Stover
PRESIDENT OF ROCHESTER COMMON COUNCIL
ATTEST: Valori Langseth
Acting CITY CLERK

APPROVED THIS 23rd DAY OF January, 2017.

Russell F. Breda
MAYOR OF CITY OF ROCHESTER

(Seal of the City of
Rochester, Minnesota)

PASSED AND ADOPTED BY KALMAR TOWNSHIP, OLMSTED COUNTY,
MINNESOTA, THIS 21 DAY OF February, 2017.

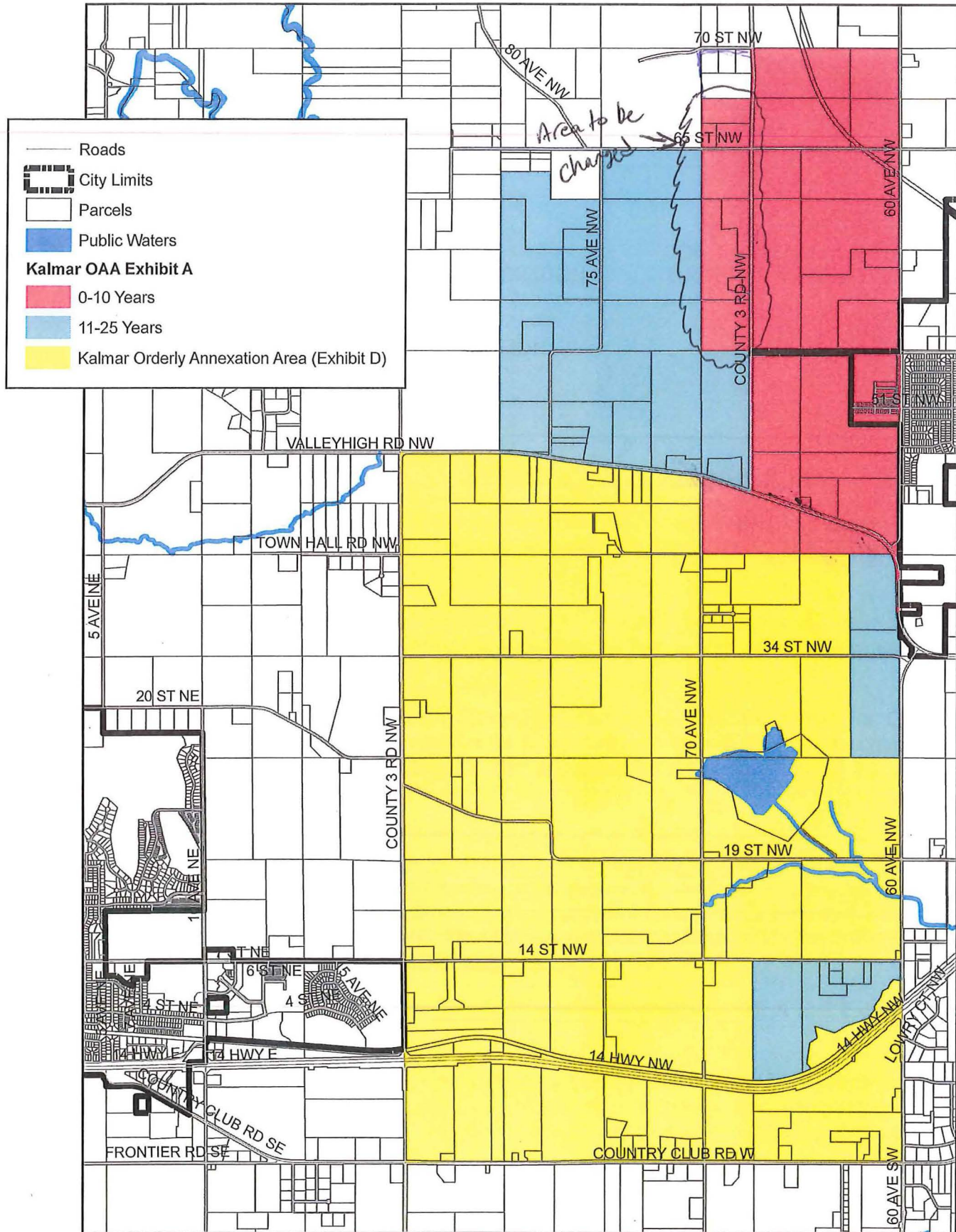
Russell F. Breda
CHAIRMAN OF TOWN BOARD
ATTEST: Russell F. Breda
TOWN CLERK

This document prepared by:
Rochester City Attorney's Office
201 Fourth Street S.E., Room 247
Rochester, MN 55904

Zone2015\order annex.Kalmar.amd2.doc

Kalmar Orderly Annexation Amendment

Passed and Adopted by the Rochester Common Council, January 2016



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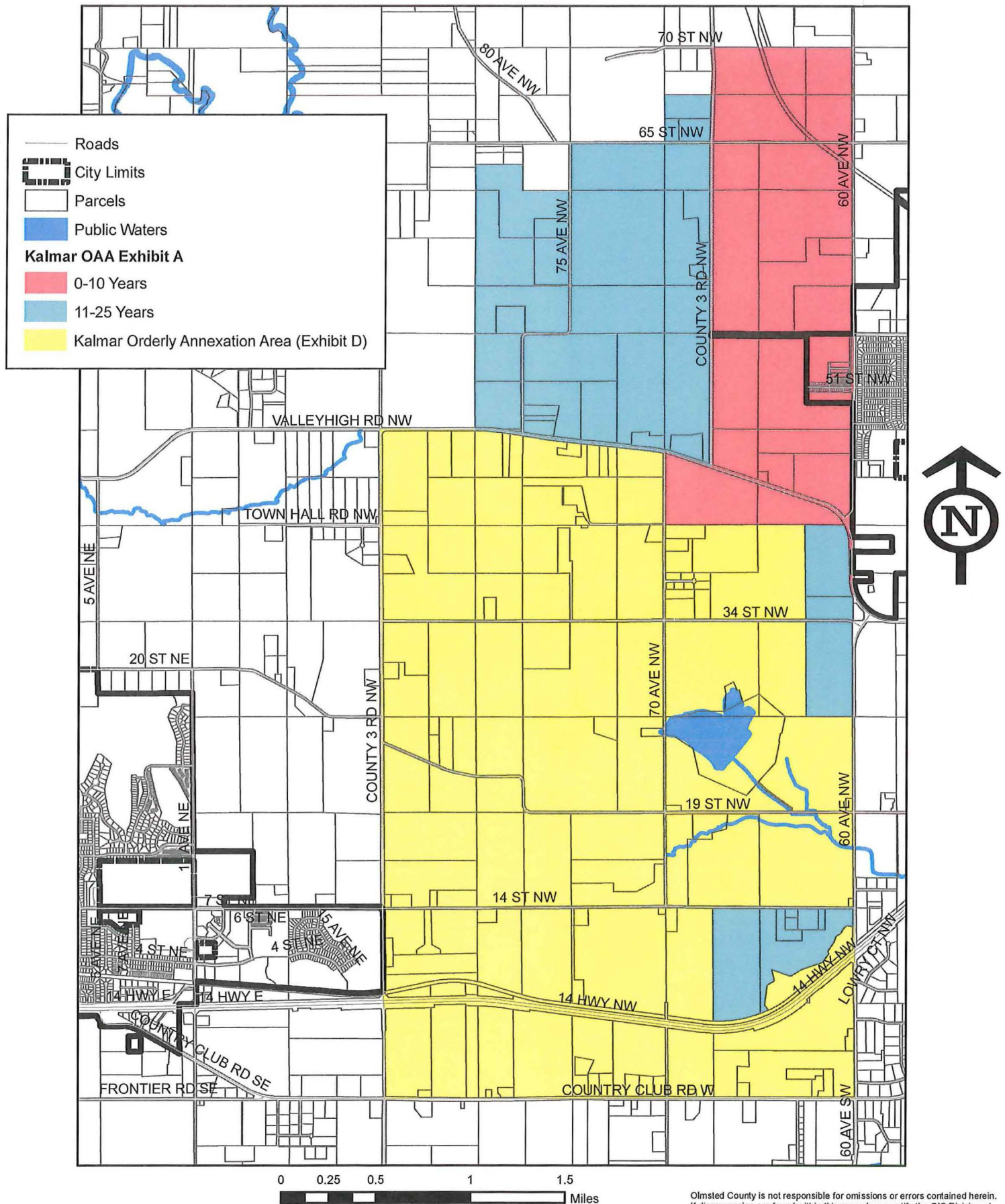


Prepared by the Rochester-Olmsted Planning Department
Analysis, Planning, & Policy Division
May 3, 2016

Olmsted County is not responsible for omissions or errors contained herein.
If discrepancies are found within this map please notify the GIS Division at
507.328.7100, Rochester-Olmsted Planning Department, 2122 Campus
Drive SE Rochester, MN 55904.

Kalmar Orderly Annexation Amendment **EXHIBIT B**

Passed and Adopted by the Rochester Common Council, January **2017**



Olmsted County is not responsible for omissions or errors contained herein. If discrepancies are found within this map please notify the GIS Division at 507.328.7100, Rochester-Olmsted Planning Department, 2122 Campus Drive SE Rochester, MN 55904.



Prepared by the Rochester-Olmsted Planning Department
Analysis, Planning, & Policy Division
January 3, 2017

BEFORE THE

MINNESOTA BOUNDARY ADJUSTMENTS OFFICE
OF THE DEPARTMENT OF ADMINISTRATION

IN THE MATTER OF THE DESCRIPTION OF)	
AN UNINCORPORATED AREA IN KALMAR)	
TOWNSHIP AS IN NEED OF ORDERLY)	
ANNEXATION AND CONFERRING JURISDICTION)	AMENDMENT TO
OVER SAID AREA ON MINNESOTA)	JOINT RESOLUTION FOR
BOUNDARY ADJUSTMENTS OFFICE)	ORDERLY ANNEXATION
OF THE DEPARTMENT OF ADMINISTRATION)	
PURSUANT TO MINNESOTA STATUTES)	
SECTION 414.0325, Subd. 1)	

JOINT RESOLUTION / ORDERLY ANNEXATION AGREEMENT

THIS AMENDMENT TO ORDERLY ANNEXATION AGREEMENT is entered into this 20 of January, 2016, by and between the CITY OF ROCHESTER, MINNESOTA (the "City") and KALMAR TOWNSHIP (the "Township").

WHEREAS, Minn. Stat. § 414.0325 authorizes townships and municipalities to provide for the orderly annexation of unincorporated areas that are in need of orderly annexation; and,

WHEREAS, the City and the Township executed a Joint Resolution for Orderly Annexation (orderly annexation agreement) dated September 3, 2003, that described the unincorporated area in Kalmar Township intended to be subject to the terms of the orderly annexation agreement, the legal description of the property listed on Exhibit A and depicted on Exhibit B; and,

WHEREAS, paragraph 29 of the orderly annexation agreement states that the Agreement may not be modified, amended, or altered except upon 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 MBA (now Municipal Boundary Adjustment Unit of the Officer of Administrative Hearings).

WHEREAS, the City and the Township desire to amend Exhibit A and Exhibit B to expand the area to be subject to the order annexation agreement; and,

WHEREAS, the City and Township have caused a notice of intent to include additional property in the orderly annexation area to be published in a newspaper of general circulation in both the City and Township not less than 10 days before approval of this amendment as required by Minn. Stat. 414.0325, subd. 1b.

NOW, THEREFORE, BE IT RESOLVED by the City of Rochester and the Kalmar Township that the Joint Resolution for Orderly Annexation between the parties dated September 3, 2003, is amended by replacing Exhibit A and Exhibit B with the Exhibit A and Exhibit B attached hereto. All other provision of the Joint Resolution for Orderly Annexation shall remain in full force and effect.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF
ROCHESTER, MINNESOTA, THIS 20 DAY OF January, 2016.

ATTEST:

Aaron S. Kan
CITY CLERKRandy Slaves
PRESIDENT OF ROCHESTER COMMON COUNCIL

APPROVED THIS 20 DAY OF January, 2016

Mace F. Breda
MAYOR OF CITY OF ROCHESTER

(Seal of the City of
Rochester, Minnesota)

PASSED AND ADOPTED BY KALMAR TOWNSHIP, OLMSTED COUNTY,
MINNESOTA, THIS 21st DAY OF December 2015.

ATTEST:

Terrence L. Behrens
TOWN CLERKJames Janson
CHAIRMAN OF TOWN BOARD

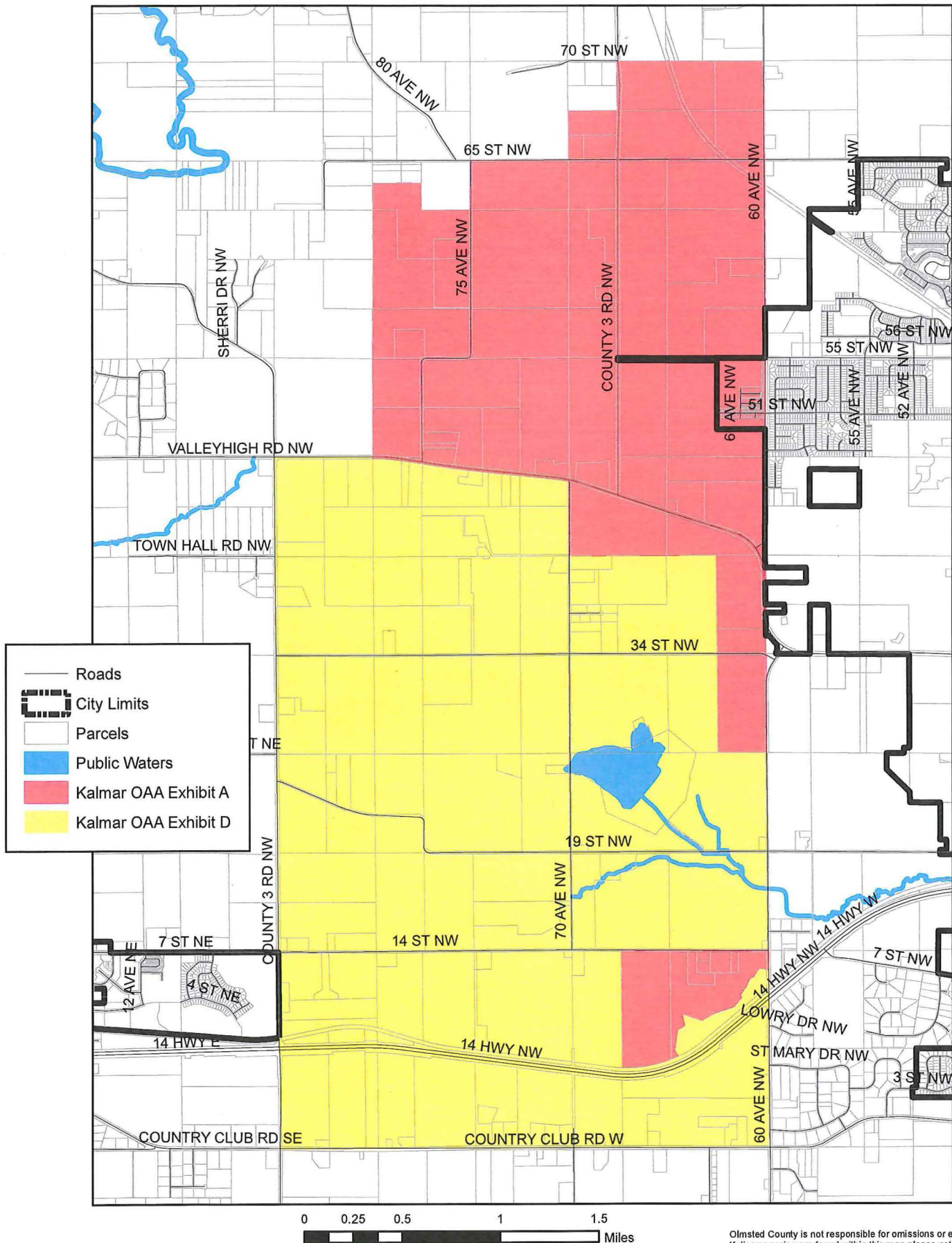
This document prepared by:
Rochester City Attorney's Office
201 Fourth Street S.E., Room 247
Rochester, MN 55904

Zone2015\order annex Kalmar.amend

Kalmar Orderly Annexation Amendment

RECEIVED
by OAH on May 2, 2016

Passed and Adopted by the Rochester Common Council, January 2016



Olmsted County is not responsible for omissions or errors contained herein. If discrepancies are found within this map please notify the GIS Division at 507.328.7100, Rochester-Olmsted Planning Department, 2122 Campus Drive SE Rochester, MN 55904.



Prepared by the Rochester-Olmsted Planning Department
Analysis, Planning, & Policy Division
May 2, 2016

EXHIBIT A

Kalmar Township Orderly Annexation Area

That part of Section 1, 11, 12, 13, 14, 24 and 36 of Kalmar Township (T-107-N, R-15-W), Olmsted County Minnesota described as follows:

All that part of the South $\frac{1}{2}$ (half) of Section 1 of Kalmar Township except the Northwest $\frac{1}{4}$ (quarter) of the Southwest $\frac{1}{4}$ (quarter) lying west of the westerly right of way line of County Road 3.

Together with

All that part of Section 11 of Kalmar Township except the North $\frac{1}{2}$ (half) of the Northwest $\frac{1}{4}$ (quarter) of the Northwest $\frac{1}{4}$ (quarter) and except of the Northeast $\frac{1}{4}$ (quarter) of the Northwest $\frac{1}{4}$ (quarter) lying west of the westerly right of way line of 75th Avenue NW.

Together with

Section 12, Kalmar Township

Together with

Section 13, Kalmar Township

Together with

All that part of Section 14, Kalmar Township lying Northerly of the Southern right of way line of Valley High Drive NW (CSAH #4)

Together with

All that part of the East $\frac{1}{2}$ (half) of the East $\frac{1}{2}$ (half) of Section 24, Kalmar Township

Together with

The East Half of the Northwest Quarter of Section 36, Township 107 North, Range 15 West, Olmsted County, Minnesota.

Together with

That part of the Northeast Quarter of the Southwest Quarter of Section 36, Township 107 North, Range 15 West lying north of the right-of-way of the Chicago and Northwestern Railway Company, Olmsted County, Minnesota.

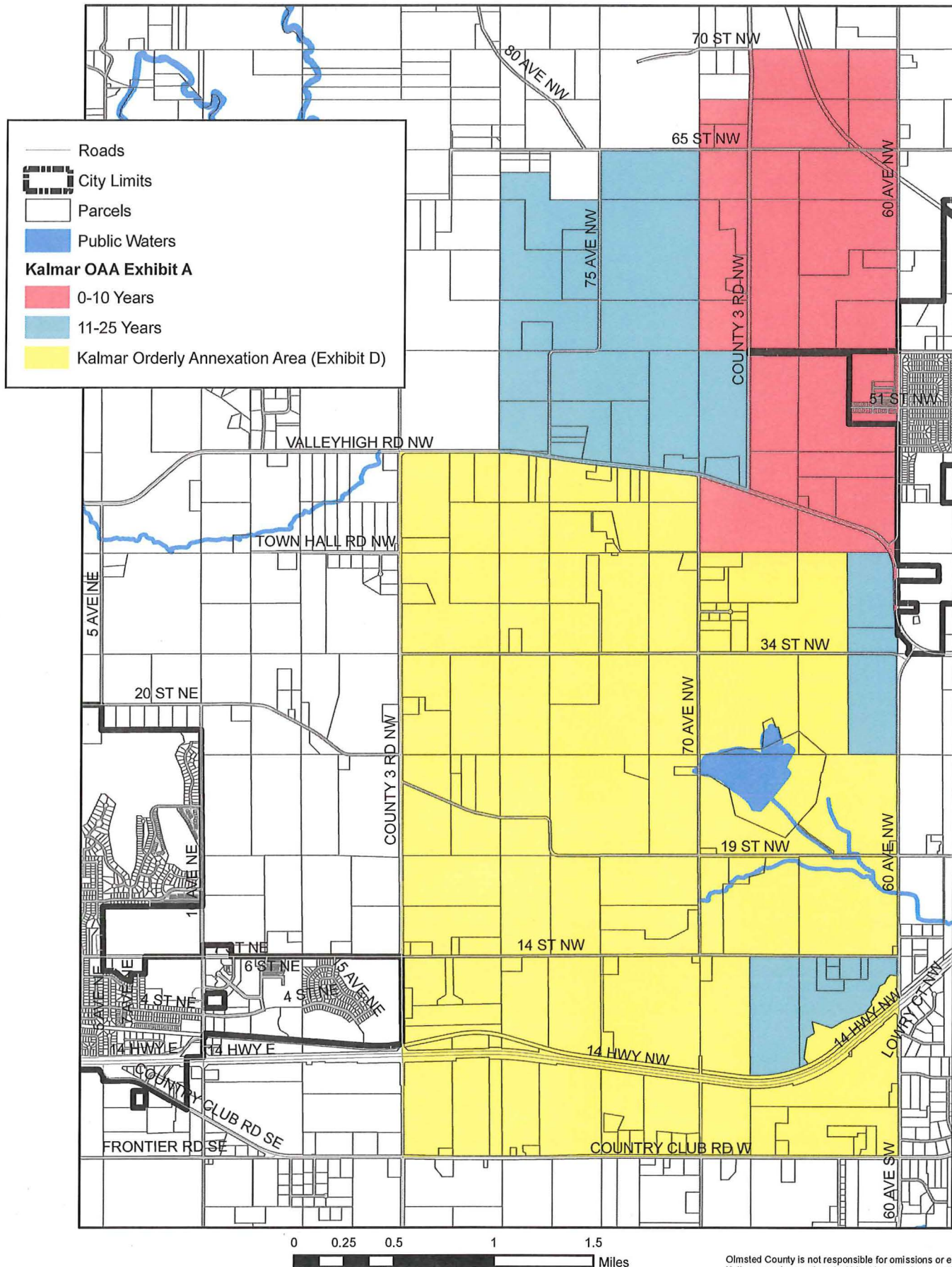
Together with

That part of the Northeast Quarter and that part of the Northwest Quarter of the Southeast Quarter, all in Section 36, Township 107 North, Range 15 West, Olmsted County, Minnesota, described as follows:

Beginning at the northwest corner of the Northeast Quarter of said Section 36; thence South 89 degrees 48 minutes 45 seconds East, Minnesota State Plane Grid Bearing, along the north line of said Northeast Quarter, 2644.80 feet to the northeast corner of said Northeast Quarter; thence South 00 degrees 28 minutes 08 seconds East, along the east line of said Northeast Quarter, 518.95 feet; thence North 82 degrees 04 minutes 24 seconds West 223.02 feet; thence South 47 degrees 48 minutes 26 seconds West 112.82 feet; thence South 26 degrees 27 minutes 10 seconds West 164.30 feet; thence South 61 degrees 04 minutes 41 seconds West 152.56 feet; thence South 18 degrees 39 minutes 37 seconds West 176.36 feet; thence South 35 degrees 02 minutes 45 seconds West 290.07 feet; thence South 13 degrees 38 minutes 44 seconds East 85.85 feet; thence South 39 degrees 08 minutes 18 seconds West 306.26 feet; thence South 71 degrees 30 minutes 11 seconds West 578.92 feet; thence South 59 degrees 27 minutes 00 seconds West 375.97 feet; thence North 71 degrees 36 minutes 29 seconds West 546.43 feet; thence South 12 degrees 02 minutes 11 seconds East 315.80 feet; thence South 58 degrees 39 minutes 45 seconds West 228.54 feet; thence South 08 degrees 19 minutes 19 seconds West 543.95 feet; thence South 37 degrees 35 minutes 09 seconds East 182.59 feet to the northerly right-of-way line of the Dakota, Minnesota, and Eastern Railroad; thence westerly 243.51 feet along said northerly right-of-way line of nontangential curve concave northerly, having a radius of 3283.67 feet, a central angle of 04 degrees 14 minutes 56 seconds, and a chord bearing of South 67 degrees 34 minutes 25 seconds West, to the west line of the Southeast Quarter of said Section 36; thence North 00 degrees 33 minutes 46 seconds West along said west line and along the west line of the Northeast Quarter of said Section 36, a distance of 2925.03 feet to the point of beginning.

Kalmar Orderly Annexation Amendment

Passed and Adopted by the Rochester Common Council, January 2016



Olmsted County is not responsible for omissions or errors contained herein. If discrepancies are found within this map please notify the GIS Division at 507.328.7100, Rochester-Olmsted Planning Department, 2122 Campus Drive SE Rochester, MN 55904.



Prepared by the Rochester-Olmsted Planning Department
Analysis, Planning, & Policy Division
May 3, 2016

457-03

REC'D BY
MAM B

SEP 19 2003

RESOLUTION

BE IT RESOLVED by the Common Council of the City of Rochester that the City execute the Joint Resolution/Orderly Annexation Agreement between the Town of Kalmar and the City of Rochester for 2640 acres of a watershed located west of 60th Avenue N.W.

The Mayor and the City Clerk are authorized and directed to execute this Joint Resolution/Orderly Annexation Agreement on behalf of the City.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF
ROCHESTER, MINNESOTA, THIS 3RD DAY OF SEPTEMBER, 2003.

John Hinzler
PRESIDENT OF SAID COMMON COUNCIL

ATTEST: Mindy Kay Schum
CITY CLERK

APPROVED THIS 4th DAY OF SEPTEMBER, 2003.

Orville F. Brede
MAYOR OF SAID CITY

(Seal of the City of
Rochester, Minnesota)

BEFORE THE

MINNESOTA BOUNDARY ADJUSTMENTS OFFICE
OF THE DEPARTMENT OF ADMINISTRATION

IN THE MATTER OF THE DESCRIPTION OF)	
AN UNINCORPORATED AREA IN KALMAR)	
TOWNSHIP AS IN NEED OF ORDERLY)	
ANNEXATION AND CONFERRING JURISDICTION)	JOINT RESOLUTION FOR
OVER SAID AREA ON MINNESOTA)	ORDERLY ANNEXATION
BOUNDARY ADJUSTMENTS OFFICE)	
OF THE DEPARTMENT OF ADMINISTRATION)	
PURSUANT TO MINNESOTA STATUTES)	
SECTION 414.0325, Subd. 1)	

JOINT RESOLUTION / ORDERLY ANNEXATION AGREEMENT

THIS ORDERLY ANNEXATION AGREEMENT is entered into this 3rd of SEPTEMBER, 2003, by and between the CITY OF ROCHESTER, MINNESOTA (the "City") and KALMAR TOWNSHIP (the "Township").

WHEREAS, Minn. Stat. § 414.0325 authorizes townships and municipalities to provide for the orderly annexation of unincorporated areas that are in need of orderly annexation; and,

WHEREAS, the City and the Township agree that there is a public need for the coordinated, efficient and cost effective extension of the City services to promote the public health, well being, and safety; and,

WHEREAS, the property described in the attached Exhibit "A" (hereinafter referred to as "Annexation Area") is presently urban or suburban in nature or about to become so, and the City is capable of providing City services within a reasonable time; and,

WHEREAS, the extension of City services can only be provided in prioritized phases and if the process and timing of annexation is clearly identified and jointly agreed upon in advance of the City's capital planning, commitment and expenditure; 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, the City and the Township desire to accomplish the orderly annexation of the Annexation Area and the extension of municipal services in a mutually acceptable and beneficial manner without the need for a hearing before the Municipal Boundary Adjustments

Office of the Minnesota Department of Administration (MBA) or its successor (this reference to the MBA is intended to include this or any other agency succeeding the Minnesota Municipal Board) and, with the purpose of avoiding an annexation dispute, enter into this joint resolution for orderly annexation pursuant to Minnesota Statutes 414.0325, Subd. 1.

WHEREAS, although there currently are no Suburban Development Areas ("SDA") within the Annexation Area, and no part of the annexation area has been designated a part of the City's Urban Service Area ("USA") or Urban Reserve Area ("URA"), as the same are depicted in the Olmsted County Land Use Plan, a means is needed to control the development of these areas should they be created;

NOW, THEREFORE, BE IT RESOLVED by the City of Rochester and the Township that the parties enter into this Joint Resolution Orderly Annexation Agreement (hereinafter referred to as "Agreement") and agree to the following terms:

1. The City and Township hereby designate that property situated in the Annexation Area as in need of orderly annexation pursuant to Minnesota Statutes 414.0325. The legal description for the Annexation Area is provided on Exhibit "A" attached hereto. A map of the Annexation Area is provided in Exhibit "B" attached hereto for the convenience of the parties.

2. The City and Township shall jointly request that the entire area described in Exhibit "A" and illustrated in Exhibit "B" be included as Urban Service Area within the Olmsted County Land Use Plan.

3. Annexation of land within the Annexation Area.

(A) The City shall have the right to annex by resolution any land within the Annexation Area at any time subject only to the annexation provisions of this agreement and when such land meets one or more of the following criteria:

- (i) a majority of the property owners in a subdivision (defined as all of the lots on an individual plat filed for record in the Olmsted County Recorder's Office) in which one or more parcels are contiguous to the City, or a majority of the property owners of a contiguous parcel of land located entirely within the Annexation Area petition for annexation;
- (ii) the City decides to add an arterial or collector road to its Municipal State Aid Street System that is designated on the ROCOG Thoroughfare Plan, but only to the extent of the right-of-way needed for said road and such land annexed for right-of-way purposes by itself shall not be used as the basis for surrounding an area to allow annexation by ordinance;

- (iii) the City determines by resolution that land, right-of-way or easements are needed for a public works improvement project designed to provide sanitary sewer pumping and conveyance facilities, water supply, water storage or water conveyance facilities, stormwater retention, stormwater detention or stormwater conveyance facilities, but only to the extent needed for said facilities and such land annexed for public improvement facility purposes by itself shall not be used as the basis for surrounding an area to allow annexation by ordinance;
 - (iv) the City receives an annexation petition from a landowner;
or
 - (v) the City owns the land.
- (B) The City may, by resolution, annex land within the Annexation Area which is completely surrounded by property within the City, without a petition from a majority of the owners of such property, provided that all of the following criteria are met as to such land:
- (i) The land has been completely surrounded by land within the City for a period of at least two years prior to the annexation of the surrounded land; and
 - (ii) Land annexed pursuant to paragraphs 3(A)(ii) or 3(A)(iii) is excluded from the determination of whether the surrounded land is completely surrounded by land within the City.
- (C) The City may annex ^{how?} any interim development land situated in the Annexation Area only if the annexation occurs 12 years after the execution of the Interim Development Agreement (DA). For purposes of this Agreement, the term "interim development" shall mean any residential development: (i) outside the City; (ii) after the date of this Agreement; and (iii) before the availability of city utilities (City sanitary sewer and municipal water services) located within the 11 to 25 year area of the Annexation Area as delineated on Exhibit B to this Agreement. However, interim development shall be allowed only if the following requirements are satisfied:
- (i) installation of common sewage collection and water distribution system services on-site at the time of development;
 - (ii) establishment of an escrow account to pay for all on-site and off-site capital improvements not installed by the developer (such capital improvements being substantially

similar to the types of capital improvements required by developments within the City contemporaneous with the Interim Development);

- (iii) documentation of agreements for sewer and water service hookup to the City's public sewer and water systems;
- (iv) clustering of buildable lots to minimize costs and provide flexibility for future development;
- (v) development of platting arrangements and zoning requirements to allow for future lot splits or zoning arrangements limiting the final residential lot size to a maximum of 0.5 acres , unless otherwise approved by the City due to exceptional topographic constraints;
- (vi) development of site planning that is approved through a general development plan, including City and Township review; and
- (vii) execution of the required Connection Agreement and Interim Development Agreement (DA).

4. The Township will not file any objection with the MBA concerning the City's annexation of any land within the Annexation Area so long as the annexation complies with the terms and conditions of this Agreement. If the Township has already filed such an objection with the MBA, the filing of this Agreement with the MBA shall constitute withdrawal of the objection.

5. If the City intends to annex a parcel of property in the Annexation Area, the City shall, within 14 days of receipt of a petition to annex, submit to the Township the following:

- (A) The legal description of the property to be annexed and a map of the property to be annexed;
- (B) A description of the proposed use of said property if known; and
- (C) Any General Development Plan for the parcel to be annexed, if one has been submitted to the City.

6. The City will initiate annexation pursuant to this Agreement by City Council resolution ("Annexation Resolution"). The City Planning and Zoning Commission is not required to review the City's adoption of an Annexation Resolution. The Annexation Resolution must be filed with the MBA, the Township and the Olmsted County Auditor/Treasurer. The Annexation Resolution must contain the boundary description of the

area to be annexed and, pursuant to Minn. Stat. §§ 414.01, subd. 4, and 414.0325, subd. 1a, must contain the City's estimates of the population and number of households in the area to be annexed. It must also contain a cost estimate of any change in electrical utility services, including rate changes and assessments which might occur from the annexation. The resolution must also identify one or more paragraphs of this Agreement which authorize such annexation.

7. Upon the filing of the Annexation Resolution with the MBA, the parties will not request any alteration of the boundaries of the land to be annexed or any change in the annexation of the land not provided for in this Agreement. The MBA may review and comment on the Annexation Resolution, but may not otherwise consider the resolution or alter the annexation boundaries. Within 30 days of receipt of the Annexation Resolution, the MBA must order the annexation of the area described in the Annexation Resolution in accordance with the terms and conditions of this Agreement.

8. Lands ordered annexed pursuant to this Agreement will 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 Township for the entire year in which the annexation becomes effective. If the MBA's order approving the annexation becomes effective on or before August 1 of a levy year, the City may levy on the annexed area beginning with that same levy year. If the MBA's order becomes effective after August 1 of a levy year, the Township may continue to levy on the annexed area for that levy year. Thereafter, property taxes on the annexed land must be paid to the City.

9. The City will provide the following property tax re-imbursement payments to the Township for land within the Orderly Annexation Agreement Area that are annexed to the City:

- (A) For undeveloped land as of the date of this agreement, the City will make ten yearly payments equal to the Township taxes on undeveloped land value at the time of annexation, regardless of whether the property is later developed. "Undeveloped land" is defined as any parcel without a structure or that contains a structure and yet is greater than 30 acres in size. The annual payments shall commence in the year following the annexation.
- (B) For lands that have already been developed prior to the date of this agreement, the City will make declining payments annually over five years. The first year payment will be 90% of the township taxes on the annexed land in the year of annexation. The second year payment will be 70% of the township taxes on the annexed land in the year of annexation. The third year payment will be 50% of the township taxes on the annexed land in the year of annexation. The fourth year payment will be 30% of the township taxes on the annexed land in the year of annexation. The fifth year and final payment will be 10% of the township taxes on the annexed land in the year of annexation. Developed lands are defined as lands upon which a building structure exists on the County tax records prior to the date of execution of this agreement.

- (C) For interim residential developments that are approved in the Annexation Area after the date of this agreement, the City will make no township property tax reimbursement payments to the Township.

10. Any tax payments due to the Township pursuant to this Agreement will be made within 30 days of receipt by the City of the tax distribution from Olmsted County.

11. Interim residential development will be permitted only in the 11-25 year areas within the Annexation Area as shown on the attached Exhibit B, and only if the interim residential development complies with the following:

- (A) the development complies with the Olmsted County Land Use Plan, dated November 14, 1995, updated June, 2002, and any amendments approved by the Olmsted County Board and the corresponding Olmsted County Future Land Use Map ("Land Use Plan").
- (B) the development complies with any applicable General Development Plan for the project or area as approved by the City, the City's subdivision controls, capital improvement standards and zoning regulations; and
- (C) the developer agrees to enter into a City-approved Connection Agreement ("CA") and Interim Development Agreement ("DA") wherein the developer agrees to construct a County and City-approved community-based water system and Township and City-approved sewer system and sewage treatment system, both of which must be fully compatible for incorporation into the City's public water and sewer system.

12. If the development complies with paragraph 11 of this Agreement, the Township and the County may approve a residential interim development provided that the developer enters into a City-approved CA and DA. Parties to the DA must include the County, the Township and the City.

13. The DA must provide (but is not limited to) the following:

- (A) the affected property owners, the developer and the Township will agree that the land upon which the development is located will be annexed to the City pursuant to paragraph 3(C) of this agreement;
- (B) the developer agrees to construct a County and City-approved community-based water system, which must be fully compatible for incorporation into the City's public water system;
- (C) the developer agrees to construct a Township and City-approved community based sewer system and sewage treatment system, which

must be fully compatible for incorporation into the City's public sewer system.

- (D) the developer will construct, or pay a fee to the City equal to the cost of providing any and all on-site and off-site capital improvements or facilities (such capital improvements being substantially similar to the types of capital improvements required of developments within the City contemporaneous with the Interim Development) in an amount as reasonably determined by the City, including, but not limited to, public sanitary sewer and watermain, roads, bicycle and pedestrian facilities, storm drainage and, stormwater management facilities, and parks/recreational space that are required to provide the public infrastructure and services needed to serve the Annexation Area;
- (E) if requested by the City, the developer will extend these public facilities through the development to serve adjacent properties;
- (F) property located in the Annexation Area will be subject to the payment of development related charges associated with publicly provided infrastructure. This infrastructure includes, but is not limited to, sanitary sewer, watermain, water towers, storm sewer, roadway improvements, storm water management and parkland. The charges become due and payable upon development or connection to city utilities; and,
- (G) payments for related infrastructure improvements must be made pursuant to standardized charges at the time of development of the property. These standardized charges are those based upon the City of Rochester policies in effect at the time of development.

14. Residential development, with a density of non-farm development higher than that permitted by the Olmsted County Zoning Ordinance in effect as of the date of this Agreement, will not be permitted in the 0 to 10 year area as shown on the attached Exhibit B. This prohibition applies to a subdivision or a single parcel of land including a development that has residential or combined residential and non-residential uses within the 0 to 10 year area of the Annexation Area. This prohibition does not apply to land located within the City.

15. Olmsted County has not in its Land Use Plan designated any lands within the Annexation Area as Suburban Development Areas. Under the terms of this Agreement, the lands included within the Annexation Area are designated for future urban development within the City of Rochester. The Township shall not initiate, seek, or support any request to the Olmsted County Board or Planning Commission for designation of any Suburban Development Areas within the Annexation Area, and further the Township shall oppose any efforts to include any of the lands within the Annexation Area into any governmental jurisdiction other than the City of Rochester or Olmsted County.

16. Nothing in this Agreement relieves the Township of its governmental responsibilities for the Annexation Area, including but not limited to the regular and normal maintenance of the existing infrastructure of roads, drainage facilities, and street signs. The Township's continuing governmental responsibilities for an annexed area continue until the date of the MBA's order approving the annexation.

17. The continued investment of public funds to maintain public roads is an essential function of the local government. Recognizing such obligation, the Township will maintain public roads within the Annexation Area in a satisfactory condition. The City will name the Township as an additional insured party in the owner contracts for the construction of public infrastructure in cases that development takes access from a Township road. The Township must crack-fill, seal-coat and overlay all paved Township roads in the Annexation Area on a preventive maintenance schedule. If the City annexes a Township roadway before the expiration of the useful life of any major maintenance activity undertaken after the adoption of this agreement, the City will reimburse the Township for the pro rata cost of the remaining useful life, as determined consistent with Exhibit "C", of the major maintenance activity. For purposes of this agreement, a major maintenance activity shall be one that had a total cost of \$10,000 or more. Exhibit "C" is attached to this Agreement to show the preventive maintenance schedule and the manner in which pro rata costs will be calculated.

18. In instances in which a City subdivision takes direct connection onto a Kalmar Township roadway and the subdivision traffic results in increased annual Township maintenance costs for that segment of roadway as determined by the County Engineer, the City agrees to provide an annual maintenance contribution to Kalmar Township for the actual increased maintenance costs as determined by the County Engineer up to but not more than \$10,000 per mile of roadway. Roadway segment shall be defined as that portion of a Kalmar Township roadway that extends between the intersections of two public roads at either end of the segment.

19. All utility extensions within the Annexation Area will be consistent with the City's policies concerning the extension of municipal utilities.

20. The City will construct and provide water, sanitary sewer, storm sewer and street improvements to the Annexation Area as requested by the owner, pursuant to state and local law, at the discretion of the City and based on the City's policies then in effect.

21. The City and Township agree that the City's zoning and subdivision authority do not apply within the Annexation Area until the time of annexation.

22. This Agreement provides the exclusive procedure by which the unincorporated property identified in the Annexation Area may be annexed by the City.

23. The Township agrees that it will notify and discuss with the City any requests to enter into an Orderly Annexation Agreement with any governmental body other than the City for any lands shown in Exhibit D. If any land shown on Exhibit D becomes the subject of an annexation petition in favor of a governmental entity other than the City, nothing in this

Agreement will prevent the City from responding to that petition using any and all statutorily available legal responses.

24. Except as provided in paragraph 25 of this Agreement, the City cannot annex land outside of the Annexation Area without the Township's written approval.

25. Until such time as 50% of the land area within the Annexation Area is annexed to the City, the City may only annex land outside of the Annexation Area if the land abuts the City and the City receives a petition for annexation from all of the property owners of the land. The City will provide the same property tax reimbursement payments to the Township (as described in paragraph 9 of this Agreement) for the land outside of the Annexation Area that is annexed to the City. Once 50% or more of the land area within the Annexation Area is annexed to the City, the City may annex land outside of the Annexation using any legal procedure available to it.

26. The Township and City will meet at least once every five years to review the status of the annexation and development of the Annexation Area. A request from either party to this Agreement will be sufficient to initiate the review meeting.

27. This Agreement will terminate when the parties adopt a joint resolution of termination, when all of the land within the Annexation Area is annexed to the City, or on January 1, 2034, whichever occurs first.

28. Disputes concerning this Agreement shall be resolved as follows:

- (A) Negotiation. When a disagreement over interpretation of any provision of this Agreement occurs, City and Township staff members must meet at least once at a mutually convenient time and place to attempt to resolve the dispute through negotiation.
- (B) Mediation. When the parties are unable to resolve a dispute, claim or counterclaim, or are unable to negotiate an interpretation of any provision of this Agreement, the parties may mutually agree in writing to seek relief by submitting their respective grievances to non-binding mediation.
- (C) Adjudication. When the parties are unable to resolve a dispute, claim, or counterclaim, or are unable to negotiate an interpretation of any provision of this Agreement 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 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.

29. This Agreement may not be modified, amended, or altered except upon 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 MBA.

30. This Agreement 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 Agreement is determined and adjudged to be unconstitutional, invalid, illegal or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect.

31. The terms, covenants, conditions, and provisions of this Agreement, 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. There are no understandings, agreements or assumptions other than the written terms of this Agreement.

32. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the City and the Township. Specifically, this Agreement is binding upon the governmental entity that survives or is created by the Township's action to merge, consolidate, detach, annex, reorganize or incorporate.

33. This resolution shall be effective immediately upon its adoption by the parties and its filing with the MBA. This Agreement shall terminate as provided in paragraph 27 of this Agreement, except that the tax sharing obligations of the City arising under this Agreement shall survive the termination of this Agreement until such obligations have been completely fulfilled.

34. 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 Kalmar Township Clerk.

35. Properties located in Exhibits A and B shall be subject to the payment of development related charges associated with publicly provided infrastructure for sanitary sewer, watermain, water towers, storm sewer, roadway improvements, storm water management and parkland. Charges for property located outside of the corporate limits of the City of Rochester (Exhibits A and B) shall be deferred until such time as the property is annexed and/or developed. Costs for said improvements shall be based on the policies in effect for the City of Rochester at the time of development. Property within the corporate limits of the City of Rochester are also subject to development related charges as outlined above. Payments for related infrastructure shall be made pursuant to levied assessments for the infrastructure or at the time of the property's development. Costs for said improvements

shall be based on the policies in effect for the City of Rochester at the time of development or as established in the assessment procedures.

36. Notwithstanding any provision of this Agreement to the contrary, the City and Township agree that, upon the parties' execution of this Agreement, the City may by resolution annex the following described land containing 56.70 acres, more or less: The north 1900.00 feet of the east 1300.00 feet of the Northeast Quarter of Section 13, Township 107 North, Range 15 West, Olmsted County, Minnesota.

37.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF

ROCHESTER, MINNESOTA, THIS 3rd DAY OF SEPTEMBER, 2003.

ATTEST:

Judy Kay Spence
CITY CLERK

John Hanzel
PRESIDENT OF ROCHESTER COMMON COUNCIL

APPROVED THIS 4th DAY OF SEPTEMBER, 2003.

Arnell F. Buede
MAYOR OF CITY OF ROCHESTER

(Seal of the City of
Rochester, Minnesota)

PASSED AND ADOPTED BY KALMAR TOWNSHIP, OLMSTED COUNTY,
MINNESOTA, THIS 18 DAY OF August, 2003.

ATTEST:

Pete W. Hahn
TOWN CLERK

John Meyer
CHAIRMAN OF TOWN BOARD

This document prepared by:
Rochester City Attorney's Office
201 Fourth Street S.E., Room 247
Rochester, MN 55904

EXHIBIT A

Kalmar Township Orderly Annexation Area

That part of Sections 1, 11, 12, 13, 14, and 24 of Kalmar Township (T-107-N, R-15-W), Olmsted County Minnesota described as follows:

All that part of the South $\frac{1}{2}$ (half) of Section 1 of Kalmar Township except the Northwest $\frac{1}{4}$ (quarter) of the Southwest $\frac{1}{4}$ (quarter) lying west of the westerly right of way line of County Road 3.

Together with

All that part of Section 11 of Kalmar Township except the North $\frac{1}{2}$ (half) of the Northwest $\frac{1}{4}$ (quarter) of the Northwest $\frac{1}{4}$ (quarter) and except the Northeast $\frac{1}{4}$ (quarter) of the Northwest $\frac{1}{4}$ (quarter) lying west of the westerly right of way line of 75th Avenue NW.

Together with

Section 12, Kalmar Township

Together with

Section 13, Kalmar Township

Together with

All that part of Section 14, Kalmar Township lying Northerly of the Southern right of way line of Valley High Drive NW (CSAH #4)

Together with

All that part of the East $\frac{1}{2}$ (half) of the East $\frac{1}{2}$ (half) of Section 24, Kalmar Township

EXHIBIT C

Roadway Infrastructure Maintenance

Pavement Maintenance Strategy	Frequency of Strategy	Life Expectancy	Annual Depreciation
Crack Fill	5 years	5 years	20% per year
Seal Coat	5 years	5 years	20% per year
Bituminous Overlay			
1" – 1 ¼"	9 years	9 years	11.1 % per year
1 ¼" – 1 ½"	12 years	12 years	8.3 % per year
1 ½" – 1 ¾"	15 years	15 years	6.7 % per year
1 ¾" – 2"	18 years	18 years	5.5 % per year
Culvert Crossing Replacement (3-way / 4-way roadway intersections or Drainageway / Creek Crossings)	25 years	25 years	4% per year
Gravel Roadway Expansion - Widening	As needed	25 years	4% per year
Bridge Replacement	75 years	75 years	1.3 per year

NOTE: Work items in excess of \$10,000.00 shall be co-authorized between the City and the Township.