

**THIS IS A DRAFT OF REDLINES WHICH
STILL REQUIRE FURTHER ATTORNEY
REVIEW PRIOR TO EXECUTION BY THE
TOWNSHIP.**

**JOINT RESOLUTION AS TO ORDERLY ANNEXATION BY AND BETWEEN
THE CITY OF ST. CLOUD AND THE TOWN OF HAVEN**

WHEREAS, the City of St. Cloud (the “City”) and the Town of Haven (the “Town”) previously entered into an orderly annexation agreement in 2010 (Haven Township Resolution No. 2010-3, City of St. Cloud Resolution No. 2010-10-191); and

WHEREAS, the City and the Town desire to provide for the orderly development of areas of the Town that are or are about to become urban or suburban in character, replacing and updating the 2010 agreement; and

WHEREAS, the City and the Town wish to encourage development and extension of services to those properties which are contiguous to the City limits prior to properties which are not adjacent to the City boundaries; and

WHEREAS, the City and Town wish to limit non-farm rural development within those areas surrounding the City until such time as municipal services are available and to ensure that growth occurs in an orderly manner; and

WHEREAS, the City and the Town have reached an agreement which is in the best interest of citizens of the City and Town, ensuring enhanced representation of the Town’s interests.

NOW, THEREFORE, BE IT RESOLVED, BY THE COUNCIL OF THE CITY OF ST. CLOUD AND THE BOARD OF SUPERVISORS OF THE TOWN OF HAVEN:

1. **Repealer.** The parties agree the previous Joint Resolution as to Orderly Annexation between the City of St. Cloud and the Town of Haven, adopted in 2010, is hereby repealed and superseded by this Agreement.

2. Description of Area to be Annexed. That the following described areas are properly subject to orderly annexation under and pursuant to Minnesota Statutes §414.0325, and the parties do hereby designate these areas for orderly annexation as provided by statute:

A. That area set forth on the attached map (Exhibit A) and legally described by Exhibit B. The designated area shall be identified as Tract 1, Tract 2, Tract 3, and Tract 4, as further detailed in the Exhibits.

No lands outside of Exhibits A and B may be annexed under this agreement.

3. Office of Administrative Hearings Jurisdiction. That upon approval by the parties, this agreement shall confer jurisdiction upon the Office of Administrative Hearings (the “Office”) and the Municipal Boundary Adjustment Unit Chief Administrative Law Judge (“Chief Judge”) so as to accomplish said orderly annexation in accordance with the terms of this agreement.

4. No Alterations of Boundaries. The City and the Town mutually state that no alteration by the Office or the Chief Judge of the boundaries of those areas designated herein for orderly annexation is appropriate, unless otherwise required by law.

5. Conditions for Annexation. The City and the Town mutually state that this resolution sets forth all of the conditions for annexation of the areas designated herein for orderly annexation; however, the parties expressly agree that the Office of Administrative Hearings and the Chief Administrative Law Judge shall retain authority to review annexation submissions to ensure compliance with Minnesota Statutes, Chapter 414, and the terms of this Agreement. Such review shall include verification that (a) the procedural and notice requirements of this Agreement have been met; (b) the proposed annexation is consistent with the phasing and service conditions contained herein; and (c) municipal services are available or will be available within the time frames required under Section 7 of this Agreement. The Office or the Chief Judge may, upon finding that the conditions or timelines have not been met, delay or withhold issuance of the annexation order until such compliance is demonstrated to the satisfaction of both parties and the Office.

6. Approval Process. No annexation petition or resolution of annexation shall be filed with or submitted to the Office of Administrative Hearings (OAH) unless the Haven Township Board has first provided written approval of the proposed annexation.

The City and the Town mutually state that properties in the areas designated herein, or any portion thereof, shall be annexed to the City only after joint certification by both the City and the Town that all procedural requirements of this Agreement have been met, and that the annexation is consistent with the applicable phasing, petition, and service provisions contained herein.

Upon such joint certification, the City may adopt a resolution of annexation and submit it to the Office/Chief Judge not sooner than forty-five (45) days after providing the Town with a copy of the proposed annexation petition.

No resolution of annexation shall be deemed final or effective unless accompanied by the written certification of both the City and the Town confirming compliance with this Section.

a. Agricultural and/or Undeveloped Land.

(i) Petition requesting annexation signed by owners of 100% of individual parcels of record for agricultural and/or undeveloped properties in an area proposed for annexation; or

(ii) agreement of both the City Council and the Town Board

b. Developed Property.

(i) Fifty-one percent (51%) of the owners of individual parcels of record for developed property in an area proposed for annexation sign a petition requesting annexation; or

(ii) agreement of both the City Council and the Town Board.

When a petition for annexation of developed lands involves more than one property, all such properties must be contiguous to each other. All of the properties considered to be developed are described in **Exhibit 3**. Residential subdivisions of land resulting in a lot(s) of 10 acres or less that are approved subsequent to the effective date of this agreement will be considered developed. Any property utilized for commercial or industrial purposes and which has been developed with buildings or other significant structures is considered developed.

c. Surrounded Properties. Any property, whether in Tract 1, 2, 3, or 4, which is less than 40 acres in size and that is entirely surrounded by the City may be annexed by the City at any time ten (10) years after the date on which it becomes surrounded by the City. Surrounded properties include those properties which abut

the City of St. Cloud, or a street which abuts the City of St. Cloud, on three or more sides, except that areas within City boundaries but that are isolated from the main areas of the City (such as the St. Cloud airport or relatively narrow strips of land connecting these isolated areas to the main portion of the City) shall not be considered when determining if a Township property is surrounded.

d. **Phased Annexation:** Unless otherwise agreed to by the Town Board, annexation of land in Tract 2 shall only be considered after 70% of the acreage of Tract 1 is annexed to the City; annexation of land in Tract 3 shall only be considered after 85% of the total acreage of Tract 2 is annexed to the City; and annexation of land in Tract 4 shall only be considered after 85% of the acreage of Tract 3 is annexed to the City.

e. **City Not to Initiate Annexation.** The City will not initiate annexation within the Designated Area, unless petitioned for by property owners or as otherwise provided in this Agreement.

7. Provision of Municipal Utility Service.

a. Sewer Extension a High Priority. Extension of sanitary sewer service to annexed properties requesting sewer service will be a high priority by the City.

b. Assessment or connection charges. Assessment or connection charges to annexed properties will be at the City's officially established rate applicable citywide for improvements of a similar type at the time of benefit and/or connection to said service.

c. Timeline for Connection. Annexed properties must connect to municipal services on the earlier of one of the following:

- (1) The property owner petitions for service;
- (2) The property is sold or otherwise transferred for purposes other than agricultural;
- (3) Construction of new non-agricultural buildings or expansion of existing non-agricultural buildings occurs on the property;

- (4) The property's septic system is failing;
- (5) State or Federal law requires connection; or
- (6) Three years from readily available (installed abutting or directly adjacent to the property) sanitary sewer and/or water services.

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

e. The City shall make no assessments or charges to properties for any improvements prior to its annexation.

f. The City and Township state that the following municipal services shall be provided to substantially all property annexed under this Agreement within eighteen (18) months of the date it is annexed: Sewer Service, Water Service, Police Service, Fire Service, First Response Service. If substantially all of the annexed property is not so served with municipal services on the timelines noted no future annexations of any property from the Township to the City under the terms of this Agreement may occur until said services are extended to substantially all of the previously annexed properties.

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

9. Tax Reimbursement. The parties agree the City will reimburse the Town a portion of the taxes levied on annexed properties for a 10-year period following annexation as provided in this section.

a. **All Properties.** For all annexed properties, whether commercial, industrial, residential, agricultural, developed, or undeveloped, the annual tax reimbursement payment shall be calculated each year during the ten (10) year reimbursement period as follows:

$$\text{Township Tax Reimbursement} = (\text{Assessor's Estimated Market Value of Annexed Property for the current tax year}) \times (\text{Township's certified tax capacity rate for the current tax year}).$$

It is the intent of the parties that this payment reflects the amount of taxes that would have been collected by the Town had the property remained within the Township for that tax year. The City shall provide the Town with a written statement each year identifying the values, tax rates, and calculations used.

All such payments shall be made annually, on or before December 1, based on taxes collected by the City during that same year.

If payment is not received within thirty (30) days of the due date, the unpaid amount shall accrue interest at the rate of ten percent (10%) per annum until paid in full.

b. **Developed Commercial/Industrial Properties.** In addition to the tax reimbursement payment provided for above, the City's reimbursement of taxes collected on commercial and industrial properties which were developed prior to annexation will continue for an additional 10 years (after the 10 years provided for above) at a rate of 20% of the fixed amount paid during the initial 10-year reimbursement term as provided for above.

c. **Payment.** The City shall make its payment to the Town once each year, prior to December 1st of each year, based on the monies the City has collected.

10. **Outstanding Assessments and Debt.** To the extent applicable, upon annexation of a given area, the City shall collect and pay to the Town any outstanding assessments for public improvements or services imposed in the Town under Minnesota Statutes, chapters 429, 365A, or other law or property annexed by the City. The City shall pay such amounts over to the Town within 30 days of each tax distribution containing the assessed amounts until the assessment, including applicable interest, imposed on the property is paid in full.

11. **Tax Step-Up for Platted Developed Residential Property.** To ensure a fair and predictable transition for residents of Haven Township whose properties are annexed to the City, the City shall increase the total tax rate applicable to each annexed platted, residentially developed property in substantially equal annual increments so that, by the sixth (6th) year following

annexation, the tax rate equals the rate then in effect for similar properties within the City. The City shall provide written notice to both the Town and the affected property owners at least sixty (60) days prior to the effective date of each annual adjustment, identifying the current rate, the adjusted rate, and the expected final equalization year.

If, during the six-year step-up period, the City's overall property tax rate increases by more than ten percent (10%) from the prior year, the City shall notify the Town within thirty (30) days and meet jointly with the Town Board to review the fiscal impact on annexed properties. By mutual resolution, the City and the Town may agree to suspend, modify, or extend the step-up schedule to prevent undue hardship on affected property owners.

During the step-up period, the City shall provide the Town with a written certification each year from its Finance Director or equivalent officer confirming that the step-up calculations were made in accordance with this Section and identifying the rate applied to each annexed property. These provisions shall apply to all platted, residentially developed properties annexed under this Agreement unless the affected property owner elects, in writing, to be subject immediately to the City's full tax rate.

12. Joint Planning Board. The parties agree that the zoning for the Designated Area shall be administered by a Joint Planning Board as provided in this section and as the parties may agree to as part of a joint powers agreement.

a. **Joint Planning Board Continued.** A Joint Planning Board shall be established pursuant to Minn. Stat. § 471.59 as provided in the 2010 OAA to exercise planning and land use control over the Designated Area is hereby reaffirmed and continued. **The Joint Planning Board cannot be dissolved without the consent of both governing bodies.**

b. **Make-up of Board.** The Joint Planning Board shall continue to be made up of two representatives from the Town appointed by the Town Board on an annual basis and one representative of the City appointed by the City Council on an annual basis. Appointees will serve until their replacement is appointed. The Chair of the Joint Planning Board will be rotated between City and Town appointees.

c. **Zoning & Subdivision Ordinances.** The Joint Planning Board will adopt its own zoning regulations for the Designated Area. For those areas within Tracts 1 and 2 which are to be annexed the soonest, the zoning regulations shall closely mirror those zoning regulations, and make use of substantially similar zoning districts, which apply within the City of Saint Cloud so as to facilitate consistency in lot dimensions and land uses. In Tracts 3 and above where annexation may not

occur for several decades or more, the zoning regulations and zoning districts shall be written to prevent gross inconsistencies with the land uses allowed within the City of Saint Cloud or excessive barriers to the efficient future expansion of city infrastructure and services, but allow for significant flexibility to customize lot dimensions and land uses to the rural nature and specific goals of the Township in maintaining a rural lifestyle. The Joint Planning Board may adopt alternative ordinances and amendments by the unanimous vote of all Joint Planning Board Members. The Joint Planning Board shall serve as the Board of Appeals and Adjustments and it shall adopt such revisions to its ordinance as may be needed to make clear that it serves in that capacity.

d. Permit Fees and Distributions. The permit fees shall be established by the unanimous agreement of the Joint Powers Board. Upon dissolution of the Joint Planning Board, any property acquired as the result of the exercise of its powers shall be returned to the City and the Town in equal shares, except to the extent a contribution of property was unequal then that property shall be distributed in proportion to the contributions made

e. Staff. The Joint Planning Board duties will be administered by the staff of the City or by staff hired by the Joint Planning Board. The funding of such staffing shall be as determined by the City and Township. The City will be entitled to retain permit fees to cover the cost of administration.

f. Special Provisions with Joint Planning Area. The following provisions will apply within the Designated Area:

1. Continuation of Farming Operations. Any farm land that is in existence at the time of the execution of this Agreement may continue to be farmed and developed as a farming enterprise including the construction of agricultural buildings, the maintenance of livestock, the employment of manure storage facilities and any and all agricultural practices that are employed by the land owner or their successors or assigns subsequent to the execution of this Agreement, provided, that such activities are in accord with federal and state laws and the rules and regulations adopted by the Joint Planning Board.

2. Setbacks from Farm Operations. The Joint Planning Board will adopt measures to ensure that no new residential homes are constructed within 500 feet of structures (used to house animals or which are considered feedlots according to Minnesota Rules) located on land employed and engaged in agricultural business endeavors. This provision is not intended to apply to new residential structures constructed on the same parcel as the agricultural structures. The exact details of any additional restrictions in this area will be established by the Joint Planning Board as part of a Zoning Ordinance to be adopted.

3. Development. It is the directive to the Joint Planning Board to ensure that regulations adopted by the Joint Planning Board permit existing businesses and farms located within the orderly annexation area to expand as necessary in accord with federal, state and local laws. It is also the directive to the Joint Planning Board that with the exception of expansions of existing facilities and expansion of agricultural operations the Board will limit new residential, commercial and industrial development within the orderly annexation area prior to annexation of the property into the City and the provision of municipal sewer and water services, unless such commercial or industrial development is of a nature which does not generate significant volumes or types of wastewater and does not make use of unusually high amounts of water and such commercial or industrial development is allowable under the adopted zoning regulations.

4. Development of Annexed Properties. The Joint Planning Board, the City, and the Town shall all adopt and maintain a policy which requires that Developers seeking to develop land within the Designated Area provide notice to potential builders and homeowners that their land is located in an agricultural area and as such is subject to sounds and smells associated with agricultural production, or within an active mining area or area subject to likely mining activity, or within an airport zoning district, as appropriate.

5. Existing Rural Uses. The parties acknowledge that certain uses exist within the orderly annexation area that may lead to conflict as residential properties are developed adjacent to these uses. The City and the Town acknowledge that Minnesota Statutes § 462.357, subd. 1c provides that a municipality must not enact, amend, or enforce an ordinance providing for the elimination or termination of a use by annexation which use was lawful at the time of its inception. In

addition, the City and Town agree to work in good faith to address issues that may arise as anticipated property use conflicts arise.jalex annex

6. Drainage Plans. For all plats of property annexed to the City from the Town, drainage and grading plans will be presented to the Joint Planning Board and Town for review and comment regarding the potential impacts on other property located within the Town. The City will use good faith efforts to eliminate problems caused in the Town by the drainage and grading completed as a result of such drainage and/or grading plans. The City will also use good faith efforts to address concerns raised by the Joint Planning Board and/or the Town by either making changes to the drainage and grading plans for the plat or by providing written responses to the Joint Planning Board's and/or Town's concerns and agreeing to meet with either the Joint Planning Board or the Town upon the request of either of them to discuss their concerns.

13. Town Roads.

a. **Existing Town Roads.** The Town shall maintain Town roads in existence at the time of the execution of the Agreement until lands on both sides of said Town roads are annexed to the City. Upon annexation of the road, any payments remaining due on bonds taken out by the Township for improvement of such roads shall be transferred to the City or the City shall reimburse the Township for continuing such payments.

b. **Annexation of Abutting Property.** If the City annexes property abutting a Town Road, but annexes on one side only of that Road, the Town shall have the option to require the City to maintain both sides of the road abutting the annexed property. Such option shall be exercised within 90 days of the annexation by Town Board resolution.

c. **Undue Burden on Town Roads.** The Town and the City recognize that City development within or adjacent to annexed areas may generate additional traffic or maintenance burdens on existing Town roads that provide access to or serve such development. In such cases, the City shall assume responsibility for maintaining, improving, or contributing to the maintenance of those affected Town roads in proportion to the impact generated by the City development. The determination of such responsibility shall consider traffic volumes, pavement condition, and proportional use attributable to the City's development activities.

The Town and the City shall cooperate in good faith to identify the affected road segments and determine the appropriate level of City participation. If the parties are unable to reach agreement within sixty (60) days after written notice from the Town identifying the affected road segments, the Town may submit the matter to the Joint Planning Board for review and recommendation. Upon such referral, the Joint Planning Board shall consider evidence submitted by both parties and issue a written decision within forty-five (45) days. If the Joint Planning Board determines that the City should assume full or partial responsibility for any Town road under these circumstances, the City shall implement that decision and include such work or contribution in its next adopted budget cycle.

14. **Annexation Outside of Designated Area.**

a. **Other Annexations Limited.** The City will not initiate any annexation action for property outside of the Designated Area except by agreement with the Town Board. However, in the event an incorporation proceeding is initiated by any party for any part of Haven Township, the City then has the right to initiate an annexation action for any part of Haven Township, provided that right is available to it under law at the time of the action.

b. **Property Owners Rights.** Property owners continue to maintain those options available by law at the time of their action to pursue municipal boundary adjustment outside of the Designated Area. Until such time as 70% of the total acreage of Tract 1 and 85% of the total acreage of areas in Tract 2, 3, and 4 are annexed, the City will not support any property owner-initiated annexation petition for areas proposed for residential development that are located outside of the Designated Area. The City will not support any property owner-initiated petition for annexation of land proposed for non-residential development for a period of 60 days starting from the date of the City's submission of a copy of such a petition to the Town Board for its consideration. The Town and the City mutually agree to meet to consider the appropriateness for the requested annexation and approval of an amendment to the Orderly Annexation Agreement.

15. **Costs Associated with OA Agreement.** Each party shall pay its own costs incurred in the negotiation, development and implementation of this Agreement. The City shall be responsible for paying the costs of filing this Agreement with the Boundary Adjustment Unit and for making any corrections to the maps or legal descriptions as may be required.

16. **Binding Agreement.** Pursuant to Minnesota Statutes § 414.0325, subd. 6, and by agreement of the parties, this Agreement is a binding agreement on the parties and its terms are not preempted by the provisions of Minnesota Statutes, chapter 414 or other law as it may now exist or may later be adopted or amended. The parties intend this Agreement to set all exclusive procedures for annexing property within the Designated Area. The City agrees to oppose any effort to annex property within the Designated Area that does not comply with the terms of this Agreement.

17. **Dispute Resolution.** The parties agree to mediate any disputes concerning the interpretation of this Agreement that cannot be resolved by the City and Township's staff, legal counsel and elected officials by filing a request for non-binding mediation with the Bureau of Mediation Services within 30 days after one party notifies the other party of existence of a dispute under this Agreement. **No annexation actions may proceed during the pendency of a dispute or mediation.**

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

18. **Venue.** The venue for all actions concerning this Agreement shall be Sherburne County, Minnesota.

19. **Authorization.** The appropriate officers of the City and the Town are hereby authorized to carry the terms of this Joint Resolution and Agreement into effect.

20. **Severability and Repealer.** All prior resolutions and ordinances of the Town and City, or portions of resolutions and ordinances in conflict herewith, are hereby repealed. Should any section of this Joint Resolution and Agreement be held by a court of competent jurisdiction to be unconstitutional or void, the remaining provisions will remain in full force and effect. In the event of litigation neither the City nor the Town will seek to have any provision of this Agreement declared null and void. If a court issues an

order declaring a portion of this Agreement unconstitutional or void, the parties mutually agree to request of that court reformation of the contract and/or, of the legislature, special legislation, both actions being for the purpose of reinstating the original intent of this Agreement.

21. **Effective Date.** This Joint Resolution and Agreement is effective upon its adoption by the respective governing bodies of the Town and the City, as provided by law.

22. **Periodic Review and Amendments.** The City and Town mutually agree and state that upon request of either party a joint periodic review of this agreement may be conducted 5 years after the effective date of this Agreement and every 5 years thereafter upon the request of either party. The parties may mutually agree to meet to review this Agreement more often than is set forth in this paragraph.

Any amendments to this Joint Resolution and Agreement will require adoption and approval by both the City Council and Town Board. A public hearing must be held if the amendment proposes to expand the Designated Area as provided in Minn. Stat. § 414.0325, subd. 1b.

23. **Termination of OA Agreement.** The parties agree that this Agreement shall terminate on **December 31, 2075**, unless extended before such time by resolution of the parties. Unless the parties have agreed to an extension, this Agreement shall terminate on December 31, 2075. Notwithstanding the termination of this Agreement, the provisions of paragraphs 7 (Utilities Services), 8 (Other Municipal Services), 9 (Tax Reimbursement), 10 (Outstanding Assessments and Debt), 11 (Tax Step-Up), and 13 (Town Roads) of this Agreement shall remain binding after the termination of the Agreement for all properties annexed under the terms of this Agreement prior to its termination.

The Township reserves the right to terminate or withdraw from this Agreement solely with respect to any unannexed land (i.e., land not yet subject to a final, legally effective Resolution of Annexation by the City) if the City commits a material breach of any specific covenant, condition, or term outlined in this Agreement (e.g., failure to make agreed-upon payments, failure to provide specified utility services, or failure to honor specific zoning commitments).

A right of withdrawal shall be exercised only after the following procedure has been strictly observed:

The Township shall provide written notice (the “Notice of Non-Performance”) to the City, specifying the exact nature of the non-performance or material breach and referencing the specific provision of this Agreement that has been violated.

The City shall have ninety (60) days from the receipt of the Notice of Non-Performance to cure the breach or non-performance. **No annexation actions may proceed during the pendency of the cure period.**

If the City fails to cure the breach or non-performance within the ninety (60)-day cure period, the Township may thereafter adopt a resolution declaring this Agreement terminated and withdrawn, but only as to the unannexed territory.

Upon the effective termination of this Agreement with respect to the unannexed territory:

1. This Agreement shall be null and void and of no further effect as to all lands not previously annexed. The City shall have no further right to annex such lands under the terms of this Agreement.
2. The Township shall promptly file a formal Notice of Termination with the State of Minnesota Office of Administrative Hearings, Municipal Boundary Adjustments Unit, referencing the original Orderly Annexation Agreement and noting the withdrawal of consent for all remaining, unannexed territory.
3. Termination shall not affect the validity or status of any land previously annexed under a completed, legally effective Resolution of Annexation adopted prior to the date of termination.

EXHIBIT 1 (Map of Designated Area)

EXHIBIT 2 (Legal Descriptions of Designated Area)

EXHIBIT 3 (Developed Properties within the Designated Area)

GENERAL NOTE: The legal descriptions and maps (Exhibits A, B, and potentially new Exhibits for phased areas or developed properties) from the 2010 St. Cloud/Haven Township agreement would need to be updated or created and attached to this new draft. The specific delineation of Tract 1, Tract 2, etc., would also need to be defined in the new exhibits. As all are aware, the Joint Planning Board having zoning jurisdiction over the annexed area is a fundamental shift from Haven Township having sole land use control as per the 2010 agreement in Tracts 1 and 2 and Sherburne County having sole land use control over the rest of the Township.

Note also that in addition to deciding who will administer the Zoning Ordinance (city staff or an outside/independent hire), it will also need to be decided who will administer the building code and who will review plans and inspect installation of private septic systems.

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