STATE OF MICHIGAN

DEPARTMENT OF CONSUMER & INDUSTRY SERVICES

BEFORE THE STATE BOUNDARY COMMISSION

In the matter of:

Boundary Commission
Docket #02-AP-2

The proposed annexation of territory in Fillmore Township to the City of Holland

SUMMARY OF PROCEEDINGS
FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. On March 15, 2002, a petition was filed by PHC L.L.C., asking for the annexation of territory in Fillmore Township to the City of Holland. The territory petitioned for annexation is described in Attachment A.

B. On May 9, 2002, the State Boundary Commission held an adjudicative meeting to determine the legal sufficiency of the petition. The petition was declared to be legally sufficient, pursuant to Public Act 191 of 1968, as amended, and Public Act 279 of 1909, as amended. The Commission expanded the area to be considered for annexation.

C. On September 25, 2002, the State Boundary Commission held a public hearing in Fillmore Township to receive testimony given pursuant to Public Act 191 of 1968, as amended.

D. On December 12, 2002, at an adjudicative meeting, State Boundary Commissioners VerBurg, Ishbia and Walker, and Ottawa County Boundary Commissioner Trap voted to recommend that the Director of the Department of Consumer & Industry Services approve the annexation as petitioned and expanded. The territory approved for annexation is described in Attachment B.

E. On February 13, 2003, at an adjudicative meeting, Boundary Commissioners VerBurg, Walker, Ishbia and Trap voted to adjourn the meeting to April 17, 2003. The City and the Township requested additional time to allow the expiration of the referendum period for an Urban Cooperation Agreement involving the petitioned and expanded areas.

F. On April 17, 2003, at an adjudicative meeting Boundary Commissioners VerBurg, Walker, Ishbia and voted to adopt the draft Findings of Fact and Conclusions of Law, and recommend that the Director of the Department of Consumer and Industry Services sign the Order approving the annexation as described in Attachment B.

FINDINGS OF FACT

1. The Petitioner wants access to municipal services that are necessary to support industrial development and cannot be obtained from Fillmore Township.

2. The petitioned area is 85.9 acres adjacent to railroad tracks and an industrial zone in the City of Holland.

3. The expanded area is 1.72 acres containing one residence with four occupants. The property owner in the expanded area requested that his residence not be annexed.

4. If the expanded area is not included with the annexation of the petitioned area, the expanded area would only have contiguity to Fillmore Township along 48th Street/ 146th Street, creating an irregular boundary.

5 None of the other property owners included in the petitioner's request expressed opposition to the annexation of their property.

6. Sanitary sewer mains and water mains exist adjacent to the site on the west and south.

7. According to the City, the water main has capacity to handle normal industrial fire flow needs and domestic needs. Water system capacity is a little over 80 percent on a maximum day. With projected growth for the current commitments, the water system has capacity through 2005.

8. The City will only provide services to the proposed area if it is annexed.

9. The City did offer to sell water to this area through an Act 425 Agreement, but the township voters did not approve the Agreement.

10. On February 19, 2003, Fillmore Township and the City of Holland entered into an Urban Cooperation Agreement, as authorized by Act 7 of 1967, The Urban Cooperation Act. The Agreement was filed with the Secretary of State, Office of the Great Seal.

THE COMMISSION FINDS THAT

1. The city has the capacity and capability to provide the desired municipal services.

2. The area proposed for annexation receives some governmental services, but the township is not able to provide water and some other public services.

3. The proposed annexation reflects the best of the available alternatives in providing municipal

services to the area.

4. Development of the area proposed for annexation under the jurisdiction of the City is not inconsistent with present adjacent or nearby land use patterns.

5. The Commission included the expanded the area in the annexation because one of the purposes of the Commission is to make boundaries more regular. Omitting the expanded area would create an irregular boundary.

6. The proposed annexation will result in an increase of taxes for the affected parcels, but the increase is relatively consistent with the services that the parcels and occupants will receive.

7. The Urban Cooperation Agreement with Revenue Sharing involves the same territory as the area petitioned for annexation and includes the expanded area.

8. The Agreement goes into effect only if a final order of the State Boundary Commission is entered, annexing the territory.

9. The Urban Cooperation Agreement with Revenue Sharing, signed February 19, 2003, on file with the Secretary of State, Office of the Great Seal, is incorporated in these Findings as Attachment C.

CONCLUSIONS OF LAW

The record of this docket, in accordance with the criteria stipulated under Section 9 of the Public Act 191 of 1968, as amended, supports the Commission's recommendation that the Director of the Department of Consumer & Industry Services sign the attached Order approving the subject annexation and adopting the Summary of Proceedings and Findings of Fact and Conclusions of Law.

Kenneth VerBurg

Kenneth VerBurg, Chairperson
State Boundary Commission

June 19, 2003
Date

STATE OF MICHIGAN
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES
BEFORE THE STATE BOUNDARY COMMISSION

In the matter of:

Boundary Commission
Docket # 02-AP-2

The proposed annexation of territory in Fillmore Township to the City of Holland.

FINAL ORDER

IT IS ORDERED THAT these Findings of Fact, Conclusions of Law and Order **approving the annexation of territory in Fillmore Township, described in Attachment B**, to the City of Holland shall be effective on the date the Director of the Department of Consumer & Industry Services signs the Order.

IT IS FURTHER ORDERED THAT the Manager of the State Boundary Commission shall transmit a certified copy of this Order and the attached Summary of Proceedings and Findings of Fact and Conclusions of Law to the Fillmore Township Clerk, the City of Holland Clerk, the Allegan County Clerk, and the Secretary of State.

David C. Hollister

David C. Hollister, Director
Michigan Department of Consumer & Industry Services

June 24, '03
Date

ATTACHMENT A

Annexation Petition by Owners of at Least 75% Land
PART III

The territory proposed to be annexed to the City of Holland is described as follows:

FILED
MAR 15 2002 02 AP 02
STATE BOUNDARY COMMISSION

Part of the Southwest 1/4 of Section 3 and part of the Northwest 1/4 of Section 10, Town 4 North, Range 15 West, Fillmore Township, Allegan County, Michigan, described as: Beginning at the Southwest corner of Section 3 and proceeding thence North 01 degree 00 minutes 18 seconds West 1588.28 feet along the West line of Section 3 also being along the Holland City Limits; thence along the Easterly line of the CSX Railroad also being along the Holland City Limits on a curve to the left an arc distance of 847.81 feet, radius of 5679.65 feet, chord bears South 27 degrees 45 minutes 17 seconds East 847.02 feet; thence South 88 degrees 24 minutes 05 seconds East 953.03 feet along the South line of the North 55 acres of the West 1/2 of the Southwest 1/4 of Section 3 also being along the Holland City Limits; thence North 01 degrees 06 minutes 01 second West 1000.54 feet along the West line of the East 1/2 of the Southwest 1/4 of Section 3 also being along the Holland City Limits; thence South 88 degrees 30 minutes 16 seconds East 1332.89 feet along the North line of the South 16 acres of the Northeast 1/4 of the Southwest 1/4 of Section 3; thence South 01 degrees 11 minutes 46 seconds East 1809.76 feet along the North and South 1/4 line of Section 3 to a point distant North 01 degrees 11 minutes 46 seconds West 33.03 feet from the South 1/4 corner of Section 3; thence North 88 degrees 36 minutes 26 seconds West 300.00 feet parallel with the South line of Section 3; thence South 01 degrees 11 minutes 46 seconds East 33.03 feet; thence North 88 degrees 36 minutes 26 seconds West 2196.72 feet along the North line of Section 10 also being along the Holland City Limits; thence South 00 degrees 36 minutes 44 seconds East 200.00 feet along the Holland City Limits; thence North 88 degrees 36 minutes 26 seconds West 175.00 feet along the Holland City Limits; thence North 00 degrees 36 minutes 44 seconds West 200.00 feet along the West line of Section 10 also being along the Holland City Limits to the point of beginning.

ATTACHMENT B

Part of the southwest ¼ of Section 3 and part of the northwest ¼ of Section 10, T4N, R15W, Fillmore Township, Allegan County, Michigan, described as: beginning at the southwest corner of Section 3 and proceeding thence north 01 degrees 00' 18" west 1588.28 feet along the west line of Section 3 also being along the Holland City Limits; thence along the easterly line of the CSX railroad also being along the Holland City Limits on a curve to the left an arc distance of 847.81 feet, radius of 5679.65 feet, chord bears south 27 degrees 45' 17" east 847.02 feet; thence south 88 degrees 24' 05" east 953.03 feet along the south line of the north 55 acres of the west ½ of the southwest ¼ of Section 3 also being along the Holland City Limits; thence north 01 degrees 06' 01" west 1000.54 feet along the west line of the east ½ of the southwest ¼ of Section 3 also being along the Holland City Limits; thence south 88 degrees 30' 16" east 1332.89 feet along the north line of the south 16 acres of the northeast ¼ of the southwest ¼ of Section 3; thence south 01 degrees 11' 46" east 1842.79 feet along the north and south ¼ line of Section 3 to the south ¼ corner of Section 3; thence south 01 degrees 31' 42" east 250.00 feet along the north and south ¼ line of Section 10 also being along the Holland City Limits; thence north 88 degrees 36' 26" west 300.00 feet along the Holland City Limits; thence north 01 degrees 31' 42" west 250.00 feet along the Holland City Limits, thence north 88 degrees 36' 26" west 2196.72 feet along the north line of Section 10 also being along the Holland City Limits; thence south 00 degrees 36' 44" east 200.00 feet also being along the Holland City Limits; thence north 88 degrees 36' 26" west 175.00 feet also being along the Holland City Limits; thence north 00 degrees 36' 44" west 200.00 feet along the west line of Section 10 also being along the Holland City Limits to the point of beginning.

ATTACHMENT C

2/18/03

URBAN COOPERATION AGREEMENT
WITH REVENUE SHARING

This Agreement is entered into this 19th day of February, 2003, by and between the **TOWNSHIP OF FILLMORE**, a General Law Township, of Holland, Michigan (hereinafter referred to as the "Township") and the **CITY OF HOLLAND**, a Municipal Corporation of Ottawa and Allegan Counties, Michigan (hereinafter referred to as the "City").

Recitals:

WHEREAS, the City is a municipal corporation organized and existing under and pursuant to the Home Rule Cities Act (Act 279 of the Public Acts of 1909, as amended) (MCLA 171.1, et seq.; M.S.A. 5.207, et seq.) and exercising all of the powers provided for therein, and in its Charter adopted pursuant thereto; and

WHEREAS, the Township is a general law township organized and existing under the Constitution and Statutes of the State of Michigan, and exercising all of the powers provided for therein; and

WHEREAS, the Urban Cooperation Act, being Act 7 of the Public Acts of 1967, as amended (MCLA 124.501, *et seq.*) (hereinafter referred to as "Act 7") authorizes and provides for the allocation of revenues, including taxes and monies received from other sources between the City and the Township pursuant to an agreement;

WHEREAS, PHC L.L.C. ("PHC") has filed a Petition for Annexation with the State Boundary Commission of the State of Michigan ("Commission") in Docket Number 02-AP-2 seeking annexation of certain property from the Township to the City; and

WHEREAS, the Commission has expanded the area to be annexed which is legally described on the attached Exhibit A and depicted on the attached Exhibit A-1(hereinafter referred to as the "Property") to be annexed from the Township to the City;

WHEREAS, the Commission has approved annexation of the Property from the Township to the City and intends to consider for adoption findings of fact and conclusion of law relating to the annexation of the Property at its meeting scheduled for April 17, 2003;

WHEREAS, it is in the best interests of the City and the Township to agree to a mutual agreement that, when annexation of the Property from the Township to the City becomes effective, the City will provide for the allocation of revenues, including taxes and monies received from other sources between the City and the Township pursuant to the terms hereof;

WHEREAS, the execution of this agreement will assist, alleviate, and prevent conditions of unemployment; retain local industrial and commercial enterprises; and strengthen and maintain the economy of the City and the Township;

WHEREAS, it is in the desire of the City and the Township, acting under and pursuant to the authorities of the aforesaid public acts, to provide for revenue sharing upon the annexation of the Property from the Township to the City in the manner and on the conditions set forth herein.

NOW, THEREFORE, IT IS HEREBY AGREED by the City and the Township, acting pursuant to the authority of the aforesaid public acts, and acting by and through their duly authorized representatives, as follows:

1. **Term.** The effective date of this Agreement ("Effective Date") shall be the later of the date this Agreement is approved by the respective legislative bodies of the City and the Township; the referendum period pursuant to the Act has expired; this Agreement has been duly

filed pursuant to M.S.A. 5.4088(10); and a final order shall be entered by the Commission in Docket No. 02-AP-2 annexing the Property for the Township to the City.

2. **Covenant to Cooperate**. The City and the Township hereby covenant and agree that they will cooperate with each other to perform any action in connection with or pursuant to the terms of this Agreement, and will do all things necessary in a legally sufficient and expeditious manner to effect the annexation of the Property and to cause the development of the Property.

3. **Annexation of Property**. The parties acknowledge that the Property shall be annexed from the Township to the City in accordance with a final order of the Commission in Docket No. 02-AP-2. The Township agrees not to file any appeal or challenge to the final order of the Commission in Docket No. 02-AP-2 seeking to challenge the decision of the Commission, in whole or in part, or to commence any litigation challenging the annexation of the property from the Township to the City.

4. **Revenue Collection and Sharing**. From and after the Effective Date hereof, the City shall, when and as authorized by law, collect as revenues ("Revenues"): ad valorem real and personal property taxes derived from the Property and improvements located thereon. All other sources of income derived from the Property, including but not limited to permits, franchises, licenses and or fees for services not supported by tax revenues; income taxes; special assessments; and any charges for water and/or sewer services shall be collected by and belong expressly to the City and shall be excluded from the definition of Revenues during the term of this agreement.

5. **Reporting Revenues**. Within 90 days after the end of each fiscal year commencing for the fiscal year ending June 30, 2004, the City shall furnish to the Township a written statement, certified by the Finance Director of the City, as being correct to the best of his or her knowledge and belief, setting forth the amount of the Revenues collected by the City during such fiscal year pursuant to Paragraphs 4 and 6 hereof.

6. **Disbursement of Revenues**. The revenue sharing provisions of this Agreement shall commence for the assessment date of December 31, 2003 and continue for ten (10) years until assessment date December 31, 2013. Within 30 days after mailing the Township Report required pursuant to Paragraph 5, the City shall disburse to the Township the portion of the Revenues based upon applying 4.9556 mills (Millage) against the taxable value (TV) of the real and industrial personal property located on the Property as finally assessed on December 31, 2003 and a similar computation and disbursement based upon the adjusted TV of the real and industrial personal property applied against the Millage of the Township levied each and every year thereafter during the term of the Agreement. The Township Millage to be applied against the TV to determine the amounts paid to the Township during the term of this Agreement shall be its annually levied Millage. Notwithstanding the foregoing, the Township Millage to be applied against the TV of the real and industrial personal property during the term of this Agreement shall not exceed 35.4% of the annual total City millage which, at the inception of this Agreement, was 14.0 mills. In the event the computation of Revenue shall be changed by Constitutional amendment or statute during the term of this Agreement, the City and the Township shall negotiate, in good faith, the calculation of Revenue to the Township based upon the requirements of Constitution or statute.

7. **Industrial Tax Abatement**. Upon the annexation of the Property from the Township to the City, the City shall have sole and complete authority to grant or deny tax abatement for the Property, subject to the provisions of Act 198 of the Public Acts of 1984, as amended or any subsequently adopted tax abatement statute or procedure. In the event the grant of such tax abatement should reduce the Revenues to be paid by the City to the Township, the Township waives and releases any claim, action, or liability against the City relating to the grant of tax abatement in its sole and complete discretion.

8. **Delivery of Services to the Property**. Upon the effective date of the annexation of the Property from the Township to the City, the City shall be responsible for all municipal services to the Property, including but not limited to police and fire protection. The Township shall not be responsible to provide any services to the Property, except as shall be required by emergency response agreements which have been or may be executed between the Township and the City prior or subsequent to the date hereof.

9. **Termination of Agreement**. This Agreement shall terminate upon the occurrence of any of the following events:

A. The term of the Urban Cooperation Agreement expires after the payment on June 30, 2014; or

B. In the event this Agreement is subject to referendum pursuant to MCL 124.505(a)(4), the City shall rescind its approval of the Agreement and shall request the Commission to proceed with its Adjudicative Order in Docket No. 02-AP-2 without incorporation of or reference to any Urban Cooperation Agreement between the City and the Township; or

C. In the event the Property, in whole or in part, is subject to a detachment election pursuant to MCL 117.11, during the term of this Agreement, the City shall rescind the revenue sharing payment to be made by the City to the Township upon 10 days notice; or

D. In the event any portion of the City, in whole or in part, which was formerly under the jurisdiction of Fillmore Township, is detached from the City pursuant to MCL 117.11, the City will rescind the revenue sharing payment in this Agreement upon 10 days written notice to the Township.

10. **Notification of Boundary Commission**. Upon the execution of this Agreement, the City and the Township shall notify the Commission of the Agreement and shall file a copy with the Commission. The Township and the City shall endeavor to obtain a final order from the Commission consistent with this Agreement.

11. **Notices**. All notices required or desired to be given under or pursuant to this Agreement shall be sent by certified or registered mail, return receipt requested, to the following designated individuals on behalf of their respective parties:

FOR THE CITY OF HOLLAND:

City Manager's Office
City Hall
Holland, MI 49423

FOR THE TOWNSHIP OF FILLMORE:

Township Supervisor
Township Hall
4219 52nd Street
Holland, MI 49423

All notices shall be deemed given on the date of mailing. The City or the Township may change its address for the receipt of notices pursuant to this Section at any time by giving notice thereof to the other party as herein provided. Any notice given by a party hereto must be signed by an acknowledged representative of such party.

12. **Amendments**. No amendment, extension, modification, or alteration of this Agreement shall be effective unless same is in writing and duly approved and executed by the City and the Township. Such amendments shall make specific reference to this Agreement and to the specific provision hereof which is amended and shall be attached hereto. Such amendment shall not invalidate this agreement, nor relieve or release the City or the Township of any obligation hereunder except as expressly stated therein. Notwithstanding the foregoing, Paragraph 4 of this Agreement regarding Revenue Sharing may not be extended.

13. **No Waivers.** The failure of either the City or the Township to insist upon strict performance of any covenant or obligation set forth in this Agreement shall not be a waiver of such party's right to demand strict compliance therewith in the future.

14. **Captions**. Titles or captions of articles and sections contained in this agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend, or describe the scope of this agreement or the intent of any provision thereof.

15. **Entire Agreement**. This Agreement, including the exhibits attached hereto, which are incorporated herein and made a part hereof, contains the entire agreement between the City and the Township with respect to the subject matter hereof and all prior agreements and understanding, whether written or oral, are superseded hereby and merged herein. Neither the City nor the Township has made any representations except those expressly set forth herein and

no rights or remedies are or shall be acquired by either the City or the Township by implication or otherwise unless expressly set forth herein.

16. **Successors Bound**. This Agreement shall be binding according to its terms upon and inure to the benefit of the City and the Township, their successors and assigns.

17. **Interpretation and Severability.** In the event that any provision herein shall be determined by a court or appropriate administrative tribunal to be contrary to the provision of any statute or to be unenforceable for any reason, then, to the extent necessary and possible to render the remainder of this agreement enforceable, such provision may be modified or severed by such court or administrative tribunal having jurisdiction over this Agreement and interpretation thereof, or by the parties hereto, so as to, as nearly as possible, carrying out the intention of the City and the Township herein considering the purpose of this agreement.

18. **Execution in Counterparts**. This Agreement may be executed in any number of counterparts. All such counterparts shall be deemed originals and, together, shall constitute one and the same instrument.

(Remainder of this page intentionally left blank.)

IN WITNESS WHEREOF, the City of Holland and the Township of Fillmore, by and through their duly authorized representatives, have executed this Agreement as of the day and date first above written.

WITNESSES:

Dinka M. Babinec

Carolyn R. O'Connor

CITY OF HOLLAND

By _____
Albert H. McGeehan

Its Mayor

By _____
Jenifer L. French

Its City Clerk

Roger Zoet

Jay Hop

TOWNSHIP OF FILLMORE

By _____
Keith Potter

Its Supervisor

APPROVED AS TO FORM
CITY OF HOLLAND

CITY ATTORNEY

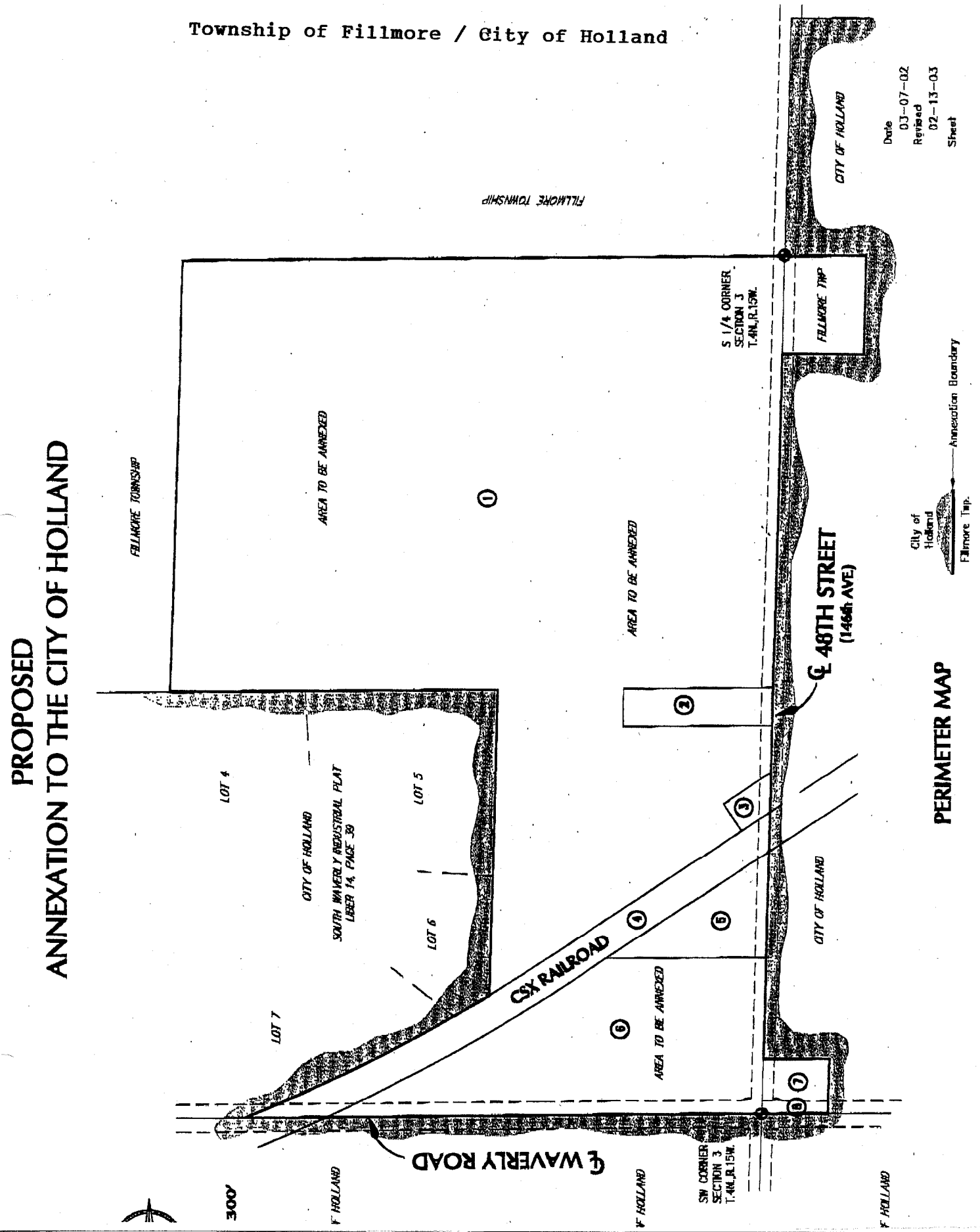
2/19/2003
DATE

P/City/Fillmore/Annex/Urban Cooperation Agreement Clean 2-18-03..doc - lc

EXHIBIT A

Part of the southwest ¼ of Section 3 and part of the northwest ¼ of Section 10, T4N, R15W, Fillmore Township, Allegan County, Michigan, described as: beginning at the southwest corner of Section 3 and proceeding thence north 01 degrees 00' 18" west 1588.28 feet along the west line of Section 3 also being along the Holland City Limits; thence along the easterly line of the CSX railroad also being along the Holland City Limits on a curve to the left an arc distance of 847.81 feet, radius of 5679.65 feet, chord bears south 27 degrees 45' 17" east 847.02 feet; thence south 88 degrees 24' 05" east 953.03 feet along the south line of the north 55 acres of the west ½ of the southwest ¼ of Section 3 also being along the Holland City Limits; thence north 01 degrees 06' 01" west 1000.54 feet along the west line of the east ½ of the southwest ¼ of Section 3 also being along the Holland City Limits; thence south 88 degrees 30' 16" east 1332.89 feet along the north line of the south 16 acres of the northeast ¼ of the southwest ¼ of Section 3; thence south 01 degrees 11' 46" east 1842.79 feet along the north and south ¼ line of Section 3 to the south ¼ corner of Section 3; thence south 01 degrees 31' 42" east 250.00 feet along the north and south ¼ line of Section 10 also being along the Holland City Limits; thence north 88 degrees 36' 26" west 300.00 feet along the Holland City Limits; thence north 01 degrees 31' 42" west 250.00 feet along the Holland City Limits, thence north 88 degrees 36' 26" west 2196.72 feet along the north line of Section 10 also being along the Holland City Limits; thence south 00 degrees 36' 44" east 200.00 feet also being along the Holland City Limits; thence north 88 degrees 36' 26" west 175.00 feet also being along the Holland City Limits; thence north 00 degrees 36' 44" west 200.00 feet along the west line of Section 10 also being along the Holland City Limits to the point of beginning.

EXHIBIT A-1

URBAN COOPERATION AGREEMENT WITH REVENUE SHARING

Township of Fillmore / City of Holland