

COUNCIL ACTION FORM

**SUBJECT: WATER SERVICE TERRITORY AGREEMENT FOR
TWO RESIDENTIAL PROPERTIES ANNEXED WITH
IOWA STATE UNIVERSITY RESEARCH PARK**

BACKGROUND:

On June 24, 2014, the City Council annexed 204 acres of land to facilitate development of Phase III of the Iowa State University Research Park. The annexation was final on September 23, 2014 when the State of Iowa recorded the annexation documents. Although they were not parties to the annexation petition, five private homesteads were also included in that annexation. State law prohibits the creation of unincorporated "islands" within cities.

Two of these recently annexed residential properties currently receive water service from Xenia Rural Water District. These are the Riley property at 2959 South Riverside Drive, and the May property at 2978 South Riverside Drive. (See map in Exhibit A.)

These two properties lie in an area on the southern edge of the City where the City and Xenia have not yet agreed on the boundary line between our two water territories. It is clear that Xenia received City permission to serve the Riley homestead in 2002. However, there is no record of the City giving permission to serve the May property.

Even though the City had only given Xenia permission to serve territory in the southern half of Phase III, the urgency of developing Phase III led the Research Park to agree to a territory buy-out agreement with Xenia for all of their property, as well as for the Riley and May properties. As was the case a year ago in the development of north Ames, the responsible "developer" (ISURP) has thus paid for the buy-out of related water service territory.

In addition to its agreement with ISURP, Xenia also needs an agreement with the City of Ames to confirm transfer of the Riley and May territory to the City. Under Chapter 357A of the Code of Iowa, a rural water district has an obligation to continue serving customers until another water provider agrees to take them as customers and the customers agree to the new provider assuming service. City staff has negotiated an agreement that provides that the customers will continue with Xenia until such time as the City can provide service to them. At that time the customers may choose to switch to the City as their provider. The agreement to accomplish this is attached to this report.

Key terms of this agreement include the following:

- The Rileys and Mays may continue as Xenia customers, even though their properties are annexed into the City and are in the City's water service territory.

- At the time that City water lines are installed next to their properties, the Rileys and Mays may connect to City water. They would bear no buy-out cost to Xenia, since ISURP already made that payment. Further, they would pay the City's typical connection fee to connect to City water (currently \$18 per lineal foot of lot frontage) unless the City Council approved an alternate fee. Both parties have requested Council consideration of a reduced connection fee, such as the arrangement made for residents along Grant Avenue in north Ames whose homesteads were annexed along with Quarry Estates.

In designing Phase III of the Research Park, the ISURP engineer anticipated that the pavement of South Riverside Drive and the installation of City utilities there will require removal of Xenia's existing, small water line serving these two properties. When that construction occurs, the Rileys and Mays could choose to connect to City water. Should they desire to continue as Xenia customers, however, ISURP and Xenia would be contractually obligated to replace the Xenia service lines serving their homesteads.

The attached agreement has already been approved by Xenia's board of directors.

ALTERNATIVES:

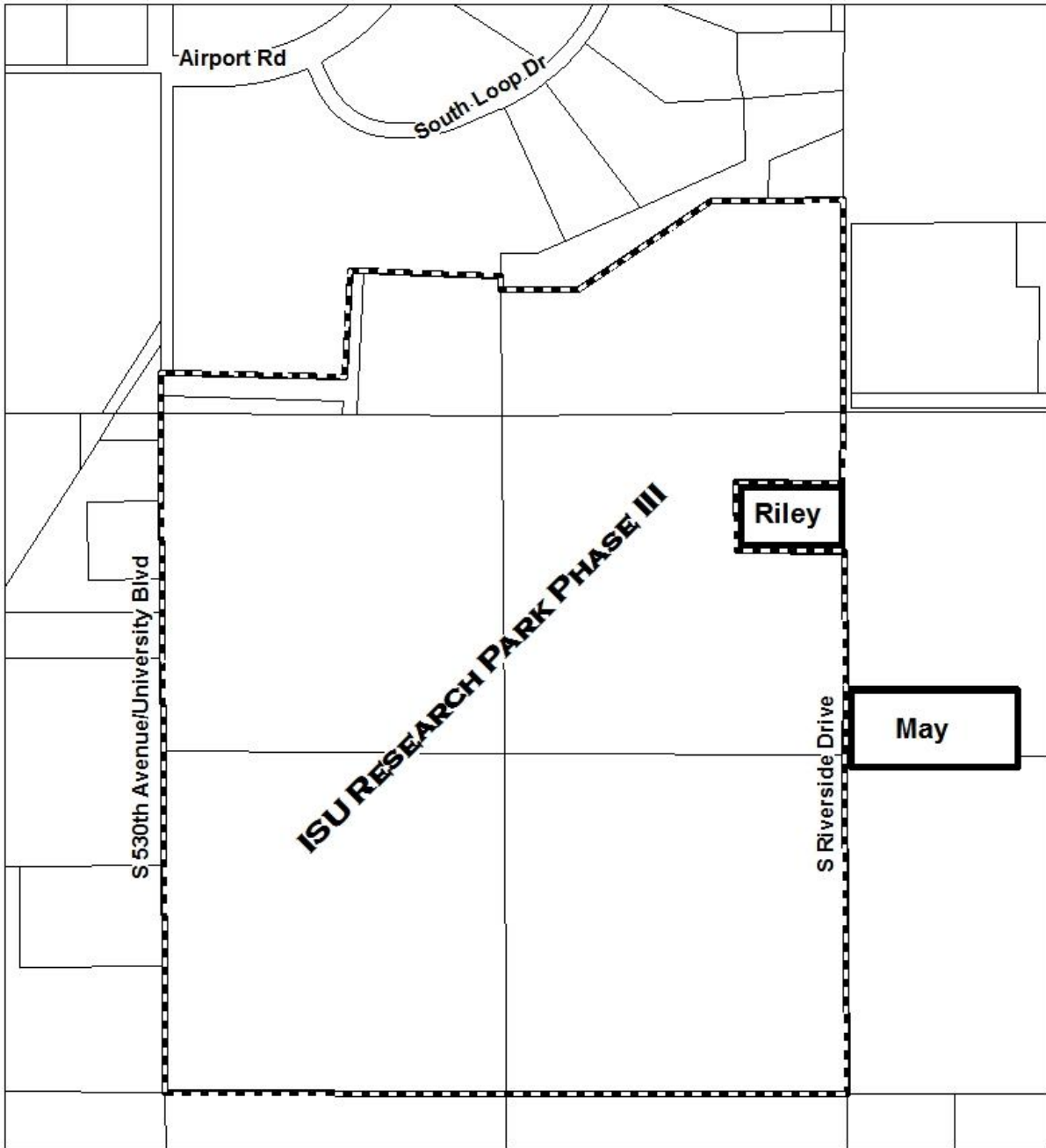
1. The City Council can approve the attached agreement with Xenia Rural Water District to transfer the specified water service territory to the City.
2. The City Council can choose not to approve the attached transfer agreement.

MANAGER'S RECOMMENDED ACTION:


Even though the owners of these two homesteads did not request annexation, that needed to occur in order to proceed with Phase III of the ISU Research Park. That situation then led to a need to transfer water service territory for these properties. The two property owners may continue as Xenia customers until City water is available. At that time, the owners may connect to City water service.

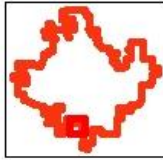
Therefore, it is the recommendation of the City Manager that the City Council approve Alternative No. 1, thereby approving the attached agreement with Xenia Rural Water District to transfer the specified water service territory to the City.

Exhibit A: Location Map of Riley and May residential properties and ISU Research Park Phase III



Legend

 ISU Research Park Phase III



DO NOT WRITE IN THE SPACE ABOVE THIS LINE; RESERVED FOR RECORDER

Prepared by: James R. Wainwright, 100 Court Ave., Suite 600, Des Moines, IA 50309-2231; 515-246-0331
Return to: Ames City Clerk, Ames City Hall, 515 Clark Ave., Ames, IA 50010

**AGREEMENT BETWEEN CITY OF AMES AND XENIA
CONCERNING CONTINUED WATER SERVICE TO CERTAIN
PARCELS ADJACENT TO ISU RESEARCH PARK PHASE 3**

This agreement is between the City of Ames, Iowa ("Ames") and Xenia Rural Water District, a rural water district existing pursuant to Iowa Code chapter 357A ("Xenia"). Ames and Xenia are sometimes collectively referred to herein as the "Parties" or individually as a "Party."

WHEREAS, Xenia is a rural water district with certain exclusive rights and responsibilities to provide water services in designated areas; and

WHEREAS, the Iowa State University Research Park (ISURP) wishes to develop Phase 3 of its research park on certain land that Xenia believes is located in its protected water service territory; and

WHEREAS, the land encompassing ISURP Phase 3 has been annexed into Ames and ISURP desires to procure Ames water services to that land; and

WHEREAS, Xenia is not currently providing water or wastewater services on the land where ISURP Phase 3 will be developed and Xenia is willing to enter into an agreement with ISURP through which Xenia will release its rights to provide water and wastewater services to that land; and

WHEREAS, ISURP has requested that two additional areas in which Xenia currently provides water services, more particularly identified in subsections 2 and 3 below, be included in the release of service territory rights agreement; and

WHEREAS, Ames and Xenia wish to assist ISURP in developing Phase 3 of its research park; and

WHEREAS, ISURP and Xenia have negotiated and intend to enter into a Release of Service Territory Rights Agreement through which Xenia will relinquish its water service rights in the area described in that agreement, pursuant to Iowa Code section 357A.11(13), subject to the conditions and commitments described in that agreement and the additional terms and commitments by Ames described below; and

WHEREAS, pursuant to Iowa Code section 357A.11(13), Xenia cannot relinquish its right to provide service to an area without providing for the continuation of water services to the area immediately following such relinquishment.

NOW THEREFORE, in consideration of the above recitals and the mutual covenants contained herein, and in reliance on the same, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals and Exhibits. The foregoing recitals are incorporated herein and made a part of this Agreement. The recitals and exhibits described below are substantive and contractual parts of this Agreement.

2. Identification of the Affected Area. This Agreement affects the land shown in Exhibit A hereto as the Riley and May parcels. Legal descriptions for the parcels are contained in Exhibit B.

3. Existing Xenia Customers and Infrastructure. The Release of Service Territory Rights Agreement between ISURP and Xenia includes the area of the Riley and May parcels. Although the City does not acknowledge that Xenia has established that it properly obtained a right to serve both parcels, the City acknowledges that Xenia currently maintains and owns infrastructure that provides Xenia water services to these properties.

4. Agreement Concerning Continuation of Water Services. It is agreed that Xenia shall continue to provide water services to the Riley and May parcels, if

requested by the property owners, until such time as Ames is able to provide water services to the properties. The Parties further agree that there will be no interruption in providing water services to the Riley and May parcels due to the Release of Service Territory Rights Agreement between ISURP and Xenia. When Ames is able to provide water services to the Riley or May parcels, and if the customers wish to connect to Ames' water system, Xenia shall cease providing water service to the parcels.

5. Consideration. The Parties agree that the joint assistance of ISURP's development of its Phase 3 is full and adequate consideration for this Agreement.

6. Authorization and Approval by the Parties. The Parties each represent and warrant to the other that this Agreement and its performance have been authorized and approved by all necessary action of the Party, including, without limitation, all necessary action on the part of the governing body of each, and this Agreement constitutes a valid and binding agreement enforceable in accordance with its terms.

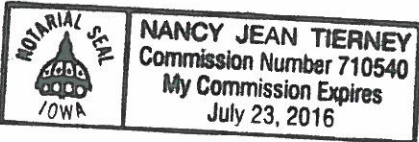
7. Third-party approval. This agreement shall not become effective until and unless it is approved in writing, as indicated below, by the United States Department of Agriculture, Rural Development, and Assured Guaranty Corp., which approval Xenia shall diligently seek.

8. Complete Agreement and Effective Date. This Agreement, including Exhibits, constitutes the entire, complete and final agreement of the Parties with respect to the matter described herein. This Agreement shall be fully executed upon the exchange of all of the signatures indicated below. This shall not be effective until a fully executed, original agreement is provided to Ames for recordation.

9. Intended Beneficiaries. This Agreement is made solely for the benefit of ISURP, the owners of the Riley and May parcels, and the Parties, and nothing herein shall be construed as creating any benefits, rights, remedies or claims in favor of any other entity or person.

10. No Precedent. The terms of this Agreement shall not otherwise be considered precedent for any other Xenia service territory relinquishment.

11. Counterparts. This Agreement and the consents indicated below may be executed in multiple counterparts, each of which shall be an original and all of which, taken together, shall constitute but one and the same agreement.

<p>Xenia Rural Water District</p> <p>By <u>Dan Lovett</u></p> <p>Chair, Board of Directors</p> <p>Attest <u>[Signature]</u></p> <p>Secretary, Board of Directors</p> <p>Executed <u>January 23</u>, 2015</p> <p>STATE OF IOWA, COUNTY OF DALLAS, ss:</p> <p>This instrument was acknowledged before me on <u>January 23</u>, 2015, by <u>Dan Lovett</u> and <u>Harold Jensen</u> as Chair, Board of Directors, and Secretary, Board of Directors, respectively, of Xenia Rural Water District.</p> <p><u>[Signature]</u> Notary Public in and for the State of Iowa</p> 	<p>City of Ames, Iowa</p> <p>By _____</p> <p>Ann H. Campbell, Mayor</p> <p>Attest _____</p> <p>Diane R. Voss, City Clerk</p> <p>Executed _____, 2015</p> <p>STATE OF IOWA, COUNTY OF STORY, ss:</p> <p>On this ____ day of _____, 2015, before me, a Notary Public in and for the State of Iowa, personally appeared Ann H. Campbell and Diane R. Voss, to me personally known and who, by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Ames, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in Resolution No. _____ adopted by the City Council on the ____ day of _____, 2015, and that Ann H. Campbell and Diane R. Voss acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.</p> <p>_____ Notary Public in and for the State of Iowa</p>
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CONSENTS AND APPROVALS

This Agreement is consented to by the United States Department of Agriculture (USDA), Rural Development, as of the ____ day of _____, 2015. USDA is not a party to this Agreement.

USDA RURAL DEVELOPMENT

By _____

Community Programs Director

This agreement is consented to and approved by Assured Guaranty Corp. as of the _____ day of _____, 2015.

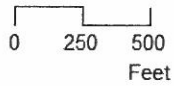
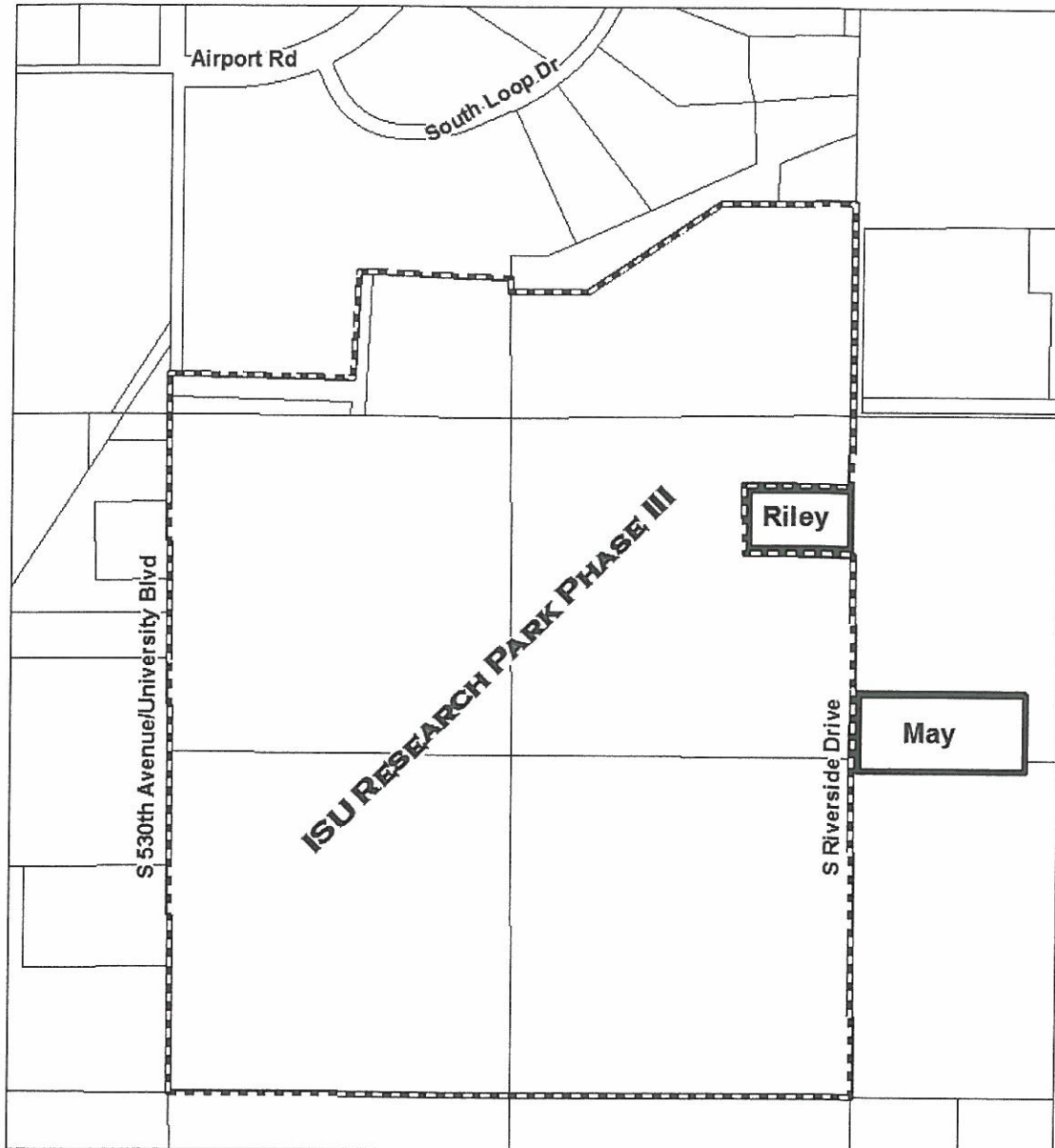
ASSURED GUARANTY CORP.

By _____

Name

Neither this consent nor any past, present or future consents, waivers, approvals, actions, amendments or other agreements, individually or in combination, may be construed to imply or impose upon Assured Guaranty Corp. any intention, agreement, obligation or undertaking to grant future consents, waivers, approvals or amendments or to limit the ability of Assured Guaranty Corp. to exercise any and all of its rights in connection with the bonds of the District it has insured, agreements it has with the District, or any related transaction documents, all of which shall remain unmodified and in full force and effect. In addition, Assured Guaranty Corp. makes no representation as to whether the consent of any other party is required in connection herewith.

Exhibit A: Location Map of Riley and May residential properties and ISU Research Park Phase III



Legend

 ISU Research Park Phase III

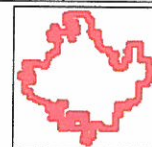


Exhibit B

Residential Parcels Currently Served by Xenia

Parcel 1:

Owner: Arthur E. Riley and Kathleen M. Riley
Area: 2.57 acres
Legal: Commencing (sic) at a point on the East line of the NW1/4, Sec. 22, T83N, R24W of the 5th P.M., Iowa 241.45 ft. South of the N1/4 Cor. of said Sec. 22; thence S89° 55' 30"W, 412.0 ft.; thence South 2710 ft.; thence N89° 55' 30"E, 412.0 ft. to the East line of said NW1/4; thence North 272.0 ft. along said East line to the point of beginning, containing 2.57 acres, as described in a Quit Claim Deed recorded in the office of the Story County Recorder on May 11, 1994 as Instrument Number 94-05359.

Parcel 2:

Owner: Gary J. May and Katherine J. May
Area: 5.00 acres
Legal: A part of the West Half (W1/2) of the Northeast Quarter (NE1/4) of Section Twenty-two (22), Township Eighty-three (83) North, Range Twenty-four (24) West of the 5th P.M., Story County, Iowa, described as follows: Beginning at a point on the West line of said Northeast Quarter (NE1/4) which is One Thousand Two Hundred Sixty (1,260) Feet North of the Southwest (SW) Corner thereof; thence North along said West line Three Hundred Twenty (320) Feet; thence East Six Hundred Eighty and Sixty-two Hundredths (680.62) Feet; thence South Three Hundred Twenty (320) Feet; thence West Six Hundred Eighty and Sixty-two Hundredths (680.62) Feet to the point of beginning, subject to a Thirty-three (33) Foot wide easement along the entire Westerly side for road purposes, as described in a Warranty Deed recorded in the office of the Story County Recorder on August 3, 2006 as Instrument Number 2006-00009524.