

COUNCIL ACTION FORM

SUBJECT: REQUEST FOR APPROVAL OF PREANNEXATION AGREEMENT AND WAIVER OF RIGHT TO WITHDRAW ANNEXATION APPLICATION AND DETERMINATION OF BOUNDARIES FOR ANNEXATION OF PROPERTIES LOCATED SOUTH OF THE CURRENT CITY BOUNDARIES BETWEEN UNIVERSITY BLVD/530TH AVENUE AND CEDAR LANE

BACKGROUND

On February 12, 2019, the City Council directed staff to prepare a Pre-annexation Agreement for voluntary annexation within the area located south of the existing city limits between Cedar Lane and University Boulevard (530th Avenue), to be modeled after the Hyde Avenue Agreement that includes the following:

- Connection fees to water lines based upon an 80-foot lot frontage with deferral of remaining costs.
- Requirements of a property owner to secure any Xenia service territory rights prior to connecting to City water.
- Connection fees to sanitary sewer lines based upon an 80-foot lot frontage with deferral of remaining costs.
- The property owner would provide to the City any needed temporary or permanent easements related to surveying, construction, and restoration.

As directed by the City Council, staff prepared a Pre-annexation Agreement for distribution by Steve Burgason in support of a voluntary annexation application. The City has now received applications for annexation with the proposed agreement and waivers to withdraw from the process from the owners of all eighteen properties with the designated area (*See Attachment A – Proposed Annexation Boundaries*). The total area is approximately 156 gross acres. The template agreement signed by the property owners is included as *Attachment B – Preannexation Agreement*.

At this time, concurrence is needed from the City Council to initiate voluntary annexation, based upon the boundaries proposed by the annexation petitions, and refer the voluntary annexation application to the Planning and Zoning Commission. Proceeding with the annexation process is consistent with the Land Use Policy Plan designation of this area as part of the Southwest Allowable Growth Area and the Urban Service Designation of the Fringe Plan.

ALTERNATIVES:

1. Accept the Annexation application with the Pre-annexation Agreement and Waiver of Right to Withdraw Annexation Application for each of the eighteen properties, direct staff to initiate the voluntary annexation process, and refer the voluntary annexation application to the Planning and Zoning Commission.
2. Request additional information from staff prior to initiating the annexation process.
3. Decline to proceed with the annexation process at this time.

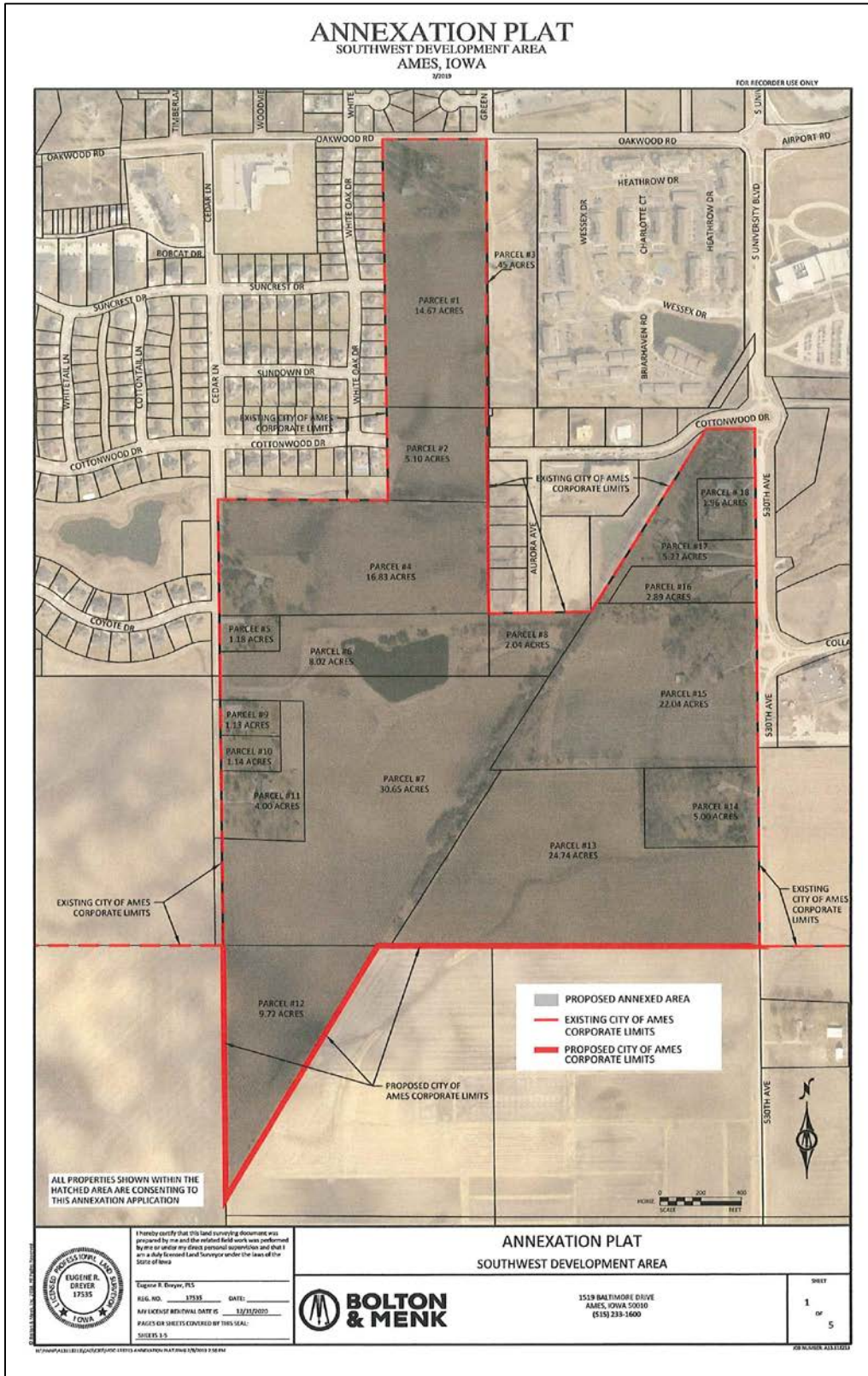
CITY MANAGER'S RECOMMENDED ACTION:

Coordination of efforts to request voluntary annexation of all eighteen parcels including the Pre-annexation Agreement and the Waiver of Right to Withdraw Annexation Application results in a cohesive grouping of properties that will provide a location for future residential development within the city boundaries. With City Council's initiation of the process, City Council will formally consider approval of the application and agreement upon conclusion of the required consultation with townships and county and review by the Planning and Zoning Commission. The annexation is also within 2 miles of Kelley and will require state approval after the City's approval of the application.

Upon conclusion of the annexation process, individual property owners may then proceed with rezoning and subdivision requests to the City for development of the area.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative #1 thereby approving the Pre-annexation Agreement, and Waiver of Right to Withdraw Annexation Application for each of the eighteen properties, directing staff to initiate voluntary annexation, and referring the voluntary annexation application to the Planning and Zoning Commission.

ATTACHMENT A – PROPOSED ANNEXATION BOUNDARIES



ATTACHMENT B – PREANNEXATION AGREEMENT

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

Prepared by: City of Ames Legal Department, 515 Clark Avenue, Ames, IA 50010; Ph.: 515-239-5146

Return document to: City Clerk, City of Ames, 515 Clark Avenue, Ames, IA 50010

Legal Description: See Pages 21-24.

PREANNEXATION AGREEMENT (Southwest Development Area)

WHEREAS this Pre-Annexation Agreement (the “Agreement”), dated for reference purposes, _____ day of _____, 2019, is made and entered into by and between the City of Ames, Iowa, and certain property Owners located in the Southwest Development Area between Cedar Lane and University Boulevard; and

WHEREAS the Owners are all of the owners of certain real property shown in the attached Annexation Plat marked as Exhibit ‘A’ and hereafter described collectively as the “Real Estate;” and

WHEREAS the individual Owners and their respective tracts of property are as follows:

Parcel	Owner	Parcel ID	Acres
1	Oakwood Akers, LLC	09-16-480-150	14.67
2	Oakwood Akers, LLC	09-21-200-125	5.10
3	Oakwood Akers, LLC	09-16-480-205	.45
4	David P. Skarshaug and Jeanne P. Skarshaug	09-21-200-120	16.83
5	Jon Engelman and Patrice Engelman, as Trustees of the Jon Engelman Living Trust dated May 14, 2018, (a ½ interest) and Patrice Engelman and Jon Engelman, as Trustees of the Patrice Engelman Living Trust dated May 14, 2018 (a ½ interest)	09-21-200-155	1.18
6	Burgason Enterprises, L.L.C.	09-21-200-165	40.71
7	Burgason Enterprises, L.L.C.	09-21-200-305	
8	Burgason Enterprises, L.L.C.	09-21-200-260	
9	Steven W. Burgason and Anne Frances Burgason	09-21-200-330	1.13
10	Steven W. Burgason and Anne Frances Burgason	09-21-200-320	1.14
11	Steven B. Harold and Sonia M. Harold	09-21-200-340	4.00
12	Burgason Enterprises, L.L.C.	09-21-400-110	9.72
13	James A. Roth and Jeanne R. Roth, as Trustees of the James A. Roth Revocable Trust u/d/o 11-21-14 (a ½	09-21-200-450	24.74

	interest) AND Jeanne R. Roth and James A. Roth, as Trustees of the Jeanne R. Roth u/d/o 11-21-14 (a ½ interest)		
14	Christopher A. Hicks and Tamara Hicks	09-21-200-480	5.00
15	James A. Roth and Jeanne R. Roth, as Trustees of the James A. Roth Revocable Trust u/d/o 11-21-14 (a ½ interest) AND Jeanne R. Roth and James A. Roth, as Trustees of the Jeanne R. Roth u/d/o 11-21-14 (a ½ interest)	09-21-200-275	22.04
16	Audrey K. Cammack and Mark W. Cammack	09-21-200-280	2.89
17	Daniel J. Fuchs and Carmen J. Fuchs	09-21-200-250	5.27
18	Robert William Larrance and Lora Lee Larrance	09-21-200-240	1.96

WHEREAS, the City Council, after due and careful consideration, has concluded that the voluntary annexation of real estate by the City on the terms and conditions hereinafter set forth would further the growth of the City, would provide for the harmonious development of the City, would enable the City to control the development of the area, and would serve the best interests of the City of Ames.

NOW THEREFORE, IN CONSIDERATION OF THE PROMISES AND THE MUTUAL COVENANTS AND AGREEMENTS HEREIN CONTAINED, IT IS HEREBY AGREED AS FOLLOWS:

SECTION 1. AGREEMENT PURSUANT TO IOWA CODE CHAPTER 368. This Agreement is made pursuant to and in accordance with the provisions of Iowa Code Chapter 368. The forgoing preambles and recitations are made a part of this Agreement.

SECTION 2. TERM. The term of this Agreement is from the _____ day of _____, 2019, until the annexation of the real estate to the City is completed.

SECTION 3. PETITION FOR ANNEXATION. Each Owner, contemporaneous with the execution of this Agreement, will submit to the City Clerk a Voluntary Petition for Annexation of the real estate by the City. The City Clerk will file the Petition, submit it to the City Council for consideration at such time and under such circumstances as the City Council deems appropriate, and comply with the requirements of Iowa Code Chapter 368. Pursuant to Iowa Code section 368.7(e), upon execution of this Agreement, Owner hereby irrevocably waives the right to withdraw or rescind the Petition and hereby irrevocably waives the right to withdraw its consent to the Petition and waives its right to object to annexation.

SECTION 4. ADMINISTRATIVE COSTS. City agrees to pay the administrative costs associated with the annexation of the Real Estate, which includes filing, publication and recording costs. The cost of preparation of any Annexation Plats required shall be the responsibility of the Owners and not the City.

SECTION 5. CITY WATER SERVICES.

5.1 Upon annexation, each Owner (which includes each Owner's heirs, successors and assigns), will obtain City water services to the Owner's property in accordance with the following:

5.1.1 Each Owner shall be allowed to make a single connection to the City water distribution system to serve the Owner's existing dwelling *at the time of the Owner's choosing*, once the City's infrastructure has been installed and made operational. At the time each Owner chooses to connect water services, the City will require the Owner to pay a connection fee for an 80-lineal foot width lot at the connection fee rate then in effect under the City Code.

5.1.2 Each Owner agrees that the Owner shall be responsible for all costs associated with the installation of water service from the connection point at the main to the Owner's dwelling.

5.1.3 Each Owner agrees that, if any additional water connections are made to their property or to any future subdivisions of their property, the Owner shall pay the balance of the connection fee for water, less any amounts previously paid for connections to their dwelling.

5.2 If an Owner obtains water services from a federally protected rural water provider, said Owner shall be responsible for payment of any amount that may become due and owing to any rural water provider as a result of the annexation of the Owner's Property which are related to buyout of rights to serve the property with water. The City shall not be required to advance any funds or costs due and owing to a rural water provider on behalf of any Owner. Each Owner shall hold the City harmless and indemnify the City from any and all amounts required to pay a rural water provider service provider as a settlement for resolution of any claims, disputes objections, protest or litigation related to or arising out of the City providing water service to all or any part of each Owner's property, following annexation of the Real Estate to the City.

5.3 If an Owner obtains City water services, Owner will pay the regular City water rate paid by all other residents for such services.

5.4 If an Owner operates and maintains a private well to supply water to the Owner's property, the Owner will be allowed to keep, maintain and replace such well indefinitely upon annexation, if the Owner chooses to do so, consistent with City ordinances.

5.5 It is the intention of the parties that the owner of each of the eighteen separate parcels identified in Exhibit 'A' shall constitute an 'Owner' for the purposes of this Section.

SECTION 6. CITY SEWER SERVICES.

6.1 Upon annexation, each Owner (which includes each Owner's heirs, successors and assigns), will obtain City sanitary sewer services to the Owner's property in accordance with the following:

6.1.1 Each Owner shall be allowed to make a single connection to the City sanitary sewer system to serve the Owner's existing dwelling *at the time of the Owner's choosing*, once the City's infrastructure has been installed and made operational. At the time each Owner

chooses to connect to sanitary sewer services, the City will require the Owner to pay a connection fee for an 80-lineal foot width lot at the connection fee rate then in effect under the City Code.

6.1.2 Each Owner agrees that the Owner shall be responsible for all costs associated with the installation of sanitary service from the connection point at the main to the Owner's dwelling.

6.1.3 Each Owner agrees that, if any additional sanitary sewer connections are made to their property or to any future subdivisions of their property, the Owner shall pay the balance of the connection district fee for sewer, less any amounts previously paid for connections to their dwelling.

6.1.4. Each Owner understands and agrees that nothing in this paragraph is intended to modify or supersede State and County standards for septic systems.

6.2 If an Owner obtains City sanitary sewer services, Owner will pay the regular City sanitary sewer rate paid by all other residents for such services.

6.3 It is the intention of the parties that the owner of each of the eighteen separate parcels identified in Exhibit 'A' shall constitute an 'Owner' for the purposes of this Section.

SECTION 7. EASEMENTS. Each Owner agrees to grant to the City, at no cost, any temporary or permanent construction easements, utility easements or right-of-way required by the City in a form deemed acceptable to the City. This requirement is limited to properties with frontage along Cedar Lane, Oakwood Drive, and 530th Avenue. The City will pay for any survey costs and acquisition plat preparation associated with said easements and right of way. The City shall also make appropriate restoration to City standards of the vegetation or landscaping improvements affected by the construction.

SECTION 8. BINDING AGREEMENT. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, successors and assigns and shall be recorded and will apply to any subsequent plats and/or subdivisions of the Real Estate. This Agreement shall constitute a covenant running with the land and may be extended by any of the parties to the Agreement, including the City, by the filing of a verified claim.

SECTION 9. EFFECT OF INVALID PROVISION. If any provision of the Agreement is held invalid, such invalidity shall not affect any of the other provisions contained herein.

SECTION 10. ENTIRE AGREEMENT. This instrument constitutes the entire agreement between the parties with respect to the subject matter thereof and supersedes all prior oral or written agreements, statements, representations, and promises. No addition to or change in the terms of this Agreement shall be binding upon the parties unless it is expressed in a writing signed and approved by the parties.

SECTION 11. DEFAULT.

11.1 Failure by each Owner to substantially observe or perform any material covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement constitutes an Event of Default.

11.2 Whenever any Event occurs and is continuing, City may take any or more of the following actions after giving written notice by City to each Owner of the Event of Default, but only if the Event of Default has not been cured within sixty (60) days following such notice, or if the Event of Default has not been cured within sixty (60) days following such notice, or if the Event of Default cannot be cured within sixty (60) days and the Owner does not provide assurances to City that the Event of Default will be cured as soon as reasonably possible thereafter:

11.2.1 City may suspend any part of or all of its performance under this Agreement until it receives assurances from the Owner, deemed adequate by City, that the Owner will cure its default and continue its performance under this Agreement;

11.2.2 City may cancel and rescind this Agreement;

11.2.3 Each Owner will reimburse City for all amounts expended by City in connection with this Agreement with respect to the Owner's property, and City may take any action, including any legal action it deems necessary, to recover such amounts from each Owner.

SECTION 12. CROSS OBLIGATIONS. This Agreement is between the City and each Owner and it is not intended to create any rights or obligations between the various Owners. Except as it may be expressly stated, nothing in this Agreement shall be construed as giving any person or entity, other than the parties hereto and their successors and permitted assigns, any right, remedy or claim under or in respect of this Agreement or any provision hereof.

SECTION 13. DEVELOPMENT STANDARDS. This Agreement does not anticipate all requirements or standards related to development of property and each Owner recognizes that rezoning and development of property is subject to city ordinances, policies and standards in effect at the time.

S I G N A T U R E P A G E S F O L L O W

Passed and approved on _____, 2019, by Resolution No. 19-_____
adopted by the City Council of the City of Ames, Iowa.

CITY OF AMES, IOWA

By:

John A. Haila, Mayor

Attest:

Diane R. Voss, City Clerk

STATE OF IOWA, COUNTY OF STORY, SS.:

This instrument was acknowledged before me on _____, 2019, by John A. Haila and Diane R. Voss, as Mayor and City Clerk, respectively, of the City of Ames, Iowa.

NOTARY PUBLIC

