#### Staff Report

### **XENIA RURAL WATER UPDATE**

9/10/13

As a part of its deliberations over how to provide water service to lands seeking annexations on Ames north side, Council had directed staff to search the City's records and determine the status of other alternative growth lands surrounding the City, and to retain outside legal counsel to advise the City in these dealings. This report responds to those directives and provides an update on related activities.

# **Map Preparations & Legal Research**

Staff reviewed existing City files to gather all available documentation of past dealings regarding service territory transfers between the Xenia Rural Water District and the City. A summary of this research is provided below (see Attachment A). Xenia was also asked to search its records for additional documentation, but was not able to locate any files that substantially clear up the territory transfer questions.

Using the information available, a map was prepared to show the status of various Xenia territory requests over the past 20 years (Attachment B). This map illustrates areas where the documentation appears to confirm that Xenia has rights to serve territory (brown areas), as well as areas where such transfers have not been made or where questions remain (yellow areas). Existing Xenia customers are shown on the map as black dots. The City's current 2-mile fringe area is marked with a green line. Based upon these findings, City and Xenia staff will work together to more clearly define our respective service territories to the west and south of Ames.

Staff also engaged the Des Moines legal firm of Dorsey & Whitney to assist in determining the City's legal position. This firm reviewed pertinent laws and the available documentation to verify if the proper processes were followed in Xenia's service territory transfer requests.

After reviewing the 1996 northern area agreement with Xenia (Attachment C), Dorsey confirmed that the City is bound by the terms of this 1996 agreement. In Section 13, that agreement specifies that "the City and Xenia may negotiate a buy/sell agreement for all or parts of the water distribution system" based on the actual value of Xenia's infrastructure within the specified northern area. Although the agreement identified acceptable terms to be considered during negotiation of that price, it also provided for additional issues to be considered. Xenia has now utilized that opportunity in requesting a very large payment before this service territory is transferred back to the City.

The Dorsey and Whitney legal team believes that there are avenues that might be pursued to seek to better establish the City's interests in these areas. Those actions, however, would be time-consuming. Furthermore, given the lack of legal

precedent on adjudicating the process of service territory transfers, there would be no assurance of success.

# **Recent Developments with Xenia**

Within the last two weeks, Xenia staff reports that they have met with the local Ames developers who are seeking annexation in the northern growth area. (A map of this area is included as Attachment D.) As a result of those discussions, Xenia staff report that they and the developers have reached a tentative agreement on a per customer buy-out payment. The developers may share that agreement with the City Council after studying this staff report. Xenia's General Manager reports that the framework he discussed with the developers has received tentative approval by his board; and that, if the developers and City Council are amenable to that arrangement, he will take that framework to Xenia's creditors to seek their consent.

Even though Xenia and the City have spent several months negotiating possible territory transfer scenarios, this approach by the land developers of working directly with the rural water agency to negotiate a service territory buy-out is consistent with how these buy-outs have historically been handled when development stretched out into rural water territory. Should the developers themselves be willing to assume the obligation to see that Xenia is compensated for this service territory, as has historically happened in other locations, then this impediment to northern annexation will have finally been removed.

In the event that Xenia and the northern developers agree to buy-out terms, it would be advisable for the City to also enter into an agreement with Xenia to confirm the transfer of service territory. This agreement should show the specific service territory to be transferred, and could include <u>all</u> of the City's northern growth area (shown in red on Attachment D).

Following consummation of those agreements, the City and the developers should enter into pre-annexation agreements confirming these buy-out terms. The same language for rural water buy-outs that has historically been included in development agreements could be used.

Council has previously indicated that, once the developers have signed annexation agreements that include the cost sharing arrangement for paving Grant Avenue, it would proceed with annexation of the affected properties. After that step occurs, the developers could seek zoning and subdivision approval, and the installation of water and sewer infrastructure up Grant Avenue could be initiated. Those steps would hopefully open the way for development in that area to commence during 2014.

One final step involves the paving of Grant Avenue. Under the terms of the existing Rose Prairie annexation agreement, as well as the proposed annexation agreements with Quarry Estates and Hunziker, this project will involve special assessments to be paid by each developer. The City will also pay for a 23 percent share of this cost, since Hayden Park fronts on this street. To proceed with that project, Council will need to appropriate funds for the City's share of the cost, bonds will need to be issued, and the

State's special assessment process must be followed. Assuming acceptable construction bids are received, actual paving of the street could hopefully be completed during 2015.

# **Staff Comments & Next Steps**

Thus far staff's analysis could not verify that all appropriate territory transfer steps have been followed for areas to the west and south of Ames. Attached is a map showing the City's defined growth areas to the west and south (Attachment E). A comparison of that map to the map showing apparent Xenia territory (Attachment D) shows potential growth areas along County Line Road and to the south. Xenia and City staff have agreed to work together to definitively identify our respective service territories in those areas.

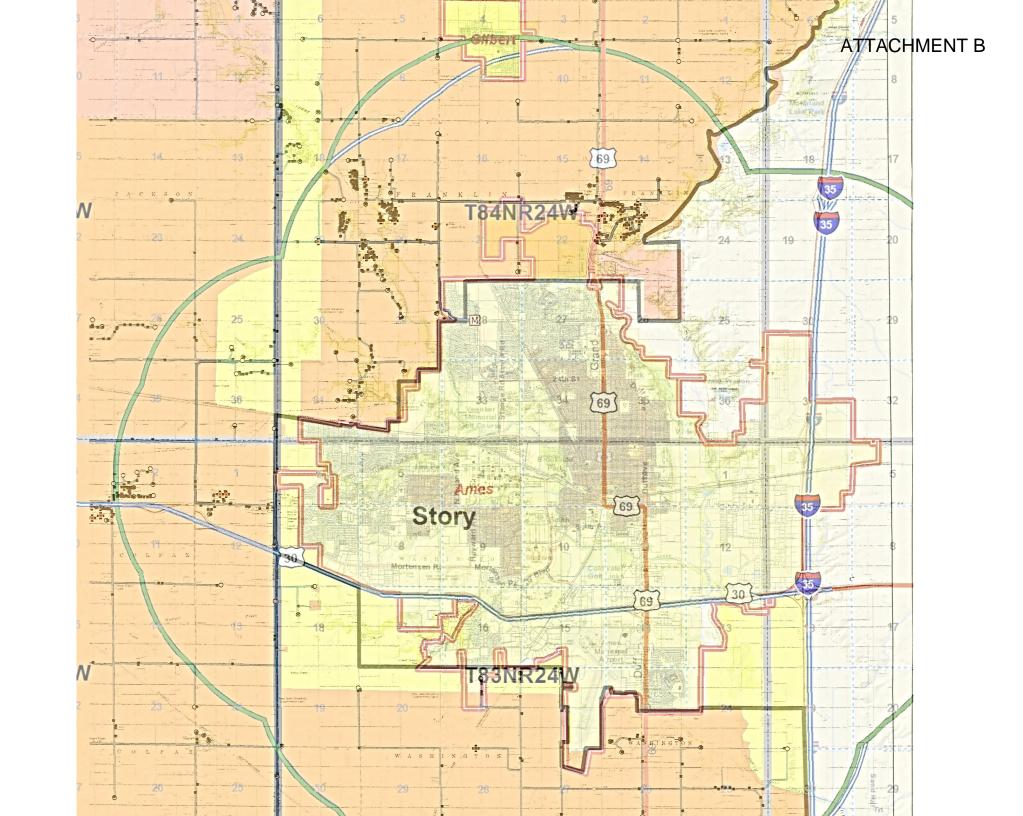
Staff is not yet privy to the terms that were negotiated between the local developers and Xenia. If these payment terms are relatively modest, then this should bring a speedy resolution to this vexing expansion issue. Should the payments terms be quite high, however, this may be a bitter pill to swallow. It should be remembered that, for the developments northward along Grant Avenue, any Xenia buy-out charge would be in addition to the connection district charges to finance the extension of water mains and sewer trunk lines needed to facilitate development in that area.

It is difficult for staff to justify what could be millions of dollars in buy-out payments in order for our citizens to build homes in our community. These additional payments could have a chilling effect on the competitiveness of housing in Ames. It could also set challenging precedents for our future negotiations regarding other areas in which we hope to grow, as well as for other lowa communities' in their rural water buy-out negotiations.

At the same time, staff recognizes that the City is suffering from a critical lack of developable home lots at this time, and that opening up the northern growth areas that have petitioned for annexation would be the quickest way to address this need. Should the northern developers now be willing to commit those who purchase their subdivided land to pay a specific buy-out amount for each water connection, the City Council could finally be in a position to move forward with this northern annexation and growth. If so, the terms of those transactions should be confirmed with the respective developers in written annexation agreements. The City should also confirm this territory transfer in a written agreement with the Xenia Rural Water District.

Finally, opening up these northern lands for annexation is only one of the actions needed to facilitate our City's growth. Staff will continue to work with Xenia to define precise service territories to the south and west of Ames, particularly with regard to land involved with Phase III of the ISU Research Park. Thereafter staff will also continue discussions with Central lowa Water Association to identify options for urban water service and growth on the east side of Ames.

		Xenia Ite	ms Submitted to	Ames
Date	Area	Request Letter	Water Plan	Legal Desc.
1005 1000	CAF: "[] Xenia has also filed a request to provide service within the two-mile limit of Ames in an area			
1996 1022	north and northwest of the City. The attached map identifies the specific area of Xenia's request."	None		None
	Xenia Letter: "[]the SW 1/4 of Section 23, Township 83N, Range 24 W, and the North fractional 1/4 of			
	the NW 1/4 Section 26, Township 83N, Range 24W, all in Washington Township. []At this time, we are requesting the ability to purchase the water for this subdivision from the city of Ames, and clearance to			
1007.0512	service this area. []"			None
1997 0313	service this area. []			None
	   Xenia Letter: "At this time I would like to give official notice by Xenia Rural Water District that it intends to			
	provide water service within the two mile boundary of the City of Ames. I am submitting a portion of our			
	water plan that involves the cities [sic] two mile limit. As shown by the plan, our proposal is to serve all or			
	portions of sections: 2, 12, 11, 14, 13, 24, and 25 of Colfax Township (83N 25W) in Boone County. In Story			
	County we propose serving homes along the county line road in sections 18, 19, and 30 of Washington			
	Township (83N 24W) in Story County. I have highlighted the proposed boundary. The water lines outside			
1998 0113	the proposed boundary are not part of this request. []"			None
	Xenia Letter: "At this time I would like to give official notice by Xenia Rural Water District that it intends to			
	provide water service within the two mile boundary of the City of Ames. I am submitting a portion of our			
	water plan that involves the cities [sic] two mile limit. As shown by the plan, our proposal is to serve all or			
	portions of sections: 1, 2, 12, of Colfax Township (83N 25W) and 25, 26, 35, 36 of Jackson Township (84N			
	25W) in Boone County. In Story County we propose service homes along the county line road in section 6			
	of Washington Township (83N 24W) in Story County. I have highlighted the proposed boundary. The water			
1999 0525	lines outside the highlighted area are not part of this request. []"			None
	Verticular III 3 December 1991 and 1991			
	Xenia Letter: "[] Due to these contacts I would like to give official notice, on behalf of Xenia Rural Water			
	District, of our intent to provide water service within the two mile protection boundary of the city of			
2000 0012	Ames. I am submitting a portion of our water plan that involves the cities [sic] two mile limit. As shown by			None
2000 0912	this plan, our proposal is to serve south of the city of Ames. []"			None
	Northridge Heights Developer AGR: "The Developer shall, at its sole expense, and at no cost or charge to			
	the City, provide for the relocation of the existing 12" water main that is the property of Xenia Rural Water			
	District. That main is now located along the north side of the right-of-way of George Washington Carver			
	Avenue. A written agreement executed between Developer and Xenia Rural Water District providing for			
	the relocation of the said water main shall be on file with the Ames City Clerk prior to the approval of this			
2000 1114	Development Agreement by the City."	None	None	None
	CAF: Riley, Bell, McCay, and Kingsbury properties. Additional request from Reyes (Reyes denied by			
2002 0723	Council).	None	None	None
	CAF: "The location is shown on the attached map. The request is for a service line to the Gerald Ryerson			
2002 1022	property at 56389 265th Street. []"	None		None
	the release from the City of Ames 2-mile protection boundary for the following described property for			
	entry into Xenia Rural Water District's Service area. A tract of land commencing at the Northwest (NW)			
	corner of Section Seven (7), Township Eighty-three (83) North, Range Twenty-four (24) West of the 5th			
	P.M., and running thence East along the North line of said Section Seven (7), a distance of Seven hundred			
	leighty-three feet (783'), thence South Seven hundred forty-seven (747) feet, thence West, parallel to the			
	North line of said Section Seven (7), a distance of Seven hundred ninety-one and sixty-five hundredths			
	(791.65) feet to the West line of said Section Seven (7), thence North, along the West line of Section Seven			
	(7), a distance of Seven hundred forty-seven and five hundredths (747.05) feet to the place of beginning,			
	containing Twelve (12) acres more or less, exclusive of public highways as now established, subject,			
	however, to the public use of said highways, except the North Sixty-five (65) feet of the West Seven hundred eighty-three (783) feet of the Northwest Quarter (NW 1/4) of the Northwest Quarter (NW 1/4) of			
	said Section Seven (7), said excepted parcel containing Three tenths (0.3) acre, more or less, exclusive of			
2006 0808	present established roads, subject to easements, covenant and restrictions or record, Story County, Iowa."		None	
	present established rodds, subject to edsements, coveriant and restrictions of record, story country, nowa.		TOTIC	
	Xenia Letter: "[] at its December 30, 2010 monthly board meeting, Xenia Rural Water District's board of			
	directors reviewed the service request made by Dennis Kessler for the property located at 2126 State			
	Avenue in Ames. [] For the sake of efficiency and cost effectiveness for the consumer, Xenia agrees to			
2011 0222	release 2126 State Street, Ames, IA to the City of Ames for the purpose of providing water service."		None	None



# SPECIAL CONTRACT FOR AN UNUSUAL TYPE OF WATER UTILITY SERVICE XENIA RURAL WATER DISTRICT

THIS CONTRACT, made and entered into effective this 22nd day of October 1996, by and between the City of Ames, Iowa (hereinafter called the "City") and Xenia Rural Water District (hereinafter called "Xenia"),

#### WITNESSES THAT:

WHEREAS, Xenia is a rural water district existing under Chapter 357A, <u>Code of Iowa</u>, for the purpose of distributing a supply of potable water to consumers; and

WHEREAS, Xenia has proposed that the City provide water to Xenia for distribution as aforesaid, and

WHEREAS, the requested service is of an unusual type due to its wholesale nature; and

WHEREAS, Section 384.84(6)(a)(2), Code of Iowa, provides that a City may contract specially for services where the type of service is unusual; and,

WHEREAS, Xenia desires to purchase and the City desires to sell a supply of water upon the terms and conditions of a written contract.

NOW, THEREFORE, the parties hereto have agreed and do agree as follows:

- 1. The City shall sell and supply, and Xenia shall take and pay for, potable water in accordance with the terms and provisions stated in the following paragraphs of this contract. The City shall have no obligation, financial or otherwise, to provide more water to Xenia than Xenia has reserved in Appendix A.
- 2. Xenia shall not supply or deliver potable water to a site within two miles of the corporate limits of the City, as such limits may change, for any building or use for which any and all federal, state, county, and city permits and approvals required by law, regulation or ordinance, have not been obtained.

Any failure by Xenia to abide by the provisions of this section, shall be grounds for this agreement to be voided at the option of the City.

3. The water to be delivered hereunder shall be delivered through one or more master meter(s) at the location(s) agreed to by the City of Ames and shown in Appendix B. Said master meter(s) shall be installed by the City at Xenia's sole expense. The City will permit Xenia to purchase

the meter(s) directly but shall identify the specific meter(s) and manufacturer(s) that may be purchased. Said meter(s) shall always remain property of the City, which shall be responsible for future maintenance, repair, and/or replacement as may be needed.

- Appendix B Xenia shall be solely responsible for all expenses for installation, maintenance and repair/replacement of the meter vault or building; applicable operating expenses including utilities; and all other expenses as may be incurred. Xenia shall be solely responsible for all expenses incurred in order to connect to the City of Ames system including but not limited to expenses for tapping, valves, materials and installation to extend the service to the metering vault or building. If the City requests over-sizing or fittings to be used solely by or for the City requirements, Xenia shall obtain bids for the oversizing or special fittings as an alternative to bids received for customary sizing or fittings. If the City then instructs Xenia to install the over-sized apparatus or special fittings, Xenia shall follow the City's instructions and the City shall pay Xenia for the difference in cost. The City of Ames may partially reimburse Xenia for some of the connection expenses where the City of Ames requests over sizing or fittings to be used solely by/for City of Ames. Xenia shall include in each meter vault or building all of the following:
  - a. An approved backflow device(s) as determined by the City of Ames
  - b. A meter bypass/testing branch as determined by the City of Ames
  - c. Meter/service shutoff valves before and after each meter as determined by the City of Ames
  - d. A sample tap connected to a frost-free, above-ground sampling port in a weather-proof, protected enclosure as determined by the City
  - e. On-site and telemetry capability for meter recording/registration, including instantaneous and totalizing capability. Telemetry from the meter vault/building to the receiving unit to be located at the City of Ames Water Plant
  - f. Appropriate lighting, ventilation, and warning signs to minimize entry restrictions/requirements applicable under confined space entry criteria set by IOSHA and/or the City of Ames Building/Fire Codes
  - g. Gravity drain or sump and pump installation

Xenia shall submit plans and specifications for the metering facilities for approval of the City of Ames Water Meter Division prior to installation. Said approval of the Water Meter Division shall not be construed as waiving any approvals or permits required for construction of said facilities by any federal, state, or local agency having applicable jurisdiction. Xenia shall be solely responsible to obtain all approvals, permits, licenses, or authorizations needed for construction and operation of said metering facilities. Xenia shall also provide ongoing ingress and egress to said metering facilities for City of Ames personnel.

5. The rate to be charged by the City to Xenia for water provided to Xenia under this agreement shall be set by the City at such amount as the City, in its judgment, shall find appropriate so as to prevent service to Xenia being subsidized by other consumers and service to other consumers

being subsidized by Xenia. The rate to be charged Xenia shall include provision for existing capacity repayment and the unit charge for water purchased. Said rate beginning January 1, 1997 is stated in Appendix A; but, the rates stated in Appendix A may be changed by the City, from time to time, following 120 days written notice to Xenia.

- 6. Bills to Xenia for water provided under this agreement shall be submitted at monthly intervals, and shall be payable upon receipt. The City shall have the right to terminate service under this agreement should a bill for service hereunder remain unpaid beyond thirty (30) days of its date due.
- 7. The City agrees to deliver water to Xenia which meets the same health standards as water provided to customers within the City of Ames. The City shall not be liable to Xenia, or to any consumer served by Xenia with water provided by the City, or any other person, for any interruptions or failure of water service for any cause or reason; and, Xenia shall defend and indemnify the City from any and all claims of such liability.
- 8. Should the quantity of water available to the City to serve all its customers become inadequate, and should City so request, Xenia shall thereupon discontinue permitting persons to tap onto the Xenia system, so long only as the City makes the same requirements of all others provided with water by the City. The City agrees to give six (6) months written notice to Xenia of such suspension, unless circumstances require a shorter period of notice. Further, during times of temporary water shortage, Xenia agrees that it shall restrict the use of water by its consumers in accordance with the same program of curtailed water use as may be implemented by the City for its customers.
- 9. Either party may assign its interest in this agreement as collateral, but such assignment shall not relieve it from its obligations hereunder. This agreement shall remain binding upon the successors of the parties.
- 10. Except as stated in Item 9 above, there shall be no sale, transfer, or assignment of this contract by either party without the express written consent of the other party.
- 11. Xenia agrees to sell water to the City for the cost of the water from Xenia's other sources, if the City has a need for such water and Xenia is able to help meet the City's need, without adversely affecting Xenia's ability to serve its other customers..
- 12. Xenia shall construct oversized water transmission lines, with the additional cost of such pipe, material, and installation as appropriate, being at City's expense, at such locations as may be requested by the City. The actual differential cost shall be determined through a process of taking bid alternates.
- 13. With regard to the area within two-miles of the corporate limits of the City, as such limits may change, the City and Xenia may negotiate a buy/sell agreement of all or parts of the water

distribution system within that area. Issues to be considered during the negotiation of the purchase price include but are not limited to:

- a. the cost of initial construction, modifications, and improvements;
- b. the principal balance owed by Xenia to its lender for financing of such construction, modification and improvements;
- c. depreciation and functional obsolescence;
- d. any appraisal of the market value of the said distribution system made by an MAI appraiser acceptable to both the City and Xenia;
- e. the City and Xenia's out-of-pocket expenses necessarily incurred in the purchase and sale of said distribution system.
- f. The authorization to transmit water through the bought-out area at such transmission rate as may from time to time be set.
- 14. Upon Xenia's completion of construction of its initial distribution system, Xenia shall send the City bid tabulation sheets documenting the costs of that initial construction. Annual updates shall be provided at the end of each calendar year to reflect the costs of improvements and modifications during that year, including the addition of new water users. City shall report to Xenia any and all changes in the City's corporate limits as such changes occur.
- 15. This contract shall be effective upon the date first above written and shall continue for a period of forty (40) years. Thereafter, this Agreement shall continue from time to time unless and until either party shall terminate it by giving written notice of intent to do so to the other party not less than two (2) years in advance of the termination date.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be signed and sealed by their duly authorized representatives.

XENIA RURAL WATER DISTRICT

By: Jom E. / Dowres

By: Thomas J. Pinn

CITY OF AMES, IOWA

Larry R. Curtis, Mayors

Attested by:

Sandra L. Ryan, City Clerk

# **CONSENT**

The U.S. Department of Agriculture Rural Development, lender to Xenia Rural Water District, hereby evidences its CONSENT of the entry into the foregoing Water and Service Agreement by Xenia Rural Water District.

Dated this 12 day of November, 1996.

U.S. DEPARTMENT OF AGRICULTURE

DORMAN A. OTTE, Director

Rural Utilities & Community Facilities

law\Xenia.o20 rev. 9/25/96

#### APPENDIX A

# Water Service Agreement between City of Ames and Xenia Rural Water District

# **CAPACITY RESERVED and Payment Rate**

# 1. Water CAPACITY RESERVED

# 2. Payment for Capacity Purchase

Xenia agrees to pay to the City of Ames the amount calculated as shown below for reimbursement of existing capacity in the water utility. Said payment does not acquire ownership for Xenia. The payment is simply reimbursement to the City of Ames for expenses already incurred. Said amount is due and payable not later than 14 days prior to obtaining service. The City may agree to monthly payments in lieu of a single payment, but this payment option shall be limited to a time period not to exceed seven years in length and at a rate of interest as determined by the City of Ames.

0.5 , mil gal/day (CAPACITY RESERVED) x \$1,122,200/mil gal/day = \$ 561,100

# 3. Unit Rate for Water Purchased

Xenia agrees to pay to the City of Ames each month for water purchased during the billing period. All water metered (or estimated in the event of a meter malfunction) will be billed at the unit rate set out below. Said unit rate is composed of the following components.

Component	Unit Rate, \$/mil gal
Finance and Billing Operation and Maintenance Annual Capital Improvements TOTAL	\$ 60 990 <u>270</u> \$1,320
	Ψ1.020

In addition, Xenia agrees to pay to the City of Ames for extra use during the billing period for all water used in excess of the CAPACITY RESERVED. The extra use fee shall increase as the volume of use increases above the CAPACITY RESERVED. The extra-use fee is as follows:

Extra-Use Ratio	Extra-Use Fee, \$/mil gal
<1.05	\$ 1,500
1.05 to 1.1499	2,000
1.15 to 1.2499	2,500
1.25 to 1.3999	3,500
>1.40	5,000

The amount of the extra use fee is calculated as follows:

Extra-Ose hatto = Average Use/Day (during billing period) = CAPACITY RESERVED
[, mil gal (Monthly Volume Used) —
[, mil gal/day (CAPACITY RESERVED) x (Days in Billing Period) ]] >
(Extra-Use Fee) = \$

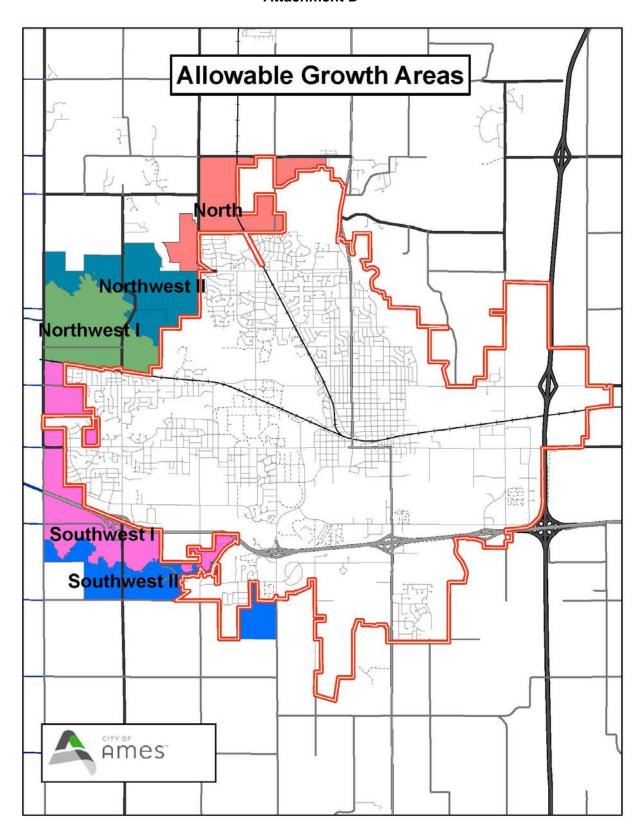
In the event of mandatory use reductions imposed by City of Ames, the extra-use fee shall be calculated by substituting "Winter Consumption less Mandatory Reduction" for "Capacity Reserved" in the above equations. "Winter Consumption" is the average use during the previous winter (November through April).

Furthermore, it is agreed that an increase in the amount of CAPACITY RESERVED in Item. No. 1 above shall be requested whenever any of the following occurs unless said event(s) occurs during a mandatory use reduction situation.

- A. Any single month where use exceeds CAPACITY RESERVED by 25 percent or more
- B. Any two months within any six-month period where use exceeds CAPACITY RESERVED by 15 percent or more
- C. Any four months within any six-month period where use exceeds CAPACITY RESERVED by five percent or more
- D. Any occurrence during any billing period where the peak day use exceeds CAPACITY RESERVED by 55 percent or more.

All such requests, if approved, shall become effective at the start of the next billing cycle and all CAPACITY RESERVED charges are due and payable immediately. The parties may agree to monthly payments as per Item No. 2 above.

# **Attachment D**



Attachment E
Proposed Annexation Areas

