

**AGREEMENT PERTAINING TO THE
ANNEXATION OF LAND
TO BE IN THE CITY OF AMES**

THIS AGREEMENT, made and entered into this 12th day of December, 2013, by and between the City of Ames, Iowa (hereinafter called "City"), and Hunziker Land Development Co., L.L. C. (hereinafter called "Developer"), their successors and assigns,

WITNESSETH THAT:

WHEREAS, the parties hereto desire the improvement and development of an area legally described as set out on Attachment A and depicted in Attachment A1 (collectively the "Site"); and

WHEREAS, Developer intends to apply to the City for anticipated annexation of the Site in conjunction with annexation of other adjacent real estate shown on Attachment B (the "Annexation Area"); and

WHEREAS, an agreement between the Developer and the City with respect to public improvements in the Annexation Area is jointly sought by the Developer and the City.

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

**I.
INTENT AND PURPOSE**

- A. It is the intent of this Agreement to:
1. Recognize that the Developer is the owner of the Site which is located outside of the City limits but is within the two-mile fringe area set forth in Iowa Code section 354.9.
 2. Acknowledge that the City and Developer desire to have the Site developed within the City.
 3. Provide for installation of infrastructure designed and intended to mitigate the environmental impact of development within the Ada Hayden Watershed, which is affected by development within the Annexation Area.
- B. It is the purpose of this Agreement to document, record and give notice of a certain plan of development, and the public and private measures and undertakings essential to the implementation of that plan of development, for the Site and the Annexation Area.

II. CITY'S REMEDIES

- A. All ordinances, regulations and policies of the City now existing, or as may hereafter be enacted, including but not limited to the Conservation Subdivision Ordinance, so long as they are not inconsistent with the terms of this Agreement, shall apply to activity on the Site.
- B. Prior to the issuance of a Final Plat, and unless otherwise agreed by the parties, the Developer shall cause the creation of an Owners' Association under Iowa Code Chapter 504 in connection with a declaration of covenants that shall run with the land for each platted lot included in the Site. If any obligation or duty of the Owners' Association, as prescribed by this Agreement, is not met or performed, the City may bring suit against the Owners' Association for court-ordered specific performance of the duty owed to the City by the Owners' Association; alternatively, the City may undertake the required obligation and may assess each property at the Site which is a member of the Owners' Association a prorated portion of the cost of said cure and such assessment shall constitute a lien on the Site.

III. PLATTING PROCESS

The Developer may, at a time of Developer's choosing after the annexation of the Site, undertake the official platting of subdivisions of the Site and said platting shall be done pursuant to the procedures established by the statutes of the State of Iowa and the ordinances of the City.

IV. IMPROVEMENTS

- A. With regard to Grant Avenue, a street that is **adjacent to the Site**, the following terms shall apply:
 - 1. The street to be assessed under this Agreement shall be Grant Avenue from West 190th Street (at the north end) to Hyde Avenue (at the south end); and said assessment shall be as provided by contract and waiver agreement, Attachment C, which shall be consistent with the terms of this Agreement.
 - 2. Grant Avenue shall be constructed by the City as a standard two-lane, collector city street that is in compliance with City ordinances and standards with regard to width; depth; curbing; gutter; storm sewer pipe, structures, and curb outflows; street lights; and pavement markings.
 - 3. Costs associated with construction of Grant Avenue, including but not limited to design, bond issuance costs, interest, construction, administration, permits and fees, and engineering inspections shall be paid 3% by Developer. The

street shall be installed by the City by the end of calendar year 2015. This time frame is subject to the City Council's appropriation of funding for the project, and to the City's ability to successfully bid out the project. This action is also subject to the City's ability to obtain easements necessary for the street, and the City agrees to use diligence in obtaining those rights. The City cannot require payment from Developer until adoption of the assessment schedule for the street improvement, and such payment shall be distributed over the term of the assessment period in ten annual installments, as provided in Iowa Code section 384.60.

4. With respect to the payment of the assessed costs for Grant Avenue, the initial area to be assessed pursuant to the procedures under Iowa Code Chapter 384, Division IV - Special Assessments, shall include all of the acres of land on the Site. As the Site is developed, Developer shall, upon approval of every Final Plat, pay the remaining balance assessed against the gross acres within each Final Plat excluding the acres designated as outlots reserved for future platting in that Plat. The total amount of the assessment will then be reduced by the amount thus paid, and the remainder of the unpaid assessment will be reallocated to all of the remaining acres of the Site, including Platted outlots, to continue being paid by Developer according to the original assessment schedule. At the end of the period of assessment the Developer shall pay any remaining unpaid balance of the assessment.

B. With regard to **off-Site** traffic improvements, and subject to the provisions of paragraph IV(G) below, Developer shall pay to the City, prior to approval of the initial Final Plat for the Site, the costs of Developer's share of the cost of the traffic signal to be installed at Hyde Avenue and Bloomington Road, together with Developer's share of the cost of the widened intersection and traffic signal at Grand Avenue and Bloomington Road. The present estimate of cost of these improvements is \$17,700. Developer acknowledges that this amount will be reviewed at the time of approval of the initial Final Plat and may be revised to reflect the updated estimated cost at that time.

C. Water System Improvements

1. Rural Water Buyout. Developer agrees that it shall be responsible for payment of any amounts that may become due and owing to any rural water provider as a result of annexation of the Site or connection of any lot to City water, including but not limited to the buyout of territory and demolition or removal of infrastructure, as provided in Iowa Code section 357A.
2. City Installation of Water Improvements Serving the Site. City agrees that, subject to its governmental discretion, it will endeavor to install the water system improvements as shown generally extending from Point 1 to Point 2 on Attachment D. Toward that end, the City will initiate efforts to secure bids and award a contract during the first quarter of 2014, with the intent that

installation be completed during the 2014 construction season. If a lack of bids or other unforeseen circumstances preclude initiation of construction in calendar year 2014, this project will be given priority for completion as early as possible in 2015. This action is subject to the City's ability to obtain easements necessary for these improvements, and the City agrees to use diligence in obtaining those rights.

3. **Financing Terms.** To finance these improvements, the City will establish water utility connection fee districts pursuant to the procedures provided for by Iowa Code section 384.38. Developer will be allowed to connect to the City-installed water system improvements in like manner and at similar cost-assessment basis as the other parties who are subject to concurrent agreements identified in paragraph IV(H) below who may connect to such improvements. City agrees to obtain from other land owners all easements necessary to bring the City-installed water system to the Site.
4. **Timing of Water Connection Fee Payments.** Developer shall, upon approval of every Final Plat, pay a connection fee to the City for the "benefitted area." For a period of ten years from the date of this Agreement, "benefitted area" shall be those gross acres included in the Final Plat excluding outlots reserved for future platting, compared to the total gross acres of the Site. After ten years from the date of this Agreement, "benefitted area" shall be all gross acres contained within the Final Plat, plus all remaining gross acres in the Site, including outlots, that have not previously been included within a benefitted area for which a connection fee has been paid. It is the intent of this paragraph that upon approval of the first Final Plat occurring more than ten years from the date of this Agreement, the total connection fee attributable to the Site shall be paid in full.

D. Sanitary Sewer Improvements.

1. **City Installation of Sanitary Sewer Improvements Serving the Site.** City agrees that, subject to its governmental discretion, it will endeavor to install the sanitary sewer system improvements as shown generally from Point 1 to Point 3 on Attachment E. Toward that end, the City will initiate efforts to secure bids and award a contract during the first quarter of 2014, with the intent that installation be completed during the 2014 construction season. If a lack of bids or other unforeseen circumstances preclude initiation of construction in calendar year 2014, this project will be given priority for completion as early as possible in 2015. This action is subject to the City's ability to obtain easements necessary for these improvements, and the City agrees to use diligence in obtaining those rights.
2. **Financing Terms.** To finance these improvements, the City will establish sanitary sewer utility connection fee districts pursuant to the procedures provided for by Iowa Code section 384.38. Developer shall not be required to

install, fund or otherwise provide security for the installation of such improvements and Developer will be allowed to connect to the City-installed sanitary sewer system improvements in like manner and at a similar cost-assessment basis as the other parties who are subject to concurrent agreements identified in paragraph IV(H) below who may connect to such improvements. City agrees to obtain from other land owners all easements necessary to bring the City-installed sanitary sewer improvements to the Site.

3. Timing of Sanitary Sewer Connection Fee payments. Developer shall, upon approval of every Final Plat, pay a connection fee to the City for the "benefitted area." For a period of ten years from the date of this Agreement, "benefitted area" shall be those gross acres included in the Final Plat, excluding outlots reserved for future platting, compared to the total gross acres of the Site. After ten years from the date of this Agreement, "benefitted area" shall be all gross acres contained within the Final Plat plus all remaining gross acres in the Site, including outlots, that have not previously been included within a benefitted area for which connection fee has been paid. It is the intent of this paragraph that upon approval of the first Final Plat occurring more than ten years from the date of this Agreement, the total connection fee attributable to the Site shall be paid in full.

E. Storm Sewers and Storm Water Management.

1. Homeowner Association Duties. The Owners' Association shall be responsible for routine maintenance of the storm water management facilities and surface water flowage areas, excluding areas within the public right of way, that are deemed necessary by the City, including maintenance and repair of the subdrain pipes associated with the storm water management facilities, collection of trash and debris that is found on such areas, and the management of grass and vegetation on such areas as appropriate and permitted. If the Owners' Association fails to perform such maintenance work, City may provide written notice and reasonable time to perform said work. If the required work is not done within the time specified by the City, the City may perform the work and the City's cost to do so shall be the obligation and the debt of the Owners' Association and a lien against any and all benefitted properties.
2. Phosphate-Free Fertilizer. The Developer shall include a covenant binding on all platted lots prohibiting the use or application of any fertilizer or lawn additive that contains phosphate.

F. Electric. Because this Site is outside of the City's municipal electric service territory, neither City nor Developer has any responsibilities for electric infrastructure or service arising from this Agreement.

- G. Non Inclusion of Other Improvement Obligations. The parties acknowledge and agree that this Agreement is being executed without review or approval of specific plans for development of the Site. The parties acknowledge and agree that it is not possible to anticipate all the infrastructure requirements the Developer may be required to complete to properly develop the site. Therefore, the parties agree that all work done by or on behalf of the Developer with respect to, but not limited to, a traffic study and any improvements identified by that study, public streets, sidewalks, bike paths, building design, construction and utilities, both on-site and off-site, shall be made in compliance with the Iowa Code, SUDAS, and all other federal, state and local laws and policies of general application, including but not limited to subdivision and zoning codes, whether or not such requirements are specifically stated in this Agreement.
- H. Concurrent Agreements. "Concurrent Agreements" means the separate agreements which have been or are to be executed by the City, Story County Land, LLC or its successor, Erben Hunziker and Margaret Hunziker Apartments, L.L.C., and The Quarry Estates, L.L.C., concurrently with this Agreement for the voluntary annexation to the City of Ames, Iowa of the Annexation Area.
- I. Condition Precedent. In the event that the City does not commence installation of the water and sewer improvements specified in paragraphs IV(C) and IV(D) above within a time frame acceptable to the Developer, Developer may initiate severance of the Site from the City pursuant to Iowa Code Section 368.8.

VI. MODIFICATION OF AGREEMENT

The parties agree that this Agreement may be modified, amended or supplemented only by written agreement of the parties.

VII. COVENANTS RUN WITH THE LAND

This Agreement shall run with the Site and shall be binding upon the Developer, its successors and assigns. Each party hereto agrees to cooperate with the other in executing a Memorandum of Agreement that may be recorded in place of this document.


IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed effective as of the date first above written.

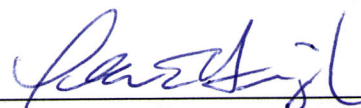
CITY OF AMES, IOWA

By _____
Ann H. Campbell, Mayor

Attest _____
Diane R. Voss, City Clerk

HUNZIKER LAND DEVELOPMENT
CO., L.L.C.

By  _____
Charles Winkleblack, Manager

By  _____
Dean E. Hunziker, Manager

92424.docx

Attachment A

Hunziker North Parcel



Owner: Hunziker Land Development Co., LLC
105 S. 16th Street
Ames, IA 50010

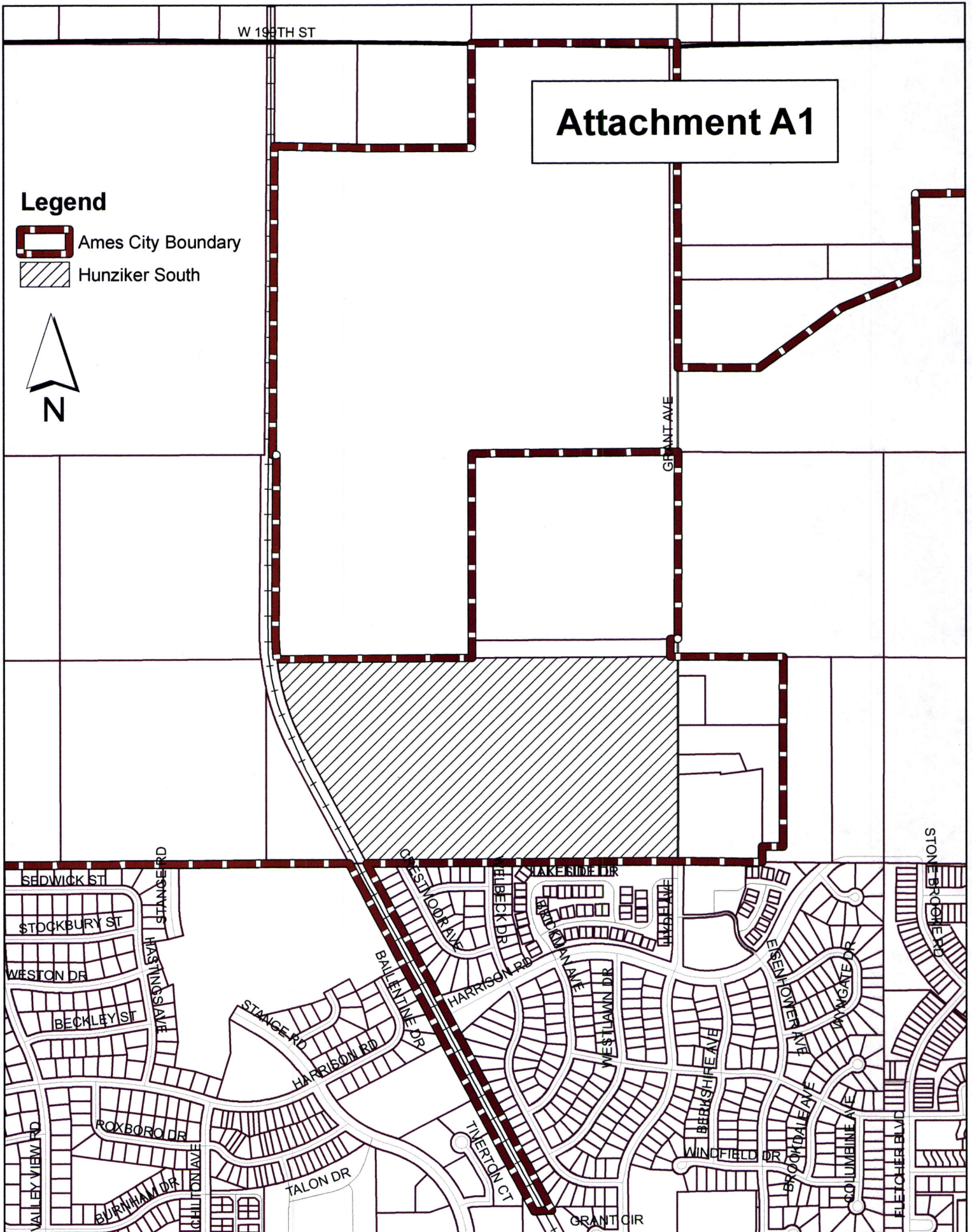
Legal: Commencing at the W $\frac{1}{4}$ corner of Section 22, Township 84 North, Range 24 West of the 5th P.M., Story County, Iowa; thence North 540.9 feet along the West line of the NW $\frac{1}{4}$ of said Section 22 to the Point of Beginning; thence South 89° 30' East 510.4 feet; thence North 54° 20' East 648.2 feet; thence North 67° 27' East 479.6 feet; thence North 90° 00' West 1479.9 feet to said West line; thence South 557.4 feet along said West line to the Point of Beginning; as described on the Warranty Deed filed in the office of the Recorder of Story County, Iowa, on September 15, 2005, and recorded as Instrument # 2005-00011586. Contains 12.00 gross acres.

W 198TH ST

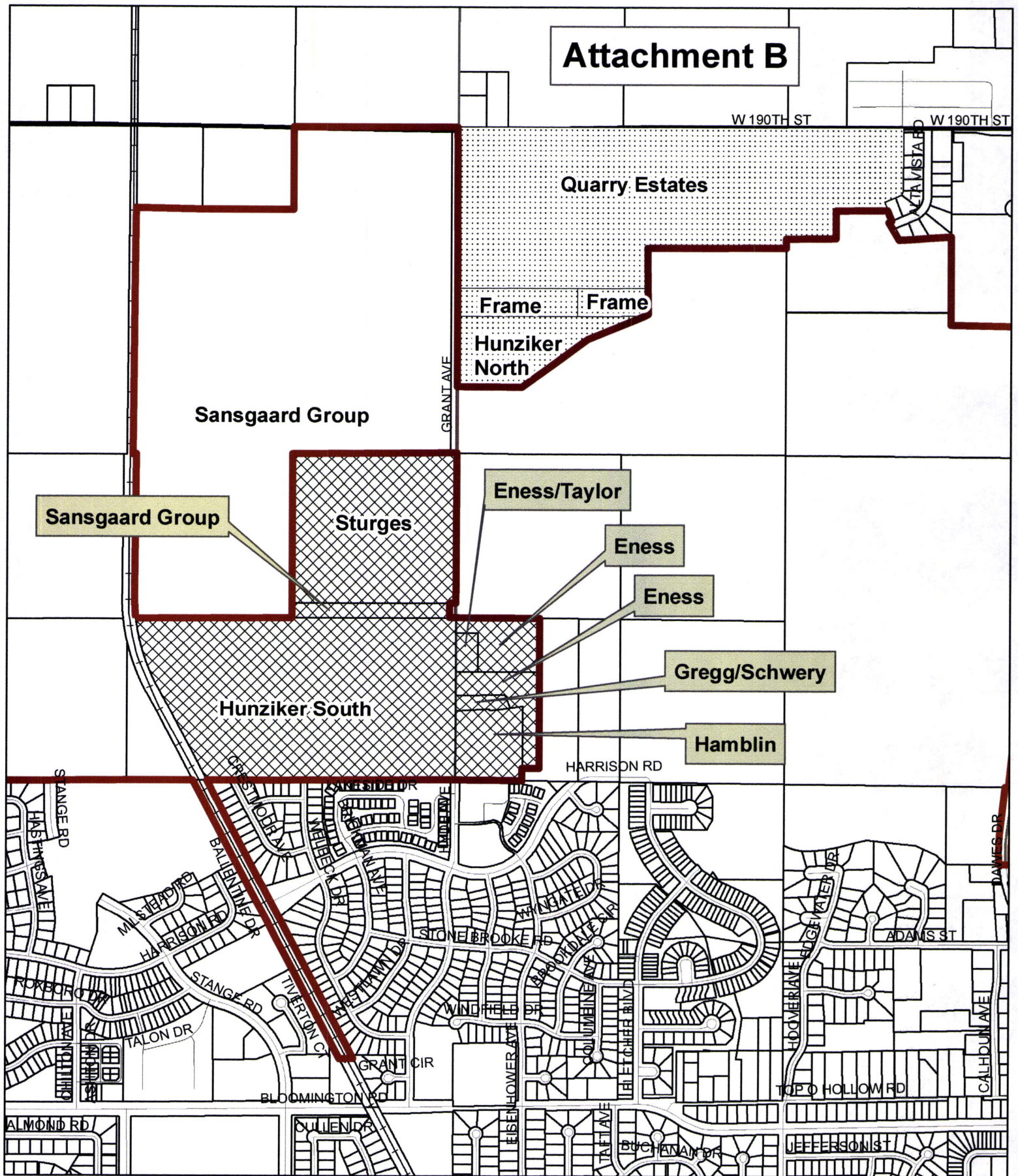
Attachment A1

Legend

-  Ames City Boundary
-  Hunziker South



Attachment B



0 500 1,000
Feet

Note: Ownership as of 11/27/2013

Legend

- Ames City Boundary
- North Area
- South Area

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

Prepared by: Judy Parks, City of Ames Legal Department, 515 Clark Ave., Ames, IA 50010; 515-239-5146
Return to: Ames City Clerk, Ames City Hall, 515 Clark Ave., P.O. Box 811, Ames, IA 50010

**SPECIAL ASSESSMENT
CONTRACT AND WAIVER**

ATTACHMENT C

*

AMES, IOWA

THIS AGREEMENT made and entered into by and between the City of Ames, Iowa (hereinafter referred to as the "City"), the undersigned Property Owners in the City (hereinafter referred to as the "Property Owners") and the undersigned Lienholders (hereinafter referred to as the "Lienholders") who hold liens on certain property of the Property Owners,

WITNESSETH THAT:

WHEREAS, each of the Property Owners is respectively the owner of the tracts of real estate set opposite their name; and

WHEREAS, the undersigned Property Owners desire that the public improvements (hereinafter referred to as the "Project") described in the Appendix hereto be accomplished; and

WHEREAS, such construction or repair will specifically benefit the respective properties of the Property Owners; and

WHEREAS, the City has the power to accomplish such Project and assess the cost thereof to the Property Owners pursuant to Iowa Code Chapter 384;

NOW, THEREFORE, IN CONSIDERATION OF THE AFORESAID, IT IS AGREED AMONG THE PARTIES HERETO AS FOLLOWS:

The Property Owners, City and Lienholders, by execution of this Agreement, agree and intend that this Agreement shall constitute a written contract as provided for in Iowa Code section 384.41 for public improvement to be paid in whole by special assessments to be levied against the below listed properties of the undersigned Property Owners.

FURTHER, it is understood and agreed that the costs of the Project may be financed by the issuance and sale of general obligation bonds of the City, payment of the principal and interest thereon, and all costs of design, bond issuance, interim borrowing, legal fees, engineering, interest, construction, administration, permits and fees, engineering inspections, or whatever to be included in and fully abated by the aforesaid assessment as provided for herein.

FURTHER, Property Owners and Lienholders agree that in consideration of the City proceeding to complete the Project, the Property Owners and Lienholders each, by execution of this Agreement:

1. Waive notice to Property Owners by publication and mailing as provided by Iowa Code section 384.50.
2. Waive the right to a hearing on the making of the improvement, the boundaries of the special assessment district, the cost of the Project, the assessment against any lot or the final adoption of the resolution of necessity as provided for in Iowa Code section 384.51.
3. Consent to the adoption of a preliminary resolution, a plat, schedule of assessments and cost estimate, and resolution of necessity by the City for the Project.



- ~~4. Waive any objections to the Project, the boundaries of the district, the cost of the Project, the valuation of any lot, the assessment against any lot or the final adoption of the resolution of necessity.~~
5. Agree that the amount and proportion of the cost of the construction or repair of the above-described improvement to be paid by the Property Owners, as ascertained and determined by the Council of the City, shall constitute assessments against the respective properties described in the attached Appendix and that said assessments shall be paid by the undersigned Property Owners within the time provided by law for the payment of special assessments for such improvement.
6. The right to request deferment for agricultural land is hereby waived.
7. Waive the limitation provided in Iowa Code section 384.62 that an assessment may not exceed twenty-five percent (25%) of the value of his lot as defined in Iowa Code section 384.37(5).

8. Waive notice to Property Owners by publication and mailing as provided by Iowa Code section 384.60 (relating to notice to certification to County Auditor of final schedule of assessments).
9. Warrant that the real estate described below is free and clear of all liens and encumbrances other than for ordinary taxes, except for such liens as are held by the Lienholders hereinafter listed and designated as signatories of this Agreement.
10. Agree to subordinate the sale of any part of the property listed below to the terms of this Agreement.
11. If the Project in this Agreement or the assessment is declared in whole or in part invalid or beyond the City's authority, the parties agree to nevertheless pay the assessed amounts stated pursuant to this Agreement.

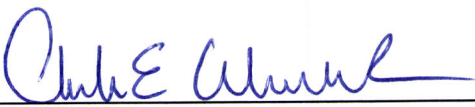
FURTHER, each of the Lienholders, by execution of this Agreement, individually:

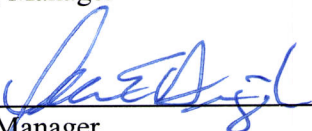
1. Agrees and consents to the initiation of this public improvement as authorized by Iowa Code section 384.41(1) in order that the special assessments for the cost of the Project shall be liens on the below listed properties to the same extent as provided in Iowa Code section 384.65(5).
2. Agrees and consents that their lien or liens shall be junior and inferior to the lien of the assessment levied pursuant to this Agreement.
3. That all the foregoing covenants, agreements, waivers and consents shall be binding on and inure to the heirs, devisees, executors, administrators, successors and assigns of any and all said lienholders.

FURTHER, as provided by the second unnumbered paragraph of Iowa Code section 384.61, if a Property Owner divides the property subject to assessment (as described in the Appendix hereto) into two or more lots, and if the plan of division is approved by the City Council, the lien on the property assessed may be partially released and discharged, with respect to any such lot, by payment of the amount calculated as determined by the City Council.

PROPERTY OWNER

Legal:

By 
*, Manager

By 
*Manager

STATE OF IOWA, COUNTY OF STORY, ss:

On this _____ day of _____, 2013, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared _____ and _____, to me personally known, who, being by me duly sworn, did say that they are the managers of _____, that no seal has been procured by the said Limited Liability Company and that said instrument was signed on behalf of the said Limited Liability Company by authority of its members and the said managers acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by it voluntarily executed.

Notary Public in and for the State of Iowa

PROPERTY OWNER

Legal:

STATE OF IOWA, COUNTY OF STORY, ss:

On this _____ day of _____, 2013, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared _____, to me known to be the person named in and who executed the foregoing instrument, and acknowledged that he/she executed the same as his/her voluntary act and deed.

Notary Public in and for the State of Iowa

_____, LIENHOLDER

By _____

_____, LIENHOLDER

By _____

_____, LIENHOLDER

By _____

CITY OF AMES, IOWA

By _____

Ann H. Campbell, Mayor

Attest _____ (Seal)
Diane R. Voss, City Clerk

STATE OF IOWA, COUNTY OF STORY, ss:

On this _____ day of _____, 2013, 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, who, being 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 _____, 2013, 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.

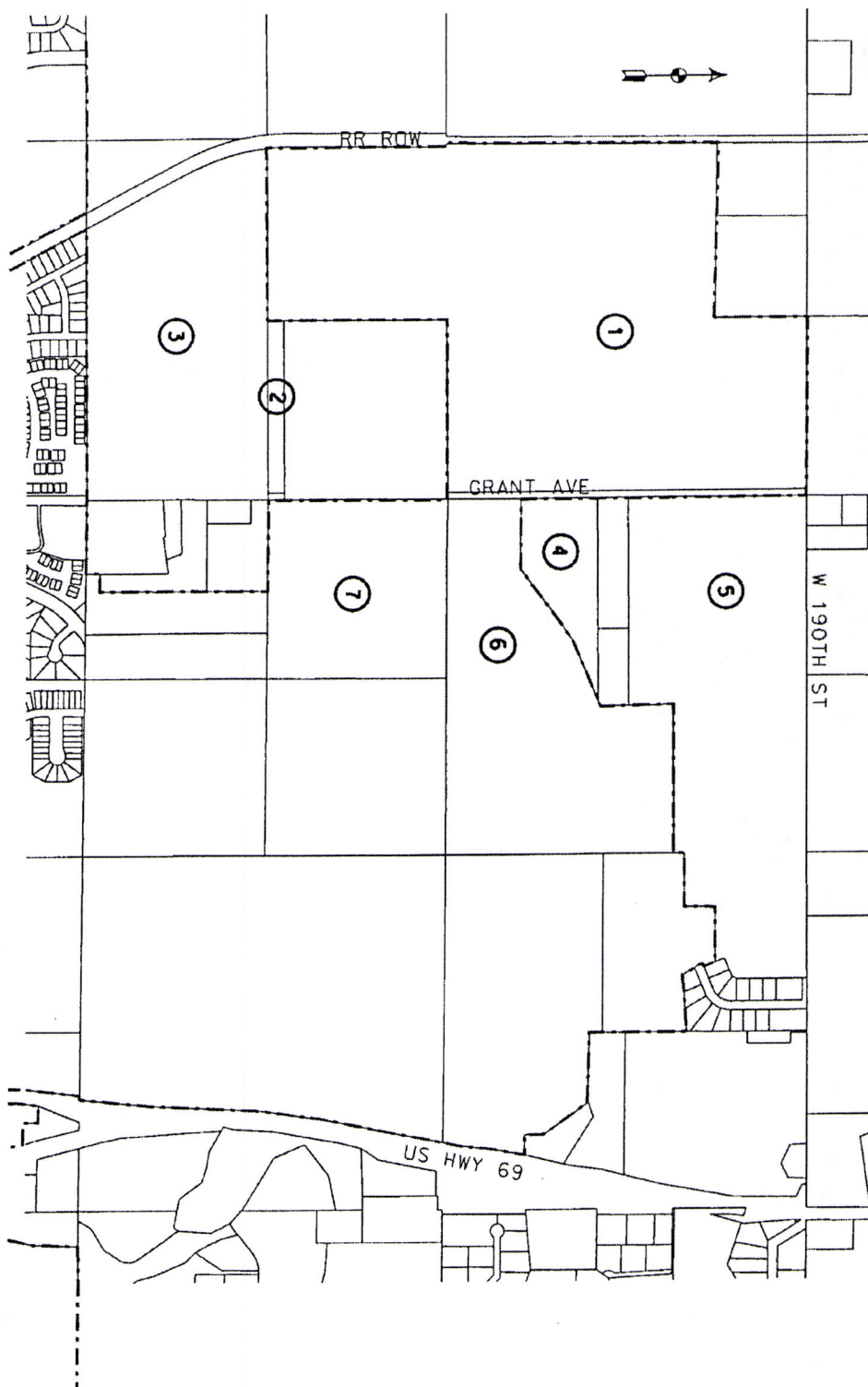
Notary Public in and for the State of Iowa

APPENDIX – PROJECT DESCRIPTION

A standard two lane collector city street that is in compliance with City ordinances and standards with regard to width; depth; curbing; gutter; storm sewer pipe, structures, and curb outflows; street lights; and pavement markings.

**Grant Avenue Paving Assessment
Hyde Avenue to W 190th Street**

	Name and Address	Legal Description	Estimated Assessment as of 12/17/12	Fixed Percentage of Cost
1	Sansgaard Group, Inc, 1529 Broad Street, Story City, IA 50248	Rose Prairie Final Plat, Lot 2, Story County Iowa <u>Address: 5571 Grant Ave. (05-21-200-150)</u>	\$1,016,613.04	36
2	Sansgaard Group, Inc, 1529 Broad Street, Story City, IA 50248	Rose Prairie Final Plat, Outlot X, Story County, Iowa <u>Address: 4397 Grant Ave. (05-21-400-001)</u>	\$28,239.25	1
3	Hunziker, Erben & Margaret Hunziker Apartmenst LLC 105 S 16 th St Ames, IA 50010-8009	S ½ SE Ex Parcel 'D', Slide 10 Pg 3 & Ex RR ROW, Story County, Iowa <u>Address: 4397 Grant Ave (05-21-400-310)</u>	\$564,785.02	20
4	Hunziker Land Development Co LLC 105 S 16 th St Ames, IA 50010-8094	S ½ Bg 540.9' NW ¼ CR NE 510.4' NE 648.2' NE 479.6' W 1479.9' S 557.4' to Beginning, Story County, Iowa <u>Address: Franklin Township (05-22-100-320)</u>	\$84,717.75	3
5	Quarry Estates LLC 100 6 th St Ames, IA 50010-6338	Parcel 'L' in the North Half (N ½) of Section 22, Township 84 North, Range 24 West of the 5 th P.M., Story County, Iowa; as shown on the Plat of Survey filed in the office of the Recorder of Story County, Iowa on January 17, 2012, and recorded as Instrument # 2012-00000476. Contains 85.45 gross acres. <u>Address: 904 W. 190th St. (05-22-100-100)</u>	\$480,067.27	17
6	City of Ames 515 Clark Ave Ames, IA 50010-6135	Parcel 'J' NW, Slide 112 Pg 3, Ames, Iowa <u>Address: 5300 Grant Ave (05-22-100-340)</u>	\$423,588.76	15
7	City of Ames 515 Clark Ave Ames, IA 50010-6135	NW SW, Ames, Iowa <u>Address: 5000 Grant Ave (05-22-300-100)</u>	\$225,914.01	8
			\$2,823,925.10	100.0



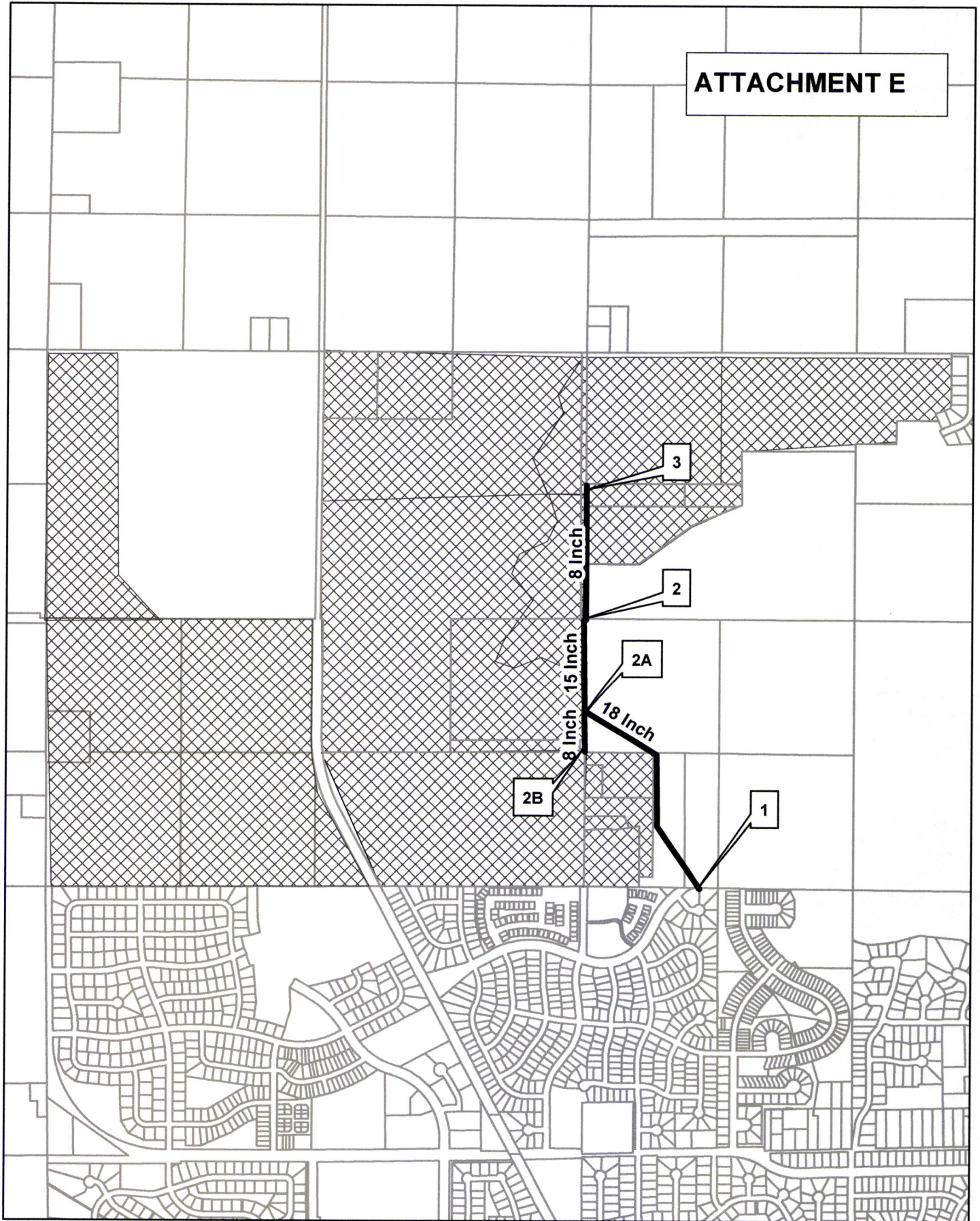
ATTACHMENT D



 Potential Water Connection District



ATTACHMENT E



630 315 0 630 Feet

Sanitary Sewer Main Potential Sanitary Connection District

