

COUNCIL ACTION FORM

SUBJECT: FRIEDRICH VOLUNTARY ANNEXATION OF 108.14 GROSS ACRES FOR THREE PROPERTIES ADJACENT TO THE INTERSECTION OF GEORGE W CARVER AVENUE AND CAMERON SCHOOL ROAD AND ADJACENT WITH RIGHT OF WAY

BACKGROUND:

Kurt Friedrich, representing R. Friedrich & Sons Inc. and Friedrich Land Development, is proposing annexation of 108.14 acres of land adjacent George Washington Carver Avenue and Cameron School Road (Attachment A: Annexation Plat). The annexation area includes land that is presently used for agricultural purposes. This is a 100% voluntary annexation.

The annexation area is composed of three parcels. The site was previously referred to as the Dankbar and Muench properties, reflecting the previous owner's names. A location map of the proposed annexation is included as Attachment B. **City Council initiated the annexation at its October 9, 2018 meeting with condition for the a pre-annexation agreement addressing three issues: 1) water service, 2) traffic impacts, and 3) sanitary sewer capacity.**

Prior to initiating the annexation, the site was the subject of a Land Use Policy Plan (LUPP) and Ames Urban Fringe Plan amendment to allow for its annexation. City Council approved an amendment in November 2017 to designate the area as an Urban Service Area in the Fringe Plan and as Urban Residential with a Commercial Node as part of the North Allowable Growth Area of the LUPP.

The LUPP identified it as "New Lands" within a non-incentivized growth area. Upon annexation the site could be developed as suburban low to medium density development or a village development. The 2017 Amendment also approved a Convenience Commercial Node that would allow up to 10 acres of commercial land for local-serving commercial uses.

During the creation of Ames Plan 2040, this site was included in the scenario analysis based upon the City's initiation of the annexation in 2018. No additional land west or north of this site is included in Plan 2040 for future expansion.

Plan 2040 identifies this area as "RN-3" – Expansion, an area identified as primarily residential development with a variety of residential types and neighborhood services. The characteristic of an RN-3 area is conventual suburban layout with limited, primarily single-family development at low density, but with some medium density apartment development. Additionally, the layout may include small commercial nodes as part of a development within the RN-3 designated lands. An excerpt from the Plan 2040 Land Use Map is found in *Attachment C*.

DEVELOPER AGREEMENT:

Prior to approval of the 2017 land use amendment, the City analyzed sanitary sewer capacity for the area. A May 2017 report determined that downstream capacity improvements would be needed to serve the area. Due to this initial study, City Council directed with the initiation of the annexation application that the developer would be responsible for all costs associated with sanitary sewer improvements needed to serve this site.

Subsequently, the City completed sanitary sewer rehabilitation work downstream of this area and remodeled the sewer capacity. City staff has determined that some additional capacity is available to serve a limited amount of development without other improvements. The proposed pre-annexation agreement (Attachment D) sets a development limitation for the future of approximately 171 residential single-family and townhome lots along with 6.84 acres of commercial development, or for uses of equivalent levels to that of the conceptual site plan that was used for modeling purposes. **If future development, or its equivalent level of water usage, exceeds these thresholds, the developer is responsible for downstream improvements. The developer must file a Master Plan at the time of zoning to address this use limitation.**

The proposed annexation is presently within Xenia Rural Water service territory and will remain so upon annexation. **This is the first area to be proposed to be annexed consistent with the recently adopted City of Ames and Xenia Rural Water Service Agreement.** With the recent approval of the Xenia agreement, the initial direction from City Council for the developer to buy out the water territory rights so City service may be provided is no longer applicable. **The pre-annexation agreement only acknowledges the requirements of the Xenia agreement for the developer to install infrastructure that meets City standards and does not have territory buyout requirements.**

A traffic study was completed in 2019 for the development of the site with housing and commercial uses. An addendum was also completed in 2021 to analyze impacts for development of a church on part of the property in lieu of commercial development. The findings of the traffic study identified needs for turn lanes along Cameron School Road and GW Carver with development of the site. The study identified incremental impacts to other intersections under cumulative 2040 conditions.

City staff has determined that the development's proportional impacts to the transportation network are appropriately mitigated by full turn lane improvements along the abutting roadways and a contribution to a future signal improvement at Cameron School Road and GW Carver **The agreement memorializes these obligations for turn lane improvements and separately for a 30% payment towards a future traffic signal. Improvements are tied to the future platting and payment of the fee is based upon timing with a second final plat. The agreement includes a cap on the traffic signal fee for the first three years of up to \$135,000.**

Early in the evaluation of the annexation, Story County indicated it had an interest in completing an intersection improvement coordinated with this development. A roundabout was initially discussed, but it was determined to not be a feasible improvement based upon existing right-of-way and cost. Ultimately the City determined a traffic signal would be satisfactory per the impacts identified with the traffic study.

Upon further discussions with the County as the annexation progressed, the County determined it is not interested in providing funding to move up a signal project to coincide with development of the site. **At this time there is no agreement with the County for improvements; the funding from the developer will be held by the City to make future improvements at a time determined necessary by the City and when additional funds are available.**

In addition to the original three issues identified at the time the annexation was initiated (water service, traffic impacts, and sanitary sewer capacity), Public Works staff identified a potential opportunity to work with the developer and activities related to nutrient reduction. A recent agreement with the Iowa DNR encourages the City to provide storm water quality improvements related to flood and nutrient reduction adjacent to the loway Creek. The developer is willing to coordinate with the City staff regarding possible opportunities to address these conditions at the time of platting. **The agreement includes language for the developer to work with staff prior to future plat approval on potential improvements.**

OUTREACH:

As part of the state-mandated process for annexations, City staff held a consultation with the Franklin Township Trustees and the Story County Supervisors on May 1, 2019. Representatives from Story County Planning Department attended and did not indicate any issues or recommendations for altering the proposed annexation. Others in attendance included a representative from the Story County Board of Supervisors, City of Gilbert and Gilbert Community School District representatives, and the applicant. No written comments were received about the annexation at this time.

The Planning and Zoning Commission reviewed the request on May 15, 2019. The Commission discussed City Council's conditions related to possible traffic improvements and water service. The Commission voted 5-0 to recommend that the City Council approve the request to voluntarily annex the 108.14 gross acres, all in Section 20 of Franklin Township, Story County, by finding that the proposed annexation is consistent with the Land Use Policy Plan and Urban Fringe Plan, subject to the developer's agreement to provide for sanitary sewer upgrades, transportation improvements adjacent to the site, and provisions for the territory transfer of water rights with Xenia (Note – the requirement for territory rights to be transferred from Xenia was rendered moot by the subsequent territory and service agreement between the City and Xenia).

On May 28, 2019, the Story County Board of Supervisors passed Resolution No. 19-117 supporting the voluntary annexation of the 108.14-net acre property located on the southwest corner of the intersection of George Washington Carver Avenue and Cameron School Road.

Right-of-way is included with the annexation. There is a standard county easement of 50 feet related to the GW Carver frontage and part of the Cameron School Road frontage that is included in the annexation plat. Additionally, per the City's 28-E Agreement with Story County, the City is to annex the Cameron School Road right-of-way that abuts the site where it is not shown as part of the annexation plat. In consultation with City Development Board

staff, state law allows for this annexation of right-of-way with the final application upon notice to the County Attorney. Including the Cameron School Road right-of-way will add approximately 2.2 additional acres to the final annexation application.

The proposed annexation area lies within two miles of another city (1.8 miles from Gilbert). Therefore, action by the City Development Board is needed if the City approves annexation.

ALTERNATIVES:

1. Approve the annexation of approximately 108.14 gross acres located on the southwest corner of the intersection of George Washington Carver Avenue and Cameron School Road and the related Development Agreement and direct staff to include approximately 2.2 acres of Cameron School Road in the final application filed with the City Development Board. The annexation is contingent upon the receipt of a signed development agreement.
2. Do not approve the annexation of approximately 108.14 gross acres located on the southwest corner of the intersection of George Washington Carver Avenue and Cameron School Road and the related Development Agreement.
3. Defer this item and request additional information from city staff or the applicant.

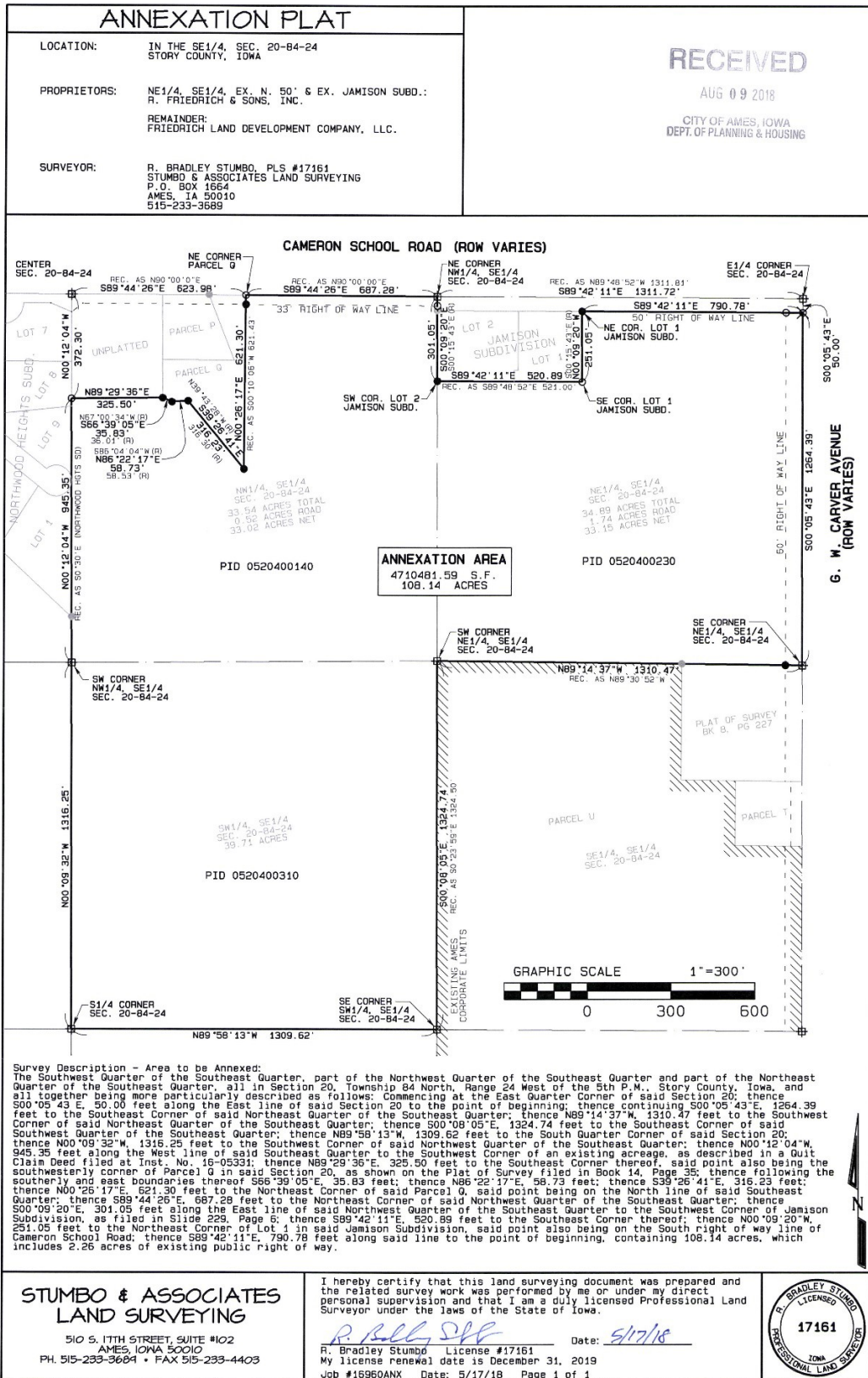
CITY MANAGER'S RECOMMENDATION:

This voluntary annexation is consistent with the approved amendments under the previous applicable LUPP/Fringe Plan and with the recently adopted Ames Plan 2040. Additionally, with the commitment to providing for sanitary sewer, transportation improvements, and water service built to City standards, the proposed annexation is consistent with the City Council's initiation of the annexation. The proposed development agreement has been shared with the developer and staff is awaiting return of the signed agreement prior to City Council's approval of the annexation.

Although there are no non-consenting owners as part of an 80/20 annexation, the property is located within two miles of Gilbert and will require approval of the annexation by the State of Iowa's City Development Board.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1.

Attachment A – Annexation Plat

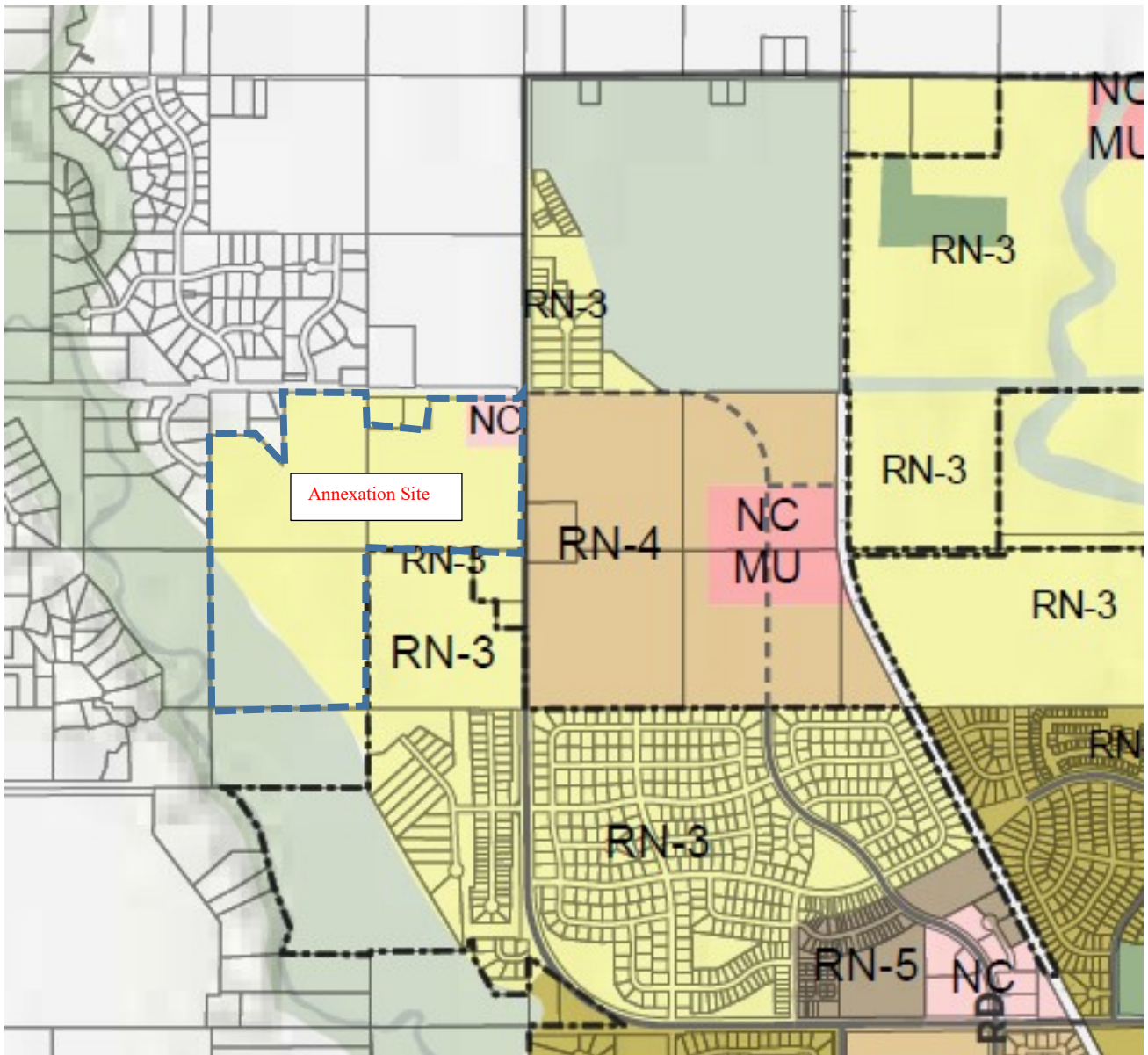


Attachment B - Location Map



Friedrich Annexation

Attachment C – Ames Plan 2040



ATTACHMENT D – PRE-ANNEXATION AGREEMENT

S P A C E A B O V E R E S E R V E D F O R O F F I C I A L U S E

Legal description: See page 7.

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

Document prepared by: City of Ames Legal Department, 515 Clark Ave., Ames, IA 50010 – 515-239-5146

**PREANNEXATION AGREEMENT
(Dankbar – Muench Area)**

WHEREAS, this Pre-Annexation Agreement (the “Agreement”), dated for reference purposes, _____ day of February 2022, is made and entered into by and between the City of Ames, Iowa (hereinafter “City”), and R. Friedrich and Sons, Inc., and Friedrich Land Development Company, L.L.C. (hereinafter “Developers”), the titleholders of approximately 108.14 acres of property lying west of George Washington Carver Avenue and south of Cameron School Road; and

WHEREAS, the Developers hereto desire the improvement and development of an area legally described on Exhibit ‘A’ attached hereto and as depicted in Exhibit ‘B’ (collectively, the “Site”); and

WHEREAS, Developers requested an amendment to the Ames Urban Fringe Plan that was approved by the Ames City Council on November 28, 2017, to designate the area as Urban Service Area with a Convenience Commercial Node designation; and

WHEREAS, the Ames City Council initiated a 100% voluntary annexation of land on October 9, 2018, as territory within the North Growth Area of the City of Ames and subject to three conditions: (a) Resolve rural water service territory requirements for the property with a requirement the developer is responsible for any cost related to rural water territory transfers and water infrastructure extensions to meet City specifications, (b) Evaluate Sanitary Sewer capacity to serve the site with any needed upgrades as the responsibility of the developer, and (3) Complete a traffic study to evaluate impacts of the project with a requirement for the Developers to mitigate identified impacts related to the project; and

WHEREAS, the City of Ames approved on December 14, 2021, entering into an Agreement for Water Service Operations and Territory Transfer with Xenia Rural Water District (Xenia) that designated the site as eligible for Xenia water service within the city limits of Ames without a transfer of water service territory and subject to conformance with City standards.

WHEREAS, a traffic study and an addendum were completed to evaluate development of the

site as Floating Suburban Residential and Convenience Commercial uses that identified the need for project improvements related to access to the site and incremental contributions to mitigation of cumulative impacts; and

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 consistent with the terms of this Agreement, 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. PETITION FOR ANNEXATION. Developers have previously filed a petition for annexation with the City of Ames that was accepted by the City on October 9, 2018, to initiate a 100% voluntary annexation subject to certain conditions. 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 3. 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 Developers and not the City.

SECTION 4. DEVELOPMENT. All improvement obligations described within this Agreement are subject to rezoning the Site. Nothing in this Agreement shall constitute a commitment or representation by the City to rezone the Site to a particular zoning district(s) or the approval of a particular subdivision layout(s). Developers may undertake the rezoning and official platting of subdivisions of the Site pursuant to the Code of Iowa and the ordinances of the City.

SECTION 5. TRAFFIC MITIGATION. (1) Developers shall be responsible at their sole cost and expense for constructing all required turn lane and widening requirements to Cameron School Road as identified with the 2019 Traffic Study, the 2021 Addendum, and recommended practice under NCHRP 457, generally described as widening of Cameron School Road to provide for turn lane improvements needed for the planned extension of Everest Avenue, or any other similar street and driveway connections, to Cameron School Road. The final location of access points and design of the improvements will be subject to approval of the City of Ames with preliminary and final plat approval. (2) Developers shall be responsible at their sole cost and expense for constructing all required turn lane and widening requirements to George Washington Carver Avenue as identified with the 2019 Traffic Study, the 2021 Addendum, and recommend practice under NCHRP 457, generally described as widening of George Washington Carver Avenue to provide for turn lane improvements needed at the intersection of Cameron School Road and for a future east/west street extension and or driveway improvements with George Washington Carver. The final location of access points and design of the improvements will be subject to the approval of the City of Ames with preliminary and final plat approval. (3) Developers shall be responsible for dedicating all needed right of way at no cost to the City and constructing all street improvements per Public Improvement plans approved by the City in compliance with City ordinances and standards with regard to, among other things, taper lanes, width, depth, curbing, gutter, drainage, ditch capacity, storm sewer, street lights, and any other improvements associated with or related to the street improvements required as

part of (1) or (2) above. (4) Developers shall also pay for 30% of the cost of the future installation of a traffic signal system at the intersection of Cameron School Road and George Washington Carver Avenue. The cost of the traffic signal is inclusive of all costs related to design, materials, and installation as estimated by the City at the time said costs are payable and due. The current estimated cost for design and installation of a traffic signal is \$450,000, and if the Developers make payment to the City for their share of the traffic signal improvement within three years of the date of this Agreement, the Developers' 30% share shall not exceed \$135,000, regardless of actual cost. If payment by Developers to the City occurs more than three years after the date of this Agreement, Developers' financial obligation for the traffic signal shall be 30% of the total cost as determined by an updated estimate obtained by the City for the traffic signal system. Developers shall make payment to the City for the traffic signal prior to approval of a second final plat for site. The traffic signal will be installed at such time as determined by the City based on available funding and need, as determined solely by the City.

SECTION 6. WATER SYSTEM IMPROVEMENTS. (1) The City and Developers acknowledge that the Site is within the area included in the Xenia and City of Ames Agreement for Water Service Operations and Territory Transfer and is eligible to receive rural water service within the City of Ames. (2) Developers shall be responsible at their sole cost and expense of coordinating with Xenia for verification of adequate water flow and pressure to the serve future development to City standards. (3) Developers shall be responsible at Developers' sole cost and expense of working with Xenia for the construction of all water mains, fire hydrants and all related improvements as stated in the 2022 Water Service Operations and Territory Agreement needed to meet City standards. City shall not be required to advance any amount on behalf of Developers, and Developers shall hold harmless and indemnify the City from and against all claims or damages due Xenia, or its successors or assigns, for any reason whatsoever related to the Development of the Site, including the City's reasonable costs of defense. (4) All buildings developed within the future subdivision are subject to meeting all City Building Code and City Fire Department fire suppression and service standards. Developers shall include proposed water infrastructure improvements with Preliminary and Final Plat approvals.

SECTION 7. WATER QUALITY IMPROVEMENTS. Developers shall cooperate and work with City staff prior to preliminary plat approval on opportunities to include flood and nutrient reduction strategies on lands adjacent to Ioway Creek. Developers and City shall collaborate with other stakeholders as may be appropriate to implement Best Management Practices. The City shall have the exclusive right to claim all qualified flood and nutrient reduction credits from such agreed upon practices.

SECTION 8. SANITARY SEWER CAPACITY. (1) The sanitary sewer capacity downstream of the Site is limited in its ability to support new development without mitigation. Developers shall be responsible for any off-site sanitary sewer improvements needed to serve the new development as required by the City Public Works Director. (2) Developers acknowledge that there is not sanitary sewer capacity downstream of the site to serve a higher residential density or commercial uses and agree to apply for a Master Plan with future rezoning that limits use of the site to levels consistent with sanitary sewer modeling completed in March 2021 by the City's consultant for a conceptual site plan of approximately 171 residential single-family and townhome lots along with 6.84 acres of commercial development, or for uses of equivalent levels to that of the conceptual site plan. Provided that the intensity of development of the site is within the limits identified by the City in the sanitary sewer analysis, Developers have no identified off site improvement obligations. (3) Any changes to the development plan or development that exceed the intensity modeled by the City, shall be subject

to off-site mitigation responsibilities by Developers at their sole cost and expense.

SECTION 9. BINDING EFFECT. 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 Site. Developers shall be jointly and severally liable to the City for each and every obligation imposed under the terms of this Agreement. 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 10. REMEDIES. In the event of a breach of this Agreement by Developers, and if the breach has not been cured within 30 days of a notice to cure provided to Developers by the City, the City may advance such funds as may be necessary to fulfill the intent of this Agreement and thereafter assess the amounts due from the breaching party in the manner of a special assessment, or by any legal action it deems necessary, to recover such amounts from Developers.

SECTION 11. 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 12. DEVELOPMENT STANDARDS. This Agreement does not anticipate all requirements or standards related to development of property and Developers recognize that rezoning and development of property is subject to city ordinances, policies, and standards in effect at the time.

SECTION 13. ENTIRE AGREEMENT. This instrument constitutes the entire agreement of 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.

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

R. FRIEDRICH AND SONS, INC.

Dated February _____, 2022.

By: _____
Kurt W. Friedrich, President

STATE OF IOWA, COUNTY OF STORY, SS.:

This instrument was acknowledged before me on February _____, 2022, by Kurt W. Friedrich, as President of R. Friedrich and Sons, Inc.

NOTARY PUBLIC

**FRIEDRICH LAND DEVELOPMENT
COMPANY, L.L.C.**

Dated February _____, 2022.

By: _____
Kurt W. Friedrich, Manager

STATE OF IOWA, COUNTY OF STORY, SS.:

This instrument was acknowledged before me on February _____, 2022, by Kurt W. Friedrich, as Manager of Friedrich Land Development Company, L.L.C.

NOTARY PUBLIC

Passed and approved on _____, 2022, by Resolution No. 22-_____
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 _____, 2022, by John A. Haila and Diane R. Voss, as Mayor and City Clerk, respectively, of the City of Ames, Iowa.

NOTARY PUBLIC

EXHIBIT 'A'
LEGAL DESCRIPTION OF THE SITE

The Northeast Quarter (NE $\frac{1}{4}$) of the Southeast Quarter (SE $\frac{1}{4}$) of Section Twenty (20), Township Eighty-Four (84) North, Range Twenty-Four (24) West of the 5th P.M., Story County, Iowa, EXCEPT a parcel of land containing approximately 3.6 acres described as: Commencing at the Northwest Corner (center of road) of the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 20-T84N-R24W of the 5th P.M., Story County, Iowa, thence East along the center of the road 521 feet, thence South 301 feet, thence West 521 feet to the West line of said NE $\frac{1}{4}$ of the SE $\frac{1}{4}$, thence North 301 feet to the place of beginning.

AND,

West one-half of the Southeast Quarter of Section Twenty in Township Eighty-four North, Range Twenty-four West of the 5th P.M., Story County, Iowa, EXCEPT beginning at concrete monument located at center of Section Twenty, Township Eighty-four North, Range Twenty-four West of the 5th P.M., in Story County, Iowa, which is the Northwest Corner of the Southeast Quarter of said Section; thence South 0°30' East a distance of 372.30 feet along the West line of said Southeast Quarter; thence North 89°30' East a distance of 325.00 feet; thence South 66°41' East a distance of 36.09 feet; thence North 84°40' East a distance of 58.92 feet; thence South 39°45' East a distance of 316.30 feet; thence North 0°09' East a distance of 621.43 feet to the North line of said Southeast Quarter Section; thence West along the North line of Southeast Quarter Section a distance of 623.92 feet to the point of beginning.

EXHIBIT 'B'
DEPICTION OF THE SITE