

COUNCIL ACTION FORM

SUBJECT: TRANSFER XENIA WATER SERVICE TERRITORY TO AMES FOR ANSLEY DEVELOPMENT

BACKGROUND:

Ansley is a planned development in south Ames of approximately 59.7 acres, primarily accessed from Cedar Lane. This land is located within the service territory of Xenia Rural Water, and therefore cannot be served with water by the City of Ames unless the territory is transferred to the City.

The land was annexed into the City with a pre-annexation agreement in 2019, which required the buyout of any rural water service territory rights at the cost of the developer. City Council placed a condition on the Ansley rezoning that prior to preliminary plat approval, the developer would complete terms of the territory transfer with Xenia.

Representatives of Ansley Land LLC, developer of Ansley, have completed terms of a phased buyout of the site with Xenia. The buyout is based upon the City and Xenia's approved agreement from 2022 for the transfer and service of water territory within Ames. The cost is \$3,000 per net acre for the developer.

To complete the transfer of the service territory, the City must accept the territory in order to release Xenia from its service requirements as a water district. With approval of the attached agreement, the developer of Ansley will have fulfilled its condition of approval related to the territory transfer and will be able to proceed with development of Ansley.

ALTERNATIVES:

1. Approve the final agreement to accept the transfer of approximately 59.7 acres of land for the Ansley development from Xenia Rural Water to the City of Ames.

Note- Final agreement with exhibit to be provided.

2. Refer this item to staff for additional information.

CITY MANAGER'S RECOMMENDED ACTION:

This is the first rural water territory transfer to occur since approval of the agreement with Xenia for water service within Ames and territory transfers. Approval of the agreement will allow the developer to proceed with installing water infrastructure to City standards and for homes to be served by Ames Water. The developer is responsible for all buyout and development costs.

Therefore, it is the recommendation of the City Manager that the City Council approve Alternative 1.

DRAFT-

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

Prepared by: Corey Iben, 23998 141st St. Bouton, IA 50039; 515-676-2117

Return to: Ames City Clerk, Ames City Hall, 515 Clark Ave., Ames, IA 50010

**AGREEMENT BETWEEN CITY OF AMES AND XENIA
CONCERNING CONTINUED WATER SERVICE**

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

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

WHEREAS, Ansley Land, LLC ("DEVELOPER") wishes to develop one parcel south of Ames' city limits ("the "Property") that Xenia believes is located in its protected water service territory; and

WHEREAS, DEVELOPER desires to procure water services from Ames for the Property; and

WHEREAS, Xenia is not currently providing water or wastewater services to the Property and Xenia is willing to enter into an agreement with DEVELOPER through which Xenia will release its rights to provide water and wastewater services to the Property; and

WHEREAS, Ames and Xenia wish to assist DEVELOPER in developing the Property;
and

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

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

WHEREAS, Ames and Xenia have entered into an Agreement for Water Service Operations and Territory Transfer, dated February 1, 2022, and recorded as Instrument # 2022-01065, Story County Iowa.

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

1. Incorporation of Recitals and Exhibits. The foregoing recitals are incorporated herein and made a part of this Agreement. The recitals and exhibits described below are substantive and contractual parts of this Agreement.
2. Identification of the Affected Area. This Agreement affects the Property included in the Plat of Survey shown in Exhibit A attached hereto.
3. Existing Xenia Customers and Infrastructure. Xenia does not have any existing infrastructure or customers located on the Property.
4. Agreement Concerning Continuation of Water Services. It is agreed that Ames shall provide water services to the Property, when requested by DEVELOPER.
5. Consideration. The Parties agree that the joint assistance of DEVELOPER's development of the Property is full and adequate consideration for this Agreement.
6. Authorization and Approval by the Parties. The Parties each represent and warrant to the other that this Agreement and its performance have been authorized and approved by all necessary action of the Party, including, without limitation, all necessary action on the part of the governing body of each, and this Agreement constitutes a valid and binding agreement enforceable in accordance with its terms.

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

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

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

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

<p>Xenia Rural Water District</p> <p>By _____ Royce Hammitt CEO/General Manager</p> <p>Attest _____ Corey Iben Office Manager</p> <p>Executed _____, 2022</p> <p>STATE OF IOWA, COUNTY OF STORY, ss:</p> <p>This instrument was acknowledged before me on _____, 2022, by Royce Hammitt and Corey Iben, as General Manager, and Office Manager respectively, of Xenia Rural Water District.</p> <p>_____ Notary Public in and for the State of Iowa</p>	<p>City of Ames, Iowa</p> <p>By _____ Ann H. Campbell, Mayor</p> <p>Attest _____ Diane R. Voss, City Clerk</p> <p>Executed _____, 2022</p> <p>STATE OF IOWA, COUNTY OF STORY, ss:</p> <p>On this ____ day of _____, 2022, before me, a Notary Public in and for the State of Iowa, personally appeared Ann H. Campbell and Diane R. Voss, to me personally known and who, by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Ames, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in Resolution No. _____ adopted by the City Council on the ____ day of _____, 2022, and that Ann H. Campbell and Diane R. Voss acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.</p> <p>_____ Notary Public in and for the State of Iowa</p>
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