

COUNCIL ACTION FORM

SUBJECT: REVISIONS TO AGREEMENT WITH XENIA RURAL WATER DISTRICT TO PROVIDE WATER SERVICE AND FACILITATE TERRITORY TRANSFER

BACKGROUND:

On October 26, 2021, the City Council approved an agreement with Xenia Rural Water District that provides standards for Xenia to operate and maintain its water system as the City grows into Xenia's territory over time. The agreement settles the boundaries of Ames and Xenia service territories, provides mechanisms for certain portions of Xenia territory to potentially be bought out by developers and transferred to Ames to serve, and addresses how Xenia would bill customers within the Ames corporate limits on the City's behalf for sanitary and storm sewer charges.

The approved agreement was subject approval by Xenia's Board of Directors and consent from United States Department of Agriculture Rural Development (USDA). In November, Xenia's board approved the agreement, subject to the approval of Xenia's outside legal counsel and USDA.

Changes in two areas of the agreement are now being requested by Xenia:

- In the section regarding the fee Xenia may charge customers to administer the billing of Ames sanitary and storm sewer service, Xenia requests that the phrase "not to exceed" \$1.50 per month be removed. Another part of this paragraph allows the \$1.50 fee to increase as long as that increase is in line with fees Xenia charges elsewhere and reflects the actual cost of administering billing.
- In the sections regarding the transfer of territory to the City, Xenia has requested a clarification that Xenia retains any territory that is not transferred by the time those sections expire.

City staff has prepared text changes to the agreement to implement these requested modifications (Attachment 1). Staff does not believe that the changes help clarify the intent of the parties and do not adversely affect the City or potential customers.

USDA ASSURANCE AGREEMENT

Xenia has also communicated to City staff that the USDA is requiring that the City sign an assurance agreement (Attachment 2). This assurance agreement commits the City to abide by federal non-discrimination and civil rights legislation and policies. Staff has reviewed this assurance agreement; it appears the City is already bound to abide by

these policies through federal financial assistance requirements already in place between the City and the federal government. Therefore, signing this assurance agreement does not bind the City to any new requirements.

ALTERNATIVES:

1. A. Approve the revised version of the attached agreement for water service operations and territory transfer with Xenia Rural Water District.
B. Approve the attached Form RD-400-4 USDA Assurance Agreement
2. Do not approve the attached agreements.

CITY MANAGER'S RECOMMENDED ACTION:

The City Council has approved the original version of this agreement with Xenia. The requested modifications from Xenia clarify the intent of both parties and do not appear to restrict the City or future water customers in any significant way. The USDA assurance agreement must be signed by the City to obtain USDA's consent to the water service operations and territory transfer agreement. The commitments contained in the assurance agreement are already in effect in the City of Ames due to our participation in existing federal financial assistance programs.

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

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

Prepared By: City of Ames, City Manager's Office, 515 Clark Ave., Ames, IA 50010; 515-239-5101

Return Recorded Document To: Ames City Clerk, Ames City Hall, 515 Clark Ave., PO Box 811, Ames, IA 50010

AGREEMENT FOR WATER SERVICE OPERATIONS AND TERRITORY TRANSFER

ARTICLE I: PURPOSE AND DEFINITIONS

1.1 PURPOSE

- A. This Agreement is made and entered into, effective this ____ day of _____, 2021, between the Xenia Rural Water District (hereinafter sometimes referred to as "XENIA") and the City of Ames, Iowa (hereinafter sometimes referred to as "AMES"), (collectively hereinafter sometimes referred to as the "Parties"), pursuant to the provisions of Chapter 28E, Code of Iowa.
- B. The purpose of this Agreement is to:
- i. Establish the process for the delivery of Public Water Supply Service to new and existing Customers located within service territory served by XENIA that is also within the corporate limits of AMES as those corporate limits may change over time, and;
 - ii. Establish the procedures and purchase price for XENIA to transfer a portion of its water service territory to AMES.

1.2 DEFINITIONS

- A. *Customer*: A connection from XENIA's Distribution System to an end user. Such end user may be a person, firm, corporate body, or other legal entity.
- B. *Distribution System*: The collection of water mains, hydrants, fittings, and other appurtenances that facilitate the delivery of finished (treated) drinking water to a Customer's connection.

- C. *Effective Date*: The date this Agreement has been recorded in the Office of the Story County Recorder.
- D. *Emergency*: A situation requiring immediate attention and remedial action; an event that interferes with normal utility operations. This does not include growth in customer demand or other existing or continuing conditions. A water main break shall be considered an emergency.
- E. *Infrastructure Design Standards*: The collective body of standards for infrastructure design adopted by AMES, including the Statewide Urban Design and Specifications (SUDAS) and AMES' local amendments thereto specifically pertaining to fire hydrants and critical crossings of water/sewer mains, as those standards may be amended from time to time.
- F. *Property*: All land, or a portion of any parcel of land, to be served by either AMES or XENIA as generally depicted on Exhibit B.
- G. *Public Water Supply Service*: Construction of infrastructure consistent with standards for delivery of potable water for human consumption and beneficial use, including fire protection.
- H. *Purchase Price*: The total amount to be paid to XENIA in return for XENIA's relinquishment of its right to provide public water supply services to that property.
- I. *Transfer Date*: The date XENIA conveys, assigns, and transfers to AMES all of XENIA's right, title, and interest to provide public water supply services to a designated property or territory.

1.3 GEOGRAPHIC AREA CONCERNED

- A. Except where this Agreement indicates otherwise, it is understood that the obligations upon the Parties set forth in this Agreement extend only to activities and operations within the corporate limits of AMES, as those limits may change from time to time.

ARTICLE II: INFRASTRUCTURE AND BILLING

2.1 INFRASTRUCTURE STANDARDS, DESIGN, AND INSTALLATION

- A. For all XENIA Distribution System infrastructure installed within the corporate limits of AMES after the Effective Date of this Agreement:
- i. Such Distribution System infrastructure shall be installed according to the Infrastructure Design Standards as that term is defined in this Agreement. This infrastructure is to be installed and operated to provide fire protection in addition to other beneficial uses of water.
 - ii. XENIA will inspect and collect GPS data for new Distribution System infrastructure, and provide that data to AMES. AMES may inspect installations of new infrastructure at its own cost, and nothing shall prevent AMES from seeking reimbursement of those inspection costs from others not a Party to this Agreement.
 - iii. XENIA shall work with Property owners to develop mutually agreeable timeframes to provide water service to Customers in new developments.
- B. For all XENIA Distribution System infrastructure present within the corporate limits of AMES, whether existing prior to the Effective Date of this Agreement or after it:
- i. Although XENIA shall install all new Distribution System infrastructure in accordance with the fire protection standards as described in Article II, Section 2.1(A) above, it is acknowledged that XENIA is not obligated to upgrade any infrastructure serving existing XENIA Customers which was in existence prior to the Effective Date of this Agreement to meet those standards.
 - ii. XENIA shall install, operate, and maintain the Distribution System so as to prevent significant deterioration of water quality within the Distribution System.
 - iii. To the extent such information is available, XENIA shall provide to AMES information regarding the characteristics of its Distribution System infrastructure related to the service of Properties within the corporate limits of AMES. Information to be provided from XENIA to AMES will include a map showing the location of water mains (with diameters, construction material, and dates of installation), valves, and fire hydrants (with manufacturer, model, and flow rate). XENIA shall provide updated information upon request from AMES,

provided that AMES does not request data regarding the entire Distribution System more than once per year.

- iv. AMES shall be notified when XENIA plans to conduct its periodic operating (flushing) of hydrants, and AMES shall be permitted to send representatives to attend the operating (flushing) to collect hydrant flow data using AMES' equipment for the purpose of planning firefighting response. AMES shall share any data collected with XENIA.
- C. XENIA shall be subject to all AMES right-of-way user policies for construction, maintenance, and site restoration.

2.2 FIRE PROTECTION

- A. In order to assure AMES is able to provide adequate fire protection for certain areas within the XENIA water service territory, XENIA agrees to:
- i. Ensure any infrastructure designed and installed after the Effective Date of this Agreement is designed and installed in a manner to facilitate firefighting needs when installed either:
 - 1. Within the corporate limits of AMES, as those boundaries may change from time to time, or
 - 2. Within areas designated by AMES in AMES' Urban Fringe Map and/or Comprehensive Plan as intended for future annexation to AMES. However, XENIA service installed in AMES' two-mile fringe area to a single dwelling on a parcel in existence as of the Effective Date of this Agreement is not subject to the requirement to be designed and installed in a manner to facilitate firefighting needs.
 - ii. The standard for such shall meet the Infrastructure Design Standards defined in this Agreement.
 - iii. Allow AMES to operate XENIA's hydrants and use XENIA's water to provide fire protection and other emergency services. XENIA shall not charge AMES for water used for fire protection or other emergency services purposes, training excepted. This provision includes the use of XENIA hydrants within the corporate limits of AMES, and if necessary, hydrants located outside the corporate limits of AMES that are used to provide fire protection to facilities AMES serves (Exhibit A). AMES understands that XENIA hydrants located outside the AMES corporate limits generally do not support

urban firefighting flows. Any XENIA hydrants used by AMES for fire protection outside of the AMES corporate limits will therefore only be used to create a water supply for drafting from a tank or pool.

- iv. Perform hydrant maintenance and repairs so as to meet the recommendations of the hydrant manufacturer.
- v. Operate and inspect all fire hydrants annually to ensure that hydrants do not freeze and break. It is understood that “operating” a hydrant includes opening the valve to expel water until any sediment accumulated in the main has been flushed out.
- vi. Tag any out-of-service hydrants, report such hydrants via email or telephone to contact person(s) whom AMES shall designate and complete repairs at the earliest opportunity.

B. AMES agrees to:

- i. Notify XENIA whenever XENIA’s hydrants are being utilized and the purpose of the use. Any use of hydrants for purposes other than fire protection or other emergencies shall only take place with advance approval by XENIA.
- ii. Operate XENIA’s hydrants in a manner intended to prevent the incidence of water hammer in the Distribution System and possible main breaks due to water hammer.
- iii. Calculate the amount of water used from XENIA’s hydrants and send notice of the amount of water used to XENIA so XENIA can properly monitor water lost for this service area.

2.3 WATER MAIN BREAK RESPONSE

- A. XENIA shall have sufficient staffing available to respond to water main breaks at all days and times and shall respond to water line breaks in AMES. XENIA shall arrive on site as soon as reasonably possible after being notified of a potential break.
- B. XENIA shall notify residents who will be affected by the main break either by going door-to-door or utilizing customer service records to notify these Customers.
- C. Should a water main break or other Emergency occur in XENIA’s Distribution System in a manner to necessitate a boil water advisory for

XENIA Customers within AMES, XENIA shall promptly notify contact person(s) whom AMES shall designate regarding the affected area and anticipated duration of the boil order, so AMES may respond to inquiries from residents should they be received by AMES. However, XENIA shall have the primary responsibility to notify and communicate with Customers regarding water main breaks and boil advisories.

2.4 WATER DISTRIBUTION SYSTEM MAINTENANCE

- A. XENIA shall:
 - i. Operate and maintain water Distribution System infrastructure in accordance with water industry standards and the rules and regulations of the Iowa Department of Natural Resources and the U.S. Environmental Protection Agency.
 - ii. Complete timely locates of underground facilities as required by Iowa Code Chapter 480 (“Iowa One Call” program).

2.5 CUSTOMER BILLING

- A. XENIA shall be responsible for metering and billing to its individual Customers for water service. The rates to be charged by XENIA to individual Customers for water provided under this Agreement shall be the same rates XENIA charges Customers in similar classes (residential, commercial, industrial) in other XENIA service areas throughout the state of Iowa.
- B. On behalf of AMES, XENIA shall bill to and collect from each Customer within AMES that Customer’s sanitary sewer fees and storm water utility charges on a monthly basis.
 - i. XENIA shall be responsible for processing Customer requests to start or stop service for its water service and for sanitary sewer and storm water utility services provided by AMES.
 - ii. Upon receipt of a request from a Customer to start or stop service, XENIA shall provide the Customer name, address, date of start/stop, and other pertinent service details to the contact person(s) whom AMES shall designate. These service details shall be provided to AMES from XENIA no more than one business day after request for start or stop of service. When AMES receives a notice to start or stop service from XENIA, AMES shall respond to XENIA with the rates and fees to charge the new Customer, including amount of impervious area related to storm water charges.

- iii. AMES shall inform XENIA of changes to rates and fees, as those may change from time to time.
- iv. XENIA shall remit to AMES monthly the fees and charges collected by XENIA on behalf of AMES, and shall provide AMES accompanying records of AMES' charges billed to each Customer. The records shall include water consumption, sanitary sewer billed amount and the storm sewer billed amount as well as totals for each category.
 - 1. XENIA may estimate consumption or allow for Customer-reported consumption at a given address as a means to calculate monthly bills, provided that XENIA completes a reading obtained by its staff at the same address no less than once every three months.
 - 2. If XENIA provides a Customer with a second water meter for purposes of metering water that does not reach the sanitary sewer (i.e., water consumed for outdoor irrigation, filling swimming pools, or used as a medium for chillers or evaporative condensers), XENIA may exempt water measured through that second meter from sanitary sewer charges.
 - 3. XENIA may not exempt a Customer from AMES sanitary sewer charges in the event of a leak or malfunction of a Customer's plumbing. In the event that a Customer experiences a leak, XENIA may refer that Customer to AMES for AMES to consider authorizing XENIA to issue a billing credit in accordance with AMES' ordinances and policies. AMES will notify XENIA within two business days of its decision regarding a sewer charge credit for billing purposes.
- v. XENIA will reimburse AMES the amount billed for AMES' services. Any adjustments to the reimbursement amount will be done when the adjustments are made. Adjustments would include items such as a deduct for a leak that did not go into the sanitary sewer or a deduct for the amount of AMES' services that were a part of a bill that was ultimately not collected, even after using all measures to collect a bill (disconnecting water service, utilizing a collection agency, etc.). Any adjustment will be made in the quarter that it occurs.
- vi. XENIA may assess, collect, and retain late fees and finance charges calculated against a Customer's entire delinquent balance, and

XENIA may assess, collect, and retain fees for disconnecting and reconnecting service to a delinquent Customer, provided that those fees and/or charges do not exceed the same fees and charges charged to Customers in similar classes (residential, commercial, industrial) in other XENIA service areas throughout the state of Iowa.

- vii. To recover the cost of administering billing on behalf of AMES, XENIA may assess, collect, and retain a fee from each Customer in the amount of \$1.50 per month per Customer. This amount may change from time to time and shall be the same amount charged by XENIA for Customer billing services in other communities, provided the amount charged reflects the actual cost to XENIA to administer billing.
- viii. AMES reserves the right to require XENIA to administer billing for additional services based on water meter readings, or fixed fees determined by AMES, if such services or fees are adopted by AMES for Customers or properties in the future (e.g., if AMES offered City-operated recycling collection in the future, XENIA agrees to conduct billing for that service without an amendment to this Agreement).

ARTICLE III: WATER SERVICE TERRITORY AND TRANSFER

3.1 WATER SERVICE TERRITORY AND EXISTING CUSTOMERS

- A. In regards to that area shown on Exhibit B, it is acknowledged by the parties that:
- i. The area shown in blue on Exhibit B is within the water service territory of AMES.
 - ii. The area shown in orange on Exhibit B is within the water service territory of XENIA. Except for the properties in the area shown in orange that are also in the areas of black hatching or blue cross-hatching, XENIA has the desire to provide potable water service to these properties as they are annexed to AMES.
 - iii. The areas shown in black hatching and labeled as “5 Years” and the areas shown in blue cross-hatching and labeled as “10 Years” on Exhibit B are within the water service territory of XENIA, and XENIA is willing to transfer the exclusive territory rights to these properties to AMES in accordance with Article III Section 3.2 of this Agreement.
 - iv. The star symbols on Exhibit C are individual Customers that were transferred over time to XENIA for water service. In these circumstances, AMES ceded only the service for an individual Customer’s parcel (up to a maximum of three acres) and not the adjacent land. The Property owner is responsible for satisfying the terms of their contract with XENIA as an individual Customer and to provide for buyout or cancellation of their contract per XENIA’s terms; however, the buyout of that adjacent land, not having been ceded to XENIA originally, is not required. XENIA agrees to allow for buyout or cancellation of these contracts in order to remove individual Customers from XENIA service and to then become a customer of AMES. If a Customer refuses to buy out or cancel their contract with XENIA, the Customer may continue to be a XENIA Customer for domestic water service. A detailed list of these Customers is included as Exhibit C.
- B. Upon approval of this Agreement, Exhibit B shall be the agreed upon definition of AMES and XENIA territory boundaries adjacent to AMES. **All other maps and descriptions of territories from prior grants of service territory between AMES and XENIA shall be deemed null and void.**

3.2 PURCHASE OF WATER SERVICE TERRITORY FOR THE PROPERTY REFLECTED IN EXHIBIT B

- A. The Properties indicated in blue cross-hatching on Exhibit B are those that are well-situated to be served by AMES based upon AMES's existing infrastructure as compared to XENIA's existing infrastructure. Therefore, XENIA and AMES agree that with respect only to those Properties indicated in blue cross-hatching on Exhibit B:
- i. The provisions of Article III, Section 3.2 of this Agreement shall be in effect for an initial term of 120 months (10 years) from the Effective Date of this Agreement.
 - ii. At the conclusion of that initial 120-month term, the provisions of Article III, Section 3.2 shall automatically renew for up to five (5) 60-month renewal terms.
 - iii. Either party to this Agreement may elect to cancel an approaching automatic renewal of Article III, Section 3.2 as it pertains to those Properties indicated in blue cross-hatching on Exhibit B by notifying the other party in writing no less than 12 months prior to the end of the initial term or any renewal term. Upon receipt of a timely cancellation notice, the provisions of Article III, Section 3.2 as they pertain to those Properties indicated in blue cross-hatching on Exhibit B shall be void and of no further legal force and effect at the conclusion of the current term, and XENIA shall therefore remain the exclusive water supply provider for any of those Properties where the water service territory has not been transferred prior to the conclusion of the current term.
- B. The Properties indicated in black hatching on Exhibit B are those that are potentially suitable to be served by AMES and are potentially suitable to be served by XENIA. Therefore, XENIA and AMES agree that with respect only to those Properties indicated in black hatching on Exhibit B:
- i. The provisions of Article III, Section 3.2 of this Agreement shall be in effect for an initial term of 60 months (5 years) from the Effective Date of this Agreement.
 - ii. At the conclusion of that initial 60-month term, the provisions of Article III, Section 3.2 shall automatically renew for up to six (6) 60-month renewal terms.
 - iii. Either party to this Agreement may elect to cancel an approaching automatic renewal of Article III, Section 3.2 as it pertains to those Properties indicated in black hatching on Exhibit B by notifying the

other party in writing no less than 12 months prior to the end of the initial term or any renewal term. Upon receipt of a timely cancellation notice, the provisions of Article III, Section 3.2 as they pertain to those Properties indicated in black hatching on Exhibit B shall be void and of no further legal force and effect at the conclusion of the current term, and XENIA shall therefore remain the exclusive water supply provider for any of those Properties where the water service territory has not been transferred prior to the conclusion of the current term.

- C. During the period of time Article III, Section 3.2 is in effect for a given Property shown in black hatching and labeled as “5 Years” or shown in blue cross-hatching and labeled as “10 Years” on Exhibit B (as provided in Article III, Section 3.2(A) or Article III, Section 3.2(B)), XENIA agrees to transfer the water territory rights for that Property at the time the request to transfer the territory rights is made, utilizing the process described below:
- i. Regardless whether the request to transfer service territory comes from a Property owner or from AMES, AMES shall initiate the transfer process by submitting to XENIA a written request consisting of a map and legal description of the specific Property proposed to be released from XENIA to AMES.
 - ii. XENIA shall provide a written confirmation to AMES that shall release, waive, and transfer to AMES XENIA’s right, title, and interest to provide Public Water Supply Services to said Property. This written confirmation shall refer to the map and legal description provided in the initial request by AMES.
 - iii. Unless otherwise mutually agreed by XENIA and AMES, such transfer shall be completed within sixty (60) days of XENIA’s receipt of payment of all sums due XENIA related to such transfer of water service territory rights.
 - iv. By way of this Agreement AMES consents to accept any or all water service territory shown in black hatching and labeled as “5 Years” or shown in blue cross-hatching and labeled as “10 Years” on Exhibit B, provided that the provisions of Article III, Section 3.2 are still in effect for that Property, and subject to completing the appropriate steps for transfer defined in this Agreement and applicable state and federal law.
- D. XENIA and AMES agree that if any of the water service territory shown in black hatching and labeled as “5 Years” or shown in blue cross-hatching and labeled as “10 Years” on Exhibit B is set to be removed from eligibility for AMES service (i.e., by non-renewal of an approaching renewal term described in Article III, Section 3.2(A) or Article III, Section 3.2(B); or in

the final 12-month period of the final renewal term of those Sections), XENIA and AMES will confer regarding the rates and terms for the potential sale of water from AMES to XENIA so XENIA may serve that territory. Nothing in this Agreement binds either AMES or XENIA to agree to a proposal regarding the sale of water.

- E. Nothing in this Agreement is intended to prohibit Property owners from requesting buyouts of other properties outside of those shown in black hatching and labeled as “5 Years” or outside of those shown in blue cross-hatching and labeled as “10 Years” on Exhibit B. If such a request for a buyout and transfer is agreed upon by XENIA and AMES, no amendment to this Agreement is required.

3.3 PURCHASE PRICE CALCULATION FOR WATER TERRITORY RIGHTS BUYOUTS

- A. For the first sixty (60) months following the Effective Date of this Agreement, the Purchase Price for XENIA’s water territory rights to be transferred to AMES shall be \$3,000 per net acre, and no greater amount shall be required. Net acreage shall be defined as gross acreage less any right-of-way easements.
- B. The Purchase Price for months 61 through 120 following the Effective Date of the Agreement shall be adjusted for inflation based on the difference in Consumer Price Index - All Urban Consumers, All Cities, All Items, as published by the Bureau of Labor Statistics, in month 60 compared to month 1. The same Purchase Price adjustment process shall be used for all subsequent 60-month time periods (months 121 through 180, months 181 through 240, etc., and continuing in 60-month increments).
- C. The Purchase Price for the water territory rights shall be rounded to the nearest dollar as shown in the example below.

The following example illustrates the computation of the Purchase Price for months 61 through 120:

CPI published in the 60 th month from the Effective Date of this Agreement	240.501
Less CPI published in the month the Agreement took effect	229.815
Equals index change	10.686
Divided by the CPI published in the month the Agreement took effect	229.815
Equals	0.0464
Result multiplied by 100	4.64%

$\$3,000 \text{ per acre} \times 1.0464 = \$3,139 \text{ per acre payment due for months 61 through 120 following the Effective Date of this Agreement}$

ARTICLE IV: TERM, REMEDIES, AND MISCELLANEOUS PROVISIONS

4.1 TERM OF AGREEMENT

- A. The provisions of Article III, Section 3.2 of this Agreement shall be in effect for thirty-five (35) years from the Effective Date, subject to the renewal provisions contained in Article III, Section 3.2(A) and Article III, Section 3.2(B) of this Agreement. All other provisions of this Agreement, being necessary to provide orderly and efficient potable water service and fire protection to the public, shall remain in effect in perpetuity, unless terminated by mutual agreement of the Parties.

4.2 REMEDIES

- A. The Parties retain all rights accorded them by law and equity to enforce the terms hereof. In the event either Party obtains a court order to enforce any provision of this Agreement that is in dispute, the prevailing Party shall be entitled to reimbursement from the other Party for reasonable attorneys' fees and court costs associated with bringing or defending the suit.

4.3 XENIA AUTHORITY

- A. XENIA warrants and represents that it has the legal right and authority to: (a) provide Public Water Supply Service for the Property reflected in Exhibit B, and (b) release, waive, and transfer its service territory rights as described in this Agreement. Nothing in this Agreement is intended to expand any water service territory rights that are not already XENIA's rights to provide Public Water Supply Services to.

4.4 AMES AUTHORITY

- A. Nothing in this Agreement shall limit the authority granted to AMES under Iowa law to review, approve, deny, or condition any use of land or division of land that is inconsistent with City standards.

4.5 INTENDED BENEFICIARIES

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

4.6 AMENDMENTS

- A. No amendment, change, or modification of any of the terms, provisions, or conditions of this Agreement shall be effective unless made in writing and signed by both parties. It is acknowledged and agreed to by the parties that the United States Department of Agriculture's approval of any amendment will be required before the amendment is effective.

4.7 GOVERNING LAW

- A. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa and in accordance with applicable federal law, including but not limited to 7 U.S.C. § 1926(b).
- B. Effective as of the time of the release and waiver of its water service rights for any portion of the Property reflected in hatching or cross-hatching on Exhibit B or as star symbols on Exhibit C, XENIA waives and relinquishes all rights, privileges, and benefits it has or may have under 7 U.S.C. § 1926(b) relating to that portion of Property reflected in hatching or cross-hatching on Exhibit B or as star symbols on Exhibit C, but XENIA retains all rights, privileges, and benefits it has or may have under 7 U.S.C. § 1926(b) for the water service territory depicted in orange on Exhibit B that is not transferred to AMES and to which AMES subsequently and immediately upon transfer provides Public Water Supply Services to.

4.8 NOTICES

- A. Except where otherwise required to take place in a different format, all notices required by this Agreement shall be given by certified mail, return receipt requested, and shall be deemed given as of the date of such certified mailing.

- i. Notices to AMES shall be to:

City Manager's Office
City of Ames
515 Clark Avenue
Ames, IA 50010

- ii. Notices to XENIA shall be to:

Xenia CEO/General Manager
Xenia Rural Water District
23998 141st Street
P.O. Box 39
Bouton, IA 50039

4.9 CONSTRUCTION

- A. The Parties agree that this Agreement was prepared by the combined efforts of the Parties and their attorneys and to that end, the Agreement shall not be construed against any Party as the drafter of the Agreement.

4.10 BINDING EFFECT

- A. This contract and Agreement is binding on all successors and assigns to XENIA and AMES.

4.11 COMPLETE AGREEMENT AND EFFECTIVE DATE

- A. This Agreement, including Exhibits, constitutes the entire, complete, and final agreement of the Parties to provide Municipal Water Service and to transfer certain service territory rights from XENIA to AMES, and supersedes all prior understandings, undertakings, negotiations, representations, statements, and agreements made by or on behalf of or between the Parties, with the exception of prior bulk water sale terms and agreements. It is further agreed that this Agreement shall not be effective until the fully executed original Agreement has been recorded in the Office of the Story County Recorder.

In witness whereof, the parties, acting under authority of their respective governing bodies, have caused this Agreement to be executed in three (3) counterparts, each of which shall be deemed to be an original.

CITY OF AMES, IOWA:

By: _____
John A. Haila, Mayor

Attest:

Diane R. Voss, City Clerk

Executed _____, 2021

STATE OF IOWA, COUNTY OF STORY, ss:

On this ___ day of _____, 2021, before me, a Notary Public in and for the State of Iowa, personally appeared John A. Haila 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 _____, 2021, and that John A. Haila 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

XENIA RURAL WATER DISTRICT:

By: _____
Chair, Board of Directors

Attest:

Secretary, Board of Directors

Executed _____, 2021

STATE OF IOWA, COUNTY OF STORY, ss:

This instrument was acknowledged before me on _____, 2021,
_____ and _____, as Chair, Board of Directors, and
Secretary, Board of Directors, respectively, of Xenia Rural Water District.

Notary Public in and for the State of Iowa

CONSENT

This Agreement is consented to by the United States Department of Agriculture (USDA), Rural Development, as of the ____ day of _____, 2021. USDA is not a party to this Agreement.

USDA RURAL DEVELOPMENT

By _____

USDA
Form RD 400-4
(Rev. 11-17)

ASSURANCE AGREEMENT
(Under Title VI, Civil Rights Act of 1964)

FORM APPROVED
OMB No. 0575-0018
OMB No. 0570-0062

The

(name of recipient)

(address)

As a condition of receipt of Federal financial assistance, you acknowledge and agree that you must comply (and require any subgrantees, subrecipients, contractors, successors, transferees, and assignees to comply) with applicable provisions of national laws and policies prohibiting discrimination, including but not limited to:

1. Title VI of the Civil Rights Act of 1964, as amended, which prohibits you from discriminating on the basis of race, color, or national origin (42 U.S.C. 2000d et seq.), and 7 CFR Part 15, 7 CFR 1901, Subpart E.

As clarified by Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency (Rural Housing Service, Rural Business and Cooperative Service, and Rural Utilities Service) guidance, national origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [in accordance with USDA RD LEP Guidance for RD Funded (Assisted) Programs]. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. You are encouraged to consider the need for language services for LEP persons served or encountered both in developing your budgets and in conducting your programs and activities. For assistance and information regarding your LEP obligations, go to <http://www.lep.gov>;

2. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating on the basis of sex in education programs or activities (20 U.S.C. 1681 et seq.) [as implemented by 7 CFR Part 15, 7 CFR 1901, Subpart E];

3. The Age Discrimination Act of 1975, as amended, which prohibits you from discriminating on the basis of age (42 U.S.C. 6101 et seq.) [as implemented by 7 CFR Part 15, 7 CFR 1901, Subpart E];

4. Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits you from discriminating on the basis of disability (29 U.S.C. 794) [as implemented by 7 CFR Part 15, 7 CFR Part 15b, 7 CFR 1901, Subpart E];

5. Title VIII of the Civil Rights Act, which prohibits you from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex (42 U.S.C. 3601 et seq.), as implemented by the Department of Housing and Urban Development at 24 CFR part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units, i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators) be designed and constructed with certain accessible features, see 24 CFR Part 100.201; and

6. Titles II and III of the Americans with Disabilities Act, which prohibit you from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189), as implemented by Department of Justice regulations at 28 C.F.R. parts 35 and 36, and 7 CFR Part 15, 7 CFR Part 15b, 7 CFR 1901, Subpart E.

You also acknowledge and agree that you must comply (and require any subgrantees, subrecipients, contractors, successors, transferees, and assignees to comply) with applicable provisions governing USDA Rural Development (Rural Housing Service, Rural Business and Cooperative Service, and Rural Utilities Service) access to records, accounts, documents, information, facilities, and staff:

1. You must cooperate with any compliance review or complaint investigation conducted by USDA Rural Development (Rural Housing Service, Rural Business and Cooperative Service, and Rural Utilities Service).
2. You must give USDA Rural Development (Rural Housing Service, Rural Business and Cooperative Service, and Rural Utilities Service) access to and the right to examine and copy records, accounts, and other documents and sources of information related to the grant and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by Title VI, Title IX, Age, and Section 504 implementing regulations and other applicable laws or program guidance.
3. You must keep such records and submit to the responsible Department official or designee timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official or his designee may determine to be necessary to ascertain whether you have complied or are complying with relevant obligations.
4. You must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.
5. Make available to users, participants, beneficiaries and other interested persons such information regarding the provisions of this agreement and the regulations, and in such manner as the Rural Development or the U.S. Department of Agriculture finds necessary to inform such persons of the protection assured them against discrimination.
6. If, during the past three years, you (the recipient) have been accused of discrimination on the grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status, you must provide a list of all such proceedings, pending or completed, including outcome and copies of settlement agreements.
7. In the event any court or administrative agency makes a finding of discrimination on grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status against you, or you settle a case or matter alleging such discrimination, you must forward a copy of the complaint and findings to USDA Rural Development (Rural Housing Service, Rural Business and Cooperative Service, and Rural Utilities Service), Office of Civil Rights.

The United States has the right to seek judicial enforcement of these obligations.

You also acknowledge and agree that you must comply (and require any subgrantees, subrecipients, contractors, successors, transferees, and assignees to comply) with applicable provisions of program-specific nondiscrimination policy requirements found at CFR Part 15, 7 CFR Part 15 b, 12 CFR Part 202, 7 CFR 1901, Subpart E., DR4300-003, DR4330-0300, DR4330-005.

Period of Obligation

In the case of any service, financial aid, covered employment, equipment, property, or structure provided, leased, or improved with federal assistance extended to the Recipient by Rural Development (Rural Housing Service, Rural Business and Cooperative Service, and Rural Utilities Service), this assurance obligates the Recipient for the period during which federal assistance is extended. In the case of any transfer of such service, financial aid, equipment, property, or structure, this assurance obligates the transferee for the period during which federal assistance is extended. If any personal property is so provided, this assurance obligates the Recipient for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates the Recipient for the period during which the federal assistance is extended to the Recipient by Rural Development (Rural Housing Service, Rural Business and Cooperative Service, and Rural Utilities Service).

Employment Practices

Where a primary objective of the federal assistance is to provide employment or where the Recipient's employment practices affect the delivery of services in programs or activities resulting from federal assistance extended by Rural Development (Rural Housing Service, Rural Business and Cooperative Service, and Rural Utilities Service), the Recipient agrees not to discriminate on the grounds of race, color, national origin, sex, age, or disability, in its employment practices. Such employment practices may include, but are not limited to, recruitment, advertising, hiring, layoff or termination, promotion, demotion, transfer, rates of pay, training and participation in upward mobility programs; or other forms of compensation and use of facilities.

Data Collection

The Recipient agrees to compile and maintain information pertaining to programs or activities developed as a result of the Recipient's receipt of federal assistance from Rural Development (Rural Housing Service, Rural Business and Cooperative Service, and Rural Utilities Service). Such information shall include, but is not limited to the following: (1) the manner in which services are or will be provided and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination; (2) the population eligible to be served by race, color, national origin, sex, age, and disability; (3) data regarding covered employment including use or planned use of bilingual public contact employees serving beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English; (4) the location of existing or proposed facilities connected with the program and related information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any person on the basis of prohibited discrimination; (5) the present or proposed membership by race, color, national origin, sex, age and disability in any planning or advisory body which is an integral part of the program; and (6) any additional written data determined by Rural Development (Rural Housing Service, Rural Business and Cooperative Service, and Rural Utilities Service) to be relevant to the obligation to assure compliance by recipients with laws cited in this assurance agreement.

Under penalty of perjury, the undersigned officials certify that they have read and understand their obligations as herein described, that the information submitted in conjunction with this Document is accurate and complete, and that the recipient is in compliance with the nondiscrimination requirements set out above.

Rights and remedies provided for under this agreement shall be cumulative.

In witness whereof, _____ on this
(name of recipient)
date has caused this agreement to be executed by its duly authorized officers and its seal affixed hereto, or, if a natural person, has hereunto executed this agreement.

(S E A L)

Recipient

Date

Attest: _____

Title

Title