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Prepared by Doug Marek, City of Ames, 515 Clark Avenue, Ames, IA 50011 (515-239-5146)
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(env)

AMES URBAN FRINGE
JOINT AND COOPERATIVE AGREEMENT
[Pursuant to Code of Iowa, Chapter 28E]

This Joint and Cooperative Agreement (hereinafter referred to as the "Agreement") is entered into pursuant to the authority of the *Code of Iowa*, Chapter 28E on this 11 day of July, 2011 by and between Story County, Iowa, (hereinafter referred to as "County"); the City of Ames, Iowa (hereinafter referred to as "Ames"); and the City of Gilbert, Iowa (hereinafter referred to as "Gilbert"). The two cities shall be referred to hereinafter collectively as "Cities", and all three entities collectively as the "Cooperators".

WHEREAS, continued growth and development within the two mile extraterritorial jurisdiction area of Ames requires increased coordination among the Cooperators to achieve better land use management and control of development within the area; and

WHEREAS, the two mile extraterritorial jurisdiction area of Gilbert overlaps into significant portions of the Fringe Area; and

WHEREAS, the councils of Cities have previously asserted the two mile extraterritorial jurisdiction over land divisions available to them pursuant to the *Code of Iowa*, Chapter 354; and

WHEREAS, the long range, comprehensive planning documents of each Cooperator establish goals and policies that promote the rational and efficient development of land in furtherance of the social and economic well-being of its respective citizens; and

WHEREAS, the governing bodies of Cooperators have determined that the best method for achieving such rational and efficient development is through a coordinated program of inter-jurisdictional land use planning; and

WHEREAS, the provisions of the *Code of Iowa*, Chapter 28E were adopted to facilitate such inter-jurisdictional cooperative efforts; and

WHEREAS, the Cooperators have heretofore developed and approved in July of 2006, pursuant to public notice, hearing and decision, a document entitled "Ames Urban Fringe Plan" (hereinafter referred to as "Plan") that sets forth specific understandings, goals and policies to guide and control the future development of the fringe area; and

WHEREAS, the Cooperators now seek to provide a legal mechanism for the implementation of the Plan through the adoption of this Agreement; and

WHEREAS, each Cooperator has determined, and deems, that it is in the best interests of the Cooperator and the most efficient use of the Cooperator's power and authority with respect to land use planning within the Fringe Area, that the County and Cities enter into this Agreement pursuant to the provisions of the *Code of Iowa*, Chapter 28E.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. Compliance with the Plan
The Cooperators agree to observe, follow, and comply with all policies for development in the Fringe Area as set forth in the Plan, and its approved attachments, including the Land Use Classes Map and the Land Use Framework Map, in establishing and amending land use regulations within the territory of the Fringe Area.

Section 2. Reference to Planning Documents
The Plan and its accompanying maps, approved July, 2006, and as subsequently amended, are hereby adopted as the guiding documents for development in the Fringe Area.

Section 3. Protecting Agricultural Operations
It is agreed and understood by the Cooperators that neither this Agreement, nor any policy set forth in the Plan, shall interfere with the agricultural exemption as provided by *Code of Iowa*, Section 335.2.

Section 4. Fringe Area Boundary
The area within which this Agreement shall be known as the Ames Urban Fringe as specifically established by the Plan. It may also be known as the Fringe Area or Planning Area.

Section 5. Administration of the Plan
It is the purpose of this Agreement to provide for an alternative, and more efficient, method for the regulation and processing of development within the Fringe Area. To achieve this purpose, Cities and County agree that each will waive the exercise of some portion of its otherwise existing land use authority in order to facilitate the operation of this Agreement in the manner hereinafter set forth in this Section 5. Where an existing land use authority is not specifically referenced in this Section 5, it shall continue to be normally exercised unless it would render one or more of the following subsections inoperative, in which case it shall be deemed to be waived to the extent necessary to give effect to any subsection hereof. In any instance when a Cooperator seeks to exercise its land use authority, including but not limited to Conceptual Reviews,

Annexations, Change of Zone, and Sketch Plans, in the Fringe Area, it shall notify the other Cooperators within ten (10) days of submittal of an application for such action.

5.1 County Zoning Regulations:

5.1.1 **Story County Land Development Regulations.** Zoning regulations for unincorporated Story County are under the authority of Story County through the adoption of the *Story County Land Development Regulations* and the provisions of *Code of Iowa*, Chapter 335.

5.1.1.1 Nothing in this Agreement shall be construed or applied to limit the County's legislative authority or discretion in adopting or amending its land use regulations.

5.1.1.2 The A-2, Agribusiness Zoning District, defined in the *Story County Land Development Regulations*, is intended and designed to provide for those activities strongly interrelated with agricultural uses and must therefore be located in agricultural areas. While the Plan recognizes that there are industrial and commercial land uses which are dependent on proximity to local agricultural land uses and which are essential to the continued feasibility of farming in the County, it furthermore seeks to strategically locate such uses. With the growth of the agri-business and agri-technology industries, the Cooperators agree that the intensities of uses allowed in the A-2 Zoning District could escalate beyond what each of the Cooperators may have individually envisioned or intended for identified agricultural areas. Further, the Plan creates Planned Industrial and Industrial Reserve areas in which the Cooperators will invest or have invested in infrastructure to accommodate more intense uses. Some uses in the A-2 Zoning District are incompatible with the Agriculture and Farm Services designation in the Plan. Therefore, the County agrees to limit the intensity of uses allowed within the A-2 Zoning District outside of said Planned Industrial and Industrial Reserve areas through Conditional Rezoning Agreements that allow all permitted uses in the A-2 Zoning District except the storage, retail or wholesale marketing, or processing of agricultural products into a value added agricultural product.

5.1.2 **Official Zoning Map of Story County, Iowa.** Amendments to the Official Zoning Map of Story County, Iowa within the Fringe Area shall conform to the goals and policies set forth in the Plan and the Land Use Framework Map.

5.1.2.1. All applications for amending the Official Zoning Map of Story County, Iowa will be processed in accordance with the requirements set forth in the *Story County Land Development Regulations.*

5.1.2.2. County shall not take action on any request to amend the Official Zoning Map of Story County, Iowa, within the Fringe Area when such request is accompanied by a request to amend the Plan.

5.1.2.2.1 Such request to amend the Plan shall be acted upon by all Cooperators as provided for in Section 6.2 of this Agreement prior to action by the County on an amendment to the Official Zoning Map of Story County, Iowa.

5.1.3 **Non-conforming Properties.** Properties zoned a classification inconsistent with this Agreement or the Plan as determined by the Cooperators, as of the date this Agreement is executed, shall not be deemed to be in violation of this Agreement or the Plan, as long as such zoning remains in effect on the property.

5.2 Subdivision Regulations:

5.2.1 **Rural Service and Agricultural Conservation Area Designation.** In areas designated Rural Service and Agricultural Conservation Area in the Plan, Cities agree to waive the exercise of their extra-territorial subdivision authority and application of their respective related design and improvement standards.

5.2.2 **Rural/Urban Transition Area Designation.** In areas designated Rural/Urban Transition Area in the Plan, Cooperators shall apply Subdivision Review Procedures as described in Attachment A. However, Agricultural Subdivisions in the Rural/Urban Transitional Area shall be processed solely by the County.

5.2.3 **Urban Service Areas Designation.** In areas designated Urban Services Area in the Plan, County agrees to waive the exercise of its subdivision authority.

5.3 Annexation:

5.3.1 **Planning Area Boundary.** In consideration of the fact that annexation has the effect of extending the two-mile extraterritorial subdivision plat review area as defined by the Code of Iowa beyond the Planning Area Boundary defined in the Plan, Cooperators understand and agree that Cities shall waive their extra-territorial jurisdiction in such extended area, and that County shall approve pursuant to such waiver and within such extended area, only those subdivisions meeting the definition of Agricultural Subdivisions, which shall be so designated on the face of each Final Plat. Alternatively, a property owner may request the Cooperators to amend the Plan to extend the Planning Area. Such request shall be processed as provided for in Section 6 of this Agreement.

5.3.2 **Annexation in Accordance with Plan.** Cities agree to annex territory in accordance with the goals and policy statements set forth in the Plan.

5.3.3 **Annexation of Property within the Rural Service and Agricultural Conservation Areas.** In areas designated Rural Service and Agricultural Conservation Area in the Plan, Cities shall not review annexation requests until such time the Plan has been amended to designate such property as Urban Service Area and then such annexation processed in accordance with this Agreement.

5.3.4 **Annexation of Property within the Rural/Urban Transition Areas** In areas designated Rural/Urban Transition Area in the Plan, Cities shall not review annexation requests until such time the Plan has been amended to designate such property as Urban Service Area and then such annexation processed in accordance with this Agreement.

5.3.5 **Annexation of Property within the Urban Service Area.** It is the Cooperators' intent that Cities will annex all property within the Urban Service Area. Such annexation will occur only after Cities gives full consideration to comprehensive plan policies, degree of contiguity to the City limits, proximity to existing City services, the cost of extending City services, the fiscal impact and funding sources for providing City services, and the development needs of the City.

5.3.6 **Annexation of Right-of-Way.** When undertaking any annexation of land within the Fringe Area, Cities shall annex the entire width of public rights-of-way located within and immediately adjacent to such lands.

Section 6. Plan Review and Amendment

6.1 Plan Review

At any time during the term of this Agreement, either the Chair of the County Board of Supervisors or a Mayor of either of the Cities may initiate a review of the Plan by providing a notice in writing of the intent to so review.

6.2 Amending the Ames Urban Fringe Plan

6.2.1 The Plan may be amended at any time following a review pursuant to Section 6.1 above, or upon petition by a Property Owner. As the Ames Urban Fringe Plan shall be adopted by each of the Cooperators as a part of their respective comprehensive plans, the procedures of adopting an amendment to the comprehensive plan is unique to each Cooperator, subject to meeting the notification requirements of Code of Iowa. Each Cooperator shall process an amendment to the Plan as an amendment to their comprehensive plan.

6.2.2 Upon the approval of a proposed amendment by the governing body of all Cooperators, notice shall be made to all other cooperators within twenty (20) business days. The amendment shall be effective upon receipt by the other Cooperators of all such notices.

6.2.3 Outside its two-mile extra-territorial zone, Gilbert shall have the right to participate in the approval process only of those Plan amendments where there is reasonable expectation of significant cumulative impact on Gilbert resulting from the amendment. In assessing the potential impact, both the magnitude of possible impact, as well as the geographic proximity to Gilbert of the possible impact, shall be considered.

6.2.4 Cooperators have agreed to an administrative process for the consideration of Plan amendments, which process is set forth on Attachment C, Plan Amendment Process, and incorporated herein for all purposes.

6.2.5 It is understood and agreed that the provisions of Attachment C may be revised from time to time by an affirmative vote of the governing body of each Cooperator.

Section 7. Amendment of Agreement

7.1 This Agreement may be amended at any time by an affirmative vote of the governing body of all Cooperators. Any Cooperator desiring an amendment to this Agreement shall notify the other Cooperators of its desire, and the reasons for the request.

7.2 Such request shall be in writing to the other Cooperators, and shall be considered without unreasonable delay and within no more than ninety (90) days of receipt.

7.3 If the request is agreed to by the other Cooperators, each Cooperator shall prepare and submit to the others a certified resolution confirming the affirmative vote of the Cooperator's governing body.

7.4 The amendment shall take effect ten (10) days following receipt of the last such resolution by the other Cooperators. Amendments shall be filed and recorded as required by Section 14 hereof.

Section 8. Termination of Agreement.

8.1 It is the intent of this Section to provide the sole and exclusive method for termination of the mutual rights and obligations of Cooperators pursuant to this Agreement.

8.2 The governing body of any Cooperator may terminate this Agreement at any time, and for any reason, by approving a resolution of notice of intent to terminate to the other Cooperators, such termination shall not be effective for one hundred twenty (120) days following receipt by the other Cooperators.

8.3 If, at the time of the giving of such notice, a Cooperator is in breach of this Agreement, it is understood and agreed that the actions of Cooperator giving rise to such breach shall be null, void and of no force or effect whatsoever, ab initio, and that for such actions to be effective will have to be repeated following termination of this Agreement pursuant to this Section 8.

8.4 During these one hundred twenty days, Cooperators shall seek to resolve issues, if any, that gave rise to the notice of intent to terminate through direct meetings of governing bodies, mediation, or other means to which all parties shall agree.

8.5 During these one hundred twenty days no waiver of governmental power established by this agreement shall be effective.

8.6 If resolution is not achieved after one hundred twenty days, the governing body of the Cooperator who initiated the notice of intent to terminate the agreement may approve a resolution terminating the agreement effective thirty (30) days following receipt of a certified resolution by the other Cooperators.

Section 9. Effective Period.

This Agreement shall become effective as of the date first set forth above, following acceptance and execution by the parties, and shall be in effect for five (5) years after such date, unless earlier terminated pursuant to Section 8 above. This Agreement shall be automatically renewed for an additional five years unless any Cooperator objects in writing to such renewal no less than one hundred fifty (150) days prior to the termination date.

Section 10. No Separate Legal/Administrative Entity Created.

It is the intention of this Agreement that there be no new or additional legal or administrative entity created by this Agreement, nor that the inherent governmental powers of any Cooperator be affected in any way beyond the terms of this Agreement. It is further agreed and understood by the parties hereto that no financial obligations upon any Cooperator are intended to be created hereby.

Section 11. Entire Agreement.

This Agreement represents the entire understanding between the Cooperators and no Cooperator is relying on any representation or understanding which may have been made by another Cooperator and which is not included in this Agreement.

Section 12. Severability/Invalidity
If any term, provision or condition of this Agreement shall be determined to be invalid by a court of law, such invalidity shall in no way effect the validity of any other term, provision or condition of this Agreement, and the remainder of the Agreement shall survive in full force and effect unless to do so would substantially impair the rights and obligations of the parties to this Agreement or substantially frustrate the attainment of the purposes of this Agreement.

Section 13. Notices.
Notices under this Agreement shall be in writing and delivered to the representative of the party to receive notice (identified below) at the address of the party designated to receive notice for each Cooperator as set forth in this Agreement. The effective date for any notice under this Agreement shall be the date of actual delivery of such notice and not the date of dispatch. The preferred means of notice shall be either actual hand delivery, certified US Mail, return receipt requested with postage prepaid thereon, or by recognized overnight delivery service, such as FedEx or UPS.

Notices shall be delivered to the following persons at each Cooperator:

County: Chairperson, Story County Board of Supervisors
Story County Administration
900 6th Street
Nevada, Iowa 50201

Ames: Mayor, City of Ames
City Hall
515 Clark Avenue
Ames, IA 50010

Gilbert Mayor, City of Gilbert
City Hall
119 Main Street
Gilbert, IA 50105

Section 14. Recordation
This Agreement shall be recorded pursuant to the requirements of *Code of Iowa*, Chapter 28E.

Section 15. Entire Agreement.
This Agreement and attachments attached hereto constitute the entire Agreement, among the Cooperators and supersedes or replaces any prior agreements among the Cooperators relating to its subject matter.

Section 16. No Waiver.
The waiver or acceptance by any Cooperator of a breach or violation of any provisions of this Agreement by another Cooperator shall not operate as, or be construed to be, a waiver of any subsequent breach.

Section 17. No Assignment or Delegation.
Neither this Agreement, nor any right or obligation under it, may be assigned, transferred or delegated in whole or in part to any outside party without the prior written consent of all the Cooperators.

Section 18. Authority and Authorization.
Each party to this Agreement represents and warrants to the other that it has the right, power and authority to enter into and perform its obligations under this Agreement; and that it has taken all requisite actions necessary to approve the execution, delivery and performance of this Agreement, and that this Agreement constitutes a legal, valid and binding obligation upon itself in accordance with the terms of the Agreement.

Section 19. Headings and Captions.
The paragraph headings and captions set forth in this Agreement are for identification purposes only and do not limit or construe the contents of the paragraphs.

Section 20. Counterparts.
The Cooperators agree that this Agreement has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.

[Signature page follows]

STORY COUNTY

Dated this 5 day of July, 2011.

By: Wayne E. Clinton
Wayne Clinton, Chairperson, Board of Supervisors

Attest: LMM
Lucinda Martin, County Auditor

(seal)

CITY OF AMES

Dated this 28th day of June, 2011.

By: Ann Campbell
Ann Campbell, Mayor

Attest: Jill Ripperger
Jill Ripperger, Deputy City Clerk

(seal)

APPROVED AS TO FORM
BY DRMarek
DOUGLAS R. MAREK
CITY ATTORNEY

CITY OF GILBERT

Dated this 11 day of July, 2011.

By: Jonathan C. Popp
Jonathan Popp, Mayor

Attest: Susan Gens
Susan Gens, City Clerk

(seal)

ATTACHMENTS:

Attachment A

Subdivision Review Procedures – Rural/Urban Transition Area Land Use Class

The Cities and County all have established subdivision review and approval and, for the Cities, have extended that review and approval outside its boundaries in accordance with Code of Iowa 354.9 and as amended. In establishing a process for subdivision review in the Rural/Urban Transitional Area Land Use Class, the three jurisdictions acknowledge the primacy of the Cities' interests in regulating development in areas that the Cities may, at some future moment, annex. Therefore, the Cities are tasked with giving primary review and, if appropriate, approval of any proposed division of land, except for Agricultural Subdivisions, which shall remain the sole province of the County.

As noted in Section 5.2.1 of this agreement, Cities agree to waive their subdivision review authority in areas designated Rural Service and Agricultural Conservation Area in the Plan. And as noted in Section 5.2.3 of this agreement, County agrees to waive its subdivision review authority in areas designated Urban Services Area in the Plan.

1. City Sketch Plan application form submitted to the closer City.

2. Sketch Plan review by City and County staff and determination as to whether the proposed division is a Major, Minor, or Agricultural Plat or whether the division can be allowed by Plat of Survey.

3. If a Major Subdivision Plat, follow City's Preliminary Plat process through to City Council decision. Plat is then forwarded to the County for action. Final Plat follows City's Major Final Plat process through to City Council decision. Plat is then forwarded to the County for action.

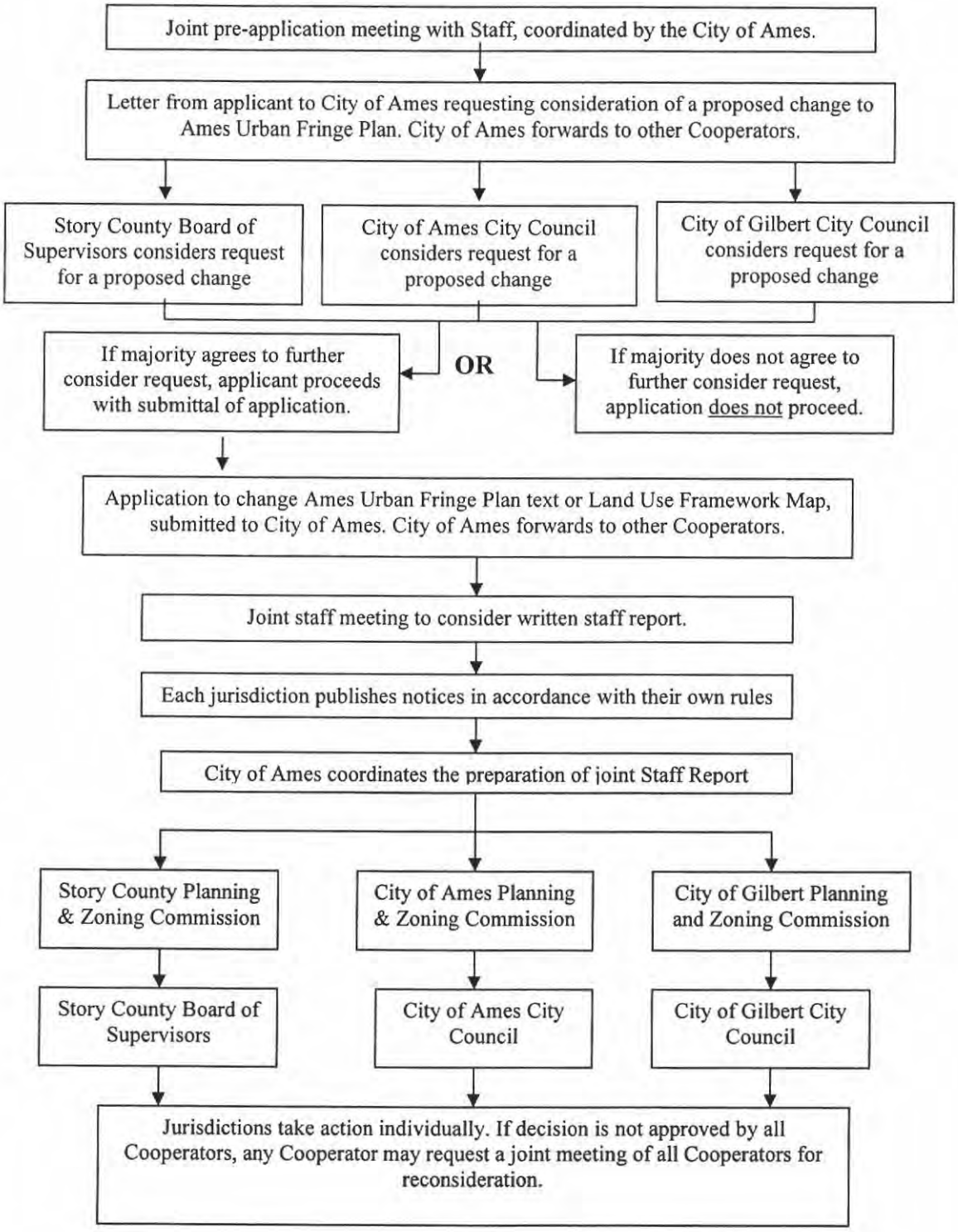
4. If a Minor Subdivision Plat, follow City's Minor Final Plat process through to City Council decision. Plat is then forwarded to the County for action.

5. If an Agricultural Plat, follow County's Agricultural Plat process through to Board of Supervisor's decision. No action by the City is required.

6. If a Plat of Survey, follow City's Plat of Survey process through to City Council decision. Plat is then forwarded to the County for action.

Attachment B

Reserved

Attachment C

Ames Urban Fringe Plan Amendment Procedures