

## Sample: TWO-MILE AGREEMENT

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by and between the City of \_\_\_\_\_, Iowa, a municipal corporation organized and existing under the laws of the State of Iowa ("City"), and Rural Water Association ("Water District"), organized and incorporated as a body politic pursuant to Chapter 357A of the Code of Iowa.

### RECITALS

WHEREAS, Water District is organized under Section 357A of the Code of Iowa (the "Code") by resolutions of the Boards of Supervisors in \_\_\_\_\_ Counties, in which counties it has constructed or shall construct a water system to serve members within such counties (the "Water System").

WHEREAS, Water District desires to expand the Water System to include an area located in \_\_\_\_\_ County and to be known as the \_\_\_\_\_ Project (the "\_\_\_\_\_ Project"), the boundaries of which are located within two miles of the limits of the City existing as of \_\_\_\_\_, \_\_\_\_\_, and as set forth in Exhibit A hereto (the "Two-Mile Area").

WHEREAS, Section 357A.2 of the Code provides that a rural water district incorporated under 357A may not provide services within two miles of the limits of a city unless the city has approved a new water system plan or has not timely objected to a new water system submitted to a city as provided in Section 357A.2 of the Code.

WHEREAS, Water District and the City desire to set forth their agreement as to the boundaries of the \_\_\_\_\_ Project, the City's agreement to allow Water District to provide water service to customers in the \_\_\_\_\_ Project, which includes territory within the Two-Mile Area, and the City's option to purchase that portion of the \_\_\_\_\_ Project lying within the Two-Mile Area in the event the City annexes any area within the Two-Mile Area.

NOW, THEREFORE, the parties hereto agree as follows:

1. Purpose: The purpose of this Agreement is to provide for the boundaries of the \_\_\_\_\_ Project and to provide for the continued operation of the Water System in the event the City exercises its option to purchase a portion of the \_\_\_\_\_ Project located within the Two-Mile Area. The further purpose of this Agreement is to set forth the terms and conditions under which the City may purchase such portion of the \_\_\_\_\_ Project located within the Two-Mile Area.

2. Water District. Water District has and shall have the full unrestricted and exclusive right, subject only to the conditions of this Agreement pertaining to a purchase of one or more areas by the City, to construct, operate, maintain, repair, replace, improve, modify and reconstruct the \_\_\_\_\_ Project. The City shall not sell or provide water to any property served by Water District or participating member of Water District within the boundaries of the \_\_\_\_\_ Project except as specifically provided in this Agreement. As used in this Agreement, "participating member" means an owner or occupant of land within the Water System who has subscribed to and paid the established fee for at least one benefit unit in Water District's Water System pursuant to Chapter 357A of the Code.

3. Construction Standards. The City recognizes that the Water System is not constructed to provide fire protection and will not attempt to impose construction standards upon Water District greater than ASTM standards that apply to water line construction. However, in the event a new subdivision is proposed within the Two-Mile Area, the City may impose standards on Water District to upgrade the Water System within such proposed subdivision to meet fire protection standards at the City's expense.

4. Purchase Option. With regard to any property in the \_\_\_\_\_ Project that is within the Two-Mile Area, the City shall have the option to purchase such property from Water District and Water District shall sell such property subject to the following terms and conditions:

a. The City shall give written notice by certified mail at the address listed in this Agreement to Water District of its intent to exercise this option and shall specify the property to be purchased and annexed by the City which shall be located within the Two-Mile Area defined on Exhibit A (the "Purchase Area").

b. The purchase price shall be based upon the appraised value of the Purchase Area as determined by an MAI certified appraiser acceptable to Water District and the City or by negotiations between Water District and the City, but in either case such purchase price shall not be less than a formula based upon (i) the outstanding principal balance owed by Water District to the USDA Rural Development or the successor lender for the \_\_\_\_\_ Project (ii) divided by the total number of users in the \_\_\_\_\_ Project, including extensions (iii) multiplied by the total number of participating members in the Purchase Area so long as such amount shall not be less than the appraised value described in this subparagraph.

c. Water District shall, within 60 days of receipt of said notice, provide the City an accounting reflecting the purchase price to be paid by the City to Water District on the closing date of purchase.

5. Required Purchase. The City shall purchase a particular area within the Two-Mile Area before the City commences construction of any water system to provide

water for the benefit of such area. Before the City lets bids for such construction, the City shall give prior notice that it will purchase such area from Water District. Such notice shall conform to and constitute the notice described in Section 4 of this Agreement and the purchase shall thereafter be completed in the manner described in Section 4. If the City fails to give the foregoing notice, then Water District may at any time either give the notice provided in Section 4 and consummate the purchase in accordance with Section 4 or enjoin the City from continuing such construction until it has purchased the subject area.

6. District Rights After Closing. From and after the closing date for any Purchase Area:

a. Water District shall have the right to continue to provide water to participating members who were participating members on such closing date until such time as the City provides notice to Water District of its intention to provide water to such participating members. Water District and the City shall jointly provide written notice to the persons who will be affected. The notice shall specify the date upon which Water District shall no longer provide service and upon which City water service shall be exclusively available. From and after the specified date Water District shall not provide service to the designated participating members in the Purchase Area.

b. From and after the notice date, Water District shall not add any new participating members without the City's consent.

c. Water District shall continue to own all right, title and interest to that portion of the Water System within the Purchase Area that Water District uses or in the future shall use to serve members outside the Purchase Area, including in particular, the transmission mains. The City shall, at its sole cost, separate the Purchase Area from the remaining Water System. Water District may maintain, repair, replace, improve and operate its portion of the Water System within the Purchase Area as a part of the Water System but, except as provided in Section (a) herein, Water District shall not provide water to any property or person within the Purchase Area.

7. Emergency Water Agreement. The City and Water District agree that they intend to negotiate an agreement under terms and conditions mutually agreeable to the parties to provide for water purchases each from the other in the event of certain emergency needs for water by either of them; subject, however, to all applicable laws and regulations, and any and all approvals and proceedings necessary including consent, if required, from USDA Rural Development and Water District's lenders.

8. No Waiver. Water District hereby retains any and all of its rights, privileges and benefits possessed and not herein specifically relinquished by the terms and conditions of this Agreement including, but not limited to, the rights, privileges and benefits under 7 U.S.C. § 1926(b) which provides as follows:

(b) **Curtailement or limitation of service prohibited**

The service provided or made available through any such association shall not be curtailed or limited by inclusion of the area served by such association within the boundaries of any municipal corporation or other public body, or by the granting of any private franchise for similar service within such area during the term of such loan; nor shall the happening of any such event be the basis of requiring such association to secure any franchise, license, or permit as a condition to continuing to serve the area served by the association at the time of the occurrence of such event.

9. Termination. This Agreement shall be in full force and effect until the earlier of (a) such time as fully performed by the parties hereto or (b) termination by the mutual agreement of the parties hereto in writing.

10. Notices. Any notices or mailings required by this Agreement shall be sent to the respective parties by personal delivery or certified mail to the following persons at the following addresses:

CITY: City of \_\_\_\_\_  
Attention: City Clerk  
City Hall  
P.O. Box \_\_\_\_  
\_\_\_\_\_, Iowa 50\_\_\_\_

WATER DISTRICT: Rural Water Association  
Attention: Manager

11. USDA Rural Development Approval. This Agreement shall not become effective until the terms and conditions herein contained have been approved by USDA Rural Development.

11. Resolutions and Execution. The City and the District shall become a party hereto upon its execution by their respective chief executive officers after the passage of a resolution or ordinance, as applicable, approving this Agreement and authorizing the execution of the same.

{Signature Page Follows}

Executed the day and year first written above.

**CITY OF \_\_\_\_\_, IOWA**

**ATTEST:**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

**RURAL WATER ASSOCIATION**

**ATTEST:**

\_\_\_\_\_  
Chairperson

\_\_\_\_\_  
Secretary

**CONSENT AND APPROVAL**

This Agreement is consented to and approved by USDA Rural Development as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**USDA Rural Development**

By: \_\_\_\_\_

Dorman A. Otte  
Program Director  
Rural Utilities and Community Facilities