

AGREEMENT REGARDING WATER SERVICE

THIS AGREEMENT is made and entered into this day of _____ 2023 ("Effective Date"), by and between the CITY OF ANKENY, IOWA (the "City") and BERWICK WATER ASSOCIATION ("Berwick").

RECITALS:

WHEREAS, Berwick is a rural water district organized and existing under the provisions of Chapter 504A of the Iowa Code; and

WHEREAS, the City is a municipal corporation organized and existing under the laws of the State of Iowa; and

WHEREAS, the City has expanded its corporate boundaries into Berwick's water service boundary. The area of expansion by the City is approximately 244 acres and a diagram of said area is attached hereto, marked as Exhibit "A-1" and "A-2", and incorporated herein by this reference; and

WHEREAS, the City and Berwick each agree it is in each party's respective interest to reach an agreement concerning the reasonable and affordable provision of water service throughout the area which Berwick contends is its water service boundary; and

WHEREAS, the parties desire to set forth in this Agreement an understanding concerning future annexation by City, and do hereby agree to the following:

1. Western Boundary of Berwick Water Association. The area referenced above and marked as Exhibit "A-1" and "A-2" is approximately 244 acres annexed by the City. The City agrees to pay \$285.00 per acre (244 acres x \$285.00 equals \$69,540) for the right to provide water service to the green hatched area as set out in Exhibit "A-1" and "A-2" to this Agreement. This payment is a good faith negotiation between the parties.

The agreed-upon amount (\$69,540) shall be made by City to Berwick within fifteen (15) days of the execution of this Agreement. (See Paragraph 9 of this Agreement.)

2. Retention of Facilities Owned by the Water District. The parties agree that Berwick shall retain ownership and control over the facilities (water lines, "pipes in the ground"), now owned by Berwick which lie in the recently annexed territory and are used by Berwick to provide service to their association members. (See green hatched area of Exhibit "A-1" and "A-2" attached hereto.)
3. Retention of Facilities for Future Annexation. The City does hereby agree in the event of any future annexation of territory by the City into the area which Berwick contends is within its water service boundary, that Berwick will continue to own and control its facilities (water lines, "pipes in the ground") in order to allow Berwick to continue to provide services to their association members who are members as of the date of purchase of the area within the

water service boundary. Berwick agrees it shall not create new services or add new association members to properties that have an annexation petition on file with the City or have been formally annexed by the City.

4. Provision of Service. All members of the Berwick Water Association at the time of annexation of an area will be entitled to continue to receive water from their association (Berwick Water Association) and the City will not solicit any association member or place restrictions upon those members in order to force them to accept water service from the City. However, if any association member or user of Berwick Water services solicits the City requesting that they receive water service from the City of Ankeny, then and in that event, the City may provide water service to that individual or entity (i.e. corporation, limited liability company, partnership). Berwick will cooperate with the change in service from itself to the City; however, the cost of said transfer shall be made at no expense to Berwick. Berwick shall not create new services or add new association members to properties that have either an annexation petition on file with the City or have been formally annexed by the City.
5. Future Annexation and Purchase Price Calculation. In the event of any future annexation by the City beyond the area described in Exhibit "A-1" and "A-2" attached hereto into the area within Berwick's water service boundary, the City agrees to the Purchase Price of \$285.00 per acre to Berwick for Berwick's water territory rights to be transferred to City. This amount shall increase by 1% for each year thereafter for five years following the Effective Date of this Agreement, and no greater amount shall be required. The Purchase Price after five years from the Effective Date is subject to negotiation by the parties. The Purchase Price shall be rounded to the nearest dollar as shown in the example below.

Year 1: \$288 per acre;

Year 2: \$291 per acre;

Year 3: \$294 per acre;

Year 4: \$297 per acre; and

Year 5: \$300 per acre

6. Damages. In the event that either party damages those facilities owned by the other (service mains, service lines, water lines, "pipes in the ground"), the damaged party shall be reimbursed for the reasonable cost of replacement and repair of their facilities, including the cost of water lost as a result of a break in a water line. In the event of such damage, under this Agreement, the damaged party will have thirty (30) days following the date of said damage to notify the other party and provide documentation, in writing, establishing those damages sustained. The party being notified shall have fifteen (15) days to respond to the demand for damages. In the event that there is no response to the demand for compensation for damages sustained, then the damaged party shall be entitled to exercise all rights and remedies available at law or in equity including, but not limited to, the right to obtain damages, restitution, specific performance and injunctive relief. All rights and remedies provided for herein or which are otherwise available at law or in equity shall be distinct,

separate and cumulative and may be exercised concurrently, independently or successively in any order whatsoever, and as often as the occasion thereof arises.

7. Termination. This Agreement shall be in full force and effect until the earlier of (i) such time as fully performed by the parties hereto; or (ii) termination by mutual agreement of the parties hereto in writing.
8. Notices. All notices required by this Agreement shall be in writing and deemed given when personally delivered or deposited in the United States mail, postage prepaid, sent certified or registered, addressed as follows:

If to the City, to:

City of Ankeny
Attn: City Clerk
410 West 1st Street
Ankeny, Iowa 50021

If to Berwick, to:

Berwick Water Association
P.O. Box 187
Berwick, Iowa 50032

Or to such other address or person as hereafter designated in writing by the applicable party in the manner provided in this paragraph for the giving of notices.

9. Resolutions and Execution. The City and Berwick shall become parties hereto after the passage of a resolution by the City approving and authorizing the execution of the same.
10. Entire Agreement. This Agreement and all exhibits attached hereto constitute the entire agreement of the parties hereto with respect to the subject matters hereof and supersedes all negotiations, preliminary agreements and all prior and contemporaneous discussions and understandings of the parties hereto in connection with the subject matters hereof.
11. Authority to Act. Each party does hereby acknowledge that it has the authority to enter into this Agreement and that said Agreement shall be binding upon both parties.
12. Indemnification. To the extent allowed by law, each party, their contractors or subcontractors, shall indemnify and hold harmless the other party (its agents and employees) from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees arising out of or resulting from the negligent acts or omissions of the other party (or its contractors, subcontractors or anyone directly or indirectly employed by them or anyone for whose acts they may be liable) and related to the obligations under this Agreement. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to party or person described in this agreement.

13. No Precedential Effect. The parties agree the decision to enter into this Agreement wherein Berwick receives payment for damages from the City for the expansion, by the City, of its corporate boundaries into Berwick's water service boundary shall have no precedential effect. Should a court of competent jurisdiction determine, as a matter of law, that there exists no such obligation to Berwick that court decision shall control. This paragraph shall be applied prospectively and in no event will Berwick be required to refund any damage payments received from the City under the terms of this Agreement which were paid prior to a determination by a court competent jurisdiction that such payments are not required.
14. Severability. In the event any provision of this Agreement is held invalid, illegal or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable. In the event any provision of this Agreement is held to be unenforceable as written, but enforceable if modified, then such provision shall be deemed to be amended to the extent it shall be necessary for such provision to be enforceable and it shall be enforced to that extent.

Dated this ____ day of _____, 2023.

CITY OF ANKENY

By: _____
Mark E. Holm, Mayor

ATTEST:

By: _____
Michelle Yuska, City Clerk

STATE OF IOWA, COUNTY OF POLK ss:

On this ____ day of _____, 2023, before me, the undersigned, a notary public in and for the State of Iowa, personally appeared Mark E. Holm and Michelle Yuska, to me personally known, and who being duly sworn, did say that they are the Mayor and City Clerk respectively of the City of Ankeny, Iowa; that the seal affixed to the foregoing instruction is the Corporate Seal of the corporation, and that the instrument was signed and sealed on behalf of the municipal corporation, by authority of its City Council, as contained in Resolution No. _____ adopted by the City Council of the City of Ankeny, Iowa, on the ____ day of _____, 2023, and that Mark E. Holm and Michelle Yuska 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

BERWICK WATER ASSOCIATION

By: Ted J. Griffieon
Name: Ted J. Griffieon
Title: President

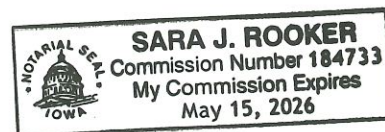
ATTEST:

By: R. Bradley Skinner
Name: R. Bradley Skinner
Title: Attorney

STATE OF IOWA, COUNTY OF POLK ss:

On this 3rd day of April, 2023, before me, the undersigned, a notary public in and for the State of Iowa, personally appeared Ted J. Griffieon and R. Bradley Skinner to me personally known, and who being duly sworn, did say that they are the President and Attorney, respectively, of Berwick Water Association; that the seal affixed to the foregoing instruction is the Corporate Seal of the corporation, and that the instrument was signed and sealed on behalf of said corporation, by authority of its Board of Directors; and that Ted J. Griffieon and R. Bradley Skinner as such officer, 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.

Sara J. Rooker
Notary Public in and for the State of Iowa



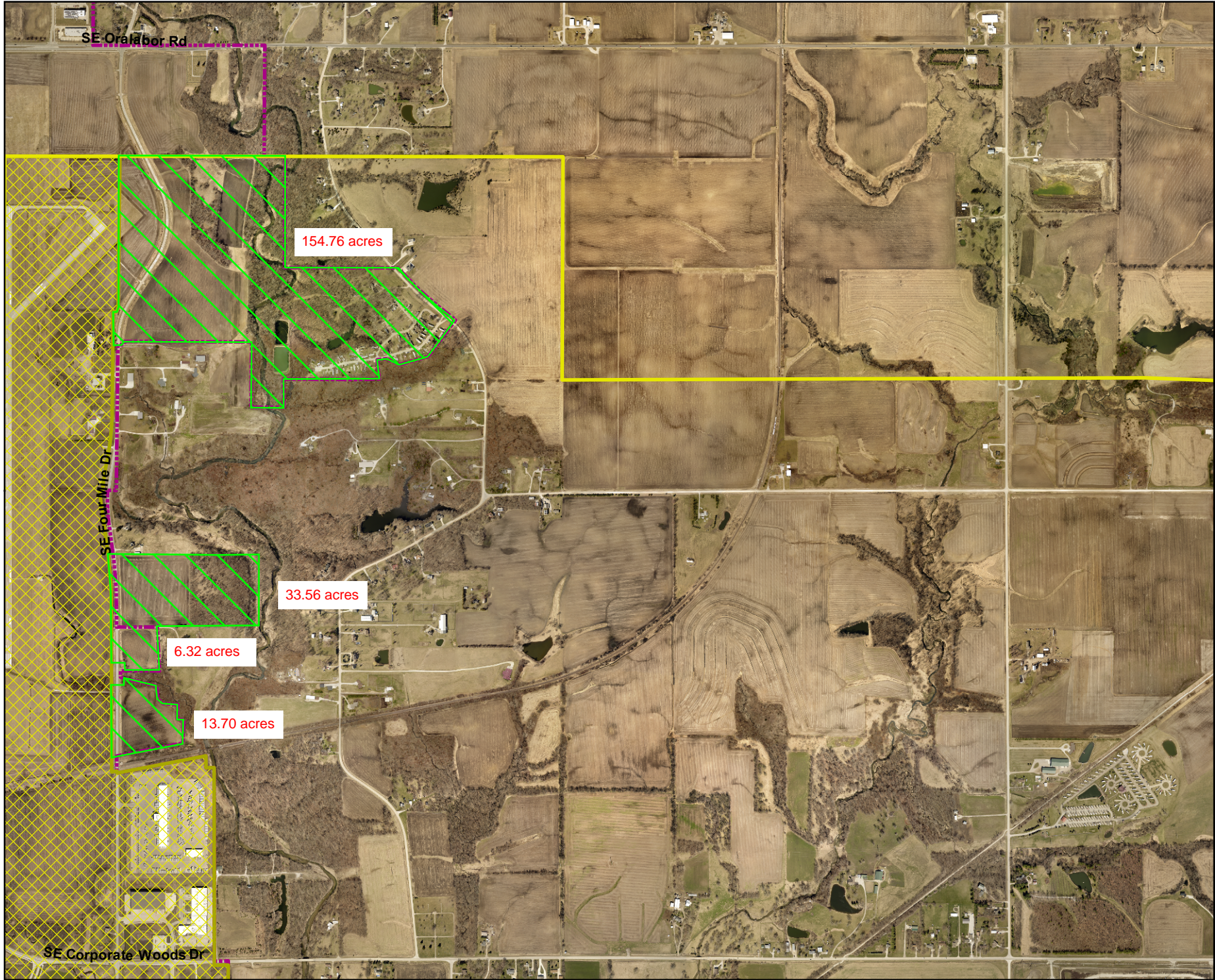
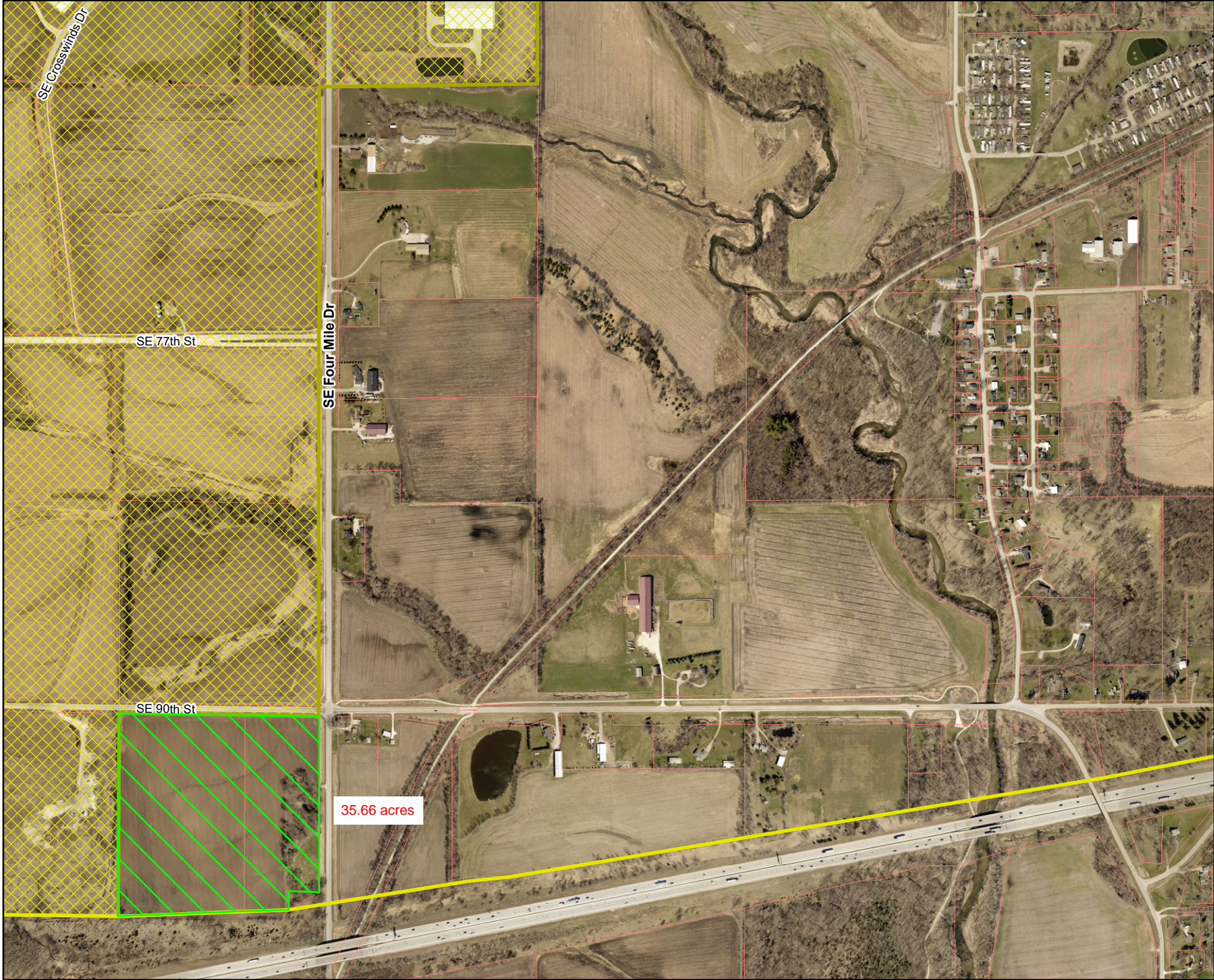


Exhibit A-1
Map is for Locational Purposes Only.



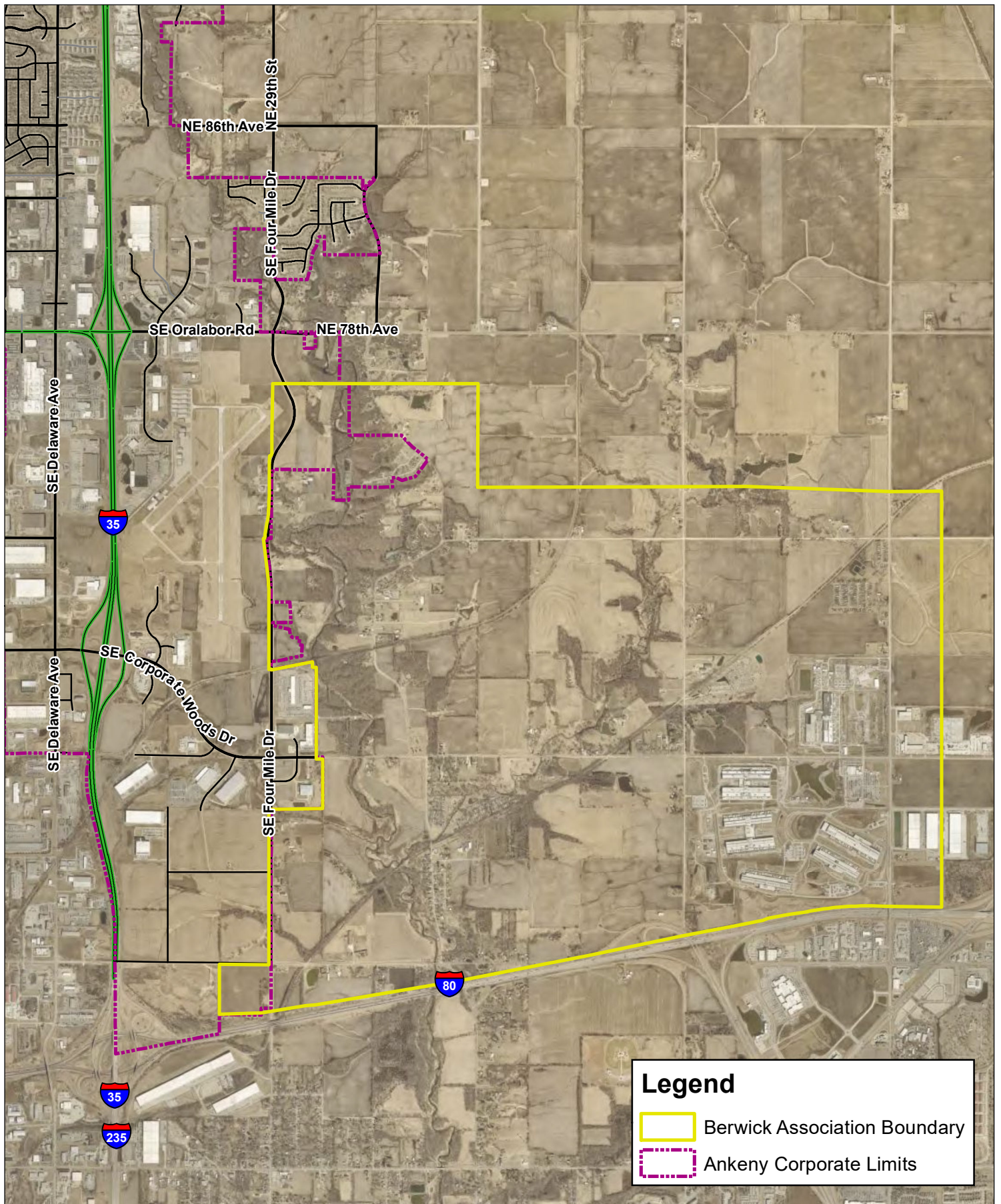


Exhibit B