

# FRANK SMITH LAW OFFICE

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Frank Murray Smith  
*Attorney and Counselor at Law*

August 25, 2016

Tom Hockensmith  
Chairman of the Board  
Board of Supervisors  
111 Court Avenue, Room #300  
Des Moines, IA 50309

Robert Brownell  
Board of Supervisors  
County Administration Building  
111 Court Avenue, Room #300  
Des Moines, IA 50309

Angela Connolly  
Board of Supervisors  
County Administration Building  
111 Court Avenue, Room #300  
Des Moines, IA 50309

Steve Van Oort  
Board of Supervisors  
County Administration Building  
111 Court Avenue, Room #300  
Des Moines, IA 50309

John Mauro  
Board of Supervisors  
County Administration Building  
111 Court Avenue, Room #300  
Des Moines, IA 50309

Ted Griffieon  
Trustee of Delaware Township  
6561 NE 46<sup>th</sup> Street  
Altoona, IA 50009

Debbie S. Wise  
Trustee of Delaware Township  
3960 NE 46<sup>th</sup> Street  
Des Moines, IA 50317

Kim Overton  
Clerk of Delaware Township  
5069 NE 29<sup>th</sup> Street  
Des Moines, IA 50317

William Pearce  
Trustee of Delaware Township  
6868 NE Berwick Drive  
Ankeny, IA 50021

Jamie Fitzgerald  
Polk County Auditor  
County Administrative Building  
111 Court Avenue, Room #300  
Des Moines, IA 50309

Berwick Water Association  
Attn: Richard Moore  
Registered Agent  
P.O. Box 187  
Berwick, IA 50032-0187

Iowa Communications Network  
Attn: Doug Ebelsheiser  
Grimes State Office Building  
400 E. 14<sup>th</sup> Street  
Des Moines, IA 50319

Mediacom Communication Corp.  
c/o CT Corporation System  
Registered Agent  
400 E. Court Avenue, Ste. 110  
Des Moines, IA 50309

Bondurant City Council  
c/o City Clerk  
200 2<sup>nd</sup> Street NE  
P.O. Box 37  
Bondurant, IA 50035

Des Moines City Council  
c/o City Clerk  
400 E. Court Avenue  
Des Moines, IA 50309

Des Moines Area M.P.O.  
420 Watson Powell Jr. Parkway, Suite 200  
Des Moines, IA 50309

Des Moines Metropolitan  
Wastewater Reclamation Authority  
3000 Vandalia Road  
Des Moines, IA 50317

Ankeny City Council  
c/o City Clerk  
410 W. 1<sup>st</sup> Street  
Ankeny, IA 50023

CenturyLink, Inc.  
c/o CT Corporation System  
Registered Agent  
400 E. Court Avenue, Ste. 110  
Des Moines, IA 50309

MidAmerican Energy Company  
Attn: Paul J. Leighton  
Registered Agent  
4299 NW Urbandale Drive  
Urbandale, IA 50322

Unite Private Networks, LLC  
Attn: National Corporate Research, Ltd.  
Registered Agent  
400 Locust Street, Suite 400  
Des Moines, IA 50309

Zayo Group, LLC  
c/o CT Corporation System  
Registered Agent  
400 E. Court Avenue, Ste. 110  
Des Moines, IA 50309

Waste Management of Iowa, Inc.  
c/o CT Corporation System  
Registered Agent  
400 E. Court Avenue, Ste. 110  
Des Moines, IA 50309

Des Moines Water Works  
2201 George Flagg Parkway  
Des Moines, IA 50321-9943

Metro Waste Authority  
Attn: Des Moines Metropolitan Area Solid  
Waste Agency, Registered Agent  
300 E. Locust St., Suite 100  
Des Moines, IA 50309-1864

Re: Notice re Proposed Annexation of Unincorporated Territory in Polk County into the City of Altoona, Iowa and of Public Hearing

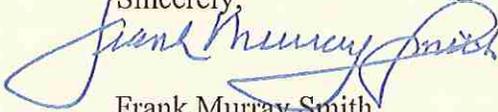
Dear All:

I represent the City of Altoona, Iowa, in regard to the above referenced matter. Pursuant to Iowa Code §368.7 you are hereby notified that the City of Altoona will conduct a public hearing regarding the proposed annexation of territory to the City of Altoona as hereinafter described. Said public hearing will be held at 6:30 p.m. on September 19, 2016, at the Altoona City Hall, 407 8<sup>th</sup> Street SE, Altoona, IA 50009.

Enclosed are copies of the following documents regarding the proposed annexation, to wit:

1. Copies of the Voluntary Annexation Petitions to the City of Altoona received from each of the consenting property owners. These documents are marked Exhibit 1.
2. A map of the annexation territory showing its general relationship to Altoona and the surrounding communities. This document is marked as Exhibit 2.
3. A more localized map showing the proposed annexation territory and identifying the consenting property owners in purple shading and the non-consenting property owners in light green shading. This document is marked as Exhibit 3.
4. The combined legal descriptions of the properties owned by both the consenting and the non-consenting property owners in the territory proposed for annexation. This document is marked as Exhibit 4.
5. Notice of Public Hearing marked Exhibit 5.

Should you have any questions regarding any of the foregoing you are advised to consult with your attorney. Take notice and govern your actions as you deem appropriate in light of the foregoing information. Thank you for your attention to this matter.

Sincerely,  
  
Frank Murray Smith

FMS\abz  
Enclosures

*All sent by certified mail on August 25, 2016.*

ANNEXATION PETITION  
TO THE CITY COUNCIL  
ALTOONA, IOWA

MAYOR AND COUNCIL MEMBERS:

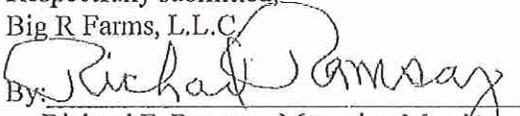
We, the undersigned, hereby make application to the City of Altoona, Iowa, pursuant to Code Section 368.7 of the 2015 CODE OF IOWA for annexation by voluntary petition the following described real estate to-wit:

The Northwest Quarter (NW1/4) and the North 36 acres of the West One-Half of the Southwest Quarter (W1/2SW1/4) of Section 10, Township 79 North, Range 23 West of the 5th P.M., Polk County, Iowa, except established highways, and except: Beginning at a point 745.0 feet North 0 degrees 00 minutes and 33.0 feet North 89 degrees 18 minutes East of the West 1/4 corner of said Section 10; thence North 89 degrees 18 minutes East 218.3 feet; thence North 0 degrees 00 minutes 317.0 feet; thence South 89 degrees 18 minutes West, 218.3 feet; thence South 0 degrees 00 minutes along a line parallel with and 33.0 feet East of the West line of the Northwest Quarter (NW1/4) of said Section 10, 317.0 feet to the point of beginning.

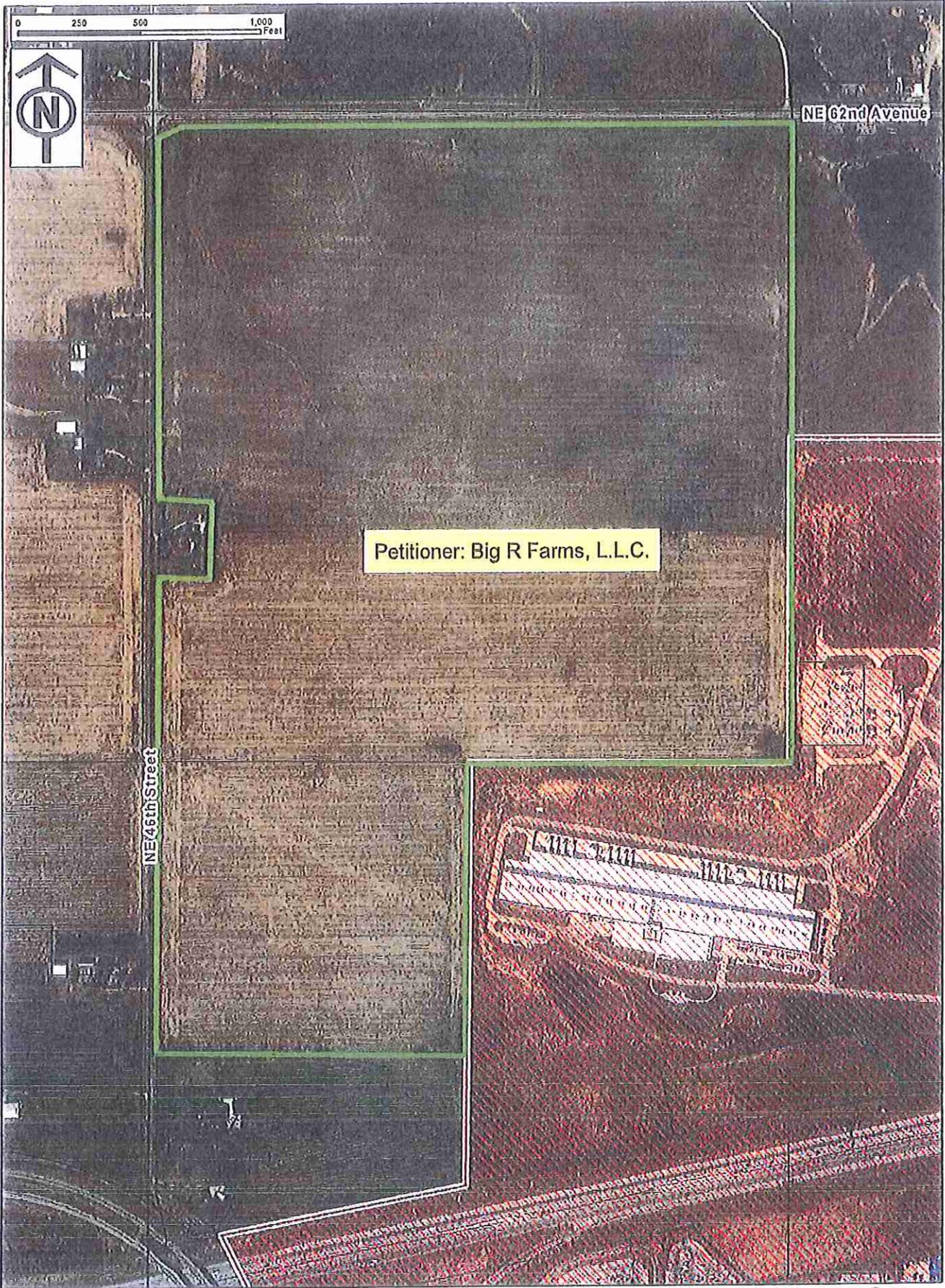
The annexation also includes any and all county road right-of-way to the centerline of the abutting roads, if any.

We hereby respectfully request and solicit the Council of the City of Altoona, Iowa to adopt a resolution assenting to the annexation of the above-described real estate to the City of Altoona, Iowa.

Respectfully submitted,  
Big R Farms, L.L.C.

By:   
Richard E. Ramsay, Managing Member

June 27, 2016  
Date Signed



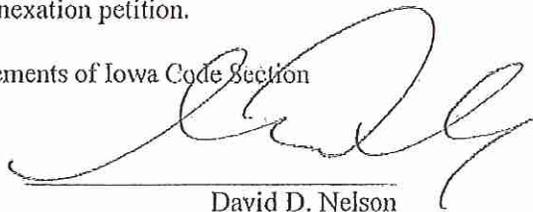
Petitioner: Big R Farms, L.L.C.

AFFIDAVIT

STATE OF IOWA, COUNTY OF POLK, ss:

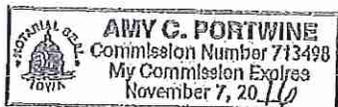
I, David D. Nelson, being first duly sworn on oath, depose and state as follows:

1. I am a licensed attorney in the State of Iowa and I represent Big R. Farms, LLC, an Iowa limited liability company.
2. Big R. Farms, LLC is the record titleholder of the real estate described on Exhibit "A" attached hereto, and has signed a petition to annex said real estate to the City of Altoona, Iowa.
3. On June 2, 2016, at a special meeting of all of the members of Big R. Farms, LLC, said members appointed Richard E. Ramsay, as manager, to execute any and all documents related to said real estate, including the annexation petition.
4. This affidavit is given pursuant to the requirements of Iowa Code Section 368.7.2(1)(a)(2) of the Code of Iowa.



David D. Nelson

SUBSCRIBED AND SWORN TO before me this 5<sup>th</sup> day of July, 2016.



Signature of Notary Public

The Northwest Quarter (NW1/4) and the North 36 acres of the West One-Half of the Southwest Quarter (W1/2SW1/4) of Section 10, Township 79 North, Range 23 West of the 5th P.M., Polk County, Iowa, except established highways, and except; Beginning at a point 745.0 feet North 0 degrees 00 minutes and 33.0 feet North 89 degrees 18 minutes East of the West 1/4 corner of said Section 10; thence North 89 degrees 18 minutes East 218.3 feet; thence North 0 degrees 00 minutes 317.0 feet; thence South 89 degrees 18 minutes West, 218.3 feet; thence South 0 degrees 00 minutes along a line parallel with and 33.0 feet East of the West line of the Northwest Quarter (NW1/4) of said Section 10, 317.0 feet to the point of beginning.

ANNEXATION PETITION  
TO THE CITY COUNCIL  
ALTOONA, IOWA

MAYOR AND COUNCIL MEMBERS:

We, the undersigned, hereby make application to the City of Altoona, Iowa, pursuant to Code Section 368.7 of the 2015 CODE OF IOWA for annexation by voluntary petition the following described real estate to-wit:

25 FOOT DRIVEWAY STRIP NORTH OF AND ADJACENT TO INTERSTATE 80 IN THE SOUTHWEST ¼ OF THE SOUTHWEST ¼ IN SECTION 10, TOWNSHIP 79 NORTH, RANGE 23, WEST OF THE 5TH P.M., POLK COUNTY, IOWA, EXCEPT BEGINNING 658.5 FEET NORTH AND 76.1 FEET EAST OF THE SOUTHWEST CORNER; THENCE NORTHEASTERLY 133.1 FEET; THENCE NORTHERLY 30.6 FEET; THENCE SOUTHWESTERLY 115.5 FEET; THENCE SOUTHEASTERLY 25 FEET TO THE POINT OF BEGINNING.

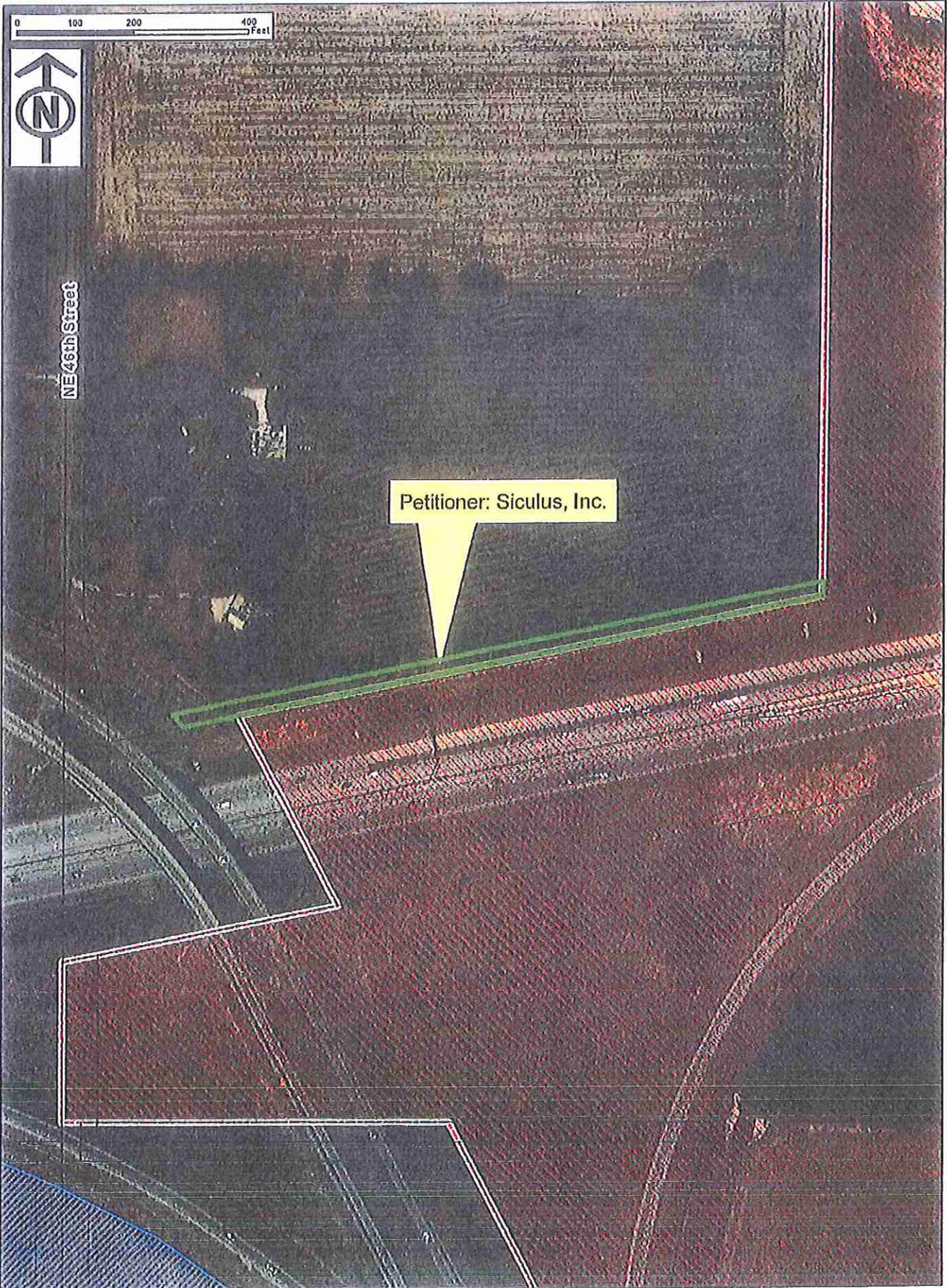
The annexation also includes any and all county road right-of-way to the centerline of the abutting roads, if any.

We hereby respectfully request and solicit the Council of the City of Altoona, Iowa to adopt a resolution assenting to the annexation of the above-described real estate to the City of Altoona, Iowa.

Respectfully submitted,  
Siculus, Inc.

By:   
B.J. Miller, Attorney For Siculus, Inc.

6/29/16  
Date Signed



AFFIDAVIT

STATE OF IOWA, COUNTY OF POLK, ss:

I, B.J. Miller, being first duly sworn on oath, depose and state as follows:

1. I am a licensed attorney in the State of Iowa and in the course of my practice I represent Siculus, Inc., a Delaware corporation.

2. Siculus, Inc. is the record titleholder of the real estate described on Exhibit "A" attached hereto, and has signed a petition to annex said real estate to the City of Altoona, Iowa.

3. As attorney for Siculus, Inc., I was authorized to sign the annexation petition dated June 29, 2016 and filed that day with the City of Altoona.

4. This affidavit is given pursuant to the requirements of Iowa Code Section 368.7.2(1)(a)(2) of the Code of Iowa.

  
\_\_\_\_\_  
B.J. Miller

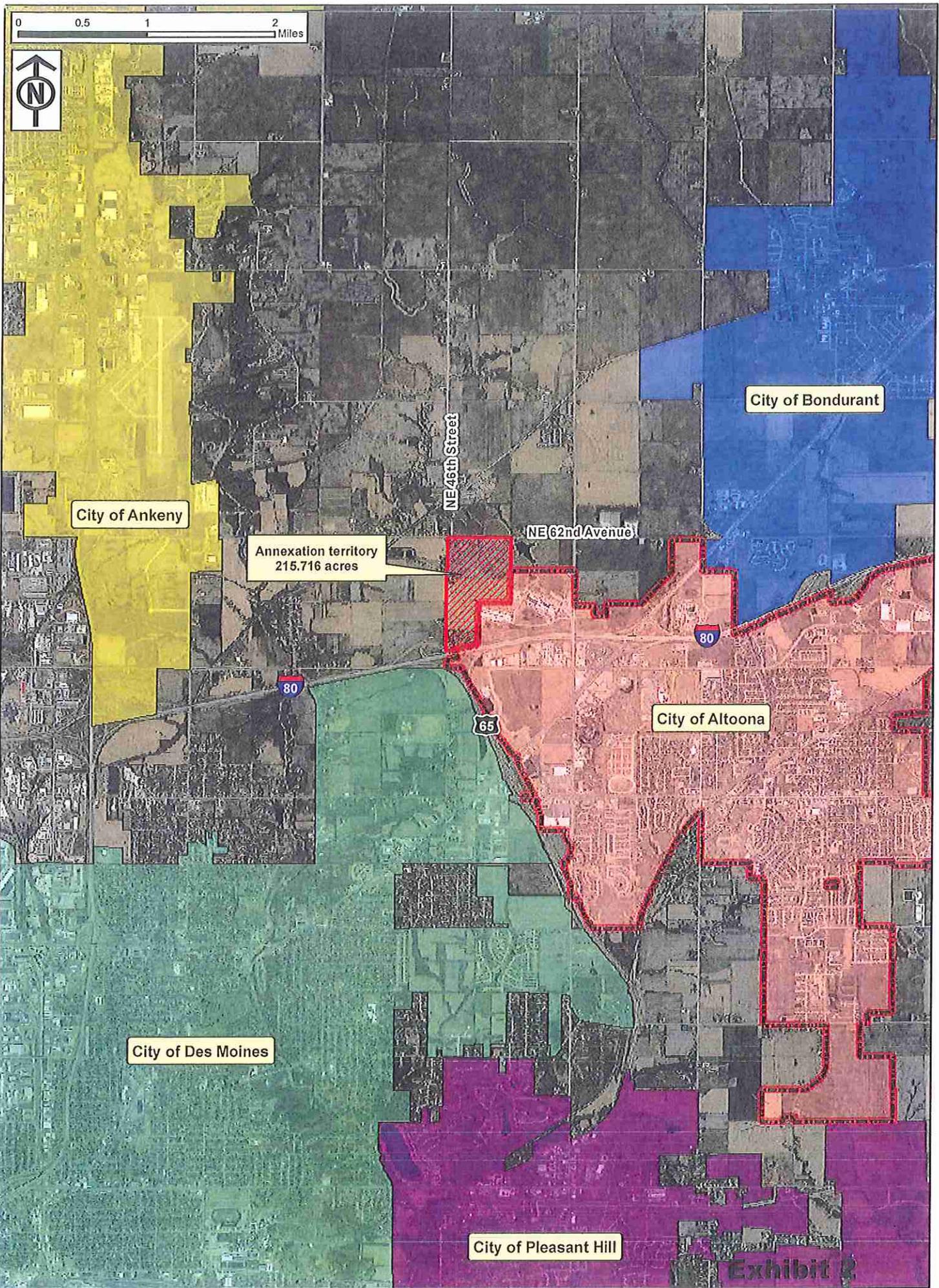
SUBSCRIBED AND SWORN TO before me this 11<sup>th</sup> day of August, 2016.



  
\_\_\_\_\_  
Signature of Notary Public

EXHIBIT A

25 FOOT DRIVEWAY STRIP NORTH OF AND ADJACENT TO INTERSTATE 80 IN THE SOUTHWEST ¼ OF THE SOUTHWEST ¼ IN SECTION 10, TOWNSHIP 79 NORTH, RANGE 23, WEST OF THE 5TH P.M., POLK COUNTY, IOWA, EXCEPT BEGINNING 658.5 FEET NORTH AND 76.1 FEET EAST OF THE SOUTHWEST CORNER; THENCE NORTHEASTERLY 133.1 FEET; THENCE NORTHERLY 30.6 FEET; THENCE SOUTHWESTERLY 115.5 FEET; THENCE SOUTHEASTERLY 25 FEET TO THE POINT OF BEGINNING.



0 0.5 1 2 Miles



City of Ankeny

City of Bondurant

Annexation territory  
215.716 acres

NE 46th Street

NE 62nd Avenue

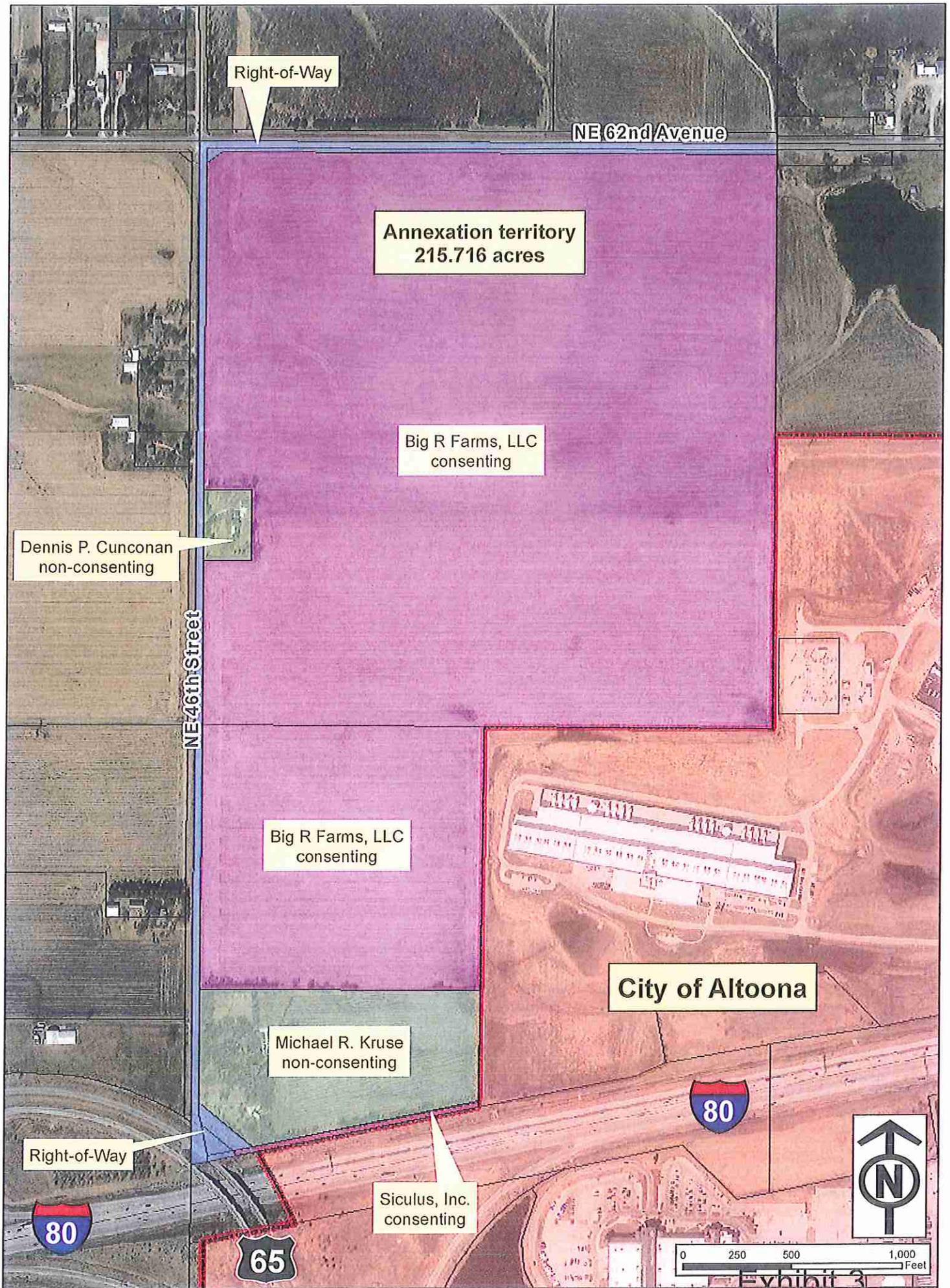


City of Altoona

City of Des Moines

City of Pleasant Hill

Exhibit 2



Right-of-Way

NE 62nd Avenue

Annexation territory  
215.716 acres

Big R Farms, LLC  
consenting

Dennis P. Cunconan  
non-consenting

NE 46th Street

Big R Farms, LLC  
consenting

Michael R. Kruse  
non-consenting

City of Altoona

Right-of-Way

Siculus, Inc.  
consenting

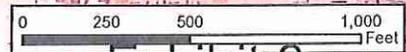


Exhibit 3

**Combined Annexation Legal Descriptions:**

***Consenting***

***Owners:***

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**Big R Farms, L.L.C.** The Northwest Quarter (NW1/4) and the North 36 acres of the West One-Half of the Southwest Quarter (W1/2SW1/4) of Section 10, Township 79 North, Range 23 West of the 5<sup>th</sup> P.M., Polk County, Iowa, except established highways, and except: Beginning at a point 745.0 feet North 0 degrees 00 minutes and 33.0 feet North 89 degrees 18 minutes East of the West 1/4 corner of said Section 10; thence North 89 degrees 18 minutes East 218.3 feet; thence North 0 degrees 00 minutes 317.0 feet; thence South 89 degrees 18 minutes West, 218.3 feet; thence South 0 degrees 00 minutes along a line parallel with and 33.0 feet East of the West line of the Northwest Quarter (NW1/4) of said Section 10, 317.0 feet to the point of beginning.

DP#’s:  
190/00168-002-000  
190/00173-000-000

The annexation also includes any and all county road right-of-way to the centerline of the abutting roads, if any.

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**Siculus, Inc.** 25 foot driveway strip North of and adjacent to Interstate 80 in the Southwest 1/4 of the Southwest 1/4 in Section 10, Township 79 North, Range 23, West of the 5<sup>th</sup> P.M., Polk County, Iowa, except beginning 658.5 feet North and 76.1 feet East of the Southwest corner; thence Northeasterly 133.1 feet; thence Northerly 30.6 feet; thence Southwesterly 115.5 feet; thence Southeasterly 25 feet to the point of beginning.

DP#:  
190/00174-007-000

The annexation also includes any and all county road right-of-way to the centerline of the abutting roads, if any.

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***Non-Consenting:***

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**Michael R Kruse:** The South 44 acres of the West 1/2 of the Southwest 1/4 of Section 10, Township 79 North, Range 23 West of the 5<sup>th</sup> P.M., all in Polk County, Iowa, which lies North of Interstate 80, except a 25 foot driveway lying North of and immediately adjacent to Interstate 80, and except that part thereof conveyed to the State of Iowa by Warranty Deed recorded in Book 6503 Page 890.

DP#  
190/00174-002-000

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**Verizon Wireless:** Lease on Michael R. Kruse property

DP#  
190/00174-002-001

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**Nextel Partners:** Lease on Michael R. Kruse property

DP#  
190/00174-002-002

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**Sprectrasite:** Lease on Michael R. Kruse property

DP#  
190/00174-002-003

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**Dennis P Cunconan:** That part of the Southwest 1/4 of the Northwest 1/4 of Section 10, Township 79 North, Range 23, West of the 5<sup>th</sup> P.M., Polk County, Iowa, described as follows: Beginning at a point 745.0 feet North 0°00’ and 33.0’ North 89°18’ East of the West 1/4 corner of said Section 10; thence North 89°18’ East 218.3 feet; thence North 0°00’ 317.0 feet; thence South 89°18’ West 218.3 feet; thence South 0°00’ along a line parallel with and 33.0 feet

DP#:  
190/00169-001-000

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East of the West line of said Northwest 1/4, 317.0 feet to the point of beginning.

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**Polk County Road  
Right-of-Way:**

Entire annexation includes all abutting road right-of-way to the centerline of the roadways of NE 46<sup>th</sup> Street and NE 62<sup>nd</sup> Avenue; and

**DP#’s:**

190/00171-000-000  
190/00170-000-000  
190/00176-001-000  
190/00174-003-000

A parcel of land located in the SW 1/4 of the SW 1/4 of Section 10, Township 79 North, Range 23, West of the 5<sup>th</sup> P.M., Polk County, Iowa, more particularly described as: Commencing at the SW corner of said Section 10; thence N00°21 ½’E, 684.0 feet on the west line of said SW 1/4; thence N79°01’E, 186.6 feet to the Point of Beginning; thence continuing N79°01’E, 91.2 feet; thence N50°49’W, 307.3 feet to the easterly right of way line of the existing county road; thence S00°21 ½’W, 50.1 feet on said easterly right of way line; thence S10°59’E, 47.4 feet on said easterly right of way line; thence southeasterly 181.2 feet along a 1341.2 foot radius curve, concave southwesterly, the chord for which bears S50°37’E, and has a length of 181.1 feet to the Point of Beginning; containing 0.39 acres.

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**State of Iowa  
Road Right-of-  
Way:**

Annexation includes Right-of-way owned by the State of Iowa:

DP#’s:  
190/00174-004-000  
190/00174-006-000

A parcel of land located in the SW 1/4 of the SW 1/4 of Section 10, Township 79 North, Range 23, West of the 5<sup>th</sup> P.M., Polk County, Iowa, more particularly described as: Commencing at the SW corner of said Section 10; thence N00°21 ½’E, 684.0 feet on the west line of said SW 1/4; thence N79°01’E, 71.1 feet to the easterly right of way line of the existing county road, the Point of Beginning; thence continuing N79°01’E, 115.5 feet; thence northwesterly 181.2 feet to said easterly right of way line along a 1341.2 foot radius curve, concave southwesterly, the chord for which bears N50°37’W, and has a length of 181.1 feet; thence S10°59’E, 139.5 feet on said easterly right of way line to the Point of Beginning; containing 0.19 acres.

A parcel of land located in the SW 1/4 of the SW 1/4 of Section 10, Township 79 North, Range 23, West of the 5<sup>th</sup> P.M., Polk County, Iowa, more particularly described as: Commencing at the SW corner of said Section 10; thence N00°21 ½’E, 658.5 feet on the west line of said SW 1/4; thence N79°01’E, 76.1 feet to the intersection of the easterly right of way line of the existing county road with the existing northerly right of way line of Interstate Route No. 80, the Point of Beginning; thence continuing N79°01’E, 133.1 feet on said northerly right of way line; thence northwesterly 30.6 feet on a 1341.2 foot radius curve, concave southwesterly, the chord for which bears N46°05 ½’W 30.6 feet; thence S79°01’W, 115.5 feet to the easterly right of way line of the existing county road; thence S10°59’E, 25.0 feet on said easterly right of way line to the Point of Beginning; containing 0.07 acres.

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## NOTICE OF PUBLIC HEARING

PUBLIC NOTICE is hereby given that the City Council of the City of Altoona, Iowa will hold a Public Hearing on the 19th day of September, 2016 at 6:30 p.m., in the Council Chambers, City Hall, 407 8<sup>th</sup> Street SE, Altoona, Iowa, at which meeting the Council will consider annexation of the territory hereinafter described - including applications for voluntary annexation and including the annexation of certain land without the consent of the owners (i.e. generally and collectively known as an 80/20 annexation) to create more uniform boundaries and / or to avoid the creation of islands. The legal description of the territory which the Altoona City Council will consider whether to annex at said date, time and place is described as:

The Northwest Quarter (NW1/4) and the North 36 acres of the West One-Half of the Southwest Quarter (W1/2 SW1/4) of Section 10, Township 79 North, Range 23 West of the 5<sup>th</sup> P.M., Polk County, Iowa, except established highways, and except: Beginning at a point 745.0 feet North 0 degrees 00 minutes and 33.0 feet North 89 degrees 18 minutes East of the West 1/4 corner of said Section 10; thence North 89 degrees 18 minutes East 218.3 feet; thence North 0 degrees 00 minutes 317.0 feet; thence South 89 degrees 18 minutes West, 218.3 feet; thence South 0 degrees 00 minutes along a line parallel with and 33.0 feet East of the West line of the Northwest Quarter (NW1/4) of said Section 10, 317.0 feet to the point of beginning.

And,

25 foot driveway strip North of and adjacent to Interstate 80 in the Southwest 1/4 of the Southwest 1/4 in Section 10, Township 79 North, Range 23, West of the 5<sup>th</sup> P.M., Polk County, Iowa, except beginning 658.5 feet North and 76.1 feet East of the Southwest corner; thence Northeasterly 133.1 feet; thence Northerly 30.6 feet; thence Southwesterly 115.5 feet; thence Southeasterly 25 feet to the point of beginning.

And,

The South 44 acres of the West 1/2 of the Southwest 1/4 of Section 10, Township 79 North, Range 23 West of the 5<sup>th</sup> P.M., all in Polk County, Iowa, which lies North of Interstate 80, except a 25 foot driveway lying North of and immediately adjacent to Interstate 80, and except that part thereof conveyed to the State of Iowa by Warranty Deed recorded in Book 6503 Page 890.

And,

That part of the Southwest 1/4 of the Northwest 1/4 of Section 10, Township 79 North, Range 23, West of the 5<sup>th</sup> P.M., Polk County, Iowa, described as follows: Beginning at a point 745.0 feet North 0°00' and 33.0' North 89°18' East of the West 1/4 corner of said Section 10; thence North 89°18' East 218.3 feet; thence North 0°00' 317.0 feet; thence South 89°18' West 218.3 feet; thence South 0°00' along a line parallel with and 33.0 feet East of the West line of said Northwest 1/4, 317.0 feet to the point of beginning.

And,

A parcel of land located in the SW 1/4 of the SW 1/4 of Section 10, Township 79 North, Range 23, West of the 5<sup>th</sup> P.M., Polk County, Iowa, more particularly described as: Commencing at the SW corner of said

Section 10; thence N00°21 ½'E, 684.0 feet on the west line of said SW 1/4; thence N79°01'E, 186.6 feet to the Point of Beginning; thence continuing N79°01'E, 91.2 feet; thence N50°49'W, 307.3 feet to the easterly right of way line of the existing county road; thence S00°21 ½'W, 50.1 feet on said easterly right of way line; thence S10°59'E, 47.4 feet on said easterly right of way line; thence southeasterly 181.2 feet along a 1341.2 foot radius curve, concave southwesterly, the chord for which bears S50°37'E, and has a length of 181.1 feet to the Point of Beginning; containing 0.39 acres.

And,

Annexation includes Right-of-way owned by the State of Iowa:

A parcel of land located in the SW 1/4 of the SW 1/4 of Section 10, Township 79 North, Range 23, West of the 5<sup>th</sup> P.M., Polk County, Iowa, more particularly described as: Commencing at the SW corner of said Section 10; thence N00°21 ½'E, 684.0 feet on the west line of said SW 1/4; thence N79°01'E, 71.1 feet to the easterly right of way line of the existing county road, the Point of Beginning; thence continuing N79°01'E, 115.5 feet; thence northwesterly 181.2 feet to said easterly right of way line along a 1341.2 foot radius curve, concave southwesterly, the chord for which bears N50°37'W, and has a length of 181.1 feet; thence S10°59'E, 139.5 feet on said easterly right of way line to the Point of Beginning; containing 0.19 acres.

And,

A parcel of land located in the SW 1/4 of the SW 1/4 of Section 10, Township 79 North, Range 23, West of the 5<sup>th</sup> P.M., Polk County, Iowa, more particularly described as: Commencing at the SW corner of said Section 10; thence N00°21 ½'E, 658.5 feet on the west line of said SW 1/4; thence N79°01'E, 76.1 feet to the intersection of the easterly right of way line of the existing county road with the existing northerly right of way line of Interstate Route No. 80, the Point of Beginning; thence continuing N79°01'E, 133.1 feet on said northerly right of way line; thence northwesterly 30.6 feet on a 1341.2 foot radius curve, concave southwesterly, the chord for which bears N46°05 ½'W 30.6 feet; thence S79°01'W, 115.5 feet to the easterly right of way line of the existing county road; thence S10°59'E, 25.0 feet on said easterly right of way line to the Point of Beginning; containing 0.07 acres.

The annexation includes all abutting road right-of-way to the centerline of the roadways of NE 46<sup>th</sup> Street and NE 62<sup>nd</sup> Avenue.

The proposed annexation totals 215.716 acres. A total of 90.70 percent of the acres are owned by property owners who consent to the annexation, not including the abutting road right-of-way or State owned property.

At the above meeting, the Council will receive oral and written objections or approvals on the above for consideration.

Dated this 26th day of August, 2016

Randy L. Pierce  
City Clerk