

COUNCIL ACTION FORM

SUBJECT: **ANNEXATION MORATORIUM AGREEMENT FOR PROPERTY
EAST OF 590TH AVENUE**

BACKGROUND:

At the October 26, 2010 Council meeting, staff reported that a notice had been received from the City of Nevada regarding its intent to annex property immediately west of the ethanol plant along Lincoln Way. This annexation is made possible through the unique use of a flag lot strategy. What makes this proposed annexation so significant is the fact that it represents the first time the City of Nevada has attempted to annex property within the City of Ames' "urbanized area" (better know as the two-mile fringe). Continued annexation of land west of the current Nevada city boundaries will limit our ability in the future to create more developable industrial land and accompanying jobs within our community. In addition, as the Nevada city limits move farther to the west, Nevada's control over subdivisions within our Fringe Area increases.

At the meeting, the Council discussed a number of options to respond to this encroachment into our two-mile fringe. Ultimately, the Council directed the staff to refrain from aggressive tactics and not to object to the proposed annexation as long as the City of Nevada takes action to establish an annexation moratorium prior to the hearing before the City Development Board.

ALTERNATIVES:

- 1) The City Council can decide not to object to the City of Nevada's proposed annexation of the property immediately west of the ethanol plant as long as the attached Annexation Moratorium Agreement is approved by both cities.

In order to proceed with this option, the Council will need to set December 14, 2010, as the date of public hearing for the proposed moratorium. Since it appears that the City of Nevada will be pursuing this same course of action, it is hoped that moratorium will be approved by both cities prior to the City of Nevada's annexation hearing before the City Development Board. Until the moratorium is approved by both cities, it will be important that the City of Ames voice an objection to the proposed annexation at the appropriate hearings in order to preserve our rights. Therefore, even if the Council selects Alternative #1, staff will plan to provide written comments and objections about the proposed annexation to the City of Nevada.

- 2) Rather than agreeing to the attached moratorium agreement in exchange for not objecting to the proposed annexation, the City Council can decide to take action

to prevent the encroachment of the Nevada city limits into our two-mile fringe. Under this option, the City would aggressively pursue objecting to the annexation before the Nevada City Council, City Development Board, and, if necessary, the Courts.

- 3) The City Council can decide not to object to this first intrusion into our two-mile fringe area and not to require the City of Nevada to approve an annexation moratorium west of 590th. Under this option, it is hoped that the Nevada City Council will not pursue a growth strategy that would further extend their city limits west into our urbanized area.

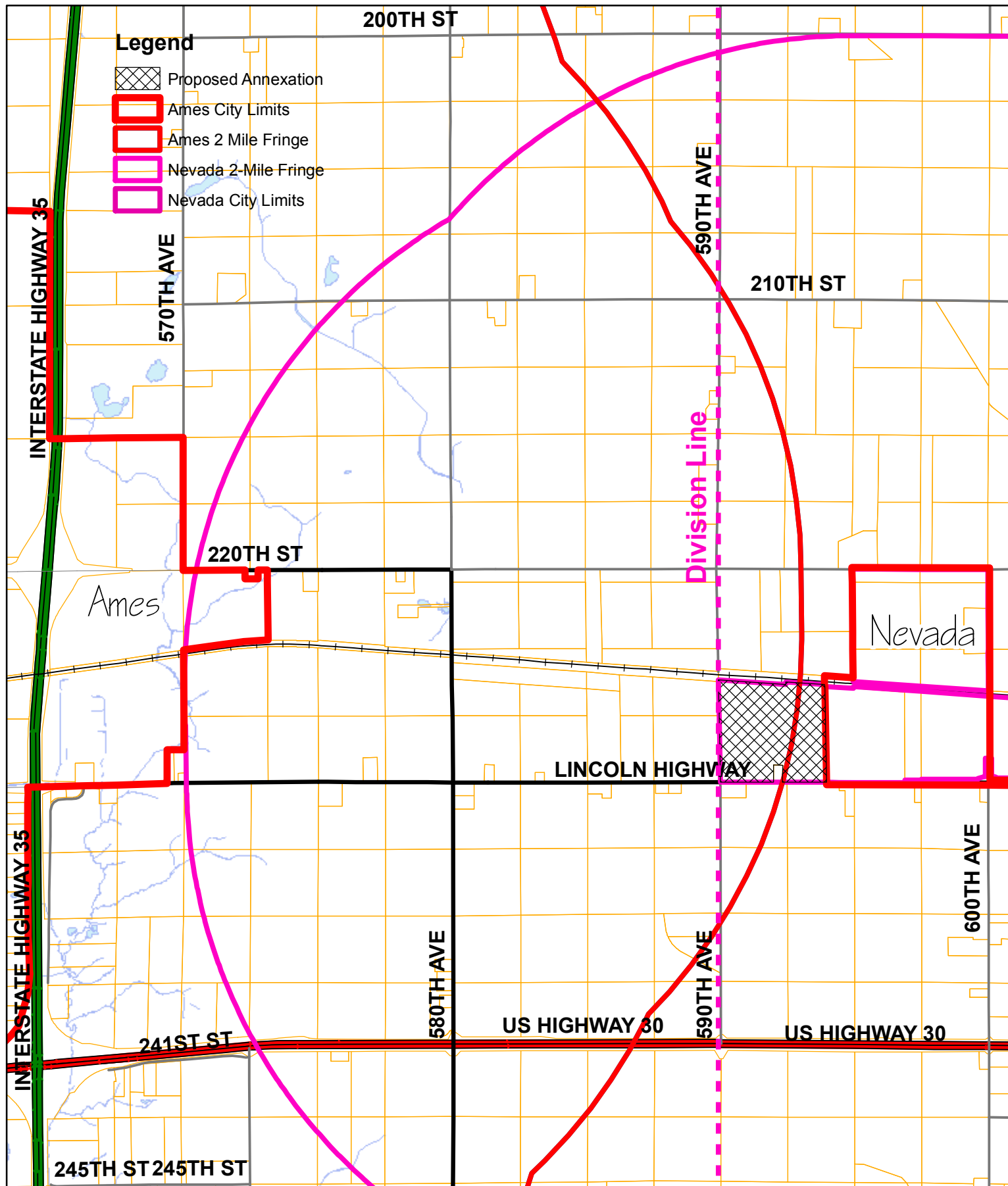
MANAGER'S RECOMMENDED ACTION:

Following the October 26th meeting, City staff continued discussions with Nevada's representatives. **It soon became clear that in order for them to consider an annexation moratorium west of 590th Avenue as the Council had requested, the City of Nevada expects Ames in turn to agree not to annex east of 590th Avenue.**

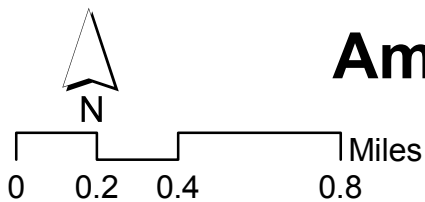
Attached for your approval is the proposed Annexation Moratorium Agreement to be executed by **both** the City of Nevada and the City of Ames. As provided for in the Iowa Code, this mutually agreed upon moratorium will be binding on both cities for ten years. It will also operate as a Chapter 28E Agreement for Joint Exercise of Governmental Powers in order to address the issue of subdivision authority within the two-mile fringe. Under the terms of the agreement, Nevada's subdivision authority would not extend west of 590th Avenue. This is significant to Ames since without this concession, Nevada's sub-division authority would extend west to approximately 580th Avenue.

Besides the prohibition for annexation as it relates to 590th Avenue, the agreement strives to promote joint planning at the Division Line for the moratorium areas. For example, Section 5 of the proposed agreement calls for both cities to coordinate the planning and zoning of development for land within 600 feet of the Division Line between the moratorium areas. In addition, Section 6 specifies that within one-eighth of a mile of the Division Line, both parties should coordinate the design and location of major transportation improvements. Finally, this same section requires joint planning for any public improvements that are located on or along the Division Line.

In an effort not to impede a major economic development project for the City of Nevada, and at the same time, to protect the industrial expansion area for the City of Ames, it is the recommendation of the City Manager that the City Council approve Alternative #1. This alternative will set the date of hearing for the attached ten-year Annexation Moratorium Agreement for December 14, 2010. Under this option, as long as this agreement is approved by the Nevada City Council prior to the City Development Board hearing for the proposed annexation, the City will not pursue more aggressive measures to oppose this annexation request.



Ames-Nevada Division Line



City of Ames, Iowa, Resolution No. _____

City of Nevada, Iowa, Resolution No. _____

AGREEMENT FOR JOINT EXERCISE OF GOVERNMENTAL POWERS
AND TO ESTABLISH A DIVISION LINE BETWEEN
CORPORATE BOUNDARY LINES

WHEREAS, it is in the public interest of the CITY OF AMES (hereinafter referred to as AMES), and the CITY OF NEVADA (hereinafter referred to as NEVADA), to establish compatible land uses for land adjacent to and between their respective corporate boundary lines, and encourage compatible development, and coordinate public infrastructure in these areas, to the maximum extent possible; and

WHEREAS, it is in the public interest of the cities of Ames and Nevada, to establish an annexation Division Line (hereinafter referred to as Division Line), between their respective corporate boundary lines;

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

SECTION 1. PURPOSE. Because of their close proximity leading to common corporate boundaries in the future, and their common desire to enhance the land use in the area adjacent to and between their respective corporate boundaries, it is in the public interest for Ames and Nevada to respectively pass resolutions to establish this AGREEMENT FOR JOINT EXERCISE OF GOVERNMENTAL POWERS AND TO ESTABLISH A DIVISION LINE BETWEEN CORPORATE BOUNDARY LINES (hereinafter referred to as AGREEMENT), to provide for communication and cooperation in developing each city's comprehensive plan in their respective territories adjacent to the Division Line, and to establish a Division Line more particularly identified in Section 2.

SECTION 2. DIVISION LINE. The aforementioned cities hereby agree upon the establishment of a Division Line, between the presently established corporate boundaries of the two Cities, which is legally describes as follows, all located in Story County, Iowa:

A line extending from the northern county line of Story County at the center line of 590th Avenue and extending south along the center line of 590th Avenue, and along the center line of 590th Avenue extended, to the southern county line of Story County.

A map of this description is attached as Exhibit A and made part of this agreement.

SECTION 3. ANNEXING MORATORIUM. In accordance with Iowa Code Chapter 368 (2009) and as defined therein, Ames and Nevada agree to an annexing moratorium as follows:

- A. Ames agrees not to annex voluntarily or involuntarily, or otherwise incorporate within its boundaries, all or any part of the territory located to the east of the Division Line.
- B. Nevada agrees not to annex voluntarily or involuntarily, or otherwise incorporate within its boundaries, all or any part of the territory located to the west of the Division Line.

SECTION 4. APPLICABILITY. This Agreement is applicable to all annexation proceedings, both voluntarily and involuntary, and pending annexations as well as any that may be commenced in the future, to the fullest extent allowed and as provided by Iowa Code Chapter 368 (2009). All such proceedings which have been initiated but not completed are hereby amended to conform to this agreement, and any portion of any petition for annexation, whether voluntary or involuntary, in conflict herewith is hereby terminated and withdrawn. Completion is hereby defined as being approved by the City Development Board and duly recorded prior to the date of the second City's approval and signature on this Agreement.

Both cities agree not to annex territory in violation of this Agreement. Each city, and their officials, agents and representatives acting in their official capacities, agree not to aid or support in any way, any person, party, agency, or governmental body who may oppose, enjoin, or obstruct the other in the pursuit of any annexation that conforms with this Agreement. Terminology used in this Agreement shall be defined in the same manner as it is defined and used in Iowa Code Chapter 368, unless specifically defined herein.

SECTION 5. JOINT COORDINATION AND COOPERATION. The Cities agree to coordinate long range planning and zoning of development along the Division Line. The Cities shall coordinate their comprehensive plans for the territory located within 600 feet of the Division Line to the end that the uses proposed by one City may be compatible with the uses proposed by the other city; corridors are developed for future streets that would bisect the annexation line with the proposed classification of those streets; proposed corridors for pedestrian and bicycle traffic are identified; and any other matters agreed to by the Cities. This is not intended to establish that one City has control over the other City's legislative powers; rather it is intended to establish that the two Cities will coordinate and cooperate with each other in their planning and legislative powers for the land along the Division Line to the extent deemed acceptable by the respective Cities.

Pursuant to Iowa Code Section 354.9(3), Ames and Nevada agree that the subdivision standards and review authority granted by state law to the cities for the two miles from their respective and overlapping limits shall be handled as follows:

Ames shall have extra territorial review and approval authority west of the above-described Division Line.

Nevada shall have extra territorial review and approval authority east of the above-described Division Line.

SECTION 6. PUBLIC IMPROVEMENTS. Within one-eighth mile of the Division Line, the design and location of collector streets and other major thoroughfares, and major pedestrian and bicycle systems, which are or should be constructed in a size larger than customary for local service to adjoining property owners; or which should be continuous between the two Cities for the convenience of the public and the welfare of their citizens, shall be coordinated with both Cities.

Wherever practical, new streets and other public improvements shall not be located on or along the Division Line. Where such situations cannot be avoided or already exist, construction, reconstruction, or expansion of such public improvements shall be subject to the approval of each City and shall be jointly planned.

SECTION 7. RIGHTS AND OBLIGATIONS. This Agreement creates rights and obligations only between these two parties as governmental entities, and is to be interpreted, applied, and enforced by these entities only. It is not intended and shall not be interpreted to create any rights, title, or interest in any other person, firm, corporation, or entity, whether or not resident or taxpayer of either City, and whether directly or as a third party beneficiary.

SECTION 8. STATUTORY AUTHORITY. This Agreement is entered into by Ames and Nevada pursuant to Iowa Code Section 368.4, and is joint exercise of governmental powers, pursuant to Iowa Code Chapter 28E. It does not create a separate legal entity; grants no power to purchase, own, or mortgage real or personal property; creates no governing board; and does not have an operating budget.

SECTION 9. EFFECTIVE DATE AND DURATION. The effective date of this Agreement shall be the later of approval dates of the two Cities. This Agreement shall be in full force and effect for a period of ten years after the aforementioned effective date, and thereafter as provided by any agreement to extend this Agreement. This Agreement may be amended at any time upon approval of both City Councils.

SECTION 10. SEPARABILITY. If any section, provision, or part of this Agreement shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of this Agreement as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional.

CITY OF AMES, IOWA

By: _____
Ann H. Campbell, Mayor

By: _____
Diane Voss, City Clerk

**AMES CITY CLERK'S CERTIFICATION
RESOLUTION _____**

I, _____ City Clerk of the City of Ames, Story County, Iowa, do hereby certify that the notice of the public hearing on the foregoing Agreement, was published at least once in the _____ a weekly newspaper having general circulation in Ames, Iowa, on the _____ day of _____, _____, which publication date was not less than four nor more than twenty days before the date of the hearing. Further, following the hearing which was held on the _____ day of _____, _____, the Resolution approving the Agreement was duly approved and accepted by the City Council of said City of Ames, by Resolution No. _____ on the _____ day of _____, _____.

City Clerk

STATE OF IOWA, COUNTY OF STORY, ss:

On the _____ day of _____, 2010, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared _____ and _____, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk of the City of Ames, Iowa, a municipal corporation; that the seal affixed to the above and foregoing instrument is the corporate seal of said municipal corporation, and that said instrument was signed and contained in the Resolution adopted by the City Council of Ames, Iowa, on the _____ day of _____, 2010, and the said _____ and _____ acknowledged the execution of said instrument to be their voluntary act and deed and the voluntary act and deed of said municipal corporation, by it and by them voluntarily executed.

Notary Public in and for the State of Iowa

CITY OF NEVADA, IOWA

By: _____
Mayor

Attest:

By: _____
City Clerk

**NEVADA CITY CLERK'S CERTIFICATION
RESOLUTION _____**

I, _____ City Clerk of the City of Nevada, Story County, Iowa, do hereby certify that the notice of the public hearing on the foregoing Agreement, was published at least once in the _____ a weekly newspaper having general circulation in Nevada, Iowa, on the _____ day of _____, _____, which publication date was not less than four nor more than twenty days before the date of the hearing. Further, following the hearing which was held on the _____ day of _____, _____, the Resolution approving the Agreement was duly approved and accepted by the City Council of said City of Nevada, by Resolution No. _____ on the _____ day of _____, _____.

City Clerk

STATE OF IOWA, COUNTY OF STORY, ss:

On the _____ day of _____, 2010, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared _____ and _____, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk of the City of Nevada, Iowa, a municipal corporation; that the seal affixed to the above and foregoing instrument is the corporate seal of said municipal corporation, and that said instrument was signed and contained in the Resolution adopted by the City Council of Nevada, Iowa, on the _____ day of _____, 2010, and the said _____ and _____ acknowledged the execution of said instrument to be their voluntary act and deed and the voluntary act and deed of said municipal corporation, by it and by them voluntarily executed.

Notary Public in and for the State of Iowa

This Agreement was duly filed and recorded in the Office of the Secretary of State of the State of Iowa on this _____ day of _____, 2010.

Secretary of State

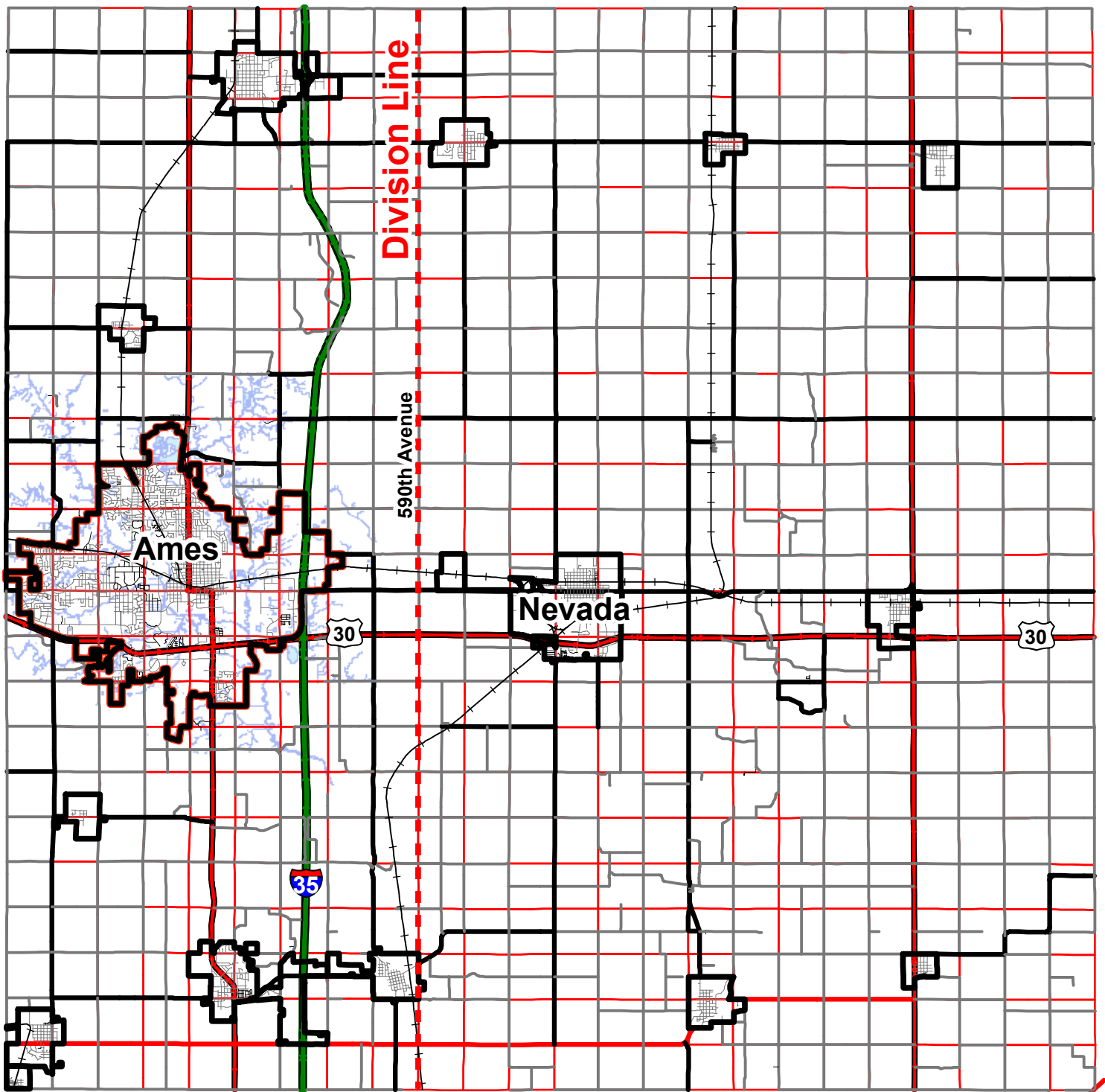


Exhibit A