MEETING DATE: 05/2/22 **ITEM: 10E**

AGENDA ITEM SUMMARY

Subject: Consider Resolution 58-22 for a one year lease on farm ground located by the water resource recovery facility

Background Summary:

Historically, the city has rented out farm ground located at the WRRF site at Shaw Avenue. After construction of the new plant, there is approximately eight acreas that are tillable and Terry Wegner has again expressed interest in leasing this land. This lease will be for one year for row crop (corn or soybeans) and the rent he will be paying is $2,400.

We are recommending approval of this resolution.

RESOLUTION NO. 58-22

RESOLUTION APPROVING LEASE AGREEMENT FOR CITY PROPERTY

WHEREAS, the City Council of the City of Charles City, Iowa is hereby interested in leasing City property containing 7 acres, more or less, adjoining the municipal Water Pollution Control Plant in Charles City, Iowa, and

WHEREAS, Terry Wegner (Tenant) is interested in leasing and renting the above property for one year commencing May 3, 2022 and ending May 3, 2023, and

WHEREAS, the said Tenant, in consideration of the City leasing and renting the property for the growing of row crops (corn or soybeans, unless another type of crop is approved in writing by the City Administrator), keeping the non-cultivated areas properly mowed and making said area available to the City at times for application of sanitary sewer sludge, does agree to pay the City the sum of $2400 per year commencing May 3, 2022. The Tenant also agrees to hold the City harmless from and indemnify the City for all damages to persons or property during the lease term except only for damages arising from the negligence of the City.

NOW, THEREFORE, BE, AND IT IS HEREBY RESOLVED, BY THE CITY COUNCIL OF THE CITY OF CHARLES CITY, IOWA, that the lease agreement is approved and the Mayor and City Clerk are authorized and directed to execute same with Terry Wegner.

COUNCIL MEMBER moved the adoption of the foregoing Resolution;

COUNCIL MEMBER seconded the motion to adopt, and on roll call the voting was as follows:

AYES:

NAYS:

Passed and approved this 2nd day of May, 2022.

_____
Dean Andrews, Mayor

Attest:

_____
Trudy O'Donnell, City Clerk

FARM LEASE - CASH

THIS LEASE ("Lease") is made between the City of Charles City, Iowa ("Landlord"), whose addresses for the purpose of this Lease is 101 Milwaukee Mall, Charles City, IA 50616; and Terry Wegner ("Tenant"), whose address for the purpose of this Lease is 1736 Redwood Avenue, Charles City, IA 50616.

THE PARTIES AGREE AS FOLLOWS:

1. **PREMISES AND TERM.** Landlord leases to Tenant the following real estate situated in Floyd County, Iowa (the "Real Estate"):

8.0 acres M/L adjoining the municipal water pollution control plant in Charles City, Iowa, as depicted in Exhibit A hereto

with possession by Tenant for a term of one year(s) to commence on May 3, 2022, and end on March 1, 2023. The Tenant has had or been offered an opportunity to make an independent investigation as to the acres and boundaries of the premises. In the event that possession cannot be delivered within fifteen (15) days after commencement of this Lease, Tenant may terminate this Lease by giving the Landlord notice in writing.

2. **RENT.**Tenant shall pay to Landlord as rent for the Real Estate (the "Rent") total annual cash rent of **$2,500.00** payable on or before May 6, 2022.

All Rent is to be paid to Landlord at the addresses above or at such other place as Landlord may direct in writing. Rent must be in Landlord's possession on or before the due date. Participation of this farm in any offered program by the U.S. Department of Agriculture or any state for crop production control or soil conservation, the observance of the terms and conditions of this program, and the division of farm program payments, requires Landlord's consent. Payments from participation in these programs shall be divided 0 % Landlord 100 % Tenant for CRP payments. Crop disaster payments shall be divided 0 % Landlord 100 % Tenant.

3. **LANDLORD'S LIEN AND SECURITY INTEREST.** As security for all sums due or which will become due from Tenant to Landlord, Tenant hereby grants to Landlord, in addition to any statutory liens, a security interest as provided in the Iowa Uniform Commercial Code and a contractual lien in all crops produced on the premises and the proceeds and products thereof, all contract rights concerning such crops, proceeds and/or products, all proceeds of insurance collected on account of destruction of such crops, all contract rights and U.S. government and/or state agricultural farm program payments in connection with the above described premises whether such contract rights be payable in cash or in kind, including the proceeds from such rights, and any and all other personal property kept or used on the real estate that is not exempt from execution. Tenant shall also sign any additional forms required to validate the security interest in government program payments.

Upon payment in full Landlord shall release Landlord's lien on the crop produced in that crop year on the premises. The parties agree that by the Landlord releasing the lien as to the crop in one year, the Landlord in no way releases the lien or agrees to release the lien in any prior or subsequent year.

Landlord is further granted the power, coupled with an interest, to sign on behalf of Tenant as attorney-in-fact and to file one or more financing statements under the Iowa Uniform Commercial Code naming Tenant as Debtor and Landlord as Secured Party and describing the collateral herein specified. Tenant consents to the financing statement being filed immediately after execution of this Lease.

4. **INPUT COSTS AND EXPENSES.** Tenant shall only be entitled to pasture or till those portions of the Real Estate designated by Landlord. The following materials, in the amounts required by good husbandry, shall be acquired by Tenant and paid for by the parties as follows:

	% Landlord	% Tenant
(1) Commercial Fertilizer	0	100
(2) Lime and Trace Minerals	0	100
(3) Herbicides	0	100
(4) Insecticides	0	100
(5) Seed	0	100
(6) Seed cleaning	0	100
(7) Harvesting and/or Shelling Expense	0	100
(8) Grain Drying Expense	0	100
(9) Grain Storage Expense	0	100
(10) Other	0	100

Tenant agrees to furnish, without cost, all labor, equipment and application for all fertilizer, lime, trace minerals and chemicals.

5. **PROPER HUSBANDRY; HARVESTING OF CROPS; CARE OF SOIL, TREES, SHRUBS AND GRASS.** Tenant shall farm the Real Estate in a manner consistent with good husbandry, seek to obtain the best crop production that the soil and crop season will permit, properly care for all growing crops in a manner consistent with good husbandry, and harvest all crops on a timely basis. In the event Tenant fails to do so, Landlord reserves the right, personally or by designated agents, to enter upon the Real Estate and properly care for and harvest all growing crops, charging the cost of the care and harvest to the Tenant, as part of the Rent. Tenant shall timely control all weeds, including noxious weeds, weeds in the fence rows, along driveways and around buildings throughout the premises. Tenant shall protect all desirable vegetation, such as grass field borders, grassed waterways, wildlife cover, shrubs and trees. Tenant shall comply with all terms of the conservation plan and any other required environmental plans for the leased premises. Tenant shall do what is reasonably necessary to control soil erosion including, but not limited to, the maintenance of existing watercourses, waterways, ditches,

drainage areas, terraces and tile drains, and abstain from any practice which will cause damage to the Real Estate.

Upon written request from the Landlord, Tenant shall by August 15 of each lease year provide to the Landlord a written listing showing all crops planted, including the acres of each crop planted, fertilizers, herbicides and insecticides applied showing the place of application, the name and address of the applicator, the type of application and the quantity of such items applied on the lease premises during such year.

Tenant shall distribute upon the poorest tillable soil on the Real Estate, unless directed otherwise by Landlord, all of the manure and compost from the farming operation suitable to be used. Tenant shall not remove from the Real Estate, nor burn, any straw, stalks, stubble, or similar plant materials, all of which are recognized as the property of Landlord. Tenant may use these materials, however, upon the Real Estate for the farming operations. Tenant shall protect all trees, vines and shrubbery upon the Real Estate from injury by Tenant's cropping operation or livestock.

Tenant shall maintain accurate yield records for the real estate, and upon request, during or after lease term, shall disclose to Landlord, all yield base information required for participation in government program

6. **ENVIRONMENTAL.**

a. Landlord. To the best of Landlord's knowledge to date:

i) Neither Landlord nor, Landlord's former or present tenants, are subject to any investigation concerning the premises by any governmental authority under any applicable federal, state, or local codes, rules, and regulations pertaining to air and water quality, the handling, transportation, storage, treatment, usage, or disposal of toxic or hazardous substances, air emissions, other environmental matters, and all zoning and other land use matters.

ii) Any handling, transportation, storage, treatment, or use of toxic or hazardous substances that has occurred on the premises has been in compliance with all applicable federal, state, and local codes, rules, and regulations.

iii) No leak, spill release, discharge, emission, or disposal of toxic or hazardous substances has occurred on the premises.

iv) The soil, groundwater, and soil vapor on or under the premises is free of toxic or hazardous substances except for chemicals (including without limitation fertilizer, herbicides, insecticides) applied in conformance with good farming methods, applicable rules and regulations and the label directions of each chemical.

Landlord shall hold Tenant harmless against liability for removing solid waste disposal sites existing at the execution of this Lease, with the exception that Tenant shall be liable for removal of solid waste disposal sites to the extent that the Tenant created or contributed to the solid waste disposal site at any time.

Landlord shall assume liability and shall indemnify and hold Tenant harmless against any liability or expense arising from any condition which existed, whether known or unknown, at the time of execution of the lease which is not a result of actions of the Tenant or which arises after date of execution but which is not a result of actions of the Tenant.

b. Tenant. Tenant shall comply with all applicable environmental laws concerning application, storage and handling of chemicals (including, without limitation, herbicides and insecticides) and fertilizers. Tenant shall apply any chemicals used for weed or insect control at levels not to exceed the manufacturer's recommendation for the soil types involved. Farm chemicals **may not** be stored on the premises. Farm chemicals for use on other properties **may not** be stored on this property. No chemicals or chemical containers will be disposed of on the premises. Application of chemicals for agricultural purposes per manufacturer's recommendation shall not be construed to constitute disposal.

Tenant shall employ all means appropriate to insure that well or ground water contamination does not occur, and shall be responsible to follow all applicator's licensing requirements. Tenant shall install and maintain safety check valves for injection of any chemicals and/or fertilizers into an irrigation system (injection valve only, not main well check valve). Tenant shall properly post all fields (when posting is required) whenever chemicals are applied by ground or air. Tenant shall haul and spread all manure on appropriate fields at times and in quantities consistent with environmental protection requirements. Tenant shall not dispose of waste oil, tires, batteries, paint, other chemicals or containers anywhere on the premises. Solid waste may not be disposed of on the premises. Dead livestock may not be buried on the premises. Tenant shall not use waste oil as a means to suppress dust on any roads on or near the premises. No underground storage tanks, except human waste septic systems that meet current codes, rules, and regulations, shall be maintained on the premises.

Tenant shall immediately notify Landlord of any chemical discharge, leak, or spill which occurs on premises. Tenant shall assume liability and shall indemnify and hold Landlord harmless for any claim or violation of standards which results from Tenant's use of the premises. Tenant shall assume defense of all claims, except claims resulting from Landlord's negligence, in which case each party shall be responsible for that party's defense of any claim. After termination, Tenant shall remain liable for violations which occurred during the term of this Lease.

7. **TERMINATION OF LEASE.** This Lease shall automatically renew upon expiration from year-to-year, upon the same terms and conditions unless either party gives due and timely written notice to the other of an election not to renew this Lease. If renewed, the tenancy shall terminate on March 1 of the year following, provided that the tenancy shall not continue because of an absence of notice in the event there is a default in the performance of this Lease. All notices of termination of this Lease shall be as provided by law.

8. **POSSESSION AND CONDITION AT END OF TERM.** At the termination of this Lease, Tenant will relinquish possession of the Real Estate to the Landlord. If Tenant fails to do so Tenant agrees to pay Landlord $100.00 per day, as liquidated damages until possession is delivered to Landlord. At the time of delivery of the Real Estate to Landlord, Tenant shall assure that the Real Estate is in good order and condition, and substantially the same as it was when received by Tenant at the commencement of this Lease, excusable or insurable loss by fire, unavoidable accidents and ordinary wear, excepted.

9. **LANDLORD'S RIGHT OF ENTRY AND INSPECTION.** In the event notice of termination of this Lease has been properly served, Landlord may enter upon the Real Estate or authorize someone else to enter upon the Real Estate to conduct any normal tillage or fertilizer operation after Tenant has completed the harvesting of crops even if this is prior to the date of termination of the lease. Landlord may enter upon the Real Estate at any reasonable time for the purpose of viewing or seeding or making repairs, or for other reasonable purposes.

10. **VIOLATION OF TERMS OF LEASE.** If Tenant or Landlord violates the terms of this Lease, the other may pursue the legal and equitable remedies to which each is entitled. Tenant's failure to pay any Rent when due shall cause all unpaid Rent to become immediately due and payable, without any notice to or demand upon Tenant.

11. **REPAIRS.** Landlord shall furnish necessary materials for minor repairs that Landlord deems necessary within a reasonable time after being notified of the need for repairs. Tenant shall haul the materials to the repair site and perform the necessary repairs without charge to Landlord.

12. **NEW IMPROVEMENTS.** All buildings, fences and improvements of every kind and nature that may be erected or established upon the Real Estate during the term of the Lease by the Tenant shall constitute additional rent and shall inure to the Real Estate, becoming the property of Landlord unless the Landlord has agreed in writing prior to the erection that the Tenant must remove the improvements no later than 30 days following termination of this lease.

13. **EXPENSES INCURRED WITHOUT CONSENT OF LANDLORD.** No expense shall be incurred for or on account of the Landlord without first obtaining Landlord's written authorization. Tenant shall take no actions that might cause a mechanic's lien to be imposed upon the Real Estate.

14. **NO AGENCY.** Tenant is not an agent of the Landlord.

15. **ATTORNEY FEES AND COURT COSTS.** If either party files suit to enforce any of the terms of this Lease, the prevailing party shall be entitled to recover court costs and reasonable attorneys' fees.

16. **CHANGE IN LEASE TERMS.** The conduct of either party, by act or omission, shall not be construed as a material alteration of this Lease until such provision is reduced to writing and executed by both parties as addendum to this Lease.

17. **CONSTRUCTION.** Words and phrases herein, including the acknowledgment, are construed as in the singular or plural and as the appropriate gender, according to the context.

18. **NOTICES.** The notices contemplated in this Lease shall be made in writing and shall either be delivered in person, or be mailed in the U.S. mail, certified mail to the recipient's last known mailing address, except for the notice of termination set forth in Section 9, which shall be governed by the Code of Iowa.

19. **ASSIGNMENT.** Tenant shall not assign this Lease or sublet the Real Estate or any portion thereof without prior written authorization of Landlord.

20. **CERTIFICATION**. Tenant certifies that it is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order or the United States Treasury Department as a terrorist, Specially Designated National and Blocked Person or any other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and it is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity or nation. Tenant hereby agrees to defend, indemnify and hold harmless Landlord from and against any and all claims, damages, losses, risks, liabilities and expenses (including attorney's fees and costs) arising from or related to any breach of the foregoing certification.

21. **ADDITIONAL PROVISIONS.**

a. Tenant shall grow corn or soybeans unless another type of crop is approved in writing by the City Administrator and shall keep non-cultivated areas properly mowed.

b. Tenant shall make land available to the City for application of sanitary sewer sludge at times that are not damaging to the crops and in amounts that are not damaging to the crops or in violation of any applicable laws.

c. The property shall be returned to the City in tilled (plant residue plowed under) condition at the conclusion of the lease.

d. During the term of this lease, the City will be constructing new facilities for the expansion of its wastewater treatment plant on the property to the south of the Real Estate. It is the intent of the City that the construction of the facilities will not impact the Real Estate. However, in the event of unforeseen circumstances, it may be necessary for the City to access and utilize a portion of the Real Estate for construction of the new facilities or for access to and from the property to the south of the Real Estate.

In the event the City must access and utilize the Real Estate during the term of this Lease, then the City agrees to pay Tenant one-time compensation for any and all portions of the Real Estate that are taken out of commercial crop production for a season or that are removed or damaged as a direct result of the City's development of the property to the south of the Real Estate ("Crop Damage Compensation"). Portions of the Real Estate shall be deemed to have been taken out of commercial crop production only if Tenant was actually farming such portions of the Real Estate immediately prior to the City commencing development and construction. The Crop Damage Compensation shall be deemed full compensation for any losses of income, rent, business opportunities, profits, or other losses arising out of City's construction of facilities. Crop Damage Compensation shall be equal to 100% of the average crop yield (as measured by the federal crop insurance yield for the Real Estate) for the portion of the Real Estate taken out of production in the year the damage occurs multiplied by the cash price for the crop at December 1 of the year of which the crop damage occurred. Payment shall be made no later than December 31st of the year the damage took place. If less than one acre of Tenant's crops on the Real Estate is damaged by the City's activities on the Real Estate, the applicable dollar amount per acre shall be reduced proportionately. The City and Tenant shall attempt, in good faith, to agree upon the extent of damage and amount of acreage affected. If the parties cannot agree, the parties shall have the area measured and the extent of damage assessed by an impartial party chosen by mutual agreement of the parties, such as a crop insurance adjuster.

e. Tenant agrees to hold the City harmless from and indemnify the City for any and all claims and actions of any kind or nature asserted against the City arising from Tenant's use of this property

f. This Lease may be executed in counterparts, each of which shall be deemed an original. Signatures which have been photocopied, sent by facsimile, or scanned and sent by electronic delivery shall have the same force and effect as original signatures.

Dated: _____

TENANT

_____
Terry Wegner

LANDLORD
City of Charles City, Iowa

_____
Dean Andrews, Mayor

Attested to by:

_____
Trudy O'Donnell, City Clerk

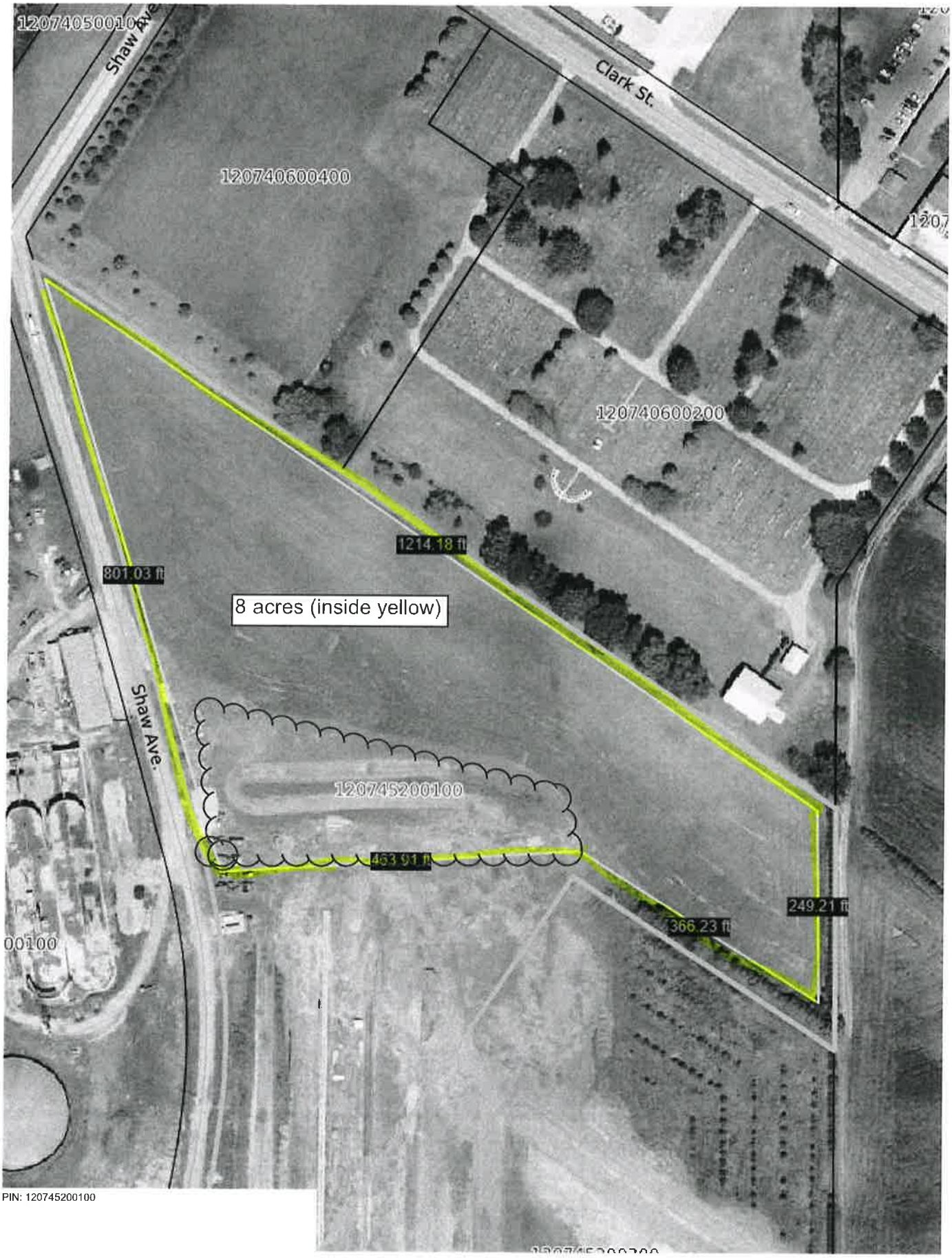

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Exhibit A