

RESOLUTION APPROVING AGREEMENT BY AND
BETWEEN THE CITY OF MARSHALLTOWN, IOWA
AND RON BURNS RELATING TO FARM LEASE

WHEREAS, there is herewith submitted to the City Council of Marshalltown, Iowa a proposed agreement by and between the CITY OF MARSHALLTOWN, IOWA and RON BURNS relating to Farm Lease, and

WHEREAS, the Council has fully examined same and has found same to be in the best interests of the CITY OF MARSHALLTOWN, IOWA and that same should now be approved and accepted.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF MARSHALLTOWN, IOWA:

Section 1. That the agreement by and between the CITY OF MARSHALLTOWN, IOWA and RON BURNS for Farm Lease is hereby fully approved in all respects and particulars and the Mayor and City Clerk are hereby authorized and directed to execute same for and on behalf of said City.

Passed this _____ day of January 2009, and signed this _____ day of January 2009.

CITY OF MARSHALLTOWN, IOWA

Gene L. Beach, Mayor

ATTEST:

Shari L. Coughenour, CMC, City Clerk

Date: December 31, 2008

To: Honorable Mayor Beach and Council Members

From: Mike Fields, Director WPCP

Re: WPCP Farm Lease

The Water Pollution Control Plant has terminated its long-term farm lease with Dorman Brush following his unexpected death and has negotiated a new farm lease with Ron Burns. In replacing Dorman, the department placed an ad in the local paper and interviewed 6 area farmers that showed interest in the 262 acre WPCP farm. The WPCP farm is used each spring for the land application of approximately 3 million gallons of biosolids fertilizer, generated at the treatment plant. Ron Burns was selected based on his current farm operation and his ability to work with the City's Land Application Program.

The changes in the farm leases include the following:

- 1) The previous lease rate was \$107.25/acre and \$132.25/acre with biosolids application.
The new lease rate is adjustable and based on the ISU Extension's Annual "Cash Rental Rates for Iowa" / Medium Quality Third. For 2008, that would be \$190/acre and \$210/acre with biosolids application.
- 2) The previous lease agreement reads – The landlord intends to apply sludge fertilizer to those lands indicated in Exhibit "A", the application of which is to be completed on or before April 20th of each crop year. For each day after April 20th of each year that the said application is not completed, the rent on those lands will be reduced \$2.00 per acre.

The new lease agreement reads – If the landlord does not have land application completed on or before April 27th for corn and May 10th for soybean land, the landlord shall reduce the rent value by \$3.00/acre per day until application per area is complete.

- 3) The previous lease rate was a fixed rate agreement. The new lease agreement has an adjustable rate based on the ISU Extension's Annual Rental Rate Survey performed each year.

The new lease agreement will adjust each year for the rental rate and will produce an estimated \$54,300 at the new rates compared to \$31,500 under the previous agreement.

I have attached a copy of the new lease agreement for your review. If you have any questions, please give me a call.

Iowa Cash Rent Farm Lease

Owner: City of Marshalltown Operator: Ron Burns Year: 2009

1. Legal Description:

See attached legal description (Exhibit A) and Map (Exhibit B)

2. Terms of Lease: Beginning March 1st, 2009, and ending the last day of February, 2010. Continuing thereafter from year to year, unless terminated by either party according to Iowa Law on or before September 1st effective the following March 1st.

3. There are 262 contract acres available according to county FSA and City of Marshalltown records.

The following housing, buildings and storage structures located on the Real Estate may be used by the Operator for the following purposes:

Structure	Purpose
None	

In the event of damage or destruction of buildings or structures listed above the Owner will have the option to replace them or provide their functional equivalent operator for the purpose described above within a reasonable period of time, or make adjustments to the terms of this lease in lieu of replacement.

4. Cash Rent: Operator agrees to pay the Owner cash rent for the use of part or all of the Real Estate as follows:

- a) Cash rent shall be based on Iowa State University Extension’s annual “Cash Rental Rates for Iowa” survey for Marshall County for corn and soybeans and based on the “Medium quality third” average response. For Example in 2008, that would have been \$190 per acre. See Exhibit C.
If Iowa State University Extension no longer prepares and publishes the Cash Rental Rate Survey, the Tenant and Landlord agree to use the latest published survey rates for as long as the agreement stays in affect.
- b) City reserves the right to apply Biosolids-Sludge Fertilizer each spring. Land that receives Biosolids-Sludge Fertilizer shall be charged an additional \$20 per acre rent. For Example in 2008, that would have been \$210 per acre.

The cash rent shall be due and payable as follows: Dec. 15th of each crop year

5. USDA Commodity Program Payments: Payments shall be paid to the Operator unless otherwise agreed on with the Farm Service Agency.

6. Hunting Rights: Hunting rights belong to the Owner.

7. **Division of Expense:** All crop production expenses are the responsibility of the Operator. Cost of lime and application will be treated as follows: To be scheduled by tenant, paid by landlord.
8. **Expenses:** No expense shall be incurred by the Operator for or on account of the Owner without first obtaining written permission from the Owner. The Operator agrees to take no actions that might cause a mechanic's or other lien to be imposed upon the Real Estate and agrees to indemnify the Owner if actions are taken by the Operator that result in such a lien being imposed.
9. **Repairs & Maintenance:** Buildings and Fences for minor repairs: Owner will furnish all materials and Operator will provide the labor at no charge. New Fence: Owner to furnish all materials and one-half of the cost of labor. Operator to provide one-half of the labor and all of the equipment to construct fence. Owner will pay 100% of the cost to clear fence row when necessary.
10. **Operator's Duties:** Operator agrees to operate the farm in a efficient and workmanlike manner, control weeds and brush in the fields, fence rows, road ditches, provide proper maintenance to control erosion and maintain waterways and tiles, and building lots and all other areas of the farm where access is possible. Operator agrees, on termination of the lease, to yield prompt possession of the farm to the Owner.
11. **Owner's Duties:** Owner agrees to warrant and defend the Operator's possessions against all persons as long as this lease remains in effect. The Owner will promptly pay taxes and carry insurance on his/her interest in the property.
12. **Compensation:** Operator shall have the right to take away from the farm any movable buildings and fixtures which he/she has replaced upon the farm at his/her own expense. Such moving must be done within 60 days after termination of the lease. The Operator must leave the premises from which such improvements are removed in as good condition as they were before said removal or compensate the Owner for damages. Each party shall present to the other all such claims for compensation in writing at the termination of the lease. The Operator shall receive compensation from the Owner for the unprotected value for the **following items** upon termination of the lease provided that the value and date of completion are documented.

Item a. None
13. **Transfer of Interest:** The Operator agrees not to lease or sublet any part of the Real Estate nor assign this lease to any other person, nor sublease any or all of the property described herein without prior written permission of the Owner. This lease shall be binding upon the heirs, assignees, or successors in interest of both parties. If the Owner should sell or otherwise transfer title to the Real Estate, the Owner will do so subject to the provisions of this lease.

- 14. Changes in Lease Terms:** The conduct, representation, or statement 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 an addendum to this lease.
- 15. Right of Entry:** The Owner reserves the right to enter the premise at any time for any reason. Upon notice of the lease termination, the Operator agrees to permit the Owner or the Owner's lessee or agent to enter the premise to do customary tillage and operations on any land from which the current crops have been removed.
- 16. Violation of Terms:** If the Operator fails to keep any agreement contained in this lease, the lease shall then terminate and the Owner or legal representative shall have the right to take immediate possession of the premises.
- 17. Other Provisions:**
- a) If the Landlord does not have land application completed on or before April 27th for corn and May 10th for soybean land, the Landlord shall reduce the rent value by \$3.00 per acre per day until application per area is completed.
 - b) Ground that is not farmable due to flooding or standing water shall not be charged rent.
 - c) Landlord reserves the right to remove land from production to enlarge the Stormwater Detention Area. Landlord shall compensate the tenant for any losses if land is removed from production after any farm work begins for the crop year.
 - d) Landlord reserves the rights to land apply Mudpit wastes on the farm ground that is low and is frequently wet.
- 18. Arbitration:** Any disputes between the Owner and Operator not covered by the terms of this lease may be submitted by either party for arbitration at a reasonable fee by three disinterested persons, one of whom shall be selected by the Owner, one by the Operator, and the third by the previously named two. If and when disputes are submitted, a majority decision of the arbitrator shall be binding upon the parties to the lease.

In Witness whereof, we agree to the terms and conditions of this lease and we affix our signatures on this _____ day of January 2009.

Ron Burns
Operator

City of Marshalltown, WPCP
Owner

For (business entity)
Address:
2716 Rockton Dr.
Marshalltown, IA 50158
Telephone:
641-752-0284

By (owners representative)
Address:
1001 Woodland Street
Marshalltown, IA 50158
Telephone:
641-754-5709

Optional Notarization

On this _____ day of _____; A.D., 20 ____ before me and undersigned, a Notary public for the county of _____ State of Iowa, personally appeared to me known to be identical persons named in who executed the foregoing instrument an acknowledged that they executed the same as their voluntary act and deed.

Notary Public

Exhibit A

Area A - ASCS Farm #5059, tract #1293 - Southeast of Water Pollution Control Plant.

A tract of land located in the NW ¼ of Section 30, Township 84 North, Range 17 West of the 5th P. M., Marshall County, Iowa, described as follows:

- A) Beginning at a point North 1° 07' 48" East 33.0 feet of the West ¼ corner of said Section 30; Thence North 90° 00' East 930.72 Feet; Thence North 1° 54' West 1,463.96 feet; Thence North 51° 56' West 1,065.35 feet; Thence South 1° 07' 48" West 2,120.55 feet to the point of beginning.
- B) Except for a tract of land located in the NW ¼ of Section 30, Township 84 North, Range 17 West of the 5th Prime Meridian, Marshall County, Iowa and described as follows: Beginning at the SW Corner of the NW ¼ of Section 30, thence North 1°07'48" East 33.0 feet along the west line of NW ¼ of Section 30; thence North 90°00'00" East 545.0 feet to the Point of Beginning. Thence North 01°53'59" West 150.0 feet; thence North 90°00'00" East 290.0 feet; thence south 01°54'00" East 150.0 feet; thence South 90°00'00" West 290.0 feet to the Point of Beginning. Said tract of land contains approximately 43,477 square feet or 0.998 acre. The assumed bearing of the west line of the NW ¼ of Section 30 is North 01°07'48" East (land used for Off Highway Vehicle parking lot at SE corner of farm).

To contain approximately 37 acres of cropland of which 17 acres to receive municipal fertilizer/biosolids sewage sludge in the spring.

Area B - ASCS Farm #5059, tract #7312 - South of Water Pollution Control Plant.

- A) The Northeast 6.85 acres of the East 19 acres of the Northeast Quarter (NE ¼) of Section 26, except the South 660 feet and except Woodland Street all in Township 84 North, Range 18 West of the 5th P. M., Marshall County, Iowa.
- B) The Northeast Quarter (NE ¼) of the Northwest Quarter (NW ¼), except the North 410.0 feet thereof; The Southwest Quarter (SW ¼) of the Northwest Quarter (NW ¼), except the South 660 feet thereof; the Southeast Quarter (SE ¼) of the Northwest Quarter (NW ¼), except the South 795.50 feet thereof and except 2.53 acres in the southeast corner thereof; the West two-thirds (W 2/3) of the West one-half (W ½) of the Northeast Quarter (NE ¼), except the South 795 feet thereof, and except the north 410.0 feet thereof, and except 8.47 acres in the southwest corner thereof, all located in Section 25, Township 84 North, Range 18 West of the 5th P. M., Marshall County, Iowa.
- C) The Northwest Quarter (NW ¼) of the Northwest Quarter (NW ¼) of Section 25, Township 84 North, Range 18 of the 5th P. M., Marshall County, Iowa, except Woodland Street, and except 3.32 acres in the northeast corner thereof.

To contain approximately 121 acres of cropland of which 114 acres to receive municipal fertilizer/biosolids sewage sludge in the spring.

Area C – ASCS Farm 5059, track 8755 - Area East of Preferred Cartage Services, Inc. and South of Farm Tract #7312.

- A) Lot One (1), Lot One (1) of Two (2), Lot Two (2), and all of Lot Three (3), except the West 105 feet all in the Southwest Quarter (SW $\frac{1}{4}$) of the Northwest Quarter (NW $\frac{1}{4}$) of Section Twenty-five (25), Township Eighty-four (84) North, Range Eighteen (18) West of the 5th P. M., Marshall County, Iowa.
- B) Except the East 220 feet of the North 620 feet in the Southwest Quarter (SW $\frac{1}{4}$) of the Northwest Quarter (NW $\frac{1}{4}$) of Section Twenty-five (25), Township Eighty-four (84) North, Range Eighteen (18) West of the 5th P. M., Marshall County, Iowa. Approximately 3.13 acres sold to Preferred Cartage Services, Inc.

To contain approximately 7 acres of cropland of which 0 acres will receive municipal fertilizer/biosolids sewage sludge.

Area D – ASCS Farm 5059, tract #7477 - Located between farm tracts #1293 and #7312.

The East One-third (E $\frac{1}{3}$) of the West One-half (W $\frac{1}{2}$) of the Northeast Quarter (NE $\frac{1}{4}$), Except the South 60 feet and the East One-half (E $\frac{1}{2}$) of the Northeast Quarter (NE $\frac{1}{4}$), Except the East 33 feet and Except the South 60 feet, all in Section Twenty-five (25), Township Eighty-four (84) North, Range Eighteen (18) West of the 5th P. M., Marshall County, Iowa, from the root of title.

To contain approximately 97 acres of cropland of which 95 acres receive municipal fertilizer/biosolids sewage sludge in the spring.

All lands are further subject to Landlord's uses in operation of its Water Pollution Control Plant, its Construction Projects and other uses. Tenant and Landlord shall visually agree to exact lands to be farmed under this agreement.

Area A - Southeast of Water Pollution Control Plant

Marion Township 30
ASCS Farm #2628 Tract #1293
37 Farmable acres

A tract of land located in the NW ¼ of Section 30, Township 84 North, Range 17 West of the 5th P. M., Marshall County, Iowa described as follows:

Beginning at a point North 1° 07' 48" East 33.0 feet of the West ¼ corner of said Section 30; Thence North 90° 00' East 930.72 feet; Thence North 1° 54' West 1,463.96 feet; Thence North 51° 56' West 1,065.35 feet; Thence South 1° 07' 48" West 2,120.55 feet to the point of beginning.

Except for a tract of land located in the NW ¼ of Section 30, Township 84 North, Range 17 West of the 5th Prime Meridian, Marshall County, Iowa and described as follows: Beginning at the SW Corner of the NW ¼ of Section 30, thence North 1°07'48" East 33.0 feet along the west line of NW ¼ of Section 30; thence North 90°00'00" East 545.0 feet to the Point of Beginning. Thence North 01°53'59" West 150.0 feet; thence North 90°00'00" East 290.0 feet; thence south 01°54'00" East 150.0 feet; thence South 90°00'00" West 290.0 feet to the Point of Beginning. Said tract of land contains approximately 43,477 square feet or 0.998 acre. The assumed bearing of the west line of the NW ¼ of Section 30 is North 01°07'48" East (land used for Off Highway Vehicle parking lot at SE corner of farm).

Part of the NW ¼ Section 30-84-17

EXHIBIT B

**CITY OF MARSHALLTOWN
CASH LEASE FARM**

**STORMWATER
DETENTION**
4 Acres

Area B

CROPLAND
114 Ac w/sludge
7 Ac w/o sludge

Area D

CROPLAND
95 Ac w/sludge
2 Ac w/o sludge

Area A

CROPLAND
17 Ac. w/sludge
20 Ac. w/o sludge

Area C

**AND
sludge**

**1 Ac ATV
Parking Lot**



Exhibit C

Iowa State University Extension Services Cash Rental Rates for Iowa-Survey

Iowa State University Extension has a web site for Agricultural Decision Makers - <http://www.extension.iastate.edu/agdm> that provides information on Cash Lease rates being charged in Iowa.

The Cash Rental rate will be taken from that survey each year and will be based on:

- Current years survey
- Marshall County
- Corn and Soybean ground
- “Medium Quality Third” – average response

See attached information for 2008 Survey (Example Only)