

COUNCIL ACTION FORM

SUBJECT: PRIVATE WATER MAIN AGREEMENT WITH HARVESTER LAND HOLDINGS LC AND DICKSON & LUANN JENSEN

BACKGROUND:

Beginning in the 1990's, the City granted permission to rural water districts to provide service to land within two miles of the City's corporate boundary with the understanding that the right to provide service to those properties would revert to the City as growth occurred. However, when such growth eventually occurred Xenia did not allow the City to provide water service to that land unless major "buy-out" payments were made to Xenia. This was true even when the land had been annexed into the City.

To address this issue and reserve the right to serve customers in areas adjacent to the City's corporate limits, the City Council adopted provisions in Chapter 28 - Division II of the Municipal Code that allows for the City to deliver water service to land outside the corporate limits but within two miles of the City. This right to serve is provided in Iowa Code Sec 357A.2, which provides that in responding to the rural water service request, the City may waive its right to serve or may reserve the right to provide service. **The City must then provide water service within three years if the right to serve is retained.**

Where current City infrastructure is not present, a temporary water main may be extended to such areas. That temporary main would then be replaced with a larger main as adjacent property is incorporated into the City. Under Section 28.202 of the Municipal Code, **the costs for temporary and future water infrastructure needed to serve such properties and any applicable permit/connection fees are the responsibility of the requesting property owner.** Additional provisions in Chapter 28 - Division II include requirements for metering, back-flow prevention, and rural water rate structure.

Harvester Land Holdings LC, and Dickson and Luann Jensen, the owners of seven (7) properties west of US 69 (South Duff Ave) and outside of City limits have requested permission to install a rural water connection off the City's public water main (see Attachment A). Each private residential water service will be metered individually and charged the City rural water rate fees. The intent of this rural water connection is to initially serve three (3) residences (two of which are under construction) and potentially additional future homes as those properties are developed.

City Council may recall that a request to amend the Urban Fringe Plan to Rural Residential for this same area was withdrawn by the applicant in June 2020. City Council received a memo from staff dated June 19th discussing options and that staff recommended the properties be annexed in accordance with future planning of Plan 2040, rather than support addition rural development. **It should be emphasized that**

approval of the requested rural water service is not indicative of any support for future subdivision and rural development beyond the use of each of existing seven lots while remaining in the County.

With multiple services, this rural water connection will function as a private water main, but it will not be constructed to City standards. Therefore, an agreement (see Attachment B) has been created to address the following:

1. Operation, repair, and maintenance of the private water main (Owner's responsibility).
2. Compliance with applicable laws and regulations (Owner's responsibility).
3. Water flows, water pressures, and fire protection (City not responsible nor liable).
4. Future annexations (Owner is responsible for installing new public main).

This agreement will protect the City from potential disputes over these issues and allow the City to discontinue or disconnect water service if the owner fails to comply with the terms of the agreement. Staff has received and reviewed construction plans for the private water main, but the construction of the private water main should not commence until this agreement has been approved by City Council.

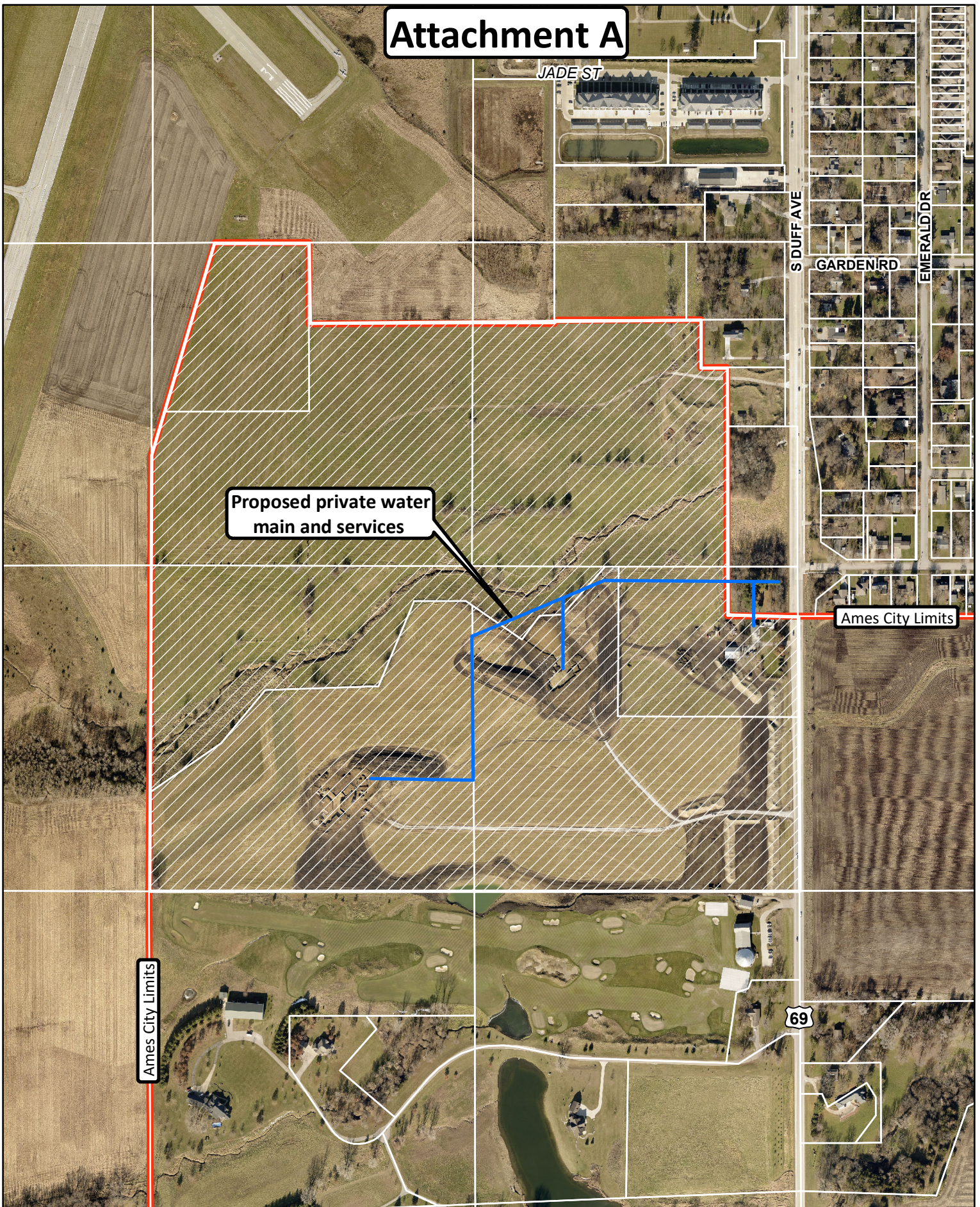
ALTERNATIVES:

1. Approve the private water main agreement with Harvester Land Holdings LC and Dickson and Luann Jensen for uses on the seven existing lots.
2. Direct staff to make modifications to the agreement and continue to allow construction of the rural water connection to commence.

CITY MANAGER'S RECOMMENDED ACTION:

By approving this agreement, construction of the rural water connection can move forward with a clear understanding of the Owner and City responsibilities associated with this private water main. Approval of the agreement does not indicate future support for additional rural subdivision or development beyond the use of the current seven lots identified by the applicant. **Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, as described above.**

Attachment A



**Properties (7 total) owned by
Harvester Land Holdings LC and Dickson & Luann Jensen
intended to be served by a private water main**



1 inch = 500 feet
Date: 6/26/2020

Prepared by/Return to: Kathleen Law, 700 Walnut, Suite 1600, Des Moines, IA 50309; 515-283-3116

PRIVATE WATER MAIN AGREEMENT

This Private Water Main Agreement (“Agreement”) is made effective as of August 31, 2020 by and between Dickson D. Jensen and Luann C. Jensen, husband and wife, and Harvester Land Holdings L.C. whose address is 4611 Mortensen Road, Suite 106, Ames, Iowa 50014 and their successors and assigns (collectively, “Owner”) and the City of Ames, Iowa, a municipal corporation (“City”) located at 515 Clark Ave, Ames, Iowa 50010.

RECITALS

- A. WHEREAS the Owner owns the real property located in Story County, Iowa, and described on the attached Exhibit A (“Property”); and,
- B. WHEREAS the Owner desires for the City to provide water service to the Property; and,
- C. WHEREAS the City agrees to allow Owner to access City water service to the Property under certain terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Owner and the City for themselves, and their successors and assigns, do mutually agree as follows:

1. The Owner, at the Owner’s sole cost and expense, shall cause a private water main (“Water Main”) to be constructed on the Property in the general location shown on the plans attached hereto as Exhibit B (“Plans”). This Water Main will serve the Property. The Water Main will begin at, and be connected to, the City’s public water main at the valve located west of the hydrant on the west side of South Duff Avenue (Highway 69) just south of the intersection of Ken Maril Road. The City agrees to provide water service to the Property according to the terms of this Agreement at the general water service rates established and charged by the City.

2. The Owner will be solely responsible for all necessary maintenance, repairs, operation, and replacement of the Water Main. The Owner shall comply with all applicable laws and regulations governing the Water Main.
3. Within six (6) months of the annexation (either voluntary or involuntary) of all or part of the Property into the City, the Owner shall cause the annexed part of the Property to be served by a public water main meeting the City's standards for water main at the time of the annexation at the Owner's sole expense and not at the expense of the City.
4. The Owner acknowledges and agrees that the City does not guarantee water pressures or flow rates within the Water Main. The Owner further acknowledges and agrees that the City does not guarantee, and will not be responsible for, inadequate water supply from the Water Main for fire protection service to the Property. The Owner acknowledges and agrees that any failure of the Owner to comply with the terms of this Agreement that continues more than thirty (30) days after written notice from the City of such failure may result in disconnection or discontinued water service by the City to all or part of the Water Main.
5. This Agreement and any document or instrument executed pursuant hereto may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
6. Any notice under this Agreement shall be in writing and be deemed given: (i) when personally delivered; (ii) three (3) days after deposit in the United States registered or certified mail, postage prepaid; or (iii) when sent by Federal Express or similar nationally recognized overnight courier service. For the purposes of notice, the addresses of the parties shall be as set forth on page one of this Agreement, provided that a party may change its address for notices by giving written notice of such change to the other party in accordance with this provision.
7. If the Owner, or its successors and assigns, obtain water services from a federally protected rural water provider, at any time, or if a federally protected rural water provider, *e.g. Xenia Rural Water District*, intends to provide water services to all or a portion of the Property, said Owner shall be responsible for payment of any amount that may become due and owing to any rural water provider as a result of the annexation of the Owner's Property which are related to, in whole or in part, a buyout of rights to serve the property with water. The City shall not be required to advance any funds or costs due and owing to a rural water provider on behalf of the Owner or any successors or assigns of the Owner. The Owner, and its successors and assigns, shall hold the City harmless and indemnify the City from any and all amounts required to pay a rural water provider service provider as a settlement for resolution of any claims, disputes objections, protest or litigation related to or arising out of the City providing water service to all or any part of each Owner's property, following annexation of the Property (or any portion thereof) to the City, or for any other reason related to a claim made by a federally protected rural water provider related to the Property, or any portion thereof.

8. In the performance of each provision of this Agreement, time shall be of the essence. Failure to promptly assert rights herein shall not, however, be a waiver of such rights or a waiver of any existing or subsequent default. This Agreement and the representations, warranties, and covenants of the parties shall apply to and bind the successors in interest and assigns of the parties. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine, or neuter gender according to the context. This Agreement, together with all the Exhibits attached hereto and incorporated by reference herein, constitutes the entire agreement of the parties hereto with respect to the subject matters hereof and supersedes any and all prior agreements, arrangements, and undertakings of the parties, hereto with respect to the subject matters hereof and shall not be amended except by a written instrument duly signed by the parties. This Agreement shall be construed and interpreted according to the laws of the State of Iowa, without reference to conflicts of law principles. If any provision of this Agreement shall be declared by a court of competent jurisdiction to be unenforceable or invalid, such provision shall be severed from this Agreement and the remaining portions hereof shall continue in full force and effect pursuant to their terms.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year set forth in the first paragraph of this Agreement.

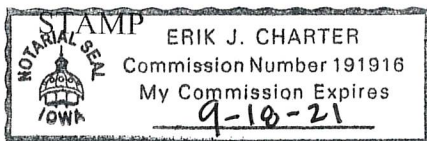
Dickson D. Jensen
Dickson D. Jensen

Luann C. Jensen
Luann C. Jensen

Harvester Land Holdings, L.C.

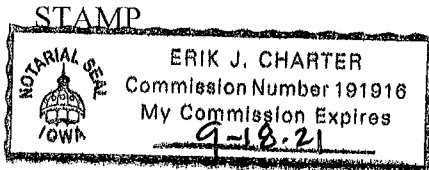
By: Dickson D. Jensen
Dickson D. Jensen, Manager

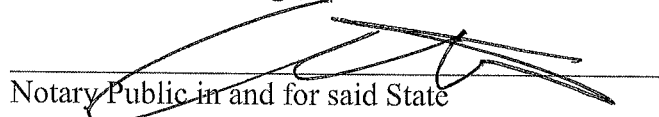
STATE OF IOWA, COUNTY OF Stony:
This record was acknowledged before me on August 31, 2020 by
Dickson D. Jensen and Luann C. Jensen, husband and wife.



[Signature]
Notary Public in and for said State

STATE OF IOWA, COUNTY OF Story :
This record was acknowledged before me on August 31, 2020 by
Dickson D. Jensen, as Manager of Harvester Land Holdings, L.C.




Notary Public in and for said State

Passed and approved on _____, 2020, by Resolution No. 20-_____
adopted by the City Council of the City of Ames, Iowa.

CITY OF AMES, IOWA

By:

John A. Haila, Mayor

Attest:

Diane R. Voss, City Clerk

STATE OF IOWA, COUNTY OF STORY, SS.:

This instrument was acknowledged before me on _____, 2020, by John A. Haila
and Diane R. Voss, as Mayor and City Clerk, respectively, of the City of Ames, Iowa.

NOTARY PUBLIC

EXHIBIT A

Legal Description of the Property

The North Half (N ½) of the Southwest Quarter (SW ¼) of Section Twenty-three (23), Township Eighty-three (83) North Range Twenty-four (24) West of the 5th P.M., Story County, Iowa, except the North 603.5 Feet of the East 721.8 Feet of the Southwest Quarter (SW ¼) of said Section Twenty-three (23), and except the following described tract of land: Commencing at a point on the North line of the Southwest Quarter (SW ¼) of said Section Twenty-three (23), 776.2 Feet S 89°28' W of the NE Corner of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) of said Section Twenty-three (23), thence S 42°40' W 259.3 Feet, thence S 86°22' W 93.3 Feet, thence S 36°20' W 120.3 Feet, thence N 56°14' W 277.6 Feet, thence S 89°48' W 208.7 Feet, Thence S 22°36' W 376.0 Feet; thence S 87°34' W 459.1 Feet; thence S 39°47' W 281.3 Feet, thence S 55°01' W 353.6 Feet to the West line of the Northwest Quarter (NW ¼) of the Southwest Quarter (SW ¼) of said Section Twenty-three (23), thence N 0°31' W 909.8 Feet, to the NW Corner of the Northwest Quarter (NW ¼) of the Southwest Quarter (SW ¼) of said Section Twenty-three (23), thence N 89°28' E 1,860.5 Feet along the North line of said Southwest Quarter (SW ¼) of Section Twenty-three (23), to the place of beginning.

AND

Commencing at the Northeast (NE) Corner of the Southwest Quarter (SW ¼) of Section Twenty-three (23), Township Eighty-three (83) North, Range Twenty-four (24) West of the 5th P.M., Iowa, thence West Seven Hundred Twenty-one and Eight Tenths (721.8) Feet, thence South Six Hundred Three and Five Tenths (603.5) Feet, thence East Seven Hundred Twenty-one and Eight Tenths (721.8) Feet, thence North Six Hundred Three and Five Tenths (603.5) Feet to the point of beginning, subject to easements of record.

AND

Commencing at a point on the North line of the Southwest Quarter (SW¼) of Section Twenty-three (23), Township Eighty-three (83) North, Range Twenty-four (24) West of the 5th P.M., Story County, Iowa, 776.2 feet S 89°28' W of the NE Corner of the NE ¼ of the SW ¼ of said Sec. 23; thence S 42°40' W 259.3 feet; thence S 86°22' W 93.3 feet; thence S 36°20' W 120.3 feet; thence N 56°14' W 277.6 feet; thence S 89°48' W 208.7 feet; thence S 22°36' W 376 feet; thence S 87°34' W 459.1 feet; thence S 39°47' W 281.3 feet; thence S 55°01' W 353.6 feet to the West line of the NW ¼ of the SW ¼ of said Sec. 23; thence N 0°31' W 909.8 feet to the NW Corner of said NW ¼ of the SW ¼ of said Sec. 23; thence N 89°28' E 1,860.5 feet along the North line of said SW ¼ of said Sec. 23 to the place of beginning, containing 16 acres.

AND

The Southwest Quarter (SW $\frac{1}{4}$) of the Northwest Quarter (NW $\frac{1}{4}$) of Section Twenty-three (23), Township Eighty-three (83) North, Range Twenty-four (24) West of the 5th P.M., Story County, Iowa, except the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ and except the North 330 feet of the East 664.9 feet and except Beginning at the NW Corner of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 23-T83N-R24W of the 5th P.M.; Thence N 89°57'07" E 267.81 feet along the north line of said SW $\frac{1}{4}$ of the NW $\frac{1}{4}$; thence S 16°38'59" W 940.14 feet to the west line of said SW $\frac{1}{4}$ of the NW $\frac{1}{4}$; thence N 0°05'56" E 900.5 feet to the point of beginning.

AND

Commencing 286.9 feet West of the SE Corner of the Southeast Quarter (SE $\frac{1}{4}$) of the Northwest Quarter (NW $\frac{1}{4}$) of Section Twenty-three (23), Township Eighty-three (83) North, Range Twenty-four (24) West of the 5th P.M., Story County, Iowa, thence North 810.9 feet, thence West 106 feet, thence North 194.9 feet, thence West 594.25 feet; thence South 80 feet, thence West 330 feet, thence South 925.8 feet, thence East 1,033 feet to the point of beginning.

AND

The Northwest Quarter (NW $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) of the Northwest Quarter (NW $\frac{1}{4}$) of Section Twenty-three (23), Township Eighty-three (83) North, Range Twenty-four (24) West of the 5th P.M., Story County, Iowa, except Beginning at the NW Corner of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 23-T83N-R24W of the 5th P.M.; Thence N 89°57'07" E 267.81 feet along the north line of said SW $\frac{1}{4}$ of the NW $\frac{1}{4}$; thence S 16°38'59" W 940.14 feet to the west line of said SW $\frac{1}{4}$ of the NW $\frac{1}{4}$; thence N 0°05'56" E 900.5 feet to the point of beginning.

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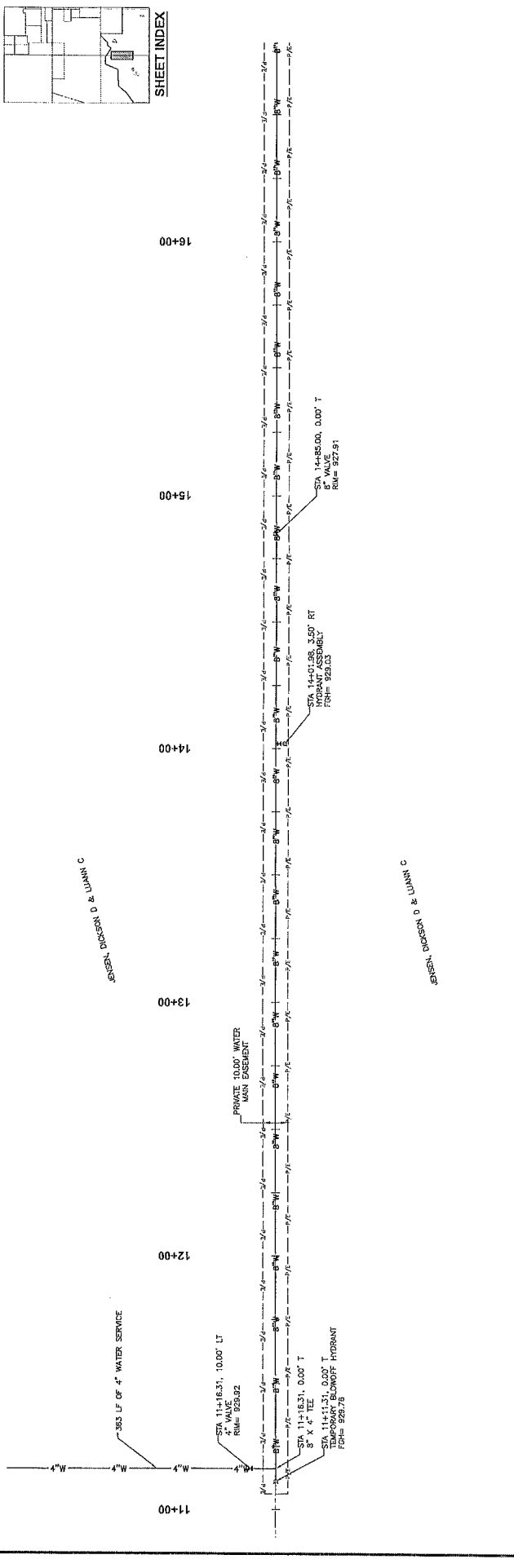
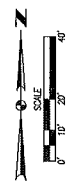
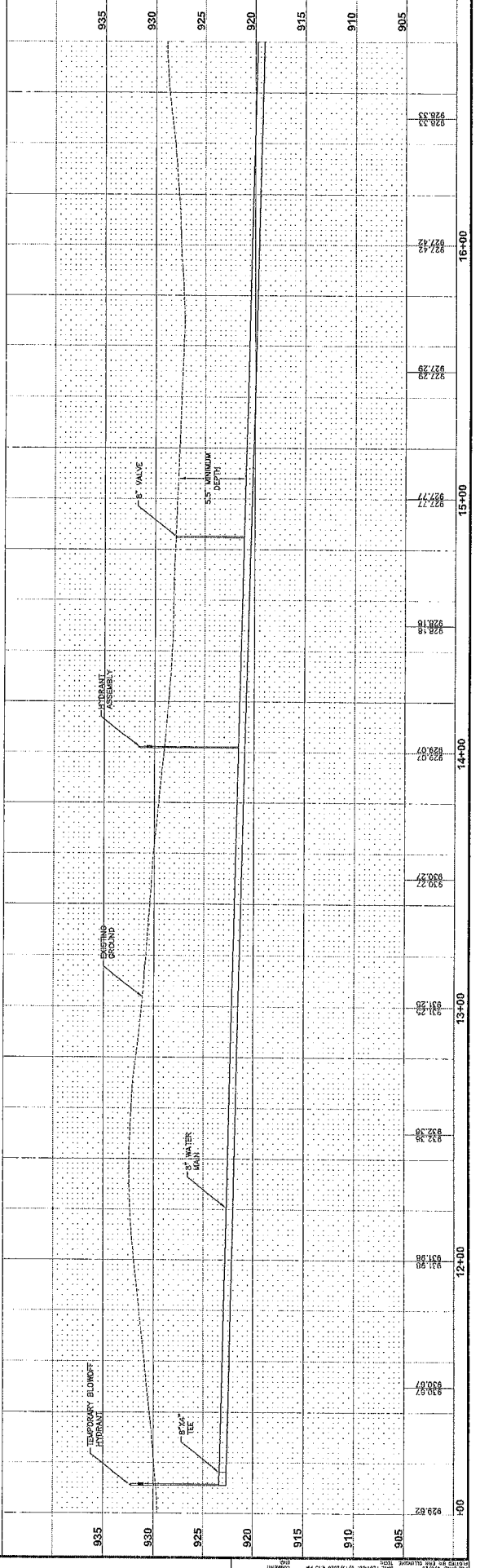
JENSEN FAMILY FARM
WATERMAIN PLAN AND PROFILE

STORY COUNTY, IOWA



ENGINEER: EKO
PHONE: (515) 369-4400
3405 S.E. CROSSROADS DRIVE, SUITE G
GRIMES, IOWA 50111
FAX: (515) 369-4410

DATE	REVISIONS
	08/10/2010
	08/03/2010
	08/07/2010
	PERMIT SUBMITTAL
	FINAL SUBMITTAL
	RECORD SUBMITTAL



JENSEN, DISCHEN D & LUMANN C

JENSEN, DISCHEN D & LUMANN C

1. ALL DIMENSIONS ARE IN FEET AND INCHES. 2. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED. 3. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED. 4. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED. 5. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.

DATE	
REVISIONS	
FINAL SUBMITTAL	09/18/2020
FIRST SUBMITTAL	08/07/2020

3405 S.E. CROSSROADS DRIVE, SUITE G
 GRIMES, IOWA 50111
 PHONE: (515) 369-4400 FAX: (515) 369-4410
 ENGINEER: EKO
 EH: GH



CIVIL DESIGN ADVANTAGE
 STORY COUNTY, IOWA
JENSEN FAMILY FARM
WATERMAIN PLAN AND PROFILE

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