

COUNCIL ACTION FORM

SUBJECT: HAULED WASTE AGREEMENT WITH BURKE CORPORATION

BACKGROUND:

The Ames Water Pollution Control Facility (WPCF) is capable of accepting hauled non-hazardous liquid wastes. Depending on the nature of the waste, it can be either discharged into the headworks of the facility, or it can be discharged directly into the digesters. Appendix Q of the Ames Municipal Code contains fees for the disposal of such hauled wastes. Fees have been established for domestic/septic tank waste and for restaurant grease trap waste. For unique non-domestic waste, the fees are calculated on a case-by-case basis. There is an additional 15% surcharge that applies for wastes that originate outside the Ames City limits.

Burke Corporation, located in the City of Nevada, processes fully cooked meat products for the food service and prepared foods industries. Burke is in the final stages of an expansion to its production facility. The Nevada Wastewater Treatment Plant currently accepts waste from Burke, but does not have sufficient capacity to accept the planned increase in loading from Burke. The City of Nevada is undertaking a capacity expansion which is scheduled for completion in early 2024. Nevada will only be able to accept the additional loading from Burke after this capacity expansion is complete.

In July 2018, Ames staff was approached by the Ames Economic Development Commission on behalf of Burke, inquiring whether the Ames WPCF would have the capability to accept a portion of the wastewater generated by Burke's proposed expansion. City staff evaluated the inquiry and determined that the WPCF has available capacity for the excess wastewater that cannot be discharged to the City of Nevada.

The following table compares the anticipated loading due to hauled waste from Burke to the design capacity of the Ames WPCF and its current loading.

| | WPC Design Capacity | Current Loading | Available Capacity | Year 5 Load from Burke |
|---------------------|----------------------------|------------------------|---------------------------|-------------------------------|
| Flow (MGD) | 12.1 | 9.3 | 2.8 | 0.019 |
| BOD (lb/day) | 16,150 | 12,600 | 3,550 | 210 |
| TSS (lb/day) | 16,190 | 17,400 | -1,210 | 52.5 |
| TKN (lb/day) | 2,750 | 1,750 | 1,000 | 23.6 |
| TP (lb/day) | -- | 320 | -- | 10.5 |

BOD – Biochemical Oxygen Demand
TSS – Total Suspended Solids
TKN – Total Kjeldahl Nitrogen
TP – Total Phosphorus

Note that the data set above suggests that the Ames WPCF is already overloaded for Total Suspended Solids (TSS). Over time, it has become clear that the theoretical design capacity for TSS was very conservative, as the facility continues to comfortably meet its permit limits despite exceeding the design loading (In calendar year 2019, the facility had an average effluent TSS of 8 mg/L, compared to the permit limit of 30 mg/L).

Based on the proposed volume and loading, an estimate of the fees that would be generated from the hauled waste is shown below

| | CBOD @ \$0.46/lb (+15%) | | TSS @ \$0.65/lb (+15%) | | TKN @ \$1.01/lb (+15%) | | Total P, no surcharge | | Volume @ \$0.00396/gal (+15%) | | Hauled Fee @ \$8.65 per truck (+15%) | Annual \$ |
|------|--|------------|---------------------------------------|------------|---------------------------------------|------------|--------------------------------------|------------|--|------------|---|----------------------|
| | lbs/ day | \$/ day | lbs/ day | \$/ day | lbs/ day | \$/ day | lbs/ day | \$/ day | 1,000 gal./day | \$/ day | \$/ day | @ 252 days/year |
| 2020 | 75 | \$39 | 17 | \$14 | 8 | \$9 | 4 | \$0 | 4.8 | \$22 | \$8 | \$23,184 |
| 2021 | 100 | \$53 | 26 | \$21 | 12 | \$13 | 5 | \$0 | 7.5 | \$23 | \$12 | \$30,744 |
| 2022 | 130 | \$69 | 35 | \$27 | 16 | \$17 | 7 | \$0 | 10.7 | \$48 | \$18 | \$45,108 |
| 2023 | 210 | \$111 | 53 | \$41 | 24 | \$25 | 11 | \$0 | 19.8 | \$90 | \$33 | \$75,600 |
| | | | | | | | | | | | | \$174,636 |

On September 11, 2018, City Council authorized staff to develop a written agreement between Burke Corporation and the City of Ames that would detail the obligations of each party for the hauling and disposal of liquid waste. Attached is the Hauled Waste Agreement developed by City staff in collaboration with Burke staff.

Accepting hauled waste will use a portion of the available capacity of the Ames WPCF, and that capacity will not be available for other growth in Ames until the proposed agreement expires in five years or at completion of the City of Nevada's capacity expansion, whichever shall occur first. However, the incremental loading from the proposed Burke waste is not a significant percentage of the currently available capacity, and staff believes that accepting the Burke waste would not be a determining factor in deciding whether there is sufficient capacity to accommodate a future industry in Ames of the type that has been historically recruited. Ames ratepayers can be assured that they are not subsidizing an entity outside the City limits due to the 15% surcharge being applied.

ALTERNATIVES:

1. Approve the Hauled Waste Agreement with Burke Corporation.

2. Do not approve the Hauled Waste Agreement.

CITY MANAGER’S RECOMMENDED ACTION:

The Ames WPCF currently has additional capacity that is available to support growth in the community. Until that capacity is needed, however, it is not generating any revenue for the Sewer Fund. Approving an agreement to accept hauled waste for a fixed period of time would allow the facility to generate revenue in the short term, while knowing that the capacity will be “released” and available for future growth once Burke is able to discharge directly to the Nevada Wastewater Treatment Plant.

Because of 1) the indirect economic benefits that will be realized by the City with the expansion of the Burke facility in Story County, 2) the additional revenue that can be generated from the unused capacity at the WPC Plant, 3) the opportunity to assist one of our neighboring cities in securing an economic development project, and 4) the fact that the amount of capacity that will be lost at the WPC Plant over a short period of time due to accepting the Burke waste will be minimal; it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, as described above.

HAULED WASTE AGREEMENT

THIS IS AN AGREEMENT made by and between the City of Ames, Iowa, and Burke Marketing Corporation, upon the following terms and conditions:

- 1 **Definitions.** When used in this Agreement, unless otherwise required by the context:
 - 1.1 “City” means the City of Ames, Iowa, a municipal corporation, whose address is 515 Clark Avenue, Ames, Iowa.
 - 1.2 “Burke” means Burke Marketing Corporation, whose address is 1516 South D Avenue, Nevada IA 50201.
 - 1.3 “Agreement” means this instrument in its entirety as signed by the parties thereto.
- 2 **Circumstances.** The Ames Water Pollution Control Facility (hereinafter “WPCF”) is capable of accepting hauled liquid wastes and has excess capacity currently. Burke, located in the City of Nevada, proposes to expand production of meat products for food service and the resulting increase in liquid waste generated by the expansion is in excess of the capacity that may be accepted by the City of Nevada. The City of Nevada is undertaking a capacity expansion, but it will be approximately five years until the capacity will be sufficient to manage and accept the Burke excess capacity of liquid waste. The Ames City Council has agreed to make use of the WPCF to accept a portion of the liquid waste generated by Burke that cannot be accepted by the City of Nevada. Burke agrees to pay to the City of Ames fees for the disposal of liquid waste, as set forth in the City Code (currently within Appendix Q) with the addition of a 15% surcharge for the reason that the waste was originated outside the City of Ames.
- 3 **Purpose.** The governing body of the City of Ames finds it to be in the best interest of the citizens of Ames to enter into an agreement whereby it may make efficient use of the WPCF and utilize excess capacity. Burke enters into this Agreement so that the waste generated by its expansion may be disposed of properly until the City of Nevada is able to expand its facility to handle Burke’s liquid waste. The parties anticipate that this Agreement shall not exceed five years in duration.
- 4 **Effective Date.** This Agreement shall become effective upon the signed approval of both the City and Burke.
- 5 **Administrative Entity.** No separate administrative or legal entity is established by this Agreement.
- 6 **Term.** This Agreement shall expire and terminate at noon five years from the Effective Date as previously defined or at such time as the expansion of the City of Nevada’s facility expansion is complete, whichever event shall first occur.
- 7 **Burke’s Obligations.** In consideration of the City’s opening the WPCF for Burke’s temporary and limited use:
 - 7.1 Burke shall be limited to using the WPCF for excess wastewater that Burke is not able to discharge to the City of Nevada’s facility.
 - 7.2 At such time that the City of Nevada’s facility expansion is complete Burke shall use the City of Nevada’s facility to discharge its liquid waste.
 - 7.3 Burke shall obey all limitations on the discharge of liquid waste as set forth in the Ames Municipal Code, Chapter 28.306. Notwithstanding the limitations set forth in §28.306(3), the City may disallow, and Burke shall not deliver any wastewater which has a pH less than 5.0 or higher than 10.0.
 - 7.4 Burke shall deliver liquid waste loads to the WPCF between the hours of 6:30 a.m. and 3:30 p.m., Monday thru Friday, excluding City holidays, or as otherwise directed by the City’s Department of Water and Pollution Control.

- 7.5 Burke shall enter and exit the WPCF from the South entrance/exit along 280th Street when delivering the liquid waste that is the subject of this Agreement. Exhibit 'A' attached to this Agreement shows an illustration of the permitted path for the delivery of liquid waste.
- 7.6 Burke shall deliver liquid waste to the WPCF as directed by, and within the sole determination of City staff. Control Box A at the WPCF shall serve as the primary discharge point; however, for loads with a PH outside of 6.5 – 9.5 Standard Units, the waste shall be discharged to the Equalization Basin.
- 7.7 Burke shall pay to the City fees, charges and surcharges (including, but not limited to, the High Strength Surcharge and Non-Ames location surcharge for waste originating outside the City) as set forth in the Ames Municipal Code, which is subject to change by the Ames City Council.
- 8 Required Testing.** The City shall sample and analyze samples of the first five liquid waste deliveries from Burke. Analysis for these samples shall include Chemical Oxygen Demand (COD), Total Kjeldahl Nitrogen (TKN), and Total Suspended Solids (TSS). After the initial sampling/analysis has been completed, the City shall sample and analyze samples of liquid waste deliveries from Burke at a rate not to exceed once per week. Analysis for these samples shall include COD and TKN. The City reserves the right to collect samples more frequently if operational concerns at the WPCF may be attributable to liquid waste deliveries from Burke, in the sole judgment of the City. The City's cost to test samples of liquid waste shall be billed to Burke, and Burke shall pay to the City the billed amounts timely, at the rates set forth under the Ames Municipal Code (Appendix Q), as may be adjusted by the City Council from time to time. The City shall not be required to accept additional deliveries of waste from Burke if any invoice for sample testing is unpaid and more than 60 days past due.
- 9 Terms of Payment.** The City shall invoice Burke on a monthly basis, which shall be due upon receipt. The City shall not be required to accept additional deliveries of waste from Burke if any invoice is unpaid and more than 60 days past due. This Agreement shall be subject to immediate termination in its entirety upon Burke's failure to pay amounts invoiced by the City within 75 days.
- 10 Termination.** Either the City or Burke may terminate this Agreement as of a specified date by giving written notice of such election to the other not less than 60 days prior to the effective date of termination specified therein. Burke shall pay for all costs, charges and surcharges owed up to the date of termination. Final payment to the City shall be made within 60 days of the final invoice date.
- 11 Administration.** The Superintendent of the WPCF (or acting Superintendent of the WPCF) and the President of Burke Marketing Corporation jointly administer the obligations under this Agreement and shall be the primary points of contact for any matters arising under this Agreement. There shall be no separate entity created by this Agreement to which any power or authority of either party shall be delegated. There shall be no joint acquisition or ownership of any real or personal property.
- 12 Notice.** Unless otherwise required by law, any notice or demand required or permitted by the terms of this Agreement shall be sufficient and deemed complete when expressed in writing and either (a) personally delivered to the person entitled thereto, or (b) deposited at any office of the United States Postal Service in the form of certified mail addressed to the last known mailing address of the person entitled thereto, or (c) served on the person entitled thereto in the manner of an original notice under the Iowa Rules of Civil Procedure.
- 13 Timely Performance.** Time is of the essence in this Agreement. However, no delay by a party to this Agreement in exercising any right or remedy provided herein or otherwise afforded by

law or equity shall be deemed a waiver of or preclude the exercise of such right or remedy or constitute a waiver of any existing or subsequent default by any other party to this Agreement.

- 14 **Rights Cumulative.** All rights and remedies provided for in this Agreement or which the City may have otherwise, at law or in equity, shall be distinct, separate and cumulative and may be exercised concurrently, independently or successively in any order whatsoever, and as often as the occasion therefor arises.
- 15 **Severability.** If any part of this Agreement shall be adjudged invalid or unenforceable such adjudication shall not affect the validity or enforceability of this Agreement as a whole or any part thereof not adjudged invalid or unenforceable.
- 16 **Applicable Law; Jurisdiction.** This Agreement shall be governed exclusively by and construed in accordance with the laws of the State of Iowa. The parties hereby submit to jurisdiction in the state courts located in Story County, Iowa and the federal courts of the United States of America located in said state for the enforcement of the obligations hereunder.
- 17 **Entire Agreement.** This instrument constitutes the entire agreement between the parties with respect to the subject matter thereof and supersedes all prior statements, representations, promises and agreements, oral or written. No addition to or change in the terms of this Agreement shall be binding upon the parties unless it is expressed in a writing signed by the parties.
- 18 **Interpretation.** Words and phrases used in this Agreement shall be construed as in the single or plural number, and as masculine, feminine, or neuter gender, according to the context. The paragraph headings in this Agreement are for convenience only and in no way define or limit the scope or intent of any provisions of this Agreement. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument. Any counterpart of this Agreement may be executed by facsimile signatures on the part of one or more of the parties hereto provided that each signature page containing a facsimile signature on behalf of any one party also contains an original signature on behalf of at least one other party.

IN WITNESS OF THIS AGREEMENT the City and Burke have executed this instrument under date of _____, 2020.

BURKE MARKETING CORPORATION

Approved dated _____, 2020.

By: _____
Chad Randick, President

Approved dated _____, 2020.

CITY OF AMES, IOWA

Attest

By: _____

Diane Voss, City Clerk

By: _____

John A. Haila, Mayor