

COUNCIL ACTION FORM

**SUBJECT: RENEWAL OF INTERGOVERNMENTAL AGREEMENTS FOR
RESOURCE RECOVERY SYSTEM**

BACKGROUND:

Since 1974, the City of Ames has partnered with communities and entities within Story County through “28E intergovernmental agreements” for disposal of garbage and solid waste. These agreements include contractual obligations for the entities to have their solid waste brought to our Resource Recovery Plant, and provide a basis for sharing the costs of operating the Plant. Both the original agreements and the one previous extension were for terms of 20 years. The third agreement phase will commence on July 1, 2014, and will span the next 20 years.

All Iowa cities and counties are responsible to make provisions for the safe and sanitary disposal of garbage. Due to the high fixed costs of an environmentally satisfactory solid waste disposal method, there is a lower cost per person if the costs of a single, high capacity system can be spread over the populations of a number of jurisdictions. For the last 40 years, Ames has been willing to operate and maintain an environmentally satisfactory, efficient, and economical high capacity solid waste disposal system.

The new 28E agreements provide for operation and planning of the City’s resource recovery, or “solid waste reclamation, recycling, and disposal” system, into the future with a known, stable solid waste stream. The general provisions of the proposed twenty-year agreements remain essentially the same.

The following communities and entities within Story County have approved the renewal contracts:

Story County Board of Supervisors
Nevada City Council
Story City City Council
Huxley City Council
Slater City Council
Roland City Council
Gilbert City Council
Maxwell City Council
Cambridge City Council
Zearing City Council
McCallsburg City Council
Kelley City Council
Board of Regents, State of Iowa

During their consideration of the renewal agreements, the city councils in Nevada, Colo, Slater and Huxley raised questions related to the 20-year term of the agreement. Some cities proposed a shorter time frame or asked if provision could be made for them to opt out of the agreement under various scenarios. Staff explained that the 20-year term is vital to Ames' ability to make long-term financial commitments as the system evolves in the future. For example, staff is currently exploring an entirely new gasification technology to convert refuse into electricity. Should the City commit to that change, that step would involve making financing commitments that could extend for up to 20 years. Before taking such a step, it is very important that the City of Ames has long-term financial and waste stream commitments from our partners.

Since it had been 20 years since these contracts were last approved, some of these cities also expressed concerns regarding their not having direct input or control over expenses incurred at the Resource Recovery Plant, as well as concerns over plant outages due to maintenance needs at the City's Power Plant.

After considering these issues, one community opted not to renew its contract. The City of Colo instead chose to enter into a waste disposal agreement with Marshall County Landfill. Colo represents approximately 0.8 percent of the system's total waste stream, and its per capita contribution currently totals \$7,972 annually.

Details of the city agreements are shown in the attached Ames-Gilbert contract.

ALTERNATIVES:

1. Approve the proposed 2014-2034 intergovernmental agreements with the communities and entities listed above.
2. Do not approve the proposed agreements.

MANAGER'S RECOMMENDED ACTION:

The Resource Recovery System has been a point of pride for Ames and Story County for nearly 40 years. Through the end of 2013, 1,264,411 tons of solid waste have been diverted from landfills, and the majority of that waste has replaced a non-renewable resource (coal) as fuel at the City's Power Plant. These partnership agreements are a key element for the City to continue this service and provide for the safe and sanitary disposal of garbage and solid waste both now and in the future.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, thereby approving the proposed 2014–2034 intergovernmental agreements with the communities and entities listed above.

DO NOT WRITE IN THE SPACE ABOVE THIS LINE; RESERVED FOR RECORDER

Prepared by: City of Ames Legal Department, 515 Clark Ave., Ames, IA 50010; 515-239-5146
Return to: Ames City Clerk, Ames City Hall, 515 Clark Ave., P.O. Box 811, Ames, IA 50010

**CONTRACT AND AGREEMENT FOR USE AND SUPPORT OF A
SOLID WASTE RECLAMATION, RECYCLING AND DISPOSAL SYSTEM**

(AMES - GILBERT)

This Contract and Agreement is made and entered into by and between the City of Ames, Iowa, a municipal corporation organized and existing pursuant to the laws of the State of Iowa (hereinafter called "Ames") and the City of Gilbert, a municipal corporation organized and existing pursuant to the laws of the State of Iowa (hereinafter called "Gilbert").

WITNESSETH THAT:

WHEREAS, since 1974 the City of Ames has partnered with communities within Story County (including Gilbert) through 28E agreements for disposal of garbage and solid waste, this third agreement phase will commence July 1, 2014 and span the next 20 years; and

WHEREAS, some provision must be made for the safe and sanitary disposal of garbage and solid waste both now and in the future; and

WHEREAS, it is found that due to the high fixed costs of an environmentally satisfactory solid waste disposal method there is a lower cost per person if the costs of a single high capacity system can be spread over the populations of a number of cities and towns; and

WHEREAS, Ames is willing and able to design, construct, operate and maintain an environmentally satisfactory, efficient and economical high capacity solid waste disposal system if a sufficient number of jurisdictions are committed to its use and support; and

WHEREAS, Gilbert has considered the system proposed by Ames and finds that the Ames System will afford to the citizens of Gilbert a safe, sanitary and environmentally desirable means for the disposal of solid waste.

NOW, THEREFORE, the parties hereto have and do hereby covenant, contract and agree as follows:

**ARTICLE I
BASIC INTENT AND PURPOSE**

1. Ames shall, subject to terms, provisions and conditions hereinafter set out and in accordance with the procedures and provisions hereinafter made and declared, maintain a safe, sanitary and environmentally satisfactory solid waste processing system and for and by such system accept and dispose of all garbage and solid waste of Gilbert during the period of July 1, 2014, to June 30, 2034.

2. Gilbert shall, subject to terms, provisions and conditions hereinafter set out and in accordance with the procedures and provisions hereinafter made and declared, use and support the Ames solid waste disposal system by providing for the disposal of all garbage and solid waste of Gilbert by means of the Ames System and to the lawful extent of its powers allow or permit no other means; and pay such proportionate share of the cost of the Ames System as the population of Gilbert bears to the total of the populations of all the jurisdictions so using and supporting the Ames System during the period July 1, 2014, to June 30, 2034.

3. Nothing in this agreement shall be construed as prohibiting or discouraging Gilbert from encouraging or assisting its citizens to propose, create or participate in any public or private recycling efforts. However, if during the term of this agreement it becomes necessary for all participating jurisdictions to assist in meeting state mandated recycling goals or demand-side management reduction goals, Gilbert agrees to establish recycling programs to meet Gilbert's proportionate share of those goals.

**ARTICLE II
METHOD OF PAYMENT**

1. Costs of the Ames System shall be computed for each calendar year. On or before February 15th of each year Ames shall notify Gilbert of its proportionate share of the net costs of the system for the prior calendar year. Such proportionate share of the costs shall be paid by Gilbert to Ames as follows: one-half on or before July 15 and one-half on or before December 15 of each year.

2. Each using and supporting jurisdiction shall be responsible for a share of the system costs, based on the proportionate population of each jurisdiction. Such per capita cost shall be calculated annually, based on the most recent decennial Federal census. The per capita cost shall be established by analyzing the previous costs and revenues of the Ames System and projecting the future expenses and revenue sources of the system in order to maintain an adequate ongoing balance. When establishing the per capita cost, an effort will be made to maintain consistency over a period of time.

Revenue Sources

Fuel Revenue
Plant Fees
Sale of Materials
Government Agency Contracts

Planned Expenditures

Operation Costs
Debt Service

Per Capita Cost = (Planned Expenditures – Projected Revenue) ÷ System Population

3. Whenever there is a Net Income to the Ames System for any calendar year, such Net Income shall be retained in a fund balance for future system needs.

**ARTICLE III.
DEFINITIONS**

1. For the purpose of this agreement, certain words and phrases are defined as follows:
 - a. Garbage. Every waste accumulation of animal or vegetable matter, or otherwise, that attends or results from the preparation, use, cooking, dealing in or storage of food for human consumption, but not including the accumulated by-products of commercial animal slaughtering, butchering or meat-cutting activities.
 - b. Solid Waste. All waste materials, including yard waste and garbage except liquid matter, toxic and hazardous waste, and not including the accumulated by-products of commercial animal slaughtering, butchering or meat-cutting activities.
 - c. Ames System. A sanitary landfill and a Resource Recovery Plant established, operated and maintained by Ames, plus all attendant and ancillary processes, procedures and activities conducted by Ames, its agents and licensees for the collection and processing of garbage and solid waste.
 - d. Sanitary Landfill. Such areas as have heretofore or may hereafter be set aside or designated by Ames a place where garbage and solid waste will be accepted and disposed of by compaction and burial.
 - e. Resource Recovery Plant. Building, equipment and all attendant processes, procedures and manpower established and maintained by Ames for processing of garbage and solid waste to reclaim usable elements and substances, produce combustible matter for use as fuel for the Ames Municipal Electric System, and reduce all inert and unusable matter to a form convenient for burial in a sanitary landfill.

- f. Using and Supporting Jurisdiction. An incorporated city or town, or a county of the State of Iowa, that has entered into a contract and agreement to use and support the Ames System pursuant to and in accordance with the same provisions, terms and conditions as are set out in this agreement.
- g. Operating Costs. All costs, direct or indirect, incurred by Ames in the operation, maintenance and administration of the Ames System, including equipment replacement costs and interest costs needed to maintain cash flow requirements.
- h. Debt Service. Annual principle and interest for the repayment of debt incurred for capital improvements.
- i. Income from Electric Fuel Sales. The Ames Municipal Electric System will be purchasing fuel from the Resource Recovery. The price paid per ton of fuel will be increased or decreased in response to increases or decreases in the price paid per BTU of other fuel burned at the Ames Power Plant.
- j. Income from Government Agency Contracts. Monies received pursuant to any contracts with may be made for use of the Ames System at a rate per ton with such agencies as Iowa State University, the National Animal Disease Laboratory, the National Biologics Laboratory and others.
- k. Plant Fees. Fees established by the Ames City Council for use of the Ames System.
- l. Income from Sale of Materials. Income derived from the sale of materials reclaimed from solid waste by the processes of the Ames Solid Waste Separation Plant.
- m. Population. The population of an incorporated city or town shall be the number of persons living within its corporate limits as established by the most recent Federal Census, except that for Ames the population thus established will be decreased by the number of persons living in Iowa State University housing facilities. For a county, population shall be the number of persons living within its borders as established by the most recent Federal Census, less the number of such persons living within the limits of incorporated cities and towns as established by the most recent decennial Federal Census.

ARTICLE IV ADMINISTRATION

- 1. The Ames System shall be governed, controlled and administered solely by and through the Ames City Council and Ames City Manager in accordance with and pursuant to the terms of this agreement.

2. It is understood and agreed that Ames will cause the promulgation of specific rules and procedures for the use and workings of the Ames System. Such rules shall govern:

- a. Which types and quantities of garbage and solid waste shall be delivered to and accepted by a sanitary landfill.
- b. Which types and quantities of garbage and solid waste shall be delivered to and accepted by the Resource Recovery Plant.
- c. The days and hours when the Resource Recovery Plant and other system facilities will be open to receive materials.
- d. All procedures for billing and collection of fees.
- e. Every and any other aspect of the management and control of the Ames System.

3. All financial record keeping and accounting for monies and funds related to the Ames System will be done in accordance with such generally accepted accounting principles and procedures as the Ames City Manager and the Director of Finance for the City of Ames shall deem appropriate and sufficient to accurately reflect all costs, direct and indirect, and all revenues and income of the Ames System. Such financial records will be subjected to audit annually by an independent Certified Public Accountant or Certified Public Accounting firm. Financial records of the Ames System will be open and available for inspection by Gilbert at any time during normal business hours.

4. As a means of enhancing communications with the using and supporting jurisdictions, those jurisdictions may request a meeting to discuss projected operating costs, revenues, rates, capital improvements and debt financing. It is Ames' desire that each using and supporting jurisdiction will designate a contact person for facilitating this coordination. Ames will send out an annual report by February 15th of each calendar year. Ames may also utilize the Story County Mayor's Association as a means of ongoing communication with the using and supporting jurisdictions.

5. Gilbert shall require all garbage and solid waste collectors and haulers that it may license or engage to have and use for such collecting and hauling, vehicles of a type and nature which meet the minimum standards Ames now or hereafter requires of its licensed collectors and haulers. Gilbert shall also require all garbage and solid waste collectors and haulers which it may license or engage to produce evidence of insurance coverage of the types and minimum amounts which Ames now or hereafter requires of its licensed collectors and haulers.

6. From time to time during the term of this agreement it may become necessary for Ames to incur additional debt for the Ames System. The decision whether to incur such additional debt for the Ames System shall be solely at the discretion of the Ames City Council. Ames will hold an official public hearing prior to the issuance of additional debt.

7. All decisions and determinations as to plant fees, operating budgets, wages and salaries, equipment and supply purchases and any and all other expenses of or charges by the Ames System shall be solely within the discretion of the Ames City Council and City Manager.

8. All land and equipment and any and all other property before now or hereafter acquired by Ames to establish, operate and maintain the Ames System shall be solely the property of Ames; and Gilbert shall not, by virtue of this agreement, have or acquire any proprietary right, title or interest therein. Gilbert shall not, by virtue of this agreement, obtain, acquire or succeed to any rights or entitlements other than those expressly set out and provided for herein.

9. This contract and agreement is made and entered into in accordance with the provisions of Chapter 28E, Code of Iowa, insofar as the provisions of that chapter are applicable and may not be terminated prior to June 30, 2034, except by the mutual consent of the parties hereto.

10. No later than calendar year of 2033, representatives of Ames and Gilbert shall meet to determine the feasibility of continuing this contract after the expiration of the contract on June 30, 2034

11. This agreement rescinds and replaces the agreement recorded as Instrument Nos. 94-05844 and 94-05845 in the records of the office of the Story County Recorder.

ARTICLE V MISCELLANEOUS

1. Assignment. This agreement may not be assigned by either party without the prior written consent of the other party.

2. Waiver. No delay or failure to exercise a right resulting from a default or breach of this agreement shall impair such right or shall be construed to be a waiver thereof, but such right may be exercised from time to time and as often as may be deemed expedient.

3. Amendment. No amendment, modification, change or extension of this agreement shall be effective unless it is in writing and duly executed by the parties.

4. Agreement Governed by Iowa Law. This agreement shall be governed by the laws of the State of Iowa.

5. Execution of Documents. This agreement may be executed in any number of duplicate originals, any of which shall be regarded for all purposes as an original, and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have approved and caused the execution of the aforesaid covenant, contract and agreement, to wit:

CITY OF AMES, IOWA

By _____
Ann H. Campbell, Mayor

Attest _____
Diane R. Voss, City Clerk

STATE OF IOWA, COUNTY OF STORY, ss:

On this ____ day of _____, 2014, before me, a Notary Public in and for the State of Iowa, personally appeared Ann H. Campbell and Diane R. Voss, to me personally known and who, by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Ames, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in Resolution No. ____ adopted by the City Council on the ____ day of _____, 2014, and that Ann H. Campbell and Diane R. Voss acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.

Notary Public in and for the State of Iowa

CITY OF GILBERT, IOWA

By _____
_____, Mayor

Attest _____
_____, City Clerk

STATE OF IOWA, COUNTY OF STORY, ss:

On this ____ day of _____, 2014, before me, a Notary Public in and for the State of Iowa, personally appeared _____ and _____, to me personally known and who, by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Gilbert, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in Resolution No. ____ adopted by the City Council on the ____ day of _____, 2014, and that _____ and _____ acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.

Notary Public in and for the State of Iowa