

COUNCIL ACTION FORM

**SUBJECT: VERBIO AND CITY OF NEVADA REQUEST TO  
AMEND ANNEXATION MORATORIUM AGREEMENT**

**BACKGROUND:**

On December 14, 2010, the City of Ames agreed to enter into an Annexation Moratorium Agreement with the City of Nevada. (Exhibit A) The two cities agreed for a period of 10 years that neither city would pursue annexation beyond 590<sup>th</sup> Street, meaning west of 590<sup>th</sup> would only be annexed by the City of Ames and east of 590<sup>th</sup> Street would only be annexed by Nevada. **This agreement has proven to be successful in eliminating the motivation for a rush by either party to annex up to the city limits of the other municipality as a defensive move to protect their growth future plans.**

At the August 25<sup>th</sup> meeting, the City Council directed that the request from Verbio and the City of Nevada be placed on a future agenda. In order to accommodate the request, our existing 28E agreement with Nevada will have to be modified to allow Nevada to annex the 100 acres west of 590<sup>th</sup> Street and north of the railroad tracks as requested by Verbio. In addition to the request to modify the Moratorium Agreement to allow 100 acres previously reserved for Ames annexation to be shifted to the City of Nevada, Nevada is offering to extend this modified agreement for an additional ten years. (Exhibit B and C).

As Verbio explains in their request they have a desire to build a rail facility for the transport of ethanol to work with their existing plant located at the corner of 590<sup>th</sup>/Lincoln Way (formerly known as the Dupont Plant). The site is located north of the Union Pacific rail line and could be annexed to either the City of Ames or Nevada, if not for the current agreement. Verbio indicates minimal city services would be needed to serve the site and the primary improvement would be a rail loop to service tanker cars.

**ALTERNATIVES:**

ALTERNATIVE #1 - Direct staff to prepare and amendment the Annexation Moratorium Agreement to allow Verbio to annex to Nevada and extend the agreement until 2030.

With this option staff would communicate to the City of Nevada that with their formal approval of an amendment to the 28E agreement the City of Ames would also agree to exempt the 100 acre site and extend the Annexation Moratorium Agreement for 10 years with the requested modification.

ALTERNATIVE #2 - Decline Verbio's request, but pursue an extension until 2030 of the Annexation Moratorium Agreement with no boundary modification.

Verbio would be free to apply for annexation to the City of Ames under this option. The property can be annexed to the City as it abuts Ames with annexation of the adjoining railroad right-of-way as allowed by Iowa Code. There are currently not utilities present to serve the site. The property owner would be responsible for ensuring adequate infrastructure would exist to serve their needs for the rail facility.

Under this alternative, Staff would still pursue an extension of the Annexation Moratorium Agreement for 10 additional years with the City of Nevada. The extension would benefit both cities making it clear what annexation expectations exist in this area to avoid disputes on future boundaries of the Cities.

ALTERNATIVE #3 - Decline Verbio's request and the City of Nevada request for an amendment to the agreement.

With this option City Council would take no action on the request and the current agreement would expire on December 15, 2020. Upon expiration, a property within two miles of Ames or Nevada could request annexation to either city. If there is a dispute about appropriateness of annexation the issue would be resolved by the state's City Development Board.

**CITY MANAGER'S RECOMMENDED ACTION:**

Although the 100 acre site could be annexed to Ames, it is not in a critical location related to other future residential or industrial development envisioned by the City. The City is focused on serving industrial development on the south side of the Union Pacific railroad line and the evaluation of East Growth Scenario for Plan 2040 did not contemplate that development would occur up 590<sup>th</sup> Street north of the railroad during the next 20 years. In addition, extending the agreement would benefit both cities making it clear what annexation expectations exist in this area to avoid disputes on future boundaries of the Cities. Finally, the stated use of the 100 acres for a rail yard will not reflect in a significant tax revenue loss to the City if it were allowed to be annexed into Nevada.

Therefore, it is the recommendation of the City Manager that the City Council approve Alternative #1.

City of Ames, Iowa, Resolution No. 10-562

City of Nevada, Iowa, Resolution No. 30 (2010/2011)

AGREEMENT FOR JOINT EXERCISE OF GOVERNMENTAL POWERS  
AND TO ESTABLISH A DIVISION LINE BETWEEN  
CORPORATE BOUNDARY LINES

WHEREAS, it is in the public interest of the CITY OF AMES (hereinafter referred to as AMES), and the CITY OF NEVADA (hereinafter referred to as NEVADA), to establish compatible land uses for land adjacent to and between their respective corporate boundary lines, and encourage compatible development, and coordinate public infrastructure in these areas, to the maximum extent possible; and

WHEREAS, it is in the public interest of the cities of Ames and Nevada, to establish an annexation Division Line (hereinafter referred to as Division Line), between their respective corporate boundary lines;

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

SECTION 1. PURPOSE. Because of their close proximity leading to common corporate boundaries in the future, and their common desire to enhance the land use in the area adjacent to and between their respective corporate boundaries, it is in the public interest for Ames and Nevada to respectively pass resolutions to establish this AGREEMENT FOR JOINT EXERCISE OF GOVERNMENTAL POWERS AND TO ESTABLISH A DIVISION LINE BETWEEN CORPORATE BOUNDARY LINES (hereinafter referred to as AGREEMENT), to provide for communication and cooperation in developing each city's comprehensive plan in their respective territories adjacent to the Division Line, and to establish a Division Line more particularly identified in Section 2.

SECTION 2. DIVISION LINE. The aforementioned cities hereby agree upon the establishment of a Division Line, between the presently established corporate boundaries of the two Cities, which is legally describes as follows, all located in Story County, Iowa:

A line extending from the northern county line of Story County at the center line of 590<sup>th</sup> Avenue and extending south along the center line of 590<sup>th</sup> Avenue, and along the center line of 590<sup>th</sup> Avenue extended, to the southern county line of Story County.

A map of this description is attached as Exhibit A and made part of this agreement.

SECTION 3. ANNEXING MORATORIUM. In accordance with Iowa Code Chapter 368 (2009) and as defined therein, Ames and Nevada agree to an annexing moratorium as follows:

- A. Ames agrees not to annex voluntarily or involuntarily, or otherwise incorporate within its boundaries, all or any part of the territory located to the east of the Division Line.
- B. Nevada agrees not to annex voluntarily or involuntarily, or otherwise incorporate within its boundaries, all or any part of the territory located to the west of the Division Line.

SECTION 4. APPLICABILITY. This Agreement is applicable to all annexation proceedings, both voluntarily and involuntary, and pending annexations as well as any that may be commenced in the future, to the fullest extent allowed and as provided by Iowa Code Chapter 368 (2009). All such proceedings which have been initiated but not completed are hereby amended to conform to this agreement, and any portion of any petition for annexation, whether voluntary or involuntary, in conflict herewith is hereby terminated and withdrawn. Completion is hereby defined as being approved by the City Development Board and duly recorded prior to the date of the second City's approval and signature on this Agreement.

Both cities agree not to annex territory in violation of this Agreement. Each city, and their officials, agents and representatives acting in their official capacities, agree not to aid or support in any way, any person, party, agency, or governmental body who may oppose, enjoin, or obstruct the other in the pursuit of any annexation that conforms with this Agreement. Terminology used in this Agreement shall be defined in the same manner as it is defined and used in Iowa Code Chapter 368, unless specifically defined herein.

SECTION 5. JOINT COORDINATION AND COOPERATION. The Cities agree to coordinate long range planning and zoning of development along the Division Line. The Cities shall coordinate their comprehensive plans for the territory located within 600 feet of the Division Line to the end that the uses proposed by one City may be compatible with the uses proposed by the other city; corridors are developed for future streets that would bisect the annexation line with the proposed classification of those streets; proposed corridors for pedestrian and bicycle traffic are identified; and any other matters agreed to by the Cities. This is not intended to establish that one City has control over the other City's legislative powers; rather it is intended to establish that the two Cities will coordinate and cooperate with each other in their planning and legislative powers for the land along the Division Line to the extent deemed acceptable by the respective Cities.

Pursuant to Iowa Code Section 354.9(3), Ames and Nevada agree that the subdivision standards and review authority granted by state law to the cities for the two miles from their respective and overlapping limits shall be handled as follows:

Ames shall have extra territorial review and approval authority west of the above-described Division Line.

Nevada shall have extra territorial review and approval authority east of the above-described Division Line.

SECTION 6. PUBLIC IMPROVEMENTS. Within one-eighth mile of the Division Line, the design and location of collector streets and other major thoroughfares, and major pedestrian and bicycle systems, which are or should be constructed in a size larger than customary for local service to adjoining property owners; or which should be continuous between the two Cities for the convenience of the public and the welfare of their citizens, shall be coordinated with both Cities.

Wherever practical, new streets and other public improvements shall not be located on or along the Division Line. Where such situations cannot be avoided or already exist, construction, reconstruction, or expansion of such public improvements shall be subject to the approval of each City and shall be jointly planned.

SECTION 7. RIGHTS AND OBLIGATIONS. This Agreement creates rights and obligations only between these two parties as governmental entities, and is to be interpreted, applied, and enforced by these entities only. It is not intended and shall not be interpreted to create any rights, title, or interest in any other person, firm, corporation, or entity, whether or not resident or taxpayer of either City, and whether directly or as a third party beneficiary.

SECTION 8. STATUTORY AUTHORITY. This Agreement is entered into by Ames and Nevada pursuant to Iowa Code Section 368.4, and is joint exercise of governmental powers, pursuant to Iowa Code Chapter 28E. It does not create a separate legal entity; grants no power to purchase, own, or mortgage real or personal property; creates no governing board; and does not have an operating budget.

SECTION 9. EFFECTIVE DATE AND DURATION. The effective date of this Agreement shall be the later of approval dates of the two Cities. This Agreement shall be in full force and effect for a period of ten years after the aforementioned effective date, and thereafter as provided by any agreement to extend this Agreement. This Agreement may be amended at any time upon approval of both City Councils.

SECTION 10. SEPARABILITY. If any section, provision, or part of this Agreement shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of this Agreement as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional.

CITY OF AMES, IOWA

By: Ann H. Campbell  
Ann H. Campbell, Mayor

By: Diane Voss  
Diane Voss, City Clerk

AMES CITY CLERK'S CERTIFICATION  
RESOLUTION 10-562

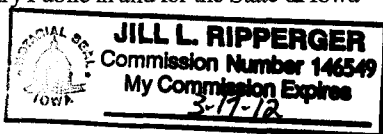
I, Diane Voss City Clerk of the City of Ames, Story County, Iowa, do hereby certify that the notice of the public hearing on the foregoing Agreement, was published at least once in the Ames Tribune & Boone News Republican a weekly newspaper having general circulation in Ames, Iowa, on the 15<sup>th</sup> day of Nov. 2010 respectively, which publication date was not less than four nor more than twenty days before the date of the hearing. Further, following the hearing which was held on the 14 day of Dec., 2010, the Resolution approving the Agreement was duly approved and accepted by the City Council of said City of Ames, by Resolution No. 10-562 on the 14 day of December, 2010.

Diane R. Voss  
City Clerk

STATE OF IOWA, COUNTY OF STORY, ss:

On the 14 day of December, 2010, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Ann H. Campbell and Diane Voss, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk of the City of Ames, Iowa, a municipal corporation; that the seal affixed to the above and foregoing instrument is the corporate seal of said municipal corporation, and that said instrument was signed and contained in the Resolution adopted by the City Council of Ames, Iowa, on the 14 day of December, 2010, and the said Ann H. Campbell and Diane Voss acknowledged the execution of said instrument to be their voluntary act and deed and the voluntary act and deed of said municipal corporation, by it and by them voluntarily executed.

Jill L. Ripperger  
Notary Public in and for the State of Iowa



CITY OF NEVADA, IOWA

By: Gerold E. Gull II  
Mayor

Attest:  
By: Teresa R. Peterson Smith  
City Clerk

NEVADA CITY CLERK'S CERTIFICATION  
RESOLUTION 30(2010/2011)

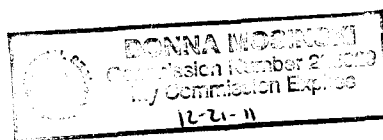
I, Teresa Peterson Smith City Clerk of the City of Nevada, Story County, Iowa, do hereby certify that the notice of the public hearing on the foregoing Agreement, was published at least once in the Nevada Journal a weekly newspaper having general circulation in Nevada, Iowa, on the 25<sup>th</sup> day of November, 2010, which publication date was not less than four nor more than twenty days before the date of the hearing. Further, following the hearing which was held on the 13<sup>th</sup> day of December, 2010, the Resolution approving the Agreement was duly approved and accepted by the City Council of said City of Nevada, by Resolution No. 30 on the 13<sup>th</sup> day of December, 2010.

Teresa R. Peterson Smith  
City Clerk

STATE OF IOWA, COUNTY OF STORY, ss:

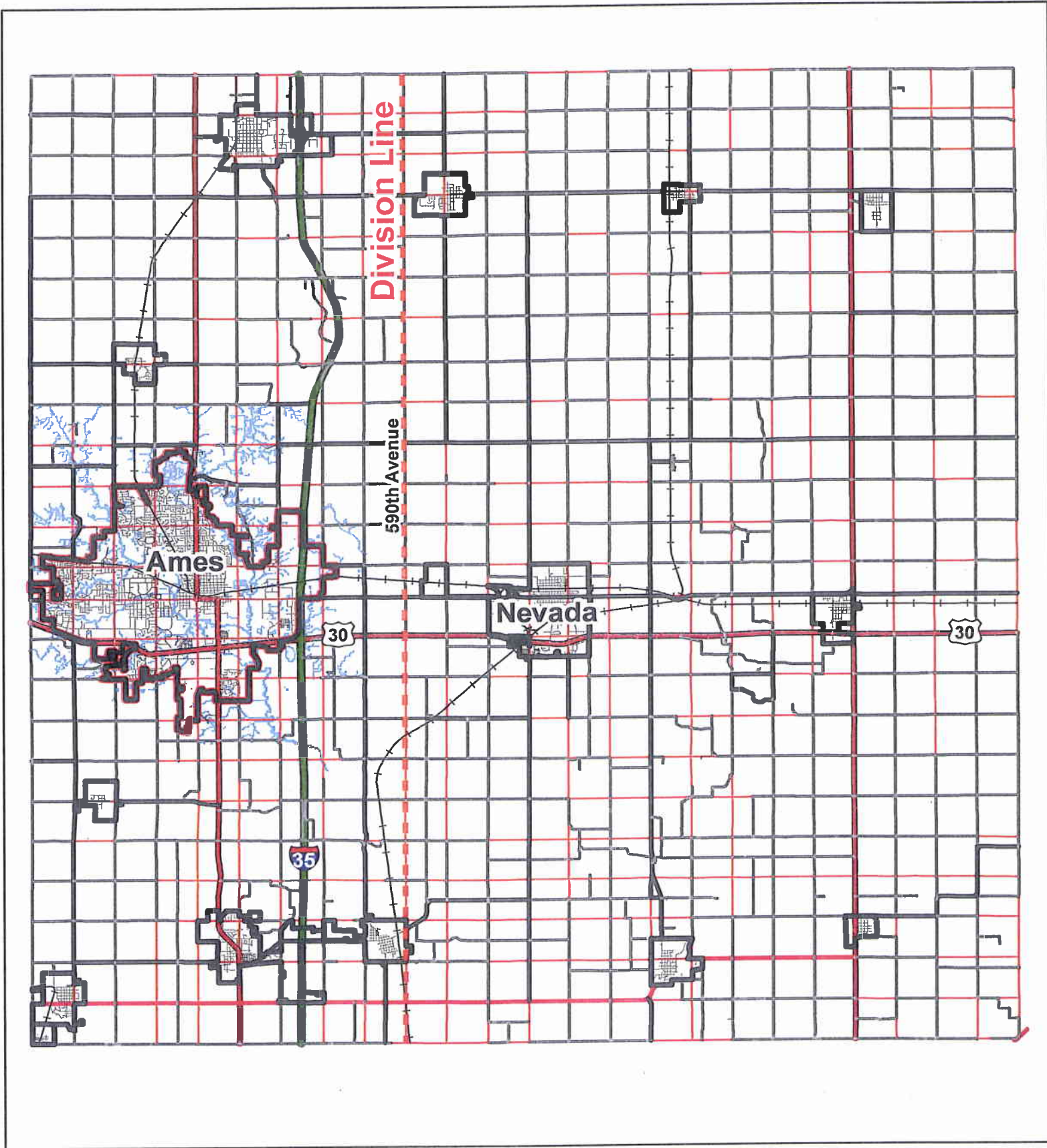
On the 14<sup>th</sup> day of December, 2010, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Gerold Gull II and Teresa R. Peterson Smith, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk of the City of Nevada, Iowa, a municipal corporation; that the seal affixed to the above and foregoing instrument is the corporate seal of said municipal corporation, and that said instrument was signed and contained in the Resolution adopted by the City Council of Nevada, Iowa, on the 13<sup>th</sup> day of December, 2010, and the said Gerold E. Gull II and Teresa R. Peterson Smith acknowledged the execution of said instrument to be their voluntary act and deed and the voluntary act and deed of said municipal corporation, by it and by them voluntarily executed.

Donna Moczinski  
Notary Public in and for the State of Iowa



This Agreement was duly filed and recorded in the Office of the Secretary of State of the State of Iowa on this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Secretary of State



**Exhibit A**



Exhibit B



VERBIO North America Corporation,  
17199 N Laurel Park Dr, Suite 320, Livonia, MI 48152, USA

Honorable Mayor John Haila  
City of Ames  
515 Clark Ave  
Ames, IA 50010

Greg Northrup  
President & CEO

Phone: 866 306 4777 x1300  
Mobile: 616 204 1055  
Greg.northrup@verbio.us  
www.verbio.us

July 21, 2020

RE: [REDACTED] - Annexation Request

Dear Mayor Haila,

I am writing to confirm our request to allow the City of Nevada to annex property that by prior agreement of the two cities would have fallen under the jurisdiction of the City of Ames.

By way of background I am happy to report that our buildout and expansion of the facilities located at 59219 Lincoln Highway is progressing well, despite the uncertainties we face nationally. More importantly, we remain extremely pleased with our decision to purchase the former Dupont cellulosic ethanol plant and the strong support we have received from the City of Nevada. Being served by a single unit of local government will allow us to build upon the relationships we have established.

Following a detailed evaluation and engineering analysis, we are now planning to not only begin the production of renewable natural gas, but to aggressively pursue actions that will create a biorefinery by the end of 2022. This will allow us to produce ethanol, while maximizing the production interrelationship benefits resulting from the co-production of both fuels.

To accommodate our production objectives, we have entered into an agreement to purchase 103 acres of property owned by Evergreen Lane, Inc., which is located just northwest of our current site within the jurisdiction of Story County. Knowing of our ongoing plans, long-term requirements, and the beneficial collaboration we have experienced to date, we believe annexation of the property by the City of Nevada, would be in the best interest of both parties. Attachment #1 outlines our proposed buildout plans and contains two site graphics for your reference.

We respectfully seek the city's support of our request. Should you require any additional information please advise.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Northrup".

cc: Mr. Steve Schainker, City Administrator  
Mr. John Hall, Executive Director, NEDC

**CITY MANAGER'S OFFICE**

**JUL 23 2020**

**CITY OF AMES, IOWA**

**Attachment #1**

**Build out plans for the proposed property annexation**

**Evergreen Lane, Inc Property**

Parcel IDs:

10-04-400-110

10-04-200-200

10-04-200-110

10-04-200-310

10-04-200-400

**Planned and potential uses\*:**

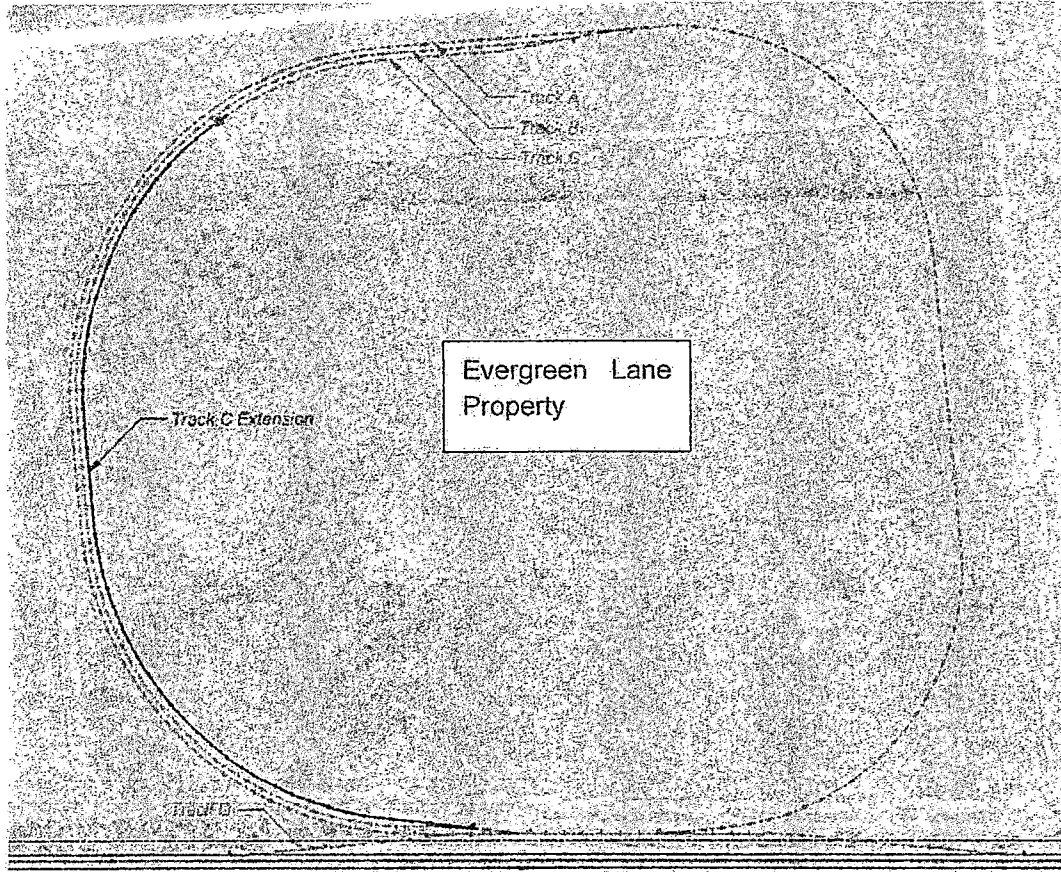
- Corn stover bale storage site
- Construction of an ethanol storage tank for railcar loading
- Construction of a fire water tank
- Erection and operation of wind turbines (2 at 3 MWs)
- Transport of ethanol to the storage tank from our facility
- Transport of bales to the production site
- Railcar loading track

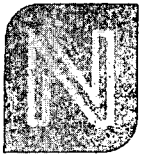
\*Property will require rezoning from A-1, agricultural to general industrial.



The property is in the northwest ¼ of the above graphic. Our existing site is in southeast 1/8 of the graphic.

Rail trackage denoted by the green circle. Red denote Union Pacific trackage and required access.





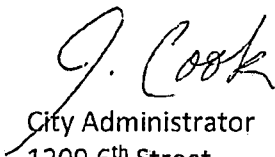
Mayor Haila and Ames City Council,

The City Council of Nevada supports the letter from Verbio in wanting to be served by the City of Nevada. We would like to continue to build on a positive and sustainable relationship with Verbio as they have created a unique market for our community. Verbio is an imperative part of our community and helps create more diversity amongst businesses. The City of Nevada would like to request a modification to the Ames/Nevada Moratorium plan to exclude said location below:

The East Three-Fourths of the Northwest Quarter of the Northeast Quarter (E3/4 NW1/4 NE1/4); Northeast Quarter of the Northeast Fractional Quarter (NE1/4 NE Frl. ¼); East Three-Fourths of the Southwest Quarter of the Northeast Quarter (E3/4 SW1/4 NE1/4); Southeast Quarter of the Northeast Quarter (SE1/4 NE1/4); Northeast Quarter of the Southeast Quarter (NE1/4 SE1/4) North of the RR; Northwest Quarter of the Southeast Quarter (NW1/4 SE1/4) North of the RR., all in Section Four (4), Township Eighty-three (83) North, Range Twenty-three (23), West of the 5<sup>th</sup> P.M., Story County, Iowa. Said parcel to contract 103 acres, more or less.

The City would also like to request an extension to the existing 28E agreement for an additional 10 years.

Respectfully,  
Jordan Cook



City Administrator  
1209 6<sup>th</sup> Street  
Nevada, Iowa 50201  
O: (515) 382. 5466 ext. 232

cc: Mayor Brett Barker  
cc: Erin Clanton

