

**COUNCIL ACTION FORM**

**SUBJECT: BIOSOLIDS AGREEMENT WITH VERBIO NEVADA LLC**

**BACKGROUND:**

The Ames Water Pollution Control Facility (WPCF) produces approximately 30,000 gallons of biosolids each day. Throughout the year, these biosolids are stored in the facility's primary and secondary digesters and biosolids storage lagoon. Ultimately, the biosolids are disposed of by land application on farm ground adjacent to the WPCF. A majority of the land application is performed for the City by a contract hauler.

Verbio Nevada LLC (Verbio), located near the city of Nevada, Iowa, is in the process of constructing digesters for the purpose of producing renewable natural gas. Verbio is nearing completion of the first set of eight digesters and plans to bring them online in phases in the coming months. Start-up of the digesters requires a biological "seed" material for the digestion process to begin. After the startup, the digestion process sustains itself as organic material continues to be introduced. The biosolids produced at the WPCF can act as this seed material to start the digestion process for a new digestion unit.

In Fall 2020, Ames staff was approached by representatives from Verbio, inquiring whether the Ames WPCF would have the ability to provide a portion of its biosolids to Verbio for digester start-up. City staff evaluated the inquiry and has had ongoing conversations with Verbio staff and the Iowa Department of Natural Resources to determine the logistical and regulatory feasibility of providing the biosolids to Verbio.

**It has been determined that a portion of the biosolids produced by WPCF can be provided to Verbio without adversely affecting operations at the WPCF or negatively impacting the facility's regulatory record. Verbio will be responsible for hauling all the material at its cost. While the biosolids would be provided to Verbio at no cost, a savings of \$25,000-\$75,000 in the FY 2021/22 WPCF operating budget may be achieved due to the avoided expense of contract land application.**

City staff has developed a written agreement (attached) with Verbio that details the obligations of each party for the hauling and handling of the biosolids.

**ALTERNATIVES:**

1. Approve the Biosolids Agreement with Verbio Nevada LLC effective upon signed approval of both parties for a period of three years from the executed date.

2. Do not approve the Biosolids Agreement. City staff would continue to handle biosolids in the same manner as in previous years.

**CITY MANAGER'S RECOMMENDED ACTION:**

The Ames Water Pollution Control Facility (WPCF) produces a large volume of biosolids during the wastewater treatment process. These biosolids require annual disposal onto land adjacent to the facility by a contract hauler. Providing biosolids to Verbio Nevada LLC would allow the City to achieve significant savings in the WPCF operating budget over the next three years while providing additional operational flexibility and maintaining regulatory compliance.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, as described above.

## BIOSOLIDS AGREEMENT

**THIS IS AN AGREEMENT** made by and between the City of Ames, Iowa, and Verbio Nevada LLC, a Michigan limited liability company, authorized to do business in the state of Iowa, 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 "Verbio" means Verbio Nevada LLC, whose address for the purpose of this Agreement is 59219 Lincoln Hwy, 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") produces biosolids which are stored in the facility's primary and secondary digesters and biosolids storage lagoon. Ultimately, the biosolids are disposed of by land application on farm ground adjacent to the WPCF. Verbio, located near the City of Nevada, is in the process of constructing digesters for the purpose of producing renewable natural gas. Start-up of the digesters requires a seed material for the digestion process to begin and the biosolids produced by the WPCF can act as this seed material.
- 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 efficiently dispose of the biosolids produced at the WPCF. Verbio enters into this Agreement so that the biosolids provided may act as a no cost seed material for start-up of their digesters. The parties agree that there shall be no compensation for providing or accepting biosolids under this Agreement.
- 4 **Effective Date.** This Agreement shall become effective upon the signed approval of both the City and Verbio.
- 5 **Administrative Entity.** No separate administrative or legal entity is established by this Agreement.
- 6 **Term.** This Agreement shall expire and terminate at noon three years from the executed date.
- 7 **Verbio's Obligations.** In consideration of the City temporarily providing biosolids to Verbio:
  - 7.1 At all times during the term of this agreement, Verbio shall have a valid and active Certificate of Authority to transact business within the state of Iowa, as issued by the Iowa Secretary of State.
  - 7.2 Verbio shall be limited to using biosolids from the WPCF for the purpose of digester start-up.
  - 7.3 At such time that the digesters at the Verbio facility are fully operational in the judgment of the City, Verbio shall cease receiving biosolids from the WPCF.
  - 7.4 Verbio shall receive biosolids loads at the WPCF between the hours of 7:30 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 Verbio shall enter and exit the WPCF from the South entrance/exit along 280<sup>th</sup> Street when hauling the biosolids that are the subject of this Agreement. Exhibit 'A' attached to this Agreement shows an illustration of the permitted path for the hauling of biosolids.
  - 7.6 Verbio shall receive biosolids at the WPCF as directed by, and within the sole determination of City staff.
  - 7.7 Verbio shall contract with a waste hauler that is fully bonded, insured, and capable of safely transporting biosolids from the WPCF to the Verbio facility.

- 7.8 Verbio shall assume full responsibility for any biosolids once they are received from the WPCF and hold harmless the City of Ames from any responsibility whatsoever from any claims or damages resulting, either directly or indirectly, from the transport, use, application, or spillage of the biosolids received from the WPCF. Under no circumstances shall biosolids be returned to the WPCF.
- 7.9 Verbio shall understand that the City offers no guarantee for any beneficial use of the biosolids.
- 7.10 Verbio shall obey all limitations on the disposal of biosolids as set forth in any NPDES Permit that apply to the Verbio facility and/or the biosolids disposal requirements set forth in 40 CFR Part 503.
- 8 Indemnification.** In consideration of the use of biosolids at no charge to Verbio, Verbio agrees to indemnify, defend and hold harmless the City of Ames, its officials in their individual and official capacities, agents, representatives, current and former employees, successors and assigns harmless from and against any and all liability, causes of action, claims and the reasonable costs incurred in connection therewith, which result from this Agreement, or from a breach of any legal, regulatory, operational and/or contractual restraint or obligation. In no event shall the City or its officers, agents, employees, successors, assigns, or representatives be liable for any special, indirect, incidental, or consequential damages, even if the City has been apprised of the possibility of such damages or has been negligent.
- 9 Termination.** Either the City or Verbio may terminate this Agreement, for any reason or for no reason at all, 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. The City may terminate this Agreement immediately and without notice if Verbio breaches, or otherwise fails to abide by, any of Verbio's obligations set forth in paragraph 7 above.
- 10 Administration.** The Superintendent of the WPCF (or acting Superintendent of the WPCF) and the President of Verbio Nevada LLC 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.
- 11 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.
- 12 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.
- 13 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.
- 14 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.

- 15 **Assignment.** Neither party may assign, delegate or transfer this Agreement or any of its rights or obligations under this Agreement without obtaining the written consent of the other party.
- 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 Verbio have executed this instrument under date of April 30, 2021.

VERBIO NEVADA LLC

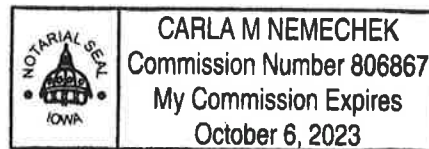
Approved dated April 30, 2021.

By: Greg Faith  
Greg Faith, President

STATE OF IOWA, COUNTY OF STORY, SS.:

This instrument was acknowledged before me on April 30, 2021, by Greg Faith, as President of Verbio Nevada LLC.

Carla M. Nemeček  
NOTARY PUBLIC



Approved dated \_\_\_\_\_, 2021.

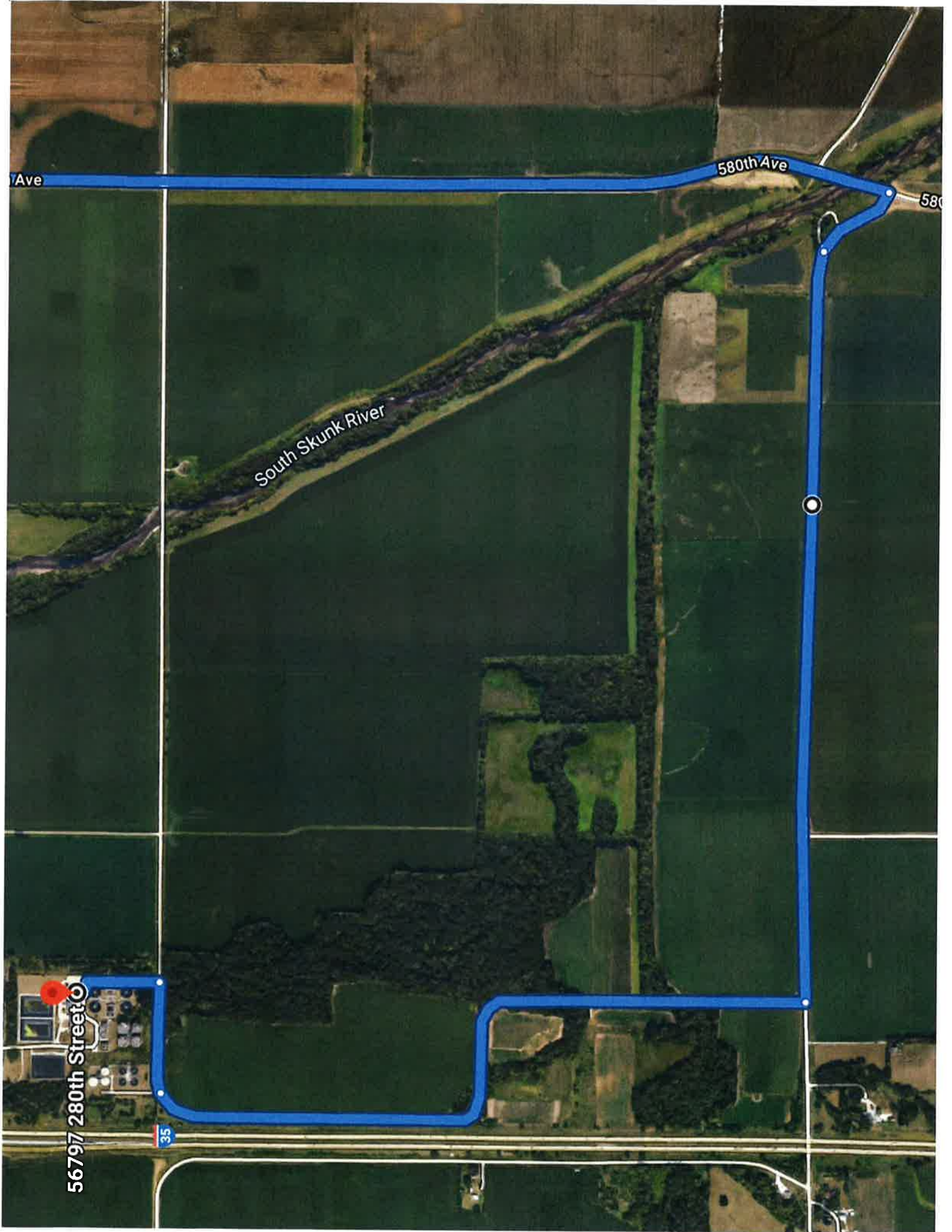
**CITY OF AMES, IOWA**

Attest

By: \_\_\_\_\_  
**Diane Voss, City Clerk**

By: \_\_\_\_\_  
**John A. Haila, Mayor**





Ave

580th Ave

580

South Skunk River

56797 280th Street

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