

COUNCIL ACTION FORM

SUBJECT: AGREEMENT WITH AgOUTCOMES TO PURCHASE NUTRIENT REDUCTION CREDITS

BACKGROUND:

The Water Pollution Control (WPC) Facility is being converted to a nutrient removal treatment technology over a period of 20 years. **Separate from the work that will occur inside the treatment plant, watershed-based improvements performed by the City can be ‘banked’ as credit toward any future, more stringent nutrient reduction requirements imposed on the WPC Facility.** On February 24, 2021, staff executed a Memorandum of Understanding (MOU) with the Iowa Department of Natural Resources to allow these off-site nutrient reductions to be banked with the Iowa Nutrient Reduction Exchange.

In anticipation of the MOU being executed, the City partnered with AgOutcomes, a subsidiary of the Iowa Soybean Association, to reduce nutrient runoff in the watershed north of Ames. AgOutcomes has recruited private landowners to install Best Management Practices (BMPs) on corn and soybean fields upstream from Ames located within the South Skunk Watershed.

The BMPs utilized are no-till tillage and the planting of cover crops. The growth of cover crops provides living groundcover over the winter. This living crop on the land provides uptake of nitrogen and reduces soil erosion that contributes to phosphorus loss. These nutrients, without the protection of cover crops, leach or run off into waterways during the many months when there is not a crop growing.

AgOutcomes has tracked the fields where cover crops are planted, documented the planting times, collected photographs and provided all other data required to register the nutrient savings outcomes in units of annual pounds in the Nutrient Reduction Exchange located on the United States Army Corps of Engineers (USACE) Regulatory In-lieu Fee and Bank Information Tracking System (RIBITS) program.

Staff has negotiated an agreement with AgOutcomes for the City to purchase the nutrient credits and the obligation of AgOutcomes to register them with the Iowa Nutrient Reduction Exchange. Below are the 2020 reductions resulting from the conservation practices implemented as part of this project:

2020 Nitrogen (N)

Acres: 2,086

Total N Reduction: 60,448 lbs.

Average: 29.0 lbs./ac

2020 Phosphorus (P)

Acres: 2,086

Total P Reduction: 3,887 lbs.

Average: 1.9 lbs./ac

The City will pay AgOutcomes a lump sum fee of \$50,000 as reimbursement for nutrient reduction as listed above. This is a one-time payment for nutrient reductions achieved during the 2020 crop year. The nutrient reduction credits will be transferred to the City of Ames upon completion of the contract terms. Below is a summary of the project budget.

Project Budget:

FY 2020/21 CIP	\$ 200,000
FY 2019/20 CIP Carryover Savings	79,815
<u>Total Project Budget</u>	<u>\$ 279,815</u>

Another such agreement is anticipated for 2021. Conceptually, staff has indicated to AgOutcomes that we would support cover crops for two years as a way to work through the contracting and nutrient reduction credit banking process. Beyond that, staff has explained a preference to direct our funding towards projects with a longer life, such as saturated buffers, nitrifying bioreactors, wetlands, and other more structural practices where the environmental benefit endures for more than just the year that the payment was made.

ALTERNATIVES:

1. Award a contract to purchase watershed nutrient reduction credits to AgOutcomes, Inc. of Ankeny, Iowa, in an amount not to exceed \$50,000.
2. Do not award a contract to AgOutcomes, Inc. at this time.

CITY MANAGER'S RECOMMENDED ACTION:

The Ames Water Pollution Control Facility (WPCF) will be converted to a nutrient removal treatment technology over a period of 20 years. To mitigate future investment beyond what is planned for, watershed-based projects can be performed, and nutrient reduction credits can be banked. This project not only has a nutrient reduction element, but also provides other benefits such as flood mitigation and drinking water source protection.

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

CONTRACT FOR 2020 WATER QUALITY OUTCOMES PURCHASE

THIS AGREEMENT, effective the 11th day of May 2021, by and between the CITY OF AMES, IOWA, a municipal corporation organized and existing pursuant to the laws of the State of Iowa (hereinafter sometimes called "City") and AgOutcomes, Inc. (a wholly-owned subsidiary of the Iowa Soybean Association, organized and existing pursuant to the laws of the State of Iowa and hereinafter called "Provider");

WITNESSETH THAT:

WHEREAS, the City of Ames has determined that certain services to be provided to the City of Ames and its citizens by Provider, such services and facilities being hereinafter described and set out, should be purchased in accordance with the terms of a written agreement as hereinafter set out;

NOW, THEREFORE, the parties hereto have agreed and do agree as follows:

I PURPOSE

The purpose of this Agreement is to procure for the City of Ames certain services as hereinafter described and set out; to establish the methods, procedures, terms and conditions governing payment by the City of Ames for such services; and, to establish other duties, responsibilities, terms and conditions mutually undertaken and agreed to by the parties hereto in consideration of the services to be performed and monies paid.

II SCOPE OF SERVICES

Provider shall provide the services set out in the Scope of Services, Soil & Water Outcomes Fund 2020 Water Quality Outcomes Purchase attached hereto as Exhibit A.

The City, without invalidating the Agreement, may direct changes in the services within the general scope of the Agreement, with the authorized payment maximum being adjusted accordingly. Any change in the scope of service by the provider shall be done by written agreement signed by both parties. The added cost or cost reduction to the City resulting from a change in the Agreement shall be determined by mutual acceptance of a lump sum properly itemized and supported by sufficient data to permit evaluation, or by unit prices stated in the Agreement or subsequently agreed upon.

It shall be the responsibility of the provider, before proceeding with any change in scope, to verify that the change has been properly authorized on behalf of the City. No additional charges or any other change in the Agreement will be allowed unless previously authorized in writing by the City, with the applicable compensation method and maximum authorized additional sum stated.

III METHOD OF PAYMENT

A. The City will pay AgOutcomes a flat fee of \$50,000 to conduct the services set out in Exhibit A and no greater amount shall be paid without written amendment.

B. Payment will be made upon completion of the services and acceptance by the City of Ames. Provider shall submit an invoice upon completion of the services. The invoice shall include an itemization of the services for which payment is claimed. Invoices referencing the assigned purchase order number shall be sent to the following address:

City of Ames, Finance Dept. – Accounts Payable, PO Box 811, Ames, IA 50010
or by email to: accountspayable@cityofames.org

IV
FINANCIAL ACCOUNTING AND ADMINISTRATION

A. All claims for payment shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, or other documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified as such and readily accessible for examination and audit by the City or its authorized representative.

B. All records shall be maintained in accordance with procedures and requirements established by the City Finance Director, and the City Finance Director may, prior to any payment under this Agreement, conduct a pre-audit of record keeping and financial accounting procedures of the Provider for the purpose of determining changes and modifications necessary with respect to accounting for charges made hereunder. All records and documents required by this Agreement shall be maintained for a period of three (3) years following final payment by the City.

C. At such time and in such form as the City may require, there shall be furnished to the City such statements, records, reports, data, and information as the City may require with respect to the payments made or claimed under this Agreement.

D. At any time during normal business hours, and as often as the City may deem necessary, there shall be made available to the City for examination all records with respect to all matters covered by this Agreement and Provider will permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.

V
INSURANCE

A. The provider shall maintain insurance coverage in scope and amounts acceptable to the City's Risk Manager.

B. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City of Ames, its officials, employees, or volunteers.

C. Provider shall furnish the City with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on standard insurance company forms or forms provided by the City and are to be received and approved by the City before services commence. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

D. Provider shall include all sub-consultants as insured under its policies. All coverages for sub-consultants shall be subject to all of the requirements stated herein.

E. Each party shall indemnify and hold the other, its assignees, agents, officers and employees harmless from and against any damages to real or tangible personal property and/or bodily injury to persons, including death, to the extent such damages result from its or its employees' or agents' gross negligence or willful misconduct.

F. In no case will the Provider's coverage be constructed to provide coverage for acts of negligence alleged to be caused by the sole negligence of employees of the City of Ames.

VI
PROPRIETARY RIGHTS AND CONFIDENTIAL INFORMATION

Subject to the provisions of Chapter 22 of the Code of Iowa as it exists now or is hereafter amended, Provider agrees to hold in confidence any confidential and/or proprietary information or data relating to City

business and shall not disseminate or disclose such confidential information to any individual or entity, except Provider's employees or sub-consultants performing services hereunder (who shall be under a duty of confidentiality), and any other individuals specifically permitted in each instance by the City.

**VII
TERMINATION**

The City of Ames may terminate this Agreement without penalty to the City at any time by giving written notice to the Provider at least fifteen (15) days before the effective date of such termination. In any case where the Provider fails in whole or in part to substantially perform its obligations or has delivered nonconforming services, the City shall provide a Cure notice. If after notice the Provider continues to be in default, the City may terminate this agreement immediately. The City shall only be obligated to compensate the Provider for compliant services performed prior to notice of termination.

**VIII
INDEPENDENT CONTRACTOR STATUS**

Provider agrees that the relationship between Provider and the City is that of an independent contractor for employment tax purposes. The Provider shall be solely responsible for all taxes relating to payments under this agreement including those of employees.

**IX
LAWS**

This contract is governed by the law of the State of Iowa with venue in the appropriate state and/or federal courts for Story County, Iowa.

**X
ASSIGNMENT**

This Agreement may not be assigned or transferred by the Provider without the prior written consent of the City.

**XI
AFFIRMATIVE ACTION**

Provider shall place on file with the City a statement of nondiscrimination policy in the form of a completed *Assurance of Compliance with the City of Ames, Iowa, Affirmative Action Program* satisfactory to the Affirmative Action Officer of the City for contracts over \$25,000.

**XII
AMENDMENTS**

This Agreement may be amended at any time by mutual agreement of the parties. Amendments to this Agreement must be in writing and signed by both parties.

**XIII
NOTICE**

All notices under this Agreement shall be in writing. Notices shall be deemed to have been given: (i) upon hand delivery or (ii) if sent by Regular Mail, within seventy-two (72) hours after the notice has been deposited in the United States Post Office, postage paid. Notices shall be sent to the other party at the addresses set forth below. Either party may change its address by giving notice in writing thereof to the other parties.

For the City:
Director of WPC
City of Ames
1300 E 13th Street
Ames, Iowa 50010

For AgOutcomes, Inc.:
Adam Kiel
AgOutcomes, Inc.
1255 SW Prairie Trail Parkway
Ankeny, Iowa 50023

**XIV
DURATION**

This Agreement shall be in full force and effect from and after May 11, 2021 until completion of the Services, or, until terminated by either party as provided herein.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

CITY OF AMES, IOWA

AGOUTCOMES, INC.

By: _____
John A. Haila, Mayor

By:  _____
Kirk Leeds, President

Date

 _____
Date

Attest by: _____
Diane R. Voss, City Clerk

EXHIBIT A

SCOPE OF SERVICES

Soil & Water Outcomes Fund

2020 Water Quality Outcomes Purchase

I. PROJECT DESCRIPTION

AgOutcomes has recruited private landowners to install Best Management Practices (BMPs) on corn and soybean fields upstream from Ames located within the City's HUC 8 watershed, the South Skunk Watershed (HUC 07080105). The BMPs utilized are no-till tillage and the planting of cover crops. The growth of cover crops provides living groundcover over the winter. This living crop on the land provides uptake of nitrogen and reduces soil erosion that contributes to phosphorus loss. These nutrients without the protection of cover crops leach or runoff into waterways during the many months when there is not a crop growing. AgOutcomes has tracked the fields where cover crops are planted, documented the planting times, collected photographs and provided all other data required to register the nutrient savings outcomes in units of annual pounds in the Nutrient Reduction Exchange located on the United States Army Corps of Engineers (USACE) Regulatory In-lieu Fee and Bank Information Tracking System (RIBITS) program. The registered outcomes will be transferred to the City of Ames on completion of the contract terms. Ames and IDNR have signed a MOU which outlines in broad terms that the City plans to present the outcomes as part of the requirements in future NPDES permits to reduce nutrients as required in Iowa's Nutrient Reduction Strategy.

II. OBJECTIVE

The City of Ames Water & Pollution Control Department is purchasing nitrogen (N) and phosphorous (P) reduction outcomes (collectively "Outcomes") in units of pounds to bank as credits that can be used to help meet future regulatory requirements. The City of Ames Water and Pollution Control Department plans to use the credits for reducing N and P as may be required in Iowa Department of Natural Resources (IDNR) issued National Pollution Control Discharge Elimination System (NPDES) permit.

The Scope of Services by AgOutcomes shall include the services and supplies to complete the following:

III. SCOPE OUTLINE

- A. Administer contracts / agreements with private landowners and farmers to implement conservation practices on agricultural land in the South Skunk Watershed upstream from Ames.
- B. Upload longitude / latitude coordinates of field locations, Nutrient Tracking Tool (NTT) results, photos, and all other required data into the Nutrient Reduction Exchange (NRE) located in US Corps of Engineers RIBITs website.
- C. Conduct verification and approval from Iowa State University (or the IDNR designee) of the nutrient reduction outcome modeling. Obtain from the IDNR acceptance of the modeled nutrient reduction outcomes and a letter of validity establishing the validity of the practices.
- D. List and document the Outcomes in units of pounds of nitrogen (N) and phosphorous (P).
- E. Transfer the Outcomes to the City of Ames inside the NRE.

F. Below are the 2020 outcomes from the conservation practices implemented as part of the Soil & Water Outcomes Fund.

2020 Nitrogen (N):

Acres: 2,086

Total N Outcomes: 60,448 lbs.

Average: 29.0 lbs./ac

2020 Phosphorus (P):

Acres: 2,086

Total P Outcomes: 3,887 lbs.

Average: 1.9 lbs./ac

The City of Ames shall pay directly to AgOutcomes a total fixed lump sum fee of \$50,000 as full reimbursement for nutrients credits purchase as listed.
