

RESOLUTION NO. 015 (2024/2025)

A RESOLUTION APPROVING THE AGREEMENT TO PAY USER INCREASE IN WASTEWATER COST

WHEREAS the City of Nevada, Iowa ("City") desires to enter into an agreement with Burke Marketing Corporation ("Burke"); and

WHEREAS the City constructed a new wastewater treatment plant to align with IDNR requirements and Burke's capacity increase request; and

WHEREAS on November 27, 2023 the City passed and approved Ordinance No. 1047 (2023/2024) to amend code §99.06(3), adding a monthly construction fee in the amount of \$53.00 to begin with the July 2024 customer billing; and

WHEREAS the City had intentions of reaching an agreement with Burke for wastewater treatment and having an Ordinance in place to decrease the construction fee prior to 7/1/2024; and

WHEREAS because an agreement has not been reached, Burke has agreed to pay the user increase on behalf of all users for the month of September; and

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Nevada, Iowa, as follows:

1. The agreement to pay user increase in wastewater cost by Burke for September billing, is approved.
2. The Mayor is hereby authorized and directed to execute said Agreement on behalf of the City and the City Clerk is authorized to take any other action necessary to effectuate this Agreement.

Passed and Approved this 12th day of August, 2024.

Brett Barker, Mayor

ATTEST:

Kerin Wright, City Clerk

ONE-MONTH AGREEMENT TO PAY WASTEWATER COST

THIS AGREEMENT, effective this ____ day of August 2024, is made by and between the City of Nevada, Iowa, a municipal corporation (hereinafter designated as the "City") and Burke Marketing Corporation (hereinafter designated as the "Burke") (collectively, the "Parties").

WHEREAS, in April 2017 the City received a renewed NPDES permit that included nutrient removal requirements causing the City to begin a facility planning process for a new wastewater treatment plant and related infrastructure (the "Treatment Plant") and site acquisition to conform to the new IDNR limits; and

WHEREAS, the City and Burke negotiated and entered into a development agreement on August 13, 2020 (the "Development Agreement"), specifying that Burke would build a \$150 million plant in the City (the "Burke Project"), employ a certain number of employees and pay a share of the cost of the new Treatment Plant ("Cost Share") if the City would do certain things including incorporating Burke's increased expansion into the new Treatment Plant and entering into a new wastewater treatment agreement (the "Wastewater Treatment Agreement") between the Parties; and

WHEREAS, the City borrowed funds by issuing indebtedness through the State Revolving Fund ("SRF") in order to finance the construction, furnishing and equipping of the Treatment Plant; and

WHEREAS, the SRF loans required the City demonstrate that rates were in place to repay the SRF loans when the Treatment Plant was completed; and

WHEREAS, in November 2023, the City amended Nevada Municipal Code §99.06(3) to assess a monthly construction fee in the amount of \$53.00 to all wastewater users, to begin with June 2024 meter readings, payable by customers beginning July 2024 to cover the SRF loan requirement; and

WHEREAS, the Parties have been working towards a Wastewater Treatment Agreement, the terms of that agreement have not yet been finalized; and

WHEREAS, the Parties have decided that it is currently in their best interests to continue discussions in an effort to reach a potential resolution and agreement.

NOW, THEREFORE, it is agreed by the City and the Burke as follows:

1. Purpose. The purpose of this Agreement is to provide the Parties with additional time to negotiate the final Cost Share, rate structure and other contractual terms in order that a Wastewater Treatment Agreement can be finalized between the Parties.
2. User Increase. On or about November 27, 2023, the City Council of the City of Nevada, Iowa amended Municipal Code § 99.06(3) to assess a monthly construction fee in the amount of \$53.00 to all the City's wastewater account holders to cover the SRF loan requirement. The \$53.00 monthly construction fee is set to begin with the June 2024 meter readings and to appear on the July 2024 billing statements. Prior to this amendment, the monthly construction fee was \$8.00

for each wastewater account holder.

3. Burke Payment. Burke agrees to make a one-time payment of \$127,800.00, which amount shall be billed to Burke as a separate line item on its wastewater bill and payable within thirty (30) days of the invoice ("Burke Payment"). This \$127,800.00 payment represents the approximate total additional monthly construction fee that would be paid by all wastewater account holders if the City charged the \$53.00 monthly construction fee assessed by the November 2023 amendment. The City agrees that it shall charge other account holders only the \$8.00 monthly construction fee for the August 2024 meter readings.

4. Credit. The Development Agreement provides that Burke will pay a Cost Share of the new Treatment Plant and the parties agree that the Burke Payment (referenced above in paragraph 3) shall be credited against the final Cost Share owed by Burke once the Cost Share amount has been agreed to and documented in the Wastewater Treatment Agreement.

5. No Waiver. This Agreement does not waive and does not release any claim, counterclaim, objection, or right, whether arising by contract, statute, common law or otherwise, that Burke has or may have in the future against the City, its departments, subdivisions, representatives, agents, or employees. This Agreement is not a concession or admission by Burke regarding the reasonableness or legality of any rate structure for wastewater services, monthly construction fee or Cost Share. The Parties have entered this Agreement solely for the purposes providing additional time to negotiate and finalize a Wastewater Treatment Agreement.

6. Counterparts. This Agreement may be executed in one or more counterparts each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission or electronic mail transmission (e.g., in .PDF format) will constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or electronic mail (e.g., in .PDF format) will be deemed to be their original signatures for any purpose whatsoever.

7. Miscellaneous. The City and Burke warrant that each has right, title and authority to enter into this Agreement. This Agreement may not be amended, changed or modified unless the amendment, change or modification is in writing and signed by both parties. This Agreement shall bind and inure to the benefit of the parties and their respective successors and assigns, except as herein limited. This Agreement shall be governed by the laws of the State of Iowa.

{Signature Page to Follow}

IN WITNESS WHERE OF, the City and Burke have duly executed this Agreement as of the date first above.

CITY OF NEVADA, IOWA

ATTEST:

By _____
Mayor, Brett Barker

By _____

BURKE MARKETING CORPORATION

ATTEST:

By _____

By _____

Title _____