

RESOLUTION NO. 018 (2025/2026)

**A RESOLUTION APPROVING ALLOCATED CAPACITY AGREEMENT FOR
WASTEWATER SERVICES BETWEEN
CITY OF NEVADA, IOWA AND BURKE MARKETING CORPORATION**

WHEREAS, the City of Nevada, Iowa ("City"), and Burke Marketing Corporation, and its parent, subsidiaries, successors and assigns ("Participant") desire to enter into an Allocated Capacity Agreement for Wastewater Services; and

WHEREAS, the City owns, manages, and controls a sewerage system ("Wastewater Treatment System") and these facilities are capable of receiving wastewater from the Participant's production plant within the corporate limits of the City; and

WHEREAS, the Participant is a significant user of the City's Wastewater Treatment System and has requested additional capacity and treatment elements resulting in additional, increased costs for the system; and

WHEREAS, the City and the Participant have mutually agreed to enter into the agreement, Exhibit B attached; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Nevada, Story County, Iowa, does hereby approve the Allocated Capacity Agreement for Wastewater Services with Burke Marketing Corporation, and its parent, subsidiaries, successors and assigns, per attached Exhibit B. The Mayor is hereby authorized to execute the agreement on behalf of the City.

PASSED AND APPROVED this 8th day of September, 2025.

Ryan Condon, Mayor

ATTEST:

Kerin Wright, City Clerk

Moved by Council Member __, seconded by Council Member __, that Resolution No. 018 (2025/2026) be adopted.

AYES: —
NAYS: —
ABSENT: —

The Mayor declared Resolution No. 018 (2025/2026) adopted.

I hereby certify that the foregoing is a true copy of a record of the adoption of Resolution No. 018 (2025/2026) at the regular Council Meeting of the City of Nevada, Iowa, held on the 8th day of September, 2025.

Kerin Wright, City Clerk

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ALLOCATED CAPACITY AGREEMENT FOR WASTEWATER SERVICES

THIS AGREEMENT (hereinafter the "Agreement") is made and entered into this [] day of [], 2025, by and between the City of Nevada, Iowa, a municipal corporation (hereinafter designated as the "City") and Burke Marketing Corporation, and its parent, subsidiaries, successors and assigns (hereinafter designated as the "Participant"). The City and the Participant are herein collectively referred to as the "Parties," and each individually as a "Party." This Agreement shall become effective upon completion and full operational status of the Treatment Plant (as defined below) (the "Effective Date").

RECITALS

WHEREAS, the City owns, manages, and controls a sewerage system ("Sewerage System"), including interceptor sewers, pumping stations, outfall sewers, wastewater treatment facilities and other appurtenances, and these facilities and appurtenances are capable of receiving wastewater from the Participant's production plant within the corporate limits of the City; and

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 Iowa Department of Natural Resources (the "IDNR") limits; and

WHEREAS, during Participant's investigation of potential sites for expansion, discussions between Nevada and Participant included the prospect of increasing the planned capacity of the Treatment Plant to accommodate Participant's expansion needs; and

WHEREAS, the City and the Participant negotiated and entered into a Development Agreement on August 13, 2020, specifying various terms related to the Participant's expansion in the City and to the construction of the new Treatment Plant; and

WHEREAS, the City borrowed funds by issuing indebtedness through the State of Iowa Revolving Fund in order to finance the engineering, planning, design, construction administration, and construction costs of the Treatment Plant; and

WHEREAS, the City and the Participant have mutually agreed to enter into this Agreement for the purpose of memorializing their agreed-upon terms and for the purpose of continuing their long-term successful relationship.

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

ARTICLE I. DEFINITIONS

As used in this Agreement, unless a different meaning clearly appears from the context:

- A. "BOD" means 5-day biochemical oxygen demand as measured using test procedures approved under 40 CFR 136.

- B. "City Sewer Rates" means the rate structure established by ordinance of the City Council (as it may be amended from time to time pursuant to Article V Paragraph B of this Agreement), which the Parties agree shall initially include the flow rate, Surcharges, and Penalty Charges that will apply to Participant's Industrial Waste set forth in Schedule B. All Surcharges shall be calculated based on the average monthly concentrations applied to the total monthly flow.
- C. "COD" means Chemical Oxygen Demand as measured using test procedures approved under 40 CFR 136.
- D. "Cost Share" means the allocated share of the actual certified total cost of the Treatment Plant agreed to by the Parties.
- E. "Development Agreement" means the agreement between the parties of August 13, 2020, which is attached hereto as Schedule A.
- F. "Facility" means the Participant's facility located at 1516 South D Avenue, Nevada, Iowa 50201.
- G. "Flow" means the wastewater volume discharged to the sewerage system as measured by the permanent or temporary flow rate measurement equipment. Billing for domestic wastewater flow from the Participant's production facility shall be determined separately from this Agreement.
- H. "Industrial Waste" means the liquid waste from the industrial manufacturing processes, trade, or business as distinct from Sanitary Sewage.
- I. "Interference" means, per 40 CFR 403.3 (as amended from time to time), a discharge which, alone or in conjunction with a discharge or discharges from other sources, both:
- (1) Inhibits or disrupts the Sewerage System, its treatment processes or operations, or its sludge processes, use or disposal; and
- (2) Therefore is a cause of a exceedance of any requirement of the Sewerage System's NPDES permit (including an increase in the magnitude or duration of an exceedance) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act ("SWDA") (including title II, more commonly referred to as the Resource Conservation and Recovery Act ("RCRA"), and including State regulations contained in any State sludge management plan prepared pursuant to subtitle D of the SWDA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.
- J. "NH₃" means ammonia, as measured using test procedures approved under 40 CFR 136.
- K. "O&G" means oil and grease, as measured using test procedures approved under 40 CFR 136.

L. "Participant's Purchased Capacity" shall mean the following quantity, quality and composition of constituents that the Participant will be entitled to discharge into the sewerage system:

- | | | | |
|------|------|---------|---|
| (1) | Flow | 700,000 | gal./day (calculated on the basis of a maximum daily discharge) |
| (2) | Flow | 500,000 | gal./day (calculated on the basis of a monthly average) |
| (3) | pH | | The pH of the Participant's wastewater discharge shall not be less than 5.5 or greater than 9.5 (The Participant's pH limit will be reviewed after the City's Treatment Plant is in operation for one (1) year. |
| (4) | BOD5 | 10,440 | lbs./day (calculated on the basis of a maximum daily discharge) |
| (5) | BOD5 | 5,040 | lbs./day (calculated on the basis of a monthly average) |
| (6) | TSS | 2,500 | lbs./day (calculated on the basis of a maximum daily discharge) |
| (7) | TSS | 950 | lbs./day (calculated on the basis of a monthly average) |
| (8) | TKN | 1,100 | lbs./day (calculated on the basis of a maximum daily discharge) |
| (9) | TKN | 500 | lbs./day (calculated on the basis of a monthly average) |
| (10) | TP | 350 | lbs./day (calculated on the basis of a maximum daily discharge) |
| (11) | TP | 200 | lbs./day (calculated on the basis of a monthly average) |
| (12) | O&G | 300 | mg/l maximum day concentration |
| (13) | O&G | 300 | 300 mg/l monthly average concentration |
| (14) | | | Participant will also be entitled to discharge all of its Sanitary Sewage from its facility into the Sewerage System. |

Notwithstanding the foregoing discharge limits, all discharge shall be subject to IDNR review and the City's NPDES permit, as provided in Sections VII.A-B of this Agreement.

M. "Penalty Charge" means a fine or penalty for exceeding Participant's Purchased Capacity flows and loads and is billed in addition to Surcharges. Such Penalty Charges as of the

date hereof are set forth in Schedule F. For the avoidance of doubt, Penalty Charges may be amended by the City Council, subject to Article V Paragraph B of this Agreement.

- N. "Sanitary Sewage" means a combination of water-carried wastes from personal and domestic water uses, such as bathroom and kitchen use, from residences, business buildings, institutions and industrial plants. Stormwater is not allowed to be discharged to the sanitary sewer.
- O. "Sewerage System" means all land, buildings, machinery, interceptor and sewers and other tangible and intangible property, whether now or later owned or used by the City for collecting, transmitting, treating or disposing of Wastewater, but shall not include sewer laterals connecting Users to the sewer mains of the City.
- P. "Surcharge" means a charge for discharge of Industrial Waste with concentrations in excess of normal domestic strength sewage, as set forth in the City Sewer Rates.
- Q. "TKN" means Total Kjeldahl Nitrogen, as measured using test procedures approved under 40 CFR 136.
- R. "TN" means Total Nitrogen, which is the sum of TKN, nitrate and nitrite as measured using test procedures approved under 40 CFR 136.
- S. "TP" means total phosphorus, as measured using test procedures approved under 40 CFR 136.
- T. "TSS" means Total Suspended Solids, as measured using test procedures approved under 40 CFR 136.
- U. "User" means any person, partnership, institution, corporation or other entity or organization, public or private, that discharges Wastewater into the Sewerage System.
- V. "Wastewater" means the combination of Sanitary Sewage and Industrial Waste.

ARTICLE II. COVENANTS RELATING TO OPERATION OF SEWERAGE SYSTEM

- A. The City shall ensure that the Treatment Plant is designed and constructed (a) in a good and workmanlike manner; (b) in accordance with all approved plans, drawings and specifications; (c) with sufficient capabilities to properly treat Participant's Purchased Capacity, in addition to Wastewater from other Users; and (d) in accordance with all applicable federal, state and local laws.
- B. The Treatment Plant will be so designed and constructed as to interconnect the existing Sewerage System to the Participant's production plant. The City agrees to receive the Participant's Purchased Capacity, as discharged to the Treatment Plant upon the Treatment Plant's substantial completion and optimization of all systems at the Treatment Plant.

- C. The City hereby agrees to operate and maintain the Sewerage System and to collect and treat the Wastewater of the Participant in an efficient and economical manner, as determined by the City, in accordance with sound business practices, complying with all statutes, orders, laws, ordinances, rules, regulations and requirements of any governmental body, agency or authority having jurisdiction over the City, the Participant or the Sewerage System. Costs related to operation and maintenance of the Sewerage System will be included in the City's normal operation budget and allocated as part of the cost levied to all Users.
- D. Participant shall sample its Industrial Waste that leaves its facility, consistent with the methods and requirements in this Agreement and the City's NPDES permit.
- E. The City shall indemnify, release, defend and hold harmless Participant, its directors, officers, partners, shareholders, members, managers, owners, agents, employees, guests, invitees, attorneys and representatives, or any of them, from and against civil claims, orders, suits, liabilities, judgments, demands, actions, causes of action, penalties, fines, losses, costs, damages and expenses, including reasonable attorneys' fees and consultant fees ("Claims") arising out of: the construction of the Treatment Plant, including without limitation the negligence or intentional or willful misconduct of the City's construction contractor(s); the operation or failure of the Sewerage System, to the extent caused by an act or omission of the City or its agents; the decommissioning of existing City facilities; and the City's non-compliance with applicable rules and regulations, including its NPDES permit (attached hereto as Schedule C), to the extent caused by an act or omission of the City or its agents. This release and indemnification obligation shall not apply to the negligence or intentional or willful misconduct of the Participant but only to the extent of such divisible or allocable share of such Claims directly attributed to such negligence or intentional or willful misconduct.
- F. The Participant shall indemnify, release, defend and hold harmless the City, its employees, agents, elected officials, agents and representatives, from and against any and all Claims arising out of any property damage or personal injury sustained or claimed to have been sustained to or by any person in connection with the operation or failure of operation of the Sewerage System, to the extent the Claim is the result of any violation by Participant of the Revised Treatment Agreement or this Agreement, including any discharge from the Participant in exceedance of any constituent limitation set forth therein.

ARTICLE III. COLLECTION AND TREATMENT

- A. The Participant has the right to discharge to the Sewerage System in the volumes of Participant's Purchased Capacity to the Sewerage System, and the City shall collect and treat Participant's Wastewater, as set forth in this Agreement. Burke agrees to work with the City to appropriately increase flow to the Treatment Plant that works for their system in order to allow the Sewerage System sufficient time to acclimate to the increased load from Burke.

- B. The Participant shall comply, at all times, with all federal, state, and local regulations and ordinances with regard to the discharge of Wastewater into the Sewerage System, including compliance with any prohibited and restricted discharges provided therein. If the City finds the discharge from the Participant to not meet the requirements, the City shall promptly provide written notice to the Participant, which such notice shall set forth any Penalty Charges assessed. The Participant shall determine the source of the improper substance or substances and eliminate, or reduce the amount to an allowable level, of such substance or substances into the City's Sewerage System by whatever means necessary. The Participant shall be responsible for any fines or penalties incurred resulting solely from Participant's (or any agent, representative, or contractor of Participant) noncompliance with federal and state regulations.
- C. If Participant's Wastewater discharge exceeds the Participant's Purchased Capacity in a manner that causes probable and irreparable harm to the Treatment Plant, the City shall immediately notify the Participant. After such notice, the City may restrict Participant's Flow as is necessary to remove any such danger to the Treatment Plant. The Participant shall be solely responsible for any reasonable costs of repair or cleanup, and any fines or penalties incurred, resulting from Participant's excessive Wastewater discharge.
- D. If emergency circumstances arise that cause the City to temporarily limit or reduce the volume of Wastewater load taken from its customers, the volume received from the Participant shall be reduced in the same proportion as to all other industrial and commercial customers of the Sewerage System.
- E. The Participant has constructed a monitoring station to measure the Participant's Industrial Waste parameters discharged at the outfall. The Participant shall maintain the monitoring station in good working order, at its expense. The Participant shall inspect, test and certify the monitoring station for accuracy per the manufacturer's recommended frequency. Participant shall have its flow meter certified annually by an independent third party and provide evidence of such certification to the City upon request. The City shall collect samples and such City-collected samples shall be analyzed by the City or an independent testing laboratory for the constituents that are included in Participant's Purchased Capacity. The sampling method shall be flow proportional, 24-hour composite sampling for all parameters except for oil and grease (O&G) and pH samples. The analysis of these two parameters shall be conducted using grab samples. The City shall deliver copies of all analyses, laboratory reports, flow meter records and IDNR reports regarding Participant discharges to the Sewerage System to the Participant on a regular basis after each monitoring period.

The Participant will sample no fewer than five (5) days per week total, which shall include sampling on one (1) non-production day. The City shall be entitled to direct the independent testing laboratory regarding timing of such sampling. Participant agrees to ensure reasonable access as needed for sample collection, upon no less than two hours' prior notice. Nothing in this Agreement shall prohibit the Participant from sampling more than five (5) days per week.

The Participant shall have the right to observe testing and sampling procedures used by the City at the composite sampler and, at the request of the Participant, split any samples

collected by the City for the Participant's own purposes. The Participant shall have the right to collect its own samples at the testing station. The Participant shall have the option of collecting samples for analysis of the constituents that are included in Participant's Purchased Capacity by an independent testing laboratory. The Participant's laboratory analysis results of such sample collection shall be transmitted directly to the City by the independent laboratory.

The Participant shall record daily flows and provide such records to the City by the Tuesday of the following week.

- F. The Participant shall pay the independent testing laboratory for the analytical laboratory costs incurred by the City to analyze the wastewater samples of the Participant's waste for the sampling and frequency described in Article III, Paragraph E of this Agreement. Bills for laboratory costs shall be transmitted directly from the independent testing laboratory to the Participant for payment.
- G. Monthly average mass discharge used for compliance monitoring purposes shall be calculated as the average of the mass discharges for every day that a sample was collected and analyzed.
- H. The City will, on a monthly basis, submit to the Participant a statement setting forth any Surcharges and Penalty Charges incurred during the preceding billing period together with a copy of the laboratory test reports from the corresponding period.
- I. The City shall have the right of access, during Participant's normal business hours or at any other time reasonably requested by the City, and upon the presentation of proper credentials, to the monitoring equipment used by the Participant for monitoring the quantity and quality of the Wastewater of the Participant being discharged into the Sewerage System. The Participant shall make the City aware of the required sanitary and safety regulations. The intent of this provision is to provide the City with free and unimpeded access, subject to reasonable sanitary and safety regulations of the Participant, to the monitoring equipment.
- J. In the event of an Interference with operation of the City's Sewerage System caused solely by the Participant's discharge in excess of Participant's Purchased Capacity or other wastewater constituent, the Participant agrees to cover the additional operational and maintenance expenses directly resulting from the Interference. Such expenses may include, but are not limited to:
 - (1) Costs of storing, hauling, dumping and disposal of residue or sludge from the Treatment Plant;
 - (2) Power, chemicals, fuel, materials and supplies;
 - (3) Sewer cleaning fees; and
 - (4) Reasonable additional staff time.

- K. In the event Participant is in significant noncompliance, the City must notify Participant in writing of the specific violation(s). Any such notice from the City shall detail the specific events, times and extent of the non-compliance. Participant shall provide City with a written plan as to how Participant intends to correct and eliminate further significant noncompliance. Participant is in "significant noncompliance" if its violation meets any one of the following:
- (1) Chronic violations of wastewater discharge limits, defined here as those in which 66 percent or more of all of the measurements taken for the same pollutant parameter during a 6-month period exceed (by any magnitude) a numeric pretreatment Standard or Requirement, including instantaneous limits, as defined by 40 CFR 403.3(l);
 - (2) Technical Review Criteria (TRC) violations, defined here as those in which 33 percent or more of all of the measurements taken for the same pollutant parameter during a 6-month period equal or exceed the product of the numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40 CFR 403.3(l) multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);
 - (3) Any other violation of a Pretreatment Standard or Requirement as defined by 40 CFR 403.3(l) (daily maximum, long-term average, instantaneous limit, or narrative Standard) that the POTW determines has caused, alone or in combination with other Discharges, Interference or Pass Through (including endangering the health of POTW personnel or the general public);
 - (4) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under paragraph (f)(1)(vi)(B) of this section to halt or prevent such a discharge.
- L. In the event Participant is in violation of its Participant's Purchase Capacity limits (either daily or 30-day average limits) or other prohibited discharge, the City shall follow its enforcement procedures found in Nevada City Ordinance Section 95.10 and levy applicable Penalty Charges. Participant agrees to pay all applicable Penalty Charges.

ARTICLE IV. COST SHARE

- A. The Parties agree that for the purpose of calculating the Cost Share, the final actual cost of the Treatment Plant including engineering, planning, design, construction administration, and construction costs shall be \$[_____], as adjusted for, and reconciled with, actual costs once the Treatment Plant construction is complete (the "Final Cost").
- B. The Parties mutually agree that the Participant's Cost Share shall be 42.69% of the Final Cost, which is estimated to be \$[_____], as adjusted for the calculation of the Final Cost. The Parties agree that Participant has prepaid, prior to the date hereof, \$816,281.00

of the Participant's Cost Share. The remaining balance of the Participant's Cost Share shall be paid to the City in monthly installments as part of Participant's monthly utility bill. The monthly Cost Share amount will be set forth in Schedule G. Any and all late payments by the Participant shall accrue interest at an annual rate equal to 2% until the payment is received.

- C. Participant's payment of the Cost Share includes the guarantee of Participant's Purchased Capacity. The Participant may transfer or sell any unused portion of the Participant's Purchased Capacity to another user provided the Participant receives the City's prior written consent.
- D. In consideration for payment of Participant's Cost Share, the City is obligated to receive and treat the Participant's Purchased Capacity from the Participant for the life of the Agreement. The City may not transfer, re-allocate, or reduce any portion of the Participant's Purchased Capacity without the Participant's prior written consent.
- E. Additionally, Participant agrees to pay 42.69% of the total cost to decommission the City's pre-existing wastewater treatment facilities that require decommissioning in connection with the construction of the Treatment Plant (the "Decommissioning Cost"). Such payment shall be made in monthly payments, based upon the City's actual Decommissioning Cost incurred in the previous month. Participant's payment shall be due within ten (10) days of invoicing. Upon request from Participant, City, within three days of such request, shall provide Participant with invoices and other evidence of the Decommissioning Cost.

ARTICLE V. SEWER SERVICE RATES

- A. The Participant and City agree that the City Sewer Rates in effect as of the date hereof are designed to charge Participant a combination of monthly flow rate and Surcharges that, in the aggregate and on an annual basis, equal to 54% (which percentage was calculated based upon the Participant's proportionate usage of the Sewerage System in the City's fiscal year 2023) of the City's projected annual budget for operation and maintenance of the Sewerage System after completion of the Treatment Plant. The Participant agrees to pay the wastewater sewer user charges to the City monthly as established by City Code. The City Sewer Rates may be adjusted from time to time, subject to Article V, Paragraph B of this Agreement. For the avoidance of doubt, the Participant shall be charged based on the then-current City Sewer Rates, not based upon a certain percentage of the City's annual operation and maintenance budget.
- B. The City has the right to set the rates for wastewater treatment based on operational costs. The City shall review rates at least annually in accordance with its Financial Policy. The City shall provide actual notice to the Participant of any proposed increases in the City Sewer Rates. If the City needs to change treatment process (such as incorporating Micro C or Ferric Chloride), the City will adjust the City Sewer Rates to cover such costs. Should the City increase or decrease the City Sewer Rates, any such increase or decrease shall be equally applied to the Participant and other Users. For the avoidance of doubt,

the percentage increase or decrease in the City Sewer Rates shall be distributed equally among the Users, and Participant shall not be disproportionately adversely impacted.

ARTICLE VI. TERM OF AGREEMENT

- A. This Agreement shall be for a term of twenty (20) years, unless otherwise terminated as provided herein or until superseded by a new Agreement.
- B. The Participant may terminate this Agreement by written notice to the City of no less than 12 months. Upon the designated date provided in the notice, the Participant shall cease discharging Wastewater to the Sewerage System on the effective date of termination. In the event that Participant is in significant noncompliance and fails to remedy such significant noncompliance within 4 months of written notice, the City may order a show cause hearing, after which the City Council may elect to terminate this Agreement upon 30 days' prior written notice to Participant. However, if, prior to the effective date of the termination, the Participant operates at discharge levels that will cure its significant noncompliance and provides the City with a plan of action to maintain future compliance, the City must postpone such termination notice as long as the Participant operates at discharge levels. If the Participant complies with discharge levels for 60 days, the City must withdraw its termination notice. The City must provide proper advanced notice of such hearing to the Participant.

The Participant shall make payment to the City for any remaining balance of Sewer Service Charges and remaining Participant Cost Share as set forth in Article IV by the effective date of termination.

- C. In the future should the IDNR require the City to comply with more stringent discharge limitations from its Sewerage System and realizing that the IDNR will establish a compliance schedule, the City and Participant will work together to the best of their abilities with the IDNR to obtain an amenable compliance schedule for both Parties to achieve compliance with the more stringent discharge limits. The Parties shall enter into good faith negotiations to modify the City Sewer Rates in order to account for any necessary increased or additional costs and any necessary modification to Participant's Purchased Capacity.
- D. Additional capacity needs caused by future expansion of the Participant's facilities will be addressed through good faith negotiations and a modification to this Agreement as the need arises. However, for the avoidance of doubt, no modification of this Agreement shall be effective unless approved by both Parties, pursuant to Article VII, Paragraph G of this Agreement.

ARTICLE VII. MISCELLANEOUS PROVISIONS

- A. Prior to signing this Agreement, the City and the Participant shall have entered into a Revised Treatment Agreement (IDNR Form 542-3221), attached hereto as Schedule D

("Revised Treatment Agreement") that shall be effective upon the completion of the Treatment Plant. The City has submitted the Revised Treatment Agreement to the IDNR.

- B. The City and the Participant both acknowledge that the IDNR has approved the Revised Treatment Agreement. If (a) the IDNR voids or terminates the Revised Treatment Agreement for any reason, or (b) if the IDNR revokes or refuses to issue the City an NPDES permit or NPDES permit amendment for the Sewerage System that would permit the Participant to discharge the Participant's Purchased Capacity, the Participant and the City shall have the option to either (i) terminate this Agreement upon mutual consent or (ii) negotiate in good faith any modifications to this Agreement and the Revised Treatment Agreement, to the extent necessary to meet IDNR requirements. For the avoidance of doubt, none of the foregoing actions from the IDNR shall negate the City's obligations set forth in Article II, Paragraph A of this Agreement, including constructing the Treatment Plant with sufficient capacity to treat the Participant's Purchased Capacity.
- C. Upon request by either Party to this Agreement, the Parties shall meet to discuss the Parties' respective progress under the Agreement, any issues that have arisen in the Parties' respective performance under the Agreement, and any other issues arising from or related to the Agreement, including the City Sewer Rates.
- D. Pursuant to Iowa Code Chapter 22, the City will keep books, records and accounts in which complete entries shall be made available of all transactions and costs relating to the Sewerage System, and such books and records shall at all reasonable times be subject to inspection and copying by any Party to this Agreement. The City shall also provide to the Participant such information regarding the design or other technical information regarding the Treatment Plant and its Sewerage System as allowed by the governing Professional Services Agreements between the City and its consultants for related work as the Participant may request from time to time.
- E. The City and the Participant warrant that each has the right, title and authority to enter into this Agreement and to perform each and every term, covenant and condition in it.
- F. The City and the Participant agree that this Agreement constitutes the entire understanding of the Parties and that no prior or contemporaneous oral or written understandings of the Parties shall be applicable hereto, except as specifically set forth herein. Nothing in this Agreement shall prohibit the City from adopting and enforcing ordinances, rules or regulations providing for pretreatment of Wastewater, exclusion of Wastewater, or the establishment of Sewer Service Charges periodically, provided that no such action shall affect the Participant's rights hereunder.
- G. Except as otherwise expressly provided, this Agreement may not be amended, changed or modified unless the amendment, change or modification is in writing and signed by both Parties.
- H. All notices, requests, and demands provided hereunder shall be in writing and shall be deemed to have been given if and when (i) sent via electronic mail or (ii) delivered, postage prepaid, by certified or registered mail, to:

- (1) City of Nevada
Attention: City Administrator
1209 6th Street
P.O. Box 530
Nevada, IA 50201
Email: []
- (2) Burke Marketing Corporation
Attn: Plant Manager
1516 South D Avenue
Nevada, IA 50201
Email: BLKoehler@Burkecorp.com

With a copy to:
Hormel Foods Corporation
Attention: Corporate Environmental Engineering
1101 North Main Street
Austin, MN 55912
Email: []

With an additional copy to:
Hormel Foods Corporation
Attention: Law Department
1 Hormel Place
Austin, MN 55912
Email: []

The Parties acknowledge and agree that correspondence and communications regarding day-to-day operations (invoices, sampling reports, etc.) are not subject to the foregoing notice requirement. The Parties shall notify the other party if contact information has changed.

- I. This Agreement shall bind and inure to the benefit of the Parties and their respective successors and assigns, except as herein limited.
- J. Any provision of this Agreement, which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.
- K. Claims and disputes of any type between the City and Participant arising out of or relating to this Agreement which cannot be resolved by negotiation between the Parties shall be brought and maintained in the federal courts of the United States of America or the courts of the State of Iowa, in each case located in the City of Des Moines and County of Polk, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

- L. This Agreement shall supersede any previous agreement for wastewater service between the Parties. Until the Effective Date, the Parties agree to continue to operate under the City's NPDES Permit and the December 22, 2003, Wastewater Agreement, as amended, modified, supplemented or superseded by the Iowa Department of Natural Resources Treatment Agreement Form dated November 11, 2024, attached hereto in Schedule E, except with respect to the City Sewer Rates, which shall be effective upon such rates being approved by the City Council and enacted by the City.
- M. Notwithstanding any other provision in this Agreement, neither Party shall be responsible for damages to the other for any failure to comply with this Agreement resulting from an act of God, riot, public calamity, flood, strike, unforeseeable breakdown of the Treatment Plant and/or the Sewerage System, or other event beyond its reasonable control.
- N. The City shall procure and maintain, with respect to the Sewerage System, public liability insurance with policy limits of at least \$2,000,000 and coverage for any and all personal injury, property damage, or other damages sustained in connection with the Treatment Plant, and the operation or failure to operate the Sewerage System, and such other insurance in types and limits ordinarily carried by public entities engaged in similar operations in the State of Iowa. All insurance shall be procured with companies licensed to do business in the State of Iowa and shall be maintained for the term of this Agreement. Pursuant to Iowa Code Chapter 22, and upon request by the Participant, the City shall provide the Participant with certificates of coverage under all insurance policies.
- O. If all or any portion of the Sewerage System is damaged or destroyed by fire or other casualty, the City, unless prohibited by federal or state law, shall repair or replace the damaged or destroyed facility and shall expend all amounts received by the City by reason of such damage or destruction to the facility toward the cost of performing such repairs and replacements.
- P. The City and the Participant agree that this Agreement and all documents related thereto and referenced herein may be entered into and provided for pursuant to and in accordance with Chapter 554D of the Code of Iowa.
- Q. The City and the Participant agree that the terms in this Agreement are consistent with Section 204(b)(1)(A) of the Federal Clean Water Act and 40 CFR Part 35.2140.
- R. In the event Participant fails to make a monthly payment for their Cost Share, and is delinquent by thirty (30) days or more, in addition any other action set forth herein, the City shall be entitled to assess Participant's Facility for the amount due and owing, which will be collected in the same manner as general property taxes.

[Signature Page to Follow]

IN WITNESS WHEREOF, the City and the Participant have duly executed this Agreement in duplicate originals as of the date first written above.

CITY OF NEVADA, IOWA

ATTEST:

By _____
Ryan Condon
Mayor

By _____
Kerin Wright
City Clerk

**BURKE MARKETING
CORPORATION**

By _____
Andrew Sieren
Plant Manager

SCHEDULE A

Development Agreement

See attached.

SCHEDULE B

City Sewer Rates

See attached.

Schedule B is subject to revision of the City Council. Sewer rates shall comply with the then current City Ordinance.

SCHEDULE C

NPDES Permit

See attached.

SCHEDULE D

Revised Treatment Agreement (IDNR Form 542-3221)

See attached.

SCHEDULE E

Iowa Department of Natural Resources Treatment Agreement Form

(November 11, 2024)

See attached.

SCHEDULE F

Penalty Charges

PENALTY CHARGE. Major Contributing Industry Violations. The following Penalty Charges shall be assessed for exceeding Daily or Monthly Average flows and/or loads for any Participant's Capacity per a NPDES Permit through the City's Permit and are billed in addition to surcharges. In addition, any violations of a specified pollutant. Such Penalty Charges are set forth in addition to Surcharges.

CONSECUTIVE DAILY OCCURRENCES (determined based on number of consecutive sampling days with a daily maximum violation)

1. First Day: $\$250.00 \times (\text{actual/pollutant limit})$

Example: Actual BOD is 680 pounds per day, limit is 500 pounds per day. Fine would be:
 $\$250.00 \times (680/500) = \340.00

2. Second Day: $\$500.00 \times (\text{actual/pollutant limit})$
3. Third Day: $\$750.00 \times (\text{actual/pollutant limit})$
4. Fourth and additional Days: $\$1,000.00 \times (\text{actual/pollutant limit})$

** Consecutive sampling days shall be based on a 3-day cycle. If there are 2 clean sampling days after a violation, the penalty charge restarts at the First Day.*

**In addition, if Treatment Agreement violations by a major contributing industry cause permit violations by the City, the industry will be responsible for costs incurred by the City.*

CONSECUTIVE MONTHLY AVERAGE OCCURRENCE (determined based on number of consecutive months with a monthly average violation):

1. First Month: $\$1,000 \times (\text{actual/pollutant limit})$ (if there has not been a violation of the specified pollutant in the last 12 months)

*Example: Actual BOD is 680 pounds per day, limit is 500 pounds per day. Fine would be:
 $\$1,000 \times (680/500) = \$1,360.00$

2. Second Month: $\$2,000.00 \times (\text{actual/pollutant limit})$
3. Third Month: $\$3,000.00 \times (\text{actual/pollutant limit})$
4. Fourth and additional Month: $\$4,000.00 \times (\text{actual/pollutant limit})$

** Consecutive monthly violations shall be based on a 3-month cycle. If there are 2 months without a penalty following a violation, the penalty charge restarts at the First Month.*

**In addition, if Treatment Agreement violations by a major contributing industry cause permit violations by the City, the industry will be responsible for costs incurred by the City.*

Schedule F is subject to revision of the City Council. Penalty charges shall comply with the then current City Ordinance.

SCHEDULE G

Cost Share Amortization Schedule

See attached.