

RESOLUTION NO. _____

**A RESOLUTION APPROVING AN AMENDMENT TO SANITARY SEWER SERVICES AGREEMENT
(BETWEEN THE CITY OF FORT DODGE, IOWA, AN IOWA MUNICIPAL CORPORATION (THE
“CITY”) AND CJ BIOAMERICA INC. (THE “COMPANY”) AND CJ CHEILJEDANG CORPORATION
(THE “PARENT”))**

WHEREAS, the City and the Company previously authorized and executed a certain Sanitary Sewer Services Agreement, dated March 12, 2012 (the “Original Agreement”) which established the Company’s use of the City’s sanitary sewer utility system (the “Sewer System”) for the provision of sanitary sewer services to its now-completed manufacturing plant; and

WHEREAS, under the Original Agreement, the City agreed to sell sewer services to the Company in certain quantities and at certain rates as set forth in Sections 4 and 5 therein; and

WHEREAS, the City and the Company now desire to amend Sections 4 and 5 of the Original Agreement to clarify and better explain the intended terms and prices of sanitary sewer system usage between the parties; and

WHEREAS, the Parent agreed to be jointly and severally liable with the Company under the Original Agreement; and

WHEREAS, this Amendment to Sanitary Sewer Services Agreement has been prepared to set forth the updated understanding of the parties with respect to the Company’s use and payments as a customer of the Sewer System;

NOW THEREFORE BE IT RESOLVED that the City Council approves the attached Amendment to Sewer Service Agreement between the City of Fort Dodge, CJ Cheiljedang Corporation (the “Company”) along with any minor future amendments or changes, which in the discretion of the City Manager, do not change the basic terms of the Agreement .

The above Resolution passed and adopted by the City Council of the City of Fort Dodge, Iowa this ____ day of November, 2014.

Ayes: _____

Nays: _____

Other: _____

CITY OF FORT DODGE

BY: _____
Matt Bemrich, Mayor

ATTEST:

Jeff Nemmers, City Clerk

AMENDMENT TO SANITARY SEWER SERVICES AGREEMENT

THIS AMENDMENT TO SANITARY SEWER SERVICES AGREEMENT (the "Agreement"), is made and entered into this ____ day of November, 2014 by and between the City of Fort Dodge, Iowa, an Iowa Municipal Corporation (the "City"), CJ BioAmerica Inc. (the "Company") and, solely for purposes of Section A.4. and A.5. of the original Sanitary Services Agreement, CJ Cheiljedang Corporation (the "Parent").

BACKGROUND RECITALS

WHEREAS, the City and the Company previously authorized and executed a certain Sanitary Sewer Services Agreement, dated March 12, 2012 (the "Original Agreement") which established the Company's use of the City's sanitary sewer utility system (the "Sewer System") for the provision of sanitary sewer services to its now-completed manufacturing plant; and

WHEREAS, under the Original Agreement, the City agreed to sell sewer services to the Company in certain quantities and at certain rates as set forth in Sections 4 and 5 therein; and

WHEREAS, the City and the Company now desire to amend Sections 4 and 5 of the Original Agreement to clarify and better explain the intended terms and prices of sanitary sewer system usage between the parties; and

WHEREAS, the Parent agreed to be jointly and severally liable with the Company under the Original Agreement; and

WHEREAS, this Amendment to Sanitary Sewer Services Agreement has been prepared to set forth the updated understanding of the parties with respect to the Company's use and payments as a customer of the Sewer System;

NOW THEREFORE, the parties agree and stipulate as follows:

Section A. Amendment of Section A.4 of Original Agreement. Section A.4 of the Original Agreement is hereby amended to read as follows:

4. Sewer Service Rates and Charges. The Company agrees to be billed and to pay for its use of the Sewer System at the rates (the "Sewer Rates") as follows:

a. For Fiscal Year July 1, 2014 through June 30, 2015 The Company agrees to pay a minimum monthly fee \$167,914.61 representing the then current established sewer rate schedule multiplied by a minimum flow of 40,454,167 gallons per month.

i. For 40,454,168 to 49,822,000 gallons discharged per month the rate shall be \$1.65 per thousand gallons discharged and for the first 49,822,000 gallons discharged per month, the average monthly wastewater loading shall be no more than:

(1) BOD: 7,300 pounds per day

(2) TSS: 2,870 pounds per day

(3) TKN: 2,990 Pounds per day

ii. For 49,822,001 to 76,041,000 gallons discharged per month, the rate shall be \$.87 per thousand gallons discharged, and the average monthly wastewater loading shall be no more than:

(1) BOD: 9,490 pounds per day

(2) TSS: 3,730 pounds per day

(3) TKN: 3,890 pounds per day

iii. For 76,041,001 to 91,250,000 gallons discharged per month, the rate shall be \$.87 per thousand gallons discharged, the average monthly wastewater loading shall be no more than:

(1) BOD: 10,440 pounds per day

(2) TSS: 4,100 pounds per day

3) TKN: 4,280 pounds per day

iv. To support capital investment and operations, the Company agrees to pay a monthly surcharge of \$63,108.50 each month throughout the Term.

b. For Fiscal Year July 1, 2015 through June 30, 2016 The Company agrees to pay a minimum monthly fee \$186,190 representing the then current established sewer rate schedule multiplied by a minimum flow of 43,495,833 gallons per month.

i. For 43,495,834 to 49,822,000 gallons discharged per month the rate shall be \$1.70 per thousand gallons discharged and for the first 49,822,000 gallons discharged per month, the average monthly wastewater loading shall be no more than:

(1) BOD: 7,300 pounds per day

(2) TSS: 2,870 pounds per day

(3) TKN: 2,990 Pounds per day

ii. For 49,822,001 to 76,041,000 gallons discharged per month, the rate shall be \$.90 per thousand gallons discharged, and the average monthly wastewater loading shall be no more than:

(1) BOD: 9,490 pounds per day

(2) TSS: 3,730 pounds per day

(3) TKN: 3,890 pounds per day

iii. For 76,041,001 to 91,250,000 gallons discharged per month, the rate shall be \$.90 per thousand gallons discharged, the average monthly wastewater loading shall be no more than:

(1) BOD: 10,440 pounds per day

(2) TSS: 4,100 pounds per day

(3) TKN: 4,280 pounds per day

iv. To support capital investment and operations, the Company agrees to pay a monthly surcharge of \$67,853.50 each month throughout the Term.

c. For Fiscal Year July 1, 2016 through June 30, 2017 The Company agrees to pay a minimum monthly fee \$205,260.51 representing the then current established sewer rate schedule multiplied by a minimum flow of 46,537,500 gallons per month.

i. For 46,537,501 to 49,822,000 gallons discharged per month the rate shall be \$1.75 per thousand gallons discharged and for the first 49,822,000 gallons discharged per month, the average monthly wastewater loading shall be no more than:

(1) BOD: 7,300 pounds per day

(2) TSS: 2,870 pounds per day

(3) TKN: 2,990 Pounds per day

ii. For 49,822,001 to 76,041,000 gallons discharged per month, the rate shall be \$.93 per thousand gallons discharged, and the average monthly wastewater loading shall be no more than:

(1) BOD: 9,490 pounds per day

(2) TSS: 3,730 pounds per day

(3) TKN: 3,890 pounds per day

iii. For 76,041,001 to 91,250,000 gallons discharged per month, the rate shall be \$.93 per thousand gallons discharged, the average monthly wastewater loading shall be no more than:

(1) BOD: 10,440 pounds per day

(2) TSS: 4,100 pounds per day

(3) TKN: 4,280 pounds per day

iv. To support capital investment and operations, the Company agrees to pay a monthly surcharge of \$72,598.50 each month throughout the Term.

d. For Fiscal Year July 1, 2017 through June 30, 2024 The Company agrees to pay a minimum monthly fee established by the then current established sewer rate schedule multiplied by a minimum flow of 46,537,500 gallons per month.

i. For 46,537,501 to 49,822,000 gallons discharged per month the rate shall be \$1.75 per thousand gallons discharged or as adjusted by the City Council and for the first 49,822,000 gallons discharged per month, the average monthly wastewater loading shall be no more than:

(1) BOD: 7,300 pounds per day

(2) TSS: 2,870 pounds per day

(3) TKN: 2,990 Pounds per day

ii. For 49,822,001 to 76,041,000 gallons discharged per month, the rate shall be \$.93 per thousand gallons discharged or as adjusted by the City Council, and the average monthly wastewater loading shall be no more than:

(1) BOD: 9,490 pounds per day

(2) TSS: 3,730 pounds per day

(3) TKN: 3,890 pounds per day

iii. For 76,041,001 to 91,250,000 gallons discharged per month, the rate shall be \$.93 per thousand gallons discharged or as adjusted by the City Council, the average monthly wastewater loading shall be no more than:

(1) BOD: 10,440 pounds per day

(2) TSS: 4,100 pounds per day

(3) TKN: 4,280 pounds per day

iv. To support capital investment and operations, the Company agrees to pay a monthly surcharge of \$72,598.50 each month throughout the Term.

e. For Fiscal Year July 1, 2024 through June 30, 2034 The Company agrees to pay a minimum monthly fee established by the then current established sewer rate schedule multiplied by a minimum flow of 45,625,000 gallons per month.

i. For 45,625,001 to 49,822,000 gallons discharged per month the rate shall be \$1.75 per thousand gallons discharged or as adjusted by the City Council and for the first 49,822,000 gallons discharged per month, the average monthly wastewater loading shall be no more than:

- (1) BOD: 7,300 pounds per day
- (2) TSS: 2,870 pounds per day
- (3) TKN: 2,990 Pounds per day

ii. For 49,822,001 to 76,041,000 gallons discharged per month, the rate shall be \$.93 per thousand gallons discharged or as adjusted by the City Council, and the average monthly wastewater loading shall be no more than:

- (1) BOD: 9,490 pounds per day
- (2) TSS: 3,730 pounds per day
- (3) TKN: 3,890 pounds per day

iii. For 76,041,001 to 91,250,000 gallons discharged per month, the rate shall be \$.93 per thousand gallons discharged or as adjusted by the City Council, the average monthly wastewater loading shall be no more than:

- (1) BOD: 10,440 pounds per day
- (2) TSS: 4,100 pounds per day
- (3) TKN: 4,280 pounds per day

iv. To support capital investment and operations, the Company agrees to pay a monthly surcharge of \$71,175.50 \$71,170.32 each month throughout the Term.

f. The Company hereby acknowledges that the Sewer Rates for the Sewer System may be adjusted from time-to-time by the City through action of its City Council, pursuant to the provisions of Section 384.84 of the Code of Iowa.

g. The Company hereby agrees to make timely payment of accrued charges for the use of the Sewer System in accordance with the terms and

conditions of the ordinary billing statements which shall be provided monthly by the City during the Term.

Section B. Deletion of Section A.5 of Original Agreement. Section A.5 of the Original Agreement is hereby deleted in its entirety. The parties hereby acknowledge and agree that the terms previously covered in Section A.5 of the Original Agreement are now covered by the amended Section A.4 as described above.

Section C. Renumbering of remaining Subsections of Section A of the Original Agreement. Subsections A.6, A.7, A.8 and A.9 of the Original Agreement are hereby renumbered as Sections A.5, A.6, A.7 and A.8, respectively, following the deletion covered in Section B., above.

Section D. Parent Consent. By executing this Amendment to Sewer Services Agreement in the space provided below, the Parent agrees with and consents to be bound by the modified terms provided herein.

Section E. Implementation. This Amendment to Sewer Services Agreement shall be effective upon execution by the City and the Company. This document shall be attached to the Original Agreement and shall modify the Original Agreement as set forth herein. In case of any ambiguity or need for interpretation, the terms of the Original Agreement shall govern except as to Sections A.4 and A.5.

The City, the Company and the Parent have caused this Agreement to be signed in their names and on their behalf by their duly authorized officers, all as of the day and date written above.

CITY OF FORT DODGE, IOWA

By _____
Mayor

Attest:

City Clerk

STATE OF IOWA
CITY OF FORT DODGE ss:
COUNTY OF WEBSTER

On this ____ day of _____, 2014, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____ to me personally known, who being by me duly sworn, did say that they are the Mayor and City Clerk of the City of Fort Dodge, Iowa, respectively; that said instrument was signed and sealed on behalf of said municipal corporation by authority of its City Council; and that the said Mayor and City Clerk as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.

Notary Public in and for said State of Iowa

CJ BIOAMERICA INC.

By _____

STATE OF IOWA
CITY OF FORT DODGE ss:
COUNTY OF WEBSTER

On this ____ day of _____, 2014 before me, the undersigned, a Notary Public in and for said State, personally appeared _____, to me personally known, who being by me duly sworn, did say that they are the _____ of CJ BioAmerica Inc.; that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors; and that the said _____ as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.

Notary Public in and for said State of Iowa

CJ CHEILJEDANG CORPORATION

By _____

STATE OF IOWA
CITY OF FORT DODGE ss:
COUNTY OF WEBSTER

On this ____ day of _____, 2014 before me, the undersigned, a Notary Public in and for said State, personally appeared _____, to me personally known, who being by me duly sworn, did say that they are the _____ of CJ Cheiljedang Corporation; that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors; and that the said _____ as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.

Notary Public in and for said State of Iowa