

**CITY OF HAWARDEN
REGULAR CITY COUNCIL MEETING AGENDA
Hawarden City Hall – Council Chambers Room
Wednesday, October 25, 2017 at 5:30 p.m.**

Standard Agenda Items

- 1a. Approval of October 11, 2017 Council Meeting Minutes.**
- 1b. Approval of October 25, 2017 Claims for Payment**
- 1c. Open business from the Community (limited to a maximum of 5 minutes per item).**
- 2a. Mayor's Report**
- 2b. Council Comments**
- 2c. Staff Reports/Discussion**

Other Agenda Items

3. Hospital Update – Jayson Pullman

4. Resolution 2017-19 allowing the extension of City-Wide Solid Waste Collection and Disposal Agreement between the City of Hawarden and K&P Services, Inc. D/B/A Independence Waste for an additional two years

5. Closed session under Iowa Code Section 21.5(i) to evaluate the professional competency and qualifications of candidates for City Administrator and discussion and possible decision on offer of contract and negotiation of contract terms with any candidate selected.

6. Possible Action on hiring of City Administrator

City of Hawarden

Public Meeting Procedures

These Procedural rules are to provide for the orderly conduct of City business by the City Council, with the objective of providing for full, open and comprehensive debate of issues brought before the body for action in a forum open to the public, and which encourages citizens' awareness of City Council activities. These procedures do not increase or diminish the existing powers or authority of the Mayor or City Council members, but is intended merely to serve as a general set of guidelines to assist the governmental body in conducting City business.

House Rules:

- No food or drink other than bottled water may be brought into the Council Chambers.
- Cell phones and pagers should be silenced in the Council Chambers.
- Signs and placards are not permitted in the Council Chambers.

Citizens' Right To Be Heard:

It is the Council's goal that citizens resolve their complaints for service or regarding employees' performance at the staff level. However, it is recognized that citizens may from time to time believe it is necessary to speak to City Council on matters of concern. Accordingly, City Council expects any citizen to speak in a civil manner, with due respect for the decorum of the meeting, and with respect for all persons attending.

- No member of the public shall be heard until recognized by the presiding officer.
- Public comments will only be heard during the Public Comment portion of the meeting unless the issue is a Public Hearing.
- Speakers must stand at the dais and speak into the microphone, unless unable to do so, and state your name and address for the record.
- Any citizen requesting to speak shall limit himself or herself to matters of fact regarding the issue of concern.
- Comments should be limited to five (5) minutes unless prior approval by the presiding officer.
- If a representative is elected to speak for a group, the presiding officer may approve an increased time allotment.
- Personal attacks made publicly toward any citizen or city employee are not allowed. Citizens are encouraged to bring their complaints regarding employee performance through the supervisory chain of command in accordance with the City's Personnel policies.
- Any member of the public interrupting City Council proceedings, approaching the dais without permission, otherwise creating a disturbance, or failing to abide by these rules of procedure in addressing the City Council, shall be deemed to have disrupted a public meeting and, at the direction of the presiding officer, shall be removed from the Council Chambers by Police Department personnel or other agent designated by the City Council or City Administrator.

**UNAPPROVED MINUTES REGULAR CITY COUNCIL MEETING
HAWARDEN CITY HALL - COUNCIL CHAMBERS ROOM
Wednesday, October 11, 2017 at 5:30 p.m.**

The Council Meeting was called to order at 5:34 p.m.

Present: Mayor Pro Tem Olson; Council Members: Kurth, Feldhacker, Allen

Absent: Mayor Porter; Council Member Harvey

Staff Present: Gary Tucker, City Administrator/City Clerk; Tom Kane, Public Works Director; Pam Wakeman, Finance Officer; Mike DeBruin, Chief of Police; Jim Pickner, City Attorney

Staff Absent: None

Standard Agenda Items

1a. Approval of September 27, 2017 Regular Council Meeting Minutes.

Moved by Feldhacker/Allen to approve September 27, 2017 Regular Council Meeting Minutes.

Motion carried 4-0.

1b. Approval of Claims for payment.

Moved by Kurth/Allen to approve the October 11, 2017 Claims for Payment. Motion carried 3-0 with Olson abstaining.

1c. No Open Business from the Community was held.

2a. No Mayor's Report was given.

2b. No Council Comments were given.

2c. Staff Reports were given.

Other Agenda Items

Item 3. Hospital Project Update.

Jayson Pullman was unavailable for an update.

Item 4. Final Report on Cleanup Days.

Tom gave a report on the fall cleanup costs.

Item 5. Consent Agenda:

- a. Request from Brian Engleman dba Hawarden Golf Course Clubhouse for a Liquor License Transfer to Hawarden Community Center on Sat., Oct. 14, 2017.**

Moved by Allen/Feldhacker to approve. Motion carried 4-0.

The next regular City Council Meeting will be Wednesday, October 25, 2017.

Moved by Kurth/Allen to adjourn the meeting. Motion carried 4-0.

Meeting adjourned at 5:41 p.m.

Travis Olson, Mayor Pro Tem

ATTEST:

Gary W. Tucker, City Administrator/City Clerk

**CITY OF HAWARDEN
COUNCIL MEETING
OCTOBER 20, 2017**

CHECK DATE	CHECK NO	VENDOR NAME	REFERENCE	VENDOR TOTAL
10/20/2017	ACH	CITY OF HAWARDEN	PAYROLL	\$ 73,763.59
10/20/2017	11140611	IPERS	IPERS - CITY	\$ 14,535.90
10/20/2017	11140612	EFTPS	FED/FICA TAX	\$ 12,403.91
10/20/2017	11140613	IOWA DEPT OF REVENUE	STATE TAX	\$ 4,022.00
10/20/2017	11140614	CLAYTON ENERGY CORPORATION	GAS PURCHASE	\$ 9,309.27
10/20/2017	11140615	MISSOURI RIVER ENERGY SVCS	ELECTRIC PURCHASE	\$ 80,362.83
10/20/2017	11140616	PEOPLES BANK	BILLING CHGS & FEES	\$ 40.00
10/20/2017	11140617	TREASURER STATE OF IOWA	USE TAX	\$ 4,758.00
10/20/2017	11140618	TREASURER STATE OF IOWA	SALES TAX	\$ 9,344.00
10/13/2017	50542	HILLCREST HEALTH CARE	COMM HALLOWEEN	\$ 100.00
10/13/2017	50543	JIM'S REPAIR, INC.	MAINTENANCE	\$ 669.03
10/13/2017	50544	TRUESDELL OIL INC	FUEL	\$ 1,013.43
10/13/2017	50545	VAN HOLLAND LAWN SERVICE LTD	SUPPLIES	\$ 893.52
10/13/2017	50546	VAN WERT INC	METERS UG	\$ 5,778.00
10/13/2017	50547	VERIZON	CELL SVC	\$ 229.98
10/20/2017	50548 thru	PAYROLL		
10/20/2017	50551	PAYROLL		
10/20/2017	50552	ICMA-RC	457- ICMA	\$ 950.00
10/20/2017	50553	FLEX PLAN	URM/FLEX PLAN	\$ 1,479.44
10/20/2017	50554	WADDELL & REED	457- W&R	\$ 700.00
10/20/2017	50555	STATE OF SOUTH DAKOTA	REIMBURSEMENT	\$ 398.28
10/20/2017	50556	AFSCME/IOWA COUNCIL 61	UNION DUES	\$ 367.00
10/20/2017	50557	SIOUX COUNTY SHERIFF'S OFFICE	REIMBURSEMENT	\$ 290.38
10/20/2017	50558	AIRGAS USA LLC	CYLINDER RENTAL	\$ 48.65
10/20/2017	50559	SAM ANDERSON	INTERNET REFUND	\$ 4.26
10/20/2017	50560	AUREON NETWORK SERVICES	CALEA SVCS	\$ 120.33
10/20/2017	50561	BALTIC NETWORKS USA	SUPPLIES	\$ 131.44
10/20/2017	50562	BATTERIES PLUS #129	SUPPLIES	\$ 72.35
10/20/2017	50563	BOYER MACHINE INC	BEARING	\$ 1,087.40
10/20/2017	50564	HONESTY CARR	INTERNET REFUND	\$ 22.17
10/20/2017	50565	CATALYST SOLUTIONS INC	SERVICES	\$ 1,033.00
10/20/2017	50566	CAYLER CONSULTING LLC	PROFESSIONAL	\$ 600.00
10/20/2017	50567	MARK DEKOCK	CABLE REFUND	\$ 14.90
10/20/2017	50568	DGR ENGINEERING	WSTWA PLANT IMPROVEMENTS	\$ 1,770.00
10/20/2017	50569	EAGLE RIDGE COPORATE SVCS	COBRA FEES	\$ 660.00
10/20/2017	50570	ENERGY ECONOMICS	SUPPLIES	\$ 2,425.14
10/20/2017	50571	ERICSON AUTO BODY	VEHICLE MAINT	\$ 124.00
10/20/2017	50572	FERGUSON WATERWORKS #2516	SUPPLIES	\$ 16,313.45
10/20/2017	50573	GRAYBAR	SUPPLIES	\$ 528.31
10/20/2017	50574	GROEBNER	SUPPLIES	\$ 1,677.56
10/20/2017	50575	MARY HULLEMAN	RETIREMENT BENEFIT	\$ 488.68
10/20/2017	50576	IOWA INFORMATION INC	ADVERTISING	\$ 299.95

CHECK DATE	CHECK NO	VENDOR NAME	REFERENCE	VENDOR TOTAL
10/20/2017	50577	JEFFS RADIATOR & REPAIRS	VEH MAINT	\$ 1,349.65
10/20/2017	50578	JOHN DEERE FINANCIAL	SUPPLIES	\$ 456.96
10/20/2017	50579	KRIZ-DAVIS COMPANY	SUPPLIES	\$ 56.14
10/20/2017	50580	KSOU-AM & FM KHK-FM	ADVERTISING	\$ 45.00
10/20/2017	50581	L.G. EVERIST INC	UTILITY REFUND	\$ 3,013.62
10/20/2017	50582	LONG LINES	MONTHLY MGMT FEE	\$ 15,101.55
10/20/2017	50583	PERLA LOPEZ	INTERNET REFUND	\$ 18.81
10/20/2017	50584	MAILFINANCE	LEASE	\$ 1,446.00
10/20/2017	50585	MANGOLD ENVIRONMENTAL	LAB FEES	\$ 560.00
10/20/2017	50586	MOREAU MARKETING	SUPPLIES	\$ 161.04
10/20/2017	50587	MUNICIPAL UTILITIES	VOID	\$ -
10/20/2017	50588	MUNICIPAL UTILITIES	UTILITIES	\$ 6,132.29
10/20/2017	50589	LINDA MURPHY	INTERNET REFUND	\$ 23.41
10/20/2017	50590	NATIONAL CABLE TELEVISION	TV PROGRAMMING COST	\$ 917.91
10/20/2017	50591	NEXSTAR BROADCASTING INC	KCAU-ABC	\$ 4,237.97
10/20/2017	50592	OLSONS PEST TECHNICIANS	PEST CONTROL	\$ 284.76
10/20/2017	50593	TOM OPDAHL	INTERNET REFUND	\$ 7.86
10/20/2017	50594	PICKNER LAW OFFICE PC	LEGAL FEES	\$ 700.00
10/20/2017	50595	SHELLY PIES	REBATE	\$ 130.00
10/20/2017	50596	QUICK CORNER INC	VOID	\$ -
10/20/2017	50597	LAURENCE SCHULLER	INTERNET REFUND	\$ 9.08
10/20/2017	50598	SD DEPT. OF TRANSPORTATION	CLPVLG LEASE	\$ 293.00
10/20/2017	50599	SHEEHAN MACK SALES	REPAIRS	\$ 467.63
10/20/2017	50600	SHOWTIME NETWORK INC	TV PROGRAMMING COST	\$ 275.77
10/20/2017	50601	SIOUXLAND OUTDOOR POWER CO	SUPPLIES	\$ 85.67
10/20/2017	50602	ST MARY'S CATHOLIC CHURCH	WEATHERIZATION	\$ 308.70
10/20/2017	50603	STATE HYGIENIC LABORATORY	LAB FEES	\$ 125.00
10/20/2017	50604	SUBSCRIBER TECHNOLOGIES INC	TV PROGRAMMING COST	\$ 225.00
10/20/2017	50605	SUNSHINE FOODS	SUPPLIES	\$ 521.48
10/20/2017	50606	DON TRAGESER	INTERNET REFUND	\$ 26.16
10/20/2017	50607	UNITED PARCEL SERVICE	SHIPPING	\$ 16.19
10/20/2017	50608	WELLS FARGO VENDOR FIN SERV	LEASE COPIER	\$ 233.86
10/20/2017	50609	WESCO RECEIVABLES CORP	SUPPLIES	\$ 1,014.47
10/20/2017	50610	SHELL	FUEL	\$ 347.31
10/20/2017	50611	DELL MARKETING LP	SUPPLIES FIRE	\$ 755.65
10/20/2017	50612	FIRST CHOICE RECYCLING	SERVICES	\$ 1,840.00
10/20/2017	50613	IOWA ONE CALL	EMAIL LOCATES	\$ 36.90
		***** REPORT TOTAL *****		\$ 290,054.99

BEFORE THE CITY COUNCIL OF HAWARDEN, IOWA
RESOLUTION NO. 2017-19

A RESOLUTION EXTENSION OF
CITY-WIDE SOLID WASTE COLLECTION AND DISPOSAL
AGREEMENT BETWEEN THE CITY OF HAWARDEN AND
K&P SERVICES, INC. d/b/a INDEPENDENCE WASTE

WHEREAS, the City of Hawarden previously entered into a contract with K&P Services, Inc. d/b/a Independence Waste for City Wide Solid Waste Collection and Disposal for a period of three years commencing at 12:00 a.m. on January 1, 2015 and terminating at 12:00 a.m. on January 1, 2018.; and

WHEREAS, the original Agreement provides for an extension of its term by two years until 12:00 a.m. on January 1, 2020 by mutual agreement; and

WHEREAS, K&P Services, Inc. d/b/a Independence Waste has given the City notice that it wishes to extend the Agreement; and

WHEREAS, the City of Hawarden finds that it is in the best interests of the City and its citizens to agree to the extension;

NOW, THEREFORE be it RESOLVED by the City Council of Hawarden, Iowa that:

1. That the City of Hawarden agrees to an extension of the City Wide Solid Waste Collection and Disposal Agreement for an additional two years and approves the Agreement for Extension of City Wide Solid Waste Collection and Disposal drafted by the City Attorney.
2. That the Mayor and the City Administrator are authorized to sign said Agreement for Extension of City Wide Solid Waste Collection and Disposal on behalf of the City of Hawarden, Iowa.

Adopted this ____ day of October, 2017.

CITY OF HAWARDEN, IOWA

By _____
Ricard R. Porter, Mayor

ATTEST:

Gary Tucker, City Administrator

CITY-WIDE SOLID WASTE COLLECTION AND DISPOSAL AGREEMENT

Whereas the City provides for the collection of all residential solid waste in the City and at its discretion may provide the collection service by contracting with a person, persons, county, or other city or a combination thereof, for the entire city or portions thereof, as it deems to be in the best interests of the City. And whereas the City deems it to be in its best interests to enter into a contract with Contractor to provide for the collection of all residential waste in the City and Contractor desires to provide said service, it is therefore agreed as follows:

1. Parties. The parties to this agreement are K&P Services, Inc. d/b/a Independence Waste, whose address for purposes of this agreement is P.O. Box 1010, Elk Point, SD, herein referred to as Contractor and the City of Hawarden, a political subdivision of the State of Iowa, whose address for purposes of this agreement is 1150 Central Avenue, Hawarden, Iowa 51023, herein referred to as “City”.

2. Purpose. The purpose of this agreement is to provide the residents of Hawarden the most economical, efficient, safe and sanitary collection and disposal service solid waste and recyclable materials and insure the availability of services for institutional commercial, industrial and business establishments.

3. Duration. The term of this agreement shall be for a period of three years commencing at 12:00 a.m. on January 1, 2015 and terminating at 12:00 a.m. on January 1, 2018. The contract may be extended an additional two years by written mutual agreement of City and Contractor. If Contractor desires to extend this agreement Contractor will provide City with ninety days written notice prior to January 1, 2018.

4. Independent Contractor. Contractor is an Independent Contractor and this agreement is for services performed and in no way is intended to mean that Contractor or its agents are employees of the City. At its own expense, the contractor shall obtain and maintain in effect. all necessary licenses and permits and remain in compliance with all applicable ordinances, laws, rules and regulations. It is the responsibility of the contractor to obtain and review all applicable City of Hawarden ordinances

5. Incorporation of Chapter 105 and Chapter 106. Except as stated in subparagraphs a, b and c of this section, the provisions of Chapter 105 and Chapter 106 of the Hawarden Municipal Code including amendments thereto and revisions thereof and regulations promulgated pursuant thereto, which pertain to solid waste collection and disposal, are specifically incorporated herein as if the same were fully set forth, and shall be a part of this agreement and binding on the parties. Additional terms included in this agreement shall wherever possible be construed to avoid

conflict with the aforementioned ordinances and regulations but, in the event of conflicting terms, the ordinances and regulations shall control.

a. The parties specifically acknowledge that the monthly garbage rates as set forth in the Hawarden City Code and amendments thereto, are not a part of this agreement. The City shall from time to time establish residential garbage collection rates the amounts of which shall be independent of the amounts due the Contractor under the terms of this agreement.

b. The parties specifically acknowledge that this agreement does not cover the collection of commercial solid waste from institutional commercial, industrial or business establishments. However, in further consideration for the benefits of this agreement, Contractor agrees that upon the request of any of the aforementioned establishments or upon Contractor's own initiative, Contractor will offer collection and disposal of commercial solid waste to those establishments located in the City or connected to City utilities. Contractor warrants that the level of services provided and charges for such services will be negotiated in good faith, that it will not discriminate between similarly situated establishments, and that the charges will be directly related to the recovery of the actual costs of providing such service plus a profit factor comparable to the profit realized upon the provision of residential collection services under the terms of this agreement. Contractor also agrees that disputes regarding service to commercial customers shall be resolved under the procedure provided in section 14 of this agreement. City shall have no responsibility for the billing or collection of fees for services provided by Contractor to commercial accounts.

c. Nothing in this agreement shall prohibit City from charging commercial accounts a direct fee separate and in addition to Contractor's fee for costs the City incurs and services which it provides as a result of its solid waste management program.

6. Amendments and Regulations. Revisions and amendments to ordinances and regulations implementing this agreement, which are not inconsistent with this agreement may be adopted from time to time by the City through its regular procedures.

7. Scope of Services. The contractor shall at its sole cost and expense, provide all management, supervision, personnel, materials, equipment and supplies necessary to provide collection and disposal services for residential solid waste, bulky item pickup and special collections in accordance with the following requirements:

a. The contractor shall collect all items of solid waste which have been properly placed in regulation containers, plastic bags, bundles, etc., and normally generated by the households served. The City will be responsible for all billing to each household and for collection of monies for the collection and disposal of solid waste.

- b. Contractor shall employ sufficient staff and use and have possession of sufficient equipment necessary to fulfill the collection activities in a timely manner. Solid waste materials will be collected on a weekly basis 5 days of the week as noted on the map attached as “EXHIBIT A”.
- c. Bulky items such as furniture, and other large items such as carpet shall be collected and billed by the contractor on an on-call basis. The contractor shall be responsible for all scheduling and follow-up. For the bi annual clean ups, the contractor shall coordinate this program annually with the Director of Public Works.
- d. The contractor shall extend collection services to new homes in the City at the contract price. The City will be initially responsible for identifying eligible residences to the contractor. Subsequent to implementation, the contractor will be required to add eligible residences throughout the contract. The City will cooperate monthly with the contractor to provide locations of new/added homes.
- e. Where the contractor has reason to leave solid waste uncollected at a residence, he or his agent shall inform the City and the resident either by telephone, or in person, on the same day as regularly scheduled collection as to why the particular waste was not collected.
- f. Collection areas must be left free and clean of all solid waste and recyclables by the contractor after the collection. Contractor shall also insure that equipment is in good repair so as not to leak system fluids on to the roadway.
- g. Failure to complete a daily route without a reason acceptable to the City shall result in liquidated damages being imposed upon the contractor totaling two percent of the monthly contract value or \$100, whichever is greater, per day for each calendar day that a route has not been completed. Failure to complete a daily route will be determined when more than five percent of the homes scheduled for collection on that day are missed by the contractor.
- h. The contractor will be responsible for responding to all claims of damages to personal property with homeowners who allege such damages were caused by the contractor or the contractor’s personnel while in the performance of the contract. The contractor will respond to a complaint of damage within two days.
- i. Title to all solid waste and recyclables shall pass to the contractor when placed in the contractor’s collection vehicle, removed by the contractor from a residential container or removed by the contractor from the customer’s residence.
- j. The Contractor shall provide collection services for solid waste collection and from all City facilities in the City at locations and frequencies as noted in ‘EXHIBIT B’ at no additional charge. The Contractor shall provide large capacity containers equal in size to the containers already in use at each City facility. Containers will be kept in good repair. The Contractor shall further provide and service porta pots as noted in “EXHIBIT B” at no additional charge.
- k. In the event that the City provides for fall and spring cleanup dates for open

dumping the Contractor agrees to provide and keep serviced for disposal dumpsters having a capacity of 40 yards or more and shall remove and empty them as filled. The charge per dumpster will be \$8.97 and the City shall be responsible for the tonnage charges of the landfill.

l. Waste storage containers, bags and/or bundles will be placed at the curbside for collection unless the household is approved for a special collection.

m. Normal collection days are anticipated to occur on weekdays. During weeks containing holidays or disruptive acts of God, Saturday collections may be needed to maintain the normal collection schedule. Solid waste shall be placed by the resident at curbside by 7:00 a.m. on the designated collection days. Collection of residential solid waste shall not start before 7:00 a.m. Exceptions to collection hours shall be affected only upon the mutual agreement of the City and the Contractor.

n. No route changes will be allowed without the permission of the City. In the event a route change is necessary, the residents affected by the change will be given no less than 30 days written notice of the route change. During the 30 days prior to the change the Contractor shall publish notice of the change for two consecutive weeks in Hawarden Advertiser and Independent. All cost for publicizing approved route changes will be the responsibility of the Contractor.

o. The following holidays for purposes of this contract will be: New Year's Day, Memorial Day, and July 4th, Labor Day, Thanksgiving Day and Christmas day. The Contractor will suspend collection service on the holiday if such holiday falls on a collection day, but such determination in no manner relieves the Contractor of the obligation to provide collection service at least once per week. On the week of the observed holiday, scheduled collection day service shall be adjusted for the day of the week following the holiday, by a one-day delay.

p. Contractor shall provide the City of Hawarden with monthly record of tons of solid waste collected under the contract

8. Disposal Site. All solid waste shall be collected and transported to the Northwest Iowa Solid Waste Agency Landfill site in the vicinity of Hospers, Iowa. Disposal of such collected material, together with collateral operations necessary thereto, shall be the full and sole responsibility of the Contractor.

9. Presentation and Placement for Pickup. No later than 7:00 AM on the date of scheduled pickup, all residential solid waste shall be placed within ten feet of the street curb. Solid waste shall be presented in plastic bags or approved tapered containers. The weight of any individual article or container and contents shall not exceed sixty-five pounds.

10. Payment of Service Fee. Contractor shall be paid a monthly service fee for each billed dwelling unit out of a monthly charge determined and collected

from each such dwelling unit in the City of Hawarden, Iowa. The number of billed dwelling units will be supplied to Contractor from the City's billing report. The service month shall run from the first day of one month to the first day of the following month. Payments for each such service month shall be due and payable on the 15th day of the calendar month following the service month. The City shall assume all uncollectible residential accounts.

11. Amount and Adjustments to Service Fee. The amount of the service fee paid to Contractor shall be \$_____ per billed dwelling unit per month except as otherwise adjusted in accordance with this section.

a. **Gate Surcharge.** Upon written notice given to the City not less than thirty days prior to the first day of the service month for which an increase is requested, Contractor shall be allowed an increase in the amount of the service fee sufficient to cover actual costs associated with the increases in the gate charges paid by Contractor for disposal of the residential solid waste collected in the City. The amount of the increase shall be equal to thirteen percent (13%) of the amount of the increase per ton in the amount of the gate charges. For example, if the gate charges increase by one dollar per ton then the monthly service fee would increase by 13¢.

b. **Fuel Surcharge/Reduction.** Upon written notice and proof given to the City that the monthly average fuel price per gallon has exceeded the \$4.50 threshold the Contractor shall be entitled to begin to receive a fuel surcharge in accordance with schedule listed below. To qualify for a fuel surcharge the Contractor shall be responsible to figure the monthly average fuel price per gallon and submit the same in the form of a report to City showing all calculations and with all paid fuel invoices attached no later than the 10th of the following month for which a fuel surcharge is requested. Similarly, the Contractor shall be responsible to give written notice to the City with the same documentation by the 10th of the month following any month in which the monthly average fuel price per gallon is under the \$3.50 threshold not later than the 10th of the month following any month in which the monthly average is less than \$3.50 per gallon and upon such notice the City shall be entitled to a reduction in the monthly charge to the City, also in accordance with the schedule listed below. The schedule below will be extended on the same basis to reflect increases and reductions beyond the range shown in the schedule.

<u>Average Monthly Fuel Charge Range</u>	<u>Fuel Surcharge/Reduction</u>
\$2.40 - \$2.59	-.10
\$2.60 - \$2.79	-.10
\$2.80 - \$2.99	-.10

\$3.00 - \$3.19	- .10
\$3.20 - \$3.39	- .10
\$3.40 - \$3.49	- .10
\$3.50 - \$4.50	.00
\$4.51 - \$4.70	+ .10
\$4.71 - \$4.90	+ .10
\$4.91 - \$5.10	+ .10
\$1.46 - \$1.65	+ .10
\$5.11 - \$5.30	+ .10
\$5.31 - \$5.50	+ .10

For example if the base rate was \$7.00 and average fuel price per gallon were \$5.35 Contractor rate would be \$7.50 and if the average fuel price per gallon were \$2.55 per gallon then Contractor rate would be \$6.40.

12. Recycling Program. The City is presently sponsoring a recycling program. The Contractor shall operate a regular recycling pickup schedule in which recyclables at every dwelling unit shall be picked up at least twice per month. Contractor shall haul the recycling materials to the Northwest Iowa Area solid Waste Agency in the vicinity of Hospers, Iowa and report the tonnage to City.

13. Collections Equipment. The Contractor shall provide an adequate number of vehicles for regular collection services and sufficient back-up vehicles to provide uninterrupted service including seasonal variations and maintenance down times. The Contractor shall maintain all collection equipment in good repair and appearance at all times and free of excessive noise, odor, leakage of fluids or emissions. The Contractor's logo, telephone number and individual vehicle identification number shall be clearly visible. All vehicles shall be operated and maintained properly and kept in sanitary condition at all times. The Contractor shall take reasonable care to prevent damage to residential Waste storage containers during collection.

14. Public Complaint Resolution. Contractor shall maintain a toll free customer assistance phone service at its local office within 75 miles of the corporate limits of Hawarden. Any and all complaints shall be made directly to the Contractor and shall be given prompt and courteous attention. This includes alleged claims of damage to carts/toters or other personal property by the Contractor or his personnel while in the performance of this contract. In the case of alleged missed scheduled collections, the Contractor shall investigate and shall arrange for the collection of solid waste not collected immediately. The Contractor shall maintain a log of all complaints received and shall document all actions taken to resolve the complaints and times of such actions. The City shall

be notified monthly in writing of all complaints and manner of resolution as part of the monthly reports submitted to the City. City shall form a Solid Waste Committee consisting of the Mayor and two councilpersons. Complaints from the public shall be addressed by this committee and after investigation and review, the decision of the committee shall be binding on the Contractor and customer.

15. Termination. In the event services are not performed as called for in the contract, the City may terminate the contract and elect to have the services performed by others. If services are performed by others, the Contractor shall be liable for all costs to the City in excess of the contract price for the remaining portion of the current contract period. If the City elects to terminate the contract for any reason prior to the initial term of the contract or any extended term thereof, written notice will be given at least 90 days in advance of the effective date. The Contractor will be entitled to payment up to the termination date. The Contractor will not be entitled to any damages Contractor may sustain for any anticipated loss of revenue on any cancelled portion of any contract. The Contractor's right to continue under the contract shall not be terminated nor the Contractor charged with damages if their performance was interrupted by extreme weather conditions or other acts of nature, public disturbance or acts of war. Mechanical failure of the Contractor's collection equipment is not considered to be a valid reason for nonperformance under the contract. However, the Contractor must recommence solid waste collection as directed by the City upon cessation of the cause for the interruption. After an interruption caused by severe and inclement weather or other disaster as noted in section 8 above, the Contractor must be prepared to complete all missed solid waste collection without unnecessary delays. Regular daily routes must be collected first on their normally scheduled day and missed portions following immediately. Failure to expeditiously attempt to catch up on missed collection routes may result in penalties as further defined in the contract

16. Insurance. General: The Contractor shall purchase and maintain insurance to protect themselves, the City, its agents, officers and employees against all hazards enumerated in the contract. The policy shall include the City, its agents, officers and employees as additional insured under the Contractor's policy. All certificates of insurance required therein shall state that thirty days written notice will be given to the City before the policy is cancelled or changed. All certificates of insurance shall be delivered to the City prior to the time that any operations under the proposed contract begin. All certificates of insurance shall be written by an insurance company authorized to conduct business in the State of Iowa.

a. Insurance Requirements: The Contractor shall purchase and maintain such insurance as will protect him from claims set forth below which may arise out of or result from the Contractor's operations under the contract, whether such operations be by himself or by a sub-Contractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

1. Claims under workers compensation, disability benefit and other similar employee benefit acts;
2. Claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
3. Claims for damages because of bodily injury, sickness or disease or death of any person other than Contractor's employees;
4. Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or (2) by any other person;
5. Claims for damages because of injury to or destruction of tangible property including loss of use resulting therefrom; and
6. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle or the acts, conduct or fault of Contractor's operations.

b. Limits of Liability: The insurance required, shall be written on an occurrence form of policy for not less than any limits specified herein, or required by law, whichever is greater:

1. General Liability: \$1,000,000 combined single limit per Occurrence \$1,000,000 aggregate

(including contractual independent Contractors, broad form property damage, personal injury, underground explosion, collapse hazards, in addition, coverage for punitive damages)

2. Automobile Liability: \$1,000,000 combined single

limit (including all owned, non-owned and hired autos)

3. Workers Compensation: Statutory Benefits
\$100,000 Coverage B
4. Umbrella Liability: \$2,000,000 combined single
limit \$2,000,000 Aggregate
(applying directly in excess of above liability
coverages)

c. Contractual Liability Insurance: The insurance required by paragraph 16b shall include contractual liability insurance applicable to the Contractor's obligations as follows:

1. The Contractor shall indemnify and hold harmless the City, its agents, officers and employees from and against all claims, causes of action, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of work, fault of the operation of the Contractor's services which claim, damages, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom and (2) is caused in whole or in part by a negligent act or fault or omission of the Contractor, any sub-Contractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in whole or in part by the party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this section.
2. Any claims against the City, its agents, officers or employees by any employee of the Contractor, any sub-Contractor, or anyone directly or indirectly employed by

any of them for whose acts any of them may be liable, the indemnification obligation under this section, shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any sub-Contractor under workers compensation acts, disability acts or other employee benefit acts.

d. Notification in Event of Liability or Damage: Upon occurrence of any event or incident wherein a claim for damages or loss may arise, the Contractor agrees to provide a police report or otherwise forthwith notify the City in writing of such incident, the cause as far as can be ascertained, the estimate of loss or damage done, the names of witnesses, if any, and stating the amount of the claim.

17. Authority. _____ warrants that execution of this Agreement has been authorized by its Shareholders and Board of Directors, Members and Managers or any and all other persons or entities whose authorization is required to make it effective.

18. Choice of Law and Venue. This agreement shall be construed in accordance with the substantive laws of the State of Iowa and any action concerning this agreement shall be tried in the District Court for the State of Iowa of Sioux County Iowa.

19. No Franchise. It is the understanding and intention of the parties that this agreement shall constitute a contract for the collection and hauling of solid waste and recyclables and shall not constitute a franchise and shall not be deemed or construed as a franchise.

20. Partial Invalidity. If any of the provisions of this agreement are held to be invalid or unenforceable, all other provisions of this agreement shall nevertheless continue in full force and effect so long as the original intent of the agreement remains valid.

21. Modification and Waiver. A modification or waiver of any of the provisions of this agreement shall be effective only if made in writing and executed with the same formality as this Agreement. The failure of either party to insist upon strict performance of any of the provisions of this agreement shall not be construed as waiver of any subsequent default of the same or similar nature.

22. Assignment. As an inducement to entering into this agreement the City has relied upon the reputation and ability of Contractor and upon its prior experience with Contractor and it is therefore agreed that Contractor shall not assign any of its duties or performance under this contract to any other person or entity without the written consent of the City. Such consent shall not be unreasonably withheld.

23. Agreement to Bind Successors, Assigns, etc. Each and every promise and duty under this agreement shall be binding upon the respective successors, heirs, administrators, executives and assigns of the parties to this agreement.

24. No Jury Trial. All parties hereto knowingly, voluntarily and intentionally waive any right which they may have to a trial by jury in respect to any litigation, whether arising in law or in equity, under this Agreement or the subject matter hereof. No such litigation may be consolidated or in any way combined with any other action in which a jury trial has not been waived.

25. Entire Agreement. This agreement is the entire agreement between the parties and cancels all prior agreements whether written, oral or implied.

CITY OF HAWARDEN, IOWA

By _____
Ricard R. Porter, Mayor
Date Signed: _____

ATTEST:

Gary W. Tucker, City Administrator/Clerk
Date Signed: _____

NAME AND SIGNATURES OF ENTITY ETC OF CONTRACTOR

By _____
President

By _____
Secretary

Date signed _____