

OELWEIN SINGLE HAULER AGREEMENT

This Agreement, made and entered into this _____ day of _____ 2023, by and between the City of Oelwein, Iowa, a Municipal Corporation, (hereinafter referred to as the City), and Kluesner Sanitation, LLC. (hereinafter referred to as Kluesner or Contractor).



WITNESS

WHEREAS, the City, on behalf of its residents, desires to provide proper management of solid waste generated by City residential customers, including household waste, recyclable solid waste, residential bulk solid waste, and solid waste in City-owned; and,

WHEREAS, the City of Oelwein desires to provide proper management of solid waste generated by its own facilities; and,

WHEREAS, the City anticipates that an agreement with _____ regarding the same will be of substantial benefit to the City in that it will allow City to attain solid waste management requirements mandated by the State of Iowa pursuant to Title V Code of Iowa; and,

WHEREAS, _____ desires to provide the City with solid waste management services;

NOW, THEREFORE, in consideration of the recitals and the following mutual agreements and covenants, it is understood and agreed by and between the Parties hereto as follows:

Article 1. Term of Agreement

1. This Agreement shall commence April 2, 2023 and shall remain in full force and effect through MONTH DAY, YEAR.

Article 2. Definitions

The following terms, whenever used in this Agreement, shall have the meanings set forth in this Article unless otherwise limited or expanded elsewhere in this Agreement.

1. *Appliances* means refrigerators, freezers, kitchen ranges, air conditioning units, dehumidifiers, water heaters, furnaces, thermostats, clothes washers, clothes dryers, dishwashers, microwave ovens, and PCB-containing ballasts and capacitors.
2. *Approved solid waste collection site* means at the site where the residential customer must set out solid waste for collection, and where the Contractor collects the solid waste. An approved solid waste collection site meets the following criteria:
 - A. Solid waste must be set out for collection at ground level within the City right-of-way at the curb no sooner than 18 hours prior to collection. Solid waste containers must be removed from the collection site within 12 hours after the collection event, regardless whether or not the solid waste was collected.
 - B. Solid waste collection containers must be placed at the approved solid waste collection site in a position easily accessible to the Contractor.
3. *Assigned territory* means the City limits of the City of Oelwein. Except as explicitly provided herein, assigned territory does not include commercial or industrial waste or collection from multi-family dwelling units larger than four (4) units, both of which shall be open to all licensed haulers, regardless of location. The assigned territory may be expanded due to annexations.
4. *Bulk solid waste* means nonputrescible solid waste that is either too large or too heavy to be contained inside a tote, or which cannot be safely or conveniently loaded into solid waste collection vehicles. Bulk solid waste includes appliances and furniture but does not include yard waste.
5. *City* means the City of Oelwein, Iowa.
6. *Construction debris* means solid waste generated by construction activities, including lumber and other processed materials, and is not recyclable solid waste or yard waste.
7. *Demolition debris* means solid waste generated by demolition activities, including lumber and other processed materials, and is not recyclable solid waste or yard waste.
8. *Dwelling unit* means a room or group of rooms that are arranged, designed, or used as living quarters for the occupancy of one family or individual.
9. *Household waste* means garbage, refuse, and trash, and other solid waste generated by dwelling units.
10. *Non-residential bulk solid waste* means bulk solid waste that includes or contains the following materials:

- A. Solid waste generated outside the assigned territory
 - B. Solid waste generated by other than residential customers
 - C. Solid waste generated by businesses, schools, or commercial entities
 - D. Solid waste generated by agricultural activities on farms and properties zoned for agricultural use
 - E. Solid waste containing asbestos containing materials regulated pursuant to Title 40 Code of Federal Regulations Part 61
 - F. Appliances, tires, lead-acid batteries
 - G. Liquid waste or solid waste containing free liquids
 - H. Soils contaminated with petroleum products
 - I. Solid waste containing construction debris or demolition debris
 - J. Solid waste containing materials that are prohibited from the landfill.
11. *Recyclable solid waste* means household waste, which, until such time that the waste is recycled, reused, or processed in a manner that the waste is reintroduced into the economic stream as raw or usable materials, or, until such time that the waste is delivered to a facility approved by the State of Iowa for receiving such waste, is considered solid waste. For the purpose of this Agreement, recyclable solid waste includes, but is not limited to: tin cans, plastics (#1-#7, and plastic milk jugs), aluminum foil, newsprint (newspaper, magazines, phone books, junk mail, news print with glossy inserts, office paper, computer paper, chipboard (e.g., cereal boxes)), and corrugated cardboard, but does not include construction debris, demolition debris, plastic grocery bags or yard waste. Glass is not accepted in this program.
12. *Recycling tote* means a durable, rigid-wall plastic container designated for recyclable solid waste.
13. *Residential bulk solid waste* means bulk solid waste that is not residential bulk solid waste.
14. *Residential customer* means any person or household residing within the corporate limits of the City whose dwelling unit is a single-family residence or part of a multi-family complex which contains no more than four (4) dwelling units.
15. *Specifications* means the documents listed in Article 22 of this Agreement.
16. *Solid waste* means putrescible and non-putrescible waste and other discarded material, including solid, liquid, semi-solid, or contained gaseous materials, resulting from industrial, commercial, mining, agricultural, institutional, and residential activities. Solid waste does not include hazardous waste as defined by the Iowa State Code 455B.411.
17. *Tote* means a durable, rigid-wall plastic container with a hinged lid, and with wheels designed to provide adequate support to roll when fully loaded with household waste. Totes shall be a 90–95 gallon container or a 45 gallon equivalent.

Article 3. Scope of Work

1. The scope of work under this Agreement shall include the work described in the Specifications, composed of the documents listed in Article 22 of this Agreement, and shall include all supervision, materials, equipment, labor, and all other items necessary to complete such work in accordance with the Agreement.

2. During the term of this Agreement, and as defined and detailed in the Specifications, the Contractor shall provide to the City, services related to collection, transportation, and disposal of household waste collected from residential customers within the assigned territory and municipal facilities. Household and municipal waste shall be transported to the Fayette County Transfer Station, for disposal.
3. During the term of this Agreement, and as defined and detailed in the Specifications, the Contractor shall provide to the City, services related to collection, transportation, and delivery of recyclable solid waste collected from residential customers within the assigned territory and municipal facilities. Recyclable solid waste shall be transported to a facility approved by the State of Iowa for receiving recyclable solid waste.
4. During the term of this Agreement, and as defined and detailed in the Specifications, the Contractor shall provide to the City, services related to collection, transportation, and disposal of residential bulk solid weekly. Residential bulk solid waste shall be transported to the Fayette County Transfer Station for disposal.
5. During the term of this Agreement, and as defined and detailed in the Specifications, the Contractor shall provide to the City, services related to collection, transportation, and disposal of solid waste collected from City of Oelwein solid waste receptacles.
6. During the term of this Agreement, the Contractor shall provide to the City, services related to recordkeeping and reporting, as detailed in Article 6, Table 2.
7. The Contractor shall extend all services in this Agreement to new residential customers in the assigned territory at the contract price.
8. In the event of a tornado, flood, ice storm, disabling snow event, or other disaster, the City may grant the Contractor a temporary variance in the Contractor's regular schedules and routes at the option of, and according to, conditions set by the City Administrator or its designee.
9. The Contractor shall adhere to the Quality Control procedures as detailed in Article 6-7, Quality Control.
10. The City shall conduct work related to residential customer monthly billing for solid waste services.

Article 4. Collection Services Provided

1. General Requirements

- A. The Contractor shall load and transport solid waste in such a manner as to be as inoffensive to the public as practicable and shall exert all reasonable precautions to prevent spilling or scattering of solid waste in transit or while loading. In the event that solid waste is spilled or scattered, the Contractor shall immediately remove the solid waste and clean up the area, regardless whether the spillage occurred on private or public property, or within or outside the City limits.
- B. The Contractor shall not knowingly collect any hazardous waste.

2. Public Education Program

The Contractor shall have a website for the City of Oelwein. The website may be an extension of their own website. The page shall provide all information relating to the single hauler service.

- A. The Contractor shall provide an annual pickup calendar.
 - A. The Contractor shall provide a one-page sheet showing acceptable recycling materials.
 - B. The Contractor shall provide a one-page sheet showing acceptable waste allowed in the single hauler program and a bulk item list of generally accepted items.
- A. The Contractor shall collect household waste from residential customers within the assigned territory at the frequency listed for household waste collection in Article 5, Table 1 during the term of this Agreement.
- B. Household waste shall be collected from approved solid waste collection sites.
- C. Individual customer collection days shall remain the same throughout the term of this Agreement, unless specifically approved by the City.
- D. All household waste must be set out for collection in totes.
- E. Each residential customer shall be issued a 90-96 gallon or 45-gallon equivalent tote. A residential customer may request an additional tote for household waste collection if the following conditions, are met:
 - i. the residential customer pays the monthly fee for the additional tote in addition to the monthly fee for the initially-issued tote
 - ii. the residential customer pays service fee for the additional large tote
- F. A service fee shall be charged to change a tote size, or add an additional tote for waste or recycling.
- G. The Contractor shall provide inventory, storage, maintenance and repair of all totes.
- H. The Contractor shall have upon each tote the Contractor Name and a phone number for contact.

3. Recyclable Solid Waste

- A. The Contractor shall collect recyclable solid waste from residential customers within the assigned territory at the frequency listed for recyclable solid waste collection in Article 5.1, Table 1 of this Agreement during the term of this Agreement. The collection day of the recyclable solid waste shall be the same day of the week as the household waste collection.
- B. The collection of recyclable solid waste shall be limited to the items listed in the Article 2, Definitions.

- C. The Contractor shall not incinerate or landfill recyclable solid waste without specific approval from the City.
 - D. Recycling totes containing recyclable solid waste shall be collected from approved solid waste collection sites.
 - E. Recycling totes containing solid waste other than recyclable solid waste may be deemed by the Contractor as unacceptable and may not be collected. In such case, the customer is responsible to retrieve the recycling tote from the approved solid waste collection site.
 - F. Contractor shall provide customers recycling totes and a written policy on how the Contractor will address customers improperly using their recycling container.
 - G. The Contractor shall provide inventory, storage, maintenance and repair of all totes.
 - H. The Contractor shall have upon each tote the Contractor Name and a phone number for contact.
4. Residential bulk solid waste
- A. The Contractor shall provide services for collection, transport, and disposal of residential bulk solid waste.
 - B. Residential bulk solid waste shall be set out for collection on the resident's collection day on Mondays by 5:00 AM.
 - C. Residential bulk solid waste must be set out for collection in a manner that does not require mechanical means (i.e., shoveling, sweeping, gathering, binding, bundling, etc.), or that requires a task in addition to placing the solid waste into the collection vehicle.
 - D. A list of acceptable bulk pickup items will be created with the Contractor along with the Fayette County Transfer station.
 - E. The City will take all bulk items orders at City Hall. City Hall will provide the item lists to the Contractor every Friday.
5. Commercial and Industrial Waste and Recyclable Solid Waste
- A. The Contractor shall collect commercial and industrial solid waste and recyclable solid waste from each City facility at the locations and at the frequencies listed in Appendix A.
 - B. The individual City facility collection days for collection of commercial and industrial solid waste and recyclable solid waste shall remain the same throughout the term of this Agreement, unless specifically approved by the City.
 - C. The Contractor shall provide dumpsters and roll-offs as identified in Appendix A. The Contractor shall maintain all dumpsters and roll-offs in good repair and appearance, replacing or repairing as needed.

Article 5. Solid Waste Collection Operation

1. Frequency of Collection

Solid waste shall be collected at the frequencies listed in Table 1 below:

Table 1	
Type of Solid Waste	Frequency
A. Household waste	One time per week
B. Recyclable solid waste	Every other week – must occur on the same day of the week as household waste collection
D. Residential bulk solid waste	Weekly on Monday
E Additional solid waste nonresidential bulk solid waste, etc.	By appointment with licensed Contractor
F. City Receptacles in the Downtown, including City properties	Refer to appendix A

2. Hours of Operation

Collection services for household waste, recyclable solid waste, and yard waste, shall not start before 5:00 a.m. nor continue after 5:00 p.m., or on Saturday or Sunday. The City Administrator may grant exceptions to these hours and may require a full explanation of any request for such exception.

3. Collection Routes

- A. The Contractor shall establish regular routes for collection of each type of solid waste. Routes must be provided and approved by the City.
- B. The Contractor shall establish a regular schedule for each residential customer. The Contractor shall establish regular schedule routes. The Contractor shall notify residential customers of their regular collection day. The Contractor shall inform residential customers of their regular collection days either by mail, or in local newspaper ads covering at least one-quarter of a page and published at least two weeks prior to beginning the new collection schedule.
- C. Collection routes may be altered as necessary and after approval from the City; altered routes must be provided to the City and residential customers must be notified by mail at least two weeks prior to any changes in their regular collection day.

4. Holiday Collection of Household and Recyclable Solid Waste

- A. All pickup dates affected by holidays shall be picked up the next day. This meaning that all holidays where no pickup occurs, pickups will be a day late.
- B. It shall be the Contractor's responsibility to notify the City of any changes to the collection schedule for City facilities. The Contractor shall contact City Hall.
- C. For the purpose of this Agreement, the following days are considered holidays:

Thanksgiving Day	New Year's Day
Memorial Day	Christmas Day
Independence Day	Labor Day

5. Availability of Contractor

- A. The Contractor shall maintain availability for accepting, responding, and documenting complaints or other calls from City of Oelwein residential customers. The Contractor shall be continuously available during the hours of 8:00 a.m. to 5:00 p.m. Monday through Friday, except on holidays pursuant to Article 5.
- B. The Contractor shall maintain a phone number for the purposes of customer assistance.
- C. The Contractor shall designate a service manager to provide a single point of contact with the City's designated representative. The service manager shall be available to respond to emergencies 24/7.

6. Complaints

All customers calling the City to complain will be instructed to call the Contractor first.

All complaints made directly to the Contractor shall be given prompt and courteous attention. In the case of alleged missed collections, the Contractor shall investigate and if such allegations are verified, the Contractor shall arrange for the prompt collection of the solid waste from the complainant within 24 hours of the complaint. An extension of the 24-hour period may occur if the incident occurs around a holiday or weekend.

If the Contractor is able to substantiate via a process pre-approved by the City using documentation such as written records or date and time stamped photos that the household did not have their tote out at the time the collection vehicle serviced the household, the Contractor may inform the household of this fact and provide the household the option to pay a "Return Service Fee" to return. Contractor shall also inform the resident that they may also hold the waste until the next scheduled collection.

In the case of complaints regarding collection service or any related activities, the Contractor shall, upon being notified of the complaint, resolve the complaint with the eligible household or other person/entity submitting the complaint. The Contractor shall work cooperatively with the eligible households, and the City if applicable, to resolve complaints. The Contractor shall make a record of each complaint received on a form approved by the City and shall be tracked and reported in accordance with Article 6-7 of this Agreement.

In the event that a dispute between the eligible household and the Contractor cannot be resolved, the City shall have the final say on the resolution.

7. Liquidated Damages

The failure of the Contractor to remedy the cause of any service complaints which is found to be justified shall be deemed a breach of this Agreement. In the event of such breach, the Contractor shall pay liquidated damages to the City according to the following schedule. The Parties agree that actual damages incurred for each complaint may be difficult to ascertain. It is agreed between the Parties that the following schedule reasonably reflects the actual damages incurred, and that the City may deduct such damages from payments due or to become due to Contractor. Extended or significant failure and/or neglect of the following items may result in default and result in further action as noted in Article 12 of this agreement.

- A. Failure to clean up spilled Solid Waste - \$150 each incident.
- B. Failure or neglect to collect solid waste from any eligible residence within twenty-four (24) hours from the scheduled date for collection - \$150 each failure or neglect.
- C. Failure to keep equipment in clean, safe and sanitary manner – \$100 per vehicle incident per day.
- D. Failure to have vehicle operators properly licensed - \$500 per incident per day.
- E. Failure to maintain office and phone hours in the manner specified Article 5.5 of this agreement - \$100 per incident per day.
- F. Failure to file on a timely basis information and reports required by this agreement - \$100 per incident per day.
- G. Failure or neglect to complete each route on the regular schedule collection day, if failure to complete collection is attributable to the Contractor - \$1,000 for each route not completed each day.
- H. Collection Service delivered outside of the approved hours of collection as specified in Article 5.3 - \$100 per incident per day.

Complaints listed above will be vigorously investigated and damages will be assessed when justified. However, the City, prior to any assessment of damages, shall give written notice to Contractor of any allegations and shall also give reasonable opportunity for Contractor to contest the alleged violation. The City shall have the option to waive damages assessment where, in its sole judgement, circumstances warrant the same.

- 8. Contractor understands and agrees that Contractor and Contractor's employees, agents, servants, or other personnel are not City of Oelwein employees. Contractor shall be solely responsible for payment of salaries, wages, payroll taxes, unemployment benefits, or any other form of compensation or benefit to Contractor or any of the Contractor's employees, agents, servants, or any other personnel performing the services or work or supplying equipment or materials specified herein. Whether it be of a direct or indirect nature. Further, it is expressly understood and agreed that neither Contractor nor Contractor's employees, agents, servants, or other personnel shall be entitled to any City of Oelwein payroll, insurance, unemployment, worker's compensation, retirement, or any other benefits whatsoever.

Article 6. Operations Procedures

1. The Contractor's employees shall handle all solid waste containers with reasonable care to avoid damage and shall exert all reasonable precautions to prevent spilling or scattering of solid waste. Upon emptying containers, bags, or totes, the Contractor shall immediately clean up and dispose of any spilled or scattered waste, regardless whether the spilled solid waste is on public or private property.
2. The Contractor shall be liable for replacement of all solid waste and recycling containers damaged by reason of misuse or mishandling by the Contractor.

3. Collection 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 refuse and recycling totes during collection.

4. Personnel and Safety

The Contractor shall employ personnel of sufficient numbers and qualifications to carry out the Contractor's obligations under this agreement. Such Personnel shall have the ability and authority to make operating decisions during normal working hours. The Contractor shall have key maintenance and operational personnel on call at all other times.

Employees who normally and regularly come into direct contact with the public shall bear some means of individual identification such as a name tag or identification card. If wearing Contractor apparel, the apparel shall identify the employee with the same Contractor name as on the equipment used for this agreement. Contractor's employees shall be courteous at all times and shall work quietly, not use profane or loud language.

Employees driving the Contractor's vehicles shall at all times possess and carry a valid commercial vehicle operator's license issued by the State of Iowa as required for the type of vehicle they are operating.

Contractor's employees, officers, and agents, shall at no time, be allowed to identify themselves or in any way represent themselves as being employees or agents of the City of Oelwein.

The Contractor agrees that it will take all reasonable precautions to prevent damage, injury, or loss by reason of or related to its operations in the City of Oelwein, and Contractor will establish and maintain safety equipment and procedures for protection of employees and all other person consistent with industry standard, applicable laws or regulations and normal operating practices. The collection vehicles and other equipment shall be equipped with all required safety equipment and warning stickers to comply with OSHA, ANSI, IDOT and other applicable law and regulation. The Contractor shall comply with all applicable federal, state and local laws, ordinances, rules, regulations, and lawful orders of any public authority relating to safety of persons or property.

5. Inspection

The City, or its authorized agent, may inspect the work performed, and equipment of Contractor, for compliance with this Agreement.

6. Point of Contact

The point of contact for the City is the City Administrator or designee.

7. Quality Control Procedures.

The Contractor shall provide the City the following information at the frequencies and reporting times required in Article 6, Table 2.

- A. List of major complaints. A complaint is major if it is a repeat complaint, an area-wide complaint, or the occurrence of a major spill of solid waste.
- B. Date and time each major complaint was received or of the reportable occurrence of major spill of solid waste.
- C. Nature (brief description) of the complaint or occurrence.
- D. Name, phone number, and address of the complainant(s), if provided
- E. Follow-up actions / corrective measures
- F. Date and time of follow-up actions / corrective measures

8. Auditing.

The City may conduct an audit of the information reported to the City by the Contractor as the City deems necessary. The City may, in its sole discretion and expense, require the Contractor to submit to a financial audit, conducted by a certified public accountant.

9. Reporting.

The Contractor shall obtain the data for the report items, at the frequency stated, and provide this information as needed to the City or annually, based on the calendar year, to the City at the report due dates given in Table 2 below:

Table 2		
Report Item	Frequency of Data Collection	Report Date* Due
A. Summary list of major complaints described in Article 6-7, above.	Each Occurrence	Within two weeks, or upon request by the City
B. Tons of household waste collected from residential customers in the assigned territory and number of stops on each route	Monthly	Final Business day of the month.

C. Tons of recyclable solid waste collected from residential customers in the assigned territory and number of stops on each route	Monthly	Final Business day of the month.
E. Tons of residential bulk solid waste collected during each bulk pick up week from residential customers in the assigned territory and number of stops on each route	Each event	Within 30 days following the event

**The City reserves the right to request data more frequently as needed.*

Article 7. Compliance with Laws

1. In performing any actions or services under this Agreement, the Contractor shall comply with any and all federal and state statutes, rules, regulations, and any and all City ordinances and regulations pertaining to or regulating such services or actions, including those now in effect or hereafter adopted.

City/Contractor

2. Amendments to existing regulatory laws, ordinances, rules, and regulations or the enactment of new laws, ordinances, rules, and regulations shall not serve as justification for the Contractor to terminate its obligations hereunder, unless same make the completion of this Agreement impossible.

Article 8. Insurance

1. Specific Requirements

The Contractor shall procure and maintain at all times during the term of this Agreement, insurance of such types and amounts as may be necessary to protect the Contractor, the City of Oelwein, its agents, officers, and employees against all hazard or risks or loss as hereinafter specified. The insurance shall be provided by an insurance Contractor(ies), licensed/authorized by law to do business in the State of Iowa, having no less than a A-VII Am Best rating. The form and limits of such insurance, together with the underwriter thereof in each case shall be acceptable to the City and consistent with limits set out below.

Failure of the Contractor to maintain coverage shall not relieve the Contractor of any contractual responsibility or obligation.

Satisfactory certificates of insurance shall be filed with the City prior to the commencement of this agreement. All required insurance certificates shall be required and indicate that 30 days advance written notice will be given to the City before any cancellation or amendment to the policy may occur.

The insurance shall be written on a per occurrence form of policy for not less than any limits of liability specified herein, or required by law, whichever is greater.

2. Insurance Required

The Contractor must provide certificates of insurance for all of the following insurance coverages:

- A. The Contractor agrees to provide workman’s compensation and employer’s liability insurance during the term of this Agreement. Worker’s compensation, as required by Iowa law and employer’s liability shall provide coverage for \$500,000.00 per accident, \$500,000.00 for each employee, with a \$500,000.00 policy limit.
- B. General Liability – This insurance shall be written on a per occurrence form of policy and shall insure the Contractor from and against all claims arising from injuries to members of the public or damage to property of others arising out of any act or omission of the Contractor or its agents, employees, or subContractors. This policy shall specifically insure the contractual liability assumed by the Contractor under any lawsuits arising from the above actions or omissions. The City, its agents, officers, and employees shall be named as additional insureds. In addition, this policy shall include coverage for contractual incident contracts, broad form property damage, personal injury, underground explosion, collapse hazards, and coverage for punitive damages.

Bodily Injury -	\$1,000,000/combined	single	limit/occurrence
	\$2,000,000/aggregate		
Property Damage-	\$1,000,000/	combined	single limit/occurrence
	\$2,000,000/aggregate		

- C. Vehicle liability – This insurance shall be written on a per occurrence form and shall protect the Contractor from and against all claims arising from injuries to members of the public or damage to property of others arising from the use of licensed motor vehicles, whether owned, non-owned, or hired. The liability limits shall be no less than:

Bodily Injury -	\$1,000,000/person
Property Damage-	\$1,000,000/occurrence

- D. Umbrella Liability – This insurance shall apply directly to excess of above liability coverages

Bodily Injury -	\$3,000,000/combined	single	limit/occurrence
	\$3,000,000/aggregate		
Property Damage-	\$1,000,000/	combined	single limit/occurrence
	\$1,000,000/aggregate		

3. Indemnification

Contractor agrees to defend, indemnify and hold harmless the City, its officers, agents, and employees from any and all claims, settlements, and judgements to include all reasonable investigative fees, attorney’s fees, and court costs for any damage or loss which is due to or arises in whole or in part from the services performed under this Agreement, a breach of this Agreement, or any omission or negligence arising out of performance or nonperformance of this Agreement, and those of its subcontractors or anyone for whom the Contract is legally liable.

4. Disclaimer of Adequacy

Approval of insurance by the City does not in any way relieve or decrease the liability of the Contractor hereunder, and is expressly understood that the City does not in any way represent that the above-

specified insurance or limits of liability are sufficient or adequate to protect the Contractor's interests or liabilities.

Article 9. Licenses and Permits

1. The Contractor shall obtain all required licenses and permits to legally perform the obligations of this Agreement.

Article 10. Transferability of Agreement

1. Other than by operation of law, no assignment of this Agreement or any right accruing under this Agreement shall be made, in whole or in part, by the Contractor without the express written consent of the City. In the event of an approved assignment, Contractor shall act as a guarantor of the assignee's satisfactory performance of all contractual obligations.

Article 11. Exclusive Agreement

1. The Contractor shall have then sole and exclusive license and privilege to provide collection, transportation, and disposal or delivery services as provided in this Agreement, except as provided in Article 12, Article 13 and/or Article 17.

Article 12. Default

1. It shall be an Event of Default if Contractor:
 - A. Fails to collect all Solid Waste, Bulky Waste, and special collections placed out for collection as required by this Agreement;
 - B. Fails to deliver all Solid Waste, Bulky Waste, and special collections collected to the designated facilities as required by this Agreement;
 - C. Fails for any reason to comply with insurance and/or Performance Bond requirements;
 - D. Assigns rights or obligations hereunder for the benefit of creditors, files or has filed against Contractor a voluntary or involuntary petition for bankruptcy; Contractor
 - E. Contractor Fails to perform any other material obligation or comply with any material term of this Agreement.
2. The City shall have the ability to exercise the following remedies in the Event of Default:
 - A. Upon the occurrence of an Event of Default, the City shall not exercise any of the remedies described below unless the City has given the Contractor written notice describing in reasonable detail the nature of the Event of Default and the Contractor has failed to cure the Event of Default within a period of five (5) days of receipt of such notice; provided, however, if the Event of Default is an Event of Default listed in Article 12.1, Contractor shall have 24 hours from receipt of notice of default to cure the Event of Default; or, if the Event of Default is one not listed in Section 12.1, Contractor shall have such reasonable time, not to exceed 30 days, to effect a cure.
 - B. Subject to the foregoing required notice and cure period, the City may take any or all of

the following actions:

- a. Terminate this Agreement immediately without any obligation or liability to the Contractor.;
- b. Call upon the Contractor's Performance Bond for performance or payment and compensation in such amount as shall reasonably compensate the City for any and all loss, costs, and expenses incurred as a result of the Event of Default; or
- c. Take such action and exercise such rights as the City may have at law or in equity, including, without limitation, the right to seek injunctive relief and specific performance on the Contractor's obligations hereunder. All rights and remedies of the City shall be cumulative and the exercise of any right or remedy shall not be deemed a waiver, relinquishment, or abandonment of any other right or remedy.

Article 13. Termination

1. The proper exercise of the right of termination by City is in addition to, and not in substitution for, such other remedies whether damages or otherwise. If City terminates this Agreement all of Contractor's rights, remedies, powers, and privileges are terminated, except as provided by Article 15 and Article 16 hereof, or as otherwise specifically provided or preserved herein and/or by operation of law.

Article 14. Damages and Enforcement

1. Upon the occurrence of an Event of Default, Contractor shall be liable to City for all loss, costs, and expenses incurred as a result of the Event of Default.
2. The termination of this Agreement does not limit or otherwise affect the rights and obligations of the Parties that accrued before the date of such termination

Article 15. Mitigation of Damages

1. The Parties recognize their legal obligation, and otherwise agree, to take any and all steps reasonable and appropriate to mitigate damages to the other Party in the Event of Default.

Article 16. Contingency

1. In the event of the default as specified under Article 12.1 of this Agreement, the City may at its option and without notice to the Contractor, cause such materials to be collected and disposed of by any other available means, and any and all reasonable expenses incurred by the City in so doing may be charged to and collected from the Contractor and, in the event that the Contractor does not pay the same within thirty (30) days of being invoiced, charged against Contractor's performance bond as provided in Article 8.3 of this agreement.

Article 17. Method of Payment

1. City will provide Contractor a residential customer count monthly. Contractor will invoice the City monthly based upon the residential customer count provided by the City. The "count" will be

determined as of the first day of each month and will not vary, up or down, during the course of the month regardless of a change in the count during the course of the month. Should the Contractor identify a discrepancy between the count provided by the City and any count calculated by Contractor based upon actual collection, Contractor may request an adjustment with the City supported by applicable data. The City will evaluate Contractor's request and adjust the Count, invoicing, and payment as appropriate, all to be reflected on the next month's invoice/payment. Contractor shall submit its' invoice by the 10th day of each month for the prior month and City will pay the invoice as appropriate by the end of each month.

2. The City shall receive payment directly from residential customers utilizing these services. The Contractor may work with customers on other trash related pickups outside of the single hauler program, but the Contractor will be responsible for invoicing and payment collection.
3. City shall not pay the Contractor for additional bulk solid waste disposal services at times other than as provided herein. In those circumstances, if any, Contractor shall obtain payment directly from the customer for said additional collection.
4. City shall be responsible for billing and collection of fees for solid waste listed in Article 17.1, above.
5. The City will not provide data on customers that are temporarily shut off from utilities. The Contractor will pick up all garbage placed at the curb. The City will only notify the Contractor of a shut off resident should it be longer than one month.

Article 18. Conflict of Interest

1. Contractor agrees that no member, officer, or employee of the City shall have any direct or indirect interest in this Agreement or the proceeds therefrom. Violations of this provision shall allow City to declare this Agreement null and void. Contractor shall forfeit any payments made under this Agreement for any period of time where this provision was not complied with.

Article 19. Force Majeure

1. Force Majeure means any of the following acts or events, and not others, which materially adversely affect the performance of the obligations of the City or the Contractor if such act or event is beyond the reasonable control, and not the result of willful or negligent action or a lack of due diligence of the Party relying upon:
 - A. An act of God, fire, flood, or other similar casualty;
 - B. A valid and enforceable order, judgment, or law of any federal, state, or local court, administrative agency or governmental body, specifically excluding OSHA, ANSI, IDOT or other health or safety-related enforcement actions; provided, however, that either a good faith contesting or a good faith failure to contest any such order, judgment, or law shall not constitute or be construed as a wrongful or negligent act or omission or lack of reasonable diligence, and
2. As soon as a Party becomes aware of a possible Force Majeure event or occurrence, such Party shall notify the other Party. In the event either Party by reason of a Force Majeure event is rendered unable to perform its obligations, said Party shall give prompt notice to the other in any effective manner, but if not in writing, to be followed by written notice as soon as practicable after knowledge of the

occurrence of said Force Majeure, in which event said Party shall be excused from performing until cessation of the Force Majeure event ; provided, however, that, in no event, will a Force Majeure event affecting a Party excuse it from any obligation to make any payment for Services performed in accordance with this Agreement. Notwithstanding anything in this Section, should such delay exceed ninety (90) days, the Party not claiming the Force Majeure may, at its sole election, terminate this Agreement. No Force Majeure claim shall be valid absent written notice as provided herein and absent such notice any failure to perform shall be considered unexcused and subject said Party to penalties as provided herein. The effects of said Force Majeure event shall be remedied with all reasonable dispatch, and said Party giving notice shall use best efforts to eliminate and mitigate the consequences thereof.

3. If a Force Majeure event occurs which prevents or interferes with the provision of Services, the City shall be obligated for payments to the Contractor only to the extent of Services performed.
4. The Contractor shall not be paid for Services not performed as a result of a Force Majeure. In the event Contractor is unable to perform obligations provided hereunder as a result of a Force Majeure event, the City may enter into service agreements with others or take whatever action the City deems appropriate to cause the provision of Collection Services during the period of the Force Majeure event.

Article 20. Governing Law

1. The laws of the State of Iowa shall be used to interpret and enforce this Agreement. The venue for all disputes is the District Court in and for Fayette County, Iowa.

Article 21. Agreement Components

1. The following make up the entire agreement of the Parties, and any additional documents or attachments enumerated below, are incorporated herein by this reference as if set forth fully verbatim herein, and shall be considered enforceable terms hereof:
 - A. Signed and dated Residential Solid Waste Collection Agreement (this document), with Appendices A
 - B. Notice of Hearing and Letting
 - C. Instructions to Bidders
 - D. The Contractor's response on the Bid Form
 - E. The Contractor's performance bond
 - F. The Resolution of the City Council approving this Agreement
2. While this Agreement instrument and the exhibits listed in Article 22 above constitute the entire Agreement between the Parties, this Agreement instrument supersedes all other documents, proposals, or representations between the Parties, whether written or oral, and this Agreement instrument shall govern in the event of a conflict or inconsistency between various documents.
3. No amendment shall be construed to release either Party from any obligations of this Agreement, except as specifically provided for by said written amendment.

Article 22. Amendment

1. No amendment to this agreement shall be valid and/or enforceable unless in writing and formally approved by the Parties.

Article 23. Waiver

1. No waiver of any provision of this Agreement will be valid unless in writing and signed by the Party against whom such waiver is sought to be enforced, nor will failure to enforce any right hereunder constitute a continuing waiver of the same or a waiver of any other right hereunder.

Article 24. Fees

The following fees are agreed upon by both parties:

Per residential customer:

April 1, 2023 through March 31, 2024	\$12.26
April 1, 2024 through March 31, 2025	\$12.26
April 1, 2025 through March 31, 2026	\$12.51
April 1, 2026 through March 31, 2027	\$13.36
April 1, 2027 through March 31, 2028	\$14.21

Monthly Single Item Bulk Pickup	\$20.00 per item
Additional Items	priced by item
Additional Refuse Tote	\$9.26 per month
Large Refuse Tote	available for the same price
Medium Refuse Tote	available for the same price
Additional Recycling Tote	\$9.26 per month
Container Exchange	\$50.00 one time charge
Container Replacement	\$100.00 one time charge
Assisted/Elderly/disabled Pickup	no additional fee

Article 25. Signatures

CITY OF OELWIN, IOWA A MUNICIPAL CORPORATION OF FAYETTE COUNTY,

By: _____
Brett DeVore, Mayor Date

By: _____
Dylan Mulfinger, City Administrator Date

Seal of the City of Oelwein, Iowa

Contractor Name

By: _____
Name of authorized signer Date

DRAFT