

**CONTRACT AGREEMENT BETWEEN THE  
CITY OF MAPLEWOOD  
AND  
TENNIS SANITATION, LLC  
FOR RECYCLING SERVICES**

**September 9, 2013**

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This Agreement is made this 9th day of September 2013, between the City of Maplewood, 1830 East County Road B, Maplewood, Minnesota 55109 (the "City") and Tennis Sanitation, LLC, with its current local place of business at 720 4<sup>th</sup> Street, St. Paul Park, Minnesota 55071 (the "Contractor").

WITNESSETH:

WHEREAS, the City supports a comprehensive residential recycling program and desires that high-quality recycling services be available to all its residents; and

WHEREAS, the City supports curbside recycling as part of an overall landfill abatement program; and

WHEREAS, the City supports multi-family recycling services as another part of an overall landfill abatement program; and

WHEREAS, Ramsey County has funding available for such residential recycling services; and

WHEREAS, the Contractor and the City have negotiated an extension of the Contractor's Contract;

NOW, THEREFORE, the City and Contractor mutually agree as follows, in consideration of the mutual promises and covenants contained herein:

## **1. Definitions**

### ***1.1 "Aerosol cans"***

Aerosol cans include but are not limited to spray paint, hairspray, deodorant, etc.

### ***1.2 "Aluminum cans"***

Disposable containers fabricated primarily of aluminum, commonly used for soda, beer, juice, water or other beverages. Also includes aluminum foil and trays.

### ***1.3 "Church"***

A commercial building for public worship which is capable of having its recyclables collected in curbside recycling carts rather than dumpsters.

### ***1.4 "Contractor's annual recycling public education flyer"***

The City requires the Contractor to publish and distribute an annual public education flyer that contains the following recycling information for City residents:

- Annual calendar and map of curbside recycling districts for "single family dwellings"
- List of materials to be included for recycling
- List of non-targeted materials that cannot be recycled in the City's recycling program
- General information about curbside recycling and multi-family recycling instructions
- How to prepare materials

**1.5 "City's designated contact person"**

The City has designated the Community Development Director or his or her designee as the contact person for management and administration of this Agreement.

**1.6 "City-designated recyclables" or "Recyclable materials" or "Recyclables"**

The following list of materials are accepted as part of the Contract Agreement: aluminum cans; steel cans; glass jars and bottles; paper recyclables; phone books; plastic bottles; plastic tubs (yogurt, margarine, sour cream; plastic toys; plastic containers for shrubs, trees and flowers; egg cartons; motor oil bottles (drained); aerosol cans; household scrap metal; textiles; boxboard; corrugated cardboard; and milk cartons and juice boxes. This list of recyclable materials can be amended through negotiation between the City and its Contractor at any time within the duration of the contract term. Such negotiations must be reduced to a written amendment to this Agreement and duly executed before it shall go into effect.

**1.7 "Collection"**

The aggregation and transportation of recyclable materials from the place at which it is generated and includes all activities up to the time when it is delivered to a recycling facility.

**1.8 "Contractor"**

The City's recycling service Contractor under the new contract beginning operation on January 1, 2014.

**1.9 "Corrugated cardboard"**

Cardboard material with double wall construction and corrugated separation between walls but not plastic, wax or other coated cardboard.

**1.10 "Curbside recycling bins"**

Containers supplied by the City in which recyclables can be stored for later placement for curbside collection, as specified by the City. The recycling containers remain the property of the City and are the only receptacles approved for use under this contract except that curbside recycling carts may be used during the contract at the sole determination of the City.

**1.11 "Curbside recycling cart"**

Containers equipped with wheels and a lid in the following standardized sizes (approximate/nominal capacities):

30-gallon

60-gallon

90-gallon

Recycling cart capacities by cart size will depend on the cart manufacturer selected by the City or Contractor through a separate procurement process.

**1.12 "Curbside recycling service"**

The recycling collection service, together with related public education and other customer services, specified within this contract utilizing curbside recycling bins or carts. Multi-family

dwellings may receive curbside recycling service as determined by the City and the Contractor.

**1.13 "Glass jars and bottles"**

Unbroken glass jars, bottles, and containers (lids/caps and pumps removed) that are primarily used for packing and bottling of food and beverages.

**1.14 "Household Scrap Metal"**

Household scrap metal includes, but is not limited to, silverware, pots, pans and wire hangers.

**1.15 "Holidays"**

Holidays refers to any of the following: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day and any other holidays mutually agreed upon by the City and the Contractor. In no instance will there be more than one holiday during a Collection week. When the scheduled Collection day falls on a holiday, Collection for that day will be collected one day later. The Contractor shall publish the yearly calendar including alternate Collection days, with assistance from the City.

**1.16 "Holiday weeks"**

A week where a holiday falls on a Monday through Friday and requires the Contractor to collect recyclables on a Saturday, of which Saturday will be agreed upon by the City.

**1.17 "Market demand"**

The economic and technical capacity of markets to use recyclable material to make new products.

**1.18 "Markets"**

Any person or company that buys (or charges) for recycling of specified materials and may include, but are not limited to, end-markets, intermediate processors, brokers and other recycling material businesses.

**1.19 "Milk cartons and juice boxes"**

Gable top and Tetra Pak cartons for milk, soy, broth and juice boxes.

**1.20 "Multiple family dwellings (MFD)"**

A building or a portion thereof containing five (5) or more dwelling units.

**1.21 "MFD recycling containers"**

Recycling containers used for multiple family dwellings (MFD) including any bin, cart, dumpster or other receptacle for temporary storage and collection of designated recyclables from residents in MFD's prior to Collection. Such recycling containers must be separate, explicitly labeled on the lid and the front of the containers as to recyclables included, and colored differently from other containers for mixed solid waste or trash.

### **1.22 "Multiple family recycling service"**

Recycling Collection service, together with related public education and other customer services, provided to multiple family residents that utilize multiple family recycling containers (i.e., carts) and use multiple family recycling stations.

### **1.23 "Multiple family recycling stations"**

The location of multiple family recycling containers designated by the recycling Contractor with agreement of the MFD building owner. Multiple family recycling stations will likely be a cluster of recycling carts and/or recycling dumpsters.

### **1.24 "Non targeted materials"**

Materials that are not included in the City's recycling program. Examples of typical non-targeted items include, but are not limited to, pumps on plastic bottles, ceramic material in glass streams, window glass and mirrors, paper cups and plates.

### **1.25 "Paper"**

Paper includes the following: newspapers (including inserts); household office paper and mail; cereal, cake mix, chips and cracker boxboard; egg cartons; old corrugated cardboard; phone books; Kraft bags; pop/beer boxes; pizza boxes, frozen food boxes, tissue boxes, and magazines/catalogs.

### **1.26 "Participation rate"**

Percentage of residents participating in curbside or multi-family recycling. Participation is defined as a resident who places recyclables at the curb or utilizes their multi-family recycling containers at least once per month.

### **1.27 "Plastics"**

All plastics with plastic resin codes #1 (PET & PETE); #2 (HDPE); #3 (PVC); #4 (LDPE); #5 (PP); #6 (PS - except Styrofoam), and #7 (other). These will include, but not be limited to, plastic beverage bottles; liquor; juice; milk; soft drinks; certain foods; soap and cosmetics; plastic tubs (yogurt, sour cream, margarine); tree, flower and shrub containers; plastic toys; motor oil bottles (drained), and retail plastic bags.

### **1.28 "Process residuals"**

The normal amount of material that cannot be economically recycled due to material characteristics such as size, shape, color, cross-material contamination, etc., and must be disposed as mixed municipal solid waste. Process residuals include subcategories of process residuals including, but not limited to, bulky items, contaminants, sorted tailings, floor sweepings and rejects from specific processing equipment (e.g. materials cleaned from screens, etc). "Process residuals" does not include clean, separated products that are normally processed and prepared for shipment to markets as commodities but are of relatively low-value because of depressed market demand conditions. The maximum percent of process residuals shall not exceed six percent (6%).

### **1.29 "Processing"**

The sorting, volume reduction, baling, containment or other preparation of recyclable materials delivered to the processing center for transportation or marketing purposes.



### **1.30 "Processing center"**

A recycling facility in which recyclable materials are processed. The facility will conform to all applicable rules, regulations and laws of state, local or other jurisdictions.

### **1.31 "Revenue share"**

Any increases in tonnage of recyclables with the use of recycling carts over the tonnage of that month in the previous year of the Contract Re-Opener with the use of recycling bins will result in a seventy (70%) revenue share for the blended value of all commodities collected using the following procedure: Total tonnage for the month shall be apportioned to the individual commodities by use of the most recent composition study conducted by the Contractor and monitored and approved by the City. The value of the commodity for a particular month shall be determined by the price quoted in Recyclingmarkets.net on the fifth business day of that month.

### **1.32 "Small business"**

A commercial building capable of having its recyclables collected in carts rather than a dumpster.

### **1.33 "Steel cans"**

Disposable containers fabricated primarily of steel or tin, used for food and beverages.

### **1.34 "Textiles"**

Textiles include unwanted but reusable linens such as towels, sheets, blankets, curtains, tablecloths and clothes (including belts, coats, hats, gloves, shoes and boots that are clean and free of mold, mildew and excessive stains). Textiles must be dry.

### **1.35 "Work Plan from Contractor"**

The annual work plan proposal for recycling system improvements submitted from the Contractor and approved by the City.

## **2. Term of Contract**

The term of this recycling contract will be a period of two (2) years from January 1, 2014 through December 31, 2015. The City may consider up to two (2), one (1) year extensions for years 2016 and 2017, at the City's sole discretion.

## **3. Annual Work Plan**

The Contractor shall submit an annual work plan proposal no later than October 1 for the upcoming calendar year to outline key priorities for system improvements. Public education tools shall be itemized and approximate timelines described. Other service improvements may also be included in the work plan. The City shall review and approve the work plan by no later than November 1 each year. The annual work plan shall be incorporated by reference as an amendment to this contract.

## **4. Annual Performance Review**

Upon receipt of the Contractor's annual report, the City shall schedule an annual meeting with the Contractor and the City's Environmental and Natural Resources (ENR) Commission.

Once concluded, the report from the ENR Commission shall be presented to the City Council, and a meeting will be held between the Council and Contractor to review the performance of the contract. The objectives of this annual meeting will include, but not be limited to:

- Review Contractor's annual report, including trends in recovery rate and participation rate.
- Efforts the Contractor has made to expand recyclable markets.
- Review Contractor's performance based on feedback from residents to the ENR Commission, City Council, and City staff.
- Review Contractor's recommendations for improvement in the City's recycling program, including enhanced public education and other opportunities as contained within the annual work plan for the upcoming year.
- Review City staff recommendations for Contractor's service improvements.
- Discuss other opportunities for improvement with the remaining years under the current contract.

## **5. Single Stream Recyclables Collection/Processing System**

### ***5.1 Single Stream Recyclables***

Single stream recyclables collection and processing system shall be the basic service system design for this contract. Under this single stream design, residents will be instructed to combine all City designated recyclables, except clean, reusable textiles, in the curbside recycling bin or carts. Residents may place clean, reusable textiles separate from other recyclables in water-proof bags labeled "Clothes and Linens".

### ***5.2 Change of Recyclables Collection System***

During this contract period, the City may elect to change the recyclables collection system to use curbside recycling carts. These carts may be purchased by the City, or by the Contractor, and the carts may be distributed by the City or its proxy or by the Contractor, as determined in Section 6.

### ***5.3 Changes to Processing System***

The Contractor shall not make any changes to the single stream collection or processing system without written direction of the City.

## **6. Payment Terms**

The Contractor will invoice the City of Maplewood on a monthly basis and the City will pay the contractor no later than net thirty (30) days of receipt of the invoice. The billing system will include the following elements:

### ***6.1 Per Unit Fee***

A charge for collection services calculated by multiplying the number of single family units, multiple family units, and churches and small businesses times the per unit fee of one dollar and seventy-five cents (\$1.75) per unit per month.

## **6.2 Households**

The City has determined that there are eleven thousand three hundred forty-five (11,345) single family units and four thousand one hundred seventy (4,170) multiple family units in the City of Maplewood. The City will pay the Contractor for all single family units in the City, but will only pay one dollar and seventy-five cents (\$1.75) per unit per month for those multiple family units that the Contractor actually services. January 1 of each year the Contractor and the City will review household counts to determine changes in household numbers. The review will include a study of the City's trash collection and recycling routes, water utility billing, Community Development Department housing counts, Census housing data, Metropolitan Council housing data and Contractor route inspections to come up with the most accurate housing counts. The housing count numbers will be modified yearly by February 1 of each year based on this review.

## **6.3 Churches and Small Businesses**

Churches and small businesses which are capable of having recyclables collected in curbside recycling carts are able to use the City's recycling Contractor to provide recycling services. The City will pay the Contractor for all churches and businesses that opt into the recycling program at a rate of one dollar and seventy-five cents (\$1.75) per one (1) or two (2) ninety-five (95) gallon recycling carts used by the church or small business, and one dollar and seventy-five cents (\$1.75) for each subsequent cart beyond one (1) or two (2). The City will work with the Contractor in determining which churches and small businesses are cable of opting into the City's recycling program, with final approval by the City. The Contractor will break out the pricing for churches and small businesses separately in its invoice to the City and will report on the number of churches and small businesses in the Monthly and Yearly reports.

The recycling containers for churches and small businesses shall be:

1. Sufficient in number and size to meet the demands for recycling services created by the occupants.
2. Equipped with hinged lids.
3. Equipped with standardized labels approved by the City, attached to the lid and the front of the carts, and which identify the type of recyclable material to be deposited in each container. Recycling containers shall be colored differently from other containers for mixed solid waste or trash.
4. Maintained in proper operating condition and reasonably clean and sanitary.
5. Repaired or replaced on a reasonable schedule if broken due to regular wear and tear.
6. Provided at no cost to the City or residents.
7. Approved by City staff for use prior to entering service.

## **6.4 Conversion to Curbside Recycling Carts**

If the City, in its sole discretion, determines that it wishes recycling services to its residents, churches, and small businesses to be provided by use of curbside recycling carts, it shall so notify the Contractor. The City shall also determine which cart option and delivery system ("1" or "2" below) it will implement, and will notify the Contractor of its decision.

1. Contractor-Supplied Recycling Carts: If the Contractor supplies the curbside recycling carts to Maplewood residential properties and churches and small businesses, the Contract term will be extended for an additional four (4) years and the cost of the Contract shall be two dollars and fifty cents (\$2.50) per household or church or small business per month for the first two (2) years of the Contract and two dollars and seventy five cents (\$2.75) per household or church or small business per month for two (2) additional years.
2. City-Supplied Recycling Carts: If the City purchases the curbside recycling carts for Maplewood residential properties and churches and small business, the cost of the Contract shall remain at one dollar and seventy five cents (\$1.75) per household or church or small business per month for the remainder of the contract, with the possibility of two (2) additional one (1) year extensions. Additionally, the City will capture seventy percent (70%) of the revenue earned for any increases in tonnage of materials collected with the use of curbside recycling carts over tonnage collected in 2012 with the use of recycling bins.

### **6.5 Revenue share**

The City and the Contractor intend to implement more effective recycling education programs and the City will, during the Contract period, determine if the use of curbside recycling carts for single stream recycling is in the best interests of the City for Contract years 2014 and 2015. If the City elects to begin collection of recyclables in curbside recycling carts, any increase in tonnage of all commodities collected with the use of carts over the tonnage of that month in 2012 with the use of curbside recycling bins shall result in a share of recycling revenue to be returned to the City as follows:

- Each month seventy percent (70%) of the blended value of all commodities, net processing, shall be returned to the City using the following procedure:
  - ✓ The current year's monthly tons minus the previous year that the Contractor Re-Opener was negotiated monthly tons for that same month. Any increase in tons based on this calculation will trigger the revenue share procedure as follows:
    - Total tonnage for the month shall be apportioned to the individual commodities by use of the most recent composition study conducted by the Contractor and monitored and approved by the City.
    - The value of the commodity for a particular month shall be determined by the price quoted in Recyclingmarkets.net on the fifth (5<sup>th</sup>) business day of that month.
    - Values for each commodity will be divided by the apportioned percent of each commodity from the composition study.
    - Addition of the apportioned commodity values will equal the blended value per ton of all commodities.
    - Minus the processing fee of eighty dollars (\$80.00) per ton equals the total revenue increase over the previous year that the Contract Re-Opener was negotiated.
    - Seventy percent (70%) of the total revenue share goes to the City for its revenue share.
    - Revenue share is credited on the City's invoice for the next month.

Example:

January 2013 Recycling Tons	4,000	
January 2012 Recycling Tons	3,920	
Current Net Tons	80	
Blended Value per Ton		\$104.06
(Based on January Recyclingmarkets.net)		
Minus Processing Fee		- \$80.00
Equals Increase in Revenue		\$24.06
Multiplied by 70%		x .70
Equals City's Share of Revenue Increase		\$16.84
Multiplied by Current Net Tons		80.00
Equals the City's January Revenue Share		\$952.26

- The City shall not be penalized for decreases in tonnage. If there is a decrease in tonnage, there is no revenue share due to the City.

#### **6.6 Other**

Any other mutually agreed upon charges or credits for any other future efforts outside of the scope of this contract (e.g., organics and food waste collection, etc.).

#### **7. Cart Purchasing Plan**

If the City elects to begin collection of recyclables with curbside recycling carts and elects to purchase the curbside recycling carts, the City shall develop a cart purchasing plan and schedule in coordination with the Contractor. The Contractor shall review and comment on this cart purchasing plan.

#### **8. Cart Distribution and Management Plan**

If the City elects to begin collection of recyclables with curbside recycling carts and elects to purchase the curbside recycling carts, the Contractor shall develop a cart distribution and management plan in coordination with the City within two (2) weeks of adopting the cart purchasing plan. The City may elect to include its cart manufacturer as part of the team to plan for cart distribution and management. The Contractor may elect to include any cart management subcontractor as part of the cart distribution and management team.

#### **9. RFP and Contractor's Proposal**

The contents of the City's original Request for Proposal (RFP) for Recycling Services (dated June 1, 2010) and the Contractor's original proposal (dated June 30, 2010) are part of the contractual obligations and are incorporated by reference into this contract. If any provision of the contract is in conflict with the referenced RFP or proposal, the contract shall take precedent.

#### **GENERAL REQUIREMENTS FOR ALL COLLECTIONS**

The following general requirements are pertinent to all recycling collections (i.e., both curbside recycling collection and multiple family recycling collection services). However, the City acknowledges that collection service frequencies and other factors will vary between residential, multiple family and church and small business collection programs.

## **10. Missed Collections**

The Contractor shall have a duty to pick up missed recycling collections. The Contractor agrees to pick up all missed collections on the same day the Contractor receives notice of a missed collection, provided notice is received by the Contractor before 11:00 a.m. on a business day. With respect to all notices of a missed collection received after 11:00 a.m. on a business day, the Contractor agrees to pick up that missed collection before 4:00 p.m. on the following business day.

## **11. Severe Weather**

The Contractor may postpone recycling collections due to severe weather at the sole discretion of the Contractor. "Severe Weather" shall include, but not be limited to, those cases in which snow, sleet, ice or cold temperatures might jeopardize the safety of the Contractor's staff or result in unsafe driving conditions. If collections are postponed, the Contractor shall notify the City. Upon postponement, collection will be made on a day agreed upon between the Contractor and the City.

## **12. Collection Hours and Days**

The City requires all such collections to begin no sooner than six (6) a.m. and shall be complete by seven (7) p.m. Furthermore, the City requires scheduled collection days to be Monday through Friday, and agreed upon Saturdays during holiday weeks. The Contractor may request City approval of exceptions to these time and day requirements (e.g., pursuant to the "Severe Weather" section - Section 11 above). The Contractor must request such exception from the City's Designated Contact Person via telephone or email prior to the requested collection event, and specify the date, time and reason for the exception.

## **13. Customer Complaints**

The Contractor shall provide staffing of a telephone equipped office to receive missed collection complaints and other complaints between the hours of seven (7) a.m. until five (5) p.m. on all days of collection as specified in this Agreement. The Contractor shall have an answering machine or voice mail system activated to receive phone calls after hours. The address and telephone numbers of such office shall be given to the city in writing, with ten (10) days prior notice of changes therein. The address of this office as of the execution of the contract is 720 4<sup>th</sup> Street, St. Paul Park, Minnesota 55071 and the telephone number is 651-459-1887. The Contractor shall also allow complaints to be made electronically.

Each month the Contractor shall provide the City with a list of all customer complaints, the nature of these complaints and a description of how each complaint was resolved. The names of the complainants and contact numbers or e-mail addresses must also be included.

Complaints on service will be taken and collected by the City and the Contractor. The City will notify the Contractor of all complaints it receives. The Contractor is responsible for corrective actions. The Contractor shall answer all complaints courteously and promptly.

## **14. City Retains Right to Specify Resident Preparation Instructions**

The Contractor shall agree that it is the City's sole right to clearly specify the resident sorting and set out requirements. The Contractor shall publish and distribute, on an annual basis, the detailed recyclable preparation instructions for its residents as part of its annual public education flyer.

## **15. City Shall Approve Contractor's Public Education Literature**

The Contractor shall conduct its own promotions and public education to increase participation and improve compliance with City-specified recycling preparation instructions as per the public education elements of the annual work plan. At a minimum, this shall include: production and distribution of an annual flyer to each home; and distribution of "resident education tags" to be left by curbside collection crews if any non-targeted material is rejected and left at the curb. The Contractor shall submit a draft of any public education literature for approval by the City, at least one (1) month before printing and release of any such literature.

## **16. Weighing of Loads**

Contractor will keep accurate records consisting of an approved weight slip with the date, time, collection route, driver's name, vehicle number, tare weight, gross weight, net weight and number of recycling stops for each loaded vehicle. Collection vehicles will be weighed after completion of a route or at the end of the day, whichever occurs first. A copy of each weight ticket shall be kept on file and made available for inspection upon request by the City.

## **17. Monthly and Annual Reports**

The Contractor will submit to the City monthly and annual reports. At a minimum, the Contractor shall include the following information in these reports:

- Total quantities of recyclable materials collected, by material type (in tons) for single family, multi-family, city facilities, parks, churches and small businesses.
- Net quantities of recyclable materials marketed, by material type (in tons).
- Quantities stored, by type of material, with any notes as to unusual conditions (in tons).
- Quantity of process residual disposed of (in tons).
- For single and multiple family homes, recycling service fee of one dollar and seventy five cents (\$1.75) per unit per month or as outlined in Section 6.
- For churches or small business, recycling service fee of one dollar and seventy five cents (\$1.75) for up to two ninety five (95) gallon recycling carts, and one dollar and seventy five cents (\$1.75) per cart thereafter or as outlined in Section 6.
- Log of all resident and church or small business addresses where education tags were left because of non-targeted materials set out for recycling.
- Log of all complaints, including the nature of the complaints, to include the following: names, addresses, and contact numbers of the complainants; the date and time received; the Contractor's response; and the date and time of the response.
- List of single family addresses that do not set out recycling bins at least once a month.
- Recycling cart data including cart inventory, replacement, repair, warranty issues, etc.

Monthly reports shall be due to the City by the fifteenth (15<sup>th</sup>) day of each month. Annual reports shall be due by January 31 of each year. The Contractor will be encouraged to include in its annual report recommendations for continuous improvement in the City's recycling program (e.g., public education, multiple family recycling, etc.).

## **18. Ownership of Recyclables**

Ownership of the recyclables shall remain with the person placing them for collection until Contractor's personnel physically touches them for collection, at which time the ownership of the recyclables shall transfer to the Contractor.

## **19. Scavenging Prohibited**

All recyclable materials placed for collection shall be owned by and are the responsibility of the occupants of residential or church or small business properties until the Contractor handles them. Upon collection of the designated recyclable materials by the Contractor, the recyclable materials become the property and responsibility of the Contractor.

It is unlawful for any person other than the City's recycling Contractor or owner's independent hauler to collect, remove or dispose of designated recyclables after the materials have been placed or deposited for collection in the recycling containers. The owner, owner's employees, owner's independent hauler's employees or City's recycling Contractor's employees may not collect or "scavenge" through recycling in any manner that interferes with the contracted recycling services.

## **20. Cleanup of Spillage or Blowing Litter**

The Contractor shall clean up any material spilled or blown during the course of collection and/or hauling operations. All collection vehicles shall be equipped with at least one broom and one shovel for use in cleaning up material spillage. Designated recyclables shall be transported in a covered vehicle so that the recyclables do not drop or blow onto any public street or private property during transport.

## **21. Recyclable Materials Transported to Markets**

Upon collection by the City's recycling Contractor, the Contractor shall deliver the designated recyclables to a recyclable material processing center, an end market for sale or reuse, or to an intermediate collection center for later delivery to a processing center or end market. It is unlawful for any person to transport for disposal or to dispose of designated recyclables in a mixed municipal solid waste disposal facility. The Contractor shall not landfill, incinerate, compost or make fuel pellets out of the recyclable materials.

## **22. Designated Primary Glass Market**

The City and Contractor hereby agree that eCullet (St. Paul, MN) and Strategic Materials (St. Paul, MN) will process and sort glass bottles and jars and shall remain the primary market of choice for glass bottles and jars collected from the City's recycling program. The Contractor shall develop a proposed glass marketing contingency plan in writing for review, comment and approval by the City. This contingency plan shall be based on recycling glass into markets with the highest and best use of this commodity. The Contractor shall provide an annual assessment of eCullet's Strategic Material's performance and glass market as part of its annual report to the City.

The Contractor shall provide as much notice as possible if the eCullet or Strategic Materials plant closes, stops accepting recyclable glass cullet or otherwise becomes economically unfeasible as the primary glass market outlet. If eCullet or Strategic Materials are no longer a viable primary market for glass, and if the Contractor must adjust its glass processing and/or marketing operations, the Contractor must submit a proposed plan amendment to the City so that glass continues to be recycled as glass with the highest and best use of this commodity



rather than being used for road aggregate, sandblast media, fiberglass or other alternative uses.

### **23. Processing Facilities**

The Contractor shall assure the City that adequate recyclable material processing capacity will be provided for City material collected. The Contractor shall provide written notice to the City at least sixty (60) days in advance of any substantial change in these or subsequent plans for receiving and processing recyclables collected from the City.

### **24. Estimating Materials Composition as Collected**

The Contractor shall conduct at least one materials composition analysis of the City's recyclables during October of each year to estimate the relative amount by weight of each recyclable commodity by grade. The results of this analysis shall include: (1) percent by weight of each recyclable commodity by grade as collected from the City; (2) relative change compared to the previous year's composition; (3) percent by weight of the Process Residuals collected from the City; and (4) a description of the methodology used to calculate the composition, including number of samples, dates weighed, and City route(s) used for sampling. The City shall be notified of the composition analysis and be offered the opportunity to view the sorting and weighing of materials. The Contractor shall provide the City with a copy of the analysis for each year of the contract.

### **25. Estimating Process Residuals**

In October of every year the Contractor shall estimate the City's process residuals. The Contractor shall provide the City a written description of the means to estimate process residuals derived from the City's recyclables. This written description shall be reviewed and approved in writing by the City. This written description shall be updated by the Contractor immediately after any significant changes to the processing facilities used by the Contractor. The City may audit the records of the Contractor to verify that the agreed upon process is being followed (see Section 64, Inspection of Records).

The quantities of Process Residuals must not exceed the agreed upon residual rate of six percent (6%). This percentage must be reported to the City in the annual composition analysis as described in Section 24. In addition, the Contractor must report to the City, on an annual basis, the disposal location of Process Residuals.

### **26. Lack of Adequate Market Demand**

In the event that the market for a particular recyclable ceases to exist, or becomes economically depressed that it becomes economically unfeasible to continue the Collection, processing and marketing of that particular recyclable, the City and the Contractor will both agree in writing that it is no longer appropriate to collect such item before collection ceases. The Contractor shall give the City as much notice as possible about the indications of such market condition changes.

The City and Contractor shall agree on a date in a written Contract amendment to cease Collection of the recyclable item in question. The Contractor shall at all times be under a duty to minimize the quantity of recyclable materials disposed in a landfill, incinerator or other facility receiving mixed municipal solid waste. If disposal of any recyclable commodity becomes necessary, upon receiving written permission from the City, the Contractor shall dispose of the recyclable materials at a facility specified in writing by the City or an alternative

agreed upon by the City and the Contractor. The City and the Contractor will negotiate a cost for disposal as a substitute for a Processing fee for that material.

## **27. Vehicle Requirements**

Vehicles shall be clearly signed on both sides as a recycling Collection vehicle. In addition, all Collection vehicles used in performance of the Contract shall:

- Be marked with the name and telephone number of the Contractor prominently displayed on both sides of the truck. The lettering must be at least three (3) inches in height.
- Operate within the weight allowed by Minnesota Statutes and local ordinances;
- Be duly licensed and inspected by the State of Minnesota;
- Have a two (2) way communication device;
- Have a first aid kit;
- Have an approved fire extinguisher;
- Have warning flashers;
- Have a broom and shovel for cleaning up spills;
- Have warning alarms to indicate movement in reverse;
- Have a sign on rear of vehicle which states "This vehicle makes frequent stops";
- All of the required equipment must be in proper working order.
- All vehicles must be maintained in proper working order and be as clean and free of offensive odors as possible.

## **28. Personnel Requirements**

Contractor shall retain sufficient personnel and equipment to fulfill the requirements and specifications of this Agreement. Contractor's personnel shall be trained both in program operations and in customer service, and insure that all personnel maintain a positive attitude with the public and in the work place, and shall:

- Conduct themselves at all times in a courteous manner and use no abusive or foul language.
- Make a concerted effort to have at all times a presentable appearance and attitude.
- Wear a uniform and employee identification badge or name tag.
- Drive in a safe and considerate manner.
- Manage curbside recycling bins and multiple family containers in a careful manner so as to avoid spillage and littering, or damage to the bin or container. Containers should not be thrown once emptied.
- Monitor for any spillage and be responsible for cleaning up any litter or breakage.
- Avoid damage to property.
- Not perform their duties or operate vehicles while consuming alcohol or illegally using controlled substances or while under the influence of alcohol and/or such substances.

## **29. Licenses and Permits**

The Contractor shall ensure that all driver and truck licenses and permits are current and in full compliance with local, state and federal laws and regulations. Any processing facility used to handle material from the City of Maplewood must have current permits and licenses as required by the appropriate city, county, state and federal laws and ordinances. Contractor shall make available for inspection all such licenses and permits upon request by the City. Contractor must have a Collection license issued by the City per City Code, Chapter 30.

## **30. Performance Monitoring**

The City will monitor the performance of the Contractor against goals and performance standards required within this Agreement. The City reserves the right to inspect Contractor facilities or vehicles at any time during normal business hours for compliance with the language of the Agreement, and the performance measures and goals contained herein.

Substandard performance as determined by the City in its sole discretion will constitute non-compliance. If action to correct such substandard performance is not taken by the Contractor within sixty (60) days after being notified by the City, the City will initiate contract termination procedures.

## **31. Liquidated Damages**

The Contractor shall agree, in addition to any other remedies available to the City, that the City may withhold payment from the Contractor in the amounts specified below as liquidated damages for failure of the Contractor fulfilling its obligations:

1. Failure to respond to legitimate service complaints within twenty four (24) hours in a reasonable and professional manner – fifty dollars (\$50) per incident.
2. Failure to collect properly notified missed collections – two hundred and fifty dollars (\$250) per incident.
3. Failure to provide monthly and annual reports – one hundred dollars (\$100) per incident.
4. Failure to complete the collections within the specified timeframes without proper notice to the City – one hundred dollars (\$100) per incident.
5. Failure to clean up from spills during collection operations – two hundred fifty dollars (\$250) per incident.
6. Failure to report on changes in location of recyclable processing operations – two hundred fifty dollars (\$250) per incident.
7. Failure to provide written description of the means to estimate relative amount of process residuals derived from the City's recyclables – one thousand dollars (\$1000) per incident.
8. Exceeding the maximum process residual rate of six percent (6%) – one thousand dollars (\$1,000) per incident.
9. Making changes to the Collection and Processing systems prior to receiving City approval to implement any such change – five thousand dollars (\$5,000) per incident.
10. Failure to conduct and report results of the annual composition analysis – one thousand dollars (\$1000) per incident.

These amounts will be for liquidated damages for losses suffered by the City and not penalties. Three (3) or more such incidents in a six (6) month period shall constitute grounds for termination of Agreement and not subject to cure.

## **CURBSIDE COLLECTION REQUIREMENTS**

The following collection requirements are for curbside recycling services only (single family dwellings, buildings with up to four units, churches, small businesses, manufactured homes and townhomes), and do not pertain to multiple family household (buildings with more than four units) type of collection services.

### **32. Weekly Collection**

The Contractor shall collect curbside recycling materials weekly from the authorized curbside recycling bins, as hereinbefore defined, and provided by the City. No other different or unapproved receptacles shall be used in performance of this Agreement unless negotiated by the City and Contractor in writing. Violation of this provision shall be grounds for termination of the Agreement. Recyclables shall be collected on the same days corresponding to City trash collection days whenever possible (with the exception of curbside collection on Saturdays within agreed-upon "holiday weeks").

### **33. Point of Collection**

All curbside collection service will occur at the curbside, with the exception of elderly residents or those with short or long-term physical limitations who require house-side collection service.

### **34. Curbside Collection Schedule Deadline**

If the Contractor determines that the collection of recyclables will not be completed by 7:00 p.m. on the scheduled collection day, the Contractor shall notify the City by 4:30 p.m. that same day and request an extension of the collection hours. The Contractor shall inform the City of the areas not completed, the reason for non-completion and the expected time of completion. If the City's designated contact person cannot be reached, the Contractor will request the City Manager.

### **35. Procedure for Handling Non-Targeted Materials**

If Contractor determines that a resident, church or small business has set out non-targeted materials, the driver shall use the following procedure:

1. Contractor shall leave the non-targeted materials in the curbside recycling bin and leave an "education tag" indicating acceptable materials and the proper method of preparation.
2. The driver shall record the address and the Contractor shall report the address to the City in the required monthly report.

If this procedure for handling non-targeted materials is not feasible for automated or semi-automated Collection systems, the Contractor must specify and demonstrate alternative public education methods to the City for its approval so that the quality of recyclable materials set out will be maintained.

### **36. Participation Study**

The Contractor shall conduct at least one analysis of household participation per year. The results of the analysis shall include number and addresses of single family households not participating. The Contractor will then target nonparticipating households with educational

material approved by the City. The Contractor shall provide the City with a copy of the analysis for each year of the contract.

### **37. Set Out Information**

The Contractor shall provide the City with the addresses of single family households not setting out curbside recycling bins at least once a month. The addresses will be supplied to the City in the Monthly Reports.

### **38. Public Education Information for Curbside Collection**

The Contractor shall be responsible for the following:

1. Annual distribution of the Contractor's recycling public education flyer as described in Section 1.4 and Section 15.
2. Distribution of education tags to be left by curbside Collection crews if any non-targeted material is reflected and left at the curb.

## **MULTIPLE FAMILY COLLECTION REQUIREMENTS**

The following collection requirements are for multiple family recycling services only and do not pertain to curbside collection services.

### **39. MFD Building Owners May Elect to Subscribe to City's Recycling Service**

MFD building owners are be able to use the City's recycling Contractor to provide recycling services. Alternatively, MFD building owners may independently contract with another licensed recycling contractor to provide the recycling services at the owner's expense.

### **40. Multiple Family Collection Stations**

Multiple family recycling stations will be specified with agreement of the MFD building owner on a case-by-case basis. MFD recycling stations will likely be a cluster of recycling bins, carts and/or recycling dumpsters (e.g., for old corrugated cardboard). The number and location of MFD recycling stations shall be adequate to be reasonably convenient and accessible to all MFD residents.

### **41. Multiple Family Container Location(s)**

Multiple family recycling containers shall be placed in a location(s) on the MFD premises which permits access for collection purposes but which does not obstruct pedestrian or vehicular traffic. Recycling containers must also comply with the City's zoning and other ordinances.

### **42. Multiple Family Service Standards**

At a minimum, multiple family collection services shall be available on the premises and shall be provided on a regularly scheduled weekly basis, or as the City and Contractor agree is adequate. The Collection schedule and recycling containers' capacity shall provide for regular removal of the recyclables such that there is adequate storage capacity available in the recyclable containers to avoid overflowing containers.

### **43. Multiple Family Recycling Container Requirements**

The recycling containers for buildings of eleven (11) units or more shall be:

3. Sufficient in number and size to meet the demands for recycling services created by the occupants.
4. Equipped with hinged lids.
5. Equipped with standardized labels approved by the City, attached to the lid and the front of the carts, and which identify the type of recyclable material to be deposited in each container. Recycling containers shall be colored differently from other containers for mixed solid waste or trash.
6. Maintained in proper operating condition and reasonably clean and sanitary.
7. Repaired or replaced on a reasonable schedule if broken due to regular wear and tear.
8. Provided at no cost to the City or residents.
9. Approved by City staff for use prior to entering service.

#### **44. Responsibility for Providing and Maintaining Multiple Family Recycling Containers**

If the MFD building owner uses the City's Contractor, adequate multiple family recycling containers shall be provided and maintained by the City's Contractor.

#### **45. Public Education Information for Tenants with Multiple Family Recycling Service**

At least once per year, the City's recycling Contractor shall supply the multiple family building owner with the sufficient number of recycling fact sheets with instructions for the tenants in their building(s). The information should specifically address multiple family recycling service, and should not be the same educational material distributed to single-family residents.

#### **46. Other Public Education Tools to Residents with Multiple Family Recycling Service**

The Contractor shall provide other public education tools (e.g., educational material in languages other than English such as Spanish, Hmong, Somali, etc.) that the Contractor will provide, in cooperation and coordination with multiple family building owners, as part of the annual work plan. The City will work with the Contractor regarding the quantities needed and the locations for distribution.

#### **47. Annual Report to MFD Building Owners**

The Contractor shall provide an annual report by January 31 of each year to the multiple family building owners served by the City's Contractor. A copy of each report to the multiple family building owners shall also be submitted to the City. The report shall contain, at a minimum, the following information:

1. Name of owner, building manager and contact information (mailing address, telephone numbers, e-mail, etc.)
2. Street address of each multiple family building served.
3. Number of dwelling units for each multiple family building.
4. Description of collection services made available to occupants, including number of multiple family recycling stations, number of multiple family recycling containers, location

of stations (or curbside service provided for multiple-family buildings under eleven (11) units) and dates of collection.

5. Description of public education tools used to inform occupants of availability of services.
6. Tonnage quantities for each type of material recycled.
7. Recommendations for future improvements to increase recovery rates (e.g., specific public education tools).

#### **48. Municipal Facilities Collection Requirements**

The Contractor shall provide, at no charge, recycling containers and collection services once per week at the following City buildings:

1. City Hall - 1830 County Road B East
2. Public Works Building - 1902 County Road B East
3. Park & Recreation Maintenance Building - 1810 County Road B East
4. Fire Station One - 1177 Century Avenue North
5. Fire Station Two - 1955 Clarence Street
6. Fire Station Three – 1530 Hazelwood Street
7. Maplewood Community Center - 2100 White Bear Avenue
8. Nature Center – 2659 East 7<sup>th</sup> Street
9. Staging Areas for Public Space Recyclables as designated by the City.

#### **49. Annual Municipal Facilities Report**

The Contractor shall provide an annual report by January 31 to the City in regard to recycling at Municipal Facilities. The report shall contain, at a minimum, the following information:

1. Description of collection services made available to Municipal Facility, including number of recycling containers and dates of collection.
2. Tonnage quantities for each type of material recycled.
3. Recommendations for future improvements to increase recovery rates (e.g., specific public education tools).

### **INSURANCE AND OTHER LEGAL REQUIREMENTS**

#### **50. Insurance**

Insurance secured by the Contractor shall be issued by insurance companies acceptable to the City and admitted in Minnesota. The insurance specified may be in a policy or policies of insurance, primary or excess. Such insurance shall be in force on the date of execution of the contract and shall remain continuously in force for the duration of the contract. The Contractor shall have the City of Maplewood named as an additional insured on each insurance policy specified below, unless the Contractor submits in writing this is not feasible for a specific insurance policy. The Contractor shall then provide certificates of insurance to the City by approximately December 15 of each year. The Contractor and its sub-contractors shall secure and maintain the following insurance:

## **51. Workers Compensation Insurance**

Workers compensation insurance as specified by the Minnesota Department of Occupational Health and Safety and federal law.

## **52. Commercial General Liability Insurance**

Commercial general liability insurance shall be at the limits of at least \$1,500,000 bodily injury, per occurrence, or combined single limit, and \$500,000 property damage. The policy shall be on an "occurrence" basis, shall include contractual liability coverage and the City shall be named an additional insured.

This insurance includes up to \$10,000 in additional coverage for expenses incurred to extract pollutants from land or water at the "premises" if the discharge, dispersal, seepage, migration, release, escape or emission of the pollutants is caused by or results from a covered cause, including any deliberate, willful and negligent conduct on the part of Contractor or their laborers, employees or assigns.

## **53. Commercial Automobile Liability Insurance**

Commercial automobile liability insurance covering all the Contractor's owned, non-owned and hired automobiles with limits of at least \$1,000,000 per person, \$5,000,000 per occurrence, and \$500,000 property damage or combined single limit. This insurance includes a cause of loss where there is a spill of fuels and lubricants used in the vehicle for its operation.

## **54. Transfer of Interest**

The Contractor shall not assign any interest in the contract, and shall not transfer any interest in the contract, either by assignment or notation, without the prior written approval of the City. The Contractor shall not subcontract any services under this contract without prior written approval of the City. Failure to obtain such written approval by the City prior to any such assignment or subcontract shall be grounds for immediate contract termination.

## **55. Non-Assignment and Bankruptcy**

The parties hereby agree that the Contractor shall have no right to assign or transfer its rights and obligations under said Agreement without written approval from the City. In the event the City or its successors or assigns files for bankruptcy as provided by federal law, this Agreement shall be immediately deemed null and void relieving all parties of their contract rights and obligations.

## **56. Dispute Resolution and Arbitration Procedures**

The parties agree that any controversy or claim arising out of or relating to this Agreement or the breach thereof, shall be settled, at the option of the Contractor, by arbitration in accordance with the Rules of the American Association of Arbitration and judgment upon the award by the arbitrator(s) may be entered in any court with jurisdiction thereof.

## **57. Performance Bond**

This contract specifies requirements for a performance bond in the case of the Contractor's failure to perform contracted services. The performance bond shall be for a minimum of \$300,000. The responsibility for renewal is the responsibility of the Contractor.



## **58. General Compliance**

The Contractor agrees to comply with all applicable local, state and federal laws and regulations governing funds provided under this Agreement.

The Contractor pays its employees a living wage based on the recycling industry in the State of Minnesota and Washington County. The Contractor does not use temporary labor arrangements to avoid paying a living wage. Additionally, the contractor provides health insurance for all full time employees and a pro rata share for employees working more than twenty (20) hours but less than forty (40) hours a week.

## **59. Independent Contractor**

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Contractor shall at all times remain an independent Contractor with respect to the services to be performed under this Contract. Any and all employees of Contractor or other persons engaged in the performance of any work or services required by Contractor under this Contract shall be considered employees or subcontractors of the Contractor only and not of the City; and any and all claims that might arise, including worker's compensation claims under the Worker's Compensation Act of the State of Minnesota or any other state, on behalf of said employees or other persons while so engaged in any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the Contractor.

## **60. Hold Harmless**

The Contractor agrees to defend, indemnify and hold harmless the City, its officers and employees, from any liabilities, claims, damages, costs, judgments, and expenses, including attorney's fees, resulting directly or indirectly from an act or omission of the Contractor, its employees, its agents, or employees of subcontractors, in the performance of the services provided by this contract, any resulting environmental liability that is a result of this Agreement or by reason of the failure of the Contractor to fully perform, in any respect, any of its obligations under this Agreement. If a Contractor is a self-insured agency of the State of Minnesota, the terms and conditions of Minnesota Statute 3.732 et seq. shall apply with respect to liability bonding, insurance and liability limits. The provisions of Minnesota Statutes Chapter 466 shall apply to other political subdivisions of the State of Minnesota.

## **61. Accounting Standards**

The Contractor agrees to maintain the necessary source documentation and enforce sufficient internal controls as dictated by generally accepted accounting practices to properly account for expenses incurred under this contract.

## **62. Retention of Records**

The Contractor shall retain all records pertinent to expenditures incurred under this contract for a period of six (6) years after the resolution of all audit findings. Records for non-expendable property acquired with funds under this contract shall be retained for six (6) years after final disposition of such property.

## **63. Data Practices**

The Contractor agrees to comply with the Minnesota Government Data Practices Act and all other applicable state and federal laws relating to data privacy or confidentiality. The Contractor must immediately report to the City any requests from third parties for information

relating to this Agreement. The City agrees to promptly respond to inquiries from the Contractor concerning data requests. The Contractor agrees to hold the City, its officers, and employees harmless from any claims resulting from the Contractor's unlawful disclosure or use of data protected under state and federal laws.

All proposals shall be treated as non-public information until the proposals are opened for review by the City. At that time the proposals and their contents become public data under the provisions of the Minnesota Government Data Practices Act, Minn. Stat. C. 13.

#### **64. Inspection of Records**

All Contractor records with respect to any matters covered by this Agreement shall be made available to the City or its designees at any time during normal business hours, as often as the City deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data.

#### **65. Applicable Law**

The laws of the State of Minnesota shall govern all interpretations of this Agreement, and the appropriate venue and jurisdiction for any litigation which may arise hereunder will be in those courts located within the County of Ramsey, State of Minnesota, regardless of the place of business, residence or incorporation of the Contractor.

#### **66. Contract Termination**

The City may cancel the Contract if the Contractor fails to fulfill its obligations under the Contract in a proper and timely manner, or otherwise violates the terms of the Agreement if the default has not been cured after sixty (60) days written notice has been provided. The City shall pay Contractor all compensation earned prior to the date of termination minus any damages and costs incurred by the City as a result of the breach. If the Agreement is canceled or terminated, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials prepared by the Contractor under this Agreement shall, at the option of the City, become the property of the City, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents or materials prior to the termination.

#### **67. Employee Working Conditions and Contractor's Safety Procedures**

The Contractor will ensure adequate working conditions and safety procedures are in place to comply with all applicable local, state and federal laws and regulations. The City reserves the right to inspect on a random basis all trucks, equipment, facilities, working conditions, training manuals, records of claims for worker's compensation or safety violations and standard operating procedures documents.

#### **68. Agreement Amendments**

Any amendments to this Agreement shall be valid only when reduced to writing, and duly signed by the parties.

IN WITNESS WHEREOF, the parties have subscribed their names as of the date first written.

Tennis Sanitation, LLC

City of Maplewood:

By \_\_\_\_\_  
Chief Executive Officer

By \_\_\_\_\_  
City Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By \_\_\_\_\_  
Chief Operating Officer

By \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED TO FORM

By \_\_\_\_\_  
City Attorney