

Falcon Heights Environment Commission
March 11, 2013
6:30 p.m.

Agenda

- 1) Election of Commission Chair for 2013 (Tabled from January)
- 2) Approval of Minutes for December, 2012 (tabled from January) and January, 2013
- 3) Chicken Ordinance Update - Council Member Mercer Taylor, Staff
- 4) Proposed solar energy amendments to the Zoning Code - Staff
- 5) Review of Recycling Contract (expires 12/31/13, eligible for extension) - Staff
- 6) Information and Announcements - Council, Staff, Commissioners
 - a. Updates from Council - Council Member Mercer-Taylor
 - b. Updates from Staff - Deb Jones
 - c. Other Announcements

Solar Energy Ordinance: Draft 1

City of Falcon Heights

This draft is based on the model solar ordinance offered through the Minnesota Solar Challenge, funded by Minnesota Pollution Control Agency Sustainable Communities Grant.

I. **Purpose and Scope.** The City of Falcon Heights has adopted this ordinance to meet the Comprehensive Plan goal of becoming a sustainable, energy efficient community and to preserve the health, safety and welfare of the community's citizens by promoting the safe, effective and efficient use of solar energy systems to reduce consumption of fossil fuels. This article applies to all solar energy installations in the City of Falcon Heights.

II. Definitions.

Photovoltaic System: An active solar energy system that converts solar energy directly into electricity.

Renewable Energy Easement: An easement that limits the height or location, or both, of permissible development on the burdened land in terms of a structure or vegetation, or both, for the purpose of providing access for the benefited land to wind or sunlight passing over the burdened land.

Renewable Energy System: A solar energy or wind energy system. Passive systems that serve dual functions, such as greenhouses or windows, are not considered renewable energy systems.

Roof Pitch: The final exterior slope of a building roof typically but not exclusively expressed as a ratio of the distance, in inches, of vertical "rise" to the distance, in inches, of horizontal "run," such as 3:12, 9:12, 12:12.

Solar Access: A view of the sun, from any point on the collector surface, that is not obscured by any vegetation, building, or object located on parcels of land other than the parcel upon which the solar collector is located, between the hours of 9:00 AM and 3:00 PM Standard time on any day of the year.

Solar Collector: A device, structure or a part of a device or structure for which the primary purpose is to transform solar radiant energy into thermal, mechanical, chemical, or electrical energy.

Solar Collector Surface: Any part of a solar collector that absorbs solar energy for use in the collector's energy transformation process. Collector surface does not include frames, supports and mounting hardware.

Solar Daylighting: A device specifically designed to capture and redirect the visible portion of the solar spectrum, while controlling the infrared portion, for use in illuminating interior building spaces in lieu of artificial lighting.

Solar Energy: Radiant energy received from the sun that can be collected in the form of heat or light by a solar collector.

Solar Energy Device: A system or series of mechanisms designed primarily to provide heating, to provide cooling, to produce electrical power, to produce mechanical power, to provide solar daylighting or to provide any combination of the foregoing by means of collecting and transferring solar generated energy into such uses either by active or passive means. Such systems may also have the capability of storing such energy for future utilization. Passive solar systems shall clearly be designed as a solar energy device such as a trombe wall and not merely a part of a normal structure such as a window.

Solar Energy Easement: See "Renewable Energy Easement."

Solar Energy System: A device or structural design feature, a substantial purpose of which is to provide daylight for interior lighting or provide for the collection, storage and distribution of solar energy for space heating or cooling, electricity generating, or water heating.

Solar Heat Exchanger: A component of a solar energy device that is used to transfer heat from one substance to another, either liquid or gas.

Solar Hot Water System: A system that includes a solar collector and a heat exchanger that heats or preheats water for building heating systems or other hot water needs, including residential domestic hot water and hot water for commercial processes.

Solar Mounting Devices: Devices that allow the mounting of a solar collector onto a roof surface or the ground.

Solar Storage Unit: A component of a solar energy device that is used to store solar generated electricity or heat for later use.

Solar System, Active: A solar energy system that transforms solar energy into another form of energy or transfers heat from a collector to another medium using mechanical, electrical, or chemical means.

Solar System, Building-Integrated: An active solar system that is an integral part of a principal or accessory building, rather than a separate mechanical device, replacing or substituting for an architectural or structural component of the building. Building-integrated systems include but are not limited to photovoltaic or hot water solar systems that are contained within roofing materials, windows, skylights, and awnings.

Solar System, Grid-Intertie: A photovoltaic solar system that is connected to an electric circuit served by an electric utility company.

Solar System, Off-Grid: A photovoltaic solar system in which the circuits energized by

the solar system are not electrically connected in any way to electric circuits that are served by an electric utility company.

Solar System, Passive: A solar energy system that captures solar light or heat without transforming it to another form of energy or transferring the energy via a heat exchanger.

III. Permitted Accessory Use - Active solar energy systems shall be allowed as an accessory use in all zoning classifications where structures of any sort are allowed, subject to certain requirements as set forth below.

- A. **Height** - Active solar energy systems must meet the following height requirements:
 - 1. Building- or roof- mounted solar energy systems shall not exceed the maximum allowed height in any zoning district. For purposes for height measurement, solar energy systems other than building-integrated systems shall be considered to be mechanical devices and are restricted consistent with other building-mounted mechanical devices.
 - 2. Ground- or pole-mounted solar energy systems shall not exceed ~~20~~ *[number of feet to be determined: 15 or 20]* feet in height when oriented at maximum tilt.

- B. **Set-back** - Active solar energy systems must meet the accessory structure setback for the zoning district and primary land use associated with the lot on which the system is located.
 - 1. **Roof-mounted Solar energy systems** - In addition to the building setback, the collector surface and mounting devices for roof-mounted solar energy systems shall not extend beyond the exterior perimeter of the building on which the system is mounted or built. Exterior piping for solar hot water systems shall be allowed to extend beyond the perimeter of the building on a side yard exposure.
 - 2. **Ground-mounted Solar energy systems** - Ground-mounted solar energy systems may not extend into the side-yard or rear setback when oriented at minimum design tilt.

- C. **Visibility** - Active solar energy systems shall be designed to blend into the architecture of the building or be screened from routine view from public right-of-ways other than alleys. The color of the solar collector is not required to be consistent with other roofing materials.
 - 1. **Building Integrated Photovoltaic Systems** - Building integrated photovoltaic solar energy systems shall be allowed regardless of whether the system is visible from the public right-of-way, provided the building component in which the system is integrated meets all required setback, land use or performance standards for the district in which the building is located.
 - 2. **Solar Energy Systems with Mounting Devices** - Solar energy systems using roof mounting devices or ground-mount solar energy systems shall not be restricted if the system is not visible from the closest edge of any public right-

of-way other than an alley. Roof-mount systems that are visible from the nearest edge of the street frontage right-of-way shall not have a highest finished pitch steeper than the roof pitch on which the system is mounted, and shall be no higher than twelve (12) inches above the roof.

3. **Coverage** - Roof or building mounted solar energy systems, excluding building-integrated systems, shall not cover more than 80% of the south-facing or flat roof upon which the panels are mounted. The surface area of pole or ground mount systems shall not exceed half the building footprint of the principal structure.
 4. **Lot Coverage** – The surface area of pole or ground mount systems shall be treated as impervious coverage as regulated for each zoning classification. Allowed impervious coverage may be increased by up to 10% above maximum lot coverage for the zone provided 100% of the excess is accounted for by an approved solar ground or pole mounted solar energy system.
- D. **Approved Solar Components** - Electric solar energy system components must have a UL listing and solar hot water systems must have an SRCC rating.
- E. **Plan Approval Required** - All solar energy systems shall require administrative plan approval by the Zoning and Planning Administrator.
1. **Plan Applications** - Plan applications for solar energy systems shall be accompanied by a site plan and by to-scale horizontal and vertical (elevation) drawings. The drawings must show the location of the system on the building or on the property for a ground-mount system, including the property lines.
 2. **Pitched Roof Mounted Solar Energy Systems** - For all roof-mounted systems other than a flat roof the elevation must show the highest finished slope of the solar collector and the slope of the finished roof surface on which it is mounted.
 3. **Flat Roof Mounted Solar Energy Systems** - For flat roof applications a drawing shall be submitted showing the distance to the roof edge and any parapets on the building and shall identify the height of the building on the street frontage side, the shortest distance of the system from the street frontage edge of the building, and the highest finished height of the solar collector above the finished surface of the roof.
 4. **Plan Approvals** - Applications that meet the design requirements of this ordinance shall be granted administrative approval by the zoning official and shall not require Planning Commission review. Plan approval does not indicate compliance with Building Code or Electric Code.
- F. **Compliance with Building Code** - All active solar energy systems shall require a building permit.
- G. **Compliance with State Electric Code** - All photovoltaic systems shall comply with the Minnesota State Electric Code.

- H. **Compliance with State Plumbing Code** - Solar thermal systems shall comply with applicable Minnesota State Plumbing Code requirements.
- I. **Utility Notification** - No grid-intertie photovoltaic system shall be installed until evidence has been given to the Planning and Zoning Department that the owner has submitted notification to the utility company of the customer's intent to install an interconnected customer-owned generator. Off-grid systems are exempt from this requirement.

Section 113-393 to be amended as follows:

Sec. 113-393. - Solar systems.

Access to sunlight for active and passive solar systems (~~for heating and cooling of buildings~~) shall be protected in accordance with applicable state statutes and regulations. ~~All active solar systems proposed shall require a conditional use permit.~~

SINGLE STREAM RECYCLING COLLECTION AGREEMENT

AGREEMENT dated SEPT 27, 2010, by and between the **CITY OF FALCON HEIGHTS**, a Minnesota municipal corporation (“City”), and **TENNIS SANITATION, LLC**, a Minnesota Limited Liability Company (the “Contractor”).

RECITALS

- A. The Contractor desires to provide single stream recycling collection services to residents of the City of Falcon Heights.
- B. The City desires to provide these services for the health, safety and welfare of its residents.

**NOW, THEREFORE, IN CONSIDERATION OF THEIR MUTUAL COVENANTS,
THE PARTIES AGREE AS FOLLOWS:**

1. CONTRACT DOCUMENTS. The following documents shall be referred to as the “Contract Documents,” all of which shall be taken together as a whole as the contract between the parties as if they were set verbatim and in full herein:

- A. This Agreement.
- B. Addendum #1 to the City of Falcon Heights Request for Proposals (RFP) for recycling collection services dated June 22, 2010.
- C. Request for Proposals (RFP) for Recycling Services June 4, 2010.
- D. Tennis Sanitation, LLC Proposal for the City of Falcon Heights, MN for Recycling Collection Services including Appendix A-K, inclusive.

In the event of a conflict among the provisions of the Contract Documents, the order in which they are listed above shall control in resolving any such conflicts with Contract Document “A” having the first priority and Contract Document “D” having the last priority.

2. OBLIGATIONS OF THE CONTRACTOR. The Contractor shall provide the goods, services, and perform the work in accordance with the Contract Documents.

3. DEFINITIONS.

- A. City Facility Means City Hall.
- B. Missed Collection: Means the failure of the Contractor to provide recycling collection service to a SFD, MFD, the City Facility, or designated Community Event during collection hours on the scheduled collection day.
- C. Multi-Family Dwelling (MFD): Means a building containing more than four (4) dwelling units.
- D. Recyclable Materials or Recyclables: Means all items of refuse designated by the Ramsey County Environmental Services to be part of an authorized recycling program and which are intended for transportation, processing, and re-manufacturing or reuse and include the following:

Textiles:

- Clothes
- Shoes and Boots

Paper and Corrugate:

- Egg cartons, Milk cartons
- Corrugated Cardboard – (No collapsing of cardboards will be required)
- News and Office Papers
- Magazines, Junk Mail and Paper Food Boxes
- Coated Magazines and Catalogs
- Phone Books, Paper Backs, TV Guides, Comic Books, Readers Digest Covers, Flyers and Brown Paper
- The 4 C's: Cereal, Cake Mix, Chip and Cracker Boxes
- Pop, Beer and Tissue Boxes

Plastic #1 through #5:

- All Plastic with a Recycle Symbol of 1 through 5
- All Plastic Containers that Shrubs, Flowers and Trees come in
- Plastic Tubs (Yogurt, Sour Cream, etc.)
- Plastic Toys
- Motor Oil Bottles (That have been drained)

Glass:

- All Food, Beverage and Jams Glass Bottles (Clear, Brown and Green)

Metals:

- Aerosol Cans
- Scrap Metal in Household quantities (Silverware, Hangers, Pots, Pans, Etc.)
- All beverage cans that are aluminum
- All Food and Beverage cans and other cans that are Steel (Tin, Aluminum, Bi-metal)

Other:

- Car and Truck Batteries
- Other materials agreed upon by the City and Contractor

- E. Single-Family Dwelling (SFD): A building containing up to four (4) dwelling units.
- F. Single Stream Recycling Collection Service: Residents will be instructed to commingle all recyclable materials in one container that will be picked up weekly by Contractor. Contractor will pick up all recyclable material placed in and next to recycling containers.

4. **CONTRACTOR'S COLLECTION REQUIREMENTS.**

A. Recycling Collection Program. The Contractor shall collect recyclable materials from all single family dwellings, multi-family dwellings, and the City Facility weekly using a single stream collection service. The Contractor shall also collect recyclable materials from designated community events.

B. Multi-Family Dwelling (MFD) Collection Requirements. In addition to the other requirements set forth herein applicable to all recycling, the following additional collection requirements are for MFD Recycling Services only and do not pertain to single family dwelling Collection services.

- 1) MFD Recycling Stations. MFD Recycling Stations will be specified with agreement of the MFD building owner and the Contractor on a case-by-case basis. MFD Recycling Stations will likely be a cluster of recycling carts and/or recycling dumpsters. The number and location of MFD Recycling Stations shall be adequate to be reasonably convenient and accessible to all MFD residents. MFD Recycling Stations shall be located on the MFD premises which permits access to the MFD Recycling Containers for Collection purposes but which does not obstruct pedestrian or vehicular traffic and shall comply with the City's zoning and other ordinances.
- 2) MFD Service Standards. MFD recyclables Collection services shall be available on the premises and shall be provided on a regularly scheduled basis of at least once per week. 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 recycling containers to avoid overflowing containers.
- 3) MFD Recycling Container Requirements. The recycling containers shall be:
 - a. Sufficient in number and size to meet the demands for recycling services created by the occupants.
 - b. Equipped with hinged lids.
 - c. Equipped with standardized labels identifying the type of recyclable material to be deposited in each container.
 - d. Colored differently from other containers used for garbage Collection.
 - e. Maintained in proper operating condition and reasonably clean and sanitary.
 - f. Repaired or replaced on a reasonable schedule if stolen or broken.

C. Community Event Recycling. Contractor shall collect recyclables at the following annual community events:

- Winter Fest in January;
- Ice Cream Social in July
- Falcon Heights/Lauderdale Family 5K in August.

D. Collection Hours and Days. Collections must begin no sooner than 7 a.m. and shall be complete by 7 p.m. on scheduled collection days. The Contractor may request City authorization of exceptions to these time restrictions. 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.

E. Holidays. Collection of recycling materials is prohibited on 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 to by the City and 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 a yearly calendar including alternate Collection days, with assistance from the City.

F. Weighing of Loads and Reporting Requirements: The Contractor will keep accurate records consisting of an approved weight slip with the date, time, collection route, driver's identification, vehicle number, rate and gross weight, net weight and number of route stops for each loaded vehicle. A detailed monthly report shall be provided to the City that identifies total tonnage activity by commodity. This report should include all curbside and municipal recycling activity.

G. Recycle Cart Purchase and Delivery: The Contractor agrees to, at its expense, purchase, deliver, service, repair, and maintain sufficient cart inventory to meet supply and demand needs for the City of Falcon Heights recycling.

1) The Contractor shall initially deliver one 65-gallon wheeled cart to each single family residential dwelling and have a sufficient inventory of 30-gallon and 90-gallon carts available for delivery and switch-out with the 65-gallon carts per resident/customer request. The standard 65-gallon cart shall be approximately 26" X 26" X 41" in dimension, and be smooth for ease in cleaning. The cart shall be uniform and consistent in color and approved instruction label imbedded into each lid, so as to be easily identified by the resident/customer and the Contractor driver as the container for recyclable materials.

2) The Contractor shall provide for use for multiple family dwellings (MFD) and the City Facility, suitable carts, bins, dumpsters or other receptacle for temporary storage and aggregation of designated recyclables. Such recycling containers must be separate, explicitly labeled as to recyclables included, and colored differently from other containers for mixed solid waste or trash.

H. Recycling Cart Maintenance/Replacement. The driver is required to report to the Contractor the location of any cart that is damaged. The Contractor is required to notify the Recycling Coordinator by fax/email of any driver report of cart damage. The Recycling Coordinator will notify the Contractor by fax/email of any cart damage or request for change of cart size that is reported/requested by customers/residents. Any damaged cart or cart request will be repaired or replaced by the Contractor within two (2) weeks of the report.

I. Point of Collection: Most residential recycling collection will occur at the same location from where the regular refuse is collected, generally the alleys where they exist and street curbside in other areas. Carts shall be placed with the handle toward the house and lid opening toward the street or alley. The driver is required to place the emptied cart back/down in the same location as set by resident.

J. Ownership of Recyclable Materials: All recyclable materials for collection shall remain the responsibility and in the ownership of the occupant of the resident or municipal location until handled for collection by the Contractor. At the point of collection the recyclable materials become the property of the Contractor. Any person or persons taking recyclable materials from a curbside container without explicit permission of the resident or municipality will be in violation of local ordinance and subject to penalty. The Contractor shall report to the Recycling Coordinator any instances of suspected scavenging or unauthorized removal of recyclable materials from any collection container.

K. Route Management and Customer Service: The Contractor shall, at all times, provide the City's Recycling Coordinator with a lead route/driver supervisor who is accessible to the Contractor dispatch department via two way communications and to the Recycling Coordinator to handle route and collection issues in a timely fashion. The Contractor shall have on duty Monday through Friday from 8:00 a.m. to 4:30 p.m. a dispatch customer service representative to receive customer calls and route issues. The Contractor shall provide a 24 hour answering service line or device to receive customer calls. The Route Supervisor and all collection vehicles must be equipped with 2-way communication devices.

L. Procedure for Unacceptable Materials, Materials Outside Cart and Unreachable Carts: If the Contractor determines that a resident has set out unacceptable recyclable materials, left recyclable materials outside of the cart, or has positioned the cart so that it is unreachable with the mechanical arm, the Contractor shall use the following procedures:

- 1) The Contractor shall collect all the recyclable materials and leave an "education tag" provided by the Contractor attached to the handle of the recycling container indicating acceptable materials, the proper method of preparation and the proper placement of the cart.
- 2) The driver shall record the address and report the addresses to the Contractor dispatcher, who will notify the City's Recycling Coordinator of the addresses no later than noon the following day.

M. Procedure for Complaints-Questions-Missed Collections. A complaint of service or missed collection is a complaint received by the Contractor from either the customer or the Administration Office. If the report is for a missed stop and is received by the Contractor before 11:00 a.m. on a scheduled working day, the Contractor is required to return to the complaint address and complete the collection. If the report is registered after 11:00 a.m. on a scheduled working day, the Contractor is required to return to the complaint address by 12:00 noon the following working day.

N. Clean up Responsibilities: The Contractor shall adequately clean up any recyclable 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. The Contractor shall have no responsibility to remove or clean up any items which are not recyclable materials.

O. Non-Completion of Collection and Extension of Collection Hours: The Contractor shall inform the City of the areas not completed, the reason for non-completion, and the expected time of completion.

P. Vehicle Requirements:

- 1) The Contractor must obtain all pertinent licenses from the Federal, State and County and City governments. An annual report/update on licensing shall be submitted. The Contractor shall provide proof of current licensing and current MnDOT vehicle inspection reports upon request by the City, and on an annual basis.
- 2) All vehicles must be maintained in proper working condition and available for inspection by the City or County. The Contractor shall supply the City with copies of annual inspections on all vehicles per MnDot requirements.
- 3) Vehicles should be equipped with a two-way radio or phone, warning flashers and signs, backup alarms, a first aid kit and a broom and shovel for spills, and the contractor's name and phone number prominently displayed on both sides of the vehicle.
- 4) Recycling vehicles must be designated for recyclables collection only. All such vehicles must be clearly signed on both sides as recycling collection vehicles.
- 5) Vehicles must be kept in good operating condition, comply with all State inspection requirements, and be kept neat in appearance. Generally this shall mean washed and painted regularly.
- 6) In the event that a vehicle other than the type specified in the proposal is to be used, the contractor is required to notify the City as soon as possible prior to collection.

Q. Collection Vehicle Equipment Requirements: Each collection vehicle shall be equipped with the following:

- 1) A two way communication system.
- 2) A first aid kit.
- 3) An approved 2A10BC dry chemical fire extinguisher.
- 4) Warning flashers.
- 5) Overhead strobe light.
- 6) "Reverse" audio warning alarm to indicate movement in reverse.
- 7) Signs on the rear of the vehicle which state "This Vehicle Makes Frequent Stops."
- 8) A rear mounted video camera and cab monitor/screen to view operations occurring at the rear of the vehicle.
- 9) Hazard flares and cones.
- 10) A broom and a shovel for cleaning up spills.
- 11) "Absorb" pillows or dry product adequate to absorb/contain any oil/liquid spill from collection vehicle.

All required equipment must be in proper working order at all times. All vehicles must be maintained in proper working order and be clean and free from odor as much as possible. All collection vehicles shall be uniformly painted and the paint shall be in good condition. The Contractor's name shall be clearly visible from all sides of the vehicle, along with the Contractor's phone number, the Recycling symbol, and the vehicle ID number.

R. Driver Duties and Responsibilities: The Contractor shall be responsible for ensuring that there is sufficient personnel and equipment to fulfill the requirements and specifications of this contract, and that all personnel are 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:

- 1) Conduct themselves at all times in a courteous manner and use no abusive or foul language.
- 2) Be clean and presentable in appearance, as so far as possible.
- 3) Wear a uniform and employee identification badge or name tag.
- 4) Drive in a safe and considerate manner.
- 5) Manage carts in a careful manner, setting them back in place so as to avoid spillage and littering or damage to container.
- 6) Perform their work in a neat and quiet manner, monitor for any spillage and be responsible for cleaning up any litter or breakage spilled in collection and hauling operations.
- 7) Record all addresses that could not be collected and reasons, turn list into dispatch at end of each collection day and copies sent to Recycling Coordinator.
- 8) Attach an education tab to the container identifying problems and how to resolve them.
- 9) Collect and transport recyclable materials according to all existing laws and ordinances, and future amendments thereto, of the State of Minnesota and local governing bodies.
- 10) Report all damage to property.

5. **CONTRACT LENGTH.** This contract shall commence January 1, 2011 and shall be for three (3) years ending December 31, 2013. By mutual written agreement of the Parties this Agreement may be extended for a period not to exceed two years subject to such amendments as the parties may agree upon.

6. **RATE.** The City will pay the Contractor and the Contractor will accept as payment for all services and goods rendered under the Contract Documents \$3.00 per single family and multi-family dwelling unit per month. There shall be no charge for the City Facility and Community Events. The rate is not subject to annual adjustments.

7. **PAYMENT.** The City will pay the contractor within thirty (30) of receipts of a properly itemized invoice.

8. **PROMPT PAYMENT TO SUBCONTRACTORS.** Pursuant to Minn. Stat. § 471.25, Subd. 4a, the Contractor must pay any subcontractor within ten (10) days of the Contractor's receipt of payment from the City for undisputed services provided by the subcontractor. The Contractor must pay interest of 1 ½ percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100.00 or more is \$10.00. For an unpaid balance of less than \$100.00, the Contractor shall pay the actual penalty due to the subcontractor.

9. **PENALTY CLAUSE.** The City shall impose a \$100.00 per day penalty for violations in the terms of the agreement. The City shall inform the Contractor of the violation and allow the Contractor one working day to correct the violation. If the violation is not resolved to the satisfaction of the City, the penalty shall be subtracted from the City's monthly payment.

10. **DEFAULT.** Any of the following occurrences, conditions, or acts shall be deemed a "Default" under this Agreement:

A. If either party fails to observe or perform its obligations under this Agreement and does not cure such failure within ten (10) days from its receipt of written notice of breach without, however, limiting any other rights available to parties pursuant to any other provisions of this Agreement.

B. Except as expressly limited hereby, City and Contractor shall have such remedies for the default of the other party hereto as may be provided at law or equity following written notice of such default and failure to cure the same within ten (10) days.

11. **TERMINATION.** Except as otherwise provided herein, this Agreement may be terminated without any penalty or further liability as follows:

A. Upon ten (10) days written notice in the event of a default (as defined above);

B. Upon ninety (90) days written notice by Contractor, if Contractor is unable to obtain or maintain any license, permit or other governmental approval necessary to the operation of the Contractor's business;

C. Upon ninety (90) days written notice by City if it determines that Contractor has failed to comply with applicable ordinances, or state or federal law, or any conditions attached to governmental approvals granted thereunder, after a public hearing before the City's Council.

12. TAXES. Contractor shall pay any taxes, of any nature, due, owing or levied in association with its services pursuant to this Agreement.

13. INSURANCE. Insurance secured by the Contractor shall be issued by insurance companies acceptable to the City and admitted in Minnesota. The Contractor shall maintain insurance in the amounts shown below during the entire term of the project. The City shall be named as an additional insured on the comprehensive general liability policy and certificates of said insurance shall be provided to the City before any work on this project may commence. The Contractor shall not allow any subcontractor to commence work until all insurance has been obtained and copies have been filed and accepted by the City. All policies shall provide that the coverage may not be terminated or changed by the insurer except upon 30 days written notice to the City Administrator.

None of the insurance policies shall contain any provisions for exclusions from liability other than those provisions for exclusion from liability which form part of the standard basic unamended and unendorsed form of a policy, except that no exclusion shall be permitted if it conflicts with a coverage expressly required in this Agreement, and in addition, no policy shall contain any exclusion from bodily injury to, or sickness, disease, or death of any coverage under the contractual liability endorsement of the liability of the Contractor under this Agreement.

The Contractor and its sub-contractors shall secure and maintain the following insurance:

Workers Compensation Insurance

Workers Compensation insurance shall meet the statutory obligations with Coverage B - Employers Liability limits of at least \$100,000 each accident, \$500,000 disease - policy limit and \$100,000 disease each employee.

Commercial General Liability Insurance

Commercial General Liability insurance shall be at the limits of at least \$2,000,000 general aggregate, \$2,000,000 personal and advertising injury, \$2,000,000 each occurrence, \$50,000 fire damage and \$1,000 medical expense any one person. The policy shall be on an "occurrence" basis, shall include contractual liability coverage and the City shall be named an additional insured. This insurance shall include up to \$10,000 expenses 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 of loss.

Commercial Automobile Liability Insurance

Commercial Automobile Liability insurance covering all owned, non-owned and hired automobiles with limits of at least \$1,000,000 per accident. This insurance shall include a cause of loss where there is a spill of fuels and lubricants used in the vehicle for its operation.

Environmental Liability Insurance

The Contractor agrees that they shall obtain and maintain environmental liability insurance in compliance with local, state and federal regulations for all matters related to in this recycling services agreement. Contractor shall add the City as an additional insured under said insurance policy(s). The policy coverage shall include Environmental Impairment Liability. Contractor shall provide the City with appropriate documentation of said environmental liability insurance for verification upon written request from the City. The Contractor further indemnifies the City, its employees, agents and licensees from all liability related to hazardous contamination/pollution resulting from the acts of the Contractor, its employees or agents.

14. PERFORMANCE AND PAYMENT BOND. Within fifteen (15) calendar days after the execution of this agreement and before any work or services are rendered, the Contractor shall furnish the City a performance bond and a payment bond, pursuant to Minnesota Statutes §574.26, each in the amount of \$70,000.00.

15. INDEMNIFICATION. Contractor agrees to defend, indemnify and hold harmless City and its elected officials, officers, employees, agents, and representatives, from and against any and all claims, costs, losses, expenses, demands, actions, or causes of action, including reasonable attorneys' fees and other costs and expenses of litigation, which may be asserted against or incurred by City or for which City may be liable in the performance of this Agreement, except those which arise solely from the negligence, willful misconduct, or other fault of City. Contractor shall defend the City against all claims arising out of the performance of this Agreement.

16. NOTICES. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent by overnight carrier to the following addresses:

If to City, to: City of Falcon Heights
 2077 W. Larpenteur Avenue
 Falcon Heights, MN 55113
 (651) 792-7600

If to Contractor, to: Tennis Sanitation, LLC
 720 4th Street
 St. Paul Park, MN 55071

17. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

18. MISCELLANEOUS.

A. If the City is a prevailing party in any litigation arising hereunder the City shall be entitled to its reasonable attorneys' fees and court costs, including appeals, if any.

B. This Agreement constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations and other agreements. There are no representations or

understandings of any kind not set forth herein. Any amendments to this Agreement must be in writing and executed by both parties.

C. This Agreement shall be construed in accordance with the laws of the State of Minnesota. Venue of any action shall be in the Ramsey County.

D. If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall remain in full force and effect.

E. Nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the parties hereto or as constituting the Contractor as the agent, representative or employee of the City for any purpose or in any manner whatsoever. The Contractor is to be and shall remain an independent contractor with respect to all services performed under this contract. Any and all personnel of the Contractor or other persons while so engaged, and any and all claims whatsoever on behalf of any such person or personnel arising out of employment or alleged employment including, without limitation, claims of discrimination against the Contractor, its officers, agents, contractors or employees shall in no way be the responsibility of the City; and the Contractor shall defend, indemnify and hold the City, its officers, agents and employees harmless from any and all such claims regardless of any determination of any pertinent tribunal, agency, board, commission or court. Such personnel or other persons shall not require nor be entitled to any compensation, rights or benefits of any kind whatsoever from the City, including, without limitation, tenure rights, medical and hospital care, sick and vacation leave, Workers' Compensation, Unemployment Compensation, disability, severance pay and PERA.

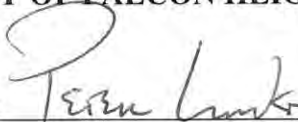
F. Neither party shall assign the executed contract, or any interest arising therein, without the written consent of the other party.


G. No claim for services furnished by the Contractor not specifically provided for herein shall be honored by the City. This includes but is not limited to the cost to transfer materials collected to a disposal site.

H. Data Practices. Contractor their officers, agents, owners, partners, employees, volunteers and subcontractors shall abide by the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 (MGDPA), and all other applicable state and federal laws, rules, regulations and orders relating to data privacy or confidentiality, and as any of the same may be amended. If Contractor creates, collects, receives, stores, use, maintains or disseminates data because it performs functions of the City pursuant to this Agreement, then Contractor must comply with the requirements of the MGDPA as if it was a government entity, and may be held liable under the MGDPA for noncompliance. Contractor agrees to defend, indemnify and hold harmless the City, its officials, officers, agents, employees, and volunteers from any claims resulting from Contractor's officers', agents', owners', partners', employees', volunteers', assignees' or subcontractors' unlawful disclosure and/or use of such protected data, or other noncompliance with the requirements of this section. Contractor agrees to promptly notify the City if it becomes aware of any potential claims, or facts giving rise to such, under the MGDPA. The terms of this section shall survive the cancellation or termination of this Agreement.

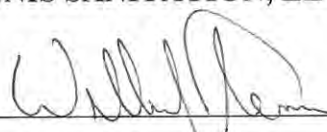
SIGNED BY THE PARTIES ON THE EXECUTION DATE SPECIFIED ON PAGE 1.

**CITY:
CITY OF FALCON HEIGHTS**

BY: 
Peter Lindstrom, Mayor

AND 
Justin Miller, City Administrator

**CONTRACTOR:
TENNIS SANITATION, LLC**

BY: 
Its: PARTNER