RESIDENTIAL CURBSIDE ORGANIC SERVICES AGREEMENT

AGREEMENT dated July 12, 2019, by and between the **CITY OF EDINA**, a Minnesota municipal corporation ("City"), and Vierkant Disposal, LLC, P.O. Box 24319, Edina, MN 55424

RECITALS

A. The Contractor desires to provide curbside source separated compostable materials, i.e. organics collection services to residents of the City of Edina.

B. The City desires to provide these services for the health, safety and welfare of its residents and to meet the requirements of Hennepin County's Ordinance 13.

C. On March 19, 2019, Edina City Council selected Vierkant Disposal, LLC as the curbside organics collection provider.

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. City of Edina Request for Proposals (RFP) for Residential Curbside Organic Services dated November 15, 2018

C. Vierkant Disposal Proposal for the City of Edina, MN for Residential Curbside Organic Services.

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 "C" 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. **Source-separated compostable materials (SSC) also known as Organics** means materials that:

(1) are separated at the source by waste generators for the purpose of preparing them for use as compost;

(2) are collected separately from mixed municipal solid waste and are governed by the licensing provisions of section 115A.93;

(3) are comprised of food wastes, fish and meat waste, plant materials, compostable food containers that are food soiled (i.e. pizza boxes, paper/cardboard take out boxes - removed wire handles), and paper that is not recyclable because the commissioner of the Minnesota Pollution Control Agency (MPCA) has determined that no other person is willing to accept the paper for recycling. Organics for this contract does not include yard waste, pet waste, i.e. feline or canine, and kitty litter.

(4) are delivered to a facility to undergo controlled microbial degradation to yield a humus-like product meeting the MPCA's class I or class II, or equivalent, compost standards and where process rejects do not exceed 15 percent by weight of the total material delivered to the facility; and

(5) may be delivered to a transfer station, mixed municipal solid waste processing facility, or recycling facility only for the purposes of composting or transfer to a composting facility.

B. Organic Container: Means a cart with a lid, and wheels, minimum size of 32 gallon in which recyclable materials can be stored and later placed at the curb or alley for collection as specified by the City. The container shall be properly marked for Organics.

C. Organic Collection Service: Residents will be instructed to commingle all organic materials in one container that will be picked up every week by Contractor. Contractor will pick up all organic material placed in the containers at Certified Dwelling Units and other City designated collection stops in the City of Edina.

D. Certified Dwelling Unit (CDU): Means a single family home and each residential unit in a building up to an eight-plex, or townhouse complex. Residential units in structures (other than town houses) containing more than eight dwelling units may be designated as CDU's upon mutual agreement by the City and the Contractor, Exhibit C.

E. Contractor: Means person or persons authorized by the City to perform organic collection services on prescribed routes within collection districts within the City of Edina.

F. Collection Hours: Means the time period during which collection of organic material is authorized in the City.

G. Missed Collection: Means the failure of the Contractor to provide organic collection service to a CDU or other City designated collection stop within the organic district during collection

hours on the scheduled collection day. CDU shall have cart on the curb by 7 am on collection day. If cart is not out on time it should not be considered a missed collection.

H. Holidays: Means any of the following: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

I. Scheduled Collection Day: Means the day or days of the week on which organic collection service by the Contractor is to occur, as specified in the contract with the City, see Exhibit B. If a holiday occurs on a weekday, the collection for each day of that week after the holiday will be made one (1) working day later. Except if a Holiday falls on a weekend day, then collection will be provided on the scheduled collection day.

4. CONTRACTOR'S COLLECTION REQUIREMENTS.

A. Residential Curbside Organic Collection Program.

1. Frequency of Residential Collection: Residential organic collection shall occur weekly.

2. Residential Collection Hours: Collection shall commence no earlier than 7:00 a.m. local time and shall be completed by 7:00 p.m. collection day. Residents will be required to have materials placed at the collection point by 7:00 a.m. on the scheduled collection day.

3. Compliance with Laws and Regulations: In providing services hereunder, the Contractor shall abide by all statutes, ordinances, rules and regulations pertaining to the provision of services to be provided hereunder. Any violation shall constitute a material breach of this Agreement. This contract shall be controlled by the laws of the State of Minnesota, and ordinances of the City of Edina.

4. 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 (See Exhibit A).

5. Organic Cart Purchase and Delivery: The Contractor agrees to, at its expense, purchase, deliver, service and repair, and maintain sufficient cart inventory to meet supply and demand needs for the City of Edina Organic CDU's, estimated to be 13,647 in number. The Contractor shall initially deliver one 32 gallon cart to each CDU and have a sufficient inventory of carts available for replacement when needed. The standard 32 gallon cart shall smooth for ease in cleaning. The cart shall be uniform and consistent in color and approved instruction label on each lid, so as to be easily identified by the resident and the Contractor driver as the container for organic materials. Larger carts, 65 and 95 gallon, shall be available by the Contractor but will only be provided to the resident upon approval by the Contractor. Approval shall be given if the CDU has more organic material than will fit in the 32 gallon cart on a weekly basis and does not include yard waste.

6. Organic Cart Maintenance/Replacement: Cart maintenance includes wheels, axel lids that may need replacement or repair. Cart maintenance shall be done as often as needed without additional cost or fees to the City. The driver is required to report to the Contractor the location of any cart that is damaged. The Recycling/Organic Coordinator will notify the Contractor by email of any cart damage or request for change of cart size that is reported/requested to them by customers/residents. Any damaged cart or cart request will be repaired or replaced by the Contractor within one week of the report. A single CDU will be allowed one replacement cart per year without additional cost, excluding manufacturer defects to a cart which result in more than one replacement a year. More than one replacement in a year will result in a $30.00 service fee paid to the Contractor for the additional cart.

- If CDU is requesting a new cart because it is dirty or due to odor there will be a $30 fee.
- If CDU is responsible for the damage to the cart a service fee of $30 will be due. This includes but is not limited to placing hot ashes into the cart and melting it or damaging the cart with their vehicle.
- An address the same owner or occupant that has more than 3 (three) cart changes within five years may be charged full cost of a replacement cart.

7. Point of Collection: Most residential recycling collection will occur at the same location from where the regular refuse is collected, generally the street curbside or alley. The driver is required to place the emptied cart back/down in the same location as set by resident.

Organic carts/containers for municipal recycling collection shall be placed at agreed upon specific locations as determined by the Contractor and City. All carts/containers shall be returned to the specific location after completion of collection.

8. Non-Completion of Collection Due to Weather Conditions: Contractor may postpone Collection due to severe weather at the sole discretion of the Contractor. "Severe Weather" shall include, but shall not be limited to, those cases in which snow, sleet, ice or cold, or in which the temperature at 6:00 a.m. is minus twenty (-20) degrees Fahrenheit or colder, might jeopardize the safety of the Contractor's staff or result in unsafe driving conditions. If Collections are so postponed, the Contractor shall notify the City via telephone and email by 7 a.m. Upon postponement, the Contractor will make collections one day after the regularly scheduled day through Saturday.

9. Ownership of Organic Materials: All Organic materials for collection shall remain the responsibility and in the ownership of the resident until handled for collection by the Contractor. At the point of collection the organic materials become the property of the Contractor. Any person or persons taking organic 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/Organic Coordinator any instances of suspected

scavenging or unauthorized removal of organic materials from any collection container.

10. Route Management and Customer Service: The Contractor shall, at all times, provide the City's Recycling/Organic Coordinator with a lead route/driver supervisor who is accessible to the Contractor dispatch department via two way communications and to the Recycling/Organic Coordinator to handle route and collection issues in a timely fashion. The Contractor shall have on duty Monday through Friday from 8:30 a.m. to 5:00 p.m. a 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.

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

    a. 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.

    b. The driver shall record the address and why the education tag was left. A record of the tag shall be kept with the Contractor should the City request the information.

    c. Education tag will serve as a contamination warning. Additionally, a sticker will be placed on the lid indicating what non-compostable material was present. The Contractor will notify the City at the time of the 2nd contamination warning. The City will work contact the dwelling occupant, educate the occupant regarding proper organics materials and a potential suspension of service with added fees for non-compliance. The Contractor reserves the right to suspend service after three consecutive warnings to CDU and charge a $30 contamination fee. The Contractor will notify the City and reinstate services after the City has provided additional education to the occupant.

12. 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 City Offices. If the report is for a missed stop and is received by the Contractor before 12:00 p.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 12:00 p.m. on a scheduled working day, the Contractor is required to return to the complaint address by 12:00 noon the following working day.

13. Penalties: Contractor agrees, in addition to any other remedies available to the City, that the City can charge penalty fees to Contractor in the amounts specified below for failure of contractor to fulfill its obligations, as determined by the City.

Contractor will be penalized for non-complainant missed pick-ups, area-wide missed pickups/route non-completion, and administrative non-compliance, as listed: $20 per house. Penalties will only be assessed or administrative non-compliance after the City has provided written warnings to Contractor and given Contractor an opportunity to correct the violation.

13.1 Non-Compliant Missed Pickup: Whenever the City or a Customer notifies Contractor before 12 noon of locations that have not received scheduled service, the Contractor shall be required to service such locations before 6:00 p.m. the same day. When notified after12 noon, Contractor shall be required to service such locations before 7 p.m. the following day, excluding Saturday, Sundays and Holidays.

14. Clean up Responsibilities: The Contractor shall adequately clean up any organic 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 organic materials.

14. 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.

15. Collection Vehicle Equipment Requirements: Each collection vehicle shall be equipped with the required Department of Transportation equipment in addition to the following:

a. A two way communication system.
b. Shall be equipped with some form of monitoring system for the driver to observe the materials as the cart is being dumped into the hopper.
c. A broom and a shovel for cleaning up spills.
d. "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, and the vehicle ID number.

16. 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 proposal, 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:

a. Conduct themselves at all times in a courteous manner and use no abusive or foul language.
b. Be clean and presentable in appearance, as so far as possible.
c. Wear a uniform and employee identification badge or name tag.
d. Drive in a safe and considerate manner.
e. Manage carts in a careful manner, setting them back in place so as to avoid spillage and littering or damage to container.
f. 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.
g. Record all addresses that could not be collected and reasons, turn list into dispatch at end of each collection day.
h. Attach an education tab to the container identifying problems and how to resolve them.
i. Collect and transport organic materials according to all existing laws and ordinances, and future amendments thereto, of the State of Minnesota and local governing bodies.
j. Report all damage to property.

17. Holidays and Annual Flyer: The Contractor will observe all holidays on which no organic collection service will be performed. When a holiday occurs on a scheduled collection day, the collection for each day of that week after the holiday shall be made one (1) working day later.

The Contract will produce an annual direct mailer that will include list of acceptable organic materials for collection, items to be excluded from collection and approved graphics from Hennepin County. Mailer will also indicate Holidays that cause organic collection to be delayed one day.

18. Contract Length: This contract shall commence April 30, 2020 due to unpredictable weather and shall be for 5 years, May 1, 2025 and shall have options for contract renewal with the terms up to 3 or 5 years.

19. Rate: The price per CDU for organic curbside collection service per month from April 30, 2020 through May 1, 2025 for the City shall be $5.00.

- At any time on or after April 30, 2020 Vierkant Disposal may submit a written notice to the City of Edina requesting to discuss and negotiate in good faith possible adjustment to the rate based on actual increases in raw material, processing of material or operating costs.

20. 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.

21. 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.

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

23. Insurance.

a. The Contractor must maintain the types and amounts of insurance set forth in the RFP.

b. Adjustment to Insurance Coverage Limits. The coverage limits shall be increased at the time of any rate adjustment by the Consumer Price Index.

c. Additional Insured - Certificate of Insurance. The Contractor shall provide, prior to starting services, evidence of the required insurance in the form of a Certificate of Insurance issued by a company (rated A+ or better), licensed to do business in the State of Minnesota, which includes all coverages required in this paragraph. Contractor will name the City as an Additional Insured on the General Liability and Commercial Automobile Liability Polices. The Certificate(s) shall also provide the coverage may not be cancelled, non-renewed, or materially changed without thirty (30) days prior written notice to the City.

24. 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.

25. 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 Edina
4801 W. 40th Street
Edina, Minnesota, 55424
Attention: Solvei Wilmot

If to Contractor, to:
Vierkant Disposall, LLC
Justin Vierkant
P.O. Box 24319
Edina, MN 55424

26. Assignment. This Agreement, or rights thereunder, may not be sold, assigned, or transferred at any time by Contractor without the written consent of the City.

27. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

28. Miscellaneous.

a. The prevailing party in any litigation arising hereunder 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. These 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.

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.

CITY:
CITY OF EDINA

BY: _____ Date: 7/16/19
James Hovland, Mayor

AND _____ Date: 7/16/19
Scott Neal, City Manager

CONTRACTOR:

BY: _____ Date: 7 12 19
Gary Vierkant, Owner

Exhibit A

Monthly Reports. The Contractor will submit to the City monthly reports. At a minimum, the Contractor shall include the following information in its monthly reports:

(a) Gross amounts of materials collected (in tons).

(b) Educational tag counts that were left with a resident, indicate most frequent reason.

(c) Monthly list of all customer complaints, including a description of how each complaint was resolved.

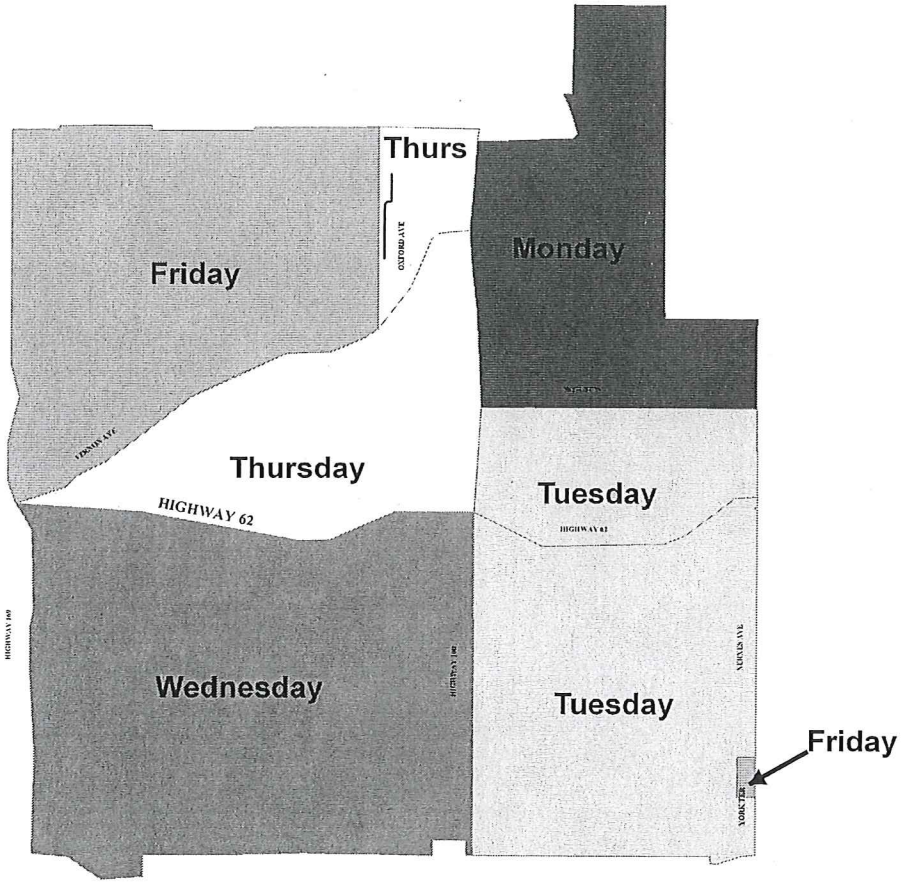
Monthly reports hall be due to the City by the 15th day of each month.

Annual Reports. The Contractor will submit an annual report to the City by Feb 1st of each calendar year for the previous year collections. The annual report shall include:

1. Annual sum total of tons of materials collected.
2. Set out rates and participation rate: number of residents that could participate in a route and number that are actually setting out.
3. Annual summary of complaints received, methods used to handle and respond to such complaints, and summary of complaint types.
4. Response to any City staff recommendations for Contractor's service improvements. Other opportunities for improvement with the remaining years under the contract.

Exhibit B

Collection Route Map (by collection day of the week)



City of Edina
Residential Recycling
Pick-Up Schedule

N
W E
S
Engineering Dept
December, 2006

Exhibit C

MULTI-FAMILY HOUSING INCLUDED IN RESIDENTIAL RECYCLING COLLECTION

Name	Address	Zip	Units
Apartments, 8 or fewer units			
	5148 Hankerson	55436	4
	4200 Valley View Rd	55424	4
	4240 Valley View Rd	55424	4
	4246 Valley View Rd	55424	3
	4000 Mavelle Drive	55435	4
	7101 Lynmar Lane	55435	4
	4300 Parklawn Avenue	55435	8
	4200 64th Street	55424	3
		Total	**34**
Condo, 8 or fewer units			
Edina Morningside	4360 France Ave	55410	8
Valley View Est	6201 Brookview Ave	55424	5
		Total	**13**
Townhomes			
Blake Ridge	6055-6141 Blake Rd Road	55436	30
Cahill of Edina	7400-7486 Cahill Rd	55439	44
Colony	6330 Barrie Road	55435	236
Dewey Hill III	Shaughnessy Rd & Lochmere Terrace	55439	34
Edina Mills	4600-12 France Ave	55410	7
Gleason Court	6400-6519 Gleason Ct	55436	28
Habitat Ct.	6100-6121 Habitat Ct.	55436	18
Highcroft West	5545-5551 70th St W	55439	9
Highcroft East	5501-5541 70th St W	55439	12
Highlander	7032-7096 Cahill Rd	55439	17
Lewis Ridge	7220-7240 Lewis Ridge	55439	12
Londonderry	5700-5752 Duncan Ln	55436	26
	5700-5736 Tucker Ln	55436	10
Manor Homes Edina	6800 Langford Drive	55436	144
Nine Mile Village	Falcon, Oriole, Pheasant, Red Fox, Sandpiper	55436	97
Pondwood	7700-7744 Pondwood Dr	55439	24
Summit Hill	5205 Interlachen Blvd.	55436	5
Vernon Court	6200-6216 Vernon Ct.	55436	5
Vernon Woods	6703-6711 Vernon Ave	55436	5
Waterford Court	6100-6110 Waterford Ct	55436	10
Wellesley Place	1—8 Wellesley Place	55436	8
White Oaks	4620-4626 France Ave	55410	4
Hills of Braemar	7650-7677 Woodview Ct	55439	20
		Total	**805**
		Grand Total	**852**

Areas with Duplexes: Xerxes Ave, France Ave, Habitat Ct., Waterford Ct, Gleason Ct., Tanglewood Ct and Vernon Hills.