

CITY OF VINELAND

ORDINANCE NO. 2022-51

ORDINANCE APPROVING A NEW SHARED SERVICES AGREEMENT FOR WASTE MANAGEMENT SERVICES WITH THE ACUA FOR THE PERIOD OF AUGUST 1, 2022 THROUGH DECEMBER 31, 2023.

WHEREAS, the current shared services agreement for waste management services with the Atlantic County Utilities Authority will expire on July 21, 2022;

WHEREAS, the ACUA has offered to extend the current shared serves agreement for waste management contract to August 1, 2022 and enter into a new shared services agreement for waste management services for the period of August 1, 2022 through December 31, 2023 for once per week trash and recycling collection for \$194,671.67 per month, with the City paying all tipping fees charged by the CCIA and subject to increase based on the number of residences receiving services.

WHEREAS, due to labor shortages, inflation, and the difficulty in obtaining the collection vehicles necessary to provide waste management services to the City, the proposed new shared services agreement proposed by the ACUA is the best option to provide the City time to explore long-term options which are in the best interests of city residents.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Vineland that the Mayor of the City of Vineland is hereby authorized to execute a new shared services agreement with the ACUA providing for trash and recycling collection 1 time per week covering the period of August 1, 2022 through December 31, 2023 for \$194,671.67 per month, with the City paying all tipping fees charged by the CCIA and subject to increase based on the number of residences receiving services.

This Ordinance shall take effect upon adoption and publication according to Law.

Passed first reading:

Passed final reading:

President of Council

Approved by the Mayor:

Mayor

ATTEST:

City Clerk

SHARED SERVICES AGREEMENT

by and between

THE ATLANTIC COUNTY UTILITIES AUTHORITY

and

THE CITY OF VINELAND

FOR SOLID WASTE, BULK ITEMS, AND RECYCLABLES COLLECTION SERVICES

This Shared Services Agreement, made as of this ___ day of July, 2022, by and between the Atlantic County Utilities Authority, a public body politic of the State of New Jersey, with offices located at 6700 Delilah Road, Egg Harbor Township, New Jersey 08234, and a mailing address of PO Box 996, Pleasantville, New Jersey 08232-0996 (the “**AUTHORITY**”), and the City of Vineland, a municipal corporation of the State of New Jersey with offices located at 640 Wood Street, Vineland, New Jersey 08360 (the “**CITY**”).

WITNESSETH:

WHEREAS, the **AUTHORITY** is a county utilities authority created in accordance with *N.J.S.A. 40:14B-1*, et seq.; and

WHEREAS, pursuant to *N.J.S.A. 40:14B-49*, et seq., the **AUTHORITY** is authorized to provide solid waste and recycling collection and disposal services, both within and outside of its solid waste district; and

WHEREAS, the **AUTHORITY** and the **CITY** (each, a “**PARTY**” and collectively, the “**PARTIES**”) desire to enter into an agreement whereby the **AUTHORITY** will provide the **CITY** with certain solid waste and recycling collection and disposal services, as described in more detail herein; and

WHEREAS, the **PARTIES**, by resolution or ordinance duly adopted by their respective governing bodies, wish to enter a shared services agreement (“**AGREEMENT**”) pursuant to

which the **AUTHORITY** will perform certain solid waste and recycling collection and disposal services, as described in more detail herein for the residents of the **CITY** at the costs as set forth below; and

WHEREAS, the Uniform Shared Services and Consolidation Act, *N.J.S.A. 40A:65-1, et seq.*, authorizes the **PARTIES** to enter into such an agreement for such shared services.

NOW, THEREFORE, in consideration of the mutual promises, agreements and other considerations made by and between the **PARTIES**, and pursuant to all applicable federal, state, and local laws, statutes, codes, or ordinances, the **AUTHORITY** and the **CITY** hereby agree as follows:

1. Payment of Outstanding Sums. In addition to the timely payment of the remaining invoices issued in connection with the **PARTIES'** October 18, 2018 Shared Services Agreement, and as an inducement for the **AUTHORITY** to enter into this **AGREEMENT**, the **CITY** has agreed to pay, and the **AUTHORITY** has agreed to accept, the sum of \$427,499.82, as full and final resolution of outstanding sums owed to the **AUTHORITY** under the **PARTIES'** October 18, 2018 Shared Services Agreement for the time period of September 1, 2021 through December 31, 2021. Because the **AUTHORITY** requires payment of this outstanding sum before passage of a resolution approving this **AGREEMENT**, and the **CITY** requires this **AGREEMENT** to be fully executed prior to making payment to the **AUTHORITY**, the **PARTIES** agree that the funds shall be held in escrow by the law firm of Nehmad Davis & Goldstein, P.C., pending the duly authorized execution of this **AGREEMENT** by the **PARTIES**.

1.1 Payment of Funds into Escrow. The **CITY** shall provide a check in the amount of \$427,499.82 payable to "Nehmad Davis & Goldstein, P.C. Attorney Trust Account," and Nehmad Davis & Goldstein, P.C. shall retain these funds in safe custody without interest until such

time as: 1) the respective governing bodies of the **PARTIES** duly enter a resolution or adopt an ordinance approving this **AGREEMENT**; and 2) this **AGREEMENT** is fully executed by the **PARTIES**.

1.2 Disbursement of Escrowed Funds. Once this **AGREEMENT** has been fully executed by the **PARTIES** and each **PARTY** has been provided with an executed copy, Nehmad Davis & Goldstein, P.C. shall release the full amount of the funds, totaling \$427,499.82, to the **AUTHORITY**. In the event this **AGREEMENT** is not approved by the governing body of either or both of the **PARTIES**, or either or both of the **PARTIES** fail to execute this **AGREEMENT** on or before August 1, 2022, the full amount of the escrowed funds shall be returned to the **CITY** and this **AGREEMENT** shall be invalid.

1.3 No Conflict. The **PARTIES** agree that Nehmad Davis & Goldstein, P.C. shall not be conflicted out of representing the **AUTHORITY** in connection with this **AGREEMENT**, the **PARTIES**' October 18, 2018 Shared Services Agreement, or any other dispute arising between the **CITY** and the **AUTHORITY** by virtue of Nehmad Davis & Goldstein, P.C.'s holding the aforementioned funds in escrow so long as such funds are disbursed only as specifically provided in Section 1.2 above.

2. Term. This **AGREEMENT** shall be in effect from July 22, 2022 through December 31, 2023 (the "Term"), and shall be renewable for up to two (2) one-year terms, on such terms and conditions as agreed by the **PARTIES**, unless terminated earlier, as set forth in Section 5 below.

3. Scope of Services. The **AUTHORITY** will provide all labor and equipment necessary to perform residential Solid Waste, Bulk Items, and Recyclables collection and disposal services throughout and on behalf of the **CITY** (the "**SERVICES**"). The **AUTHORITY** shall not be responsible for any contaminated material, any material that is improperly packaged for collection,

or any material that is not at the curb at the time the **AUTHORITY** collection vehicle passes the residence. The **AUTHORITY** shall not be required to make more than one pass for each residence on any collection day. The **CITY** shall be responsible for the payment of all landfill costs, disposal and related costs. All Solid Waste, Bulk Items, and Recyclables shall be brought to the Cumberland County Improvement Authority.

3.1 Definitions.

3.1.1 Solid Waste: “Solid Waste” shall consist of “Type 10” solid waste as defined in N.J.A.C. 7:26-2.13(g)(1)(i) or any successor regulation governing the definition of municipal solid waste. The materials will be acceptable for delivery and transfer to the landfill located at Cumberland County Improvement Authority.

3.1.2 Bulk Items: “Bulk Items” include mattresses, furniture, four (4) foot lengths of rolled and tied carpet of sixty-five (65) lbs. or less, and bagged cut grass of forty-five (45) lbs. or less.

3.1.3 Recyclables: The term “Recyclables” includes the following: cartons, newspaper, magazines, unwanted mail, computer paper, envelopes, telephone books, paperback books, brown paper bags, catalogs, cardboard, glass bottles and jars, steel (tin) cans, aerosol cans, empty paint cans without lids, plastic bottles and containers numbered one through seven, and aluminum cans which material will be acceptable for delivery and transfer to the landfill at the Cumberland County Improvement Authority.

3.1.4 Business Day(s): “Business Days” include Monday, Tuesday, Wednesday, Thursday and Friday, and under the circumstances set forth in Section 3.2.3 or Section 3.2.4, occasionally may include Saturdays.

3.1.5 Regularly Scheduled Collection Day(s): The “Regularly Scheduled Collection Day” for each residence is reflected in the Collection Maps attached hereto as Schedule 1. Regularly Scheduled Collection Days shall be Monday through Friday, except for adjustments made pursuant to Section 3.2.3 or Section 3.3.1 below.

3.1.6 Missed Collections: The term “Missed Collections” shall refer to collections that the Authority fails to make on or before the Saturday at the end of the week in which the Regularly Scheduled Collection Day falls.

3.1.7 Holiday(s): For purposes of this **AGREEMENT**, the following days shall be considered a “Holiday”: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

3.1.8 Default: As to the **CITY**, “Default” shall mean a failure to make payment as required by Section 3.4. As to the **AUTHORITY**, “Default” shall mean two consecutive weeks of two or more Missed Collections per week, unless such Missed Collections are due to reasons beyond the **AUTHORITY’S** control as set forth in Section 3.3.

3.2 Schedule.

3.2.1 From **July 22, 2022 through July 31, 2022**, the **AUTHORITY** will continue Solid Waste and Recyclables collection and disposal services pursuant to the schedule set forth in the October 18, 2018 Shared Services Agreement between the **PARTIES**, which terminates, effective July 21, 2022. The terms of this **AGREEMENT** shall govern the **SERVICES** during this time period, except that the collection schedules set forth in the October 18, 2018 Shared Services Agreement shall apply through July 31, 2022. This will allow the **CITY** to properly inform and educate its residents of the new Collection Schedules.

3.2.2 Effective **August 1, 2022** and for the remainder of the term of this **AGREEMENT**, the **AUTHORITY** will perform once per week Solid Waste and Bulk Items collection and disposal services and once per week Recycling collection and disposal services to the residents of the **CITY** pursuant to the Collection Maps attached as Schedule 1, which are representative of both Solid Waste/Bulk Items and Recycling collection routes. Solid Waste/Bulk Items collection and/or Recyclable collections activities shall not begin before 6:00 a.m. and shall cease by 6:00 p.m.

3.2.3 Collections will be made on Regularly Scheduled Collection Days as set forth in the Collection Maps attached as Schedule 1. When a Regularly Scheduled Collection Day falls on a Holiday, however, the collection schedule for the remainder of that week will be pushed back by one (1) Business Day, which may result in some collections on a Saturday.

3.2.4 The **AUTHORITY** and the **CITY** will cooperate in the development of advertisements and press releases to address the new collection schedules.

3.3 **Force Majeure.** If an event beyond the control of the **AUTHORITY** prevents collections on any Regularly Scheduled Collection Day, the **AUTHORITY** shall endeavor to notify the **CITY** as soon as practicable. Such instances may include, but are not limited to, snow or other storm conditions that make it unsafe to operate and/or maneuver the **AUTHORITY**'s vehicles in the **CITY**, lack of staffing due to mandatory quarantine of **AUTHORITY** employees in connection with COVID-19 or other infectious diseases, emergency orders from the state or federal government requiring the **AUTHORITY** to cease operations in the **CITY**, breakdown/failure of equipment that makes it unsafe or impossible to perform the **SERVICES**, and other circumstances outside the control of the **AUTHORITY**.

3.3.1 In the event a collection is missed on a Regularly Scheduled Collection Day pursuant to the provisions of Section 3.3, the **AUTHORITY** may, in its discretion and in consultation and agreement with the **CITY**, shift the remaining Regularly Scheduled Collection Days back by one day and make collections on Saturday.

3.4 Solid Waste, Bulk Items, and Recyclables Collection Requirements.

3.4.1 The **CITY** shall take appropriate steps to advise residents of the following collection requirements, which must be met in order for the **AUTHORITY** to collect Solid Waste, Bulk Items, and Recyclables in the **CITY**:

3.4.1.1 All Solid Waste and Recyclables shall be placed at the curb by 6:00 a.m. on the Regularly Scheduled Collection Day in the ninety-six (96) gallon wheeled carts previously provided to the **CITY**'s residents by the **CITY**. All Bulk Items also shall be placed at the curb by 6:00 a.m. on the Regularly Scheduled Collection Day.

3.4.1.2 It shall be the **CITY**'s responsibility to provide the ninety-six (96) gallon wheeled carts for Solid Waste and Recyclables collection to new residences.

3.4.1.3 Replacement of RFID tags will be the responsibility of the **CITY**.

3.4.1.4 The **AUTHORITY** shall not be responsible for the replacement of damaged, lost or stolen carts, or supplying additional carts for a change in home ownership.

3.4.1.5 Only one (1) Bulk Item per residence will be picked up with Solid Waste on the Regularly Scheduled Collection Day. Four (4) lengths of rolled and tied carpet shall be considered (1) Bulk Item and four (4) bags of cut grass shall be considered (1) Bulk Item.

4. Compensation for Services.

4.1 2022 Collection Costs. The total annual cost to the **CITY** for the **SERVICES** in 2022 is \$2,336,060, or \$194,671.67 per month, which is based on performance of the **SERVICES** for 17,103 residences in the **CITY** and breaks down as follows:

Service	Annual Rate for All Residential Collections 2022	Monthly Cost 2022
Solid Waste and Bulk Items Collection	\$1,594,407	\$132,867.25
Recyclables Collection	\$741,653	\$61,804.42
Total	\$2,336,060	\$194,671.67

4.2 2023 Collection Costs. The estimated annual cost to the **CITY** for the **SERVICES** in 2023 is \$2,382,781.20, or \$198,565.11 per month, which is based on performance of the **SERVICES** for 17,103 residences in the **CITY**. This estimated rate is subject to change based on the provisions of Section 4.2.1 below.

4.2.1 Number of Residential Dwellings Receiving Service. On a calendar year basis, a sum of all residential dwellings with a new certificate of occupancy will be totaled. From that total, all demolition of houses or discontinuation of Solid Waste and Recycling services to a residential dwelling will be subtracted from the new certificate of occupancy total. If there is a net increase of 50 or more residential dwellings, the annual rate per residence to be paid by the **CITY** to the **AUTHORITY** shall increase based on the total net increase of residential dwellings. Conversely, if there is a net decrease of 50 or more residential dwellings, the annual rate per residence to be paid by the **CITY** to the **AUTHORITY** shall decrease based on the total net decrease of residential dwellings.

4.3 Credits for Missed Collections. In the event of any Missed Collections, the **CITY** shall receive a credit in the amount corresponding to the number of Solid Waste collections missed

per month, multiplied by the rate per Solid Waste collection in effect for the year in which the Missed Collection occurs, plus a credit corresponding to the number of Recyclables collections missed per month, multiplied by the rate per Recyclables collection in effect for the year in which the Missed Collection occurs.

4.3.1 Any credits due to the **CITY** pursuant to this section will be reflected on a monthly statement within 60 days of the determination that a credit should be issued.

4.4 **Statements and Payment.** The **AUTHORITY** will forward statements to the **CITY** on or before the second week of each month for collections made the preceding month, and the **CITY** will pay all invoices within 60 days of presentation of the appropriate vouchers or other documentation necessary to process payment. All bills not paid within 60 days of presentation shall bear interest at the rate of 1 ½% per month (18% per annum) from the date of presentation until paid.

5. Termination. This **AGREEMENT** may be terminated by either of the **PARTIES** during the Term as follows:

5.1 Without Cause. This **AGREEMENT** may be terminated by either of the **PARTIES** without cause upon at least one-hundred eighty (180) days' prior written notice to the other **PARTY** of such termination.

5.2 Notice of Default and Opportunity to Cure. This **AGREEMENT** may be terminated by either of the **PARTIES** with cause upon at least ninety (90) days' prior written notice of Default and intent to terminate to the other **PARTY** ("**90-DAY NOTICE**") if the Defaulting **PARTY** fails to cure its Default within thirty (30) days of receipt of the **90-DAY NOTICE**. If the Defaulting **PARTY** cures the Default within thirty (30) days of receipt of the **90-**

DAY NOTICE, then the **PARTIES** shall continue to perform pursuant to the provisions of this **AGREEMENT** through the end of the Term unless earlier terminated pursuant to this Section 5.

6. **Insurance.** The **AUTHORITY** will carry appropriate general liability, auto, and workers' compensation insurance covering its activities and employees as designated by the **CITY**. The general liability and automobile insurance shall be in an amount with policy limits not less than one million dollars. The **CITY** shall be named as an "Additional Insured." Said insurance shall be primary to any insurance owned by the **CITY**. The **AUTHORITY** shall provide a certificate of insurance to the **CITY** prior to the commencement of this Agreement. Said certificate shall state that the insurance cannot be cancelled without at least 10 days written notice to the **CITY**. The parties acknowledge that the **AUTHORITY** is an independent contractor and not an agent of the **CITY** in conducting activities hereunder.

7. **Indemnification.** The **AUTHORITY** hereby agrees to indemnify and keep indemnified, and hold and save harmless the **CITY**, its governing body, its officers, agents and employees, from and against all demands, claims, loss, costs, damages, expenses and attorney's fees whatsoever, and any and all liability therefore, alleged to have been sustained or incurred by them, directly by reason of or in consequence of or in connection with any act or omission of the **AUTHORITY** in connection with its rights and obligations pursuant to this **AGREEMENT**.

Similarly, the **CITY** hereby agrees to indemnify and keep indemnified, and hold and save harmless the **AUTHORITY**, its Directors, Officers, Board Members, agents and employees, from and against all demands, claims, loss, costs, damages, expenses and attorney's fees whatsoever, and any and all liability therefore, alleged to have been sustained or incurred by them directly by reason of or in consequence of or in connection with any act or omission of the **CITY** in connection with its rights and obligations pursuant to this **AGREEMENT**. Notwithstanding the undertakings

of this section, however, if either the **CITY** or the **AUTHORITY** shall be physically or legally prevented from performing their obligations under this Agreement, neither shall have any liability to the other for monetary damages.

8. Entire Agreement. This **AGREEMENT** represents the entire agreement of the parties and supersedes all prior agreements between the **PARTIES** regarding the subject-matter herein as well as any verbal or written representations made prior hereto. No modifications to this **AGREEMENT** shall be valid unless in writing and adopted by resolution of the respective governing bodies of the **CITY** and the **AUTHORITY**.

9. Mutual General Release. In consideration of the promises contained in this **AGREEMENT**, the **PARTIES** hereby release and give up any and all claims and rights which the **PARTIES** may have against each other. This releases claims resulting from anything which has happened up to now and includes all claims, including those of which the **PARTIES** are, or either **PARTY** is, not aware and those not mentioned specifically in this **AGREEMENT**.

The **CITY** specifically and unconditionally releases, acquits, and forever discharges the **AUTHORITY** of and from any and all claims, causes of action, demands and liabilities whatsoever, of whatever kind or nature, in law, equity or otherwise, whether known or unknown, vested or contingent, asserted or unasserted, that the **CITY** may have against the **AUTHORITY** as of the date of the execution of this **AGREEMENT**, including, but not limited to any and all claims or demands which the **CITY** may have against the **AUTHORITY** in connection with that certain Shared Services Agreement by and between the **CITY** and the **AUTHORITY**, dated October 18, 2018, and/or the **AUTHORITY'S** termination thereof, and those arising under the Constitution of the United States, the Constitution of the State of New Jersey, and any and all

claims arising under any federal, state or local statutes, regulations, ordinances, public policy, or common law.

The **AUTHORITY** specifically and unconditionally releases, acquits, and forever discharges the **CITY** of and from any and all claims, causes of action, demands and liabilities whatsoever, of whatever kind or nature, in law, equity or otherwise, whether known or unknown, vested or contingent, asserted or unasserted, that the **AUTHORITY** may have against the **CITY** as of the date of the execution of this **AGREEMENT**, including, but not limited to any and all claims or demands which the **AUTHORITY** may have against the **CITY** in connection with that certain Shared Services Agreement by and between the **CITY** and the **AUTHORITY**, dated October 18, 2018, and those arising under the Constitution of the United States, the Constitution of the State of New Jersey, and any and all claims arising under any federal, state or local statutes, regulations, ordinances, public policy, or common law.

IN WITNESS WHEREOF, the parties have set their hands and seals the day and year set forth above.

ATTEST:

CITY OF VINELAND

BY:

Dated: _____

Dated: _____

ATTEST:

ATLANTIC COUNTY UTILITIES
AUTHORITY

BRIAN G. LEFKE, Board Secretary

RICHARD S. DOVEY, President

Dated: _____

Dated: _____

Schedule 1