A-629
KC

AGREEMENT

THIS AGREEMENT (this "**Agreement**") made and entered into by and between the **CITY OF ATLANTIC CITY**, a municipal corporation of the State of New Jersey, herein referred to as the "**City**" located at 1301 Bacharach Boulevard, Atlantic City, New Jersey 08401, and **GOLD MEDAL ENVIRONMENTAL OF NJ, INC.** located at 309 Salina Road, Sewell, New Jersey 08080, herein referred to as the "**Contractor**", pursuant to Resolution No. 488 adopted by City Council on July 27, 2022, a copy of which is attached hereto and made a part hereof.

WITNESSETH:

WHEREAS, the City wishes to retain the services of the Contractor to provide **SOLID WASTE AND RECYCLING COLLECTION SERVICES** (the "**Services**"), as set forth in advertised bid #22-23 (the "**Bid**"); and

WHEREAS, the Contractor is ready, willing and able to undertake such Services; and

WHEREAS, the City believes the Contractor to be well able to undertake and perform the Services for the City and desires to enter into this Agreement with the Contractor for the performance of such Services.

NOW, THEREFORE, in consideration of the covenants and conditions set forth herein, and for other good and valuable consideration, the parties hereto agree as follows:

SECTION 1
WORK TO BE PERFORMED

The work to be performed under this Agreement is as follows: provide the Services in the City in accordance with the terms as set forth in the specifications and instructions to bidders contained in the Bid and in the bid proposal received from the Contractor attached hereto as **Exhibit A** and made a part hereof (the "**Bid Proposal**"). Pursuant to the Bid and the Contractor's Bid Proposal, the Contractor shall collect solid waste and recyclable materials from residential properties, municipal buildings, apartments and condominiums and Public Schools all in accordance with the collection of solid waste and recycling schedule included in bid as **Attachment 2** as attached and made a part hereof. The cost of disposal (tipping fees) shall be the responsibility of the City and shall be paid directly to the Atlantic County Utility Authority (ACUA). Any recycling rebates associated with this Agreement shall be property of the City.

If any of the terms and conditions of this Agreement and the Bid conflict with the Bid Proposal, the terms and conditions of this Agreement and the Bid shall control. In the event the terms and conditions of this Agreement conflict with the Bid, the terms and conditions of this Agreement shall control. Capitalized terms used herein and not otherwise defined shall have the meanings as set forth in the Bid.

SECTION 2
CONTRACT PRICE AND PAYMENT TERMS

In accordance with the terms of the Bid and the Bid Proposal, the City shall pay in twelve (12) equal monthly installments (the "**Monthly Payment**") to the Contractor the following amounts per year for the Services:

Collection of All Solid Waste and Recycling

Year	Yearly Amount
Year 1	$2,697,660.00
Year 2	$2,899,985.00
Year 3	$3,073,984.00

Within thirty (30) days after the end of each calendar month during the Term of this Agreement during which the Contractor provided Services, the Contractor shall submit an invoice for solid waste and recycling collection to the City for the preceding calendar month (the "**Billing Month**").

The City shall pay all invoices within thirty (30) days of receipt. The City shall not be obligated to pay a defective invoice until the Contractor cures the defect.

The City shall have thirty (30) days from the date of receipt of a corrected invoice to make payment for the respective Billing Month.

SECTION THREE
CONTRACT TERM

The initial term of this Agreement shall be for three (3) years beginning on August 1, 2022 (the "**Effective Date**") and ending on July 31, 2025 (the "**Term**"), unless otherwise terminated as hereinafter provided.

Thereafter, the City, in its sole discretion, may extend this Agreement and the Term for two (2) additional one (1) year periods (each, an "**Option Period**"), with the first Option Period beginning on August 1, 2025 and ending on July 31, 2026 ($3,258,423.00) and the second Option Period beginning on August 1, 2026 and ending on July 31, 2027 ($3,453,928.00). The City shall submit written notice to the Contractor exercising its option to extend this Agreement for the first Option Period no later than April 30, 2025, and for the second Option Period no later than April 30, 2026. The total Term of this Agreement shall not exceed five (5) years.

SECTION FOUR
STATUS OF CONTRACTOR

It is expressly understood and agreed by and between the parties hereto that the status of the Contractor and its employees, officers, and agents shall be that of independent contractors. It is not intended, nor shall it be construed, that the Contractor or any of its employees, officers or agents is an employee or officer of the City for any purpose whatsoever.

SECTION FIVE
EXPIRATION; TERMINATION

Unless earlier terminated pursuant to this Section 5, this Agreement shall automatically expire on the last day of the Term.

The City shall have the right to terminate this Agreement during the Term after giving five (5) days written notice of termination to the Contractor in the event of any default ("**Default**") by the Contractor.

It shall be considered a Default by the Contractor if:

1. The Contractor makes a general assignment for the benefit of creditors;
2. A receiver should be appointed on account of the Contractor's insolvency;
3. The Contractor persistently or repeatedly refuses to supply enough labor, material or equipment to maintain the established schedules of collections;
4. The Contractor fails to remove designated recyclable materials in a timely manner as outlined within the Bid;
5. The Contractor fails to comply with all conditions of any and all laws of City of Atlantic City, the State of New Jersey and the New Jersey Department of Environmental Protection; or
6. The Contractor breaches any provision of this Agreement.

SECTION SIX
DAMAGES

The parties acknowledge that in the event of a Default by the Contractor, it is foreseeable that the City will suffer damages for which it is entitled to be compensated. Certain of these damages may be reasonably ascertained, such as revenue losses and general and

administrative costs. Other damages may consist of intangible losses which are difficult to accurately calculate and assess. For any such intangible losses, in the event the Contractor fails to satisfactorily comply with all terms and conditions of this Agreement and the Bid, the Contractor shall be liable for, and the City may deduct from any amount then due to the Contractor, the amounts listed below as **"Liquidated Damages"**:

1. In the event that the Contractor does not clean up spillage within one half hour (1/2) of being notified of such spillage, the work may be performed by a designated contractor or City employees. If the City employs a designated contractor to perform the cleanup, the amount of damages shall be the actual and total contract cost for such designated contractor. If City employees perform the cleanup, the amount of damages shall be the actual cost of the municipal labor and equipment used. The parties agree that the minimum cost to reassign City employees to such cleanup duties shall be one hundred dollars ($100.00);

2. In the event that the Contractor should commingle solid waste with recyclable material in any load, the Contractor shall be assessed damages equal to the cost of the tonnage of material outside the scope of this Agreement, plus the actual cost of all necessary inspections. Each truckload shall be a separate event. The parties agree that the minimum damage assessed for each infraction of this provision shall be two thousand dollars ($2,000.00);

3. In the event that the Contractor should commingle solid waste from any source other than those authorized under this Agreement, the

Contractor shall be assessed damages equal to the cost of the tonnage of the materials collected outside the scope of this Agreement, plus the actual cost of all necessary inspections. Each truckload shall be a separate event. The parties agree that the minimum damage assessed for each infraction of this provision shall be five thousand dollars ($5,000.00);

4. In the event that the Contractor fails to collect solid waste or recycling in accordance with this Agreement, the parties agree that the minimum damage assessed for each verified failure shall be two hundred dollars ($200.00) per location per day;

5. In the event that the Contractor fails to make any collections after twenty-four (24) hours' notice of each complaint by telephone, fax, letter or in person, the Contractor shall pay an additional one hundred dollars ($100.00) in liquidated damages for each twenty four (24) hours during which said failure shall occur shall be assessed. Each day and each residential, commercial, industrial or institutional unit shall be considered a separate event for the purposes of this provision;

6. In the event that the Contractor fails to properly return containers to the curb, the parties agree that that the minimum damage assessed for each such failure shall be one hundred dollars ($100.00);

7. In the event that the Contractor fails to provide sufficient equipment or staffing as contained in this Agreement, the parties agree

that the minimum damage assessed for each day of non-compliance shall be five hundred dollars ($500.00);

8. In the event that the Contractor fails to maintain telephone service properly as provided in the Bid, the parties agree that the minimum damage assessed for each hour of improper telephone service shall be twenty-five dollars ($25.00);

9. In the event that the Contractor uses vehicles and equipment which are not in conformance with this Agreement, appropriate safety regulations or with the New Jersey Department of Environmental Protection ("**NJDEP**") regulations and which the Contractor has failed to repair or properly maintain for a period of forty-eight (48) hours after receipt of written notice from the City of a directive to repair or replace as required for the purpose of providing safe and sanitary collection service, the parties agree that the minimum damage assessed for each nonconforming vehicle or piece of equipment shall be two hundred dollars ($200.00); and

10. In the event that the Contractor's personnel solicit gratuities from residents, the parties agree that the minimum damage assessed for each solicitation shall be two hundred dollars ($200.00).

The provisions contained herein for liquidated and agreed upon damages, or agreed upon minimum damages, as the case may be, are a bona fide provision for such and are not a penalty. These provisions have been incorporated as a provision beneficial to both parties, as a valid estimate of the damages, or minimum damages, as the case may be, which

will otherwise flow on account of any such Default by the Contractor. The Contractor agrees that it will not file any action against the City seeking the return of any portion of the liquidated damages amount pursuant to this Agreement or seeking any reduction in the amount of liquidated and agreed upon damages.

In the event that the Contractor is in Default, then the City may, without prejudice and in addition to the above remedies, terminate this Agreement. In the event of termination of this Agreement by the City because of a Default, no action by the City pursuant to this Section shall operate to waive or release any claims that the City may have against the Contractor under this Agreement.

SECTION SEVEN
CERTIFICATE OF COMPLIANCE

The Contractor represents that it is in compliance with all applicable laws of the State of New Jersey and all Ordinances of the City, including without limitation Ordinance No. 24 of 1993 and Executive Order No. 1 of 1993 and will remain so for the Term of this Agreement, and failure to continue in compliance shall be deemed a breach of this Agreement.

SECTION EIGHT
ASSIGNMENT

The Contractor shall not assign its rights or obligations under this Agreement without the prior written consent of the City and the NJDEP. If the Contractor merges, sells, or transfers its interest to another entity, such entity shall assume the obligations contained herein and submit the

documentation that was required to be submitted in connection with the Bid.

SECTION NINE
CONFLICT OF INTEREST

The Contractor covenants that it presently has no interest and shall not acquire any interest, directly or indirectly, which would conflict in any manner or degree with the performance of this Agreement. The Contractor further covenants that in the performance of this Agreement no person having any such interest shall knowingly be employed by the Contractor or its subcontractors.

SECTION TEN
EFFECT OF ILLEGALITY

If any provision of this Agreement is determined to be invalid or unenforceable to any extent by a court of competent jurisdiction, the remaining terms, conditions and provisions of this Agreement shall not be affected thereby and each remaining term, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law.

SECTION ELEVEN
FULL AGREEMENT

This Agreement, including all Exhibits attached hereto and documentation required therein, constitutes the entire agreement between the parties and any prior understandings or representation of any kind preceding the Effective Date of this Agreement shall not be binding on the parties hereto except to the extent incorporated herein.

SECTION TWELVE
CHOICE OF LAW

This Agreement shall be governed and construed in accordance with the laws of the State of New Jersey and the ordinances of the City. All actions, whether sounding in contract or tort, relating to the validity, construction, interpretation or enforcement of this Agreement shall be instituted in the courts of New Jersey and in the County of Atlantic.

SECTION THIRTEEN
INDEMNIFICATION

The Contractor shall indemnify, defend and hold harmless the City from and against any claim (including any claim brought by employees or agents of the Contractor), liability, damage or expense (including attorneys' fees) that the City may incur relating to, arising out of or existing by reason of (i) Contractor's performance of this Agreement or the conditions created thereby (including use, misuse or failure of any equipment used by the Contractor or its subcontractors, servants or employees) or (ii) the Contractor's breach of this Agreement or the inadequate or improper performance of this Agreement by the Contractor or its subcontractors, servants or employees. The City shall, if it so desires, defend such actions and charge the expense of the same to the Contractor.

SECTION FOURTEEN
INSURANCE

Without limiting the foregoing, the Contractor shall at its own expense during its performance under this Agreement, maintain insurance policies written with an insurance company or joint insurance fund

currently admitted in New Jersey in at least the types and amounts set forth herein.

INSURANCE REQUIREMENTS FOR CONTRACTOR

Before commencing the Services the Contractor shall purchase and maintain insurance in conformance with the provisions contained herein. This insurance will provide a defense and indemnify the City, its officers, agents or employees against any such claim, damage, loss or expense that is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use, which arises out of the Contractor's operations under this Agreement. This insurance shall apply regardless of whether the operations, actions, derelictions or failures to act from which the claim arises are attributable to the Contractor, any of its consultants, officers, agents, subcontractors, employees, or anyone directly or indirectly employed by any of them including anyone for whose acts of the aforementioned may be liable by operation of statute, government regulation, or applicable case law or the City, unless caused by the sole negligence of the City. Proof of this insurance shall be provided to the City before the Effective Date. In no event shall the failure to provide this proof prior to the Effective Date be deemed a waiver by the City of the Contractor's insurance obligations set forth herein. In the event that the insurance company(ies) issuing the policy(ies) required by this Agreement deny coverage to the City, the Contractor will defend and indemnify the City at the Contractor's expense.

MINIMUM TYPES AND LIMITS OF LIABILITY

The Contractor shall obtain the required insurance with a carrier rated A-VII or better by A.M. Best. The Contractor shall maintain at least the following types and limits of liability:

Comprehensive General and Contractual Liability Insurance: policy must include personal liability, property, contractual liability, explosion, collapse and underground hazard coverage and completed operations coverage in the following amounts:

$ 1,000,000 bodily injury liability per person; and
$ 3,000,000 property damage liability per occurrence.

Contractual liability that will respond to the indemnification clause contained in Section 13 herein shall be included in the policy.

Comprehensive Automobile Liability Insurance: Coverage must include all owned, non-owned and hired vehicles used in connection with the Services in the following amounts:

$ 500,000 bodily injury liability per person;

$ 1,000,000 bodily injury liability per occurrence; and

$ 1,000,000 property damage liability per occurrence;

Workers' Compensation and Employers' Liability Insurance: unlimited coverage.

If the Contractor is a Sole Proprietor, Partnership or LLC, the Insurance Policy and Certificate must indicate that the proprietor/partners/members are "included".

ADDITIONAL INSURED STATUS AND CERTIFICATE OF INSURANCE

The City, along with its officers, agents and employees, shall be named as **"Additional Insureds"** for operations on the Contractor's Comprehensive General and Contractual Liability Insurance which must be primary and noncontributory with respect to the Additional Insureds. It is expressly understood by the parties to this Agreement that it is the intent of the parties that any insurance obtained by the City is deemed excess, non-contributory and not co-primary in relation to the coverage(s) procured by the Contractor, any of its consultants, officers, agents, subcontractors,

employees or anyone directly or indirectly employed by any of them or by anyone for whose acts any of the aforementioned may be liable by operation of statute, government regulation or applicable case law. To the extent permitted by law, a waiver of subrogation clause shall be added to the Comprehensive General and Contractual Liability, Comprehensive Automobile Liability and Workers' Compensation and Employer's Liability insurance policies in favor of the City, and this clause shall apply to the City's officers, agents and employees with respect to all projects during the policy term.

NO LIMITATION ON LIABILITY

In any and all claims against the Additional Insureds by any employee of the Contractor, anyone directly or indirectly employed by the Contractor or anyone for whose acts the Contractor may be liable, the indemnification obligation shall not be limited by any limitation on the amount or type of damage, compensation or benefits payable by or for the Contractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

CANCELLATION, RENEWAL AND MODIFICATION

The Contractor shall maintain in effect all insurance coverage required hereunder at the Contractor's sole expense and with insurance companies acceptable to the City. The policies shall contain a provision that coverage will not be cancelled, not renewed, or undergo a material change until at least thirty (30) days prior written notice has been given to the City. A Certificate of Insurance showing required coverage and written

notice must be delivered to the City prior to the Effective Date. In the event the Contractor fails to obtain or maintain any insurance coverage required under this Agreement, the City may, at its sole discretion, purchase such coverage as desired for the City's benefit and charge the expense to the Contractor, or, in the alternative, terminate this Agreement.

Prior to the Effective Date, the Contractor shall provide the City with Certificates of Insurance stating that the City is an "ADDITIONAL NAMED INSURED WITH RESPECT TO LIABILITY COVERAGES AFFORDED BY THE POLICY". The Contractor shall also provide to the City evidence of Worker's Compensation Insurance to cover all workers involved in any work contemplated under this Agreement.

SECTION FIFTEEN
PERFORMANCE BOND

The Contractor shall provide a performance bond issued by a surety/insurance company in an amount equal to no more than 100% of the annual value of this Agreement (the "**Performance Bond**"). The Contractor shall provide the Performance Bond concurrent with the delivery of this executed Agreement to the City of Atlantic City Solicitor's Office located at 1301 Bacharach Boulevard, Room 406, Atlantic City, New Jersey 08401. The Performance Bond for each succeeding year shall be delivered to the City with proof of full payment of the premium one hundred twenty (120) days prior to the expiration of the existing Performance Bond.

Failure to deliver a Performance Bond for any year of a multiyear contract one hundred twenty (120) days prior to the termination of the existing Performance Bond shall constitute a Default under this Agreement and shall entitle the City to terminate this Agreement upon the expiration of the Performance Bond. Notwithstanding termination pursuant to this Section Fifteen, the Contractor is obligated to provide Services until the City employs a new contractor. Damages shall be assessed in an amount to the costs incurred by the City in re-bidding this Agreement.

SECTION SIXTEEN
PREFERENCE DOMESTIC PRODUCTS

It is understood by and between the parties hereto that only manufactured products of the United States, wherever available, shall be used in connection with this Agreement, pursuant to N.J.S.A. 40A:11-18.

SECTION SEVENTEEN
BOOKS AND RECORDS

The Contractor shall at all times during the Term conduct its business in the ordinary course of business. The Contractor and any subcontractor thereof engaged under a contract pursuant to this Agreement is subject to and shall comply with the provisions of N.J.S.A. 34:11-68 with respect to recordkeeping of all individuals engaged in the collection or transportation of solid waste or recyclable material, excluding recycled or reclaimed asphalt or concrete, collected under this Agreement as follows:

1. The Contractor shall keep an accurate record showing the name, the actual hourly rate of wages paid to, and the actual daily, overtime and weekly hours worked by, each individual engaged in the collection

and transportation work done under this Agreement, and any other records deemed necessary by the Commissioner of Labor and Workforce Development or his or her duly authorized representatives (the "**Commissioner**") for the enforcement of wage payments. In addition, the records shall be preserved for two (2) years from the date of payment.

2. The Contractor or subcontractor shall submit a certified payroll record showing only the name, the actual hourly rate of wages paid to, and the actual daily, overtime and weekly hours worked by each individual engaged in the collection and transportation work done under this Agreement, in a form satisfactory to the Commissioner, to the City for each payroll period not more than ten (10) days after the payment of wages. Reporting under this section may be fulfilled by using the New Jersey Department of Labor and Workforce Development's "Payroll Certification for Public Works Project" and completing columns 1-5 for each covered employee. The certification shall be submitted to: City of Atlantic City, 1301 Bacharach Boulevard, Atlantic City, New Jersey 08401.

The records required to be maintained by the Contractor pursuant to this Section Seventeen shall be open at all reasonable hours to the City, any other party to this Agreement and the Commissioner. By entering into this Agreement, the Contractor acknowledges the provisions contained under N.J.S.A. 34:11-68, including without limitation, the Commissioner's authority to investigate the Contractor's or subcontractor's wages and

ascertain any penalties that result from failure to comply with the requirements imposed under N.J.S.A. 34:11-68.

SECTION EIGHTEEN
WAIVER AND RENUNCIATION

No waiver or renunciation by either party to this Agreement with respect to any breach or default or of any right or remedy consequent thereon shall be deemed to constitute a continuing waiver or renunciation or a waiver or renunciation of any other breach or default or any other right or remedy consequent thereon unless such waiver or renunciation be expressed in writing, signed by the party making such waiver or renunciation and specifying the nature and extent of such waiver or renunciation.

SECTION NINETEEN
BINDING

This Agreement shall be binding upon the heirs, assigns, and/or successors in right, title or interest of the parties to this Agreement.

SECTION TWENTY
CAPTIONS

All captions in this Agreement are for convenience only and shall not be deemed part of this Agreement and in no way define, limit, extend or describe the scope or intent of any provisions hereof.

SECTION TWENTY-ONE
MODIFICATION OR AMENDMENT

This Agreement may not be modified or amended except by a writing executed by the parties to this Agreement.

SECTION TWENTY-TWO
FORCE MAJEURE

If a party is delayed or hindered in, or prevented from the performance required under this Agreement (except for payment of monetary obligations) by reason of earthquakes, landslides, strikes, lockouts, labor troubles, failure of power, riots, insurrection, war, acts of God or other reason of like nature not the fault of the party delayed in performing work or doing acts, such party is excused from such performance for the period of delay. The period for the performance of any such act will then be extended for the period of such delay.

(Signature page follows)

IN WITNESS WHEREOF, the City has caused the Seal of the City of Atlantic City to be hereto affixed and this Agreement to be signed by the Mayor and attested by the City Clerk thereof, and the Contractor has caused this Agreement to be executed by its President and attested by its Secretary and its corporate seal to be hereto affixed the day and year first below written.

ATTEST:

Paula Geletei

Paula Geletei, City Clerk

City of Atlantic City

Marty Small, Sr., Mayor

Date: 9-23-22

Witness:

Gold Medal Environmental of NJ, Inc.

By: , President

COO

Derren J Brunelle

Please Print Name Above

Date: 9/15/22

The within Agreement is approved as to form and execution:

Date: 9/19/2022

By:

Karl Timbers, Esq.
Assistant City Solicitor

(Signature page to Gold Medal Environmental of NJ, Inc. Agreement)

STATE OF)

) ss.

COUNTY OF)

I CERTIFY that on September 15, 2022, Darren Gruendel, the Secretary or Assistant Secretary of the Corporation, personally came before me, and this person acknowledged under oath, to my satisfaction, that:

(a) this person is the secretary or assistant secretary of Gold Medal Environmental of NJ, Inc. (the corporation named in this document);

(b) this person is the attesting witness to the signing of this document by the proper corporate officer of the corporation;

(c) this document was signed and delivered by the corporation as its voluntary act duly authorized by a proper resolution of its Board of Directors and;

(d) this person signed this proof to attest to the truth of these facts.

Signed and sworn to before me on

Secretary or Asst. Secretary

9/15/22, 2022

Notary Public of New Jersey
(Seal attached)