



## ENVIRONMENTAL SERVICES AGREEMENT

Stericycle Environmental Solutions, Inc., a Delaware corporation (“SRCL” or “Contractor”) and City of Killeen \_\_\_\_\_, a Texas municipal governmental entity (“Customer”) enter into and agree as provided in this Environmental Services Agreement (the “Agreement”) effective as of the \_\_\_ day of \_\_\_\_\_, 2016 (the “Effective Date”).

1. **Purpose and Term of Agreement.** This Agreement sets forth the terms and conditions under which Contractor shall provide services to Customer (“Services”). The term of this Agreement shall commence on the Effective Date and shall continue in effect for three (3) years or until terminated in accordance with Paragraph 13 below (“Initial Term”). After the Initial Term, this Agreement will automatically renew for successive renewal terms (“Renewal Term”) equal in length to the Initial Term unless either party gives written termination notice at least twelve months before expiration of the Initial Term or any subsequent Renewal Term. The parties agree that if any Services are performed prior to the Effective Date or the Initial Term, the terms and conditions of this Agreement shall govern.
2. **Services.** When Customer requires any Services covered by this Agreement, Customer may issue to Contractor, in writing, a purchase order, work authorization, notice to proceed, bid, or proposal (hereinafter “Work Order Authorization”). Any Work Order Authorization issued by Customer is subject to the terms and conditions of this Agreement and any other terms referenced herein. In the event of any conflict, the controlling order is this Agreement, any attachment(s) to, or references within, this Agreement, then the Work Authorization. Customer agrees to exclusively use Contractor for the Services at the locations and/or facilities indicated below during the Initial Term and any subsequent Renewal Term.

Location of Customer Facility or Facilities	Services
	1) Collection, transportation, and disposal of household hazardous waste, as found in the Description of Work in Contractor’s proposal for RFP16-08, attached as “Exhibit A” and incorporated herein for all purposes

3. **Fees and Billing.** (a) Amount. Customer agrees to pay Contractor for the performance of the Services at the fees or rates set forth in the Corporation’s Cost Proposal submitted and attached in “Exhibit A”, or, if not specified therein, at Contractor’s standard fees or rates for such Services at the time the Services are rendered. Customer is responsible for all sales and use taxes associated with the Services. Any payments made by credit card will be assessed a 2.5% service fee; (b) Invoices. Contractor shall invoice Customer for the Services performed, and Customer shall pay such invoice within thirty (30) days after the date of the invoice. In the event Customer has a good-faith objection to an invoice, Customer shall pay the undisputed amount pursuant to the terms of this Agreement and notify Contractor of said objection in writing within fifteen days; failure to object in writing within fifteen days constitutes waiver of objections to invoices. (c) Late Payment. For any late payment received by Contractor, Contractor shall charge Customer a service charge of one and one-half percent per month of the amount of the invoice or the maximum percentage allowed by law, whichever is less. Customer shall pay all reasonable costs of collection, including attorneys’ fees and expenses, incurred by Contractor in the collection of payment of invoices which are not timely paid by Customer; (d) Non-Payment of Invoices. If payment of Contractor invoices is not maintained on a 30-day current basis, Contractor may suspend further performance of any or all Services and/or withhold any and all materials, labor, work or data from Customer until full payment is made;
4. **Customer Site Access.** Customer shall provide access to Customer’s property and/or worksite during regular business hours as necessary to perform Services hereunder. Customer shall provide Contractor, its employees and subcontractors a safe working environment for any Services performed. Contractor, its employees and subcontractors shall comply with Customer’s safety procedures, provided such procedures are conspicuously and legibly posted in the working area or have been delivered, in writing, to Contractor prior to the commencement of Services. Customer grants to Contractor and warrants (if the project site is not owned by Customer) that permission has been granted by all persons necessary for Contractor, its employees, agents and subcontractors to enter the property on which the Services are to be performed for the purposes of performing the Services.
5. **Independent Contractor.** The relationship between Contractor and Customer under this Agreement shall be that of independent contractors. Each party shall exercise its own discretion in the method and manner of performing its duties, and neither party shall exercise control over the other except insofar as may be necessary to ensure performance and compliance with this Agreement. Employees, methods, equipment and facilities used by a party shall at all times be under its exclusive direction and control. Nothing in this Agreement shall be construed to designate either party, or any of its employees, as employees, agents, joint venturers or partners of the other party.
6. **Confidentiality.** Contractor and Customer shall treat as confidential property and not disclose to others during or subsequent to the term of this Agreement, except as required by law or as is necessary to perform this Agreement (and then only on a confidential basis satisfactory to both parties), any information (including any technical information, experience or data) regarding either party’s plans, programs, plants, processes, products, costs, equipment, operations, chemical constituents or customers which may come within the knowledge of the parties, their officers or their employees in the performance of this Agreement (“Confidential Information”), without in each instance securing the prior written consent of the other party. Contractor, upon Customer’s request, shall have its employees, agents, and subcontractors sign reasonable and customary confidentiality agreements furnished by Customer. **Exceptions.** Nothing above, however, shall prevent either party from disclosing to others or using in any manner Confidential Information which the disclosing party can show: (i) had, at the time of such disclosure or use, been published and become part of the public domain (other than by acts, omissions or fault of the disclosing party or their employees); (ii) had, at the time of such disclosure or use, been furnished or made known to the disclosing party by third parties (other than those acting directly or indirectly for or on behalf of the disclosing party) as a matter of legal right without restrictions on its disclosure; (iii) was in the disclosing party’s possession prior to the disclosure of the Confidential Information by one party to the other; or (iv) was developed independently by the receiving party without use of Confidential Information of the other party. Nothing herein shall limit the Customer’s ability to comply with the Public Information Act or the interpretation of Texas Attorney General opinions construing the same.

By signing in the space indicated below, Customer agrees to all terms and conditions of this Agreement, including those terms and conditions on the attached Environmental Services Addendum.

Between Stericycle Environmental Solutions, Inc.  
  
 \_\_\_\_\_  
 Name: Melinda Rath  
 Title: Vice President of Sales  
 Date: February 22, 2016

And: City of Killeen  
 \_\_\_\_\_  
 Name: Glenn Morrison  
 Title: City Manager  
 Date: March 1, 2016

7. **Warranties, Representations, and Standard of Care.** Contractor warrants and represents that (i) it possesses the business, professional, and technical expertise to perform the Services, (ii) it possesses the equipment, facilities, and employees to perform the Services, (iii) it shall perform the Services, within the limits prescribed by Customer, in a safe and workmanlike manner consistent with the care and skill ordinarily exercised for such services by other companies providing similar services under similar circumstances and conditions at the same time and in the same locality, (iv) it shall perform the Services in material compliance with all valid and applicable laws and regulations, and (v) its facilities have been issued, as of the date of this Agreement, all material permits, licenses, certificates, or approvals required by applicable statutes, ordinances, orders, rules and regulations necessary to perform the Services (hereinafter the "Standard of Care"). CONTRACTOR MAKES NO OTHER WARRANTIES OF ANY KIND, WHETHER WRITTEN, ORAL, EXPRESS, STATUTORY, OR IMPLIED (WHETHER ARISING UNDER LAW OR EQUITY OR CUSTOM OF USAGE), INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE.
8. **Insurance.** Contractor agrees to furnish to Customer insurance certificates upon request. In no event shall Contractor's liability under this Agreement, including the indemnity obligations contained herein, exceed the amount of Contractor's insurance.
9. **Delays.** In the event that Contractor's Services are interrupted due to causes outside of its control (except for Force Majeure), Contractor shall be compensated for the labor, equipment, and other costs (in accordance with Contractor's current Schedule of Fees) associated with maintaining the availability of its work force and equipment during the interruption or any other delay charges reasonably incurred by Contractor.
10. **Force Majeure.** Except for the obligation to pay for Services, any delay or failure of either party to perform its obligations hereunder shall be excused if, and to the extent, caused by acts of God, action of a governmental authority (including, but not limited to, revocation of permits and changes in applicable laws, regulations, rules or administrative practices of any governmental authority), fire, flood, windstorm, explosion, riot, war, sabotage, labor problems (including lockouts, strikes and slowdowns), court injunction or order or other such causes that are beyond the reasonable control of the affected party and without its fault or negligence; provided, that prompt notice of such delay shall be given by the affected party to the other party. Each of the parties hereto shall be diligent in attempting to remove such cause or causes but shall not be under any obligation to settle strikes by its employees.
11. **Termination.** (a) Either party may terminate this Agreement or any Services under this Agreement upon five (5) days prior written notice if the other party has breached any material provision of this Agreement, including non-payment and/or partial payment of invoices. The notice of termination shall specify the date when this Agreement or Services terminates and the reasons for termination. (b) If this Agreement is terminated under this paragraph, Customer shall pay Contractor for the Services performed by Contractor up to the date of the termination of this Agreement or of any Services performed hereunder plus reasonable costs incurred by Contractor in terminating this Agreement or such Services, including but not limited to demobilization expenses.
12. **Termination for Governmental Non-Appropriations**

A contract is a commitment of the City's current revenues only.

- (a) City represents and warrants: that it has appropriated and budgeted the necessary fund to make all payments required pursuant to such contract for the remainder of the fiscal year in which the payment term commences; and that it currently intends to make payments for the full term as scheduled in the applicable payment schedule if funds are appropriated for the payment in each succeeding fiscal year by its governing body. Without contractually committing itself to do so, City reasonably believes that monies in an amount sufficient to make all payments can and will lawfully be appropriated; therefore, City agrees to budget requests to include the payments payable during each fiscal year in the budget requests presented to City's governing body for each fiscal year; provided, that City's governing body retains authority to approve or reject any such budget request. All payments shall be payable out of the general funds of City or out of other funds legally appropriated therefore. Contractor agrees that this contract will not be a general obligation of City and this contract shall not constitute a pledge of either the full faith and credit of City or the taxing power of City.
- (b) If City's governing body fails to appropriate sufficient funds in any fiscal year for payments due under this contract and if other funds are not legally appropriated for such payment, then a non-appropriation event shall be deemed to have occurred. If a non-appropriation event occurs, then: (1) City shall give Contractor immediate notice of such non-appropriation event and provide written evidence of such failure by City's governing body; (2) on the return date, City shall return to Contractor all of the equipment covered by the affected contract, at City's sole expense; (3) the contract shall terminate on the return date without penalty to City; (4) return date means the last day of the fiscal year for which appropriations were made for the payments due under the contract.
13. **Waiver.** Any failure by either party to enforce any of the terms or conditions of this Agreement shall not constitute a waiver of such terms or conditions and shall not affect or impair such terms or conditions in any way or the right of either party at any time to avail itself of such remedies as it may have for any default in the performance of such terms or conditions.
14. **Disputes.** Each party shall bear its own costs, including its own attorneys' and/or expert fees and costs. The cost of any mediation (or, if applicable, arbitration) service shall be borne equally by both parties unless otherwise agreed by the parties. If legal action is brought in connection with any dispute arising out of this Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees (whether in-house or outside counsel is used), court costs, collection agency fees, and all other reasonable costs incurred in connection with the legal action.
15. **Miscellaneous.** (a) Customer represents that Customer is contractually free to enter into this Agreement and to perform hereunder and shall indemnify and defend, to the extent allowed by law, Contractor against all allegations brought against Contractor if Customer's representation is not correct. (b) Except where otherwise expressly authorized, notice shall be by facsimile, by first class certified or registered mail, or by commercial delivery service issuing a receipt for delivery and addressed as set forth on the signature page, unless changed in writing by the party to whom the notice is being sent. Notice shall be effective upon delivery, except that notice via facsimile shall be effective upon the next business day after receipt, provided that a confirming copy of the notice is also mailed via first class mail to the applicable address. (c) Neither party shall assign its rights or obligations under this Agreement without prior written consent of the other party; provided however, that such consent shall not be unreasonably withheld. Notwithstanding, Contractor may assign its rights or obligations under this Agreement to its parent, corporate affiliates, or subsidiaries without the consent of Customer. Additionally, Contractor may subcontract, orally or in writing, for performance of some or all of the Services with any of its corporate affiliates, parent or subsidiaries without the consent of Customer. If Customer transfers a material part of its assets and/or its operations at any facility or its stock to a third party, Customer shall require the third party to accept an assignment of this Agreement, as it relates to any applicable Facility, in form and content acceptable to Contractor. (d) This Agreement shall be construed in all respects in accordance with laws of the state in which the Services were provided and venue shall be proper in Bell County, Texas. (e) Paragraph headings are for the convenience of the parties only and are not to be construed as part of this Agreement. Capitalized terms in this Agreement, including Attachments, shall carry their meanings throughout as defined in this Agreement. All references to this Agreement shall include all Attachments hereto as amended and supplemented from time to time. (f) This Agreement shall apply to, inure to the benefit of, and be binding upon Contractor and Customer and their respective permitted successors and assigns. (g) This Agreement (including all Attachments, Work Plans, Work Order Authorizations, Online Terms and Conditions, or other documents incorporated into this Agreement) is the entire Agreement and understanding of Contractor and Customer regarding the Services. This Agreement supersedes any and all prior or contemporaneous contracts, agreements, purchase orders, representations, terms and conditions, whether oral or written relating to the Services. All previous representations relating to this Agreement or the Services, whether written or oral, are void. No terms, conditions, prior course of dealings, course of performance, usage of trade, understandings, purchase orders, or agreements purporting to modify, vary, supplement or explain any provision of this Agreement shall be effective unless in writing and signed by authorized representatives of each party. In no event shall the pre-printed terms or conditions in any Customer Work Order Authorization or similar document be considered an amendment or modification whether such terms conflict or not, with this Agreement, even if such documents are signed by representative of both parties. Except where this Agreement expressly provides for modification by one party, no modification of this Agreement shall be binding on either party unless it is specifically negotiated, in writing and signed by an authorized representative of each party. If any provision of this Agreement is prohibited by or invalid under any applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or any other provision of this Agreement.

**Environmental Services Addendum**  
*(Waste Management Services)*

Addendum to 2016 Service Agreement, City of Killeen

1. Insurance: CONTRACTOR shall procure and maintain, at its expense, during the term of this agreement, at least the following insurance coverages:

General Liability \$1,000,000  
General Liability Aggregate \$2,000,000  
Automobile Liability (combined single limit \$5,000,000  
Worker's Compensation \$1,000,000  
Excess Liability \$5,000,000  
Pollution Liability \$10,000,000

The City of Killeen shall be named as an additional insured on the Certificate of Insurance. A Certificate of Insurance will be issued after full execution of the service agreement.

2. CONTRACTOR shall be the Generator for all waste accepted at the City of Killeen household hazardous waste (HHW) collection events performed during the term of this contract.

**3. Conditionally Exempt Small Quantity Generator Services**

CESQG's are entities that 1) generate no more than 220 lbs. per month of hazardous waste and no more than 2.2 lbs. per month of acutely hazardous waste. Conditionally exempt means an entity that generates the waste is exempt from hazardous waste management regulations if they comply with four basic requirements:

- 1) Generator of waste has identified the waste material by waste classification, shipping records, and quantities of hazardous waste on a monthly basis;
- 2) Does not ever store more than 2,200 lbs. of hazardous on their property at any time;
- 3) Sends the waste material to an approved waste disposal facility;
- 4) Maintains records for the waste material to prove the generator of the waste material is a CESQG.

CESQG's are not required to obtain a Texas solid-waste registration number or an EPA identification number if they meet the above requirements. Industrial entities that generate more than 220 lbs. of Class 1 industrial waste per month are required to obtain a Texas solid-waste registration number.

To conduct a CESQG collection event in conjunction with the Killeen HHW program, the following process will apply:

- 1) The event will be scheduled separately from the scheduled HHW collection event. The CESQG event shall be scheduled to occur the day before the HHW scheduled collection event date to minimize mobilization costs. Stericycle will develop a separate operations plan for the CESQG collection and submit any required notifications to TCEQ or other regulatory agencies as may be required.
- 2) The CITY OF KILLEEN should notify potential CESQG event participants separately from any HHW event advertisements/notifications to prevent homeowners from bringing residential HHW to the event and to prevent CESQG participants from bringing their business waste to the HHW collection event.
- 3) Scheduling participation at the CESQG event shall be by appointment through a pre-registration process with Stericycle. The CITY OF KILLEEN can provide interested generators with the registration information. The registration process will include the name of the generator, identification of the waste material by proper shipping

documents, label, or MSDS, and quantity of waste material, so a waste profile can be created prior to the CESQG collection event. CESQG event participation will be limited to participants who are CESQG's.

- 4) The CESQG registrant will bring the waste material to the designated collection site on the specified date and during the specified hours of the CESQG collection event. Stericycle can provide waste transporting information to the participant to help them understand how to transport the waste material safely and in accordance with any applicable regulations. NO HHW will be accepted during the CESQG event and no CESQG waste will be accepted during the HHW event on the following day.
- 5) CESQG event participants will be required to bring proper documentation as outlined above that validates the generator requirements/qualifications of a Conditionally Exempt Small Quantity Generator.
- 6) The waste material that is collected during the event will be manifested and packaged separately from any HHW waste that is collected. If required due to the type and amount of waste collected, the CESQG manifested waste will be transported from the collection site to the Chemical Reclamation Services TSDF after the conclusion of the CESQG event.
- 7) Pricing for CESQG collection activities will be the pricing included in the attached pricing sheet submitted with the proposal response for RFP16-08 ("Exhibit A").