

FORM OF SERVICES AGREEMENT

THIS SERVICES AGREEMENT (this “*Agreement*”) is made and entered into as of [____], 2024 (the “*Effective Date*”), by and between the State Environmental Improvement and Energy Resources Authority, a body corporate and politic and a governmental instrumentality of the State of Missouri, P.O. Box 744, Jefferson City, Missouri 65102 (the “*Authority*”), and [____], a [____] with offices at [____] (the “*Company*”). The Authority and Company are each a “*Party*” and collectively, the “*Parties*”.

WHEREAS, the Authority was notified by the United States Environmental Protection Agency (the “*EPA*”) that its workplan was accepted for Solid Waste Infrastructure for Recycling (“*SWIFR*”) Grants, which workplan requires the Authority to develop various components of the plan with respect to sustainable materials management (“*SMM*”);

WHEREAS, the Authority solicited proposals from qualified consultants to develop the SMM plan components (collectively, the “*SMM Plan*”);

WHEREAS, the Company has submitted a Response to Request for Proposal to the Authority, a copy of which is attached hereto and incorporated herein as Exhibit A (the “*Proposal*”), to provide services in connection with the development of the SMM Plan; and

WHEREAS, the Authority desires to engage Company to perform the services set forth in the Proposal, and the Company desires to accept such engagement, all pursuant to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Recitals and Agreement. The statements in the recitals above are true and correct and form an integral part of this Agreement. This Agreement constitutes the entire agreement between the Authority and the Company and supersedes all other communications, either written or oral, with respect to the subject matter of this Agreement. The terms of this Agreement shall supersede any other agreement or document provided by Company with respect to the Services.

2. Services and Fees.

A. **Services.** The Company agrees to provide the services described on Exhibit B, attached hereto and incorporated herein (collectively, the “*Services*”) in accordance with the terms of this Agreement and the Proposal. Any change in Services must be approved by the Authority in writing prior to the provision of such Services. The Company shall manage all employment aspects of Company Personnel (as defined herein) assigned to perform the Services.

B. **Fees.** Payment for Services (the “*Fees*”) to be provided pursuant to this Agreement are set forth in Exhibit B. Prices for the Services shall be firm and not subject to adjustment or variation, unless specifically approved in writing by the Authority. Except as otherwise provided herein, the payment due for the Services set forth in Exhibit B constitutes the full amount(s) payable to the Company for the performance of the Services by the Company, free and clear of any additional charges, including, without limitation, all general overhead and administrative costs incurred in the provision of the Services and any additional

services or expenses not contemplated in Exhibit B such as modifications to the SMM Plan required by the EPA. The Authority will use its reasonable efforts to make payment net 30 days from the Authority's receipt of the Company's invoice. The Company shall be solely responsible for compliance with all applicable federal, state, local and foreign wage and hour laws in connection with all Company Personnel.

- C. Expenses. All expenses incurred by the Company in performing the Services shall be at the Company's sole cost.

3. Term and Termination.

- A. Term. The initial term of this Agreement shall commence as of the Effective Date and, unless sooner terminated in accordance with this Agreement, shall continue until [December 31, 2025] (the "**Term**").
- B. Termination. Notwithstanding anything to the contrary in this Agreement, the Authority may terminate this Agreement at any time for the Authority's convenience, by giving the Company at least 30 days' written notice of termination. Upon receipt of such notice, if requested by the Authority, the Company shall immediately cease all Services. In addition, either Party may terminate, at its option, this Agreement at any time upon written notice if the other Party is in material default of any covenant, representation, or warranty hereunder and such Party fails to cure such default within ten business days after such defaulting Party's receipt of notice from the other Party. Further, the Authority may terminate this Agreement upon the insolvency of the Company or institution of any proceeding by or against the Company in bankruptcy or insolvency, or a receiver or trustee is appointed for the Company. Notwithstanding the foregoing termination rights, the Company shall be obligated to fulfill the terms of this Agreement through the termination date as a condition of the Authority's obligation to make payment therefor through the termination date in accordance with the terms hereof.
- C. Post-Termination Claims. If this Agreement is terminated before the expiration of the Term, the Authority shall continue to be obligated to pay the Fees then due and to pay for any documented Services up to the effective date of termination.

4. Progress Reports and Non-Compliant Services.

- A. Upon request by the Authority, the Company shall promptly submit a progress report with respect to any Services. Such progress report shall detail the Services performed to date and the estimated time and cost to complete the Services, and such other information as the Authority reasonably requests.
- B. The Authority shall notify the Company in writing of any non-compliant Services. Within 15 business days after the Company receives such notice, it shall: (1) provide evidence in reasonable detail that the Services comply with the terms of this Agreement; (2) correct the deficiencies in the Services previously provided by the Company; or (3) deliver to the Authority a written plan to correct the deficiencies in the Services within a period of time that is reasonably acceptable to the Authority under the circumstances.

- 5. Company Personnel. The Company shall be solely responsible for all salaries, employee benefits, social security taxes, federal and state unemployment insurance, and any and all similar expenses or taxes relating to the Company, its subcontractors and their employees, agents or other persons working at the direction or permission of Company (collectively the "**Company Personnel**"). Neither the Company nor

any Company Personnel shall be entitled to participate in, or to receive any benefits from, the Authority's or the State of Missouri's employee benefit or welfare plans. The Company shall also be solely responsible for any and all taxes or assessments imposed or charged with respect to the Fees, the Services or the performance by the Company of its obligations under this Agreement.

6. Proprietary Rights/Work For Hire.

- A. Upon full payment of all amounts due Company under this Agreement, and exclusive of any Company Property, as hereinafter defined, the Authority and its successors and assigns, shall be entitled to, and shall own as its exclusive property, all of the results and proceeds of the Services, including without limitation the SMM Plan, in whatever stage of completion (which results and proceeds are hereafter collectively referred to as the "**Work Product**"), all of which shall be considered a work-for-hire, including without limitation, all written work, research, concepts, reports, documentation, data, all forms of data files (including, but not limited to, spreadsheets, databases, text files, and word processing files) and other tangible or intangible work product produced by the Company as part of the Services hereunder. The Authority shall own all rights in the Work Product in perpetuity. The Authority shall have the right to dispose of the Work Product and/or make any or all uses thereof as it, at any time and in the exercise of its sole discretion for the Authority's internal business purposes and the purposes contemplated under this Agreement. Notwithstanding anything to the contrary in this Section 6.A., the Company shall retain sole and exclusive ownership of all rights, title and interest in its work papers, proprietary information, processes, methodologies, know-how and software, including such information as existed prior to the delivery of the Services and, to the extent such information is of general application, anything that it may discover, create or develop during provision of the Services (collectively, the "**Company Property**"). To the extent the Work Product contains Company Property; the Authority is granted a non-exclusive, non-assignable, royalty-free license to use it in connection with the subject of this Agreement.
- B. Except as otherwise provided in this Section, the Company shall deliver all originals and copies (including, but not limited to, hard copies and digital copies in their native format) of the Work Product (whether completed or in process) and all research, plans, designs, specifications, and any other work product or information which pertains to the Work Product to the Authority upon the expiration of the Term or earlier termination of this Agreement (all of which shall be free and clear of any and all claims, liens, mortgages and other encumbrances of any kind or nature whatsoever) and, exclusive of any requirements under the Company's internal retention policies and subject to Section 19.B. herein, the Company shall not retain or use any of the Work Product without the Authority's prior written consent, such consent not to be unreasonably withheld; provided, however, that the Company may refer to the Services provided to the Authority in subsequent proposals and in marketing materials.
- C. All provisions of this Section shall survive the expiration of the Term or earlier termination of this Agreement.

7. Indemnification; Limitation of Liability.

- A. The Company hereby agrees to indemnify the Authority and its members, directors, officers, employees, and agents (collectively, the "**Authority Indemnities**") from all third-party claims, lawsuits, damages, losses and liabilities, including, without limitation, attorneys' fees, and other expenses, caused by or arising out of: (a) the gross negligence or willful misconduct of the Company, its subcontractors and its affiliates, and their respective

employees or agents in connection with the Services furnished under this Agreement; or (b) any and all claims, demands, and liens respecting the Services furnished or labor performed under this Agreement, including any intellectual property infringement claim. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

- B. Notwithstanding the terms of any other provision, except to the extent expressly prohibited by applicable law and exclusive of any direct loss to the Authority caused by intentional or willful misconduct, fraudulent act, or other tortious conduct of Company or Company's employees or agents, the total liability of Company and its affiliates, directors, officers, employees, subcontractors, agents and representatives for all claims of any kind arising out of this Agreement, whether in contract, tort or otherwise, shall be limited to two (2) times the total fees paid to Company under this Agreement. Neither Company nor Authority shall in any event be liable for any indirect, consequential or punitive damages, even if Authority or Company have been advised of the possibility of such damages.

8. Insurance. The Company agrees to secure and maintain the following insurance coverages from a reputable licensed company reasonably acceptable to the Authority during the Term:

- A. Commercial General Liability (“*CGL*”) insurance (including contractual liability covering this Agreement) for property loss or damage and personal or bodily injury or death of any person with a combined single limit of \$1,000,000 per occurrence, and aggregate coverage of \$2,000,000. Such CGL insurance shall cover claims arising from or related to products and completed operations, broad form property damage liability, provide coverage for contractual liability and cross liability and name the Authority as additional insured.
- B. The Company shall maintain workers compensation insurance covering all states of operation under this Agreement for the payment of claims for bodily injuries, including death or disease sustained by employees in the amount of at least the statutory limits under applicable law or \$500,000, whichever is greater. Employers' liability coverage shall be included with a limit of liability of not less than \$500,000. A waiver of subrogation in favor of the Authority shall be obtained from the Company's insurer.
- C. In the event Company's activities provided to the Authority under this Agreement can be covered by professional liability insurance, then the Company shall also maintain professional liability insurance covering all claims, damages, and liabilities for personal injury, death or damage to or loss of property arising from, connected with, or attributable to the acts or omissions of the Company in the amount of not less than \$2,000,000. The professional liability policy shall name the Authority as additional insured.

All insurance provided by the Company shall be primary, and any insurance maintained by the Authority shall be excess and not contributing with Company insurance. The Company shall arrange with its insurance companies to endorse its insurance policies accordingly. The Authority shall be notified in writing of cancellation or amendment of any of the policy terms described above at least 30 days prior to the effective date of such cancellation or amendment. Notice shall be sent to the Authority in accordance with this Agreement. Within five days following the execution of this Agreement, the Company shall deliver certificates of insurance or other materials evidencing the above coverages and endorsements, including but not limited to (i) the waiver of subrogation, except as to claims arising out of the acts or omissions of Authority, its employees and its agents, and (ii) required additional insured language.

9. Representations and Warranties. The Company represents and warrants that:

- A. The Authority's purchase or use of the Services furnished pursuant to this Agreement, in the form in which furnished to the Authority, will not infringe any proprietary right of a third party;
- B. The Services furnished pursuant to this Agreement will be performed in a professional manner in accordance with recognized professional consulting standards for similar services and that qualified personnel will be assigned for that purpose;
- C. It has obtained all licenses and permits required to observe and perform the terms, covenants, conditions, and other provisions on its part to be observed or performed under this Agreement;
- D. It has obtained all third party necessary consents, permissions, or releases, and will timely make all payments to third parties, that may be required to provide the Services;
- E. It shall be solely responsible for all professional quality and technical accuracy and completeness of the Services; and
- F. The execution, delivery, or performance by it of this Agreement will comply with all applicable federal, state and local laws, codes, ordinances, regulations and rules.

In addition to being true as of the date first written above, each of the foregoing representations, warranties and covenants shall be true at all times during the Term. The Company acknowledges that each of such representations, warranties and covenants is deemed to be material and has been relied upon by the Authority notwithstanding any investigation made by the Authority.

10. Notices. All notices, consents, requests, demands and other communications hereunder are to be in writing, and are deemed to have been duly given and received: (a) when delivered in person; (b) three business days after deposit in the United States mail, postage prepaid, return receipt requested; (c) one business day after delivery to an overnight courier service with payment provided for, in each case with proof of delivery provided, addressed as provided in the opening paragraph of this Agreement, unless otherwise instructed in writing; or (d) transmitted electronically to the following email addresses (or to such other email addresses as a Party may designate by notice to the other Party): if to the Authority, joe.boland@eiera.mo.gov with a copy to mark.pauley@eiera.mo.gov and if to the Company, [] with a copy to [] .

11. Governing Law and Jurisdiction. This Agreement is made in the State of Missouri and shall be governed exclusively by the substantive laws of Missouri, without giving effect to any conflict-of-laws rules requiring the application of the substantive law of any other jurisdiction. The Authority and the Company knowingly and voluntarily intend and agree that the mandatory, exclusive venue for any action in any way related to this Agreement or its enforcement shall be the U.S. District Court for the Eastern District of Missouri, or any state court located in Cole County, Missouri. All Parties hereby knowingly and voluntarily waive any and all objections to venue and personal jurisdiction in the foregoing, and submit themselves thereto. Each Party hereby waives any right it may have to assert the doctrine of *forum non conveniens* or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this Section, and stipulates that the aforementioned courts shall have *in personam* jurisdiction and venue over each of them for the purpose of litigating any dispute, controversy, or proceeding arising out of or related to this Agreement.

12. Remedies. Upon termination for cause, or default or breach of this Agreement by either Party, the terminating or non-defaulting Party shall have the right to recover from the other Party all damages and other remedies available to the terminating or non-defaulting Party at law or in equity resulting from or arising out of the default under this Agreement. All such remedies shall be cumulative and non-exclusive. To the extent permitted by law, each remedy may be exercised concurrently or separately. The exercise of any one remedy shall not be deemed to be an election of such remedy or to preclude the exercise of any other remedy.

13. Assignment and Subcontracts. This Agreement shall be binding upon the Authority and the Company and their respective successors and assigns. The Company shall not assign, subcontract or delegate its rights or obligations under this Agreement to any third party without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed. Notwithstanding any permitted assignment or subcontracting, the Company shall continue to be liable for any breach of this Agreement or any act or omission of the third party related to this Agreement. Any losses caused by subcontractors in connection with any performance of the Services hereunder shall be the responsibility of the Company.

14. Nondiscrimination in Employment. Those provisions of Title VI of the Civil Rights Act of 1964 providing that no person in the United States shall, on the grounds of race, color, sex, religion or national origin, be excluded for participation in, be denied the benefits of, or otherwise subjected to discrimination under this Agreement, are hereby incorporated into this Agreement by reference.

15. Employment of State Employees. No person who during the performance of this Agreement is employed by or under contract with the State of Missouri or any department, commission, agency, or branch thereof, whose duties as such employee or consultant include matters relating to or affecting the subject matter of this Agreement, shall while so employed by or under contract with the State of Missouri, be employed by the Company and/or receive any compensation from the Company for any work or other purpose related in any way to the performance of this Agreement by the Company.

16. Employment of Unauthorized Aliens Not Permitted. The Company acknowledges approval of this Agreement requires compliance with Section 285.530, RSMo regarding enrollment and participation in the federal work authorization program with respect to all persons performing services under this Agreement. The Company represents and warrants that it is in compliance with Section 285.530, RSMo at the time of execution of this Agreement and has provided a sworn affidavit and supporting documentation affirming participation in a qualified work authorization program as evidence thereof.

17. Report of Conflicts of Interest. The Company shall promptly report to the Authority any proposed or existing relationship which might reasonably be construed as an organizational conflict of interest which would diminish the Company's capability to render impartial or objective assistance and advice. The Authority shall promptly make a determination where the proposed relationship would constitute an organizational conflict of interest in regard to the subject matter of this Agreement. If determined by the Authority that an organizational conflict of interest exists and the Company enters into the proposed contractual relationship, the Authority may, in its sole discretion, terminate this Agreement upon written notice to the Company.

18. Anti-Boycott. By entering into this Agreement, the Company certifies that it and its parent company, wholly or majority-owned subsidiaries, and other affiliates, if any, are not currently engaged in, or for the duration of this Agreement will not engage in, a boycott of goods or services from the State of Israel; companies doing business in or with the State of Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel. The Company understands that “boycott” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations, but does not include an action made for ordinary business purposes.

19. Miscellaneous Provisions.

- A. No Waiver. Failure of a Party to insist on performance of any of the terms and conditions or requirements of this Agreement shall not be construed as a waiver of such terms, conditions or requirements, and shall not affect the right of such Party thereafter to enforce each and every term, condition or requirement.
- B. Books and Records. During the Term and for a period of two years thereafter, the Company shall maintain such time sheets and expense records (collectively, “*Records*”) as are necessary to substantiate that: (i) all invoices and other charges submitted to the Authority for payment hereunder were valid and proper; and (ii) no payments have been made, directly or indirectly, by or on behalf of the Company to or for the benefit of any Authority employee or agent who may reasonably be expected to influence the Authority’s decision to enter into this Agreement, or the amount to be paid by the Authority pursuant hereto. The Authority and/or its representative shall have the right at any time during normal business hours, upon not less than five business days’ notice, to examine and copy said Records at the Authority’s sole cost and expense. The provision of this subsection shall survive the expiration of the Term or earlier termination of this Agreement.
- C. Time of the Essence; Acceptance. All time limits stated in this Agreement are of the essence of this Agreement. The Company shall make every reasonable effort to complete its performance within the time or schedule provided for in Exhibit B or as may be approved by the Authority in writing. Receipt of a deliverable occurs when the deliverable is provided to the Authority. Receipt of Services is deemed to occur when the Authority receives an invoice from Company for those Services.
- D. Survival. The warranties, remedies, and indemnities provided in this Agreement, as well as any other sections specifically indicating or contemplating survival, shall survive delivery of the Services and the expiration or earlier termination of this Agreement. Further, such provisions shall not be deemed waived by reason of acceptance or payment and shall be in addition to those implied or available at law.
- E. Relationship. The Parties shall be and act as independent contractors, and under no circumstances shall this Agreement be construed as one of agency, partnership, joint venture, or employment between the Parties. Each Party acknowledges and agrees that it neither has nor shall give the appearance or impression of having any legal authority to bind or commit the other Party in any way.
- F. Construction. Each Party to this Agreement expressly recognizes that this Agreement results from a negotiation process in which each Party was, or had the opportunity to be, represented by counsel and contributed (or had the opportunity to contribute) to the drafting of this Agreement. Given this fact, no legal or other presumptions against the Party drafting this Agreement concerning its construction, interpretation, or otherwise accrue to the

benefit of any Party to this Agreement, and each Party expressly waives the right to assert such a presumption in any proceedings or disputes connected with, arising out of, or involving this Agreement.

- G. Severability. If any provision of this Agreement is deemed to be invalid or unenforceable by any court of competent jurisdiction, then the balance of this Agreement shall remain enforceable, and such invalid or unenforceable provision shall be enforced by such court to the maximum possible extent.
- H. Amendment. This Agreement cannot be amended except by an agreement in writing signed by authorized representatives of both Parties and specifically referring to this Agreement.
- I. Attorneys' Fees. If either Party commences legal action to interpret or enforce the terms of this Agreement, the prevailing Party in such action shall be entitled to recover reasonable attorneys' fees and costs, including, without limitation, in-house attorney fees and all fees and costs incurred at the trial and appellate levels and in any bankruptcy, reorganization, insolvency or similar proceeding.
- J. Counterparts. This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original, but all of which when taken together shall constitute one and the same Agreement. Delivery of an executed counterpart hereof by facsimile, pdf, or other electronic transmission shall be deemed to be the same as delivery of a manually executed counterpart. Each of the individuals executed this Agreement certifies that he or she is duly authorized to do so.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Services Agreement as of the Effective Date hereof.

STATE ENVIRONMENTAL IMPROVEMENT AND ENERGY RESOURCES AUTHORITY [_____]

By: _____
Joe Boland
Executive Director

By: _____
Print Name: _____
Title: _____

EXHIBIT A

RESPONSE TO REQUEST FOR PROPOSAL

(see attached)

EXHIBIT B

SERVICES AND FEES

1. **Services.** [To be completed based upon proposal]
2. **Fees.** [To be completed based upon proposal]