

EnviroStars Regional Green Business Program Memorandum of Agreement ATTACHMENT B

SERVICEMARK LICENSE AGREEMENT

THIS AGREEMENT is made and entered into by and between City of Bellevue, as a Member of the EnviroStars Regional Green Business Program ("Licensee"), with its principal place of business at 450 110th Ave NE, Bellevue, WA 98004, and King County, acting through its Department of Natural Resources & Parks ("Licensor"), with its principal place of business at 201 S. Jackson St, Suite 600, Seattle, WA 98104.

WHEREAS, Licensor is committed to protecting environmental and public health by working towards a community that is free from hazardous contaminants, encouraging business practices which preserve and use natural resources efficiently, and reduce waste generation at its source, and has created an environmental certification program; and

WHEREAS, Licensor is the owner of all right, title and interest in and to the Servicemark EnviroStars and the associated logo identified in Attachment A (the "Servicemark"); and

WHEREAS, Licensor is willing to grant Licensee the right to use the Servicemark solely in accordance with the terms and conditions set forth herein;

NOW THEREFORE, for and in consideration of the promises and covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. SCOPE OF LICENSE.

- 1.1 GRANT OF LICENSE. Subject to the terms and conditions set forth in this Agreement, Licensor grants to Licensee a non-exclusive, non-transferable license to use the Servicemark in conjunction with EnviroStars services which shall, in part, promote Licensor's services, and may be jointly developed by Licensor and Licensee. Licensee may only use the Servicemark as a collective whole and shall not separately use any element or elements of the Servicemark.
- 1.2 RESERVATION OF RIGHTS. Licensor hereby reserves any and all rights not expressly and explicitly granted in this Agreement, including the Licensor's right to authorize or license use of the Servicemark or any other trademarks or names, to any third party for use in connection with any goods and services, including, but not limited to, EnviroStars Regional Green Business Program services.
- 1.3 Licensee may not assign, transfer, or sublicense this license.

2. LICENSE FEE. For the rights granted to Licensee herein, Licensee shall not pay the Licensor a license fee at the time of the execution of the Agreement in consideration for the rights granted herein. However Licensor reserves the right to require new consideration for any expenses incurred after the date of this Agreement in maintaining the EnviroStars brand, which has been

developed and in use since 1994. Licensee shall pay a reasonable portion of such costs at the request of Licensors.

3. OWNERSHIP OF THE SERVICEMARK.

3.1 OWNERSHIP. Licensee hereby acknowledges that the Licensors are the owners of the Servicemark, and any servicemark applications and/or registrations thereto, agrees that it will do nothing inconsistent with such ownership and agrees that all use of the Servicemark by Licensee shall inure to the benefit of the Licensors. Licensee agrees that nothing in this Agreement shall give Licensee any right, title or interest in the Servicemark other than the right to use the Servicemark in accordance with this Agreement. Licensee agrees not to register or attempt to register the Servicemark or the logo as a trademark, service mark, Internet domain name, trade name, or any similar trademarks or name, with any domestic or foreign governmental or quasi-governmental authority which would be likely to cause confusion with the Servicemark. The provisions of this paragraph shall survive the expiration or termination of the Agreement.

4. USE OF THE MARK; PROTECTION OF THE MARK.

4.1 PROPER USE. Licensee agrees that all use of the Servicemark shall only occur in connection with the EnviroStars services as agreed on and in strict compliance with the terms of this Agreement. Licensee may use the Servicemark as set forth in Section 1.1 as well as in connection with the promotion of the EnviroStars Regional Green Business Program ("Regional Program") services. Licensee agrees to use the Servicemark in strict compliance with the Co-branding criteria and guidelines developed by the Regional Program. The look of the graphic logo may be periodically updated by the Regional Program, with advance agreement in writing by the Local Hazardous Waste Management Program as the representative of Licensors.

4.2 QUALITY STANDARDS. Licensee agrees to maintain a consistent level of quality of the EnviroStars services performed in connection with the Servicemark substantially equal to that found in Licensors' existing EnviroStars Logo Use Guidelines (Attachment A to this Agreement) and Web site services; and as found on the Regional Program web platform.

4.3 MONITORING BY THE Licensors. Licensee acknowledges that the Licensors have no further obligations under this Agreement other than the right to periodically monitor Licensee's use of the Servicemark in conjunction with the EnviroStars services. Upon request by the Licensors, Licensee shall provide Licensors with representative samples of Regional Program shared marketing, promotion, and co-branding prior to the time the Servicemark is first published on the Internet or to the public. Use of the Servicemark on goods or services other than the EnviroStars Program services or the promotion of the EnviroStars services, shall constitute material breach of the Agreement. If such material

breach has not been cured within seven (7) business days following receipt of notice from Licensor, this Agreement shall be terminated.

- 4.4 SERVICES. If Licensor reasonably determines that Licensee's services contains or presents any materials that constitutes an infringement of the Licensor's trademark, Licensor may immediately terminate the license grant described in Section 1.1 if Licensee has not revised, removed or delinked to such material to Licensor's reasonable satisfaction within seven (7) business days of written notice from the Licensor. If the Licensor reasonably determines that the EnviroStars services contains or presents any material that could reasonably constitute a clear and unambiguous infringement of a third party's copyright, servicemark, trademark, patents or trade secrets, the Licensor and Licensee shall confer and mutually agree on a proper course of action.

5. TERMINATION.

- 5.1 TERM AND TERMINATION. This Agreement and the term of the license granted herein shall continue for the duration of the currently in effect registration of the Servicemark, i.e., through 2017, and shall automatically be extended beyond that date, without further action by either party to this Agreement, upon renewal of the registration of the Servicemark by the State of Washington for the duration of such renewal. Notwithstanding the forgoing, Licensor shall have the right to terminate this Agreement upon the occurrence of one or more of the following: (a) any material breach by Licensee of its obligation under this Agreement which remains uncured for more than seven (7) business days following written notice of such breach from Licensor, or (b) use of the Servicemark by Licensee in a manner which is directly, explicitly or maliciously disparaging of its products and services and which remains uncured for three (3) business days following notice from the Licensor.
- 5.2 TERMINATION as MEMBER UNDER THE MEMORANDUM OF AGREEMENT. This Agreement will immediately and automatically terminate in the event and on the date that Licensee's status as a Member under that certain Memorandum of Agreement, to which a form of this Agreement is attached as Attachment B, is terminated.
- 5.3 EFFECT OF TERMINATION. Upon termination of the Agreement, Licensee agrees it shall immediately cease any and all use of the Servicemark.

6. GENERAL.

- 6.1 GOVERNING LAW. This Agreement shall be subject to and governed in all respects by the statutes and laws of the State of Washington without regard to the conflicts of laws principles thereof. The Superior Court of King County shall have exclusive jurisdiction and venue over all controversies in connection herewith and each party hereby consents to such exclusive and personal jurisdiction and venue.
- 6.2 ENTIRE AGREEMENT. This Agreement constitutes the entire Agreement and understanding between the parties and integrates all prior discussions between them related to its subject matter. No modification of any terms of this Agreement shall be valid unless in writing and signed by an authorized representative of each party.

- 6.3 NOTICES. All notices required or permitted hereunder shall be given in writing addressed to the respective parties as set forth below and shall either be (a) personally delivered; (b) transmitted by postage prepaid certified mail, return receipt request; or (c) transmitted by nationally-recognized private express courier, and shall be deemed to have been given on the date of receipt if delivered personally, or three (3) days after deposit in mail or express courier. Either party may change its address for purposes hereof by written notice to the other in accordance with the provision of this Subsection. The addresses for the parties are as follows:

Licensors: 130 Nickerson St #100, Seattle WA 98109

Licensee: 450 110th Ave NE, Bellevue, WA 98004

- 6.4 WAIVER. Any waiver, either expressed or implied, by either party of any default by the other in the observance and performance of any of the conditions, covenants of duties set forth herein shall not constitute or be construed as a waiver of any subsequent or other default.
- 6.5 INDEPENDENT CONTRACTORS. The parties acknowledge and agree that they are dealing with each other hereunder as independent contractors. Nothing contained in the Agreement shall be interpreted as constituting either party the joint venture or partner of the other party or as conferring upon either party the power of authority to bind the other party in any transaction with third parties.
- 6.6 SURVIVAL. The provisions of Section 1.2 (Reservation of Rights) 3 (Ownership of the Servicemark), 5.2 (Effect of Termination) and 6 (General) will survive any termination of this Agreement.
- 6.7 EQUITABLE RELIEF. Licensee recognizes and acknowledges that a breach by Licensee of the Agreement will cause the Licensors irreparable damage which cannot be readily remedied in monetary damages in an action at law, and may, in addition thereto, constitute an infringement of the Servicemark. In the event of any default or breach by Licensee that could result in irreparable harm to the Licensors or cause some loss or dilution of Licensors' goodwill, reputation, or rights in the Servicemark, the Licensors shall be entitled to immediate injunctive relief to prevent such irreparable harm, loss, or dilution in addition to any other remedies available.
- 6.8 SEVERABILITY. Except as otherwise set forth in this Agreement, the provisions of this Agreement are severable, and if any one or more such provisions shall be determined to be invalid, illegal or unenforceable, in whole or in part, the validity, legality and enforceability of any of the remaining provisions or portion thereof shall be changed and interpreted so as to best accomplish the objectives of such provision or portion thereof within the limits of applicable law.
- 7.0 INDEMNIFICATION.

All liability, claims, loss or damage arising out of this Agreement is at the sole risk of the Licensee. Licensee shall indemnify, defend and hold harmless the Licensor, its officials, employees, agents and assigns from and against any claim arising from Licensee's use of the Servicemark.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives to be effective as of the last date set forth below.

For King County:

Signature: _____

Name: Christie True

Title: Director, Department of Natural Resources & Parks

Date: _____

For City of Bellevue:

Signature: _____

Name: Brad Miyake

Title: City Manager

Date: _____

Service mark License Agreement: ATTACHMENT A

1) Use the following **EnviroStars Program logo** to represent the program as a whole in marketing, advertising, promotional materials and venues (e.g. Business cards, letterhead, websites, electronic signatures, program reports, awards, grant applications, event/tradeshow booth exhibits and backdrop banners).



2) Use the **EnviroStars Certified logo** to represent individual businesses* which have been determined by EnviroStars Regional Program Member representatives to meet the EnviroStars program certification eligibility and qualification standards (e.g. window decal, recognition certificate, posters/signs to be placed at certified businesses, in certified business' own marketing). It can also be used to represent the EnviroStars Certification process and the broader group of EnviroStars Certified businesses on promotional and marketing materials (e.g. business and public outreach introductory brochures, certification-related web pages, listings/directories of certified businesses, visual media such as articles about certification).



3) Use **Co-branding** criteria and guidelines developed by the Regional Program. The look of the graphic logo may be periodically updated by the Regional Program, with advance agreement in writing by the Local Hazardous Waste Management Program as the representative of Licensor.

*the term "businesses" refers to commercial businesses, government agencies, organizations and others which meet the eligibility requirements for EnviroStars certification and/or recognition.