

SERVICE AGREEMENT BETWEEN
ECOLOGY CENTER, INC.
AND
CITY OF ANN ARBOR
FOR RECYCLING PLANT TOURS AT
THE MATERIALS RECOVERY FACILITY EDUCATION CENTER

The City of Ann Arbor, a Michigan municipal corporation, having its offices at 301 E. Huron, Ann Arbor, Michigan 48104 ("CITY") and Ecology Center, Inc., a Michigan nonprofit having its offices at 339 E. Liberty St., Suite 300, Ann Arbor, Michigan 48104 ("CONTRACTOR"), agree as follows:

The Contractor agrees to provide services to the City under the following terms and conditions:

I. DEFINITIONS

Administering Service Area/Unit means the Public Services Area.

Contract Administrator means the Solid Waste Coordinator, acting personally or through any assistants authorized by the Administrator/Manager of Public Services Administration/Systems Planning.

Project means public recycling plant tours at the Materials Recovery Facility (MRF) Education Center, 4150 Platt Road, Ann Arbor, MI 48108.

II. DURATION

This agreement shall become effective on July 16, 2013, and shall remain in effect until satisfactory performance of all services or June 30, 2018, whichever occurs first, unless terminated for breach or as provided in this agreement.

The parties agree that this Agreement may be renewed, at the sole option of the City, for one, two-year period under the same terms and conditions for the amount specified in Article IV, Compensation. Should the City elect to exercise its option to renew this Agreement, the City Administrator, acting personally or through the Contract Administrator, will provide written notice of its intent to renew no less than sixty (60) days prior to the termination date of the original term of the Agreement.

III. SERVICES

A. The Contractor agrees to provide educational programming services ("Services") as described in Exhibit A attached hereto and incorporated herein. The City retains the right to make changes to the quantities of service within the general scope of the Agreement at any time by a written order. If the changes add to or deduct from the extent of the services, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original Agreement.

B. Quality of Services under this Agreement shall be of the level of quality performed by experts regularly rendering this type of service. Determination of acceptable quality shall

be made solely by the Contract Administrator.

- C. The Contractor shall perform its Services in compliance with all statutory, regulatory and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.
- D. The Contractor shall provide services to the City at the City of Ann Arbor's Materials Recovery Facility Education Center, 4150 Platt Road, Ann Arbor, MI 48108.

IV. COMPENSATION OF CONTRACTOR

- A. The Contractor shall be paid in the manner set forth in Exhibit B. Payment shall be made monthly, unless another payment term is specified in Exhibit B, following receipt of invoices submitted by the Contractor, and approved by the Contract Administrator. Total compensation payable for all Services performed during the term of this Agreement shall not exceed \$232,540.16 over the five year contract.
- B. The Contractor will be compensated for Services performed in addition to the Services described in Section III, only when those additional Services have received prior written approval of the Contract Administrator. Compensation will be payable according to the fee schedule in Exhibit B. The Contract Administrator shall be the sole arbitrator of what shall be considered "reasonable" under this provision.
- C. The Contractor shall keep complete records of time spent and materials used on the Project so that the City may verify invoices submitted by the Contractor. Such records shall be made available to the City upon request and submitted in summary form with each invoice.

V. INSURANCE; INDEMNIFICATION

- A. The Contractor shall procure and maintain during the life of this contract, such insurance policies, including those set forth in Exhibit C, as will protect itself and the City from all claims for bodily injuries, death or property damage which may arise under this contract; whether the acts were made by the Contractor or by any subcontractor or anyone employed by them directly or indirectly. In the case of all contracts involving on-site work, the Contractor shall provide to the City, before commencement of any work under this contract, documentation demonstrating it has obtained the policies required by Exhibit C.
- B. Any insurance provider of Contractor shall be admitted and authorized to do business in the State of Michigan and shall carry and maintain a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A-" Overall and a minimum Financial Size Category of "V". Insurance policies and certificates issued by non-admitted insurance companies are not acceptable unless approved in writing by the City.
- C. To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold the City, its officers, employees and agents harmless from all suits, claims,

judgments and expenses including attorney's fees resulting or alleged to result, from any acts or omissions by the Contractor or its employees and agents occurring in the performance of or breach in this Agreement.

VI. COMPLIANCE REQUIREMENTS

- A. Nondiscrimination. The Contractor agrees to comply and to require its subcontractor(s) to comply, with the nondiscrimination provisions of Section 209 of the Elliot-Larsen Civil Rights Act (MCL 37.2209) The Contractor further agrees to comply with the nondiscrimination provisions of Chapter 112 of the Ann Arbor City Code and to assure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity.
- B. Living Wage. The Contractor is a "covered employer" as defined in Chapter 23 of the Ann Arbor City Code and agrees to comply with the living wage provisions of Chapter 23 of the Ann Arbor City Code. The Contractor agrees to pay those employees providing Services to the City under this Agreement a "living wage," as defined in Section 1:815 of the Ann Arbor City Code, as adjusted in accordance with Section 1:815(3) and specified in Exhibit D; to post a notice approved by the City of the applicability of Chapter 23 in every location in which regular or contract employees providing services under this Agreement are working; to maintain records of compliance; if requested by the City, to provide documentation to verify compliance; to take no action that would reduce the compensation, wages, fringe benefits, or leave available to any employee or person contracted for employment in order to pay the living wage required by Section 1:815; and otherwise to comply with the requirements of Chapter 23.

VII. REPRESENTATIONS AND WARRANTIES BY CONTRACTOR

- A. The Contractor warrants that the quality of its Services under this Agreement shall conform to the level of professional quality performed by experts regularly rendering this type of service.
- B. The Contractor warrants that it has all the skills, experience, and professional licenses necessary to perform the Services specified in this Agreement.
- C. The Contractor warrants that it has available, or will engage, at its own expense, sufficient trained employees to provide the Services specified in this Agreement.
- D. The Contractor warrants that it is not, and shall not become overdue or in default to the City for any contract, debt, or any other obligation to the City including real and personal property taxes.

VIII. TERMINATION OF AGREEMENT; RIGHTS ON TERMINATION

- A. If either party is in breach of this Agreement for a period of fifteen (15) days following receipt of notice from the non-breaching party with respect to a breach, the non-breaching party may pursue any remedies available to it against the breaching party under applicable law, including but not limited to, the right to terminate this Agreement without further notice.
- B. The City may terminate this Agreement, on at least thirty (30) days advance notice, for any reason, including convenience, without incurring any penalty, expense or liability to Contractor, except the obligation to pay for Services actually performed under the Agreement before the termination date.
- C. Contractor acknowledges that, if this Agreement extends for several fiscal years, continuation of this Agreement is subject to appropriation of funds for this Project. If funds to enable the City to effect continued payment under this Agreement are not appropriated or otherwise made available, the City shall have the right to terminate this Agreement without penalty at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to the Contractor. The Contract Administrator shall give the Contractor written notice of such non-appropriation within thirty (30) days after it receives notice of such non-appropriation.
- D. The remedies provided in this Agreement will be cumulative, and the assertion by a party of any right or remedy will not preclude the assertion by such party of any other rights or the seeking of any other remedies.

IX. OBLIGATIONS OF THE CITY

- A. The City agrees to give the Contractor access to staff and City owned properties as required to perform the necessary services under the agreement.
- B. The City shall notify the Contractor of any defects in the services of which the City has actual notice.

X. ASSIGNMENT

- A. The Contractor shall not subcontract or assign any portion of the services without prior written consent to such action by the City. Notwithstanding any consent by the City to any assignment, Contractor shall at all times remain bound to all warranties, certifications, indemnifications, promises and performances, however described, as are required of it under the Agreement unless specifically released from the requirement, in writing, by the City
- B. The Contractor shall retain the right to pledge payment(s) due and payable under the agreement to third parties.

XI. NOTICE

All notices and submissions required under this Agreement shall be delivered to the respective party in the manner described herein to the address stated in this Agreement or such other address as either party may designate by prior written notice to the other.

Notices given under this Agreement shall be in writing and shall be personally delivered, sent by next day express delivery service, certified mail, or first class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given on the date when one of the following first occur: (1) the date of actual receipt; (2) the next business day when notice is sent next day express delivery service or personal delivery; or (3) three days after mailing first class or certified U.S. mail.

If Notice is sent to the CONTRACTOR, it shall be addressed and sent to:

Ecology Center
339 E. Liberty St., Suite 300
Ann Arbor, MI 48103
Attn: Michael Garfield, Exec. Director

If Notice is sent to the CITY, it shall be addressed and sent to:

City of Ann Arbor
301 E. Huron St., POB 8647
Ann Arbor, Michigan 48107
Attn: Thomas McMurtrie, Solid Waste Coordinator

XII. CHOICE OF LAW

This Agreement will be governed and controlled in all respects by the laws of the State of Michigan, including interpretation, enforceability, validity and construction. The parties submit to the jurisdiction and venue of the Circuit Court for Washtenaw County, State of Michigan, or, if original jurisdiction can be established, the United States District Court for the Eastern District of Michigan, Southern Division, with respect to any action arising, directly or indirectly, out of this Agreement or the performance or breach of this Agreement. The parties stipulate that the venues referenced in this Agreement are convenient and waive any claim of non-convenience.

XIII. CONFLICT OF INTEREST

Contractor certifies it has no financial interest in the Services to be provided under this Agreement other than the compensation specified herein. Contractor further certifies that it presently has no personal or financial interest, and shall not acquire any such interest, direct or indirect, which would conflict in any manner with its performance of the Services under this Agreement.

XIV. SEVERABILITY OF PROVISIONS

Whenever possible, each provision of this agreement will be interpreted in a manner as to be effective and valid under applicable law. However, if any provision of this agreement or the application of any provision to any party or circumstance will be prohibited by or invalid under applicable law, that provision will be ineffective to the extent of the prohibition or invalidity without invalidating the remainder of the provisions of this agreement or the application of the provision to other parties or other circumstances.

XV. EXTENT OF AGREEMENT

This Agreement, together with any affixed exhibits, schedules or other documentation, constitutes the entire understanding between the City and the Contractor with respect to the subject matter of the Agreement and it supersedes, unless otherwise incorporated by reference herein, all prior representations, negotiations, agreements or understandings whether written or oral. Neither party has relied on any prior representations, of any kind or nature, in entering into this Agreement. This Agreement may be altered, amended or modified only by written amendment signed by the Contractor and the City.

**FOR ECOLOGY CENTER, INC.
(CONTRACTOR)**

By Michael Garfield
Michael Garfield,
Its: Executive Director

THE CITY OF ANN ARBOR

By John Hieftje
John Hieftje, Mayor
By Jacqueline Beaudry
Jacqueline Beaudry, City Clerk

Approved as to substance:

By Steven D. Powers
Steven D. Powers, City Administrator

Approved as to substance:

By Craig Hupy
Craig Hupy, Public Services
Area Administrator

Approved as to form

By Stephen K. Postema
Stephen K. Postema, City Attorney

EXHIBIT A SCOPE OF SERVICES

Contractor shall provide solid waste youth educational services to the City as identified in RFP No. 865 and its proposal dated June 6, 2013, which documents are incorporated by reference and made a part of this Agreement.

It is agreed that for any staff whose job responsibilities involve direct contact with children (youth under the age of 18) Contractor shall have performed a background check, at its expense, which includes at minimum the following:

- FirstWatch – A comprehensive list of persons including FBI fugitives, US BIS Denied Person Lists, Ineligible firms lists from Work Bank, and US BIS, International Police Most Wanted, State Department Terrorist Exclusions and more.
- FirstCheck - National Criminal History is a comprehensive database search of multiple criminal record sources and provides instant access to around 200 million criminal records, with thousands of new records added each month. Plus, as a value added service to our clients, all potential criminal records are re-verified with the courts at no additional charge to our client.
- County Criminal History - County Criminal History provides criminal history reports from all U.S. counties. Our team of experienced investigators researches and reports back to our clients the most accurate records in our industry.
- Statewide Criminal History - State Criminal History provides criminal history reports from all states where they are available (39 states). Our team of experienced investigators researches and reports back to our clients the most accurate records in our industry.
- Motor Vehicle Registration
- Sex Offender
- SSN trace
- References

Contractor's employees must successfully pass a background check which includes all of the above elements before assignment to City activities. Any employee who fails such a test shall not be assigned or continue to be assigned to City activities.

The City reserves the right to request confirmation of the results of the background check on any employee assigned to City activities.

**EXHIBIT B
COMPENSATION**

Contractor shall be paid an annual flat fee* as follows:

Year 1	\$43,788.00
Year 2	3% increase on prior year fee
Year 3	3% increase on prior year fee
Year 4	3% increase on prior year fee
Year 5	3% increase on prior year fee

*Payments will be adjusted to deduct the pro-rated amount for each tour under 130 provided during each fiscal year. The formula for the per-tour cost is calculated as the annual amount x .005

EXHIBIT C

INSURANCE REQUIREMENTS

Effective the date of this Agreement, and continuing without interruption during the term of this Agreement, Contractor shall provide certificates of insurance to the City on behalf of itself, and when requested any subcontractor(s).

A. The certificates of insurance shall meet the following minimum requirements.

1. Worker's Compensation Insurance in accordance with all applicable state and federal statutes. Further, Employers Liability Coverage shall be obtained in the following minimum amounts:

Bodily Injury by Accident - \$500,000 each accident
Bodily Injury by Disease - \$500,000 each employee
Bodily Injury by Disease - \$500,000 each policy limit

2. Commercial General Liability Insurance equivalent to, as a minimum, Insurance Services Office form CG 00 01 07 98 or current equivalent. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements including, but not limited to: Products and Completed Operations, Explosion, Collapse and Underground Coverage or Pollution. Further, the following minimum limits of liability are required:

\$1,000,000	Each occurrence as respect Bodily Injury Liability or Property Damage Liability, or both combined
\$2,000,000	Per Job General Aggregate
\$1,000,000	Personal and Advertising Injury

3. Motor Vehicle Liability Insurance, including Michigan No-Fault Coverages, equivalent to, as a minimum, Insurance Services Office form CA 00 01 07 97 or current equivalent. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles. Further, the limits of liability shall be \$1,000,000 for each occurrence as respects Bodily Injury Liability or Property Damage Liability, or both combined.

4. Umbrella/Excess Liability Insurance shall be provided to apply in excess of the Commercial General Liability, Employers Liability and the Motor Vehicle coverage enumerated above, for each occurrence and for aggregate in the amount of \$1,000,000.

- B. Insurance required under A.2 and A.3 above of this contract shall be considered primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance. Further, the Contractor agrees to waive any right of recovery by its insurer against the City.
- C. Documentation must provide and demonstrate an unconditional 30 day written notice of cancellation in favor of the City of Ann Arbor. Further, the documentation must explicitly state the following: (a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts; (b) any deductibles or self-insured retentions which shall be approved by the City, in its sole discretion; (c) that the policy conforms to the requirements specified. An original certificate of insurance may be provided as an initial indication of the required insurance, provided that no later than 21 calendar days after commencement of any work the Contractor supplies a copy of the endorsements required on the policies. Upon request, the Contractor shall provide within 30 days a copy of the policy(ies) to the City. If any of the above coverages expire by their terms during the term of this contract, the Contractor shall deliver proof of renewal and/or new policies to the Administering Service Area/Unit at least ten days prior to the expiration date.