

**CITY OF MISSOULA
AND
EKO COMPOST, INC.**

DEWATERED BIOSOLIDS MANAGEMENT AGREEMENT

REVISED November 20, 2013

THIS AGREEMENT made this _____ day of _____ 2013, by and between the City of Missoula, a municipal corporation organized under the laws of the State of Montana, hereinafter referred to as “CITY,” and Eko Compost, Inc., hereinafter referred to as “EKO.”

WHEREAS, CITY operates a secondary treatment plant for municipal wastewater that produces a combined end product of waste activated and anaerobically digested biosolids (sludge) in a dewatered form; and

WHEREAS, EKO has requested the opportunity to obtain biosolids for its product line, and intends to use the biosolids along with certain bulking agents, to produce man-made humus products that EKO markets as natural compost; and

WHEREAS, the parties are desirous of entering into a municipal agreement whereby CITY provides to EKO dewatered biosolids.

WITNESSETH

IN CONSIDERATION of the performance of the terms and conditions of this municipal agreement on the part of each party, **IT IS HEREBY AGREED AS FOLLOWS:**

ARTICLE 1: SERVICES AND CHARGES

1. **Biosolids Removal and Delivery.** CITY will provide to EKO and EKO will accept the dewatered biosolids produced at CITY’s wastewater treatment plant. The projected initial average production of biosolids is one hundred twenty (120) dry tons per month. CITY shall supply all labor, equipment, material, fuel, repairs, equipment operators and supervisory personnel required to deliver the biosolids by conveyor or other mutually agreed upon method and location.
2. **Charges.** CITY shall pay to EKO the following annual amounts per dry ton of biosolids delivered to and accepted by EKO during the term of this agreement:

The annual increase of Producer Price Index (PPI) will determine the annual percentage increase of the price of delivered biosolids if the annual PPI percentage increase exceeds the annual percentage increase of the price of delivered biosolids as listed in this agreement.

	TIME PERIOD	AMOUNT/DRY TON
a.	FY 13 (7/1/2012 – 6/30/2013)	\$175.00
b.	FY 14 (7/1/2013 – 6/30/2014)	\$180.00
c.	FY 15 (7/1/2014 – 6/30/2015)	\$185.00
d.	FY 16 (7/1/2015 – 6/30/2016)	\$191.00

ARTICLE II: BIOSOLIDS CHARACTERISTICS

1. **Physical Characteristics.** The biosolids delivered to EKO by CITY shall be dewatered to at least 14 percent (14%) solids content.
2. **Chemical Characteristics.** CITY will not deliver to EKO any biosolids where test results exceed maximum contaminant limits established by the USEPA or the Montana Department of Water Quality. If the biosolids contain any physical, chemical, or organic chemical characteristics that render it unsuitable for use by EKO, EKO has the right to refuse acceptance of the biosolids and shall have the option, upon ninety (90) days written notice to CITY, to terminate this agreement with no penalty to EKO.
3. **Method of Delivery.** The primary method of biosolids delivery shall be via conveyor to a holding bin located on the property line boundary between the Eko Compost site and the wastewater treatment plant. If other temporary means of biosolids delivery are required due to unforeseen circumstances such as equipment failure the City will notify Eko Compost and mutually develop a plan for delivery.
4. **Testing Requirements.** Fecal coliforms, Heavy metals, and other testing requirements, in accordance with Section 503 Biosolids Disposal Regulations, shall be completed by CITY, and test results will be provided to EKO.

ARTICLE III: MEASUREMENT AND PAYMENT

1. **Maintenance of Records.** CITY will maintain accurate records of the tonnages delivered to EKO in a form adopted by CITY. These records will form the basis of payment in accordance with ARTICLE I of this agreement.
2. **Loading Measurement.** CITY shall determine the tonnage of biosolids to be delivered. CITY shall have a method or device that accurately reflects the tonnage of the delivered biosolids such as using the actual percent solids of the actual sludge flow metering. All measuring methods shall be subject to EKO's review and approval. Weight of the biosolids, if necessary, shall be ascertained by weighing the equipment when empty and then when filled on scales provided by CITY.
3. **Invoice Submission and Payment.** CITY will pay EKO within thirty (30) days of receipt of itemized invoices. The invoices shall identify the dates and tonnages, delivered to EKO by CITY.

ARTICLE IV: BULKING AGENT

1. The CITY agrees to deliver and EKO agrees to accept without monetary charge (through 6/30/2014) organic material such as leaves, wood waste, Christmas tree collection and other organic green waste from the CITY leaf collection program and CITY maintained park lands and rights-of-way that the CITY does not use, dispose of or sell to someone else. Beginning 7/1/2014, EKO will begin charging the CITY for this waste at an annual cost of \$10,000. A mutually agreed to additional fee may be charged by EKO for any wood wastes that are delivered from the City Hybrid Poplar Project. CITY reserves the absolute right to dispose of the organic green waste in any way it so desires. In return for the organic green waste, EKO will make available to CITY, composting material at a price twenty percent (20%) less than manufacturer's wholesale prices, F.O.B., for use by the CITY on its publicly owned lands.

ARTICLE V: SCHEDULES AND TESTING

1. **Schedules**. CITY and EKO shall develop and agree to a normal operating schedule that will allow CITY to efficiently operate the wastewater treatment facility and allow EKO to accept the projected volume of biosolids. The normal operating schedule will be Monday through Saturday during regular business hours. If it becomes necessary to deliver biosolids outside of this schedule due to unforeseen circumstances such as equipment failures the City will notify Eko Compost as soon as the problem is discovered.
2. **Testing**. CITY will provide to EKO all results of all tests conducted on the biosolids with regard to total solids and total volatile solids on a monthly basis. Special analyses, such as biochemical oxygen demand, routine heavy metals, ammonia, nitrogen and volatile acids will be provided to EKO on a monthly basis. In addition, upon written request from EKO, CITY will provide EKO with the results of any additional biosolids tests conducted by CITY. If EKO conducts any such tests on the biosolids, EKO shall provide the results of such tests to CITY.

ARTICLE VI: PERMITS, CHANGES TO LAW

1. **Permits**. EKO shall have the full responsibility and any and all liability for meeting the terms and conditions of any permits that EKO must acquire relative to the program outlined in this agreement. EKO agrees to hold CITY harmless and indemnify CITY with regard to EKO's lack of compliance or any other reason that results in action of regulatory enforcement or litigation relative to EKO's program and ultimate disposition of EKO's end product. EKO shall acquire and maintain in continuous effect liability insurance in the amount specified in ARTICLE VII. EKO must be in continuous compliance with the provisions of any permit or law applicable to its business operations, or it will be in default with the provisions of this agreement.

2. **Changes to Law.** The price agreed to above is based on EKO's anticipated compliance with current Federal, State and local laws and permitting requirements. In the event that there are changes in such laws or permitting requirements, which impose additional costs that are attributable to the characteristics of the biosolids, EKO may request that the agreed to price be renegotiated, stating in detail the reasons or justifications for the request. Such request for additional sums must be in writing. In the event agreement of a revised amount cannot be reached within sixty (60) days of receipt of such request, either party may terminate this agreement with ninety (90) days written notice.

ARTICLE VII: INSURANCE AND INDEMNIFICATION

1. **Insurance Requirements.** Without limiting EKO's indemnification of CITY, EKO shall provide and maintain at its own expense, during the term of this agreement, the following policy or policies of insurance covering its operations hereunder, whether such operations be by EKO or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Such insurance shall be secured through a carrier satisfactory to CITY. Evidence of such insurance satisfactory to CITY shall be delivered to CITY on or before the effective date of this agreement, and shall contain the express condition that CITY is to be given written notice at least thirty (30) days in advance of cancellation, modification, expiration or termination of any insurance policy. CITY shall be named as an additional named insured on all policies except workers' compensation.
2. **General Liability.** Such policy of insurance shall include, but not be limited to, comprehensive general liability with explosion, collapse and underground hazards, contractual liability, products/completed operations and independent contractors' endorsements, with a combined single limit not less than \$750,000 per claim and \$1,500,000 per occurrence. Such insurance shall be primary to and not contributing with any other insurance maintained by CITY and shall name the City of Missoula as an additional insured.
3. **Workers' Compensation.** EKO's employees shall be covered by Workers' Compensation insurance in an amount and form to meet all applicable requirements of the Labor Code of the State of Montana.
4. **Failure to Procure Insurance.** In case of failure on the part of EKO to procure or maintain required insurance, EKO shall be deemed to be in default of this agreement. CITY shall notify EKO of such default. EKO shall within thirty (30) days of such notice of default, take corrective action to rectify such default by procuring and maintaining the required insurance.
5. **Indemnification.** EKO agrees to indemnify, defend and save CITY, its agents, elected and appointed officials, and employees from suppliers', or agents' operations, or anyone directly or indirectly employed by any of them, or their service, from and against any and all liability, expense, including defense costs and legal fees (including costs and attorney's fees on appeal), and claims for damages of any nature whatsoever; including, but not limited to, bodily injury, death, personal injury, or property damage arising from or connected to EKO's, its subcontractors', suppliers', or agents' operations, or their service hereunder,

including any workers compensation suites, liability, or expense arising from or connected with services by any person pursuant to this agreement. CITY shall specifically be indemnified and held harmless of any liability as a result of the sale or use of the biosolids produced by CITY in any form whatsoever.

ARTICLE VIII: TERM OF AGREEMENT

1. **Term.** The term of this agreement is for a four (4) year period from July 1, 2012 to June 30, 2016.
2. **Termination.** CITY shall have the right to terminate this agreement upon ten (10) days written notice to EKO at its option for cause, for violation of the agreement, or if EKO fails in any consecutive thirty (30) day period to accept biosolids under the terms of this agreement.

ARTICLE IX: MISCELLANEOUS

1. **Binding Effect.** This agreement is binding upon the heirs, successors, administrators, executors, personal representatives, and assigns of the parties hereto.
2. **Entire Agreement.** This agreement contains the entire agreement between the parties. This agreement completely replaces any and all prior agreements of any nature whatsoever. Any additional agreement hereafter made shall not be effective to alter, change, modify, or discharge this agreement in whole or in part unless any additional agreement is in writing and signed by the parties hereto.
3. **Severability.** If any article, section, subsection, sentence, clause, phrase, or word of this agreement is ever, for any reason, held to be invalid by a court, the parties hereby agree that such decision shall not affect the validity of the remainder of this agreement; and the parties agree that the remaining provisions shall remain in full force and effect.
4. **Affirmative Action Policy.** Contractors, subcontractors, subgrantees, and other firms doing business with CITY or any agency connected with CITY must be in compliance with the City of Missoula's Affirmative Action Plan and Title 49, M.C.A. or forfeit the right to continue such business dealings.

CITY's Affirmative Action Policy Statement is: The Mayor of the City of Missoula is committed to implement affirmative action to provide all persons equal opportunity for employment without regard to race, color, religion, national origin, sexual orientation, gender identity or gender expression, age, marital status, ancestry, receipt of public assistance, political beliefs, physical or mental handicap, ex-offender status, or sex. In keeping with this commitment, we are assigning to all department heads and their staff the responsibility of actively facilitating equal opportunity for present employees, applicants, and trainees. This responsibility shall include assurance that employment decisions are based on furthering the principle of equal employment opportunity by imposing only valid

requirements for employment and assuring that all personnel actions are administered on the basis of job necessity.

Specific responsibility for development, implementation, monitoring and reporting will be assigned to the City Personnel staff under the supervision of the Mayor's Administrative Assistant.

It is the policy of the City of Missoula to take affirmative action to eliminate discrimination in personnel policies and procedures that have adverse impact on the "affected class" unless sex, ex-offenders status, and/or physical or mental handicap relates to a bona fide occupational qualification. Equal opportunities shall be provided for all City employees during their terms of employment. All applicants for City employment shall be recruited from the available labor market, and employed on the basis of their qualifications and abilities.

The City of Missoula, where practical, shall utilize minority owned enterprises and shall ensure that subcontractors and vendors comply with this policy. Failure of subcontractors and vendors to comply with this policy statement shall jeopardize initial, continued, or renewed funds.

Our commitment is intended to promote equal opportunity in all employment practices and provide a positive program of affirmative action for the City of Missoula, its employees, C.E.T.A. program participants, trainees and applicants.

5. **Non-discrimination**. In connection with the performance of work and services under this agreement, EKO agrees to comply with the provisions of the law and Constitution of the State of Montana. EKO further agrees to comply with the Civil Rights Act of 1964 (78 Stat. 242), the regulations of the Department of Health, Education and Welfare issued pursuant to the Act, and the provisions of Executive Order 11246, Equal Opportunity, September 24, 1965. EKO agrees that any and all hiring by them related to this agreement shall be on the basis of merit and qualifications and there shall be no discrimination on the basis of race, color, religious creed, political ideas, gender, age, marital status, physical or mental handicap, national origin, sexual orientation, gender identity or gender expression or ancestry, by persons performing this contract. Qualifications mean such abilities that are genuinely related to competent performance of the particular occupational task.

EKO COMPOST

BY: _____
Tom Pawlish, EKO

STATE OF COLORADO)
) ss.
County of Jefferson)

On this _____ day of _____, 2013 before me the undersigned, a Notary Public for the State of Colorado, personally appeared _____, known to me to personally (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledge to me that he/she/they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal on the day, month, and year in this certificate first above written.

(SEAL)

Notary Public for the State of Colorado.
 Printed Notary Name _____
 Residing at _____, Colorado.
 My Commission expires: _____.
 MM/DD/YYYY

CITY OF MISSOULA

ATTEST:

BY:

Martha L. Rehbein, City Clerk

John Engen, Mayor

(SEAL)

APPROVED AS TO FORM AND CONTENT:

Jim Nugent, City Attorney