

AGREEMENT TO SELL AND PURCHASE REAL PROPERTY

This agreement (the "Agreement") is made and entered into this ____ day of June, 2011, by and between **EKO-COMPOST, INC. (a/k/a EKO-KOMPOST, INC.)**, a Montana Corporation, of 1125 Clark Fork Lane, Missoula, Montana 59808 (referred to in this agreement as the "Seller"), and the **CITY OF MISSOULA**, a municipal corporation, of 435 Ryman Street, Missoula, Montana 59802 (referred to in this agreement as the "Buyer").

In consideration for the covenants and agreements made by and between the Seller and the Buyer in this Agreement, the Seller and the Buyer agree as follows:

Section 1. Agreement to buy and sell; description of Property. The Seller agrees to sell and the Buyer agrees to buy, on the terms and conditions set forth in this Agreement, all of the Seller's right, title, and interest, including any and all water rights, in the real property and improvements, including the bagging plant and Quonset hut, located in Missoula County, Montana, and more particularly described as follows (referred to in this Agreement as the "Real Property"):

Tract 1 of Certificate of Survey No. 5208, located in the South one-half of the Southeast one-quarter of Section 18, Township 13 North, Range 19 West, Principal Meridian, Missoula County, Montana.

Section 2. Purchase price and terms of payment. The purchase price of the Real Property is One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00) (the "Purchase Price"). The Buyer will pay the Purchase Price to the Seller as follows:

A. The sum of Three Hundred Thousand and No/100 Dollars (\$300,000.00) shall be paid by Buyer in cash to Seller at the closing.

B. The remaining balance of the Purchase Price, One Million Two Hundred Thousand and No/100 Dollars (\$1,200,000.00) plus interest on the declining balance at the rate of three percent (3.00%) per annum from the date of the closing, shall be paid to the Escrow Agent named in Section 22 in quarterly installments of principal and interest amortized over a period of five (5) years. The remaining balance of the Purchase Price shall be evidenced by a Promissory Note which is substantially similar to that attached hereto and incorporated herein as Exhibit "A." Buyer's obligation to Seller shall be secured by a first position Deed of Trust against the Property which is substantially similar to that attached hereto and incorporated herein as Exhibit "B." Immediately after said first position Deed of Trust is recorded following the closing, Seller shall execute the Request for Full Reconveyance portion of the Deed of Trust instructing the Escrow Agent named in Section 22 to fully reconvey the Trustee's interest thereunder by filing the same with the Missoula County Clerk & Recorder's office upon Buyer's payment of the outstanding balance of the Purchase Price in full.

C. **Adjustment to the Purchase Price.** The Real Property contains an Eleven (11) acre parcel (the "Parcel") that is currently classified by the Federal Emergency Management Agency ("FEMA") as part of the floodplain. New preliminary maps issued by FEMA indicate

that the Parcel is no longer in the floodplain. The parties anticipate that later this year FEMA will release official maps that verify the Parcel has been removed from the floodplain. The Purchase Price is based on the understanding that the Parcel will be removed. However, in the event that the Parcel is not removed from the floodplain within the three (3) year period that begins at closing and continues for three (3) years thereafter, the Purchase Price will be adjusted downward to a sum of One Million Two Hundred Thousand and No/100 Dollars (\$1,200,000.00). In the event this adjustment occurs, the parties agree to revise the Promissory Note and take whatever further action is necessary to make this adjustment.

Section 3. Lease. Concurrently with the closing of this transaction, the parties will enter into a separate Lease Agreement whereby Seller (as Lessee) will lease a portion of the Real Property, from Buyer (as Lessor) on the terms and conditions set forth in the Lease Agreement. The Lease Agreement to be signed by the parties will be substantially similar to that attached hereto and incorporated herein as Exhibit "C."

Section 4. Closing Agent. The parties designate Title Services, Inc., with principal address of 2425 W. Central Avenue, #200, Missoula, Montana, 59801 as the "Closing Agent" to perform the closing in accordance with the requirements of this Agreement.

Section 5. Costs, Adjustments and Prorations. The Buyer will pay the costs of recording the warranty deed and the cost of filing any water rights transfer certificates. The Seller will pay the premium for the title insurance policy required by this Agreement and the costs of recording any documents required to clear up the Seller's title to the Real Property, and perfect Seller's security interest in the Real Property. The fee of the Closing Agent will be divided equally between the parties. All real property taxes and assessments will be prorated between the parties on the basis of the number of days for which such amounts were paid or are owed. Because Buyer is the City of Missoula, Buyer shall not be responsible for any taxes or assessments that accrue from date of closing or after. However, Seller shall be responsible for paying all taxes and assessments for the days before the date of closing. The amount of taxes and assessments from the most recent tax bill will be used as the basis for proration.

Section 6. Title to Real Property.

(a) The Seller will convey good and marketable fee simple title to the Real Property to the Buyer by warranty deed, free and clear of all liens, encumbrances, easements, restrictions, conditions, defects, and burdens, except as follows:

1. Easements and rights-of-way which are acceptable to the Buyer;
2. Laws, ordinances, and regulations relating to zoning, land use, environmental protection, and building;
3. Reservations made in patents or in acts authorizing the issuance of patents;
4. Taxes and assessments which are not yet due and payable.

(b) Within fifteen (15) days after execution of this Agreement by all parties, the Seller will deliver to the Buyer a commitment for a standard ALTA owner's title insurance policy

issued by Title Services, Inc. The Buyer will examine the title commitment and notify the Seller by 5:00 p.m., on the fifteenth (15th) business day following receipt of the commitment in writing if in the opinion of the Buyer the title insurance commitment discloses liens, encumbrances, easements, or defects in title other than those referred to in Paragraph (a) of this section. If the Sellers cannot remove these liens, encumbrances, easements, restrictions, defects, and burdens on or before the date of closing, then the Buyer will have the right either (i) to rescind and terminate this agreement, or (ii) to extend the date for closing and require the Seller to continue to make good faith efforts to remove these liens, encumbrances, easements, restrictions, defects, and burdens. If the liens, encumbrances, easements, restrictions, defects, and burdens cannot be removed, then this agreement will be terminated and the earnest money will be returned to the Buyer.

(c) After the closing, a title insurance policy or policies will be issued pursuant to the title insurance commitment described in Paragraph (a) of this section to insure the Buyer's title to the Real Property.

(d) The warranty deed shall be substantially similar to that attached hereto and incorporated herein as Exhibit "D."

Section 7. Date of closing. (a) A closing will be held to consummate this Agreement in the offices of the Closing Agent on or before _____, 2011. The date by which the closing must occur can be extended by written agreement of the parties.

Section 8. Conditions to Buyer's performance. The Buyer will have the right to terminate this Agreement, and will not be obligated to complete the purchase of the Real Property or to perform the Buyer's other obligations under this Agreement unless the following conditions have been satisfied:

(a) The Seller's title to the Property has been accepted by the Buyer pursuant to this Agreement, or if the Buyer objects to any defects in the Seller's title, then the Seller shall cure those defects on or before the date of closing.

(b) On the date of closing the Seller executes and delivers to the Closing Agent all of the documents which this Agreement requires the Seller to execute and deliver in form acceptable to the Buyer.

(c) Inspection and testing of the Real Property by consultants at the Buyer's expense reveals no conditions which are unacceptable to the Buyer.

(d) Inspection (Phase I Environmental Assessment) of the Property by environmental consultants at the Buyer's expense, if Buyer elects to do such inspection, reveals no evidence of underground storage tanks or hazardous substances which are unacceptable to the Buyer. For the purposes of this paragraph, "hazardous substances" means any toxic, dangerous, or hazardous waste, substance, or material under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, any so-called Superfund or Superlien law, or any other federal, state, or local statute, law, ordinance, code, rule, regulation, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous waste,

substance, or material. In the event that the Phase I environmental assessment reveals the need to do a Phase II assessment, the parties agree to equally share the cost of the Phase II assessment. Any remediation or cleanup necessary as a result of the Phase II assessment shall be the responsibility of the Seller. Seller shall remove and properly dispose of the following items of property that are identified on pages 14-15 of the Phase I Environmental Assessment prepared by AMEC Geomatrix, Inc., dated May of 2011: all of the industrial debris pile, outdoor drums of hydraulic, abandoned heavy machinery, tires, paintball course debris, and picnicking area debris. If the Seller does not perform the remediation or cleanup required prior to the date of closing, Buyer may, in its sole discretion, terminate this agreement.

(e) The Buyer has reviewed and analyzed the water rights which are appurtenant to the Real Property and has determined that those water rights are acceptable to the Buyer, are sufficient to support the activities which have historically been pursued on the Real Property, and should continue to be sufficient to support those activities after the water rights have been adjudicated.

(f) All of the representations and warranties of the Seller set forth in this Agreement are true, correct, or complied with on the date of closing.

(g) The Seller has performed all of the obligations and complied with all of the requirements which this Agreement requires the Seller to perform or comply with before the date of closing.

(h) The Buyer has received all of the documents that this Agreement requires the Seller to deliver to the Buyer prior to the date of closing, and has not delivered a written objection to such documents to the Seller.

If any of the conditions set forth above are not met on the date of closing, the Buyer will have the right to exercise the remedies provided for in this Agreement, which include the right to terminate this Agreement.

Section 9. Conditions to Sellers' performance. (a) The Seller will have the right to terminate this Agreement, and will not be required to convey the Real Property to the Buyer or to perform the other obligations of the Seller under this Agreement, unless all of the following conditions are satisfied:

(a) On the date of closing the Buyer tenders to the Seller the down payment.

(b) On the date of closing the Buyer executes and delivers to the Closing Agent all of the documents which this Agreement requires the Buyer to execute and deliver.

(c) If either of the conditions set forth above are not satisfied, the Seller will have the right to exercise the remedies provided for in this Agreement, which include the right to terminate this Agreement.

Section 10. Mutual Indemnification.

(a) Seller shall defend, indemnify and hold Buyer harmless from and against any and all claims, debts, expenses, obligations or other liabilities pertaining to Seller's ownership or use of the Real Property prior to the date of closing.

(b) Buyer shall defend, indemnify and hold Seller harmless from and against any and all claims, debts, expenses, obligations or other liabilities pertaining to Buyer's ownership or use of the Real Property from and after the date of closing.

Section 11. Documents to be delivered at closing. On the date of closing, the Seller and the Buyer will execute and deliver the following documents:

(a) A warranty deed conveying a fee simple interest in the Real Property to the Buyer;

(b) A realty and water rights transfer certificate acknowledging the transfer of all water rights, if any, appurtenant to the Real Property to the Buyer;

(c) An affidavit of non-foreign status executed by the Seller, as provided for in IRC Section 1445 and Regs. Section 1.1445-2(b)(2);

(d) A Promissory Note, documenting the obligation of Buyer to Seller for the remaining balance of the Purchase Price;

(e) A Deed of Trust, granting a security interest in the Real Property to Seller;

(f) A Request for Reconveyance, to be signed by Seller and held by the Escrow Agent;

(g) The Lease Agreement referenced above in Section 3; and

(h) All documents required to remove or cure the defects in title which the Seller has agreed to remove or cure.

Section 12. Remedies. (a) If the Seller fails, refuses, or is unable to furnish good title to the Real Property as required by this Agreement or to perform the Seller's other obligations under this Agreement on or before the date of closing, the Buyer may either (i) rescind this Agreement, whereupon all rights and obligations under this Agreement will cease, or (ii) pursue any remedy available to the Buyer in law or equity, including, but not limited to, an action to compel specific performance, or an action for damages for breach, separately or alternatively.

(b) If the Buyer fails, refuses, or is unable to comply with the conditions of this Agreement or to perform the Buyer's obligations under this Agreement on or before the date of closing, the Seller may either (i) rescind and terminate this Agreement, whereupon all rights and obligations under this Agreement will cease, or (ii) pursue any remedy available to the Sellers in law or equity, including, but not limited to, an action for specific performance, or an action for damages for breach, separately or alternatively.

Section 13. Representations of the Seller. The Seller represents as follows:

- (a) Seller is a Montana corporation duly organized, validly existing, and in good standing under the laws of the State of Montana.
- (b) Seller owns the Real Property and has the full power and authority to sell the Real Property;
- (c) Seller has taken all necessary action to approve the execution and delivery of this Agreement and prior to the closing shall take all corporate action necessary to approve the performance of this Agreement and the consummation of the transaction contemplated herein. This Agreement constitutes a valid and binding obligation of Seller in accordance with its terms;
- (d) Seller is unaware of the presence of any toxic or hazardous materials on or upon the Real Property in violation of or subject to remediation pursuant to any environmental law or regulation;
- (e) Seller has received no notice or communication of any alleged violation of any environmental law or regulation pertaining to the Real Property;
- (f) Seller will discharge all claims, liens, encumbrances, attachments, judgments or other obligations related to the Real Property, if any, prior to the closing;
- (g) That there are no leases affecting the Real Property which will be in effect on the date of closing, except for the lease between the parties set forth above in Section 3.

Section 14. Representations of Buyer. Buyer represents as follows:

- (a) Buyer has taken all necessary action to approve the execution and delivery of this Agreement and prior to the closing shall take all action necessary to approve the performance of this Agreement and the consummation of the transaction contemplated herein. This Agreement constitutes a valid and binding obligation of Buyer in accordance with its terms;
- (b) Buyer enters into this Agreement in full reliance upon its independent investigation and judgment, and there are no verbal or other agreements which modify or affect this Agreement;
- (c) No further representations, guarantees or promises of any kind concerning the Real Property or its condition have been made by Seller or anyone acting on behalf of Seller, except as provided in this Agreement. All agreements as to the condition of the Real Property are contained in this Agreement and Buyer is not relying upon any statements, express or implied warranties, representations, guarantees, promises or information not contained in this Agreement, whether made by Seller or by any person representing or claiming to represent Seller;

(d) Buyer agrees to take the Real Property “**AS IS**” with its faults, if any, as of the closing date and will not claim that Seller has made any promises, warranties or representations as to the condition of the Real Property, it being understood by Buyer that any such promises, warranties or representations must be contained in this Agreement.

(e) Until the entire Purchase Price is paid in full, Buyer shall keep the Real Property insured against all risks of loss or damage from every cause whatsoever for not less than the full replacement value thereof, as determined by the parties. All of said insurance shall be with standard and reliable insurance companies. Buyer shall pay the premiums therefore and deliver said policy or policies, or duplicates or certificates thereof, to Seller from time to time as requested by Seller. Said policy or policies shall provide that any loss payable thereunder shall be payable jointly to Seller, and shall contain a provision requiring written notice to Seller at least ten (10) days prior to cancellation;

Section 15. Radon Disclosure Statement. The following disclosure is given pursuant to the Montana Radon Control Act, Montana Code Annotated Section 75-3-606.

RADON GAS: RADON IS NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN MONTANA. ADDITIONAL INFORMATION REGARDING RADON AND RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY OR STATE PUBLIC HEALTH UNIT.

If the Real Property has been tested for radon, then Seller shall provide Buyer a copy of the test results concurrently with the execution of this Agreement. If the Real Property has received radon mitigation treatment, then Seller shall provide the evidence of the mitigation treatment concurrently with the execution of this Agreement.

Section 16. Megan’s Law Disclosure. Pursuant to the provisions of Title 46, Chapter 23, Part 5 of Montana Code Annotated, certain individuals are required to register their address with the local law enforcement agencies as part of Montana’s Sexual or Violent Offender Registration Act. In some communities, law enforcement offices will make the information concerning registered offenders available to the public. Further information may be obtained from the local County Sheriff’s office, the Montana Department of Justice, in Helena, Montana, and the probation officers assigned to the area.

Section 17. Noxious Weeds Disclosure. Buyer acknowledges the following noxious weeds disclosure: The laws of the State of Montana require sellers of property to notify purchasers of property that noxious weeds exist or potentially exist on the property being offered for sale. The State of Montana and Missoula County have established certain requirements for the control of noxious weeds. For information concerning noxious weeds and a property owner’s obligations, Purchaser may contact either the local county extension agent or the county weed control board.

Section 18. Real Estate/Brokers' Commissions. The Real Property is not currently listed for sale with any real estate broker or agent and no commissions are due from either party at closing.

Section 19. Inspection. The Buyer and the Buyer's representatives and consultants are authorized to enter the Real Property at any reasonable time or times before the date of closing to conduct any and all inspections, examinations, environmental assessments, and tests of the Real Property which the Buyer may wish to perform.

Section 20. Transfer of possession. The Seller will transfer possession of the Real Property to the Buyer on the date of closing.

Section 21. Destruction or taking of Real Property prior to closing. Risk of loss or damage to the Property or any part of it by fire, storm, burglary, vandalism or other casualty between the effective date of this Agreement and the date of closing is retained by the Seller. If prior to the date of closing all or a material portion of the Real Property is damaged, destroyed or taken by right of eminent domain, the Buyer may, by written notice to the Seller, elect to cancel this Agreement. If the Buyer elects to cancel this Agreement, both parties will be relieved of and released from any further liability or obligation under this Agreement, and the Seller will repay to the Buyer all amounts paid or deposited pursuant to this Agreement.

Section 22. Escrow Agent. The parties agree that Insured Titles, located at 1724 Fairview Avenue, #C, Missoula, Montana, 59801, shall be the Escrow Agent for this transaction. Seller shall pay the opening escrow fee and Buyer shall pay all subsequent fees and charges of the Escrow Agent.

Section 23. Time of essence. Time will be of the essence in complying with the terms and conditions of this Agreement.

Section 24. No Assignment. Buyer shall not assign its interest in this Agreement without obtaining Seller's prior written consent, except as specifically provided in this Agreement. Seller may not unreasonably withhold such consent if the prospective purchaser is financially capable, in Seller's reasonable opinion, of meeting Buyer's obligations under this Agreement. All requests for Seller's consent to a sale or assignment shall be submitted to Seller in writing and shall be accompanied by a signed financial statement from the prospective purchaser.

Section 25. Notice. Any notice which this Agreement requires or permits to be given to the Buyer or the Seller must be in writing and must be delivered to such person either personally, by fax, or by depositing it in the United States mails, certified mail, addressed to such person at the address set forth at the beginning of this Agreement, and the notice will be deemed complete when so deposited. The parties to this Agreement may hereafter designate in writing a different and/or additional address or person to whom such notices must be given.

Section 26. Document Preparation. This Agreement and related documents shall be deemed to have been jointly prepared by Seller and Buyer, and no ambiguity herein shall be construed against any party hereto based upon the identity of the author of this Agreement or any

portion hereof. Each party shall pay its own costs and expenses, including its attorneys' fees, incurred to prepare and review this Agreement and any related closing documents.

Section 27. Attorney's fees. If either of the parties to this Agreement institute legal proceedings to enforce the terms of this Agreement, the unsuccessful party to such proceedings will pay the reasonable attorney's fees, paralegal fees, lay and expert witness fees and expenses, out of pocket expenses and legal costs of the prevailing party, including any such fees, expenses and costs incurred in any appeal and in any bankruptcy proceedings.

Section 28. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Montana.

Section 29. Binding Effect. This Agreement is binding upon and will inure to the benefit of the parties and their heirs, executors, representatives, successors and assigns.

Section 30. Headings. The headings of the particular sections of this Agreement are intended for guidance only, and will not be relied upon in the construction or interpretation of this Agreement, nor will they restrict the scope of the particular sections to which they refer.

Section 31. Modification of Agreement. No modification of this Agreement will be valid or binding unless the modification is in writing, signed by all parties to this agreement.

Section 32. Entire Agreement. This instrument constitutes the entire agreement between the parties. No party will be bound by any terms, conditions, understandings, warranties, statements or representations, oral or written, not contained in this Agreement. Each party hereby acknowledges that the execution of this Agreement was not induced or motivated by any promise or representation made by any other party, other than the promises and representations expressly set forth in this Agreement. All previous negotiations, statements and preliminary instruments by the parties or their representatives are merged into this Agreement, except as expressly provided herein.

Section 33. Severability. If any provision of this Agreement is declared or becomes invalid, unenforceable or contrary to law, then the provision will be severed from the remaining provisions of this Agreement and will not affect the validity or enforceability of the other provisions of this agreement.

Section 34. Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. As used herein, "counterparts" shall include full copies of this Agreement signed and delivered by facsimile transmission, as well as photocopies of such facsimile transmission.

BUYER:

CITY OF MISSOULA

By _____
John Engen, Mayor

Dated: _____

Attest:

Martha L. Rehbein, City Clerk, CMC

SELLER:

EKO-COMPOST, INC.

By _____
Thomas S. Pawlish
Its President

Dated: _____

STATE OF MONTANA)
 :ss.
County of Missoula)

This Agreement to Sell and Purchase Real Property was acknowledged before me on the ____ day of _____, 2011, by Thomas A. Pawlish as President of EKO-COMPOST, INC. as Seller.

Printed name of Notary _____
NOTARY PUBLIC FOR THE STATE OF MONTANA
Residing at _____
My Commission Expires _____