

**AGREEMENT BETWEEN
ECO-CYCLE, INC.
AND THE
REGENTS OF THE UNIVERSITY OF COLORADO**

This agreement ("Agreement," "Contract") is made this 1st day of August, 1999, by and between Eco-Cycle, Inc. ("Eco-Cycle," "Contractor") and The Regents of the University of Colorado, a body corporate, contracting on behalf of the University of Colorado at Boulder ("UCB," "University").

RECITALS

WHEREAS, authority exists in the Law and funds will be made available;

WHEREAS, required approval, clearance and coordination have been accomplished from and with appropriate agencies;

NOW THEREFORE, the parties agree as follows:

I. TERM AND TERMINATION.

The term ("Term") of this Agreement shall begin on August 1, 1999 and end on June 30, 2000. Dec 31, 1999 The Agreement may be extended upon mutual agreement of the parties until such time as the Boulder County Recyclables Processing Center becomes operational, estimated to be in 2001. The University expressly reserves the right to contract with another firm for short term emergencies, i.e., Eco-Cycle is unable to handle deliveries or make pick-ups due to equipment failure, or other factors. Either party may terminate this Agreement for default as described in Section IX.

II. SCOPE OF WORK.

A. Current UCB IPF Recycling Program.

The UCB recycling program utilizes an Intermediate Processing Facility ("IPF"). University personnel centralize and upgrade materials at the IPF, using University-owned processing equipment. Recyclable containers are collected as a co-mingled grade and include: aluminum, steel, mixed color glass and blow-

molded PET and HDPE plastics. These co-mingled materials are not separated by the University, but are sorted free of trash and other non-recyclable contaminants. Materials are then loaded into roll-offs provided by Eco-Cycle. It is estimated that Eco-Cycle is required to make five (5) to seven (7) pulls per week of materials.

B. Delivery by UCB of Materials to Eco-Cycle.

The University may deliver recyclable materials directly to Eco-Cycle in addition to processing materials through the IPF.

C. UCB estimates that it will generate the following tons of recyclable material in a one-year period. The numbers accompanying specific paper grades listed below correspond to grade definitions used by the Institute of Scrap Recycling Industries PS-94s for Domestic Transactions.

<u>Material</u> _____	<u>Tons</u>
Newspaper (8)	350
White Ledger (40)	80
Mixed Office Paper (Office Pak) (37)	350
Corrugated Containers (12)	150
Aluminum (UBCS)	6
Commingled Containers Consisting Of:	
Mixed Colored Glass	120
Aluminum	17
Steel Cans	5
Blow-Molded HDPE	3
Blow-Molded PET	5
Acseptic & Polycoat	1
Mixed Paper (1)	45
Magazines (10)	100
Phone Books	<u>70</u>
Total	1302

D. Services Provided.

1. Response time/transportation procedures for collecting materials from UCB's IPF will be arranged on an as-needed, call-in basis. Performance must occur within 24 hours. Periodically, all roll-offs will need collection and return on the same day. Priority will be

given to emptying and returning UCB's corrugated containers.

2. Eco-Cycle will create three account codes with corresponding weight records for UCB: one for materials collected from UCB; one for materials delivered to Eco-Cycle where payment is made to UCB; and one for materials delivered to Eco-Cycle which do not have market prices paid to UCB.

3. Recyclables collected by Eco-Cycle will meet ISRI specifications or mill specifications for grades not listed by ISRI. If recyclables cannot be sorted by UCB prior to Eco-Cycle's collection, Eco-Cycle will be notified in advance. Eco-Cycle will not downgrade any load of materials without first notifying UCB and giving UCB an opportunity to correct the problem. Eco-Cycle will work with CU to improve any ongoing quality problems.

4. Eco-Cycle will assist UCB in training and promotional activities including: tours of its facilities, articles in each newsletter and cost sharing of signs and placards.

5. Eco-Cycle will review the composition of commingled containers and mixed paper and adjust pricing if quality and value dictate changes in pricing structure.

E. Eco-Cycle Provided Equipment.

Eco-Cycle shall furnish the following equipment during the Term of the Agreement to UCB at no charge. Eco-Cycle will be responsible for maintaining equipment and insuring the equipment against loss or damage during the Term of the Agreement.

<u>Quantity</u>	<u>Description</u>
1	Maintained, 40 cubic yard closed-top compactor box that will match the UCB-owned maintained cardboard compactor.
2-3	Maintained, 40 cubic yard open-top variable gate, compartmentalized roll-offs

which will hold three (3) different recyclable materials.

- 1 Maintained, 40 cubic yard open-top roll-off for commingled containers.
- 1 Maintained, 2- cubic yard closed-top roll-off with top-loading openings for telephone books.
- Up to 70 Cardboard Gaylord boxes.
- Up to 3 Maintained, 40 cubic yard open-top roll-offs for temporary use for up to four (4) special events/programs UCB will give a minimum of two weeks notice of upcoming special events/programs.

F. Expansion of Services.

UCB desires to expand recycling services and reserves the right to contract with other recycling groups in the region provided that new programs and collection locations will not materially decrease the volume of materials which are currently generated for collection by, or delivery to, Eco-Cycle.

III. FEES.

The pricing in this Section III shall be based on published prices in the last week of the month's Official Board Markets (the "Yellow Sheet"). Pricing shall be based on HIGH-POINT RANGE and shall be for Los Angeles prices.

A. FOR MATERIALS COLLECTED FROM UCB (PROCESSED AT THE UCB IPF)

<u>Material</u>	<u>Percentage of Published High- Point Price</u>	<u>Price paid to UCB</u>	<u>Floor Price</u>
Newspaper **		\$	\$
White Ledger **		\$	\$
Office Pak **		\$	\$
Corrugated Cardboard **		\$	\$
Aluminum *		\$	\$

Commingled Materials	Flat Rate: \$	\$
Mixed Colored Glass	(Flat Rate is Firm through 6/30/00)	
Aluminum		
Steel Cans		
Blow-Molded HDPE		
Blow-Molded PET		
Mixed Paper **	\$	\$
Magazines **	\$	\$

B. FOR MATERIALS DELIVERED BY UCB (SOURCE SEPARATED AT UCB AND DELIVERED BY UCB TO ECO-CYCLE)

<u>Material</u>	<u>Percentage of Published High- Point Price</u>	<u>Price paid to UCB</u>	<u>Floor Price</u>
Newspaper **		\$	\$
White Ledger **		\$	\$
Office Pak **		\$	\$
Corrugated Cardboard **		\$	\$
Aluminum *		\$	\$
Commingled Materials	Flat Rate: \$	\$	
Mixed Colored Glass	(Flat Rate is Firm through 6/30/00)		
Aluminum			
Steel Cans			
Blow-Molded HDPE			
Blow-Molded PET			
Mixed Paper **		\$	\$
Magazines **		\$	\$

* (MT) Means use Mill Trade Journal's Recycling Markets for this item.

** (OBM) Means Use Official Board Markets ("The Yellow Sheet") for this item.

C. The pricing above includes the use of all equipment described in Section III.E at no charge to the University. The pricing above includes all license fees, other fees and taxes, all of which shall be the responsibility of Eco-Cycle. For

recyclables collected from UCB's IPF, the above pricing shall also include all transportation charges.

D. Upon request by UCB, Eco-Cycle must make available to UCB for audit purposes, copies of sales invoices and/or other printed documentation relative to payments made to UCB.

E. Eco-Cycle shall provide to UCB monthly weights, **estimated pricing information**, and a copy of the Official Board Market Index, fifteen (15) days after the end of each month. <<<Upon request, Eco-Cycle shall provide additional current pricing information to help UCB determine expected revenues.>>> Payment to UCB will be on a Net 60 Days basis, except for the month of May when payment will be made Net 30 Days. UCB may assess interest on late payments at the rate of one percent (1%) per month.

IV. GOVERNMENTAL IMMUNITY.

It is specifically understood and agreed that nothing contained in this paragraph or elsewhere in this Agreement shall be construed as an express or implied waiver by University of its governmental immunity or of the governmental immunity of the State of Colorado, as an express or implied acceptance by University of liabilities arising as a result of actions which lie in tort or could lie in tort in excess of the liabilities allowable under the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq., as a pledge of the full faith and credit of the State of Colorado, or as the assumption by the University of a debt, contract or liability of the Contractor in violation of Article XI, Section 1 of the Constitution of Colorado.

V. INDEMNIFICATION.

To the extent authorized by law, the Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the Contractor, or its employees, agents, subcontractors or assignees pursuant to the terms of this Agreement.

VI. NOTICE.

All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed to be

given if hand delivered, faxed or mailed by certified mail, return receipt requested.

Unless hereinafter changed by written notice to Eco-Cycle, any notice to the University shall be delivered, faxed or mailed to the University at:

CU Recycling
Attn: Jack DeBell
Campus Box 207, UMC 331
Boulder, CO 80309

Tele: (303) 492-8307
Fax: (303) 492-1897

Unless hereinafter changed by written notice to the University, any notice to Eco-Cycle shall be delivered, faxed or mailed to Eco-Cycle at:

Eco-Cycle, Inc.
Attn: Eric Lombardi
P.O. Box 19006
Boulder, CO 80308

Tele: (303) 444-6634
Fax: (303)

All notices delivered by hand shall be effective upon delivery and all notices mailed by certified mail, return receipt requested, or faxed shall be effective when received, as indicated on the return receipt or facsimile transmittal.

VII. INSURANCE.

1. Contractor shall obtain, and maintain at all times during the term of this Agreement sufficient insurance to cover any and all liabilities which may reasonably occur during the performance of services under this Agreement. As a minimum, Contractor shall provide insurance in the following kinds and amounts:

A. Standard Workers' Compensation/Employer Liability as required by state statute, including occupational disease, covering all of its employees.

B. General Liability - Personal Liability and Property Damage (minimum coverage)

- i. Combined single limit of \$1,000,000 written on an occurrence basis.
- ii. Any aggregate limit will not be less than \$2 million.
- iii. Contractor must purchase additional insurance if claims reduce the annual aggregate below \$1,000,000.

C. Automobile Liability (minimum coverage) in the amount of \$600,000 combined single limit.

2. "The Regents of the University of Colorado, a body corporate" shall be named as an additional insured on each comprehensive general liability policy.
3. The insurance shall include provisions preventing cancellation without 60 calendar days prior written notice to the University by certified mail.
4. Contractor shall submit a certificate of insurance at the signing of this Agreement and also any notices of renewal of said policy as they occur.

VIII. INDEPENDENT CONTRACTOR.

THE CONTRACTOR SHALL PERFORM ITS DUTIES HEREUNDER AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE OF THE UNIVERSITY. NEITHER THE CONTRACTOR NOR ANY AGENT OR EMPLOYEE OF THE CONTRACTOR SHALL BE OR SHALL BE DEEMED TO BE AN AGENT OR EMPLOYEE OF THE STATE. CONTRACTOR SHALL PAY WHEN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAX WITHHOLDING, INCLUDING ALL FEDERAL AND STATE INCOME TAX AND LOCAL HEAD TAX AND ANY MONIES PAID PURSUANT TO THIS CONTRACT. CONTRACTOR ACKNOWLEDGES THAT THE CONTRACTOR AND ITS EMPLOYEES ARE NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS THE CONTRACTOR OR A THIRD PARTY PROVIDES SUCH COVERAGE AND THAT THE STATE DOES NOT PAY FOR OR OTHERWISE PROVIDE SUCH COVERAGE. CONTRACTOR SHALL HAVE NO AUTHORIZATION, EXPRESS OR IMPLIED, TO BIND THE STATE TO ANY AGREEMENTS, LIABILITY, OR UNDERSTANDING EXCEPT AS EXPRESSLY SET FORTH HEREIN. CONTRACTOR SHALL PROVIDE AND KEEP IN FORCE WORKER'S COMPENSATION (AND SHOW PROOF OF SUCH INSURANCE) AND

UNEMPLOYMENT COMPENSATION INSURANCE IN THE AMOUNTS REQUIRED BY LAW, AND SHALL BE SOLELY RESPONSIBLE FOR THE ACTS OF THE CONTRACTOR, ITS EMPLOYEES AND AGENTS.

IX. DEFAULT AND TERMINATION.

An event of default is a failure by either party to comply with any material obligation under this Agreement, which non-compliance remains uncured for more than thirty (30) days after receipt of written notice thereof, provided however, that if the nature of the failure is such that it cannot reasonably be cured within such thirty (30) day period, the cure period shall extend so long as the non-complying party begins to take action to substantially cure the failure within such thirty (30) day period and thereafter prosecutes such cure to completion with due diligence and in good faith.

If an event of default occurs, the non-defaulting party may then terminate this Agreement by giving written notice to the defaulting party. Except as otherwise specifically stated herein, remedies, as set forth herein, shall be cumulative and there shall be no obligation to exercise a particular remedy.

X. FORCE MAJEURE.

Neither party shall be considered to be in default as a result of its delay or failure to perform its obligations herein when such delay or failure arises out of causes beyond the reasonable control of the party. Such causes may include, but are not restricted to, acts of God or the public enemy, acts of the state or the United States in either its sovereign or contractual capacity, fires, floods, epidemics, strikes, and unusually severe weather; but, in every case, delay or failure to perform must be beyond the reasonable control of and without the fault or negligence of the party.

XI. WAIVER.

No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent to breach is in writing.

XII. MODIFICATIONS.

No amendment to this Agreement shall be effective unless in writing and signed by the duly authorized representatives of both parties.

XIII. ENTIRE AGREEMENT.

The terms and provisions of this Agreement, its attachments, exhibits and amendments, represent the entire understanding of the parties with respect to the subject matter of this Agreement. No representations or warranties are made by Eco-Cycle or the University except as herein set forth.

XIV. ASSIGNMENT.

Neither party shall assign any obligation hereunder or assign any interest or right herein without the prior written consent of the other party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

**THE REGENTS OF THE UNIVERSITY
OF COLORADO, A BODY CORPORATE**

ECO-CYCLE, INC.

By _____

By _____

Printed Name

Printed Name

Title

Title

Date

Date