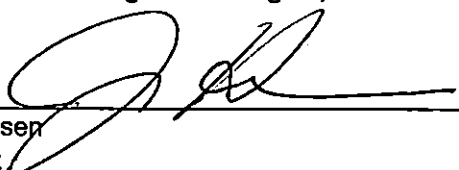


**SIGNATURES TO THE 1ST OF 4 RENEWALS OF THE COLDSTREAM PARK STREAM CORRIDOR RESTORATION AND PRESERVATION SEP POST-CONSTRUCTION MONITORING, REPORTING, AND MAINTENANCE PROJECT CONSULTANT SERVICES AGREEMENT RELATED TO THE EPA CONSENT DECREE**

**ACCEPTED:**

**Advanced Mulching Technologies, Inc. DBA Ecogro**

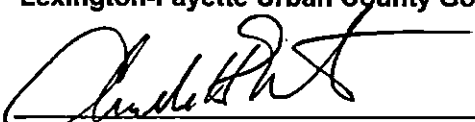
DATE: 1-29-20

BY:   
\_\_\_\_\_  
Jim Hanssen  
President

**REVIEWED:**

**Lexington-Fayette Urban County Government**

DATE: 2/4/20

BY:   
\_\_\_\_\_  
Charles H. Martin, P.E., Director  
Division of Water Quality

**APPROVED:**

**Lexington-Fayette Urban County Government**

DATE: 3/6/2020

BY:   
\_\_\_\_\_  
Linda Gorton  
Mayor

RESOLUTION NO. 279 - 2019

A RESOLUTION AUTHORIZING THE MAYOR, ON BEHALF OF THE URBAN COUNTY GOVERNMENT, TO EXECUTE AN AGREEMENT (AWARDED PURSUANT TO RFP NO. 15-2019) WITH ADVANCED MULCHING TECHNOLOGIES, INC. D/B/A ECOGRO, FOR POST-CONSTRUCTION MONITORING, REPORTING, AND MAINTENANCE RELATING TO THE COLDSTREAM PARK STREAM RESTORATION AND PRESERVATION PROJECT, A SUPPLEMENTAL ENVIRONMENTAL PROJECT REQUIRED BY THE CONSENT DECREE, AT A COST ESTIMATED NOT TO EXCEED \$54,312.00 IN FISCAL YEAR 2019.

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BE IT RESOLVED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 – That the Mayor, on behalf of the Lexington-Fayette Urban County Government, be and hereby is authorized to execute an Agreement (awarded pursuant to RFP No. 15-2019), which is attached hereto and incorporated herein by reference, with Advanced Mulching Technologies, Inc. d/b/a EcoGro, for post-construction monitoring, reporting, and maintenance relating to the Coldstream Park Stream Restoration and Preservation Project, a Supplemental Environmental Project required by the Consent Decree.

Section 2 – That an amount, estimated not to exceed the sum of \$54,312 (Fiscal Year 2019), be and hereby is approved for payment to Advanced Mulching Technologies, Inc. d/b/a EcoGro, from account # 4052 – 303204 – 71223, pursuant to the terms of the Agreement, with future fiscal years subject to sufficient funds being appropriated.

Section 3 – That this Resolution shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: June 6, 2019

  
\_\_\_\_\_  
MAYOR

ATTEST:

  
\_\_\_\_\_  
CLERK OF URBAN COUNTY COUNCIL

489-19\_MSC\_X:\Cases\WATER-AIR\18-LE0001\LEG\00653191.DOCX

## CONSULTANT SERVICES AGREEMENT

THIS IS AN AGREEMENT made as of JUN 06 2019, 2019, between the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, an urban county government of the Commonwealth of Kentucky pursuant to KRS Chapter 67A ("OWNER") and Advanced Mulching Technologies, Inc. DBA EcoGro with offices located in Lexington, Kentucky ("CONSULTANT"). OWNER intends to proceed with the Coldstream Park Stream Corridor Restoration and Preservation Supplemental Environmental Project Post-Construction Monitoring, Reporting, and Maintenance Project as described in the attached EXHIBIT A, Ecological/Environmental Consultants for the Coldstream Park Stream Restoration and Preservation Project RFP #15-2019 (the "PROJECT"). The CONSULTANT shall perform ecological services (and some services that may require a professional engineer) and deliverables as described in EXHIBIT A that will assist the OWNER in successfully implementing the PROJECT and complying with any requirements which are related to the Consent Decree entered in a case styled *United States & Commonwealth of Kentucky v. Lexington Fayette Urban County Government*, United States District Court for the Eastern District of Kentucky, Civil Action No. 5:06-cv-386-KSF (the "CONSENT DECREE"). The services are hereinafter referred to as the PROJECT. The primary goal of the PROJECT is to provide the OWNER with the technical support necessary to successfully meet the obligations and deadlines of the CONSENT DECREE. OWNER and CONSULTANT in consideration of their mutual covenants herein agree in respect of the performance of professional ecological services by CONSULTANT and the payment for those services by OWNER as set forth below.

CONSULTANT shall provide professional consulting services for OWNER in all phases of the PROJECT to which this Agreement applies, serve as OWNER'S professional ecological representative for the PROJECT as set forth below and shall give professional consultation and advice to OWNER during the performance of services hereunder.

### SECTION 1 - BASIC SERVICES OF CONSULTANT

#### 1.1. General

CONSULTANT shall perform ecological services (and any professional engineering services incidental thereto) as hereinafter stated that include, but are not limited to, ecological planning, native vegetative planting, non-native invasive species removal, community outreach/education, coordination with permitting agencies, and maintenance with a goal of future vegetative sustainability of the project corridor and achieving the success criteria of the stream restoration for the intended purpose of improved water quality with minimal future maintenance.

#### 1.2. Incorporated Documents

The following documents are incorporated by reference as part of this Agreement:

1. The CONSENT DECREE, as may be amended, including all appendices.
2. EXHIBIT A – RFP #15-2019 Ecological/Environmental Consultants for the Coldstream Park Stream Restoration and Preservation Project (Including Addendums).
3. EXHIBIT B – Certificate of Insurance and Evidence of Insurability.

4. **EXHIBIT C – Statement of Qualifications for Ecological/Environmental Consultants for the Coldstream Park Stream Restoration and Preservation Project (the CONSULTANT's response to RFP #15-2019).**
5. **EXHIBIT D – Task Order Agreement Form.**

To the extent of any conflict among the provisions of these documents and/or this Agreement, the provisions of this Agreement shall control, followed by the provisions of **EXHIBIT A**, and then **EXHIBIT C**.

### **1.3 Project Phase**

A complete description of the duties and responsibilities of the **CONSULTANT** are as indicated in **EXHIBIT A**, Ecological/Environmental Consultants for the Coldstream Park Stream Restoration and Preservation Project RFP #15-2019 and **EXHIBIT C** Statement of Qualifications for Ecological/Environmental Consultants for the Coldstream Park Stream Restoration and Preservation Project. After written authorization to proceed from the **OWNER**, **CONSULTANT** shall:

- 1.3.1. Notify the **OWNER** in writing of its authorized representative who shall act as Project Manager and liaison representative between the **CONSULTANT** and the **OWNER**. **OWNER** has the right to approve the Project Manager, or any change thereto, which approval shall not be unreasonably withheld.
- 1.3.2. The **CONSULTANT** must perform all duties necessary to fully complete the deliverables as further described in attached EXHIBIT A, Ecological/Environmental Consultants for the Coldstream Park Stream Restoration and Preservation Project RFP #15-2019, and attached **EXHIBIT C**, Statement of Qualifications for Ecological/Environmental Consultants for the Coldstream Park Stream Restoration and Preservation Project **unless otherwise agreed to in writing by the parties.**
- 1.3.3. The **CONSULTANT** shall provide written documentation of all meetings and be responsible for incorporating all comments and changes resulting therefrom in final work product.
- 1.3.4. The **CONSULTANT** shall submit five (5) copies (hardcover) of all initial draft final work products for this **PROJECT** unless otherwise described in Exhibit A. The copies of the initial draft final reports are submitted for review and comment by the **OWNER**, and should be presented in person to the **OWNER**.
- 1.3.5. After the **OWNER'S** detailed review, the **CONSULTANT** will revise the initial draft final for all work products for this **PROJECT**, and the **CONSULTANT** shall submit five (5) copies (hardcover) unless otherwise described in Exhibit A. One electronic copy of the all work products for this **PROJECT**, including all appendices, shall be provided and prepared in such a manner that it can readily be converted to a quick-link accessible form for the **OWNER'S** Website. The **OWNER** shall have ten (10) business days within which to accept or deny each such final draft. If it is denied, the **OWNER** shall provide a detailed explanation in writing for the basis of such denial. Once the **OWNER** accepts the draft as final, a total of ten (10) final copies (hardcover) are required in addition to an electronic copy unless otherwise described in Exhibit A.
- 1.3.6. Immediately notify **OWNER** of any delay in the delivery of a work product or deliverable, regardless of cause. Give written notice to **OWNER** within five (5)

business days whenever **CONSULTANT** observes or otherwise becomes aware of any development that affects the scope or timing of **CONSULTANT'S** services, or any defect in the work of Contractor(s).

## **SECTION 2 - EXTRA WORK BY CONSULTANT**

- 2.1. The **OWNER** may desire to have the **CONSULTANT** perform work or render services in connection with this **PROJECT** other than provided by the expressed intent of this Agreement. Such work shall be considered as Extra Work, subject to a change order, supplemental to this Agreement, setting forth the character and scope thereof and the compensation therefore. Work under such change order shall not proceed until the **OWNER** gives written authorization. Should the **OWNER** find it desirable to have previously satisfactorily completed and accepted plans or parts thereof revised, the **CONSULTANT** shall make such revisions as directed, in writing, by the **OWNER**. This work shall be considered as Extra Work and shall be paid as such.
- 2.2. All Extra Work is subject to prior written authorization of **OWNER** and necessary appropriations made by the Urban County Council.

## **SECTION 3 - OWNER'S RESPONSIBILITIES**

**OWNER** shall:

- 3.1. Provide criteria and information, as to **OWNER'S** requirements for the **PROJECT**, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations.
- 3.2. Assist **CONSULTANT** by placing at his disposal available information pertinent to the Project.
- 3.3. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by **CONSULTANT**, and provide written approval or disapproval thereof within a reasonable time so as not to delay the services of **CONSULTANT**.
- 3.4. Designate in writing a person to act as **OWNER'S** representative agent with respect to the services to be rendered under this Agreement (see Section 8.1.1.). Such person shall have complete authority to transmit instructions, receive information, interpret, and define **OWNER'S** policies and decisions with respect to materials, equipment, elements, and systems pertinent to **CONSULTANT'S** services.
- 3.5. Give written notice to **CONSULTANT** whenever **OWNER** observes or otherwise becomes aware of any development that affects the scope or timing of **CONSULTANT'S** services, or any defect in the work of **CONSULTANT**.
- 3.6. Furnish or direct **CONSULTANT** to provide, Extra Work as stipulated in Section Two (2) of this Agreement or other services as required.

## **SECTION 4 - PERIOD OF SERVICES**

- 4.1. Time is of the essence in the performance of this Agreement. **CONSULTANT** is aware that the **OWNER** is subject to penalties for non-compliance with the **CONSENT DECREE** deadlines. See attached **EXHIBIT A** for the overall current project schedule.

- 4.2. The provisions of this Section Four (4) and the various rates of compensation for **CONSULTANT'S** services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the **PROJECT** through completion.
- 4.3. If a delay results from the acts of **OWNER** or another entity that is required to permit or approve the work or services, an extension of time for such delay will be considered by **OWNER**.
- 4.3.1. If the above type of delay occurs and **CONSULTANT** wants an extension of time, it must, within ten (10) days from the date of the delay, apply in writing to **OWNER** for an extension of time for a reasonable period, which must be agreed upon by **OWNER**.
- 4.3.2. If the extension of time is approved by **OWNER**, the **PROJECT** schedule shall be revised to reflect the extension. Such extension of time to the completion date shall in no way be construed to operate as a waiver on the part of **OWNER** of any of its other rights in the Agreement.
- 4.3.3. If the above type of delay would prevent complete performance of the **PROJECT** within sixty (60) days of the time specified therein, **OWNER** shall have the option of cancelling the **PROJECT** or otherwise adjusting the scope of the services or work.
- 4.3.4. If the parties cannot mutually agree to an extension of time or an adjustment, Section 6.5 under "DISPUTES" of this Agreement shall apply.
- 4.4. If delays result solely by reason of acts of the **CONSULTANT**, the **CONSULTANT** shall be held liable for any financial penalties incurred by the **OWNER** as a result of the delay, including but not limited to those assessed pursuant to the **CONSENT DECREE**. Section 6.5 of this Agreement (**Disputes**), shall apply in the event the parties cannot mutually agree upon the cause(s) associated with delays in completing project deliverables. The **CONSULTANT** must immediately notify the **OWNER** in the event of such delay, and provide the **OWNER** a written action plan within five (5) business days on how it will attempt to resolve the delay.

## **SECTION 5 - PAYMENTS TO CONSULTANT**

### **5.1. Methods of Payment for Services of CONSULTANT.**

#### **5.1.1. For Basic Services**

**OWNER** shall issue individual task orders for each work assignment performed under this Agreement by **CONSULTANT** or its sub-consultant/s. Each task order shall contain scope of work, fee, and schedule for performance of the work. Individual task orders shall be of the form included in **EXHIBIT D**.

**5.1.1.a** Fee payable to **CONSULTANT** under individual task order shall be developed using hourly rates included in **EXHIBIT D** or as amended in accordance with provisions therein.

**5.1.1.b** Terms of payment to **CONSULTANT** shall be specified in each task order. For assignments with defined scope, lump sum task orders shall be issued. Otherwise, task orders shall include time and materials payment terms.

**5.1.1.c** Each task order issued shall receive prior written approval of **OWNER** prior to **CONSULTANT** proceeding with said work. The **OWNER's** designated agent in Section 8.1.1. shall be the only person authorized to provide such approval.

**5.1.2. For Extra Work**

Extra Work shall be paid for by the **OWNER** on the basis of a fixed fee, the amount of which shall be determined by negotiation. The **OWNER** shall have the right to negotiate alternate methods of payment for Extra Work if the **OWNER** determines that the fixed fee basis is not feasible. In the event the **OWNER** and the **CONSULTANT** are unable to agree upon the amount of payment for Extra Work, then the amount of such payment shall be determined pursuant to Section 6.5 (Disputes).

**5.2. Times of Payment**

**5.2.1** **CONSULTANT** shall submit to **OWNER** detailed monthly statements for Basic Services and Extra Work rendered. The Statements will be based upon **CONSULTANT'S** estimate of the proportion of the total services actually completed at the time of billing. **OWNER** shall respond to **CONSULTANT'S** monthly statements within thirty (30) days, either denying payment or making payment.

**5.3. Other Provisions Concerning Payments**

**5.3.1.** In the event the Agreement is terminated by the **OWNER** without fault on the part of the **CONSULTANT**, the **CONSULTANT** shall be paid for the work performed or services rendered for which it has not already been paid in an amount bearing the same ratio to the total Agreement fee as the amount of work completed or partially completed and delivered to the **OWNER** is to the total amount of work provided for herein, as determined by mutual agreement between the **OWNER** and the **CONSULTANT**.

**5.3.2.** In the event the services of the **CONSULTANT** are terminated by the **OWNER** for fault on the part of the **CONSULTANT**, the **CONSULTANT** shall be paid reasonable value of the work performed or services rendered and delivered for which it has not already been paid, and the amount to be paid shall be determined by the **OWNER**.

**SECTION 6 - GENERAL CONSIDERATIONS**

**6.1. Termination**

**6.1.1.** **CONSULTANT** may only terminate this Agreement due to **OWNER'S** material breach of the terms hereof which breach causes **CONSULTANT** to be unable to

perform its duties and responsibilities under this Agreement and upon forty-five (45) days written advance notice to OWNER.

- 6.1.2. The OWNER may terminate this Agreement for cause upon seven (7) business days written advance notice to the CONSULTANT. The OWNER reserves the right to terminate the Agreement for any reason whatsoever, with or without cause, at any time upon thirty (30) days written advance notice to the CONSULTANT.

## 6.2. Ownership and Reuse of Documents

All documents, including raw data, reports, drawings and specifications, prepared by the CONSULTANT pursuant to this Agreement shall be delivered to and become the property of the OWNER. The OWNER shall have the right to reuse same without restriction or limitation, but without liability or legal exposure to CONSULTANT.

## 6.3. Legal Responsibilities and Legal Relations

- 6.3.1. The CONSULTANT shall familiarize itself with and shall at all times comply with the CONSENT DECREE and all federal, state, and local laws, ordinances, and regulations that in any manner affect the services of this Agreement.
- 6.3.2. In performing the services hereunder, the CONSULTANT and its consultants, employees, agents and representatives shall not be deemed or construed to be employees of OWNER in any manner whatsoever. Except as otherwise provided in this Agreement, the CONSULTANT shall be acting as an independent contractor. The CONSULTANT shall not hold itself out as, nor claim to be, an officer or employee of OWNER by reason hereof and shall not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of OWNER. The CONSULTANT shall be solely responsible for any claims for wages or compensation by CONSULTANT'S employees, agents and representatives, including consultants, and shall save and hold OWNER harmless therefrom.
- 6.3.3. The parties hereto agree that causes of actions between the parties shall be governed by applicable provisions of the Kentucky Revised Statutes, and that venue of any legal action shall be a court of appropriate jurisdiction in Fayette County, Kentucky. The parties further agree that Kentucky law shall apply with respect to the interpretation of any provision of this Agreement.

## 6.4. Successors and Assigns

- 6.4.1. CONSULTANT binds itself and its partners, successors, assigns and legal representatives to this Agreement. CONSULTANT shall not assign any interest in this Agreement without prior written consent of OWNER. OWNER'S consent shall not relieve the CONSULTANT of any responsibility for compliance with the provisions of this Agreement.
- 6.4.2. In no event shall the CONSULTANT subcontract more than fifty percent (50%) of the work, based upon dollar value of the work.
- 6.4.3. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than OWNER and CONSULTANT.



## **6.5. Disputes**

Except as otherwise provided in this Agreement, any dispute hereunder may be resolved by agreement of the OWNER'S Agent (Section 8.1.1) and the CONSULTANT. In the absence of such an agreement, the dispute shall be submitted to the OWNER'S Commissioner, Department of Environmental Quality and Public Works, whose decision shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith. Pending a final decision of a dispute hereunder, the CONSULTANT shall proceed diligently with the performance of the Agreement in accordance with the directions of the OWNER.

## **6.6. Accuracy of Consultant's Work**

CONSULTANT shall be required to perform this Agreement in accordance with the degree of ordinary and reasonable skill and care usually exercised by professional engineers prevailing at the time, place and under similar conditions as the services hereunder are rendered. CONSULTANT shall be responsible for the accuracy of all work, even though raw data, reports, Drawings and Specifications have been accepted by OWNER, and it shall make any necessary revisions or corrections resulting from its errors and/or omissions for no additional compensation. By submission of reports, soils and subsurface information, quantities estimates, calculations and Drawings and Specifications to OWNER, CONSULTANT has made an incontrovertible representation that the information is accurate within the appropriate standard of skill and care. Failure on the part of CONSULTANT to provide the expected level of accuracy may be grounds for OWNER to terminate this Agreement

## **6.7. Security Clause**

The CONSULTANT certifies that he shall not at any time release or divulge any information concerning the services covered by this Agreement to any person or any public or private organization without prior approval of the OWNER unless otherwise required by law

## **6.8. Access to Records**

The CONSULTANT and its sub-consultants shall maintain all books, documents, papers, and accounting records, and make such materials available at their respective offices at all reasonable times during the Agreement period and for three (3) years from the date of final payment under the Agreement for inspection by the OWNER, and copies thereof shall be furnished if requested. Failure to maintain such records for three (3) years after the date of final payment may be grounds for the OWNER to disqualify the CONSULTANT from consideration for future consultant Agreements.

## **6.9. Risk Management Provisions, Insurance and Indemnification**

### **6.9.1. DEFINITIONS**

The CONSULTANT understands and agrees that the Risk Management Provisions of this Agreement define the responsibilities of the CONSULTANT to the OWNER.

As used in these Risk Management Provisions, the terms "CONSULTANT" and "OWNER" shall be defined as follows:

- a. **CONSULTANT** means the consultant and its employees, agents, servants, owners, principals, licensees, assigns and subcontractors of any tier.
- b. **OWNER** means the Lexington-Fayette Urban County Government and its elected and appointed officials, employees, agents, boards, assigns, volunteers, and successors in interest.

**6.9.2. INDEMNIFICATION AND HOLD HARMLESS PROVISION**

- a. It is understood and agreed by the parties that **CONSULTANT** hereby assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of **CONSULTANT** or its employees, agents, servants, owners, principals, licensees, assigns or subcontractors of any tier (hereinafter "**CONSULTANT**") under or in connection with this agreement and/or the provision of goods or services and the performance or failure to perform any work required thereby.
- b. **CONSULTANT** shall indemnify, save, hold harmless and defend the Lexington-Fayette Urban County Government and its elected and appointed officials, employees, agents, volunteers, and successors in interest (hereinafter "**OWNER**") from and against all liability, damages, and losses, including but not limited to, demands, claims, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney's fees that are in any way incidental to or connected with, or that arise or are alleged to have arisen, directly or indirectly, from or by **CONSULTANT**'s performance or breach of the agreement and/or the provision of goods or services provided that: (a) it is attributable to personal injury, bodily injury, sickness, or death, or to injury to or destruction of property (including the loss of use resulting therefrom), or to or from the negligent acts, errors or omissions or willful misconduct of the **CONSULTANT**; and (b) not caused solely by the active negligence or willful misconduct of **OWNER**.
- c. Notwithstanding, the foregoing, with respect to any professional services performed by **CONSULTANT** hereunder (and to the fullest extent permitted by law), **CONSULTANT** shall indemnify, save, hold harmless and defend **OWNER** from and against any and all liability, damages and losses, including but not limited to, demands, claims, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney's fees, for any damage due to death or injury to any person or injury to any property (including the loss of use resulting therefrom) to the extent arising out of, pertaining to or relating to the negligence, recklessness or willful misconduct of **CONSULTANT** in the performance of this agreement.
- d. In the event **OWNER** is alleged to be liable based upon the above, **CONSULTANT** shall defend such allegations and shall bear all costs, fees and

expenses of such defense, including but not limited to, all reasonable attorneys' fees and expenses, court costs, and expert witness fees and expenses, using attorneys approved in writing by OWNER, which approval shall not be unreasonably withheld.

- e. These provisions shall in no way be limited by any financial responsibility or insurance requirements, and shall survive the termination of this agreement.
- f. OWNER is a political subdivision of the Commonwealth of Kentucky. CONSULTANT acknowledges and agrees that OWNER is unable to provide indemnity or otherwise save, hold harmless, or defend the CONSULTANT in any manner.

**6.9.3. DAMAGES RELATED TO NONPERFORMANCE OR DELAY BY CONSULTANT**

In the event that CONSULTANT'S delay or other nonperformance of its obligations hereunder results in the imposition of penalties against the OWNER pursuant to the CONSENT DECREE, or the OWNER otherwise suffers damage as a result of such delay or nonperformance, CONSULTANT shall be solely liable to OWNER for any and all such damages, including any costs and attorney's fees.

**6.9.4. FINANCIAL RESPONSIBILITY**

The CONSULTANT understands and agrees that the CONSULTANT shall, prior to final acceptance of the CONSULTANT'S proposal and the commencement of any work; demonstrate the ability to assure compliance with the Indemnity Agreement and other provisions of this Agreement.

**6.9.5. INSURANCE REQUIREMENTS**

**6.9.5.1. Required Insurance Coverage**

CONSULTANT shall procure and maintain for the duration of this Agreement the following or equivalent insurance policies at no less than the limits shown below and cause its subcontractors to maintain similar insurance with limits acceptable to OWNER in order to protect OWNER against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by CONSULTANT. The cost of such insurance shall be included in any proposal:

**Coverage**

General Liability  
(Insurance Services Office Form CG 00 01)

**Limits**

\$1 million per occurrence,  
\$2 million aggregate or  
\$2 million combined single  
limit

Commercial Automobile Liability, (Insurance Services Office Form CA 0001)	combined single, \$1 million per occurrence
Professional Liability	\$1 million per occurrence, \$ 2 million aggregate
Worker's Compensation	Statutory
Employer's Liability	\$500,000.00

The policies above shall contain the following conditions:

- a. **OWNER** shall be named as an additional insured in the General Liability Policy and Commercial Automobile Liability Policy.
- b. The General Liability Policy shall be primary to any insurance or self-insurance retained by **OWNER**.
- c. The General Liability Policy shall include Business Interruption coverage.
- d. The Contractor shall carry Builders Risk coverage at a level sufficient to cover the replacement cost of any equipment or machinery used at the work site, if applicable.
- e. The General Liability Policy shall include a Pollution Liability endorsement and/or Environmental Casualty coverage unless it is deemed not to apply by **OWNER**.
- f. The General Liability Policy shall have a Professional Liability endorsement (including Errors and Omissions), which shall include Business interruption coverage and this policy or endorsement shall include Environmental Casualty coverage for any services performed pursuant to the contract, and/or a separate Professional Liability Policy shall be obtained unless it is deemed not to apply by **OWNER**. (**OWNER** does not need to be named as additional insured).
- g. **OWNER** shall be provided at least 30 days advance written notice via certified mail, return receipt requested, in the event any of the required policies are canceled or non-renewed.
- h. The Professional Liability policy shall be maintained for a minimum of three years beyond the completion date of the project, to the extent commercially available. If not commercially available, **CONSULTANT** shall notify **OWNER** and obtain similar insurance that is commercially available and acceptable to **OWNER**.
- i. Said coverage shall be written by insurers acceptable to **OWNER** and shall be in a form acceptable to **OWNER**. Insurance placed with insurers with a rating classification of no less than Excellent (A or A-) and a financial size category of no less than VIII, as defined by the most current Best's Key Rating Guide shall be deemed automatically acceptable.

#### **6.9.5.2. Renewals**

After insurance has been approved by **OWNER**, evidence of renewal of an expiring policy must be submitted to **OWNER**, and may be submitted on a manually signed renewal endorsement form. If the policy or carrier has changed, however, new evidence of coverage must be submitted in accordance with these Insurance Requirements.

#### **6.9.5.3. Right to Review, Audit and Inspect**

**CONSULTANT** understands and agrees that **OWNER** may review, audit and inspect any and all of **CONSULTANT'S** records and operations to insure compliance with these Insurance Requirements.

#### **6.9.6. SAFETY AND LOSS CONTROL**

**CONSULTANT** shall comply with all applicable federal, state, and local safety standards related to the performance of its works or services under this Agreement and take necessary action to protect the life, health and safety and property of all of its personnel on the job site, the public, and **OWNER**.

#### **6.9.7. DEFINITION OF DEFAULT**

**CONSULTANT** understands and agrees that the failure to comply with any of these insurance, safety, or loss control provisions shall constitute default under this Agreement. **CONSULTANT** also agrees that **OWNER** may elect as its option any single remedy or penalty or any combination of remedies and penalties, as available, including but not limited to purchasing insurance and charging **CONSULTANT** for any such insurance premiums purchased, or suspending or terminating this Agreement.

### **SECTION 7 - EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this Agreement, the **CONSULTANT** agrees as follows:

- 7.1.** The **CONSULTANT** will not discriminate against any employee or application for employment because of race, color, religion, national origin, sex, age, or handicap. The **CONSULTANT** will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, national origin, sex, age, or handicap. Such action shall include, but not be limited to the following: employment upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. The **CONSULTANT** agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.

- 7.2. The **CONSULTANT** will, in all solicitations or advertisements for employees placed by or on behalf of the **CONSULTANT**, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, sex, age (between forty and seventy), or handicap.

## **SECTION 8 - SPECIAL PROVISIONS, EXHIBITS, AND SCHEDULES**

- 8.1. This Agreement is subject to the following provisions.
- 8.1.1. Pursuant to subparagraph 3.4 of this Agreement, **OWNER** has assigned Charles H. Martin, P.E., Director of the Division of Water Quality (the "**OWNER'S Agent**"), as the authorized agent of **OWNER**, to monitor, direct and review the performance of work of the **CONSULTANT**. Documents, data, reports, and all matters associated with carrying out this Agreement shall be addressed to the **OWNER'S Agent** or his designee. Questions by the **CONSULTANT** regarding interpretations of the terms, provisions and requirements under this Agreement shall be addressed to the **OWNER'S Agent** or his designee. The **CONSULTANT** shall look only to the **OWNER'S Agent** or his designee for direction in its performance under this Agreement; no other direction shall be binding upon **OWNER**. **OWNER** shall respond to written requests by **CONSULTANT** within thirty (30) days.
- 8.2. This Agreement, together with the Incorporated Documents (Section 1.2) constitutes the entire Agreement between **OWNER** and **CONSULTANT** and supersedes all prior written or oral understandings. This Agreement and **EXHIBITS A, B, C and D** and any related schedules or documents may only be amended, supplemented, modified or canceled by a duly executed written instrument.
- 8.3. **NO THIRD PARTY RIGHTS.** This agreement does not create a contractual relationship with or right of action in favor of a third party against either **OWNER** or **CONSULTANT**.
- 8.4. **UNENFORCEABLE TERMS/SURVIVABILITY.** If any term or provision of this Agreement shall be found to be illegal or unenforceable, this Agreement shall remain in full force and such term or provision shall be deemed stricken. The provisions of Section 6 of this Agreement shall survive its termination.
- 8.5. **NON-WAIVER.** The failure of either party to enforce any right reserved to it in this Agreement shall not be a waiver of any such right to which the party is entitled.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

OWNER:  
LEXINGTON-FAYETTE URBAN  
COUNTY GOVERNMENT

CONSULTANT:  
ADVANCED MULCHING  
TECHNOLOGIES, INC. DBA  
ECOGRO

BY: *Linda Gorton*  
LINDA GORTON, MAYOR

BY: *[Signature]*

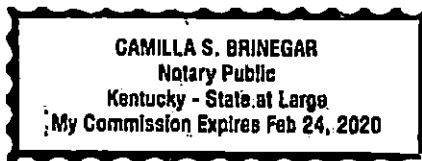
ATTEST:  
*[Signature]*  
URBAN COUNTY COUNCIL CLERK

COMMONWEALTH OF KENTUCKY )  
   )  
COUNTY OF FAYETTE               )

The foregoing Agreement was subscribed, sworn to and acknowledged before me by JAMES HANSEN, as the duly authorized representative for and on behalf of ECOGRO, on this the 26 day of April, 2019.

My commission expires: Feb 04, 2020.

*[Signature]*  
NOTARY PUBLIC



## LaDonna Roberts

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**From:** Michael Cravens  
**Sent:** Tuesday, February 4, 2020 10:47 AM  
**To:** Commisioner EQ PW Exec Asst; Nancy Albright  
**Cc:** Charles Martin; LaDonna Roberts  
**Subject:** RE: Law Review: EcoGro Annual Renewal Post-Construction Monitoring and Maintenance

I have reviewed this request for a resolution authorizing the Mayor, on behalf of the Urban County Government, to execute the First Renewal of the Agreement with Advanced Mulching Technologies, Inc. D/B/A EcoGro, for Post-Construction Monitoring, Reporting, and Maintenance relating to the Coldstream Park Stream Restoration and Preservation Project, a Supplemental Environmental Project required by the Consent Decree, at a cost not to exceed \$41,310.00.

No legal issues. However, there is a small typo in the first paragraph of the bluesheet memo ("of the" is repeated in the first line).

**Michael Cravens**  
*Attorney Senior*  
Department of Law

859.258.3500  
[MCravens@lexingtonky.gov](mailto:MCravens@lexingtonky.gov)  
[lexingtonky.gov](http://lexingtonky.gov)



**LEXINGTON**

### NOTICE OF CONFIDENTIALITY

This message is intended only for the use of the individual or entity to which it is addressed and may contain confidential information that is legally privileged and exempt from disclosure under applicable law, including but not limited to, Kentucky Rule of Evidence 503. Any legal opinion provided in this electronic mail transmission is provided in the course of my legal representation of the Lexington-Fayette Urban County Government and should not be disseminated to the public. If the reader of this message is not the intended recipient, you are notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, delete it from your system without copying or forwarding it, and notify the sender of the error by replying via e-mail or by calling the Department of Law at (859) 258-3500, so that our address record can be corrected. Thank you.

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**From:** Commisioner EQ PW Exec Asst <commeqpw@lexingtonky.gov>  
**Sent:** Monday, February 3, 2020 9:02 AM  
**To:** Susan Speckert <sspeckert@lexingtonky.gov>; Michael Cravens <mcravens@lexingtonky.gov>; Nancy Albright <nalbright@lexingtonky.gov>  
**Cc:** Charles Martin <chmartin@lexingtonky.gov>; LaDonna Roberts <lroberts@lexingtonky.gov>  
**Subject:** FW: Law Review: EcoGro Annual Renewal Post-Construction Monitoring and Maintenance

Susan, I am requesting review of the attached on behalf of the Commissioner for Water Quality.

Thank you,

Sandy  
3401



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**From:** LaDonna Roberts  
**Sent:** Friday, January 31, 2020 4:21 PM  
**To:** Commisioner EQ PW Exec Asst <[commegpwea@lexingtonky.gov](mailto:commegpwea@lexingtonky.gov)>  
**Cc:** Nancy Albright <[nalbright@lexingtonky.gov](mailto:nalbright@lexingtonky.gov)>; Charles Martin <[chmartin@lexingtonky.gov](mailto:chmartin@lexingtonky.gov)>  
**Subject:** Law Review: EcoGro Annual Renewal Post-Construction Monitoring and Maintenance

Sandy,

Please send the attached documents to law for review.

Thank you,

**LaDonna Roberts**  
*Administrative Specialist*  
Division of Water Quality

859.258.3362 office  
[lexingtonky.gov](http://lexingtonky.gov)



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**From:** Jennifer Carey <[jcarey@lexingtonky.gov](mailto:jcarey@lexingtonky.gov)>  
**Sent:** Friday, January 31, 2020 11:54 AM  
**To:** LaDonna Roberts <[lroberts@lexingtonky.gov](mailto:lroberts@lexingtonky.gov)>  
**Subject:** For Legistar

LaDonna,

I'm putting the originals in a red signature folder, but in case the memo needs to be edited, it is attached.


**Jennifer M. Carey, P.E.**  
*MS4 / Water Quality Section Manager*  
Water Quality

859.425.2482 office  
859.948.6792 cell  
[lexingtonky.gov](http://lexingtonky.gov)





TO: Mayor Linda Gorton  
Urban County Council

FROM:   
Charles H. Martin, P.E., Director  
Division of Water Quality

DATE: January 31, 2020

SUBJECT: Renewal of the Coldstream Park Stream Corridor Restoration and Preservation SEP's Post-Construction Monitoring, Reporting, and Maintenance Consultant Services Agreement - Resolution #279-2019

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**Request**

Division of Water Quality is requesting approval of the First Renewal of the Agreement with Advanced Mulching Technologies, Inc. D/B/A EcoGro, per Resolution #279-2019, at a cost not to exceed \$41,310.00 for FY20.

**Why are you requesting?**

The renewal option with Advanced Mulching Technologies, Inc. D/B/A EcoGro is for continued services associated with LFUCG's Consent Decree related to the post-construction monitoring, reporting, and maintenance of the Coldstream Park Stream Corridor Restoration and Preservation Supplemental Environmental Project (SEP). The KDOW-issued Water Quality Certification, which was required for the construction of the SEP, mandates a minimum five-year post-construction monitoring and maintenance period.

**What is the cost in this budget year and future budget years?**

The funds are fully budgeted in the FY20 budget year at a cost not to exceed \$41,310.00, for this first annual renewal. Subsequent annual renewals will be requested in future budget cycles.

**Are the funds budgeted?**

Funds are budgeted and available in 4052-303204-3321-71223 2020 STORM\_MAIN CONSENT\_DE

**File Number:** RFP #15-2019 / Resolution #279-2019

**Director / Commissioner:** Martin / Albright

