

ECOLOGICAL SERVICES CONTRACT AGREEMENT

THIS AGREEMENT, made as of _____, 2014, 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, P.O. Box 22273, Lexington, KY 40522, (“CONSULTANT”). OWNER intends to proceed with the Ecological Restoration Services for the Green Acres Stream Corridor Vegetative Buffer as described in the attached EXHIBIT A, RFP #31-2014 Green Acres Stream Corridor Vegetative Buffer – Ecological Restoration, (the “PROJECT”). The CONSULTANT shall perform ecological services (and some services that may require a professional engineer), produce deliverables as described in EXHIBIT A that will assist the OWNER in successfully implementing the PROJECT. The services are hereinafter referred to as the PROJECT. OWNER and CONSULTANT in consideration of their mutual covenants herein agree in respect of the performance of ecological services by CONSULTANT and the payment for those services by OWNER as set forth below.

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

SECTION 1 - SCOPE OF SERVICES OF CONSULTANT

1.1. General

CONSULTANT shall perform ecological services (and any professional engineering services incidental thereto) which include 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 stream and corridor 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. **EXHIBIT A** – RFP #31-2014 Green Acres Stream Corridor Vegetative Buffer – Ecological Restoration (Including Addendums).
2. **EXHIBIT B** – Certificate of Insurance and Evidence of Insurability.
3. **EXHIBIT C** – Proposal for Green Acres Stream Corridor Vegetative Buffer - Ecological Restoration (the CONSULTANT's response to RFP #31-2014).
4. **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, EXHIBIT D 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**, RFP #31-2014 Green Acres Stream Corridor Vegetative Buffer – Ecological Restoration (Including Addendums). 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 and shall furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to fully complete the PROJECT and provide deliverables as further described in attached EXHIBIT A – RFP #31-2014 Green Acres Stream Corridor Vegetative Buffer – Ecological Restoration, and attached EXHIBIT C – Proposal for Green Acres Stream Corridor Vegetative Buffer -Ecological Restoration 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 three (3) hardcover copies and one (1) electronic (pdf) copy of all initial draft final reports for this **PROJECT**, unless otherwise described in Exhibit A, for review and comment by the **OWNER**. After the **OWNER'S** review, the **CONSULTANT** will revise the draft final report for this **PROJECT**, and the **CONSULTANT** shall submit three (3) copies (hardcover) and one electronic copy of the final reports for this **PROJECT**, including all appendices. The **OWNER** shall have ten (10) business days within which to accept or deny each such final draft. If 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 three (3) final copies (hardcover) are required in addition to an electronic copy unless otherwise described in Exhibit A.
- 1.3.5. 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 **PROJECT**.

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. 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/Final Task Order 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/Final Task Order** within sixty (60) days of the time specified therein, **OWNER** shall have the option of cancelling the **PROJECT/Final Task Order** 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. 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 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, 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 an ecological consultant 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, 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

CONSULTANT shall defend, indemnify, and hold harmless OWNER from and against all liability, claims, losses, actions, costs, expenses, obligations, fines, and assessments of whatever kind, including 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 (or subcontractors or subconsultants of any tier) performance or breach of the Agreement provided that such claim, damage, loss or expense 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 negligent acts, errors or omissions or willful misconduct; provided however, that CONSULTANT shall not be required to indemnify for damages caused solely by the negligent act or omission or willful misconduct of OWNER. 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. 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. This Indemnification and Hold Harmless Provision shall in no way be limited by any financial responsibility or insurance requirements, and shall survive the termination of this Agreement.

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, 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:

<u>Coverage</u>	<u>Limits</u>
General Liability (Insurance Services Office Form CG 00 01)	\$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 General Liability Policy shall include a Products and Completed Operations endorsement or Premises and Operations Liability endorsement unless it is deemed not to apply by OWNER.
- 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:

BY: _____
JIM GRAY, MAYOR

BY: _____

ATTEST:

URBAN COUNTY COUNCIL CLERK

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF FAYETTE)

The foregoing Agreement was subscribed, sworn to and acknowledged before me by _____, as the duly authorized representative for and on behalf of _____, on this the ___ day of _____, 2012.

My commission expires: _____.

NOTARY PUBLIC

EXHIBIT A

RFP #31-2014

Green Acres Stream Corridor Vegetative Buffer – Ecological Restoration

(Including Addendums)

EXHIBIT B

Certificate of Insurance

and

Evidence of Insurability

EXHIBIT C

Proposal for Green Acres Stream Corridor Vegetative Buffer – Ecological Restoration

EXHIBIT D

Task Order Agreement Form

LFUCG TASK ORDER NO. _____

UNDER LFUCG AGREEMENT WITH _____ FOR

CONSULTANT

OWNER

Name	_____	Lexington Fayette Urban County Government
Street Address	_____	125 Lisle Industrial Ave Ste 180
City, State, Zip	_____	Lexington, KY 40507
Contact Person	_____	Charles Martin
Telephone	_____	859-425-2400
Fax	_____	859-254-7787
E-Mail	_____	chmartin@lexingtonky.gov

Task Order Date: _____

Task Name: _____

Task ID: _____

SCOPE OF WORK/DELIVERABLES

SCHEDULE OF WORK

FEE

ACCEPTED BY:

AUTHORIZED BY:

Consultant's Authorized Signature

Owner's Authorized Signature

Date Signed

Date Signed

Two originals of this work order shall be executed by the Owner and returned to _____. A fully executed copy will be returned to the Owner.