

ECOLOGICAL RESTORATION
MAINTENANCE SERVICES AGREEMENT

THIS AGREEMENT, made as of _____, 2015, 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**, (“**CONTRACTOR**”).

WITNESSETH:

WHEREAS, OWNER intends to proceed with the Ecological Restoration Maintenance 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 and more specifically the Ecological Restoration-5.0 Yearly Maintenance and Permit Reporting, (services hereinafter referred to as the “**PROJECT**”); and

WHEREAS, CONTRACTOR agrees to perform the maintenance services needed to support the Ecological Restoration Project and produce deliverables as described in **EXHIBIT A** that will assist **OWNER** in successfully implementing the **PROJECT**.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein with respect to the performance of ecological restoration maintenance services for the **PROJECT** by **CONTRACTOR** and the payment for those services by **OWNER** as set forth below, **OWNER** and **CONTRACTOR** hereby agree as follows:

1. **Scope of Agreement:** **CONTRACTOR** shall perform ecological restoration maintenance services to promote long term establishment and improvement of the Green Acres Stream Corridor Vegetative Buffer - Ecological Restoration Project (as referenced above in RFP #31-2014 and noted in the Incorporated Documents section below) for the purpose of improving water quality with minimal future maintenance. Services shall include planned seasonal activities to promote the growth and establishment of the stream buffer plantings including removal of non-native and invasive plant species and supplemental seeding and mowing of areas as needed during winter months. These services also include vegetative monitoring for progression of the buffer establishment and submittal of an annual vegetative monitoring report due by December 10 each year of authorization of this agreement and in a format suitable for submittal to the USACE to meet permitting requirements.

Incorporated Documents: The following documents are attached hereto and incorporated by reference as part of this Agreement:

- i. **EXHIBIT A** – RFP #31-2014 Green Acres Stream Corridor Vegetative Buffer – Ecological Restoration (Including Addendums and **CONTRACTOR**’s Response).
- ii. **EXHIBIT B** – Quote and Scope of Work for Maintenance of Stream Corridor Vegetative Buffer – Green Acres Ecological Restoration (**CONTRACTOR**’s letter dated 9/21/15 including exhibits).

2. **Term:** The initial term of this Agreement shall be for a period of thirty-six (36) calendar months, commencing on January 1, 2016 and ending on December 31, 2018. This agreement may be automatically renewed for an additional term of twenty-four (24) calendar months, January 1, 2019 and ending on December 31, 2020, unless it is earlier terminated. The contract rate for this renewal term shall increase by not more than ten percent (10%), from the per year rate quoted in the referenced RFP #31-2014 Response.

3. **Termination:** **OWNER** shall have the right to terminate the agreement prior to the expiration date set forth in this contract, if **OWNER** provides **CONTRACTOR** with forty-five (45) calendar days written advance notice of termination by registered mail in the event **CONTRACTOR** fails to perform or observe any covenant or obligation set forth in this Agreement; or within sixty (60) days written advance notice of termination by registered mail in the event it fails to obtain sufficient funding approval from its legislative body. **OWNER** reserves the right to terminate the Agreement for any reason whatsoever, with or without cause, at any time upon ninety (90) days written advance notice to **CONTRACTOR**. **CONTRACTOR may only terminate this Agreement** due to **OWNER'S** material breach of the terms hereof which breach causes **CONTRACTOR** to be unable to perform its duties and responsibilities under this Agreement and upon forty-five (45) days written advance notice to **OWNER**. **OWNER** has the right to not accept the automatic renewal as long as the Owner has notified the **CONTRACTOR** within ninety (90) days of a term.

4. **Consideration:** In consideration of the Ecological Restoration Maintenance Services to be performed by **CONTRACTOR**, **OWNER** shall pay to **CONTRACTOR** the following fixed fee sums annually for the first term:

Year 1 Post-Construction (2016)	\$20,075.00
Year 2 Post-Construction (2017)	\$16,125.00
Year 3 Post-Construction (2018)	<u>\$13,125.00</u>
Total Term Maintenance Service	\$49,325.00

CONTRACTOR shall provide **OWNER** with an invoice for services to be rendered during the term no more than on a quarterly per year basis and the first invoice may be issued no sooner than March 1, 2016. **OWNER** shall make payment of the invoice sum to **CONTRACTOR** within thirty (30) days of receipt.

5. **CONTRACTOR's Duties:** **CONTRACTOR** shall have and perform the following duties, obligations and responsibilities for the **OWNER**:
 - 5.1 Meet the **PROJECT** goals and objectives as outlined in **EXHIBIT A** and **EXHIBIT B**, including, but not limited to the following:
 - 5.2 Remove non-native and invasive plants in the riparian corridor through the following methods, including, but not limited to: Mechanical, Chemical and Cultural Controls.
 - 5.3 Annual vegetation monitoring report to USACE to include: Exhibits on the status of trees planted and Report documenting progression of the establishment of the riparian area.

6. **Default:** In the event the Agreement is terminated by **OWNER** without fault on the part of **CONTRACTOR**, **CONTRACTOR** shall be paid for the 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 **OWNER** to the total amount of work provided for herein, as determined by mutual agreement between **OWNER** and **CONTRACTOR**. In the event the services of **CONTRACTOR** are terminated by **OWNER** for fault on the part of **CONTRACTOR**, **CONTRACTOR** shall be paid reasonable value of the services rendered and delivered for which it has not already been paid, and the amount to be paid shall be determined by **OWNER**.

7. Miscellaneous Provisions.

7.1 Legal Responsibilities and Legal Relations: **CONTRACTOR** 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.

- i. In performing the services hereunder, **CONTRACTOR** and its Sub-Contractors, 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 **CONTRACTOR** shall be acting as an independent contractor. **CONTRACTOR** 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**. **CONTRACTOR** shall be solely responsible for any claims for wages or compensation by **CONTRACTOR'S** employees, agents and representatives, including Sub-contractors, and shall save and hold **OWNER** harmless therefrom.
- ii. **Successors and Assigns:** **CONTRACTOR** binds itself and its partners, successors, assigns and legal representatives to this Agreement. **CONTRACTOR** shall not assign any interest in this Agreement without prior written consent of **OWNER**. **OWNER'S** consent shall not relieve **CONTRACTOR** of any responsibility for compliance with the provisions of this Agreement.

7.2 Disputes: Except as otherwise provided in this Agreement, any dispute hereunder may be resolved by agreement of **OWNER'S** Agent (Section 8.1) and **CONTRACTOR**. In the absence of such an agreement, the dispute shall be submitted to **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, **CONTRACTOR** shall proceed diligently with the performance of the Agreement in accordance with the directions of **OWNER**.

7.3 Access to Records: **CONTRACTOR** and its sub-contractors 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 **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 **OWNER** to disqualify **CONTRACTOR** from consideration for future service agreements.

7.4 Risk Management Provisions: **CONTRACTOR** agrees to comply with the Risk Management provisions contained in their response to the RFP, which are incorporated herein by reference as if fully stated.

7.5 Equal Employment Opportunity: During the performance of this Agreement, **CONTRACTOR** agrees as follows:

7.5.1 **CONTRACTOR** will not discriminate against any employee or application for employment because of race, color, religion, national origin, sex, age, or handicap. **CONTRACTOR** 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. **CONTRACTOR** 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.

7.5.2 **CONTRACTOR** will, in all solicitations or advertisements for employees placed by or on behalf of **CONTRACTOR**, 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.

8 Special Provisions. This Agreement is subject to the following provisions.

8.1 Pursuant to subparagraph 7.2 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 **CONTRACTOR**. Documents, data, reports, and all matters associated with carrying out this Agreement shall be addressed to **OWNER'S** Agent or his designee. Questions by **CONTRACTOR** regarding interpretations of the terms, provisions and requirements under this Agreement shall be addressed to **OWNER'S** Agent or his designee. **CONTRACTOR** shall look only to **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 **CONTRACTOR** within thirty (30) days.

8.2. This Agreement, together with the Incorporated Documents (Section 1) constitutes the entire Agreement between **OWNER** and **CONTRACTOR** and supersedes all prior written or oral understandings. This Agreement and **EXHIBITS A, B** 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 **CONTRACTOR**.

8.4 UNENFORCEABLE TERMS/SURVIVABILITY. If any term or provision of this Agreement shall be found to be illegal or unenforceable, this Agreement shall

EXHIBIT A

RFP #31-2014

Green Acres Stream Corridor Vegetative Buffer – Ecological Restoration

(Including Addendums and CONTRACTORS Response)

EXHIBIT B

Quote and Scope of Work for Maintenance

of Stream Corridor Vegetative Buffer – Green Acres Ecological Restoration

(CONTRACTOR's letter dated 9/21/15 including exhibits)

