MEMORANDUM OF AGREEMENT

PERTAINING TO THE POLO FIELD SPILLWAY MODIFICATION PROJECT AT THE DEPARTMENT OF UTILITIES & ENERGY SERVICES AT TEXAS A&M UNIVERSITY, COLLEGE STATION, TEXAS

This Agreement, made this 23rd day of March 2017 by and between Texas A&M University, a member of The Texas A&M University System, an agency of the State of Texas hereinafter referred to as the Owner, and Ecological Restoration, Inc, hereinafter referred to as the Vendor, pertains to all items covered by Texas A&M University Purchase Order #AM02-17-P048101 in the BAM E-Commerce System, together with all the specifications and Terms and Conditions which are hereby agreed to by Vendor and incorporated herein.

WITNESSETH: That for and in consideration of the payment and agreement hereinafter mentioned, to be made and performed by Owner, Vendor and Owner agree to the following terms:

1. Vendor shall provide, at Vendor’s own proper cost and expense, all labor and equipment necessary for the Polo Field Spillway Modification Project and as designated on the tabulation of bids and resolution of award as shown on the TAMU Purchase Order #AM02-17-P048101 for the sum of $78,567.00 (Seventy Eight Thousand, Five Hundred Sixty Seven Dollars & Zero Cents).

2. Vendor agrees that the General and Special Conditions as stated in the attached Appendix A, the printed or written explanatory matter thereof, Scope of Work and Vendor Requirements, and specifications, as stated in TAMU Bid #AM02-17-B000907 are all made a part hereof and collectively evidence and constitute the Texas A&M University Purchase Order.

3. Vendor agrees to be responsible for the timely payment of all costs and expenses incurred in the performance of this Agreement and for the payment of all applicable income and self-employment taxes.

4. Vendor agrees to provide the services covered by this Purchase Order and Agreement, in the time period agreed upon by the TAMU Designee and Vendor.

5. It is further agreed that Vendor will provide Owner Certificates of Insurance as required in the specifications prior to beginning work on campus.

6. Vendor hereby agrees that no mechanic, vendor, subvendor, materialman or other person can or will contract for or in any other manner have or acquire any lien upon any materials covered by this Contract and Memorandum of Agreement.

P.O. Box 30013
1477 TAMU
College Station, TX 77842-3013
Tel. 979.845.4570 Fax. 979.845.3800
http://purchasing.tamu.edu
7. Vendor indemnifies and holds harmless Texas A&M University for any actions, causes of action, or claim that may be alleged or asserted by any party arising out of utilization of Vendor's products and/or services.

8. Vendor must comply with all Texas A&M University's rules and regulations, and all applicable federal, state and local environmental laws and regulations. This agreement shall be construed and governed in accordance with the laws of the State of Texas.

9. Vendor shall submit one copy of an itemized invoice showing order number and agency purchase order number. Owner will incur no penalty for late payment if payment is made in 30 or fewer days from receipt of goods or services and an uncontested invoice.

10. Vendor agrees to protect and indemnify Owner from claims involving infringement of patents or copyrights.

11. Vendor hereby assigns to Owner any and all claims for overcharges associated with this contract which arise under the antitrust laws of the United States 15 U.S.C.A. Section 1, et seq. (1973), and which arise under the antitrust laws of the State of Texas, TEX. Bus. & Comm. Code Ann. Sec. 15.01, et seq. (1967).

12. Information, documentation, and other material in connection with this Agreement may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the “Public Information Act”).

13. A child support obligor who is more than thirty (30) days delinquent in paying child support and a business entity which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The Texas Family Code requires the following statement: “Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminate and payment may be withheld if this certification is inaccurate.”

14. The dispute resolution process provided in Chapter 2260, Texas Government Code, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall he used by Owner and Vendor to attempt to resolve any claim for breach of contract made by Vendor that cannot be resolved in the ordinary course of business. Vendor shall submit written notice of a claim of breach of contract under this Chapter to the University Contracts Officer, Texas A&M University, who shall examine Vendor's claim and any counterclaim and negotiate with Vendor in an effort to resolve the claim.

15. Pursuant to Section 2252.903, Texas Government Code, Vendor agrees that any payments owing to Vendor under this Agreement may be applied directly toward certain debts or
delinquencies that Vendor owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.

16. If Vendor is a taxable entity subject to Texas Franchise Tax (Chapter 171, Texas Tax Code), then Vendor certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that Vendor is exempt from the payment of franchise (margin) taxes.

17. A state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based. The Texas Government Code requires the following statement: “Under Section 2155.044, Texas Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.”

18. Vendor agrees that in accordance with Section 2155.441, Texas Government Code, in performing its duties and obligations under this Agreement, Vendor will purchase products and materials produced in Texas when such products and materials are available at a price and time comparable to products and materials produced outside of Texas.

19. Pursuant to Section 85.18, Texas Education Code, venue for any suit filed against Owner shall be in the county in which the primary office of the chief executive officer of Owner is located.

20. Performance by Owner under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the “Legislature”). If the Legislature fails to appropriate or allot the necessary funds, Owner will issue written notice to Vendor and Owner may terminate this Agreement without further duty or obligation hereunder. Vendor acknowledges that appropriation of funds is beyond the control of Owner.

21. Vendor understands that acceptance of funds under this agreement constitutes acceptance of the authority of the Texas State Auditor’s Office or any successor agency (collectively, “Auditor”), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), Texas Education Code. Vendor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. Vendor will include this provision in all contracts with permitted subvendors.

22. By executing and/or accepting this Agreement, Vendor and each person signing on behalf of Vendor certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no member of The Texas A&M University System (TAMUS) or TAMUS Boar of Regents, nor any employee, or person, whose salary is payable in whole or in part TAMU or TAMUS, has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof.
23. Insurance.

Vendor shall obtain and maintain, for the duration of this Agreement or longer, the minimum insurance coverage set forth below. With the exception of Professional Liability (E&O), all coverage shall be written on an occurrence basis. All coverage shall be underwritten by companies authorized to do business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code and have a financial strength rating of A- or better and a financial strength rating of VII or better as measured by A.M. Best Company or otherwise acceptable to Texas A&M University. By requiring such minimum insurance, the Owner shall not be deemed or construed to have assessed the risk that may be applicable to Vendor under this Agreement. Vendor shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. Vendor is not relieved of any liability or other obligations assumed pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. No policy will be canceled without unconditional written notice to Texas A&M University at least ten days before the effective date of the cancellation.

**Insurance:**

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<tr>
<th>Coverage</th>
<th>Limit</th>
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<tr>
<td><strong>A. Worker’s Compensation</strong></td>
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<tr>
<td>Statutory Benefits (Coverage A)</td>
<td>Statutory</td>
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<tr>
<td>Employers Liability (Coverage B)</td>
<td>$1,000,000 Each Accident</td>
</tr>
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<td></td>
<td>$1,000,000 Disease/Employee</td>
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<tr>
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<td>$1,000,000 Disease/Policy Limit</td>
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Workers’ Compensation policy must include under Item 3.A. on the information page of the workers’ compensation policy the state in which work is to be performed for Texas A&M University. Workers’ compensation insurance is required, and no “alternative” forms of insurance will be permitted.

**B. Automobile Liability**

Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than $1,000,000 Single Limit of liability per accident for Bodily Injury and Property Damage;

**C. Commercial General Liability**

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<tbody>
<tr>
<td>Each Occurrence Limit</td>
<td>$1,000,000</td>
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<tr>
<td>General Aggregate Limit</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>Products / Completed Operations</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Personal / Advertising Injury</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Damage to rented Premises</td>
<td>$300,000</td>
</tr>
<tr>
<td>Medical Payments</td>
<td>$5,000</td>
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The required commercial general liability policy will be issued on a form that insures Vendor’s or its subcontractors’ liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement.
Additional Endorsements

The Auto and Commercial General Liability Policies shall name the following as additional insured: Texas A&M University System Board of Regents for and on behalf of The Texas A&M University System and the Texas A&M University
  Attn: Insurance Services
  1182 TAMU
  College Station, TX 77843-1182

D. Vendor will deliver to Texas A&M University:

Evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all insurance after the execution and delivery of this Agreement and prior to the performance of any services by Vendor under this Agreement. Additional evidence of insurance will be provided on a Texas Department of Insurance approved certificate form verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.

*All insurance policies*, with the exception of worker’s compensation and employer’s liability will be endorsed and name The Board of Regents for and on behalf of The Texas A&M University System, The Texas A&M University System and Texas A&M University as Additional Insureds up to the actual liability limits of the policies maintained by Vendor. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage. The Commercial General Liability Additional Insured endorsement will include ongoing and completed operations and will be submitted with the Certificates of Insurance.

*All insurance policies* will be endorsed to provide a waiver of subrogation in favor of The Board of Regents of The Texas A&M University System, The Texas A&M University System and Texas A&M University. No policy will be canceled without unconditional written notice to Texas A&M University at least ten days before the effective date of the cancellation. *All insurance policies* will be endorsed to require the insurance carrier providing coverage to send notice to Texas A&M University ten (10) days prior to the effective date of cancellation, material change, or non-renewal relating to any insurance policy required in this section.

Any deductible or self-insured retention must be declared to and approved by Texas A&M University prior to the performance of any services by Vendor under this Agreement. Vendor is responsible to pay any deductible or self-insured retention for any loss. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.

The insurance coverage required by this Agreement will be kept in force until all services have been fully performed and accepted by Texas A&M University in writing.

24. Neither party is required to perform any term, condition, or covenant of this Agreement, if performance is prevented or delayed by a natural occurrence, a fire, an act of God, an act of terrorism, or other similar occurrence, the cause of which is not reasonably within the control of such party and which by due diligence it is unable to prevent or overcome.

25. Vendor expressly acknowledges that Owner is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by Owner of its right to claim such exemptions, privileges, and immunities as may be provided by law.
26. The validity of this Agreement and all matters pertaining to this Agreement, including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and laws of the State of Texas.

27. Any notice required or permitted under this Agreement must be in writing, and shall be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set out below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email or other commercially reasonably means and will be effective when actually received. Owner and Vendor can change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:

Owner: Texas A&M University  
Department of Procurement Services  
P.O. Box 30013  
College Station, TX 77843-3013  
Attention: Clyde Oberg  
Phone: 979-845-1042  
Fax: 979-845-8171  
E-mail: co@tamu.edu

Contractor: Ecological Restoration, Inc.  
194 Goodview Drive  
Apollo, PA 15613  
ATTN: Dave Hails  
Phone: 724-727-3771  
E-mail: wetplants@aol.com

28. Vendor acknowledges and understands that Section 2252.901, Texas Government Code, prohibits Owner from using state appropriated funds to enter into any employment contract, consulting contract, or professional services contract with any individual who has been previously employed, as an employee, by the agency within the past twelve (12) months. If Vendor is an individual, by signing this Agreement, Vendor certifies that Section 2252.901, Texas Government Code, does not prohibit the use of state appropriated funds for satisfying the payment obligations herein.

29. Vendor acknowledges that, because Owner is an agency of the State of Texas, liability for the tortuous conduct of the agents and employees of Owner or for injuries caused by conditions of tangible state property is provided solely by the provisions of the Texas Tort Claims Act (Texas Civil Practice and Remedies Code, Chapters 101 and 104), and that Worker’s Compensation Insurance coverage for employees of Owner is provided by owner as mandated by the provisions of Chapter 502, Texas Labor Code. Owner shall have the right, at its option, to (a) obtain liability insurance protecting Owner’s buildings and contents, to the extent authorized by Section 51.966, Texas Education Code, or other law, or (b) self-
insure against any risk that may be incurred by Owner as a result of its operations under this Agreement.

**IN WITNESS WHEREOF,** the parties to these presents have executed this Agreement in the year and day first written above.

Texas A&M University
Owner

By: ________________________________
    Robert C Bounds
    Director, Procurement Services
    Title

______5.25.2017______
    Date

Ecological Restoration, Inc.
Vendor

By: ________________________________
    [Signature]
    [Position]

______4/10/17______
    Date