

**AGREEMENT BETWEEN
TRUE EARTH ORG AND THE CITY OF ANN ARBOR
FOR PILOT FOOD FOREST PROJECT AT LESLIE PARK**

This Agreement ("Agreement") is between the City of Ann Arbor, a Michigan municipal corporation, having its offices at 301 E. Huron Street, Ann Arbor, Michigan 48107 ("City"), and True Earth Org ("Contractor"), a registered LLC with its address at 2697 Arrowwood Trail, Ann Arbor, MI 48105. City and Contractor are referred to collectively herein as the "Parties." The Parties agree as follows:

I. DEFINITIONS

Administering Service Area/Unit means Parks and Recreations Services Unit, Community Services Area.

Contract Administrator means Parks and Recreation Services Unit Manager, acting personally or through any assistants authorized by the Administrator/Manager of the Administering Service Area/Unit.

Project means the Pilot Food Forest Project at Leslie Park.

II. DURATION

This Agreement shall become effective on January 1, 2021, and shall remain in effect until December 31, 2021, unless terminated as provided for in this Agreement.

The City shall review the Project in October 2021 and may elect to renew this Agreement for future years if such renewal, and any related amendments, are amenable to both Parties.

III. SERVICES

- A. The Contractor agrees to provide management of the Project ("Services") as described in Exhibit A. The City retains the right to make changes to the service within the general scope of the Agreement at any time by a written order. Contractor may also request that the City make changes to such service. All such changes shall be executed under the conditions of the original Agreement.

- B. Quality of Services under this Agreement shall be of the level of quality performed by persons regularly rendering this type of service. Determination of acceptable quality shall be made solely by the Contract Administrator.
- C. The Contractor shall perform its Services in compliance with all statutory, regulatory and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement. Contractor shall also be required to comply with all laws, ordinances and regulations in connection with the use of pesticides, herbicides, fertilizers, and other chemicals within the designated community garden sites, and to enforce compliance by any individual using a community garden site under Contractor's management. Contractor shall receive the City's written approval before applying any pesticide, herbicide, fertilizer or other chemicals to the Project site.
- D. The Contractor may rely upon the accuracy of reports and surveys provided to it by the City except when defects should have been apparent to a reasonably competent professional or when it has actual notice of any defects in the reports and surveys.

IV. COMPENSATION OF CONTRACTOR

The Contractor shall not receive payment from the City for performing the Services. The City shall provide Contractor a license to manage the Project at the location referenced in Exhibit B, at no cost to Contractor. The City may, at its sole option, provide support to the Project (wood chips, staff support in advance of outreach classes, etc.). The Parties acknowledge that their mutual promises outlined in this Agreement are sufficient to bind them to the terms herein.

V. INSURANCE/INDEMNIFICATION

- A. The Contractor shall procure and maintain during the life of this Agreement, such insurance policies, as will protect itself and the City from all claims for bodily injuries, death or property damage which may arise under this Agreement; whether the act(s) or omission(s) giving rise to the claim were made by the Contractor or by any subcontractor or anyone employed by them directly or indirectly. Prior to commencement of work under this Agreement, Contractor shall provide to the City documentation satisfactory to the City, through City-approved means (currently myCOI), demonstrating it has obtained the policies and endorsements required by this Article. Contractor shall add registration@mycoitracking.com to its safe sender's list so that it will receive necessary communication from myCOI. When requested, Contractor shall provide the same documentation for its subcontractor(s) (if any).

Subject to the conditions hereinafter set forth, Contractor, at its own expense and in its own name, and in the City's name, as additional insured, as their respective

interests may appear, must maintain and keep in force during the term of this Agreement the following policies of insurance, which must be written by an insurance company or companies licensed to conduct business in the State of Michigan:

Commercial General Liability Insurance equivalent to, as a minimum, Insurance Services Office form CG 00 01 04 13 or current equivalent. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements that diminish the City's protections as an additional insured under the policy. Further, the following minimum limits of liability are required:

\$1,000,000	Each occurrence as respect Bodily Injury Liability or Property Damage Liability, or both combined
\$2,000,000	Per Project General Aggregate
\$1,000,000	Personal and Advertising Injury

- B. Any insurance provider of Contractor shall be authorized to do business in the State of Michigan and shall carry and maintain a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A-" Overall and a minimum Financial Size Category of "V". Insurance policies and certificates issued by non-authorized insurance companies are not acceptable unless approved in writing by the City.
- C. To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold the City, its officers, employees and agents harmless from all suits, claims, judgments and expenses including attorney's fees resulting or alleged to result, to its proportionate extent, from any negligent, grossly negligent, reckless and/or intentional wrongful or tortious acts or omissions by the Contractor or its employees and agents occurring in the performance of or in breach of this Agreement.

Contractor agrees that it is his/her responsibility and not the responsibility of the City to safeguard his/her property and materials used in performance of this agreement. Contractor further agrees to obtain and maintain sufficient insurance coverage to protect it and the City from any claim, demand, and cause of action debt or liability based upon the provision of the services performed under this contract. Contractor shall provide the City with proof of insurance that is satisfactory to the City Attorney.

VI. COMPLIANCE REQUIREMENTS

The Contractor agrees to comply, and to require its subcontractor(s) to comply, with the nondiscrimination provisions of MCL 37.2209. The Contractor further agrees to comply with the nondiscrimination provisions of Chapter 112 of the Ann Arbor City Code and to assure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity.

VII. WARRANTIES BY THE CONTRACTOR

- A. The Contractor warrants that the quality of its Services under this Agreement shall conform to the level of quality performed by persons regularly rendering this type of service.
- B. The Contractor warrants that it has all the skills and experience necessary to perform the Services specified in this Agreement.
- C. The Contractor warrants that it has available, or will engage, at its own expense, sufficient trained employees or volunteers to provide the Services specified in this Agreement.
- D. The Contractor warrants that it is not, and shall not become overdue or in default to the City for any contract, debt, or any other obligation to the City including real and personal property taxes.
- E. The person signing this Agreement on behalf of Contractor represents and warrants that she/he has the authority to sign this Agreement and shall hold the City harmless for any costs or consequences of the absence of such authority.
- F. Contractor shall not place any permanent or semi-permanent structures at the Project Site without first obtaining the City's written approval. Contractor shall also not place any signage at the Project site without the City's prior written approval.

VIII. OBLIGATIONS OF THE CITY

- A. The City agrees to give the Contractor access to City-owned properties as required to perform the necessary Services under this Agreement, as described in Attachments A, B, and C.
- B. The City shall notify the Contractor of any defects in the Services of which the Contract Administrator has actual notice.
- C. The City shall attend two meetings with the Contractor to review the Agreement and Project. The meetings shall take place in March and October of each year and shall be scheduled by the City at a time mutually agreed upon between the Parties. At the March meeting, Contractor shall present its maintenance, landscaping, and planting plans for the year's growing season to the City for approval (which shall not be unreasonably withheld).

IX. ASSIGNMENT

Contractor shall not subcontract or assign any portion of any right or obligation under this Agreement without prior written consent from the City. Notwithstanding any consent by the City to any assignment, Contractor shall at all times remain bound to all warranties, certifications, indemnifications, promises and performances, however described, as are required of it under the Agreement unless specifically released from the requirement, in writing, by the City.

X. TERMINATION OF AGREEMENT

- A. If either party is in breach of this Agreement for a period of fifteen (15) days following receipt of notice from the non-breaching party with respect to a breach, the non-breaching party may pursue any remedies available to it against the breaching party under applicable law, including but not limited to, the right to terminate this Agreement without further notice. The waiver of any breach by any party to this Agreement shall not waive any subsequent breach by any party.
- B. Either Party may terminate this Agreement, if it decides not to proceed with the Project or any portion of the Project at the Project Site, identified in Exhibit B, by 30-days' notice pursuant to Article XII.
- C. Contractor acknowledges that, if this Agreement extends for several fiscal years, continuation of this Agreement is subject to appropriation of funds for this Project. The Contract Administrator shall give the Contractor written notice of such non-appropriation within thirty (30) days after it receives notice of such non-appropriation.

XI. REMEDIES

- A. This Agreement does not, and is not intended to, impair, divest, delegate or contravene any constitutional, statutory and/or other legal right, privilege, power, obligation, duty or immunity of the Parties.

Absent a written waiver, no act, failure, or delay by a Party to pursue or enforce any rights or remedies under this Agreement shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Agreement. No waiver of any term, condition, or provision of this Agreement, whether by conduct or otherwise, in one or more instances, shall be deemed or construed as a continuing waiver of any term, condition, or provision of this Agreement. No waiver by either Party shall subsequently affect its right to require strict performance of this Agreement.

- B. The following provision(s) shall survive the termination of this Agreement: Article V and VII.
- C. The remedies provided in this Agreement will be cumulative, and the assertion by a party of any right or remedy will not preclude the assertion by such party of any other rights or the seeking of any other remedies

XII. NOTICE

All notices and submissions required under this Agreement shall be delivered to the respective party in the manner described herein to the address stated in this Agreement or such other address as either party may designate by prior written notice to the other.

Notices given under this Agreement shall be in writing and shall be personally delivered, sent by next day express delivery service, certified mail, or first-class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given on the date when one of the following first occur: (1) the date of actual receipt; (2) the next business day when notice is sent next day express delivery service or personal delivery; or (3) three days after mailing first class or certified U.S. mail.

If Notice is sent to the CONTRACTOR, it shall be addressed and sent to:

Food Forest Coalition
True Earth Org LLC
2697 Arrowwood Trail
Ann Arbor, MI 48105

If Notice is sent to the CITY, it shall be addressed and sent to:

City of Ann Arbor
Colin Smith, Parks & Recreation Services Manager
301 E. Huron Street,
Ann Arbor, Michigan 48104

XIII. CHOICE OF LAW AND FORUM

This Agreement will be governed and controlled in all respects by the laws of the State of Michigan, including interpretation, enforceability, validity and construction, excepting the principles of conflicts of law. The parties submit to the jurisdiction and venue of the Circuit Court for Washtenaw County, State of Michigan, or, if original jurisdiction can be established, the United States District Court for the Eastern District of Michigan, Southern Division, with respect to any action arising, directly or indirectly, out of this Agreement or the performance or breach of this Agreement. The parties stipulate that the venues referenced in this Agreement are convenient and waive any claim of non-convenience.

XIV. CONFLICTS OF INTEREST

Contractor certifies it has no financial interest in the Services to be provided under this Agreement other than the compensation specified herein. Contractor further certifies that it presently has no personal or financial interest, and shall not acquire any such interest, direct or indirect, which would conflict in any manner with its performance of the Services under this Agreement.

XV. SEVERABILITY OF PROVISIONS

Whenever possible, each provision of this Agreement will be interpreted in a manner as to be effective and valid under applicable law. However, if any provision of this Agreement or the application of any provision to any party or circumstance will be prohibited by or invalid under applicable law, that provision will be ineffective to the extent of the prohibition or invalidity without invalidating the remainder of the provisions of this Agreement or the application of the provision to other parties and circumstances.

XVI. EXTENT OF AGREEMENT

This Agreement, together with Exhibits A, B, and C, constitutes the entire understanding between the City and the Contractor with respect to the subject matter of the Agreement and it supersedes, unless otherwise incorporated by reference herein, all prior representations, negotiations, agreements or understandings whether written or oral. Neither party has relied on any prior representations, of any kind or nature, in entering into this Agreement. Nothing in this Agreement, express or implied, is intended to or shall confer on any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement. This Agreement may only be altered, amended or modified by written amendment signed by the Contractor and the City. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement.

XVII. INDEPENDENT CONTRACTOR

The Parties agree that at all times and for all purposes under the terms of this Agreement each Party's relationship to any other Party shall be that of an independent contractor. Each Party will be solely responsible for the acts of its own employees, agents, and servants. No liability, right, or benefit arising out of any employer/employee relationship, either express or implied, shall arise or accrue to any Party as a result of this Agreement.

Contractor does not have any authority to execute any contract or agreement on behalf of the City, and is not granted any authority to assume or create any obligation or liability on the City's behalf, or to bind the City in any way.

XVIII. ELECTRONIC TRANSACTION

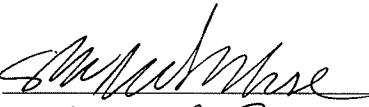
The parties agree that signatures on this Agreement may be delivered electronically in lieu of an original signature and agree to treat electronic signatures as original signatures that bind them to this Agreement. This Agreement may be executed and delivered by facsimile and upon such delivery, the facsimile signature will be deemed to have the same effect as if the original signature had been delivered to the other party.

XIX. EFFECTIVE DATE

This Agreement will become effective when all parties have signed it. The Effective Date of this Agreement will be the date this Agreement is signed by the last party to sign it.

[SIGNATURE PAGE FOLLOWS]

FOR CONTRACTOR

By 
Name: Shanah Sii Rose
Title: Director @ TRUE EARTH
Date: 4/14/2021

FOR THE CITY OF ANN ARBOR

By _____
Tom Crawford, City Administrator
Date:

Approved as to substance

Derek Delacourt, Community Service Area
Administrator

Approved as to form and content

Stephen K. Postema, City Attorney

EXHIBIT A

SCOPE OF SERVICES

Both Parties seek to provide the opportunity for ecological regeneration as well as a strengthening of local community resilience, particularly with regard to food independence. The Project is intended to use underutilized areas of a City park to improve both ecological and community resilience through an edible, self-regulating landscape that would be available for open foraging by community members and coordinated harvest days.

Contractor shall provide the following:

1. Operational expertise, management, and maintenance of Project at the Project Site listed in Exhibit B, in accordance with the City-approved maintenance, landscaping, and planting plan (described in Article VIII).
2. Conduct at least three outreach, educational classes annually; open and free to the general public, on regenerative growing practices, food forest systems, and community resilience. Endeavor to provide schedule for annual classes to the City in writing by April 1, 2021.
3. Any costs, capital, or otherwise related to the operation, management and maintenance of the Project.
4. Water for the site must be brought in by the Contractor in a method approved by the Contract Administrator.
5. Any signage provided by the Contractor requires prior written approval by the City.
6. If the Project concludes (due to termination or non-renewal of this Agreement), Contractor shall be responsible for the restoration of the land to its condition prior to being used for the Project purposes or other state desired by the Contract Administrator, as agreed upon by both parties, which happened approximately on May 20, 2020.
7. Maintenance and appearance of Project Site to the standards described in Exhibit C.
8. Adhere to all requirements contained in the PAC resolution from October 20, 2020 provided in Exhibit D.
9. Report to the City at the at the Parks Advisory Commission's October meeting with an update on the Project.

EXHIBIT B

PROJECT SITE

The attached GIS maps indicates the location of the Project Site. No extension of the Project Site shall take place without the City's express, written consent.



EXHIBIT C

MAINTENANCE AND APPEARANCE OF PROJECT

1. The Project Site shall be maintained in a neat and orderly appearance, as determined by City staff.
2. Project equipment and supplies shall not be stored on site.
3. At the end of each season, Contractor shall leave the Project Site in a clean and orderly manner, as determined by City staff. The City may require that the site be graded to avoid unnecessary trip hazards, and the ground stabilized to avoid soil erosion.
4. Public access to and around the Project Site shall be maintained at all times. The Project shall not block the public from accessing any park amenities not associated with the Project.
5. Prior to conducting any mechanical turning of the soil, Contractor shall call MISSDIG to ensure that all underground utilities have been identified to ensure that the systems will not be compromised. All materials used in the creation and maintenance of the Project shall be kept within the confines of the Project Site.

EXHIBIT D

PAC RESOLUTION – 10/20/2020

Whereas, in early 2020 the Northside Food Forest began their project in the southern section of Leslie Park, on a site less than one acre in size;

Whereas, neither City permission, nor public input were sought prior to commencing work on the NFF;

Whereas, concern has been raised by citizens regarding the lack of public input solicited by NFF;

Whereas, residents have voiced both support and opposition for the NFF project;

Whereas, the NFF aims to achieve goals in line with City sustainability goals;

Whereas, a template for the establishment and management of community gardens exists in an agreement between Project Grow and the City of Ann Arbor;

Whereas, the agreement between Project Grow and the City of Ann Arbor outlines a process for establishing new garden sites or the extension of existing sites, with staff providing their recommendation, but leaving the final recommendation up to the Park Advisory Commission;

Whereas, staff recommend treating the NFF as a pilot project through the 2021 season, allowing for an opportunity to see how the project resonates with community;

Whereas, the purpose of the Park Advisory Commission is to provide a consistent and formal opportunity for public involvement and perspective regarding community park and recreation services;

RESOLVED, that the Park Advisory Commission believe the NFF project seeks to address meaningful sustainability goals along with having the potential to strengthen community, but that a lack of process, permission and public input has generated polarizing sides of support and opposition for the project;

RESOLVED, that the Park Advisory Commission recommend approval of the NFF on a pilot basis only, following these steps:

1. Prior to April 1, 2021 The City and NFF develop a working agreement that outlines the goals and purpose of the NFF, the organizational structure of the NFF, maintenance responsibilities, community outreach, signage, insurance requirements, and level of City support.
2. Until such an agreement is formalized and signed by both parties that no further work on the site occur, beyond what is necessary to keep the existing NFF alive and in good condition.
3. For the 2021 season any additional plantings and landscaping must be approved prior to implementation. Failure to do so will end the pilot project and require removal of the NFF.
4. For the 2021 season no permanent or semi-permanent structures will be erected on the NFF site in Leslie Park.
5. During the 2021 season the NFF conduct at least 3 free outreach and educational classes, with support from City Staff, on Food Forests to neighborhoods near Leslie Park.
6. That the NFF report back to the Park Advisory Commission at their October 2021 meeting on how the 2021 season went.
7. The Park Advisory Commission will decide the future of the NFF project at Leslie Park at the conclusion of the pilot process.