

**AGREEMENT BETWEEN
NATUREWRITE, LLC AND THE CITY OF ANN ARBOR
FOR
MONITORING AND DEER VEGETATION IMPACT ASSESSMENT
OF ANN ARBOR NATURAL AREAS**

The City of Ann Arbor, a Michigan municipal corporation, having its offices at 301 E Huron Avenue, Ann Arbor, Michigan 48103 ("City"), and NatureWrite, LLC, ("Contractor") a Michigan limited liability company, with offices at 4420 Jackson Rd., Suite 102, Ann Arbor, Michigan 48103 agrees as follows on this _____ day of _____, 2017

The Contractor agrees to provide professional services to the City under the following terms and conditions:

I. DEFINITIONS

Administering Service Area/Unit means Community Services Area/Administration

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

Project means City of Ann Arbor Deer Management Program, Vegetation Impact Study

II. DURATION

This Agreement shall become effective on March 1, 2017, and shall terminate on May 31, 2020, unless terminated as provided for in this Agreement.

III. SERVICES

- A. The Contractor, under the direction and supervision of Dr. Jacqueline Courteau, agrees to provide professional monitoring to assess deer impacts on vegetation in Ann Arbor natural areas as described in Exhibit A ("Services"). The City retains the right to make changes to the quantities of service within the general scope of the Agreement at any time by a written order. If the changes add to or deduct from the extent of the services, the contract sum shall be adjusted accordingly. 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 professional quality performed by experts 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 for the Project 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.
- 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.

- E. The Contractor is not authorized to assume or create any obligation or responsibility, express or implied, on behalf of, or in the name of, the City of Ann Arbor or bind the City in any manner. 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 retains the right to exercise such discretion and judgment in the provision of its service to fulfill and comply with the requirements of this Agreement.

IV. COMPENSATION OF CONTRACTOR

- A. The Contractor shall be paid in the manner set forth in Exhibit B. Payment shall be made monthly, unless another payment term is specified, following receipt of invoices submitted by the Contractor, and approved by the Contract Administrator. Total compensation payable for all Services performed during the term of this Agreement shall not exceed Ninety-nine Thousand and no/100 dollars (\$99,000).
- B. The Contractor will be compensated for Services performed in addition to the Services described in Section III, only when those additional Services have received prior written approval of the Contract Administrator. Compensation will be payable according to the fee schedule in Exhibit B. The Contract Administrator shall be the sole arbitrator of what shall be considered "reasonable" under this provision.
- C. The Contractor shall keep complete records of time spent and materials used on the Project so that the City may verify invoices submitted by the Contractor. Such records shall be made available to the City upon request and submitted in summary form with each invoice.

V. INSURANCE/INDEMNIFICATION

- A. The Contractor shall procure and maintain during the life of this contract, such insurance policies, including those set forth in Exhibit C, as will protect itself and the City from all claims for bodily injuries, death or property damage which may arise under this contract; whether the acts were made by the Contractor or by any subcontractor or anyone employed by them directly or indirectly. In the case of all contracts involving on-site work, the Contractor shall provide to the City, before commencement of any work under this contract, documentation demonstrating it has obtained the policies and endorsements required by Exhibit C.
- B. Any insurance provider of Contractor shall be admitted and 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-admitted insurance companies are not acceptable unless approved in writing by the City.

- C. The Contractor agrees to 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, from any acts or omissions by the Contractor or its employees and agents occurring in the performance of or breach in this Agreement.
- D. The City agrees to hold Contractor, its officers, employees and agents, harmless from any damage, judgment, loss or expense sustained or incurred by Contractor caused by or resulting from the City's negligence or intentional misconduct in performance of its obligations under this Agreement.
- E. 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.

VI. COMPLIANCE REQUIREMENTS

- A. Nondiscrimination. The Contractor agrees to comply and to require its subcontractor(s) to comply, with the nondiscrimination provisions of Section 209 of the Elliot-Larsen Civil Rights Act (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
- B. Living Wage. The Contractor is a "covered employer" as defined in Chapter 23 of the Ann Arbor City Code and agrees to comply with the living wage provisions of Chapter 23 of the Ann Arbor City Code. The Contractor agrees to pay those employees providing Services to the City under this Agreement a "living wage," as defined in Section 1:815 of the Ann Arbor City Code, as adjusted in accordance with Section 1:815(3); to post a notice approved by the City of the applicability of Chapter 23 in every location in which regular or contract employees providing services under this Agreement are working; to maintain records of compliance; if requested by the City, to provide documentation to verify compliance; to take no action that would reduce the compensation, wages, fringe benefits, or leave available to any employee or person contracted for employment in order to pay the living wage required by Section 1:815; and otherwise to comply with the requirements of Chapter 23.

VII. WARRANTIES BY THE CONTRACTOR

- A. The Contractor warrants that the quality of its Services under this Agreement shall conform to the level of professional quality performed by experts regularly rendering this type of service.
- B. The Contractor warrants that it, and any of its employees and agents performing

Services under this Agreement, have all the skills, experience, and professional licenses and certifications 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 subcontractors to provide the Services specified in this Agreement. Further Contractor warrants that it will provide any training or supplement the training of any person(s) employed by Contractor, at its own expense, to perform services under this Agreement to fulfill and comply with requirements of 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 Contractor makes no other warranties, expressed or implied, and no warranty of merchantability or fitness for a particular purpose.

VIII. 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. Provided however, and except as provided in Section V. C., under no circumstances shall Contractor's liability exceed amounts received in payment from the City for Services under this Agreement.
- B. The City may terminate this Agreement, on at least thirty (30) days advance notice, for any reason, including convenience, without incurring any penalty, expense or liability to the Contractor, except the obligation to pay for Services actually performed under the Agreement before the termination date.
- 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. If funds to enable the City to effect continued payment under this Agreement are not appropriated or otherwise made available, the City shall have the right to terminate this Agreement without penalty at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to the Contractor. 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.
- D. 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. 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 effect its right to require strict performance of this Agreement.

- E. The provisions of Article V and VII shall survive the expiration or earlier termination of this Agreement for any reason. The expiration or termination of this Agreement, for any reason, shall not release either party from any obligation or liability to the other party.

IX. OBLIGATIONS OF THE CITY

- A. The City agrees to give the Contractor access to the Project area and other City-owned properties as required to perform the necessary Services under this Agreement.
- B. The City shall notify the Contractor of any defects in the Services of which the Contract Administrator has actual notice.

X. ASSIGNMENT

- A. The 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.
- B. The Contractor shall retain the right to pledge payment(s) due and payable under this Agreement to third parties.

XI. 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:

NatureWrite,, LLC
4420 Jackson Rd., Suite 102

Ann Arbor, Michigan 48103
Attn.: Dr. Jacqueline Courteau

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

City of Ann Arbor
301 E. Huron St., POB 8647
Ann Arbor, Michigan 48107-8647
Attn.: Derek Delacourt, Community Services Area Administrator

XII. 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. 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.

XIII. OWNERSHIP OF DOCUMENTS

Upon completion or termination of this Agreement, all documents (i.e., deliverables) prepared by or obtained by the Contractor as provided under the terms of this Agreement shall be delivered to and become the property of the City. Original basic survey notes, sketches, charts, drawings, partially completed drawings, computations, quantities and other data shall remain in the possession of the Contractor as instruments of service unless specifically incorporated in a deliverable, but shall be made available, upon request, to the City without restriction or limitation on their use. The City acknowledges that the documents are prepared only for the Project. Prior to completion of the contracted Services the City shall have a recognized proprietary interest in the work product of the Contractor.

The City grants Contractor the right to use, analyze and publish all data generated as a result of the Services following delivery to the City subject to proper acknowledgement of City if used in any presentation or published document..

Unless otherwise stated in this Agreement, any intellectual property owned by Contractor prior to the effective date of this Agreement (i.e., preexisting information) shall remain the exclusive property of Contractor even if such Preexisting Information is embedded or otherwise incorporated in materials or products first produced as a result of this Agreement or used to develop Deliverables. The City's right under this provision shall not apply to any Preexisting Information or any component thereof regardless of form or media.

XIV. CONFLICT 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 any affixed exhibits, schedules or other documentation, 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. This Agreement shall be binding on and shall inure to the benefit of the parties to this Agreement and their permitted successors and permitted assigns and 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 be altered, amended or modified only by written amendment signed by the Contractor and the City.

FOR CONTRACTOR

By _____
Its: _____

FOR THE CITY OF ANN ARBOR

By _____
Christopher Taylor, Mayor

By: _____
Jacqueline Beaudry, City Clerk

Approved as to substance

Howard S. Lazarus, City Administrator

Derek Delacourt, Community Services Area Administrator

[signatures continued on next page]

Approved as to Form and Content

Stephen K. Postema, City Attorney

EXHIBIT A

SCOPE OF SERVICES

General Conditions

The scope of services shall consist of those duties, functions, obligations, responsibilities, and tasks found reasonably necessary to monitor and assess deer impacts on vegetation in designated Ann Arbor nature areas as identified in the conditions, metrics and protocols identified in this Exhibit and described in greater detail the October 2016 monitoring proposal, "Monitoring Proposal for Assessing Deer Impacts in Ann Arbor Natural Areas, October 2016-October 2017."

Contractor will utilize Dr. Jacqueline Courteau to provide overall supervision of the performance of the Project and as its project coordinator and field supervisor. Contractor shall be solely responsible for ensuring the full and proper completion of the Services, and shall devote whatever time and attention is necessary to reasonably ensure the adequate performance of the Services in a professional and competent manner.

Contractor shall maintain or cause to be maintained all records, tests, reports or other documents relative to the scope of services set forth in Exhibit A for a period of not less than three (3) years from the date of the final payment for work performed under this Agreement.

Study Metrics

% of red oak seedlings browsed each year

% of plants of each of 4 experimental wildflower species browsed, flowering, fruiting each year

% change in trillium abundance and flowering over time

Monitoring Protocol

Monitoring will continue the red oak experimental seedling approach used in the pilot study for 2015-2016, and will also look at deer impacts on experimental plantings of wildflower species as well as existing trillium populations.

- 1) **Experimental (sentinel) seedling approach:** Red oak seedlings will be planted in 15-20 park sites in each spring (2017, 2018, 2019), and deer damage will be monitored for a year following planting to offer a standardized yardstick of damage across parks. New seedlings (20 per site) will be planted each year to allow results to be standardized from year to year as well as across sites. **Metric: % of oak seedlings browsed by deer.**
- 2) **Experimental wildflower plantings:** A suite of native wildflower species commonly found in Ann Arbor parks (including spring and summer flowering species) will be planted in 5 paired exclosure and control plots in 5 city park natural areas in spring 2017 and periodically monitored for flowering, fruiting, and deer browse damage. These initial plantings will allow for baseline measurements of deer browse levels as well as flowering and fruiting. In each subsequent year (2018 and 2019), new experimental plants will be

in unfenced plots only, so that browse levels can be compared on fresh plants each year. However, the original fenced and unfenced plots from 2017 will be maintained through 2020 to assess cumulative deer browse impacts (most forest wildflowers are perennial species; tracking plants for multiple seasons will allow a more complete understanding of deer impacts on flowering, plant reproduction, and pollinator resources). **Metrics: % of experimental wildflower plants browsed by deer; % of plants blooming and fruiting, and number of flowers/fruits.**

In addition to the experimental wildflower study, we will continue monitoring an enclosure study of existing trillium populations in 4 city park natural areas initiated as a separate study in 2016-17. These plots will be monitored in 2018 and 2019 to assess changes in trillium abundance and flowering over time. Direct signs of deer browse damage will be assessed to the extent possible, but can be difficult to find on tender herbaceous stems that die back within a few days of being browsed; measurements of plant abundance and flowering are a more complete indicator of deer impacts than % of plants browsed. **Metrics: % change in number of trillium plants and number of plants flowering.**

The attached chart outlines the annual schedule of monitoring work to be done.

2. Deliverables to be as follows:

- October 1 each year (2017, 2018, 2019): Preliminary report outlining results to date for wildflowers and for the first two monitoring periods (through September 1) on oak seedlings.
- April 30 each year (2017, 2018, 2019, 2020): Final report summarizing monitoring results for oak seedlings as of March 1, along with any additional wildflower results.
- Staff briefing prior to finalizing each preliminary and final report (September 15, March 15)
- One public presentation to City staff and/or Council each year (2017, 2018, 2019, 2020). (Additional presentations can be arranged as needed and will be billed at \$75/hour for preparation and presentation time.)

The parties acknowledge that Contractor's work is dependent on factors such as weather, time of year and site conditions, and that as a consequence, the quantities, scope of work, contract amount or time for completion may need to be adjusted. If such conditions are encountered, Contractor shall promptly notify the Contract Administrator. The parties shall meet and confer regarding any appropriate adjustments in quantities, scope, contract amount or time for completion. If the City and Contractor cannot agree on a requested adjustment, Contractor shall complete the work to the extent possible, but shall not be obligated or permitted to exceed the "not to exceed" amount in Section IV. A. of the Agreement.

**EXHIBIT B
COMPENSATION**

MATERIALS COSTS, LABOR, AND TIME FOR MONITORING OF DEER IMPACTS IN ANN ARBOR

Research component	LABOR				MATERIALS	TOTAL
	Installation per plot	Replanting Monitoring, Reporting	Labor cost per plot (hrs x \$)	Total labor for plots		
1. Experimental red oak seedlings	8	12	\$800	\$16,000	\$1,250	\$17,250
2. Wildflower experimental plantings, existing trillium	10	24	\$1,360	\$13,600	\$2,150	\$15,750
TOTAL LABOR AND MATERIALS COSTS: \$33,000 per year						

Budget Notes:

Cost breakdown for each component of this work fall into four categories: project installation; monitoring; materials and maintenance (fencing and/or stakes, fire-proof labels, plants); and analysis/reporting. All costs other than materials are for labor. Contractor will invoice City with costs allocated for each category. Contractor reserves the right to modify the below category allocations, while keeping within the overall budgeted cost for each Research Component. Requests for additional work or significant modifications to the work outlined in this proposal could result in additional costs, to be negotiated and agreed on between Contractor and City in advance.

Experimental (sentinel) red oak seedlings.	\$17,250
Project installation (select locations, plant seedlings, replant as needed).	\$6,400
Materials (stakes, seedlings)	\$1,250
Monitoring (assess seedlings for browse damage for a year).	\$5,000
Analysis and reporting.	\$4,600

Experimental wildflower plantings and trilliums.	\$15,750
Project installation (select locations, construct fences, plant wildflowers, replant).	\$4,400
*Materials (fencing, plants)	\$2,150
*Monitoring (assess browse damage, flowering, fruiting during growing season).	\$5,000
Analysis and reporting.	\$4,200

* Note that project installation and materials costs for the experimental wildflower study will decrease after 2017 because new fences will not be constructed (although repair may be needed) and fewer plants will be needed (since there will not be new fenced plots). However, cost reductions for materials will be fully offset by increased monitoring costs (labor) to continue monitoring the 2017 plants through 2020 for information on cumulative impacts, and to continue monitoring existing trillium populations after 2017 (a study that was previously in a separate contract and budget).

**EXHIBIT C
INSURANCE REQUIREMENTS**

Effective the date of this Agreement, and continuing without interruption during the term of this Agreement, Contractor shall provide certificates of insurance and endorsements to the City on behalf of itself, and when requested any subcontractor(s).

A. Contractor shall have insurance that meets the following minimum requirements.

1. Worker's Compensation Insurance in accordance with all applicable state and federal statutes. Further, Employers Liability Coverage shall be obtained in the following minimum amounts:

Bodily Injury by Accident - \$500,000 each accident
Bodily Injury by Disease - \$500,000 each employee
Bodily Injury by Disease - \$500,000 each policy limit

2. Errors and Omissions Insurance protecting the Contractor and its employees in an amount not less than \$1,000,000.

3. Commercial General Liability Insurance equivalent to, as a minimum, Insurance Services Office form CG 00 01 07 98 or current equivalent. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements which 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 Job General Aggregate
\$1,000,000	Personal and Advertising Injury

4. Motor Vehicle Liability Insurance, including Michigan No-Fault Coverages, equivalent to, as a minimum, Insurance Services Office form CA 00 01 07 97 or current equivalent. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles. Further, the limits of liability shall be \$1,000,000 for each occurrence as respects Bodily Injury Liability or Property Damage Liability, or both combined.

5. Umbrella/Excess Liability Insurance shall be provided to apply in excess of the Commercial General Liability, Employers Liability and the Motor Vehicle coverage enumerated above, for each occurrence and for aggregate in the amount of \$1,000,000.

B. Insurance required under A 3 above of this contract shall be considered primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance. Further, the Contractor agrees to waive any right of recovery by its insurer against the City.

- C. Insurance companies and policy forms are subject to approval of the City Attorney, which approval shall not be unreasonably withheld. Documentation must provide and demonstrate an unconditional 30-day written notice of cancellation in favor of the City of Ann Arbor. Further, the documentation must explicitly state the following: (a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts; (b) any deductibles or self-insured retentions which shall be approved by the City, in its sole discretion; (c) that the policy conforms to the requirements specified. Contractor shall furnish the City with satisfactory certificates of insurance and endorsements prior to commencement of any work. Upon request, the Contractor shall provide within 30 days a copy of the policy(ies) to the City. If any of the above coverages expire by their terms during the term of this contract, the Contractor shall deliver proof of renewal and/or new policies to the Administering Service Area/Unit at least ten days prior to the expiration date.