



CITY COUNCIL AGENDA ITEM

Date: December 12, 2014

To: Troy City Council Members

From: Brian Kischnick, City Manager
Lori Grigg Bluhm, City Attorney
Kurt Bovensiepe, Public Works Manager
Susan M. Lancaster, Assistant City Attorney

Subject: Agreement with North Woodward Community Foundation ("NWCF") for Use of Public Property for "Troy Family Daze" Festival

History

The City of Troy hosted and sponsored a family festival known as Troy Daze from the period of 1968 to 2009. The event was well attended and served the purpose of bring Troy residents together with their families and friends to enjoy various outdoor family oriented activities. The Troy Daze festival was terminated after 2009 due to the economic down turn during which funding was not available to provide police, fire and other municipal services for the festival.

In 2011, the North Woodward Community Foundation ("NWCF"), a non-profit corporation organized and presented a carnival-type event title the "Troy Family Daze" festival. From 2011 to 2014, the Troy Family Daze festival was held on private property at the Zion Christian Church. The festival included many similar activities that had previously been available to the public during the Troy Daze festival, including, a naturalization ceremony for new citizen, booths for organization to display materials and, of course, rides, games and food.

At the July 21, 2014 study session, the City Administration presented a request from NWCF to allow the festival to move the Troy Family Daze festival to City owned property. NWCF would organize, present and take full responsibility for the festival and pay the City of Troy a flat fee for the cost of use of the property. By consensus, City Council directed City Administration to enter into negotiations with NWCF to hold the event on Civic Center property.

The attached Agreement with North Woodward Community Foundation for the Use of Public Property for "Troy Daze Family" Festival is the result of negotiations between the administrative staff, the City Attorney's Office and representatives from NWCF.



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Purchasing

Due to the unique character of a carnival-type festival and based on NWCF's past experience in organizing and presenting such a festival in the City of Troy, it is in the best interest of the City of Troy to waive the requirement of a sealed bid procedure pursuant to Section 12.1 of the City Charter and enter into this Agreement. NWCF is aware of the right of referendum set out in Section 12.3 of the City Charter.

Financial

The City of Troy will receive a yearly fee of \$10,000.00 for use of the property for the eleven (11) days during which the festival will be prepared, presented and cleaned-up. There is also a yearly increase which to the CPI not to exceed 2% for the use of the property over the eight (8) year period of the agreement. This fee will offset the City's administrative expenses.

Recommendation

The City Administration recommends approval of a Resolution approving the Agreement and allowing the Mayor and City Clerk to execute the Agreement on behalf of the City of Troy.

**AGREEMENT FOR USE OF PUBLIC PROPERTY
FOR "TROY FAMILY DAZE" FESTIVAL**

THIS AGREEMENT entered into on December ____, 2014, between the CITY OF TROY, a Michigan Municipal Corporation, 500 W. Big Beaver, Troy, Michigan, hereinafter referred to as the "CITY", and North Woodward Community Foundation, a Michigan Non-Profit Corporation and fiscal sponsor of the donor advised fund indentified as the Community Events Fund d/b/a Troy Family Daze, 1120 E. Long Lake Road, Suite 205, Troy, Michigan 48085, hereinafter referred to as "NWCF", also referred to individually as "Party" or collectively referred to as the "Parties".

WITNESSETH:

CITY has a longstanding policy of promoting a better sense of community, good will, and enjoyment of its residents, by providing events, such as a family festival, to achieve such goals.

Due to the unique character of a festival event and the need to enlist the service of a company that has developed a process of competently organizing all the many subcontractors, vendors, employees and volunteers needed for such an event, and due to the past performance of the non-profit NWCF in running private family festivals which are well received by Troy residents and their families and friends, City Council determines that it is in the best interest of the public to waive the requirement for a sealed bid procedure pursuant to Section 12.1 of the Troy Charter and enter into this Agreement with NWCF.

As such, CITY is granting to NWCF the exclusive privilege and right of conducting on CITY property an annual family carnival-type event, hereinafter referred

to as “Festival”, including, but not limited to, carnival rides, games of chance, animals, entertainment, the sale of food and beverages, including alcoholic beverages but only as set out in this Agreement, entertainment, sales booths and other activities related to a family Festival presented for the enjoyment of the residents of the City of Troy and their friends and relatives.

CITY and NORTH WOODWARD agree as follows:

1. EFFECTIVE DATE, TERM OF AGREEMENT AND RENEWAL.

This Agreement shall become effective on December _____, 2014 and terminate on November 1, 2022, unless terminated under the provisions of Section 29. Within one hundred and twenty (120) days prior to the end of the term of this Agreement, NWCF shall notify the CITY if it desires to extend the Term of this Agreement. Within 90 days of NWCF’s notification of its desire extend the Term of this Agreement, Troy City Council may at its option renew this Agreement for a specific period of time under the same terms and conditions as set out in this Agreement, or as otherwise amended by written agreement between the Parties. If City Council takes no action on NWCF’s notification within 90 days as set out above, the Agreement is terminated.

2. APPROVAL OF ACTIVITIES.

Within thirty (30) days prior to the Festival, NWCF shall provide the City Manager or his/her designee with the following information regarding participants in the Festival: a list of all carnival rides and operator’s/owner’s names and addresses; a list of all operator’s/owner’s names and address who will provide games of chance or prize booths; a list of all names and addresses of food and/or beverage vendors; a list of all

names of vendor's/owner's that will provide alcoholic beverage service and a copy of the provider(s)' liquor license. The City Manager or his/her designee has the discretion to reject any rides, games, food and/or beverage vendors, and/or vendors/owners that intend to provide alcoholic beverage services upon showing of good cause. At the request of NWCF, the City will give a written good cause explanation, describing why it is rejecting the rides, games and/or activity. Good cause shall be defined as "a showing that the offending party poses a particularized concern for the general welfare, safety, and/or peace and order of the Festival or its attendees. If there are any deletions and/or additions to its pre-Festival list, NWCF shall present an amended list consistent with this paragraph no later than ten (10) days before the first day the Festival is open to the public.

3. REIMBURSEMENT FEE

NWCF agrees to pay to the CITY a flat fee of \$10,000.00 for each year of the term, and payment will be tendered within 30 days after close of the Festival to compensate CITY for NWCF's use of the Property identified in Exhibit 1. After the 2015 Festival, each yearly fee shall be increase from the previous year by the Consumer Price Index ("CPI") for the Greater Metropolitan Detroit area, as long as the CPI increase does not exceed 2% per year. Each year by June 1, NWCF shall provide to the City Manager's Troy Daze Executive Committee appointee a copy of its annual financial statements for the previous fiscal year.

4. USE OF PUBLIC PROPERTY AND FESTIVAL SITE.

NWCF shall be restricted for each yearly Festival to that Property owned by CITY as designated on the site map attached hereto as Exhibit 1. Alteration of the site

perimeter, attached as Exhibit 1, may be made administratively by the City Manager or his/her designee. Any such administrative alteration of the perimeter of the site shall be presented to NWCF within one-hundred eighty (180) days of the scheduled start of the annual Festival.

5. DATES OF USE OF PUBLIC PROPERTY.

NWCF shall be given use of the Property as set out in Section 4 for four (4) days of the Festival activities plus five (5) days before the Festival to be used for the preparation for the Festival and two (2) days after the Festival for clean-up and removal of rides and/or exhibits (the "Possession Period").

The Festival activities shall take place each year on the second week-end after Labor Day which are the following dates during the Term of this Agreement:

2015	September 17, 18, 19, 20
2016	September 15, 16, 17, 18
2017	September 14, 15, 16, 17
2018	September 13, 14, 15, 16
2019	September 12, 13, 14, 15
2020	September 17, 18, 19, 20
2021	September 16, 17, 18, 19
2022	September 15, 16, 17, 18

6. HOURS OF FESTIVAL AND HOURS FOR SET UP.

The hours of operation for Festival days shall be 7:00 a.m. to 9:00 p.m. if held on a Sunday through and including Thursday and 7:00 a.m. to 11:00 p.m. on Friday and Saturday.

NWCF may allow its employees, volunteers, vendors and subcontractors to set up or take down necessary rides and equipment before and after the Festival during overnight hours. NWCF agrees that all such activities shall comply with the City's Code of Ordinances, including but not limited to Chapter 88, Nuisance, which controls noise

violations and litter, and other nuisance issues. If required, special work permits will be obtained from the City prior set up and take down activities being performed during overnight hours. Any deviation from this schedule shall be approved in writing by the City Manager or his/her designee.

7. SITE PLAN LAYOUT INCLUDING PARKING PLAN, ACCESS AND LIGHTING.

NWCF shall submit a site plan layout showing spacing and arrangement of rides, vendors, booths, storage areas, stages, game areas, children play areas, food/beverage facilities (with a designation as to locations where alcohol may be served) and tents and/or booths, restroom facilities or Port-a-Johns, displays of any animals, areas of entertainment, and all other activity areas whether or not open to the public. The site plan shall indicate all areas which are available for parking use by the public, including grass areas. If a private property owner has given approval for use of property for parking during the Festival days and hours, a written letter from the owner of the property indicating the approval and dates and hours of approval must be submitted with the site plan.

The site plan shall provide details for lighting and lighting fixtures. The site plan shall indicate all public access into the Festival and whether or not those accesses will be gated or manned. The City Manager or his/her designee shall review the site plan to ensure adequate emergency ingress/egress for Fire, Police and emergency personal and for the purpose of reducing potential fire and/or health hazards. NWCF shall submit the site plan layout at least sixty (60) days prior to the Festival's first day open to the public. If acceptable, the City Manager or his/her designee shall approve the site plan in writing. Prior to written site plan approval, NWCF shall not erect, place or locate any

carnival rides or other types of structures which cannot be easily removed from the property.

8. EQUIPMENT AND PERSONNEL.

NWCF shall provide at its own costs and be responsible for all personnel to staff and service events and/or activities. NWCF shall be responsible and provide all necessary personal property and/or equipment, including, but not limited to, carnival rides, games of chance, booths, entertainment, food and beverage tents, seating, parking attendants, gate keepers, ticket production and distribution, advertising, signage, fencing, and all other necessary equipment and supplies.

CITY has the absolute right to require NWCF to remove personnel and/or equipment or property from the site upon showing of good cause. Good cause shall be defined as “a showing that the offending personnel and/or equipment poses a particularized concern for the general welfare, safety, and/or peace and order of the Festival, or its attendees.

9. FIRE/POLICE DEPARTMENTS INSPECTIONS AND WEATHER OR EMERGENCY CONTINGENCY PLANS

NWCF shall present a written contingency plan for emergency situations such as a fire, severe weather and/or major public disruption or terrorist attack. The contingency plan shall be submitted each year to the CITY at least sixty (60) days prior to the opening date of the yearly Festival. After the contingency plans have been submitted, NWCF will meet with representatives of the CITY’S Fire and Department and Police Department to discuss implementation of the contingency plan and revisions, if necessary. The Fire Department and Police Department shall give final written approval of the contingency plan.

10. APPEARANCE/TRASH, FOOD VENDORS AND PRICING.

NWCF shall be responsible at its own costs for providing and setting up a sufficient number of trash receptacles. NWCF shall be responsible and pay all costs for keeping the Property and designated parking areas 100 feet from the Festival site free from debris from items associated with the Festival. NWCF shall ensure that all vendors have obtained the necessary inspections and approvals required for food preparation and serving of the public in compliance with all CITY ordinances, state law, and applicable health standards.

Menu items and prices shall be decided by NWCF with consideration of the CITY resident population it will be serving, keeping in mind that CITY is allowing use of public property on behalf of its residents. Pricing shall not be cost prohibitive and NWCF shall use reasonable efforts to offer a variety of food items in an effort to accommodate different ethnic backgrounds.

11. NWCF PERSONNEL.

NWCF shall provide appropriate badges and/or identifying “volunteer” shirts for its employees, volunteers, agents and representatives. NWCF is responsible for all wages, benefits or any other condition of employment and acknowledges that its employees, agents, volunteers, representatives and sub-contractor employees have no employment relationship with the CITY. The CITY shall have the right to mandate that NWCF remove an employee, vendor employee or contract employee from the Festival for indecent, disruptive and/or inappropriate behavior.

12. SPECIAL BOOTHS AND AREAS AND NATURALIZATION CEREMONY.

CITY shall be allowed a booth whether manned or unmanned by the CITY for display of CITY related materials and/or activities at no cost to CITY. NWCF shall have no responsibility to monitor, secure materials, guard, and/or man the City booth at any time. Additionally, NWCF shall designate a reasonable amount of space (no less than 250 square feet) for political groups on a “first come, first served “ basis.

NWCF agrees to designate an area, and accommodate a naturalization ceremony for each Festival year, subject to requirements of Homeland Security, and/or U.S. Citizenship and Immigrations Services and/or other requirements. NWCF agrees to allow enough time for participants to complete the ceremony and clear the area without being discourteous to participants.

13. ADVERTISING AND USE OF LOGOS.

The Festival shall be known as “Troy Family Daze” and NWCF grants the City of Troy a limited license to use “Troy Family Daze” as the name of the Festival during the term of this Agreement. The CITY, at its option and sole expense, may advertise the Festival. The City shall include NWCF’s brand and logos and must state “Troy Family Daze is a fiscally sponsored fund of the North Woodward Community Foundation” in all advertisements, press releases, and websites. NWCF will supply samples of suggested advertisements, website, and Facebook link. CITY shall have the sole discretion to decide what advertising it will use, what publications and/or websites it will use and when it will publish the advertisement.

NWCF is prohibited from using any CITY logos which have previously appeared on CITY publications, websites and/or documents without the approval of the CITY, and

to the extent that it should choose to advertise the Festival on its own and in addition to any City's advertisement.

14. FIREWORKS.

If NWCF intends to present a fireworks display as part of the Festival, it shall submit an application for a fireworks permit to the Troy Fire Department in accordance with Chapter 93. NWCF shall submit a Certificate of Insurance for the fireworks display naming the CITY as an additional insured for the activity. In lieu of a separate Certificate of Insurance, the fireworks display activity can be included in the Certificate of Insurance which meets the standards set out in Section 21. The Troy Fire Department shall review the permit and certificate of insurance to determine if revisions are necessary. If no revisions are necessary, the Fire Department shall recommend that Troy City Council approve the permit.

The Fire Department shall be present at a location to be determined by that Department at all approved firework displays for emergency standby purposes, at no further costs to NWCF.

15. LIQUOR LICENSE, SERVING OF ALCOHOL AND LIQUOR LAW VIOLATIONS

NWCF shall require that any of its vendors/organizations apply for and acquire an appropriate State of Michigan liquor license/permit for the Festival and provide to CITY a list of all names of vendors/organizations that will provide alcoholic beverage service and a copy of provider(s)' liquor license. To the extent that NWCF chooses (in its sole discretion) to allow the sale and consumption of alcohol within a specified area of the Festival, NWCF shall ensure that all vendors, contract employees, and/or

employees serving alcoholic beverages on the public property site shall be TIPS and/or TAMS trained and shall only serve alcoholic beverages within the guidelines of the State of Michigan liquor laws. The CITY may request that any person who violates the liquor laws be terminated and/or removed from the premises by NWCF.

CITY shall not be liable for any costs for the applications and liquor licenses/permits required by the Michigan Liquor Control Commission ("MLCC"). NWCF Employees/Vendors serving alcoholic beverages shall do so in compliance with the State of Michigan liquor laws and guidelines as set forth by the MLCC.

NWCF agrees to assume full and total responsibility for all sanctions and/or penalties assessed for violations of the Michigan Liquor Control Commission's Administrative Rules and Regulations and/or federal, state, or local laws concerning the sale/serving of alcohol at the Festival site, based on the actions or inactions of the NWCF employees, volunteers, vendors, agents and/or representatives who sell/serve alcohol.

NWCF shall ensure that no alcoholic liquor is served at times prohibited by State statute. NWCF shall not serve or allow alcoholic beverages outside of that allowed by the MLCC licensee/permit and/or outside of the area perimeter designated on Exhibit 1.

NWCF agrees to indemnify and hold the CITY harmless from any and all claims arising out of the sale of alcoholic beverages by the NCWF, its employees, its vendors, its agents and/or its representatives which occurred on CITY Property as designated on Exhibit 1 and/or which is sold by its employees, its vendors, its agents and/or its representatives on CITY property as designated on Exhibit 1 and carried beyond the perimeter of that Property.

CITY views liquor license violations by vendors/organizations as serious health, safety and welfare issues. Depending on the number and/or type of violation(s) of State and/or City liquor laws on the Festival Property, City may terminate this Agreement pursuant to Paragraph 29.

16. SECURITY.

NCWF shall be responsible at its own costs for providing security guards licensed by the State of Michigan while the Festival is open to the Public. In addition, NWCF shall be responsible for annually securing the Property 24 hours per day beginning from the first hours of set up and continuing until all property has been removed from the site. CITY assumes no liability and/or responsibility for any personnel, property, equipment, materials, documents or any other items kept on the CITY owned property during this time.

Consistent with the normal duties, CITY personnel, including but not limited to the City Manager or his/her designee, police, fire personnel, Department of Public Works personnel, building inspectors, code enforcement officers, and agents of those personnel, shall at all times have access to the Property without further permission from NWCF. Except for Troy Police personnel, all other City personnel accessing the Property in their official capacities must check in at the headquarters trailer, and wear identifying name badges, or in another way identify themselves as City personnel to NWCF's satisfaction.

17. CLEAN-UP AND RESTORATION OF PROPERTY.

Within two (2) days after the last date of each yearly Festival, NWCF shall properly remove or have removed from the Property all structures, rides, tents, booths,

trash receptacles, Port a Johns, litter, debris and other items to return the Property to the substantially same condition that existed prior to each Festival. Each year, at least thirty (30) days before possession of the Property, NWCF shall post a cash or surety bond in the amount of \$5,000 to insure prompt and thorough clean up. If clean-up is not completed within two (2) days of the last date of the Festival to the CITY'S satisfaction, CITY shall clean-up the Property and invoice NWCF at the City's customary rates. Prior to City commencing clean up, City shall provide a list of items that are at issue, and conduct a walk-through with NWCF representatives, showing the exact areas of concern, and provide NWCF 48 hours to correct any issues. CITY will send a billing for clean-up within ten (10) days after completion of the clean up. If NWCF has posted a surety bond, it shall then have thirty (30) days from the date of the billing to pay the City directly. If payment is not received within thirty (30) days, CITY shall submit the billing to the surety bond holder for payment. If NWCF choses to deposit a cash bond, CITY shall deduct the cost of the clean-up from the cash bond. If the clean-up cost more than the cash bond, NWCF shall be billed for the additional amount. NWCF shall have ten (10) days to pay the additional clean-up costs. If the NWCF should post a cash bond and upon clean-up, there are no further costs, and/or there is an excess amount, then that amount shall be returned NWCF, within 21 days of completion of the clean-up.

The Troy City Manager or his designee shall have the discretion to extend the deadline date for clean-up and removal of items under this Section 17 if the reason for the failure to clean-up or remove items is, in the sole opinion of the City Manager or his/her designee, not the fault of NWCF. In such case, a new clean-up and removal deadline will be given in writing to NWCF.

18. FESTIVAL RULES, GUIDELINES AND POLICIES.

NCWF is a privately held event and not City sponsored, and therefore NCWF has adopted Festival rules, guidelines and/or policies, which are attached and incorporated as Exhibit 2. Any changes to these rules, guidelines and/or policies shall be sent to the City Manager or his/her designee immediately after the revision(s). The City Manager or his/her designee shall have the right to object to any amended rule, guideline and/or policy. The Parties shall discuss and reach a reasonable resolution regarding the CITY's objections.

19. APPOINTMENT OF CITY REPRESENTATIVE TO BOARD.

At all times this Agreement is in effect, NWCF shall allow the Troy City Manager to appoint a representative from CITY to the Troy Family Daze Executive Committee and this designee shall be afforded all rights and responsibilities of any other Troy Family Daze Executive Committee member. Any NCWF objections to the City Manager's appointment shall be presented to the City Manger by NWCF's Executive Director for discussion and consideration. Failure to allow the Troy City Manager to make such an appointment to the Executive Committee shall be considered a material breach of this Agreement and, in its sole discretion, CITY may terminate this Agreement as set out in Section 29.

21. INSURANCE REQUIREMENTS.

NWCF shall carry general liability insurance, automobile insurance, workers' compensation insurance, liquor liability coverage (if liquor is available on site), employers' liability insurance, and fireworks display insurance (if applicable, as set out in Section 14), for any actions, claims, liability or damages caused to others arising out

of the performance of this Agreement in the amount of at least \$1,000,000.00 per occurrence and \$3,000,000.00 aggregate, which shall be on an appropriate Accord or ISO B form. The CITY shall be named as an additional insured on the required general liability, liquor liability and fireworks display policies, using the following wording: "CITY of Troy, all elected and appointed officials, all employees and volunteers, those working as agents or on behalf of the CITY, boards, commissions and/or authorities, or board members, employees, and volunteers additional insured."

Cancellation or lapse of the insurance shall be considered a material breach of this Agreement and the Agreement shall become null and void unless NWCF immediately provides proof of renewal of continuous coverage for the Possession Period to the CITY. All insurance carriers shall be licensed and admitted to do business in the State of Michigan and acceptable to the CITY. Proof of insurance meeting these requirements shall be provided to the CITY ten (10) days before Possession of the Property.

NWCF is responsible for any deductibles to any of the policies. NWCF shall furnish three (3) complete copies of the acceptable Certificates of Insurance ten (10) days prior to Possession of the Property.

22. INDEMNIFICATION AND HOLD HARMLESS.

To the fullest extent permitted by law, NWCF agrees to defend, pay on behalf of, indemnify, and hold harmless the CITY of Troy, its elected and appointed officials, employees and volunteers and others working on behalf of the CITY, against any and all claims, demands, suits, or loss, including all costs connected therewith, and for any damages which may be asserted, claimed or recovered against or from the CITY, its

elected and appointed officials, employees, volunteers or others working on behalf of the CITY, by reason of personal injury, including bodily injury or death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with the execution of activities by NWCF or its employees, representatives, agents, or subcontractors, as outlined in this Agreement or as relating to or resulting from those activities.

CITY agrees to defend, pay on behalf of, indemnify, and hold harmless NWCF and its appointed officials, directors, members, trustees, employees and volunteers and others working on behalf of the NWCF and Troy Family Daze, against any and all claims, demands, suits, or loss, including all costs connected therewith, and for any damages which may be asserted, claimed or recovered against them by reason of personal injury, including bodily injury or death and/or property damage, including loss of use thereof, which arises out of claims of gross negligence actions of the CITY or City Personnel.

23. FOLLOW-UP MEETING AND PRESENTATION.

NWCF shall meet with the City Manager and/or his/her designee(s) each November after the Festival to discuss the overall community feedback, positive events and future challenges relating to the Festival so that the Parties may work together to continue to improve the experience for Festival attendees. Topics for documentation and discussion could include but not be limited to, attendance, operational outcomes, possible personal injury and/or property damage claims, and traffic, parking and security issues. Discussions should include topics of how to solve any perceived problems for the following year's Festival. If requested by the City Manager, a member of NWCF and

a member of the Troy Family Daze Executive Board shall appear before Troy City Council to give a presentation of outcomes of the Festival on topics agreed to by the Parties in advance of the Meeting. The date for the City Council presentation shall be agreed upon by the Parties.

24. NO ARREARS FOR TAXES.

NWCF shall not be in arrears for any taxes invoiced by or payments due to any governmental entity.

25. DUTY TO NOTIFY AND COOPERATE.

NWCF and the CITY shall provide notice to each other within three (3) days of the receipt of any claim for damages or injuries related to the performance of the Agreement or the use of CITY property. The parties shall cooperate with the defense of any claims subject to the indemnification provisions of Section 22. Copies of all damage or accident reports submitted to insurance companies by NWCF dealing with any damage or accident that may occur during an event must also be sent to the CITY within three (3) days of the incident.

26. ASSIGNMENT OF AGREEMENT OR LIQUOR LICENSES.

NWCF shall have no authority or power to assign, sublet and/or transfer any rights, privileges or interests under this Agreement without prior written consent from the CITY. NWCF and/or its designated Vendor, shall not assign, sublet and/or transfer any rights in any liquor license obtained in accordance with this Agreement without prior written consent from the CITY.

27. INDEPENDENT CONTRACTOR.

NWCF acknowledges that it is an independent contractor with no authority to bind the CITY to any contracts or agreements, written or oral.

28. NOTICE.

All written notices to be given under this Agreement shall be via first class mail to the other party at its last known address set forth herein.

29. EARLY TERMINATION.

Both Parties reserve the right to terminate this Agreement with by providing the other with one hundred eighty (180) days written notice prior to the start of the Possession Period of the next upcoming annual Festival. It is recognized by the parties that there is a right of referendum that is set forth in the Troy City Charter, Section 12.3. A timely filed referendum petition that results in an ultimate vote requiring an early termination of the Agreement excuses the requirement for 180 days advance notification. The termination may be with or without cause. There shall be no penalty for early termination to either Party except NWCF shall remain responsible for any outstanding amounts due to the CITY for prior years, as set out in Section 3 or Section 17 without further liability to either party. Any financial losses resulting from cancellation of preplanned activities and/or events or contracts with NWCF's employees, vendors, agents, representatives and subcontractors shall be the sole responsibility of NWCF.

30. NON-COMPETITION

During the term of this Agreement, the CITY agrees that it will not directly or indirectly:

- a. Utilize, hire, or solicit for hire, any employees, vendors, and/or volunteers, for purposes of the City or putting on, hosting, or allowing a City Festival similar in scope (i.e. having a carnival, midway and rides) within the City of Troy.

CITY understands and acknowledges that the above covenant is required for the fair and reasonable protection of NWCF's charitable efforts, and that violation of any of the covenants and agreements contained in this Agreement would cause NWCF and/or Troy Family Daze irreparable injury and that the remedy at law for any violation or threatened violation thereof would be inadequate, and that NWCF and/or Troy Family Daze shall be entitled to temporary and permanent injunctive relief or other equitable relief, including specific performance, without the necessity of proving actual damages.

31. FREEDOM OF INFORMATION ACT REQUESTS.

As part of this Agreement, CITY may be voluntarily provided certain Confidential, proprietary, and trade secret information relating to NWCF and Troy Family Daze for purposes of further developing the policies and future Festivals, as described above.

Any documents or other materials defined as Confidential in this Section in CITY'S possession may be subject to release under the Federal or Michigan Freedom of Information Act ("FOIA") unless expressly exempt therefrom. CITY has a FOIA policy in place concerning review and release of documents in its possession. FOIA requires release of documents within 5 days of the receipt of the request unless a 10 day extension is exercised by the CITY. CITY in its sole discretion shall make the determination as to whether documents in its possession and provided by NWCF must be released under FOIA. CITY agrees to give NWCF a copy of a FOIA request for such documents as soon as possible after receipt by the CITY. This will allow NWCF an opportunity to obtain an immediate preliminary injunction to prevent release of the requested documents. If NWCF obtains a preliminary injunction and any resulting

litigation results in a judgment against CITY, NWCF will indemnify and hold the CITY harmless for that judgment, including, any attorney fees and costs incurred by CITY.

32. COMPLIANCE WITH LAWS.

NWCF agrees that (1) all rides and mechanical devices shall be inspected and permitted by the Michigan Department of Labor-Ride Safety Division; (2) all food concessions shall be inspected and licensed by the Oakland County Health Department; and, NWCF shall at all times be in compliance with all federal and state statutes and local ordinances and with all Oakland County Health Department licensing requirements, rules and regulations. The serving of alcoholic beverages will be in full compliance with State of Michigan Liquor Laws.

33. NON-DISCRIMINATION.

NWCF shall not discriminate in the hiring of any employees, vendors and/or subcontractors or in the use of the CITY property by patrons, directly or indirectly on the basis of age, race, color, religion, national origin, sex, height, weight, disability, sexual orientation, familial relationship, political orientation or any other illegal basis.

34. SEVERABILITY.

If any court, agency, commission, legislative body or other authority of competent jurisdiction declares invalid, illegal or unenforceable any portion of this Agreement or its application to any person, that decision shall not affect the validity of the remaining portions of this Agreement.

35. ENTIRE AGREEMENT; AMENDMENT; WAIVER.

This Agreement is and shall be deemed to be the complete and final expression of the agreement between the Parties as to the matters contained in and related to

this Agreement and supersedes any previous understandings, dealing and communications, including negotiations, discussions, representations, warranties, information, documents and agreements, among the parties pertaining to such matters. This Agreement shall not be modified or amended except pursuant to a written agreement signed by both Parties unless otherwise set out in this Agreement. Any waiver of any Party's rights or obligations under this Agreement must be in writing and must be signed by the Party against which such waiver is to be enforced. Neither Party's failure to exercise a right or to invoke a remedy in any particular circumstance shall be construed as a waiver of such right or remedy, and no waiver by either Party of any right or remedy in one situation shall constitute a waiver of such Party's rights or remedies in any other subsequent situation, whether similar or not.

36. GOVERNING LAW AND JURISDICTION.

This Agreement is made in and shall be governed by the laws of the State of Michigan. Any lawsuits under this Agreement shall be filed in the Oakland County Circuit Court, Michigan.

37. HEADINGS.

Pronouns and relative words herein used shall be read interchangeably in the masculine, feminine or neuter, singular or plural as the respective case may be.

38. AUTHORITY TO EXECUTE

By execution of this Agreement, the respective parties acknowledge that each has executed this Agreement with full and complete authority to do so.

WITNESS:

**NORTH WOODWARD COMMUNITY
FOUNDATION,**

A Michigan Non-Profit
Corporation,

By: Thomas Kaszubski
Its: Executive Director

WITNESS:

CITY OF TROY,

By _____
Dane Slater, Mayor

By _____
Aileen Bittner, City Clerk



624 0 312 624 Feet



Note: The information provided by this application has been compiled from recorded deeds, plats, tax maps, surveys, and other public records and data. It is not a legally recorded map survey. Users of this data are hereby notified that the source information represented should be consulted for verification.

Exhibit 1

TROY FAMILY DAZE FESTIVAL CODE OF CONDUCT FOR ATTENDEES

Attendees are expected to be courteous toward other attendees and follow the rules and regulations.

The following actions are prohibited and may result in ejection and/or legal prosecution:

- 1) Violation of any law or Ordinance.
- 2) Children under 12 years of age must be supervised at all times. If staff finds children without proper supervision the procedures listed below will be followed:
 - a. Immediately try to locate the parent.
 - b. Find a designated area where the child can be watched and attempt to phone the parents.
 - c. The City of Troy Police will be called for children left after the close of business or if parents cannot be located.
- 3) Possession or use of any controlled or intoxicating substance, being under the influence of any controlled or intoxicating substance. People under the influence of, or in possession of alcohol, drugs or other controlled substances, will not be allowed on the property and will be reported to police for further investigation.
- 4) Possession or use of any firearms, knives or any other weapons within the Festival Perimeter will not be allowed and will be reported to police for further investigation.
- 5) Vulgar, obscene, abusive, derogatory, taunting or demeaning comments, behavior or gestures.
- 6) Destructive or dangerous behavior towards people, equipment or facilities (including fighting)
- 7) Theft, attempted theft, taking control over or possessing another person's property without their permission, destruction or damages to another person's property.
- 8) Climbing, jumping or other inappropriate use of rides, games, tables, tents, or any other equipment.
- 9) Unwanted or inappropriate physical touching of another person.
- 10) Abuse of, harassment of, or failure to obey lawful direction of staff
- 11) Dogs or other pets (except if leading the blind or by special permission)
- 12) Use of open flames such as candles, sterno can, etc.
- 13) Bicycles
- 14) In-line skating (including shoe/skate combinations) and skateboards.
- 15) Use of the Festival grounds for monetary gain by outside agencies that have not paid a Troy Family Daze Festival booth fee.
- 16) Loitering on the Festival grounds

Patrons who violate the rules or code of conduct may be immediately ejected from the Festival grounds by security.

Illegal behavior will immediately result in action by a Troy Police Officer.