



CITY COUNCIL AGENDA ITEM

Date: June 10, 2013

To: Brian Kischnick, City Manager

From: Mark F. Miller, Director of Economic & Community Development
 Carol Anderson, Recreation Director
 Brian Goul, Aquatic/Fitness Coordinator

Subject: Troy Nature Society Agreement

History

The Troy Nature Society was founded in the spring of 2010 as a 501c3 organization to support the Lloyd A. Stage Nature Center. In 2011, the Nature Society and the City entered into a two year agreement for the Nature Society to provide programming at the Nature Center.

The current agreement expires June 30, 2013. There is a two year extension on the current agreement but the revisions are such that a new agreement is optimal. The new agreement includes changes as follows:

1. Eliminates all start up language.
2. Allocates \$50,000 in city funds for fiscal 2013-14 and will continue to consider annual appropriations each year thereafter as part of TROY's annual budget process.
3. Allows TNS to charge an admission to enter the grounds or building.
4. Eliminates city approval for specific program offerings.
5. Allows use of the farm property with city approval. Previous agreement addressed use of the Nature Center property only.
6. Term of the agreement is four years beginning July 1, 2013 with a four year option to renew.

Financial

Funds for the allocation are budgeted in the Nature Center budget 101.771.7802.070.

Recommendation

City management recommends approval of the agreement as attached with the Troy Nature Society for a four year term beginning July 1, 2013.

City Attorney's Review as to Form and Legality

 Lori Grigg Bluhm, City Attorney

 Date

**AGREEMENT BETWEEN THE CITY OF TROY
AND TROY NATURE SOCIETY FOR USE AND OPERATION OF
LLOYD A. STAGE NATURE CENTER**

THIS AGREEMENT made this _____ day of _____, 2013, by and between **THE CITY OF TROY**, a Michigan municipal corporation, whose address is 500 W. Big Beaver Road, Troy, Michigan, (“TROY”) and **TROY NATURE SOCIETY**, a Michigan non-profit corporation, whose address is P.O. Box 99302, Troy, Michigan, 48099 (“TNS”) , and collectively referred to as the “Parties” hereby agree as follows:

RECITALS

WHEREAS, TROY established the Lloyd A. Stage Nature Center to create passion for, and knowledge of, the natural world in the hearts and minds of its citizens leading to increased understanding and stewardship of our natural environment, as set out in its mission statement; and

WHEREAS, due to current economic conditions TROY is unable to provide funding in its budget, including TROY personnel, for the continued operation of the Lloyd A. Stage Nature Center; and

WHEREAS, the mission of the TNS is to provide resources and education to inspire the appreciation and preservation of nature. The TNS will accomplish their mission through an organized structure of volunteers, fundraising efforts, and collaboration with TROY, community groups and entities; and

WHEREAS, the Parties desire to enter into this Agreement to facilitate the mutual goals of the Parties:

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. NON-PROFIT STATUS. TNS represents and warrants that it is a Michigan non-profit corporation exempt from tax under Sec. 501 (c)(3) of the Internal Revenue Code and that it has the power and authority to execute and deliver this Agreement and to perform its obligations hereunder, and the execution, delivery and performance of this Agreement have been authorized by all necessary action, including the approvals and ratification by the TNS Board of Directors prior to the effective date hereof. This Agreement shall only be effective if TNS continues its status as a Michigan non-profit corporation with the same or similar mission as attached hereto as Exhibit 1.

2. USE OF CITY PROPERTY BY TNS. TROY, in consideration of the mutual covenants and agreements contained herein, and for other valuable consideration, will allow TNS the non-exclusive use of its property commonly known as the Lloyd A. Stage Nature Center, located at 6685 Coolidge Highway, Troy, Michigan 48098 (“Nature Center”), legally described on Exhibit 2.

- The use of the term “Nature Center” shall refer to the land, improvements and facilities on the Premises. The term “Premises” shall refer to the Nature Center only. The Premises are to be occupied and used for the sole purpose of promoting outdoor recreation and nature education programs under the conditions and requirements set out in this Agreement.
- TNS shall have the right to have access to and may utilize the Lloyd A. Stage Nature Center building, consisting of the “interpretive center” and the maple syrup shed (“Buildings”) for preparation, classes and disassembly of set up for any programs it offers consistent with its mission statement. (Exhibit 1) If at any time TROY believes the Buildings or Premises are being misused or activities are occurring which are beyond the scope of this Agreement or TNS’ mission, the Director, in his/her sole discretion, may require TNS to immediately cease the activity or misuse. TNS shall be solely responsible for any damage to property caused by the misuse of or the improper use of the Premises.
- TNS shall have the sole discretion to develop and oversee classes, programs or activities and shall be solely responsible for overseeing the actual instructional material and activities of its employees or volunteers. TNS will provide a copy of the public programs and activities that are scheduled prior to public notification of the programs.
- TNS, at its own expense, may maintain and operate a Nature Center store.
- The Premises shall remain the property of TROY at all times. At any time, employees of TROY and/or agents acting on behalf of TROY may enter onto the Premises for maintenance, service and inspection or for any other purpose set out in this Agreement.

3. TROY’S EXCLUSIVE USE OF PREMISES FOR ELECTIONS. TNS acknowledges and agrees that at any time an election is held which requires use of TROY’S Premises as a polling place, the use of the Premises shall be controlled exclusively by TROY. TROY shall advise TNS as soon as reasonably possible of the dates and times that TROY will require exclusive use of the Premises for elections. During those times, TNS may be denied any and all access to the Premises or areas of the Premises designated by TROY. If at all possible, any property belonging to TNS will be allowed to remain on the property; however, TNS shall cooperate in moving the property to another area on the Premises or removing the property from the Premises when so indicated by TROY.

4. FINANCIAL ASSISTANCE. In order to insure the continued vitality of the Lloyd A. Stage Nature Center as an invaluable community resource to the citizens of Troy and as a center of learning for Troy children and adults alike, TROY will provide an appropriation for TNS operations of \$50,000 for 2013, and will continue to consider annual appropriations each year thereafter as part of TROY’s annual budget process.

During the term of the Agreement, TROY also agrees to the following:

- Reasonable Utilities and Maintenance. TROY shall be responsible for all reasonable water, electricity and gas service used on the Premises. TROY shall be responsible for all reasonable custodial services on the Premises, including lawn mowing and parking lot snow removal. Troy shall be responsible for all park, buildings, equipment and forestry maintenance and repairs at its sole and absolute discretion.
- Trash Pick-Up. Troy shall pick up trash, so long as it is bagged and placed in designated Troy owned trash cans and placed at a properly designated location for pick-up.
- Surveillance. TROY, at its expense, shall be responsible for the costs and maintenance of the current Vigilante surveillance system on the Premises, or any similar system installed by TROY.
- Phone line. TROY will continue to provide the connection for the one existing analog phone line on the Premises. Any phone line billings resulting from that use of a phone at that connection site are the responsibility of TNS.

TNS may charge an admission fee as part of the funding to support the operation of the Premises, outreach and/or programs, in addition to program/class fees. TNS may only charge reasonable admission fees subject to the approval of the Recreation Director. All other terms and conditions set forth in this Agreement shall also apply to admission fees.

5. TERM OF AGREEMENT. This Agreement shall remain in effect for a four (4) year period beginning on July 1, 2013 unless terminated by either party as set out in Section 18. Within sixty (60) days prior to the end of the term of this Agreement, TNS shall notify TROY if it desires to continue to perform the services described in this Agreement. At that time, Troy City Council may decide to renew the Agreement for an additional four (4) year period, at which time City Council may decide to extend the original Agreement or modify terms contained in Section 4. Alternatively, City Council may decide to continue to use of the services of TNS but require that TNS and TROY enter into a new Agreement.

6. USE OF TROY'S COLLECTIONS AND EQUIPMENT ON THE PREMISES. TNS shall be entitled to use all equipment listed on TROY'S July 1, 2011 inventory to prepare and conduct workshops, classes, nature walks, and other activities promoting outdoor recreation.

If TNS at its own expense adds to the collections of TROY, those collection additions shall become the property of TROY. Any equipment purchased by TNS at its own expense shall remain the property of TNS.

7. DUTIES AND RESPONSIBILITIES OF TNS.

- Employees and Volunteers. TNS shall be responsible for the recruitment, salaries and schedules of all employees and volunteers. TNS will provide application forms, pre-approved by TROY, for potential volunteers. TNS will initially screen all individuals for acceptable volunteer candidates for TNS. Applications for volunteers found acceptable by TNS will be forwarded to TROY. TROY will run background checks with State of Michigan I-CHAT, or another program acceptable to TROY, at no cost to TNS. The completed background check responses will be returned to the TNS in a timely manner and TROY shall have absolute discretion in deciding which individual applicants shall not be accepted as volunteers due to unsatisfactory background checks or any other reason. TNS will oversee the training of their employees and volunteers. The names, addresses and telephone numbers of each employee and each volunteer will be provided to TROY upon request.

No volunteer shall be under the age of 14 years old. Any volunteers that are between the ages of 14 and 18 years old, such as, but not limited to school programs, youth volunteers or Boy Scouts or Girls Scouts, shall be supervised at all times by TNS employees and/or an adult present at the site on behalf of the volunteers.

- Program/Class Registration and Advertising. TNS shall be responsible for program, class or other activity on-line or in person registration and fee collection. TNS shall be responsible for keeping records for all registrations and fees. If there is a cancellation of a program, class or activity, TNS shall be responsible for reimbursing fees to the registrant.

TNS shall be responsible for the preparation of advertising of any programs or classes for *Troy Today*. TNS will at its own expense pay for publication of advertising in *Troy Today* or any other TROY owned publication. TROY shall have sole discretion to prohibit TNS from advertising activities in a specific publication or other media source. TROY may require that TNS remove immediately any content which, in TROY'S sole discretion, is inaccurate, offensive or not in keeping with TROY'S opinion of the mission of the Lloyd A. Stage Nature Center or the philosophy of TROY. Failure to remove the content as requested may constitute cause for an immediate termination of this Agreement.

All advertising materials prepared and/or disseminated by TNS or its agents shall contain a statement which reads: "Troy Nature Society has entered into an

agreement with the City of Troy to manage the Lloyd A. Stage Nature Center. All programs and events are now under the direction of Troy Nature Society.”

- Program/Class Supplies. TNS shall be responsible for the costs of all programs and/or class supplies.
- Hours of Operation and Opening/Closing of Facilities. TNS may determine the hours of programs and/or classes. TNS shall be responsible for the daily opening and closing of the facilities on the Premises during those periods it is using the Premises. TNS shall be provided with a key to the main buildings at the Nature Center.
- Daily Maintenance. TNS shall keep the Premises clean and orderly and all trash shall be kept inside and out of view until the designated trash pick-up day(s). TNS shall notify TROY immediately of any defects of whatever nature it discovers on the Premises, Buildings or trails and shall not use the Premises, or trails until TROY has inspected the defect, made repairs or closed down the Premises, Buildings and/or trails for safety reasons. Failure to notify TROY of such discovered defects shall result in liability to TNS. TNS shall be responsible for any hazardous waste as set forth in Section 30.
- Telephone/Electronic/Other Equipment. At its own expense, TNS will be solely responsible for telephones, telephone lines, computers, computer cables, fax machines, fax cables, copiers, copier cables and other electrical systems. No changes to the Premises for the installation of any telephones, telephone lines, computers, computer cables, fax machines, fax cables, copier, copier cables or other electrical systems shall be made without prior written approval of TROY. TNS shall be responsible for supplies and routine maintenance associated with the items set out in this Section.

8. ALLIANCES. TNS, after consulting with TROY’S contact person, may enter into partnerships, collaborations, or other relationships with entities other than TROY to enhance the Nature Center mission-focused visitor experience, enhance operations, diversify sources of private or public funding, reduce costs, or realize other benefits or operational efficiencies.

9. TNS REVENUES. All funds received by TNS from any sources shall be used to further and promote the general welfare and interests of the Nature Center. All donations to support other TNS non-program activities or activities conducted on other premises besides the Nature Center may be used at the discretion of TNS to support its other activities. Donations to TNS with conditions or directives set by the donor relating to the Nature Center or other property owned by TROY shall be reviewed and approved by TROY. TNS shall have no authority to authorize any agreements, conditions, promises, directives or other actions on behalf of TROY.

TNS will have full control of those revenues received from all educational and recreational programs including special fund raising activities. TNS may maintain banking accounts, including, but not limited to, checking and savings accounts, special service accounts, certificates of deposit or an endowment fund. All funds from any monies received by TNS must be accounted for in the records of TNS as set out in Section 20 of this Agreement.

10. PROTECTION OF COLLECTIONS. Any property of TROY'S shall not be used as collateral by TNS. TNS shall not de-access or dispose of any buildings or collection materials without TROY's prior permission. New accessions donated to or purchased by TNS will become the property of TROY. If TROY authorizes the sale of any building or collection materials, any proceeds from the sale of any building or collection materials will be used only for the acquisition of new artifacts, or archival materials, or for the care of existing collections.

11. SECURITY. TNS shall allow members of the Troy Police Department and/or any other federal or state law enforcement agency onto the property at any time to ensure security of the premises.

12. FINANCIAL STATEMENTS AND REPORTS. By October 15 of each year, TNS shall furnish an annual report of its activities with respect to the Nature Center to TROY. This report shall include the following subject matters:

- a. Itemized revenues and expenses;
- b. Fund raising activities;
- c. Program/class participation numbers/reports;
- d. Number of visitors during the reporting period;
- e. The schedule of hours of operation of the Nature Center during the reporting period and the average number of hours per week that the Nature Center was open to the public during the reporting period;
- f. List of major accessions and deaccessions.
- g. TNS shall deliver a copy of its annual financial statements for the previous fiscal year, audited, compiled or reviewed by an independent certified public accountant, to TROY.

13. INSURANCE. TNS shall carry general liability insurance, personal property insurance, workers compensation insurance, liquor liability insurance (if required as set out herein), and motor vehicle liability insurance for any actions, claims, liability or damages caused to others arising out of the performance of this Agreement, in coverage amounts approved by TROY. TROY shall be named as an additional insured on the general liability insurance and the liquor liability insurance (if required as set out herein), using the following wording: "City of Troy, all elected and appointed officials, all employees and volunteers, boards, commissions and/or authorities and their board members, employees, and volunteers are additional insureds" on ISO form B or broader. Liquor liability insurance shall be required per occurrence or event. Service of liquor on the Premises at any time by TNS or its agents, without liquor liability insurance

in place, shall be considered a material breach of this Agreement and TROY may immediately terminate this Agreement. Proof of liquor liability insurance will be presented to TROY'S risk manager at least 30 days prior to the service of any alcoholic beverages on the Premises.

TROY shall be notified of any cancellation or material change of any insurance within 30 days. The cancellation clause shall read:

“Should any of the above-described policies be canceled or materially changed before the expiration date thereof, the issuing company will provide 30 days written notice to the additional insured.”

Cancellation of the insurance shall be considered a material breach of this Agreement, and the Agreement shall become null and void unless TNS immediately provides proof of renewal of continuous coverage to TROY. All TNS insurance carriers shall be licensed and admitted to do business in the State of Michigan and shall be acceptable to TROY. Proof of insurance meeting these requirements shall be provided to TROY within 24 hours after execution of this Agreement.

TNS is responsible for any deductibles for any of the policies. TNS shall furnish to TROY three (3) complete copies of the acceptable Certificates of Insurance. If any of the policies expire during the term of the Agreement, TNS shall deliver renewal certificates and/or policies to TROY at least ten (10) days prior to the expiration date.

14. MUTUAL INDEMNIFICATION. To the fullest extent permitted by law, TNS agrees to defend, pay on behalf of, indemnify, and hold harmless TROY, its elected and appointed officials, employees and volunteers and others working on behalf of TROY, 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 TROY, its elected and appointed officials, employees, volunteers or others working on behalf of TROY, 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 TNS as outlined in this Agreement or as relating to or resulting from those activities. To the fullest extent permitted by law, TROY agrees to defend, pay on behalf of, indemnity, and hold harmless TNS against any and all claims, demands, suits or loss, including costs connected therewith, and for any damages which may be asserted, claimed or recovered against or from TNS, by reason of personal injury, including bodily injury or death and/or property damage, including loss of use thereof, which are proximately caused and the direct result of the gross negligence of TROY or its employees or which TROY may be statutorily liable under MCL 691.1401, et. seq..

15. ALCOHOL AND TOBACCO USE. TNS shall prohibit the use of tobacco on the Premises at all times. The use of alcohol shall be prohibited unless approved by TROY and unless TNS obtains a valid permit issued by the Michigan Liquor Control Commission. The use of alcohol is restricted to fund raising events only and no alcohol

will be served or allowed outside of the interpretive center building. Persons who refuse to cooperate with this requirement shall be removed from the premises by TNS and/or law enforcement personnel.

16. PARKS AND RECREATION DEPARTMENT RULES. TNS agrees to abide by all of the rules and regulations of TROY'S Parks and Recreation Departments.

17. DUTY TO NOTIFY AND COOPERATE. The parties shall provide notice within twenty-one (21) days of the receipt of any claim for damages or injuries. The parties shall cooperate with the defense of any claims subject to the indemnification provisions of Section 14.

18. TERMINATION AND SURRENDER OF PREMISES. TROY or TNS for any reason may terminate this Agreement upon one hundred eighty (180) days written notice to the other Party. Notice shall be provided as set out in Section 36. TNS shall peaceably surrender the Premises to TROY immediately when requested to do so by TROY in the same condition as the date of first use of the Premises by TNS, excepting normal wear and tear. Either TROY or TNS may terminate this Agreement with sixty (60) days written notice for substantial breach of the terms of the Agreement.

19. TAXES. TNS agrees to pay any and all sales, use or other taxes that may be legally due and owing to any governmental agency as a result of its use, occupation and/or programming on the Premises.

20. ACCOUNTING. For the purpose of ascertaining revenues and expenditures, TNS agrees to maintain records showing all income, expenditures and other receipts with respect to TNS's use, occupation and programming on the Premises. TROY shall have the right to examine TNS's records at any reasonable time and/or place. TNS further agrees to meet with the City Manager of TROY or his/her designee when requested, but at least once a calendar year, for the purpose of jointly evaluating the continued use, occupation and programming on the Premises. TNS shall further provide to TROY an annual verification or certification status as a Michigan Non-Profit Organization. TNS will provide an annual report to TROY and include financial reporting of revenues, expenditures and programming reviews as set out in Section 12.

21. VENDING MACHINES. Subject to approval of TROY, TNS may provide vending machines for its employees, volunteers and participants at its sole expense and at its discretion regarding the contractor. TROY shall approve the location and number of vending machines prior to their installation. TNS shall at its own expense pay for the costs of installation or removal of the vending machines.

22. CONSTRUCTION, IMPROVEMENTS AND REPAIRS BY TNS. Any and all construction to be performed on or about the Premises by TNS shall not occur without the prior written consent of TROY at its sole and absolute discretion, following discussion with TNS. Any approved construction work shall be performed in a safe, proper and workmanlike manner and as expeditiously as possible so as to minimize any

interference with the use of the Premises and its surrounding environs and in such a manner so as to not interfere with the use and operation of any utilities, except as mutually agreed by the Parties, that may be located within the Premises.

Any construction, improvements and repairs done by TNS at its expense shall become the property of TROY.

23. SIGNS. TNS, as an independent contractor, shall comply with TROY'S Code of Ordinances, Chapter 85, Signs, including the placement or installation of any permanent or temporary signs on the Premises. TNS shall follow any application or other procedures set out in that Ordinance.

24. CAPITAL EXPENSES. TROY shall be responsible for and have the sole discretion to determine the need for long-term capital expenses and costs to the facilities located on the Premises.

25. FIRE OR OTHER LOSS. TROY shall not be responsible or liable to TNS for any fire, theft or damage to the Premises or any property located, kept or stored on the Premises, or any loss or damage to property that may be occasioned by or through the acts or omissions of TNS, its employees, agents, officers, business invitees or any other person; or any of its or their heirs, representatives, agents or assigns, whether that property be owned by TROY or TNS. TNS shall give immediate written notice to TROY in case of fire, damage or accidents at or to the Premises.

26. USE OF SEWERS. TNS or its employees, volunteers and/or agents shall not use, deposit or discharge any material, debris or goods down any drains or sewers that in any way may cause or result in blockage or obstruction of normal sewer activities.

27. NO WARRANTIES. TNS has inspected the Premises and accepts the Premises "as is". TNS acknowledge that no warranties or representations regarding the condition of the Premises have been made by TROY.

28. MUTUAL AUTHORSHIP. This Agreement shall be deemed to have been mutually authored by the Parties.

29. COMPLIANCE WITH LAW. TNS shall comply with all Federal and State laws, and Troy's Code of Ordinances. TNS shall comply with all permit and licensing requirements, including, but not limited to, acquiring any permits or licenses required under those laws.

30. HAZARDOUS MATERIALS. TNS shall not use or permit the use of the Premises for any purpose relating to the storage or use of hazardous materials. TNS shall under no circumstances manufacture, produce, release, discharge or dispose of, on, in, or under the Premises any hazardous materials. TSN shall not allow any other person or entity to do so, or transport to or from the Premises any hazardous material.

TNS, its employees, volunteers and/or agents shall comply with all Federal and State laws, Troy's Code of Ordinances and any rules and/or regulations promulgated by those laws, ordinances or regulations relating to hazardous materials and above ground and underground storage tanks on, in, under or about the Premises.

"Hazardous materials" shall mean any flammable explosives, radioactive materials, hazardous wastes, injurious substance, toxic substances or related materials, including without limitation, any substance defined as or included in the definition of hazardous substances, hazardous wastes, hazardous materials, toxic substances, contaminants or pollutants under any applicable Federal or State law and/or rule or regulation.

31. INDEPENDENT CONTRACTOR RELATIONSHIP. TNS is an independent contractor and as such shall have full authority and responsibility to discharge the duties imposed upon it hereunder without restrictions other than those imposed by or pursuant to this Agreement. Nothing contained in this Agreement shall constitute the Parties as partners or joint venturers for any purpose, it being the express intention of the Parties that no such partnership or joint venture exists and that each Party has only those duties to the other that are specified in this Agreement.

32. DOCUMENTATION. TROY and TNS agree that they will execute and deliver any documents which may be necessary to implement this Agreement.

33. NO AUTHORITY TO BIND OTHER PARTY. TNS, its Board of Directors and its Officers, shall not have any right or authority to bind or obligate TROY, nor shall TROY have any right or authority to bind or obligate TNS, without the other party's prior written consent.

34. NON-ASSIGNABILITY. TNS's privilege to use, occupy and provide programs on the Premises shall be solely in connection with this Agreement. TNS shall not transfer or assign this Agreement or any rights hereunder. This Agreement is non-assignable in whole or in part.

35. CONTACT PERSONS. TROY will contact the President of TNS regarding issues of concern regarding use, occupation and programs on the Premises or other concerns raised under this Agreement. In the absence or unavailability of the President, TROY will contact the individual named by the President as his/her designee. For concerns regarding the day to day use, occupation and programming on the Premises, TNS will contact the Director or his/her designee. The Director, or his/her designee, shall serve as the "contact person" under this Agreement.

It is the intent of this Agreement that TNS will cooperate with TROY in accommodating TROY's concerns regarding the use, occupation and programming on the Premises, including, but not limited to, the amount of fees charged for admission or programs so that members of the general public will not be prohibited financially from visiting the Nature Center. If, after consultation with TROY's contact person, there is a

dispute between TROY and TNS regarding a use, occupation, admission/programming fee or programming content issue, the Parties agree to abide by the decision of the Director.

36. NOTICES. All notices required under this Agreement shall be in writing and be sent by certified mail addressed to the respective party at the address indicated below or at such other address as the parties shall designate in writing. A change in address may be effected by a letter sent via first class mail by either party to the other. Notices regarding termination shall be sent by certified mail return receipt requested. In the alternative, notices of termination may be given by personal service on the party.

To the CITY
City Manager
TROY City Hall
500 W. Big Beaver Rd.
TROY, MI 48084

With copies to-

TROY City Clerk
TROY City Hall
500 W. Big Beaver Rd.
TROY, MI 48084

and
TROY City Attorney
TROY City Hall
500 W. Big Beaver Rd.
TROY, MI 48084

To TNS

Troy Nature Society
P.O. Box 99302
Troy, MI 48099
Attention: President

37. ENTIRE AGREEMENT; AMENDMENT; WAIVER. This Agreement is and shall be deemed to be the complete and final expression of the agreement among 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. 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. No 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.

38. 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.

39. NO THIRD PARTY BENEFICIARIES. Except to the extent expressly contemplated in this Agreement, the obligations undertaken by TROY and TNS in this Agreement are for the benefit of TROY and TNS only, and neither any creditor of TROY and TNS, nor any other party shall have the right to rely on or enforce the provisions of this Agreement as a thirty-party beneficiary or otherwise.

40. NON-DISCRIMINATION. TNS shall not discriminate in the hiring of any employees or contractors, in its use of volunteers or in its use of the Premises, directly or indirectly on the basis of age, race, color, religion, national origin, sex, height, weight, disability, familial relationship, political orientation or any other illegal basis.

41. GOVERNMENTAL IMMUNITY. By entering into this Agreement, TROY in no way gives up its right to claim governmental immunity or any other defense provided to governmental entities under Federal or State law, on behalf of itself, all elected and appointed officials, all employees and volunteers, those working as agents or on behalf of TROY, its boards, commissions and/or authorities, or board members, employees, and volunteers.

42. SECTION HEADINGS. The Section headings contained in this Agreement have been inserted only as a matter of convenience and for reference and will not be construed to define, limit or describe the scope or intent of any provision of this Agreement

43. GOVERNING LAW. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Michigan. In the event any provision of this Agreement is in conflict with any statute or rule of any law in the State of Michigan or is otherwise unenforceable for any reason whatsoever, then that provision shall be deemed severable from or enforceable to the maximum extent permitted by law, as the case may be, and that provision shall not invalidate any other provision of this Agreement. Venue for any action brought under this Agreement shall lie in Oakland County Circuit Court, Michigan.

44. TNS LIMITED USE OF TROY FARM. TROY, in its sole discretion, may permit TNS use of the Troy Farm, which is legally described in the Attached Exhibit 3, for any programs it offers consistent with its mission statement (Attached as Exhibit 1). Any

programs and/or activities conducted at the Troy Farm must be approved by the Director. If at any time TROY believes that the Troy Farm Property is being misused or activities are occurring which are beyond the scope of this Agreement or TNS' mission, the Director, in his/her sole discretion, may require TNS to immediately cease the activity or misuse. TNS shall be solely responsible for any damage to property caused by the misuse of or the improper use of the Troy Farm Property.

45. CERTIFICATION OF AUTHORITY TO SIGN AGREEMENT. The persons signing this Agreement on behalf of the Parties hereto certify by their signatures that they are duly authorized to sign on behalf of said Parties and that this Agreement has been authorized by said Parties.

WITNESSES:

CITY OF TROY,
a Michigan Municipal Corporation

By: _____
Dane Slater, Mayor

By: _____
M. Aileen Bittner, CMC, City Clerk

WITNESSES:

TROY NATURE SOCIETY,
a Michigan Non-Profit Corporation

By: _____
Stuart Redpath
Title: President

Exhibit 1

Troy Nature Society

501 (c) (3) Corporation

Purpose: Studying and preserving natural spaces for future generations

Mission: To provide resources and education to inspire the appreciation and preservation of nature.

Support: The organization will support operations and programs at the Lloyd A. Stage Nature Center and other activities within the city and surrounding region that are within the scope of our mission. The organization may involve or partner with other organizations to increase our support of the Lloyd A. Stage Nature Center and green space in Troy and surrounding region.

EXHIBIT 2

Legal Description of Lloyd A. Stage Nature Center and adjoining property that Troy Nature Society may use for programing

Licensors, in consideration of the covenants and agreements herein specified to be kept by the Licensee, hereby grants to Licensee a non-exclusive license and permit to use the following described premises situated and being in the City of Troy, County of Oakland and State of Michigan, including the Lloyd A. Stage Nature Center, *to wit*:

Town 2 North, Range 11 East, Section 6
Part of the Northeast Fractional 1/4
Beginning at a Point Distant
South 00-04-00 East 1,689 Feet
From the Northeast Section Corner,
Thence South 00-04-00 East 790 Feet,
Thence South 89-46-00 West 1,322.29 Feet,
Thence North 00-06-00 East 790 Feet,
Thence North 89-45-00 East 1,319.82 Feet
To Beginning. 23.95 A

Parcel Identification Number 88-20-06-200-003
(hereinafter, the "Premises") to be occupied and used for the sole purpose of promoting outdoor recreation and nature education programs and subject to the limitations and requirements contained in the Agreement between the Troy Nature Society and the City of Troy.

EXHIBIT 3

Legal Description of Troy Farm that Troy Nature Society may use for programming subject to discretion of Director

Licensors, in consideration of the covenants and agreements herein specified to be kept by the Licensee, hereby grants to Licensee a non-exclusive license and permit to use the following described premises situated and being in the City of Troy, County of Oakland and State of Michigan, *to wit*:

Town 2 North, Range 11 East, Section 6
Part of the Northeast Fractional 1/4
Beginning at the North 1/4 Corner,
Thence North 89-32-10 East 1,327.41 Feet,
Thence South 00-13-30 East 2,483.75 Feet,
Thence South 89-48-30 West 1,322.72 Feet,
Thence North 00-19-54 West 2,477.42 Feet
To Beginning. 75.46 Acres

Parcel Identification Number 88-20-06-200-007

(hereinafter, the "Troy Farm") to be occupied and used for the sole purpose of promoting outdoor recreation and nature education programs and subject to the limitations and requirements contained in the Agreement between the Troy Nature Society and the City of Troy.