




500 West Big Beaver
Troy, MI 48084
troymi.gov

CITY COUNCIL AGENDA ITEM

Date: December 6, 2022

To: Mark F. Miller, City Manager 

From: Robert J. Bruner, Assistant City Manager
Rob Maleszyk, Chief Financial Officer
Dee Ann Irby, Controller
Kurt Bovensiep, Public Works Director

Subject: Agreement with Troy Community Foundation for Use of Public Property for “Troy Family Daze” Festival (Introduced by Public Works Director Kurt Bovensiep)

History

The Troy Family Daze Festival has been a City of Troy tradition since 1968. The festival has been hosted at Boulan Park, the former Zion Christian Church property, and currently the Troy Civic Center campus. Currently, the Troy Community Foundation administers and underwrites the festival in addition to providing volunteers to run and organize the event. The Troy Community Foundation uses proceeds from the event to fund various Troy based grant programs.

On December 15, 2014, Troy City Council passed a resolution adopting an agreement that allowed the North Woodward Community Foundation, who is now the Troy Community Foundation, to use a portion of the Civic Center Campus for the following eight (8) years beginning in September 2015 to host the Troy Family Daze Festival (**Resolution # 2014-12-163**). There was an amendment to the agreement on May 8, 2017, that changed the foundation’s reimbursement fee obligation to only have a reimbursement commitment of \$10,000 if the festival had a revenue of \$25,000 exceeding expenditures (**Resolution # 2017-05-079**).

The relationship between the City of Troy, Troy Community Foundation, and the Troy Daze Committee is a great example of how community organizations can partner to provide a large event for the community. The festival continues to grow and react to the changing demands by creating different events and amenities to the festival.

The City of Troy and the Troy Community Foundation has been negotiating the terms of the agreement for the last several months. The current agreement has expired resulting in a new agreement. The major changes between the two agreements are as follows:

- Changes all references to North Woodward Community Foundation to Troy Community Foundation
- Clearly defines the partnership and intent between the city and foundation
- Clearly defines the City of Troy and Troy Community Foundation’s role
- Five (5) year agreement with options to renew for three (3) additional five (5) year terms
- Reimbursement fee of \$10,000 is based on a threshold of admission sales of over \$30,000
 - Both the fee and threshold will increase 3% a year



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- City of Troy must give notice of early termination within 12 months of the next festival

Financial

The City of Troy will receive \$10,000 in reimbursement cost for City of Troy resources used associated with hosting the Troy Family Daze Festival if admission revenue is \$30,000 or more.

Recommendation

Due to the unique character of a carnival-type festival and based on Troy Community Foundation'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. The Troy Community Foundation is aware of the right of referendum set out in Section 12.3 of the City Charter.

City of Troy Management recommends approval of the five (5) year Agreement, with up to three (3) additional renewal five (5) year terms to host the Troy Family Days Festival as detailed in the attached agreement.

Legal Review

This item was submitted to the City Attorney for review pursuant to City Charter Section 3.17.

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

This AGREEMENT is entered into on December _____, 2022 ("Effective Date"), between the CITY OF TROY, a Michigan Municipal Corporation, 500 W. Big Beaver, Troy, Michigan, hereinafter referred to as the "CITY", and Troy Community Foundation, a Michigan Non-Profit Corporation and fiscal sponsor of the donor advised fund identified as the Community Events Fund d/b/a Troy Family Daze, P.O. Box 861, Troy MI 48099, hereinafter referred to as "TCF", also referred to individually as "Party" or collectively referred to as the "Parties".

WITNESSETH:

- A. 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.
- B. 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 TCF 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 TCF.
- C. CITY and the predecessor of TCF most recently entered into an Agreement on December 15, 2014, and amended and restated the Agreement on May 8, 2017, the term of which ended on November 1, 2022.
- D. CITY is willing to grant TCF 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.

- E. TCF and CITY understands that there is an organized, intentional partnership between the two organizations and the intent of the partnership is to ensure a successful family centric festival and that the partnership will include items in this contract but may not be exclusive to these items.

NOW THEREFORE, CITY and TCF agree as follows:

1. EFFECTIVE DATE, TERM OF AGREEMENT AND RENEWAL.

This Agreement shall become effective on the Effective Date. Unless this Agreement is earlier terminated as provided in Paragraph 29, the term of the Agreement is five years, and there are options to mutually renew this Agreement for up to three successive five-year terms thereafter. At least one hundred and twenty (120) days prior the end of the current term TCF shall notify the CITY Manager or designated representative if it desires to renew this Agreement for a successive five-year term. The City Manager shall communicate this request to the Troy City Council at the next available Regularly Scheduled City Council Meeting. Within 90 days of TCF's notification, Troy City Council may at its option agree to renew this Agreement for a successive five-year term 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 TCF's notification prior to expiration of the then-current term,

the Agreement is terminated as of the end of the current term.

2. APPROVAL OF ACTIVITIES.

At least thirty (30) days prior to the Festival, TCF shall provide the City Manager or his/her designee with the following information regarding the Festival: a list of all names and addresses of persons, organizations, or businesses that have contracted space within the festival; a list of any and all names of vendors/owners 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, provided that such rejection is given within 30 days of first being notified of the applicable ride, game, or vendor. If TCF entered into a contract for a ride, game, or vendor after receiving written pre-approval from the City Manager or his/her designee, then the foregoing right to reject the ride, game, or vendor shall not apply to such ride, game, or vendor. At the request of TCF, 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 City, Festival or its attendees". If there are any deletions and/or additions to its pre-Festival list, TCF shall present an amended list consistent with this paragraph as soon as possible, but no later than ten (10) days before the first day the Festival is open to the public.

3. REIMBURSEMENT FEE.

Based on past history, TCF and CITY acknowledge that there may be some years where the Festival has an unfavorable financial performance, due to adverse

weather conditions or other circumstances beyond TCF's control. In accordance with the terms of this Agreement, TCF can use the Property identified in Exhibit 1 for the annual Festival. Before the end of the calendar year of each festival, TCF shall provide to the City Manager or his/her designee a copy of its annual financial statements for the Festival for the current year. The financial statement shall be detailed in listing the individual revenue types and expenditure types. If the annual financial statement shows that the Festival for that year exceeded \$30,000 in admission revenue ("Fee Threshold") or more, then TCF shall pay to CITY \$10,000 ("Yearly Fee") to compensate CITY for TCF's use of the Property and the associated services detailed in Paragraph 5. Thereafter, this Yearly Fee and the Fee Threshold shall automatically increase by 3% each year.

If the festival annual financial statement documents show that the Festival for the current year did not meet the then-current Fee Threshold, then the City Manager shall administratively waive the Yearly Fee for that year.

4. USE OF PUBLIC PROPERTY AND FESTIVAL SITE.

TCF shall be restricted for each yearly Festival to use only that Property owned by CITY as designated on the site map attached hereto as Exhibit 1. Alterations 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 TCF at least one-hundred eighty (180) days in advance of the scheduled start of the annual Festival. The City Manager or his/her designee may allow the use of any CITY facilities that are within Exhibit 1 and may consider the exclusive use of a portion of the Troy Trail for a running event that is associated with the Festival.

5. USE OF CITY RESOURCES

The CITY will obligate resources to assist in the success of the Festival, and will be responsible for the following activities: install TCF provided road side banners and street light pole banners at locations determined by the CITY up to one month prior to the start of the Festival; coordinate the grounds maintenance including grass mowing and vegetation pruning one week prior to the start of the Festival; provide the necessary notification, detour, and barricades to close Town Center Drive and Civic Center Drive within the Festival area the Monday before the start of the Festival and dismantle and reopen the road the Monday following the Festival; provide the necessary cones and barricades to assist in the pedestrian movement within the Festival grounds; provide additional picnic tables and trash receptacles within the Festival grounds; provide at least two (2) water connections; provide means to dispose of sewage related to water connections; provide bus transportation if off-site parking is used; provide law enforcement services as determined necessary by the CITY; and other associated de minimis activities. The CITY, at its own discretion and if requested by TCF, may also provide other services and charge TCF the direct cost of these services in addition to the reimbursement fee, set forth in Paragraph 3.

6. DATES OF USE OF PUBLIC PROPERTY.

TCF shall be given use of the Property as set out in Section 4 for four (4) days of the Festival activities. During the term of this Agreement, such activities shall be the second weekend after Labor Day, from Thursday through Sunday during the Term of this Agreement 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").

7. HOURS OF FESTIVAL AND HOURS FOR SETUP.

Festival operations shall not commence on the Property before 7 am. Additionally, Festival operations shall terminate not later than 9 pm on Sunday,

Monday, Tuesday, Wednesday and Thursday, and 11 pm on Friday and Saturday.

TCF 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. TCF 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 CITY before any set up and take down activities are performed during overnight hours. Any deviation from these hours of operation shall be approved in writing by the City Manager or his/her designee.

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

TCF shall annually 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 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. TCF shall submit the site plan layout at least sixty (60) days prior to the first day the Festival is open to the public. If acceptable, the City Manager or his/her designee shall approve the site plan in writing. If the City Manager or his/her designee does not object, in writing within ten business days after receipt, it is presumed that the required written approval for the site plan has been granted. Any written objection shall describe in reasonable detail any deficiencies to be corrected. Prior to written site plan approval, TCF shall not erect, place or locate any carnival rides or other types of structures which cannot be easily removed from the Property.

9. EQUIPMENT AND PERSONNEL.

TCF shall provide at its own costs and be responsible for all personnel to staff and service festival events and/or activities unless otherwise described in paragraph 5. TCF and/or its contractors 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 unless otherwise described in paragraph 5.

CITY has the absolute right to require TCF to remove personnel and/or equipment or property from the site upon showing of good cause, except as set forth in Paragraph 2. 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 City, Festival, or its attendees."

10. FIRE/POLICE DEPARTMENT INSPECTIONS AND WEATHER OR EMERGENCY CONTINGENCY PLANS

TCF 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, TCF 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. Both the Fire Department and Police Department shall give final written approval of the contingency plan, but such approval is deemed granted if the - City's designated Fire or Police representative does not object within 10 business days of receipt of the contingency plan, describing in reasonable detail any deficiencies to be corrected.

11. APPEARANCE/TRASH, FOOD VENDORS AND PRICING.

TCF shall be responsible at its own cost for providing and setting up a sufficient number of trash receptacles. TCF 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. TCF 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 TCF 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 TCF shall use reasonable efforts to offer a variety of food items in an effort to accommodate different food preferences.

12. TCF PERSONNEL.

TCF shall provide appropriate badges and/or identifying “volunteer” shirts for its employees, volunteers, agents and representatives. TCF 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 TCF remove an employee, vendor employee or contract employee from the Festival for indecent, disruptive and/or inappropriate behavior.

13. 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. TCF shall have no responsibility to monitor, secure materials, guard, and/or man the CITY booth at any time. Additionally, TCF shall designate a reasonable amount of space (no less than 250 square feet) for political groups to lease or purchase booths or tables on a “first come, first- served” basis.

TCF 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. TCF agrees to allow enough time for participants to complete the ceremony and clear the area without being discourteous to participants.

14. ADVERTISING AND USE OF LOGOS.

The Festival shall be known as “Troy Family Daze” and TCF grants CITY a limited license to use “Troy Family Daze” as the name of the Festival during the term of this Agreement. TCF may substitute an alternative name for the Festival, and the foregoing license shall include such alternative name. The CITY, at its option and sole

expense, may advertise the Festival. The City shall include TCF's brand and logos and must state "Troy Family Daze (or any subsequent name) is a fiscally sponsored fund of the Troy Community Foundation" in all advertisements, press releases, and websites. TCF will supply samples of suggested advertisements, website addresses and/or links, and Facebook links. CITY shall have the sole discretion to decide what advertising it will use, what publications and/or websites it will use and if and when it will publish an advertisement.

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

15. FIREWORKS.

If TCF intends to present a firework display as part of the Festival, it shall apply for a firework permit with the Troy Fire Department in accordance with Chapter 93. TCF 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.

At all approved fireworks displays, the Fire Department shall have representatives for emergency standby purposes, at no further costs to TCF. The Fire Department shall determine the appropriate number of representatives and the standby locations.

The CITY may sponsor the fireworks display as long as funds are budgeted and approved through the normal budgeting process.

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

TCF 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 each provider's' liquor license. To the extent that TCF chooses (in its sole discretion) to allow the sale and consumption of alcohol within a specified area of the Festival, TCF shall ensure that all vendors, contract employees, and/or employees serving alcoholic beverages on the public property site shall be trained with TIPS and/or TAMS or a comparable alcohol server program 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 TCF.

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

TCF 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 TCF employees, volunteers, vendors, agents and/or representatives who sell/serve alcohol.

TCF shall ensure that no alcoholic liquor is served at times prohibited by State statute. TCF 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.

TCF agrees to indemnify and hold the CITY harmless from any and all claims arising out of the sale of alcoholic beverages by TCF, 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 TCF's employees, vendors, agents and/or 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.

No indemnification or other obligation of TCF pursuant to this Agreement is intended to make TCF responsible for the grossly negligent or intentional acts or omissions of CITY, its employees, vendors, agents and/or representatives.

17. SECURITY.

TCF 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, TCF 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 TCF. Except for Troy Police personnel, all other City personnel accessing the Property in their official capacities must check in at the festival headquarters, and wear identifying name badges, or in another way identify themselves as City personnel to TCF's satisfaction.

18. CLEAN-UP AND RESTORATION OF PROPERTY.

Within two (2) days after the last date of each yearly Festival, TCF shall properly remove or have removed from the Property all structures, rides, tents, booths, trash receptacles, Porta Johnns, litter, debris and other items and return the Property to the substantially same condition that existed prior to each Festival. 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 TCF 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 TCF representatives, showing the exact areas of concern, and provide TCF 48 hours to correct any issues. CITY will send a billing for clean-up after completion of the cleanup. It shall then have thirty (30) days from the date of the billing to pay CITY directly. If payment is not received within thirty (30) days it 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.

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 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 TCF. In such case, a new clean-up and removal deadline will be given in writing to TCF.

19. FESTIVAL RULES, GUIDELINES AND POLICIES.

Troy Family Daze is a privately held event and therefore TCF 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.

TCF shall post the agreed upon Festival rules, guidelines and/or policies at all entrances to the Festival and include it on the Festival website.

20. APPOINTMENT OF CITY REPRESENTATIVE TO BOARD.

At all times this Agreement is in effect, TCF 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 TCF objections to the City Manager's appointment shall be presented to the City Manager by TCF'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.

TCF 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,), for any actions, claims,

liability or damages caused to others arising out of its 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 TCF 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 the Possession Period.

TCF is responsible for any deductibles to any of the policies. TCF shall furnish complete copies of the acceptable Certificates of Insurance and any riders at least ten (10) days prior to the Possession Period.

22. INDEMNIFICATION AND HOLD HARMLESS.

To the fullest extent permitted by law, TCF 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 TCF 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 TCF and its appointed officials, directors, members, trustees, employees and volunteers and others working on behalf of the TCF 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 or intentional actions of the CITY or City Personnel.

23. FOLLOW-UP MEETING AND PRESENTATION.

TCF shall meet with the City Manager and/or his/her designee(s) following the festival but no later than 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 TCF 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.

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

25. DUTY TO NOTIFY AND COOPERATE.

TCF 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 TCF 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

TCF 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.

27. INDEPENDENT CONTRACTOR.

TCF 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, unless the parties both agree in writing that notice can be served by another method.

29. EARLY TERMINATION.

Both Parties reserve the right to terminate this Agreement by providing the other

with twelve months' 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 twelve months' advance notification. The termination may be with or without cause. There shall be no penalty for early termination to either Party except TCF 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 TCF's employees, vendors, agents, representatives and subcontractors shall be the sole responsibility of TCF

30. NON-COMPETITION.

During the term of this Agreement, the CITY agrees that it will not directly or indirectly 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 TCF's charitable efforts, and that violation would cause TCF 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 TCF 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 TCF 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 TCF must be released under FOIA. CITY agrees to give TCF a copy of a FOIA request for such documents as soon as possible after receipt by the CITY. This will allow TCF an opportunity to obtain an immediate preliminary injunction to prevent release of the requested documents. If TCF obtains a preliminary injunction and any resulting litigation results in a judgment against CITY, TCF will indemnify and hold the CITY harmless for that judgment, including, any attorney fees and costs incurred by CITY.

32. COMPLIANCE WITH LAWS.

TCF 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, TCF 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.

TCF 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 any characteristics protected by law, including age, race, color, religion, national origin, sex, height, weight, disability, sexual orientation, familial relationship, political orientation or any other 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.

Dated: _____

Dated: _____

TROY COMMUNITY FOUNDATION

CITY OF TROY

By: _____

By: _____
Ethan D. Baker, Mayor

Its : _____

By: _____
Aileen Dickson, City Clerk

Exhibit 1



Exhibit 2
**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.**