

**CITY OF ROCHESTER HILLS
SERVICES AGREEMENT WITH
DINOSAUR HILL NATURE PRESERVE, INC.-COMMUNITY GARDEN**

THIS AGREEMENT, made and entered into this ___ day of _____, 2013, by and between CITY OF ROCHESTER HILLS, a Michigan Municipal Corporation located at 1000 Rochester Hills Drive, Rochester Hills, Michigan, hereinafter referred to as the "CITY", and the DINOSAUR HILL NATURE PRESERVE, INC., a Michigan Non-Profit Corporation, located at 333 North Hill Circle, Rochester, MI 48307, hereinafter referred to as the "DINOSAUR HILL."

WITNESSETH:

WHEREAS, DINOSAUR HILL was established as a Michigan Non-Profit Corporation on December 19, 1980 and has a 501(c)(3) status; and

WHEREAS, the CITY owns a tract of land known as Wabash Park ("Park") which abuts Wabash Road, Hickory Lawn and Norton Lawn; and

WHEREAS, the CITY recommended the establishment of a community garden ("Garden"), which recommendation was positively received by the City Council; and

WHEREAS, it was decided that the Garden should be located at the park, in part due to the accessibility and current use; and

WHEREAS, there has been discussion as to fundraising, implementation and oversight of the Garden project, and it was decided that DINOSAUR HILL could serve in that capacity, and was willing to do so; and

WHEREAS, the CITY and DINOSAUR HILL believe that it is in their respective best interests to have a written agreement that sets forth such arrangements and obligations of the respective parties.

NOW, THEREFORE, for and in consideration of the mutual undertakings of the parties hereto, all as hereinafter set forth, it is agreed by and between the parties as follows:

1. The parties acknowledge and agree that the Park, and ultimately the Wabash Community Garden, is solely owned by the CITY.
2. DINOSAUR HILL Obligations. DINOSAUR HILL agrees to perform the following:
 - a. Establish, maintain, operate and over see the Garden on an ongoing basis.
 - b. Assist in fundraising efforts to cover the expenses of the Garden.
 - c. Work with the City to develop, implement and administer the policies and procedures for the Garden.
 - d. Reimburse the CITY for water usage, up to \$250, at end of growing season (November).

3. CITY Obligations. The CITY agrees to perform the following:
 - a. Establish an area on CITY property, as provided for in Exhibit one, dedicated to the Garden.
 - b. Provide labor and supplies, as approved by the CITY, to assist in constructing the Garden.
 - c. Provide a water source to the Garden in a fashion agreeable to the CITY and DINOSAUR HILL.
 - d. The CITY will establish a Garden Advisory Board, to include One (1) Parks Employee, One (1) Educational Representative, One (1) DINOSAUR HILL Employee, and Three (3) Rochester Hills Residents.

4. Direction and Control of DINOSAUR HILL Employees. DINOSAUR HILL shall have the sole right and responsibility for the direction and control of all of DINOSAUR HILL's employees and agents including, but not limited to the right to recruit, hire, assign, supervise, promote, demote, discipline and discharge. DINOSAUR HILL represents that it shall perform these functions in compliance with all state, federal and local laws applicable to the employment relationship, including provisions of the U.S. and Michigan Constitutions, wage and hour laws, statutes prohibiting discrimination, retaliation and/or harassment based on protected classification, and state and federal laws concerning occupational safety and health, employee leave rights, whistleblowers' protection, unemployment compensation and workers' compensation, and common law governing the employment relationship. The CITY shall have no right or responsibility for the direction and control of DINOSAUR HILL's employees or for compliance by DINOSAUR HILL with any legal requirements applicable to DINOSAUR HILL's employees.

5. The initial term of this Agreement shall be one (1) year commencing on _____, 20__ and shall terminate on _____, 20__. Following such initial term, the Agreement shall continue on one-year renewal terms under the same terms and conditions. Each renewal term shall be automatic unless the CITY or DINOSAUR HILL advises the other in writing its desire to terminate the Agreement, with said notice being given at least three (3) months prior to the end of any term then in effect. Notwithstanding the foregoing, this Agreement shall automatically end should DINOSAUR HILL dissolve or otherwise cease to be in existence.

6. DINOSAUR HILL acknowledges that in receiving the CITY's services pursuant to this Agreement, certain confidential and/or proprietary information may become involved. DINOSAUR HILL recognizes that unauthorized exposure of such confidential or proprietary information could irreparably damage the CITY. Therefore, DINOSAUR HILL agrees to use reasonable care to safeguard the confidential and proprietary information and to prevent the unauthorized use or disclosure thereof. The DINOSAUR HILL shall inform its employees of the confidential or proprietary nature of such information and shall limit access thereto to employees rendering services pursuant to this Agreement. DINOSAUR HILL further agrees to use such confidential or proprietary information only for

the purpose of receiving the additional services provided by the CITY pursuant to this Agreement.

7. This Agreement shall be governed by and performed, interpreted and enforced in accordance with the laws of the State of Michigan.
8. If any provision of this Agreement is declared invalid, illegal or unenforceable, such provision shall be severed from this Agreement and all other provisions shall remain in full force and effect.
9. This Agreement shall be binding upon the successors and assigns of the parties hereto, but no such assignment shall be made by DINOSAUR HILL without the prior written consent of the CITY. Any attempt at assignment without prior written consent shall be void and of no effect.
10. To the fullest extent permitted by law, DINOSAUR HILL and any entity or person for whom DINOSAUR HILL is legally liable, agrees to be responsible for any liability, defend, pay on behalf of, indemnify, and hold harmless the CITY, 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 and reasonable attorney fees 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 and death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with this Agreement. Such responsibility shall not be construed as liability for damage caused by or resulting from the sole act or omission of its elected or appointed officials, employees, volunteers or others working on behalf of the CITY.
11. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled either by commencement of a suit in Oakland County Circuit Court, the 52/3 District Court or by arbitration. If both parties elect to have the dispute resolved by arbitration, it shall be settled pursuant to Chapter 50 of the Revised Judicature Act for the State of Michigan and administered by the American Arbitration Association with one arbitrator being used, or three arbitrators in the event any party's claim exceeds \$1,000,000. Each party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Such arbitration shall qualify as statutory arbitration pursuant to MCL §600.5001 et. seq., and the Oakland County Circuit Court or any court having jurisdiction shall render judgment upon the award of the arbitrator made pursuant to this Agreement. This Agreement shall be governed by the laws of the State of Michigan and the arbitration shall take place in Oakland County, Michigan. In the event that the parties elect not to have the matter in dispute arbitrated, any dispute between the parties may be resolved by the filing of a suit in the Oakland County Circuit Court or the 52/3 District Court.

12. DINOSAUR HILL and the CITY agree that DINOSAUR HILL shall be liable for its own actions and neither DINOSAUR HILL nor its employees or contractors shall be construed as employees of the CITY. Neither party, by virtue of this Agreement, shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party, except as specifically outlined herein. DINOSAUR HILL, including its employees and contractors, shall not be considered entitled or eligible to participate in any benefits or privileges given or extended by the CITY, or be deemed an employee of the CITY for purposes of federal or state withholding taxes, FICA taxes, unemployment, workers' compensation and other employer contributions on behalf of DINOSAUR HILL or DINOSAUR HILL's employees or contractors.
13. Nothing in this Agreement shall be construed to waive or in any way limit government immunity or to create an assumption of liability for the CITY as to any person or entity whatsoever.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

CITY OF ROCHESTER HILLS

By: _____
Bryan K. Barnett, Mayor

By: _____
Tina Barton, CITY Clerk

DINOSAUR HILL NATURE PRESERVE, INC.

By _____

Its: _____