

Lease

This Lease is made on _____, between the City of Rochester Hills, a Michigan municipal corporation (hereinafter “Landlord”), whose address is 1000 Rochester Hills Drive, Rochester Hills, Michigan 48309, and Clinton River Watershed Council, a Michigan nonprofit corporation (hereinafter “Tenant”), whose address is 1115 W. Avon Road, Rochester Hills, Michigan 48309, who agree as follows:

1. **Definitions.** The following defined terms will be used throughout this Lease:

- a. “Premises” means the land parcel, building and parking lot commonly known as the Environmental Education Center located at 1115 W. Avon Road, Rochester Hills, Michigan, comprising approximately 0.56 acres. Parcel ID No. 70-15-21-201-002.
- b. “Commencement Date” means July 1, 2016.
- c. “Termination Date” means June 30, 2021.
- d. “Rent” means Annual Rent and each Monthly Installment of Rent, as follows:

	<u>Annual Rent</u>	<u>Monthly Rent Installment</u>
7/1/2016-6/30/2019	\$15,600.00	\$1,300.00
7/1/2019-6/30/2021	16,800.00	1,400.00

- e. “Designated Use” means use as Tenant’s organization office and operating facility.
- f. “Applicable Laws” means all statutes, codes, ordinances, administrative rules, regulations, and orders or directives of any governmental authority.

2. **Premises.** Landlord leases the Premises to Tenant “as is.” Tenant has inspected the Premises and is satisfied with the condition. Landlord shall deliver possession of the Premises on the Commencement Date. However, Tenant shall be permitted to enter the Premises prior to the Commencement Date rent-free for purposes of landscaping, painting and making other Tenant improvements, and moving in furniture, equipment and personal property.

3. **Term.** The Term commences on the Commencement Date and expires on the Termination Date, unless otherwise terminated or extended as provided in this Lease.

4. **Rent.** Beginning on the Commencement Date, Tenant will pay to Landlord the Annual Rent through Monthly Rent Installments to the Landlord, in advance, on or before the first day of each calendar month, at Landlord’s office or such other place that Landlord may designate in writing.

5. **Property Taxes.** The Premises are currently exempt from Real Property Taxes, and the parties understand that the Premises will remain exempt from Real Property Taxes throughout the Term. Tenant shall be responsible for Personal Property Taxes, if any.
6. **Utilities.** Tenant shall arrange and pay for any and all utility service to the Premises, including gas, electric, water, sewer, telephone, data and/or cable.
7. **Signs.** Lessee may, with Landlord's consent (which shall not be unreasonably withheld), install a sign identifying Tenant on the building and a ground-mounted sign near Avon Road. Tenant's signs shall conform to Applicable Laws.
8. **Holding Over.** If Tenant remains in possession of the Premises after the Termination Date with the consent of Landlord, Tenant shall be considered to be a holdover tenant on a month-to-month basis. Landlord may withhold its consent to hold over in its sole discretion. If Landlord consents to the holdover, Tenant is subject to all the covenants of this Lease to the extent they can be applied to a month-to-month tenancy, and the Monthly Rent Installments for each month of the holdover will be the same as the Monthly Rent Installments payable during the last month of the Term. This covenant does not preclude Landlord from recovering damages if Tenant fails to timely deliver possession of the Premises after termination of the holdover, nor does it establish any right to extend or renew the Term. If Tenant holds over after the expiration of the Term without Landlord's consent, Tenant is liable for all damages resulting from the holdover. It is expressly within the contemplation of the parties that such damages may include (a) the reasonable rental value of the Premises; (b) any damages arising from the loss of any sale, lease, or refinancing of the Premises; (c) any lost profits incurred by Landlord; and (d) any other damages allowed under Applicable Laws.
9. **Quiet Enjoyment.** Unless this Lease is terminated or Tenant is evicted in accordance with Michigan law, Landlord will not disturb Tenant's quiet enjoyment of the Premises or unreasonably interfere with Tenant's Designated Use of the Premises. Tenant must permit Landlord to enter the Premises during regular business hours for the purpose of inspection or to show the Premises to prospective purchasers or tenants.
10. **Use of the Premises.** The Premises may be used for the Designated Use but for no other purpose, except that Tenant may allow community, civic, environmental, educational and nonprofit groups and organizations to use the Premises for meetings, programs and activities. Tenant will not allow the Premises to be used in any manner that violates this Lease or the Applicable Laws. Tenant will not store, keep, handle, manufacture or process any explosives, inflammables or other inherently dangerous, hazardous or toxic substance, material, chemical, thing or device at the Premises.
11. **Repairs and Liens.** Tenant shall keep and maintain the Premises in good repair to the reasonable satisfaction of Landlord, in a clean, sanitary and safe condition, and in accordance with Applicable Laws. Tenant shall be responsible for janitorial services and security; minor building repairs; snow, ice and dirt removal in parking, driveway and footway areas; and landscape maintenance, except that Landlord shall periodically mow the lawn area. Landlord

shall be responsible for major repairs and replacement of the parking lot, structural components of the building, and the exterior walls, roof, windows, plumbing and heating system unless the need for such repair or replacement is caused by the act, neglect, fault or omission of Tenant or Tenant's agents, guests or invitees.

12. **Building Alterations.** Tenant shall be responsible for making any alterations to the Premises that are required for Tenant's Designated Use of the Premises to comply with the Americans with Disabilities Act of 1990, as amended, or other Applicable Laws. Tenant may, at Tenant's expense and with Landlord's consent (which shall not be unreasonably withheld), remodel, redecorate, and make additions, improvements and replacements to the Premises as Tenant may deem advisable, provided the work is done with good workmanship and in accordance with Applicable Laws. Tenant must keep the Premises free of construction liens. Tenant will hold Landlord harmless from any liens that may be placed on the Premises, except those attributable to the acts of Landlord. If a lien is filed against the Premises as the result of any action undertaken by Tenant, Tenant must discharge the lien after receiving notice of the lien. If Tenant fails to discharge the lien, Landlord may procure a discharge at Tenant's expense, which Tenant must pay immediately on a demand from Landlord.

13. **Indemnification.** Tenant will indemnify, hold harmless and defend Landlord from any liability, loss, damage, cost or expense (including attorney fees) based on any claim, demand, suit or action by any person or entity for personal injury or property damage from any cause relating to the use or misuse of the Premises by Tenant or its agents, contractors, or invitees; or any event on the Premises, whatever the cause. Tenant's indemnification does not extend to liability for damages resulting from the sole or gross negligence of Landlord or from Landlord's intentional misconduct. Tenant's obligations under this section shall survive termination of this Lease.

14. **Insurance.** Tenant must maintain in effect during the Term of this Lease a commercial general liability insurance covering all of Tenant's operations, occupancy and use of the Premises with policy limits of not less than \$1,000,000 combined single limit personal injury, bodily injury and property damage.

Tenant must maintain in effect insurance covering Tenant's personal property, trade fixtures, and improvements to their full replacement cost.

All insurance policies that Tenant is required to maintain must be written by carriers who are licensed and admitted to do business in Michigan and are acceptable to Landlord. Any commercial general liability policy that Tenant is required to maintain will (a) name Landlord as an additional insured; (b) be endorsed to provide that it will not be canceled or materially changed for any reason except on 30 days prior written notice to Landlord; (c) provide coverage to Landlord whether or not the event giving rise to the claim is alleged to have been caused in whole or in part by the acts, omissions, or negligence of Landlord; (d) all policies must be primary, with the policies of Landlord and Landlord's Mortgagees being excess, secondary, and noncontributing; and (e) Tenant shall reinstate any aggregate limit that is reduced because of losses paid to below 75 % of the limit required by this Lease.

Landlord and Tenant will require their property insurance policies to include a clause or an endorsement allowing Landlord and Tenant to release each other from any liability to each other or anyone claiming through or under them by way of subrogation or otherwise, for any loss resulting from risks insured against. If any policy that Tenant is required to maintain is written on a claims-made insurance form, each policy must have a retroactive date that is not later than the Commencement Date. Furthermore, if insurance coverage is written on a claims-made basis, Tenant's obligation to provide insurance will be extended for an additional period equal to the statute of limitations for such claims on the Termination Date, plus one year. Insurance may be provided in the form of blanket insurance policies covering properties in addition to the Premises or entities in addition to Tenant. All blanket policies must provide that the overall aggregate limit of liability that applies to Landlord or the Premises is independent from any overall or annual aggregate that applies to other entities or properties.

Tenant must deliver either certificates of insurance to Landlord before the Commencement Date. Tenant must deliver certificates of renewal for the policies to Landlord not less than 30 days before their expiration dates.

Landlord and Tenant will each look to its own insurance for the recovery of insured claims. Landlord and Tenant release one another from insured claims. Landlord and Tenant waive any right of recovery of insured claims by anyone claiming through them, by way of subrogation or otherwise, including their respective insurers. This release and waiver remains effective despite either party's failure to obtain insurance in accord with this Lease. If either party fails to obtain insurance, it bears the full risk of its own loss.

15. Fire or Casualty. Tenant must give Landlord notice of fire or other casualty on the Premises. In addition to the written notice, Tenant must immediately and with all diligence attempt to contact Landlord by all means available, including telephone, pager, fax, and e-mail, to inform Landlord of the casualty. If the Premises are damaged or destroyed by fire or other casualty, Landlord or Tenant may terminate this Lease by notice to the other party. After the notice of termination has been given, Tenant must surrender the Premises to Landlord. After the surrender, each party is released from any further obligations under this Lease, with the following exceptions: (a) all Rent accruing through the surrender date must be paid in full, and (b) the Security Deposit will be retained or returned as provided in this Lease. Tenant has no obligation to pay any Rent accruing after the surrender date. If Landlord does not exercise this option, Landlord must diligently proceed to repair and restore the Premises to its condition before the casualty.

16. Eminent Domain. If all or a portion of the Premises are taken through eminent domain, including a conveyance in lieu of a taking, such that Tenant's Designated Use is materially interfered with, this Lease shall automatically terminate as of the date the condemning agency takes possession of the Premises. Notwithstanding this termination, Tenant is required to pay rent through the date that it actually surrenders possession of the Premises. After Tenant surrenders possession, the parties' obligations under this Lease are terminated, provided that Tenant surrenders possession in accord with this Lease and pays rent through the date of surrender.

If any portion of the Premises is taken through eminent domain, including a conveyance in lieu of a taking, Landlord and Tenant agree that all compensation paid for the Premises, including any value of Tenant's leasehold interest in the Premises, will be paid to and be the property of Landlord. Tenant may seek compensation for any of its own trade fixtures, business interruption, going concern, moving expenses, and other items, provided that Tenant's compensation is not in diminution of Landlord's compensation for the Premises.

If any portion of the Premises is taken through eminent domain, including a conveyance in lieu of a taking, Tenant shall not have a claim against Landlord for the value of any unexpired term of this Lease.

17. **Assignment and Subletting.** Tenant will not assign this Lease or sublet the Premises without the prior consent of Landlord.

18. **Security Deposit.** On or before the Commencement Date, Tenant must deposit a \$1,200.00 Security Deposit with Landlord. The Security Deposit will be used to secure Tenant's performance of this Lease. Landlord may commingle the Security Deposit with its own funds. If Tenant fails to pay Rent or otherwise commits a Breach, Landlord may apply all or part of the Security Deposit to make the payment or cure the Breach. Landlord's rights under this section are in addition to any other rights or remedies Landlord may have under the terms of this Lease or under Michigan law. If Landlord uses all or part of the Security Deposit, within 10 days after demand by Landlord, Tenant must pay Landlord sufficient funds to restore the Security Deposit to its original amount. Any unused portion of the Security Deposit must be returned to Tenant, without interest, within 10 days of the later of (a) the termination of the Lease, (b) Tenant's surrender of the Premises, or (c) the return of the keys to Landlord.

19. **Remedies.** Breach means Tenant's failure to comply with any of the terms of this Lease. Material Breach means a Habitual Economic Breach or a Prolonged Uncured Breach. Habitual Economic Breach means Tenant's failure to pay Rent within 7 days of its due date on 3 or more occasions during any 12-month period. Prolonged Uncured Breach means any Breach, including those regarding payment, that continues for more than 30 days following a demand for cure by Landlord.

Time is of the essence in the definition of a Material Breach. Landlord has the power to terminate this Lease and evict Tenant upon the occurrence of a Material Breach. Landlord will exercise this power by the delivery of a notice of termination. The termination is effective immediately on delivery of the notice to Tenant. If Landlord terminates this Lease, Landlord is entitled to recover all damages suffered as the result of any default or breach. It is within the contemplation of the parties that such damages include (a) the contract rent through the remainder of the original Term; (b) the unamortized expenditures, calculated on a straight-line basis, undertaken by Landlord to fit the Premises to the needs of Tenant, including expenditures for Landlord Work, interior partitions, doors, floor coverings, wall coverings, paint, plaster, cabinetry, and all other work performed on the Premises; (c) the

estimated cost of restoring the Premises to their original condition; (d) any commissions paid to re-lease the Premises; and (e) any other damages identified in this Lease.

Landlord may also evict Tenant without terminating this Lease. Tenant waives any right to possession of the Premises after eviction. Despite eviction, Tenant remains fully obligated for the payment of Rent through the remainder of the Term. Landlord has no obligation to re-lease the Premises, and Landlord's failure or refusal to re-lease does not affect Tenant's obligation to pay Rent.

The remedies provided to Landlord under this Lease are cumulative, regarding both other remedies provided by the Lease and any remedies provided by law. If Landlord commences an action to enforce this Lease, Tenant agrees to pay Landlord's reasonable costs and attorney fees.

20. Surrender on Termination. On termination, Tenant must promptly deliver all keys for the Premises to Landlord. Tenant must surrender the Premises broom clean and in the same condition as on the Commencement Date, reasonable wear and tear excepted. Any damage to the Premises resulting from the removal of trade fixtures or other items of personal property must be repaired at Tenant's expense. Tenant must reimburse all expenses paid or incurred by Landlord in connection with repairing or restoring the Premises to the designated condition immediately upon demand. Tenant must remove its personal property and trade fixtures from the Premises immediately on termination. Tenant represents that it is Tenant's intention that all personal property and trade fixtures remaining on the Premises after termination are abandoned by Tenant. Landlord may sell, discard, or keep such personal property and trade fixtures as it deems appropriate in its sole discretion. Tenant must reimburse all expenses paid or incurred by Landlord in connection with removing Tenant's personal property and trade fixtures immediately upon demand.

21. Communications. All communications, including any notices, demands, requests, consents, and other communications required or provided under this Lease must be in writing. Any communications from Landlord to Tenant are deemed duly and sufficiently given if a copy has been: (a) personally delivered; (b) mailed by U.S. mail, postage prepaid; or (c) sent by professional delivery service to Tenant at the Tenant's address stated in this Lease or another address that Tenant has designated in writing. Any communications from Tenant to Landlord are deemed duly and sufficiently given if delivered to Landlord in the same manner at the Landlord's address stated in this Lease or another address that Landlord has designated in writing. Communications sent by U.S. mail are deemed received on the next regular day for the delivery of mail after the day on which they were mailed.

22. Construction and Interpretation. This Lease will be construed in accordance with Michigan law. This Lease has been negotiated at arms length and carefully reviewed by both parties. This Lease is not to be construed against Landlord.

The use of the word *may* in describing the right of a party means that the party has the option, but not the obligation, to exercise that right. Furthermore, the exercise of the right is not an

election of remedies or a waiver of any other right or claim. The use of the words *include* and *including* is intended to be illustrative, not exhaustive.

The parties will rely solely on the terms of this Lease to govern their relationship. This Lease merges all proposals, negotiations, representations, agreements, and understandings with respect to the Lease. There are no representations with respect to the condition of the Premises or any other matter in any way related to the Premises or this Lease except as expressly set forth in this Lease. There are no damages within the contemplation of the parties except as expressly identified in this Lease. No rights, covenants, easements, or licenses may arise by implication. Reliance on any representation, omission, action, or inaction outside of this Lease is unreasonable and does not establish any rights or obligations on the part of either party. This Lease may only be modified or amended by a written document signed by Landlord and Tenant. There may be no oral modifications or amendments of this Lease, whether or not supported by consideration.

No covenant or breach is intended to be waived unless a waiver is clearly expressed in a document (a) signed by the waiving party; (b) specifically identifying the covenant or breach; and (c) expressly stating that it is a waiver of the identified covenant or breach. The waiver of a covenant or breach is not construed as a continuing waiver of the same covenant or of any future breach. Consent by Landlord to any act requiring Landlord's consent does not constitute a waiver of the requirement of Landlord's consent with respect to any similar or subsequent act. Tenant is not entitled to surrender the Premises to avoid liability for Rent unless (a) an acceptance of the surrender is evidenced in a document signed by Landlord and (b) the document expressly states that it is the acceptance of a surrender. No action or inaction, other than as expressly provided in this section, may be construed as an acceptance of surrender by Landlord.

Notwithstanding anything to the contrary, Tenant's obligation to pay Rent is a material and independent covenant and is not subject to setoff, recoupment, or suspension. Notwithstanding anything to the contrary, Landlord has no obligation to mitigate any claim for Rent.

If any covenant of this Lease is invalid, illegal, or unenforceable, that covenant will be enforced to the fullest extent permitted by law, and the validity, legality, and enforceability of the remaining covenants will not in any way be affected or impaired.

23. Authorized and Binding. Tenant and each person executing this Lease on its behalf warrant and represent to Landlord that (a) Tenant is validly organized, existing, and authorized to do business under Michigan law; (b) Tenant has full power and lawful authority to enter into this Lease; and (c) the execution of this Lease by the individual who has signed below is legally binding on Tenant in accordance with its terms. Landlord and each person executing this Lease on its behalf warrant and represent to Tenant that (a) Landlord is validly organized, existing, and authorized to do business under Michigan law; (b) Landlord has full power and lawful authority to enter into this Lease; and (c) the execution of this Lease by the individual who has signed below is legally binding on Landlord in accordance with its terms. This Lease shall bind and inure to the benefit of the parties' successors and assigns.

24. This Lease supersedes any and all prior Lease(s) between the parties and constitutes the entire agreement between the parties concerning the leased Premises.

LANDLORD: City of Rochester Hills

By: _____
Bryan K. Barnett, Mayor

Dated: _____

TENANT: Clinton River Watershed Council

By: _____

Its: _____

Dated: _____