

**USE AND FACILITY MANAGEMENT AGREEMENT
BETWEEN
WISCORPS, INC.
FOR THE USE AND MANAGEMENT
OF MYRICK PARK CENTER**

This Use Agreement and Facility Management Agreement (hereinafter referred to as “Agreement”) is made and entered into by and between the **City of La Crosse**, a Wisconsin municipal corporation through its Board of Park Commissioners (hereinafter referred to as “**City**”) and **WisCorps, Inc.** a Wisconsin non-stock Corporation (hereinafter referred to as “**WisCorps**”) and effective the first day of November, 2017.

WHEREAS, WisCorps intends to operate the Myrick Park Center “**Myrick**” in the City of La Crosse;

WHEREAS, the City believes it is in the best interests of the citizens of the City to allow WisCorps a use agreement for operation of the Center.

WHEREAS, the City believes that this will be a cost saving measure for the taxpayers of the City; and

WHEREAS, the parties wish to formalize an agreement under which WisCorps is authorized to use and manage the Myrick Park Center;

NOW, THEREFORE, in consideration of the promises and mutual covenants of the parties hereto, IT IS AGREED that WisCorps is granted a non-exclusive privilege to use the Myrick Park Center subject to the following terms and conditions:

1. Definitions.

- A. *Substantial Repair.* The term, “substantial repair” shall mean any repair or replacement to any mechanical system (heating, plumbing, electrical, HVAC), structural repairs or roof repairs which would reasonably interfere with WisCorps’ use of the Myrick Park Center, for the use described herein.
- B. *Board.* “Board” means the City of La Crosse Board of Park Commissioners.

- 2. Term.** This Agreement, unless earlier terminated as provided for herein, shall be effective for the time period 12:01 am November 1, 2017 through 5:00 pm on June 30, 2022.

3. **Premises.** The City grants the non-exclusive use of the Myrick Park Center, main building, barn and outbuildings, more particularly described in **Exhibits “A”** and **“B”** (floor plans) which are attached hereto and incorporated herein by this reference, including all existing structures. WisCorps is further granted the non-exclusive use of parking areas and other lands adjoining the Myrick Park Center.

4. **Scheduling and Use of the Myrick Park Center.** The Parties agree to the following timetable for scheduling of events at the Myrick Park Center:
 - A. WisCorps must submit to the Director of Parks and Recreation for the City a proposed schedule of events and programs for the upcoming year on or about July 1st to be approved no later than August 31st of each year

 - B. WisCorps must preserve the same availability and use of the Myrick Park Center for City recreational programs and events and School District recreational programs and events. A copy of the 2015/2016 use schedule is attached hereto as **Exhibit “C”** and incorporated herein by this reference. Any conflicts between user groups shall be resolved by the Board.

 - C. WisCorps will be allowed to store personal property specific to WisCorps related operations on the site and have access to the site for the term of this Agreement. WisCorps shall insure its personal property against loss. WisCorps releases the City from any future claims of personal property damage or loss.

 - D. WisCorps may not lease the barn or out-buildings to the public, since such buildings do not meet code requirements for use other than storage.

5. **WisCorps Responsibilities.**
 - A. WisCorps shall provide all staff necessary for all Myrick Park Center events and programs. This may include but is not limited to ushers, ticket takers, scorekeepers, public address announcers, equipment persons, attendants, trainers, officials, concessions, security, medical and maintenance persons.

 - B. WisCorps shall clean the Myrick Park Center for any and all events or programs.

 - C. The WisCorps shall keep the Myrick Park Center in a state that is safe and suitable for any and all activities that are being held in the Myrick Park

Center. WisCorps will be responsible for the removal of exterior ice and snow from any sidewalks and walkways immediately adjacent to Myrick Park Center. The City will be responsible for the removal of exterior ice and snow from the other areas. A map indicating the exterior areas which are the responsibility of WisCorps are attached hereto as Exhibit D

- D. WisCorps shall be responsible for all premises' maintenance and all daily operation's expenses at the Myrick Park Center and surrounding premises for all events and programs at the Myrick Park Center. Moreover, all equipment and supplies necessary to perform these responsibilities and the cost to run and maintain said equipment shall be the responsibility of WisCorps. Any substantial repairs in excess of \$1,000.00 per occurrence shall be the expense of the City, unless such substantial repair has been caused by the action, inaction, negligence or acts of WisCorps, or its guests, attendees, users, employees, volunteers, invitees, contractors or repair persons.
- E. WisCorps shall supply all necessary cleaning supplies and labor to maintain in a safe, clean and sanitary condition all public or private areas, public restrooms, and any other area used for events at the Myrick Park Center.
- F. The City shall be responsible for all trash removal and recycling from the outside trash receptacles.
- G. WisCorps will pay for all personal property taxes assessed for WisCorps' use and/or management of Myrick Park Center or any equipment used or owned by WisCorps, unless WisCorps is determined to be tax-exempt.
- H. WisCorps shall pay all utilities, including, without limitation, water and sanitary service, electric, gas, storm water, phone, internet or any other utility expense, when due.
- I. WisCorps shall be responsible for all renovations; however, they may ask that the City partner on any costs of renovation.
- J. WisCorps may not store items outside of the building or in the parking area, except for temporary storage during the winter.

6. City Responsibilities.

- A. The City agrees not to schedule a competing Nature Summer Camp at the Myrick Park Center during the term of this Agreement, except as allowed herein.

- B. The City will maintain and pay for a Service Agreement covering the mechanical systems.

7. Fees, Revenue and Related Financial Matters.

A. *Rent.*

1. WisCorps shall pay the City Two Thousand and 00/100 Dollars (\$2,000.00) per month during the term of this Agreement, commencing November 1, 2017, plus a fee of One Hundred and 00/100 (\$100.00) per month for the right to lease the facility to outside groups and organizations on an occasional basis. Any Rent then collected through occasional rental shall be retained by WisCorps.

2. Rent will be paid to the City of La Crosse and deposited in the budget for the City Park and Recreation.

3. In addition to any other remedy available to the City, delinquent payments shall be charged a late fee of one and one-half percent (1.5%) per month.

4. The Board further is charging a refundable security deposit of Five Thousand and 00/100 Dollars (\$5,000.00) to protect the City against any and all expense related to the Myrick Park Center that are to be paid by WisCorps. The deposit has been paid and will be retained by the City until the expiration/termination of this agreement.

B. *Revenues and Licenses.*

1) WisCorps shall have the exclusive right to sell concessions of any type, except for beer, alcohol, tobacco or e-cigarettes in any form, and to keep all proceeds from these concession sales. For such events as may be determined by the Board which do not interfere with WisCorps' use of the facility, the sponsor of those may be allowed concession privileges at a location separate from the location where WisCorps sells concessions, subject to prior approval of the Board. In addition, the sponsor of such events may enter into a separate agreement with WisCorps to operate concession sales and provides for payment of a portion of those concession sales to the sponsor. WisCorps shall ensure that all applicable state and local laws and health regulations are complied with in the exercise of its concession rights.

- 2) WisCorps may not lease advertising space at the Myrick Park Center.
- 3) Subject to applicable law, WisCorps may apply for a seasonal beverage license on an annual basis for events held at the Myrick Park Center.
- 4) WisCorps agrees to obtain and keep in good standing all licenses and permits related to its operation.
- 5) Naming rights. The City retains all naming rights to the Myrick Park Center.
- 6) WisCorps can establish user fees for all users other than City events or programs and the School District of La Crosse events or programs, which will be at no charge. All user fees must be approved by the Board in advance. User fees will be submitted for Board for approval 30 days in advance of effective date for approval. Final determination on user fees for groups rests with the Board.
- 7) For any emergency, flooding or disaster related events or City sponsored events identified on Exhibit "C" that are sponsored or run by the City, the City may use the facility at no charge. If the City wishes to add an event or program that is not on the Exhibit C, the City may only do so, after an agreement is reached between WisCorps and the City as to the cost, management and operation of the same.

8. **Assignment and Subcontracting.** Except as provided herein, WisCorps shall not assign this Agreement or any interest therein, nor let or underlet the Myrick Park Center, or any part thereof, or any right or privilege appurtenant thereto, nor permit the occupancy or use of any part thereof for any other purpose without the advance written consent of the Board.

9. **Indemnification.**

- A. To the fullest extent allowable by law, WisCorps hereby indemnifies and shall defend and hold harmless the City, its elected and appointed officials, officers, employees, authorized representatives and volunteers and each of them from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorneys' fees, costs and expenses of whatsoever kind or nature whether arising before, during or after the usage of the Myrick Park Center and in any manner directly or indirectly caused, occasioned, or contributed to or claimed to be caused, occasioned, or contributed to, by reason of

any act, omission, fault, or negligence, whether active or passive, of WisCorps or of anyone acting under its direction or control or on its behalf in connection with or incident to the performance of this Agreement. WisCorps' aforesaid indemnity and hold harmless agreement shall not be applicable to any liability caused by the fault, negligence, or willful misconduct of the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers. This indemnity provision shall survive the termination or expiration of this Agreement.

- B. In any and all claims against the City, its elected and appointed officials, officers, employees, authorized representatives or City volunteers by an employee of WisCorps, WisCorps itself, or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for WisCorps or any WisCorps under Worker's Compensation Acts, Disability Benefits Acts, or other employee benefit acts.
 - C. No provision of this indemnification clause shall give rise to any duties not otherwise provided for by this Agreement or by operation of law. No provision of this indemnity clause shall be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity that would otherwise exist as to the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers under this or any other contract. This clause is to be read in conjunction with all other indemnity provisions contained in this Agreement. Any conflict or ambiguity arising between any indemnity provisions in this Agreement shall be construed in favor of indemnified parties except when such interpretation would violate the laws of the state in which the Myrick Park Center is located.
 - D. WisCorps shall reimburse the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. WisCorps' obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers.
10. **Insurance.** Unless otherwise specified in this Agreement, WisCorps shall, at its sole expense, maintain in effect at all times during the usage of the Myrick Park Center, insurance coverage with limits not less than those set forth below with insurers and under forms of policies set forth below.
- A. *Worker's Compensation and Employers Liability Insurance.* WisCorps shall cover or insure under the applicable labor laws relating to worker's

compensation insurance, all of their employees in accordance with the laws of the State of Wisconsin. WisCorps shall provide statutory coverage for work-related injuries and employer's liability insurance with limits of at least for employers' liability of One Hundred Thousand (\$100,000.00) for each accident, One Hundred Thousand (\$100,000.00) for each employee and Five Hundred Thousand (\$500,000.00) for total policy limit.

B. *Commercial General Liability, Liquor Liability and Automobile Liability Insurance.* WisCorps shall provide and maintain the following commercial general liability and automobile liability insurance:

1) Coverage. Coverage for commercial general liability and automobile liability insurance shall be at least as broad as the following:

- a) Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 0001)
- b) Insurance Services Office (ISO) Business Auto Coverage (Form CA 0001), covering Symbol 1 (any vehicle)

2) Limits commencing July 1, 2017. WisCorps shall maintain limits no less than the following commencing on July 1, 2017:

- a) General Liability. One Million and 00/100 Dollars (\$1,000,000.00) per occurrence; Two Million and 00/100 Dollars (\$2,000,000.00) general aggregate, if applicable, for bodily injury, personal injury and property damage.
- b) Automobile Liability. One Million and 00/100 Dollars (\$1,000,000.00) for bodily injury and property damage per occurrence limit covering all vehicles to be used in relationship to the Agreement.
- c) Umbrella Liability. Six Million and 00/100 Dollars (\$6,000,000.00) following form excess of the primary General Liability, Automobile Liability and Employers Liability Coverages. Coverage is to duplicate the requirements as set forth herein.
- d) Liquor Liability. One Million and 00/100 Dollars (\$1,000,000.00) per occurrence.

C. *Required Provisions.* The general liability, umbrella liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- 1) The City, its elected and appointed officials, officers, employees or authorized representatives or volunteers are to be given additional insured status (via ISO endorsement CG 2010, CG 2033, or insurer's equivalent for general liability coverage) as respects: liability arising out of activities performed by or on behalf of WisCorps; products and completed operations of WisCorps; premises occupied or used by WisCorps; and vehicles owned, leased, hired or borrowed by WisCorps. The coverage shall contain no special limitations on the scope of protection afforded to the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Except for the workers compensation policy, each policy shall contain a waiver of subrogation endorsement in favor of the City.
- 2) For any claims related to this Agreement or usage of the Myrick Park Center, WisCorps' insurance shall be primary insurance as respects to the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Any insurance, self-insurance, or other coverage maintained by the City, its elected and appointed officers, officials, employees or authorized representatives or volunteers shall not contribute to the primary insurance.
- 3) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its elected and appointed officers, employees or authorized representatives or volunteers.
- 4) WisCorps' insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 5) Each insurance policy required by this Agreement shall state, or be endorsed to the state, that coverage shall not be canceled by the insurance carrier or WisCorps, except after sixty (60) days (ten (10) days for non-payment of premium) prior written notice by U.S. mail has been given to the City.
- 6) Such liability insurance shall indemnify the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers against loss from liability imposed by law upon, or assumed under contract by, WisCorps for damages on account of such bodily injury, (including death), property damage personal injury, completed operations, and products liability.
- 7) The general liability policy shall cover bodily injury and property damage liability, owned and non-owned equipment, blanket contractual

liability and completed operations. The automobile liability policy shall cover all owned, non-owned, and hired vehicles.

8) All of the insurance shall be provided on policy forms and through companies satisfactory to the City and shall have a minimum AM Best's rating of A-VIII.

D. *Deductibles and Self-Insured Retentions.* Any deductible or self-insured retention must be declared to and approved by the City. At the option of the City, the insurer shall either reduce or eliminate such deductibles or self-insured retentions.

E. *Evidences of Insurance.* Prior to execution of the Agreement, WisCorps shall file with the City a certificate of insurance (Accord Form 25-S or equivalent) signed by the insurer's representative evidencing the coverage required by this Agreement. Such evidence shall include an additional insured endorsement signed by the insurer's representative. Such evidence shall also include confirmation that coverage includes or has been modified to include all required provisions as detailed herein.

F. *Sub-Users.* Any party that uses Myrick Park Center, that involves the sale or consumption of alcohol or the use of any temporarily inflatable structures of any kind under any agreement WisCorps, must provide to the City insurance under the minimum standards set forth herein, naming the City as an additional insured. WisCorps is responsible for insuring that each sub-user meets the insurance requirements specified herein.

11. **Default and Termination.** In the event WisCorps shall default on any of the amounts due to the City as set forth in this Agreement or in the observance of any of the covenants, agreements, commitments or conditions herein contained, and any such default shall continue unremedied for a period of fifteen (15) days after written notice thereof to WisCorps, or (a) WisCorps shall make an assignment of its property for the benefit of creditors, or (b) WisCorps shall petition a court to be adjudged bankrupt, or (c) if a petition in bankruptcy shall be filed in any court against WisCorps for more than thirty (30) days, or (d) if WisCorps be judicially determined to be insolvent, or (e) WisCorps shall be adjudged bankrupt, or (f) if a receiver or other officer shall be appointed to take charge of the whole or any part of WisCorps' property or to wind up or liquidate its affairs, or (g) if WisCorps shall seek a reorganization under any of the terms of the National Bankruptcy Act, as amended, or under any other insolvency law, or (h) WisCorps shall admit in writing its inability to pay its debts as they become due, or (i) if any final judgment shall be rendered against WisCorps and remain unsatisfied for a period of thirty (30) days from the date on which it becomes final; or (j) if WisCorps shall abandon the facility, the City may, at its option and in addition to all other rights and remedies which it may have at law or in equity against WisCorps, including expressly the specific enforcement hereof, forthwith

have the cumulative right to immediately terminate this Agreement and all rights of WisCorps hereunder. Cancellation shall not constitute a cancellation or a waiver by the City of the remainder of the total amounts payable to City or for any damages or losses for the unexpired portion of the demised term which may be sustained by the City on account of such default, assignment, insolvency, adjudication, or other default as provided hereinabove in this Section, including any expenses incurred in exercising its rights in this Agreement.

In the event of lapse of insurance policies or coverage and protection as required by this Agreement, the City may, without notice of default, declare this Agreement terminated. WisCorps shall have no access rights to or use of Myrick Park Center unless all insurance policies required by this Agreement are in full force and effect.

In the event of termination of this Agreement for default, WisCorps may make no claim for compensation for the capital improvements furnished and the City shall retain title and ownership of the said Myrick Park Center, together with all buildings and improvements thereon, without any payment whatsoever to WisCorps. No improvements or buildings shall be removed from the above-described Myrick Park Center during the term of this Agreement without the written consent of the City, except any equipment, trade, and/or personal property of WisCorps which WisCorps lawfully removed prior to the termination of this Agreement.

12. **Impossibility of Performance.** Neither the City nor WisCorps shall be obligated to or liable for the performance of any term or condition of this Agreement on its part to be performed if such performance is prevented by fire, earthquake, flood, act of God, riots or civil commotions, or by reason of any other matter or condition beyond the control of either party.
13. **Damage and Destruction at the Myrick Park Center.** In the case of the destruction or any substantial damage of the Myrick Park Center resulting from fire or other casualty, either City or WisCorps may terminate this Agreement upon written notice to the other, if the Myrick Park Center cannot be repaired or rebuilt by City within thirty (30) days.
14. **Ownership and Control.** WisCorps states that as of the date of signing of this Agreement, all persons and entities with interest in the WisCorps, Inc. are disclosed on the attached **Exhibit "D"** which is incorporated herein by this reference as if set forth in full. On an annual basis, on or before the fifteenth (15th) day of June of each year, a disclosure signed and authenticated by the member of the corporation setting forth the current Directors and Officers of the entity.
15. **Accounting.** WisCorps shall keep, or cause to be kept, full, complete and proper books, records and accounts of the gross sales and credits of such

separate department, WisCorps or division at any time operated in or on the Myrick Park Center; such books, records and accounts, including any sales tax reports that WisCorps may be required to furnish to any governmental agency, for the purpose of verifying compliance with the terms and conditions of this Agreement, shall, at all reasonable times, be open to the inspection of the City, its auditor or other authorized representative or agent at no cost to City or its agents. If WisCorps fails to supply any and all records when asked by the City for the purpose of verifying compliance with the terms and conditions of this Agreement or attempts to charge a fee or cost of any kind for inspection, reproduction, review or duplication of these records, it will be an immediate default under the terms and conditions of this Agreement. All books shall be maintained on an accrual accounting basis.

16. **Compliance with All Laws.** WisCorps shall, at its own cost and expense, be responsible to promptly comply and conform with all present and future laws, ordinances, rules, requirements and regulations of the federal, state, county and municipal governments and of any and all other governmental authorities or agencies affecting the Myrick Park Center or its use, and WisCorps shall, at their own cost and expense, make all additions, alterations or changes to the Myrick Park Center or any portion thereof as may be required by a governmental authority or agency.

17. **Code Compliance.**

A. Annually. Without limitation, the following codes or their successor codes must be met annually or the Agreement will be in default:

- 1) City of La Crosse permits
- 2) Health Department & City permits for any food and beverage operations
- 3) Fire department inspection requirements

B. *Environmental.* WisCorps shall, during the entire term of this Agreement, comply with all applicable federal, state, and local environmental laws, ordinances and amendments thereto and rules and regulations implementing the same, together with all common law requirements, which relate to discharge, emissions, waste, nuisance, pollution control, hazardous or toxic substances and other environmental matters as the same shall be in existence during the term hereof. All of the foregoing laws, regulations and requirements are hereinafter referred to as Environmental Laws.

WisCorps shall obtain all environmental licenses, permits, approvals, authorizations, exemption classifications, certificates and registrations (hereinafter collectively referred to as Permits) and make all applicable filings required of WisCorps under the Environmental Laws to operate at

the Myrick Park Center. The Permits and required filings shall be made available for inspection and copying by City at WisCorps' offices upon reasonable notice and during business hours. WisCorps shall not cause or permit any flammable explosive, oil, contaminant, radioactive material hazardous waste or material, toxic waste or material or any similar substance (hereinafter collectively referred to as Hazardous Substances) to be brought upon, kept or used in or about the Myrick Park Center except for small quantities of such substances as is necessary for the business conducted upon the Myrick Park Center provided that WisCorps shall handle, store, use and dispose of any such Hazardous Substance in compliance with all applicable laws and in a manner which is safe and does not contaminate the Myrick Park Center.

If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of any Hazardous Substance on or about the Myrick Park Center by any occupant of the Myrick Park Center during the Agreement, then the reasonable costs thereof shall be reimbursed by City to WisCorps upon demand. WisCorps shall deliver to City Material Safety Data Sheets describing all Hazardous Substances stored, used or disposed of on the Myrick Park Center. WisCorps shall also, from time to time, at City's request, execute such other affidavits, representations and the like concerning WisCorps' best knowledge and belief regarding the presence of Hazardous Substances on the Myrick Park Center. WisCorps agree to indemnify and hold the City harmless from any liability, claim or injury, including attorney fees and the cost of any required or necessary repair, clean-up, remediation or detoxification, arising out of (i) the use, manufacture, handling, storage, disposal or release of any Hazardous Substances by WisCorps, its agents and employees and any subtenant and its agents and employees on, under or about the Myrick Park Center, or (ii) an actual or alleged violation of Environmental Laws in connection with the occupancy of the Myrick Park Center by WisCorps or any occupant of the Myrick Park Center or the operation of WisCorps' business on the Myrick Park Center during the term of the Agreement. The foregoing indemnification shall survive the expiration or earlier termination of this Agreement. It is agreed that the City shall also indemnify WisCorps for any payment WisCorps are required to make with regard to necessary testing, repair, cleanup, remediation, or detoxification with regard to any environmental damage which existed prior to WisCorps' occupancy of the Myrick Park Center.

18. City's Right of Entry and Inspection.

- A. *Right of Entry.* City shall have the right to enter the Myrick Park Center at all reasonable times for the purpose of verifying compliance with the terms and conditions of this Agreement.

- B. *Inspection of Records.* The City may also request any and all records from WisCorps, at no cost, upon ten (10) days advance notice for the purpose of verifying compliance with the terms and conditions of this Agreement.
- C. *Public Records.* WisCorps understands and acknowledges that City is subject to the Public Records Law of the State of Wisconsin. As such, WisCorps agrees to retain all records as defined by Wisconsin Statute § 19.32(2) applicable to this Agreement for a period of not less than seven (7) years after the termination or expiration of this Agreement. WisCorps agrees to assist the City in complying with any public records request that the City receives pertaining to this Agreement. Additionally, WisCorps agrees to indemnify and hold harmless the City, its elected and appointed officials, officers, employees, and authorized representatives for any liability, including without limitation, attorney fees related to or in any way arising from WisCorps' actions or omissions which contribute to the City's inability to comply with the Public Records Law. In the event that WisCorps decides not to retain its records for a period of seven (7) years, then it shall provide written notice to the City whereupon the City shall take custody of said records assuming such records are not already maintained by the City. This provision shall survive the termination of this Agreement.

19. Alterations and Improvements.

- A. *Structural changes.* WisCorps shall not make, or suffer to be made, any structural alterations or improvements of the real property without prior review and the written consent of both the Board. All such alterations or improvements shall be made in accordance with any applicable local, state and federal laws and regulations. Any additions to, or alterations of, the real property improvements shall become at once a part of the realty and belong to the City. If written consent of the City to any proposed alterations shall have been obtained, WisCorps agrees to advise the Board in writing of the date upon which such alterations will commence in order to permit the City to post notice of no responsibility. WisCorps shall be consulted in any discussions pertaining to alterations proposed to be made by the City to the Myrick Park Center. WisCorps shall further provide verification of the alterations' or improvements' value to the City Engineer, City Assessor and City Finance Director.
- B. *Liens.* WisCorps shall keep the Myrick Park Center free from any and all liens arising out of any work performed, materials furnished or obligations incurred by WisCorps. Upon request, WisCorps shall provide verification, certification and proof that no liens or other encumbrances exist on any part of the Myrick Park Center or portion thereto. In the event such liens or encumbrances exist, then WisCorps shall obtain a release of the same

or other appropriate documentation extinguishing such lien or encumbrance following receipt of a fifteen (15) day noticed from the City.

20. **Abandonment.** WisCorps agrees not to vacate or abandon the Myrick Park Center at any time during the Agreement. Should WisCorps vacate or abandon the Myrick Park Center or be dispossessed by process of law or otherwise, such abandonment, vacation or dispossession shall be a breach of the Agreement; and, in addition to any other rights which the City may have, the City may remove any personal property belonging to WisCorps which remains in the Myrick Park Center and store and dispose of the same, such removal, storage and disposal to be at the expense of WisCorps.

21. **Notices.** All notices to be given to the City and WisCorps shall be in writing, and either personally delivered or deposited in the United States Mail, certified or registered, with postage prepaid, and addressed as follows:

To WisCorps: WisCorps.
c/o Matthew Brantner
789 Myrick Park Drive
La Crosse, WI 54601

To the City: Attn: City Clerk
City of La Crosse
400 La Crosse Street
La Crosse, WI 54601

With a copy to: Attn: Director of Parks and Recreation
City of La Crosse
400 La Crosse Street
La Crosse, WI 54601

22. **Leased Equipment.**

A. The City agrees to lease to WisCorps all equipment itemized on the attached **Exhibit "F"** which is incorporated herein by this reference as if set forth in full.

B. Any items indicated on the Exhibit "E" are to be maintained in good operating condition by WisCorps and must be repaired or replaced, as necessary, if damaged, or destroyed or in any way rendered unusable for its intended purpose.

- C. WisCorps must maintain full replacement and liability insurance with the same limits as set forth above and pay all personal property taxes related to the use of the equipment.
 - D. WisCorps will pay a fee of One and 00/100 Dollar (\$1.00) per year for the use of the equipment commencing November 1, 2017. .
23. **No Third-Party Beneficiary.** Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party.
24. **Independent Contractor.** The parties hereto agree they are acting as independent contractors, and nothing in this Agreement is intended to create, nor shall anything herein be construed or interpreted as creating, a partnership, joint venture, or any such mutual relationship between the parties. Each party shall be responsible for its own separate debts, obligations and other liabilities.
25. **Construction.** This Agreement shall be construed and interpreted under the laws of the State of Wisconsin. This Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument to be drafted. This Agreement shall be deemed to have been drafted by the parties of equal bargaining strength. The captions appearing at the first of each numbered section of this Agreement are inserted and included solely for convenience but shall never be considered or given any effect in construing this Agreement with the duties, obligations, or liabilities of the respective hereto or in ascertaining intent, if any questions of intent should arise. All terms and words used in this Agreement, whether singular or plural and regardless of the gender thereof, shall be deemed to include any other number and any other gender as the context may require. This Agreement may not be amended except in writing and approved by both parties.
26. **Governmental Approvals.** WisCorps acknowledges that several of the specific undertakings of the City described in this Agreement may require approvals from the City of La Crosse Common Council, City of La Crosse governing bodies, and/or other public bodies, some of which may require public hearings and other legal proceedings as conditions precedent thereto. WisCorps further acknowledges that this Agreement, if it requires the expenditure of any funds is subject to appropriation by the La Crosse Common Council. The City's obligation to perform under this Agreement is conditioned upon obtaining all such approvals in the manner required by law. The City cannot assure that all such approvals will be obtained; however, it agrees to use good faith efforts to obtain such approvals on a timely basis.
27. **Patents, Trademarks, Copyrights and Royalties.** WisCorps assumes all costs arising from the use of patented, trademarked or copyrighted materials, equipment devices, processes or dramatic rights used in their conduct and agree

to indemnify and hold harmless the City from all damage, costs and expenses on account of the use of any such materials, equipment, devices, processes or dramatic rights by WisCorps or its employees, agents, or licensees. WisCorps agrees to pay all royalties, license fees and other charges accruing or becoming due by reason of any music, live or recorded, or other entertainment of any kind played, staged or produced by WisCorps, its agents, employees or licensees in the Myrick Park Center.

28. **Jury Trial Waiver.** The parties hereby waive their respective rights to a jury trial on any claim or cause of action based upon or arising from or otherwise related to this Agreement. This waiver of right to trial by jury is given knowingly and voluntarily by the parties and is intended to encompass individually each instance and each issue as to which the right to a trial by jury would otherwise accrue. Each party is hereby authorized to file a copy of this section in any proceeding as conclusive evidence of this waiver by the other party.
29. **Governing Law.** This Agreement and all questions and issues arising in connection herewith shall be governed by and construed in accordance with the laws of the State of Wisconsin. Venue for any action arising out of or in any way related to this Agreement shall be exclusively in La Crosse County, Wisconsin. Each party waives its right to challenge venue.
30. **Severability.** If any of the terms or conditions contained herein shall be declared to be invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions and conditions of this Agreement, or the application of such to person or circumstances other than those to which it is declared invalid or unenforceable shall not be affected thereby and shall remain in full force and effect and shall be valid and enforceable to the full extent permitted by law.
31. **Title to be Retained by City.** City shall retain title and ownership of the Myrick Park Center together with all buildings, and improvements thereon without any payment whatsoever to WisCorps.
32. **Non-Discrimination.** In the performance of the services under this Agreement, WisCorps agrees not to discriminate against any employee, subcontractor or applicant because of race, religion, marital status, age, color, sex, handicap, national origin, ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs, or student status.
33. **Current Areas in Use.** Myrick Park Center shall remain a voting center. WisCorps will provide to the City a locked room to hold all voting equipment, flags, signs, etc. The key for that room shall be held only by the City.

- 34. **Entire Agreement.** The entire agreement of the parties is contained herein and this Agreement supersedes any and all oral contracts and negotiations between the parties.
- 35. **No Waiver.** No failure to exercise and no delay in exercising of any right, power or remedy hereunder on the part of either party shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than the event or default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by either party therein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.
- 36. **Authority.** The persons signing this Agreement warrant they have the authority to sign as, or on behalf of, the party for whom they are signing.
- 37. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties.

WITNESS:

WisCorps, Inc.

BY: _____

Date: _____

WITNESS:

WisCorps, Inc.

BY: _____

Date: _____

WITNESS:

WITNESS:

**CITY OF LA CROSSE
BOARD OF PARK COMMISSIONERS**

BY: _____

Date: _____

BY: _____

Date: _____

CITY OF LA CROSSE

BY: _____

Mayor

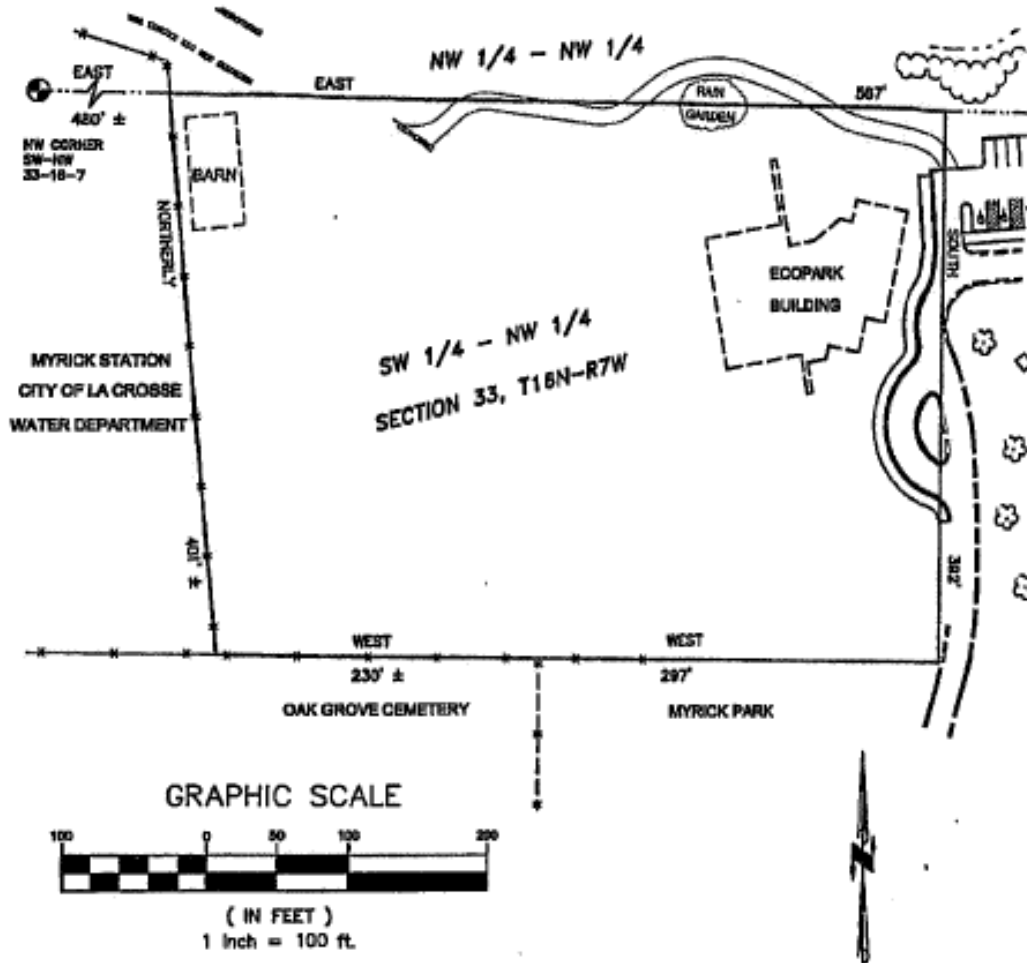
Date: _____

BY: _____

City Clerk

Date: _____

EXHIBIT "A" Floor Plan



WISCORPS LEASE DESCRIPTION

Part of the SW 1/4 of the NW 1/4, Section 33, T16N-R7W, City of La Crosse, La Crosse County, Wisconsin described as follows:

Commencing at the northwest corner of said SW 1/4 of the NW 1/4, thence East along the north line of said SW 1/4 of the NW 1/4, 480 feet more or less to an existing chain link fence and the point of beginning;
 thence, continuing East, along said north line 567 feet;
 thence South 392 feet;
 thence West 297 feet to the northeast corner of Oak Grove Cemetery;
 thence, continuing West along the north line of said Cemetery 230 feet more or less to an existing chain link fence running northerly;
 thence Northerly 401 feet more or less to the point of beginning.

Subject to any easements covenants or restrictions of record.

Drafted: SMD
 Checked: JMC
 7/25/13
 EDF: 2013-026 MISC.

EXHIBIT "B" Floor Plan



EXHIBIT "C"
USE SCHEDULE

EXHIBIT "D"
SNOW REMOVAL MAP

**EXHIBIT “E”
Board of Directors of WisCorps, Inc.**

<u>Name/address</u>	<u>Title</u>
Katie Bittner Great Lakes Trailbuilders, Inc. 1027 Charles Street La Crosse, WI 54603 651-485-0832	Chair
Brenda Haug Cindy Gerke & Associates 1114 28 th St. South La Crosse, WI 54601 608-317-9070	Vice Chair
Buzz Bocher University of Wisconsin – La Crosse 923 26th Street South La Crosse, WI 54601 608-788-5991	Treasurer
Steve Simpson University of Wisconsin – La Crosse 2636 Hackberry Lane La Crosse, WI 54601 608-782-6033	Secretary
Tom Melnarik United States Department of Agriculture - NRCS 6609 Round Lake Rd Rhineland, WI 54501 715-282-4939	
Maria Ludwigson Gunderson Health System 328 Regent Dr. La Crescent, MN 55947	
Bradley Bowe Wisconsin Department of Transportation 141 NW Barstow St Waukesha, WI 53187 (262) 548-5902	
Kristen Bouska United States Geological Survey 2630 Fanta Reed Road La Crosse, WI 54603 (618) 924-2592	

EXHIBIT "F"
EQUIPMENT LEASED FROM THE CITY

Kitchen

Item	Quantity	Item	Quantity
Stemless Glasses	26	Tables, 6'x30"	18
Coffee Urns	15	Chairs, Sled-based	150
Water Pitchers	10 lg 14 sm	Chair carts	6
Juice glasses	5	Brute cans on wheels	3
Refrigerator	1	Podium	1
Oven/stove top	1	Microphones	1 cord, 2 cordless
Microwave	1	Projector	1
Dishwasher	1	Projector remotes	2
		VGA Cable/w audio	1
		Screen	1

Marshview Room

Marshview Storage

Black Hangers	159	Chairs, padded	40
Audio System	1	Tables, 6' x 24"	10
		Trapezoid Table	1
		Curved Table	1
		Garbage can set	1

La Crosse Room

Atrium, Hallway, & Patio

High top tables	12	Section signs	4
Wooden end tables	4	Barricade/ropes	8 poles, 6 ropes
Cushioned stools	15	Coat rack	1
Garbage can sets	2	Wet floor signs	3
AED's	2	Garbage cart	1
Steel Picnic tables	4	Flat screen tv	1
		Dvd/cables	1 with 3 cables

Storage

Discovery Room

Screen	1	Desk	1
AV System	1		
Microphone	1 wireless		

Office