

**USE AGREEMENT BETWEEN THE
CITY OF LA CROSSE AND
MYRICK HIXON ECOPARK, INC.**

This Agreement ("Agreement") is made and entered into by and between the City of La Crosse, a Wisconsin municipal corporation ("City"), the City of La Crosse, Board of Park Commissioners ("BPC") and the Myrick Hixon EcoPark, Inc. ("MHEP") a Wisconsin non-stock, not for profit and tax exempt corporation, to be effective May 1, 2013.

WHEREAS, the City is the owner of lands formerly housing a City zoo. On January 10, 2008, City and MHEP entered into an agreement whereby MHEP would operate and manage a zoo, including the creation of a nature center. A copy of the said Agreement is attached hereto as Appendix "A" and made a part hereof by this reference as if set forth in full. The January 10, 2008 Agreement is terminated by this Agreement; and

WHEREAS, MHEP, with the assistance of City, State of Wisconsin, Rotary, and private donor funding, has constructed a nature center on the property, which is now subject to the terms and conditions of a State of Wisconsin grant agreement, which is attached hereto as Appendix "B" and made a part hereof by this reference as if set forth in full; and

WHEREAS, the current agreement for the operation of the EcoPark expires on April 30, 2013 and MHEP has requested a new Agreement to operate the EcoPark and to allow for additional long term development of the area; and

WHEREAS, MHEP has set forth a plan for additional improvements to the EcoPark, which are attached hereto as Appendix "C" and made a part hereof by this reference as if set forth in full; and

WHEREAS, the Board of Commissioners and the City of La Crosse after review of this matter and due consideration of the possible uses of the former zoo property and the work which has been completed to date by MHEP, plus future proposed improvements, desire to enter into an agreement.

NOW, THEREFORE, in consideration of the promises and mutual covenants of the parties hereto, **IT IS AGREED** that MHEP will be given a multi-year use agreement to operate the EcoPark located at 789 Myrick Park Drive, in the City of La Crosse, County of La Crosse, State of Wisconsin under the following terms and conditions:

1. **Premises.**

The "Premises" which are subject to the Agreement are legally described on Appendix "D" attached hereto and made a part hereof by reference and consist of approximately 7.0 acres of real property.

2. **Term.**

A. This Agreement, unless earlier terminated, shall be for the time period of May 1, 2013 through April 30, 2023, except as set forth in Article 20, below.

B. **Renewal.** This Agreement may be renewed for two (2) additional ten (10) year terms (a total of 20 years) by a written notice from MHEP to City as set forth herein, no later than six (6) months prior to the expiration of the initial term of this Agreement or any renewals or extension of the same, provided that there has been no uncured default under the Agreement and all terms and conditions of the Agreement have been in full compliance.

C. **Default.** MHEP may not exercise any renewal options unless the planned public improvements to the Premise set forth on Appendix "C" scheduled for completion as of the renewal date have been substantially completed, unless such completion has been waived or extended by the City and BPC.

3. **Use of the Premises.**

A. **Instructional and Education:** MHEP may use the Premises for any and all instructional and educational events related to the core purposes of the EcoPark, including the viewing of and interacting with the various exhibits, displays and activities on Premises.

B. **MHEP Events:** MHEP may also conduct fundraisers, meetings and special events upon the Premises, where the primary purpose of such activities is to raise funds for the operation of, or improvements to, the EcoPark provided all provisions and ordinances of City, County of La Crosse and State of Wisconsin related to such an event are fully complied with and all necessary licenses and permits are approved and obtained in advance.

C. **Pre-approved Events:** The EcoPark may, subject to the terms and conditions set forth in Article 3(D) below without additional approval from the City or the BPC, conduct the following events on the premises for which an individual, group or organization may pay a fee of any kind, provide consideration, share income or exchange anything of value for whatsoever such as but not limited to:

Wedding rehearsals and rehearsal dinners
Weddings
Anniversary parties
Retirement parties
Graduation Parties
Family Reunions
Class Reunions
Recitals
Baby Showers
Dances
Memorial Services
Ethnic celebrations
Business meetings, retreats, & training sessions
Non-profit organization board or membership meetings
Classes & training sessions by non-profits
Business & non-profit organization holiday or recognition parties
Non-profit fund raising dinners, auctions & indoor concerts
Festivals (i.e. Earth Day, Dulcimer Festival)
Farmers Market
Wellness Programs
Birthday Parties

D. Additional Approval Required: Any event, not listed above, regardless as to whether the event may pay a fee of any kind, provide consideration, share income or exchange anything of value for whatsoever or any events (even if on the preapproved list set forth in Article 3(C) above) that may have on-site, provide, serve, sell or make available on the Premises, alcoholic beverages and/or intoxicating liquors of any kind are NOT allowed unless:

- 1) These events may be held on the Premises only upon the advance written consent for each individual event by the BPC; and
- 2) Any such events must still be in compliance with Article 3(B) above and provide for the insurance called for in Article 8, below; and
- 3) The fees/charges/consideration for the use of the premises must be approved in advance by the BPC.

E. City Events:

- 1) The City may use the Premises for no charge for such things as voting location or emergency services related to a natural disaster, fire or flood.

- 2) The City may also use the Premises for no charge for such events as approved by the City Council, if scheduled at least sixty (60) days in advance provided that the City use does not conflict with the use/event scheduled by MHEP prior to receipt of the City's notice. City agrees to pay for any labor and/or utility charges incurred by MHEP after normal operating hours.

4. **MHEP Responsibilities.**

- A. MHEP shall provide all staff necessary for all EcoPark operations, including, but not limited to: guides, teachers, attendants, trainers, security and groundskeepers.
- B. MHEP shall keep the Premises including all lands in good condition and repair. This responsibility includes but is not limited to the mowing and trimming of grass or vegetation, providing trash and recycling collection, snow removal, landscaping, fertilization and irrigation. Moreover, all equipment and supplies necessary to perform these responsibilities, and the cost to run and maintain said equipment, shall be MHEP's responsibility. MHEP agrees to comply and conform to all present and future laws, ordinances, rules, requirements and regulations of the federal, state, county and city government in doing such maintenance and repairs.
- C. At MHEP's expense, all buildings and structures on the Premises must be fully maintained by MHEP, including all structural and mechanical components, modified as set forth in Article 4(d) below. All buildings and structures must meet all City, County, State and Federal codes for their use and purpose. Moreover, all equipment and supplies necessary to perform these responsibilities and the cost to run and maintain said equipment shall be MHEP's responsibility. MHEP agrees to comply and conform to all present and future laws, ordinances, rules, requirements and regulations of the federal, state, county and city government in doing such maintenance and repairs.
- D. The City agrees to be responsible for roof replacement, structural repairs and mechanical replacements, including the HVAC system, should the estimate for any individual repair or replacement exceed \$5,000.00, subject to annual appropriation.
- E. The EcoPark and all building and structures therein must be open to the public for viewing the interactive exhibits, participating in educational services and other core EcoPark events, for no less than one hundred fifty (150) days in a calendar year, upon a time schedule approved annually on or before March 1st of each year, by the BPC.

- F. MHEP must submit to and have approved by the BPC on or before March 1st of each year a fee schedule for admission to and use of the EcoPark, including and charges for use of the facilities.
- G. MHEP must also establish and have approved a non-resident surcharge for all admissions and fees at the EcoPark. This fee will be collected and paid to the City by MHEP as set forth in this Use Agreement to the Myrick Park Improvement Fund.
- H. MHEP shall pay all utilities, including, without limitation, water, electric and sewer consumed or used at the EcoPark.
- I. MHEP will submit to and have approved by the BPC on or before March 1st of each year any rules or regulations related to the use of the Premises.

5. City Responsibilities.

- A. The City shall provide all staff necessary for all City events, including someone who will be responsible to lock the building(s) if the City is the last user of the day.
- B. The City will designate the Director of the Park's Department as the primary City contact person for all matters related to EcoPark.

6. Non-resident Fee.

- A. On or before July 1st and January 30th of each year of this lease or any renewal of the same, MHEP will provide an accounting of all due and collected non-resident fees.
- B. The non-resident fees shall be paid twice annually, no later than July 15th and February 15th of each year.
- C. Non-resident fees are payable to the City of La Crosse Treasurer for deposit in the Myrick Park Improvement Fund.

7. Revenues and Licenses.

- A. During all times under this Agreement, MHEP will have the right to sell food and beverages subject to compliance with any all applicable laws.
- B. MHEP may grant sponsorships and naming rights to individual exhibits and displays placed upon the premises for fundraising purposes; however, MHEP may not sell advertising or grand naming rights to any buildings or

to EcoPark itself. Any sponsorship or naming rights MAY NOT extend beyond the term of the Use Agreement and must automatically terminate if the Use Agreement is terminated for any reason.

- C. MHEP shall obtain and keep in good standing all licenses and permits related to its operation.

8. Assignment and Subcontracting.

- A. MHEP shall not assign this Agreement or any interest or duties set forth herein without the advance written consent of the City and BPC.
- B. MHEP will not permit the occupancy or use of any portion of the premises or buildings to anyone except MHEP, except as set forth herein.

9. Indemnification and Insurance.

- A. MHEP does hereby agree to defend and indemnify the City against and to hold the City harmless from any and all claims or demands for loss of or damage to property or for injury or death to any person from any cause whatsoever while in, upon or about the Premises or the sidewalks adjacent thereto during the term of this Agreement or any extension hereof. MHEP agrees to take out and maintain with a reputable insurance company, at their sole cost and expense, general liability insurance against property damage or bodily injury growing out of the use of or occurring on or about the Premises, with minimum liability limits of \$1,000,000 per occurrence, \$2,000,000 aggregate, along with an additional \$2,000,000 umbrella policy to cover all incidents, accidents or occurrences on or about the Premises. The policies shall be endorsed to name the City as an additional insured, and the City shall be entitled to a copy of the general liability and umbrella policies showing said coverage to be in effect. The City shall, at its own cost and expense during the term of this Use Agreement, carry insurance against fire, vandalism; malicious mischief and such other perils as are, from time to time, included in a standard extended coverage endorsement. MHEP agrees to take out and maintain with a reputable insurance company, at their sole cost and expense, comprehensive automobile liability insurance for owned, non-owned and hired vehicles with a minimum limit of liability of \$1,000,000 per occurrence for bodily injury. This insurance shall be required for the full term of the Use Agreement.
- B. MHEP shall protect, defend, indemnify, hold harmless the City, its elected and appointed officials, agencies, officers, employees, agents, authorized representatives, or volunteers, from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities,

interest, attorney fees, costs and expenses of whatsoever kind or character arising out of bodily injury (including death) or property damage, that occur as a result of wrongful, intentional, or negligent act or omission of MHEP or those holding under MHEP which may arise out of or is connected with MHEP's activities pursuant to this Agreement. MHEP's indemnity and hold harmless obligations do not apply to any claim, lawsuit, or liability caused by the wrongful, intentional, or negligent act or omission of the City, its elected and appointed officials, agencies, officers, employees, agents, authorized representatives, or volunteers. This provision shall not be construed to waive the City's limitation of liability and immunities as a Wisconsin municipality as set forth in the applicable Wisconsin Statutes or other applicable law.

- C. MHEP shall pay all its insurance premiums required pursuant to this Article as the same become due and deposit certificates of such insurance with City. Said certificates shall contain a stipulation prohibiting cancellation, amendment or nonrenewal until City shall have received ten (10) days' advance written notice thereof.
- D. In the event that the Premises or any part thereof shall be damaged by fire or other casualty for which there is insurance coverage as prescribed in this Agreement, the same shall be repaired by City at City's expense as speedily as possible, and City shall be entitled to the insurance proceeds maintained by the MHEP or City for the benefit of City, as provided in Article 8, provided that in the event the proceeds of such insurance are insufficient to cover the costs of rebuilding or repair, City shall have the option to cancel this Agreement and/or not rebuild or repair the Premises. It is understood that City is not required to repair or replace trade fixtures and merchandise owned or installed by MHEP in the Premises and that the same is the responsibility of the MHEP. Any rebuilding is subject to annual appropriation by the City Council.

10. Default and Termination.

In the event MHEP shall default in 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 ten (10) days, with respect to the cancellation or non-payment of insurance premiums, thirty (30) with respect to any amounts due the City as set forth in this Agreement and ninety (90) with respect to all other defaults, after written notice thereof to MHEP, or if:

- A. MHEP shall make an assignment of its property for the benefit of creditors;
- B. MHEP shall petition a court to be adjudged as bankrupt;

- C. If a petition in bankruptcy shall be filed in any court against MHEP which continues for more than thirty (30) days;
- D. MHEP is judicially determined to be insolvent;
- E. MHEP shall be adjudged a bankrupt;
- F. A receiver or other officer shall be appointed to take charge of the whole or any part of MHEP'S property or to wind up or liquidate its affairs;
- G. MHEP shall seek reorganization under any of the terms of the State or Federal Law or under any other insolvency law;
- H. MHEP shall admit, in writing, its inability to pay its debts as they become due;
- I. A final judgment shall be rendered against MHEP and remain unsatisfied for a period of ninety (90) days from the date on which the same is entered; or
- J. MHEP shall abandon all or part of the Premises.

In such an event, 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 MHEP including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this Agreement and all rights of MHEP hereunder.

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

- 11. Impossibility of Performance. Neither City nor MHEP 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.
- 12. Ownership and Control of MHEP. MHEP shall state that as of the date of signing of this Agreement, all officers, directors, and executive employees of MHEP are disclosed on the attached Appendix "E" which is incorporated herein by this reference as if set forth in full.

13. Accounting.

- A. MHEP shall keep, or cause to be kept, full, complete and proper books, records and accounts of all income and expenses derived from any operations, membership, events, advertising related in any way to its operations or use of the Premises. Such books, records and accounts, including any sales tax reports shall at all reasonable times, be open to the inspection of the City, City's auditor or other authorized representative or agent at no cost to City or City's agents.
- B. If MHEP fails to supply any and all records when asked 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 monetary default under the terms and conditions of this Agreement.
- C. All books shall be maintained on an accrual accounting basis.
- D. A CPA audit of the books, along with all tax filings will be provided to the City by May 1st of each year. These documents must be provided in a hard copy format, unless the City requests an electronic copy

14. Audit of Books and Records. The City may, at City's expense, audit the books and records of MHEP or any affiliated organization which may receive any income or pay any expenses related to the Premises. MHEP agrees to assist and comply with all instructions related to the same. If there is a determination by the auditor of an error in the books and records of MHEP which would result in a payment to the City of Five Hundred Dollars (\$500.00) or more, the costs of the audit shall be borne by MHEP.

15. Compliance with All Laws. MHEP 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 city governments and of any and all other governmental authorities or agencies affecting the Premises or its use, and MHEP shall, at its own cost and expense make all additions, alterations or changes to the Premises or any portion thereof as may be required by a governmental authority or agency.

16. Code Compliance.

- A. Without limitation, the following codes or their successor codes must be in full force and effect during the term of this Agreement and all certificates required under the same be obtained or this Agreement will be in default:

- 1) City of La Crosse permits;
 - 2) Health Department and City permits for food and beverage operations;
 - 3) Fire department inspection requirements; and
 - 4) All flood plain, use and zoning regulations.
- B. MHEP 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.
- C. MHEP 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 by MHEP under the Environmental Laws to operate at the Premises. The Permits and required filings shall be made available for inspection and copying by City at MHEP's offices upon reasonable notice and during business hours. MHEP 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 Premises except for small quantities of such substances as is necessary for the business conducted upon the Premises provided that the MHEP 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 Premises.
- D. If any entity 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 Premises by any occupant of the Premises during the Agreement term then the reasonable costs thereof shall be reimbursed by the MHEP to the City upon demand. MHEP shall deliver to City Material Safety Data Sheets describing all Hazardous Substances stored, used or disposed of on the Premises. MHEP shall also, from time to time, at City's request, execute such other affidavits, representations and the like concerning MHEP's best knowledge and belief regarding the presence of Hazardous Substances on the Premises. MHEP agrees 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 MHEP, its agents and employees and any subtenant and its agents and employees on, under or about the Premises, or (ii) an actual or alleged violation of Environmental Laws in connection with the occupancy of the Premises by MHEP or any allowed by MHEP or the operation of MHEP's activities on the Premises during the term of this Agreement. The foregoing indemnification shall survive the expiration or earlier termination of this Agreement.

- E. MHEP will not be responsible for any environmental contamination occurring prior to January 10, 2008.

17. City's Right of Entry and Inspection.

- A. City shall have the right to enter the Premises at all reasonable times for the purpose of verifying compliance with the terms and conditions of this Agreement.
- B. City may also request any and all records from MHEP, at no cost, upon thirty (30) days advance notice for the purpose of verifying compliance with the terms and conditions of this Agreement. The City may, at its option request the records in hard copy or electronic form.
- C. MHEP understands and acknowledges that the City is subject to the Public Records Law of the State of Wisconsin. As such, MHEP 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. MHEP agrees to assist City in complying with any public records request that City receives pertaining to this Agreement. Additionally, MHEP agrees to indemnify and hold harmless 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 MHEP's actions or omissions which contribute to City's inability to comply with the Public Records Law. In the event that MHEP decides not to retain its records for a period of seven (7) years, then it shall provide written notice to City whereupon City shall take custody of said records assuming such records are not already maintained by City. This provision shall survive the termination of this Agreement.

18. Alterations and Improvements.

- A. MHEP shall not make, or suffer to be made, any alterations of the real property without the advance written consent of the BPC.
- B. If written consent of the BPC to any proposed alterations shall have been obtained, MHEP agrees to advise the BPC in writing of the date upon which such alterations will commence in order to permit the City to post notice of no responsibility. MHEP shall keep the demised Premises free from any and all liens arising out of any work performed, materials furnished or obligations incurred by MHEP.
- C. Any and all improvements or buildings, placed upon the premises must obtain and all proper permits and further must be approved, in writing, prior to the commencement of any work by the City's insurance company and risk management provider.
- D. MHEP, at the end of this Use Agreement, may not remove property except for office furniture and supplies, files, merchandise held for resale, food or beverage items and personal property of employees or staff.
- E. MHEP upon removal of any personal property improvements must restore the Premises into a fully useable condition.

19. Laws and Regulations. MHEP, at its own cost and expense, shall comply promptly with all laws, rules and orders of all federal, state and municipal governments or departments, which may be applicable with the Premises.

20. Notices. Any Notices required under this Agreement shall be sent by certified mail, postage pre-paid, certified mail to the following persons:

City:

Teri Lehrke
City Clerk, City of La Crosse
400 La Crosse Street
La Crosse, WI 54601

Steve Carlyon, Director
Park and Recreation Department
City of La Crosse
400 La Crosse Street
La Crosse, WI 54601

MHEP:

Myrick Hixon Ecopark
c/o Executive Director
789 Myrick Park Drive
La Crosse, WI 54601

- 21. Attorneys Fees.** In the event of any litigation by the City to enforce its rights under this Lease, the City, if it prevails, shall be allowed all reasonable attorneys fees expended or incurred in such litigation to be recovered as part of the costs therein.
- 22. Non-related Parties.** 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.
- 23. Law and Venue.** This Agreement shall be construed and interpreted under the laws of the State of Wisconsin. Any actions related to the same will be venued in La Crosse County, WI.
- 24. Amendment.** This Agreement may not be amended except in writing and approved by both parties.
- 25. Liens.** MHEP shall not place any liens or other encumbrances on the improvements or Premises, without the advance written consent of the City. If requested, MHEP will provide to the City verification that no liens exist on any of the improvements made by MHEP to the Premises. In the event such liens or encumbrances do exist, then MHEP shall obtain a release of any lien or encumbrance or other appropriate documentation extinguishing such lien or encumbrance following receipt of a fifteen (15)-day notice provided by the City that the same be extinguished. City and MHEP are aware that there may be liens in place on pre-existing improvements, and that a consent for these liens will be submitted to the Board of Public Works for approval, such approval shall not be unreasonably withheld. All parties understand and agree that liens MAY NOT be placed on City property.
- 26. Patents, Trademarks, Copyrights and Royalties.** MHEP assumes all costs arising from the use of patented, trademarked or copyrighted materials, used in the conduct of any events held on the Premises and agrees to indemnify and hold harmless the City from all damage, costs and expenses on account of the use of any such materials.
- 27. Terms or Conditions.** If any of the terms or conditions contained herein shall be declared 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.

28. Title to be Retained by City. City shall retain title and ownership of the Premises, except for the improvements described herein without any payment whatsoever to MHEP.
29. Non-Discrimination. In the performance of the services under this Agreement, MHEP agrees not to discriminate 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. MHEP further agrees not to discriminate against any subcontractor or person who offers to subcontract on this Agreement because of race, religion, color, age, disability, sex or national origin.
30. Entire Agreement. The entire agreement of the parties is contained herein and this Agreement supersedes any and all other oral or written contracts and negotiations between the parties.
31. No Waiver. Any delay or failure in exercising any rights or remedies herein shall not 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 the City or MHEP 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.
32. Taxes:
 - A. It is understood that the improvements and personal property resulting from the Project shall be subject, in part, to property taxes. In addition the EcoPark may incur and shall pay when due all federal, state and local taxes in connection with its operations, as well as all operating expenses in connection with the EcoPark.
 - B. EcoPark shall pay when due and file all appropriate reports, all personal property taxes assessed by the City of La Crosse. In the event that some or all of the personal property is or becomes exempt from general property taxes under Chapter 70, Wis. Stat., as amended or superseded, or by any other statute, provision or reason, then the EcoPark shall make an annual payment to the City in lieu of taxes ("Annual PILOT") for the services, improvements or facilities furnished to the Premises by the City. The amount of the Annual PILOT shall be computed and determined by the City Assessor by multiplying the fair market value (using tax assessment definitions, rules and procedures) of the tax exempt portion of such

personal property by the total tax rate of all taxing jurisdictions as shown on tax bills issued to taxpayers in the City. EcoPark or the then current owner of the tax exempt property, its successors or assigns shall pay the Annual PILOT within sixty (60) days of receipt. EcoPark shall have the right to appeal the determination of the City Assessor to the City Council. Any appeal shall specifically state the reasons, in writing, why the amount due as provided by the City Assessor is in error.

C. Special Charge. In the event there is a lack of compliance for payment of the Annual PILOT, then the City, in addition to any other remedy available at law or in equity, may levy a special charge or assessment under Wisconsin Law on the personal property for the delinquent amount as calculated herein to enable the City to enforce performance. The owners of the personal property and their successors and assigns further agree that they waive any objection to the City making said special charge or assessment; however, they still retain their right to object to the accuracy and amount of the special charge or assessment.

D. MHEP shall file with the City Assessor's Office for the year 2013 and all prior years not completed a personal property tax return for each year, properly completed on or before May 1, 2013. The amount due will be paid in full to the City on or before July 1, 2013.

CITY OF LA CROSSE

Trinity Kohrt
Name

Date: 6-24-2013

MYRICK HIXON ECOPARK, INC.

[Signature]
Name

Date: 6-20-2013

CITY OF LA CROSSE

[Signature]
Name

Date: 6-24-13

MYRICK HIXON ECOPARK, INC.

Paul Borsch
Name

Date: 6-20-2013

BOARD OF PARK COMMISSIONERS

[Signature] President
Name

Date: 6-20-13

BOARD OF PARK COMMISSIONERS

[Signature] Vice President
Name

Date: 6-20-2013

EXHIBIT "A"

2008 AGREEMENT

**AGREEMENT BETWEEN THE CITY OF LA CROSSE ("CITY")
AND
MYRICK HIXON ECOPARK, INC. ("MHEP")**

This Agreement is made this 10th day of January, 2008 by and between the City of La Crosse, Wisconsin, a municipal corporation and its Board of Park Commissioners, (hereinafter singularly or, if the context requires, collectively referred to as "City"), and Myrick Hixon EcoPark, Inc., a Wisconsin non-profit corporation, (hereinafter referred to as "MHEP").

RECITALS

WHEREAS, the City owns a zoo located at Myrick Park, and it would be beneficial for the City and community to provide for the operation and management of the zoo as well as improvements to the zoo, including modifications to the grounds and establishment of a nature center, and

WHEREAS, the Myrick Hixon EcoPark, Inc., formerly Friends of Hixon Forest Nature Center, Inc., and Coulee Region Area Rotary Clubs have initiated fundraising efforts in order to provide for such zoo operation, management, and improvements, and

NOW, THEREFORE, In consideration of the mutual promises hereinafter set forth and for other good and valuable consideration, the City and MHEP agree as follows:

ARTICLE I: GENERAL STATEMENT OF AGREEMENT

1.01 General Intent.

The City is the owner of the Myrick Park Zoo, (hereinafter "zoo"), which consists of approximately seven (7) acres of land located at 2000 La Crosse Street, La Crosse, Wisconsin, and which is more particularly depicted in the attached Exhibit A. The zoo currently consists of animals, grounds, buildings, exhibits, and equipment. It is the intent of the parties to enter into an agreement for MHEP to operate and manage the zoo and provide for improvements to the zoo, including modifications to the grounds, establishment of a nature center, and creation of exhibits of animals indigenous to North America, in accordance with the proposed zoo site plan and vision attached as Exhibit B. The zoo and nature center will be operated together as an "EcoPark", and are collectively referred to in this Agreement as "zoo."

1.02 Quality of Operation.

It is the intent of the parties that a quality zoo be constructed, maintained, and operated in the City for the recreational enjoyment of the general public. In addition, it is the intent of the parties that the zoo will appeal to and attract a

broad audience from the greater Coulee Region, including individuals and groups interested in education, animal interaction, conservation, environmental awareness, local culture and history, and outdoor sports and recreation.

ARTICLE II: ZOO OPERATION AND MANAGEMENT

The parties shall have the following rights, duties, and responsibilities relating to zoo operation and management:

- 2.01 General Operating Control. MHEP shall have general operating control of the zoo for the term and under the conditions of this Agreement. For purposes of this Agreement, general operating control means the authority to administer, control, and manage the zoo in all respects and in such a manner as will benefit and serve the interests of the zoo.
- 2.02 Exhibits and Programs. MHEP shall manage, administer and control zoo exhibits. MHEP shall conduct education programs and other public programs relating to zoo exhibits, topics, issues, and concerns.
- 2.03 Events. MHEP shall have the authority to schedule and arrange for events by individuals and groups. The City shall have the right to schedule City-sponsored events at the zoo in cooperation with MHEP, and MHEP shall not unreasonably refuse to schedule such events. MHEP, with the consent of the Board of Park Commissioners, may lease a portion of the zoo, including the nature center, on a short-term or temporary basis, for events. In advance of the event, MHEP shall request consent from the Board of Park Commissioners and such request shall include information as to the name of the event holder, the date of the event, the purpose of the event, and a description of the event. Under no circumstances shall any lease by MHEP exceed the term of this Agreement. The Board of Park Commissioners may grant MHEP approval for certain classes of events, such as birthday parties or business meetings, and the Board of Park Commissioners may determine that such classes of events do not require individual event approval. The Board of Park Commissioners may rescind any such class approval as it determines.
- 2.04 Employees and Volunteers. MHEP has the right to obtain employees and volunteers to provide services for the operation of the zoo. MHEP shall provide insurance coverage relating to such services with the City named as an additional insured. Zoo personnel shall be trained to discharge duties relating to general zoo operation and maintenance, including animal care. Zoo personnel and volunteers shall be trained to interact and communicate with the public in a courteous and helpful manner. Any employees or volunteers shall be solely the employees and volunteers of MHEP. Any compensation, benefits, and conditions of employment shall be solely the responsibility of MHEP.

- 2.05 Animals. MHEP shall have custody and control over any animals at the zoo for the purpose of operating the zoo. MHEP shall have the authority to sell or trade animals for the sole purpose of improving the exhibits at the zoo. MHEP shall have the authority to obtain additional animals for the zoo. The intent and understanding of the parties is that the zoo will contain animals that are indigenous to North America. MHEP shall properly keep, treat, and care for the animals at its expense. MHEP shall provide to the City a written inventory of the animals at the zoo by July 1 of each year, beginning in 2008.
- 2.06 Zoo Admission and Prices. The initial charge or fee to enter the zoo will be \$3.00 per adult and \$1.00 per child, except MHEP may charge a reduced fee or no fee during construction periods in 2008 and possibly 2009. MHEP may increase this fee every other year by no more than 50 cents per person without obtaining further Common Council approval. For example, in year 2010, the child entrance fee may be increased to \$3.50 per adult and \$1.50 per child.

Residents of the City of La Crosse shall be given the opportunity to purchase an annual pass at a reduced rate. This rate shall be determined by the Board of Park Commissioners and MHEP. The annual passes may be obtained by City residents from the MHEP. Purchasers of an annual pass shall not be required to also purchase a membership and/or become a member of MHEP. Funds collected from zoo admissions, including annual passes, shall be used exclusively for the benefit of zoo operations, maintenance, and capital improvements.

- 2.07 Concession. MHEP may operate a concession facility on the zoo grounds, subject to compliance with applicable federal, state, and local laws and regulations. Funds collected from such operation shall be used exclusively for the benefit of zoo operations, maintenance, and capital improvements.

ARTICLE III: REAL ESTATE, IMPROVEMENTS AND MAINTENANCE

The parties shall have the following rights, duties, and responsibilities relating to zoo real estate, improvements, and maintenance:

- 3.01 Management and Control of Buildings and Land. MHEP shall have management and control over buildings and land as described and set forth in Exhibits A and B. This includes those buildings and land that currently exist and will be utilized for the zoo prior to construction of any new facilities. This management and control includes the public sidewalks and parkway panels located within the zoo.
- 3.02 Title. The City shall retain legal title to any and all zoo land and real estate. The City shall also retain ownership of any and all existing buildings as well as any and all buildings or improvements constructed. MHEP shall not place any liens or encumbrances on City-owned real estate or buildings without the permission

of the City.

1-7-08

- 3.03 Capital Improvement Projects. MHEP may implement capital improvement projects that are included in the City's Capital Improvement Plan ("CIP") without further approval of the City, except the plans shall be subject to approval by the Board of Park Commissioners. In addition, capital improvement projects the cost of which is estimated to be less than the amount requiring public bidding under §62.15, Wis. Stat., shall not require prior approval of the City except the plans shall be subject to approval by the Board of Park Commissioners.

Capital improvement projects that require public bidding under §62.15, Wis. Stat., and are not included in the City's CIP shall be subject to the City's prior approval. The City shall promptly initiate review of capital improvement projects requested by MHEP. Capital improvement projects requiring the City's prior approval shall be submitted in writing to the City of La Crosse Common Council through the City Clerk, with a copy to the Director of Parks and Recreation, and referred to the proper committee or commission for review. The City agrees that its consent for a capital improvement project will not be unreasonably withheld. MHEP further agrees to comply with applicable public bidding requirements. The appropriate City officials will work with MHEP in order to effectuate compliance with the applicable public bidding requirements.

- 3.04 Maintenance. MHEP shall be responsible for maintenance of the grounds and facilities, including interiors of buildings, of the zoo area and within the zoo boundaries as described and set forth in Exhibit A. This maintenance includes grass cutting and watering, flower planting and watering, snow plowing, salting and sanding, trash removal, and janitorial services. The City shall be responsible for snow and ice control for the parking lot and general public areas which are located outside of the zoo boundaries as described and set forth in Exhibit A.
- 3.05 Utilities. MHEP shall be responsible for the expense and payment of all utilities, including, but not limited to, electric, gas, water, sanitary sewer, and telephone services.
- 3.06 Infrastructure. The City shall be responsible for the cost of closing any streets, removing the pavement in the existing lot, paving of the parking lot, surfacing or establishment of a recreational and access path, and providing potable water. The City may assist in sewer connection to the new buildings along with storm water drainage for the parking area provided, however, that the cost is included as part of any capital improvement plan or budget by the Common Council. The recreation path between the zoo and the marsh shall be open to bicycles, pedestrians, service vehicles, and for emergency use, but shall not be open for public motor vehicle use.
- 3.07 MHEP Access Prior to Commencement of Agreement. MHEP may have access

to the zoo prior to the commencement date of this Agreement in order to conduct preliminary construction work. MHEP shall notify the City of preliminary construction work performed on the zoo grounds prior to the commencement of this Agreement.

ARTICLE IV: BOARD OF DIRECTORS OF MHEP

- 4.01 Board of Directors of MHEP: The Board of Directors of MHEP shall consist of no greater than twenty-one (21) members. The membership of the Board of Directors of MHEP shall include the following:
- a) One (1) member appointed by the Mayor of the City of La Crosse, subject to confirmation by the Common Council for a term of two years. In case of a vacancy, the Mayor shall appoint another member for the remainder of the unexpired term.
 - b) The Chairperson of the City's Board of Park Commissioners.
 - c) Two (2) members of the City's Board of Park Commissioners as appointed by the Chairperson of said Board for terms of two years. In the case of a vacancy, the Chairperson shall appoint another member of the Board for the remainder of the unexpired term.
 - d) Three (3) members appointed by the local Rotary Clubs.

ARTICLE V: FINANCING AND FUNDING

- 5.01 Nature Center Funding. To fund the construction of a nature center, including the nocturnal/aquatic animal display area, the City will provide \$250,000 from its 2007 Capital Improvement Budget and an additional \$250,000 from its 2008 Capital Improvement Budget. MHEP shall provide the remaining funding for the nature center, the total cost of which is expected to be \$1,800,000. If MHEP fails to provide for the remaining funding of the nature center, the City shall not be required to provide its funding for the nature center.
- 5.02 Operating and Maintenance Costs. The City agrees to provide up to \$132,000 per year during the term of this Agreement, and such funds shall be used solely for reimbursement of the following zoo expenses: personnel costs, grounds maintenance, facility maintenance, animal supplies and food, veterinary services, and utilities. To receive reimbursement of such expenses, MHEP shall provide an itemized invoice on a monthly basis to the City, and then the City shall pay such eligible expenses within forty-five (45) days of receipt of the same. Under no circumstances will the City provide more than \$132,000 annually for such expenses.

- 5.03 Payments. Payments by the City to MHEP shall be made to the Treasurer of MHEP at an address or to a depository furnished in writing by MHEP to the City Finance Director.

ARTICLE VI: TERM AND TERMINATION

- 6.01 Term and Renewal. This Agreement is for a five-year term from May 1, 2008 through April 30, 2013. At least six (6) months prior to the expiration of this Agreement, MHEP may request renewal of this Agreement. Once notice is provided of intent to renew, both parties agree to work diligently and in good faith to renew the Agreement subject to mutually agreed terms.
- 6.02 Termination Due to Public Necessity. The City may terminate this Agreement if necessary for reason of public necessity. MHEP will cooperate with the City should public necessity require termination of the Agreement.
- 6.03 Termination Due to Breach. The City or MHEP may terminate this Agreement based on a material breach of any of the terms and conditions of the Agreement. Such termination shall be effective thirty (30) days after a written termination notice is provided. The termination notice shall state the alleged breach of the Agreement and provide that unless the violation is corrected within the thirty (30) day period, the Agreement will terminate at the end of such period.
- 6.04 Effect of Termination and Expiration of Agreement. Upon termination or expiration of the Agreement, all control of the zoo shall be immediately returned to the City. MHEP shall have a reasonable time within which to remove any equipment and other items of personal property that it owns. All equipment, supplies, animals, and exhibits in the possession of MHEP and owned by the City shall be returned to the City. It is further agreed that upon termination or expiration of the Agreement, all capital improvements at the zoo whether constructed at MHEP's expense or at the City's expense, shall become the property of the City.
- 6.05 Suspension. The City reserves the right to suspend MHEP's rights under this Agreement to operate and manage the zoo if it determines that an emergency exists involving the health, welfare, or safety of the public or the zoo animals. Such suspension shall be on such terms and conditions as may be prescribed by the Mayor of the City of La Crosse and shall be of such duration as to protect and secure the health, welfare, or safety of the public or the zoo animals.

ARTICLE VII: OVERSIGHT, FINANCIAL REPORT, AND AUDIT

- 7.01 Oversight and Approval. Authority retained by the City under this Agreement shall be exercised by the Board of Park Commissioners and its successors.

Unless otherwise provided in this agreement, the Board of Park Commissioners shall review and approve all major issues concerning the zoo, including:

- a) Annual operating budget and any modifications thereto; and,
- b) Capital improvements; and,
- c) Change in species of animals.

- 7.02 Financial Report. MHEP shall submit an annual financial report to the City by July 1 of each year, with such report being for the preceding year.
- 7.03 Books and Records. MHEP agrees that the City Finance Director and/or Board of Park Commissioners may inspect the books and records of MHEP relating to the zoo and may audit or cause to be audited these books and records at any time with reasonable prior notice. In addition, MHEP shall provide, as requested by the City Finance Director and/or Board of Park Commissioners, statistical records relating to the use and activities of the zoo.

ARTICLE VIII: ACCESS

- 8.01 City Access. Authorized City staff and/or officials shall at all times have access without restriction to all areas of the zoo with reasonable notice to MHEP and subject to USDA guidelines relative to access to areas containing dangerous or quarantined animals.
- 8.02 Public Access and Rules. MHEP shall keep the zoo open to the general public during the term of this Agreement on a regular basis at such times as shall afford the general public an opportunity to have reasonable access thereto. MHEP is authorized to make and enforce rules and regulations affecting public use of the zoo as may be necessary to insure an orderly operation and in the interest of the health, welfare and safety of the public and zoo animals. MHEP shall submit a current list of these rules and regulations to the City by July 1 of each year.

ARTICLE IX: INSURANCE AND INDEMNIFICATION

- 9.01 Insurance. The City shall provide insurance coverage for the buildings during the term of this Agreement. MHEP shall maintain liability insurance coverage during the term of this Agreement, with limits not less than \$1,000,000 per occurrence for bodily injury, personal injury and property damage. In addition, MHEP shall maintain umbrella liability insurance coverage during the term of the Agreement, with limits not less than \$5,000,000. The City shall be listed as an additional insured under this insurance coverage. The City shall receive 30-day notice of any material change, non-renewal or termination of insurance.
- 9.02 Indemnification. MHEP shall protect, defend, indemnify, and hold harmless the City, its elected and appointed officials, agencies, officers, employees, agents, or

authorized representatives or volunteers, from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorney's fees, costs and expenses of whatsoever kind or character arising out of bodily injury (including death) or property damage, that occur as a result of wrongful, intentional, or negligent act or omission which may arise out of or is connected with the activities covered by this Agreement. MHEP's indemnity and hold harmless agreement does not apply to any claim, lawsuit, or liability caused by the wrongful, intentional or negligent act or omission of the City, its elected and appointed officials, agencies, officers, employees, agents, or authorized representatives or volunteers. This provision shall not be construed to waive the City's limitation of liability and/or immunities as a Wisconsin municipality as set forth in the applicable Wisconsin Statutes or other applicable law.

ARTICLE X: SEVERABILITY, ENTIRE AGREEMENT, AND DOCUMENTS

- 10.01 Severability. In the event that any part, term, portion or provision or the application thereof to any person or circumstances be in conflict with any federal or state law, or otherwise rendered unenforceable, it shall be deemed severable and shall affect the remaining provision, provided that such remaining provisions can be construed in substance to continue to constitute the agreement that the parties intended to enter into in the first instance.
- 10.02 Entire Agreement. This Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein. This Agreement may not be amended or modified, except pursuant to a written instrument which has been duly authorized and executed by both parties to this Agreement. This Agreement replaces and supersedes any previous agreements by the parties.
- 10.03 Documents. All documents, exhibits, including Exhibits A and B, and addendums referenced and incorporated into this Agreement are expressly made a part of this Agreement as though completely herein, and all references to this Agreement herein shall be deemed to refer and include all such documents.

ARTICLE XI: MISCELLANEOUS

- 11.01 Licenses and Permits. MHEP is responsible for obtaining and maintaining any licenses and permits concerning its rights and responsibilities under this Agreement, including those relating to zoo operation, management, construction, improvement, and maintenance. The City will waive fees for City building permits, as the buildings will be City owned.

11.02 Compliance with Law. MHEP shall comply in all material respects with any and all applicable federal, state, and municipal laws and regulations.

11.03 Independent Contractors. MHEP, its employees, agents, volunteers, and representatives shall in no way be deemed as a result of this Agreement to be the employees of the City. MHEP, its employees, agents, volunteers, and representatives are not entitled to any of the benefits that the City provides for its employees.

11.04 Discrimination. MHEP agrees that its operation of the zoo will not discriminate or permit discrimination against any person or group of persons in any manner prohibited by Title VII of the Civil Rights Act of 1964 or amendments thereto, or Section 7.03(J) of the Municipal Code of the City of La Crosse.

11.05 Notices. All notices under this Agreement shall be sent in writing to the parties as follows:

For the City: City Clerk (and a copy to the City Attorney)
City of La Crosse
400 La Crosse Street
La Crosse, WI 54601

For MHEP: Myrick Hixon EcoPark, Inc.
2702 Quarry Road
La Crosse, WI 54601

11.06 Assignment. MHEP is prohibited from assigning this Agreement or any portion thereof to any third persons without the prior written consent of the City.

11.07 Captions. The captions in this Agreement are for the convenience of reference only and shall not define or limit any of the terms and conditions set forth herein.

11.08 Nonwaiver of Rights. No failure by a party to insist upon the strict performance of any term in this Agreement, or to exercise any right, power, or remedy consequent upon a breach thereof, shall constitute a waiver of any such term or breach. No waiver of any breach shall affect or alter this Agreement, which shall continue in full force and effect with respect to any other then existing or subsequent breach.

11.09 Choice of Law. This Agreement is and shall be governed by the laws of the State of Wisconsin. Any judicial action relating to the construction, interpretation, or enforcement of this Agreement shall be brought and venued in La Crosse County Circuit Court in La Crosse, Wisconsin. The parties hereby consent to personal jurisdiction in those Wisconsin courts, and waive any defenses that they might otherwise have relating thereto.

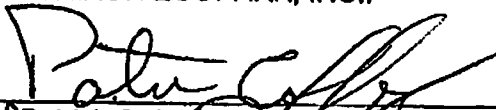
1-7-08

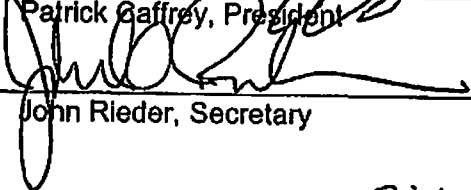
11.10 Bargaining of Agreement. This agreement shall be deemed to have been drafted by the parties of equal bargaining strength.

11.11 Political Activities Prohibited. MHEP shall not promote or permit use of the zoo, for political activities, including campaign rallies, referendum initiatives or other political activities.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their authorized representatives on the date and year first above written.

MYRICK HIXON ECOPARK, INC.:

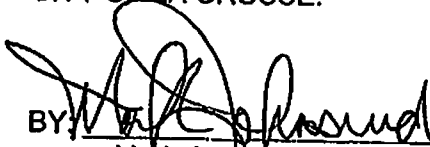
BY: 
Patrick Gaffrey, President

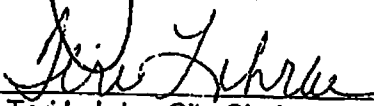
BY: 
John Rieder, Secretary

Patrick Gaffrey
Subscribed and sworn to before
me this 24 day of January, 2008.
Jana M. Erickson
Notary Public, State of Wisconsin
My commission: 8-2-09

John Rieder
Subscribed and sworn to before
me this 4th day of February, 2008.
Jana M. Erickson
Notary Public, State of Wisconsin
My commission: 8-2-09

CITY OF LA CROSSE:

BY: 
Mark Johnson, Mayor

BY: 
Teri Lehrke, City Clerk

1-7-08

Subscribed and sworn to before
me this ____ day of _____, 2008.

Notary Public, State of Wisconsin
My commission: _____

BOARD OF PARK COMMISSIONERS:

BY: *Dorothy Leonard* Chair

BY: *Richard J. Smith* Secretary

Subscribed and sworn to before
me this ____ day of _____, 2008.

Notary Public, State of Wisconsin
My commission: _____

EXHIBIT "B"

STATE OF WISCONSIN GRANT AGREEMENT



CITY OF LA CROSSE COUNCIL LEGISLATION

File #

CAPTION:

Resolution authorizing Myrick Hixon EcoPark, Inc to accept a grant from the State of Wisconsin for the EcoCenter and approving documents relating to the same.

REFERRAL ROUTE:

Intro. 05/13/10
Park Board
F&P

ACTIONS AND DATES: (for Clerk's Office use only)

DRAFTED BY:

REQUESTED BY:

INTRODUCED BY:

C. Member John Satory

RESOLUTION

WHEREAS, Myrick Hixon EcoPark, Inc. is a not for profit corporation which raised funds and built an educational center facility located in Myrick Park, and now operates and maintains said facility under an operating agreement with the City of La Crosse; and

WHEREAS, the Wisconsin Legislature determined that it is in the public interest and is the public policy of the state to assist Myrick Hixon EcoPark, Inc. in the construction of the educational center facility and accordingly, awarded Myrick Hixon EcoPark, Inc. a grant in the amount of \$500,000; and

WHEREAS, the conditions of the grant are set forth in a Grant Agreement and Use Restriction Easement, which conditions include that the facility be used for educational purposes for a period of five (5) years; and

WHEREAS, the grant, when received, will be used by Myrick Hixon EcoPark, Inc. to reimburse construction expenses for the EcoCenter, and as a result, \$500,000 from private sources raised by Myrick Hixon EcoPark, Inc. will be used for non-EcoCenter fixed structures.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of La Crosse that Myrick Hixon EcoPark, Inc. is authorized to accept a grant from the State of Wisconsin and approves the related documents, including the Grant Agreement, Use Restriction Easement, and the Agreement between Myrick Hixon EcoPark, Inc. and the City Concerning the Grant and Use Restriction Easement.

BE IT FURTHER RESOLVED that the Mayor and City Clerk are hereby authorized to execute any documents in connection with the same.

BE IT FURTHER RESOLVED that the City Attorney, Finance Director, and Director of Parks & Recreation are hereby authorized to take any and all steps necessary to effectuate this resolution.

GRANT AGREEMENT

Between the

**State of Wisconsin
Department of Administration**

And

Myrick Hixon EcoPark, Incorporated

This Agreement is made and entered into by and between the Department of Administration, State of Wisconsin ("Grantor") and Myrick Hixon EcoPark, Inc. ("Grantee").

Recording Area

Name and return address:

Cari Anne Renlund, Chief Counsel
WI Department of Administration
P.O. Box 7864
Madison, WI 57707

PIN #

WHEREAS, the Wisconsin State Legislature has determined that creating a unique destination with dynamic educational programming is a statewide responsibility of statewide dimension; and

WHEREAS, the Wisconsin State Legislature has determined that the EcoPark in the city of La Crosse plays a vital role in improving the education of the citizens of this state and that it will advance the appreciation and conservation of this state's natural resources; and

WHEREAS, the Wisconsin State Legislature has determined that it is in the public interest and it is the public policy of the state to assist Myrick Hixon EcoPark, Inc. in the city of La Crosse in the construction of a new educational center, which is operated and maintained by Myrick Hixon EcoPark, Inc. and owned by the City of La Crosse; and

WHEREAS, the Legislature has provided that the Wisconsin State Building Commission may authorize up to Five Hundred Thousand (\$500,000.00) Dollars of general fund supported borrowing to aid in the construction of a new educational center; and

WHEREAS, the statutes provide that the state funding commitment for the construction of the educational center shall be in the form of a grant to the Grantee; and

WHEREAS, the statutes provide that the state funding commitment for the construction of the educational center shall not be released by the Wisconsin State Building Commission until the Commission has determined that the Myrick Hixon EcoPark, Inc. has secured all necessary additional funding commitments from non-state revenue sources; and

WHEREAS, the Wisconsin State Building Commission, at its meeting on October 21, 2009, determined that Myrick Hixon Ecopark, Inc has met all the conditions set forth by the Legislature and authorized the Grantor to release funds to Myrick Hixon EcoPark, Inc. for the construction of an educational center at the facility in La Crosse in the amount of Five Hundred Thousand (\$500,000.00) Dollars general fund supported borrowing as a grant to the Grantee.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the parties hereto agree as follows:

1. The Grantor shall make payments to the Grantee in the total amount of Five Hundred Thousand (\$500,000.00) Dollars, as reimbursement of construction expenses paid by the Grantee. The Grantor shall disburse the grant as a one time lump sum payment (Form of requisition attached as Exhibit A).
2. The Grantee has provided information to the Grantor showing that it has secured additional funding commitments for the remainder of the approximately Two Million Three Hundred Thousand (\$2,300,000.00) Dollars project cost from non-state revenue sources, the non-state revenue sources are reasonable and available and the total funding commitments of the state and the non-state sources will permit Grantee to satisfy the payments for the construction of the educational center. The Grantee shall provide such additional information as may be required by the Grantor from time to time to show its compliance with the requirement of this paragraph.
3. The educational center is located at 789 Myrick Park Drive in the city of La Crosse. The legal description of the facility is attached hereto as Exhibit B.
4. Other than payment of the Five Hundred Thousand (\$500,000.00) Dollars in grant funds, the State of Wisconsin and its agencies, officers and employees will have no obligation regarding the new facility. Therefore, the Grantee hereby agrees to indemnify, hold harmless and defend the State of Wisconsin and its agencies, officers and employees against any financial obligation or liability regarding the construction of the educational center, including, but not limited to, injury to any person or property or environmental hazards which may be encountered in the construction, maintenance and management of this facility. Grantee shall maintain full replacement cost coverage for the facility and upon loss or destruction of the facility shall repair or rebuild the facility within three (3) years from the date of loss or repay to Grantor the amount of the Grant. The form of this replacement cost coverage shall be satisfactory to the Grantor.
5. Pursuant to 2009 Wisconsin Act 28 and Article 8, section 7, sub. 2 of the State of Wisconsin Constitution, all grantees are required to sign the attached Use Restriction Easement. The grantee, by its acceptance of funds voluntarily granted by the Building Commission, hereby accepts a use restriction easement over property for a period of five (5) years hereof or until such time that the person charged with the administration of the grant determines that the purpose of the grant has been satisfied. The use restriction easement

shall be of the nature and character and to the extent and on the terms and conditions set forth therein.

6. The Grantee shall not discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical conditions, developmental disability as defined in Section 51.01(5), Wisconsin Statutes, sexual orientation, or national origin. This provision shall include, but not be limited to, employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the Grantee shall take affirmative action to ensure equal employment opportunities. The Grantee shall post in conspicuous places, available for employees and applicants for employment, notices to be provided by the Grantee setting forth the provisions of the nondiscrimination clause. An Affirmative Action Plan is required from any Grantee who receives an award from the Grantor in excess of Twenty-five Thousand (\$25,000.00) Dollars and who has a workforce of twenty-five (25) or more employees as of the Grant date. The Grantee shall include these provisions in any subcontract associated with this Grant.
7. The Grantee shall establish a record keeping system, which assures that the Grantee is in compliance with this Agreement. The system shall provide an historic account of Agreement activities for examination and review by anyone authorized by the Grantor. Records must be maintained after final completion of construction for a period of not less than three (3) years.

The minimum acceptable records for administrative purposes of this Agreement consist of invoices for allowable construction costs, materials and equipment and construction services and professional, architectural and engineering fees.

The Grantee shall maintain sufficient segregation of accounting records for this Agreement separate from other agreements, projects and programs. Documents related to this Agreement shall be made available for review by the Grantor during normal business hours. The Grantor shall have access to all records related to this Agreement at any time during normal business hours, and shall have the right to examine, audit, excerpt, transcribe and copy on the premises any directly pertinent records, in whatever form, relating to this Agreement. If the material is on electronic media, the Grantee shall provide copies in such form as may be requested by the Grantor. This provision shall also apply in the event of termination of this Agreement.

8. If the facility that is constructed with funds from the Grant is not used for the new education center, the Grantor shall retain an ownership interest in the facility equal to the amount of the state's grant. In the event such ownership interest is retained, it may be reconveyed by repayment of the original amount of the Grant to the Grantor.

9. This Grant Agreement shall be recorded in the Office of the City Clerk of the City of La Crossc.

**STATE OF WISCONSIN
(GRANTOR)**

**Myrick Hixon EcoPark, Inc.
(GRANTEE)**

By: _____

By: _____

Name: David W. Helbach
Title: Secretary
State of Wisconsin Building
Commission

Name: Patrick Caffrey
Title: President

Date: _____

Date: _____

ACKNOWLEDGEMENT

State of Wisconsin
County of _____

This instrument was acknowledged before me on _____, by
_____ as _____ of
_____.

Notary Public, Wisconsin
My Commission (expires) (is) _____

ACKNOWLEDGEMENT

State of Wisconsin
County of _____

This instrument was acknowledged before me on _____, by
_____ as _____ of
_____.

Notary Public, Wisconsin

Attachment A

State of Wisconsin Capital Finance Office
Attn: Mr. Frank R. Hoadley, Capital Finance Director
101 East Wilson Street, 10th Floor
P.O. Box 7864
Madison, WI 53707

To Whom It May Concern:

Requisition Date: _____ Requisition Number _____

**Requisition of Construction Grant Funds
Myrick Hixon EcoPark, Inc.**

On behalf of Myrick Hixon EcoPark, Inc. a draw on available grant funds for the above project is hereby requested. The invoice(s) for which reimbursement is requested are listed and attached separately. This grant draw is to reimburse construction invoice(s) paid by Myrick Hixon EcoPark, Inc. The calculation of the amount of grant available and this draw is as follows:

1. Total Amount of Grant:	\$500,000.00
2. Total of Previous Grant Draws	0.00
3. Remaining Grant Available:	\$500,000.00
4. Total Invoices Submitted/Grant Draw	\$0.00
5. Cumulative total of Grant Draws (line 2 plus line 4)	\$0.00
6. Remaining Grant Available (line 1 minus line 5)	\$500,000.00

On behalf of the Myrick Hixon EcoPark, Inc., I hereby certify that the invoices submitted with this letter are true and correct copies of the original invoices paid by the Myrick Hixon EcoPark, Inc. for this project and that the amounts requested for payment under this Requisition are due to the Myrick Hixon EcoPark, Inc.

Sincerely,

Patrick Caffrey, President,

Myrick Hixon EcoPark, Inc.

Legal Description of the Facility

Myrick Hixon EcoPark, Inc. – Educational Center

EXHIBIT "C"

PLANNED IMPROVEMENTS BY MHEP



REVISED BUSINESS & IMPLEMENTATION PLAN

Submitted to City Park Department January 2013

- EcoPark Overview: Mission and Programs Schematic
- Business Plan Update
- Outdoor Playscape Budget and Assumptions
- List of Activities and Events

*City of La Crosse
Board of Park Commissioners*

Hixon Forest

Myrick Hixon EcoPark
*Play, Learn, Repeat
Promoting Healthy, Sustainable Living*

Myrick Marsh

PK-12 Schools

Family/Community
Activities

Outdoor
Playscapes

EE Curriculum Support	Summer Options	Teacher Prof Development
<ul style="list-style-type: none"> •Elem Curriculum •Mid & HS Schools •Private Schools 	<ul style="list-style-type: none"> •HPL Eco-Leaders •Trail Crew •HS Internships •Nature Camps •Partner with City Park/Rec 	<ul style="list-style-type: none"> •WAE conference •KEEP-energy •Flying WILD-birds •Facing the Future-CPS •LEAF-forestry •Leopold Educ Project-conservation ethics

General Signature Events (evolving)		
<ul style="list-style-type: none"> • Enchanted Forest • Earth Week site • Barn Dance • River-Ridge 		
Nature	Fun & Fitness	Citizen Science
<ul style="list-style-type: none"> • Movies, concerts, speakers • Naturalist-led "silent sports" • Geocaching • Green Wedding planning • Birthday parties • Art in Nature • Family Camps • Sustainability Activities 	<ul style="list-style-type: none"> • Wellness Events • Minutes in Motion - GL • Eat Local Challenge • Bike Share • Farmer's Markets • Snowshoe Rental • Support City & ORA web offerings 	<ul style="list-style-type: none"> • Frog Call Survey • Dec Bird Count • Internal Migratory Bird Day • Water Action Volunteers (WAV) • Marsh Research • More TBD

Wild Water	Forest Scramble	Farm Play
<ul style="list-style-type: none"> • Hydrology • Locks & Dams • Marsh and Floods • Uses & Quality 	<ul style="list-style-type: none"> • Animal Habitat • Forest Value/Uses • Vertical diversity • Invited Wildlife • Birds & Butterflies • Touch pools • Bees, Ants 	<ul style="list-style-type: none"> • Growing Cycles • Soil & Composting • Prepare, plant, harvest • Backyard ideas for healthy eating • Food Miles -toy tractors

ABOUT THE ECOPARK

City-owned Park space: 7 acres leased for EcoCenter and surrounding "Playscapes", linking education and exploration of natural habitats to surrounding marsh and 8 miles of Hixon Forest trails in fun ways; Privately funded and operated by nonprofit organization, Myrick Hixon EcoPark.

ECO-PARK REVISED BUSINESS PLAN	CURRENT STATUS Jan 2013	TRANSITION GOALS 2013 - 2016	REVISED BUSINESS PLAN For Operation by 2017
OPERATING REVENUE	\$301,745	Estimated 2% annual increase	\$650,000
Earned	32%	Increase earned income as possible	75%
Contributed	55%	Reduce need for operating donations	20%
Govt/Grants	13%	Seek grants or other funding as possible	5%
MISSION--REVENUE			
A. EDUC-SCHOOLS	Students = 4,227 (2010) Schools involved Range of programs	Create new educational modules PK-12 Partner with WI Assoc Environ Education; Explore new contracts with school districts Expand retired educator volunteers & higher ed internships	Link Playscape habitats with marsh and forest Develop student leadership Environmental Ed resource to surrounding areas Generate 10% of total budget
B. EDUC-COMMUNITY	Participants = 11,300 (2010) Revenue Sources: Programs Memberships Events Rentals	Expand awareness of "nature deficit"; Refine signature events; Increase community awareness & support; Increase membership; Partner with regional organizations; Increase revenue	Revenue Sources---projected growth in each area Serve as hub: Links to ORA & other nonprofits Co-Host free City Park event(s) annually Rent space per City approval Generate 15% of total budget using all revenue sources outlined
C. EDUC-PLAYSCAPES* (See attached)	Master Plan developed Business Plan developed Demolition occurred Barrn in place Intro work in each area Silent phase of Capital Campaign initiated	Form capital campaign team-detailed goals and strategies for final Masterplan; Expand donor base and pledges; Attract interest in outdoor space with community events, fundraisers, tours; Prepare for transition to full operation with Playscapes	Masterplan: \$4.4 million goal, \$760,000 included for long and short-term operating Start construction at 80% pledged and 50% received Open on or before June 2017 42,000 Attendance goal per year Admission Fee of \$5-\$10; 10% Free entrance Generate 50% of total budget
OPERATING EXPENSES		Continue budget with 2% annual increase	
A. OCCUPANCY COSTS: Utilities, Insurance, Maintenance, Safety	\$64,000 = 23% of budget	Anticipate rising fixed costs and new insurance requirements.	Est at 15% of new budget = \$97,500 allows for increased insurance and rising utility costs, plus additional maintenance and security
B. STAFF: FTE + Hourlies Salaries/Benefits	\$144,000 = 48% budget 3.0 FTE, Hourly staff + volunteers	Retain min 3.0 FTE. Use interns, hourlies, and more volunteers to develop, market, and oversee programs	Est 58% of new budget = 6.5 FTE; 1% raise annually with Health SA provided; Volunteers heavily utilized
C. GEN ADMINISTRATION Office, Contracted Services, Marketing, IT, Development	Gen Admin & Programs = 29% = \$87,506	Keep costs at minimum.	Est at 27% of total budget = \$175,500

**MASTER PLAN BUDGET
1/25/2013**

	Wild Water	Prairie Mystery	Forest Scramble	Farm Play	Community Space	Total
Wild Water	\$ 1,100,450.00					
Commercial Aquatic Engineering						
Excavation						
Pump house						
Sidewalks						
Utilities to location						
Plumbing						
Electrical						
Prairie Area		\$ 45,000.00				
Worm/ ant hill display						
Butterfly Garden						
Soil Profile						
Overseeding/ maintenance						
Forest Scramble			\$ 442,250.00			
Design Fees						
Tree Nests- based on (5)						
Grove Tower with roof						
Round Timber Bridge						
WT Climber						
Small Bridges - (16) ea						
Secondary Pentagon Platform w/ roof						
Roof for main platform						
Hollow logs - (3) ea						
Large branching tree						
Stepping logs						
Spider web to bluff top						
Wooden tea party						
Hanging nests						
Nest-y décor						
Wood bark/ logs to frame paths						
Wood plank walk deck and seating area						
Added safety measures to meet playground stnds						
Barn/ Garden				\$ 539,660.00		
Garden - Blackdirt						
Fencing - demo garden areas						
Concrete - animal area/ ramp to barn						
Farm play area - fencing for gardens/ misc						
Farm play - concrete - 200' x 8'						
Faux vegetables/ tractor						
Farm stand - 200 sf x \$85						
Windmill						
Plumbing - to gardens/ animal area						
Barn Interior - improvements						
Barn floor - stain floor						
Storage building - 600 sf						
Barn addition for restroom/ waiting						
Barn house FFE						
Trash area						
Greenhouse - 18' X 36'						
Miscellaneous					\$ 762,480.00	
Invited Wildlife						
Multimedia						
Site Lighting - Based on 12 poles						
Site lighting - solar						
Permanant Trails (Brick pavers)-1500' x 8' x \$8 /sf						
Gathering area sidewalk/ pavers - 40' x 15' x \$8/ sf						
Sidewalk to upper parking lot - 300' x 6' * \$5						
Fencing - Perimeter - 1350 * \$30						
Fencing - Gates						
Seawall/ retaining wall - 472' x 2' x \$45						
Community benches - 24 ea						
Trash Receptacles - 10 ea						
Information Kiosk - 6 ea						
Signage - In the park						
Signage - Way finding						
Equipment to maintain park						
Civil engineering						
Staking						
Storm water managemant						
Grading/ fill/ topsoil						
Landscaping						
Kid cleanup/ footwash						
Added office space in existing building						
Cut-de-sac/ bike trail reconstruction						
by City of La Crosse						
Totals	\$ 1,100,450.00	\$ 45,000.00	\$ 442,250.00	\$ 539,660.00	\$ 762,480.00	\$ 2,889,840.00
Inflation - 6% (2%/ year x 3 yrs)	\$ 66,027.00	\$ 2,700.00	\$ 26,635.00	\$ 32,379.60	\$ 45,748.80	\$ 173,390.40
Projected Cost for 2018 Construction	\$ 1,166,477.00	\$ 47,700.00	\$ 468,769.00	\$ 572,039.60	\$ 808,228.80	\$ 3,063,230.40
					10% Contingency	\$ 306,323.04
					Subtotal	\$ 3,369,553.44
					5% Management fee	\$ 168,477.67
					Subtotal	\$ 3,538,031.11
					Construction Financing	\$ 100,000.00
					Total Construction Budget	\$ 3,638,031.11
					Short and Long Term Operating Reserves	\$ 760,000.00
					Total Capital Campaign	\$ 4,398,031.11

Assumptions

Start construction at 80 % pledged and 50% received
 Would need \$2.2 million on hand by March 1, 2016
 Based on a \$4.4 million campaign we would have \$3.52 million pledged and \$2.2 million in hand.
 Start construction July 1, 2016

EcoPark Rental Categories

Private Events/Celebrations: Celebrate Sustainability Theme

- Birthday parties* (naturalist-led)**
- Weddings & Receptions ("green wedding guide")**
- Wedding rehearsals & rehearsal dinners**
- Anniversary parties**
- Retirement parties**
- Graduation Parties**
- Family Reunions**
- Class Reunions**
- Recitals**
- Baby Showers**
- Dances**
- Memorial Services**
- Ethnic celebrations**

Business/Professional, Non-Profit Meetings

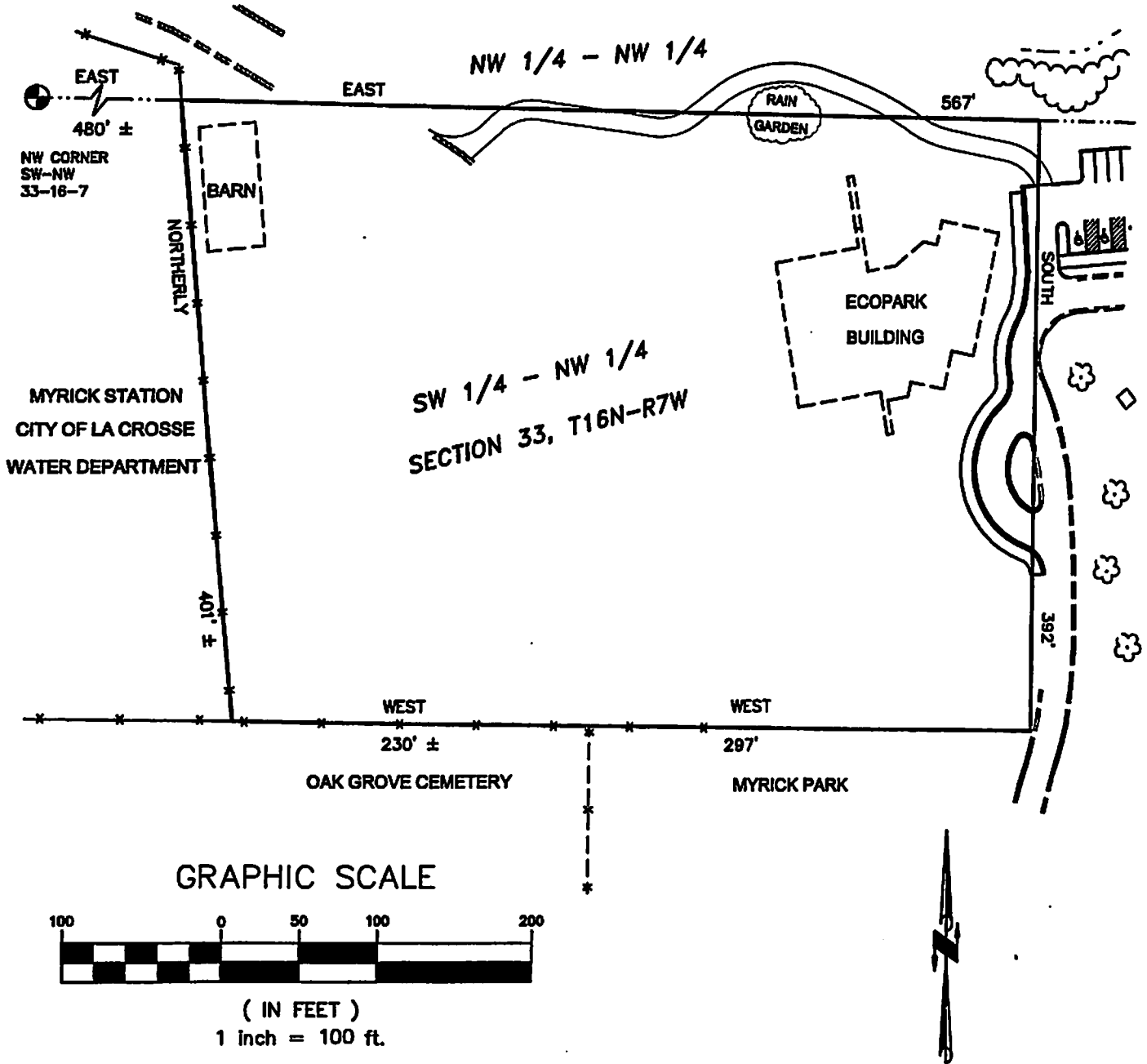
- Business meetings, retreats, & training sessions**
- Non-profit organization board or membership meetings**
- Classes & training sessions by non-profits**
- Business & non-profit organization holiday or recognition parties**
- Non-profit fund raising dinners, auctions & indoor concerts**

Community-Wide Events-Hosted on site (often co-sponsored)

- Festivals (ie Earth Day, Dulcimer Festival)**
- Farmers Market**
- Dances**
- Lectures**
- Wellness Workshops/Classes**
- Public Library video or reading events**

EXHIBIT "D"

LEGAL DESCRIPTION



MYRICK ECOPARK 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 "E"

MHEP OFFICERS, DIRECTORS AND EXECUTIVE EMPLOYEES



Key Staff - 2013

Jean Chromey
Executive Director

Stephanie Hanna
Education Coordinator

Angela Orr
Accountant/Database Coordinator

Myrick Hixon EcoPark, Inc.

Board of Directors 4/23/2012 Rev 7/7/12; 02/13; 04/13

Term End end of year	Term Number	First Name	Last Name	Address	City	State	Zip	Hphone	Wphone	Email	Officers
APPOINTED											
1	Rotary	Stephanie	Fraase	215 22nd St N	La Crosse	WI	54601	780-7220	796-0355	stephdesigns@centurytel.net	Director
2	Rotary	Paul	Borsheim	N3304 Bond Rd	La Crosse	WI	54601	783-7017	779-0400	paulborsheim@borfonconstruction.com	Secretary
3	Rotary	OPEN									
4	City-P.B.	Marvin	Wanders		La Crosse	WI	54601				Director
5	City-Mayor	Nathan	Barnhart	2301 Onalaska Ave	La Crosse	WI	54603	792-8044		barnhart.nath@uwlax.edu	Director
6	City-P.B. Chair	John	Satory	1404 Main St	La Crosse	WI	54601	782-1041	785-2779	satoriarts@centurytel.net	Director
ENDS Dec											
1	2015	1	OPEN								
2	2012	1	Kristine	4737 N. Wilshire Rd	Whitefish Bay	WI	53211	414-617-7119	783-7500	kcleary@cmclax.com	Director
3	2013	1	Jim	1715 Madison St	La Crosse	WI	54601	784-8042		jjmjiangallagher@msn.com	Director
4	2015	1	OPEN								Director
5	2014	2	Catherine	449 19th St S	La Crosse	WI	54601	498-1016	785-5151	cathkolk@gmail.com	Director
6	2012	1	Tom	218 21st St S	La Crosse	WI	54601	796-1527		teknothe@viterbo.edu	Director 3/12
7	2014	2	Dave	2505 Smith Valley Rd	La Crosse	WI	54601	781-2029	785-9577	lange.david@co.la-crosse.wi.us	Treasurer 2/13
8	2013	2	Sam	623 22nd St N	La Crosse	WI	54601	796-9371	775-6767	sam@gundluthcu.org	President
9	2015	1	OPEN								Director
10	2014	2	Tom	N1174 Bloomer Mill Rd	La Crosse	WI	54601	788-0027	775-4843	tjthomps@gundluth.org	Vice Pres
11	2014	2	Kathie	N2410 Three Town Rd	La Crosse	WI	54601	788-0996		tyser@mac.com	Director/Past-Pres
12	2014	1	Tim	974 Tahoe Drive	Onalaska	WI	54650	519-2711	392-9703	johnson.tim@mayo.edu	Director 3/12
13	2013	2	Ken	1333 Wood St.	La Crosse	WI	54601	784-8242	304-0560	kwing6@charter.net	Director
14	2013	1	Denise	W4910 Wolf Ridge Ct	La Crosse	WI	54601	792-7568	785-9190	vujnovichd@westerntc.edu	Director 3/12
	Staff	Jean	Chromey	Executive Director						ichromey@mhecopark.org	

P.B. = Park Board Member