

# USE AND FACILITY MANAGEMENT AGREEMENT BETWEEN THE CITY OF LA CROSSE AND HATCHERY LLC FOR USE OF THE FISH LAB BUILDINGS

410 VETERANS MEMORIAL DRIVE E

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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 Hatchery LLC, a Wisconsin non-stock Corporation (hereinafter referred to as “Hatchery LLC”) and effective the first day of January 2022 or upon substantial completion of the scheduled City of La Crosse Parks, Recreation, and Forestry upgrades.

WHEREAS, Hatchery LLC intends to operate the Fish Lab Buildings, see exhibit “C”, (410 Veterans Memorial Drive E) in the City of La Crosse; and

WHEREAS, the City believes it is in the best interests of the citizens of the City to allow Hatchery LLC a use agreement for operation of the buildings; and

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 Hatchery LLC is authorized to use and manage the Fish Lab Buildings;

NOW, THEREFORE, in consideration of the promises and mutual covenants of the parties hereto, IT IS AGREED that Hatchery LLC is granted a non-exclusive privilege to use the Fish Lab Buildings in Riverside Park 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 Hatchery LLC use of the Fish Lab Buildings, for the use described herein.
- b. Board. “Board” means the City of La Crosse Board of Park Commissioners.
- c. Definition of Gross Income. The term “Gross Income” as used in this Lease shall mean the gross amount received or derived from any source whatsoever on the premises, by either barter, cash, credit, or trade (whether payment is actually received for sales credit or not) from all sales or merchandise, services and from income from all other sources derived from business conducted on the premises, including orders received on the premises, but filled elsewhere. There shall be excepted from Hatchery LLC gross income, as such term is used herein, the amount of all sales tax and room tax receipts which are required to be accounted for by Hatchery LLC to any government or governmental agency.

2. TERM: This Agreement, unless earlier terminated as provided for herein, shall be effective for the time period 12:01am on January 1, 2022 through 5:00pm on December 31, 2031. Hatchery LLC may renew this Agreement for up to two (2) additional periods of five (5) years. Either party may terminate the agreement upon 12 months advanced written notice with approval of the Board of Park Commissioners.
3. PREMISES: The City grants the non-exclusive use of the Fish Lab Buildings (main building and garage) more particularly described in Exhibits "A" and "B" (floor plans) which are attached hereto and incorporated herein by this reference, including all existing structures. Hatchery LLC is further granted the non-exclusive use of the parking areas and other lands adjoining the Fish Lab Buildings. See Exhibit "C".
  - a. Hatchery LLC will be allowed to store personal property specific to Hatchery LLC related operations on the site and have access to the site for the term of this Agreement. Hatchery LLC shall insure its personal property against loss. Hatchery LLC releases the City from any future claims of personal property damage or loss.
  - b. Use of motorized vehicles on the Vietnam Veterans trail.
    1. Hatchery LLC is able to use electric personalized vehicle to shuttle guests back and forth to Hatchery LLC venue assuming any permits and any required permissions are in place. Vehicles will have slow moving signs and appropriate lights.
4. SCHEDULING AND USE OF THE BUILDINGS.
  - a. Hatchery LLC shall make available at no charge the second level of the Fish Lab buildings for up to 5 days/calendar year for community related activities.
  - b. The use of the Fish Lab buildings, see exhibit "C", and surrounding area shall be restricted to use as an event center, overnight room rental, and outdoor patio space. Any deviation from these uses must be approved by the City of La Crosse Board of Park Commissioners.
5. HATCHERY LLC RESPONSABILITIES:
  - a. Hatchery LLC shall keep the Fish Lab buildings in a state that is safe and suitable for any and all activities that are being held in the Fish Lab buildings. The City of La Crosse Parks, Recreation, and Forestry Department will be responsible for the removal of exterior ice and snow from any sidewalks and walkways immediately adjacent to Veterans Memorial Drive. Hatchery LLC will be responsible for the removal of exterior ice and snow from leased areas.
  - b. Hatchery LLC shall be responsible for all premise's maintenance and all daily operation expenses at the Fish Lab buildings and surrounding premises for all events and programs at the Fish Lab buildings. Moreover; all equipment and supplies necessary to perform these responsibilities and the cost to run and maintain said equipment shall be the responsibility of Hatchery LLC. Any substantial repairs, as described in 1. DEFINITIONS: in excess of \$10,000.00 per occurrence per calendar year shall be the expense of the City, unless such substantial repair has been caused by the action, inaction, negligence or

acts of Hatchery LLC, or its guests, users, employees, volunteers, invitees, contractors or repair persons.

- c. Hatchery LLC 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 Fish Lab buildings.
- d. Hatchery LLC shall be responsible for all trash removal and recycling from the outside trash receptacles, as well as obtaining trash and recycling dumpsters per ordinance.
- e. Hatchery LLC will pay all personal property taxes assessed for Hatchery LLC use and/or management of the Fish Lab buildings and any equipment used or owned by Hatchery LLC.
- f. Hatchery LLC shall be responsible for all renovations; however, they may ask that the City partner on any costs of renovation, based solely on the discretion of the City.
- g. Hatchery LLC shall pay all utilities, including, without limitations, water and sanitary service, electric, gas, storm water, phone, internet, or any other utility expense, when due.
- h. Hatchery LLC may not store items outside of the buildings or in the parking area.
- i. Hatchery LLC in conducting any of the above operations or uses, the Licensee and any sub-licensee must be in full compliance with all of the codes, ordinances, statutes, rules and regulations of the City of La Crosse, County of La Crosse, State of Wisconsin and the United States Government and any of their committees, boards, agencies or commissions.
- j. Hatchery LLC recognizes that the leased premises are surrounded by the Riverside International Friendship Gardens, a place of beauty and peace enjoyed by the general public, and it will do nothing to detract from these Gardens. Hatchery LLC, will not do anything that will harm or detract from the peaceful atmosphere and general public use of said Gardens. Hatchery LLC, will be responsible for any damaged caused to the Riverside International Friendship Gardens by its employees, customers, or contractors. Hatchery LLC, will work cooperatively and in good faith with the Riverside International Friendship Gardens Board and will provide outside access to the leased garage for garden tool storage.

6. CITY RESPONSIBILITIES:

- a. Maintain the park and surrounding areas to the highest standards.

7. FEES: REVENUE AND RELATED FINANCIAL MATTERS:

- a. Rent

- 1. Rent Payout Calendar

- a. Years 1 through 4      \$2200.00/month or two- and one-half percent (2.5%) of all gross annual income, see definition 1 (C) whichever is greater than Twenty-Six Thousand and 400/100 Dollars (\$26,400)/year.
    - b. Years 5 through 9      \$5000.00 /month or two- and one-half percent (2.5%) of all gross annual income, see definition 1 (C)

whichever is greater than Sixty- Thousand and 00/100 Dollars (\$60,000)/year.

- c. Years 10 through 14 \$7000.00/month or two- and one-half percent (2.5%) of all gross annual income, see definition 1 (C)whichever is greater than Eighty-Four Thousand and 00/100 Dollars (\$84,000)/year.
  - d. Years 15 through 19 \$7000.00/month or two- and one-half percent (2.5%) of all gross annual income, see definition 1 (C)whichever is greater than Eighty-Four Thousand and 00/100 Dollars (\$84,000)/year.
  - ii. Rent will be paid to the City of La Crosse and deposited in the Riverside Improvement Fund for the City of La Crosse Park, Recreation, and Forestry Department. The City of La Crosse at its discretion may use up to Ten-Thousand and 00/100 Dollars (\$10,000) of these funds to finance improvements in and around the International Gardens on an annual basis.
  - iii. Any delinquent payments shall be charged a late fee of one and one-half percent (1.5%) per month.
  - iv. The Board further is charging a refundable security deposit of one-thousand and 00/100 dollars (\$1,000.00) to protect the City against any and all expense related to the Fish Lab buildings that are to be paid by Hatchery LLC. The deposit has been paid and will be retained by the City of La Crosse Parks and Recreation Department until the expiration/termination of this agreement.
  - v. Capital Improvements are exchangeable for rent credits at up to 85% of construction costs. Pre-approval from The Board through submission of requested documentation and justification of all improvements projects is required.
- b. Late Payment Penalty and Interest
- i. Any amounts due the City shall be paid, without demand, at the office of the Treasurer, 400 La Crosse St, La Crosse, WI 54601.
  - ii. Any delinquent payments shall be charged a late fee of one and one-half percent (1.5%) per month.
- c. Income
- i. Deductions from the Gross Income. There shall be excepted from Hatchery LLC gross income, as such term is used herein, the amount of all sales tax and room tax receipts which are required to be accounted for by Hatchery LLC to any government or governmental agency.
  - ii. Accounting.
    - 1. All books shall be maintained on an accrual accounting basis.
  - iii. Records.
    - 1. On or before April 30<sup>th</sup> of each year, Hatchery LLC shall furnish the City with a balance sheet and income statement, and Schedule K 1 reviewed and approved by an accountant chosen by Hatchery LLC, certifying all income and expenses from all operations in or on the premises, divided by each department or operation. These records shall clearly set forth

the gross income made in or from the premises during the lease year just concluded and the authorized deductions, if any, therefrom.

2. On or before April 30<sup>th</sup> of each year, Hatchery LLC shall provide the City signed copies of all state and federal tax returns and all sales tax reports for the prior year for Hatchery LLC and for all activities which derived income from, in or on the premises. In the event that Hatchery LLC obtain an extension on filing tax returns and/or sales tax reports, such tax returns and/or report shall be provided to the City as required in this provision by June 30<sup>th</sup> of said year.

8. REVENUES AND LICENSES:

- a. Hatchery LLC shall have the exclusive right to sell concessions of any type on the premise, see exhibit "C", except tobacco or e-cigarettes in any form, and to keep all proceeds from these concession sales. Hatchery LLC shall ensure that all applicable state and local laws and health regulations are complied with in the exercise of its concession rights.
  - i. Hatchery LLC may not lease advertising space at The Fish Lab buildings.
  - ii. Hatchery LLC agrees to obtain and keep in good standing all licenses and permits related to its operation.
  - iii. Naming rights. The City retains all naming rights to The Fish Lab buildings.
  - iv. Hatchery, LLC reserves the right to sublease space and sell business operations. to a pre-approved, by the City of La Crosse Board of Park Commissioners, business entity with transferable leasing options.

9. MISCELLANEOUS:

- a. For any emergency, flooding or disaster related events, the City may use the facility at no charge.
- b. Assignment and Subcontracting. Except as provided herein, Hatchery LLC shall not assign this Agreement or any interest therein, nor let or underlet the Fish Lab buildings, 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 of Park Commissioners.

10. INDEMNIFICATION:

- a. To the fullest extent allowable by law, Hatchery LLC hereby indemnifies and shall defend and hold harmless the City, its elected and appointed officials, officers, employees, authorized representatives, Board Members and all 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 Fish Lab buildings 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 Hatchery LLC or of anyone acting under its direction or control or on its behalf in connection with or incident to the

performance of this Agreement. Hatchery LLC 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 Hatchery LLC, Hatchery LLC 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 Hatchery LLC or any Hatchery LLC under Workers Compensation Acts, Disability Benefits Acts, or other employee benefit acts.
  - i. 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 Hatchery LLC is located.
- c. Hatchery LLC 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. Hatchery LLC 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.

11. **INSURANCE:** Unless otherwise specified in this Agreement, Hatchery LLC shall, at its sole expense, maintain in effect at all times during the usage of the Fish Lab buildings, insurance coverage with limits not less than those set forth below with insurers and under forms of policies set forth below.

- a. **Workers Compensation and Employers Liability Insurance.** Hatchery LLC shall cover or insure under the applicable labor laws relating to workers compensation insurance, all of their employees in accordance with the laws of the State of Wisconsin. Hatchery LLC 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.** Hatchery LLC shall provide and maintain the following commercial general liability and automobile liability insurance.

- i. Coverage. Coverage for commercial general liability and automobile liability insurance shall be at least as broad as the following:
  - 1. Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 0001)
  - 2. Insurance Services Office (ISO) Business Auto Coverage (Form CA 0001), covering Symbol 1 (any vehicle)
- ii. Limits commencing November 1, 2021. Hatchery LLC shall maintain limits no less than the following commencing November 1, 2021:
  - 1. 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.
  - 2. 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
  - 3. Umbrella Liability. Six million and 00/100 dollars (\$6,000,000.00) following form excess of the primary General Liability Coverages. Coverage is to duplicate the requirements as set for herein.
  - 4. 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:
  - i. The City, its elected and appointed officials, officers, employees, authorized representatives or City 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 Hatchery LLC; premises occupied or used by Hatchery LLC; and vehicles owned, leased, hired or borrowed by Hatchery LLC. The coverage shall contain no special limitations on the scope of protection afforded to the city, its elected and appointed officials, officers, employees, authorized representatives or City volunteers. Except for the workers compensation policy, each policy shall contain a waiver of subrogation endorsement in favor of the City.
  - ii. For any claims related to this Agreement or usage of the Fish Lab buildings Hatchery LLC insurance shall be primary insurance as respects to the City, its elected and appointed officials, officers, employees, authorized representatives or City volunteers. Any insurance, self-insurance, or other coverage maintained by the City, its elected and appointed officials, officers, employees, authorized representatives or City volunteers shall not contribute to the primary insurance.
  - iii. 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 officials, officers, employees, authorized representatives or City volunteers.

- iv. Hatchery LLC 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.
- v. 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 Hatchery LLC, 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.
- vi. Such liability insurance shall indemnify the City, its elected and appointed officials, officers, employees, authorized representatives or City volunteers against loss from liability imposed by law upon, or assumed under contract by Hatchery LLC for damages on account of such bodily injury, (including death), property damage, personal injury, completed operations, and products liability.
- vii. 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.
- viii. 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, Hatchery LLC 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 the Fish Lab buildings, that involves the sale or consumption of alcohol or the use of any temporarily inflatable structures of any kind under any agreement Hatchery LLC must provide to the City insurance under the minimum standards set forth herein, naming the City as additional insured. Hatchery LLC is responsible for insuring that each sub-user meets the insurance requirements specified herein.

12. **DEFAULT AND TERMINATION:** In the event Hatchery LLC 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 a written notice thereof to Hatchery LLC, or (a) Hatchery LLC shall make an assignment of its property for the benefit of creditors, or (b) Hatchery LLC shall petition a court to be adjudged bankrupt) or (c) if a petition in bankruptcy shall be filed in any court against Hatchery LLC for more than thirty (30) days, or (d) if Hatchery LLC be judicially determined to be insolvent, or (e) Hatchery LLC 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 Hatchery LLC shall seek a reorganization under any of the terms of the National Bankruptcy Act,



as amended , or under any other insolvency law or (h) Hatchery LLC shall admit in writing its inability to pay its debts as they become due, or (i) if any final judgement shall be rendered against Hatchery LLC and remain unsatisfied for a period of thirty (30) days from the date on which it becomes final; or (j) if Hatchery LLC 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 Hatchery LLC hereunder. Cancellation shall not constitute a cancellation or waiver by the City of the remainder of the total amounts payable to City or for any damages or losses for 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 right in this Agreement.

- a. 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. Hatchery LLC shall have no access rights to or use of the Fish Lab buildings unless all insurance policies required by this Agreement are in full force and effect.
- b. In the event of termination of this Agreement for default, Hatchery LLC may make no claim for compensation for the capital improvements furnished and the City shall retain title and ownership of the said Fish Lab buildings, together with all buildings and improvements thereon, without any payment whatsoever to Hatchery LLC. No improvements or buildings shall be removed from the above described Fish Lab buildings during the term of this Agreement without the written consent of the City, except any equipment, trade, and/or personal property of Hatchery LLC which Hatchery LLC lawfully removed prior to the termination of this Agreement.

13. IMPOSSIBILITY OF PERFORMANCE: Neither the City nor Hatchery LLC 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.
14. DAMAGE AND DESTRUCTION at the Fish Lab buildings: In the case of the destruction or any substantial damage of the Fish Lab buildings resulting from fire or other casualty, either City or Hatchery LLC may terminate this Agreement upon written notice to the other, if the Fish Lab buildings cannot be repaired or rebuilt by City within thirty (30) days.
15. OWNERSHIP AND CONTROL: Hatchery LLC states that as of the date of signing of this Agreement, all persons and entities with interest in Hatchery LLC are disclosed which is incorporated herein by this reference as if set forth in full. On an annual basis, on or before the fifteenth (15<sup>th</sup>) 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.
16. ACCOUNTING: Hatchery LLC 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, Hatchery LLC or division at any time operated in or on the Fish Lab buildings; such books, records and accounts; including any sales tax reports that Hatchery LLC 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 Hatchery LLC 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 immediate default under the terms and conditions of this Agreement. All books shall be maintained on an accrual accounting basis.

17. COMPLIANCE WITH ALL LAWS: Hatchery LLC 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 Fish Lab buildings or its use, and Hatchery LLC shall, at their own cost and expense, make all additions, alterations or changes to the Fish Lab buildings or any portion thereof as may be required by a governmental authority or agency.

18. CODE COMPLIANCE:

- a. Annually. Without limitation, the following codes or their successor codes must be met annually or the Agreement will be in default.
  - i. City of La Crosse permits
  - ii. Health Department and City permits for any food and beverage operations
  - iii. Fire Department inspection requirements
- b. Environmental. Hatchery LLC 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, population control, hazardous or toxic substances and other environmental matters as the same shall be in existence during the term hereof. All of the forgoing laws, regulations and requirements are hereinafter referred to as Environmental Laws.
- c. Hatchery LLC 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 Hatchery LLC under the Environmental Laws to operate at the Fish Lab buildings. The Permits and required filings shall be made available for inspection and copying by City of La Crosse at Hatchery LLC offices upon reasonable notice and during business hours. Hatchery LLC 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 the Fish Lab buildings provided that Hatchery LLC shall handle, store, use and dispose of any such Hazardous Substance in compliance with all applicable laws in a manner which is safe and does not contaminate the Fish Lab buildings.
  - i. 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 Fish Lab buildings by any occupant of the Fish Lab buildings during the Agreement, then the reasonable costs thereof shall be reimbursed by City to

Hatchery LLC upon demand. Hatchery LLC shall deliver to City material safety data sheets describing all Hazardous Substances stored, used or disposed of on the Fish Lab buildings. Hatchery LLC shall also, from time to time, at the City's request, execute such other affidavits, representations and the like concerning Hatchery LLC best knowledge and belief regarding the presence of Hazardous Substances on the Fish Lab buildings. Hatchery LLC 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 Hatchery LLC, its agents and employees and any subtenant and its agents and employees on, under or about the Fish Lab buildings, or (ii) an actual or alleged violation of Environmental Laws in connection with the occupancy of the Fish Lab buildings by Hatchery LLC or any occupant of the Fish Lab buildings or the operation of Hatchery LLC business on the Fish Lab buildings 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 Hatchery LLC for any payment Hatchery LLC are required to make with regard to necessary testing, repair, cleanup, remediation, or detoxification with regard to any environmental damage which existed prior to Hatchery LLC occupancy of the Fish Lab buildings.

#### 19. CITY'S RIGHT OF ENTRY AND INSPECTION

- a. Right of Entry. The City shall have the right to enter the Fish Lab buildings 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 Hatchery LLC, at no costs upon ten (10) days advance notice for the purpose of verifying compliance with the terms and conditions of this Agreement.
- c. Public Record. Hatchery LLC understands and acknowledges that the City is subject to the Public Records Law of the State of Wisconsin Statute S 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. Hatchery LLC agrees to assist the City in complying with any public records request that the City receives pertaining to this Agreement. Additionally, Hatchery LLC agrees to indemnify and hold harmless the City, its elected and appointed officials, officers, employees, authorized representatives for any liability, including without limitation, attorney fees related to or in any way arising from Hatchery LLC actions or omissions which contribute to the City's inability to comply with the Public Records Law. In the event that Hatchery LLC 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.

20. ALTERATIONS AND IMPROVEMENTS

- a. Structural Changes. Hatchery LLC 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 the Board of Park Commissioners. 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, Hatchery LLC 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. Hatchery LLC shall be consulted in any discussions pertaining to alterations proposed to be made by the City to the Fish Lab buildings. Hatchery LLC shall further provide verification of the alterations' or improvements' value to the City Engineer, City Assessor and City Finance Director.
- b. Liens. Hatchery LLC shall keep the Fish Lab buildings free from any and all liens arising out of any performed, materials furnished or obligations incurred by Hatchery LLC. Upon request, Hatchery LLC shall provide verification, certification and proof that no liens or other encumbrances exist on any part of the Fish Lab buildings or portion thereto. In the event such liens or encumbrances exist, then Hatchery LLC shall obtain a release of the same or other appropriate documentation such a lien or encumbrance following receipt of a fifteen (15) day noticed from the City.

21. ABANDONMENT: Hatchery LLC agrees not to vacate or abandon the Fish Lab buildings at any time during the Agreement. Should Hatchery LLC vacate or abandon the Fish Lab buildings 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 which the City may have, the City may remove any personal property belonging to Hatchery LLC which remains in the Fish Lab buildings and store and dispose of the same, such removal, storage and disposal to be at the same expense of Hatchery LLC.

22. NOTICES: All notices to be given to the city and Hatchery LLC 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:

- a. To the Fish Lab buildings
  - i. 410 Veterans Memorial Dr. E  
La Crosse WI 54601
- b. To the City:
  - i. ATTN: City Clerk  
City of La Crosse  
400 La Crosse St  
La Crosse, WI 54601
- c. With a copy to:
  - i. ATTN: Director of Parks and Recreation  
City of La Crosse  
400 La Crosse St  
La Crosse, WI 54601

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 strength. The captions appearing at the first of each numbered section of this Agreement are inserted and included solely for the 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:** Hatchery LLC 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. Hatchery LLC 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 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:** Hatchery LLC 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 Hatchery LLC or its employees, agents, or licensees. Hatchery LLC 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 Hatchery LLC, if agents, employees or licensees in the Fish Lab buildings.
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 a 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 Fish Lab buildings together with all buildings, and improvements thereon without any payment whatsoever to Hatchery LLC.
32. **NON-DISCRIMINATION:** In the performance of the services under this Agreement, Hatchery LLC agrees not to discriminate against any employee, subcontractor or applicant because of race, religion, marital status, age, color, sex, handicap, national origin, ancestry, income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs, or student status.
33. **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.
34. **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.
35. **COUNTERPART:** 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.

## **SIGNATURE PAGE**

HATCHERY LLC

Date:

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Tiffany Smith

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Marty Walleser

BOARD OF PARK COMMISIONERS:

Date:

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PRESIDENT

MAYOR:

Date:

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Mitch Reynolds

Exhibit "A"

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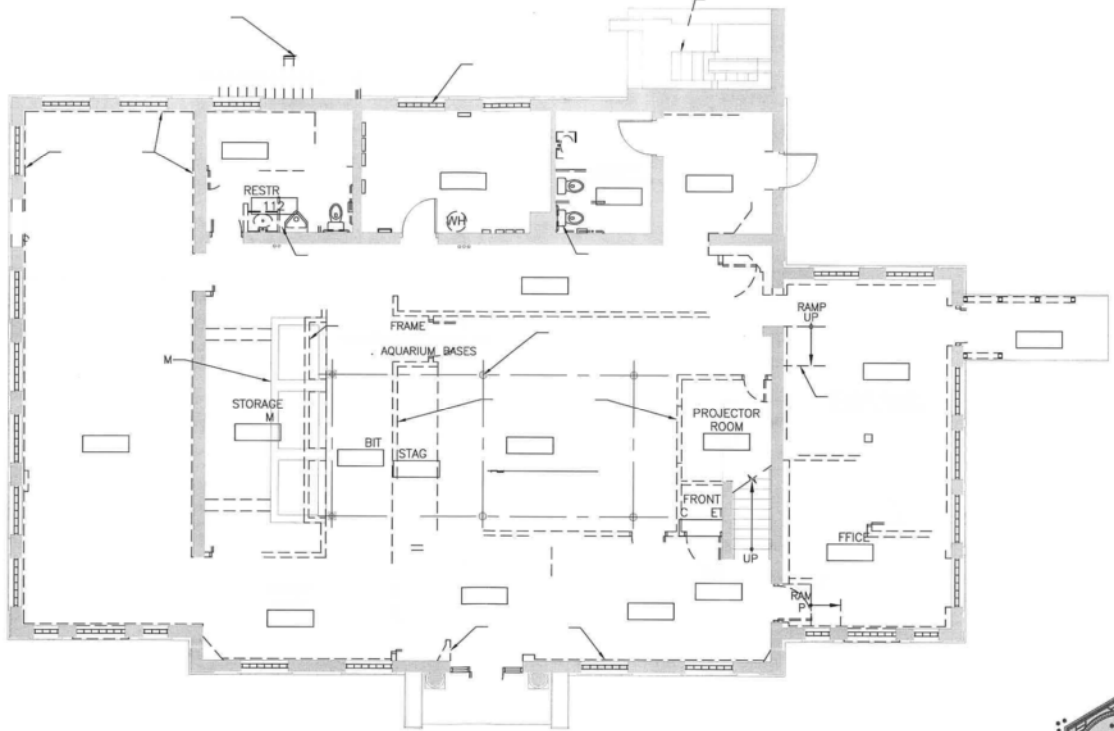
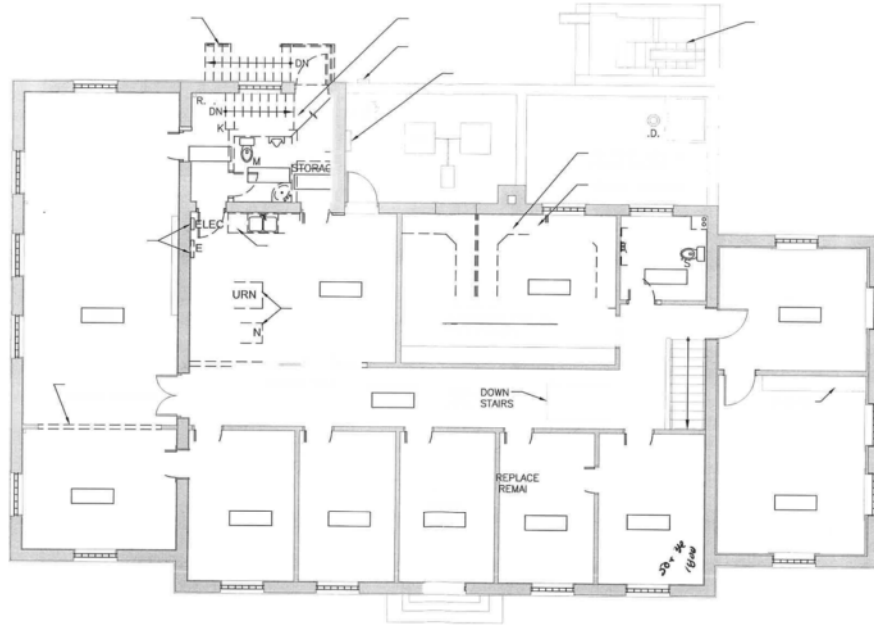


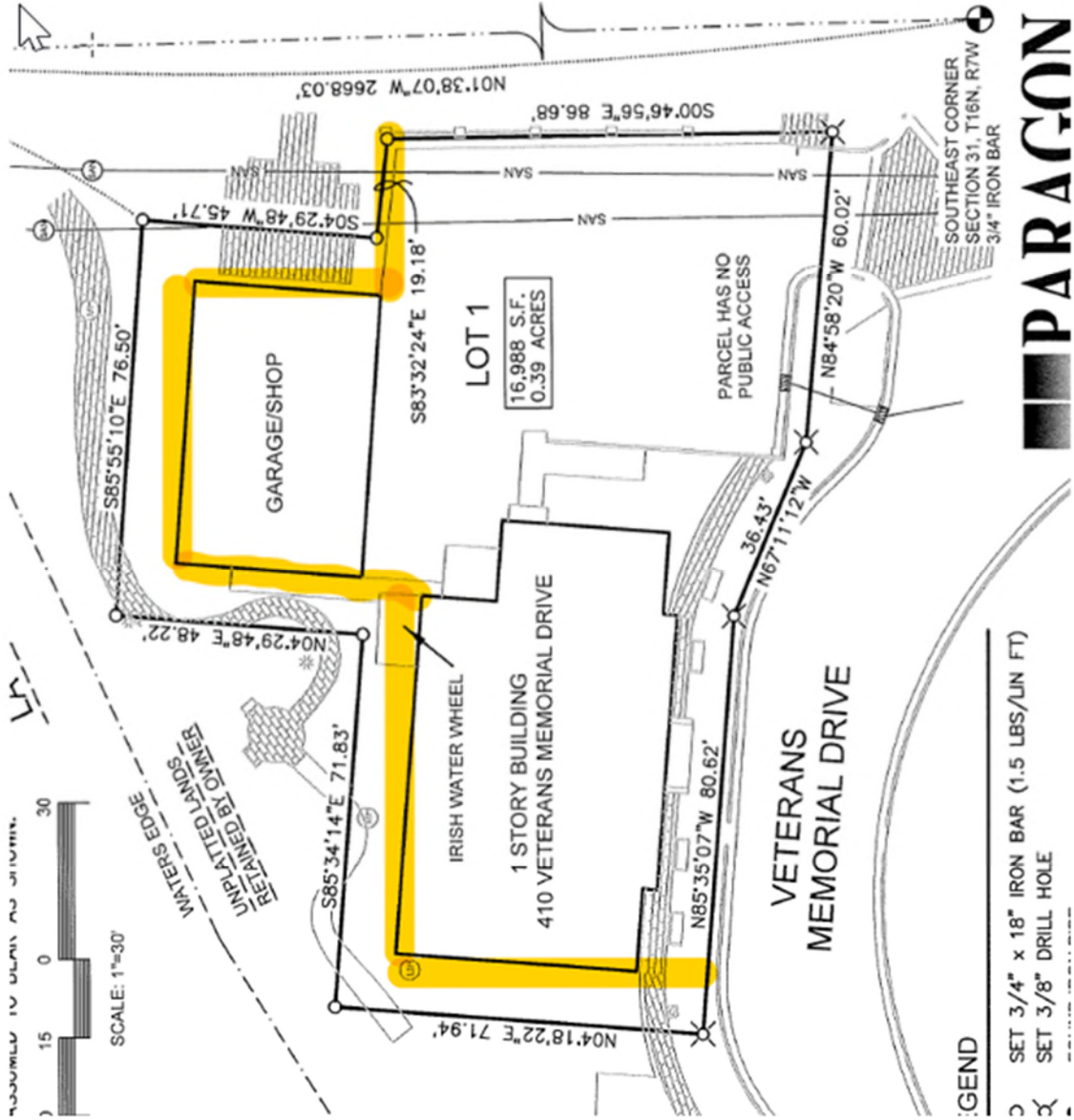


EXHIBIT "B"



DRAWINGS NOT FOR CONSTRUCTION

EXHIBIT "C"



**PARAGON**