

**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

MYRICK HIXON ECOPARK, INC.

Name

Name

Date: _____

Date: _____

CITY OF LA CROSSE

MYRICK HIXON ECOPARK, INC.

Name

Name

Date: _____

Date: _____

BOARD OF PARK COMMISSIONERS

BOARD OF PARK COMMISSIONERS

Name

Name

Date: _____

Date: _____