By Supervisors Weishan and Broderick Journal,
File No. 13-345

A RESOLUTION

To support local civic leaders and residents' consideration of pursuit of legal actions against the Public Service Commission's (PSC) recent approval of the We Energies and American Transmission Company's (ATC) joint application to construct two overhead transmission lines in Western Milwaukee County.

WHEREAS, on March 1, 2013, the Public Service Commission of Wisconsin approved a $34 million joint application for We Energies and ATC to construct two 138kV electric overhead transmission lines and an associated substation in the City of Wauwatosa ; and

WHEREAS, the East-West section route for these lines begin at a proposed interconnection point located near 120th Street and West Diane Drive in the Underwood Parkway, Route B(1) lies north of and parallel to Underwood Creek and the CP railroad until it crosses to the south side of the creek at 115th Street, the route continues, following Underwood Creek, crossing the UP railroad, Watertown Plank Road, and STH 100, the route then turns and continues east, crossing the USH 45 freeway, and then parallels the east side of the freeway south to Watertown Plank Road, turning east, the route follows the north side of the street until it reaches a point just south of the proposed MC Substation site; and

WHEREAS, the North-South section route for these lines begin at the 96th Street Substation and follows the east edge of the USH 45 freeway ROW behind the Parkside Pool Apartments, the Montessori School, and St. Therese Church properties north to Watertown Plank Road, crossing Bluemound Road and Wisconsin Avenue, and the route will eventually reach a point just south of the proposed substation site, and the route then turns to proceed north into the substation; and

WHEREAS, civic leaders and residents of Milwaukee County favored and supported the option to bury the transmission lines, due to the concern for fire and safety hazards of high voltage overhead transmission lines in public parks and along County Parkways, as well as neighborhoods and school grounds, which may carry unknown risks associated with exposure to high levels of electromagnetic fields; and

WHEREAS, on February 2, 2012, the Milwaukee County Board of Supervisors adopted a resolution (File No. 12-134) opposing the construction of these overhead transmission lines proposed by We Energies and ATC as part of the Western Milwaukee County Electric Reliability Project; and

WHEREAS, on January 18, 2012, the City of Milwaukee's Common Council opposed overhead transmission lines on 95th Street with a unanimous vote of 15-0; now, therefore

BE IT RESOLVED, that the Milwaukee County Board of Supervisors hereby opposes the Public Service Commission's decision to approve the We Energies and

American Transmission Company's joint application for the Western Milwaukee County Electric Reliability Project, which includes the provision of constructing overhead transmission lines along Underwood Creek Parkway and the County Grounds; and

BE IT FURTHER RESOLVED that the County Board supports Milwaukee County municipalities, civic leaders, and/or residents in their pursuit of legal action to overturn the PSC's approval of the Western Milwaukee County Electric Reliability Project application.

MILWAUKEE COUNTY FISCAL NOTE FORM

DATE: March 28, 2013

Original Fiscal Note ☒

Substitute Fiscal Note ☐

SUBJECT: A resolution opposing the Public Service Commission's approval of We Energies/American Transmission Company's joint application to construct overhead transmission lines in Western Milwaukee County

FISCAL EFFECT:

☒ No Direct County Fiscal Impact

☒ Existing Staff Time Required

☐ Increase Operating Expenditures
(If checked, check one of two boxes below)

☐ Absorbed Within Agency's Budget

☐ Not Absorbed Within Agency's Budget

☐ Decrease Operating Expenditures

☐ Increase Operating Revenues

☐ Decrease Operating Revenues

☐ Increase Capital Expenditures

☐ Decrease Capital Expenditures

☐ Increase Capital Revenues

☐ Decrease Capital Revenues

☐ Use of contingent funds

Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.

	Expenditure or Revenue Category	Current Year	Subsequent Year
Operating Budget	Expenditure	0	0
	Revenue	0	0
	Net Cost	0	0
Capital Improvement Budget	Expenditure	0	0
	Revenue	0	0
	Net Cost	0	0

DESCRIPTION OF FISCAL EFFECT

In the space below, you must provide the following information. Attach additional pages if necessary.

A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated. [1] If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
D. Describe any assumptions or interpretations that were utilized to provide the information on this form.

Approval of this resolution will have no fiscal effect.

Department/Prepared By Jessica Janz-McKnight, Research Analyst, County Board

Authorized Signature

Did DAS-Fiscal Staff Review? ☐ Yes ☒ No

Did CBDP Review?[2] ☐ Yes ☐ No ☒ Not Required

[1] If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.
[2] Community Business Development Partners' review is required on all professional service and public work construction contracts.

Public Service Commission of Wisconsin

Phil Montgomery, Chairperson
Eric Callisto, Commissioner
Ellen Nowak, Commissioner

610 North Whitney Way
P.O. Box 7854
Madison, WI 53707-7854

FOR IMMEDIATE RELEASE
March 1, 2013
Contact: Kristin Ruesch or Matt Pagel, 608-266-9600
Kristin.Ruesch@wisconsin.gov or Matt.Pagel@wisconsin.gov

Commission Takes Action on Western Milwaukee County Reliability Project Application

Madison - The Public Service Commission of Wisconsin (Commission) today approved the joint application of Wisconsin Electric Power Company and the American Transmission Company for authority to construct two 138 kV electric transmission lines and an associated substation in Wauwatosa in order to increase reliability for the Milwaukee Regional Medical Center and growing electric loads in the western portion of Milwaukee County.

"The is no disagreement that there is a need to increase reliability for the Western Milwaukee area and Milwaukee Regional Medical Center, and I think the Commission's action today represents our commitment to finding a balance between the needs of electric customers, the ratepayers, and landowners affected by the project," said PSC Chairperson Phil Montgomery.

"Siting was challenging in this case, and the Commission appropriately balanced economic, engineering, environmental, and community concerns to get to a good result," said Commissioner Eric Callisto.

The Commission's routing decisions favored above-ground transmission options when possible in an effort to protect ratepayers from undue costs of undergrounding. The Commissioners agreed that undergrounding is appropriate in very limited situations, generally to address technical or engineering concerns.

Commissioner Nowak stated that it must be technically necessary for the line to be undergrounded, consistent with commission precedent which states that "underground construction is not a viable transmission option unless engineering considerations require it or circumstances leave no other reasonable option available." (PSC Ref.: #165332 at p.36, Docket No 5-CE-136.)

"The fact that Wisconsin has over 11,000 miles of transmission lines and under 1% of those lines are underground demonstrates the rarity in which the decision to underground is made," said Commissioner Nowak.

The cost difference between the suggested all-above-ground transmission routes compared to the cost of all-underground routes in this case is a difference approximately $35 to $50 Million, or a total cost of $11.6M with no undergrounding vs. a total cost of $45.4 - $61.5M with all undergrounding. The total cost for transmission lines only, as sited by the Commission today, is approximately $18 million.

The total project cost as sited, including all transmission, substation, and certification costs, will be approximately $34 million.

The Commission-approved routes for the project are as follows:

> East-West Section: The route begins at a proposed interconnection point located near 120th Street and West Diane Drive in the Underwood Parkway. Route B(1) lies north of and parallel to Underwood Creek and the CP railroad until it crosses to the south side of the creek at 115th Street. The route continues, following Underwood Creek, crossing the UP railroad, Watertown Plank Road, and STH 100. The route then turns and continues east, crossing the USH 45 freeway, and then parallels the east side of the freeway south to Watertown Plank Road. Turning east, the route follows the north side of the street until it reaches a point just south of the proposed MC Substation site.
>
> North-South Section: The route begins at the 96th Street Substation and follows the east edge of the USH 45 freeway ROW behind the Parkside Pool Apartments, the Montessori School, and St. Therese Church properties north to Watertown Plank Road, crossing Bluemound Road and Wisconsin Avenue. While the Commission will return to decide where undergrounding will begin at this section, the route will eventually reach a point just south of the proposed substation site. The route then turns to proceed north into the substation.

All documents associated with the application may be found at the Commission's web site, http://psc.wi.gov, by typing in docket number 5-CE-139 into the Electronic Regulatory Filing System.

###

OFFICE OF THE COUNTY EXECUTIVE

Milwaukee County

CHRIS ABELE COUNTY EXECUTIVE

Date: June 29, 2012

To: Marina Dimitrijevic, Chairwoman, County Board of Supervisors

From: Chris Abele, County Executive

Subject: Appointment to the War Memorial Corporation Board of Trustees

Pursuant to the provisions set forth in Milwaukee County General Ordinance 45.058 and subject to confirmation by your honorable body, I am hereby appointing Jim Duff to serve on the War Memorial Corporation Board of Trustees. Jim Duff's term will expire on April 30, 2016.

Your consideration and confirmation will be appreciated.

Attached is a copy of his biography for your review.

Chris Abele
Milwaukee County Executive

cc: Supervisor Gerry Broderick, Chair, Parks, Energy & Environment Committee
Milwaukee County Board of Supervisors
Kelly Bablitch, Chief of Staff, County Board
Dave Drent, Executive Director, War Memorial Corporation
Jim Duff, Director of Veteran Services

MILWAUKEE COUNTY COURTHOUSE, 901 NORTH 9TH STREET, ROOM 306, MILWAUKEE, WI 53233
TELEPHONE (414) 278-4211 FAX (414) 223-1375 COUNTY.MILWAUKEE.GOV/COUNTYEXECUTIVE

RESUME

James A. Duff
8020 Harwood Avenue
Wauwatosa, Wisconsin 53213
(home) 414.302.1396 (work) 414.382.1753 (cell) 414.322.1581

OBJECTIVE: A position of influence in government, with responsibility for realizing cost savings while expanding services and achieving efficiencies

EXPERIENCE:

Deputy Director/Acting Director, Veterans Services 12/2004 – 12/2011
Director, Veterans Services 12/2011 - Present
Milwaukee County, Milwaukee, WI

- Principal representative to county's 60,000 veterans and their families
- Conduct outreach, make presentations at schools, meeting places and community events
- Developed new services while reducing personnel costs
- Principal advocate regarding veterans issues
- Fostered creative relationships to provide additional services to veterans
- Assist veterans/families in applying for local/state/federal benefits
- Maintained or reduced budget in every year of assignment

Adjutant, Cudworth Post 23 04/2003 – 11/2004
American Legion, Whitefish Bay, WI

- Managed administrative activities of a 900+ member veterans organization
- Made public speeches and presentations

Supervisor, Customer Services 09/1999 – 03/2003
United States Postal Service, Milwaukee, WI

- Supervised 30 union employees in mail delivery and customer service
- Managed assignments and overtime in achieving budgetary goals

Manager, Production/Distribution 04/1997 – 09/1999
Hometown Inc, Milwaukee, WI

- Supervised 35 union employees in ice production/distribution, fuel oil deliveries, and maintenance and customer service.
- Responsible for operational budget of $4M; achieved budgetary goals

Chief, Personnel Automation and Data Processing 06/1989 – 03/1997
Headquarters, Wisconsin Army National Guard, Madison, WI

- Responsible for integrity of Wisconsin Army National Guard personnel data base and all associated information and reports
- Managed Standard Installation/Division Personnel Reporting System (SIPDERS) Branch – 8 military employees
- Provided information/reports to all levels of chain-of-command
- Conducted briefings to end-users/reported to staff agencies at state level

MILITARY EXPERIENCE: Retired US Army: Active Army 1971-1978, (AGR – WIARNG) 1983-1997

EDUCATION: BA, Business/Communications, Concordia College, Mequon, WI 2004
Currently enrolled in MBA program at UW-Whitewater

ORGANIZATIONS/AFFILIATIONS: Member, VVA, American Legion, VFW; War Memorial Center Veterans Board of Directors; Past President, Soldiers Home Foundation Inc; Past Chairman, Board of Directors Grays Child Development Center; Licensed Minister, Church of God in Christ

OFFICE OF THE COUNTY EXECUTIVE

Milwaukee County

CHRIS ABELE • COUNTY EXECUTIVE

Date: February 4, 2013

To: Marina Dimitrijevic, Chairwoman, County Board of Supervisors

From: Chris Abele, County Executive

Subject: Appointment of Bill Christofferson to the War Memorial Corporation Board of Trustees

Pursuant to the provisions set forth in Milwaukee County General Ordinance 45.058 and subject to confirmation by your honorable body, I am hereby appointing Bill Christofferson to serve on the War Memorial Corporation Board of Trustees. Bill Christofferson's term will expire on February 1st, 2017.

Your consideration and confirmation will be appreciated.

Attached is a copy of his biography for your review.

Chris Abele
Milwaukee County Executive

cc: Supervisor Gerry Broderick, Chair, Parks, Energy & Environment Committee
Kelly Bablitch, Chief of Staff, County Board
Dave Drent, Executive Director, War Memorial Corporation
Bill Christofferson

MILWAUKEE COUNTY COURTHOUSE, 901 NORTH 9TH STREET, ROOM 306, MILWAUKEE, WI 53233
TELEPHONE (414) 278-4211 FAX (414) 223-1375 COUNTY.MILWAUKEE.GOV/COUNTYEXECUTIVE

BILL CHRISTOFFERSON

2937 S. Superior, Milwaukee, WI 53207

Bill Christofferson is a Vietnam veteran who has retired after a career in journalism, government and politics.

For the last several years he has served as member of the board of directors of the Milwaukee Homeless Veterans Initiative (MHVI), a non-profit charitable organization dedicated to helping homeless and at-risk veterans to reach and maintain their highest levels of independence. He is the immediate past president and current development chair of MHVI.

Christofferson spent 12 years as a newspaper reporter and editor in several Midwestern states, and was a Marine Corps combat correspondent in Vietnam during a 17-month tour in 1966-67.

He has served as chief of staff to the mayor of Milwaukee and as director of research and information for the Wisconsin Department of Justice. He served five years as a member of the board of Milwaukee World Festivals and as a commissioner of the Milwaukee Metropolitan Sewerage District.

For much of the last 20 years before his retirement he was a political campaign consultant to candidates for federal, state and local office in Wisconsin.

He is the author of a biography of the late Wisconsin Gov. and U.S. Sen. Gaylord Nelson, *"The Man From Clear Lake: Earth Day Founder Gaylord Nelson,"* published by the University of Wisconsin Press.

He and his wife, Karin Borgh, have lived in Bay View since 1996.

OFFICE OF THE COUNTY EXECUTIVE
Milwaukee County
CHRIS ABELE • COUNTY EXECUTIVE

4

Date: February 4, 2013

To: Marina Dimitrijevic, Chairwoman, County Board of Supervisors

From: Chris Abele, County Executive

Subject: Appointment of Matt Flynn to the War Memorial Corporation Board of Trustees

Pursuant to the provisions set forth in Milwaukee County General Ordinance 45.058 and subject to confirmation by your honorable body, I am hereby appointing Matt Flynn to serve on the War Memorial Corporation Board of Trustees. Matt Flynn's term will expire on February 1st, 2017.

Your consideration and confirmation will be appreciated.

Attached is a copy of his biography for your review.

Chris Abele
Milwaukee County Executive

cc: Supervisor Gerry Broderick, Chair, Parks, Energy & Environment Committee
Kelly Bablitch, Chief of Staff, County Board
Dave Drent, Executive Director, War Memorial Corporation
Matt Flynn

MILWAUKEE COUNTY COURTHOUSE, 901 NORTH 9TH STREET, ROOM 306, MILWAUKEE, WI 53233
TELEPHONE (414) 278-4211 FAX (414) 223-1375 COUNTY.MILWAUKEE.GOV/COUNTYEXECUTIVE

Quarles & Brady LLP

Home address:
2720 E Bradford Ave
Milwaukee, WI 53211-4502

ATTORNEY PROFILE

Milwaukee Office
411 East Wisconsin Avenue
Suite 2350
Milwaukee, Wisconsin 53202

Contact
(414) 277-5315
Fax: (414) 978-8914
matthew.flynn@quarles.com

RELATED PRACTICE GROUPS

- Litigation & Dispute Resolution
- Antitrust & Trade Regulation Litigation
- Financial Institutions Litigation
- Securities Litigation
- Trade Secrets and Unfair Competition Litigation
- Antitrust, Trade Regulation & Franchising
- Lender Liability Task Force
- Government Affairs Compliance
- ERISA Litigation
- Franchise and Distribution
- Internal Investigations
- Lender Liability

Matthew J. Flynn / Partner

Professional Experience
Matt Flynn is considered one of Wisconsin's foremost litigators handling highly complex and often highly controversial matters. His extensive experience includes:

- Defending individuals and corporations who are the subjects of Securities and Exchange Commission proceedings and investigations.
- Representing defendants in class action securities cases.
- Representing news organizations in cases involving libel, invasion of privacy and newsgathering torts.
- Complex commercial litigation.
- Advising Clients on Internal Investigations.

Representative Cases: Complex Commercial Litigation:

- *Johnson Controls, Inc. v. Employers Insurance of Wausau*, 264 Wis.2d 60, 665 N.W.2d 257 (July 11, 2003). Mr. Flynn successfully represented Johnson Controls when it sued its comprehensive general liability insurers to recover costs incurred for environmental cleanup of contaminated sites.
- *Lorraine Wilson, et al. v. ATM Enterprises, Inc. d/b/a First American Rental Center*, Case No. 98-CV-005945. Mr. Flynn successfully represented ATM Enterprises, Inc. in settlement of this class action in which the plaintiff class alleged that the defendant violated the Wisconsin Consumer Act and other Wisconsin laws protecting consumer interests.
- *Trickle, et al. v. Air Products and Chemicals, et al.*, Case No. 95-CV-3758. Mr. Flynn represented Air Products and Chemicals in a class action alleging defendant supplied welding products containing manganese and other metallic substances used at sites where the plaintiff class was exposed to welding emissions containing manganese and other metallic substances. Mr. Flynn's motion to dismiss, granted by the Court, dismissed Mr. Flynn's client with prejudice.
- *Pritzlaff v. Archdiocese of Milwaukee*, 194 Wis.2d 301, 533 N.W.2d 780 (June 27, 1995). In this highly emotional and controversial case, Mr. Flynn successfully defended the Archdiocese of Milwaukee against sexual abuse claims

RELATED NEWS

Thirty-Eight Quarles & Brady Attorneys Selected for Inclusion in 2012 Wisconsin Super Lawyers® - 18 Named to Rising Stars List

Quarles & Brady Attorneys Named in The Best Lawyers in America 2013® - 160 Quarles & Brady Attorneys Recognized Nationally

Thirty-Nine Attorneys Selected for Inclusion in 2011 Wisconsin Super Lawyers® - 14 Named to Rising Stars List

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brought by a victim 30 years after the alleged incidents.

- *John BBB Doe v. Archdiocese of Milwaukee*, 211 Wis.2d 312, 565 N.W.2d 94 (June 27, 1997). Seven alleged victims claiming they were sexually abused by priests, while they were minors, brought damage actions against diocese, churches and priests. The Supreme Court ruled in favor of Mr. Flynn's client, the Archdiocese.

- *Annunzio C. Ferraro v. Hyatt Corporation, 124 Wis.2d 154, 368 N.W.2d 666* (June 5, 1985). A former hotel employee brought a wrongful discharge action against Mr. Flynn's client, Hyatt Corporation. The Supreme Court held that an employee handbook may convert an employment at will relationship into one that can be terminated only by adherence to contractual terms in the handbook. However, the Court ruled in favor of Mr. Flynn's client on factual grounds.

  Securities Litigation:
  - *Joseph White, et al. v. Heartland High-Yield Municipal Bond Fund, et al.,* Consolidated Case No. 00-C-1388. Mr. Flynn successfully represented Heartland Group, Inc. in a class action by investors in several Heartland funds.

  - *In re Van Wagoner Funds, Inc. Securities Litigation,* Master File No. C-02-03383 JSW – Consolidated. Mr. Flynn has successfully represented UMB/Sunstone, one of the defendants and the administrator of the Van Wagoner Funds, in a class action brought by disgruntled investors.

  - *Decade's Monthly Income and Appreciation Fund v. W&H*, 173 Wis.2d 665, 495 N.W.2d 335 (February 18, 1993). Mr. Flynn successfully represented the limited partnership in the malpractice case brought against a law firm and its legal malpractice insurer.

  - *Federal Savings and Loan Insurance Corporation v. Robert W. Quinn and Daniel J. Gannon*, 922 F.2d 1251 (January 7, 1991). In an action by FSLIC, Mr. Flynn successfully represented an officer of a failed thrift recruited by FSLIC to prepare the thrift for acquisition.

  Media:
  - *United States of America v. Anthony J. Peters Appeal of Hearst Corporation and Newspapers, Inc.*, 754 F.2d 753 (February 8, 1985). Mr. Flynn successfully represented the Hearst Corporation's WISN-TV affiliate in a case involving the exclusion of the public and the media from *voir dire* of prospective jurors in a criminal case, and the exclusion of a reporter from access to admitted exhibits during the pendency of the trial.

  - *Bay View Packing Company vs. Jerry Taff*, 198 Wis. 2d 653, 543 N.W. 2d 522 (Ct. App. 1995). Mr. Flynn successfully represented an affiliate of the Hearst Corporation, WISN-TV, in a libel case in which the

court ruled that the plaintiff was a limited purpose public figure.

Education and Honors

- University of Wisconsin Law School (J.D., 1975)
  Order of the Coif (Member), *Wisconsin Law Review* (Editor in Chief, 1974-1975).
- Yale University (B.A., 1969)

Bar Admissions

Wisconsin, 1975

Court Admissions

U.S. Supreme Court
Wisconsin Supreme Court
U.S. Court of Appeals, 7th Circuit
U.S. District Court, Eastern District of Wisconsin

Professional Recognition

Listed in *The Best Lawyers in America*® (2010-present: Commercial Litigation).

"Wisconsin Lawyer of the Year," *Wisconsin Law Journal*.

Selected for inclusion in the 2005-2012 *Wisconsin Super Lawyers*® lists (General Litigation).

Martindale-Hubbell AV® Peer Review Rated.

Professional and Civic Activities

- Law clerk to the Hon. Thomas E. Fairchild, Chief Judge of the U.S. Court of Appeals for the 7th Circuit, 1975-1976.
- Milwaukee Bar Association (Member).
- American Bar Association (Member).
- State Bar of Wisconsin (Member).
- Navy veteran.

Mr. Flynn has appeared in numerous other state and Federal courts including Illinois, California, South Dakota, Minnesota and Ohio.

Languages

Spanish

COUNTY OF MILWAUKEE
INTER-OFFICE COMMUNICATION

DATE: April 23, 2013

TO: Marina Dimitrijevic, Chairperson, County Board of Supervisors

FROM: Greg High, Director of AE&ES Section, Department of Administrative Services

SUBJECT: **Urban Non-Point Source & Storm Water (UNPS&SW) Program Planning Grants**

POLICY

The DAS Director is requesting authorization to have the Department of Administrative Services—Architecture, Engineering and Environmental Services Section apply for and accept UNPS&SW Program Planning grants offered by the Wisconsin Department of Natural Resources in fiscal year 2014.

BACKGROUND

Milwaukee County was issued a storm water permit from the Wisconsin Department of Natural Resources (WIDNR) in 2006. The permit requires that the County develop and implement a public involvement and participation program intended to increase awareness of storm water pollution impacts on surface waters and to encourage changes in citizen behavior to reduce impacts.

Other municipalities in the region have similar requirements, and some have banded together to improve the effectiveness of their limited resources. Certain non-profit organizations in the region also share similar goals of improving awareness about the adverse impacts from storm water, such as the Southeastern Wisconsin Watershed Trust, Inc. (SWWT). Milwaukee County Department of Administrative Services and County Parks Department staff have worked cooperatively with SWWT in coordinating water pollution control efforts in the region. County staff have also been active in working with the Menomonee River Group (MRG), a partnership of municipal governments active in that watershed. SWWT and MRG are working together with the WIDNR in efforts to increase water quality improvements in the region, including efforts to better coordinate storm water education efforts like those potentially supported by this WIDNR initiative.

WIDNR is making available planning grant funds that can be used for public education and awareness. The WIDNR Urban Non-Point Source & Stormwater Program Planning Grants are offered to Wisconsin counties, cities, towns, and villages as competitive grant process to improve urban water quality by limiting or ending sources of urban nonpoint source pollution, also known as storm water or run-off pollution. As storm water accounts for more than 90% of the pollutant loadings in the rivers and streams of greater Milwaukee, additional improvements in water quality must include work to reduce this category of pollutants. Among the eligible activities allowed by the grant are "Public participation, education, and outreach activities."

As noted, the Urban Non-Point Source & Storm Water Planning Grant funding is available to government entities, but not to non-governmental organizations such as SWWT and MRG. In 2011, Milwaukee County applied for and was awarded a similar grant. This application will seek to continue the public education efforts started during the previous grant.

As an eligible entity, Milwaukee County can apply for this grant and SWWT can perform the public education activities outlined in the proposal scope and strategy, working on behalf of its municipal partners. The cost share required by the WIDNR would be provided by SWWT, using both its own resources, funds raised through SWWTs fundraising efforts, and with funding offered by the other municipal partners working with SWWT. Should SWWT be unable to provide the required cost share, DAS will not accept the grant.

RECOMMENDATION

It is recommended that the DAS Director be authorized to have the Department of Administrative Services—Architecture, Engineering and Environmental Services Section apply for and accept an Urban Non-Point Source & Storm Water Planning Grant for the purposes of public education and outreach on storm water impacts.

Prepared by: Stevan Keith, P.E., Sustainability & Environmental Engineer

Approved by:

Greg High, Director, AE&ES Section
Department of Administrative Services

cc: Chris Abele, County Executive
Supervisor Gerry Broderick, Parks, Energy & Environment Committee Chairman
Amber Moreen, Chief of Staff
Scott Manske, Comptroller
Pam Bryant, Comptroller Office
Dan Laurila, Budget Analyst, DAS
Kimberly Walker, Corporation Counsel
Martin Weddle, Research Analyst, County Board
Don Tyler, Department of Administrative Services
Janelle Jensen, Parks, Energy & Environment Committee Clerk
Josh Fudge, Interim Fiscal & Budget Administrator
Don Tyler, Director, Department of Administrative Services

From the Director of Administrative Services requesting authority to apply for and accept grants offered by the Wisconsin Department of Natural Resources, by recommending adoption of the following:

A RESOLUTION

WHEREAS, the Wisconsin Department of Natural Resources is offering Urban Non-Point Source & Storm Water (UNPS&SW) Program Planning grants for 2014 that can be used for public education regarding storm water management and water quality impacts; and

WHEREAS, Milwaukee County is responsible for the administration of a County-wide stormwater discharge permit issued by the Wisconsin Department of Natural Resources, which includes the requirement to develop and implement a public education and outreach plan; and

WHEREAS, as part of its education & outreach efforts, Milwaukee County is a member of the Menomonee River Group (MRG), a consortium of municipalities organized to address public education and outreach in communities within the Menomonee River watershed, and actively supports the Southeastern Wisconsin Watersheds Trust, Inc. (SWWT), an organization created to pursue improvements in surface waters in the Greater Milwaukee region; and

WHEREAS, Milwaukee County is eligible to apply for the UNPS&SW grant but MRG and SWWT are not, but Milwaukee County can apply on behalf of SWWT who could then execute the proposed scope of work; and

WHEREAS, any match funding would be provided by MRG or SWWT; and

WHEREAS, the projects would not have long-term maintenance obligations; and

WHEREAS, the funds will be awarded in fiscal year 2014; now therefore

BE IT RESOLVED, that the County Board of Supervisors does hereby authorize the DAS Director to have the Department of Administrative Services—Architects, Engineers and Environmental Services Section apply for and accept UNPS&SW Program-Planning grants for fiscal year 2014,

contingent on the required match funding being provided by MRG or SWWT.

MILWAUKEE COUNTY FISCAL NOTE FORM

DATE: 4/24/13

Original Fiscal Note ☒

Substitute Fiscal Note ☐

SUBJECT: UNPS&SW Program Planning Grant

FISCAL EFFECT:

☒ No Direct County Fiscal Impact

☒ Existing Staff Time Required

☐ Increase Operating Expenditures
(If checked, check one of two boxes below)

☐ Absorbed Within Agency's Budget

☐ Not Absorbed Within Agency's Budget

☐ Decrease Operating Expenditures

☐ Increase Operating Revenues

☐ Decrease Operating Revenues

☐ Increase Capital Expenditures

☐ Decrease Capital Expenditures

☐ Increase Capital Revenues

☐ Decrease Capital Revenues

☐ Use of contingent funds

Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.

	Expenditure or Revenue Category	Current Year	Subsequent Year
Operating Budget	Expenditure	NA	NA
	Revenue	NA	NA
	Net Cost	0	0
Capital Improvement Budget	Expenditure	0	0
	Revenue	0	0
	Net Cost	0	0

DESCRIPTION OF FISCAL EFFECT

In the space below, you must provide the following information. Attach additional pages if necessary.

A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated. [1] If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
D. Describe any assumptions or interpretations that were utilized to provide the information on this form.

A. The DAS Director is requesting authorization to have the DAS A&E&ES Division apply for and accept an Urban Non-Point Source and Storm Water Program Planning Grant for FY 2014.
B. No net increase or decrease in the annual budget. Milwaukee County staff currently devote staff time to this issue. Our time spent on administration of the grant would be absorbed in the existing budget.
C. This is a one-time application for the year 2014. The match amount would be provided by SWWT.
D. None

Department/Prepared By DAS-Environmental Services, Steve Keith

Approved by:

Greg High, Director AE&ES
Dept of Administrative Services

Did DAS-Fiscal Staff Review? ☐ Yes ☒ No

Reviewed With:

[1] If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.

REVISED

MILWAUKEE COUNTY FISCAL NOTE FORM

DATE: 4/22/13

Original Fiscal Note ☒

Substitute Fiscal Note ☐

SUBJECT: UNPS&SW Program Planning Grant

FISCAL EFFECT:

☒ No Direct County Fiscal Impact

☒ Existing Staff Time Required

☐ Increase Operating Expenditures
(If checked, check one of two boxes below)

☐ Absorbed Within Agency's Budget

☐ Not Absorbed Within Agency's Budget

☐ Decrease Operating Expenditures

☐ Increase Operating Revenues

☐ Decrease Operating Revenues

☐ Increase Capital Expenditures

☐ Decrease Capital Expenditures

☐ Increase Capital Revenues

☐ Decrease Capital Revenues

☐ Use of contingent funds

Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.

	Expenditure or Revenue Category	Current Year	Subsequent Year
Operating Budget	Expenditure	NA	NA
	Revenue	NA	NA
	Net Cost	0	0
Capital Improvement Budget	Expenditure	0	0
	Revenue	0	0
	Net Cost	0	0

DESCRIPTION OF FISCAL EFFECT

In the space below, you must provide the following information. Attach additional pages if necessary.

A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated.[1] If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
D. Describe any assumptions or interpretations that were utilized to provide the information on this form.

A. The DAS Director is requesting authorization to have the DAS A&E&ES Division apply for and accept an Urban Non-Point Source and Storm Water Program Planning Grant for FY 2014.

B. No net increase or decrease in the annual budget. Milwaukee County staff currently devote staff time to this issue. Our time spent on administration of the grant would be absorbed in the existing budget.

C. This is a one-time application for the year 2014. The match amount would be provided by SWWT.

D. None

Department/Prepared By DAS-Environmental Services, Steve Keith

Approved by:

Greg High 4/30/13

Greg High, Director
DAS -AE&ES

Did DAS-Fiscal Staff Review? ☐ Yes ☒ No

Did CBDP Review?[2] ☐ Yes ☐ No ☒ Not Required

Reviewed With:

[1] If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.

COUNTY OF MILWAUKEE
INTEROFFICE COMMUNICATION

Date: April 8, 2013

To: Marina Dimitrijevic, Chairperson, Milwaukee County Board of Supervisors

From: Greg High, Director, Architecture, Engineering and Environmental Services Section

Subject: **Milwaukee County NR 216 Permit Annual Report**
Informational Report

Background

The Wisconsin Department of Natural Resources (WDNR) issued an NR 216 Stormwater Permit to Milwaukee County on December 15, 2006. The permit requires that Milwaukee County submit an annual report to the WDNR by March 31st each calendar year. The annual report provides status updates on each of the permit requirements. The permit further requires that the Milwaukee County Board of Supervisors review or be apprised of the content of the report.

Prepared by: Tim Detzer, P.E. Environmental Engineer

Approved by:

Gregory High, P.E., Director
Architecture, Engineering and Environmental Services Section.

Attachments: 2012 Annual Report, Milwaukee County NR 216 Permit

cc: Chris Abele, County Executive
Supervisor Gerry Broderick, Parks, Energy & Environment Committee Chairman
Amber Moreen, Chief of Staff
Scott Manske, Comptroller
Pam Bryant, Comptroller Office
Craig Kammolz, Fiscal & Budget Director, DAS
Josh Fudge, Budget Analyst, DAS
Kimberly Walker, Corporation Counsel
Martin Weddle, Research Analyst, County Board
Don Tyler, Director, Department of Administrative Services
Janelle Jensen, Parks, Energy & Environment Committee Clerk

MS4 Annual Report
(Due by March 31, 2013)

Please use this template to assist in compiling information for the annual report. Use of this template is optional. Please refer to the permit language for the information minimally required to be submitted in the reporting year. If you have any questions, please contact Bryan Hartsook at (262) 574-2129 or by email at Bryan.Hartsook@wisconsin.gov. Please submit a signed copy of the annual report and any attachments to my attention at the Waukesha Service Center: **141 NW Barstow St., Rm 180, Waukesha, WI 53188**

** ELECTRONIC SUBMITTALS ARE ACCEPTABLE **

Municipality: **Milwaukee County**			Reporting Year: **2012**
Name of Permit Group (if applicable):	WPDES Permit No. **WI-S050113-1**		Facility ID No. (FIN):
Contact Information:			
Name: Tim Detzer	Title: Environmental Engineer		
Mailing Address: 2711 W. Wells Street #213	City: Milwaukee	State: WI	Postal Code 53208
E-mail Address: tim.detzer@milwcnty.com	Telephone No: (414) 278-2988		

Section I. Summarize program activities implemented during the reporting year to maintain compliance with the six minimum control measures identified in the permit. Please include the management practice, individual or department responsible, measurable goals, and activities planned for next year. Amendments to the planned activities and/or changes to measurable goals should also be identified. *Add rows or attach additional sheets as needed*

A. PUBLIC INVOLVEMENT, EDUCATION, AND OUTREACH

BMP Description:

Turf Quality Workshop

On April 27, Milwaukee County hosted a workshop on maintaining turf quality while using less fertilizer. Fortin Consulting led the workshop. The intent of the workshop was to educate about ways to reduce fertilizer amounts, thereby saving money and reducing negative impacts on nearby waterways.

Franklin Sports Complex Parking lot

On November 8, a media event was held to recognize the opening of the reconstructed parking lot at the Sports Complex. The parking lot features permeable pavement, which will reduce the impact from storm water runoff to the nearby Root River. The Milwaukee County Parks also posted construction progress on their Facebook Page and permanent signage is planned for 2013 to educate Sports Complex visitors.

Menomonee River Group Public Education Committee

In 2012 Milwaukee County made a $1,600.00 contribution to support a regional public education program spearheaded by the Menomonee River Group Public Education Committee. These funds were used to develop and implement a multi-media public education program.

Milwaukee County Zoo

The Milwaukee County Zoo has erected a sign to educate the more than 1.2 million yearly visitors on storm water runoff. They also plan to erect signs to describe the rainwater collection system that were installed in 2012 (See Section F).

Responsible Dept./Person:

Department of Adminsitration, Facilities Management Division, Architecture, Engineering & Environmental Services Section

Measurable Goal(s):
Please see above section BMP Description

Progress Made Towards Achieving Goal(s):
Please see above section BMP Description

Planned Activities for Next Reporting Year:
A green roof was installed on top of one of the flat roof buildings connecting the Domes at Mitchell Park Conservatory. An educational display will be installed inside the building to show how the green roof was constructed and to describe its benefits.

Milwaukee County intends to continue its support of the Menomonee River Group Public Education Committee.

Program Modifications or Changes to Measurable Goal(s):
NA

B. ILLICIT DISCHARGE DETECTION AND ELIMINATION

Screening Strategy (priority areas identified in plan?):
Milwaukee County's strategy for detecting illicit discharges and connections is described by the following activities:
1. maintenance and upgrades at County facilities
2. development and implementation of SWPPPs at applicable facilities
3. field screening of major outfalls
4. tracking and containing spills
5. regular maintenance of storm sewers
6. continued refinement of the County's stormwater map
7. education of County employees
8. Milwaukee County's CMOM Program
9. targeted illicit connection program

Number of Outfalls Screened, Parameters Used, Detection Limits:
See Attachment 1

Number of Illicit Discharges / Illegal Connections Detected (identify outfall ID numbers):
No illicit discharges or detection were found in 2012.

In 2012 Milwaukee County investigated an incident where foaming was reported at stormwater pond #1on the County Grounds. After investigation it was determined that the foaming was caused by a fire suppressant that entered the storm system as a result of the Wauwatosa Fire Department putting out a coal fire at the WE Energies power plant on Watertown Plank Road.

Screening Strategy for Next Reporting Year (identify priority areas / basins and outfall ID's):
The standard screening strategy as outline above will continue in 2013.

Milwaukee County will also be continuing an investigation into sources of human fecal contamination in stormwater outfalls owned by Milwaukee County. The investigation will be conducted by Clark Dietz using storm sewer and sanitary sewer mapping and the analytical results of outfall sampling performed by the Great Lakes Water Institute. In 2013, several outfalls along the Menomonee River with a history of human fecal contamination will be monitored during dry weather for flow and water samples will be taken if flow is present.

Storm Sewer Map Updated? (summarize changes identifying basins and outfall ID's):
There were no updates to Milwaukee County's storm sewer map in 2012.

C. CONSTRUCTION SITE POLLUTANT CONTROL

Target Number of Inspections (measurable goal, can be represented as percentage of permits issued):
Milwaukee County does not issue construction site erosion control permits, but defers to municipalities within Milwaukee County to write and enforce ordinances. Milwaukee County conforms to local municipal erosion control ordinances on all applicable construction sites.

Number of Permit Applications Received / Number of Permits Issued:
NA

Individual(s) Responsible for Plan Review, Inspection, and Enforcement Procedures:
NA

Number of Inspections Completed:
NA

Number of Enforcement Actions and Description:
NA

Changes in Inspection and /or Enforcement Strategy and Protocol:

NA

D. POST-CONSTRUCTION STORM WATER MANAGEMENT

Number of Storm Water Management Plans Reviewed:
Milwaukee County reviews stormwater management plans for development on and connections to County stormwater structures within County Trunk Highways. These plans are also reviewed by the local municipality. There were no plans reviewed in 2012.

Approved or Scheduled Ordinance Updates:
None. Milwaukee County defers to local municipalities within the County to write and enforce post-construction storm water management ordinances.

Number of Redevelopment Sites Reviewed:
There were no redevelopment sites reviewed in 2012.

Are you Documenting TSS Reductions Achieved on Redeveloped Sites? (for later inclusion in MS4 pollutant loading analysis):
Milwaukee County will not be taking TSS reduction credit for redevelopment along County Trunk Highways.

Inspection and/or Scheduled Maintenance of Facilities Where a Long-Term Maintenance Agreement was Recorded:
None.

E. POLLUTION PREVENTION

Estimate quantity of Street Sweepings and Catch Basin Cleanings Collected:
Milwaukee County has collected approximately 426 cubic yards of material through street sweeping and 44 cubic yards from catch basin cleaning. Please see attachment 2.

Summarize Findings of Municipal Yard Inspection(s), SWPPP Implemented and Up to Date?:
All Stormwater Pollution Prevention Plans are up to date. See attachment 3 for inspection reports.

Updates to Yard Waste Collection:
Milwaukee County does not collect residential yard waste. Plant material from parks and County facilities is collected and reused. Woody materials are chipped for mulch and grass clippings and leaves are left in place except on golf courses where they are moved to a different location.

Winter Road Maintenance Program (description and estimate quantity of anti-icing or deicing materials used):

		STATE	COUNTY
Salt:	26,438 tons	22,962	3,476
Liquid CaCl:	25,670 gals.	21,150	4,520
Dry CaCl:	15.33 tons	14	1.33
Salt Brine:	39,085 gals.	35,885	3,200
Sand/Salt:	0 tons	0	0

Planned Activities for Next Reporting Year:
Milwaukee County has hired Sigma Environmental to design a catch basin dewatering system to dewater material removed from catch basins prior to disposal at a licensed landfill. The intent is to lower the cost of landfilling the material to be able to clean more catch basins within existing budgets. The design has been on hold because the target site is within areas being considered for the Wisconsin Department of Transportation's Zoo Interchange reconstruction.

Program Modifications or Changes:
NA

F. STORM WATER QUALITY MANAGEMENT

Have there been any changes in implementation, maintenance, mapping or modeling of storm water management practices in the past year? If yes, please complete the remainder of Section F.

Yes	No

Pollutant Loading Analysis:

Date of last model run:	2010	"No Controls" Load (tons/yr):	1,218,826.20	"With Controls" Load (tons/yr):	782,880.40
Model Version Used:	SLAMM 9.4.0	Average Unit Area Load (lbs/acre/yr):		TSS Reduction %	35.8

Storm Water Management Plan:

If TSS percent reduction is less than 20%, has a strategy been developed under a municipal-wide storm water management planning effort to acheive compliance?

Projected Timeframe to Achieve 20% TSS Reduction (if applicable):

BMPs Implemented in Reporting Year:

The Milwaukee County Sports Complex parking lot was reconstructed and includes a large 2-acre area of permeable pavers to reduce the amount of polluted storm water runoff from the site that flows into the nearby Root River.

The Doctors Park parking lot reconstruction included a sedimentation chamber to reduce polluted runoff and a 30% reduction in total impervious area.

A green roof was installed at the Milwaukee County Domes.

The Milwaukee County Zoo installed two cisterns that collect roof runoff. The water is used for washing pavement.

BMP Maintenance Activities in Reporting Year:

Street sweeping and catch basin cleaning were completed. See Attachment 2.
BMP Inspections are completed twice annually. See Attachment 4.

Agreements or Discussions with Other Municipalities to Employ a Regional Watershed Approach?

Milwaukee County has joined the Menomonee River Watershed-Based MS4 Permit group.

Milwaukee County is assisting the MMSD on their efforts to develop a Regional Green Infrastructure (GI) Plan, that will serve to document the locations and benefits of existing GI, and identify mechanisms for stimulating more widespread implementation of GI in the MSSD service area. Environmental Services and Parks staff serve on the Technical Steering Committee.

Milwaukee County is also collaborating with 1000 Friends of Wisconsin, MMSD, and participating municipalities to promote watershed scale adoption of green infrastructure through updates to municipal codes and ordinances. The project will identify local codes and ordinances that are barriers to the implementation of green infrastructure and make recommendations and provide assistance to revise the codes. The project's focus area is the Menomonee River Watershed.

Planned Activities for Next Reporting Year:

General Mitchell International Airport is designing a green roof for the new baggage claim area. The green roof will be visible from the skywalks that lead from the parking garage to the terminal presenting another educational opportunity.

Milwaukee County is currently designing a treatment wetland at a stormwater outfall in the Menomonee River. The wetland will receive stormwater from a 100-acre treatment area. The project also involves the removal of a small dam. Construction is scheduled for 2014.

Milwaukee County is currently redesigning the 11-acre McKinley Marina parking lot. The design will incorporate stormwater BMPs to curb contaminated runoff from boat maintenance and vehicle parking areas. Construction is scheduled for 2014.

The Milwaukee County Department of Transportation through an MMSD Green Infrastructure grants will install permeable, articulating concrete block mats along three County highway shoulders to reduce erosion, improve water quality and lower right-of-way maintenance costs. In addition, one of the sites will be retrofitted with a subsurface gravel wetland to provide additional water quality benefits.

Locations of the work are: W. Rawson Ave between S. 92nd St. and state Highway 100; W. Layton Ave from S. 28th St. to S. 35th St.; and N. 107th St., between Brown Deer and County Line roads.

Program Modifications or Changes to Measurable Goal(s):

NA

Section II. Identify any known or perceived water quality improvements or degradation in the receiving water to which the MS4 system discharges. Where degradation is identified, identify why and what actions are being taken to improve the water quality of the receiving water. Please describe the stream reach or lake effected and the basin / outfall ID contributing to the improvement or degradation.

Milwaukee County anticipates that projects carried out in within the permit period will have positive water quality impacts. These projects include:

- Lake Michigan Outfalls as described in the NR 216 Permit (Bradford and McKinley Beaches)
- Pond & Lagoon Demonstration Projects (various locations)
- Boerner Botanical Gardens Rainwater Harvesting System
- Rain gardens, permeable pavers and green roof at the Milwaukee County Zoo
- Green Roof and pervious pavement installed at the Domes
- Franklin Sports Complex Pervious Pavers
- Doctors Park sedimentation chamber and pavement reduction

Section III. Fiscal Analysis

Program Element	*Annual Expenditure*	*2012 Budget*	*Source of Funds*
Public Involvement, Education and Outreach		$ 31,900.00	
IDDE		$ 27,364.00	
Construction Site Pollutant Control			
Post-Construction Storm Water Management			
Pollution Prevention		$ 77,633.00	
Storm Water Quality Management	$ 556,781.00	$ 118,600.00	
Total	$ 556,781.00	$ 255,497.00	

This fiscal analysis reflects the permit obligation costs associated with the Environmental Services Unit of Milwaukee County's Architecture, Engineering and Environmental Services Division, the group tasked with compliance of the MS4 permit. Additional costs of permit compliance not included in this analysis are located within other departmental and/or project budgets. For example each construction project completed by Milwaukee County would have a construction site pollution control component as part of the specific project budget. Also, stormwater related projects completed by other departments such as the installation of pervious pavement at the zoo are not in this analyses.

The Annual Expenditure column reflects actual costs for the Environmental Services Unit in 2012 as described above. Milwaukee County does not track the various components of the analyses (e.g. Education, Public Involvement, IDDE, etc.) in Milwaukee County's accounting system. The total sum of all categories is contained in the "Storm Water Quality Management" category.

Section IV. Certification Statement

I hereby certify that I am an authorized representative of the municipality covered under the MS4 permit for which this anual report

Authorized Representative Printed Name: Timothy Detzer

Title: Environmental Engineer

Authorized Representative Signature: Timothy Detzer

Date Signed: 3/28/13

Attachment 1
Outfall Screening

Attachment 1
Outfall Field Screening

County ID	Prog. Year	Outfall	Date	Time	Last Rain Fall	Amount	Flow	pH	Chlorine	Copper	Turbidity	Phenols	Detergents	Ammonia	Notes
16979	2012	County Grounds at 87th	11/29/2012	1 30 PM	11/19/2012	0.08	LIGHT	8.4	0	0 04 ppm	LOW	ND	7 5 ppm +	ND	Chlorine value could be 0-0.2 ppm / +sample was analyzed for Potasium not detergents
16000	2012	Doctor's Park	11/29/2012	11 30 AM	11/19/2012	0 08	NONE	NA	NA	NA	NA	NA	NA	NA	
16985	2012	Brown Deer - Teutonia at South Branch Creek	11/29/2012	12 00 PM	11/19/2012	0.08	MODERATE	8.2	ND	ND	LOW	ND	6 1 ppm+	0 15 ppm	+sample was analyzed for Potasium not detergents
8055	2012	Zoo	11/29/2012	12:50 PM	11/19/2012	0.08	LIGHT	8.7	ND	ND	LOW	ND	8.2 ppm+	0 33 ppm	flow is constant at this location/+sample was analyzed for Potasium not detergents
17003	2012	County Grounds Wisconsin & Windsor (84th)	11/29/2012	1:10 PM	11/19/2012	0.08	LIGHT	8.3	ND	ND	LOW	ND	6.5 ppm+	ND	flow is constant at this location/+sample was analyzed for Potasium not detergents
17022	2012	Highway 100 & Watertown Plank	11/29/2012	1:40 PM	11/19/2012	0.08	LIGHT	NA	NA	NA	NA	NA	NA	NA	flow was too low to capture
16006	2012	Timmerman	11/29/2012	12:28 PM	11/19/2012	0.08	NONE	NA	NA	NA	NA	NA	NA	NA	no flow detected from manholes upstream
16982	2012	Layton Ave at Honey Creek (west)	11/29/2012	2:00 PM	11/19/2012	0.08	NONE	NA	NA	NA	NA	NA	NA	NA	
16983	2012	Layton Ave at Honey Creek (east)	11/29/2012	2:00 PM	11/19/2012	0.08	NONE	NA	NA	NA	NA	NA	NA	NA	
16984	2012	76th Street at Root River	11/29/2012	2:18 PM	11/19/2012	0.08	NONE	NA	NA	NA	NA	NA	NA	NA	

Attachment 2
Street Sweeping and Catch Basin Cleaning

Attachment 2
Street Sweeping and Catch Basin Cleaning

County Highway	Sweeping Frequency*	Collected (Cubic yards)	CBs Cleaned	Collected (Cubic yards)
Silver Spring Dr	7	24	0	
Hampton Ave	3	18	0	0
Beloit Road	1	6	0	
S. 92nd St	1	3	0	
Oklamhoma Ave	1	2	0	
Layton Ave	2	15	2	1
S. 76 St	4	24	3	1
Rawson Ave	1	3	0	
Mill Road	10	50	2	
Good Hope Rd	10	50	2	**
Teutonia Ave	5	24	2	**
43rd St	5	21	2	**
Port Washington Rd	6	18	2	**
107th St	3	12	2	**
College Ave	7	21	3	2
Layton Ave	6	18	4	2
Rawson Ave	7	21	1	1
South 13th Street	-	-	-	-
Zoo	177	78	25	19
Parks	2	18	-	-
Total		**426**		**26**

*One unit is equal a distinct sweeping event not necessarily the entire roadway.
** Amount collected not recorded.
*** Material was collected from trench drains, settling basins, grates and basins.

Attachment 3
Storm Water Pollution Prevention Plan Inspections

For the purposes of this informational report,
Pages 14 through 95 (Storm Water Pollution Prevention Plan Inspection Reports) have been deleted to save paper. They will be made available upon request.

Attachment 4
Storm Water Management Facility Inspections

Spring 2012 Storm Water Management Facility Inspections

	Inspection Type	Location Notes	Major Outfall?	Date Inspected	Date Sediment Depth Taken	GPS STRUCTURES	Serious Problems Reported to Owner?	Comments
[illegible]	[illegible]		No					No Longer Inspected
[illegible]	[illegible]	[illegible]	No					No Longer Inspected
Bradford Beach Outfalls	Rain Garden & Infiltration		No	5/18/2012			X	yes sent 8/21/12
Bradford Beach Parking lot Bvo R	Rain Garden & Infiltration		No	5/18/2012			X	yes sent 8/21/12
Bradford Beach Parking lot sed Cham	Rain Garden & Infiltration		No	5/18/2012			X	yes sent 8/21/12
Bradford Beach Outfall 7 (Lake Park R	Rain Garden & Infiltration	Three Raingardens in Lake Park	No	5/18/2012			X	yes sent 8/21/12
County Grounds Pond 1	Pond	Near Daycare	yes	6/14/2012				Recived certificate of accetance of MMSD Construction 2/13/12
County Grounds Basin 2 - Pond 1	Pond	Wisconsin Ave ponds	yes					
County Grounds Basin 2 - Pond 2	Pond	Wisconsin Ave ponds	yes					
County Grounds Basin 2 - Pond 3	Pond	Wisconsin Ave ponds	yes					
County Grounds Pond 3	Pond	Near Underwood Parkway	yes	6/14/2012				Pond to change with Zoo Interchange work
County Grounds Pond 10	Pond	Behind Children's Court	No					
Greenfield Park	Pond		No					
Menomonee Parkway	Pond		No					Pond awarded FLM grant to convert to a wetland in 2013
Brown Deer Park	Pond		No					
McGovern Park	Pond		No					8/8/12 sent out pond and lagoon improvements maint plan
[illegible]	[illegible]		No					[illegible]
[illegible]	[illegible]		No					[illegible]
Washington Park	Pond		No					8/8/12 sent out pond and lagoon improvements maint plan
McKinley Raingarden	Rain Garden & Infiltration		No	5/18/2012				
McKinley Subsurface	Rain Garden & Infiltration		No	5/18/2012				
College Ave	Pond	College ave south east of airport	no	6/14/2012		X		Added to GIS
College Ave @ Loomis	Pond			6/14/2012			X	Bad errosion issues Notified Transportation Engineering and Highways

Fall 2012 Storm Water Management Facility Inspections

	Inspection Type	Location Notes	Major Outfall?	Date Inspected	Date Sediment Depth Taken	GPS STRUCTURES	Serious Problems Reported to Owner?	Comments
South Shore Rain Garden	Rain Garden & Infiltration		No					No Longer Inspected
South Shore Storm Tract	Sedimentation Chamber	South of boat launch	No					No Longer Inspected
Bradford Beach Outfalls	Rain Garden & Infiltration		No					
Bradford Beach Parking lot Bio R	Rain Garden & Infiltration		No					
Bradford Beach Parking lot sed Cham	Rain Garden & Infiltration		No					
Bradford Beach Outfall 7 (Lake Park R	Rain Garden & Infiltration	Three Raingardens in Lake Park	No					
County Grounds Pond 1	Pond	Near Daycare	yes	11/9/2012			x	more foam noticed. Wrote a memo to steve keith re investigation work
County Grounds Basin 2 - Pond 1	Pond	Wisconsin Ave ponds	yes					
County Grounds Basin 2 - Pond 2	Pond	Wisconsin Ave ponds	yes					
County Grounds Basin 2 - Pond 3	Pond	Wisconsin Ave ponds	yes					
County Grounds Pond 3	Pond	Near Underwood Parkway	yes					Pond to change with Zoo Interchange work. Reviewed and commented on plans 2012
County Grounds Pond 10	Pond	Behind Children's Court	No					
Greenfield Park	Pond		No					
Menomonee Parkway	Pond		No					Pond awarded FLM grant to convert to a wetland in 2013
Brown Deer Park	Pond		No	10/16/2012				
McGovern Park	Pond / Bio Retention / Sed Sump		No	10/16/2012				
[illegible]	[illegible]		No					
[illegible]	[illegible]		No					
Washington Park	Pond		No					
McKinley Raingarden	Rain Garden & Infiltration		No	10/24/2012				
McKinley Subsurface	Rain Garden & Infiltration		No	10/24/2012				
Zoo Pervious Pavement	Pervious Pavement	Various Locations	no					
Sports Complex Parking Lot	Pervious Pavement		no	10/10/2012				Substantially Complete 10/2012
College Ave	Pond	College ave south east of airport	no					
College Ave @ Loomis	Pond			Many Times			x	Wrote recommendations and applied for 2014 capital budget to repair
Doctors Park Sed Sump	Sedimentation Chamber			10/16/2012				

MILWAUKEE COUNTY PARKS
N·A·T·I·O·N·A·L GOLD MEDAL WINNER

CHRIS ABELE, MILWAUKEE COUNTY EXECUTIVE
JAMES KEEGAN, INTERIM DIRECTOR OF PARKS, RECREATION AND CULTURE

Date: April 30, 2013

To: Chairwoman Marina Dimitrijevic, County Board of Supervisors

From: James Keegan, Interim Director, Department of Parks, Recreation and Culture

Subject: **Request to Enter into a Vendor Permit Agreement for Scooter Rental Concession Services at the Lakefront – ACTION**

POLICY

The Department of Parks, Recreation and Culture (DPRC) respectfully requests authorization to enter into a vendor permit agreement for scooter rental concession services at the lakefront.

BACKGROUND

In January 2013, the DPRC issued a number of Requests for Proposals (RFP) to provide various concession services in the Milwaukee County Parks located on the lakefront. Cream City Scooters LLC responded to the scooter rental concession RFP and, meeting all terms and conditions of the process, was awarded the opportunity. Cream City Scooters has been a long-standing partner with the DPRC renting scooters at McKinley Marina. The vendor is also permitted to sell non-alcoholic beverages and pre-packaged snack items.

The term of this agreement is five (5) years with two (2) options to extend the term for one (1) additional consecutive year. The vendor has agreed to pay the

ADDRESS
9480 Watertown Plank Road
Wauwatosa, WI 53226-3560

PHONE/FAX
ph: **414 / 257 PARK** (7275)
fax: 414 / 257 6466

EMAIL
parks@milwcnty.com

WEBSITE
countyparks.com

County $10,000 over the first five (5) years and an additional $2,000 in year six (6) and $2,000 in year seven (7), if renewed. In addition, there is a percentage profit-sharing agreement if gross receipts exceed established amounts.

Cream City Scooters is responsible for its own utility hookups and monthly payments.
This is a fair weather concession and will suspend operation whenever the Marina is closed.

RECOMMENDATION

The Interim Parks Director respectfully recommends that the DPRC be authorized to enter into a vendor permit agreement with Cream City Scooters LLC for scooter rental concession services at the lakefront.

Prepared by: Laura Schloesser, Chief of Administration and External Affairs

Recommended by:	**Approved by:**
Laura Schloesser, Chief of Administration and External Affairs	James Keegan, Interim Parks Director

Attachment – Request for Proposal Criteria and Scoring

Cc: County Executive Chris Abele
Amber Moreen, Chief of Staff, County Executive's Office
Kelly Bablitch, Chief of Staff, County Board
Supv. Gerry Broderick, Chair, Parks, Energy & Environment Committee
Supv. Jason Haas, Vice-Chair, Parks, Energy & Environment Committee
Daniel Laurila, Fiscal Mgt. Analyst, Admin & Fiscal Affairs/DAS
Janelle Jensen, Parks, Energy & Environment Committee Clerk
Jessica Janz-McKnight, Research Analyst, County Board

File No. 13-
(Journal,)

(ITEM NO.) From the Director, Department of Parks, Recreation and Culture, requesting authorization to enter into a vendor permit agreement for scooter rental concession services at the lakefront.

A RESOLUTION

WHEREAS, in January 2013 the Department of Parks, Recreation and Culture (DPRC) issued a number of Requests for Proposals (RFP) for various concession services in the Milwaukee County Parks located at the lakefront; and

WHEREAS, Cream City Scooters LLC responded to the scooter rental concession RFP; and

WHEREAS, the term of this agreement is five (5) years with, upon mutual agreement, two (2) additional one (1) year extensions; and

WHEREAS, the DPRC will receive $10000 during the five (5) year term and an additional $2000 in year six (6) and $2000 in year seven (7), if renewed; and

WHEREAS, the Cream City Scooters is responsible for all utility hookups and monthly payments; and

WHEREAS, the concession will operate daily, weather permitting; now, therefore,

BE IT RESOLVED, that the Milwaukee County Board of Supervisors hereby authorizes the Interim Parks Director to execute a vendor permit agreement with Cream City Scooters LLC for scooter rental concessions at the lakefront.

MILWAUKEE COUNTY FISCAL NOTE FORM

DATE: April 30, 2013

Original Fiscal Note ☒

Substitute Fiscal Note ☐

SUBJECT: Vendor Permit Agreement for Scooter Rental Concession Services at the Lakefront

FISCAL EFFECT:

☒ No Direct County Fiscal Impact

☒ Existing Staff Time Required

☐ Increase Operating Expenditures
(If checked, check one of two boxes below)

☐ Absorbed Within Agency's Budget

☐ Not Absorbed Within Agency's Budget

☐ Decrease Operating Expenditures

☐ Increase Operating Revenues

☐ Decrease Operating Revenues

☐ Increase Capital Expenditures

☐ Decrease Capital Expenditures

☐ Increase Capital Revenues

☐ Decrease Capital Revenues

☐ Use of contingent funds

Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.

	Expenditure or Revenue Category	Current Year	Subsequent Year
Operating Budget	Expenditure	0	0
	Revenue	0	0
	Net Cost	0	0
Capital Improvement Budget	Expenditure	0	0
	Revenue	0	0
	Net Cost	0	0

DESCRIPTION OF FISCAL EFFECT

In the space below, you must provide the following information. Attach additional pages if necessary.

A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated. [1] If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
D. Describe any assumptions or interpretations that were utilized to provide the information on this form.

A. Request to enter into a Vendor Permit Agreement for Scooter Rental Concession Services at the Lakefront
B. Cream City Scooter agrees to pay the DPRC $2000 in 2013 and $2000 in 2014.
C. No Impact
D. None

Department/Prepared By Laura Schloesser/DPRC

Authorized Signature _____

Did DAS-Fiscal Staff Review? ☐ Yes ☒ No

Did CBDP Review?[2] ☒ Yes ☐ No ☐ Not Required

[1] If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.

Attachment

RFP Criteria and Scoring: Scooter Rental Services

Category	Criteria	Weight	Average Cream City Scooters	Average Wheel Fun Rentals
A	Qualifications and Experience	30	23.33	16.67
B	Revenue to the County	30	28.33	21.67
C	Quality of Services and Products and Reasonableness of Pricing	10	9	9
D	Innovation and Variety of Services and Products	10	8.67	8.67
E	Marketing Plan	10	9.33	9.33
F	DBE Participation	10	10	4
	Total	100	**88.67**	69.33

VENDOR PERMIT AGREEMENT

BETWEEN

MILWAUKEE COUNTY DEPARTMENT OF PARKS, RECREATION AND CULTURE

AND

CREAM CITY SCOOTERS LLC

This Vendor Permit Agreement (the "Agreement") is made and entered into effective _____, 2013 (the "Effective Date"), by and between the MILWAUKEE COUNTY DEPARTMENT OF PARKS, RECREATION AND CULTURE (the "County") and CREAM CITY SCOOTERS LLC (the "Vendor"), as represented by: Daniel Hernandez, (414) 745-3803. Referenced together, the County and the Vendor are the "Parties" to this Agreement.

WITNESSETH:

WHEREAS, in January 2013 the County issued a Request for Proposals ("RFP") to provide scooter rental concession services in one of the Milwaukee County Parks located on the Milwaukee Lakefront, and the Vendor submitted a written proposal response meeting all terms and conditions of the RFP process; and

WHEREAS, the Milwaukee County Board of Supervisors, by virtue of adopting Resolution ____ on ____, 2013, has authorized the Interim Director of the Department of Parks, Recreation and Culture ("DPRC") to enter into this agreement with the Vendor for and on behalf of Milwaukee County.

NOW THEREFORE, Vendor is hereby awarded a contract to provide the concession services per all terms and conditions in the RFP and as indicated in the Vendor's complete response thereto, which documents are both hereby incorporated by reference. Each party, for good and valuable consideration and the promises of County and Vendor set forth in this Agreement, agrees as follows:

PROVISIONS:

1. Operation of Concession:

1.1 General: Vendor is permitted to operate a concession for scooter rental services (the "Concession"). The Concession shall be operated in the area designated at McKinley Marina at 1750 North Lincoln Memorial Drive, Milwaukee (the "Premises"). Vendor is the sole owner of the structure operated on the Premises (the "Facility"). Vendor shall have the exclusive right to provide the above-indicated service in the Marina for the Term (as hereinafter defined). The Concession is a fair-weather operation. The times of operation shall be mutually agreed upon by the Parties and may be modified upon the written approval of the Parks Director. Vendor shall suspend operation of the Concession whenever the Marina is closed. For the purposes of this Agreement, "scooter" shall have the same meaning as "moped" as provided in Wis. Stat. § 240.01(29m), a Type 1 motorcycle that is incapable of speeds faster than thirty (30) miles per hour, and is equipped with an automatic transmission, an engine certified by the manufacturer at not more than fifty (50) cubic centimeters or an equivalent power unit, and a seat for the operator, which can be operated lawfully on public roads.

1.2 Operation of Scooters. Scooters may be operated on public roads only. VENDOR SHALL INSTRUCT ITS RENTORS NOT TO OPERATE SCOOTERS ON ANY PAVED PEDESTRIAN PATHWAY OR TURF. Vendor shall be responsible for any actual documented physical damage to park property caused by Vendor or its renters. If any such damage occurs, Vendor shall in coordination with County cause the site to be restored to a condition satisfactory to the Parks Director. Scooters are subject to all traffic laws just like any other motor vehicle. Vendor acknowledges that it is wholly responsible for confirming its renters are licensed drivers who are aware of the rules of the road as contained in Wis. Stat. Ch. 346.

1.3 Number of Scooters Available for Rent. No more than fifteen (15) scooters may be located on the Premises and offered for rent by Vendor without the written permission of the Parks Director.

1.4 Non-exclusive Food and Beverage Concession: Vendor shall further be permitted to sell bottled water, non-alcoholic beverages, and pre-packaged food items including chips, snacks, cookies, and ice cream as approved by the Parks Director or his designee. Vendor shall comply with all current Milwaukee County Parks practices, including compliance with agreements regarding Milwaukee County Parks's exclusive non-alcoholic beverage provider and prohibitions on the sale of gum and glass bottles. The County reserves the right to award a contract with one (1) or more additional vendors to provide food and beverage and/or other concessionable items in the Marina, subject to the exclusivity clause in Section 1.1.

1.5 Special Events: Any special events hosted by Vendor shall be governed by standard DPRC and Milwaukee County procedures.

2. Term: This Agreement shall commence on the Effective Date and expire on March 30, 2018 (the "Initial Term"). The Parties shall have two (2) options to extend the Term for one (1) additional consecutive year if mutually agreeable to both Parties (each such period, a "Renewal Term"). Such option may be exercised so long as Vendor first provides written notice to County of its desire to enter into a Renewal Term at least six (6) months' prior to the then-current Term expiration date. The Initial Term and any then-existing Renewal Term shall be referred to as the "Term" herein.

3. Payment: Vendor shall pay County Five Hundred Dollars ($500) at the close of each June, July, August, and September during the Term. County shall invoice Vendor within fifteen (15) days at the close of the applicable month, and Vendor shall pay County within thirty (30) days of receipt of invoice. If, over the course of Vendor's Operating Year (as hereinafter defined), ten percent (10%) of Vendor's Gross Receipts (as hereinafter defined) (the "Gross Receipt Percentage") is greater than the total amount invoiced to Vendor for such Operating Year pursuant to this Section 3 (the "Flat Fee"), Vendor shall remit to County the difference between the Gross Receipt Percentage and the Flat Fee by April 1. "Gross Receipts" shall be defined as the total of all receipts (cash, checks, credit cards) derived from the sale of all merchandise associated with the Concession, less sales tax. Deductions for client non-payments or bad-debt expenses are not allowed. An "Operating Year" shall be that period from March 1 through the last day of February of each year of the Agreement; provided, however, that during the initial year of the Term, the Operating Year shall be from the Effective Date through March 1. Checks shall be made payable to the Milwaukee County Treasurer and mailed

or delivered to: Milwaukee County Parks Department, Milwaukee County Treasurer, 9480 Watertown Plank Rd., Wauwatosa, Wisconsin, 53226.

4. Sales Reports: Upon demand, Vendor agrees to compile and provide County with a detailed summary report of all sales activities, a financial reconciliation of all commissions owed and paid, and remit to County any additional amounts as may be required.

5. Utilities: Vendor shall be responsible for its own Utility hookups and monthly payments. "Utilities" shall include water and sewer, gas, electricity, and telephone.

6. Alterations and Improvements: In no event shall Vendor make any alterations or additions to the Facility or the Premises without the prior written consent of County. All development and landscaping shall be completed in a first-class manner and consistent with the standards established for other work in Milwaukee County Parks. Any and all alterations, additions and improvements shall be made in compliance with all statutes, laws, ordinances, rules, and regulations of any governmental authority having jurisdiction over the Premises. Vendor shall also indemnify and hold County harmless from and against all statutory liens or claims of liens of any contractor, subcontractor, laborer or any other party which may arise in connection with any alteration, addition or improvement to the Facility or the Premises undertaken by or on behalf of Vendor.

7. Parks Logo: Vendor is responsible for all marketing and advertising to promote its activities. Vendor shall acknowledge the Parks Department and include the Parks logo in all promotional materials, whether print or digital, directly related to its activities covered under this Agreement. All proposed banners, signage and advertising on or within the Premises, including such signage on temporary or portable structures, must be pre-approved in writing by the Parks Director.

8. Rights Reserved to County: County reserves the right to award a contract with one (1) or more additional vendors to provide other concessionable items in other areas of the Marina. County further reserves the right to operate its own concession area during any and all events held in its Parks.

9. Public Access: Vendor understands that the Concession is part of a public park, and the Premises are to remain open and accessible to the public in a manner that is compatible with the use of the Concession as contemplated by this Agreement.

10. Compliance with Laws: Vendor shall, at Vendor's expense, promptly comply with all laws, rules, and regulations made by any governmental authority having jurisdiction over Vendor's use of the Marina and the Concession, including all local health code requirements. Vendor shall obtain and pay for all necessary permits and licensing for the operation of the Concession, including, if applicable, permits and licensing for a food and beverage concession in the City of Milwaukee.

11. Taxes: Vendor shall pay all taxes of whatever character which may be levied or charged upon Vendor to use the Premises or own the Facility, or upon the improvements, fixtures, equipment or other property, or upon the Concession operations under the Agreement.

12. County Approval of Items to be Rented or Sold: Vendor shall provide County with a list and pricing information for the products it intends to rent or sell to the public for

approval. The Parks Director maintains the right to prohibit the sale or rental of any item that he/she deems to be inappropriate or otherwise within the Milwaukee County Parks System.

13. Cleanliness; Garbage: Vendor is responsible for maintaining the Premises and surrounding areas, at least twenty-five (25) feet beyond the Concession, in a state of cleanliness and repair to prevent injury to the public. No offensive or refuse matter, nor any substance constituting an unnecessary, unreasonable, or unlawful hazard, nor any material detrimental to the public health, shall be permitted to remain on the Premises, and Vendor shall prevent any such matter or material from being or accumulating on the Premises. Vendor, at its expense, shall see that all garbage or refuse is collected as often as necessary and in no case less than once a day and disposed of in the County receptacles. Vendor will incur the cost of all excessive garbage pick-up from the Concession during the Term.

14. Safety: Vendor shall instruct customers and staff on the operation and safety rules/standards for all rental equipment. Vendor shall require all customers to sign a statement indicating that they are familiar with the operation and safety rules/standards for such equipment along with a liability waiver in favor of County. Vendor shall require customers to use applicable safety equipment such as helmets.

15. Maintenance of Facility and Equipment: Vendor shall equip the Concession with all equipment necessary to conduct business such as all rental equipment, and all safety equipment including helmets. Vendor shall, at all times and at its own expense, keep and maintain the Facility and all equipment, whether owned and/or installed by Vendor or the County, such as, but not limited to, all of the fixtures, equipment and personal property in the Facility, in good repair and in a clean, sanitary and orderly condition and appearance. No equipment provided by County shall be removed or replaced by Vendor without the prior written consent of the Parks Director, and if consent is secured, removal and/or replacement shall be at Vendor's expense.

16. Removal of Facility, Equipment and Supplies: Upon expiration or termination of this Agreement for any reason or no reason, Vendor shall remove, at its costs, the Facility and all of its supplies, displays, and related items from the Premises within three (3) days of the expiration or termination date, and shall restore the Premises to its prior condition, satisfactory to the Parks Director.

17. Staff: Vendor shall maintain customer service as a top priority. Vendor shall employ a sufficient number of qualified staff to properly operate the Concession. Vendor shall provide employees who are professional, friendly, and courteous to customers and the general public. Employees shall maintain a neat appearance, exercise good public relations skills, respond to customer complaints and questions, and conduct themselves in a high standard acceptable to County. Vendor and staff shall wear appropriate attire which, in the sole determination of County, clearly distinguishes Concession staff from Milwaukee County Parks staff.

18. Nondiscrimination, Affirmative Action and DBE Goals:

20.1 Generally: There shall be no discrimination against or segregation of any person, or group of persons, on account of gender, age, race, color, religion, creed, national origin or ancestry in the use of the Premises or the Concession, and Vendor (or

any person claiming under or through Vendor) shall not establish or permit any such practice or practices of discrimination or segregation with reference to the Premises or the Concession.

20.2 Non-Discrimination: Vendor certifies that it will not discriminate against any employee or applicant for employment because of race, color, national origin, age, sex or handicap which includes, but is not limited to, the following: employment, upgrading, demotion or transfer, recruitment, or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship. Vendor will post in conspicuous places, available for employment, notices setting forth the provisions of the non-discriminatory clause. Attached hereto as Exhibit A is an Equal Opportunity Certificate that shall be executed and delivered by Vendor simultaneously with the execution and delivery of the Agreement.

20.3 Affirmative Action Program: Vendor certifies that it will strive to implement the principles of equal employment opportunity through an effective affirmative action program which shall have as its objective to increase the utilization of women, minorities and handicapped persons and other protected groups, at all levels of employment in all divisions of its work force, where these groups may have been previously under-utilized and under-represented. Vendor also agrees that in the event of any disputes as to compliance with the aforementioned requirements, it shall be its responsibility to show that it has exercised good faith efforts to meet all requirements.

20.4 Affirmative Action Plan: Vendor certifies that if it has fifty (50) or more employees, it has filed or will develop and submit a written Affirmative Action Plan. Current Affirmative Action Plan, if required, must be filed with any of the following: The Office of Federal Contract Compliance Programs, the State of Wisconsin, or the Milwaukee County Department of Audit, City Campus, 9th Floor.

20.5 Non-Segregated Facilities: Vendor certifies that it does not and will not maintain or provide segregated facilities for its employees, and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained.

20.6 Reporting Requirement: When applicable, Vendor certifies that it will comply with all reporting requirements and procedures established in Title 41 Code of Federal Regulations, Chapter 60.

20.7 Compliance: Vendor certifies that it is not currently in receipt of any outstanding letters of deficiencies, show cause, probable cause, or other such notification of noncompliance with EEO regulations.

20.8 Disadvantaged Business Enterprise Goals: Vendor shall use reasonable efforts to cause its contractors to establish Disadvantaged Business Enterprise ("DBE") participation goals, consistent with Milwaukee County DBE goals of seventeen percent (17%) for professional service contracts, and to use good faith efforts to achieve those goals. The Milwaukee County Community Business Development Partners shall assist Vendor in soliciting potential DBE vendors for the improvements and monitor such goal attainment. Vendor's contact regarding DBE participation is: Director, Nelson Soler, at (414) 289-4608.

19. Site Restoration: Both Vendor and County shall together participate in a pre-season and post-season inspection of the Premises. Vendor shall be responsible for any actual documented physical damage to the Premises caused by Vendor, its employees, agents, representatives, and guests. Within five (5) days of the discovery of any such damage, the Premises shall be restored to the satisfaction of the Parks Director.

20. Security: Unarmed security personnel are permitted within the Premises for the purposes of checking identification and general observation. Vendor shall be solely responsible for and assume all risks related to the security and protection of the Premises and any equipment and for the prevention of unauthorized access to the Premises. Vendor expressly acknowledges that any security measures deemed necessary or desirable for protection of the Facility shall be the sole responsibility of Vendor at no cost to County. Vendor shall notify County of any incident resulting in loss or damage to the Premises or breach of security whether or not such incident is reported to the Milwaukee County Sheriff's Office.

21. Inspection by County: County shall at all reasonable times have the right to enter the Premises and the Facility to inspect the condition thereof, and to improve or repair the Premises, and to make such repairs, alterations, improvements or additions as County may deem necessary or desirable; provided, however, such entry shall be done in such a manner that it does not unreasonably interfere with the conduct of Vendor's use of the Premises.

22. Interest: Unless waived by County Board of Supervisors, Vendor shall be responsible for payment of interest on amounts not remitted in accordance with this Agreement. The rate of interest shall be the statutory rate in effect for delinquent County property taxes (one-percent (1%) per month or fraction of a month) as described in Wisconsin statutes section 74.47(1). The obligation for payment and calculation thereof shall commence upon the day following the due dates established herein.

22.1 Penalty: In addition to the interest described above, Vendor may be responsible for payment of penalty on amounts not remitted in accordance with this Agreement, as may be determined by County. The penalty shall be the statutory rate in effect for delinquent County property taxes (.5% per month, or fraction of a month) as described in Milwaukee County ordinance section 6.06(1) and Wisconsin statutes section 74.47(2). The obligation for payment and calculation thereof shall commence upon the day following the due dates established herein.

22.2 Audit Results: If, as a result of the annual audit required herein, additional amounts are disclosed to be due and owing to the County, interest and penalty shall be calculated thereon in accordance with the above method. Vendor shall remit to the County any additional amounts identified due and owing for the audit including interest and penalty thereon within thirty (30) days following receipt of the audit report by the County.

22.3 Nonexclusivity: This provision permitting collection of interest and penalty by the County on delinquent payments is not to be considered the County's exclusive remedy for Vendor's default or breach with respect to delinquent payment. The exercise of this remedy is not a waiver by the County of any other remedy permitted under this Agreement, including but not limited to termination of this Agreement.

23. Audit: Pursuant to Milwaukee County ordinance section 56.30(6)(e), Vendor shall allow the County or any other party the County may name, when and as they demand, to audit, examine and make copies of records in any form and format, meaning any medium on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by Vendor, including not limited to, handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes), computer files, computer printouts and optical disks, and excerpts or transcripts from any such records or other information directly relating to matters under this Agreement, all at no cost to County. Any subcontracting by Vendor in performing the duties described under this Agreement shall subject the subcontractor and/or associates to the same audit terms and conditions as the Vendor. Vendor (or any subcontractor) shall maintain and make available to County the aforementioned audit information for no less than three years after the conclusion of this Agreement.

24. Insurance: Vendor shall acquire and maintain the established insurance and liability limits for the Concession. Such evidence shall include insurance coverage in the following minimum amounts:

Type of Coverage	Minimum Limits
Commercial General Liability Bodily Injury and Property Damage (incl. Personal Injury, Fire Legal, Contractual & Products/Completed Operations)	$1,000,000 Per Occurrence $1,000,000 General Aggregate
Advertising Injury	$1,000,000
Wisconsin Workers Compensation or Proof of All States Coverage	Statutory
Employers' Liability	$100,000/$500,000/$100,000

Milwaukee County will be named as an additional insured for General Liability and be afforded a thirty (30)-day notice of cancellation or non-renewal. A waiver of subrogation for Workers Compensation by endorsement in favor of Milwaukee County shall be provided. Disclosure must be made of any non-standard or restrictive additional insured endorsement, and any use of non-standard or restrictive additional insured endorsement will not be acceptable.

A certificate indicating the above coverages shall be submitted by Vendor for the County's review and approval for each successive period of coverage for the duration of this Agreement.

Coverages shall be placed with an insurance company approved to do business in the State of Wisconsin and rated "A" per Best's Key Rating Guide. The insurance requirements contained within this Agreement are subject to periodic review and reasonable adjustment by the County Risk Manager consistent with similarly situated properties within the properties owned by the County.

25. Indemnification: To the fullest extent permitted by law, Vendor shall indemnify the County for, and hold it harmless from all liability, claims and demands on account of personal injuries, property damage and loss of any kind whatsoever, including workers' compensation claims, which arise out of or are in any manner connected to the Premises, based on any injury, damage or loss being caused by any wrongful, intentional, or negligent acts or omissions of the Vendor, its agents, or employees. Vendor shall, at its own expense, investigate all claims and demands, attend to their settlement or disposition, defend all actions based thereon and pay all charges of attorneys and other costs and expenses arising from any such injury, damage or loss, claim, demand or action.

25.1 Environmental Indemnification: Vendor shall, to the fullest extent provided for under any environmental laws, rules and regulations, be responsible for any required repair, cleanup, remediation or detoxification arising out of any Hazardous Materials brought onto or introduced into the Premises or surrounding areas by Vendor, or its agents. Vendor hereby agrees to indemnify, defend and hold County harmless from and against any and all liabilities, costs, expenses (including attorney fees), damages (including but not limited to clean-up, remediation or detoxification of) or any other losses caused by its introduction of any such Hazardous Materials into or onto the Premises and any Hazardous Materials brought onto or introduced into the Premises as described below.

25.2 "Hazardous Materials" as the term is used herein shall mean any substance: (i) the presence of which requires investigation or remediation under any Federal, State or local statute, regulation, ordinance, order, action or policy; or (ii) which is or becomes defined as a "hazardous waste" or "hazardous substance" under any Federal, State or local statute, regulation, ordinance, or amendments thereto.

26. Assignment and Subletting: Vendor may not assign this Agreement, in whole or in part, or sublease any part of the Premises without the prior written approval of the Parks Director.

27. Default:

27.1 Definition: A "Default" will occur under this Agreement if: (a) A party fails to comply with any provision in this Agreement, and such failure continues for thirty (30) days after a written notice from the other party setting forth in reasonable detail the nature of such default; or (b) Vendor ceases to do business as a going concern, ceases to pay its debts as they become due, or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any proceeding under any federal or state bankruptcy law, or a custodian or trustee is appointed to take passion of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Vendor's assets or Vendor's interest in this Agreement and fails to remedy such condition within thirty (30) days after written notice from County; or Vendor becomes, without the prior written approval of County, a successor or merged entity in a merger, or a constituent entity in a consolidation, or an entity in a dissolution.

27.2 Remedies: If a Default occurs, then the non-defaulting party shall, at such party's option, have any or all of the following described remedies, all cumulative (so exercise of one remedy shall not preclude exercise of another remedy), in

addition to such other remedies as may be available at law or in equity or under any other terms of this Agreement. The non-defaulting party's remedies shall include:

27.3 Termination of Rights: The non-defaulting party may terminate this Agreement by sixty (60) days prior written notice of termination of this Agreement to the defaulting party or by any other lawful means, in which case this Agreement and the Term shall terminate, and Vendor shall vacate the Premises on the termination date. Should County so choose, if Vendor is the defaulting party, Vendor shall cooperate in continuing to staff the Concession during a transition period as County seeks an alternate service provider. Additionally, the non-defaulting party may bring an action to recover any or all of the following from the defaulting party: (i) any unpaid amounts set forth in Section 3 earned as of the date the Agreement terminates; and (ii) any other amount reasonably and directly necessary to compensate the non-defaulting party for all detriment caused by and directly arising from the defaulting party's failure to perform its obligations under this Agreement.

27.4 No Waiver: No failure by the County to insist upon strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy upon a Default, and no acceptance of full or partial amounts due pursuant to Section 3 during continuance of any such Default, shall waive any such Default or such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Agreement to be performed or complied with by Vendor, and no Default, shall be modified, except by a written instrument executed by County. No waiver of any Default shall modify this Agreement. Each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then-existing or subsequent Default of such covenant, agreement, term or condition of this Agreement.

27.5 Survival: No expiration or termination of this Agreement and no entry into or onto the Premises by County after such expiration or termination shall relieve Vendor of its liabilities and obligations under this Agreement, all of which shall survive such expiration, termination or entry.

28. Independent Contractor: Nothing contained in this Agreement shall constitute or be construed to create a partnership or joint venture between County or its successors or assigns and Vendor or its successors or assigns. This Agreement does not create the relationship of principal and agent.

29. Notices: All notices with respect to this Agreement shall be in writing. Except as otherwise expressly provided in this Agreement, a notice shall be deemed duly given and received upon delivery, if delivered by hand or after posting via US Mail, to the party addressed as follows:

To Vendor:
Cream City Scooters LLC
Attn: Daniel Hernandez
P.O. Box 26892
Milwaukee, 53226-0892

To County:
Milwaukee County Dept. of Parks
Parks Director
9480 Watertown Plank Road
Wauwatosa, WI 53226

Either party may designate a new address for purposes of this Agreement by written notice to the other party.

30. Integration; Order of Precedence: The Parties understand and agree that the RFP and Vendor's RFP Response, including Vendor's Best and Final Offer, are incorporated into and made a part of this Agreement by this specific reference. In the event of a conflict or disagreement among the documents, the following order of precedence shall govern:
    (a) Written amendments to the Agreement;
    (b) The Agreement;
    (c) The RFP;
    (d) Vendor's Best and Final Offer; and
    (e) Vendor's original RFP Response.

Signature page follows

IN WITNESS WHEREOF, the Parties hereto have set their hands as follows:

Cream City Scooters LLC

By: _____ Date: _____
Daniel Hernandez, Owner

Milwaukee County Dept. of Parks, Recreation & Culture

By: _____ Date: _____
James Keegan, Interim Director

Approved as to form and independent status:

By: _____ Date: _____
Corporation Counsel

Reviewed by:

By: _____ Date: _____
Risk Management

Approved as to Chapter 42 DBE provisions:

By: _____ Date: _____
Community Business
Development Partners

EXHIBIT A
EQUAL OPPORTUNITY CERTIFICATE

[Attached.]

MILWAUKEE COUNTY PARKS
N·A·T·I·O·N·A·L GOLD MEDAL WINNER

CHRIS ABELE, MILWAUKEE COUNTY EXECUTIVE
JAMES KEEGAN, INTERIM DIRECTOR OF PARKS, RECREATION AND CULTURE

Date: April 30, 2013

To: Chairwoman Marina Dimitrijevic, County Board of Supervisors

From: James Keegan, Interim Director, Department of Parks, Recreation and Culture

Subject: **Request to Enter into a Vendor Permit Agreement for Jet Ski Concession Services at the Lakefront – ACTION**

POLICY

The Department of Parks, Recreation and Culture (DPRC) respectfully requests authorization to enter into a vendor permit agreement for jet ski rental concession services at the lakefront.

BACKGROUND

In January 2013, the DPRC issued a number of Requests for Proposals (RFP) to provide various concession services in the Milwaukee County Parks located on the lakefront. Hands on Science Demos, Inc. responded to the jet ski rental concession RFP and, meeting all terms and conditions of the process, was awarded the opportunity. Hands on Science has been a long-standing partner with the DPRC renting jet skis at McKinley Beach.

The term of this agreement is five (5) years with two (2) options to extend the term for one (1) additional consecutive year. The vendor has agreed to pay the

ADDRESS
9480 Watertown Plank Road
Wauwatosa, WI 53226-3560

PHONE/FAX
ph: **414 / 257 PARK** (7275)
fax: 414 / 257 6466

EMAIL
parks@milwcnty.com

WEBSITE
countyparks.com

County $15,612.12 over the first five (5) years and an additional $3,312.24 in year six (6) and $3,378.48 in year seven (7), if renewed.

The concession is a fair-weather operation scheduled to be open daily, weather permitting.

RECOMMENDATION

The Interim Parks Director respectfully recommends that the DPRC be authorized to enter into a vendor permit agreement with Hands on Science Demos, Inc. for jet ski rental concession services at the lakefront.

Prepared by: Laura Schloesser, Chief of Administration and External Affairs

Recommended by:	Approved by:
Laura Schloesser, Chief of Administration and External Affairs	James Keegan, Interim Parks Director

Attachment – Request for Proposal Criteria and Scoring

Cc: County Executive Chris Abele
Amber Moreen, Chief of Staff, County Executive's Office
Kelly Bablitch, Chief of Staff, County Board
Supv. Gerry Broderick, Chair, Parks, Energy & Environment Committee
Supv. Jason Haas, Vice-Chair, Parks, Energy & Environment Committee
Daniel Laurila, Fiscal Mgt. Analyst, Admin & Fiscal Affairs/DAS
Janelle Jensen, Parks, Energy & Environment Committee Clerk
Jessica Janz-McKnight, Research Analyst, County Board

File No. 13-
(Journal,)

(ITEM NO.) From the Director, Department of Parks, Recreation and Culture, requesting authorization to enter into a vendor permit agreement for jet ski rental concession services at the lakefront.

A RESOLUTION

WHEREAS, in January 2013 the Department of Parks, Recreation and Culture (DPRC) issued a number of Requests for Proposals (RFP) for various concession services in the Milwaukee County Parks located at the lakefront; and

WHEREAS, Hands on Science Demos, Inc. responded to the jet ski rental concession RFP; and

WHEREAS, the term of this agreement is five (5) years with, upon mutual agreement, two (2) additional one (1) year extensions; and

WHEREAS, the DPRC will receive $15,612.12 during the five (5) year term and an additional $3312.24 in year six (6) and $3378.48 in year seven (7), if renewed; and

WHEREAS, the concession will operate daily, weather permitting; now, therefore,

BE IT RESOLVED, that the Milwaukee County Board of Supervisors hereby authorizes the Interim Parks Director to execute a vendor permit agreement with Hands on Science Demos, Inc. for jet ski rental concessions at the lakefront.

MILWAUKEE COUNTY FISCAL NOTE FORM

DATE: April 30, 2013

Original Fiscal Note ☒

Substitute Fiscal Note ☐

SUBJECT: Vendor Permit Agreement for Jet Ski Concession Services at the Lakefront

FISCAL EFFECT:

☒ No Direct County Fiscal Impact

☒ Existing Staff Time Required

☐ Increase Operating Expenditures
(If checked, check one of two boxes below)

☐ Absorbed Within Agency's Budget

☐ Not Absorbed Within Agency's Budget

☐ Decrease Operating Expenditures

☐ Increase Operating Revenues

☐ Decrease Operating Revenues

☐ Increase Capital Expenditures

☐ Decrease Capital Expenditures

☐ Increase Capital Revenues

☐ Decrease Capital Revenues

☐ Use of contingent funds

Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.

	Expenditure or Revenue Category	Current Year	Subsequent Year
Operating Budget	Expenditure	0	0
	Revenue	0	0
	Net Cost	0	0
Capital Improvement Budget	Expenditure	0	0
	Revenue	0	0
	Net Cost	0	0

DESCRIPTION OF FISCAL EFFECT

In the space below, you must provide the following information. Attach additional pages if necessary.

A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated. [1] If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
D. Describe any assumptions or interpretations that were utilized to provide the information on this form.

A. Request to enter into a Vendor Permit Agreement for Jet Ski Concession services at the Lakefront
B. Hands on Science agrees to pay the DPRC $3000 in 2013 and $3060 in 2014.
C. No Impact
D. None

Department/Prepared By Laura Schloesser/DPRC

Authorized Signature _____

Did DAS-Fiscal Staff Review? ☐ Yes ☒ No

Did CBDP Review?[2] ☒ Yes ☐ No ☐ Not Required

[1] If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.

Attachment

RFP Criteria and Scoring:
Jet Ski Rental Services

Category	Criteria	Weight	Average Hands on Science (Sole Bidder)
A	Qualifications and Experience	30	25.67
B	Revenue to the County	30	23.33
C	Quality of Services and Products and Reasonableness of Pricing	10	7.67
D	Innovation and Variety of Services and Products	10	7
E	Marketing Plan	10	3.67
F	DBE Participation	10	8.67
	Total	100	**76**

VENDOR PERMIT AGREEMENT

BETWEEN

MILWAUKEE COUNTY DEPARTMENT OF PARKS, RECREATION AND CULTURE

AND

HANDS ON SCIENCE DEMOS, INC.

This Vendor Permit Agreement (the "Agreement") is made and entered into effective _____, 2013 (the "Effective Date"), by and between the MILWAUKEE COUNTY DEPARTMENT OF PARKS, RECREATION AND CULTURE (the "County") and HANDS ON SCIENCE DEMOS, INC. (the "Vendor"), as represented by: Keith McElroy, (414) 803-3515. Referenced together, the County and the Vendor are the "Parties" to this Agreement.

WITNESSETH:

WHEREAS, in January 2013 the County issued a Request for Proposals ("RFP") to provide jet ski rental concession services in one of the Milwaukee County Parks located on the Milwaukee Lakefront, and the Vendor submitted a written proposal response meeting all terms and conditions of the RFP process; and

WHEREAS, the Milwaukee County Board of Supervisors, by virtue of adopting Resolution ____ on ____, 2013, has authorized the Interim Director of the Department of Parks, Recreation and Culture ("DPRC") to enter into this agreement with the Vendor for and on behalf of Milwaukee County.

NOW THEREFORE, Vendor is hereby awarded a contract to provide the concession services per all terms and conditions in the RFP and as indicated in the Vendor's complete response thereto, which documents are both hereby incorporated by reference. Each party, for good and valuable consideration and the promises of County and Vendor set forth in this Agreement, agrees as follows:

PROVISIONS:

1. Operation of Concession:

1.1 General: Vendor is permitted to operate a concession for the jet ski rental services (the "Concession"). The Concession shall be operated at McKinley Marina's Pebble Beach, 1750 North Lincoln Memorial Drive, Milwaukee, Wisconsin 53202 (the "Premises"). Vendor is the sole owner of the structure operated on the Premises (the "Facility"). Vendor shall have the exclusive right to provide the above-indicated service in the Marina for the Term (as hereinafter defined). The Concession is a fair-weather operation scheduled to be open daily, weather permitting. Vendor shall suspend operation of the Concession whenever the Marina is closed. The County further reserves the right to prohibit the operation of the Concession during some or all of the annual Air and Water Show in early August based on safety or similar concerns.

1.2 Special Events: Any special events hosted by Vendor shall be governed by standard DPRC and Milwaukee County procedures.

2. Term: This Agreement shall commence on the Effective Date and expire on March 30, 2018 (the "Initial Term"). The Parties shall have two (2) options to extend the Term for one (1) additional consecutive year if mutually agreeable to both Parties (each such period, a "Renewal Term"). Such option may be exercised so long as Vendor first provides written notice to County of its desire to enter into a Renewal Term at least six (6) months' prior to the then-current Term expiration date. The Initial Term and any then-existing Renewal Term shall be referred to as the "Term" herein.

3. Alterations and Improvements: Vendor shall make no changes or improvements to the Facility or the Premises without the written permission of Milwaukee County. Any changes or improvements to the Facility or the Premises approved by Milwaukee County shall be performed at Vendor's sole expense.

4. Parks Logo; Signage: Vendor is responsible for all marketing and advertising to promote its activities. Vendor shall acknowledge the Parks Department and include the Parks logo in all promotional materials, whether print or digital, directly related to its activities under this Agreement. All proposed banners, signage and advertising on or within the Premises must be pre-approved in writing by the Parks Director.

5. Payment: Vendor shall pay County the following amounts at the close of each June, July and August during the Term:

Year One	$1000
Year Two	$1020
Year Three	$1040.40
Year Four	$1061.21
Year Five	$1082.43
Year Six (if renewed)	$1104.08
Year Seven (if renewed)	$1126.16

County shall invoice Vendor for the above-referenced amounts within fifteen (15) days at the close of the applicable month, and Vendor shall pay County within thirty (30) days of receipt of invoice.

Vendor shall further pay the County's going rate for each spot utilized by Vendor in the dry storage area.

Checks shall be made payable to the **Milwaukee County Treasurer** and mailed or delivered to: Milwaukee County Parks Department, Milwaukee County Treasurer, 9480 Watertown Plank Rd., Wauwatosa, Wisconsin, 53226.

6. Rights Reserved to County: County reserves the right to award a contract with one (1) or more additional vendors to provide other concessionable items in other areas of the Marina. County further reserves the right to operate its own concession area during any and all events held in its Parks.

7. Public Access: Vendor understands that the Concession is part of a public park, and the Premises are to remain open and accessible to the public in a manner that is compatible with the use of the Concession as contemplated by this Agreement.

8. Compliance with Laws: Vendor shall, at Vendor's expense, promptly comply with all laws, rules, and regulations made by any governmental authority having jurisdiction over Vendor's use of the Marina and the Concession, including all local health code requirements. Vendor shall obtain and pay for all necessary permits and licensing for the operation of the Concession.

9. Taxes: Vendor shall pay all taxes of whatever character which may be levied or charged upon Vendor to use the Premises or own the Facility, or upon the improvements, fixtures, equipment or other property, or upon the Concession operations under the Agreement.

10. County Approval of Items to be Rented and/or Sold: Vendor shall provide County with a list and pricing information for the products it intends to rent (or sell) to the public for approval. The Parks Director maintains the right to prohibit the sale or rental of any item that he/she deems to be inappropriate or otherwise within the Milwaukee County Parks System.

11. Cleanliness; Garbage: Vendor is responsible for maintaining the Premises and surrounding areas, at least twenty-five (25) feet beyond the Concession, in a state of cleanliness and repair to prevent injury to the public. No offensive or refuse matter, nor any substance constituting an unnecessary, unreasonable, or unlawful hazard, nor any material detrimental to the public health, shall be permitted to remain on the Premises, and Vendor shall prevent any such matter or material from being or accumulating on the Premises. Vendor, at its expense, shall see that all garbage or refuse is collected as often as necessary and in no case less than once a day and disposed of in the County receptacles. Vendor will incur the cost of all excessive garbage pick-up from the Concession during the Term.

12. Safety: Vendor shall instruct customers and staff on the operation and safety rules/standards for all rental equipment. Vendor shall require all customers to sign a statement indicating that they are familiar with the operation and safety rules/standards for such equipment along with a liability waiver in favor of County. Vendor shall require customers to use applicable safety equipment such as life jackets.

13. Maintenance of Premises, Facility and Equipment: Vendor shall equip the Concession with all equipment necessary to conduct business such as rental skis and all safety equipment including life jackets. Vendor shall, at all times and at its own expense, keep and maintain the Facility and all equipment, whether owned and/or installed by Vendor or the County, such as, but not limited to, all of the fixtures, equipment and personal property in the Facility, in good repair and in a clean, sanitary and orderly condition and appearance. Vendor shall remove any graffiti from the Facility and repair any damage to the Facility, satisfactory to County. No equipment provided by County shall be removed or replaced by Vendor without the prior written consent of the Parks Director, and if consent is secured, removal and/or replacement shall be at Vendor's expense. Vendor shall take every precaution to avoid any spillage of fuel into Lake Michigan. Any reports from the public regarding fuel spillage by Vendor shall be referred to the Wisconsin DNR. At no time may Vendor or any of Vendor's employees, agents or guests park any vessels on any dock.

14. Removal of Facility, Equipment and Supplies: Upon expiration or termination of this Agreement for any reason, Vendor shall remove, at its expense, the Facility and all of its

supplies, displays, and related items from the Premises within three (3) days of the expiration or termination date, and shall restore the Premises to its prior condition, satisfactory to the Parks Director.

15. Staff: Vendor shall maintain customer service as a top priority. Vendor shall employ a sufficient number of qualified staff to properly operate the Concession. Vendor shall provide employees who are professional, friendly, and courteous to customers and the general public. Employees shall maintain a neat appearance, exercise good public relations skills, respond to customer complaints and questions, and conduct themselves in a high standard acceptable to County. Vendor and staff shall wear appropriate attire which, in the sole determination of County, clearly distinguishes Concession staff from County and Milwaukee County Parks staff.

16. Nondiscrimination, Affirmative Action and DBE Goals:

16.1 Generally: There shall be no discrimination against or segregation of any person, or group of persons, on account of gender, age, race, color, religion, creed, national origin or ancestry in the use of the Premises or the Concession, and Vendor (or any person claiming under or through Vendor) shall not establish or permit any such practice or practices of discrimination or segregation with reference to the Premises or the Concession.

16.2 Non-Discrimination: Vendor certifies that it will not discriminate against any employee or applicant for employment because of race, color, national origin, age, sex or handicap which includes, but is not limited to, the following: employment, upgrading, demotion or transfer, recruitment, or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship. Vendor will post in conspicuous places, available for employment, notices setting forth the provisions of the non-discriminatory clause. Attached hereto as Exhibit A is an Equal Opportunity Certificate that shall be executed and delivered by Vendor simultaneously with the execution and delivery of the Agreement.

16.3 Affirmative Action Program: Vendor certifies that it will strive to implement the principles of equal employment opportunity through an effective affirmative action program which shall have as its objective to increase the utilization of women, minorities and handicapped persons and other protected groups, at all levels of employment in all divisions of its work force, where these groups may have been previously under-utilized and under-represented. Vendor also agrees that in the event of any disputes as to compliance with the aforementioned requirements, it shall be its responsibility to show that it has exercised good faith efforts to meet all requirements.

16.4 Affirmative Action Plan: Vendor certifies that if it has fifty (50) or more employees, it has filed or will develop and submit a written Affirmative Action Plan. Current Affirmative Action Plan, if required, must be filed with any of the following: The Office of Federal Contract Compliance Programs, the State of Wisconsin, or the Milwaukee County Department of Audit, City Campus, 9th Floor.

16.5 Non-Segregated Facilities: Vendor certifies that it does not and will not maintain or provide segregated facilities for its employees, and that it does not permit its

employees to perform their services at any location under its control where segregated facilities are maintained.

16.6 Reporting Requirement: When applicable, Vendor certifies that it will comply with all reporting requirements and procedures established in Title 41 Code of Federal Regulations, Chapter 60.

16.7 Compliance: Vendor certifies that it is not currently in receipt of any outstanding letters of deficiencies, show cause, probable cause, or other such notification of noncompliance with EEO regulations.

16.8 Disadvantaged Business Enterprise Goals: Vendor shall use reasonable efforts to cause its contractors to establish Disadvantaged Business Enterprise ("DBE") participation goals, consistent with Milwaukee County DBE goals of seventeen percent (17%) for professional services contracts, and to use good faith efforts to achieve those goals. The Milwaukee County Community Business Development Partners shall assist Vendor in soliciting potential DBE vendors for the improvements and monitor such goal attainment. Vendor's contact regarding DBE participation is: Director Nelson Soler, at (414) 289-4608.

17. Site Restoration: Both Vendor and County shall together participate in a pre-season and post-season inspection of the Premises. Vendor shall be responsible for any actual documented physical damage to the Premises caused by Vendor, its employees, agents, representatives, and guests. Within five (5) days of the discovery of any such damage, the Premises shall be restored to the satisfaction of the Parks Director.

18. Security: Unarmed security personnel are permitted within the Premises for the purposes of checking identification and general observation. Vendor shall be solely responsible for and assume all risks related to the security and protection of the Premises and any equipment and for the prevention of unauthorized access to the Premises. Vendor expressly acknowledges that any security measures deemed necessary or desirable for protection of the Facility shall be the sole responsibility of Vendor at no cost to County. Vendor shall notify County of any incident resulting in loss or damage to the Premises or breach of security whether or not such incident is reported to the Milwaukee County Sheriff's Office.

19. Inspection by County: County shall at all reasonable times have the right to enter the Premises and the Facility to inspect the condition thereof, and to improve or repair the Premises, and to make such repairs, alterations, improvements or additions as County may deem necessary or desirable; provided, however, such entry shall be done in such a manner that it does not unreasonably interfere with the conduct of Vendor's use of the Premises.

20. Interest: Unless waived by County Board of Supervisors, Vendor shall be responsible for payment of interest on amounts not remitted in accordance with this Agreement. The rate of interest shall be the statutory rate in effect for delinquent County property taxes (one-percent (1%) per month or fraction of a month) as described in Wisconsin statutes section 74.47(1). The obligation for payment and calculation thereof shall commence upon the day following the due dates established herein.

20.1 Penalty: In addition to the interest described above, Vendor may be responsible for payment of penalty on amounts not remitted in accordance with this Agreement, as may be determined by County. The penalty shall be the statutory rate in effect for delinquent County property taxes (.5% per month, or fraction of a month) as described in Milwaukee County ordinance section 6.06(1) and Wisconsin statutes section 74.47(2). The obligation for payment and calculation thereof shall commence upon the day following the due dates established herein.

20.2 Audit Results: If, as a result of the annual audit required herein, additional amounts are disclosed to be due and owing to the County, interest and penalty shall be calculated thereon in accordance with the above method. Vendor shall remit to the County any additional amounts identified due and owing for the audit including interest and penalty thereon within thirty (30) days following receipt of the audit report by the County.

20.3 Nonexclusivity: This provision permitting collection of interest and penalty by the County on delinquent payments is not to be considered the County's exclusive remedy for Vendor's default or breach with respect to delinquent payment. The exercise of this remedy is not a waiver by the County of any other remedy permitted under this Agreement, including but not limited to termination of this Agreement.

21. Audit: Pursuant to Milwaukee County ordinance section 56.30(6)(e), Vendor shall allow the County or any other party the County may name, when and as they demand, to audit, examine and make copies of records in any form and format, meaning any medium on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by Vendor, including not limited to, handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes), computer files, computer printouts and optical disks, and excerpts or transcripts from any such records or other information directly relating to matters under this Agreement, all at no cost to County. Any subcontracting by Vendor in performing the duties described under this Agreement shall subject the subcontractor and/or associates to the same audit terms and conditions as the Vendor. Vendor (or any subcontractor) shall maintain and make available to County the aforementioned audit information for no less than three years after the conclusion of this Agreement.

22. Insurance: Vendor shall acquire and maintain the established insurance and liability limits for the Concession. Such evidence shall include insurance coverage in the following minimum amounts:

Type of Coverage	Minimum Limits
Commercial General Liability	
Bodily Injury and Property Damage (incl. Personal Injury, Fire Legal, Contractual & Products/Completed Operations)	$1,000,000 Per Occurrence $1,000,000 General Aggregate
Advertising Injury	$1,000,000

Wisconsin Workers Compensation or Proof of All States Coverage	Statutory
Employers' Liability	$100,000/$500,000/$100,000
United States Longshoremen and Harbor Workers Compensation Act Coverage	If required by law

Milwaukee County will be named as an additional insured for General Liability and be afforded a thirty (30)-day notice of cancellation or non-renewal. A waiver of subrogation for Workers Compensation by endorsement in favor of Milwaukee County shall be provided. Disclosure must be made of any non-standard or restrictive additional insured endorsement, and any use of non-standard or restrictive additional insured endorsement will not be acceptable.

A certificate indicating the above coverages shall be submitted by Vendor for the County's review and approval for each successive period of coverage for the duration of this Agreement.

Coverages shall be placed with an insurance company approved to do business in the State of Wisconsin and rated "A" per Best's Key Rating Guide. The insurance requirements contained within this Agreement are subject to periodic review and reasonable adjustment by the County Risk Manager consistent with similarly situated properties within the properties owned by the County.

23. Indemnification: To the fullest extent permitted by law, Vendor shall indemnify the County for, and hold it harmless from, all liability, claims and demands on account of personal injuries, property damage and loss of any kind whatsoever, including workers' compensation claims, which arise out of or are in any manner connected to the Premises, based on any injury, damage or loss being caused by any wrongful, intentional, or negligent acts or omissions of the Vendor, its agents, or employees. Vendor shall, at its own expense, investigate all claims and demands, attend to their settlement or disposition, defend all actions based thereon and pay all charges of attorneys and other costs and expenses arising from any such injury, damage or loss, claim, demand or action.

23.1 Environmental Indemnification: Vendor shall, to the fullest extent provided for under any environmental laws, rules and regulations, be responsible for any required repair, cleanup, remediation or detoxification arising out of any Hazardous Materials brought onto or introduced into the Premises or surrounding areas by Vendor, or its agents. Vendor hereby agrees to indemnify, defend and hold County harmless from and against any and all liabilities, costs, expenses (including attorney fees), damages (including but not limited to clean-up, remediation or detoxification of) or any other losses caused by its introduction of any such Hazardous Materials into or onto the Premises and any Hazardous Materials brought onto or introduced into the Premises as described below.

23.2 "Hazardous Materials" as the term is used herein shall mean any substance: (i) the presence of which requires investigation or remediation under any Federal, State

or local statute, regulation, ordinance, order, action or policy; or (ii) which is or becomes defined as a "hazardous waste" or "hazardous substance" under any Federal, State or local statute, regulation, ordinance, or amendments thereto.

24. Assignment and Subletting: Vendor may not assign this Agreement, in whole or in part, or sublease any part of the Premises without the prior written approval of the Parks Director.

25. Default:

25.1 Definition: A "Default" will occur under this Agreement if: (a) A party fails to comply with any provision in this Agreement, and such failure continues for thirty (30) days after a written notice from the other party setting forth in reasonable detail the nature of such default; or (b) Vendor ceases to do business as a going concern, ceases to pay its debts as they become due, or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any proceeding under any federal or state bankruptcy law, or a custodian or trustee is appointed to take passion of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Vendor's assets or Vendor's interest in this Agreement and fails to remedy such condition within thirty (30) days after written notice from County; or Vendor becomes, without the prior written approval of County, a successor or merged entity in a merger, or a constituent entity in a consolidation, or an entity in a dissolution.

25.2 Remedies: If a Default occurs, then the non-defaulting party shall, at such party's option, have any or all of the following described remedies, all cumulative (so exercise of one remedy shall not preclude exercise of another remedy), in addition to such other remedies as may be available at law or in equity or under any other terms of this Agreement. The non-defaulting party's remedies shall include:

25.3 Termination of Rights: The non-defaulting party may terminate this Agreement by sixty (60) days prior written notice of termination of this Agreement to the defaulting party or by any other lawful means, in which case this Agreement and the Term shall terminate, and Vendor shall vacate the Premises on the termination date. Should County so choose, if Vendor is the defaulting party, Vendor shall cooperate in continuing to staff the Concession during a transition period as County seeks an alternate service provider. Additionally, the non-defaulting party may bring an action to recover any or all of the following from the defaulting party: (i) any unpaid amounts set forth in Section 5 earned as of the date the Agreement terminates; and (ii) any other amount reasonably and directly necessary to compensate the non-defaulting party for all detriment caused by and directly arising from the defaulting party's failure to perform its obligations under this Agreement.

25.4 No Waiver: No failure by the County to insist upon strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy upon a Default, and no acceptance of full or partial amounts due pursuant to Section 5 during continuance of any such Default, shall waive any such Default or such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Agreement to be performed or complied with by Vendor, and no Default, shall be modified, except by a written instrument

executed by County. No waiver of any Default shall modify this Agreement. Each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then-existing or subsequent Default of such covenant, agreement, term or condition of this Agreement.

25.5 Survival: No expiration or termination of this Agreement and no entry into or onto the Premises by County after such expiration or termination shall relieve Vendor of its liabilities and obligations under this Agreement, all of which shall survive such expiration, termination or entry.

26. Independent Contractor: Nothing contained in this Agreement shall constitute or be construed to create a partnership or joint venture between County or its successors or assigns and Vendor or its successors or assigns. This Agreement does not create the relationship of principal and agent.

27. Notices: All notices with respect to this Agreement shall be in writing. Except as otherwise expressly provided in this Agreement, a notice shall be deemed duly given and received upon delivery, if delivered by hand or after posting via US Mail, to the party addressed as follows:

To Vendor:
Hands On Science Demos, Inc.
Attn: Keith McElroy
7929 N. 64th Court
Milwaukee, WI 53223

To County:
Milwaukee County Dept. of Parks
Attn: Parks Director
9480 Watertown Plank Road
Wauwatosa, WI 53226

Either party may designate a new address for purposes of this Agreement by written notice to the other party.

28. Integration; Order of Precedence: The Parties understand and agree that the RFP and Vendor's RFP Response, are incorporated into and made a part of this Agreement by this specific reference. In the event of a conflict or disagreement among the documents, the following order of precedence shall govern:
(a) Written amendments to the Agreement;
(b) The Agreement;
(c) The RFP; and
(d) Vendor's original RFP Response, dated January 25, 2013.

Signature page follows

IN WITNESS WHEREOF, the Parties hereto have set their hands as follows:

Hands On Science Demos, Inc.

By: _____ Date: _____
Keith McElroy, President

Milwaukee County Dept. of Parks, Recreation & Culture

By: _____ Date: _____
James Keegan, Interim Director

Approved as to form and independent status:

By: _____ Date: _____
Corporation Counsel

Reviewed by:

By: _____ Date: _____
Risk Management

Approved as to Chapter 42 DBE provisions:

By: _____ Date: _____
Community Business
Development Partners

EXHIBIT A
EQUAL OPPORTUNITY CERTIFICATE

[Attached.]

MILWAUKEE COUNTY PARKS
N·A·T·I·O·N·A·L GOLD MEDAL WINNER

CHRIS ABELE, MILWAUKEE COUNTY EXECUTIVE
JAMES KEEGAN, INTERIM DIRECTOR OF PARKS, RECREATION AND CULTURE

Date: April 30, 2013

To: Chairwoman Marina Dimitrijevic, County Board of Supervisors

From: James Keegan, Interim Director, Department of Parks, Recreation and Culture

Subject: **Authorization to Submit Federal Congestion Mitigation and Air Quality Improvement Program Grant Applications – ACTION**

POLICY

The Interim Director of the Department of Parks, Recreation and Culture (DPRC) is seeking authorization to submit one or more Federal Congestion Mitigation and Air Quality Improvement Program (CMAQ) grant applications.

BACKGROUND

The CMAQ Program is designed to provide funding for transportation-related projects that improve air quality and reduce traffic congestion in counties classified as air quality non-attainment areas for the federal criteria pollutant ozone. CMAQ projects generally fall into one of three broad categories:

- Projects that reduce emissions through improved vehicle and fuel technologies
- Projects that reduce emissions by improving traffic congestion
- Projects that reduce the number of vehicle trips and/or vehicle miles traveled (i.e., bike trail projects – new construction)

ADDRESS
9480 Watertown Plank Road
Wauwatosa, WI 53226-3560

PHONE/FAX
ph: **414 / 257 PARK** (7275)
fax: 414 / 257 6466

EMAIL
parks@milwcnty.com

WEBSITE
countyparks.com

Examples of typical projects include efforts to enhance public transit, to construct bicycle/pedestrian facilities, to establish ridesharing programs and facilities, and to employ technologies that improve traffic flow and vehicle emissions. The DPRC has obtained and implemented a number of CMAQ grants for bike trail projects since the program's inception in the early 1990s, and those grants have enabled the DPRC to make steady progress in its efforts to expand and enhance the Oak Leaf Trail, one of the DPRC's most popular facilities.

CMAQ is authorized and funded under the federal Moving Ahead for Progress in the 21st Century (MAP-21), the federal transportation act that was signed into law on July 6, 2012. It is administered by the Wisconsin Department of Transportation with funds being made available through a competitive application process open to the eleven county non-attainment and maintenance area in southeastern and northeastern Wisconsin. CMAQ is a reimbursement program and funds are awarded on an 80:20 federal:local cost-share basis. The application deadline is June 14, 2013.

RECOMMENDATION

The Interim Parks Director respectfully recommends that the DPRC be authorized to apply for one or more CMAQ grants, and to undertake all actions and activities necessary to accept and implement CMAQ grant awards offered to Milwaukee County.

Prepared by: Bill Waldron, Natural Resources Specialist

Recommended by: **Approved by:**

Laura Schloesser, Chief of Administration and External Affairs

James Keegan, Interim Parks Director

cc: County Executive Chris Abele

Amber Moreen, Chief of Staff, County Executive's Office

Kelly Bablitsch, Chief of Staff, County Board

Supv. Gerry Broderick, Chairman, Parks, Energy & Environment Committee

Supv. Jason Haas, Vice-Chair, Parks, Energy & Environment Committee

Dan Laurila, Fiscal Mgt. Analyst, Admin & Fiscal Affairs/DAS

Janelle Jensen, Parks, Energy & Environment Committee Clerk

Jessica Janz-McKnight, Research Analyst, County Board

File No. 13-
(Journal,)

(ITEM NO.) From the Director, Department of Parks, Recreation and Culture (DPRC), seeking authorization to submit one or more federal Congestion Mitigation and Air Quality Improvement Program grant applications, by recommending adoption of the following:

A RESOLUTION

WHEREAS, the federal Congestion Mitigation and Air Quality Improvement Program (CMAQ) is designed to provide funding for transportation-related projects that improve air quality and reduce traffic congestion in counties classified as air quality non-attainment areas for the federal criteria pollutant ozone; and

WHEREAS, CMAQ projects generally fall into one of three broad categories:

- Projects that reduce emissions through improved vehicle and fuel technologies
- Projects that reduce emissions by improving traffic congestion
- Projects that reduce the number of vehicle trips and/or vehicle miles traveled (ie: bike trail projects – new construction)

; and

WHEREAS, the DPRC has obtained and implemented a number of CMAQ grants for bike trail projects and those grants have enabled the DPRC to make steady progress in its efforts to expand and enhance the Oak Leaf Trail system; and,

WHEREAS, CMAQ is authorized and funded under the federal Moving Ahead for Progress in the 21st Century (MAP-21), the federal transportation act that was signed into law on July 6, 2012; and

WHEREAS, CMAQ is administered by the Wisconsin Department of Transportation with funds being made available through a competitive application process open to the eleven county non-attainment and maintenance area in southeastern and northeastern Wisconsin; and

WHEREAS, CMAQ is a reimbursement program and funds are awarded on an 80:20 federal:local cost-share basis, and the application deadline is June 14, 2013; now, therefore

BE IT RESOLVED, that the DPRC is hereby authorized to submit one or more federal CMAQ grant applications, and to undertake all actions and activities necessary to accept and implement CMAQ grant awards offered to Milwaukee County.

MILWAUKEE COUNTY FISCAL NOTE FORM

DATE: April 30, 2013

Original Fiscal Note ☒

Substitute Fiscal Note ☐

SUBJECT: The DPRC Director is seeking authorization to submit one or more Congestion Mitigation Air Quality Improvement Program (CMAQ) grant applications.

FISCAL EFFECT:

☒ No Direct County Fiscal Impact

☐ Existing Staff Time Required

☐ Increase Operating Expenditures
(If checked, check one of two boxes below)

☐ Absorbed Within Agency's Budget

☐ Not Absorbed Within Agency's Budget

☐ Decrease Operating Expenditures

☐ Increase Operating Revenues

☐ Decrease Operating Revenues

☐ Increase Capital Expenditures

☐ Decrease Capital Expenditures

☐ Increase Capital Revenues

☐ Decrease Capital Revenues

☐ Use of contingent funds

Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.

	Expenditure or Revenue Category	Current Year	Subsequent Year
Operating Budget	Expenditure	0	0
	Revenue	0	0
	Net Cost	0	0
Capital Improvement Budget	Expenditure	0	0
	Revenue	0	0
	Net Cost	0	0

DESCRIPTION OF FISCAL EFFECT

In the space below, you must provide the following information. Attach additional pages if necessary.

A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated. [1] If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
D. Describe any assumptions or interpretations that were utilized to provide the information on this form.

A. Requesting authorization to apply for Congestion Mitigation Air Quality Improvement Program (CMAQ) grant and accept such grants if awarded to the department. The CMAQ Program is designed to provide funding for transportation-related projects that improve air quality and reduce traffic congestion in counties classified as air quality non-attainment areas for the federal criteria pollutant ozone.

B. CMAQ grants require a 20% local match.

C. No Impact

D. None

Department/Prepared By Laura Schloesser/DPRC

Authorized Signature _____

Did DAS-Fiscal Staff Review? ☐ Yes ☒ No

Did CBDP Review?[2] ☐ Yes ☐ No ☒ Not Required

[1] If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.

County of Milwaukee
Interoffice Communication

Date: April 30, 2013

To: Supervisor Gerry Broderick, Chair, Parks Energy and Environment Committee

From: Josh Fudge, Interim Fiscal and Budget Administrator, Department of Administrative Services

Subject: Due Diligence Report for an agreement with The Carol Company, INC d/b/a Milwaukee Bike and Skate Rental and Milwaukee Lakefront Segway to provide Segway and bicycle rental concession services at Veterans Park

Request
The Department of Parks, Recreation, and Culture (Parks) requests approval to enter into a five (5) year agreement with The Carol Company (Carol) to provide Segway and bicycle rental concession services at Veterans Park.

Background
In January 2013, Parks issued Requests for Proposals (RFP) for Segway and bicycle rental services at Veterans Parks. Carol was selected as the successful bidder to continue providing concession services. Parks has received an average of $25,335 in annual commission from the combined concessions since 2008[1].

Review & Analysis
The Department of Administration - Fiscal Affairs (DAS), Corporation Counsel, Risk Management, and Community Business Development Partners have reviewed the draft proposal with Carol.

Carol would be permitted to operate a concession for the rental of Segways, bicycles, skates, and related products at the County-owned building on the end of Lagoon Drive in Veterans Park. The concession shall be open daily from 10:00 a.m. to 7:00 p.m., weather permitting.

The term of the proposed agreement is five (5) years with two one (1) year mutual options for an extended term. The agreement begins on the execution date and the original term expires on March 30, 2018. If the mutual options are exercised, the agreement will expire on March 30, 2020. The agreement may be terminated by either party for cause if a failure to comply with any provision of the agreement is not cured in a timely manner. Upon expiration or termination of the agreement, Carol shall remove all of its supplies, displays and related items within three (3) days.

[1] Based on data from the Milwaukee County Fiscal Intranet for actual revenues (Functional Code VW26, Activity Code KWYL, Revenue Source 9046, Agency 900, Fund 001)

Per terms of the proposed agreement, the County will receive 23% of gross receipts for Segway and bicycle/skate rentals, with a guaranteed annual minimum of $31,000. The previous agreement with Carol (in effect from 2008 to 2012) provided that the County would receive 17% of gross receipts with no annual minimum. The chart below shows the actual amount of revenue received from the concession and the projected amount of revenue based on the terms of the proposed agreement. An annual 1% increase in gross receipts is assumed for future years.

Year	Revenue
2008 - Actual	$ 23,568
2009 - Actual	$ 23,397
2010 - Actual	$ 25,322
2011 - Actual	$ 27,468
2012 - Actual	$ 26,920
2013 - Projected	$ 36,786
2014 - Projected	$ 37,153
2015 - Projected	$ 37,525
2016 - Projected	$ 37,900
2017 - Projected	$ 38,279

Recommendation

Upon review of the available information, and changes made to the agreement based on consultation with Corporation Counsel, Risk Management, Parks, and CBDP staff, DAS recommends approval of the vendor permit agreement.

Josh Fudge, Interim Fiscal and Budget Administrator

cc: Chris Abele, County Executive
Supervisor Marina Dimitrijevic, Chair, County Board of Supervisors
Amber Moreen, Chief of Staff, County Executive's Office
Kelly Bablitch, Chief of Staff, County Board of Supervisors
Jim Keegan, Interim Director, Parks, Recreation & Culture
Laura Schloesser, Chief of Admin & External Affairs, Parks, Recreation, & Culture
Suzanne Carter, Contracts Services Officer, Parks, Recreation, & Culture
Don Tyler, Director, Department of Administrative Services
Jessica Janz-McKnight, Research Analyst, County Board
Stephen Cady, Fiscal and Budget Analyst, County Board

MILWAUKEE COUNTY PARKS
N·A·T·I·O·N·A·L GOLD MEDAL WINNER

CHRIS ABELE, MILWAUKEE COUNTY EXECUTIVE
JAMES KEEGAN, INTERIM DIRECTOR OF PARKS, RECREATION AND CULTURE

Date: April 30, 2013

To: Chairwoman Marina Dimitrijevic, County Board of Supervisors

From: James Keegan, Interim Director, Department of Parks, Recreation and Culture

Subject: **Request to Enter into a Vendor Permit Agreement for Segway and Bicycle Rental Concession Services at the Lakefront – ACTION**

POLICY

The Department of Parks, Recreation and Culture (DPRC) respectfully requests authorization to enter into a vendor permit agreement for Segway and bicycle rental concessions at the Lakefront.

BACKGROUND

In January 2013, the DPRC issued a number of Requests for Proposals (RFP) to provide various concession services in the Milwaukee County Parks located on the lakefront. The Carol Company, Inc. responded to both the Segway and bicycle rental RFPs and, meeting all terms and conditions of the process, was awarded the opportunities. The Carol Company has been a long-standing partner with the DPRC renting Segways, bicycles, surreys, skates, and other related products. The vendor is also permitted to sell non-alcoholic beverages and pre-packaged snack items.

ADDRESS
9480 Watertown Plank Road
Wauwatosa, WI 53226-3560

PHONE/FAX
ph: **414 / 257 PARK** (7275)
fax: 414 / 257 6466

EMAIL
parks@milwcnty.com

WEBSITE
countyparks.com

The term of this agreement is five (5) years with two (2) options to extend the term for one (1) additional consecutive year. The vendor has agreed to pay the County $155,000 for the first five (5) years and $31,000 in year six (6) and $31,000 in year seven (7), if renewed. In addition, there is a percentage profit-sharing agreement if gross receipts exceed established amounts.

The Carol Company will reimburse the County for utility costs in the amount of $500 per operating year.

The concession is a fair-weather operation scheduled to be open daily from 10:00 a.m. - 7:00 p.m.

RECOMMENDATION

The Interim Parks Director respectfully recommends that the DPRC be authorized to enter into a vendor permit agreement with The Carol Company, Inc. for Segway and bicycle rental concession services at the lakefront.

Prepared by: Laura Schloesser, Chief of Administration and External Affairs

Recommended by:	**Approved by:**
Laura Schloesser, Chief of Administration and External Affairs	James Keegan, Interim Parks Director

Attachment - Request for Proposal Criteria and Scoring

Cc: County Executive Chris Abele
Amber Moreen, Chief of Staff, County Executive's Office
Kelly Bablitch, Chief of Staff, County Board
Supv. Gerry Broderick, Chair, Parks, Energy & Environment Committee

Supv. Jason Haas, Vice-Chair, Parks, Energy & Environment Committee
Daniel Laurila, Fiscal Mgt. Analyst, Admin & Fiscal Affairs/DAS
Janelle Jensen, Parks, Energy & Environment Committee Clerk
Jessica Janz-McKnight, Research Analyst, County Board

File No. 13-
(Journal,)

(ITEM NO.) From the Director, Department of Parks, Recreation and Culture, requesting authorization to enter into a vendor permit agreement for Segway and bicycle rental concession services at the lakefront.

A RESOLUTION

WHEREAS, in January 2013 the Department of Parks, Recreation and Culture (DPRC) issued a number of Requests for Proposals (RFP) for various concession services in the Milwaukee County Parks located at the lakefront; and

WHEREAS, The Carol Company, Inc., responded to both the Segway and bicycle rental RFPs; and

WHEREAS, the term of this agreement is five (5) years with, upon mutual agreement, two (2) additional one (1) year extensions; and

WHEREAS, the DPRC will receive $155,000 for the first five (5) years and $31,000 in year six (6) and $31,000 in year seven (7), if renewed; and

WHEREAS, the DPRC will receive a percentage of gross receipts if rental sales exceed $9,000 for Segways and $22,000 for bicycles and related products; and

WHEREAS, the DPRC will receive utility reimbursement of $500 per operating year; and

WHEREAS, the concession will operate daily, weather permitting, from 10:00 a.m. – 7:00 p.m.; now, therefore,

BE IT RESOLVED, that the Milwaukee County Board of Supervisors hereby authorizes the Interim Parks Director to execute a vendor permit agreement with The Carol Company, Inc. for Segway and bicycle rental concessions at the lakefront.

MILWAUKEE COUNTY FISCAL NOTE FORM

DATE: April 30, 2013

Original Fiscal Note ☒

Substitute Fiscal Note ☐

SUBJECT: Vendor Permit Agreement for Segway and Bicycle Rental Concession Services at the Lakefront

FISCAL EFFECT:

☒ No Direct County Fiscal Impact

☒ Existing Staff Time Required

☐ Increase Operating Expenditures
(If checked, check one of two boxes below)

☐ Absorbed Within Agency's Budget

☐ Not Absorbed Within Agency's Budget

☐ Decrease Operating Expenditures

☐ Increase Operating Revenues

☐ Decrease Operating Revenues

☐ Increase Capital Expenditures

☐ Decrease Capital Expenditures

☐ Increase Capital Revenues

☐ Decrease Capital Revenues

☐ Use of contingent funds

Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.

	Expenditure or Revenue Category	Current Year	Subsequent Year
Operating Budget	Expenditure	0	0
	Revenue	0	0
	Net Cost	0	0
Capital Improvement Budget	Expenditure	0	0
	Revenue	0	0
	Net Cost	0	0

DESCRIPTION OF FISCAL EFFECT

In the space below, you must provide the following information. Attach additional pages if necessary.

A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated. [1] If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
D. Describe any assumptions or interpretations that were utilized to provide the information on this form.

A. Request to enter into a Vendor Permit Agreement for Segway and Bicycle Rental Concession Services at the Lakefront
B. The Carol Company agrees to pay the DPRC $31,000 in 2013 and $31,000 in 2014 plus 23% of gross receipts for Segway rentals when greater than $9000 and 23% of gross receipts for non-Segway rentals when greater than $22,000.
C. No Impact
D. None

Department/Prepared By Laura Schloesser/DPRC

Authorized Signature _____

Did DAS-Fiscal Staff Review? ☐ Yes ☒ No

Did CBDP Review?[2] ☒ Yes ☐ No ☐ Not Required

[1] If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.

RFP Criteria and Scoring: Bike Rental Services

Category	Criteria	Weight	Average Carol Company	Average Wheel Fun Rentals
A	Qualifications and Experience	30	30	25
B	Revenue to the County	30	25.67	26
C	Quality of Services and Products and Reasonableness of Pricing	10	8.67	9
D	Innovation and Variety of Services and Products	10	8.67	9.67
E	Marketing Plan	10	8	8.67
F	DBE Participation	10	10	4
	Total	100	**91**	82.33

RFP Criteria and Scoring: Segway Rental Services

Category	Criteria	Weight	Average Carol Company	Average Wheel Fun Rentals
A	Qualifications and Experience	30	30	21.67
B	Revenue to the County	30	26	27.67
C	Quality of Services and Products and Reasonableness of Pricing	10	9	8.67
D	Innovation and Variety of Services and Products	10	9	8.67
E	Marketing Plan	10	8	8.67
F	DBE Participation	10	10	4
	Total	100	**92**	79.33

VENDOR PERMIT AGREEMENT

BETWEEN

MILWAUKEE COUNTY DEPARTMENT OF PARKS, RECREATION AND CULTURE

AND

THE CAROL COMPANY, INC.

This Vendor Permit Agreement (the "Agreement") is made and entered into effective _____, 2013 (the "Effective Date"), by and between the MILWAUKEE COUNTY DEPARTMENT OF PARKS, RECREATION AND CULTURE (the "County") and THE CAROL COMPANY, INC., d/b/a MILWAUKEE BIKE & SKATE RENTAL and MILWAUKEE LAKEFRONT SEGWAY (the "Vendor"), as represented by: Carol French, (262) 510-3439. Referenced together, the County and the Vendor are the "Parties" to this Agreement.

WITNESSETH:

WHEREAS, in January 2013 the County issued a number of Requests for Proposals ("RFPs") to provide various concession services in the Milwaukee County Parks located on the Milwaukee Lakefront, including an RFP for Segway rental concession services and an RFP for bicycle rental concession services, and the Vendor submitted written proposal responses to the Segway and bicycle rental RFPs meeting all terms and conditions of the RFP process; and

WHEREAS, the Milwaukee County Board of Supervisors, by virtue of adopting Resolution ____ on ____, 2013, has authorized the Interim Director of the Department of Parks, Recreation and Culture ("DPRC") to enter into this agreement with the Vendor for and on behalf of Milwaukee County.

NOW THEREFORE, Vendor is hereby awarded a contract to provide the concession services per all terms and conditions in the RFPs and as indicated in the Vendor's complete responses thereto, which documents are hereby incorporated by reference. Each party, for good and valuable consideration and the promises of County and Vendor set forth in this Agreement, agrees as follows:

PROVISIONS:

1. Operation of Concession:

1.1 General: Vendor is permitted to operate a concession for the rental of Segways, bicycles, surreys, skates, and related products (the "Concession"). The Concession shall be operated in the County-owned building (the "Facility") at the end of Lagoon Drive at Veterans Park in Milwaukee, Wisconsin (the "Premises"). Vendor shall have the exclusive right to provide the above-indicated service in the Park for the Term (as hereinafter defined). The Concession is a fair-weather operation scheduled to be open daily from 10:00 a.m. to 7:00 p.m. local time, weather permitting. The times of operation may be modified upon the written approval of the Parks Director. Vendor shall suspend operation of the Concession whenever the Park is closed.

1.2 Non-exclusive Food and Beverage Concession: Vendor shall further be permitted to sell bottled water, non-alcoholic beverages, and pre-packaged food items

including chips, snacks, cookies, nachos, candy, and ice cream as approved by the Parks Director or his designee. Vendor shall comply with all current Milwaukee County Parks practices, including compliance with agreements regarding Milwaukee County Parks's exclusive non-alcoholic beverage provider and prohibitions on the sale of gum and glass bottles. The County reserves the right to award a contract with one (1) or more additional vendors to provide food and beverage and/or other concessionable items in the Park, subject to the exclusivity clause in Section 1.1.

1.3 Special Events: Any special events hosted by Vendor shall be governed by standard DPRC and Milwaukee County procedures.

1.4 Prerequisites: This Agreement and the obligations of County and Vendor hereunder are contingent upon Vendor successfully meeting the Milwaukee County "Due Diligence" requirements in a timely manner (see attached, as Exhibit A).

2. Term: This Agreement shall commence on the Effective Date and expire on March 30, 2018 (the "Initial Term"). The Parties shall have two (2) options to extend the Term for one (1) additional consecutive year if mutually agreeable to both Parties (each such period, a "Renewal Term"). Such option may be exercised so long as Vendor first provides written notice to County of its desire to enter into a Renewal Term at least six (6) months' prior to the then-current Term expiration date. The Initial Term and any then-existing Renewal Term shall be referred to as the "Term" herein.

3. Payment: Vendor shall pay County Seven Thousand Seven Hundred Fifty Dollars ($7750) at the close of each June, July, August, and September during the Term. County shall invoice Vendor for the above-referenced fee within fifteen (15) days at the close of the applicable month, and Vendor shall pay County within thirty (30) days of receipt of invoice. If, over the course of Vendor's Operating Year (as hereinafter defined), twenty-three-percent (23%) of Vendor's Gross Receipts (as hereinafter defined) (the "Gross Receipt Percentage") for Segway rentals is greater than the Nine Thousand Dollars ($9000), Vendor shall remit to County the difference between the Gross Receipt Percentage and Nine Thousand Dollars ($9000) by April 1. Likewise, if, over the course of Vendor's Operating Year, the Gross Receipt Percentage for all rentals and sales other than Segway rentals is greater than Twenty-Two Thousand Dollars ($22,000), Vendor shall remit to County the difference between the Gross Receipt Percentage and Twenty-Two Thousand Dollars ($22,000) by April 1. "Gross Receipts" shall be defined as the total of all receipts (cash, checks, credit cards) derived from the rental or sale of all merchandise associated with the Concession, less sales tax. Deductions for client non-payments or bad-debt expenses are not allowed. An "Operating Year" shall be that period from March 1 through the last day of February of each year of the Agreement; provided, however, that during the initial year of the Agreement, the Operating Year shall be from the Effective Date through March 1. Checks shall be made payable to the Milwaukee County Treasurer and mailed or delivered to: Milwaukee County Parks Department, Milwaukee County Treasurer, 9480 Watertown Plank Rd., Wauwatosa, Wisconsin, 53226.

4. Utilities: Vendor shall pay to the County the monthly sum of One Hundred Dollars ($100.00) toward the cost of Utilities for each of the five (5) months in which the Concession is operational. "Utilities" shall include electricity. Payment shall be due within fifteen (15) days of the end of each month.

5. Sales Reports: Upon demand, Vendor agrees to compile and provide County with a detailed summary report of all sales activities, a financial reconciliation of all commissions owed and paid, and remit to County any additional amounts as may be required.

6. Alterations and Improvements: Vendor shall make no changes or improvements to the Facility or the Premises without the written permission of Milwaukee County. Any changes or improvements to the Facility or the Premises approved by Milwaukee County shall be performed at Vendor's sole expense.

7. Parks Logo: Vendor is responsible for all marketing and advertising to promote its activities. Vendor shall acknowledge the Parks Department and include the Parks logo in all promotional materials, whether print or digital, directly related to its activities covered under this Agreement. All proposed banners, signage and advertising on or within the Premises, including signage on temporary or portable structures, must be pre-approved in writing by the Parks Director.

8. Rights Reserved to County: County reserves the right to award a contract with one (1) or more additional vendors to provide other concessionable items in other areas of the Park. County further reserves the right to operate its own concession area during any and all events held in its Parks.

9. Public Access: Vendor understands that the Concession is part of a public park, and the Premises are to remain open and accessible to the public in a manner that is compatible with the use of the Concession as contemplated by this Agreement.

10. Compliance with Laws: Vendor shall, at Vendor's expense, promptly comply with all laws, rules, and regulations made by any governmental authority having jurisdiction over Vendor's use of the Park and the Concession, including all local health code requirements. Vendor shall obtain and pay for all necessary permits and licensing for the operation of the Concession, including, if applicable, permits and licensing for a food and beverage concession in the City of Milwaukee.

11. Taxes: Vendor shall pay all taxes of whatever character which may be levied or charged upon Vendor to use the Premises, or upon the improvements, fixtures, equipment or other property, or upon the Concession operations under the Agreement.

12. County Approval of Items to be Rented or Sold: Vendor shall provide County with a list and pricing information for the products it intends to rent or sell to the public for approval. The Parks Director maintains the right to prohibit the sale or rental of any item that he/she deems to be inappropriate or otherwise within the Milwaukee County Parks System.

13. Cleanliness; Garbage: Vendor is responsible for maintaining the Premises and surrounding areas, at least twenty-five (25) feet beyond the Concession, in a state of cleanliness and repair to prevent injury to the public. No offensive or refuse matter, nor any substance constituting an unnecessary, unreasonable, or unlawful hazard, nor any material detrimental to the public health, shall be permitted to remain on the Premises, and Vendor shall prevent any such matter or material from being or accumulating on the Premises. Vendor, at its expense, shall see that all garbage or refuse is collected as often as necessary and in no case less than once a day and disposed of in the County

receptacles. Vendor will incur the cost of all excessive garbage pick-up from the Concession during the Term.

14. Safety: Vendor shall instruct customers and staff on the operation and safety rules/standards for all rental equipment. Vendor shall require all customers to sign a statement indicating that they are familiar with the operation and safety rules/standards for such equipment along with a liability waiver in favor of County. Vendor shall require customers to use applicable safety equipment such as helmets.

15. Maintenance of Facility and Equipment: Vendor shall equip the Concession with all equipment necessary to conduct business such as storage racks, all rental equipment, and all safety equipment including helmets. Vendor shall, at all times and at its own expense, keep and maintain the Facility and all equipment, whether owned and/or installed by Vendor or the County, such as, but not limited to, all of the fixtures, equipment and personal property in the Facility, in good repair and in a clean, sanitary and orderly condition and appearance. No equipment provided by County shall be removed or replaced by Vendor without the prior written consent of the Parks Director, and if consent is secured, removal and/or replacement shall be at Vendor's expense.

16. Removal of Equipment and Supplies: Upon expiration or termination of this Agreement for any reason, Vendor shall remove, at its expense, all of its supplies, displays, and related items from the Premises within three (3) days of the expiration or termination date, and shall restore the Premises to its prior condition, satisfactory to the Parks Director.

17. Staff: Vendor shall maintain customer service as a top priority. Vendor shall employ a sufficient number of qualified staff to properly operate the Concession. Vendor shall provide employees who are professional, friendly, and courteous to customers and the general public. Employees shall maintain a neat appearance, exercise good public relations skills, respond to customer complaints and questions, and conduct themselves in a high standard acceptable to County. Vendor and staff shall wear appropriate attire which, in the sole determination of County, clearly distinguishes Concession staff from Milwaukee County Parks staff. All personnel operating as Segway "tour guides" must be trained by the manufacturer prior to their service as guides. Upon request, Vendor will provide the County with written evidence from the manufacturer indicating that such individuals have received the appropriate training prior to their service as guides.

18. Nondiscrimination, Affirmative Action and DBE Goals:

20.1 Generally: There shall be no discrimination against or segregation of any person, or group of persons, on account of gender, age, race, color, religion, creed, national origin or ancestry in the use of the Premises or the Concession, and Vendor (or any person claiming under or through Vendor) shall not establish or permit any such practice or practices of discrimination or segregation with reference to the Premises or the Concession.

20.2 Non-Discrimination: Vendor certifies that it will not discriminate against any employee or applicant for employment because of race, color, national origin, age, sex or handicap which includes, but is not limited to, the following: employment, upgrading, demotion or transfer, recruitment, or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship. Vendor will post in conspicuous places, available for employment, notices setting forth

the provisions of the non-discriminatory clause. Attached hereto as Exhibit B is an Equal Opportunity Certificate that shall be executed and delivered by Vendor simultaneously with the execution and delivery of the Agreement.

20.3 Affirmative Action Program: Vendor certifies that it will strive to implement the principles of equal employment opportunity through an effective affirmative action program which shall have as its objective to increase the utilization of women, minorities and handicapped persons and other protected groups, at all levels of employment in all divisions of its work force, where these groups may have been previously under-utilized and under-represented. Vendor also agrees that in the event of any disputes as to compliance with the aforementioned requirements, it shall be its responsibility to show that it has exercised good faith efforts to meet all requirements.

20.4 Affirmative Action Plan: Vendor certifies that if it has fifty (50) or more employees, it has filed or will develop and submit a written Affirmative Action Plan. Current Affirmative Action Plan, if required, must be filed with any of the following: The Office of Federal Contract Compliance Programs, the State of Wisconsin, or the Milwaukee County Department of Audit, City Campus, 9th Floor.

20.5 Non-Segregated Facilities: Vendor certifies that it does not and will not maintain or provide segregated facilities for its employees, and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained.

20.6 Reporting Requirement: When applicable, Vendor certifies that it will comply with all reporting requirements and procedures established in Title 41 Code of Federal Regulations, Chapter 60.

20.7 Compliance: Vendor certifies that it is not currently in receipt of any outstanding letters of deficiencies, show cause, probable cause, or other such notification of noncompliance with EEO regulations.

20.8 Disadvantaged Business Enterprise Goals: Vendor shall use reasonable efforts to cause its contractors to establish Disadvantaged Business Enterprise ("DBE") participation goals, consistent with Milwaukee County DBE goals of seventeen percent (17%) for professional services contracts. The Milwaukee County Community Business Development Partners shall assist Vendor in soliciting potential DBE vendors for the improvements and monitor such goal attainment. Vendor's contact regarding DBE participation is: Interim Director, Nelson Soler, at (414) 289-4608.

19. Site Restoration: Both Vendor and County shall together participate in a pre-season and post-season inspection of the Premises. Vendor shall be responsible for any actual documented physical damage to the Premises caused by Vendor, its employees, agents, representatives, and guests. Within five (5) days of the discovery of any such damage, the Premises shall be restored to the satisfaction of the Parks Director.

20. Security: Unarmed security personnel are permitted within the Premises for the purposes of checking identification and general observation. Vendor shall be solely responsible for and assume all risks related to the security and protection of the Premises and any equipment and for the prevention of unauthorized access to the Premises. Vendor shall

notify County of any incident resulting in loss or damage to the Premises or breach of security whether or not such incident is reported to the Milwaukee County Sheriff's Office.

21. Inspection by County: County shall at all reasonable times have the right to enter the Premises and the Facility to inspect the condition thereof, and to improve or repair the Premises, and to make such repairs, alterations, improvements or additions as County may deem necessary or desirable; provided, however, such entry shall be done in such a manner that it does not unreasonably interfere with the conduct of Vendor's use of the Premises.

22. Interest: Unless waived by County Board of Supervisors, Vendor shall be responsible for payment of interest on amounts not remitted in accordance with this Agreement. The rate of interest shall be the statutory rate in effect for delinquent County property taxes (one-percent (1%) per month or fraction of a month) as described in Wisconsin statutes section 74.47(1). The obligation for payment and calculation thereof shall commence upon the day following the due dates established herein.

24.1 Penalty: In addition to the interest described above, Vendor may be responsible for payment of penalty on amounts not remitted in accordance with this Agreement, as may be determined by County. The penalty shall be the statutory rate in effect for delinquent County property taxes (.5% per month, or fraction of a month) as described in Milwaukee County ordinance section 6.06(1) and Wisconsin statutes section 74.47(2). The obligation for payment and calculation thereof shall commence upon the day following the due dates established herein.

24.2 Audit Results: If, as a result of the annual audit required herein, additional amounts are disclosed to be due and owing to the County, interest and penalty shall be calculated thereon in accordance with the above method. Vendor shall remit to the County any additional amounts identified due and owing for the audit including interest and penalty thereon within thirty (30) days following receipt of the audit report by the County.

24.3 Nonexclusivity: This provision permitting collection of interest and penalty by the County on delinquent payments is not to be considered the County's exclusive remedy for Vendor's default or breach with respect to delinquent payment. The exercise of this remedy is not a waiver by the County of any other remedy permitted under this Agreement, including but not limited to termination of this Agreement.

23. Audit: Pursuant to Milwaukee County ordinance section 56.30(6)(e), Vendor shall allow the County or any other party the County may name, when and as they demand, to audit, examine and make copies of records in any form and format, meaning any medium on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by Vendor, including not limited to, handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes), computer files, computer printouts and optical disks, and excerpts or transcripts from any such records or other information directly relating to matters under this Agreement, all at no cost to County. Any subcontracting by Vendor in performing the duties described under this Agreement shall subject the subcontractor and/or associates to the same audit terms and conditions as the Vendor. Vendor (or any subcontractor)

shall maintain and make available to County the aforementioned audit information for no less than three years after the conclusion of this Agreement.

24. Insurance: Vendor shall acquire and maintain the established insurance and liability limits for the Concession. Such evidence shall include insurance coverage in the following minimum amounts:

Type of Coverage	Minimum Limits
Commercial General Liability	
Bodily Injury and Property Damage	$1,000,000 Per Occurrence
(incl. Personal Injury, Fire Legal, Contractual & Products/Completed Operations)	$1,000,000 General Aggregate
Advertising Injury	$1,000,000
Automobile Liability	
Bodily Injury & Property Damage	$1,000,000 Per Accident
All Autos - Owned, non-owned and/or hired	
Uninsured Motorists	Per Wisconsin Requirements
Wisconsin Workers Compensation or Proof of All States Coverage	Statutory
Employers' Liability	$100,000/$500,000/$100,000

Milwaukee County will be named as an additional insured for General Liability and Automobile Liability and be afforded a thirty (30)-day notice of cancellation or non-renewal. A waiver of subrogation for Workers Compensation by endorsement in favor of Milwaukee County shall be provided. Disclosure must be made of any non-standard or restrictive additional insured endorsement, and any use of non-standard or restrictive additional insured endorsement will not be acceptable.

A certificate indicating the above coverages shall be submitted by Vendor for the County's review and approval for each successive period of coverage for the duration of this Agreement.

Coverages shall be placed with an insurance company approved to do business in the State of Wisconsin and rated "A" per Best's Key Rating Guide. The insurance requirements contained within this Agreement are subject to periodic review and reasonable adjustment by the County Risk Manager consistent with similarly situated properties within the properties owned by the County.

25. Indemnification: To the fullest extent permitted by law, Vendor shall indemnify the County for, and hold it harmless from, all liability, claims and demands on account of personal injuries, property damage and loss of any kind whatsoever, including workers' compensation claims, which arise out of or are in any manner connected to the Premises, based on any injury, damage or loss being caused by any wrongful, intentional, or negligent acts or omissions of the Vendor, its agents, or employees. Vendor shall, at its own expense, investigate all claims and demands, attend to their settlement or

disposition, defend all actions based thereon and pay all charges of attorneys and other costs and expenses arising from any such injury, damage or loss, claim, demand or action.

25.1 Environmental Indemnification: Vendor shall, to the fullest extent provided for under any environmental laws, rules and regulations, be responsible for any required repair, cleanup, remediation or detoxification arising out of any Hazardous Materials brought onto or introduced into the Premises or surrounding areas by Vendor, or its agents. Vendor hereby agrees to indemnify, defend and hold County harmless from and against any and all liabilities, costs, expenses (including attorney fees), damages (including but not limited to clean-up, remediation or detoxification of) or any other losses caused by its introduction of any such Hazardous Materials into or onto the Premises and any Hazardous Materials brought onto or introduced into the Premises as described below.

25.2 "Hazardous Materials" as the term is used herein shall mean any substance: (i) the presence of which requires investigation or remediation under any Federal, State or local statute, regulation, ordinance, order, action or policy; or (ii) which is or becomes defined as a "hazardous waste" or "hazardous substance" under any Federal, State or local statute, regulation, ordinance, or amendments thereto.

26. Assignment and Subletting: Vendor may not assign this Agreement, in whole or in part, or sublease any part of the Premises without the prior written approval of the Parks Director.

27. Default:

27.1 Definition: A "Default" will occur under this Agreement if: (a) A party fails to comply with any provision in this Agreement, and such failure continues for thirty (30) days after a written notice from the other party setting forth in reasonable detail the nature of such default; or (b) Vendor ceases to do business as a going concern, ceases to pay its debts as they become due, or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any proceeding under any federal or state bankruptcy law, or a custodian or trustee is appointed to take passion of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Vendor's assets or Vendor's interest in this Agreement and fails to remedy such condition within thirty (30) days after written notice from County; or Vendor becomes, without the prior written approval of County, a successor or merged entity in a merger, or a constituent entity in a consolidation, or an entity in a dissolution.

27.2 Remedies: If a Default occurs, then the non-defaulting party shall, at such party's option, have any or all of the following described remedies, all cumulative (so exercise of one remedy shall not preclude exercise of another remedy), in addition to such other remedies as may be available at law or in equity or under any other terms of this Agreement. The non-defaulting party's remedies shall include:

27.3 Termination of Rights: The non-defaulting party may terminate this Agreement by sixty (60) days prior written notice of termination of this Agreement to the defaulting party or by any other lawful means, in which case this Agreement and the Term shall terminate, and Vendor shall vacate the Premises on the termination

date. Should County so choose, if Vendor is the defaulting party, Vendor shall cooperate in continuing to staff the Concession during a transition period as County seeks an alternate service provider. Additionally, the non-defaulting party may bring an action to recover any or all of the following from the defaulting party: (i) any unpaid amounts set forth in Section 3 earned as of the date the Agreement terminates; and (ii) any other amount reasonably and directly necessary to compensate the non-defaulting party for all detriment caused by and directly arising from the defaulting party's failure to perform its obligations under this Agreement.

27.4 No Waiver: No failure by the County to insist upon strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy upon a Default, and no acceptance of full or partial amounts due pursuant to Section 3 during continuance of any such Default, shall waive any such Default or such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Agreement to be performed or complied with by Vendor, and no Default, shall be modified, except by a written instrument executed by County. No waiver of any Default shall modify this Agreement. Each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then-existing or subsequent Default of such covenant, agreement, term or condition of this Agreement.

27.5 Survival: No expiration or termination of this Agreement and no entry into or onto the Premises by County after such expiration or termination shall relieve Vendor of its liabilities and obligations under this Agreement, all of which shall survive such expiration, termination or entry.

28. Termination. The County may terminate the Agreement in the event that the Milwaukee County Board of Supervisors, via official action and resolution, effects to close the Facility in the Park or the Park during the Term. If County terminates the Agreement pursuant to this Section, County shall relocate the Concession to another Milwaukee County Parks location reasonably mutually acceptable to Vendor and County.

29. Independent Contractor: Nothing contained in this Agreement shall constitute or be construed to create a partnership or joint venture between County or its successors or assigns and Vendor or its successors or assigns. This Agreement does not create the relationship of principal and agent.

30. Notices: All notices with respect to this Agreement shall be in writing. Except as otherwise expressly provided in this Agreement, a notice shall be deemed duly given and received upon delivery, if delivered by hand or after posting via US Mail, to the party addressed as follows:

To Vendor:
The Carol Company, Inc.
Attn: Carol French, Owner
17219 Spencer House Lane
Surprise, AZ 85387

To County:
Milwaukee County Dept. of Parks
Parks Director
9480 Watertown Plank Road
Wauwatosa, WI 53226

Either party may designate a new address for purposes of this Agreement by written notice to the other party.

31. Integration; Order of Precedence: The parties understand and agree that the RFPs and Vendor's RFP Responses, including Vendor's Best and Final Offers, are incorporated into and made a part of this Agreement by this specific reference. In the event of a conflict or disagreement among the documents, the following order of precedence shall govern:
    (a) Written amendments to the Agreement;
    (b) The Agreement;
    (c) The RFPs;
    (d) Vendor's Best and Final Offers; and
    (e) Vendor's original RFP Responses.

Signature page follows

IN WITNESS WHEREOF, the Parties hereto have set their hands as follows:

The Carol Company, Inc.
d/b/a Milwaukee Lakefront Segway and
Milwaukee Bike & Skate Rentals

By: _____ Date: _____
Carol French, Owner

Milwaukee County Dept. of Parks, Recreation & Culture

By: _____ Date: _____
James Keegan, Interim Director

Approved as to form and independent status:

By: _____ Date: _____
Corporation Counsel

Reviewed by:

By: _____ Date: _____
Risk Management

Approved as to Chapter 42 DBE provisions:

By: _____ Date: _____
Community Business
Development Partners

EXHIBIT A
MILWAUKEE COUNTY DUE DILIGENCE REQUIREMENTS

Procedure REVISION DATE CHAPTER TITLE CHAPTER NO. ADMINISTRATIVE MANUAL Financial & Management 7 MILWAUKEE COUNTY Accounting

ORIG ISSUE DATE SECTION TITLE SECTION NO. 09-28-O 1

Due Diligence 7.92

CHECKLIST. Prior to recommending any venture for consideration, responsible County agencies shall ensure that any of the following applicable factors have been identified:

- Letter of Full Disclosure and Cooperation
- Cash flow projections for the venture.
- Operating budget impact.
- Debt management responsibilities, schedules and procedures.
- Legal liability for all priorities.
- Financial reporting systems and controls.
- Right-to-audit provisions.
- Project feasibility studies and market analysis.
- Key factors for success/failure of the venture.
- Governance structure and procedures.
- Public policy impacts (e. g. Affirmative Action, Disadvantaged Business).
- Employee/labor relations impacts (including benefits).
- Environmental concerns.
- Tax consequences.
- Capital management (e. g. maintenance).
- Conflicts of interest/ethics.
- Performance measurements.
- Organization Chart and Mission Statement
- Name of Lending institution or Bank to determine single or combined reporting

Each relevant item noted above should be included in the description of the proposal, which is subtitled for approval by the County Executive and County Board.

EXHIBIT B
EQUAL OPPORTUNITY CERTIFICATE

[Attached.]

County of Milwaukee
Interoffice Communication

Date: April 30, 2013

To: Supervisor Gerry Broderick, Chair, Parks Energy and Environment Committee

From: Josh Fudge, Interim Fiscal and Budget Administrator, Department of Administrative Services

Subject: Due Diligence Report for a Vendor Permit Agreement with Gift of Wings, Inc. to provide kite sale concession services at Veterans Park

Request
The Department of Parks, Recreation, and Culture (Parks) requests approval to enter into a five (5) year agreement with Gift of Wings (GoW) to provide kite sale concession services at Veterans Park.

Background
In January 2013, Parks issued a Request for Proposals (RFP) for kite sale concession services at Veterans Park. GoW was selected as the successful bidder to continue operating the concession. A 2008 agreement with GoW expired on December 31, 2012. GoW is currently operating the concession on a month-to-month basis per the terms of the 2008 agreement. During the five-year term of the previous contract, Parks received an average of $20,163 in annual revenue from the concession[1].

Review & Analysis
The Department of Administration - Fiscal Affairs (DAS), Corporation Counsel, Risk Management, and Community Business Development Partners have reviewed the draft proposal with GoW.

GoW would be permitted to operate a concession for the sale of kites and related items at Veterans Park. GoW would also be permitted to sell bottled water, non-alcoholic beverages, and food items as approved by the Director of Parks.

The term of the proposed agreement is five (5) years with two one (1) year mutual options for an extended term. The agreement begins on the execution date and the original term expires on March 30, 2018. If the mutual options are exercised, the agreement will expire on March 30, 2020. The agreement may be terminated by either party for cause if a failure to comply with any provision of the agreement is not cured in a timely manner. Upon expiration or termination of the agreement, GoW shall remove all of its supplies, displays and related items within 30 days.

[1] Based on data from the Milwaukee County Fiscal Intranet for actual revenues (Functional Code VW26, Activity Code KWYL, Revenue Source 9046, Agency 900, Fund 001)

Per terms of the proposed agreement, the County will receive 15% of all gross receipts with a guaranteed annual minimum of $19,000. The minimum commission to the County automatically increases 2% each year. The previous agreement with GoW (in effect from 2008 to 2012) provided that the County would receive 15% of gross receipts with an annual minimum of $5,250. The chart below shows the actual amount of revenue received from the concession and the projected amount of revenue based on the terms of the proposed agreement. An annual 1% increase in gross receipts is assumed for future years.

Year	Revenue
2008 - Actual	$ 20,044
2009 - Actual	$ 19,935
2010 - Actual	$ 18,657
2011 - Actual	$ 20,371
2012 - Actual	$ 21,810
2013 - Projected	$ 22,028
2014 - Projected	$ 22,248
2015 - Projected	$ 22,470
2016 - Projected	$ 22,695
2017 - Projected	$ 22,922

Recommendation

Upon review of the available information, and changes made to the agreement based on consultation with Corporation Counsel, Risk Management, Parks, and CBDP staff, DAS recommends approval of the vendor permit agreement.

Josh Fudge, Interim Fiscal and Budget Administrator

cc: Chris Abele, County Executive
Supervisor Marina Dimitrijevic, Chair, County Board of Supervisors
Amber Moreen, Chief of Staff, County Executive's Office
Kelly Bablitch, Chief of Staff, County Board of Supervisors
Jim Keegan, Interim Director, Parks, Recreation & Culture
Laura Schloesser, Chief of Admin & External Affairs, Parks, Recreation, & Culture
Suzanne Carter, Contracts Services Officer, Parks, Recreation, & Culture
Don Tyler, Director, Department of Administrative Services
Jessica Janz-McKnight, Research Analyst, County Board
Stephen Cady, Fiscal and Budget Analyst, County Board

MILWAUKEE COUNTY PARKS
N·A·T·I·O·N·A·L GOLD MEDAL WINNER

CHRIS ABELE, MILWAUKEE COUNTY EXECUTIVE
JAMES KEEGAN, INTERIM DIRECTOR OF PARKS, RECREATION AND CULTURE

Date: April 30, 2013

To: Chairwoman Marina Dimitrijevic, County Board of Supervisors

From: James Keegan, Interim Director, Department of Parks, Recreation and Culture

Subject: **Request to Enter into a Vendor Permit Agreement for Kite Sale Concession Services at the Lakefront – ACTION**

POLICY

The Department of Parks, Recreation and Culture (DPRC) respectfully requests authorization to enter into a vendor permit agreement for kite sale concession services at the lakefront.

BACKGROUND

In January 2013, the DPRC issued a number of Requests for Proposals (RFP) to provide various concession services in the Milwaukee County Parks located on the lakefront. Gift of Wings, Inc. responded to the kite sale concessions RFP and, meeting all terms and conditions of the process, was awarded the opportunity. Gift of Wings has been a long-standing partner with the DPRC selling kites, windsocks, and related items. The vendor is also permitted to sell non-alcoholic beverages and various prepared and pre-packaged food items.

The term of this agreement is five (5) years with two (2) options to extend the term for one (1) additional consecutive year. The vendor has agreed to pay the

ADDRESS
9480 Watertown Plank Road
Wauwatosa, WI 53226-3560

PHONE/FAX
ph: **414 / 257 PARK** (7275)
fax: 414 / 257 6466

EMAIL
parks@milwcnty.com

WEBSITE
countyparks.com

County $98,876.75 over the first five (5) years and an additional $20,977.50 in year six (6) and $21,397.10 in year seven (7), if renewed. In addition, there is a percentage profit-sharing agreement if gross receipts exceed established amounts.

The DPRC will receive an in-kind contribution of up to $4,000 of complimentary merchandise each contract year. Past in-kind contributions have included flags, banners, and marketing items for use by the DPRC.

Gift of Wings will reimburse the County for utility costs in the amount of $1,500 per operating year.

The concession is a fair-weather operation, generally open from May 1 through September 30.

RECOMMENDATION

The Interim Parks Director respectfully recommends that the DPRC be authorized to enter into a vendor permit agreement with Gift of Wings, Inc. for kite sale concession services at the lakefront.

Prepared by: Laura Schloesser, Chief of Administration and External Affairs

Recommended by:	**Approved by:**
Laura Schloesser, Chief of Administration and External Affairs	James Keegan, Interim Parks Director

Attachment – Request for Proposal Criteria and Scoring

Cc: County Executive Chris Abele
Amber Moreen, Chief of Staff, County Executive's Office

Kelly Bablitch, Chief of Staff, County Board
Supv. Gerry Broderick, Chair, Parks, Energy & Environment Committee
Supv. Jason Haas, Vice-Chair, Parks, Energy & Environment Committee
Daniel Laurila, Fiscal Mgt. Analyst, Admin & Fiscal Affairs/DAS
Janelle Jensen, Parks, Energy & Environment Committee Clerk
Jessica Janz-McKnight, Research Analyst, County Board

File No. 13-
(Journal,)

(ITEM NO.) From the Director, Department of Parks, Recreation and Culture, requesting authorization to enter into a vendor permit agreement for kite sale concession services at the lakefront.

A RESOLUTION

WHEREAS, in January 2013 the Department of Parks, Recreation and Culture (DPRC) issued a number of Requests for Proposals (RFP) for various concession services in the Milwaukee County Parks located at the lakefront; and

WHEREAS, Gift of Wings, Inc. responded to the kite sale concession RFP; and

WHEREAS, the term of this agreement is five (5) years with, upon mutual agreement, two (2) additional one (1) year extensions; and

WHEREAS, the DPRC will receive $98,876.75 during the five (5) year term and an additional $20,977.50 in year six (6) and $21,397.10 in year seven (7), if renewed; and

WHEREAS, the DPRC will receive a percentage of gross receipts if sales exceed established amounts; and

WHEREAS, the DPRC will receive an in-kind contribution of up to $4000 of complimentary merchandise each contract year; and

WHEREAS, the DPRC will receive utility reimbursement of $1500 per operating year; and

WHEREAS, the concession will operate daily, weather permitting, from approximately May 1 through September 30; now, therefore,

BE IT RESOLVED, that the Milwaukee County Board of Supervisors hereby authorizes the Interim Parks Director to execute a vendor permit agreement with Gift of Wings, Inc. for kite sale concessions at the lakefront.

MILWAUKEE COUNTY FISCAL NOTE FORM

DATE: April 30, 2013

Original Fiscal Note ☒

Substitute Fiscal Note ☐

SUBJECT: Vendor Permit Agreement for Kite Sale Concession services at the Lakefront

FISCAL EFFECT:

☒ No Direct County Fiscal Impact

☒ Existing Staff Time Required

☐ Increase Operating Expenditures
(If checked, check one of two boxes below)

☐ Absorbed Within Agency's Budget

☐ Not Absorbed Within Agency's Budget

☐ Decrease Operating Expenditures

☐ Increase Operating Revenues

☐ Decrease Operating Revenues

☐ Increase Capital Expenditures

☐ Decrease Capital Expenditures

☐ Increase Capital Revenues

☐ Decrease Capital Revenues

☐ Use of contingent funds

Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.

	Expenditure or Revenue Category	Current Year	Subsequent Year
Operating Budget	Expenditure	0	0
	Revenue	0	0
	Net Cost	0	0
Capital Improvement Budget	Expenditure	0	0
	Revenue	0	0
	Net Cost	0	0

DESCRIPTION OF FISCAL EFFECT

In the space below, you must provide the following information. Attach additional pages if necessary.

A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated. [1] If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
D. Describe any assumptions or interpretations that were utilized to provide the information on this form.

A. Request to enter into a Vendor Permit Agreement for Kite Sale Concession services at the Lakefront
B. Gift of Wings agrees to pay the DPRC $19,000 in 2013 and $19,380 in 2014 plus 15% of gross receipts greater than the total amount invoiced.
C. No Impact
D. None

Department/Prepared By Laura Schloesser/DPRC

Authorized Signature _____

Did DAS-Fiscal Staff Review? ☐ Yes ☒ No

Did CBDP Review?[2] ☒ Yes ☐ No ☐ Not Required

[1] If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.

Attachment

RFP Criteria and Scoring:
Kite Sales Services

Category	Criteria	Weight	Average Gift of Wings (Sole Bidder)
A	Qualifications and Experience	30	30
B	Revenue to the County	30	25.67
C	Quality of Services and Products and Reasonableness of Pricing	10	9.33
D	Innovation and Variety of Services and Products	10	9.67
E	Marketing Plan	10	10
F	DBE Participation	10	7.67
	Total	100	**92.33**

VENDOR PERMIT AGREEMENT

BETWEEN

MILWAUKEE COUNTY DEPARTMENT OF PARKS, RECREATION AND CULTURE

AND

GIFT OF WINGS, INC.

This Vendor Permit Agreement (the "Agreement") is made and entered into effective May 1, 2013 (the "Effective Date"), by and between the MILWAUKEE COUNTY DEPARTMENT OF PARKS, RECREATION AND CULTURE (the "County") and GIFT OF WINGS, INC. (the "Vendor"), as represented by: Scott Fisher, (414) 305-3145. Referenced together, the County and the Vendor are the "Parties" to this Agreement.

WITNESSETH:

WHEREAS, in January 2013 the County issued a Request for Proposals ("RFP") to provide kite sale concession services in one of the Milwaukee County Parks located on the Milwaukee Lakefront, and the Vendor submitted a written proposal response meeting all terms and conditions of the RFP process; and

WHEREAS, the Milwaukee County Board of Supervisors, by virtue of adopting Resolution ____ on ____, 2013, has authorized the Interim Director of the Department of Parks, Recreation and Culture ("DPRC") to enter into this agreement with the Vendor for and on behalf of Milwaukee County.

NOW THEREFORE, Vendor is hereby awarded a contract to provide the concession services per all terms and conditions in the RFP and as indicated in the Vendor's complete response thereto, which documents are both hereby incorporated by reference. Each party, for good and valuable consideration and the promises of County and Vendor set forth in this Agreement, agrees as follows:

PROVISIONS:

1. Operation of Concession:

1.1 General: Vendor is permitted to operate a concession for the sale of kites and related items (the "Concession"). The Concession shall be operated in the area designated at Veterans Park at 1010 North Lincoln Memorial Drive, Milwaukee, Wisconsin as further set forth on Exhibit A (the "Premises"). Vendor is the sole owner of the structure and the flag pole operated on the Premises (the "Facility"). No kites or other items may be sold by Vendor outside the Premises in the Park. Vendor shall have the exclusive right to provide the above-indicated service in the Park for the Term (as hereinafter defined). The Concession is a fair-weather operation, generally open from May 1 through September 30, with occasional service in the off-season. The times of operation shall be mutually agreed upon between Vendor and the County. Vendor shall suspend operation of the Concession whenever the Park is closed.

1.2 Non-exclusive Food and Beverage Concession: Vendor shall further be permitted to sell bottled water, non-alcoholic beverages, and food items including

hamburgers, hot dogs, pizza, hot sandwiches, chips, snacks, cookies, and ice cream as approved by the Parks Director or his designee. Vendor shall comply with all Milwaukee County Parks practices, including compliance with agreements regarding Milwaukee County Parks's exclusive non-alcoholic beverage provider and prohibitions on the sale of gum and glass bottles; provided, however, that Vendor may continue to sell gum from the two (2) gumball machines on the Premises. The County reserves the right to award a contract with one (1) or more additional vendors to provide food and beverage and/or other concessionable items in the Park, subject to the exclusivity clause in Section 1.1. Food and beverage items may not be sold by Vendor outside the Premises, including from walking salespersons or pushcarts, without the specific approval of the Director or his designee.

1.3 Other Items Concession. Vendor shall further be permitted to sell glow sticks, flying toys, and related items at any time within the Premises, including the Facility, temporary tents, and immediate surrounding areas. Such items may not be sold by Vendor outside the Premises, including from walking salespersons or pushcarts, without the specific approval of the Director or his designee.

1.4 Special Events: Any special events hosted by Vendor shall be governed by standard DPRC and Milwaukee County procedures.

1.5 Prerequisites: This Agreement and the obligations of County and Vendor hereunder are contingent upon Vendor successfully meeting the Milwaukee County "Due Diligence" requirements in a timely manner (see attached, as Exhibit B).

2. Term: This Agreement shall commence on the Effective Date and expire on March 30, 2018 (the "Initial Term"). The Parties shall have two (2) options to extend the Term for one (1) additional consecutive year if mutually agreeable to both Parties (each such period, a "Renewal Term"). Such option may be exercised so long as Vendor first provides written notice to County of its desire to enter into a Renewal Term at least six (6) months' prior to the then-current Term expiration date. The Initial Term and any then-existing Renewal Term shall be referred to as the "Term" herein.

3. Payment: Vendor shall pay County the following amounts at the close of each May, June, July, August, and September during the Term:

Year One	$3800
Year Two	$3876
Year Three	$3953.52
Year Four	$4032.59
Year Five	$4113.24
Year Six (if renewed)	$4195.50
Year Seven (if renewed)	$4279.42

County shall invoice Vendor for the above-referenced amounts within fifteen (15) days at the close of the applicable month, and Vendor shall pay County within thirty (30) days of receipt of invoice. If, over the course of Vendor's Operating Year (as hereinafter defined), fifteen percent (15%) of Vendor's Gross Receipts (as hereinafter defined) (the "Gross Receipt Percentage") is greater than the total amount invoiced to Vendor for such Operating Year pursuant to this Section 3 (the "Flat Fee"), Vendor shall remit to County the difference between the Gross Receipt Percentage and the Flat Fee by April

1. "Gross Receipts" shall be defined as the total of all receipts (cash, checks, credit cards) derived from the sale of all merchandise associated with the Concession, less sales tax. Deductions for client non-payments or bad-debt expenses are not allowed. An "Operating Year" shall be that period from March 1 through the last day of February of each year of the Agreement; provided, however, that during the Initial Term, the Operating Year shall be from the Effective Date through March 1. Checks shall be made payable to the Milwaukee County Treasurer and mailed or delivered to: Milwaukee County Parks Department, Milwaukee County Treasurer, 9480 Watertown Plank Rd., Wauwatosa, Wisconsin, 53226.

4. In-Kind Contribution. Vendor shall provide County with an in-kind contribution of up to Four Thousand Dollars ($4,000) of complimentary Vendor merchandise valued at Vendor list prices each Contract Year. "Contract Year" means the twelve (12) calendar months starting on the Effective Date and every subsequent twelve (12)-month period during the Term. If the Agreement is renewed for a second Renewal Term, the amount of the in-kind contribution shall be prorated to reflect that such Renewal Term is not a twelve (12)-month period. The in-kind contribution shall not be included in the Gross Receipts.

5. Utilities: Vendor shall pay to the County the monthly sum of Three Hundred Dollars ($300) toward the cost of Utilities for each of the five (5) months in which the Concession is operational. "Utilities" shall include electricity and water and sewer. Payment shall be due within fifteen (15) days of the end of each month.

6. Sales Reports: Upon demand, Vendor agrees to compile and provide County with a detailed summary report of all sales activities, a financial reconciliation of all commissions owed and paid, and remit to County any additional amounts as may be required.

7. Alterations and Improvements: In no event shall Vendor make any additions to the Facility or the Premises without the prior written consent of County. All development and landscaping shall be completed in a first-class manner and consistent with the standards established for other work in Milwaukee County Parks. Any and all alterations, additions and improvements shall be made in compliance with all statutes, laws, ordinances, rules, and regulations of any governmental authority having jurisdiction over the Premises. Vendor shall also indemnify and hold County harmless from and against all statutory liens or claims of liens of any contractor, subcontractor, laborer or any other party which may arise in connection with any alteration, addition or improvement to the Facility or the Premises undertaken by or on behalf of Vendor.

8. Parks Logo: Vendor is responsible for all marketing and advertising to promote its activities. Vendor shall acknowledge the Parks Department and include the Parks logo in all promotional materials, whether print or digital, directly related to its activities covered under this Agreement. All proposed banners, signage and advertising on or within the Premises, temporary or portable structures, must be pre-approved in writing by the Parks Director.

9. Rights Reserved to County: County reserves the right to award a contract with one (1) or more additional vendors to provide other concessionable items in other areas of the Park. County further reserves the right to operate its own concession area during any and all events held in its Parks except as otherwise mutually agreed between the Parties.

10. Public Access: Vendor understands that the Concession is part of a public park, and the Premises are to remain open and accessible to the public in a manner that is compatible with the use of the Concession as contemplated by this Agreement.

11. Compliance with Laws: Vendor shall, at Vendor's expense, promptly comply with all laws, rules, and regulations made by any governmental authority having jurisdiction over Vendor's use of the Park and the Concession, including all local health code requirements. Vendor shall obtain and pay for all necessary permits and licensing for the operation of the Concession, including, if applicable, permits and licensing for a food and beverage concession in the City of Milwaukee.

12. Taxes: Vendor shall pay all taxes of whatever character which may be levied or charged upon Vendor to use the Premises or own the Facility, or upon the improvements, fixtures, equipment or other property, or upon the Concession operations under the Agreement.

13. County Approval of Items to be Sold: Vendor shall provide County with a list and pricing information for the products it intends to sell to the public for approval. The Parks Director maintains the right to prohibit the sale or rental of any item that he/she deems to be inappropriate or otherwise within the Milwaukee County Parks System.

14. Cleanliness; Garbage: Vendor is responsible for maintaining the Premises and surrounding areas, at least twenty-five (25) feet beyond the Concession, in a state of cleanliness and repair to prevent injury to the public. No offensive or refuse matter, nor any substance constituting an unnecessary, unreasonable, or unlawful hazard, nor any material detrimental to the public health, shall be permitted to remain on the Premises, and Vendor shall prevent any such matter or material from being or accumulating on the Premises. Vendor, at its expense, shall see that all garbage or refuse is collected as often as necessary and in no case less than once a day and disposed of in the County receptacles. Vendor will incur the cost of all excessive garbage pick-up from the Concession during the Term.

15. Maintenance of Facility and Equipment: Vendor shall, at all times and at its own expense, keep and maintain the Facility and all equipment, whether owned and/or installed by Vendor or the County, such as, but not limited to, all of the fixtures, equipment and personal property in the Facility, in good repair and in a clean, sanitary and orderly condition and appearance. No equipment provided by County shall be removed or replaced by Vendor without the prior written consent of the Parks Director, and if consent is secured, removal and/or replacement shall be at Vendor's expense.

16. Removal of Facility, Equipment and Supplies: Upon expiration or termination of this Agreement for any reason or no reason, Vendor shall remove, at its costs, the Facility and all of its supplies, displays, and related items from the Premises within thirty (30) days of the expiration or termination date, and shall restore the Premises to its prior condition, satisfactory to the Parks Director.

17. Staff: Vendor shall maintain customer service as a top priority. Vendor shall employ a sufficient number of qualified staff to properly operate the Concession. Vendor shall provide employees who are professional, friendly, and courteous to customers and the general public. Employees shall maintain a neat appearance, exercise good public relations skills, respond to customer complaints and questions, and conduct themselves in

a high standard acceptable to County. Vendor and staff shall wear appropriate attire which, in the sole determination of County, clearly distinguishes Concession staff from County and Milwaukee County Parks staff.

18. Nondiscrimination, Affirmative Action and DBE Goals:

20.1 Generally: There shall be no discrimination against or segregation of any person, or group of persons, on account of gender, age, race, color, religion, creed, national origin or ancestry in the use of the Premises or the Concession, and Vendor (or any person claiming under or through Vendor) shall not establish or permit any such practice or practices of discrimination or segregation with reference to the Premises or the Concession.

20.2 Non-Discrimination: Vendor certifies that it will not discriminate against any employee or applicant for employment because of race, color, national origin, age, sex or handicap which includes, but is not limited to, the following: employment, upgrading, demotion or transfer, recruitment, or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship. Vendor will post in conspicuous places, available for employment, notices setting forth the provisions of the non-discriminatory clause. Attached hereto as Exhibit C is an Equal Opportunity Certificate that shall be executed and delivered by Vendor simultaneously with the execution and delivery of the Agreement.

20.3 Affirmative Action Program: Vendor certifies that it will strive to implement the principles of equal employment opportunity through an effective affirmative action program which shall have as its objective to increase the utilization of women, minorities and handicapped persons and other protected groups, at all levels of employment in all divisions of its work force, where these groups may have been previously under-utilized and under-represented. Vendor also agrees that in the event of any disputes as to compliance with the aforementioned requirements, it shall be its responsibility to show that it has exercised good faith efforts to meet all requirements.

20.4 Affirmative Action Plan: Vendor certifies that if it has fifty (50) or more employees, it has filed or will develop and submit a written Affirmative Action Plan. Current Affirmative Action Plan, if required, must be filed with any of the following: The Office of Federal Contract Compliance Programs, the State of Wisconsin, or the Milwaukee County Department of Audit, City Campus, 9th Floor.

20.5 Non-Segregated Facilities: Vendor certifies that it does not and will not maintain or provide segregated facilities for its employees, and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained.

20.6 Reporting Requirement: When applicable, Vendor certifies that it will comply with all reporting requirements and procedures established in Title 41 Code of Federal Regulations, Chapter 60.

20.7 Compliance: Vendor certifies that it is not currently in receipt of any outstanding letters of deficiencies, show cause, probable cause, or other such notification of noncompliance with EEO regulations.

20.8 Disadvantaged Business Enterprise Goals: Vendor shall use reasonable efforts to cause its contractors to establish Disadvantaged Business Enterprise ("DBE") participation goals, consistent with Milwaukee County DBE goals of seventeen percent (17%) for professional services contracts, and to use good faith efforts to achieve those goals. The Milwaukee County Community Business Development Partners shall assist Vendor in soliciting potential DBE vendors for the improvements and monitor such goal attainment. Vendor's contact regarding DBE participation is: Interim Director, Nelson Soler, at (414) 289-4608.

19. Site Restoration: Both Vendor and County shall together participate in a pre-season and post-season inspection of the Premises. Vendor shall be responsible for any actual documented physical damage to the Premises caused by Vendor, its employees, agents, representatives, and guests. Within five (5) days of the discovery of any such damage, the Premises shall be restored to the satisfaction of the Parks Director.

20. Security: Unarmed security personnel are permitted within the Premises for the purposes of checking identification and general observation. Vendor shall be solely responsible for and assume all risks related to the security and protection of the Premises and any equipment and for the prevention of unauthorized access to the Premises. Vendor expressly acknowledges that any security measures deemed necessary or desirable for protection of the Facility shall be the sole responsibility of Vendor at no cost to County. Vendor shall notify County of any incident resulting in loss or damage to the Premises or breach of security whether or not such incident is reported to the Milwaukee County Sheriff's Office.

21. Inspection by County: County shall at all reasonable times have the right to enter the Premises and the Facility to inspect the condition thereof, and to improve or repair the Premises, and to make such repairs, alterations, improvements or additions as County may deem necessary or desirable; provided, however, such entry shall be done in such a manner that it does not unreasonably interfere with the conduct of Vendor's use of the Premises.

22. Interest: Unless waived by County Board of Supervisors, Vendor shall be responsible for payment of interest on amounts not remitted in accordance with this Agreement. The rate of interest shall be the statutory rate in effect for delinquent County property taxes (one-percent (1%) per month or fraction of a month) as described in Wisconsin statutes section 74.47(1). The obligation for payment and calculation thereof shall commence upon the day following the due dates established herein.

24.1 Penalty: In addition to the interest described above, Vendor may be responsible for payment of penalty on amounts not remitted in accordance with this Agreement, as may be determined by County. The penalty shall be the statutory rate in effect for delinquent County property taxes (.5% per month, or fraction of a month) as described in Milwaukee County ordinance section 6.06(1) and Wisconsin statutes section 74.47(2). The obligation for payment and calculation thereof shall commence upon the day following the due dates established herein.

24.2 Audit Results: If, as a result of the annual audit required herein, additional amounts are disclosed to be due and owing to the County, interest and penalty shall be calculated thereon in accordance with the above method. Vendor shall remit to the County any additional amounts identified due and owing for the audit including interest

and penalty thereon within thirty (30) days following receipt of the audit report by the County.

24.3 Nonexclusivity: This provision permitting collection of interest and penalty by the County on delinquent payments is not to be considered the County's exclusive remedy for Vendor's default or breach with respect to delinquent payment. The exercise of this remedy is not a waiver by the County of any other remedy permitted under this Agreement, including but not limited to termination of this Agreement.

23. Audit: Pursuant to Milwaukee County ordinance section 56.30(6)(e), Vendor shall allow the County or any other party the County may name, when and as they demand, to audit, examine and make copies of records in any form and format, meaning any medium on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by Vendor, including not limited to, handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes), computer files, computer printouts and optical disks, and excerpts or transcripts from any such records or other information directly relating to matters under this Agreement, all at no cost to County. Any subcontracting by Vendor in performing the duties described under this Agreement shall subject the subcontractor and/or associates to the same audit terms and conditions as the Vendor. Vendor (or any subcontractor) shall maintain and make available to County the aforementioned audit information for no less than three years after the conclusion of this Agreement.

24. Insurance: Vendor shall acquire and maintain the established insurance and liability limits for the Concession. Such evidence shall include insurance coverage in the following minimum amounts:

Type of Coverage	Minimum Limits
Commercial General Liability	
Bodily Injury and Property Damage	$1,000,000 Per Occurrence
(incl. Personal Injury, Fire Legal, Contractual & Products/Completed Operations)	$1,000,000 General Aggregate
Advertising Injury	$1,000,000
Automobile Liability	
Bodily Injury & Property Damage	$1,000,000 Per Accident
All Autos - Owned, non-owned and/or hired	
Uninsured Motorists	Per Wisconsin Requirements
Wisconsin Workers Compensation or Proof of All States Coverage	Statutory
Employers' Liability	$100,000/$500,000/$100,000

Milwaukee County will be named as an additional insured for General Liability and be afforded a thirty (30)-day notice of cancellation or non-renewal. A waiver of

subrogation for Workers Compensation by endorsement in favor of Milwaukee County shall be provided. Disclosure must be made of any non-standard or restrictive additional insured endorsement, and any use of non-standard or restrictive additional insured endorsement will not be acceptable.

A certificate indicating the above coverages shall be submitted by Vendor for the County's review and approval for each successive period of coverage for the duration of this Agreement.

Coverages shall be placed with an insurance company approved to do business in the State of Wisconsin and rated "A" per Best's Key Rating Guide. The insurance requirements contained within this Agreement are subject to periodic review and reasonable adjustment by the County Risk Manager consistent with similarly situated properties within the properties owned by the County.

25. Indemnification: To the fullest extent permitted by law, Vendor shall indemnify the County for, and hold it harmless from all liability, claims and demands on account of personal injuries, property damage and loss of any kind whatsoever, including workers' compensation claims, which arise out of or are in any manner connected to the Premises, based on any injury, damage or loss being caused by any wrongful, intentional, or negligent acts or omissions of the Vendor, its agents, or employees. Vendor shall, at its own expense, investigate all claims and demands, attend to their settlement or disposition, defend all actions based thereon and pay all charges of attorneys and other costs and expenses arising from any such injury, damage or loss, claim, demand or action.

25.1 Environmental Indemnification: Vendor shall, to the fullest extent provided for under any environmental laws, rules and regulations, be responsible for any required repair, cleanup, remediation or detoxification arising out of any Hazardous Materials brought onto or introduced into the Premises or surrounding areas by Vendor, or its agents. Vendor hereby agrees to indemnify, defend and hold County harmless from and against any and all liabilities, costs, expenses (including attorney fees), damages (including but not limited to clean-up, remediation or detoxification of) or any other losses caused by its introduction of any such Hazardous Materials into or onto the Premises and any Hazardous Materials brought onto or introduced into the Premises as described below.

25.2 "Hazardous Materials" as the term is used herein shall mean any substance: (i) the presence of which requires investigation or remediation under any Federal, State or local statute, regulation, ordinance, order, action or policy; or (ii) which is or becomes defined as a "hazardous waste" or "hazardous substance" under any Federal, State or local statute, regulation, ordinance, or amendments thereto.

26. Assignment and Subletting: Vendor may not assign this Agreement, in whole or in part, or sublease any part of the Premises without the prior written approval of the Parks Director.

27. Default:

27.1 Definition: A "Default" will occur under this Agreement if: (a) A party fails to comply with any provision in this Agreement, and such failure continues for thirty (30) days after a written notice from the other party setting forth in reasonable detail the nature of such default; or (b) Vendor ceases to do business as a going concern, ceases

to pay its debts as they become due, or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any proceeding under any federal or state bankruptcy law, or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Vendor's assets or Vendor's interest in this Agreement and fails to remedy such condition within thirty (30) days after written notice from County; or Vendor becomes, without the prior written approval of County, a successor or merged entity in a merger, or a constituent entity in a consolidation, or an entity in a dissolution.

27.2 Remedies: If a Default occurs, then the non-defaulting party shall, at such party's option, have any or all of the following described remedies, all cumulative (so exercise of one remedy shall not preclude exercise of another remedy), in addition to such other remedies as may be available at law or in equity or under any other terms of this Agreement. The non-defaulting party may terminate this Agreement by sixty (60) days prior written notice of termination of this Agreement to the defaulting party or by any other lawful means, in which case this Agreement and the Term shall terminate, and Vendor shall vacate the Premises on the termination date. Should County so choose, if Vendor is the defaulting party, Vendor shall cooperate in continuing to staff the Concession during a transition period as County seeks an alternate service provider. Additionally, the non-defaulting party may bring an action to recover any or all of the following from the defaulting party: (i) any unpaid amounts set forth in Section 3 earned as of the date the Agreement terminates; and (ii) any other amount reasonably and directly necessary to compensate the non-defaulting party for all detriment caused by and directly arising from the defaulting party's failure to perform its obligations under this Agreement.

27.3 No Waiver: No failure by the County to insist upon strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy upon a Default, and no acceptance of full or partial amounts due pursuant to Section 3 during continuance of any such Default, shall waive any such Default or such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Agreement to be performed or complied with by Vendor, and no Default, shall be modified, except by a written instrument executed by County. No waiver of any Default shall modify this Agreement. Each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then-existing or subsequent Default of such covenant, agreement, term or condition of this Agreement.

27.4 Survival: No expiration or termination of this Agreement and no entry into or onto the Premises by County after such expiration or termination shall relieve Vendor of its liabilities and obligations under this Agreement, all of which shall survive such expiration, termination or entry.

28. Termination. The County may terminate the Agreement in the event that the Milwaukee County Board of Supervisors, via official action and resolution, and with notice to Vendor, effects to close the Facility in the Park or the Park during the Term. If County terminates the Agreement pursuant to this Section, County shall relocate the Concession to another Milwaukee County Parks location reasonably mutually acceptable to Vendor and County. Such location shall be selected in order to account for the unique, "open-sky" requirements of Vendor's business. If the Facility shall be relocated, the County shall relocate the Facility or pay all documented expenses associated therewith.

29. Independent Contractor: Nothing contained in this Agreement shall constitute or be construed to create a partnership or joint venture between County or its successors or assigns and Vendor or its successors or assigns. This Agreement does not create the relationship of principal and agent.

30. Notices: All notices with respect to this Agreement shall be in writing. Except as otherwise expressly provided in this Agreement, a notice shall be deemed duly given and received upon delivery, if delivered by hand or after posting via US Mail, to the party addressed as follows:

To Vendor:
Gift of Wings, Inc.
Attn: Scott Fisher
9955 W. St. Martins
Franklin, WI 53132

To County:
Milwaukee County Dept. of Parks
Parks Director
9480 Watertown Plank Road
Wauwatosa, WI 53226

Either party may designate a new address for purposes of this Agreement by written notice to the other party.

31. Integration; Order of Precedence: The parties understand and agree that the RFP and Vendor's RFP Response are incorporated into and made a part of this Agreement by this specific reference. In the event of a conflict or disagreement among the documents, the following order of precedence shall govern:
(a) Written amendments to the Agreement;
(b) The Agreement;
(c) The RFP; and
(d) Vendor's original RFP Response, dated February 1, 2013.

Signature page follows

IN WITNESS WHEREOF, the Parties hereto have set their hands as follows:

Gift of Wings, Inc.

By: _____ Date: _____
Scott Fisher, President

Milwaukee County Dept. of Parks, Recreation & Culture

By: _____ Date: _____
James Keegan, Interim Director

Approved as to form and independent status:

By: _____ Date: _____
Corporation Counsel

Reviewed by:

By: _____ Date: _____
Risk Management

Approved as to Chapter 42 DBE provisions:

By: _____ Date: _____
Community Business
Development Partners

EXHIBIT A
THE PREMISES

[Attached.]

EXHIBIT B
MILWAUKEE COUNTY DUE DILIGENCE REQUIREMENTS

Procedure REVISION DATE CHAPTER TITLE CHAPTER NO. ADMINISTRATIVE MANUAL Financial & Management 7 MILWAUKEE COUNTY Accounting

ORIG ISSUE DATE SECTION TITLE SECTION NO. 09-28-O 1

Due Diligence 7.92

CHECKLIST. Prior to recommending any venture for consideration, responsible County agencies shall ensure that any of the following applicable factors have been identified:

- Letter of Full Disclosure and Cooperation
- Cash flow projections for the venture.
- Operating budget impact.
- Debt management responsibilities, schedules and procedures.
- Legal liability for all priorities.
- Financial reporting systems and controls.
- Right-to-audit provisions.
- Project feasibility studies and market analysis.
- Key factors for success/failure of the venture.
- Governance structure and procedures.
- Public policy impacts (e. g. Affirmative Action, Disadvantaged Business).
- Employee/labor relations impacts (including benefits).
- Environmental concerns.
- Tax consequences.
- Capital management (e. g. maintenance).
- Conflicts of interest/ethics.
- Performance measurements.
- Organization Chart and Mission Statement
- Name of Lending institution or Bank to determine single or combined reporting

Each relevant item noted above should be included in the description of the proposal, which is subtitled for approval by the County Executive and County Board.

EXHIBIT C
EQUAL OPPORTUNITY CERTIFICATE

[Attached.]

County of Milwaukee
Interoffice Communication

Date: April 30, 2013

To: Supervisor Gerry Broderick, Chair, Parks Energy and Environment Committee

From: Josh Fudge, Interim Fiscal and Budget Administrator, Department of Administrative Services

Subject: Due Diligence Report for a Catering and Facilities Management Service Agreement with Grandview Management, Inc. d/b/a Zilli Hospitality Group to provide food, beverage, bar, banquet, and facility management services at Boerner Botanical Gardens Educational & Visitors Center in Whitnall Park.

Request
The Department of Parks, Recreation, and Culture (Parks) requests approval to enter into a ten-year agreement with Zilli Hospitality Group (Zilli) to provide food, beverage, bar, banquet, and facility management services at Boerner Botanical Gardens Educational & Visitors Center in Whitnall Park.

Background
In August 2012, Parks issued a Request for Proposals (RFP) for catering and facility management services at the Boerner Botanical Gardens at Whitnall Park. Zilli was selected as the successful bidder to replace the current vendor, whose agreement expires on December 31, 2013. In the past five years, Parks has received an average of $67,184 in annual revenue from the concession[1]. Zilli has current agreements with the County to provide food and beverage catering services at the Mitchell Park Domes and to operate Coast Restaurant at the O'Donnell Park Pavilion.

Review & Analysis
The Department of Administration - Fiscal Affairs (DAS), Corporation Counsel, Risk Management, and Community Business Development Partners have reviewed the draft proposal with Zilli.

The term of the proposed agreement is ten (10) years with a five (5) year mutual option for an extended term. The start date is January 1, 2014 and the original term expires on December 31, 2023. If the mutual option is exercised, the agreement will expire on December 31, 2028. The agreement may be terminated by either the County or Zilli if either party fails to comply with any provision of the agreement, provided the failure continues for 30 days after written notice.

Per terms of the proposed agreement, the County will receive a percentage of total gross receipts as follows:

[1] Based on data from the Milwaukee County Fiscal Intranet for actual revenues (Functional Code VH02; Activity Code KRSE; Revenue Sources 3560, 3603, 3613, 3649; Agency 900; Fund 001)

Annual Gross Receipts	Percentage Paid to County
$500,001 - $1,000,000	11%
$1,000,001 - $1,500,000	13%
$1,500,000 +	17%

The County is also guaranteed an annual minimum commission. For the first five years of the proposed agreement (2014 to 2019), the County's guaranteed minimum is $84,000. For the subsequent five years of the initial term and the extended term, the County is guaranteed $96,000 annually.

Per the terms of the proposed agreement, Zilli may determine that any County-owned catering and kitchen equipment requires repair. Zilli may then repair or replace such equipment at its own expense. If Zilli chooses to replace such equipment, the equipment becomes property of Zilli rather than the County.

Should the County and Zilli agree to the to the additional five year term, Zilli will make $75,000 in capital improvements during the 11th contract year (2024). If the additional five year term is not mutually agreed to, the contract will expire on December 31, 2023 with no requirement for capital improvements.

Per the terms of the proposed agreement, Zilli is responsible for all necessary repairs to catering equipment in areas of the facility covered by the agreement, provided the total cost of each individual repair does not exceed $5,000. The County is responsible for all major repairs in excess of $5,000. Zilli must also keep plumbing, electrical, lighting, doors, windows, and HVAC systems in good condition so the facility will be returned to the County in the same or better condition (ordinary wear and tear excepted).

Recommendation

Upon review of the available information, DAS recommends approval of the vendor permit agreement, with the following recommendation:

1. Section 6.2 – Equipment and Fixtures
    i. Part of this section provides that the County is responsible for replacing any County-owned kitchen and catering equipment that is not in good order and working condition at the start of the agreement. At any other point of the agreement, Zilli is responsible for such replacement and would retain ownership of the equipment. In order to provide a financial safeguard to the County, DAS recommends that Zilli be responsible for replacement of equipment at the start of the agreement as well as throughout the agreement.

Josh Fudge, Interim Fiscal and Budget Administrator

cc: Chris Abele, County Executive
Supervisor Marina Dimitrijevic, Chair, County Board of Supervisors
Amber Moreen, Chief of Staff, County Executive's Office
Kelly Bablitch, Chief of Staff, County Board of Supervisors
Jim Keegan, Interim Director, Parks, Recreation & Culture
Laura Schloesser, Chief of Admin & External Affairs, Parks, Recreation, & Culture
Suzanne Carter, Contracts Services Officer, Parks, Recreation, & Culture
Don Tyler, Director, Department of Administrative Services
Jessica Janz-McKnight, Research Analyst, County Board
Stephen Cady, Fiscal and Budget Analyst, County Board

MILWAUKEE COUNTY PARKS
N·A·T·I·O·N·A·L GOLD MEDAL WINNER

CHRIS ABELE, MILWAUKEE COUNTY EXECUTIVE
JAMES KEEGAN, INTERIM DIRECTOR OF PARKS, RECREATION AND CULTURE

Date: April 30, 2013

To: Chairwoman Marina Dimitrijevic, County Board of Supervisors

From: James Keegan, Interim Director, Department of Parks, Recreation and Culture

Subject: **Request to Enter into a Catering and Facility Management Services Agreement at the Boerner Botanical Gardens Educational & Visitors Center – ACTION**

POLICY

The Department of Parks, Recreation and Culture (DPRC) respectfully requests authorization to enter into a catering and facility management services agreement for the Educational & Visitors Center at Boerner Botanical Gardens in Whitnall Park.

BACKGROUND

The 2012 Adopted Budget authorized and directed the DPRC to issue a Request for Proposals (RFP) for vendors interested in providing catering and facility management services at Boerner Botanical Gardens to assist it in becoming self-sustaining.

In August 2012, the DPRC issued the RFP and Grandview Management, Inc., d/b/a Zilli Hospitality Group (ZHG), responded to the RFP and, meeting all terms and conditions of the process, was awarded the opportunity. ZHG has

ADDRESS
9480 Watertown Plank Road
Wauwatosa, WI 53226-3560

PHONE/FAX
ph: **414 / 257 PARK** (7275)
fax: 414 / 257 6466

EMAIL
parks@milwcnty.com

WEBSITE
countyparks.com

been a long-standing partner with Milwaukee County and the DPRC with contracts to provide services at the Mitchell Park Domes, O'Donnell Park, Transit Center, Milwaukee Public Museum, Charles Allis Art Museum, and others.

The term of this agreement is ten (10) years and, upon mutual agreement, one (1) five (5) year extension. ZHG guaranteed the DPRC commission of $900,000 for the first ten (10) years and an additional $480,000 during the 5-year extension, if renewed. In addition, a percentage of gross receipts, per operating year, will be paid on an escalating scale dependent on annual revenue generated. ZHG will be responsible for payment of 33% of all utility bills.

ZHG proposed and has agreed to an investment of $75,000 in capital improvements during year eleven (11) and will become the property of Milwaukee County. ZHG will provide the DPRC a $25,000 in-kind contribution per operating year.

On April 29, 2013, an Administrative Review Determination Panel (ARDP) convened as provided for under Milw. Co. Ord 110.07 in response to an appeal of the DPRC recommendation to award this contract to ZHG. The ARDP was responsible for reviewing the RFP process used by the DPRC to ensure compliance with existing rules and regulations.

The ARDP unanimously affirmed that the DPRC followed proper protocol in issuing the RFP and making the recommendation that the contract be awarded to ZHG.

RECOMMENDATION

The Interim Parks Director respectfully recommends that the DPRC be authorized to enter into a facility and maintenance service agreement with Grandview Management, Inc. d/b/a Zilli Hospitality Group for services at the Educational & Visitors Center at Boerner Botanical Gardens in Whitnall Park.

Prepared by: Laura Schloesser, Chief of Administration and External Affairs

Recommended by:

Laura Schloesser, Chief of Administration and External Affairs

Approved by:

James Keegan, Interim Parks Director

Attachment – Request for Proposal Criteria and Scoring

Cc: County Executive Chris Abele
Amber Moreen, Chief of Staff, County Executive's Office
Kelly Bablitch, Chief of Staff, County Board
Supv. Gerry Broderick, Chair, Parks, Energy & Environment Committee
Supv. Jason Haas, Vice-Chair, Parks, Energy & Environment Committee
Daniel Laurila, Fiscal Mgt. Analyst, Admin & Fiscal Affairs/DAS
Janelle Jensen, Parks, Energy & Environment Committee Clerk
Jessica Janz-McKnight, Research Analyst, County Board

File No. 13-
(Journal,)

(ITEM NO.) From the Director, Department of Parks, Recreation and Culture, requesting authorization to enter into a catering and facility management services agreement for the Educational & Visitors Center at Boerner Botanical Gardens in Whitnall Park.

A RESOLUTION

WHEREAS, the 2012 Adopted Budget authorized and directed the DRPC to issue a Request for Proposals (RFP) for vendors interested in providing catering and facility management services at Boerner Botanical Gardens to assist it in becoming self-sustaining; and

WHEREAS, in August 2012 the Department of Parks, Recreation and Culture (DPRC) issued a RFP; and

WHEREAS, Grandview Management, Inc. d/b/a Zilli Hospitality Group (ZHG) responded to the RFP and, meeting all terms and conditions of the process, was awarded the opportunity; and

WHEREAS, the term of this agreement is ten (10) years with, upon mutual agreement, one (1) five (5) year extension; and

WHEREAS, the DPRC will receive $900,000 for the first ten (10) years and an additional $480,000 during the 5-year extension if renewed; and

WHEREAS, the DPRC will receive a percentage of gross receipts, per operating year, paid on an escalating scale dependent on annual revenue generated; and,

WHEREAS, ZHG will pay 33% of utility bills; and,

WHEREAS, ZHG will invest $75,000 in capital improvements during year eleven (11) that will become the property of Milwaukee County; and

WHEREAS, the ZHG will provide the DRPC a $25,000 in-kind contribution per operating year; now, therefore,

BE IT RESOLVED, that the Milwaukee County Board of Supervisors hereby authorizes the Interim Parks Director to execute a catering and facility management agreement with Grandview Management, Inc. d/b/a Zilli Hospitality Group for services at the Education & Visitors Center at Boerner

45 Botanical Gardens in Whitnall Park.

MILWAUKEE COUNTY FISCAL NOTE FORM

DATE: April 30, 2013

Original Fiscal Note ☒

Substitute Fiscal Note ☐

SUBJECT: Catering and Facility Management Services Agreement at the Boerner Botanical Gardens Educational & Visitors Center

FISCAL EFFECT:

☒ No Direct County Fiscal Impact

☒ Existing Staff Time Required

☐ Increase Operating Expenditures
(If checked, check one of two boxes below)

☐ Absorbed Within Agency's Budget

☐ Not Absorbed Within Agency's Budget

☐ Decrease Operating Expenditures

☐ Increase Operating Revenues

☐ Decrease Operating Revenues

☐ Increase Capital Expenditures

☐ Decrease Capital Expenditures

☐ Increase Capital Revenues

☐ Decrease Capital Revenues

☐ Use of contingent funds

Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.

	Expenditure or Revenue Category	Current Year	Subsequent Year
Operating Budget	Expenditure	0	0
	Revenue	0	0
	Net Cost	0	0
Capital Improvement Budget	Expenditure	0	0
	Revenue	0	0
	Net Cost	0	0

DESCRIPTION OF FISCAL EFFECT

In the space below, you must provide the following information. Attach additional pages if necessary.

A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated. [1] If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
D. Describe any assumptions or interpretations that were utilized to provide the information on this form.

A. Request to enter into a Catering and Facility Management Services Agreement at the Boerner Botanical Gardens Educational & Visitors Center
B. No current year costs or revenue as contract doesn't commence until 2014. In 2014, the DPRC will receive $84,000 guaranteed commission and a percentage of gross receipts if sales exceed $500,001 (11%), $1,000,001 (13%), and $1,500,000 (17%)
C. No Impact
D. None

Department/Prepared By Laura Schloesser/DPRC

Authorized Signature _____

Did DAS-Fiscal Staff Review? ☐ Yes ☒ No

Did CBDP Review?[2] ☒ Yes ☐ No ☐ Not Required

[1] If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.

Attachment

RFP Criteria and Scoring:
Catering and Facility Management Services at Boerner Botanical Gardens

Category	Criteria	Weight	Average Bartolotta Restaurant Group	Average Zilli Hospitality Group
A	Qualifications and Experience	40	40	37.33
B	Revenue to the County	35	25.33	35
C	Quality of Products and Reasonableness of Pricing	15	13.33	11.33
D	Marketing Plan	10	10	8
	Total	100	88.67	**91.67**

CATERING AND FACILITY MANAGEMENT SERVICES AGREEMENT

This CATERING AND FACILITY MANAGEMENT SERVICES AGREEMENT (the "Agreement") is hereby made as of the __ day of _____, 2013 (the "Effective Date") by and between MILWAUKEE COUNTY, WISCONSIN, a political subdivision of the State of Wisconsin, as represented through its DEPARTMENT OF PARKS, RECREATION AND CULTURE (the "County"), and GRANDVIEW MANAGEMENT, INC., a Wisconsin corporation d/b/a ZILLI HOSPITALITY GROUP (the "Operator").

RECITALS

WHEREAS, the County issued a Request for Proposals ("RFP") to provide exclusive food, beverage, bar, banquet and facility management services at the Boerner Botanical Gardens Educational & Visitors Center (the "Facility") in Whitnall Park, Hales Corners, Wisconsin, and the Operator submitted a written proposal response meeting all terms and conditions of the RFP process; and

WHEREAS, the Milwaukee County Board of Supervisors, by virtue of adopting Resolution ____ on ____, 2013, has authorized the Interim Director of the Department of Parks, Recreation and Culture to enter into an agreement with the Operator for and on behalf of Milwaukee County.

NOW THEREFORE, the Operator is hereby awarded a contract to provide the requested services per all terms and conditions in the RFP and as indicated in the Operator's complete response thereto, which documents are both hereby incorporated by reference. Each party, for good and valuable consideration and the promises of the County and the Operator set forth in this Agreement, agrees as follows:

ARTICLE I
GRANT OF RIGHTS; SCOPE OF SERVICES

1.1 License. Subject to the limitation set forth in Section 1.2, County hereby grants to Operator, as of January 1, 2014 (the "Catering Commencement Date"), the exclusive right, license and privilege to provide, manage and operate the Catering Services for the following Facility amenities, as further defined in the RFP: (a) Nell's Café, (b) Boerner Hall, (c) the Garden Room, (d) the Multimedia Room, and (e) the Laboratory Classrooms. "Catering Services" shall mean the business of selling food, food products, non-alcoholic and alcoholic beverages at Boerner Botanical Gardens. Operator covenants and agrees to exercise the full management and catering rights granted hereunder at all such events in such manner and with such personnel as are necessary to provide adequate supplies and service of the food, beverage and other products described herein to Facility patrons. Nell's Café shall be operated in accordance with the description of services detailed in the RFP.

1.2 County Reservation of Rights. County reserves the right to utilize an alternate provider (including the County) for all or part of the Catering Services (including alcoholic beverage service), or no provider of Catering Services at all, for County-sponsored events at the

Facility. County shall notify Operator prior to scheduling the date of a County-sponsored event to confirm that there have been no events scheduled by Operator for the proposed date and time of the County-sponsored event in the same portion of the Facility. In the event that County chooses to use such an alternate provider of Catering Services, Operator shall cooperate with County in providing County with a commercially adequate amount of storage space at the Facility, on dates and at times to be determined by County.

1.3 Rights to Use Outdoor Spaces at Boerner Botanical Gardens. Operator shall have the limited, non-exclusive right to provide the Catering Services in the outdoor spaces at Boerner Botanical Gardens, with County's prior approval.

1.4 Due Diligence Obligation. This Agreement and the obligations of County and Operator hereunder are contingent upon Operator successfully meeting the Milwaukee County "Due Diligence" requirements (see attached as Exhibit A).

ARTICLE II
TERM

2.1 Term. The term of this Agreement (the "Initial Term") shall commence on the Effective Date and shall continue until December 31, 2023 (such conclusion, the "Scheduled Expiration Date"), unless terminated earlier as provided under this Agreement. Operator is not permitted to book the Facility beyond the Scheduled Expiration Date.

2.2 Renewal Option. Operator shall provide County with written desire of intent to renew no later than eighteen (18) months prior to the Scheduled Expiration Date. Upon such notice, mutual agreement of County and the authorization of all appropriate Milwaukee County entities, this Agreement shall be renewed on the same terms and conditions for one (1) additional successive period of five (5) years (the "Renewal Term") commencing at the expiration of the Initial Term**.** The Initial Term and any Renewal Term hereunder shall be collectively referred to as the "Term."

ARTICLE III
FINANCIAL TERMS

3.1 Direct Compensation. As consideration for the rights granted to Operator hereunder, Operator shall pay County:

(a) Guaranteed Commission. Eighty-Four Thousand Dollars ($84,000) per Operating Year, guaranteed commission, for the first five (5) Operating Years of this Agreement, or Seven Thousand Dollars ($7,000) per month, and Ninety-Six Thousand Dollars ($96,000) per Operating Year, guaranteed commission, for the second five (5) Operating Years of this Agreement and the Renewal Term, or Eight Thousand Dollars ($8,000) per month. An "Operating Year" means the twelve calendar months starting on the Catering Commencement Date and every subsequent twelve-month period during the Term;

(b) Gross Receipts. A percentage of Gross Receipts per Operating Year, in accordance with the following schedule:

Gross Receipts	Percentage Paid to County
$500,001 - $1,000,000	11%
$1,000,001 - $1,500,000	13%
$1,5000,000 +	17%

"Gross Receipts" shall be defined as the total of all amounts billed by Operator for the operation of Catering Services on food and beverage sales, whether such amounts are evidenced by cash, check, credit, charge account, exchange or otherwise, less (i) retail sales taxes and other direct taxes imposed upon receipts collected from the consumer, (ii) fees and charges on credit card transactions, (iii) tips and gratuities, and (iv) any fees charged to the County for County-sponsored events. An example of the calculation of Gross Receipts is included as Exhibit B hereto. Gross Receipts must be recorded for purposes of this Agreement in the Operating Year in which the event for which they were collected occurs. County will assume no liability or responsibility for any credit extended to any Person, or for any insufficient funds check received by Operator, and such amounts shall not be deducted from Gross Receipts. "Person" means any association, corporation, government, individual, joint venture, joint stock company, partnership, trust, unincorporated organization, or other entity of any kind;

(c) Room Rental Fees. All fees it receives from room rentals at the Facility. Room rental fees shall be paid to County by the fifteenth (15th) day of each month following the month in which Operator collected them. A schedule of room rental fees shall be set by County and revised from time and time by the parties;

(d) Parking Fees. All fees it receives from parking at the Facility. A schedule of parking fees shall be set by County and revised from time to time by the parties; and

(e) Outdoor Space Rental Fees. All fees it receives from renting outdoor spaces at Boerner Botanical Gardens. A schedule of outdoor space rental fees shall be set by County and revised from time to time by the parties.

Operator shall pay the amounts set forth in Sections 3.1(a), 3.1(c), 3.1(d), and 3.1(e) to County on a monthly basis. Such amounts shall be delivered to County by the fifteenth (15th) day of each month following the month in which such amounts were accrued by Operator or, in the case of the guaranteed commission, earned by County. Operator shall pay any Gross Receipts due County by the fifteenth (15th) day following the end of the Operating Year in which such Gross Receipts were accrued.

3.2 Utilities. Operator shall remit to County thirty-three percent (33%) of all Facility gas, electric, sewer, water, fire protection, and phone ("Utility") bills and the expenses of installation, maintenance, use, and service in connection with the foregoing during the Term of this Agreement; provided, however, that the amounts paid by Operator for Utilities shall not increase more than the Consumer Price Index for All Urban Consumers, Bureau of Labor Statistics, U.S. Department of Labor, on an Operating Year basis. County shall bill Operator for Utility charges on a monthly basis, and Operator shall pay all such bills within thirty (30) days of issuance.

3.3 Capital Improvements. Operator shall invest a minimum of Seventy-Five Thousand Dollars ($75,000) in capital improvements in the Facility during the eleventh (11th) Operating Year of the Agreement. Operator and County shall mutually agree upon the specific design services, improvements and/or equipment to be purchased or made with Operator's investment, as well as the location for such improvements or installation of such equipment. All such improvements purchased pursuant to this Section 3.3 shall be owned by County, and Operator agrees to execute such documents as County may reasonably request evidencing County's ownership interest in such improvements.

3.4 In-Kind Contribution. Operator shall provide County with an in-kind contribution of up to Twenty-Five Thousand Dollars ($25,000) of complimentary food and beverages valued at Operator list prices for an event of County's choice and on a date to be mutually agreed upon by the parties at the Facility each Operating Year. The in-kind contribution shall not be included in the Gross Receipts.

ARTICLE IV
PERSONNEL

4.1 Hiring of Personnel. Operator shall employ, train and supervise personnel with appropriate qualifications and experience, in sufficient number to adequately provide the Catering Services. All such personnel shall be employees, agents or independent contractors of Operator (or a subsidiary or affiliate thereof), as applicable, and not of County. Operator shall select the number, function, qualifications, and compensation, including salary and benefits, of its employees, and shall control the terms and conditions of employment relating to such employees. Operator agrees to use reasonable and prudent judgment in the selection and supervision of such personnel, and shall strive to employ persons who are courteous, friendly, respectful, and efficient, and who will not use improper language or act in a loud or boisterous manner while performing duties at the Facility.

4.2 General Manager. Operator shall employ as part of its personnel at the Facility an individual with managerial experience to serve as a full-time general manager of Catering Services ("General Manager"). Hiring of the General Manager by Operator shall require the prior approval of County, which approval shall not be unreasonably withheld or delayed. The General Manager will have general supervisory responsibility for Operator at the Facility and

will be responsible for day-to-day operations of the Catering Services, supervision of Operator employees, and management and coordination of all activities associated with Operator's duties at the Facility. The General Manager or his or her designee will be on duty during all events hosted by the Operator and will open the Facility on each day Operator has a morning event and close and set the alarm for the Facility on each day Operator has an evening event. County will provide the General Manager with an alarm code and a set of keys for the Facility.

4.3 Uniforms; Training. Operator shall ensure that its non-management employees performing Operator's duties at the Facility shall be neatly attired in clean, commercially-attractive uniforms, which shall be subject to the approval of County. Operator shall train all such employees so that they are aware of the high standards for cleanliness, courtesy and service required by Operator and County.

4.4 Policies. All personnel engaged by Operator to work at the Facility shall be admitted to the Facility without payment of any admission fee, at an entrance to be designated by County. All such personnel shall have the right to park at the Facility on the same terms as County's employees, in areas designated by County. All such personnel shall follow any work rules prescribed by County, so long as County gives Operator and/or such personnel notice of the same.

ARTICLE V
INVENTORY

5.1 Generally. Operator shall order, stock, prepare, pay for, and sell quality food, beverage, and other concession and catering products. Consumables shall be first quality, wholesome, and pure, and all food and beverage merchandise on hand shall be stored and handled with due regard for sanitation. Operator shall have sufficient amounts of product prepared in inventory on the premises so as not to run out of product during an event at the Facility.

5.2 Brands and Prices. The brands and prices of all products sold by Operator shall be determined by Operator, subject to the reasonable approval of County; provided, however, that Operator shall comply with all current County contractual requirements, including the use of the County's exclusive non-alcoholic beverage provider. Operator further will forego the sale of glass bottles and gum, consistent with County policy.

ARTICLE VI
MAINTENANCE

6.1 General. Operator shall keep all fixtures, equipment (including the equipment set forth in Exhibit C), furniture and other property installed, furnished or supplied by or for the benefit of Operator in good order and repair and shall make all necessary repairs and improvements thereto and to the Catering Areas. "Catering Areas" shall mean the catering

areas, customer serving locations, kitchen and warehouse facilities, food preparation areas, Facility areas listed in Section 1.1, and other related areas of the Facility.

6.2 Equipment and Fixtures. All catering equipment and fixtures owned by County at the Facility are set forth on Exhibit C (the "County Equipment"). If any County Equipment requires repair after the Catering Commencement Date, Operator may elect to repair or replace such County Equipment at Operator's expense. If Operator replaces such County Equipment, such replacement equipment shall be owned by Operator, and County agrees to execute such documents as Operator may reasonably request evidencing Operator's ownership interest in such equipment. Nothing in this Section 6.2 shall affect Operator's obligations pursuant to Section 3.3, Capital Improvements, or County's ownership rights thereunder.

6.3 Janitorial Service. Operator will provide year-round janitorial service for the areas of the Facility indicated on the map attached hereto as Exhibit D and provide all supplies used in the performance of such janitorial services at Operator's expense. Janitorial service must be performed for the Facility on a daily basis, and when Operator has hosted an event at the Facility, the Facility must be thoroughly cleaned by the opening of the Facility on the day following the event. If County utilizes an alternate provider of Catering Services pursuant to Section 1.2, Operator shall not be responsible for janitorial service following such provider's hosted event.

6.4 Facility Maintenance. Operator shall, at its expense, during the Term repair all damage to the areas of the Facility indicated on Exhibit D (i) caused by the Operator or its guests; or (ii) provided the total cost of each such repair (including any maintenance and material charges) does not exceed Five Thousand Dollars ($5,000). Operator shall not be responsible for any repair where the damage giving rise to a need for such repair is caused by the negligence or misconduct of County, its employees or its agents, including structural damage to the building that exists as of the Catering Commencement Date. Operator may within the sixty (60) day period prior to the Catering Commencement Date have a professional building inspector examine the Facility and its components and systems to determine any material defects in the Facility. Operator shall provide County with a list of the structural defects identified by the building inspection ("Existing Structural Defects"). Operator shall have no obligation to repair those items of structural damage identified as an Existing Structural Defect. Such repairs shall include, but not be limited to, repairs to plumbing, electrical and lighting (including light bulbs), the doors, door checks, door hardware, windows, fixtures, heating, ventilating and air conditioning facilities servicing the Facility to the point of entry to a common line. Operator shall keep and maintain the same in good condition and repair so that at the expiration of the Term, the Facility shall be surrendered to County in the same condition or better that the same are in as of the Catering Commencement Date, ordinary wear and tear excepted. All repairs shall be done by licensed tradespersons, with oversight by County. Operator may contract with County for repairs on a time and materials basis. Operator shall perform its repair obligations promptly after learning of the need for such repairs, but in any event within thirty (30) days after written notice provided by one party to the other. If Operator fails to make such repairs for which it is obligated within thirty (30) days after

County's notice, and such failure constitutes a health or safety hazard to the public, or has the potential to cause further damage to the Facility, then County shall have the right to make the repair with its own staff or contract with a private contractor to make the repair, and charge all reasonable costs directly associated with making the repair, to Operator (including salary and benefits if done with County's own staff). Operator shall have no obligation to make repairs or perform maintenance if the damage giving rise to a need for such repair is caused by an alternate provider of Catering Services hired pursuant to Section 1.2 or a guest of such provider.

6.5 Garbage and Waste. Operator shall deposit in its own receptacles and pay for the removal of all waste, garbage, refuse, and recyclables which accumulate in the Facility.

6.6 Disposal of Fats, Oils and Grease.

(a) Prevention of FOG Build-up. Operator shall keep leftover grease and food scraps from going down the drains. Fats, oils, and grease ("FOG") poured down drains can build up in pipes and sewers and cause sewage backups, which can lead to raw sewage overflows. Large amounts of FOG should be collected and stored in drums or barrels for recycling. Small amounts can be poured into a sealable container and thrown away. Operator should scrape or wipe FOG from dishware and cookware and put it in the trash.

(b) GCD Installation. Operator shall have a grease control device ("GCD") meeting all applicable requirements of Wisconsin Administrative Code NR 113 and State of Wisconsin Department of Commerce 82.34 standards. The GCD shall be installed by a plumber licensed in the State of Wisconsin prior to the Operator's occupancy of the Facility. The GCD shall be installed and connected so that it may be readily accessible for inspection, cleaning and removal of FOG at any time.

(c) Maintenance. The GCD shall be maintained at Operator's sole expense. Maintenance shall include the complete removal of all contents, including floating material, wastewater and settled solids. The GCD shall be cleaned no less frequently than once every six (6) months. Grease interceptors shall be pumped out completely when the total accumulation of FOG, including floating solids and settled solids, reaches twenty-five percent (25%) of the overall liquid volume. Frequency of cleaning will depend upon the type of food prepared and how well grease is managed in the kitchen.

(d) Waste Disposal. FOG removed from a grease interceptor shall be disposed of in a solid waste disposal system or by a certified grease hauler. FOG removed from a grease interceptor shall be disposed of at a

facility permitted to receive such wastes. No FOG shall be returned, decanted or discharged to any grease interceptor or into any portion of any private or County sanitary sewer system or water treatment facility.

(e) Posting of Signage. Operator shall post the County's signage provided to Operator regarding FOG disposal in a clear and prominent place in the kitchen at the Facility. The County's signage shall be posted above the sink at the Facility if such posting is possible and if such posting would not obscure the signage.

(f) Inspection. The County shall have the right of entry into the Facility at any time to make inspections, observation, measurements, sampling, testing, or records review of the GCD to ensure that Operator is in compliance with this Section 6.6. Operational changes, maintenance and repairs requested by the County shall be implemented by Operator at Operator's expense if such change, maintenance, or repair is the obligation of Operator under the terms of this Agreement.

(g) Record Keeping. Operator shall retain and make available for the County's inspection and request all records of all cleaning and/or maintenance pertaining to the GCD during the Term. Cleaning and/or maintenance records shall include, at a minimum: (a) the dates of cleaning/maintenance; (b) the names and business addresses of each company or person performing the cleaning/maintenance; (c) the volume of waste removed in each cleaning/maintenance; (d) information regarding each FOG disposal, including location of the waste disposal site and a copy of the original manifest from the hauler, if applicable; and (e) description of any repairs needed to the GCD, date repairs performed and name of repairer. The rights and obligations set forth under this provision shall survive the termination of the Agreement for a period of three (3) years.

6.7 Legal Compliance. Operator shall comply with and observe all federal, state and local laws, ordinances and regulations as to sanitation and the purity of food and beverages or otherwise relating to its operations under this Agreement.

ARTICLE VII
LICENSES; ALCOHOL; TAXES

7.1 Permits and Licenses. Operator shall secure and maintain throughout the Term all licenses and permits necessary for the operation of the Catering Services, including those required for the sale of liquor, beer and wine at the Facility. The cost of all permits and licenses shall be borne by Operator.

7.2 Alcoholic Beverages. Operator agrees to strictly comply with the laws of the State of Wisconsin regarding the sale and service of alcoholic beverages to minors. Operator agrees to adopt an identification policy to verify the age of potential purchasers of alcoholic beverages and to avoid selling alcoholic beverages to customers who are visibly intoxicated. Operator will institute and conduct training programs for Operator employees at the Facility on the proper standards to use to avoid selling alcoholic beverages to customers who are who appear to be intoxicated.

7.3 Change in Liquor Laws; Inability to Obtain Permit. In the event that Operator is unable to secure or maintain the necessary licenses or permits to sell alcoholic beverages at the Facility due to its own negligence or misconduct, Operator will be considered in Default under this Agreement, and County may avail itself of the remedies under Article XIV. If, due to a change during the Term in any state or local law, rule or regulation, or due to a rule or regulation of Milwaukee County or the Village of Hales Corners, Operator is prevented or materially limited from selling alcoholic beverages at the Facility or unable to secure or maintain the necessary licenses or permits to sell alcoholic beverages at the Facility through no fault of its own, the parties agree to renegotiate in good faith the terms of this Agreement so that the economic benefits anticipated by each party are maintained to the greatest extent possible.

7.4 Taxes. Operator shall pay all taxes of whatever character which may be levied or charged upon Operator to use Whitnall Park, or upon the improvements, fixtures, equipment or other property, or upon the operations under the Agreement.

ARTICLE VIII
FACILITY MANAGEMENT

8.1 Operating Hours. Unless otherwise mutually agreed between the parties, Operator shall provide daily café service in the manner detailed in the RFP at Nell's Café during the Facility's high season (approximately May to September) from approximately 11:00 a.m. to 3:00 p.m. and year round Catering Services for meetings, banquets and wedding receptions. The parties agree to further negotiate the hours of Facility operation, days of service, and length of the operating season, which approvals shall not be unreasonably conditioned or delayed.

8.2 Noise. Operator shall not use or permit the use of the Facility in any manner that creates or maintains any noise or sound in violation of any noise ordinance of the County or the Village of Hales Corners, as applicable to the Facility or to the Boerner Botanical Gardens.

8.3 Nuisance. Operator shall not itself and shall not allow any other Person to use the Facility for any unlawful purpose and shall not itself and shall not allow any other Person to perform, permit or suffer any act or omission upon or about the Facility that would result in a nuisance or a violation of any law, regulation or ordinance, as the same may now or hereafter be in force and effect.

8.4 Signage and Promotions. All signage must be pre-approved in writing by Milwaukee County and comply with the County Code and any applicable code of the Village of Hales Corners. All signs in the Facility will be maintained in good condition by Operator during the Term. Operator agrees to provide County with prominent acknowledgement signage using the County Parks Logo as an integral part of all promotions. The acknowledgement signage must be prominently displayed in all of Operator's promotions and advertising related to the activities covered by this Agreement. Operator will remove all signs containing Operator's name or logo installed in or on the Facility on or before termination of this Agreement, except as otherwise agreed by the parties, and will repair and restore any damage caused by the installation or removal of such signs.

8.5 Alterations, Renovations And Additions. Operator shall not, without the advance written approval of County, remove from the Facility, or permit the removal of, any equipment, furnishings and other property of the County. If at any time County supplies the Operator with labels, plates, or other markings identifying equipment, furnishings and other property of County, Operator shall affix and keep the same in a prominent place on such equipment, furnishings and other property.

8.6 Public Access. Operator understands that the Facility is part of a public park and is to remain open and accessible to the public in a manner that is compatible with the use of the Catering Areas as contemplated by the Agreement.

8.7 Scheduling. In coordination with County staff, Operator shall schedule all events at the Facility, including events not using Catering Services. Operator shall make best efforts not to divert, cause, allow, or permit to be diverted any business from the Facility. If business cannot be booked at the Facility due to prohibitive scheduling, Operator shall make best efforts to divert such business to another similar Milwaukee County Parks facility.

8.8 Marketing Efforts. Operator will take all reasonable measures, in every proper manner, to develop, maintain, and increase the business the business conducted by it under this Agreement. Operator will provide an ongoing marketing plan and communication effort to facilitate a successful and vibrant operation at the Facility.

8.9 County Right of Access. Notwithstanding anything to the contrary in this Agreement, the County, its agents, representatives, or designees may enter any part of the Facility at any time for any purpose without notice to Operator.

ARTICLE IX
RECORDS, REPORTS AND AUDITS

9.1 Establishment of Operating Account. Operator shall establish and maintain, in its name, a separate commercial bank account for the Facility (the "Operating Account") and shall deposit all Gross Receipts in such account.

9.2 Books and Records. Operator agrees to maintain separate and independent books and records, in accordance with generally accepted accounting principles, relating to its operations in connection with its management of the Catering Services and the Facility, as applicable. Such books and records shall contain documentation regarding the deposit of all Gross Receipts in the Operating Account and inventories and receipt of merchandise at the Facility, including daily receipts from all sales and other transactions on or from the Facility by Operator.

9.3 Monthly Financial Reports. Operator shall provide to County, within fifteen (15) days of the end of each month during the Term, sales reports regarding its provision of Catering Services, including a statement showing Gross Receipts for the applicable period, and an Operating Year to date reconciliation report.

9.4 Audit and Examination Rights. Pursuant to Milwaukee County Ordinance Section 56.30(6)(e), Operator and its affiliates shall allow Milwaukee County or any other party the County may name, when and as they demand, to audit, examine and make copies of records in any form and format, meaning any medium on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by Operator or its affiliates, including handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes), computer files, computer printouts and optical disks, and excerpts or transcripts from any such records or other information directly relating to matters under this Agreement, all at no cost to County. Any subcontracting by Operator in performing the duties described under this Agreement shall subject the subcontractor or its associates to the same audit terms and conditions as Operator. The County shall preserve the confidentiality of such information to the extent permitted by Wisconsin law, as determined by County's Corporation Counsel. If Operator is found to have underpaid County with regard to Gross Receipts, room rentals or parking fees for any Operating Year, the Operator shall immediately pay to the County any earned but unpaid amounts due to the County.

9.5 Retention of Books and Records. Operator and its affiliates shall, for a period of five (5) years following the end of the Term, keep and maintain, safe and intact, all of the records, books and accounts required to be maintained by such Persons regarding the Facility pursuant to this Agreement, and shall from time to time, upon request, make these records available to the County, the County's auditor, representative or agent for examination at any reasonable time, on ten (10) days advance written notice. The County shall also have the right to make abstracts from the records, to make copies of any or all of the records and to examine and make copies of any or all contracts, licenses and concession agreements. In addition, on request of the County or the County's representative, Operator shall furnish copies of the Operator's state and local sales and use tax returns and federal and state income tax return.

ARTICLE X

COMPLIANCE

10.1 Generally. Operator shall during the Term, at the Operator's sole expense: (a) comply with all laws, ordinances, rules and regulations; and, pursuant to its management of the Facility and its operation of the Catering Services: (b) procure and comply with all licenses, permits, approvals, consents, rulings, variances and authorizations required by law.

10.2 Environmental Compliance. Operator shall not knowingly allow any violation of any Environmental Law at Whitnall Park or knowingly permit the introduction into Whitnall Park of any Hazardous Substances after the Catering Commencement Date.

(a) "Environmental Laws" means any and all applicable federal, state, tribal and local statutes, laws, rules, regulations, ordinances, codes, principles of common law, judicial orders, administrative orders, consent decrees, judgments, permits, licenses or other binding determinations of any judicial or regulatory authority, now or hereafter in effect, imposing liability, establishing standards of conduct or otherwise relating to protection of the environment (including natural resources, surface water, groundwater, soils, and indoor and ambient air), health and safety, land use matters or the presence, use, generation, treatment, storage, disposal, Hazardous Substance Discharge or threatened Hazardous Substance Discharge, transport or handling of Hazardous Substances.

(b) "Hazardous Substance" includes flammable substances, explosives, radioactive materials, asbestos, asbestos-containing materials, polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, medical wastes, toxic substances or related materials, explosives, petroleum and petroleum products, and any "hazardous" or "toxic" material, substance or waste that is defined by those or similar terms or is regulated as such under any law, regulation, or ordinance, including any material, substance or waste that is: (i) defined as a "hazardous substance" under Section 311 of the Water Pollution Control Act (33 U.S.C. § 1317), as amended; (ii) substances designated as "hazardous substances" pursuant to 33 U.S.C. § 1321; (iii) defined as a "hazardous waste" under Section 1004 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq., as amended; (iv) defined as a "hazardous substance" or "hazardous waste" under Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq. or any so-called "superfund" or "superlien" law; (v) defined as a "pollutant" or "contaminant" under 42 U.S.C.A. § 9601(33); (vi) defined as "hazardous waste" under 40 C.F.R. Part 260; (vii) defined as a "hazardous chemical" under 29 C.F.R. Part 1910; any matter within the definition of "hazardous substance" set forth in 15 U.S.C. § 1262; (viii) any matter, waste or substance regulated under the Toxic Substances Control Act ("TSCA") [15 U.S.C. Sections 2601, et seq.]; any matter, waste or substance regulated under the

Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801, et seq.; any matter, waste or substance regulated under the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901, et seq.; those substances listed in the United States Department of Transportation (DOT) Table [49 CFR 172.101], or designated by the EPA, or any successor authority, as a hazardous substance [40 CFR Part 302]; and those substances defined as "hazardous waste" or, as a "hazardous substance" under Wisconsin Statutes or the Wisconsin Administrative Code; (ix) subject to any other law, regulation, or ordinance regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source; or (x) other substances, materials, and wastes that are, or become, regulated or classified as hazardous or toxic under federal, state, or local laws or regulations and in the regulations adopted pursuant to said laws, and shall also include manure, asbestos, polychlorinated biphenyl, flammable explosives, radioactive material, petroleum products.

(c) "Hazardous Substance Discharge" means any deposit, discharge, generation, release, or spill of a Hazardous Substance that occurs at or from Whitnall Park, whether or not caused by a party to this Agreement and whether occurring before or after the Catering Commencement Date.

ARTICLE XI
INDEMNIFICATION

11.1 General Indemnification. Each party (the "Indemnitor") shall indemnify and hold harmless the other party and its respective elected officials, officers, directors, partners, employees, and other agents from and against any claims, actions or suits arising any act, omission or negligence of the Indemnitor or its elected officials, officers, directors, partners, employees, or other agents which may arise out of or are connected with the activities covered by this Agreement. Notwithstanding anything to the contrary in this Agreement, the Indemnitor shall not be required to indemnify any party to the extent of such party's wrongful intentional acts or negligence. Milwaukee County's liability shall be limited by Wis. Stat. §§ 345.05(3) for automobile and 893.80(3) for general liability.

11.2 Conditions to Indemnification. Each party seeking indemnification shall give prompt written notice to the other party of each claim giving rise to an indemnification obligation under this Agreement (and in any event not more than thirty (30) days after notification that any third-party litigation has been commenced asserting the claim giving rise to an indemnification obligation hereunder), specifying the amount and nature of any such claim. The party seeking indemnification shall not settle or compromise any claim by a third party for which it is entitled to indemnification hereunder without the prior written consent of

the Indemnitor. The party seeking indemnification shall cooperate in the indemnifying party's defense of such claim at the sole cost of the Indemnitor.

11.3 Survival. The obligations of the parties contained in this Article XI shall survive the termination or expiration of this Agreement.

ARTICLE XII
INSURANCE

12.1 Operator to Insure. Operator shall, at its sole expense, during the Term, maintain the insurance specified in this Article.

12.2 Policy Requirements and Endorsements. Operator shall purchase and maintain policies of insurance and proof of financial responsibility to cover costs as may arise from claims of tort, statutes, and benefits under Workers' Compensation laws, as respects damage to persons or property and third parties in such coverages and amounts as required and approved by the County Director of Risk Management and Insurance. Acceptable proof of such coverages shall be furnished to the Director of Risk Management and Insurance prior to services commenced under this Agreement.

Operator shall provide evidence of the following coverages and minimum amounts.

Type of Coverage	Minimum Limits
Wisconsin Workers Compensation (with waiver of subrogation)	Statutory
Employers Liability	$100,000/$500,000/$100,000
Commercial/Comprehensive General Liability	
General Aggregate	$2,000,000 per occurrence
Bodily injury/Property Damage	$1,000,000 per occurrence
Personal Injury	$1,000,000 per occurrence
Contractual Liability	$1,000,000 per occurrence
Automobile Liability	
Bodily Injury & Property Damage	$1,000,000 per accident
All Autos – owned and non owned and/or hired	
Uninsured Motorist	per WI requirements
Liquor Liability Insurance	$1,000,000 per occurrence

Milwaukee County, as its interests may appear, shall be named as an additional insured for general liability, automobile, and liquor liability as respects the services provided in this

Agreement. Disclosure must be made of any non standard or restrictive additional insured endorsement, and any use of non standard or restrictive additional insured endorsement will not be acceptable, a thirty (30) day written notice of cancellation, nonrenewal, or material change shall be afforded to the County.

Operator shall purchase and maintain policies of insurance and proof of financial responsibility to cover costs as may arise from claims of tort, statutes, and benefits under Workers' Compensation laws, as respects damage to persons or property and third parties in such coverages and amounts as required and approved by the County Director of Risk Management and Insurance. Acceptable proof of such coverages shall be furnished to the Director of Risk Management and Insurance prior to services commenced under this Agreement.

It is understood and agreed that Operator shall obtain information on the professional liability coverages of all sub-consultants and/or sub-contractors in the same form as specified above for review of the County.

The insurance specified above shall be placed with at least an A-/VIII rated carrier per Best's Rating Guide approved to do business in the State of Wisconsin.

A Certificate of Insurance shall be submitted for review to the Parks Department for each successive period of coverage for the duration of this Agreement.

ARTICLE XIII
INTEREST

13.1 Interest Rate. Unless waived by the County Board of Supervisors, Operator shall be responsible for payment of interest on amounts not remitted in accordance with the terms of the Agreement with County. The rate of interest shall be the statutory rate in effect for delinquent County property taxes (1% per month or fraction of a month) as described in Wisconsin Statutes Section 74.47(1). The obligation for payment and calculation thereof shall commence upon the day following the due dates established herein.

13.2 Penalty Amounts. In addition to the interest described above, Operator may be responsible for payment of penalty on amounts not remitted in accordance with the terms of the Agreement with County, as may be determined by the administrator of this Agreement, or his designee. The penalty shall be the statutory rate in effect for delinquent County property taxes (.5% per month, or fraction of a month) as described in Milwaukee County Ordinance section 6.06(1) and Wisconsin Statues Section 74.47(2). The obligation for payment and calculation thereof shall commence upon the day following the due dates established herein.

13.3 Further Penalties. If, as a result of the annual audit required herein, additional amounts are disclosed to be due and owing to the County, interest and penalty shall be calculated thereon in accordance with the above method. Operator shall remit to the County

any additional amounts due and owing for the audit including interest and penalty thereon within thirty (30) days following receipt of the audit report by Milwaukee County.

13.4 Non-Exclusive Remedies. This provision permitting collection of interest and penalty by the County on delinquent payments is not to be considered the County's exclusive remedy for Operator's default or breach with respect to delinquent payment. The exercise of this remedy is not a waiver by the County of any other remedy permitted under the Agreement, including but not limited to termination of this Agreement.

ARTICLE XIV
EVENTS OF DEFAULT; REMEDIES

14.1 Events of Default. A "Default" will occur under this Agreement if:

(a) Breach. A party fails to comply with any provision in this Agreement, and such failure continues for thirty (30) days after a written notice from the other party setting forth in reasonable detail the nature of such default;

(b) Bankruptcy or Insolvency. Operator ceases to do business as a going concern, ceases to pay its debts as they become due, or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any proceeding under any federal or state bankruptcy law, or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Operator's assets or Operator's interest in this Agreement and fails to remedy such condition within thirty (30) days after written notice from County; or

(c) Succession in Interest without County's Consent. Operator becomes, without the prior written approval of County, a successor or merged entity in a merger, or a constituent entity in a consolidation, or an entity in a dissolution.

14.2 Remedies. If a Default occurs, then the non-defaulting party shall, at such party's option, have any or all of the following described remedies, all cumulative (so exercise of one remedy shall not preclude exercise of another remedy), in addition to such other remedies as may be available at law or in equity or under any other terms of this Agreement. The non-defaulting party's remedies shall include:

(a) Termination of Operator's Rights. The non-defaulting party may terminate this Agreement by written notice of termination of this Agreement to the defaulting party or by any other lawful means, if the defaulting party has not began to cure the default within such thirty (30) day period or if the default is of the type that would reasonably take longer than thirty (30) days to cure, the defaulting party has not begun to cure the default within such (30) thirty days and exercise reasonable diligence to complete such cure in which case this Agreement and

the Term shall terminate, and Operator shall vacate the Facility on the termination date. Should County so choose, if Operator is the defaulting party, Operator shall cooperate in providing the Catering Services during a transition period as County seeks an alternate service provider at the Facility. Additionally, the non-defaulting party may bring an action to recover any or all of the following from the defaulting party: (i) any unpaid amounts set forth in Article III earned as of the date the Agreement terminates. If County is the non-defaulting party, it shall be paid a prorated portion of the guaranteed commission set forth in Section 3.1 and any Gross Receipts to reflect that point in the Operating Year on which the Agreement terminates; and (ii) any other amount reasonably and directly necessary to compensate the non-defaulting party for all detriment caused by and directly arising from the defaulting party's failure to perform its obligations under this Agreement.

(b) Suits before Termination. The County may sue the Operator for damages or to recover the amounts set forth in Article III, from time to time, at the County's election, without terminating this Agreement.

(c) Receipt of Moneys. No receipt of money by County from Operator after the termination of this Agreement, or after the giving of any notice of termination of this Agreement, shall reinstate, continue, or extend this Agreement or affect any notice previously given to Operator, or waive County's right to enforce payment of any amount payable or later falling due, or County's right to enter the Facility, except as this Agreement expressly states otherwise, it being agreed that after service of notice of termination of this Agreement or the commencement of suit or proceedings, or after final order or judgment, the County may demand, receive, and collect any moneys due or thereafter falling due, without in any manner affecting such notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of use of the Facility or, at the County's election, on account of Operator's liability to County.

(d) No Waiver. No failure by the County to insist upon strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy upon a Default, and no acceptance of full or partial amounts due pursuant to Article III during continuance of any such Default, shall waive any such Default or such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Agreement to be performed or complied with by Operator, and no Default, shall be modified, except by a written instrument executed by County. No waiver of any Default shall modify this Agreement. Each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then-existing or subsequent Default of such covenant, agreement, term or condition of this Agreement.

14.3 Accord and Satisfaction; Partial Payments. No payment by Operator or receipt by County of a lesser amount than the amount owed under this Agreement shall be deemed to be other than a part payment on account by Operator. Any endorsement or statement on any check or letter accompanying any check or payment of the amounts set forth in Article III or any other amount shall not be deemed an accord or satisfaction. County may accept any such check or payment without prejudice to County's right to recover the balance of such amounts or other payment or pursue any other remedy.

14.4 Survival. No expiration or termination of this Agreement and no entry into or onto the Facility by County after such expiration or termination shall relieve Operator of its liabilities and obligations under this Agreement, all of which shall survive such expiration, termination or entry.

ARTICLE XV
NONDISCRIMINATION, AFFIRMATIVE ACTION AND DBE GOALS

15.1 Generally. There shall be no discrimination against or segregation of any person, or group of persons, on account of gender, age, race, color, religion, creed, national origin or ancestry in the use of the Facility, and Operator (or any person claiming under or through Operator) shall not establish or permit any such practice or practices of discrimination or segregation with reference to the Facility.

15.2 Non-Discrimination. Operator certifies that it will not discriminate against any employee or applicant for employment because of race, color, national origin, age, sex or handicap which includes, but is not limited to, the following: employment, upgrading, demotion or transfer, recruitment, or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship. Operator will post in conspicuous places, available for employment, notices setting forth the provisions of the non-discriminatory clause. Attached hereto as Exhibit E is an Equal Opportunity Certificate that shall be executed and delivered by Operator simultaneously with the execution and delivery of the Agreement.

15.3 Affirmative Action Program. Operator certifies that it will strive to implement the principles of equal employment opportunity through an effective affirmative action program which shall have as its objective to increase the utilization of women, minorities and handicapped persons and other protected groups, at all levels of employment in all divisions of its work force, where these groups may have been previously under-utilized and under-represented. Operator also agrees that in the event of any disputes as to compliance with the aforementioned requirements, it shall be its responsibility to show that it has exercised good faith efforts to meet all requirements.

15.4 Affirmative Action Plan. Operator certifies that if it has fifty (50) or more employees, it has filed or will develop and submit a written Affirmative Action Plan. Current Affirmative Action Plan, if required, must be filed with any of the following: The Office of

Federal Contract Compliance Programs, the State of Wisconsin, or the Milwaukee County Department of Audit, City Campus, 9th Floor.

15.5 Non-Segregated Facilities. Operator certifies that it does not and will not maintain or provide segregated facilities for its employees, and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained.

15.6 Reporting Requirement. When applicable, Operator certifies that it will comply with all reporting requirements and procedures established in Title 41 Code of Federal Regulations, Chapter 60.

15.7 Compliance. Operator certifies that it is not currently in receipt of any outstanding letters of deficiencies, show cause, probable cause, or other such notification of noncompliance with EEO regulations.

15.8 Disadvantaged Business Enterprise Goals. Operator shall use reasonable efforts to cause its contractors to establish Disadvantaged Business Enterprise ("DBE") participation goals, consistent with Milwaukee County DBE goals of ten percent (10%) for goods and services, purchases and subcontracts, and to use good faith efforts to achieve those goals. The Milwaukee County Community Business Development Partners shall assist Operator in soliciting potential DBE vendors for the improvements and monitor such goal attainment. Operator's contact regarding DBE participation is: Interim Director, Nelson Soler, at (414) 289-4608.

ARTICLE XVI
CONFLICT OF INTEREST; CODE OF ETHICS

16.1 Conflict of Interest. During the Term, Operator shall not hire, retain or utilize for compensation any member, officer or employee of the County or any person who, to the actual knowledge (without inquiry) of Operator, has a Conflict of Interest. A "Conflict of Interest" is a set of circumstances that creates a risk that professional judgment or actions regarding a primary interest will be unduly influenced by a secondary interest.

16.2 Code of Ethics. Operator hereby acknowledges that portion of County's Code of Ethics, which states in part: No person may offer to give to any County officer or employee or his immediate family, and no County officer or employee or his immediate family may solicit or receive anything of value pursuant to an understanding that such officer's or employee's vote, official actions or judgment would be influenced thereby.

ARTICLE XVII
MISCELLANEOUS

17.1 Integration; Order of Precedence. The parties understand and agree that the RFP and Operator's RFP Response, including Operator's "Best and Final Offer" RFP Response,

are incorporated into and made a part of this Agreement by this specific reference. In the event of a conflict or disagreement among the documents, the following order of precedence shall govern:

(a) Written amendments to the Agreement;
(b) The Agreement;
(c) The RFP;
(d) Operator's "Best and Final Offer" RFP Response; and
(e) Operator's original RFP Response, dated October 5, 2012.

17.2 No Waiver by Silence. Failure of either party to complain of any act or omission on the part of the other party shall not be deemed a waiver by the noncomplaining party of any of its rights under this Agreement. No waiver by either party at any time, express or implied, of any breach of this Agreement shall waive the same such breach at another time or any other breach.

17.3 Performance Under Protest. If a dispute arises about performance of any obligation under this Agreement, the party against which such obligation is asserted shall have the right to perform such obligation under protest, which shall not be regarded as voluntary performance. A party that has performed under protest may institute appropriate proceedings to determine the parties' rights and obligations regarding such performance and, if appropriate, to recover any amount paid or the reasonable cost of otherwise complying with any such obligation.

17.4 Survival. All rights and obligations that by their nature are to be performed after any termination of this Agreement shall survive any such termination.

17.5 Captions. The captions of this Agreement are for convenience and reference only and in no way affect this Agreement.

17.6 Counterparts. This Agreement may be executed in counterpart originals, each of which shall constitute an original of this Agreement and that, collectively, shall constitute one and the same agreement.

17.7 Delivery of Drafts. Neither party shall be bound by this Agreement unless and until the authorized representatives and such party has/have executed, at least, one counterpart original of this Agreement and delivered such executed counterpart original to the other party. The submission of drafts or comments on drafts shall not bind either party in any way. Such drafts and comments shall not be considered in interpreting this Agreement.

17.8 Modification. Any modification to this Agreement must be evidenced by a writing agreed upon and executed by both County and Operator to be binding on either party.

17.9 Governing Law and Venue. This Agreement, its interpretation and performance, the relationship between the parties, and any disputes arising from or relating to any of the foregoing, shall be governed, construed, interpreted, and regulated under the laws of the State of Wisconsin, without regard to principles of conflicts of laws.

17.10 Partial Invalidity/Severability. If any term or provision of this Agreement or its application to any Person or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Agreement, or the application of such term or provision to Persons or circumstances, except those as to which it is invalid or unenforceable, shall not be affected by such invalidity. All remaining provisions of this Agreement shall be valid and be enforced to the fullest extent the law allows.

17.11 Principles of Interpretation. No inference in favor of or against any party shall be drawn from the fact that such party has drafted any part of this Agreement. The parties have both participated substantially in the negotiation, drafting, and revision of this Agreement, with advice from counsel and other advisers of their own selection. A term defined in the singular in this Agreement may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which also govern all other language in this Agreement. The words “include” and “including” shall be construed to be followed by the words: “without limitation.”

17.12 Independent Contractor/Disclaimer of Partnership. The relationship of the parties to this Agreement is that of the owner and third-party contractor, and it is expressly understood and agreed that County does not, as a result of this Agreement, in any way, nor for any purpose, become a partner of or a joint venturer with Operator in the conduct of Operator's business or otherwise. This Agreement is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture or association as between County and Operator.

17.13 Condition; Final Approval. This Agreement is expressly conditioned upon and subject to the approval of the Milwaukee County Board of Supervisors and shall not be or become effective or binding on either County or Operator, unless and until formally approved by the Milwaukee County Board of Supervisors and fully executed by the authorized representatives of each Party.

17.14 Assignment. Neither party may assign this Agreement without the prior written consent of the other party.

17.15 Notices. All Notices shall be in writing and addressed to County or Operator (and their designated copy recipients) as set forth below. Notices (including any required copies) shall be delivered personally or by Federal Express, United Parcel Service or other nationally recognized overnight (one-night) courier service to the addresses set forth below, in which case they shall be deemed delivered on the date of delivery (or when delivery has been attempted twice, as evidenced by the written report of the courier service) to such address(es). Either

party may change its address for delivery of notices by written notice in compliance with this Agreement. Notice of such a change shall be effective only upon receipt. Any party giving a notice may request the recipient to acknowledge receipt of such notice. The recipient shall promptly comply with any such request, but failure to do so shall not limit the effectiveness of any notice. Any attorney may give any notice on behalf of his or her client.

Zilli Hospitality Group	Milwaukee County Dept. of Parks
Jim Zilli, CEO	Jim Keegan, Interim Director
613 Grandview Boulevard	9480 Watertown Plank Road
Waukesha, WI 53188	Wauwatosa, WI 53226

17.16 Entire Agreement. This Agreement contains all of the terms, covenants, conditions and agreements between the parties regarding the Facility and Catering Services. The parties have no other understandings or agreements, oral or written, about the Facility and Catering Services.

Signature page follows

IN WITNESS WHEREOF, the parties hereto have set their hands as follows:

Grandview Management, Inc. d/b/a Zilli Hospitality Group

by _____ Date _____
Jim Zilli, Chief Executive Officer

Milwaukee County Dept. of Parks, Recreation & Culture

by _____ Date _____
James Keegan, Interim Director

Approved as to form and independent status: _____
Corporation Counsel

Reviewed by: _____
Risk Management

Approved with regard to County Ordinance Chapter 42: _____
Community Business
Development Partners

EXHIBIT A
MILWAUKEE COUNTY DUE DILIGENCE REQUIREMENTS

Procedure REVISION DATE CHAPTER TITLE CHAPTER NO. ADMINISTRATIVE MANUAL Financial & Management 7 MILWAUKEE COUNTY Accounting

ORIG ISSUE DATE SECTION TITLE SECTION NO. 09-28-O 1

Due Diligence 7.92

CHECKLIST. Prior to recommending any venture for consideration, responsible County agencies shall ensure that any of the following applicable factors have been identified:

- Letter of Full Disclosure and Cooperation
- Cash flow projections for the venture.
- Operating budget impact.
- Debt management responsibilities, schedules and procedures.
- Legal liability for all priorities.
- Financial reporting systems and controls.
- Right-to-audit provisions.
- Project feasibility studies and market analysis.
- Key factors for success/failure of the venture.
- Governance structure and procedures.
- Public policy impacts (e. g. Affirmative Action, Disadvantaged Business).
- Employee/labor relations impacts (including benefits).
- Environmental concerns.
- Tax consequences.
- Capital management (e. g. maintenance).
- Conflicts of interest/ethics.
- Performance measurements.
- Organization Chart and Mission Statement
- Name of Lending institution or Bank to determine single or combined reporting

Each relevant item noted above should be included in the description of the proposal, which is subtitled for approval by the County Executive and County Board.

EXHIBIT B
SAMPLE GROSS RECEIPTS CALCULATION

[Attached.]

EXHIBIT C
COUNTY EQUIPMENT

[Attached.]

Attachment 2

Building Equipment Inventory List

Equipment Purchases by
Bartolotta Catering, LLC for
Boerner Botanical Gardens

INVOICE DATE	INVOICE #	COMPANY	DESCRIPTION	AMOUNT
04/26/03	42603	American Restaurant	proofer	121.44
04/25/03	213419	Automatic Fire Protection	fire equipment	1,256.64
05/22/03	156560	Badger Popcorn	super 88 machine	875.44
06/11/03	20694	Berghammer	Construction	24,296.00
06/11/03	20694	BHS Architect	Construction Drawings	6,182.84
02/11/03	90534203	Boelter	Convection Oven Gas	9,028.80
04/07/03	90581580	Boelter	racks	566.09
05/08/03	90581897	Boelter	cup rack	113.10
05/15/03	90585539	Boelter	cup rack	314.17
05/20/03	90588067	Boelter	China	21,359.49
05/01/03	50103	Bonafire Safe & Lock	Safe	626.40
02/12/03	21203	Cash Auction Boerner	Copier, Alto Shaam, Cart	591.36
04/29/03	117802	Cash register Service Co	Cash register	792.00
04/22/03	3613286	Edward Don	Kitchen Utensils	8,321.43
05/06/03	3647700	Edward Don	Dolly Glass Racks	333.08
05/06/03	3647699	Edward Don	Rack glass	3,478.85
05/06/03	3647698	Edward Don	Glassware & Silverware	9,133.26
05/07/03	3652540	Edward Don	Glassware	492.44
05/07/03	3656174	Edward Don	Glassware	2,968.09
05/13/03	3668639	Edward Don	Dolly dish adjustable	2,100.64
05/21/03	3692624	Edward Don	glass racks & smallwares	2,114.49
05/22/03	3696313	Edward Don	Shelves	376.23
05/23/03	3698529	Edward Don	Cater table	1,632.33
05/23/03	3699661	Edward Don	Glassware	795.95
05/28/03	3704228	Edward Don	Kitchen Utensils	2,205.15
06/30/03	8745	Wisconsin Commercial	Ice Cart	475.20
06/26/03	190826	Town & Country Electic	Fax Line	539.57
05/08/03	117877	Cash register Service Co	Till Tray	44.88
04/30/03	3637762	Edward Don	coffee pots & utensils	553.04
04/29/03	3634032	Edward Don	Pots	17.93
05/13/03	3668544	Edward Don	Silverware	669.67
05/06/03	3647701	Edward Don	Sauce pots etc	304.13
05/20/03	3686131	Edward Don	Wall kits	306.83
05/14/03	3672883	Edward Don	Griddle	116.25
05/14/03	3672877	Edward Don	Cutting Board	87.45
05/23/03	3698213	Edward Don	Cutting Board	62.02
05/22/03	3696312	Edward Don	Dolly	79.37
04/30/03	63253	Vince Ingrilli & Son	gas & plumbing hookups	2,972.64
04/23/03	3620449	Edward Don	booster seats, carts, etc.	262.00
04/22/03	3617007	Edward Don	smallwares	476.13
04/23/03	3620448	Edward Don	smallwares	588.91
06/03/03	3718934	Edward Don	shelving	2,663.37
06/04/03	3722968	Edward Don	dish dolly's	1,337.75
04/24/03	183418	General Parts	fryer hookup	107.71
04/24/03	183417	General Parts	grill broiler hookup	92.64
04/24/03	183408	General Parts	oven install	143.62
04/24/03	183416	General Parts	brazing pan	741.31
04/29/03	183964	General Parts	convection oven	715.87
03/27/03	INV0003071	Office Resources	Office Furniture	3,700.20
06/12/03	20039	Restaurant Works	Credit Card Machines	425.00
02/03/03	230435	Schweppe Equipment	Equipment	8,061.00
03/07/03	230588	Schweppe Equipment	Equipment	2,438.00
03/28/03	231093	Schweppe Equipment	Vulcan Hart Gas Braising Par	4,417.50
04/17/03	231503	Schweppe Equipment	Range	900.49
05/05/03	231754	Schweppe Equipment	Equipment	5,403.43
04/03/03	8668	Wis Commercial	freezers	5,516.54
05/31/03	8709	Wisconsin Commercial Serv	Walk In Cooler	8,976.00
05/31/03	8710	Wisconsin Commercial Serv	Ice Maker & Bin	6,931.58
05/31/03	8708	Wisconsin Commercial Serv	Ice Machine set up	228.10
TOTAL				160,431.84

Exhibit C

EXHIBIT D
MAP OF OPERATOR'S JANITORIAL AND MAINTENANCE RESPONSIBILITY IN FACILITY

[Attached.]

EXHIBIT E
EQUAL OPPORTUNITY CERTIFICATE

[Attached.]

County of Milwaukee
Interoffice Communication

Date: April 30, 2013

To: Supervisor Gerry Broderick, Chair, Parks Energy and Environment Committee

From: Josh Fudge, Interim Fiscal and Budget Administrator, Department of Administrative Services

Subject: Due Diligence Report for an agreement with Funtime LLC d/b/a Wheel Fun Rentals to provide paddleboat rental concession services at Veterans Park

Request
The Department of Parks, Recreation, and Culture (Parks) requests approval to enter into a five (5) year agreement with Wheel Fun Rentals (Wheel Fun) to provide paddleboat rental concession services at Veterans Park.

Background
In January 2013, Parks issued a Request for Proposals (RFP) for paddleboat rental services at the lagoon at Veterans Park. Wheel Fun was selected as the successful bidder to replace the current vendor, whose agreement expired in 2012. During the five-year term of the previous contract, Parks received an average of $12,904 in annual revenue from the concession[1].

Review & Analysis
The Department of Administration - Fiscal Affairs (DAS), Corporation Counsel, Risk Management, and Community Business Development Partners have reviewed the draft proposal with Wheel Fun.

Wheel Fun would be permitted to operate a concession for the rental of paddleboats, kayaks, canoes, and related items at the Veterans Park Lagoon. Wheel Fun would also be authorized to erect a structure on the premises, with the approval of the Director of Parks and DAS-Facilities Management, Architecture and Engineering Section. The proposed structure would be owned by Wheel Fun. Upon expiration or termination of the agreement, the Vendor shall remove all of its supplies, displays, and related items (including the proposed structure) within three (3) days.

The term of the proposed agreement is five (5) years with two one (1) year mutual options for an extended term. The agreement begins on the execution date and the original term expires on March 30, 2018. If the mutual options are exercised, the agreement will expire on March 30, 2020. The agreement may be terminated by either party for cause if a failure to comply with any provision of the agreement is not cured in

[1] Based on data from the Milwaukee County Fiscal Intranet for actual revenues (Functional Code VW26, Activity Code KWYL, Revenue Source 9046, Agency 900, Fund 001)

a timely manner. Upon expiration or termination of the agreement, Wheel Fun shall remove all of its supplies, displays and related items within three (3) days.

Per terms of the proposed agreement, the County will receive 20% of all gross receipts with a guaranteed annual minimum of $22,000 in 2013. The minimum commission to the County automatically increases $250 each year. The agreement with the previous vendor (in effect from 2008 to 2012) provided that the County would receive 15% of gross receipts with no annual minimum. The chart below shows the actual amount of revenue received from the concession and the projected amount of revenue based on the terms of the proposed agreement. An annual 1% increase in gross receipts from 2012 actual activity is assumed for future years.

Year	Revenue
2008 - Actual	$ 11,752
2009 - Actual	$ 11,962
2010 - Actual	$ 12,221
2011 - Actual	$ 13,279
2012 - Actual	$ 15,304
2013 - Projected	$ 22,000
2014 - Projected	$ 22,250
2015 - Projected	$ 22,500
2016 - Projected	$ 22,750
2017 - Projected	$ 23,000

Recommendation

Upon review of the available information, and changes made to the agreement based on consultation with Corporation Counsel, Risk Management, Parks, and CBDP staff, DAS recommends approval of the vendor permit agreement.

Josh Fudge, Interim Fiscal and Budget Administrator

cc: Chris Abele, County Executive
Supervisor Marina Dimitrijevic, Chair, County Board of Supervisors
Amber Moreen, Chief of Staff, County Executive's Office
Kelly Bablitch, Chief of Staff, County Board of Supervisors
Jim Keegan, Interim Director, Parks, Recreation & Culture
Laura Schloesser, Chief of Admin & External Affairs, Parks, Recreation, & Culture
Suzanne Carter, Contracts Services Officer, Parks, Recreation, & Culture
Don Tyler, Director, Department of Administrative Services
Jessica Janz-McKnight, Research Analyst, County Board
Stephen Cady, Fiscal and Budget Analyst, County Board

MILWAUKEE COUNTY PARKS
N·A·T·I·O·N·A·L GOLD MEDAL WINNER

CHRIS ABELE, MILWAUKEE COUNTY EXECUTIVE
JAMES KEEGAN, INTERIM DIRECTOR OF PARKS, RECREATION AND CULTURE

Date: April 30, 2013

To: Chairwoman Marina Dimitrijevic, County Board of Supervisors

From: James Keegan, Interim Director, Department of Parks, Recreation and Culture

Subject: **Request to Enter into a Vendor Permit Agreement for Paddleboat Rental Concession Services at the Lakefront – ACTION**

POLICY

The Department of Parks, Recreation and Culture (DPRC) respectfully requests authorization to enter into a vendor permit agreement for paddleboat concession services at the lakefront.

BACKGROUND

In January 2013, the DPRC issued a number of Requests for Proposals (RFP) to provide various concession services in the Milwaukee County Parks located on the lakefront. Funtime LLC d/b/a Wheel Fun Rentals (Wheel Fun) responded to the paddleboat concessions RFP and, meeting all terms and conditions of the process, was awarded the opportunity. Wheel Fun would be permitted to operate a concession for the rental of paddleboats and related items. The vendor would also be permitted to sell non-alcoholic beverages and various pre-packaged food items.

The term of this agreement is five (5) years with two (2) options to extend the term for one (1) additional consecutive year. The vendor has agreed to pay the

ADDRESS
9480 Watertown Plank Road
Wauwatosa, WI 53226-3560

PHONE/FAX
ph: **414 / 257 PARK** (7275)
fax: 414 / 257 6466

EMAIL
parks@milwcnty.com

WEBSITE
countyparks.com

County $112,500 over the first five (5) years and an additional $23,250 in year six (6) and $23,500 in year seven (7), if renewed. In addition, there is a percentage profit-sharing agreement if gross receipts exceed established amounts.

Wheel Fun will be permitted to construct a small rental kiosk, only after receiving approval from Milwaukee County regarding design and placement, near the lagoon in Veterans Park. Wheel Fun will be responsible for utility hookups and monthly payments.

Wheel Fun will be required to submit a list and pricing information for the products it intends to rent or sell to the public for approval by the DPRC. The Parks Director maintains the right to prohibit the sale or rental of any item that is deemed inappropriate or otherwise. Wheel Fun is required to maintain customer service as a top priority and provide employees who are neat in appearance, professional, friendly, and courteous to customers and the general public. The concession is a fair-weather operation open daily, weather permitting.

On April 29, 2013, an Administrative Review Determination Panel (ARDP) convened as provided for under Milw. Co. Ord 110.07 in response to an appeal of the DPRC recommendation to award this contract to Wheel Fun Rentals. The ARDP was responsible for reviewing the RFP process used by the DPRC to ensure compliance with existing rules and regulations.

The ARDP unanimously affirmed that the DPRC followed proper protocol in issuing the RFP and making the recommendation that the contract be awarded to Wheel Fun Rentals.

RECOMMENDATION

The Interim Parks Director respectfully recommends that the DPRC be authorized to enter into a vendor permit agreement with Funtime LLC d/b/a Wheel Fun Rentals for paddleboat concession services at the lakefront.

Prepared by: Laura Schloesser, Chief of Administration and External Affairs

Recommended by:	**Approved by:**
Laura Schloesser, Chief of Administration and External Affairs	James Keegan, Interim Parks Director

Attachment – Request for Proposal Criteria and Scoring

Cc: County Executive Chris Abele
Amber Moreen, Chief of Staff, County Executive's Office
Kelly Bablitch, Chief of Staff, County Board
Supv. Gerry Broderick, Chair, Parks, Energy & Environment Committee
Supv. Jason Haas, Vice-Chair, Parks, Energy & Environment Committee
Daniel Laurila, Fiscal Mgt. Analyst, Admin & Fiscal Affairs/DAS
Janelle Jensen, Parks, Energy & Environment Committee Clerk
Jessica Janz-McKnight, Research Analyst, County Board

File No. 13-
(Journal,)

(ITEM NO.) From the Director, Department of Parks, Recreation and Culture, requesting authorization to enter into a vendor permit agreement for paddleboat concession services at the lakefront.

A RESOLUTION

WHEREAS, in January 2013 the Department of Parks, Recreation and Culture (DPRC) issued a number of Requests for Proposals (RFP) for various concession services in the Milwaukee County Parks located at the lakefront; and

WHEREAS, Funtime LLC d/b/a Wheel Fun Rentals (Wheel Fun) responded to the paddleboat concession RFP; and

WHEREAS, the term of this agreement is five (5) years with, upon mutual agreement, two (2) additional one (1) year extensions; and

WHEREAS, the DPRC will receive $112,500 during the five (5) year term and an additional $23,250 in year six (6) and $23,500 in year seven (7), if renewed; and,

WHEREAS, the DPRC will receive a percentage of gross receipts if sales exceed established amounts; and

WHEREAS, Wheel Fun is responsible for its own utility hookups and monthly payments; and

WHEREAS, Wheel Fun is permitted to construct a small rental kiosk near the Veterans Park lagoon; and

WHEREAS, Wheel Fun is required to submit a list and pricing information for the products it intends to rent or sell to the public for approval by the DPRC; and

WHEREAS, Wheel Fun is required to maintain customer service as a top priority; now, therefore,

BE IT RESOLVED, that the Milwaukee County Board of Supervisors hereby authorizes the Interim Parks Director to execute a vendor permit agreement with Funtime LLC d/b/a Wheel Fun Rentals for paddleboat concessions at the lakefront.

MILWAUKEE COUNTY FISCAL NOTE FORM

DATE: April 30, 2013

Original Fiscal Note ☒

Substitute Fiscal Note ☐

SUBJECT: Vendor Permit Agreement for Paddleboat Rental Concession Services at the Lakefront

FISCAL EFFECT:

☒ No Direct County Fiscal Impact

☒ Existing Staff Time Required

☐ Increase Operating Expenditures
(If checked, check one of two boxes below)

☐ Absorbed Within Agency's Budget

☐ Not Absorbed Within Agency's Budget

☐ Decrease Operating Expenditures

☐ Increase Operating Revenues

☐ Decrease Operating Revenues

☐ Increase Capital Expenditures

☐ Decrease Capital Expenditures

☐ Increase Capital Revenues

☐ Decrease Capital Revenues

☐ Use of contingent funds

Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.

	Expenditure or Revenue Category	Current Year	Subsequent Year
Operating Budget	Expenditure	0	0
	Revenue	0	0
	Net Cost	0	0
Capital Improvement Budget	Expenditure	0	0
	Revenue	0	0
	Net Cost	0	0

DESCRIPTION OF FISCAL EFFECT

In the space below, you must provide the following information. Attach additional pages if necessary.

A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated. [1] If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
D. Describe any assumptions or interpretations that were utilized to provide the information on this form.

A. Request to enter into a Vendor Permit Agreement for Paddleboat Rental Concession Services at the Lakefront
B. Wheel Fun Rentals agrees to pay the DPRC $22,000 in 2013 and $22,250 in 2014 plus 20% of gross receipts greater than the total amount invoiced.
C. No Impact
D. None

Department/Prepared By Laura Schloesser/DPRC

Authorized Signature _____

Did DAS-Fiscal Staff Review? ☐ Yes ☒ No

Did CBDP Review?[2] ☒ Yes ☐ No ☐ Not Required

[1] If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.

Attachment

RFP Criteria and Scoring: Paddleboat Rental Services

Category	Criteria	Weight	Average Juneau Park Paddleboats	Average Wheel Fun Rentals
A	Qualifications and Experience	30	26	28.33
B	Revenue to the County	30	20	29.33
C	Quality of Services and Products and Reasonableness of Pricing	10	7.33	8.33
D	Innovation and Variety of Services and Products	10	6.33	10
E	Marketing Plan	10	6.67	8
F	DBE Participation	10	7.33	4
	Total	100	73.67	**88**

VENDOR PERMIT AGREEMENT

BETWEEN

MILWAUKEE COUNTY DEPARTMENT OF PARKS, RECREATION AND CULTURE

AND

FUNTIME LLC D/B/A WHEEL FUN RENTALS

This Vendor Permit Agreement (the "Agreement") is made and entered into effective _____, 2013 (the "Effective Date"), by and between the MILWAUKEE COUNTY DEPARTMENT OF PARKS, RECREATION AND CULTURE (the "County") and FUNTIME LLC D/B/A WHEEL FUN RENTALS (the "Vendor"), as represented by: Dwight Bratholt, (701) 367-7704. Referenced together, the County and the Vendor are the "Parties" to this Agreement.

WITNESSETH:

WHEREAS, in January 2013 the County issued a Request for Proposals ("RFP") to provide paddleboat rental concession services in one of the Milwaukee County Parks located on the Milwaukee Lakefront, and the Vendor submitted a written proposal response meeting all terms and conditions of the RFP process; and

WHEREAS, the Milwaukee County Board of Supervisors, by virtue of adopting Resolution ____ on ____, 2013, has authorized the Interim Director of the Department of Parks, Recreation and Culture ("DPRC") to enter into this agreement with the Vendor for and on behalf of Milwaukee County.

NOW THEREFORE, Vendor is hereby awarded a contract to provide the concession services per all terms and conditions in the RFP and as indicated in the Vendor's complete response thereto, which documents are both hereby incorporated by reference. Each party, for good and valuable consideration and the promises of County and Vendor set forth in this Agreement, agrees as follows:

PROVISIONS:

1. Operation of Concession:

1.1 General: Vendor is permitted to operate a concession for the rental of paddleboats, kayaks, canoes, barracudas, and related items (the "Concession"). The Concession shall be operated off the Lagoon at Veterans Park at 1400 North Lincoln Memorial Drive, Milwaukee, Wisconsin (the "Premises"). Vendor shall be the sole owner of the structure operated on the Premises (the "Facility"). Vendor shall have the exclusive right to provide the above-indicated service in the Park. The Concession is a fair-weather operation, and the times of operation shall be mutually agreed upon between Vendor and the County. Vendor shall suspend operation of the Concession whenever the Park is closed.

1.2 Non-exclusive Food and Beverage Concession: Vendor shall further be permitted to sell bottled water, non-alcoholic beverages, and pre-packaged food items including chips, snacks, candy, cookies, and ice cream as approved by the Parks Director or his designee. Vendor shall comply with all current Milwaukee County Parks

practices, including compliance with agreements regarding Milwaukee County Parks's exclusive non-alcoholic beverage provider and prohibitions on the sale of gum and glass bottles.

1.3 Special Events: Any special events hosted by Vendor shall be governed by standard DPRC and Milwaukee County procedures.

1.4 Prerequisites: This Agreement and the obligations of County and Vendor hereunder are contingent upon Vendor successfully meeting the Milwaukee County "Due Diligence" requirements in a timely manner (see attached, as Exhibit A).

1.5 Rights Reserved to County: County reserves the right to award a contract with one (1) or more additional vendors to provide other concessionable items in other areas of the Park. County further reserves the right to operate its own concession area during any and all events held in its Parks. County also reserves the right to close the Concession and use the Lagoon and related amenities, free of charge, and retain all Gross Receipts (as hereinafter defined) derived therefrom, for up to ten (10) days of County's choice during each Contract Year of the Term (as hereinafter defined) of the Agreement. County shall provide Vendor at least thirty (30) days' prior notice of its intent to close the Concession and use the Lagoon pursuant to this Section 1.5. "Gross Receipts" shall mean the total of all receipts (cash, checks, credit cards) derived from the sale of all merchandise associated with the Concession, less sales tax. Deductions for client non-payments or bad-debt expenses are not allowed. "Contract Year" means the twelve (12) calendar months starting on the Effective Date and every subsequent twelve (12)-month period during the Term.

2. Term: This Agreement shall commence on the Effective Date and expire on March 30, 2018 (the "Initial Term"). The Parties shall have two (2) options to extend the Term for one (1) additional consecutive year if mutually agreeable to both Parties (each such period, a "Renewal Term"). Such option may be exercised so long as Vendor first provides written notice to County of its desire to enter into a Renewal Term at least six (6) months' prior to the then-current Term expiration date. The Initial Term and any then-existing Renewal Term shall be referred to as the "Term" herein.

3. Payment: Vendor shall pay County the following amounts at the close of each June, July, August, and September during the Term:

Year One	$5500
Year Two	$5562.50
Year Three	$5625
Year Four	$5687.50
Year Five	$5750
Year Six (if renewed)	$5812.50
Year Seven (if renewed)	$5875

County shall invoice Vendor for the above-referenced amounts within fifteen (15) days at the close of the applicable month, and Vendor shall pay County within thirty (30) days of receipt of invoice. If, over the course of Vendor's Operating Year (as hereinafter defined), twenty percent (20%) of Vendor's Gross Receipts (the "Gross Receipt Percentage") is greater than the total amount invoiced to Vendor for such Operating Year pursuant to this Section 3 (the "Flat Fee"), Vendor shall remit to County the

difference between the Gross Receipt Percentage and the Flat Fee by April 1. An "Operating Year" shall be that period from March 1 through the last day of February of each year of the Agreement; provided, however, that during the initial year of the Term, the Operating Year shall be from the Effective Date through March 1. Checks shall be made payable to the Milwaukee County Treasurer and mailed or delivered to: Milwaukee County Parks Department, Milwaukee County Treasurer, 9480 Watertown Plank Rd., Wauwatosa, Wisconsin, 53226.

4. Utilities: Vendor shall be responsible for its own Utility hookups and monthly payments. "Utilities" shall include electricity, gas, water and sewer, and telephone.

5. Sales Reports: Upon demand, Vendor agrees to compile and provide County with a detailed summary report of all sales activities, a financial reconciliation of all commissions owed and paid, and remit to County any additional amounts as may be required.

6. Alterations and Improvements: Prior to the start of any construction or renovation of the Facility and the Premises, including any subsequent alterations or renovations, Vendor shall submit any detailed construction plans and specifications to the Parks Department and the Architecture and Engineering Section of Milwaukee County Facilities Management for review and approval. In no event shall Vendor make any alterations or additions to the Facility or the Premises without the prior written consent of the Parks Department and the Architecture and Engineering Section of Milwaukee County Facilities Management. All development and landscaping shall be completed in a first-class manner and consistent with the standards established for other work in Milwaukee County Parks. Any and all alterations, additions and improvements shall be made in compliance with all statutes, laws, ordinances, rules, and regulations of any governmental authority having jurisdiction over the Premises. Vendor shall also indemnify and hold County harmless from and against all statutory liens or claims of liens of any contractor, subcontractor, laborer or any other party which may arise in connection with any alteration, addition or improvement to the Facility or the Premises undertaken by or on behalf of Vendor. Vendor agrees to provide evidence satisfactory to the County that the total amount of funds necessary to construct the Facility or any proposed renovations thereto are immediately available and dedicated to such purpose and documentation is in place to provide for the orderly disbursement of such funds during the course of construction to pay for all permits, material, labor, supplies, and any other miscellaneous items used or necessary for such construction. Vendor shall deliver to County evidence reasonably acceptable to the County that the total amount of such funds are immediately available and dedicated for the above purpose prior to any construction activities taking place on the Premises.

7. Parks Logo: Vendor is responsible for all marketing and advertising to promote its activities. Vendor shall acknowledge the Parks Department and include the Parks logo in all promotional materials, whether print or digital, directly related to its activities covered under this Agreement. All proposed banners, signage and advertising on or within the Premises, including if placed on temporary or portable structures, must be pre-approved in writing by the Parks Director.

8. Public Access: Vendor understands that the Concession is part of a public park, and the Premises are to remain open and accessible to the public in a manner that is compatible with the use of the Concession as contemplated by this Agreement.

9. Compliance with Laws: Vendor shall, at Vendor's expense, promptly comply with all laws, rules, and regulations made by any governmental authority having jurisdiction over Vendor's use of the Park and the Concession, including all local health code requirements. Vendor shall obtain and pay for all necessary permits and licensing for the operation of the Concession, including, if applicable, permits and licensing for a food and beverage concession in the City of Milwaukee.

10. Taxes: Vendor shall pay all taxes of whatever character which may be levied or charged upon Vendor to use the Premises or own the Facility, or upon the improvements, fixtures, equipment or other property, or upon the Concession operations under the Agreement.

11. County Approval of Items to be Rented and Sold: Vendor shall provide County with a list and pricing information for the products it intends to sell to the public for approval. The Parks Director maintains the right to prohibit the sale or rental of any item that he/she deems to be inappropriate or otherwise within the Milwaukee County Parks System.

12. Cleanliness; Garbage: Vendor is responsible for maintaining the Premises and surrounding areas, at least twenty-five (25) feet beyond the Concession, in a state of cleanliness and repair to prevent injury to the public. No offensive or refuse matter, nor any substance constituting an unnecessary, unreasonable, or unlawful hazard, nor any material detrimental to the public health, shall be permitted to remain on the Premises, and Vendor shall prevent any such matter or material from being or accumulating on the Premises. Vendor, at its expense, shall see that all garbage or refuse is collected as often as necessary and in no case less than once a day and disposed of in the County receptacles. Vendor will incur the cost of all excessive garbage pick-up from the Concession during the Term.

13. Safety: Vendor shall instruct customers and staff on the operation and safety rules/standards for all rental equipment. Vendor shall require all customers to sign a statement indicating that they are familiar with the operation and safety rules/standards for such equipment along with a liability waiver in favor of County. Vendor shall require customers to use applicable safety equipment such as life jackets.

14. Maintenance of Facility and Equipment: Vendor shall equip the Concession with all equipment necessary to conduct business such as storage racks, all rental equipment, and all safety equipment including life jackets. Vendor shall, at all times and at its own expense, keep and maintain the Facility and all equipment, whether owned and/or installed by Vendor or the County, such as, but not limited to, all of the fixtures, equipment and personal property in the Facility, in good repair and in a clean, sanitary and orderly condition and appearance. No equipment provided by County shall be removed or replaced by Vendor without the prior written consent of the Parks Director, and if consent is secured, removal and/or replacement shall be at Vendor's expense.

15. Removal of Facility, Equipment and Supplies: Upon expiration or termination of this Agreement for any reason or no reason, Vendor shall remove, at its costs, the Facility and all of its supplies, displays, and related items from the Premises within three (3) days of the expiration or termination date, and shall restore the Premises to its prior condition, satisfactory to the Parks Director.

16. Staff: Vendor shall maintain customer service as a top priority. Vendor shall employ a sufficient number of qualified staff to properly operate the Concession. Vendor shall provide employees who are professional, friendly, and courteous to customers and the general public. Employees shall maintain a neat appearance, exercise good public relations skills, respond to customer complaints and questions, and conduct themselves in a high standard acceptable to County. Vendor and staff shall wear appropriate attire which, in the sole determination of County, clearly distinguishes Concession staff from Milwaukee County Parks staff.

17. Nondiscrimination, Affirmative Action and DBE Goals:

17.1 Generally: There shall be no discrimination against or segregation of any person, or group of persons, on account of gender, age, race, color, religion, creed, national origin or ancestry in the use of the Premises or the Concession, and Vendor (or any person claiming under or through Vendor) shall not establish or permit any such practice or practices of discrimination or segregation with reference to the Premises or the Concession.

17.2 Non-Discrimination: Vendor certifies that it will not discriminate against any employee or applicant for employment because of race, color, national origin, age, sex or handicap which includes, but is not limited to, the following: employment, upgrading, demotion or transfer, recruitment, or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship. Vendor will post in conspicuous places, available for employment, notices setting forth the provisions of the non-discriminatory clause. Attached hereto as Exhibit B is an Equal Opportunity Certificate that shall be executed and delivered by Vendor simultaneously with the execution and delivery of the Agreement.

17.3 Affirmative Action Program: Vendor certifies that it will strive to implement the principles of equal employment opportunity through an effective affirmative action program which shall have as its objective to increase the utilization of women, minorities and handicapped persons and other protected groups, at all levels of employment in all divisions of its work force, where these groups may have been previously under-utilized and under-represented. Vendor also agrees that in the event of any disputes as to compliance with the aforementioned requirements, it shall be its responsibility to show that it has exercised good faith efforts to meet all requirements.

17.4 Affirmative Action Plan: Vendor certifies that if it has fifty (50) or more employees, it has filed or will develop and submit a written Affirmative Action Plan. Current Affirmative Action Plan, if required, must be filed with any of the following: The Office of Federal Contract Compliance Programs, the State of Wisconsin, or the Milwaukee County Department of Audit, City Campus, 9th Floor.

17.5 Non-Segregated Facilities: Vendor certifies that it does not and will not maintain or provide segregated facilities for its employees, and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained.

17.6 Reporting Requirement: When applicable, Vendor certifies that it will comply with all reporting requirements and procedures established in Title 41 Code of Federal Regulations, Chapter 60.

17.7 Compliance: Vendor certifies that it is not currently in receipt of any outstanding letters of deficiencies, show cause, probable cause, or other such notification of noncompliance with EEO regulations.

17.8 Disadvantaged Business Enterprise Goals: Vendor shall use reasonable efforts to cause its contractors to establish Disadvantaged Business Enterprise ("DBE") participation goals, consistent with Milwaukee County DBE goals of seventeen percent (17%) for professional services contracts, and to use good faith efforts to achieve those goals. The Milwaukee County Community Business Development Partners shall assist Vendor in soliciting potential DBE vendors for the improvements and monitor such goal attainment. Vendor's contact regarding DBE participation is: Director, Nelson Soler, at (414) 289-4608.

18. Site Restoration: Both Vendor and County shall together participate in a pre-season and post-season inspection of the Premises. Vendor shall be responsible for any actual documented physical damage to the Premises caused by Vendor, its employees, agents, representatives, and guests. Within five (5) days of the discovery of any such damage, the Premises shall be restored to the satisfaction of the Parks Director.

19. Security: Unarmed security personnel are permitted within the Premises for the purposes of checking identification and general observation. Vendor shall be solely responsible for and assume all risks related to the security and protection of the Premises and any equipment and for the prevention of unauthorized access to the Premises. Vendor expressly acknowledges that any security measures deemed necessary or desirable for protection of the Facility shall be the sole responsibility of Vendor at no cost to County. Vendor shall notify County of any incident resulting in loss or damage to the Premises or breach of security whether or not such incident is reported to the Milwaukee County Sheriff's Office.

20. Inspection by County: County shall at all reasonable times have the right to enter the Premises and the Facility to inspect the condition thereof, and to improve or repair the Premises, and to make such repairs, alterations, improvements or additions as County may deem necessary or desirable; provided, however, such entry shall be done in such a manner that it does not unreasonably interfere with the conduct of Vendor's use of the Premises.

21. Interest: Unless waived by County Board of Supervisors, Vendor shall be responsible for payment of interest on amounts not remitted in accordance with this Agreement. The rate of interest shall be the statutory rate in effect for delinquent County property taxes (one-percent (1%) per month or fraction of a month) as described in Wisconsin statutes section 74.47(1). The obligation for payment and calculation thereof shall commence upon the day following the due dates established herein.

21.1 Penalty: In addition to the interest described above, Vendor may be responsible for payment of penalty on amounts not remitted in accordance with this Agreement, as may be determined by County. The penalty shall be the statutory rate in effect for delinquent County property taxes (.5% per month, or fraction of a month) as described in Milwaukee County ordinance section 6.06(1) and Wisconsin statutes section 74.47(2). The obligation for payment and calculation thereof shall commence upon the day following the due dates established herein.

21.2 Audit Results: If, as a result of the annual audit required herein, additional amounts are disclosed to be due and owing to the County, interest and penalty shall be calculated thereon in accordance with the above method. Vendor shall remit to the County any additional amounts identified due and owing for the audit including interest and penalty thereon within thirty (30) days following receipt of the audit report by the County.

21.3 Nonexclusivity: This provision permitting collection of interest and penalty by the County on delinquent payments is not to be considered the County's exclusive remedy for Vendor's default or breach with respect to delinquent payment. The exercise of this remedy is not a waiver by the County of any other remedy permitted under this Agreement, including but not limited to termination of this Agreement.

22. Audit: Pursuant to Milwaukee County ordinance section 56.30(6)(e), Vendor shall allow the County or any other party the County may name, when and as they demand, to audit, examine and make copies of records in any form and format, meaning any medium on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by Vendor, including not limited to, handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes), computer files, computer printouts and optical disks, and excerpts or transcripts from any such records or other information directly relating to matters under this Agreement, all at no cost to County. Any subcontracting by Vendor in performing the duties described under this Agreement shall subject the subcontractor and/or associates to the same audit terms and conditions as the Vendor. Vendor (or any subcontractor) shall maintain and make available to County the aforementioned audit information for no less than three years after the conclusion of this Agreement.

23. Insurance: Vendor shall acquire and maintain the established insurance and liability limits for the Concession. Such evidence shall include insurance coverage in the following minimum amounts:

Type of Coverage	Minimum Limits
Commercial General Liability	
Bodily Injury and Property Damage	$1,000,000 Per Occurrence
(incl. Personal Injury, Fire Legal, Contractual & Products/Completed Operations)	$1,000,000 General Aggregate
Advertising Injury	$1,000,000
Automobile Liability	
Bodily Injury & Property Damage	$1,000,000 Per Accident
All Autos - Owned, non-owned and/or hired	
Uninsured Motorists	Per Wisconsin Requirements
Wisconsin Workers Compensation or Proof of All States Coverage	Statutory

Employers' Liability $100,000/$500,000/$100,000

Milwaukee County will be named as an additional insured for General Liability and be afforded a thirty (30)-day notice of cancellation or non-renewal. A waiver of subrogation for Workers Compensation by endorsement in favor of Milwaukee County shall be provided. Disclosure must be made of any non-standard or restrictive additional insured endorsement, and any use of non-standard or restrictive additional insured endorsement will not be acceptable.

A certificate indicating the above coverages shall be submitted by Vendor for the County's review and approval for each successive period of coverage for the duration of this Agreement.

Coverages shall be placed with an insurance company approved to do business in the State of Wisconsin and rated "A" per Best's Key Rating Guide. The insurance requirements contained within this Agreement are subject to periodic review and reasonable adjustment by the County Risk Manager consistent with similarly situated properties within the properties owned by the County.

24. Indemnification: To the fullest extent permitted by law, Vendor shall indemnify the County for, and hold it harmless from all liability, claims and demands on account of personal injuries, property damage and loss of any kind whatsoever, including workers' compensation claims, which arise out of or are in any manner connected to the Premises, based on any injury, damage or loss being caused by any wrongful, intentional, or negligent acts or omissions of the Vendor, its agents, or employees. Vendor shall, at its own expense, investigate all claims and demands, attend to their settlement or disposition, defend all actions based thereon and pay all charges of attorneys and other costs and expenses arising from any such injury, damage or loss, claim, demand or action.

24.1 Environmental Indemnification: Vendor shall, to the fullest extent provided for under any environmental laws, rules and regulations, be responsible for any required repair, cleanup, remediation or detoxification arising out of any Hazardous Materials brought onto or introduced into the Premises or surrounding areas by Vendor, or its agents. Vendor hereby agrees to indemnify, defend and hold County harmless from and against any and all liabilities, costs, expenses (including attorney fees), damages (including but not limited to clean-up, remediation or detoxification of) or any other losses caused by its introduction of any such Hazardous Materials into or onto the Premises and any Hazardous Materials brought onto or introduced into the Premises as described below.

24.2 "Hazardous Materials" as the term is used herein shall mean any substance: (i) the presence of which requires investigation or remediation under any Federal, State or local statute, regulation, ordinance, order, action or policy; or (ii) which is or becomes defined as a "hazardous waste" or "hazardous substance" under any Federal, State or local statute, regulation, ordinance, or amendments thereto.

25. Assignment and Subletting: Vendor may not assign this Agreement, in whole or in part, or sublease any part of the Premises without the prior written approval of the Parks Director.

26. Default:

26.1 Definition: A "Default" will occur under this Agreement if: (a) A party fails to comply with any provision in this Agreement, and such failure continues for thirty (30) days after a written notice from the other party setting forth in reasonable detail the nature of such default; or (b) Vendor ceases to do business as a going concern, ceases to pay its debts as they become due, or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any proceeding under any federal or state bankruptcy law, or a custodian or trustee is appointed to take passion of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Vendor's assets or Vendor's interest in this Agreement and fails to remedy such condition within thirty (30) days after written notice from County; or Vendor becomes, without the prior written approval of County, a successor or merged entity in a merger, or a constituent entity in a consolidation, or an entity in a dissolution.

26.2 Remedies: If a Default occurs, then the non-defaulting party shall, at such party's option, have any or all of the following described remedies, all cumulative (so exercise of one remedy shall not preclude exercise of another remedy), in addition to such other remedies as may be available at law or in equity or under any other terms of this Agreement. The non-defaulting party's remedies shall include:

26.3 Termination of Rights: The non-defaulting party may terminate this Agreement by sixty (60) days prior written notice of termination of this Agreement to the defaulting party or by any other lawful means, in which case this Agreement and the Term shall terminate, and Vendor shall vacate the Premises on the termination date. Should County so choose, if Vendor is the defaulting party, Vendor shall cooperate in continuing to staff the Concession during a transition period as County seeks an alternate service provider. Additionally, the non-defaulting party may bring an action to recover any or all of the following from the defaulting party: (i) any unpaid amounts set forth in Section __ earned as of the date the Agreement terminates; and (ii) any other amount reasonably and directly necessary to compensate the non-defaulting party for all detriment caused by and directly arising from the defaulting party's failure to perform its obligations under this Agreement.

26.4 No Waiver: No failure by the County to insist upon strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy upon a Default, and no acceptance of full or partial amounts due pursuant to Section 3 during continuance of any such Default, shall waive any such Default or such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Agreement to be performed or complied with by Vendor, and no Default, shall be modified, except by a written instrument executed by County. No waiver of any Default shall modify this Agreement. Each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then-existing or subsequent Default of such covenant, agreement, term or condition of this Agreement.

26.5 Survival: No expiration or termination of this Agreement and no entry into or onto the Premises by County after such expiration or termination shall relieve Vendor of its liabilities and obligations under this Agreement, all of which shall survive such expiration, termination or entry.

27. Independent Contractor: Nothing contained in this Agreement shall constitute or be construed to create a partnership or joint venture between County or its successors or assigns and Vendor or its successors or assigns. This Agreement does not create the relationship of principal and agent.

28. Termination. The County may terminate the Agreement in the event that the Milwaukee County Board of Supervisors, via official action and resolution, effects to close the Facility in the Park or the Park during the Term. If County terminates the Agreement pursuant to this Section, County shall relocate the Concession to another Milwaukee County Parks location reasonably mutually acceptable to Vendor and County.

29. Notices: All notices with respect to this Agreement shall be in writing. Except as otherwise expressly provided in this Agreement, a notice shall be deemed duly given and received upon delivery, if delivered by hand or after posting via US Mail, to the party addressed as follows:

To Vendor:
Funtime LLC d/b/a Wheel Fun Rentals
Attn: Dwight Bratholt, Manager
1 East Scott Street, Unit 1609
Chicago, IL 60610

To County:
Milwaukee County Dept. of Parks
Parks Director
9480 Watertown Plank Road
Wauwatosa, WI 53226

Either party may designate a new address for purposes of this Agreement by written notice to the other party.

30. Integration; Order of Precedence: The parties understand and agree that the RFP and Vendor's RFP Response, including Vendor's Best and Final Offer, are incorporated into and made a part of this Agreement by this specific reference. In the event of a conflict or disagreement among the documents, the following order of precedence shall govern:
(a) Written amendments to the Agreement;
(b) The Agreement;
(c) The RFP;
(d) Vendor's Best and Final Offer, dated March 1, 2013; and
(e) Vendor's original RFP Response.

Signature page follows

IN WITNESS WHEREOF, the Parties hereto have set their hands as follows:

Funtime LLC d/b/a Wheel Fun Rentals

By: _____ Date: _____
Dwight Bratholt, Manager

Milwaukee County Dept. of Parks, Recreation & Culture

By: _____ Date: _____
James Keegan, Interim Director

Approved as to form and independent status:

By: _____ Date: _____
Corporation Counsel

Reviewed by:

By: _____ Date: _____
Risk Management

Approved as to Chapter 42 DBE provisions:

By: _____ Date: _____
Community Business
Development Partners

EXHIBIT A
MILWAUKEE COUNTY DUE DILIGENCE REQUIREMENTS

Procedure REVISION DATE CHAPTER TITLE CHAPTER NO. ADMINISTRATIVE MANUAL Financial & Management 7 MILWAUKEE COUNTY Accounting

ORIG ISSUE DATE SECTION TITLE SECTION NO. 09-28-O 1

Due Diligence 7.92

CHECKLIST. Prior to recommending any venture for consideration, responsible County agencies shall ensure that any of the following applicable factors have been identified:

- Letter of Full Disclosure and Cooperation
- Cash flow projections for the venture.
- Operating budget impact.
- Debt management responsibilities, schedules and procedures.
- Legal liability for all priorities.
- Financial reporting systems and controls.
- Right-to-audit provisions.
- Project feasibility studies and market analysis.
- Key factors for success/failure of the venture.
- Governance structure and procedures.
- Public policy impacts (e. g. Affirmative Action, Disadvantaged Business).
- Employee/labor relations impacts (including benefits).
- Environmental concerns.
- Tax consequences.
- Capital management (e. g. maintenance).
- Conflicts of interest/ethics.
- Performance measurements.
- Organization Chart and Mission Statement
- Name of Lending institution or Bank to determine single or combined reporting

Each relevant item noted above should be included in the description of the proposal, which is subtitled for approval by the County Executive and County Board.

EXHIBIT B
EQUAL OPPORTUNITY CERTIFICATE

[Attached.]