

**2013-15 MOBILITY EQUIPMENT REVENUE SHARE AGREEMENT**

**BETWEEN**

**MILWAUKEE COUNTY ZOO**

**AND**

**SCOOTERBUG, INC**

THIS AGREEMENT, by and between the Milwaukee County Zoo (the “County”) and ScooterBug, Inc. (the “Vendor”) shall become effective upon execution by the parties including all necessary County agencies. Referenced together, the County and the Vendor are the “Parties” to this Agreement.

WITNESSETH:

WHEREAS, the Vendor is to provide a variety of strollers and other mobility equipment for rent at the Milwaukee County Zoo for use by the Zoo’s patrons; and

WHEREAS, in consideration for the privilege of operating at the Zoo, the Vendor will share with the County a percentage of its sales revenue; and

WHEREAS, recognizing that the development of an agreement permitting Vendor to offer Stroller Rental Service at the Zoo is advantageous to both agencies, the Parties do herewith, in consideration of mutual promises and other good and valuable consideration, agree as follows:

PROVISIONS:

1. RESPONSIBILITIES OF THE PARTIES.

Vendor shall specifically perform all of the tasks and achieve the objectives set forth in its proposal, which is incorporated herein by reference. In the event of any conflict between the terms and provisions of the proposal and the terms and provisions of this Agreement, the terms and provisions of this Agreement shall govern, control and prevail

- A. As specified in **Vendor’s response to the RFP**, on or about the delivery date, Vendor will deliver to County a specified number of strollers and other mobility equipment (the "Equipment") for the County’s use in a visitor rental management program.
- B. The County agrees to use its best efforts to rent the Equipment to its customers. The County also agrees to make a full and honest accounting to Vendor of County rentals. The County shall provide a rental statistics report to Vendor within 15 days of the close of each calendar month during the time period covered by this Agreement. Reports shall consist of daily rental utilization by each type and make of Equipment rented.

- C. Vendor shall be responsible for all shipping costs and remain responsible for the Equipment including any loss during the Equipment transport to and from the Zoo.
- D. At the end of the Term of this Agreement, the Vendor shall remove all Equipment from the County at Vendor's cost within 30 days or the Vendor shall be deemed to have abandoned the Equipment to the County.
- E. The County shall not pledge, loan, mortgage, sublease or part with possession of the Equipment or remove same from the Zoo or suffer any liens or legal process to be incurred or levied thereon.
- F. Vendor or its agents may at any time during normal operating hours, enter the Zoo for the purpose of inspecting the Equipment and the manner in which the Equipment is being rented, used or serviced. Further, at any time upon reasonable notice, Vendor shall be entitled to review the County's Equipment rental records. The County also agrees that during the term of this Agreement it will maintain complete and accurate books, records, and accounts of Equipment rentals, separate and apart from any and all other sales and rentals of the County not subject to this Agreement. If the Vendor discovers through the review of the books and records discrepancies in payment to Vendor, the County shall immediately pay the amount then owed.
- G. Vendor personnel shall not drive personal vehicles onto Zoo walkways.
- H. The County shall provide at no cost to Vendor electrical service, water, and waste pick-up throughout the term of this Agreement.
- I. Vendor shall be responsible for maintaining the Equipment in proper working condition. On-site servicing of the Equipment by the Vendor will be scheduled in cooperation with the County. The County will provide Vendor reasonable access to the Equipment rental and storage site including free parking for business purposes.
- J. The County agrees to rent the Equipment at prevailing market rates for daily use and to remit a percentage of the gross revenue to Vendor, as provided for in Paragraph 3 below. Equipment shall be rented at the following minimum rates\*:

Single Stroller	\$ 7.00
Double Stroller	\$10.00
Wheelchair	\$ 9.00
Electronic Convenience Vehicle	\$25.00

\*These prices include state of Wisconsin Sales Tax and are subject to change.

2. TERM.

This Agreement shall be for three (3) calendar years beginning in the year in which it is executed, with two (2) options to renew for one (1) additional calendar year if mutually agreeable to the Parties.

3. COMPENSATION.

A. The County agrees to pay Vendor forty percent (40%) of the gross revenue, less sales tax, for furnishing strollers and manual wheelchairs, and forty-five percent (45 %) of the gross revenue, less sales tax, for furnishing electronic convenience vehicles. The Zoo can retain an additional five percent (5%) of gross collected revenue after state sales taxes for providing electric convenience vehicles/motorized scooters (ECV's) as an incentive if sales goals are met or exceeded as indicated in the RFP response. State Prompt Pay Law, Section 66.285, does not apply to this Agreement.

B. County's payments to Vendor will be based on actual daily rental use of the Equipment. As a matter of practice, the County attempts to pay all invoices in 30 days.

4. AUDIT AND INSPECTION OF RECORDS.

Vendor shall permit the authorized representatives of County, after reasonable notice, to inspect and audit all data and records of Vendor related to carrying out this Agreement for a period up to three years after completion of the Agreement. The prime consultant must obtain prior written Milwaukee County approval for all subconsultants and/or associates to be used in performing its contractual obligations. There must be a written contractual agreement between the prime consultant and its County approved subconsultant and/or associates which binds the subconsultant to the same audit Agreement terms and conditions as the prime consultant.

5. NON-DISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION PROGRAMS.

In the performance of work under this Agreement, Vendor shall not discriminate against any employee or applicant for employment because of race, color, national origin, age, sex, or handicap, which shall include, but not be limited to, the following:

Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. Vendor will post in conspicuous places, available for employees and applicants for employment, notices setting forth the provisions of the non-discriminatory clause.

Vendor agrees to strive to implement the principles of equal employment opportunity through an effective Affirmative Action program, and has so indicated on the Equal Employment Opportunity Certificate attached hereto as and made a part of this Agreement. The program 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 Vendor's work force, where these groups may have been previously under-utilized and under-represented. Vendor also agrees that in the event of any dispute as to compliance with the aforesaid requirements, it shall be its responsibility to show that it has met all such requirements.

When a violation of the non-discrimination, equal opportunity or Affirmative Action provisions of this section has been determined by County, Vendor shall immediately be informed of the violation and directed to take all action necessary to halt the violation, as well as such action as may be necessary to correct, if possible, any injustice to any person adversely affected by the violation, and immediately take steps to prevent further violations.

If, after notice of a violation to Vendor, further violations of the section are committed during the term of the Agreement, County may terminate the Agreement without liability for the uncompleted portion or any materials or services purchased or paid for by the Vendor for use in completing the Agreement, or it may permit Vendor to complete the Agreement, but, in either event, Vendor shall be ineligible to bid on any future Agreements let by County.

6. INDEMNITY.

Vendor agrees to the fullest extent permitted by law, to indemnify, defend and hold harmless, County, and its agents, officers and employees, from and against all loss or expense including costs and attorney's fees by reason of statutory benefits under Workers Compensation Laws, or liability for damages including suits at law or in equity, caused by any wrongful, intentional, or negligent act or omission of Vendor, or its (their) agents which may arise out of or are connected with the activities covered by this Agreement.

7. INSURANCE.

The Vendor understands and agrees that financial responsibility for claims or damages to any person, or to Vendor's employees and agents, shall rest with the Vendor. The Vendor may effect and maintain any insurance coverage, including, but not limited to, Worker's Compensation, Employers Liability and General Contractual, Professional and Automobile Liability, to support such financial obligations. The indemnification obligation, however, shall not be reduced in any way by existence or non-existence, limitation, amount or type of damages, compensation or benefits payable under Worker's Compensation laws or other insurance provisions.

The Vendor shall provide evidence of the following coverages and minimum amounts:

<u>Type of Coverage</u>	<u>Minimum Limits</u>
Wisconsin Workers' Compensation or Proof of All States Coverage	Statutory (waiver of subrogation)
Employer's Liability	\$100,000/500,000/100,000

Commercial or Comprehensive 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
Professional Liability	\$1,000,000 Per Occurrence \$1,000,000 Aggregate
Automobile Liability	
Bodily Injury & Property Damage All Autos-Owned, non-owned and/or hired Uninsured Motorists	\$1,000,000 Per Accident Per Wisconsin Requirements

Milwaukee County will be named as an additional insured for General and Automobile, 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 certificate indicating the above coverages shall be submitted for review and approval by the County for the duration of this Agreement.

Coverages shall be placed with an insurance company approved by the State of Wisconsin and rated "A" per Best's Key Rating Guide. Additional information as to policy form, retroactive date, discovery provisions and applicable retentions shall be submitted to County, if requested, to obtain approval of insurance requirements. Any deviations, including use of purchasing groups, risk retention groups, etc., or requests for waiver from the above requirements shall be submitted in writing to the County for approval prior to the commencement of activities under this Agreement.

The insurance requirements contained within this Agreement are subject to periodic review and adjustment by the County Risk Manager.

8. PERMITS, TAXES, LICENSES.  
Vendor is responsible for procuring, maintaining and paying for all necessary federal, state, and local permits, licenses, fees and taxes required to carry out the provisions of this Agreement.
9. RIGHT OF TERMINATION BY COUNTY.  
The County further reserves the right to terminate the Agreement at any time for any reason by giving Vendor thirty (30) days written notice of such termination. Upon termination, Vendor shall be paid for all services rendered through the date of termination.

10. 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. In entering into this Agreement, and in acting in compliance herewith, Vendor is at all times acting and performing as an independent Vendor, duly authorized to perform the acts required of it hereunder.

11. ASSIGNMENT LIMITATION.

This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns; provided, however, that neither party shall assign its obligations hereunder without the prior written consent of the other.

12. PROHIBITED PRACTICES.

- A. Vendor during the period of this Agreement shall not hire, retain or utilize for compensation any member, officer, or employee of County or any person who, to the knowledge of Vendor, has a conflict of interest.
- B. Vendor hereby attests that it is familiar with Milwaukee 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."

13. 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 three days after posting via US Mail, to the party addressed as follows:

To Vendor:  
ScooterBug, Inc  
Attn.: Sandy Porter Calabrese  
2126 Landstreet Rd, Suite 300  
Orlando, FL 32809  
407-532-7400, Ext 216  
Fax: 407-532-0111

To County:  
Milwaukee County Zoo  
Attn.: Charles Wikenhauser  
10001 W. Bluemound Rd.  
Milwaukee, WI 53226  
414-771-3040  
Fax: 414-256-5410

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

14. MISCELLANEOUS.

This Agreement shall be interpreted and enforced under the laws and jurisdiction of the State of Wisconsin. This Agreement constitutes the entire understanding between the parties and is not subject to amendment unless agreed upon in writing by both parties

hereto. Vendor acknowledges and agrees that it will perform its obligations hereunder in compliance with all applicable state, local or federal law, rules and regulations and orders.

**IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day, month and year first above written.**

**FOR MILWAUKEE COUNTY**

**BY VENDOR**

\_\_\_\_\_  
**Charles Wikenhauser**  
**Zoo Director**

\_\_\_\_\_

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Taxpayer ID**

**MILWAUKEE COUNTY WITNESS:**

**VENDOR WITNESS**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Date**

**Approved as to form and Independent Contractor status by Corporation Counsel.**

**Reviewed by County's Risk Manager**

By \_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Date**

**Approved as Chapter 42 Requirements By County's CBDP Office**

By \_\_\_\_\_

\_\_\_\_\_  
**Date**

Milwaukee County Zoo  
 Request For Proposal #6792  
 Strollers Rental Service

**Attachment – Incentive for Zoo to increase revenue share on sales.**

- ScooterBug would like to reward the Zoo with the opportunity to earn a 5% increase on the ECV revenue-share based on reaching or exceeding annual ECV rental volumes.
- Should the Zoo meet or exceed the ECV rental volume goals in any of the years over the term of the Agreement, as indicated in the chart below, the Zoo will be awarded an extra 5% of the annual ECV revenue-share for that year.

<b>Milwaukee Zoo - ECV Rental Incentive Plan</b>		
<b>Year</b>	<b>Rentals Goal</b>	<b>Rev-Share Bonus</b>
2013	1575	5%
2014	1690	5%
2015	1800	5%

**Attachment – List of Available Products**

- ScooterBug provides the following mobility products:
  - Strollers
    - Bucket color options include: Blue (pictured above), Green, Tan
    - Canopy color options include: Blue (pictured above), Green, Tan, Yellow
  - Wheelchairs (manual push)
    - Aluminum
  - Electronic Convenience Vehicles (motorized scooters)
    - Gray
  - See the attached product spec sheet for color pictures and design specifications.