

**VENDOR PERMIT AGREEMENT**  
**BETWEEN**  
**MILWAUKEE COUNTY PARKS**  
**AND**  
**WHEEL FUN RENTALS IL & WI LLC**

This Vendor Permit Agreement (the "Agreement") is made and entered into effective April 1, 2015 (the "Effective Date"), by and between the MILWAUKEE COUNTY PARKS (the "County") and FUNTIME LLC D/B/A WHEEL FUN RENTALS ("Wheel Fun" or "Vendor"), as represented by: Dwight Bratholt, (701) 367-7704. Referenced together, the County and the Vendor are the "Parties" to this Agreement.

**WITNESSETH:**

**WHEREAS**, since 2013, Wheel Fun has been providing paddleboat rental concession services at Veterans lagoon in one of Milwaukee County's Parks located on the Milwaukee lakefront, namely Veterans lagoon; and

**WHEREAS**, Wheel Fun approached Milwaukee County Parks in 2018 to discuss a major investment it wishes to make in its services at the lagoon and a request for a long-term agreement to allow for the investment; and

**WHEREAS**, the Milwaukee County Board of Supervisors, by virtue of adopting Resolution \_\_\_\_\_ on \_\_\_\_\_, 2019, has authorized the Parks Director to enter into this agreement with Wheel Fun for and on behalf of Milwaukee County.

**NOW THEREFORE**, Vendor is hereby offered a contract to provide the paddleboat concession services at Veterans' lagoon. 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 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 of designee. Vendor shall comply with all current Milwaukee County Parks practices, including compliance agreements regarding Milwaukee County Parks' 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 Milwaukee County Parks and Milwaukee County procedures.

1.4 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.

2. Term: This Agreement shall commence on the Effective Date and expire on March 30, 2024 (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	\$5812.50
Year Two	\$5875
Year Three	\$5937.50
Year Four	\$6,000
Year Five	\$6,062.50
Year Six (if Renewed)	\$6,125
Year Seven (if Renewed)	\$6,187.50

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 each year of the Agreement. "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. Checks shall be made payable to the Milwaukee County Treasurer and mailed or delivered to: Milwaukee County, Milwaukee County Treasurer, 9480 Watertown Plank Rd., Wauwatosa, Wisconsin, 53226.

If, at the instruction of the County, Vendor is required to close its operations due to water quality issues at the Lagoon, Vendor shall receive a prorated reduction in the Flat Fee. The reduction will be calculated by taking the monthly payment at that time and dividing it by the number of days in the month.

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. Construction and Improvements: Prior to the start of any construction 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. Construction and 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.
6. Marketing: 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.
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 Park and the Concession, including all local health code requirements and Milwaukee County Ordinance 111, related to the County's minimum wage 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 Sold: Vendor shall provide County with a list and pricing information for the products it intends to rent or sell to the public. 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 Concession 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 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.
14. 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.

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 Milwaukee County Parks' staff.
16. 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.
17. 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.
18. 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.

18.1 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.

18.2 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.

19. County Rights of Access and Audit: The Contractor, Lessee, or other party to the contract, its officers, directors, agents, partners and employees shall allow the County Audit Services Division and department contract administrators (collectively referred to as Designated Personnel) and any other party the Designated Personnel may name, with or without notice, to audit, examine and make copies of any and all records of the Contractor, Lessee, or other party to the contract, related to the terms and performance of the Contract for a period of up to three years following the date of last payment, the end date of this contract, or activity under this contract, whichever is later. Any subcontractors or other parties performing work on this Contract will be bound by the same terms and responsibilities as the Contractor. All subcontracts or other agreements for work performed on this Contract will include written notice that the subcontractors or other parties understand and will comply with the terms and responsibilities. The Contractor, Lessee, or other party to the contract, and any subcontractors understand and will abide by the requirements of Section 34.09 (Audit) and Section 34.095 (Investigations Concerning Fraud, Waste, and Abuse) of the Milwaukee County Code of General Ordinances.
20. 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:

Commercial General Liability	
Bodily Injury and Property Damage	\$1,000,000 Per Occurrence
(incl. Personal Injury, Fire Legal, Contractual & Products/Completed Operations)	\$2,000,000 General Aggregate
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, if applicable
Employers' Liability	\$100,000/\$500,000/\$100,000, if applicable

Milwaukee County will be named as an additional insured for General 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.

21. 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.

21.1 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 : (a) any Hazardous Materials brought onto or introduced into the Premises or surrounding areas by Vendor or its agents and/or (b) Hazardous Materials whose presence pre-exists the commencement of Vendor's improvements, located in the Park, that are discovered or disturbed as a result of Vendor's improvements on, at or near the Park. The Vendor hereby agrees to indemnify, defend and hold County harmless from and against any and all liabilities, costs, expenses (including taxable costs and taxable attorneys 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 herein. "Hazardous Materials" as the term is used herein shall mean any substance: (a) the presence of which requires investigation or remediation under any Federal, State or local statute, regulation, ordinance, order, action or policy; or (b) which is or becomes defined as a "hazardous waste" or "hazardous substance" under any Federal, State or local statute, regulation, ordinance, or amendments thereto. Notwithstanding the foregoing, the Vendor shall not be liable for, and shall have no obligations for (including but not limited to the indemnification, repair, clean-up, remediation, or detoxification of) any Hazardous Materials brought onsite by the County or any third parties, other than the Vendor's contractors, subcontractors, agents or guests.

22. 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.
23. Termination: County may terminate this Agreement: (a) if Vendor fails to comply with any provision in this Agreement, and such failure continues for thirty (30) days after a written notice from County setting forth in reasonable detail the nature of such default; (b) if 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 interest in this Agreement; or (c) in the event that the Milwaukee County Board of Supervisors, via official action and resolution, effects to close or

repurpose the Premises during the Term. If County terminates the Agreement pursuant to Section (c) above, County agrees to buy out one hundred percent (100%) of Vendor's documented capital expenditure investment in the Premises on a straight-line depreciation over five (5) years. In addition, If County terminates the Agreement pursuant to Section (c) above, County shall make best efforts to relocate the concession to another Milwaukee County Parks location reasonably mutually acceptable to Vendor and County. No buy-out by the County shall include any investment Vendor has made in furniture or equipment.

24. 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.
25. 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:  
Wheel Fun Rentals IL & WI LLC  
Attn: Dwight Bratholt, Manager  
3609 Heights Court  
St. Cloud, MN 56301

To County:  
Milwaukee County 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.

***Signature page follows***



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

**Wheel Fun Rentals IL & WI LLC**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Dwight Bratholt, Manager

**Milwaukee County Dept. of Parks, Recreation & Culture**

by \_\_\_\_\_ Date \_\_\_\_\_  
Guy Smith, Executive Director

*Approved with regards to County Ordinance Chapter 42:*

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Community Business Development Partners

*Approved for execution:*

*Reviewed by:*

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Corporation Counsel

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Risk Management

*Approved by:*

*Approved by:*

By: \_\_\_\_\_ Date: \_\_\_\_\_  
County Executive Chris Abele

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Comptroller Scott B. Manske

*Approved as compliant under Sec. 59.42(2)(b)5, Stats.:*

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Corporation Counsel