

Food Services Agreement

This **Food Services Agreement**, as from time to time amended (Agreement), is entered into between the City of Marshall (Client), and The Hitching Post of Marshall, Inc., a Minnesota Corporation, DBA Hitching Post Eatery and Saloon (Hitching Post), collectively "the Parties"

1. **Definitions.** In addition to terms defined elsewhere herein,
 - 1.1. The term "Program" means the attached Services Program.
 - 1.2. The term "Effective Date" shall mean the date as set forth on the signature page in which The Hitching Post begins performance of Services.
 - 1.3. The term "Obligations" means all present and future liabilities, obligations of payment and performance, and indebtedness of one party to another party, of whatever kind, now due or that become due, absolute or contingent, and whether joint, several, or joint and several.

2. **Client Services.** The Hitching Post shall provide the following services to Client ("the Services"):

2.1 **Food Services; Sales.** Client grants to The Hitching Post the right to control and operate all food and beverage services and sales for the employees, guests, and invitees at the Amateur Sports Complex, 300 Tiger Drive, Marshall, MN 56258, (collectively Food Services) at the sites and facilities set forth on the signature page (collectively Premises) at such times and dates of operation as set forth in the Program attached hereto. Hitching post shall secure the approval of the local health department in addition to all other governmental agencies having applicable jurisdiction. In addition, Hitching Post shall possess all Federal, State, and local licenses required for said operation. Hitching Post shall procure and keep current all permits and licenses, pay promptly all charges and fees, and give all notices necessary and incidental to the due and lawful operation of the food services at the Amateur Sports Complex. Hitching Post shall notify the Client in writing in the event Hitching Post becomes aware of any lapse of any required permit or license that falls under the responsibility of the Client.

Soft drink beverage sales at the Premises are granted to Viking Coca-Cola pursuant to Sponsorship Agreement between Client and Viking Coca-Cola dated September 7, 2016. Copies of the referenced Sponsorship Agreements are available for inspection at the office of the Park & Recreation Director for the City of Marshall.

Client shall provide its mobile concession trailer to Hitching Post for their use to provide food and beverage services at the Premises. Said mobile concession trailer shall be brought to the Premises by Client. Hitching Post staff and personnel will be responsible for setting up the trailer to provide food and beverage services. Hitching Post staff and personnel shall be responsible for securing and cleaning the trailer at the conclusion of each event.

2.2 **Sanitation Services.** The Hitching Post shall be responsible for event housekeeping and sanitation services in the food preparation, storage, dining, and serving areas of the Premises as follows (collectively Sanitation Services):

- 2.2.1 Cleaning dining furniture;
- 2.2.2 Cleaning floors, walls up to six (6) feet above floor level, and the exterior of hoods, ducts, vents, concession trailer, and other equipment and fixtures used by Hitching Post in food storage and preparation areas; and
- 2.2.3 Collecting and properly packing dry refuse, recyclables, and compost from food storage and preparation areas and discarding of the packed refuse at site(s) on Premises designated by Client.
- 2.2.4 Properly cleaning and securing the mobile concession trailer after each use.

2.3 **Other Services.** Hitching Post shall have the right to operate and provide such other services and

product sales as agreed to, in writing, from time to time by the Parties.

2.4 **Quality of Services.** Hitching Post shall supply Services of good quality, on a timely basis, and with appropriate products in accordance with the terms of this Agreement. All Products and methods of service shall conform in all respect to all applicable federal, state and local laws, ordinances and regulations. Products served are equivalent to the Industry standard with respect to service, personnel, management, products, menus, pricing and all other aspects of similarly situated Concession Services. Hitching Post shall charge fair, reasonable and not unjustly discriminatory prices for all food and other related products. Prior to setting initial prices and/or adjusting published prices, Hitching Post agrees to consult with Park & Recreation Director prior to implementing price changes. Prices will be displayed in such a manner as to be easily visible and understood by potential customers.

2.5 **Inspection of Services.** Client may inspect the Services, without notice, on any business day at any time. The inspection will be conducted in a manner to avoid disruption to the Services.

2.6 **Staff for Services.** Hitching Post shall keep and maintain an adequate staff of qualified individuals to perform Services and related administration. Hitching Post shall provide enough qualified management and non-management employees to operate the Concessions Stand, including an on-site manager. All personnel employed by Hitching Post shall always and for all purposes, be deemed solely Hitching Post employees. The Client reserves the right to require replacement of any of the employees. The Client shall not be responsible for any actions of the employees of Hitching Post and Hitching Post agrees to hold harmless for any claims, liabilities, damages or obligations the Village of Lake Hallie for any actions of the employees. If any employee violates any of the rules of this agreement, policies, or procedures of the Client, upon recommendation to Hitching Post, that employee shall be prohibited from continued work in the concession stand.

2.7 **Inventory of Product of Food and Beverages for Services.** Hitching Post shall purchase and hold in its own name an inventory of food and supplies necessary for the performance of its obligations under this Agreement which includes the provision of:

2.7.1 An adequate and appropriate inventory sufficient for the performance of Services.

2.7.2 The timely and full payment for such inventory.

2.7.3 Soft drink beverage products shall be purchased from Viking Coca-Cola by client. Client will have soft drink beverage products available for repurchase by Hitching Post for resale at scheduled events. Hitching Post shall coordinate with Client for the purchase of soft drink beverage product and subsequent resale. Prices of soft drink beverages will be negotiated between Client and Hitching Post but will equal or exceed the cost by Client of those beverage products from Viking Coca-Cola. Hitching Post shall not sell beverage products other than those anticipated by this 2.7.3 section.

2.8 **Independent Contractor.** Hitching Post shall perform the Services as an independent contractor. Neither party intends, and nothing contained in this Agreement shall be construed to establish, a partnership or joint venture between the parties. No person performing any of the work or services described hereunder shall be considered an officer, servant, or employee of the Client, nor shall any such person be entitled to any benefits available or granted to employees of the Client.

3. **Client Premises.** To facilitate the performance of Services, Client shall furnish, at its expense, at the Premises:

3.1 **Operation Facilities.** Interior facilities for exclusive Hitching Post use, supplied per such specifications prepared by Hitching Post as reasonably necessary to perform the Services;

3.2 **Equipment.** Equipment in the food preparation, storage, dining, and serving areas for exclusive Hitching Post use as identified in the Program or as parties mutually agree is reasonably necessary to sufficiently perform the Services conducted at Client's request (collectively Services Equipment). Equipment includes, but is not limited to, the mobile concession trailer referenced herein.

3.3 **Utilities.** All utilities as identified in the Program or as reasonable and necessary for the efficient performance of the Food Services, Sanitation Services, and such other services conducted at Client's request.

3.4 **Cleaning; Maintenance; Safety.**

3.4.1 Client shall ensure that all walls above six (6) feet from floor level, windows, ceilings, lighting, ventilation fittings and interiors, and grease traps are in clean condition for Hitching Post's use of the Premises and

3.4.2 The Premises, Services Equipment, Offices, and Utilities shall be serviced and kept by Client in good working and safe operating condition and further shall be maintained, replaced, and repaired to ensure continued fitness for their particular and intended purposes, and in accordance with relevant manufacturer warranties and recommendations. Notwithstanding the foregoing, if Services Equipment provided by Client becomes inoperative, hazardous, or inefficient, Hitching Post shall notify Client within five (5) days of discovering the Service Equipment has become inoperative, hazardous, or inefficient. If Client does not repair or replace the Service Equipment within ten (10) days of receiving the notice, then Hitching Post may affect repairs or replacements at the expense of the Client. However, Client shall, if applicable, pay the cost of all paper products used during the up to fifteen (15) day-time period anticipated herein where Services Equipment is inoperable.

4. **Financial Terms and Payment for Services.**

4.1 **Financial Terms.** Hitching Post shall be responsible for payment and for providing services at the scheduled events, all as set forth in **Attachment #1 Services Program: Payment Provisions**, attached hereto and made a part hereof.

5. **Agreement Term.** Unless sooner terminated as provided in this section, the term of this Agreement shall be **March 1, 2023 through December 31, 2023.**

5.1 **Permitted Termination.** This Agreement may be terminated:

5.1.1 Effective upon sixty (60) days' prior notice by either party to the other without cause; or

5.1.2 At any time after the occurrence or continuance of a Payment Default or other Default that is material to the whole of this Agreement that has not been remedied in accordance with Section 11 herein.

5.2 **Survival of Obligations.** Termination of this Agreement shall not operate to limit, reduce, cancel, or otherwise modify any accrued Obligations .

5.3 **Equipment Return.** Promptly following termination of this Agreement, Hitching Post shall return to Client such Services Equipment, Offices, and Utilities in a similar condition, ordinary wear and tear excepted. Ordinary wear and tear shall have the meaning commonly attributed to such term as well as mean losses or damage to chinaware, glassware, flatware, trays, utensils, and other small wares that may result from breakage, theft, or regular use.

6. **Representations, Warranties, and Covenants.** The following representations, warranties, and covenants are made by the Parties at the time and from the Effective Date hereof and shall survive the termination of this Agreement.

6.1 **Business Status.** The execution, delivery, and performance by the parties of this Agreement are within their respective powers, have been duly authorized by all necessary action, and do not and will not contravene their respective charters, agreement of partnership, or by-laws. This Agreement constitutes the valid and legally binding Obligations of the Parties, enforceable in accordance with its terms. The Parties' respective chief executive offices, principal places of business, and the places of record retention are located at the addresses set forth on the signature page.

6.2 **Taxes; Assessments.** Hitching Post shall pay when due, all federal, state, local, and other governmental taxes or assessments in connection with the operation and performance of the Services. Hitching Post shall pay when due all license and permit fees in connection with Services.

6.3 **Compliance with Laws.** Hitching Post and Client shall comply with all federal, state, and local laws applicable to their Obligations. Hitching Post shall keep in effect all necessary permits, licenses, and food handlers' cards and will post such permits where required.

6.4 **Alcohol Prohibited during Youth Events (MAYBA, MAFSA, Marshall Community Services and School District Sponsored Events).** The Hitching Post shall not provide for sale nor serve alcohol at any MAYBA, MAFSA, or Marshall Community Services sponsored events and alcohol shall not be provided for sale or served at Independent School District #413 school events.

6.5 **No Title.** Client has no right, title, or interest in, and shall not assert or disturb rights, title, or interest to, any equipment, inventory, or other property furnished or installed by the Hitching Post on the Premises. Client shall not operate, remove, or tamper with such equipment, inventory, or other property, except such equipment or other property identified herein.

Hitching Post has no right, title, or interest in, and shall not assert or disturb rights, title, or interest to, any equipment, inventory, or other property furnished or installed by Client on the Premises. Hitching Post shall not operate, remove, or tamper with such equipment, inventory, or other property, except such equipment or other property as specifically identified herein

7. **Indemnification.**

7.1 **Mutual Indemnification.** Each party shall indemnify, defend, and hold harmless the other from any and all losses, damages, or expenses, including reasonable attorneys' fees, arising out of or resulting from claims or actions for bodily injury, death, sickness, property damage, or other injury or damage if caused by any negligent act or omission or breach of such party.

7.2 **Notification of Claim.** Notification of an event giving rise to an indemnification claim (Notice) must (a) be received by the indemnifying party on or by the earlier of a date thirty (30) days subsequent to the date which such event was or should have been discovered or ninety (90) days subsequent to the effective termination date of this Agreement; and (b) include a brief factual summary of the damage and cause thereof. An indemnification claim is expressly subject to, and conditioned upon, compliance with the Notice provisions hereunder.

7.3 **Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR LOST

PROFITS, SUFFERED BY EITHER PARTY UNDER THIS AGREEMENT. Nothing in this agreement constitutes a waiver by the Client of any statutory or common law defenses, immunities or limits on liability. The liability of the Client shall be governed by the provisions of Chapter 466 of Minnesota Statutes.

8. Insurance.

8.1 Hitching Post. Hitching Post shall obtain and maintain insurance for the following risks in such amounts under such policies as appropriate:

a. **General Liability** (including contractual, dram shop and products-completed operations liability) in an amount not less than One Million Dollars (\$1,500,000.00) as required by applicable statute.

b. **Worker's Compensation.** Workers' Compensation. Workers' compensation insurance in compliance with all applicable statutes including an all-states or universal endorsement where applicable. Such policy shall include employer's liability coverage in an amount of no less than \$500,000. If Hitching Post is not required by statute to carry workers' compensation insurance, Hitching Post agrees: (1) to provide Client with evidence documenting the specific provision under Minnesota Statutes, section 176.041 which excludes Hitching Post from the requirement of obtaining workers' compensation insurance; (2) to provide prior notice to the Client of any change in Hitching Post's exemption status under Minnesota Statutes, section 176.041; and (3) to defend, hold harmless, and indemnify the Client from and against any and all claims and losses brought by Hitching Post or any subcontractor or other person claiming from the Client's workers' compensation or employers' liability benefits for damages arising out of any injury or illness resulting from Hitching Post's performance of work under this Agreement. If any change in Hitching Post's business requires Hitching Post to obtain workers' compensation insurance, Hitching Post agrees to promptly provide Client with evidence of such insurance coverage.

8.2 Client. Client shall obtain and maintain insurance for the Operation Facilities, Services Equipment, Offices, and Utilities against risks covered by standard forms of fire, theft, and extended coverage in such amounts under such policies as appropriate, but not less than One Million Dollars (\$1,000,000.00) per occurrence, but not less than One Million, Five Hundred Thousand Dollars (\$1,500,000.00) to cover claims in the aggregate. Client need not obtain and maintain insurance for Hitching Post's personal property used in conjunction with providing the services herein.

8.3 Certificates of Insurance. Certificates of Insurance for such coverage shall be provided by each party to the other party, naming the applicable party as an additional insured as respects such coverage prior to commencement of Services hereunder.

9. Default. The occurrence of one or more of the following events shall constitute a default under this Agreement (a Default): (a) Each and every occurrence of a Payment Default (no waiver, deferral, or compromise of any payment obligations or prior Payment Default shall extend to, or constitute a waiver of, any subsequent or other Payment Defaults or impair any Hitching Post termination rights or remedies at law or in equity); (b) A party's failure to perform when due any Obligation under this Agreement (except a Payment Default, which shall be subject to subsection (a) above) when such failure continues for a period of thirty (30) days subsequent to notice thereof; (c) A party's breach of any warranty, representation, or covenant under this Agreement when such failure continues for a period of thirty (30) days subsequent to notice thereof; and (d) A party (i) becomes insolvent or unable to pay its debts as they become due; (ii) ceases to do business as a going concern; or (iii) makes an assignment for the benefit of creditors, applies to or petitions any tribunal for the appointment of a custodian, receiver, or trustee for itself or any substantial part of its assets, or commences any proceeding with respect to itself under any bankruptcy, reorganization, readjustment of debt, insolvency, receivership, dissolution or liquidation law or statute of any jurisdiction, or if it files any such application or petition, or if such proceeding is commenced against a party.

10. Dispute Resolution and Governing Law.

10.1 **Good Faith Negotiation.** The Parties agree that any dispute, controversy, claim, or disagreement arising out of or relating to this Agreement, or the breach, termination, validity, or enforceability of any provision of this Agreement (each a Dispute) shall be negotiated between them in good faith in an attempt to reach a just and equitable solution satisfactory to both parties for a period of thirty (30) days.

10.2 **Governing Law; Exclusive Choice of Forum.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Minnesota. Any Dispute not remedied within thirty (30) days after complying with the Obligations set forth in 12.1 herein, shall be submitted to State District Courts in Lyon County, Minnesota for litigation, including all requirements to mediate said resolution.

11. Miscellaneous.

11.1 **No Assignment.** Neither party may assign this Agreement to an unaffiliated business entity without the prior written consent of the other party.

11.2 **Force Majeure.** In case performance of any Obligations hereunder (other than the payment of monies due) shall be delayed or prevented because of compliance with any law, decree, or order of any governmental agency or authority, either local, state, or federal, or because of riots, war, public disturbances, strikes, lockouts, differences with workmen, fires, floods, Acts of God, epidemic, pandemic, or any other reason whatsoever which is not within the control of the party whose performance is interfered with and which, by exercise of reasonable diligence said party is unable to prevent, the party so suffering may at its option suspend, without liability, the performance of its Obligations hereunder (other than the payment of monies due) during the period such cause continues, and, if mutually agreed to and if possible, extend the term of this Agreement for the period of such suspension of the performance of duties hereunder.

11.3 **Signatures.** Agreement to, and acceptance of, this Agreement may be made and evidenced by facsimile signature or in an electronic form evidencing signatures of both parties hereto.

11.4 **Notices.** All notices to be given under this Agreement shall be in writing and shall be served either personally, by facsimile, by deposit with an overnight courier with charges prepaid, or by deposit in the United States mail, first-class postage prepaid by registered or certified mail, addressed to the parties at the address or facsimile number stated below or at any other address as designated by one party upon notice to the other party. Any such notices shall be deemed to have been given (a) upon delivery in the case of personal delivery; (b) upon the first business day following facsimile receipt; (c) one business day after deposit with an overnight courier; or (d) three business days after deposit in the United States mail.

11.5 **Information Technology Security.** In connection with the services being provided hereunder, the Hitching Post may need to operate certain information technology systems not owned by the Client (Non-Client Systems), which may need to interface with or connect to Client's networks, internet access, or information technology systems (Client Systems). The Hitching Post shall be responsible for all Non-Client Systems, and Client shall be solely responsible for Client Systems, including taking the necessary security and privacy protections as are reasonable under the circumstances. If the Hitching Post serves as the merchant-of-record for any credit or debit card transactions in connection with any of the services provided hereunder, then the Hitching Post will be responsible for complying with all applicable laws, regulations and payment card industry data security standards related to the protection of cardholder data (Data Protection Rules). If Non-Client Systems interface with or

connect to Client Systems, then Hitching Post will notify Client of the need for the Non-Client System to interface with the Client Systems. Upon receiving this notification, Client and Hitching Post agree to share the expense equally for any necessary changes to the Client Systems that the Parties agree are necessary or prudent to ensure the Hitching Post's compliance with the Data Protection Rules. Each party shall indemnify, defend and hold harmless the other party from all claims, liabilities, damages and costs (including reasonable attorneys' fees) to the extent caused by the indemnifying party's failure to comply with its obligations in this Section.

11.6 Data Practices. As required in Minnesota Statutes, section 13.05, subdivision 6, the Hitching Post agrees to comply with the requirements of the Minnesota Data Practices Act (Minnesota Statutes, Chapter 13) with respect to all data created, collected, received, stored, used, maintained, or disseminated by the Hitching Post in the course of providing services under this Agreement.

11.7 Entire Agreement. This Agreement constitutes the entire understanding of the Parties pertaining to all matters contemplated hereunder at this time. The Parties signing this Agreement desire or intend that any subsequent other implementing contract agreement entered into between the Parties shall supersede and preempt any conflicting provision of this Agreement whether written or oral.

11.8 Headings. The subject headings of the paragraphs and subparagraphs of this Agreement are included for purposes of convenience only and shall not affect the construction of interpretation of any of its provisions.

11.9 Executed in Parts. This Agreement may be executed simultaneously in two or more counterparts that, when taken together, shall be deemed an original and constitute one and the same document. The signature of any Party to the counterpart shall be deemed a signature to the Agreement, and may be appended to, any other counterpart. Email transmissions of executed signature pages shall be deemed as originals and sufficient to bind the executing Part.

11.10 Severability. In the event that any provision of this Agreement shall be deemed to be severable or invalid, and if any term, condition, phrase, or portion of this Agreement shall be determined to be unlawful or otherwise unenforceable, the remainder of the Agreement shall remain in full force and effect, so long as the clause severed does not affect the intent of the Parties. If a court should find that any provision of this Agreement to be invalid or unenforceable, but that by limiting said provision it would become valid and enforceable, said provision shall be deemed to be written, construed and enforced as so limited.

11.11 Nondiscrimination. The Hitching Post agrees to comply with requirements of Minnesota Statutes, section 181.59 regarding nondiscrimination.

11.12 Documents. In accordance with Minnesota Statutes, section 16C.05, subdivision 5, the Hitching Post's books, records, documents and accounting procedures and practices relevant to this Agreement are subject to examination by the Client and the Minnesota State Auditor for a minimum of six years from the expiration date of this Agreement. The Hitching Posts agrees to comply with any requests for data pursuant to the Minnesota Data Practices Act, Minnesota Statutes Chapter 13.

Effective Date: _____

Client: City of Marshall

By: _____
(Authorized Officer or Principal Signature)

Printed Name: **Robert J. Byrnes**

Title: Mayor

By: _____
(Authorized Officer or Principal Signature)

Printed Name: **Kyle Box**

Title: City Clerk

Signature Date: _____

Principal Address: 344 W. Main Street, Marshall, MN 56258

Premises Location(s): Amateur Sports Complex, 300 Tiger Drive, Marshall, MN 56258

Client Notice To:

Name: **Preston Stensrud**
Title: **Park & Recreation Director**

The Hitching Post of Marshall, Inc. d/b/a Hitching Post Eatery and Saloon

By: 
(Authorized Officer or Principal Signature)

Printed Name: **Jordan Handeland**

Title: Owner

Signature Date: 2/22/23

The Hitching Post Notice To:

Name: Hitching Post of Marshall, Inc.

Attachment #1

Services Program: Payment Provisions

Commissions Hitching Post shall pay commissions to the Client within thirty (30) days from the fiscal close of the preceding month in an amount equal to 0% of Gross Sales. "Gross Sales" shall mean all moneys received for sales or Services rendered at or from the Premises.

Payment Terms Net fifteen (15) days of Billing Statement date via Client check or electronic fund transfer to the account and banking institution designated by Hitching Post.

Hours or Days of Operation Correspond to customary Client operating hours and days of operation, or as otherwise agreed. Food services to be provided by Hitching Post at the following events:

- (a) All School District, MAYBA, and MAFSA sponsored events at the Premises
- (b) All Client (City of Marshall) sponsored youth events at the Premises (no city sponsored events requiring food services during the term of this agreement at the Amateur Sports Complex, unless specifically agreed to by Hitching Post).

Hours of operation shall be at least one-half hour before scheduled event start time and continuing until one-half hour after conclusion of event.

*Payment of commissions as set forth above is hereby WAIVED for term of this agreement (March 1, 2023 through December 31, 2023). Client (City of Marshall) hereby reserves the right to collect a commission from Hitching Post in subsequent years should this agreement be extended for additional years of service.

Attachment #2

Summary of Responsibilities		Hitching Post	Client
Inventory	food, beverages, detergent, paper supplies, postage	X	
Services Equipment			
Fabrics	linens, uniforms	X	
Expendable Equipment	pots, pans, bowls, utensils, measuring/mixing tools, knife sharpening tools	X	
Non-Expendable Equipment	cash drawers & computer processing systems, dining furniture, food-production appliances, kiosks & server/display units, maintenance & sanitation supplies/appliances	X	
Operation Facilities	food production & storage space per Hitching Post specifications		X
Utilities	telephone hardware, lines & service, 220w electric current, lighting fixtures, gas & fuel, HVAC, hot & cold water, steam, refuse collection & removal, facilities sewerage disposal, extermination service, fire safety systems		X
Cleaning	Concession Trailer	X	
Operation & Dining Facilities	windows, ceilings, fans & lighting fixtures, ventilation fittings & interiors, grease traps, restrooms, carpeted areas, walls above 6 ft.		X
	exterior of equipment in food storage & preparation areas, walls up to 6 ft., floors, exterior of hoods & vents, dining furniture	X	
Maintenance	Client Premises, Operation Facilities, Services Equipment, Utilities, Offices		X
Services Staff	adequate staff of qualified Employees & agents to perform Services & related administration	X	