

Food Services Agreement – Amateur Sports Complex

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).

1. **Definitions.** In addition to terms defined elsewhere herein, the term Program means the attached Services Program. Effective Date shall mean the date as set forth on the signature page in which The Hitching Post begins performance of Services. Obligations mean 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. Equipment, fixture, and inventory have the meanings assigned to them in Article 9.
2. **Client Services.** The Hitching Post shall provide services to Client as follows (collectively 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.

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

Client shall provide to Hitching Post its mobile concession trailer for primary use by Hitching Post to provide food and beverage services at the premises. Said mobile concession trailer shall primarily be located at said premises and Hitching Post staff and personnel shall be responsible for setup of the trailer for providing food and beverage services at the premises. Hitching Post staff and personnel shall be responsible for securing the trailer at the conclusion of each event.

2.2 **Sanitation Services.** The Hitching Post shall be responsible for such 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 The Hitching Post in food storage and preparation areas; and

2.2.3 Collecting and properly packing dry refuse, recyclables and compost from such areas and placing 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.** The Hitching Post shall have the right to operate and provide such other services and product sales as agreed from time to time by the parties.

2.4 **Quality of Services.** The Hitching Post shall supply Services of good quality, on a timely basis, and with appropriate products in accordance with the terms hereunder.

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

2.6 **Staff for Services.** The Hitching Post shall keep and maintain an adequate staff of qualified individuals for the performance of Services and related administration.

2.7 **Inventory of Product of Food and Beverages for Services.** The Hitching Post shall provide or cause the provision of:

2.7.1 An adequate and appropriate food and beverage inventory sufficient for the performance of Services; and

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 Hitching Post. Hitching Post shall coordinate with Viking Coca-Cola for the purchase and payment of product and shall be entitled to subsequent soft drink beverage rebates, if any.

2.8 **Independent Contractor.** The Hitching Post shall perform such 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.

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 The 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 reasonably necessary to sufficiently perform the Services conducted at Client's request (collectively Services Equipment). Equipment to include, but 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 keep clean all walls above six (6) feet from floor level, windows, ceilings, lighting, ventilation fittings and interiors, and grease traps; and

3.4.2 The Premises, Services Equipment, Offices, and Utilities shall be serviced and kept by Client in a good workmanlike manner and in a 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 to operate, the Hitching Post shall notify Client and have the right to effect repairs or replacements at the expense of the Client, if the Client fails to do so within ten (10) days after five (5) days' notice by the Hitching Post to Client of said Equipment deficiency. However, Client shall, if applicable, pay the cost of all paper products used during such fifteen (15) day period or longer that the Services Equipment is inoperable.

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

4.1 **Financial Terms.** The Hitching Post shall be responsible for payment and for providing services at the scheduled events, all as set forth on **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 8, 2022 through December 31, 2022.**

5.1 **Permitted Termination.** Notwithstanding the foregoing, this Agreement may be terminated:
5.1.1 Effective upon sixty (60) days' prior notice by either party to the other; 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 Obligations then accrued.

5.3 **Equipment Return.** Promptly following termination of this Agreement, the 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, over-use, or negligent misuse.

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; etc.** 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.** The 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. The Hitching Post shall pay when due all license and permit fees in connection with Services.

6.3 **Compliance with Laws.** The Hitching Post and Client shall comply with all federal, state, and local laws applicable to their Obligations. The 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 during MAYBA, MAFSA, or Marshall Community Services sponsored events and alcohol shall not be provided for sale or served during 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.

The 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. The 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 (except to the extent caused by the negligent act or omission or breach of the other party, its employees, or agents).

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 SPECIAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY DAMAGES CONSTITUTING LOST PROFITS, SUFFERED BY EITHER PARTY UNDER THIS AGREEMENT.

8. Insurance.

8.1 **The Hitching Post.** The Hitching Post shall obtain and maintain insurance for the following risks in such amounts under such policies as appropriate: general liability (including contractual, dram shop and products-completed operations liability) in an amount not less than One Million Dollars (\$1,000,000.00) as required by applicable statute.

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.

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 Client agrees to implement forthwith upon request from the Hitching Post, at its own expense, the changes to the Client Systems that the Hitching Post reasonably requests and believes 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.

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: **Scott VanDerMillen**
Title: **Director, Community Services**

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

By: Jordan Handeland
(Authorized Officer or Principal Signature)

Printed Name: **Jordan Handeland**

Title: Manager

Signature Date: 3/25/22

The Hitching Post Notice To:

Name: Hitching Post of Marshall, Inc., 1104 East Main St #2505, Marshall, MN.

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: <ul style="list-style-type: none">(a) All School District, MAYBA and MAFSA sponsored events at the "Premises"(b) All Client (City of Marshall) sponsored events at the "Premises"(no sponsored events during the term of this agreement, 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 8, 2022 through December 31, 2022). 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. Compensation for the use of said mobile concession trailer is also WAIVED during the term of the agreement apart from events not identified Services Program: Payment Provisions; (a) and (b).

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	