

## Food Services Agreement

This **Food Services Agreement**, as from time to time amended (Agreement), is entered into between the City of Marshall (Client), and Marshall Area Hockey Association, a Minnesota non-profit corporation (MAHA), who, in consideration of the promises contained herein, agree as follows:

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 MAHA 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.** MAHA shall provide services to Client as follows (collectively Services):

2.1 **Food Services; Sales.** Client grants to MAHA the right to control and operate all food and beverage services and sales for the employees, guests, and invitees at the Schwan Regional Amateur Sports Center, also known as Red Baron Arena and Expo, 1651 Victory Drive, Marshall, MN 56258, (collectively Food Services) at the sites and facilities set forth on the signature page (collectively Premises) at such prices and times of operation as set forth in the Program attached hereto.

The opportunity to manage and operate Food Services at the Premises is subject to and contingent upon compliance with food product lines as identified in the Master Sponsorship Agreement between City and Schwan's Shared Services, LLC and further subject to procurement of Broad Line food products from Reinhart Foodservice, LLC as identified in the Sponsorship Agreement between City and Reinhart Foodservices.

Soft drink and candy and snack vending services at the Premises are granted to Viking Coca-Cola pursuant to Sponsorship Agreement. Copies of the referenced Sponsorship Agreements are available for inspection at the office of the Community Services Director.

2.2 **Sanitation Services.** MAHA 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, and other equipment and fixtures used by MAHA 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.

2.3 **Other Services.** MAHA 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.** MAHA 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.** MAHA shall keep and maintain an adequate staff of qualified individuals for the performance of Services and related administration.

2.7 **Inventory for Services.** MAHA shall provide or cause the provision of:

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

2.7.2 The timely and full payment for such inventory.

2.8 **Independent Contractor.** MAHA 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.

2.9 **Test Kitchen.** Client grants to Reinhart Food Service, LLC, the Broad Line food products provider at the facility, the right to use said facility for "test kitchen" purposes. Said "test kitchen" use shall not interfere with or interrupt scheduled use of the kitchen facilities by MAHA. Reinhart Food Service, LLC shall coordinate with MAHA for kitchen use so as not to interrupt any scheduled event by MAHA.

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 MAHA use, supplied per such specifications prepared by MAHA as reasonably necessary to perform the Services;

3.2 **Equipment.** Equipment in the food preparation, storage, dining, and serving areas for exclusive MAHA use as identified in the Program or as reasonably necessary to sufficiently perform the Services conducted at Client's request (collectively Services Equipment);

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, MAHA 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 MAHA 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.** MAHA 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 October 01, 2018 through September 30, 2019.

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, MAHA 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.** MAHA shall pay when due all federal, state, local, and other governmental taxes or assessments in connection with the operation and performance of the Services. MAHA shall pay when due all license and permit fees in connection with Services. Client shall pay when due all federal, state, local, and other governmental sales, use, property taxes, or assessments in connection with the Premises, Services Equipment, Offices, Utilities, and payment of Client Obligations.

6.3 **Compliance with Laws.** MAHA and Client shall comply with all federal, state, and local laws applicable to their Obligations. MAHA 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 (MAHA and School District Sponsored Events).** MAHA shall not provide for sale nor serve alcohol during MAHA 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 MAHA on the Premises. Client shall not operate, remove, or tamper with such equipment, inventory, or other property.

MAHA 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. MAHA shall not operate, remove, or tamper with such equipment, inventory, or other property.

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 **MAHA.** MAHA shall obtain and maintain insurance for the following risks in such amounts under such policies as appropriate: general liability (including contractual 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 MAHA 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.

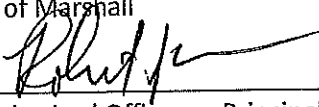
11.5 **Information Technology Security.** In connection with the services being provided hereunder, MAHA may need to operate certain information technology systems not owned by the Client (Non-Client Systems), which may need to interface with or connect to Client's networks, internet access, or information technology systems (Client Systems). MAHA 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 MAHA serves as the merchant-of-record for any credit or debit card transactions in connection with any of the services provided hereunder, then MAHA 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 MAHA, at its own expense, the changes to the Client Systems that MAHA reasonably requests and believes are necessary or prudent to ensure MAHA' 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 **Loss Prevention.** MAHA will have the right at MAHA' expense to implement security measures and security systems as it deems necessary, including, but not limited to, employing a loss prevention manager on-site at the Premises. Client agrees to cooperate with MAHA in connection with MAHA' implementation of such systems, including, but not limited to, providing permission for MAHA to install equipment related to such systems at the Client's Premises.

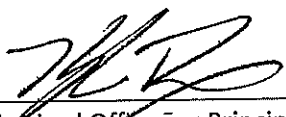
Effective Date: 10-1-18

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: 9-11-18

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

Premises Location(s): Red Baron Arena and Expo, 1651 Victory Drive, Marshall, MN 56258

Client Notice To:


Name: **Scott VanDerMillen**

Title: **Director, Community Services**

MAHA

Address: PO Box 173

Marshall, MN 56258

By: 

Printed Name: Scott Mauch

Title: President

Signature Date: 9-14-18

MAHA Notice To:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Facsimile No.: \_\_\_\_\_

**Attachment #1**

**Services Program: Payment Provisions**

|                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|--------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Commissions        | MAHA shall pay commissions to the Client within thirty (30) days from the fiscal close of the preceding month in an amount equal to 5% 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 MAHA.                                                                                                                                                                                                                                                                                                                    |
| Hours of Operation | Correspond to customary Client operating hours and days of operation, or as otherwise agreed.<br>Food services to be provided by MAHA at the following events:<br>(a) All MAHA sponsored events at the "Premises"<br>(b) All Public School sponsored events at the "Premises"<br>(c) All Client (City of Marshall) sponsored events at the "Premises" (not to exceed 10 client sponsored events during the term of this agreement, unless specifically agreed to by MAHA). |

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 **this second** term of this agreement (October **01, 2018** through September **30, 2019**). Client (City of Marshall) hereby reserves the right to collect a commission from MAHA in subsequent years should this agreement be extended for additional years of service.



**Attachment #2**

Summary of Responsibilities

MAHA

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      | point-of-sale units, 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 MAHA 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                      |                                                                                                                                                                                                                                 |   |   |
| 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 |   |