

**ALCOHOL SALES AGREEMENT FOR THE
MIDLAND COUNTY HORSESHOE
MIDLAND, TEXAS**

This alcohol sales agreement ("Agreement") is made and entered into this _____ day of _____, 20____, between Midland County (the "County"), acting by and through its duly authorized Director ("the DIRECTOR"), and _____ (the "Vendor"), and is for the purpose of establishing and maintaining high standards for alcohol sales at the Midland County Horseshoe (the "MCH").

1. **Grant.** In consideration of the covenants and subject to the terms and conditions contained in this Agreement, the Owner grants to the Vendor the non-exclusive right to sell alcohol at the MCH.

2. **Term.** The term of this Agreement is for the period set forth below (*check one*):

_____ A term of months, beginning on _____, and ending on _____, unless sooner terminated by either party upon thirty (30) days written notice to the other party;

OR

_____ A **one-time-only** event _____ (*name of event*) on _____ (*date of event*).

3. **List of Approved Alcohol Vendors.** The DIRECTOR of Facilities or the DIRECTOR'S designee shall maintain a list of alcohol vendors who have executed an alcohol sales agreement with the County for providing alcohol vending service at the MCH. The County shall provide this list of alcohol vendors to a person leasing all or part of the MCH (a "Client") for an event for which alcohol vending services are required.

4. Each alcohol vendor must contract directly with a Client. No goods or services will be provided to the County under this Agreement.

6. **Deposit.** At all times, the Vendor shall maintain a deposit of **\$500.00** with the County. The deposit is held by the County without liability for interest and as security for the performance by the Vendor of its covenants under this Agreement. The deposit is not considered as a measure of the County's damages upon the occurrence of any breach by the Vendor of its covenants under this Agreement. The County may commingle the deposit with the County's other funds. The County may, from time to time, without prejudice to any other remedy, use the deposit to satisfy any delinquent fee or any other covenant of the Vendor under this Agreement. In this event, Caterer must bring the balance of the deposit back up to \$500.00 before being allowed to work at the MCH again. Upon termination of this Agreement with satisfaction of all covenants of this Agreement, and if all fees have been paid, the County will refund the deposit to the Vendor.

7. **Duties of Vendor.** For each event, unless a written agreement is made between the County and the Vendor to do otherwise, the Vendor shall:

- Provide all necessary equipment and furnishings to build a temporary booth from which the Vendor will operate.
- Provide TABC Approved Permit 2 days before the event to MCH staff.

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- Post TABC Permit on Bar during event per TABC requirements.
- Promptly remove from the MCH all alcoholic beverages at the end of the event.
- Remove from the MCH all equipment and supplies related to the sale of alcoholic beverages at the end of the event.
- Clean up all trash and debris. The County is not responsible for providing tables, chairs, trash cans, bags, table coverings, or any other items related to the sale of alcoholic beverages.

8. Miscellaneous.

- The Vendor may not make any improvements, additions, or alterations to the MCH.
- No signs, posters or other similar materials used for advertising purposes may be placed within the MCH and no solicitation may be made within the MCH without the prior written consent of the DIRECTOR or the DIRECTOR designee.
- The County has no responsibility to attempt to resolve disputes between the Vendor and a Client.
- The Vendor may not delegate its duties under this Agreement.

9. Inspection. At the conclusion of an event, a representative of the County shall inspect the MCH to assure that the Vendor has performed its duties as prescribed in Section 6. If the Vendor has not performed those duties to the reasonable satisfaction of the representative, the Vendor must further perform those duties to the reasonable satisfaction of the representative, or the County shall deduct from the Vendor’s deposit the reasonable cost of so performing those duties.

10. Insurance. The Vendor shall at all times during the term of this Agreement maintain and keep in full force and effect insurance in the following types and minimum amounts with companies authorized to do business in the State of Texas:

Commercial General Liability (including Contractual Liability):

- Personal Injury: \$1,000,000.00 per person
\$1,000,000.00 per occurrence
- Property Damage: \$500,000.00 per occurrence
- Liquor Liability: \$1,000,000.00 per occurrence
- General Aggregate: \$2,000,000.00 per occurrence

The Commercial General Liability shall be on a per project aggregate, including completed operations, and shall be on an occurrence basis.

The Business Automobile Liability insurance provided by the Vendor shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-Owner vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of \$250,000.00 covering any vehicle used for the execution of the work that is the subject of this Agreement.

The Worker’s Compensation coverage provided by the Vendor shall inure to the benefit of employees injured during the course and scope of their employment by the Vendor pursuant to this Agreement.

All insurance required pursuant to this Agreement shall provide for a waiver of subrogation in favor of the County and the City of Midland, Texas (the “City”). All insurance required pursuant to this Agreement, except for Worker’s Compensation Insurance, shall name the County and the City as additional insureds on a claims occurred basis. The County shall be provided the notice by

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the Vendor's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage.

The parties agree that, prior to the execution of this Agreement, the Vendor shall provide one or more certificates of insurance specifically stating that these requirements have been met and subject to the approval of the County. The County and the City shall not be required to provide any insurance whatsoever pursuant to this Agreement.

The Vendor certifies that the certificate of insurance provided as required herein complies with the requirements of Senate Bill 425, passed during the 82nd regular session of the Texas Legislature, and effective January 1, 2012.

11. Default and Remedies. If the Vendor breaches any of the covenants set forth in this Agreement, the County shall notify the Vendor in writing of the breach. If the Vendor fails to remedy the breach within ten (10) days of its receipt of notice of the breach from the County, the County may terminate this Agreement. These remedies are in addition to any other remedies that the County has at law or in equity as a result of the Vendor's breach.

12. Compliance with Laws and Rules. The Vendor shall comply with all standards, ordinances, laws, and regulations, including but not limited to those pertaining to alcoholic beverages, employment, and non-discrimination. Additionally, the Vendor shall comply with any rule or request set out by the County, including but not limited to the prohibition of sales of certain types of alcoholic beverages. The County, in the County's sole discretion, may at any time prohibit the sale of certain types of alcoholic beverages within all or any portion of the MCH. The Vendor shall comply with all applicable laws concerning employment and non-discrimination. The Vendor is responsible for the conduct of its agents and employees. The Vendor is prohibited from serving any beverages other than alcoholic beverages.

13. INDEMNITY. THE VENDOR WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE COUNTY AND THE CITY AND ALL OF THE COUNTY'S AND THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, INCLUDING ACCIDENTAL DEATH, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF THE VENDOR, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT, AND THE VENDOR WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST THE COUNTY OR THE CITY OR ANY OF THEIR OFFICERS, AGENTS, OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

THE VENDOR SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE OWNER AND THE CITY AND ALL OF THE COUNTY'S AND THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, INCLUDING ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING

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ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF THE OWNER OR THE CITY, THE COUNTY'S OR THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH THE NEGLIGENCE OF THE VENDOR OR THE VENDOR'S EMPLOYEES, AGENTS, OR SUBCONTRACTORS, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT, AND THE VENDOR WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST THE COUNTY OR THE CITY OR ANY OF THEIR OFFICERS, AGENTS, OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

14. **Notices.** Any notice or demand that shall be made regarding this Agreement, shall be made in writing and delivered either in person or by certified or registered mail. Notice by mail shall be complete upon deposit of the paper, postage prepaid, in a post office or official depository under the care and custody of the United States Postal Service addressed as follows:

If to the Owner:

Horseshoe Director
Midland County Horseshoe
P. O. Box 1230
Midland, Texas 79702

AND

Midland County Judge
Midland County Courthouse
500 N. Loraine, Suite 1100
Midland, TX 79701

If to the Vendor:

The parties hereto may change the above designated addresses by giving notice pursuant to the terms of this Section.

15. RELEASE. NOTWITHSTANDING ANY OTHER PROVISIONS, THE VENDOR HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES THE COUNTY, THE CITY, THE COUNTY'S AND THE CITY'S EMPLOYEES, AND THE COUNTY'S AND THE CITY'S OFFICERS, FROM ANY AND ALL DEMANDS,

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CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH THE VENDOR HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR THE COUNTY'S OR THE CITY'S NEGLIGENCE.

16. Governing Law & Venue. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have been performed in Midland County, Texas. This Agreement shall be construed under the laws of the State of Texas. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties arising from or relating in any way to the subject matter of this Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.

17. Notice of Alleged Breach; Prerequisites. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, the Vendor or his legal representative, shall give the Vice President/General Director, notice in writing (consisting of one original and seven copies of notice attached to a copy of this agreement) of such damages, duly verified, within one hundred and twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Vendor will settle, the physical and mailing addresses of the Vendor at the time and date the claim was presented and the physical and mailing addresses of the Vendor for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Vendor relies to establish its claim; and a failure to so notify the Vice President/General Director within the time and manner provided herein shall exonerate, excuse and except the County from any liability whatsoever. The County is under no obligation to provide notice to the Vendor that the Vendor's notice is insufficient. The County reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

18. Termination at Will. The County may terminate this Agreement at will for no or any reason upon giving thirty (30) days written notice to the Vendor. The parties to this Agreement understand and agree that it is in the County's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the County. The Vendor has no expectation and has received no guarantees that this Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work under the Agreement shall be suspended upon termination of Agreement becoming effective.

19. Independent Contractor. It is expressly understood and agreed that the Vendor shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the County; that the Vendor shall have exclusive control of and the

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exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between the County and the Vendor, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between the County and the Vendor. No person performing any of the work and services described hereunder by the Vendor shall be considered an officer, agent, servant or employee of the County. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. The Vendor shall be an independent contractor under this Agreement and shall assume all of the rights, obligations and liabilities, applicable to it as such independent contractor hereunder. The County does not have the power to direct the order in which the work is done. The County shall not have the right to control the means, methods or details of the Vendor's work. The Vendor shall assume exclusive responsibility for the work. The Vendor is entirely free to do the work in its own way.

20. ATTORNEY'S FEES. BY EXECUTING THIS AGREEMENT, THE VENDOR AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE COUNTY AND THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE VENDOR SPECIFICALLY AGREES THAT IF THE VENDOR BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, THE VENDOR AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH THE VENDOR MIGHT OTHERWISE BE ENTITLED.

THE VENDOR AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. THE VENDOR ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE AGREEMENT. THE VENDOR FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE OWNER AND THE VENDOR. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

THE VENDOR SHALL PAY TO THE OWNER ALL REASONABLE ATTORNEY'S FEES, COLLECTION COSTS, AND OTHER EXPENSES INCURRED BY THE OWNER IN ENFORCING THIS AGREEMENT.

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THE VENDOR AND THE OWNER ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

21. **Assignment.** The Vendor shall not, either directly or indirectly, assign all or any part of this Agreement or any interest, right or privilege herein, without the prior written consent of the Vice President/General Director or the DIRECTOR designee. The issue of whether or not to grant consent to an assignment is in the sole discretion of the DIRECTOR or the DIRECTOR designee.

22. **Third-Party Beneficiary.** The County's approval of this Agreement does not create a third party beneficiary. There is no third party beneficiary to this Agreement. No person or entity who is not a party to this Agreement shall have any third party beneficiary or other rights hereunder.

23. **Entire Agreement and Binding Effect.** This Agreement constitutes the entire agreement between the County and the Vendor, and supersedes and cancels any and all prior agreements and arrangements as to the matters covered herein or relating hereto. No prior written or prior or contemporaneous oral promises or representations shall be binding. The provisions of this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties.

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This Agreement may not be amended, supplemented or modified except by an instrument in writing signed by both parties to this Agreement. Nothing in this Agreement is intended to confer on any person other than the parties to this Agreement any rights or remedies under or by reason of this Agreement.

EXECUTED this _____ day of _____, 20____.

MIDLAND COUNTY, TEXAS

By _____
Terry Johnson
Midland County Judge

Vendor: _____

By: _____
Printed Name: _____
Title: _____
Phone No.: _____

THE STATE OF TEXAS §
§
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared **Terry Johnson**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of the **Midland County**, in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 20____.

Notary Public, State of Texas

THE STATE OF TEXAS §
§
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he or she executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of _____, in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 20____.

Notary Public, State of Texas

Initial: _____