

**CATERING AGREEMENT FOR THE
MIDLAND COUNTY HORSESHOE
MIDLAND, TEXAS**

This Catering Agreement (“Agreement”) is made and entered into this _____ day of _____, 20____, between Midland County, Texas (the “County”), acting by and through its duly authorized Director (“the Director”), and _____ (the “Caterer”), and is for the purpose of establishing and maintaining high standards for food service 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 County grants to the Caterer the right set forth below: The non-exclusive right to cater food for events at the MCH.

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

_____ A term of **24** months, beginning on _____, and ending on _____, unless sooner terminated by either party upon ten (10) days written notice to the other party;

OR

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

3. **List of Approved Caterers.** The Director or the Director designee shall maintain a list of caterers who have executed a catering agreement with the County for providing food service at the MCH. The County shall provide this list of caterers to a person leasing all or part of the MCH (a “Client”) for an event for which catering services are required. An up-to-date list of caterers is available on the Midland County Horseshoe website: midlandhorseshoe.com. Each caterer must contract directly with a Client. No goods or services will be provided to the County under this Agreement.

4. Catering Fees.

- No food service fee will be charged to the caterer or lessee.
- The Caterer will pay MCH a fee of \$150 per day for access to and use of the kitchen facility at MCH. The Caterer will be responsible for scheduling the use of the MCH kitchen with the MCH staff.
- The Caterer will pay MCH a fee of \$25 per day for access to each of MCH’s warming ovens. The Caterer will be responsible for scheduling the use of the warming ovens with the MCH staff.

5. **Deposit.** At all times, the Caterer shall maintain a deposit of **\$500.00** with the MCH. The deposit is held by Midland County without liability for interest and as security for the performance by the Caterer 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 Caterer 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 Caterer under this Agreement. In this event, Caterer

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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 Caterer.

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

- Furnish all tabletop items necessary to serve the meal, including plates, flatware, glasses, salt and pepper shakers, napkins, and condiments.
- Clean all areas of the kitchen, including the grills, stove, ovens (portable and stationary), sinks, and all other equipment in the kitchen that was used by the Caterer.
- Sweep and mop the kitchen floors.
- Empty all garbage cans into the proper receptacles.
- Wash all dishes.
- Clean off all tables. (MCH staff does not bus tables.)
- Remove all trash.
- Remove all serving equipment from the MCH.

7. Miscellaneous.

- The Caterer 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 Caterer and a Client.
- The Caterer may not delegate its duties under this Agreement.

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

9. Insurance. The Caterer 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

Business Automobile Liability: \$250,000.00 combined single limit -

Personal Injury and Property Damage

Worker's Compensation: Statutory limits

Employer's Liability: \$500,000.00 per accident or 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 Caterer shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-Owner vehicles, and

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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 Caterer shall inure to the benefit of employees injured during the course and scope of their employment by the Caterer 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 County of Midland, Texas (the "County"). All insurance required pursuant to this Agreement, except for Worker's Compensation Insurance, shall name Midland County as an additional insured on a claims occurred basis. The County shall be provided the notice by the Caterer's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage.

The Caterer shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this Agreement to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts specified herein. All contractors, subcontractors, and sub-subcontractors shall obtain insurance policies that provide blanket waivers of subrogation in favor of Midland County and policies that name Midland County as an additional insured on a claims occurred basis (except Worker's Compensation Insurance). The parties agree that, prior to the execution of this Agreement, the Caterer 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 shall not be required to provide any insurance whatsoever pursuant to this Agreement. The Caterer 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.

10. Default and Remedies. If the Caterer breaches any of the covenants set forth in this Agreement, the County shall notify the Caterer in writing of the breach. If the Caterer 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 and remove the Caterer's name from the Midland County Horseshoe website. These remedies are in addition to any other remedies that the County has at law or in equity as a result of the Caterer's breach.

11. Compliance with Laws. The Caterer shall comply with all standards, ordinances, laws, and regulations. The Caterer shall comply with all applicable laws concerning employment and non-discrimination. The Caterer is responsible for the conduct of its agents and employees. The Caterer may not serve any alcoholic beverage.

12. INDEMNITY. THE CATERER WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE COUNTY AND ALL OF THE COUNTY'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 CATERER, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE

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PERFORMANCE OF THIS AGREEMENT, AND THE CATERER WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST THE COUNTY OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

THE CATERER SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE COUNTY AND ALL OF THE COUNTY'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 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 COUNTY, OR THE COUNTY'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 CATERER OR THE CATERER'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 CATERER WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST THE COUNTY OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

13. **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 Caterer:

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

14. RELEASE. NOTWITHSTANDING ANY OTHER PROVISIONS, THE CATERER HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES THE COUNTY, AND THE COUNTY'S EMPLOYEES, AND THE COUNTY'S OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH THE CATERER 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 NEGLIGENCE.

15. 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.

16. 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 Caterer or his legal representative, shall give the 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 Caterer will settle, the physical and mailing addresses of the Caterer at the time and date the claim was presented and the physical and mailing addresses of the Caterer for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Caterer relies to establish its claim; and a failure to so notify the 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 Caterer that the Caterer'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.

17. Termination at Will. The County may terminate this Agreement at will for no or any reason upon giving ten (10) days written notice to the Caterer. 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 Caterer has no expectation and has received no guarantees that this Agreement will not be terminated before the end of the Agreement term. The

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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.

18. Independent Contractor. It is expressly understood and agreed that the Caterer 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 Caterer shall have exclusive control of and the 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 Caterer, 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 Caterer. No person performing any of the work and services described hereunder by the Caterer 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 Caterer 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 Caterer’s work. The Caterer shall assume exclusive responsibility for the work. The Caterer is entirely free to do the work in its own way.

19. ATTORNEY’S FEES. BY EXECUTING THIS AGREEMENT, THE CATERER 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 COUNTY, 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 CATERER SPECIFICALLY AGREES THAT IF THE CATERER 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 CATERER AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY’S FEES TO WHICH THE CATERER MIGHT OTHERWISE BE ENTITLED. THE CATERER AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. THE CATERER ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE AGREEMENT. THE CATERER FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE COUNTY AND THE CATERER. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF

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SOVEREIGN IMMUNITY. THE CATERER SHALL PAY TO THE COUNTY ALL REASONABLE ATTORNEY'S FEES, COLLECTION COSTS, AND OTHER EXPENSES INCURRED BY THE CHAMBER IN ENFORCING THIS AGREEMENT. THE CATERER AND THE COUNTY ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

20. **Assignment.** The Caterer 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 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.

21. **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.

22. **Entire Agreement and Binding Effect.** This Agreement constitutes the entire agreement between the County and the Caterer, 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.: _____

Initial: _____