



FACILITIES USE AGREEMENT OFF-CAMPUS FACILITIES ONLY

THIS FACILITIES USE AGREEMENT is between the **City of Marshall, Minnesota**, a Minnesota municipal corporation (“Licensor”) and the State of Minnesota, by and through the Board of Trustees of the Minnesota State Colleges and Universities, on behalf of **Southwest Minnesota State University** (“Minnesota State”).

1. PERMITTED USE.

Licensor agrees to allow Minnesota State use of the following (hereinafter defined as the “Space”):

- a. Location: **Legion Field and Other Facilities listed in Exhibit A.**
- b. Date and Time: **Baseball Season and Other Events listed in Exhibit C.**
- c. Description of Activity or Event: **Baseball Games and Other Events Listed in Exhibit C.**

2. FEE.

For its use of the Space, Minnesota State agrees to pay to Licensor a fee of **Three Thousand and Zero Dollars and zero cents (\$3,000.00) per year**, which shall be payable in arrears within thirty (30) days of Minnesota State’s receipt of Licensor’s invoice, in the amount of \$3,000.00. Prepayment by Minnesota State is prohibited by Minnesota Statute. The total for the length of the contract period is \$12,000.

Payment shall be made to the Licensor’s Fiscal Agent as follows:

[Insert Name]
[Insert Title]
344 W Main Street
Marshall, MN 56258

3. TERM OF AGREEMENT; CANCELLATION.

This agreement shall be effective as of **January 1, 2026**, or the date when the final required signature is obtained by Minnesota State and shall remain in effect until **June 30, 2029**. This agreement may be canceled by either party at any time, for any reason, upon thirty (30) days written notice to the other party. Licensor expressly understands and agrees that this agreement is not intended to and does not create a landlord-tenant relationship between the parties.

4. AUTHORIZED REPRESENTATIVES.

All notices, requests, and other communications between Licensor and Minnesota State that are required or that Licensor and Minnesota State elect to deliver shall be deemed sufficiently given or rendered if in writing and delivered to either party personally, by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, (return receipt required) and such notice shall also be sent as courtesy via email, and shall be sent to the respective

addressee at the respective address and email address set forth below or to such other address or email address as the parties may specify in writing addressed as follows:

a. Authorized agent for Minnesota State:

Name: Deb Kerkaert or their successor
Title: Vice President for Finance and Administration
Address: 1501 State Street, Marshall, MN 56358
Email: Deb.Kerkaert@SMSU.edu

b. Authorized agent for Licensor:

Name: Preston Stensrud or their successor
Title: Park and Recreation Superintendent
Address: 400 West College Drive, Marshall, MN 56358
Email: Preston.Stensrud@ci.marshall.mn.us

Notices shall be deemed effective upon the earlier of receipt when delivered, or if mailed, upon return receipt. A courtesy notice sent via email shall be delivered to the designated email address of said addressee.

5. MAINTENANCE OF SPACE.

Minnesota State agrees to maintain the Space in a reasonably clean and sanitary condition. Licensor shall provide the following:

- a. all utilities reasonably required to use the Space, including heating, cooling, and electricity;
- b. parking
- c. building security customarily provided by Licensor; Minnesota State may provide additional security at its own expense;
- d. janitorial services;
- e. any necessary keys or access codes;
- f. other: ***None***

Licensor shall allow Minnesota State to place temporary signs directing students and other attendees to its event.

Minnesota State shall, at the end of a permitted Activity or Event, remove all of its personal property and equipment from the Space or store in mutually agreed upon storage area, leaving the Space in as good condition that existed at the commencement of its permitted Activity or Event, normal wear and tear and damage from the use and elements excepted.

6. BUILDING HOURS.

The Space's hours are 06:00am – 10:30pm. Minnesota State may access the Space during the specified hours and as otherwise allowed by Licensor.

7. RULES AND REGULATIONS.

Minnesota State agrees to comply with the building rules and regulations attached as Exhibit C during its use of the Space which are not inconsistent with this agreement, Minnesota State board policies

and applicable laws. Minnesota State further agrees to comply with all of Licensor's policies and procedures related to use of the Space.

8. LIABILITY.

Each party shall be responsible for its own acts and omissions and the results thereof to the extent authorized by law and shall not be responsible for the other party's acts and omissions and the results thereof. The State's and Minnesota State's liability under this Agreement is governed by the Minnesota Tort Claims Act, Minnesota Statutes §3.736 and other applicable laws. Licensor's liability is subject to the limits of Minn. Stat. Chapter 466 and other applicable law.

9. INSURANCE.

Minnesota State maintains commercial general liability insurance in compliance with the Tort Claims limits set forth in Minn. Stat. §3.736, subd. 4, as amended. Minnesota State shall name Licensor as an additional insured upon request. Minnesota State shall maintain this coverage at its sole expense during its use of the Space. For purposes of this Agreement, Licensor shall maintain applicable insurance coverage consistent with the coverages outlined on Exhibit B, attached hereto and made a part of this Facilities Use Agreement. Licensor shall maintain coverages at its sole expense during the term of this Agreement. Minnesota State and Licensor shall provide each other with certificates of insurance, upon request. Coverage afforded under these policies shall not be cancelled without at least thirty (30) days advance written notice to the certificate holder. Each party, at its sole expense, shall provide and maintain workers' compensation insurance as such party may be required to obtain by law. Minnesota State is self-insured for workers' compensation purposes, and any such insurance extends only to employees of Minnesota State, not to students.

10. MINNESOTA DATA PRACTICES ACT.

Minnesota State and Licensor agree to comply with the terms of the Minnesota Data Practices Act, Minnesota Statutes, Chapter 13, with regard to data related to this Agreement. Parties agree to promptly respond to inquiries from the other party concerning data requests.

11. AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE.

Licensor is responsible for complying with the Americans with Disabilities Act, 42 U.S.C. section 12101, et seq., and any regulations promulgated pursuant to the Act.

12. AUDIT.

The books, records, documents, and accounting procedures and practices of the Licensor relevant to this contract shall be subject to examination by Minnesota State and the Legislative Auditor for a minimum of six (6) years from the end of the agreement.

13. ASSIGNMENT; AMENDMENTS.

Neither party shall assign nor transfer any rights or obligations under this agreement without the prior written consent of the other party. All amendments to this agreement shall be in writing and executed by a duly authorized representative of each party.

14. BREACH.

In the event that either party breaches this Agreement, the non-breaching party shall have the right to immediately terminate this Agreement, as well as any other remedy available at law or equity.

15. GOVERNING LAW and VENUE.

This Agreement, including all exhibits, amendments and supplements thereto, shall be governed by the laws of the State of Minnesota. Venue for all legal proceedings arising out of this contract, or breach thereof, shall be brought in Ramsey County or a federal court with competent jurisdiction.

16. ENTIRE AGREEMENT.

This Agreement (including all exhibits, as shown below intended by the parties as the final and binding expression of their agreement and as the complete and exclusive statement of its terms. This Agreement supersedes all prior negotiations, representations and agreements between the parties, whether oral or written, relating to the subject matter of this Agreement.

- » Agreement
- » EXHIBIT A, Facilities sketch/map identifying Locations
- » EXHIBIT B, General Insurance Requirements
- » EXHIBIT C, Rules (if applicable)
- » Any Subsequent amendments, addendum properly executed by the parties.

17. CLERICAL ERROR

Notwithstanding Clauses “Assignment, Amendments, and Entire Agreement” of this agreement, Minnesota State reserves the right to unilaterally fix clerical errors, defined as misspellings, minor grammatical or typographical mistakes or omissions, that do not have a substantive impact on the terms of this agreement without executing an amendment. Minnesota State must inform Licensor of clerical errors that have been fixed pursuant to this paragraph within a reasonable period of time.

18. SEVERABILITY.

The provisions of this Agreement are severable. If any portion is found to be invalid or unenforceable for any reason, such decision will not affect the remaining provisions of the Agreement.

The rest of this page intentionally left blank. Signature page to follow.

IN WITNESS WHEREOF, the parties have caused this contract to be duly executed intending to be bound thereby.

APPROVED:

1. LICENSOR: *City of Marshall, Minnesota*

Licensor certifies that the appropriate person(s) have executed the Agreement on behalf of Licensor as required by applicable articles, bylaws, resolutions, or ordinances.

By (authorized signature and printed name)
Title
Date

2. VERIFIED AS TO ENCUMBRANCE:

Employee certifies that funds have been encumbered as required by Minnesota Statutes §16A.15.

By (authorized signature and printed name)
Title Buyer
Date

3. MINNESOTA STATE COLLEGES AND UNIVERSITIES

Southwest Minnesota State University

By (authorized signature and printed name)
Title VP for Finance & Administration
Date

4. AS TO FORM AND EXECUTION:

By (authorized signature and printed name)
Title Director of Business Services
Date

EXHIBIT A

https://ci.marshall.mn.us/community_services/parks_and_recreation/parks_department/marshall_parks/legion_field.php

https://ci.marshall.mn.us/community_services/parks_and_recreation/parks_department/marshall_parks/softball_complex.php

<https://redbaronarena.com/map-directions/>

EXHIBIT B

General Insurance Requirements

1. Workers' Compensation Insurance

- a. Statutory Compensation Coverage
- b. Coverage B – Employers Liability with limits of not less than:
 - \$100,000 Bodily Injury by Disease per Employee
 - \$500,000 Bodily Injury by Disease Aggregate
 - \$100,000 Bodily Injury by Accident

2. General Liability Insurance

- a. Minimum Limits of Liability:
 - \$2,000,000 – Per Occurrence
 - \$2,000,000 – Annual Aggregate
 - \$2,000,000 – Annual Aggregate applying to Products/Completed Operations
- b. Coverages:
 - X Premises and Operations Bodily Injury and Property Damage
 - X Personal & Advertising Injury
 - X Blanket Contractual
 - X Products and Completed Operations
 - X Other; if applicable, please list _____
 - X State of Minnesota or Minnesota State Colleges and Universities named as Additional Insured

3. Additional Insurance Conditions

- a. Licensor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to the State of Minnesota with respect to any claim arising out of the Licensor's performance under this Agreement.
- b. Licensor agrees to notify the State of Minnesota within five (5) business days with a copy of the cancellation notice, unless Licensor's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to the State of Minnesota
- c. Licensor is responsible for payment of Agreement related insurance premiums and deductibles.
- d. If Licensor is self-insured, a Certification of Self-Insurance must be attached.
- e. Licensor's policy(ies) shall include legal defense fees in addition to the liability policy limits.
- f. Licensor shall obtain insurance policy(ies) from insurance company(ies) having an "AM Best" rating of A- (minus), Financial Size Category of VII or better, and authorized to do business in the State of Minnesota.
- g. An Umbrella or Excess Liability insurance policy may be used to supplement the Licensor's policy limits to satisfy the full policy limits required by the Agreement.

EXHIBIT C

- SMSU to utilize the City baseball field (Legion Field) for pre-season, in-season, and post-season games/practices. Scheduling will be completed through the SMSU Athletic staff and the Marshall Park and Recreation Staff.
- SMSU to utilize City Softball fields for one summer softball tournament per year.
- SMSU to utilize Red Baron for Wrestling Camp to be held each summer for approximately five days.
- Other Mutually Agreed-upon facility exchanges. If the City of Marshall or one of its divisions uses SMSU space, a general short-term lease agreement will be prepared.