

**Amended  
MEMORANDUM OF UNDERSTANDING BETWEEN**

**MARSHALL AMATEUR HOCKEY ASSOCIATION**

**AND**

**THE CITY OF MARSHALL**

THIS AGREEMENT, MADE this 15<sup>th</sup> day of November, 2021, by and between Marshall Amateur Hockey Association, (MAHA/Lessee) and the City of Marshall, a Minnesota municipal corporation, (Client/Lessor) as follows:

The parties hereto have agreed that this Memorandum of Understanding applies to all contractual obligations between the parties related to issues involving use and services at the Red Baron Arena and Expo located at 1651 Victory Drive, Marshall, Minnesota. And;

Whereas, the parties agree that the contractual obligations are set forth as follows, Part A. Ice Time Agreement and Part B. Food Services Agreement as follows:

A. Ice Time Agreement

**RECITALS**

1. City of Marshall, Lessor, is the owner and operator of the facility identified as the Red Baron™ Arena & Expo located at 1651 Victory Drive, Marshall, MN 56258; and
2. Marshall Amateur Hockey Association, Lessee, collectively provides competitive youth hockey opportunities for families in the Marshall, Minnesota area; and
3. Lessee, in the process of providing ice rink availability for practices, games and tournaments has identified the Red Baron™ Arena & Expo, hereinafter referred to as Facility, as a location for establishment of such events; and
4. Lessor has offered the Facility as an event location that would be made available to Lessee in the circumstances of hosting said practices, games and tournaments.

NOW, THEREFORE, in consideration of below listed ice rink rental fees and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

School Academic Year	Ice Rink Rental Fee	
<b>2021/2022</b>	<b>\$70.00/hourly for first 450 hours</b>	<b>\$50.00/hourly thereafter</b>
<b>2022/2023</b>	<b>\$70.00/hourly for first 450 hours</b>	<b>\$50.00/hourly thereafter</b>
<b>2023/2024</b>	<b>\$70.00/hourly for first 450 hours</b>	<b>\$50.00/hourly thereafter</b>
<b>2024/2025</b>	<b>\$70.00/hourly for first 450 hours</b>	<b>\$50.00/hourly thereafter</b>

Prior to the conclusion of the 2024/2025 academic year; the parties agree to discuss and negotiate a four (4) year extension of the lease agreement. The parties agree that the minimum rental rate for renegotiated terms shall be at a rate of \$70.00/hour for the first 450 hours and \$50.00/hour thereafter. The maximum rental rate for renegotiated terms shall be \$75.00/hour for the first 450 hours and \$55.00/hour thereafter:

- 2025/2026 – terms as renegotiated by the parties
- 2026/2027 – terms as renegotiated by the parties
- 2027/2028 – terms as renegotiated by the parties
- 2028/2029 – terms as renegotiated by the parties

Red Baron Arena & Expo (Facility), to provide physical facilities to support the personnel who are providing services for competitive youth hockey opportunities.

**A. DUTIES AND RESPONSIBILITIES**

The Lessor agrees to the following:

1. Provide facility located at: 1651 Victory Drive, Marshall, Minnesota 56258  
(Street) (City) (State) (Zip Code)
2. Provide support to access appropriate and necessary locker rooms and restroom facilities.
3. Provide access to facility/utility resources. The facility is equipped with the following (please check):

- Y Garbage containers
- Y Telephones (Y/N)
- Y Internet access with WI-FI
- N Fax machines (Y/N)
- Y Copy machine (Y/N)
- Y Handicap Accessible (Y/N)
- Y Adequate Parking Facilities (Y/N)
- Y Water Supply
- Y Restrooms (Y/N)

**B. TERM**

This Contract shall be effective on the 1<sup>st</sup> day of September, 2021 and shall terminate on the 31st day August 2029.

Rates become effective on September 1<sup>st</sup> of each year of the agreement.

**C. OTHER CONSIDERATIONS**

The parties agree to the following:

1. No modifications or changes will be made to the facility/property without the express written approval of the Lessor.
2. This agreement will be exclusive to the Lessee and may not be sublet to, or utilized by, any other private or public entity for the benefit of the agreed upon rates and services.
3. Normal wear and tear is considered to be the responsibility of the Lessor.
4. Expenses: Lessee shall be responsible for payment of ice rink rental fees to the Lessor. Lessor will invoice Lessee after every 30 days of usage and payments shall be made payable to the City of Marshall within 30 days of dated invoice. No ice rink rental fees will be assessed to Lessee for Lessee and/or Minnesota Hockey sponsored tournaments.
5. Lessor shall provide to Lessee, names and telephone numbers of Lessor's staff that may be contacted for Facility scheduling requests, to authorize and allow Lessee access to the Facility for its participants.
6. Lessee shall provide a current Certificate of Liability Insurance to Lessor on, or before, the expiration date of the existing certificate on file. Lessee to provide general liability insurance coverage in the amount of at least \$500,000 and to indemnify the City of Marshall and hold it harmless from any liability arising from the use of the City of Marshall property.
7. Lessee agrees to split the expenditure with the City of Marshall for the purchase of a Zamboni 552AC. Both parties will be responsible for one half of the purchase price, currently estimated to be \$64,477.50 for each party. Payment due on or before January 2, 2022.

**D. NOTICE AND CORRESPONDENCE**

All notices and correspondence, which may be necessary or proper for either party, shall be addressed as follows:

**TO LESSEE:**

Marshall Amateur Hockey Association  
PO Box 173 - Marshall, MN 56258  
Attention: Josh Johnson, President

**TO THE LESSOR:**

City of Marshall  
Attention: Director of Community Services  
344 W. Main Street - Marshall, MN 56258

**E. INTERPRETATION**

*This agreement shall be interpreted according to the laws of the State of Minnesota, regardless of its place of execution. Any actions, suits, or claims that may arise pursuant to this agreement shall be brought in a court of competent jurisdiction in the State of Minnesota.*

*This document represents the entire Agreement between the parties. Any amendments shall be in writing and agreed upon by both parties. IN WITNESS WHEREOF, the parties have caused this instrument to be executed as of the date and year first above written.*

## B. 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. **MAHA 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 sponsorship agreement, broadline food products identified in sponsorship agreement between the City of Marshall and present and/or future broadline food product line sponsorship agreement and the soft drink, candy and snack vending services at the premises pursuant to sponsorship agreement between the City of Marshall and the existing sponsor. Copies of referenced sponsorship agreements presently existing and in future will be made available for inspection to MAHA at the office of the Community Services Director for the City of Marshall. MAHA shall honor all sponsorship contracts and remit payment to authorized vendors within 30 days of receipt of invoice.

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 food and beverage 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.

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.** All equipment presently located at premises, used for food preparation, storage, dining and serving is hereby granted to MAHA for MAHA's exclusive use for the term of this agreement. MAHA shall solely be responsible for maintenance, upkeep, and replacement of food preparation equipment during the term of this agreement.

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.

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

4.1 **Financial Terms and Hours of Operation.** MAHA shall be responsible for maintenance, upkeep and replacement of kitchen equipment used in food preparation, storage, dining and serving. Payment for equipment maintenance, upkeep and replacement shall be net fifteen (15) days of billing statement date via MAHA check or electronic fund transfer to the account and banking institution designated by MAHA.

4.2 Hours of Operation.

Correspond to customary Client operating hours and days of operation, or as otherwise agreed. Concession services to be provided by MAHA at the following events:

- (a) All MAHA sponsored events at the "Premises"
- (b) All Public-School sponsored events the "Premises"
- (c) All Client (City of Marshall) sponsored events at the "Premises" (not to exceed 12 Client sponsored events per year 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.

5. **Agreement Term.** Unless sooner terminated as provided in this section, the term of this Agreement shall be October 1, 2021 through August 31, 2029

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 (either by expirations of this agreement or permitted termination), 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 smallwares 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 and Services Equipment. 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.

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'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.

**11.6 Loss Prevention.** MAHA will have the right at MAHA's 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's implementation of such systems, including, but not limited to, providing permission for MAHA to install related to such systems at the Client's Premises.

FOR THE LESSOR: CITY OF MARSHALL

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By: Robert J. Byrnes  
Its: Mayor

Date: \_\_\_\_\_

ATTEST:

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By: Kyle Box  
Its: City Clerk

FOR LESSEE: MARSHALL AMATEUR HOCKEY ASSOCIATION



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Josh Johnson  
Its: President

Date: 11-15-21

**Attachment #1**

Summary of Responsibilities

MAHA      Client

Inventory	food, beverages, detergent, paper supplies, postage	X	
Services Equipment	food preparation, storage, dining, serving	X	
Fabrics	linens, uniforms	X	
Smallware's as of the Effective Date	china, flatware, glassware		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	
Smallware's Post Effective Date	china, flatware, glassware		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	equipment and supplies	X	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, , Utilities, Offices		X
Services Staff	adequate staff of qualified Employees & agents to perform Services & related administration	X	