

FESTIVAL SERVICES CONTRACT

This Agreement made effective ~~August 26, 2019~~July 7, 2020, by and between **MAXX MARKETING, INC.**, d/b/a Brew Fest Partners, a Wisconsin corporation authorized to do business in the state of Indiana, hereinafter referred to as ("MMI") and **Town of Munster**, and Indiana not-for profit municipality, hereinafter referred to as ("Client").

WHEREAS, MMI is in the business of providing festival development and consulting services and;

WHEREAS, the Client desires MMI to provide such services for a craft beer festival dated on or about October ~~13¹⁰~~20192020. Upon completion of festival, ~~contract parties~~ may agree to renew contract annually through 2021.

NOW, THEREFORE, the parties agree as follows:

1. Term. The term of this contract shall commence on the execution of this Agreement by both parties and continue until the final accounting for the ~~2019-2020~~ Festival has been concluded pursuant to paragraph 3 herein. The terms of paragraph 3 and paragraphs 6-17, both inclusive, shall survive the expiration of this Agreement. The term of this contract shall commence on the execution of this Agreement and continue until the final accounting for the Event, or any Renewal Event that has been concluded pursuant to paragraph 3 hereof. A Renewal Event is any Event which is annually conducted as a repeat of the first event.

Annual Renewal: The parties anticipate renewing the Event each year at approximately the same month and location. Subsequent Events are "Renewal Events." The Event and Renewal Events shall be known collectively as "Events." Client reserves the right to renew or decline subsequent renewal events.

Formatted: Font color: Text 1

2. Scope of Services. MMI shall perform the following services;
 - a. Obtain sponsor and brewer participation in conjunction with efforts of Client for the Festival.
 - b. Recommend the activities to be included in the Festival plan and Budget.
 - c. Recommend and execute the advertising publications and press releases for the Festival building on Client's customer list and relationships with local media. Recommendations shall include development of brand and use of advertising online, social media, posters, radio, newsprint, television and other advertising outlets. Arrange media events.
 - d. Recommend the promotional schedule and promotional material for the Festival.

- e. Recommend staffing requirements.
- f. Other Management services including:
 - i. Suggestions for the site of the Festival with identification of limitations of crowd sizes, etc.
 - ii. Oversee volunteers in conjunction with representatives of Client.
 - iii. Review Vendors contracts and schedule Vendor locations in conjunction with Client.
 - iv. Recommend security and cash management procedures.
 - v. Account for revenues supervised or received by MMI on behalf of Festival
 - vi. Recommend target audience and pricing strategies.
 - vii. Recommend inventory control procedures
 - viii. Provide other Festival advice for client and conduct reasonable duties assigned by client.
 - ix. Recommend entertainment.
 - x. Recommend equipment that must be rented or purchased for the Festival.
- g. The parties agree that MMI shall not include the following services, which services shall be provided by the Client:
 - i. Purchase or renting of any equipment required for the Festival.
 - ii. Employ anyone required for the Festival except for any employee designated a MMI employee.
 - iii. Obtaining license and permits required for the Festival.
 - iv. Signing Festival Contracts.
 - v. Signing agreement for the Site required for the Festival.
 - vi. Accounting functions and filing necessary tax documents required for the Festival.
 - vii. Payment of any costs of the Festival including wages (and costs associated with wages), taxes, sales taxes, payment to Vendors or others who have contracted with Festival except for employee(s) of MMI.
 - viii. Coordination of food sales during the Festival.
 - ix. Facilitating any street closure required for the Festival.
 - x. Arranging parking for the Festival
 - xi. Accepting or rejecting Vendors.
 - xii. Settlement of Festival proceeds with third parties if Festival is cancelled for any reason.

3. Fee. Client shall pay MMI a consulting fee as follows:

- a. Within fifteen (15) days of the ticket sales beginning, with approval of all of the exhibits by each party, the client shall pay MMI an initial retainer of \$4,000. This retainer shall be not refundable after completion of the events or milestones set forth in the budget attached to this Agreement.

~~retainer may be recovered, in whole or in part, by the Client in the event of the cancellation of the event by either party.~~ The retainer may be recovered, in whole or in part, by client if failure of MMI to perform its services, or upon a determination that MMI is guilty of gross negligence in the performance of its duties.

b. MMI shall receive 60% of the Net Profit of the Festival. The terms "Net Profit and Gross Revenues" as used herein shall be determined by Generally Accepted Accounting Principles and Gross revenue will include but not be limited to fees paid by vendors to sell at Festival (such as, food, beverages, merchandise), parking revenue, sponsorship and advertising and all other revenue of the Festival. The responsibility for collecting all revenue shall be performed by the Client. The retainer, once earned, shall be one of the allowed expenses attributable to the Net Profit calculation. The expenses or wages of the Client's members, employees, and contractors in the amount provided for in the event that these expenses may increase on account of increased participation by the public or by vendors, the parties shall agree on the adjusted amount for such expenses.

c. Invoicing between MMI and the client shall take place on or around the first of every month starting June 1, or as soon as ticket sales have started.

d. The fee payable to MMI determined by 3.b. above, less payment made to MMI pursuant to paragraph 4 below, shall be due and payable not later than 90 days from the final day of the Festival. The payment shall be accompanied by a compiled financial statement prepared by the Client or its agent setting forth all income and expenses of the Festival. If MMI disagrees with the compilation, MMI shall have the right to audit the Festival financials. If the audit reveals that Festivals compilation is incorrect (to the detriment of MMI) by more than 10% with reference to the Net Profit compilation and Client or third-party auditor hired by Client agrees with the audit provided by MMI, in addition to any Fees due MMI. Client shall also pay to MMI the cost of its audit not to exceed \$1,500. If the advance payments made to MMI pursuant to paragraph 4 below shall exceed the payments owed MMI (as described in (b) above), MMI shall refund the amount of overpayment as soon as reasonable practicable following the calculation of the overpayment, but not less than fourteen (14) days.

e. At the execution of this Agreement, Client shall provide MMI with Client's State Seller's Permit or any claimed exemption document from any State Sales or Use Tax. ~~Client is responsible for any sales tax due the state of Indiana for the execution of this event.~~ ~~Client is responsible for any sales tax due the state of Indiana for the execution of this event~~

4. Ticket Sales. Client agrees that ticket sales will be conducted through Eventbrite or otherwise designated by MMI and that all sales will be deposited into an account set up by MMI. All receipts for net ticket sales received by MMI from Eventbrite are considered and shall be reported to Client as soon as reasonably practicable. In addition, ticket sales may be conducted through local ticket outlets upon prior written

consent of MMI. All local ticket sales shall be reconciled weekly. Client and MMI shall authorize any ticket seller to provide any and all information regarding ticket sales. MMI agrees to be invoiced by client for 100% of all net ticket sales by Client.

5. Lanyard Sales. Lanyard sales and all associated expenses shall be the responsibility of MMI. Expensed associated with Lanyard sales shall not be included in the calculation of payment to MMI.
6. Festival Records and Budget. Festival records held by Client shall at all times from the date hereof be provided or made available during normal business hours to MMI upon reasonable request of MMI within 3 business days of such request. The parties have developed a budget for the Festival which is attached hereto as **Exhibit A**.
7. Confidential Information. MMI agrees that all proprietary information provided by Client to MMI which is maintained as confidential by Client shall be maintained as confidential by MMI, unless such information is in the public domain, or the release is unintentional or required by appropriate third Parties. This provision may be enforced by injunctive relief.
8. Independent Contractor. Both parties acknowledge that MMI is an Independent Contractor and not an employee of the Client. The parties are not joint ventures of "partners" of a partnership and neither may act as agent for the other except as set forth herein. Client recognizes that MMI services are provided on a non-exclusive basis. However MMI agrees that within 60 days before and after this festival, MMI will not, directly or indirectly, conduct further festivals within 30 miles of Munster, Indiana, except for the city of Valparaiso.
9. Applicable Law. The venue for any litigation arising out of this contract shall be in Lake County, Indiana, in either state or federal court.
10. Notices. Any Notice required or desired to be given under this Contract shall be deemed given if, in writing, sent by certified mail to the party at the following addresses, or at such other address as a party may from time to time designate to the other party.

MAXX Marketing, Inc.
Dba BrewFest Partners
c/o Curt Foreman
Caledonia, Wisconsin 53108

Munster Parks and Recreation Department
c/o Greg Vitale
1005 Ridge Rd.
Munster, IN 46321

11. Force Majeure: In the event that MMI is restricted, or precluded from performing the services contemplated herein by Client's loss of license or permit or government authority said interruption of service shall not be a default of this Agreement or entitle Client to any damages from MMI or refund of the initial retainer or any subsequent fees

paid to MMI (unless Client is required to refund all or a portion of ticket in which case MMI shall repay any payment received (other than the initial retainer) as related to such refund).

12. Successors: This Agreement shall inure to the benefit of the Parties and their successors and assigns of the Parties. This Agreement may not be assigned by Client or MMI without the prior written consent of either party.
13. Default: Should Client fail to pay to abide by the terms of this agreement, MMI may immediately terminate this Agreement. Other events of Default unless cured within 20 days of notice of Default shall be:
 - a. Loss of the license or permit required for the Festival by Client.
 - b. Failure of Client, within 20 days from the execution of this Agreement, to appoint a representative of Client with the power to execute all contract and agreements necessary to conduct the Festival.

Should MMI fail to abide by the terms of this agreement, the client may immediately terminate the agreement, they shall be in in default. If in default, the client may sue for damages and immediately terminate this agreement.

14. Enforcement. The Failure of either party, at any time or times, to enforce any provision of this Agreement shall in no way be construed as a waiver of such provision and shall not affect the right of that party at a later time to enforce each and every condition.
15. Modification: There shall be no modification of this Agreement unless agreed to by both parties in writing.
16. Intellectual Property: All of MMI's intellectual property is and shall remain the sole and exclusive property of MMI and a limited license is granted to client as to such Intellectual Property for the purposes of the performance of this agreement.

"Intellectual Property" means patents, domain names, trademarks, service marks, copyrights, logos, email addresses, trade names, social media sites and/or websites developed by MMI except as to the property which is in the public domain or property created by the Client and/or the postal and email addresses of attendees. The Client agrees that all proprietary information provided by MMI to client shall be maintained as confidential by Client unless such information is in the public domain, or the release is unintentional or required by Third Parties. This provision May be enforced by injunctive relief.

17. Future Beer Festivals: Client agrees to offer MMI the right of first refusal to provide the services for any similar beer festival held within one calendar year following a beer festival contracted with MMI. If MMI does not agree to provide such services within 15 days of receiving notice of an offer to provide such services, or if both parties cannot agree on terms, Client's obligations in the prior sentence are terminated.

18. Complete Agreement. This Agreement sets forth the complete agreement between the parties. No alternative or modifications of any of the terms of the Agreement will be binding on either party unless evidenced by a written amendment fully executed by the parties.
19. Insurance: At or prior to execution of this Agreement, MMI shall provide a certificate of insurance in the amount of at least \$1,000,000 naming the Town of Munster and Centennial Golf Management, LLC. As additionally insured. Client agrees to insure any festivals and grounds that are owned and operated by client.
20. Indemnification: The parties hereby agree to indemnify and hold each other harmless for any and all claims, damages, losses, judgments, suits, actions and liabilities, including attorneys' fees, due to their negligence, respectively, arising from the Festival Services Contract.

If you should have any questions or comments, please feel free to contact me.

IN WITNESS WHEREOF, the parties hereunto set their hands and seals the first day and year above written.

MAXX Marketing, Inc.

Munster Parks and Recreation

By: Curt Foremen, President

By:

EXHIBIT A

Budget

2020 Budget Munster Ale Fest								
					Budget Code: 770-10301-65150BF			
Vendor	Date	Check #	Purpose	Revenue	Vendor	Date of Voucher Request or Purchase	Purpose	Expense
Sponsorship		23923	Sponsorship	\$5,000.00	Service Sanitation	10/11/2019	Porta Potty's and Fencing	\$2,544.00
					Times Newspaper		Advertising	\$100.75
					Times Mailer		Mailing	\$189.26
					Panorama		Advertising	\$76.66
					Baxter Design	10/1/2019	Panorama Magazine Ad	\$77.00
					Ticket Printing		Wristbands	\$39.90
					PT Staff 1 x 7 hours x 9.50/hr.	10/12/2019	Event Staff	\$66.50
					PT STAFF 1 X 2.5 hours x \$9.00/hr.	10/12/2019	Event Staff	\$22.50
					PT STAFF 1 X 7 HOURS X 11.25/hr.	10/12/2019	Event Staff	\$78.75
					PT Staff 2 x 11 hours x 9.40/hr	10/12/2019	Maintenance	\$206.80
Wadas Dental		CC	Sponsor	\$500.00	PT Staff 1 x 11 hours x \$9.65/hr.	10/12/2019	Maintenance	\$106.15
Dan's Pierogi		cash	food vendor	\$267.50	FT Staff 1 x 11 hours x 19.03	10/12/2019	Maintenance	\$209.33
Edwardo's Pizza		CC	Food Vendor	\$214.00	FT STAFF 1 x 7 hours x 21.36/hr.	10/12/2019	Event Staff	\$149.52
Parking Receipts			Parking	\$620.00	FT Staff 1 x 5.5 hours x \$18.69/hr.	10/12/2019	Event Staff	\$102.80
Merchandise			Merch	\$610.00	Webrestaurant		Table cloths	\$255.32
Admissions			Admissions	\$620.00	Nitro Entertainment		DJ	\$495.00
Maxx Marketing	11/18/2019		Reimburse tix-merch sales	\$30,000.00	Centennial Park Golf Management, LLC	10/12/2019	reimbursements (beer, security, ice, tents, etc)	\$11,792.03
					Strack and Van Til		Cookies for brewers	\$42.47
					Walmart		Antenna and Cords	\$31.26
					Eduardo's	10/12/2019	Pizza for Brewers	
					Maxx Marketing	10/12/2019	Retainer per contact	\$4,000.00
					Crown Party Rentals	11/14/2019	Tables	\$632.45
					Maxx Marketing	11/18/2019	Reimbursements for supplies	\$5,288.79
					Indiana Dept. of Revenue		Sales Tax Collected	\$89.56
Total (Net Revenue)				\$37,831.50				
* = Taxable (tax amount shown as an expense)					Total (Net Expenses)			\$26,596.80
					Variance (net profit)			\$11,234.70
					Maxx Marketing Commission (60% of net profit)			\$6,740.82
					Munster Parks and Recreation Gross Profit			\$4,493.88

EXHIBIT B
FESTIVAL MILESTONES

Festival Budget	July 1
Sponsor Presentations Commence	July 15
Brewer Invitations Sent	July 15
Advertising Plan	July 15 30
Site Layout	July 15 30