

TOWN OF WEST SENECA



JACQUELINE A. FELSER  
TOWN CLERK

RECEIVER OF TAXES  
REGISTRAR OF VITAL STATISTICS  
NOTARY PUBLIC  
RECORDS MANAGEMENT OFFICER

TOWN SUPERVISOR  
SHEILA M. MEEGAN

TOWN COUNCIL  
EUGENE P. HART  
JOHN M. RUSINSKI

To: West Seneca Town Board

From: Jacqueline A Felser, Town Clerk

Date: October 30, 2013

Re: DECALS agreement

Honorable Board Members:

The NYS Department of Environmental Conservation (DEC) is changing software vendors for the sale of conservation licenses on the DECALS system. Along with this change, they are requiring all towns to renew their previous contracts to enable them to continue selling conservation licenses on behalf of the DEC.

Kindly adopt the attached resolution authorizing myself to execute the NYS Department of Environmental Conservation License Issuing Agent Agreement on behalf of the Town of West Seneca, noting that Town Attorney Shawn Martin has reviewed said agreement.

NOV 04 2013  
2.

WHEREAS, the Town of West Seneca has been selling conservation licenses on behalf of the NYSDEC; and

WHEREAS, the NYSDEC DECALS system will be starting a new contract commencing on December 1, 2013 with a new vendor for services, and

WHEREAS, the NYSDEC is requiring all the towns in New York State to renew their previous contracts to enable them to continue selling conservation licenses on behalf of the DEC;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN BOARD AS FOLLOWS:

1. The Town Board does hereby approve the agreement between the Town of West Seneca Town Clerk Jacqueline Felser and the NYSDEC commencing on December 1, 2013 in form annexed hereto.
2. The Town Clerk is hereby authorized to execute such agreement on behalf of the Town of West Seneca.
3. This resolution shall take effect immediately.

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
LICENSE ISSUING AGENT AGREEMENT**

(Do not alter this Agreement. If information is incorrect, please call the New York State Department of Environmental Conservation at 518-402-9365.)

This Agreement entered into between the New York State Department of Environmental Conservation (hereinafter referred to as the "Department"), with offices at 625 Broadway, Albany, New York 12233, and Jacqueline A Felser,

as the       owner       municipal clerk       manager      of

Town of West Seneca, 1250 Union Rd.  
Business/Municipality Name      Street Address

West Seneca, NY, 14224  
City/Town/Village      State      Zip Code

(hereinafter collectively referred to as the "License Issuing Agent")

**WITNESSETH:**

WHEREAS, the Department is authorized by § 11-0713 of the Environmental Conservation Law and applicable rules and regulations to appoint agents to issue licenses for the privilege of hunting and fishing in New York State; and

WHEREAS, the License Issuing Agent has applied to the Department for appointment as such a License Issuing Agent; and

WHEREAS, the Department has determined that the License Issuing Agent is qualified to be appointed as a license issuing agent.

NOW THEREFORE, the parties hereto agree as follows:

1.      **DEFINITIONS**

As used in this Agreement, the following terms shall have the meaning provided herein:

*License Issuing Agent* – shall mean both the *License Issuing Agent* and the *License Issuing Officer* as provided in 6 NYCRR § 177.1(f) and (g) of the Department regulations and shall also mean the duly appointed owner, municipal clerk, or manager set forth above.

*Assistant License Issuing Agent* – shall mean the individual appointed by the Licensing Issuing Agent to receive Department sponsored training for the purpose of issuing sportsman licenses and to be the point of contact for any Department inquires.

*Approved location* – shall mean the business' or municipality's address as set forth in the beginning of this Agreement.

2. **APPOINTMENT**

A. The Department hereby appoints the License Issuing Agent and their duly appointed Assistant License Issuing Agent (designed below) to be an agent issuing hunting, trapping, and fishing licenses at the approved location.

B. The License Issuing Agent hereby appoints Jacqueline A Felser,  
Name  
Town Clerk, as the Assistant License Issuing Agent.  
Title

(See paragraph [11. F] herein for information regarding changes in appointment of the Assistant License Issuing Agent.)

3. **DEPARTMENT REPRESENTATIONS**

The Department hereby agrees that it will:

A. Provide the License Issuing Agent with a license printer (and necessary supplies) at the approved location for the sale and reporting of hunting and fishing licenses and provide necessary support for the printer.

B. Pay a commission to the License Issuing Agent for each license sold as prescribed in Department laws, rules and regulations.

C. Provide appropriate training and training materials to the Assistant License Issuing Agent, including a toll free telephone "help desk" service to answer questions and assist with problems.

D. Provide informational materials for use at the approved location for the License Issuing Agent and their authorized employees to distribute to hunters, anglers, etc., regarding regulatory requirements for all authorized licenses issued.

4. **AGENT REPRESENTATIONS**

The Agent hereby agrees that it will:

A. Provide authorization attached hereto as Attachment "A" for the Department to access a bank account for electronic fund transfers to pay for all licenses sold. Fund transfers shall be scheduled on a regular basis as determined by the Department.

B. Provide reasonable and necessary security to protect equipment and supplies from damage and unauthorized use.

C. Ensure that all Department license issuing equipment is maintained in good working condition and returned to the Department when license sales are no longer provided at the approved location.

D. Pay all amounts due to the Department. Failure to maintain an adequate balance in the License Issuing Agent's account may result in immediate termination of this Agreement.

E. The License Issuing Agent must provide a compatible computer system including a plain paper printer and access to the internet at no charge to the Department.

F. The License Issuing Agent agrees that it will indemnify and save harmless the Department and the State of New York from and against all losses from claims, demands, payments, suits, actions, recoveries and judgments of every nature and description brought or recovered against it in a court of competent jurisdiction, to the extent such loss is attributable to a negligent omission or tortious act of the License Issuing Agent, its agents or employees, in the performance of this Agreement.

G. The License Issuing Agent is solely responsible for the supervision and direction of the performance of this Agreement by the Assistant License Issuing Agent and other authorized license issuing employees other than as specifically provided herein.

## 5. AGENT RESPONSIBILITY

A. General Responsibility: The License Issuing Agent shall at all times during the Agreement term remain responsible. The License Issuing Agent agrees, if requested by the Commissioner or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

B. Suspension of Work (for Non-Responsibility): The Commissioner or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when he or she discovers information that calls into question the responsibility of the License Issuing Agent. In the event of such suspension, the License Issuing Agent will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the License Issuing Agent must comply with the terms of the suspension order. Agreement activity may resume at such time as the Commissioner or his or her designee issues a written notice authorizing a resumption of performance under the Agreement.

## 6. LICENSE ISSUING CONDITIONS

A. All licenses authorized to be sold pursuant to this Agreement may only be sold by the Assistant License Issuing Agent or authorized employees of the License Issuing Agent at the approved location set forth in this Agreement.

B. All employees authorized to issue licenses by the License Issuing Agent pursuant to paragraph "A" of this section, shall be appropriately trained in the use of the license issuing system by the Assistant License Issuing Agent prior to using the issuance system.

C. The Assistant License Issuing Agent must receive recurring training sponsored by the Department at least once every three years or sooner as circumstances warrant as determined by the Department.

D. The License Issuing Agent and its employees who are authorized to issue licenses pursuant to this Agreement must abide by New York State Regulations 6 NYCRR Part 177 ([www.dec.ny.gov/regs/3936.html](http://www.dec.ny.gov/regs/3936.html)) and 6 NYCRR Part 183 ([www.dec.ny.gov/regs/3931.html](http://www.dec.ny.gov/regs/3931.html)).

E. All personal data provided by customers shall be kept confidential to the extent required by Law.

F. All documents considered returnable documents as well as all voided licenses for which credit is requested must be returned to the Department within one month of the transaction.

G. All funds received from the sale of licenses, less the commission fee established by the Department, will be held in trust for the Department. Monies collected from the sale of licenses are Department funds and any other use of such funds is prohibited. The License Issuing Agent accepts the responsibility and duties of trustee for all funds collected for the benefit of the Department under this Agreement.

H. No license may be sold for a fee in excess of or less than the amount established by the Department.

I. The complete catalog of sportsman licenses must be available for sale at the License Issuing Agent's approved location as designated in this Agreement.

#### 7. USE OF EQUIPMENT AND SUPPLIES

A. Supplies and equipment assigned to the License Issuing Agent for the printing of licenses are to be used for that purpose only, unless prior approval for such use is provided by the Department. Equipment is not transferable to other license issuing agent locations.

B. In the event that defective equipment is replaced, the License Issuing Agent shall return the defective equipment immediately to the specified repair center. The License Issuing Agent shall pay for any such equipment not returned, or equipment that shows obvious abuse. Failure to remit payment for abused or unreturned equipment may result in the immediate termination of this Agreement.

#### 8. CHANGE IN OWNERSHIP

In the event of a change in ownership of the License Issuing Agent's business, the Department must be notified 30 days in advance of any such change, and this Agreement becomes immediately terminated at the time of such change in ownership. At the time of termination, all Department-provided licensing equipment must be returned to the Department or the

Department's representative. This License Issuing Agent's appointment is not transferable and shall apply only to the License Issuing Agent's appointment to sell hunting and fishing licenses.

9. **CHANGE IN MUNICIPAL CLERK**

In the event of a change in municipal clerk from that who entered into this Agreement, the Department must be notified within 30 days of such change and this Agreement will become void at the time of such change. To avoid a disruption in service, a new Agreement should be submitted in advance of such change signed by the new municipal clerk. If the municipality intends to submit a new Agreement, Department-provided equipment does not need to be returned.

10. **COMPLIANCE INSPECTIONS**

The Department reserves the right to inspect the approved location for the purpose of determining compliance with this Agreement.

11. **TERMINATION**

In addition to any termination event appearing elsewhere in this Agreement, or provided in the applicable Department regulations, the following shall apply:

A. This Agreement may be terminated for cause if the Department determines that any false statements or omissions were made on the License Issuing Agent's application.

B. This Agreement may be terminated for cause for failure to comply with the terms of this Agreement at any or all approved locations at any time by the Department.

C. Either party may terminate this Agreement for convenience by 15 days written notice to the other party.

D. In the event of termination of this Agreement, the License Issuing Agent shall pay for all licenses sold and not previously paid for and return all equipment and supplies to the Department within 30 days of such termination.

E. Termination for Non- Responsibility: Upon written notice to the License Issuing Agent, and a reasonable opportunity to be heard with appropriate Department officials or staff, the Agreement may be terminated by the Commissioner or his or her designee at the License Issuing Agent's expense where the License Issuing Agent is determined by the Commissioner or his or her designee to be non-responsible. In such event, the Commissioner or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

F. In the event of a change in the appointment of the Assistant License Issuing Agent, the License Issuing Agent shall notify the Department of such change within 15 business days by submitting to the Department a completed revised License Issuing Agent Application

Form attached hereto as Attachment "B," which shall provide, among other things, the name and title of the newly appointed Assistant Licensing Issuing Agent. In the Department's sole discretion, this agreement may be suspended or terminated in the event the Department is not notified of any change in appointment of the Assistant License Issuing Agent as provided herein.

12. **TERM**

This Agreement shall remain in effect from the date of execution until such termination.

13. **APPLICABLE LAWS**

A. This Agreement shall be governed by the laws of the State of New York.

B. All licenses shall be issued in accordance with the provisions of the New York Codes, Rules and Regulations of the State of New York (<http://www.dec.ny.gov/regs/2494.html>) and New York State Law and the policies and procedures of the Department.

14. **TOTAL AGREEMENT**

This Agreement together with any laws, documents and instruments herein referenced, shall constitute the entire agreement and any previous communication pertaining to this Agreement is hereby superseded.

15. **CONTRACT AMENDMENT**

Any agreement revisions, including payment adjustments or time extensions, shall be made by a written amendment to the agreement, signed by both parties.

Signature \_\_\_\_\_  
License Issuing Agent  
(notarization required below)

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

LICENSE ISSUING AGENT ACKNOWLEDGMENT

State of \_\_\_\_\_ )  
 )s.s.:  
County of \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_ personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her /their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Date Notary Expires

\_\_\_\_\_  
Notary Public