



TOWN OF WEST SENECA

LAUREN J. MASSET
RECREATION SUPERVISOR

TOWN SUPERVISOR
GARY DICKSON
TOWN COUNCIL
ROBERT BREIDENSTEIN
JOSEPH CANTAFIO
SUSAN KIMS
JEFFREY PIEKAREC

TO: Honorable Town Board / Town of West Seneca

FROM: Lauren J. Masset
Recreation Supervisor

DATE: April 14, 2022

RE: R.J. Gullo Music in the Park Event

Please allow the Supervisor to execute the necessary documents to enter into agreement with R.J. Gullo Inc for use of Veterans Park for a Music in the Park Event on August 7, 2022. The event will include music and food truck(s).

NON-EXCLUSIVE FACILITIES
USAGE PERMIT & LICENSE AGREEMENT
TOWN OF WEST SENECA RECREATION DEPARTMENT

This Non-Exclusive Facilities Usage Permit & License Agreement (the "Agreement") is by and between the Town of West Seneca, located at 1250 Union Road, West Seneca, New York (the "Town"), and the insured Russel Gullo / R.J. Gullo CO, INC Companies located at 3865 Seneca Street, West Seneca, NY, 14224 (the "Licensee") (collectively, the "Parties"), and is effective the date it was executed on behalf of the Town (the "Effective Date").

Recitals

WHEREAS, the Town owns and operates certain recreation facilities, including but not limited to: baseball diamonds, softball diamonds, soccer fields, community center gym and an ice rink; and

WHEREAS, the Licensee desires to use a Town owned and operated recreation facility for the purpose of conducting games, practices or any other permitted use as set forth in this Agreement; and

WHEREAS, the Town is willing to permit the Licensee, and its employees, volunteers, agents, representatives and invitees to use the Facilities upon the terms, and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, the Parties agree as follows:

1. Subject to the conditions, obligations, and terms of this Agreement, including the Facilities Usage Rules and Regulations, set forth and attached hereto as EXHIBIT A, the Town grants the Licensee and the Licensee's Permitted Users a non-exclusive license (the "License") to use the facilities set forth herein. By executing this Agreement, Licensee acknowledges and affirms it has reviewed and understands it shall be obligated to follow the Facilities Usage Rules and Regulations. Such use shall be solely for the Permitted Use as set forth below.

2. The License shall be permitted use of Veterans Park (Lions Bandshell and Kiwanis Shelter) located at 1250 Union Road, West Seneca, NY, 14224 on Sunday, August 7, 2022 from dawn to dusk. Any changes to any provisions set forth in this section must be agreed to in writing by the Town, acting in its sole discretion. Usage dates/times to be determined by the Recreation Office.

3. The term of this Agreement shall commence on August 6, 2022, and end on August 8, 2022, unless terminate earlier in writing as provided by the Agreement.

4. The Licensee designates the individual named below (the "Licensee Representative") as the Licensee's authorized representative with whom the Town will work to

facilitate the Permitted Use of the Facilities. The Town shall have the absolute right to rely upon representations and warranties made by the Licensee Representative purportedly on behalf of the Licensee:

Licensee Representative

Name and Title: Russel Gullo
Address: 3865 Seneca St, West Seneca, NY, 14224
Phone: 716-675-1500
Email: ccim@rjgullo.com

5. On or before October 1, 2022, the Licensee shall pay the \$00.00, for their approved usage type and scheduled dates, per each single use to the Town, for the right to use the Facilities during the term. After the Licensee's use of the Facilities, the Town shall provide an invoice setting forth any additional buildings and grounds maintenance costs resulting from the use. The invoice shall be paid within fifteen (15) days of Licensee's receipt.

There is an additional fee for B&G prep on weekends and weekday evenings.

This document serves as an invoice for the facility use fee.

Checks should be made out to the Town of West Seneca. There is an additional fee for each credit card transaction, which will be applied to your "amount due" at time of payment. Payments can be made in person at West Seneca Youth & Recreation located at 1300 Union Road, West Seneca, NY, 14224. Payments can be submitted via mail to West Seneca Youth & Recreation, 1250 Union Road, West Seneca, NY 14224. No currency should be sent in the mail. Checks are the preferred method of payment. Please do not mail anything to the previous Mill Road address.

Single use is defined as one game, practice, scrimmage, etc.

6. Other Licensee obligations/understandings:

- The Town of West Seneca will not provide any sound, P.A., announcement system or any other equipment. The Licensee must provide all of their own equipment.
- Soccer Field Rental Licensee must book fields through Mark Molloy and provide schedule to West Seneca Recreation office within 48 hours of confirmation from Mr. Molloy (MMolloy@nixonpeabody.com).

- Baseball Diamond Rental Licensee must call the Rainout Line (716-677-4754) on each weekday usage date after 4:00 PM to ensure the diamond is not closed due to weather related conditions. Diamonds will not be prepared on weekend or holiday dates. The diamond line is not updated on weekends or holidays.
- Baseball Diamond/ Soccer Field Rental/ Ice Rink– Licensee understands that they are not able to reserve any time slots for Baseball Diamonds or Soccer Fields until after April 10 of each year and Ice Rink slots until after September 10 of each year regardless of the time this agreement was filed. This is to allow West Seneca Youth Sports, West Seneca Central School District & West Seneca Youth & Recreation time to book their required time slots. Licensee understands that regardless of when (date) this agreement was filed no usage is guaranteed. Time slots are on a first come, first serve basis. Licensee understands that they may receive zero timeslots regardless of when this agreement was filed. If April 10 or September 10 fall on a weekend day or holiday, the date will be moved to the next business day.
- Baseball Diamond/ Field Rental/Ice Rink - The Licensee must email the requested date(s), time(s), and if applicable diamond or field size(s). If any ice rink slot/diamond/field is open, we will add that game to the schedule and notify the Licensee. If one is not open, we will notify the Licensee that nothing is available, and a new request may be made. Please note that Recreation must submit the weekly schedule to B&G several days in advance for the following week. Therefore, any requests for use and/or cancellations must be made by the week before by Wednesday at 4:00 PM. No uses will be accepted after Wednesday at 4:01 PM for the following week. The weeks run Monday – Sunday. In the event you do not cancel by the week before by Wednesday at 4:00 PM, you will be charged for the usage. Usage requests and usage cancellations will only be accepted in writing and emailed to lmasset@twсны.org.
- Diamond Rental – The fee is for weekday diamond use (prepared) and weekend diamond use (unprepared). Diamonds will not be prepared on the weekends or holidays or observed union holiday dates. Licensee can request they be done for an additional fee. Licensee must contact the Highway Superintendents a minim of two weeks before the use to request this and if approved receive the cost and due date for the preparation.
- Races/Tournaments/Community Events/Special Events/Other Events: Licensee must attach a race map and schedule to this agreement. Licensee must contact the Highway Superintendent (716-674-4850) and the Police Chief (716-674-2943) to discuss this event during the permit process. This must be done a minimum of 30 days before the event.
- Races Community Events, Special Events: The Licensee must inform each business/homeowner, any person living along or doing business along the race route and any other persons that will be affected by any road closures. This includes any home, businesses, etc. directly on the race route and any home, business, etc. on side streets being blocked or closed on the race route. This must be done at least 72 hours before the race start time. Failure to inform all parties could result in the licensee not being able to

host their event the following year. It is suggesting each affected party receive a flyer with the date, start and end time of the event and other event details.

- Races: The Licensee must attach a schedule and race map to this agreement. The Licensee must provide in writing attached to this agreement a list of streets being closed, blocked, etc. on the race map and in list form.
- Tournaments/Community Events/Special Events/Other: A schedule must be provided to both Lauren J. Masset (lmasset@twyny.org) and Brian Adams (badams@twyny.org) no later than 10 days before the event.
- All Use Types – The Licensee understands that the Town of West Seneca reserves the right to cancel this agreement at any time, with no reason, cause or notice.
- The sale of food at the West Seneca Ice Rink, Community Center and Library, West Seneca Soccer Park and Sunshine Park is prohibited. The Town of West Seneca has an agreement with a vendor for the exclusive rights to sell food in these areas. In any other area of food of town the sale of any food must be discussed before this agreement is approved by the West Seneca Town Board. It is the Licensee responsibility to begin the conversation during the first stage of the agreement process.
- If food is being sold, the Licensee must contact the West Seneca Code Enforcement Office at 716-558-3242 and file an “Application for Special Events” and any other required documents in addition to this document. This must be done within 30 days of the event date. Questions regarding this should be directed to West Seneca Code Enforcement Office.
- For Community Events, Special Events and Road Races the Licensee must contact the West Seneca Code Enforcement Office at 716-558-3242 and file an “Application for Special Events” and any other required documents in addition to this document. This must be done within 30 days of the event date. Questions regarding this should be directed to West Seneca Code Enforcement Office.
- If Raffle Tickets/Auctions/Raffles/Etc. are being sold the Licensee must contact the West Seneca Town Clerks Offices to complete any required documents, in addition to this document, for the sale of these items. 716-558-3215. This must be done within 30 days of the event date. Questions regarding this should be directed to West Seneca Town Clerks Office.
- The placement of any storage containers, bins, sheds, trailers, etc. but be discussed with the Highway Superintendent and approved by the Highway Superintendent at least two weeks before any items are placed on Town of West Seneca property. These items must have signs that say no climbing. The Town of West Seneca is not responsibility for any damages or theft of these items.

- The Town of West Seneca is not responsible for and will not reimburse the cost of any lost, stolen, damaged, vandalized, etc. items.
- The Licensee must clean up the facility they used, after their use. Otherwise, they may be billed after the event for cleanup fees. The fees will be based on the Town's cost to clean up the facility and cannot be precalculated. The invoice will be required to be paid within 30 days. Otherwise, future Town of West Seneca Facility use may not be permitted.
- The Licensee understands that if their permitted use is of a grassy field, the area will not contain any equipment, nets, or other items. The area will not be lined. The area may contain lines and equipment for other events, activities, and sports. The Licensee should not make any changes or adjustments to the area. The Licensee should not place, keep or store any items on Town property. If the Licensee would like to request the area be lined or marked and/or the Licensee would like to place/store equipment or other items there, the Licensee must contact the Highway Superintendent (716-674-4850) no later than 30 days prior to their first usage. The request is not guaranteed to be approved. The Highway Superintendent grants these requests at his/her sole discretion and may impose additional fees and/or requirements. Any items left on Town property are not the responsibility of the Town of West Seneca. The Town of West Seneca is not responsible for and will not reimburse the cost of any lost, stolen, vandalized, etc. items.

7. The Parties acknowledge that there is a COVID-19 public health emergency and that Licensee, including its owners/operators/employees/players/spectators, must take precautions to help protect against the spread of COVID-19. The Licensee will ensure that the organization adheres to all guidelines and rules made by the Centers for Disease Control and Prevention (CDC), New York State Department of Health, Erie County Department of Health, and Town of West Seneca, if applicable, and any changes to those guidelines and rules. It will be the responsibility of the Licensee to be abreast of any changes to aforementioned guidelines and rules.

8. The Licensee, on behalf of its owners/operators/employees/players/spectators, acknowledge the contagious nature of COVID-19 and further acknowledge that such exposure or infection may result in personal injury, illness, permanent disability, or death. The Licensee hereby forever releases and waives any right to bring suit against the Town of West Seneca, and its officers, directors, managers, officials, trustees, agents, employees, or other representatives in connection with exposure, infection, and/or spread of COVID-19 related to utilizing the Town's Facility. The Licensee understands that this waiver means they give up their right to bring any claims including for personal injuries, death, disease or property losses, or any other loss, including but not limited to claims of negligence and give up any claim seeking damages, whether known or unknown, foreseen or unforeseen.
Other Town obligations:

9. Failure of the Parties to agree upon any changes to, or extension of, the Permitted Use Dates will result in expiration of the Term; if that occurs, the Town will have no liability for damages of any kind whatsoever to the Licensee. The Town, in its sole discretion, may terminate

this Agreement on the basis of any termination right set forth anywhere in this Agreement, including but not limited to any violation of the Facilities Usage Rules and Regulations.

10. The Licensee will only engage in Permitted Uses, all other uses are prohibited. The Licensee will engage in Permitted Uses in a manner that will protect and not damage the Facilities, and will immediately notify the Town in writing of any prohibited uses by the Licensee or its invitees.

11. The Licensee will cooperate and will cause the Licensee's Representative and its invitees to cooperate with the Town's personnel at all times.

12. Neither the Licensee nor its invitees will make any alterations, improvements or changes of any kind to any of the Facilities or other Town property. If any alterations take place, the Licensee will immediately notify the Town in writing of such prohibited alterations. If any damage is sustained by the Facilities during the Licensee's use, then the Licensee shall pay the Town for such damages.

13. The Licensee agrees to indemnify and hold harmless the Town from any and all liability, damages, expenses, causes of action, suits, judgments and claims of any nature arising out of or in any manner connected with injury to persons or property which results from the Town's use and access of the Facilities, only to the extent that such liability, damages, expenses, causes of action, suits, judgments and claims do not arise out of the Town's negligence. The Licensee will maintain, or cause to be maintained, in full force and effect, at the Licensee's expense, one or more policies of general comprehensive liability insurance (the "Licensee's Liability Insurance") with combined single limit coverage of at least one million dollars (\$1,000,000.00) per occurrence, and at least three million dollars (\$3,000,000.00) in the aggregate, naming the Town as an additional insured. If the Certificates of Insurance, demonstrating insurance coverage required by this Section, are not received by the Town prior to the Permitted Use Dates, then the Town in its sole discretion may terminate this Agreement and/or prohibit the Licensee use of the Facilities. Certificates of Insurance upon their approval by the Town shall become part of this Agreement and shall be attached hereto as EXHIBIT B. An approved insurance certificate must be filed at least ten (10) days prior to Licensee's use of the Facilities. Failure to provide a Certificate ten (10) days prior to use may result in termination of this Agreement.

14. Each of the Parties acknowledges that it is not an agent for the other, and the Parties will not make any such assertions. This Agreement may be executed on behalf of the Town by any authorized Recreation Personnel, as designated by the Town Board. In the event any provision of this Agreement is determined to be invalid or unenforceable, the remainder shall remain in force as if such provision were not a part. This Agreement sets forth the entire understanding between the Parties and may be amended solely upon the written mutual agreement of the Parties.

Other:

The opening and closing dates for Town Facilities varies by season and is TBD. The dates this agreement is valid for may fall before or after the opening and closing dates for the season. The

Town will notify users of opening and closing dates. Facilities cannot be used before they are open or after they are closed for the season, regardless of the dates of this agreement.

Other:
This is for a Music in the Park Event sponsored by RJ Gullo Companies. The Event will take place on the Lions Bandshell, Kiwanis Pavilion and grassy area.

The Licensee must contact West Seneca Buildings and Grounds, West Seneca Police Department and West Seneca Code enforcement to discuss this event by May 1, 2022. The Licensee must complete any paperwork, provide any information, documents, etc. that are required by these departments.

The event will be by 8/7/2022 from 4:00 – 7:00 PM. There will be music and one or more food trucks.

TOWN OF WEST SENECA

Signature: _____
Printed Name: Gary Dickson, West Seneca Town Supervisor
Dated: _____

(LICENSEE)

Signature: by: Russell J. Gullo, president *R.J. Gullo & Co., Inc.*
Printed Name: RUSSELL J. GULLO
Dated: 4/13/22

EXHIBIT A - Facilities Usage Rules and Regulations

1. a. If the Town cancels events, games, gatherings or other scheduled activities due to weather or any other conditions, Licensee is prohibited from using the facilities. If Licensee cancels any scheduled use or will not be using the scheduled facility use, the Recreation Department must be notified in advance. The Town will, at the request of the Licensee, make a good faith effort to reschedule any uses canceled by the Town due to weather. If the town is unable to reschedule any canceled game, Licensee will not be entitled to any refund from the Town.
b. Fees will not be refunded or adjusted should the Licensee fail to use the date they reserved. Fees will not be refunded or adjusted if usage is canceled due to weather related issues. Usage dates are not required to be rescheduled if they are canceled for weather related issues.
c. The Town of West Seneca reserves the right to deny a refund of fees should the Licensee wish to withdraw from usage prior to it's scheduled start date.
2. Licensee agrees to pay the Town the total rental fee for use of the Town facility specified upon execution of this agreement. (Payment in full is required) Unless otherwise listed in section 5 of this agreement.
3. Licensee agrees to follow all local laws and any rules posted at the facility or park they are using.
4. Licensee is responsible for keeping vicinity free and clear of debris and garbage.
5. No alcoholic beverages or rowdiness will be allowed on the premises or in the immediate vicinity of any Town facilities or property.
6. There is no smoking of any kind permitted at any town facility.
7. When using the Ice Rink all "Rink Rules" must be followed. These are posted in the main lobby of the ice rink.
8. Failure of Licensee to abide by the terms of this agreement may result in cancellation of this License by the Town.
9. Licensee acknowledges that its players have made themselves familiar with the terms of the Agreement and finds such terms acceptable.
10. Players and spectators WILL stay OFF the berm, if using the West Seneca Soccer Park.
11. Parking spots cannot be reserved for any Town facility.
12. West Seneca Youth & Recreation reserves the right to cancel any scheduled use at any time, with no notice.
13. If using the West Seneca Ice Rink no "outside" food or drink should be brought in. Food should be purchased from the concession area within the rink.
14. If using the West Seneca Soccer Park no grills are allowed.
15. The Town of West Seneca reserves the right to cancel this agreement at anytime, with no reason, cause or notice.
16. Failure to abide by this agreement and work in harmony with the Town of West Seneca could result in termination of this agreement. No refunds will be given. All fees will still be owed for future reserved field uses.
17. Licensee understands that regardless of the dates of this agreement, the Town of West Seneca facility requested may not be open for the season, could close for the season and/or may not be available.

EXHIBIT B – CERTIFICATE OF INSURANCE

See attached.

FOR TOWN OF WEST SENECA USE ONLY:

- o Attached - COI Attached
- o Required Signature (1) by Licensee
- o If applicable race/event maps, schedules, descriptions, etc.
- o Town Board Approved Date _____

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THIS AGREEMENT (WITH ALL REQUIRED ITEMS) MUST BE TURNED INTO WEST SENECA YOUTH & RECREATION A MINIMUM OF THIRTY BUSINESS DAYS PRIOR TO THE EVENT.

FAQs**FAQ: What is the process for renting a soccer field?**

After an organization completes the agreement process and the agreement receives approval by the West Seneca Town Board, they can reserve fields at the West Seneca Soccer Complex. Fields are assigned based on the following priority.

1. Town of West Seneca / Town of West Seneca Recreation Department – No agreement needed.
2. West Seneca Soccer Club (LA 12/31/2025) / West Seneca Central School District – Annual agreement/shared services.
3. WNY Flash (LA expires 10/1/2023)
4. Third Parties (first come, first serve based on when the agreement (a) was submitted and approved & (b) when the request was submitted). These agreements are typically only valid for one season. 3rd Parties can begin sending in their requests on April 10 of each year. If April 10 falls on a weekend or holiday, the requests will be accepted on the next business day. The organization must submit their requests on April 10 or later (even if the request(s) were previously submitted). These agreements are typically only valid for one season.

More information regarding the Non-Exclusive Facility Use Agreement process can be found at the following link:

<http://www.westseneca.net/departments-and-services/town-facilities/facilities-usage#gsc.tab=0>

FAQ: What is the process for renting a diamond?

After an organization completes the agreement process and the agreement receives approval by the West Seneca Town Board, they can reserve Town of West Seneca diamonds. Diamonds are assigned based on the following priority.

1. Town of West Seneca / Town of West Seneca Recreation Department – No agreement needed
2. West Seneca Fire Districts – Annual agreement required. The Town will hold the diamond location on Thursdays, until April 1 annually that the Fire District used in previous years. The Fire District must submit their agreement and requested usage dates by April 1 annually, otherwise, the diamonds will be released to third parties on/after April 1. New Fire Districts who did not use a Town of West Seneca diamond in the previous calendar year, are considered a 3rd party, for their first year.
3. West Seneca Youth Baseball (LA expires 12/31/2025) and West Seneca Girls Softball (LA expires 12/31/2025) / West Seneca Central School District – Annual agreement/shared services. WSYBA and WSGSA must submit their usage requests by April 1 of each year, on/after April 1 annually, diamonds are released to third parties.
5. Third Parties (first come, first serve, on/after April 10, based on when the agreement (a) was submitted and approved & (b) when the request was submitted). 3rd Parties can begin sending in their requests on April 10 of each year. If April 10 falls on a weekend or holiday, the requests will be accepted on the next business day. The organization must submit their requests on April 10 or later (even if the request(s) were previously submitted). These agreements are typically only valid for one season.

More information regarding the Non-Exclusive Facility Use Agreement process can be found at the following link:

<http://www.westseneca.net/departments-and-services/town-facilities/facilities-usage#gsc.tab=0>

FAQ: What is the process for renting ice at the West Seneca Ice Rink?

After an organization completes the agreement process and the agreement receives approval by the West Seneca Town Board, they can reserve ice at the West Seneca Ice Rink. Ice time is assigned based on the following priority.

1. Town of West Seneca / Town of West Seneca Recreation Department – No agreement needed
2. West Seneca Youth Hockey (LA expires 6/1/2023) / West Seneca Central School District – Annual agreement/shared services. WSYHA and WSCSD schedules and approved agreements are due August 1 annually, after that time all ice time is released for third parties.
3. Third Parties (first come, first serve based on when the agreement (a) was submitted and approved & (b) when the request was submitted). The dates we will begin accepting 3rd party requests varies by season and can be found on our website. These agreements are typically only valid for one season.

FAQ: What is the process for holding a Road Race or Community Event?

This varies on the type of event, length of the event and various other factors. Please visit

<http://www.westseneca.net/departments-and-services/town-facilities/facilities-usage#gsc.tab=0> for more information on this process.

FAQ: Where can I find more information on the Non-Exclusive Facility Use Agreement process?

More information regarding the Non-Exclusive Facility Use Agreement process can be found at the following link:

<http://www.westseneca.net/departments-and-services/town-facilities/facilities-usage#gsc.tab=0>