

MEMO

To: The Honorable Town Board and Chief Daniel Denz

From: Tina M. Hawthorne, Town Attorney

Date: April 18, 2019

Subject: Intermunicipal Agreement with Cheektowaga

The Town of West Seneca Police Department desires to share services with the Town of Cheektowaga Police Department by utilizing Cheektowaga's firing range at times. It is my advice that the Town Board adopt the attached resolution authorizing the Supervisor to enter into the attached Agreement.

RESOLUTION

WHEREAS, the Town of Cheektowaga Police Department operates a firing range facility; and

WHEREAS, the Town of Cheektowaga Police Department desires to lease the firing range from time to time to the Town of West Seneca Police Department; and

WHEREAS, by the Resolution adopted at a meeting held, the Cheektowaga Town Board authorized the Town of Cheektowaga to enter into a sharing of services with the Town of West Seneca to provide the use of its Police Firing Range; and

WHEREAS, the Town of Cheektowaga Police Department and Town of West Seneca Police Department jointly desire to enter into an Agreement whereby the Town of West Seneca Police Department would permit its police officers to utilize Cheektowaga's firing range; and

WHEREAS, the Town Board of West Seneca has determined that it is in the best interest of West Seneca, its residents, and the West Seneca Police Department to enter into this Agreement with Cheektowaga; and

NOW THEREFORE, be it resolved that the Town Board of the Town of West Seneca authorizes the Supervisor to execute the Intermunicipal Agreement Between the Town of Cheektowaga and the Town of West Seneca Relative to the Use of The Town of Cheektowaga Police Department's Firing Range.

INTERMUNICIPAL AGREEMENT BETWEEN THE TOWN OF CHEEKTOWAGA AND
THE TOWN OF WEST SENECA RELATIVE TO THE USE OF THE TOWN OF
CHEEKTOWAGA POLICE DEPARTMENT'S FIRING RANGE

This Agreement (hereinafter, "this Agreement") is entered into this ____ day of _____, 2019 between the Town of Cheektowaga (hereinafter referred to as "Cheektowaga"), a municipal corporation duly organized and validly existing under the laws of the State of New York, with office located at 3301 Broadway, Cheektowaga, New York 14227 and the Town of West Seneca (hereinafter referred to as "West Seneca"), a municipal corporation duly organized and validly existing under the laws of the State of New York, with office located at 1250 Union Road, West Seneca, New York 14224, for the purpose of setting forth the terms and conditions upon which Cheektowaga shall permit the use of its firing range by the Town of West Seneca Police Department.

WITNESSTH:

WHEREAS, the Town of Cheektowaga Police Department is duly authorized to operate a firing range facility; and

WHEREAS, the Town of Cheektowaga Police Department desires to lease the premises from time to time to the Town of West Seneca Police Department; and

WHEREAS, by Resolution No. 2019- 215 duly adopted at its meeting held on April 9, 2019, the Cheektowaga Town Board authorized the Town to enter this Agreement with the Town of West Seneca to provide the use of its Police Firing Range, all as the same may be agreed to between the parties; and

WHEREAS, West Seneca desires to enter into an agreement to permit the police officers of the West Seneca Police Department to utilize Cheektowaga's firing range; and

WHEREAS, it is deemed beneficial to both Cheektowaga and West Seneca to permit the police officers of the West Seneca Police Department to utilize Cheektowaga's firing range; and

WHEREAS, the Town Board of Cheektowaga has determined that it is in the best interest of Cheektowaga and its residents and the Cheektowaga Police Department to enter into this Agreement with West Seneca:

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth it is agreed as follows:

1. Cheektowaga agrees to permit the police officers of the West Seneca Police Department to utilize its firing range located off Scott Place in the Town of Cheektowaga, pursuant to the terms and conditions of this Agreement.

2. The parties hereto acknowledge and agree that the use of Cheektowaga's firing range is on a daily basis and that each use shall be scheduled two (2) weeks in advance with Sgt. Thomas Allen of the Cheektowaga Police Department, including but not limited to when a party desires to conduct firearms training exercises at Cheektowaga's firing range.
3. West Seneca agrees to indemnify, hold harmless and defend THE TOWN OF CHEEKTOWAGA, ITS BOARD, OFFICIALS, EMPLOYEES AND AGENTS from and against any and all liability, loss, damages, expenses, claims, costs of defense and attorney's fees related in any way to the terms, conditions and obligations of this Agreement and/or arising out of the activities conducted at Cheektowaga's firing range by any of West Seneca and any police officers of the West Seneca Police Department, included, but not limited to, any claims, loss of or damage to property or any injury to, or death of, any persons that may be occasioned by or related to any cause what so ever pertaining to the use of Cheektowaga's firing range or any liabilities, losses or damages or claims, therefor, including but not limited to any claims by any officers, employees, volunteers or agents of West Seneca and/or West Seneca's Police Department against Cheektowaga, the Cheektowaga Police Department and their respective elected and appointed officials, officers, employees, agents and volunteers. If such claim is asserted, each party to this Agreement shall give prompt notice thereof to the other party, and if requested by Cheektowaga, West Seneca shall not settle or consent to settlement of any such claim without written consent of Cheektowaga. This indemnification and hold harmless agreement shall apply only to the activities of West Seneca and the employees of the West Seneca Police Department at Cheektowaga's firing range and not to the activities of Cheektowaga, the Cheektowaga Police Department or any other parties with whom Cheektowaga has an agreement to utilize Cheektowaga's firing range. A "hold harmless" letter signed by an authorized agent of the Town of West Seneca Police Department shall be submitted prior to any training being conducted. An example of this document is available upon request. Additionally, all individuals receiving or observing training shall sign a "Waiver of Liability" prior to the start of any training.
4. The term of this Agreement shall commence on April 9, 2019 and shall terminate on April 8, 2020. Either party may terminate this Agreement without cause upon thirty (30) days written notice to the other party and effective upon such termination, any prepaid annual fee(s) paid by West Seneca shall be prorated based upon the actual term and the balance shall be refunded to West Seneca.
5. West Seneca agrees to pay Cheektowaga a daily fee, per usage, of \$165.00 to cover a portion of Cheektowaga's costs of maintenance, operating and periodic updating of Cheektowaga's firing range. West Seneca agrees to and shall pay for the repair or replacement of any and all damage caused to Cheektowaga's firing range, or any other property or premises of Cheektowaga, as a result of the use of Cheektowaga's firing range by the West Seneca Police Department and such repair or replacement shall be performed by a contractor selected by Cheektowaga.

6. The parties hereto acknowledge and agree that other police agencies may from time to time be permitted to use Cheektowaga's firing range for firearms training and other lawful purposes, pursuant to separate agreements with Cheektowaga.
7. The use of Cheektowaga's firing range shall be at the sole risk of each user and the Town of West Seneca shall be responsible to ensure that each individual user of Cheektowaga's firing range from the West Seneca Police Department shall take proper precautions and safety measures when utilizing, conducting and/or participating in any activities at Cheektowaga's firing range, including but not limited to the following:
 - A. Eye and ear protection must be worn during live firing. Ballistic vests are strongly encouraged to be worn at all times while at the range.
 - B. Only police officers of the West Seneca Police Department are permitted to use the range pursuant to this Agreement and no other persons shall be authorized to use the range or may be permitted to use the range by the West Seneca Police Department.
 - C. Individuals using the range are required to pick up all used shell or cartridge casings and any other debris left at the range after use, including but not limited to non-burnable trash (glass, cans, plastics, Styrofoam, etc.). West Seneca Police Department shall repair, replace or reimburse the Town of Cheektowaga for any damage done to the facility by their personnel.
 - D. A Town of Cheektowaga Police Department Certified Range Officer must be present during any and all hours the West Seneca Police Department police officers are using the firing range.
 - E. All police agencies using the range must have a qualified firearms instructor present during all training exercises. Proof of certification may be required.
 - F. The parties hereto acknowledge and agree that neither Cheektowaga nor the Cheektowaga Police Department has made any representation(s) regarding the fitness of said property and/or Cheektowaga's firing range for the identified use and West Seneca expressly understands that, on behalf of itself and the West Seneca Police Department and their respective officers, employees, agents and volunteers that Cheektowaga's firing range is being used at its/their own risk and at the risk of each individual user.
 - G. In the event portable toilets are needed, West Seneca Police Department shall make arrangements as such, with written approval of the Chief of Police, including coordinating a delivery and pick up time with the Range Master.

H. All POV's shall be parked in the "Parking Lot"; arrangements can be made for vehicle range.

I. Standard firearms safety rules will be observed at all times.

8. Any notice or written communication required or permitted to be given under this Agreement shall be in writing and shall be delivered (i) personally, (ii) by a reputable overnight courier or (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid. Unless otherwise provided in this Agreement, notices shall be deemed received after the first to occur of (a) the date of actual receipt; or (b) the date that is one business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (c) the date that is three business days after the deposit in the U.S. Mail, as evidenced by a return receipt.

Notices and communications to Cheektowaga shall be addressed to and delivered at the following address:

Town of Cheektowaga
Attn: Town Supervisor
3301 Broadway – Rm. 201
Cheektowaga, NY 14227

With a copy to:

Chief of Police
Cheektowaga Police Department
3223 Union Road
Cheektowaga, NY 14227

Town Attorney's Office
3301 Broadway – Rm. 206
Cheektowaga, NY 14227

Notices and communications to West Seneca shall be addressed to and delivered at the following address:

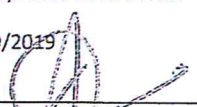
Town of West Seneca
Attn: Town Supervisor
1250 Union Road
West Seneca, NY 14224

With a copy to:

Chief of Police
West Seneca Police Department
1250 Union Road
West Seneca, NY 14224

Town Attorney's Office
1250 Union Road
West Seneca, NY 14224

9. Governing Law: This Agreement shall be governed by and enforced in accordance with the applicable laws of the State of New York.
10. Severability: It is hereby expressed to be the intent of the parties to this Agreement that should any provision, covenant, agreement or portion of this Agreement or its application to any person or property be held invalid by a court of competent jurisdiction, the remaining provisions of this Agreement and the validity, enforceability and application to any person or property shall not be impaired thereby, but the remaining provisions shall be interpreted, applied and enforced so as to achieve, as near as may be, the purpose and intent of this Agreement to the greatest extent permitted by applicable law.
11. Entire Agreement: This Agreement constitutes the entire agreement between the parties and supersedes any and all prior agreements and negotiations between the parties, whether written or oral, relating to the subject matter of this Agreement.
12. Interpretation: This Agreement shall be construed without regard to the identity of the party who drafter various provisions of this Agreement. Moreover, each and every provision of this Agreement shall be construed as though all parties to this Agreement participated equally in the drafting of this Agreement. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.
13. Authority to Execute: Each party hereby warrants and represents to the other party that the persons executing this Agreement on its behalf have been properly authorized to do so by the corporate authorities of such party.
14. No Third Party Beneficiary: No claim as a third party beneficiary under this Agreement by any person shall be made, against either party of this Agreement.

<i>Approved as to Form:</i>
Date: 04/09/2019

_____ John M. Dudziak, Town Attorney
Resolution: 2019-215
Date: 04/09/2019

TOWN OF CHEEKTOWAGA
ERIE COUNTY, NEW YORK

By: _____
DIANE BENCZKOWSKI
Supervisor

TOWN OF CHEEKTOWAGA
ERIE COUNTY, NEW YORK

By: _____
DAVID ZACK
Police Chief

TOWN OF WEST SENECA
ERIE COUNTY, NEW YORK

By: _____
SHEILA M. MEEGAN
Supervisor

TOWN OF WEST SENECA
ERIE COUNTY, NEW YORK

By: _____
DANIEL DENZ
Police Chief

