



TOWN OF WEST SENECA

LAUREN J. MASSET
RECREATION SUPERVISOR

TOWN SUPERVISOR
GARY DICKSON
TOWN COUNCIL
WILLIAM HANLEY
WILLIAM BAUER
JOSEPH CANTAFIO
JEFFREY PIEKAREC

TO: Honorable Town Board / Town of West Seneca

FROM: Lauren J. Masset
Recreation Supervisor

DATE: March 3, 2021

RE: West Seneca Youth Baseball Association Inc. and West Seneca Warriors Travel Baseball Club
(Agreement 2021 – 2025)

Please allow the Supervisor to execute the attached "Non-Exclusive Facilities Usage Permit & License Agreement" with West Seneca Youth Baseball Association Inc. and West Seneca Warriors Travel Baseball Club.

This is contingent upon the following items being turned in by April 1, 2021.

1. Valid Certificate of Insurance (16)
2. Signed Affirmation regarding Interim Guidance for Sports & Recreation (8b)
3. Written Safety Plan as required by the NYS Department of Health (8c)

West Seneca Youth Baseball Association
West Seneca Warriors Travel Baseball Club

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<input type="checkbox"/> Insurance Travel	<input type="checkbox"/> Filed @ Rec
<input type="checkbox"/> Insurance WSYBA	WSWTBC <input type="checkbox"/> Filed @ TA
<input type="checkbox"/> Fees Paid	<input type="checkbox"/> Filed @ Clerks

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 West Seneca Youth Baseball Association Inc. and West Seneca Warriors Travel Baseball Club, located at 997 Union Road, West Seneca, New York 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 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 and described within the hereto attached EXHIBIT B (the "Facilities"). 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 the Permitted Use and the Permitted Use Dates as set forth and attached hereto as EXHIBIT C. Any changes to any provisions set forth in this section must be agreed to in writing by the Town, acting in its sole discretion.

3. The term of this Agreement shall commence on January 1, 2021, and end on December 31, 2025, 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

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representations and warranties made by the Licensee Representative purportedly on behalf of the Licensee:

Licensee Representative
West Seneca Youth Baseball Association, Inc.

Name and Title: Tim Liddle, President
Address: 680 Union Road
West Seneca, New York 14224
Phone: (716) 983-4130
Email: trl@benderson.com

Licensee Representative
West Seneca Warriors Travel Baseball Club

Name and Title: Ricky Albano, President
Address: 997 Union Road
West Seneca, New York 14224
Phone: (716) 982-4028
Email: ricky@schunkeins.com

Contract Phone Number for Patrons (716) 982-4028

5.) Facility Use Fee: The Licensee shall pay to the Town an annual fee of \$30.00 per player without distinction of whether or not the player is a resident of the Town. In the event a player is on more than one team roster, there will only be one annual fee charged for that player. It is the responsibility of the organization to remove the player from all but one team roster when submitting the rosters to the Town to ensure they are not charged more than one player fee for that player.

In the event the annual fee is not paid on or before June 1st, a \$45 late fee will be charged and an additional \$45 will be added the first of each month thereafter (i.e. if paid on July 12th, an \$80 late fee will be charged). If June 1st falls on a Saturday or Sunday, the annual fee will be due on Monday.

The parties acknowledge that at the time of the signing of this Agreement there is a COVID-19 public health emergency. The following will apply, if applicable:

a. In the event that there is a New York State order or law in effect that prohibits the youth sport from being played and the organization cancels their season, the Town agrees that the Facility Use Fee will not be due and owing for that calendar year.

b. In the event that there is a New York State order or law in effect that shortens the youth sport season, the Town agrees to reduce the Facility Use Fee by the equal percentage that the participants fees are reduced by the organization.

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After the Licensee's use of the Facilities, the Town shall provide an invoice to the Licensee setting forth any additional Buildings & Grounds maintenance costs resulting from the usage. This shall include any overtime expenses incurred. The first two weekend days will not be charged any overtime costs. Thereafter, the overtime rate shall be paid at a 50% reduced rate. Said invoice shall be paid within fifteen (15) days of the Licensee's receipt.

All check should be made out to the "Town of West Seneca," and payments should be submitted to West Seneca Youth & Recreation at 1250 Union Road, West Seneca, New York 14224.

6. Other Licensee obligations:

Usage schedules must be submitted to West Seneca Youth & Recreation no later than April 1st of each and every year for approval. The schedule submitted must in the manner prescribed by the Town and must set forth the requested date(s), time(s), and diamond/field size. Any and all subsequent schedule change requests shall be made no later than 4:00 p.m. on the Wednesday preceding the upcoming week that contains the requested schedule change.

Licensee shall provide a contact telephone number for their organization to West Seneca Youth & Recreation for the public's information no later than 10 business days prior to the first day of registration each and every year.

It is the responsibility of the Licensee to make sure they check their e-mail about any cancellations due to weather, as the Town will send all cancellations notices via e-mail.

Licensee shall be solely responsible for the cost of any and all umpires and equipment.

Each usage that is reserved must be used. If the usage is cancelled for any reason, other than weather related, the Licensee must notify the West Seneca Youth & Recreation 14 days prior. Any reserved usage that goes unused without providing the required notice is subject first to a verbal warning. The second offense will result in a written warning. A third offense will result in suspension of the Licensee's right to use Town Facilities for the remainder of the season with no refund.

Licensee is solely responsible for player registration. The Town will not accept player registrations.

7. Other Town obligations: None.

8. 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.

a. 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

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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.

b. The Licensee must sign the affirmation regarding Interim Guidance for Sports and Recreation provided by New York State affirming they have read and understand their obligation to operate in accordance with the guidance and provide proof of the signing of the affirmation to the Town prior to use of the Town's Facility. The affirmation may be found at <https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/SportsAndRecreationMasterGuidance.pdf>. Such affirmation must be completed and proof of signature submitted to the Town with the return of this executed Agreement.

c. The Licensee is solely responsible for the preparation of their written safety plan as required by New York State Department of Health. Said written safety plan shall be submitted to the Town with the return of this executed Agreement.

d. It is the sole responsibility of the Licensee to enforce the guidelines set forth by the New York State Department of Health. Such failure to adhere to or enforce the guidelines may lead to police intervention and possible charges for those individuals not following the guidelines pursuant to the Governor's Executive Order 202 and New York State Public Health Law Section 12-b.

e. In the event the Licensee fails to remain compliant with provisions of this Paragraph, the Town in its sole discretion may terminate this Agreement and/or prohibit the Licensee use of the Facilities.

9. 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.

10. The Town, in its sole discretion, may terminate this Agreement at any time, with no reason, cause or notice. If that occurs, the Town will have no liability for damages of any kind whatsoever to the Licensee.

11. 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.

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12. The Licensee will cooperate and will cause the Licensee's Representative and its invitees to cooperate with the Town's personnel at all times, treating the Town's personnel in a professional and respectful manner.

13. The Licensee shall adhere to the following guidelines when using social media:

- a. Be fair and respectful to the Town and its employees;
- b. Avoid using statements, photos, videos or audio that could be reasonably viewed as malicious, obscene, offensive, or that disparages the Town or its employees;
- c. Be honest and accurate in providing information or news. Correct misinformation quickly upon learning it is misinformation;
- d. Do not make statements you know to be false about the Town or its employees;
- e. Maintain the Town's private or confidential information;
- f. Respect local laws, rules, and regulations; and
- g. Do not create a link from your social networking or website to the Town's website.

14. 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 without prior approval from the Town. Alterations under \$500.00 must be approved by the Town of West Seneca Highway Superintendent, and alterations over \$500.00 must be approved by the Town of West Seneca Town Board. The Licensee must follow the Town of West Seneca procurement policy with regards to expenses for said alterations. If any agreed upon alterations take place, the Licensee will immediately notify the Town in writing upon completion of the alteration so that the Town may inspect said alterations. The Licensee shall indemnify and hold the Town harmless from any liability related to construction of the alterations, improvements or changes of any kind to any of the Facilities or other Town property. Said alterations after completion and inspection by the Town shall be the property of the Town.

15. If any damage is sustained by the Facilities during the Licensee's use, then the Licensee shall pay the Town for such damages.

16. 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

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and shall be attached hereto as EXHIBIT D. 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.

17. 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.

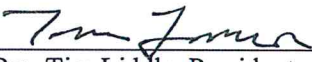
18. Each of the Parties acknowledges that they are separate entities, and neither is an agent for the other. The Parties will not make any assertions to the contrary.

19. In the event any provision of this Agreement is determined to be invalid or unenforceable, the remainder shall remain in full force and effect. This Agreement sets forth the entire understanding between the Parties and may be amended solely upon the written mutual agreement of the Parties.

TOWN OF WEST SENECA


By: Gary Dickson, Supervisor
Dated:

WEST SENECA YOUTH BASEBALL ASSOCIATION, INC.



By: Tim Liddle, President
Dated: 3/2/21

WEST SENECA WARRIORS TRAVEL BASEBALL CLUB



By: Ricky Albano, President
Dated: 3-2-21

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. 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. However, in the event the usage is not rescheduled, the Licensee will not be entitled to any refund from the Town.

b. Fees will not be refunded or adjusted, for any reason, should the Licensee fail to use the date they reserved to use the Facilities. The Licensee must notify the Recreation Department in advance if they will not be utilizing the Facilities as reserved. It is in the sole discretion of the Recreation Department whether any canceled use will be rescheduled.

c. It is in the sole discretion of the Town of West Seneca whether a refund of fees will be paid should the Licensee wish to withdraw from usage in advance of its scheduled start date.
2. Licensee agrees to follow all local laws and any rules posted at the facility or park they are using.
3. Licensee agrees to follow all orders 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.
4. Licensee is responsible for keeping the vicinity of any facility or park free and clear of debris and garbage.
5. No alcoholic beverages or leud/rowdy behavior 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. Licensee acknowledges that its players have made aware the rules and regulations contained in this Agreement, and the Licensee will enforce the players following the rules and regulations.
9. Players and spectators WILL stay OFF the berm, if using the West Seneca Soccer Park.
10. Parking spots cannot be reserved for any Town facility.
11. West Seneca Youth & Recreation reserves the right to cancel any scheduled use at any time, with no notice.
12. 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.
13. If using the West Seneca Soccer Park, no grills are allowed.
14. Failure of the Licensee to abide by the terms of this Agreement may result in termination of this Agreement and usage of the Town facilities and parks by the Licensee. In this event, no refunds will be given. All fees will still be due and owing pursuant to this Agreement.

EXHIBIT B - (the "Facilities") – Use

Parks, Soccer Complex (Fields) and Diamonds - In addition to the use of the fields, diamonds, courts, Licensees and participants shall receive use of the bathroom facilities and walking path.

West Seneca Ice Rink – In addition to the use of the ice, Licensees and participants shall receive use of the bathrooms, facilities, locker rooms (if available), and lobby.

EXHIBIT C - Permitted Use and the Permitted Use Dates

Usage schedules must be submitted to West Seneca Youth & Recreation no later than April 1st of each and every year for approval.