



Office of the West Seneca Town Supervisor
Hon. Gary A. Dickson

Memorandum

To: Honorable Town Board
From: Gary Dickson, Town Supervisor
Date: March 19, 2021
Subject: Farmers' Market 2021

Kindly adopt the attached resolution authorizing the Supervisor to execute the attached License and Joint Venture Agreement with the Chamber of Commerce for Town of West Seneca/West Seneca Chamber of Commerce – Farmers' Market 2021.

**RESOLUTION
FARMER'S MARKET AGREEMENT**

WHEREAS, the Town owns and operates certain properties and facilities located at 1250 and 1300 Union Road; and

WHEREAS, both the Town and Chamber desires to jointly venture to organize and operate a Farmer's Market for the benefit of the Town's residence and visitors; and

NOW THEREFORE, be it resolved that the Town Board of the Town of West Seneca authorizes the Supervisor to execute the Non-Exclusive Facilities Usage Permit and License and Joint Venture Agreement with the West Seneca Chamber of Commerce.

NON-EXCLUSIVE FACILITIES
USAGE PERMIT & LICENSE AND JOINT VENTURE AGREEMENT
TOWN OF WEST SENECA

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 West Seneca Chamber of Commerce ("Chamber"), located at 1300 Union Road, West Seneca, New York 14224 (the "Licensee") (collectively, the "Parties"), and is effective the date executed on behalf of the Town (the "Effective Date").

Recitals

WHEREAS, the Town owns and operates certain properties and facilities located at 1250 and 1300 Union Road; and

WHEREAS, both the Town and Chamber desires to jointly venture to organize and operate a Farmer's Market for the benefit of the Town's residence and visitors; and

WHEREAS, the Town is willing to permit the Licensee, and its employees, volunteers, agents, representatives and invitees to use the Town's properties and 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 the Town grants the Licensee and the Licensee's Permitted Users a non-exclusive facilities usage permit and license (the "License") to use the side lawn on the hill next to the Community Center and Library and Town Hall, located at 1250 and 1300 Union Road in the Town of West Seneca (the "Facilities") for the purposes of operating a Farmer's Market.

2. The License shall be for the 2021 Farmer's Market (the "Permitted Use"), which is sixteen (16) weeks in length, beginning May 13, 2021 and ending on August 26, 2021, on Thursdays from 4:00 p.m. to 7:00 p.m. (the "Permitted Use Dates"). 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 April 1, 2021, and end on October 1, 2021, unless terminated 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: Joe Kirchmyer, Executive Director
Address: 1300 Union Road
West Seneca, New York 14224
Phone: (716) 674-4900
Email: director@westseneca.org

5. Fee structure and agreement:
- a. The parties agree that the cost to the vendor for a seasonal license shall be \$200.00 (for participation in all 16 weeks). A vendor may purchase a biweekly license in the amount of \$125.00 (for participation in 8 weeks). In the event a vendor elects the biweekly option, they must elect to either participate on odd or even dates for the season.
 - b. There will be no reduced or prorated rates for late registration by a vendor.
 - c. Food truck vendors may participate in the event by submission of an application to the West Seneca Code Enforcement Office for a food truck license along with a copy of any required health department inspection and any applicable application fee. The vendor fee for a food truck is \$25.00 per week.
 - d. In the event the Farmer's Market is canceled for any reason for a duration of two (2) or more consecutive weeks, the effected vendors will receive a discount equal to what they paid for each week canceled, i.e. 1/16 or 1/8, to be applied to their registration for the following calendar year.
 - e. There will be no refunds of vendor fees under any circumstances.
 - f. All payments from sponsors and vendors shall be payable to the Town of West Seneca and shall be submitted to the Supervisor's Office.
 - g. At the completion of the Farmer's Market season, the fees collected shall be distributed in the following order:
 1. The Chamber shall be reimbursed for all marketing and promotion expenses upon providing receipts of such expenses to the Town; and
 2. The remaining fees shall be shared equally by the Town and Chamber.
6. Other Licensee obligations:
- a. The Chamber, through its membership and contracts, shall be responsible for soliciting sponsors and vendors.

- b. The Chamber shall be solely responsible for marketing and promotion of the Farmer's Market.

7. Other Town obligations:

- a. The Town Buildings and Grounds Department will coordinate and provide trash containers and removal of said containers for each scheduled date of the Farmer's Market.
- b. The Town will permit vendors of the Farmer's Market to have access to the Facilities for set up beginning at 3:00 p.m. the day of the Farmer's Market and will permit the vendors access until 8:00 p.m. that day for clean-up.
- c. The Town will provide two tables for each Farmer's Market that will be made available to not-for-profit/community groups each week at no charge to those groups.
- d. Parking for vendors and visitors of the Farmer's Market shall be designated by the Town and approved by the West Seneca Police Department.
- e. The Town shall be responsible for coordinating the execution of licensee agreements by all vendors.
- f. The Town shall be responsible for the collection of all application forms, vendor payments, licensee agreements between the vendor and the Town, and certificates of insurance from vendors naming the Town and Chamber as additional insureds for \$1 million per occurrence and \$3 million in the aggregate.

8. 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 Agreement.

9. 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.

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

11. 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.

12. 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.

13. Each of the Parties acknowledges that it is not an agent for the other, and the Parties will not make any such assertions. 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.

14. 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.

TOWN OF WEST SENECA

By: Gary A. Dickson, Supervisor
Dated:

WEST SENECA CHAMBER OF COMMERCE

By: Joe Kirchmyer, President
Dated: