



TOWN OF WEST SENECA

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

LAUREN J. MASSET
RECREATION SUPERVISOR

TO: Honorable Town Board / Town of West Seneca
FROM: Lauren J. Masset
Recreation Supervisor
DATE: August 10, 2021
RE: WSCSD Facility Usage Agreement 2021-2022

Please allow the Supervisor to execute the necessary documents to enter into an agreement with the West Seneca Central School District (WSCSD) located at 1397 Orchard Park Road, West Seneca, NY, 14224 for the use of Town of West Seneca facilities for the school year.

Please note this agreement is also contingent upon West Seneca School Board approval at one of their upcoming meetings.

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 Central School District, located at 1397 Orchard Park Road, West Seneca, New York 14224 (the “Licensee” and “WSCSD”) (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 Licensee shall be permitted use on dates and times, at locations identified in EXHIBIT B, as determined and scheduled between the WSCSD Athletic Office and Town of West Seneca Recreation Office. 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 August 20, 2021 and end on August 19, 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

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

Licensee Representative
West Seneca Central School District

Name and Title: Matthew Bystrak, Superintendent
Address: 1397 Orchard Park Road
West Seneca, New York 14224
Phone: (716) 677-3100

5. The Licensee hereby authorizes representatives of Section VI of NYSPHSAA, Inc., to conduct scheduling of facilities use on behalf of the Licensee.

6. Facility Use Fees:

The WSCSD shall pay as follows for the use of the West Seneca Ice Rink: \$120.00 per hour or \$2.00 per minute between 7:00 a.m. and 1:59 p.m. on weekdays and \$210.00 per hour or \$3.50 per minute before 6:59 a.m. on weekdays, after 2:00 p.m. on weekdays, and anytime on weekends. These fees are due at the end of each season (no later than June 1, 2022). This document serves as the invoice of fees.

The WSCSD shall pay no fees for use of Town of West Seneca softball diamonds, baseball diamonds, soccer fields, tennis courts, basketball courts, walking paths, park use, and track and cross-country trails.

The WSCSD must pay a fee for any tournaments, large gatherings, community events, or special events. These fees will be assessed on a case-by-case basis. Said fees are due a minimum of 10 business days in advance. An invoice will be provided.

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, if applicable. The invoice shall be paid within fifteen (15) days of Licensee's receipt.

Checks should be made out to the "Town of West Seneca."

Payments can be submitted via mail to: West Seneca Recreation Department, 1250 Union Road, West Seneca, NY 14224. No currency should be sent in the mail.

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, New York State Department of Education, 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.

It is the sole responsibility of the Licensee to enforce the guidelines set forth by the relevant governmental agencies. In the event the Licensee fails to remain compliant with and enforce such guidelines, the Town in its sole discretion may terminate this Agreement and/or prohibit the Licensee use of the Facilities.

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.

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 this Agreement and the Facility Usage Rules and Regulations attached as EXHIBIT A.

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, treating the Town's personnel in a professional and respectful manner.

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 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.

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 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.

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.

15. 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 CENTRAL SCHOOL DISTRICT, INC.

By: Matthew Bystrak, Superintendent of Schools
Dated:

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 reschedule, 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

Use of Town of West Seneca Ice Rink, softball diamonds, baseball diamonds, soccer fields, tennis courts, basketball courts, track and cross-country trails for WSCSD athletic/sporting events (games, practices, scrimmages, etc.) during the 2021-2022 school year. All uses must be booked through the Town Recreation Office. No dates/times/locations are guaranteed.

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 (if/when available).

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.

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