



CITY OF BETHLEHEM
OFFICE OF THE CITY SOLICITOR

INTEROFFICE MEMORANDUM

To: Robert G. Vidoni, City Clerk

From: William P. Leeson, Esq., City Solicitor

Re: Use Permit Agreements for Public Property
Permittee Name: ArtsQuest
Purpose: Musikfest 2020, Musikfest 2021, Musikfest 2022, Musikfest 2023 and Musikfest 2024
Location: Streets and Various City Properties

Date: January 16, 2020

Attached is a proposed Resolution and associated Use Permit Agreements for Council's consideration.

We request that this matter be placed on City Council's January 21, 2020 agenda for communication purposes as well as for review and appropriate action. This is to accommodate ArtsQuest's timing to apply for its annual Special Occasion Permit from the Pennsylvania Liquor Control Board.



William P. Leeson, Esq., Solicitor

Cc: Robert J. Donchez, Mayor
Eric Evans, Business Administrator
Michael Alkhal, Public Works
Jodi Evans, Recreation
Katherine E. Hilgert, ArtsQuest

RESOLUTION NO. 2020-_____

Authorization For Use Permit Agreements

BE IT RESOLVED by the Council of the City of Bethlehem that the Mayor and the Controller and/or such other City officials as deemed appropriate by the City Solicitor, are hereby authorized to execute Use Permit Agreements and such other agreements and documents as are deemed by the City Solicitor to be necessary and/or related thereto, according to the terms and conditions indicated therein and made a part hereof, with the following named permittee, for the uses and purposes indicated below:

1. Name of Permittee: ArtsQuest
2. Premises:
 - A.) Certain City streets as identified in the Use Permit Agreement for Streets
 - B.) Certain City properties as identified in the Use Permit Agreement for Festival Sites
3. Purpose: Musikfest 2020, Musikfest 2021, Musikfest 2022, Musikfest 2023 and Musikfest 2024
4. Duration:
 - A.) Streets
 - 1.) Main Street between Lehigh Street and Spring Street Only
 - a.) from 8:00 a.m. Monday, July 27, 2020 until 5:00 p.m. Wednesday, August 12, 2020.
 - b.) from 8:00 a.m. Monday, August 2, 2021 until 5:00 p.m. Wednesday, August 18, 2021.
 - c.) from 8:00 a.m. Monday, August 1, 2022 until 5:00 p.m. Wednesday, August 17, 2022.
 - d.) from 8:00 a.m. Monday, July 31, 2023 until 5:00 p.m. Wednesday, August 16, 2023.
 - e.) from 8:00 a.m. Monday, July 29, 2024 until 5:00 p.m. Wednesday, August 14, 2024.
 - 2.) First Street between Polk Street and its eastern terminus, allowing for access to Steel Ice Center and its parking lot, and Founders Way from Second Street to First Street
 - a.) from 8:00 a.m. Monday, July 27, 2020 until 5:00 p.m. Wednesday, August 12, 2020
 - b.) from 8:00 a.m. Monday, August 2, 2021 until 5:00 p.m. Wednesday, August 18, 2021.
 - c.) from 8:00 a.m. Monday, August 1, 2022 until 5:00 p.m. Wednesday, August 17, 2022.
 - d.) from 8:00 a.m. Monday, July 31, 2023 until 5:00 p.m. Wednesday, August 16, 2023.
 - e.) from 8:00 a.m. Monday, July 29, 2024 until 5:00 p.m. Wednesday, August 14, 2024.

- 3.) All Other Premises –
 - a.) from July 31 to August 9, 2020 only between the hours of 8:00 a.m. and 11:30 p.m. each day.
 - b.) from August 6 to August 15, 2021 only between the hours of 8:00 a.m. and 11:30 p.m. each day.
 - c.) from August 5 to August 14, 2022 only between the hours of 8:00 a.m. and 11:30 p.m. each day.
 - d.) from August 4 to August 13, 2023 only between the hours of 8:00 a.m. and 11:30 p.m. each day.
 - e.) from August 2 to August 11, 2024 only between the hours of 8:00 a.m. and 11:30 p.m. each day.

B.) Festival Sites

- 1.) July 20, 2020 to August 14, 2020
- 2.) July 26, 2021 to August 20, 2021
- 3.) July 25, 2022 to August 19, 2022
- 4.) July 24, 2023 to August 18, 2023
- 5.) July 22, 2024 to August 16, 2024

- 5. Event Dates:
 - July 31 to August 9, 2020 only between the hours of 8:00 a.m. and 11:30 p.m. each day.
 - August 6 to August 15, 2021 only between the hours of 8:00 a.m. and 11:30 p.m. each day.
 - August 5 to August 14, 2022 only between the hours of 8:00 a.m. and 11:30 p.m. each day.
 - August 4 to August 13, 2023 only between the hours of 8:00 a.m. and 11:30 p.m. each day.
 - August 2 to August 11, 2024 only between the hours of 8:00 a.m. and 11:30 p.m. each day.

Sponsored by _____

ADOPTED by Council this _____ day of _____, 20__.

President of Council

ATTEST:

City Clerk

CITY OF BETHLEHEM
Bethlehem, Pennsylvania

USE PERMIT AGREEMENT FOR PUBLIC PROPERTY
(STREETS)

- PREMISES:
- a.) North Side
 - i.) Main Street from Broad Street to the Lehigh River
 - ii.) Walnut Street from Guetter Street to Main Street
 - iii.) Spring Street from Conestoga Street to Main Street
 - iv.) Lehigh Street from Conestoga Street to New Street
 - v.) Conestoga Street from W Union Blvd to Spring Street and the eastern leg of Conestoga Street from Spring Street to Lehigh Street
 - b.) South Side
 - i.) Founders Way from Third Street to First Street
 - ii.) First Street from Polk Street to its eastern terminus
 - iii.) Second Street from Polk Street to its eastern terminus
- PURPOSE: Musikfest 2020, Musikfest 2021, Musikfest 2022, Musikfest 2023 and Musikfest 2024
- DURATION:
- a.) Main Street between Lehigh Street and Spring Street Only
 - i.) from 8:00 a.m. Monday, July 27, 2020 until 5:00 p.m. Wednesday, August 12, 2020.
 - ii.) from 8:00 a.m. Monday, August 2, 2021 until 5:00 p.m. Wednesday, August 18, 2021.
 - iii.) from 8:00 a.m. Monday, August 1, 2022 until 5:00 p.m. Wednesday, August 17, 2022.
 - iv.) from 8:00 a.m. Monday, July 31, 2023 until 5:00 p.m. Wednesday, August 16, 2023.
 - v.) from 8:00 a.m. Monday, July 29, 2024 until 5:00 p.m. Wednesday, August 14, 2024.
 - b.) First Street between Polk Street and its eastern terminus, allowing for access to Steel Ice Center and its parking lot, and Founders Way from Second Street to First Street
 - i.) from 8:00 a.m. Monday, July 27, 2020 until 5:00 p.m. Wednesday, August 12, 2020
 - ii.) from 8:00 a.m. Monday, August 2, 2021 until 5:00 p.m. Wednesday, August 18, 2021.
 - iii.) from 8:00 a.m. Monday, August 1, 2022 until 5:00 p.m. Wednesday, August 17, 2022.

- iv.) from 8:00 a.m. Monday, July 31, 2023 until 5:00 p.m. Wednesday, August 16, 2023.
 - v.) from 8:00 a.m. Monday, July 29, 2024 until 5:00 p.m. Wednesday, August 14, 2024.
- c.) All Other Premises –
- i.) from July 31 to August 9, 2020 only between the hours of 8:00 a.m. and 11:30 p.m. each day.
 - ii.) from August 6 to August 15, 2021 only between the hours of 8:00 a.m. and 11:30 p.m. each day.
 - iii.) from August 5 to August 14, 2022 only between the hours of 8:00 a.m. and 11:30 p.m. each day.
 - iv.) From August 4 to August 13, 2023 only between the hours of 8:00 a.m. and 11:30 p.m. each day.
 - v.) From August 2 to August 11, 2024 only between the hours of 8:00 a.m. and 11:30 p.m. each day.

THIS USE PERMIT AGREEMENT is entered into this _____ day of _____, 20____, by and between ARTSQUEST, with its mailing address at 25 West Third Street, Suite 300, located in the City of Bethlehem, Pennsylvania, 18015-1238 (hereinafter referred to as the “Permittee”);

- AND -

The CITY OF BETHLEHEM, a municipal corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with its offices and principal place of business situate at 10 East Church Street, Bethlehem, Northampton County, Pennsylvania, 18018 (hereinafter referred to as the “City”).

WITNESSETH:

WHEREAS, Permittee desires to utilize the premises identified above for the purpose identified above; and

WHEREAS, City desires to grant a Use Permit to the Permittee for the premises described, for the purpose stated, and for the date(s) described above as duration.

NOW THEREFORE, in consideration of the sum of Fifty Dollars and No Cents (\$50.00) and the other amounts, if any, hereinafter identified to be paid by the Permittee to the City concurrently herewith, the sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

A. Special Provisions

1. Contributions. Permittee has agreed to pay to the City those amounts identified in the separate document entitled “Use Permit Agreement for Public Property (Festival Sites)”. No additional payments are required in connection with this Use Permit Agreement for Streets.

2. Designation as “Special Event”. Musikfest is hereby authorized, licensed, permitted and designated by City as a “Special Event” or Special Condition for all purposes set forth in applicable City Ordinances and Resolutions. For the purposes of Article 531.99, the designated area is the area including and within the following boundaries, which is also shown on Exhibit “A”: Main Street from Broad Street to North Street, North Street from Main Street to Long Street, Long Street from North Street to Church Street, Church Street from Long Street to Center Street, Center Street/Lehigh Street from Church Street to Conestoga Street, Conestoga Street from Lehigh Street to Spring Street, Spring Street from Conestoga Street to Second Avenue, Second Avenue from Spring Street to Prospect Avenue, Prospect Avenue from Second Avenue to First Avenue, First Avenue from Prospect Avenue to Broad Street and Broad Street from First Avenue to Main Street.

3. Termination. Permittee shall have the right to terminate this Lease by ten (10) days written notice to the City.

4. Vehicular and Pedestrian Use. The Premises shall be kept open for vehicular and pedestrian use at all times, except as otherwise allowed herein. Permittee shall place no barricades, blockades or other items in the Premises which would, in any way, impede the flow of vehicular or pedestrian traffic. Said Premises may be closed or barricades or blockades erected only with the prior written consent of the Police Chief, which consent may include such restrictions or conditions as the Police Chief may require in his sole discretion. Sufficient emergency vehicle and equipment ingress and egress must be maintained at all times.

5. Use of Public Sidewalks. Permittee shall not restrict the use of the public sidewalks by the abutting property owners and tenants.

6. Street Maintenance – Permittee Responsible. Permittee shall keep the Premises clean and in good condition during the term of this Use Permit and, at the conclusion thereof shall return the Premises to the City in the same condition it was in at the commencement of the term of the Use Permit, normal and reasonable wear and tear excepted. It is expressly agreed that Permittee shall be responsible for all damage beyond normal and reasonable wear and tear occurring to the Premises during the term of the Use Permit, except that caused by the active negligence or willful misconduct of the City. Any damage to city property will be invoiced to the Permittee and must be reimbursed to the City of Bethlehem within 30 days of invoicing. If payment is not received within 30 days, interest charges will accrue at an interest rate of 1% per month or any portion of a month thereof.

7. Street Maintenance – City Responsibility. City will continue its program of routine street maintenance and cleaning during the term of this Use Permit.

8. Submission of Site Plan to City. Permittee shall provide City with a site plan showing the proposed location of all refrigerator trucks, dumpsters, parking areas, bus and trolley stops and any other uses it intends to make of the Premises four (4) weeks prior to the commencement of the Use Permit term. The locations must be approved in writing by City's Director of Public Works prior to their placement on the Premises. The approved locations shall be not altered without further written approval of City's Director of Public Works. In addition, the final and complete site plan must be approved in writing by the Fire Marshal or his designee to ensure adequate emergency vehicle access to all areas of the festival.

9. [Reserved.]

10. Law Enforcement. Notwithstanding the terms of this Use Permit, City shall retain sole and exclusive jurisdiction to enforce the Ordinances of the City of Bethlehem and laws of the Commonwealth of Pennsylvania on the Premises during the term of this Use Permit.

11. ArtsQuest in Exclusive Possession of Premises. For purposes of enforcement by governmental and municipal entities of all state laws and City ordinances, ArtsQuest shall be deemed to be in exclusive possession of the premises. For enforcement purposes, this provision shall supersede and amend any inconsistent provision of this Agreement set forth hereinbefore or hereinafter.

12. Requests for City Services. All requests for City services shall be submitted in writing at least four (4) weeks before the commencement of the Musikfest Festival.

13. Annual Review. Representatives of ArtsQuest and the City agree to meet annually to discuss any proposed Amendments to this Agreement.

14. Code Inspection and Compliance

A. Temporary Structures and Overhead Cover. Any tent, canopy, membrane, or similar structure that Permittee erects or allows to be erected on City property in conjunction with this Use Permit Agreement shall be subject to health, fire, safety, etc. inspections by the appropriate City departments including but not limited to the Code Enforcement Bureau. For purposes of this agreement each tent, canopy, membrane, or similar structure must comply with all pertinent provisions of the current UCC building and fire codes adopted by City and other codes, guidelines, etc. deemed relevant by City. The City shall issue a written approval to Permittee as it relates to each tent, canopy, membrane or other similar structure. Permittee hereby agrees to pay the City \$50.00 fee for the inspection of each tent, canopy or membrane subject to this provision.

- B. Cooking and Cooking Devices. Any vendor, party or participant of the festival or event that is the subject of this Use Permit Agreement that anticipates cooking or heating any food during the event, is required to obtain the necessary permit from the City's Fire Department and have any cooking or heating device or equipment to be used or anticipated to be used inspected by the City's Fire Department.
- C. Permittee's failure to follow City Code requirements and directives by inspectors shall be a violation of this agreement under Section B.5.

B. Standard Provisions

- 1. Grant of Non-Exclusive Use Permit. The City hereby grants to the Permittee a permit to use the Premises, as more particularly described above, for Permittee's non-exclusive use for the Purpose described above.
- 2. Purpose of Use Permit and Duration. The Premises shall be used for the Purpose described above only. The grant of this non-exclusive Use Permit shall run for the period of time indicated above as Duration if not terminated sooner as allowed under this Agreement.
- 3. Premises to Remain Open and Accessible to the Public. The Premises must remain open and accessible to the public at all times and for constitutionally protected speech or activity, excepting reasonable restrictions and accommodation to prevent deliberate interference with activities or events scheduled by and conducted by the Permittee. If the Premises covered by this Agreement pertains to a building or other enclosed structure, City will determine the days and hours for public access, and the days and hours that the building or other structure shall be closed and locked. Permittee shall avoid interference with or disruption of City's operations and activities. Sufficient emergency vehicle and equipment ingress and egress must be maintained at all times.
- 4. Scheduling of Programs and Events. The City and the Permittee will coordinate the scheduling of events for use of any facility or other building on the Premises. The City shall retain final approval over all scheduling matters.
- 5. Violations of Use Permit. Any violation of this Use Permit, as determined by the City in its sole discretion, shall result in the immediate termination of the Use Permit. Such violations include but are not limited to:
 - A. The prevention of the public from the use and enjoyment of the Premises at times when no activities or other events are scheduled.
 - B. The exclusive use by the Permittee, to the exclusion of the public, of the facility or other building on the Premises during periods when no activities or other events are scheduled.

- C. The failure of the Permittee to obtain and provide the insurance required by this agreement.
- D. Violation and/or non-compliance with any federal or state law, or of City ordinance, inspection and safety Codes, directives by City Code compliance officers and inspectors, policy, rule or regulation.
- E. Violation of a material obligation of Permittee under this Agreement.

6. Required CGL Insurance Coverage. Except as set forth herein, the Permittee shall purchase and maintain comprehensive general liability insurance naming the “City of Bethlehem and its officers and employees” as additional insureds for a minimum of \$1,000,000.00 per occurrence and general aggregate of \$5,000,000.00. The said insurance shall cover public liability, products liability and property damage. To provide proof of insurance, the Permittee shall furnish a Certificate of Insurance to the Bureau of Law of the City of Bethlehem at the time of Permittee’s signing and delivery of this Agreement to the City for counter-signature. A certificate naming the City as “certificate holder” only is non-compliant. Permittee is not required to purchase and maintain police professional liability insurance.

7. Indemnification of City. Except as set forth herein, the Permittee shall indemnify, defend, save and hold harmless the City and its officers and employees, from and against all suits or claims that may be based upon any damage or injury or death, to any person or property that may occur, or that may be alleged to have occurred, in the course of the use of the Premises by the Permittee, and also whether such claims be made by an owner, officer, principal, employee, or a contractor or its employees, of the Permittee, or by any third party, also including Event and Festival licensees and vendors, their owners, principals, employees, and their contractors and contractor’s employees, and by members of the public, and whether or not it shall be claimed that the damage or injury or death was caused through the negligent act or omission in whole or in part of the City and/or its officers and/or employees. The Permittee shall indemnify, defend, save and hold harmless the City and its officers and employees, from and against all suits or claims that may be based upon any liability of the City, including such that may arise under U.S. Copyright Laws, to all music licensing agencies (including but not limited to SESAC, BMI and ASCAP) and any other third parties resulting from or accruing from Permittee’s unlicensed authorization, sponsoring or presenting recorded or live music on City property or in City buildings or facilities. The Permittee shall, at the Permittee’s own expense, pay all charges of attorneys, and all costs and other expenses arising therefrom or incurred in connection therewith, and if any judgment shall be rendered against the City and/or its officers and/or its employees in any such action, or actions, the Permittee, at the Permittee’s own expense, shall satisfy and discharge the same. The preceding shall not apply to require indemnification by Permittee for any liability, claims, suits, etc., arising from action by officers of the Bethlehem Police Department.

- 8. Maintenance by Permittee. Deleted. See Special Provision A-6.
- 9. Renewal. Deleted. Duration of permit described above.

10. Environmental Protection / Energy Conservation / Compliance with Law. Permittee must at all times incorporate best management practices in Permittee's operations as it relates to environmental protection and energy conservation. The best management practices would include full and complete compliance with state and/or local regulatory and/or non-regulatory guidelines for the management of, but not limited to, recycling, soil pollution, erosion control, energy saving applications, energy conservation, and use of environmentally friendly products. Permittee shall fully and completely comply with all Ordinances, policies, rules and/or regulations of the City of Bethlehem, and all state and federal laws, rules and regulations pertaining to the premises utilized herein and the uses thereof, and shall obtain all required permits. City shall have the authority to enforce the ordinances of the City and laws of the Commonwealth of Pennsylvania at the Premises during the term of this Use Permit Agreement.

11. Personal Property. Permittee shall be solely responsible for the safety and security of its personal property, and any damage or loss to items of personalty shall be the sole and exclusive responsibility of Permittee.

12. No City Services. Not Applicable – Language Deleted.

13. Cancellations. City may, at its sole discretion, and with or without notice, postpone or cancel the exercise by Permittee of the permit granted hereby for causes beyond City's control. Such causes shall include, without limitation, the laws, regulations, acts, demands, or interpositions of any Federal, State or Local Government Agency, acts of God, fire, flood, weather, or any other cause beyond City's control whether similar or dissimilar to the foregoing.

14. Removal of Personalty. At the termination of this permit, Permittee shall remove all of its personal property from the premises and return the premises to its condition existing at the commencement of this permit. On termination, if Permittee fails to return the Premises to its condition existing at the commencement of this Permit, Permittee agrees to pay to the City on demand, all costs incurred by City to return and restore the Premises to its original condition. The Permittee shall remove all personalty from the premises within four (4) days of the termination of this permit, and in the event of failure to do so, City will impose a charge on Permittee for same.

15. Amendment. The material terms of this Permit Agreement may not be amended or modified except by agreement in writing duly executed by the parties hereto. The Mayor is authorized to execute amendments to correct obvious drafting errors, and to clarify the intent of this Permit Agreement.

16. Governing Law, Venue and Limitation of Actions. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania. The exclusive venue for resolution of all disputes, claims and actions, whether the same involves litigation, arbitration or otherwise, shall be in Northampton County, Pennsylvania, only. Any and all civil actions and demands for arbitration by Permittee against the City pertaining to this

Agreement and/or anything related thereto shall be subject to the following time limitation: civil actions must be commenced, and demands for arbitration must be filed with the American Arbitration Association, within six (6) months of the end of the event, it being the intent of the parties that this provision shall supercede any inconsistent statutory limitation period. This limitation of action provision shall not however apply to any civil actions and/or demands for arbitration by City against Permittee.

17. Dispute Resolution. For all claims, disputes and actions, City may, at its sole option, either demand and require that the same be litigated in the Court of Common Pleas of Northampton County, or demand and require non-binding mediation under the auspices of and in accordance with the then applicable mediation rules and guidelines of the American Arbitration Association, and/or arbitration in front of a three (3) member arbitration panel under the then applicable Arbitration Rules of the American Arbitration Association. Judgment upon the award rendered by the arbitration panel may be entered in the Court of Common Pleas of Northampton County, Pennsylvania. Election by the City of mediation and/or arbitration shall operate as an automatic stay of any litigation filed by the Permittee. The costs of any mediation and/or arbitration shall be borne equally by the parties.

18. Limitation on Damages. In the event of any claims, disputes, actions or arbitrations, by Permittee against City, Permittee waives and relinquishes any and all claims for consequential damages, damages for delay and damages for acceleration.

19. Non-Assignable. The Permittee may not assign its interest hereunder, nor may Permittee sub-permit the premises, without the prior written consent of the City.

20. Termination.

- A. Either party may terminate this Agreement for any reason on thirty (30) days advance written notice to the other party.
- B. City may terminate or temporarily suspend this Use Permit Agreement immediately and without prior notice where City determines it requires emergency access to the public property that it cannot otherwise satisfactorily accommodate for its needs or City if deems termination necessary for the health, safety or welfare of the public under paragraph 13 above.

[THE REMAINDER IF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, and intending to be legally bound hereby, the Permittee and the City, have caused this Use Permit to be duly executed the day and year first above written.

ATTEST:

Secretary

PERMITTEE:
ARTSQUEST

By: _____ (SEAL)

1. Name: Katherine E. Hilgert
 2. Title: President & CEO
 3. Certificate of Insurance Naming "City of Bethlehem And Its Officers and Employees" Has Been Provided: Yes/No
- (NOTE: THIS CONTRACT WILL NOT BE PROCESSED FOR SIGNATURE BY CITY UNLESS REQUIRED CERTIFICATE OF INSURANCE HAS BEEN PROVIDED!!)

ATTEST:

City Controller

CITY:
CITY OF BETHLEHEM

By: _____ (SEAL)

Robert J. Donchez
Mayor

The within Use Permit Agreement is certified to be needed, necessary and appropriate.

By: _____
City of Bethlehem Department Head
Print Name: _____

CITY OF BETHLEHEM
Bethlehem, Pennsylvania

USE PERMIT AGREEMENT FOR PUBLIC PROPERTY
(FESTIVAL SITES)

- PREMISES:
- a.) Johnston Park (areas outlined and hatched as shown on the attached maps – Exhibit A, Maps a-1, a-2 and a-3); and -
 - b.) Sand Island:
 - Sand Island West: Park lands west of the railroad trestle to be used for parking and storage units and park lands east of the railroad right of way and west of Fritch Fuel to be used for parking (areas outlined and hatched as shown on the attached map – Exhibit A, Map b-1);
 - Routine City and public uses of Sand Island and its facilities will not be restricted, including use of the basketball courts, tennis courts, playground areas and any maintenance or construction activities;
 - Usage of the Charles A. Brown Ice House and adjacent parking lot on Sand Island East is subject to availability to be determined on an annual basis and separate permit pursuant to City Article 941;
 - Sand Island East will be closed at agreed upon times for installation of fireworks; and -
 - c.) Second Avenue Ramp on Hill-to-Hill Bridge (area outlined and hatched as shown on the attached map – Exhibit A, Map c-1); and -
 - d.) Nevin Place adjacent to Sun Inn Courtyard (area outlined and hatched as shown on the attached map – Exhibit A, Map d-1).

PURPOSE: Musikfest 2020, Musikfest 2021, Musikfest 2022, Musikfest 2023 and Musikfest 2024

- DURATION:
- a.) July 20, 2020 to August 14, 2020
 - b.) July 26, 2021 to August 20, 2021
 - c.) July 25, 2022 to August 19, 2022
 - d.) July 24, 2023 to August 18, 2023
 - e.) July 22, 2024 to August 16, 2024

THIS USE PERMIT AGREEMENT is entered into this ____ day of _____, 20____, by and between ARTSQUEST, with its mailing address at 25 West Third Street, Suite 300, located in the City of Bethlehem, Pennsylvania, 18015-1238 (hereinafter referred to as the “Permittee”);

- AND -

The CITY OF BETHLEHEM, a municipal corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with its offices and principal place of business situate at 10 East Church Street, Bethlehem, Northampton County, Pennsylvania, 18018 (hereinafter referred to as the “City”).

WITNESSETH:

WHEREAS, Permittee desires to utilize the premises identified above for the purpose identified above; and

WHEREAS, City desires to grant a Use Permit to the Permittee for the premises described, for the purpose stated, and for the date(s) described above as duration.

NOW THEREFORE, in consideration of the sum of Fifty Dollars and No Cents (\$50.00) and the other amounts, if any, hereinafter identified to be paid by the Permittee to the City concurrently herewith, the sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

A. Special Provisions

1. Submission of Public Safety Plan/EMS Standby. The Permittee shall comply with the following provisions.

- A. At least thirty (30) days before the festival or special event is scheduled to begin, the Permittee must submit a Public Safety Plan (hereinafter referred to as the “Plan”) to the City’s Recreation Director, Fire Chief, Police Chief, EMS Director and Emergency Management Coordinator, which Plan addresses each item on the attached Exhibit “B.” The Plan must address each item as contained in Exhibit B to the satisfaction of the City. The Permittee’s festival or special event shall not be held on City property unless written approval has been granted by the City on or before the start date of the festival or special event to the Permittee’s Plan.
- B. The Permittee shall pay for and arrange a City EMS crew and ambulance to provide service to the festival or special event. The Permittee shall pay to the City a standby rate for the EMS crew and ambulance. Said rate shall be the current established rate as set by the City and found in Article 1120 of the Codified Ordinances of the City of Bethlehem.

2. Contributions. Permittee hereby agrees to pay to City as a contribution, the sum of One Hundred Fifteen Thousand Dollars (\$115,000.00) in 2020 toward the overall non-uniform in-kind service costs of Musikfest, which amount shall be paid to the City by September 1, 2020. Permittee hereby agrees to pay to City as a contribution, the sum of One Hundred Sixteen Thousand Five Hundred Dollars (\$116,500.00) in 2021 toward the overall non-uniform in-kind service costs of Musikfest, which amount shall be paid to the City by September 1, 2021. Permittee hereby agrees to pay to City as a contribution, the sum of One Hundred Eighteen Thousand Dollars (\$118,000.00) in 2022 toward the overall non-uniform in-kind service costs of Musikfest, which amount shall be paid to the City by September 1, 2022. Permittee hereby agrees to pay to City as a contribution, the sum of One Hundred Nineteen Thousand Five Hundred Dollars (\$119,500.00) in 2023 toward the overall non-uniform in-kind service costs of Musikfest, which amount shall be paid to the City by September 1, 2023. Permittee hereby agrees to pay to City as a contribution, the sum of One Hundred Twenty-One Thousand Dollars (\$121,000.00) in 2024 toward the overall non-uniform in-kind service costs of Musikfest, which amount shall be paid to the City by September 1, 2024.

For purposes of this Use Permit, “non-uniform in-kind services” shall include: Garbage pickup and over-night clean-up of permitted and adjacent streets at the North and Southside venues; street cleaning; street and site flushing, sign erection and removal; electrical labor work to include wiring of Liederplatz and festival panel sets; electricity; bridge banners, equipment; fire hydrant adaptor installation and removal; water and sewage treatment costs; installation of temporary fencing; and any other service that is customary and performed based on past practice and paid for by Permittee upon billing by City. For purposes of this Use Permit, “non-uniform in-kind services” City obligations shall not include: Electrical work – wiring of Handwerkplatz, Zinzenplatz and Main Street; pole banner installation; over-night clean-up at festival tent sites; and electrician on duty; and such services shall be performed by Permittee at its expense.

3. Parking. Parking is permitted only where legally designated.

4. Admission Charges. Permittee may charge admission to its performances. All admission proceeds shall be retained by the Permittee.

5. Security. Permittee agrees to use roster duty City of Bethlehem Police Officers primarily for all crowd control and traffic duties on City streets and property. However, Permittee may use additional proper security with respect to private property. Said roster duty services shall be reimbursed by Permittee to City in amounts billed by City. Said amounts are not included in or compensated by the Contributions and constitute a separate obligation of Permittee.

6. Fire Safety. Permittee agrees to use roster duty City of Bethlehem Fire Department personnel primarily for all fire safety coverage on City streets and property. However, Permittee may use additional proper security with respect to private property. Said roster duty services shall be reimbursed by Permittee to City in amounts billed by City. Said amounts are not included in or compensated by the Contributions and constitute a separate obligation of Permittee.

7. Removal of Port-A-Johns. Permittee shall remove all port-a-johns from the Premises as soon as possible following August 9, 2020, August 15, 2021, August 14, 2022, August 13, 2023 and August 11, 2024 (i.e. the last day of each year's festival).

8. Food Vendor Area Cleaning. Permittee shall ensure that all food vendor areas located at the Sun Inn Courtyard and along Main Street, from Church Street to Broad Street, will be cleaned daily especially around the grease barrels and dumpster areas.

9. Repairs. Permittee shall be responsible for the cost of replacing broken City sidewalks along Main Street, from Church Street to Broad Street, that occur as a result of the event, including set-up and take down. Permittee reserves the right to video and/or photograph all sites before the commencement of the festival, to document pre-festival conditions.

10. Itemized Written Statement of Damages and Cost of Repair. Within thirty (30) days after the yearly permit term has ended, the City shall provide the Permittee with an itemized written statement setting forth any damages which have occurred to the Premises and the cost of repair thereof. The Permittee shall pay the amount due within thirty (30) days of receipt of the damage itemization. If the Permittee objects to the damage itemization, it shall so notify the City in writing within ten (10) days of receipt thereof. If Permittee fails to object within the stated period, it shall thereafter be deemed to have consented to the damage itemization and to have waived any objection thereto.

11. Site Plan. Permittee shall provide City with a final and complete site plan showing the location of all proposed festival infrastructure (temporary or otherwise) to be placed on the Premises and the identities of the parties to be occupying said festival infrastructure four (4) weeks prior to the commencement of the term. For purposes of this Use Permit, "festival infrastructure" shall mean: tents; booths; seating; amenities; structures; stages; equipment; vehicles; amusements; truck trailers; refrigerator trucks; dumpsters; parking areas; bus and trolley stops; and any other uses Permittee intends to make or to be placed and used on the permitted premises during the festival. The locations of said festival infrastructure must be approved in writing by the City's Director of Public Works prior to their placement on the Premises. In addition, the final and complete site plan must be approved in writing by the Fire Marshal or his designee to ensure adequate emergency vehicle access to all areas of the festival. The approved locations of the festival infrastructure shall not be altered without further written approval of the City. The City shall not unreasonably withhold such consent.

12. Mobile Vendors. Permittee shall not allow any mobile or moving vendors or vendors of any kind at any locations on the Premises not indicated on the site plan.

13. List of Vendors. Permittee shall provide the City with a list of all vendors at least five (5) weeks prior to the start of each year's festival (i.e. – by no later than June 26, 2020, July 2, 2021, July 1, 2022, June 30, 2023, and June 28, 2024), so that the proper City licenses and permits can be issued before the start of the event. The list of vendors shall include the following information: Business Name/Vendor Name; Vendor Contact Person; Mailing Address;

Telephone Number(s); E-mail Address; Website (if available); Current City of Bethlehem Business Privilege License Number; Description of what the vendor will be vending (i.e. – retail, food, sampling, displaying information, etc.).

14. Licenses and Permits to be Displayed. Permittee shall notify all vendors that Vendor Permits, Business Privilege Tax Licenses and Health Permits must be prominently displayed at all times during the festival. To assure such notification is given, Permittee shall include this requirement in its agreements with vendors. The latter provision shall apply only to such vendor agreements not yet signed as of the date of this Use Permit Agreement. Vendor Permits shall be applied for at least four (4) weeks prior to the start of the event each year.

15. Amounts Paid to Vendors. Permittee shall report to the City the gross amount paid to individual vendors within sixty (60) days of the end of each Musikfest. In addition, Permittee shall require in its agreements with vendors that the vendors shall report to the City the number of employees each vendor used. The latter provision shall apply only to such vendor agreements not yet signed as of the date of this Use Permit Agreement.

16. Maintenance by Permittee. During the term that the Permittee is using the Premises, as granted by this Permit, the Permittee shall maintain and keep the Premises in a clean and sanitary condition and, at the conclusion thereof shall return the Premises to the City in the same condition it was in at the commencement of the term of the Permit. It is expressly agreed that Permittee shall be responsible for all damage except that caused by the active negligence or willful misconduct of the City. Any damage to city property will be invoiced to the Permittee and must be reimbursed to the City of Bethlehem within 30 days of invoicing. Permittee shall clean up, aerate and seed the green space at Spring and Lehigh Streets and in the Colonial Industrial Quarter, said work to begin within twenty-one (21) days after August 9, 2020, within twenty-one (21) days after August 15, 2021, within twenty-one days after August 14, 2022, within twenty-one days after August 13, 2023, and within twenty-one days after August 11, 2024. The City will inspect the sidewalk along Main Street, from Church Street to Broad Street, immediately after event take-down to determine what areas will need to be power washed. After such determination, Permittee shall power wash the sidewalks as directed. If Permittee obtains a permit for fireworks, Permittee is responsible for clean-up of fireworks debris.

17. Designation as “Special Event”. Musikfest is hereby authorized, licensed, permitted and designated by City as a “Special Event” or Special Condition for all purposes set forth in applicable City Ordinances and Resolutions.

18. ArtsQuest in Exclusive Possession of Premises. For purposes of enforcement by governmental and municipal entities of all state laws and City ordinances, ArtsQuest shall be deemed to be in exclusive possession of the premises. For enforcement purposes, this provision shall supersede and amend any inconsistent provision of this Agreement set forth hereinbefore or hereinafter. This provision shall not be interpreted or applied by ArtsQuest to avoid its obligation to keep the premises accessible to the public under this Agreement.

19. Requests for City Services. All requests for City services shall be submitted in writing at least four (4) weeks before the commencement of the Musikfest Festival.

20. Annual Review. Representatives of ArtsQuest and the City agree to meet annually to discuss any proposed Amendments to this Agreement.

21. Liquor Liability Insurance. Permittee must provide a copy of its Special Occasion Permit issued by the Pennsylvania Liquor Control Board and provide Special Event Liquor Liability Insurance in the amount of \$1,000,000, which insurance names the “City of Bethlehem, its officers and employees” as an additional insured. Such insurance shall be in effect and provide coverage at all times during the periods of time identified above under Duration.

22. Code Inspection and Compliance

A. Temporary Structures and Overhead Cover. Any tent, canopy, membrane, or similar structure that Permittee erects or allows to be erected on City property in conjunction with this Use Permit Agreement shall be subject to health, fire, safety, etc. inspections by the appropriate City departments including but not limited to the Code Enforcement Bureau. For purposes of this agreement each tent, canopy, membrane, or similar structure must comply with all pertinent provisions of the current UCC building and fire codes adopted by City and other codes, guidelines, etc. deemed relevant by City. The City shall issue a written approval to Permittee as it relates to each tent, canopy, membrane or other similar structure. Permittee hereby agrees to pay the City \$50.00 fee for the inspection of each tent, canopy or membrane subject to this provision.

B. Cooking and Cooking Devices. Any vendor, party or participant of the festival or event that is the subject of this Use Permit Agreement that anticipates cooking or heating any food during the event, is required to obtain the necessary permit from the City’s Fire Department and have any cooking or heating device or equipment to be used or anticipated to be used inspected by the City’s Fire Department.

C. Permittee’s failure to follow City Code requirements and directives by inspectors shall be a violation of this agreement under Section B.5.

23. All contributions, fees and charges are due and must be paid within 30 days of the date of invoice, unless otherwise specified herein. If payment is not received within 30 days or by the specified due date, interest charges will accrue at an interest rate of 1% per month or any portion of a month thereof. Interest accruals will include, if applicable: any claims for damages (#9 and #16 above) and/or other services provided by the City of Bethlehem (EMS, fire inspectors, police personnel, etc.).

B. Standard Provisions

1. Grant of Non-Exclusive Use Permit. The City hereby grants to the Permittee a permit to use the Premises, as more particularly described above, for Permittee's non-exclusive use for the Purpose described above.

2. Purpose of Use Permit and Duration. The Premises shall be used for the Purpose described above only. The grant of this non-exclusive Use Permit shall run for the period of time indicated above as Duration if not terminated sooner as allowed under this Agreement.

3. Premises to Remain Open and Accessible to the Public. The Premises must remain open and accessible to the public at all times and for constitutionally protected speech or activity, excepting reasonable restrictions and accommodation to prevent deliberate interference with activities or events scheduled by and conducted by the Permittee. If the Premises covered by this Agreement pertains to a building or other enclosed structure, City will determine the days and hours for public access, and the days and hours that the building or other structure shall be closed and locked. Permittee shall avoid interference with or disruption of City's operations and activities. Sufficient emergency vehicle and equipment ingress and egress must be maintained at all times.

4. Scheduling of Programs and Events. The City and the Permittee will coordinate the scheduling of events for use of any facility or other building on the Premises. The City shall retain final approval over all scheduling matters.

5. Violations of Use Permit. Any violation of this Use Permit, as determined by the City in its sole discretion, shall result in the immediate termination of the Use Permit. Such violations include but are not limited to:

- A. The prevention of the public from the use and enjoyment of the Premises at times when no activities or other events are scheduled.
- B. The exclusive use by the Permittee, to the exclusion of the public, of the facility or other building on the Premises during periods when no activities or other events are scheduled.
- C. The failure of the Permittee to obtain and provide the insurance required by this agreement.
- D. Violation and/or non-compliance with any federal or state law, or of City ordinance, inspection and safety Codes, directives by City Code compliance officers and inspectors, policy, rule or regulation.
- E. Violation of a material obligation of Permittee under this Agreement.

6. Required CGL Insurance Coverage. Except as set forth herein, the Permittee shall purchase and maintain comprehensive general liability insurance naming the “City of Bethlehem and its officers and employees” as additional insureds for a minimum of \$1,000,000.00 per occurrence and general aggregate of \$5,000,000.00. The said insurance shall cover public liability, products liability and property damage. To provide proof of insurance, the Permittee shall furnish a Certificate of Insurance to the Bureau of Law of the City of Bethlehem at the time of Permittee’s signing and delivery of this Agreement to the City for counter-signature. A certificate naming the City as “certificate holder” only is non-compliant. Permittee is not required to purchase and maintain police professional liability insurance.

7. Indemnification of City. Except as set forth herein, the Permittee shall indemnify, defend, save and hold harmless the City and its officers and employees, from and against all suits or claims that may be based upon any damage or injury or death, to any person or property that may occur, or that may be alleged to have occurred, in the course of the use of the Premises by the Permittee, and also whether such claims be made by an owner, officer, principal, employee, or a contractor or its employees, of the Permittee, or by any third party, also including Event and Festival licensees and vendors, their owners, principals, employees, and their contractors and contractor’s employees, and by members of the public, and whether or not it shall be claimed that the damage or injury or death was caused through the negligent act or omission in whole or in part of the City and/or its officers and/or employees. The Permittee shall indemnify, defend, save and hold harmless the City and its officers and employees, from and against all suits or claims that may be based upon any liability of the City, including such that may arise under U.S. Copyright Laws, to all music licensing agencies (including but not limited to SESAC, BMI and ASCAP) and any other third parties resulting from or accruing from Permittee’s unlicensed authorization, sponsoring or presenting recorded or live music on City property or in City buildings or facilities. The Permittee shall, at the Permittee’s own expense, pay all charges of attorneys, and all costs and other expenses arising therefrom or incurred in connection therewith, and if any judgment shall be rendered against the City and/or its officers and/or its employees in any such action, or actions, the Permittee, at the Permittee’s own expense, shall satisfy and discharge the same. The preceding shall not apply to require indemnification by Permittee for any liability, claims, suits, etc., arising from action by officers of the Bethlehem Police Department.

8. Maintenance by Permittee. Deleted. See Special Provision A-16 above.

9. Renewal. Language Deleted. Duration of permit described above.

10. Environmental Protection / Energy Conservation / Compliance with Law. Permittee must at all times incorporate best management practices in Permittee’s operations as it relates to environmental protection and energy conservation. The best management practices would include full and complete compliance with state and/or local regulatory and/or non-regulatory guidelines for the management of, but not limited to, recycling, soil pollution, erosion control, energy saving applications, energy conservation, and use of environmentally friendly products. Permittee shall fully and completely comply with all Ordinances, policies, rules and/or regulations of the City of Bethlehem, and all state and federal laws, rules and regulations

pertaining to the premises utilized herein and the uses thereof, and shall obtain all required permits. City shall have the authority to enforce the ordinances of the City and laws of the Commonwealth of Pennsylvania at the Premises during the term of this Use Permit Agreement.

11. Personal Property. Permittee shall be solely responsible for the safety and security of its personal property, and any damage or loss to items of personalty shall be the sole and exclusive responsibility of Permittee.

12. No City Services. Not Applicable – Language Deleted.

13. Cancellations. City may, at its sole discretion, and with or without notice, postpone or cancel the exercise by Permittee of the permit granted hereby for causes beyond City's control. Such causes shall include, without limitation, the laws, regulations, acts, demands, or interpositions of any Federal, State or Local Government Agency, acts of God, fire, flood, weather, or any other cause beyond City's control whether similar or dissimilar to the foregoing.

14. Removal of Personalty. At the termination of this permit, Permittee shall remove all of its personal property from the premises and return the premises to its condition existing at the commencement of this permit. On termination, if Permittee fails to return the Premises to its condition existing at the commencement of this Permit, Permittee agrees to pay to the City on demand, all costs incurred by City to return and restore the Premises to its original condition. The Permittee shall remove all personalty from the premises within four (4) days of the termination of this permit, and in the event of failure to do so, City will impose a charge on Permittee for same.

15. Amendment. The material terms of this Permit Agreement may not be amended or modified except by agreement in writing duly executed by the parties hereto. The Mayor is authorized to execute amendments to correct obvious drafting errors, and to clarify the intent of this Permit Agreement.

16. Governing Law, Venue and Limitation of Actions. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania. The exclusive venue for resolution of all disputes, claims and actions, whether the same involves litigation, arbitration or otherwise, shall be in Northampton County, Pennsylvania, only. Any and all civil actions and demands for arbitration by Permittee against the City pertaining to this Agreement and/or anything related thereto shall be subject to the following time limitation: civil actions must be commenced, and demands for arbitration must be filed with the American Arbitration Association, within six (6) months of the end of the event, it being the intent of the parties that this provision shall supercede any inconsistent statutory limitation period. This limitation of action provision shall not however apply to any civil actions and/or demands for arbitration by City against Permittee.

17. Dispute Resolution. For all claims, disputes and actions, City may, at its sole option, either demand and require that the same be litigated in the Court of Common Pleas of

Northampton County, or demand and require non-binding mediation under the auspices of and in accordance with the then applicable mediation rules and guidelines of the American Arbitration Association, and/or arbitration in front of a three (3) member arbitration panel under the then applicable Arbitration Rules of the American Arbitration Association. Judgment upon the award rendered by the arbitration panel may be entered in the Court of Common Pleas of Northampton County, Pennsylvania. Election by the City of mediation and/or arbitration shall operate as an automatic stay of any litigation filed by the Permittee. The costs of any mediation and/or arbitration shall be borne equally by the parties.

18. Limitation on Damages. In the event of any claims, disputes, actions or arbitrations, by Permittee against City, Permittee waives and relinquishes any and all claims for consequential damages, damages for delay and damages for acceleration.

19. Non-Assignable. The Permittee may not assign its interest hereunder, nor may Permittee sub-permit the premises, without the prior written consent of the City.

20. Termination.

- A. Either party may terminate this Agreement for any reason on thirty (30) days advance written notice to the other party.
- B. City may terminate or temporarily suspend this Use Permit Agreement immediately and without prior notice where City determines it requires emergency access to the public property that it cannot otherwise satisfactorily accommodate for its needs or City if deems termination necessary for the health, safety or welfare of the public under paragraph 13 above.

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IN WITNESS WHEREOF, and intending to be legally bound hereby, the Permittee and the City, have caused this Use Permit to be duly executed the day and year first above written.

ATTEST:

Secretary

PERMITTEE:
ARTSQUEST

By: _____ (SEAL)

1. Name: Katherine E. Hilgert
 2. Title: President & CEO
 3. Certificate of Insurance Naming "City of Bethlehem And Its Officers and Employees" Has Been Provided: Yes/No
- (NOTE: THIS CONTRACT WILL NOT BE PROCESSED FOR SIGNATURE BY CITY UNLESS REQUIRED CERTIFICATE OF INSURANCE HAS BEEN PROVIDED!!)

ATTEST:

City Controller

CITY:
CITY OF BETHLEHEM

By: _____ (SEAL)

Robert J. Donchez
Mayor

The within Use Permit Agreement is certified to be needed, necessary and appropriate.

By: _____
City of Bethlehem Department Head
Print Name: _____

EXHIBIT A, MAP b-1



EXHIBIT A, MAP c-1



EXHIBIT A, MAP d-1

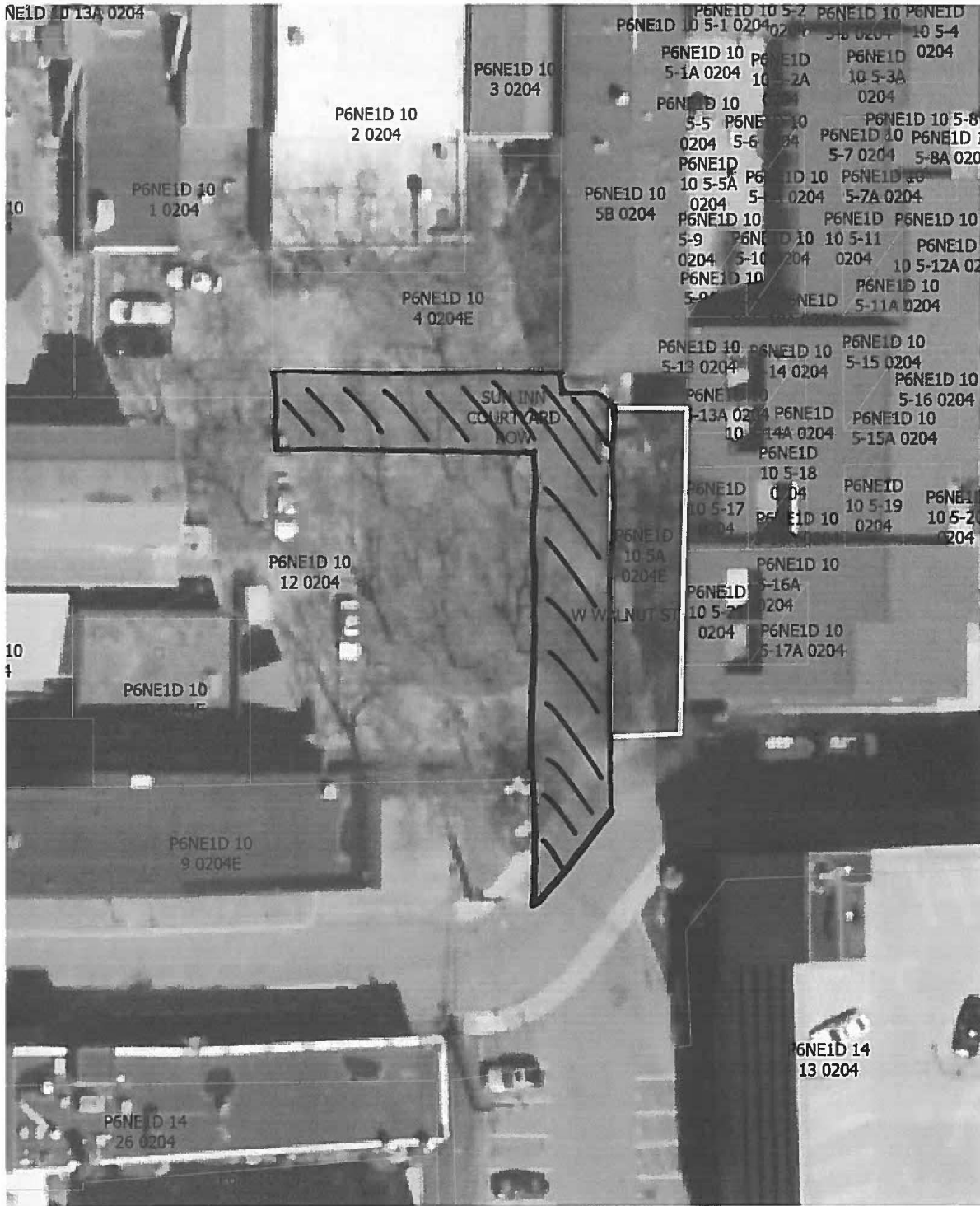


EXHIBIT B

REQUIREMENTS FOR A PUBLIC SAFETY PLAN.

A Public Safety Plan submitted to the City of Bethlehem, must include the following;

1. EMS Criteria:

- Education of event staff regarding how and when to contact 911 services.
- Signage/education of attendees regarding how to access 911 services.
- Evacuation plans, including the use of PSAs.
- Coordination of EMS needs with fire and police needs and requirements.
- Emergency contact information and means for contacting event administration staff.
- Notification method of anticipated surges in crowd size, unsafe conditions or events, on-site health facilities, if any.
- On-site communication system (event staff).
- Ability to monitor weather conditions.

2. Fire and Police Criteria:

- Administration, delegation, contacts and responsible parties.
- Staffing levels, organization and roles and training.
- Communications both internal and external, liaison contacts and procedures, emergency reporting and emergency announcements.
- Site security, staffing, site layout mapping, access points and evacuation points for both site areas and entire leased area.
- Evacuation plans for each site area as well as the entire leased area and coordination with local authorities.
- Traffic control both vehicular and pedestrian.
- Assembly and crowd control as it pertains to each specific site as well as to the entire leased area (staffing, clearing aisles and spaces, lighting, ingress and egress, etc.)

3. Event Public Safety Coordination:

- Medical/First Aid, ambulance stand-by and first aid station(s).
- Police, staffing levels, traffic control, coordinate with event administration.
- Fire, emergency procedures and fire reporting, fire protection (portable extinguishers, etc.) fire department stand-by (if required), fireworks permit, tent permit(s), cooking site inspections, access to fire department apparatus and emergency lighting.
- Utilities, electric, water, gas/propane, contacts, responsible parties and suppliers.
- Health, site inspections, waste management, restroom facilities inspections and maintenance.