



CITY OF BETHLEHEM
OFFICE OF THE CITY SOLICITOR

INTEROFFICE MEMORANDUM

To: Robert G. Vidoni, Esq., City Clerk

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

Re: Use Permit Agreement for Public Property
Permittee: Lehigh University
Purpose: Temporary closure of portions of Packer Avenue to Motorized Vehicular Traffic
Location: West Packer Avenue and East Packer Avenue between Vine Street and Webster Street and City right of way abutting the street proper

Date: January 30, 2020

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

Please place this matter on City Council's agenda for review and appropriate action.



William P. Leeson, Esq., Solicitor

Cc: Robert J. Donchez, Mayor
Michael Alkhal, Public Works
Mark A. DiLuzio, Police
Adrienne McNeil, Lehigh University

RESOLUTION NO. 2020-_____

Authorization For Use Permit Agreement

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 a Use Permit Agreement for Public Property and Temporary Closure of Public Street 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: Lehigh University
2. Premises: West Packer Avenue and East Packer Avenue between Vine Street and Webster Street and City right of way abutting the street proper
3. Purpose: To assess the merits of closing portions of Packer Avenue, a public street, to motorized vehicular traffic and to establish the area exclusively for predominantly pedestrian use; and to assess the impacts of long term closure
4. Duration: March 9, 2020 to April 30, 2020

Sponsored by _____

ADOPTED by Council this _____ day of _____, 2020.

President of Council

ATTEST:

City Clerk

CITY OF BETHLEHEM
USE PERMIT AGREEMENT FOR PUBLIC PROPERTY AND
TEMPORARY CLOSURE OF PUBLIC STREET

THIS USE PERMIT AGREEMENT is entered into this _____ day of _____, 2020, by and between LEHIGH UNIVERSITY, with a principal place of business at 27 Memorial Drive West, located in the City of Bethlehem, Pennsylvania 18015 (hereinafter referred to alternately as “Lehigh” or 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 assess the merits of closing portions of Packer Avenue, a public street, to motorized vehicular traffic and to establish the area for predominantly pedestrian use; and

WHEREAS, to accomplish its purpose and to assess the impacts of long term closure, Lehigh must request permission from the City of Bethlehem to temporarily close West Packer Avenue and East Packer Avenue between Vine Street and Webster Street to motorized vehicular traffic except emergency vehicles, deliveries and limited bus access; and

WHEREAS, City wishes to accommodate Lehigh’s request on a temporary basis, subject to certain conditions and limitations; and

WHEREAS, City has determined that the proper manner of accommodating Lehigh’s request is to grant a Use Permit to the Permittee for the premises described, for the purposes stated, and for the limited term stated in this agreement.

NOW THEREFORE, in consideration of promises and duties hereinafter identified, accepted and owed 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:

1. Duration of Permit. The term of the Use Permit shall be as follows:
 - A. The start date is March 9, 2020.
 - B. The termination date is April 30, 2020.
 - C. There shall be no automatic renewal of this agreement.
2. Description of Area Subject to Use Permit. The area for which Lehigh is granted permission for the purposes allowed under this agreement is West Packer Avenue and

East Packer Avenue between Vine Street and Webster Street and City right of way abutting the street proper. This area is referenced in this agreement as the “permitted area.”

3. Consideration. There shall be no fee charged by City for the permissions granted under this agreement. Consideration owed by Permittee in exchange for the permissions granted by City shall be the promises, duties and liabilities accepted by Permittee under this agreement.
4. Description of Permitted Uses.
 - A. The permitted area shall be closed to motorized non-emergency vehicular access, except as expressly permitted in this agreement or as otherwise determined by Permittee for its reasonably necessary and temporary internal uses (e.g., access for emergency vehicles, delivery vehicles, etc.).
 - B. The permitted area shall remain open to the public for pedestrian and bicyclist use and access.
 - C. Except for the closure under subparagraph A. preceding, Permittee’s possession and use shall be non-exclusive, at all times open to the public, and reserving to the City and the public the right to access and use of the permitted public area for lawful purposes, including constitutionally-protected conduct and speech.
5. Termination and Suspension.
 - A. Either party may terminate this Agreement with or without cause on ten (10) 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 motorized vehicular access to the permitted area or if City deems termination or suspension is necessary for the health, safety or welfare of the public.
 - C. Manner of Closure of Street. Lehigh will be responsible for all traffic control, with the approval of the City Department of Public Works.

The preliminary traffic control plan is for Lehigh to install two rows of water barriers in a chicane pattern, temporary traffic striping, authorized vehicle only signage, do not enter signage, and movable road closure signage at the intersection of Webster Street and E. Packer Avenue and the intersection of Vine Street and W. Packer Avenue. The City’s Department of Public Works, Police Department, Fire Department, and Emergency Management will review the actual set-up on site to determine if the preliminary traffic control plan is sufficient, and reserves the exclusive authority and discretion to direct any changes thereto and/or require that

additional traffic control devices be added. Any such changes or additions required by the City will be the responsibility of Lehigh.

For the purposes of this temporary closure permit, the final traffic control plan will consist of the preliminary plan referenced above and any and all modifications required by the City.

Lehigh University Police will be on site the first two weeks of the temporary closure and as needed throughout the duration of the road closure to perform traffic flagging.

Lehigh will be responsible for the cost to furnish and install all traffic equipment and signage and for the maintenance and protection of same. At the end of the road closure, all traffic control devices, signage, equipment and pavement markings installed by Lehigh shall be removed from the streets and the roadway/affected areas returned to their original condition.

6. Detour Directions. Lehigh shall be responsible at its expense for posting vehicle detour direction signage suitable to the City Department of Public Works; and to revise sign postings as directed by City during the term of the agreement. Lehigh shall be responsible at its expense for removing such detour signs at expiration of the agreement.
7. Utilities. No alterations, relocations, impairments or infringements on public utilities, above and below ground, are permitted. "Utilities" includes but is not limited to, public water, sanitary sewer, storm sewer and gas mains, laterals and valves; electric, broadband, wireless and telecommunications facilities, poles, mounted equipment, wiring and conduit. Moreover, utility companies with facilities within the permitted area shall be allowed motorized vehicular access as they determine necessary to repair, upgrade and maintain their facilities. Lehigh shall cooperate with utility companies to accommodate their needs to attend to facilities.
8. Emergency Reopening of Street. Lehigh shall immediately, upon demand by City, make the permitted area accessible to motorized vehicular traffic during the term of this agreement. City reserves the right to remove such barriers at its discretion and without advance notice to Lehigh for emergency access and for any other purpose deemed by the City, in its sole discretion, related to the health, safety and welfare of the City and the public.
9. Liability for Maintenance and Repairs. During the term of the Use Permit, subject to Section 12 below, the Permittee shall maintain and keep the permitted area in a clean and sanitary condition, take reasonable measures to prevent and eliminate public nuisances, and keep the permitted area in reasonably safe condition for public access and use. Permittee shall not make any permanent changes to City's property without City's review and issuance of all appropriate approvals, which City may refuse in its sole discretion. Permittee shall be liable for expense to repair or replace damage to City's property, including the road surface, utilities, curb and gutter, amenities and signage caused or arising during the term of the agreement due to Permittee's permitted

uses of the permitted area under Section 4.A, except for damage occurring from normal use, wear and tear.

10. Snow and Ice Removal. Lehigh shall be deemed to be “controlling and to be occupying” the permitted area for purposes of City Article “721.03 REMOVAL OF SNOW, ICE OR RUBBISH” for the duration of the agreement. Lehigh shall be responsible to comply with all duties under 721.03 during the term of the agreement.
11. Scheduling of Programs and Events. This agreement does not confer permission to conduct special events for which City inspections and approvals, permits or use permits are required. If Lehigh wishes to conduct or host a program or special event in the permitted area, Lehigh must apply for and secure the appropriate permit or special event permit through the City’s usual permitting processes, and any health, fire and building code inspections, to the extent applicable under City ordinance.
12. Police Coverage and Enforcement. During the term of this agreement, to facilitate Lehigh’s request and its intent to assess the impact and merits of closing portions of Packer Avenue to motorized vehicular traffic, Lehigh accepts primary responsibility through its police department to exercise police authority and duties within and over the permitted area. This authority exists pursuant to **22 Pa.C.S. § 501, Appointment by nonprofit corporations [private police] and 42 Pa.C.S. § 8953.1, Nonmunicipal police extraterritorial jurisdiction**, which provides:
 - (a) **Power and authority.** In addition to a power and authority vested by law, a nonmunicipal police officer who is within this Commonwealth, but beyond the territorial limit of the jurisdiction established for the officer’s nonmunicipal police department by law, shall have the power and authority to enforce the laws of this Commonwealth or to perform a function of a municipal police officer in the following circumstances:
 - (1) If the officer is in hot pursuit of a person for an offense which was committed, or which the officer has probable cause to believe was committed, within the officer’s jurisdiction and for which the officer continues in fresh pursuit of the person after the commission of the offense.
 - (2) If the officer:
 - (i) has been requested to immediately aid or assist a Federal, State or local law enforcement officer or park police officer;
 - (ii) has probable cause to believe that a Federal, State or local law enforcement officer or park police officer is in need of aid or assistance; or
 - (iii) has been requested to participate in a Federal, State or local task force and participation has been approved by the officer’s nonmunicipal police department.

(3) If, while on official business, the officer views an offense and makes a reasonable effort to identify himself or herself as a police officer and the offense is:

(i) A felony.

(ii) A misdemeanor.

(iii) A breach of the peace or other act that presents an immediate clear and present danger to a person or property.

(4) If the officer views an offense that is a felony and makes a reasonable effort to identify himself or herself as a police officer.

(b) **Applicability.** A nonmunicipal police officer acting in accordance with the authority granted under this section shall be subject to section 8953(b), (c) and (d) (relating to Statewide municipal police jurisdiction) to the same extent as would a municipal police officer.

Additionally, the Lehigh Police Department shall request assistance from the City's Police Department for any police matter requiring enforcement of the laws of this Commonwealth or to perform a function of a municipal police officer not within the lawful powers of the Lehigh Police Department under the foregoing statutes.

13. 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 permitted area except as expressly permitted by Section 4.
- B. The exclusive use by the Permittee, to the exclusion of the public, of the permitted area in violation of this agreement including Section 4.C.
- 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.

14. Required CGL Insurance Coverage. 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 \$1,000,000.00. The said insurance shall cover public 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.

15. Indemnification of City. The Permittee shall indemnify, defend, save and hold harmless the City and its officers and employees, from and against all third party 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, to the extent caused by the Permittee's acts or omissions in connection with engaging in the permitted use of the permitted area granted hereunder, 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, including 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 in the permitted area. 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.
16. 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.
17. No City Services. City shall not be obligated to provide any services to Permittee incident to Permittee's possession and use of the permitted area.
18. Removal of Personal Property. At the termination of this permit, Permittee shall remove all of its personal property from the permitted area and return the permitted area to its condition existing at the commencement of this permit, except for damage occurring from normal use, wear and tear or from the City's use of the permitted area. On termination, if Permittee fails to return the permitted area 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 permitted area to its original condition. The Permittee shall remove all personalty from the permitted area within two (2) days of the termination of this permit, and in the event of failure to do so, City will impose a charge on Permittee for City's expense for removal of same.
19. Amendment. The material terms of this Agreement may not be amended or modified except by agreement in writing duly executed by authorized representatives of the parties hereto. The mayor is authorized to execute amendments which do not increase the permitted area, or to correct obvious drafting errors, or to clarify the intent of this Use Permit Agreement, without further approval by City Council.

20. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania. The exclusive venue shall be in Northampton County, Pennsylvania for resolution of all disputes, claims and actions, whether the same involve litigation, arbitration or otherwise.
21. Non-Assignable. The Permittee may not assign its interest hereunder. Nor may Permittee grant a sub-permit for the permitted area without City's permission.
22. City Council Approval Required. This Use Permit Agreement shall not be valid, in force or binding absent authorized execution by all parties and approval by resolution adopted by Bethlehem City Council.

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:

LEHIGH UNIVERSITY

Secretary

By: _____ (SEAL)
Name: _____
Title: _____

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 OF BETHLEHEM

By: _____
George Yasso, City Controller

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
Michael Alkhal, Director of Public Works