



CITY OF BETHLEHEM
OFFICE OF THE CITY SOLICITOR

INTEROFFICE MEMORANDUM

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

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

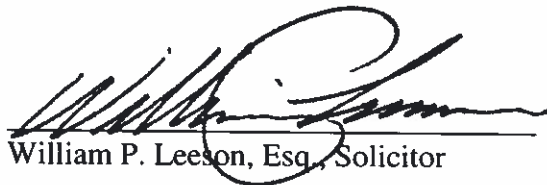
Re: Use Permit Agreement for Public Property
Permittee Name: Mount Airy Neighborhood Association
SubPermittee Name: Fegley Enterprises, Inc.
Purpose: West Side Farmers Market
Location: Bethlehem Rose Garden

Date: May 28, 2020

Attached is a proposed Resolution and associated Use Permit Agreement for Council's consideration. This Agreement allows for the sale of alcohol by Fegley Enterprises, Inc. and will supersede the one previously approved by Council on May 19, 2020.

The only changes from the May 19 Permit approval are the permission for alcohol sale and roster duty police if that becomes necessary.

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


William P. Leeson, Esq., Solicitor

Cc: Robert J. Donchez, Mayor
Jodi M. Evans, Director of Recreation
Mary Toulouse, MANA
Ana McCaw, Fegley Enterprises

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 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: Mount Airy Neighborhood Association
- 2. Name of SubPermittee: Fegley Enterprises, Inc.
- 3. Premises: Bethlehem Rose Garden
- 4. Purpose: West Side Farmers Market
- 5. Duration: Every Saturday from June 13, 2020 through October 10, 2020 from 8:00 a.m. to 1:45 p.m.
- 6. Event Dates: June 13, 2020, June 20, 2020, June 27, 2020, July 4, 2020, July 11, 2020, July 18, 2020, July 25, 2020, August 1, 2020, August 8, 2020, August 15, 2020, August 22, 2020, August 29, 2020, September 5, 2020, September 12, 2020, September 19, 2020, September 26, 2020, October 3, 2020, and October 10, 2020 from 9:00 a.m. to 1:00 p.m.

Sponsored by _____

ADOPTED by Council this _____ day of _____, 2020.

President of Council

ATTEST:

City Clerk

CITY OF BETHLEHEM
Bethlehem, Pennsylvania

USE PERMIT AGREEMENT FOR PUBLIC PROPERTY

PREMISES: Bethlehem Rose Garden
PURPOSE: West Side Farmer’s Market
DURATION: Every Saturday from June 13, 2020 to October 10, 2020
from 8:00 a.m. to 1:45 p.m.

THIS USE PERMIT AGREEMENT is entered into this _____ day of _____, 2020, by and between MOUNT AIRY NEIGHBORHOOD ASSOCIATION, with its mailing address at c/o Mary Toulouse, 1528 W. Market Street, located in the City of Bethlehem, Pennsylvania 18018 (hereinafter referred to as the “Permittee”) and FEGLEY ENTERPRISES, INC., with its mailing address at 559 Main Street, #101, located in the City of Bethlehem, Pennsylvania 18018 (hereinafter referred to as the “SubPermittee”);

- 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 00/100 (\$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. Event Date and Times

A. The event date and times are as follows:

June 13, 2020, June 20, 2020, June 27, 2020, July 4, 2020, July 11, 2020, July 18, 2020, July 25, 2020, August 1, 2020, August 8, 2020, August 15, 2020, August 22, 2020, August 29, 2020, September 5, 2020, September 12, 2020, September 19, 2020, September 26, 2020, October 3, 2020 and October 10, 2020 from 9:00 a.m. to 1:00 p.m.

B. Alcohol service and sales each day of the event shall end at the earlier thirty minutes prior to the end time or any time required by the SubPermittee's PA LCB license or Special Occasion Permits, if any.

2. Public Safety. The Permittee shall comply with the following provisions.

A. Submission of Public Safety Plan. Not Required.

B. EMS Standby. Not Required.

C. Emergency Vehicle and Equipment Access. Sufficient emergency vehicle and equipment ingress and egress must be maintained at all times.

D. Compliance with Pennsylvania Department of Health and Pennsylvania Department of Agriculture Guidelines in dealing with COVID-19 Pandemic Response. Permittee and all subpermittees, vendors and event volunteers shall be required to comply with guidelines and directives issued by City, by or on behalf of the Director of the City of Bethlehem Health Bureau, for the purpose of enforcing or implementing guidelines, practices and safety protocols intended to maintain public and personal safety during the course of the COVID-19 Pandemic. Said persons shall also be obligated to comply with any directives issued by the Director of the Health Bureau which the Director deems appropriate to the particular circumstances of the event. Permittee shall be responsible for informing all subpermittees, vendors and event volunteers of the foregoing, including guidelines and directives issued by the Director.

3. Fees, Contributions and Charges.

A. Fees for the usage of the Premises will be due in accordance with the fee schedules adopted by City Council.

- B. 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 on claims for damages (see Paragraph B.8. below) and/or other services provided by the City of Bethlehem (including but not limited to EMS, fire inspectors, police personnel, City services described in Paragraph B.12. below, etc.).

4. Special Requirements Regarding Service and Sale of Alcohol

- A. The provisions under this paragraph 4 are mandatory because SubPermittee has represented that it will be selling alcohol at the Event or Festival.
- B. SubPermittee must obtain from the Pennsylvania Liquor Control Board and provide to the Bureau of Law of the City of Bethlehem a copy of its Special Occasion Permit or other Pennsylvania Liquor Control Board issued Permit or License for each event listed above.
- C. SubPermittee must obtain and provide proof of liquor liability insurance coverage under a Liquor Liability Insurance Policy or a Special Event Liability Insurance Policy providing liquor liability coverage (1) with minimum limits of \$1,000,000 per person and \$1,000,000 per occurrence or aggregate, (2) the insurance shall provide coverage for the periods of time indicated above as Duration and (3) which insurance names the “City of Bethlehem, its officers and employees” as an additional insured. To provide proof of insurance, the SubPermittee shall furnish a Certificate of Insurance to the Bureau of Law of the City of Bethlehem at the time of SubPermittee’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.

5. Roster Duty Police Officers. Permittee must provide and pay for City of Bethlehem Roster Duty Police Officers at all times during the permitted Event or Festival. The number of roster duty police officers required for the event shall be determined at the sole discretion of the City of Bethlehem Police Department. Payment for police services is an obligation of Permittee under paragraph 3 above.

6. Revenue. All revenue from the event activities may be retained by Permittee.

7. 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 not interfere with or disrupt 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. 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, 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.

7. Indemnification of City. 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. 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. The City's clean-up and trash hauling costs and cost to repair damage to City property resulting from conducting the event will be invoiced to the Permittee and must be reimbursed to the City of Bethlehem within 30 days of invoicing.

9. Renewal. This Permit shall not automatically renew, unless otherwise agreed to in writing, signed by both Permittee and City.

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. Except for services expressly committed under this Agreement, City shall not be obligated to provide any services to Permittee incident to Permittee's use of the licensed property. All services provided to Permittee by City (e.g., clean-up, custodian during events and final day clean-up) shall be for separate consideration or fee to be paid by Permittee to City. All charges are due and must be paid within 30 days.

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 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 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 Solicitor 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. 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 by Permittee 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, revenues, profits for delay and damages for acceleration.

19. Non-Assignable. The Permittee may not assign its interest hereunder, nor may Permittee subpermit 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.

21. Security. If security services will be or are being required, then Permittee agrees to use City of Bethlehem Police personnel exclusively for all security, crowd control, traffic control and related duties during the event, immediately before the event and immediately after the event.

22. This Permit supersedes the Permit approved by Council on May 19, 2020 for the West Side Farmer’s Market.

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:

PERMITTEE:
MOUNT AIRY NEIGHBORHOOD
ASSOCIATION

Secretary

By: _____ (SEAL)

- 1. Name: _____
- 2. Title: _____
- 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!!)

[Additional signatures appear on the next page]

ATTEST:

Secretary

SUBPERMITTEE:
FEGLEY ENTERPRISES, INC.

By: _____ (SEAL)

1. Name: _____
2. Title: _____
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: Jodi M. Evans