



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: St. Luke's University Health Network
Purpose: Impact Through Infusion Initiative
Location: Earl E. Schaffer Ice Rink and Illick's Mill Tennis Courts

Date: May 28, 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
Jodi M. Evans, Director of Recreation
Bobby McClarin, CSCS, St. Luke's University Health Network

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: St. Luke's University Health Network
2. Premises: Earl E. Schaffer Ice Rink and Illick's Mill Tennis Courts
3. Purpose: Impact Through Infusion Initiative
4. Duration: To Be Determined as approved and authorized by the Mayor (beginning possibly June 8, 2020 or the earliest Monday agreed upon by both parties following the migration of Northampton County to the "Yellow" phase and ending when school starts)
5. Event Dates: Start and end dates to be determined as approved and authorized by the Mayor.
6. Event Times: Monday, Tuesday and Thursday from 6:00 am to 8:00 pm
Wednesday and Friday from 6:00 am to 4:00 pm

Times include set-up and clean-up in addition to a 15 minute sanitation period between the 1-hour and 1.25 hour event sessions

Above event times are tentative. Final schedule to be agreed upon by both parties and approved by the Director of Recreation.

Tennis Courts will be scheduled and approved for use through the Recreation Bureau.

Sponsored by _____

ADOPTED by Council this day of , 2020.

ATTEST:

President of Council

City Clerk

CITY OF BETHLEHEM
Bethlehem, Pennsylvania

USE PERMIT AGREEMENT FOR PUBLIC PROPERTY

PREMISES: Earl E. Schaffer Ice Rink and Illick’s Mill Tennis Courts
PURPOSE: Impact Through Infusion Initiative
DURATION: To Be Determined as approved and authorized by the Mayor
(beginning possibly June 8, 2020 or the earliest Monday agreed upon by
both parties following the migration of Northampton County to the
“Yellow” phase and ending when school starts)

THIS USE PERMIT AGREEMENT is entered into this _____ day of _____,
2020, by and between ST. LUKE’S UNIVERSITY HEALTH NETWORK, with its mailing
address at 801 Ostrum Street, located in the Borough of Fountain Hill, Pennsylvania 18015
(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, as more fully described in Permittee’s proposal submitted to City, a copy of
which is attached hereto and made a part hereof as Exhibit A; 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:

Start and end dates to be determined as approved and authorized by the Mayor.

Event Times: Monday, Tuesday and Thursday from 6:00 am to 8:00 pm
Wednesday and Friday from 6:00 am to 4:00 pm

Times include set-up and clean-up in addition to a 15 minute sanitation period between the 1-hour and 1.25 hour event sessions

Above event times are tentative. Final schedule to be agreed upon by both parties and approved by the Director of Recreation.

Tennis Courts will be scheduled and approved for use through the Recreation Bureau.

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

A. Submission of Public Safety Plan. Not Required.

B. EMS Standby. If at any time before or for the duration of this Permit it is determined by the City, in the City's sole discretion, that EMS Standby services are warranted and required, the City reserves the right to impose the obligation and Permittee shall accept the requirement and 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.

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 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, and as issued by the Pennsylvania Department of Health, 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. City reserves the right to suspend or terminate in whole or in part this Permit if in the judgment of the City's Health Director that the event or events cannot be conducted in compliance with COVID-19 Pandemic related guidelines issued by the Pennsylvania Department of Health or the City of Bethlehem Health Bureau.

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. Deleted; Permittee certifies no alcohol will be served or sold during the event.

5. Roster Duty Police Officers. If at any time before or for the duration of this Permit it is determined by the City, in the City's sole discretion, that Roster Duty Police services are warranted and required, the City reserves the right to impose the obligation and Permittee shall accept the requirement and shall provide and pay for City of Bethlehem Roster Duty Police Officers 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 Personal Property. 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.

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:
ST. LUKE'S UNIVERSITY HEALTH NETWORK

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

EXHIBIT A

St. Luke's Impact Through Infusion Initiative
Infusing Energy Back Into Bethlehem
City of Bethlehem Ice Rink Rental Proposal

ST. LUKE'S IMPACT THROUGH INFUSION INITIATIVE
INFUSING ENERGY BACK INTO BETHLEHEM
CITY OF BETHLEHEM ICE RINK RENTAL PROPOSAL



Bobby McClarin, CSCS
ST. LUKE'S UNIVERSITY HEALTH NETWORK



May 26, 2020

Bethlehem Bureau of Recreation

Attn: Jodi Evans

10 E. Church St.

Bethlehem, PA 18018

Subj: City of Bethlehem Ice Rink Summer Rental for *St. Luke's IMPACT THROUGH INFUSION INITIATIVE – Infusing ENERGY Back into Bethlehem*

Good Morning,

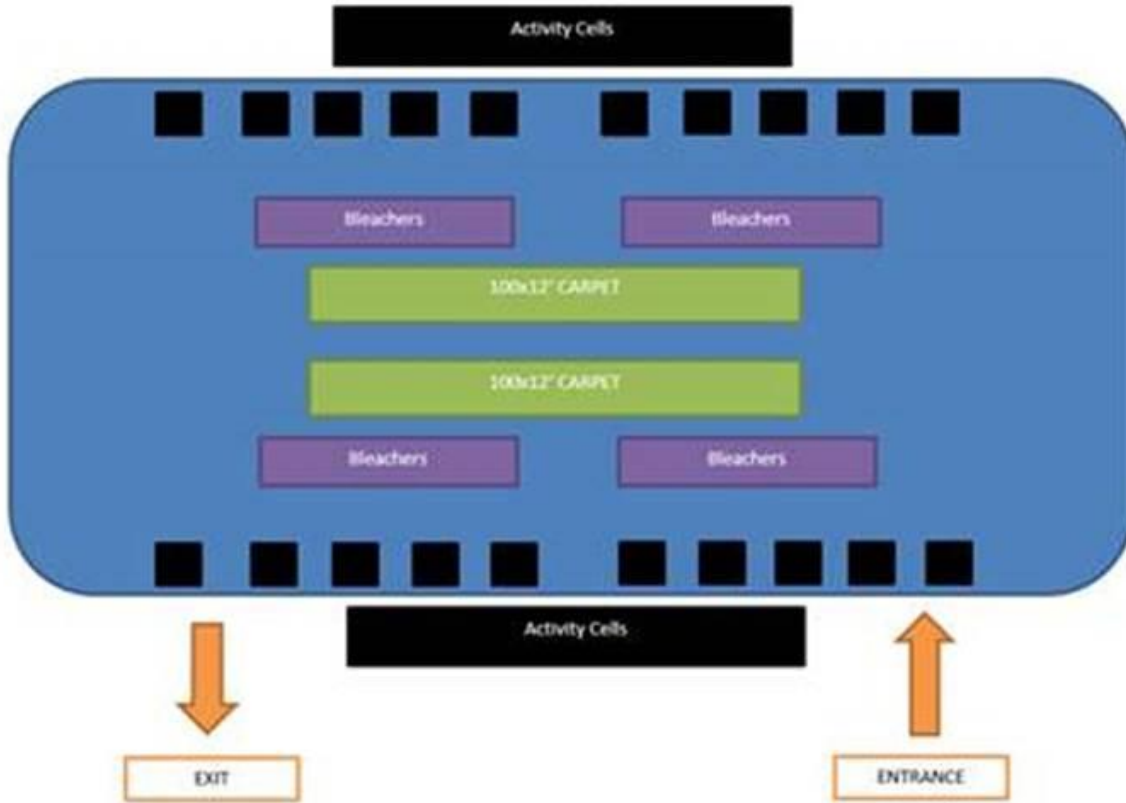
On behalf of St. Luke's University Health Network, please consider this as a proposal to rent the City of Bethlehem's Ice Rink (345 Illich's Mill Rd, Bethlehem, PA 18017) for a *St. Luke's Impact Through Infusion Initiative* scheduled on weekdays beginning Monday, June 8th (or the earliest Monday agreed upon by both parties following the migration of Northampton County to the "Yellow" phase) for one-month with intent to rent the ice rink for the summer months thereafter dependent upon the COVID-19 "phase" status. *St. Luke's Impact Through Infusion Initiative* is an initiative designed to bring students from across Bethlehem and the surrounding areas together in a controlled but fun environment. The initiative shall be administered by our team of certified professionals along with our affiliated certified partner Made Strength's Craig Merrick. The mental and physical health focused initiative shall afford students ranging from middle school through college with the opportunity to experience individual-based programming but also enjoy in-person interaction with their respective peers keeping social distancing. All programming shall be conducted under the direct supervision of St. Luke's staff members and in strict accordance with the policies set forth by the CDC and the Pennsylvania Governor's Office (and all other policies as prescribed by the City of Bethlehem). **St. Luke's along with the City of Bethlehem have a vested interest in the safety of all staff members and participants. We are all in this together.** Please see the following details regarding the *St. Luke's Impact Through Infusion Initiative*:

Initiative Components: Mental & Physical Health

- Goal Setting/Leadership/Mindfulness
- Strength & Conditioning Programming
- Speed, Agility, & Quickness Programming
- Spinning
- Motivational Guest Speakers

Location & Layout: City of Bethlehem Ice Rink with the ability to utilize the adjacent grass hill behind the pool and/or sectioned-off area of the parking lot as approved by the City of Bethlehem when weather permits.

IMPACT THROUGH INFUSION - NOT TO SCALE



Prospective Participants: Male and female students enrolled in 7th grade through college *(designated timeslots for age groups with limited number of 20 participants per session and 1:10 instructor to participant ratio)*

*****All participants shall arrive wearing a mask. They shall receive a temperature test administered by a St. Luke's staff member prior to entrance. Participants who register an abnormal temperature test will not be granted access to the initiative. Following the temperature testing, participants will be directed to a "Activity cell" in which they will stow their belongings in preparation for programming. The "Activity cell" is a designated programming area with individualized equipment and supplies for each participant. "Activity cell" areas shall be marked-off to maintain social distancing.

Participants who fail to comply with safety and social distancing policies and procedures shall be subject to termination from the initiative by St. Luke's.

Tentative Schedule Throughout the Summer: Monday, Tuesday, and Thursday 6:00 am to 8:00 pm / Wednesday and Friday 6:00 am to 4:00 pm *(includes set-up and clean-up in addition to 15-minute sanitation period between the 1-hour and 1.25-hour sessions)*



*****St. Luke's shall inform the City of Bethlehem's Recreation Department of schedule updates leading up to the intended start date as we are in the process of surveying interest.

St. Luke's Responsibility:

- Present a Certificate of Insurance and signed contract
- Participate in pre and post initiative collaboration meetings
- Collect waiver forms and registration fees
- Administrate ALL initiative operations
- Maintain clean facility at all times
- Provide all training equipment, industrial carpet, cleaning supplies, hand sanitizer, and first aid kit
- Co-market and engage in media relations in partnership with the City of Bethlehem
- Present payment in the amount of \$275 per day for the first four (4) days and \$125 per day for all scheduled rental days thereafter as prescribed in the "Off Season Rink Rental Confirmation" contract

*****All equipment owned by St. Luke's shall be stowed on the premises on the weekends in a secured area designated by the City of Bethlehem.

Site Safety Plan: St. Luke's shall meet with the City of Bethlehem at least five (5) working days prior to anticipated initiative start date to develop a site safety plan to cover the following and any other topics of interest.

- Dedicated parking lot spaces
- Dedicated parking lot area for training
- Dedicated one-way entry and exit
- Dedicated before-training screening and check-in location
- Participant safety protocol review
- Foot traffic pattern
- Bathroom protocol******Emergency situations only.*

Please feel free to contact me directly at (610) 417-8361 with any questions or concerns that you may have with regards to our proposal as I will serve as the initiative's coordinator. We look forward to serving students from across the region this summer and years ahead in partnership with the City of Bethlehem. Thank you for your time.

Best,
Bobby McClarin, CSCS
St. Luke's University Health Network
Business Development/Community Ambassadors - Sports Medicine
robert.mcclarin@sluhn.org
610-417-8361