



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
North Bethlehem Little League
Purpose: Athletic Association's Sanctioned Baseball/Softball

Date: February 11, 2021

Attached is a proposed Resolution and associated Use Permit Agreement with the North Bethlehem Little League 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
Dan Wickemeyer, North Bethlehem Little League

RESOLUTION NO. 2021-___

Authorization For Use Permit Agreement for Public Property

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, with the following named Youth Athletic Organization:

1. North Bethlehem Little League

Sponsored by _____

ADOPTED by Council this day of , 2021.

President of Council

ATTEST:

City Clerk

CITY OF BETHLEHEM

**Department of Public Works
Bureau of Recreation**

Bethlehem, Pennsylvania

USE PERMIT AGREEMENT FOR PUBLIC PROPERTY

Between

North Bethlehem Little League

and

City of Bethlehem

for use of

**Sell Fields, Northdale Fields, Bernie Fritz Fields
and Annex Field at Monocacy Complex**

Edition 12-2019

CITY OF BETHLEHEM
Bethlehem, Pennsylvania

USE PERMIT AGREEMENT FOR PUBLIC PROPERTY

PREMISES: Sell Fields, Northdale Fields, Bernie Fritz Fields and Annex Field at Monocacy Complex

PURPOSE: *Athletic Organization's sanctioned Baseball/Softball*

PERIOD: **JANUARY 1, 2021 through DECEMBER 31, 2021**
(Use Permit Agreement will automatically renew on an annual basis unless terminated by the parties.)

This Use Permit Agreement shall supersede any and all previous agreements between the parties.

THIS USE PERMIT AGREEMENT is entered into this _____ day of _____, 2021, by and between NORTH BETHLEHEM LITTLE LEAGUE, with its mailing address at Attn: Dan Wickemeyer, 1608 Lansdale Avenue, located in the City of Bethlehem, Pennsylvania, 18017 (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 only 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 only, and for the date(s) described above as "period".

NOW THEREFORE, in consideration of the sum of One Dollar and No Cents (\$1.00) 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:

1. PURPOSE.

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 Period.

2. DURATION OF AGREEMENT.

This permit shall renew on an annual basis automatically, under the same terms, unless the parties have terminated the Permit as allowed under this Agreement.

3. TERMINATION.

This Agreement may be terminated by either of the Parties with or without cause, on thirty (30) days advance written notice to the other party.

4. 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 as described above.

5. PREMISES TO REMAIN OPEN and ACCESSIBLE TO THE PUBLIC.

As public park grounds and facilities, the Premises must remain open and accessible to the public at all times, except times as defined below in Section 6, Period of Use, Paragraph (a) below.

6. PERIOD OF USE.

- (a) Use of the Premises is limited to the scheduled league season and reasonable additional times for tournament play. The Permittee's use schedule for the calendar year must be submitted and approved by the Director of Recreation or designee prior to the start of the scheduled league season. Any use beyond what was stated and approved by the Department of Public Works is not allowed unless requested in writing and approved by the Director of Recreation or designee.
- (b) Where fields are permitted concurrently to more than one Permittee, the concurrent Permittees may reach an agreement in writing between them and with the City's knowledge and consent on the apportionment of responsibilities. In the absence of an agreement between the concurrent Permittees under terms disclosed and acceptable to the City, each Permittee's liability under its permit shall be shared jointly and severally to the City as if the Permittee was the sole Permittee of the premises.

7. FIELD CANCELLATIONS.

Fields are not to be used when wet or during inclement weather when injury to persons is at risk due to weather or field conditions or damage to the Premises is at risk.

The 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. City shall owe no compensation to Permittee if it exercises its discretion as allowed by the preceding.

8. 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. The Permittee shall remove all personalty from the premises within seven (7) days of the termination of this Permit; and in the event of failure to do so, City will impose a charge on Permittee for its expense of removal, storage and discarding of such property.

9. PERMITTED USES.

Permittee's use of the athletic fields is allowed under the following conditions:

- (a) The athletic fields shall be used and occupied by Permittee only for the purpose of Youth Athletic Organization sanctioned activities or as defined in the organization's By-Laws. Permittee shall not use the athletic fields for any other purpose.
- (b) Permittee shall not permit the athletic fields to be used by third party (other) organizations, teams or individuals without prior written approval from the Director of Recreation or designee and signature of a Bethlehem Youth Organization SubPermit Application and Agreement by the third party (other) organization, team or individual.
- (b) Use of the athletic fields as home fields is limited to players within the Youth Athletic Association's service area as approved by the Youth Athletic Organization's District Office. Permittee shall not allow the athletic fields to be used as home fields by any teams other than the Permittee's teams without the written approval from the Director of Recreation or designee and signature of a Bethlehem Youth Organization SubPermit Application and Agreement by the other team.

10. USE BY OTHERS.

The City shall retain the right to allow and approve athletic field use by others during those times when Permittee is not scheduled to use the fields as noted above, provided the fields are returned to Permittee in good playable condition. Under this scenario, a Field Use Permit will be issued by the Director of Recreation or designee and the applicable field and lighting fees that the City charges shall be paid to the Permittee to cover the expenses incurred by the Permittee.

Any organization, team or individual utilizing the field pursuant to a Bethlehem Youth Organization SubPermit Application and Agreement or a Field Use Permit must submit an acceptable Certificate of Insurance that meets the following requirements:

Comprehensive general liability insurance naming the “City of Bethlehem, its officials and employees” and the Youth Athletic Organization as additional insureds for a minimum of \$1,000,000.00 per occurrence and general aggregate of \$2,000,000.00.

11. PROPERTY.

Permittee shall assume responsibility and maintenance, repairs, playability and safety of conditions of the following but not limited to: playing field(s), the field house, backstops, field fencing, bleachers, press box, concession stand, scoreboards, dugouts, and field lighting. These facilities shall remain the Permittee’s responsibility until the expiration or termination of this Agreement.

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

12. RIGHT TO ENTER.

The City shall have the right to enter Permittee’s facilities for any reasonable purpose to include, but not limited to, safety inspections, maintenance inspections and ensuring code compliance.

13. ENVIRONMENTAL PROTECTION and ENERGY CONSERVATION.

Permittee must at all times incorporate Best Management Practices (BMP) in their operations as it relates to environmental protection and energy conservation. This would include following State or local regulatory or non-regulatory guidelines for the management of, but not limited to, recycling, soil pollution, erosion control, energy savings applications, use of environmentally friendly products.

14. FIELD IMPROVEMENTS.

Field improvements, other than standard maintenance and repairs, proposed by Permittee must be requested in writing and approved by the Director of Recreation or designee. No improvements will be installed or provided by Permittee without the written permission of the Director of Recreation or designee. This permission will be granted providing it can be shown the improvement will provide a benefit to league participants or spectators and will not distract from the appearance and function of the park. Permittee shall assume the costs of maintaining new improvement unless otherwise agreed in writing by the Director of Recreation or designee. Should an improvement be made without the permission of the City, the City has the right to direct to Permittee to remove the improvement within 30 days at Permittee cost. If the improvement is not removed within 30 days, the City may remove the improvement and bill Permittee for all related costs and City will be entitled to full payment for those costs. Permanent improvements shall be deemed owned by City without compensation to Permittee.

15. TEMPORARY or PERMANENT STRUCTURES.

Placement of temporary structures (tents, booths, coke wagon, etc.) must be approved in writing by the Director of Recreation or designee.

Any request for placement of permanent structures (field lights, press box, dug outs, etc.) must be submitted in writing to the Director of Recreation to review for code compliance and referral to Council for final approval. Permanent improvements shall be deemed owned by City without compensation to Permittee.

16. INSPECTIONS, SAFETY AND MAINTENANCE.

(a) Inspections and Maintenance Provided by Permittee for Duration of Agreement:

- (1) Permittee shall provide on-going safety inspections and maintenance to the permitted premises and shall maintain these premises in clean and well-manicured condition, at its own cost and expense, recognizing they are part of a park serving the general public. The City will endeavor to supplement maintenance tasks that are beyond Permittee's capabilities.
- (2) Permittee shall provide litter control to its permitted area daily during the practice, league play and tournament season and shall keep the area free of litter.
- (3) If the City determines there are maintenance needs, the Director of Recreation or designee will work with Permittee in adequately addressing the concern.
- (4) Maintenance items that present a liability or safety concern must be corrected as soon as possible by Permittee. The Director of Recreation

should be contacted immediately if any form of assistance from the City is required. Such duty shall not be cause for delay of Permittee's obligation to implement short term and long term safety measures to prevent personal injuries.

- (5) Graffiti shall be painted out or removed by Permittee within 48 hours (weather permitting) of notification. Any graffiti that appears to be gang related shall be reported to the Bethlehem Police Department prior to removal. The Public Works Department can offer assistance with graffiti removal.
- (6) Permittee shall provide snow and ice abatement on parking lots, at its own cost and expense.

(b) Maintenance and Services Provided by City

When feasible and in the sole discretion and judgment of the City, the City will provide assistance with responsibilities for snow and ice abatement on parking lots. This accommodation by the City shall not alter Permittee's primary responsibilities for the tasks. City shall attempt to assist Permittee with other facility maintenance requests as presented.

17. RESPONSIBILITY FOR COSTS.

Permittee will assume the costs for the maintenance and operational services as noted above including the costs of electricity related to Permittee use, water consumption above the standard, costs of approved improvements and capital repairs.

18. ATTENDANCE AT ANNUAL MEETING.

An officer of the Permittee organization shall attend the annual meeting called by the Recreation Director during the first quarter of each year. The purpose of the meeting will be to review the Use Permit Agreement, responsibilities and needs and to update all contact information. At that meeting, the Permittee representative shall provide the following:

- (a) The number of teams and participants in its league from the last completed season; and
- (b) A year end statement of revenue and expenses from the previous year. Revenue shall include all revenue received including concession stand, fund raising, etc.; and
- (c) Proof of insurance as required in Paragraph 30. Submission of proof of current insurance does not negate the Permittee's responsibility to provide an up to date certificate at the time of renewal of the policy.

19. FIELD LIGHTS and PA SYSTEM.

Permittee agrees to ensure games are over and field lights turned off by 10:00 p.m., however, the Director of Recreation or designee retains the right to permit special recreational use closing hours. Field lights shall be focused on the field areas only. Any lights utilized at the premises shall not illuminate areas beyond permitted site.

Permittee agrees to limit the use of the public address system after 9:00 p.m. to a level acceptable to the adjacent residential neighborhoods. City shall have full authority and discretion to direct public address system volume reduction to a level the City deems reasonable and necessary.

20. PARKING CONTROL.

Parking is permitted only where legally designated. Parking on grass areas posted “No Parking” is prohibited. Permittee will assign as many members of their organization as necessary to manage and control parking.

21. FOOD and BEVERAGE.

Permittee agrees to abide by the laws, fire and health codes and regulations of the City of Bethlehem and of the State of Pennsylvania, which regulate the operation of food and beverage serving facilities.

22. ALCOHOLIC BEVERAGES.

No alcoholic beverages are permitted to be offered, sold or consumed on the Premises by anyone.

23. ADVERTISING.

Permittee shall abide by the Ordinance – Title Nine – Recreation, Article 941 Parks, Section 941.07 Merchandising, Advertising and Signs, (d) Exceptions.

24. AMENDMENT.

This Use Permit Agreement may not be amended or modified except by agreement in writing duly executed by the parties hereto.

25. NON-ASSIGNABLE.

This Use Permit is not assignable by the Permittee. Permittee shall not subpermit the premises or allow use by others unless in conformance with terms, conditions and approvals of the City as set forth within this Use Permit.

26. GOVERNING LAW and VENUE.

This Use Permit Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania. The exclusive venue for the resolution of all disputes shall be Northampton County, Pennsylvania, only. City shall have authority to enforce the Ordinances of the City and laws of the Commonwealth of Pennsylvania on the premises during the term of this Use Permit.

27. COMPLIANCE WITH LAW.

The Permittee shall comply with all Ordinances, policies, rules and regulations of the City of Bethlehem and all State and Federal laws, rules and regulations pertaining to the above described Premises and the uses thereof, and shall obtain all required permits.

28. NON-DISCRIMINATION.

Permittee agrees not to discriminate in providing its services and shall provide those services without regard to race, religion, or sex and all protected classifications listed under City of Bethlehem Article 145, Section 145.01B.

29. 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, or caused by or resulting from Permittee's breach of a duty imposed under this Use Permit, whether such claims be made by an employee of the Permittee, its officers or members, or by a third party, or members of the public, and including if it shall be claimed or alleged in a civil action that the damage or injury or death was caused jointly or solely through the negligent act or omission of the City and/or its officers and/or employees. 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.

30. REQUIRED INSURANCE.

The Permittee shall purchase and maintain comprehensive general liability insurance naming the "City of Bethlehem and its officials and employees" as additional insured for a minimum of \$1,000,000.00 per occurrence and general aggregate of \$2,000,000.00. The Permittee shall furnish a Certificate of Insurance to the Bureau of Recreation of the City of Bethlehem at the time of signing this Agreement and shall be responsible for providing an up-to-date certificate each year. The said insurance shall cover public

liability, products liability, property damage, and personal injury, and the insurance coverage required by this paragraph shall be approved by the City of Bethlehem Solicitor.

31. 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 and conducted by Permittee.
- (b) The exclusive use by the Permittee, to the exclusion of the public, of the facility or other building on the Premises during periods outside of approved Period of Use to Permittee.
- (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, policy, rule or regulation. Where the terms of this Use Permit Agreement are in conflict with any City ordinance, policy, rule or regulation, the terms of the Use Permit Agreement shall govern.
- (e) Any violation and/or non-compliance with the Use Permit Agreement for Youth Athletic Organizations.

32. NOTICES.

Any notice under this Permit must be in writing and must be sent by first class mail or delivered to the address of the party to whom the notice is to be given, as designated by such party in writing.

The City hereby designates the City's address as:

City of Bethlehem
Attn: Director of Bureau of Recreation
10 East Church Street
Bethlehem, Pennsylvania, 18018

[the remainder of this page intentionally left blank]

Permittee hereby designates Permittee's address as:

North Bethlehem Little League
Attn: Dan Wickemeyer
1608 Lansdale Avenue
Bethlehem, PA 18017

If the identity and address of the person to receive notices under this Use Permit changes, Permittee shall provide prompt notification to the City of the new name and address.

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:
North Bethlehem Little League

By: _____ (Seal)

Name: _____

Title: _____

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 Director of Recreation
Print Name: _____ Jodi M. Evans