



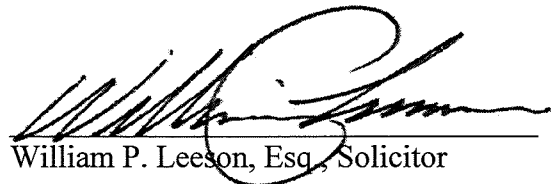
CITY OF BETHLEHEM
OFFICE OF THE CITY SOLICITOR

INTEROFFICE MEMORANDUM

To: Robert G. Vidoni, Esq., City Clerk
From: William P. Leeson, Esq., City Solicitor
Re: Lease Agreement for Public Property
ECTB Holdings, LLC
Purpose: Use of 3 Upper Softball/Baseball Saucon Fields for Baseball
Date: June 29, 2021

Attached is a proposed Resolution and associated Lease Agreement for Public Property 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, Director of Public Works
Eric R. Evans, Business Administrator
Jodi M. Evans, Director of Recreation
Dominic Albanese, ECTB Holdings, LLC

RESOLUTION NO. 2021-_____

Authorization For Lease 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 Lease Agreement for Public Property with ECTB Holdings, LLC, and such other agreements and documents as are deemed by the City Solicitor to be necessary and/or related thereto, for the use of three (3) Upper Softball/Baseball Saucon Fields for baseball, according to the terms and conditions indicated therein and made a part hereof.

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

LEASE AGREEMENT FOR PUBLIC PROPERTY

Between

ECTB Holdings, LLC

and

City of Bethlehem

for use of

3 Upper Softball/Baseball Saucon Fields

CITY OF BETHLEHEM
Bethlehem, Pennsylvania

LEASE AGREEMENT FOR PUBLIC PROPERTY

PREMISES: **3 Upper Softball/Baseball Saucon Fields**

PURPOSE: **Baseball**

PERIOD: **JULY 15, 2021 through DECEMBER 31, 2021**
(Lease Agreement will automatically renew on an annual calendar year basis unless terminated by the parties.)

THIS LEASE AGREEMENT is entered into this _____ day of _____, 2021, by and between ECTB HOLDINGS, LLC, with its mailing address at Attn: Dominic Albanese, 1008 S. Howard Street, located in the City of Allentown, Pennsylvania, 18103 (hereinafter referred to as the “Lessee”);

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, Lessee desires to utilize the premises identified above (hereinafter referred to as “Premises” or “Leased Premises”) only for the purpose identified above; and

WHEREAS, City desires to grant a Lease to the Lessee 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) for the remainder of calendar year 2021, Seven Thousand Five Hundred Dollars and No Cents (\$7,500.00) for calendar year 2022, and Fifteen Thousand Dollars and No Cents (\$15,000.00) annually thereafter, and the other amounts, if any, hereinafter identified to be paid by the Lessee 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 Lease shall run for the period of time indicated above as Period.

2. DURATION OF AGREEMENT.

This lease shall renew on an annual calendar year basis automatically, under the same terms, unless the parties have terminated the Lease as allowed under this Lease Agreement.

3. TERMINATION.

- (a) This Lease Agreement may be terminated by either of the Parties without cause, on thirty (30) days advance written notice to the other party.
- (b) This Lease Agreement may be terminated immediately by the City for cause for any violation of this Lease Agreement, as determined by the City in its sole discretion. Such violations include but are not limited to:
 - (1) 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 Lessee.
 - (2) The exclusive use by the Lessee, to the exclusion of the public, of the facility or other building on the Premises during periods outside of approved Period of Use to Lessee.
 - (3) The failure of the Lessee to obtain and provide the insurance required by this agreement.
 - (4) Violation and/or non-compliance with any federal or state law, or of City ordinance, policy, rule or regulation. Where the terms of this Lease Agreement are in conflict with any City ordinance, policy, rule or regulation, the terms of the Lease Agreement shall govern.
 - (5) Any violation and/or non-compliance with this Lease Agreement.

4. GRANT OF NON-EXCLUSIVE LEASE.

The City hereby grants to the Lessee a lease to use the Premises, as more particularly described above, for Lessee'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 Paragraph 6, Period of Use, Subparagraph (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 Lessee'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.

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 Lessee of the lease 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 Lessee if it exercises its discretion as allowed by the preceding.

8. REMOVAL OF PERSONALTY.

At the termination of this Lease, Lessee shall remove all of its personal property from the Premises and return the Premises to its condition existing at the commencement of this lease. The Lessee shall remove all personalty from the Premises within seven (7) days of the termination of this Lease; and in the event of failure to do so, City will impose a charge on Lessee for its expense of removal, storage and discarding of such property.

9. PERMITTED USES.

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

- (a) The athletic fields shall be used and occupied by Lessee only for the purpose of Athletic Organization sanctioned activities or as defined in the organization's By-Laws. Lessee shall not use the athletic fields for any other purpose.
- (b) Lessee 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 Organization SubPermit Application and Agreement by the third party (other) organization, team or individual.

- (c) Use of the athletic fields as home fields is limited to players within the Athletic Association's service area as approved by the Athletic Organization's District Office. Lessee shall not allow the athletic fields to be used as home fields by any teams other than the Lessee's teams without the written approval from the Director of Recreation or designee and signature of a Bethlehem 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 Lessee is not scheduled to use the fields as noted above, provided the fields are returned to Lessee 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 Lessee to cover the expenses incurred by the Lessee.

Any organization, team or individual utilizing the field pursuant to a Bethlehem 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 Lessee as additional insureds for a minimum of \$1,000,000.00 per occurrence and general aggregate of \$2,000,000.00.

11. PROPERTY.

Lessee 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 Lessee's responsibility until the expiration or termination of this Lease.

Lessee 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 Lessee.

12. RIGHT TO ENTER.

The City shall have the right to enter Lessee'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.

Lessee must at all times incorporate Best Management Practices (BMP) in its 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 Lessee must be requested in writing and approved by the Director of Recreation or designee. No improvements will be installed or provided by Lessee 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. Lessee 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 Lessee to remove the improvement within 30 days at Lessee cost. If the improvement is not removed within 30 days, the City may remove the improvement and bill Lessee for all related costs and City will be entitled to full payment for those costs. Permanent improvements shall be deemed owned by City when installed or completed without compensation to Lessee, regardless of the timing or cause for termination of this Lease.

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 when installed or completed without compensation to Lessee, regardless of the timing or cause for termination of this Lease.

16. OWNERSHIP OF PERMANENT IMPROVEMENTS AND FIXTURES

City shall owe no compensation to Lessee for any improvements or permanent fixtures installed by Lessee and no compensation is owed at the end of the Lease for same. The permanent improvements and fixtures shall transfer to City's ownership upon completion and City's acceptance, except for removable fixtures and equipment Lessee elects to remove.

17. INSPECTIONS, SAFETY AND MAINTENANCE.

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

- (1) Lessee shall provide on-going safety inspections and maintenance to the 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 Lessee's capabilities.
- (2) Lessee 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 Lessee in adequately addressing the concern.
- (4) Maintenance items that present a liability or safety concern must be corrected as soon as possible by Lessee. 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 Lessee's obligation to implement short term and long term safety measures to prevent personal injuries.
- (5) Graffiti shall be painted out or removed by Lessee 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) Lessee 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 Lessee's primary responsibilities for the tasks. City shall attempt to assist Lessee with other facility maintenance requests as presented.

18. RESPONSIBILITY FOR COSTS.

Lessee will assume the costs for the maintenance and operational services as noted above including the costs of electricity related to Lessee use, water consumption above the

standard, costs of approved improvements and capital repairs. With respect to the field lights, Lessee will accept primary billing responsibility for electricity billing for usage of the field lights.

19. ATTENDANCE AT ANNUAL MEETING.

An officer of Lessee 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 Lease Agreement, responsibilities and needs and to update all contact information. At that meeting, the Lessee 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 31. Submission of proof of current insurance does not negate the Lessee's responsibility to provide an up to date certificate at the time of renewal of the policy.
- (d) Proposed schedule of use required under Paragraph 6(a).
- (e) The annual payment to the City of Bethlehem, in the amount of \$7,500.00 for calendar year 2022 and in the amount of \$15,000.00 per calendar year thereafter.

20. FIELD LIGHTS and PA SYSTEM.

Lessee 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 the leased site.

Lessee 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.

21. PARKING CONTROL.

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

22. FOOD and BEVERAGE.

Lessee 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.

23. ALCOHOLIC BEVERAGES.

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

24. ADVERTISING.

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

25. AMENDMENT.

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

26. NON-ASSIGNABLE.

This Lease is not assignable by the Lessee. Lessee shall not sublease the Premises or allow use by others unless in conformance with terms, conditions and approvals of the City as set forth within this Lease Agreement.

27. GOVERNING LAW and VENUE.

This Lease 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 Lease.

28. COMPLIANCE WITH LAW.

The Lessee 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.

29. NON-DISCRIMINATION.

Lessee 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.

30. INDEMNIFICATION OF CITY.

The Lessee 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 Lessee, or caused by or resulting from Lessee's breach of a duty imposed under this Lease, whether such claims be made by an employee of the Lessee, 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 Lessee shall, at the Lessee'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 Lessee, at the Lessee's own expense, shall satisfy and discharge the same.

31. REQUIRED INSURANCE.

The Lessee 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 Lessee shall furnish a Certificate of Insurance to the Bureau of Recreation of the City of Bethlehem at the time of signing this Lease 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.

32. NOTICES.

Any notice under this Lease 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

Lessee hereby designates Lessee's address as:

ECTB Holdings, LLC
Attn: Dominic Albanese
1008 S. Howard Street
Allentown, PA 18103

If the identity and address of the person to receive notices under this Lease Agreement changes, Lessee shall provide prompt notification to the City of the new name and address.

33. REAL ESTATE TAXES.

City may suspend this Lease upon receipt of notification of revocation, or a taxing body's filing of proceedings to revoke, the real estate tax exemption on the Leased Premises. Such event shall be deemed a force majeure with the legal effect of preventing the parties' continuing performance of their obligations under the Lease. Upon such notice of imposition of tax to City and suspension of the Lease, the parties shall then in good faith proceed as follows:

- (a) To keep the Lease in force, within thirty (30) days of suspension, Lessee may agree in writing, acceptable in form and terms to City, to pay increased rent in the full amount of all assessed real estate taxes on all affected parcels or affected portions thereof for the term of any retroactive assessment plus for the duration of the term remaining under the Lease in equal, prorated monthly installments or in a single installment annually when and as invoiced by City, payable within thirty (30) days of the invoice date, or payable on terms as the parties may otherwise agree, and in amounts adjusted for and including annual tax increases, if any; or,
- (b) If Lessee refuses or fails to agree to pay the increased rent required to keep the Lease in force, the Lease thereupon shall be deemed terminated. Accrued financial liabilities shall be reconciled to the date of suspension and satisfied by the parties. Lessee may remove and take possession of its removable fixtures and equipment as permitted under the Lease upon termination. City shall owe no compensation to Lessee as a result of suspension or termination so that City shall not be liable to Lessee for economic loss of revenue, profit, revenue expectancy, expenses, or consequential damages of any type or calculated basis.
- (c) City at its discretion may assert a legal challenge to the assessment of real estate tax to restore the real estate tax exemption if, in City's sole judgment, City has grounds to challenge with a reasonable chance to prevail. City shall have no duty to accommodate a demand by Lessee to pursue a legal challenge to the assessment. If City prevails in a challenge and recovers tax real estate tax payments from the taxing agencies, City will refund the recovered funds to the extent recovered, less any arrearages and default amounts due under the Lease.

34. CITY COUNCIL APPROVAL.

The Lease is subject to approval by resolution adopted by Bethlehem City Council. It is not valid or enforceable absent such approval notwithstanding execution by a party or by the parties before Council’s approval.

35. ENTIRE AGREEMENT; SEVERABILITY.

This Lease contains the entire agreement between the parties and shall not be modified in any manner except by an instrument in writing executed by the parties. If any term or provision of this Lease or the application thereof, to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to the persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Lease shall be valid and be enforced to the extent permitted by law.

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

ATTEST: _____
Secretary
LESSEE:
ECTB HOLDINGS, LLC
By: _____ (Seal)
Name: _____
Title: _____

ATTEST _____
City Contoller
CITY:
City of Bethlehem
By: _____ (Seal)
Robert J. Donchez,
Mayor

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

By: _____
City of Bethlehem Director of Public Works
Print Name: Michael Alkhal

By: _____
City of Bethlehem Director of Recreation
Print Name: Jodi M. Evans