



CITY OF BETHLEHEM
OFFICE OF THE CITY SOLICITOR

INTEROFFICE MEMORANDUM

To: Tad J. Miller, City Clerk

From: John F. Spirk, Jr., Esq., City Solicitor

Re: Use Permit Agreement for Public Property
Permittee Name: ArtsQuest
Purpose: Levitt Summer Concert Series
Location: 1st Street from Founders Way to the eastern terminus

Date: April 28, 2022

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.

John F. Spirk, Jr.

John F. Spirk, Jr., Esq., Solicitor

Cc: J. William Reynolds, Mayor
Jodi M. Evans, Director of Recreation
Eric Bauder, ArtsQuest

CITY OF BETHLEHEM
Bethlehem, Pennsylvania

USE PERMIT AGREEMENT FOR PUBLIC PROPERTY

PREMISES: 1st Street from Founders Way to the eastern terminus

PURPOSE: Levitt Summer Concert Series

DURATION: Friday and Saturday: May 20-21, May 27-28, June 3-4, June 10-11, June 17-18, June 24-25, July 1-2, July 8-9, July 15-16, July 22-23, July 29-30, August 19-20, August 26-27, September 2-3, 2022 and September 9-10, 2022 from 7:00 pm to 10:00 pm

THIS USE PERMIT AGREEMENT is entered into this _____ day of _____, 2022, by and between ARTSQUEST, with its mailing address at 25 W. 3rd Street, Suite 300, located in the City of Bethlehem, 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; 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 dates and times are as follows:

Event Dates: Friday and Saturday: May 20-21, May 27-28, June 3-4, June 10-11, June 17-18, June 24-25, July 1-2, July 8-9, July 15-16, July 22-23, July 29-30, August 19-20, August 26-27, September 2-3, 2022 and September 9-10, 2022 from 7:30 pm to 9:00 pm

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 Permittee'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. At least thirty (30) days before the festival or special event is scheduled to begin, the Permittee must submit a Public Safety Plan (hereinafter referred to as the "Plan") to the City's Recreation Director, Fire Chief, Police Chief, EMS Director and Emergency Management Coordinator, which Plan addresses each item on the attached Exhibit "A." The Plan must address each item as contained in Exhibit A to the satisfaction of the City. The Permittee's festival or special event shall not be held on City property unless written approval has been granted by the City on or before the start date of the festival or special event to the Permittee's Plan.

B. EMS Standby. The Permittee shall consult with the City EMS Director to determine if EMS Standby services are warranted for each event date noted above. If it is determined by the EMS Director, in the EMS Director's sole discretion, that EMS Standby services are required for a particular event date, the Permittee 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

- A. The provisions under this paragraph 4 are mandatory because Permittee has represented that it will be selling alcohol at the Event or Festival.
- B. Permittee 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. Permittee 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 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.

- D. Service and consumption of alcohol on City property or public right-of-way is prohibited.

5. Roster Duty Police Officers. Permittee shall consult with the City of Bethlehem Police Department three weeks before each scheduled event regarding expected attendance and/or pertinent information regarding each Event. After that consultant, the Police Chief will determine if roster duty officers are required for the Event. The number of roster duty police officers required for the Event(s) shall be determined at the sole discretion of the City of Bethlehem Police Chief. The Police Chief may exercise his/her discretion and issue a determination at any time prior to or during the Event(s) where the circumstances indicate the need for additional police presence. If it is determined by the City of Bethlehem Police Chief, in the Police Chief’s sole discretion, that Roster Duty Police Officers are required for a particular event date or at a particular event location, the Permittee shall accept the determination of the Police Chief without recourse, and must provide and pay for the required number of Roster Duty Police Officers to be present at all required times during the permitted Event or Festival on the event date or dates and at the location or locations in question. 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.

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:
ARTSQUEST

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!!)

ATTEST: CITY:
CITY OF BETHLEHEM

City Controller

By: _____(SEAL)
J. William Reynolds
Mayor

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

By: _____
City of Bethlehem Bureau Head
Print Name: Jodi M. Evans

EXHIBIT A

REQUIREMENTS FOR A PUBLIC SAFETY PLAN.

A Public Safety Plan submitted to the City of Bethlehem, must include the following;

1. EMS Criteria:

- Education of event staff regarding how and when to contact 911 services.
- Signage/education of attendees regarding how to access 911 services.
- Evacuation plans, including the use of PSAs.
- Coordination of EMS needs with fire and police needs and requirements.
- Emergency contact information and means for contacting event administration staff.
- Notification method of anticipated surges in crowd size, unsafe conditions or events, on-site health facilities, if any.
- On-site communication system (event staff).
- Ability to monitor weather conditions.

2. Fire and Police Criteria:

- Administration, delegation, contacts and responsible parties.
- Staffing levels, organization and roles and training.
- Communications both internal and external, liaison contacts and procedures, emergency reporting and emergency announcements.
- Site security, staffing, site layout mapping, access points and evacuation points for both site areas and entire permitted area.
- Evacuation plans for each site area as well as the entire permitted area and coordination with local authorities.
- Traffic control both vehicular and pedestrian.
- Assembly and crowd control as it pertains to each specific site as well as to the entire permitted area (staffing, clearing aisles and spaces, lighting, ingress and egress, etc.)

3. Event Public Safety Coordination:

- Medical/First Aid, ambulance stand-by and first aid station(s).
- Police, staffing levels, traffic control, coordinate with event administration.
- Fire, emergency procedures and fire reporting, fire protection (portable extinguishers, etc.) fire department stand-by (if required), fireworks permit, tent permit(s), cooking site inspections, access to fire department apparatus and emergency lighting.
- Utilities, electric, water, gas/propane, contacts, responsible parties and suppliers.
- Health, site inspections, waste management, restroom facilities inspections and maintenance.