



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: Touchstone Theatre
Purpose: Theatre and creative arts events, productions, performances, rehearsals;
student and community lectures, workshops, and related activities
Location: Parham Park

Date: August 31, 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
Michael Alkhal, Director of Public Works
James P. Jordan, Touchstone Theatre

RESOLUTION NO. 2022-_____

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: | Touchstone Theatre |
| 2. | Premises: | Parham Park |
| 3. | Purpose: | Theatre and creative arts events, productions, performances, rehearsals; student and community lectures, workshops and related activities |
| 4. | Duration: | September 15, 2022 through December 31, 2022 |

Sponsored by _____

ADOPTED by Council this day of , 2022.

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

TOUCHSTONE THEATRE

and

CITY OF BETHLEHEM

for use of

PARHAM PARK

CITY OF BETHLEHEM
Bethlehem, Pennsylvania

USE PERMIT AGREEMENT FOR PUBLIC PROPERTY

PREMISES: *PARHAM PARK*

PURPOSE: *Theatre and creative arts events, productions, performances, rehearsals; student and community lectures, workshops, and related activities*

PERIOD: **SEPTEMBER 15, 2022 through DECEMBER 31, 2022**

THIS USE PERMIT AGREEMENT is entered into this _____ day of _____, 20____, by and between TOUCHSTONE THEATRE with its mailing address at 321 E. 4th Street, 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 only for the purposes identified above; and

WHEREAS, City desires to grant a Use Permit to the Permittee for the premises described, for the purposes stated only, and for the date(s) as set forth herein 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 Purposes 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 end on December 31, 2022, 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 Purposes described above.

Any use by Permittee of the adjacent Greenway which would impact the free flow and passage along the Greenway shall be by separate permit only.

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, below.

6. PERIOD OF USE.

Use of the Premises is limited to the above purposes. The Permittee will work in consultation with the Director of Recreation or designee to implement necessary scheduling procedures to coordinate Permittee's use of the Premises. For this purpose, the Permittee shall, immediately upon execution of this Agreement, submit its proposed use schedule to the Director of Recreation or designee for all events planned from September 15, 2022 through December 31, 2022.

For more spontaneous pop-up type events that do not involve alcohol, outside vendors, or anticipated public attendance of more than 35 persons, Permittee shall give City not less than 72 hours' notice prior to the start of the event, and the City shall promptly respond as to whether the event is approved.

For spontaneous pop-up type events that do involve alcohol, outside vendors, or anticipated public attendance of more than 35 persons, Permittee shall give the City not less than 30 days' notice, and approval may be granted in the sole discretion of the City, which approval shall not be unreasonably withheld.

7. EVENT CANCELLATIONS.

The Park is not to be used during wet or inclement weather under circumstances when injury to persons is at risk due to weather or Park conditions, or when 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. USE BY OTHERS.

The City shall retain the right to allow and approve use of the Park by others during those times when Permittee is not scheduled to use the Park.

10. PROPERTY.

City will cut the grass at the Park in accordance with its normal maintenance schedule. Permittee shall assume responsibility for general clean-up following Permittee's use, and shall leave the Park in the condition it was in prior to Permittee's use.

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.

11. RIGHT TO ENTER.

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

12. ENVIRONMENTAL PROTECTION and ENERGY CONSERVATION. SPECIAL EFFECTS.

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.

Special effects or events involving pyrotechnics or open flame will require additional separate City approvals/permits as appropriate.

13. IMPROVEMENTS.

No improvements will be installed or provided by Permittee without the written permission of the Director of Public Works or designee. This permission will be granted providing it can be shown the improvement will provide a benefit to the general public and will not distract from the appearance and function of the park. Permittee shall assume the costs of maintaining new improvement. 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.

14. TEMPORARY STRUCTURES.

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

15. INSPECTIONS, SAFETY AND MAINTENANCE.

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

- (1) As a good neighbor Permittee will monitor the condition of the Park and report any problems to the City. To the extent consistent with Permittee's existing resources, Permittee shall provide on-going safety inspections and maintenance to the permitted premises and shall maintain these premises in clean condition, as a park serving the general public. The City will cut the grass in accordance with its normal maintenance schedule.
- (2) To the extent consistent with Permittee's existing resources, Permittee shall provide litter control to its permitted area and shall keep the area free of litter.

- (3) If the City determines there are maintenance needs, the Director of Public Works 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 Public Works or designee 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) To the extent consistent with Permittee's existing resources, Permittee shall paint out or remove graffiti within 48 hours (weather permitting) of notification/discovery. 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.

16. LIGHTING and SOUND AMPLIFICATION.

Permittee agrees to limit the use of any sound amplification system after 10:00 p.m. on weekdays and 11:00 pm on weekends to a level acceptable to the adjacent residential neighborhoods. City shall have full authority and discretion to direct sound amplification volume reduction to a level the City deems reasonable and necessary.

Any temporary lighting used by Permittee shall be compliant with City codes and ordinances, shall be turned off no later than 10:00 p.m. on weekdays and 11:00 pm on weekends, and any lighting used on the premises shall not illuminate areas beyond the permitted site.

17. EVENT AND PARKING MANAGEMENT.

Parking is permitted only where legally designated. Parking on grass areas is prohibited. Permittee will assign as many members of their organization as necessary to manage and control parking. Permittee will monitor entrances and exits to control the flow of attendees. Permittee shall create temporary barriers to delineate the event perimeter. Existing Touchstone rest room facilities will be used for events on the premises.

18. 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. Any food vendors/trucks must obtain their own permits through the City's vendor application process. Food trucks are not permitted to be located in the park.

19. ALCOHOLIC BEVERAGES.

- (a) It is anticipated that Permittee's patrons will bring alcohol purchased at Permittee's premises onto the Park. Permittee acknowledges and agrees that any alcohol brought onto the Park by Permittee's patrons must remain within the Park and Permittee will take the appropriate steps to monitor and manage this requirement.
- (b) Alcohol service and sales each day shall end thirty minutes prior to the end time or any time required by the Permittee's PA LCB license.
- (c) Special Requirements Regarding Service and Sale of Alcohol.
 - (1) The provisions under this paragraph are mandatory because Permittee has represented that it will be selling alcohol at the Event or Festival.
 - (2) 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.
 - (3) 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 the Period 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.

20. PUBLIC SAFETY.

It is understood and agreed by the Parties hereto that Permittee's use of the Park for permitted purposes may involve use of several different set-ups, configurations, or arrangements (hereinafter "set-ups"). In order to facilitate City's exercise of its reserved rights and discretion hereunder, Permittee shall, upon issuance of the permit, provide City with a detailed description of all their possible set-up models, so that City can determine and advise Permittee where these set-up models fall within the City's public safety requirements. Consistent with the foregoing, Permittee shall comply with the following provisions.

- (a) Submission of Public Safety Plan. City reserves the right to require that Permittee submit a Public Safety Plan for a particular event or use if the City, in its sole discretion, determines that circumstances indicate a Public Safety Plan is needed for said event.
- (b) EMS Standby. City reserves the right, in the sole discretion of the City EMS Director, to require that Permittee pay for and arrange for a City EMS crew and ambulance to provide service for a particular event or use. 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 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.

21. 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 be included on claims for damages (see subparagraph (c) 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 subparagraph (d) below, etc.).

- (c) The City's 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.
- (d) 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 Premises. All services provided to Permittee by City 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.

22. ROSTER DUTY POLICE OFFICERS.

Permittee must provide and pay for City of Bethlehem Roster Duty Police Officers at all times during the permitted Event or Festival. The number of roster duty police officers required for the event, if any, 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 21 above.

23. REVENUE.

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

24. 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 34.

25. ADVERTISING and SIGNS.

Permittee shall abide by the city ordinances regarding outdoor advertising. Permittee may use non-destructive means to post signs on the Park.

26. AMENDMENT.

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

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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, inspection and safety Codes, directives by City Code compliance officers and inspectors, 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 this Use Permit Agreement.

35. 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

Permittee hereby designates Permittee's address as:

Touchstone Theatre
Attn: _____

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.

[the remainder of this page intentionally left blank]

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:
TOUCHSTONE THEATRE

Secretary By: _____ (Seal)

Name: _____

Title: _____

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 Director of Public Works
Print Name: Michael Alkhal

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