

Resolution 2023-R-5 Exhibit A

PUBLIC RIGHT OF WAY AND PROPERTY LIMITED USE AGREEMENT

This Agreement made by and between the City of Bellbrook, hereinafter called the “City”, and the Bellbrook Sugar Maple Festival Committee, Inc. hereinafter called the “Committee”.

WITNESSTH:

WHEREAS, the City owns and controls the public streets, alleys and certain parcels of property and facilities in the City of Bellbrook, Ohio; and

WHEREAS, the Committee desires to use the streets for the Sugar maple Festival from Friday, April 21, 2023 to Sunday, April 23, 2023; and

WHEREAS, the Committee plans to obtain a Temporary Alcohol Permit for the sale of alcohol at the event;

Now, therefore, in consideration of the mutual covenants and conditions herein contained, the City and the Committee agree as follows:

USE

1. The City hereby grants permission to Committee for the use of public streets and alleys as designated on Exhibit “A”, beginning Friday, April 21, 2023 at 11: a.m. and concluding Sunday, April 23, 2023 at 7:00 p.m. for the Sugar Maple Festival with applicable set-up and tear-down activities and times.
2. The City hereby grants Committee permission to use N. Main Street from Franklin Street to Walnut Street and E. Franklin Street from Main Street to East Street. As designated on Exhibit “A”, and be closed from the vehicle traffic beginning Friday, April 21, 2023 at 11:00 a.m. and concluding Sunday, April 23, 2023 at 7:00 p.m. or earlier upon tear down of the event.
3. The Committee shall occupy and use the public streets and alleys solely for the purposes of the Sugar Maple Festival and related activities.

COMMITTEE RESPONSIBILITIES

1. The Committee shall comply with all event requirements and shall provide all event planning requirements, alcohol permit, final event layout, event set-up and tear-down, time frames, security plans, vendor licenses, etc. to the City.
2. The security plan, including alcohol sales/consumption and crowd control measures, shall be submitted, for approval at least 2 weeks prior to the festival date by the Police Chief and Fire Chief.
3. The Committee shall obtain the appropriate alcohol sales permit from the State of Ohio and adhere to all its requirements. The Committee shall adhere to the following requirements:

- a. Contain alcohol sales and consumption within the designated event boundaries with the type of barrier approved within the issued permit
 - b. Limit alcohol sales times to those designated and authorized within the issued permit
 - c. Limit alcohol type, serving size and limits to those designated within the issued permit
 - d. Serve alcoholic beverages only in plastic cups
 - e. Servers and consumers must be age 21 or older with verification procedures as designated in the requirements of the issued permit.
 - f. Alcohol may not be brought into the event venue except by the authorized distributor
4. The Committee, its assigns, heirs, successors, employees and any and all subcontractors are independent contractors and are not agents and/or employees of the City of Bellbrook
 5. The Committee and all performers and vendors shall comply with inspection and obtain any permits required to operation, at the Committee's expense.
 6. Committee contracts with any performer or vendor shall not place any liability upon the City.
 7. The Committee shall maintain the cleanliness of the property utilized by the Committee and shall be responsible for removing event materials such as fencing at the conclusion of the event.
 8. The committee shall be responsible for the basic clean-up of the facilities after the conclusion of the event and remove all trash and cooking waste, etc. from the site.
 9. The Committee is responsible for all costs of maintenance and repair of damage to the physical structure, equipment or property that is caused by Committee activities.
 10. Committee event organizers and representatives shall be present at the event during the entire event.
 11. The Committee shall not assign or transfer this agreement or sublet any portion thereof without the prior written consent of the City.
 12. The Committee agrees that the City may enter upon the designated space provided by the City at all times to make inspection of the property.
 13. The Committee shall designate one individual to serve as liaison between the City and the Committee. The liaison will coordinate needs and uses with the City Manager or designee.

CITY'S RESPONSIBILITY

1. The City hereby agrees to authorize the exclusive use of the public streets and alleys as designated on Exhibit "A" for said event.
2. The City hereby agrees that this Use Agreement authorizes the selling and consumption of alcohol in the event venue as an exception contained in Ordinance 4113 Section 529.08 Liquor or Beer on City Property; No person shall use, sell, store or have in his possession any intoxicating liquor or beer on any property owned or managed by the City, except where leases or other use agreements specifically allow to the contrary.

3. The City hereby agrees that if the Association shall perform each and every one of the above covenants, undertakings and agreements contained herein, it shall during the term hereof, freely, peaceably and quietly enjoy the use of the designated property for said public purposes without molestation, hindrance, eviction or disturbance by the City or persons under its control.

LIABILITY

1. The Committee agrees to indemnify and hold harmless the City from any claim, suit of proceeding arising out of the subject claims. The Committee further agrees to assume all risk of loss, damage or injury caused by whatever kind, or whomsoever caused (other than loss, damage, or injury caused by an act omission of the City or of any under the City's control) to any person(s) or the property of the parties, or anyone on or about the property.
2. The Committee agrees to obtain and maintain for the duration of this Agreement at their own cost and expense commercial general liability insurance (including host liquor liability coverage) with limits no less than \$1,000,000 per occurrence and \$2,000,000 aggregate.
 - The insurance policies are to contain, or be endorsed to contain, the following provisions:
 - Additional Insured Status: The City of Bellbrook, its officers, employees, agents and volunteers shall be covered as Additional Insureds with respect to liability arising out of all activities by or on behalf of the Committee with respect to the Sugar Maple Festival.
 - Primary Coverage: For any claims related to this agreement, the Committee's insurance coverage shall be primary as respects the Additional Insureds. Any insurance maintained by the Additional Insureds shall be excess of the Committee's insurance and shall not contribute with it.
 - Notice of Cancellation: Each insurance policy required above shall not be canceled, except with written notice to the City. The Committee shall promptly notify the City upon receipt of cancellation or material modification of coverage.
 - Acceptability of Insurers: insurance is to be placed with insurers with a current A.M. Best rating of no less than A:VII, unless otherwise acceptable to the City.
3. The Committee shall, at the time of the execution of this agreement, furnish the City with a certificate(s) of insurance evidencing the coverages required above. The city reserves the right to require complete, certified copies of all required policies, including endorsement required by these specifications, at any time.
4. The Committee shall indemnify, hold harmless and defend the City of Bellbrook, its officers, employees, agents and volunteers against any and all liability, loss, costs, expenses, claims or actions, including attorney's fees which the City of Bellbrook, its officers, employees, agents and volunteers may hereinafter sustain, incur or be required to pay, arising out of or by any act or omission of the Committee, the City of Bellbrook, their officers, employees, agents and volunteers, in the execution, performance or failure to adequately perform the Committee's or City of Bellbrook's obligations pursuant to this contract.

TERMINATION OF AGREEMENT

1. The City retains the right to, upon the Committee’s failure to comply with all terms and conditions of the above covenants, undertakings and agreements contained herein, cancel the event in its entirety or any portion thereof. Cancellation may be prior to or during said event.
2. Either party may terminate this agreement at any time by giving a minimum 30 days advanced written notice of its intent. No waiver of any such covenant in the agreement, or of any breach of any such covenant or condition shall be taken to constitute a waiver or any subsequent breach of covenant of condition, or to justify or authorize the nonobservance on any other occasion of the same of any other covenants, or conditions hereof.

ENFORCEABILITY

1. If any provision of the agreement shall be determined to be void, invalid, unenforceable of its illegal for any reason, it shall be ineffective only to the extent of such prohibition, and the validity and enforceability of all the remaining provisions shall not be affected thereby.
2. The agreement shall be governed by and constructed under the laws of the State of Ohio.

IN WITNESS WHEREOF the authoring representative of the parties has executed the agreement on the ____ day of _____, 2023.

For Bellbrook Sugar Maple Festival, Inc.

For City of Bellbrook

Signed _____

Signed _____
Rob Schommer, City Manager

Date _____

Date _____