

Permit Account No.:
Permit Type:

**NEW YORK STATE DEPARTMENT OF TRANSPORTATION
OFFICE OF RIGHT OF WAY
PERMIT FOR TEMPORARY USE OF STATE PROPERTY**

This is a legally binding document. You may wish to consult with your attorney before signing.

P.I.N.:
Property Location:
Project:
Map and Parcel Nos.:
County:
Town/City/Village:

Permittee’s Adjoining Property:
Address:
County: Town/City/Village:

THIS PERMIT, made this _____ day of _____, _____ between _____,

_____ ,
“Permittee”; and the COMMISSIONER OF TRANSPORTATION FOR THE PEOPLE OF THE STATE OF NEW YORK,
hereinafter referred to as “the State”,

WITNESSETH:

WHEREAS the State is the owner of or has jurisdiction over the above identified property, hereinafter referred to as “Property” ; and

WHEREAS the Permittee wishes to use and occupy said Property on a temporary basis understanding that the permit is revokable at will;

NOW, THEREFORE, the State hereby grants this permit to the Permittee, subject to the following covenants and conditions:

1. The parties acknowledge that this instrument is not a lease but is merely a permit to occupy and use the State’s Property **for a temporary period of time**, and therefore a landlord-tenant relationship is not hereby created; and further, that since this is not a lease, Section 5-321 of the General Obligations Law does not apply to this permit to the extent permitted by law, hereinafter referred to as “Permit.”
2. Property description and use:

As depicted on the sketch attached hereto and made a part hereof. The Property covered by this Permit **shall be used only for above described use and for no other purpose whatsoever**. Permittee shall not sublet the Property nor assign or transfer the Permit to any other parties in part or in whole without the prior written consent of the State.

- a. **The Permittee acknowledges that this Permit is a temporary license. Any construction, repair, reconstruction, or relocation of any installations on Property is expressly prohibited except as specifically described above.**

- b. No capital investment or any other permanent or semi-permanent feature shall be made or built on State Property.
 - c. The conduct, growth, success or continuity of any Permittee business activity is not dependent on the use of State property, and the Permittee shall not rely on the use of the Property for such purpose.
 - d. Unless the Permit is revoked or cancelled, Permittee shall certify annually that any business activity is consistent with the terms of a 30 day revocable permit, and they have no other right or interest in the State's Property.
3. This Permit shall be effective as of _____.
4. The fee to be charged shall be: _____ per _____ beginning _____.
5. The Permittee acknowledges the State's right to collect a security deposit. This sum will be retained as security to ensure faithful performance of the Permit and compliance with all terms by the Permittee. The State hereby acknowledges receipt of check number _____ in the amount of _____ received on _____ by _____ . The Permittee understands and agrees that prior to return of the security deposit, the Regional Property Management Unit must be contacted at the end of the permit term for inspection of the vacated Property in accordance with the provisions herein.
6. This Permit shall be renewed automatically for successive terms of one month each unless terminated or canceled by either party in accordance with this Permit.
7. Either party may terminate this Permit at any time upon thirty (30) days' written notice to the other and in accordance with this paragraph:
- a. The State may terminate this Permit for convenience at any time upon thirty (30) days' written notice to the Permittee at the address listed above and Permittee will be required to vacate the Property at the expiration of that thirty (30) day period.
 - b. Permittee may terminate this Permit by giving thirty (30) days' written notice to:

NYSDOT Office of Right of Way
Regional Property Management Unit

and the permittee will be required to vacate the Property within that thirty day period.

- c. The State may cancel this Permit for cause (breach of any term, condition, or provision of this Permit) upon ten (10) days written notice to the Permittee and the Permittee will be required to vacate the Property and the State may immediately take possession and terminate all rights of the Permittee as of such moment.
 - d. Upon termination or cancellation of the Permit by either party, the Permittee shall remove all installations and the Property must be restored to its original condition, all at Permittee's sole cost and expense within thirty (30) days if terminated or within ten (10) days if cancelled for cause. Should the Permittee fail to remove the installations and restore the site, the Permittee shall reimburse the State for any and all costs incurred by the State for the restoration of the Property.
8. Payment of fee is due on the first of the month unless otherwise stated. Fee must be paid by check, bank cashier's check or money order payable to "Department of Transportation" and mailed or delivered to:

New York State Department of Transportation
Revenue Unit, POD 5-2
50 Wolf Road Albany, New York 12232

9. The Permittee understands and agrees that if the full amount of the fee as stated herein is not paid within thirty days from the date payment is due, interest penalties and collection fees will be imposed under the provisions of Section 18 of State Finance Law. Permittee agrees that acceptance by the State of any payment that is less than the permit fee indicated in this Permit is considered a partial payment only, insufficient to satisfy the Permittee's obligation to pay the entire amount due. Such acceptance by the State is not considered satisfaction of the total amount due. Any interest, penalties, and collection charges or assessments will continue to accrue. Permittee waives any right to assert otherwise.

10. The Permittee understands and agrees that the fee charged by the State for this Permit may be updated by the State to reflect the Permit's fair market value. In the event the fee is so updated, the State shall send the Permittee a new permit providing for the updated fee at least 60 days before the new permit is designated to take effect. If the Permittee wishes to remain in occupancy, the Permittee shall sign and return the new permit to the State no less than 30 days before it is designated to take effect. Permittee's timely return of the new permit, properly signed, shall serve to cancel this Permit as of midnight on the day before the new permit is designated to take effect. The Permittee's failure to sign and return the new permit no less than 30 days before it is designated to take effect shall void the new permit and the Permittee will be required to vacate the Property.
11. The Permittee understands and agrees that unless a new fee is established by the State's appraisal obtained at the State's discretion, the fee to be charged as indicated in Paragraph 4 shall be increased by 2% on the anniversary of the Permit Effective Date as follows:

Year	Fee
1	_____
2	_____
3	_____
4	_____
5	_____

Increases at a 2% rate shall continue each subsequent anniversary of the effective date of the Permit until a new Use and Occupancy Permit is issued.

12. The State may record a Notice of Permit against the Permittee's adjoining property, putting the Permittee and the general public on notice of such Permit.
13. This Permit supersedes the permit number _____ issued to _____ in the amount of _____ per _____ and approved by the Director, Office of Right of Way on _____, if applicable.
14. Permittee, at the Permittee's expense and for the term of the Permit, shall furnish and show evidence of General Liability Insurance coverage issued by an insurance carrier licensed to do business in the State of New York for the protection of the State of New York and Permittee against any claims, suits, demands or judgments by reason of bodily injury, including death, and for any claims resulting in property damage occurring on the Property.
- a. Such General Liability Insurance shall be in the amount no less than _____ for residential permittees and _____ for commercial permittees (combined property damage and/or bodily injury, including death) single limit per occurrence, shall name the People of the State of New York as an additional insured and include a (30) thirty days' prior written notice of any cancellation or major change in the policy conditions.
 - b. Approval of this Permit shall be contingent upon receipt, by the State, of a copy of a properly executed insurance certificate.
 - c. The Permit shall be voided if insurance is cancelled, modified or lapses.
 - d. Such insurance certificates must be updated and resubmitted annually by the anniversary date of the Permit to:

NYSDOT Office of Right of Way
Regional Property Management Unit

15. Permittee is responsible for any repairs, improvements, or maintenance work of any kind on the Property at Permittee's expense. The State may, at any time, periodically inspect the Property to determine whether same is in good repair and maintenance, structurally sound, and that no unsafe, hazardous, unsanitary, or defective conditions exist.
16. Permittee hereby agrees to admit State representatives and prospective purchasers or permittees to examine the Property during reasonable business hours. The Permittee also agrees to allow the parties responsible for the maintenance and safety of any existing power lines, telephone lines, poles, water, gas and sewer lines or drainage culverts, to enter upon the permit area at any time.

17. Permittee shall not
- a. place advertising or sponsorship signs on the Property without the express written consent of the State.
 - b. place or store, or allow others to place or store, any flammable, explosive, hazardous, toxic or corrosive materials, debris of any description, garbage or any materials commonly referred to as "junk" within the Property, except fuel kept in the fuel tanks of legally parked vehicles allowed under the terms of this Permit.
 - c. erect, construct or install any lights, signs, fences or other fixtures on the Property without the written approval of the State.
 - d. allow the installation or construction of any power lines, telephone lines, poles, water, gas and sewer lines or drainage culverts.
 - e. store junked, wrecked, damaged or abandoned vehicles on the Property unless such vehicles are kept more than 1000 feet of the right-of-way or be visible from the main traveled way of the Interstate or Federal Aid Primary System, in compliance with Section 136 of the United States Code as amended by Title II of the Highway Beautification Act. All vehicles falling within the abandoned category as defined by Section 1224 of the Vehicle and Traffic Law of the State of New York shall be considered as such, and action shall be taken in accordance with the Law to ameliorate this nuisance.
 - f. create, conduct, or expand any permittee business activity on the Property inconsistent with the terms of this 30 day revocable permit, nor shall the Permittee rely on the use of Property for such purpose.

Failure to comply with this paragraph may result in a ten (10) days' written notice of cancellation of the Permit in accordance with Paragraph 7 of this Permit. The Permittee is responsible for the removal of these materials and/or all expenses incurred in their removal.

18. Permittee is responsible for keeping and maintaining the Property in a safe and clean condition, preventing damage to the Property and for the regular and prompt removal of garbage, rubbish, litter, snow and ice. Permittee agrees and understand that no trees, shrubs, landscaping, or other naturally occurring flora may be removed or disturbed in any fashion without prior approval of the State.
- For occupants remaining at the site temporarily after an acquisition of property by the State pursuant to the EDPL, all arrangements of services for, removal of garbage, rubbish, litter, snow and ice will be made by the Permittee at the Permittee's expense, unless hereafter specified. The State shall have no responsibility to provide any services not specifically set forth in writing herein.
19. Permittee is responsible to maintain the occupancy in compliance with any and all applicable local, State, and Federal laws, ordinances, codes, rules and regulations affecting the use of the Property. Permittee shall not conduct or allow any use or activity on the Property inconsistent with law and shall not conduct or allow any use or activity on the Property which may require a permit or other approval by a government agency without having lawfully obtained such permit or approval.
20. The State shall have no responsibility whatever for the loss or destruction of any improvements made by the Permittee or for personal property stored or being used on the Property.
21. It is understood and agreed by and between the parties that the Permittee will not be entitled to any relocation benefits provided under State and Federal law.
22. Permittee agrees and understands that the State is under no obligation to sell the Property to the Permittee and that no commitment, express or implied, is made by the State to give the Permittee any right of purchase.
23. In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Permittee will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, or marital status. Neither shall the Permittee discriminate in the use of the Property or any access thereto if such Property are used as a public accommodation or in connection with a public service.
24. The Permittee for his/her self, and/or the Permittee's personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the event the use and occupancy on the said Property described in Item 1 of this Permit for a purpose for which a New York State Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Permittee shall use and occupy the Property such that (1) no person on the ground of race, color, or national origin, sex, age, and disability/handicap, shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said Property, (2) that, no person on the grounds of race, color, or national origin, sex, age, and disability/handicap, shall be excluded from participation in, denied the benefits or, or otherwise be subjected to discrimination, (3) that the Permittee shall use the Property in compliance with all other requirements imposed by or pursuant to title 49, Code of Federal Regulations, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation – Effectuation of Title VI of the Civil

Rights Act of 1964; and to Title 23 Code of Federal Regulations, Part 200, Title VI Program and Related Statutes – Implementation and Review Procedures; and further as said Regulations may be amended.

25. That in the event of breach of any of the above nondiscrimination covenants, the State shall have the right to terminate this Permit and to re-enter and repossess said land and the facilities thereon, and hold the same as if said Permit had never been made or issued, except that any Permit fees due and owing shall survive the termination of this Permit.
26. Permittee agrees that, in addition to any protection afforded to State under any available insurance, State shall not be liable for any damage or injury to the Permittee, its agents, employees, or to any other person, or to any property, occurring on the site or in any way associated with Permittee's activities or operations; whether undertaken by Permittee's own forces or by contractor or other agents working on Permittee's behalf. To the fullest extent permitted by law, the Permittee agrees to defend, indemnify and hold harmless the State and their agents from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of any claim, including but not limited to claims for personal injuries, property damage or wrongful death and/or environmental claims, in any way associated with the Permittee's activities or operations, no matter how caused.
27. If any of the provisions of this Permit are held invalid, such invalidity shall not affect or impair other provisions herein which can be given effect without the invalid provisions, and to this end the provisions of this Permit are severable.
28. This Permit shall not be effective unless accepted and approved in writing by the State.
29. The Permittee understands and agrees that a Highway Work Permit must be obtained from the State Department of Transportation prior to any construction, reconstruction, repair, or significant maintenance on the Property.
30. Damages.
Time is of the Essence for the termination date of this Permit and is an essential part of the Permit. The public is subject to detriment and inconvenience if the full use of the State's property cannot be made available because Permittee fails to vacate. The parties acknowledge that, in addition to all other rights, claims or causes of action against the Permittee Damages will be assessed in an amount per day including but not limited to the following (a) the U&O fee set forth in paragraph 4 above, , (b) the expenses incurred by the State in undertaking all steps necessary to make the Property available, (c) the estimated loss of revenue to the State during the time the Property is not available for the uses to which the State intends, (d) cost to restore the property for use by the State, (e) the cost to remove any installations placed on the Property by the Permittee, (f) the cost of temporary traffic and safety measures taken to protect the traveling public, (g) unjust enrichment to the Permittee for continued use of the Property after termination of the Permit, (h) all interest, fees, penalties and costs incurred by the State.

This paragraph shall survive the termination of the permit and will remain in effect for so long as the Permittee remains on the Property.

Additional Clauses:

Certification

I hereby certify that I will not build any permanent or semi-permanent structure on the State owned property that is subject of this permit, that cannot promptly be removed upon 30 days' notice upon termination by the State; that I understand usage of state property may be short term and that I have contemplated all costs and impact of this permit and will fully comply with the requirements herein.

Permittee certifies that the conduct, growth, success or continuity of any permittee business activity is not dependent on the use of State Property, nor shall the permittee rely on the use of Property for such purpose. Permittee certifies that any business activity is consistent with the terms of a 30 day revocable permit.”

In consideration of the granting of the Permit, each of the undersigned accepts all of the above terms, conditions and provisions.

Permittee Name:

BY:

Signature

Signature

Type or Print Name

Type or Print Name

TITLE: _____

TITLE: _____

Signature

Signature

Type or Print Name

Type or Print Name

TITLE: _____

TITLE: _____

RECOMMENDED:

Regional Real Estate Officer

Date

ACCEPTED and APPROVED: Commissioner of Transportation for the People of the State of New York

BY:

Director, Office of Right of Way

Date