

# MARK CERRONE INC.

GENERAL SITE CONTRACTORS

Telephone - (716) 282-5244

Facsimile - (716) 282-5245

E-Mail - Info@MarkCerrone.com

November 6, 2018

Attn: Michael P. DeSantis  
Sr. Project Designer  
745 Main Street  
Niagara Falls, NY 14301

**Re: Usage of 480 Main St., Niagara Falls – Whirlpool Street Laydown Area**

Dear Mr. DeSantis,

Pursuant to our conversation regarding the use of the above property, Mark Cerrone Inc. (MCI) respectfully requests usage of 480 Main Street as a material storage, laydown, and parking area for NYSDOT Project D263803 – Reconstruction of Whirlpool Street. The project duration extends until July of 2020, and the duration of the usage of this property would be approximately through that date. At the conclusion of D263803, MCI will restore 480 Main St. to the condition in which it currently sits, prior to occupation by MCI. While MCI is utilizing this property, MCI will maintain this property at its own expense. Attached to this letter is the insurance certificate for D263803, with "City of Niagara Falls" listed as additionally insured.

Please respond at your earliest convenience to the above request. MCI would anticipate occupying this property by the end of this week.

Sincerely,



Greg Bostard Jr., PE  
Estimator/Project Manager  
Mark Cerrone, Inc.

## SITE UTILIZATION AGREEMENT

This Site Utilization Agreement (this "Agreement") is made this \_\_\_\_ day of November, 2018 and effective the \_\_\_\_ day of November, 2018 by and between the City of Niagara Falls, New York, a municipal cooperation with offices at 745 Main Street, P.O. Box 69, Niagara Falls, New York 14302 (the "City") and Mark Cerrone, Inc., a New York corporation with offices located at 2368 Maryland Avenue, Niagara Falls, New York 14305 ("MCI").

WHEREAS, MCI is a general site contractor that has been selected by the State of New York to work on the reconstruction of Third Street and Whirlpool Street in the City of Niagara Falls; and

WHEREAS, the City is the owner of the premises commonly known as 480 Main Street, Niagara Falls, New York (the "Premises") which is presently not utilized for any City purpose; and

WHEREAS, MCI has requested that it be permitted to utilize the Premises for material storage, laydown and parking during the reconstruction of Third Street and Whirlpool Street which is estimated to extend from the present time through July of 2020; and

WHEREAS, attached hereto is a copy of a letter from MCI to the City requesting such use.

NOW, THEREFORE, it is hereby agreed as follows between the City and MCI:

1. Recitals. The recitals set forth above are incorporated in and made a part of this Agreement.
2. Access. The City hereby grants MCI and its employees, agents, consultants and contractors (collectively, "MCI Representatives") a license to enter on the Premises to store material, laydown and parking area for its equipment and also for parking for any of its employees if the need arises (the "Activities").

3. Term. The term of this Agreement will begin upon the execution of this Agreement by both parties through and including July of 2020 or such other date during the year 2020 when the reconstruction of Whirlpool Street and Third Street is complete.
4. Insurance. MCI agrees to, at all times during the term of this Agreement, provide insurance to the City and name the City as additional insured with respect to all Activities conducted on the Premises with coverage limits as per the attached insurance requirements.
5. Indemnification. MCI agrees that it shall indemnify, defend and save harmless the City from and against all claims, suits, losses, costs, charges, expenses, including reasonable attorney's fees, which the City may directly or indirectly incur, suffer or become liable for by reason of the use of the Premises by MCI for its Activities.
6. Restoration. Immediately after the Project involving the reconstruction of Whirlpool Street and Third Street has been completed, MCI shall repair and restore those portions of the Premises which are in any way affected, damaged or disturbed by MCI's Activities on the Premises to a condition which is, to the extent practical, identical to the condition that existed before the commencement of this Agreement. This restoration shall be done at the sole cost and expense of MCI.
7. Termination. It is agreed that the City may terminate this Agreement at any time on thirty (30) days prior written notice delivered to MCI at the address designated herein. Such delivery of any written notice may be accomplished by personal delivery or sent by Overnight Courier providing a receipt upon delivery or by Registered or Certified Mail, Return Receipt Requested, addressed to MCI at 2368 Maryland Avenue, Niagara Falls, New York 14305; mailing address of P.O. Box 3009, Niagara Falls, New York 14804.

IN WITNESS WHEREOF, MCI and the City have executed this Agreement of the day and year indicated.

By: \_\_\_\_\_  
CITY OF NIAGARA FALLS, NY

By: \_\_\_\_\_  
MARK CERRONE INC.

Attest:

## INSTRUCTIONS FOR CITY OF NIAGARA FALLS STANDARD INSURANCE CERTIFICATE

Standard Insurance Requirements apply to the following classifications:

- ✓ Construction and Maintenance
- ✓ Purchase of, or Lease of, Merchandise or Equipment
- ✓ Professional Services
- ✓ Property Leased to Others or Use of Facilities or Grounds
- ✓ Concessionaire Services
- ✓ Livery Services
- ✓ All Purpose Public Entity Contracts

The Provider of any of the above classifications shall obtain, at his own costs and expense, the following insurance coverage with insurance companies licensed in the State of New York with a Best Rating of at least B+ and shall provide a Certificate of Insurance as evidence of such coverage to the City of Niagara Falls before commencement of work and/or lease or delivery of merchandise or equipment.

Certificate should be made to the City of Niagara Falls, New York, 745 Main Street, P.O. Box 69, Niagara Falls, NY 14302-0069 and should reference the operation.

In the description area of certificate, the name/purpose, dates, and places of event or encroachment must be specified.

Prior to non-renewal, cancellation of insurance policies, or material change, at least 30 days advance written notice shall be given to the Certificate Holder.

All Certificates of Insurance shall be approved by the Law Department prior to the inception of any work.

Minimum coverage with limits and provisions are as follows:

A. Comprehensive General Liability:

With a minimum combined single limit of liability for Bodily Injury and Property Damage of \$1,500,000.00 per occurrence and \$3,000,000.00 annual aggregate. The coverage shall include:

- Premises and Operations
- Products and Completed Operations
- No exclusion for XCU coverages (explosion, collapse and underground)
- Independent Contractors
- Broad Form Property Damage
- Contractual Liability
- Fire Legal Liability
- Personal Injury Liability (Coverage A, B and C)
- Liquor Liability (if alcoholic beverages are to be dispensed under NYS license)

If the work to be performed is undertaken pursuant to a home improvement contract and a City right-of-way permit is required only by reason of the installation, repair or replacement of a driveway, apron, or sidewalk within the City right-of-way, then the limits of liability for comprehensive general liability set forth in this section shall be \$1,000,000 per occurrence and \$2,000,000 annual aggregate.

The City of Niagara Falls shall be named as an Additional Insured on the General Liability Policy with the following provisions:

1. The insurance company or companies issuing the policies shall have no recourse against the City of Niagara Falls for payment of any premiums or for assessments under any form of policy.
  2. The insurance shall apply separately to each insured (except with respect to the limit of liability.)
- B. Auto Liability (if licensed vehicles are to be used in the operation)  
With a combined single limit for Bodily Injury and Property Damage of \$1,000,000.00 each occurrence, the coverage shall include Owned, Hired and Non-owned autos (Symbol 1 should be designated for Liability Coverage on Business Auto Policy.)
- C. Excess Umbrella Liability:  
If General Liability and/or auto limits are lower than required in the above sections, Umbrella Liability or Excess Liability to the required limit is acceptable.
- D. Owners Protective Liability: (on contracts for construction which exceed a cost of \$100,000.00)  
With a minimum limit of \$1,500,000.00 each occurrence and \$3,000,000.00 aggregate. Named insured shall be the City of Niagara Falls, New York.
- E. Professional Liability:  
If the contract includes professional services (engineers, architects, etc.), contractor will carry professional liability insurance with a minimum limit of one million dollars (\$1,000,000.00).
- F. Property Insurance: (if applicable)  
Contractor shall purchase and maintain property insurance upon the work at or off the site to 100% of the contract completed value. This insurance shall include the interest of the Owner, Contractor, and Subcontractors in the work; shall insure against the perils of fire and extended coverage; shall include "all risk" insurance for physical loss and damage including theft, vandalism and malicious mischief, collapse and water damage. All such insurance required by this paragraph shall remain in effect until the work is completed and accepted by the owner.
- G. Statutory Workers' Compensation and Employer's Liability:  
All contractors doing business with or vendors entering upon City of Niagara Falls property shall carry the above insurance in compliance with the Worker's Compensation Law of the State of New York.
- H. Performance and Payment Bond: (where applicable)  
A performance and payment bond shall be issued by a Surety company who is licensed by the Insurance Department of the State of New York in favor of the City of Niagara Falls in the amount of not less than one hundred (100) per centum of the total amount and shall be delivered before commencement of lease or assumption of operations under contract.

Note: If the contract is for Professional Services only (engineers, architects, etc.), Paragraphs D, F, and H will not apply.