

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

P.I.N.: 5094.00.202

Property Location: **LASALLE EXPRESSWAY (ROUTE 951A) RIGHT-OF-WAY ALONG NORTH SIDE OF BUFFALO AVENUE (ROUTE 384) FROM CAYUGA DRIVE TO 102ND STREET.**

Project: **CITY OF NIAGARA FALLS LASALLE ARTERIAL HIGHWAY, SEC. I, 71ST STREET TO EAST CITY LINE**

Map No.(s): 500, 501,502, 504, 551, 620, 629 Parcel No.(s): 500, 502, 504, 508, 501, 505, 516, 517, 672, 670, 682

County: Niagara Town/City/Village: Niagara Falls

THIS PERMIT, made this * _____ day of * _____, *20__ between

**City of Niagara Falls
P.O. Box 69
Niagara Falls, NY 14302**

hereinafter referred to as "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 the above identified property, hereinafter referred to as "property" or "premises"; and

WHEREAS the Permittee wishes to use and occupy said property;

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

1. Property description and use: **PORTIONS OF STATE RIGHT-OF-WAY FOR 10 FOOT WIDE SHARED-USE LASALLE GREENWAY TRAIL** 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.

2. The fee to be charged shall be: \$1.00 per YEAR (PAYMENT WAIVED) beginning 8/1/2018.

3. 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

4. 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 billed as indicated on the billing invoice, interest penalties and collection fees will be imposed under the provisions of Section 18 of State Finance Law.

5. The Permittee understands and agrees that the fee charged by the State may periodically be updated to reflect fair market value and the Permittee will enter into a new permit for the new fee if the Permittee wishes to remain in occupancy. Failure to execute a new permit will require Permittee to immediately vacate the premises.

6. 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 NIA in the amount of NIA received on NIA by NIA. (Dept. Rep.'s Signature)
7. This permit supersedes the permit number NA issued to NIA in the amount of NIA per YEAR (PAYMENT WAIVED) approved by the Director, Office of Right of Way on NIA.
8. 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 or in proximity to the permit area.
- Such General Liability Insurance shall be in the amount no less than \$2000000 (combined property damage and/or bodily injury, including death) single limit per occurrence, and shall name the People of the State of New York as an additional insured.
- The Permittee will furnish the State with a certificate of insurance, with a (30) thirty day(s) prior written notice of any cancellation or major change in the policy conditions. The permit shall be voided if insurance is cancelled, modified or lapses.
- Approval of this permit shall be contingent upon receipt, by the State, of a copy of a properly executed insurance certificate.
9. 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 premises to determine whether same is in good repair and maintenance, structurally sound, and that no unsafe, hazardous, unsanitary, or defective conditions exist.
10. Permittee hereby agrees to admit State representatives and prospective purchasers or permittees to examine these premises during reasonable business hours.
11. Permittee shall not 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 permit area, except fuel kept in the fuel tanks of legally parked vehicles allowed under the terms of this permit. Failure to comply with this provision may result in a ten (10) days written notice of cancellation of the permit in accordance with Provision 16 of the permit. The permittee is responsible for the removal of these materials and/or all expenses incurred in their removal.
12. All arrangements of services for utilities, 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. Permittee shall comply with all local and State building standards/codes in the installation or repair of any utilities including but not limited to electricity and plumbing. Permittee is responsible for keeping and maintaining the premises in a safe and clean condition, for the regular and prompt removal of garbage, rubbish, litter, snow and ice. Permittee shall be responsible for preventing damages to the plumbing system and premises caused by lack of heat or water damage from leaks.
13. 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 premises inconsistent with law and shall not conduct or allow any use or activity on the premises which may require a permit or other approval by a government agency without having lawfully obtained such permit or approval.
14. The parties acknowledge that this instrument is not a lease but is merely a permit to occupy and use, 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.
15. 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 premises.
16. This permit shall be renewed automatically for successive terms of one month each unless canceled by either party. Cancellation by the State requires thirty (30) days written notice, except for cause, in which event cancellation can be effected on ten (10) days written notice. Permittee may cancel this permit by giving thirty (30) days written notice.

17. Permittee shall not sublet the premises nor assign or transfer the permit to any other parties in part or in whole without the prior written consent of the State. Failure to comply with this provision may result in ten (10) days written notice of cancellation of the permit by the State, and the State may immediately take possession and terminate all rights of the Permittee as of such moment.
18. It is understood and agreed by and between the parties that the Permittee will () will not (X) be entitled to any relocation benefits provided under State and Federal law.
19. 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 preemptive right of purchase.
20. Upon cancellation of the permit by either party, the permit area must be restored to its original condition and should the permittee fail to restore the site, the Permittee shall reimburse the State for any and all costs incurred by the State for the restoration of the permit area. This provision may be waived or modified with prior written consent from the State.
21. The Permittee shall not place advertising or sponsorship signs in the permit area without the express written consent of the New York State Department of Transportation.
22. 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 premises or any access thereto if such premises are used as a public accommodation or in connection with a public service.
23. 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 as a covenant running with the land, that in the event improvements are made over or under such land and the furnishing of services thereon and/or facilities are constructed, maintained, or otherwise operated 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 construct such improvements and maintain and operate such facilities and services 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 facilities, (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, 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 premises 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.

That in the event of breach of any of the above nondiscrimination covenants, the State shall have the right to terminate the 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.
24. 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 of New York, 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.
25. 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.
26. This permit shall not be effective unless accepted and approved in writing by the State.
27. The Permittee understands and agrees that a Highway Work Permit must be obtained from the Department of Transportation prior to any construction, reconstruction, repair, or maintenance on the permit area.

28. Additional provisions to permit:

The Permittee must limit use and occupancy to the State premises delineated in attached Appendix A

The Permittee understands and agrees that a Highway Work Permit must be obtained from the Department of Transportation prior to any construction on the property.

The Permittee must obtain all necessary environmental permits and approvals before performing any work within the property limits of the Use and Occupancy Permit. This could include but is not limited to a SPDES General Permit (GP-0-10-002), NYSDEC and USFWS Threatened and Endangered Species authorization for cutting trees and/or USACE/NYSDEC permits for filling ditches or working in streams or wetlands.

The Permittee accepts the property (right-of-way) in its "as is" condition. The Department of Transportation makes no representation as to the absence of underground storage tanks, contamination, structures, features or similar impediments. Should the Permittee find some previously unknown underground impediments to its work, the Department of Transportation shall have no obligation to remove, remedy or otherwise deal with such impediments. The Department will permit the Permittee to remove, modify or otherwise deal with such impediments if such is done in a manner which meets acceptable engineering practices and is pre-approved by the Department of Transportation. Should the Permittee determine that such unforeseen underground impediments renders the permittee's work as authorized by this permit unfeasible, the Permittee shall have the option of restoring the right-of-way to its original condition and not performing said work.

The Permittee must comply with all ADA requirements, and must build the facility (LaSalle Greenway Trail) to NYSDOT standards

In the event of cancellation of this Permit by either party, Permittee may be required to remove any/all improvements to the permit area which have been placed there by the Permittee, at his own expense, within thirty (30) days, and restore the area to its pre-permit condition.

The State is not liable for expenses incurred by the permittee which may occur as a result of construction, maintenance, or use of the permit area for highway purposes.

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 from the Department of Transportation.

All equipment, personal property and debris must be removed from the permit area at the conclusion of this permit.

The Permittee will not erect, construct or install any other lights, signs or other fixtures without the written approval of the State.

The Permittee will not install any fencing without the written approval of the State.

The Permittee 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. The Permittee will not allow the installation or construction of any of the aforementioned unless approved by the State.

The Permittee expressly understands and agrees that the grant of the permit, providing for the temporary use and occupation of the permit area, does not bestow upon the Permittee, its representatives, successors or assigns, any property interests or rights in and to the permit area.

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

FOR: City of Niagara Falls

Fed. I.D. No. * _____

BY: * _____
Signature

Print Name

TITLE: * _____

Social Security *
Number _____

INDIVIDUALLY:

* _____
Signature

Print Name

STATE OF * _____)

COUNTY OF * _____) SS:

On the * ____ day of * _____ in the year 20* ____ before me, the undersigned, a Notary Public in and for said State, personally appeared* _____, personally known to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

* _____
Notary Public

RECOMMENDED:

Regional Real Estate Officer

Date:

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

By:

Assistant Director of Office of Right-of-Way

Date:

