

PARKING PERMIT AGREEMENT

THIS PARKING PERMIT AGREEMENT ("Agreement") made and entered into this ____ day of April, 2019, by and between:

THE CITY OF NIAGARA FALLS, NEW YORK

A municipal corporation having offices located at 745 Main Street, Niagara Falls, New York 14302 ("City")

and

EMPIRE STATE DEVELOPMENT CORPORATION

Having offices at 95 Perry Street, 5th Floor, Buffalo, New York 14203 ("ESD")

WITNESSETH:

WHEREAS, ESD recently acquired a parcel of real property located in the City of Niagara Falls containing approximately four (4) acres bounded by First Street, Main Street, Second Street and Niagara Street as shown on an aerial map attached hereto and labeled "Exhibit A" and sometimes referred to as the Snow Park Parcel (the "Parcel"); and

WHEREAS, the Parcel is largely unimproved with a surface composed of asphalt and gravel with parking for approximately ____ vehicles; and

WHEREAS, the Parcel also contains the structure of a failed Snow Park attraction which ESD is considering removing from the Parcel (the "Structure") as well as various other pieces of personal property; and

WHEREAS, ESD has no immediate plans to utilize the Parcel and the City has expressed interest in utilizing the Parcel for the parking of vehicles to supplement its existing surface lots and parking ramp.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

1. **USE OF PARCEL.** ESD agrees that the City may utilize any available portions of the Parcel for the parking of vehicles as determined in the sole discretion of the City. ESD further agrees that in the event that it proceeds with the removal of the Structure and/or any other pieces of personal property from the Parcel, the City may also utilize those portions of the Parcel for the parking of vehicles. In this regard, should ESD proceed

with the removal of the Structure and/or any other pieces of personal property from the Parcel, the City agrees to take whatever action or precautions as are necessary so as to allow ESD the ability to accomplish this.

2. **TERM OF AGREEMENT.** The term ("Term") of this agreement shall commence upon the execution of this Agreement by both parties and shall expire on the 31st day of December, 2019, unless earlier terminated as provided herein.
3. **CONSIDERATION FOR USE.** The City agrees to pay ESD the sum of \$1.00 in exchange for the utilization of the Parcel. ESD agrees that the City may retain any and all revenue derived from the parking of vehicles on the Parcel.
4. **SIGNAGE.** ESD agrees that the City may install any signage it deems necessary in order to manage the Parcel provided that any such signage is acquired and installed at the sole expense of the City. Similarly, ESD hereby agrees that the City may install any arms, gates, fences and pay stations it deems necessary in order to manage the parking of vehicles on the Parcel (the "Equipment"). In this regard, upon termination of this Agreement for any reason, the City agrees to remove such signage and equipment at its sole cost and expense.
5. **HOURS OF USE.** ESD agrees that the City has unrestricted utilization of the Parcel at all times during the term of this Agreement provided the City's utilization of the Parcel does not interfere with ESD's removal of the Structure and/or any other pieces of personal property from the Parcel.
6. **MAINTENANCE OF PARCEL.** The City is responsible for all day-to-day maintenance and upkeep of the Parcel including, but not limited to snow plowing, patching, as needed and striping, as needed.
7. **ASSIGNMENT & SUBLETTING.** ESD agrees that the City may, in its discretion, assign various areas on the Parcel for utilization by various entities the City deems to be appropriate.
8. **INDEMNIFICATION.** The City agrees to defend, indemnify and hold harmless ESD, its Directors, Officers, Employees and Agents, from any and all claims, actions, suits, costs and expenses (including reasonable attorney fees) arising from the City's use of the Parcel for the purposes outlined in this Agreement, except for those claims or actions arising as a result of negligence or willful misconduct on the part of the ESD.
9. **INSURANCE.** The City is self insured as concerns matters of this nature. Attached hereto and labeled "Exhibit A" is the City's certificate of self insurance.
10. **TERMINATION.** This Agreement may be terminated by either party upon 90 days prior written notice delivered in writing to the other party at the address for such other party as set forth in Section 11 herein.
11. **NOTICES.** All notices required or permitted to be given pursuant to this Agreement shall be delivered by hand to the party for which it is intended, or sent by facsimile transmission, electronic email or other form of transmitted or electronic message or personally delivered, sent by prepaid courier or by regular mail directly to such party at the following addresses or at such other address as either party may stipulate by written notice to the other:

If to the City:
City of Niagara Falls
Attention: Mayor Paul A. Dyster
745 Main Street, Niagara Falls, NY 14302
Paul.Dyster@niagarafallsny.gov

If to ESD:
Empire State Development
95 Perry Street, 5th Floor
Buffalo, New York 14203
Mr. Paul Tronolone
paul.tronolone@esd.ny.gov

Notices shall be deemed to be received on the date of actual delivery or transmission.

12. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York. Any legal actions, claims or demands shall be handled in a court of competent jurisdiction within the County of Niagara.
13. **SEVERABILITY OF PROVISIONS.** If one or more clauses of this Agreement is found to be unenforceable, illegal, or contrary to public policy, the Agreement will remain in full force and effect except for the clauses that are unenforceable, illegal or contrary to public policy.
14. **ENTIRE AGREEMENT.** This Agreement constitutes the complete and final Agreement of the parties, replaces and supersedes all oral and/or written proposals and Agreements heretofore made on the subject matter, and may be modified only by a writing signed by both parties.

IN WITNESS WHEREOF, the parties hereto have set there hands the day and year first above written.

CITY OF NIAGARA FALLS, NEW YORK

EMPIRE STATE DEVELOPMENT
CORPORATION

By: _____
PAUL A. DYSTER, MAYOR

By: _____
PAUL TRONOLONE

ATTEST: _____
CITY CLERK

Imagery with Streets



Site is approximately 4 acres

Long: -79.0619 Lat/Long
Lat: 43.0901