MOYNIHAN STATION DEVELOPMENT CORPORATION

Application for a Temporary Activity Permit

CONTACT FOR THIS PERMIT:

Michael Evans
Moynihan Station Development Corporation
633 Third Avenue, 34th Floor
New York, NY 10017
Attn: Permits Office

Phone Number: (646) 438-2547
E-Mail: mevans@esd.ny.gov

GENERAL INFORMATION

Name of Applicant: _____

Applicant's Representative: _____

_____

Address: _____

_____

E-mail address: _____

Phone Numbers:

(Phone) (Mobile) (Fax)

EVENT/PRODUCTION DETAILS

Proposed Event/Shoot Dates:_____

Proposed Load-In/Prep Dates:_____

Proposed Load-out/Wrap Dates: _____

Proposed Number of Attendees: _____

Proposed Number of Production Staff: _____

Affirm that, if necessary, applicant will obtain a Temporary Public Assembly Permit from NYC Buildings.

(circle one) **YES** **NO**

Please describe in detail the type of event/production proposed for the Farley building, indicating which spaces within the building are under consideration by your team, the power and other technical requirements of the production, and a general description of the proposed build-out or set-dressing of the spaces. This description may be attached as a separate page.

Affirm that applicant will obtain all New York City and New York State permits for the proposed event, including but not limited to State Liquor Authority permits and Lane and Street Closure Permits from NYC Department of Transportation.

(circle one) **YES** **NO**

Please list all expected permits that will be required for your proposed event/production:

EVENT/PRODUCTION TIMELINE
Please provide the proposed timeline for the event/production, including the Load-in/Load-out days and event/shoot days. Please describe the anticipated schedule for deliveries. This description may be attached as a separate page.

ADDITIONAL AFFIRMATIONS & APPLICANT SIGNATURE

Affirm that the applicant has read all of the terms and conditions of the Temporary Activity Permit and will abide by said terms if the Permit is granted.

(circle one) YES NO

The applicant hereby affirms that the information provided in this application is factually accurate to the best of their knowledge and that any misrepresentations in the foregoing shall be grounds for revoking this application.

Signature of Applicant: _____

Date:_____

The Temporary Activity Permit does not become effective until approved and signed by the Moynihan Station Development Corporation (MSDC).

MSDC will endeavor to respond to all applications within 48 hours, but receipt and consideration of this application in no way commits MSDC to respond to this application or to grant a Temporary Activity Permit.

All applications will be reviewed on a case-by-case basis to determine their feasibility, compliance with MSDC health and safety standards, and suitability for a government facility and landmarked building.

MSDC reserves the right to request additional information from the applicant before considering or granting this application for a Temporary Activity Permit.

MOYNIHAN STATION DEVELOPMENT CORPORATION

Temporary Activity Permit

This permit may be required for activities at the James A Farley Post Office and Annex building ("Site") under the jurisdiction of the Moynihan Station Development Corporation ("MSDC").

This document is a consolidated Application and Permit and the terms "Applicant" and "Permittee" apply to the same entity at different stages of the process.

The Applicant should provide the information requested in the Application section of this Permit. MSDC recommends attaching sufficient documents to provide a thorough understanding of the proposed activity. Please describe the type of activity envisioned. Please include the number of people, animals and vehicles involved and any special equipment you will use. Equipment should be described fully, including potential for causing structural or environmental damage.

A meeting with MSDC staff or its agent is required as part of the permitting process.

The General Terms & Conditions contained in this Permit apply unless such conditions are specifically modified according to the Special Conditions attached to this Permit.

The application must be signed by a fully authorized agent of the entity that will actually be undertaking the activities specified in the Permit. The Permit is non-transferable and may not be otherwise assigned to a different entity without the express written consent of MSDC. If the application is approved, it becomes part of the Permit and additional terms and conditions may be required.

The Permit will be reviewed by MSDC and requirements specific to the activity may be required to be attached as Special Conditions.

An application for a permit may be denied, for among other causes, if:

- In the opinion of the MSDC, the proposed activity is not compatible with the environmental, commercial, or historic character of the site or may create health or safety risks;
- The proposed activity will place unreasonable burdens on MSDC's staff, regardless of the applicant's willingness to pay assessed cost recovery;
- The proposed activity would unreasonably conflict with access to, or use or development of the Site for New York State Urban Development Corporation d/b/a Empire State Development ("ESD") or MSDC or their respective agents and contractors;
- The proposed activity would unreasonably conflict with execution by MSDC and ESD of their plans to construct a passenger rail facility on and to otherwise develop the Site; or

- The applicant fails to obtain insurance/bonding, to pay the required deposit, or fails to satisfy a material condition of the permit.

MSDC may assess the following fees and charges in connection with this permit, including:

- Direct costs: This charge shall, among other things, reimburse MSDC for actual operation, program and administrative costs that are incurred as a result of the activity. Depending on the size and complexity or other factors it may be necessary for MSDC staff, or its agents, to be present during set-up for the activity, the activity itself, and/or break-down, to assure full compliance with all terms and conditions of the permit.
- Construction costs: This charge shall, among other things, reimburse MSDC for costs associated with any physical improvements requested by the Permittee and agreed to by the MSDC.
- Security costs including coverage by security officers if necessary. MSDC or its agents will determine the level of security necessary on a case by case basis. For example, smaller projects that do not involve much staff or equipment may not require much security while larger projects with equipment left on site may require twenty-four hour security. The applicant shall pay these costs. No level of security can be a guarantee against loss. MSDC assumes no responsibility for the loss of or damage to any equipment, property or for any and all damages to persons or property.
- Restoration and clean up costs are the sole responsibility of the Permittee unless otherwise agreed. Restoration and clean up costs may be estimated in advance and paid up front by the Applicant. It is the sole responsibility of the Applicant for any costs that exceed this estimate.
- Use fee: This fee is intended to compensate MSDC for the use of the Site for the activity.
- The applicant may be required to post a refundable security in the form of a bond or other security deposit to cover damages, restoration or clean-up costs, and will be required to provide general liability insurance as provided below.

GENERAL TERMS & CONDITIONS

1.) The Permittee and the Permittee's agents, employees, contractors and guests shall be subject to and abide by the rules and regulations of MSDC at all times while they are on the site, unless permit conditions otherwise waive certain rules and regulations to facilitate the permitted activities. Permittee shall comply with all applicable federal, state, and local laws and regulations as well as all permit conditions and is solely responsible for obtaining any permits, licenses or approvals necessary to undertake the activities associated with this Permit.

2.) Activities may only be conducted on the Site and at the location and during the hours specified in the Application or as modified in writing and attached to this Permit.

3.) The Permittee shall not make any alterations, additions or modifications to the location without the permission of MSDC. The Permittee shall be responsible for any damage to the

site that is the result of any activities of the Permittee, its agents, employees, contractors and guests under this Permit.

4.) The placement, operation and location of any and all equipment must not damage the buildings, grounds, roads or any other aspects of the site. MSDC may prohibit any siting of equipment or any other activity that may cause damage to the Premises and to discontinue all activities until the matter can be rectified or resolved.

5.) MSDC is not responsible for providing any utility or service in addition to that which is already located at the Site.

6.) MSDC is not responsible for providing any tools or equipment unless specified in the Special Conditions.

7.) No agents, employees or contractors of the Permittee may enter the event Site at any time other than that indicated on the Permit unless they have been authorized to do so by MSDC.

8.) MSDC may suspend all activities under this permit if damage to facilities occurs or is threatened, or if there is a breach of any of its terms and conditions. Permit privileges may be reinstated upon the correction of the problem. If the problem is not corrected to the satisfaction of MSDC, or if the breach continues, the Permit may be revoked.

9.) Upon any revocation of the Permit, or upon termination of the activity, the Permittee shall clean up and restore all facilities to their condition prior to the commencement of the project unless any changes have been approved and accepted by MSDC. Permittee shall remove all equipment, materials and debris from the facility. The cost of any clean up and restoration that must be done after the Permittee leaves the facility will be deducted from the Permittee's security.

10.) Permittee shall promptly report any and all unusual incidents directly to the MSDC or its agents. Unusual incidents include, but are not limited to, damage to property, accidents, personal injuries, and emergencies involving medical personnel.

11.) Permittee will not introduce or use any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation (collectively, “Hazardous Substance”) on the Site, and Permitee will indemnify, defend and hold harmless the Indemnitees , from and against all claims arising out of Permitee’s introduction, use, or release of any Hazardous Substance on the Site. The indemnity obligations under this Section will survive termination of this Agreement.

12.) This Permit is subordinate to any mortgage or deed of trust of record against the Site, including, without limiting the foregoing, the Site as of the Effective Date or thereafter.

13.) Permitee will comply with all applicable laws and regulations relating to its use of the Site.

14.) Permittee may at any time terminate this Permit by delivering to MSDC prior written notice, and satisfaction of all of its obligations pursuant to this Agreement, including, without limiting the foregoing, payment in full of the Permit Fee for the Term, payment of all utilities and other amount due under this Permit, and removal of Permittee’s property and restoration of all portions of the Site used by the Permittee to the condition they were in immediately prior to commencement of the Permittee’s activity at the Site. MSDC may at any time (i) require a relocation of the Site or any part thereof, to an alternate site proposed within the Farley Building

or (ii) to terminate this Permit. MSDC will deliver a written notice of such relocation or termination (the "Vacate Notice") to Permittee at least six months (the "Vacate Notice Period") prior to the date that the relocation must be completed or the date that Permittee must vacate the Site.

15.) In the event of a proposed relocation, the Vacate Notice will identify a proposed relocation site in or upon Farley. Permittee will have 30 days (the "Evaluation Period") from the date it receives the Vacate Notice to give to MSDC notice of Permittee's acceptance or rejection the proposed relocation site. If Permittee rejects the proposed relocation site, or fails to give to MSDC notice of Permittee's acceptance or rejection of the site within the Evaluation Period, or if the Vacate Notice is for Permit termination, the Permit will terminate on the earlier of the expiration of the Vacate Notice Period, or the date of termination pursuant to another provision of the Permit. If Permitee gives to MSDC timely notice (the "Acceptance Notice") of Permittee's acceptance of the proposed relocation site, Permittee shall within 20 days of giving Acceptance Notice present to MSDC for its review and approval the proposed final plans for the relocation work. MSDC shall promptly review such plans and notify Permittee of MSDC's acceptance of, or concerns regarding, the plans. If MSDC rejects the relocation plans, the Permit will terminate at the expiration of the Vacate Notice Period. If MSDC approves the relocation plans, MSDC shall promptly give to Permittee notice that the accepted relocation site (the "Relocation Site") is ready. Permittee shall promptly thereafter commence the relocation work which shall be performed Permittee's sole cost and expense. Permittee shall perform the work in accordance with the plans approved by MSDC (the "Approved Plans"), and any modification of the Approved Plans shall be in a written document signed by MSDC and the Permittee. Permittee will have 90 days (the "Relocation Work Period") to complete the relocation work, including the restoration of the portions of the Site previously used by the Permittee to their condition immediately before the Term Commencement Date. MSDC shall have the right to inspect all work in connection with relocation. Permittee, at its cost and expense, shall promptly correct all work that MSDC determines, in the exercise of its reasonable judgment, materially fails to conform to the Approved Plans. Permittee shall pay to MSDC all of MSDC's reasonable out-of-pocket expenses in connection with the relocation. Upon completion of the relocation work and the Permittee's receipt of MSDC's written approval of all the relocation work, all references to the Facilities and the Site in this Permit will be deemed to be references to the Relocation Site.

16.) If either party is in default under this Permit for a period of 30 days following receipt of written notice from the non-defaulting party, the non-defaulting party may pursue any remedies available to it against the defaulting party at law and in equity, including, but not limited to, the right to terminate this Permit. If a non-monetary default cannot reasonably be cured within a 30-day period, this Permit may not be terminated if the defaulting party commences action to cure the default within the 30-day period and proceeds with due diligence to fully cure the default within 60 days of the receipt of written notice of default.

17.) MSDC represents and warrants to Permittee that: (a) ESD is the owner of the Site and that MSDC it the duly authorized by ESD to grant to Permittee this Permit for the use of the Site in accordance with the terms of this Permit; (b) MSDC has rights of pedestrian and vehicular access from the nearest public roadway to Site, which Permitee is permitted to use; and (c) MSDC has the right to enter into this Permit; and (d) the person signing this Permit on behalf of MSDC has the authority to sign.

18.) Permittee represents and warrants to MSDC that: (a) Permittee has the right to enter into this Permit and (b) the person signing this Permit on behalf of Permittee has the authority to sign.

19.) MSDC and ESD will have access to the portions of the Site covered by this Permit for necessary inspection and maintenance, and, when possible, MSDC and ESD will make reasonable efforts to give Tenant prior notice of such need to access the premises, provided however, in the event of an emergency, no prior notice will be given, but MSDC shall promptly thereafter advise Permittee of MSDC's or ESD's emergency access to the portion of the Site subject this Permit, and with respect to any such access, MSDC and ESD will use reasonable care with respect to such access.

20.) Permittee shall not assign or transfer this Permit or any portion thereof without the prior written consent of MSDC.

21.) This Permit is governed by the laws of the State of New York.

22.) This Permit (including the exhibits, attachments and riders) constitutes the entire agreement between the parties and supersedes all prior written and verbal agreements, representations, promises or understandings between the parties.

23.) Any amendments to this Permit must be in writing and executed by both parties.

24.) If any provision of this Permit is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of the provision to persons other than those as to whom it is held invalid or unenforceable, will not be affected and each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law.

INDEMNIFICATION, BONDING & INSURANCE REQUIREMENTS

INDEMNIFICATION

Permittee shall defend, indemnify and hold harmless MSDC and ESD and their respective affiliates, commissioners, directors, officers, agents and employees (collectively, the "Indemnitees") from and against damages for injury to or death of persons and for damage to or destruction of property of the Indemnitees or others occurring during Permittee's use of the Site and caused by the acts, omissions, neglect or misconduct of Permittee or any of its employees, agents, contractors, licensees or guests in the conduct of Permittee's operations under this permit. The Permittee assumes all risk of loss of the Permittee's property or that of its agents, employees, contractors and guests. Permittee's liability is not limited to the insurance coverage provided. The obligations pursuant to this indemnification provision shall survive the termination or expiration of this Permit.

SECURITY REQUIREMENTS

Permittee shall deposit with MSDC a sufficient security to insure that the site is left in as good condition as it was prior to the activity, and to cover all estimated costs and fees. The Permittee shall reimburse MSDC and ESD for the actual costs incurred by MSDC or ESD arising from or in connection with use of the Site by Permittee or any of its employees, agents, contractors, licensees or guests. Permittee's liability to pay the costs associated with the Permit is not limited to the security deposit. Permittee agrees to pay the total costs associated with the Permit.

Security must be paid by check to **"ESDC USPS Farley Rent Program".**

Should the Permittee fail to perform any part of the necessary clean-up or restoration, or fail to reimburse MSDC and ESD for costs associated with the permit, the security will be used to make any payments necessary. Any remaining balance will be returned to the Permittee. If the security is insufficient to cover costs, the Permittee will be issued a bill for collection of the amount of the deficit, and must immediately pay such amount to MSDC and ESD.

INSURANCE REQUIREMENTS

Permittee shall procure at its sole cost and expense insurance providing coverage to the MSDC and ESD for claims for damage to property and personal injury, including death, which may arise from the conduct of the Permittee, its agents, employees, contractors and guests and for the performance of any services performed in conjunction with this Permit authorized by the Permittee.

Prior to commencement of any activities under this Permit, the Permittee shall provide a current insurance certificate evidencing the following insurance coverage:

- Commercial General Liability with a limit on not less than $1,000,000 each occurrence, $2,000,000 aggregate. This coverage must be written on ISO Form CG 00 01 or its equivalent, with no modification to the contractual liability coverage provided therein.

- Commercial Property Insurance covering at a minimum, the perils insured under the ISO Special Causes of Loss Form (CP 10 30), or a substitute form providing equivalent coverages, for loss or damage to any owned, borrowed, leased or rented capital equipment, tools, including tools of their agents and employees, staging towers and forms, and property of MSDC held in their care, custody and/or control.

- Workers Compensation, Employers Liability, and Disability Benefits, as required by New York State. If employees will be working on, near or over navigable waters, US Longshore and Harbor Workers Compensation Act endorsement must be included.

- Comprehensive Business Automobile Liability Insurance with a limit of not less than $1,000,000 each accident. Such insurance shall cover liability arising out of any automobile owned, leased, hired and non owned automobiles.

When establishing the monetary amount of required insurance, MSDC and ESD may consider the risk to their assets, the complexity of the proposed activities, the number of people involved, the equipment and vehicles involved, the magnitude of support and catering services, the number of days for the activity along with preparation and cleanup and any other relevant circumstances.

MSDC reserves the right to require higher liability limits than those shown above, and will allow the combination of primary liability and an Umbrella Liability policy to satisfy the required limits.

Insurance coverage shall be provided only by an insurer duly licensed in the State of New York. All insurance policies and certificates procured by the Permittee shall name as Additional Insured:

- "Moynihan Station Development Corporation" 633 Third Avenue, New York, NY, 10017

- "New York State Urban Development Corporation d/b/a Empire State Development," 633 Third Avenue, New York, NY 10017

- "New York State Office of General Services" Corning Tower, Empire State Plaza, Albany, NY 12242

The additional insured protection afforded the MSDC, ESD, and NYS OGS shall be on a primary and non-contributory basis and any coverage carried by MSDC, ESD, or OGS shall not be looked to for contribution. In order to ensure vertical erosion of liability limits provided as part of this contract, we reserve the right to review your liability policy language (for all liability policies) and require you to endorse those policies to clarify the hierarchy of policies in the event of a claim.

Designating the above entities as a "certificate holder" shall not constitute compliance with this section.

Each policy required by this permit must also include a waiver of subrogation in favor of the MSDC, ESD, and OGS.

The Permittee shall promptly notify MSDC of any accidents and/or claims including, without limitation, accidents or claims involving bodily injury, death or property damage, arising on or within the area covered by this permit. Such notice shall be provided in writing to MSDC and ESD as soon as practicable but in no circumstance later than seventy-two hours following the Permittee receiving notice of the accident or claim.

SPECIAL CONDITIONS

MSDC and the Permittee agree to the Special Conditions that are indicated below as well as any Special Conditions that may be found on an attachment to this Permit (see "Attachments").

1.) Special provisions relating to the public benefits of the project and patron access and protection;

2.) Provisions for the protection of environmental, recreational, commercial and historic resources;

3.) An appropriate credit line.

4.) Provisions regarding the payment of equipment use fees.

5.) Special safety precautions and **Security Plan**.

6.) **Additional Permits.** Applicant shall provide MSDC with copies of the following permits, which have effective dates through the anticipated duration of the project:

_____

_____

_____

_____

_____

7.) The fees and costs of this permit are based on a specific set of facts concerning the nature and scope of the use as described to MSDC by the Permittee. To the extent that the facts turn out to be different or the circumstances change, MSDC reserves the right to invoice the Permittee for additional fees and costs to be paid upon presentation of invoice.

8.) Upon demand, the Permittee shall repair or replace, or pay for repair or replacement, of any damage to the site arising out of the permit or as a result of the permitted activities.

9.) The terms, conditions, fees and costs associated with this permit are not binding on any future permits or agreements between the Permittee and MSDC.

10.) **Attachments.** The following documents are attached to and made a part of this permit as if they were set forth fully within the body of the Permit itself:

Security Plan

Preliminary Production Timeline/Run of Show

Certificates of Insurance

GRANT OF PERMISSIONS AND RIGHTS

Unless otherwise specified and attached to this Agreement, MSDC reserves all rights to any photographs, video or other materials produced within the Farley building.

MSDC reserves all rights to the use of the all images (exterior and interior) of the James A. Farley Building and to the names, “James A. Farley Building”, “Moynihan Station”, and “Moynihan Station Development Corporation”.

For all film and photography shoots, a Location Agreement will be attached and will supersede the conditions in this section of the Permit.

Fees & Direct Costs

Use Fee

Deposit – *Paid in Advance*

Direct Costs – *Estimated*

Building Engineer:

Additional Security:

Miscellaneous:

** The Direct Costs listed above are estimates only. Permittee is bound to pay the full amount of all Direct Costs incurred during the period governed by this Permit. MSDC will provide invoices for all Direct Costs.

** If direct costs are not paid in advance, client will be billed for direct costs and failure to pay promptly (30 days) will result in a deduction from the Security Deposit.

Security Deposit – Please Provide a Separate Check

Checks shall be made payable to "ESDC USPS Farley Rent Program".

SIGNATURES

PERMITTEE:

I have read all the terms and conditions contained in this Permit and any attachments to this Permit and accept them and shall abide by them.

_____ _____

Permittee Date

APPROVED BY MOYNIHAN STATION DEVELOPMENT CORPORATION:

_____ _____

Moynihan Station Development Corporation Date