



Zone 7 Water Agency
100 North Canyons Parkway
Livermore, CA 94551

Phone: 925-454-5000
Fax: 925-454-5726
www.zone7water.com

ENCROACHMENT PERMIT GENERAL PROVISIONS

1. **DEFINITIONS:** Wherever the following terms are used in this permit, they shall mean the following: Zone 7 shall mean Zone 7 of Alameda County Flood Control and Water Conservation District; General Manager shall mean the General Manager of Zone 7 or his/her authorized representative (e.g. Permit Engineer).
2. **REVOCAION:** This permit shall be revocable on order of the General Manager of Zone 7 and shall not be transferable.
3. **NON-EXEMPTION:** This permit shall not be construed to allow Permittee to proceed without obtaining any other permits or authorizations required by any other public agency or without the permission of affected property owners, nor shall it be construed as authorizing any zoning variance nor as establishing any precedent for similar encroachments.
4. **PRIOR RIGHTS:** This permit is subject to all prior unexpired permits, agreements, easements, privileges or other rights, whether recorded or unrecorded, in the area specified in this permit. Permittee shall make arrangements with holders of such prior rights.
5. **ACCEPTANCE OF CONDITIONS:** It is agreed by Permittee that entrance upon the property or jurisdiction of Zone 7 to perform any of the work authorized hereunder shall constitute acceptance of all the provisions hereof and that this permit is valid only for the purpose and duration specified herein. No change of program as outlined in the plans submitted for the permit will be allowed without written permission from Zone 7.
6. **CONDUCT OF WORK:** Permittee shall conduct the work in accordance with approved plans and in a manner which will cause the least possible disturbance to Zone 7 facilities. The Permittee shall also restore affected facilities to a condition as good as found, and store or place materials, equipment or machinery in such fashion as not to interfere with the proper functioning of Zone 7's facilities.
7. **INSPECTION:** Activities and uses authorized under this permit are subject to any instructions of the assigned Zone 7 inspector. All instructions must be strictly observed.
8. **STANDARDS:** Permittee shall perform all work to Zone 7 standards and use only such materials as will conform to Zone 7 standards as determined by the General Manager. Cuts or other excavations in public property shall be repaired to such standards as may be required by the General Manager and no cutting of channel walls, or connections to drainage pipes or water lines shall be made except in the presence of a Zone 7 inspector.
9. **LAW OBSERVANCE:** Permittee shall perform and conduct operations in the manner prescribed by state or other applicable laws.
10. **RELOCATION:** Permittee agrees that whenever Zone 7 requires the relocation or removal of any installation permitted hereunder, Permittee shall effect such relocation or removal at Permittee's sole expense.
11. **ZONE 7 TO COMPLETE WORK:** Whenever the Permittee fails or neglects to complete the work permitted or required hereunder, Zone 7 may, at its option and after notice, complete the said work or restore the property to its original condition, and Permittee agrees to reimburse the cost thereof to Zone 7.
12. **PERMIT ON JOB:** This permit shall be kept on the job site during the performance of any construction work hereunder and shall be shown on demand to any representative of Zone 7 or to any law enforcement officer who so demands.
13. **SUSPENSION:** This permit may be suspended at the discretion of the General Manager or when Permittee is conducting operations in such negligent fashion as to threaten the structural or operational safety of Zone 7 facilities.
14. **PERMIT RENEWAL:** If, for any reason, the work authorized under the permit will not be completed, the Permittee shall notify Zone 7 no later than two (2) weeks prior to expiration and apply for renewal.
15. **EROSION AND SEDIMENT CONTROL:** Permittee shall provide effective erosion and sediment control to prevent runoff of sediment into drainage systems and shall have an approved plan or program for erosion and sediment control complying with all applicable Federal, State, and local laws.
16. **SOILS REQUIREMENT:** Soils imported and stockpiled on Zone 7's property should be obtained from a legally permitted quarry. Prior to stockpiling of any imported soils not obtained from a legally permitted quarry

on Zone 7's property, Permittee will forward to Zone 7 any Phase I/Phase II environmental site assessments including any laboratory analysis of the soils to be stockpiled to ensure adequate precautions are taken to prevent migration of contaminants onto Zone 7's property.

17. **LOCATING UTILITIES:** Permittee shall have Underground Service Alert and an independent utility locator service to field locate and mark out any existing facilities in ample of time prior to performing work within Zone 7's property.
18. **PROPERTY RESTORATION:** Permittee shall restore the permitted work area within Zone 7's property to existing grade and condition after use.
19. **DAMAGE REPAIR:** In the event Permittee, its agents, employees, contractors and/or subcontractors damage in any way Zone 7's property, it shall be repaired or remedied by Permittee or at Zone 7's discretion by Permittee and all costs associated therewith shall be at Permittee's sole cost and expense to the extent that work by Zone 7 does not result in improving the site to a condition better than that which existed prior to being damaged. Permittee shall cause repairs to be made as directed by Zone 7 engineer after receipt of written notice to Permittee. If Permittee fails to undertake such repairs as directed by Zone 7 and/or within the time indicated in the Zone 7 notice, Zone 7 shall have the right, but not the obligation, to undertake the necessary repair work itself or by contract. Any and all costs associated with the exercise of Zone 7's right to self-help as indicated above (including but not limited to engineering, technical and/or legal service fees and costs), shall be borne by Permittee and shall become immediately due and payable to Zone 7 upon receipt of invoice from Zone 7. Zone 7's right to self-help is not exclusive and shall be in addition to any other remedy available in law or equity.
20. **PRIMARY USE OF PROPERTY:** Permittee shall not interfere with the primary use of the Zone 7 property for flood control and/or water supply purposes and shall have the duty and hereby agrees to exercise reasonable care to properly maintain Zone 7's property during the term stipulated in Zone 7's permit, including but not limited to, removing debris dumped or placed on the Zone 7 property from any source other than Zone 7 or an employee, agent, contractor, or person permitted by Zone 7, and to exercise reasonable care inspecting for and preventing any damage to any portion of Zone 7's property. Permittee understands and agrees that Zone 7 may in the event of emergency enter upon the permitted work area and in the course of doing so, may cause damage to or alter the permitted work area and/or other Zone 7's property including Permittee's improvements completed or in progress therein. Zone 7 agrees that it shall exercise due care as practical in the course of carrying out its emergency flood control and/or water supply activities but Zone 7 shall not be liable or responsible for any such damage caused during the course of emergency response. For non-emergency flood control and/or water supply related activities in or about the permitted work area, Permittee agrees to reasonably cooperate with Zone 7 to accommodate Zone 7's use of the permitted work area including but not limited to removing obstructions or barriers to Zone 7's access to the permitted work area and/or adjacent properties.
21. **HAZARDOUS MATERIALS:** Permittee shall not (a) use, generate, or store, or allow its employees, contractors or agents to use, generate, or store any Hazardous Materials on Zone 7's property, except for those materials required to perform the Work under this permit and in compliance with all federal, state and local laws and regulations for the protection of the environment, human health and safety, as now in effect or hereafter amended (hereinafter "Environmental Laws"); or (b) release or dispose of, or allow its employees, contractors or agents to release or dispose of, any Hazardous Materials on Zone 7's property. "Hazardous Materials" are those materials now or hereafter (a) defined as hazardous substances or hazardous wastes pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. section 9601 et seq.) or the Resource Conservation and Recovery Act (42 U.S.C section 6901 et seq.); (b) listed in the Hazardous Substances List, Title 8, California Code of Regulations, G.I.S.O. Section 337-339, or those which meet the toxicity, reactivity, corrosivity or flammability criteria of the above Code; (c) characterized, regulated or subject to permitting or warning requirements as hazardous or toxic materials, substances, chemicals, pollutants, contaminants or wastes, or as materials for which removal, remediation or disposal is required, under any Environmental Laws; or (d) otherwise posing a present or potential hazard to human health, welfare or the environment.
22. **HAZARDOUS MATERIAL DISPOSAL:** Permittee shall be responsible for and bear the entire cost of removal and disposal, in compliance with Environmental Laws, for all Hazardous Materials and non-hazardous wastes introduced to Zone 7's property during Permittee's use of Zone 7's property except for any such Hazardous Materials or non-hazardous wastes introduced by Zone 7 or an employee, agent, contractor, or person permitted by Zone 7. Permittee shall also be responsible for any remediation on or off the permitted work area necessitated by such Hazardous Materials or non-hazardous wastes except Permittee shall not be liable for remediation on or off the permitted work area resulting from any such Hazardous Materials or non-hazardous

wastes introduced by Zone 7 or an employee, agent, contractor, or person permitted by Zone 7. As used herein, "remediation" includes any investigation or post-cleanup monitoring that may be necessary in compliance with Environmental Laws. For purposes of disposal, Permittee shall be the generator of any such Hazardous Materials and shall provide a generator identification number on manifest for such disposal as required by Environmental Laws except for disposal of any such Hazardous Materials or non-hazardous wastes introduced by Zone 7 or an employee, agent, contractor, or person permitted by Zone 7, in which case Zone 7 shall be the generator and shall provide a generator identification number.

23. **PRE-EXISTING HAZARDOUS MATERIALS:** If at any time Permittee discovers or suspects pre-existing Hazardous Materials exists on, about, under or emanating from the permitted work area as of the commencement date of the permit, Permittee shall immediately cease any further work, activity and use within the permitted work area, reasonably secure the area(s) affected and notify Zone 7 of the condition. Zone 7 shall in its sole discretion, determine and undertake the course of remedial action unless otherwise agreed to by the Parties. Permittee acknowledges and agrees that should remedial action be necessary, that Permittee's use of the permitted work area may be suspended or limited while remediation is undertaken and that Zone 7 shall be free from any and all claims, action and liabilities, by whomever asserted, that may result from Permittee's inability to fully use and enjoy the rights conferred herein.
24. **LIABILITY FOR HAZARDOUS MATERIALS:** Permittee agrees to assume responsibility and liability for, and defend, indemnify and hold harmless Zone 7, its directors, officers, agents and employees from all claims, demands, suits, losses, damages, injury, and liability, direct or indirect (including any and all costs, fees and expenses in connection therewith) arising from the introduction on the permitted work area of any Hazardous Materials or non-hazardous wastes by Permittee (including its employees, contractors and agents) during its use of the permitted work area. (Zone 7 property)
25. **LIABILITY FOR DAMAGES:** Permittee agrees to assume responsibility and liability for, and defend, indemnify and hold harmless the County of Alameda, the Alameda County Flood Control and Water Conservation District, including Zone 7, its Board of Supervisors, the Directors of Zone 7, their officers, agents and employees (collectively "Indemnitees") from all claims, demands, suits, losses, damages, injury, and liability, direct or indirect (including any and all costs, fees and expenses in connection therewith), caused by acts or omissions of Permittee, its employees, contractors and agents in connection with the work, activity or use of the property (including property of Permittee or County and/or District), except to the extent such losses are caused by the gross negligence or willful misconduct of the Indemnitees, its employees, contractors, agents or other persons permitted by the Indemnitees. Permittee agrees at its own cost, expense and risk to defend any and all actions, suits, or other legal proceedings brought or instituted against the Indemnitees, its directors, officers, agents and employees arising from the acts or omissions of Permittee, its employees, contractors and agents in connection with the work permitted herein, and to pay and satisfy any resulting judgments, settlements or other expenses associated therewith.
26. **UNAUTHORIZED USE OF PROPERTY:** Upon any use of Zone 7's property by Permittee other than that authorized by this permit, or upon failure of the Permittee to conform to any of the terms and conditions of this permit, Zone 7 may terminate this permit by issuing a written notice of intent to terminate subject to a two week period allowing for Permittee to conform, except in those instances in which Zone 7, in its sole discretion, determines that Permittee's acts or omissions constitute a threat or potential threat to people or property and shortens the period for conformity.
27. **WRITTEN NOTICES:** Any notice which Permittee is required to provide related to this permit shall be given in writing and may be personally served, sent by overnight courier delivery, or deposited in the United States Mail as certified mail, return receipt requested, postage prepaid, addressed to the other party at the following address:

Alameda County Flood Control and Water Conservation District - Zone 7
100 N. Canyons Parkway
Livermore, CA 94551