

## **STANDARD PROVISIONS TO ENCROACHMENT PERMIT**

City of Emeryville (11/2021)

These Standard Provisions are attached and incorporated into the Encroachment Permit, which is issued in accordance with Title 7 of the Emeryville Municipal Code. The City of Emeryville grants permission to Permittee and its agents to enter upon the public right of way to perform such work as described in the application, subject to the conditions set forth in the Encroachment Permit, including these Standard Provisions. Permittee agrees that doing any work under this Encroachment Permit constitutes acceptance of the provisions of this Permit. All work performed in the City right of way shall conform to the City's standards as follows:

- "Greenbook", Standard Specifications for Public Works Construction, 2009 Edition and 2012 Edition
  - Amendment A to the Standard Specifications for Public Works Construction, 1985 Edition
  - Standard Plans for Public Works Construction, 2012 Edition
  - State of California Department of Transportation, Standard Specifications, May 2006 Edition and 2010 Edition
  - State of California Department of Transportation Standard Plans, May 2006 Edition and 2010 Edition
  - California Department of Transportation Highway Design Manual, latest Edition
  - The California Manual on Uniform Traffic Control Devices, 2012 Edition
  - 2010 Americans with Disabilities Act Standards for Accessible Design which consist of (i) Title II regulations at 28 CFR 35.151 and (ii) 2004 ADA Accessibility Guidelines at 36 CFR Part 1191, Appendices B and D
  - 2013 California Building Code Part 2; Volume 1; Chapters 11A Housing Accessibility and 11B Accessibility to Public Building, Public Accommodations, Commercial Buildings, and Public Housing
  - Alameda County Clean Water Program C3 Stormwater Technical Guidance, May 14, 2013
  - IES Roadway Lighting Standard, latest edition
1. Property. This Permit is limited to the area set forth in the application, subject to all existing licenses, easements, encumbrances, leases and claims of title.
  2. Purpose. Permittee certifies that it has the legal authority to occupy and use the public right of way for the purpose stated in the application. This nonexclusive and temporary Permit is limited to the purpose stated in the application. Any installation or operation of facilities in the public right of way requires an Encroachment Agreement from the City. Neither this Permit nor any work done by Permittee shall create a vested right of Permittee to utilize the public right of way. If any prior encroachment permit conflicts with the proposed work, Permittee shall arrange for any necessary removal or relocation with the prior permittee if willing at no expense to the City.
  3. Term. The term of this Permit is as set forth on the application. This Permit shall be void if construction has not begun within thirty (30) days of the date of the Permit. This Permit is revocable immediately upon notice by the City Engineer or his/her designee. Upon revocation or expiration of this Permit, Permittee shall suspend all activity on the Property immediately and will be responsible for the repair of any damage to the Property caused by Permittee, as directed by City.
  4. Permit on Site. Permittee shall keep this Permit on site at all times that work is occurring and shall provide the Permit upon demand of a City representative. Work may be suspended if the Permit is not at the job site.
  5. Notice Prior to Starting Work. Before starting work under this Permit, Permittee shall notify the designated City representative two (2) working days prior to the initial start of work. When work has been interrupted for more than five (5) working days, an additional 24-hour notification is required.
  6. Underground Service Alert. Permittee shall contact the Underground Service Alert (1-800-642-2444) prior to doing any excavation work to determine the existence of any underground facilities. Permittee should not rely on the absence of markers as a guarantee of no underground facilities.
  7. Inspection. All work is subject to the City's monitoring, inspection and approval. Permittee shall be billed

for inspection time at the current hourly rate in the City's Fee Schedule, with a minimum of two (2) hours.

8. Work Conditions.

- a. Work may only be undertaken between the hours of 7:00 a.m. to 6:00 p.m. Monday through Friday.
- b. Permittee shall provide a sign with the name of the contractor and 24-hour contact person that is visible from the work area to persons on the right of way.
- c. Permittee shall keep the area clean, safe and orderly at all times and shall not use the public right of way as a storage area when work is not proceeding.
- d. Permittee shall comply with the requirements of the Alameda County NPDES permit, Best Management Practices established by the Alameda County Urban Runoff Clean Water Program and the Stormwater Pollution Prevention and Control Measures to prevent construction water, debris or groundwater from entering the storm drains.
- e. If the work contemplated will interfere with established drainage, Permittee shall make provision for drainage as acceptable to the City.
- f. No hazardous materials shall be handled at any time on the Property. Should any discharge, leakage, spillage, emission or pollution of any type occur upon or from the Property due to Permittee's use and occupancy of the Property, then Permittee, at its sole cost, shall clean all affected property to the satisfaction of the City and any governmental body with jurisdiction.
- g. If hazardous materials are encountered during the excavation under this Permit, then Permittee shall immediately notify the City and properly dispose of such materials in full accordance with federal, state and local laws. Such disposal shall be at Permittee's sole cost and shall be under Permittee's EPA Generator number.
- h. Open trenches and holes shall be satisfactorily covered at all times when Permittee's forces are not working in the vicinity. No trench shall be left open at the end of a work day unless steel plated in accordance with the Department's standards. Trench plates shall be recessed for excavations exceeding 8-ft by 4-ft and for trenches open for more than 72 hours. Multiple trench plates shall be welded together.
- i. Permittee certifies that all material to be used in the work, including material for the restoration of the public right of way, is on hand and ready to use prior to beginning work.
- j. Permittee shall commence work at no cost or expense to City and Permittee waives all claims for indemnification or contribution from the City for such work. All work shall be done in a manner that does not interfere with the City's operations.
- k. Any Mechanic's Liens filed on account of the work performed by Permittee hereunder shall be promptly cured by Permittee's payment thereof and the recording of applicable Release of Mechanic's Liens, or Permittee shall post a statutory mechanic's lien release bond in lieu thereof within seven (7) days after the filing of each such Mechanic's Lien.

9. Traffic Control Measures. Permittee shall provide appropriate vehicular, pedestrian and bicycle traffic control measures.

- a. Where facilities exist, a minimum sidewalk width of four (4) feet shall be maintained at all times for safe passage through the work area. At no time shall pedestrians be diverted onto a portion of the street used for vehicular traffic. At locations where adjacent alternate walkways cannot be provided, appropriate signs and barricades shall be installed at the limits of the construction site and in advance of the closure of the nearest crosswalk or intersection to divert pedestrians across the

street. Access shall be maintained for persons with disabilities.

- b. All work shall be planned and carried out so that there is least possible inconvenience to vehicular traffic, including deliveries to adjacent properties. Warning signs, lights and safety devices and other measures shall conform to the requirements of the Manual of Traffic Controls issued by Caltrans. Traffic control for day or nighttime lane closures (if nighttime work is permitted) shall be in conformance with the Caltrans Standard Plans for Traffic Control Systems. The Permittee is authorized to place properly attired flagger(s) to stop and warn traffic. Traffic shall not be unreasonably delayed. Flagging procedures shall be in conformance with the latest edition of the Instructions to Flaggers pamphlet and/or Manual of Traffic Controls for Construction and Maintenance Work Zones issues by Caltrans.
10. Compliance with Laws. Permittee shall obtain and maintain all permits and approvals required for the activities under this Permit and shall comply with all laws now in effect or that become effective during the term of this Permit, including but not limited to those related to employee and work site health and safety, construction, grading, signage, noise, environmental protection, hazardous materials, waste disposal, water and air quality and accessibility (Americans with Disabilities Act and Title 24 of the California Code of Regulations). Permittee shall comply with the requirements set forth in the Emeryville Municipal Code and the latest orders, rules, regulations and standards of the Emeryville Department of Public Works, including standards for restoration and backfilling of excavations.
11. Restoration and Completion of Work.
- a. Prior to completion of the work, Permittee shall request that the City conduct a final inspection.
  - b. If the work is not completed within the time required or is not acceptable, then the Public Works Director shall notify Permittee in writing. Within forty-eight hours of such notice, Permittee shall restore the work so it meets the requirements of this chapter, including and permit conditions, and remedies all deficiencies including subsurface material or pavement becoming depressed, broken or otherwise failing. If Permittee fails to do the restoration or backfilling work after such notice, then the City may undertake such work at the expense of Permittee. The City's determination of the cost of the work performed shall be final.
  - c. If Permittee fails to compensate the City with five (5) business days of notification, then the City can take whatever actions are necessary to recover its damages, costs and expenses, including but not limited to withholding the amount due with payment made from the performance deposit or any remaining administrative or inspection fee amount or commencing an action against the bond.
  - d. The City's repair or restoration shall not relieve Permittee from liability at the site of the repair or restoration including but not limited to future failures.
  - e. The City may undertake the incomplete or inadequate restoration or repair work at Permittee's cost without notification to Permittee, if the City has determined that there has been a violation of any condition of the permit; that an excavation constitutes a hazardous situation, public nuisance, public emergency or threat to the public health, safety or welfare; or it is in the City's best interests.
  - f. Any monuments removed during the work shall be replaced. Each visible facility in the public right of way shall be clearly identified with the name of the owner of the facility.
  - g. At the completion of the work, all brush, timber, scraps, material and the like shall be entirely removed and the right of way left in a like new condition.
  - h. As-built plans shall be provided to the City prior to the City's release of any deposit or security required by this Permit, as specified on the Permit. Permittee shall also provide City at no cost with a copy of any data, studies or surveys conducted on the Property.

12. Warranty.

- a. Permittee warrants all work for two (2) years following completion and acceptance as conforming to all requirements of this Agreement, requirements of the Emeryville Municipal Code and standards of the Emeryville Public Works Department; to fulfill its design functions and be fit for its ordinary and intended purposes; to be free from all patent and latent defects in design, materials and workmanship; and to perform satisfactorily.
- b. Permittee shall be responsible for continual inspection of the work during the warranty period to ensure that if deficiencies arise in the work, such as subsurface material or pavement becoming depressed, broken or otherwise failing, that these deficiencies will be remedied immediately. Any other deficiencies in the work shall be remedied within forty-eight hours of notification by the Public Works Department.
- c. If the deficiencies are not remedied, then the City shall repair or restore, or cause to be repaired or restored, such deficiencies in such manner as the Director of Public Works deems expedient and appropriate at the expense of Permittee. The Director of Public Work's determination of the cost of the repair or restoration performed shall be final. If Permittee fails to compensate the City with five (5) business days of notification, then the City can take whatever actions are necessary to recover its damages, costs and expenses, including but not limited to withholding the amount due with payment made from any performance deposit or any remaining administrative or inspection fee amounts, commencing an action against the bond.
- d. Repair or restoration by the City shall not relieve Permittee from any and all liability at the site of the repair or restoration including but not limited to future failures.
- e. The City may undertake the restoration or repair work at the expense of Permittee without notifying Permittee, if the City has determined that a person has violated this chapter or any condition of the permit; that an excavation poses a hazardous situation or constitutes a public nuisance, public emergency or threat to the public health, safety or welfare; or it is in the City's best interests.

13. Assumption of Risk and Releases. Each person entering upon the Property under this Permit shall do so at its own risk. On behalf of itself and its agents, representatives, assigns, heirs, spouses, successors-in-interest, executors, administrators, employees and contractors ("Releasees"), and in consideration for obtaining this Permit, Permittee assumes all risk of entering the Property and agrees that the City of Emeryville, and the City of Emeryville as the Successor Agency to the Emeryville Redevelopment Agency, their officers, agents, employees and volunteers are released and shall not be liable in any manner for injury to or death of Permittee or its respective officers, employees or agents or to damage to property of Permittee arising from any cause. This release applies to all potential future claims and the Releasees agree to waive any and all rights pursuant to Section 1542 of the California Civil Code, which reads as follows:

**"A general release does not extend to claims that the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."**

14. Indemnification. Permittee agrees that City shall not be liable for any bodily injury, sickness, disease or death of any person or damages to any property or any person arising out of work performed by Permittee, its contractors or subcontractors in performance of this Permit. Permittee agrees to indemnify, defend and hold harmless City and its officers, agents, volunteers and employees (collectively, the Indemnitees), from any and all actions, claims and liability for any loss or damage, including, but not limited to, bodily injury, sickness, disease or death of any person or damage to any property, tangible or intangible, arising out of work performed by Permittee, its contractors or subcontractors in performance of this Permit or the entry upon the Property, whether or not it shall be claimed that the injury was caused through a negligent act or omission of Contractor or its employees or other agents, except for the active negligence, sole negligence or willful misconduct of City. Permittee shall, at its own expense, pay all costs and expenses, including reasonable attorneys' fees, arising therefrom, except for any claim arising from the sole negligence or willful misconduct

of City. If any judgment shall be rendered against City in connection with any such suit, claim or loss, Contractor shall at its own expense satisfy and discharge it. This indemnification shall survive termination of this Permit.

15. Liability Insurance. Permittee shall procure and maintain for the duration of the Permit insurance against claims for injuries to persons or damages to property of the work hereunder by the Permittee, his agents, representatives, employees.

a. Minimum Scope of Insurance

Coverage shall be placed with insurers admitted in California with a current A.M. Best’s rating of not less than A: VII and be at least as broad as:

- i. Insurance Services Office Commercial General Liability coverage (occurrence form G 001).
- ii. Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability) Code 1 (any auto).

b. Minimum Limits of Insurance

- i. Contractor shall maintain general liability insurance with limits no less than the amount set forth in California Department of Transportation Standard Specifications 7-1.06D(2) per occurrence for bodily injury, personal injury and property damage as follows:

**Liability Limits**

Total bid	For each occurrence <sup>a</sup>	Aggregate for products/completed operation	General aggregate <sup>b</sup>	Umbrella or excess liability <sup>c</sup>
≤ \$1,000,000	\$1,000,000	\$2,000,000	\$2,000,000	\$5,000,000
> \$1,000,000 ≤ \$10,000,000	\$1,000,000	\$2,000,000	\$2,000,000	\$10,000,000
> \$10,000,000 ≤ \$25,000,000	\$2,000,000	\$2,000,000	\$4,000,000	\$15,000,000
> \$25,000,000	\$2,000,000	\$2,000,000	\$4,000,000	\$25,000,000

<sup>a</sup>Combined single limit for bodily injury and property damage.

<sup>b</sup>This limit must apply separately to your work under this Contract.

<sup>c</sup>The umbrella or excess policy must contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.

- ii. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- iii. Contractor shall maintain automobile liability insurance with limits no less than \$1,000,000 per accident for bodily injury and property damage.
- iv. Workers’ Compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.

c. Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- i. The City officers, employees, agents and volunteers are to be endorsed as additional insured as respects: liability arising out of activities performed by or on behalf of the Permittee, products and completed operations of the Permittee; premises owned, occupied or used by the Permittee; or automobiles owned, leased, hired or borrowed by the Permittee. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, employees, agents or volunteers.
- ii. For claims related to this Permit, Permittee's insurance coverage shall be primary insurance as respects the City, its officers, employees, agents and volunteers; and any insurance or self-insurance maintained by the City, its officers, employees, agents or volunteers shall be excess of the Permittee's insurance and shall not contribute with it.
- iii. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, employees, agents or volunteers.
- iv. Permittee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of the insurer's liability.
- v. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested has been given to the City.
- vi. Any deductibles or self-insured retentions must be declared to and approved by the City.

16. Facilities. The installation of facilities in the public right of way requires an Encroachment Agreement from the City in addition to an Encroachment Permit.

- a. Any facilities being installed in the Property shall be kept in good and safe condition and free from any nuisance to the satisfaction of the Director of Public Works.
- b. Within thirty (30) days of receipt of a written request from the City, Permittee shall relocate its facilities at its sole cost and expense if the facility interferes with a project of the City of Emeryville. Within thirty (30) days of receipt of a written request from the City, Permittee shall at its sole cost and expense locate any subsurface facility by potholing when required by the City for the purpose of confirming the location of existing facilities in order to design or construct public facilities.
- c. Whenever a facility is abandoned in the right of way, the person owning, using, controlling or having an interest in the facility shall within thirty (30) days after such abandonment file a statement in writing with the Department of Public Works, including a detailed description of the facility's location, including a map and/or plans. If the facility is not occupied within one (1) year from the date of final inspection or is occupied then no longer occupied for one (1) year, then the facility shall be deemed abandoned. Substructures shall be considered occupied so long as there are active facilities in at least one of the ducts of the substructure. Upon abandonment, the City may require the facility to be removed by the owner at its own expense or at the City's discretion, all or part of the facility may be abandoned in place with ownership deemed to be transferred to and vested in the City at no cost.

17. Fees. Permittee certifies that neither it nor the owner of any facilities to be installed, used or repaired in the public right of way are subject to any outstanding City assessments, fees, penalties or charges. Issuance of

this Permit is conditioned upon payment of the application fee, inspection fee, performance security and any other applicable fees or security.

18. Business License. Permittee and/or contractor shall maintain a current business license in the City of Emeryville as applicable.
19. Assignment. Permittee shall not assign or otherwise transfer any rights under this Permit and any purported assignment or transfer shall automatically revoke this Permit.
20. No Dedication; Possessory Interest Tax. Nothing contained in this Permit shall be deemed a gift or dedication of any portion of the Property to or for the general public or for any public purpose whatsoever. This Permit shall not be construed to grant any real property interest or other rights to Permittee in the Property. However, if it is deemed that this Permit creates an interest subject to the possessory interest tax, then Permittee is responsible for payment of such tax.
21. No Precedent Established. This Permit is issued with the understanding that any particular action is not to be considered as establishing any precedent, including as precedent for the expediency, utility or authority of any kind of encroachment. This Permit constitutes the entire agreement between City and Permittee pertaining to entry and work upon the Property.
22. No Waiver. No waiver of any default or breach of any condition or term of this Permit shall be implied from any omission to take action on account of such default or breach.
23. Governing Law; Attorneys' Fees. This Permit shall be construed and enforced in accordance with and governed by the laws of the State of California. In the event that either party institutes any action, suit or other dispute resolution proceeding based on this Permit, the prevailing party is entitled to receive all costs and expenses, associated therewith including but not limited to reasonable attorneys' fees and courts costs.