

THIS PERMIT IS ISSUED SUBJECT TO THE FOLLOWING CONDITIONS:

Mission Viejo Municipal Code Sec. 14.03.150. - Conditions of permit.

The permit shall be subject to the following conditions, which shall be stated in the permit or incorporated by reference:

- (a) The city's encroachment permit special provisions shall be attached as conditions to the permit (unless otherwise determined by the director).
- (b) The permit must be kept at the site of the work and be shown, on demand, to any authorized representative of the city or any law enforcement officer.
- (c) The permit shall authorize work to be performed only within those rights-of-way over which the city has jurisdiction.
- (d) All work shall be performed in accordance with the provisions of the permit, and of all applicable laws, rules, and regulations of the city and any other public agency having jurisdiction and to the satisfaction of the city engineer.
- (e) The permit is nontransferable.
- (f) The city engineer may cancel the permit if the work authorized therein is not commenced within 120 days of the issuance of the permit and thereafter, in the reasonable opinion of the city engineer, is not diligently prosecuted to completion. Cancellation may be effected by written notice sent by regular mail or electronic mail to the permittee at the address shown on the application.
- (g) Not less than 24 hours before the commencement of any work authorized by the permit, the permittee shall apply to the city engineer for an inspection. In that application, the permittee shall specify the day and hour when, and the location at which, the work will be commenced. This requirement does not apply to emergency work on existing facilities within the public rights-of-way.
- (h) The permittee shall notify the city inspector when all work is completed.
- (i) The permittee shall provide proof of comprehensive liability insurance, or, if permittee holds a state-issued franchise, or a city-issued franchise and is using its own employees, proof of adequate self-insurance, for both bodily injury and property damage, in a form and in an amount acceptable to the city engineer. The city engineer may require an insurance endorsement in favor of the city. The city engineer may waive this insurance requirement if the city engineer determines that the proposed encroachment will not create any significant exposure of the city to potential liability.
- (j) In consideration for city issuance of the permit, permittee agrees to defend, indemnify, and hold harmless the city, and its officers, agents, and employees, against any and all penalties, liabilities, or loss resulting from any claim or court action arising out of any accident, loss, or damage to persons or property attributable to or occurring as a proximate result of any work undertaken by the permittee, its authorized agents, officers, representatives, or employees, under the permit. This indemnification will not apply to any claim or court action attributable to or arising out of the negligence or willful misconduct of the city, its officers, agents, or employees. City shall provide to permittee written notice of any claim or court action within ten days after the city learns of that claim or action. City shall assist in any defense that permittee must undertake in response to that claim or court action.
- (k) In the event of any controversy, claim, or dispute arising out of or relating to the permit, or the violation of any covenant contained therein, the prevailing party shall be entitled to receive from the losing party reasonable expenses, attorneys' fees, and costs.
- (l) The city engineer may, either at the time of issuance of the permit or at any time thereafter until completion of the work, prescribe reasonable time, place, and manner conditions as may be deemed necessary for the protection of the public right-of-way or public property, or for the prevention of undue interference with traffic, or to assure the safety of persons using the public rights-of-way.
- (m) All property owners and residents within 300 feet of the construction site who will be affected by the work (i.e., driveway closures, work on private property, sidewalk work in front of an adjoining property) shall be given written notice by the permittee a minimum of 48 hours prior to the start of work. This written notice shall be provided using door hangers, and the permittee shall print on the notice its contact telephone number. Any damage to private property shall be repaired by the permittee.
- (n) No excavations shall be made until after a permittee has called, at least 48 hours in advance, the Underground Service Alert (U.S.A.) of Southern California and has obtained a "digalert" identification number. No work shall be done under an encroachment permit until a Digalert identification number is obtained.
- (o) A permittee must comply with all regulations, including all stormwater best management practices, as specified in section 6.65.100 of this Code, and as required by the director.
- (p) All trenches and cuts that meet the criteria set forth in the city's encroachment permit special provisions and that are within two feet of gutter lip shall be cold planed to gutter lip.
- (q) Excavations and open cuts are prohibited within streets that have been reconstructed or overlaid with a new surface within the previous five years, or slurry sealed within the previous two years, except during emergencies as determined by the director in accordance with section 14.03.200 of this Code.
- (r) At the option of the city engineer, a permit for facilities that are actively under construction may be revoked at any time after the City provides permittee with reasonable advance notice of revocation stating a lawful cause for revocation and removal whenever:
 - (1) It appears to the city engineer that the continuance of the permitted work, whether because of changed conditions or otherwise, interferes with safe public use of the right-of-way involved; or
 - (2) The permittee fails to comply with or violates any City ordinance, safety regulations, or any material condition of the permit in a manner that precludes the safe use of the right-of-way by the public.

Upon revocation of the permit, permittee shall be responsible for the removal of the permitted improvement and restoration of the public right-of-way and public property to its pre-existing condition. If the permittee fails to remove the improvement and to restore the public right-of-way or public property within a reasonable period of time and as specified in the City's notice of revocation, the City shall be authorized to remove that improvement and to restore the public right-of-way or public property at the permittee's expense without any further notice to the permittee.

- (s) With regard to any permit application that is subject to the special provisions for large above-grade facilities set forth in section 14.03.220, the requirements applicable to those large above-grade facilities proposed by a permit applicant shall be stated in the permit or incorporated by reference.
- (t) The permittee shall make permanent repairs to and remove U.S.A. markings within the public right-of-way or public property no later than 30 days after the completion of work. Failure to complete permanent repairs and remove markings shall require the permittee to either apply for a new permit or pay applicable penalties pursuant to this Code. The permittee shall also pay city for removal fees as determined by the director if permittee fails to comply with this subsection.

(Ord. No. 06-268, § 2, 5-19-08; Ord. No. 17-324, §§ 24, 25, 9-12-17)

INDEMNIFICATION:

Permittee shall indemnify, defend, and hold harmless the City of Mission Viejo, its officers, officials, employees, agents, and volunteers from any and all losses, costs, expenses, claims, liabilities, actions, or damages, including liability for injuries to any person or persons or damage to property arising at any time during and/or arising out of or in any way connected with Permittee's authorized activities under the terms of the permit unless solely caused by the gross negligence or willful misconduct of the City of Mission Viejo, its officers, officials, employees, agents, or volunteers.

It is expressly understood and agreed between the parties to this Permit that this is an agreement and permit for access to and for certain events to occur or work to take place on City property. This Agreement and permit are not a construction contract or an agreement for design professional services as those terms are defined or used under Title 12 of the California Civil Code (§§ 2772 et. seq.).

INSURANCE REQUIREMENTS:

The permittee shall maintain and provide proof of insurance coverages in a form and an amount acceptable to City but not less than the coverages outlined below. Depending on the work to be performed, the City may increase the minimum limits of insurance required.

General liability insurance. Permittee shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage, and a \$2,000,000 completed operations aggregate. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted. The policy shall name City of Mission Viejo, its officers, officials, employees, agents, and volunteers as additional insureds.

Automobile liability insurance. Permittee shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Permittee arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned, or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

Umbrella or excess liability insurance. [If required to meet higher limits]. Permittee shall obtain and maintain an umbrella liability insurance policy with limits that will provide bodily injury, personal injury, and property damage liability coverage, including commercial general liability, automobile liability, and employer's liability. Such policy or policies shall include the following terms and conditions:

- A drop-down feature requiring the policy to respond if any primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason, other than bankruptcy or insolvency of said primary insurer;
- "Pay on behalf of" wording as opposed to "reimbursement";
- Concurrency of effective dates with primary policies.

Should Permittee obtain and maintain an excess liability policy, such policy shall be excess over commercial general liability, automobile liability, and employer's liability policies. Such policy or policies shall include wording that the excess liability policy follows the terms and conditions of the underlying policies.

Workers' compensation insurance. Permittee shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000). Permittee shall submit to the City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the City of Mission Viejo, its officers, agents, employees, and volunteers.

OTHER INSURANCE COVERAGES THAT MAY BE REQUIRED:

Contractor's pollution liability insurance. Coverage shall provide for liability arising out of sudden, accidental, and gradual pollution, and remediation. The policy limit shall be no less than \$1,000,000 per claim and in the aggregate. All activities contemplated under the Permit shall be specifically scheduled on the policy as "covered operations." The policy shall provide coverage for remediation of the site in the event of an environmental contamination event arising out of the materials, supplies, products, work, operations, or workmanship.

OTHER PROVISIONS/REQUIREMENTS:

Proof of insurance. Permittee shall provide certificates of insurance and required endorsements to the City as evidence of the insurance coverage required herein. Insurance certificates and endorsements must be approved by the City's Risk Management prior to commencement of performance. Current certification of insurance shall be kept on file with the City for the contract period and any additional length of time required thereafter. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Duration of coverage. Permittee shall procure and maintain for the period of the permit/length of the Project, and any additional length of time required thereafter, insurance against claims for injuries to persons or damages to property, or financial loss which may arise from or in connection with the performance of the Work hereunder by Permittee, their agents, representatives, employees, subcontractors, or subconsultants.

Primary/non-contributing. Coverage provided by Permittee shall be primary and any insurance or self-insurance procured or maintained by the City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

The City's rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, the City has the right but not the duty to obtain the insurance it deems necessary, and any premium paid by the City will be promptly reimbursed by Permittee or the City will withhold amounts sufficient to pay premium from Permittee payments. In the alternative, the City may cancel this Agreement.

Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with a "Best's" insurance Rating of A- (or higher) and Financial Size Category Class VII (or larger), unless otherwise approved by City.

Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against the City of Mission Viejo, its elected or appointed officers, agents, officials, employees, and volunteers or shall specifically allow Permittee or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Permittee hereby waives its own right of recovery against the City and shall require similar written express waivers and insurance clauses from each of its subcontractors/subconsultants.

Enforcement of contract provisions (non estoppel). Permittee acknowledges and agrees that any actual or alleged failure on the part of the City to inform Permittee of noncompliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

Requirements not limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits on other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Permittee maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Permittee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Notice of cancellation. Permittee agrees to oblige its insurance agent or broker and insurers to provide the City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage. If any of the Permittee's insurers are unwilling to provide such notice, then Permittee shall have the responsibility of notifying the City immediately in the event of Permittee's failure to renew any of the required insurance coverages or insurer's cancellation or non-renewal.

Additional insured status. General liability, automobile liability, and umbrella/excess liability insurance policies shall provide or be endorsed to provide that the City of Mission Viejo and its officers, officials, employees, agents, and volunteers shall be additional insureds under such policies.

Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to the City and approved of in writing.

Separation of insureds. A severability of interests provision must apply for all additional insureds ensuring that Permittee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

Pass through clause. Permittee agrees to ensure that its subconsultants, subcontractors, and any other party who is brought onto or involved in the project/service by Permittee (hereinafter collectively "subcontractor"), provide the same minimum insurance coverage and endorsements required of Permittee. Permittee agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. However, in the event Permittee's subcontractor cannot comply with this requirement, which proof must be submitted to the City, Permittee shall be required to ensure that its subcontractor provide and maintain insurance coverage and endorsements sufficient to the specific risk of exposure involved with subcontractor's scope of work and services, with limits less than required of the Permittee, but in all other terms consistent with the Permittee's requirements under this agreement. This provision does not relieve the Permittee of its contractual obligations under the agreement and/or limit its liability to the amount of insurance coverage provided by its subcontractors. This provision is intended solely to provide Permittee with the ability to utilize a subcontractor who may be otherwise qualified to perform the work or services but may not carry the same insurance limits as required of the Permittee under this agreement given the limited scope of work or services provided by the subcontractor. Permittee agrees that upon request, all agreements with subcontractors, and others engaged in the project, will be submitted to the City for review.

The City's right to revise specifications. The City reserves the right at any time during the term of the agreement/permit to change the amounts and types of insurance required by giving the Permittee ninety (90) days advance written notice of such change.

Self-insured retentions. Any self-insured retentions must be declared to and approved by the City. The City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible, or require proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention through confirmation from the underwriter.

Timely notice of claims. Permittee shall give the City prompt and timely notice of claims made or suits instituted that arise out of or result from Permittee's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional insurance. Permittee shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.

The person signing these Conditions of Permit on behalf of Permittee warrants and represents that they have the authority to execute this Agreement on behalf of Permittee and have the authority to bind Permittee to the performance of its obligations hereunder. Permittee agrees that the person executing this Agreement is an authorized agent of Permittee with the power to bind Permittee/Applicant to this Agreement.

I certify that I have read and understand the above Conditions of Permit and Insurance Requirements and agree to the requirements set forth herein:

Signature of Applicant: _____ **Date:** _____

Print Name: _____