

EL DORADO COUNTY
DEPARTMENT OF TRANSPORTATION
ENCROACHMENT AGREEMENT FOR SOUND WALL
MITIGATION MEASURE 6.3

PERMIT # _____ **APN:** _____
LOCATION: _____

For Landscape Improvements that will be on County property, the Permittee will:

1. **PLANS:** Submit landscape plans and obtain approval from the Department of Transportation (DOT) prior to starting any landscaping improvements.
2. **PREMISES:** County permits the use of the property adjoining the property identified as APN: _____ as shown on Exhibit A, which is attached hereto and incorporated herein, for landscaping purposes and no other purposes.
3. **INDEMNIFICATION:** To the fullest extent allowed by law, Permittee shall defend, indemnify, and hold harmless County and its board members, officers, directors, employees, agents, volunteers, consultants, and representatives from and against any and all claims, actions, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred, brought for or on account of, injury to or death of any person, including but not limited to workers, County employees, and the public, or damage to the County property, which arise out of, pertain to, or relate to the acts and/or omissions, or willful misconduct of Permittee, its board members, officers, directors, agents, employees, volunteers, representatives, contractors and subcontractors. This duty of Permittee includes the duty of defense, inclusive of that set forth in California Civil Code section 2778. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Encroachment Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Encroachment Agreement.
4. **ATTORNEYS' FEES:** Pay costs and reasonable attorney fees should County be required to commence an action to enforce the provisions of this agreement or in enforcing the security obligations provided herein.
5. **INSURANCE:** If Permittee hires a contractor for the installation of the Landscape Improvements, Permittee's contractor shall obtain and maintain at contractor's expense during the installation, insurance with respect to contractor's business in the minimum amounts described generally and in a form and with a surety acceptable to County as follows:
 - A. Full Workmen's Compensation and Employer's Liability Insurance covering all employees of the Permittee's contractor as required by law in the State of California.

- B. Comprehensive Public Liability Insurance or Comprehensive Liability Insurance (Bodily Injury and Property Damage) of not less than \$2,000,000 combined single limit per occurrence, including but not limited to endorsements for the following coverage: explosion hazard, personal injury, premises-operations, products, and completed operations, blanket contractual, and independent contractors liability.
- C. Comprehensive Automobile Liability Insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in connection with Permittee's contractor's business of not less than \$1,000,000 combined single limit per occurrence.
- D. In the event any explosives will be used by Contractor, the Contractor shall provide either separate insurance or an endorsement to insurance provided under subparagraph B specifically covering any operations using explosives in an amount not less than \$5,000,000 per occurrence.
- E. At request of the County, the Permittee contractor shall provide complete copies of all insurance contracts to verify coverage with specific regard to inclusions and exclusions.

Additional Insured: The insurance required under B, C, and D above shall include the County of El Dorado, its officers and employees and each of them as additional insured except with regard to occurrences that are the result of their sole negligence.

Primary Coverage: The insurance required under B, C, and D above shall provide that it is primary coverage with respect to Permittee's contractor, and the County of El Dorado, and all other additional insured.

Cancellation Notice: The insurance required above shall provide that no cancellation or material change in any policy shall become effective except upon thirty (30) days prior written notice to El Dorado County, Department of Transportation, 2850 Fairlane Ct., Placerville, California, 95667.

Premium payments: The insurance companies shall have no recourse against the County of El Dorado, its officers and employees and any of them for payment of any premiums or assessments under any policy issued by a mutual insurance company.

Certificates Requirements: Permittee's contractor shall furnish certificates satisfactory to DOT and /or the El Dorado County Risk Manager as evidence that the insurance required above is being maintained.

Policy Deductibles: Permittee's contractor shall be responsible for all deductibles in all of the Permittee's or his contractor's insurance policies.

Obligations: Permittee's contractor's INDEMNITY and other obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this permit/agreement.

Material Breach: Failure of Permittee by his contractor to maintain the insurance required by this paragraph, or to comply with any of the requirements of this paragraph, shall constitute a material breach of the entire permit/agreement.

Commencement of Performance: Permittee's contractor shall not commence performance of this permit/agreement unless and until compliance with each and every requirement of this section is achieved.

6. APPLICATION FEE: There is no application fee associated with this agreement.
7. USE AND MAINTENANCE: Permittee may only install those landscape improvements shown on the submitted landscape plan approved by the Department of Transportation. Permittee, through its authorized agents, employees and contractors, shall have the right to enter upon the County property as may be reasonably necessary for the purpose of installing, maintaining, repairing, replacing, and/or removing the landscape improvements, so long as said improvements do not impair the structural integrity of the sound wall. In conjunction with the installation and continued maintenance of their landscape improvements, Permittee, its authorized agents, employees and contractors, shall not interfere with the structural integrity of the sound wall in any manner, inclusive of the modification or alteration of its foundation, or the fixation of any structures or improvements thereon. Permittee shall be responsible for all maintenance of its landscape improvements. Permittee agrees to repair any and all damage to the County's property, or a part thereof, directly or indirectly caused by the acts and omissions of Permittee, its agents, employees, contractors, and residents as a result of Permittee's use and maintenance herein.
8. NO MODIFICATION ONCE COMPLETED: Once the landscaping is completed, Permittee shall not modify or change in any material manner the landscaping improvements without the prior written consent of the Department of Transportation. If damage results from the removal of any such landscape improvements to the Sound Wall or other County property, Permittee shall repair such damages at its sole expense.
9. TERM: This Agreement shall run with the land and expire with 10 days notice from either party.
10. RIGHT OF ENTRY: The Permittee, with 48 hours notice, hereby grants permission to the County of El Dorado ("County"), a political subdivision of the State of California and its authorized employees, agents, and its consultants and contractors to enter upon the land described as APN: _____ for the maintenance and repair of the sound wall structure and any incidental

maintenance and repair necessary to protect the integral structure of the sound wall.

- 11. FUTURE DAMAGE: In the event County must enter upon the land described as APN: _____, pursuant to paragraph 10, County will not be responsible for any damage caused by any reason in performance of any such repairs or maintenance.

I/WE HAVE READ AND AGREE TO THESE CONDITIONS

SIGNATURE _____ DATE _____

SIGNATURE _____ DATE _____

NOTARY ACKNOWLEDGMENT

STATE OF _____)
: SS

COUNTY OF _____)

Capacity claimed by signer:

[] Individual; [] Trustee(s); [] Attorney-in-Fact; [] Guardian/Conservator;

[] Corporate Officer(s) _____

Title(s);

[] Partner(s) -- [] Limited, [] General

[] Other _____

On _____ before me, _____, a Notary Public in and for said State, personally appeared _____ [] personally known to

me --or-- [] proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

(Signature of Notary)
County of _____
My commission expires _____