

When Recorded Return to: Contracts Branch  
Flood Control District of Maricopa County  
2801 West Durango Street  
Phoenix, AZ 85009

**RESOLUTION FCD 2018R013  
PERMIT TO WORK IN FLOOD CONTROL DISTRICT  
OF MARICOPA COUNTY REAL PROPERTY**

Agenda Item: C-69-19-006-6-00

**WHEREAS**, the Flood Control District of Maricopa County, hereinafter referred to as the DISTRICT, has been established in accordance with provisions of Arizona Revised Statutes Title 48, Chapter 21 for the purpose of acquiring, constructing, maintaining and operating flood control facilities to control the waters of rivers and streams, and other surface waters to prevent the flooding of property and the endangering of lives of people; and

**WHEREAS**, the laws of the State of Arizona Title 48, Chapter 21, authorize the Board of Directors of the DISTRICT to control and manage said structures, channels and associated DISTRICT real property; and

**WHEREAS**, it is necessary in the public interest that all uses within the DISTRICT real property for flood control structures and channels by person(s), corporation(s), association(s) and political subdivision(s) be regulated and controlled so that said DISTRICT real property may be effectively utilized and maintained for their primary purposes of flood control structures and ancillary services, and

**WHEREAS**, on July 24, 2002, the Board of Directors through its Chairman adopted Resolution FCD 2002R002 (Agenda Item C-69-02-088-6-00) to establish fees and usage of DISTRICT real property, and the DISTRICT desires to supersede that Resolution and adopt the following Resolution.

**NOW, THEREFORE, BE IT RESOLVED** that no person(s), corporation(s), association(s) and political subdivision(s) shall, without first obtaining a permit therefore, enter DISTRICT real property for the purpose of performing construction of any kind, reconstruction, removal, repair, maintenance or any other work or activities, including, but not limited to the following:

1. Pavement, curbs, gutters, driveways, sidewalks, and roadways;
2. Drainage or flood control facilities;
3. Grading, oiling, graveling or any surfacing of any road, street, alley or way;
4. Water, gas, sewer or other types of pipelines;
5. Irrigation, wells, wastewater, water quality and groundwater recharge facilities;
6. Utility lines such as electric, television, telephone, communications and other facilities above ground or sub-surface;
7. Multi-use facilities, bike paths and parks;
8. Fencing;
9. Structures, signs (whether temporary or permanent);
10. Temporary construction, parking and storage yards;
11. Temporary ingress/egress, including but not limited to field studies, field investigations, recreational activities and uses of any kind;
12. Plantings, landscaping, watering and/or drainage systems, and decorative placements.

**BE IT FURTHER RESOLVED** that the Board of Directors of the DISTRICT hereby authorizes the Director of the DISTRICT or his/her designee to issue such permits and to take such actions designated as DISTRICT actions herein. "DISTRICT" when used hereafter in this Resolution shall refer to the Board of Directors, the Director or his/her designee.

**BE IT FURTHER RESOLVED** that all applications for such permits shall be submitted thru the DISTRICT's online Right-of-Way Use Permit System unless otherwise approved by the Director or his/her designee. The application shall be accompanied by copies of plans, specifications, reports, calculations and exhibits that sufficiently and clearly illustrate the location, dimensions, scope, method and purpose of the proposed work.

**BE IT FURTHER RESOLVED** that the DISTRICT is authorized to require permit applicants to take all actions, precautions and measures that the DISTRICT finds necessary to maintain the integrity of the DISTRICT'S real property where issues of public safety and liability are involved, such as but not limited to permits which impact dams, flood retarding structures and levees.

**BE IT FURTHER RESOLVED** that the DISTRICT may require part or full time qualified independent inspection of the permitted activity, at the cost of the Permittee, when it is determined by the DISTRICT that the permit involves a significant issue of public safety or potentially significant impact to DISTRICT real property. Such determination and requirement will be made solely by the DISTRICT on a case-by-case basis.

Applicants for such permits may be either a design engineer, developer, a contractor or other; however, the work may be only performed by (1) a permitted contractor, (2) utility company, (3) governmental agency, or (4) resident owner of residential property, where the applicant proposes to do the work. Permits shall be issued only to the person(s), corporation(s), association(s) and political subdivision(s) making application therefore and may not be assigned or transferred to another person, corporation or political subdivision by the Permittee. If a Permittee assigns his permit to another, the permit shall become void. A permit shall be valid for the time as indicated on the permit, unless canceled or revoked sooner. If work is not completed within the allotted time period, an extension may be granted. If no work is performed after a permit is obtained, the Permittee may apply for cancellation of the permit in writing, prior to expiration.

**BE IT FURTHER RESOLVED** that the DISTRICT will determine the appropriate permit fee in accordance with the schedule of fees attached hereto as **EXHIBIT A** and the estimated market value of, or a deposit for, any land use fee and/or easements required. Permit fees may be waived for those instances where the DISTRICT and the applicant have a reciprocal waiver agreement or project agreement. The applicant shall deposit with the DISTRICT all required fees before any permit is issued.

For permit activities that impact real property for, and/or structures built by the US Army Corps of Engineers (USACE) and require a Section 408 review and approval, the applicant may request, in writing to the DISTRICT, to seek expedited Section 408 reviews through the use of the DISTRICT's 214 Memorandum of Agreement (214 MOA) with the USACE. Review activities under the 214 MOA may include generally shorter review times as compared to typical review times, facilitation of a more efficient review process through improved coordination and communication, and/or the development or use of programmatic agreements or standard operating procedures. The applicant shall pay all costs associated with a Section 408 expedited review if the use of the 214 MOA is requested. For additional details and payment procedure, refer to **EXHIBIT A**.

**BE IT FURTHER RESOLVED** that if any work is undertaken prior to securing a permit, all work shall cease until the Director or his/her designee determines whether the DISTRICT real property should be restored to its original condition or grants a permit in accordance with this resolution. The Director may require the DISTRICT'S real property to be restored to its original condition prior to granting a permit, and for any unpermitted activity may determine to assess an After-The-Fact administrative fee of \$1,500 in addition to the normal inspection, easement payment and rental fees, if applicable, the normal application fee, and the review fees prior to issuance of a permit. For all unpermitted activities by others on DISTRICT real property, the DISTRICT is authorized to recover its full cost to investigate and correct unpermitted activity and the DISTRICT is authorized to recover all costs associated with any subsequent permit related to the unpermitted activity. The determination of whether to impose full cost recovery will be made solely by the DISTRICT on a case-by-case basis in consideration of risk to public safety or in consideration of impacts to DISTRICT real property caused by the unpermitted activity. The DISTRICT may also seek to recover from those making unpermitted use of DISTRICT real property any and all cost and/or claims by third parties for personal injury and/or damages to real or personal property caused by the unpermitted use. The above conditions will be in addition to any civil or criminal penalties assessed against any trespassers or other entities using DISTRICT real property without first obtaining a permit.

**BE IT FURTHER RESOLVED** that DISTRICT staff will determine if the improvements constructed are in accordance with the specifications and details for permits granted. Any Permittee doing work under any permit as set forth in this resolution shall notify the DISTRICT at least two full working days in advance of the time and place the work will begin.

**BE IT FURTHER RESOLVED** that this resolution shall not prevent any person(s), corporation(s), association(s) and political subdivision(s) from making excavation to maintain any pipe or conduit lawfully on or under any DISTRICT real property, as may be necessary for the preservation of life or property, when an urgent necessity arises during the hours that the offices of the DISTRICT are closed. Any person(s), corporation(s), association(s) and political subdivision(s) making emergency use shall call the DISTRICT'S Blue Stake contact, provide written notification within 24 hours to the DISTRICT via email with details of emergency measure and apply for a permit within three (3) business days after the DISTRICT offices are again opened or the person(s), corporation(s), association(s) and political subdivision(s) making emergency use of DISTRICT real property will be required to pay the additional fees as mentioned above. The full cost of remedying any impact to the function or operation of DISTRICT real property will be assessed to and paid by the person(s), corporation(s), association(s) and political subdivision(s) making such emergency use of DISTRICT real property. The DISTRICT may also seek to recover from those making emergency use of DISTRICT real property all costs and/or claims by third parties for personal injury and/or damages to real or personal property caused by the emergency use.

**BE IT FURTHER RESOLVED** that all work done in DISTRICT real property shall be done in accordance with the terms and conditions of the permit.

**BE IT FURTHER RESOLVED** that the DISTRICT shall require each applicant as referred to in this resolution, before granting the permit, to deposit with the DISTRICT a Performance Bond or a Security in Lieu of Performance Bond in an amount as determined by the DISTRICT, not to exceed \$500,000 as a guarantee that the work will be completed in accordance with the permit. The Director or his/her designated agent at his/her sole discretion may waive the Security or Performance Bond.

The bond shall be joint and several in form and made payable to the DISTRICT. The bond shall be signed by the applicant, and a qualified surety company authorized to transact business in the State of Arizona. The condition shall be that the applicant will faithfully complete the work described in the application in accordance with the plans, specifications and conditions thereof.

The bond shall be released after all terms and conditions in the permit have been met and upon satisfactory completion and acceptance of the work, or may be canceled after the applicant has provided other security satisfactory to the DISTRICT which will cover obligations that remain. The bond is subject to cancellation as noted above, or may be terminated after all obligations are fulfilled which were "permitted" prior to the DISTRICT receiving cancellation notice from surety company. The surety company shall not cancel, change or amend any bond without thirty (30) days prior written notice having been served on the DISTRICT.

**BE IT FURTHER RESOLVED** that the Permittee shall be responsible for all liability for personal injury or property damage arising out of or related to work performed by the Permittee under permit. Permittee shall be required to indemnify and hold harmless the DISTRICT, its agents, officers, boards, employees, successors or assigns against any and all claims, actions, costs or expenses for property damages or personal injuries caused by or related to the rights granted in the permit. The Permittee shall defend, indemnify and hold them, and each of them, harmless from such claims, including claims alleging the joint negligence of the DISTRICT, its officers and employees and the Permittee. The requirement for indemnification for all liability shall extend to the person(s), corporation(s), association(s) and political subdivision(s) for which such permit shall be acquired by a Permittee acting as agent for the entity.

No applicant shall be entitled to a permit under this resolution unless and until the applicant has filed and maintains on file with the DISTRICT, a certificate certifying that the applicant and/or the applicant's company or business firm carries public liability and property damage insurance issued by an insurance carrier authorized to do business in the State of Arizona, insuring the applicant and the DISTRICT and its agents against loss by reason of injuries to, or death of persons or damages to property arising out of or related to work performed by the applicant under this section, and shall be provided by any Permittee per the current established minimum limits set by Maricopa County Risk Management Department for Commercial General Liability.

Failure by the applicant to provide the DISTRICT with such a certificate of insurance, and failure by the DISTRICT to demand the filing by Permittee of such a certificate before such a permit is issued, shall not be deemed to waive Permittee's obligation to provide the insurance specified herein. Such insurance certificate shall remain in effect and be kept on file with the DISTRICT until all work to be performed by the Permittee under the permit has been completed.

Commercial General Liability Insurance Coverage must be obtained and maintained per the current limits established by Maricopa County Risk Management and adopted by the Board of Directors for General Aggregate, Products/Completed Operation Aggregate, and Each Occurrence. The insurance certificate shall provide that coverage cannot be canceled or expire without providing thirty (30) days written notice of such action to the DISTRICT, also noting the permit number.

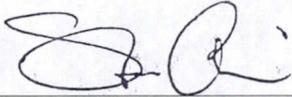
No evidence of liability insurance shall be required as a condition precedent to the issuance of a permit to a federal, state, county or municipal agency, political subdivision, or any public service corporation with a net worth of more than \$2,000,000, as reflected by its most current balance sheet.

Issuance of permits as herein provided shall not eliminate any obligation by the applicant for any other permits that may be required by either federal, state, local or other county jurisdictions.

**BE IT FURTHER RESOLVED** that this Resolution supersedes Resolution FCD 2002R002 of the Board of Directors dated July 24, 2002 (Agenda Item C-69-02-088-6-00).

**BE IT FURTHER RESOLVED** that the effective date of the revised provisions of this Resolution shall be the date of signature by the Chairman of the Board of Directors.

Dated this 21 day of October, 2018.



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Chairman, Board of Directors

ATTEST:



DEPUTY Clerk of the Board

**Enclosure:** Exhibit A, Permit Use and Fee Schedule

**EXHIBIT A to RESOLUTION FCD 2018R013  
PERMIT USE AND FEE SCHEDULE**

- |    |                                   |  |
|----|-----------------------------------|--|
| 1. | Permit Filing Fees (in all cases) | \$250.00/application   |
| 2. | Temporary Use *                   | \$325.00 + Land Use Fee  |
| 3. | Permanent Installation Review Fee | \$650.00 /first submittal<br>\$325.00/ for each submittal thereafter   |
| 4. | Inspection Fees                   | \$70.00/inspection (within 25 miles of Durango Complex)<br>\$80.00/inspection (25 to 50 miles of Durango Complex)<br>\$90.00/inspection (over 50 miles of Durango Complex)<br><i>Number of inspections is to be calculated based on the project complexity and duration.</i> |
| 5. | Land Use Fee (if applicable) **   | \$600.00 minimum or market value (whichever is greater)  |
| 6. | Easement (if applicable) **       | \$600.00 minimum or market value (whichever is greater)  |
| 7. | Valuation Fee (if applicable) *** | \$250.00 (market analysis) or actual cost if an appraisal is required.   |
| 8. | Extensions                        | \$50.00 Filing Fee + Land Use Fee and Additional Inspections (if applicable)   |
| 9. | After-the-Fact Permit             | \$1,500.00 (assessed in addition to the above fees)  |

\* No Permanent Installation Review Fee will be assessed when the DISTRICT real property is utilized for temporary use only. (For example: temporary ingress/egress, geotechnical explorations & surveys)

\*\* Land Use Fee or Easement Fees will not be charged on existing easements for the same use held by the applicant.

\*\*\* A market analysis will be used for easements valued at \$10,000 or less.

Funding of Expedited USACE Section 408 Reviews: If the applicant's request for an expedited review through the 214 MOA is approved by the DISTRICT, the applicant and DISTRICT will provide detailed project information and a scope of design and construction efforts to the USACE. The USACE will proceed with developing a detailed cost estimate for review and approval activities that are to be undertaken. The USACE estimate will include a cost for each review activity, schedule, and identification of travel by USACE personnel that may be necessary to the activities covered. Prior to the USACE commencing the expedited review, the applicant shall provide funds to the DISTRICT in the full amount of the USACE cost estimate. The DISTRICT shall then pass through the applicant funds to the USACE. If at any time the USACE determines that additional funds are needed, the USACE will notify the DISTRICT in writing and the DISTRICT will notify the applicant. The applicant shall pay the full amount of such additional funds to the DISTRICT for pass through to the USACE.

Permit Filing Fees are non-refundable. Initial Permanent Installation Review Fee covers the first submittal only and inspection fees are per trip. The number of inspection trips required is determined by the DISTRICT on a case-by-case basis.