

AGREEMENT No. TR50C-142 (*Encroachment Permit Agreement*)  
 Aliso Creek Bikeway (TR50C-142)

## **ENCROACHMENT PERMIT AGREEMENT**

This ENCROACHMENT PERMIT AGREEMENT (“**Agreement**”) is made and entered into on \_\_\_\_\_, 2022, by and between the County of Orange, a political subdivision of the State of California (“**County**”), and the State of California, acting by and through its Department of Transportation (“**State**”). County and State are referred to below individually as “**Party**” and collectively as “**Parties**.”

### **RECITALS**

This Agreement is made with respect to the following facts:

The State is performing a project for the widening of Interstate 5 freeway from Alicia Parkway to El Toro Road in the Cities of Laguna Hills, Laguna Niguel, and Mission Viejo (“**Project**”), County of Orange, State of California.

The County owns and operates the Aliso Creek Bikeway that runs from Aliso and Wood Canyons Wilderness Park to Whiting Ranch Wilderness Park (“**Bikeway**”).

The State owns a portion of the Bikeway segment (“**Premises**”) and, per the State, the County has been issued an encroachment permit (“**Encroachment Permit**”) for the Premises. The expired Encroachment Permit was never recorded. Neither Party has located the Encroachment Permit and the contents of the Encroachment Permit are unknown. Therefore, Parties agree that it is necessary to re-enter into an agreement between Parties to memorialize the County’s rights and responsibilities.

The Parties desire to acknowledge a joint use of the Premises whereby the State continues to own the underlying fee and retains full rights over the Premises and authorizes the County to operate and maintain the Premises as a bikeway consistent with the *Regional Bikeway Guidelines and Standards* to ensure continuity and connectivity of the current Bikeway.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the following mutual promises and agreements, the Parties agree as follows:

A. Incorporation of Recitals. The Parties agree that the Recitals constitute the factual basis upon which the County and the State have entered into this Agreement. The County and the State, each acknowledges the accuracy of the Recitals and agrees that the Recitals are incorporated into this Agreement as though fully set forth at length.

B. Coordination by the Parties.

(1) The County’s OC Parks Director or an authorized designee (“**County**”

**Representative**”), shall be the County’s representative in all matters pertaining to this Agreement.

(2) The State designates Right of Way Chief or any subsequently authorized designee (“**State Representative**”), to represent the State in all matters pertaining to this Agreement.

C. State’s Responsibilities. The State shall have the following responsibilities:

(1) To allow access by the County, to and from the Premises for the County to use the Premises for the purposes stated herein.

D. County’s Rights and Responsibilities. The County shall have the following rights and responsibilities:

(1) The non-exclusive right to operate and maintain the Premises for bikeway purposes (“**Bikeway Use**”) over and across that certain real property described in **Exhibit A** and depicted on **Exhibit B**, both exhibits attached hereto and made a part hereto (hereinafter referred to as the “**Premises**”).

(2) Reasonable access to the Premises for the purposes of exercising the rights and responsibilities herein granted by a practical route or routes in, upon, over, and across State’s property, which shall include access and use by the general public.

(3) The County shall maintain and repair the Premises and appurtenant improvements for the purposes stated herein, including but not limited to signage, Bikeway’s tread (area traversed by bikeway users), lodge-pole fencing, and erosion control features.

(4) The County shall abide by Encroachment Permit General Provisions as described in **Exhibit C**, attached hereto and made a part hereto.

E. It is understood and agreed by the Parties hereto and their successors and assigns, that said County’s Rights herein granted shall be subject to the following terms, limitations, reservations, and conditions:

F. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

G. In any action or proceeding brought to enforce or interpret any provision of this Agreement, or where any provision hereof is validly asserted as a defense, each party shall bear its own attorneys’ fees and costs.

H. Nothing in this Agreement is intended nor shall anything in this Agreement be

construed to transfer to the County or its successors or assigns or to relieve the State or its successors or assigns or predecessors in title of any responsibility or liability the State or its successors or assigns or predecessors in title now has, has had or comes to have with respect to human health or the environment, including but not limited to responsibility or liability relating to hazardous or toxic substances or materials (as such terms as those used in this sentence are defined by statute, ordinance, case law, governmental regulation or other provision of the law). Furthermore, the County may exercise its right under law to bring action, if necessary, to recover cleanup costs and penalties paid, if any, from the State or any others who are ultimately determined by a court of competent jurisdiction and/or a federal, state or local regulatory or administrative governmental agency or body having jurisdiction, to have responsibility for said hazardous or toxic substances or materials upon, within, or under the real property interests transferred pursuant to this Agreement. Notwithstanding the foregoing, the County shall be and remain liable for any hazardous or toxic substances or materials which become located, because of the County's operations, upon, within, or under the real property interests transferred pursuant to this Agreement.

I. Revocation. The State shall have the right to revoke this Agreement if the County violates the terms of this Agreement and the County fails to cure the same within thirty (30) days. Upon the State's notice, the County agrees to diligently cure such breach within thirty (30) days. Notwithstanding the foregoing, in an emergency situation as determined by the State, this Agreement may be revoked immediately.

J. Recordation of Agreement. The County shall record this Agreement and provide a conformed copy to the State.

K. Non-waiver of Rights and Remedies. The failure of a Party to exercise any one or more of its rights or remedies under this Agreement shall not constitute a waiver of that Party's right to enforce that right or seek that remedy in the future. No course of conduct or act of forbearance on any one or more occasions by any Party to this Agreement shall preclude that Party from asserting any right or remedy available to it in the future. No course of conduct or act of forbearance on any one or more occasions shall be deemed to be an implied modification of the terms of this Agreement.

L. Assignability. This Agreement may not be assigned by either Party without the express written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Any attempted assignment of this Agreement not in compliance with the terms of this Agreement shall be null and void and shall confer no rights or benefits upon the assignee.

M. No Oral Modifications. This Agreement represents the entire understanding of the State and the County and supersedes all other prior or contemporaneous written or oral agreements pertaining to the subject matter of this Agreement. This Agreement may be modified, but only by written amendment signed by both the State and the County, or their authorized representatives pursuant to this Agreement.

N. Binding upon Successors. This Agreement and each of its terms shall be binding upon the State, the County, and their respective officers, elected officials, employees, agents, contractors, and permitted successors and assigns.

O. Indemnification.

(1) The State shall defend with counsel approved in writing by the County, indemnify, and hold harmless the County, and its respective elected officials, officers, employees, agents, contractors, consultants, and authorized volunteers (“**County Indemnitees**”) against any and all damages, losses, fines, penalties, costs and expenses, including actual attorneys’ fees and legal expenses, arising out of any and all claims and suits by parties not affiliated with the County Indemnitees relating to this Agreement and/or challenging any action taken by the State with regard to the State’s Obligations as contemplated herein.

(2) The County shall defend with counsel approved in writing by the State, indemnify, and hold harmless the State and its respective elected officials, officers, employees, agents, contractors, consultants, and authorized volunteers (“**State Indemnitees**”) against any and all damages, losses, fines, penalties, costs and expenses, including actual attorneys’ fees and legal expenses, arising out of any and all claims and suits by parties not affiliated with the State Indemnitees relating to this Agreement and/or challenging any action taken by the County with regard to the County’s Rights as contemplated herein.

(3) Provided, however, that neither Party shall have an obligation to defend, indemnify, or hold harmless the other Party if the claims and suits brought against that Party seeking indemnification are the result of the sole negligence, actions, or omissions of that Party.

P. Governing Law. The Parties agree that this Agreement has been negotiated and executed in the State of California and shall be governed by and constructed under the laws of the State of California. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in San Diego County, California, and the Parties agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394. Furthermore, the Parties hereto specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

Q. Time is of the Essence. Except as otherwise expressly stated, time is of the essence in the performance of every act required pursuant to this Agreement.

R. Covenant of Further Assurances. The County and the State shall take all other actions and execute all other documents which are reasonably necessary to effectuate this Agreement.

S. Interpretation.

(1) The County and the State agree that this Agreement is the product of mutual negotiations and is an arm’s-length transaction. Each Party has negotiated this

Agreement with the advice and assistance of legal counsel of its own choosing.

(2) It is further agreed that this document is a product of mutual drafting efforts by both the County and the State and, accordingly, the rule that ambiguities in a document shall be construed against the drafter of the document shall have no application to this Agreement. In construing and interpreting this Agreement, the finder of fact shall give effect to the mutual intention of the County and the State, notwithstanding such ambiguity, and may refer to the facts and circumstances under which this Agreement is made, and such other extraneous evidence as may assist the finder of fact in ascertaining the intent of the County and the State.

T. Severability. If any term or provision of this Agreement is found to be invalid or unenforceable, the County and the State both agree that they would have executed this Agreement notwithstanding the invalidity of such term or provision. The invalid term or provision may be severed from the Agreement and the remainder of the Agreement may be enforced in its entirety.

U. Headings. The headings of each section of this Agreement are for the purpose of convenience only and shall not be construed to either expand or limit the express terms and language of each section.

V. Representations and Authority. Each individual Party signing this Agreement on behalf of a Party hereby represents and warrants to the other Party that all necessary legal prerequisites to that Party's execution of this Agreement have been satisfied and that he or she has been authorized to sign this Agreement and bind the Party on whose behalf he or she signs.

W. Notices. Any notices, documents, correspondence, and any other communications concerning this Agreement to be given by either party to the other hereunder shall be addressed to the parties at their respective addresses as follows:

To State: State of California  
 Department of Transportation  
 1750 East. 4th Street, Suite 100  
 Santa Ana, CA 92705  
 Attention: Right of Way, Office Chief  
 Phone: (657) 328-6300

To County: OC Parks  
 Attention: OC Parks Director  
 13042 Old Myford Road  
 Irvine, CA 92602-2304  
 Reference: Aliso Creek Bikeway – TR50C-142  
 Phone: (949) 923-3748

Notices given pursuant to this Agreement shall be deemed received as follows:

(1) If sent by first class mail, five (5) days after deposit into the United States Mail with postage prepaid; or, if sent by registered or certified mail, twenty-four (24) hours after deposit into the United States Mail with postage prepaid.

(2) If by express courier service or hand delivery, on the date of receipt by the receiving Party.

(3) The addresses for notices set forth in this Section may be changed upon written notice of such change to the other Party, as appropriate.

X. Days. Unless otherwise specified to the contrary, “days” in this Agreement shall mean calendar, not business days.

Y. Reservations. The State hereby reserves for itself and its successors and assigns, such surface, subsurface and aerial rights in the Premises as will not interfere with or prohibit the use by the County of the rights and use herein granted. In the event the State exercises such rights, the State’s only responsibility shall be to backfill with compacted earth to the grade of the surrounding property following completion of the State’s activity. The County shall restore the County’s facilities to the design and grade previously approved.

Z. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

AA. Exhibits. This Agreement includes the following, which are attached hereto and made a part hereof:

- (1) Exhibit A – Legal Description of Premises
- (2) Exhibit B – Depiction of Premises
- (3) Exhibit C – Encroachment Permit General Provisions

*[Signatures on following page]*

IN WITNESS WHEREOF, each Party hereto has executed this Agreement by its duly authorized representatives as of the date set forth below.

**County**

**COUNTY OF ORANGE**, a political subdivision of the State of California

By: \_\_\_\_\_  
Chairman of the Board of Supervisors  
Orange County, California

Date: \_\_\_\_\_


Signed and certified that a copy of this document has been delivered to the Chairman of the Board per G.C. Sec. 25103, Resolution 79-1535.

ATTEST:

\_\_\_\_\_  
Robin Stieler  
Clerk of the Board of Supervisors  
Orange County, California

Date: \_\_\_\_\_

APPROVED AS TO FORM:  
Office of the County Counsel  
Orange County, California

By:  \_\_\_\_\_  
Deputy

Digitally signed by Michael A. Haubert  
DN: cn=Michael A. Haubert, o=County of  
Orange, ou=County Counsel,  
email=michael.haubert@coco.ocgov.com,  
c=US  
Date: 2022.02.07 10:13:08 -08'00'

Date: February 7, 2022

**State**

**STATE OF CALIFORNIA**, acting by and through  
its Department of Transportation

By: \_\_\_\_\_

Print Name: Evangelina Washington

Title: Branch Chief, R/W Planning & Management,  
Project Coordination, & Acquisition

Date: \_\_\_\_\_

APPROVED AS TO FORM:

State of California  
San Diego, California

By: \_\_\_\_\_  
Deputy

Date: \_\_\_\_\_



## **Exhibit A**

### **Legal Description of Bikeway Use Premises**

**EXHIBIT A****LEGAL DESCRIPTION****ALISO CREEK RIDING AND HIKING TRAIL**

Facility No.: TR50C

Parcel No.: 142

That certain portion of land, partly in the cities of Lake Forest and Laguna Hills, County of Orange, State of California, over those portions of land described in the Final Order of Condemnation recorded February 15, 1968 per Book 8519, Page 571 of Official Records in the office of the County Recorder of said County; said certain portion being a strip of land 16.00 feet wide, the centerline of which is described as follows:

Commencing at the westerly corner of Easement Deed to the State of California recorded March 20, 1972 in Book 10043, Page 606 in said Office of the County Recorder, said corner also being the westerly corner of Lot A of Tract No. 5531 per map filed in Book 197, Pages 29 through 33 of Miscellaneous Maps in said Office of the County Recorder, as said corner is shown on Record of Survey No. 2015-1202 filed in Book 303, Pages 1 through 24 of Records of Survey in said Office of the County Recorder; said corner also being the westerly terminus of that line shown as "N84°19'50"W 82.66'" on said Record of Survey; thence easterly along the northerly line of said Easement Deed South 84°19'50" East 16.94 feet to an intersection with a non-tangent curve concave northwesterly and having a radius of 150.00 feet; a radial line through said intersection bears South 68°36'11" East; said intersection also being the **True Point of Beginning**; thence leaving said line, southwesterly along said curve, 19.26 feet through a central angle of 07°21'25"; thence non-tangent to said curve South 28°45'14" West 111.00 feet to the beginning of a curve concave northwesterly and having a radius of 207.00 feet; thence southwesterly 73.98 feet along said curve through a central angle of 20°28'34"; thence non-tangent to said curve South 49°13'48" West 65.00 feet to the beginning of a curve concave northerly and having a radius of 77.00 feet; thence westerly 95.44 feet along said curve through a central angle of 71°01'02"; thence non-tangent to said curve North 59°45'10" West 402.00 feet.

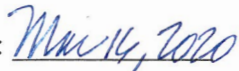
The sidelines of said strip are to be continued or shortened to terminate westerly at the generally southerly line of said Final Order of Condemnation and easterly at the southwesterly line of said Lot A.

Containing 0.157, more or less.

See EXHIBIT B attached hereto and by this reference made a part hereof.

APPROVED  
Kevin Hills, County Surveyor, L.S. 6617

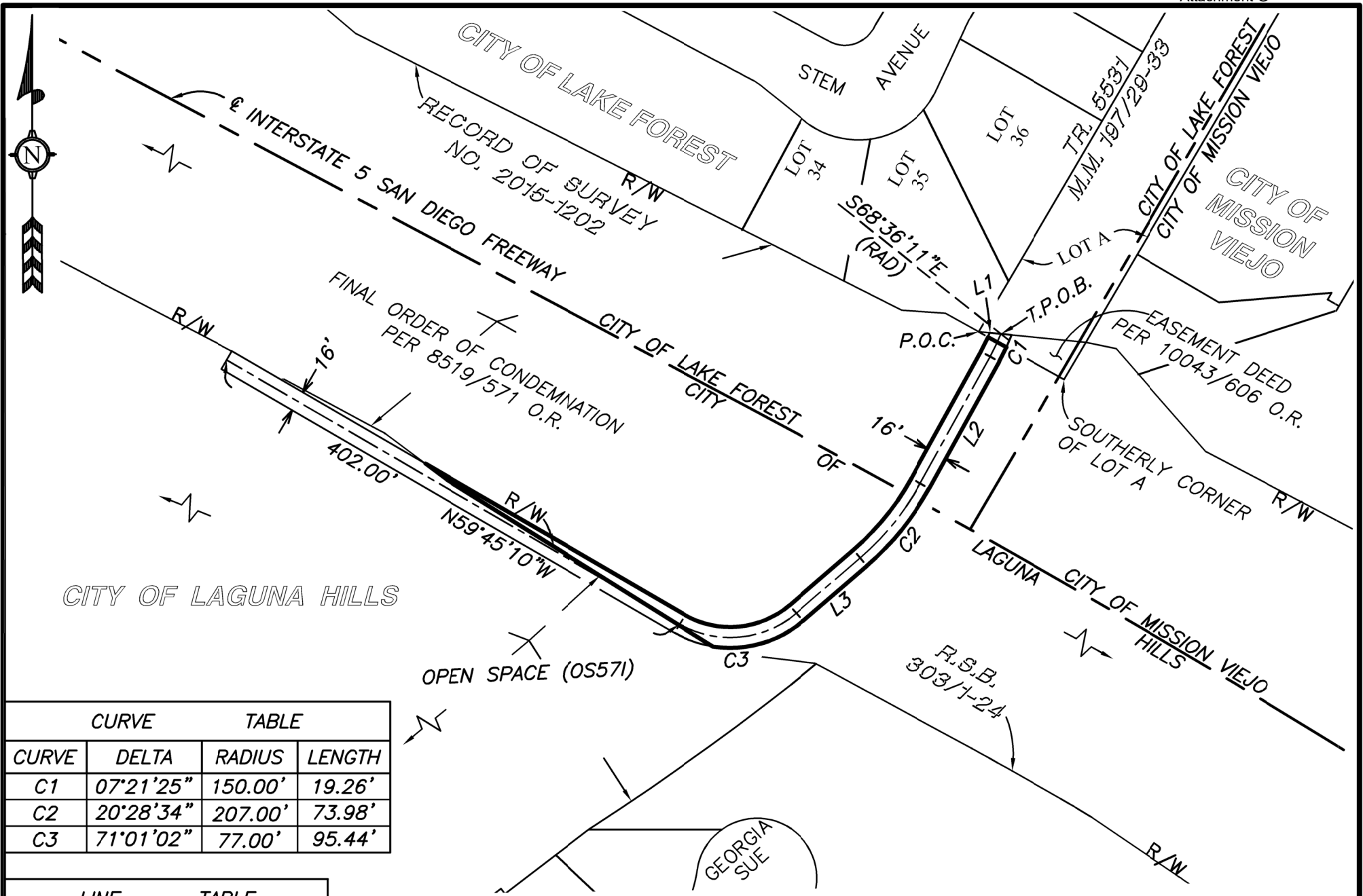
  
By: Raymond J. Rivera, L.S. 8324

Date: 



## **Exhibit B**

### **Depiction of Bikeway Use Premises**



CITY OF LAGUNA HILLS

OPEN SPACE (OS571)

GEORGIA SUE

CURVE		TABLE	
CURVE	DELTA	RADIUS	LENGTH
C1	07°21'25"	150.00'	19.26'
C2	20°28'34"	207.00'	73.98'
C3	71°01'02"	77.00'	95.44'

LINE		TABLE	
LINE	BEARING	DISTANCE	
L1	N84°19'50"W	16.94'	
L2	N28°45'14"E	111.00'	
L3	N49°13'48"E	65.00'	



**OC PUBLIC WORKS  
OC SURVEY**  
RIGHT-OF-WAY SERVICES

ROW ID No. 2019-052  
SCALE : 1" = 100'

**EXHIBIT B**

SHEET 1 OF 1

PROJECT: ALISO CREEK RIDING AND HIKING TRAIL: TR50C-142

PREPARED BY:  
MAL

## **Exhibit C**

### **Encroachment Permit General Provisions**

# ENCROACHMENT PERMIT GENERAL PROVISIONS

TR – 0045 (REV. 04/2021)

1. **AUTHORITY:** The California Department of Transportation (“Department”) has authority to issue encroachment permits under Division 1, Chapter 3, Article 1, Sections 660 through 734 of the Streets and Highways Code.
2. **REVOCACTION:** Encroachment permits are revocable on five (5) business days’ notice unless otherwise stated on the permit and except as provided by law for public corporations, franchise holders, and utilities. Notwithstanding the foregoing, in an emergency situation as determined by the Department, an encroachment permit may be revoked immediately. These General Provisions and any applicable Special Provisions are subject to modification or abrogation by the Department at any time. Permittees’ joint use agreements, franchise rights, reserved rights or any other agreements for operating purposes in State of California (“State”) highway right-of-way may be exceptions to this revocation.
3. **DENIAL FOR NONPAYMENT OF FEES:** Failure to pay encroachment permit fees when due may result in rejection of future applications and denial of encroachment permits.
4. **ASSIGNMENT:** This encroachment permit allows only the Permittee or Permittee’s authorized agent to work within or encroach upon the State highway right-of-way, and the Permittee may not assign or transfer this encroachment permit. Any attempt to assign or transfer this encroachment permit shall be null and void.
5. **ACCEPTANCE OF PROVISIONS:** Permittee understands and agrees to accept and comply with these General Provisions, the Special Provisions, any and all terms and/or conditions contained in or incorporated into the encroachment permit, and all attachments to the encroachment permit (collectively “the Permit Conditions”), for any encroachment, work, and/or activity to be performed under this encroachment permit and/or under color of authority of this encroachment permit. Permittee understands and agrees the Permit Conditions are applicable to and enforceable against Permittee as long as the encroachment remains in, under, or over any part of the State highway right-of-way.
6. **BEGINNING OF WORK:** When traffic is not impacted (see General Provision Number 35), the Permittee must notify the Department’s representative two (2) business days before starting permitted work. Permittee must notify the Department’s representative if the work is to be interrupted for a period of five (5) business days or more, unless otherwise agreed upon. All work must be performed on weekdays during regular work hours, excluding holidays, unless otherwise specified in this encroachment permit.
7. **STANDARDS OF CONSTRUCTION:** All work performed within State highway right-of-way must conform to all applicable Departmental construction standards including but not limited to: Standard Specifications, Standard Plans, Project Development Procedures Manual, Highway Design Manual and Special Provisions.  
Other than as expressly provided by these General Provisions, the Special Provisions, the Standard Specifications, Standard Plans, and other applicable Departmental standards, nothing in these General Provisions is intended to give any third party any legal or equitable right, remedy, or claim with respect to the encroachment permit and/or to these General Provisions or any provision herein. These General Provisions are for the sole and exclusive benefit of the Permittee and the Department.  
Where reference is made in such standards to “Contractor” and “Engineer,” these are amended to be read as “Permittee” and “Department’s representative,” respectively, for purposes of this encroachment permit.
8. **PLAN CHANGES:** Deviations from plans, specifications, and/or the Permit Conditions as defined in General Provision Number 5 are not allowed without prior approval from the Department’s representative and the Federal Highway Administration (“FHWA”) representative if applicable.
9. **RIGHT OF ENTRY, INSPECTION AND APPROVAL:** All work is subject to monitoring and inspection. The United States, the State, the Department, and the Directors, officers, employees, agents, and/or contractors of the State and/or of the Department, and other state, and federal agencies, and the FHWA, through their agents or representatives, must have full access to highway facilities/encroachment area, at any and all times for the purpose of inspection, maintenance, activities needed for construction/reconstruction, and operation of the State highway right-of-way.  
Upon completion of work, Permittee must request a final inspection for acceptance and approval by the Department. The local public agency Permittee must not give final construction approval to its contractor until final acceptance and approval by the Department is obtained.
10. **PERMIT AT WORKSITE:** Permittee must keep the permit package or a copy thereof at the work site at all times and must show it upon request to any Department representative or law enforcement officer. If the permit package, or a copy thereof, is not kept and made available at the work site at all times, the work must be suspended.
11. **CONFLICTING ENCROACHMENTS:** Permittee must yield start of work to ongoing, prior authorized work adjacent to or within the limits of the Permittee’s project site. When existing encroachments conflict with Permittee’s work, the Permittee must bear all cost for rearrangements (e.g., relocation, alteration, removal, etc.).

12. **PERMITS AND APPROVALS FROM OTHER PUBLIC AGENCIES AND/OR ENTITIES:** This encroachment permit is invalidated if the Permittee has not obtained all permits and approvals necessary and required by law, including but not limited to permits from the California Public Utilities Commission (“CPUC”), California Occupational Safety and Health Administration (“Cal-OSHA”), and any other public agency and/or entity having jurisdiction. Permittee warrants all such permits and approvals have been obtained before beginning work under this encroachment permit. The Department may, at the Department’s discretion, require the Permittee to demonstrate that Permittee has obtained all such permits/approvals, and Permittee shall demonstrate this at the time and in the manner specified by the Department.
13. **PEDESTRIAN AND BICYCLIST SAFETY:** A safe continuous passageway must be maintained through the work area at existing pedestrian or bicycle facilities. At no time must pedestrians be diverted onto a portion of the street used for vehicular traffic. At locations where safe alternate passageways cannot be provided, appropriate signs and barricades must be installed at the limits of construction and in advance of the limits of construction at the nearest crosswalk or intersection to detour pedestrians to facilities across the street. Attention is directed to Section 7-1.04 “Public Safety,” and to Section 12-4.04 “Temporary Pedestrian Access Routes,” and to Section 16-2.02 “Temporary Pedestrian Facility,” of the Department’s Standard Specifications, and to California Vehicle Code section 21760, subdivision (c).
14. **PUBLIC TRAFFIC CONTROL:** The Permittee must provide traffic control protection, warning signs, lights, safety devices, etc., and take all other measures necessary for the traveling public’s safety as required by law and/or the Department. While providing traffic control, the needs of all road users, including but not limited to motorists, bicyclists and pedestrians, including persons with disabilities in accordance with the Americans with Disabilities Act, must be an essential part of the work activity.
- Lane, Bike Lane, Sidewalk, Crosswalk, and/or shoulder closures must comply with the Department’s Standard Specifications and Standard Plans for Temporary Traffic Control Systems & Temporary Pedestrian Access Routes, and with the applicable Special Provisions. Where issues are not addressed in the Standard Specifications, Standard Plans, and/or Special Provisions, the California Manual on Uniform Traffic Control Devices (Part 6, Temporary Traffic Control) must be followed.
15. **MINIMUM INTERFERENCE WITH TRAFFIC:** Permittee must plan and conduct work so as to create the least possible inconvenience to the traveling public (motorized vehicles, unmotorized vehicles such as bicycles, pedestrians, person(s) with disabilities, etc.), such that traffic is not unreasonably delayed.
16. **STORAGE OF EQUIPMENT AND MATERIALS:** The storage of equipment or materials is not allowed within State highway right-of-way, unless specified within the Special Provisions of this encroachment permit. If encroachment permit Special Provisions allow for the storage of equipment or materials within the State highway right-of-way, the equipment and material storage must also comply with Section 7-1.04, Public Safety, of the Department’s Standard Specifications.
17. **CARE OF DRAINAGE:** Permittee must provide alternate drainage for any work interfering with an existing drainage facility in compliance with the Department’s Standard Specifications, Standard Plans, and/or as directed by the Department’s representative.
18. **RESTORATION AND REPAIRS IN STATE HIGHWAY RIGHT-OF-WAY:** Permittee is responsible for restoration and repair of State highway right-of-way resulting from permitted work (Streets and Highways Code, section 670 et seq.).
19. **STATE HIGHWAY RIGHT-OF-WAY CLEAN UP:** Upon completion of work, Permittee must remove and dispose of all scraps, refuse, brush, timber, materials, etc. off the State highway right-of-way. The aesthetics of the highway must be as it was before work started or better.
20. **COST OF WORK:** Unless stated otherwise in the encroachment permit or a separate written agreement with the Department, the Permittee must bear all costs incurred for work within the State highway right-of-way and waives all claims for indemnification or contribution from the United States, the State, the Department, and from the Directors, officers, and employees of the State and/or the Department. Removal of Permittee’s personal property and improvements shall be at no cost to the United States, the State, and the Department.
21. **ACTUAL COST BILLING:** When specified in the permit, the Department will bill the Permittee actual costs at the currently set Standard Hourly Rate for encroachment permits.
22. **AS-BUILT PLANS:** When required, Permittee must submit one (1) set of folded as-built plans within thirty (30) calendar days after completion and acceptance of work in compliance with requirements listed as follows:
- Upon completion of the work provided herein, the Permittee must submit a paper set of As-Built plans to the Department’s representative.
  - All changes in the work will be shown on the plans, as issued with the permit, including changes approved by Encroachment Permit Rider.
  - The plans are to be prominently stamped or otherwise noted “AS-BUILT” by the Permittee’s representative who was responsible for overseeing the work. Any original plan that was approved with a Department stamp, or by signature of the Department’s representative, must be used for producing the As-Built plans.
  - If construction plans include signing or striping, the dates of signing or striping removal, relocation, or installation must be shown on the As-Built plans when required as a condition of the encroachment permit. When the construction plans show signing and striping for staged construction on separate sheets,

- the sheet for each stage must show the removal, relocation, and installation dates of the appropriate staged striping and signing.
- e) As-Built plans must contain the Encroachment Permit Number, County, Route, and Post Mile on each sheet.
  - f) The As-Built Plans must not include a disclaimer statement of any kind that differs from the obligations and protections provided by sections 6735 through 6735.6 of the California Business and Professions Code. Such statements constitute non-compliance with Encroachment Permit requirements and may result in the Department retaining Performance Bonds or deposits until proper plans are submitted. Failure to comply may also result in denial of future encroachment permits or a provision requiring a public agency to supply additional bonding.
23. **PERMITS FOR RECORD PURPOSES ONLY:** When work in the State highway right-of-way is within an area under a Joint Use Agreement (JUA) or a Consent to Common Use Agreement (CCUA), a fee exempt encroachment permit is issued to the Permittee for the purpose of providing a notice and record of work. The Permittee's prior rights must be preserved without the intention of creating new or different rights or obligations. "Notice and Record Purposes Only" must be stamped across the face of the encroachment permit.
24. **BONDING:** The Permittee must file bond(s), in advance, in the amount(s) set by the Department and using forms acceptable to the Department. The bonds must name the Department as obligee. Failure to maintain bond(s) in full force and effect will result in the Department stopping all work under this encroachment permit and possibly revoking other encroachment permit(s). Bonds are not required of public corporations or privately-owned utilities unless Permittee failed to comply with the provisions and/or conditions of a prior encroachment permit. The surety company is responsible for any latent defects as provided in California Code of Civil Procedure section 337.15. A local public agency Permittee also must comply with the following requirements:
- a) In recognition that project construction work done on State property will not be directly funded and paid by State, for the purpose of protecting stop notice claimants and the interests of State relative to successful project completion, the local public agency Permittee agrees to require the construction contractor to furnish both a payment and performance bond in the local public agency's name with both bonds complying with the requirements set forth in Section 3-1.05 Contract Bonds of the Department's Standard Specifications before performing any project construction work.
  - b) The local public agency Permittee must defend, indemnify, and hold harmless the United States, the State and the Department, and the Directors, officers, and employees of the State and/or Department, from all project construction related claims by contractors, subcontractors, and suppliers, and from all stop notice and/or mechanic's lien claimants. The local public agency also agrees to remedy, in a timely manner and to the Department's satisfaction, any latent defects occurring as a result of the project construction work.
25. **FUTURE MOVING OF INSTALLATIONS:** Permittee understands and agrees to relocate a permitted installation upon notice by the Department. Unless under prior property right or agreement, the Permittee must comply with said notice at the Permittee's sole expense.
26. **ENVIRONMENTAL:**
- a) **ARCHAEOLOGICAL/HISTORICAL:** If any archaeological or historical resources are identified or encountered in the work vicinity, the Permittee must immediately stop work, notify the Department's representative, retain a qualified archaeologist who must evaluate the site at Permittee's sole expense, and make recommendations to the Department's representative regarding the continuance of work.
  - b) **HAZARDOUS MATERIALS:** If any hazardous waste or materials (such as underground storage tanks, asbestos pipes, contaminated soil, etc.) are identified or encountered in the work vicinity, the Permittee must immediately stop work, notify the Department's representative, retain a qualified hazardous waste/material specialist who must evaluate the site at the Permittee's sole expense, and make recommendations to the Department's representative regarding the continuance of work. Attention is directed to potential aerially deposited lead (ADL) presence in unpaved areas along highways. It is the Permittee's responsibility to take all appropriate measures to protect workers in conformance with California Code of Regulations Title 8, Section 1532.1, "Lead," and with Cal-OSHA Construction Safety Orders, and to ensure roadway soil management is in compliance with Department of Toxic Substances Control (DTSC) requirements.
  - c) **Biological:** If any regional, state, or federally listed biological resource is identified or encountered in the work vicinity, the Permittee must immediately stop work, notify the Department's representative, retain a qualified biologist who must evaluate the site at Permittee's sole expense, and make recommendations to the Department's representative regarding the continuance of work.
27. **PREVAILING WAGES:** Work performed by or under an encroachment permit may require Permittee's contractors and subcontractors to pay appropriate prevailing wages as set by the California Department of Industrial Relations. Inquiries or requests for interpretations relative to enforcement of prevailing wage requirements must be directed to the California Department of Industrial Relations.
28. **LIABILITY, DEFENSE, AND INDEMNITY:** The Permittee agrees to indemnify and save harmless the United States, the State, the Department, and the Directors, officers, employees, agents and/or contractors of the State and/or of the Department, including but not limited to the Director



of Transportation and the Deputy Directors, from any and all claims, demands, damages, costs, liability, suits, or actions of every name, kind, and description, including but not limited to those brought for or on account of property damage, invasion of privacy, violation or deprivation of a right under a state or federal law, environmental damage or penalty, or injury to or death of any person including but not limited to members of the public, the Permittee, persons employed by the Permittee, and/or persons acting on behalf of the Permittee, arising out of or in connection with: (a) the issuance and/or use of this encroachment permit; and/or (b) the encroachment, work, and/or activity conducted pursuant to this encroachment permit, or under color of authority of this encroachment permit but not in full compliance with the Permit Conditions as defined in General Provision Number 5 ("Unauthorized Work or Activity"); and/or (c) the installation, placement, design, existence, operation, and/or maintenance of the encroachment, work, and/or activity; and/or (d) the failure by the Permittee or anyone acting on behalf of the Permittee to perform the Permittee's obligations under any part of the Permit Conditions as defined in General Provision Number 5, in respect to maintenance or any other obligation; and/or (e) any change to the Department's property or adjacent property, including but not limited to the features or conditions of either of them, made by the Permittee or anyone acting on behalf of the Permittee; and/or (f) a defect or obstruction related to or caused by the encroachment, work, and/or activity whether conducted in compliance with the Permit Conditions as defined in General Provision Number 5 or constituting Unauthorized Work or Activity, or from any cause whatsoever. The duty of the Permittee to indemnify and save harmless includes the duties to defend as set forth in Section 2778 of the Civil Code.

It is the intent of the parties that except as prohibited by law, the Permittee will defend, indemnify, and hold harmless as set forth in this General Provision Number 28 regardless of the existence or degree of fault or negligence, whether active or passive, primary or secondary, on the part of: the United States, the State; the Department; the Directors, officers, employees, agents and/or contractors of the State and/or of the Department, including but not limited to the Director of Transportation and the Deputy Directors; the Permittee; persons employed by the Permittee; and/or persons acting on behalf of the Permittee.

The Permittee waives any and all rights to any type of expressed or implied indemnity from or against the United States, the State, the Department, and the Directors, officers, employees, agents, and/or contractors of the State and/or of the Department, including but not limited to the Director of Transportation and the Deputy Directors.

The Permittee understands and agrees to comply with the obligations of Titles II and III of the Americans with Disabilities Act in the conduct of the encroachment, work, and/or activity whether conducted pursuant to this encroachment permit or constituting Unauthorized Work

or Activity, and further agrees to defend, indemnify, and save harmless the United States, the State, the Department, and the Directors, officers, employees, agents, and/or contractors of the State and/or of the Department, including but not limited to the Director of Transportation and the Deputy Directors, from any and all claims, demands, damages, costs, penalties, liability, suits, or actions of every name, kind, and description arising out of or by virtue of the Americans with Disabilities Act.

The Permittee understands and agrees the Directors, officers, employees, agents, and/or contractors of the State and/or of the Department, including but not limited to the Director of Transportation and the Deputy Directors, are not personally responsible for any liability arising from or by virtue of this encroachment permit.

For the purpose of this General Provision Number 28 and all paragraphs herein, "contractors of the State and/or of the Department" includes contractors, and their subcontractors, under contract to the State and/or the Department.

This General Provision Number 28 and all paragraphs herein take effect immediately upon issuance of this encroachment permit, and apply before, during, and after the encroachment, work, and/or activity contemplated under this encroachment permit, whether such work is in compliance with the Permit Conditions as defined in General Provision Number 5 or constitutes Unauthorized Work or Activity, except as otherwise provided by California law. The Permittee's obligations to defend, indemnify, and save harmless under this General Provision Number 28 take effect immediately upon issuance of this encroachment permit and have no expiration date, including but not limited to situations in which this encroachment permit expires or is revoked, the work or activity performed under this encroachment permit is accepted or not accepted by the Department, the encroachment, work, and/or activity is conducted in compliance with the Permit Conditions as defined in General Provision Number 5 or constitutes Unauthorized Work or Activity, and/or no work or activity is undertaken by the Permittee or by others on the Permittee's behalf.

If the United States or an agency, department, or board of the United States is the Permittee, the first two paragraphs of this General Provision Number 28 (beginning "The Permittee agrees to indemnify..." and "It is the intent of the parties...") are replaced by the following paragraph:

Claims for personal injury, death, or property damage allegedly caused by the negligent or wrongful act or omission of any employee of the United States acting within the scope of their official duties are subject to the Federal Tort Claims Act, as amended, 28 U.S.C. § 1346 and § 2671 et seq. (Chapter 171).

29. **NO PRECEDENT ESTABLISHED:** This encroachment permit is issued with the understanding that it does not establish a precedent.
30. **FEDERAL CIVIL RIGHTS REQUIREMENTS FOR PUBLIC ACCOMMODATION:**

- a) As part of the consideration for being issued this encroachment permit, the Permittee, on behalf of Permittee and on behalf of Permittee's personal representatives, successors in interest, and assigns, does hereby covenant and agree that:
- i) No person on the grounds of race, color, or national origin may be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
  - ii) That in connection with the construction of any improvements on said lands and the furnishings of services thereon, no discrimination must be practiced in the selection and retention of first-tier subcontractors in the selection of second-tier subcontractors.
  - iii) That such discrimination must not be practiced against the public in their access to and use of the facilities and services provided for public accommodations (such as eating, sleeping, rest, recreation), and operation on, over, or under the space of the State highway right-of-way.
  - iv) That the Permittee must use the premises in compliance with all other requirements imposed pursuant to Title 15, Code of Federal Regulations, Commerce and Foreign Trade, Subtitle A. Office of the Secretary of Commerce, Part 8 (15 C.F.R. Part 8) and as said Regulations may be amended.
- b) That in the event of breach of any of the above nondiscrimination covenants, the State and the Department have the right to terminate this encroachment permit and to re-enter and repossess said land and the facilities thereon and hold the same as if said permit had never been made or issued.
31. **MAINTENANCE:** The Permittee is responsible as Permittee's sole expense for the encroachment, and the inspection, maintenance, repair, and condition thereof, so that it does not negatively impact State highway safety, maintenance, operations, construction, activities needed for construction/reconstruction, State facilities, or other encroachments. Additional permits or approval documents may be required authorizing additional work related to inspection, repair, and/or maintenance activities.
32. **SPECIAL EVENTS:** In accordance with subdivision (a) of Streets and Highways Code section 682.5 and 682.7, the Department is not responsible for the conduct or operation of the permitted activity, and the applicant agrees to defend, indemnify, and hold harmless the United States, the State, the Department, and the Directors, officers, employees, agents, and contractors of the State and/or of the Department, including but not limited to the Director of Transportation and the Deputy Directors, from any and all claims, demands, damages, costs, liability, suits, or actions of every name, kind and description arising out of any activity for which this encroachment permit is issued.
- The Permittee is required, as a condition of this encroachment permit, for any event that awards prize compensation to competitors in gendered categories, for any participant level that receives prize compensation, to ensure the prize compensation for each gendered category is identical at each participant level. (Streets and Highways Code, section 682.7.)
- The Permittee understands and agrees to comply with the obligations of Titles II and III of the Americans with Disabilities Act in the conduct of the event, and further agrees to defend, indemnify, and save harmless the United State, the State and the Department, and the Directors, officers, and employees of the State and/or Department, including but not limited to the Director of the Department and the Deputy Directors, from any and all claims, demands, damages, costs, liability, suits, or actions of every name, kind and description arising out of or by virtue of the Americans with Disabilities Act.
33. **PRIVATE USE OF STATE HIGHWAY RIGHT-OF-WAY:** State highway right-of-way must not be used for private purposes without compensation to the State. The gifting of public property uses and therefore public funds is prohibited under the California Constitution, Article XVI, Section 6.
34. **FIELD WORK REIMBURSEMENT:** Permittee must reimburse the Department for field work performed on Permittee's behalf to correct or remedy hazards or damaged facilities, or to clear refuse, debris, etc. not attended to by the Permittee.
35. **LANE CLOSURE REQUEST SUBMITTALS AND NOTIFICATION OF CLOSURES TO THE DEPARTMENT:** Lane closure request submittals and notifications must be in accordance with Section 12-4.02, and Section 12.4-04, of the Department's Standard Specifications or as directed by the Department's representative. The Permittee must notify the Department's representative and the Traffic Management Center ("TMC") before initiating a lane closure or conducting an activity that may cause a traffic impact. In emergency situations when the corrective work or the emergency itself may affect traffic, the Department's representative and the TMC must be notified as soon as possible.
36. **SUSPENSION OF TRAFFIC CONTROL OPERATION:** The Permittee, upon notification by the Department's representative, must immediately suspend all traffic lane, bike lane, sidewalk, crosswalk, and/or shoulder closure operations and any operation that impedes the flow of traffic. All costs associated with this suspension must be borne by the Permittee.
37. **UNDERGROUND SERVICE ALERT (USA) NOTIFICATION:** Any excavation requires compliance with the provisions of Government Code section 4216 et seq., including but not limited to notice to a regional notification center, such as Underground Service Alert (USA). The Permittee must provide notification to the Department representative at least five (5) business days before, and the regional notification center at least forty-

eight (48) hours before, performing any excavation work within the State highway right-of-way.

38. **COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT (ADA):** All work within the State highway right-of-way to construct and/or maintain any public facility must be designed, maintained, and constructed strictly in accordance with all applicable Federal Access laws and regulations (including but not limited to Section 504 of the Rehabilitation Act of 1973, codified at 29 U.S.C. § 794), California Access laws and regulations relating to ADA, along with its implementing regulations, Title 28 of the Code of Federal Regulations Parts 35 and 36 (28 C.F.R., Ch. I, Part 35, § 35.101 et seq., and Part 36, § 36.101 et seq.), Title 36 of the Code of Federal Regulations Part 1191 (36 C.F.R., Ch. XI, Part 1191, § 1119.1 et seq.), Title 49 of the Code of Federal Regulations Part 37 (49 C.F.R., Ch. A, Part 37, § 37.1 et seq.), the United States Department of Justice Title II and Title III for the ADA, and California Government Code section 4450 et seq., which require public facilities be made accessible to persons with disabilities.

Notwithstanding the requirements of the previous paragraph, all construction, design, and maintenance of public facilities must also comply with the Department's

Design Information Bulletin 82, "Pedestrian Accessibility Guidelines for Highway Projects" and Standard Plans & Specifications on "Temporary Pedestrian Access Routes."

39. **STORMWATER:** The Permittee is responsible for full compliance with the following:
- a) For all projects, the Department's Storm Water Program and the Department's National Pollutant Discharge Elimination System (NPDES) Permit requirements under Order No. 2012-0011-DWQ, NPDES No CAS000003; and
  - b) In addition, for projects disturbing one acre or more of soil, with the California Construction General Permit Order No. 2009-0009-DWQ, NPDES No CAS000002; and
  - c) In addition, for projects disturbing one acre or more of soil in the Lahontan Region with Order No. R6T-2016-0010, NPDES No CAG616002.
  - d) For all projects, it is the Permittee's responsibility to install, inspect, repair, and maintain all facilities and devices used for water pollution control practices (Best Management Practices/BMPs) before performing daily work activities.