

**STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION
ENCROACHMENT PERMIT GENERAL PROVISIONS
TR-0045 (REV. 09/2017)**

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. **REVOCATION:** 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 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 are 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:** No party other than the permittee or permittee’s authorized agent is allowed to work under this encroachment permit.
5. **ACCEPTANCE OF PROVISIONS:** Permittee understands and agrees to accept and comply with these General Provisions, the Special Provisions, any and all terms contained in this encroachment permit, and all attachments to this encroachment permit, for any work to be performed under this encroachment permit.
6. **BEGINNING OF WORK:** When traffic is not impacted (see General Provision # 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 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 encroachment permit provisions are not allowed without prior approval from the Department’s representative.
9. **INSPECTION AND APPROVAL:** All work is subject to monitoring and inspection. 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 FROM OTHER AGENCIES:** This encroachment permit is invalidated if the permittee has not obtained all permits 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), or any other public agency having jurisdiction. Permittee warrants all such permits have been obtained before beginning work under this encroachment permit.
13. **PEDESTRIAN AND BICYCLIST SAFETY:** A safe minimum continuous passageway of four (4) feet 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*, of the Department's Standard Specifications.

- 14. PUBLIC TRAFFIC CONTROL:** As required by law, 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. 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 and/or shoulder closures must comply with the Department's Standard Specifications and Standard Plans for traffic control systems, 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, such that traffic is not unreasonably delayed. On conventional highways, permittee must place properly attired flagger(s) to stop or warn the traveling public in compliance with the California Manual on Uniform Traffic Control Devices (Chapter 6E, *Flagger Control*).

- 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 State, the Department, and from the Directors, officers, and employees of the State and/or 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:

- a) Upon completion of the work provided herein, the permittee must submit a paper set of As-Built plans to the Department's representative.
- b) All changes in the work will be shown on the plans, as issued with the permit, including changes approved by Encroachment Permit Rider.
- c) 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.
- d) 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 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 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 permittee's 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.

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 State, the Department, and all 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 brought for or on account of property damage 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 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 work or other activity conducted pursuant to this encroachment permit, and/or (c) the installation, placement, subsequent operation, and/or maintenance of said encroachment, and/or (d) the failure by the permittee or anyone acting on behalf of the permittee to perform permittee's obligations under this encroachment

permit in respect to maintenance or any other obligation, and/or (e) a defect or defects in the work, or obstructions related to the work, 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 above regardless of the existence or degree of fault or negligence, whether active or passive, primary or secondary, on the part of the State, the Department, the Directors, officers, employees, agents and/or contractors of the State and/or 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 against 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 understands and agrees to comply with the obligations of Titles II and III of the Americans with Disabilities Act in the conduct of the permitted activity, and further agrees to defend, indemnify, and save harmless the State, the Department, the Directors, officers, employees, and/or agents 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 or by virtue of the Americans with Disabilities Act.

Permittee understands and agrees the Directors, officers, employees, and/or agents 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 section and all paragraphs herein, "State's contractors" includes contractors and their subcontractors under contract to the State and/or the Department performing work within the same postmile limits as the work under this encroachment permit.

This section and all paragraphs herein take effect upon issuance of this encroachment permit, and apply both during and after the work or other activity contemplated under this encroachment permit, except as otherwise provided by California law.

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 OF HIGHWAYS: By accepting this encroachment permit, the permittee agrees to properly maintain any encroachment. This assurance requires the permittee to provide inspection and repair any damage, at permittee's expense, to State facilities resulting from the encroachment.

32. SPECIAL EVENTS: In accordance with subdivision (a) of Streets and Highways Code section 682.5, 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 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 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 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 use and therefore public funds is prohibited under the California Constitution, Article 16.
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. **NOTIFICATION OF CLOSURES TO DEPARTMENT AND TRAFFIC MANAGEMENT CENTER (TMC):** The permittee must notify the Department's representative and the Transportation Management Center (TMC) at least seven (7) days before initiating a lane closure or conducting an activity that may cause a traffic impact. A confirmation notification should occur three (3) days before closure or other potential traffic impact. In emergency situations when the corrective work or the emergency itself may affect traffic, TMC and the Department's representative 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 lane 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 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."