

***CONFIDENTIALITY and HOLD HARMLESS AGREEMENT  
for the Sharing of Electronic Files***

WHEREAS, the California Department of Transportation (herein "DEPARTMENT") agrees to provide the following entity certain information which is confidential, privileged, protected, or exempted from public inspection (herein "Information"):

\_\_\_\_\_  
\_\_\_\_\_  
[Name of entity, address, telephone and fax number, and E-mail address] (herein "RECIPIENT").

The RECIPIENT represents and warrants that it is (check one):

- 1. A governmental agency, acting within the scope of its authority.
- 2. An encroachment permit applicant or holder who needs the Information for the following reasons: \_\_\_\_\_  
\_\_\_\_\_
- 3. Other entity that needs the Information for the following reasons: \_\_\_\_\_  
\_\_\_\_\_

NOW THEREFORE, the parties hereto (herein collectively the "Parties") mutually agree to the following terms and conditions.

- 1. The DEPARTMENT agrees to furnish RECIPIENT with the Information described more particularly as follows (state whether the information is to be provided in a static or vector format): \_\_\_\_\_  
\_\_\_\_\_

List of files including file type (Use additional sheets if necessary.):

\_\_\_\_\_  
\_\_\_\_\_

[NOTE: Electronic information provided hereunder is NOT intended to include the underlying meta-data or otherwise hidden data not readily accessible by normal on-screen viewing, nor shall RECIPIENT access such meta-data or hidden data.]

Said Information pertains to State Route \_\_\_\_\_, located in \_\_\_\_\_ County, from Post Mile \_\_\_\_\_ to Post Mile \_\_\_\_\_ only or Kilometer Post \_\_\_\_\_ to Kilometer Post \_\_\_\_\_, and/or Project number \_\_\_\_\_.

2. RECIPIENT agrees to hold the above described Information in trust and confidence and agrees that it shall be used only in connection with improvements to DEPARTMENT facilities or State highway related purposes, and shall not be used for any other purpose or be disclosed to any third party, without the express prior written authorization of the DEPARTMENT.
3. It is understood and agreed to by the Parties that the Information provided under the terms of this Agreement is confidential, privileged, protected, or exempted from public inspection under Federal, State and local laws. By making the Information available to the RECIPIENT, the DEPARTMENT does not hereby waive or relinquish any rights to assert such confidentiality, privilege, protection, and exemption now or in the future, including but not limited to those exemptions set forth in California Government Code sections 6254, 6254.5, or other similar provisions of law. RECIPIENT shall have no obligation under this Agreement with respect to any part of the Information that is or becomes publicly available without breach of this Agreement by RECIPIENT; is rightfully received by RECIPIENT without obligations of confidentiality; or is developed by RECIPIENT without breach of this Agreement.
4. By accepting and using the above-described Information, RECIPIENT expressly agrees to treat such documents as confidential. All of the Information provided to RECIPIENT under this Agreement, including but not limited to that contained in records, writings and documents, whether in hard copy or electronic format, shall be properly safeguarded and protected by the RECIPIENT, its employees and agents, from unauthorized viewing, use and disclosure. The RECIPIENT and its employees and agents may be held civilly and criminally liable under State and Federal laws for breach of this provision. The RECIPIENT shall designate a person responsible for the security and confidentiality of the Information provided by the DEPARTMENT, and will immediately notify the DEPARTMENT in writing of such designee, and any designee changes.
5. If any of the Information, in whole or in part, is deemed to be public record by law, by court or governmental order to be disclosed, RECIPIENT shall give the DEPARTMENT prompt written notice thereof so that the DEPARTMENT may seek a protective order or other appropriate remedy prior to such disclosure and provide full and complete cooperation to the DEPARTMENT in seeking such order or remedy.
6. The Information provided hereunder is protected by copyright and/or other intellectual property laws. The Information shall not be copied or reproduced (including but not limited to paper copies and electronically formatted copies), or altered in any form without the express prior written authorization of the DEPARTMENT.
7. RECIPIENT acknowledges that the Information is proprietary property of the DEPARTMENT and that the DEPARTMENT retains all rights, title, and interests in the Information, including all copyrights as well as any additional intellectual property rights as may exist in the Information. RECIPIENT must retain all copyright notices

and any other proprietary notices on any permitted copies and/or reproductions of the Information. RECIPIENT shall not remove any trademark, copyright or other proprietary notices on the Information or on any materials provided by the DEPARTMENT.

8. At the conclusion of the proposed purposes for which the above-described Information was furnished, or upon demand by the DEPARTMENT, all such Information shall be returned to the DEPARTMENT, including any copies and reproductions. The DEPARTMENT, at its sole discretion, may demand that all written notes, photographs, sketches, models, or memoranda which were developed or derived from or reflect information obtained from the above -referenced Information be turned over to the DEPARTMENT.
9. The above-referenced Information shall not be disclosed to any employee, consultant, or third party unless they agree to execute and be bound by the terms of this Agreement and have been approved in advance, in writing, by the DEPARTMENT.
10. The Information is provided “As Is” or “As Available” with no warranty of any kind, expressed or implied, including, but not limited to the implied warranties of merchantability, fitness for a particular purpose and non-infringement. The DEPARTMENT shall not be liable for any special, incidental or consequential damages, including without limitation, loss of revenues, loss of profits, or loss from perspective economic advantage, resulting from the use or misuse of the Information, even if the DEPARTMENT has been advised of the possibility of such damages, or for any claim by another party. The DEPARTMENT assumes no responsibility whatsoever with respect to the completeness, sufficiency, accuracy, or interpretations set forth therein of any plans, documents or data that is provided pursuant to this Agreement. In addition, there is no warranty or guarantee, either express or implied, that the conditions indicated by such documents are representative of the actual existing site conditions or future as-built conditions of the subject location.
11. By accepting and using the above-referenced Information, RECIPIENT agrees to indemnify, defend, and hold the DEPARTMENT, its directors, officers, employees, or agents harmless from and against any claims, damages, losses, liabilities, and costs relating in any manner, directly or indirectly, to the use of the Information furnished by the DEPARTMENT pursuant to this Agreement.
12. With respect to any and all third party claims RECIPIENT further waives any and all rights to any type of express or implied indemnity against the DEPARTMENT, its directors, officers, employees or agents.
13. In the event that a suit is necessary to enforce any of the provisions of this Agreement, the DEPARTMENT shall be entitled to reasonable attorney’s fees in addition to costs.

14. Severability. If any portion of this Agreement is ultimately determined not to be enforceable, that portion will be severed from the Agreement and the severability shall not affect the enforceability of the remaining terms of this Agreement.
  
15. The RECIPIENT'S signatory below represents and warrants that he/she is authorized to execute this Agreement to bind the RECIPIENT to the terms and conditions of this Agreement.

**AGREED AND ACCEPTED BY:**

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
\_\_\_\_\_

RECIPIENT  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_