

**MAINTENANCE AGREEMENT
WITH THE ORANGE COUNTY FLOOD CONTROL DISTRICT**

THIS AGREEMENT is made effective this _____ day of _____, 20__, by and between the State of California, acting by and through the Department of Transportation, hereinafter referred to as "STATE" and the ORANGE COUNTY FLOOD CONTROL DISTRICT, hereinafter referred to as "DISTRICT"; and collectively referred to as "PARTIES".

1. The PARTIES hereto mutually desire to identify the maintenance responsibilities of DISTRICT for the Laguna Canyon Channel, Orange County Flood Control District Facility Number 102, from upstream of Laguna Canyon Frontage Road to downstream of Woodland Drive (collectively the "CHANNEL") within STATE's right of way and subject to Permit Number 1221-NMC-0206.
2. This Agreement addresses DISTRICT responsibility for the hydraulic conveyance of CHANNEL segment within State Highway right of way on State Route 133, as shown on Exhibit A, attached to and made a part of this Agreement, portions of which the DISTRICT has existing easement rights pursuant to Book/Page 3915/558, Book/Page 3898/551, and Book/Page 3893/433 of the Official Records respectively, as shown on Exhibit A.
3. By this Agreement, the DISTRICT will be allowed to carry out its maintenance responsibilities that includes, but is not limited to, inspection, providing emergency repair, replacement, and maintenance, (collectively hereinafter "MAINTAIN/MAINTENANCE") of the CHANNEL segment within the STATE's right of way as shown on said Exhibit "A."
4. The degree or extent of MAINTENANCE work to be performed, and the standards, therefore, shall be in accordance with the provisions of Section 27 of the Streets and Highways Code and the then current edition of the State Maintenance Manual.
5. When a planned future improvement is constructed and/or a minor revision has been effected with STATE's consent or initiation within the limits of the STATE's right of way herein described which affects PARTIES' division of maintenance responsibility as described herein, PARTIES will agree upon and execute a new and revised Exhibit "A" which will be made a part hereof and will thereafter supersede the attached original Exhibit "A" to thereafter become a part of this Agreement.
 - 5.1. The new exhibit can be executed only upon written consent of the PARTIES hereto acting by and through their authorized representatives. No formal amendment to this Agreement will be required. DISTRICT's authorized

representative for the purposes of implementation of this Agreement shall be the OC Public Works Director or designee.

6. DISTRICT agrees, at DISTRICT expense, to do the following:
 - 6.1. DISTRICT may install, or contract to install (authorizing a licensed contractor with appropriate class of license in the State of California), the CHANNEL conforming to those plans and specifications (PS&E) pre-approved by STATE.
 - 6.2. After installation per 6.1 above, District will MAINTAIN the CHANNEL conforming to those (PS&E) pre-approved by STATE.
 - 6.3. DISTRICT will submit the final form of the PS&E, prepared, stamped and signed by a licensed engineer, to STATE's District Permit Engineer for review and approval and will obtain and have in place a valid necessary encroachment permit prior to the start of any work within STATE'S right of way. Proposed CHANNEL must meet DISTRICT's applicable standards.
 - 6.3.1. DISTRICT contractors will be required to obtain an Encroachment Permit prior to the start of any work within STATE's right of way.
 - 6.3.2. An Encroachment Permit rider may be required for any changes to the scope of work allowed by this Agreement prior to the start of any work within STATE's right of way
 - 6.4. DISTRICT shall ensure that CHANNEL areas designated on Exhibit "A" are provided with adequate scheduled routine MAINTENANCE necessary to MAINTAIN hydraulic conveyance during the entire life of this Agreement.
 - 6.4.1. To expeditiously MAINTAIN, replace, repair or remove any impediment impacting the hydraulic conveyance of CHANNEL system component that has become unsafe or unsightly.
 - 6.5. To control weeds at a level acceptable to the STATE. Any weed control performed by chemical weed sprays (herbicides) shall comply with all laws, rules, and regulations established by the California Department of Food and Agriculture. All chemical spray operations shall be reported quarterly (Form LA17) to the STATE to: District 12 Maintenance at KENNY.GONZALEZ@DOT.CA.GOV.
 - 6.6. To MAINTAIN all restrictions signs encompassed within the area of the CHANNEL.
7. STATE may provide DISTRICT with timely written notice of unsatisfactory conditions that require correction by the DISTRICT. Said notice from the STATE shall be given

to DISTRICT within a reasonable time and shall provide the DISTRICT with no less than thirty (30) days to correct the unsatisfactory condition. The parties may agree to extend the notice to allow DISTRICT additional time to correct the unsatisfactory condition. DISTRICT shall request such additional time from STATE in writing prior to the expiration of the initial thirty (30) day period. STATE will not unreasonably withhold a requested extension of the notice. However, the non-receipt of notice does not excuse DISTRICT from MAINTENANCE responsibilities assumed under this Agreement.

8. STATE shall issue encroachment permits to DISTRICT and DISTRICT contractors at no cost to them.

9. LEGAL RELATIONS AND RESPONSIBILITIES:

9.1. Nothing within the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not party to this Agreement, or affect the legal liability of either PARTY to this Agreement by imposing any standard of care respecting the design, construction and maintenance of these STATE highway improvements or DISTRICT facilities different from the standard of care imposed by law.

9.2. If during the term of this Agreement, DISTRICT should cease to MAINTAIN the CHANNEL to the satisfaction of STATE as provided by this Agreement, STATE may, after providing thirty (30) days written notice and reasonable time for DISTRICT to undertake such MAINTENANCE, either undertake to perform that MAINTENANCE on behalf of DISTRICT at DISTRICT's expense or direct DISTRICT to restore STATE's right of way to a safe operable condition. DISTRICT hereby agrees to pay said STATE expenses, within thirty (30) days of receipt of billing by STATE.

9.3. Neither DISTRICT nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority or jurisdiction arising under this Agreement. It is understood and agreed that STATE shall fully defend, indemnify and save harmless DISTRICT and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this Agreement with the exception of those actions of STATE necessary to cure a noticed default on the part of DISTRICT.

9.4. Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by DISTRICT under or in connection with any work, authority or jurisdiction arising under this Agreement. It is understood and agreed that DISTRICT shall fully defend, indemnify and save harmless STATE and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by DISTRICT under this Agreement.

9.5. PREVAILING WAGES:

9.5.1. Labor Code Compliance- If the work performed under this Agreement is done under contract and falls within the Labor Code section 1720(a)(1) definition of a "public works" in that it is construction, alteration, demolition, installation, or repair; or maintenance work under Labor Code section 1771. DISTRICT must conform to the provisions of Labor Code sections 1720 through 1815, and all applicable provisions of California Code of Regulations found in Title 8, Chapter 8, Subchapter 3, Articles 1-7. DISTRICT agrees to include prevailing wage requirements in its contracts for public works. Work performed by DISTRICT'S own forces is exempt from the Labor Code's Prevailing Wage requirements.

9.5.2. Requirements in Subcontracts - DISTRICT shall require its contractors to include prevailing wage requirements in all subcontracts when the work to be performed by the subcontractor under this Agreement is a "public works" as defined in Labor Code Section 1720(a)(1) and Labor Code Section 1771. Subcontracts shall include all prevailing wage requirements set forth in DISTRICT's contracts.

10. SELF-INSURED - DISTRICT is self-insured. DISTRICT agrees to deliver evidence of self-insured coverage providing general liability insurance, coverage of bodily injury liability and property damage liability, naming STATE, its officers, agents and employees as the additional insured in an amount of \$1 million per occurrence and \$2 million in aggregate and \$5 million in total. Coverage shall be evidenced by a certification of self-insurance letter ("Letter of Self-Insurance"), satisfactory to STATE, certifying that DISTRICT meets the coverage requirements of this section. This Letter of Self-Insurance shall also identify the CHANNEL location as depicted in EXHIBIT A. DISTRICT shall deliver to STATE the Letter of Self-Insurance with a signed copy of this AGREEMENT. A copy of the executed Letter of Self-Insurance shall be attached hereto and incorporate as Exhibit B.

10.1. SELF-INSURED using Contractor - If the work performed under this AGREEMENT is done by DISTRICT 's contractor(s), DISTRICT shall require its contractor(s) to maintain in force, during the term of this AGREEMENT, a policy of general liability insurance, including coverage of bodily injury liability and property damage liability, naming STATE, its officers, agents and employees as the additional insured in an amount of \$1 million per occurrence and \$2 million in aggregate and \$5 million in total. Coverage shall be evidenced by a certificate of insurance in a form satisfactory to the STATE that shall be delivered to the STATE with a signed copy of this Agreement.

11. TERMINATION - This Agreement may be terminated by timely mutual written consent by the PARTIES' authorized representatives, or by STATE for cause if DISTRICT's failure to comply with the provisions of this Agreement is unsafe and thereby grounds for a Notice of Termination by STATE.

12. TERM OF AGREEMENT -This Agreement shall become effective on the date first shown on its face sheet and shall remain in full force and effect until amended or terminated as set forth in Section 11 above.

PARTIES are empowered by Streets and Highways Code Section 114 & 130 to enter into this Agreement and have delegated to the undersigned the authority to execute this Agreement on behalf of the respective agencies and covenants to have followed all the necessary legal requirements to validly execute this Agreement.

IN WITNESS WHEREOF, the PARTIES hereto have set their hands and seals the day and year first above written.

THE ORANGE COUNTY FLOOD
CONTROL DISTRICT

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By: _____
Chairman of the Board of
Supervisors

STEVEN KECK
Acting Director of Transportation

By: _____
ROBERTA C. HETTICK, P.E.
Deputy District Director
Maintenance District

ATTEST:

By: _____
COUNTY Clerk of the Board

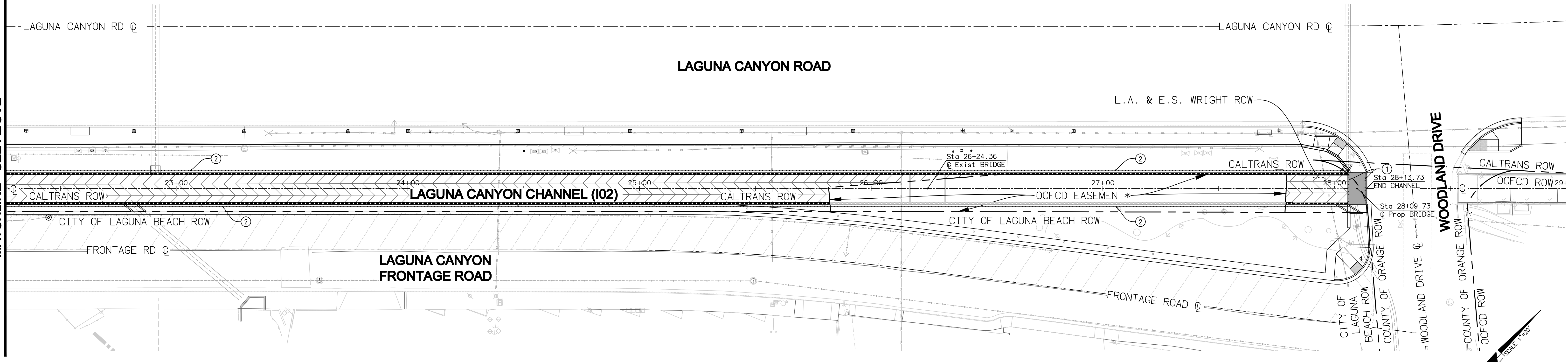
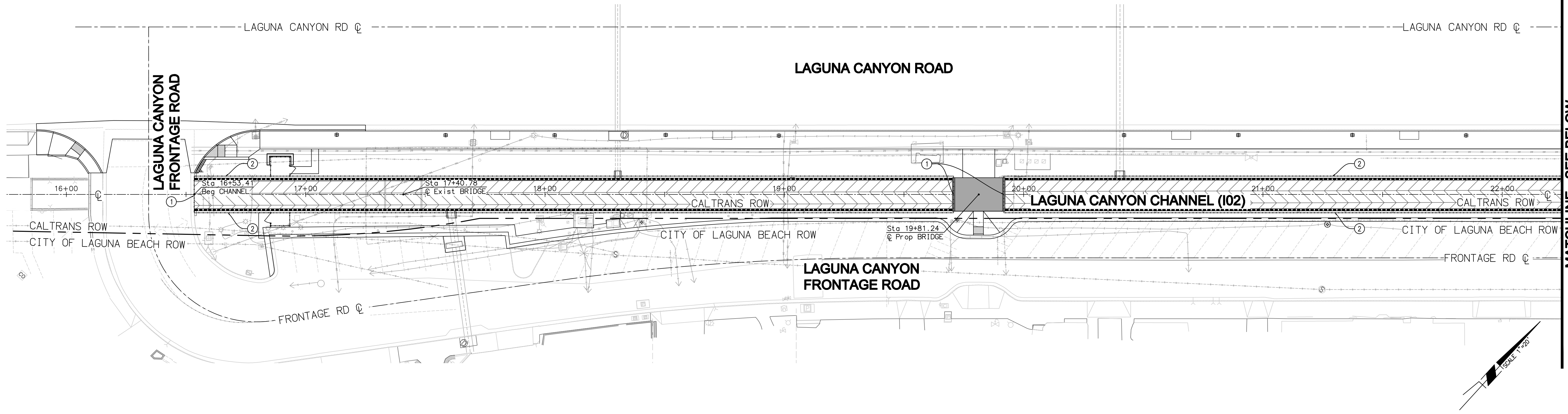
As to Form and Procedure:

By:  _____
COUNTY Counsel, Deputy


By: _____
Attorney
Department of Transportation

(Plan map identifying the applicable STATE Routes (Freeway proper) and COUNTY road(s) and facilities)

\\IRV\CA\FS1_HR001\DATA\180154\CADD\TRANSPW\EXHIBITS MAINTENANCE AGREEMENT\TRANSPW\EXHIBITS MAINTENANCE AGREEMENT-DISTRICT.DWG - RODRIGUEZ, RAUL - 6/2/2022 3:05 PM



*OCFCD EASEMENT
 OFFICIAL RECORD O.R. 3893/433
 OFFICIAL RECORD O.R. 3898/551
 OFFICIAL RECORD O.R. 3915/558

LEGEND:
 INDICATES CONCRETE CHANNEL TO BE MAINTAINED BY ORANGE COUNTY FLOOD CONTROL DISTRICT.

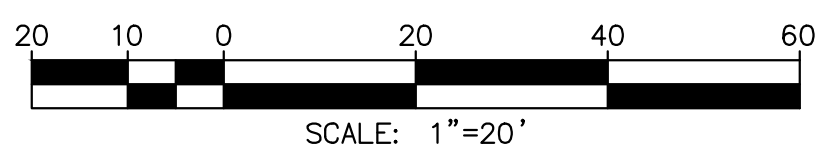


EXHIBIT "A"
LAGUNA CANYON CHANNEL
CALTRANS AND DISTRICT MAINTENANCE
AGREEMENT EXHIBIT
 POST MILE: ORA-133-0.60 TO ORA-133-0.84

Michael Baker
 INTERNATIONAL
 5 Hutton Centre Drive
 Suite 500
 Santa Ana, CA 92707
 Phone: (949) 472-3505
 MBAKERINTL.COM

DATE: JUNE 03, 2022

EXHIBIT B – LETTER OF CERTIFICATE OF ORANGE COUNTY FLOOD CONTROL DISTRICT STATEMENT OF SELF INSURANCE

1750 E 4TH STREET, SANTA ANA, CA 92705
ATTN: ESAUL MARTINEZ

_____20__

ORANGE COUNTY FLOOD CONTROL DISTRICT
Risk Management

RE: Statement of Self Insurance for ORANGE COUNTY FLOOD CONTROL DISTRICT, hereinafter referred to as "DISTRICT", Related to Landscape Maintenance Agreement with State of California Department of Transportation ("STATE") for the Laguna Canyon Channel, Orange County Flood Control District Facility Number I02, from upstream of Laguna Canyon Frontage Road to downstream of Woodland Drive along State Route 133 from Post Mile: ORA-133-0.60 to ORA-133-0.84

Dear ESAUL MARTINEZ,

The purpose of this letter is to certify that the DISTRICT is self-insured and self-funded covering third-party claims arising out of its general operations (for example, commercial general liability and automobile liability insurance). Further the DISTRICT is self-insured covering workers' compensation claims and has received the consent of the State Department of Industrial Relations to do so.

Each fiscal year, as a part of its budgetary process, the DISTRICT appropriates funds specifically to satisfy valid third-party claims and workers' compensation claims, which may be brought against the DISTRICT.

The DISTRICT certifies its self-insured, general liability coverage for bodily injury liability and property damage liability, meets the required coverage amounts in section 10.1 (INSURANCE) of the Maintenance Agreement, specifically general liability insurance, coverage of bodily injury liability and property damage liability in an amount of \$1 million per occurrence and \$2 million in aggregate and \$5 million in total. The DISTRICT further represents that regarding any claims made in connection with the Maintenance Agreement by the STATE, the STATE will be first-in-line regarding the reserved, self-insured amounts.

If you need any additional information regarding this letter, please direct those inquires through my office.

Sincerely,

Risk Management



**COUNTY OF ORANGE
CERTIFICATE OF SELF-INSURANCE**

Office of Risk Management, 601 N. Ross Street, 5th Floor, Santa Ana, CA 92701

Coverage: This is to certify that the County of Orange is self-insured for the following coverage:

Type of Coverage	Self-Insurance Limit
General Liability: Bodily Injury and Property Damage	\$1,000,000 per occurrence \$2,000,000 aggregate

Terms, Conditions and Special Items:

The provisions under General Liability, above, shall apply only with respect to claims arising out of the negligent acts or omissions of the County of Orange, its officers, agents and employees.

Cancellation:

Should any of the above described self-insured coverages be modified or cancelled before the expiration date shown below, the County of Orange will provide 30 days written notice to the named certificate holder.

<p>Certificate Holder State of California Department of Transportation 1750 E. 4th St. #100 Santa Ana, CA 92705</p> <p>ATTN: Esaul Martinez RE: Landscape Maintenance Agreement MA-080-22011758 September 1, 2022 - Upon Termination of Agreement</p>	<p>Certificate Effective Date: 09/01/22 Certificate Expiration Date: TBA</p> <p style="text-align: center;"></p> <hr/> <p>Manager, Risk Management (714) 285-5500 Date Certificate Issued: 06/07/22</p>
--	--