



Revision to ASR and/or Attachments

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CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISORS

Date: September 20, 2017
To: Clerk of the Board of Supervisors
Cc: County Executive Office *[Signature]*
From: **Shane L. Silsby, Director of OC Public Works** *[Signature]*
Re: ASR Control #: 17-000810, Meeting Date 9/26/2017 Agenda Item No. #13

Subject: Approve Bikeways and Trails Agreement with City of Placentia

Explanation: Replace Attachment B with the version included, which includes the missing Exhibit A and Exhibit B.

- Revised Recommended Action(s)
- Make modifications to the:
 - Subject Background Information Summary
- Revised Attachments (attach revised attachment(s))
 - Replace Attachment B with the version included.

AGREEMENT

This AGREEMENT, hereinafter referred to as “**AGREEMENT**”, for the purposes of identification hereby number MA-080-18010066 and dated _____ day of _____, 20____, is

BY and BETWEEN

The ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic, hereinafter referred to as “**DISTRICT**”,

and

The CITY OF PLACENTIA, a charter city, hereinafter referred to as “**CITY**,”

which are sometimes individually referred to as “**PARTY**,” or collectively referred to as “**PARTIES**.”

RECITALS

WHEREAS, CITY wishes to implement a public access plan consistent with the County of Orange Master Plan of Regional Riding and Hiking Trails and Bikeway Plan, wherein it would construct and maintain bikeways and trails on DISTRICT property owned in fee and easement (hereinafter referred to as “**DISTRICT PROPERTY**”) within the CITY that serve as DISTRICT maintenance roads along and adjacent to segments of flood control facilities;

WHEREAS, CITY desires to enter into this AGREEMENT to use DISTRICT maintenance access roads on DISTRICT PROPERTY which adjoin and will connect to future installed CITY sidewalks, to provide pedestrian access to and from recreational and transit amenities within the CITY;

WHEREAS, CITY is pursuing funding opportunities to implement those trails in order to provide increased opportunities for outdoor recreation and non-vehicular transportation for the general public;

WHEREAS, CITY may in the future desire to construct and maintain bikeway and trail improvements adjacent to Carbon Creek Channel (B01), Carbon Canyon Channel (E03), Atwood Channel (E04) and Richfield Channel (E05) within DISTRICT’s PROPERTY within CITY’s boundaries, as depicted on Exhibit A;

WHEREAS, CITY desires to enter into this AGREEMENT with DISTRICT for the operation and maintenance of all existing and future recreation improvements shown on Exhibit A within DISTRICT's PROPERTY in CITY's boundaries in accordance with the terms herein (hereinafter collectively referred to as "**RECREATION IMPROVEMENTS**"); and

WHEREAS, DISTRICT has determined that the recreational uses and RECREATION IMPROVEMENTS proposed and/or constructed by CITY will not impair or diminish existing or probable future requirements for flood control protection provided such RECREATION IMPROVEMENTS are constructed in accordance with DISTRICT requirements as determined by DISTRICT in its sole discretion and RECREATION IMPROVEMENTS are designed, constructed, operated, maintained and used in accordance with the terms and conditions of this AGREEMENT.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

The intentions of the PARTIES as described in the above recitals are incorporated into this AGREEMENT.

ARTICLE 1

DESCRIPTION OF PREMISES

- 1.1.** CITY shall only be allowed to use DISTRICT's PROPERTY as generally shown on Exhibit A, and any possible future portions of DISTRICT's PROPERTY, in accordance with the terms and conditions of this AGREEMENT. These portions of DISTRICT's PROPERTY used by the CITY shall be referred to hereinafter as the "**PREMISES**".
- 1.2.** DISTRICT may amend PREMISES shown on Exhibit A for any reason and at any time, subject to the discretion of the Director of Orange County Public Works or his designee as defined in Article 3.1 below ("**DIRECTOR**").

ARTICLE 2

CONSIDERATION

- 2.1. CITY shall only be permitted a non-exclusive and revocable use of the PREMISES at no cost to CITY when RECREATION IMPROVEMENTS will be combined with DISTRICT's maintenance roads. This AGREEMENT shall only govern the installation, maintenance and use of RECREATION IMPROVEMENTS on the PREMISES, should CITY desire to use the PREMISES, or portions thereof, for a use or activity other than those described herein, CITY shall be only permitted to use the PREMISES for such uses or activities by entering into a separate agreement with compensation paid to DISTRICT accordingly. CITY agrees, however, that DISTRICT shall have no financial obligation to contribute to the design, construction, removal, relocation, reconstruction, and/or maintenance of any RECREATION IMPROVEMENTS. Any activity conducted by CITY on DISTRICT's PROPERTY, including the PREMISES, must be approved prior to its commencement through County Property Permit process.
- 2.2. CITY shall be responsible for continuing the operation and maintenance of the RECREATION IMPROVEMENTS on DISTRICT PROPERTY during the term of this AGREEMENT as defined in Article 6 below.

ARTICLE 3

REPRESENTATIVES

- 3.1. **DISTRICT REPRESENTATIVE**
- Director of Orange County Public Works Department or his designee, hereinafter referred to as "DIRECTOR," shall be DISTRICT's representative in all matters pertaining to this AGREEMENT.
- 3.2. **CITY REPRESENTATIVE**
- The Placentia City Administrator, or an authorized designee, hereinafter referred to as "CITY OFFICER" shall be CITY's representative in all matters pertaining to this AGREEMENT.

ARTICLE 4

USE OF PREMISES BY CITY AND GENERAL PUBLIC

4.1. PERMITTED USES

CITY shall be permitted to use the PREMISES to build, operate and maintain RECREATION IMPROVEMENTS. CITY may permit the public's use of the RECREATION IMPROVEMENTS subject to the approval of the DIRECTOR through the County Property Permit process.

4.2. CITY'S RIGHTS ARE NONEXCLUSIVE

Subject to the provisions herein, CITY's use of the PREMISES shall be nonexclusive and CITY acknowledges that the primary purpose of DISTRICT's PROPERTY, including, but not limited to PREMISES is for flood control and water reclamation to protect the safety, health and welfare of the public and carry out the objectives of the Orange County Flood Control Act, as set forth in California uncodified Water Code, Act 5682, section 2, also referred to as Water Code App. sections 36-1 *et seq.* DISTRICT reserves the right in its sole and absolute discretion to use the PREMISES as necessary to access, construct, improve, expand, enlarge, repair, and maintain the DISTRICT PROPERTY, and all other uses permitted by law, and to restrict use of and access to the PREMISES by any and all persons, including any RECREATION IMPROVEMENTS, as deemed necessary by the DIRECTOR. At its own expense, CITY shall, upon reasonable prior notice of the DIRECTOR, be responsible for the rerouting of any pedestrian/bikeway and/or trail use on PREMISES whenever DIRECTOR determines such use on PREMISES conflicts with DISTRICT purpose and use of DISTRICT PROPERTY. CITY agrees to indemnify, defend with counsel approved by DISTRICT, and hold DISTRICT harmless from any and all claims, losses, or liabilities, arising from alleged injury or damage to persons or property arising out of any rerouting of any pedestrian/bikeway and/or trail use.

Subject to the business needs and flood control purpose of the DISTRICT, the DIRECTOR shall provide CITY with at least two (2) working days' notice of any need to temporarily close down the public use of the RECREATION IMPROVEMENTS to allow DISTRICT to work on PREMISES,

unless emergency conditions require immediate action by DISTRICT in which case CITY shall be notified as quickly as feasible.

4.3. NO RELOCATION OBLIGATION

CITY agrees that DISTRICT shall not under any circumstance be obligated to provide or locate for CITY a replacement site for CITY's RECREATION IMPROVEMENTS or operations in the event this AGREEMENT is terminated or PREMISES is reduced or otherwise modified pursuant to the terms of this AGREEMENT.

4.4. EMERGENCY RESTRICTIONS ON USE

CITY agrees that DIRECTOR may suspend public use of PREMISES if DIRECTOR determines, in DIRECTOR's sole and absolute discretion that emergency conditions exist such that use of PREMISES by the general public present a risk to the general public's health, safety or welfare. DISTRICT shall notify CITY as soon as practicable in case of such a determination and such an emergency.

ARTICLE 5 PROHIBITED USES

5.1. MOTORIZED VEHICLES

CITY shall not allow any non-DISTRICT or non-CITY motorized vehicles to operate within the PREMISES except as authorized by the DIRECTOR.

5.2. HAZARDOUS MATERIALS

CITY shall not cause or permit any "**HAZARDOUS MATERIAL**" as hereinafter defined, to be brought upon, kept, or used in or about the PREMISES. CITY shall promptly take all action, at its sole cost and expense, as is necessary to clean, remove and restore the PREMISES to its

condition prior to the introduction of such HAZARDOUS MATERIAL by CITY, provided CITY shall first have obtained DIRECTOR's written approval and the approval of any necessary governmental entities or agencies for any such remedial action.

As used herein, the term "HAZARDOUS MATERIAL" means any hazardous or toxic substance, material or waste which is or shall become regulated by any governmental entity or agency, including, without limitation, County of Orange, hereinafter referred to as "COUNTY", acting in its governmental capacity, the State of California or the United States government.

5.3 ACCESS ROADS SHALL NOT BE IMPEDED

CITY shall not impede, cause to be impeded, or allow to be impeded, DISTRICT's access roads and maintenance roads on the PREMISES, by any means, including but not limited to the parking of vehicles, the stockpiling of materials, or the depositing of any personal property, unless explicitly granted permission by the DIRECTOR.

ARTICLE 6

TERM OF THE AGREEMENT

6.1. INITIAL TERM

This AGREEMENT shall commence on the date the AGREEMENT is approved by the DISTRICT's Board of Supervisors and shall continue for ten (10) years unless terminated in accordance with the provisions of Article 7 of this AGREEMENT.

6.2. RENEWAL

At the end of the Initial Term, this AGREEMENT will automatically renew for an additional one year term upon the same covenants, terms and conditions unless either PARTY notifies the other in writing of its intention to terminate this AGREEMENT at least sixty (60) days prior to the expiration of the Initial Term. If sixty (60) days prior to the end of the one-year extended term, neither PARTY has given the other notification of its intention to terminate, this AGREEMENT shall continue in full force and effect upon the same covenants, terms and conditions for a further

term of one (1) year, and for annual terms thereafter until terminated by either PARTY by giving the other PARTY written notice of its intention to so terminate at least sixty (60) days prior to the end of any such annual term. However, in no event shall this AGREEMENT, including all extensions and renewals, continue in effect for a period exceeding fifty (50) years.

ARTICLE 7

TERMINATION

7.1. TERMINATION BY DISTRICT

CITY acknowledges that the primary purpose of the PREMISES is for flood control purposes. CITY agrees that DISTRICT may terminate this AGREEMENT at any time, without liability, if DISTRICT determines in its sole and absolute discretion that PREMISES are needed to reconstruct, modify, repair, expand, improve or enlarge DISTRICT's facilities and the RECREATION IMPROVEMENTS cannot be relocated so as not to interfere with DISTRICT's reconstructed, modified, repaired, expanded, improved or enlarged facilities. If RECREATION IMPROVEMENTS can be relocated without interfering with DISTRICT's reconstructed, modified, repaired, expanded, improved or enlarged facilities, CITY may relocate the RECREATION IMPROVEMENTS to a location approved in advance in writing by DISTRICT within ninety (90) days of being notified by DISTRICT that such relocation is necessary. CITY shall be solely responsible for all costs and expenses related to or arising from relocating the RECREATION IMPROVEMENTS, including but not limited to, the rerouting of any pedestrian/bikeway and/or trail caused by the relocation of the RECREATION IMPROVEMENTS. DISTRICT shall notify CITY of its intention to terminate the AGREEMENT pursuant to this section by giving CITY ninety (90) days written notice.

7.2. TERMINATION BY CITY

CITY may terminate this AGREEMENT by giving DISTRICT ninety (90) days written notice. In the event of such termination by CITY, CITY shall remove all improvements that it has placed on

the PREMISES if requested by DISTRICT and restore the PREMISES to the condition that existed prior to this AGREEMENT. This obligation to restore the PREMISES shall survive the termination of this AGREEMENT.

7.3. TERMINATION DUE TO BREACH OF THE AGREEMENT

If CITY is in breach of the AGREEMENT, and fails to diligently cure said breach within a reasonable period of time as determined by DIRECTOR in his sole and absolute discretion, DISTRICT may terminate the AGREEMENT.

7.4. NOTICE OF TERMINATION

All notices of termination shall be made in writing in accordance with the requirements of Article 11 of this AGREEMENT.

ARTICLE 8

RECREATION IMPROVEMENTS

8.1. AUTHORIZED IMPROVEMENTS

CITY may construct new or modify existing RECREATION IMPROVEMENTS as described below, which description may be modified subject to the approval of the DIRECTOR and the CITY OFFICER to include other activities, improvements and uses, subject to prior approval through the County Property Permit process and with the understanding CITY may be required to make modifications or installations to an existing DISTRICT access road or facility in order to accommodate safe pedestrian joint use:

- (a) Pathways constructed of earth, disintegrated granite, aggregate base, asphalt, unit pavers, concrete or as otherwise agreed;
- (b) Fencing that may consist of one or more of the following: wrought iron, coated metal, chain link, cable, metal safety railing, weathering steel, peeled-post wood railing, or as otherwise agreed;
- (c) Signage for the bikeway and trail routes, security and traffic control;
- (d) Storm drainage inlet, outlet and piping systems;
- (e) Grading, slope work and retaining walls;
- (f) Interpretive or way finding signage and site amenities such as benches, trash receptacles, lighting fixtures and poles, resting/staging areas, and bike racks; and

(g) Or other related improvements as approved by DIRECTOR.

8.2. DISTRICT REVIEW AND APPROVAL OF RECREATION IMPROVEMENTS

Prior to the construction of any RECREATION IMPROVEMENTS on PREMISES, CITY shall submit the plans and specifications for RECREATION IMPROVEMENTS to DIRECTOR for his review and approval. RECREATION IMPROVEMENTS shall be designed and constructed: (1) so as to assure that they do not interfere with the flood control purposes of DISTRICT facilities; (2) so as not to interfere with or increase the cost to DISTRICT for the maintenance or operation of DISTRICT's facilities; (3) where the design shall be based on established criteria and standards and all other applicable rules and regulations governing the design and construction of this type of bike trails. Approval of the plans and specifications of RECREATION IMPROVEMENTS shall be within DIRECTOR's sole and absolute discretion. CITY acknowledges, however, that the design of RECREATION IMPROVEMENTS was/will not be prepared by DISTRICT and that DISTRICT's approval of the plans and specifications shall not be deemed the approval of RECREATION IMPROVEMENTS' safety, suitability for any purpose, or compliance with the engineering requirements of any governmental agency or regulation. CITY agrees that CITY is solely and absolutely responsible for design, construction and operation of RECREATION IMPROVEMENTS.

Said plans and specifications shall be submitted by CITY for DISTRICT's review via an encroachment permit application through OC Public Works' County Property Permits section and shall be subject to applicable permit and inspection fees.

8.3. OTHER APPROVALS FOR RECREATION IMPROVEMENTS

CITY shall be responsible at its sole cost and expense to secure and comply with any other approvals required to construct, operate and/or maintain its RECREATION IMPROVEMENTS. DISTRICT is not responsible for obtaining any such approvals nor shall DISTRICT be named as co-applicant in any regulatory agreement or permit applications.

CITY and DISTRICT mutually agree that DISTRICT, as the property owner/easement holder, authorizes CITY to serve as the Legally Responsible Person (LRP) defined by the Construction General Permit (CGP), Order No. 2010-0014-DWQ for CITY's RECREATION IMPROVEMENTS on PREMISES. CITY shall be responsible, at its sole cost and expense, to comply with all requirements by the State Water Resources Control Board. CITY shall be responsible to satisfy all the requirements of any such agreements and/or permits and satisfy any conditions imposed by any regulatory agency for the issuance of any such approvals. CITY shall not agree to any conditions that impose any obligations on DISTRICT.

If any regulatory agency requires that any property is set aside as mitigation for CITY's RECREATION IMPROVEMENTS, that mitigation shall not be on PREMISES nor shall DISTRICT have any obligation to monitor or maintain that mitigation or contribute any costs therefore.

CITY shall provide DISTRICT and OC Public Works' Permit Services/Regulatory Permits with copies of all regulatory permits and/or agreements and conditions for its review and written approval prior to CITY's agreeing to any such terms and conditions. Copies of any and all current permits issued shall be available for inspection by DISTRICT's personnel.

CITY shall be responsible for obtaining permit from others for connecting its irrigation system to their water supply system. Any water supply lines provided by the CITY for irrigation of CITY's landscape or any other utilities provided for CITY's RECREATION IMPROVEMENTS are at CITY's cost. In any case when this AGREEMENT is terminated, CITY shall remove its utility lines installed pursuant to this AGREEMENT at CITY's cost. In the event that CITY's water supply lines or other utility line cause any damage to DISTRICT's facilities, CITY shall repair, replace, or restore DISTRICT's improvements at CITY's expense to the satisfaction of the DIRECTOR and hold DISTRICT and COUNTY harmless as specified in Article 9.

8.4. CONSTRUCTION OF RECREATION IMPROVEMENTS

CITY shall notify DIRECTOR two (2) weeks prior to beginning construction of any RECREATION IMPROVEMENTS on PREMISES and shall coordinate the work with COUNTY's inspector during

the progress of construction of RECREATION IMPROVEMENTS per the terms of the County Property Permit. Any Contractor hired by CITY to construct or maintain RECREATION IMPROVEMENTS on PREMISES ("Contractor") shall be required to:

- (a) Maintain insurance that complies with the insurance requirements specified in Exhibit B;
- (b) Indemnify, defend with counsel approved in writing by DISTRICT, and hold harmless DISTRICT, the COUNTY, their elected and appointed officials, officers, employees, agents and contractors (hereinafter "**DISTRICT/COUNTY INDEMNITEES**") harmless from any and all claims, losses, or liability, arising from injury or damage to persons or property related to Contractor's, its subcontractor's, their employee, agents or invitees activities on, within, upon, under or over PREMISES unless such injury or damage is caused by the sole negligence or willful misconduct of DISTRICT, COUNTY or the DISTRICT/COUNTY INDEMNITEES;
- (c) Provide DIRECTOR with a copy of its Notice of Intent (if applicable) to comply with the provisions of the Statewide CGP, and with a copy of specifications requiring its Contractors to comply with the municipal National Pollutant Discharge Elimination System (hereinafter referred to as "**NPDES**") permit provisions covering construction activities and to fully comply with the requirements of that NPDES permit. Contractors shall also be required to comply with the Best Management Practice requirements of the CITY's Drainage Area Management Plan, Local Implementation Plan as specified in Article 13 (Stormwater Regulations) of this AGREEMENT for activities to be conducted by the contractor and its subcontractors on PREMISES;
- (d) No construction materials are to be stored in such a way as to impede and/or interfere with any DISTRICT flood control operations.
- (e) DIRECTOR shall have the authority to update or modify these requirements as necessary to comply with the COUNTY's risk management policies and practices.

DIRECTOR shall give CITY advance notice of any such changes in the manner set forth in this AGREEMENT.

Any DISTRICT improvements disturbed, damaged, vandalized or removed as a result of the CITY's as a result of CITY authorized construction, maintenance, or operation within, upon, under or over PREMISES shall be repaired, restored or replaced at CITY's expense in conformance with OC Public Works Standard Plans and to the satisfaction of the DIRECTOR within sixty (60) calendar days of the issuance of written notice by DIRECTOR. If CITY and/or its contractor fail to repair, restore or replace DISTRICT's improvements within sixty (60) calendar days, DIRECTOR may, in his sole and absolute discretion, cause the repair, restoration or replacement of DISTRICT's improvements to be completed by DISTRICT personnel or DISTRICT contractors and CITY shall be solely responsible for these costs and expenses, and shall compensate DISTRICT for all such work upon invoice by DIRECTOR. CITY agrees that in an emergency situation which threatens the public's health, safety or welfare, DIRECTOR, in his sole and absolute discretion, shall be permitted to cause the repair, replacement or restoration of DISTRICT's improvements that may have been damaged, disturbed, vandalized or removed as a result of CITY authorized construction, maintenance, or operation activities contemplated herein, without prior notice to CITY and CITY shall be solely responsible for the cost of such repair, restoration or replacement in accordance with the procedures described above.

8.5. MAINTENANCE OF RECREATION IMPROVEMENTS

CITY shall be solely responsible at its sole cost and expense for the operation, maintenance, repair, relocation, and/or replacement of RECREATION IMPROVEMENTS on PREMISES.

8.6. DISTRICT'S RIGHTS TO REMOVE/RELOCATE RECREATION IMPROVEMENTS

PARTIES acknowledge that DISTRICT's 7-Year Plan, which indicates DISTRICT facilities to be improved within seven (7) years, may require removal or relocation of RECREATION IMPROVEMENTS. DISTRICT shall notify CITY if DISTRICT's plans will impact RECREATION

IMPROVEMENTS. If DIRECTOR in his sole and absolute discretion determines use of CITY RECREATION IMPROVEMENTS must be prevented for any reason, or must be modified, relocated or removed in whole or in part, DISTRICT shall notify CITY in writing and CITY shall modify, relocate or remove all or a portion of RECREATION IMPROVEMENTS as directed by DIRECTOR at CITY's sole cost and expense within ninety days (90) calendar days of the date of DIRECTOR's written notification to CITY or within a longer time period if agreed to by DIRECTOR. CITY agrees that in an emergency situation which threatens the public's health, safety or welfare as determined by DIRECTOR in his sole and absolute discretion, DIRECTOR shall be permitted to prevent use of, or cause modification, relocation or removal of all or a portion of RECREATION IMPROVEMENTS without prior notice to CITY. DISTRICT will endeavor to notify CITY of its intent to remove CITY RECREATION IMPROVEMENTS as soon as practicable but in no case shall such notice be provided greater than thirty days (30) after DISTRICT modifies relocates or removes such RECREATION IMPROVEMENTS. DISTRICT shall close RECREATION IMPROVEMENTS to the public after any modification, relocation or removal of RECREATION IMPROVEMENTS until CITY and DISTRICT agree to re-open it. CITY agrees that if any of RECREATION IMPROVEMENTS are disturbed, damaged or removed by DISTRICT for proper DISTRICT purpose as described in Paragraph 4.2, above, CITY shall determine whether it is in CITY's best interest to replace, repair, restore, or remove such RECREATION IMPROVEMENTS. CITY shall be responsible for replacing, repairing, restoring or removing RECREATION IMPROVEMENTS to the satisfaction of DIRECTOR solely at CITY's cost and expense.

8.7. FENCING AND SITE SECURITY

Security of the RECREATION IMPROVEMENTS shall be CITY's responsibility and provided at CITY's expense. CITY shall develop a plan subject to the approval of the DIRECTOR to assure that DISTRICT's adjoining flood control facility is not accessible to the public using the RECREATION IMPROVEMENTS on PREMISES but is accessible to DISTRICT personnel from

PREMISES (hereinafter referred to as "**SECURITY/ACCESS PLAN**"). This SECURITY/ACCESS PLAN shall show the placement of all fencing securing the PREMISES, including any proposed fencing located along the property line. This SECURITY/ACCESS PLAN shall also include the placement of any proposed gates as well as information concerning whether the proposed gates will be left open and if so when they will be open. This SECURITY/ACCESS PLAN shall be developed during the encroachment permit process for each of the RECREATION IMPROVEMENTS, reviewed, and approved prior to issuance of permit. For any masonry/block wall that is located all or in part on private property outside of the PREMISES, CITY shall be solely responsible for obtaining the necessary right of way and for maintaining the portion of the masonry/block wall fencing the PREMISES at its sole cost and expense during the term of this AGREEMENT. If the private property owner refuses to allow CITY on its private property to perform any necessary repairs on the masonry/block wall, and the masonry/block wall presents a hazard to persons using the RECREATION IMPROVEMENTS, CITY shall at its sole cost and expense install other fencing on PREMISES to secure PREMISES. This replacement fencing shall meet the DIRECTOR's written approval and be designed and constructed at no cost to DISTRICT. If CITY subsequently removes the masonry/block wall for any reason, CITY shall construct a replacement wall or fence meeting DIRECTOR's written approval at no cost to DISTRICT.

DIRECTOR shall have the authority to require CITY to implement all changes to the SECURITY/ACCESS PLAN that DIRECTOR, in DIRECTOR's sole discretion, determines are necessary for DISTRICT flood control activities and operations, to accommodate continued maintenance, construction, and operation of the RECREATION IMPROVEMENTS on PREMISES.

8.8. GRAFFITI REMOVAL

CITY agrees to be responsible at its sole cost and expense for keeping all RECREATION IMPROVEMENTS and DISTRICT facilities which are accessible from said RECREATION

IMPROVEMENTS free of graffiti. CITY shall regularly inspect RECREATION IMPROVEMENTS for graffiti and shall remove all graffiti from the RECREATION IMPROVEMENTS and DISTRICT facilities within two (2) working days of inspection or notification of the graffiti. CITY shall identify a contact person at the CITY responsible for graffiti removal and shall keep OC Public Works'/Operations & Maintenance informed of CITY's contact person and access requirements for this operation by calling 714-955-0200. CITY shall perform any graffiti removal work in compliance with the requirements of Article 13 of this AGREEMENT by implementing appropriate Best Management Practices (hereinafter referred to as "BMPs") to prevent all materials, including paint or chemicals used in graffiti removal and any debris associated with the proposed project, from entering into the channel and/or DISTRICT maintained areas.

ARTICLE 9

INDEMNITY AND INSURANCE PROVISIONS

9.1. CITY'S INDEMNITY OBLIGATIONS

CITY agrees that it shall indemnify, defend with counsel approved in writing by DISTRICT, release and hold DISTRICT, COUNTY, and/or DISTRICT/COUNTY INDEMNITEES harmless from any and all claims, losses, or liability, arising from alleged injury or damage to persons or property arising out of: (a) breach of the terms and conditions of this AGREEMENT by CITY, (b) the willful misconduct or negligent acts or omissions of CITY in connection with this AGREEMENT, (c) the material or other items used or employed by CITY, its contractors, or agents in performing construction work under this AGREEMENT, (d) injury to or death of any person or persons (either workman, employees of CITY or its contractors, subcontractors or the public) or damage to adjacent or other property caused by the performance of construction work being performed by CITY, its contractors, or agents to construct RECREATION IMPROVEMENTS on PREMISES, or (e) arising from use by any person or persons of RECREATION IMPROVEMENTS on PREMISES, (f) CITY's operation and maintenance activities on PREMISES, or (g) the design of RECREATION IMPROVEMENTS on PREMISES. Nothing

contained in this section shall operate to relieve DISTRICT and/or the DISTRICT/COUNTY INDEMNITEES from any loss, injury, liability, damages, claims, costs or expenses to the extent determined by a court of competent jurisdiction to have been proximately caused by the willful misconduct or negligent acts or omissions of DISTRICT and/or the DISTRICT/COUNTY INDEMNITEES or any of them.

The indemnity obligations created by this section as well as any other indemnity obligations created by this AGREEMENT shall survive the termination of this AGREEMENT, to the extent that a claim is based on an event which occurred prior to termination.

9.2. INSURANCE

During the term of this AGREEMENT, CITY shall maintain insurance or self-insurance and cause its contractors to maintain insurance in accordance with the insurance requirements set forth in Exhibit B.

ARTICLE 10
ASSIGNMENT / THIRD PARTY BENEFICIARY PROVISIONS

10.1. ASSIGNMENT BY CITY PROHIBITED

CITY acknowledges that its rights and obligations pursuant to this AGREEMENT are non-transferable without the prior written consent of DISTRICT. Any attempt by CITY to transfer all or part of its rights or obligations under this AGREEMENT to another party shall be null and void. If CITY wishes to transfer RECREATION IMPROVEMENTS and/or any of its rights or obligation under this AGREEMENT to another party, DISTRICT may require that the proposed successor enter into a separate agreement with DISTRICT with additional terms and conditions.

DISTRICT may, but is under no obligation to, record this AGREEMENT to provide notice to proposed assigns or successors that this AGREEMENT is non-transferable without the express written consent of the DISTRICT's Board of Supervisors.

10.2. NO THIRD PARTY BENEFICIARY

This AGREEMENT is not intended to give or confer any benefits, rights, privileges, claims, actions, or remedies to any person, group or entity, including but not limited to the State and/or members of the general public authorized to use the PREMISES, as a third party beneficiary, decree, or otherwise. The CITY and the DISTRICT are and will remain the only entities with standing to enforce any of the covenants, terms and conditions of this AGREEMENT.

ARTICLE 11

NOTICE

11.1. NOTICES

All notices or other communications required or permitted under this AGREEMENT shall be provided to the following official at the specified address.

City of Placentia
ATTN: Damien Arrula
401 E. Chapman Ave.
Placentia, CA 92870
(714) 993-8186 (phone); (714) 961-0283 (fax)

Orange County Flood Control District
Director of Orange County Public Works
P.O. Box 4048
Santa Ana, CA 92702-4048
(City of Placentia – Bikeway and Trails Agreement)

11.2. FORM AND TIMING OF NOTICE

All notices shall be in writing, and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, or be sent by overnight courier and shall be deemed received upon the earlier of:

- (a) If personally delivered, the date of delivery to the address of the person to receive such notice;
- (b) If mailed, three (3) business days after the date of posting by the United States Post Office; or
- (c) If sent by overnight courier, when delivered.

11.3. CHANGES OF PERSON TO RECEIVE NOTICE

Either PARTY may change the person or official to receive notice by sending a written notice of that change to the other PARTY.

ARTICLE 12**ACCESS TO DISTRICT'S CHANNEL****12.1. CITY LOCKS**

CITY shall be allowed to install a CITY lock on DISTRICT's gates if required for access to the RECREATION IMPROVEMENTS, provided CITY ensures that DISTRICT retains its ability to access its facilities.

12.2. DISTRICT ACCESS GATES

DISTRICT access gates not used by the public are to be immediately locked upon entering or exiting DISTRICT PROPERTY. CITY shall ensure that all DISTRICT access gates are locked after they are used by CITY personnel or CITY contractors.

12.3. USE OF DISTRICT ROADS

CITY acknowledges that the use of earthen DISTRICT access roads is prohibited during inclement weather or when DISTRICT's earthen access roads are wet. When DISTRICT's earthen access roads are wet, CITY's access will be limited to pedestrian access only and CITY shall allow such access only if CITY determines the conditions are safe and do not warrant the CITY's closure of such access by the public. Nothing in this paragraph shall diminish DIRECTOR's authority to order closure of the RECREATION IMPROVEMENTS when deemed necessary by DIRECTOR.

ARTICLE 13**STORMWATER****13.1. COMPLIANCE WITH STORMWATER REGULATIONS**

CITY and all CITY's, agents, employees and contractors shall maintain the PREMISES so as to assure that pollutants do not enter the DISTRICT's facilities from the PREMISES.

The Santa Ana Regional Water Quality Control Board (hereinafter referred to as "RWQCB") has issued permits which regulate stormwater and non-stormwater discharges (Stormwater Permits) resulting from areas owned and operated by the DISTRICT including activities conducted under this AGREEMENT. The COUNTY and cities within Orange County have enacted water quality ordinances that prohibit activities that result in pollutants being discharged into the Stormwater drainage system, including DISTRICT facilities.

To ensure compliance with Stormwater Permits and water quality ordinances, DISTRICT and COUNTY have developed a Drainage Area Management Plan including a Local Implementation Plan (hereinafter referred to as "DAMP/LIP") that contains Model Maintenance Procedures with BMPs that parties using DISTRICT owned properties must adhere to. These Model Maintenance Procedures contain pollution prevention and source control techniques to minimize the impact of those activities upon dry-weather urban runoff, stormwater runoff, and receiving water quality.

CITY shall review and assure that its contractors working on PREMISES review the applicable Model Maintenance Procedures contained in the DAMP/LIP. Activities performed on the PREMISES under this AGREEMENT shall conform to the requirements of the Stormwater Permits, the DAMP/LIP, and the Model Maintenance Procedures, as they exist at the time this AGREEMENT commences and as Stormwater Permits, the DAMP/LIP, and/or the Model Maintenance Procedures are modified throughout the term of this AGREEMENT. The BMP's applicable to uses authorized under this AGREEMENT must be performed as described within all applicable Model Maintenance Procedures. CITY shall fully understand the Model Maintenance Procedures applicable to operations conducted on the PREMISES prior to conducting them. CITY and/or its contractors may propose alternative BMPs that meet or exceed the pollution prevention performance of the Model Maintenance Procedures. Any such alternative BMPs shall be submitted to DIRECTOR for his review and written approval prior to implementation.

CITY acknowledges it may be required in the future by a regulatory agency such as the RWQCB to implement a self-evaluation program to demonstrate compliance with the requirements of this article.

ARTICLE 14

EXHIBITS

14.1. EXHIBITS

This AGREEMENT incorporates by this reference, the following exhibits, which are attached hereto and incorporated herein:

Exhibit A – Description of PREMISES
Exhibit B – Insurance Requirements

ARTICLE 15

MISCELLANEOUS PROVISIONS

15.1. ENTIRE AGREEMENT

This document sets forth the entire AGREEMENT among DISTRICT and CITY pertaining to this matter, and may be modified only by further written amendment between the PARTIES hereto.

15.2. AMENDMENTS

It is mutually understood and agreed that no addition to, alteration of, or variation of the terms of this AGREEMENT, nor any oral understanding or agreement not incorporated herein, shall be valid unless made in writing and signed and approved by all necessary PARTIES.

15.3. COMPLIANCE WITH APPLICABLE LAW

Each PARTY and their contractors shall at all times and in all respects comply with all applicable federal, state and local laws, ordinances regulations and permits.

15.4. CALENDAR DAY(S)

Any reference to the word “day” or “days” herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.

15.5. WAIVER OF RIGHTS

The failure of DISTRICT to insist upon strict performance of any of the terms, covenants or conditions of this AGREEMENT shall not be deemed a waiver of any right or remedy that DISTRICT may have, and shall not be deemed a waiver of the right to require strict performance of all the terms, covenants and conditions of this AGREEMENT thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant or condition of this AGREEMENT.

15.6. SEVERABILITY

If any part of this AGREEMENT is held, determined or adjudicated to be illegal, void or unenforceable by a court of competent jurisdiction, the remainder of this AGREEMENT shall be given effect to the fullest extent reasonably possible.

15.7. AUTHORITY

The PARTIES to this AGREEMENT represent and warrant that this AGREEMENT has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

15.8. CONSTRUCTION

The PARTIES acknowledge that the PARTIES and their counsel have reviewed and revised this AGREEMENT and that the normal rule of construction - to the effect that any ambiguities are to be resolved against the drafting PARTY - shall not be employed in the interpretation of this AGREEMENT or any exhibits or amendments hereto.

15.9. EXECUTION IN COUNTERPARTS

This AGREEMENT may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one agreement. To facilitate execution of this AGREEMENT, the PARTIES may execute and exchange by telephone facsimile counterparts of the signature pages.

IN WITNESS WHEREOF, each PARTY hereto has executed this AGREEMENT by its duly authorized representatives as of the date set forth above.

City of Placentia, California,
a charter city

Date: _____

BY: _____

Damien Arrula
City Administrator

Attest:

Date: _____

BY: _____

Patrick J. Melia
City Clerk

APPROVED AS TO FORM BY THE:
City Attorney for the
City of Placentia,
California

B:



City Attorney

Orange County Flood Control District,
a body corporate and politic

Date: _____

By _____
Chairwoman of the Board of Supervisors
Orange County, CA

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

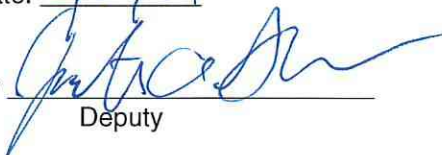
Attest:

Date: _____

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

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

Date: 8/10/17

By  _____
Deputy

IPFPS001:Location Map - OCFCD Facilities within Placentia_new

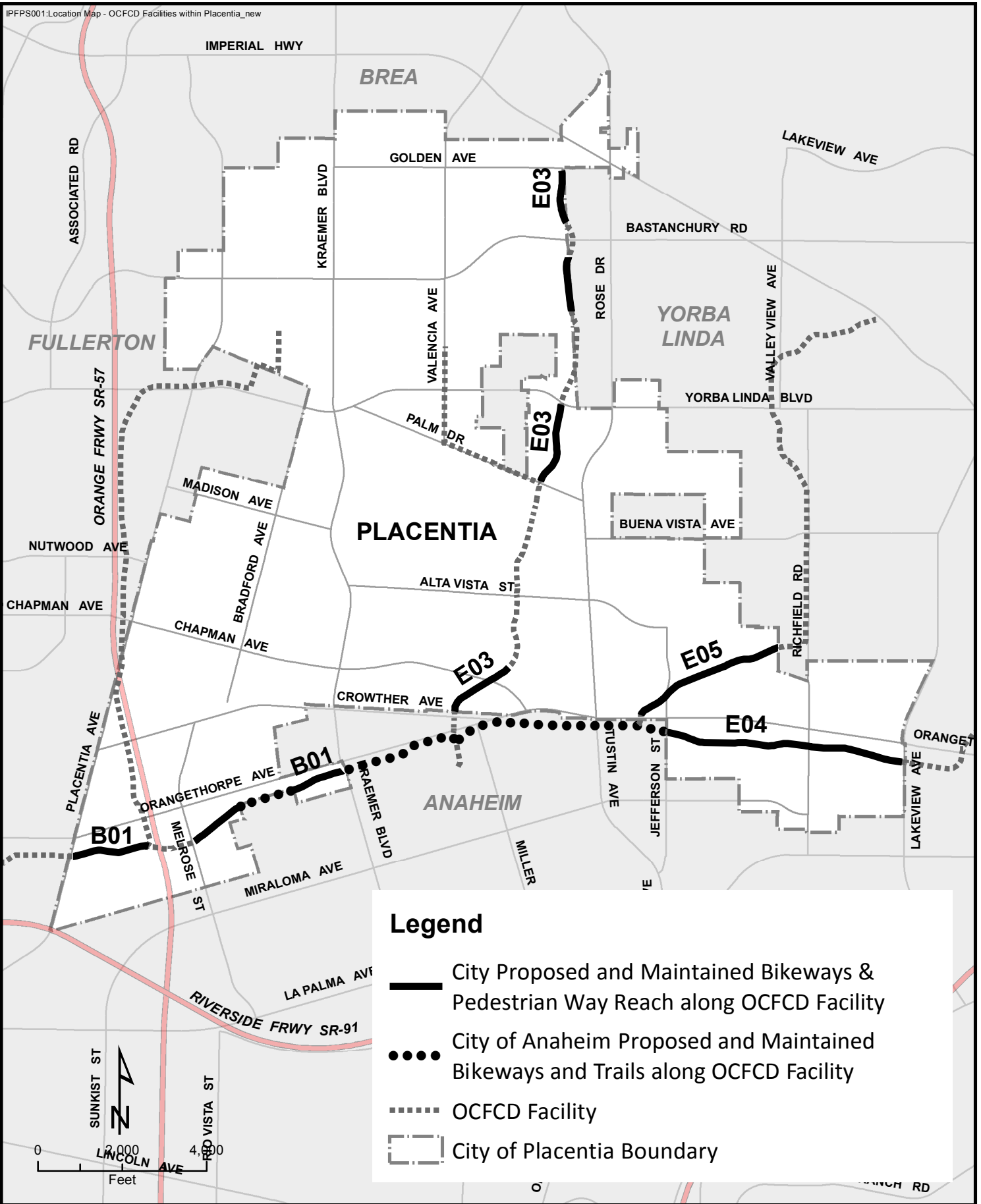


EXHIBIT B

INSURANCE REQUIREMENTS

During the term of this AGREEMENT, CITY shall maintain at CITY's expense commercial insurance or self-insurance to cover its general liability, professional liability, automobile liability and workers' compensation exposures and indemnity obligation associated with this AGREEMENT. CITY shall provide DISTRICT with proof of insurance, or a letter evidencing CITY's self-insurance coverage and the certificates therefore acceptable to DISTRICT, within seven (7) days of the effective date of this AGREEMENT.

CITY shall cause its contractors/consultants and subcontractors performing work within the PREMISES to maintain and provide proof of insurance subject to the same terms and conditions as the CITY which shall provide the minimum coverage and limits as set forth below:

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in excess of \$50,000 shall specifically be approved by County's Risk Manager. If a CITY's contractor or subcontractor ("Contractor") SIR is approved, that Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this AGREEMENT agrees to all of the following:

- 1) In addition to the duty to indemnify and hold the DISTRICT and the County of Orange (County) harmless against any and all liability, claim, demand or suit resulting from Contractor, its agents, employee's or subcontractor's performance of this AGREEMENT, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the DISTRICT and County were the insured.

Upon notice of any actual or alleged claim or loss arising out of Contractor's work hereunder, Contractor shall immediately satisfy in full the SIR provisions of the policy in order to trigger coverage for the CITY and Additional Insureds.

If the CITY fails to maintain insurance acceptable to the DISTRICT for the full term of this AGREEMENT, the DISTRICT may terminate this AGREEMENT.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's rating) and VIII (Financial Size Category) as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**. It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

Coverage/Limits *

Coverage	Minimum Limits
Commercial General Liability with products and completed operations and contractual liability	\$1,000,000 limit per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 limit per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Professional Liability Insurance**	\$1,000,000 per claims made or per occurrence \$2,000,000 aggregate

* The Parties agree the minimum coverage and limits herein shall be revised to comply with the most recent, approved version of the "County of Orange Insurance Requirements and Reference Guide." In addition, DISTRICT expressly retains the right to require CITY to increase or decrease insurance of any of the above insurance types throughout the term of this AGREEMENT. Any increase or decrease in insurance will be as deemed by the County's Risk Manager to adequately protect DISTRICT. DISTRICT shall notify CITY in writing of changes in the insurance requirements. If CITY does not deposit copies of acceptable certificates of insurance and endorsements with DISTRICT incorporating such changes within thirty days of receipt of such notice, this AGREEMENT may be in breach without further notice to CITY, and DISTRICT shall be entitled to all legal remedies.

** If Professional Liability policy is a "claims made" policy, CITY, their consultants and/or contractors shall agree to maintain professional liability coverage for two years following the completion of their work.

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

- 1) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the *County of Orange and Orange County Flood Control District, their elected and appointed officials, officers, employees, and agents* as Additional Insureds, or provide blanket coverage which shall state **AS REQUIRED BY WRITTEN CONTRACT**.
- 2) A primary non-contributing endorsement evidencing that the contractor's insurance is primary and any insurance maintained by the County of Orange, Orange County Flood Control District shall be excess and non-contributing.
- 3) A Products and Completed Operations endorsement using ISO Form CG2037 (ed. 10/01) or a form at least as broad, or an acceptable alternative is the ISO from CG2010 (ed. 11/85).

All insurance policies required by this AGREEMENT shall waive all rights of subrogation against the County of Orange, the Orange County Flood Control District, their elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the *County of Orange, the Orange County Flood Control District, and members of their Board of Supervisors, their elected and appointed officials, officers, employees and agents* or provide blanket coverage which shall state **AS REQUIRED BY WRITTEN CONTRACT** when acting within the scope of their appointment or employment.

All insurance policies required by this AGREEMENT shall give DISTRICT 30 days' notice in the event of cancellation and 10 days for non-payment of premium. This shall be evidenced by policy provisions or an endorsement separate from the Certificate of Insurance.

The Commercial General Liability policy shall contain a severability of interests clause (standard in the ISO CG 001 policy).

The procuring of such required policy or policies of insurance shall not be construed to limit CITY and/or its' consultants or Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this AGREEMENT, nor in any way to reduce the policy coverage and limits available from the insurer.