

**LANDSCAPE MAINTENANCE AGREEMENT  
WITHIN STATE HIGHWAY RIGHT OF WAY  
ON ROUTE 1 WITHIN THE CITY OF HUNTINGTON BEACH**

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 CITY of Huntington Beach; hereinafter referred to as "CITY" and collectively referred to as "PARTIES".

**SECTION I**

**RECITALS**

1. PARTIES desire to work together to allocate their respective obligations relative to newly constructed or revised improvements within STATE's right of way by Permit Number 1215-6RT-0199.
2. This Agreement addresses CITY responsibilities which can include but are not limited to landscaping, irrigation, planting, irrigation systems, mulches, litter control and weed removal (collectively the "LANDSCAPING") as well as CITY responsibilities which can include but are not limited to sidewalks and parking restriction signs (collectively the "IMPROVEMENTS") placed within State Highway right of way on State Route 1, as shown on Exhibit A, attached to and made a part of this Agreement.

NOW THEREFORE, IT IS AGREED AS FOLLOWS:

**SECTION II**

**AGREEMENT**

1. In consideration of the mutual covenants and promises herein contained, CITY and STATE agree as follows:
  - 1.1. PARTIES have agreed to an allocation of maintenance responsibilities that includes, but is not limited to, inspection, providing emergency repair, replacement, and maintenance, (collectively hereinafter "MAINTAIN/MAINTENANCE") of LANDSCAPING and IMPROVEMENTS as shown on said Exhibit "A."
  - 1.2. 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 dated 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. 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.

2. CITY agrees, at CITY expense, to do the following:

- 2.1. CITY may install, or contract, authorizing a licensed contractor with appropriate class of license in the State of California, to install and thereafter will MAINTAIN LANDSCAPING conforming to those plans and specifications (PS&E) pre-approved by STATE.
- 2.2. 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.
- 2.3. CITY will submit the final form of the PS&E, prepared, stamped and signed by a licensed landscape architect, for LANDSCAPING 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. All proposed LANDSCAPING must meet STATE's applicable standards.
- 2.4. CITY shall ensure that LANDSCAPED areas designated on Exhibit "A" are provided with adequate scheduled routine MAINTENANCE necessary to MAINTAIN a neat and attractive appearance.
- 2.5. 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.
- 2.6. CITY contractors will be required to obtain an Encroachment Permit prior to the start of any work within STATE's right of way.
- 2.7. To furnish electricity for irrigation system controls, water, and fertilizer necessary to sustain healthy plant growth during the entire life of this Agreement.
- 2.8. To replace unhealthy or dead plantings when observed or within 30 days when notified in writing by STATE that plant replacement is required.
- 2.9. To prune shrubs, tree plantings, and trees to control extraneous growth and ensure STATE standard lines of sight to signs and corner sight distances are always maintained for the safety of the public.
- 2.10. To MAINTAIN, repair and operate the irrigation systems in a manner that prevents water from flooding or spraying onto STATE highway, spraying parked and moving automobiles, spraying pedestrians on public sidewalks/bike paths, or leaving surface water that becomes a hazard to vehicular or pedestrian/bicyclist travel.

- 2.11. 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:

Department of Transportation  
District 12, Maintenance  
Maintenance Manager  
1750 East Fourth Street, Suite 100  
Santa Ana, CA 92705

- 2.12. To remove LANDSCAPING, IMPROVEMENTS \_\_\_\_\_ and appurtenances and restore STATE owned areas to a safe and attractive \_\_\_\_\_ condition acceptable to STATE in the event this Agreement is terminated as set forth herein.
- 2.13. To furnish electricity and MAINTAIN lighting system and controls for all street lighting systems installed by and for CITY.
- 2.14. To inspect LANDSCAPING and IMPROVEMENTS \_\_\_\_\_ on a regular monthly or weekly basis to ensure the safe operation and condition of the LANDSCAPING.
- 2.15. To expeditiously MAINTAIN, replace, repair or remove from service any LANDSCAPING and IMPROVEMENT \_\_\_\_\_ system component that has become unsafe or unsightly.
- 2.16. To MAINTAIN all sidewalks/bike paths within the Agreement limits of the STATE highway right of way, as shown on Exhibit A, at CITY expense. MAINTENANCE includes, but is not limited to, concrete repair, replacement and to grind or patch vertical variations in elevation of sidewalks/bike paths for an acceptable walking and riding surface, and the removal of dirt, debris, graffiti, weeds, and any deleterious item or material on or about sidewalks/bike paths or the LANDSCAPING and IMPROVEMENTS \_\_\_\_\_ in an expeditious manner.
- 2.17. To MAINTAIN all parking or use restrictions signs encompassed within the area of the LANDSCAPING.
- 2.18. To allow random inspection of LANDSCAPING, and IMPROVEMENTS \_\_\_\_\_, street lighting systems, sidewalks/bike paths and signs by a STATE representative.
- 2.19. To keep the entire landscaped area policed and free of litter and deleterious material.
- 2.20. All work by or on behalf of CITY will be done at no cost to STATE.

3. STATE agrees to do the following:

3.1. May provide CITY with timely written notice of unsatisfactory conditions that require correction by the CITY. However, the non-receipt of notice does not excuse CITY from maintenance responsibilities assumed under this Agreement.

3.2. Issue encroachment permits to CITY and CITY contractors at no cost to them.

4. LEGAL RELATIONS AND RESPONSIBILITIES:

4.1. 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 CITY facilities different from the standard of care imposed by law.

4.2. If during the term of this Agreement, CITY should cease to MAINTAIN the LANDSCAPING and IMPROVEMENTS \_\_\_\_\_ to the satisfaction of STATE as provided by this Agreement, STATE may either undertake to perform that MAINTENANCE on behalf of CITY at CITY's expense or direct CITY to remove or itself remove LANDSCAPING and IMPROVEMENTS at CITY's sole expense and restore STATE's right of way to its prior or a safe operable condition. CITY hereby agrees to pay said STATE expenses, within thirty (30) days of receipt of billing by STATE. However, prior to STATE performing any MAINTENANCE or removing LANDSCAPING and IMPROVEMENTS, STATE will provide written notice to CITY to cure the default and CITY will have thirty (30) days within which to affect that cure.

4.3. Neither CITY 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 CITY 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 CITY.

4.4. 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 CITY under or in connection with any work, authority or jurisdiction arising under this Agreement. It is understood and agreed that CITY 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 CITY under this Agreement.

5. PREVAILING WAGES:

5.1. Labor Code Compliance- If the work performed on this Project is done under contract and falls within the Labor Code section 1720(a)(1) definition of a "public work" in that it is construction, alteration, demolition, installation, or repair; or maintenance work under Labor Code section 1771. CITY 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. CITY agrees to include prevailing wage requirements in its contracts for public work. Work performed by CITY'S own forces is exempt from the Labor Code's Prevailing Wage requirements.

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

6. INSURANCE - CITY and its contractors shall 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 the 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 excess. 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.

6.1. SELF-INSURED - CITY is self insured. CITY agrees to deliver evidence of self-insured coverage providing general liability insurance, coverage of bodily injury liability and property damage liability, naming the 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 excess. 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 in a form satisfactory to STATE, along with a signed copy of the Agreement.

6.2. SELF-INSURED using Contractor - If the work performed on this Project is done under contract CITY shall require its contractors 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 the 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 excess. 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.

7. TERMINATION - This Agreement may be terminated by timely mutual written consent by PARTIES, and CITY's failure to comply with the provisions of this Agreement may be grounds for a Notice of Termination by STATE.
8. 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 at any time upon mutual consent of the PARTIES or until terminated by STATE for cause.

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 CITY OF HUNTINGTON BEACH

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

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

TOKS OMISHAKIN  
Director of Transportation


Initiated and Approved



By: \_\_\_\_\_  
City Manager

By: \_\_\_\_\_  
Monica Kress-Wooster  
Deputy District Director  
Operations and Maintenance  
District 12

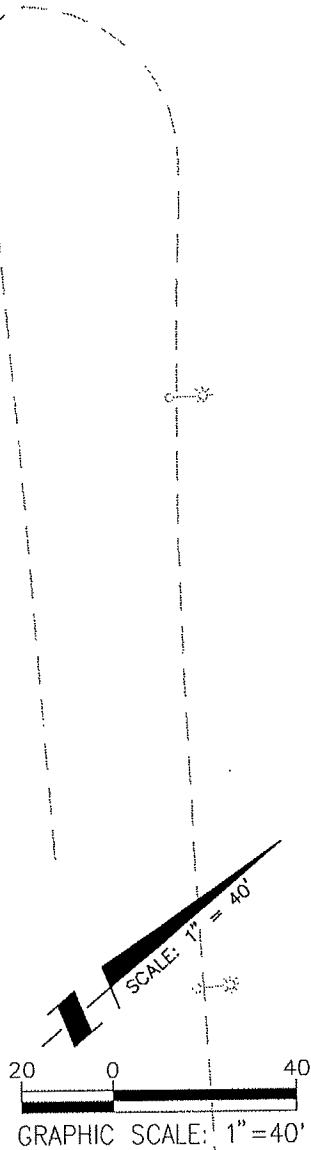
By:  \_\_\_\_\_  
Public Works Director

ATTEST:


By:  \_\_\_\_\_  
Asst City Clerk

By:  \_\_\_\_\_  
City Attorney 

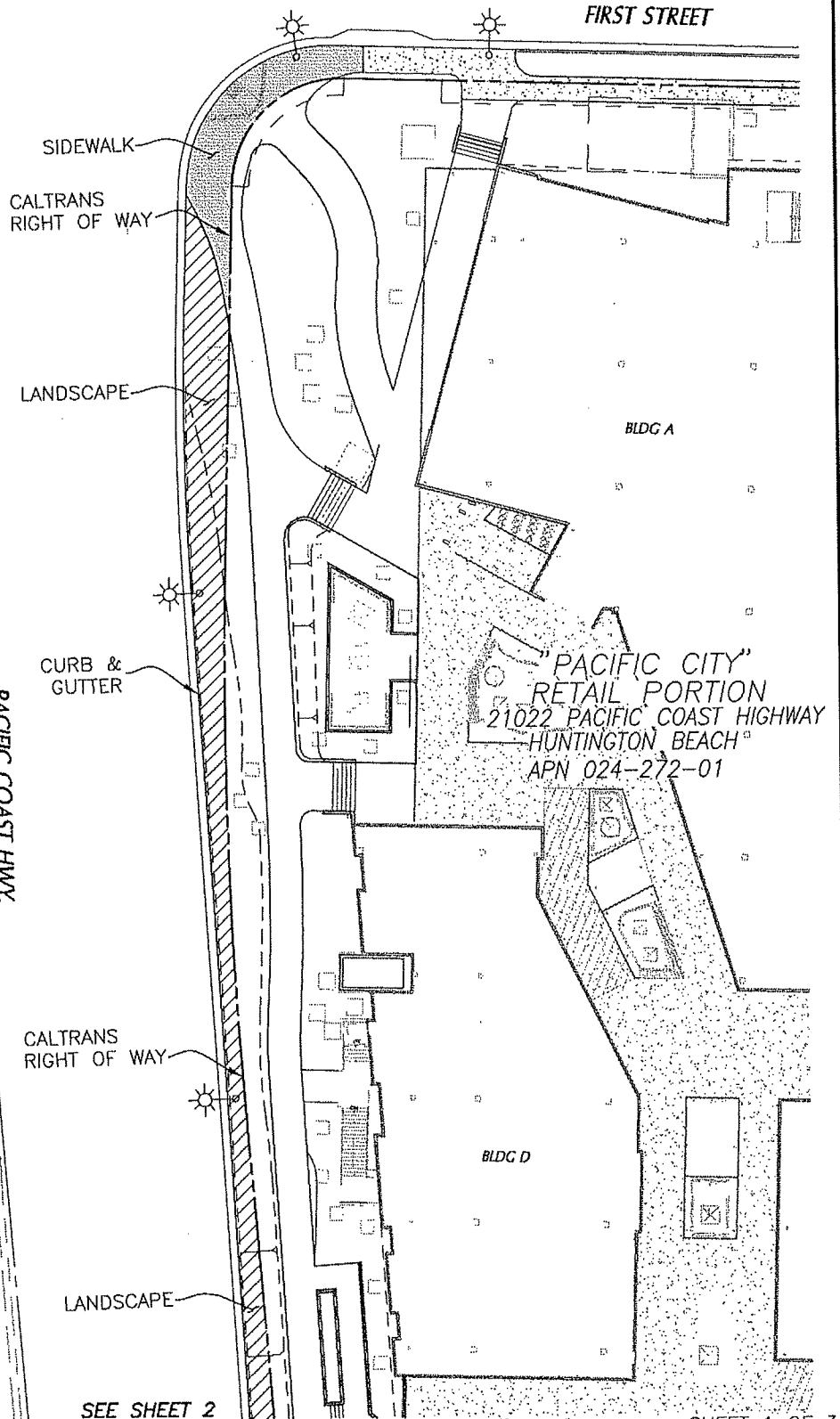
# EXHIBIT "A" IMPROVEMENT AREA PER MAINTENANCE AGREEMENT



## LEGEND

-  LANDSCAPE AREA TO BE MAINTAINED BY CITY OF HUNTINGTON BEACH
-  HARDSCAPE AREA TO BE MAINTAINED BY CITY OF HUNTINGTON BEACH
-  CITY OWNED STREET LIGHT WITHIN STATE RIGHT OF WAY TO BE MAINTAINED BY CITY OF HUNTINGTON BEACH

PACIFIC COAST HWY.



DATE PREPARED: 10/16/2019

PREPARED BY:

**HUNSAKER & ASSOCIATES**  
IRVINE, INC.  
PLANNING • ENGINEERING • SURVEYING  
Three Hughes • Irvine, CA 92618 • TEL (949) 583-1010 • FAX (949) 583-0759

PREPARED FOR:

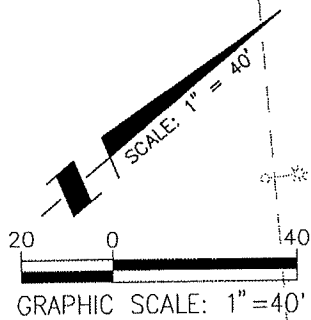
**DJM CAPITAL PARTNERS INC.**  
21022 PACIFIC COAST HIGHWAY  
HUNTINGTON BEACH CA 92648  
P. 714.845.9090  
CONTACT: BRETT THORNTON

**"PACIFIC CITY"**  
TRACT 16338 - LOT 2  
RETAIL PORTION  
21022 PACIFIC COAST HIGHWAY  
HUNTINGTON BEACH CA 92648

1215-6RT-0199

SHEET 1 OF 3

SEE SHEET 1



**LEGEND**



LANDSCAPE AREA TO  
BE MAINTAINED BY CITY  
OF HUNTINGTON BEACH



HARDSCAPE AREA TO  
BE MAINTAINED BY CITY  
OF HUNTINGTON BEACH



CITY OWNED STREET LIGHT  
WITHIN STATE RIGHT OF  
WAY TO BE MAINTAINED BY  
CITY OF HUNTINGTON  
BEACH

LANDSCAPE

CALTRANS  
RIGHT OF WAY

SIDEWALK

PACIFIC COAST HWY.

CURB &  
GUTTER

CALTRANS  
RIGHT OF WAY

LANDSCAPE

SIDEWALK

BLDG D

"PACIFIC CITY"  
RETAIL PORTION  
21022 PACIFIC COAST HIGHWAY  
HUNTINGTON BEACH  
APN 024-272-01

BLDG E

BLDG E

DATE PREPARED: 10/16/2019

SEE SHEET 3

1215-6RT-0199

SHEET 2 OF 3

PREPARED BY:



**HUNSAKER & ASSOCIATES**  
IRVINE, INC.  
PLANNING • ENGINEERING • SURVEYING  
Three Hughes • Irvine, CA 92618 • PH (949) 583-1010 • FX (949) 583-0739

PREPARED FOR:

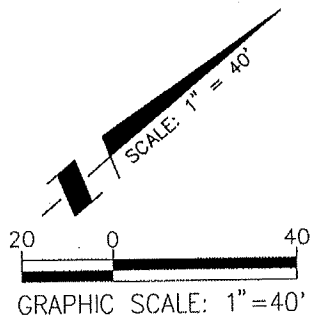
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21022 PACIFIC COAST HIGHWAY  
HUNTINGTON BEACH CA 92648  
P. 714.845.9090  
CONTACT: BRETT THORNTON

"PACIFIC CITY"




TRACT 16338 • LOT 2  
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SEE SHEET 2



**LEGEND**

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CALTRANS  
RIGHT OF WAY  
SIDEWALK

LANDSCAPE

CURB &  
GUTTER

PACIFIC COAST HWY.

LANDSCAPE

CALTRANS  
RIGHT OF WAY

BLDG E

BLDG G

BLDG M

"PACIFIC CITY"  
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HUNTINGTON BEACH  
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DATE PREPARED: 10/16/2019

1215-6RT-0199

SHEET 3 OF 3

PREPARED BY:

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"PACIFIC CITY"

TRACT 16338 • LOT 2  
RETAIL PORTION  
21022 PACIFIC COAST HIGHWAY  
HUNTINGTON BEACH CA 92648

## EXHIBIT "B"

TRAFFIC SIGNAL AND LIGHTING  
Caltrans and CITY of \_\_\_\_\_  
Effective \_\_\_\_\_, 20\_\_\_\_

BASIS OF COST DISTRIBUTION  
State-Owned and Maintained  
Billed by the State

<u>Route and PM</u>	<u>Location</u>	<u>Type of Facility</u>	<u>Cost Distribution</u>	
			<u>State</u>	<u>CITY</u>

Utility-Owned and Maintained  
Billed by the State

<u>Route and PM</u>	<u>Location</u>	<u>Type of Facility</u>	<u>Cost Distribution</u>	
			<u>State</u>	<u>CITY</u>



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/18/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Arthur J. Gallagher & Co. Insurance Brokers of CA. 1255 Battery Street #450 San Francisco CA 94111	CONTACT NAME: Ryan Jacques	PHONE (A/C, No. Ext): 949-349-9831	FAX (A/C, No): 949-349-9931
	E-MAIL ADDRESS: Ryan.Jacques@ajg.com		
INSURED City of Huntington Beach 2000 Main Street Huntington Beach CA 92648	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: Lloyd's Synd 2987		
	INSURER B: Allied World Insurance Company		22730
	INSURER C:		
	INSURER D:		
	INSURER E:		
INSURER F:			

## COVERAGES

CERTIFICATE NUMBER: 832694276

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY					EACH OCCURRENCE \$
	<input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR					DAMAGE TO RENTED PREMISES (Ea occurrence) \$
						MED EXP (Any one person) \$
						PERSONAL & ADV INJURY \$
	GEN'L AGGREGATE LIMIT APPLIES PER:					GENERAL AGGREGATE \$
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC					PRODUCTS - COMP/OP AGG \$
	OTHER:					\$
	AUTOMOBILE LIABILITY					COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> ANY AUTO					BODILY INJURY (Per person) \$
	<input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY					BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS ONLY					PROPERTY DAMAGE (Per accident) \$
A B	UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB	<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE	PK1037319 BK1168714A	7/1/2019 7/1/2019	7/1/2020 7/1/2020	EACH OCCURRENCE \$ \$7,000,000
	DED <input type="checkbox"/> RETENTION \$					AGGREGATE \$ \$7,000,000
						SIR \$ \$1,000,000
						PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/>
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	<input type="checkbox"/> Y <input type="checkbox"/> N				E.L. EACH ACCIDENT \$
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/> N/A				E.L. DISEASE - EA EMPLOYEE \$
	If yes, describe under DESCRIPTION OF OPERATIONS below					E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The State of California, its officers, agents and employees are included as additional insured solely with respect to bodily injury and property damage arising out of the operations as described by or on behalf of the named insured as required by written contract per endorsement attached. As respects to Maintenance Agreement at 21022 Pacific Coast Highway, Huntington Beach, CA.

## CERTIFICATE HOLDER

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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