

Resolution No. **2022-12-06-1205**

STOCKTON CITY COUNCIL

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE MIRACLE MILE IMPROVEMENT DISTRICT RELATIVE TO THE MIRACLE MILE COMMUNITY IMPROVEMENT DISTRICT

The Property and Business Improvement District Law of 1994, Streets and Highways Code section 36600 et seq., authorizes cities and counties to establish and renew property and business improvement districts for the purposes of providing activities and improvements which generate a special benefit to assessed parcels; and

The City of Stockton's Community Improvement District Ordinance, at Title 3, Chapter 3.96 of the Stockton Municipal Code, as amended by Ordinance No. 2022-03-22-1211, provides for alternative procedures which supplement the procedures of the Streets and Highway Code; and

The Miracle Mile Community Improvement District ("MMCID") Management District Plan (hereafter "Plan"), provides for enhanced security and maintenance, landscape beautification, advocacy services, marketing, and events with the intent of providing special benefits to assessed parcels within the MMCID; and

The City Council has authorized and approved the formation of the Miracle Mile Community Improvement District (MMCID) and its associated Management District Plan; and

On July 12, 2022, the City Council adopted Resolution No. 2022-07-12-1203, a Resolution of Intention for the formation of the MMCID; and

On September 13, 2022, the City Council adopted Resolution 2022-09-13-1602, approving the formation of the MMCID for a 20-year term beginning January 1, 2023; and

The MMCID was established to ensure the delivery of programs and provide enhanced maintenance, safety, marketing, management, and advocacy services beyond what the City currently provides; and

The adopted Management District Plan describes a governance framework for the MMCID, which requires the City of Stockton to contract with a non-profit corporation to manage MMCID funds and deliver the enhanced services pursuant to California Streets & Highways Code section 36651; and

The City desires to contract with the Miracle Mile Improvement District and designate it to deliver the enhanced services; now, therefore,

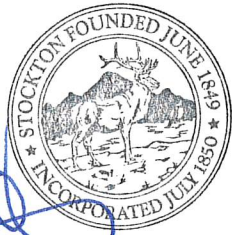
BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. The City Council designates the Miracle Mile Improvement District, a non-profit corporation, to operate the MMCID with responsibility for managing the community improvement district assessments and delivery of enhanced services, as described in the adopted Management District Plan, dated April 2022, including the delivery of programs, enhanced maintenance, safety, marketing, management, and advocacy services

2. The City Manager, or designee, is hereby authorized to execute the Agreement between the City and the Miracle Mile Improvement District, a copy of which is attached hereto as Exhibit 1 and incorporated by this reference.

3. The City Manager, or designee, is authorized to take whatever actions are necessary and appropriate to carry out the purpose and intent of this Resolution.

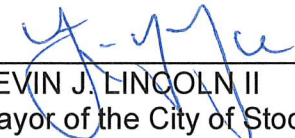
PASSED, APPROVED, and ADOPTED December 6, 2022.



ATTEST:



ELIZA R. GARZA, CMC
City Clerk of the City of Stockton



KEVIN J. LINCOLN II
Mayor of the City of Stockton

**AGREEMENT BETWEEN THE CITY OF STOCKTON
AND THE MIRACLE MILE IMPROVEMENT DISTRICT
RELATIVE TO THE MIRACLE MILE COMMUNITY
IMPROVEMENT DISTRICT (MMCID)**

This Agreement is entered into on January 1, 2023, by and between the CITY OF STOCKTON, a municipal corporation (herein “CITY”), and MIRACLE MILE COMMUNITY IMPROVEMENT DISTRICT, DBA THE MIRACLE MILE IMPROVEMENT DISTRICT, a California nonprofit corporation (herein the “Owners’ Association”).

RECITALS

On March 22, 2022, the City Council adopted an ordinance amending Title 3, Chapter 3.96, sections 3.96.020 and 3.96.030 and adding sections 3.96.040, 3.96.050, 3.96.060, 3.96.070, 3.96.080, 3.96.090, 3.96.100, 3.96.110, 3.96.120, and 3.96.130 of the Stockton Municipal Code, relating to the establishment of Community Improvement Districts (Ordinance No. 2022-03-22-1211).

A Community Improvement District (CID) is a flexible financing tool to allow Stockton business districts new mechanisms to establish innovative ways of attracting, retaining, and expanding their businesses to remain competitive with other areas of the region. The formation of a CID is authorized under the City of Stockton’s Community Improvement District Ordinance 2022-03-12-1211 (SMC Ordinance #2022-03-22-1211), upon tabulation of ballots at a public hearing. If the ballots in favor of the CID formation exceed the opposition (weighted by the amount of the assessment) the city may adopt a resolution for the formation of the CID.

On May 24, 2022, the City Council adopted a Resolution of Intention for the formation of the Miracle Mile Community Improvement District (MMCID) and authorized the City Manager to set a date for a public hearing to tabulate the ballots (Resolution No. 2022-05-24-1503).

On September 13, 2022, the City Council conducted a public hearing and, upon tabulation of the ballots with 76% of the votes in favor, adopted a resolution to approve the formation of the MMCID (Resolution No. 2022-09-13-1602), a map of the MMCID boundary is attached hereto as Exhibit “A”.

The Owners’ Association was established to support activities and improvements for the assessed properties, including enhanced security and maintenance, landscape beautification, advocacy services, marketing, events, and administration throughout the MMCID.

The City and the Owners’ Association wish to formalize respective roles and responsibilities with regards to maintenance within the MMCID, to ensure that the City continues to provide “baseline” City services, and the addition of privately contracted enhanced services is provided over and above, rather than supplanting, the current levels of City services.

The Owners' Association represents a large number of property owners within the MMCID and is instrumental in the establishment and formation of the MMCID and has the capacity to manage the District Improvements to be provided by the MMCID.

City and Owners' Association desire to enter into this Agreement to set forth the roles and responsibilities to each party with respect to providing the District Improvements and administering the MMCID in accordance with the adopted Management District Plan.

AGREEMENT

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **DEFINITIONS.** Certain terms are defined in the heading and recitals to this agreement. In addition to those definitions, as used in this Agreement, the following definitions shall apply:

- a. Management District Plan & Engineer's Report. The document entitled "Management Plan and Engineers Report" dated April 18, 2022, and April 19, 2022, respectively, adopted by the City Council on May 24, 2022 (Resolution No. 2022-05-24-1503) and incorporated herein to this Agreement by reference.
- b. District Improvements. The improvements (or services) to be provided by the Owners' Association including civil sidewalks (clean & safe), district identity & placemaking, administration & district management, and contingency & reserve as described in the Management District Plan.
- c. Benefit Zones. An area of land within the MMCID boundary designated to receive a specific level of District improvements. The four Benefit Zones are identified in Exhibit "A" and further described in the Management District Plan and Engineer's Report.

2. **OWNERS' ASSOCIATION OBLIGATIONS.** The Owners' Associations' obligations under this Agreement shall be as follows:

- a. Provide District Improvements. The Owners' Association shall provide, manage, and administer all District improvements for 20 years as indicated in the Management District Plan, during the following time periods:

Year 1	January 1, 2023 through December 31, 2023
Year 2	January 1, 2024 through December 31, 2024
Year 3	January 1, 2025 through December 31, 2025
Year 4	January 1, 2026 through December 31, 2026
Year 5	January 1, 2027 through December 31, 2027
Year 6	January 1, 2028 through December 31, 2028
Year 7	January 1, 2029 through December 31, 2029
Year 8	January 1, 2030 through December 31, 2030
Year 9	January 1, 2031 through December 31, 2031
Year 10	January 1, 2032 through December 31, 2032

Year 11	January 1, 2033 through December 31, 2033
Year 12	January 1, 2034 through December 31, 2034
Year 13	January 1, 2035 through December 31, 2035
Year 14	January 1, 2036 through December 31, 2036
Year 15	January 1, 2037 through December 31, 2037
Year 16	January 1, 2038 through December 31, 2038
Year 17	January 1, 2039 through December 31, 2039
Year 18	January 1, 2040 through December 31, 2040
Year 19	January 1, 2041 through December 31, 2041
Year 20	January 1, 2042 through December 31, 2042

- b. Budget & Annual Reports. The Owners' Association shall submit to the City, for review, comment, and approval, an annual report describing the MMCID improvements and accomplishments for the previous year and proposed budget for each upcoming year of operation. At formation of the district, the Owners' Association will submit the newly formed MMCID budget for 2023 on or before **December 15, 2022**. In year 1, the Owners' Association shall submit the final former MMPBID accomplishments and annual report and the newly formed MMCID district goals on or before **March 1, 2023**. Subsequent yearly budgets shall be submitted on or before **January 1st** for years 2-20.
- c. Financial Statements. The Owners' Association shall submit a statement of income and expenses of the MMCID, reviewed by a Certified Public Accountant, covering the previous calendar year on or before **March 1, 2024** for year 1 (2023), and **March 1st** for each year thereafter. Within thirty (30) days of written request of the City, the Owners' Association shall provide all other financial information in relation to the MMCID as may be reasonably requested from time to time. The Budget Reports for years 2-20 shall declare the budget surplus (or deficit) for the prior year.
- d. Subcontracting. The Owners' Association shall let and administer all subcontracts necessary for providing the MMCID Improvements. In all subcontracting, the Owners' Association shall follow competitive bidding procedures unless the Owners' Association has documented that it is necessary to award a subcontract on a negotiated basis to assure the provisions of adequate improvements at the most advantageous cost.
- e. Work in the Public Right-of-Way. The Owners' Association shall comply with all federal, state, and local laws and shall secure all necessary permits and authorizations pertaining to work within the public right-of-way including, but not limited to, sidewalks, alleys, streets, public easements, public buildings, and public parking areas and garages.
- f. Maintain Database. The Owners' Association shall maintain a complete database of all parcels, building square footages, and linear frontage footages of assessed properties within the MMCID. Said database shall be updated at least once each year during MMCID operations to reflect changed conditions and to accurately reflect status of assessed parcels. Owners' Association shall provide a copy of the database with the submittal of the Budget Reports

described in section 2.b. above.

- g. Indemnify and Hold Harmless. To the fullest extent permitted by law, Owners' Association shall hold harmless, defend at its own expense, and indemnify the City, its officers, employees, agents, and volunteers, against any and all liability, claims, losses, damages, or expenses, including reasonable attorney's fees, arising from all acts or omissions of Owners' Association or its officers, agents, or employees in rendering services under this Agreement; excluding, however, such liability, claims, losses, damages, or expenses arising from the City's sole negligence or willful acts. The duty to defend and the duty to indemnify are separate and distinct obligations. The indemnification obligations of this section shall survive the termination of this Agreement.
- h. Insurance Requirements. Owners' Association shall maintain insurance in the form identified in Exhibit "B".

3. **CITY OBLIGATIONS**. The City's obligations under this Agreement shall be as follows:

- a. Owners' Association Administration. The City shall provide administration of the annual MMCID proceedings, including preparation of the annual City Council reports.
- b. Billing and Collecting. The City will coordinate the annual levy process and collecting of assessments directly with the County of San Joaquin.
- c. Payments to the MMCID. The annual MMCID assessment will be collected with the regular County property taxes. The MMCID will provide direct billing to the County in order to receive these revenues. The City will not act as an intermediary to request payments on behalf of the MMCID.
- d. Annual City Contribution. The City will make an annual contribution to the MMCID for the assessments of city owned properties within the MMCID. The City's contribution will be an aggregate sum based on the number, size, and location of City-owned properties within the MMCID and the annual assessment rates. The City's contribution for the Year 1 of operation (2023), is estimated to be \$21,639.84. The City's contribution will be paid to the Owners' Association by March 31st of each year thereafter of MMCID operation based upon the assessment amount approved in the annual Council authorization for appropriation of the MMCID annual report, budget, and financials.
- e. City commitment to maintain baseline services. The City shall agree to maintain a level of City services to the MMCID boundary that allows for asset sustainability, and not supplant these services. The intent is not to supplant baseline City services currently provided within the City right-of-way with services to be provided by the MMCID Management District Plan. However, such maintenance of services shall be subject to the discretionary actions of the City Council.

- f. City contract for Owners' Association services. The City may enter into contracts for services to request that the Owners' Association provide certain maintenance functions for City-owned facilities or public right-of-way located within the MMCID.

4. GOVERNANCE

Assignment and Assumption. As provided in the Management District Plan, a new public benefit non-profit corporation may be established after formation of the MMCID to manage the MMCID. Pursuant to an assignment and assumption agreement between the City, Owners' Association, and the new public benefit non-profit corporation, the rights, obligations, and responsibilities of the Owners' Association may be assigned to and assumed by the new public benefit non-profit corporation, which shall thereafter serve as the owners' association of the MMCID. The City Manager of the City is empowered to execute such an assignment and assumption agreement on behalf of the City.

5. GENERAL PROVISIONS

- a. Notices. Any notice, tender, delivery, or other communications pursuant to the Agreement shall be in writing and shall be deemed to be properly given when delivered or mailed in the manner provided in this paragraph to the following persons:

City of Stockton
Attn: City Manager
425 N. El Dorado Street
Stockton, CA 95202

Miracle Mile Improvement District
Attn: Executive Director
PO Box 4016
Stockton, CA 95204

Any party may change that party's address for these purposes by giving written notice to the change to the other parties in the manner provided in this section. If sent by mail, any notice, delivery, or other communication shall be effective or deemed to have been given 48 hours after it has been deposited in the United States mail, with postage prepaid, and addressed as set forth above.

- b. Term and Termination. The term of this Agreement shall be from the date of execution first noted through December 31, 2042. The Owners' Association may recommend to the City Council an extension of the termination date to allow the expenditure of remaining budgeted funds for improvements in the event all MMCID funds are not received and spent by December 31, 2042. Said extension, if any, shall be at the sole discretion of the City Council. Following termination, the Owners' Association shall, as expeditiously as reasonably possible, terminate all activities of the MMCID, pay all obligations and costs of administration incurred on behalf of the MMCID, and return all remaining

MMCID funds to the City. Thereafter, the City shall return remaining MMCID funds to the owners of the assessed properties in amounts proportionate to the amounts of assessments they paid for the MMCID.

- c. Attorney's Fees. If the services of any attorney are required by either party to secure the performance of this Agreement, or otherwise upon the breach of the default of either party, or if any judicial remedy or arbitration is necessary to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to reasonable attorney fees, costs, and other expenses, in addition to any other relief to which such party may be entitled.
- d. Governing Law. This Agreement and the legal relations between the parties shall be governed by and construed in accordance with the laws of the State of California.
- e. Waiver. The waiver by any party to this agreement of breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provisions of this Agreement.
- f. Entire Agreement. This document, including all Exhibits, contains the entire Agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement.
- g. Severability. If any portion of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on this date first set for the above.

CITY OF STOCKTON,
a Municipal Corporation

MIRACLE MILE CID, dba MIRACLE
MILE IMPROVEMENT DISTRICT,
a California non-profit corporation

BY: _____
Harry Black
City Manager

BY: _____

NAME: _____

TITLE: _____

APPROVED AS TO FORM:

By _____
Lori M. Asuncion, City Attorney

Exhibit "A" MMCID Boundary Map

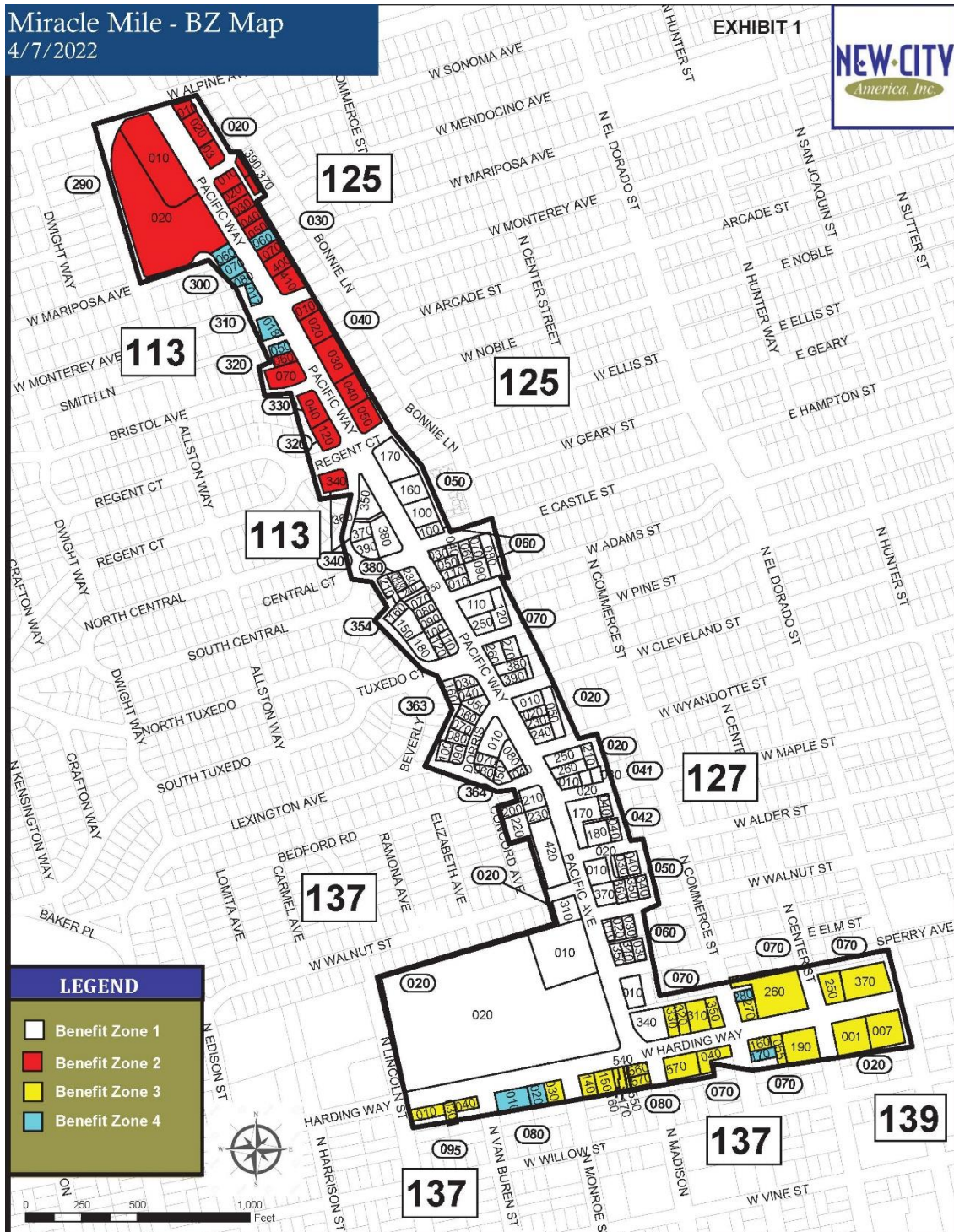


Exhibit "B"
Insurance Requirements

Owners' Association shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Owners' Association, its agents, representatives, employees or subcontractors.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the **general aggregate limit shall be twice** the required occurrence limit.
2. **Automobile Liability (AL):** ISO Form Number CA 00 01 covering any auto (Code 1), or if Owners' Association has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.

If the Owners' Association maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Owners' Association. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

- **Additional Insured Status**
The *City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers* are to be covered as additional insureds on the CGL and AL policy with respect to liability arising out of work or operations performed by or on behalf of the Owners' Association including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Owners' Association insurance (**at least as broad as** ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used). Additional insured Name of Organization shall read "City of Stockton, its Mayor, Council, officers,

representatives, agents, employees and volunteers.” Policy shall cover City of Stockton, its Mayor, Council, officers, representatives, agents, employees, and volunteers for all locations work is done under this contract.

- **Primary Coverage**

For any claims related to this contract, the Owners’ Association insurance coverage shall be endorsed as primary insurance as respects the *City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers*. Any insurance or self-insurance maintained by the *City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers* shall be excess of the Owners’ Association insurance and shall not contribute with it. The City does not accept endorsements limiting the Owners’ Association insurance coverage to the sole negligence of the Named Insured.

- **Notice of Cancellation**

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.

- **Waiver of Subrogation**

Owners’ Association hereby grants to the City a waiver of any right to subrogation which any insurer of said Owners’ Association may acquire against the City by virtue of the payment of any loss under such insurance. Owners’ Association agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

- **Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to and approved by the City of Stockton Risk Services. The City may require the Owners’ Association to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

- **Acceptability of Insurers**

Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A:VII if admitted to do business in the State of California; If not admitted to do business in the State of California, insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A+:X.

- **Claims Made Policies**

If any of the required policies provide claims-made coverage:

- The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.

- If Claims Made policy form is used, a three (3) year discovery and reporting tail period of coverage is required after completion of work.
- **Verification of Coverage**
Owners' Association shall furnish the City with original certificates and amendatory endorsements required by this clause. All certificates and endorsements are to be received and approved by the City of Stockton Risk Services before work commences. Failure to obtain the required documents prior to the work beginning shall not waive the Owners' Association obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time, for any reason or no reason.

Owners' Association shall, prior to the commencement of work under this Agreement, provide the City with a copy of its Declarations Page and Endorsement Page for each of the required policies.

- **Special Risks or Circumstances**
The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.
- **Certificate holder address**
Proper address for mailing certificates, endorsements and notices shall be:
City of Stockton
400 E. Main Street, 3rd Floor – HR
Attn: City Risk Services
Stockton, CA 95202
City of Stockton Risk Services Phone: 209-937-5037
City of Stockton Risk Services Fax: 209-937-8558
- **Maintenance of Insurance**
If at any time during the life of the Contract or any extension, the Owners' Association fails to maintain the required insurance in full force and effect, all work under the Contract shall be discontinued immediately. Any failure to maintain the required insurance shall be sufficient cause for the CITY to terminate this Contract.
- **Subcontractors**
If the Owners' Association should subcontract all or any portion of the work to be performed in this contract, the Owners' Association shall cover the sub-contractor, and/or require each sub- contractor to adhere to all subparagraphs of these Insurance Requirements section. Similarly, any cancellation, lapse, reduction or change of sub- contractor's insurance shall have the same impact as described above.