

**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 and indemnify City of Stockton and its officers, officials, employees and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with Owners' Association's performance hereunder or its failure to comply with any of its obligations contained in the agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the City of Stockton. This obligation is independent of, and shall not in any way be limited by, the minimum Insurance obligations contained in this agreement. These obligations shall survive the completion or 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. City will make an annual contribution to the MMCID for the assessment 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: Kimberly Byrd

NAME: Kimberly Byrd

TITLE: Executive Director

APPROVED AS TO FORM:

By _____
Lori M. Asuncion, City Attorney

Exhibit "B"

Insurance Requirements

Contractor shall procure and maintain for the duration of the contract, *and for three (3) years thereafter*, 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 Contractor, his 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 **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the City of Stockton requires and shall be entitled to the broader coverage and/or the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City of Stockton.

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 officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor 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 Contractor's 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, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 if a later edition is used). Additional insured Name of Organization shall read "City of Stockton, its officers, officials, employees, and volunteers." Policy shall cover City of Stockton, its officers, officials, employees, and volunteers for all locations work is done under this contract.

Primary Coverage

For any claims related to this contract, the **Contractor's insurance coverage shall be primary and non-contributory** and at least as broad as ISO CG 20 01 04 13 as respects the City of Stockton, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Stockton, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies. The City of Stockton does not accept endorsements limiting the Contractor's insurance coverage to the sole negligence of the Named Insured.

Umbrella or Excess Policy

The Contractor may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary and excess liability policies are exhausted.

Notice of Cancellation

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

Waiver of Subrogation

Contractor hereby grants to City of Stockton a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City of Stockton by virtue of the payment of any loss under such insurance. Contractor 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 of Stockton has received a waiver of subrogation endorsement from the insurer.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the City of Stockton. The City of Stockton may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City of Stockton. The CGL and any policies, including Excess liability policies, may not be subject to a self-insured retention (SIR) or deductible that exceeds \$25,000 unless approved in writing by City of Stockton. Any

and all deductibles and SIRs shall be the sole responsibility of Contractor or subcontractor who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. City of Stockton may deduct from any amounts otherwise due Contractor to fund the SIR/deductible. Policies shall NOT contain any self-insured retention (SIR) provision that limits the satisfaction of the SIR to the Named. The policy must also provide that Defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible. City of Stockton reserves the right to obtain a copy of any policies and endorsements for verification.

Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City of Stockton.

Claims Made Policies

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

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided ***for at least three (3) years after completion of the contract of work.***
3. If coverage is canceled or non-renewed, and not replaced ***with another claims-made policy form with a Retroactive Date prior to*** the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of ***three (3)*** years after completion of work.

Verification of Coverage

Contractor shall furnish the City of Stockton with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause **and a copy of the Declarations and Endorsements Pages of the CGL and any Excess policies listing all policy endorsements.** All certificates and endorsements and copies of the Declarations & Endorsements pages are to be received and approved by the City of Stockton before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City of Stockton reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. City of Stockton reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Subcontractors

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City of Stockton is an additional insured on insurance required from subcontractors.

Duration of Coverage

CGL & Excess liability policies **for any construction related work, including, but not limited to, maintenance, service, or repair work**, shall continue coverage for a minimum of 3 years for Completed Operations liability coverage. Such Insurance must be maintained and evidence of insurance must be provided ***for at least three (3) years after completion of the contract of work.***

Special Risks or Circumstances

City of Stockton reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Certificate Holder Address

The address for mailing certificates, endorsements and notices shall be:

City of Stockton

Its Officers, Officials, Employees, and Volunteers

400 E Main St, 3rd Floor – HR

Stockton, CA 95202