

COUNTY OF SACRAMENTO

AGREEMENT WITH THE CARMICHAEL IMPROVEMENT DISTRICT, INC.
FOR IMPLEMENTATION OF MANAGEMENT DISTRICT PLAN FOR THE
CARMICHAEL PROPERTY AND BUSINESS IMPROVEMENT DISTRICT

THIS Agreement (Agreement) is made and entered into this 30th day of AUGUST, 2017, by and between the County of Sacramento (County), a political subdivision of the State of California, and the Carmichael Improvement District, Inc. (Association), a California Nonprofit Mutual Benefit Corporation.

Recitals

WHEREAS, the Property and Business Improvement District Law of 1994, Streets and Highways Code §36600 et seq., authorizes counties to establish Property and Business Improvement Districts (PBID) to provide improvements and activities which specially benefit assessed properties; and

WHEREAS, the formation and operation of PBIDs by Owners Associations in business corridors and areas of the County assists the County in providing enhanced or expanded level of Municipal and social services than what was previously provided to the these area;

WHEREAS, on October 18, 2016, the Board of Supervisors (Board) of the County adopted Resolution No. 2016-0792, a Resolution of Intention to form the Carmichael PBID (District), which stated its intention to levy and collect assessments; and

WHEREAS, a Management District Plan, which details the District boundaries and summarizes the services and activities to be provided and the related costs and budgets and includes an Engineer's Report which provides the method of assessment and a table that includes each parcel within the District and its assessment amount and ensures that the assessments will be imposed in accordance with the provisions of Article

IIID of the California Constitution, has been filed with the Board and was attached as Exhibit A to the Resolution of Intention; and

WHEREAS, on December 6, 2016, the Board held a public hearing and adopted by resolution the establishment of the District and the levy of an annual assessment for a five year term (January 1, 2017 through December 31, 2021); and

WHEREAS, the Association was incorporated on December 13, 2016, as a California Nonprofit Mutual Benefit Corporation; and

WHEREAS, the Board pursuant to Streets and Highways Code §36651, has identified the Association as the body that shall be the Owners' Association of the District as defined in Streets and Highways Code §36614.5 and shall implement the proposed program as adopted in the Management District Plan (Fiscal Years 2015-16 through 2020-21); and

WHEREAS, the Board has determined that the County will contract with the Association acting as the Owners' Association to provide the District's improvements and services.

NOW, THEREFORE, in consideration of the foregoing recitals and mutual covenants contained herein, the County and Association agree as follows:

1. The Association's Obligations. The Association agrees to do all of the following:
 - A. *Management District Plan.* Provide the activities and improvements described in the management district plan and otherwise administer and implement the plan.
 - B. *Initial Report.* By June 1 of the first year of operation, submit to the County a written estimate of the District's budget for the next year. The estimate must include the amount of any anticipated increase in the assessment.

- C. *Annual Reports.* By May 1 of each year of operation after the first, submit to the County a written report in accordance with Streets and Highways Code section 36650.
- D. *Subcontracts.* The Association may subcontract portions of the services. The Association will be solely responsible for payment for such subcontract services. No contractual relationship will exist between any such subcontractors of the Association and the County. Association shall award and administer all subcontracts necessary for providing the activities and improvements. Association shall adhere to the following procedure when awarding a subcontract exceeding \$25,000: (1) solicit competitive bids or proposals for the work; (2) consider the bids received before awarding the subcontract; and (3) make a written "Bid Record" after the subcontract is awarded (the Bid Record must list the name and amount bid for each bidder and describe the reasons for awarding the subcontract to the successful bidder).
- E. *Compliance with Laws.* The Association will comply with all federal, state, and local laws. This includes The Ralph M. Brown Act (Government Code § 54950 et seq.) ("Brown Act") whenever matters within the subject matter of the District are heard, discussed, or deliberated, and the California Public Records Act (Government Code § 6250 et seq.) for all documents relating to activities of the District. The Association shall ensure that its board members and management staff, if any, undertake training on the Brown Act, which may consist of self-study materials, an online course, or in-person training. The Association shall also secure all necessary permits and authorizations for work to be done by the district on public property or within public right-of-ways such as sidewalks, alleys, streets, pedestrian malls, public easements, public buildings, and public-parking areas.
- F. *Data Base.* Maintain a complete data base of assessed properties within the District. Update the data base at least once each year to reflect changed conditions and to reflect accurately the status of assessed parcels. Provide a

copy of the data base when submitting the annual reports described in subsection 1(B) and 1(C). Pursuant to Section 2(E) below, the County will upon formation and renewal, and once annually, will provide to the Association an Excel Spreadsheet that includes the information necessary to create and maintain this database.

G. *Indemnity.* The Association shall at all times act in a reasonable and responsible manner when administering this Agreement and the activities of the Association and shall indemnify, defend, protect, and hold harmless the County and its elected officials, officers, employees, agents, and volunteers from and against all liabilities, claims, demands, damages (including but not limited to civil fines and penalties), and costs (including but not limited to reasonable attorneys' fees and litigation costs through final resolution), arising out of or related to either this Agreement or when providing the activities or improvements described in the management district plan or while otherwise administering or implementing the plan due to its failure to act reasonably, which result in injuries to or death of any person, or damage to or destruction of any property (including the environment); or from violation of law. Nothing in this Section shall absolve the County for claims caused by the sole negligence or willful misconduct of the County or any other indemnified party. Nothing in this Agreement shall be construed to create any duty to, or any standard of care with reference to, or any liability or obligation, contractual or otherwise, to any third party. The Association's obligations to indemnify shall survive the expiration or early termination of this Agreement.

The Association's obligations under this subsection 1(G) are separate from its obligations under subsection 1(H) and will survive the expiration or early termination of this Agreement.

H. *Insurance.* Maintain in force during the term of this Agreement, at its sole cost, insurance policies that meet the requirements of Exhibit B:

- I. *Independent Contractor Status.* The Association will perform under this Agreement as an independent contractor and will be responsible for any federal, state, or local taxes or fees that apply to payments it receives from the County under this Agreement. The Association's employees and subcontractors will not be employees of the County and will not be eligible for any benefits provided through the County, including but not limited to social security, health, workers' compensation, unemployment compensation, and retirement benefits. Neither the Association nor any of its officers, employees, agents, volunteers, or subcontractors are or will be considered to be agents of the County in connection with the Association's performance under this Agreement.

- J. *Records/Audit.* During the term of this Agreement, and for one year after the term expires or terminates, the Association agrees to maintain detailed records pertaining to District administration sufficient to provide the basis for an unqualified opinion by an independent auditor, including but not limited to records concerning budgeting, expenditures, subcontracts (e.g., bid records), insurance, permits, administrative expenses, and overhead. The Association agrees to make all such records available to the County at all reasonable times. Notwithstanding the record retention period specified above, if the County reasonably requests, the Association will obtain and provide to the County, at the County's sole cost, an independent financial audit of the Association's use of District funds for the previous five years of the District's operation.

2. County Obligations. The County agrees to do all of the following:

A. *District Administration.*

Annual Administration: For annual administration, this includes, but is not limited to, preparation of the annual assessment roll, review of district annual report, preparation of the annual Board of Supervisors reports, responses to inquiries from property owners, and review of appeals of assessments.

District Renewal Administration: For district renewals, this includes, but is not limited to, review of management district plan, coordinate renewal effort with consultant, Association and property owners, prepare notices and ballots, conduct Proposition 218 protest ballot process, prepare Board of Supervisors reports/resolutions and presentation of items to the Board of Supervisors.

- B. *Billing and Collecting.* Responsible for the annual levy and collection of District assessments.

- C. *Payments to the Association.* The annual District assessments will be collected with the regular county property taxes, or in certain instances, including the initial year assessments, may be direct billed. The County will pay the Association the balance of revenue actually received from the Auditor less any Department of Finance costs for annual billing and collection for assessments collected as part of the annual secured tax roll. Department of Finance Costs are updated annually and included as Attachment H to the Direct Levy Instructions and posted on the Department of Finance website.)

Payment will occur twice each year, with the County becoming obligated to make a payment only when the Auditor has disbursed the assessment revenue to the County (typically within 60 to 90 days after December 10 and April 10) unless the initial year assessments were directly billed in which case the County will provide the assessment revenue that it receives from property owners within a reasonable time from when revenues are received.

The amount of any assessments not received by the County, and not paid by the County's Teeter Plan, will be reported to the Association for inclusion in the following year's budget.

- D. *Maintain The Level of Service.* The County agrees to maintain the basic level of service to the District. The term "Level of Service" shall mean, but is not limited to, the municipal services (i.e. garbage sewer, Sheriff, etc.) enjoyed by other commercial properties and districts within the County.

C. *Effective Date, Term, and Early Termination.* This Agreement shall become effective on September 1, 2017. The term of this Agreement begins on the effective date and ends at 11:59 p.m., Pacific Coast time, on December 31, 2021. The County may terminate this Agreement early if it determines that the Association;

- i. has misappropriated funds, committed malfeasance, or violated any law in providing the activities and improvements described in the management district plan or in otherwise administering and implementing the plan; or
- ii. has materially breached this Agreement and has failed to cure the breach within 30 days after receiving the County's written demand for cure.

Following early termination, the Association will do all of the following as expeditiously as is reasonably possible: terminate all of its activities on behalf of the District, pay all obligations and administration costs it incurred on behalf of the District, and return to the County all remaining District funds and all assets acquired with District funds, consistent with the laws of the State of California. The County will hold all returned funds and assets on behalf of the District.

D. *Attorneys' Fees.* If a legal action or proceeding is sought by any party because of default or material breach of this Agreement, or to enforce any provision thereof, the prevailing party therein shall be entitled, in addition to any other relief, to recover reasonable costs, including attorney's fees and court costs, from the other party as determined by the court in which said action or proceeding is pending.

E. *Agreement Interpretation and Venue.* Time is of the essence of this Agreement, which is to be interpreted and applied in accordance with California law. Any litigation concerning this Agreement must be brought and prosecuted in the Sacramento County Superior Court.

- F. *Waiver.* A party's failure to insist on strict performance of this Agreement or to exercise any right or remedy upon the other party's breach of this Agreement will not constitute a waiver of the performance, right, or remedy. A party's waiver of the other party's breach of any term or provision in this Agreement will not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other term or provision. A waiver is binding only if set forth in writing and signed by the waiving party.
- G. *Entire Agreement.* This Agreement sets forth the parties' entire understanding regarding the subjects covered. It supersedes all prior or contemporaneous Agreements, representations, and negotiations regarding those subjects (whether written, oral, express, or implied) and may be modified only by another written Agreement signed by both parties.
- H. *Counterparts.* The parties may execute this Agreement in counterparts, each of which will be considered an original, but all of which will constitute the same Agreement.
- I. *Extension.* Unless terminated pursuant to Section 3.C, this Agreement shall be extended upon the renewal of the District by the Board for the duration that is consistent with the term of the renewal. If either party desires to change the terms of the agreement, a new agreement will be required.
- J. *Conflict of Interest.* For the duration of this Agreement, neither members of the Board of Directors of the Association, nor its Chief Executive Officer, may enter into any other contracts regarding the District, nor vote on any District matter when such contract or matter would be of financial benefit to the member or director over and above the general financial benefit to all members in the District.
- K. *Nondiscrimination.* The Association represents and agrees that it does not and will not discriminate against any employee or applicant for employment because of political affiliation or opinion, age, ancestry, marital status,

physical condition, pregnancy or pregnancy-related condition, race, ethnicity, religion, color, sex, sexual orientation, national origin or medical condition.

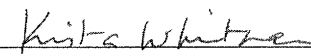
- L. *Assignment.* Neither this Agreement, nor any interest herein, shall be assigned by any party without the prior written consent of the other party.
- M. *Authority.* The signatories to this Agreement represent and warrant that they have the necessary authority to bind the party that they represent to each and all of the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Acquisition and Disclosure Agreement to be executed by their authorized representatives as of the effective date stated above.

COUNTY: COUNTY OF SACRAMENTO

By: 
Michael Penrose
Deputy County Executive

Approved as to Form:

By: 
KRISTA WHITMAN
Assistant County Counsel

DISTRICT: Carmichael Improvement District, Inc.,
California nonprofit mutual benefit
corporation.

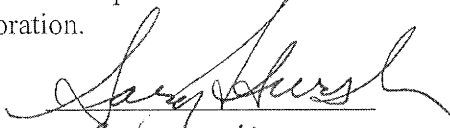
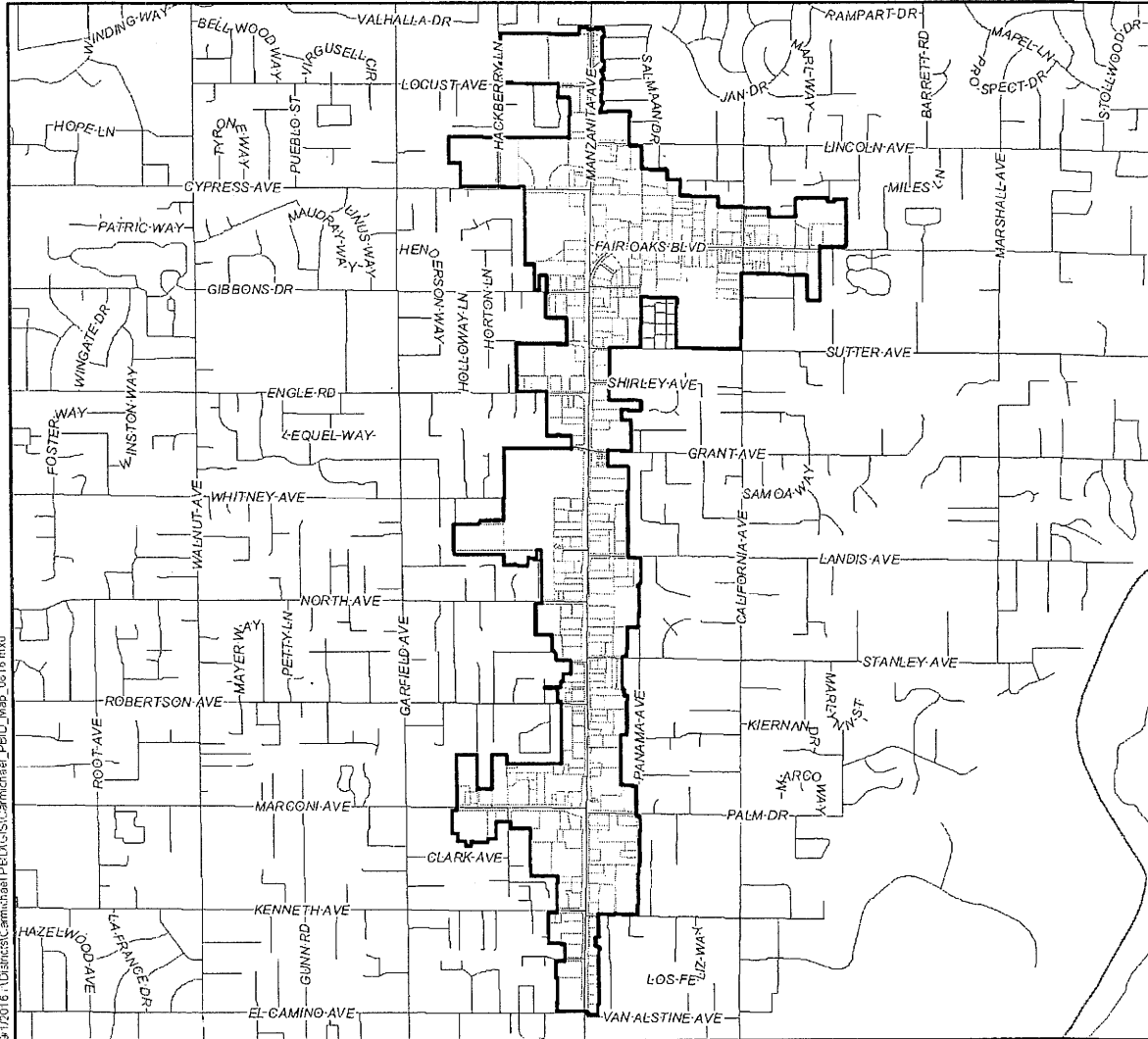
By: 
Name: GARY HURSH
Title: CHAIRMAN
BOARD OF DIRECTORS



EXHIBIT A

EXHIBIT A - CARMICHAEL PROPERTY &
BUSINESS IMPROVEMENT DISTRICT
BOUNDARY & VICINITY MAP



9-17-06 1:03:53 C:\carmichael\PBID\GIS\Carmichael_PBID_Map_0316.mxd

Legend

-  Carmichael PBID Proposed Boundary
-  Carmichael PBID Proposed Area

Supervisory Districts: 3 - Peters

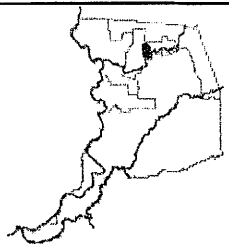


EXHIBIT B

Insurance Requirements

I. INSURANCE

Without limiting ASSOCIATION'S indemnification, ASSOCIATION shall procure and maintain or cause to be procured and maintained for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by ASSOCIATION, its agents, representatives or employees. COUNTY shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If in the opinion of COUNTY Risk Manager, insurance provisions in these requirements do not provide adequate protection for COUNTY and for members of the public, COUNTY may require ASSOCIATION to obtain insurance sufficient in coverage, form and amount to provide adequate protection. COUNTY'S requirements shall be reasonable but shall be imposed to assure protection from and against the kind and extent of risks that exist at the time a change in insurance is required. Any claim by ASSOCIATION that COUNTY'S insurance changes result in higher costs will be subject to review and approval by COUNTY, whose approval will not be unreasonably withheld.

II. VERIFICATION OF COVERAGE

ASSOCIATION shall furnish COUNTY with certificates evidencing coverage required below. Copies of required endorsements must be attached to provided certificates. COUNTY Risk Manager may approve self-insurance programs in lieu of required policies of insurance if, in the opinion of the Risk Manager, the interests of COUNTY and the general public are adequately protected. All certificates, evidences of self-insurance, and required endorsements are to be received and approved by COUNTY before performance commences. COUNTY reserves the right to require that ASSOCIATION also provide a copy of the declarations page and a copy of the schedule of forms and endorsements of each policy of insurance required hereunder. COUNTY also reserves the right to require that ASSOCIATION, through its broker, provide explanatory memoranda regarding coverages, endorsements, policy language, or limits as required hereunder.

III. MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

- A. GENERAL LIABILITY: Insurance Services Office's Commercial General Liability occurrence coverage form CG 0001. Including, but not limited to Premises/Operations, Products/Completed Operations, Contractual, and Personal & Advertising Injury, without additional exclusions or limitations, unless approved by COUNTY Risk Manager.

B. AUTOMOBILE LIABILITY: Insurance Services Office's Commercial Automobile Liability coverage form CA 0001.

1. Commercial Automobile Liability: auto coverage symbol "1" (any auto) for corporate/business owned vehicles. If there are no owned or leased vehicles, symbols 8 and 9 for non-owned and hired autos shall apply.

2. Personal Lines automobile insurance shall apply if vehicles are individually owned.

C. WORKERS' COMPENSATION: Statutory requirements of the State of California and Employer's Liability Insurance.

D. UMBRELLA: Umbrella or Excess Liability policies are acceptable where the need for higher liability limits is noted in the Minimum Limits of Insurance and shall provide liability coverages that at least follow form over the underlying insurance requirements where necessary for Commercial General Liability, Commercial Automobile Liability, Employers' Liability, and any other liability coverage (other than Professional Liability) designated under the Minimum Scope of Insurance.

IV. MINIMUM LIMITS OF INSURANCE

ASSOCIATION shall maintain limits no less than:

A. GENERAL LIABILITY:

General Liability shall be on an Occurrence basis (as opposed to Claims Made basis). Minimum limits and structure shall be:

General Aggregate:	\$2,000,000
Products Comp/Op Aggregate:	\$2,000,000
Personal & Adv. Injury:	\$1,000,000
Each Occurrence:	\$2,000,000
Fire Damage:	\$ 100,000

ASSOCIATION shall have its general liability Aggregate Limit of Insurance endorsed to apply separately to each job site or project, as provided for by Insurance Services Office form CG-2503 Amendment-Aggregate Limits of Insurance (Per Project).

B. AUTOMOBILE LIABILITY:

1. Commercial Automobile Liability for Corporate/business owned vehicles including non-owned and hired, \$1,000,000 Combined Single Limit.

2. Personal Lines Automobile Liability for Individually owned vehicles, \$250,000 per person, \$500,000 each accident, \$100,000 property damage.

C. WORKERS' COMPENSATION: Statutory.

D. EMPLOYER'S LIABILITY: \$1,000,000 per accident for bodily injury or disease.

V. DEDUCTIBLES AND SELF-INSURED RETENTION

Any deductibles or self-insured retention that apply to any insurance required by this Agreement must be declared and approved by COUNTY. Any deductibles or self-insured retention in excess of \$100,000 must be declared to and accepted by COUNTY in writing. ASSOCIATION has the option to provide by separate letter the amount of its General Liability, Automobile Liability, and, if applicable, CPL deductible or self-insured retention to COUNTY'S Risk Management Office for COUNTY'S confidential review and acceptance prior to the execution of this Agreement.

VI. OTHER INSURANCE PROVISIONS

The insurance policies required in this Agreement are to contain, or be endorsed to contain, as applicable, the following provisions:

A. ALL POLICIES:

1. ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-: VII. COUNTY Risk Manager may waive or alter this requirement, or accept self-insurance in lieu of any required policy of insurance if, in the opinion of the Risk Manager, the interests of COUNTY and the general public are adequately protected.

2. MAINTENANCE OF INSURANCE COVERAGE: ASSOCIATION shall maintain all insurance coverages and limits in place at all times and provide the COUNTY with evidence of each policy's renewal within ten (10) days after its anniversary date. ASSOCIATION is required by this Agreement to immediately notify COUNTY if it receives a communication from its insurance carrier or agent that any required insurance is to be canceled, non-renewed, reduced in scope or limits (excepting reduction of limits due to claims) or otherwise materially changed. ASSOCIATION shall provide evidence that such cancelled or non-renewed or otherwise materially changed insurance has been replaced or its cancellation notice withdrawn without any interruption in coverage, scope or limits. If commercially available, each insurance policy shall state that coverage shall not be cancelled by the ASSOCIATION or its insurer, reduced in scope of coverage or limits (excepting reduction by claims), non-renewed, or otherwise materially changed unless the insurer(s) provide thirty (30) days written notice to the COUNTY prior to such change. Ten (10) days prior written notice shall be given to the COUNTY in the event of cancellation due to nonpayment of premium.

B. COMMERCIAL GENERAL LIABILITY AND/OR COMMERCIAL AUTOMOBILE LIABILITY:

1. ADDITIONAL INSURED STATUS: COUNTY, its officers, directors, officials, employees, and authorized agents and volunteers are to be endorsed as additional insureds as respects: liability arising out of activities performed by or on behalf of ASSOCIATION; products and completed operations of ASSOCIATION; premises owned, occupied or used by ASSOCIATION; or automobiles owned, leased, hired or borrowed by ASSOCIATION.
2. PRIMARY INSURANCE: For any claims related to this Agreement, ASSOCIATION'S insurance coverage shall be endorsed to be primary insurance as respects COUNTY, its officers, officials, employees, and authorized agents and volunteers. Any insurance or self-insurance maintained by COUNTY, its officers, directors, officials, employees, and authorized agents and volunteers shall be excess of ASSOCIATION'S insurance and shall not contribute with it.
3. SEVERABILITY OF INTEREST: ASSOCIATION'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
4. SUBCONTRACTORS: ASSOCIATION shall be responsible for the acts and omissions of all its contractors at every tier and shall require adequate insurance from its contractors, as determined by ASSOCIATION.

C. WORKERS' COMPENSATION:

WORKERS' COMPENSATION WAIVER OF SUBROGATION: The workers' compensation policy required hereunder shall be endorsed to state that the workers' compensation carrier waives its right of subrogation against COUNTY, its officers, directors, officials, employees, agents or volunteers, which might arise by reason of payment under such policy in connection with performance under this Agreement by ASSOCIATION.

D. PROPERTY:

1. ASSOCIATION shall procure, maintain, and keep in force at all times during the term of the Agreement and until the date of transfer of the insurable interest to and acceptance by the COUNTY, at the ASSOCIATION'S sole expense, Builder's Risk insurance with limits of liability equal to one hundred percent (100%) of the replacement cost of the Project(s), which shall include the cost of materials and the cost of labor to install materials. The contractor and sub-contractors shall be included under the ASSOCIATION'S Builder's Risk insurance and listed on a certificate of insurance as additional insureds. The ASSOCIATION'S Builder's Risk insurance

shall contain a waiver of subrogation in favor of the contractor and all subcontractors on the project.

- a. The ASSOCIATION'S Builder's Risk insurance shall cover each project for loss or damage due to all risks of physical damage or loss, land movement and flood.
- b. All deductibles or self-insured retentions shall be borne solely by the ASSOCIATION, and the COUNTY shall not be responsible to pay any deductible or self-insured retention, in whole or in part.
- c. ASSOCIATION shall have the Builder's Risk insurance include the COUNTY as a loss payee.

E. NOTIFICATION OF CLAIM

If any claim for damages is filed with ASSOCIATION or if any lawsuit is instituted against ASSOCIATION, that arise out of or are in any way connected with ASSOCIATION'S performance under this Agreement and that in any way, directly or indirectly, contingently or otherwise, affect or might reasonably affect COUNTY, ASSOCIATION shall give prompt and timely notice thereof to COUNTY. Notice shall be prompt and timely if given within thirty (30) days following the date of receipt of a claim or ten (10) days following the date of service of process of a lawsuit.