

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this ____ day of _____, 2024, by and between the City of Merced, a California Charter Municipal Corporation, whose address of record is 678 West 18th Street, Merced, California 95340, (hereinafter referred to as "City") and Merced Main Street Association, a California Non-Profit Corporation, whose address of record is 531 West Main Street, Merced, California 95340-4701 (hereinafter referred to as "MMSA").

WHEREAS, the City has determined that services and administration to the Downtown Business Improvement Area ("DBIA") are vital to the welfare of the community; and

WHEREAS, MMSA represents that it possesses the professional skills to provide services and administration to the DBIA on behalf of the City.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, hereby agree as follows:

1. **SCOPE OF SERVICES.** MMSA shall furnish the services described in Exhibit "A" attached hereto.

No additional services shall be performed by MMSA unless approved in advance in writing by the City, stating the dollar value of the services, the method of payment, and any adjustment in contract time. All such services are to be coordinated with City and the results of the work shall be monitored by the Director of Economic Development or his designee. However, the means by which the work is accomplished shall be the sole responsibility of MMSA. City acknowledges that MMSA is providing services to other entities in addition to the City. MMSA shall not make any commitments or representations on behalf of the City.

In carrying out the services for City, MMSA shall not discriminate against any business or provider of services within the City, such as restaurants, retail stores, banks and insurance agencies, etc., regardless of whether or not such provider of services is a member of MMSA. MMSA shall not make any oral or written statement that would discourage a reasonable person from making or pursuing any type of contractual relationship with any business or provider of services, nor shall MMSA solely recommend businesses, which are members of MMSA.

2. TIME OF PERFORMANCE. All of the work outlined in the Scope of Services shall be performed until funds are expended. By mutual agreement and written addendum to this Agreement, the City and the MMSA may change the requirements in said Schedule.

3. COMPENSATION. The City shall pay MMSA a total not to exceed Forty Thousand Dollars (\$40,000.00) in the following installments:

By April 2024	\$20,000.00
By June 2024	\$20,000.00

The City must receive invoices and financial reports for each installment from MMSA thirty (30) days prior to the payment date. The financial reports are to include balance sheets, profit and loss statements, check journals, and meeting minutes and agendas.

4. RECORDS. It is understood and agreed that all records, files, reports, etc., in possession of MMSA relating to the matters covered by this Agreement shall be made available to City at any reasonable time for inspection, copying and use.

MMSA shall provide copies of all Board of Directors, Executive Committee, and Subcommittee notices, agendas, minutes and reports prior to each respective meeting to the Director of Economic Development or designee. MMSA shall provide an oral report to the City Council at the discretion of the City. City reserves the right to perform an evaluation of MMSA performance and MMSA shall make a presentation to facilitate the evaluation. The Director of Economic Development or his designee shall receive notices in advance of meetings, subcommittee meetings, workshops and events via email.

MMSA agrees to make and maintain full and complete financial records pertaining to the expenditure of all funds paid to MMSA. City may also inspect such records upon reasonable notice to MMSA either at the City or MMSA offices.

It being understood that MMSA is responsible for administering the project, MMSA agrees to accept responsibility for receiving, replying to, and/or complying with any audit exceptions directly related to the provisions of this Agreement.

5. MMSA'S BOOKS AND RECORDS. MMSA shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to MMSA to this Agreement. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the City.

6. INDEPENDENT CONTRACTOR. It is expressly understood that MMSA is an independent contractor and that its employees shall not be employees of or have any contractual relationship with the City. MMSA shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should MMSA desire any insurance protection, MMSA is to acquire same at its expense. The City shall not be liable for any payment or compensation in any form to MMSA or any of their employees other than as provided herein.

7. INDEMNITY. MMSA shall indemnify, protect, defend (with legal counsel selected by the City), save and hold City, its officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of MMSA or MMSA's officers, employees, volunteers, and agents during performance of this Agreement, or from any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of MMSA or its employees, subcontractors, or agents, or by the quality or character of MMSA's work, or resulting from the negligence of the City, its officers, employees, volunteers and agents, except for loss caused by the sole negligence or willful misconduct of the City or its officers, employees, volunteers or agents. It is understood that the duty of MMSA to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve MMSA from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall survive the termination of this Agreement and shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, MMSA acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

8. INSURANCE. During the term of this Agreement, MMSA shall maintain in full force and effect at its own cost and expense, the following insurance coverage:

a. Workers' Compensation Insurance. Full workers' compensation insurance shall be provided with a limit of at least One Hundred Thousand Dollars (\$100,000) for any one person and as required by law, including Employer's Liability limits of \$1,000,000.00 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the City.

b. General Liability.

- (i) MMSA shall obtain and keep in full force and effect general liability coverage at least as broad as ISO commercial general liability coverage occurrence Form CG 0001.
- (ii) MMSA shall maintain limits of no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage.
- (iii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects liability arising out of work or operations performed by or on behalf of the MMSA.
- (iv) The policy shall stipulate that this insurance will operate as primary insurance for work performed by MMSA and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.
- (v) MMSA shall maintain its commercial general liability coverage for three (3) years after completion of the work and shall add an additional insured endorsement form acceptable to the City naming the City of Merced, its officers, employees, agents and volunteers for each year thereafter for at least three (3) years after completion of the work. Copies of the annual renewal and additional insured endorsement form shall be sent to the City within thirty (30) days of the annual renewal.

c. Automobile Insurance.

- (i) MMSA shall obtain and keep in full force and effect an automobile policy of at least One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.
- (ii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects automobiles owned, leased, hired or borrowed by the MMSA.
- (iii) The policy shall stipulate that this insurance will operate as primary insurance for work performed by MMSA and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.

d. [Reserved]

e. Qualifications of Insurer. The insurance shall be provided by an acceptable insurance provider, as determined by City, which satisfies all of the following minimum requirements:

- (i) An insurance carrier admitted to do business in California and maintaining an agent for service of process within this State; and,
- (ii) An insurance carrier with a current A.M. Best Rating of A:VII or better (except for workers' compensation provided through the California State Compensation Fund).

f. Certificate of Insurance. MMSA shall complete and file with the City prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance evidencing coverage as set forth above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to City prior to the effective date of such cancellation—including cancellation for nonpayment of premium.

g. Notwithstanding any language in this Agreement to the contrary, MMSA shall be entitled to be paid pursuant to the terms of this Agreement until MMSA has obtained the insurance required by this Section 10 and provided documentation of said insurance to the City. In addition to any other remedies City

may have, City reserves the right to withhold payment if MMSA's insurance policies are not current.

9. **ASSIGNABILITY OF AGREEMENT.** It is understood and agreed that this Agreement contemplates personal performance by the MMSA and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of MMSA under this Agreement will be permitted only with the express written consent of the City.

10. **TERMINATION FOR CONVENIENCE OF CITY.** The City may terminate this Agreement at any time by mailing a notice in writing to MMSA that the Agreement is terminated. Said Agreement shall then be deemed terminated, and no further works shall be performed by MMSA. If the Agreement is terminated, MMSA shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.

11. **CONFORMANCE TO APPLICABLE LAWS.** MMSA shall comply with its standard of care regarding all applicable Federal, State, and municipal laws, rules and ordinances. No discrimination shall be made by MMSA in the employment of persons to work under this contract because of race, color, sexual orientation, national origin, ancestry, disability, sex or religion of such person.

MMSA hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act (8 U.S.C.A. 1101 *et seq.*), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should MMSA so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any agency or instrumentality of the federal or state government, including the courts, impose sanctions against the City for such use of unauthorized aliens, MMSA hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the City in connection therewith.

12. **WAIVER.** In the event that either City or MMSA shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

13. INCONSISTENT OR CONFLICTING TERMS IN AGREEMENT AND EXHIBITS. In the event of any contradiction or inconsistency between any attached document(s) or exhibit(s) incorporated by reference herein and the provisions of the Agreement itself, the terms of the Agreement shall control.

Any exhibit that is attached and incorporated by reference shall be limited to the purposes for which it is attached, as specified in this Agreement. Any contractual terms or conditions contained in such exhibit imposing additional obligations on the City are not binding upon the City unless specifically agreed to in writing, and initialed by the authorized City representative, as to each additional contractual term or condition.

14. AMBIGUITIES. This Agreement has been negotiated at arms' length between persons knowledgeable in the matters dealt with herein. Accordingly, any rule of law, including, but not limited to, Section 1654 of the Civil Code of California, or any other statutes, legal decisions, or common-law principles of similar effect, that would require interpretation of any ambiguities in this Agreement against the party that drafted this Agreement is of no application and is hereby expressly waived.

15. VENUE. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this agreement shall be held exclusively in a state court in the County of Merced.

16. GENERAL PROVISIONS.

a. This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or to bind any of the parties hereto.

b. At no additional compensation to MMSA, the City may duplicate, use, and disclose in any manner and for any purpose whatsoever, and have others so do, all digital media and marketing copy in any form developed or delivered under this Agreement.

c. MMSA hereby grants to the City a royalty-free, non-exclusive, and irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others so to do, all digital media now or hereafter covered by this Agreement, provided, that with respect to data not originated in the performance of

this Agreement, such license shall be only to the extent that MMSA has the right to grant such license without becoming liable to pay compensation to others because of such grant.

d. MMSA shall not affix any restrictive markings upon any data, and if such markings are affixed, the City shall have the right at any time to modify, remove, obliterate, or ignore such markings. City will provide advance notice of when data is to be used.

e. Nothing in this Agreement shall be construed to prevent direct contact between the City and local, regional, state, federal, or private Main Street related agencies or entities.

f. MMSA is responsible for all costs incurred for the implementation of the Scope of Services.

g. The City is the final authority on any land use design and/or infrastructure decision or projects. All activities carried out by MMSA shall be in compliance with local, state, county and federal regulations.

h. MMSA's focus shall be on safety and security, cleanliness and maintenance and events, and working towards securing National Main Street designation. Cleanliness shall include steam cleaning/pressure washing sidewalks in the DBIA.

17. AMENDMENT. This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

18. INTEGRATION. This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

19. AUTHORITY TO EXECUTE. The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

20. COUNTERPARTS. This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED
A California Charter Municipal
Corporation

BY: _____
D. Scott McBride
City Manager

ATTEST:
D. SCOTT MCBRIDE, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:
CRAIG J. CORNWELL, CITY ATTORNEY

BY: Craig Cornwell 4/18/2024
City Attorney Date

ACCOUNT DATA:
M. VENUS RODRIGUEZ, FINANCE OFFICER

BY: _____
Verified by Finance Officer

MERCED MAIN STREET
ASSOCIATION,
a California Non-Profit Corporation

BY: Robert Matsuo
(Signature)

Robert Matsuo
(Typed Name)

Its: President
(Title)

BY: _____
(Signature)

(Typed Name)

Its: _____
(Title)

Taxpayer I.D. No. _____

ADDRESS: 531 W. Main Street
Merced, CA 95340-4701

TELEPHONE: (209) 384-7093

FAX: (209) 384-8472

E-MAIL:
mercedmainstreetassociation@gmail.com