

## **AGREEMENT TO ADMINISTER THE MERCED TOURISM BUSINESS IMPROVEMENT DISTRICT**

This Agreement ("Agreement") is entered into by and between the City of Merced, a California municipal corporation ("City"), and the Merced Tourism Business Improvement District, a California nonprofit mutual benefit corporation ("Corporation"), for the administration of the Merced Tourism Business Improvement District ("TBID"), with reference to the following facts:

### **RECITALS:**

1. On December 2, 2024, the City Council of the City of Merced ("City Council"), acting pursuant to the Property and Business Improvement District Law of 1994 (California Streets and Highways Code Section 36600 et seq.) ("Act"), adopted City Resolution No. 2024-112 ("Resolution"), forming the TBID and approving the Merced Tourism Business Improvement District Management Plan, dated August 2024, attached hereto as Attachment 1, and incorporated herein ("Management Plan").
2. The City's December 2024 action culminated approximately four years of previous City effort and work commencing with a steering committee and the hiring of various consultants to facilitate establishment of the aforementioned district. The city elected to have the TBID's fiscal year be for the time period starting on January 1 and ending on the immediately following December 31 ("Fiscal Year").
3. Pursuant to Section 36651 of the Act, the Management Plan provides that an owners association, as defined in Section 36612 of the Act, will provide the activities and improvements described in the Management Plan ("TBID Service Plan"), and in its work in establishing the TBID, the City did represent that the organization would implement the Activities and Improvements contemplated. Based on the City's acts and representation, the Corporation was formed and is willing and able to serve as the owners' association for the TBID ("Owners' Association").
4. City desires, and Corporation agrees, to have Corporation provide the Activities and Improvements on the terms and conditions set forth in this Agreement.
5. NOW, THEREFORE, City and Corporation, in consideration of the mutual promises and covenants set forth herein, hereby agree as follows:

### **SECTION 1. INCORPORATION OF RECITALS**

The recitals set forth above are incorporated in full and made a part of this Agreement by reference.

## SECTION 2. EFFECTIVE DATE OF AGREEMENT

This Agreement shall take effect ("Effective Date") when all the following events have occurred:

- A. This Agreement has been signed on behalf of Corporation by the person or persons authorized to bind the Corporation hereto;
- B. This Agreement has been approved by the City Council and has been signed on behalf of the city by the person designated to so sign by the City Council; and

## SECTION 3. TERM OF AGREEMENT

The term of this Agreement ("Term") shall commence on the Effective Date and shall expire on December 31, 2029, unless terminated earlier in accordance with the terms of this Agreement. On expiration of the Term or earlier termination of this Agreement, this Agreement and the rights and obligations of the parties under this Agreement shall terminate, except those rights or obligations expressly surviving expiration of the Term or earlier termination of this Agreement.

## SECTION 4. CORPORATION'S WARRANTIES, REPRESENTATIONS AND RESPONSIBILITIES

Without limiting any other provision of this Agreement, Corporation warrants, represents and agrees as follows:

- A. **Non-profit Status.** Corporation agrees to maintain its status as a nonprofit mutual benefit corporation for the Term of this Agreement.
- B. **Power and Authority.** Corporation warrants that it has all requisite power, authority, skills and expertise to conduct its business and to execute, deliver and perform this Agreement.
- C. **Permits.** If the Corporation or any of its officers, agents or employees need to obtain any licenses, permits, certifications, or other documents in order to perform their obligations under this Agreement, Corporation will notify the City and will keep any such license, permit, certificate or other such documentation current and valid and further, Corporation agrees to immediately notify City of any suspension, termination, lapse, non-renewal, or restriction of any such license, permit, certificate, or other document necessary for Corporation's performance hereunder.
- D. **Signature Authority.** Corporation warrants and represents that that the person or persons executing this Agreement on behalf of Corporation have the authority to execute this Agreement on behalf of Corporation.

## SECTION 5. CITY'S WARRANTIES, REPRESENTATIONS AND RESPONSIBILITIES

- A. Formation. The City warrants and represents that it acted pursuant to the Act in the formation of the TBID and adoption of the Management District Plan.
- B. Power and Authority. The City warrants that it has all requisite power, authority, skills and expertise to conduct and perform its obligations to be performed pursuant to this Agreement.

## SECTION 6. SCOPE OF SERVICES PROVIDED BY CORPORATION

Owners' Association. Corporation shall serve as the Owners' Association and shall perform all activities necessary for the proper management of the TBID in a professional and prudent manner.

- A. Activities and Improvements. Corporation shall be fully responsible for implementing, directing, and undertaking the Activities and Improvements in accordance with the Management District Plan, the Act, as it may be amended from time to time, and the Resolution. Corporation understands and expressly agrees that it will comply with all applicable Federal, State of California ("State"), County of Merced ("County") and City laws and regulations (collectively, "Applicable Law") in the performance of this Agreement. Corporation assumes responsibility for procuring all goods and services, as required, and paying for all such direct and indirect expenses as may be necessary for the timely completion of work.
- B. Subcontracting. In administering subcontracts as necessary for providing the Activities and Improvements, Corporation shall comply with all Applicable Law. To the extent that Corporation subcontracts any portion of the work required by this Agreement, each subcontract shall contain a provision making it subject to all relevant provisions stipulated in this Agreement. Without limiting the foregoing, each subcontractor shall obtain all insurance coverage required of Corporation under this Agreement and shall maintain, in full effect, all such insurance coverage while any work is performed by subcontractor in connection with this Agreement. All required insurance must be submitted to City upon written request by the City prior to the inception of any work by a subcontractor.
- C. Liaison With Community. Corporation will maintain an ongoing relationship with the community. To this end the Corporation agrees to the following:
- D. Private Watchman. Should Corporation elect to engage in any Patrol Watchman activities or otherwise act as a Private Watchman as defined in the City's Municipal Code Section 5.40.010, the Corporation shall do so in compliance with Chapter 5.40 of Title 5 of the City's Municipal Code.

## SECTION 7. USE OF FUNDS AND ANNUAL REPORTS AND AUDITS

- A. **Use of Funds.** Corporation may expend any funds received pursuant to this Agreement only in accordance with the Annual Report, the Management District Plan, the Act, as it may be amended from time to time, the Resolution, and Applicable Law. In accordance with the Management Plan, Corporation shall expend funds received, subject to the right of the Board of Directors of Corporation to reallocate up to twenty five percent (25%) by line item of the budget allocation annually within the budgeted categories. City reserves the right to perform a contract compliance audit at least once annually at the City's expense. Corporation shall cooperate with City in the conduct of the compliance audit.
- B. **Annual Report.** Corporation shall prepare and submit to the City Clerk an Annual Report during the Term for each Fiscal Year for which the Assessment is to be levied and collected except for the first Fiscal Year (each, an "Annual Report"). The Annual Report shall be prepared in accordance with Section 36650 of the Act and shall contain all sections required by Section 36650 of the Act, which, as of the Effective Date of this Agreement, include, any proposed changes in the boundaries of the TBID or in any benefit zones or classification of businesses within the district, the services to be provided for that fiscal year, an estimate of the cost of providing the services for that fiscal year, the method and basis of levying the assessment in sufficient detail to allow each business owner to estimate the amount of the assessment to be levied against his or her business for that fiscal year, the estimated amount of any surplus or deficit revenues to be carried over from a previous fiscal year, and the estimated amount of any contributions to be made from sources other than the assessments levied pursuant to this part.
- C. The Annual Report shall be submitted by January 31st of each Fiscal Year, beginning January 31, 2026.
- D. **Audited Financial Statements.** Should the City so desire, the City may request at Corporation's expense, a financial statement prepared in accordance with Generally Accepted Accounting Principles and audited and certified by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards who then issues an audit opinion on the financial statements. If any audit reveals any pattern of suspicious or questionable financial activity by Corporation, City may suspend future Assessment disbursements until such time as City investigates such matter. Corporation shall cooperate with City's investigation.
- E. **Modification of Due Dates.** The City and Corporation may mutually agree to modify the due dates for any of the reports required by this Section 7 without amending this Agreement.

## SECTION 8. CITY RESPONSIBILITIES

City Responsibilities. City will retain the following services within the TBID to the level of services as outlined below:

## SECTION 9. COLLECTION

Collection. The City of Merced will be responsible for collecting the assessment on a quarterly basis (including any delinquencies, penalties, and interest) from each lodging business located within the TBID boundary, to be disbursed to the TBID within forty-five (45) days. The City of Merced will be paid \$500 per quarter for these services.

## SECTION 10. RETENTION OF RECORDS, AUDIT AND REPORTS

In accordance with generally accepted accounting principles, Corporation shall maintain full and complete records of all Activities and Improvements performed under this Agreement, in their original form, including but not limited to, all administrative or financial records relating to the TBID, the Assessment, and the Activities and Improvements performed by Corporation, including but not limited to, invoices, receipts and supporting documentation. Such records shall be open to inspection and copying by the City during normal business hours. Corporation agrees to keep all such records on file in a secure location for a minimum of two (2) years subsequent to the expiration of the Term or earlier termination of this Agreement. Within forty-five (45) days of expiration or termination of this Agreement, all of the Corporation records will be turned over to the City.

## SECTION 11. INSURANCE

During the Term, without limiting Corporation's indemnification of the City, Corporation shall provide and maintain the policies set forth in Attachment 2, incorporated herein. Required insurance coverages shall not prohibit Corporation from waiving the right of subrogation prior to a loss, and Corporation shall waive all subrogation rights against Indemnified Parties (defined below). Corporation agrees to provide the City with copies of said policies, certificates and/or endorsements before work commences under this Agreement.

## SECTION 12. NOTICES

All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

City: City of Merced  
Office of the City Manager  
678 W 18th Street  
Merced, Ca 95340

Corporation: Merced Tourism Business Improvement District

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or to such other address or addressee as may be designated by notice in accordance with this Section. Notice shall be deemed effective on the date personally delivered or, if mailed, upon receipt.

A copy of any notice of a legal nature, including, but not limited to, any claims against City, its officers or employees, shall also be served in the manner specified above to the following address:

City of Merced  
Office of the City Attorney  
678 W 18th Street  
Merced, Ca 95340

#### SECTION 13. GENERAL FUND NOT LIABLE

Neither the General Fund of City, nor any other fund, revenue source or monies whatsoever of City, except for the actual collected Assessment, shall be liable for payment of any obligations arising from this Agreement. Said obligations are not a debt of City, nor a legal or equitable pledge, charge, lien, or encumbrance upon any of its property or upon its income, receipts, or revenues.

#### SECTION 14. TERMINATION

Termination of Agreement. Notwithstanding any other provision of this Agreement, either party, in its sole and absolute discretion, may immediately terminate this Agreement if:

- A. The other side breaches the Agreement;
- B. Corporation ceases to be a non-profit mutual benefit corporation;
- C. A federal or state proceeding for relief of debtors is undertaken by or against the other party, or if the other party makes an assignment for the benefit of creditors;
- D. The other party makes a material misrepresentation relating to this Agreement or any money received pursuant to this Agreement; or

- E. Corporation misappropriates any funds provided by City to Corporation.
- F. The Assessment Funds are not sufficient for the Corporation to provide the Activities and Improvements set forth in the Management Plan.

In addition, if either party fails to adequately perform any material obligation required by this Agreement, the other party may give the nonperforming party written notice pursuant to Section 12 of such default, describing the default in reasonable detail. The party receiving said notice shall thereafter have thirty (30) days to cure such default. The noticing party retains the right to grant an extension of time should it determine, in its sole discretion, an extension is reasonably necessary to allow an acceptable cure. If the noticed party fails to cure the default during the time frame, but not less than thirty (30) days, the noticing party may terminate this Agreement. In addition, if City elects to disestablish the TBID pursuant to Section 36670 *et seq.* of the Act, this Agreement shall terminate upon the disestablishment of the TBID.

In addition, the City may terminate this Agreement at any time provided:

- (a) The City Council holds a public hearing on the City's intention to terminate this Agreement;
- (b) City provides Corporation sixty (60) days written notice of the public hearing pursuant to Section 13;
- (c) City provides mailed notice of the public hearing to each property owner within the TBID at least fifteen (15) days prior to the public hearing, at the City's expense; and
- (d) The City Council determines at the conclusion of the public hearing that it is in the best interests of the TBID to terminate this Agreement.

In the event City terminates this Agreement due to breach or malfeasance of Corporation, City may procure upon such terms and in such manner as City may deem appropriate, services similar in scope and level of effort to those terminated.

Rights and Remedies Not Exclusive. The rights and remedies under this Agreement are not exclusive and are in addition to any other rights or remedies available at law or equity. The rights and remedies of City under this Agreement are cumulative and exercise of any one or more of such rights or remedies shall not limit, waive, or prevent City's exercise of any other rights or remedies under this Agreement or at law or equity that may be available to City.

#### SECTION 15. EFFECT OF EXPIRATION OR TERMINATION OF THIS AGREEMENT

- A. City's Rights and Responsibilities. Expiration of the Term or earlier termination of this Agreement shall not impair City's right to audit the books and records of Corporation with respect to all monies disbursed or expended hereunder, or prejudice or otherwise

diminish the rights of City to claim and recover monies expended for other than allowable costs. Within sixty (60) days of the termination of this Agreement, City shall reimburse Corporation for work which has been performed as of the termination date or which is in progress and cannot reasonably be terminated early by virtue of contractual commitments.

- B. Corporation's Responsibilities. Upon the expiration of the Term or the earlier termination of this Agreement, Corporation shall complete any work necessary for the orderly filing of documents and closing of Corporation's performance of its obligations under this Agreement. In addition, Corporation shall, within forty-five (45) days, return to City unexpended and unencumbered funds provided to the Corporation by the City pursuant to this Agreement and all tangible assets purchased wholly with such funds. Corporation shall not purchase assets using a combination of funds derived from funds received from City pursuant to this Agreement and other resources available to the Corporation without the prior written consent of the City Manager or his or her designee, which will not be unreasonably withheld.
- C. Ownership of Documents. All documents and materials produced or procured by Corporation pursuant to its performance under this Agreement or the Act shall become City property upon the expiration of the Term or the earlier termination of this Agreement and be provided to the City within forty-five (45) days.

#### SECTION 16. RALPH M. BROWN ACT AND PUBLIC RECORDS ACT

- A. Ralph M. Brown Act. Corporation is a private entity and may not be considered a public entity for any purpose, nor may its directors, members, or staff be considered to be public officials for any purpose. Notwithstanding the foregoing, all meetings of the Board of Directors of Corporation, or any group of representatives of Corporation that would constitute a "legislative body" as defined in California Government Code Section 54952, when matters within the subject matter of the TBID, including proposed or approved TBID Activities and Improvements or expenditures (collectively, "TBID Matters") will be discussed shall be open to the public as required by the provisions of the Ralph M. Brown Act (Government Code Section 54950, et seq.) ("Brown Act"). Prior notice of such meetings, including an agenda prepared and posted in accordance with the Brown Act, of the TBID Matters to be discussed and the time and location of the meeting, shall be given in accordance with the Brown Act. Notwithstanding the foregoing, the Board of Directors of Corporation shall be permitted to meet in sessions closed to the public, so long as any such closed session conforms to the requirements of the Brown Act.
- B. Public Records Act. Corporation shall comply with the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code) for all records relating to activities of the TBID.



#### SECTION 17. NONDISCRIMINATION

Corporation shall not discriminate, in any way, against any person on the basis of age, sex, race, color, creed, sexual orientation, marital status, disability or national origin in connection with or related to the performance of this Agreement.

#### SECTION 18. ASSIGNMENT

The parties agree that the identity, expertise and experience of Corporation are material considerations for this Agreement. Corporation covenants and agrees that it will not assign or transfer its rights, including the right to payment, under this Agreement, either in whole or in part, without first obtaining the written consent of the City Manager or the City Manager's designee, which consent may be granted or denied at the sole and absolute discretion of the City Manager. Any attempt by Corporation to assign or transfer its rights or obligations without such prior written consent shall be null and void and City may, at the option of City, automatically terminate this Agreement.

#### SECTION 19. DATA SHARING

Each party, upon the request of the other, shall make available to the other any additional information in its possession as may be reasonably necessary to operate and administer the Activities and Improvements.

#### SECTION 20. SEVERABILITY

If any part, term or provision of this Agreement shall be held void, illegal, unenforceable, or in conflict with any law of a federal, state or local government having jurisdiction over this Agreement by a court of competent jurisdiction, the validity of the remaining parts, terms or provisions of the Agreement shall not be affected thereby.

#### SECTION 21. COMPLIANCE WITH APPLICABLE LAW

Each party's performance hereunder shall comply with all Applicable Law.

#### SECTION 22. INTEGRATED CONTRACT

This Agreement, including all attachments, sets forth all the rights and duties of the parties with respect to the subject matter hereof, and replaces any and all previous agreements or understandings, whether written or oral, relating thereto. This Agreement may be amended only as provided for in Section 23 hereof.

#### SECTION 23. AMENDMENT

This Agreement may be amended only by a written amendment duly executed by City and Corporation.

#### SECTION 24. NO THIRD PARTY BENEFICIARIES

Nothing in this Agreement is intended to give or allow any claim or right of action by any third party.

#### SECTION 25. EXCUSABLE DELAYS

In the event that performance on the part of any party hereto shall be delayed or suspended as a result of circumstances beyond the reasonable control and without the fault and negligence of said party, none of the parties shall incur any liability to the other party as a result of such delay or suspension. Circumstances deemed to be beyond the control of the parties hereunder shall include, but not be limited to, acts of God or of the public enemy; insurrection; acts of the Federal Government or any unit of State or Local Government in either sovereign or contractual capacity; fires, floods; epidemics; quarantine restrictions; strikes, freight embargoes or delays in transportation, to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.

#### SECTION 26. WAIVER

A waiver of a default of any part, term or provision of this Agreement shall not be construed as a waiver of any succeeding default or as a waiver of the part, term or provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

#### SECTION 27. INDEPENDENT ORGANIZATION

Corporation, in the performance of the rights and obligations existing under this Agreement, shall act independently and not act as an agent or employee of City. City shall not exercise control over the Corporation's method of performance of its obligations or duties, except as set forth herein, and desires to obtain only an end result. City shall have no liability or responsibility for payments of any wages or benefits to the Corporation's employees for whom the Corporation shall bear sole responsibility and liability.

#### SECTION 28. INDEMNIFICATION

The parties shall hold each other harmless, defend and indemnify the other and its elective and appointive boards, commissions, officials, officers, agents, employees, and volunteers ("Indemnified Parties") from and against any and all liability, loss, damage, expense, costs (including, without limitation, attorney's fees and costs of litigation) of any nature arising out of or in connection with: (a) the negligence or willful misconduct of it or its officials, officers, agents, employees and volunteers; (b) its performance of its obligations and conduct of its agents under this Agreement; or (c) its failure to comply with any provision of this Agreement; except such loss or damage which was caused by the gross negligence or willful misconduct of the other or its officials, officers, agents, employees, and volunteers. The provisions of this paragraph shall survive expiration of the Term or earlier termination of this Agreement

#### SECTION 29. ATTORNEYS' FEES

If a legal action or proceeding is brought by any party because of default under this Agreement, or to enforce a provision hereof, the prevailing party therein shall be entitled, in addition to any other relief, to recover reasonable attorney's fees and court costs from the losing party as determined by the court in which said action or proceeding is pending.

#### SECTION 30. CONSTRUCTION AND INTERPRETATION

City and Corporation agree and acknowledge that the provisions of this Agreement have been arrived at through negotiation and that each party has had a full and fair opportunity to review the provisions of this Agreement and have such provisions reviewed by legal counsel. Therefore, any ambiguities in construing or interpreting this Agreement shall not be resolved against the drafting party.

All titles or subtitles appearing herein have been inserted for convenience and shall not be deemed to affect the meaning or construction of any of the terms or provisions hereof.

#### SECTION 31. GOVERNING LAW

This Agreement shall be governed by the laws of the State of California.

#### SECTION 32. TIME OF THE ESSENCE

Time is of the essence for each provision of this Agreement.

#### SECTION 33. COUNTERPARTS

This Agreement may be signed in counterparts, each of which shall constitute an original.

IN WITNESS WHEREOF, this Agreement is duly executed by the CITY OF MERCED and the MERCED TOURISM BUSINESS IMPROVEMENT DISTRICT for administration of the Merced Tourism Business Improvement District on behalf of the parties to this Agreement.

**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 6/3/2025  
City Attorney Date

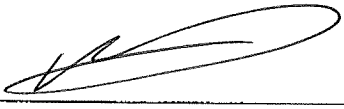
ACCOUNT DATA:

M. VENUS RODRIGUEZ

BY: \_\_\_\_\_

Verified by Finance Officer

**MERCED TOURISM BUSINESS IMPROVEMENT DISTRICT**, a California nonprofit  
mutual benefit corporation

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

ROBIN DONORAN  
\_\_\_\_\_  
Print Name

MTBID CHAIR  
\_\_\_\_\_  
Print Title

Date: 6/17/25  
\_\_\_\_\_

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

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Title

Date: \_\_\_\_\_