

## TEMPORARY ENCROACHMENT PERMIT

A Temporary Encroachment Permit (the “Permit”) is hereby granted to Merced Main Street Association, a California Corporation, hereinafter called “Permittee”, to allow banners promoting seasonal events and the Downtown to encroach in and upon real property, including street areas and City-owned light poles in various locations, subject to the following covenants and conditions:

1. Said encroachment shall be limited to the locations within the public rights-of-way for banners described in Exhibit A and for the locations shown on the map at Exhibit B attached hereto.
2. The locations as shown on the map at Exhibit B attached hereto are approved for a period not to exceed three (3) years. If the use ceases prior to the three year time period, the banners shall be removed immediately. All banners shall be maintained in good condition free from weathering, or other visible signs of damage or wear during the encroachment period. If the banners are determined by the City to be visibly damaged or worn, the permittee shall replace or remove the banners at the sole cost of the Permittee.
3. All locations are approved to have one banner per pole as shown in Exhibit A. The Permittee shall remove any City of Merced banners and return them to the City prior to installing the seasonal banners on the poles. If the seasonal banners are removed in the future, the Permittee shall re-install any City of Merced banners. Both the removal and re-installation shall be at the sole cost of the Permittee.
4. The design of each seasonal banner shall include quality, festive, and/or community-generated artwork, with the first design being that as shown on Exhibit A attached hereto. Subsequent banner designs shall be administrative-approved by Planning staff prior to their installation on the light poles. Designs shall be changed out seasonally, and shall not be larger than 30 inches by 36 inches in size, as proposed.
5. The Permittee shall repair and replace said encroachment, and shall properly maintain the same in a condition free of defects at the sole cost of Permittee.

## ATTACHMENT 5

6. The Permittee shall repair or replace any damage caused in the encroachment area and/or other City facilities by the installation, existence, or removal of the encroachment, at Permittee's sole expense, within ten (10) days of notification from the City. This Permit notwithstanding, no encroachment may be installed without the prior written consent of the City.
7. The Permittee shall provide adequate provisions for the protection for the traveling public and to ensure minimum interference with pedestrian and/or street traffic at all times during the existence of the encroachment. Warning signs, lights and safety devices and/or other measures required for the public safety shall conform to the requirements of the City.
8. Neither the City of Merced, the City of Merced Public Finance and Economic Development Authority ("PFEDA") or the Parking Authority ("Authority") or their respective officials, officers, agents, or employees shall be responsible or liable for damage to any property installed or located within the easement area covered by this Permit. Said liability and responsibility shall be borne solely by the Permittee. Permittee, by accepting this Permit, agrees to protect, defend (with counsel selected by the City), indemnify and hold the City of Merced, PFEDA, the Authority and their respective officials, officers, agents and employees, free and harmless from claims for damages of any kind whatsoever.
9. As a condition for and during the term of this Permit, the Permittee shall obtain and 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 or a letter from the Permittee confirming the Permittee has no employees.
  - B. **General Liability Insurance.** Permittee shall obtain and keep in full force and effect a commercial, general liability policy or policies of at least One Million Dollars (\$1,000,000) combined limit for bodily injury and property damage; provided that the City, PFEDA, the

Authority and their respective officials, officers, agents, and employees are to be named additional insureds under the policies, and that the policies shall stipulate that this insurance will operate as primary general liability insurance for Permittee and its employees, agents, contractors, and sub-contractors, and that no other insurance effected by City, PFEDA, the Authority or other named insureds will be called on to cover a loss covered thereunder. The General Liability insurance shall be provided by an ISO Commercial General Liability policy, with edition dates of 1985, 1988, or 1990. The City, PFEDA and Authority shall be named as an additional insured using ISO form CG 20 10 11 85 or the same form with an edition date no later than 1990.

C. Certificate of Insurance. Permittee shall complete and file with the City prior to engaging in any operation or activity set forth in this Permit, 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 Permit, without thirty (30) days written notice to City prior to the effective date of such cancellation—including cancellation for non-payment of premium. In lieu of the ISO form CG20 10 11 85 with an edition date no later than 1990, City will accept certified copies of the insurance policy or policies with the endorsements and cancellation provisions required by this provision.

10. During the term of the Permit, the Permittee shall comply, and cause to comply, with all applicable federal, state, and local laws, statutes, rules, regulations, resolutions, and policies, both now existing and as amended in the future, including but not limited to the Americans with Disabilities Act.
11. This Permit does not constitute a deed or grant of any easement by the City of Merced, and is transferable or assignable only with the prior written permission of the City of Merced, and is revocable at any time with or without notice by the City of Merced at its sole and absolute discretion. The Permittee shall remove or relocate the banners, without compensation, if required by public need or purpose identified by the City.

12. Unless the City of Merced abandons its interest in said property, Permittee, by accepting this Permit, guarantees the prompt removal of any and all structures herein permitted and/or located within the public right-of-way easement subject to this Permit upon notification from the City of Merced that this Permit has been revoked.
13. Consistent with the conditions in Section 2 above, the Permittee understands and agrees, by accepting this Permit, that the City has the right to remove the encroachment at its own expense without compensation to the Permittee if necessary for any City purposes.
14. This Permit shall not become effective until receipt by the City of Merced of a copy of this Permit with properly signed endorsements accepting the same, subject to terms and conditions contained herein.
15. This Temporary Encroachment Permit is to be cancelled and is void and of no further effect upon the recording of abandonment of the right-of-way to be filed for record by the City of Merced, affecting the herein described property.
16. This Permit is issued with the understanding that any particular action is not to be considered as establishing any precedent: (1) on the question of permitting any certain kind of encroachment to be erected within the right-of-way or easement area of the City of Merced; or (2) as to the acceptability of any such permits as to any other or future situation.
17. The banners shall be installed per City requirements as determined by the Public Works Department. In no case, shall the banners be mounted lower than fourteen (14) feet above grade (bottom of banner must be at least fourteen (14) feet above grade). Any changes to the banner locations shall be approved by the City's Planning Manager or referred back to the City Council, if necessary.

CITY OF MERCED  
A California Charter Municipal  
Corporation

BY: \_\_\_\_\_  
City Manager

ATTEST:  
STEVE CARRIGAN, CITY CLERK

BY: \_\_\_\_\_  
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY:  \_\_\_\_\_ 10/10/17  
City Attorney Date

*[Signatures continued on next page.]*

PERMITTEE  
MERCED MAIN STREET  
ASSOCIATION  
A California Corporation

BY:   
Signature

Manuel Atvarado  
Print Name

Its: Treasurer

BY:   
Signature

Robert Matsuo  
Print Name

Its: President

Taxpayer I.D. No. \_\_\_\_\_

ADDRESS: 1640 N Street  
Merced, CA 95340

TELEPHONE: 209.384.7093

FACSIMILE: \_\_\_\_\_

E-MAIL: manuel@mercedchamber.com



30"

36"

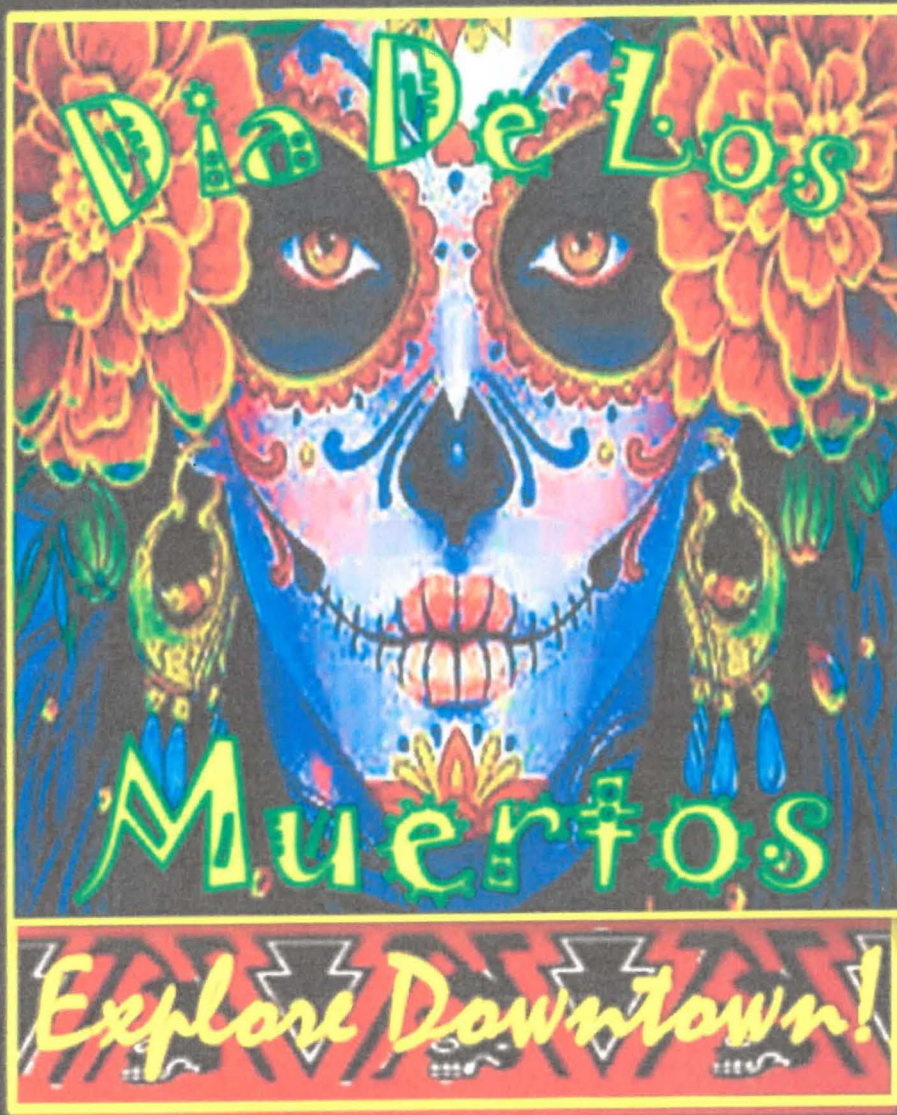


EXHIBIT A



DDL M EXTERIOR:

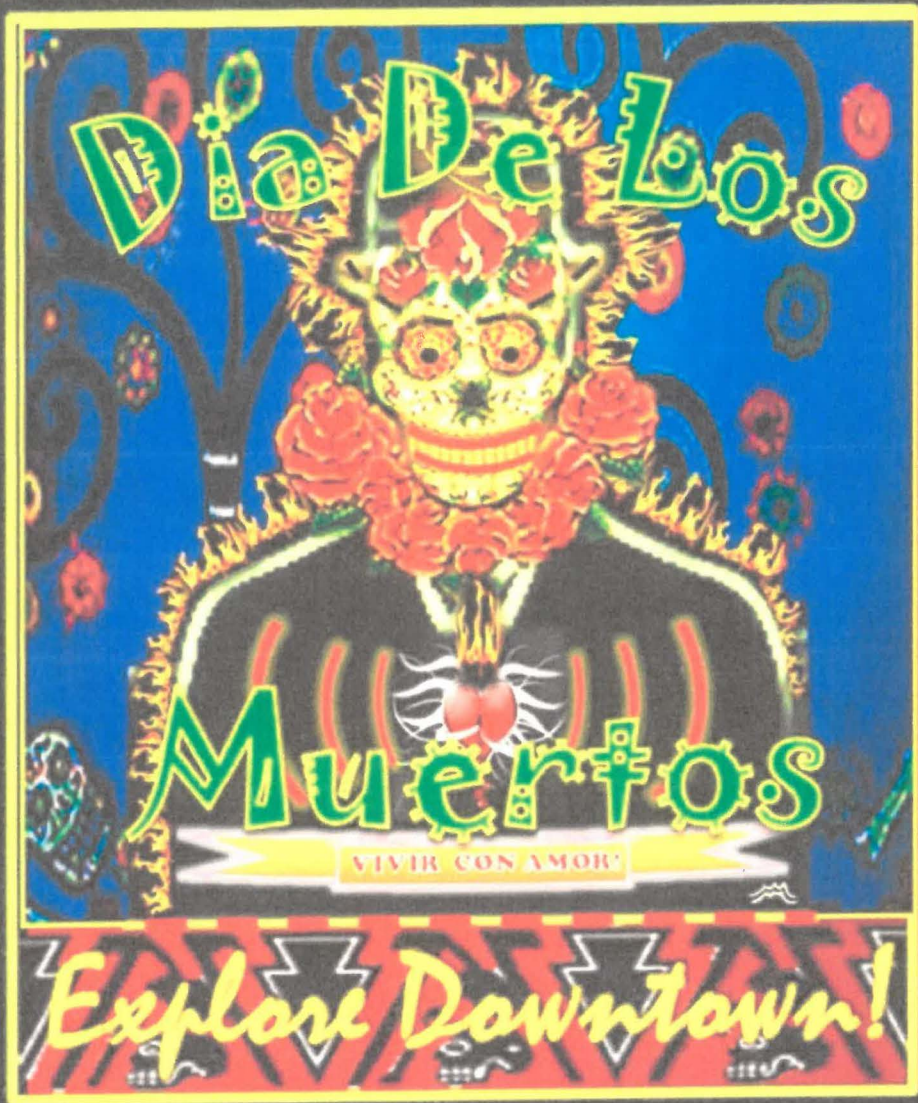
LAMP POST BANNER.03

06.29.2017



30''

36''



DDLM EXTERIOR:

LAMP POST BANNER.05

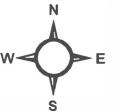
07.07.2017





Disclaimer: This document was prepared for general inquiries only. The City of Merced makes no warranty, representation, or guarantee regarding the accuracy of this map. The City of Merced is not responsible for errors or omissions that might occur. Official information regarding specific parcels should be obtained from official recorded or adopted City documents.

**LIGHTPOLES TO BE USED FOR SEASONAL BANNERS**  
**Encroachment Permit #17-01**  
**Merced Main Street Association**



**EXHIBIT B**