G.A.-A
10/4/12

CITY OF FRESNO
City Clerk's Office (Original)

MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF FRESNO AND THE DOWNTOWN ASSOCIATION OF FRESNO (DBA DOWNTOWN FRESNO PARTNERSHIP) REGARDING FULTON MALL SERVICES AND SPECIAL EVENTS

This License Agreement ("Agreement") is entered into this 25th day of October, 2012, by and between the CITY OF FRESNO, CALIFORNIA, a municipal corporation, through its Parks, After-school, Recreation and Community Service Department ("City"), and DOWNTOWN ASSOCIATION OF FRESNO, a California 501 (c)(6) non-profit corporation dba Downtown Fresno Partnership ("Association").

WITNESS

WHEREAS, the City owns, operates and maintains the facilities on the Fulton Mall in downtown Fresno (the "Mall") and is responsible for the Mall's public right-of-way; and

WHEREAS, Association is a non-profit that aims to create and assist in revitalization efforts in downtown Fresno and complement City efforts to promote and revitalize downtown Fresno wherever it is constructive; and

WHEREAS, Association hosts a number of events on the Mall each year and has event management experience necessary to operate events on the Mall; and

WHEREAS, Association has offices on the Mall and can assist in other logistical operations that occur on the Mall as an aid to the City; and

WHEREAS, outsourcing the management of Mall event and vendor permits to Association will streamline the permit process and will benefit the Association, the City and the public; and

WHEREAS, Fulton Mall activation and management is a contemplated activity in the Downtown Fresno Property Based Improvement District (PBID) Management District Plan.

NOW, THEREFORE, in consideration of the above recitals, which recitals are contractual in nature, the mutual covenants herein contained and such other and further consideration as is hereby acknowledged, the parties agree as follows:

1. PARTICIPATING AGENCIES AND DESIGNATED CONTACT PERSONS.

City Representative: Bruce Rudd, Assistant City Manager/PARCS Director
City of Fresno
2600 Fresno Street
Fresno, CA 93721

Association Representative:

Kate Borders, President/CEO
Downtown Fresno Partnership
845 Fulton mall
Fresno, CA 93721
Tel: (559) 490-9966 ext 222

2. ROLES, CONTRIBUTIONS AND RESPONSIBILITIES.

A. City Responsibilities.

1. The City will continue to provide the level of services committed to by the City in the *City Baseline Services to the Downtown Property Based Improvement District (PBID) Area* dated June 26, 2009 attached as an Exhibit to the PBID Management District Plan and incorporated by reference into the Agreement between City of Fresno and Downtown Association of Fresno (dba PBID Partners of Downtown Fresno) for Implementation of the Management District Plan (the "City Baseline Services"), including without any limitation, maintaining the fountains on the Mall, power-washing the Mall, maintaining the landscaping, and emptying the garbage receptacles.

2. The City will provide a set of event permitting guidelines for the Association to follow when handling applications for events proposed by other organizations.

B. Association Permit Management Responsibilities.

1. Association will assume responsibility of receiving, monitoring, documenting, enforcing and reporting on all Mall permits obtained by the general public and other parties wishing to reserve the Mall for an event ("Applicants") in an effort to streamline the permit processes, including Encroachment Permits, Sound Amplification Permits, Mall Parking Permits, Indemnification and Hold Harmless Agreements, and the Facility Reservation Permit, and such other permits as may be required from time to time. Such permitting duties shall be carried out in keeping with the event permitting guidelines provided by the City pursuant to Section 2.A.2 of this Agreement.

2. Association will ensure that the Mall is left in a good and clean condition after events. Applicants will pay a deposit for cleaning per the terms of the Facility Reservation Permit. Association will collect the cleaning deposit from Applicants and will keep a separate accounting of all cleaning deposits received and return up to 80% of deposit to Applicants if the Mall is left in good condition. The remaining 20% shall be retained and expended pursuant to Section

2.D. of this Agreement. If any portion of the deposit is retained by Association due to unsatisfactory condition, Association will reimburse City for any necessary cleaning or maintenance performed by City to return the Mall to satisfactory condition.

3. Association will assume management, fiscal responsibility, enforcement, permitting, and monitoring of all cart vendors located on the Mall. City's Director of Parks and Recreation ("PARCS Director") delegates its authority to grant Mall vendor permits under Fresno Municipal Code section 14-1806 to Association. Association shall require all vendors to execute the City's Pedestrian Mall Vendor Concession Permit and Agreement, and Association shall enforce the terms of that permit on behalf of the City.

4. Within 60 days following the start of each calendar year, the Association shall provide City with an annual report accounting for all of the event permit applications processed by Association in the preceding calendar year. Such annual report shall state in detail the reasons for any permit denial or non-issuance, which occurred in the preceding calendar year. The annual reports shall also include other information regarding the Association's performance as required by City to assess Association's performance and the effectiveness of this Agreement.

C. Association Events on the Mall.

1. From time to time throughout the year, Association sponsors and hosts events on Mall ("Association Events"), more fully described in Exhibit A attached hereto. Association will continue fiscal and operational responsibility and liability for Association Events and any new Association Events that Association hosts or sponsors on the Mall. These include, but are not limited to:

   - Cinco de Mayo Annual Celebration
   - Monthly concert series near the Chukchansi Mall entrance
   - Fresno Chili Festival
   - Over the Edge annual rappelling event
   - Fiestas Patrias/El Grito Celebration
   - Seasonal Winter Ice Rink in Mariposa Plaza
   - Annual Christmas Parade

2. On January 1 of each year, Association will provide to the City an Annual Event Plan detailing specific days/times of Association Events in lieu of filing a Facility Reservation Permit and Encroachment Permit for each event. The Annual Event Plan shall serve to reserve the Mall for the dates and times set forth in the Annual Event Plan.

All Association Events shall be conducted in compliance with the terms of the Encroachment Permit and Indemnification and Hold Harmless and Insurance Requirements for Use of City Grounds and Facilities, attached hereto as Exhibit B and incorporated herein. Association will not pay a security or cleaning deposit for these events to the City but will be responsible for cleaning the Mall to City's satisfaction after each Association Event.

3. Association will continue to secure all additional permits required for Association Events, including but not limited to street closure and special event permits if necessary, which would continue to be secured through the Public Works Department.

4. Association will retain the discretion to cancel future Association Event(s) if the event(s) are deemed unfeasible. Association will retain the discretion to add future Association Event(s) if event(s) are deemed advantageous to the businesses and downtown revitalization efforts. City will be informed of all new Association Events at least 30 days prior to the event and new Association Events are subject to availability of the Mall.

D. Revenue Sharing and Capital Plan

1. All revenue generated pursuant to this Agreement will be collected by Association and held in a segregated trust account for the benefit of the City. Association shall pay to City all of the revenue generated pursuant to this Agreement or $25,000, whichever is less, annually on or before June 30 of each year of this Agreement to fund City Baseline Services.

2. The parties agree to meet on or before May 31 of each year of this Agreement to develop a capital improvement plan (the "Capital Plan") for the next fiscal year. The Capital Plan shall encompass ongoing repair, maintenance and improvements to the Mall above and beyond City Baseline Services. All funds generated pursuant to this Agreement in excess of $25,000 per year ("Excess Funds") shall be expended pursuant to the Capital Plan, either by the City or Association as appropriate. Association shall pay the City that share of Excess Funds necessary for the City to carry out its responsibilities under the Capital Plan on or before June 30 of each year of this Agreement.

3. EFFECTIVENESS, DURATION AND TERMINATION.

This Agreement shall be effective upon its complete execution by the parties' authorized agents and shall remain in effect for an initial term running through December 31, 2015. Thereafter, the parties may administratively negotiate an extension of this Agreement for up to five years. Either party may, at any time, terminate this Agreement upon thirty (30) days written notice to the other party. Termination shall be effective as of the date specified in said notice of

termination. Upon such termination, all rights and obligations of each party under this Agreement shall cease as of the effective date, except for those specific obligations that shall survive termination as set forth herein. Upon termination, all funds held in trust by Association for the City shall be returned to the City on the effective date of termination.

4. COMPLIANCE WITH GOVERNING LAW.

Each party shall comply with all federal, state and local laws, rules and regulations in its pursuit hereof. No party in its performance of this Agreement shall employ discriminatory practices on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

5. CAPACITY OF THE PARTIES.

Each party is acting in an independent capacity. Nothing in this Agreement and nothing in the course of dealings between the parties hereunder shall be deemed to create any fiduciary relationship, trust, partnership, joint venture, agency or employment relationship, jointly and severally.

In addition, and without limitation, each party shall be solely responsible for all matters relating to payment of its employees, including, but not limited to, compliance with applicable social security withholding, workers' compensation insurance, benefits and all other regulations governing such matters. Personnel supplied by City will not for any purpose be considered employees or agents of the Association. The City assumes full responsibility for the actions of such personnel while they are performing services pursuant to this Agreement, and shall be solely responsible for their supervision, daily direction and control, payment of salary (including withholding of income taxes and social security), disability benefits and the like, as applicable. Conversely, personnel supplied by the Association will not for any purpose be considered employees or agents of the City. The Association assumes full responsibility for the actions of such personnel while they are performing services pursuant to this Agreement, and shall be solely responsible for their supervision, daily direction and control, payment of salary (including withholding of income taxes and social security), disability benefits and the like, as applicable.

The City and the Association agree and acknowledge that their relationship is strictly and solely that of an independent contractor to each other. The City's employees and/or agents are not entitled to any employee benefits or insurance, including without limitation any health care, workers' compensation, unemployment or disability benefits, to be provided by the Association. The Association agrees and acknowledges that its employees and/or agents are not entitled to any employee benefits or insurance, including without limitation any health care, worker's compensation, unemployment or disability benefits, to be provided by the City.

The parties further agree and acknowledge that each party is solely responsible for determining the method and means by which it will fulfill its obligations hereunder. Each shall be solely responsible for payment of all sales, use, or other taxes assessed against or associated with the performance of each party's respective obligations or on the exercise of their rights under this

Agreement, including without limitation income, payroll or employment-related taxes and payments.

Neither party shall engage any person or entity to serve in any capacity, or incur any expense or obligation on behalf of the other without the prior written consent of both parties.

6. INDEMNIFICATION AND INSURANCE.

To the furthest extent allowed by law, the Association shall indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents and authorized volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, the Association or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of the performance of this Agreement. The Association's obligations under the preceding sentence shall apply to any negligence of City or any of its officers, officials, employees, agents or authorized volunteers, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or by the willful misconduct, of City or any or its officers, officials, employees, agents or authorized volunteers.

If the Association should subcontract all or any portion of the work to be performed under this Agreement, the Association shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

The two preceding paragraphs shall survive termination or expiration of this Agreement.

Throughout the life of this Agreement, the Association shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A- VI" in Best's Insurance Rating Guide, or (ii) authorized by City's Risk Manager. The following policies of insurance are required:

(i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as Insurance Services Office (ISO) form CG 00 01 and shall include insurance for "bodily injury", "property damage" and "personal and advertising injury", including premises and operation, products and completed operations and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability of not less than $1,000,000 per occurrence and $2,000,000 general aggregate for bodily injury and property damage, $1,000,000 per occurrence for personal and advertising injury and $2,000,000 aggregate for products and completed operations.

If alcoholic beverages are to be sold, served or furnished, COMMERCIAL GENERAL LIABILITY insurance shall be endorsed to include coverage for liquor liability with limits of liability of not less than $1,000,000 per occurrence and $2,000,000

aggregate for bodily injury and property damage, or the Association shall pay for and maintain the most current version of Insurance Services Office (ISO) Liquor Liability Coverage Form CG 00 33, which shall include which shall include insurance for "bodily injury," and "property damage" with limits of liability of not less than $1,000,000 per occurrence and $2,000,000 aggregate for bodily injury and property damage. **The responsibility for Liquor Liability insurance may be assigned to the Association's caterer, concessionaire or vendor.**

(ii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) form CA 00 01 and shall include coverage for "any auto" with limits of liability of not less than $1,000,000 per accident for bodily and property damage.

(iii) WORKERS' COMPENSATION insurance as required under the California Labor Code.

(iv) EMPLOYERS' LIABILITY insurance with minimum limits of $1,000,000 each accident, $1,000,000 disease policy limit and $1,000,000 disease each employee.

THE ASSOCIATION shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and the Association shall also be responsible for payment of any self-insured retentions.

The above described policies of insurance shall be endorsed to provide an unrestricted 30 calendar day written notice in favor of the City of policy cancellation of coverage, except for the Workers' Compensation policy which shall provide a 10 calendar day written notice of such cancellation of coverage. In the event any policies are due to expire during the term of this Agreement, the Association shall provide a new certificate evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy(ies). Upon issuance by the insurer, broker, or agent of a notice of cancellation in coverage, the Association shall file with the City a new certificate and all applicable endorsements for such policy(ies).

The General Liability, Liquor Liability (if applicable) and Automobile Liability insurance policies shall be written on an occurrence form and shall name City, its officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so the Association's insurance shall be primary and no contribution shall be required of City. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City, its officers, officials, agents, employees and volunteers. The Association shall have furnished City with the certificate(s) and applicable endorsements for ALL required insurance prior to City's execution of this Agreement. The Association shall furnish City with copies of the actual policies upon the request of City's Risk Manager and this requirement shall survive termination or expiration of this Agreement.

The fact that insurance is obtained by the Association shall not be deemed to release or diminish the liability of the Association or its subcontractors, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City and its officials,

officers, employees, agents and authorized volunteers shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Association. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of the Association.

If at any time during the life of the Agreement or any extension, the Association fails to maintain the required insurance in full force and effect, all work under this Agreement shall be discontinued immediately until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement.

If the Association should subcontract all or any portion of the services to be performed under this Agreement, the Association shall require each subcontractor to provide insurance protection in favor of City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with the Association and City prior to the commencement of any services by the subcontractor.

7. RECORDS/AUDIT.

During the term of this Agreement, and for four years after the term expires or terminates, Association agrees to maintain detailed records pertaining to its duties under this Agreement sufficient to provide the basis for an unqualified opinion by an independent auditor, including, but not limited to records concerning administrative expenses, subcontracts, insurance, permits, budgeting, and overhead. The Association agrees to make all such records available to the City at all reasonable times. If the City requests, the Association will obtain and provide to the City, at the Association's sole cost, an independent financial audit of the Association's use of funds for any or all years of this Agreement.

8. ATTORNEY'S FEES.

If a party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its/their reasonable attorney's fees and legal expenses.

9. PRECEDENCE OF DOCUMENTS.

In the event of any conflict between the body of this Agreement and any exhibit/attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over terms and conditions expressed within the exhibit/attachment. Furthermore, any terms or conditions contained within any exhibit/attachment hereto which purport to modify the allocation of responsibility or liability between the parties, provided for within the body of this Agreement, shall be null and void.

10. NOTICES.

Any notice required or intended to be given to a party under the terms of this Agreement shall be in writing and shall be deemed to be duly delivered the earlier of (a) actual receipt by personal delivery to the representative (as defined herein), as the case may be, or in lieu of such personal service, by way of Federal Express or other similar courier addressed to such party at the appropriate address set forth herein, (b) the date of receipt by facsimile to the City Representative or the Association Representative, or (c) three (3) business days after the date of mailing (postage pre-paid return receipt requested). Either party may change its address for the purpose of this Paragraph by giving written notice of such change to the other.

11. BINDING.

Once this Agreement is signed by all the parties, it shall be binding upon, and shall inure to the benefit of, the parties, and each party's respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

12. ASSIGNMENT.

There shall be no assignment by any party of its rights or obligations under this Agreement without the prior written approval of the other party. Any attempted assignment by a party, its successors or assigns, shall be null and void unless approved in writing by the other party.

13. WAIVER.

The waiver by any party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement.

No provisions of this Agreement may be waived unless in writing and approved by and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

No action or omission by either party shall constitute a breach of this Agreement unless the injured party first notifies the other party of the purported breach in writing setting forth the alleged breach or default and said party does not cure the same within a reasonable period of time. The payment of any fee or compensation or performance of any obligation hereunder by either party shall not constitute a waiver of any breach by the other party or of any of the rights and remedies which either party may have as a result of such breach. No waiver by either party of breach of the Agreement shall be implied from any failure by the other party to take action on account of such breach if such breach persists or is repeated. Waivers by either party of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

14. GOVERNING LAW AND VENUE.

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno, California.

15. HEADINGS.

The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

16. SEVERABILITY.

The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision in this Agreement shall not affect the other provisions.

17. INTERPRETATION.

The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

18. ENTIRE AGREEMENT.

It is mutually understood and agreed that the foregoing along with the attached Exhibits constitutes the entire Agreement between the parties. Any modifications or amendments to this Agreement must be in writing signed by an authorized agent of each party.

[SIGNATURES ON THE FOLLOWING PAGE.]

IN WITNESS THEREOF, the parties have caused their authorized agents to execute this MOU on this 25th day of October, 2012:

CITY OF FRESNO,
A municipal corporation

By: _____
Bruce Rudd, Assistant City Manager
City of Fresno

DOWNTOWN ASSOCIATION OF FRESNO
DBA Downtown Fresno Partnership,
A California nonprofit corporation

By: _____
Kate Borders, President/CEO
Downtown Fresno Partnership

By: _____
Brent Weiner, Chair
Downtown Fresno Partnership

ATTEST:

YVONNE SPENCE
City Clerk

BY: Cindy Bruer 10/25/12
Deputy

APPROVED AS TO FORM:

JAMES C. SANCHEZ
City Attorney

BY: _____ 10.19.12
Deputy

Exhibit A:
Downtown Fresno Partnership
Summary of 2012 Public Events on Fulton Mall

OPENING NIGHT CELEBRATION
Date: 4/13/2012
Brief Description: Create a festive envirnoment prior to the first Grizzlies game of the season with live music and vendors, 4:30 - 6:30, variety of music.
Suggested Location: Fulton Mall – in front of Chukchansi Park
Goal: Celebrate kick-off of season
Attendance Estimate: 300-500
Vendors/additional components: Event will include 1-3 food vendors, 1 beverage station including alcoholic beverages, live music.

WEEKLY CONCERT SERIES IN MAY – Name TBD
Date: 5/3 - 5/31/2012
Brief Description: Weekly Thursday night concert series, 4:30 - 7:30, variety of music, 5 weeks
Suggested Location: Fulton Mall – in front of Chukchansi Park
Goal: Keep downtown workers here for an after hours event with impact on businesses
Attendance Estimate: 300-500 per week
Vendors/additional components: Event will include 1-3 food vendors, 1 beverage station including alcoholic beverages, live music.

CINCO DE MAYO
Date: 5/4-6/2012
Brief Description: Annual festival with vendors and bands
Suggested Location: Fulton Mall
Goal: Highlight Mexican culture, bring business to Fulton Mall
Attendance Estimate: 15000
Vendors/additional components: Event will include 15-20 food vendors, 3 beverage stations including alcoholic beverages, live music in two locations, 50 merchandise/promotional booths.

OVER THE EDGE
Date: 6/16/2012 (with media repels on 6/15/12)
Brief Description: First annual repelling event
Suggested Location: Pacific Southwest Building
Goal: Draw new audiences to Downtown & secure media attention
Attendance Estimate: 2500 over the course of the day with only 100 actual participants
Vendors/additional components: Event will include 1-3 food vendors, 1 beverage station, live music.

FRESNO CHILE FESTIVAL
Date: 8/11/2012
Brief Description: Annual festival with vendors and bands
Suggested Location: Fulton Mall
Goal: Highlight agriculture, Fresno Chiles, bring business to Fulton Mall
Attendance Estimate: 2500
Vendors/additional components: Event will include 10 food vendors, 2 beverage stations including alcoholic beverages, merchandise vendors, live music.

FIESTAS PATRIAS / EL GRITO
Date: 9/14-16/2012
Brief Description: Annual festival celebrating Mexican Indendence Day
Suggested Location: Fulton Mall
Goal: Highlight Mexican culture, bring business to Fulton Mall
Attendance Estimate: 15000
Vendors/additional components: Event will include 15-20 food vendors, 3 beverage stations including alcoholic beverages, live music in two locations, 50 merchandise/promotional booths.

SEASONAL ICE RINK
Date: 12/1/2012 - 1/5/2013
Brief Description: Holiday Season Fulton Mall rink
Suggested Location: Mariposa Plaza
Goal: Draw new audiences to Downtown & secure media attention
Attendance Estimate: 7000
Vendors/additional components: Event will include 1-2 food vendors, 1 beverage station which may include alcoholic beverages on occasion during the season, booth for skate rentals, possibly merchandise vendors, possibly live music.

83RD ANNUAL DOWNTOWN FRESNO CHRISTMAS PARADE
Date: 12/8/2012
Brief Description: Continue holiday tradition with festive downtown parade
Suggested Location: Downtown Fresno
Goal: Draw new audiences to Downtown, secure media attention and bring business to downtown
Attendance Estimate: 30,000
Vendors/additional components: Event will include 1-2 food vendors, 1 beverage station, MC stand in Mariposa Plaza.

EXHIBIT B

Encroachment Permit,
Indemnification and Hold Harmless Agreement,
and
Insurance Requirements for Use of City Grounds and Facilities

ENCROACHMENT PERMIT NO. _____

CITY OF FRESNO PARKS, RECREATION AND COMMUNITY SERVICES DEPARTMENT
City Hall Annex, 2326 Fresno Street, Room 101, Fresno, CA 93721-1824
Telephone (559) 621-2900 FAX (559) 498-1588

I. **SPONSOR–Name** _____

Address _____

Telephone No. _____ FAX No. _____

Nonprofit ID No. _____ Calif. Corp. No. _____

II. **DESCRIPTION OF EVENT**–Please provide a brief and complete description of the proposed event (entertainment, estimated number of food and non-food booths, estimated daily attendance, etc.).

III. **LOCATION**–List Eaton Plaza; or the closest main streets, Mall address, or focal point (e.g., Clock Tower).

IV. **DURATION**–_____ days. List each day's schedule below.

Day of the Week M/Tu/W/Th/F/Sat/Sun	Date	Time From	Time To

V. **PERTINENT QUESTIONS**–Please answer **all** questions. If you need assistance, please call 559-621-2900.

A. The event must have at least **one responsible person** who will have authority to exercise management control and direction with respect to the event, its activities, and associated personnel. Please list the individual responsible for the event.

Name _____ Telephone No. _____

Address _____

INDEMNIFICATION AND HOLD HARMLESS AGREEMENT

In consideration for the use of City grounds and facilities and to the furthest extent allowed by law, Permittee does hereby agree to indemnify, hold harmless and defend the City of Fresno and each of its officers, officials, employees, agents and volunteers (hereinafter collectively referred to as "City") from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, Permittee or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of use of City grounds and facilities by the Permittee or any of his/her/its officers, officials, employees, agents, volunteers or invitees. Permitee's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees, agents or authorized volunteers are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of City or any of its officers, officials, employees, agents or volunteers.

Throughout the life of this Agreement, Permittee shall pay for and maintain in full force and effect all insurance as required in Exhibit A, which is incorporated into and part of this Agreement, or as may be authorized or required in writing by City's Risk Manager or his/her designee at any time and in his/her sole discretion.

Permittee shall conduct all defense at his/her/its sole cost. The fact that insurance is obtained by Permittee shall not be deemed to release or diminish the liability of Permittee, including, without limitation, liability assumed under this Agreement. The duty to indemnify shall apply to all claims regardless of whether any insurance policies are applicable. The duty to defend hereunder is wholly independent of and separate from the duty to indemnify and such duty to defend exists regardless of any ultimate liability of Permittee. The policy limits do not act as a limitation upon the amount of defense and/or indemnification to be provided by Permittee. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Permittee, its officials, officers, employees, agents, volunteers or invitees.

City shall be reimbursed for all costs and attorney's fees incurred by City in enforcing this Agreement.

This Indemnification and Hold Harmless Agreement shall survive the use of City grounds and facilities.

The undersigned acknowledges that he/she (i) has read and fully understands the content of this Indemnification and Hold Harmless Agreement; (ii) is aware that this is a contract between the City and Permittee; (iii) has had the opportunity to consult with his/her attorney, in his/her discretion; (iv) is fully aware of the legal consequences of signing this document; and (v) is the Permittee or his/her/its authorized signatory.

Signed, sealed and delivered this _____ day of _____ 2012.

Permitee	Witness
Print Name	Print Name
Address	Address
Telephone Number	Telephone Number

Any "yes" response from Items B through F must be explained briefly in the space immediately following the questions.

B. Will there be any direct sale of merchandise or service from your display?

☐ Yes ☐ No

C. Will promotional literature, food, drink, or other items be provided or distributed at no cost?

☐ Yes ☐ No

D. Will there be any building, structure, wiring, plumbing, or mechanical and/or electrical appliances incorporated in the encroachment?

☐ Yes ☐ No

E. Will there be any vehicles incorporated in or used to load and/or unload on Eaton Plaza or the Mall in conjunction with the encroachment?

☐ Yes ☐ No

F. Will there be any need for connection to any public utilities, e.g., electrical or water hook-ups?

☐ Yes ☐ No

VI. GENERAL INFORMATION–

A. **All arrangements to be made with City departments and all permits to be obtained as specified by the Parks, Recreation and Community Services Director shall be accomplished at least 14 working days prior to the proposed encroachment. Failure to do so will be grounds for cancellation of this Mall Encroachment Permit.**

B. The use of sound amplification equipment on Eaton Plaza or the Mall must be in compliance with the general provisions of Sections 8-305 and 8-308 of the Fresno Municipal Code and have advance approval of the City. A **Sound Amplification Permit** may be obtained from the Parks, Recreation and Community Services Department, Administration Office. The amplification of sound should not unreasonably disrupt public use of Eaton Plaza or the Mall or occupants of any adjacent buildings in conducting regular activities therein.

C. Parking is not allowed on Eaton Plaza or the Mall except for loading and/or unloading and only with a **Mall Parking Permit** from the Parks, Recreation and Community Services Department, Administration Office. **A drip pan must be placed under all vehicles while parked on the Mall.**

D. Arrangements for electrical service should be made through the Parks, Recreation and Community Services Department after permit approval.

E. All pedestrian and lawful vehicular traffic to abutting properties shall be allowed ingress to and egress from such properties at all times.

F. No Eaton Plaza or Mall encroachment shall cause or create any substantial risk of injury to any lawful user of any public or private property.

G. No Eaton Plaza or Mall encroachment shall adversely affect the public safety or convenience in the use of Eaton Plaza or the Mall, or the physical facilities at Eaton Plaza or on the Mall.

H. All required barricades, if any, shall remain as placed during the course of the encroachment, the preparation therefor, and the dismantling thereafter.

I. Each applicant to whom an Encroachment Permit is issued hereunder shall maintain the same in his/her possession at all times during the activity and display same upon request by any City official.

J. All fire lanes must be kept free of obstruction.

K. The permittee shall clean thoroughly all public and private property in the encroachment area of debris remaining from the encroachment or its incidence. All such cleaning shall be completed immediately following conclusion of the event. If the area is not so cleaned and the litter removed, the Parks, Recreation and Community Services Department or Mall Manager shall cause the work to be done and the cost thereof, at applicable waste disposal rates, charged against the cleanup deposit posted by the permittee. Any excess costs over such deposit shall be a debt of and paid by the permittee.

L. The permittee agrees and undertakes to appear for, defend, indemnify and hold harmless the City of Fresno, and each of its officers, boards, commissions, agents and employees, with respect to all claims, demands, actions, and other proceedings, and with respect to all damages, losses, costs and expenses of every kind, nature and source whatsoever, including but not limited to, any and all liabilities, demands, claims, damages, losses, costs, and expenses caused, or alleged to have been caused, by any act or omission of any indemnitee hereunder arising out of or pertaining to enjoyment by the permittee of any such permit, or the issuance of any such permit to or for the benefit of the permittee, or the existence or occurrence of any mall encroachment caused, maintained, or permitted to exist or occur by the permittee.

VII. CONDITIONS–

VIII. FEES–Security/Cleanup Deposit - $ _____ Paid on _____

I certify that the above information is correct and that I have read and understand all requirements of this permit.

_____
Signature of Applicant

Approved on this _____ day of _____

_____
Parks, Recreation and Community Services Department

INSURANCE REQUIREMENTS FOR SPECIAL EVENTS
EXHIBIT A

In consideration for the issuance of a Permit for a special event, Permittee shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide, or (ii) authorized by City's Risk Manager or his/her designee. The following policies of insurance are required:

(i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as Insurance Services Office (ISO) form CG 00 01 and shall include insurance for "bodily injury", "property damage" and "personal and advertising injury", including premises and operation, products and completed operations and contractual liability with limits of liability of not less than $1,000,000 per occurrence and $2,000,000 general aggregate for bodily injury and property damage, $1,000,000 per occurrence for personal and advertising injury and $2,000,000 aggregate for products and completed operations.

If alcoholic beverages are to be sold, served or furnished, COMMERCIAL GENERAL LIABILITY insurance shall be endorsed to include coverage for liquor liability with limits of liability of not less than $1,000,000 per occurrence and $2,000,000 aggregate for bodily injury and property damage, or Permittee shall pay for and maintain the most current version of Insurance Services Office (ISO) Liquor Liability Coverage Form CG 00 33, which shall include which shall include insurance for "bodily injury," and "property damage" with limits of liability of not less than $1,000,000 per occurrence and $2,000,000 aggregate for bodily injury and property damage. **The responsibility for Liquor Liability insurance may be assigned to Permittee's concessionaire or vendor.**

Permittee shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Permittee shall also be responsible for payment of any self-insured retentions.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar day written notice by certified mail, return receipt requested, has been given to the City. Upon issuance by the insurer, broker or agent of a notice of cancellation, non-renewal or reduction in coverage or limits, Permittee shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). **In the event any policy(ies) are due to expire during the special event, Permittee provide a new certificate and all applicable endorsements evidencing renewal of such policy(ies) not less than 15 calendar days prior to the expiration date of the expiring policy(ies).**

The General Liability and Liquor Liability (if applicable) insurance policies shall name City of Fresno, its officers, officials, agents, employees and volunteers as an additional insureds. Permittee's insurance shall be primary as respects to the City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents and volunteers shall be excess of the Permittee's insurance and not contribute with it. **Permittee shall have furnished City with the certificate(s) and applicable endorsements for ALL required insurance fourteen (14) days prior to the special event.**

Upon request of City, Permittee shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive the expiration or termination of the Permit.

If at any time during the special event, Permittee fails to maintain the required insurance in full force and effect, the special event shall be discontinued immediately until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City.

NOTE: A Certificate of Insurance is not acceptable, in lieu of the additional insured and/or waiver of subrogation endorsements required above. The Certificate of insurance **must** be accompanied by the additional insured and primary insurance endorsements.

SOUND AMPLIFICATION PERMIT

Name of Individual/Sponsor _____ Telephone No. _____

User of Equipment _____ Telephone No. _____

Address _____

Owner of Equipment _____

Address _____

Type of Equipment (Describe Make or Model) _____

Time and date(s) on which equipment will be used _____

Place or area where equipment will be used _____

Describe Purpose–

Power rating of amplifier–Watts _____

(If applicable) Did you obtain a Mall Parking Permit from Parks, Recreation and Community Services Department for loading an unloading equipment?

☐ Yes ☐ No

Vehicle to be used– _____

License Plate No. State

The use of all sound amplification equipment shall be in strict compliance with the provisions of Sections 8-305 and 8-308 of the Fresno Municipal Code.

Permit is hereby ☐ approved ☐ not approved.

_____

Parks, Recreation and Community Services Department

MALL PARKING PERMIT

Applicant's Name _____

Address _____

City/State/Zip _____

Telephone No. _____ FAX No. _____

Name of Mall _____

Mall Address _____

Purpose _____

Date & Time Limits

FROM _____
Month/Day/Year Time

TO _____
Month/Day/Year Time

Applicant understands that the Fresno Municipal Code pertaining to mall traffic will be enforced.

SECTION 10-1901. TRAFFIC IN MALL.

(b) No person shall operate or park on any mall in the City any vehicle or equipment which will mark, stain or damage a mall structure or the surface of a mall, by wheel marks, the dripping of oil, or any other means.

(c) Any person operating or causing the operation of any equipment or vehicles which damage a mall or surface of a mall or any fixtures or appurtenances in a mall shall be responsible for replacing or repairing the same to the satisfaction of the City, and upon failing to do so, shall be responsible to the City for the cost thereof.

Applicant is limited to 30 minutes for loading/unloading on the mall. A drip pan must be placed under parked vehicle.

Date _____ _____
Applicant's Signature

APPROVED:

Date _____ _____
Parks, Recreation and Community Services Department