

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To:	Matthew J. Fertil	From:	Kimberly Huy	
Dept.:	City Manager	Dept.:	Community Services	
Subject:	APPROVAL OF AN AGREEMENT WITH THE VIETNAMESE COMMUNITY OF SOUTHERN CALIFORNIA TO CONDUCT TET FESTIVALS		Date:	October 14, 2014

OBJECTIVE

To recommend that the City Council approve a three (3) year Agreement with the Vietnamese Community of Southern California (VNCSC) to conduct Tet Festivals at Garden Grove Park.

BACKGROUND

In November 2013, the City Council approved an agreement with VNCSC to host the 2014 Tet Festival at Garden Grove Park. The festival was a three-day event that included carnival rides, food, vendors and traditional entertainment and activities. VNCSC conducted a successful Tet Festival and reimbursed the City for City-related festival expenses.

DISCUSSION

In August 2014, staff received a proposal from VNCSC to host upcoming Tet Festivals at Garden Grove Park. Attached is a three-year Agreement with VNCSC, allowing them to conduct the Tet Festivals at Garden Grove Park for the next three years. The Agreement has been signed by representatives from VNCSC.

Staff is working with the office of JG Davidson and Company (CPA) to complete the financial review of the 2014 Tet Festival. Preliminary discussions with the CPA have indicated that to date there are no issues with the information that has been provided by VNCSC. Upon receipt of the completed financial report, staff will review the information and ensure there are not any concerns. Should the financial review indicate otherwise, the Agreement allows the City to terminate the Agreement following the 2015 Tet Festival.

FINANCIAL IMPACT

Included in this Agreement is the requirement that VNCSC reimburse the City for costs incurred by the City in support of the Tet Festival. The VNCSC will be required

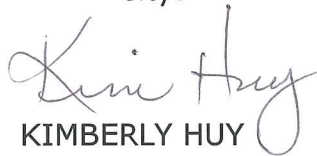
APPROVAL OF AN AGREEMENT
WITH THE VIETNAMESE COMMUNITY
OF SOUTHERN CALIFORNIA TO
CONDUCT THE 2015 TET FESTIVAL
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to pay an initial payment of \$50,000 thirty days in advance of the festival. After the Festival, the VNCSC is to reimburse the City for use of the Park and the remainder of City costs, up to a total amount of \$145,000.

RECOMMENDATION

It is recommended that the City Council:

- Approve the Agreement with the Vietnamese Community of Southern California to conduct Tet Festivals at Garden Grove Park; and
- Authorize the City Manager, or his designee, to execute the Agreement, including any minor modifications as appropriate thereto, on behalf of the City.


KIMBERLY HUY
Director


By: Janet Pelayo
Manager

Attachment: Tet Festival Agreement

Recommended for Approval



Matthew J. Fertal
City Manager

TET FESTIVAL AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____ 2014, by and between the CITY OF GARDEN GROVE, a municipal corporation, hereinafter referred to as "CITY," and the VIETNAMESE COMMUNITY OF SOUTHERN CALIFORNIA, a California non-profit corporation, hereinafter referred to as "VNCSC."

RECITALS

1. VNCSC has received City Council permission to sponsor and conduct Tet Festivals and related activities in the City of Garden Grove referred to herein as the "FESTIVAL" or "FESTIVALS."

2. CITY wants to ensure the safety of all residents and orderly conduct of all participants in the FESTIVAL.

3. VNCSC understands and acknowledges that (i) CITY will incur substantial direct and indirect costs with regard to the FESTIVALS and (ii) the CITY and public generally will incur a substantial burden through the closure of Garden Grove Park for the set-up, conduct of and tear-down of the FESTIVALS which burden is difficult to quantify monetarily.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **TERM.** The term of this Agreement shall commence on the date first written above and continue through August 31, 2017, unless earlier terminated pursuant to this Section 1 or Section 36 herein. The purpose of this Agreement is to allow VNCSC to conduct FESTIVALS in 2015, 2016 and 2017. The dates for the 2015 FESTIVAL shall be February 20, 2015 through February 22, 2015. The dates for FESTIVALS in 2016 and 2017 shall be set by mutual agreement of the parties hereto. It is mutually understood by VNCSC and CITY that VNCSC is still in the process of preparing an accounting of its income and expenditures in connection with the 2014 FESTIVAL pursuant to the agreement governing the 2014 FESTIVAL. Notwithstanding the foregoing, VNCSC agrees that if the financial review and accounting of VNCSC's income and expenditures in connection with the 2014 FESTIVAL to be provided to CITY pursuant to the agreement between VNCSC and CITY for the 2014 FESTIVAL is determined not to be satisfactory by CITY's City Manager, in his sole and absolute discretion, then the term of this Agreement shall be for one year only (i.e., only for the 2015 FESTIVAL). Within fifteen (15) days of the City Manager's determination regarding his satisfaction with the financial review and accounting of VNCSC's income and expenditures in connection with the

2014 FESTIVAL, CITY shall provide notice to VNCSC pursuant to Section 26 of whether the term of this Agreement will end after the 2015 FESTIVAL or extend through the 2017 FESTIVAL.

2. **REIMBURSEMENT.** VNCSC shall reimburse CITY for all CITY/ Community costs attributable to operation of the FESTIVALS as follows:

A. The parties acknowledge and agree that conduct of the FESTIVALS will result in the loss of the Park to the public at large for the duration of the FESTIVALS, including set up and tear down for the events, and that such loss is difficult to quantify in monetary terms. In order to compensate the CITY for its direct and indirect costs, the community for the loss of use of the park and to provide a benefit to the Garden Grove community as a result of each FESTIVAL, VNCSC shall make payments to the CITY for each FESTIVAL as follows: (i) VNCSC shall pay an initial sum of Fifty Thousand Dollars (\$50,000) to CITY at least thirty (30) days prior to the scheduled start of each FESTIVAL; (ii) VNCSC, in addition to the initial sum, shall pay the total cost not to exceed the sum of Fifty Five Thousand Dollars (\$55,000,000) to CITY within thirty (30) days of the end of each FESTIVAL; and (iii) following VNCSC's payment of all of its other FESTIVAL expenses, VNCSC shall pay to CITY, within one hundred twenty (120) days of the end of each FESTIVAL, Fifty Cents (\$0.50) of each dollar of FESTIVAL income remaining until VNCSC has paid to CITY an additional Forty Thousand Dollars (\$40,000). If VNCSC fails to make the initial payment as required, CITY shall not issue any permit in connection with the FESTIVAL and VNCSC shall not proceed with the FESTIVAL. Notwithstanding the foregoing, the CITY may reduce the total amount of VNCSC's payment for CITY costs if, following any FESTIVAL, the City Manager, in his sole discretion, determines that the CITY's costs were less than the total amount specified herein.

B. The estimate of CITY's costs in Section 2.A. above does not include potential damage caused as a result of the FESTIVAL. VNCSC shall be responsible for and agrees to pay the full cost of any repair of damages to the FESTIVAL site (except as otherwise set forth herein), buildings, fixtures, property and other structures, including the irrigation system, that are attributable to the FESTIVAL operations.

C. In the case of any damage to CITY property or facilities attributable to FESTIVAL operations, a deposit of Two Thousand Five Hundred Dollars (\$2,500) shall be made at least thirty (30) days prior to the scheduled start of the FESTIVAL. CITY shall subtract damage costs from this deposit, and refund the balance within thirty (30) days of the end of the event. If damage costs exceed this deposit amount, VNCSC agrees to pay such excess within thirty (30) days of the end of the event. If VNCSC fails to make the deposit prior to the scheduled start of the FESTIVAL, CITY shall not issue any permits in connection with the FESTIVAL and the VNCSC shall not proceed with the FESTIVAL.

D. In addition to the costs set forth in Section 2.A., VNCSC shall pay the costs for CITY renovation of the park turf area on which the FESTIVAL is held, including aeration of the FESTIVAL site. VNCSC shall reimburse the CITY for the amount of such costs as determined by the Public Works Director and the City Manager.

3. **FESTIVAL ACTIVITIES.** VNCSC agrees that the FESTIVAL will represent a mixture of cultural activities. Expressly prohibited from FESTIVAL activities are helicopter rides, and activities, music or speech that call, incite or provoke an immediate breach of the peace. CITY reserves the right to immediately stop and terminate any such activity. All music, whether live or recorded, shall be planned and implemented by the VNCSC as an activity which is ancillary to the FESTIVAL, not designed in and of itself to draw spectators to the FESTIVAL. Each live music performance shall be staged in an area with a seating capacity for no more than 800 persons. The volume on all music provided at the FESTIVAL shall not exceed 70 decibels at any time at any property line of the FESTIVAL site. The VNCSC shall provide sufficient security, as determined to be appropriate in the reasonable exercise of discretion by CITY's Chief of Police, to ensure compliance with all requirements of this Agreement, including but not limited to the requirements for music provided at the FESTIVAL. VNCSC shall notify CITY at least thirty (30) days in advance of the FESTIVAL of the name of each music group, type of music and type of amplification system which will be used by each group providing live music at the FESTIVAL in order to ensure that requirements of this Agreement will be met. In addition, at the same time, VNCSC shall provide to CITY identification of the areas of the FESTIVAL site at which each musical group will perform, the times during which the performances will occur and the seating arrangements and capacities to be provided by the FESTIVAL for each such performance. Notwithstanding the foregoing, VNCSC shall comply with the requirements of Garden Grove Municipal Code Section 8.47.050(g)(2) regarding filing a registration statement with CITY's Zoning Administrator at least seven (7) days prior to use of any sound amplification equipment during the FESTIVAL. If the Police Department determines that the FESTIVAL's noise level is disturbing the peace of the surrounding community, VNCSC shall lower the noise volume of the offending source(s) as directed by the Police Department.

4. **FESTIVAL PARTICIPANTS.** VNCSC shall have sole responsibility for arranging and providing all contractors, persons, VNCSCs, businesses and employees necessary to properly conduct FESTIVAL activities.

5. **USE OF GARDEN GROVE PARK.** In consideration for VNCSC's activities, as provided herein, CITY grants VNCSC a non-exclusive right to use Garden Grove Park for the purpose of conducting the annual FESTIVAL including, but not limited to, food booths, amusement zone operations, ancillary music and related uses, subject to VNCSC submitting to CITY a schedule of events, operations plan and complete plot plan, including but not limited to

vendor locations, carnival area, stage area and vehicle and fire lanes, no later than thirty (30) days before the FESTIVAL, and obtaining the approval of the submitted schedule, operations plan and plot plan from the City Manager or his designee.

A. The FESTIVAL shall be operated in accordance with the following schedule:

Friday

Open no earlier than 1:00 p.m.

Completely closed no later than 10:00 p.m.

Saturday

Open no earlier than 10:00 a.m.

Completely closed no later than 10:00 p.m.

Sunday

Open no earlier than 10:00 a.m.

Completely closed no later than 9:00 p.m.

“Completely closed” shall mean the cessation of FESTIVAL related activities, including music and other entertainment, amusement rides, food and game booth operations and all other FESTIVAL activities, and shall not mean the vacation of the FESTIVAL grounds by FESTIVAL patrons. An earlier closing time of the amusement zone may be determined by representatives of the Fire Department, Police Department or FESTIVAL officials.

B. VNCSC shall be responsible for closing the FESTIVAL each night. All rides shall begin closing one hour before closing time with no additional tickets being sold. The grounds shall be completely clear no later than one hour past closing.

C. For the purposes of set-up and tear down, VNCSC may enter Garden Grove Park no earlier than three (3) days before each FESTIVAL, and shall have the grounds cleaned of all debris and equipment no later than one (1) day after the conclusion of the FESTIVAL. This permission is granted with the understanding that the specific dates will be covered under the insurance policy(ies) provided by VNCSC and others to CITY, pursuant to Section 20.

6. **PARK USAGE CONDITIONS.** VNCSC shall be responsible for the continual clearing of trash/debris from the site during each FESTIVAL. VNCSC shall further be responsible for and agrees to provide proper clean-up of the FESTIVAL site upon conclusion of

each FESTIVAL, including proper clean-up of the parking areas used for the FESTIVAL, except privately-owned parking lots. "Proper clean-up" shall mean that the open, visible ground is free of litter, lumber, construction materials and other materials resulting from FESTIVAL operations and that these materials are removed from the grounds and disposed of properly. VNCSC shall reimburse CITY for any costs CITY incurs for site clean-up, including but not limited to special materials, labor, overtime, or damage to CITY property, which result in additional charges.

A. VNCSC shall provide adequate trash containers and portable restrooms during the FESTIVAL, which restrooms shall be cleaned daily by VNCSC.

B. VNCSC shall contact Dig Alert (800) 422-4133, in accordance with the requirements of Government Code Section 4216 et seq., prior to driving or placing any stake or other item into the ground, and shall avoid all areas identified through Dig Alert as containing underground facilities of any type whatsoever.

C. VNCSC shall provide plans and calculations to CITY for approval no later than thirty (30) days before the event for proposed stages, platforms, tent structures and electrical systems for approval. VNCSC shall designate a representative for the coordination of all safety related activities pertaining to electrical and structural matters at the FESTIVAL. VNCSC shall obtain the inspection of and approval by CITY's Building Services Division of all structures and electrical systems prior to the first day of each FESTIVAL. Structures, including sanitary facilities, shall comply with the accessibility requirements of Title 24 of the California Building Code (Handicap Access). VNCSC may contact the City of Garden Grove Inspection Request Line, at (714) 741-5332, to request inspections.

D. The noise levels for the FESTIVAL shall not exceed the maximum allowed under either this Agreement or the City's noise ordinance, whichever is lower, and shall not disturb the peace of the surrounding community. If CITY's Police Department determines that the noise level is disturbing the peace of the surrounding community, VNCSC shall lower the noise volume as directed by the Police Department.

7. **FENCING.** If required by CITY, VNCSC shall install temporary fencing satisfactory to CITY. In addition, VNCSC shall ensure that the fencing contractor provides the necessary traffic control during the installation and removal of fencing. VNCSC shall remove all fencing within 48 hours after the end of each FESTIVAL.

8. **STORMWATER QUALITY BEST MANAGEMENT PRACTICES.** VNCSC shall use best management practices (BMP's) as feasible to prevent or control the discharge of pollutants and minimize non-stormwater runoff from the FESTIVAL site. BMPs may include structural or non-structural solutions, a schedule of activities, prohibition of

practices, maintenance procedures, or other management practices used to prevent or reduce the discharge of pollutants to the CITY's storm drain system.

The VNCSC shall contact City of Garden Grove Environmental Compliance staff at (714) 741-5375 during office hours for assistance in choosing the appropriate BMPs for the FESTIVAL.

9. **PARKING.** VNCSC shall obtain pre-approval from the Garden Grove Police Department regarding any proposed parking restrictions or modifications in traffic flow prior to the event. Nothing in this Agreement authorizes FESTIVAL access to parking other than that which is generally available to the public.

10. **FINANCIAL REVIEW AND REPORTING.** VNCSC agrees that it will, within four (4) months after each FESTIVAL, furnish CITY with an accounting of its income and expenditures in connection with the FESTIVAL and related activities. Such information may be in the form of an audit report, or similar suitable documentation, prepared by a Certified Public Accountant acceptable to City. The review and reporting shall ensure that comprehensive and transparent information regarding FESTIVAL-related receipts and disbursements is provided. VNCSC financial controls shall include the following:

- Maintain and provide for review a general ledger accounting system that encompasses all transactions of VNCSC, and within that accounting system, the maintenance of separate bank accounts, revenue accounts, and expense accounts used for the express and exclusive purpose of transacting all Tet Festival related business.
- Implement internal controls over cash receipts and disbursements, including but not limited to monthly bank reconciliations for all VNCSC bank accounts, a system of initiation, authorization, asset custody, transaction documentation and processing, and oversight of disbursements to employees related to payroll, to volunteers related to expense reimbursements, to vendors related to purchases of goods and services, and to community assistance organizations related to the sharing of profits pursuant to Section 41 herein, the records of which shall be provided for review.
- Compliance with federal form 990 reporting requirements.
- Compliance with state form 199 reporting and payment requirements.
- Compliance with California Secretary of State, Statement of Information reporting and payment requirements, related to the maintaining of VNCSC in good standing with the State of California.

- Compliance with California Attorney General registration renewal reporting and payment requirements related to the Registry of Charitable Trusts.
- Compliance with federal and state payroll and payroll tax payment and reporting laws and regulations.
- Compliance with federal and state reporting laws and regulations pertaining to payments made to independent contractors.
- Compliance with provisions of this and all other contracts.
- Compliance with all provisions of grants agreements procured related to Tet Festival related activities.

11. **COMMERCIAL FOOD SALES.** All commercial mobile trailers with food vending equipment, whether or not operated by owner of the equipment, are required to have a permit from the Orange County Health Department prior to operation on FESTIVAL grounds. VNCSC shall make every effort to ensure that required permits have been obtained prior to the opening of the FESTIVAL. Any commercial equipment found in operation without the required Orange County Health Department permits shall be closed.

12. **HEALTH DEPARTMENT.** Prior to the opening of the FESTIVAL, VNCSC shall provide the Orange County Health Department (“OCHD”) and CITY with a list of food concession vehicles and stand vendors and their approximate location on the grounds. All health permit applications for non-profit and commercial entities shall be submitted to the Orange County Health Department no later than two weeks prior to the FESTIVAL.

13. **HEALTH COMPLIANCE.** All food and candy concessions shall be operated in compliance with the OCHD "MINIMUM STANDARDS FOR CLEANLINESS AND FOOD PROTECTION FOR HANDLING FOOD AT SPECIAL EVENTS," or its successor standards, relating to prepackaged and unpackaged foods and beverages, and any other OCHD Guidelines.

A. VNCSC shall work with the Orange County Health Department to ensure compliance with all health regulations by all food concessions at the FESTIVAL. In addition, the Police Chief, the Fire Chief, or their designees shall have the right, at their sole discretion, to close any food booth that becomes non-compliant during the FESTIVAL. Any such food booth found shall not be allowed to reopen until satisfactory compliance is demonstrated.

14. **FOOD SALES COORDINATION.** VNCSC shall designate a representative for the coordination of all food service activities at the FESTIVAL. This person shall coordinate with the Orange County Health Department during the planning stages of FESTIVAL

development to ensure that food service activities occur in compliance with all regulatory requirements.

15. **SAFETY COORDINATION.** VNCSC shall designate a representative for the coordination of all safety related activities pertaining to electrical and structural matters at the FESTIVAL. This person shall coordinate with the CITY's Building Official during the planning stages and conduct of the FESTIVAL.

16. **SECURITY PLAN.** VNCSC shall prepare an operation and security plan for FESTIVAL operations. This plan for the operation and security of the FESTIVAL shall be submitted to the Chief of Police of CITY for approval no later than fourteen (14) days before the FESTIVAL. VNCSC shall obtain approval of such plan from the Chief of Police. Approval of the plan shall not be unreasonably withheld. Insurance information for all security related contracts shall be submitted to CITY's Finance Director in accordance with Section 20 of this Agreement.

17. **PERMITS.** VNCSC and its representatives shall comply with all applicable laws. It shall be the responsibility of the VNCSC to obtain, or cause to be obtained, all required permits, including but not limited to a Community Event Permit, except a City of Garden Grove Business Operations Tax Certificate and State Board of Equalization Seller's Permit, which shall be obtained by each organization or group participating in the FESTIVAL, where applicable. Failure by the VNCSC to annually apply for a Community Event Permit at least two (2) months in advance of the proposed FESTIVAL may result in the loss of authorization to conduct FESTIVAL.

18. **FIRE REGULATIONS.** No later than December 15, 2014, VNCSC shall provide to the Fire Chief of CITY, a general plot plan or site plan that indicates the location of all vehicles, stands, tents, amusement zone activities/rides, fire lanes and Fire Department ingress. VNCSC shall comply with all applicable Fire Code provisions. All Fire Code required permits shall be obtained at least one (1) week prior to the beginning of the FESTIVAL. In addition, VNCSC shall obtain the approval of the Fire Chief of all cooking appliances and fuels before use at the FESTIVAL.

A. Tents over 200 square-feet or canopies over 400 square-feet require Fire Department permits. VNCSC shall submit site plans (CFC 105.6.43) by one (1) week before FESTIVAL.

B. VNCSC shall ensure that each cooking booth shall provide and mount (acceptable to bungee cord to pole) a 2A10:BC fire extinguisher (40B:C where deep fryers are used) with an affixed State Fire Marshal's service tag. (CFC 906.1, Title 19, Sec 567.6)

C. VNCSC shall ensure access and visibility of fire hydrants, Fire Department connections, suppression system, and appliances at all times.

D. Use of fireworks is strictly prohibited.

19. **POLICE SERVICES.** The Garden Grove Police Department reserves the right to revoke the FESTIVAL permit at any time without prior notice to or permission from VNCSC if, in the opinion of the Chief of Police, or his designee, the public health and safety is in jeopardy.

20. **INSURANCE.** VNCSC shall provide commercial general liability insurance, including contractual liability, applicable to each FESTIVAL event, including set-up, tear down of facilities, and shall protect VNCSC and CITY from claims for such damages. This insurance shall be in the amount normally carried by VNCSC for such purposes, but in no event shall it be less than:

\$2,000,000 (two million dollars) per occurrence for Bodily Injury and Property Damage Liability, and \$2,000,000 (two million dollars) general aggregate. (*“Claims Made” and “Modified Occurrence” policies are not acceptable.*)

VNCSC shall furnish to CITY a Certificate of Insurance signed by the authorized agent of the insurance carrier issued on the insurance carrier’s form setting forth the general provisions of their insurance coverage. An Additional Insured Endorsement shall designate the **City of Garden Grove, its employees, agents, volunteers, and officials** as Additional Insureds for on-going operations under the policy (**Additional Insured Endorsement form CG 2026, or equivalent, as approved by CITY, shall be furnished to CITY**). The Certificate and Endorsement (**CG 2026 or equivalent, as approved by CITY**) shall be submitted by VNCSC to CITY for approval not less than thirty (30) days prior to each FESTIVAL. (*“Claims Made” and “Modified Occurrence” policies are not acceptable.*) VNCSC shall provide to CITY endorsements from each insurance carrier wherein the insurance carrier shall give CITY thirty (30) days advance written notice of any material change, cancellation, or termination of coverage.

VNCSC shall obtain a Certificate of Insurance and Additional Insured Endorsements evidencing proof of no less than \$10,000,000 (ten million dollars) commercial general liability insurance, per occurrence, and no less than \$10,000,000 (ten million dollars) general aggregate policy from any vendor providing rides, games or other “carnival-type” activities at each FESTIVAL, naming the **City of Garden Grove, its employees, agents, volunteers, and officials**, as Certificate Holders and Additional Insureds. The Certificate and Endorsement (**CG 2026 or equivalent and CG 2037 or equivalent, as approved by CITY**) shall be submitted by VNCSC to CITY for approval not less than thirty (30) days prior to the event. (*“Claims Made” and “Modified Occurrence” policies are not acceptable.*) VNCSC shall provide to CITY endorsements from each insurance carrier wherein the insurance carrier

shall give CITY thirty (30) days advance written notice of any material change, cancellation, or termination of coverage.

In addition to the above-required insurance, VNCSC shall ensure that all contractors/vendors submit proof to CITY of not less than \$1,000,000 (one million dollars) commercial general liability insurance per occurrence, and not less than \$2,000,000 (two million dollars) general aggregate. This includes, but is not limited to, contractors providing FESTIVAL coordination services, fencing, trash collection, sanitary facilities and site security. The City of Garden Grove, its employees, agents, volunteers, and officials, shall be designated as Additional Insured on these policies for on-going operations. The required Certificates and Additional Insured Endorsements (**CG 2026 or equivalent, as approved by CITY**) shall be submitted by VNCSC to CITY for approval not less than thirty (30) days prior to each FESTIVAL. (***“Claims Made” and “Modified Occurrence” policies are not acceptable.***) VNCSC shall provide to CITY endorsements from each insurance carrier wherein the insurance carrier shall give CITY not less than thirty (30) days advance written notice of any material change, cancellation, or termination of coverage.

VNCSC shall ensure that VNCSC and each of its contractors, vendors and sponsors using automobiles for FESTIVAL purposes shall provide evidence of automobile liability insurance in an amount not less than \$1,000,000 (one million dollars) combined single limit. If transportation is provided for persons, evidence of automobile liability insurance shall be provided in an amount not less than \$5,000,000 (five million dollars) combined single limit. The required Certificates and Additional Insured Endorsements, (**CA 2048 or equivalent, as approved by CITY**) naming the **City of Garden Grove, its employees, agents, volunteers, and officials** as additional insured for automobiles owned, leased, hired or borrowed, and also for mobile equipment, if mobile equipment is used, shall be submitted by VNCSC to CITY for approval not less than thirty (30) days prior to each FESTIVAL. VNCSC shall provide to CITY endorsements from each insurance carrier wherein the insurance carrier shall give CITY thirty (30) days advance written notice of any material change, cancellation, or termination of coverage. Should VNCSC or any of its sponsors, contractors, or vendors not be utilizing automobiles in carrying out the terms of or activities contemplated by this Agreement, each such person(s) or entity(ies) may request an exemption from such insurance requirement by submitting a request on CITY's request for exemption form to CITY's Finance Director for approval. Approval of such request shall rest within the sole discretion of CITY's Finance Director or his/her designee.

VNCSC shall ensure that if VNCSC, or any of VNCSC's sponsors, contractors or vendors have employees, workers' compensation insurance for such employees is in effect in the amount and type required by California law. The required Certificates shall be submitted by VNCSC to CITY for approval not less than thirty (30) days prior to the FESTIVAL. VNCSC shall provide to CITY endorsements from each insurance carrier wherein the insurance carrier shall give CITY not less than thirty (30) days advance written notice of any material change, cancellation, or termination of coverage. Should VNCSC or any of its sponsors, contractors or vendors not have employees, such person(s) or entity(ies) shall be required to sign CITY's worker's compensation waiver form and submit it to CITY's Finance Director for approval

thereof. Approval of the waiver form shall rest within the sole discretion of CITY's Finance Director or his/her designee.

All insurance companies shall have a Best's Guide rating of A-, Class VII, or better, or as otherwise approved in advance by the CITY's Finance Director or his/her designee. All insurance shall be **primary** to insurance or self insured retentions maintained by the City of Garden Grove, its employees, agents, volunteers, and officials, **and shall not contribute** with it. An endorsement providing primary/non-contributory coverage shall be provided for **ALL** policies, except excess liability policies. All insurance policies must be in effect at all times anyone will be on the event site (including set up, tear down, etc.).

In the event any of underlying policies for VNCSC or any of its contractors, vendors, or sponsors do not meet or exceed the policy limits of these insurance requirements, VNCSC shall ensure that VNCSC, or the subject contractor, vendor or sponsor, as appropriate, provides a **Follows Form** excess liability policy to ensure that the required policy limits are met. VNCSC shall also ensure that the subject contractor, vendor, or sponsor provides a schedule of underlying policies for the excess liability policy, and that the insurance certificate states that the excess policy follows form to the underlying policies.

If VNCSC or any of its sponsors, vendors, or contractors hire subcontractors to assist with their operations, such subcontractors shall be required to provide the same insurance as VNCSC, or the respective sponsor, vendor, or contractor, as appropriate, including applicable waiver forms. The person or entity hiring the subcontractor shall be responsible to collect from that subcontractor and maintain all insurance documentation. All insurance from subcontractors shall be **primary** to insurance or self insured retentions maintained by the City of Garden Grove, its employees, agents, volunteers, and officials, **and shall not contribute** with it. An endorsement providing primary/non-contributory coverage shall be provided for **ALL** policies.

If any sponsor, contractor, vendor, or subcontractor maintains higher insurance limits than the minimums shown above, the sponsor, contractor, vendor, or subcontractor shall provide coverage for the higher insurance limits otherwise maintained by the sponsor, contractor, vendor, or subcontractor.

ALL INSURANCE POLICIES MUST BE IN EFFECT AT ALL TIMES THAT ANYONE WILL BE ON THE EVENT SITE (INCLUDING SET UP, TEAR DOWN, ETC.)

FAILURE BY VNCSC TO PROVIDE TO CITY PROOF OF INSURANCE REQUIRED BY THIS AGREEMENT OR TO ENSURE THAT PROOF OF REQUIRED INSURANCE HAS BEEN PROVIDED TO CITY, AS APPROPRIATE, SHALL BE SUFFICIENT GROUNDS FOR CITY TO DECLINE TO ISSUE PERMITS FOR THE FESTIVAL, CANCEL AUTHORIZATION FOR THE FESTIVAL TO PROCEED AND TO PRECLUDE THE FESTIVAL FROM OCCURRING.

Variances from the above referenced insurance requirements may be issued by the CITY's Finance Director or his/her designee in the exercise of his/her sole discretion. No variance shall be valid unless issued in writing and signed by the CITY's Finance Director or his/her designee.

21. **BUSINESS TAXES.** VNCSC shall provide the City's Business Tax office with a list of all FESTIVAL vendors and food booths at least one (1) month prior to opening of the FESTIVAL. VNCSC shall ensure that all vendors and food booths possess a current City business license. VNCSC shall also ensure that vendors selling tangible items have a Seller's Permit from the State Board of Equalization. If data related to business licenses, insurance, seller's permits, and other similar items, is incomplete or unsatisfactory, a field inspection will be required with a minimum of four hours at a rate of \$57.89 per hour payable by VNCSC, which hourly rate may be adjusted annually by City as CITY costs increase.

A. VNCSC shall ensure that any non-profit food vendors provide to CITY proof of non-profit status from the IRS and financial statements (of the prior year's event if possible).

B. VNCSC shall ensure that any person or entity soliciting for charitable purposes at a FESTIVAL shall submit to CITY a completed "Application for Permit to Appeal or Solicit for Charitable Purposes" and a signed letter of indemnification, satisfactory to CITY, at least thirty (30) days before the event.

22. **ALCOHOLIC BEVERAGES.** Alcoholic beverages shall not be sold, distributed or consumed on the FESTIVAL grounds. Any food or other booth in which alcohol is found shall immediately, and for the duration of the FESTIVAL, be closed by the Chief of Police or designee.

23. **NON-LIABILITY OF OFFICIALS AND EMPLOYEES OF CITY.** No official or employee of CITY shall be personally liable to VNCSC in the event of any default or breach by CITY, or for any amount, which may become due to VNCSC, or for any obligation under the terms of this Agreement.

24. **COMPLIANCE WITH LAW.** VNCSC shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state and local governments in the performance of FESTIVAL-related activities.

25. **CONFLICT OF INTEREST.** VNCSC shall at all times avoid conflict of interest or appearance of conflict of interest in the performance of this Agreement.

26. **NOTICES.** All notices shall be personally delivered or mailed to the below listed address, or to such other address as may be designated by written notice. These addresses shall be used for delivery of service of process.

VNCSC:

President
Vietnamese Community of Southern California
P. O. Box 2316
Garden Grove, CA 92842

CITY:

City of Garden Grove
Attention: City Manager
11222 Acacia Parkway
Garden Grove, CA 92840

27. **TIME OF ESSENCE.** Time is of the essence in the performance of this Agreement.

28. **LIMITATIONS ON SUBCONTRACTING AND ASSIGNMENT.** The experience, knowledge, capability, and reputation of VNCSC, its principals and employees were a substantial inducement for CITY to enter into this Agreement. VNCSC shall not contract with any other entity or otherwise transfer its rights and obligations under this Agreement without the prior written approval of CITY. Any attempted assignment, subcontracting or transfer by VNCSC of its rights or obligations under this Agreement without the prior written consent of City in violation of this provision shall be null and void. If VNCSC is permitted to subcontract any part of this Agreement, VNCSC shall be fully responsible to CITY for the acts and omissions of its subcontractor as it is for the acts and omissions of persons directly employed. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and CITY. All persons engaged in the work will be considered employees of VNCSC. CITY will deal directly with VNCSC.

29. **NON-DISCRIMINATION.** VNCSC covenants there shall be no discrimination against or segregation of any person, group, or employee due to race, color, creed, religion, sex, marital status, sexual orientation, age, handicap, national origin or ancestry, in any action or activity pursuant to this Agreement.

30. **AUTHORITY TO EXECUTE.** Each person executing this Agreement on behalf of a party hereto warrants and represents that he/she is duly authorized to execute this Agreement on behalf of the entity for which he/she is signing, and that by executing this Agreement, the party for which the person is signing is formally bound to the term of this Agreement.

31. **INDEMNIFICATION.** To the fullest extent allowed by law, VNCSC agrees to protect, defend, and hold harmless CITY and its elective and appointive boards, officials,

officers, agents, employees and volunteers from any and all claims, liabilities, expenses or damages of any nature, including attorney's fees, for injury or death of any person, or damage to property, interference with the use of property, or any other type of monetary or other claim arising out of, or in any way connected with any FESTIVAL related activities and/or the performance of the terms of this Agreement by VNCSC, and its agents, officers, employees, volunteers, vendors, subcontractors, or independent contractors hired by VNCSC. The only exception to VNCSC responsibility to protect, defend and hold harmless CITY is due to the sole negligence or intentional wrongful conduct of CITY, or any of its elective or appointive boards, officials, officers, agents, employees or volunteers.

32. **MODIFICATION.** This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified only by subsequent mutual written agreement executed by VNCSC and CITY. Nothing herein prohibits the parties from mutually agreeing to modify any condition contained in this Agreement.

33. **WAIVER.** The waiver of any provision of this Agreement must be in a writing signed by the appropriate authorities of CITY and VNCSC.

34. **CALIFORNIA LAW.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced pursuant to this Agreement shall be initiated in the central or main branch of the Orange County Superior Court.

35. **INTERPRETATION.** This Agreement shall be interpreted as though prepared by both parties.

36. **DEFAULT AND TERMINATION.**

A. In the event of material default under this Agreement, the non-defaulting party may provide notice to the defaulting party of the conduct constituting the default. The defaulting party shall have thirty (30) days within which to correct the default. If the default is not corrected within the thirty (30) day period, the non-defaulting party may give notice of immediate termination of this Agreement to the defaulting party. Such notice shall be effective five (5) days following the day such notice is provided pursuant to Section 26 herein.

B. Any termination of this Agreement by CITY shall not relieve VNCSC of any outstanding obligation under this Agreement, including but not limited to the following: VNCSC's indemnification obligations shall survive the termination of this Agreement until all claims and actions related thereto are fully and finally resolved and all monies related thereto are fully paid.

37. **PRESERVATION OF AGREEMENT.** Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision invalidated, and all remaining provisions shall remain in full force and effect.

38. **NON-PROFIT STATUS.** VNCSC shall either maintain charitable non-profit corporation status in accordance with Internal Revenue Code Section 501(C)(3) or bring in an alternative charitable non-profit organization, subject to City Manager approval, with which to partner for the FESTIVALS.

39. **USAGE OF TET FESTIVAL PROCEEDS.** Net profit is the balance, in positive numbers, of all proceeds from all accounts (including the sale of admission tickets, booth rentals, donations from sponsors, etc.), less all expenditures (including payment to the CITY pursuant to Section 2 herein, rental of special equipment, payment to specialists/technicians, etc.). Fifty percent (50%) of the net profit shall be used by the governing board of the VNCSC for activities to serve the community. The remaining net profits shall be used as follows: Fifty percent (50%) of this remaining amount shall be placed in a special account for VNCSC's project to build a "Community House" for the community. The other fifty percent (50%) shall be donated to other non-profit organizations in Southern California with priority to non-profit organizations based in the City of Garden Grove, based on recommendations of a community committee. Composition of the community committee shall be determined by agreement between the City Manager and the President of VNCSC.

40. **ADMISSION TICKETS.** CITY understands that VNCSC intends to sell admission tickets in advance and/or at the booths by entrance gates. VNCSC understands that CITY may monitor on-site ticket sales in order to assist CITY in verifying FESTIVAL sales and attendance numbers. VNCSC shall cooperate with CITY's monitoring activities.

IN WITNESS THEREOF, the parties have executed this Agreement on the day and year first referenced herein.

CITY OF GARDEN GROVE

By: _____
Matthew J. Fertal, City Manager

ATTEST:

Kathleen Bailor, CMC, City Clerk


APPROVED AS TO FORM:

Thomas F. Nixon, City Attorney

VIETNAMESE COMMUNITY OF
SOUTHERN CALIFORNIA

By: 

Leslie K. Le, President (Interim)

By: 

Hoa Nguyen, Chairman
Tet Festival Organizing Committee