

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To: Allan L. Roeder
Dept.: Interim City Manager
Subject: APPROVAL OF AN AMENDMENT
TO THE AGREEMENT WITH THE
STRAWBERRY FESTIVAL ASSOCIATION
FOR THE ANNUAL STRAWBERRY FESTIVAL

From: Kimberly Huy
Dept.: Community Services
Date: April 14, 2015

OBJECTIVE

To recommend that the City Council approve an Amendment to the Agreement between the City and the Strawberry Festival Association (Association).

BACKGROUND

For 56 years, the Association has organized the annual Strawberry Festival each Memorial Day weekend. The four-day event includes: a parade, carnival rides, food, vendors, entertainment, and activities. The most recent Agreement between the City and the Association authorizes them to conduct the annual Strawberry Festival at Village Green Park from 2014 through 2018.

DISCUSSION

Attached is an Amendment to the Agreement with the Association that outlines the new insurance requirements. These changes to the insurance requirements only apply to the Association and carnival operator. The cost for the Association to provide the new policy limits would be an additional \$4,826 in 2015.

This Amendment also includes changes to Section 2.a., reimbursement from the Association to the City for City support, where the City agrees to reduce the amount from the Association for City support for a period of two (2) years. After two (2) years, the Association would be responsible for paying the reimbursement amount not to exceed \$40,000.

The proposed Amendment has been signed by representatives from the Strawberry Festival Association and has been approved as to form by the City Attorney.

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FINANCIAL IMPACT

As set forth in the Agreement, the Association will continue to reimburse the City for costs incurred in support of the Strawberry Festival, but the maximum amount of cost reimbursement for the 2015 and 2016 festivals shall be \$37,587.

RECOMMENDATION

It is recommended that the City Council:

- Approve the Amendment to the Agreement with the Strawberry Festival Association; and
- Authorize the City Manager, or his designee, to sign and execute the Amendment on behalf of the City, including making minor modifications as appropriate and necessary.


KIMBERLY HUY
Director


By: Janet Pelayo
Manager

Attachment: Strawberry Festival Amendment

Recommended for Approval


Allan L. Roeder
Interim Director

CITY OF GARDEN GROVE
AMENDMENT NO. 1

To: Strawberry Festival Agreement

This Amendment No. **1** to allow the Strawberry Festival Association to sponsor and conduct the annual Strawberry Festival and activities in the City of Garden Grove, is made and entered into this ____ day of April 2015, by and between the **CITY OF GARDEN GROVE**, hereinafter referred to as "CITY", and **Strawberry Festival Association**, a California non-profit corporation, hereinafter referred to as "ASSOCIATION".

WHEREAS, ASSOCIATION and CITY entered into a Strawberry Festival Agreement, effective **April 22, 2014**.

WHEREAS, ASSOCIATION and CITY desire to amend the Existing Agreement as provided herein.

Now, therefore, it is mutually agreed, by and between the parties as follows:

Section 2.A., REIMBURSEMENT, shall be amended in its entirety to read as follows:

ASSOCIATION shall reimburse CITY for its direct and indirect costs attributable to operation of the Festival (Including a parade, if held) in an amount no to exceed Forty Thousand Dollars (\$40,000) except as otherwise set forth herein. ASSOCIATION agrees to pay such costs, up to a maximum of Forty Thousand Dollars (\$40,000), within thirty days (30) following the mailing of an invoice by CITY to ASSOCIATION for such costs. Notwithstanding the forgoing, the maximum amount of cost reimbursement for the 2015 and 2016 Festivals shall be Thirty-Seven Thousand Five Hundred and Eighty Seven Dollars (\$37,587).

Section 25. INSURANCE, shall be amended in its entirety to read as follows:

25. **INSURANCE.** ASSOCIATION shall take out and maintain during the life of this Agreement, commercial general liability insurance, including contractual liability, and shall protect ASSOCIATION and CITY from claims for such damages. This insurance shall be in the amount normally carried by ASSOCIATION for such purposes, but in no event shall it be less than:

\$5,000,000 (five million dollars) per occurrence for Bodily Injury and Property Damage Liability, and \$5,000,000 (five million dollars) general aggregate. (**"Claims Made" and "Modified Occurrence" policies are not acceptable.**)

ASSOCIATION 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 the insurance coverage under the commercial general liability policy. 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**) and shall be submitted by ASSOCIATION to CITY for approval not less than thirty (30) days prior to the event. (**"Claims Made" and "Modified Occurrence" policies are not acceptable.**) ASSOCIATION 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.

ASSOCIATION shall obtain an Certificate of Insurance and Additional Insured Endorsements evidencing proof of not less than \$10,000,000 (ten million dollars) commercial general liability insurance, per occurrence, and not less than \$10,000,000 (ten million dollars) general aggregate policy from any vendor providing rides, games or other "carnival-type" activities at the 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 ASSOCIATION to CITY for approval not less than thirty (30) days prior to the event. (**"Claims Made" and "Modified Occurrence" policies are not acceptable.**) ASSOCIATION 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, ASSOCIATION shall ensure that all of ASSOCIATION's contractors, vendors and sponsors obtain and maintain 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 parade coordination services, fencing, trash collection, sanitary facilities, tents, tables/chairs and site security. The **City of Garden Grove, its employees, agents, volunteers, and officials**, shall be designated as Additional Insureds on these policies for on-going operations. The required Certificates and Additional Insured Endorsements (**CG 2026, or equivalent, as approved by CITY**) shall be collected and maintained by ASSOCIATION not less than thirty (30) days prior to the event. (**"Claims Made" and "Modified Occurrence" policies are not acceptable.**) The endorsements from each insurance carrier shall provide that the insurance carrier shall give CITY not less than thirty (30) days advance written notice of any material change, cancellation, or termination of coverage.

ASSOCIATION shall ensure that ASSOCIATION and each of its contractors, vendors and sponsors using automobiles for FESTIVAL purposes shall obtain and maintain automobile liability insurance in an amount not less than \$1,000,000 (one million dollars) combined single limit. If transportation services (such as shuttle services and transportation for parade purposes) are provided for persons, automobile liability insurance shall be obtained and maintained in an amount not less than \$5,000,000 (five million dollars) combined single limit. The parade coordinator shall obtain and maintain insurance that covers losses for all automobiles and floats used for parade transportation purposes. Additional Insured Endorsements for all automobile related insurance shall be obtained. The required Additional Insured Endorsements, **(CA 2048, or equivalent, as approved by CITY)** shall name the **City of Garden Grove, its employees, agents, volunteers, and officials** as Additional Insureds for all automobiles, including automobiles owned, leased, hired or borrowed, and also for mobile equipment, if mobile equipment is used. The required Certificates and Additional Insured Endorsements shall be collected and maintained by ASSOCIATION not less than thirty (30) days prior to the event. ASSOCIATION shall submit to CITY for approval not less than thirty (30) days prior to the event its Certificates and Endorsements confirming that ASSOCIATION has for itself obtained such coverage. **("Claims Made" and "Modified Occurrence" policies shall not be accepted.)** For each such contractor, vendor or sponsor, ASSOCIATION shall collect and maintain the required Additional Insured endorsements and other 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 ASSOCIATION 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 Risk Manager for approval. Approval of such request shall rest within the sole discretion of CITY's Risk Manager.

ASSOCIATION shall ensure that if ASSOCIATION, or any of ASSOCIATION's sponsors, contractors or vendors, or any of their subcontractors, have employees, workers' compensation insurance for such employees is in effect in the amount of and type required by California law. Each such insurer shall waive its rights of subrogation against the City of Garden Grove, its employees, agents, volunteers, and officials. The required Certificates and endorsements shall be collected and maintained by ASSOCIATION not less than thirty (30) days prior to the event. ASSOCIATION shall submit to City for approval insurance certificates and endorsements confirming that ASSOCIATION has for itself obtained such insurance, if required by California law, not less than thirty (30) days prior to the event. ASSOCIATION shall ensure that each such insurance carrier shall give CITY not less than thirty (30) days advance written notice of any material change, cancellation, or termination of coverage. Should ASSOCIATION or any of its sponsors, contractors or vendors, or any of their subcontractors, 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 Risk Manager for approval thereof. Approval of the waiver form shall rest within the sole discretion of CITY's Risk Manager.

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

If ASSOCIATION or any of its sponsors, vendors, or contractors hire any subcontractor to assist with their operations, each such subcontractor shall be required to provide the same insurance as the person or entity for which it is performing the work, including providing applicable waiver forms as approved by CITY.

ASSOCIATION shall be responsible to collect and maintain all insurance certificates and endorsements from all of its contractors, vendors, sponsors, and any of their subcontractors, and shall ensure that such insurance meets the terms of this Agreement. All insurance from Association, its contractors, vendors, sponsors, and any of their 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. Endorsements providing primary/non-contributory coverage shall be provided for **ALL** policies.

"Claims Made" and "Modified Occurrence" policies shall not be accepted. All insurance carriers must have a Best's Guide rating of A-, Class VII or better. All insurance policies must be in effect at all times during the Festival, including all times for set-up and tearing down for the event. Upon request by CITY, ASSOCIATION shall provide to CITY original or certified copies of all insurance policies, endorsements, and certificates of ASSOCIATION, its contractors vendors, sponsors and any of their subcontractors.

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. For purposes of this Section 25, the term "sponsor" shall not include an individual or entity that provides only a monetary payment to the ASSOCIATION and does not enter onto or conduct activities on the Festival site.

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 ASSOCIATION TO PROVIDE TO CITY PROOF OF ASSOCIATION'S INSURANCE AS REQUIRED BY THIS AGREEMENT OR TO ENSURE THAT THE INSURANCE REQUIRED OF ANY CONTRACTOR, VENDOR, SPONSOR, OR SUBCONTRACTOR HAS BEEN OBTAINED , 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 Risk Manager in the exercise of his/her sole discretion. No variance shall be valid unless issued in writing and signed by the CITY's Risk Manager. CITY's Risk Manager may require increased policy limits and/or additional insurance if in the exercise of his/her reasonable discretion, he/she determines that the increased policy limits or additional insurance is appropriate based on potential risks associated with the Festival. CITY shall not require increased policy limits or additional insurance without first discussing the matter with ASSOCIATION. CITY shall at all times have the right to inspect and receive the original or a certified copy of all policies and certificates of insurance, including additional insured endorsements, required pursuant to this Agreement.

If ASSOCIATION wishes to use the First Baptist Church of Garden Grove's parking lot for parking and/or access to the Festival, ASSOCIATION shall comply with the requirements set forth in the November 27, 2012 License Agreement between CITY and the First Baptist Church of Garden Grove, including but not limited to (i) payment of specified user fees; (ii) fulfillment of all operational requirements; (iii) indemnification of both CITY and the First Baptist Church of Garden Grove in accordance with the requirements of Section 9 of the License Agreement; and (iv) providing commercial general liability insurance for the Church property to CITY, including an insurance certificate evidencing not less than \$1,000,000 (one million dollars) per occurrence commercial general liability coverage and not less than \$2,000,000 (two million dollars) general aggregate. ASSOCIATION shall also provide an additional insured endorsement for on-going operations under the general liability policy (Form CG 20 26 07 04 or equivalent designating the City of Garden Grove, First Baptist Church of Garden Grove, and their respective employees, agents, volunteers and officials as additional insureds. All insurance provided shall be primary to the insurance or self insured retentions maintained by the City of Garden Grove, First Baptist Church of Garden Grove, and their respective employees, agents, volunteers and officials, and shall not contribute with it. An endorsement providing primary/non-contributory coverage shall be provided for ALL policies. **("Claims Made" and "Modified Occurrence" policies shall not be accepted.)**

Except as expressly amended hereby, the Existing Contract shall remain in full force and effect as originally executed.

IN WITNESS WHEREOF, the parties have caused this Amendment No. 1 to the Existing Agreement to be executed by their respective officers duly authorized on the date first written above.

Date: _____

**"CITY"
CITY OF GARDEN GROVE**

By: _____
Mayor

ATTESTED:

City Clerk

Date: _____

Strawberry Festival Association

By: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

Garden Grove City Attorney

Date