

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To: Matthew Fertal

From: Kimberly Huy

Dept.: City Manager

Dept.: Community Services

Subject: KOREAN FESTIVAL AGREEMENT

Date: August 12, 2008

OBJECTIVE

To transmit a new three (3) year Agreement between the City and the Korean Festival Foundation of Orange County (KFFOC) in order for the Chamber to conduct the 25th annual Korean Festival at the Garden Square Parking Lot on Garden Grove Blvd., over the weekend of October 10 to 12, 2008, as well as each of the next two (2) years, through 2010.

BACKGROUND

For 24 years, the Korean Chamber of Commerce (now operating as the Korean Festival Foundation of Orange County) has organized the annual Korean Festival each October. The three-day event includes a parade, carnival rides, food, vendors and traditional Korean entertainment and activities. Last year, the Festival was moved back to the Garden Square Parking Lot on Garden Grove Boulevard after having been held at the Brookhurst Triangle for four years. The most recent Agreement between the City and KCC only authorized their coordination of the 2007 Festival. This Agreement did not contain any provisions for renewal.

In June 2008, City staff received a letter from Raymond Choi, the current KFFOC Chairman, requesting that the City allow them to continue to conduct the annual Korean Festival at the Garden Square Parking Lot for another three years.

DISCUSSION

Attached is a three-year Agreement with the Korean Festival Foundation of Orange County, allowing them to conduct the annual Korean Festival at the Garden Square Parking Lot from 2008 to 2010. The more significant aspects of this Agreement include provisions related to allowable festival activities, insurance requirements, reimbursement for City support, and restrictions on sound and crowd levels.

The proposed Agreement has been signed by representatives from the Korean Festival Foundation of Orange County and has been approved as to form by the City Attorney.

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FINANCIAL IMPACT

Included in this new Agreement is the requirement that the Korean Festival Foundation of Orange County reimburse the City for one-half of the direct costs incurred in support of the Korean Festival. The Agreement stipulates that this amount shall not be less than \$5,000.

COMMUNITY VISION IMPLEMENTATION

The Community Vision seeks to integrate ethnic groups in community-wide events. The Korean Festival is one of four festivals hosted in Garden Grove each year.

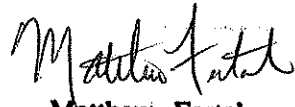
RECOMMENDATION

It is recommended that City Council:

1. Approve the Agreement with the Korean Festival Foundation of Orange County, and
2. Authorize the Mayor and City Clerk to execute the Agreement.


Kimberly Huy
Director


By: Chad Clanton
Supervisor

Recommended for Approval

Matthew Ferial
City Manager

Attachment: Korean Festival Agreement

AGREEMENT

Korean Festival

THIS AGREEMENT is made and entered into this _____ day of _____ 2008, by and between the CITY OF GARDEN GROVE, a municipal corporation, hereinafter referred to as "CITY," and the Korean Festival Foundation of Orange County, a California non-profit corporation, hereinafter referred to as "FOUNDATION."

RECITALS

1. CITY may lawfully expend money accruing to its general fund for purposes of supporting community events.
2. FOUNDATION has received Council permission to sponsor and conduct an annual Festival and related activities in the City of Garden Grove, commonly known as the "Korean Festival."
3. CITY wants to ensure the safety of all residents and orderly conduct of all participants in the Festival.
4. FOUNDATION has requested, and CITY agrees to grant, aid in connection with defraying the expenses of the Festival activities subject to the terms and conditions provided herein.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **TERM**. The term of this Agreement shall be from the date first noted above through October 31, 2010, unless earlier terminated pursuant to Section 33 herein. The purpose of this Agreement is to allow FOUNDATION to conduct the annual Festivals during 2008-2010. The dates for the 2008 Festival shall be October 10-12, 2008. The dates on which subsequent Festivals will be held will be determined by later agreement of the parties hereto.
2. **PERMITS**. FOUNDATION and its representatives shall comply with all applicable laws, and shall obtain all required permits. It shall be the responsibility of the FOUNDATION 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 FOUNDATION to annually apply for a Community Event Permit at least five (5) months in advance of the proposed Festival may result in the loss of authorization to conduct Festival.
3. **REIMBURSEMENT**. FOUNDATION shall reimburse CITY for one-half of all direct costs attributable to operation of the Festival not covered elsewhere in this Agreement. These costs include, but are not limited to: overtime labor, part-time labor, the rental or purchase of necessary materials and permit fees. At no time shall this reimbursement be less than \$5,000, which has historically been the minimum level of payment for direct City services. Once the reimbursement amount is set, FOUNDATION agrees to provide payment within thirty (30) days.

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 each year covered by this Agreement. The deposit shall be made at least thirty (30) days prior to the scheduled start of the Festival. CITY shall subtract its reimbursable costs from the deposit, and refund the balance within thirty (30) days of the end of the event. If reimbursable costs exceed the deposit amount, FOUNDATION agrees to pay such excess within thirty (30) days of the end of the event. If FOUNDATION fails to make said deposit prior to the scheduled start of the Festival, CITY shall not issue any permits in connection with the Festival and the FOUNDATION shall not proceed with the Festival.

4. **FESTIVAL ACTIVITIES**. Festival will be held at the Garden Square Parking Lot located on Garden Grove Boulevard. FOUNDATION 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 FOUNDATION 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 FOUNDATION 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. FOUNDATION 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, FOUNDATION 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, FOUNDATION 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, FOUNDATION shall lower the noise volume of the offending source(s) as directed by the Police Department.

5. **FESTIVAL PARTICIPANTS.** FOUNDATION shall have sole responsibility for arranging and providing all contractors, persons, organizations, businesses and employees necessary to properly conduct Festival activities.

6. **FESTIVAL SCHEDULE.** FOUNDATION shall submit to CITY a schedule of events, operations plan and complete plot plan (vendor locations, carnival area, stage area, vehicles, fire lanes, etc.) no later than thirty (30) days before the event, and shall obtain the approval of the submitted schedule, operations plan and plot plan from the City Manager or his designee.

The Festival shall be operated within the bounds of the following schedule:

Friday

Open no earlier than 5:00 PM

Close no later than 10:00 PM

Saturday

Open no earlier than 12:00 Noon

Close no later than 10:00 PM

Sunday

Open no earlier than 12:00 Noon

Close no later than 9:00 PM

FOUNDATION will be responsible for closing the Festival each night. All rides must begin closing one hour before closing time with no additional tickets being sold. The grounds must be completely clear no later than one hour past closing.

For the purposes of set-up and tear down, FOUNDATION may enter the Festival site no earlier than four (4) days before the Festival, and must have the grounds cleaned of all debris and equipment no later than two (2) days after the event. This permission is granted with the understanding that the specific dates will be covered under the insurance policy provided by FOUNDATION and others to CITY, pursuant to Section 17.

7. **GROUND USAGE CONDITIONS.** FOUNDATION will be responsible for the continual clearing of trash/debris from the site. FOUNDATION shall reimburse CITY for any costs CITY incurs for site clean up, including but not limited to special materials, labor, overtime, or damage to Festival site.

FOUNDATION shall provide adequate trash containers and portable restrooms during the Festival, which restrooms must be cleaned daily.

FOUNDATION shall provide all electrical power for the Festival. Plans and calculations must be submitted to CITY by thirty (30) days before the event for proposed stages, platforms, tent structures and electrical systems for approval. FOUNDATION shall designate a representative for the coordination of all safety related activities pertaining to electrical and structural matters at the Festival. FOUNDATION 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 the event. Structures, including sanitary facilities, must comply with the accessibility requirements of Title 24 of the California Building Code (Handicap Access). FOUNDATION may contact the City of Garden Grove Inspection Request Line, at (714) 741-5332, to request inspections.

8. **BEST MANAGEMENT PRACTICES.** In order to prevent pollution caused by festival activities, FOUNDATION shall incorporate Best Management Practices (BMP's) as feasible. FOUNDATION shall contact City of Garden Grove Environmental Compliance staff at (714) 741-5375 for assistance in choosing the appropriate BMPs for the event.

9. **PARKING.** FOUNDATION shall obtain pre-approval from the Garden Grove Police Department regarding any proposed parking restrictions or modifications in traffic flow during the event.

10. **COMMERCIAL FOOD SALES.** All commercial mobile trailers with food vending equipment, whether or not operated by owner of said equipment, are required to have a permit from the Orange County Health Department prior to operation on Festival grounds. FOUNDATION 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.

11. **HEALTH DEPARTMENT.** FOUNDATION shall provide the Orange County Health Department with a list of food concession vehicles or stand vendors and their approximate location on the grounds. This information shall be provided no later than one (1) week before the Festival.

12. **HEALTH COMPLIANCE.** All food and candy concessions shall be operated in compliance with the "MINIMUM STANDARDS FOR CLEANLINESS AND FOOD PROTECTION FOR HANDLING FOOD AT SPECIAL EVENTS" relating to prepackaged and unpackaged foods and beverages, and Orange County Health Department Guidelines.

FOUNDATION 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 food booth found by any regulatory authority not to be in compliance will not be allowed to operate until brought into compliance.

13. **FOOD SALES COORDINATION.** FOUNDATION 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.

14. **SECURITY PLAN.** FOUNDATION shall develop a security plan for Festival operations. This plan and all contracts pertaining to the operation and security of the Festival shall be submitted to the Chief of Police of CITY for approval by two weeks, or fourteen (14) days before the event.

15. **FIRE REGULATIONS.** FOUNDATION shall comply with all applicable Fire Code provisions (e.g. Sections 902, 903, 1102, 3202, 1002, and 3218). All Fire Code required permits shall be obtained at least one (1) week prior to the beginning of the Festival.

Tents over 200 square-feet or canopies over 400 square-feet require Fire Department permits. FOUNDATION shall submit site plans (Uniform Fire Code, Section 3202) by one (1) week before Festival.

FOUNDATION 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. (Uniform Fire Code, Section 1002)

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

Use of fireworks is strictly prohibited.

16. **POLICE SERVICES.** The Garden Grove Police Department reserves the right to revoke the event permit at any time without prior notice to or permission from FOUNDATION if, in the opinion of the Chief of Police, or his designee, it is in the best interest of the general public and public safety. FOUNDATION agrees to compensate CITY for extraordinary law enforcement costs when such extraordinary services are deemed necessary and are rendered to the Festival. Determination of whether extraordinary police services are needed, and the amount thereof, shall be made by the Chief of Police, at his sole discretion. Costs for extraordinary police services shall be agreed upon by the FOUNDATION President, the Chief of Police and the City Manager, and recommended to the City Council.

17. **INSURANCE.** FOUNDATION shall take out and maintain during the life of this Agreement, commercial general liability insurance, including contractual liability, and shall protect FOUNDATION and CITY from claims for such damages. This insurance shall be in the amount normally carried by FOUNDATION 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.*)

FOUNDATION 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 name the **City of Garden Grove, its employees, agents, volunteers, and officials** as Additional Insureds under the policy (**Additional Insured Endorsement form CG 2026, or equivalent, as approved by CITY, shall be furnished to CITY**). Said Certificate and Endorsement (**CG 2026, or equivalent, as approved by CITY**) shall be submitted by FOUNDATION, to CITY, for approval at least thirty (30) days prior to the event. (*"Claims Made" and "Modified Occurrence" policies are not acceptable.*) FOUNDATION 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.

FOUNDATION shall obtain a Certificate of Insurance and Additional Insured Endorsement 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 the Festival, naming the **City of Garden Grove, its employees, agents, volunteers, and officials**, as Certificate Holders and Additional Insureds. Said Certificate and Endorsement (**CG 2026, or equivalent, as approved by CITY**) shall be submitted by FOUNDATION, to CITY, for approval at least thirty (30) days prior to the event. (*"Claims Made" and "Modified Occurrence" policies are not acceptable.*) FOUNDATION 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, FOUNDATION shall ensure that all contractors/vendors submit proof to CITY of no less than \$1,000,000 (one million dollars) commercial general liability insurance per occurrence, and no less than \$1,000,000 (one million dollars) general aggregate. This includes, but is not limited to contractors providing parade coordination services, fencing, trash collection, sanitary facilities and site security. The City of Garden Grove, its employees, agents, volunteers, and officials, shall be named as Additional Insured on these policies. The required Certificates and Additional Insured Endorsements (**CG 2026, or equivalent, as approved by CITY**) shall be submitted by FOUNDATION, to CITY, for approval at least thirty (30) days prior to the event. (*"Claims Made" and "Modified Occurrence" policies are not acceptable.*) FOUNDATION 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.

FOUNDATION shall ensure that any contractor, vendor, or sponsor using autos shall provide evidence of automobile liability insurance in an amount no 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 of no 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 insureds shall be submitted by FOUNDATION to CITY for approval at least thirty (30) days prior to the event. FOUNDATION 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.

FOUNDATION shall ensure that if the sponsor or its contractors/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 FOUNDATION, to CITY, for approval at least thirty (30) days prior to the event. FOUNDATION 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.

All insurance companies must have a Best's Guide rating of A-, Class VII, or better, or as otherwise approved in advance by the CITY's Risk Management Department. All insurance policies must be in effect at all times anyone will be on the event site (including set up, tear down, etc.).

FAILURE BY FOUNDATION 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 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.

18. **BUSINESS TAXES.** FOUNDATION shall provide the Business Tax office with a list of all Festival vendors and food booths. FOUNDATION shall ensure that all vendors and food booths possess a current business license. FOUNDATION 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 \$32.80 per hour payable by FOUNDATION.

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

FOUNDATION shall ensure that any sponsoring organizations submit to CITY a completed "Application for Permit to Appeal or Solicit for Charitable Purposes" and a signed letter of indemnification, satisfactory to CITY, by thirty (30) days before the event.

19. **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.

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

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

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

23. **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.

- A. Address of FOUNDATION is as follows:
Chairman
Korean Festival Foundation of Orange County
9562 Garden Grove Blvd., Suite O
Garden Grove, CA 92844
- B. Address of CITY is as follows:
City of Garden Grove
11222 Acacia Parkway
Garden Grove, CA 92840
Attn: City Attorney's Office

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

25. **LIMITATIONS ON SUBCONTRACTING AND ASSIGNMENT.** The experience, knowledge, capability, and reputation of FOUNDATION, its principals and employees were a substantial inducement for CITY to enter into this Agreement. FOUNDATION shall not contract with any other entity to perform the services required without written approval of CITY. If FOUNDATION is permitted to subcontract any part of this Agreement, FOUNDATION 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 FOUNDATION. CITY will deal directly with FOUNDATION.

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

27. **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.

28. **INDEMNIFICATION.** To the fullest extent allowed by law, FOUNDATION agrees to protect, defend, and hold harmless CITY and its elective or appointive boards, 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, or interference with the use of property, arising out of, or in any way connected with any Festival related activities and the performance of the terms of this Agreement by FOUNDATION, FOUNDATION agents, officers, employees, volunteers, vendors, subcontractors, or independent contractors hired by FOUNDATION. The only exception to FOUNDATION 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, officers, agents or employees.

29. **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 FOUNDATION and CITY. Nothing herein prohibits the parties from mutually agreeing to modify any condition contained in this Agreement.

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

31. **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.

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

33. **TERMINATION**. CITY and FOUNDATION shall have the right to terminate this Agreement, without cause, by giving written notice of termination at least 180 days before each event. Any impending termination pursuant to this section shall be agendized for City Council action during open session.

Any termination of this agreement by CITY shall not relieve FOUNDATION of any outstanding obligation under this Agreement, including but not limited to the following: FOUNDATION'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.

34. **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.

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


CITY OF GARDEN GROVE

ATTEST:

By: _____
Mayor

City Clerk

APPROVED AS TO FORM:



City Attorney

KOREAN FESTIVAL FOUNDATION
OF ORANGE COUNTY

By: 
Chairman

By: 
Secretary