

**City of Garden Grove**

**INTER-DEPARTMENT MEMORANDUM**

To: Matthew J. Fertal  
Dept.: City Manager  
Subject: APPROVAL OF AN AGREEMENT  
WITH THE VIETNAMESE COMMUNITY  
OF SOUTHERN CALIFORNIA TO  
CONDUCT THE 2014 TET FESTIVAL

From: Kimberly Huy  
Dept.: Community Services  
Date: November 26, 2013

OBJECTIVE

To recommend that the City Council approve a one (1) year Agreement between the City and the Vietnamese Community of Southern California (VNCSC) in order for VNCSC to conduct the Tet Festival at Garden Grove Park the weekend of January 31, to February 2, 2014.

BACKGROUND

In November 2013, staff received a written proposal from VNCSC requesting approval to host the 2014 Tet Festival at Garden Grove Park. The proposal from VNCSC was reviewed by City Council during a Study Session held on Tuesday, November 12, 2013. At that meeting, City Council directed staff to prepare for City Council consideration a one-year agreement with VNCSC for the Tet Festival.

DISCUSSION

Attached is a one-year Agreement with VNCSC, allowing them to conduct the Tet Festival at Garden Grove Park in 2014. The more significant aspects of this Agreement include provisions related to the distribution of proceeds, reimbursement for City support, allowable festival activities and insurance requirements. The proposed Agreement has been signed by representatives from VNCSC.

FINANCIAL IMPACT

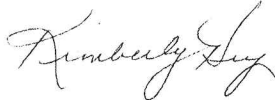
Included in this Agreement is the requirement that VNCSC pay the City for all of the City's costs incurred in support of the Tet Festival. Thirty days in advance, the VNCSC is to pay an initial amount of \$50,000 as required by the City for City expenses. After the Festival, the VNCSC is to reimburse the City for use of the Park and the remainder of City costs, for a total amount of \$145,000.

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RECOMMENDATION

It is recommended that the City Council:

- Approve the Agreement with the Vietnamese Community of Southern California to conduct the Tet Festival at Garden Grove Park the weekend of January 31 through February 2, 2014; and
- Authorize the City Manager to execute the Agreement, including any minor modifications as appropriate thereto, on behalf of the City.



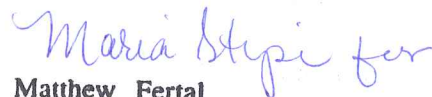
KIMBERLY HUY  
Director



By: Janet Pelayo  
Supervisor

Attachment: Tet Festival Agreement

**Recommended for Approval**



**Matthew Feral**  
Director

## TET FESTIVAL AGREEMENT

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2013, 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 Council permission to sponsor and conduct a 2014 Tet Festival and related activities in the City of Garden Grove, known as the "FESTIVAL."

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 FESTIVAL 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 FESTIVAL 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, 2014, unless earlier terminated pursuant to Section 36 herein. The purpose of this Agreement is to allow VNCSC to conduct one FESTIVAL during 2014. The dates for the 2014 Festival shall be January 31 through February 2, 2014.

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

A. The parties acknowledge and agree that conduct of the FESTIVAL will result in the loss of the Park to the public at large for the duration of the FESTIVAL, including set up and tear down for the event, 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 the FESTIVAL, VNCSC shall make payments to the CITY 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 the FESTIVAL; (ii) VNCSC shall pay the sum of Fifty-Five Thousand Dollars

(\$55,000) to CITY within thirty (30) days of the end of the 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 the 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.

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 the deposit, and refund the balance within thirty (30) days of the end of the event. If damage costs exceed the 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, vendor locations, carnival area, stage area, vehicles, fire lanes, etc., no later than thirty (30) days before the FESTIVAL, and shall obtain the approval of the submitted schedule, operations plan and plot plan from the City Manager or his designee, and provisions provided herein.

A. The FESTIVAL shall be operated within the bounds of 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 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.

C. For the purposes of set-up and tear down, VNCSC may enter Garden Grove Park no earlier than three (3) days before the FESTIVAL, and must 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 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. 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 must be cleaned daily by the 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, must 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 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 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 the 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 the 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 the 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 said 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 Risk Manager 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, 2013, 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 event permit at any time without prior notice to or permission from VNCSC 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.

20. **INSURANCE.** VNCSC shall take out and maintain during the life of this Agreement, commercial general liability insurance, including contractual liability, 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 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.

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 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 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 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 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 the event. 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 Risk Manager for approval. Approval of such request shall rest within the sole discretion of CITY's Risk Manager.

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 event. 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 Risk Manager for approval thereof. Approval of the waiver form shall rest within the sole discretion of CITY's Risk Manager.

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 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 and maintain all insurance from that subcontractor. 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, 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 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.

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 last year's event if possible).

B. VNCSC shall ensure that any sponsoring VNCSCs 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.

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 with 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 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. **TERMINATION.** CITY and VNCSC shall each have the right to terminate this Agreement, without cause, by giving written notice of termination to the other party at least sixty (60) days before the FESTIVAL.

A. 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 represents and warrants that it is a charitable non-profit corporation in accordance with Internal Revenue Code Section 501(C)(3). VNCSC shall remain in good standing as such a corporation at all material times herein.

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

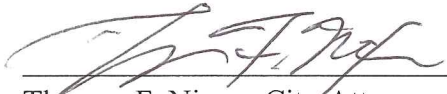
By: \_\_\_\_\_  
Mayor




ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Thomas F. Nixon, City Attorney

VIETNAMESE COMMUNITY OF  
SOUTHERN CALIFORNIA

By:   
\_\_\_\_\_  
Leslie K. Le, President (Interim)  
(a.k.a. Le Khac Ly, Former ARVN Col.)

By: \_\_\_\_\_  
\_\_\_\_\_  
Secretary