

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To: Matthew J. Fertal
Dept.: City Manager
Subject: APPROVAL OF THE AGREEMENT WITH THE STRAWBERRY FESTIVAL ASSOCIATION TO CONDUCT THE ANNUAL STRAWBERRY FESTIVAL FOR FIVE YEARS, FROM 2014 THROUGH 2018

From: Kimberly Huy
Dept.: Community Services
Date: April 22, 2014

OBJECTIVE

For City Council approval of a new five (5) year Agreement with the Strawberry Festival Association in order for the Association to conduct the Strawberry Festival at The Village Green Park, over the Memorial Day weekend of May 23-26, 2014, as well as each of the next four (4) years, through 2018.

BACKGROUND

For 55 years, the Strawberry Festival 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 with the Strawberry Festival Association authorized their conduct of this event through the 2013 Festival.

The Strawberry Festival Association President has requested that the City allow them to continue to conduct the annual Strawberry Festival at The Village Green Park.

DISCUSSION

Attached is a five-year Agreement with the Strawberry Festival Association, allowing the Association to conduct the annual Strawberry Festival at Village Green Park from 2014 to 2018. Significant aspects of this Agreement include the following provisions:

- Reimbursement of City costs attributable to operation of the Festival in the amount of \$40,000. (Section 2);
- Association is responsible for removal of trash during the Festival and clean-up afterwards. (Section 6);

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- Association must comply with financial reporting and accountability requirements for each Festival. (Section 11);
- Food vendors must comply with all Orange County Health Department requirements. (Sections 12-14);
- Association and its contractors and vendors must comply with insurance requirements, including designation of the City of Garden Grove as an additional insured on the insurance policies. (Section 25); and
- Association must distribute at least 12.5% of the Festival's gross revenue to local non-profit community groups. (Section 43.B)

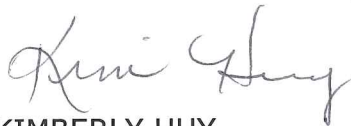
FINANCIAL IMPACT

Included in this new Agreement is the requirement that the Strawberry Festival Association reimburse the City for annual costs of \$40,000 incurred in support of the Strawberry Festival.

RECOMMENDATION

It is recommended that the City Council:

- Approve the Agreement with the Strawberry Festival Association to conduct the Strawberry Festival at Village Green Park over the Memorial Day weekend of May 23-26, 2014, as well as each of the next four (4) years, through 2018; 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: Agreement

Recommended for Approval



Matthew Ferial
City Manager

STRAWBERRY 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 GARDEN GROVE STRAWBERRY FESTIVAL ASSOCIATION, INC., a California non-profit corporation, hereinafter referred to as "ASSOCIATION".

RECITALS

A. CITY may lawfully expend money accruing to its general fund for purposes of supporting community events.

B. ASSOCIATION has received City Council permission to sponsor and conduct an annual Festival and related activities in the City of Garden Grove, commonly known as the "Strawberry Festival."

C. CITY wants to ensure the safety of all residents and orderly conduct of all participants in the Festival.

D. ASSOCIATION 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 January 31, 2019, unless earlier terminated pursuant to Section 41 herein. The purpose of this Agreement is to allow ASSOCIATION to conduct the annual Strawberry Festivals on Memorial Day weekend of each year during 2014-2018. The dates for the 2014 Festival shall be May 22-26, 2014. The primary location for the Festivals shall be at Village Green Park ("Park").

2. **REIMBURSEMENT.**

A. ASSOCIATION shall reimburse CITY for its direct and indirect costs attributable to operation of the Festival (including a parade, if held) in an amount not to exceed Forty Thousand Dollars (\$40,000) except as otherwise set forth herein. ASSOCIATION agrees to pay such costs, up to a maximum of \$40,000, within thirty (30) days following the mailing of an invoice by CITY to ASSOCIATION for such costs.

B. ASSOCIATION agrees to reimburse CITY for all extraordinary costs attributable to the operation of the Festival not covered elsewhere in this Agreement. Extraordinary costs include, but are not limited to, the rental of barricades, purchase of special signs, and overtime costs for personnel that may include responding to emergency situations involving the Park

facilities and grounds. CITY shall provide an itemized invoice to ASSOCIATION for all extraordinary costs. Extraordinary costs shall be agreed upon by the ASSOCIATION Board of Directors, the Community Services Director, the Public Works Director and the City Manager. Once the reimbursement amount is set, ASSOCIATION agrees to provide payment within thirty (30) days.

C. ASSOCIATION 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. ASSOCIATION agrees to pay the cost of damages within thirty (30) days of the mailing by CITY to ASSOCIATION of an itemized invoice of the damages.

3. **FESTIVAL ACTIVITIES.** ASSOCIATION agrees to use its knowledge and experience to organize, promote, advertise and conduct during each year covered by this Agreement, and any renewal thereof, in the City of Garden Grove a citywide celebration known as the "Strawberry Festival." 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 ASSOCIATION as an activity that 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 ASSOCIATION 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. The Parties hereto acknowledge that ASSOCIATION has chosen in the past to utilize the Garden Grove Police Department for security purposes. Should ASSOCIATION decide instead to utilize a private security firm for such services, ASSOCIATION shall coordinate with CITY's Chief of Police to ensure that adequate security is provided. ASSOCIATION 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, ASSOCIATION 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, ASSOCIATION shall comply with the requirements of Garden Grove Municipal Code Section 8.47.060(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. The noise levels of the Festival shall not disturb the peace of the surrounding community. If the Police Department determines that the Festival's noise level is disturbing the peace of the surrounding community, ASSOCIATION shall lower the noise volume of the offending source(s) as directed by the Police Department.

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

5. **USE OF THE VILLAGE GREEN.** In consideration for ASSOCIATION's activities, as provided herein, CITY grants ASSOCIATION a non-exclusive right to use the Village Green during the period beginning the Sunday of the week preceding the Memorial Day holiday, and continuing through the Memorial Day holiday, for the purpose of operating the Festival; including, but not limited to, food booths, amusement zone operations, ancillary music and related uses, subject to ASSOCIATION submitting a schedule of events and complete plot plan (vendor locations, carnival area, stage area, vehicles, fire lanes, etc.) by thirty (30) days before the Festival and the approval of the submitted schedule and plot plan by the City Manager or designee, and provisions provided herein. CITY acknowledges that it does not intend to authorize any other community event on the Village Green concurrently with the Festival, but reserves its right to use any portion of the site for municipal purposes during the Festival. Should the CITY enter onto the Festival site during the Festival, it shall use reasonable efforts to minimize impacts on the conduct of the Festival.

The Festival Amphitheater Lessee retains the right to utilize the Festival Amphitheater Concession Area for fund raising purposes during the Strawberry Festival, provided that the Lessee complies with all applicable rules and directions of ASSOCIATION, including obtaining insurance covering the ASSOCIATION as an additional insured. The coverage shall cover the activities, products sold, and premises occupied by the Lessee. Any organizations operating under the authority of the Lessee shall carry similar insurance. The amount of the insurance shall be the same as that amount required by the ASSOCIATION from all other non-profit food vendors at the Strawberry Festival.

The Festival Amphitheater shall be reserved for use by ASSOCIATION for the period beginning the Saturday before the Festival and continuing through Memorial Day, or as otherwise mutually agreed by ASSOCIATION and CITY.

CITY agrees to allow ASSOCIATION to make use of the Community Meeting Center the Saturday preceding Memorial Day, and the Courtyard Center throughout the duration of the Festival. ASSOCIATION agrees to compensate CITY for the cost of CITY personnel required to open and operate the facilities for ASSOCIATION use, and for any goods provided by CITY at request of ASSOCIATION incidental to such usage.

6. **PARK USAGE CONDITIONS.** CITY agrees not to charge ASSOCIATION for use of the Village Green.

ASSOCIATION shall be responsible for the continual clearing of trash/debris from the site during each Festival. ASSOCIATION 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. ASSOCIATION 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.

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

ASSOCIATION 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.

ASSOCIATION shall be responsible for and agrees to pay the full cost of any repair of damages to the Festival site (except normal wear and tear to the grass), buildings, fixtures and other structures, including the irrigation system, that are attributable to Festival operations. CITY agrees to be responsible for and pay for the renovation of the turf area, including aeration, fertilization and over-seeding. In advance of the Festival, CITY shall mark the location of the irrigation system.

ASSOCIATION 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. ASSOCIATION shall designate a representative for the coordination of all safety related activities pertaining to electrical and structural matters at the Festival. ASSOCIATION 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). ASSOCIATION may contact the City of Garden Grove Inspection Request Line, at (714) 741-5332, to request inspections.

7. **STREET BANNER POLES.** ASSOCIATION shall be granted exclusive use of the street banner poles at various locations throughout the City beginning the fourth Wednesday in April. All banners shall be removed no later than the first week in June.

8. **EUCLID FENCE.** ASSOCIATION shall install and remove temporary fencing satisfactory to City in the median on Euclid Street to discourage mid-block crossing between Stanford and College. In addition, ASSOCIATION must ensure that the fencing contractor provides the necessary traffic control during the installation and removal of fencing. ASSOCIATION shall remove all fencing within 48 hours after the end of Festival.

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

10. **STORMWATER QUALITY BEST MANAGEMENT PRACTICES.**

ASSOCIATION shall use best management practices (BMPs) 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 storm drain system.

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

11. **FINANCIAL REVIEW AND REPORTING.** ASSOCIATION agrees that it will, by the end of the following January 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. ASSOCIATION financial controls shall include the following:

- Maintain and provide for review a general ledger accounting system that encompasses all transactions of ASSOCIATION, and within that accounting system, the maintenance of all bank accounts, revenue accounts, and expense accounts used for the purpose of transacting Festival-related business.
- Implement internal controls over cash receipts and disbursements, including but not limited to monthly bank reconciliations for all ASSOCIATION 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 distribution of Festival proceeds pursuant to Section 43 herein, the records of which shall be provided to the CITY for review upon written request by CITY's Director of Community Services.
- 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 ASSOCIATION 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 Festival related activities.

12. **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. ASSOCIATION 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.

13. **HEALTH DEPARTMENT.** Prior to the opening of the Festival, ASSOCIATION shall provide the Orange County Health Department and CITY with a list of food concession vehicle or 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.

14. **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", or its successor standards, relating to prepackaged and unpackaged foods and beverages, and Orange County Health Department Guidelines.

ASSOCIATION 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 Orange County Health Department, 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 shall not be allowed to reopen until satisfactory compliance is demonstrated.

15. **FOOD SALES COORDINATION.** ASSOCIATION 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.

16. **SAFETY COORDINATION.** ASSOCIATION 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.

17. **SECURITY PLAN.** ASSOCIATION shall develop 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. ASSOCIATION shall obtain the approval of such plan from the Chief of Police, which approval shall not be unreasonably withheld. Insurance information for all security related contracts shall be submitted to CITY's Risk Manager in accordance with Section 25 of this Agreement.

18. **PERMITS.** In consideration of the community benefit derived from the Strawberry Festival, the CITY agrees to waive the community event and street closure permit fees for the Strawberry Festival. However, ASSOCIATION and Festival Participants (including vendors), as described in Section 4 above, shall comply with all applicable laws, and shall obtain and comply with all required permits. It shall be the responsibility of the ASSOCIATION to obtain, or cause to be obtained, all required permits, including but not limited to Community Event Permits and Street Closure Permits, 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.

19. **FIRE REGULATIONS.** No later than the second week in May, ASSOCIATION 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. ASSOCIATION 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. In addition, ASSOCIATION shall obtain the approval of the Fire Chief of all cooking appliances and fuels before use at the Festival.

Tents over 200 square-feet or canopies over 400 square-feet require Fire Department permits. ASSOCIATION shall submit site plans (CFC Section 105.6.43) no later than one (1) week before Festival.

ASSOCIATION 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)

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

Use of fireworks is strictly prohibited.

20. **FESTIVAL SCHEDULE.** ASSOCIATION shall be entitled to promote and stage events throughout the city during the entire month of May of each year during the term of this agreement. When such events require a Community Event Permit, ASSOCIATION shall comply in a timely manner. Amusement attractions shall be confined to the amusement zone.

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

Thursday

Open no earlier than 9 AM
Completely closed by 6 PM

Friday

Open no earlier than 1 PM
Completely closed by 10 PM

Saturday

Open no earlier than 10 AM
Completely closed by 10 PM

Sunday

Open no earlier than 10 AM
Completely closed by 10 PM

Monday

Open no earlier than 10 AM
Completely closed by 9 PM

“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.

The erection of commercial booths may commence one week ahead of the scheduled opening; other amusement zone set-up shall commence no earlier than the Sunday before the scheduled opening, and all equipment shall be removed within one week after Memorial Day.

21. **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 ASSOCIATION 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. ASSOCIATION 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 ASSOCIATION President, the Chief of Police and the City Manager.

22. **BUSINESS TAXES.** ASSOCIATION shall provide the Business Tax office with a list of all Festival vendors and food booths at least two (2) weeks prior to the opening of each Festival. ASSOCIATION shall ensure that all vendors and food booths possess a current business license. ASSOCIATION 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 ASSOCIATION, which hourly rate may be adjusted annually as CITY costs increase.

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

ASSOCIATION 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, by thirty (30) days before the event.

23. **PARADE CONDITIONS.** CITY agrees not to charge ASSOCIATION for use of the public streets closed for the purposes of the parade. CITY will provide a parade route is in a clean and safe condition prior to the parade. ASSOCIATION agrees to pay the extraordinary costs involved in the parade, which may include but are not limited to posting and barricading the streets, street sweeping, and the removal of temporary no parking signs and barricades and the purchase of temporary no parking signs.

ASSOCIATION shall obtain approval in advance from the Garden Grove Police Department for the parade route. Such approval shall not be unreasonably withheld.

24. **SHOWMOBILE.** CITY will furnish and absorb the costs of installing and removing the Showmobile. ASSOCIATION agrees to work with CITY to schedule Showmobile placement and usage to minimize costs incurred.

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:

\$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.)

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 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 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 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 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 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 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 provide evidence of 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, evidence of automobile liability insurance shall be

provided in an amount not less than \$5,000,000 (five million dollars) combined single limit. The parade coordinator shall provide insurance that covers losses for all automobiles and floats used for parade transportation purposes. Additional insured endorsements shall also be provided. 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 for automobiles owned, leased, hired or borrowed, and also for mobile equipment, if mobile equipment is used, 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 shall not be accepted.)** For each such contractor, vendor or sponsor, 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. 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 have employees, workers’ compensation insurance for such employees is in effect in the amount and type required by California law. ASSOCIATION shall submit insurance certificates confirming that such insurance is in effect to CITY for approval not less than thirty (30) days prior to the event. ASSOCIATION 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 ASSOCIATION 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. 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 as to the City of Garden Grove, its employees, agents, volunteers and officials (as approved by CITY) shall be provided for **ALL** policies, except workers’ compensation insurance and excess liability policies. 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.

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 the subcontractor(s) and shall ensure that such insurance meets the terms of this Agreement. 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. Endorsements providing primary/non-contributory coverage shall be provided for **ALL** policies. **("Claims Made" and "Modified Occurrence" policies shall not be accepted.)**

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 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. 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.**)

26. **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.

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

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

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

30. **CONFLICT OF INTEREST.** ASSOCIATION shall at all times avoid conflicts of interest or appearance of conflicts of interest in the performance of this Agreement.

31. **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 ASSOCIATION is as follows:
Garden Grove Strawberry Festival Association
P.O. Box 2287
Garden Grove, CA 92840
Attn: President

B. Address of CITY is as follows:	Copy to:
City of Garden Grove	City of Garden Grove
11222 Acacia Parkway	11222 Acacia Parkway
Garden Grove, CA 92840	Garden Grove, CA 92840
Attn: City Manager	Attn: City Attorney

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

33. **LIMITATIONS ON SUBCONTRACTING AND ASSIGNMENT.** The experience, knowledge, capability and reputation of ASSOCIATION, its principals and employees are a substantial inducement for CITY to enter this Agreement. ASSOCIATION shall not assign, sublet or otherwise transfer its rights or obligations under this Agreement without the prior written consent of CITY. Any attempted assignment, sublet or transfer made in violation of this provision shall be null and void. If ASSOCIATION is permitted to subcontract any part of this Agreement, ASSOCIATION 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 agents of ASSOCIATION. CITY will deal directly with ASSOCIATION.

34. **NON-DISCRIMINATION.** ASSOCIATION 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, sexual orientation, national origin or ancestry, in any action or activity pursuant to this Agreement.

35. **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 such entity is bound to the rights and by the obligations set forth in this Agreement by such signature.

36. **INDEMNIFICATION.** To the fullest extent allowed by law, ASSOCIATION 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 ASSOCIATION, ASSOCIATION agents, officers, employees, volunteers, vendors, subcontractors, or independent

contractors hired by ASSOCIATION. The only exception to ASSOCIATION's 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.

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

38. **WAIVER.** The waiver of any provision of this Agreement must be in writing by the appropriate authorities of CITY and ASSOCIATION.

39. **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.

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

41. **TERMINATION.** CITY and ASSOCIATION shall each have the right to terminate this Agreement, without cause, by giving written notice of termination at least two hundred eighty (280) days before the next Festival 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 ASSOCIATION of any outstanding obligation under this Agreement, including but not limited to the following: ASSOCIATION's indemnification obligations shall survive termination of this Agreement until all actions and claims are fully and finally resolved and all monies related thereto are fully paid.

42. **PRESERVATION OF AGREEMENT.** Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provisions interpreted, and all remaining provisions shall remain enforceable.

43. **FESTIVAL PROCEEDS.**

A. Notwithstanding ASSOCIATION's commitment to payment of CITY costs and the limits on such payments set forth in Section 2 herein, if ASSOCIATION's net income for the Strawberry Festival in any year exceeds Two Hundred Thousand Dollars (\$200,000), ASSOCIATION shall reimburse CITY for its additional direct and indirect costs attributable to the operation of the Festival as follows: For each dollar of ASSOCIATION net income in excess of \$200,000 from an annual Festival, ASSOCIATION shall pay to CITY fifty cents (\$0.50) to CITY until CITY has been fully reimbursed for its direct and indirect costs related to the Festival. CITY shall provide the calculation of CITY's total direct and indirect costs to ASSOCIATION within

forty-five (45) days following the close of the annual Festival. Net income for each Festival shall be calculated by subtracting from ASSOCIATION's gross Festival revenue for that year all of its direct Festival related costs for that year.

B. An amount not less than 12.5% of ASSOCIATION's gross revenue from each Festival shall be distributed to local non-profit, non-political community groups. In the event that unusual circumstances prevent this percentage of distribution of gross revenue, ASSOCIATION shall meet with CITY to address the issue. Award distributions shall be determined by the end of the first quarter of the following year. Local non-profit community groups shall be deemed to include CITY departments.

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

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

GARDEN GROVE STRAWBERRY
FESTIVAL ASSOCIATION, INC.

By: _____
_____, President

By: _____
_____, Secretary