

SECOND ADDENDUM TO FACILITIES USE AGREEMENT

(Music Festival)

THIS ADDENDUM TO FACILITIES USE AGREEMENT (“Second Addendum”) is entered into effective as of June 13, 2017, by and between **LFA GROUP, LLC**, a California limited liability company (“LFA”), and **CITY OF GARDEN GROVE**, a municipal corporation (“CITY”).

RECITALS

WHEREAS, the parties have entered into a Facilities Use Agreement, dated on or about February 14, 2017, pertaining to LFA’s use of the Strawberry Bowl Festival Amphitheater in Village Green Park for programming professional theatrical performances, cultural artistic events and performances, and bookings of other events (the “Agreement”), and an Addendum to the Agreement, dated on or about April 1, 2017 (“First Addendum”), pertaining to group sales of alcoholic beverages at the Amphitheatre;

WHEREAS, in connection with its use of the Amphitheater pursuant to the Agreement, LFA has received City Council permission to sponsor and conduct a one-time music festival and related activities in and around Village Green Park on August 5-6, 2017 (the “FESTIVAL”);

WHEREAS, the FESTIVAL will benefit CITY’s Re-Imagine Campaign efforts to revitalize downtown by bringing additional exposure of, and visitors and patrons to, downtown Garden Grove;

WHEREAS, CITY wants to ensure the safety of all residents and orderly conduct of all participants in the FESTIVAL;

WHEREAS, LFA 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 Village Green Park for the set-up, conduct of and tear-down of the FESTIVAL, which burden is difficult to quantify monetarily;

WHEREAS, the parties desire to amend the Agreement as set forth in this Second Addendum to set forth the terms upon which LFA may conduct the FESTIVAL.

AGREEMENT

NOW THEREFORE, with the intent of being legally bound hereby, in consideration of the mutual covenants and promises hereinafter set forth, and other good and valuable consideration, which the parties acknowledge is sufficient to create a legally binding agreement, the parties agree as follows:

1. **PURPOSE.** The purpose of this Second Addendum is to allow LFA to conduct a music festival in Village Green Park on August 5 and 6, 2017.

2. **REIMBURSEMENT.** LFA 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 events, and that such loss is difficult to quantify in monetary terms. In order to compensate the CITY for its direct and indirect costs, the community for the loss of use of the park and to provide a benefit to the Garden Grove community as a result of the FESTIVAL, LFA shall make payment to the CITY for the FESTIVAL as follows: (i) LFA 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) CITY shall subtract its reimbursable costs from this initial sum, and refund the balance, if any, within thirty (30) days of the end of the Festival. Reimbursable costs shall include all direct and indirect costs incurred by CITY in conjunction with set-up, operation, tear-down, and clean-up of the FESTIVAL, including, but not limited to, CITY staff and contractor costs and loss of rent from facilities within Village Green Park. If reimbursable costs exceed the deposit amount, LFA agrees to pay such excess within thirty (30) days following the mailing of an invoice to LFA for such excess costs. If LFA fails to make the initial payment as required, CITY shall not issue any permit in connection with the FESTIVAL and LFA shall not proceed with the FESTIVAL. Notwithstanding the foregoing, the CITY may reduce the total amount of LFA's payment for CITY costs if, following the FESTIVAL, the City Manager, in his sole discretion, determines that the CITY's costs were less than the total amount specified herein.

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

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

D. In addition to the costs set forth in Sections 2.A. through 2.C., LFA shall pay the costs for CITY renovation of the park turf area on which the FESTIVAL is held, including

eration of the FESTIVAL site. LFA shall reimburse the CITY for the amount of such costs as determined by the Public Works Director and the City Manager.

3. **FESTIVAL ACTIVITIES.** LFA agrees that the FESTIVAL will represent only approved 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. 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. LFA 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 Second Addendum, including but not limited to the requirements for music provided at the FESTIVAL. LFA 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 Second Addendum will be met. In addition, at the same time, LFA 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, LFA 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. If the Police Department determines that the FESTIVAL's noise level is disturbing the peace of the surrounding community, LFA shall lower the noise volume of the offending source(s) as directed by the Police Department.

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

5. **USE OF VILLAGE GREEN PARK.** In consideration for LFA's activities, as provided herein, CITY grants LFA a non-exclusive right to use Village Green Park for the purpose of conducting the FESTIVAL including, but not limited to, food booths, alcohol beverage booths, amusement zone operations, music and related uses, subject to LFA submitting to CITY a schedule of events, a complete list of performers and their set lists, security plan, parking plan, occupancy plan, and complete plot plan, including but not limited to vendor locations, amusement zone area, VIP location, alcohol booth locations, stage area and vehicle and fire lanes, no later than thirty (30) days before the FESTIVAL, and obtaining the approval of the submitted schedule, performer and set lists, security plan, occupancy plan, and complete plot plan from the City Manager or his designee.

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

Saturday

Open no earlier than 12::00 p.m.

Music commencing no earlier than 1:00 p.m.

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

Sunday

Open no earlier than 12::00 p.m.

Music commencing no earlier than 1:00 p.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 and food 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 VIP location, alcohol beverage booths, food booths, and amusement zone may be determined by representatives of the Fire Department, Police Department or FESTIVAL officials.

B. LFA shall be responsible for closing the FESTIVAL each night. The grounds shall be completely clear no later than one hour past closing.

C. For the purposes of set-up and tear down, LFA may enter Village Green Park no earlier than three (3) days before the FESTIVAL, and shall have the grounds cleaned of all debris and equipment no later than two (2) days after the conclusion of the FESTIVAL. This permission is granted with the understanding that the specific dates will be covered under the insurance policy(ies) provided by LFA and others to CITY, pursuant to Section 20.

6. **PARK USAGE CONDITIONS.** LFA shall be responsible for the continual clearing of trash/debris from the site during the FESTIVAL. LFA shall further be responsible for and agrees to provide proper clean-up of the FESTIVAL site upon conclusion of the FESTIVAL, including proper clean-up of the parking areas used for the FESTIVAL, except privately-owned parking lots. “Proper clean-up” shall mean that the open, visible ground is free of litter, lumber, construction materials and other materials resulting from FESTIVAL operations and that these materials are removed from the grounds and disposed of properly. LFA 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. LFA shall provide adequate trash containers and portable restrooms during the FESTIVAL, which restrooms shall be cleaned daily by LFA.

B. LFA shall contact Dig Alert, 811 or www.digalert.org, 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. LFA 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. LFA shall designate a representative for the coordination of all safety related activities pertaining to electrical and structural matters at the FESTIVAL. LFA 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 FESTIVAL. Structures, including sanitary facilities, shall comply with the accessibility requirements of Title 24 of the California Building Code (Handicap Access). LFA may contact the City of Garden Grove Inspection Request Line, at (714) 741-5332, to request inspections.

D. The noise levels for the FESTIVAL shall not exceed the maximum allowed under either this Second Addendum 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, LFA shall lower the noise volume as directed by the Police Department.

E. LFA shall provide adequate notice of FESTIVAL to all businesses and residences located reasonably near Village Green Park at least thirty (30) days in advance of the event.

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

8. **STORMWATER QUALITY BEST MANAGEMENT PRACTICES**. LFA 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 LFA 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.** LFA shall be responsible for securing and ensuring the availability of off-street parking for all FESTIVAL attendees. LFA shall provide a parking plan and evidence of contracts and/or arrangements for all necessary private off-street parking to the City no later than thirty (30) days prior to the FESTIVAL. CITY's approval of the parking plan and adequacy of off-street parking arrangements is a condition precedent to LFA's right under this Second Addendum to use Village Green Park for the FESTIVAL. LFA 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 Second Addendum authorizes FESTIVAL access to parking other than that which is generally available to the public.

10. **ALCOHOL BEVERAGE SALES.** Alcoholic beverages may be sold on the FESTIVAL grounds pursuant to, and in compliance with, a valid license or licenses issued by the California Department of Alcohol Beverage Control and all conditions imposed by the Garden Grove Police Department. The CITY has restricted the type of alcohol sales and hours. The sales of alcohol spirits will be limited to the VIP fenced area as indicated on the approved plot plan. The sales of beer and/or wine can be conducted in alcohol booths throughout FESTIVAL grounds as indicated on approved plot plan. Any food or other booth that is not approved as part of complete plot plan in which alcohol is found shall immediately, and for the duration of the FESTIVAL, be closed by the Chief of Police or designee. All alcohol sales and service shall end ten (10) minutes prior to the end of the FESTIVAL. Consistent with Section 2.h. of the Agreement, LFA shall share twenty percent (20%) of all net proceeds (as defined in the Agreement) from alcohol beverage sales with the Garden Grove Community Foundation.

11. **COMMERCIAL FOOD SALES.** All commercial mobile trailers with food vending equipment, whether or not operated by owner of the equipment, are required to have a permit from the Orange County Health Department prior to operation on FESTIVAL grounds. LFA 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, LFA 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. LFA 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.** LFA 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.** LFA 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.** LFA 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 thirty (30) days before the FESTIVAL. LFA shall obtain approval of such plan from the Chief of Police. Approval of the plan shall not be unreasonably withheld. Insurance information for all security related contracts shall be submitted to CITY's Finance Director in accordance with Section 20 of this Second Addendum.

17. **PERMITS.** LFA and its representatives shall comply with all applicable laws. It shall be the responsibility of the LFA to obtain, or cause to be obtained, all required permits, provided, however, that this Second Addendum shall constitute a Community Event Permit. Each organization or group participating in the FESTIVAL, where applicable, shall separately obtain a City of Garden Grove Business Operations Tax Certificate and State Board of Equalization Seller's Permit.

18. **FIRE REGULATIONS.** No later than June 30, 2017, LFA shall provide to the Fire Chief of CITY, an occupancy plan and general plot plan that indicates the location of all vehicles, stands, tents, amusement zone activities/rides, fire lanes and Fire Department ingress. LFA 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, LFA 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. LFA shall submit site plans (CFC 105.6.43) by one (1) week before FESTIVAL.

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

D. Use of fireworks is strictly prohibited.

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

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

\$10,000,000 (ten million dollars) per occurrence for Bodily Injury and Property Damage Liability, and \$10,000,000 (ten million dollars) general aggregate. (*“Claims Made” and “Modified Occurrence” policies are not acceptable.*)

LFA 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 LFA to CITY for approval not less than thirty (30) days prior to the event. (*“Claims Made” and “Modified Occurrence” policies are not acceptable.*) LFA 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.

LFA shall obtain an Certificate of Insurance and Additional Insured Endorsements evidencing proof of not less than \$10,000,000 (ten million dollars) commercial general liability insurance, per occurrence, and not less than \$10,000,000 (ten million dollars) general aggregate policy from any vendor providing rides, games or other “carnival-type” activities at the Festival, designating the **City of Garden Grove, its employees, agents, volunteers, and officials**, as Certificate Holders and Additional Insureds for on-going and completed operations. The Certificate and Endorsement (**CG 2026, or equivalent and CG 2037 or equivalent, as approved by CITY**) shall be submitted by LFA to CITY for approval not less than thirty (30) days prior to the event. (*“Claims Made” and “Modified Occurrence” policies are not acceptable.*) LFA 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.

LFA shall obtain an Certificate of Insurance and Additional Insured Endorsements evidencing proof of not less than \$10,000,000 (ten million dollars) commercial general liability insurance, per occurrence, and not less than \$10,000,000 (ten million dollars) general aggregate policy from any vendor providing any stage equipment and/or set up including, but not limited to, the stage itself, sound equipment, lighting equipment, set design, and any other support structures used on or for the stage at the Festival, designating the **City of Garden Grove, its employees, agents, volunteers, and officials**, as Certificate Holders and Additional Insureds for on-going and completed operations. The Certificate and Endorsement (**CG 2026, or equivalent and CG 2037 or equivalent, as approved by CITY**) shall be submitted by LFA to CITY for approval not less than thirty (30) days prior to the event. (*“Claims Made” and “Modified Occurrence” policies are not acceptable.*) LFA 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.

LFA shall obtain an Certificate of Insurance and Additional Insured Endorsements evidencing proof of not less than \$5,000,000 (five million dollars) commercial general liability insurance, per occurrence, and not less than \$5,000,000 (five million dollars) general aggregate policy from any vendor providing safety and/or security services at the Festival, including site security, and designating 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 or equivalent, as approved by CITY**) shall be submitted by LFA to CITY for approval not less than thirty (30) days prior to the event. (*“Claims Made” and “Modified Occurrence” policies are not acceptable.*) LFA 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, LFA shall ensure that all of LFA’s other contractors, vendors and sponsors obtain and maintain not less than \$2,000,000 (two million dollars) commercial general liability insurance per occurrence, and not less than \$4,000,000 (four million dollars) general aggregate. This includes, but is not limited to, contractors providing entertainment coordinators, fencing, trash collection, sanitary facilities, tents, and tables/chairs, and food truck services. The **City of Garden Grove, its employees, agents, volunteers, and officials**, shall be designated as Additional Insureds on these policies for on-going operations. The

required Certificates and Additional Insured Endorsements (**CG 2026, or equivalent, as approved by CITY**) shall be collected and maintained by LFA not less than thirty (30) days prior to the event. (*“Claims Made” and “Modified Occurrence” policies are not acceptable.*) The endorsements from each insurance carrier shall provide that the insurance carrier shall give CITY not less than thirty (30) days advance written notice of any material change, cancellation, or termination of coverage.

LFA shall ensure that LFA and each of its contractors, vendors and sponsors using automobiles for FESTIVAL purposes, including food trucks shall obtain and maintain automobile liability insurance in an amount not less than \$2,000,000 (two million dollars) combined single limit. If transportation services (such as shuttle services and transportation for festival purposes) are provided for persons, automobile liability insurance shall be obtained and maintained in an amount not less than \$5,000,000 (five million dollars) combined single limit. The entertainment coordinator shall obtain and maintain insurance that covers losses for all automobiles used for transportation purposes. Additional Insured Endorsements for all automobile related insurance shall be obtained. The required Additional Insured Endorsements, (**CA 2048, or equivalent, as approved by CITY**) shall name the **City of Garden Grove, its employees, agents, volunteers, and officials** as Additional Insureds for all automobiles, including automobiles owned, leased, hired or borrowed, and also for mobile equipment, if mobile equipment is used. The required Certificates and Additional Insured Endorsements shall be collected and maintained by LFA not less than thirty (30) days prior to the event. LFA shall submit to CITY for approval not less than thirty (30) days prior to the event its Certificates and Endorsements confirming that LFA has for itself obtained such coverage. (*“Claims Made” and “Modified Occurrence” policies shall not be accepted.*) For each such contractor, vendor or sponsor, LFA shall collect and maintain the required Additional Insured endorsements and other endorsements from each insurance carrier wherein the insurance carrier shall give CITY thirty (30) days advance written notice of any material change, cancellation, or termination of coverage. Should LFA 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.

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

rest within the sole discretion of CITY's Risk Manager.

In the event any of underlying policies for LFA or any of its contractors, vendors, or sponsors do not meet or exceed the policy limits of these insurance requirements, LFA shall ensure that LFA, 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. LFA 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. An additional insured endorsement for the excess policy shall designate the **City of Garden Grove, its officers, officials, agents, employees, and volunteers** as additional insured.

If LFA 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.

LFA shall be responsible to collect and maintain all insurance certificates and endorsements from all of its contractors, vendors, sponsors, and any of their subcontractors, and shall ensure that such insurance meets the terms of this Agreement. All insurance from LFA, its contractors, vendors, sponsors, and any of their subcontractors shall be **primary** to insurance or self-insured retentions maintained by the City of Garden Grove, and/or its employees, agents, volunteers, and officials, **and shall not contribute** with it. Endorsements providing primary/non-contributory coverage shall be provided for **ALL** policies.

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

If any sponsor, contractor, vendor, or subcontractor maintains higher insurance limits than the minimums shown above, the sponsor, contractor, vendor, or subcontractor shall provide coverage for the higher insurance limits otherwise maintained by the sponsor, contractor, vendor, or subcontractor. For purposes of this Section 24, the term "sponsor" shall not include an individual or entity that provides only a monetary payment to the LFA 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 LFA TO PROVIDE TO CITY PROOF OF LFA'S INSURANCE AS REQUIRED BY THIS AGREEMENT OR TO ENSURE THAT THE INSURANCE REQUIRED OF ANY CONTRACTOR, VENDOR, SPONSOR, OR

SUBCONTRACTOR HAS BEEN OBTAINED, AS APPROPRIATE, SHALL BE SUFFICIENT GROUNDS FOR CITY TO DECLINE TO ISSUE PERMITS FOR THE FESTIVAL, CANCEL AUTHORIZATION FOR THE FESTIVAL TO PROCEED AND TO PRECLUDE THE FESTIVAL FROM OCCURRING.

Variances from the above-referenced insurance requirements may be issued by the CITY's Risk Manager in the exercise of his/her sole discretion. No variance shall be valid unless issued in writing and signed by the CITY's Risk Manager. CITY's Risk Manager may require increased policy limits and/or additional insurance if in the exercise of his/her reasonable discretion, he/she determines that the increased policy limits or additional insurance is appropriate based on potential risks associated with the Festival. CITY shall not require increased policy limits or additional insurance without first discussing the matter with LFA. 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 LFA wishes to use the First Baptist Church of Garden Grove's parking lot for parking and/or access to the Festival, LFA 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.**)

LFA shall ensure that all entities or organizations engaging or sponsoring alcohol sales obtain and maintain not less than \$5,000,000 (five million dollars) commercial general liability insurance, per occurrence, and not less than \$5,000,000 (five million dollars) general aggregate. Coverage shall include no-host liquor liability for the sale of any and all alcohol at the event. The **City of Garden Grove, its employees, agents, volunteers, and officials**, shall be designated as Additional Insureds on these policies for on-going operations, including no-host liquor liability.

21. **BUSINESS TAXES.** LFA 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. LFA shall ensure that all vendors and food booths possess a current City business

license. LFA 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 that will be charged at the current hourly rate payable by LFA, which hourly rate may be adjusted annually by City as CITY costs increase.

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

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

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

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

24. **CONFLICT OF INTEREST.** LFA shall at all times avoid conflict of interest or appearance of conflict of interest in the performance of this Second Addendum.

25. **NOTICES.** All notices pertaining to this Second Addendum shall be personally delivered or mailed to the below listed address, or to such other address as may be designated by written notice.

LFA:

Jon Reiser
LFA Group, LLC
12762 Main Street
Garden Grove, CA 92840

CITY:

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

26. **TIME OF ESSENCE.** Time is of the essence in the performance of this Second Addendum.

27. **LIMITATIONS ON SUBCONTRACTING AND ASSIGNMENT.** The experience, knowledge, capability, and reputation of LFA, its principals and employees were a substantial inducement for CITY to enter into this Second Addendum. LFA shall not contract with any other entity or otherwise transfer its rights and obligations under this Second Addendum without the prior written approval of CITY. Any attempted assignment, subcontracting or transfer by LFA of its rights or obligations under this Second Addendum without the prior written consent of City in violation of this provision shall be null and void. If LFA is permitted to subcontract any part of this Second Addendum, LFA 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 Second Addendum shall create any contractual relationship between any subcontractor and CITY. All persons engaged in the work will be considered employees of LFA. CITY will deal directly with LFA.

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

29. **INDEMNIFICATION.** To the fullest extent allowed by law, LFA agrees to protect, defend, and hold harmless CITY and its elective and appointive boards, officials, officers, agents, employees and volunteers from any and all claims, liabilities, expenses or damages of any nature, including attorney's fees, for injury or death of any person, or damage to property, interference with the use of property, or any other type of monetary or other claim arising out of, or in any way connected with any FESTIVAL related activities and/or the performance of the terms of this Second Addendum by LFA, and its agents, officers, employees, volunteers, vendors, subcontractors, or independent contractors hired by LFA. The only exception to LFA 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.

30. **DEFAULT AND TERMINATION.**

A. In the event of material default under this Second Addendum, the non-defaulting party may provide notice to the defaulting party of the conduct constituting the default. The defaulting party shall have thirty (30) days within which to correct the default. If the default is not corrected within the thirty (30) day period, the non-defaulting party may give notice of immediate termination of this Second Addendum to the defaulting party. Such notice shall be effective five (5) days following the day such notice is provided pursuant to Section 25 herein.

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

31. **CONSTRUCTION.** This Second Addendum shall be deemed fully incorporated into the Agreement. Unless expressly provided to the contrary herein, to the extent that any provision of this Second Addendum conflicts with any provision of the Agreement, this Second Addendum shall control. Provisions of the Agreement not inconsistent with the provisions of this Second Addendum, including but not limited to the following provisions, shall expressly govern and apply to this Second Addendum: Sections 10, 11, 12, 13, 14, 15 (b) – (e), and 15 (k) – (p).

32. **SEVERABILITY.** If any provision of this Second Addendum shall be deemed for any reason to be invalid, illegal or unenforceable, such provision shall be severed from the remainder of this Addendum, and that remainder shall continue in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Second Addendum as of the date first above written.

LFA GROUP, LLC

CITY OF GARDEN GROVE

By: _____
Its: _____

By: Scott C. Stiles
Its: City Manager

ATTESTED:

By: _____
Its: _____

City Clerk

APPROVED AS TO FORM:

Garden Grove City Attorney