

ROMAN CATHOLIC BISHOP OF ORANGE 5K EVENT AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 2016 (the "Effective Date"), by and between the CITY OF GARDEN GROVE, a municipal corporation, hereinafter referred to as "CITY", and the ROMAN CATHOLIC BISHOP OF ORANGE, hereinafter referred to as "ORGANIZATION".

RECITALS

A. ORGANIZATION has requested permission from CITY to sponsor and conduct a 5K event and related activities in the City of Garden Grove utilizing CITY's streets and property.

B. CITY desires to facilitate and permit ORGANIZATION to utilize CITY's streets and property for the proposed event, provided the safety of all residents and orderly conduct of all participants in the 5K event is ensured and CITY is reimbursed for costs it incurs as a result of the 5K event.

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

D. CITY and ORGANIZATION desire to enter into this Agreement to facilitate 5K event and related activities in the City of Garden Grove and to memorialize the terms and conditions pursuant to which ORGANIZATION may utilize CITY's streets and property for such event.

Now, therefore, in consideration of the mutual covenants contained herein and other valuable consideration, including publicity generated from ORGANIZATION's activities, the parties agree as follows:

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **TERM.** The term of this Agreement shall be from the Effective Date first noted above through September 18, 2016, unless earlier terminated pursuant to Section 32 herein. The purpose of this Agreement is to allow ORGANIZATION to conduct a 5K event on September 18, 2016, from ____ a.m. to ____ p.m.

2. **COST REIMBURSEMENT.**

A. ORGANIZATION shall reimburse CITY for all direct and indirect costs incurred by CITY as a result of the conduct and operation of the 5K event and the performance of this Agreement by CITY. Such reimbursable costs shall include, but are not limited to, costs for street-sweeping before and/or after the 5K event, costs incurred for the installation of temporary signage related to the 5K event, and the full burdened cost of CITY staff time spent in conjunction with the preparation for, conduct of, and clean-up, deconstruction and removal of signage after the 5K event. ORGANIZATION understands and agrees that reimbursable CITY staff time will include, without limitation, time spent by CITY police and emergency personnel on duty and on

standby at the 5K event, as well as time spent by CITY planning, public works and engineering personnel assisting with installation of necessary signage for the 5K event. Reimbursable costs shall also include any costs incurred by CITY in responding to unforeseen or emergency situations arising out of the 5K event, including overtime costs for responding personnel and related equipment costs. ORGANIZATION further acknowledges and agrees that it shall be responsible for and shall reimburse CITY for the full cost to repair any damages caused to city streets, sidewalks, buildings, fixtures, property and other structures along the 5K event routes as a result of the conduct and operation of the 5K event by ORGANIZATION.

B. As a condition to conduct the 5K event, CITY may require ORGANIZATION to deposit with CITY, prior to the 5K event, an amount sufficient to cover the costs the CITY reasonably estimates to be incurred by CITY in conjunction with such 5K event. Following completion of the 5K event, CITY shall provide ORGANIZATION with one or more invoices itemizing all reimbursable costs incurred by CITY in conjunction with the 5K event. ORGANIZATION shall pay CITY for such invoiced costs, less any amounts previously deposited, within thirty (30) days of the date of mailing of the invoice. In the event the amounts deposited with CITY by ORGANIZATION prior to the 5K event exceed the total reimbursable costs ultimately incurred by the CITY in conjunction with the 5K event, CITY shall return the unexpended portion of the deposit to ORGANIZATION.

3. **5K ACTIVITIES.** For the purposes of this Agreement, the term "5K event" shall be inclusive of the set-up period prior to the 5K, the 5K itself, and any post-5K cleaning and deconstruction. ORGANIZATION agrees to use its knowledge and experience to organize, promote, advertise and conduct the 5K event during the date covered by this Agreement. Expressly prohibited from 5K 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 ORGANIZATION as an activity that is ancillary to the 5K event. The volume on all music provided at the 5K event shall not exceed 70 decibels at any time at any property line of the 5K route. ORGANIZATION 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 on the 5K route. ORGANIZATION shall notify CITY at least thirty (30) days in advance of the 5K event 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 along the route in order to ensure that requirements of this Agreement will be met. In addition, at the same time, ORGANIZATION shall provide to CITY identification of the areas along the route at which each musical group will perform and the times during which the performances will occur. Notwithstanding the foregoing, ORGANIZATION 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 5K event. The noise levels of the 5K event shall not disturb the peace of the surrounding community. If the Police Department determines that the noise level is disturbing the peace of the surrounding community, ORGANIZATION shall lower the noise volume of the offending source(s) as directed by the Police Department.

4. **PARTICIPANTS.** ORGANIZATION shall have sole responsibility for arranging and providing all contractors, persons, organizations, businesses, and employees necessary to properly conduct 5K event activities.

5. **USE OF CITY STREETS.** In consideration for ORGANIZATION's activities as provided herein, CITY grants ORGANIZATION a right to use the City streets along the 5K event route for the purpose of operating the 5K event; including, but not limited to, booths, ancillary music and related uses. This right shall be contingent on ORGANIZATION's submission of a sufficient schedule of activities, events, and complete traffic plans thirty (30) days before the 5K event, and the approval by the City Manager or his designee of the same.

ORGANIZATION shall provide adequate notice of street closures to all businesses and residences located on or reasonably near street closures at least forty five (45) days in advance of the 5K event.

ORGANIZATION shall be responsible for the clearing of trash/debris from the route after the 5K event. ORGANIZATION shall further be responsible for and agrees to provide proper clean-up of any public parking areas used for the 5K event, except privately-owned parking lots. "Proper clean-up" shall mean the removal from all open, visible grounds litter, lumber, construction materials, debris, and other materials directly or indirectly resulting from the 5K event. In accordance with Section 2 of this Agreement, ORGANIZATION shall reimburse CITY for any costs CITY incurs for site clean-up, including but not limited to, special materials, labor, overtime, or damage to event routes.

ORGANIZATION shall provide adequate trash containers and portable restrooms during the 5K event. Should the City determine that additional or larger trash receptacles are necessary, ORGANIZATION shall contract with Garden Grove Disposal to ensure appropriate disposal of all waste generated during the event. Agreements for solid waste disposal shall be subject to approval by City's Risk Management department.

ORGANIZATION shall obtain approval in advance from the Garden Grove Police Department for the 5K event route.

6. **PARKING.** ORGANIZATION shall obtain pre-approval from the Garden Grove Police Department regarding any proposed parking restrictions or modifications in traffic flow during the 5K event. Nothing in this Agreement authorizes ORGANIZATION access to parking other than that which is generally available to the public. ORGANIZATION shall ensure all of its agents, representatives, officers, volunteers, and participants are aware of, and abide by, all public and private parking restrictions. Should the City determine that there is insufficient parking for the event, ORGANIZATION shall arrange for additional parking, including the rental of private lots.

7. **STORMWATER QUALITY BEST MANAGEMENT PRACTICES.** ORGANIZATION shall use best management practices (BMPs) as feasible to prevent or control the discharge of pollutants and minimize non-storm water runoff from the 5K route. 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.

ORGANIZATION shall contact City of Garden Grove Compliance staff at (714) 741-5375 during office hours for assistance in choosing the appropriate BMPs for the 5K event. ORGANIZATION shall submit proposed BMPs for City approval at least (30) days prior to the 5K event.

8. **FOOD SALES AND VENDING.** All food vendors, including concession stands and food trucks, shall obtain all necessary permits and approvals, including business licenses, Orange County Health Department permits, and Fire Department approvals prior to the 5K event. ORGANIZATION shall notify CITY at least thirty (30) days in advance of their intent to have food vendors present at the 5K event, and provide a detailed list of all vendors. CITY shall retain discretion to approve food vendors, including location and time of operation. If applicable, all commercial mobile trailers with food vending equipment, whether or not operated by the owner of said equipment, are required to have a permit from the Orange County Health Department prior to operation on or near 5K event route. ORGANIZATION shall make every effort to ensure that required permits have been obtained prior to the 5K event. Any commercial equipment found in operation without the required Orange County Health Department permits shall be closed.

9. **SAFETY COORDINATION.** ORGANIZATION shall designate a representative for the coordination of all safety related activities pertaining to electrical and structural matters at the 5K event. This person shall coordinate with the CITY's Building Official during the planning stages and conduct of the 5K event. Structures, including sanitary facilities, must comply with the accessibility requirements of Title 24 of the California Code of Regulations, including those relating to handicap access. ORGANIZATION may contact the City of Garden Grove Inspection Request Line, at (714) 741-5332, to request inspections.

10. **SECURITY PLAN.** ORGANIZATION shall develop an operation and security plan for 5K operations. This plan for the operation and security of the 5K event shall be submitted to the Chief of Police of CITY for approval no later than fourteen (14) days before the 5K event. ORGANIZATION shall obtain the approval of such plan from the Chief of Police, which approval shall not be unreasonably withheld.

11. **PERMITS.** ORGANIZATION and 5K 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 ORGANIZATION to obtain, or cause to be obtained, all required permits, including but not limited to, Community Event Permits and Street Closure Permits, except for 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 5K event, where applicable.

12. **FIRE REGULATIONS.** ORGANIZATION shall provide to the Fire Chief of CITY all necessary information to determine applicable Fire Code provisions and permits. All Fire Code required permits shall be obtained at least one (1) week prior to the 5K event. ORGANIZATION shall comply with all such regulations and conditions imposed by the Fire Chief of CITY.

13. **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 ORGANIZATION 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. CITY, by and through the Chief of Police or his designee, retain the right to determine the level of police personnel necessary to ensure the safe execution of the 5K event. In accordance with Section 2 of this Agreement, ORGANIZATION shall reimburse CITY for all such police personnel costs.

14. **BUSINESS TAXES.** If applicable, ORGANIZATION shall provide the Business Tax office with a list of all vendors and food booths at least two (2) weeks prior to the 5K event. ORGANIZATION shall ensure that all vendors and food booths possess a current business license. ORGANIZATION 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 two hours at a rate of \$57.89 per hour payable by ORGANIZATION.

ORGANIZATION shall ensure that any non-profit food vendors provide to CITY proof of non-profit status from the IRS and financial statements (from the most recent available year).

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

15. **LIABILITY WAIVERS.** ORGANIZATION shall require all 5K participants (and if participant is a minor their parent or guardian on their behalf) to sign and submit a liability waiver approved by CITY that expressly waives liability against, among others, the City of Garden Grove and its officers, officials, agents, employees, and volunteers. ORGANIZATION shall provide to the City of Garden Grove copies of any or all liability waivers within ten (10) days of any request by the City. ORGANIZATION shall retain the original waivers for at least two (2) years following the event.

16. **INSURANCE.** ORGANIZATION shall ensure that insurance meeting the following requirements and acceptable to the City covering the 5K event and activities is obtained and maintained, and that evidence of all required insurance is provided to the City not less than thirty (30) days prior to the 5K event. The 5K event may not be conducted until all certificates and endorsements have been received and approved by the CITY.

A. **Notice of Change or Cancellation.** All insurance required by this Agreement shall contain a Statement of Obligation on the part of the carrier to notify the CITY of any material change, cancellation, or termination at least thirty (30) days in advance, as approved by CITY.

B. **Workers Compensation Insurance.** For the 5K event, ORGANIZATION shall maintain Workers Compensation Insurance in the amount and type required by California law, if applicable. Each insurer shall waive its rights of subrogation against the CITY, its officers, officials, agents, employees, and volunteers.

C. General Liability Insurance. For the 5K event, ORGANIZATION shall maintain a policy or policies of commercial general liability insurance in the amount not less than \$5,000,000 per occurrence and \$5,000,000 general aggregate, providing coverage for the acts or omissions of ORGANIZATION, its contractors and subcontractors, and each of their respective officers, employees, agents, and volunteers in conjunction with the conduct or operation of the 5K event (claims made and modified occurrence policies are not acceptable). Insurance companies must be admitted and licensed in California and have a Best's Guide Rating of A-, Class VII or better, as approved by the CITY.

D. Insurance certificates designating the City of Garden Grove as certificate holder for the commercial general liability policy(ies) required by Subsection B and C, above, shall be provided to CITY. The certificate holder address is as follows:

City of Garden Grove
Attn: Risk Management
11222 Acacia Parkway
Garden Grove, CA 92840

E. An **additional insured endorsement** for **on-going** under the **commercial general liability** policy(ies) required by Subsection C, above, designating the "**City of Garden Grove, its officers, officials, agents, employees, and volunteers**" as additional insureds. (Form CG 20 26 07 04 or equivalent), shall be obtained and provided to CITY, as approved by CITY.

F. All insurance provided to the CITY shall be primary and non-contributory to the CITY's insurance and self-insured retentions. A **primary/non-contributory** endorsement shall be provided as to the "**City of Garden Grove, its officers, officials, agents, employees, and volunteers,**" as approved by CITY.

G. Evidence of automobile liability coverage for all vehicles that will be driven by employees, agents, or volunteers of ORGANIZATION or its contractors or subcontractors during the 5K event shall be provided to CITY, as approved by CITY.

H. In the event any of ORGANIZATION's underlying policies do not meet policy limits within the insurance requirements, ORGANIZATION shall provide: 1) the schedule of underlying policies for a follows form excess liability policy, 2) state that the excess policy follows form on the insurance certificate, and 3) an additional insured endorsement for the follows form excess liability policy designating CITY, its officers, officials, employees, agents, and volunteers.

1. Claims made and modified occurrence policies shall not be accepted. All insurance carriers must have a minimum A.M. Best Guide Rating of A-, VII or better.

J. ORGANIZATION shall ensure that all of its contractors and subcontractors provide the same insurance and endorsements as required of ORGANIZATION herein. ORGANIZATION shall be responsible to collect and maintain all insurance and endorsements

from its respective contractors and subcontractors. ORGANIZATION shall provide certified copies of all policies upon CITY's request.

K. All of ORGANIZATION's contractors and subcontractors providing work or services in conjunction with the 5K event shall be required to obtain and maintain the same insurances herein as ORGANIZATION. Policy limits may vary depending on the type of work or services performed. ORGANIZATION shall be responsible to collect and maintain all insurances from all contractors and subcontractors. Certified copies of policies and copies of certificates and endorsements shall be given to City by ORGANIZATION upon request.

If any such contractors or subcontractors' insurance carrier(s) require there be an agreement between the subcontractor and the CITY in order to trigger the additional insured coverage provided for in this section, the subcontractor shall be required to enter into an agreement with CITY on terms acceptable to CITY. ORGANIZATION shall perform all tasks necessary to execute this subsection, including but not limited to, coordination with its contractors.

L. If ORGANIZATION or its contractors and/or subcontractors maintains higher insurance limits than the minimums shown above, ORGANIZATION or its contractors and/or subcontractors shall provide coverage for the higher insurance limits otherwise maintained by ORGANIZATION or its contractors and/or subcontractors.

17. **ALCOHOLIC BEVERAGES.** Alcoholic beverages shall not be sold, distributed, or consumed on the 5K event route. Any food or other booth in which alcohol is found shall immediately, and for the duration of the event, be closed by the Chief of Police or designee.

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

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

20. **COMPLIANCE WITH LAW.** ORGANIZATION shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local governments in the performance of the 5K event-related activities and the performance of this Agreement.

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

22. **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 ORGANIZATION is as follows:

Roman Catholic Bishop of Orange
13280 Chapman Avenue
Garden Grove, CA 92840
Attn: Ryan Lilyengren

B.	Address of CITY is as follows: City of Garden Grove 11222 Acacia Parkway Garden Grove, CA 92840 Attn: City Manager	Copy to: City of Garden Grove 11222 Acacia Parkway Garden Grove, CA 92840 Attn: City Attorney
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23. **TIME OF ESSENCE.** Time is of the essence in the performance of this Agreement.

24. **LIMITATIONS ON SUBCONTRACTING AND ASSIGNMENT.** The experience, knowledge, capability, and reputation of ORGANIZATION, its principals and employees are a substantial inducement for CITY to enter into this Agreement. ORGANIZATION 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 ORGANIZATION is permitted to subcontract any part of this Agreement, ORGANIZATION 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 execution of the 5K event will be considered agents of ORGANIZATION. CITY will deal directly with ORGANIZATION.

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

26. **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.

27. **INDEMNIFICATION.** To the fullest extent allowed by law, ORGANIZATION agrees to protect, defend, and hold harmless CITY and its elective or appointive boards, officers, officials, 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 5K event related activities and the performance of the terms of this Agreement by ORGANIZATION, ORGANIZATION agents, officers, officials, employees, volunteers, vendors, subcontractors, or independent contractors hired by ORGANIZATION. The only exception to ORGANIZATION'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, officials, agents, or employees.

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

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

30. **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.

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

32. **TERMINATION.** CITY and ORGANIZATION shall each have the right to terminate this Agreement, without cause, by giving written notice of termination at least thirty (30) days before the 5K event.

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

33. **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.

[SIGNATURE PAGE FOLLOWS]

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

CITY OF GARDEN GROVE

By: _____
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

ROMAN CATHOLIC BISHOP OF ORANGE

By: _____

By: _____