

AGREEMENT

Korean American Festival

THIS AGREEMENT is made and entered into this _____ day of _____ 2016, by and between the CITY OF GARDEN GROVE, a municipal corporation, hereinafter referred to as "CITY," and the Korean American Festival Foundation of Orange County, a California non-profit corporation, hereinafter referred to as "FOUNDATION."

1. **TERM.** The term of this Agreement shall be from the date first noted above through October 31, 2016. The purpose of this Agreement is to allow FOUNDATION to conduct the Korean American Festival from September 30 through October 2, 2016.

2. **REIMBURSEMENT.** FOUNDATION shall reimburse CITY for all direct costs incurred by CITY attributable to operation of the Festival (including a parade, if held) not covered elsewhere in this Agreement. A deposit of thirty thousand dollars (\$30,000) shall be provided by FOUNDATION to the CITY at least thirty (30) days prior to the scheduled start of the Festival. CITY shall subtract its reimbursable costs from the deposit, and refund the balance, if any, within thirty (30) days of the end of the Festival. If reimbursable costs exceed the deposit amount, FOUNDATION agrees to pay such excess within thirty (30) days following the mailing of an invoice to FOUNDATION for such excess costs. If FOUNDATION fails to make said deposit prior to the scheduled start of the Festival, CITY shall not issue any permits in connection with the Festival and the FOUNDATION shall not proceed with the Festival.

In addition, FOUNDATION agrees to reimburse CITY for all extraordinary costs incurred by CITY attributable to the operation of the Festival not covered elsewhere in this Agreement. These 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. Extraordinary costs shall be agreed upon by the FOUNDATION Board of Directors, the Community Services Director, the Public Works Director and the City Manager. Once the reimbursement amount is set, FOUNDATION agrees to provide payment within thirty (30) days.

3. **FESTIVAL ACTIVITIES.** FOUNDATION agrees that the Festival will represent a mixture of cultural activities. Expressly prohibited from Festival activities are helicopter rides, and activities, music or speech that call, incite or provoke an immediate breach of the peace. CITY reserves the right to immediately stop and terminate any such activity. All music, whether live or recorded, shall be planned and implemented by the FOUNDATION as an activity which is ancillary to the Festival, not designed in and of itself to draw spectators to the Festival. Each live music performance shall be staged in an area with a seating capacity for no more than 800 persons. The volume on all music provided at the Festival shall not exceed 70 decibels at any time at any property line of the Festival site. The FOUNDATION shall provide sufficient security, as determined to be appropriate in the reasonable exercise of discretion by CITY's Chief of Police, to ensure compliance with all requirements of this Agreement, including but not limited to the requirements for music provided at the Festival. FOUNDATION shall notify CITY at least thirty (30) days in advance of the Festival of the name of each music group, type of music and type of amplification system which will be used by each group providing live music at the Festival in order to ensure that requirements of this Agreement will be met. In addition, at the same time, FOUNDATION shall provide to CITY identification of the areas of the Festival site at which each musical group will perform, the times during which the performances will occur and the seating arrangements and capacities to be provided by the Festival for each such performance. Notwithstanding the foregoing, FOUNDATION shall comply with the requirements of Garden Grove Municipal Code Section 8.47.060(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,

FOUNDATION shall lower the noise volume of the offending source(s) as directed by the Police Department.

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

5. **FESTIVAL SCHEDULE.** In consideration of FOUNDATION's activities as provided herein, City authorizes FOUNDATION to conduct the Festival at the Garden Square Parking Lot located on Garden Grove Boulevard (the "Festival site"), including, but not limited to, food booths, amusement zone operations, ancillary music and related uses, subject to FOUNDATION submitting to CITY a schedule of events, operations plan and complete plot plan (vendor locations, carnival area, stage area, vehicles, fire lanes, etc.) no later than thirty (30) days before the Festival, and shall obtain the approval of the submitted schedule, operations plan and plot plan from the City Manager or his designee, and provisions provided herein. FOUNDATION shall provide CITY with written consent from the owner or manager of the Festival site to CITY at least thirty (30) days in advance of the Festival.

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

Friday

Open no earlier than 10:00 AM

Completely closed no later than 10:00 PM

Saturday

Open no earlier than 10:00 AM

Completely closed no later than 10:00 PM

Sunday

Open no earlier than 10:00 AM

Completely closed no later than 9:00 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.

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

For the purposes of set-up and tear down, FOUNDATION may enter the Festival site no earlier than four (4) days before the Festival, and must have the grounds cleaned of all debris and equipment no later than two (2) days after the conclusion of the Festival. This permission is granted with the understanding that the specific dates will be covered under the insurance policy provided by FOUNDATION and others to CITY, pursuant to Section 19.

6. **GROUND USAGE CONDITIONS.** FOUNDATION will be responsible for the continual clearing of trash/debris from the site during each day of the Festival. FOUNDATION shall further be responsible for and agrees to provide proper clean-up of the Festival site upon conclusion of each day of the Festival, including proper clean-up of the parking areas used for the Festival. "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.

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

FOUNDATION shall provide plans and calculations to CITY for approval no later than thirty (30) days before the Festival for proposed stages, platforms, tent structures and electrical systems for approval. FOUNDATION shall designate a representative for the coordination of all safety related activities pertaining to electrical and structural matters at the Festival. FOUNDATION shall obtain the inspection of and approval by CITY's Building Services Division of all structures and electrical systems prior to the first day of the Festival. Structures, including sanitary facilities, must comply with the accessibility requirements of Title 24 of the California Building Code (Handicap Access). FOUNDATION may contact the City of Garden Grove Inspection Request Line, at (714) 741-5332, to request inspections.

The noise levels for Festival shall not exceed the maximum allowed under either this Agreement or the City's noise ordinance, whichever is lower, and shall not disturb the peace of the surrounding community. If CITY's Police Department determines that the noise level is disturbing the peace of the surrounding community, FOUNDATION shall lower the noise volume as directed by the Police Department.

7. **PARADE CONDITIONS.** CITY will provide a parade route in a clean and safe condition prior to the parade. FOUNDATION 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. FOUNDATION shall obtain approval of the parade route in advance from the Garden Grove Police Department.

8. **BEST MANAGEMENT PRACTICES.** In order to prevent pollution caused by Festival activities, FOUNDATION shall incorporate Best Management Practices (BMP's). Additionally, FOUNDATION shall contract with Garden Grove Disposal to ensure appropriate disposal of all waste generated during the festival. The service shall have proper approval from Risk Management department.

The FOUNDATION 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 event.

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

10. **COMMERCIAL FOOD SALES.** All commercial mobile trailers with food vending equipment, whether or not operated by owner of said equipment, are required to have a permit from the Orange County Health Department prior to operation on Festival grounds. FOUNDATION shall make every effort to ensure that required permits have been obtained prior to the opening of the Festival. Any commercial equipment found in operation without the required Orange County Health Department permits shall be closed.

11. **HEALTH DEPARTMENT.** Prior to the opening of the Festival, FOUNDATION shall provide the Orange County Health Department and CITY with a list of food concession vehicles 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.

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

FOUNDATION shall work with the Orange County Health Department to ensure compliance with all health regulations by all food concessions at the Festival. In addition, the Police Chief, the Fire Chief, or their designees shall have the right, at their sole discretion, to close any food booth that becomes non-compliant during the Festival. Any such food booth found shall not be allowed to reopen until satisfactory compliance is demonstrated.

13. **FOOD SALES COORDINATION.** FOUNDATION shall designate a representative for the coordination of all food service activities at the Festival. This person shall coordinate with the Orange County Health Department during the planning stages of Festival development to ensure that food service activities occur in compliance with all regulatory requirements.

14. **SAFETY COORDINATION.** FOUNDATION 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.

15. **SECURITY PLAN.** FOUNDATION 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 two weeks (fourteen (14) days) before the Festival. Insurance information for all security related contracts shall be submitted to CITY's Risk Manager in accordance with Section 20 of this Agreement.

16. **PERMITS.** FOUNDATION and its representatives shall comply with all applicable laws. It shall be the responsibility of the FOUNDATION to obtain, or cause to be obtained, all required permits, including but not limited to a Community Event Permit, except a City of Garden Grove Business Operations Tax Certificate and State Board of Equalization Seller's Permit, which shall be obtained by each organization or group participating in the Festival, where applicable. Failure by the FOUNDATION to apply for a Community Event Permit at least five (5) months in advance of the proposed Festival may result in the loss of authorization to conduct Festival.

17. **FIRE REGULATIONS.** No later than the last week in August, FOUNDATION 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. FOUNDATION shall comply with all applicable Fire Code provisions (e.g. Sections 902, 903, 1102, 3202, 1002, and 3218). All Fire Code required permits shall be obtained at least one (1) week prior to the beginning of the Festival. In addition, FOUNDATION 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. FOUNDATION shall submit site plans (CFC Section 105.6.43) by one (1) week before Festival.

FOUNDATION shall ensure that each cooking booth shall provide and mount (acceptable 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)

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

Use of fireworks is strictly prohibited.

18. **POLICE SERVICES.** The Garden Grove Police Department reserves the right to revoke the event permit at any time without prior notice to or permission from FOUNDATION if, in the opinion

of the Chief of Police, or his designee, it is in the best interest of the general public and public safety. FOUNDATION agrees to compensate CITY for extraordinary law enforcement costs when such extraordinary services are deemed necessary and are rendered to the Festival. Determination of whether extraordinary police services are needed, and the amount thereof, shall be made by the Chief of Police, at his sole discretion. Costs for extraordinary police services shall be agreed upon by the FOUNDATION President, the Chief of Police and the City Manager.

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

\$5,000,000 (five million dollars) per occurrence for Bodily Injury and Property Damage Liability, and \$5,000,000 (five million dollars) general aggregate. (*“Claims Made” and “Modified Occurrence” policies are not acceptable.*)

FOUNDATION shall furnish to CITY a Certificate of Insurance signed by the authorized agent of the insurance carrier issued on the insurance carrier’s form setting forth the general provisions of 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, and including no-host liquor liability under the policy (**Additional Insured Endorsement form CG 2026, or equivalent, as approved by CITY**) and shall be submitted by FOUNDATION to CITY for approval not less than thirty (30) days prior to the event. (*“Claims Made” and “Modified Occurrence” policies are not acceptable.*) FOUNDATION shall provide to CITY endorsements from each insurance carrier wherein the insurance carrier shall give CITY thirty (30) days advance written notice of any material change, cancellation, or termination of coverage.

FOUNDATION shall obtain 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, 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 FOUNDATION to CITY for approval not less than thirty (30) days prior to the event. (*“Claims Made” and “Modified Occurrence” policies are not acceptable.*) FOUNDATION shall provide to CITY endorsements from each insurance carrier wherein the insurance carrier shall give CITY thirty (30) days advance written notice of any material change, cancellation, or termination of coverage.

In addition to the above-required insurance, FOUNDATION shall ensure that all of FOUNDATION’s contractors, vendors and sponsors obtain and maintain 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 collected and maintained by FOUNDATION 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.

FOUNDATION shall ensure that FOUNDATION and each of its contractors, vendors and sponsors using automobiles for FESTIVAL purposes shall obtain and maintain 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, automobile liability insurance shall be obtained and maintained in an amount not less than \$5,000,000 (five million dollars) combined single limit. The parade coordinator shall obtain and maintain insurance that covers losses for all automobiles and floats used for parade 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 FOUNDATION not less than thirty (30) days prior to the event. FOUNDATION shall submit to CITY for approval not less than thirty (30) days prior to the event its Certificates and Endorsements confirming that FOUNDATION has for itself obtained such coverage. **(“Claims Made” and “Modified Occurrence” policies shall not be accepted.)** For each such contractor, vendor or sponsor, FOUNDATION 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 FOUNDATION 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.

FOUNDATION shall ensure that if FOUNDATION, or any of FOUNDATION’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 FOUNDATION not less than thirty (30) days prior to the event. FOUNDATION shall submit to City for approval insurance certificates and endorsements confirming that FOUNDATION has for itself obtained such insurance, if required by California law, not less than thirty (30) days prior to the event. FOUNDATION 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 FOUNDATION 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 FOUNDATION or any of its contractors, vendors, or sponsors do not meet or exceed the policy limits of these insurance requirements, FOUNDATION shall ensure that FOUNDATION, 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. FOUNDATION 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 FOUNDATION 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.

FOUNDATION 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 FOUNDATION, 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, 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, FOUNDATION shall provide to CITY original or certified copies of all insurance policies, endorsements, and certificates of FOUNDATION, 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 25, the term “sponsor” shall not include an individual or entity that provides only a monetary payment to the FOUNDATION 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 FESTIVAL SITE (INCLUDING SET UP, TEAR DOWN, ETC.)

FAILURE BY FOUNDATION TO PROVIDE TO CITY PROOF OF FOUNDATION’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.

Variations 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 FOUNDATION. 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.

20. **BUSINESS TAXES.** FOUNDATION shall provide the Business Tax office with a list of all Festival vendors and food booths at least two (2) weeks prior to the Festival. FOUNDATION shall ensure that all vendors and food booths possess a current business license. FOUNDATION shall also ensure that vendors selling tangible items have a Seller’s Permit from the State Board of Equalization. If data related to business licenses, insurance, seller’s permits, and other similar items, is incomplete or unsatisfactory, a field inspection will be required with a minimum of four hours at a rate of \$57.89 per hour payable by FOUNDATION, which hourly rate may be adjusted annually as CITY costs increase.

FOUNDATION shall ensure that any non-profit food vendors provide to CITY proof of non-profit status from the IRS and financial statements.

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

21. **ALCOHOLIC BEVERAGES.** With the exception of the permitted "Beer Garden" at the Festival grounds, alcoholic beverages shall not be sold, distributed or consumed on the Festival grounds. Any unauthorized 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.

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

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

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

25. **NOTICES.** All notices shall be personally delivered or mailed to the below listed address, or to such other address as may be designated by written notice. These addresses shall be used for delivery of service of process.

A. Address of FOUNDATION is as follows:
James Bong Cho, President
Korean American Festival Foundation of Orange County
9828 Garden Grove Blvd # 207
Garden Grove, CA 92844

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

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

27. **LIMITATIONS ON SUBCONTRACTING AND ASSIGNMENT.** The experience, knowledge, capability, and reputation of FOUNDATION, its principals and employees were a substantial inducement for CITY to enter into this Agreement. FOUNDATION shall not contract with any other entity to perform the services required without written approval of CITY. If FOUNDATION is permitted to subcontract any part of this Agreement, FOUNDATION shall be fully responsible to CITY for the acts and omissions of its subcontractor as it is for the acts and omissions of persons directly employed. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and CITY. All persons engaged in the work will be considered employees of FOUNDATION. CITY will deal directly with FOUNDATION.

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

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

30. **INDEMNIFICATION.** To the fullest extent allowed by law, FOUNDATION agrees to protect, defend, and hold harmless CITY and its elective or appointive boards, officers, agents, employees and volunteers from any and all claims, liabilities, expenses or damages of any nature, including attorney's fees, for injury or death of any person, or damage to property, or interference with the use of property, arising out of, or in any way connected with any Festival related activities and the performance of the terms of this Agreement by FOUNDATION, FOUNDATION agents, officers, employees, volunteers, vendors, subcontractors, or independent contractors hired by FOUNDATION. The only exception to FOUNDATION responsibility to protect, defend and hold harmless CITY is due to the sole negligence or intentional wrongful conduct of CITY, or any of its elective or appointive boards, officers, agents or employees.

31. **MODIFICATION.** This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified only by subsequent mutual written agreement executed by FOUNDATION and CITY. Nothing herein prohibits the parties from mutually agreeing to modify any condition contained in this Agreement.

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

33. **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.

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

35. **PRESERVATION OF AGREEMENT.** Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision invalidated, and all remaining provisions shall remain in full force and effect.

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

CITY OF GARDEN GROVE


ATTEST:

By: _____
City Manager

City Clerk

KOREAN FESTIVAL FOUNDATION
OF ORANGE COUNTY

APPROVED AS TO FORM:

By: 
President

City Attorney

By: 
Secretary