

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To: Matthew J. Fertal
Dept.: City Manager
Subject: AGREEMENT WITH FIRST BAPTIST CHURCH OF GARDEN GROVE FOR PARKING LOT USAGE

From: Kimberly Huy
Dept.: Community Services
Date: November 27, 2012

OBJECTIVE

To request City Council approval of the attached Agreement with First Baptist Church of Garden Grove (FBC) for parking lot usage.

BACKGROUND

Several community groups, including the City and the Strawberry and Arab-American Festivals, utilize the parking lot of the FBC throughout the year. Primarily, the lot is used prior to, during and after festival events to accommodate festival personnel and transport vehicles, as well as for drop-off and pick-up of sport participants utilizing Village Green fields. Prior to 2011, the Church has been solely responsible for the repair and replacement of the parking lot. In 2011, the City agreed to assist with the repair of the FBC parking lot and it was agreed that an Agreement would be established to provide for a parking lot replacement fund for future parking lot maintenance and repairs.

DISCUSSION

The attached Agreement is a result of discussions held between the City and FBC, and contains the following points:

- 1) The Agreement is for a term of 10 years commencing on January 1, 2013, and may, by mutual agreement, be renewed for up to two (2) additional five (5) year periods by written notice provided by both parties.
- 2) Subject to payment of the user fees described in the Agreement, the FBC parking lot may be used for public parking during City Council approved festivals, including, but not limited to, the following annual festivals:
 - Strawberry (Memorial Day weekend); and
 - Arab-American (September).

Additionally, the FBC parking lot may be used for public parking on an as needed basis, including, but not limited to, for the following activities and events:

- Tree Lighting Celebration (generally 1st Tuesday in December);
- Recreational activities, e.g., sport team practices, day camp drop-off/pick-up, concerts;

- Garden Grove Unified School District activities that take place within the Village Green Park, including the Courtyard Center; and
 - Theatrical events that take place within the Village Green Park, including the Festival Amphitheater and GEM Theater.
- 3) The City shall not schedule events during the two-day Easter weekend, the four day Thanksgiving weekend, nor at anytime during the month of December, each year (except for the Christmas Tree Lighting Celebration),
 - 4) The total number of festivals conducted in the Village Green is limited to four (4) per year.
 - 5) Each festival must pay a user fee of \$1,000 per festival day (plus \$1,000 added to allow for up to five days of setup time and \$1,000 added for up to five days of take down time) for use of the FBC parking lot for annual events.
 - 6) The festival user fees would be paid to FBC and be used to fund the maintenance, repair, and rehabilitation of the FBC parking lot. Any costs incurred in excess of the cumulative aggregate amount of the user fees paid to FBC, shall be split in the ratio of 40 percent to be paid by FBC and 60 percent to be paid by the City.

FISCAL IMPACT

Festival user fees paid by the festival groups will be deposited into an FBC parking lot replacement fund. The City will be responsible for 60 percent of the maintenance costs that exceed the total amount of user fees collected.

RECOMMENDATION

It is recommended that the City Council:

- Approve the Agreement with First Baptist Church of Garden Grove for parking lot usage; and
- Authorize the City Manager to execute the Agreement on behalf of the City, and to make minor modifications as appropriate thereto.



KIMBERLY HUY
Community Services Director

By: Elaine Ma'ae *em*
Administrative Analyst

Attachment: Agreement

Recommended for Approval



Matthew Fertal
City Manager

**REVOCABLE LICENSE AGREEMENT
(First Baptist Church of Garden Grove – Parking Lot)**

THIS LICENSE AGREEMENT is made and entered into this ____ day of _____, 2012, by and between the CITY OF GARDEN GROVE, a municipal corporation, hereinafter referred to as "Licensee" and FIRST BAPTIST CHURCH OF GARDEN GROVE, a California 501(c)(3) non-profit Corporation, hereinafter referred to as "Licensor."

1. Term. This License Agreement is for a term of 10 years commencing on January 1, 2013, subject to the provisions set forth in Paragraph 11 hereof ("Term"). This License Agreement may, by mutual agreement, be renewed for up to two (2) additional five (5) year periods by written notice provided by both parties pursuant to paragraph 15 herein.
2. Premises. This License Agreement is made with reference to the property located at 12761 Euclid Street, in the City of Garden Grove, California ("Premises"), consisting of approximately 2.63 acres, including 41,144 square feet of parking lot space, in the approximate location depicted on Exhibit A attached hereto and incorporated herein by reference.
3. Permit to Enter Premises. Licensor grants to Licensee a nonexclusive revocable license to enter upon and use, and to authorize others to enter upon and use, the Premises for the sole purpose set forth in Paragraph 5 hereof and for no other purpose, subject to Licensee's compliance with all of the terms of this License Agreement.
4. Consideration. As consideration for the license granted in this License Agreement, Licensor shall be paid a user fee (per Section 5) for the use of the Premises in conjunction with each festival.
5. Use. Subject to payment of the user fees described below, Licensee shall be entitled to use the Premises for the purposes of public parking and related ingress and egress during City Council approved festivals, including, but not limited to, the following annual festivals:
 - Strawberry (Memorial Day Weekend); and
 - Arab-American (September).

Licensee shall be solely responsible, at its expense, for providing parking lot access control, security and traffic management for each festival.

Additionally, without requiring the payment of user fees, the Licensor shall make available the use of the Premises for public parking on an as needed basis, including, but not limited to, for the following activities and events:

- Tree Lighting Celebration (generally 1st Tuesday in December)
- Recreational Activities, e.g., sport team practices, day camp drop-off/pick-up parking, concerts, other miscellaneous activities

- School District Activities that take place within the Village Green Park, including the Courtyard Center
- Theatrical events that take place within the Village Green Park, including the Festival Amphitheater and GEM Theater.

The Licensee's Community Services Department shall:

- Notify the Licensor about any future events as soon as possible.
- Not schedule festivals events during the two-day Easter weekend, the four-day Thanksgiving weekend, or at anytime during the month of December, each year (except for the Tree Lighting Celebration as indicated above).
- Require payment to Licensor of a user fee of \$1,000 per festival day (plus \$1,000 added to allow for up to five days of setup time and \$1,000 added for up to five days of take down time) for use of the parking lot for annual festivals. For example, the user fee for a two-day festival will be \$4,000, the user fee for a three-day festival will be \$5,000, the user fee for a four-day festival will be \$6,000, including \$2,000 set-up and take down charge for each such festival. Notwithstanding the foregoing, the user fee for the Strawberry Festival will be grandfathered at \$5,000 for 2013, after which, beginning in 2014, the user fee will be calculated per the above schedule.
- Not issue a festival permit for any festival until the requisite user fee has been collected by Licensee and paid to Licensor.
- Restrict all activities on the Premises on the Sunday of the festival before 12:00 p.m. Parking lot access will be restricted for Licensor use until 12:00 p.m. on these days.
- Prohibit the sale of any goods or any other commercial activities within the Licensor's parking lot.

6. Utilities. Licensee shall be responsible only for the removal of trash within the Premises, including trash collection fees or charges, if any, during the dates of use as described in paragraph 5. Licensee shall not be responsible for payment of charges for any other utilities serving the Premises.
7. Condition of Premises. Licensee accepts the Premises in an "as is" condition. Licensor expressly disclaims any warranty or representation with regard to the condition, safety, security or suitability for Licensee's intended use of the Premises.
8. Maintenance and Condition of Premises; Repairs and Rehabilitation of Parking Lot. Licensee shall maintain the Premises in a neat, clean, orderly and safe condition during use of the Premises pursuant to this License Agreement and shall be responsible for any damage done in or to the Premises caused by Licensee, its employees, agents, customers, visitors, volunteers, contractors, representatives or patrons of festivals. Upon termination of this License Agreement, Licensee shall peaceably surrender and quit the Premises in good order, condition and repair, reasonable wear and tear excepted only, and, at its expense, shall remove all of its trade fixtures and personal property, if any, and repair any damage to the Premises occasioned by removal of these items.

It is the parties' intent that the user fees paid to Licensor pursuant to Paragraph 5 will be used to fund the maintenance, repair, and rehabilitation of the parking lot on the Premises. Accordingly, Licensor shall be responsible for all parking lot maintenance, repair and rehabilitation costs up to the cumulative aggregate amount of user fees paid to Licensor pursuant to this Agreement. All parking lot repair and rehabilitation costs incurred in excess of the cumulative aggregate amount of user fees paid to Licensor pursuant to this Agreement, if any, shall be split in the ratio of 40% to be paid by Licensor and 60% to be paid by Licensee. Licensor will be responsible for notifying Licensee when major repair or rehabilitation of the parking lot is required and will allow Licensee to provide a mutually agreed upon cost-effective option. Notwithstanding the foregoing, in order to help assure at least a fifteen (15) year pavement lifespan, Licensee agrees to apply necessary slurry coating(s) to the entire parking surface in approximately seven years, or on or about May 2, 2019, at Licensee's sole expense.

9. Indemnity. Licensee shall indemnify, defend and hold Licensor, its officers, directors, employees, agents, and volunteers, harmless from any loss, damage, injury, accident, casualty, liability claim, cost or expense (including, but not limited to, reasonable attorneys fees) of any kind or character to any person or property arising from the acts or omissions of Licensee, its employees, agents, volunteers, contractors, or representatives in conjunction with the use of the Premises for public parking pursuant to this License Agreement, or arising out of the acts or omissions of patrons of the festivals entering upon the Premises under the authority or color of this License Agreement, except to the extent such claims arise out of the negligence or willful misconduct of Licensor, its officers, directors, employees, agents or volunteers. Licensor shall not be responsible for any loss or theft of any property on the Premises occurring during use of the Premises by Licensee and/or the public pursuant to this License Agreement. Licensee waives all claims or demands against Licensor for any loss, damage, or injury to Licensee or Licensee's property occurring during use of the Premises by Licensee and/or the public pursuant to this License Agreement and agrees to so indemnify and hold Licensor harmless there from.
10. Insurance. At all times during the Term of this License Agreement, Licensee and Licensor, at their own expense, shall each maintain commercial general liability insurance or self-insurance providing coverage for their respective use, occupancy, and maintenance of the Premises in an amount not less than \$1,000,000 per occurrence. In the case of use of the Premises in conjunction with a festival, Licensee may satisfy its obligation under this paragraph by requiring the festival sponsor to provide a policy of liability insurance for the period of time the Premises are used in conjunction with the festival in a form acceptable to Licensor, which names both Licensee and Licensor as additional insureds under the policy.
11. Termination. This License Agreement may be terminated with or without cause by either Licensor or Licensee, following thirty (30) days written notice to the

other party. Neither Licensor nor Licensee shall incur any liability whatsoever for termination of this License Agreement at any time. Following termination of this License Agreement, Licensor shall be entitled to retain all user fees previously paid to Licensor.

12. Inspection. Licensor and its representatives, employees, agents or independent contractors may enter and inspect the Premises or any portion of the Premises or any improvements on the Premises at any time and from time to time.
13. Non-assignment. Except as set forth in this License Agreement, Licensee may not assign, sublet or otherwise transfer its interest under this License Agreement. Any attempted assignment, sublet or transfer made in violation of this provision shall be null and void.
14. Costs of Enforcement. If it is necessary for either party to employ an attorney to commence an action to enforce any of the provisions of this License Agreement, the non-prevailing party agrees to pay all costs of such action including, but not limited to, court costs and reasonable attorneys' fees.
15. Notices. All notices, consents, submissions for approvals, approvals, requests, demands and other communications provided for in this License Agreement shall be in writing and shall be deemed to have been duly given and received if and when personally served or seventy-two (72) hours after being deposited in the United States mail, registered, return receipt requested, postage prepaid, addressed to the intended party at:

LICENSOR:

First Baptist Church of Garden
Grove 12761 Euclid Street
Garden Grove, CA 92840

LICENSEE:

City of Garden Grove
ATTN: Community Services Director
P. O. Box 3070
Garden Grove, CA 92842

16. Miscellaneous. This License Agreement constitutes the entire agreement between the Licensor and Licensee pertaining to the subject matter of this License Agreement and supersedes all prior and contemporaneous agreements, representations, and understandings of Licensor and Licensee, oral or written. No supplement, modification or amendment of this License Agreement shall be binding unless in writing and executed by Licensee and Licensor. No waiver of any provision of this License Agreement shall constitute

a continuing waiver or waiver of any other provision. This License Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of California. The headings of this License Agreement are for purposes of reference only and shall not limit or define the meaning of any provision. This License Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. Neither this License Agreement nor a short form memorandum of this License Agreement shall be filed or recorded in any public office.

17. Non-Discrimination. Licensee covenants that there shall be no discrimination against or segregation of any person, group, or employees due to race, color, gender, marital status, age, handicap, national origin, or ancestry, in any action or activity pursuant to this License Agreement.
18. Number of Festivals. It is mutually agreed by the Licensor and Licensee that the total number of festivals conducted in the Village Green should be limited to four (4) per year. Scheduling in excess of four (4) festivals per year must be mutually agreed upon by the Licensor and Licensee.
19. Execution. Licensor and Licensee have executed this instrument as of the date first above written.
20. Authority to Sign. Each of the undersigned represents and warrants that he/she is authorized by the entity for which he/she is signing to sign this Revocable License Agreement on behalf of such entity and that by signing below, the entity for which he/she is signing is bound by this Revocable License Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Licensee and Licensor have executed this instrument as of the date first set forth above.

LICENSEE

CITY OF GARDEN GROVE, a municipal corporation

Date: _____

By: _____
Matthew J. Fertal
City Manager

ATTEST:

Date: _____

By: _____
Kathleen Bailor
City Clerk

APPROVED AS TO FORM:

Date: _____

By: _____
Thomas F. Nixon
City Attorney

LICENSOR

FIRST BAPTIST CHURCH OF GARDEN GROVE,
California 501(c)(3) non-profit Corporation

Date: 1-19-2012

By: Daniel W. Dill
Name: DANIEL W. DILL
Its: Representative for the
Board of Trustees


Date: 11-18-12

By: Wade Whitcomb
Name: Wade Whitcomb
Its: Senior Pastor


Date: 11-18-12

By: 
Name: Steven R. Smith
Its: Chairman of the Board of Trustees

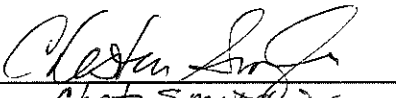
Date: 11-18-12

By: 
Name: JACK C. GOLDEN
Its: Chairman of the Board of Deacons

Date: 11-18-12

By: 
Name: ROBYN SCHAEFER
Its: Chairwoman of the Board of Deaconesses

Date: 11-18-12

By: 
Name: Chet Smith
Its: Chairman of the Board of Elders

Date: 11-18-12

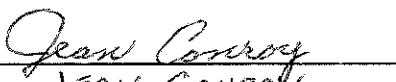
By: 
Name: JEAN CONROY
Its: Church Moderator

EXHIBIT A

LOCATION

