

**ADOPT-A-SPOT PROGRAM AGREEMENT
BETWEEN CITY OF MESQUITE, KEEP MESQUITE BEAUTIFUL AND**

This Agreement (“Agreement”) is made and entered into this the _____ day of _____ 202__ (“Effective Date”) by and between the City of Mesquite, a Texas home-rule municipal corporation, (the “City”), Keep Mesquite Beautiful, Inc. a Texas non-profit organization (“KMB”) and _____ (“Group”), each acting by and through their duly authorized agents. (The City, KMB, and Group hereafter may be individually referred to as “Party” or collectively as “Parties”).

WHEREAS, the Parties recognize the need and desirability of litter-free roadways and are entering into this Agreement to permit the Group to contribute toward the effort of maintaining litter- free areas in Mesquite.

NOW, THEREFORE, in consideration of mutual covenants set forth herein, the City, KMB, and Group agree as follows:

I. DEFINITIONS

“**Adopted Spot**” shall mean the location specified by the City and KMB in **Exhibit A**, which Group shall maintain for the Term of this Agreement.

“**Cleanup**” shall mean any City or KMB event to clean up areas of the City, or any Work conducted by Group and/or Participants at the Adopted Spot.

“**Participant(s)**” shall mean any individual or individuals who participate in Work, including but not limited to, volunteers, officers, agents, employees, and invitees of Group.

“**Program**” shall mean the Adopt-a-Spot Program administered by the City and/or KMB which allows Groups to adopt spots for litter clean up, in the City of Mesquite, Texas.

“**Work**” or “**Working**” shall mean the presence of the Group and/or any Participants at the Adopted Spot for any purpose including but not limited to, cleaning up litter and debris.

II. TERM

The term of this Agreement commences on the Effective Date and shall terminate two calendar years from the Effective Date unless terminated earlier under the terms of this Agreement (“Term”). This Agreement may be renewed for an additional two (2) year term if agreed to in writing by all Parties.

III. DUTIES AND OBLIGATIONS OF THE GROUP

Group, both jointly and severally, acknowledges the hazardous nature of the Work and agrees, both jointly and severally, to the following:

1. Group accepts the responsibility for picking up litter for the location or area specified in **Exhibit A**, attached hereto and made a part of this Agreement for all purposes, (“Adopted Spot”) and promoting a litter-free environment in the community for the Term of this Agreement.
2. Participants in Group agree to obey and abide by all applicable laws and regulations and such terms and conditions as may be required by City and KMB, including but not limited to special conditions on any particular adopted section of roadway or site.
3. When Participants are seventeen (**17**) years of age or younger, Group shall furnish adequate supervision by one or more adult and obtain a signed Waiver of Claim, in the form attached hereto as **Exhibit B**, from a legal parent or guardian from each Participant under the age of seventeen (17) prior to any Cleanup or Work.
4. Group shall obtain a signed Waiver of Claim, in the form attached hereto as **Exhibit B**, from each Participant prior to any Cleanup or Work.
5. Group shall conduct at least two (2) safety meetings per year. Participants must attend a minimum of one (1) full safety meeting conducted by Group before attending a Cleanup. KMB will provide curriculum to Participants via email and/or website.
6. Group shall adopt a section of roadway or site from a list prepared and maintained by KMB, which shall be known as the Group’s Adopted Spot.
7. Group shall be required to maintain the Adopted Spot for a minimum of two (**2**) years.
8. Group shall pick up litter at the Adopted Spot a minimum of six (**6**) times per year, two (**2**) of which will be mandatory KMB Cleanup events at a time and date as directed by KMB (likely in April and September).
9. Group is prohibited from subcontracting or assigning its duties or obligations under this Agreement to any other group, organization, or enterprise.
10. Group shall appoint or select a chairperson or other representative to serve as spokesperson for Group and advise KMB of any changes in chairperson(s) or representative(s).
11. Group shall obtain required supplies and materials from KMB during regular business hours at least five (**5**) days prior to performing Work or a Cleanup.
12. All Participants shall wear approved safety vests and appropriate protective attire at all times during Work or a Cleanup.

13. Group shall be responsible for prohibiting Participants from either possessing or consuming alcoholic beverages or illegal substances while at the Adopted Spot.
14. Group shall be responsible for placing litter in trash bags furnished by KMB.
15. Unused materials and supplies furnished by KMB shall be returned within seven (7) calendar days following any Work or Cleanup.
16. Group shall maintain a first-aid kit and adequate drinking water for all Participants while Working at the Adopted Spot. Group shall maintain both transportation and communication at the Adopted Spot in case of emergency.
17. Group shall not pick up litter on bridges, in tunnels, in construction areas, near highways, overpasses, or other hazardous areas. Participants shall not enter the roadway or hazardous areas. Vehicles shall be parked clear of roadways and other hazards.
18. Group shall not remove or attempt to remove any hazardous or potentially hazardous items or substances, but shall immediately notify KMB of the presence of any such substance.

IV. DUTIES AND OBLIGATIONS OF CITY AND KMB

City and KMB agree to the following:

1. To work with the Group to determine the specific section of the site, area, or roadway to be adopted.
2. To provide safety vests, trash bags, and safety information to the Group for Work performed under this Agreement.
3. To erect a sign at a specified location of the Adopted Spot with Group's name, acronyms, or logo displayed during the Term of this Agreement.
4. To recognize participating Group through various means as determined by KMB and City during the Term of this Agreement.
5. To remove filled trash bags the first working day after Work or Cleanup to the extent reasonably possible.
6. To remove litter from the Adopted Spot only when determined to be appropriate in the sole discretion of KMB and/or the City, such as removal of large, heavy, or hazardous items.

V. TERMINATION

The City may terminate this Agreement at any time without cause upon thirty (30) days written notice to the other Parties. City and KMB reserve the right to cancel the Program at any time, and for any reason. In the event the program is cancelled, the City and KMB may immediately terminate this Agreement by written notice to Group. The City or KMB may terminate this Agreement immediately for cause if either the City or KMB determines Group has not fully complied with this Agreement.

VI. MODIFICATION

This Agreement may be modified or altered in any manner at the sole discretion of City by providing written notice to KMB and Group.

VII. INDEMNIFICATION

GROUP AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND KMB, ITS OFFICERS, AGENTS, AND EMPLOYEES, FROM AND AGAINST LIABILITY FOR ANY CLAIMS, LIENS, SUITS, DEMANDS, AND ACTIONS FOR DAMAGES, INJURIES TO PERSONS (INCLUDING DEATH), PROPERTY DAMAGE (INCLUDING LOSS OF USE), AND EXPENSES, INCLUDING COURT COSTS AND ATTORNEY'S FEES AND OTHER REASONABLE COSTS AND EXPENSES ARISING OUT OF OR RESULTING FROM THIS AGREEMENT, IN CONNECTION WITH OR INCIDENTAL TO THIS AGREEMENT AND FROM ANY LIABILITY ARISING OUT OF, OR RESULTING FROM, THE INTENTIONAL ACTS OR NEGLIGENCE, INCLUDING ALL SUCH CAUSES OF ACTION BASED UPON COMMON, CONSTITUTIONAL, OR STATUTORY LAW, OR BASED IN WHOLE OR IN PART UPON THE NEGLIGENT OR INTENTIONAL ACTS OR OMISSIONS OF GROUP, INCLUDING BUT NOT LIMITED TO ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES, AND OTHER PERSONS WHETHER OR NOT ARISING OUT OF OR CAUSED, IN WHOLE OR IN PART, BY THE ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS OF THE OFFICERS, EMPLOYEES, OR AGENTS OF THE CITY AND KMB.

GROUP FURTHER AGREES THAT IT SHALL AT ALL TIMES EXERCISE REASONABLE PRECAUTIONS ON BEHALF OF, AND BE SOLELY RESPONSIBLE FOR, THE SAFETY OF ITS PARTICIPANTS, OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES AND OTHER PERSONS, AS WELL AS THEIR PROPERTY, WHILE ENGAGED IN WORK UNDER THIS AGREEMENT OR WHILE ON CITY'S PREMISES. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT CITY OR KMB SHALL NOT BE LIABLE OR RESPONSIBLE FOR THE NEGLIGENCE OF GROUP, INCLUDING BUT NOT LIMITED TO ITS PARTICIPANTS, OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES, AND OTHER PERSONS.

FURTHER, CITY AND KMB ASSUME NO RESPONSIBILITY OR LIABILITY FOR HARM, INJURY, OR ANY DAMAGING EVENTS WHICH ARE DIRECTLY OR INDIRECTLY ATTRIBUTABLE TO PREMISE DEFECTS, REAL OR ALLEGED, ON CITY PREMISES OR AT OR IN THE VICINITY OF THE ADOPTED SPOT, WHICH MAY NOW EXIST OR WHICH MAY HEREAFTER ARISE UPON THE PREMISES, RESPONSIBILITY FOR ANY AND ALL SUCH DEFECTS BEING EXPRESSLY ASSUMED BY GROUP. GROUP UNDERSTANDS AND AGREES THAT THIS INDEMNITY PROVISION SHALL APPLY TO ANY AND ALL CLAIMS, SUITS, DEMANDS, AND ACTIONS BASED UPON OR ARISING FROM ANY SUCH PREMISE DEFECTS OR CONDITIONS, INCLUDING BUT NOT LIMITED TO ANY SUCH CLAIM

ASSERTED BY OR ON BEHALF OF GROUP, INCLUDING BUT NOT LIMITED TO ITS PARTICIPANTS, OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES, AND OTHER PERSONS.

IT IS FURTHER AGREED WITH RESPECT TO THE ABOVE INDEMNITY, THAT CITY, KMB, AND GROUP WILL PROVIDE THE OTHER PROMPT AND TIMELY NOTICE OF ANY EVENT COVERED WHICH IN ANY WAY, DIRECTLY OR INDIRECTLY, CONTINGENTLY OR OTHERWISE, AFFECTS OR MIGHT AFFECT THE GROUP OR CITY, AND CITY SHALL HAVE THE RIGHT TO COMPROMISE AND DEFEND THE SAME TO THE EXTENT OF ITS OWN INTERESTS.

VIII. INDEPENDENT CONTRACTOR

City, KMB, and Group agree that in no event shall City or KMB have the right to control Group or Participants in performing the actual details of picking up litter from the location adopted by Group or Participants, and, in picking up litter, Group shall act as an independent contractor. Furthermore, Group and Participants shall not, with respect to their acts or omissions, be deemed an agent or employee of the City or KMB.

IX. SEVERABILITY

If any part of this Agreement shall be stricken for any reason whatsoever or found to be invalid or unenforceable, that part will be severed and the remainder of this Agreement will continue in full force and effect.

X. SURVIVAL

Any liabilities or obligations of the Parties for acts or omissions prior to the cancellation or termination of this Agreement, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or be performed after) termination of this Agreement, shall survive the termination thereof.

XI. GOVERNING LAW AND VENUE

The parties agree that the laws of the State of Texas shall apply to and govern this Agreement and venue for any legal proceeding shall be in Dallas County, Texas.

XII. NON-WAIVER

Failure of any Party hereto to insist on the strict performance of any of the agreements herein or to exercise any rights or remedies accruing hereunder upon default or failure of performance shall not be considered a waiver of the right.

XIII. GOVERNMENTAL IMMUNITY

Notwithstanding any other provision of this Agreement, this Agreement shall be expressly subject to the governmental immunity of Mesquite, Texas Civil Practice and Remedies Code, and all applicable federal and state law.

XVI. AUTHORITY TO SIGN

The undersigned officers and/or agents of the parties hereto are the properly authorized individuals and have the necessary authority to execute this Agreement on behalf of the parties hereto.

IN WITNESS WHEREOF, CITY, KMB, AND GROUP have executed this Agreement in three (3) counterparts, each of which shall be deemed an original, the day and year first written above.

CITY OF MESQUITE
(CITY)

(GROUP)

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

KEEP MESQUITE BEAUTIFUL
(KMB)

By: _____

Printed Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM:
David L. Paschall, City Attorney

By: _____
Assistant City Attorney

EXHIBIT A

Description and or Depiction of Group's Adopted Spot

EXHIBIT B

**WAIVER AND RELEASE OF CLAIMS
FOR ADOPT A SPOT PROGRAM**

In consideration of being allowed to participate in the Adopt-A-Spot Program and all related activities, the I _____, the undersigned, agree as follows:

- Prior to participating or being present at any Adopt-A-Spot location or event, I will attend a safety awareness class sponsored by his/her participating group/organization.
- Prior to participating or being present at any Adopt-A-Spot location or event, I will put on a safety vest and appropriate safety attire, and I will not participate in the Adopt-A-Spot Program unless I am wearing the safety vest and appropriate safety attire.
- To immediately report anything I consider to be unsafe, and I will immediately advise the Adopt-A-Spot chairperson or representative of such condition(s), and I understand that I may refuse to participate in such cleanup activities until such condition(s) is/are corrected.
- **I ACKNOWLEDGE AND FULLY UNDERSTAND THAT ALL ROADWAYS STREETS, AND IMMEDIATELY SURROUNDING AREAS INVOLVE INHERENT RISKS AND MAY BE DANGEROUS AND I UNDERSTAND THAT PARTICIPATING IN ANY CLEANUP ACTIVITIES OR BEING PRESENT AT THE ADOPT-A-SPOT LOCATIONS, MAY INVOLVE RISK OF HARM INCLUDING BUT NOT LIMITED TO BODILY INJURY, PERMANENT DISABILITY, SERIOUS INJURY, DEATH, SEVERE SOCIAL AND ECONOMIC LOSSES WHICH MIGHT RESULT NOT ONLY FROM MY OWN ACTIONS, OMISSIONS, OR NEGLIGENCE, BUT ALSO THE ACTIONS, OMISSIONS, OR NEGLIGENCE OF OTHERS, INCLUDING BUT NOT LIMITED TO THE EXTENT TO WHICH I OR OTHERS PRACTICE SAFETY, THE CONDITIONS OF: THE LOCATION, ROADWAY/STREET, ANY EQUIPMENT, ANY VEHICLES, OR MACHINERY USED BY MYSELF OR OTHERS.**
- **I HEREBY ASSUME ALL OF THE FOREGOING RISKS AND ACCEPT PERSONAL RESPONSIBILITY FOR THE DAMAGES FOLLOWING ANY HARM, INJURY, PERMANENT/TEMPORARY DISABILITY OR DEATH. I RELEASE, WAIVE, AND DISCHARGE ANY AND ALL CLAIMS FOR DAMAGES (INCLUDING BOTH MENTAL AND PHYSICAL), INJURIES TO PERSONS (INCLUDING DEATH), AND PROPERTY DAMAGE (INCLUDING LOSS OF USE) ARISING OUT OF, INCIDENTAL TO, OR IN CONNECTION WITH THE ADOPT-A-SPOT PROGRAM, WHICH MAY BE ASSERTED BY ME OR ON MY BEHALF AGAINST THE CITY OF MESQUITE, TEXAS, AND/OR KEEP MESQUITE BEAUTIFUL, INC. THEIR RESPECTIVE ADMINISTRATORS, OFFICIALS, AGENTS, DIRECTORS, AND OTHER EMPLOYEES.**

By execution below, I _____, the undersigned, hereby acknowledge that I am of sound mind, at least eighteen (18) years of age, have read the above and fully understand that substantial rights are being given up by signing this document, and that the execution of this document is completely voluntary.

(Printed Name)

(Date)

(Signature)

(Organization/Group)

INDIVIDUAL UNDER 18 YEARS OF AGE

By execution below, I _____, warrant and represent that I am the legal parent or guardian of _____, and I hereby acknowledge that I am of sound mind, at least eighteen (18) years of age, have read the above and fully understand that substantial rights are being given up by signing this document, and that the execution of this document is completely voluntary.

(Printed Name of Consenting Parent/Legal Guardian)

(Signature of Consenting Parent/Legal Guardian)

(Date)