

ORDINANCE NO. 2015- \_\_\_\_\_

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A FIRST AMENDMENT TO AGREEMENT BY AND BETWEEN THE CITY OF DENTON, TEXAS AND KEEP DENTON BEAUTIFUL, INCORPORATED, RELATING TO DEVELOPING PROGRAMS ENHANCING THE APPEARANCE AND ENVIRONMENT OF THE CITY OF DENTON, TEXAS; AUTHORIZING THE EXPENDITURE OF FUNDS THEREFOR; PROVIDING FOR RETROACTIVE APPROVAL, CONFIRMATION AND RATIFICATION THEREOF.

WHEREAS, on the 7<sup>th</sup> day of March, 2000, the City Council enacted Ordinance No. 2000-087 providing that the City Manager would execute an "Agreement between the City of Denton and Keep Denton Beautiful, Incorporated Relating to Developing Programs Enhancing the Appearance and Environment of Denton ("Agreement");" and

WHEREAS, with the passage of fifteen (15) years, it is now desirable that the above Agreement be amended in furtherance of the programs, as well as for several desired amendments to the programs; NOW THEREFOR

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Manager, or his designee is authorized to execute an "Amendment to Agreement between the City of Denton, Texas and Keep Denton Beautiful, Incorporated" (hereafter the "Amendment") relating to developing and funding programs enhancing the appearance and environment of the City of Denton, Texas under the terms and conditions contained in the Amendment, which is attached hereto as Exhibit "A" and incorporated herewith by reference.

SECTION 2. The City Manager, or his designee, is authorized to perform the Amendment on behalf of the City and to expend funds for the performance thereof.

SECTION 3. This ordinance is hereby retroactively approved, confirmed and ratified, effective as of January 1, 2015.

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

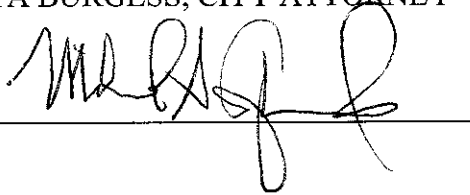
\_\_\_\_\_  
CHRIS WATTS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

By: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

By: \_\_\_\_\_

A handwritten signature in black ink, appearing to be "Anita Burgess", written over a horizontal line.

2015  
FIRST AMENDED AGREEMENT BETWEEN THE CITY OF DENTON, TEXAS  
AND KEEP DENTON BEAUTIFUL, INCORPORATED

This First Amended Agreement (hereafter the "Amendment") is made and entered into by and between the City of Denton, a Texas municipal corporation, acting by and through its City Manager (hereinafter referred to as "CITY,") and Keep Denton Beautiful, Incorporated, 1117 Riney Road, Denton, Texas 76207, a Texas non-profit corporation (hereinafter referred to as "CONTRACTOR").

WHEREAS, heretofore on the 7<sup>th</sup> day of March, 2000 the City Council enacted Ordinance No. 2000-087 regarding Keep Denton Beautiful, Incorporated an "Agreement between the City of Denton and Keep Denton Beautiful Incorporated" was entered into on that date as well; with the passage of time it has become necessary and appropriate to amend such Agreement; this is the first amendment to such Agreement; and

WHEREAS, the CITY recognizes that the mission of Keep Denton Beautiful, Inc. is "to engage our community in creating a clean and beautiful Denton;" and

WHEREAS, the CITY has adopted a budget which includes in-kind support of , as well as a direct expenditure of funds for various Keep Denton Beautiful projects (herafter the "Projects"), from time-to-time.; and

WHEREAS, the CITY has now designated the Solid Waste Department as the department of the City that is responsible for the administration of this Agreement and all matters pertaining thereto; and

WHEREAS, the CITY wishes to continue to engage CONTRACTOR to continue to carry out such Projects;

NOW, THEREFORE, the parties hereto agree, and by the execution hereof are bound to the mutual obligations and to the performance and accomplishment of the conditions hereinafter described.

I.  
TERM

This Amendment shall commence effective as of, January 1, 2015 and shall continue annually thereafter, so long as appropriate funds are budgeted for each fiscal year by the City for continuation of this Amendment.

II.

## RESPONSIBILITIES

CONTRACTOR hereby accepts the responsibility for the performance of all services and activities described in the Work Statement attached hereto as Exhibit "A," in a lawful, satisfactory and efficient manner as determined by CITY, in accordance with the terms herein. CITY will consider CONTRACTOR'S designated Executive Officer to be the CONTRACTOR's representative, responsible for the management of all contractual matters pertaining hereto, unless written notification to the contrary is received from CONTRACTOR, and approved by CITY.

The CITY's KDB Program Manager shall be CITY's representative that is responsible for the administration of this Amendment.

### III. CITY'S OBLIGATION

A. Limitation of Liability. CITY shall provide CONTRACTOR the sum of \$10,000 or such other sum of money as determined by the City's annual budget, in subsequent years, to be expended in accordance with the Project budget. Notwithstanding any other provision of the Amendment, the total of all payments and other obligations made or incurred by CITY hereunder shall not exceed the sum of the then current budget for CONTRACTOR. For the calendar year 2015 and for each subsequent year, the Project budget may be amended by approval of a budget for applicable fund(s) that specifically earmarks the manner in which the funds so appropriated are to be expended.

B. Measure of Liability. In consideration of full and satisfactory services and activities hereunder by CONTRACTOR, CITY shall make payments to CONTRACTOR based on the annual Budget approved by the Council; subject however, to the limitations and provisions set forth in this Section and Section VII of this Amendment.

(1) CITY shall not be liable for any cost or portion thereof which:

(a) was incurred prior to the beginning date, or after the ending date specified in Section I;

(b) is not incurred in strict accordance with the terms of this Amendment, including all exhibits attached hereto;

(c) is not an allowable cost as defined by Section X of this Amendment or the Project budget.

(2) CITY shall not be liable for any cost or portion thereof which is incurred with respect to any activity of CONTRACTOR which requires prior written approval and authorization from CITY; or after CITY has requested that CONTRACTOR furnish data concerning such action prior to proceeding further, unless and until CITY advises CONTRACTOR to proceed.

(3) CITY shall not be obligated or liable under this Amendment to any party other than to the CONTRACTOR for payment of any monies or provision of any goods or services.

C. In-Kind Services. The CITY shall provide staffing, office supplies, office space, and other related expenses to assist and facilitate CONTRACTOR in the accomplishment of the programs and Projects set forth in Exhibit "A;" provided that such expenditure of funds does not exceed the value that such programs and Projects bring to the CITY. The determination of the amount of in-kind services provided by the CITY shall be limited generally by the CITY'S budget for such services and specifically by the City Manager's (or his/her designee's) allocation of the manpower and support services available to the Solid Waste Department for its overall operations in the CITY. Such allocation shall not exceed the amount allowed by Article 3, Section 52 of the Texas Constitution.

#### IV.

#### COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

CONTRACTOR shall comply with any and all applicable Federal laws, laws of the State of Texas and ordinances of the City of Denton, Texas.

#### V.

#### REPRESENTATIONS

A. CONTRACTOR assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Amendment.

B. The person(s) signing and executing this Amendment on behalf of CONTRACTOR do/does hereby warrant and guarantee that he, she, or they have been fully authorized by CONTRACTOR to execute this Amendment on behalf of CONTRACTOR and to validly and legally bind CONTRACTOR to all terms, performances and provisions herein set forth.

C. CITY shall have the right, at its option, to either temporarily suspend or permanently terminate this Amendment if there is any dispute as to the legal authority of either CONTRACTOR or the person signing the Amendment to enter into this Amendment. CONTRACTOR is liable to CITY for any money which it has received from CITY for performance of the provisions of this Amendment if CITY has suspended or terminated this Amendment for the reasons enumerated in this Section.

D. CONTRACTOR agrees that the funds and resources provided CONTRACTOR under the terms of this Amendment will in no way be substituted for funds and resources from other sources, nor in any way serve to reduce the resources, services, or other benefits which would have been available to, or provided through, CONTRACTOR had this Amendment not been executed.

VI.  
PERFORMANCE BY CONTRACTOR

CONTRACTOR shall provide, oversee, administer, and carry out all of the activities and services set out in the WORK STATEMENT, which is attached hereto and incorporated herein for all purposes as Exhibit "A," utilizing the funds herein described in Article III." and deemed by both parties to be necessary and sufficient payment for full and satisfactory performance of the Program, as determined solely by CITY and in accordance with all other terms, provisions and requirements of this Amendment. No modifications or alterations may be made in the Work Statement without the prior written approval of the City's Representative described in Paragraph II herein.

VII.  
PAYMENTS TO CONTRACTOR

A. Payments to Contractor. The CITY shall pay to the CONTRACTOR the sum of \$10,000 (or such other budgeted sums for CONTRACTOR'S calendar year 2015 and for each fiscal year thereafter so long as this Amendment is in force) for services rendered under this Amendment with payment being due on or before January 1 of each calendar year thereafter, in which such sum is budgeted. CONTRACTOR is a calendar year taxpayer.

B. Disallowed Costs. Upon termination of this Amendment, should any expense or charge for which payment has been made, be subsequently disallowed or disapproved as a result of any auditing or monitoring by CITY, CONTRACTOR will refund such amount to CITY within ten (10) working days of a written notice issued to CONTRACTOR, which specifies the amount disallowed and declared due.

Disallowed salaries or wages must be returned to CITY in the following format:

- (1) A cashier's check for the net aggregate amount payable to the City of Denton; and
- (2) A listing showing the Social Security number, full name, last known complete address and the amount owed to each person involved.

Refunds of disallowed costs may not be made from these or any other funds received from or through CITY.

VIII.  
WARRANTIES

CONTRACTOR represents and warrants that:

A. All information, reports and data heretofore or hereafter requested by CITY and furnished to CITY, are complete and accurate as of the date shown on the information, data, or report, and, since that date, have not undergone any significant change without written notice to CITY.

B. Any supporting financial statements heretofore requested by CITY and furnished to CITY, are complete, accurate and fairly reflect the financial condition of CONTRACTOR on the date shown on said report, and the results of the operation for the period covered by the report, and that since said date, there has been no material change, adverse or otherwise, in the financial condition of CONTRACTOR.

C. No litigation or legal proceedings are presently pending or threatened against CONTRACTOR.

D. None of the provisions herein contravenes or is in conflict with the authority under which CONTRACTOR is doing business, or with the provisions of any existing indenture or other agreement of CONTRACTOR.

E. CONTRACTOR has the power to enter into this Amendment and accept payment hereunder, and has taken all necessary action to authorize such acceptance under the terms and conditions of this Amendment.

F. None of the assets of CONTRACTOR is subject to any lien or encumbrance of any character, except for current taxes, not delinquent, except as disclosed and shown in the financial statements furnished by CONTRACTOR to CITY.

Each of these representations and warranties shall be continuing and shall be deemed to have been repeated by the submission of each request for payment by the CONTRACTOR.

## IX. COVENANTS

A. During the period of this Amendment, the CONTRACTOR shall not, without the prior written consent of the City's authorized representative referenced in Paragraph II:

(1) Mortgage, pledge, or otherwise encumber or suffer to be encumbered, any of the assets of CONTRACTOR now owned or hereafter acquired by it, or permit any pre-existing mortgages, liens, or other encumbrances to remain on, or attached to, any assets of CONTRACTOR which are allocated to the performance of this Amendment and with respect to which CITY has ownership hereunder.

(2) Sell, assign, pledge, transfer or otherwise dispose of accounts receivables, notes or claims for money due or to become due.

(3) Sell, convey, or lease all or substantial part of its assets.

(4) Make any advance or loan to, or incur any liability for any other firm, person, entity or corporation as guarantor, surety, or accommodation endorser.

(5) Sell, donate, loan or transfer any equipment or item of personal property



purchased with funds paid to CONTRACTOR by CITY, unless CITY authorizes such transfer.

#### X. ALLOWABLE USES

Funds shall only be used in the performance of and in compliance with this Amendment and in conformance with the standards and provisions of Exhibits "A" attached hereto.

#### XI. MAINTENANCE OF RECORDS

A. CONTRACTOR agrees to maintain records that will provide accurate, current, separate, and complete disclosure of the status of the funds received under this Amendment, in compliance with the provisions of Exhibit "B," attached hereto, and with any other applicable Federal and State regulations establishing standards for financial management. CONTRACTOR's record system and financial accounting system shall contain sufficient documentation to provide in detail full support and justification for each expenditure. Nothing in this Section shall be construed to relieve CONTRACTOR of fiscal accountability and liability under any other provision of this Amendment or any applicable law. CONTRACTOR shall include the substance of this provision in all subcontracts.

B. CONTRACTOR agrees to retain all books, records, documents, reports, and written accounting policies and procedures pertaining to the operation of programs and expenditures of funds under this Amendment for a period of three (3) years from the date of expenditure in order to permit CITY to timely audit such materials, should it so choose.

C. Nothing in the above subsections shall be construed to relieve CONTRACTOR of responsibility for retaining accurate and current records which clearly reflect the level and benefit of services provided under this Amendment.

D. At any reasonable time and as often as CITY may deem necessary, the CONTRACTOR shall make available to CITY all of its records and shall permit CITY to audit, examine, make excerpts and copies of such records, and to conduct audits of all contracts, invoices, materials, payrolls, records of personnel, conditions or employment and all other data requested by said CITY representatives.

#### XIII. REPORTS AND INFORMATION

At such times and in such form as CITY may require, CONTRACTOR shall furnish such statements, records, data and information as CITY may request and deem pertinent to matters covered by this Amendment.

Unless a written exemption has been granted by the CITY, CONTRACTOR shall submit an audit conducted by independent examiners within ten (10) days after receipt of such audit, to the Assistant City Manager of Finance.



XIV.  
MONITORING AND EVALUATION

A. CITY shall perform on-site monitoring of CONTRACTOR's performance under this Agreement from time-to-time.

B. CONTRACTOR agrees that CITY may carry out monitoring and evaluation activities to ensure adherence by CONTRACTOR to the Work Statement, and Program Goals and Objectives, which are attached hereto as Exhibit "A," as well as to other provisions of this Amendment.

C. CONTRACTOR agrees to cooperate fully with CITY in the development, implementation and maintenance of recordkeeping systems and to provide data determined by CITY to be necessary for CITY to effectively fulfill its legal, monitoring and evaluation responsibilities.

D. CONTRACTOR agrees to cooperate in such a way so as not to obstruct or delay CITY in such monitoring and to designate one of its staff to coordinate the monitoring process as requested by CITY staff.

E. After each official monitoring visit, CITY shall provide CONTRACTOR with a written report of monitoring findings.

F. CONTRACTOR shall submit copies of any fiscal, management, or audit reports by any of CONTRACTOR's funding or regulatory bodies to CITY within ten (10) working days of receipt by CONTRACTOR.

XV.  
DIRECTORS' MEETINGS

During the term of this Agreement, CONTRACTOR shall cause to be delivered to CITY copies of all notices of meetings of its Board of Directors, setting forth the time and place thereof. Such notice shall be received by the CITY at least seventy-two (72) hours in advance of said meeting, in a timely manner to give adequate notice, and shall include an agenda and a brief description of the matters to be discussed. CONTRACTOR understands and agrees that CITY representatives shall be afforded access to all of the CONTRACTOR'S Board of Directors meetings.

Minutes of all meetings of CONTRACTOR's governing body shall be available to CITY within thirty (30) working days of approval.

XVI.  
INSURANCE

A. CONTRACTOR shall observe sound business practices with respect to providing

such bonding and insurance as would provide adequate coverage for services offered under this Agreement.

B. If the premises on and in which the activities described in Exhibit "A" are conducted, are not owned or leased by the City, and the employees conducting these activities are not employed by CITY, then CONTRACTOR shall be covered by premises liability insurance, commonly referred to as "Owner/Tenant" coverage with CITY named as an additional insured. Upon the reasonable written request of CONTRACTOR, CITY may, at the sole discretion of its Risk Manager, approve alternate insurance coverage arrangements, in writing.

C. CONTRACTOR will comply with applicable workers' compensation statutes and will obtain employers' liability coverage where available and other appropriate liability coverage for program participants not employed by CITY, if applicable.

D. CONTRACTOR shall maintain adequate and continuous liability insurance on all vehicles owned, leased or operated by CONTRACTOR. All employees of CONTRACTOR who are required to drive a vehicle in the normal scope and course of their employment must possess a valid Texas driver's license and automobile liability insurance. Evidence of the employee's current possession of a valid license and insurance must be maintained on a current basis in CONTRACTOR's files.

E. Actual losses not covered by insurance as required by this Section are not allowable costs under this Agreement, and remain the sole responsibility of CONTRACTOR.

F. The policy or policies of insurance shall contain a clause which requires that CITY and CONTRACTOR be notified in writing of any cancellation or change in the policy at least thirty (30) days prior to such change or cancellation. The CONTRACTOR shall be obligated to obtain replacement insurance coverage and provide evidence of same to the CITY Risk Manager.

## XVII. EQUAL OPPORTUNITY

A. CONTRACTOR shall comply with CITY's policies in regard to the Federal Equal Employment and Affirmative Action provisions, or submit an alternate plan within thirty (30) days of the effective date of this Amendment.

B. CONTRACTOR shall comply with all applicable equal employment opportunity and affirmative action laws or regulations.

C. CONTRACTOR will furnish all information and reports requested by the CITY, and will permit access to its books, records, and accounts for purposes of investigation to ascertain compliance with local, State and Federal rules and regulations.

D. In the event of CONTRACTOR's non-compliance with the non-discrimination requirements, CITY, at its sole option, may cancel or terminate the Agreement in whole or in part, and CONTRACTOR may be barred from further contracts with CITY.

XVIII.  
PERSONNEL POLICIES

CONTRACTOR's employment policies shall be no more liberal than the CITY'S personnel and Human Resources policies.

XIX.  
CONFLICT OF INTEREST

A. CONTRACTOR covenants that neither it nor any member of its governing body presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Amendment. CONTRACTOR further covenants that in the performance of this Amendment, that no person having such interest shall be employed or appointed as a member of its governing body.

B. CONTRACTOR further covenants that no member of its governing body or its staff, subcontractors or employees shall possess any interest in, or use his position for a purpose that is, or gives the appearance of being motivated by desire for private gain for himself, or others, particularly those with which he has family, business, or other ties.

C. No officer, member, or employee of CITY and no member of its governing body who exercises any function or responsibilities in the review or approval of the undertaking or carrying out of this Agreement shall (1) participate in any decision relating to the Amendment which affects his personal interest or the interest in any corporation, partnership, or association in which he has direct or indirect interest; or (2) have any interest, direct or indirect, in this Amendment or the proceeds thereof.

XX.  
NEPOTISM

CONTRACTOR shall not employ in any paid capacity any person who is a member of the immediate family of any person who is currently employed by CONTRACTOR, or is a member of CONTRACTOR's governing board. The term "member of immediate family" includes: wife, husband, son, daughter, mother, father, brother, sister, in-laws, aunt, uncle, nephew, niece, step-parent, step-child, half-brother and half-sister.

XXI.  
POLITICAL OR SECTARIAN ACTIVITY

A. None of the performance rendered hereunder shall involve, and no portion of the funds received by CONTRACTOR hereunder shall be used, either directly or indirectly, for any political activity (including, but not limited to, an activity to further the election or defeat of any candidate for public office) or any activity undertaken to influence the passage, defeat or final content of legislation

B. None of the performance rendered hereunder shall involve, and no portion of the funds received by CONTRACTOR hereunder shall be used for or applied directly or indirectly to the construction, operation, maintenance or administration, or be utilized so as to promote in any manner any sectarian or religious facility or activity.

## XXII. CHANGES AND AMENDMENTS

A. Any alterations, additions, or deletions to the terms of this Amendment shall be by a further written amendment, executed by duly-authorized signatories both parties, except when the terms of this Amendment expressly provide that another method shall be used. For purposes of this Amendment the duly-authorized signatories are the KDB Program Manager for the CITY and the Board President regarding the CONTRACTOR. In the event that additional monies are requested by CONTRACTOR, then the CITY'S authorized signatory shall be instead, the City Manager.

B. CONTRACTOR may not make transfers between or among approved line-items within budget categories set forth in Exhibit "B" without the prior written approval of CITY. CONTRACTOR shall request, in writing, any budget revision in a form prescribed by CITY, and such request for revision shall not increase the total monetary obligation of CITY under this Amendment. In addition, CONTRACTOR expressly understands that budget revisions cannot significantly change the nature, intent, or scope of the Program funded under this Amendment.

C. CONTRACTOR shall submit revised budget and program information, whenever the level of funding for CONTRACTOR or the Program(s) described herein is/are altered according to the total levels contained in any Council approved budget.

D. It is understood and agreed by CITY and CONTRACTOR that changes in the State, Federal or local laws or regulations pursuant hereto may occur during the term of this Amendment. Any such modifications are to be automatically incorporated into this Amendment without any written amendment hereto, and shall become a part of the Amendment on the effective date specified by the law or regulation.

E. CITY may, from time to time during the term of the Amendment, request changes in Exhibit "A," which may include an increase or decrease in the amount of CONTRACTOR's compensation. Such changes shall be incorporated in a written amendment hereto, as provided in Subsection A of this Section.

F. Any alterations, deletions, or additions to the Contract Budget shall require the prior written approval of CITY.

G. CONTRACTOR agrees to notify CITY of any proposed change in physical location for work performed under this Amendment, at least thirty (30) calendar days in advance of the change.

H. CONTRACTOR shall promptly notify CITY of any changes in personnel or governing board composition.

I. It is expressly understood that neither the performance of Exhibit "A" for any program contracted hereunder, nor the transfer of funds between or among said Programs will be permitted.

## XXV. SUSPENSION OF FUNDING

Upon determination by CITY of CONTRACTOR's failure to timely and properly perform each of the requirements, time conditions and duties provided herein, CITY, without limiting any rights it may otherwise have, may, at its discretion, and upon ten (10) working days written notice to CONTRACTOR, require the CONTRACTOR to refund all unused funds. Such notice may be given personally and by certified mail to the Board President of CONTRACTOR. The notice shall set forth the specific basis of any default or failure alleged, and the action required for cure.

The period of such suspension shall be of such duration as is appropriate to accomplish corrective action, but in no event shall it exceed thirty (30) calendar days. At the end of the suspension period, if CITY determines the default or deficiency has been satisfied, CONTRACTOR may be restored to full compliance status and paid all returned eligible funds, withheld or impounded. If, however, CITY determines that CONTRACTOR has not come into compliance, the provisions of Section XXVI may be effectuated.

## XXVI. TERMINATION

A. CITY may terminate this Agreement with cause for any of the following reasons:

(1) CONTRACTOR's failure to attain compliance during any prescribed period of suspension as provided in Section XXV.

(2) CONTRACTOR's violation of covenants, agreements or guarantees of this Amendment.

(3) A finding by CITY that CONTRACTOR:

(a) is in such unsatisfactory financial condition as to endanger performance under this Amendment;

(b) has allocated inventory to this Amendment substantially exceeding reasonable requirements;

(c) is delinquent in payment of taxes, or of costs of performance of this Amendment in the ordinary course of business.

(4) Appointment of a trustee, receiver or liquidator for all or substantial part of CONTRACTOR's property, or the institution of bankruptcy, reorganization, rearrangement



of or liquidation proceedings by or against CONTRACTOR.

(5) CONTRACTOR's inability to conform to changes required by Federal, State and local laws or regulations as provided in Section IV of this Agreement.

(6) The commission by CONTRACTOR of an act of bankruptcy.

(7) CONTRACTOR's violation of any law or regulation to which CONTRACTOR is bound, or shall be bound under the terms of the Amendment.

CITY shall promptly notify CONTRACTOR in writing of the decision to terminate this Amendment, and the effective date of termination thereof. Simultaneous notice of pending termination may be made to the other funding sources specified in Exhibit "B."

B. CITY may terminate this Amendment for convenience, at any time upon providing CONTRACTOR thirty (30) days written notice of termination.

C. CONTRACTOR may terminate this Amendment in whole or in part by written notice to CITY, if a termination of outside funding occurs upon which CONTRACTOR depends for performance hereunder. CONTRACTOR may opt, within the limitations of this Amendment, to seek an alternative funding source, with the approval of CITY, provided the termination by the outside funding source was not occasioned by a breach of contract as defined herein or as defined in a contract between CONTRACTOR and the funding source in question.

D. CONTRACTOR may terminate this Amendment upon the dissolution of CONTRACTOR's organization not occasioned by a breach of this Amendment.

E. Upon receipt of notice to terminate, CONTRACTOR shall cancel, withdraw, or otherwise terminate any outstanding orders or subcontracts which relate to the performance of this Amendment. CITY shall not be liable to CONTRACTOR or CONTRACTOR's creditors for any expenses, encumbrances or obligations whatsoever incurred after the termination date.

F. Notwithstanding any exercise by CITY of its right of suspension or termination, CONTRACTOR shall not be relieved of liability to CITY for damages sustained by CITY by virtue of any breach of the Amendment by CONTRACTOR, and CITY may withhold any reimbursement to CONTRACTOR until such time as the exact amount of damages due to CITY from CONTRACTOR is agreed upon or is otherwise determined.

## XXVII.

### NOTIFICATION OF ACTION BROUGHT

In the event that any claim, demand, suit or other action is made or brought by any person(s), firm, corporation or other entity against CONTRACTOR, CONTRACTOR shall give written notice thereof to CITY within two (2) working days after being notified of such claim, demand, suit or other action. Such notice shall state the date and hour of notification of any such claim, demand, suit or other action; the names and addresses of the person(s), firm, corporation or

other entity making such claim, or that instituted or threatened to institute any type of action or proceeding; the basis of such claim, action or proceeding; and the name of any person(s) against whom such claim is being made or threatened. Such written notice shall be delivered either personally or by certified mail. CONTRACTOR shall also provide to CITY at the same time a true and correct copy of the pleadings or documents served upon it by the opposing party.

## XXVIII. INDEMNIFICATION

A. It is expressly understood and agreed by both parties hereto that CITY is contracting with CONTRACTOR as an independent contractor and that as such, CONTRACTOR shall save and hold CITY, its officers, agents and employees harmless from all liability of any nature or kind, including costs and expenses for, or on account of, any claims, audit exceptions, demands, suits or damages of any character whatsoever resulting in whole or in part from the performance or omission of any employee, agent or representative of CONTRACTOR.

B. CONTRACTOR agrees to provide the defense for, and to indemnify and hold harmless CITY its agents, employees, or contractors from any and all claims, suits, causes of action, demands, damages, losses, attorneys fees, expenses, and liability arising out of the use of these contracted funds and program administration and implementation except to the extent caused by the willful act or omission of CITY, its agents, employees, or contractors.

## XXIX. MISCELLANEOUS

A. CONTRACTOR shall not transfer, pledge or otherwise assign this Amendment or any interest therein, or any claim arising thereunder, to any party or parties, bank, trust company or other financial institution without the prior written approval of CITY.

B. If any provision of this Amendment is held to be invalid, illegal, or unenforceable, the remaining provisions shall remain in full force and effect and continue to conform to the original intent of both parties hereto.

C. In no event shall any payment to CONTRACTOR hereunder, or any other act or failure of CITY to insist in any one or more instances upon the terms and conditions of this Amendment constitute, or be construed in any way to be a waiver by CITY of any breach of covenant or default which may then or subsequently be committed by CONTRACTOR. Neither shall such payment, act, or omission in any manner impair or prejudice any right, power, privilege, or remedy available to CITY to enforce its rights hereunder, which rights, powers, privileges, or remedies are always specifically preserved. No representative or agent of CITY may waive the effect of this provision.

D. This Amendment, together with the referenced exhibits and attachments, constitutes the entire agreement between the parties hereto, and any prior agreement, assertion, statement, understanding or other commitment antecedent to this Amendment, whether written or oral, shall have no force or effect whatsoever; nor shall any agreement, assertion, statement, understanding, or



other commitment occurring during the term of this Amendment, or subsequent thereto, have any legal force or effect whatsoever, unless properly executed in writing, and if appropriate, recorded as a further amendment of this Amendment.

E. In the event any disagreement or dispute should arise between the parties hereto pertaining to the interpretation or meaning of any part of this Amendment or its governing rules, codes, laws, ordinances or regulations, CITY will have the final authority to render or to secure an interpretation.

F. For purposes of this Amendment, all official communications and notices among the parties shall be deemed made if sent postage paid, hand-delivered, sent by electronic mail, or faxed to the parties and address set forth below:

TO CITY:

City Manager  
City of Denton, Texas  
215 East McKinney Street  
Denton, Texas 76201

TO CONTRACTOR:

President of the Board of Directors  
Keep Denton Beautiful, Inc.  
1117 Riney Road  
Denton, Texas 76207

G. This Amendment shall be interpreted in accordance with the laws of the State of Texas and venue of any litigation concerning this Amendment shall be in a court of competent jurisdiction sitting in Denton County, Texas.

IN WITNESS WHEREOF, this amendment is executed on this the 18 day of August, 2015, but to be effective from and after January 1, 2015.

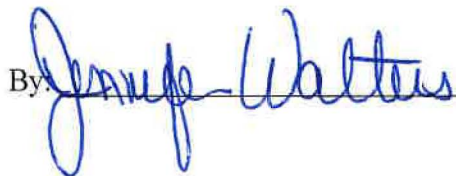
“CITY”

CITY OF DENTON, TEXAS  
A Texas Municipal Corporation

By:

  
GEORGE C. CAMPBELL, CITY MANAGER

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

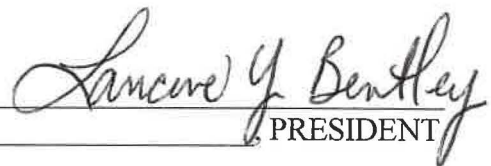
By: 

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

By: 

“CONTRACTOR”

KEEP DENTON BEAUTIFUL, INC.  
A Texas Non-Profit Corporation

By:   
PRESIDENT

ATTEST:

By: \_\_\_\_\_  
Board Secretary

## EXHIBIT "A"

### Keep Denton Beautiful Work Statement

Keep Denton Beautiful, Inc. ("KDB") develops and makes recommendations on issues related to the appearance and environment of Denton, Texas. KDB organizes and implements programs, projects, and educational opportunities in the areas of litter abatement, community beautification and urban forestry, to include without limitation, proposed public and private property tree planting programs such as (1) Tree Giveaways to the Community and Businesses; (2) Public and Youth Education functions; and (3) Arbor Day celebration activities.. KDB is an affiliate organization of the Keep America Beautiful, Inc. ("KAB") national program, and complies with all KAB standards to remain in good standing.