

CITY OF SANTA FE and KEEP SANTA FE BEAUTIFUL, INC.

ADOPT-A-MEDIAN SERVICES AGREEMENT

THIS AGREEMENT is made and entered into by and between the City of Santa Fe, New Mexico, hereinafter referred to as the "City of Santa Fe," in association with Keep Santa Fe Beautiful, hereinafter referred to as "KSFB," and Luca Decor, Michael Galya , hereinafter referred to as the "Adopter," and is effective as of the date set forth below upon which it is executed by the Parties.

KSFB has instituted an Adopt-a-Median program to support and supplement the City's efforts to beautify and maintain medians by obtaining volunteer support from civic-minded entities and individuals; and Adopter desires to "adopt" a street median by voluntarily providing certain services.

IT IS AGREED BETWEEN THE PARTIES:

1. SCOPE OF WORK.

A. The Adopter shall perform the following work:

1) Adopter shall provide the following prescribed services at the following median location:

South Guadalupe Street between Read Street and Garfield Street

2) Before commencing any work on the intended median, Adopter must complete the following trainings and plans, contingent on approval by the City:

- a. Attend and complete an approved Work Zone Safety Training class, and submit an associated Work Zone Safety Plan;
- b. Attend required program orientation as scheduled by the City and KSFB;
- c. Accept an approved landscape design plan provided by the City; or submit an alternate landscape design plan.

3) Adopter shall install or maintain approved median elements as prescribed in the approved median design plan within 30 days of completion of all safety and design prerequisites as described in #2 within this scope of work;

4) KSFB will install a sign acknowledging the Adopter after the median elements have been installed and/or upon commencement of median maintenance for those with pre-existing landscape elements;

5) Adopter will provide ongoing monthly and quarterly maintenance as described in the Performance Measures section. Adopter will adhere to approved landscaping plan for installation and maintenance. *The approved median design plan will be considered the standard to which the median is maintained.*

B. *Performance Measures.*

Contractor shall substantially perform the following Performance Measures:

- 1) Adopter shall perform the following basic median maintenance tasks at least once per month:
 - a. removal of litter and debris;
 - b. eliminate weeds and overgrown vegetation;
 - c. sweeping of slab-type median.

- 2) The adopter shall conduct a minimum of four (4) landscape maintenance work days per year to address major seasonal or occasional maintenance needs to ensure the landscape elements adhere to the approved median design plan, including but not limited to:
 - a. seasonal clearing of dead leaves and pruning perennials and grasses;
 - b. trimming and pruning of vegetation as the Adopter or City deems is necessary;
 - b. replacement of dead or damaged shrubs or vegetation when needed.

- 3) Adopter shall submit a prescribed performance report within seven days after each maintenance event;

- 4) Adopter's Work Zone Safety trained designee must be present at each maintenance event, and ensure that all work complies with the approved Work Zone Safety Plan as appropriate for the specific median location.

Keep Santa Fe Beautiful will perform the following Performance Measures:

- 1) KSFB will administer the Adopt-a-Median program on behalf of the City, and as directed by City-designated staff;
- 2) KSFB will purchase and install a median sign acknowledging the adopter;
- 3) KSFB will plan and conduct a program orientation for new adopters at least once per year and develop and supply informational materials for all adopters;
- 4) KSFB will review submitted reports from adopters to ensure maintenance compliance;
- 5) Adopted medians will be observed at least once per month by KSFB, and a report of compliance issues will be remitted to the City;
- 6) KSFB will send notifications of non-compliance to adopters when medians do not meet performance measures as listed above, and as specified in the Scope of Work;
- 7) Adopters will be acknowledged and promoted by KSFB through public outreach and information programs; and at its yearly volunteer thank-you banquet event.

The receipt of the deliverables contemplated under this Agreement shall assist the City in obtaining its goal of being a clean, beautiful and welcoming city.

2. CONDITIONS AND REQUIREMENTS

- A. The Adopter, sub volunteers, and any of Adopter's agents shall sign the attached City of Santa Fe Volunteer Waiver Form before performance of any median maintenance. No volunteer shall be allowed to work without the Waiver Form on file with the City.
- B. The Adopter shall sign the attached Statement of Responsibility and Waiver of Liability upon execution of this Agreement.
- C. All Volunteers working with Adopter must be a minimum of 16 years of age.
- D. Adopter will ensure compliance with its' Work Zone Safety Plan, which includes (but is not limited to) safety vests for all workers and appropriate traffic cone placement during job detail. Area must have traffic cones and any other required equipment as prescribed by the Work zone Safety Plan.

3. COMPENSATION

- A. Adopter shall pay City \$500.00 for each Adopt-a-Median sign at the time of contract submittal. A yearly maintenance fee of \$100.00 will be due within 30 days of the annual contract renewal date. If Adopter maintains more than one median, the renewal fees are \$100.00 for the first median, and \$25.00 for each additional median due within 30 days of the renewal date.
- B. Adopter agrees to receive no fee, money, remuneration or reimbursement of any kind whatsoever from the City for the services and responsibilities set forth in this Agreement. The Adopter shall bear all costs of the installation of the approved median design plan.
- C. Adopter acknowledges that the City owns the medians and all vegetation, hardscape materials, or any other items the Adopter installs on the median; and this material may be maintained or removed at the sole discretion of the City either during the contract term, or upon its termination.

4. TERM

The term of this agreement shall be five (5) years, renewed annually upon completion of annual training and payment of annual maintenance fee.

5. TERMINATION

A. Non-compliance of any of the requirements in the Scope of Work or the Conditions and Requirements, or breach of this Agreement by the Adopter, or its agents of any other kind, shall result in the immediate termination of this Agreement and forfeiture of the adopted median and any rights or responsibilities of the Adopter and the City under this Agreement.

B. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least 15 days prior to the intended date of termination. By

such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination.

6. STATUS OF ADOPTER

The Adopter and its authorized agents, sub volunteers and/or Adopter's employees, are independent volunteers performing professional services for the City and are not employees of the City. The Adopter, and its' agents and employees, shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Agreement.

7. THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the City and the Adopter. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

8. INSURANCE

The Adopter, at its own cost and expense, is requested to buy and maintain in full force and effect during the term of this Agreement, comprehensive general liability insurance covering bodily injury and property damage liability, in a form and with an insurance company acceptable to the City, with limits of coverage in the MAXIMUM amount which the city could be held liable under the New Mexico Tort Claims Act for the each person injured and for each accident resulting in damage to property. Such insurance shall provide that the City is named as an additional insured and that the City is notified no less than 30 days in advance of cancellation for any reason. The Adopter shall furnish the City with a Copy of a Certificate of Insurance or other evidence of Adopter's compliance with the provisions of this section as a condition prior to performing services under this Agreement. Adopter is requested to also obtain and maintain Workers Compensation insurance, required by law, to provide coverage for Adopter's employees throughout the term of this Agreement. Adopter shall provide the City with evidence of its compliance with such requirements.

9. INDEMNIFICATION

The Adopter, sub volunteers and/or its Adopter's authorized agents shall indemnify, hold harmless and defend the City from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Adopter's performance under this Agreement as well as the performance of Adopter's employees, agents, representatives and sub volunteers.

10. SUBCONTRACTING OR ASSIGNMENT

The Adopter shall not subcontract or assign any portion of the services to be performed under this Agreement without the prior written approval of the City.

11. CONFLICT OF INTEREST

The Adopter warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under this Agreement.

12. AMENDMENT

This Agreement shall not be altered, changed or modified except by an amendment in writing executed by the parties hereto.

13. SCOPE OF AGREEMENT

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the services to be performed hereunder, and all such agreements, covenants and understanding have been merged into this Agreement. This Agreement expresses the entire Agreement and understanding between the parties with respect to said services. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

14. REPRESENTATIONS AND WARRANTIES

The Adopter hereby warrants that it is in compliance with the Americans with Disabilities Act, 29 CFR 1630.

15. APPLICABLE LAW

This Agreement shall be governed by the ordinances of the city of Santa Fe and the laws of the state of New Mexico.

CITY OF SANTA FE:

John Blair
John Blair (Sep 6, 2022 09:19 MDT)

JOHN BLAIR, CITY MANAGER

DATE: Sep 6, 2022

ADOPTER:

Michael Galya
ADOPTER NAME

DATE: 7/29/22

ATTEST

Kristine Mihelcic

KRISTINE BUSTOS MIHELICIC, CITY CLERK XIV

CITY ATTORNEY'S OFFICE:

Marcos Martinez

Marcos Martinez (Aug 26, 2022 13:12 MDT)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Alexis Lotero

Alexis Lotero (Sep 5, 2022 21:19 MDT)

ALEXIS LOTERO, INTERIM FINANCE DIRECTOR