

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING THE  
“ADOPT-A-SPOT PROGRAM”**

**WHEREAS**, the goal of the “Adopt-A-Spot Program” is to encourage volunteerism in the community, develop a sense of community pride and ownership in Milpitas’ image, enhance the conditions and usability of Milpitas’ open space and parks, and further enhance the community landscape in an effort to beautify the community; and

**WHEREAS**, adoption types within the “Adopt-A-Spot Program” include but are not limited to litter removal, graffiti removal, vegetation control, and tree and shrub planting within City parks and open space; and

**WHEREAS**, the “Adopt-a-Spot Program” is detailed in the “City of Milpitas Adopt-A-Spot Program” description, attached hereto as Exhibit 1 and incorporated fully herein.

**NOW, THEREFORE**, the City Council of the City of Milpitas, hereby finds, determines, declares and resolves as follows:

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

2. The City Council hereby approves the “Adopt-A-Spot Program” as detailed in Exhibit 1, and authorizes the City Manager, Manager of Recreation Services, and other City employees as further set forth in Exhibit 1 to implement the Adopt-A-Spot Program consistent with the attached policy.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_ 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

## EXHIBIT 1

### CITY OF MILPITAS ADOPT-A-SPOT PROGRAM

1. Purpose

The purpose of the Adopt-A-Spot Program is to encourage and support volunteerism in the community, to develop a sense of community pride and ownership in Milpitas' image, while enhancing the conditions and usability of Milpitas' open space and parks and to further enhance the community landscape in an effort to beautify the community.

2. Authority

The Manager of Recreation Services or designee, with approval of the City Manager, has the authority to implement the Adopt-A-Spot program in accordance with this Policy. The Manager of Recreation Services or designee, with approval of the City Manager, may approve or deny requests to participate in the Adopt-A-Spot program and may enact administrative guidelines or procedures to further implement this Policy.

3. Eligibility

A. An individual or organization may request to participate in the Adopt-A-Spot Program. All requests shall be made to the Volunteer Services Coordinator within the Department of Recreation Services consistent with this Policy and as further discussed below. The City of Milpitas encourages individuals, community-based groups, service clubs, fraternal organizations, youth groups, private clubs, churches, schools and businesses to participate.

B. All participants shall be 13 years or older. All participants under the age of 18 years old shall be accompanied by an adult 18 years of age or older at all times.

4. Adoption Opportunities

The four (4) adoption opportunities, as listed below, reflect the primary maintenance or beautification opportunities in the Adopt-A-Spot Program, which may be modified by the City Manager at any time.

1. Litter removal: Removing litter within the adopted area several times per month as agreed upon by adopter and City.
2. Graffiti removal: Painting over graffiti within the adopted areas as needed.
3. Vegetation Control: Vegetation control can be performed by hand-pulling of weeds, hoeing, pruning, applying weed barrier(s) and/or applying mulch within the adopted area.
4. Tree and Shrub Planting: Planting and establishing trees and/or shrubs according to the City's approved plan within the adopted area.

5. Establishing Adoption Sites

All City parks or City open spaces are eligible to be adopted under this Policy, subject to the approval of the Recreation Services Manager or designee and City Manager.

6. Terms and Conditions

The general terms and conditions for participation in the program are set forth in Exhibit A and attached to this Policy.

7. Recognition Signs

The City may recognize contributions made through the program by displaying the adopter's name (without any logo or other symbol) on a recognition sign designed and installed by the City. The sign shall have a maximum size of two (2) feet in width by two (2) feet in height. The design, lettering, color, size, and other features of all recognition signs shall be uniform. The recognition sign, if any,

shall be installed in the general vicinity of the adopted area, subject to the discretion of the Manager of Recreation Services or designee and City Manager.

The sole purpose of the recognition sign installed on City property is a form of “Government Speech” as City recognition of significant contribution made by an individual or organization under this Policy. The recognition sign is not to advertise or endorse the adopter’s services, products or location in any manner.

8. Program Application

Any interested individual or organization may request an application form from the Volunteer Services Coordinator, who will either send an application form to the requester, or make the application form available online.

Once a fully completed application is submitted to the Volunteer Services Coordinator, the completed application will be reviewed internally, by the City’s Recreation Services and Public Works Department and any other departments the City deems necessary. A completed application packet shall include:

- a. Completed Application Form
- b. Completed Agreement (Exhibit A)
- c. Completed Waiver of Liability Forms (Exhibit C-2)
- d. Certificate of Liability Insurance
- e. Any other documents required by the Volunteer Services Coordinator

After the completed application has been reviewed by the City, and the City has had the opportunity to discuss the application with the applicant, the Volunteer Services Coordinator shall notify the applicant of whether the City will approve or deny the request to participate in the Adopt-A-Spot Program and any modifications that will be made to the application.

9. Safety Orientation

Once the application has been approved, all applicants will be required to attend a safety orientation. A safety orientation will be provided by City Staff to ensure that the individual or group leader has received the necessary training and information to participate in the program in a safe manner. Additional training may be required subject to the discretion of the Manager of Recreation Services or designee. A separate safety orientation or training is required for each adoption site.

10. Adoption Duration

The adoption period shall be a minimum of nine (9) months and up to a maximum of twelve (12) months. The City may renew the adoption period for up to nine (9) months and up to a maximum of twelve (12) months, provided there are no other requests from other individuals or organizations to adopt the same site. Each site will be limited to one adopter at a time and will be on a first come, first served basis, based upon the submittal of a completed application.

11. Other Policies

Nothing in this Policy is intended to supersede or limit any other City Council Policy.

**EXHIBIT A**

**ADOPT-A-SPOT AGREEMENT**

1. **GROUP Services:** GROUP shall `adopt` \_\_\_\_\_ for a period of nine (9), or twelve (12) months. The purpose of this adoption and agreement is to encourage volunteerism in the community, to develop a sense of community pride and ownership in Milpitas' Adopt-A-Spot Program, and to enhance the conditions and usability of Milpitas' open space and parks. In this regard, during the term of this agreement, the GROUP shall perform either one or both of the following:
  - A. Organize a work party to clean up the open space or park, remove debris, and generally spruce up the condition of the area as mutually agreed between the CITY and the GROUP. This might include painting, litter pick-up, planting and weeding, and similar tasks. These activities shall not include mowing, pruning or other use of sharp-edged cutting tools. These activities shall not conflict with the duties of City employees. The GROUP will submit to the Volunteer Services Coordinator or designee, a proposed work plan for the clean-ups by dates mutually agreed upon. This plan must be approved by Volunteer Services Coordinator or designee before implementation. The GROUP may also embark on park clean-ups or spruce-up projects more frequently in coordination with the CITY, and is encouraged to do so.
  - B. Provide a presence in the park on a regular basis to be on the lookout for potential problems such as criminal activities, vandalism, and maintenance concerns. These problems shall be reported to the CITY immediately. In this regard, the GROUP will provide at least a weekly inspection of the park during the term of this Agreement. Presence shall mean a minimum of one GROUP representative walking and inspecting the entire area for the duration of the time he/she is there. GROUP representatives shall not intervene in conflict or potential conflict situations in any manner whatsoever, but contact appropriate CITY personnel instead.
2. **Term:** The term of this Agreement shall commence on \_\_\_\_\_ and shall terminate on the \_\_\_\_\_, unless terminated earlier pursuant to Exhibit B, Paragraph 4 herein. Thirty (30) days prior to expiration of this Agreement, and every year thereafter, the GROUP shall notify the CITY in writing whether it wishes to extend the Agreement. If the GROUP does not wish to extend the Agreement, the CITY will request that the GROUP make a good faith effort to find a replacement organization to adopt the area. Extension of the Agreement will be by mutual consent between the CITY and the GROUP, subject to the CITY's sole discretion.
3. **Location:** The GROUP will provide these services in \_\_\_\_\_, which is located between \_\_\_\_\_.
4. **Reporting:** The GROUP will complete appropriate reports indicating time, type of activity and materials and submit to the Volunteer Services Coordinator.
5. Any notice or submittal required herein shall be provided to the following:

For Group:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

For City:

Volunteer Services Coordinator  
457 E. Calaveras Blvd.  
Milpitas, CA 95035  
(408) 586-3207

APPROVED AS TO FORM  
CITY OF MILPITAS

APPROVED

By: \_\_\_\_\_  
City Attorney

By: \_\_\_\_\_  
City Manager

GROUP

By: \_\_\_\_\_  
Officer/Group Representative

By: \_\_\_\_\_  
Officer/Group Representative

**EXHIBIT A TO ADOPT-A-SPOT AGREEMENT**

1. City Services: The CITY may provide the following:
  - A. Coordination of appropriate projects and volunteer services with the GROUP.
  - B. Technical assistance to the GROUP on projects such as planting arrangements and other area improvements.
  - C. Appropriate recognition for the GROUP's efforts may include:
    - Recognition at a City Council meeting.
    - Certificates of Appreciation at a City Council meeting.
    - Installation of An Adopt-A-Spot sign.

## EXHIBIT B TO ADOPT-A-SPOT AGREEMENT

1. GROUP NO AGENT. Except as the CITY may specify in writing, the GROUP shall have no authority, express or implied, to act on behalf of the CITY in any capacity whatsoever as an agent. The GROUP shall have no authority, express or implied, pursuant to this Agreement to bind the CITY to any obligation whatsoever.
2. ASSIGNMENT PROHIBITED. No party to this Agreement may assign any right or obligation pursuant to this Agreement, except in cases where cancellation of agreement, where the GROUP makes a good faith effort to find a replacement organizations. Any attempt or purport to assign any right or obligation by GROUP pursuant to this Agreement shall be void and have no effect.
3. PERSONNEL. The GROUP shall assign only competent personnel to perform services pursuant to this Agreement. Services performed by the GROUP and/or its individual contributors are strictly voluntary, for which the GROUP is not to be compensated in any manner. All members of the GROUP must complete a Volunteer Application. A monthly report of the GROUP's activities must be submitted to the Volunteer Services Coordinator, as required by the Milpitas Volunteer Program.
4. CANCELLATION OF AGREEMENT. The CITY may terminate this Agreement at any time by giving written notice to GROUP. The GROUP must notify the CITY thirty (30) days in advance of its intent to cancel the Agreement. Pursuant to Paragraph 2 of this Agreement, the CITY will request that the GROUP make a good faith effort to find a replacement organization if the GROUP terminates the Agreement.
5. SAFETY. The GROUP shall conduct all of its work parties and construction projects according to accepted work and safety standards as set forth in, but not limited to, Exhibit C-1. The CITY makes no guarantee as to the personal safety of the GROUP. Each individual who is going to do any type of physical work at the park must sign a waiver, in a form set forth as Exhibit C-2.
6. INDEPENDENT CONTRACTOR. At all times during performance of its services under this Agreement, the GROUP is an independent contractor, and volunteer, and the GROUP's members shall not, under any circumstances or for any reason, including but not limited to workers' compensation coverage, be considered employees of the City of Milpitas.
7. IMPROVEMENT PLAN. The CITY and GROUP will mutually plan improvements to the area based on development plans and community needs known at the time of the execution of the Agreement. The parties may mutually agree in writing to modify any proposed area improvements.
8. NON-EXCLUSIVE USE. The GROUP has non-exclusive use of the park or open space under the Agreement and CITY reserves all rights over the park and open space. Nothing herein shall grant the GROUP any authority to close the park or open space, prohibit any individual or organization from using the park or open space or in any way hinder the ability of the public from enjoying the park or open space. GROUP shall immediately report to the City any concerns it may have or concerns witnessed while pursuing activities within the scope of the Adopt-A-Spot Program .
9. INDEMNITY. To the fullest extent permitted by law, the GROUP agrees to indemnify, defend with counsel reasonably acceptable to the CITY, and hold harmless the CITY, its officers and employees from all costs, expenses, claims, suits, judgments, demands, causes of action, losses, liabilities or damages arising out of or in any way connected with the intentional or negligent act or omission of the GROUP, the GROUP's officers, employees, volunteer's agents, contractors, subcontractors or any

officer, agent or employee thereof, including without limitation those relating to injury or death of any person or damage to any property.

10. COMPLIANCE. GROUP, and all its members and volunteers, shall comply with all local, state, and federal rules, guidelines, regulations, policies and laws. The City Council approved Adopt-A-Spot Policy and any City Manager rules and regulations implanting the Adopt-A-Spot Policy are specifically fully incorporated into this Agreement by this reference.
  
11. INSURANCE: PUBLIC LIABILITY. The GROUP agrees to maintain and pay for a general liability policy naming the CITY, its officers and employees each as an insured, and insuring them against liability or financial loss resulting from injuries occurring to persons or property in or about or in connection with said work to be performed under this Agreement. Each policy of insurance shall provide primary coverage on an occurrence basis in a company satisfactory to the CITY in the following minimal amounts: Personal injury, \$1,000,000 for each person and \$1,000,000 per occurrence; and property damage, \$500,000 per occurrence. Each policy shall provide that it shall not be cancelled or reduced in coverage without 30 days prior written notice to the CITY. The general liability policy shall provide (a) if the CITY, its officers or employees have other insurance against loss covered by said policy, said other insurance shall be excess insurance only, (b) that the CITY, its officers and employees are not precluded from claim under said policy against other insured parties.

The GROUP shall file Certificates of Insurance with the CITY in form satisfactory to the CITY ATTORNEY upon execution of this Agreement, evidencing said coverage and the requirements of this paragraph.

By signing their names hereunder, however, the parties waive the provisions of this paragraph requiring Public Liability Insurance:

By: \_\_\_\_\_  
City Manager

GROUP

By: \_\_\_\_\_  
Officer/Group Representative

By: \_\_\_\_\_  
Officer/Group Representative

**EXHIBIT C-1**

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**CITY OF MILPITAS  
ADOPT-A-SPOT PROGRAM  
SAFETY REQUIREMENTS FOR PARTICIPANTS**

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Thank you for helping to improve the Milpitas community's open space and parks. We want you to have an enjoyable and rewarding experience. All we ask is that you follow these safety precautions.

**While in the open space or park, remember. . . SAFETY FIRST!**

To protect yourself and others:

- Do not consume alcoholic beverages, or other narcotics and any recreational and/or prohibited/unlawful drugs, before entering, or while in the area.
- Avoid overexertion and dehydration; drink plenty of water, especially on warm, humid days, and if necessary bring water with you to remain hydrated and replenished.
- Do not touch or attempt to remove materials which you suspect may be toxic or hazardous, or are not readily identifiable. Items to avoid: powders, chemicals, smelly substances, suspicious packages, chemical drums or containers, weapons, syringes or hypodermic needles, dead animals or broken glass. Notify the Police Department (EMERGENCY 911; NON-EMERGENCY 586-2400) or the Public Works Department (586-2600) of the location of weapons or suspected toxic substances immediately.
- Discontinue presence in the area at dusk.
- If you see potential problems, do not intervene. Immediately contact the Police Department for response at (408) 586-2400. Emergencies should be reported immediately to the Police Department at 911.
- Be on the lookout for broken glass, dangerous play equipment, graffiti, damaged trees and shrubs, broken signage, litter and trash, anything out of the ordinary. Report all hazards to the Public Works Department immediately.
- Groups are encouraged to use a checklist for inspections, submit it to the group coordinator, and notify the City as soon as possible if problems are observed.
- As an Adopt-A-Spot Program participant, always act in a responsible manner.

**Thank you for participating in the City of Milpitas Adopt-A-Spot Program.**

EXHIBIT C-2

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**CITY OF MILPITAS  
ADOPT-A-SPOT PROGRAM**

**RELEASE AND WAIVER OF LIABILITY  
(ADULT – 18 YEARS+)**

**TO BE READ, UNDERSTOOD AND SIGNED BY PARTICIPANT**

I, the undersigned, declare that I am not an employee of the City of Milpitas. I do hereby agree to voluntarily participate in \_\_\_\_\_ (activity/program), which will take place on a property or facility that is owned, controlled, and/or maintained by the City of Milpitas. I certify that I am at least 18 years of age, in good physical condition and have not been advised otherwise by a qualified medical practitioner.

I understand that participation in the above listed activity involves an element of risk and danger of accidents. I understand that the hazards of participation in the above activity include, but are not limited to, injury or death from natural or manmade conditions on property, as well as the operations that are conducted thereon by the City of Milpitas, its officers, agents, employees or other volunteers. **I am voluntarily participating in this activity with the knowledge of the danger involved and I agree to accept and assume all risks of injury, death or personal property damage.**

\_\_\_\_\_  
**Please Initial**

I understand that the City of Milpitas will not provide medical or health insurance coverage to me during any aspect of my participation in this activity. I hereby represent and warrant that I am and will be covered throughout the activity by a policy of accident and health insurance that provides coverage for injuries I may sustain in the course of my participation in the above mentioned activity. I understand that I may be required to show proof of insurance coverage prior to my participation in this activity.

In consideration of my being permitted to participate in the above listed activity, I, my heirs, executors, administrators, or assigns hereby agree to not make a claim against, or sue, the City of Milpitas, its officers, agents, employees or volunteers for and from any injury, death, or property damage I may suffer arising out of or in any way connected with my participation in this activity.

In addition, I, my heirs, executors, administrators, or assigns release and discharge the City of Milpitas, its officers, agents, employees and volunteers from all actions, claims or demands, costs, attorneys' fees, expenses, losses, or liabilities, in law or in equity, of every kind and nature whatsoever, that I have or may later have for injury, death or property damage resulting from my participation in the above listed activity.

Section 1542 of the Civil Code of the State of California provides as follows:

**“A General Release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the Release which if known by him must have materially affected his settlement with the debtor.”**

I hereby represent that I have read and understand Civil Code Section 1542 and that I hereby waive all present and future rights and benefits under Section 1542 to the extent it would permit claims arising from my

participation in the above activity, including without limitation, any based on facts found to be different from the facts believed to be true at the time this Release and Waiver of Liability was executed.

**Please Initial**

I further agree to defend, indemnify and hold harmless the City of Milpitas and its officers, agents and employees from all actions, claims, or demands that my heirs, spouse, guardians, legal representatives or assigns now have or may later have for any injury, death or property damage resulting from my participation in this activity. This Waiver and Release of Liability is intended to be binding upon any heirs, guardians, legal representatives and assigns.

To the extent that I, individually, or my heirs, guardians, legal representatives or assigns bring a claim of any kind whatsoever against the City of Milpitas, I agree that this Release and Waiver of Liability is to be construed under the laws of the State of California, and that if any portion hereof is held invalid, the balance hereof shall, notwithstanding, continue in full legal force and effect. Any claims or causes of action arising out of or related to this activity, of which I am voluntarily participating, shall be tried exclusively in the courts of the State of California, Santa Clara County, or (if such claims are permitted by law) in the U.S. District Courts for the State of California, San Jose.

Lastly, I also grant full permission to the City of Milpitas to use my name and/or photograph, videograph, motion picture or recording for any publicity or promotion purposes without obligation or liability.

**I, \_\_\_\_\_ (*Participant's Name – Please Print*), HAVE CAREFULLY READ THIS DOCUMENT AND FULLY UNDERSTAND ITS CONTENTS. I AM AWARE THAT THIS IS A WAIVER AND RELEASE OF LIABILITY, AND I SIGN IT VOLUNTARILY.**

\_\_\_\_\_  
PARTICIPANT'S PRINTED NAME

\_\_\_\_\_  
DATE

\_\_\_\_\_  
PARTICIPANT'S SIGNATURE

**CITY OF MILPITAS  
RELEASE AND WAIVER OF LIABILITY  
(MINOR – UNDER 18 YEARS OLD)**

**TO BE READ, UNDERSTOOD AND SIGNED BY PARTICIPANT**

I am the legal parent or guardian of minor \_\_\_\_\_. I, the undersigned, declare that I do hereby voluntarily grant permission for the minor to participate in \_\_\_\_\_ (activity/program), which will take place on a property or facility that is owned, controlled, and/or maintained by the City of Milpitas. I certify that the minor is under 18 years of age, in good physical condition and have not been advised otherwise by a qualified medical practitioner.

I, and the minor, understand that participation in the above listed activity involves an element of risk and danger of accidents. I, and the minor, understand that the hazards of participation in the above activity include, but are not limited to, injury or death from natural or manmade conditions on property, as well as the operations that are conducted thereon by the City of Milpitas, its officers, agents, employees or other volunteers. **I am voluntarily granting permission for the minor to participate in this activity with the knowledge of the danger involved and I, and the minor, agree to accept and assume all risks of injury, death or personal property damage.**

**Please Initial**

I, and the minor, understand that the City of Milpitas will not provide medical or health insurance coverage to the minor during any aspect of participation in this activity. I hereby represent and warrant that the minor will be covered throughout the activity by a policy of accident and health insurance that provides coverage for injuries the minor may sustain in the course of participation in the above mentioned activity. I understand that I may be required to show proof of insurance coverage prior to the minor participation in this activity.

In consideration of the minor being permitted to participate in the above listed activity, I, the minor, our heirs, executors, administrators, or assigns hereby agree to not make a claim against, or sue, the City of Milpitas, its officers, agents, employees or volunteers for and from any injury, death, or property damage the minor may suffer arising out of or in any way connected with participation in this activity.

In addition, I, the minor, our heirs, executors, administrators, or assigns release and discharge the City of Milpitas, its officers, agents, employees and volunteers from all actions, claims or demands, costs, attorneys' fees, expenses, losses, or liabilities, in law or in equity, of every kind and nature whatsoever, that the we have or may later have for injury, death or property damage resulting from the minor participation in the above listed activity.

Section 1542 of the Civil Code of the State of California provides as follows:

**“A General Release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the Release which if known by him must have materially affected his settlement with the debtor.”**

I hereby represent that I have read and understand Civil Code Section 1542 and that I and the minor hereby waive all present and future rights and benefits under Section 1542 to the extent it would permit claims arising

from the minor participation in the above activity, including without limitation, any based on facts found to be different from the facts believed to be true at the time this Release and Waiver of Liability was executed.

**Please Initial**

I, and the minor, further agree to defend, indemnify and hold harmless the City of Milpitas and its officers, agents and employees from all actions, claims, or demands that my heirs, spouse, guardians, legal representatives or assigns now have or may later have for any injury, death or property damage resulting from the minor participation in this activity. This Waiver and Release of Liability is intended to be binding upon any heirs, guardians, legal representatives and assigns.

To the extent that I or the minor, individually, or our heirs, guardians, legal representatives or assigns bring a claim of any kind whatsoever against the City of Milpitas, I and the minor agree that this Release and Waiver of Liability is to be construed under the laws of the State of California, and that if any portion hereof is held invalid, the balance hereof shall, notwithstanding, continue in full legal force and effect. Any claims or causes of action arising out of or related to this activity, of which the minor am voluntarily participating, shall be tried exclusively in the courts of the State of California, Santa Clara County, or (if such claims are permitted by law) in the U.S. District Courts for the State of California, San Jose.

Lastly, I also grant full permission to the City of Milpitas to use the minor name and/or photograph, videograph, motion picture or recording for any publicity or promotion purposes without obligation or liability.

**I, \_\_\_\_\_ (*Participant's Name – Please Print*), HAVE CAREFULLY READ THIS DOCUMENT AND FULLY UNDERSTAND ITS CONTENTS. I AM AWARE THAT THIS IS A WAIVER AND RELEASE OF LIABILITY, AND I SIGN IT VOLUNTARILY.**

\_\_\_\_\_  
DATE

Parent/Guardian: \_\_\_\_\_  
(Signature)

Minor: \_\_\_\_\_  
(Signature)

Parent/Guardian: \_\_\_\_\_

Minor: \_\_\_\_\_