

REAL ESTATE ADVISORY SERVICES AGREEMENT

This Real Estate Advisory Services Agreement (“Agreement”) is entered into this ____ day of _____, 2013 (“Effective Date”) by and between the Town of Addison, Texas (“City”) and Marcus & Millichap Real Estate Investment Services, a _____ [*type of entity, state of formation*] (“Marcus & Millichap”) (the City and Marcus & Millichap are referred to sometimes in this Agreement together as the “parties” and individually as a “party”).

Recitals:

1. The City is the owner of various real estate properties located within the City, including property which it owns in fee simple title, in which it has an easement interest, and in which it may have a license or other right to use or occupy the property.

2. From time to time, the City has a need to evaluate those properties, including whether or not to retain them, and has a need to evaluate and consider the acquisition of additional properties. In connection therewith, the City desires to retain the services of Marcus & Millichap as set forth herein.

3. Marcus & Millichap is in the business of providing real estate services, including investment real estate brokerage, sales, financing, research and advisory services.

4. The City desires to retain the services of Marcus & Millichap to provide real estate advisory services to the City, and Marcus & Millichap desires to provide such services to the City, in accordance with the terms and provisions of this Agreement.

NOW, THEREFORE, for and in consideration of the above and foregoing premises, the mutual covenants and obligations set forth herein, the benefits flowing to each of the parties hereto, and other good and valuable consideration, the Town of Addison, Texas and Marcus & Millichap do contract and agree as follows:

Section 1. Term; Termination.

A. This Agreement shall be effective on the date the last of the parties signs this Agreement as set forth below (the “Effective Date”) and shall end one year thereafter, subject to the termination provisions of this Agreement.

B. This Agreement may be terminated, for any reason or for no reason whatsoever, by either party upon the terminating party giving the non-terminating party at least thirty (30) days written notice of such termination. In the event of termination or upon the expiration of this Agreement, all finished or unfinished data, studies, reports and other materials and items (whether kept electronically, in writing, or otherwise) prepared by or for Marcus & Millichap shall be promptly delivered to the City (and such obligation shall survive the expiration or termination of this Agreement).

Section 2. Scope of Services.

A. The City hereby engages Marcus & Millichap to perform, and Marcus & Millichap agrees to provide to the City to the City's satisfaction, professional real estate advisory services for various City projects as determined by the City and as requested by the City from time to time (the "Services"). The Services may include discussions and negotiations with property owners, project feasibility analysis, the performance of due diligence and economic analysis, market analysis, proforma analysis, public/private transaction negotiations and structuring, fiscal impact studies, and other tasks as requested by City.

B. The Services shall be performed and provided by Marcus & Millichap in a professional manner, consistent with that level of care and skill ordinarily exercised by reputable members of the real estate services industry in Dallas County, Texas. Marcus & Millichap represents that it has the skill and the professional expertise necessary to provide the Services to the City according that standard.

C. In providing the Services, Marcus & Millichap shall at all times comply with all applicable federal, state and local laws, statutes, ordinances, codes, rules, regulations and standards adopted by any governmental entity, agency, commission, or authority having jurisdiction over the Services, and with all applicable professional standards for real estate services.

Section 3. Compensation.

In the event the City requests in writing that Marcus & Millichap provide real estate brokerage services for the City, and thereafter Marcus & Millichap successfully brokers the purchase, sale, transfer, or conveyance of any real estate or any interest in real estate owned or controlled by the City that is identified in the City's request, the City shall pay to Marcus & Millichap a brokerage commission as follows:

- 6% of any purchase price under \$999,999;
- 5% of any purchase price above \$1 million and up to \$2 million;
- 4% of any purchase price above \$2 million and up to \$4 million; and
- 3% of any purchase price above \$4 million;

All such commissions shall become immediately due and payable at the time of closing out of the escrow proceeds. If requested in writing by the City, Marcus & Millichap shall be responsible for the payment of any commissions or referral fees owed to any other brokers involved in the transaction.

For all Services other than real estate brokerage services, the City shall pay to Marcus & Millichap an hourly rate of \$40.00 for each hour of Services provided to the City outside the scope of Marcus & Millichap's standard evaluation, pricing or marketing, in accordance with this Agreement (each hour being divided into 6 minute increments, so that, for example, if such Services are provided for 1 hour and 12 minutes, Client will be charged 1.2 X \$40.00, or \$48.00). No other compensation or payment shall be owed or made to Marcus & Millichap for such Services.

On or before the 10th day of each month, Marcus & Millichap shall submit to the City an invoice for the Services provided by Marcus & Millichap outside the scope of Marcus &

Millichap's standard evaluation, pricing or marketing, during the immediately prior month. Each invoice shall include (i) a description of the Services performed, (ii) the date and the amount of time (in increments) spent by Marcus & Millichap for each item for which Services were provided and the name of the Marcus & Millichap employee or independent contractor associate providing the Services, (iii) true and correct copies of any and all receipts, invoices, and other documents and materials in support of the invoice, and (iv) any such additional documents or materials as the City may request in connection with the invoice and/or the compensation paid to Marcus & Millichap.

The City shall pay Marcus & Millichap, for all Services described in the invoice and that are not in dispute, within thirty (30) days after the City's receipt of each such invoice (and all accompanying materials) as described above.

Section 4. Records, Documents.

A. All records, reports, documents, materials, and all other information whatsoever, in whatever form or format, prepared by, for, or on behalf of Marcus & Millichap in connection with or related to this Agreement and the Services shall belong to and are owned exclusively by the City for all purposes, and shall be provided and delivered to the City upon the earlier of the termination of this Agreement or at the City's request. This provision shall survive the expiration or termination of this Agreement.

B. Marcus & Millichap shall keep all records, documents, plans, and all other materials and information received by, for, or on behalf of Marcus & Millichap, or prepared by, for or on behalf of Marcus & Millichap or the City, in connection with or related to the Services, confidential, and shall not release, reveal, divulge, or furnish the same to any person or entity unless authorized in writing by the City. This obligation shall survive the expiration or termination of this Agreement. Marcus & Millichap further agrees that upon request by the City, or upon the termination or expiration of this Agreement, Marcus & Millichap will immediately return to the City any and all such records, documents, plans, and all other materials and information which may have been provided to or prepared by or for Marcus & Millichap, or which is in Marcus & Millichap's possession or under Marcus & Millichap's control. In the event of Marcus & Millichap's breach or threatened breach of this provision, the City shall be entitled to an injunction or restraining order obtained from any court having appropriate jurisdiction restraining Marcus & Millichap from any unauthorized use or disclosure of such information, but such injunction or restraining order shall not limit the City's right to seek any other remedy available to the City, whether at law or in equity or otherwise, in connection with such breach or threatened breach.

C. Marcus & Millichap shall keep complete and accurate records of the Services performed pursuant to this Agreement and any records required by law or government regulation and shall make such records available to the City upon request. Marcus & Millichap shall assure the confidentiality of any records that are required by law to be so maintained.

Section 5. Conflict of Interest.

During the term of this Agreement, Marcus & Millichap shall not participate or be involved in, undertake planning for, or organize, directly or indirectly, any activity which is or may be competitive with the City or which may be in conflict with its Services.

Section 6. Additional Representations. Marcus & Millichap represents to the City that:

A. it will not use the City's name in any promotional materials or other communications with third parties without the City's prior written consent;

B. it is legally authorized to engage in business and to provide the Services in the State of Texas;

C. it has the skills, qualifications, expertise, and experience necessary to perform and provide the Services in an efficient and cost-effective manner with a high degree of quality and responsiveness and has performed and continues to perform the same and similar services for others;

D. its execution and delivery of this Agreement and performance of the Services does not conflict with, or result in any violation or breach of, or constitute a default under, or require a consent or waiver under, any of the terms, conditions or provisions of any license, contract or other agreement to which Marcus & Millichap is a party; and

E. all of its representations and covenants in this Agreement are and shall be true as of the Effective Date and as of the dates the Services are provided and performed, and at all other times pertinent to this Agreement.

Section 7. Insurance; Marcus & Millichap' Indemnification Obligation.

A. *Insurance.* At all times in connection with this Agreement, Marcus & Millichap shall purchase and maintain in a company or companies lawfully authorized to do business in Texas such insurance coverages as set forth below:

(i) Commercial general liability insurance at minimum combined single limits of \$1,000,000.00 per occurrence and \$1,000,000 general aggregate for bodily injury and property damage, which coverage shall include products/completed operations (\$1,000,000 products/ completed operations aggregate) and contractual liability (covering, but not limited to, the liability assumed under the indemnification provisions of this Agreement).

(ii) Commercial Automobile Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including owned, non-owned, and hired car coverage.

(iv) Professional Liability coverage at minimum limits of \$1,000,000. This coverage must be maintained for at least two (2) years after the termination of this letter agreement. If coverage is written on a claims-made basis, a policy retroactive date equivalent to the

inception date of the contract (or earlier) must be maintained during the full term of this agreement or any extensions or renewals thereof.

With reference to the foregoing insurance requirement, Marcus & Millichap shall specifically endorse applicable insurance policies as follows:

- (i) The Town of Addison shall be named as an additional insured with respect to General Liability and Automobile Liability.
- (ii) All liability policies shall contain no cross liability exclusions or insured versus insured restrictions.
- (iii) A waiver of subrogation in favor of the Town of Addison shall be contained in all liability policies.
- (iv) All insurance policies shall be endorsed to require the insurer to immediately notify the Town of Addison of any material change in the insurance coverage.
- (v) All insurance policies shall be endorsed to the effect that the Town of Addison will receive at least sixty (60) days notice prior to cancellation or non-renewal of the insurance.
- (vi) All insurance policies, which name the Town of Addison as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
- (vii) Required limits may be satisfied by any combination of primary and umbrella liability insurances.
- (viii) Marcus & Millichap may maintain reasonable and customary deductibles, subject to approval by the Town of Addison.
- (ix) Insurance must be purchased from insurers that are financially acceptable to the Town of Addison.

All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, delivered to Marcus & Millichap and City prior to the commencement of this Agreement, and shall:

- (i) List each insurance coverage described and required herein. Such certificates will also include a copy of the endorsements necessary to meet the requirements and instructions contained herein.
- (ii) Specifically set forth the notice-of-cancellation or termination provisions to the Town of Addison.

Upon request, Marcus & Millichap shall furnish City with complete copies of all insurance policies certified to be true and correct by the insurance carrier.

B. *Marcus & Millichap' Indemnity Obligation.* Marcus & Millichap covenants, agrees to, and shall DEFEND (with counsel reasonably acceptable to Addison), INDEMNIFY, AND HOLD HARMLESS the Town of Addison, Texas, the past, present and future elected and appointed officials, and the past, present and future officers, employees, agents, and representatives of the Town of Addison, Texas, individually or collectively, in both their official and private capacities (the said Town of Addison, Texas, elected and appointed officials, and officers, employees, agents, and representatives of the Town of Addison, Texas each being an "Addison Person" and collectively the "Addison Persons"), from and against any and all claims, liabilities, judgments, lawsuits, demands, harm, losses, damages, proceedings, suits, actions, causes of action, liens, fees, fines, penalties, expenses, or costs, of any kind and nature whatsoever made upon or incurred by the Town of Addison, Texas and/or any other Addison Person, whether directly or indirectly, (the "Claims"), that arise out of, result from, or relate to: (i) the Services to be provided by Marcus & Millichap pursuant to this Agreement as described herein, including in Section 2, above, (ii) any representations and/or warranties by Marcus & Millichap under this Agreement, (iii) any personal injuries (including but not limited to death) to any Marcus & Millichap Persons (as hereinafter defined) and any third persons or parties arising out of or in connection with the provision of Services under this Agreement, and/or (iv) any act or omission under, in performance of, or in connection with this Agreement by Marcus & Millichap or by any of its owners, directors, officers, managers, partners, employees, agents, contractors, subcontractors, invitees, patrons, guests, customers, licensees, sublicensees, or any other person or entity for whom Marcus & Millichap is legally responsible, and their respective owners, directors, officers, directors, officers, managers, partners, employees, agents, contractors, subcontractors, invitees, patrons, guests, customers, licensees, sublicensees (collectively, "Marcus & Millichap Persons"). SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND. However, Marcus & Millichap's liability under this section shall be reduced by that portion of the total amount of the Claims (excluding defense fees and costs) equal to the Addison Person or Addison Persons' proportionate share of the negligence, or conduct that would give rise to strict liability of any kind, that caused the loss. Likewise, Marcus & Millichap's liability for Addison Person's defense costs and attorneys' fees shall be reduced by that portion of the defense costs and attorneys' fees equal to Addison Person or Persons' proportionate share of the negligence, or conduct that would give rise to strict liability of any kind, that caused the loss.

Marcus & Millichap shall promptly advise the Town of Addison in writing of any claim or demand against any Addison Person related to or arising out of Marcus & Millichap's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Marcus & Millichap's sole cost and expense. The Addison Persons shall have the right, at the Addison Persons' option and own expense, to participate in such defense without

relieving Marcus & Millichap of any of its obligations hereunder. This defense, indemnity, and hold harmless provision shall survive the termination or expiration of this Agreement.

Section 8. Independent Contractor. In providing or performing Services, Marcus & Millichap is an independent contractor, and nothing in this Agreement creates nor shall be construed to create an employer-employee relationship, a joint venture relationship, a joint enterprise, or to allow the City to exercise discretion or control over the manner in which Marcus & Millichap performs the Services which are the subject matter of this Agreement. Marcus & Millichap is solely responsible for all labor and expenses in connection with its Services provided under or in connection with this Agreement.

Section 9. Miscellaneous.

A. *Notice*. Any notice or statement required or permitted to be given or delivered shall be in writing and shall be deemed to have been properly given or delivered for all purposes (i) if sent by a nationally recognized overnight carrier for next business day delivery, on the first business day following deposit of such notice with such carrier unless such carrier confirms such notice was not delivered, then on the day such carrier actually delivers such notice, or (ii) if personally delivered, on the actual date of delivery, or (iii) if sent by certified U.S. Mail, return receipt requested postage prepaid, on the third business day following the date of mailing. Addresses for any such notice, statement and/or report hereunder are as follows:

To the City:

Town of Addison, Texas
5300 Belt Line Road
Dallas, Texas 75254
Attn: City Manager

To Marcus & Millichap:

Attn: _____

Such addresses may be changed by giving notice of such change in accordance with this provision.

B. *Headings; "Includes"*. Section and paragraph headings are for convenience only and shall not be used in interpretation of this Agreement. For purposes of this Agreement, "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

C. *Assignment; Binding Agreement; No Third Party Beneficiaries*. Marcus & Millichap shall not, and has no authority to, assign, sell, pledge, transfer, encumber, or otherwise convey (any of the foregoing, and the occurrence of any of the foregoing, a "Conveyance") in any manner or form whatsoever (including by operation of law, by merger, or otherwise) all or part of its rights and obligations hereunder without the prior written approval of the City. Any Conveyance of any kind or by any method without the City's prior written consent shall be null and void.

This Agreement shall be binding on and inure to the benefit of the parties, their respective permitted successors and permitted assigns. This Agreement and all of its provisions are solely for the benefit of the parties hereto and do not and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

D. *No Waiver of Immunity.* Notwithstanding any other provision of this Agreement, nothing in this Agreement shall or may be deemed to be, or shall or may be construed to be, a waiver or relinquishment of any immunity, defense, or tort limitation to which the City, its officials, officers, employees, representatives, and agents are or may be entitled, including, without limitation, any waiver of immunity to suit.

E. *Rights, Remedies; Waiver.* Except as set forth in or otherwise limited by this Agreement, the remedies and rights set forth in this Agreement: (a) are and shall be in addition to any and all other remedies and rights either party may have at law, in equity, or otherwise, (b) shall be cumulative, and (c) may be pursued successively or concurrently as either party may elect. The exercise of any remedy or right by either party shall not be deemed an election of remedies or rights or preclude that party from exercising any other remedies or rights in the future. Any rights and remedies either party may have with respect to the other arising out of this Agreement shall survive the expiration or termination of this Agreement. All waivers must be in writing and signed by the waiving party.

F. *Entire Agreement; Amendment.* This Agreement represents the entire and integrated agreement between Marcus & Millichap and the City with regard to the matters set forth herein and supersedes all prior negotiations, representations and/or agreements, either written or oral. Any amendment or modification of this Agreement must be in writing and signed by authorized representatives of Marcus & Millichap and City or it shall have no effect and shall be void.

G. *Severability.* The terms, conditions, and provisions of this Agreement are severable, and if any provision of this Agreement shall be held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.

H. *Governing Law; Venue.* This Agreement and performance hereunder shall be governed by and construed in accordance with the laws of the State of Texas, without regard to choice of laws rules of any jurisdiction. Any and all suits, actions or legal proceedings relating to this Agreement shall be maintained in the state or federal courts of Dallas County, Texas, which courts shall have exclusive jurisdiction for such purpose. Each of the parties submits to the exclusive jurisdiction of such courts for purposes of any such suit, action, or legal proceeding hereunder, and waives any objection or claim that any such suit, action, or legal proceeding has been brought in an inconvenient forum or that the venue of that suit, action, or legal proceeding is improper.

I. *Recitals.* The above and foregoing recitals are true and correct and are incorporated into and made a part of this Agreement for all purposes.

J. *Authorized Persons.* The undersigned representatives of the parties hereto are the properly authorized persons and have the necessary authority to execute this Agreement on behalf of the respective parties hereto.

SIGNED by the parties on the dates set forth below.

TOWN OF ADDISON, TEXAS

**MARCUS & MILLICHAP REAL ESTATE
INVESTMENT SERVICES**

By:_____

Ron Whitehead, City Manager

Date:_____

By:_____

Typed name:_____

Title:_____

Date:_____