

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

Agreement for Advertising

This Agreement for Advertising (“Agreement”) is made as of _____, 2013 by and between the Town of Addison, Texas (“Addison” or the “Town”) and Rodney Hand & Associates Marketing Communications, LP (“Hand”) (Addison and Hand are sometimes referred to herein together as the “parties” and individually as a “party”).

Recitals:

1. The Town is a home rule Texas municipality. Hand is a Texas limited partnership.

/2. Hand is the owner of two publications known as *Addison the Magazine of the North Dallas Corridor*, (the “Magazine”), published by Hand in both print and digital editions, and *Addison and The North Dallas Corridor Visitors Guide* (the “Visitors Guide”) (the Magazine and the Visitors Guide being sometimes referred to in this Agreement together as the “Publications”). The Town desires to advertise in the Publications for the purpose of promoting the Town and the surrounding area to residents and visitors through, am distribution in hotel rooms and elsewhere in the Town and North Dallas area.

3. Hand agrees to produce the Publications and distribute them in accordance with the terms, conditions, and provisions of this Agreement, including Exhibit A and Exhibit B attached hereto and incorporated herein).

NOW, THEREFORE, for and in consideration of the above and foregoing premises, the mutual promises and covenants contained herein, and other good and valuable consideration, the Town of Addison, Texas and Hand & Associates Marketing Communications, LP do contract and agree as follows:

1. Incorporation of Premises. The above and foregoing Recitals are true and correct and are incorporated into and made a part of this Agreement.

2. Term. This Agreement shall be in effect for a period of one (1) year, beginning on the date of execution hereof by the last of the Town and Hand and ending one (1) year thereafter, subject, however, to the termination provisions of this Agreement. Following the initial one (1) year term, this Agreement may be renewed by the Town for four (4) additional one (1) year terms (each such one (1) year term being a “Renewal Term”) by the Town giving written notice to Hand of its election to renew not later than 30 days prior to the end of the initial term or a Renewal Term, as applicable. The terms, conditions, and provisions of this Agreement shall apply to each Renewal Term except as the parties may otherwise agree in writing (each Renewal Term, the dates for various items included in this Agreement will be modified).

3. Distribution of Publications. Hand will direct and distribute the Visitors Guide primarily to Addison and North Dallas hotels and visitors (as identified and agreed upon by the Town and Hand). The Magazine shall be directed and distributed primarily to Addison and

North Dallas residential properties (as identified and agreed upon by the Town and Hand). The content of the Visitors Guide and of the Magazine will be similar, but the Magazine may include some additional information or features which is pertinent and unique to a residential audience.

In addition to the print version of the Publications, there are also digital versions of each, and Hand will promote the digital editions as agreed upon by Hand and the Town.

4. Obligations, Representations and Warranties of Hand and the Town; **Waiver; Hand's Indemnification Obligation.**

A. *Hand's Obligations, Representations, Warranties.*

(1) In connection with the Publication and their publication and distribution, Hand agrees to provide its professional work and services set forth in this Agreement, including but not limited to to the City's satisfaction, in a professional manner, and represents, warrants and covenants that:

- (a) Hand shall acquire any and all licenses, agreements, permits, waivers, releases, registrations, approvals, authorizations, or any other permit or document required or necessary to produce and distribute the Publications.
- (b) In the production and distribution of the Publications, Hand shall comply with all applicable federal, state and local laws, rules and regulations.
- (c) During the term of this Agreement, neither Hand nor any of Hand's associates or employees shall participate, whether directly or indirectly, financially or otherwise, in the production of any other publication related to Addison or the North Dallas area.
- (d) Hand shall keep and hold all information provided to it by the Town in connection with this Agreement in confidence and shall not disclose such information to any third party. This paragraph shall survive the termination hereof.

(2) **Hand's Indemnification Obligation.** Hand 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 Town and such elected and appointed officials, and such officers, employees, agents, and representatives of the Town 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 work and services to be provided by Hand pursuant to this Agreement as described herein, including in Sections 3 and 4, above, and in Exhibit A and Exhibit

B attached hereto and incorporated herein, (ii) any representations and/or warranties by Hand under this Agreement, (iii) any personal injuries (including but not limited to death) to any Hand Persons (as hereinafter defined) and any third persons or parties arising out of or in connection with Hand's provision of its work and services under or in connection with this Agreement, and/or (iv) any act or omission under, in performance of, or in connection with this Agreement by Hand 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 Hand is legally responsible, and their respective owners, directors, officers, directors, officers, managers, partners, employees, agents, contractors, subcontractors, invitees, patrons, guests, customers, licensees, sublicensees (collectively, "Hand 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, Hand'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, Hand'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.

Hand shall promptly advise the Town of Addison in writing of any claim or demand against any Addison Person related to or arising out of Hand's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Hand'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 Hand of any of its obligations hereunder. This defense, indemnity, and hold harmless provision shall survive the termination or expiration of this Agreement.

(3) **Waiver.** Hand, its officers, agents and employees do hereby waive any and all claims for damage, injury or loss to any person or property, including the death of any person, that may be caused, in whole or in part, by the act or failure to act of any officer, agent or employee of the Town. Hand, its officers agents and employees assume the risk of all conditions whether dangerous or otherwise, in and about the premises of the Town, and waive any and all specific notice of the existence of any defective or dangerous condition in or about the said premises. The provisions of this paragraph shall survive the termination of this Agreement.

B. *Town's Obligations.* The Town agree that it will:

- (1) Pay Hand a sum of \$_____ for ___ pages of R.O.B. (Run of Book) advertising in the _____ 2013 issue of the Publications, \$_____ for ___ pages of R.O.B. advertising in the _____ 2014 issue, \$_____ for ___ pages of R.O.B. advertising in the _____ 2014 issue and \$_____ for ___ pages of

R.O.B. advertising in the _____ 2014 issue of the Publications. Such payment shall be made in accordance with the terms of this Agreement, including Exhibit A attached hereto and incorporated herein.

- (2) Pay Hand a sum of \$_____ for local distribution of each of the Holiday/Winter 2013/2014, Spring 2014, Summer 2014 and Fall 2014 Publications respectively to various locations approved by the City Manager. The area distribution will include the Town and extends from the borders of the Town south to LBJ Freeway (IH 635), north to Legacy, east to Hillcrest Road, and west to Marsh Lane. The various local distribution points shall be determined by the Town. Such sum shall be paid by the Town to Hand upon the Town receiving proof acceptable to the Town of the completion of the distribution.

5. Termination.

A. This Agreement may be terminated at any time by either party hereto in the event that the other party is in breach of any term of this Agreement and such breach continues for more than three (3) days after receipt by the breaching party of written notice of the breach from the non-breaching party. In the event of such termination Hand shall be compensated for all work and services properly performed pursuant to this Agreement to the date of termination. In the event of such termination, should Hand have been paid by the Town for services not yet properly performed then Hand shall reimburse the Town all such payments. Acceptance or payment of such reimbursement shall not constitute a waiver of any claim that may otherwise arise out of this Agreement.

B. In addition, the Town may terminate this Agreement at any time and for any reason (or for no reason) by giving Hand at least sixty (60) days written notice of such termination ("Termination Notice"). If a Space Reservation deadline listed on the attached Exhibit B for any issue of the Publications will occur prior to the expiration of the said 60 day period that begins on the day that such notice is actually received or deemed received (as set forth in Section 7 below) by Hand and ends at the conclusion of the 60th day thereafter, then this Agreement shall continue in effect as to such Publications only (the "Continued Publications"), and upon the completion of the work and services of Hand in connection with such Publications and payment by the City therefor in accordance with this Agreement, this Agreement shall terminate. Upon receipt of the termination notice, Hand will stop work in an orderly and expeditious manner (except for the Continued Publications), place no further subcontracts or orders in connection with this Agreement, and terminate all subcontracts (if any).

Example: The Spring 2014 Space Reservation deadline is January 20, 2014 as shown on the attached Exhibit B. The Town sends written notice to the address for Hand included in Section 7 below on January 5, 2014 that the Town wants to terminate this Agreement. The notice is sent by certified mail and is deposited in the U.S. Mail, postage pre-paid on January 5, 2014, and under Section 7 below is deemed received 3 days thereafter, or January 8, 2014. The 60th day after January 8, 2014 is March 9, 2014. The Space Reservation deadline for Spring 2014 shown in Exhibit B - January 20, 2014 – occurs during the 60 day period between January 8, 2014 and March 9, 2014. The Agreement will be terminated at the end of March 9, 2014, but the work and services of Hand for the Spring 2013 Publications will be a Continued Publication. Upon the completion of Hand's work and services for the Spring 2014 Publications and the payment by the City

for such work and services in accordance with this Agreement, this Agreement shall end. Accordingly, Hand will not provide work and services, and the Town will not pay Hand, for the Summer 2014 and the Fall 2014 Publications.

6. Delays; Breach. No delay by either of the parties hereto in performing their respective duties, or obligations hereunder shall be deemed a breach of this Agreement if such delay arises from causes beyond the reasonable control of party and not avoidable by diligence of that party, including delays resulting from labor disputes, strikes, wars, riots, insurrection, civil commotion, government regulations, fire, flood, storm, or acts of God, provided that such affected party uses its best efforts to avoid non-performance and resumes full performance hereunder as soon as practical. Shortage of material or equipment or changes in price of materials or equipment shall not constitute valid grounds for delay.

It will constitute a breach of this Agreement, allowing for termination and/or recovery of damages which the non-breaching party sustains if:

A. The Town fails to make any payment due hereunder within thirty (30) days following the receipt of an invoice provided in accordance with this Agreement therefor (and each such invoice shall include a summary statement of services rendered; and Hand shall supply such supporting documentation with each invoice regarding the services performed by Hand as may be requested by Town from its Staff employees), or

B. Hand fails to deliver the Holiday/Winter 2013/2014 issue of the Publications, in the required quantities (see Exhibit A) on or before _____, 2013, the Spring 2014 issue in the required quantities (see Exhibit A) on or before _____, 2014, the Summer 2014 issue in the required quantities (see Exhibit A) on or before _____, 2014, or the Fall 2014 issue in the required quantities (see Exhibit A) on or before _____, 2014; provided, however, that the Town agrees to allow Hand a period not to exceed five (5) business days from the delivery date set out above to fully complete Hand's required distribution of the Publications. Failure by Hand to deliver on the dates set above shall result in a late fee of \$400.00 per day which the Town may deduct from the final amount then payable.

7. Notice: Where the terms of this Agreement require that notice in writing be provided, such notice shall be deemed received by the party to whom it is directed upon being hand-delivered or upon three (3) days following the deposit of the notice in the United States mail, postage pre-paid, and sent by certified mail, return receipt requested and properly addressed as follows:

To Addison:

5300 Belt Line Road
Dallas, Texas 75254
Attn: Carrie Sloan Rice
Director of Marketing

To Hand:

Rodney Hand & Associates Marketing
Communications, LP
PO Box 12121
Dallas, Texas 75225
Attn: Rodney Hand

8. Assignment. This Agreement shall not be assigned or otherwise conveyed in whole or in part by Hand without the prior written consent of the Town. Because this is a services contract, the Town is not obligated to consent to any assignment or other conveyance of

any portion of this Agreement. Any attempted assignment or other conveyance hereof by Hand shall be null, void and of no force or effect.

9. Independent Contractor. The relationship of Hand to the Town is that of an independent contractor. Neither the Town nor Hand shall be deemed to be the agent of the other and neither is authorized to take any action binding upon the other. No term or provision of this Agreement or any action in the performance hereof is intended nor shall be construed as making Hand the agent, servant or employee of the Town, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship.

10. Texas Law to Apply. This Agreement shall be governed by the laws of the State of Texas (without reference to choice of law provisions of any jurisdiction), and shall be performable and all compensation payable in Dallas County Texas. Exclusive venue under this Agreement lies in Dallas County, Texas.

11. Entire Agreement. This Agreement is the entire and integrated agreement between the Town and Hand and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both parties.

12. Severability. If any clause, paragraph, section or portion of this Agreement shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the Agreement shall remain in full force and effect.

13. Authority to Execute. The undersigned officers and/or agents of the Town and Hand are properly authorized officials of the said parties and have the authority necessary to execute this Agreement on behalf of the respective party, and the parties hereby certify one to the other that any necessary resolutions extending said authority have been duly passed and are now in full force and effect.

EXECUTED at Dallas County, Texas on the day and year first written above.

TOWN OF ADDISON, TEXAS

**RODNEY HAND & ASSOCIATES
MARKETING COMMUNICATIONS, LP**

By: _____
Ron Whitehead, City Manager

By: _____

Date of signing: _____

Date of signing: _____

Exhibit A

DESCRIPTION OF ADDISON/NORTH DALLAS PUBLICATIONS

A. Schedule: The (i) Holiday/Winter 2013/2014 issue of the Publications shall be completed and distributed by Hand on or before _____, 2013, (ii) the Spring 2014 issue of the Publications shall be completed and distributed by Hand on or before _____, 2014, (iii) the Summer 2014 issue of the Publications shall be completed and distributed by Hand on or before _____, 2014, and the (iv) Fall 2014 issue of the Publications shall be completed and distributed by Hand on or before _____, 2014.

B. Duties of Town: The Town shall:

1. Become the anchor advertiser for the Holiday/Winter 2013/2014, Spring 2014, Summer 2014 and Fall 2014 issue of the Publications. The Town shall be provided (a) ____ pages of R.O.B. (Run of Book) advertising and editorial, for the Holiday/Winter 2013/2014 issue of the Publications at a total cost not to exceed \$_____, (b) ____ pages of R.O.B. (Run of Book) advertising and editorial, for the Spring 2014 issue of the Publication at a total cost not to exceed \$_____, (c) ____ pages of R.O.B. (Run of Book) advertising and editorial, for the Summer 2014 issue of the Publications at a total cost not to exceed \$_____ and (d) ____ pages of R.O.B. advertising and editorial for the Fall 2014 issue of the Publications at a total cost not to exceed \$_____. Payments shall be due based on the following schedule:

For the Holiday/Winter 2013/2014 issue, a total of \$_____ will be due not later than 30 days after the Town's receipt from Hand of Hand's certification, in form and content satisfactory to the Town, that Hand has completed (a) delivery of the Visitors Guide to all the hotels, and delivery of the Magazine to all the residential properties, contained on a distribution list designated by the Town, and (b) the distribution of the Publications to all other sources as described herein or as may be designated by the Town.

For the Spring 2014 issue, a total of \$_____ will be due not later than 30 days after the Town's receipt from Hand of Hand's certification, in form and content satisfactory to the Town, that Hand has completed (a) delivery of the Visitors Guide to all the hotels, and delivery of the Magazine to all the residential properties, contained on a distribution list designated by the Town, and (b) the distribution of the Publications to all other sources as described herein or as may be designated by the Town.

For the Summer 2014 issue, a total of \$_____ will be due not later than 30 days after the Town's receipt from Hand of Hand's certification, in form and content satisfactory to the Town, that Hand has completed (a) delivery of the Visitors Guide to all the hotels, and delivery of the Magazine to all the residential properties, contained on a distribution list

designated by the Town, and (b) the distribution of the Publications to all other sources as described herein or as may be designated by the Town.

For the Fall 2014 issue, a total of \$_____ will be due not later than 30 days after the Town's receipt from Hand of Hand's certification, in form and content satisfactory to the Town, that Hand has completed (a) delivery of the Visitors Guide to all the hotels, and delivery of the Magazine to all the residential properties, contained on a distribution list designated by the Town, and (b) the distribution of the Publications to all other sources as described herein or as may be designated by the Town.

2. Submit to Hand in writing: changes and/or corrections to proofs or artwork, photos, and editorial layout. The Town shall return requests for proofing within 96 hours of receipt from Hand.

3. The Town agrees to permit Hand to review its collection of photographs, and agrees to grant to Hand a non-exclusive, royalty free license to use or reproduce such photographs, but solely as a part of the content of the publications which are the subject hereof; provided, however, that if any other person, firm or entity is the owner of any intellectual property rights in connection with any of such photographs, Hand is required to pay such fees, or enter into agreements with third parties as Hand and such third party may agree, without any cost or expense to the Town

4. Town authorizes Hand to produce the Town's logo, royalty free, but solely in connection with the publications which are the subject of this Agreement, and for no other purpose.

C. Duties of Hand: In addition to all other work and services to be provided by Hand under this Agreement, Hand shall provide:

1. On or before January 1, 2014 a timeline that details the elements of the Publications with key milestones.

2. A minimum 64-page Perfect Bound Magazine of 20,000 copies each for the November 2013 issue, February 2014 issue, May 2014 issue and the August 2014 issue of the Publications.

3. Proofs of the editorial outline, story ideas, cover design, photos, artwork, and layout and input for approval by the Town. No editorial material of any nature will appear in the Publications (in any format, including paper, digital, electronic, or otherwise) unless it has been reviewed and approved by the Town.

4. The Town shall have prior approval of all promotional material including advertising rates pertaining to the Publications.

5. (a) With respect to the Visitors Guide, Hand shall be responsible for its distribution to the participating hotels and shall also verify placement of the Visitors Guide in guest rooms. Hand shall also provide replacement copies of the

Visitors Guide to hotels as needed. In addition, Hand shall also distribute the Visitors Guide to the following sources:

Participating Hotel Sales Offices
Corporate Concierges
Commercial Leasing Offices and Residential Real Estate Offices
Certain Advertisers

(b) With respect to the Magazine, Hand shall be responsible for its distribution to the residential properties identified and agreed upon by Hand and the Town, and Hand shall verify the distribution of the same.

(c) Hand shall provide to the Town a list of all sources to whom copies of the Publications are distributed.

6. As the anchor advertiser, the Town will be given copies for distribution.

7. Advertising sales area will be limited to:

South of Legacy
East of Marsh Lane
North of Harvest Hill
West of Hillcrest Road

Restaurants outside the area shall not be included.

No advertising will be accepted from any person, business or organization unless it meets the geographic limitations set out above without express permission from the Town of Addison Deputy City Manager or City Manager. The Town shall receive a list of advertisers one (1) week following the posted space reservation deadline for each issue.

8. The Town and Hand agree that the ratio of advertising to editorial shall not exceed 40% ads to 60% editorial.

9. The Town and Hand agree that the average ad rate for a run of space, full page/4 color insertion shall not exceed \$3,500.00 and for exclusive positions, a full page/4 color insertion shall not exceed \$4595.00.

10. Digital Edition. For the digital edition of the Magazine, Hand shall provide to the Town the following:

(a) front page ad position of the inside back cover in each of the quarterly issues;

(b) up to two (2) additional front page per issue in the section of the Town's choice in each of the quarterly issues; and

(c) up to three (3) enhancements for each digital issue, including: *Cover Sponsorship, Blow-In, Web Content (iFrame) Blow-in, Button Drawer, Belly Band, Slideshows, 360° Animation, Audio-Video*, in each of the quarterly issues.

11. Hand shall produce and maintain a website for the Magazine; with respect to that website, Hand shall provide to the Town the following:

- (a) front page ad zone (rotation ad zones 2, 3 and 4) three (3) times each year;
- (b) category page I (rotation ad zones 2, 3 and 4) each month;
- (c) category page II (rotation ad zones 2, 3 and 4) each month; and
- (d) category page III (rotation ad zones 2, 3 and 4) each month.

12. Hand shall provide to the Town E news services, as follows:

- (a) one portrait and position each for 26 weeks; and
- (b) middle banner ad position each week for 13 weeks.