

Services Agreement

This Services Agreement ("Agreement") is entered into effective as of the 19th day of February, 2014 (the "Effective Date"), by and between Vivanti, LLC, a Texas limited liability company, d/b/a Vivanti Group ("Vivanti") with a business address at 5005 Greenville Avenue, Suite 155, Dallas, Texas 75206-4032 and the Town of Addison, Texas ("Client" or "Town of Addison"), with a business address at 5300 Belt Line Road, Dallas, Texas 75254-7606. Client and Vivanti may be collectively referred to as the "Parties."

W i t n e s s e t h:

Whereas, Vivanti is a Dallas based a marketing and graphic design firm that provides strategy, branding, and creative marketing services to its clients, with the goal of increasing each client's growth; and

Whereas, Client desires to engage Vivanti to provide certain marketing services as described herein, and Vivanti desires to provide the Work to Client; and

Now, therefore, in consideration of the foregoing premises and the mutual covenants hereinafter set forth and other valuable consideration, the Parties hereto agree as follows:

1. Description of the Work; Standard of Performance; Subcontractors.

a. Vivanti will provide to Client (i) the services and deliverables specifically described on Schedule 1 attached hereto and incorporated herein for all purposes (hereinafter the "Work") and (ii) when the scope of services and maximum price, if any, is mutually agreed upon in writing between the parties, additional marketing and advertising services for other Client departments and special projects (such additional marketing and advertising services being sometimes referred to herein as "Additional Work").

Vivanti will perform its Work and Additional Work in a professional manner and in accordance with commercially accepted best practices and standards that are in Vivanti's industry at the time the Work or Additional Work is performed, and to Client's satisfaction.

Vivanti Group will carefully proof each marketing deliverable internally before presenting the same to Client. Vivanti will also pay for one final review by a professional third-party proof reader for all items prior to printing. Clients is also responsible for carefully reviewing and proof reading all information before giving final approval to print or publish the materials. In the event that a typo or error slips in, Client accepts responsibility for errors and will cover costs for necessary reprints or additional production fees.

b. Vivanti may, engage sub-contractors to provide a portion of the Work and Additional Work pursuant to the terms of this Agreement. In the event Vivanti subcontracts any of the Work or Additional Work, Vivanti shall be solely responsible for such Work and Additional Work and for the payment of all Work and Additional Work sub-contracted and agrees to indemnify and hold Client harmless for all monies owed to each subcontractor.

In connection with this Agreement, as of the Effective Date Vivanti has or intends to subcontract a portion of the Work, as set forth on the attached Schedule 1, to The Matchbox Studio, Inc. (a Texas corporation) (“Matchbox”) and to Joan Tibbets Media Services, Inc. (a Texas corporation) (“Tibbets Media”). Client hereby consents to such subcontracting by Vivanti with Matchbox and Tibbets Media, but, notwithstanding such consent, Vivanti shall be and remain solely liable and responsible for all Work performed pursuant to this Agreement.

2. Contract Term.

a. Subject to earlier termination of this Agreement, the term of this Agreement begins on the Effective Date and continues through and concludes on the 14th day of February, 2014, or twelve months after the Effective Date. The term of this Agreement may be renewed for up four (4) additional one (1) year terms, each such term commencing upon the expiration of the immediately prior term and ending one (1) year thereafter, upon mutual written agreement by the Client and Vivanti, subject, however, to the earlier termination of this Agreement.

b. Notwithstanding the foregoing or any other provision of this Agreement, any renewal of this Agreement is subject to and conditioned upon the appropriation and budgeting of funds by Client to make the payments hereunder for such renewed term. If funds sufficient to make all payments hereunder by Client are not so appropriated and budgeted, this Agreement shall end on the last day of the Client’s fiscal year (September 30) for which sufficient funds were appropriated and budgeted to make the payments hereunder. In order to exercise its right under this provision, the Client shall pay Vivanti in accordance with this Agreement for all Work and Additional Work performed and expenses incurred prior to September 30. Payment in full shall be made to Vivanti within thirty days of September 30.

3. Fees and Expenses.

a. In consideration for the Work Client will pay Vivanti the sum of \$135.00 per hour for each hour worked, not to exceed the amounts set forth below:

For special event marketing for
Taste of Addison, Oktoberfest,
Worldfest, Kaboom Town and
Summer Series, an amount not to exceed: **\$295,750**

For Town of Addison economic
development marketing, an amount not
to exceed: **\$109,946**

The cost for any Additional Work (e.g., marketing and advertising services for other Client departments and special projects as needed) will, prior to commencement by Vivanti, be estimated by Vivanti and agreed to in writing signed by both Parties prior to inception thereof.

Vivanti will divide each hour of Work or Additional Work into 15 minute (or some other mutually agreed upon in writing) increments.

b. Client acknowledges that the not-to-exceed amounts for the Work as provided in this Paragraph 3. include only those services listed on Schedule 1 and no Additional Work.

c. In addition to the professional services provided to perform the Work and any Additional Work, Vivanti will invoice Client monthly for actual related out-of-pocket expenses incurred, including, but not limited to media advertising costs, printing, postage, courier fees, analyst reports, proof preparation, report preparation and on-line demographic services and travel, including airfare, lodging, meals, rental cars, taxis, mileage reimbursement at the then-prevailing Internal Revenue Service mileage rate and parking. These items will be billed with a 20% mark up.

Notwithstanding the foregoing, Vivanti shall not be entitled to any travel or travel-related costs or expenses for travel outside of Dallas County, Texas unless Vivanti has first submitted a written request for payment of such travel and/or travel-related costs or expenses, including a not-to-exceed estimate therefor, and received the prior written approval from Client of such costs or expenses.

d. Any provision hereof to the contrary notwithstanding, Client shall not be obligated to make payment to Vivanti hereunder if:

1. Vivanti has failed to comply with or is in default of any of its obligations under this Agreement or any other written documents agreed to by both parties in the future and in connection with the Work (or Additional Work) (and payment may be withheld to the extent of any such failure or default);

2. Any part of such payment is attributable to any Work (or Additional Work) of Vivanti which is not performed in accordance with this Agreement;
3. Vivanti has failed to make payment promptly to subcontractors or consultants or other third parties used by Vivanti in connection with the Work or Additional Work for which the Client has made payment to Vivanti; or
4. Payment Schedule and Due Dates.
 - a. Vivanti will bill Client for its professional services for the Work, and any Additional Work, as follows:
 - (1) Project management, graphic design and copywriting work will be billed on a monthly basis as incurred.
 - (2) Printing/ production, media, photography/illustration and event marketing fees will be billed on a monthly basis as incurred.

Each such bill (invoice) shall be submitted by Vivanti to Client on or before the fifth (15th) day of each month, and shall include (i) a description of the Work or Additional Work performed by or for Vivanti for the month preceding the date of the invoice. At any time, Client may request background documentation for invoices, which includes: (i) time reports for that month for all Vivanti (and any subcontractor of Vivanti, including Matchbox and Tibbets Media) personnel who perform Work or Additional Work under this Agreement (which shall include the date and amount of time (in 15 minute (or some other agreed upon) increments) spent by Vivanti (and any subcontractor of Vivanti) for each item worked on), (ii) true and correct copies of any and all receipts, invoices, and other documents and materials in support of the invoice, and (iii) any such additional documents, materials, or information as Client may request in connection with the invoice and/or the compensation paid to Vivanti.

b. Vivanti agrees to perform its Work as set forth in the attached Schedule 1. Client understands that Client's failure to submit required information or materials that is readily available to Client may cause delays in production and in delivery of finished Work.

c. A service charge will be applied, in accordance with Chapter 2251, Subchapter B, Tex. Gov. Code, on the portion of any past due account which is not disputed and paid within thirty (30) days.

d. Any Additional Work requested by Client may be provided at an additional cost may be mutually agreed upon in writing by both Parties at the time

of the request, Additional Work may be provided on an hourly rate basis of \$135.00 per hour or other rate mutually agreed upon in writing. Additional Work is considered outside the scope of this Agreement and will result in additional fees.

5. Confidentiality.

a. Vivanti acknowledges having access to Client's Confidential Information. "Confidential Information" means all information relating to Client's business, including but not limited to the following: data, source codes, reports, analyses, computations, studies, projections, financial statements, records, notes, memoranda, trade secrets, know-how, marketing strategies, vendors, names, addresses and/or particular desires or needs of customers, merchants, vendors, suppliers or subcontractors (including but not limited to independent contractors and independent sales organizations), operating and other costs, pricing, work flow strategies, merchant control and practices, terms and conditions of agreements to which Client is a party, information concerning particular projects performed by or for Client, and other materials in whatever form maintained, whether documentary, computerized or otherwise, other than information which (i) on the date hereof or thereafter, becomes generally available to the public other than as a result of a disclosure, directly or indirectly, in violation of the terms hereof or as a result of any other person's failure to observe an obligation to Client of confidentiality or non-disclosure, (ii) was available to such party on a non-confidential basis prior to its disclosure, (iii) becomes available to such party on a non-confidential basis from a source other than the other party or its representatives, which source is not prohibited from disclosing such information to Vivanti. Vivanti shall maintain the confidentiality of all Confidential Information; however, Vivanti may disclose the Confidential Information to its employees and subcontractors approved by Client (including Matchbox and Tibbets Media) who (i) need to know such information for the purpose of providing the Work or any portion of the Work, and (ii) have been informed of the confidential nature of the Confidential Information and have agreed to maintain such confidentiality.

Vivanti shall cause, and ensure that, its subcontractors of the Work hereunder (including, without limitation, Matchbox and Tibbets Media) and any approved assignees hereof protect the confidentiality of the Confidential Information, and to that end shall require that the same enter into an agreement with Vivanti to protect the Confidential Information that is consistent with or more restrictive than the terms of the confidentiality provisions of this Agreement, including this Paragraph 5.

b. If Vivanti or its representatives (or any subcontractor or assigned of Vivant hereunder or their representatives) are requested or required (by oral questions, written interrogatories, requests for information, or documents, subpoena, civil investigatory demand, or similar process) to disclose any of the Confidential Information, it shall provide Client with immediate notice of such request or requirement so that Client may seek an appropriate protective order or selectively waive compliance with the provisions of this Agreement. Before

disclosing any Confidential Information as legally required, Vivanti will first notify Client of such obligation and assist Client in seeking a protective order or other appropriate relief. Vivanti will not disclose, reproduce or in any way allow any Confidential Information to be disclosed or used by any person without specific consent of Client's City Manager or City Attorney. Vivanti will not take with it, after termination of this Agreement, any Confidential Information that Vivanti produced, caused to be produced, or obtained during the course of Vivanti's service to Client.

c. Vivanti agrees and acknowledges that the violation of the covenants in this Paragraph 5. would cause irreparable injury to Client and that the remedy at law for any violation or threatened violation would be inadequate and that Client shall be entitled to temporary and permanent injunctive relief or other equitable relief. Vivanti represents that enforcement of a remedy by way of injunction will not prevent it from earning a livelihood. Vivanti further represents and admits that time periods contained in this Paragraph 5. are reasonably necessary to protect the interests of Client and would not unfairly or unreasonably restrict Vivanti.

d. Notwithstanding the termination of this Agreement for any reason, the provisions of Paragraph 5. of this Agreement will continue in full force and effect following such termination.

6. Intellectual Property.

a. All Work, including all materials, products, documents, drawings, reports, records, designs, concepts, images, creative, artwork, and all other information in whatever form or format, and modifications, developed or prepared by, for, or on behalf of Vivanti under or pursuant to this Agreement, are the property of Client (the "Addison Intellectual Property") and all right, title and interest therein shall vest in Addison and shall be deemed to be a "work made for hire" under United States copyright law (17 U.S.C. § 101 et seq.) and made in the course of this Agreement. To the extent that title to any such Addison Intellectual Property may not, by operation of law, vest in Addison or such works may not be considered to be work made for hire, all right, title and interest therein are hereby irrevocably assigned by Vivanti to Addison. All such Addison Intellectual Property shall belong exclusively to Addison with Addison having the right to obtain and to hold in its own name, copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. Vivanti agrees to give Client, and any person designated by Client, any reasonable assistance required to perfect and enforce the rights defined in this Paragraph. Vivanti shall cause its subcontractors (including, without limitation, Matchbox and Tibbets Media) and its assignees to comply in all things and be bound by the terms and provisions of this Paragraph to the same extent as Vivanti is required to comply herewith. Notwithstanding any other provisions to this Agreement, Vivanti and its subcontractors retain the right to display all designs as examples of their work in their portfolios, but for no other purpose without prior written consent of Client.

b. Client represents to Vivanti that any elements of text, graphics, photos, designs, trademarks, or other artwork furnished by Client to Vivanti for inclusion in the Work described in Schedule 1 are owned by Client, or that Client has permission from the rightful owner to use each of these elements.

7. Termination of Agreement; Return of Property.

a. Either Party (the "Non-breaching Party") may terminate this Agreement if the other Party (the "Breaching Party") fails to comply with any obligation or provision of this Agreement, and such failure remains uncured for a period of ten (10) days after notice thereof (which notice shall specifically identify the failure) (the "Notice of Failure") is received by the Breaching Party; however, if the failure cannot with diligence be cured within said 10 day period, if within such 10 day period the Breaching Party provides the Non-breaching Party written notice of the curative measures which it proposes to undertake, and proceeds promptly to initiate such measures to cure such failure, and thereafter prosecutes the curing of such failure with diligence and continuity, the time within which such failure may be cured shall be extended for such period as may be necessary to complete the curing of such failure with diligence and continuity, not to exceed 15 days following the date the Notice of Failure is received by the Breaching Party.

b. In addition to the right to terminate this Agreement as set forth in Paragraph 7.a, above, Client and Vivanti may terminate this Agreement, for any reason or for no reason, at any time by giving thirty (30) days written notice of termination to the non-terminating party.

c. Upon termination or expiration of this Agreement, Vivanti will promptly (but in any event within not more than 10 days after such termination or expiration) provide or return to Client all drawings, project plans, documents and other tangible manifestations of Confidential Information or Work products, and all Addison Intellectual Property, as herein defined, including all copies and reproductions thereof. In addition, Vivanti will return any other property belonging to Client.

d. Client shall pay Vivanti in accordance with this Agreement all undisputed amounts for all Work and Additional Work performed and expenses incurred prior to the date of termination. Work completed by Vivanti prior to termination shall be billed at the hourly rate of \$135, and deducted from any downpayment remitted by Client, the balance of which (if any) shall be returned to Client. If, at the time of the request for refund, work has been completed beyond the amount covered by the initial payment, Client shall be liable to pay for all Work or Additional Work completed at the hourly rate in accordance with this Agreement.

8. Representations. Vivanti represents and warrants that (and the same shall be true at all times while this Agreement, or any portion hereof, is in effect):

a. Vivanti is a limited liability company duly organized and validly existing under the laws of the State of Texas and is qualified to do business in the State of Texas, has the legal capacity and the authority to enter into and perform its obligations under this Agreement;

b. The execution and delivery of this Agreement and the performance and observance of its terms, conditions and obligations have been duly and validly authorized by all necessary action on its part to make this Agreement, and this Agreement is not in contravention of Vivanti's articles or certificate of formation or regulations, or any agreement or instrument to which Vivanti is a party or by which it may be bound as of the date hereof;

c. Vivanti has the necessary legal ability to perform its obligations under this Agreement;

d. No litigation or governmental proceeding is pending, or, to the knowledge of any of Vivanti's officers, threatened against or affecting Vivanti, which may result in a material adverse change in Vivanti's business, properties or operations sufficient to jeopardize Vivanti as a going concern; and

e. This Agreement constitutes a valid and binding obligation of Vivanti, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.

9. Independent Contractor. This Agreement shall not render Vivanti an employee, partner, agent of, or joint venturer with Client for any purpose. Vivanti is and will remain an independent contractor in its relationship with Client, and nothing in this Agreement creates or is intended to create and this Agreement shall not be construed to create, an employer-employee relationship, a joint venture relationship, a joint enterprise, a principal/agent relationship, or to allow Client City to exercise discretion or control over the manner in which Vivanti performs the Work or Additional Work which is the subject matter of this Agreement. Client shall not be responsible for withholding taxes with respect to Vivanti's compensation hereunder. Vivanti shall have no claim against Client hereunder or otherwise for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employment benefits of any kind.

10. Laws Affecting Electronic Commerce. From time to time governments enact laws and levy taxes and tariffs affecting Internet electronic commerce. Client agrees that Client is solely responsible for complying with such laws, taxes, and tariffs, and will hold harmless, protect, and defend Vivanti and its subcontractors from any claim, suit, penalty, tax, or tariff arising from Client's exercise of Internet electronic commerce.

11. Assignment, Binding Effect.

a. Neither this Agreement nor any duties or obligations under this Agreement, except as otherwise provided herein, may be assigned, sold, transferred, or otherwise conveyed (collectively, "assignment") by Vivanti without the prior written consent of Client, which shall be in Client's sole discretion. Any such assignment without Client's prior written consent shall be null and void.

b. The covenants and conditions contained in this Agreement shall apply to and bind the Parties and the heirs, legal representatives, successors and permitted assigns of the Parties.

c. Vivanti shall require each of its contractors (including, without limitation, Matchbox and Tibbets Media) to perform and complete its work and services in accordance with the contract documents between Vivanti and such contractor that concern the matters, or some of the matters, set forth in this Agreement.

12. **Insurance; Vivanti's Indemnity Obligation.**

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

1. Commercial general liability insurance for all of its operations at minimum combined limits of \$1,000,000 per occurrence and \$2,000,000 general aggregate. Coverage must be amended to provide for an each-project aggregate limit of insurance.

2. Professional liability (Errors & Omissions) - with a per loss limit policy period aggregate limit of not less than \$1,000,000 per occurrence. Said insurance shall provide coverage for claims arising out of Vivanti's errors, omissions, wrongful acts, negligence, misstatement, or breach of duty in the rendering, or failure to render, the services for which it was contracted.

3. 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.

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

1. The Town of Addison, Texas shall be named as an additional insured with respect to all liability policies.

2. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions applicable to the claims of the Town of Addison.

3. A waiver of subrogation in favor of the Town of Addison, Texas, its officers, employees, and agents shall be contained in each policy required herein.

4. All insurance policies shall be endorsed to the effect that the Town of Addison, Texas will receive at least sixty (60) days' notice prior to cancellation or non-renewal of the insurance.

5. All insurance policies, which name the Town of Addison, Texas as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.

6. Required limits may be satisfied by any combination of primary and umbrella liability insurances.

7. Vivanti may maintain reasonable and customary deductibles.

8. Insurance must be purchased from insurers that are financially acceptable to the Town of Addison and licensed to do business in the State of Texas.

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 Vivanti and the Town of Addison prior to the commencement of any Services hereunder, and shall :

1. 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.

2. Specifically set forth the notice-of-cancellation or termination provisions to the Town of Addison.

Upon request, Vivanti shall furnish the Town of Addison with complete copies of all insurance policies certified to be true and correct by the insurance carrier.

b. **Vivanti's Indemnity Obligation.** Vivanti covenants, agrees to, and shall DEFEND (with counsel reasonably acceptable to Addison), INDEMNIFY, AND HOLD HARMLESS the Town of Addison, Texas and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas, individually or collectively, in both their official and private capacities (the Town of Addison, Texas, and the elected officials, the officers, employees, representatives, and volunteers 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, (collectively, the "Claims"), that arise out of, result from, or relate to: (i) the Work and any Additional Work as described in this Agreement, including Paragraph 1 and Schedule 1 hereof, (ii) any representations and/or warranties by Vivanti under this Agreement, and/or (iii) any act or omission under, in performance of, or in connection with this Agreement by Vivanti or by any of its owners, directors, officers, shareholders, managers, partners, employees, agents, consultants, contractors, subcontractors, invitees, patrons, guests, customers, licensees, sublicensees, or any other person or entity for whom Vivanti is legally responsible, and their respective owners, directors, officers, shareholders, owners, directors, officers, shareholders, managers, partners, employees, agents, consultants, contractors, subcontractors, invitees, patrons, guests, customers, licensees, sublicensees (collectively, "Vivanti 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 OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.**

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

13. Notices. Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given when delivered by hand or when deposited in the United States mail, by registered or certified mail, return receipt requested, postage prepaid or with a nationally recognized overnight courier serviced addressed to the respective parties as follows:

If to Vivanti: Laura Schieber
 Vivanti, LLC d/b/a Vivanti Group
 5005 Greenville Avenue, Suite 155
 Dallas, Texas 75206

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

Either Party may change such addresses from time-to-time by providing notice as set forth.

14. Headings; "Includes". The headings herein are for convenience of reference only and shall not be deemed to be part of the substance of this Agreement. The words "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.

15. Entire Agreement, Modification, Waiver.

a. This Agreement constitutes the entire agreement between the Parties and supersedes any prior understanding or representation of any kind preceding the date of this Agreement. There are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this Agreement.

b. This Agreement may be modified, amended or supplemented only by a written agreement signed by Vivanti and Client.

c. The failure of either Party to enforce any provision of this Agreement shall not be deemed a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement. No term or condition of this Agreement will be deemed waived, and no breach will be deemed excused, unless such waiver or excuse is in writing and is executed by the Party from whom such waiver or excuse is claimed.

16. Governing Law, Enforceability; Severability. This Agreement shall be governed in all respects by the laws of the State of Texas without regard to its conflict of laws principles.

It is the intention of Client and Vivanti that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies of the laws of the State of Texas, but that the unenforceability (or the modification to conform with such laws or public policies) of any provisions hereof shall not render unenforceable or impair the remainder of this Agreement. Accordingly, if any provision of this Agreement shall be determined to be invalid or unenforceable, either in whole or in part, this Agreement shall be deemed amended to delete or modify, as necessary, the offending provisions and to alter the balance of this Agreement (by adding thereto, as may be necessary, a provision that is as close to the intent of the original provision as possible) in order to render the same valid and enforceable to the fullest extent permissible as aforesaid. The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any one or more of the provisions hereof shall not affect the validity and enforceability of the other provisions hereof.

17. Jurisdiction and Venue. The Parties irrevocably and unconditionally (a) agree that any suit, action or legal proceeding arising out of or relating to this Agreement shall be brought in the courts of record of the State of Texas, Dallas County or the court of the United States, Northern District of Texas; (b) consents to the jurisdiction of each such court in any such suit, action or proceeding; and (c) waives any objection which it or he may have to the laying of venue of such suit, action or proceeding in any of such courts.

18. [Section 17 Warranty. Intentionally Deleted.]

19. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

20. Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either Party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights either Party may have by law, statute, ordinance, or otherwise.

21. No Third Party Beneficiaries. The provisions of this Agreement are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

22. Authorized Signatories. Each Party hereby represents that the undersigned officers and/or agents of the Parties are the properly authorized persons and have the necessary authority to execute this Agreement on behalf of each of the respective Parties.

23. Dispute Resolution. Prior to the institution of any suit, action or other legal proceeding, the parties agree to submit any dispute hereunder to, and attempt in good faith to resolve such dispute through, mediation. Unless otherwise agreed in writing by the parties, mediation shall be conducted in accordance with the Construction Industry Mediation Rules of the American Arbitration Association, and each party shall pay one-half of the mediation fee. If the dispute is not resolved by mediation, then the dispute shall be resolved by litigation, unless otherwise agreed in writing between the parties.

In Witness Whereof, the Parties have executed this Agreement effective as of the Effective Date.

Vivanti, LLC d/b/a Vivanti Group

By: Laura Schieber,
Principal

Client: _____

.

By: _____,
Its: _____

**Schedule 1
to
Services Agreement**

THE WORK

Over the term of this Agreement Vivanti will deliver the following key deliverables:

- Marketing strategy and project management services for Special Event Marketing
- Creative concepts and implementation for special events including Fork & Cork, Oktoberfest, Kaboom Town! and Summer Series (each an “Event” and collectively “Events”).
- Marketing strategy and project management services for Economic Development marketing
- Marketing strategy and project management services for Visitor Services
- Media plan / budget / schedule
- Media purchase, coordination and submission for all advertising placements

- Additional marketing and advertising services for other Town of Addison departments and special projects as needed. This work will be estimated by Vivanti and agreed to by both parties prior to project inception.

I. EVENTS

Total budget for all Events not to exceed \$295,750 (this includes all hourly rate fees as described in Paragraph 3.a. above and all out-of-pocket expenses (plus any mark-up) as described in Paragraph 3.c. above). The scope of work for each event is limited to the items detailed below. Any additional items to support Events not included on this list requested by the Town of Addison will be considered Additional Work to be estimated separately unless the new item replaces another item of equal value.

All pricing is based on hourly estimates for work based on *presenting two (2) initial concepts for each with three (3) rounds of revisions*. For each Event, as requested by Client from time to time, Vivanti will provide the following at a not-to-exceed dollar amount identified (e.g., the total fees, costs, and expenses (including all hourly rate fees as described in Paragraph 3.a. and all out-of-pocket expenses (plus any mark-up) as described in Paragraph 3.c.)_ for Marketing Strategy and Project Management, as set forth below, shall not exceed \$16,000):

**Marketing Strategy and Project Management
(handled by Vivanti)**

\$16,000

- Establish marketing objectives, strategies and metrics for measuring success for the Events
- Attend all event marketing meetings
- Weekly status call to review outstanding items with the Town of Addison
- Track budget, schedule and list of deliverables to ensure timely completion, review and submission.
- Provide a written marketing report following each event (to be provided to Client not later than the last day of the month next following the event that is the subject of the report)
 - Event attendance
 - Marketing recap reports
 - Impressions and/or response rates for all media
 - Update on marketing activities completed during the period
 - Tracking success metrics identified in the marketing plan
 - Success Stories

Media plan / budget / schedule

(to be handled by Vivanti through Tibbets Media)

\$2,000

The document will lay out specific media to be used to execute the marketing campaign for the Town of Addison Events. It will include a detailed implementation plan including a monthly schedule and budget. Scope includes initial presentation of draft plan with two rounds of changes/edits for Client consideration of approval.

Media purchase, coordination and submission

(to be handled by Vivanti through Tibbets Media)

\$70,000

The scope of work includes:

- Purchasing media and trafficking creative to vendors and media channels in a timely fashion to meet campaign deadlines outlined in the marketing and media plan.
- Cost for all ad buys.
- Ensure the creative team is aware of media specifications and double check that materials are in the appropriate formats required by vendors / media outlets.

Photography/ Illustration

(to be handled by Vivanti through Matchbox)

\$25,000

Purchase of illustration and/or photography to be used in the Event campaigns.

Graphic Design for Events (to be handled by Vivanti through Matchbox) \$83,930

Execute all creative deliverables for Events as outlined below. Scope of graphic design services for Events is limited to the items outlined in the following list. This list of deliverables was created based on the marketing deliverable list provided by the Town of Addison. *Additional Work is considered outside the scope of this Agreement and will result in additional fees.*

Please see the following page for the listing of creative deliverables for the special events.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK

Events Creative Deliverables:

Fork & Cork \$46,730

Concept Refresh
Logo
Website Graphics
Social Media Graphics
Flyer
Email Invitation
Email Template
Ticket/Pass & Lanyard
Kiosks
Program
Belt Line Banner
Print Ad
Print Ad Resizes (3)
Online Ad Campaign
Online Ad Resizes (1)
Radio Ad Copy
Billboard
NY Times Insert
Parking Pass
Vendor Signs

Summer Series \$6,250

Concept Refresh
Web Banner
Kiosk
Print Ad
Print Ad Resizes (1)
Belt Line Banner

Kaboom! Town \$9,550

Concept Refresh
Web Banner / Main Graphic
Email Blast Header
Parking Passes - 4 Versions
Kiosk
Print Ad
Print Ad Resizes (3)
Online Ad
Online Ad Resizes (1)
Belt Line Banner

Oktoberfest \$21,400

Web Banner/Main Graphic
Email Blast Header
Program
Parking Passes - 4 Versions
Flyers
Kiosks
Ticket - Version 1
Ticket - Version 2
Ticket Booth Posters
Print Ad
Print Ad Resizes (3)
Online Ad
Online Ad Resizes (12)
Belt Line Banner
Billboard
Coaster Artwork
Bottleneck Hangers
Case Cards
T-shirt

Printing (to be handled by Vivanti through Matchbox)

\$70,000

Budget for all printing / production of all marketing collateral for the Events outlined in the Events creative deliverables. We will only bill for the actual cost of the printing.

- Beltline banner
- Event tickets
- Parking passes
- Event programs
- Flyers
- Kiosk displays
- Ticket Booth Posters
- Inserts
- Ticket booth signs

Copywriting (to be handled by Vivanti) \$23,820
 Development of a tagline / theme for each Event along with editing services for all collateral pieces outlined in the Events creative deliverables. Price includes original content development with two rounds of revisions.

Miscellaneous Expenses \$1,600
 Small contingency for unexpected items not included in our project scope and for incidental reimbursed expenses.

II. ECONOMIC DEVELOPMENT

Total budget for economic development is not to exceed \$109,946 (this includes all hourly rate fees as described in Paragraph 3.a. above and all out-of-pocket expenses (plus any mark-up) as described in Paragraph 3.c. above). The scope of work Economic Development is limited to the items outlined below. **Any additional items to support Economic Development not included on this list requested by the Town of Addison will be considered Additional Work to be estimated separately unless the new item replaces another item of equal value.**

The fees and expenses below reflect the cost to concept, write, design and produce marketing collateral for the Town of Addison. *For each project, Vivanti will show and provide to Client a first round of two (2) creative concepts. If a design is not chosen in the first round, this fee includes one (1) additional round of creative, OR three (3) rounds of revisions to a selected design. Any additional rounds will be estimated separately.* Once a design direction is chosen, designs will move into production. Production includes making any final tweaks to the design, and prepping files to print. Vivanti, through Matchbox, will coordinate and oversee printing. The estimates below are based on an hourly estimate billed at \$135 an hour.

Economic Development creative deliverables (the dollar amounts identified are estimated not-to-exceed amounts, and include all fees, costs and expenses (e.g., the total fees, costs, and expenses (including all hourly rate fees as described in Paragraph 3.a. and all out-of-pocket expenses (plus any mark-up) as described in Paragraph 3.c.)_ for Photography, as set forth below, shall not exceed \$6,000):

Ad Development	
Create one new ad for the existing campaign with an airport focus	\$2,500
Create two new ads for the existing campaign (one airport and one TBD)	\$5,000
Photography for new ad(s):	\$6,000

Ad Re-sizing \$8,400
\$350 each, assume 24 for the year.

10' x 10' Tradeshow Booth Display \$2,270
Update all three panels of the booth to accommodate the new logo

Printing three new panels \$850

Update the table cloth \$635

Print two table cloths \$788

Media purchase, coordination and submission (to be handled by Vivanti through Tibbets Media) **\$80,000**

The scope of work includes:

- Developing media plan
- Purchasing media and trafficking creative to vendors and media channels in a timely fashion to meet campaign deadlines outlined in the marketing and media plan.
- Cost for all ad buys.
- Ensure the creative team is aware of media specifications and double check that materials are in the appropriate formats required by vendors / media outlets.

Project management **\$6,000**

Vivanti Group will invoice monthly for efforts to support the economic development marketing initiatives. Activities include the following:

- Recommendations / coordinating media plan.
- Track budget, schedule and list of deliverables to ensure timely completion, review and submission.

III. MARKETING CONSULTING **\$12,960**

Vivanti Group will invoice monthly for marketing strategy, project management and consulting services to the Town of Addison marketing department related to planning for upcoming projects and initiatives. This includes time for weekly project meetings, strategy and planning for upcoming projects and attending other special planning meetings. Additional hours required will be considered Additional Work and will be estimated and agreed to separately.

ADDITIONAL WORK

Vivanti Group (whether on its own or through Matchbox or Tibbets) will, as may be requested by Client from time to time, also support the marketing efforts of other Town of Addison departments and special projects. Additional Work includes work not included within the scope of The Work I. Special Event, II. Economic Development and III Marketing departments. It also includes all other Town of Addison projects.

Specific estimates for all Additional Work will be provided on a project by project basis after complete project scope is defined and prior to initiation of work. All estimates will be provided based on the Vivanti Group hourly rate of \$ 135 prior to 3/1/14 and \$150 after 3/1/14.

This work will be estimated by Vivanti and agreed to in writing and signed by both parties prior to project inception.

TEAM MEMBER RESPONSIBILITIES

Vivanti ensures that Work and Additional Work provided directly by Vivanti along Tibbets Media and Matchbox, are thoroughly coordinated from planning through implementation. Specific roles for each of Vivanti, Matchbox, and Tibbets Media, as determined by Vivanti, follow.

Vivanti Group

- Project management
- Marketing strategy
- Planning
- Writing / editing
- Reporting

- Creative services
- Art direction
- Production and printing oversight/management
- Photography / illustration

Matchbox

- Branding

Tibbets Media

- Media planning, buys, scheduling and placement

PROCESS

Vivanti Group is available to begin the Work immediately. The project steps are outlined below as a way to imagine the proposed approach. A final project timeline for each item will be developed based on client deadlines.

Fork & Cork Campaign

Concept development / presentation

Revisions / Client approval

Creative implementation development / revisions / approval / execution

Track and report results

Modify plan based on results

Economic Development Campaign

Concept development / presentation

Revisions / Client approval

Creative implementation development / revisions / approval / execution

Track and report results

Modify plan based on results

Summer Series Campaign

Concept development / presentation

Revisions / Client approval

Creative implementation development / revisions / approval / execution

Track and report results

Modify plan based on results

Kaboom Town! Campaign

Concept development / presentation

Revisions / Client approval

Creative implementation development / revisions / approval / execution

Track and report results

Modify plan based on results

Oktoberfest Campaign

Concept development / presentation

Revisions / Client approval

Creative implementation development / revisions / approval / execution

Track and report results

Modify plan based on results