

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING AN AGREEMENT FOR SPECIAL EVENTS SPONSORSHIP DEVELOPMENT, SALES AND ACTIVATION SERVICES BETWEEN THE TOWN OF ADDISON AND MILE ZERO, INC., AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT, AND PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

SECTION 1. The Services Agreement for Advertising Services between the Town of Addison and Mile Zero, Inc. for Special Events sponsorship development, sales and activation services, a copy of which is attached to this Resolution as **Exhibit A**, is hereby approved. The City Manager is hereby authorized to execute the agreement.

SECTION 2. This Resolution shall take effect from and after its date of adoption.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this the 10th day of September, 2019.

TOWN OF ADDISON, TEXAS

Joe Chow, Mayor

ATTEST:

APPROVED AS TO FORM:

Irma Parker, City Secretary

Brenda N. McDonald, City Attorney

EXHIBIT A

SERVICES AGREEMENT

STATE OF TEXAS §
COUNTY OF DALLAS §

This Services Agreement (“Agreement”) is made and entered into this 10th day of September, 2019, by and between the Town of Addison, Texas (the “City”) and Mile Zero, Inc., an Illinois corporation (“Mile Zero”) (the City and Mile Zero are sometimes referred to herein together as the “Parties” and individually as a “Party”).

Recitals:

WHEREAS, each year the City conducts and hosts various special events (together, the “Events” and individually an “Event”), and seeks to market and obtain sponsors for the Events (each a “Sponsor”); and

WHEREAS, to facilitate its promotional and sponsorship sales efforts, the City sought proposals from businesses to provide such services; and

WHEREAS, Mile Zero is an experienced sponsorship development, sales and activation company; and

WHEREAS, the City has selected Mile Zero to provide sponsorship development, sales and activation services as described herein, and Mile Zero desires to provide such services for the City.

NOW, THEREFORE, for and in consideration of the above and foregoing premises, the terms and conditions contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and Mile Zero do hereby contract and agree as follows:

1. **Incorporation of Recitals.** The above and foregoing recitals and true and correct and are incorporated herein and made a part hereof.

2. **Term.** Subject to the termination provisions and all other terms and conditions of this Agreement, this Agreement shall be effective as of October 1, 2019 (the “Effective Date”) and shall continue in effect for a period of two (2) years, so that it shall expire on September 30, 2021 (the “Initial Term”).

The City may at its option (i) renew this Agreement for an additional two (2) year term (i.e., commencing October 1, 2021 and ending September 30, 2023) (the “First Renewal Term”) by giving to Mile Zero notice of its intent to renew this Agreement (the “Renewal Notice”) not later than thirty (30) days prior to the end of the Initial Term, and (ii) further renew this Agreement for an additional two (2) year term (i.e., commencing October 1, 2023 and ending September 30, 2025) (the “Second Renewal Term”) by giving to Mile Zero a Renewal Notice not later than 30 days prior to the end of the First Renewal Term. For purposes of this Agreement, the First Renewal Term and the Second Renewal Term are each referred to as a “Renewal Term.” The parties agree that adequate consideration for each such right to renew has been given and received in connection with this Agreement. Each Renewal Term shall be on the same terms and conditions as set forth in this Agreement.

Each consecutive twelve (12) month period during the Initial Term and any Renewal Term, beginning on October 1 and ending on September 30 of the following year, is referred to herein as an “Agreement Year.”

This Agreement and the City's obligations to make any payments hereunder are subject to the annual budgeting and appropriation of revenues by the City to make such payments, in the City's sole and absolute discretion. If the City elects not to budget or to appropriate revenues to make any payment set forth in this Agreement for any fiscal year of the City (the City's fiscal year being the 12 month period from October 1 through September 30), this Agreement shall terminate at the end of September 30 of the City's fiscal year for which funds have been budgeted and appropriated by the City to make the payments set forth in this Agreement. In no case shall Mile Zero be expected or required to provide any services for any time period for which the City has not budgeted and appropriated funds.

3. **Events.** As of the Effective Date the events for which Mile Zero will perform services hereunder are and include Taste Addison, Addison Kaboom Town!®, Addison Oktoberfest, and Addison After Dark (together, the "Events"). In addition, Mile Zero and City agree to extend services to undefined, but mutually agreed upon, sellable assets.

Notwithstanding any other provision of this Agreement, nothing in this Agreement shall be construed to require the City to hold and/or conduct the Events or any of them, and the City may elect, in its sole and absolute discretion, not to hold and/or conduct any or all of the Events.

4. **Mile Zero Services.** During the Initial Term and any Renewal Term, Mile Zero shall provide the following services (the "Services") to the City and to the City's reasonable satisfaction in connection with each of the Events:

- a. Execute a detailed analysis of available event assets and provide recommended valuations;
- b. Development of sponsorship packages, both standard and customized, using available assets identified and approved by the City;
- c. Solicitation of cash sponsorships;
- d. Negotiation of cash sponsorship agreements; provided, that Mile Zero is not responsible for providing legal counsel to the City, and the City shall bear sole responsibility for having its attorneys review and approve any sponsorship agreements prior to execution;
- e. Implementation and management of cash sponsorship programs;
- f. On-site management of sponsor load-in, operations and load-out for all Events;
- g. Development and provision of monthly progress reports and post-event sponsorship reports no later than twenty (20) days following each Event; and
- h. Other related sponsorship and promotional services as the City and Mile Zero may mutually agree upon.

With regard to the Services, the City will reasonably provide Mile Zero with support and assistance as may be reasonably necessary for the performance by Mile Zero of its Services hereunder. For example, Mile Zero may request that City personnel attend meetings within 25 miles of Addison, Texas, or participate in conference calls, provide information, photos and graphics for sponsorship packages, and/or provide Mile Zero with contact information of sponsor targets that the City has had dealings with in the past; provided, however, that notwithstanding the foregoing, the City shall not be required to provide other support or assistance if the City (or the appropriate City personnel) reasonably determines that providing

any of such support or assistance will require the City to expend any additional funds whatsoever or that it will require an unreasonable use or commitment of the City's personnel or other resources.

The Services are inclusive of cash sponsorships only; Mile Zero is not to solicit or manage value-in-kind/trade sponsorships or media partnerships for the Events. Solicitation, negotiation, implementation and management of value-in-kind/trade sponsorships and/or media partnerships will be managed by City personnel. The approval of all sponsorships, cash, value-in-kind/trade and media, shall be within the sole discretion of the City; provided, however, both Parties agree to maintain regular communication regarding sponsorship sales, and will make a good faith and reasonable effort to avoid or mitigate potential conflicts between sponsorships obtained by the City and those obtained by Mile Zero.

5. **Exclusivity.** The Services to be performed by Mile Zero hereunder are exclusive in nature, and during the Initial Term (and any Renewal Term) of this Agreement, the City shall not grant any other person or company the right to perform any of the Services. In the event the City or any of its officers or employees shall receive a call or otherwise obtain a lead regarding a prospective new or returning cash sponsor, the City will provide the information received by the City regarding the same to Mile Zero within a reasonable time after receiving the same. The City agrees to list Mile Zero as the sponsorship sales agency of record on the website of all Events. Mile Zero may represent and perform services for such additional clients, persons or companies as Mile Zero, in its sole discretion, chooses, provided, however, that such services shall not conflict with the Services being provided pursuant to this Agreement, and, without limiting the foregoing, Mile Zero shall not perform or provide such services for any person, business or entity in connection with, directly or indirectly, any of the Events.

6. **Compensation.** As compensation for the Services to be performed by Mile Zero pursuant to this Agreement, the City shall pay Mile Zero as follows:

a. *Monthly Retainer.* A monthly retainer in the amount of Four Thousand One Hundred Sixty Six Dollars and Sixty Six Cents (\$4,166.66) (the "Retainer"), payable on the tenth (10th) day of the month. The Monthly Retainer will pay for and cover internal Mile Zero labor in performance of the Services, including, but not limited to, meetings with the City and prospective Sponsors, analysis and valuation of event assets, development of a sponsorship sales plan, development of sponsorship presentations and recap materials, sponsorship negotiation, and ongoing sponsor communications.

b. *Sponsorship Sales Commission.*

i. For sponsorship agreements for Events (i) which are secured directly (whether new or renewal) by Mile Zero during the Initial Term (and any Renewal Term), (ii) approved by the City (provided the proposed Sponsor meets all of the City's standards and requirements, such approval not to be unreasonably withheld), (iii) for which a written sponsorship agreement is entered into between the City and the Sponsor, and (iv) which agreement provides for the Sponsor to pay to the City cash for such sponsorship (each such sponsorship being a "Cash Sponsorship" and such agreements being "Cash Sponsorship Agreements"), the City shall pay to Mile Zero a commission of ten percent (10%) of the cumulative amount of cash actually received by the City from Sponsors during each Agreement Year, all such amounts to be computed and paid no later than 30 days after City's receipt of each Cash Sponsorship Payment.

ii. If at any time prior to the expiration or earlier termination of this Agreement, the City has entered into any Cash Sponsorship Agreement(s) which extends beyond the date of expiration or early termination of this Agreement (or if a Cash Sponsorship

Agreement is in the process of being negotiated as of the such date, notwithstanding the fact that a Cash Sponsorship Agreement may not be signed until after such date, or that payments will be made after such date), the City shall, following such expiration or earlier termination, pay to Mile Zero a percentage of cash received by the City pursuant to the Cash Sponsorship Agreement(s) in accordance with the terms in subsection (b)(i) of this Section. This provision shall survive the expiration or earlier termination of this Agreement.

iii. In any event and notwithstanding any other provision of this Agreement, Mile Zero shall not be entitled to any such payment unless and until the City has actually received cash from a Sponsor pursuant to a written agreement between the City and the Sponsor.

iv. If at any time prior to the Initial Term of this Agreement, the City entered into any Cash Sponsorship Agreement(s) which extend into the Initial Term (and any Renewal Term) of this Agreement, the City shall pay to the sponsorship sales agency responsible for securing such Cash Sponsorship Agreement a commission in accordance with the terms of the contractual agreement between the City and said sponsorship sales agency. Mile Zero will not receive a commission on the cash received by the City from such Sponsors during the term of the Cash Sponsorship Agreement(s).

c. *Travel Expenses.* The City will reimburse Mile Zero for travel expenses mutually agreed upon as being necessary in performance of the Services, including on-site management of sponsor load-in, operations and load-out for all Events. Mile Zero will provide a travel expense estimate to the City at least six (6) weeks prior to each Event. Upon receiving approval from the City, Mile Zero will work with the City to book travel and lodging.

i. Mile Zero will secure airfare and hotel transfer, and will be reimbursed for such expenses in full by City. If driving personal vehicles, Mile Zero will track mileage for travel from the Mile Zero offices in Rolling Meadows, Illinois to the hotel in Addison, Texas and will be reimbursed for roundtrip mileage at the current Privately Owned Vehicle Mileage Reimbursement Rate set by the U.S. General Services Administration (GSA).

ii. Lodging may be provided directly by the City at a mutually agreed upon establishment within Addison city limits. If lodging is not provided directly by the City, Mile Zero will secure lodging at an establishment within Addison city limits and will be reimbursed for this expense at a nightly rate not to exceed the current U.S. GSA Per Diem Lodging rate for Dallas, Texas per room.

iii. Meals and incidental expenses will be reimbursed at a rate not to exceed the current U.S. GSA Per Diem Meals & Incidentals rate for Dallas, Texas per person.

iv. An invoice for travel expense reimbursement must be submitted to the City by Mile Zero, including copies of receipts for airfare and/or lodging, no later than thirty (30) days following each Event.

v. The City shall pay Mile Zero's submitted travel expense reimbursement invoice no later than thirty (30) days following its receipt.

7. **Mile Zero Representations.** Mile Zero represents that:
- a. Mile Zero has the skills, qualifications, expertise, experience and financial capability necessary to perform 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;
 - b. The undersigned officer of Mile Zero has the necessary authority to execute this Agreement on behalf of Mile Zero; and
 - c. The Services will be provided in a professional and timely manner, consistent with the commercially accepted best practices and standards that are in use in Mile Zero's line of business as of the time such Services are provided.
8. **City Representations.** The City represents that:
- a. The City has the right, power and authority to enter into this Agreement, to grant the rights granted herein, and to perform the duties and obligations described herein;
 - b. The City shall, if it elects (in its sole discretion) to conduct the Events or any of them, be fully responsible for and shall acquire, at its sole cost and expense, all licenses, permits, authorizations and insurance which may be required under federal, state or local law or regulations in order to legally conduct the Events, and the Events shall comply with all applicable federal, state or local statutes, ordinances, laws, rules, standards, codes, and regulations; and
 - c. The undersigned officer of the City has the necessary authority to execute this Agreement on behalf of the City.
9. **Termination.**
- a. This Agreement may be terminated without cause (that is, for any reason or for no reason whatsoever) by either party upon the giving of at least thirty (30) days' prior written notice of such termination to the other party. In the event either party gives such notice, this Agreement shall be deemed terminated upon the later of (i) the date set forth in the notice or (ii) the expiration of the 30th day following the date the said notice is given to the other party (the "Termination Date").
 - b. Either party (the "non-breaching party") shall have the right to terminate this Agreement if the other party hereto (the "breaching party") fails to reasonably perform any material duty, responsibility, or obligation of that party set forth in this Agreement and does not cure such failure within fifteen (15) days after it receives written notice of such failure from the non-breaching party; but if the failure cannot with diligence be cured within said fifteen (15) day period and if within such fifteen (15) 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 thirty (30) days following the receipt of said notice.

c. This Agreement shall terminate if the City elects, in its sole discretion, not to budget and appropriate revenues to make payments under this Agreement as described in Section 2, above.

10. **Relationship of Parties.** Mile Zero is and shall be during the entire term of the Agreement an independent contractor, and nothing in this Agreement is intended 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 professional manner in which Mile Zero performs the Services which are the subject matter of the Agreement; provided always however that the Services to be provided by Mile Zero shall be provided in a manner consistent with all applicable federal, state, and local statutes, ordinances, codes, standards, regulations, and laws.

11. **Indemnification.** See attached **Exhibit A.**

12. **No Israel Boycott.** Pursuant to Texas Government Code Chapter 2270, Mile Zero's execution of this Agreement shall serve as verification that Mile Zero does not presently boycott Israel and will not boycott Israel during the Initial Term (and any Renewal Term) of this Agreement.

13. **Records.** Mile Zero shall keep complete and accurate records for 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. Mile Zero shall assure the confidentiality of any records that are required by law to be so maintained. All data, studies, information, reports, sponsorship agreements and other materials and items (whether kept electronically, in writing, or otherwise) prepared by or for Mile Zero in connection with or related to this Agreement and the Services provided by Mile Zero hereunder are the sole property of the City; upon the expiration or termination of this Agreement, all such finished or unfinished data, studies, information, reports, sponsorship agreements and other materials and items shall be promptly delivered by Mile Zero to the City, and this obligation shall survive such expiration or termination.

14. **Notice.** For purposes of this Agreement, notices and all other communications provided for herein shall be in writing, addressed as provided hereinafter to the party to whom the notice or request is given, and shall be either (i) delivered personally, (ii) sent by United States certified mail, postage prepaid, return receipt requested, (iii) placed in the custody of a nationally recognized carrier to be delivered overnight. Notice shall be deemed given: when received if delivered personally; seventy-two (72) hours after deposit if sent by mail; and twenty-four (24) hours after deposit if sent by nationally recognized carrier. Addresses for notice are as follows:

To the City:

Town of Addison
Attn: Jasmine Lee, Director of Special Events
5300 Belt Line Road
Dallas, Texas 75254

To Mile Zero:

Mile Zero
Attn: Mike Brant
2805 Grouse Lane
Rolling Meadows, IL 60008

15. **Confidentiality.** No reports, information, documents, or other materials given to or prepared by Mile Zero under this Agreement which the City requests in writing to be kept confidential, shall be made available to any individual, business, or organization by Mile Zero, its employees, representatives, or agents, without the prior written approval of the City.

16. **Assignment.** Inasmuch as this Agreement is intended to secure the specialized services of Mile Zero, Mile Zero has no authority or power to and may not assign, transfer, delegate, subcontract or otherwise convey any interest herein without the prior written consent of the City, and any such assignment, transfer, delegation, subcontract or other conveyance without the City's prior written consent shall be considered null and void.

17. **Rights and Remedies Cumulative; Non-Waiver.** 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 the parties may have by law, statute, ordinance, or otherwise. The failure by either party to exercise any right, power, or option given to it by this Agreement, or to insist upon strict compliance with the terms of this Agreement, shall not constitute a waiver of the terms and conditions of this Agreement with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. Any rights and remedies either party may have with respect to the other arising out of this Agreement shall survive the cancellation, expiration or termination of this Agreement.

18. **Enforceability.** If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

19. **No Third-Party Beneficiaries.** This Agreement and all of its terms and provisions are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

20. **Entire Agreement and Modification.** This Agreement supersedes all previous agreements and communications between the parties and constitutes the entire understanding of the parties hereto. No changes, amendments or alterations to this Agreement shall be effective unless in writing and signed by both parties.

21. **Jurisdiction.** The validity, enforceability and interpretation of any of the provisions of this Agreement shall be determined and governed by the applicable laws and regulations of the State of Texas. The parties hereto agree that appropriate jurisdiction and venue in connection with this Agreement and the subject matter hereof shall be in the District Courts of Dallas County, Texas.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date first written above.

TOWN OF ADDISON, TEXAS

By: _____
Wesley Pierson, City Manager

MILE ZERO, INC.

By:  _____
Mike Brant, President

EXHIBIT A

Town of Addison

Indemnification Agreement

Contractor's Indemnity Obligation. Contractor covenants, agrees to, and shall DEFEND (with counsel reasonably acceptable to Owner), INDEMNIFY, AND HOLD HARMLESS Owner, its past, present and future elected and appointed officials, and its past, present and future officers, employees, representatives, and volunteers, individually or collectively, in both their official and private capacities (collectively, the "**Owner Persons**") and each being an "**Owner Person**"), from and against any and all claims, liabilities, judgments, lawsuits, demands, harm, losses, damages, proceedings, suits, actions, causes of action, liens, fees (including attorney's fees), fines, penalties, expenses, or costs, of any kind and nature whatsoever, made upon or incurred by Owner and/or Owner Person, whether directly or indirectly, (the "**Claims**"), that arise out of, result from, or relate to: (i) the services to be provided by Contractor pursuant to this Agreement, (ii) any representations and/or warranties by Contractor under this Agreement, (iii) any personal injuries (including but not limited to death) to any Contractor Persons (as hereinafter defined) and any third persons or parties, and/or (iv) any act or omission under, in performance of, or in connection with this Agreement by Contractor 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 Contractor is legally responsible, and their respective owners, directors, officers, directors, officers, managers, partners, employees, agents, contractors, subcontractors, invitees, patrons, guests, customers, licensees, sublicensees (collectively, "**Contractor 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 OWNER OR ANY OTHER OWNER PERSON, OR CONDUCT BY OWNER OR ANY OTHER OWNER PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.

Contractor shall promptly advise Owner in writing of any claim or demand against any Owner Person related to or arising out of Contractor's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Contractor's sole cost and expense. The Owner Persons shall have the right, at the Owner Persons' option and own expense, to participate in such defense without relieving Contractor of any of its obligations hereunder. This defense, indemnity, and hold harmless provision shall survive the termination or expiration of this Agreement.

The provisions in the foregoing defense, indemnity and hold harmless are severable, and if any portion, sentence, phrase, clause or word included therein shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, void, or unenforceable in any respect, such invalidity, illegality, voidness, or unenforceability shall not affect any other provision thereof, and this defense, indemnity and hold harmless provision shall be considered as if such invalid, illegal, void, or unenforceable provision had never been contained in this Agreement. **In that regard, if the capitalized language included in the foregoing indemnity is so determined to be void or unenforceable, the parties agree that:**

(i) the foregoing defense, indemnity, and hold harmless obligation of Contractor shall be to the extent Claims are caused by, arise out of, or result from, in whole or in part, any act or omission of Contractor or any Contractor Persons; and

(ii) notwithstanding the provisions of the foregoing subparagraph (i), to the fullest extent permitted by law, Contractor shall INDEMNIFY, HOLD HARMLESS, and DEFEND Owner and Owner Persons from and against all Claims arising out of or resulting from bodily injury to, or sickness, disease or death of, any employee, agent or representative of Contractor or any of its subcontractors, regardless of whether such Claims are caused, or are alleged to be caused, in whole or in part, by the negligence, or any act or omission, of Owner or any Owner Persons, it being the expressed intent of Owner and Contractor that IN SUCH EVENT THE CONTRACTOR'S INDEMNITY, HOLD HARMLESS, AND DEFENSE OBLIGATION SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF OWNER OR ANY OTHER OWNER PERSON, OR CONDUCT BY OWNER OR ANY OTHER OWNER PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND. The indemnity obligation under this subparagraph (ii) shall not be limited by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor under workers compensation acts, disability benefit acts, or other employee benefit acts.

I understand that the indemnification provisions are required of all Town of Addison Contracts. I have read the provisions and agree to the terms of these provisions.

Project/Bid#: RFP 19-211

Company Name: Mile Zero, Inc.

Signature: 

Date: 7/10/19