

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A PROFESSIONAL CONSULTING AGREEMENT BETWEEN THE TOWN AND SUNWEST COMMUNICATIONS, INC. FOR PUBLIC RELATIONS CONSULTING SERVICES IN THE AMOUNT OF \$90,000, 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 City Council for the Town of Addison hereby approves the Professional Consulting Agreement between the Town of Addison and Sunwest Communications, Inc. for public relations consulting services in the amount of \$90,000 (“Agreement”), a copy of which is attached to this Resolution as **Exhibit A.**

SECTION 2. The City Manager is hereby authorized to execute the Agreement.

SECTION 3. This Resolution shall take effect from and after its date of adoption.

DULY RESOLVED AND ADOPTED by the City Council of the Town of Addison, Texas, on this the **12th** day of **OCTOBER 2021.**

TOWN OF ADDISON, TEXAS

Joe Chow, Mayor

ATTEST:

APPROVED AS TO FORM:

Irma Parker, City Secretary

Whitt Wyatt, City Attorney

PROFESSIONAL CONSULTING AGREEMENT
Sunwest Communications Consulting

This Professional Consulting Agreement (“Agreement”) is made by and between the Town of Addison (“Town”), and Sunwest Communications, Inc. (“Professional”) (each a “Party” and collectively the “Parties”), acting by and through their respective authorized representatives.

RECITALS

WHEREAS, Town desires Professional to perform certain public relations and strategic corporate communications consulting services set forth in the Scope of Services; and

WHEREAS, Professional has expressed a willingness to perform said consulting services, hereinafter referred to only as “Services”, specified in said Scope of Services, and enumerated under Section 1, of this Agreement, and Professional represents it has the qualifications, experience, and ability to properly perform the Services;

NOW, THEREFORE, for and in consideration of the covenants and promises made one to the other herein, Town and Professional agree as follows:

Section 1. Scope of Services.

Professional agrees to provide to Town the Services as set forth in the Scope of Services attached hereto as Exhibit “A” and incorporated herein by reference (the “Scope of Services”).

Section 2. Term of Agreement.

The term of this Agreement shall begin on the last date of execution hereof (the “Effective Date”) and shall continue for one (1) year (“Initial Term”), unless sooner terminated as provided in Section 8, below. Following the Initial Term, this Agreement may be renewed at the Town’s sole option and subsequent mutual agreement of both parties, for up to four (4) additional one (1) year terms (“Renewal Term”). Town shall give Contractor notice of its intent to renew no later than thirty (30) days prior to the end of the existing term. The terms, conditions, and provisions of this Agreement shall apply to each Renewal Term except as the parties may otherwise agree in writing.

Section 3. Professional Obligations.

A. Professional shall devote such time as reasonably necessary for the satisfactory performance of the work under this Agreement.

B. Professional shall furnish and pay for all labor, tools, materials, equipment, supplies, and management necessary to perform all Services set forth in the Scope of Services. Printing, mailing, graphic design, travel, delivery, and any other out-of-pocket expenses incurred on behalf of the Town may be reimbursable so long as the expenses are approved in advance by the Town and prior to incurring such expense.

Section 4. Payment.

A. Town agrees to pay Professional a services retainer in the amount of \$7,500 per month for all Services outlined in the attached Scope of Services, subject to additions or deletions for changes or extras as agreed upon in writing. All payments to Professional by Town shall be based on detailed monthly invoices submitted by Professional for work performed and accepted by Town, less any previous payments. As a condition to reimbursement for expenses beyond the Scope of Services, Professional shall be required to submit to the Town reasonable evidence that the amount involved was both reasonable and necessary to the Services provided under this Agreement. Payment will be due within 30 days of the Town's receipt of an approved invoice.

B. Professional recognizes each Renewal Term is subject to Town Council approval. If Town Council does not approve the appropriation of funds, the Agreement shall terminate at the end of the fiscal year for which the funds were appropriated, and the parties shall have no further obligations hereunder.

C. Town reserves the right to delay, without penalty, any payment to Professional when, in the opinion of Town, Professional has not made satisfactory progress on the Services as described in the Scope of Services.

D. Town may deduct from any amounts due or to become due to Professional any sum or sums owing by Professional to Town. In the event of any breach by Professional of any provision or obligation of this Agreement, or in the event of the assertion by other parties of any claim or lien against Town, or Town's premises, arising out of Professional's performance of this Agreement, Town shall have the right to retain out of any payments due or to become due to Professional an amount sufficient to completely protect Town from any and all loss, damage or expense therefrom, until the breach, claim or lien has been satisfactorily remedied or adjusted by Professional.

Section 5. Responsibilities.

A. Professional shall be responsible for the professional quality and sufficiency of the Services furnished by Professional under this Agreement. Professional shall, without additional compensation, correct or revise any errors or deficiencies in the Services as requested by the Town.

B. Neither Town's review, approval/acceptance of, nor payment for any of the Services required under this Agreement, shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Professional shall be and remain liable to Town in accordance with applicable law for all damages to Town caused by Professional's negligent performance of any of the Services furnished under this Agreement.

C. The rights and remedies of Town under this Agreement are as provided by law.

Section 6. Time for Performance.

A. Professional shall perform all Services as provided for under this Agreement in a proper, efficient, timely, and professional manner in accordance with Town's requirements.

Section 7. Documents.

A. All media and publicity plans, media materials, influencer campaigns, social media campaigns, media monitoring, documentation, and analysis, event recaps, monthly activity reports, and other documents, including those in electronic form, prepared by Professional and its consultants, subcontractors, agents, representatives, and/or employees in connection with this Agreement (“Project Documents”) are intended for the use and benefit of Town. Professional and its consultants, subcontractors, agents, representatives, and/or employees shall be deemed the authors of their respective part of the Project Documents. Notwithstanding, upon payment by Town as required by this Agreement, Town shall own, have, keep and retain all rights, title and interest in and to all Project Documents, including all ownership, common law, statutory, and other reserved rights, including copyrights (except copyrights held by the Professional) in and to all Project Documents, whether in draft form or final form, which are produced at Town’s request and in furtherance of this Agreement. Town shall have full authority to authorize contractor(s), subcontractors, sub-subcontractors, Town consultants, and material or equipment suppliers to reproduce applicable portions of the Project Documents to and for use in their execution of the work or for any other purpose. All Project Documents prepared by Professional in connection with this Agreement are “works for hire” and shall be the property of Town upon payment of Professional as provided in this Agreement. Town shall have the right to publish, disclose, distribute and otherwise use Project Documents. Professional shall, upon completion of the Services and full payment for Professional’s Services by the Town, or earlier termination and appropriate compensation as provided by this Agreement, provide Town with reproductions of all materials, reports, and plans prepared by Professional pursuant to this Agreement in any format as requested by the Town.

B. The Town, through its official logo(s), shall be prominently recognized as a supporter of the Professional in all marketing materials produced or published by the Professional during the term hereof (including all print and digital marketing materials regardless of platform). The Professional shall notify the Town in writing of its intent to produce or publish any such marketing materials and provide the Town a reasonable opportunity to elect to have its logo(s) removed from the materials prior to publication. The Professional shall use the Town’s designated logo(s) in strict conformance with the Town’s currently adopted branding guidelines. The Town hereby grants the Professional a limited, non-exclusive license to use the Town’s logo solely for the foregoing purposes and the trade names, trademarks, service marks, logos, designs, identification, decals, artwork and other symbols and devises associated with the Town (“Town Marks”) shall at all times remain the sole and exclusive property of the Town. The Professional shall not license, sublicense, or use the Town Marks in any manner, other than as expressly permitted in this subsection (b), without the prior written approval of the Town.

C. Professional acknowledges that during the term of this Agreement, Professional may have access to, or may come into possession of, various confidential materials of the Town (“Confidential Information”). All material supplied to Professional by the Town shall be deemed

Confidential Information, whether it is marked as such. With respect to such Confidential Information, both parties agree to protect the Confidential Information in a commercially reasonable manner, use Confidential Information only to perform its obligations under this Agreement, and reproduce Confidential Information only as required to perform its obligations under this Agreement. Professional agrees to delete or destroy the Confidential Information upon conclusion of this Agreement, or if unable to do so because it is stored electronically, Professional agrees to maintain such in a confidential location and format and not use the Confidential Information for any matter other than as directed in writing by the Town.

D. Acceptance and approval of the Project Documents by Town shall not constitute nor be deemed a release of the responsibility and liability of Professional, its employees, associates, agents and consultants for the accuracy or competency of their documents and work; nor shall such approval be deemed to be an assumption of such responsibility by Town for any defect in the documents prepared by Professional, its employees, contractor, agents and consultants.

Section 8. Termination.

A. Town may suspend or terminate this Agreement for cause or without cause at any time by giving written notice to Professional. In the event suspension or termination is without cause, payment to Professional, in accordance with the terms of this Agreement, will be made on the basis of Services reasonably determined by Town to be satisfactorily performed to the date of suspension or termination. Such payment will be due upon delivery of all instruments of service to Town.

B. Should Town require a modification of this Agreement with Professional, and in the event Town and Professional fail to agree upon a modification to this Agreement, Town shall have the option of terminating this Agreement and Professional's Services hereunder at no additional cost other than the payment to Professional, in accordance with the terms of this Agreement, for the Services reasonably determined by Town to be properly performed by Professional prior to such termination date.

C. Termination for Force Majeure. No Party shall be deemed in default of this Agreement or, unless otherwise expressly provided therein, any Ancillary Agreement for any delay or failure to fulfill any obligation (other than a payment obligation) hereunder or thereunder so long as and to the extent to which any delay or failure in the fulfillment of such obligation is prevented, frustrated, hindered, or delayed as a consequence of circumstances of Force Majeure. In the event of any such excused delay, the time for performance of such obligations (other than a payment obligation) shall be extended for a period equal to the time lost by reason of the delay. A Party claiming the benefit of this provision shall, as soon as reasonably practicable after the occurrence of any such event, (a) provide written notice to the other Party of the nature and extent of any such Force Majeure condition; and (b) use commercially reasonable efforts to remove any such causes and resume performance under this Agreement and the Ancillary Agreements, as applicable, as soon as reasonably practicable.

Section 9. Indemnification.

TOWN SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE SERVICES OF PROFESSIONAL PURSUANT TO THIS AGREEMENT. PROFESSIONAL HEREBY WAIVES ALL CLAIMS AGAINST TOWN, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS “TOWN INDEMNITEES”) FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE TOWN INDEMNITEES. PROFESSIONAL AGREES TO INDEMNIFY AND SAVE HARMLESS THE TOWN INDEMNITEES FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, REASONABLE ATTORNEYS’ FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY TO THE EXTENT CAUSED BY THE NEGLIGENT PERFORMANCE OF SERVICES UNDER THIS AGREEMENT OR BY REASON OF ANY NEGLIGENT ACT OR OMISSION ON THE PART OF PROFESSIONAL, ITS OFFICERS, DIRECTORS, SERVANTS, EMPLOYEES, REPRESENTATIVES, CONSULTANTS, LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO NEGLIGENCE OF A TOWN INDEMNITEE, IN WHOLE OR IN PART, IN WHICH CASE PROFESSIONAL SHALL INDEMNIFY THE TOWN INDEMNITEE ONLY TO THE EXTENT OR PROPORTION OF NEGLIGENCE ATTRIBUTED TO PROFESSIONAL, ITS OFFICERS, AGENTS, OR EMPLOYEES AS DETERMINED BY A COURT OR OTHER FORUM OF COMPETENT JURISDICTION). PROFESSIONAL’S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY PROFESSIONAL UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

Section 10. Assignment.

Professional shall not assign or sublet this Agreement, or any part thereof, without the prior written consent of Town.

Section 11. Applicable Laws.

Professional shall comply with all Federal, State, County and Municipal laws, ordinances, regulations, safety orders, resolutions and building codes relating or applicable to Services to be performed under this Agreement. The laws of the State of Texas shall govern this Agreement; and venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

Section 12. Default of Professional.

In the event, Professional fails to comply or becomes disabled and unable to comply with the provisions of this Agreement as to the quality or character of the service or time of performance, and the failure is not corrected within ten (10) days after written notice by Town to Professional, Town may, at its sole discretion without prejudice to any other right or remedy:

A. Terminate this Agreement and be relieved of the payment of any further consideration to Professional except for all work determined by Town to be satisfactorily completed prior to termination. Payment for work satisfactorily completed shall be for actual costs, including reasonable salaries and travel expenses of Professional to and from meetings called by Town at which Professional is required to attend, but shall not include any loss of profit of Professional. In the event of such termination, Town may proceed to complete the Services in any manner deemed proper by Town, either by the use of its own forces or by re-subletting to others.

B. Town may, without terminating this Agreement or taking over the Services, furnish the necessary materials, equipment, supplies and/or help necessary to remedy the situation, at the expense of Professional.

Section 13. Adjustments in Services.

No claims for extra services, additional services or changes in the Services will be made by Professional without a written agreement with Town prior to the performance of such services.

Section 14. Execution becomes Effective.

This Agreement will be effective on the date when signed by authorized representatives of Professional and Town (“the Effective Date”).

Section 15. Agreement Amendments.

This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and there are no oral understandings, statements or stipulations bearing upon the meaning or effect of this Agreement which have not been incorporated herein. This Agreement may only be modified, amended, supplemented or waived by a written instrument executed by the Parties except as may be otherwise provided therein.

Section 16. Severability.

In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

Section 17. Independent Contractor.

It is understood and agreed by and between the Parties that Professional in satisfying the conditions of this Agreement, is acting independently, and that Town assumes no responsibility or liabilities to any third party in connection with Professional's actions. All Services to be performed by Professional pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of Town. Professional shall supervise the performance of its Services and shall be entitled to control the manner and means by which its Services are to be performed, subject to the terms of this Agreement. There is no intended third-party beneficiary to this Agreement.

Section 18. Notice.

Any notice required or permitted to be delivered hereunder may be sent by first class mail, overnight courier or by confirmed telefax or facsimile to the address specified below, or to such other party or address as either party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If to Town: Wes Pierson, Town Manager
Town of Addison
PO Box 9010
Addison, Texas 75001

With copy to: Whitt L. Wyatt
Town Attorney's Office
PO Box 9010
Addison, Texas 75001

If to Professional: Crayton W. Webb
Owner, Chief Executive Officer
Sunwest Communications, Inc.
4851 LBJ Freeway, Suite 1200
Dallas, Texas 75244

Section 19. Counterparts.

This Agreement may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the Parties.

Section 20. Exhibits.

The exhibits attached hereto are incorporated herein and made a part hereof for all purposes.

Section 21. Survival of Obligations.

Any of the representations and obligations of the Parties, as well as any rights and benefits of the Parties pertaining to a period of time following the termination of this Agreement shall survive termination.

Section 22. Authorization.

Each Party represents that it has full capacity and authority to grant all rights and assume all obligations granted and assumed under this Agreement.

Section 23. Successors and Assigns.

Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.

Section 24. Recitals.

The recitals to this Agreement are incorporated herein.

Section 25. Audits and Records.

Professional agrees that during the term hereof the Town and its representatives may, during normal business hours and as often as deemed necessary, inspect, audit, examine and reproduce any and all of Professional's records relating to the Services provided pursuant to this Agreement for a period of one year following the date of completion of Services as determined by the Town or date of termination if sooner.

Section 26. Conflicts of Interests.

Professional represents that no official or employee of the Town has any direct or indirect pecuniary interest in this Agreement.

Section 27. No Boycott Israel.

Pursuant to Texas Government Code Chapter 2270, Professional's execution of this Agreement shall serve as verification that Professional does not presently boycott Israel and will not boycott Israel during the term of this Agreement.

(Signature page to follow)

EXECUTED this the ____ day of _____, 2021.

TOWN OF ADDISON, TEXAS

By: _____
Wes Pierson, Town Manager

APPROVED AS TO FORM:

By: _____
Whitt L. Wyatt, Town Attorney

EXECUTED this the 5th day of October, 2021.

SUNWEST COMMUNICATIONS, INC.

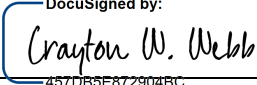
By:  _____
Crayton W. Webb
Owner/Chief Executive Officer

EXHIBIT "A"

**PUBLIC RELATIONS AND STRATEGIC CORPORATE COMMUNICATIONS
CONSULTING SERVICES**

SCOPE OF SERVICES

(attached)

SCOPE OF SERVICES

Special Events

- Active, on-going participation in the Special Events planning process, which includes attendance at all Special Events team meetings; continuous participation with all members of the special events team including advertising agency, sponsorship agency, and other key participants.
- Working with Special Events and Marketing Department staff to develop and execute specific features for each event to maximize overall publicity value and build attendance for special events
- Development of a comprehensive media and publicity plan and execution strategy for each event.
- Work with featured chefs, restaurants, performers, and other featured personalities to create maximum event media exposure.
- Creation and placement of all publicity including customized local, regional and national media targeting and list development; messaging and talking points creation; drafting of all media materials; targeted and comprehensive media placement; one-on-one outreach to media members to place stories; follow up, closing, coordination and confirmation of all stories for TV, print, on-line media interviews; on-site coordination and field production of all TV and key print interview.
- Coordination of all on-line media including the development and execution of influencer campaigns.
- Coordinate with the Special Events and Marketing teams to develop and plan a comprehensive Special Events social media campaign as a part of the Visit Addison social media platforms.
- Media monitoring, documentation and analysis of all media exposure obtained for each event including calculations of impressions and assignment of media dollar values, creation of a summary recap for each event.
- Participation in the post-analysis of each event to determine steps to be made to improve the event in future years.
- Preparation and distribution of a monthly activity report to the Marketing directors.
- Work with the Economic Development and Tourism Department as requested to assist with tourism-focused media pitches, blog writing, and other publicity efforts.

*Unplanned work or time that exceeds the project scope of work as described herein, including an ongoing reputational or communications crisis matter creative services work, or tourism marketing will be billed at Sunwest's established hourly rate of \$160 per hour as agreed to prior to any performance of such work.