

STATE OF TEXAS §
§
COUNTY OF DALLAS § PROFESSIONAL SERVICES AGREEMENT FOR
§ “LOVE THE BRANCH” MARKETING CAMPAIGN

This agreement (“Agreement”) is made by and between the City of Farmers Branch, Texas (“City”) and Miller Ad Agency, a Texas firm (the “Professional”) acting by and through their respective authorized representatives.

RECITALS:

WHEREAS, the City desires to engage the services of Professional as an independent contractor and not as an employee to develop and implement a “Love the Branch” seven (7) month radio and internet marketing campaign for the City of Farmers Branch, Texas to be held from March, 2013 through September, 2013, in accordance with the Scope of Services set forth in Exhibit “A” (hereinafter referred to as the “Scope of Services”) on the terms and conditions provided in this Agreement; and

WHEREAS, the Professional desires to render professional services for the City on the terms and conditions provided in this Agreement;

NOW THEREFORE, in exchange for the mutual covenants set forth herein and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

Article I
Term

1.1 This Agreement shall commence on the last date of execution hereof (the “Effective Date”) and continue for a period of one (1) year, unless sooner terminated as provided herein (the “Term”).

1.2 Either party may terminate this Agreement by giving thirty (30) days prior written notice to the other party. In the event of such termination the Professional shall deliver to City all finished and unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by the Professional in connection with this Agreement. Professional shall be entitled to compensation for any services completed to the reasonable satisfaction of the City in accordance with this Agreement prior to such termination.

Article II Scope of Services

2.1 The Professional shall perform the professional services in connection with the Project as set forth in the Scope of Services.

2.2 The City shall, prior to commencement of services, provide the Professional with the information set forth in the Scope of Services, if any.

2.3 The parties acknowledge and agree that any and all opinions provided by the Professional in connection with the Scope of Services represent the professional judgment of the Professional, in accordance with the professional standard of care applicable by law to the services performed hereunder.

2.4 Upon payment of all amounts due Professional hereunder, all materials and reports prepared by the Professional in connection with this Agreement shall become the property of the City. The City shall have the right to publish, disclose, distribute and otherwise use such materials and reports only for those purposes for which they were intended. Subject to the foregoing, Professional shall upon completion of the services, or earlier termination, provide the City with reproductions of all drawings, materials, specifications, reports, maps, and exhibits prepared by Professional pursuant to the Scope of Services, and in electronic format as requested by the City.

Article III Schedule of Work

The Professional agrees to commence services upon the Effective Date and to complete the required services diligently except for delays beyond the reasonable control of the Professional.

Article IV Compensation and Method of Payment

Professional will be compensated as set forth in the Scope of Services.

Article V Devotion of Time; Personnel; and Equipment

5.1 The Professional shall devote such time as reasonably necessary for the satisfactory performance of the under this Agreement. Should the City require additional services not included under this Agreement, the Professional shall make reasonable effort to provide such additional services within the time schedule without decreasing the effectiveness of the performance of services required under this Agreement, and shall be compensated for such additional services on a time and materials basis, in accordance with Professional's standard hourly rate schedule, or as otherwise agreed between the parties.

5.2 To the extent reasonably necessary for the Professional to perform the services under this Agreement, the Professional shall be authorized to engage the services of any agents, assistants, persons, or corporations that the Professional may deem proper to aid or assist in the performance of the services under this Agreement. The cost of such personnel and assistance shall be included as part of the total compensation to be paid Professional hereunder, and shall not otherwise be reimbursed by the City unless provided differently herein.

5.3 The Professional shall furnish the facilities, equipment and personnel necessary to perform the services required under this Agreement unless otherwise provided herein.

Article VI Miscellaneous

6.1 Entire Agreement. This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings written or oral agreements between the parties with respect to this subject matter.

6.2 Assignment. The Professional may not assign this Agreement without the prior written consent of City. In the event of an assignment by the Professional to which the City has consented, the assignee shall agree in writing with the City to personally assume, perform, and be bound by all the covenants, and obligations contained in this Agreement.

6.3 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.

6.4 Governing Law. The laws of the State of Texas shall govern this Agreement without regard to any conflict of law rules; 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.

6.5 Amendments. This Agreement may be amended by the mutual written agreement of the parties.

6.6 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.

6.7 Independent Contractor. It is understood and agreed by and between the parties that the Professional in satisfying the conditions of this Agreement, is acting independently, and that the City assumes no responsibility or liabilities to any third party in connection with these 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 the City. 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.

6.8 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 intended for City:

Attn: City Manager
City of Farmers Branch, Texas
13000 William Dodson Parkway
Farmers Branch, Texas 75234

With Copy to:

Peter G Smith
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

If intended for Professional:

Miller Ad Agency
ATTN: _____
2711 Valley View Lane, #101
Farmers Branch, Texas 75234

6.9 Insurance.

- (a) Professional shall during the Term maintain in full force and effect the following insurance: (1) policy of automobile liability insurance covering any vehicles owned and/or operated by Professional, its officers, agents, and employees, and used in the performance of this Agreement with a minimum of \$1 Million Dollars combined single limit.; and (2) statutory Worker's Compensation Insurance covering all employees involved in the provision of services under this Agreement.
- (b) All insurance shall be endorsed to contain the following provisions: (1) name the City, its officers, and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance; (2) provide for at least thirty (30) days prior written notice to the City for cancellation, non-

renewal, or material change of the insurance; (3) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance, except for Professional Liability Insurance.

- (c) All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service.
- (d) A certificate of insurance evidencing the required insurance and all endorsements shall be submitted to the City prior to commencement of services.

6.10 Indemnification. CITY 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 THE PROFESSIONAL PURSUANT TO THIS AGREEMENT. PROFESSIONAL HEREBY WAIVES ALL CLAIMS AGAINST CITY, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS "CITY") 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 CITY OR BREACH OF CITY'S OBLIGATIONS HEREUNDER. PROFESSIONAL AGREES TO INDEMNIFY AND SAVE HARMLESS CITY FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, 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 PROFESSIONAL'S 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 THE CITY, IN WHOLE OR IN PART, IN WHICH CASE PROFESSIONAL SHALL INDEMNIFY CITY ONLY TO THE EXTENT OR PROPORTION OF NEGLIGENCE ATTRIBUTED TO PROFESSIONAL AS DETERMINED BY A COURT OR OTHER FORUM OF COMPETENT JURISDICTION). THE 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.

6.11 Counterparts. This Agreement may be executed by the parties hereto 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 hereto.

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

[Signature Page to Follow]

EXECUTED on this _____ day of _____, 2013.

CITY OF FARMERS BRANCH, TEXAS

By: _____
Gary D. Greer, City Manager

Approved as to Form:

By: _____
Peter G. Smith, City Attorney

EXECUTED on this _____ day of _____, 2013.

MILLER AD AGENCY

By: _____
Name: _____
Title: _____

EXHIBIT “A”

SCOPE OF SERVICES

I.

General Description of Project

The City of Farmers Branch, Texas (“City”) desires to engage professional marketing services from Miller Ad Agency (“Professional”) to develop and implement a “Love the Branch” seven (7) month radio and internet marketing campaign for the City of Farmers Branch, Texas to be held from March, 2013 through September, 2013, which shall meet the following general goals and objectives:

1. Focus on attracting residents, home builders, businesses and visitors to the City;
2. Position the City as a desirable place to move;
3. Strategically target specific demographics;
4. Utilize non-traditional methods for government marketing; and
5. Maximize the City’s exposure at a reasonable cost.

II.

Scope of Work

Professional agrees to furnish the City with professional marketing services for the development and implementation of a “Love the Branch” radio and internet marketing campaign for the City of Farmers Branch, Texas, as follows:

A. Radio Media Buys

1. Radio Commercials produced by Professional and delivered to the City in February, 2013 to be aired on the following local radio station: KPLX-FM 99.5 “The Wolf”
2. Professional shall cause said Radio Commercials to be aired no less than twenty-five (25) times per month during a four month between April, 2013 and July, 2013.
 - a. Total cost shall be approximately \$7,000.00 per month from March, 2013 through September, 2013.

B. Monthly online Media Buy

1. Search Engine Marketing (SEM) Keyword focusing on placement of web banner produced by Professional and delivered to the City in November, 2013 on internet search engine advertisement sections when individuals type target keywords into search engine.

- b. Total cost shall be approximately \$925.00 per month from March, 2013 through September, 2013.
 - 2. Online Web Banners to focus on placement of web banner produced by Professional and delivered to the City in November, 2013 on particular internet websites to encourage individuals visiting said websites to link to the City's marketing website.
 - c. Total cost shall be approximately \$1,500.00 per month from March, 2013 through September, 2013.
- C. Web Site Updates (Page Builds).
 - 1. Professional shall perform monthly Page Builds on the City's marketing website to increase Search Engine Optimization (SEO).
 - a. "Page Builds" shall mean Professional's evaluation and revision of the City's marketing website to include specific keywords and phrases so that internet search engines may associate said keywords or phrases with the City's marketing website.
 - b. "Search Engine Optimization" shall mean optimizing the location and visibility of the City's marketing website in internet search engine results when specific keywords and phrases are used.
 - c. Professional shall perform four (4) Page Builds on the City's marketing website per month.
 - d. Total cost shall be approximately \$700 per month from March, 2013 through September, 2013.
- D. Professional shall obtain pre-approval from the City before any work herein is performed.

III. Compensation

In exchange for its complete performance of the Scope of Services hereunder to the City's satisfaction, City shall pay Professional a total fee not to exceed Fifty Thousand and No/Dollars (\$50,000.00). Professional shall invoice City on a monthly basis for work performed in the preceding thirty (30) days. Only work that has received pre-approval from the City shall be compensated. City shall pay the invoiced charges within thirty (30) days of receipt of invoice from Professional.