

City Council Agenda

SAGINAW CITY COUNCIL NOTICE OF MEETING

Meeting and/or Executive Session Agenda

6:00 PM - Tuesday, June 2, 2020

Saginaw City Hall Council Chambers

333 West McLeroy Blvd.

In accordance with Section 551.042 of the Texas Government Code, this agenda has been posted at Saginaw City Hall, and distributed to the appropriate news media within the required time frame. All meetings of the Saginaw City Council are open to the public. Public participation and written comments are invited on all open session business items.

The Mayor and City Council request that all cell phones and pagers be turned off or set to vibrate. Members of the audience are requested to step outside to respond to a page or to conduct a phone conversation.

The City Hall is wheelchair accessible and special parking is available on the east side of the building. If special accommodations are required please contact the City Secretary a minimum of 72 hours in advance at 817-232-4640.

(1) Call to Order--Todd Flippo, Mayor

Pledge of Allegiance to the United States

Pledge of Allegiance to the State of Texas

"Honor the Texas Flag; I pledge allegiance to thee, Texas, one State under God, one and indivisible"

(2) Invocation--Pastor Dennis Hudson, Saginaw Park Baptist Church

(3) Audience Participation--On the Video Screen

(4) Consent Agenda

- (a)** Action regarding Minutes, May 19, 2020--Janice England, City Secretary
- (b)** Action Regarding Acceptance of a Utility Easement from for Lot 1, Block 1, Saginaw Skilled Nursing Addition--Rick Trice, P.E., Director of Public Works
- (c)** Action regarding Lease Agreement for Property at 301 S. Saginaw Boulevard--Dolph Johnson, Asst. City Manager
- (d)** Action regarding Metropolitan Area EMS Authority (MAEMSA) Restated and Amended Interlocal Agreement--Doug Spears, Fire Chief

- (e) Action regarding Metropolitan Area EMS Authority (MAEMSA) Revised EMS Ordinance (Ordinance No. 2020-13)--Doug Spears, Fire Chief
 - (f) Action Regarding Resolution No. 2020-14, Authorizing Creation of Employee Benefit Trust and Designating Trustees--Melanie McManus, Director of Human Services
-
- (5) Presentation of Service Pin to Councilmember Farr--Todd Flippo, Mayor
 - (6) Election of Mayor Pro-Tem--Todd Flippo, Mayor
 - (7) Consideration and Action regarding a Chapter 380 Economic Development Incentive Agreement with Bright Living Saginaw Manager, L.L.C. associated with a proposed Senior Assisted Living Project--Gabe Reaume, City Manager
 - (8) Multi Year Financial Plan Update/Budget Update--Kim Quin, Finance Director
 - (9) **Executive Session--The City Council may take action on any Executive Session item posted.**

551.071. Texas Government Code.

Consultation with Attorney. The City Council may convene in executive session to conduct a private consultation with its attorney on any legally posted agenda item, when the City Council seeks the advice of its attorney about pending or contemplated litigation, a settlement offer, or on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the provisions of Chapter 551, including the following items:

- (a) Any Posted Item
 - (b) Willow Creek Station Playground Project
-
- (10) **Adjournment--Todd Flippo, Mayor**



City of Saginaw

Meeting Date: 6/2/2020

Staff Contact: Janice England
City Secretary

Agenda Items: (4)(a)

E-mail: jengland@saginawtx.org

Phone: 817-230-0327

SUBJECT:

Action regarding Minutes, May 19, 2020

BACKGROUND/DISCUSSION:

The minutes of the City Council Meeting held on May 19, 2020 are being presented for consideration.

FINANCIAL IMPACT:

N/A

RECOMMENDATION:

Staff recommends approval.

ATTACHMENTS:

Description

Minutes 5-19-2020

**CITY OF SAGINAW
MINUTES OF CITY COUNCIL MEETING,
PUBLIC HEARING, AND WORKSHOP
HELD AT THE SAGINAW CITY HALL
333 WEST MCLEROY BLVD.
MAY 19, 2020**

Present at the meeting:

Mayor	Todd Flippo
Mayor Pro-Tem	Valerie Tankersley
Councilmember	Charles Beasley
Councilmember	Charles Tucker
Councilmember	Cindy Bighorse
Councilmember	Mary Copeland
City Attorney	Bryn Meredith
City Manager	Gabe Reaume
Asst. City Manager	Dolph Johnson
Finance Director	Kim Quin
City Secretary	Janice England
Fire Chief	Doug Spears
Director of Public Works	Rick Trice, P.E.
Director of Comm. & Eco. Dev.	Keith Rinehart
Human Resource Director	Melanie McManus
Police Officer	Richard Taylor

Absent from the meeting:

Councilmember	Patrick Farr
City Engineer	Andrew Simonsen, P.E.
Police Chief	Lee Howell
Library Director	Ellen Ritchie

Visitors at the meeting:

Laura Gallagher	Maggie Gallagher
Jim Makens	Michael Clark
Dorothy Parks	

(1) Call to Order

Mayor Flippo called the meeting to order at 6:00 p.m. with a quorum present.

Pledge of Allegiance to the United States

Pledge of Allegiance to the State of Texas

(2) Invocation

Councilmember Bighorse gave the invocation.

(3) Audience Participation

This item was covered on the video screen.

(4) Consent Agenda

a. Action regarding Approval of Minutes, April 7, 2020

b. Action regarding Resolution No. 2020-12 to deny the DCRF Amendment proposed by Oncor

Summary: The City is an electric utility customer of Oncor Electric Delivery Company LLC. The Oncor Cities Steering Committee (OCSC) is a coalition of similarly situated cities served by Oncor that have joined together to efficiently and cost effectively review and respond to electric issues affecting rates charged in Oncor's Service area in matters before the Public Utility Commission (PUC) and the courts. On April 3rd Oncor filed an Application to Amend its Distribution Cost Recovery Factor (DCRF) with each of the cities retaining original jurisdiction and with the Commission in Docket No. 50734. In the filing, the Company sought to increase distribution rates by \$75.9 million annually (an approximately \$0.88 increase to the average residential customer's bill). The resolution authorizes the City to join with OCSC to evaluate the filing, determine whether the filing complies with law, and if lawful, to determine what further strategy, including settlement, to pursue. Resolution No. 2020-12 addresses this and denies the proposed amendment.

c. Action regarding an Individual Project Order with Kimley-Horn and Associates, Inc. for Design of Old Decatur Road and WJ Boaz Intersection

Summary: On February 18th the City Council conducted a "Mid-Term Capital Improvement Project Planning" Workshop to review projects that might be considered as short-term or interim projects leading up to the proposed 2020 Bond Election. The design of the Old Decatur Road and WJ Boaz intersection. At that meeting the Council directed staff to bring back a design contract for consideration. Contract expenditures will be funded in the interim through the Fund Balance with the intent of reimbursing the fund with a future funding mechanism. in the proposed Individual Project Order, Kimley-Horn and Associates, Inc. proposes to provide services for this design for a total fee of \$130,000.

d. Action regarding Resolution No. 2020-13 regarding the City of Saginaw's Participation in Tarrant County's Community Development Block Grant, Home Investment Partnership and Emergency Solutions Grant Consortium for the Three Program Year Period, Fiscal Year 2021 through Fiscal Year 2023

Summary: In order to continue to receive Community Development Block Grant (CDBG), HOME Investment Partnership and Emergency Solution Grants (ESG) Entitlement funding through 2023, Tarrant County must once again qualify as an Urban County under the CDBG, HOME and ESG programs. Entitlement counties, such as Tarrant County must re-qualify every three years for funding. Tarrant County is eligible to receive entitlement grant funds by having a combined population of 200,000 or more from unincorporated areas and participating municipalities. Resolution No. 2020-13 will authorize the City's continued participation in the consortium.

e. Action regarding Public Highway Overpass Agreement with Union Pacific Railroad Company (UPRR) for the Bailey Boswell Road Overpass

Summary: The proposed Overpass Agreement with Union Pacific Railroad Company (UPRR) provides for the obligations of UPRR and the City associated with the construction of the Bailey Boswell Road overpass over UPRR right-of-way. The agreement calls for special contract provisions that will be incorporated into the City's construction contract including insurance and agreements that must be entered into between UPRR and the contractor. In the agreement, UPRR grants the City the right to construct, maintain and repair the structure (overpass) over and across UPRR for a sum of \$1,000. The agreement also requires a sum of \$50,000 for UPRR engineering and related services, construction management, construction observation and plan review for the work. The sum is an estimate and can be

recalculated based on fluctuations in quantity or cost of material and/or labor. Flagman is not included in the costs. The total estimated financial impact will be \$51,000. Funds are available to cover this expenditure in the 2015 and 2017 G.O. Bonds.

- f. Action regarding Ordinance No. 2020-11, amending Saginaw City Code Section 6-37, “Keeping of Animals and Fowl”; Amending standards for keeping backyard chickens
Summary: The current City Ordinance, approved in 2018, sets forth the regulations and standards for keeping backyard chickens. The proposed ordinance increases the number of backyard chickens allowed from three to six.
- g. Action regarding Award of Contract for East McLeroy Boulevard Curb and Gutter Improvements
Summary: On April 16, 2019, City Council approved an Individual Project Order (IPO) with Kimley-Horn and Associates, Inc. for McLeroy Boulevard Curb and Gutter Replacement. The IPO, as approved, was limited to preparation of construction documents only with bidding and construction phase services deferred to a later date pending project selection for the proposed 2020 Bond Program. On January 21, 2020, City Council authorized Amendment No. 1 to the IPO to add construction phase services. On March 3, 2020, City Council authorized Amendment No. 2 adding proposed top of curb grades to the plans. On May 13, 2020, eighteen bids were received for the project with the low bidder being Nu-Way Construction with a bid of \$308,675. Kimley-Horn and Associates, Inc. reviewed the bids and references and has recommended award of the contract to Nu-Way Construction. Funds for this project are budgeted in the Street Maintenance Fund.

Mayor Flipppo received requests from the City Council to pull Items 4b and 4e for discussion.

Motion was made by Mayor Pro-Tem Tankersley with a second by Councilmember Tucker to approve Items 4a, 4c, 4d, 4f, and 4g of the Consent Agenda as presented.

Motion carried unanimously. 6-0-0-1

For: Mayor Flipppo, Mayor Pro-Tem Tankersley, Councilmembers
Beasley, Tucker, Bighorse, and Copeland

Against: None

Abstain: None

Absent: Councilmember Farr

- b. Action regarding Resolution No. 2020-12 to deny the DCRF Amendment proposed by Oncor

Asst. City Manager Johnson briefly explained proposed Resolution No. 2020-12.

Motion was made by Mayor Pro-Tem Tankersley with a second by Councilmember Beasley to approve Item 4b.

Motion carried unanimously. 6-0-0-1

For: Mayor Flipppo, Mayor Pro-Tem Tankersley, Councilmembers
Beasley, Tucker, Bighorse, and Copeland

Against: None

Abstain: None

Absent: Councilmember Farr

- e. Action regarding Public Highway Overpass Agreement with Union Pacific Railroad Company (UPRR) for the Bailey Boswell Road Overpass

Director of Public Works Trice briefly explained the proposed agreement.

Motion was made by Councilmember Bighorse with a second by Mayor Pro-Tem Tankersley to approve Item 4e. Motion carried unanimously. 6-0-0-1

For: Mayor Flippo, Mayor Pro-Tem Tankersley, Councilmembers
Beasley, Tucker, Bighorse, and Copeland

Against: None

Abstain: None

Absent: Councilmember Farr

(5) Proclamation – First Responder Month

Mayor Pro-Tem Tankersley read a proclamation declaring the month of May to be “First Responder Month” in the City of Saginaw. She explained the purpose of the proclamation is to honor our local first responders. Mayor Flippo explained the proclamations will be delivered to the Saginaw Fire Department and Saginaw Police Department.

(6) Proclamation – Educator Appreciation Week

Mayor Pro-Tem Tankersley read a proclamation declaring the week of May 18-24 to be “Educator Appreciation Week” in the City of Saginaw honoring all educators of the Eagle Mountain-Saginaw Independent School District and the International Leadership of Texas-Saginaw campus. Mayor Flippo explained that the proclamations will be delivered to both.

(7) Oath of Office for Councilmember Place 4 and Councilmember Place 6

City Secretary England administered the oath of office for Councilmember Place 4, Charles Tucker, and Councilmember Place 6, Mary Copeland. Both were presented with Certificates of Election.

(8) Presentation of Service Pins to Mayor Pro-Tem Tankersley and Councilmember Farr

Mayor Flippo presented a five year service pin to Mayor Pro-Tem Tankersley. Mayor Pro-Tem Tankersley recently completed five years of service on the City Council. Mayor Flippo explained that the presentation of Councilmember Farr’s pin will be postponed until the next meeting since he is not present tonight.

(9) Election of Mayor Pro-Tem

The consensus of the City Council was to postpone the election of a Mayor Pro-Tem until the entire Council is present.

(10) Consideration and Action to approve funds for “Art in the Community Program” Mural

This proposed “Arts in the Community Program” Mural will be located on the north side of the J.R.’s Café Building at 300 S. Saginaw Blvd.

Motion was made by Councilmember Beasley with a second by Councilmember Tucker to approve the amount of \$10,000 for Adam Davenport to paint a mural on the north side of the J.R.'s Café Building.

Motion carried unanimously. 6-0-0-1

For: Mayor Flipppo, Mayor Pro-Tem Tankersley, Councilmembers
Beasley, Tucker, Bighorse, and Copeland

Against: None

Abstain: None

Absent: Councilmember Farr

- (11) Consideration and Action regarding Lease Agreement with Mike Greene to allow a Mural to be painted on the north side of the J.R.'s Café Building located at 300 S. Saginaw Blvd.

Motion was made by Mayor Pro-Tem Tankersley with a second by Councilmember Beasley to approve the Lease Agreement with Mike Greene to allow a mural to be painted on the north side of the J.R.'s Café Building located at 300 S. Saginaw Blvd.

Motion carried unanimously. 6-0-0-1

For: Mayor Flipppo, Mayor Pro-Tem Tankersley, Councilmembers
Beasley, Tucker, Bighorse, and Copeland

Against: None

Abstain: None

Absent: Councilmember Farr

- (12) Consideration and Action regarding approval of Ordinance No. 2020-10, authorizing the issuance and Sale of City of Saginaw, Texas General Obligation Refunding Bond, Series 2020; levying an annual ad valorem tax and providing for the security for and payment of said bond; providing an effective date; and enacting other provisions related to the subject

Motion was made by Mayor Pro-Tem Tankersley with a second by Councilmember Tucker to approve Ordinance No. 2020-10, authorizing the issuance and sale of City of Saginaw General Obligation Refunding Bond, Series 2020; levying an annual ad valorem tax and providing for the security for and payment of said bond.

Motion carried unanimously. 6-0-0-1

For: Mayor Flipppo, Mayor Pro-Tem Tankersley, Councilmembers
Beasley, Tucker, Bighorse, and Copeland

Against: None

Abstain: None

Absent: Councilmember Farr

- (13) Consideration and Action regarding a Recommendation from the Planning and Zoning Commission for

Approval of a Preliminary Plat for The Square, being 27.246 acres out of the Benjamin Thomas Survey, Abstract No. 1497, City of Saginaw, Tarrant County, Texas

Motion was made by Councilmember Beasley with a second by Councilmember Copeland to approve the preliminary plat for The Square, being 27.246 acres out of the Benjamin Thomas Survey, Abstract No. 1497, as recommended by the Planning and Zoning Commission.

Motion carried unanimously. 6-0-0-1

For: Mayor Flippo, Mayor Pro-Tem Tankersley, Councilmembers Beasley, Tucker, Bighorse, and Copeland

Against: None

Abstain: None

Absent: Councilmember Farr

- (14) PUBLIC HEARING – Consideration and Action regarding a Recommendation from the Planning and Zoning Commission for Approval of a request for a change in zoning on approximately 76.613 acres out of the J Walker Survey Abstract 1602, Tracts 3C and 3E, and the J Bradford Survey, Abstract 183, Tracts 1K and 1 from Community Commercial (CC) and Multi Family (MF1) to Community Commercial (CC), Multi Family (MF2), and Light Industrial (LI). Property is located at the northwest corner of Blue Mound Road (Hwy. 156) and E. McLeroy Blvd. (Ordinance No. 2020-12)

Mayor Flippo declared the public hearing for this item opened at 6:33 p.m. Councilmember Bighorse expressed her concern regarding the proposed multi family and related increase in density. There was no public input. Mayor Flippo declared the public hearing closed at 6:48 p.m.

Motion was made by Councilmember Beasley with a second by Councilmember Copeland to approve the request for a change in zoning on approximately 76.613 acres out of the J Walker Survey, Abstract 1602, Tracts 3C and 3E, and the J Bradford Survey, Abstract 183, Tracts 1K and 1 from Community Commercial(CC) and Multi Family (FM1) to Community Commercial (CC), Multi Family (MF2) and Light Industrial (LI) as recommended by the Planning and Zoning Commission.

Motion failed. 3-3-0-1

For: Mayor Flippo, Councilmembers Beasley and Copeland

Against: Mayor Pro-Tem Tankersley, Councilmembers Tucker and Bighorse

Abstain: None

Absent: Councilmember Farr

Note: The Council returned to this item following Item No. 19.

- (15) Consideration and Action regarding Agreement between City of Saginaw and HUB International for Benefits Consulting Services

Motion was made by Mayor Pro-Tem Tankersley with a second by Councilmember Bighorse to approve the Agreement between the City of Saginaw and HUB International for Benefits Consulting Services.

Motion carried unanimously. 6-0-0-1

For: Mayor Flippo, Mayor Pro-Tem Tankersley, Councilmembers
Beasley, Tucker, Bighorse, and Copeland

Against: None

Abstain: None

Absent: Councilmember Farr

- (16) Consideration and Action regarding an Interlocal Agreement with Tarrant County governing the allocation of federal assistance funds to the City of Saginaw

Motion was made by Mayor Pro-Tem Tankersley with a second by Councilmember Bighorse to approve the Interlocal Agreement with Tarrant County governing the allocation of federal assistance funds to the City of Saginaw.

Motion carried unanimously. 6-0-0-1

For: Mayor Flippo, Mayor Pro-Tem Tankersley, Councilmembers
Beasley Tucker, Bighorse, and Copeland

Against: None

Abstain: None

Absent: Councilmember Farr

- (17) Recess into Workshop

Mayor Flippo declared the meeting recessed into workshop at 6:56 p.m.

- (18) Discussion of Central Fire Station Design/Delivery Considerations/Potential Bond Program

Asst. City Manager Johnson stated that ten Statements of Qualifications from architectural firms interested in designing a new central fire station were recently received. A committee reviewed the submittals and ranked the firms. Interviews were held with the top two firms and the consensus of the committee was to recommend BRW for the fire station design. He explained the options for the type of delivery method which include competitive bidding; competitive sealed proposals (CSP); and construction manager at risk (CMAR). City Manager Reaume read comments received from Councilmember Farr on this item. He also read comments from members of the Bond Committee. After some discussion, the consensus of the Council was to move forward with \$15 million for a fire station and any remaining funds be used towards Knowles Drive; and to use the CMAR option.

- (19) Reconvene into Regular Session

Mayor Flippo declared the meeting back in regular session at 7:28 p.m.

The Council returned to Item No. 14. Consideration and Action regarding a Recommendation from the Planning and Zoning Commission for Approval of a request for a change in zoning on approximately 76.613 acres out of the J Walker Survey Abstract 1602, Tracts 3C and 3E, and the J Bradford Survey, Abstract 183, Tracts 1K and 1 from Community Commercial (CC) and Multi Family (MF1) to Community Commercial (CC), Multi Family (MF2), and

Light Industrial (LI). Property is located at the northwest corner of Blue Mound Road (Hwy. 156) and E. McLeroy Blvd. (Ordinance No. 2020-12)

Motion was made by Mayor Pro-Tem Tankersley with a second by Councilmember Bighorse to reconsider Item No. 14 (request for a change in zoning on approximately 76.613 acres out of the J Walker Survey Abstract 1602, Tracts 3C and 3E, and the J Bradford Survey, Abstract 183, Tracts 1K and 1 from Community Commercial (CC) and Multi Family (MF1) to Community Commercial(CC), Multi Family (MF2), and Light Industrial (LI). Motion carried unanimously. 6-0-0-1

For: Mayor Flipppo, Mayor Pro-Tem Tankersley, Councilmembers
Beasley, Tucker, Bighorse, and Copeland

Against: None

Abstain: None

Absent: Councilmember Farr

Motion was made by Mayor Pro-Tem Tankersley with a second by Councilmember Bighorse to table Item No. 14.
Motion carried unanimously. 6-0-0-1

For: Mayor Flipppo, Mayor Pro-Tem Tankersley, Councilmembers
Beasley, Tucker, Bighorse, and Copeland

Against: None

Abstain: None

Absent: Councilmember Farr

(20) Executive Session

1 § 551.071. Texas Government Code. Consultation with Attorney. The City Council may convene in executive session to conduct a private consultation with its attorney on any legally posted agenda item, when the City Council seeks the advice of its attorney about pending or contemplated litigation, a settlement offer, or on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the provisions of Chapter 551, including the following items:

a. Any Posted Item

1 § 551.087. Texas Government Code. Deliberation regarding Economic Development Negotiations. The City Council may convene in executive session to discuss or deliberate regarding commercial or financial information that the City has received from a business prospect that the City seeks to have locate, stay, or expand in or near the City and with which the City is conducting economic development negotiations; or to deliberate the offer of a financial or other incentive to a business prospect described above, including:

- a. Building Improvement Grant Application – 125 S. Belmont St.
- b. Assisted Living Facility Project Incentive Request

c. Potential Retail Relocation Incentive

Mayor Flippo declared the meeting recessed into Executive Session at 7:32 p.m.

Mayor Flippo declared the meeting back in Regular Session at 8:19 p.m.

(21) Adjournment

Motion was made by Mayor Pro-Tem Tankersley with a second by Councilmember Beasley to adjourn the meeting. Motion carried unanimously. 6-0-0-1

For: Mayor Flippo, Mayor Pro-Tem Tankersley, Councilmembers
Beasley, Tucker, Bighorse, and Copeland

Against: None

Abstain: None

Absent: Councilmember Farr

Mayor Flippo declared the City Council Meeting of May 19, 2020 adjourned at 8:20 p.m.

ATTEST:

APPROVED:

City Secretary Janice England

Mayor Todd Flippo



City of Saginaw

Meeting Date: 6/2/2020

Staff Contact: Rick Trice, P.E.
Director of Public Works

Agenda Items: (4)(b)

E-mail: rtrice@saginawtx.org

Phone: (817) 230-0449

SUBJECT:

Action Regarding Acceptance of a Utility Easement from for Lot 1, Block 1, Saginaw Skilled Nursing Addition

BACKGROUND/DISCUSSION:

On September 3, 2019, City Council approved a Specific Use Permit to allow the operation of a Skilled Nursing Facility (Nursing Home) on the northeast corner of West McLeroy Boulevard and North Knowles.

Subsequently, on March 3, 2020, a plat for Lot 1, Block 1, Saginaw Skilled Nursing Addition was administratively filed for record in the Deed Records of Tarrant County, Texas.

Civil plans for the facility are currently in the review/approval process. The review determined the need for a public water line be looped around the facility for fire protection. The waterline requires that it be placed within an easement for future maintenance.

FINANCIAL IMPACT:

N.A.

RECOMMENDATION:

It is recommended that the Utility Easement granted by Texas Opportunity Fund SNF Investment, LP be accepted by the City on Lot 1, Block 1, Saginaw Skilled Nursing Addition.

ATTACHMENTS:

Description

Utility Easement Instrument

**CITY OF SAGINAW
UTILITY EASEMENT**

THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

Notice of Confidentiality Rights: If you are a natural person, you may remove or strike any of the following information from this instrument before it is filed for record in the public records: your Social Security Number or your Driver's License Number.

Texas Opportunity Fund SNF Investment, LP, GRANTOR herein, for and in consideration of the sum of Ten (\$10.00) Dollars and other good and valuable consideration in hand paid by GRANTEE herein, the receipt and sufficiency of which is hereby acknowledged and confessed, have granted, sold and conveyed, and by these presents do grant, sell and convey to the CITY OF SAGINAW, GRANTEE herein, of Tarrant County, Texas a permanent and perpetual utility easement for the purpose of installing, repairing, maintaining, altering, replacing, relocating, rebuilding, removing, and operating drainage and utility facilities in, into, upon, over, across, under and through all that land in Tarrant County, Texas described as follows, to-wit:

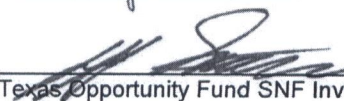
A permanent Utility Easement described as 0.59 acres, more or less, out of the A. F. Albright Survey, Abstract No. 1849, Tarrant County, Texas; and being more particularly described in Exhibit "A" and shown on Exhibit "B" attached hereto and incorporated herein.

GRANTOR covenants and agrees that GRANTOR and GRANTOR'S heirs, representatives, successors and assigns shall at no time erect, place or construct, or cause to be erected, placed or constructed in, into, upon, over, across or under any easement granted herein any temporary or permanent structures.

It is further intended that the Permanent Utility Easement herein granted to the GRANTEE shall run with the land and forever be a right in and to the land belonging to GRANTOR, and GRANTOR'S successors and assigns, and said grant is expressly excepted from any right of reversion of said premises under any prior deeds in GRANTOR's chain of title. The Permanent Utility Easement granted therein is exclusive, and GRANTOR covenants that it will not convey any other easement or conflicting rights within the area covered by the grant to any other person.

TO HAVE AND TO HOLD the above-described permanent easement, together with all and singular, the rights and appurtenances thereto, anywise belonging unto the said GRANTEE, its successors and assigns forever; and GRANTOR does hereby bind itself, its heirs and assigns, to warrant and to forever defend all and singular the premises unto the said GRANTEE, its successors and assigns, against every person whomsoever lawfully claiming or to claim same or any part thereof.

EXECUTED this the 7th day of May, 2020.



Texas Opportunity Fund SNF Investment, LP

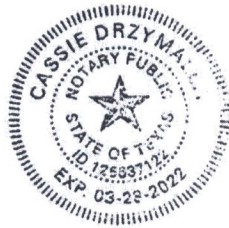
Printed Name: Jeff Smithers
Title: Authorized Signatory

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF Brewer §

BEFORE ME, the undersigned authority, on this day personally appeared Jeff Smithers, known to me to be the same person whose name is subscribed to the foregoing instrument and acknowledge to me that he is the _____ of Texas Opportunity Fund SNF Investment, LP. and he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this 7th day of May, 2020.



Cassie Drzymała
Notary Public in and for the State of Texas

GRANTEE:
By: Todd Flipppo, Mayor
City of Saginaw

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, on this day personally appeared Mayor Todd Flipppo, known to me to be the person whose name is subscribed above, and affirmed that he is the Mayor of the City of Saginaw, and that he has executed the above and foregoing document for the purposes and consideration therein expressed and with full authority to so act.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this ____ day of _____, 2020.

Notary Public in and for the State of Texas

CLERK'S CERTIFICATE

STATE OF TEXAS

COUNTY OF TARRANT

§
§
§

I, _____, County Clerk of the County of Tarrant, do hereby certify that
the foregoing instrument of writing dated on the _____ day of _____,
20____, was filed for record in my office on the _____ day of _____,
20____, at _____ o'clock ____m., and duly recorded this _____ day of _____,
20____, at _____ o'clock ____m. in the _____ Records of said County, in
Volume _____ on pages _____.

WITNESS MY HAND AND SEAL OF THE COUNTY COURT of said County, at
office in Tarrant County, the day and year last above written.

County Clerk, Tarrant County, Texas

By: _____
Deputy

EXHIBIT A – LEGAL DESCRIPTION
WATER LINE EASEMENT

Being a 0.59 acre tract of land situated in the A.F. Albright Survey, Abstract No. 1849, City of Saginaw, Tarrant County, Texas and being a part of Lot 1, Block 1, Saginaw Skilled Nursing Addition, an addition to the City of Saginaw as recorded in Clerk Document No. D220054204, Plat Records Tarrant County, Texas and being more particularly described by metes and bounds as follows:

Commencing at a point in the east line of Knowles Drive for the northwest corner of said Lot 1, Block 1, same being the southwest corner of Lot A, Block 5, Willow Vista Estates Phase III-A, an addition to the City of Saginaw as recorded in Clerk Document No. D214051894, Plat Records Tarrant County, Texas;

Thence South 00°30'16" East, with the Knowles Drive east line, a distance of 23.91 feet to the Point of Beginning;

Thence North 89°20'45" East a distance of 581.74 feet to a point in the east line of said Lot 1, Block 1;

Thence South 00°37'08" East with the Lot 1 east line a distance of 16.00 feet to a point:

Thence South 89°20'45" West a distance of 18.66 feet to a point:

Thence South 00°23'18" East a distance of 383.39 feet to a point:

Thence South 89°36'42" West a distance of 82.22 feet to a point:

Thence South 78°31'56" West a distance of 70.02 feet to a point:

Thence South 89°57'10" West a distance of 104.58 feet to a point:

Thence North 79°07'21" West a distance of 69.95 feet to a point:

Thence South 89°18'08" West a distance of 238.21 feet to a point in the east line of Knowles Drive;

Thence North 00°30'16" West, with the Knowles Drive east line, a distance of 16.00 feet to a point:

Thence North 89°18'08" East a distance of 173.65 feet to a point:

Thence North 00°41'52" West a distance of 27.95 feet to a point:

Thence North 89°18'08" East a distance of 16.00 feet to a point:

Thence South 00°41'52" East a distance of 27.95 feet to a point:

Thence North 89°18'08" East a distance of 50.13 feet to a point:

Thence South 79°07'21" East a distance of 70.05 feet to a point:

Thence North 89°57'10" East a distance of 101.45 feet to a point:

Thence North 78°31'56" East a distance of 69.98 feet to a point:

Thence North 89°36'42" East a distance of 67.78 feet to a point:

Thence North 00°23'18" West a distance of 17.54 feet to a point:

Thence South 89°20'45" West a distance of 15.21 feet to a point:

Thence North 00°23'18" West a distance of 16.00 feet to a point:

Thence North 89°20'45" East a distance of 15.21 feet to a point:

Thence North 00°23'18" West a distance of 295.19 feet to a point:

Thence South 89°20'45" West a distance of 15.21 feet to a point:

Thence North 00°23'18" West a distance of 16.00 feet to a point:

Thence North 89°20'45" East a distance of 15.21 feet to a point:

Thence North 00°23'18" West a distance of 22.58 feet to a point:

Thence South 89°20'45" West a distance of 181.16 feet to a point:

Thence South 00°39'15" East a distance of 10.69 feet to a point:

Thence South 89°20'45" West a distance of 16.00 feet to a point;

Thence North 00°39'15" West a distance of 10.69 feet to a point;

Thence South 89°20'45" West a distance of 144.25 feet to a point;

Thence South 00°39'15" East a distance of 10.72 feet to a point;

Thence South 89°20'45" West a distance of 16.00 feet to a point;

Thence North 00°39'15" West a distance of 10.72 feet to a point;

Thence South 89°20'45" West a distance of 189.70 feet to a point in the east line of Knowles Drive;

Thence North 00°30'16" West, with the Knowles Drive east line, a distance of 16.00 feet to the Point of Beginning and Containing 25,502 square feet, 0.59 acres of land, more or less.

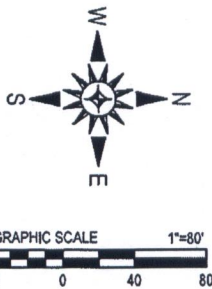


KNOWLES DRIVE

POINT OF BEGINNING
NORTH: 6,997,584.57
EAST: 2,312,387.89
NAD 83, ZONE 4202 (GRID)

McLEROY BOULEVARD

LOT 1, BLOCK 1
SAGINAW SKILLED NURSING
ADDITION



LINE TABLE		
LINE No.	LENGTH	BEARING
L1	16.00	N00°30'16"W
L2	27.95	N00°41'52"W
L3	16.00	N89°18'08"E
L4	27.95	S00°41'52"E
L5	67.78	N89°36'42"E
L6	17.54	N00°23'18"W
L7	15.21	S89°20'45"W
L8	16.00	N00°23'18"W
L9	15.21	N89°20'45"E
L10	15.21	S89°20'45"W
L11	16.00	N00°23'18"W
L12	15.21	N89°20'45"E

LINE TABLE		
LINE No.	LENGTH	BEARING
L13	22.58	N00°23'18"W
L14	18.66	S89°20'45"W
L15	16.00	S00°37'08"E
L16	10.69	S00°39'15"E
L17	16.00	S89°20'45"W
L18	10.69	N00°39'15"W
L19	10.72	S00°39'15"E
L20	16.00	S89°20'45"W
L21	10.72	N00°39'15"W
L22	16.00	N00°30'16"W
L23	23.91	S00°30'16"E



B
Barron-Stark
Engineers

8221 Southwest Boulevard, Suite 100
Fort Worth, Texas 76132
(O) 817.231.8100 (F) 817.231.8144
Texas Registered Engineering Firm F-10398
Texas Registered Survey Firm F-1015800
www.barronstark.com

EXHIBIT B WATER LINE EASEMENT

PROJECT No. 393-9566

DATE: 05/05/2020

SHEET



City of Saginaw

Meeting Date: 6/2/2020

Staff Contact: Dolph Johnson
Assistant City Manager

Agenda Items: (4)(c)

E-mail: djohnson@saginawtx.org

Phone: 817-230-0325

SUBJECT:

Action regarding Lease agreement for property at 301 S. Saginaw Boulevard (Depot Property)

BACKGROUND/DISCUSSION:

The City owns the Depot building located at 301 S. Saginaw Blvd. but not the land it sits on. The City leases the property from BNSF. The original ten year lease began in 2000. We did an extension of the lease in 2010 for another ten years. The lease is now due for renewal with some changes. BNSF is doing a rail expansion project that requires some of the land the building sits on. It does not affect any of the buildings or our operations there. The new ten year lease reduces the property footprint from 2.53 to 1.8 acres and reduces our annual rent from \$7,725 to \$5,466. BNSF will also be constructing a fence between the tracks and the buildings as shown on Exhibit A in the amendment. The lease amendment has been reviewed and modified by the City Attorney and agreed to by BNSF.

FINANCIAL IMPACT:

Reduction in annual rent from \$7, 725 to \$5,466.

RECOMMENDATION:

Staff recommends approval of the second amendment to the lease agreement.

ATTACHMENTS:

Description

Memo from staff

Depot Lease Agreement 2020

MEMORANDUM

DATE: May 21, 2020
TO: Mayor and Council
FROM: Dolph Johnson, Assistant City Manager
CC: Gabe Reaume, City Manager
RE: Depot property lease

The City owns the Depot building located at 301 S. Saginaw Blvd. but not the land it sits on. The City leases the property from BNSF. The original ten year lease began in 2000. We did an extension of the lease in 2010 for another ten years. The lease is now due for renewal with some changes. BNSF is doing a rail expansion project that requires some of the land the building sits on. It does not affect any of the buildings or our operations there. The new ten year lease reduces the property footprint from 2.53 to 1.8 acres and reduces our annual rent from \$7,725 to \$5,466. BNSF will also be constructing a fence between the tracks and the buildings as shown on Exhibit A in the amendment. The new lease has been reviewed and modified by the City Attorney and agreed to by BNSF.

Staff recommends approval of the second amendment to the lease agreement with BNSF.

SECOND AMENDMENT TO LEASE AGREEMENT

THIS SECOND AMENDMENT TO LEASE AGREEMENT ("**SECOND AMENDMENT**") is made and entered into to be effective as of the date of the last signature hereto ("**Effective Date**"), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Lessor**") and **CITY OF SAGINAW**, a Texas municipality ("**Lessee**").

RECITALS:

- A. Lessee and Lessor entered into a Definite Term Lease Agreement for Land (the "**Original Lease**") on July 25, 2000 under which Lessor leases to Lessee that certain property situated in the City of Saginaw, County of Tarrant, State of Texas as more particularly described therein (the "**Property**");
- B. Lessor and Lessee entered into that certain Agreement, Assumption and Amendment to Lease Agreement dated January 9, 2007 (the "**First Amendment**");
- C. Lessee and Lessor entered into the Exercise of Option to Renew dated July 26, 2010 (the "**Renewal Agreement**"); which among other things extended the Lease term for ten years;
- D. The Original Lease, as modified by the provisions of the First Amendment, Renewal Agreement and this Second Amendment, shall be referred to herein as the "**Lease**";
- E. Lessor and Lessee desire to extend the term of the Lease and revise the description of the Premises as further described herein; and
- F. Lessor and Lessee desire to amend the terms of the Lease as described below.

AGREEMENTS:

NOW, THEREFORE, in consideration of the mutual covenants, premises, and agreements and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **PREMISES.**

As of the Effective Date, Exhibit "A" of the Original Lease is hereby deleted and replaced in its entirety with the Drawing No 77052 - dated October 17, 2019, a copy of which is attached to this Second Amendment as **Exhibit "A"** and made a part hereof. All reference to Exhibit "A" in the Lease shall mean and refer to the **Exhibit "A"** attached to this Second Amendment and incorporated herein by this reference. Lessor will install a fence on the lease area boundary behind the existing buildings for safety.

2. **RENT.**

As of the Effective Date, Lessee shall pay as rental for the premises, in advance, an amount equal to Five Thousand Four Hundred Sixty-Six and No/100 Dollars (\$5,466.00) ("**Base Rent**"). Base rent shall increase 3% annually during the term of the Lease. Lessor reserves the right to change rental rates as conditions warrant. Billing or acceptance by Lessor of any rental shall not imply a definite term or otherwise restrict either party from canceling this Lease as provided herein. Either party hereto may assign any receivables due it under this Lease; provided, however, such assignments shall not relieve the assignor of any of its rights or obligations under this Lease. All rent and other monetary payments under this Lease from Lessee to Lessor shall be delivered solely to the following address:

BNSF Railway Company
PO Box 676160
Dallas, TX 75267-6160

3. **TERM.**

Lessor and Lessee desire to extend the Term of the Lease for a period of ten (10) years (the "**Second Extended Term**") under the same terms and conditions set forth in the Lease except as otherwise provided

herein. The Second Extended Term will commence on the effective date and shall expire on July 26, 2030. Base Rent during the Second Extended Term shall be adjusted as provided herein.

4. **ENVIRONMENTAL.**

Lessee shall strictly comply with all Environmental Laws. Lessee shall not maintain any treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws, on the Premises. Lessee shall not release or suffer the release of oil or Hazardous Materials on, about or affecting the Premises.

Lessee shall give Lessor immediate notice to Lessor's Resource Operations Center at (800) 832-5452 of any release of Hazardous Materials on, from, or affecting the Premises and to Lessor's Manager Environmental Leases at EnvironmentalLeases@BNSF.com for any violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Lessee's use of the Premises. Lessee also shall give Lessor's Manager-Environmental Leases immediate notice of all measures undertaken by or on behalf of Lessee to investigate, remediate, respond to or otherwise cure such release or violation and shall provide to Lessor's Manager-Environmental Leases copies of all reports and/or data regarding any investigations or remediations of the Premises. If Lessor has notice from Lessee or otherwise of a release or violation of Environmental Laws on, from, or otherwise affecting the Premises which occurred or may occur during the Term, Lessor may require Lessee, at Lessee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure each such release or violation on, from, or otherwise affecting the Plant, Premises, or Lessor's adjoining property or Lessor's right-of-way.

Lessee shall promptly report to Lessor in writing any conditions or activities upon the Plant or Premises which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to mitigate injury or damage to persons, property or the environment arising out of such conditions or activities, including but not limited to releases or violations of Environmental Laws; provided, however, that Lessee's reporting to Lessor shall not relieve Lessee of any obligation whatsoever imposed on it by this Lease or by any Legal Requirement. Lessee shall promptly respond to Lessor's request for information regarding said conditions or activities.

Hazardous Materials (as defined below) are not permitted on the Premises except as otherwise specifically described in this Lease. Lessee expects to use on the Premises the following Hazardous Materials: None, and to store on the Premises the following Hazardous Materials in the following quantities/storage containers: None ("**Permitted Substances**"). All such Permitted Substances shall be placed, used, and stored in strict accordance with all Environmental Laws. Use or storage on the Premises of any Hazardous Materials not disclosed is a breach of this Lease.

In addition to the rights set forth in the Lease and any amendments thereto above, Lessor and its agents and representatives shall have a right of entry and access to the Premises: (i) at any time an actual or threatened emergency exists and (ii) at any reasonable time, upon prior written notice, and, at Lessee's election, with a representative of Lessee present, for the purposes of (a) inspecting the documentation relating to Hazardous Materials or environmental matters maintained by Lessee or any occupant of the Premises and (b) ascertaining whether Lessee is in compliance with its environmental obligations in the Lease and any amendments thereto.

Within thirty (30) days after the Effective Date, Lessee has the right, at its option, to conduct an environmental audit of the Premises for use as a baseline as of this Amendment ("**Amendment Baseline Audit**"). The cost of the Amendment Baseline Audit shall be borne by Lessee. Lessee agrees to use an environmental consulting engineer acceptable to Lessor to perform such Amendment Baseline Audit and further agrees to promptly provide a copy of the final environmental Amendment Baseline Audit report to Lessor. If such Amendment Baseline Audit reveals an environmental condition(s) in existence at the date of the Amendment Baseline Audit ("**Pre-Existing Condition**") that is not satisfactory to either party, either party has the right, which must be exercised by written notice to the other party on or before sixty (60) days after the Effective Date, to terminate this Lease. Such termination shall be effective thirty (30) days from receipt of the written notice by the other party. Upon such termination, the parties shall have no further obligations hereunder except for those that have accrued prior to such termination, including but not limited to Lessee's obligation to restore the Premises prior to termination. Notwithstanding anything else herein to the contrary, except to the extent caused, aggravated, or contributed to by an Lessee Party, Lessee shall not be responsible for any Pre-Existing Condition on the Premises as shown in the Amendment Baseline Audit report unless Lessee conducted a prior baseline audit at the beginning of its occupancy of the Premises ("**Original Baseline Audit**"), in which case Lessee shall not be

responsible for any Pre-Existing Condition on the Premises as shown in the Original Baseline Audit report, except to the extent caused, aggravated or contributed to by an Lessee Party.

Regardless of whether Lessee elects to have an Amendment Baseline Audit performed, Lessor has the right, at its option, on or prior to termination of the Lease, to require Lessee to conduct an environmental audit of the Premises to determine if any noncompliance or environmental damage to the Premises has occurred during Lessee's occupancy thereof ("**Exit Audit**"). The cost of the Exit Audit shall be borne by Lessee. Lessee agrees to use an environmental consulting engineer acceptable to Lessor to perform such Exit Audit, and further agrees to promptly provide a copy of the final environmental Exit Audit report to Lessor. Lessee shall pay all expenses that may be required to correct: (i) any noncompliance or environmental condition on the Premises shown in the Exit Audit but not shown on the Original Baseline Audit as a Pre-Existing Condition; and/or (ii) any aggravation of or contribution to a Pre-Existing Condition during the Term of the Lease, including any amendments thereto. Notwithstanding the foregoing, however, if Lessee did not elect to perform an Original Baseline Audit, then Lessee shall pay all expenses that may be required to correct any noncompliance or environmental conditions on the Premises shown on the Exit Audit. Lessee shall diligently pursue all necessary work to completion no later than thirty (30) days after termination. Lessee acknowledges that it remains responsible for any noncompliance or environmental damage during Lessee's occupancy of the Premises that was not discovered during the Exit Audit or that was not completely investigated or remediated by Lessee and that this Section does not relieve Lessee of that responsibility. Lessee's obligations under this Section shall survive termination of this Lease.

"**Environmental Law(s)**" shall mean any federal, state, or local law, statute, ordinance, code, rule, regulation, policy, common law, license, authorization, decision, order, or injunction which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground, air, water, or noise pollution or contamination, and underground or above-ground tanks) and shall include, without limitation, the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq. ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 to 136y; the Oil Pollution Act, 33 U.S.C. 2701 et seq.; and the Occupational Safety and Health Act, 29 U.S.C. 651 et seq.; all as have been amended from time to time, and any other federal, state, or local environmental requirements, together with all rules, regulations, orders, and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

"**Hazardous Material(s)**" shall include but shall not be limited to any substance, material, or waste that is regulated by any Environmental Law or otherwise regulated by any federal, state, or local governmental authority because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment, including without limitation asbestos and asbestos-containing materials, radon, petroleum and petroleum products, urea formaldehyde foam insulation, methane, lead-based paint, polychlorinated biphenyl compounds, hydrocarbons or like substances and their additives or constituents, pesticides, agricultural chemicals, and any other special, toxic, or hazardous (i) substances, (ii) materials, or (iii) wastes of any kind, including without limitation those now or hereafter defined, determined, or identified as "hazardous chemicals", "hazardous substances," "hazardous materials," "toxic substances," or "hazardous wastes" in any Environmental Law.

5. **LIABILITY.**

TO THE FULLEST EXTENT PERMITTED BY LAW, LESSEE SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS LESSOR AND LESSOR'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION AND GOVERNMENTAL OVERSIGHT COSTS) ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY "LIABILITIES") OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):

- (i) THIS LEASE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS;
- (ii) ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LEASE;
- (iii) LESSEE'S OCCUPATION AND USE OF THE PREMISES;
- (iv) THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY, AGGRAVATED BY, OR CONTRIBUTED IN WHOLE OR IN PART, BY LESSEE; OR
- (v) ANY ACT OR OMISSION OF LESSEE OR LESSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER,

EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED TO, IN WHOLE OR IN PART, ANY NEGLIGENCE OF ANY INDEMNITEE. THE ONLY LIABILITIES WITH RESPECT TO WHICH LESSEE'S OBLIGATION TO INDEMNIFY THE INDEMNITEES DOES NOT APPLY ARE LIABILITIES TO THE EXTENT PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE.

FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, NOTWITHSTANDING THE LIMITATION SET FORTH IN THE PRECEDING PARAGRAPHS LESSEE SHALL NOW AND FOREVER WAIVE ANY AND ALL CLAIMS, REGARDLESS OF WHETHER SUCH CLAIMS ARE BASED ON STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, THAT LESSOR IS AN "OWNER", "OPERATOR", "ARRANGER", OR "TRANSPORTER" WITH RESPECT TO THE PREMISES FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. LESSEE WILL INDEMNIFY, DEFEND AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF THE INDEMNITEES. LESSEE FURTHER AGREES THAT THE USE OF THE PREMISES AS CONTEMPLATED BY THIS LEASE SHALL NOT IN ANY WAY SUBJECT LESSOR TO CLAIMS THAT LESSOR IS OTHER THAN A COMMON CARRIER FOR PURPOSES OF ENVIRONMENTAL LAWS AND EXPRESSLY AGREES TO INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FOR ANY AND ALL SUCH CLAIMS. IN NO EVENT SHALL LESSOR BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.

Upon written notice from Lessor, Lessee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this Lease for which Lessee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Lessee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

6. **INSURANCE.**

Lessee shall, at its sole cost and expense, procure and maintain during the life of this Lease the following insurance coverage:

- A. **Commercial General Liability Insurance.** This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$1,000,000 each occurrence and an aggregate limit of at least \$ 2,000,000 but in no event less than the amount otherwise carried by Lessee. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:
 - Bodily Injury and Property Damage
 - Personal Injury and Advertising Injury
 - Fire legal liability
 - Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of Lessor property.

- Waiver of subrogation in favor of and acceptable to Lessor.
- Additional insured endorsement in favor of and acceptable to Lessor and Jones Lang LaSalle Brokerage, Inc.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Lessor.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to Lessor employees.

No other endorsements limiting coverage may be included on the policy.

- B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ♦ Bodily injury and property damage
- ♦ Any and all vehicles owned, used or hired

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ♦ Waiver of subrogation in favor of and acceptable to Lessor.
- ♦ Additional insured endorsement in favor of and acceptable to Lessor.
- ♦ Separation of insureds.
- ♦ The policy shall be primary and non-contributing with respect to any insurance carried by Lessor.

- C. Workers Compensation and Employers Liability Insurance. This insurance shall include coverage for, but not limited to:

- ♦ Lessee's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- ♦ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ♦ Waiver of subrogation in favor of and acceptable to Lessor.

- D. Railroad Protective Liability Insurance. If construction is to be performed on the Premises by Lessee, Lessee or Lessee's contractor shall procure Lessor Protective Liability insurance naming only the Lessor as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:

- Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- Endorsed to remove any exclusion for punitive damages.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to the Lessor prior to performing any work or services under this Lease

- E. Other Requirements.

All policies (applying to coverage listed above) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.

Lessee agrees to waive its right of recovery against Lessor for all claims and suits against Lessor. In addition, its insurers, through the terms of the policy or through policy endorsement, waive their right of

subrogation against Lessor for all claims and suits. The certificate of insurance must reflect the waiver of subrogation endorsement. Lessee further waives its right of recovery, and its insurers also waive their right of subrogation against Lessor for loss of its owned or leased property or property under Lessee's care, custody, or control.

Lessee is not allowed to self-insure without the prior written consent of Lessor. If granted by Lessor, any deductible, self-insured retention or other financial responsibility for claims shall be covered directly by Lessee in lieu of insurance. Any and all Lessor liabilities that would otherwise, in accordance with the provisions of this Lease, be covered by Lessee's insurance will be covered as if Lessee elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to accessing the Premises, Lessee shall furnish to Lessor an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Lessor in writing at least 30 days prior to any cancellation, renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. Upon request from Lessor, a certified duplicate original of any required policy shall be furnished.

Any insurance policy shall be written by a reputable insurance company acceptable to Lessor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the Premises is located.

Lessee represents that this Lease has been thoroughly reviewed by Lessee's insurance agent(s)/broker(s), who have been instructed by Lessee to procure the insurance coverage required by this Lease. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five years, Lessor may reasonably modify the required insurance coverage to reflect then-current risk management practices in the Lessor industry and underwriting practices in the insurance industry.

If any portion of the operation is to be contracted by Lessee, Lessee shall require that the contractor shall provide and maintain insurance coverages as set forth herein, naming Lessor as an additional insured, and shall require that the contractor shall release, defend and indemnify Lessor to the same extent and under the same terms and conditions as Lessee is required to release, defend and indemnify Lessor herein.

Failure to provide evidence as required by the above provisions shall entitle, but not require, Lessor to terminate this Lease immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Lessee's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Lessee shall not be deemed to release or diminish the liability of Lessee including, without limitation, liability under the indemnity provisions of this Lease. Damages recoverable by Lessor shall not be limited by the amount of the required insurance coverage.

For purposes of this Section, Lessor shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

7. **DEFINED TERMS.**

Unless otherwise provided herein, all capitalized and/or defined terms herein shall have the same meaning given to such capitalized and/or defined terms in the Lease.

8. **RATIFICATION.**

Except as amended hereby, all of the terms and provisions of the Lease are hereby reaffirmed and remain in full force and effect. In the event there is a conflict between the terms and provisions of the Lease and

the terms and provisions of this Second Amendment, the terms and provisions of this Second Amendment shall control.

9. **COUNTERPARTS.**

This Second Amendment may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this Second Amendment may also be exchanged electronically and any electronic version of any party's signature shall be deemed to be an original signature for all purposes.

10. **VENUE.**

All questions concerning the interpretation or application of provisions of this Lease shall be decided according to the substantive laws of the State of Texas without regard to conflicts of law provisions. To the fullest extent permitted by law any dispute arising under or in connection with this Lease or related to any subject matter which is the subject of this Lease shall be subject to the sole and exclusive jurisdiction of the United States District Court for the Northern District of Texas. The aforementioned choice of venue is intended by the parties to be mandatory and not permissive. Each party hereto hereby irrevocably consents to the jurisdiction of the United States District Court for the Northern District of Texas in any such dispute and irrevocably waives, to the fullest extent permitted by law, any objection that it may now have or hereafter have to the laying of venue in such court and that any such dispute which is brought in such court has been brought in an inconvenient forum.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Second Amendment to be effective as of the Effective Date.

LESSOR:

BNSF Railway Company, a Delaware corporation

Name: Blaine Bilderback
Director-Corporate Real Estate
Date: _____

LESSEE:

The City of Saginaw

By: _____
Name: _____
Title: _____
Date: _____

PLACEHOLDER

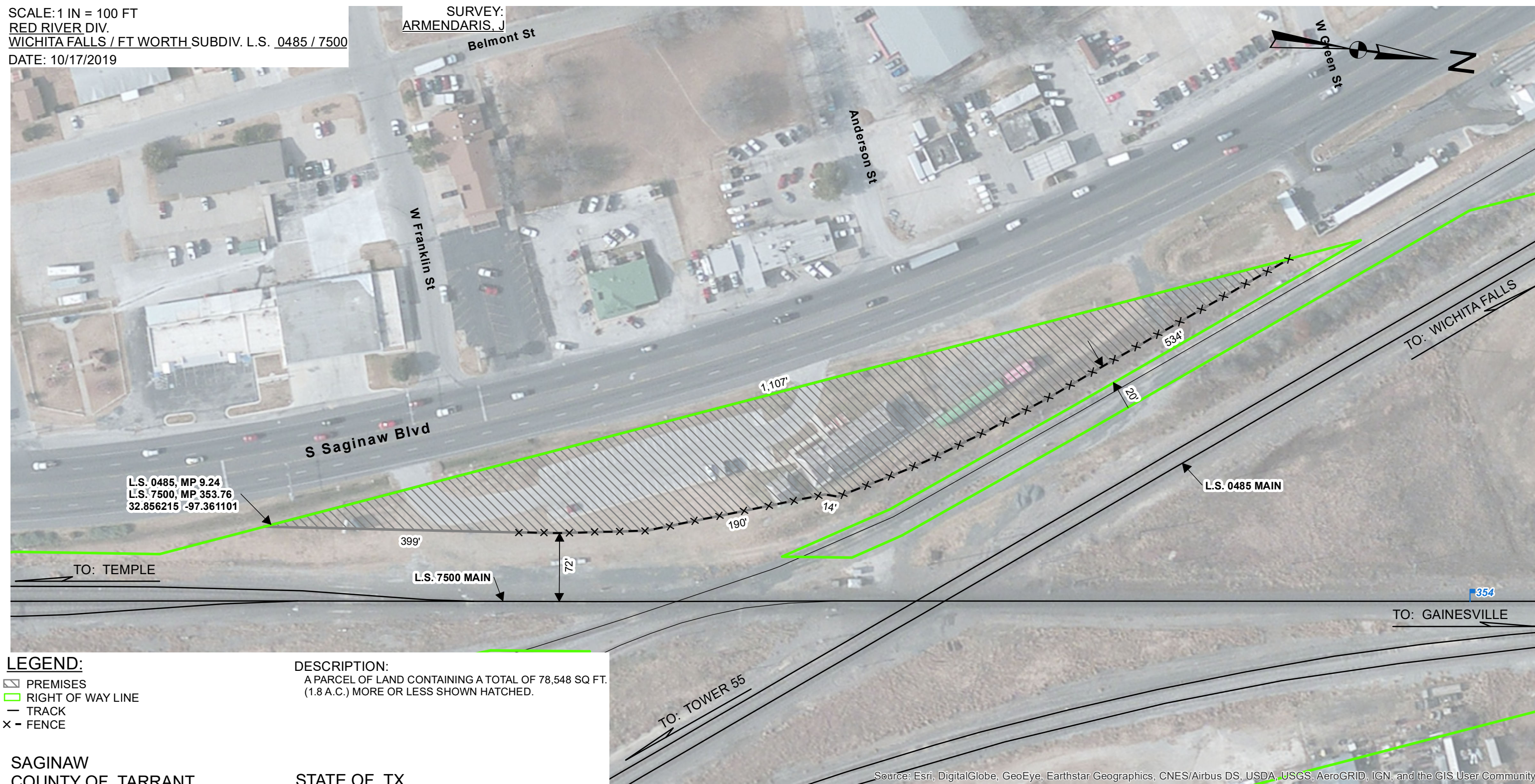
**EXHIBIT A
PREMISES**

EXHIBIT "A"
ATTACHED TO CONTRACT BETWEEN
BNSF RAILWAY COMPANY
AND
CITY OF SAGINAW
CHAMBER OF COMMERCE

SCALE: 1 IN = 100 FT
RED RIVER DIV.
WICHITA FALLS / FT WORTH SUBDIV. L.S. 0485 / 7500
DATE: 10/17/2019

SURVEY:
ARMENDARIS, J

TRIM LINE-



MAP REF. 509005

LEGEND:

-  PREMISES
 RIGHT OF WAY LINE
 TRACK
 FENCE

DESCRIPTION:

A PARCEL OF LAND CONTAINING A TOTAL OF 78,548 SQ. FT.
(1.8 A.C.) MORE OR LESS SHOWN HATCHED.

SAGINAW
COUNTY OF TARRANT

STATE OF TX

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



City of Saginaw

Meeting Date: 6/2/2020

Staff Contact: Doug Spears
Fire Chief

Agenda Items: (4)(d)

E-mail: dougspears@saginawfire.us

Phone: 817-230-0412

SUBJECT:

Action regarding Metropolitan Area EMS Authority (MAEMSA) Restated and Amended Interlocal Agreement

BACKGROUND/DISCUSSION:

A stakeholder working group was formed to recommend necessary revisions to the MAEMSA ILA. Chief Spears was a member of the stakeholder working group. The intent of the revised ILA was to improve the structure and operation of MAEMSA by more clearly defining the roles, responsibilities and reporting structure of executive staff and the stakeholder Advisory Boards. Some of the prominent changes include:

- Expanding the MAEMSA Board of Directors from 6 to 9 voting members, 2 of which will be chiefs of the member cities First Responder Organizations;
- Removing term limits of the voting Directors and defining the methods of reappoint and removal of representatives;
- Defining the roles and responsibilities of the Medical Director, the Emergency Physicians Advisory Board or EPAB and the First Responders Advisory Board or FRAB;
- Establishment of a Conflict of Interest policy;
- Defining the MAEMSA Executive Committee and the reporting structure.

The attached ILA has undergone legal counsel review on behalf of all 15 MAEMSA member entities.

FINANCIAL IMPACT:

None

RECOMMENDATION:

Approval of the MAEMSA Restated and Amended Interlocal Agreement as presented.

ATTACHMENTS:

Description

MAEMSA Restated & Amended ILA

RESTATED AND AMENDED INTERLOCAL COOPERATIVE AGREEMENT

WHEREAS, the State of Texas, in the Interlocal Cooperation Act, has provided in Chapter 791 of the Tex. Government Code that this jurisdiction (hereinafter, “this Jurisdiction”) may jointly exercise with other local governments the power to provide governmental services for the public health and welfare, and such services include Ambulance Services; and

WHEREAS, it is in the best interests of the public health and welfare of the people of this Jurisdiction to have available to them a regulated prehospital emergency medical services, mobile integrated healthcare, and medical transportation system which can provide quality clinical care with performance measures and standards, with the goal of facilitating the best possible outcomes for each patient;

WHEREAS, through the adoption of a Uniform EMS Ordinance and Interlocal Cooperative Agreement between local governments (“Member Jurisdictions”), the Area Metropolitan Ambulance Authority (the “Authority”) was created in 1988 as a governmental administrative agency to administer and operate a prehospital emergency medical services, mobile integrated health, and medical transportation system in a service area comprised of the Member Jurisdictions (“Service Area”); and

WHEREAS, providing for a multi-jurisdictional emergency physicians advisory board will provide for professional oversight of the clinical performance of the prehospital emergency medical services, mobile integrated health, and medical transportation system; and

WHEREAS, establishing a multi-jurisdictional first responder advisory board will facilitate coordination and communication between first responder agencies in the service area, the Emergency Physicians Advisory Board and the Board of Directors of the Authority:

WHEREAS, due to the relatively low population and low population density of some portions of the Service Area and the extremely high, start-up and fixed operating costs of a state-of-the-art prehospital emergency medical services, mobile integrated health, and medical transportation system, it is necessary to designate a single provider of emergency and nonemergency ambulance transportation within this Jurisdiction in order to maximize clinical proficiency, enhance operational effectiveness, and maximize economies of scale for providing such services; and

WHEREAS, the Member Jurisdictions entered into a Restated Interlocal Cooperative Agreement effective June 19, 2017, which, among other things, changed the name of the Authority to the “Metropolitan Area EMS Authority”; and

WHEREAS, it is the desire of this Jurisdiction and the other Member Jurisdictions to amend and restate the Restated Interlocal Cooperative Agreement in its entirety as set forth herein; and

THEREFORE, be it resolved that this Jurisdiction, which has joined with the other Member Jurisdictions to adopt this Restated and Amended Interlocal Cooperative Agreement (the "Agreement"), to be effective as of the date of the last of the Member Jurisdictions to execute the Agreement, agrees as follows:

ARTICLE I. MEMBERSHIP/CONTINUATION

1.1 This Jurisdiction has elected to continue to be a member of the Authority by the adoption of this Agreement and the concurrent adoption of the Uniform EMS Ordinance (which is attached hereto as Exhibit A and incorporated herein by reference). Capitalized terms used in this Agreement shall have the same meaning as used in the Uniform EMS Ordinance unless otherwise defined. Other terms are defined in this Agreement as follows:

1.1.1 **Deleted by agreement of the parties.**

1.1.2 **Medical Protocol.** Any diagnosis-specific or problem-oriented written statement of standard procedure, or algorithm, promulgated by the Medical Director as the standard of care and course of treatment for a given clinical condition.

1.1.3 **Mobile Integrated Healthcare Provider (MIH Provider).** A person who has additional training in physiology, disease processes, injury and illness prevention, and medical system navigation; and who focuses on providing out-of-hospital services to clients who may benefit from effective management of out of hospital care (including without limitation the elderly, underserved, and chronic condition-patient populations); by providing primary care under the direction of a physician or by acting as the enrolled client's advocate to connect them to a variety of beneficial social and medical services outside the emergency department or hospital.

1.1.4 **System.** The regulated prehospital emergency medical services, mobile integrated healthcare, medical transportation system, and any other medical services provided by the Authority or the Member Jurisdictions' First Responders.

1.2 The existence of the Authority is perpetual unless and until all Member Jurisdictions withdraw. The withdrawal of less than all the Member Jurisdictions shall not cause the dissolution of the Authority.

1.3 The name of the Authority is the "Metropolitan Area EMS Authority."

1.4 A Member Jurisdiction may withdraw, for any reason, on (i) the renewal or termination date of a contract for Ambulance Service if a competitively selected contractor is the provider of Ambulance Services, or (ii) the last day of the fiscal year of the Authority, if the Authority is the operator of the Ambulance Service. Notice of such intention to withdraw shall not be effective unless given in writing to the Authority and to each Member Jurisdiction not less than twelve months before the proposed effective date of withdrawal.

1.5 To ensure the continuation of the Authority's services to other Member Jurisdictions, any Member Jurisdiction that withdraws from the Authority pursuant to Section 1.4 above forfeits all rights, title, interest or claim to any asset or combination of assets of the Authority except as specifically provided in Section 4.4 below.

ARTICLE II. BOARD OF DIRECTORS

2.1 The Authority shall be administered by a Board of Directors (the "Board") which shall provide overall direction with respect to all matters within the scope of this Agreement.

2.2 The Board shall be composed of nine voting members and two non-voting, *ex-officio* members, subject to Section 2.4 and 2.5 below. The Board receives no compensation for service.

2.3 Voting members of the Board are required to have knowledge or experience in healthcare, finance or accounting, business administration, law, or other relevant knowledge or experience.

2.4 The Board shall be constituted as follows:

2.4.1 The City of Fort Worth shall appoint four directors who are residents of Fort Worth. The four directors shall serve at the pleasure of the City of Fort Worth and may be replaced by the City of Fort Worth at any time, with or without cause.

2.4.2 One director who is a resident of the Service Area shall be elected by the combined vote of the other Member Jurisdictions as follows:

- (a) Whenever the term of the director is expiring or open, each Member Jurisdiction other than Fort Worth shall be entitled to nominate one candidate for the available position. The candidates nominated by the Member Jurisdictions shall be named on the "Candidates List."
- (b) The Candidates List shall be submitted to the governing body of each Member Jurisdiction, with the exception of Fort Worth.
- (c) Each Member Jurisdiction other than Fort Worth shall cast all of its votes for one (1) of the eligible candidates on the Candidates List. Each Member Jurisdiction shall be entitled to the number of votes which corresponds to the number of residents residing in that Member Jurisdiction, based on then-current population estimates reported by the North Central Texas Council of Governments.
- (d) The candidate for the available position receiving the most votes shall be certified by Chair of the Board as the winner of the election to that seat.
- (e) The director may be removed and replaced prior to the end of a term upon the vote of two-thirds of the Member Jurisdictions other than Fort Worth.

2.4.3 The Emergency Physicians Advisory Board (“EPAB”) shall elect two of its members who are residents of or actively or formerly practice in the Service Area, with a preference given to those who live or practice medicine in the Service Area, to serve as voting directors of the Board.

2.4.4 The First Responders Advisory Board shall appoint two voting directors of the Board, one of whom shall be the Fort Worth Fire Chief (or designee) and one of whom shall be a Fire Chief of one of the other Member Jurisdictions.

2.4.5 The Chief Executive Officer of the Authority and the Medical Director shall all be *ex-officio* members of the Board, without voting rights.

2.4.6 The Board may add other non-voting members as it deems appropriate by an affirmative vote of two-thirds of the Board, including members who are experienced in issues of community concern. By way of example and not for purposes of limitation, “issues of community concern” shall include homelessness, mental health, drug abuse, diversity and inclusion, and domestic violence. Non-voting members of the Board shall not be counted for purposes of determining a quorum.

2.5 The Board may add additional voting directors to provide additional representation of new Member Jurisdictions by unanimous vote and may provide the mechanism for electing or appointing the additional voting directors in the Authority’s bylaws; provided that the addition of any new director must maintain proportional representation among the Member Jurisdictions in accordance with their populations (based on the then-current population estimates reported by the North Central Texas Council of Governments). Any other changes to the number of voting members of the Board must be unanimously approved by the Member Jurisdictions.

2.6 Non-voting members of the Board do not have a fixed term. The terms of office of all voting members of the Board shall be three years, except for the Fort Worth Fire Chief (or designee), who shall not have a fixed term. No later than sixty days prior to the expiration of the three year term of a Board member appointed or elected by a Member Jurisdiction, EPAB, or FRAB, the Authority will send written notice to the Member Jurisdiction(s), EPAB, or FRAB, as the case may be, of the expiration of such Board member’s term with a request that the Member Jurisdiction(s), EPAB, or FRAB either re-appoint the existing director for an additional term or appoint a new director for the next three year term. Directors shall serve until their successors are duly appointed.

2.7 Members of the Board shall act in compliance with all laws applicable to service on the Board, including but not limited to conflict of interest laws.

2.8 Any voting member of the Board who fails to attend any three consecutive, regularly scheduled Board meetings or who fails to attend at least 50% of the regularly scheduled meetings in any twelve month period without good cause may be removed from the Board at the request of a majority of their

appointing jurisdiction(s) and their position will be filled for the remainder of their term as provided in by Section 2.4 above.

2.9 The Board shall hire, employ, direct, and discharge the Chief Executive Officer, the General Counsel, and the Medical Director (collectively, the “Executive Personnel”). Whenever, in the judgment of the Board, the best interests of the organization will be served, any Executive Personnel may be terminated or non-renewed by the affirmative vote of two-thirds of the entirety of the Board, not only of those present. The Board shall establish written protocols and procedures for the hiring and termination of Executive Personnel, subject to the requirements of Section 6.4(g).

2.9.1 The Chief Executive Officer shall:

- (i) be hired by a majority affirmative vote of the Board;
- (ii) have the responsibility of operating, managing, and directing the operations of the Authority, including the employment of individuals (except employees of the General Counsel and Medical Director) to carry out the purposes and operations of the Authority; and
- (iii) perform any other duties as assigned by the Board.

2.9.2 The General Counsel shall:

- (i) be hired by a majority affirmative vote of the Board;
- (ii) be the chief legal counsel for the Authority, and advise the Board, Executive Personnel, EPAB, FRAB, and the Authority employees on legal matters and compliance, new and existing laws, and risk mitigation; notwithstanding anything herein, the Board may retain outside counsel as needed.
- (iii) hire, employ, direct, manage, and discharge employees that report to the General Counsel in the performance of his or her duties, and, as applicable, ensure all such employees follow the written policies, rules, and procedures applicable to all Authority employees as set forth or approved by the Board; and
- (iii) perform other duties as assigned by the Board.

2.9.3 The Medical Director shall:

- (i) be hired by a majority affirmative vote of the Board.
- (ii) be the independent medical director for the System, in accordance with state law, and as further set forth in Article VII;

(iii) if an employee of Authority, hire, employ, direct, manage, and discharge employees who report to the Medical Director and assist the Medical Director in the performance of his or her duties, and ensure all such employees follow the written policies, rules, and procedures applicable to all Authority employees as set forth or approved by the Board; if a contractor of Authority, the Board shall, for the purpose of independent medical direction, ensure that the employees of the OMD report directly to the Board through an alternate structure adopted by the Board, and do not report to the Chief Executive Officer of the Authority; and

(iv) perform other duties as assigned by the Board.

ARTICLE III. NEW MEMBERS

3.1 Requirements for a new member (“New Member”) to join the Authority shall be as follows:

3.1.1 The New Member must be a “Local Government” (as such term is defined in Chapter 791 of Tex. Government Code).

3.1.2 The New Member must be approved by the Board of the Authority. The Board shall set the terms and conditions of the New Member’s admission based on the services required by the New Member and the fiscal and operational impact that providing such services would have on the Authority.

3.1.3 The New Member shall concurrently adopt this Agreement and the Uniform EMS Ordinance (attached hereto as Exhibit A).

ARTICLE IV. RESPONSIBILITIES OF MEMBERS

4.1 Each Member Jurisdiction agrees to the following as a condition of membership in the Authority:

4.1.1 To adopt and enforce the Uniform EMS Ordinance and this Agreement;

4.1.2 To establish, operate, and fund a First Responder program in support of the Uniform EMS Ordinance, which may be an Emergency Care Attendant program approved by the Authority.

4.1.3 To abide by the medical protocols, credentialing requirements, and medical policies for First Responders established by the Medical Director in consultation with EPAB.

4.1.4 Deleted by agreement of the parties.

4.1.5 Support Infrastructure: Each Member Jurisdiction agrees to provide a mechanism for transferring 911 calls requesting medical assistance from the Member’s 911 center to the

Authority's designated EMS Communications Center and shall transfer 911 callers in accordance with System performance standards adopted by the Authority.

4.2 This Jurisdiction accepts no financial responsibility or commitment in exchange for its membership in the Authority except for the cost of furnishing a mechanism for transferring 911 callers requesting medical assistance from the Jurisdiction's 911 communications center to Authority's designated EMS Communications Center. Any decision by the Authority affecting the financial obligations of a Member Jurisdiction, contingent or otherwise, shall be subject to prior approval by the governing body of the affected Member. In no event shall this Agreement be construed to mandate the appropriation of specific funds by any Member Jurisdiction beyond the Member's next fiscal year without the annual approval of the Member's governing body.

4.3 A Member Jurisdiction is in default if it fails to substantially comply with any of its obligations under this Agreement and such failure continues for a period of six months without an ongoing good faith attempt to cure the default after it receives written notice of such failure from the Board of the Authority. If a Member Jurisdiction is in default under this Agreement, the Board may terminate that Member Jurisdiction's membership in the Authority and any services provided to that Member Jurisdiction by the Authority shall cease. In such event, the removed Member Jurisdiction forfeits any financial or other interest in the Authority.

4.4 In the event of repeated and chronic failure of the Authority to provide adequate Ambulance Service (whether directly or by contract) within a Member Jurisdiction, and after written notice to the Authority and reasonable opportunity to correct such deficiencies, that Member Jurisdiction may withdraw from the Authority, subject to the following terms:

4.4.1 The Member Jurisdiction must give written notice to the Authority that it intends to invoke this Section of this Agreement;

4.4.2 Upon a continued failure for the following three consecutive full calendar months, or four of the following six full calendar months, after receipt by the Authority of the written notice described above, the Member Jurisdiction may withdraw by giving written notice to the Authority, such notice to be effective ten days after receipt by the Authority.

4.4.3 Upon the effective date of the withdrawal, the Authority shall cease being the exclusive provider of Ambulance Service in the withdrawing Member Jurisdiction and the Authority shall remit to the withdrawing Member Jurisdiction its pro rata share of the Authority's Net Worth, as defined in Subsection 4.4.4 below. In the event that more than one Member Jurisdiction gives notice of its intent to withdraw under this Section 4.4 during a three month notice period and there are not sufficient cash reserves to remit the share of "Net Worth" of each withdrawing Member Jurisdiction in full, the available funds will be distributed pro rata to the withdrawing Member Jurisdictions. Notwithstanding the forgoing, any Member Jurisdiction who is admitted after the date of this Agreement and who does not pay to the Authority an initial fee for start-up of services,

shall not be entitled to Net Worth distributions as provided in Subsection 4.4.4 or to any other distribution of the assets of the Authority under any circumstances.

4.4.4 Net Worth shall be defined as the cash or cash equivalents of the Authority, exclusive of funds specifically allocated for operations or debt service, or budgeted for capital improvements by the Board, and exclusive of the amount of prudent operating reserves required under Subsection 5.5.2 below. Each Member Jurisdiction's pro-rata share of the Net Worth shall be calculated at least once every fiscal year based upon the current population estimate of each Member Jurisdiction compared to the total population of all Member Jurisdictions (as reported by the North Central Texas Council of Governments).

ARTICLE V: POWERS AND DUTIES OF AUTHORITY

5.1 To ensure delivery of quality Ambulance Service and prehospital emergency medical services, the Board shall determine whether the Authority shall directly provide Ambulance Service or engage a contractor to provide Ambulance Service or any part thereof by way of a request for proposals. The provider of Ambulance Service, be it the Authority or the Authority's private contractor, shall be required to provide all such service in each Member Jurisdiction, except for those services exempted in Section 7 of the Uniform EMS Ordinance adopted concurrently herewith.

5.2 Whether the Authority is providing Ambulance Service directly or through a contractor, the Authority shall:

5.2.1 Through its Board, set System performance standards for the Service Area and, if a competitively selected contractor is the operator of the Ambulance Service, enforce compliance therewith through contractually imposed financial penalties.

5.2.2 Provide each Member Jurisdiction with emergency and non-emergency Advanced Life Support and Basic Life Support Ambulance Service; such service to comply with all applicable laws, rules and regulations, and with the clinical standards, credentialing requirements and medical policies that may be promulgated from time to time by the Medical Director.

5.2.3 Fund the Authority's Office of the Medical Director ("OMD") in an amount approved by the Board that is sufficient to fulfill the Medical Director's powers and duties.

5.3 If the Authority is providing Ambulance Service directly, the Authority shall provide Member Jurisdictions' First Responders opportunity to participate in the Authority's continuing education training without charge to the Member Jurisdictions.

5.4 The Authority is authorized to enter into contracts to provide additional related services that the Board deems appropriate in its discretion to advance the public health and welfare or financial stability of the Authority, including without limitation:

5.4.1 Mobile integrated healthcare services (“MIH Services”) that are designed to enhance, coordinate, effectively manage, and integrate out of hospital care, in order to improve outcomes, enhance an enrolled client’s experience of care, and improve the efficiency and effectiveness of healthcare services provided to the client. MIH Services may include, but are not limited to, patient education and navigation services that promote patient self-management of disease processes, injury prevention programs, admission/readmission prevention programs, chronic disease management, a demand management system, and any other related services; and

5.4.2 Other services related to Ambulance Service, such as 911 nurse triage programs, event medical standby, nurse or physician-staffed critical transports, or wheelchair or ambulatory non-emergency transports.

5.5 To fund the Authority’s financial obligations and to ensure use of sound business controls and financial management practices, the Authority shall:

5.5.1 Adopt sound business practices and accounting methods, in accordance with generally accepted accounting standards applicable to independent enterprise agencies, as prescribed by the Governmental Accounting Standards Board;

5.5.2 Establish and maintain a prudent operating reserve of cash or cash equivalents in an amount set by the Board in the Authority’s Bylaws, which shall be at least three months of operating capital;

5.5.3 Adopt a fiscal year beginning October 1st;

5.5.4 Develop and implement a financial management plan designed to ensure long-range financial stability and reinvestment into the System; and

5.5.5 Secure annual audits of the Authority by an independent certified public accounting firm.

5.6 If the Authority is providing Ambulance Service directly, it shall:

5.6.1 Present written reports of the operational performance of the medical transportation, MIH, and prehospital emergency medical services at meetings of the Board and make the reports available to Authority members upon request;

5.6.2 For each fiscal year, prepare and provide to each Member Jurisdiction a comprehensive review and summary of the financial, clinical and operational performance of the Authority during such fiscal year. This report must be submitted to the Member Jurisdictions no later than 120 days after the end of the fiscal year; and

5.6.3 Upon the written request of a majority of Member Jurisdictions or the request of Member Jurisdiction(s) whose combined population exceeds 50% of the total population of all Member

Jurisdictions (based on the then-current population estimates reported by the North Central Texas Council of Governments), provide to each Member Jurisdiction an audit of the clinical and operational performance of the Authority during the preceding fiscal year prepared by a qualified and independent third party. This audit must be completed no later than one hundred twenty (120) days after the date of such written request.

5.7 The Authority shall manage accounts, subscriptions, payments and billing practices related to the services it provides as follows:

5.7.1 Deleted by agreement of the parties.

5.7.2 The Authority shall bill patients, third-party payers or other responsible parties, and collect the revenue from such bills, for all services provided.

5.7.3 The Authority shall implement an Ambulance Service subscription program (unless otherwise prohibited by law) and shall offer memberships in the program to all residents of the Member Jurisdictions.

5.7.4 The Authority shall maintain a separate account for the balance of funds allocated to EPAB prior to the enactment of the Restated and Amended Interlocal Cooperative Agreement. Those funds shall be expended upon the recommendation of EPAB and approval of the Board solely for the purposes of System enhancement, research, and medical direction.

5.8 The Authority is authorized to purchase, lease, acquire, accept, own or hold real or personal property, to operate or maintain the same, to borrow or incur debt in its own name, to accept gifts, grants or bequests, to insure itself and its Member Jurisdictions for any liabilities which might be incurred through performance of this Agreement, to contract in its own name and to sue or be sued in its own name; provided that nothing in this grant of authority shall be construed to waive any immunity otherwise afforded by law to the Authority and its officers, employees and agents or the Member Jurisdictions or their officers, employees and agents.

5.9 The Authority, through its Board, shall adopt performance goals and standards for the System and shall review such goals and standards on at least an annual basis, acting on recommendations from the Medical Director and a System performance committee as described below.

5.9.1 The Board shall appoint a System performance committee consisting of representatives of EPAB, FRAB, the Executive Personnel, and any other individuals the Board deems necessary in its discretion to develop performance standards for the System (the "System Performance Committee"). The proposed standards shall include but not be limited to: reasonable and medically appropriate response times for the Ambulance Service; response time goals for First Responders; call processing time goals for participating communication centers; clinical performance standards; standards for data collection and sharing; and standards for reporting

System performance. The proposed goals and standards shall be presented to the Board for review and approval.

5.9.2 The System Performance Committee shall thereafter meet as needed, but no less than on a semi-annual basis, to review System performance, address any deficiencies, and make appropriate recommendations for modification of the standards.

5.10 In addition to the powers set forth in this Agreement or the Uniform EMS Ordinance, the Authority shall have all of the powers allowed or provided by Chapter 791 of the Tex. Government Code, the “Interlocal Cooperation Act.”

5.11 To the extent permitted by law, the Authority shall indemnify and hold harmless members of the Board, and FRAB, from liability for actual damages, including costs and attorney’s fees, arising from any claim, lawsuit, or judgment resulting from their acts or omissions in the scope and course of their office, provided that such liability arises out of, or in connection with, the provision of any and all services through the Authority; provided that nothing in this Agreement shall limit or waive any defense or immunity as to claims by third parties that is otherwise available to the Authority and its officers, employees, and agents or to the Member Jurisdictions or their officers, employees, and agents.

5.12 To the extent permitted by law, the Authority shall indemnify and hold harmless members of EPAB, the Medical Director, and Associate Medical Directors, from liability for actual damages, including costs and attorney’s fees, arising from any claim, lawsuit, or judgment resulting from their acts or omissions in the scope and course of their office, provided that such liability arises out of, or in connection with, the provision of any and all services through the System; provided that nothing in this Agreement shall limit or waive any defense or immunity as to claims by third parties that is otherwise available to the Authority and its officers, employees, and agents or to the Member Jurisdictions or their officers, employees, and agents.

5.13 This Agreement is not intended to designate MAEMSA as the single provider of standby emergency medical services for any Member Jurisdiction. Nothing herein prohibits any Member Jurisdiction from regulating, managing, and governing standby emergency medical services and the provider(s) thereof in its own jurisdiction.

ARTICLE VI: EMERGENCY PHYSICIANS ADVISORY BOARD

6.1 EPAB’s membership shall be composed as follows:

(a) **Hospital Members:** From each full-service hospital located in the Service Area, the Medical Director of the Emergency Department (or their designee, who must actively practice at the hospital and have board certification in Emergency Medicine or Pediatric Emergency Medicine).

(b) **Community Physicians:** Upon the request of EPAB, additional physicians with currently or formerly active specialties or sub-specialties of benefit in developing standards for emergency pre-hospital care, all of whom shall be appointed by and serve at the pleasure of the Tarrant County Medical Society, provided that the number of physicians appointed by the Medical Society shall not exceed one less than the number of Hospital Members with voting rights under paragraph (a) above.

(c) **Non-Voting Members:** EPAB may add other non-voting members as it deems appropriate by an affirmative vote of two-thirds of EPAB. Non-voting members of EPAB shall not be counted for purposes of determining a quorum. Non-voting members of EPAB are not required to be a physician licensed to practice medicine in the State of Texas.

6.2 EPAB shall conduct meetings in compliance with Chapter 551 of the Tex. Government Code (the Open Meetings Act). The manner of determining a quorum shall be set forth in EPAB's bylaws.

6.3 The officers of EPAB shall be Chair, Vice-Chair, Secretary, and Treasurer, and such other officers as may be provided in EPAB's bylaws. All voting members of EPAB are required to be physicians licensed to practice medicine in the State of Texas.

6.4 The parties recognize that EPAB exists to provide independent medical oversight to the System, inclusive of the First Responders who are (i) Emergency Care Attendants, Emergency Medical Technicians, and Paramedics, (ii) employees of the parties, and (iii) not in any way controlled by the Authority. However, the parties have elected not to establish a framework for direct advising of and reporting to the governing bodies of the parties by EPAB with regard to independent medical oversight of the First Responders. Therefore, EPAB shall provide all independent medical oversight for the System as an advisory board to the Authority, and shall report directly to the Board of the Authority. EPAB shall provide independent medical advice and oversight for clinical matters by:

- a. advising the Authority about the clinical performance of the System and the Authority's MIH programs;
- b. reviewing and approving medical protocols for the System and making recommendations to the Medical Director;
- c. representing the interests of the medical community and providers by making recommendations for improvement of the System;
- d. promoting the System's programs to the medical community;
- e. serving as an advisory appeals board for credentialing actions of the Medical Director;
- f. recommending and reviewing research conducted within the System; and

g. participating in the selection of the Medical Director and review of the Medical Director's clinical performance through processes established by the Board, including matters related to the termination or non-renewal of all contracts for medical direction. The process established by the Board for the selection of the Medical Director and the review of the Medical Director's clinical performance shall include participation and input from the members of EPAB.

ARTICLE VII. MEDICAL DIRECTOR

7.1 The Medical Director for the System shall be retained through a contract with the Board of the Authority. The Medical Director must be a licensed physician who is board-certified in emergency medicine and meets all state requirements.

7.2 The Board shall adopt procedures for soliciting input and recommendations from EPAB and FRAB when selecting the Medical Director and reviewing the Medical Director's performance.

7.3 The Medical Director shall be the Chief Medical Officer of the Authority, shall report to the Board of the Authority, and shall have all the powers and duties afforded and required of EMS medical directors under state law. The parties recognize that the Medical Director provides independent medical direction to the System, inclusive of the First Responders who are (i) Emergency Care Attendants, Emergency Medical Technicians, and Paramedics, (ii) employees of the parties, and (iii) not in any way controlled by the Authority. However, the parties have elected not to establish a framework for direct reporting to the governing bodies of the parties by the Medical Director with regard to independent medical direction of the First Responders. The Medical Director shall provide all independent medical direction and is the exclusive source of medical direction and oversight for the System. The Medical Director and the OMD shall report directly to the Board and not to the Chief Executive Officer of the Authority. To the extent not in conflict with state law, the Medical Director shall have the following powers and duties:

- (a) To establish patient care standards for all medical services provided by the System;
- (b) To develop medical protocols, credentialing requirements, and medical policies, for all medical services for the System and periodically revise the same; and to provide necessary training to the System regarding the same;
- (c) To recommend to the Authority medically appropriate performance measures and standards for the Service Area, including but not limited to standards for equipment on ambulances and First Responder vehicles in the Service Area;
- (d) To direct the activities of the Authority's employees assigned to the OMD, subject to the provisions of Section 2.9.3;
- (e) To provide medical direction to the Authority's EMS Communication Center, including quality assurance and protocol review;

- (f) To provide medical direction to the System's clinical education and training programs;
- (g) To develop, direct, and conduct the System's quality assurance and medical review programs for Medical Transportation, MIH, and prehospital emergency medical service;
- (h) To develop, direct, and conduct the System's programs for the credentialing of Medical Transportation, MIH, and prehospital emergency medical service personnel in the Service Area, including ambulance personnel, MIH Providers, First Responders, and EMS Communication Center personnel; to provide training for purposes of credentialing, and to credential qualified personnel;
- (i) To monitor the clinical performance of the System;
- (j) To present written and oral reports of the clinical performance of the System at meetings of the Board and EPAB and to make the written reports available to Member Jurisdictions upon request;
- (k) To approve standards governing the operation of Specialized Mobile Intensive Care units within the Service Area, including standards limiting the types of Patients which may be transported thereby;
- (l) To approve standards governing the operation of Aeromedical Transportation Units within the Service Area, including standards defining the circumstances under which such units may be deployed to emergency scenes;
- (m) To credential First Responders, Medical Transportation providers, and ambulance standby providers through the Authority's permitting and credentialing process;
- (n) To the extent feasible, and in coordination and collaboration with the participating organization's administration, develop, implement and oversee an organized ongoing program of EMS research to improve the System and contribute to the EMS knowledge base;
- (o) To conduct inspections of System vehicles, equipment and supplies;
- (p) To periodically conduct intensive reviews of the System's performance relative to specific clinical modalities and to revise medical protocols and such other standards of the System as may be appropriate in light of the findings;
- (q) To serve as medical director for the Authority and for First Responders of Member Jurisdictions when they provide medical services outside the Service Area; and
- (r) To perform any other duties pursuant to the powers granted to the Medical Director pursuant to state law.

7.4 The Board of the Authority may retain Associate Medical Directors as it deems necessary to support the Medical Director and the System's programs. Associate Medical Directors shall report to the Medical Director.

7.5 The Board shall include funding for the OMD in its budget in an amount sufficient to carry out the power and duties of the Medical Director under this Agreement. Expenditure of budgeted OMD funds shall be in accordance with the Authority's policies and procedures.

ARTICLE VIII: FIRST RESPONDERS ADVISORY BOARD

8.1 The First Responder Advisory Board ("FRAB") shall advise the Authority and EPAB on matters related to first response and prehospital emergency medical services in the Service Area.

8.2 FRAB's membership shall include:

(a) One First Responder agency representative from every Member Jurisdiction.

(b) Executive Personnel, who shall be non-voting, *ex-officio* members.

(c) Any other non-voting members added by FRAB by an affirmative vote of two-thirds of FRAB.

Non-voting members of FRAB shall not be counted for purposes of determining a quorum.

8.3 FRAB shall:

(a) Participate in the System Performance Committee.

(b) Facilitate the collection and reporting of information related to System performance by First Responders.

(c) Coordinate training and credentialing activities for First Responder personnel with OMD.

(d) Inform and advise the Board regarding issues related to medical first response in the Service Area.

ARTICLE IX: MISCELLANEOUS

9.1 Notwithstanding anything herein to the contrary, neither the Authority nor the Medical Director may require the Member Jurisdictions to expend funds for equipment purchases, training, implementation of protocols, or any other requirement necessitating an expenditure of funds, over the objection of the governing body of the Member Jurisdiction.

9.2 The provisions of this Agreement are severable. Should any provision of this Agreement be or become unenforceable or impossible of performance under current or future law, so long as applicable

law does not substantially impair the intent of the parties, the parties shall continue to be bound hereunder and shall perform consistent with the intent of this Agreement.

This Agreement shall become effective on the date it is executed by all of the Member Jurisdictions.

Agreed and entered into by the following Member Jurisdictions:



City of Saginaw

Meeting Date: 6/2/2020

Staff Contact: Doug Spears
Fire Chief

Agenda Items: (4)(e)

E-mail: dougspears@saginawfire.us

Phone: 817-230-0412

SUBJECT:

Action regarding Metropolitan Area EMS Authority (MAEMSA) Revised EMS Ordinance (Ordinance No. 2020-13)

BACKGROUND/DISCUSSION:

The Uniform EMS Ordinance provides for the establishment and regulation of prehospital emergency medical services. We have a Uniform EMS Ordinance in effect however with the adoption of the MAEMSA Restated & Amended ILA it was necessary to revise the Uniform EMS Ordinance to remove or revise conflicting language. The revisions are minor and do not have substantive impact.

The revised Uniform EMS Ordinance is attached.

FINANCIAL IMPACT:

None

RECOMMENDATION:

Approval of the Uniform EMS Ordinance as presented.

ATTACHMENTS:

Description

Ord 2020-13

ORDINANCE NO. 2020-13

AN ORDINANCE AMENDING CHAPTER 4 “AMBULANCE/ EMERGENCY MEDICAL SERVICES” OF THE SAGINAW CITY CODE TO AMEND THE TERMS AND CONDITIONS FOR THE OPERATION OF AN AMBULANCE SERVICE WITHIN THE CITY OF SAGINAW; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Saginaw, Texas is a home rule City acting under its Charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, Tex. Health and Safety Code § 773.051 provides that local governments may establish standards for ambulances; and

WHEREAS, Tex. Government Code Chapter 791, authorizes combinations of local governmental units to contract for the provision of governmental services, including the creation of administrative agencies to promote public health and welfare.

WHEREAS, the City Council previously adopted regulations, and approved an interlocal agreement providing for ambulance service within the City of Saginaw; and

WHEREAS, the City Council now wishes to adopt an amended regulations outlining the terms and conditions under which ambulance service will be provided within the City of Saginaw.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL, CITY OF SAGINAW, TEXAS THAT:

SECTION 1.

Chapter 4 “Ambulance/Emergency Medical Services” of the Saginaw City Code is hereby amended to read as follows:

CHAPTER 4

AMBULANCE/EMERGENCY MEDICAL SERVICES

ARTICLE I. IN GENERAL

Sec. 4-1 STATUTORY AUTHORITY.

This chapter is enacted by the City of Saginaw (“this Jurisdiction”), pursuant to Tex. Health and Safety Code § 773.051, which provides that local governments may establish standards for ambulances, and pursuant to Tex. Government Code Chapter 791, which authorizes combinations of local governmental units to contract for the provision of governmental services, including the creation of administrative agencies to promote public health and welfare.

Sec. 4-2 GENERAL PURPOSES AND INTENT OF CHAPTER.

It is the purpose of this Chapter:

- (a) To establish a regulated prehospital emergency medical services and medical transportation system which can provide quality clinical care with performance measures and standards, with the goal of facilitating the best possible outcomes for each patient;
- (b) To establish a mobile integrated healthcare program with effective medical direction and quality assurance and review;
- (c) To form an administrative agency to administer and operate the prehospital emergency medical services and medical transportation system in a service area comprised of member jurisdictions and to administer and operate the mobile integrated healthcare program;
- (d) To designate the administrative agency as the sole-provider of emergency and non-emergency ambulance service within this jurisdiction to maintain consistent, high-quality service while controlling costs through efficiencies and economies of scale;
- (e) To provide for effective medical direction by establishing a multi-jurisdictional emergency physicians advisory board to advise the administrative agency’s board and to provide independent medical oversight for all clinical aspects of prehospital emergency medical services, the administrative agency’s mobile integrated healthcare program, and medical transportation which affect patient care in the service area; and
- (f) To provide for effective coordination and communication between first responder agencies in the service area, the emergency physicians advisory board, and the board of the administrative agency by establishing a multi-jurisdictional first responder advisory board.

Sec. 4-3 **DEFINITIONS.**

For the purposes of this Chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

- (a) **Advanced Life Support.** Out-of-hospital care that uses invasive medical acts (as defined in Tex. Health and Safety Code § 773.003(1)).
- (b) **Aeromedical Transportation Unit.** Any rotary or fixed wing aircraft providing basic or advanced life support services and patient transportation that originates within the Service Area.
- (c) **Ambulance Mutual Aid Agreement.** A written agreement between the Authority and one or more entities whereby the signing parties agree to provide backup ambulance service to one another under the terms and conditions specified in the agreement.
- (d) **Ambulance Service.** The transportation of Patients by emergency or non-emergency ambulance.
- (e) **Associate Medical Director.** A licensed physician who assists the Medical Director in carrying out his or her duties under this Chapter and the Restated and Amended Interlocal Cooperative Agreement.
- (f) **Authority (Metropolitan Area EMS Authority).** The public administrative agency established to administer and operate the Medical Transportation and prehospital emergency medical services system and the program for MIH (as hereinafter defined) established by this Chapter.
- (g) **Basic Life Support.** Out-of-hospital care that uses noninvasive medical acts (as defined in § 773.003(2), Tex. Health and Safety Code).
- (h) **Board.** The Board of Directors of the Authority.
- (i) **Emergency Care Attendant.** A person certified as an “emergency care attendant” under § 773.046 of the Tex. Health and Safety Code.
- (j) **Emergency Medical Technician (EMT).** A person certified as an “emergency medical technician” under § 773.047 or an “advanced emergency medical technician” under § 773.048 of the Tex. Health and Safety Code, and any other class of EMT recognized by state law or regulation.
- (k) **EMS Communications Center.** The facility designated by the Authority as the central communications center from which all services offered by the Authority shall be dispatched and controlled.

- (l) **First Responder.** Any agency that provides first response to requests for emergency medical services and, in cooperation with the Ambulance Service, provides immediate on-scene care to ill or injured persons but does not transport those persons to healthcare facilities.
- (m) **Medical Director.** The licensed physician retained through a contract with or employed by the Board who is responsible for carrying out his or her duties under this Chapter and the Restated and Amended Interlocal Cooperative Agreement and for directing the Office of the Medical Director.
- (n) **Medical Transportation.** The transportation of Patients by ambulance, Specialized Mobile Intensive Care Unit, Specialty Care Transport, or Aeromedical Transportation Unit, including both emergency and non-emergency transports, where such transportation originates within the Service Area.
- (o) **Mobile Integrated Healthcare (MIH).** Services provided by the Authority that are designed to enhance, coordinate, effectively manage, and integrate out of hospital care, in order to improve outcomes, enhance the client's experience of care, and improve the efficiency and effectiveness of healthcare services provided to the enrolled clients.
- (p) **Office of Medical Director.** The clinical office of the Authority through which the Medical Director carries out his/her rights and duties under this Chapter and the Restated and Amended Interlocal Cooperative Agreement. The Office of the Medical Director is comprised of the Medical Director, and any Associate Medical Directors, and the employees of the Authority in the Office of the Medical Director to assist the medical directors in carrying out the Medical Director's rights and duties under this Chapter and the Restated and Amended Interlocal Cooperative Agreement.
- (q) **Paramedic.** A person qualified as a certified or licensed "paramedic" as defined by Tex. Health and Safety Code Sections 773.049 and 773.0495.
- (r) **Patient.** An individual who is ill, sick, injured, wounded, or otherwise incapacitated, and in need of or at risk of needing medical care at the scene of a medical emergency or during transport to or from a healthcare facility.
- (s) **Person.** Any individual, firm, association, partnership, corporation, governmental entity, or other group, or a combination of the same acting as a unit.
- (t) **Restated and Amended Interlocal Cooperative Agreement.** The interlocal contract, as it may be amended from time to time, adopted by this Jurisdiction concurrently with the passage of this Chapter pursuant to Chapter 791 of the Tex. Government Code (the Interlocal Cooperation Act).
- (u) **Service Area.** That geographical area which is contained within the boundaries of all the jurisdictions which become members of the Authority by adopting this Uniform EMS Ordinance and executing the Restated and Amended Interlocal Cooperative Agreement.

(v) **Special Event.** Any public event located within the Service Area for which standby ambulance service is arranged in advance, and for which an ambulance is hired by the sponsor of the event or other interested party.

(w) **Specialty Care Transport.** The transportation of a critically injured or ill patient at a level of service beyond the scope of the EMT-Paramedic when the patient's condition requires ongoing care that must be furnished by one or more health professionals in an appropriate specialty area; for example, emergency or critical care nursing, emergency medicine, respiratory care, cardiovascular care, or a paramedic with additional training.

(x) **Specialized Mobile Intensive Care Unit.** A vehicle which is specially constructed, equipped, staffed, and employed in the inter-facility transport of patients whose requirements for en route medical support are likely to exceed the clinical capabilities of an Advanced Life Support ambulance.

Secs. 4-4—4-25. - Reserved.

ARTICLE II: BOARDS; THE AUTHORITY

Sec. 4-26 EMERGENCY PHYSICIANS ADVISORY BOARD.

(a) There is hereby created an Emergency Physicians Advisory Board ("EPAB") which shall, on behalf of this Jurisdiction, provide independent medical oversight for and advise and inform the Authority on all clinical aspects of Medical Transportation, the Authority's MIH program, and prehospital emergency medical services in this Jurisdiction, including such services provided by the Authority and First Responders, and shall exercise independent professional judgment in all matters related to Patient care.

(b) EPAB's membership and other matters relating to EPAB shall be set forth in the Restated and Amended Interlocal Cooperative Agreement and in the Bylaws adopted by EPAB.

Sec. 4-27 METROPOLITAN AREA EMS AUTHORITY.

By adopting this Chapter and executing and approving the Restated and Amended Interlocal Cooperative Agreement, this Jurisdiction has joined the Authority, which shall now be known as the Metropolitan Area EMS Authority.

Sec. 4-28 POWERS AND DUTIES OF METROPOLITAN AREA EMS AUTHORITY.

The Authority shall have the following powers and duties:

(a) The Authority is hereby designated as the sole provider of Ambulance Service and Special Event ambulance standby service within this Jurisdiction, whether directly or indirectly through contractors, pursuant to the terms, conditions and provisions of the Restated and Amended

Interlocal Cooperative Agreement, except for those services exempted by Section 4-47 (b) of this Chapter.

(b) The Authority shall comply with all terms of the Restated and Amended Interlocal Cooperative Agreement and have all the powers and duties enumerated therein.

(c) The Authority is required to provide this Jurisdiction with Basic and Advanced Life Support Ambulance Service in accordance with system performance standards and all applicable law, rules and regulations, as well as all patient care standards that the Medical Director may from time to time promulgate;

(d) The Authority is authorized to operate an MIH program on a non-exclusive basis in this Jurisdiction.

(e) The Authority shall enter into a First Responder Agreement with this Jurisdiction and may issue, suspend, revoke, and renew permits for the delivery of First Responder services in this Jurisdiction by other agencies, subject to the credentialing process by the Medical Director and subject to rights of appeal to the Board.

(f) The Authority shall adopt standards approved by the Medical Director governing the operation of Specialized Mobile Intensive Care units and for Specialty Care Transport within the Service Area, including standards limiting the types of patients which may be transported thereby, and, subject to the credentialing process by the Office of the Medical Director, may issue, suspend, revoke, and renew permits for the operation of such units as required by this Chapter.

(g) The Authority shall adopt standards approved by the Medical Director governing the operation of Aeromedical Transportation Units within the Service Area, including standards defining the circumstances under which such units may be deployed to emergency scenes and, subject to the credentialing process by the Office of the Medical Director, may issue, suspend, revoke, and renew permits for the operation of such units as required by this Chapter.

(h) The Authority shall adopt standards approved by the Medical Director governing the provision of Special Event ambulance standby service within the Service Area, and, subject to the credentialing process by the Medical Director, may issue, suspend, revoke, and renew permits for the provision of such ambulance standby service; provided, however, nothing contained in this Section 4-28 establishes the Authority as the sole provider of non-ambulance standby emergency medical services, nor shall it limit the authority of the City to regulate, manage, or govern standby emergency medical services and the provider(s) thereof.

Sec. 4-28 MEMBERSHIP OF METROPOLITAN AREA EMS AUTHORITY.

The Authority Board's membership and other matters relating to the Authority shall be set forth in the Restated and Amended Interlocal Cooperative Agreement and in the Bylaws adopted by the Authority's Board.

Sec. 4-29 FIRST RESPONDER ADVISORY BOARD.

- (a) There is hereby created a First Responder Advisory Board (“FRAB”) which shall advise and inform the Authority and EPAB on matters related to first response and prehospital emergency medical services in the Service Area.
- (b) The FRAB’s membership and other matters relating to the board shall be set forth in the Restated and Amended Interlocal Cooperative Agreement and in the Bylaws adopted by the FRAB.

Secs. 4-30—4-45. - Reserved.

ARTICLE III: VIOLATIONS; PENALTIES; TRAFFIC LAW EXEMPTION.

Sec. 4-46 VIOLATIONS.

- (a) It shall be unlawful:
 - (1) To knowingly give false information to induce the dispatch of an ambulance or Aeromedical Transportation Unit.
 - (2) To perform duties as an ECA, EMT, Paramedic or emergency ambulance dispatcher without current credentials issued by the Office of the Medical Director, unless participating in a training program approved by Office of the Medical Director;
 - (3) To permit a person to work as an ECA, EMT, Paramedic or emergency ambulance dispatcher without current credentials issued by the Office of the Medical Director, unless participating in a training program approved by Office of the Medical Director;
 - (4) To use, or cause to be used, any Ambulance Service other than the Authority, except as permitted in subsection (b) below;
 - (5) For any person or entity other than the Authority to provide Ambulance Service within this Jurisdiction, unless pursuant to a written agreement with the Authority;
 - (6) For any person to provide Medical Transportation originating in the Service Area without a permit issued by the Authority;
 - (7) For any agency to provide First Responder services without a First Responder permit issued by the Authority, unless pursuant to a First Responder Agreement with the Authority or a written automatic aid or mutual aid agreement with this Jurisdiction;

- (8) To use an ambulance for the transportation of persons other than in connection with the transportation of a Patient.
- (b) It shall be a defense to any alleged violation of this section that a vehicle is being used or service is provided solely in any of the following manners:
- (1) As a privately owned vehicle not ordinarily used in the business of transporting persons who are sick, injured, wounded, incapacitated or helpless;
 - (2) Rendering service as an ambulance at the request of the EMS Communications Center upon the declaration of a disaster by this Jurisdiction, the State of Texas, or the United States; or a declaration of a major catastrophe or extreme system overload by the Chief Executive Officer of the Authority;
 - (3) Any ambulance owned or operated by the federal or state government;
 - (4) Ambulance mutual aid calls when rendered pursuant to an Ambulance Mutual Aid agreement approved by the Authority;
 - (5) Special Event ambulance standby coverage, so long as such service is provided without charge by an emergency medical services volunteer provider, as defined in Tex. Health and Safety Code § 773.003(13), or the Authority has first declined to provide coverage and the entity providing coverage has been issued a permit by the Authority;
 - (6) Wheelchair transport services for persons other than Patients, when the service is not provided by ambulance; and
 - (7) Medical Transportation of a Patient where the transport originates outside the Service Area.

Sec. 4-47. PENALTIES.

- (a) Any person convicted of violating the provisions of Section 4-45 shall be guilty of a Class C misdemeanor and shall be punished by a fine not to exceed \$500 (Tex. Penal Code §12.23).
- (b) This Section does not serve to limit any other remedies available to the Jurisdiction in law or equity.
- (c) Each violation of this Chapter shall constitute a separate offense.

Sec. 4-48 TRAFFIC LAWS; EXEMPTION.

When the driver of an emergency medical response vehicle has reasonable grounds to believe that an emergency exists, as determined by the EMS Communication Center, the vehicle

shall be treated as an “authorized emergency vehicle” within the meaning of Chapter 546 of the Tex. Transp. Code and shall be exempt from traffic laws as provided therein.

SECTION 2.

This ordinance shall be cumulative of all provisions of ordinances and of the Saginaw City Code, as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event the conflicting provisions of such ordinances and such Code are hereby repealed.

SECTION 3.

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause sentence, paragraph or section.

SECTION 4.

That all rights or remedies of the City of Saginaw, Texas, are expressly saved as to any and all violations of the City Code or any amendments thereto regarding the provision of ambulance services that have accrued at the time of the effective date of this ordinance; and as to such accrued violations, and all pending litigation, both civil or criminal, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

SECTION 5.

The City Secretary of the City of Saginaw is hereby directed to publish at least twice in the official newspaper of the City of Saginaw, the caption and the penalty clause of this ordinance in accordance with Section 52.013(b) of the Local Government Code.

SECTION 6.

This ordinance shall be in full force and effect after its passage and publication as required by law, and it is so ordained.

PASSED AND APPROVED ON THIS _____ DAY OF _____, 2020.

TODD FLIPPO, MAYOR

ATTEST:

JANICE ENGLAND, CITY SECRETARY

APPROVED AS TO FORM AND LEGALITY:

BRYN MEREDITH, CITY ATTORNEY



City of Saginaw

Meeting Date: 6/2/2020

Staff Contact: Melanie McManus
Director of Human Resources

Agenda Items: (4)(f)

E-mail: mmcmanus@saginawtx.org

Phone: 817-230-0330

SUBJECT:

Action Regarding Resolution No. 2020-14, Authorizing Creation of Employee Benefit Trust and Designating Trustees

BACKGROUND/DISCUSSION:

At the recommendation of HUB International, the employee benefit trust will allow the city to purchase various forms of insurance that will benefit the city employees and their dependents. The trust will reduce the taxable gross premiums by 1.75% with an estimated annual savings of \$31,937. Resolution No. 2020-14 addresses the creation of the trust and designates trustees.

FINANCIAL IMPACT:

The financial impact will be the estimated annual savings of \$31,937.

RECOMMENDATION:

Staff recommends approval.

ATTACHMENTS:

Description

Resolution No. 2020-14

RESOLUTION NO. 2020-14

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAGINAW, TEXAS, AUTHORIZING THE CREATION OF AN EMPLOYEE BENEFITS TRUST; DESIGNATING THE CITY MANAGER, FINANCE DIRECTOR AND HUMAN RESOURCES DIRECTOR TO BE TRUSTEES OF SAID TRUST; AND AUTHORIZING THE TRUST TO PURCHASE VARIOUS FORMS OF INSURANCE FOR THE BENEFIT OF CITY OFFICERS, EMPLOYEES, QUALIFIED RETIREES, AND THEIR DEPENDENTS.

* * * *

WHEREAS, the City of Saginaw, Texas (the "City") provides or offers various employee benefits to its employees, including health, dental, and life insurance, and disability benefits; and

WHEREAS, state law imposes a tax upon the receipt of gross premiums and revenues associated with such benefits; and

WHEREAS, state law also authorizes the exemption of such premiums and revenues from state law, provided that the City establishes and maintains the funds under the ownership and control of a single, nonprofit trust; and

WHEREAS, the City Council of the City finds it to be in the public interest to authorize the creation of an Employee Benefits Trust for the reasons provided above;

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

Section 1. The City Council hereby authorizes creation of an Employee Benefits Trust, designating the City Manager, Finance Director and Human Resources Director Trustees of said Trust, and authorizing the Trust to purchase various forms of insurance for the benefit of City officers, employees, qualified retirees, and their dependents, all of which is pursuant to the Declaration of Trust attached as Exhibit "A."

PASSED, APPROVED, AND RESOLVED this ____ day of _____, 2020.

Todd Flippo, Mayor

ATTEST:

Janice England, City Secretary

**EXHIBIT “A”
DECLARATION OF TRUST**

I.

CREATION OF TRUST

The City of Saginaw (“City”), as Settlor or creator of the trust, designates City Manager, Finance Director, and Human Resources Director to be Trustees and declares that the City holds in trust the funds described in Schedule A attached hereto and incorporated herein by reference, which is the property of the City, and all substitutions and additions to such funds, for the purpose of providing or offering, whether now or possibly in the future, life, disability, sick, accident, and other health benefits to the City’s officers, employees, and qualified retirees and their dependents.

II.

PURPOSE

This is a nonprofit trust created for the purpose of providing or offering, whether now or possibly in the future, City officers, employees, and qualified retirees and their dependents with life, disability, sickness, accident, and other health benefits either directly or through the purchase of insurance and to perform operations in furtherance thereof. The Trust is intended to qualify as a tax-exempt trust performing an essential governmental function within the meaning of Section 115 of the Internal Revenue Code (the “Code”).

III.

DURATION

The Trust shall continue until terminated by operation of law or by majority vote of the Trustees.

IV.

TRUSTEES: COMPOSITION, OFFICERS, COMPENSATION, AND MEETINGS

A. Composition. The Trustees are City Manager, Finance Director, and Human Resources Director, and each Trustee’s term is contemporaneous with his or her employment with the City. Whenever a Trustee ceases to be a City employee, the person succeeding him or her in office will automatically be appointed to serve as a successor Trustee of the Trust.

B. Officers. The City Manager shall serve as Chairman and shall preside at meetings of the Trustees and shall have all such other powers as are conferred herein or by majority vote of the Trustees at a duly called meeting at which a quorum is present. The Finance Director shall serve as Vice Chairman and shall preside at meetings of the Trustees whenever the Chairman is absent. The Human Resources Director shall serve as Secretary. The Secretary will oversee the

preparation of meeting agendas, giving notice of meetings to the Trustees, and the minutes of the meetings of the Trustees.

C. Compensation. The Trustees shall be reimbursed for all reasonable and necessary expenses incurred by them in the performance of their duties and will otherwise receive no compensation for their service as Trustees.

D. Meetings. A meeting of the Trustees may be called by the Chairman or on written request to the Chairman by two or more Trustees. Trustees shall have at least three days written notice of any meeting. For purposes of this section, electronic mail notice is written notice.

V.

RIGHTS, POWERS, AND DUTIES OF TRUSTEES; QUORUM AND VOTING

A. Rights, Powers, and Duties. In addition to all other powers and duties conferred on them by this Trust document and imposed or authorized by law, the Trustees shall have the following powers and duties, but only to the extent permissible for a single purpose non-profit trust under Section 222.002(c)(5) of the Texas Insurance Code:

1. The Trustees shall carry out all of the duties necessary for the proper operation and administration of the Trust on behalf of the covered persons and shall have all the powers necessary and desirable for the effective administration of the affairs of the Trust.

2. The Trustees have the general power to make and enter into all contracts, leases, and agreements necessary or convenient to carry out any of the powers granted by this Trust document or by law or to effectuate the purpose of the Trust. All such contracts, leases, and agreements or any other legal documents herein authorized shall be approved by the Trustees by majority vote at a duly called meeting at which a quorum is present and signed by the Chairman on behalf of the Trust. The Trustees may also designate another Trustee to sign such documents.

3. The Trustees shall use the Trust's funds to accomplish the purpose of the Trust, as described in Section II herein, and to operate and administer the Trust solely in the interest of the covered City officers, employees, and qualified retirees and dependents thereof and for the exclusive purpose of providing or offering benefits to such persons and defraying the reasonable expenses of administration of the Trust. To this end, the Trustees may purchase life, disability, or accident and health insurance to provide or offer coverage for participating City officers, employees, and qualified retirees and their dependents. The Trustees may also adopt a health benefits plan that covers eligible City officers, employees, and qualified retirees, and their dependents.

4. The Trustees may accept contributions to the Trust funds from any source including contributions from covered persons receiving benefits from the Trust.

5. The Trustees shall be authorized to contract with any qualified organization to perform any of the functions necessary for providing or offering life, disability, sick, accident, and other health benefits, including but not limited to excess loss insurance, stop loss insurance,

claims administration, administrative services, and any other services that the Trustees shall deem expedient for the proper operation of the Trust. When required by law or desired by the Trustees, the Trustees shall seek sealed competitive bids or sealed competitive proposals with respect to contracts required to carry out the operations of the Trust and to affect the purpose of the Trust.

6. The Trustees shall arrange for the investing of the funds of the Trust so as to keep the same invested according to law and at the best interest rates obtainable for the benefit of the covered persons. The Trustees may hire money managers and shall adopt an investment policy for its own use and that of its agents in making investments. The Trustees shall select a depository for the Trust's funds and provide for the proper security of any and all investments. The Trustees shall designate signatories for the Trust's depository accounts.

7. The Trustees may purchase insurance for the Trustees and any other fiduciaries appointed by the Trustees and for the Trust itself to cover liability or losses occurring by reason of the act or omission of any one or more of the Trustees or any other fiduciary appointed by them. Any insurance purchased by the Trustees must give the insurer recourse against the Trustees or other fiduciaries concerned for breach of any fiduciary obligation or fiduciary duty owed to the Trust.

8. The Trustees shall arrange for proper accounting and reporting procedures for the Trust's funds and shall also provide for an annual audit of the Trust's financial affairs by a certified public accountant.

9. The Trustees may retain legal counsel to represent the Trust and the Trustees in all legal proceedings as well as to advise the Trust and the Trustees on all matters pertaining to the operation and administration of the Trust.

10. The Trustees have the authority to terminate the Trust at any time.

11. Upon termination of the Trust, the Trustees shall provide for the payment of Trust obligations, debts, losses, and other liabilities and shall provide for the disposition of the remaining Trust funds in accordance with Section IX herein.

B. Quorum and Voting. A majority of the Trustees shall constitute a quorum for the transaction of business at any meeting of the Trustees and the vote of a majority of the Trustees present shall be required for approval of any action at such meeting. The vote of such majority of the Trustees at such meeting shall constitute action of the Trustees as a group.

VI.

BENEFICIARIES

The beneficiaries of the Trust are the City officers, employees, and qualified retirees and their dependents who are covered by a life, disability, sick, accident, or other health benefits plan purchased or adopted by the Trust (also called “covered persons” herein). Beneficiaries may make contributions to the Trust for use by the Trustees in fulfilling the purposes of the Trust. No beneficiary shall have any claim against the funds or any other property of the Trust. The rights and interests of the beneficiaries are limited to the insurance or health benefits specified in any policy purchased or plan adopted by the Trustees.

VII.

TRUST FUNDS

The Trust funds consist of the funds described in Schedule A hereto as provided by the Settlor to institute this Trust, future contributions by the Settlor, beneficiary contributions, investment income, and any other money or property which shall come into the hands of the Trustees in connection with the administration of the Trust. The funds of the Trust shall not inure to the benefit of, or be distributed to, any private person, except for the payment of necessary costs and benefits described below. The Trustees may use the Trust’s funds as follows:

1. to pay premiums on group health, accident and life policies or contracts;
2. to make authorized investments and to pay fund management fees from the proceeds of the investment.

VIII.

LIABILITY OF TRUSTEES AND OFFICERS

The Trustees shall use ordinary care and reasonable diligence in the exercise of their powers and the performance of their duties hereunder; and they shall not be liable for any mistake of judgment or other action made, taken or omitted by them in good faith, nor for any action taken or omitted by any agent, employee or independent contractor selected with reasonable care; nor for loss incurred through investment of the Trust funds or failure to invest. No Trustee shall be liable for any action taken or omitted by any other Trustee. No Trustee shall be required to give a bond or other security to guarantee the faithful performance of his or her duties hereunder. To the fullest extent permitted by law: (a) the City shall indemnify each Trustee who was, is, or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding (“Proceeding”), any appeal therein, or any inquiry or investigation preliminary thereto, by reason of the fact that the Trustee is or was a Trustee; (b) the City shall pay or reimburse a Trustee for expenses incurred (i) in advance of the final disposition of a Proceeding to which such Trustee was, is or is threatened to be made a party, and (ii) in connection with such Trustee’s appearance as a witness or other participation in any Proceeding.

IX.

AMENDMENT, REVOCATION AND TERMINATION

This Declaration of Trust and the Trust created herein shall terminate when and if required by operation of law. The Trustees shall have the power to amend, modify, terminate or revoke, in whole or in part, this Declaration of Trust and the Trust created herein by majority vote at a duly called meeting at which a quorum is present. Notwithstanding the foregoing, the Trustees shall have no power to amend Section II of this Declaration of Trust. Beneficiaries of the Trust shall have no right to amend this Declaration of Trust, and their approval shall not be a condition or requirement for an authorized amendment by the Trustees. Upon termination of the Trust, the Trustees shall pay all obligations, debts, losses, and other liabilities of the Trust. Thereafter, the Trustees shall first use the remaining trust funds to pay covered claims of persons covered under the City's health benefits plan that may be in effect at the time of termination of the Trust and then, either apply any remaining balance of the funds to provide the benefits described herein or transfer such funds to a successor whose income is excluded under Section 115(1) of the Code. Notwithstanding the foregoing, the Trustees, upon termination of the Trust and payment of all Trust obligations may, by vote of a majority of the Trustees, transfer the remaining funds or any portion thereof to the trustees of any trust or trusts established by the City for a substantially similar purpose to be applied for uses substantially similar to those set forth in Section II herein.

X.

GOVERNING LAW

This Declaration of Trust and the Trust created herein shall be construed and governed by the laws of the State of Texas in force from time to time.

XI.

MISCELLANEOUS

Whenever the context so admits and such treatment is necessary to interpret this Declaration of Trust in accordance with its apparent intent, the use herein of the singular shall include the plural, and vice versa, and the use of the feminine, masculine, or neuter gender shall be deemed to include the other genders.

The captions or headings above the various Sections of this Declaration of Trust have been included only to facilitate the location of the subjects covered by each Section but shall not be used in construing this Declaration Trust.

If any clause or provision of this Declaration of Trust proves to be or is adjudged invalid or void for any reason, such invalid or void clause, provision, or portion shall not affect the whole, but the balance of the provisions hereof shall remain operative and shall be carried into effect insofar as is legally possible.

[REMAINDER OF PAGE INTENTIONALLY BLANK; SIGNATURE PAGE FOLLOWS.]

IN WITNESS HEREOF, the undersigned parties have executed this Declaration of Trust, consisting of ten (10) pages and Schedule A attached hereto, on the dates of their respective acknowledgments below. By joining in the execution of this Declaration of Trust, the Trustees acknowledge receipt of the property described in Schedule A, signify acceptance of the Trust created hereunder, and covenant that the Trust will be executed with all due fidelity. This Trust is effective as of the last date of signature below.

_____ Todd Flippo, Mayor	_____ Date
-----------------------------	---------------

_____ Valerie Junkersfield, Mayor Pro-Tem	_____ Date
--	---------------

_____ Charles, Beasley, Councilmember	_____ Date
--	---------------

_____ Patrick Farr, Councilmember	_____ Date
--------------------------------------	---------------

_____ Charles Tucker, Councilmember	_____ Date
--	---------------

_____ Cindy Bighorse, Councilmember	_____ Date
--	---------------

_____ Mary Copeland, Councilmember	_____ Date
---------------------------------------	---------------

_____ City Manager, Trustee	_____ Date
--------------------------------	---------------

_____ Finance Director, Trustee	_____ Date
------------------------------------	---------------

_____ Human Resources Director, Trustee	_____ Date
--	---------------

ACKNOWLEDGMENTS

THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

This instrument was acknowledged before me on this _____ day of _____ 2020, by Todd Flippo, Mayor of the City of Saginaw on behalf of the City.

Notary Public In and For the State of Texas

(SEAL)

THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

This instrument was acknowledged before me on this _____ day of _____
2020, by Valerie Junkersfield, Mayor Pro-Tem.

Notary Public In and For the State of Texas

(SEAL)

[illegible]

This instrument was acknowledged before me on this _____ day of _____
2020, by Charles Beasley, Councilmember.

Notary Public In and For the State of Texas

(SEAL)

THE STATE OF TEXAS

§
§
§

COUNTY OF TARRANT

This instrument was acknowledged before me on this ____ day of _____
2020, by Patrick Farr, Council Member.

Notary Public In and For the State of Texas

(SEAL)

THE STATE OF TEXAS

§
§
§

COUNTY OF TARRANT

This instrument was acknowledged before me on this ____ day of _____
2020, by Charles Tucker, Councilmember.

Notary Public In and For the State of Texas

(SEAL)

THE STATE OF TEXAS

§
§
§

COUNTY OF TARRANT

This instrument was acknowledged before me on this ____ day of _____
2020, by Cindy Bighorse, Councilmember.

Notary Public In and For the State of Texas

(SEAL)

THE STATE OF TEXAS

§
§
§

COUNTY OF TARRANT

This instrument was acknowledged before me on this _____ day of _____
2020, by Mary Copeland, Councilmember.

Notary Public In and For the State of Texas

(SEAL)

SCHEDULE A

The following is a list of the assets initially transferred by the City of Saginaw, Texas, to the Trust:

City of Saginaw's first month (**October 2020**) contributions for Employee and Dependents Medical/Pharmacy Benefits, Dental Benefits, Life Insurance Benefits, and Long-Term Disability Benefits.

City of Saginaw's Employee and Dependents first month (**October 2020**) of Plan Year's payroll deductions or contributions for Medical/Pharmacy Benefits, Dental Benefits, Life Insurance Benefits, and Long-Term Disability Insurance Benefits.



City of Saginaw

Meeting Date: 6/2/2020

Staff Contact: Janice England
City Secretary

Agenda Items: (5)

E-mail: jengland@saginawtx.org

Phone: 817-230-0327

SUBJECT:

Presentation of Service Pin to Councilmember Farr

BACKGROUND/DISCUSSION:

Per the City of Saginaw Personnel Policy, service pins are awarded to members of the Council after they have completed five years of service on the City Council. Councilmember Farr has completed five years of service within the past year. Mayor Flippo will present the service pin.

FINANCIAL IMPACT:

N/A

RECOMMENDATION:

N/A



City of Saginaw

Meeting Date: 6/2/2020

Staff Contact: Janice England
City Secretary

Agenda Items: (6)

E-mail: jengland@saginawtx.org

Phone: 817-230-0327

SUBJECT:

Election of Mayor Pro-Tem

BACKGROUND/DISCUSSION:

Each year following the election (or date that the election would have been held), the City Council must choose one of its members to serve as Mayor Pro-Tem.

FINANCIAL IMPACT:

N/A

RECOMMENDATION:

N/A



City of Saginaw

Meeting Date: 6/2/2020

Staff Contact: Gabe Reaume
City Manager

Agenda Items: (7)

E-mail: greamue@saginawtx.org

Phone: 817-230-0324

SUBJECT:

Consideration and Action regarding a Chapter 380 Economic Development Incentive Agreement with Bright Living Saginaw Manager, L.L.C. associated with a proposed Senior Assisted Living Project

BACKGROUND/DISCUSSION:

The proposed Chapter 380 Economic Development Agreement is with Bright Living Saginaw Manager, L.L.C. and associated with a proposed Senior Assisted Living Project.

FINANCIAL IMPACT:

The financial impact will be the waived fees as described in the agreement .

RECOMMENDATION:

Staff recommends approval.

ATTACHMENTS:

Description

Proposed 380 Agreement

**CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF SAGINAW, TEXAS
AND
BRIGHT LIVING SAGINAW MANAGER, L.L.C.**

This Chapter 380 Economic Development Agreement (“**Agreement**”) is made by and between the City of Saginaw, Texas (“**City**”) and Bright Living Saginaw Manager., a Texas limited liability company (“**Company**”). City and Company are sometimes hereafter referred to individually as a “party” and collectively as the “parties.”

RECITALS

WHEREAS, Company intends to build a luxury senior independent, assisted, and memory care community project within the City; and

WHEREAS, the project will be a great asset to the City by providing unique and upscale housing to its citizens and offering a host of amenities; and

WHEREAS, the City Council finds and determines that it is necessary to increase and diversify the quality housing stock in the City to stimulate business and commercial activity in the City; and

WHEREAS, the City desires to provide the incentives herein to assist the Company with costs related to construction of the project; and

WHEREAS, the City Council finds and determines that by providing the incentives, this Agreement will aid in the development of a more desirous residential housing market, and encourage commercial businesses to locate to the City; and

WHEREAS, City is authorized by Article 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code to establish programs to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City Council has determined that establishing a program to bring the project to the City in accordance with this Agreement will further the objectives of the City, benefit the City and City’s inhabitants, and promote economic development and stimulate business and commercial activity in the City.

NOW THEREFORE, in consideration of the foregoing, and on the terms and conditions set forth below, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1 DEFINITIONS

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

The terms “Agreement”, “City”, and “Company” shall have the meanings provided above.

“Bankruptcy or Insolvency” means the dissolution or termination of a party’s existence as a going business, insolvency, appointment of receiver for any part of such party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“Effective Date” means the last date this Agreement is executed by the parties.

“Expiration Date” means the date both parties have fulfilled their obligations under this Agreement.

“Impositions” means all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on Company or any property or any business owned by Company within City.

“Project” means a luxury senior independent, assisted, and memory care community to be constructed on the Property, said community consisting of an approximate 89 units and 95 beds, private residences, concierge-style services, chef-prepared meals, 24/7 professional care, salon, library, movie theatre, grand-kids room, art room, activity room, fitness center, coffee/bistro, multiple enclosed courtyards, dog park, and private garages for cottages.

“Property” means an approximate 5.615-acre tract of land located at McLeroy Boulevard and Knowles Drive, and being more particularly described on the attached Exhibit “A”

“Related Agreement” means any agreement (other than this Agreement) between City and Company.

“Term” shall have the meaning as defined in Article 2 of this Agreement.

ARTICLE 2 PROGRAM AND TERM

2.1 Program. A program authorized under Chapter 380 of the Texas Local Government Code is hereby established to bring the Project to City. The terms of this Agreement implement the program.

2.2 Term. The term of this Agreement (“**Term**”) will commence on the Effective Date and will continue until the Expiration Date, unless sooner terminated as provided herein.

ARTICLE 3 COMPANY OBLIGATIONS

The obligation of City to provide the fee waivers describe in Article 4 of this Agreement is conditioned upon the compliance and satisfaction by Company of the terms and conditions of this Agreement and each of the conditions set forth in this Article 3.

3.1 Good Standing. Company shall not have an uncured breach or default of this Agreement or a Related Agreement.

3.2 Plat and Building Permit Submittal. No later than March 2, 2021, Company must submit a full and complete final plat application for the Property and a full and complete building permit application for construction of the Project, as deemed acceptable by City.

ARTICLE 4 CITY OBLIGATIONS

4.1 Fee Waivers. Provided Company is in compliance with this Agreement, City agrees to waive the following fees attributable to the development and construction of the Project: 100% of platting fees, 100% of building permit and plan review fees, and 100% of water and sewer tap fees. Any fees not referenced herein as being waived are specifically deemed not to be waived by City.

ARTICLE 5 TERMINATION; REPAYMENT; OFFSET

5.1 Termination. This Agreement terminates on the Expiration Date, and may, prior to the Expiration Date, be terminated upon any one or more of the following:

- (a) by mutual written agreement of the parties;
- (b) upon written notice by either party, if the other party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof;
- (c) upon written notice by City, if any Impositions owed to City or the State of Texas by Company shall have become delinquent (provided, however, Company retains the right to timely and properly protest and contest any such taxes or Impositions);
- (d) upon written notice by City, if Company suffers an event of Bankruptcy or Insolvency; or

(e) upon written notice by either party if any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal, or unenforceable.

5.2 Repayment. In the event this Agreement is terminated by City pursuant to Section 5.1 (b), (c), (d), or (e), Company shall immediately refund to City an amount equal to the amount of all of the fee waivers that have been provided by City to Company prior the date of such termination, plus interest at the rate of interest periodically announced by the Wall Street Journal as the prime or base commercial lending rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by City) as its prime or base commercial lending rate, accruing from the Effective Date until paid. The repayment obligation of Company set forth in this Section 5.2 hereof shall survive termination of this Agreement.

5.3 Offsets. City may at its option, offset any fee waivers due under this Agreement against any debt (including taxes) lawfully due to City from Company, regardless of whether the amount due arises pursuant to the terms of this Agreement, a Related Agreement or otherwise, and regardless of whether or not the debt due City has been reduced to judgment by a court.

ARTICLE 6 MISCELLANEOUS

6.1 Binding Agreement. The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the parties hereto.

6.2 Limitation on Liability. It is understood and agreed between the parties that Company and City, in satisfying the conditions of this Agreement, have acted independently, and City assumes no responsibilities or liabilities to third parties in connection with these actions.

6.3 No Joint Venture. It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties.

6.4 Authorization. Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement. The undersigned officers and/or agents of the parties are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties.

6.5 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below (or such other address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If intended for City, to:

City of Saginaw, Texas
Attn: Economic Development Director
2121 Cross Timbers Rd.
Saginaw, TX 75028

If intended for Company, to:

Bright Living Saginaw Manager, L.L.C
Attn: _____

6.6 Entire Agreement. This Agreement is the entire agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement.

6.7 Governing Law/Venue. The substantive laws of the State of Texas (and not its conflicts of law principles) govern all matters arising out of, or relating to, this Agreement and all of the transactions it contemplates, including without limitation its validity, interpretation, construction, performance and enforcement. Mandatory and exclusive venue for any action arising out of, or relating to, this Agreement must be in a court of competent jurisdiction in Tarrant County, Texas.

6.8 Amendment. This Agreement may only be amended by the mutual written agreement of the parties.

6.9 Legal Construction. 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 other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.10 Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

6.11 Successors and Assigns. This Agreement may not be assigned without the prior written consent of City.

6.12 Recitals. The recitals to this Agreement are incorporated herein.

6.13 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.14 Survival of Covenants. Any of the representations, warranties, covenants, 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.

6.15 Employment of Undocumented Workers. During the term of this Agreement, Company agrees not to knowingly employ any undocumented workers, and if convicted of a violation under 8 U.S.C. Section 1324a (f) Company shall repay the fee waivers granted herein and any other funds received by Company from City as of the date of such violation within one hundred twenty (120) days after the date Company is notified by City of such violation, plus interest at the rate of four percent (4%) compounded annually from the date of violation until paid.

6.16 Consequential Damages. The parties agree that the parties will never be liable under this Agreement for consequential damages (including lost profits) or exemplary damages.

6.17 No Waiver. Any failure by a party to insist upon strict performance by another party of any material provision of this Agreement shall not be deemed a waiver thereof, and the party shall have the right at any time thereafter to insist upon strict performance of any and all provisions of this Agreement. No provision of this Agreement may be waived except by writing signed by the party waiving such provision. Any waiver shall be limited to the specific purposes for which it is given. No waiver by any party of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

6.18 Attorneys' Fees. If either party employs an attorney or attorneys to enforce any of the provisions hereof, or to recover damages for the breach of this Agreement, the non-prevailing party in any final judgment or award agrees to pay the other party all reasonable costs, charges and expenses, including reasonable attorneys' fees and costs of court, expended or incurred in connection therewith.

{Signatures on following page}

CITY OF SAGINAW, TEXAS

Todd Flippo, Mayor

Date: _____

**BRIGHT LIVING SAGINAW MANAGER,
L.L.C,**
a Texas limited liability company

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT “A”

The Property



City of Saginaw

Meeting Date: 6/2/2020

Staff Contact: Kim Quin
Finance Director

Agenda Items: (8)

E-mail: kquin@saginawtx.org

Phone: 817-230-0332

SUBJECT:

Multi Year Financial Plan Update/ Budget Update--Kim Quin, Finance Director

BACKGROUND/DISCUSSION:

Lewis McLain, who has previously developed a long range financial plan for the City, will present an update.

FINANCIAL IMPACT:

The items discussed will be considerations in future debt issuances and budget decisions.

RECOMMENDATION:

N/A