MEMORANDUM OF UNDERSTANDING

between

CITY OF SAGINAW, TEXAS

and

EAGLE MOUNTAIN-SAGINAW INDEPENDENT SCHOOL DISTRICT

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1. PARTIES

This Memorandum of Understanding ("MOU") is entered into between the CITY OF SAGINAW, TEXAS ("City") and EAGLE MOUNTAIN-SAGINAW INDEPENDENT SCHOOL DISTRICT ("EMSISD") (collectively referred to herein as "the Parties" or individually as "Party"). The Parties agree to abide by the terms and provisions of the MOU throughout its duration.

2. PURPOSE

The purpose of this MOU is to establish a cooperative and mutually beneficial working relationship between the Parties with the goal of developing, constructing, operating and maintaining an indoor swim facility ("Facility") within the City of Saginaw, Texas.

3. SCOPE OF COOPERATION

The City desires to provide funds to develop, construct and maintain the Facility, and EMSISD desires to provide initial funds and recurring funds to develop, construct, maintain and operate the Facility. Both City and EMSISD ultimately desire to memorialize the respective Parties' intended rights and obligations with respect to the financing, construction and operation of the Facility pursuant to an Interlocal Cooperation Agreement (pursuant to Chapter 791 of the Texas Government Code).

4. OPERATION OF THE FACILITY

The Parties intend to operate the Facility pursuant to an operating agreement ("Operating Agreement") to be negotiated and entered into with a third-party operator ("Operator"), which is yet to be identified.

5. EXTENT OF EQUITY AND ACCESS

5.1 The Parties desire to contribute capital for the development and construction of the Facility.

5.2 City anticipates contributing a minimum of $10,500,000.00 and a maximum of $12,500,000.00 for the development and construction of the Facility.

5.3 EMSISD anticipates contributing an amount of $5,000,000.00 for the development and construction of the Facility.

5.4 It is anticipated that the City shall be the sole owner of the Facility. In addition, it is anticipated that EMSISD shall have unrestricted access to the Facility, and may have the option to purchase the Facility

from City at an amount not to exceed City's original basis plus any obligations to Operator at the time of such purchase.

5.5 Both City and EMSISD may elect to allow the Operator to contribute funds as a capital contribution toward the development and construction of the Facility. The Parties agree that Operator's capital contribution shall not entitle the Operator to own any portion of the Facility, but shall entitle the Operator to receive certain privileges, to be defined in the Operating Agreement. Such entitlement should not exceed a duration of 20 years from the date that such contribution is made.

5.6 The Parties agree that shared and equitable access to the Facility will be defined in the Operating Agreement and that each Party will have unrestricted access to the Facility during the times and dates agreed upon in the Operating Agreement. It is anticipated that EMSISD's access to the Facility will be scheduled on an annual basis pursuant to a mutually-agreed upon use schedule outlining the dates, times and portions of the Facility to be used by EMSISD.

6. MAINTENANCE & OPERATION EXPENSES

6.1 Both City and EMSISD anticipate establishing a capital improvement and replacement fund ("CapEx Fund") and to equitably contribute to the CapEx Fund. The CapEx Fund, which total anticipated amount shall be determined by mutual agreement of the Parties, shall be used to replace major components of the Facility intended to have a service life of more than 10 years. City anticipates contributing (to the CapEx Fund) 50% of the agreed upon amount less initial capital expense overages, including debt service cost. EMSISD anticipates contributing the balance of the agreed-upon amount.

6.2 It is anticipated that EMSISD shall be responsible for all maintenance and operation costs necessary to safely and efficiently operate the Facility 40 hours per week for a period of 48 weeks each year.

6.3 The Parties agree that the Operating Agreement should include provisions that will enable the Operator to supplant EMSISD's operating costs, and to also supplement operating costs to increase hours of operation.

6.4 The Parties agree that the Operating Agreement should be the only instrument used to define hours of operation, staffing and housekeeping responsibilities for the Facility.

6.5 The Parties anticipate that the Operator may lease the Facility in order to fund its operational expenses.

7. DURATION

7.1 This MOU shall be effective on the date the MOU is signed by the last signing party, as indicated by the date under that party's signature ("Effective Date"), and shall remain in full force and effect until the MOU is terminated by the Parties in accordance with the terms set forth herein, or until the Parties execute an Interlocal Cooperation Agreement governing the Facility, whichever is earlier.

7.2 Either party may terminate this MOU, with or without cause, by providing 30 days written notice to the other party.

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7.3 The terms of this MOU may be amended upon written approval by both Parties' designated representative without requiring further approval by their respective governing body, if any. The amendment(s) becomes effective upon the date of approval.

8. COSTS ASSOCIATED WITH MOU

Each Party hereto shall be solely responsible for its own costs and expenses associated with the Parties' respective obligations under this MOU. All respective expenses shall be funded through currently available funds of each Party, only.

9. NOTICES

All notices to any Party to this MOU must be in writing and must be delivered by hand, facsimile, electronic mail, or registered or certified mail, return receipt requested, to the Party to whom the notice is given at its address set out below or other address the receiving Party has designated previously by proper notice to the sending Party.

To City: Gabe Reaume
City Manager
P. O. Box 79070
Saginaw, Texas 76179
greaume@saginawtx.org

To EMSISD: Jim Chadwell
Superintendent
1200 N Old Decatur Rd
Fort Worth, TX 76179
jchadwell@ems-isd.net

EXECUTED by the Parties, or their duly authorized representatives, to be and become effective on the Effective Date.

CITY OF SAGINAW **Date:**

_____ _____

By: Todd Flippo

Mayor

ATTEST:

_____

City Secretary

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EAGLE MOUNTAIN SAGINAW **Date:**

INDEPENDENT SCHOOL DISTRICT

_____ _____

By: _____

_____

ATTEST:

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