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**SUBJECT TO ATTORNEY-CLIENT PRIVILEGE
CONFIDENTIAL COMMUNICATION**

February 25, 2020

Via Email

Mayor and City Council Members
c/o Doug Spears
Fire Chief
City of Saginaw
333 West McLeroy Blvd.
Saginaw, Texas 76179

Re: Interlocal Cooperation Agreement Between Saginaw and Lake Worth; Waiver of
Potential Conflicts of Interest

Dear Mayor and City Council Members:

We have been advised that the cities of Saginaw and Lake Worth are contemplating entering into an interlocal agreement to establish a partnership for the creation and funding of an Emergency Management Coordinator to serve as a joint staff position for Saginaw and Lake Worth.

As you know, our firm is retained as city attorney for both cities and has been asked to draft an agreement and related documents pertaining to this partnership and the operation of the Emergency Management Coordinator, provide advice concerning the agreement, and perhaps even help negotiate the agreement. Before doing so, however, we are seeking written and signed consent from both cities for the common representation on this particular matter. This letter is intended to bring potential issues to your attention in order for you to fully evaluate whether to utilize TOASE for this project.

Although there are rules that prohibit lawyers from representing adverse parties in litigation,¹ giving mutual advice to both clients about the contemplated agreement will not violate these rules. Litigation is neither threatened nor imminent. As between Saginaw and Lake Worth, we are aware of no present legal dispute. The proposed agreement is contemplated to allocate resources in a practical manner.

Although in any agreement, each city's interests are potentially adverse to the other (for example, in the event one party fails to carry out its obligations, the other party would possibly be harmed; or in the event an injury occurs during the performance of the Emergency Management

¹ TEX. DISCIPLINARY R. PROF'L CONDUCT 1.06(a), *reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G app. A (Vernon Supp. 2006) (TEX. STATE BAR R. art. X, § 9).

Coordinator's services, there could be questions of liability), I do not believe this firm's representation of Saginaw will be materially affected.² Nor do I believe that any of the matters to be negotiated in the agreement will be realistically subject to challenge.

Also, the rules of professional conduct specifically allow a lawyer to act as an intermediary between clients if:

- (1) the lawyer obtains written consent from each of the clients after consultation about the implications, risks, advantages and waivers of attorney-client privilege;
- (2) the lawyer reasonably believes that the matter can be resolved without contested litigation; and
- (3) the lawyer reasonably believes the common representation can be undertaken impartially and without improper effect on responsibilities to the other clients.³

First, I believe assisting both cities will pose little risk for Saginaw and this representation can be undertaken impartially with respect to Saginaw. With respect to client confidences, we would still be obligated to maintain any confidences given to us by Saginaw. However, attorney-client privilege does not extend to commonly-represented clients. In the event of future litigation, any communications with our firm concerning this matter would not be privileged as to Lake Worth. Concerning the benefits of common representation, they are obvious—the cities will share legal expenses and will be able to utilize attorneys you are familiar and comfortable with. Moreover, I do not view the cities' relationship or discussion thus far over this matter as antagonistic or unfriendly, nor do I foresee the negotiations becoming contentious. It is anticipated that this agreement can likely be negotiated without resorting to litigation.

Please understand that acting as an intermediary prohibits our firm from being partial to either city. While a lawyer normally acts as a partisan and advocate for a single client in a matter, acting as an intermediary requires a lawyer to not favor one client over the other. I believe that the danger of any such partiality here is greatly reduced in this matter given that our firm is retained as general counsel for each city and, as a result, does comparable amount of legal work for both cities. In other words, there is not one client for which we handle infrequent matters and one client for whom we handle a large amount of legal work every month.

Also understand that the rules mandate that a lawyer must withdraw from being an intermediary between clients if the lawyer believes any of the conditions stated above are no longer satisfied **or if any of the clients requests withdrawal**. As a result, if at any time during these negotiations either city requests that this firm withdraw, TOASE will have to stop representing both clients concerning the agreement and each city will have to hire its own legal counsel for the purpose of negotiating and drafting the agreement.

² *Id.* 1.06(b)(1), (c)(1).

³ *Id.* 1.07(a)(1)-(3).

Please do not hesitate to call me if you have any questions or concerns about this matter. If the City of Saginaw consents to the common representation of Saginaw and Lake Worth for negotiating and drafting the agreement and any related documents, please sign below and return this letter to our offices. If signed, please forward a copy to me.

Very truly yours,



Bradley A. Anderle

BAA/kb

CONSENT TO COMMON REPRESENTATION GRANTED:

Gabe Reaume, City Manager
City of Saginaw, Texas

Approved by Saginaw City Council on the _____ day of _____, 2020.