City of Saginaw

Community & Economic Development Department
333 W. McLeroy Blvd., Saginaw, Texas 76179

Council Agenda Background

To: Gabe Reaume, City Manager

From: Keith C. Rinehart, Director of Community & Economic Development

Date: City Council Meeting – November 17, 2020

ITEM:

Consideration and Action regarding a Management Agreement with Community Link Mission, Inc. for the Operation and Promotion of a Farmer's Market at Saginaw Switchyard.

PRESENTER:

Keith C. Rinehart, Director of Community & Economic Development

DISCUSSION:

This agreement with Community Link Mission, Inc. will allow them to operate the Farmer's Market at Willow Creek Park. The responsibilities are spelled out in the agreement. The agreement will expire December 31, 2021.

FINANCIAL IMPACT:

The financial impact will be $30,000 payable in monthly installments from April 1, 2021 to December 31, 2021.

RECOMMENDATION

Staff recommends approval.

ATTACHMENTS:

- Agreement with Community Link Mission

If you have any questions, please contact me at 817-230-0331.

Thank you,

Keith C. Rinehart, Director of Community & Economic Development

AGREEMENT BETWEEN
THE CITY OF SAGINAW AND COMMUNITY LINK MISSION, INC.
REGARDING FARMER'S MARKET AT SAGINAW SWITCHYARD

This Agreement ("Agreement") is made and entered into by and between the City of Saginaw, Texas ("City"), a home rule Texas municipality, and Community Link Mission, Inc. ("CLM"), a Texas non-profit corporation, for the purposes and considerations stated below:

RECITALS

WHEREAS, CLM certain skills, knowledge, experience in operating farmers' markets;

WHEREAS, the City desires that CLM operate and promote a Farmer's Market at the Saginaw Switchyard; and

WHEREAS, CLM is willing to operate and promote a Farmer's Market in accordance with the terms of this Agreement.

TERMS AND CONDTIONS

NOW THEREFORE, in consideration of the mutual benefits and promises contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Definitions.

The following terms shall have the definitions ascribed to them as follows:

Affiliate means all entities, incorporated or otherwise, under common control with, controlled by or controlling CLM.

City means the City of Saginaw, Texas.

City Manager means the City Manager of the City, or their designee.

CLM means Community Link Mission, Inc. and includes any officer, principal, agent, employee, member, owner, or shareholder of that corporation.

Effective Date has the meaning ascribed to it in Part 2 of this Agreement.

Farmer's Market means a physical retail marketplace intended to sell foods directly by farmers to consumers. A farmer's market will typically consist of booths, tables or stands where farmers sell fruits, vegetables, meats, cheeses, and sometimes prepared foods and beverages. A farmer's market also includes as a secondary use the sale of hand-crafted items but expressly prohibits the sale of commercially produced items for resale.

Saginaw Switchyard means that portion of Willow Creek Park, located within the City, designated for use by food trucks, a Farmer's Market, or similar uses.

Term has the meaning ascribed to it in Part 2 of this Agreement.

Weekend means a Saturday, a Sunday, or both Saturday and Sunday.

2. Term and Termination.

a. This Agreement shall be effective as of the date of execution by all parties and will continue to be in force and effect until December 31, 2021, unless terminated earlier under the terms of this Agreement.

b. The City may terminate this Agreement without cause on thirty (30) days' written notice to CLM. The City may terminate this Agreement immediately upon any breach of this Agreement by CLM with written notice to CLM.

3. Covenants of CLM to the City.

a. In consideration of the City's grant of funds to CLM described in and in accordance with the terms and conditions of this Agreement, CLM agrees to:

(1) operate a Farmer's Market at Saginaw Switchyard at least fourteen (14) Weekends between April 1, 2021 and December 31, 2021, under the terms and conditions of this Agreement. In the absence of bad weather or some other event beyond the control of CLM, the Farmer's Market shall be held on two Weekends a month for at least four (4) hours each Weekend;

(2) operate the Farmer's Market at Saginaw Switchyard in a commercially reasonable manner;

(3) not operate, and ensure that no Affiliate operates, any other farmer's market within Tarrant County during the term of this Agreement; and

(4) require that no more than fifty percent (50%) of the vendors participating in the Farmer's Market each Saturday are non-food vendors;

b. CLM represents and warrants that it has the authority to enter into this Agreement. CLM also represents and warrants it will not violate any federal, state, or local laws in operating the Farmer's Market, and that all activity at Saginaw Switchyard under this Agreement shall conform to applicable building codes, health and safety codes, zoning regulations, and all other ordinances of the City.

c. In consideration of the privilege of using Saginaw Switchyard, during the term of this Agreement, CLM agrees to use its best efforts to prevent damage to any part or portion of Saginaw Switchyard. If, however, any part or portion of Saginaw Switchyard becomes damaged

during CLM's occupation of Saginaw Switchyard under this Agreement, CLM shall immediately notify the City Manager. CLM shall also notify the City Manager of any existing or developing hazardous or dangerous condition within and about Saginaw Switchyard. CLM further agrees to accept Saginaw Switchyard in the condition in which it is found each Saturday covered by this Agreement. The City hereby disclaims, and CLM hereby accepts the City's disclaimer, of any warranty, express or implied, of the conditions or fitness for use of any portions of Saginaw Switchyard for the Farmer's Market or of the adequacy of any on-or off-site parking for the Farmer's Market.

d. Preparation of Saginaw Switchyard for the Farmer's Market and clean-up following the market shall be the responsibility of CLM and the vendors. CLM and any vendors will be allowed access to Saginaw Switchyard no earlier than 6:30 a.m. each Saturday for a Weekend in which the Farmers Market shall be operated. The Saginaw Switchyards will be open for use for the Farmer's Market generally from 6:30 a.m. until 9:00 p.m. each Weekend. CLM agrees that it will, following each use of Saginaw Switchyard, restore it to as good a condition as existed prior to such use by CLM. CLM's failure to clean up and restore Saginaw Switchyard to the same good condition will result in the City hiring a third party to restore or clean Saginaw Switchyard to the same good condition. CLM will be responsible for all fees paid to such third party. CLM and all vendors will vacate Saginaw Switchyard no later than 9:00 p.m. each Sunday for a Weekend in which the Farmers Market shall be operated.

4. <u>Covenants of the City to CLM.</u>

a. The City will pay CLM Thirty Thousand Dollars ($30,000) payable in monthly installments beginning April 1, 2021 and ending on December 31, 2021 to assist in the funding of operations and promotion for the Farmer's Market.

b. The City hereby authorizes and agrees that CLM will be allowed to operate a Farmer's Market at Saginaw Switchyard at the times specified in this Agreement. The parties agree and understand these rights are not exclusive and at any time Saginaw Switchyard is not being occupied by CLM and the Farmer's Market vendors under the terms of this Agreement, the City may permit other parties to use Saginaw Switchyard for any authorized purpose.

c. The City will promote the Farmers Market operated by CLM as the City determines in its sole discretion to be appropriate. Such promotion may include advertisement in the utility bills, posting notices and updates on the City's website, and issuing press releases.

d. The City in its sole discretion may close Saginaw Switchyard due to inclement weather that may hinder CLM from utilizing Saginaw Switchyard under the Agreement. The City will communicate with CLM regarding the closure of Saginaw Switchyard due to inclement weather. In addition, the City will have the absolute right, for any reason and with or without cause, to preempt this Agreement and cancel the Farmer's Market for not more than three (3) Saturdays. If a farmer's market is cancelled or Saginaw Switchyard is closed under the terms of this paragraph, CLM will nonetheless be credited with successful completion of a farmer's market for the purposes of Part 5(a)(1).

e. The City specifically reserves the right, to remove or exclude any vendor or other person who refuses to abide by any local, state or federal law.

5. General Breach.

Unless stated elsewhere in this Agreement, CLM shall be in default under this Agreement if CLM breaches any term or condition of this Agreement. In the event that such breach remains uncured after thirty (30) calendar days following receipt of written notice from the City referencing this Agreement, the City shall have the right to terminate this Agreement immediately by providing written notice to CLM. If this Agreement is terminated, CLM will forfeit its right to further payments by the City.

6. No Independent Contractor or Agency Relationship.

It is expressly understood and agreed that CLM shall operate as an independent contractor and not as an agent, representative or employee of the City. CLM shall have the exclusive right to control all details and day-to-day operations relative to the Farmer's Market and shall be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors, subcontractors, licensees, and invitees. CLM acknowledges that the doctrine of respondeat superior will not apply as between the City and CLM, its officers, agents, servants, employees, contractors, subcontractors, licensees, and invitees. CLM further agrees that nothing in this Agreement will be construed as the creation of a partnership or joint enterprise between the City and CLM.

7. INDEMNIFICATION.

CLM, AT NO COST TO THE CITY, AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS SERVANTS AND EMPLOYEES IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, ACTIONS, DEMANDS, CAUSES OF ACTION, COSTS AND EXPENSES OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION AND SETTLEMENT, INCLUDING, BUT NOT LIMITED TO, THOSE FOR PROPERTY DAMAGE OR LOSS (INCLUDING ALLEGED DAMAGE OR LOSS OF BUSINESS AND ANY RESULTING LOST PROFITS) AND/OR PERSONAL INJURY, INCLUDING DEATH, THAT MAY RELATE TO, ARISE OUT OF, OR BE OCCASIONED BY: (a) CLM'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT; OR (b) ANY ACT OR OMISSION OR INTENTIONAL MISCONDUCT OF CLM, ITS OFFICERS, AGENTS, ASSOCIATES, EMPLOYEES, CONTRACTORS (OTHER THAN THE CITY, OR ITS EMPLOYEES, OFFICERS, AGENTS, ASSOCIATES, CONTRACTORS OR SUBCONTRACTS), OR SUBCONTRACTORS DUE OR RELATED TO OR ARISING FROM THE OPERATIONS OF THE FARMER'S MARKET, ACTIVITIES AT SAGINAW SWITCHYARD, OR THE PERFORMANCE OF THIS AGREEMENT.

8. Insurance

CLM agrees to maintain insurance for comprehensive general liability, automobile liability insurance, and workers' compensation during the term of this Agreement in the amounts specified by the City, and CLM shall furnish City with a valid Certificate of Insurance covering all workers and subcontractors. Such policies shall name the City, its officers, employees and agents as an additional insured and shall provide for a waiver of subrogation against the City.

9. Notices.

All written notices called for or required by this Agreement shall be addressed to the following, or such other party or address as either party designates in writing, by certified mail, postage prepaid, or by hand delivery:

City:	**CLM:**
City of Saginaw	Community Link Mission, Inc.
Attn: City Manager	Attn: Lara Gay
Address:	
333 West McLeroy Blvd.	300 Belmont St.
Saginaw, Texas 76179	Saginaw, Texas 76179

10. Assignment and Successors.

CLM may at any time assign, transfer, or otherwise convey any of its rights or obligations under this Agreement to an Affiliate, so long as CLM, the Affiliate, and the City first execute an Agreement under which the Affiliate agrees to assume and be bound by all covenants and obligations of CLM under this Agreement. Otherwise, CLM may not assign, transfer or otherwise convey any of its rights or obligations under this Agreement to any other person or entity without the prior consent of the City of Saginaw. Any attempted assignment, transfer, or conveyance without the City's prior written approval shall constitute a breach and be grounds for termination of this Agreement. Any authorized assignee or successor-in-interest of CLM of all rights under this Agreement shall be deemed "CLM" for all purposes under this Agreement.

11. Compliance with Laws, Ordinances, Rules, and Regulations.

This Agreement will be subject to all applicable federal, state and local laws, ordinances, rules and regulations, including, but not limited to, all provisions of the City's Charter, codes and ordinances, as they may be amended.

12. Right to Inspect Records.

CLM agrees that the City shall have access to and the right to examine any directly pertinent books, documents, papers, and records of CLM or any Affiliate involving transactions relating to this Agreement during the term of this Agreement. The City shall give CLM or its Affiliate reasonable advance notice of intended examination.

13. Governmental Immunity and Powers.

It is understood that by execution of this Agreement, the City does not waive or surrender any of its governmental powers or immunities that are outside of the terms, obligations and conditions of this Agreement.

14. No Waiver.

The failure of either party to insist upon the performance of any term or provision of this Agreement or to exercise any right granted hereunder shall not constitute a waiver of that party's right to insist upon appropriate performance or to assert any such right on any future occasion.

15. Venue and Jurisdiction; Applicable Law; Limitation of Remedies.

a. *Venue*. If any action, whether real or asserted, at law or in equity, arises on the basis of any provision of this Agreement, venue for such action shall lie in state courts located in Tarrant County, Texas or the United States District Court for the Northern District of Texas – Fort Worth Division.

b. *Applicable Law*. This Agreement shall be construed in accordance with the laws of the State of Texas and is entered into subject to the charter and ordinances of the City as they may be amended from time to time. Situs of this Agreement is agreed to be Tarrant County, Texas, for all purposes including performance and execution.

c. *No Waiver of Immunity; Limitation of Remedies*. Notwithstanding any provision of this Agreement to the contrary, nothing contained in this agreement may be construed to limit or waive any governmental or sovereign immunity of the City, or any immunity applicable to its officers, agents, servants or employees. To the extent there may be a waiver of immunity under state law, the remedies available to enforce this agreement are limited to mandamus, specific performance or injunctive relief. All other remedies (except recovery of attorney's fees as allowed below), including suits for damages are specifically waived by both parties.

d. *Attorney's Fees*. In the event it should become necessary to take legal action to interpret or enforce the terms of this Agreement, the prevailing party in such action shall be entitled to recover from the non-prevailing party reasonable attorney's fees and costs of court.

16. No Third Party Rights.

The provisions and conditions of this Agreement are solely for the benefit of the City and CLM, and any lawful assign or successor of CLM, and are not intended to create any rights, contractual or otherwise, to any other person or entity.

17. Force Majeure.

It is expressly understood and agreed by the Parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of

God, inclement weather, or other circumstances which are reasonably beyond the control or knowledge of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such requirement shall be extended for a period of time equal to the period such party was delayed.

18. Interpretation.

In the event of any dispute over the meaning or application of any provision of this Agreement, this Agreement shall be interpreted fairly and reasonably, and neither more strongly for or against any party, regardless of the actual drafter of this Agreement. To the extent of any conflict between an incorporated exhibit and the body of this Agreement, the Agreement shall control.

19. Severability Clause.

It is hereby declared to be the intention of the parties that sections, paragraphs, clauses and phrases of this Agreement are severable, and if any phrase, clause, sentence, paragraph or section of this Agreement shall be declared unconstitutional or illegal by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or illegality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Agreement since the same would have been executed by the parties without the incorporation in this Agreement of any such unconstitutional phrase, clause, sentence, paragraph or section. It is the intent of the Parties to provide the economic incentives contained in this Agreement by all lawful means.

20. Captions.

Captions and headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

21. Entirety of Agreement.

This Agreement, including any exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the City and CLM, and any lawful assign and successor of CLM, as to the matters contained in the Agreement. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement. Notwithstanding anything to the contrary in this Agreement, this Agreement shall not be amended unless the amendment is executed in writing by both parties.

22. Counterparts.

This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

Signed this _____ day of _____2021.

CITY OF SAGINAW

By: _____
Gabe Reaume, City Manager

Date: _____

ATTEST:

_____
Janice England, City Secretary

COMMUNITY LINK MISSION, INC

_____

By: _____

Title: _____

Date: _____

ACKNOWLEDGEMENT

BEFORE ME, the undersigned authority, on this date personally appeared _____, who after being duly sworn stated that she is the _____ of Community Link Mission, Inc., and that she signed the foregoing instrument on behalf of said entity for the purposes expressed therein on the date shown.

_____
Notary Public in and for the State of Texas

My commission expires: _____

Date: _____