

RESOLUTION NO. R2022-39

**A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BURNET,
TEXAS, APPROVING A LICENSE AGREEMENT ALLOWING
CAREFLITE STAFF TO BE HOUSED AT THE CENTRAL FIRE STATION.**

WHEREAS, CareFlite is a nonprofit 501c3 corporation operating helicopter Air Ambulance bases in Burnet, Dallas, Fort Worth, Granbury, McKinney, Gainesville, and Whitney Texas; and

WHEREAS, City Council recognizes the benefits of having an helicopter Air Ambulance based at the Burnet Municipal Airport; and

WHEREAS, CareFlite employees are currently housed in Licensor's Central Fire Station by an informal arrangement; and

WHEREAS, City Council deems it appropriate to enter into this Agreement in order to memorialize the terms and conditions by which CareFlite employees may continue to be housed in the Central Fire Station.

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

Section one. Findings. That the recitals to this Resolution are incorporated herein for all purposes.

Section two. Approval. The License Agreement attached hereto is hereby approved.

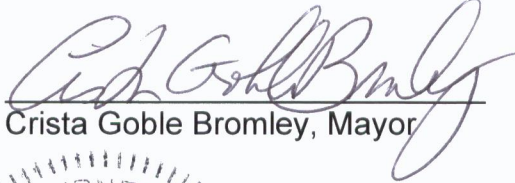
Section three. Authorization. The City Manager is hereby authorized and directed to execute a License Agreement, in substantial form as the attachment, on behalf of the City and take such further actions and execute such ancillary documents as may reasonably be necessary to facilitate the purpose of this resolution. Moreover, the City Manager is hereby authorized to terminate the Agreement, without the necessity of further City Council directions for any material breach by CareFlite as described in said Agreement.

Section four. Open Meetings. It is hereby officially found and determined that the meeting at which this resolution was passed was open to the public and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, as modified by the governor's orders in response to the COVID-19 pandemic.

Section five. Effective Date. That this resolution shall take effect immediately upon its passage, and approval as prescribed by law.

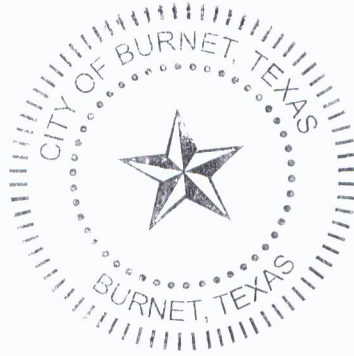
PASSED AND APPROVED this the 26th day of April, 2022.

CITY OF BURNET, TEXAS


Crista Goble Bromley, Mayor

ATTEST:


Kelly Dix, City Secretary



LICENSE AGREEMENT

THIS AGREEMENT is entered into by and between the City of Burnet, a Texas Home Rule Municipal Corporation, ("Licensor") acting by and through its City Manager, and CareFlite, a Texas nonprofit 501c3 corporation, ("Licensee") acting by and through its President to be effective as of the date set out below.

Recitals

WHEREAS, Licensor is a Texas home rule municipality which maintains a fire department, as a governmental function, to provide protection to the citizens of the City of Burnet and its environs from fires and other emergencies; and

WHEREAS, Licensee is a nonprofit 501c3 corporation operating helicopter Air Ambulance bases in Burnet, Dallas, Fort Worth, Granbury, McKinney, Gainesville, and Whitney Texas; and

WHEREAS, Licensor recognizes the benefits Licensee's Mission serves the Burnet, community; and

WHEREAS, Licensor has allowed Licensee's employees to be housed in Licensor's Central Fire Station, in order for Licensee to best fulfill its mission; and

WHEREAS, the Parties enter into this Agreement in order to memorialize the terms and conditions by which Licensee may continue to be housed in the Central Fire Station.

NOW THEREFORE, for and in consideration of the mutual promises and obligations set out herein, the Parties agree as follows:

I. DEFINITIONS

- 1.1 City Manager means Licensor's City Manager or the City Manager's designee.
- 1.2 Facility means The Burnet Fire Department Central Station located at 2002 S Water St, Burnet, TX 78611.
- 1.3 Licensee's Mission means the provision of helicopter Air Ambulance to the City of Burnet and surrounding areas.
- 1.4 Licensor's Mission means the provision of firefighting and emergency medical services to the City of Burnet and surrounding areas.
- 1.5 Parties means Licensor and Licensee collectively and Party, means either Licensor or Licensee as context may require.

- 1.6 Premises means that area of the Facility the City Manager authorizes Licensor to house its employees and store its equipment.

II. USE OF PREMISES

- 2.1 Provided that Licensee substantially complies the terms and conditions set forth in this Agreement, Licensor grants Licensee revocable permission to enter and use, the Premises to the extent described in this Article II.
- 2.2 Permission for Licensee to enter and use the Premises under this Agreement shall be non-exclusive, and Licensee's use of the Premises shall be subject to Licensor's paramount use of the Premises for Licensor's Mission.
- 2.3 Licensee's use of the Premises shall be limited to housing of up to three of Licensee's employees at one time, and storage of Licensee's equipment, that is directly related to Licensee's Mission.

Note: This License pertains exclusively to use of the Facility. The storage of rotary wing aircraft and related equipment at the Airport shall be addressed by separate agreement.

- 2.4 The City Manager shall impose and enforce all necessary and proper rules for the management and operation of the Premises, including rules related to the housing of Licensee's employees and storage of Licensee's equipment.
- 2.5 Licensee agrees that its employees and any other individuals under its control shall abide by, conform to, and comply with, the rules imposed by the City Manager as well all applicable municipal, state and federal laws, ordinances, rules and regulations and that it will not do, or permit to be done, anything in violation hereof. If the attention of Licensee is called to any such violation, Licensee, or those under its control, will immediately desist from and correct such violation. Failure to comply with Section shall be cause for immediate termination of this Agreement.

III. TERM OF AGREEMENT/EFFECTIVE DATE/FEES

- 3.1 This Agreement may be terminated by either Party with or without cause upon thirty days' notice to the other Party and will remain in effective until such termination. Notwithstanding the forgoing, this Agreement may be immediately terminated by the City Manager for Licensee's violation of Sections 2.5, 3.3.2, 6.4.4 or 6.4.6.
- 3.2 This Agreement shall be effective as of the date executed on behalf of Licensor.
- 3.3 Licensee shall pay a use fee of \$1,500.00 monthly which shall be prorated the first month if the License does not become effective on the first day of the month.

On the Effective Date Licensee shall pay the prorated fee and the fee for the following month. Thereafter Licensee shall pay the fee on the first day of each month.

3.3.1 Failure to pay the fee on or before the third day of said month shall be cause for Licensor to impose a fifty-dollar late fee.

3.3.2 Failure to pay the fee on or before the tenth day of said month shall be cause for Licensor to terminate this Agreement immediately.

3.4 Utilities costs shall be included in the Fee.

IV. ACCEPTANCE AND CONDITIONS OF FACILITY

License has been afforded sufficient time and opportunity to examine the Facility, and Premises, therein, and to acknowledge that there is in and about them nothing dangerous to life, limb, or health and hereby waives any claim for damages that may arise from defects of that character after occupancy. Licensee's acceptance of this License shall be conclusive evidence of Licensee's acceptance of the Premises provided within the Facility and that same is in good satisfactory order in its present condition of AS IS, WHERE IS AND WITH ALL FAULTS and is suitable for the purpose for which licensed. Licensor specifically disclaims any warranty of suitability for intended purposes of Licensee.

V. MAINTENANCE

5.1 Licensor's Maintenance: During the term of this Agreement, Licensor shall, at its sole expense provide all manpower, supplies and materials for the purpose of provide maintenance to the Facility to the extent reasonably necessary to facilitate the fulfilment of Licensor's Mission.

5.2 Licensee's Maintenance. During the term of this Agreement, Licensee shall, at its sole expense provide all manpower, supplies and materials for the purpose of provide maintenance to the Premises to the extent reasonably directed by the City Manager.

V. INDEMNIFICATION

Licensee covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, Licensor, and the elected officials, employees, officers, volunteers and representatives of Licensor, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the Licensor directly or indirectly arising out of, resulting from or related to Licensee's activities under this Agreement, including any acts or

omissions of Licensee, any agent, officer, representative, or employee, of Licensee, and their respective officers, agents employees, and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of Licensor, its officers, or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT LICENSEE AND LICENSOR ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE LICENSOR UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNITY are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Licensee shall advise Licensor in writing within 24 hours of any claim or demand against Licensor or Licensee known to Licensee related to or arising out of Licensee's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Licensee's cost. Licensor shall have the right, at its option and at its own expense, to participate in such defense without relieving Licensee of any of its obligations under this paragraph.

VI. INSURANCE

Licensee shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Licensee's operation and use of the leased Premises.

- 6.1. **No Limitation.** Licensee's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the Licensee to the coverage provided by such insurance, or otherwise limit the Licensor's recourse to any remedy available at law or in equity.
- 6.2. **Minimum Scope of insurance.** Licensee shall obtain insurance of the types described below:
 - 6.2.1. Commercial General Liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover Premises and contractual liability. The City shall be named as an insured on Licensee's Commercial General Liability insurance policy using ISO Additional Insured-Managers or Lessors of Premises Form CG 20 11 or a substitute endorsement providing equivalent coverage.

- 6.2.2. Property insurance shall be written on an all-risk basis and provide per occurrence coverage.
- 6.3. **Minimum Amounts of Insurance.** Licensee shall maintain the following insurance limits:
- 6.3.1. Commercial General Liability insurance shall be written with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate.
- 6.3.2. Property insurance shall be written covering the full value of Licensee's property and improvements with no coinsurance provisions.
- 6.4. **Other Insurance Provisions.** The Licensee's Commercial General Liability insurance policy or policies are to contain, or be endorsed to contain, that they shall be primary insurance as respects the Licensor. Any Insurance, self-insurance, or insurance pool coverage maintained by the Licensor shall be excess of the Licensee's insurance and shall not contribute with it.
- 6.4.1. *Acceptability of Insurers.* Insurance is to be placed with insurers with a current A.M. Best rating of not less than A-VII.
- 6.4.2. *Verification of Coverage.* No later than ten (10) business days after execution of this Agreement by the Parties, Licensee shall furnish the Licensor with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Licensee. Licensee's failure to comply with this provision shall be cause for Licensor's immediate termination of this Agreement.
- 6.4.3. *Waiver of Subrogation.* Licensee and Licensor hereby release and discharge each other from all claims, losses and liabilities arising from or caused by any hazard covered by property insurance on or in connection with the Premises. This release shall apply only to the extent that such claim, loss or liability is covered by insurance.
- 6.4.4. Intentionally deleted.
- 6.4.5. *Notice of Cancellation.* The Licensee shall provide the Licensor with written notice of any policy cancellation, within two business days of its receipt of such notice.
- 6.4.6. *Failure to Maintain Insurance.* Failure on the part of the Licensee to maintain the insurance as required shall constitute a material breach of this Agreement, upon which the Licensor may, after giving five (5) business days' notice to the Licensee to correct the breach, terminate this License.

Licensee's failure to comply with this provision shall be cause for Licensor's immediate termination of this Agreement.

6.4.7. *City Full Availability of Licensee Limits.* If the Licensee maintains higher insurance limits than the minimums shown above, the Licensor shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Licensee, irrespective of whether such limits maintained by the Licensee are greater than those required by this Agreement or whether any certificate of insurance furnished to the Licensor evidences limits of liability lower than those maintained by the Licensee.

VII. MISCELLANEOUS TERMS

- 7.1 **Non-assignable.** This Agreement is personal to Licensee. It is non-assignable, and any attempt to assign this Agreement will terminate all privileges granted to Licensee.
- 7.2 **No Joint Venture.** Nothing contained herein shall be deemed or construed by the Parties hereto, or by any third-party, as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationship between the Parties hereto. It is understood and agreed that no provision contained in this Agreement, nor any acts of the Parties create a relationship other than the relationship of Licensor and Licensee.
- 7.3 **Severability.** The Parties agree that if any clause or provision of this Agreement is determined to be illegal, invalid or unenforceable under any present or future federal, state, or local law, including, but not limited to, the City Code, or City ordinances of the City of Burnet, Texas, effective during the term of this Agreement, then and in that event it is the intention of the Parties hereto that the remainder of this Agreement shall not be affected, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.
- 7.4 **Notice.** Notices to Licensor required or appropriate under this Agreement shall be deemed sufficient if in writing and hand delivered or mailed, registered, or certified mail, postage prepaid, addressed to:

City of Burnet

Attn: City Manager
PO BOX 1369
1001 Buchanan Drive, Suite 4
Burnet, Texas 78611

or to such other address as may have been designated in writing by City from time to time. Notices to Licensee shall be deemed sufficient if in writing and hand delivered or mailed, registered or certified mail, postage prepaid, addressed to Licensee at:

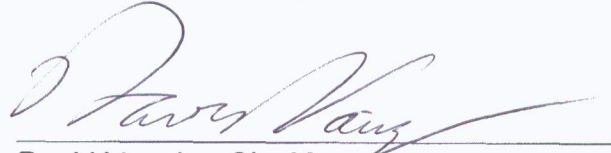
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- 7.5 **Jurisdiction and venue.** This Agreement shall be construed under and in accordance with the laws of the state of Texas, and all obligations of the Parties created hereunder are performable in Burnet County, Texas.
- 7.6 **Gender.** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.
- 7.7 **Captions.** The captions contained in this Agreement are for convenience or reference only and in no way limit or enlarge the terms and conditions of this Agreement.
- 7.8 **No holdover.** Licensee shall have no right to hold over after the end of the term of this License Agreement.
- 7.9 **Entire Agreement/Amendment.** This Agreement constitutes the entire Agreement between the parties, any other written or parole agreement with City being expressly waived by Licensee. Moreover:
- 7.1.1 No amendment, modification, or alteration of the terms of this Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the Parties.
- 7.1.2 Any amendment, modification, or alteration of the terms of this Agreement shall not be binding on Licensor unless approved by Licensor's governing body as evidenced by ordinance or resolution.
- 7.10 **Authority.** The signer of this License Agreement for Licensee hereby represents and warrants that he or she has full authority to execute this Agreement on behalf of Licensee.

The remainder of this page intentionally left blank and signature page follows.


IN WITNESS WHEREOF, we have affirmed our signatures this ___ day of _____, 2022.

LICENSOR:
CITY OF Burnet,
a Texas municipal corporation



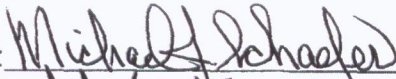
David Vaughn, City Manager

ATTEST:



Kelly Dix, City Secretary



By: 
Title: Interim CEO