

## **Funding and Shared Use Agreement**

This Funding and Shared Use Agreement (the "Agreement") is entered into between the SAISD Foundation, which is a Texas Non-Profit Corporation ("Foundation"), and the City of San Antonio ("City"), a Texas Municipal Corporation, (hereinafter collectively referred to as the "Parties") pursuant to Ordinance No. 2017-05-18-\_\_\_\_, passed and approved on the 18<sup>th</sup> day of May, 2017.

**WHEREAS**, through the collaboration of the Foundation and the City to improve San Antonio Independent School District (SAISD) property, CAST Tech High School (Fox Tech campus), the general public will benefit from the provision of access to computer labs and other facilities for children, students and adults for computer literacy training, internet and computer access to support educational courses and college applications and submittals, as well as supporting workforce development and employment opportunities; and

**WHEREAS**, the City Council finds that the improvements and renovation of designated SAISD properties that will then be made available to the citizens of San Antonio is a public purpose that will benefit the economic and workforce development of the City of San Antonio; and

**NOW THEREFORE**, this Funding and Shared Use Agreement of the Parties delineates the responsibilities of each of the Parties:

### **I. PURPOSE**

1.1 The Parties have determined that through their mutual collaboration, Foundation will be provided funding for the improvement, renovation and management of SAISD properties that will then be made available to citizens of the City of San Antonio as further set out within this Agreement (the "Project").

### **II. TERM**

2.1 This agreement becomes effective immediately upon execution by Foundation and the City and will terminate on June 30, 2020.

### **III. RESPONSIBILITIES OF THE CITY**

4.1 In consideration of the Foundation's performance of all services and activities set forth in this Agreement, City agrees to provide the Foundation with funding for the Project hereunder in an amount not to exceed TWO HUNDRED FIFTY THOUSAND DOLLARS AND NO/100THS (\$250,000.00).

4.2 The City shall not be obligated or liable under this Agreement to any party, other than the Foundation, for payment of any monies, or for the provision of any goods or services.

4.3 It is expressly understood and agreed by the Foundation that the City's obligations under this Agreement are contingent upon the actual receipt of adequate funds to meet the City's liability hereunder. Lack of funding is not and shall not be considered a breach of this Agreement. If City does not receive adequate funds to pay obligations under this Agreement, then this Agreement shall terminate and neither the City nor the Foundation shall have any further obligations hereunder.

## **V. RESPONSIBILITIES OF FOUNDATION**

5.1 The Foundation, in accordance and compliance with the terms, provisions and requirements of this Agreement, shall transfer provided funding to SAISD to renovate designated areas of the Fox Tech campus CAST Tech High School (Fox Tech campus), complete extensive technology upgrades, and install the tools and spaces essential to the delivery of integrated education and workforce development courses.

5.2 It is anticipated that all work identified above will be completed by August 2017.

5.3 The Foundation agrees and understands that all improvements and renovations are the responsibility of Foundation, SAISD and its selected contractors. All security and liability for the designated SAISD properties shall be, and continue to be, the sole responsibility of SAISD.

5.4 The Foundation agrees that it will coordinate with SAISD to ensure that the facilities developed and improved under this Agreement, including, but not limited to, computer labs and other facilities, will be operational and available for use by the City, and its designated associated entities, one Saturday per month (excluding July and December) as coordinated between the City and SAISD, for the duration of this Agreement.

## **VI. REQUESTS FOR and RETENTION of RECORDS**

6.1 The Foundation shall retain any and all documents produced as a result of this Agreement for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, the Foundation shall retain the records until the resolution of such litigation or other such questions. Foundation acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Foundation to return said documents to City prior to or at the conclusion of said retention.

6.3 The Public Information Act, Government Code Section 552.021, requires the City to make public information available to the public. Under Government Code Section 552.002(a), public information means information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business: 1) by a governmental body; or 2) for a governmental body and the governmental body owns the information or has a right of access to it. Therefore, if the Foundation receives inquiries regarding documents within its possession pursuant to this Agreement, the Foundation shall within twenty-four (24) hours of

receiving the requests provide the City with notice of such requests. If the requested information is confidential pursuant to state or federal law, the Foundation shall submit to City the list of specific statutory authority mandating confidentiality no later than three (3) business days of Foundation's receipt of such request in order to provide the City with sufficient time to provide arguments for withholding such confidential information, if necessary. For the purposes of communicating and coordinating with regard to public information requests, all communications shall be made to the designated public information liaison for each Party. Each Party shall designate in writing to the other Party the public information liaison for its organization and notice of a change in the designated liaison shall be made promptly to the other Party.

## **VII. TERMINATION**

7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II Term, or earlier termination pursuant to any of the provisions hereof.

7.2 Termination Without Cause. This Agreement may be terminated by either party upon 30 calendar days written notice, which notice shall be provided in accordance with the requirements of this Agreement.

7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with the requirements of this Agreement, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of a material breach of this Agreement, as determined by City.

7.4 Defaults With Opportunity for Cure. Should the Foundation default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. The Foundation shall have ten (10) calendar days after receipt of the written notice, in accordance with the requirements of this Agreement, to cure such default. If the Foundation fails to cure the default within such ten-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another contractor to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new contractor against Foundation's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

7.4.2 Failing to perform or failing to comply with any covenant herein required

7.4.3 Performing unsatisfactorily

7.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.6 Regardless of how this Agreement is terminated, the Foundation shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Foundation, or provided to Foundation, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Foundation in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Foundation's sole cost and expense. Payment of compensation due or to become due to Foundation is conditioned upon delivery of all such documents, if requested.

7.7 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Foundation for any default hereunder or other action.

### **VIII. NOTICE**

8.1 Any notice or communication required or permitted hereunder shall be given in writing, sent by (a) personal delivery, or (b) expedited delivery service with proof of delivery, (c) United States mail, postage prepaid, registered or certified mail, or (d) via facsimile, telegram or e-mail, address as follows:

**If to the City:**

Melody Woosley  
Director Department of Human Services  
City of San Antonio  
P.O. Box 839966  
San Antonio Texas 78283-3966  
Melody.Woosley@sanantonio.gov  
210-207-8198 office  
210-207-4254 fax

**If to the FOUNDATION:**

Judy Geeloed  
Executive Director  
SAISD Foundation  
141 Lavaca  
San Antonio, Texas 78210  
[jgeelhoed@saisdfoundation.com](mailto:jgeelhoed@saisdfoundation.com)  
(210) 554-2235 office  
(210) 228-3084 fax

### **IX. ADMINISTRATION OF AGREEMENT and RESTRICTIONS ON USE OF FUNDS**

9.1 In the event that any disagreement or dispute should arise between the Parties hereto pertaining to the interpretation or meaning of any part of this Agreement or its governing rules, regulations, laws, codes or ordinances, the City Manager or the Director of the Department of Human Services, as representatives of the City, shall have the final authority to render an interpretation.

9.2 The Foundation shall make available to the City, upon appropriate notice, such books, records, reports, documents, papers, policies and procedures as may be necessary for audit, examination, excerpt, transcription, and copy purposes, for as long as such records, reports,

books, documents, and papers are retained. This right also includes timely and reasonable access to SAISD Foundation offices and personnel for the purpose of interview and discussion related to such documents. Foundation shall, upon request, transfer certain records to the custody of City, when City, determines that the records possess long-term retention value.

9.3 Unless disclosure is authorized by the City, Foundation agrees to maintain in confidence all information pertaining to the Project or other information and materials prepared for, provided by, or obtained from City including, without limitation, reports, information, project evaluation, project designs, data, other related information (collectively, the "Confidential Information") and to use the Confidential Information for the sole purpose of performing its obligations pursuant to this Agreement. The Foundation shall protect the Confidential Information and shall take all reasonable steps to prevent the unauthorized disclosure, dissemination, or publication of the Confidential Information. If disclosure is required (i) by law or (ii) by order of a governmental agency or court of competent jurisdiction, the Foundation shall give the Director of the DHS prior written notice that such disclosure is required with a full and complete description regarding such requirement.

9.4 Prohibited Political Activity. The Foundation agrees that no funds provided from or through the City shall be contributed or used to conduct political activities for the benefit of any candidate for elective public office, political party, organization or cause, whether partisan or non-partisan, nor shall the personnel involved in the administration of the Project provided for in this Agreement be assigned to work for or on behalf of any partisan or non-partisan political activity.

9.5 Adversarial proceedings. The Foundation agrees that under no circumstances will the funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the City or any other public entity.

## X. INSURANCE

10.1 A) Prior to the commencement of any work under this Agreement, the Foundation, and/or SAISD, as applicable, shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Risk Management Department, which shall be clearly labeled "*CAST High School Funding*" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Risk Management Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

B) The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify

insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

**C) The Foundation's financial integrity is of interest to the City; therefore, subject to the Foundation's and/or SAISD's right to maintain reasonable deductibles in such amounts as are approved by the City, the Foundation and/or SAISD shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at the Foundation's and/or SAISD's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:**

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
5. Employee Dishonesty Insurance / Third Party Crime Coverage	\$250,000.00 each occurrence

D) The Foundation agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of the Foundation herein, and provide a certificate of insurance and endorsement that names the Foundation and the CITY as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of the Foundation. Respondent shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

E) As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. The Foundation shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. The Foundation shall pay any costs incurred resulting from provision of said documents.

City of San Antonio  
Attn: Office of Risk Management  
P.O. Box 839966  
San Antonio, Texas 78283-3966

F) The Foundation agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

G) Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, the Foundation shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend the Foundation's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

H) In addition to any other remedies the City may have upon the Foundation's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order the Foundation to stop work hereunder, and/or withhold any payment(s) which become due to the Foundation hereunder until the Foundation demonstrates compliance with the requirements hereof.

I) Nothing herein contained shall be construed as limiting in any way the extent to which the Foundation may be held responsible for payments of damages to persons or property

resulting from the Foundation's or its subcontractors' performance of the work covered under this Agreement.

J) It is agreed that the Foundation's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

K) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided..

L) The Foundation and any Subcontractors are responsible for all damage to their own equipment and/or property.

## **XI. INDEMNIFICATION**

**11.1 FOUNDATION covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, 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 CITY directly or indirectly arising out of, resulting from or related to FOUNDATION's activities under this Agreement, including any acts or omissions of FOUNDATION, any agent, officer, director, representative, employee, contractor or subcontractor of FOUNDATION, and their respective officers, agents employees, directors 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 CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT FOUNDATION AND CITY 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 CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

11.2 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. FOUNDATION shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or FOUNDATION known to FOUNDATION related to or arising out of FOUNDATION's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at FOUNDATION's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving FOUNDATION of any of its obligations under this paragraph.



## **XII. APPLICABLE LAW**

12.1 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 BEXAR COUNTY, TEXAS.

12.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

## **XIII. AMENDMENTS**

13.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Foundation.

## **XIV. CONFLICT OF INTEREST**

14.1 The Foundation acknowledges that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any Contract with the City or any City agency such as City owned utilities. An officer or employee has a "prohibited financial interest" in a Contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the Contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City Contract, a partner or a parent or subsidiary business entity.

14.2 Pursuant to the subsection above, the Foundation warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees, and agents are neither officers nor employees of the City. Contractor further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

## **XV. SEVERABILITY**

15.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement

that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

#### **XVI. LEGAL AUTHORITY**

16.1 The signer of this Agreement for the Foundation represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of the Foundation and to bind the Foundation to all of the terms, conditions, provisions and obligations herein contained.

#### **XVII. ENTIRE AGREEMENT**

17.1 This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire Agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other Agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XIV. This Agreement shall supersede any and all prior written and oral agreements between the City and the Foundation.

#### **CITY**

\_\_\_\_\_  
PETER ZANONI, Deputy City Manager  
City of San Antonio

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

#### **FOUNDATION**

  
\_\_\_\_\_  
SAISD Foundation

5-16-17  
\_\_\_\_\_  
Date