

MEMORANDUM OF AGREEMENT

STATE OF TEXAS §
COUNTY OF BEXAR §

This Memorandum of Agreement (“MOA” or “Agreement”) is entered into between the City of San Antonio, a Texas Municipal Corporation (“City”), acting by and through its Director of the Office of Historic Preservation as authorized by City Council pursuant to Resolution No. \_\_\_\_\_, and San Antonio Independent School District (“SAISD”), a Texas political subdivision, and is effective on the date (“Effective Date”) of the last of the signatures by City and SAISD, City and SAISD are collectively referred to as the Parties.

WHEREAS, the Beacon Hill #22 structure, located at 1411 W. Ashby (“Beacon Hill #22 Structure”), is located within the original 36 miles of the City and is among a group of SAISD schools erected in 1915 by the SAISD school board; and

WHEREAS, SAISD applied to the City for a demolition permit for the Beacon Hill #22 Structure on August 2, 2018 (the “Demolition Permit”); and

WHEREAS, on November 7, 2018, the Historic and Design Review Commission found the 1915 Beacon Hill #22 Structure to have Historical Significance and recommended this site for landmark designation; and

WHEREAS, the Parties have discussed the need to address the importance of issues on historic significance while still allowing SAISD to fulfill its mission to its students; and

WHEREAS, SAISD agrees to coordinate with the City to demonstrate SAISD’s commitment to exploring the historic significance within the district, documenting and preserving historic significant elements where possible, and imparting the importance of that responsibility to its students and the community;

NOW THEREFORE, this Memorandum of Agreement of the Parties delineates the responsibilities of the Parties regarding the purpose described below.

I. PURPOSE

This Agreement outlines the collaboration of the Parties with regard to the demolition of the Beacon Hill #22 Structure and efforts for the preservation and enhancement of historically, culturally, architecturally, and archaeologically significant sites, and structures owned by SAISD, which impart a distinct aspect to the City and serve as visible reminders of the City's culture and heritage.

II. TERM

Unless sooner terminated in accordance with the provisions herein, the term of this MOA shall commence on the Effective Date and automatically expires two (2) years thereafter, unless mutually extended.

### **III. SAISD'S OBLIGATIONS**

- 3.1 SAISD shall undertake the following activities during the duration of this MOA:
  - 3.1.1 Prior to issuance of a demolition permit, SAISD will provide the City documentation of the Beacon Hill #22 Structure including but not limited to – HABS level 1 drawings, digital 3D model, and photographs.
  - 3.1.2 Prior to issuance of a demolition permit, SAISD will provide the City a salvage and reuse plan for the materials of the Beacon Hill #22 Structure.
  - 3.1.3 Prior to issuance of the Demolition Permit, SAISD will provide City with a plan and timeline for completion of the inventory, which shall be approved by the Director of the City's Office of Historic Preservation. Within 12 months of the issuance of the Demolition Permit, SAISD will provide the City a complete inventory of SAISD buildings and identification of all historic resources.
  - 3.1.4 SAISD will meet with the Office of Historic Preservation following completion of the inventory outlined above and discuss possible initiation of the landmark designation process for other school buildings in the district, as a way to underscore the importance of historic schools in the community.
  - 3.1.5 SAISD will implement preservation trades courses and/or certification as part of SAISD career and technical education program.
  - 3.1.6 SAISD will develop in collaboration with the City, a SAISD-wide Cultural Heritage Curriculum as outlined in Exhibit A Prior to the expiration of this MOA, SAISD agrees to implement an ongoing Cultural Heritage Curriculum.

### **IV. CITY'S OBLIGATIONS**

- 4.1 City, through its Office of Historic Preservation, shall undertake the following activities during the duration of this MOA:
  - 4.1.1 Review and approve all documentation evidencing SAISD's performance of obligations as set forth in this MOA, including monitoring SAISD's compliance with the MOA.
  - 4.1.2 Work in collaboration with SAISD and other agencies to develop the technical training offerings and SAISD-wide Cultural Heritage Curriculum.
- 4.2 City shall issue without delay after SAISD fulfills its obligations set forth above in subsections 3.1.1, 3.1.2, and 3.1.3, the Demolition Permit to SAISD for the demolition of the Beacon Hill #22 Structure.
- 4.3 City shall not be responsible for funding this MOA or for payment of any financial obligations under this MOA to any party, or any agreement associated with it, unless such obligations are mutually agreed upon by the Parties and set out in a subsequent written agreement or amended to this MOA.

## V. OWNERSHIP OF DOCUMENTS/INTELLECTUAL PROPERTY

- 5.1 Any and all writings, documents or information in whatsoever form and character produced by, or on behalf of SAISD and provided to City pursuant to the provisions of this MOA is the exclusive property of City. No such writings, documents, and information shall be the subject of any copyright or proprietary claim by SAISD.
- 5.2 SAISD understands and acknowledges that as the exclusive owner of any and all such writings, documents or information, City has the right to use all such all writings, documents or information as City sees fit, without restriction.

## VI. RECORDS RETENTION

- 6.1 SAISD and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services, if any, rendered under the MOA, and shall make such materials available for review by the City at SAISD's offices, at all reasonable times upon reasonable notice, and as often as City may deem necessary during the MOA term, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.
- 6.2 SAISD shall retain any and all documents produced as a result of services provided hereunder for a period of four years (retention period) from the date of termination of this MOA. 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, SAISD shall retain the records until the resolution of such litigation or other such questions. SAISD acknowledges and agrees that City shall have access to any and all such documents as set forth in 6.1 above during said retention period. City may, at its election, require SAISD to return the documents to City prior to or at the conclusion of the retention period
- 6.3 SAISD shall notify City immediately in the event SAISD receives a request from a third party for records referenced herein. SAISD will process and handle all such requests pursuant to applicable law.

## VII. TERMINATION

- 7.1 For purposes of this Agreement, "termination" of this MOA shall mean termination by expiration of the term as stated in Article II. Term, or earlier pursuant to any provision hereof.
- 7.2 TERMINATION FOR CAUSE. Upon written notice, which notice shall be provided in accordance with Article VIII, Notice, either Party may terminate this MOA as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement, provided that the written notice delivered pursuant to this MOA shall set forth in reasonable detail the nature of the alleged breach of this MOA.
  - 7.2.1 The sale, transfer, pledge, conveyance or assignment of this MOA without prior approval, as provided in Article XIII. Assignment and Subcontracting.

- 7.2.2 Any material breach of this MOA, provided such breach is not cured within thirty (30) days after written notice is received from the non-breaching Party to the breaching Party.
- 7.3 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 MOA shall automatically terminate as of the effective date of such prohibition.
- 7.4 TERMINATION NOT SOLE REMEDY. In no event shall City's or SAISD's actions of terminating this MOA, whether for cause or otherwise, be deemed an election of City's or SAISD's remedies, nor shall such termination limit, in any way, at law or at equity, City's or SAISD's right to seek damages from or otherwise pursue the other Party for any default hereunder or other action.

## VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

**If intended for City, to:**

City of San Antonio  
Office of Historic Preservation  
Attn: Director  
P.O. Box 839966  
San Antonio, Texas 78283

**If intended for SAISD, to:**

SAISD  
Office of the Superintendent  
141 Lavaca  
San Antonio, Texas 78210

## IX. NON-DISCRIMINATION

NON-DISCRIMINATION. As a party to this MOA, SAISD understands and agrees to comply, to the extent permitted by and consistent with SAISD policy, with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X. of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

## X. INSURANCE

SAISD shall be responsible for insuring its Property, Equipment, Autos and General Liability. In no event will the City be required to maintain any insurance coverage for SAISD or held liable for the

actions or injuries whether property or bodily injuries are sustained as result of SAISD's activities hereunder.

#### **XI. CONFIDENTIALITY**

- 11.1 All reports, information, project evaluation, project designs, data or any other documentation developed by, given to, prepared by or assembled by SAISD under this MOA shall be disclosed or made available to any individual or organization pursuant to applicable law.
- 11.2 SAISD shall comply with laws, regulations pertaining to confidentiality of records maintained by SAISD and shall establish a method to secure the confidentiality of documents and information that SAISD may have access to, in accordance with the applicable federal, state, and local laws, rules, and regulations. This provision shall not be construed as limiting City's right of access to records or other information under this MOA.

#### **XII. INDEMINIFICATION**

- 12.1 City and SAISD acknowledge and agree that each Party is a governmental entity subject to applicable provisions the terms of the Texas Tort Claims Act. Neither City nor SAISD shall indemnify the other for any claims arising under or related to this MOA, and neither City nor SAISD waive any immunities, defenses or limits of liability available to it under the laws of the State of Texas.

#### **XIII. ASSIGNMENT AND SUBCONTRACTING**

- 13.1 Except as otherwise stated herein, SAISD may not sell, assign, pledge, transfer or convey any interest in this MOA without the written consent of the Director of the City's Office of Historic Preservation, which such consent will not be unreasonably withheld, delayed or conditioned. As a condition of such consent, if such consent is granted, SAISD shall remain liable for completion of the services outlined in this MOA in the event of default by the successor.
- 13.2 Any attempt to transfer, pledge or otherwise assign this MOA without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should SAISD improperly assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this MOA, City may, at its option, cancel this MOA and all rights, titles and interest of SAISD shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this MOA.

#### **XIV. INDEPENDENT CONTRACTOR**

SAISD covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that SAISD shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and SAISD; that the doctrine of "respondeat superior" shall not apply as between City and SAISD, its officers, agents, employees, contractors, subcontractors and SAISD, and nothing herein shall be construed as

creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and SAISD. The Parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the SAISD under this Agreement and that the SAISD has no authority to bind the City.

## **XV. CONFLICT OF INTEREST**

15.1 The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the City. 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 or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;
- an entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) 10 percent or more of the voting stock or shares of the entity, or (ii) 10 percent or more of the fair market value of the entity; or
- an entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner or (iii) a parent or subsidiary entity.

15.2 Pursuant to the subsection above, SAISD acknowledges, this Agreement is made in reliance thereon, that to the SAISD Superintendent’s knowledge, its officers, employees and agents are neither officers nor employees of the City. SAISD shall tender to the City a Contracts Disclosure Statement pursuant to the City’s Ethics Code.

## **XVI. AMENDMENTS**

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 Contractor.

## **XVII. SEVERABILITY**

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. The foregoing notwithstanding, if modifying or disregarding the unenforceable provision would result in failure of the purpose set forth in Article I. PURPOSE herein above of this MOA, the entire MOA will terminate with no further obligation by either Party.

## **XVIII. LICENSES/CERTIFICATIONS**

SAISD represents that SAISD and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

## **XIX. COMPLIANCE**

The Parties shall provide and perform all services required under this MOA in compliance with all applicable federal, state and local laws, rules and regulations.

## **XX. NONWAIVER OF PERFORMANCE**

Unless otherwise specifically provided for in this MOA, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this MOA shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained.

## **XXI. LAW APPLICABLE & LEGAL FEES**

- 21.1 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.
- 21.2 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.
- 21.3 The Parties hereto expressly agree that, in the event of litigation, each party hereby waives its right to payment of attorneys' fees.

## **XXII. LEGAL AUTHORITY**

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

## **XXIII. PARTIES BOUND**

This Agreement shall be binding on and inure to the benefit of the Parties and their respective successors and assigns, except as otherwise expressly provided for herein.

## **XXIV. CAPTIONS**

The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

**XXV. ENTIRE AGREEMENT**

This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the Parties 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, unless same is in writing, dated subsequent to the date hereto, and duly executed by the Parties, in accordance with Article XV. Amendments.

**EXECUTED** and **AGREED** to as of the dates indicated below.

**CITY OF SAN ANTONIO**

**SAN ANTONIO INDEPENDENT  
SCHOOL DISTRICT**

\_\_\_\_\_  
Shanon Shea Miller, Director  
Office of Historic Preservation  
Date: \_\_\_\_\_

\_\_\_\_\_  
Pedro Martinez, Superintendent  
Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

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

