

## **CITY OF SAN MARCOS FACILITY LEASE AGREEMENT FOR NONPROFIT TENANTS**

This Lease Agreement ("this Agreement") is entered into on the \_\_\_\_ day of \_\_\_\_\_, 202\_\_, between the City of San Marcos, Texas, ("the City"), a Texas home rule municipality, and The Teacher Reuse, a Texas nonprofit corporation ("the Nonprofit"), collectively referred to as Parties ("the Parties").

### **RECITALS:**

1. The Nonprofit is a Nonprofit entity has as its public purpose the operation and administration of providing much-needed classroom supplies and materials to teachers at no cost.

2. It is the desire of the City Council of the City of San Marcos and the Board of Directors of the Nonprofit to enter into this Agreement to set forth the terms by which the City will lease to the Nonprofit the City facility commonly known as old SMEU or in the future 1040 Hwy123 from which the Nonprofit will carry out its public purpose in San Marcos for the benefit of the City and its residents.

### **NOW, THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:**

#### **SECTION 1. PREMISES; PUBLIC PURPOSE.**

A. The City leases to Nonprofit and Nonprofit leases from the City the premises in San Marcos, Texas, located at 1040 Hwy 123 as further described on Exhibit "A" attached hereto and incorporated herein for all purposes ("the Premises"), subject to the terms and conditions contained in this Agreement and to be used solely for the public purpose of operating and administering The Teachers Reuse in the City to provide free classroom supplies and materials to teachers ("the Public Purpose"). The Premises are more clearly described in the Hays County Central Appraisal District records as: Parcel CSM021, 1040 HWY123, San Marcos, TX 78666.

B. The Premises may not be used for any other purpose than the Public Purpose. The failure of the Nonprofit to maintain the use of the Premises solely for the Public Purpose shall be considered a breach of this Agreement and will result in the automatic termination of this Agreement.

#### **SECTION 2. TERM.**

A. The term of this Agreement shall commence on the date on which authorized representatives of both parties have signed below following the approval of the City Council of the City of San Marcos ("the Effective Date") and, unless sooner terminated as provided in this Agreement, shall extend for a period of ten (10) years from the Effective Date. If the Nonprofit seeks to extend the term of this Agreement beyond ten years, the Nonprofit shall provide written notice to the City one hundred eighty days (180) before the expiration of the Agreement to express its intent to renew. Any renewal must be by the mutual agreement of the City and Nonprofit and must be approved by the San Marcos City Council.

B. Failure of the Nonprofit to surrender the Premises at the expiration of this Agreement constitutes a holding over which shall be construed as a tenancy from month to month.

### **SECTION 3. RENT/COMPENSATION**

It is the intent of the Parties that the annual rental payment for this Agreement is to be made by an in-kind contribution of the Nonprofit by providing services to the City and its residents necessary to accomplish the Public Purpose. The memorialized commitment of the Nonprofit established by this Agreement to serve the Public Purpose by complying with all terms and conditions of this Agreement on behalf of the entire City of San Marcos community is to be recognized as legally sufficient consideration.

### **SECTION 4. CARE AND USE OF PREMISES.**

A. The Nonprofit shall use reasonable care to maintain the Premises in a good condition and take every precaution to prevent damage or destruction to the Premises. The Nonprofit shall not use or permit the use of the Premises for any unlawful purpose, maintain any nuisance, permit any waste, or use the Premises in any way that creates a hazard to persons or property. The Nonprofit shall keep the sidewalks and public ways on the Premises, together with any public right-of-way abutting the Premises, free and clear from any obstructions or conditions which might create a hazard, or from any litter and debris. The Nonprofit shall also be responsible for mowing the Premises and areas of public right-of-way abutting the Premises on a regular basis, but no less often than necessary to ensure that grass and weeds do not exceed 12 inches in height in accordance with Chapter 34, Division 2 of the San Marcos City Code.

B. The Nonprofit shall not permit any sign on the Premises, except signs relating to the Nonprofit's hours of operation or programs. No political signs supporting candidates or measures shall be placed on the Premises or on the adjacent road right-of way.

C. The Nonprofit shall comply with all governmental laws, ordinances, rules, regulations, and orders relating to the Nonprofit's use of the Premises and this Agreement.

### **SECTION 5. MAINTENANCE AND REPAIRS**

A. The Nonprofit agrees to maintain the Premises in a manner that keeps the Premises safe and in good, clean condition at all times and shall make all needed repairs and replacements to the Premises at its sole cost and expense up to a total of \$2,500.00 per incident requiring repair or replacement, including replacement of items such as, but not limited to, cracked or broken glass and light bulbs. The Nonprofit agrees to maintain the Premises by keeping the exterior and interior walls repaired and periodically repainted, and maintain and repair all doors, windows, any molding, and door and window locks at its sole cost and expense up to a total of \$2,500.00 per incident requiring repair or replacement. The Nonprofit shall keep the Premises free from all refuse and obstructions that may create unsafe conditions. The Nonprofit shall promptly remove all garbage and refuse of any kind from the Premises and provide routine daily janitorial activities and landscaping services.

B. In the event any repair or maintenance item for the Premises requires an expenditure greater than \$2,500.00 per incident of repair or maintenance, the Nonprofit may request in writing that the City perform that portion of the repairs or maintenance which will exceed \$2,500.00. The City may, at its discretion, perform the requested maintenance or repairs. In the event the City chooses to perform maintenance or repairs at any time on the Premises, the Nonprofit shall provide the City with access to the Premises at all reasonable times for performance of the maintenance or repairs and shall cooperate with the City in providing access or cordoning off of areas from the public, as necessary for the performance of the needed maintenance or repairs. Where maintenance or repairs are performed or paid for by the City, the City shall have sole discretion in all decisions related to the repairs or maintenance, including, but not limited to design, type of materials, and method of acquisition of materials and services.

## **SECTION 6. IMPROVEMENTS.**

No alterations, improvements or installations may be made on the Premises without the prior written consent of the City. Any alternations, improvements or installations must comply with all City Code requirements.

## **SECTION 7. CONDITION OF PREMISES.**

The Nonprofit has examined the Premises and accepts the Premises in its current "As Is" condition.

## **SECTION 8. INSURANCE.**

A. Before commencement of the term of this Agreement and at least once every year thereafter, the Nonprofit shall provide the City a certificate issued by its insurance carrier evidencing the insurance coverage required by this Agreement. The amount of insurance required is \$1,000,000.00 for commercial general liability coverage. The policy shall list the City as an additional insured.

B. Not more frequently than once every two years, the City may reasonably modify the required insurance coverage to reflect then-current risk management practices of the City.

C. All insurance correspondence, certificates and endorsements shall be directed to: Risk Manager, City of San Marcos, 630 East Hopkins Street, San Marcos, TX 78666.

D. The Nonprofit shall carry insurance sufficient to cover the value of its personal property and any improvements owned by it on the Premises.

## **SECTION 9. RESERVATIONS, TITLE, AND PRIOR RIGHTS.**

A. The City reserves to itself, its agents, and contractors the right to enter the Premises during normal business hours at such times as will not unreasonably interfere with the Nonprofit's use of the Premises, and, when necessary, at times outside of normal business hours. The City shall be given keys to the Premises and any security code needed for access to the Premises. The City will provide sufficient notification, twenty-four hours at a minimum, to the Nonprofit of its intent to enter the Premises, except that the City may enter the Premises without such notice in the

event of an emergency. The City will conduct at least one yearly inspection of the Premises to examine the conditions of the Premises and provide written notice of any deficiencies that must be corrected to the Nonprofit.

**B.** The City reserves the exclusive right to permit placement of signs on the Premises, and the right to construct, maintain and operate new and existing facilities (including, without limitation, fences, communication facilities, roadways and utilities) upon over, across or under the Premises, and to grant to others such rights, provided that the Nonprofit's use of the Premises is not interfered with unreasonably. No political signs shall be placed on the Premises or on adjacent road right-of-way.

**C.** The Nonprofit acknowledges that the City makes no representations or warranties, express or implied, concerning the title to the Premises, and that the rights granted to the Nonprofit under this Agreement do not extend beyond such right, title or interest as the City may have in and to the Premises. Without limitation of the foregoing, this Agreement is made subject to all outstanding rights, whether or not of record.

## **SECTION 10. TAXES.**

The Premises are tax exempt under a public property tax exception pursuant to Section 11.11 of the Texas Tax Code. It is anticipated that continued use of the Premises for a public purpose will result in the retention of the public exemption. All personal property and improvements to the Premises are expected to be tax exempt as well. Although such an event is unlikely, in the event any activity of the Nonprofit on the Premises causes the Premises to lose this tax exemption, the Nonprofit shall be responsible for payment of any resulting taxes owed, and either party may terminate this Agreement.

## **SECTION 11. UTILITIES/OTHER SERVICES**

The Nonprofit will arrange and pay for all utilities and services supplied to the Premises including monthly security and internet costs.

## **SECTION 12. LIENS.**

The Nonprofit shall not allow any liens to attach to the Premises for any services, labor or materials furnished to the Premises or otherwise arising from the Nonprofit's use of the Premises. The City shall have the right to discharge any liens placed on the Premises at the Nonprofit's expense.

## **SECTION 13. RELEASE AND INDEMNITY,**

***A. As a material part of the consideration for this Agreement, the Nonprofit, to the extent it may lawfully do so, waives and releases any and all claims against the City, for, and agrees to indemnify, defend and hold harmless the City, its affiliates, and its and their officers, agents and employees ("Indemnified Parties") from and against, any loss, damage (including, without limitation, punitive or consequential damages), injury, liability, claim, demand, cost or expense (including, without limitation, attorneys' fees and court costs), fine or penalty***

*(collectively, “Loss”) incurred by any person (including, without limitation, the City, the Nonprofit, or any employee of the City or the Nonprofit) (i) for personal injury or property damage caused to any person while on or about the Premises, or (ii) arising from or related to any use of the Premises by Nonprofit or any invitee or licensee of Nonprofit, any act or omission of Nonprofit, its officers, agents, employees, licensees or invitees or any breach of this Agreement by Nonprofit.*

*B. The foregoing release and indemnity shall apply regardless of any negligence, misconduct, or strict liability of any Indemnified Party, except that the indemnity, only, shall not apply to any Loss determined by final order of a court of competent jurisdiction to have been caused by the sole active direct negligence of any Indemnified Party.*

*C. Where applicable to the Loss, the liability provisions of any contract between the City and the Nonprofit covering the carriage of shipments or trackage serving the Premises shall govern the Loss and shall supersede the provisions of this Section 13.*

*D. No provision of this Agreement with respect to insurance shall limit the extent of the release and indemnity provisions of this Section 13. Nothing herein shall limit any immunity defense available to the City as a governmental entity.*

#### **SECTION 14. TERMINATION.**

**A.** Either Party may terminate this Agreement for the other Party’s default by giving the defaulting Party notice of termination if either Party defaults under any obligation under this Agreement and, after written notice is given by the other Party specifying the default, the defaulting Party fails either to immediately commence to cure the default, or to complete the cure expeditiously but in all events within thirty (30) days after the default notice is given. The City may terminate this Agreement by giving notice of termination to the Nonprofit if Nonprofit abandons the Premises for a period of one hundred twenty (120) consecutive days.

**B.** In the event that in any year of this Agreement City Council determines there are not sufficient funds available in the budget for the City’s portion of building maintenance and repair or any other obligation under this Agreement, the City may terminate this Agreement by providing the Nonprofit with one hundred eighty (180) days-notice of the termination.

**C.** Failure of the Nonprofit to comply with any term or condition of this Agreement, including, but not limited to failure to maintain the Premises as required in Section 5a above, failure to submit required reports, or failure to provide services as set forth in Exhibit B shall constitute a default under this Agreement.

#### **SECTION 15. REPORTS.**

The Nonprofit agrees to provide quarterly reports as required by the City relating to its performance and expenditures of funds under the terms of this Contract. Quarterly reports are due by the 15<sup>th</sup> of the month following the end of each quarter with the first of these reports being due on or prior to January 30, 2023, for the period from October 1, 2023, through December 31, 2023. (“Report 1”). The City of San Marcos requires that detailed records be kept related to

staffing, staffing compensation and hours of operation along with attendance documents related to visitors of the Nonprofit.

As clarification, reports will be for the following periods:

October 1, 2023, through December 31, 2023 (Report #1)

January 1, 2024, through March 31, 2024 (Report #2)

April 1, 2024, through June 30, 2024 (Report #3)

July 1, 2024, through September 30, 2024 (Report #4)

Quarterly report documents required:

1. Performance Measures Report on the form attached hereto as Exhibit "B."
2. Income statement (profit-and-loss statement) - organization's revenue, expenses and profitability – budget vs actual
3. Statement of financial position (balance sheet) – organization's assets, liabilities and equity

## **SECTION 16. NOTICES.**

Any notice, consent or approval to be given under this Agreement shall be in writing and personally served, sent:

### If to the City

(1) by email to [citymanagerinfo@sanmarcostx.gov](mailto:citymanagerinfo@sanmarcostx.gov),  
with a copy to: [gcarr@sanmarcostx.gov](mailto:gcarr@sanmarcostx.gov); or

(2) by reputable courier service, or by certified mail, postage prepaid, return receipt requested, to City at: City of San Marcos, Attn: City Manager, 630 East Hopkins Street, San Marcos, TX 78666; or

### If to the Nonprofit

(1) by email to [shelly@theteacherreuse.org](mailto:shelly@theteacherreuse.org),  
or,

(2) by reputable courier service, or by certified mail, postage prepaid, return receipt requested, to: The Teacher Reuse, PO Box 342, Buda, Texas, 78610.

or to such other address as a party may designate in notice given to the other party. Mailed notices shall be deemed served five (5) days after deposit in the U.S. Mail. Notices which are faxed, emailed, are personally served or sent by courier service shall be deemed served upon receipt.

## **SECTION 17. ASSIGNMENT/SUBLEASES.**

**A.** The Nonprofit shall not sublease the Premises, in whole or in part, or assign, encumber or transfer (by operation of law or otherwise) the rights under this Agreement, without the prior consent of the City, which consent may be denied at City's sole and absolute discretion. Any purported transfer or assignment without the City's consent shall be void and shall constitute

a default of this Agreement by Nonprofit.

**B.** Subject to the prohibition stated in paragraph A above, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, successors and assigns.

**C.** Upon written request and approval, the City may authorize the Nonprofit to allow members of the public to use the Premises for special classes or authorized activities that relate to the Public Purpose so long as the activity is covered by the Nonprofit's insurance and the Nonprofit agrees to indemnify the City for any damage resulting from the activity. The Nonprofit may charge a usage fee for the activity to be used to pay for Programs sponsored by the Nonprofit or other operating expenses.

#### **SECTION 18. CONDEMNATION.**

If any portion of the Premises is taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain or should the Premises be sold to a condemning authority under threat of condemnation, this Agreement shall terminate.

#### **SECTION 19. DISPUTES; ATTORNEY'S FEES; VENUE.**

If either party retains an attorney to enforce this Agreement (including, without limitation, the indemnity provisions of this Agreement), the prevailing party is entitled to recover reasonable attorney's fees. Venue for any dispute arising under this Agreement shall be in the state courts having appropriate jurisdiction in Hays County, Texas, or, if in federal court, the United States District Court for the Western District of Texas, Austin Division.

#### **SECTION 20. NON-DISCRIMINATION.**

Nonprofit shall comply with Title VI and Title VII Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and all other State and Federal laws prohibiting discrimination and shall not discriminate on the basis of race, creed, color, religion, age, sex, national origin, physical disability, or other protected class in its use of the Premises.

#### **SECTION 21. ENTIRE AGREEMENT; AMENDMENT.**

This Agreement is the entire agreement between the Parties. This Agreement supersedes all other oral or written agreements between the Parties pertaining to this transaction, including any other agreement under which all or any portion of the Premises was leased to Nonprofit. This Agreement may be amended only by a written instrument signed by the City and the Nonprofit following approval by the City Council of the City of San Marcos.

#### **SECTION 22. REQUIREMENT OF PAYMENT AND PERFORMANCE BONDS FOR CONSTRUCTION.**

To the extent required by HB2518, passed by the Texas Legislature to take effect on September 1, 2023, Nonprofit must include in each contract for the construction, alteration, or repair of an improvement to the leased property a condition that the contractor execute a payment bond and

execute a performance bond in an amount equal to the amount of the contract for the protection of the governmental entity and conditioned on the faithful performance of the contractor's work in accordance with the plans, specifications, and contract documents; and provide to the City a notice of commencement at least ninety (90) days before the construction, alteration, or repair of any improvement to the leased property begins. The notice of commencement must identify the public property where the work will be performed, describe the work to be performed, state the total cost of the work to be performed, include copies of the performance and payment bonds, and include a written acknowledgment signed by the contractor stating that copies of the required performance and payment bonds will be provided to all subcontractors not later than the fifth day after the date a subcontract is executed.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_, 202\_. ("the Effective Date").

**CITY:**

**NONPROFIT:**

By: \_\_\_\_\_  
Stephanie Reyes, City Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



## Exhibit A – Premises



Red Area – Space to be utilized by The Teachers Reuse (TR).

Yellow Area – Space to be utilized for parking.

Blue Lines – Gates to restricted area for use.

◆ – After hours door for access to bathroom facilities.

Loading and Unloading – Space adjacent to the front of The Teachers Reuse area may be used for temporary loading and unloading.

Restroom facilities – During city open hours access to bathrooms in the lobby area will be accessed through front doors. During city closed hours access will be available for only vetted TR staff and volunteers through door indicated by orange diamond.

## **Exhibit B – Performance Measures**

Performance measures shall be submitted to the City as specified in the Lease Agreement.

**Summary of all organization's projects and programs involving community service:**

**Hours which the facility is open for community service and total weekly hours:**

**Number of people served categorized by:**

- Residents \_\_\_\_\_
- Non-Residents \_\_\_\_\_
- Teach in SMISD \_\_\_\_\_
- Teach outside of SMISD \_\_\_\_\_

**List of programs/classes/services provided with schedule and summary of how this program provides community service:**

\_\_\_\_\_  
Signature of Lessee

\_\_\_\_\_  
Printed Name of Lessee

\_\_\_\_\_  
Date