

**STATE OF TEXAS**

§

**CHAPTER 380 GRANT**

§

**AGREEMENT FOR ALAMEDA**

§

**THEATER CONSERVANCY**

**BEXAR COUNTY**

§

**OPERATIONS**

This Chapter 380 Economic Development Grant Agreement (hereafter referred to as this “Agreement”), is made and entered into by the City of San Antonio (herein referred to as “City” or “Grantor”) a municipal corporation of the State of Texas, acting by and through its City Manager or his designee, Tax Increment Reinvestment #9 (the “TIRZ or “Board”), acting by and through its Presiding Officer, and Alameda Theater Conservancy, a Texas nonprofit corporation (hereinafter referred to as “ATC” or “Grantee”). Together, Grantor, TIRZ and Grantee may be referred to herein as the “Parties,” or individually as a “Party.”

**RECITALS**

**WHEREAS**, Grantee requests economic incentives from the City in the amount of \$550,000 to support staffing and consulting services for the Alameda Theater during the construction and remediation of the historic theater and to program and operate the theater once restoration is complete; and

**WHEREAS**, the restored Alameda Theater is part of public-private partnership intended to aid in the revitalization of the TIRZ area; and

**WHEREAS**, the City and Board seek to incentivize Grantee to undertake operations and have identified the Tax Increment from the Houston Street TIRZ as the source of funds to be made available to Grantee in the form of an economic development grant to cause the services to be provided in accordance with the terms and conditions of this Agreement; and

**WHEREAS**, Bexar County has also committed to providing an additional \$450,000 in funding to support Grantee’s operations; and

**WHEREAS**, in accordance with City Ordinance No. 100684 and Chapter 380 of the Texas Local Government Code and Sections 311.010(b) and 311.010(h) of the Texas Tax Code, the City and the Board are authorized to grant funds to promote state and local economic development and to stimulate commercial activity in the municipality and within the boundaries of the TIRZ; and

**WHEREAS**, the City Council of Grantor has authorized the Grantor’s Manager or his designee to enter into this Agreement with Grantee in accordance with Grantee Ordinance No. \_\_\_\_\_, passed and approved on \_\_\_\_\_ to grant said funds;

**NOW THEREFORE:**

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described:

**SECTION 1. AGREEMENT PURPOSE**

The purpose of this Agreement is to assist Grantee in defraying costs associated with the on-going operational expenses for the Alameda Theater through the award of public funds in the form of an economic development grant. Grantor and TIRZ anticipate that upon completion, ATC operations at the Theater will help to promote local economic development and stimulate business and commercial activity in the City of San Antonio and within the boundaries of the TIRZ.

**SECTION 2. AGREEMENT PERIOD**

This Agreement shall commence upon full execution of this Agreement and shall terminate upon the completion of Section 3(A) and (B) or at the completion of Fiscal Year 2021, whichever comes first.

**SECTION 3. ALLOWABLE USES AND SERVICES TO BE PROVIDED**

Throughout the Term of this Agreement, Grantee, or its contractors, shall provide the services listed below:

A. Operational Responsibilities. Grantee shall be responsible for the following activities:

- i. Hire and employ qualified support staff and management for the Conservancy.
- ii. Develop and implement a program plan, fundraising plan and staffing plan in preparation for the Alameda Theater opening.
- iii. Begin Theater operations once restoration is complete.
- iv. Contract with qualified consultants to assist with or complete the above activities, as needed.

B. Fiscal Responsibilities. In addition to the deliverables in section 3(A), Grantee and its contractors shall:

- i. Develop and implement an annual budget.
- ii. Maintain complete and accurate permanent financial records of income, expenditures, assets and liabilities.

- iii. Submit to Grantor evidence of expenditure of the funds granted under this agreement, in accordance with Section 6 below, on a monthly basis throughout the term of this Agreement.

#### **SECTION 4. ECONOMIC DEVELOPMENT GRANT**

4.1 In consideration of Grantee's undertaking and completing the activities listed in Section 3 above, Grantor, having been authorized by the TIRZ Board of Directors, as evidenced by the passage of Resolution T09 \_\_\_\_\_, is providing an economic development incentive grant with the TIRZ tax increment fund serving as the source of funding, as follows:

The total amount of funding that may be granted under this Agreement is FIVE HUNDRED AND FIFTY THOUSAND DOLLARS (\$550,000.00), which shall be restricted to defraying costs associated with staffing, programming and operating the Alameda Theater during and immediately after restoration, as further described by the activities listed in Section 3(A) and (B). The funds shall be disbursed as follows:

- A. Grantee shall receive an allocation of ONE HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS (\$150,000.00), to be disbursed ~~within ten (10) calendar days following~~ upon execution of this contract, for spending in FY2020. Funds disbursed to Grantee shall be deposited into the ATC bank account(s) and utilized for costs incurred after July 1, 2019 and for the purposes described herein.
- B. Grantee shall receive an allocation of ONE HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS (\$150,000.00), to be disbursed on April 1, 2020, contingent on compliance with Section 6. Monitoring, for spending in FY2020.
- C. Grantee shall receive an allocation of ONE HUNDRED TWENTY FIVE THOUSAND DOLLARS AND NO CENTS (\$125,000.00), to be disbursed on October 1, 2020, contingent upon Grantee's compliance with Section 6. Monitoring, for spending in FY2021.
- D. Grantee shall receive an allocation of ONE HUNDRED TWENTY FIVE THOUSAND DOLLARS AND NO CENTS (\$125,000.00), to be disbursed on April 1, 2021, contingent upon Grantee's compliance with Section 6. Monitoring, for spending in FY2021.

4.2 Should Grantee not fully expend grant funds directly on theater operations activities during the relevant two-year period, the remaining funds shall be returned to the TIRZ.

4.3. Grantee acknowledges that the disbursement of grant funds is subject to TIF funds being available pursuant to the priority of payment for the TIRZ.

4.4 If available TIF Funds do not exist in an amount sufficient to payment in full when payments are due, partial payment shall be made and the remainder shall be paid as TIF Funds become available. No fees, costs, expense, interest or penalties shall be paid to the Parties for any partial or late payment of Grant Funds.

4.5 It is expressly understood by Grantee that this Agreement in no way obligates Grantor's General Fund or any monies or credits of the Grantor and creates no debt of, nor any liability to, Grantor. Grantee acknowledges that the disbursement of FY2021 grant funds is subject to Grantee being in compliance with the Section 6. Monitoring of this agreement.

4.6 If any payment to Grantee is held invalid, ineligible, illegal, or unenforceable under federal, state, or local laws, including but not limited to the charter, codes, or ordinances of the City, then such invalid, ineligible, illegal, or unenforceable payment shall be repaid in full by Grantee to the TIRZ for deposit into the TIF Fund, and that the remainder of this Agreement shall be construed as if such invalid, illegal, or unenforceable payment was never contained in this Agreement.

4.7. Should Grantee fail to provide proof of expenditures for any portion of any payment made under this Section, in accordance with Section 6.1 Monitoring, Grantee shall repay such amount to the TIRZ.

## **SECTION 5. RETENTION AND ACCESSIBILITY OF RECORDS**

Grantee shall give the City, its designee, or any of its duly authorized representatives, access to and the right to examine all books, accounts, records, audit reports, reports, files, documents, written or photographic material, videotape and other papers, things, or property belonging to or in use by Grantee pertaining to the funds paid on behalf of Grantee under this Agreement. Such rights to access shall continue as long as the records are retained by Grantee. Failure to provide reasonable access to authorized City representatives shall give the City the right to suspend or terminate the Agreement as provided for in Sections 15 and 16, or any portion thereof, for reason of default. All records and other information shall be retained by Grantee for a period of four (4) years after all performance requirements are achieved for audit purposes until such audits or other administrative, civil or criminal matters including, but not limited to, investigations, lawsuits, administrative inquiries and open record requests are completed. Grantee agrees to maintain such records in an accessible location and to provide citizens reasonable access to such records consistent with the Texas Public Information Act.

## **SECTION 6. MONITORING**

6.1 Grantee shall provide to Grantor's Director of Center City Development and Operations monthly statements with reasonable supporting documentation of expenditures, to include invoices, evidencing Grantee's use of grant funds in accordance with Section 3 above.

6.2 In addition to Grantee's monthly reporting of expenditures, City reserves the right to confirm Grantee's compliance with the terms and conditions of this Agreement at any time during the term of this agreement and Grantee shall provide or cause the City and Board to be provided access to Records and information reasonably necessary to assess Grantee's compliance with this agreement.

6.3 City will provide Grantee with a written report of the monitor's findings. If the monitoring report notes deficiencies in Grantee's performances under the terms of this Agreement, the monitoring report shall include a listing of requirements for the correction of such deficiencies by Grantee and a reasonable amount of time in which to attain compliance. Failure by Grantee to take action specified in the monitoring report may be cause for suspension or termination of this Agreement, in accordance with Sections 13 and 14 herein.

## **SECTION 7. INDEPENDENT CONTRACTOR**

It is expressly understood and agreed by the parties hereto that City is contracting with Grantee as an independent contractor, and that Grantee, its employees and subcontractors are not employees of the City.

## **SECTION 8. CONFLICT OF INTEREST**

8.1 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:

- (1) a City officer or employee; his or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;
- (2) 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
- (3) 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.

8.2 Pursuant to the subsection above, Grantee 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. Grantee further warrants and certifies that it has tendered.

## **SECTION 9. NONDISCRIMINATION AND SECTARIAN ACTIVITY**

9.1. Grantee shall ensure that no person shall, on the ground of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied access to any program or activity funded in whole or in part with funds made available under this Agreement.

9.2. None of the performances rendered by Grantee under this Agreement shall involve, and no portion of the funds received by Grantee under this Agreement shall be used in support of, any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.

9.3. Grantee shall include the substance of this Section 9 in all subcontract agreements.

## **SECTION 10. LEGAL AUTHORITY**

10.1. Each party assures and guarantees to the other that they possesses the legal authority to enter into this Agreement, to receive/deliver the funds authorized by this Agreement, and to perform their obligations hereunder.

10.2. The person or persons signing and executing this Agreement on behalf of each Party or representing themselves as signing and executing this Agreement on behalf of a party, do hereby guarantee that he, she or they have been duly authorized to execute this Agreement on behalf of that Party and to validly and legally bind that party to all terms, performances and provisions herein set forth.

10.3. City will have the right to suspend or terminate this Agreement in accordance with Sections 13 and 14 herein if there is a dispute as to the legal authority, of either Grantee or the person signing this Agreement, to enter into this Agreement, any amendments hereto or failure to render performances hereunder. Grantee is liable to City for any money it has received from City for performance of the provisions of this Agreement if City suspends or terminates this Agreement for reasons enumerated in this Section 10.

## **SECTION 11. ATTORNEY'S FEES**

In the event Grantee or Grantor should default under any of the provisions of this Agreement and the other should employ attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of the defaulting Party herein contained, the defaulting Party agrees to pay to the other Party its reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting Party so ordered by a court having jurisdiction over the Parties.

## **SECTION 12. CHANGES AND AMENDMENTS**

12.1. Except as specifically provided in this Agreement, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment hereto in writing and executed by both parties to this Agreement following TIRZ and City approval and authorization of Grantee.

12.2. It is understood and agreed by the Parties hereto that performances under this Agreement shall be rendered in accordance with the laws and rules governing the Economic Development Program as set forth this date, and the terms and conditions of this Agreement.

## **SECTION 13. SUSPENSION**

13.1 Notwithstanding the provisions of Chapter 2251 of the Texas Government Code, in the event Grantee fails to comply with the terms of any Agreement with the City, City shall provide Grantee with written notification as to the nature of the non-compliance. City shall grant Grantee a sixty (60) day period from the date of the City's written notification to cure any issue of non-compliance under such Agreement. Should Grantee fail to cure any default within this period of time, the City may, upon written Notice of Suspension to Grantee, suspend this Agreement in whole or in part and withhold further payments to Grantee, and prohibit Grantee from incurring additional obligations of funds under this Agreement. Such Notice of Suspension shall include: (1) the reasons for such suspension; (2) the effective date of such suspension; and, (3) in the case of partial suspension, the portion of the Agreement to be suspended.

13.2. In the case of default for causes beyond Grantee's reasonable control, which cannot with due diligence be cured within such sixty (60) day period, the City, acting on behalf of itself and the TIRZ may, in its sole discretion, extend the cure period provided that Grantee shall: (1) immediately upon receipt of Notice of Suspension advise City of Grantee's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same.

13.3. A suspension under this Section 13 may be lifted only at the sole discretion of the City upon a showing of compliance with or written waiver by City of the term(s) in question.

13.4 With the exception of payment for work in progress or materials ordered prior to receiving a Notice of Suspension, City and TIRZ shall not be liable to Grantee or to Grantee's creditors for costs incurred during any term of suspension of this Agreement.

## **SECTION 14. TERMINATION**

14.1. City and TIRZ shall have the right to terminate this Agreement for non-compliance, in whole or in part, at any time before the date of completion specified in Section 4 of this

Agreement whenever City or TIRZ determines that Grantee has failed to comply with any term of this Agreement, subject to the cure periods herein described herein. City and/or TIRZ will provide Grantee with written notification as to the nature of the non-compliance, and grant Grantee a sixty (60) day period from the date of written notification to cure any issue of non-compliance under such Agreement. Should Grantee fail to cure any default within this period of time, the City and/or TIRZ may, upon issuance to Grantee of a written Notice of Termination, terminate this Agreement in whole or in part and withhold further payments to Grantee, and prohibit Grantee from incurring additional obligations of funds under this Agreement. Such notification shall include: (1) the reasons for such termination; (2) the effective date of such termination; and, (3) in the case of partial termination, the portion of the Agreement to be terminated.

14.2. In the case of default for causes beyond Grantee's reasonable control, which cannot with due diligence be cured within such sixty (60) day period, the City may, in its sole discretion, extend the cure period provided that Grantee shall: (1) immediately upon receipt of Notice of Termination advise City of Grantee's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same.

14.3. Grantee is liable to City for any money it has received from City or which has been expended by City on behalf of Grantee for performance of the specified provisions of this Agreement if City rightfully suspends or terminates this Agreement for Grantee's material non-compliance, in whole or in part, at any time before the date of completion. Upon termination, Grantee shall have no more than sixty (60) days to repay City any and all funds disbursed under this Agreement.

14.4. Upon receipt of Notice of Termination for non-compliance under Section 14.1, Grantee shall, to the extent possible under its other contractual obligations, cancel, withdraw or otherwise terminate any outstanding orders or subcontracts related to the performance of this Agreement or the part of this Agreement to be terminated and shall cease to incur costs thereunder. Any other work or materials under or part of this Agreement shall be terminated and City will not be liable to Grantee or to Grantee's creditors for any costs incurred subsequent to receipt of a Notice to Terminate.

14.5 Notwithstanding any exercise by City of its right of suspension under Section 13 of this Agreement, or of early termination pursuant to this Section 14, Grantee shall not be relieved of any liability to City for damages due to City by virtue of any breach by Grantee of any other Agreement with City. City may withhold payments to Grantee until such time as the exact amount of damages due to City from Grantee is agreed upon or is otherwise determined.

## **SECTION 15. SUBCONTRACTS**

15.1. Grantee shall ensure that the performance rendered under all subcontracts funded by this Agreement complies with all terms and provisions of this Agreement as if such performance were rendered by Grantee. Grantee shall bear full responsibility for performance by all subcontractors.

15.2. Grantee, in subcontracting any of the performances hereunder, expressly understands that in entering into such subcontracts, City and TIRZ is in no way liable to Grantee's subcontractor(s).

15.3. Grantee assures and shall obtain assurances from all of its subcontractors where applicable and utilizing the grant funds provided through this Agreement, that no person shall, on the grounds of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, be excluded from, be denied the benefit of, or be subjected to discrimination under any program or activity funded in whole or in part under this Agreement.

## SECTION 16. INSURANCE

16.1 Grantee must require that the insurance requirements contained in this Article be included in all of its contracts or agreements where Grantee seeks payment under this Agreement, unless specifically exempted in writing by the City and/or the Board.

16.2 PROOF OF INSURANCE. Grantee shall furnish copies of all required endorsements and Certificate(s) of Insurance to the City's TIF Unit, which shall be clearly labeled "**Houston Street TIRZ, Alameda Operations**" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent authorized to bind coverage on its behalf. The City shall not accept Memorandum of Insurance or Binders as proof of insurance. The certificate(s) or form must have the agent's signature, including the signer's company affiliation, title and phone number, and be mailed with copies of all applicable endorsements, directly from the insurer's authorized representative to the City at the same addresses listed in Section 22 of this Agreement. The City shall have no duty to pay/perform under the Agreement until such certificate(s) and their endorsements has been received and approved by the City. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement for the City.

16.3 REQUIRED TYPES AND AMOUNTS. Grantee's financial integrity is of the interest to the City and the Board, therefore, subject to the Grantee's right to maintain reasonable deductibles in such amounts as approved by the City, Grantee, Grantee's design consultants, and/or Grantee's contractor, shall maintain in full force and effect during the construction of all Public Improvements and Public Infrastructure required and any extension hereof, at the Grantee's, Grantee's design consultants, or the Grantee's contractor's sole expense, insurance coverage written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- or better by the A.M. Best Company and/or otherwise acceptable to the City, in the following types and for an amount not less than the amount listed:

<u><b>TYPE</b></u>	<u><b>AMOUNTS</b></u>
<p>1. Workers' Compensation</p> <p>2. Employers' Liability</p>	<p><i>Statutory</i></p> <p>\$1,000,000.00</p>
<p>3. Commercial General Liability Insurance to include coverage for the following:</p> <p>a. Premises/Operations</p> <p>b. Personal/Advertising Injury</p> <p>c. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability.</p> <p>d. Explosion, Collapse, Underground</p>	<p>For <u>Bodily Injury</u> and <u>Property Damage</u> of:</p> <p><b>\$1,000,000.00</b> per occurrence;</p> <p><b>\$2,000,000.00</b> General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage</p> <p>Coverage must include per project aggregate</p>
<p>4. Business Automobile Liability:</p> <p>a. Owned/leased vehicles</p> <p>b. Non-owned vehicles</p> <p>c. Hired Vehicles</p>	<p><u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of <b>\$1,000,000.00</b> per occurrence</p>
<p>5. Professional Liability (Claims-made basis)</p> <p>To be maintained and in effect for no less than two years subsequent to the completion of the professional service.</p>	<p><b>\$1,000,000.00</b> per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services. Coverage to be maintained and in effect for no less than seven years subsequent to the completion of the professional service.</p>
<p>6. Umbrella or Excess Liability</p>	<p><b>\$5,000,000.00</b> per occurrence combined limit <u>Bodily Injury</u></p>

Coverage	(including death) and <u>Property Damage</u> .
7. Builder's Risk	All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.

16.4 RIGHT TO REVIEW. The City reserves the right to review the insurance requirements during the effective period of this Agreement and to modify insurance coverages and their limits when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance shall the City allow modification whereupon the City may incur increased risk.

16.5 REQUESTS FOR CHANGES. The City shall be entitled, upon request and without expense to receive copies of the policies, declaration page and all endorsements as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy term, condition, limitation, or exclusion (except where policy provisions are established by law or regulation binding upon either of the Parties, or the underwriter of any such policies). Grantee and/or Grantee's contractor shall comply with any such request and shall submit a copy of the replacement certificate of insurance to City within ten (10) days of the requested change. Grantee and/or Grantee's contractor shall pay any costs incurred resulting from said changes. All notices under this Article shall be given to the City and the Board at the addresses listed under Section 22 of this Agreement.

16.6 REQUIRED PROVISIONS AND ENDORSEMENTS. Grantee agrees that with respect to the above required insurance, all insurance contract policies, and Certificate(s) of Insurance will contain the following provisions:

- a. Name the City and its officers, officials, employees, volunteers, and elected representative as additional insureds as respects operations and activities of, or on behalf of, the named insured subject to this Agreement, with the exception of the workers' compensation and professional liability policies;
- b. Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio if the City is an additional insured shown on the policy;
- c. Employers' liability policies will provide a waiver of subrogation in favor of the City; and,

d. Provide thirty (30) calendar days advance written notice directly to City at the same addresses listed in this Article of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for non-payment of premium.

16.7 CANCELLATIONS AND NON-RENEWAL. Within five (5) calendar days of a suspension, cancellation, non-renewal, or material change in coverage, Grantee and or Grantee's contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City at the same address listed in Section 20 of this Agreement. City shall have the option to suspend Grantee or Grantee's contractor's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a breach of this Agreement and the City may exercise any and all available legal remedies.

16.8 CITY'S REMEDIES. In addition to any other remedies the City may have upon Grantee and/or Grantee's contractor for the failure to provide and maintain insurance or policy endorsements to the extent and within the time required, the City shall have the right, to order Grantee to stop work, and/or withhold any payment(s), which become due until Grantee and/or Grantee's contractor demonstrates compliance with the requirements.

16.9 RESPONSIBILITY FOR DAMAGES. Nothing in the Agreement shall be construed as limiting in any way the extent to which Grantee and/or Grantee's contractor may be held responsible for payments of damages to persons or property resulting from Grantee's or its subcontractors' performance of the work covered under this Agreement.

16.10 PRIMARY INSURANCE. Grantee's insurance, Grantee's design consultants' insurance, and/or Grantee's contractor's insurance, each as the case may be, shall be deemed primary with respect to any insurance or self-insurance carried by the City for liability arising under this Agreement.

16.11 GRANTEE'S OBLIGATION. Grantee agrees to obtain all insurance coverage with minimum limits of not less than the limits delineated under Section 16.3 of this Section from each general contractor of Grantee and Certificate of Insurance and Endorsements that names the Grantee and the City as an additional insured; provided, however, that the professional liability coverage shall be provided by Grantee's design consultants. It is understood and agreed that the insurance required is in addition to and separate from any other obligation in the Agreement. Grantee and any general contractors are responsible for all damages to their own equipment and/or property. Grantee must provide City current proof of insurance for all projects and applicable contracts and agreements executed pursuant to Agreement.

16.12 "ALL RISK". At all times during the performance of construction, Grantee and their contractor shall maintain in full force and effect builder's "All Risk" insurance policies covering

such construction. The Builder's Risk Policies shall be written on an occurrence basis and on a replacement cost basis, insuring 100% of the insurable value of construction improvements.

## **SECTION 17. INDEMNIFICATION**

**17.1 GRANTEE covenants and agrees TO FULLY INDEMNIFY AND HOLD HARMLESS, the CITY (and the elected officials, employees, officers, directors, and representatives of the CITY), and the BOARD (and the officials, employees, officers, directors, and representatives of the BOARD), individually or 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 injury or death and property damage, made upon the CITY, and/or upon the BOARD, directly or indirectly arising out of, resulting from or related to GRANTEE, any agent, officer, director, representative, employee, consultant or subcontractor of GRANTEE, and their respective officers, agents, employees, directors and representatives while in the exercise of the rights or performance of the duties under this AGREEMENT, all without however, waiving any governmental immunity available to the CITY and/or the BOARD, under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS AGREEMENT.**

**17.2 It is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY provided for in this section, is an INDEMNITY extended by GRANTEE to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY, and the BOARD, from the consequences of the CITY'S and/or the Board's OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the City and/or Board is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the City and/or the Board is the sole cause of the resultant injury, death, or damage. GRANTEE further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND/OR THE BOARD AND IN THE NAME OF THE CITY AND IN THE NAME OF THE BOARD, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.**

**SECTION. 18. DEBARMENT**

By signing this Agreement, Grantee certifies that it will not knowingly award any funds provided under this Agreement to any party which is debarred, suspended or otherwise excluded from or ineligible for participation in assistance programs.

**SECTION 19. RIGHTS UPON DEFAULT**

It is expressly understood and agreed by the parties hereto that any right or remedy provided for in this Agreement shall not preclude the exercise of any other right or remedy under any Agreement between Grantee, TIRZ and the City or under any provision of law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy hereunder shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

**SECTION 20. NON-ASSIGNMENT**

This Agreement is not assignable. Notwithstanding any attempt to assign the Agreement, Grantee shall remain fully liable on this Agreement and shall not be released from performing any of the terms, covenants and conditions herein. Grantee shall be held responsible for all funds received or expended on Grantee’s behalf under this Agreement.

**SECTION 21. ORAL AND WRITTEN AGREEMENTS**

All oral and written agreements between the parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement.

**SECTION 22. 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 or TIRZ, to:

City of San Antonio  
Center City Development and Operations  
Attn: Director

P.O. Box 839966  
San Antonio, TX 78283-3966

If intended for Grantee, to:

Alameda Theater Conservancy  
Attn: Chair of Board  
PO Box ~~830425~~  
San Antonio, TX 782~~83~~

**SECTION 23. AUTHORIZED RELIEF FROM PERFORMANCE (*Force Majeure*)**

The Parties shall grant relief from performance of the Agreement if the Grantee is prevented from compliance and performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributed to the fault or negligence of the Grantee. The burden of proof for the need for such relief shall rest upon the Grantee. To obtain release based upon *force majeure*, the Grantee must file a written request with the non-defaulting Parties.

*Signatures to follow on the next page*

EXECUTED and AGREED to as of \_\_\_\_\_, 2019 (the "Effective Date"):

**CITY OF SAN ANTONIO,**  
a Texas Municipal Corporation

**ALAMEDA THEATER CONSERVANCY**  
A Texas non-profit Corporation

\_\_\_\_\_  
Erik Walsh  
CITY MANAGER

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

ATTEST:

ATTEST (if necessary):

\_\_\_\_\_  
Leticia Vacek  
CITY CLERK

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
ASSISTANT CITY ATTORNEY

**TAX INCREMENT REINVESTMENT ZONE #9**

Executed as an acknowledgement that the TIRZ #9 tax increment fund shall serve as the source of funding for the grant funds provided under this agreement

\_\_\_\_\_  
Presiding Officer