

**CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT  
BETWEEN THE CITY OF SAN ANTONIO AND CENTRO SAN ANTONIO  
FOR THE DOWNTOWN SHADE PLAN**

This Economic Development Program Grant Agreement (hereinafter referred to as this "Agreement") is made and entered into by and among the City of San Antonio (the "GRANTOR"), a municipal corporation of the State of Texas, acting by and through its City Manager or his designee and Centro San Antonio a non-profit organization registered in the State of Texas (hereinafter referred to as "GRANTEE"). Together, the GRANTOR and GRANTEE may be referred to herein as the "Parties."

**RECITALS**

**WHEREAS**, pursuant to Chapter 380 of the Texas Local Government Code, GRANTOR is authorized to grant municipal funds in furtherance of public purposes for economic development projects; and

**WHEREAS**, in accordance with Chapter 380 of the Local Government Code, GRANTOR created an economic development program for the purpose of making such grants available; and

**WHEREAS**, GRANTEE is engaged in an economic development project intended to promote tourism and commerce along downtown streets through the installation of shade structures above certain areas of sidewalk to provide relief to shoppers and visitors, known as the Downtown Shade Plan; and

**WHEREAS**, GRANTEE has requested an economic development grant in order to assist with implementing the location study, contracting with artists, architects, designers, production vendors and other relevant service and product providers, and with the installation of the permanent and/or movable shade structures ("the Project"). GRANTOR has identified funds available in the form of an Economic Development Program Grant funded by tax increment from the Houston Street Tax Increment Reinvestment Zone #9 (the "TIRZ") to provide to GRANTEE to carry out this purpose; and

**WHEREAS**, on \_\_\_\_\_ the Houston Street TIRZ Board approved providing funding for this Project through Resolution T09-\_\_\_\_\_R; and

**WHEREAS**, the City Council of GRANTOR authorized the City Manager or his designee to enter into this Agreement with GRANTEE as reflected in Ordinance No. 2021-\_\_\_\_\_, passed and approved on \_\_\_\_\_, 2021 and GRANTOR now wishes to engage GRANTEE in support of the Project.

**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**

GRANTEE shall undertake the Project which is anticipated to promote local economic development and to stimulate business and commercial activity in the downtown area of the City of San Antonio. GRANTOR is supporting the Project through this Economic Development Program Grant to provide funds to be used for costs associated with undertaking and completing the Project.

## SECTION 2. ALLOWABLE USES AND SERVICES TO BE PROVIDED

2.1 GRANTEE agrees to provide the services described in **Exhibit A** attached hereto in exchange for the compensation described in Section 3.

2.2 GRANTEE understands that this Agreement is made in reliance that funds provided hereunder for the purpose of managing the installation of the permanent and/or movable shade structures (“Shade Structures”) in furtherance of this Project shall be awarded exclusively to businesses within the Houston Street TIRZ boundaries. A copy of the TIRZ boundary has been attached and incorporated herein as **Exhibit B**, for all purposes.

2.3 All work performed by GRANTEE hereunder shall be performed to the satisfaction of GRANTOR, as determined solely by the Director of the Center City Development and Operations Department (“Director”). The determination made by Director shall be final, binding and conclusive on all Parties hereto. GRANTOR and Houston Street TIRZ shall be under no obligation to pay for any work performed by GRANTEE, which is not satisfactory to Director. GRANTOR shall have the right to terminate this Agreement, in accordance with Article 15 entitled “Termination,” in whole or in part, should GRANTEE’s work not be satisfactory to GRANTOR; however, GRANTOR shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should GRANTOR elect not to terminate.

## SECTION 3. ECONOMIC DEVELOPMENT PROGRAM GRANT

3.1 Economic Development Program Grant. GRANTOR is providing GRANTEE with an Economic Development Program Grant utilizing funding from the Houston Street TIRZ #9 Tax Increment Fund, having been authorized by the Houston Street TIRZ Board of Directors as evidenced by the passage of Resolution T09-\_\_\_\_\_, in a cumulative amount of up to approximately FIVE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$500,000.00) (the “Grant Funds”) over the Agreement Period. GRANTEE is responsible for matching this grant in the amount of TWO HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS (\$250,000.00).

3.2 Grant Disbursement. Following the execution of this Agreement by the Parties and subject to the terms and conditions herein, GRANTOR will direct disbursement as follows:

3.2.1 GRANTEE shall receive an allocation of up to ONE HUNDRED AND EIGHTY THOUSAND DOLLARS AND NO CENTS (\$180,000.00) upon execution of this Agreement to be used for the purposes described herein.

3.2.2 GRANTEE shall receive an allocation of up to ONE HUNDRED AND SIXTY THOUSAND DOLLARS AND NO CENTS (\$160,000.00) upon proof of fifty percent (50%) completion of the Project and approval of an invoice submitted by GRANTEE, to be used for the purposes described herein.

3.2.3 GRANTEE shall receive an allocation of up to ONE HUNDRED AND SIXTY THOUSAND DOLLARS AND NO CENTS (\$160,000.000) upon proof of completion of the Project and approval of an invoice submitted by GRANTEE, to be used for the purposes described herein.

3.3 Unused Funds. Any unspent Grant Funds remaining at the end of the Agreement Period shall be returned to the Houston Street TIRZ Tax Increment Fund.

3.4. Priority of Payment. GRANTEE acknowledges that the disbursement of grant funds is subject to TIF funds being available pursuant to the priority of payment for the TIRZ.

#### **SECTION 4. AGREEMENT PERIOD**

4.1 This Agreement shall commence upon the Effective Date listed on the signature page of this Agreement and shall terminate upon the completion of services outlined in **Exhibit A** attached, or by December 31, 2023 (“Agreement Period”). Should GRANTEE not fully expend grant funds on Project activities during the Agreement Period, GRANTEE may, at the discretion of the Director of the Center City Development and Operations Department, be granted one additional year (“Extension”) to expend the funds.

4.11 If, at any time prior to the termination of this Agreement, Centro’s contract with the City of San Antonio is terminated or not renewed, ownership as well as responsibility for repairs, maintenance and insurance of the shade structures automatically transfers to the City of San Antonio.

#### **SECTION 5. GRANTOR’S OBLIGATIONS**

5.1 Payment. In consideration of full and satisfactory performance of activities required by Section 2 of this Agreement, as applicable, and subject to the appropriation of funds by the Houston Street TIRZ, GRANTOR will pay GRANTEE in accordance with Section 3 above.

5.2 No Liability for Costs. GRANTOR will not be liable to GRANTEE or other entity for any costs incurred by GRANTEE in connection with this Agreement.

#### **SECTION 6. RETENTION AND ACCESSIBILITY OF RECORDS**

6.1 Retention. GRANTEE shall maintain the fiscal records and supporting documentation for expenditures of funds associated with this Agreement. GRANTEE shall retain such records and any supporting documentation for the greater of: four (4) years from the end of the Agreement period; or (2) the period required by other applicable laws and regulations.

6.2 Access. GRANTEE shall, following reasonable advance, written notice from GRANTOR, give GRANTOR, its designee, or any of their duly authorized representatives, access to and the right to examine all material records related to the Project (the "Records"). GRANTOR’s access to the Records will be limited to information needed to verify that GRANTEE is and has been complying with the terms of this Agreement. Any information that is not required by law to be made public shall be kept confidential by GRANTOR. GRANTEE shall not be required to disclose to GRANTOR any information that by law GRANTEE is required to keep confidential. Should any good faith dispute or question arise as to the validity of the data provided, GRANTOR reserves the right to require GRANTEE to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of GRANTEE. The rights to access the Records shall continue as long as the Records are retained by GRANTEE. Failure to provide reasonable access to the Records to authorized City representatives shall give GRANTOR the right to suspend or terminate this Agreement as provided for herein, or any portion thereof, for reason of default.

#### **SECTION 7. REPORTS AND MONITORING**

7.1 GRANTEE shall submit reports to demonstrate progress towards the goals outlined **Exhibit A**, to include progress reports as to status of Project. Reports shall be due quarterly, one month following the end of each quarter in accordance with the schedule set out below:

- Q1: April 1 – June 30. Report due July 31.
- Q2: July 1 – Sept 30. Report due October 31.
- Q3: October 1 – December 31. Report due January 31.
- Q4: January 1 – March 31. Report due April 30.

The quarterly reports are due on an ongoing basis until all shade structures are installed, expected to be December 31, 2023.

7.2 In addition to the reporting requirements set out above, GRANTOR reserves the right to confirm GRANTEE's compliance with terms and conditions at any time during the Agreement Period. GRANTOR 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 within a reasonable amount of time may be cause for suspension or termination of this Agreement, in accordance with Sections 14 and 15 herein.

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

If applicable, GRANTEE shall ensure that no employee, officer, or individual agent of GRANTOR shall participate in the selection, award or administration of a subcontract supported by funds provided hereunder if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: (1) the employee, officer, or individual agent; (2) any member of his or her immediate family; (3) his or her partner; or, (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract and the relationship calls for payments to be made to such subcontractor on terms which are greater than those which are customary in the industry for similar services conducted on similar terms. To the extent GRANTEE hires any former or current employee or official of GRANTOR who would be subject to the GRANTOR's ethics policy, as same exists from time to time, GRANTEE shall take reasonable efforts to ensure that such person complies with all applicable requirements of the GRANTOR's ethics ordinance in dealings between GRANTOR and GRANTEE.

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

9.1 Nondiscrimination. GRANTEE shall ensure that no person shall, on the ground of race, color, national origin, religion, sex, age or handicap, 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 Sectarian Activity. 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 Inclusion. GRANTEE shall, to the best of its knowledge and belief, include the substance of this Section in all agreements entered into by GRANTEE associated with the funds made available through this Agreement.

## **SECTION 10. LEGAL AUTHORITY**

10.1 Legal Authority. Each party assures and guarantees to the other that they possess 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 Signatories. 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 Lack of Authority. GRANTOR shall have the right to suspend or terminate this Agreement in accordance with Sections 14 and 15 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 GRANTOR for any money it has received from GRANTOR for performance of the provisions of this Agreement if GRANTOR suspends or terminates this Agreement for reasons enumerated in this Section.

## **SECTION 11. LITIGATION AND CLAIMS**

11.1 Notice to City. GRANTEE shall give GRANTOR immediate notice in writing of any action, including any proceeding before an administrative agency, filed against GRANTEE arising out the performance of any activities at the Project site (s). Except as otherwise directed by GRANTOR, GRANTEE shall furnish immediately to GRANTOR copies of all pertinent papers received by GRANTEE with respect to such action or claim. GRANTEE shall notify GRANTOR immediately of any legal action, known to GRANTEE, filed against the GRANTEE or any subcontractor thereto, or of any known proceeding filed under the federal bankruptcy code. GRANTEE shall submit a copy of such notice to GRANTOR within 30 calendar days after receipt by GRANTEE of the same. No funds provided under this Agreement may be used in the payment of any costs incurred from violations or settlements of, or failure to comply with, federal and state regulations. The above notwithstanding, GRANTEE is not required to notify GRANTOR of claim litigation which arise out of GRANTEE's operations on the Project, including without limitation, landlord tenant disputes, personal injury actions (slip and falls), and other operational activities or relationships.

11.2 Texas Torts Claims Act. GRANTEE acknowledges that GRANTOR is a political subdivision of the State of Texas and is subject to, and complies with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001 et. seq., and the remedies authorized therein regarding claims and causes of action that may be asserted by third parties for accident, injury or death.

11.3 Venue. This Agreement shall be interpreted according to the Constitution and the laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

## **SECTION 12. ATTORNEY'S FEES**

In the event GRANTEE should default beyond applicable cure periods under any of the provisions of this Agreement and GRANTOR 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 GRANTEE herein contained, GRANTEE agrees to pay to the reasonable fees of such attorneys and such other expenses so incurred by GRANTOR.

## **SECTION 13. CHANGES AND AMENDMENTS**

13.1 Amendments in Writing. Except as provided below, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment hereto in writing and executed by the Parties to this Agreement. City Manager, or his/her designee, shall have authority to execute amendments on behalf of the City without further action of City Council, except for an increase in funding which shall require both TIRZ Board and City Council approval.

13.2 380 Program. 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 in Texas Local Government Code Chapter 380, and the terms and conditions of this Agreement.

13.3 Change of Law. In the event that Chapter 380 of the Texas Local Government Code is rescinded and not otherwise replaced with other statutory authority for GRANTOR to make the grants contemplated to be made to GRANTEE under this Agreement and the terms of this Agreement are not “grandfathered” so that following such rescission it will be illegal for GRANTOR to make the economic development grants contemplated by this Agreement, the parties will use good faith reasonable efforts to identify other lawful means by which GRANTOR can provide GRANTEE with substantially similar benefits to those which GRANTEE is entitled to receive under this Agreement.

#### **SECTION 14. SUSPENSION**

14.1 Notice and Cure Period. Notwithstanding the provisions of Chapter 2251 of the Texas Government Code or anything else in this Agreement to the contrary, in the event GRANTEE fails to comply with the terms of this Agreement, GRANTOR shall provide GRANTEE with written notification as to the nature of the non-compliance and grant GRANTEE a sixty (60) day period following the date of the GRANTEE’s receipt of GRANTOR’s written notification to cure any issue of non-compliance. Should GRANTEE fail to cure any default within this period of time, the GRANTOR 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.

14.2 Extensions. 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, GRANTOR may extend the cure period to such reasonable time to allow GRANTEE to cure such default provided that GRANTEE: (1) immediately upon receipt of Notice of Suspension advises GRANTOR of GRANTEE's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institutes and thereafter pursues to completion with reasonable dispatch all steps necessary to cure same.

14.3 Lifting of Suspension. A suspension under this Section may be lifted only by GRANTOR upon a showing of full compliance with or written waiver by GRANTOR of the term(s) in question.

14.4 No Liability. GRANTOR nor the Houston Street TIRZ shall not be liable to GRANTEE or to GRANTEE's creditors for costs incurred during any term of suspension of this Agreement.

#### **SECTION 15. TERMINATION AND RECAPTURE**

15.1 Ceasing. If GRANTEE ceases conducting Project activities (or a substantial portion thereof) for a continuous period of six (6) months during the Agreement Period for any reason, except if such cessation

is caused by a Force Majeure as defined in Section 19, then GRANTOR shall have the right to terminate this Agreement. Upon termination, any and all Grant Funds disbursed to GRANTEE that have not been spent in accordance with this agreement shall be recaptured by GRANTOR and GRANTOR shall be entitled to the payment of such disbursed funds within sixty (60) calendar days from the date it notifies GRANTEE in writing of termination.

15.2 Notice of Default. During the Agreement Period, GRANTOR may declare a default if GRANTEE fails to comply with any of the terms of this Agreement. Should GRANTOR determine GRANTEE is in default under any of the terms of this Agreement, GRANTOR will notify GRANTEE in writing at the address below in Section 23. If said default is not cured within sixty (60) calendar days from the date of such notice (hereinafter the “Cure Period”), then GRANTOR shall have the right to terminate this Agreement. GRANTOR may extend the Cure Period if GRANTEE commences the cure within the Cure Period and GRANTEE is diligently pursuing such cure. If the Agreement is terminated as a result of default, all grant funds disbursed shall be due for the calendar year during which the termination occurred; in addition, GRANTOR shall have the right to recapture from GRANTEE previously disbursed grant funds not used for purposes authorized under this Agreement and said grant funds shall be paid by GRANTEE to GRANTOR within sixty (60) calendar days of receiving GRANTOR’s written notification of recapture.

## SECTION 16. SUBCONTRACTS

16.1. 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.

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

16.3. 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 17. INSURANCE

17.1 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.

17.2 PROOF OF INSURANCE. Grantee shall furnish copies of all required endorsements and Certificate(s) of Insurance to the City’s TIF Division, which shall be clearly labeled “**Houston Street TIRZ, Downtown Street Shade Plan**” 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 26 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.

17.3 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 for five (5) years after construction completion:

<b><u>TYPE</u></b>	<b><u>AMOUNTS</u></b>
<ol style="list-style-type: none"> <li>1. Workers’ Compensation</li> <li>2. Employers' Liability</li> </ol>	<p><b><i>Statutory</i></b>            \$1,000,000.00/\$1,000,000.00/\$1,000,000.00</p>
<ol style="list-style-type: none"> <li>3. Commercial General Liability Insurance to include coverage for the following:               <ol style="list-style-type: none"> <li>a. Premises/Operations</li> <li>b. Personal/Advertising Injury</li> <li>c. Products/Completed Operations</li> <li>d. Contractual Liability</li> <li>e. Independent Contractors</li> <li>f. Damage to property rented by you</li> </ol> </li> </ol>	<p>For <u>Bodily Injury</u> and <u>Property Damage</u> of:</p> <p><b>\$1,000,000.00</b> per occurrence;  <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>
<ol style="list-style-type: none"> <li>4. Business Automobile Liability:               <ol style="list-style-type: none"> <li>a. Owned/leased vehicles</li> <li>b. Non-owned vehicles</li> <li>c. Hired Vehicles</li> </ol> </li> </ol>	<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>
<ol style="list-style-type: none"> <li>5. Professional Liability (Claims-made basis)</li> </ol>	<p><b>\$1,000,000.00</b> per claim, to pay on behalf of the insured all sums which</p>



	<p>the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.</p> <p>Coverage to be maintained and in effect for no less than two years subsequent to the completion of the professional service.</p>
6. Umbrella or Excess Liability Coverage	<b>\$5,000,000.00</b> per occurrence combined limit <u>Bodily Injury</u> (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.
8. Environmental Insurance – (Contractor's Pollution Liability (Claims-made coverage)	\$1,000,000 per occurrence; \$2,000,000 general aggregate for claims associated with hazardous materials, to include spills and mitigation.
9. Explosion, Collapse, Underground Property Hazard Liability	\$2,000,000 per claim

17.4 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.

17.5 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 21

of this Agreement.

17.6 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.

17.7 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 26 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.

17.8 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.

17.9 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.

17.10 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.

17.11 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.

17.12 "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 18. INDEMNIFICATION

**18.1 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 and/or this project or structures, 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.**

**18.2 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 19. AUTHORIZED RELIEF FROM PERFORMANCE**

In addition to relief expressly granted in this Agreement, GRANTOR may grant relief from performance of this Agreement if GRANTEE is prevented from compliance and performance by an event of Force Majeure. For purposes of this section, "Force Majeure" is defined as an act of God or natural disaster. It also includes explosion or other casualty or accident which is not the result solely of gross negligence, intentional act or misconduct on the part of GRANTEE. The burden of proof for the need for such relief shall rest upon GRANTEE. To obtain release based upon this Section 19, GRANTEE must file a written request with the GRANTOR's Center City Development and Operations Department for review and approval, which request shall not be unreasonably denied.

#### **SECTION 20. SPECIAL CONDITIONS AND TERMS**

GRANTEE, in accordance with Chapter 2264 of the Texas Government Code, agrees not to knowingly employ any worker during the Agreement Period who is not lawfully admitted for permanent residence to the United States or who is not authorized under law to be employed in the United States ("Undocumented Workers"). If GRANTEE is convicted of a violation under 8 U.S.C. Section 1324a (f), then GRANTEE shall repay GRANTOR the amounts granted by this Agreement for the tax year(s) covered under this Agreement during which such violation occurred. Such payment shall be made within 120 business days after the date GRANTEE is notified by GRANTOR of such violation. GRANTOR, in its sole discretion, may extend the period for repayment herein. Additionally, GRANTEE shall pay interest on the amounts due to GRANTOR at the rate periodically announced by the Wall Street Journal as the prime or base commercial lending rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by the City) as its prime or base commercial lending rate, from the date of such violation notice until paid.

#### **SECTION 21. RESERVED**

#### **SECTION 22. DEBARMENT**

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

**SECTION 23. NO WAIVER**

It is expressly understood and agreed by the Parties hereto that, except as otherwise expressly provided herein, any right or remedy provided for in this Agreement shall not preclude the exercise of any other right or remedy under any other agreements between GRANTEE and GRANTOR under any provision of law, nor shall any action taken in the failure by either party 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 in the future.

**SECTION 24. 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 25. 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 26. NOTICE**

Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if: (a) delivered in person to the address set forth herein below for the party to whom the notice is given; (b) placed in the United States mail with postage prepaid, return receipt requested, properly addressed to such party at the address hereinafter specified; or (c) deposited, with fees prepaid, into the custody of a nationally recognized overnight delivery service such as FedEx, addressed to such party at the address hereinafter specified. Any notice mailed in the above manner shall be effective two (2) business days following its deposit into the custody of the United States Postal Service or upon actual receipt if by such nationally recognized delivery service, as applicable; all other notices shall be effective upon receipt. From time to time, either party may designate another address for all purposes under this Agreement by giving the other party no less than ten (10) calendar days advance written notice of such change of address in accordance with the provisions hereof.

TO GRANTOR:

TO GRANTEE:

(Whether personally delivered or mailed):

- If mailed:

City of San Antonio  
Attn: Center City Development and  
Operations Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

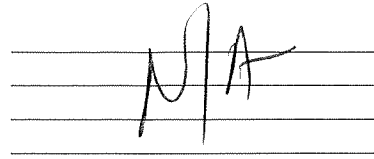
Centro San Antonio  
Attn: CEO

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- If by personal or overnight delivery:

COPIES TO:

Center City Development and  
Operations Department  
Attn: Director  
19th Floor  
100 Houston St.  
San Antonio, Texas 78205

A handwritten signature in black ink is positioned on a set of four horizontal lines. The signature is stylized and appears to consist of the letters 'M' and 'A' joined together.

Email:

Email:

DRAFT

*Signatures appear on next page.*

EXECUTED and AGREED to as of \_\_\_\_\_, 2021 (the "Effective Date"):

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

**GRANTEE:**  
**CENTRO SAN ANTONIO**  
a non-profit corporation

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

  
\_\_\_\_\_  
Matt Brown  
CEO

ATTEST:

\_\_\_\_\_  
Tina J. Flores  
CITY CLERK

**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

\_\_\_\_\_  
Councilman Roberto C. Treviño  
Board Chair

APPROVED AS TO FORM:

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

## **EXHIBIT A: SCOPE OF SERVICES**

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

- A. Centro to develop a Downtown Shade Plan that will articulate a phased approach to providing substantially more shade on many sidewalks throughout the Public Improvement District (“PID”), and possibly, some blocks adjacent to the PID needed to ensure there are pedestrian corridors that connect key locations throughout the area that are mostly shaded during summer months.
- B. Centro to oversee and manage, in coordination with City, the installation of the Shade Structures.
- C. Centro to contract with artists, architects, designers, production vendors and other relevant service and product providers to design, prototype and construct the Shade Structures.
- D. Centro to obtain CCCDO approval for final Shade Structure designs, prior to construction which approval will be timely and not unreasonably withheld.
- E. Centro to obtain CCDO approval for Shade Structure locations, in advance of submission to any other entity for approval. Approval shall be timely and not unreasonably withheld.
- F. Centro to communicate with nearby stakeholders.
- G. Centro to obtain all permits and approvals as required prior to installation.
- H. Centro to provide spending plan / budget to CCDO prior to start of work.
- I. Centro to provide quarterly progress reports to CCDO, in a format approved by City. Progress reports to include update on spending plan previously submitted.
- J. Upon completion, Centro to provide City with construction documents suitable to reproduce Shade Structures as needed. At no cost to City, Centro to provide City with all rights and licenses to allow for reproduction of the structures.
- K. Centro responsible for repairs and maintenance of Shade Structures for a period of five (5) years, estimated December 31, 2026. Ownership of shade structures and maintenance responsibilities will transfer to City five (5) years after date of completion.
- L. Insurance and Indemnification requirements outlined in agreement to apply to all shade structures.

**Include renderings of structures as well.**



**EXHIBIT B: HOUSTON STREET TAX INCREMENT REINVESTMENT ZONE BOUNDARIES**

# PROJECT ONE: GUY HUNDERE + SPRINKLE CO. 'SOMBRA DE LA ACACIA'





# PROJECT TWO: CAMPBELL LANDSCAPE ARCH. 'GROWING (SA)HADE'

## GROWING (S.A.)HADE

**Design for your Ecoregion**  
 50.2°N Texas Plains trees have cracked 6.4" for concrete.

Architectural landscape plan for Houston.



Cashell's team includes landscape architect Henry, Michigan tree 01' to 1800-1995, '02' to 2000-1995, '03' to 2000-1995, '04' to 2000-1995.

There is no better way to shade our streets and sidewalks than using native and indigenous trees. These produce natural shade, improve air quality, provide habitat for birds and other wildlife, and reduce energy costs. They also provide a sense of place and identity to our communities.

To maximize and expedite the application of shade trees to our streets, we have developed a design system that allows us to plant trees that will mature quickly and provide shade without a significant capital cost. Our design system is based on the following principles:



### Establish a downtown plan

Each city block is different, and when the sidewalk is too narrow, place the vessel on the street.



KEY: 0' to 10' (10' to 20') (20' to 30') (30' to 40') (40' to 50')

Legend: Street for tree, Sidewalk, Plant location, Plant size, No shade.

### INSTANT NATIVE SHADE

Ready to plant in 30' box trees.



### 36" Box Shade

These trees are readily available, provide instant shade, and offer drought tolerance.



Day 1 Dimensions: 6" H, 12" W, 12" D

### Timeless design

Coordinate SA & culture through the use of traditional materials and color.



### VESSEL

Vessel technology: self-watering, wind-resistant and engineered to maximize moisture & red-use (reuse).



Vessel shall be... Our tree vessel is a... Our tree vessel is a... Our tree vessel is a...

### APPLICATION

Where to place: Each city block is different, and when the sidewalk is too narrow, place the vessel on the street.

Site 1: Main Street

Site 2: Houston Street

Site 3: Market Street

