

**ROOSEVELT HEIGHTS DEVELOPMENT
CHAPTER 380 ECONOMIC DEVELOPMENT GRANT AGREEMENT**

STATE OF TEXAS	§	CHAPTER 380 ECONOMIC DEVELOPMENT
	§	PROGRAM GRANT AGREEMENT OF THE
COUNTY OF BEXAR	§	CITY OF SAN ANTONIO

This Chapter 380 Economic Development Program Grant Agreement (this “Agreement”) is made and entered into by and among the City of San Antonio (“City”), a municipal corporation of the State of Texas, acting by and through its City Manager, or his designee, the Board of Directors (“Board”) for Tax Increment Reinvestment Zone Number Thirty-Two, City of San Antonio, Texas and Bitterblue, Inc. (“Grantee”), a for-profit corporation, whom collectively may be referred to as the “Parties” and individually as a “Party”.

RECITALS

WHEREAS, the City seeks to incentivize Grantee to undertake and complete an economic development project consisting of the construction of: (1) 135 single family residential units; (2) public improvements; and (3) park and open space areas (the “Project”), generally located on or about 23.724 acres situated west of Roosevelt Avenue along SE Loop 410 in Council District 3, within Council District 3 and within the Mission Drive-In Tax Increment Reinvestment Zone (the “TIRZ”) boundaries, as more accurately described in the Special Warranty Deeds and depicted in the map attached as **Exhibit A** (the “Project Site”) and incorporated into this Agreement for all purposes; and

WHEREAS, it is anticipated that the Project will result in the investment of no less than FIVE MILLION FOUR HUNDRED NINETY FIVE THOUSAND FIVE HUNDRED THIRTY SEVEN DOLLARS AND NO CENTS (\$5,495,537) (the “Investment”) in real property improvements at the Project Site; and

WHEREAS, the City has identified the Tax Increment resulting from the City’s portion of real property taxes on the Project Site as a source of funds to be made available to Grantee in the form of an Economic Development Program Grant to cause the Project to be undertaken and completed in accordance with the terms and conditions of this Agreement; and

WHEREAS, pursuant to 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 of Directors of the Mission Drive-In TIRZ are authorized to grant funds to promote state and local economic development and to stimulate business and commercial activity in the municipality and within the boundaries of the TIRZ; and

WHEREAS, on April 28, 2021, the Board approved this Agreement through Resolution T32 2021- - - R, attached as **Exhibit B**, and authorized Tax Increment Financing (“TIF”) Funds to serve as a funding source of the Tax Increment for the Project until expiration of the TIRZ, as further described in Section 6.2; and

WHEREAS, City Council authorized the City Manager, or his designee, to enter into this Agreement to grant funds as described herein, in accordance with City Ordinance No. _____ passed and approved on _____, 2021, and attached as **Exhibit C**. **NOW THEREFORE**:

The Parties, by execution of this Agreement, are bound to the mutual obligations set out herein and to the performance and accomplishment of the tasks hereinafter described:

ARTICLE I. PURPOSE

1.1 The purpose of this Agreement is to promote state and local economic development and diversification and stimulate business and commercial activity within the municipality and TIRZ by assisting Grantee in causing the Project to be undertaken and completed resulting in the Investment within the Project Site once completed.

ARTICLE II. TERM

2.1 The term of this Agreement is up to fifteen (15) years commencing on the date the first plat for the Subject Property is submitted to the City, but no later than eighteen (18) months from the Effective Date of this Agreement (“Commencement Date”) and terminating on June 30, 2036 (the “Term”), unless sooner terminated as provided for in this Agreement. If the first plat has not been submitted and approved by the City within twenty-four (24) months from the Effective Date of this Agreement, the Agreement will terminate.

ARTICLE III. THE PROJECT

3.1 DEVELOPER shall invest approximately FIVE MILLION FOUR HUNDRED NINETY FIVE THOUSAND FIVE HUNDRED THIRTY SEVEN DOLLARS AND NO CENTS (\$5,495,537) (the “Minimum Investment”) to develop a residential subdivision located within the city limits of San Antonio and within the boundaries of the Mission Drive-In TIRZ that will consist of approximately one hundred thirty-five (135) newly constructed single family residential housing units; public improvements to include on-and off-site sewer, on-and offsite water infrastructure, streets, sidewalks, utilities, landscaping, and on-site drainage facilities to manage storm water; and park and open space areas, located at the Project Site (the “Project”), as more specifically described herein as **Exhibit D**. The Minimum Investment shall include, but not be limited to, expenditures in land acquisition, design, building construction costs, engineering, public improvement costs, taxes and insurance, administrative and financing costs, and fees.

3.2 The single-family housing units built under this Agreement shall be priced as follows, subject to inflation:

A minimum of 54 homes	From \$200,000 - \$240,000
81 homes	May be above \$240,000

ARTICLE IV. OBLIGATIONS OF GRANTEE

4.1 In order to receive incentives under this Agreement, Grantee shall: (1) undertake and complete the Project; (2) meet the minimum Investment at the Project Site; and (3) comply with all other terms and conditions of this Agreement, to include providing any necessary documentation to establish that the Project and Investment were completed.

4.2 Within one year after the execution of this Agreement, Grantee shall commence or cause the commencement of the construction of 135 homes, public improvements, and a recreational area at the Project Site.

4.3 Grantee shall complete or cause the completion of the Project no later than December 31, 2026. The Project shall be considered “completed” after:

- A. inspection by a design engineer and receipt by the City and Board of a certification letter from the design engineer, which certifies that the Project is:
 - i designed in a manner as to endure without need for maintenance, repair or replacement for five (5) years, taking into consideration the site and traffic conditions, present and future, at and near the Project Site;
 - ii constructed according to the specifications required by the engineer’s design for each improvement;
 - iii for public streets and drainage improvements only, be or have been subject to the one-year extended warranty bond required by Chapter 35 of the City’s Unified Development Code; and,
- B. inspection and approval by the City, as evidenced by a letter of acceptance issued by an authorized City official.

4.4 Grantee shall provide to the City and Board Project Status Updates within sixty (60) days following the execution of this Agreement. Thereafter, Grantee shall provide to the City and Board Project Status Updates on a quarterly basis on the 15th day of January, April, July, and October throughout the Term of this Agreement, using the form attached as **Exhibit F**, as it may be amended. Project Status Updates shall include: construction progress, project expenditures and its compliance with all contractual requirements.

4.5 Grantee shall cause the Project to be developed in compliance with all applicable federal, state, and local laws, and regulations, including the City’s Unified Development Code, and rules and regulations promulgated by the Environmental Protection Agency (EPA), Texas Department of State Health Services (TDSHS), Texas Commission on Environmental Quality (TCEQ), and all regulations related to Hazardous Substances or exposure to ACM and Hazardous Substances.

4.6 Grantee shall promote economic development through the hiring of local subcontractors and workforce and shall pay or cause to be paid prevailing wages as applicable to the trade being performed.

ARTICLE V. OBLIGATIONS OF THE CITY AND BOARD

5.1 The City and Board will make an Economic Development Program Grant available to Grantee in accordance with the terms and conditions of this Agreement.

5.2 Neither the City nor the Board shall be liable to Grantee or any other entity or person for costs or expenses incurred, or improvements made in furtherance of the Project or at the Project Site.

ARTICLE VI. ECONOMIC DEVELOPMENT PROGRAM GRANT

6.1 In consideration of full and satisfactory performance of all activities required by this Agreement, the City and Board shall make an Economic Development Program Grant available to Grantee in a cumulative amount not to exceed FOUR MILLION THREE HUNDRED FORTY-ONE THOUSAND FIVE HUNDRED SIXTY-NINE DOLLARS AND NO CENTS (\$4,341,569) (the “Grant Funds”) in tax rebate above the Project Site’s 2021 real property tax value (the “Tax Increment”) over a fifteen (15) year period. In no event shall the Grant Funds exceed the total cost of public improvements approved by the City.

6.2 Grant Funds will be disbursed annually (“Annual Property Tax Increment Reimbursement”) as

follows:

- A. Beginning in the tax year immediately following the completion of the Public Improvement Costs (“Initial Reimbursement Tax Year”) and for 5 years or until expiration of the TIRZ if sooner (Year 1 – Year 5), Grantee may request a disbursement of Grant Funds from the TIRZ in an amount equal to ninety percent (90%) (or the current participation level of the City in the TIRZ at the time of the request) of: the actual amount of real property taxes paid to the City with respect to the Project Site at the time of the request for the immediately preceding tax year, *less* the actual amount of real property taxes paid to the City with respect to the Project Site for tax year ending in December 31, 2021 (the “Base Year”), as determined by the Bexar Appraisal District and verified by the City.
- B. For Year 6 – Year 15, subject to expiration of the TIRZ as anticipated in September 2027, Grantor shall undertake the Annual Incremental Property Tax Reimbursement and Grantee may request a disbursement of Grant Funds in a reduced amount equal to the Operations & Management (the “O & M”) rate which is about sixty-two and one hundred fifteenth percent (62.115%) of the annual incremental property tax paid by GRANTEE, *less* the actual amount of the O & M rate in the real property taxes paid to the City with respect to the Project Site for tax year ending in December 31, 2021 (the “Base Year”), as determined by the Bexar Appraisal District and verified by the City.

- 6.3 Annual Property Tax Increment Reimbursements are subject to availability and priority of payment. The City and the Board cannot guarantee that available Grant Funds shall completely reimburse Grantee.
- 6.4 All requests for Reimbursement shall be initiated by the submission of an application for reimbursement to the City’s TIF Division for Board approval and shall include a list of eligible addresses, including their respective Bexar County Appraisal District account information, which will be verified by the City. For its initial request for Reimbursement, Developer must include with its submission a detailed list of total Public Improvement Costs.
- 6.5 Subject to availability and priority of payment (as described in Section 6.10 below), upon request by Grantee of Grant Funds in accordance with this Agreement, the City and Board shall make Annual Property Tax Increment Reimbursement(s) available to Grantee within sixty (60) days following confirmation by the City of the real property taxes that have been paid on the Project Site.
- 6.6 No Grant Funds shall be disbursed to Grantee for unpaid and/or uncollected ad valorem taxes for which payment is sought. No Grant Funds other than those collected from the Project Site shall be disbursed to Grantee.
- 6.7 Grantee shall submit no more than one request for reimbursement per year for the Project Site and Grantee shall receive no more than one payment of the reimbursement per year. For each tax year for which payment of the Annual Property Tax Increment Reimbursement is sought: (1) evidence from the Bexar County Tax Assessor indicating the amount of taxes paid to City for the Project Site from applicable property tax accounts, and (2) evidence that all taxes owed by Grantee on the portion of the Project Site owned by Grantee, if any, have been paid in full. The City and/or the Board may seek additional documentation before authorizing reimbursement. Failure to submit the application and all other necessary information in accordance with this Agreement may delay

the reimbursement payment.

- 6.8 It is expressly understood that the Project Site will be divided into single family home units and that owners of individual family home units shall be responsible for their respective payments of property taxes owed. It is further understood that, for purposes of calculating the reimbursement payment to Grantee, only those taxes paid at the time of the request will be considered for reimbursement. Individual tax accounts which have not been paid at the time of the request will not be considered for reimbursement for the respective tax year, nor will they be retroactively reimbursed through future requests.
- 6.9 If Grantee and/or any individual tax account holder(s) subsequently receive a property tax refund as a result of a tax protest (or otherwise) through the Bexar County Appraisal District, the amount of the refund will be deducted from the following tax year's reimbursement payment. The foregoing shall only apply if the subject property tax account was paid in full and Grant Funds were, for said account, paid to Grantee as reimbursement hereunder.
- 6.10 Priority of Payment. Grantee acknowledges that the disbursement of Grant Funds is subject to availability of funds in the Tax Increment Fund and the priority of payment in accordance with the TIRZ Finance Plan:
- i. eligible startup Administrative Costs;
 - ii. ongoing Administrative Costs;
 - iii. reimbursement to the City for costs of the repair, replacement, and maintenance of public improvements and associated costs as described in any Development Agreement, and
 - iv. reimbursement to Developers, if any, and/or the City for public improvements and eligible projects approved by the TIRZ Board.
- 6.11 If Available Grant Funds do not exist in an amount sufficient to make Annual Property Tax Increment Reimbursement in full when payments are due, partial payment shall be made in the order of priority described in Section 6.2 of this Article, and the remainder shall be paid as funds become available. No fees, costs, expenses, interest, or penalties shall be paid to the Parties for any partial or late payment.
- 6.12 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.

ARTICLE VII. RETENTION AND ACCESSIBILITY OF RECORDS

- 7.1 Grantee shall maintain the fiscal records and supporting documentation for expenditures of disbursed Grant Funds associated with this Agreement. Grantee shall retain such records and any supporting documentation for a period of four (4) years from the end of Agreement Term, unless required to be retained for a period longer than four (4) years by State law or court order.
- 7.2 Grantee shall, following reasonable advance written notice from the City and Board, give their authorized representatives, access to and the right to examine all records i.e. material information related to the Project including all books, accounts, records, audit reports, files, documents, written or photographic material videotape or other papers, things, or property related to the costs and the expenditure pertaining to this Agreement (the "Records").

- 7.3 Grantee shall provide the City and Board access to the Records and information needed to verify that Grantee is and has been in compliance with the provisions of this Agreement and to verify that the Grant Funds are used in accordance with the terms of this Agreement.
- 7.4 If a good faith dispute or question arises as to the validity of the information provided by Grantee, the City and Board reserve the right to require Grantee to obtain an independent firm to verify the information. The certified statement by an independent firm shall be provided at the sole cost of Grantee. The rights to access 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 be cause for City and Board to provide notice of intent to default.
- 7.5 Grantee's obligation to retain Records and accessibility of Records shall survive the termination of the Agreement after completion of the Term.

ARTICLE VIII. MONITORING

- 8.1 The City and Board reserve the right to confirm Grantee's compliance with the terms and conditions of this Agreement. Grantee shall provide or cause the City and Board to be provided access to the Project Site for inspections during and upon completion of the Project. 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.
- 8.2 The City and Board will provide Grantee a written report of the monitor's findings. If the monitoring report notes deficiencies in Grantee's performance under this Agreement, the monitoring report shall include the requirements and actions to be taken by Grantee to correct such deficiencies, which shall be completed within a reasonable amount of time. Failure to take action specified in the monitoring report may be cause for termination of this Agreement.

ARTICLE IX. INDEPENDENT CONTRACTOR

- 9.1 It is expressly understood and agreed by the Parties hereto that Grantee is not an agent or representative of the City and/or the TIRZ and that Grantee, its employees, partners, and subcontractors are not employees or contractors of the City and Board.

ARTICLE X. CONFLICT OF INTEREST

- 10.1 The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the City. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:
- A. a City officer or employee; his or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;
 - B. 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
 - C. 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.

- 10.2 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 to the City a Contracts Disclosure Statement in compliance with the City's Ethics Code.

ARTICLE XI. NONDISCRIMINATION AND SECTARIAN ACTIVITY

- 11.1 Grantee understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code, and further shall use reasonable efforts to ensure that no person shall, on the ground of race, color, national origin, religion, sex, age, gender (to include transgender), sexual orientation, veteran status 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 under this Agreement.
- 11.2 None of the performances rendered under this Agreement shall involve, and no portion of the Grant Funds received by Grantee shall be used to support 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.
- 11.3 Grantee shall include or cause to be included the substance of Article XI herein, in all sub-grant and contractor agreements.

ARTICLE XII. LEGAL AUTHORITY

- 12.1 Each Party assures and guarantees to the other that each possess the legal authority to enter into this Agreement, to receive/deliver the Grant Funds authorized by this Agreement, and to perform its obligations under this Agreement.
- 12.2 The person(s) signing and executing this Agreement on behalf of each Party or representing themselves as signing and executing this Agreement on behalf of a Party, hereby guarantees that s/he 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 set forth.
- 12.3 City and Board shall have the right to suspend or terminate this Agreement in accordance with Articles XIII. and XIV. 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 the TIRZ for any money it has received from the City and Board for performance of the provisions of this Agreement if the City and Board suspend or terminate this Agreement for reasons enumerated in this Section.

ARTICLE XIII. LITIGATION AND CLAIMS

- 13.1 Under no circumstances will the Available Tax Increment Funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding regarding this Agreement against the City, the Board or any other public entity including any cost incurred from violations or settlements of, or failure to comply with, federal and state regulations.
- 13.2 During the term of this Agreement, if Grantee files and/or pursues an adversarial proceeding regarding this Agreement against the City and/or Board, without first engaging in good faith mediation of the dispute, then at the City's and/or Board's option, all access to the funding provided for hereunder will be withheld.

- 13.3 Grantee shall give the City and Board immediate written notice of any action, including any proceeding before an administrative agency, or legal action filed against Grantee arising out of performance of any activity under this Agreement. Except as otherwise directed by the City and Board, Grantee shall furnish immediately to the City and Board copies of all pertinent papers received by Grantee with respect to such action or claim. Grantee shall notify the City and Board immediately of any legal action filed against the Grantee or any subcontractor, or of any proceeding filed under the federal bankruptcy code. Grantee shall submit a copy of such notice to the City and Board within fifteen (15) days after receipt.
- 13.4 Grantee at the City's and/or Board's option, could be ineligible for consideration to receive any future funding while any adversarial proceedings regarding this Agreement against the City and Board remains unresolved if it was initiated without first engaging in good faith mediation of the dispute.
- 13.5 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.
- 13.6 This Agreement shall be governed by the laws of the State of Texas. Venue and jurisdiction arising under or in connection with this Contract shall lie exclusively in Bexar County, Texas.
- 13.7 For purposes of this Article, "adversarial proceedings" include any cause of action regarding this Agreement filed by Grantee against the City in any state or federal court, as well as any state or federal administrative hearing, but does not include Alternate Dispute Resolution proceedings, including arbitration. Nothing contained in this Article shall effect or otherwise affect the indemnity provisions contained in Article XI. above.

ARTICLE XIV. DEFAULT, TERMINATION AND RECAPTURE

- 14.1 This Agreement may be terminated by mutual consent and a written agreement of the Parties. In such case, the Parties shall agree upon the reason(s) of such termination, the termination conditions, the proposed pay-back plan of disbursed funds, and the proposed effective date of such termination.
- 14.2 The City and/or the Board shall have the right to terminate this Agreement for default, in whole or in part, at any time before the date of termination. Should the City and/or the Board determine that Grantee has failed to comply with any material term of this Agreement, which shall be considered an event of default. The City and/or Board shall provide Grantee with written notification as to the nature of the default (the "Notice of Default"), and shall provide Grantee a sixty (60) day period (the "Cure Period") from the date of the City's and/or Board's written Notice of Default to cure any issue of default under this Agreement.
- 14.3 In the case of default, which cannot with due diligence be cured within such Cure Period, at the reasonable discretion of the TIF Economic Development Manager, the Cure Period may be extended provided that Grantee shall immediately upon receipt of Notice of Default advise the City of Grantee's intention to cure such default and completes all steps necessary to cure such default within the extended period granted.
- 14.4 In the event Grantee fails to cure any default within the Cure Period (or extended period), the City and the Board may, upon issuance to Grantee of a written Notice of Termination, terminate this Agreement in whole or in part. Such notification shall include the reasons for such termination, the effective date of such termination; and, in the case of partial termination, the portion of the Agreement to be terminated.

- 14.5 The City and/or the Board may also terminate this Agreement, upon written notice the occurrence of one or more of the following events: (1) failing to complete or cause the construction and completion of the Project satisfactorily; or, (2) termination of the TIRZ pursuant to State or local law.
- 14.6 Upon receipt of Notice of Termination, the City shall have the right to recapture all disbursed Grant Funds made under this Agreement and Grantee shall repay the Mission Drive-In TIRZ all Grant Funds disbursed to within sixty (60) days from the effective date of such termination.
- 14.7 All notices, requests or consents under this Agreement shall be (a) in writing, (b) delivered to a principal officer or managing entity of the recipient in person, by courier or mail or by facsimile, telegram, telex, cablegram, or similar transmission, and (c) effective only upon actual receipt by such person's business office during normal business hours. If received after normal business hours, the notice shall be considered received on the next business day after such delivery. Whenever any notice is required to be given by applicable law or this Agreement, a written waiver thereof, signed by the Person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

Any notice sent under this Agreement shall be written and mailed with sufficient postage, sent by certified mail, return receipt requested, documented facsimile or delivered personally to an officer of the receiving Party at the following addresses:

<u>THE CITY</u>	<u>THE BOARD</u>	<u>GRANTEE</u>
City of San Antonio c/o City Clerk Attn: Risk Management Dept. P.O. Box 839966 San Antonio, TX 78283-3966	Mission Drive-In TIRZ Attn: TIF Division 1400 S Flores San Antonio, TX 78204	Bitterblue, Inc. Attn: Lloyd Denton, Jr. 733 13 th Street Boulder CO, 80302

ARTICLE XV. SPECIAL CONDITIONS AND TERMS

- 15.1 Grantee understands and agrees that if Grantee is a “business” and if the City or Board’s contribution under this Agreement is a “public subsidy” as that term is defined in Chapter 2264 of Subtitle F, Title 10, Tex. Govt. Code, as amended, then in the event of Grantee’s conviction of knowingly employing an undocumented worker, Grantee shall return to the TIF fund of the Mission Drive-In TIRZ all funds that Grantee received from the City and Board through this Agreement, with repayment required within six months of final conviction. Interest shall accrue at the rate of .5% per month until the time of such repayment from the date of final conviction.
- 15.2 The Parties agree that, in the event the City acting in accordance with State law, terminates the TIRZ, or adopts an ordinance that causes the termination date of the TIRZ to occur on a date earlier than provided in the ordinance that established the TIRZ, then this Agreement shall terminate on the date the TIRZ is terminated.
- 15.3 Grantee acknowledges that this Agreement and all documents ancillary to it are public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public. Nothing in this Agreement or any document delivered pursuant to it, waives an otherwise applicable exception to disclosure.

ARTICLE XVI. SUBCONTRACTING

- 16.1 Grantee shall ensure that performances rendered under all subcontracts of the Project comply with all provisions of this Agreement as if such performance were rendered by Grantee. Grantee shall bear full responsibility for the performances of all subcontractors who work on the Project.
- 16.2 Grantee, in subcontracting any of the performances hereunder, expressly understands that in entering into such subcontracts, the City and Board shall not be liable to Grantee's subcontractors.
- 16.3. Grantee assures and shall obtain assurances from all of its subcontractors where applicable, to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code, and further shall use reasonable efforts to ensure that no person shall, on the ground of race, color, national origin, religion, sex, age, gender (to include transgender), sexual orientation, veteran status 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 under this Agreement.

ARTICLE XVII. INSURANCE

- 17.1 Unless Grantee has secured and filed all necessary insurance waivers with the State of Texas that apply to any workers who perform services under funding provided by this Agreement, then the following shall apply:
 - A. Grantee shall require that the Insurance requirements contained in this Section be included in all its contracts or agreements for public improvements, unless specifically exempt in writing by the City and Board.
 - B. Within thirty (30) days after the execution of this Agreement, Grantee shall furnish copies of all required endorsements and Certificate(s) of Insurance to the City's TIF Division, which shall be clearly labeled "Roosevelt Heights Project" in the description of operations block of the certificate. The original certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City and Board will not accept a 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 and Board at the address listed in Section 17.2 of this Article. The City and Board shall have no duty to pay or perform under this Agreement until such certificate and endorsements have 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.
 - C. The City and Board reserve the right to review the Insurance requirements of this Section during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will the City allow modification whereupon the City may incur increased risk.
 - D. Grantee's financial integrity is of interest to the City and Board, therefore, subject to the Grantee's right to maintain reasonable deductibles in such amounts as are approved by the City. Grantee or Grantee's contractor, shall obtain and maintain in full force and effect during the construction of all public improvements undertaken for the development of the Project by

Grantee or Grantee’s contractor(s) and required by this Agreement, at the Grantee’s or 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- (VII), in the following types and for an amount not less than the amount listed:

TYPE	AMOUNTS
1. Workers’ Compensation	Statutory
2. Employee Liability	\$1,000,000 / \$1,000,000 / \$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: <ul style="list-style-type: none"> a. Premises/Operations b. Independent Contractors c. Products/Completed Operations d. Personal/Advertising Injury e. Contractual Liability f. Explosion, Collapse, Underground g. Environmental Impairment/Impact sufficiently broad to cover disposable liability h. Damage to property rented 	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability <ul style="list-style-type: none"> a. Owned/lease vehicles b. Non-owned vehicles c. Hired vehicles 	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence

17.2 The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City and may require the deletion, revision or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties thereto or the underwriter of any such policies). Grantee and/or Grantee’s contractor shall be required to comply with any such request and shall submit a copy of the replacement certificate of insurance to the 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 City at the following addresses:

City Clerk City of San Antonio Attn: Risk Management Dept. P.O. Box 839966 San Antonio, TX 78283-3966	City of San Antonio Neighborhood and Housing Services Dept Attn: TIF Division 1400 S. Flores San Antonio, TX 78204
---	--

17.3 Grantee agrees that with respect to the above-required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

A. Name Grantor (both the City of San Antonio and the Mission Drive-In TIRZ #32) and its respective officers, officials, employees, volunteers and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed pursuant 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 where the City is an additional insured shown on the policy;
 - C. Workers’ compensation and employers’ liability policies will provide a waiver of subrogation in favor of the City and Board; and
 - D. Provide thirty (30) days advance written notice directly to the City and Board at the same address listed in Section 17.2 of this Article. of this Section regarding any suspension, cancellation, non-renewal, or material change in coverage, and not less than ten (10) days advance written notice for nonpayment of premium.
- 17.4 Within five (5) days of a suspension, cancellation or non-renewal of coverage, Grantee and/or Grantee’s contractor shall provide a replacement Certificate of Insurance and applicable endorsements to the City and Board at the addresses listed in Paragraph 17.2 of this Article. The City and Board shall have the option to suspend Grantee’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 material breach of this Agreement.
- 17.5 In addition to any other remedies the City and Board may have upon Grantee’s and/or Grantee’s contractor’s failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City and Board shall have the right to order Grantee to stop work hereunder, and/or withhold any payment(s) which become due to Grantee hereunder until Grantee and/or Grantee’s contractor demonstrates compliance with the requirements hereof.
- 17.6. Nothing contained in this Agreement shall be construed as limiting in any way the extent to which Grantee may be held responsible for payments of damages to persons or property resulting from Grantee’s or its contractors’ performance of the work associated with this Agreement.
- 17.7. It is agreed that Grantee’s and/or Grantee’s contractor’s insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City and Board for liability arising out of operations associated with this Agreement.
- 17.8. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.
- 17.9. Grantee agrees to obtain all insurance coverages with minimum limits of not less than those limits delineated in Section 17.1 (D) this Article from each contractor to Grant and provide a Certificate of Insurance and Endorsement that names Grantee, the City and Board as an additional insured.

ARTICLE XVIII. INDEMNIFICATION

- 18.1 **GRANTEE COVENANTS AND AGREES THAT GRANTEE SHALL, AND AGREES TO CONTRACTUALLY REQUIRE EACH OF ITS CONTRACTORS TO, FULLY INDEMNIFY AND HOLD HARMLESS, THE CITY (AND THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES OF THE CITY), THE BOARD (AND THE OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES OF THE BOARD), AND ANY PARTICIPATING TAXING ENTITY (AND THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES OF ANY SUCH ENTITY), 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, THE BOARD, AND/OR UPON ANY OF THE OTHER PARTICIPATING TAXING ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO GRANTEE'S NEGLIGENCE, WILLFUL MISCONDUCT OR CRIMINAL CONDUCT IN ITS ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY SUCH ACTS OR OMISSIONS OF GRANTEE, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUB-CONSULTANTS OF GRANTEE, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OR PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS AGREEMENT, ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY, THE BOARD, AND/OR THE OTHER PARTICIPATING TAXING ENTITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

GRANTEE SHALL ALSO INDEMNIFY, DEFEND AND HOLD THE PARTICIPATING TAXING ENTITIES HARMLESS FROM ANY CLAIM, DAMAGES, AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, ATTORNEY'S FEES, AND PENALTIES ARISING FROM POLLUTION OF THE PROPERTY BY GRANTEE OR GRANTEE'S PREDECESSORS IN TITLE, OR THE FAILURE OF GRANTEE'S PREDECESSORS IN TITLE TO COMPLY WITH LOCAL STATE OR FEDERAL ENVIRONMENTAL LAWS OR REGULATIONS.

THE INDEMNITY PROVIDED FOR IN THE FOREGOING SECTIONS SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, ITS OFFICERS OR EMPLOYEES, IN INSTANCES WHERE SUCH NEGLIGENCE CAUSES PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE, EXCEPT TO THE EXTENT PROVIDED BELOW.

IN THE EVENT GRANTEE AND THE CITY AND/OR THE BOARD ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSE OF THE PARTIES UNDER TEXAS, FEDERAL, OR INTERNATIONAL LAW.

GRANTEE SHALL ADVISE THE CITY, THE BOARD, AND ANY PARTICIPATING TAXING ENTITY IN WRITING WITHIN 24 HOURS OF ANY CLAIM OR DEMAND AGAINST THE CITY, THE BOARD OR ANY PARTICIPATING TAXING ENTITY RELATED TO OR ARISING OUT OF THE GRANTEE'S ACTIVITIES, UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION, AND DEFENSE OF SUCH CLAIM, OR DEMAND AGAINST GRANTEE, OR THE CITY OR BOARD AT THE GRANTEE'S SOLE COST TO THE EXTENT REQUIRED UNDER THE INDEMNITY IN THIS SECTION. THE PROVISIONS OF THIS INDEMNITY ARE SOLELY FOR THE BENEFIT OF THE PARTIES. THE CITY, THE BOARD AND/OR ANY PARTICIPATING TAXING ENTITY SHALL HAVE THE RIGHT, AT THEIR OPTION AND AT THEIR OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING THE GRANTEE OF ANY OF ITS OBLIGATIONS.

18.2 GRANTEE SHALL AND DOES HEREBY AGREE TO DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, AND BOARD, AND THEIR RESPECTIVE AGENTS AND EMPLOYEES FROM AND AGAINST ALL ENCUMBRANCES, CLAIMS, SUITS, DEBTS, DUES, SUMS OF MONEY, ACCOUNTS, RECKONINGS, BOND, BILLS, COVENANTS, CONTROVERSIES, AGREEMENTS, AGENTS, DEMANDS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, AND ATTORNEY FEES OF ANY KIND OR NATURE WHATSOEVER WHICH ARE ASSERTED BY ANY PERSON OR ENTITY FOR PENALTIES OR SUMS DUE ANY WORKER OR AGENCY FOR SERVICES, LABOR OR MATERIALS, FURNISHED FOR THE PROJECT, GRANTEE'S INDEMNITY, OBLIGATIONS TO THE CITY UNDER THIS INDEMNIFICATION SHALL BE LIMITED TO ALL ENCUMBRANCES, CLAIMS, SUITS, DEBTS, DUES, SUMS OF MONEY, ACCOUNTS, RECKONINGS, BOND, BILLS, COVENANTS, CONTROVERSIES, AGREEMENTS, AGENTS, DEMANDS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, AND ATTORNEY FEES OF ANY KIND OR NATURE WHATSOEVER BY ANY PERSON OR ENTITY OR VIOLATIONS OF CHAPTER 2258 OF THE TEXAS GOVERNMENT CODE OR FOR ANY SUMS OR PENALTIES DUE ANY WORKER OR AGENCY FOR LABOR FURNISHED FOR THE PROJECT. TO THE EXTENT THAT THIS INDEMNIFICATION CONFLICTS WITH THE INDEMNIFICATION PROVISIONS IN SECTION 18.1 ABOVE, THE PROVISIONS IN SECTION 18.1 OF THIS ARTICLE CONTROL OVER THOSE SET FORTH IN THIS SECTION. PRIOR TO EXPENDING ANY MONEY THAT GRANTEE WOULD BE OBLIGATED TO INDEMNIFY, THE CITY OR THE BOARD SHALL SEND WRITTEN NOTICE TO GRANTEE DESCRIBING IN REASONABLE DETAIL THE CLAIM AND ALLOWING GRANTEE TO CURE SUCH CLAIM WITHIN 15 DAYS OF RECEIVING THE NOTICE.

ARTICLE XIX. DEBARMENT

19.1 By signing this Agreement, Grantee certifies that it will not 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.

ARTICLE XX. RIGHTS UPON DEFAULT

20.1 It is expressly understood and agreed by the Parties that any right or remedy provided for in this Agreement shall not preclude the exercise of any other right or remedy under any other agreement by the Parties 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.

ARTICLE XXI. ASSIGNMENT

21.1 Grantee covenants and agrees that during the term of this Agreement, it shall notify the City and Board in writing at least thirty (30) days prior to any sale or transfer of its business or Project and/or Project location. In the event of a sale or transfer, Grantee may assign its rights and obligations under this Agreement to an assignee only with the consent of the City and Board. Any purchaser or transferee requesting an assignment of this Agreement shall be bound by all the terms and conditions of this Agreement. Failure to provide the required notification of sale or transfer may subject Grantee to the termination provisions in Article XIV. of this Agreement.

ARTICLE XXII. CHANGES AND AMENDMENTS

- 22.1 Except as specifically provided in Section 22.3 of the Article in this Agreement, any alteration, addition or deletion to the terms of this Agreement shall be by amendment, in writing and executed between the Parties to this Agreement subject to authorization by the City and Board.
- 22.2 It is understood and agreed by the Parties that performances under this Agreement shall be rendered in accordance with the laws and rules governing Economic Development Grants Chapter 380, the Texas Local Government Code and the terms and conditions of this Agreement.
- 22.3. Any alterations, additions, or deletions to the terms of this Agreement required by changes in state law or regulations are automatically incorporated into this Agreement without written amendment hereto, and shall become effective on the date designated by such law or regulation.

ARTICLE XXIII. ORAL AND WRITTEN AGREEMENTS

- 23.1 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.

ARTICLE XXIV. AUTHORIZED RELIEF FROM PERFORMANCE (*Force Majeure*)

- 24.1 Relief from performance of the Agreement if completion of the Project is delayed by reason of war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, fire or other casualty, court injunction, necessary condemnation proceedings, interference by third parties, or any circumstances reasonably beyond the Grantee's control, shall be available at the reasonable discretion of City's Director of Planning and Community Director, who may extend the deadlines set forth in this Agreement for such delay. The burden of proof for the need of such relief shall rest upon the Grantee to the satisfaction of the City and Board. To obtain relief base on *force majeure*, Grantee must file a written request with the Director of the City's Planning and Community Development.

ARTICLE XXV. INCORPORATION OF ATTACHMENTS

- 25.1 Each of Attachments referenced below are incorporated herein for all purposes as an essential part of this Agreement, which governs the rights and duties of the parties.

Exhibit A: Project Site- Special Warranty Deeds and map

Exhibit B: Board Resolution

Exhibit C: Ordinance

Exhibit D: Plat (*to be incorporated upon approval*), Survey with Field Notes, and Project Site Map

Exhibit E: *Intentionally omitted*

Exhibit F: Project Status Report

ARTICLE XXVI. ENTIRE AGREEMENT

- 26.1 This Agreement, together with its authorizing ordinance and its attachments constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same is in writing, dated subsequent to the date hereto and duly executed by the parties.

Signatures on the following page

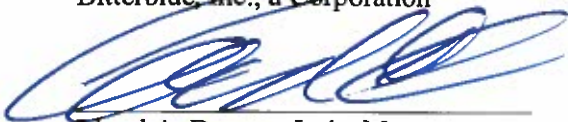
WITNESS OUR HANDS, EFFECTIVE AS OF _____, 2021.

ACCEPTED AND EXECUTED IN THREE DUPLICATE ORIGINALS, EACH OF WHICH SHALL HAVE THE FULL FORCE AND EFFECT OF AN ORIGINAL, ON BEHALF OF THE CITY OF SAN ANTONIO AND GRANTEE PURSUANT TO ORDINANCE NUMBER 2021-_____
ON THIS THE ____ DAY OF _____ 2021.

CITY OF SAN ANTONIO
a Texas Municipal Corporation

GRANTEE
Bitterblue, Inc., a Corporation

Erik Walsh, City Manager



Lloyd A. Denton, Jr, its Manager

DATE

04.27.21
DATE

BOARD OF DIRECTORS
Mission Drive-In TIRZ TIRZ #31

Board Chair

DATE

ATTEST/SEAL:

BY: Tina J. Flores
City Clerk

DATE

APPROVED AS TO FORM:

Andrew Segovia, City Attorney