

STATE OF TEXAS

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**CHAPTER 380 ECONOMIC
DEVELOPMENT AGREEMENT
FOR THE ALAMEDA
THEATER CONSERVANCY
STUCCO PROJECT**

COUNTY OF BEXAR

This Chapter 380 Economic Development Agreement (the “Agreement”) is made and entered into by and between the City of San Antonio, a municipal corporation of the State of Texas (“City”), acting by and through its City Manager or his designee, the Board of Directors (“Board”) for Tax Increment Reinvestment Zone Number Nine, City of San Antonio, Texas, and Alameda Theater Conservancy (hereinafter referred to as “Grantee”), and together referred to as the “Parties.”

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

WHEREAS, in accordance with City Ordinance No. 100684, the City created an economic development program for the purpose of making such grants available; and

WHEREAS, pursuant to the Alameda Theater Master Lease Agreement (the “Master Lease”) dated December 1, 2017, City of San Antonio as Landlord and Alameda Theater Conservancy as Tenant have established specific responsibilities for each party in the Master Lease with Landlord responsible for the maintenance of the exterior building walls for the building; and

WHEREAS, during the Alameda Theater restoration project being undertaken by Grantee, the project team observed signs of existing damage and deterioration to the exterior stucco of the building; and

WHEREAS, Grantee, as Lessee, has agreed to undertake the stucco repairs on behalf of the City, as Lessor, and is engaged in an economic development project that will be located within the city limits of the City of San Antonio (the “Project”); and

WHEREAS, in March of 2024, Grantee requested an economic development grant in an amount not to exceed THREE HUNDRED TEN THOUSAND DOLLARS AND NO CENTS (\$310,000.00) for the purpose of undertaking the Project (the “Grant”); and

WHEREAS, the Houston Street Tax Increment Reinvestment Zone Fund will serve as the source of funding the Grant for the Project; and

WHEREAS, the purpose of this Agreement is to establish the terms and conditions under which Grantee will implement the Project; and

WHEREAS, on March 27, 2024, the Board adopted Resolution T09 2024-03-27-03R, attached and incorporated into this Agreement as **Attachment A**, authorizing approval of the execution of this Agreement to provide a grant for eligible expenses in an amount not to exceed THREE HUNDRED TEN THOUSAND DOLLARS AND NO CENTS (\$310,000.00); and

WHEREAS, the City Council has authorized the City Manager or his designee to enter into this Agreement with Grantee as reflected in Ordinance No. _____, passed and approved on _____ (the “Effective Date”);

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.

I. TERM

- 1.1 This Agreement will commence upon its execution by the Parties, and terminate upon the completion of all obligations contained herein, or pursuant to provisions of Article X.

II. GENERAL RESPONSIBILITIES OF GRANTEE

- 2.1 Grantee agrees by the execution of this Agreement to comply with any and all provisions of this Agreement and accept administrative and fiscal responsibility for the use and documentation of expenditures of funds provided by City.
- 2.2 Grantee is authorized and shall, pursuant to the Director of the TIF Division’s request, publicly acknowledge that the City of San Antonio is supportive of the objectives as described in the Scope of Services and that the City of San Antonio has contributed to the cause of realizing such objectives.
- 2.3 Grantee is agreeing in this particular instance to assume responsibility for the maintenance and repair of the exterior walls, subject to the allocation of funds sufficient to accomplish the work contemplated by the funding agreement and Grantee shall perform that work as its sole responsibility. Upon completion of the exterior wall repairs by Grantee, the roles established by Section 12.1 of the Master Lease shall govern with City responsible for maintenance of the exterior walls.

III. FUNDING

- 3.1 With funding from the Houston Street TIRZ #09 Tax Increment Fund, having been authorized by the Board, City has committed and agrees to pay Grantee, or its up to THREE HUNDRED TEN THOUSAND DOLLARS AND NO CENTS (\$310,000.00) to undertake the stucco repair at the Alameda Theater in accordance with the Scope of Services attached hereto and incorporated as **Attachment B**.

- 3.2 The Grant shall be disbursed upon full execution of this Agreement, provided that Grantee has submitted a budget for the Grant to Director of the TIF Division and an invoice in a form acceptable to City.
- 3.3 In no event shall City be liable for any expense of Grantee or the Project not eligible or allowable under this Agreement and shall not pay more than the maximum amount provided under Section 3.1 for the Project. Expenses exceeding the funding provided under this Agreement shall be the responsibility of Grantee.
- 3.4 City shall not be obligated nor liable under this Agreement to any party, other than Grantee, for payment of any monies or provision of any goods or services.
- 3.5 Grantee understands that the funds provided pursuant to this Agreement are City funds and will therefore comply with all rules, regulations, policies and procedures applicable to these funds as directed by City.
- 3.6 Grantee understands and agrees that funds provided pursuant to this Agreement are subject to TIRZ Fund availability and TIRZ Fund priority of payment.

IV. SCOPE OF WORK

- 4.1 Grantee will provide, oversee, administer, and carry out all activities and services in compliance with this Agreement, including the Scope of Work attached hereto and incorporated herein for all purposes as Attachment B.
- 4.2 Provided Grantee receives the funding described in this Agreement, Grantee hereby accepts full responsibility for the performance of all services and activities described in this Agreement.
- 4.3 Upon the City's request, Grantee shall submit reports indicating the progress of the Project, in accordance with the Attachment B. Notwithstanding the foregoing, City shall have authority to audit at any time throughout the term of the Agreement to ensure compliance with this Agreement and ensure proper usage of City funds as set forth in the Scope of Services.
- 4.4 Grantee agrees to abide by the City's current Ethics Code or any amendment or revisions thereto. Grantee will establish safeguards to prohibit anyone whose position is funded or partially funded by this Agreement from using their position for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or those with whom they have family business or other ties. City, may, at its option, cancel this Agreement for any violation of this section.

V. FISCAL MANAGEMENT

- 5.1 Grantee shall establish and use generally accepted accounting principles and administrative controls to preclude theft, embezzlement, improper inducement, obstruction of investigation or other criminal action, and to prevent frauds and program abuse.
- 5.2 Upon completion of the term of this Agreement, any unused funds, rebates or credits must immediately be returned by Grantee to City, and no later than ten (10) working days.
- 5.3 Within ten (10) working days of City's written request therefor, Grantee shall refund to City any sum of money paid by City to Grantee later determined to:
 - A.) Have resulted in overpayment to Grantee;
 - B.) Have not been spent by Grantee strictly in accordance with the terms of the Agreement; or
 - C.) Not be supported by adequate documentation to fully justify the expenditure.

VI. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS BY GRANTEE

- 6.1 Grantee agrees to maintain readily identifiable records that will provide accurate, current, separate, and complete disclosure of the status of any funds received pursuant to this Agreement. Grantee further agrees:
 - 6.1.1 That maintenance of said records shall be in compliance with all terms, provisions, and requirements of this Agreement and with all generally accepted accounting practices; and
 - 6.1.2 That Grantee's record system shall contain sufficient documentation to provide, in detail, full support and justification for each expenditure.
- 6.2 Grantee agrees to retain all books, records, documents, reports, written accounting policies and procedures and all other relevant materials (hereinafter "records") pertaining to activities pertinent to this Agreement pursuant to Article IX. Records Retention, below.

VII. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

- 7.1 Grantee further represents and warrants that:
 - (A) All information, data or reports heretofore or hereafter provided to City is, shall be, and shall remain complete and accurate as of the date shown on the information, data, or report, and that since said date shown, shall not have undergone any significant change without written notice to City.

- (B) It is financially stable and capable of fulfilling its obligations under this Agreement and that Grantee shall provide City immediate written notice of any adverse material change in the financial condition of Grantee that may materially and adversely affect its obligations hereunder.
- (C) No litigation or proceedings are presently pending or to Grantee's knowledge, threatened against Grantee.
- (D) None of the provisions contained herein contravene or in any way conflict with the authority under which Grantee is doing business or with the provisions of any existing indenture or agreement of Grantee.

7.2 Grantee covenants and agrees that Grantee is an independent contractor and not an officer, agent, servant or employee of City; that Grantee shall have exclusive control of, and exclusive right to control, the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between City and Grantee, its officers, agents, employees, contractors, subcontractors and consultants; and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint ventures or any other similar such relationship between the Parties hereto. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Grantee under this Agreement and that the Grantee has no authority to bind the City.

VIII. DOCUMENTS

- 8.1 The parties recognize that, to be successful, Grantee depends on its ability to keep confidential the identity of participating businesses, and other proprietary information, and that Grantee will not be able achieve the same level of results without being able to maintain that confidentiality. Accordingly, the parties acknowledge that certain documents or information produced by or submitted to Grantee in the course of its execution of the Scope of Work will be the sole property of Grantee, are proprietary, and may be privileged under State law.
- 8.2 Without waiving any available claim or privilege, Grantee will in good faith share data, in summary or aggregate form as set out in the Scope of Work, derived from documents produced by or submitted to Grantee with City. If any "open records" or equivalent request is made of the City relating to this Agreement or Scope of Work, the City shall promptly advise Grantee, and the parties shall work cooperatively and in good faith to preserve Grantee's proprietary documents and/or confidential information. In all events, the City shall not provide any information or documents that Grantee considers proprietary to any third party without Grantee's written consent, unless the City is legally obligated to do so and so advises Grantee in writing. In addition, any third party requests to Grantee for records relating to this Agreement under the State's Public Information Act shall be

coordinated with City. City shall provide Grantee, in accordance with the Public Information Act, the opportunity to submit third-party briefs to the Attorney General.

- 8.3 Grantee understands and acknowledges that as to the summarized data Grantee shares with City, City has the right to use all such writings, documents, reports, and information as City desires, without restriction. City's rights in the shared materials include the right to change, edit, rearrange, subtract from, add to, and combine with any other material, in whole or in part as City and its successors and assigns determine in their sole discretion. City has no obligation to use the data, or to create, produce, distribute, exploit, advertise, or promote, or include, or to exercise any rights given by this Agreement. Grantee has no right to review or approve edited materials before they are used by City or at any other time.

IX. RECORDS RETENTION

- 9.1 Grantee and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as “documents”), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives. Records will be retained by Grantee in an electronic format and Grantee will forward the records to City at the end of the four-year period, or earlier if requested by City.
- 9.2 Grantee shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as “retention period”) from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Grantee shall retain the records until the resolution of such litigation or other such questions. Grantee acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Grantee to return the documents to City at Grantee’s expense prior to or at the conclusion of the retention period. In such event, Grantee may retain a copy of the documents at its sole cost and expense.
- 9.3 Grantee shall notify City, immediately, in the event Grantee receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Grantee understands and agrees that City will process and handle all such requests.

X. TERMINATION

- 10.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article I. Term, or earlier termination pursuant to any of the provisions hereof.
- 10.2 Termination Without Cause. This Agreement may be terminated by City upon thirty (30) calendar days written notice, which notice shall be provided in accordance with Article XI. Notices.
- 10.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article XI. Notices, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:
- 10.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XXVIII. Assignment
- 10.3.2 The unsatisfactory performance of Grantee as determined by Director(s).
- 10.4 Defaults With Opportunity for Cure. Should Grantee default in the performance of this Agreement in a manner stated in this Section 10.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Grantee shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article XI. Notices, to cure such default. If Grantee fails to cure the default within such fifteen day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new consultant against Grantee's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.
- 10.4.1 Bankruptcy or selling substantially all of company's assets.
- 10.4.2 Failing to perform or failing to comply with any covenant herein required.
- 10.4.3 Performing unsatisfactorily as determined by the Director.
- 10.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

- 10.6 Regardless of how this Agreement is terminated, Grantee shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Grantee, or provided to Grantee, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Grantee in accordance with Section IX. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Grantee's sole cost and expense. Payment of compensation due or to become due to Grantee is conditioned upon delivery of all such documents, if requested by City.
- 10.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Grantee shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure of Grantee to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Grantee of any and all right or claims to collect moneys that Grantee may rightfully be otherwise entitled to for services performed pursuant to this Agreement.
- 10.8 Upon the effective date of expiration or termination of this Agreement, Grantee shall cease all operations of work being performed by Grantee or any of its subcontractors pursuant to this Agreement.
- 10.9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Grantee for any default hereunder or other action.

XI. NOTICES

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

If intended for City, to:
Houston Street TIRZ
Attn: TIF Division
100 W. Houston Street, 6th Floor
San Antonio, Texas 78205

If intended for Grantee, to:
Alameda Theater Conservancy
800 Dolorosa, Suite 204
San Antonio, TX 78207

Notice of change of address or designated representative by either Party must be made in writing and mailed to the other Party's last known address within five (5) business days of such change.

XII. NONDISCRIMINATION

- 12.1 Non-Discrimination. As a party to this contract, 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 not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

XIII. INSURANCE

- 13.1 The use of the word "scheduled event" throughout this Article XIII, shall refer to September 1, 2024, the projected commencement date of the Project. No later than 30 days before the scheduled event, Grantee shall cause its Contractor to provide a completed Certificate(s) of Insurance to the TIF Division. The certificate must be:
- clearly labeled with the legal name of the event in the Description of Operations block;
 - completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (City will not accept Memorandum of Insurance or Binders as proof of insurance); and
 - properly endorsed and have the agent's signature, and phone number.
- 13.2 Certificates may be mailed or sent via email, directly from the insurer's authorized representative. City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the TIF Division. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.
- 13.3 If the City does not receive copies of insurance endorsement, then by executing this Agreement, Grantee certifies and represents that its endorsements do not materially alter or diminish the insurance coverage.
- 13.4 The City's Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles prior to the scheduled event or during the effective period of this

Agreement based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.

- 13.5 Grantee shall cause its Contractor to obtain and maintain in full force and effect for the duration of construction of all Public Improvements, 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 below. If Grantee's Contractor claims to be self-insured, they must provide a copy of their declaration page so the City can review their deductibles:

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

	Coverage to be maintained and in effect for no less than seven years subsequent to the completion of the professional service.
6. Umbrella or Excess Liability Coverage	\$5,000,000.00 per occurrence combined limit <u>Bodily Injury</u> (including death) and <u>Property Damage</u> .

- 13.6 Grantee must require, by written contract, that all subcontractors providing goods or services under this Agreement obtain similar insurance coverages as required of Grantee and provide a certificate of insurance and endorsement that names Grantee and City as additional insureds. Grantee shall provide City with subcontractor certificates and endorsements before the subcontractor starts work.
- 13.7 If a loss results in litigation, then the City is entitled, upon request and without expense to the City, to receive copies of the policies, declaration page and all endorsements. Grantee must comply with such requests within 10 days by submitting the requested insurance documents to the City at the following address:

City of San Antonio
Attn: TIF Division
100 W. Houston St.
6th Floor
San Antonio, TX 78205

- 13.8 The insurance policies must contain or be endorsed to contain the following provisions:
- Name City and its 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 under contract with City. The endorsement requirement is not applicable for workers' compensation and professional liability policies.
 - Endorsement that the "other insurance" clause shall not apply to City where City is an additional insured shown on the policy. City's insurance is not applicable in the event of a claim.
 - Grantee shall submit a waiver of subrogation to include, workers' compensation, employers' liability, general liability and auto liability policies in favor of City; and
 - Provide 30 days advance written notice directly to City of any suspension, cancellation, non-renewal or materials change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

- 13.9 Within five (5) calendar days of a suspension, cancellation, material change in coverage, or non-renewal of coverage, Grantee shall provide a replacement Certificate of Insurance and applicable endorsements to City. City 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.
- 13.10 In addition to any other remedies City may have upon Grantee's failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, City may order Grantee to stop work and/or withhold any payment(s) which become due to Grantee under this Agreement until Grantee demonstrates compliance with requirements.
- 13.11 Nothing contained in this Agreement shall be construed as limiting the extent to which Grantee 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.
- 13.12 The insurance coverage provided by Grantee's Contractor shall be deemed primary and non-contributory with respect to any insurance or self - insurance carried by City for liability arising out of operations under this Agreement.
- 13.13 The insurance required is in addition to and separate from any other obligation contained in this Agreement and no claim or action by or on behalf of City shall be limited to insurance coverage provided.
- 13.14 Grantee and any subcontractor are responsible for all damage to their own equipment and/or property result from their own negligence.

XIV. INDEMNIFICATION

- 14.1 **GRANTEE covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and 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 or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to GRANTEE'S activities under this Agreement, including any acts or omissions of GRANTEE, any agent, officer, director, representative, employee, contractor 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. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury,**

death, or property damage. IN THE EVENT GRANTEE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

- 14.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. GRANTEE shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or GRANTEE known to GRANTEE related to or arising out of GRANTEE's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at GRANTEE's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving GRANTEE of any of its obligations under this paragraph.
- 14.3 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by GRANTEE in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. GRANTEE shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If GRANTEE fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and GRANTEE shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- 14.4 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of GRANTEE, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for GRANTEE or any subcontractor under worker's compensation or other employee benefit acts.

XV. CONTRACTING

- 15.1 Any work or services contracted hereunder shall be contracted only by written contract or agreement and, unless specific waiver is granted in writing by City, shall be subject by its terms to each and every provision of this Agreement. Compliance by contractors with this Agreement shall be the responsibility of Grantee. Grantee is responsible to ensure that all local, state and federal permits and approvals required for the activities under this Agreement are obtained.

- 15.2 City shall in no event be obligated to any third party, including any sub-contractor of Grantee, for performance of or payment for work or services.
- 15.3 Except as otherwise stated herein, Grantee may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means.
- 15.4 Grantee shall conduct its own risk assessment for the City's financial exposure under the terms of this Agreement and from that assessment determine whether criminal background checks should be required for personnel and/or contractors. Should Grantee determine that background checks are necessary to protect City's financial interest, Grantee shall provide documentation showing that all of Grantee's staff members and/or contractors have cleared a criminal background check within 30 days of execution of this Agreement.

XVI. CONFLICT OF INTEREST

- 16.1 Grantee covenants that neither it nor any member of its governing body or of its staff presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Grantee further covenants that in the performance of this Agreement, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff.
- 16.2 Grantee further covenants that no member of its governing body or of its staff shall possess any interest in, or use their position for, a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with which they have family, business, or other ties.
- 16.3 No member of City's governing body or of its staff who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this Agreement shall:
- (A) Participate in any decision relating to this Agreement which may affect his or her personal interest or the interest of any corporation, partnership, or association in which he or she has a direct or indirect interest; and
 - (B) Have any direct or indirect interest in this Agreement or the proceeds thereof.

XVII. POLITICAL ACTIVITY

- 17.1 None of the activities performed hereunder shall involve, and no portion of the funds received hereunder shall be used, either directly or indirectly, for any political activity including, but not limited to, an activity to further the election or defeat of any candidate for public office or for any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation.

XVIII. CHANGES AND AMENDMENTS

- 18.1 Except when the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be effected by amendment, in writing, executed by both City and Grantee. City Manager, or his/her designee, shall have authority to execute amendments on behalf of the City without further action of City Council. Grantee shall have the authority to execute amendments under authority granted by formal action under his/her governing body.
- 18.2 It is understood and agreed by the Parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

XIX. SEVERABILITY OF PROVISIONS

- 19.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the Parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XX. LICENSES/CERTIFICATIONS

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

XXI. INCORPORATION OF ATTACHMENTS

- 21.1 Each of the attachments listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below, with this document taking priority over all attachments:

Attachment A: T09 2024-03-27-03R

Attachment B: SCOPE OF SERVICES

XXII. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

- 22.1 Grantee warrants and represents that it will comply with all Federal, State and Local laws and regulations and will use all reasonable efforts to ensure said compliance by any and all contractors and subcontractors that may work or volunteer under this Agreement.
- 22.2 Work performed under this Agreement must conform to Americans with Disabilities Act requirements.
- 22.3 GRANTEE understands and agrees that pursuant to Texas Government Code, Chapter 2264, if, after receiving a public subsidy, the business is convicted of a violation under 8 U.S.C. Section 1324a(f), the business shall repay the amount of the public subsidy with interest not later than the 120th day after the date the public agency, state or local taxing jurisdiction, or economic development corporation notifies the business of the violation. Interest shall accrue at the rate of .5% per month until the time of such repayment from the date of final conviction.
- 22.4 Grantee will complete and submit City's Ethics Disclosure Form prior to Grantee's receipt of any City funds.
- 22.5 Grantee agrees that City may carry out monitoring and evaluation of activities to ensure Grantee's compliance with this Agreement.

XXIII. ASSIGNMENT

- 23.1 Neither party shall transfer, pledge or otherwise assign this Agreement, any interest in and to same, or any claim arising thereunder, without first procuring the written approval of the other party. Any attempt at transfer, pledge or other assignment shall be void ab initio and shall confer no rights upon any third party.

XXIV. NON-WAIVER OF PERFORMANCE

- 24.1 Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXV. LAW APPLICABLE AND LEGAL FEES

- 25.1 **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**
- 25.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.
- 25.3 The Parties hereto expressly agree that, in the event of litigation, each party hereby waives its right to payment of attorneys' fees.

XXVI. LEGAL AUTHORITY

- 26.1 Grantee represents, warrants, assures, and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement and to perform the responsibilities herein required.
- 26.2 The signer of this Agreement for Grantee represents, warrants, assures and guarantees that he or she has full legal authority to execute this Agreement on behalf of Grantee and to bind Grantee to all terms, performances and provisions herein contained.

XXVII. PARTIES BOUND

- 27.1 This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as otherwise expressly provided herein.

XXVIII. CAPTIONS

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

XXIX. GENDER

- 29.1 Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XXX. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL

- 30.1 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:
- (1) does not boycott Israel; and
 - (2) will not boycott Israel during the term of the contract.
- 30.2 "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.
- 30.3 "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.
- 30.4 By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract, to the extent required by state law. City's hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

**XXXI. PROHIBITION ON CONTRACTS WITH COMPANIES ENGAGED IN
BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION**

- 31.1 Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §2270.0201 or 2252.153. Grantee hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on Grantee's certification. If found to be false, or if Grantee is identified on such list during the course of its contract with City, City may terminate this Agreement for material breach.

XXXII. ENTIRE AGREEMENT

- 32.1 This Agreement, together with its authorizing ordinance and its exhibits, constitutes the final and entire agreement between the Parties hereto and contains 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 be in writing, dated subsequent to the date hereof and duly executed by the Parties, in accordance with Article XVIII. Changes and Amendments.

EXECUTED and AGREED TO as of the dates indicated below.

CITY OF SAN ANTONIO

Erik Walsh, City Manager

Date _____

Approved as to Form:

Assistant City Attorney

GRANTEE

Alameda Theater Conservancy

Pete Carter
By:

Date 4/23/2004

BOARD OF DIRECTORS

Houston Street TIRZ # 9

Chairperson Sukh Kaur

Date _____