

**COLLEYVILLE
NEIGHBORHOOD ENTRANCE BEAUTIFICATION
PROGRAM 380 GRANT AGREEMENT**

This Colleyville Neighborhood Entrance Beautification 380 Program Grant Agreement (“Agreement”) is made by and between the **City of Colleyville, Texas** (“City”) and **[INSERT LEGAL NAME OF APPLICANT]** (“Applicant”) (each a “party” and collectively the “parties”), acting by and through their respective authorized officers.

RECITALS:

WHEREAS, Applicant is the legal owner of property located at **[INSERT SPECIFIC ADDRESS FOR IMPROVEMENTS OR LEGAL DESCRIPTION]**, which is property that is not used as a primary residence and is located at the end of a principal entrance street(s) into a subdivision development (hereinafter defined as the “Existing Premises”); and

WHEREAS, the Applicant intends to make certain Improvements to the Existing Premises, said Improvements being more particularly described in **Exhibit A** attached hereto and incorporated herein (the “Improvements”); and

WHEREAS, the Applicant has advised the City that a contributing factor that would induce the Applicant to construct the Improvements would be an agreement by the City to provide a Neighborhood Entrance Beautification Grant to the Applicant to defray a portion of the costs for the Improvements; and

WHEREAS, the City is authorized by Chapter 380 of the Texas Local Government Code to provide financial incentives and beautification grants to promote beautification throughout the City; and

WHEREAS, the City has determined that making financial incentives and beautification grants to the Applicant in accordance with this Agreement will further the objectives of the City, will benefit the City and the City’s inhabitants.

NOW THEREFORE, in consideration of the foregoing, and other consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows.

**Article I
Definitions**

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

“Bankruptcy or Insolvency” shall mean the dissolution or termination of the Applicant’s existence, insolvency, employment of receiver for any part of the Applicant’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors or the commencement of any proceedings under

any bankruptcy or insolvency laws by or against the Applicant and such proceedings are not dismissed within ninety (90) days after the filing thereof.

“Casualty” shall mean the Premises are wholly or partially destroyed by fire, tornado, hurricane, earthquake, flood or similar casualty that renders the Premises unfit for the intended purpose.

“City” shall mean the City of Colleyville, Texas.

“Commencement of Construction” shall mean that: (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the Improvements; (ii) all necessary permits for the construction of the Improvements pursuant to the plans therefore have been issued by all the applicable governmental authorities; and (iii) construction of the Improvements has commenced.

“Applicant” shall mean [INSERT LEGAL NAME OF APPLICANT HERE].

“Completion of Construction” shall mean that: (i) substantial completion of the Improvements has occurred; and (ii) the City has conducted and completed a final inspection of the Improvements.

“Effective Date” shall mean the last date of execution hereof.

“Existing Premises” shall mean that portion of property located at [INSERT SPECIFIC ADDRESS FOR IMPROVEMENTS OR LEGAL DESCRIPTION], wherein Applicant operates an insurance agency, being more particularly described in **Exhibit A**.

“Expiration Date” shall mean the fifth (5th) anniversary of the Effective Date.

“Force Majeure” means any causes beyond the party’s respective control or because of applicable law, including, but not limited to, war, nuclear disaster, labor strikes, acts of God, fire, flood, riot, a government restriction, quarantine, or mandatory closure order enacted in response to a pandemic or other public health crises, or any other circumstance for which a party is not legally responsible or which is not reasonably within its power to control (each a “Force Majeure Event”). Except where expressly provided in otherwise in this Agreement, any party asserting Force Majeure shall give prompt notice to the other parties of the prevention of performance as soon as the asserting party is reasonably aware of such prevention and has the burden of demonstrating (i) how and why their performance was so prevented, (ii) the period of time during which they were so prevented from performing (which under the facts may be equal to, or shorter or longer than, the duration of the Force Majeure Event itself), and (iii) that the party used reasonable efforts to mitigate and/or eliminate such prevention and resumed performance under this Agreement as soon as reasonably practicable. Notwithstanding any other provision of this Agreement, in no event shall the lack of sufficient financial resources be a basis for a claim of Force Majeure.

“Improvement Grant” or “Grant” shall mean a beautification reimbursement grant to offset the actual costs incurred and paid by the Applicant for the Improvements to the Existing Premises, to be paid as set forth herein.

“Impositions” shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on the Applicant with respect to the Existing Premises or any property or any business owned by the Applicant within the City.

“Improvements” shall mean the property enhancements that are proposed to be constructed on the Existing Premises in compliance with all zoning requirements and all other applicable local, state, and federal laws or regulations, said Improvements being more particularly described in Exhibit A.

“Payment Request” shall mean a written request from the Applicant to the City for payment of the Grant accompanied by copies of invoices, bills, receipts and such other information, as may reasonably be requested by the City, reflecting the actual costs incurred and paid by the Applicant for the construction and installation of the Improvements as of the date of the applicable Payment Request.

“Premises” shall mean the entire premises owned by the Applicant located at **[INSERT SPECIFIC ADDRESS OF IMPROVEMENTS OR LEGAL DESCRIPTION]**, consisting of both the Existing Premises and Improvements.

Article II Term

The term of this Agreement shall begin on the Effective Date and continue until the Expiration Date, unless sooner terminated as provided herein.

Article III Economic Development Grant

3.1 Improvement Grant. Subject to the obligation of the Applicant to repay the Grant pursuant to Section 5.2 herein, and the continued satisfaction of all the terms and conditions of this Agreement by the Applicant during the term of this Agreement, the City agrees to provide the Applicant with an Improvement Grant in an amount not to exceed TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00), which shall be payable within thirty (30) days after receipt of an approved Payment Request following the Completion of Construction.

3.2 Current Revenue. The Grant made hereunder shall be paid solely from lawfully available funds. Under no circumstances shall the obligations of the City hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. The Grant shall be paid from funds of the City consistent with Article III, Section 52(a) of the Texas Constitution.

Further, the City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by the Applicant. None of the obligations of the City under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

Article IV Conditions to Beautification Grant

4.1 Conditions of the Grant. The obligation of the City to pay the Grant shall be conditioned upon the compliance and satisfaction by the Applicant of the terms and conditions of this Agreement and each of the following conditions contained in this Article IV. The following conditions shall remain in effect throughout the entire term of this Agreement following the Effective Date and continuing thereafter until the Expiration Date.

- (a) **Permit Application:** Applicant must obtain all applicable City permits prior to commencement of the Improvements.
- (b) **Submission of a Final Concept Plan:** Prior to issuance of any permits, Applicant shall provide to City a final concept plan depicting the final proposed Improvements (including the height and dimensions of any proposed monument signs);
- (c) **Submission of Final Landscape Plan:** Prior to any issuance of any permits Applicant shall provide to City a final landscape plan depicting the final proposed landscape and design which shall be in conformance with the terms of this Agreement and further described in Exhibit A. Additionally, Applicant must maintain the Improvements at its own expense for a period of five (5) consecutive years in conformance with the City's Ordinances and applicable HOA rules and regulations.
- (d) **Completion of Improvements; Required Use.** Applicant shall cause Completion of Improvements in conformance with the terms of this Agreement and in accordance with the timeline, except in connection with and to the extent of an event of Force Majeure.
- (e) **Good Standing.** The Applicant shall not have an uncured breach or default of this Agreement during the term hereof.
- (f) **Continuous Occupancy.** During the term of this Agreement Improvements may not be demolished, removed, or substantially altered during the term of this Agreement, except with prior, express written permission of the City.
- (g) **Payment Request.** The Applicant shall, as a condition precedent to the payment of the Grant, provide the City with a completed Payment Request.
- (h) **Landscape Improvements.** The Applicant shall continuously maintain and replace (as necessary) any and all landscaping installed in connection with the Improvements at its own expense. The Applicant's obligation under this section

4.1(e) shall remain in effect throughout the entire term during the term of this Agreement.

Article V Termination; Repayment

5.1 Termination. This Agreement shall terminate upon any one of the following:

- (a) by written agreement of the parties;
- (b) Expiration Date;
- (c) upon written notice by either party in the event the other party breaches any of the terms or conditions of this Agreement and such breach is not cured within thirty (30) days after written notice thereof in accordance with this Agreement;
- (d) upon written notice by the City, if the Applicant suffers an event of Bankruptcy or Insolvency;
- (e) upon written notice by the City, if any Impositions owed to the City or the State of Texas by the Applicant shall become delinquent (provided, however, the Applicant retains the right to timely and properly protest and contest any such Impositions); or
- (f) upon written notice by either party, if any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable.

5.2 Repayment. In the event the Agreement is terminated by the City pursuant to Section 5.1(c), (d), (e), and (f), the Applicant shall immediately repay to the City an amount equal to the total Grant previously paid by the City to the Applicant, plus interest at the rate periodically announced by the Wall Street Journal as the prime or base commercial lending rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank reasonably selected by the City) as its prime or base commercial lending rate, which shall accrue from the date the Grant was initially paid to Applicant.

5.3 Right of Offset. The City may, at its sole option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to the City from the Applicant, regardless of whether the amount due arises pursuant to the terms of this Agreement, a Related Agreement or otherwise and regardless of whether or not the debt due the City has been reduced to judgment by a court.

Article VI Miscellaneous

6.1 Binding Agreement; Assignment. This Agreement shall be binding upon and inure to the benefit of the heirs, successors, affiliates, administrators, executors, and permitted assigns

of the respective parties. This Agreement may not be assigned by the Applicant without the prior written consent of the City.

6.2 No Joint Venture. It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties.

6.3 Authorization. Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement. Applicant represents and warrants to the City that the Applicant is a duly formed, validly existing legal entity in good standing under the laws of the State of Texas and is authorized to transact business in the State of Texas.

6.4 All notices required by this Agreement shall be in writing and addressed to the parties at the addresses set forth on the signature page(s) of this Agreement (or to such other address that may be designated by the receiving party from time to time in accordance with this section). All notices shall be delivered by (a) personal delivery, (b) certified or registered mail (in each case, return receipt requested, postage prepaid), (c) nationally recognized overnight courier (with all fees prepaid), or (d) email of a PDF document containing the required notice. Such notice or document shall be deemed to be delivered or given, whether actually received or not, (i) when received if delivered or given in person, (ii) if sent by United States mail, three (3) business days after being deposited in the United States mail as set forth above, (iii) on the next business day after the day the notice or document is provided to a nationally recognized carrier to be delivered as set forth above, or (iv) if sent by email, the next business day. A confirmation of delivery report which reflects the time that the email was delivered to the recipient's last notified email address is prima facie evidence of its receipt by the recipient, unless the sender receives a delivery failure notification, indicating that the email has not been delivered to the recipient.

6.5 Entire Agreement. This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement, except as provided in any exhibits attached hereto.

6.6 Governing Law. This Agreement shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Tarrant County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said Court.

6.7 Amendment. This Agreement may be amended solely by mutual written agreement of the parties.

6.8 Legal Construction. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal,

invalid, or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.9 Recitals. The recitals to this Agreement are incorporated herein.

6.10 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.11 Exhibits. Any exhibits to this Agreement are incorporated herein by reference for the purposes wherever reference is made to the same.

6.12 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.13 Employment of Undocumented Workers. During the term of this Agreement the Applicant agrees not to knowingly employ any undocumented workers and if convicted of a violation under 8 U.S.C. Section 1324a (f), the Applicant shall repay the amount of the Grant and any other funds received by the Applicant from the City as of the date of such violation within one hundred twenty (120) days after the date the Applicant is notified by the City of such violation, plus interest at the rate of four (4%) compounded annually from the date of violation until paid. The Applicant is not liable for a violation of this section by a subsidiary, affiliate, or franchisee of the Applicant or by a person with whom the Applicant contracts.

6.14 Statutory Verifications. Applicant's execution of this Agreement shall serve as its verification that:

- (a) Applicant (i) does not Boycott Israel and agrees that during the term of the Agreement will not Boycott Israel as that term is defined in Texas Government Code Section 808.001, as amended; (ii) does not Boycott Energy Companies and agrees that during the term of this Agreement will not Boycott Energy Companies as that term is defined in Texas Government Code Section 809.001, as amended; and (iii) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association as those terms are defined in Texas Government Code Section 2274.001, as amended, and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association; or
- (b) Applicant is exempt from the forgoing verification because it (i) is a sole proprietor, (ii) a nonprofit entity, (iii) a governmental entity, or (iv) has fewer than ten (10) full time employees.

6.15 Public Information Act Requirements. Applicant acknowledges that any and all records of Applicant, including but not limited to documents which describe, relate to, convey and/or illustrate the obligations, terms and conditions set forth in this Agreement may be subject to the Texas Public Information Act (the “Act”), Texas Government Code Chapter 552, as amended. Applicant agrees to fully and promptly cooperate with the City in responding to requests for information received by the City for the foregoing information pursuant to the Act. In the event Applicant determines that any of its information responsive to a request under the Act is confidential and/or exempt from disclosure to the public under the provisions of the Act, Applicant shall, at its cost, be solely responsible for asserting arguments to the Office of the Attorney General pursuant to §552.305(b) of the Act, and for filing any and all subsequent appeals relating to an opinion of the Texas Attorney General that requires disclosure of Applicant’s confidential information. Notwithstanding the foregoing, Applicant agrees that the City may, but shall be under no obligation to, submit arguments to the Attorney General relating to reasons Applicant’s confidential information is exempt from disclosure to the public under the Act, regardless of whether Applicant has asserted its own arguments to the Attorney General.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK -
SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the Effective Date.

<p>For City:</p> <p>CITY OF COLLEYVILLE, TEXAS</p> <p>By:</p> <p> Jerry Ducay City Manager</p> <p>Date:</p>	<p>For Applicant</p> <p>[INSERT APPLICANT NAME]</p> <p>By:</p> <p>Date:</p>
<p><u>Notice Address:</u> City of Colleyville Attn: City Manager 100 Main Street, 3rd Floor City of Colleyville, Texas 76034 E: jducay@colleyville.com</p> <p>ATTEST:</p> <p>By:</p> <p> Christine Loven City Secretary</p> <p>Date:</p>	<p><u>Notice Address:</u></p> <p>Attn:</p>

EXHIBIT A

DESCRIPTION OF IMPROVEMENTS

Applicant Name:

Premises Address:

Project Cost: (estimate)

Project Timeline:

Grant Amount: up to \$25,000.00

Grant Type: Qualifying Reimbursement Only

Description of Improvements:

Applicant shall make the following Improvements in conformance with this Agreement and generally consistent with the final concept and landscaping plans provided to and approved by the City, attached hereto and incorporated herein as Exhibit B. Qualifying Improvement expenses include: installation and materials costs related to perennial plants/flowers, bushes, trees, masonry walls, water features, lighting/up-lighting, monument signs, rock outcropping, pavers, or statues/art:

- 1.
- 2.

EXHIBIT B
FINAL CONCEPT AND LANDSCAPING PLANS
[TO BE ATTACHED]