

AN ORDINANCE 2008-06-12-0512

**AUTHORIZING AN ECONOMIC DEVELOPMENT PROGRAM
GRANT AGREEMENT IN THE AMOUNT OF \$400,000.00 TO
HELP FUND THE TRAINING OF KLN STEEL EMPLOYEES.**

* * * * *

WHEREAS, a municipality may grant and loan municipal funds under Chapter 380 of the Texas Local Government Code to promote economic development once it has established a program for these purposes; and

WHEREAS, the City Council established a Chapter 380 Economic Development Program by ordinance on February 27, 2003 which was then modified by ordinance on June 3, 2004 to permit City economic development grants under the Economic Development Incentive Fund (the "EDIF") Guidelines; and

WHEREAS, on April 14, 2005, the Program was further modified by ordinance to allow economic development loans and grants for any economic development project specified by City Council; and

WHEREAS, KLN Steel Products Company is a local manufacturing firm currently located at 2 Wincco Drive along I-35 North and makes high quality furniture for multi-person housing facilities and also provides packaged services for federal government offices and dormitory facilities; and

WHEREAS, the company is consolidating its existing manufacturing operations in San Antonio, California and Illinois into one operation in San Antonio with a \$20 million expansion; and

WHEREAS, for its expansion, KLN is purchasing a 500,000 sq. ft. building (formerly Friedrich Air Conditioning) at 4200 North Pan Am Expressway; and

WHEREAS, KLN has requested an economic development grant of \$400,000.00 to help pay for relocation and training costs of new employees; and

WHEREAS, the retention and expansion of KLN Steel in San Antonio supports the City's Strategic Plan for Enhanced Economic Development by encouraging the growth of a local manufacturing company, further establishes San Antonio as a skilled manufacturing center and enhances this key sector as an integral part of our regional economy with prospects for substantial future growth; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. City Council approves an Economic Development Program Grant Agreement for \$400,000.00, a copy of which is attached in substantially final form as Attachment I, to fund

training and relocation costs for employees of KLN Steel Products Company, LLC upon purchase of the property located at 4200 North Pan Am Expressway.

SECTION 2. The amount of \$400,000.00 is appropriated for this ordinance in Fund 29095000 Economic Development Incentives, Cost Center 1604010001 Economic Development Incentives, General Ledger 5201040 Fees to Professional Contractors and the FY08 budget is amended to reflect this change.

SECTION 3. Payment not to exceed \$400,000.00 is authorized to KLN Steel Products Company, LLC and should be encumbered with a purchase order.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 5. This ordinance shall be effective on the tenth (10th) day after passage.

PASSED AND APPROVED this 12th day of June, 2008.



M A Y O R

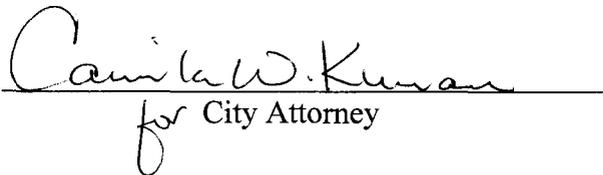
PHIL HARDBERGER

ATTEST:



City Clerk

APPROVED AS TO FORM:



for City Attorney

ATTACHMENT I

STATE OF TEXAS
COUNTY OF BEXAR

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**ECONOMIC DEVELOPMENT
PROGRAM GRANT AGREEMENT
OF THE CITY OF SAN ANTONIO**

This Economic Development Program Grant Agreement (hereinafter referred to as the "Agreement") is made and entered into by the City of San Antonio, a municipal corporation of the State of Texas, hereinafter referred to as "GRANTOR", by and through its City Manager or her designee, and KLN STEEL PRODUCTS COMPANY, L.L.C., a limited liability company, hereinafter referred to as "GRANTEE", acting by and through its Owner and Chief Executive Officer (collectively, the "Parties"), and pursuant to Article III, Section 52-a, of the Texas Constitution and Chapter 380.002 of the Local Government Code entitled "Economic Development Grants by Certain Municipalities", both as amended, as well as the CITY's Economic Development Program adopted February 27, 2003 by Ordinance No. 97248 and subsequently amended by Ordinance No. 99308 on June 3, 2004 and Ordinance No. 100884 on April 14, 2005.

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

WHEREAS, the CITY adopted an Economic Development Program as required by Chapter 380.002 of the Local Government Code (the "Chapter 380 Program"), in order to be able to provide loans and other specified incentives for eligible economic development projects, by Ordinance No. 97248 on February 27, 2003; and

WHEREAS, as set forth in Ordinance No. 99308, passed and approved on June 3, 2004, the CITY's Chapter 380 Program was modified to permit grants in accordance with the CITY's Economic Development Incentive Fund ("EDIF") Guidelines; and

WHEREAS, on April 14, 2005, CITY's governing body further modified the 380 Program to expand the eligibility of projects with regard to grants; and

WHEREAS, KLN submitted an application to the CITY for a grant from the EDIF for the purpose of expanding its manufacturing capacity for an economic development project (the "Project" specified by KLN; and

WHEREAS, the retention of KLN, as a targeted manufacturing business, and its employees is an important economic development purpose of the CITY; and

WHEREAS, CITY has a grant amount of \$400,000.00 available in the EDIF to be used to carry out the Project; and

WHEREAS, the City Council of CITY authorized the City Manager or designee to negotiate a grant agreement with KLN for the project as reflected in Ordinance No. _____, passed and approved on _____; **NOW THEREFORE:**

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

SECTION 1. AGREEMENT PURPOSE

GRANTEE shall acquire three buildings for a manufacturing facility located at 4200 North Pan Am Expressway, San Antonio, TX 78218 (the "Facility"), and add approximately five hundred (500) non-

temporary, full-time employees to its existing local retained total of two hundred (200) non-temporary, full-time employees over a period of three (3) years for a total of seven hundred (700) non-temporary, full-time jobs. The Project is anticipated to promote local economic development and stimulate business and commercial activity in the City of San Antonio. GRANTOR is supporting the Project through this Agreement.

SECTION 2. PROJECT REQUIREMENTS

A. Expansion. GRANTEE shall expend approximately twenty million dollars (\$20,000,000.00) to expand and consolidate its production capacity at its new manufacturing Facility located at 4200 North Pan Am Expressway, San Antonio, TX 78218. Said expansion and consolidation shall include the consolidation of its existing manufacturing operations in San Antonio (at 2 Winnco Drive), California and Illinois into one operation to include the renovation of an existing 50,000 sq. ft. building, an existing 370,850 sq. ft. building, and an existing 92,514 sq. ft. building at the 4200 North Pan Am Expressway location.

B. Job Creation/Retention and Project Term. In addition to the two hundred (200) non-temporary, full-time employees that GRANTEE shall retain at its consolidated location for the Project, GRANTEE shall hire an additional five hundred (500) non-temporary, full-time employees to the existing retained local total of two hundred (200) non-temporary, full-time employees over a period of three years (the "Project Term") as follows:

1. Retain and maintain two hundred (200) non-temporary, full-time existing local employees; and
2. Hire and maintain two hundred (200) non-temporary, full-time employees by December 31, 2008 for a cumulative total of four hundred (400) non-temporary, full-time employees; and
3. Hire and maintain an additional two hundred (200) non-temporary, full-time employees by December 31, 2009 for a cumulative total of six hundred (600) non-temporary, full-time employees; and
4. Hire and maintain an additional one hundred (100) non-temporary, full-time employees by December 31, 2010 for a cumulative total of seven hundred (700) employees.

SECTION 3. AGREEMENT PERIOD

This Agreement shall commence upon execution and shall terminate after the expiration of the Recapture Period, but in no case later than December 31, 2015.

SECTION 4. GRANTEE PERFORMANCE

A. GRANTEE shall complete the Project in accordance with the terms and conditions of this Agreement.

B. GRANTEE shall comply with all applicable laws and regulations, and shall perform all activities in accordance with the terms, provisions and requirements set forth herein.

SECTION 5. GRANTOR OBLIGATIONS

A. In consideration of full and satisfactory performance of activities required by Sections 2 and 4 of this Agreement, GRANTOR will disburse grant funds not to exceed four hundred thousand dollars (\$400,000.00) to GRANTEE upon approval of this Agreement by GRANTOR's governing body and execution of the Agreement by the Parties. Such disbursement shall be as follows:

1. Disbursement of four hundred thousand dollars (\$400,000.00) upon: (1) provision by GRANTEE of satisfactory evidence of acquisition of the three buildings and land at the Facility's location; and (2) provision by GRANTEE of evidence of receipt of demolition and renovation/remodeling permits; and (3) execution of this Agreement.

B. If the GRANTEE does not create the cumulative total of an additional five hundred (500) new non-temporary, full-time jobs and maintain the existing number of two hundred (200) non-temporary, full-time jobs by December 31, 2010 as required in Section 2 of this Agreement, the GRANTEE may request, in writing, an extension until December 31, 2011 to achieve these job creation/retention levels in order to receive the full disbursement of grant funds, subject to approval by the Director of the Economic Development Department of GRANTOR and the availability of funds.

C. GRANTOR shall not be liable to GRANTEE or any other entity for any costs incurred by GRANTEE.

D. GRANTEE shall provide all new non-temporary, full-time employees the same health care and benefits plan that is currently provided to existing employees as identified in Exhibit A.

E. GRANTEE shall remain in compliance with all provisions of the Tax Phase-In Agreement entered into with GRANTOR for the PROJECT.

SECTION 6. RETENTION AND ACCESSIBILITY OF RECORDS

A. GRANTEE shall maintain the fiscal records and supporting documentation for all expenditures of funds to be reimbursed or credited to GRANTEE under this Agreement in a manner that conforms to this Agreement. GRANTEE shall retain such records, and any supporting documentation, for the greater of: (1) five [5] years from the end of the Agreement period; or (2) the period required by other applicable laws and regulations.

B. GRANTEE shall give GRANTOR, its designee, or any of their duly authorized representatives, access to and the right to examine all books, accounts, records, audit reports, reports, files, documents, written or photographic material, videotape and other papers, things, or property belonging to or in use by GRANTEE pertaining to the funds expended by GRANTEE which are reimbursed or credited under this Agreement. Such rights to access shall continue as long as the records are retained by GRANTEE. Failure to provide reasonable access to authorized GRANTOR representatives shall give the GRANTOR the right to suspend or terminate the Agreement as provided for in Section 15 and 16, or any portion thereof, for reason of default. All records and other information shall be retained by GRANTEE for a period of five (5) years after all performance requirements are achieved for audit purposes until such audits or other administrative, civil or criminal matters including, but not limited to, investigations, lawsuits, administrative inquiries and open record requests are completed. GRANTEE agrees to maintain such records in an accessible location and to provide citizens reasonable access to such records consistent with the Texas Public Information Act.

SECTION 7. MONITORING

A. GRANTOR reserves the right to confirm GRANTEE's compliance with the terms and conditions of this Agreement. GRANTOR will provide GRANTEE with a written report of the monitor's findings. If the monitoring report notes deficiencies in GRANTEE's performances under the terms of this Agreement, the monitoring report shall include a listing of requirements for the correction of such deficiencies by GRANTEE and a reasonable amount of time in which to attain compliance. Failure by GRANTEE to take action specified in the monitoring report may be cause for suspension or termination of this Agreement, in accordance with Sections 14 and 15 herein.

B. GRANTEE shall provide to GRANTOR a statement with reasonable supporting information evidencing the creation of and filling of the number of jobs required by this Agreement. The supporting information provided by GRANTOR on the compliance forms required under GRANTEE's *Tax Phase-In Agreement* entered into with GRANTOR as authorized by Ordinance No. _____ shall be considered reasonable evidence if provided in compliance with the terms of that *Tax Phase-In Agreement*.

SECTION 8. INDEPENDENT CONTRACTOR

It is expressly understood and agreed by the Parties hereto that GRANTEE is not an agent or representative of GRANTOR and that GRANTEE, its employees and subcontractors are not employees or contractors of the GRANTOR.

SECTION 9. CONFLICT OF INTEREST

A. GRANTEE shall ensure that no employee, officer, or agent of GRANTEE shall participate in the selection, award or administration of a subcontract supported by funds provided hereunder if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: (1) the employee, officer, or agent; (2) any member of his or her immediate family; (3) his or her partner; or, (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract. GRANTEE shall comply with Chapter 171, Texas Local Government Code as well as the City of San Antonio Code of Ethics.

B. Except for eligible administrative costs, no employee, agent, consultant, officer, or elected or appointed official, of either GRANTEE or of a subcontractor, who exercises or has exercised any functions or responsibilities or is in a position to participate in decision-making or gain inside information in regard to the activities involved in the Project, shall be permitted to have or obtain a financial interest in or benefit from the Project or any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties. This prohibition shall remain in effect for the duration of the prohibited relationship plus one calendar year thereafter.

SECTION 10. NONDISCRIMINATION AND SECTARIAN ACTIVITY

A. GRANTEE shall ensure that no person shall, on the ground of race, color, national origin, religion, sex, age or handicap, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied access to any program or activity funded in whole or in part with funds made available under this Agreement.

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

C. GRANTEE shall include the substance of this Section 10 in all subgrant agreements.

SECTION 11. LEGAL AUTHORITY

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

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

C. GRANTOR will have the right to suspend or terminate this Agreement in accordance with Sections 14 and 15 herein if there is a dispute as to the legal authority, of either GRANTEE or the person signing this Agreement, to enter into this Agreement, any amendments hereto or failure to render performances hereunder. GRANTEE is liable to GRANTOR for any money it has received from GRANTOR for performance of the provisions of this Agreement if GRANTOR suspends or terminates this Agreement for reasons enumerated in this Section 11.

SECTION 12. LITIGATION AND CLAIMS

A. GRANTEE shall give GRANTOR immediate notice in writing of any action, including any proceeding before an administrative agency, filed against GRANTEE arising out the performance of any subcontract hereunder. Except as otherwise directed by GRANTOR, GRANTEE shall furnish immediately to GRANTOR copies of all pertinent papers received by GRANTEE with respect to such action or claim. GRANTEE shall notify the GRANTOR 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 GRANTOR within 30 calendar days after receipt. 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.

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

C. This Contract 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.

SECTION 13. CHANGES AND AMENDMENTS

A. Except as specifically provided in Section 13(C) of this Agreement, any alterations, additions or deletions to the terms of this Agreement shall be by amendment hereto in writing and executed by both Parties to this Agreement upon GRANTOR approval and authorization of GRANTEE.

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

C. 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.

SECTION 14. SUSPENSION

A. Notwithstanding the provisions of Chapter 2251 of the Texas Government Code, in the event GRANTEE fails to comply with the terms of any Agreement with the GRANTOR, GRANTOR shall

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

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

C. A suspension under this Section 14 may be lifted only at the sole discretion of the GRANTOR upon a showing of compliance with or written waiver by GRANTOR of the term(s) in question.

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

SECTION 15. TERMINATION AND RECAPTURE

A. GRANTOR shall have the right to terminate this Agreement for non-compliance, in whole or in part, at any time before the date of termination should GRANTOR determine that GRANTEE has failed to comply with any term of any agreement between GRANTEE and GRANTOR. GRANTOR will provide GRANTEE with written notification as to the nature of the non-compliance, and grant GRANTEE a sixty (60) day period from the date of the GRANTOR's written notification to cure any issue of non-compliance under such Agreement. Should GRANTEE fail to cure any default within this period of time, the GRANTOR may, upon issuance to GRANTEE of a written Notice of Termination, terminate this Agreement in whole or in part and withhold further disbursements to GRANTEE, and prohibit GRANTEE from incurring additional obligations of funds under this Agreement. Such notification shall include: (1) the reasons for such termination; (2) the effective date of such termination; and, (3) in the case of partial termination, the portion of the Agreement to be terminated.

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

C. Except as provided in Section 15(A), disbursements may be terminated in whole or in part only as follows:

1. By the GRANTOR (with the consent of the GRANTEE) in which case the two Parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated; or

2. By the GRANTEE upon written notification to the GRANTOR, setting forth the reasons of such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of partial termination, the GRANTOR determines in its sole discretion that the remaining portion of the award will not accomplish the purpose for which the award was made, the GRANTOR may terminate the award in its entirety under Section 15(A).

D. Relocation Defined. For purposes of this section, "Relocation" or "Relocate" shall mean that GRANTOR has located business activities, or a substantial portion thereof, that are the subject of this Agreement to a location outside the vicinity of 4220 North Pan Expressway, San Antonio, TX 78218 (the "Facility").

E. Termination and Recapture of Grant Funds in the Event of Relocation of Business Activities. If GRANTOR occupies and uses the the Facility for its business activities and subsequently Relocates during the term of this Agreement, except if such Relocation is caused by a Force Majeure, then GRANTOR shall have the right to terminate this Agreement and recapture all grant funds disbursed to GRANTEE. Said termination shall be effective for the calendar year during which the Facility was no longer used for the required purposes stated herein. Upon said termination, all disbursements under this Agreement shall be recaptured and shall be paid to GRANTOR within sixty (60) calendar days from the date of said termination notice to GRANTEE by GRANTOR.

F. Termination and Recapture of Grant Funds in the Event of Cessation of Business Activities. If GRANTOR occupies and uses the Facility for its business activities and subsequently ceases conducting business activities (or a substantial portion thereof) at the Facility for a continuous period of three months during this Agreement for any reason, except if such cessation is caused by a Force Majeure, then GRANTOR shall have the right to terminate this Agreement. Said termination shall be effective for the calendar year during which the Facility was no longer used for the required purposes stated herein. Upon said termination, all disbursements under this Agreement shall be recaptured and shall be paid to GRANTOR within sixty (60) calendar days from the date of said termination notice to GRANTEE by GRANTOR.

G. Termination and Recapture of Grant Funds in the Event of Failure to Create and Retain Jobs. If GRANTOR fails to create and retain employment positions at the Facility as required under Section 2 of this Agreement for any reason {but subject to Section 5 (B), if applicable}, except if such failure is caused by a Force Majeure, then GRANTOR shall have the right to terminate this Agreement. Said termination shall be effective for the calendar year during which the Facility was no longer used for the required purposes stated herein. Upon said termination, a portion of the disbursements under this Agreement shall be recaptured and shall be paid to GRANTOR within sixty (60) calendar days from the date of said termination notice to GRANTEE by GRANTOR. The recapture value shall be based on five hundred seventy one dollars (\$571.00) per job that GRANTEE fails to create and retain as required by this Agreement.

H. Recapture of Grant Funds Following Project Term of Agreement. If the Project Term expires and GRANTOR Relocates or ceases to conduct business activities (or a substantial portion thereof) at the Facility, then GRANTOR shall also have the right to recapture from GRANTEE a percentage of the disbursed grant funds based upon the following table:

1. GRANTEE relocates or ceases to conduct business in Year 2011:
GRANTOR may recapture ninety-percent (90%) of Grant Funds disbursed under Section 5(A)(1), (2), (3) and (4).

2. GRANTEE relocates or ceases to conduct business in Year 2012:
GRANTOR may recapture seventy-percent (70%) of Grant Funds disbursed under Section 5(A)(1), (2), (3) and (4).
3. GRANTEE relocates or ceases to conduct business in Year 2013:
GRANTOR may recapture fifty-percent (50%) of Grant Funds disbursed under Section 5(A)(1), (2), (3) and (4).

I. In the event that GRANTEE has been granted a one-year extension of the Project Term pursuant to Section 5 (C) of this Agreement, then the Recapture Periods in Section 15 (H) (1-3) above shall also be extended by one year.

J. Upon receipt of Notice of Termination for non-compliance under Section 15, GRANTEE shall, to the extent possible under its other contractual obligations, cancel, withdraw or otherwise terminate any outstanding orders or subcontracts related to the performance of this Agreement or the part of this Agreement to be terminated and shall cease to incur costs thereunder. Any other work or materials obtained with funds disbursed under or as part of this Agreement shall be terminated and GRANTOR will not be liable to GRANTEE or to GRANTEE's creditors for any costs incurred subsequent to receipt of a Notice to Terminate.

K. Notwithstanding any exercise by GRANTOR of its right of suspension under Section 14 of this Agreement, or of early termination pursuant to this Section 15, GRANTEE shall not be relieved of any liability to GRANTOR for damages due to GRANTOR by virtue of any breach by GRANTEE of any Agreement with GRANTOR. GRANTOR may withhold payments to GRANTEE until such time as the exact amount of damages due to GRANTOR from GRANTEE is agreed upon or is otherwise determined.

SECTION 16. SPECIAL CONDITIONS AND TERMS

A. GRANTEE understands and agrees that if GRANTEE is a "business" and if the GRANTOR's contribution under this Agreement is a "public subsidy" as that term is defined in Chapter 2264 of Subtitle F, Title 10 of the Government Code (80 (R) HB 1196), then GRANTEE is required to refund money, pursuant to 80(R) HB 1196, GRANTEE has received from GRANTOR through this Agreement, in the event of a conviction of knowingly employing an undocumented worker, 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.

SECTION 17. SUBCONTRACTS

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

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

C. GRANTEE assures and shall obtain assurances from all of its subcontractors where applicable, that no person shall, on the grounds of race, creed, color, disability, national origin, sex or religion, be excluded from, be denied the benefit of, or be subjected to discrimination under any program or activity funded in whole or in part under this Agreement.

SECTION 18. DEBARMENT

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.

SECTION 19. RIGHTS UPON DEFAULT

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

SECTION 20. ASSIGNMENT

GRANTEE covenants and agrees that during the term of this Agreement, it shall notify GRANTOR in writing at least thirty (30) calendar days prior to any sale or transfer of its business or Facility. In the event of a sale or transfer, GRANTEE may assign its rights and obligations under this Agreement to an assignee with the consent of GRANTOR. Any purchaser or transferee requesting an assignment of this Agreement shall be bound by the terms hereof. Failure to provide the required notification of sale or transfer may subject GRANTEE to the termination and recapture provisions under Section 15 of this Agreement.

SECTION 21. ORAL AND WRITTEN AGREEMENTS

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

SECTION 22. AUTHORIZED RELIEF FROM PERFORMANCE (*Force Majeure*)

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

SECTION 23. SURVIVAL OF CERTAIN AGREEMENT PROVISIONS

The following provisions of the Agreement, concerning GRANTEE's obligations, shall survive the termination of the Agreement after completion of the Project:

- A. Section 2B (Job Creation)
- B. Section 6 (Records Retention and Accessibility of Records)

(Signatures appear on following page)

WITNESS OUR HANDS, EFFECTIVE as of _____, 2008:

Accepted and executed in two duplicate originals on behalf of the City of San Antonio pursuant to Ordinance Number 2008-_____, dated _____, 2008, and KLN Steel Products Company, LLC pursuant to the authority of its _____.

KLN STEEL PRODUCTS COMPANY, LLC
a Texas Limited Liability Company

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

BY: _____
Name: _____
Title: _____

Sheryl L. Sculley
CITY MANAGER

ATTEST:

ATTEST:

Name: _____
Title: _____

Leticia Vacek
CITY CLERK

APPROVED AS TO FORM:

Michael D. Bernard
CITY ATTORNEY