

ORDINANCE

2021-06-17-0476

**AUTHORIZING A FIVE-YEAR CHAPTER 380 ECONOMIC
DEVELOPMENT GRANT AGREEMENT WITH ELRINGKLINGER USA,
INC.**

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WHEREAS, ElringKlinger AG, an international automotive supplier founded in 1879, is headquartered in Dettingen an der Erms, Germany; the United States based branch ElringKlinger USA, Inc (“ElringKlinger”), employs 800 people at manufacturing facilities in Buford, Georgia; Fremont, California; Fort Wayne, Indiana; and Southfield, Michigan; and

WHEREAS, ElringKlinger is considering the development of an advanced manufacturing facility whereby ElringKlinger will invest or cause to be invested \$1,940,000.00 in real property improvements and \$14,900,000.00 in personal property improvements for a total of \$16,840,000.00 in capital improvements over a two-year period (the “Project”); and

WHEREAS, the Project will create fifty two (52) new, full time jobs over four years, including production worker, engineering, and technician jobs, with an average wage of \$50,163.00; at least thirty percent (30%) of the 52 jobs will make an annual salary of at least \$50,000.00 exclusive of benefits, bonuses and other non-guaranteed pay; at least eighty five percent (85%) of the jobs must exceed the City’s All Industry Wage (\$17.37 per hour) and one hundred percent (100%) of the jobs must exceed the Living Wage (\$12.74 per hour) requirements; and

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, the City of San Antonio (the “City”) is authorized to establish and provide for the administration of one or more programs, including programs for making grants of public money to promote state or local economic development and to stimulate business and commercial activity in the municipality; and

WHEREAS, in accordance with City Ordinance No. 100684, the City created an Economic Development Program for the purpose of making grants available for economic development projects that the City finds will accomplish the purpose and goals of Chapter 380; and

WHEREAS, the City Council finds that offering ElringKlinger a 380 Economic Development Grant Agreement for its real and personal property improvements is a reasonable incentive to help induce ElringKlinger to make significant real and personal property improvements to create an advanced manufacturing facility and create 52 new full time jobs in San Antonio;

WHEREAS, the City Council finds that it is in the best interest of the City to approve a 380 Economic Development Grant Agreement with ElringKlinger and finds that the goals of Chapter 380 will be met by assisting ElringKlinger in undertaking and completing the Project; **NOW THEREFORE:**

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

SECTION 1. The City Council hereby approves the terms and conditions of a Chapter 380 Economic Development Grant Agreement with ElringKlinger USA, Inc. with an estimated amount of \$198,564.00, based on the value of a fifty percent (50%) tax rebate on new real and personal property. This incentive is contingent on a capital investment of at least \$16,840,000.00 and the creation of 52 new, full-time jobs at the project site.


SECTION 2. The City Manager or his designee is authorized to execute an Economic Development Grant Agreement with ElringKlinger USA, Inc in accordance with this Ordinance. A copy of the Agreement, in substantially final form, is attached to this Ordinance as **Attachment I**. The final Agreement shall be filed with this Ordinance upon execution.

SECTION 3. Funding for this Agreement is sourced from the incremental City property taxes generated by the project and is subject to future City Council approval of appropriations as part of the annual budget process.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Deputy Chief Financial Officer, City of San Antonio. The Deputy Chief Financial Officer 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 is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 17th day of June, 2021.



M A Y O R
Ron Nirenberg

ATTEST:



Tina J. Flores, City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney



City of San Antonio

City Council

June 17, 2021

Item: 32

File Number: 21-4013

Enactment Number:

2021-06-17-0476

Ordinance approving a five-year Chapter 380 economic development grant agreement with ElringKlinger USA, Inc. [Alejandra Lopez; Assistant City Manager and Interim Director, Economic Development]

Councilmember Ana E. Sandoval made a motion to approve. Councilmember John Courage seconded the motion. The motion passed by the following vote:

Aye: 10 Nirenberg, McKee-Rodriguez, Viagran, Rocha Garcia, Castillo,
Cabello Havrda, Sandoval, Pelaez, Courage and Perry

Abstain: 1 Bravo

Attachment I

STATE OF TEXAS

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

COUNTY OF BEXAR

This Economic Development Grant Agreement (hereinafter referred to as this "Agreement") is made and entered into by and among the City of San Antonio, a municipal corporation of the State of Texas (hereinafter referred to as "GRANTOR"), acting by and through its City Manager or his designee, and ElringKlinger USA, Inc. (GRANTEE) and together GRANTOR and GRANTEE are referred to as the "Parties.

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, GRANTOR is authorized to grant municipal funds to promote state or local economic development and to stimulate business and commercial activity in the municipality; and

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

WHEREAS, GRANTEE is engaged in an economic development project that will be located on real property that is located within GRANTOR's city limits and will consist of the establishment of a manufacturing facility that provides automotive parts and products for a major automobile manufacturer, focusing on plastic injection molding products (the "Business Activities") that will create 52 full-time jobs, including managers, engineers, electricians, technicians, and production workers (the "Project"); and

WHEREAS, once completed, the Project will result in the promotion of local economic development and to stimulate business and commercial activity in the City of San Antonio; and

WHEREAS, GRANTEE is seeking an economic development grant from GRANTOR for the purpose of defraying costs associated with the Project, and

WHEREAS, GRANTOR, to induce GRANTEE to undertake the Project, has identified funds available to provide a financial grant to GRANTEE for use in undertaking and successfully completing the Project; **NOW THEREFORE**:

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

SECTION 1. AGREEMENT PURPOSE

The Project is anticipated to promote local economic development and to stimulate business and commercial activity in the City of San Antonio in accordance with the purpose of Chapter 380 of the Texas Local Government Code. GRANTOR is supporting the Project through this Agreement to provide funds to be used to defray costs of the Project. This economic incentive is

being offered to GRANTEE to promote investment and job creation in a targeted industry of the City of San Antonio (Advanced Manufacturing).

SECTION 2. PROJECT REQUIREMENTS

A. In addition to the obligations and duties that may be imposed on GRANTEE by agreements it may have entered into with the State of Texas, Bexar County and the City of San Antonio, GRANTEE shall:

1. Own, hold an interest in (including a leasehold interest) or otherwise control 4222 IH-35, San Antonio, TX 78218 (the "Project Site"), legally described in Exhibit A, attached hereto and incorporated herein, for the Term of this Agreement; and
2. Invest, or cause to be invested, at least ONE MILLION NINE HUNDRED FORTY THOUSAND DOLLARS (\$1,940,000.00) in Real Property Improvements at the Project Site prior to December 31, 2022; and
3. Invest, or cause to be invested, at least FOURTEEN MILLION NINE HUNDRED THOUSAND DOLLARS (\$14,900,000.00) in Personal Property Improvements at the Project Site prior to December 31, 2022. The Real Property Improvements and Personal Property Improvements may be referred to herein as the "Improvements"; and
4. Prior to undertaking Improvements at the Project Site, and in order to meet the obligations under A(2) and A(3) above, GRANTEE shall establish separate tax accounts with the Bexar Appraisal District for the Real Property Improvements and for the Personal Property Improvements and shall provide these tax account numbers and the related entity information to GRANTOR; and
5. Create a cumulative FIFTY-TWO (52) Full-Time Jobs at the Project Site as follows:

Prior to December 31, 2021, GRANTEE shall have created not less than seven (7) Full-Time Jobs at the Project Site;

Prior to December 31, 2022, GRANTEE shall have retained not less than seven (7) Full-Time Jobs at the Project Site as required above and created an additional thirty-one (31) Full-Time Jobs at the Project Site for a cumulative total of thirty-eight (38) Full-Time Jobs and from and after such date maintain this aggregate minimum staffing level for the remaining Term of the Agreement;

Prior to December 31, 2023, GRANTEE shall have retained not less than thirty-eight (38) Full-Time Jobs at the Project Site as required above and created an additional nine (9) Full-Time Jobs at the Project Site for a cumulative total of forty-seven (47) Full-Time Jobs and from and after such date maintain this aggregate minimum staffing level for the remaining Term of the Agreement;

Prior to December 31, 2024, GRANTEE shall have retained not less than forty-seven (47) Full-Time Jobs at the Project Site created an additional five (5) Full-Time Jobs at the Project Site for a cumulative fifty-two (52) Full-Time Jobs and from and after such date maintain this aggregate minimum staffing level for the remaining Term of the Agreement.

- (a) The average annual salary of the FIFTY-TWO (52) Full-Time Jobs at the Project Site shall be FIFTY THOUSAND ONE HUNDRED SIXTY-THREE DOLLARS (\$50,163.00) with all jobs at the Project Site meeting GRANTOR's living wage of TWELVE DOLLARS AND SEVENTY-FOUR CENTS (\$12.74) per hour.
 - (b) In addition to the Living Wage requirement, after one year of initiating full operations at the Project Site; but not more than two (2) years after execution of this Agreement, at least eighty-five percent (85%) of all new and existing employees at the Project Site, without regard to the number of jobs required to be created or maintained hereunder, must earn a cash "All Industry Wage" at or exceeding SEVENTEEN DOLLARS AND THIRTY-SEVEN CENTS (\$17.37) per hour.
 - (c) At least SIXTEEN (16) of the 52 Full-Time Jobs at the Project Site shall have an annual salary of FIFTY THOUSAND DOLLARS (\$50,000.00).
 - (d) All wage requirements set forth in Article 2 shall be exclusive of benefits, bonuses, overtime, commissions, shift differentials, and any other non-guaranteed pay.
 - (e) For purposes of this Agreement, the term "Full-Time Job" means a non-temporary, full-time employment position of GRANTEE involving the equivalent of two thousand eighty (2,080) straight-time paid hours in a fiscal year.
6. If GRANTEE, a Related Organization or City-approved assignee fails to hire and the minimum number of permanent Full-Time Jobs as required in Article 2(A) in the leased premises at the Property as described, for any given year during the Grant Term, calculated by the averaging of the two most current semi-annual Compliance Certification, or substantially similar form, (Exhibit C) for such calendar year of noncompliance, then for each such calendar year of noncompliance, the grant for the Real property Improvements and the Personal Property Improvements shall be reduced in the following tax year by the same percentage as the deficiency in the number of employees in the leased premises at the Property. *For example*, if GRANTEE hires and retains ninety percent (90%) of the minimum number of Full-Time Jobs in the leased premises at the Property in a given year, GRANTEE shall be entitled to ninety percent (90%) of its ad valorem real and personal property tax abatement for the Property for the following year.

However, should GRANTEE fail to hire and retain at least fifty percent (50%) of the minimum number of Full-Time Jobs in the leased premises at the Property in any year of the Grant Term, (the "Minimum Threshold") then, at the option of City, this failure may be grounds for termination of this Agreement. Said termination shall be effective for the calendar year during which the number of permanent Full-Time Jobs in the leased premises at the Property as required by this Agreement has not been met as required.

Upon termination, any and all taxes otherwise granted for that calendar year and all previously granted taxes under this Agreement shall be recaptured by City from GRANTEE and City shall be entitled to the payment of such recaptured taxes from GRANTEE within sixty (60) calendar days from the date it notifies GRANTEE in writing of termination of this Agreement.

7. Occupy and use the Project Site for its Business Activities for the Term of this Agreement (defined below).
 8. Comply with all other applicable terms of this Agreement and all other State and local agreements applicable to the Project.
- B. GRANTEE covenants and agrees that it shall offer all of its non-temporary, full-time employees employed at the Project Site and their eligible dependents the opportunity to participate in a healthcare benefits package that is substantially similar to the healthcare benefits package offered to similarly situated employees of GRANTEE at GRANTEE's other locations. A copy of GRANTEE's intended benefits package shall be attached to this Agreement as Exhibit B. The parties acknowledge and agree that the intended benefits package may change from time to time in accordance with the applicable benefits market and any applicable changes in law.
- C. GRANTEE covenants and agrees that it shall comply with all applicable federal and state laws governing the employment relationship between employers and employees, with respect to the employees at the Project Site.
- D. GRANTEE covenants and agrees that it shall conduct its Business Activities at the Project Site in accordance with all applicable federal, state and local laws.
- E. GRANTEE shall construct, or cause to be constructed, the real property improvements on the Project Site in accordance with all applicable federal, state and local laws including, but not limited to, Texas Commission on Environmental Quality regulations, Bexar County and City of San Antonio laws, Building Codes and ordinances, Historic Preservation and Urban Design ordinances, flood, subdivision, building, electrical, plumbing, fire and life safety codes and regulations, current and as amended.
- F. Except as provided herein, GRANTEE covenants and agrees that it shall use the Project Site only to conduct its Business Activities. Without additional consent or approval by the City Council, a parent, subsidiary or affiliate organization of GRANTEE or new entity created as a result of a merger, acquisition, or other corporate restructure or reorganization of GRANTEE, or any component thereof (hereinafter, a "Related Organization") may occupy

and use the Project Site for such Related Organization's normal business activities, so long as such business activities are the same as the Business Activities defined in this Agreement and such Related Organization has assumed all obligations of this Agreement by written assumption or assignment in a document acknowledged by GRANTOR. Except as authorized above, GRANTEE covenants and agrees not to change the principal use of the Project Site without prior approval by the City Council, as evidenced in a duly approved ordinance. Any change shall be deemed a material default of this Agreement.

- G. GRANTEE covenants and agree that they shall maintain the Project Site and any constructed improvements in good repair and condition during the Term of this Agreement, normal wear and tear and damage by fire or other casualty not caused as a result of the negligence, intentional act or misconduct of GRANTEE excepted.
- H. Upon five (5) business days prior notice to GRANTEE by GRANTOR, GRANTEE covenants and agrees that it shall allow designated representatives of GRANTOR access to the Project Site during normal business hours for inspection to determine if the terms and conditions of this Agreement are being met. This inspection is independent of GRANTOR's police powers to inspect for purposes of assuring compliance with applicable City Codes and Ordinances. The City's access to GRANTEE's books and records will be limited to information necessary to confirm the information provided by GRANTEE in its most recently submitted Compliance Certificate (further defined below). Any disclosed information that is not required by law to be made public shall be kept confidential by GRANTOR. Should any good faith dispute or question arise as to the validity of the data provided on any Compliance Certificate, GRANTOR reserves the right to require GRANTEE to obtain at GRANTEE's cost, an independent firm to verify the information. GRANTOR representatives may be accompanied by GRANTEE representatives and such inspections shall be conducted in such a manner as to (i) not unreasonably interfere with the operation of the Business Activities; and (ii) comply with GRANTEE's reasonable safety and security requirements.
- I. GRANTEE covenants and agrees that it shall provide the City's Director of Economic Development Department with a semi-annual certification from an officer of GRANTEE (a "Compliance Certificate") on or before January 31st and July 31st of each year during the Term of this Agreement, attesting to, as of the preceding December 31st and June 30th respectively (each a "Reporting Period"): (i) the amount invested as of such date by GRANTEE in real property improvements and personal property improvements; (ii) the number of Full-Time Jobs maintained as of such date by GRANTEE at the Project Site; and (iii) compliance with the requirements of this Agreement with respect to the wage thresholds and healthcare benefits offered to all Full-Time Jobs and their respective eligible dependents. GRANTEE shall also submit this information to the GRANTOR upon request, as deemed necessary by GRANTOR, during the Term of this Agreement; provided, that, any such request shall not exceed two (2) within a calendar year (exclusive of the required bi-annual Compliance Certificates). The Compliance Certificates provided shall be on the form set forth in, or substantially similar to the form set forth in, Exhibit C (attached hereto and incorporated herein), as amended.

- J. GRANTEE covenants and agrees to make good-faith efforts, subject in all cases to GRANTEE's usual and customary hiring policies and applicable law, to hire a minimum of twenty-five percent (25%) of its employees from local residents. "Local" is defined, for the purposes of this Agreement, as an employee whose principal residence is located within the incorporated city limits of the City of San Antonio or within the county limits of Bexar County.

Additionally, GRANTEE covenants and agrees to work with GRANTOR to utilize the City's Ready to Work workforce training program to recruit and hire employees. For those positions to be created pursuant to this Agreement for which GRANTEE engages in recruitment, GRANTEE shall coordinate with City to market those positions to Ready to Work program participants. GRANTEE shall interview any such program participant that applies for a position and meets the minimum qualifications. It shall not be deemed a default if during any Reporting Period GRANTEE fails to meet the local resident or workforce training requirement, provided, that, GRANTEE provides in the applicable Compliance Certificate a detailed explanation regarding its good-faith efforts to satisfy such requirement.

- K. GRANTEE covenants and agrees to notify GRANTOR in writing at least ninety (90) days prior to any sale, transfer, lease or sub-lease of the Project Site during the Term if such leases, sub-leases, or similar licenses or occupancy agreements will result in a relocation of GRANTEE and GRANTEE's Business Activities.
- L. GRANTEE covenants and agrees to notify GRANTOR in writing at least ninety (90) days prior to any plan to relocate or cease its Business Activities at the Project Site for a period exceeding thirty (30) days. Failure to provide the required notification shall render GRANTEE in material default of this Agreement and subject GRANTEE to the termination of this Agreement and recapture of all disbursed funds.
- M. GRANTEE and its landlord, _____, shall not allow their ad valorem taxes on the land, real and personal property or inventory and supplies (the "Taxes") to become delinquent. GRANTEE shall not receive any Grant Funds (as defined below) for any Tax Year that the Taxes remain unpaid.

SECTION 3. ECONOMIC DEVELOPMENT PROGRAM GRANT.

- A. **Economic Development Program Grant.** GRANTOR is providing GRANTEE with an Economic Development Program Grant. The amount of the grant shall be equivalent to fifty-percent (50%) of GRANTOR's portion of ad valorem taxes for the real and personal property improvements at the Project Site (the "Grant Funds"), disbursed annually as described below for a period of five-years commencing January 1, 2022. For the purpose of calculating the Grant Funds disbursement, the base year for calculating the value of the real property improvements and personal property improvements shall be January 1, 2021 (the "Base Year Value"). GRANTOR acknowledges that this Agreement only provides for the reimbursement of real property improvement taxes and personal property improvement taxes for property brought onto the Project Site after the execution of this Agreement and over the Base Year Value amount. GRANTOR acknowledges and agrees that the Base

Year Value of the real property improvements and personal property improvements and the tax levy based on said Base Year Value of the real property improvements and personal property improvements shall not decrease, but taxes may increase and that the amount of property taxes paid by GRANTEE and _____[LANDLORD NAME]_____ to the GRANTOR attributable to the Project Site during the Term of this Agreement shall not be less than the Base Year Value, except in the event of casualty or condemnation of the Project Site. The Grant Funds shall be used for the sole purpose of defraying costs associated with undertaking the Project.

- B. **Grant Disbursement.** Following execution of this Agreement by the Parties, the GRANTOR will make the annual Grant Fund payment available to GRANTEE not more than sixty (60) days following GRANTEE's submission of an invoice clearly evidencing that all taxes owed on the Project Site, including real property taxes and personal property taxes have been paid to the Bexar County Tax Assessor for the calendar tax year in which GRANTEE is seeking a reimbursement. GRANTEE may submit for the first reimbursement of GRANTOR's portion of taxes paid following the payment by GRANTEE's Tax Year 2022 taxes.
- C. **Recapture of Program Grant.** Should GRANTEE default on any of the terms of this Agreement, GRANTOR shall have the right to terminate this Agreement in accordance with Section 15 below and recapture all Grant Funds disbursed by GRANTOR to GRANTEE after written request delivered to GRANTEE, which written request will afford GRANTEE a 60-day opportunity to either correct the failure resulting in the recapture right or to pay back any Grant Funds previously advanced.

SECTION 4. AGREEMENT PERIOD

The term of this Agreement shall commence on _____, 202_ and shall continue in full force and effect for a period of nine (9) years (the "Term") unless terminated pursuant to the provisions of Section 15. The period when grant disbursement will occur shall commence on January 1, 2022 and continue for a period of five (5) years from the Effective Date ("Grant Term"), unless terminated as otherwise provided herein. The period when no further grants are to be made hereunder and GRANTEE remains subject to the terms hereof, including termination and recapture, shall commence upon the expiration of the Grant Term and continue for a period of five (4) years ("Recapture Term"), unless terminated as otherwise provided herein.

SECTION 5. DEPARTMENT OBLIGATIONS

- A. GRANTOR will make an Economic Development Program Grant available annually to GRANTEE under the terms and conditions of this Agreement.
- B. GRANTOR will not be liable to GRANTEE or other entity for any costs incurred by GRANTEE. GRANTOR's sole obligation is to make Grant Funds available to GRANTEE for annual disbursement under the terms and conditions of this Agreement.

- C. GRANTOR shall assign GRANTEE a single point of contact to assist in the expedited permitting and inspection of the Project Site.

SECTION 6. RETENTION AND ACCESSIBILITY OF RECORDS

- A. Retention. GRANTEE shall maintain written and/or digital records and supporting documentation (the "Records") relating to and sufficient for City to reasonably determine: 1) the amount of Required Capital Investment at the Project Site; 2) the hire and termination dates of each Full-Time Job at the Project Site; and 3) employee records sufficient to determine if they live within Bexar County when hired; (4) the creation, maintenance and retention of Full-Time Jobs at the Project Site; (5) the fulfillment of all obligations of GRANTEE under this Agreement; and (6) the wages and healthcare benefits offered to all Full-Time Jobs at the Project Site. GRANTEE shall retain such records and any supporting documentation through the end of the Term. Additionally, GRANTEE shall retain records pertaining to the amount of the required capital investment in real and personal property at the Project Site and any supporting documentation from and after the commencement of the term of this Agreement and the date which falls 4 years after the expiration of the Term of this Agreement.
- B. Access. Upon at least five (5) business days' prior notice to GRANTEE, GRANTEE shall allow designated representatives of GRANTOR access to the Records at the Project Site or such other location in Bexar County where the Records are kept during normal business hours for inspection to determine if the obligations of GRANTEE hereunder and the terms and conditions of this Agreement are being met by GRANTEE. If the Records are kept in any location outside of Bexar County, GRANTEE shall provide access to GRANTOR to inspect the Records within Bexar County. Any information that is prohibited by law to be made public shall be kept confidential by GRANTOR to the extent permitted by the Public Information Act. Should any good faith dispute or question arise as to the validity of the data inspected, GRANTOR reserves the right to require GRANTEE to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of GRANTEE. The rights to access the Records shall continue through the Term of this Agreement. Failure to provide reasonable access to the Records to authorized GRANTOR representatives shall give GRANTOR the right to suspend or terminate this Agreement as provided for herein, or any portion thereof, for reason of default, and to exercise GRANTOR's right to recapture all disbursed grant funds. GRANTEE may require GRANTOR's representatives to be accompanied by GRANTEE representatives and such inspections shall be conducted in such a manner as to (a) not unreasonably interfere with the operation of Business Activities at the Project Site, and (b) comply with GRANTEE's reasonable security requirements.

SECTION 7. MONITORING

- A. GRANTOR reserves the right to confirm GRANTEE's compliance with the terms and conditions of this Agreement by periodic monitoring, including Project Site visits and review of Compliance Reports. GRANTOR will provide GRANTEE with a written report

of the monitor's findings, if any. 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.

SECTION 8. CONFLICT OF INTEREST

- A. GRANTEE shall use reasonable business efforts to ensure that no employee, officer, or individual agent of GRANTEES shall participate in the selection, award or administration of a subcontract supported by funds provided hereunder if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: (1) the employee, officer, or individual agent; (2) any member of his or her immediate family; (3) his or her partner; or, (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract and the relationship calls for payments to be made to such subcontractor on terms which are greater than those which are customary in the industry for similar services conducted on similar terms. GRANTEE shall comply with Chapter 171, Texas Local Government Code as well as the GRANTOR's Code of Ethics.

SECTION 9. 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 9 in all agreements associated with the funds made available through this Agreement unless such agreements were entered into before the date of this Agreement.

SECTION 10. LEGAL AUTHORITY

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

SECTION 11. 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 this Agreement. 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 of which GRANTEE is actually aware, 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 of or settlements relating to, or failure to comply with, federal and state regulations.

- B. GRANTEE acknowledges that GRANTOR is a political subdivision of the State of Texas and is subject to, and complies with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001 et. seq., and the remedies authorized therein regarding claims and causes of action that may be asserted by third parties for accident, injury or death.
- C. This Agreement shall be interpreted according to the Constitution and the laws of the State of Texas, without giving effect to conflict of law rules. For purposes of litigating any dispute that arises directly or indirectly from the relationship of the parties resulting from this Agreement, the parties hereby submit to and consent to the exclusive jurisdiction of the State of Texas and agree that such litigation shall be conducted only in the courts of Bexar County, Texas, or the federal courts for the United States for the Western District of Texas, and no other courts, regardless of where this Agreement is made and/or to be performed.

SECTION 12. ATTORNEY'S FEES

In the event either party defaults under any of the provisions of this Agreement, and should the non-defaulting party employ attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees to pay to the non-defaulting party reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting party.

SECTION 13. CHANGES AND AMENDMENTS

- A. Except as provided below, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment hereto in writing and executed by both parties to this Agreement. The Director of the Economic Development Department, or any successor City department, shall have the ability, without further City Council approval, to execute amendments for minor changes to this Agreement and to implement the remedies made available to City hereunder. Any substantial changes to this Agreement shall require City Council approval.
- 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 in Texas Local Government Code Chapter 380, 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. In the event that GRANTOR defaults on any material term of this Agreement, GRANTOR may suspend the payment of Grant Funds until such time as GRANTOR determines that the default has been cured. In such case, GRANTOR shall provide GRANTEE with written notification as to the nature of the default and GRANTOR shall have a sixty (60) day period from the date of GRANTOR's written notification to cure the identified default. Should GRANTEE fail to cure any default within this period of time, the GRANTOR may, following written Notice of Suspension to GRANTEE, suspend this Agreement in whole or in part by withholding further payments to GRANTEE. 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.

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

- B. In the case of a default that occurs 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 reasonable 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. GRANTOR shall not be liable to GRANTEE or to GRANTEE's creditors for costs incurred during any term of suspension of this Agreement.
- D. In addition to a suspension as a result of default, the Parties may mutually agree to a full or partial suspension of the terms and conditions of this Agreement should the Parties agree circumstances require such suspension and the suspension does not exceed one (1) year.

SECTION 15. TERMINATION

- A. GRANTOR shall have the right to terminate this Agreement should GRANTEE commit a default of any material term and such default remains uncured past any applicable cure period. Additionally, GRANTOR may terminate this Agreement if, in its sole discretion, GRANTOR determines that GRANTEE cannot cure such default in any reasonable amount of time. Such right of termination shall be available to GRANTOR independent of GRANTOR's right to suspend and may be exercised by GRANTOR without having previously suspended the Agreement under Section 14. GRANTOR shall issue GRANTEE a written Notice of Termination in which case the GRANTOR may: (1) withhold further payments to GRANTEE; and (2) recapture any and all Grant Funds disbursed to GRANTEE by GRANTOR. 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. Upon the issuance of a Notice of Termination, GRANTEE shall have thirty (30) days to repay GRANTOR the amount of disbursed Grant Funds GRANTEE has received from the commencement of this Agreement to the date of the Notice of Termination.
- B. In addition to a default of a material term of this Agreement, this Agreement may be terminated in whole or in part for any of the following:
 - 1. By the GRANTOR (with the written consent of the GRANTEE), in which case the two parties shall agree upon the termination conditions, including the repayment of funds, the effective date, and, in the case of partial termination, the portion to be terminated; or
 - 2. By GRANTEE upon written notification to the GRANTOR, setting forth the reasons of such termination, a proposed pay-back plan of any funds granted, 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 and seek repayment of all Grant Funds.

SECTION 16. SPECIAL CONDITIONS AND TERMS

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. DEBARMENT

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

SECTION 18. 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 agreements 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 19. NON-ASSIGNMENT

Other than to a Related Organization, this Agreement is not assignable without the written consent of GRANTOR and the passage of a City Ordinance approving such assignment. Any other attempt to assign the Agreement shall not relieve GRANTEE from liability under this Agreement and shall not release GRANTEE from performing any of the terms, covenants and conditions herein. GRANTEE shall be held responsible for all funds received under this Agreement. Notwithstanding the foregoing, GRANTEE may assign the Agreement, upon consent of GRANTOR, which shall not be unreasonably withheld or delayed, in conjunction with a sale or merger of the company so long as the entity that will succeed to GRANTEE's rights under this Agreement assumes in writing all of GRANTEE's obligations hereunder.

SECTION 20. 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 21. AUTHORIZED RELIEF FROM PERFORMANCE (*Force Majeure*)

GRANTOR may grant temporary relief from performance of this Agreement if 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 obtain release based upon *force majeure*, GRANTEE must file a written request with the GRANTOR. Should

GRANTOR grant temporary relief to GRANTEE, it shall in no case relieve GRANTEE from any repayment obligations as specified in this Agreement.

SECTION 22. NOTICE

Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if: (a) delivered in person to the address set forth herein below for the party to whom the notice is given; (b) placed in the United States mail with postage prepaid, return receipt requested, properly addressed to such party at the address hereinafter specified; or (c) deposited, with fees prepaid, into the custody of a nationally recognized overnight delivery service such as FedEx, addressed to such party at the address hereinafter specified. Any notice mailed in the above manner shall be effective two (2) business days following its deposit into the custody of the United States Postal Service or one (1) business day following its deposit into the custody of such nationally recognized delivery service, as applicable; all other notices shall be effective upon receipt. From time to time, either party may designate another address for all purposes under this Agreement by giving the other party no less than ten (10) calendar days advance written notice of such change of address in accordance with the provisions hereof.

TO GRANTOR:

- If mailed:

Economic Development Department
Attn: Director
P.O. Box 839966
San Antonio, Texas 78283-3966

TO GRANTEE:

- If by personal or overnight delivery:

Economic Development Department
Attn: Director
Frost Bank Tower
100 W. Houston St., 19th Floor
San Antonio, Texas 78205

SECTION 23. INCORPORATION OF EXHIBITS

Each of the Exhibits and 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:

Exhibit A: Project Site Description
Exhibit B: Employee Benefits
Exhibit C: Compliance Certification Form

Signatures appear on next page.

WITNESS OUR HANDS, EFFECTIVE as of _____, 2021:

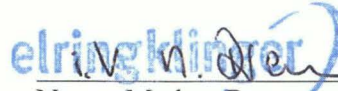
GRANTOR:

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

Erik Walsh
City Manager

GRANTEE:

ELRING KLINGER USA
a Delaware Corporation



Name: Markus Braun
Title: Director Tax
ElringKlinger AG
Postfach 11 53, D-72573 Dettingen/Erms
Max-Eyth-Straße 2, D-72581 Dettingen/Erms

LANDLORD

Name: _____
Title: _____

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

EXHIBIT A
Project Site Description

EXHIBIT B
Employee Benefits

EXHIBIT C
Compliance Certification Form