

AN ORDINANCE 2008-05-01-0351

AUTHORIZING THE TRANSFER OF \$522,612.00 FROM THE GENERAL FUND TO THE ECONOMIC DEVELOPMENT INCENTIVE FUND; AND AUTHORIZING AN ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT IN THE AMOUNT OF \$400,000.00 WITH HILL COUNTRY BAKERY LOCATED IN DISTRICT 5.

* * * * *

WHEREAS, in January 2008, the City received \$823,758.00 as repayment of abated taxes resulting from the termination of a Tax Phase-In Agreement with Oberthur Gaming Technologies; and

WHEREAS, of that amount, \$522,612.00 was transferred into the General Fund and \$301,145.00 was allocated to debt service; and

WHEREAS, City staff is now requesting that \$522,612.00 be transferred from the General Fund into the Economic Development Incentive Fund (the "EDIF") to provide additional funds to support economic development projects; and

WHEREAS, Hill Country Bakery L.L.C. ("HCB") is currently undertaking an economic development project in City Council District 5 comprised of the expansion of its manufacturing plant, renovation of an existing 63,000 sq. ft. building and the addition of a 40,000 sq. ft. freezer and loading docks; and

WHEREAS, as a result of the expansion, HCB intends to add approximately 175 full-time production employees and to grow to a cumulative total of 400 employees by 2011; and

WHEREAS, upon hiring, each employee receives 20 hours of training in food safety, state-of-the-art manufacturing practices, and standard operating procedures and production employees receive an additional 80 hours of training in sanitation, warehousing, mixing, depositing, depanning, packaging, shipping and receiving; and

WHEREAS, HCB also intends to undertake public infrastructure and neighborhood improvements such as new sidewalks, curbs, fencing, and landscaping that will enhance the safety and appeal of the surrounding neighborhood; and

WHEREAS, HCB has requested an Economic Development Program Grant to assist in defraying the costs associated with the public improvements and employee training; and

WHEREAS, because the Project is anticipated to promote local economic development and stimulate business and commercial activity in the City of San Antonio, City staff is recommending approval of an Economic Development Program Grant in the amount of \$400,000.00; **NOW THEREFORE**:

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

SECTION 1. The transfer of \$522,612.00 from the General Fund to the Economic Development Incentive Fund and the terms and conditions of an Economic Development Grant Agreement with Hill Country Bakery, L.L.C. are hereby approved.

SECTION 2. The City Manager, or her designee, is authorized to execute an Economic Development Grant Agreement with Hill Country Bakery, L.L.C. in an amount not to exceed \$400,000.00. A copy of the Agreement in substantially final form, is attached as "Attachment I" and made a part of this ordinance. A final copy of the Agreement will be attached when executed.

SECTION 3. The amount of \$522,612.00 is authorized to be transferred from Fund 11001000, General Ledger 6102100, Internal Order No. 390000000381 to Fund 29059000, General Ledger 6101100, Internal Order No. 311000000381.

SECTION 4. Payment not to exceed \$400,000.00 is authorized to be appropriated and encumbered in Fund 29059000 Economic Development Initiatives, Cost Center 1604010001, General Ledger 5201040, entitled "Fees to Professional Contractors" and is authorized to be made payable to Hill Country Bakery when the purchase order is issued.

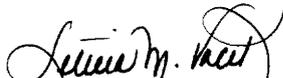
SECTION 5. The financial allocations in this ordinance are subject to approval by the Director of Finance for the City of San Antonio. The Director may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this ordinance

SECTION 6. This ordinance shall become effective ten days following its passage.

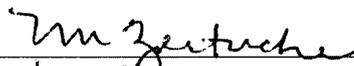
PASSED AND APPROVED this 1th day of MAY 2008.

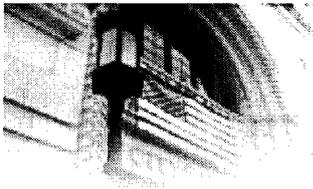

M A Y O R
PHIL HARDBERGER

ATTEST:

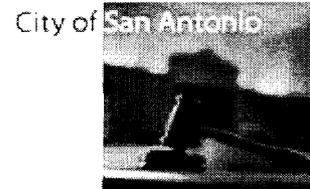

City Clerk

APPROVED AS TO FORM: _____


for City Attorney



Request for
COUNCIL
ACTION



Agenda Voting Results - 23

Name:	5, 6, 7, 8, 9, 10, 13, 14, 16, 17, 18, 19, 21, 23, 25, 26, 27, 28A, 28B, 28C, 28D, 28E, 28F, 28G						
Date:	05/01/2008						
Time:	09:48:03 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing the transfer of \$522,612.00 from the General Fund to the Economic Development Incentive Fund (EDIF); and authorizing an Economic Development Program Grant Agreement in the amount of \$400,000.00 with Hill Country Bakery located in Council District 5. [Pat DiGiovanni, Deputy City Manager; Robert Peche, Director, Economic Development]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1		x				x
Sheila D. McNeil	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				
Lourdes Galvan	District 5		x				
Delicia Herrera	District 6		x				
Justin Rodriguez	District 7		x				
Diane G. Cibrian	District 8		x			x	
Louis E. Rowe	District 9		x				
John G. Clamp	District 10		x				

STATE OF TEXAS

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

COUNTY OF BEXAR

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 HILL COUNTRY BAKERY, L.L.C., a limited liability corporation, hereinafter referred to as "GRANTEE."

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

WHEREAS, in accordance with City of San Antonio 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 comprised of the expansion of its manufacturing facility located within the city limits of the City of San Antonio, and such expansion is anticipated to add over a period of three years approximately 175 full-time production employees; and

WHEREAS, along with its efforts to expand, GRANTEE is making improvements to public infrastructure and the surrounding neighborhood such as providing new sidewalks, curbs, fencing, and landscaping; and

WHEREAS, GRANTEE has requested an economic development grant for the purpose of deferring costs associated with the expansion and public infrastructure improvements and GRANTOR has identified funds available in the form of an economic development program grant for GRANTEE to use to carry out this purpose; and

WHEREAS, the City Council of GRANTOR authorized the City Manager or designee to enter into this Agreement with GRANTEE as reflected in Ordinance No. 2008-05-01-____, passed and approved on May 1, 2008 and GRANTOR now wishes to engage GRANTEE to carry out such 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

GRANTEE shall expand its manufacturing facility located at 122 Stribling, San Antonio, TX 78207, add approximately 175 full-time production employees to its existing total of 225 full-time employees over a period of three (3) years for a total of 400 full-time jobs and provide public infrastructure and neighborhood improvements consisting of new sidewalks, curbs, fencing, and landscaping in the immediate vicinity that will enhance neighborhood safety and appeal (together these tasks shall be referred to as the "Project"). 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-two million three hundred thousand dollars (\$22,300,000.00) to expand infrastructure and production capacity at its manufacturing facility located at 122 Stribling St., San Antonio, TX 78207. Such expansion shall include the renovation of an existing 63,000 sq. ft. building while adding 40,000 sq. ft. for a freezer and loading dock. Additional improvements may include the acquisition of a tunnel oven and/or other associated equipment.

B. Public Improvements. GRANTEE shall expend a minimum of two hundred thousand dollars (\$200,000.00) to make public improvements such as widening and extending the existing sidewalks along Stribling St. from S. Flores to Mockert and to provide landscaping, fencing, and curb improvements to the general area.

C. Jobs Creation/Retention. GRANTEE shall hire an additional one hundred and seventy-five (175) employees to the existing total of 225 full-time employees over a period of three years as follows:

1. Fifty (50) full-time employees by December 31, 2009
2. An additional fifty (50) full-time employees by December 31, 2010 for a cumulative total of one hundred and twenty-five (125) employees.
3. An additional seventy-five (75) full-time employees by December 31, 2011 for a cumulative total of one hundred and seventy-five (175) employees.

Upon hiring, each employee shall receive 20 hours of training in food safety, state-of-the-art manufacturing practices, and standard operating procedures. Production employees shall receive an additional 80 hours of training in sanitation, warehousing, mixing, depositing, depanning, packaging, shipping and receiving.

SECTION 3. AGREEMENT PERIOD

This Agreement shall commence upon execution and shall terminate upon final disbursement of funds but in no case later than December 31, 2014.

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 Section 2 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 disbursements shall be as follows:

1. First Disbursement of two hundred thousand dollars (\$200,000.00) upon execution of this Agreement and submission of invoices by GRANTEE for all public improvements performed in accordance with Section 2(B).
 2. Second Disbursement of \$75,000.00 following GRANTEE's certification of the hiring of fifty (50) employees under Section 2 (C) (1) for a total of 275 full-time employees created and retained prior to December 31, 2009.
 3. Third Disbursement of \$75,000.00 following GRANTEE's submission of certification of the hiring of an additional fifty (50) employees under Section 2 (C) (2) for a total of 325 full-time jobs created and retained prior to December 31, 2010.
 4. Fourth Disbursement of \$50,000.00 following GRANTEE's submission of certification of the hiring of an additional seventy-five (75) employees under Section 2 (C) (3) for a total of 400 full-time jobs created and retained prior to December 31, 2011.
- B. If the GRANTEE accelerates its hiring of new employees prior to the dates established in Section 5A and provides certification of the creation new jobs and retention of the existing 225 jobs, then GRANTEE may request the disbursement of grant funds at the rate of \$1,500.00 per new job created under Section 5.A.1. and 5.A.2. and at the rate of \$667.00 per new job created under Section 5.A.3. by providing appropriate job certification, subject to approval by the GRANTOR and the availability of funds.
- C. If the GRANTEE does not create 175 new full-time jobs and maintains the existing number of 225 full-time jobs by December 31, 2011, the GRANTEE may request in writing an extension until December 31, 2012 to achieve these job creation/retention levels in order to receive the full disbursement of grant funds.
- D. GRANTOR is not liable to GRANTEE or other entity for any costs incurred by GRANTEE.
- E. GRANTEE is only entitled to funds for actual allowable costs incurred. Actual allowable costs shall be determined in accordance with this Agreement by GRANTOR, but may be defined as direct costs incurred in the construction of public improvements as described in Section 2 (B) or job training as described in Section 2 (C). Should GRANTOR determine after payment that a cost is unallowable under this Agreement, GRANTEE shall reimburse GRANTOR for such payment not later than 30 days after notification by GRANTOR.
- F. GRANTEE will provide all new full-time employees the same health care and benefits plan that is currently provided to existing employees as identified in Exhibit A.

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) four [4] 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 four (4) 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.

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 Agreement shall be interpreted according to the Constitution and the laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be 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

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 determines 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 that are the subject of this Agreement to a location outside the vicinity of 122 Stribling, San Antonio, TX 78207 (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.

F. Termination and Recapture of Grant Funds in 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 terminations, 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. Recapture of Grant Funds Following Term of Agreement. If the Term expires and GRANTOR Relocates or ceases to conduct business activities 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 2013:
GRANTOR may recapture eighty-percent (80%) of Grant Funds disbursed under Section 5(A)(2), (3) and (4).
2. GRANTEE relocates or ceases to conduct business in Year 2014:
GRANTOR may recapture sixty-percent (60%) of Grant Funds disbursed under Section 5(A)(2), (3) and (4).
3. GRANTEE relocates or ceases to conduct business in Year 2015:
GRANTOR may recapture forty-percent (40%) of Grant Funds disbursed under Section 5(A)(2), (3) and (4).

Grant funds disbursed under Section 5(A)(1) are not subject to recapture following the completion of the public improvements described in Section 2 (B).

F. 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 under or 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.

E. 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 (RESERVED)

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.

D. As subcontracts and supplier agreements become necessary to carry out the requirements of this Agreement, GRANTEE covenants to comply with the GRANTOR's SBEDA Program, currently identified under Ordinance No. _____, and as amended.

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 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. Upon the approval of the Director of Economic Development of GRANTOR of such an assignment, GRANTEE shall be released from all obligations hereunder. 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 obtain release based upon *force majeure*, the GRANTEE must file a written request with the GRANTOR.

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

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 2008-05-01-____, dated May 1, 2008, and Hill Country Bakery, LLC pursuant to the authority of its _____.

HILL COUNTRY BAKERY
a limited liability corporation

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

BY: _____
Name:
Title:

Sheryl L. Sculley
CITY MANAGER

ATTEST:

Name: _____
Title: _____

ATTEST:

Leticia Vacek
CITY CLERK

APPROVED AS TO FORM:

Michael D. Bernard
CITY ATTORNEY