

ORDINANCE NO. 2011-013

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ROBINSON, TEXAS  
ESTABLISHING AN ECONOMIC DEVELOPMENT PROGRAM PURSUANT TO  
CHAPTER 380 OF THE LOCAL GOVERNMENT CODE**

WHEREAS, the improvement and diversification of the economy in the Robinson area is a goal that should be pursued for both the current and future welfare of the citizens of the City of Robinson; and

WHEREAS, the City Council has attempted to identify ways to achieve this goal; and

WHEREAS, economic development and diversification, the elimination of unemployment or underemployment, and the development of transportation and commerce in the State of Texas are public purposes pursuant to Article III, §52-a of the Texas Constitution; and

WHEREAS, the City Council has both express and implied authority to establish a program to stimulate business and commercial activity in the City; and

WHEREAS, Chapter 380 of the *Local Government Code* authorizes the City Council to establish a program for economic development, and to stimulate, encourage and develop business location and commercial activity in the City; and

WHEREAS, the City Council finds it advisable and in the best interest of the citizens of the City to adopt an economic development program.

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROBINSON, TEXAS THAT THE ECONOMIC DEVELOPMENT PROGRAM SET FORTH HEREIN IS APPROVED AND ADOPTED AS FOLLOWS:**

I. GENERAL PROGRAM STATEMENT

1.1 The following economic development program (hereinafter "Program") is for the purpose of developing and diversifying the economy and developing transportation and commerce in the state of Texas, and, more specifically, the City of Robinson, Texas, and for the purpose of eliminating unemployment and underemployment.

1.2 All transactions and expenditures of money under this Program must be approved in advance by the City Council. No person to whom a member of the City Council is related in the prohibited degree as set forth in Chapter 573 of the *Government Code* shall be eligible to receive incentives or benefits under this Program. Likewise, no business in which a member of the City Council holds a "substantial interest" as that term is defined in Chapter 171 of the *Local Government Code* shall be eligible for incentives or benefits under this Program.

1.3 Under no circumstance shall any incentive or benefit be provided under this Program

without specific contractual protections and guarantees, and the continuing supervision of the City Council or its designee to assure: (a) the public purpose of economic development, development of transportation and/or commerce, economic diversification and the elimination of unemployment and underemployment is to be served; (b) that the public purpose is accomplished; (c) that there is sufficient protection and verifiable accountability of the handling of public money; (d) that the City receives adequate consideration in the form of economic development benefits to the City and its citizens; and (e) the City has remedies to recoup incentives from a business if it fails to meet certain performance standards set by the City Council.

1.4 Except as otherwise expressly stated herein, this Program applies to businesses to be engaged or engaging in manufacturing, assembly, warehousing/distribution, and/or other commercial enterprises, including enterprises which create or facilitate tourism, and professional and technical support businesses. However, due to the difficulty in creating appropriate performance measures for tourism, many of the incentives set forth below may not be available to a business promising increased tourism absent the business providing accompanying increases in local employment and making significant local capital investment. Thus, increased tourism will generally be treated as an indirect factor in making decisions on Program Projects.

1.5 This Program applies within the boundaries of the City of Robinson and any extraterritorial jurisdiction of the City of Robinson.

## II. ECONOMIC DEVELOPMENT POWERS

2.1 Section 380.001 of the *Local Government Code* authorizes the City to:

- a) use City employees or funds,
- b) make loans or grants of public money, and
- c) provide personnel and services of the City

to support the Program and carry out its purposes. The City may also accept contributions, gifts, or other resources to develop and administer the Program.

2.2 Possible uses of the authority provided by §380.001 of the *Local Government Code* include, but are not limited to:

- Loans, lease-purchases or other forms of financing for site acquisition or development;
- Grants to defray the cost of site acquisition or site development;
- Utility extensions or infrastructure improvements;
- “In kind” services such as site preparation using City equipment/personnel/or contractors;

- Grants/assistance for job training or re-location; and
- Waiver or rebate of permit and other fees.

2.3 Development Incentives, such as those identified in section 2.2 above, must be provided only in strict accordance with this Program. The incentives provided for any specific Program Project are determined by the City Council in its sole discretion.

### 2.3.1 Applying for Incentives

To be considered for Development Incentives, a business must provide the following information for review by the City:

- a) name of company;
- b) form of business (corporation, partnership, etc.);
- c) state of incorporation or organization;
- d) proof of authority to do business in the State of Texas;
- e) history of the business and description of its operations in other locations;
- f) management summary/biography;
- g) three (3) years of audited or equivalent financial statements<sup>1</sup>;
- h) other documentation requested, or which the business desires to submit, which addresses the business' financial ability to perform as promised and the feasibility of its proposed project;
- i) the number of jobs expected to be created or maintained, the average pay for such jobs, employee benefits to be provided, improvements to be constructed and the level of capital investment to be made, and other information showing the expected economic development benefits to the City;
- j) designated contact persons, and
- k) other information requested by the City for its due diligence review of the business and its proposed project.

### 2.3.2 Economic Development Performance Standards

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<sup>1</sup> This requirement may be waived by the City Manager.

In order to qualify for Development Incentives, a business must enter into a Program Project Agreement setting forth various Economic Development Performance Standards that the business agrees to provide and meet.

In determining the eligibility of a business for Development Incentives, and the level and type of Development Incentives to be provided, the City will consider various factors, including, but not necessarily limited to:

- a) level of capital investment,
- b) increase of the City's tax base,
- c) the number of jobs to be created and/or maintained,
- d) the level of wages and benefits for jobs created, and the total payroll,
- e) the "fit" of the business with the City's overall development concept and goals, and
- f) the opportunity for future expansions of the business.

Indirect factors that the City may consider include the expected level of purchases of products and services from local sources, indirect employment gains, environmental impact of the business, increased tourism and other relevant factors.

### 2.3.3 Program Project Agreements

As a necessary condition of any provision of Development Incentives, the business must enter into a Program Project Agreement with the City in the form and containing the terms approved by the City Council and the City's legal counsel.

A Program Project Agreement's terms must include, but are not limited to, the following:

- a) identification of Development Incentives and the terms of the payment/delivery of Development Incentives;
- b) identification of the Economic Development Performance Standards that the business must meet; and identification of deadlines for construction of improvements, start of operations, and meeting specific employment or payroll standards;
- c) remedies for the City's recovery of Development Incentives if the business fails to comply with the Economic Development Performance Standards;
- d) provision for inspections and reports determined by the City to be necessary to review the compliance of the business with the Economic Development

Performance Standards;

- e) other provisions considered necessary or proper by the City or its legal counsel;
- f) a venue provision providing that all disputes will be heard in a court of competent jurisdiction sitting in McLennan County, Texas, with Texas law to control; and
- g) a provision requiring any subsequent purchaser or assignee to accept and abide by the economic development obligations of the business and requiring the approval of the City for any assignment, which approval will not be unreasonably withheld if the assignee assumes the business' obligations to the City and is deemed financially able and competent to carry out those obligations.

2.4 Financing by the City through loans for eligible Projects will require documentation and liens/security interests substantially similar to that found in bank financings. ALL financing documents must be approved by legal counsel. In some circumstances, personal guaranties of loans may be required. Loan proceeds will be released only on a draw request basis, meaning that a draw request will have to be submitted to and approved by the City before the proceeds will be paid. Appropriate documentation of the work or items for which the draw request is made shall be required to be provided by the business and its contractors/vendors, along with lien releases/affidavits, and other items required by the City for its own protection. Any construction contract must provide for performance and payment bonds in the amount of the cost of the work, with both the business and the City as beneficiaries, and provide for at least a 5% retainage. The business must provide or cause to be provided property insurance on the financed Project in the amount of the replacement cost, which insurance must name the City as a loss payee. Liability insurance naming the City as an additional insured will also be required.

## V. OTHER PROGRAM ELEMENTS

It is the intention of the City Council that this Program shall have a broad scope in order that continued development of the City's economy can be realized. The City shall have the right and power to use any of the Development Incentives identified herein or authorized by Chapter 380 of the *Local Government Code* (whether or not identified herein) to promote economic development through eligible Projects anywhere within the City or its ETJ.

Any Project under this Program must comply with the standards and requirements set forth in this Program, Chapter 380 of the *Local Government Code*, and the Texas Constitution.

The nature and level of incentives, or whether any incentives are provided, are decisions within the sole discretion of the City Council. No promise of incentives is binding on the City unless contained in a Program Project Agreement approved by the City Council and signed by both parties.

## VI. LEVEL OF DEVELOPMENT INCENTIVES

6.1 It is difficult to establish bright-line standards for the level of Development Incentives that may be offered to a business. Thus, the determination will be made on a case-by-case basis taking into consideration the factors set forth in Section 2.3.2 above. The City may conduct or have conducted an appropriate cost/benefit analysis to aid in this determination.

6.2 The foregoing being said, some general rules are recognized:

- Development Incentives in the form of direct grants, as opposed to loans or in-kind services, will generally require that a greater level of benefit to the local economy/tax base be provided by the business;
- Provision of increased employment is preferred to increased capital investment alone, and increased employment generally must be a component of any Project;
- Although the number of jobs created is a substantial factor; the quality of the jobs is also very important. Jobs created must be quality, full-time jobs, having an average wage (broken down hourly) of at least 125% of minimum wage or \$12.00 per hour, whichever is greater, and providing access to employee medical benefits. A Project proposing the creation of higher wage jobs that provide better benefits may be given greater consideration for participation in the Program than a Project proposing to create more jobs of a lesser quality;
- The jobs created must be located within the City or its ETJ to be considered;
- Jobs to be filled by persons actually residing within or to reside within the City and its surrounding area will be given greater consideration than jobs that may be filled by persons commuting to the business from outside the Robinson area.
- Jobs retained will be considered jobs created where there is a real possibility that the jobs could be lost if incentives are not provided.
- Expansions to existing business operations can qualify as capital investment.

As previously stated, the final determination of the terms of a Program Project Agreement rests solely with the City Council.

## VII. PROGRAM ADMINISTRATION

7.1 The City Council shall have and retain control and final decision making authority over all aspects of the Program. However, as authorized by law, the City Council may appoint another entity or person for the administration of parts or all of the Program. The City Manager shall serve as the Program Administrator.

7.2 The Program Administrator's duties shall include, but not be limited to:

- identifying target businesses or industries (and coordinating with the Robinson Chamber of Commerce and the Greater Waco Chamber of Commerce to identify such prospects);
- analyzing business proposals and making recommendations to the City Council thereon;
- negotiating tentative Development Incentives and Economic Development Performance Standards with the businesses in coordination with legal counsel for presentation to the City Council;
- analyzing the feasibility of proposed Projects and the ability of the businesses to perform;
- recommending Development Incentives, Economic Development Performance Standards, and other terms of a Program Project Agreement to the City Council; and
- assisting in the monitoring and evaluation of business compliance with Economic Development Performance Standards.

## VIII. MONITORING OF BUSINESS COMPLIANCE

8.1 The business must provide all records and reports reasonably requested by the City or its Program Administrator to determine the business' compliance with the Program Project Agreement.

8.2 The business must allow the City, the Project Administrator, or any representative or consultant of either of them, to inspect the business premises and improvements thereon (or improvements in progress), to determine compliance of the business with the Program Project Agreement.

8.3 Substantial defaults may be enforced by action up to and including complete cancellation of Development Incentives and/or recovery of previously provided Development Incentives, and/or re-taking of property by the City if the sale or lease of property was part of the Project. Material defaults may result in suspension of incentives and/or pro rata recovery of incentives already provided. The terms of the default provisions will be as negotiated in the Program Project Agreement. However, all Program Project Agreements must contain adequate default provisions to comply with applicable law.

A substantial default means a default under the Program Project Agreement by the business which is so great or pervasive as to substantially deny the City the economic development benefits promised.

A material default is a default by the business in providing the economic development benefits promised in the Program Project Agreement that is not a substantial default, or the failure of the business to comply with any other material provisions of the Program Project Agreement after written notice and thirty days opportunity to cure. Persistent material defaults may be declared a substantial default.

IX. SEVERABILITY

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unlawful, such decision shall not affect the validity of the remaining portions of this Order, and all the remainder of this Ordinance not so declared to be invalid shall continue to be in full force and effect. The City Council hereby declares that it would have entered this Ordinance and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

PASSED AND SIGNED THIS 8 DAY OF November, 2011.

CITY OF ROBINSON, TEXAS

By:   
Mayor

ATTEST:

  
City Secretary