

2015-65R - MAY 5, 2015 COUNCIL MEETING DRAFT CONTRACT  
WITHOUT REDLINE (CLEAN COPY) AMENDMENTS\_052615

**AGREEMENT BETWEEN THE CITY OF SAN MARCOS AND  
THE GREATER SAN MARCOS ECONOMIC DEVELOPMENT CORPORATION  
FOR ECONOMIC DEVELOPMENT SERVICES**

This Agreement is Between the City of San Marcos and the Greater San Marcos Economic Development Corporation for Economic Development and Small Business Economic Development Services (the "Agreement") is dated and effective June 1, 2015, and is between the City of San Marcos, Texas, a Texas municipal corporation (the "City") and the Greater San Marcos Economic Development Corporation (the "Corporation").

**AGREEMENT:**

**SECTION 1. OBLIGATIONS OF THE CORPORATION**

**A. Provision of Professional Services.** The Corporation agrees to provide professional economic development services for the City. The Corporation agrees to provide necessary skilled and knowledgeable personnel, equipment, and supplies for the administration and operation of the economic development services provided under this Agreement, in accordance with the budget approved by the City Council. The Corporation agrees that the size, assignments and roles of Corporation staff members performing services under this Agreement will be subject to evaluation and approval by the Greater San Marcos Economic Development Corporation in response to work demands, individual skill sets, and the performance measures as approved by the city council in the Economic Development Strategy and Implementation Plan.

**B. Mission and Goals.** The mission of the Corporation's economic development services will be to enhance and diversify the San Marcos area economy. The Corporation agrees to use its best efforts to accomplish this mission by implementing the program approved by the City Council in the Economic Development Strategy and Implementation Plan. Areas of specific focus and interest for the purposes of this agreement include:

1. Supporting Quality Growth in Export-Oriented Target Sectors through small business development, entrepreneurship, business attraction and business retention efforts
2. Optimizing the local talent base, including workforce development initiatives.
3. Promoting San Marcos as a location for business
4. Accommodating and Managing Quality Growth
5. Creating Destination Appeal.

**C. Small Business Development.** The Corporation will continue its efforts in working with prospects that are small businesses and, in doing so, commit substantial resources in terms of time, personnel and funds to the growth of local SME (small and medium enterprises) of all sizes including, but not limited to micro-business. For the purpose of this agreement a small or micro business shall mean any business meeting the Small Business Administration's (SBA) definition.

**Objective:** To diversify and grow the regional economy by working with local micro, small and medium enterprises (SMEs) in primary industry sectors by

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evaluating their needs and assisting them to find appropriate resources.

**Deliverables:**

1. Facilitate two (2) educational events that communicate the efforts of the City to the public regarding their collaborative efforts in working towards established economic development goals
2. Utilize Business Retention & Expansion (BRE) program to discover challenges and opportunities faced by local SMEs and provide report to City Manager for review and direction.
3. Facilitate two (2) educational events focused on entrepreneurship in partnership with the city and other local partners.

**D. Business Retention and Expansion (BRE).** The Corporation, through the President/ CEO, agrees to function as the City's initial contact for current employers and businesses in matters related to economic development and will work to diversify and grow the local economy through a targeted BRE program.

**Objective:** Execute an annual BRE strategy that identifies local firms for surveys, fills requests for assistance, and inquiries.

**Deliverables:**

1. BRE Annual Report on interviews held, surveys completed and requests for assistance filled.
2. Partner closely with local organizations to act as a resource for local businesses.

**E. Business Recruitment (Contacts and Leads).** The Corporation, through the President/ CEO, agrees to function as the City's initial contact for prospective employers and businesses in primary industry sectors in matters related to economic development and will work to diversify and grow the local economy through a targeted business recruitment program. At least monthly, the Corporation shall provide to the City Manager, or his or her designee, a written report identifying all business prospects with which it has made contact. The President/CEO will continue to pursue business leads on behalf of the City and participate in the negotiation of incentives with all such prospects. The President/CEO may also assist other municipal members of the Corporation to pursue business leads generated by such municipality provided that assisting such other municipality does not conflict with the City's pursuit of a business lead.

**Objective:** Execute an annual business recruitment strategy in target industry sectors that will generate high quality jobs for San Marcos.

**Deliverables:**

1. A minimum of 85% of all projects pursued for which the Corporation is the primary responder will be on behalf of the City. In the event that this measure is not met, Corporation will provide documentation to explain the failure to meet the 85% measure.

**F. Workforce Development.** The quality of a community's workforce is the most important competitive asset it can offer current and future businesses. The Corporation will

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continue efforts to ensure that San Marcos has the workforce needed for a diverse and growing economy.

**Objective:** Align education and training efforts with job-creation so that local citizens have the training they need to more effectively compete for knowledge-intensive industries.

**Deliverables:**

1. Establish a Workforce Training Working Group to bring stakeholders together.
2. Work with San Marcos Consolidated Independent School District on promoting accomplishments and assets.
3. Identify short-comings in current workforce training through BRE surveys and report to workforce training providers.
4. Enhance partnerships with Gary Job Corp and other stakeholders.
5. Provide quarterly report on Workforce Development strategies and activities.

**G. Office.** The Corporation agrees to maintain an office located within the San Marcos city limits that meets ADA requirements for accessibility and is staffed during regular business hours, Monday through Friday, excluding City-recognized holidays.

**H. President/CEO.** The Corporation agrees to employ a full-time President/CEO to serve as the Corporation's manager for the performance of services under this Agreement. City Council representatives will be on the search committee for the corporation's President/CEO and provide meaningful input to the process.

1. The President/ CEO will be an ex-officio, without vote, on the Economic Development San Marcos Board (EDSM Board).

2. The President/CEO will provide reports directly to the City Manager and any City nominees who serve on the Corporation Board, and will cooperate fully with the EDSM Board, the City Council and the City staff in all matters related to economic development.

3. The President/CEO will provide all relevant details including a cost/benefit analysis and a due diligence report including criteria set forth in Exhibit "C" for each prospect and proposed incentive to the EDSM Board and to the City Council at least 3 days prior to the meeting at which an incentive is to be considered.

I: City Economic Development Director. This section intentionally left blank.

**J. Quarterly Reports.** The Corporation will prepare a written quarterly report concerning issues related to economic development in the greater San Marcos region. The President/CEO will present this report to the City Manager and City Council in closed meeting to the extent needed to protect the confidentiality of information from business prospects while assuring compliance with the Texas Open Meetings Act.

**K. Funding Requests.** On or before June 15<sup>th</sup> of each year preceding the fiscal year for which City funding is requested, the Corporation will, in consultation with the

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President/CEO, develop and submit to the City for review and approval by the City Council, the Corporation's proposed budget, any changes or additions to the proposed program of work, and benchmark measurements in the Economic Development Strategy and Implementation Plan. Any proposed changes to the approved GSMP budget must be submitted to the City Council on the same day they are submitted to the GSMP Board.

**L. Financial Report; Audit.** The Corporation agrees to submit to the City an annual financial report and an audit prepared by a certified public accountant.

**M. Records.** The Corporation shall maintain complete and accurate financial records of each expenditure of funds in accordance with generally accepted accounting principles prescribed for the Corporation and, at the request of the City Manager or his designee, or of any other person, shall make the records available for inspection and review during normal business hours. The Corporation, as a recipient of public funds under this Agreement, hereby acknowledges that all of its records both in the future and in the past are subject to the disclosure requirements and exceptions provided in the Texas Public Information Act, Chapter 552, Texas Government Code. The Corporation shall promptly respond to public information requests received by the City and shall immediately notify the City Clerk of any public information request the Corporation receives from any third party. Corporation shall provide monthly detailed expense reports to the City Clerk for distribution to Council.

**N. Financial Disclosure.** Members of the Board of Directors will be subject to the provisions of Section 2.462 (d) of the San Marcos City Code, requiring annual financial disclosures by all city board members.

**O. Conflicts of Interest.** Whenever the City's approval of an incentive request recommended by the Corporation would confer a benefit upon or have an economic effect (as those terms are defined in Section 2.422 of the San Marcos City Code) on a member of the Corporation's Board of Directors, that information shall be disclosed to the City Manager as soon as the member is aware of the conflict but no later than the presentation of the proposal to the City Council for final approval and that member must recuse themselves from any Board action that would confer a benefit upon or have an economic effect on themselves. This section shall not apply to any economic interest or benefit arising after the City has executed an agreement to provide an incentive to a prospect.

**P. City Branding.** Upon the City's submission of any official City brand, slogan or logo to the Corporation, the Corporation will include the brand, slogan or logo into advertising programs initiated after the receipt of the brand, slogan or logo.

**Q. Open Meetings.** The Corporation hereby agrees to post notice of meetings of its Board of Directors and conduct such meetings in the spirit of openness and transparency. Notices and agendas for all meetings of the Board of the GSMP shall be posted on the website of the GSMP and provided to the City Clerk's Office at least 48 hours in advance of the meeting. Members of the public are invited to attend and listen to all non-executive portions of such

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meetings. The GSMP will post the minutes and agendas of the meeting within a reasonable time after the minutes are approved.

**R. Board Responsibilities.** The Partnership Board of Directors, acting as a body, by virtue of their leadership position, shall maintain a neutral posture with regard to any political activity involving elected officials, current and future, representing the Partnership's public sector investors. A standard of respect and mutual support shall be upheld by all Partnership Board members, as well. Public sector investors and their elected officials shall be treated as collaborative, supportive partners. The President and members shall not oppose any third party analysis of financial incentives or development agreements requested by the city council.

**S. Press Releases and Promotion.** All press releases and promotional materials produced by the corporation about incentives granted and projects landed in the City of San Marcos shall recognize the involvement of the San Marcos City Council and the City of San Marcos. The corporation shall cite the determining factors for a business that commences operations or expands in the city such as educational, geographical, financial, or natural assets that influenced the decision.

### **SECTION 2. OBLIGATIONS OF THE CITY**

**A. Payments.** In exchange for the services provided under this Agreement, City will pay to the Corporation \$30,000 per month

**B. Assets and Liabilities.** As of October 1, 2010, the Corporation acknowledges that the City contributed furniture, fixtures and equipment to the Corporation with a value of \$31,302.00.

**C. Board Appointments.** The City shall appoint six (6) members to the Corporation's Board of Directors. These appointees shall include the City Manager, the Mayor, the Economic Development San Marcos Chair, San Marcos Regional Airport representative and at least two elected officials. At least one elected city representative shall serve on the Nominating Committee. Per the Corporation bylaws, the Nominating Committee meets annually and includes the Chair, Vice Chair, one Board member, two Lead members not on the Board and one General member not on the Board

### **SECTION 3. TERM**

The term of this Agreement shall be from June 1, 2015 through April 30, 2016. This Agreement serves as the fourth renewal of the initial Agreement between the parties, the term of which was from October 1, 2010 through September 30, 2011 with the option to renew for up to four one year periods upon mutual agreement of the parties. The term of this fourth renewal of the Agreement shall, accordingly, be from the effective date of June 1, 2015 through April 30, 2016.

### **SECTION 4. MISCELLANEOUS**

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**A. Notices.** Notices required by this Agreement will be provided by the parties to one another by certified mail, return receipt requested, or by confirmed facsimile or email transmission, to the following addresses:

To the City:

City Manager  
City of San Marcos  
630 E. Hopkins  
San Marcos, TX 78666  
Fax: 512/396-4656  
Email: jmiller@sanmarcostx.gov

To the Corporation:

President & CEO  
Greater San Marcos Economic Development Corporation  
1340 Wonder World Drive, Suite 108  
San Marcos, TX 78666  
Fax: 512/393-3400  
Email: adrianac@greatersanmarcostx.com

If a party changes its address, facsimile number or email address for notice purposes, it will provide written notice of the new information to the other party within 10 days of the change.

**B. Non-Appropriation of Funds.** Funds for payments under this Agreement have been provided through the City budget approved by the City Council for the current fiscal year only. State laws prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. However, the cost of services covered by this Agreement is likely to be a recurring requirement, and the City anticipates including this cost as a standard and routine expense of the City to be included in each proposed budget within the foreseeable future. However, the City does not guarantee the availability of funds in future fiscal years of the City, and the City enters into this Agreement only to the extent such funds are made available in the City's adopted budgets for future fiscal years. The fiscal year for the City extends from October 1st of each calendar year to September 30th of the following calendar year.

**C. Termination.**

**1. Termination by City.** The City reserves the right to terminate this Agreement upon 30 days' written notice for any reason deemed by the City Council to serve the public interest. In the event of such termination the City will pay the Corporation those costs directly attributable to services received by the City in compliance with the Agreement prior to termination. The City will not be liable for any damages or any loss of profits anticipated to be made by the Corporation under this Agreement in connection with any such termination.



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**2. Termination by Corporation.** The Corporation may terminate this Agreement based on default by the City if the City fails to comply with any term or condition of this Agreement. The Corporation must notify the City in writing of any default. The City will take action so that the default is corrected within 30 days of receipt of the notice. If the City fails to timely correct the default, the Corporation may immediately terminate this Agreement in its entirety.

**D. Dissolution of Corporation.** Upon dissolution of the Corporation, after the payment of all debts and obligations of the Corporation, the assets of the Corporation shall be distributed to one or more exempt organizations under Sections 510 (c) (6) and 170 (c) (2) of the Internal Revenue Code as amended, or any successor provisions, or to the federal, state or local government for lawful purposes. To the extent allowed under said provisions of the Internal Revenue Code and applicable laws, such distribution shall be as follows:

1. Contributed property shall be offered to the member entity that contributed such property;
2. All other property shall be sold and the proceeds of sale distributed to qualifying exempt members in proportion to their financial contributions to the Corporation;
3. All remaining unencumbered funds shall be distributed to qualifying exempt members in proportion to their contributions to the Corporation.

**E. Authority of Signatories.** Each of the persons executing this Agreement represents that he or she has full power and authority to execute this Agreement on behalf of the party that person represents.

**F. Force Majeure.** In the event that the performance by either party of any of its obligations under this Agreement is interrupted or delayed by events outside of their control such as acts of God, war, riot, or civil commotion, then the party is excused from such performance for the period of time reasonably necessary to remedy the effects of the events.

**G. Severability.** If any word, phrase, clause, sentence, or paragraph of this Agreement is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this Agreement will continue in force if they can be given effect without the invalid portion.

**H. Corporation Bylaws.** The Corporation shall submit its bylaws and any amendments thereof to the City Council on the same day the amendments are sent to the GSMP Board of Directors as stated in the GSMP Bylaws Section entitled Amendments.

**I. Incorporation of Terms and Conditions.** The City and the Corporation agree that the City's Standard Terms and Conditions for Professional Services Agreements, in the form attached as Exhibit A, will apply to this Agreement. In the event of any conflict between the terms of this Agreement and the attached Standard Terms and Conditions, the terms of this Agreement will govern and control.

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EXECUTED to be effective as of June 1, 2015.

**CITY OF SAN MARCOS**

By: \_\_\_\_\_  
Jared Miller, City Manager

**GREATER SAN MARCOS ECONOMIC  
DEVELOPMENT CORPORATION**

By: \_\_\_\_\_  
Will Conley, Chair

ATTEST:

\_\_\_\_\_  
Jamie Lee Pettijohn, City Clerk



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## ibit A

### City of San Marcos, Texas Terms and Conditions for Professional Services Agreements

#### 1. Standards of Performance

(a) The performance of all services by the Contractor under this Agreement will be by persons appropriately licensed or registered under State, local and Federal laws.

(b) In performing all services under this Agreement, the Contractor will use that degree of care and skill ordinarily exercised for similar projects by professionals who possess special expertise in the types of services involved under this Agreement.

(c) Any provisions in this Agreement pertaining to the City's review, approval and /or acceptance of written materials prepared by the Contractor and/or its subcontractors in connection with this Agreement will not diminish the Contractor's responsibility for the materials.

(d) The Contractor will perform all of its services in coordination with the City. The Contractor will advise the City of data and information the Contractor needs to perform its services and the Contractor will meet with City representatives at mutually convenient times to assemble this data and information.

(e) In performing all services under this Agreement, the Contractor will comply with all local, State and Federal laws.

#### 2. City's Responsibilities

(a) The City will provide information to the Contractor regarding the City's requirements for the Contractor's services under this Agreement. The City will furnish the Contractor with copies of data and information in the City's possession needed by the Contractor, at the Contractor's request.

(b) The City will designate an authorized representative to act on the City's behalf with respect to this Agreement. The City will examine documents and information submitted by the Contractor, and promptly renders responses to the Contractor on issues requiring a decision by the City.

#### 3. Contractor's Records

(a) All expense records of the Contractor related to this Agreement will be kept on a recognized accounting basis acceptable to the City and will be available to the City at mutually convenient times.

(b) The City, its auditors and federal and state agencies that have monitoring or auditing responsibilities for this Agreement will have access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, copying and transcriptions.

(c) The Contractor will furnish to the City at such time and in such form as the City may require, financial statements including audited financial statements, records, reports, data and information, as the City may request pertaining to the matters covered by this Agreement.

#### 4. Ownership and Use of Documents

(a) All documents prepared by the Contractor in connection with this Agreement will become the property of the City.

(b) The Contractor will retain all of its records and supporting documentation relating to this Agreement, and not delivered to the City, for a period of three years, except that in the event the Contractor goes out of business during that period, it will turn over to the City all of its records relating to the Project for retention by the City.

#### 5. Term; Termination of Agreement

(a) The term of this Agreement begins upon the date of the letter agreement, and will renew automatically unless terminated in accordance with this Section.

(b) This Agreement may be terminated by either party upon 15 days prior written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.

(c) This Agreement may be terminated at will by the City upon at least 30 days prior written notice to the Contractor.

(d) In the event of termination as provided in this Section, the Contractor will be compensated for all services performed to the termination date which are deemed by the City to be in accordance with this Agreement. This amount will be paid by the City upon the Contractor's delivering to the City all information and materials developed or accumulated by the Contractor in performing the services described in this Agreement, whether completed or in progress. The expense of the reproduction of these items will be borne by the City.

#### 6. Insurance and Indemnity

(a) The Contractor will hold harmless, indemnify and defend the City and its employees, agents, officers and servants from any and all lawsuits, claims, demands and causes of action of any kind arising from the negligent or intentional acts, errors or omissions of the Contractor, its officers, employees or agents. This will include, but not be limited to, the amounts of judgments, penalties, interest, court costs, reasonable legal fees, and all other expenses incurred by the City arising in favor of any party, including the amounts of any damages or awards resulting from claims, demands and causes of action for personal injuries, death or damages to property.

(b) The Contractor will procure and maintain at its expense insurance with insurance companies authorized to do business in the

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State of Texas, covering all operations under this Agreement, whether performed by the Contractor or its agents, subcontractors or employees. Before commencing the work the Contractor will furnish to the City a certificate or certificates in a form satisfactory to the City, showing that Contractor has complied with this paragraph. All certificates will provide that the policy will not be canceled until at least 30 days written notice has been given to the City, and will name the City as an additional insured on all coverages except workers' compensation and professional liability. The kinds and amounts of insurance required are as follows:

Workers' Compensation Insurance: In accordance with the provisions of the Workers' Compensation Act of the State of Texas.

Liability Insurance: (1) Commercial general liability insurance with a combined single limit of \$500,000 for each occurrence and \$500,000 in the aggregate, (2) Motor Vehicle liability insurance in an amount not less than \$250,000 for injuries to any one person, \$500,000 on account of any one accident and in an amount of not less than \$250,000 for property damage.

(c) The stated limits of insurance required by this Paragraph are **minimum** only--they do not limit the Contractor's indemnity obligation, and it will be the Contractor's responsibility to determine what limits are adequate. These limits may be met by basic policy limits or any combination of basic limits and umbrella limits. The City's acceptance of certificates of insurance that do not comply with these requirements in any respect does not release the Contractor from compliance with these requirements.

## 7. No Waiver of immunity

The City's execution of and performance under this Agreement will not act as a waiver by the City of any immunity from suit or liability to which it is entitled under Texas law. The parties acknowledge that the City, in executing and performing this Agreement, is a governmental entity acting in a governmental capacity.

## 8. Miscellaneous Provisions

(a) This Agreement is governed by the law of the State of Texas. Exclusive venue for any dispute arising under this Agreement is in Hays County, Texas.

(b) As to all acts or failures to act by either party to this Agreement, any applicable statute of limitations will commence to run and any alleged cause of action will be deemed to have accrued when the party commencing the cause of action knew or should have known of the existence of the subject act or failure to act.

(c) The Contractor agrees not to use funds received by it under the terms of this Agreement for any partisan political activity or to further the election or defeat of any candidate for public office.

(d) The Contractor hereby affirms that Contractor and Contractor's firm have not made or agreed to make any valuable

gift whether in the form of service, loan, thing, or promise to any person or any of his/her immediate family, having the duty to recommend, the right to vote upon, or any other direct influence on the selection of contractors to provide professional services to the City within the two years preceding the execution of this Agreement. A campaign contribution, as defined by the Texas Election Code or the San Marcos City Code will not be considered as a valuable gift for the purposes of this Agreement.

(e) In performing the services required under this Agreement, the Contractor will not discriminate against any person on the basis of race, color, religion, sex, national origin, age or disability.

(f) All references in this Agreement to any particular gender are for convenience only and will be construed and interpreted to be of the appropriate gender. The term "will" is mandatory in this Agreement.

(g) Should any provision in this Agreement be found or deemed to be invalid, this Agreement will be construed as not containing the provision, and all other provisions which are otherwise lawful will remain in full force and effect, and to this end the provisions of this Agreement are declared to be severable.

(h) All services provided pursuant to this Agreement are for the exclusive use and benefit of the City.

(i) The City of San Marcos is governed by the Texas Public Information Act (the "Act"), Chapter 552 of the Texas Government Code. This Agreement and all written information generated under this agreement may be subject to release under the Act. The Contractor shall not make any reports, information, data, etc. generated under this Agreement available to any individual or organization without the written approval of the City.

(j) The City and the Contractor, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. The City and the Contractor may not assign, sublet or transfer any interest in this Agreement without the written consent of the other.

(k) This Agreement represents the entire and integrated Agreement between the City and the Contractor and supersedes all prior negotiations, representations or agreements either written or oral.

(l) The City may, from time to time, request changes in the scope of services to be performed under the Agreement. Each material change (deletion or addition) in the services to be provided by Contractor must be authorized by the City on the Authorization of Change in Services form attached to the Agreement. Compensation for additional services will be in addition to that specified for Basic Services in accordance with this Agreement. The approval of the City's governing body is necessary for all additional services the compensation for which exceeds \$25,000.00. Except as to a change in the scope of services, the compensation for which does not exceed \$25,000.00, this Agreement may be amended only by written instrument approved by the City's governing body and signed by both the City and the Contractor.

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(m) Any exhibits and/or attachments attached to this Agreement are incorporated by reference into this Agreement as though included verbatim herein.

(n) In the event of any conflict between these Terms and Conditions and the provisions of any exhibit or attachment to this Agreement, the terms of the Agreement will govern and control.

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**EXHIBT B**  
**Definitions**

**DEFINTIONS**

**Primary Jobs** – Primary jobs are defined in economic development as those that bring in new revenue to the community. Many of those jobs produce a product (like manufacturing), however other service sector jobs also circulate dollars from outside the city and create additional jobs. These jobs tend to be high-wage paying and require higher levels of education or skilled trades.

**Secondary Jobs** – Secondary jobs are defined in economic development as those that circulate money already in the city, such as retail and food service. They have little spinoff or additional job creation associated with them.

**Attachments**

Economic Development Strategy – 2010-2015

Economic Development Strategy – 2016 – 2020 Effective Oct 1, 2015

City of San Marcos Incentive Policy

City of San Marcos Incentive Application