



CITY OF EL PASO

Economic Development – 380 Agreement Monitoring Audit A2023-07

Timeline

Timeline of Audit Report Issuance:

- Economic Development – 380 Agreement Monitoring Audit Report dated April 17, 2024.
- Exit Meeting held June 12, 2024 & Management Responses received June 24, 2024.
- Final report distributed to City Council and City Management on June 27, 2024.
 - At this time, approval from FOAC or City Council was not required to finalize audit reports.
- Audit Report placed on September 17, 2024 FOAC quarterly agenda for further discussion.
 - Report deleted from agenda.
- A Follow-Up Audit of the 380 Agreement Audit was scheduled in the FY25 Annual Audit Plan.
 - Follow-Up Audit initiated in May 2025, but not executed due to Executive Management's concern regarding the deletion of Audit Report from September 17, 2024, FOAC agenda.

Audit Report being referred back to FOAC for action on October 9, 2025.

Objectives

The Objectives of the Economic Development – 380 Agreement Monitoring Audit were to:

- Determine if the Economic & International Development Department has established an effective monitoring program to ensure that businesses and the City of El Paso comply with:
 - Chapter 380 of the Texas Local Government Code and Article III, section. 52(a) of the Texas Constitution,
 - The City of El Paso Chapter 380 Economic Development Program guidelines,
 - 380 Agreement payout terms and deliverables.
- Review and evaluate the reporting mechanism used by 380 Agreement/Incentive recipients to report to Economic Development their deliverables or activities for each year.

Scope

The scope of this audit included reviewing active 380 Agreements as of Fiscal Year 2023 and Agreements that were closed as of Fiscal Year 2024. The following samples were selected for review:

- Seven (7) 380 Agreements were reviewed for compliance with applicable 380 Incentive Program Policies and Procedures.
- Five (5) rebates paid to incentive recipients whose 380 Agreement included a job component were reviewed for compliance with the terms of their respective Agreement.
- Four (4) 380 Agreements that received rebate payments from the City without completing the terms of their Agreement and later closed, were reviewed for proper closure.

Methodology

To achieve our audit objectives, we:

- Interviewed Economic & International Development's (ED) management & staff.
- Reviewed ED's applicable Policies and Procedures.
- Reviewed ED's "City of El Paso Incentive Agreement Portfolio 2023-Q3" booklet.
- Reviewed ED's Agreement monitoring processes and reporting mechanisms.

Methodology (Cont.)

- Analyzed a sample of seven (7) active 380 Agreement Incentive files:

Active Chapter 380 Agreements as of May 31, 2023 (FY2023 - 3rd Quarter)					
Type of Agreement	#	\$ Range of Incentive Packages	Excluded: Agreements in Default	Excluded: Agreements Previously Audited	Total # of Agreements less Exclusions
TOD	3	\$32,944.00 - \$78,393.00	-	-	3
DSCCI/SCCI*	16	\$13,468.00 - \$3,059,279.00	-	-2	14
Infill	12	\$18,187.61 - \$416,110.00	-1	-1	10
Strategic/ Master	34	\$12,000.00 - \$150,000,000.00	-3	-8	23
	65		-4	-11	50

* DSCCI/SCCI Agreements discontinued.

Sample of seven (7) out of 23 (30.44%) "Strategic/Master" 380 Agreements selected for review.

Methodology (Cont.)

- Analyzed a sample of five (5) 380 Agreement Incentive rebates issued by ED in FY2023:
 - Five (5) companies had a job requirement and received rebates in FY2023.
 - All five rebates were selected for review.
- Conducted an analysis of 380 Agreements in default, withdrawn, and completed.
 - Total of 115 Incentive Agreements were listed as closed by ED.
 - Total of four (4) 380 Agreements that received payments without completing the full terms of their Agreement were selected for review.

Note: Populations/samples were based on the audit step being performed. It is common practice and often necessary for auditors to select different samples for different audit steps.

Finding 1

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The following revisions were made to the 2021 *City of El Paso Economic Incentives Policy*. The revisions have a significant effect on the evaluation of Incentive Agreement applicants and the reporting of incentives to City Council. Revisions were made to remove requirements included on the previous 2015 *Incentive Policy*.

Requirement for:	<i>Incentives Policy – Guidelines & Criteria 2015</i>	<i>Incentives Policy – Guidelines & Criteria 2021</i>
Business' financial stability and capacity to complete the project	Section IV. General Criteria: ... <i>The project MUST: #2 <u>Include</u> solid evidence provided by the business that demonstrates the business's financial stability and capacity to complete the project.</i>	Section IV. General Criteria, Policy & Procedures: ... <i>The project Must: #2 <u>Upon request</u>, provide credible documentation that demonstrates the business's financial stability and capacity to complete the project...</i>
Council review of Policy	Section I. Purpose: <i>Council has directed that this policy be reviewed on a <u>biennial</u> basis. This policy will remain in effect until it is expressly revised by Council.</i>	Revised in: Section IX. Term of Incentives <i>These policy guidelines and criteria shall apply upon adoption by the El Paso City Council and may be reviewed and revised <u>periodically</u> to assure impact and effective performance and/or adapt to adjusting market conditions.</i>

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Finding 1 (Cont.)

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Requirement for:	<i>Incentives Policy – Guidelines & Criteria 2015</i>	<i>Incentives Policy – Guidelines & Criteria 2021</i>
Reporting to City Council	Section I Purpose: <i>Economic Development <u>will provide</u> Council with an <u>annual report</u> reviewing the implementation of this policy and the resulting effects of Council’s approved incentives under this policy.</i>	Section I. Purpose: <i>Removed: <u>Policy no longer requires an annual report to Council on the approved incentives and resulting effects.</u></i> The current process of <u>periodically</u> providing City Council with a high-level presentation on Transformation and Key Performance Indicators (KPIs) is not documented in the Policy.

Recommendation

Economic & International Development should require revisions to the *City of El Paso Economic Incentives Policy* are communicated to, and approved by City Council.

Management Response

Finding 1

“Economic & International Development is in the process of updating the Chapter 380 Program Policies. Finding will be incorporated into proposed revisions for final approval by City Council.”

Finding 2

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A Financial Analysis is not being performed of all 380 Agreement Incentive applicants. Six (6) out of seven (7) 380 Agreement files reviewed (85.72%) did not contain documentation providing evidence of financial stability of the business to complete the project.

- One (1) applicant did not provide financial information. The Agreement file did not contain evidence of a financial analysis performed.
- Two (2) applicants provided a financial statement that demonstrated that both projects would not have enough income to cover expenses if incentives were not provided. The Agreement files did not contain evidence of financial stability of the business to complete the project.
- Three (3) applications did not contain evidence of providing documentation of the business's financial stability and capacity.

Recommendation

Economic & International Development should require that a Financial Analysis is conducted and documented of all 380 Agreement applicants to determine the financial stability and capacity of the business to complete the project.

Management Response

Finding 2

“Economic & International Development will establish a process for requesting, collecting, and assessing information required to determine the financial stability and capacity of 380 applicants. Financial Analyses will be documented and included in status reports, unless protected by law or separate agreement. When a Financial Analysis is conducted by a third-party, that will also be documented.”

Finding 3

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Economic & International Development is not providing City Council with a true representation of the dollar amount of all incentives provided to 380 Agreement Recipients and not reporting on actual job counts for each project. A review of the *City of El Paso Incentive Agreement Portfolio* as of August 23, 2023 identified the following deficiencies:

- The actual number of jobs created and/or retained are not being reported to City Council for Agreements with a job component. Only the number of jobs to be created and/or retained per each Agreement is reported.
- The Department reported to City Council a total of \$5,344,991.00 in “Incentives Paid to Date (PDT)” for the five (5) agreements reviewed. The PDT amount excluded Fee Waivers and a Tax Increment Reimbursement Zone, totaling \$1,221,967.29. The total amount of incentives for the five (5) Agreements should be \$6,566,958.29.

Recommendation

Economic & International Development should:

- Track and report actual jobs created and/or retained by 380 Agreement Recipients.
- Track and report to City Council the actual dollar amount of all incentives paid out to each 380 Agreement Recipient, both in monetary form and in waived fees.
- Provide City Council with a status report of awarded Incentive Agreements.

Management Response

Finding 3

“Economic & International Development will provide status reports of awarded Incentive Agreements on a regular basis, but not less than once a year. Status reports will include tracking of both contractual and total reported job metrics. Fee waivers are currently tracked in Accela and will be included in status reports.”

Finding 4

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Economic & International Development is not adhering to the *Economic & International Development Department Incentive Agreement Contract Compliance Policies and Procedures* in the following areas:

- Tracking and updating “key dates” for 380 Agreements.
- Documenting deadline extensions for incentive reimbursement requests to recipients.
- Processing incentive payments per the deadlines specified in each 380 Agreement.

Recommendation

Economic & International Development staff should:

- Ensure that a monitoring system is utilized to track “key dates” for 380 Agreements and is updated as required.
- Enforce deadlines specified in 380 Agreements for the submission of incentive payment requests and document any authorized deadline extensions.
- Process incentive payments in accordance with the deadline specified in 380 Agreements, typically 90 to 180 days.

Management Response

Finding 4

- “Economic & International Development has implemented Monday.com, a project management software. Monday.com has been configured to set up automated reminders of key Agreement dates to both staff and 380 recipients.
- “Economic & International Development will update standard operating procedures to ensure all Agreement notices and extensions are documented.
- The City will process payments in accordance with the timelines stated in the relevant 380 Agreement. Economic & International Development will update standard operating procedures to ensure documentation of notices of incompleteness, deadline to cure/respond, and extensions.

Finding 5

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An analysis of 115 Incentive Agreements closed as of January 24, 2024, identified four (4) 380 Agreements that received incentive payments without completing the terms of their Agreement.

- Two (2) Agreements were identified as not having a “recapture clause” and received a total of \$1,346,322.00 in incentive payments from the City. The City was unable to seek reimbursement of incentive payments made.
- One (1) Agreement was identified as having a “recapture clause” and received a total of \$1,426,018.00 in incentive payments from the City. The Agreement’s “recapture clause” only applied if the recipient did not “substantially complete the work on any component.”
- One (1) Agreement was identified as having a “recapture clause” and recourse was taken to collect the incentive payment from the recipient.

Recommendation

Economic & International Development Department should require that all 380 Agreements contain a recapture clause in the event of an Agreement defaulting the City can recover the amount of incentives granted.

Management Response

Finding 5

“Unlike Abatement Agreements executed under Chapter 312 of the Texas Tax Code, Chapter 380 Agreements do not require a recapture clause.

Economic & International Development will update standard operating procedures to ensure that consideration is given to a recapture clause in the negotiation of all 380 Agreements.”

Conclusion

Economic & International Development met the audit objectives in the following areas:

- Documenting and receiving approval for the *City of El Paso Incentives Policy*.
- Establishing and documenting the Incentive Agreement Contract Compliance Policies and Procedures.
- Establishing new businesses in the City of El Paso.

Conclusion (Cont.)

Economic & International Development did not meet the audit objectives in the following areas:

- Making revisions to the *City of El Paso Economic Incentives Policy* that have a significant effect on the evaluation of Incentive Agreement applicants and the reporting of incentives to City Council.
- Conducting a financial analysis of an applicant's business finances.
- Reporting the actual dollar amount of incentives paid out to each recipient, both in monetary form and in waived fees.
- Reporting to City Council on actual job counts for each project.

Conclusion (Cont.)

Economic & International Development **did not meet** the audit objectives in the following areas:

- Tracking and updating “key dates” for 380 Agreements on ED’s 380 Agreements Spreadsheet.
- Documenting deadline extensions for incentive reimbursement request to recipients.
- Processing incentive payments per the deadlines specified in each 380 Agreement.
- Requiring that all 380 Agreements contain a recapture clause in the event of an Agreement defaulting, allowing the City to seek reimbursement of the amount of incentives granted.

Requested Action

To accept the results of the Economic Development – 380 Agreement Monitoring Audit and schedule a Follow-Up Audit as part of the FY2026 Annual Audit Plan.