



**Economic Development – 380 Agreement  
Monitoring Audit  
No. A2023-07**

Issued by the  
Internal Audit Department  
April 17, 2024

**City of El Paso**  
**Internal Audit Department**  
**Economic Development – 380 Agreement Monitoring Audit A2023-07**

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***EXECUTIVE SUMMARY***

The Internal Audit Department has concluded the Economic Development – 380 Agreement Monitoring Audit. Based on the results of the audit, five findings were identified. The findings are considered significant in nature due to internal control breakdowns and violations of City Policy.

Listed below is a summary of the findings identified in this report:

1. Revisions have been made to the 2021 *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. Revisions were made to the current 2021 *Incentives Policy* to remove requirements included on the previous 2015 *Incentives Policy*.
2. Economic & International Development is not performing a financial analysis 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 as required by the *Economic Incentives Policy*.
3. Economic & International Development (ED) 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. ED reported to City Council a total of \$5,344,991.00 in “Incentives Paid to Date (PDT)” for five (5) agreements reviewed. The PDT amount did not include waivers and reimbursements totaling \$1,221,967.29. The total amount of incentives for the five (5) Agreements should have been reported as \$6,566,958.29.
4. 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 on ED’s monitoring Excel spreadsheet.
  - Documenting deadline extensions for incentive reimbursement requests to recipients.
  - Processing incentive payments per the deadlines specified in each 380 Agreement. Three (3) out of five (5) reimbursement requests (60%) were paid by ED staff two (2) to five (5) months past the processing deadline specified in each 380 Agreement.
5. 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 of El Paso. The City was unable to seek reimbursement of incentive payments made to the two (2) recipients. One (1) recipient withdrew from the Agreement and one (1) recipient defaulted on the Agreement.
  - 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 in accordance with the timeline outlined in the Development Agreement.” The recipient withdrew from their Agreement and was only reimbursed for the components completed.
  - One (1) Agreement was identified as having a “recapture clause” and recourse was taken by the City to collect the incentive payment of \$1,043.33 from the recipient.

For a detailed explanation of the findings, please refer to the body of this Audit Report.

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**BACKGROUND**

At the request of the Financial Oversight and Audit Committee, the Internal Audit Department conducted an Audit of the City of El Paso Chapter 380 Economic Development Program.

Chapter 380 of the Texas Local Government Code authorizes municipalities to offer incentives designed to promote economic development such as commercial and retail projects. It authorizes offering loans, grants of City funds, services at little or no cost in order to promote state and local economic development, and to stimulate business and commercial activity. The City of El Paso (“The City”) provides Incentive Agreements for projects that will result in a net increase or retention of jobs, will add to the tax base, or will improve the economic welfare of the residents and businesses of the City of El Paso.

The City’s Incentive Agreements include Chapter 380 Economic Development Agreements, Chapter 312 Tax Abatement Agreements, State-funded Programs, and Federally-funded Grant programs. The City of El Paso began executing Incentive Agreements in 2006, when the City approved the first Chapter 312 and Chapter 380 Agreements. The Economic & International Development Department (“ED”) established a Compliance Division in 2012, which tracks and monitors ED agreements. Since the first agreements executed in 2006, ED has executed approximately 250 Incentive Agreements. Chapter 380 Agreements are the most utilized Incentive Agreements by the City of El Paso. Incentives provided to 380 Agreement Recipients include:

- Fee Waivers (planning and inspection fees, ect.),
- Rebates (Texas sales tax, Hotel Occupancy Tax reimbursements, etc.),
- Tax Increment Reimbursement Zone (TIRZ) payments (reimbursement of property taxes).

Depending on each agreement, the City awards applicants with rebates based on the projects’ adherence to metrics as identified in the contract. Applicants must submit a rebate reimbursement request to the Economic & International Development Department in order to receive the granted rebates. Rebates can include, but are not limited to:

- Personal Property Tax Rebate,
- Real Property Tax Rebate,
- Mixed Beverage Tax Rebate,
- Hotel Occupancy Tax,
- Tax Abatement,
- City Master Rebate,
- Hotel Occupancy Tax Rebate,
- Event Room Block Rebate,
- Parking Rebate,
- Building Permit Fee Rebate,
- Sales and Use Tax Rebate  
(for construction Materials & Ground Floor),
- Milestone Payment.

As of August 23, 2023, the Economic & International Development’s *City of El Paso Incentive Agreement Portfolio 2023-Q3* reported a total of 65 active 380 Incentive Agreements and 111 closed 380 Agreements. Twenty-one (21) of the 65 Incentive Agreements have a job component which requires that a certain number of jobs be created and/or retained as part of the terms of the agreement.

All Chapter 380 Agreements include a set of established metrics that the applicant must accomplish in order to receive their incentives. The Economic & International Development Department’s

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Compliance Division is tasked with the enforcement of key metrics to ensure capital investment and quality job commitments are being fulfilled. The *City of El Paso Economic Incentives Policy – Guidelines & Criteria – 2021* defines the financial incentives and establishes standards and processes for implementation of the plan.

***AUDIT 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 the Texas Constitution Article III Section 52-a.,
  - 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.

***AUDIT 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:
  1. Texas Tower LLC & Hotel Dulcinea LLC,
  2. Marmaxx Operating Corp. – TJ Max,
  3. Mills Plaza Properties II, LP – Plaza Hotel,
  4. Mills Plaza Properties V, LP & Kress Tunnel, LLC,
  5. Schneider Electric USA, Inc.,
  6. United Parcel Service Inc.,
  7. West Star Tower LLC.
- 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:
  1. South Shore USA,
  2. Hotel Sancho Panza LLC (Courtyard by Marriott Hotel),
  3. Technimark LLC,
  4. United Parcel Service Inc.,
  5. Charter Communications, Inc.
- 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:
  1. University of Texas at El Paso – Regional Cyber and Energy Security Center (RCES),
  2. Erives Enterprises. Inc.,
  3. Hunt Metro 31, LLC,
  4. Bemity Global, LLC.

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***AUDIT METHODOLOGY***

To achieve our audit objectives, we:

- Conducted interviews with Economic & International Development management and staff,
- Conducted a review of Economic & International Development Department's applicable Policies and Procedures,
- Conducted a review of Economic & International Development Department's 380 Agreement Active Agreement Portfolio Booklet titled "*City of El Paso Incentive Agreement Portfolio 2023-Q3*,"
- Conducted a review of Economic & International Development's 380 Agreement monitoring processes,
- Conducted a review of Economic & International Development's reporting mechanisms,
- Analyzed a sample of active 380 Agreement Incentive files monitored by Economic & International Development staff,
- Analyzed a sample of 380 Agreement Incentive rebates issued by Economic & International Development staff,
- Conducted an analysis of 380 Agreements in default, withdrawn, and completed.

We conducted this audit in accordance with *Generally Accepted Government Auditing Standards* and the *International Standards for the Professional Practice of Internal Auditing*. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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***SIGNIFICANT FINDINGS, RECOMMENDATIONS,  
AND MANAGEMENT’S RESPONSES***

The definition of a “Significant Finding” is one that has a material effect on the City of El Paso’s financial statements, identifies an internal control breakdown, is a violation of a City procedure, or a violation of a law and/or regulation, which the City is required to follow. Any finding not meeting these criteria will be classified as a “Regular Finding”.

**Finding 1**

**Economic Incentives Policy Revisions**

City of El Paso Strategic Plan:

- Goal 6.12 *Maintain systems integrity, compliance and business continuity.*

*City of El Paso Incentives Policy – Guidelines & Criteria 2015, Sections I & IV.*

*City of El Paso Economic Incentives Policy – Guidelines & Criteria – 2021, Sections I, IV, & IX.*

The following revisions have been 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 *Incentives Policy*. The changes from the 2015 *Incentives Policy* to the current 2021 *Incentives Policy* are shown below:

<b><i>Economic Incentives Policy Revisions</i></b>		
Policy Requirement for:	<b><i>City of El Paso Incentives Policy – Guidelines &amp; Criteria 2015</i></b>	<b><i>City of El Paso Economic Incentives Policy – Guidelines &amp; Criteria 2021</i></b>
Business’ financial stability and capacity to complete the project	<ul style="list-style-type: none"> <li>• Section IV. General Criteria: <i>...The project <b>MUST</b>: #2. <u>Include</u> solid evidence provided by the business that demonstrates the business’s financial stability and capacity to complete the project.</i></li> </ul>	Section IV. General Criteria, Policy & Procedures: <i>...The project <b>MUST</b>: #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>
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>  <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. The KPI presentation does not provide detailed status reports on the awarded Incentive Agreements and payments made.</i>

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**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's Response**

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.

**Responsible Party**

Karina Bragalla, Interim Director

**Implementation Date**

6 months, (January 1, 2025); Ongoing in accordance with applicable regulations

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**Finding 2**

**Financial Analysis**

City of El Paso Strategic Plan:

- Goal 6.12 *Maintain systems integrity, compliance and business continuity.*

City of El Paso Economic Incentives Policy – Guidelines & Criteria 2021, Section IV. General Criteria, Policy & Procedures:

*...The Project MUST: 2. Upon request, provide credible documentation that demonstrates the business's financial stability and capacity to complete the project...*

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 as required by the *Economic Incentives Policy*.

- One (1) applicant did not provide financial documentation. The Agreement file did not contain evidence of a financial analysis performed of the business's financial stability and capacity:
  - TJ Max – Marmaxx Operating Corp.
- 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 businesses to complete the project:
  - Texas Tower – 1 Texas Tower, LLC and Hotel Dulcinea, LLC
  - Kress Building – Mills Plaza Properties V, LP and Kress Tunnel, LLC
- Three (3) applications did not contain evidence of providing documentation of the business's financial stability and capacity. Per Economic Development staff, a search for financial documentation was performed online to obtain the data. The Agreement files did not document the search methodology or the results of the analysis:
  - Plaza Hotel – Mills Plaza Properties II, LP
  - Schneider Electric USA, Inc.
  - West Star Tower, LLC

**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.



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**Management's Response**

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.

**Responsible Party**

Karina Bragalla, Interim Director

**Implementation Date**

6 months, (January 1, 2025); Ongoing

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**Finding 3**

**Tracking and Reporting of Incentive Agreements**

City of El Paso Strategic Plan:

- Goal 6.6 *Ensure continued financial stability and accountability through sound financial management, budgeting and reporting.*
- Goal 6.8 *Support transparent and inclusive government.*
- Goal 6.12 *Maintain systems integrity, compliance and business continuity.*

Economic & International Development (ED) prepares a booklet titled *City of El Paso Incentive Agreement Portfolio* which contains information on Incentive Agreements. The Incentive data reported does not capture the amount of all incentives provided. The booklet is provided to City Council members upon request.

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. Incentives provided to 380 Agreement Recipients include:

- Fee Waivers (planning and inspection fees, etc.),
- Rebates (Texas sales tax, Hotel Occupancy Tax reimbursements, etc.),
- Tax Increment Reimbursement Zone (TIRZ) payments (reimbursement of property taxes).

A review of the *City of El Paso Incentive Agreement Portfolio* as of August 23, 2023 identified the following deficiencies:

- Economic & International Development does not report to City Council the actual number of jobs created and/or retained by 380 Agreement Incentive Agreements with a job component. Only the number of jobs to be created and/or retained per each Agreement is reported.
- Economic & International Development 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 TIRZ reimbursement totaling \$1,221,967.29. The total amount of incentives for the five (5) Agreements should be \$6,566,958.29.

No.	Incentives Reported on <i>Incentive Agreement Portfolio</i> Booklet as of August 23, 2023			Incentive Amounts not Reported to Council		
	Recipient	Total Incentive Package	ED Incentives Paid to Date	TIRZ Paid Reimbursement	Permit Fees Waived	Total Incentives not Reported
1	Texas Tower	\$2,185,796.00	0.00	0.00	\$297.50	\$297.50
2	TJ Max	\$8,970,660.00	0.00	0.00	\$412,188.40	\$412,188.40
3	Plaza Hotel – Mills Plaza Properties II LP	\$21,969,914.71	\$2,926,593.00	\$575,686.88	\$48,295.85	\$623,982.73
4	Kress Building – Mills Plaza Properties V LP	\$2,049,000.00	0.00	0.00	\$7,936.34	\$7,936.34
5	West Star Tower	\$14,034,055.00	\$2,418,398.00	0.00	\$177,562.32	\$177,562.32
		<b>Total Reported:</b>	<b>\$5,344,991.00</b>		<b>Not Reported:</b>	<b>\$1,221,967.29</b>
					<b>Total of all Incentives:</b>	<b>\$6,566,958.29</b>

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**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's Response**

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.

**Responsible Party**

Karina Brasgalla, Interim Director

**Implementation Date**

Provide next Status Report by January 2025; Ongoing

**Finding 4**

**Monitoring Key Dates**

City of El Paso Strategic Plan:

- Goal 6.12 *Maintain systems integrity, compliance and business continuity.*

*Each 380 Agreement is unique with different terms and criteria for the reimbursement of agreed incentives. Each 380 Agreement outlines the following:*

- *“Key Dates” that require documentation to be submitted to Economic & Internal Development (ED) for review.*
- *Timing frequency for incentive payment requests,*
- *Allotted times for ED to process incentive payment requests.*

*Economic & International Development Department Incentive Agreement Contract Compliance Policies and Procedures Updated 7.20.2023,*

- Section 1. Compliance Division Employee Policies and Procedures:

Purpose: *This document established policy and presents the procedures to ensure that the Department of Economic Development, through its Chapter 380 incentives agreement process, keeps accurate records of the incentives it awards, monitors agreements to ensure they are in compliance with all metrics, and any applicable state and federal laws, rules, and regulations governing.*

Economic & International Development (ED) 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.

A review of seven (7) 380 Agreement files identified that “key dates” were not updated in ED’s 380 Agreement Spreadsheet. The following four (4) exceptions were noted:

- One (1) out of seven (7) Agreements (14.29%) had its contract terms amended. The amended due dates were not updated in the 380 Agreement Spreadsheet for the following Agreement:
  - Texas Tower – The “Certificate of Occupancy” due date was not updated from 5/24/2026 to 12/31/2026 and the “Minimum Expenditures” due date was not updated from 12/31/2025 to 12/31/2026.
- Three (3) out of seven (7) agreements (42.86%) ED did not document when the first incentive reimbursement request was received and the due dates for annual reimbursement submittals for the following recipients:
  - Plaza Hotel – Reimbursement requests are due “within ninety business days after June 1 of each year.”
  - United Parcel Service – Reimbursement requests are due “within thirty business days after July 31 of each year.”
  - West Star Tower – Reimbursement requests are due by May 15<sup>th</sup> of each year.

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A review of incentive payments issued on five (5) 380 Agreement Incentive Agreements with a job component identified the following deficiencies:

- Two (2) out of five (5) incentive payment requests (40%) were not submitted by the respective due dates listed in each 380 Agreement. The Agreement files did not document a deadline extension.
  - Payment request from Technimark was dated 3/20/2023, 2 years past the due date of 2/26/2021.
  - Payment request from UPS was dated 12/17/2021, 17 months past the due date of 7/31/2020.
- Three (3) out of five (5) reimbursement requests (60%) were not processed for payment by ED staff within the timeframe specified in each 380 Agreement. The Agreement files did not document the cause of delay.
  - Payment to Charter Communications was overdue by two (2) months from the processing deadline of 3/19/2023. Payment was made to the recipient on 5/19/2023.
  - Payment to Hotel Sancho Panza was overdue by three (3) months from the processing deadline of 4/25/2023. Payment was made to the recipient on 8/1/2023.
  - Payment to UPS was overdue by five (5) months from the processing deadline of 9/23/2022. Payment was made to the recipient on 3/1/2023.

**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.

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**Management's Response**

- 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.

**Responsible Party**

Karina Brasgalla, Interim Director

**Implementation Date**

Immediate; Ongoing

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**Finding 5**

**Recapture Clause**

City of El Paso Strategic Plan:

- Goal 6.6 *Ensure continued financial stability and accountability through sound financial management, budgeting and reporting.*
- Goal 6.8 *Support transparent and inclusive government.*
- Goal 6.12 *Maintain systems integrity, compliance and business continuity.*

City of El Paso Incentives Policy – Guidelines & Criteria February 2010, Section V.,

City of El Paso Incentives Policy – Guidelines & Criteria 2015, Section VII.,

City of El Paso Economic Incentives Policy – Guidelines & Criteria – 2021, Section VII.:

*Agreements may be conditioned on the completion of specific improvements to real property and/or job numbers and salary levels being met. The Agreements shall contain recapture clauses in the event that such conditions are not met.*

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 of El Paso. The City was unable to seek reimbursement of incentive payments made to the following recipients:
  - University of Texas at El Paso received \$1,343,690.00 for the development of a technology innovation center called Regional Cyber and Energy Security Center (RCES). University of Texas at El Paso submitted a withdrawal letter dated February 6, 2015. No reason was given for the withdrawal.
  - Erives Enterprises, Inc. received \$2,632.00 for the expansion and new construction of a freight and logistics facility. Erives Enterprises, Inc. filed a Property Owner’s Notice to Protest with the Central Appraisal District to lower the appraised value of the property being developed. The appraised value of the property was lowered to \$1,782,704.00. Erives defaulted on the Agreement due to the property’s value falling below the minimum value amount of \$1,900,000.00 as established in the 380 Agreement.
- 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 in accordance with the timeline outlined in the Development Agreement.”
  - Hunt Metro 31, LLC substantially completed the following components per the agreement: the construction of roadways, land grading, associated infrastructure and utilities at the Northgate Transfer Center. The incentive payments paid to the recipient were for the substantial completion of the components listed.
    - *“Substantially Complete” means the later of (i) the Architect’s issuance of a Certificate of Substantial Completion for the applicable improvement or (ii) the City’s issuance of a Certificate of Occupancy for such improvement.*
  - Hunt Metro 31, LLC did not complete the following components per the agreement: building retail spaces, civic use facilities, and residential complexes. Incentive payments were not paid for components not completed.

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- Hunt Metro 31, LLC provided a Notice of Termination to withdraw from the Agreement. The reason to withdraw was due to COVID-19 pandemic's impact on the retail real estate market and the Project Site being located within a federally designated flood plain.
- One (1) Agreement was identified as having a "recapture clause" and recourse was taken to collect the incentive payment from the recipient.
  - Bemity Global LLC defaulted on the Agreement and repaid the City \$1,043.33 for a Construction Materials Sales Tax Incentive.

**Recommendation**

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

**Management's Response**

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.

**Responsible Party**

Karina Bragalla, Interim Director

**Implementation Date**

Immediate; Ongoing



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***INHERENT LIMITATIONS***

Because of the inherent limitations of internal controls, errors or irregularities may occur and not be detected. Also, projections of any evaluation of the internal control structure to future periods beyond the Audit Report date are subject to the risk that procedures may become inadequate due to changes in conditions, management override of internal controls, or that the degree of compliance with the procedures may deteriorate. This was a limited scope audit which only reviewed the areas stated in the Audit Objectives during the Audit Scope period. No representations of assurance are made to other areas or periods not covered by this audit.

***CONCLUSION***

We have concluded our work on the objectives of the Economic Development – 380 Agreement Monitoring Audit. The audit evidence used in the analysis is sufficient and appropriate for addressing the objectives and supporting the findings and conclusion. In accordance with *Generally Accepted Government Auditing Standards*, we are required to conclude whether Economic & International Development met the objectives of this audit. Based on our audit work, we have determined that:

1. 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 Agreements Contract Compliance Policies and Procedures.
  - Establishing new businesses in the City of El Paso.
2. 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.
  - Tracking and updating "key dates" for 380 Agreements on ED's 380 Agreement Spreadsheet.
  - Documenting deadline extensions for incentive reimbursement requests 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 of El Paso to seek reimbursement of the amount of incentives granted.

We wish to thank Economic & International Development management and staff for their assistance and courtesies extended during the completion of this audit.



Edmundo S. Calderón, CIA, CGAP, CRMA, MBA  
Chief Internal Auditor



Liz De La O, CFE, CIA, CGAP, MPA  
Auditor IV



Miguel Montiel, CIA, CGAP  
Audit Manager

**City of El Paso**  
**Internal Audit Department**  
**Economic Development – 380 Agreement Monitoring Audit A2023-07**

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Distribution:

Financial Oversight and Audit Committee

Cary Westin, Interim City Manager

Robert Cortinas, Deputy City Manager & Chief Financial Officer

Karina Brasgalla, Interim Director of Economic & International Development