

**CITY OF EL PASO, TEXAS**  
**AGENDA ITEM**  
**DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:** City Development Department – Economic Development

**AGENDA DATE:** October 15, 2013

**CONTACT PERSON/PHONE NUMBER:** Mathew McElroy – 915-541-4193

**DISTRICT(S) AFFECTED:** District 4

**SUBJECT:**

**APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.**

Discussion and Action on a resolution that the City Manager be authorized to execute a Chapter 380 Economic Development Program Agreement by and between the City of El Paso and PC Automated Controls, INC., a Texas Corporation (“Applicant”), in relation to the Applicant’s development of a warehouse and office facility in El Paso, Texas.

**BACKGROUND / DISCUSSION:**

**Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?**

Founded in 1993, PC Automated Controls, Inc. has grown to become the region’s greatest provider in energy management solutions and HVAC services. PC Automated Controls is currently located at 5604-C Will Ruth Dr. where they lease space for their operations. PC Automated Controls has chosen to grow their business within the City of El Paso and are relocating their local offices to 10279 Dyer. The new location will allow PC Automated Controls to provide their services for the region, which includes West Texas and Southern New Mexico. The applicant is proposing to invest \$2.1million to develop the new location. In addition to their capital investment, the applicant will retain 50 employees. Staff is recommending approval of the Chapter 380 Economic Development agreement as the development will allow the applicant to retain its employees in the City of El Paso and expand its operations.

**PRIOR COUNCIL ACTION:**

**Has the Council previously considered this item or a closely related one?**

No prior actions.

**AMOUNT AND SOURCE OF FUNDING:**

**How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?**

General Fund—380 Agreement

**BOARD / COMMISSION ACTION:**

**Enter appropriate comments or N/A**

N/A

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:** \_\_\_\_\_

**(If Department Head Summary Form is initiated by Purchasing, client department should sign also)**  
*Information copy to appropriate Deputy City Manager*

# RESOLUTION

## BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to execute a Chapter 380 Economic Development Program Agreement by and between the City of El Paso and **PC Automated Controls, Inc.**, a Texas Corporation and **RJ Shelton, LLC**, a Texas Limited Liability Company (“Applicants”), in relation to the Applicants’ development of a warehouse and office facility in El Paso, Texas.

**APPROVED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_ October 2013.**

CITY OF EL PASO

\_\_\_\_\_  
Oscar Leeser  
Mayor

ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Matthew K. Behrens  
Assistant City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Mathew McElroy, Director  
City Development Department

STATE OF TEXAS            )  
  )  
COUNTY OF EL PASO    )            **CHAPTER 380 ECONOMIC DEVELOPMENT  
PROGRAM AGREEMENT**

This **Chapter 380 Economic Development Program and Agreement** (this “Agreement”) is made and entered into by and between the **CITY OF EL PASO, TEXAS** (hereinafter referred to as “**City**”), a Texas home rule municipal corporation, and **PC AUTOMATED CONTROLS, INC.**, a Texas Corporation, and **RJ SHELTON, LLC, a Texas Limited Liability Company** (hereinafter “**Applicants**”) for the purposes and considerations stated below:

**WHEREAS**, the **Applicants** desire to enter into this Agreement pursuant to Chapter 380 of the Texas Local Government Code (“Chapter 380”); and

**WHEREAS**, the **City** desires to provide, pursuant to Chapter 380, an incentive to **Applicants** to expand their operations as more fully described below; and

**WHEREAS**, the **City** has the authority under Chapter 380 to make loans or grants of public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the City of El Paso; and

**WHEREAS**, the **City** determines that a grant of funds to **Applicants** will serve the public purpose of promoting local economic development and enhancing business and commercial activity within the **City**; and

**WHEREAS**, the **City** and **Applicants** desire that relocation and construction of **Applicants’** operations occur in the City of El Paso; and

**WHEREAS**, the relocation and construction of the **Applicants’** operations will encourage increased economic development in the **City**, provide significant increases in the **City’s** property tax revenues, and improve the **City’s** ability to provide for the health, safety and welfare of the citizens of El Paso; and

**WHEREAS**, the **City** has concluded and hereby finds that this Agreement embodies an eligible “program” and clearly promotes economic development in the City of El Paso and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code and further, is in the best interests of the **City** and **Applicants**.

**NOW, THEREFORE**, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## SECTION 1. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

- A. **Agreement.** The word “Agreement” means this Chapter 380 Economic Development Program Agreement, together with all exhibits and schedules attached to this Agreement.
- B. **Applicant.** The word “Applicants” means **PC Automated Controls, Inc.** a Texas Corporation and **RJ Shelton, LLC**, a Texas Limited Liability Company.
- C. **City.** The word “City” means the City of El Paso, Texas.
- D. **Development.** The word “Development” means the construction of ‘the **Applicants’** operations located at, 10279 Dyer, El Paso, Texas, 79924, as more fully described on **Exhibit “A”**, which is attached hereto and incorporated herein for all purposes.
- E. **Full-Time Employment.** The words “Full-Time Employment” mean a job requiring a minimum of two thousand and eighty (2,080) hours of work averaged over a twelve (12) month period, including allowance for vacation and sick leave, with full company benefits, including company paid health insurance (Employee must not be required to pay more than fifty percent (50%) of the premium) with such jobs being located at the Development, within the City of El Paso, Texas. These requirements are more completely described in **Exhibit “B”**, which is attached hereto and incorporated herein for all purposes.
- F. **Grant.** The word “Grant” means each annual payment to **Applicants** under the terms of this Agreement computed as an amount not to exceed the total cumulative value of the **City’s** portion of the incremental ad valorem property tax revenue generated by the subject property in the Development identified in Exhibit A above the Base Year Value for the Grant Period and payable from the **City’s** general revenue fund.
- G. **Grant Submittal Package.** The words “Grant Submittal Package” mean the documentation required to be supplied to the **City** on a yearly basis as a condition of receipt of any Grant, with such documentation more fully described in **Exhibit “C”**, which is attached hereto and incorporated herein for all purposes.
- H. **Qualified Expenditures.** The words “Qualified Expenditures” means those costs incurred by **Applicants** in the acquisition, construction or furnishing of the Development.

## SECTION 2. TERM AND GRANT PERIOD.

The term of this Agreement shall be seven (7) years from the Effective Date of this Agreement. The Effective Date of this Agreement shall be the date upon which both parties have fully executed this Agreement, as noted below. However, the **Applicants’** eligibility for Grant

payments shall be limited to five (5) consecutive years (the "Grant Period") within the term of this Agreement. The Grant Period shall begin with the first year being the first tax year that begins after: (i) the issuance of the Certificate of Occupancy for the Development; and, (ii) the **Applicant** having met the Full Time Employment job requirements noted in Exhibit "B", which is attached hereto and incorporated herein for all purposes. Failure of the **Applicants** to receive the Certificate of Occupancy for the Development and meet its Full Time Employment job requirements in accordance with **Exhibit "B"** shall result in the immediate termination of this Agreement. The **City** shall review **Applicants'** eligibility for Grant Payments on an annual basis during the Grant Period.

### **SECTION 3. OBLIGATIONS OF APPLICANT.**

During the term of this Agreement, **Applicants** shall comply with the following terms and conditions. Applicants acknowledge that a failure of either **Applicant PC Automated Controls Inc.** or **Applicant RJ Shelton, LLC** shall terminate the right to receive benefits of both Applicants.

- A. **Applicants** agree to develop, construct, and operate, at its sole cost, the Development. **Applicants** shall commence construction and or improvements of the Development at the beginning of calendar year 2014. **Applicants** shall receive a Certificate of Occupancy, and be open for business to the general public by the end of calendar year 2015. **Applicants** agree that they shall make Qualified Expenditures of not less than Two Million, one hundred thousand Dollars (\$2,100,000.00) in the Development. The **City** shall be permitted to review **Applicants'** receipts of Qualified Expenditures to evidence the expenditure of a minimum amount of Two Million, one hundred thousand Dollars (\$2,100,000.00).
- B. **Applicants** agree that they shall maintain the Full-Time Employment positions described in Exhibit "B" for the Development through the entire Grant Period of this Agreement. **Applicants** shall maintain the Full-Time Employment positions for each quarter of each fiscal year with the total per day hours worked averaged over each fiscal quarter.

**Applicants** shall provide the **City** with an annual report by April 30<sup>th</sup> of each year during the entire Grant Period of this Agreement, certifying the status of compliance through the preceding year. Such annual report shall include the number of jobs retained for the Development, information on any new investments in the Development, and any other information relevant to the Development and the **City's** economic development goals. Documentation for jobs may be in the form of quarterly IRS 941 returns, Texas Workforce Commission Employer Quarterly Reports, or employee rosters that show the hours worked and the positions filled. **Applicants** shall also provide the **City** with such other reports as may reasonably be required.

**Applicants**, during normal business hours, at their principal place of business in El Paso, Texas, shall allow the **City** or its agents reasonable access to **Applicants'** employment records and books, and other records that are related to the economic development considerations and incentives described herein, to verify employment records and any

other records related to the **City's** economic development considerations and incentives provided herein. The confidentiality of such records will be maintained in accordance with and subject to all applicable laws.

- C. Unless otherwise agreed by the **City** and **Applicants**, each Grant Submittal Package shall be in the form provided in **Exhibit "C"**. If **Applicants** fail to timely submit a Grant Submittal Package for a particular year, the **City** may give **Applicants** written notice of their failure to timely submit such Grant Submittal Package, and **Applicants** shall have thirty (30) calendar days from the date on which such written notice is given in which to submit such Grant Submittal Package. Failure to timely submit a Grant Submittal Package is a waiver to receive a Grant for the period covered by the Grant Submittal Package.

The **City's** determination of the amount of the Grant payment due to **Applicants** is final; provided, however, that the **Applicants** may appeal to the City Council within thirty (30) days of payment. The City Council shall hear the appeal within thirty (30) days of request for appeal and the City Council's determination of the amount of the Grant payment shall be final. Nothing herein shall limit (or be construed to limit) **Applicants'** rights and remedies as described in Section 5 of this Agreement.

- D. **Applicants** shall pay by January 31 of each year all of the real and business personal ad valorem taxes due for the previous tax year on the Development and any other property within the City of El Paso. The parties to this Agreement agree that the taxable value of the Development, after completion of all construction and improvements, will have a minimum base value of Two Million One Hundred Thousand Dollars (\$2,100,000.00). **Applicants** shall have the right to contest the appraised value of the Development as provided by law. However, **Applicants** covenant and agree that during the term of this Agreement they shall not challenge or permit anyone else to take actions on their behalf to challenge any assessments by the Central Appraisal District at \$2,100,000.00 or lower. It is the intent of the parties that the assessed value of the Development on the tax rolls shall have a minimum base value of \$2,100,000.00 during the term of this Agreement and any affirmative act by **Applicants** to reduce the assessed value to amount below \$2,100,000.00 will be deemed an event of default that will result in termination of this Agreement.

#### **SECTION 4. OBLIGATIONS OF CITY.**

During the term of this Agreement and so long as an event of default has not occurred and is not continuing as set forth herein (provided, however, an event of default hereunder shall not be deemed to have occurred until after the expiration of the applicable notice and cure period), the **City** shall comply with the following terms and conditions:

- A. The **City** agrees to process any Grant Payments to **Applicants** within ninety (90) days after its approval of the **Applicants'** Grant Submittal Package.
- B. Pursuant to the **City's** "Incentives Policy – Guidelines and Criteria" attached hereto as Exhibit "D", the **City** shall determine the total amount of Grant Payments due to the

**Applicants**, if any, on an annual basis during the Grant Period. The minimum amount of the Grant Payment the **Applicants** shall be eligible for each year shall be as set forth in **Exhibit “B”**.

- C. All Grant Payments made to Applicants shall be made jointly to **Applicant PC Automated Controls Inc. and Applicant RJ Shelton, LLC**.

## **SECTION 5. EVENTS OF DEFAULT.**

Each of the following shall constitute an Event of Default under this Agreement:

- A. **Failure to Maintain Development and Job Requirements.** **Applicants’** failure or refusal to operate the Development and maintain required Full Time Employment pursuant to this Agreement through the entire Grant Period of this Agreement, and **Applicants’** failure or refusal to cure within thirty (30) days after written notice from the **City** describing such failure, shall be deemed an event of default. However, if such failure cannot be cured within such thirty (30) day period in the exercise of all due diligence, but the **Applicant** has not yet commenced such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such failure, such actions or omissions shall also be deemed an event of default.
- B. **False Statements.** In the event the **Applicants** provide any written warranty, representation or statement under this Agreement or any document(s) related hereto that is/are false or misleading in any material respect, either now or at the time made or furnished, and **Applicants** fail to cure same within thirty (30) days after written notice from the **City** describing the violation shall be deemed an event of default. If such violation cannot be cured within such thirty (30) day period in the exercise of all due diligence, and **Applicants** fail to commence such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such violation, such actions or omissions shall also be deemed an event of default. Further, if **Applicants** obtain actual knowledge that any previously provided warranty, representation or statement has become false or misleading after the time that it was made, and **Applicants** fail to provide written notice to the **City** of the false or misleading nature of such warranty, representation or statement within ten (10) days after **Applicants** learn of its false or misleading nature, such action or omission shall be deemed an event of default. In the event this Agreement is terminated pursuant to this Section, all Grant Payments previously provided by the **City** pursuant to this Agreement shall be recaptured and repaid by **Applicants** within sixty (60) days from the date of such termination.
- C. **Insolvency.** The dissolution or termination of **Applicants’** existence as a going business or concern, **Applicants’** insolvency, appointment of receiver for any part of **Applicants’** portion of the Property, any assignment of all or substantially all of the assets of **Applicants** for the benefit of creditors of **Applicants**, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against **Applicants** shall all be deemed events of default. However, in the case of involuntary proceedings, if such proceedings are

discharged within sixty (60) days after filing, no event of default shall be deemed to have occurred.

- D. **Construction of Development.** Applicants' failure to comply with its construction obligations set forth in this Agreement and Applicants' failure to cure same within thirty (30) days after written notice from the City shall be deemed an event of default. If such failure cannot be cured within such thirty (30) day period in the exercise of all due diligence but Applicants fail or refuses to commence such cure within such thirty (30) day period or fails or refuses to continuously thereafter diligently prosecute such cure, except to the extent such failure is caused by any act or failure to act on the part of the City, such actions or omissions shall be deemed events of default.
- E. **Property Taxes.** In the event Applicants allow any property taxes owed to the City to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure or post a satisfactory bond within thirty (30) days after written notice thereof from the City and/or El Paso Central Appraisal District, such actions or omissions shall be deemed an event of default. Subject to the restrictions noted herein, Applicants shall have the right to contest the appraised value of the Development.
- F. **Other Defaults.** Failure of Applicants or City to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any related documents, and Applicants or City fails to cure such failure within thirty (30) days after written notice from the other party describing such failure shall be deemed an event of default. If such failure cannot be cured within such thirty (30) day period in the exercise of all due diligence, but if Applicants or City also fails or refuses to commence such cure within such thirty (30) day period or fails or refuses to continuously thereafter diligently prosecute the cure of such failure, such act or omission shall be deemed an event of default.
- G. **Failure to Cure.** If any event of default by Applicants shall occur, and after Applicants fail to cure same in accordance herewith, then this Agreement is terminated without any further action required of the City and the City's obligations end at that time. If a default has not been cured within the time frame stated herein, the non-defaulting party shall have all rights and remedies under the law or in equity.

## **SECTION 6. TERMINATION OF AGREEMENT BY CITY WITHOUT DEFAULT OF APPLICANT.**

The City may terminate this Agreement for its convenience and without the requirement of an event of default by Applicants, which shall become effective immediately if any state or federal statute, regulation, case law, or other law renders this Agreement ineffectual, impractical or illegal, including any case law holding that a Chapter 380 Economic Development Agreement such as this Agreement is an unconstitutional debt.

## SECTION 7. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- A. **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by both parties.
- B. **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in El Paso County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of El Paso County, Texas.
- C. **Assignment of Applicants' Rights.** Applicants understands and agree that the City expressly prohibits Applicants from selling, transferring, assigning or conveying in any way any rights to receive the Grant proceeds without the City's prior written consent. Any such attempt to sell, transfer, assign or convey without the City's prior written consent shall result in the immediate termination of this Agreement, with no ability for the Applicants to cure.
- D. **Applicants' Sale or Transfer of the Development.** Prior to any sale or other transfer of ownership rights in the Development, Applicants shall notify the City in writing of such sale or transfer within thirty (30) business days of the effectiveness of such sale or transfer. This provision is a material term of this Agreement and the failure to notify the City of such sale or transfer within the applicable period shall constitute an event of default.
- E. **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. City warrants and represents that the individual executing this Agreement on behalf of City has full authority to execute this Agreement and bind City to the same. The individual executing this Agreement on Applicants' behalf warrants and represents that he or she has full authority to execute this Agreement and bind Applicants to the same.
- F. **Completion of Development.** As consideration for the agreements of the City as contained herein, Applicants agree that they will diligently and faithfully in a good and workmanlike manner pursue the completion of the Development and that the construction of same will be in accordance with all applicable federal, state and local laws and regulations.
- G. **Confidentiality Obligations.** The confidentiality of such records employment records and any other records related to the City's economic development considerations and incentives provided herein will be maintained in accordance with and subject to all applicable laws, including the Public Information Act, Chapter 552, Texas Government Code. Specifically, the City will maintain the confidentiality of any proprietary information to the extent permitted by law and agrees that, as required by the Public

Information Act, it will notify **Applicants** if a request relating to such proprietary information is received. **Applicants** represents that they understand that the Public Information Act excepts disclosure of trade secret and confidential commercial information and that it will need to assert the proprietary interest of **Applicants** as a basis for nondisclosure.

- H. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- I. **Employment of Undocumented Workers.** During the term of this Agreement, **Applicant** agrees not to knowingly employ any undocumented workers as defined in Texas Government Code Section 2264.001. If convicted of a violation under 8 U.S.C. Section 1324a(f), **Applicants** shall repay the amount of the Grant payments received by **Applicants** from the **City** as of the date of such violation not later than one hundred twenty (120) days after the date **Applicants** are notified by **City** of a violation of this section, plus interest from the date the Grant payment(s) was paid to **Applicants**, at the rate of seven percent (7%) per annum. The interest will accrue from the date the Grant payment(s) were paid to **Applicants** until the date the reimbursement payments are repaid to **City**. **City** may also recover court costs and reasonable attorney's fees incurred in an action to recover the Grant payment(s) subject to repayment under this section. **Applicants** are not liable for a violation by its subsidiary, affiliate, or franchisee, or by a person which whom **Applicants** contracts.
- J. **Execution of Agreement.** The El Paso City Council has authorized the El Paso City Manager to execute this Agreement on behalf of the **City**.
- K. **Filing.** The **City** shall file this Agreement in the deed records of El Paso County, Texas.
- L. **Force Majeure.** It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, or court injunction, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed.
- M. **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the addresses shown below. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, each party agrees to keep the other informed at all times of its current address.

CITY: City of El Paso  
City Manager  
P.O. Box 1890  
El Paso, Texas 79950-1890

Copy To: City of El Paso  
Director City Development Department  
P.O. Box 1890  
El Paso, Texas 79950-1890

**APPLICANTS:** PC Automated Controls Inc.  
5604-C Will Ruth  
El Paso, Texas 79924

RJ Shelton, LLC  
5604-C Will Ruth  
El Paso, Texas 79924

- N. **Ordinance Applicability.** The signatories hereto shall be subject to all ordinances of the **City**, whether now existing or in the future arising; provided however no ordinance shall reduce or diminish the contractual obligations contained herein. This Agreement shall confer no vested rights on the Development unless specifically enumerated herein.
- O. **Severability.** In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

(SIGNATURES BEGIN ON THE FOLLOWING PAGE)

**IN WITNESS WHEREOF**, the parties have executed this Agreement on this \_\_\_\_ day of \_\_\_\_\_, 2013.

**CITY OF EL PASO, TEXAS**

\_\_\_\_\_  
Joyce A. Wilson  
City Manager

**APPROVED AS TO FORM:**

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Matthew K. Behrens  
Assistant City Attorney

\_\_\_\_\_  
Mathew McElroy, Director  
City Development Department

**ACKNOWLEDGMENT**

**STATE OF TEXAS**       §  
                                  §  
**COUNTY OF EL PASO**   §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2013, by **Joyce A. Wilson**, as **City Manager** of the **City of El Paso, Texas (CITY)**.

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires:  
\_\_\_\_\_

[SIGNATURES CONTINUE ON FOLLOWING PAGE]





**EXHIBIT A**

**Lots 22, 23 and the southwest 100 feet of Lot 24 & 25, Parkland Addition, City of El Paso,  
El Paso County, Texas**

## EXHIBIT B

### Employment Requirements & Grant Payment Eligibility

#### SECTION 1. MINIMUM RETENTION REQUIREMENTS.

In order for **Applicants** to be eligible for any Grant Payments, **Applicant PC Automated Controls, Inc.** is required to maintain the minimum jobs that comply with the Full-Time Employment requirements of this Agreement, 50 Full-Time positions. **Applicant** agrees that the Full-Time requirements are jobs that will be retained by **Applicant** in the City of El Paso through the entire Grant Period of this Agreement.

#### SECTION 2. ELIGIBILITY FOR GRANT PAYMENTS.

The **Applicants'** eligibility for Grant Payments and any subsequent Grant Payments made by the **City** to the **Applicants** shall be determined pursuant to and in accordance with the following:

- A. Grant Payments shall be made equivalent to at least **twenty-five percent (25%)** of the taxes collected on the Development's personal and real property tax account(s) for the tax year covered by the Grant Submittal Package, upon **Applicant PC Automated Controls Inc.'s** certification of at least **eighty percent (80%)** of the retained jobs required herein for which wages are at or above **ninety percent (90%)** of the Median County Wage for the year covered by the Grant Submittal Package; or
- B. Grant Payments shall be made equivalent to at least **fifty percent (50%)** of the taxes collected on the Development's personal and real property tax account(s) for the tax year covered by the Grant Submittal Package, upon **Applicant PC Automated Controls Inc.'s** certification of at least **ninety percent (90%)** of the retained jobs required herein for which wages are at or above **ninety percent (90%)** of the Median County Wage for the year covered by the Grant Submittal Package.

#### SECTION 3. MEDIAN COUNTY WAGE.

For purposes of this Agreement, the Median County Wage is that wage established for the County of El Paso as adjusted on January 1 of each year. However, in no event shall the applicable Median County Wage used for determination of Grant Payment eligibility be less than the Median County Wage established for 2013, which is **\$12.25** per hour.





**EXHIBIT D**

**[Incentives Policy – Guidelines and Criteria]**

CITY CLERK DEPT.

10 FEB -1 AM 11:50

**RESOLUTION**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

That the City of El Paso Incentives Policy – Guidelines & Criteria attached hereto as Exhibit "A" are adopted as the City of El Paso incentive policy for business and commercial development projects.

ADOPTED this the 9<sup>th</sup> day of February, 2010.

THE CITY OF EL PASO



*John F. Cook*  
John F. Cook  
Mayor

ATTEST:

*Richarda Duffy Momsen*  
Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM:

*Marie A. Taylor*  
Marie A. Taylor  
Assistant City Attorney

APPROVED AS TO CONTENT:

*Kathryn Dodson*  
Kathryn Dodson, Director  
Economic Development Department

## EXHIBIT A

### City of El Paso Incentives Policy – Guidelines & Criteria February 2010

#### SECTION I. PURPOSE

It is the policy of the City of El Paso to provide incentives to selected private businesses that make or will make a **measurable** difference in achieving economic growth and development, expanding and diversifying the tax base and creating new quality jobs within the City of El Paso.

The purpose of this policy is to define the financial incentives and to establish standards for implementation. New businesses or expansion of existing businesses can be considered for financial incentives. In order to be eligible for incentives, businesses or individuals must be current on all city taxes or any other obligation to the City

Incentives cannot be transferred as a result of a change in the majority ownership of the business without the expressed written consent of the City of El Paso. Any new owner shall file a new application for an economic development incentive. It shall be the responsibility of the business to notify the City of any such substantive change.

*The City of El Paso is under no obligation to approve any requested incentive and no right to these incentives is neither intended nor implied.*

#### SECTION II. STRATEGIC OBJECTIVES

The City of El Paso, through the implementation of this policy, shall endeavor to accomplish the following strategic objectives:

1. The City of El Paso will pursue a stable, year-round economy with an emphasis on targeting **quality** jobs. A quality job is defined as a job that pays a wage or salary equal to or greater than the current El Paso County Median Wage as computed annually by the Texas Workforce Commission and provides health insurance benefits to employees for which the employer pays at least 50%.
2. The City of El Paso supports the retention and expansion of existing businesses within the City.
3. The City of El Paso supports the attraction of primary and secondary targets identified in Regional Economic Development Corporation's ("REDCO") strategic plan and attached as Exhibit "A"
4. The City of El Paso supports large private commercial recreational and tourism ventures that attract a Regional or National client base.

CITY CLERK DEPT.  
10 FEB - 1 AM 11:50

5. The City of El Paso supports the revitalization of designated redevelopment areas.
6. The City of El Paso supports the attraction and retention of companies that have strong Regional and National markets for their products or services.
7. The City's economic development efforts should be consistent with the City's Growth & Development Policy and General Plan for the El Paso area.
8. The City of El Paso supports Creative Class businesses as defined by Richard Florida in "The Rise of the Creative Class".

### **SECTION III. GENERAL CRITERIA**

The City of El Paso may provide incentives for any business or commercial development project if that project:

1. Will substantially enhance the economic health of the City of El Paso;
2. Will result in a net increase or retention of jobs in the City or add to the tax base or will otherwise improve or enhance the economic welfare of the residents or businesses of the City; or
3. Demonstrates the potential to generate revenues to the City which outweigh costs associated with incentives.

In addition, the following criteria must be satisfied.

The project **MUST**:

1. Show a clear demonstration of public purpose and economic benefit through advancement of the City's economic goals which include expanding the tax base, creating quality jobs, increasing private capital investment in the community, spurring development in targeted City locations; or encouraging development of targeted businesses or clusters desirable to enhance the City's economy;
2. Include solid evidence provided by the business that demonstrates the business's financial stability and capacity to complete the project;
3. Be in compliance with all local, state and federal laws.

The business, in order to receive any such incentives from the City of El Paso will make available credible information, including but not limited to capital investment and employment projections, to enable the City to prepare a fiscal impact analysis. The

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recipient will also make available an update of this data available annually after business operations have begun. The decision to provide any economic development incentives will be considered on a project-by-project basis, in accordance with the criteria set forth in this policy, and at the discretion of the City Council of the City of El Paso.

**SECTION IV. QUALIFICATION CRITERIA**

In order to be eligible for incentives, a project must meet qualifying standards in at least ONE of the categories below. ALL projects must receive a job credit of 25 or more to be eligible.

**Job Credit Scoring:**

a. Wages

Less than \$10.57/hr	=	0X
10.57-12.57/hr (or 100% to 119% of MCW whichever is greater)	=	1.0X
12.58 - 15.84/hr (120% to 149% of MCW whichever is greater)	=	1.5X
15.85/hr or more (150% of MCW whichever is greater)	=	2.0X

b. Number of Jobs

Example: ABC Company is establishing operations and hiring or retaining 40 workers

Credit for number of jobs will be based on the wage levels above. For instance, if a company is hiring or retaining 5 jobs at less than \$10.57/hr, 5 jobs at \$11/hr, 10 jobs at \$14/hr and 20 jobs at \$16/hr then their job credit would be calculated as follows:

<i>Salary</i>	<i>Jobs</i>	<i>*</i>	<i>Factor</i>	<i>=</i>	<i>credits</i>
>\$10.57/hr	5	*	0	=	0
\$11/hr	5	*	1	=	5
\$14/hr	10	*	1.5	=	15
\$16/hr	<u>20</u>	*	2	=	<u>40</u>
Totals:	40			=	60

**Category 1 - Quality Jobs - 80% of jobs must be at or above \$10.57/hr (or the prevailing median county wage, whichever is higher).**

If 80% of the jobs pay at least 10.57/hr or the prevailing Median County Wage (whichever is greater) the company is eligible for a 50% Grant.

## Category 2 - Targeted Location

- a. Located in a Federal Zone (Empowerment or Enterprise Zone) or;
- b. Located in a Census Tract with greater than 20% of its population at or above poverty level or;
- c. Located in a City defined Targeted Redevelopment Area.

*Grant Amounts will be based on the following:*

25% Grant - A minimum of 80% of the jobs paying at least \$9.51/hr (or 90% of the MCW whichever is higher) or;

50% Grant - A minimum of 90% of the jobs paying at least \$9.51/hr (or 90% of the MCW whichever is higher).

## Category 3 - Business Type

- a. Market for service or product is Regional, National or Global, or;
- b. Primary and additional targets identified in REDCO's strategic plan and identified in Exhibit "A" or;
- c. \*Member of Creative Class as defined by Richard Florida in "The Rise of the Creative Class."
- d. \*R&D, publishing, software, television & radio, design, music, film, toys & games, advertising, architecture, performing arts, crafts, video games design, fashion design and art.

*Grant Amounts will be based on the following:*

25% Grant - A minimum of 80% of the jobs paying at least \$9.51/hr (or 90% of the MCW whichever is higher) or;

50% Grant - A minimum of 90% of the jobs paying at least \$9.51/hr (or 90% of the MCW whichever is higher).

## Category 4 – Capital Intensive Project

*If 80% of Jobs pay at least \$9.51/hr (or 90% of MCW whichever is higher)*

*AND;*

Capital Investment is \$30M – \$49M - 30% Grant

Capital Investment is \$50M or more - 35% Grant

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Or;

*If 90% of Jobs pay at least \$9.51/hr (or 90 % of MCW whichever is higher)*

**AND;**

Capital Investment is \$30M - \$49M - 60% Grant

Capital Investment is \$50M or more - 65% Grant

## **SECTION V. ECONOMIC DEVELOPMENT INCENTIVE**

Companies meeting the qualification standards above who wish to pursue incentives will need to pay a \$750 non refundable application fee in order to formally request incentives.

An economic impact analysis will be conducted by the Economic Development Department on every project considered for incentives. The delivery mechanism of choice for incentives will be the Chapter 380 agreement; however, the City reserves the right to use any other source (City, State, Federal, Foundation, etc.) in the award of incentives. As a matter of general policy, tax abatements and Chapter 380 agreements entered into as a result of this policy will not be used simultaneously unless the revenue stream from which the Chapter 380 agreement is paid is derived from sources other than property tax.

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

The Economic Development Department is charged with developing a recommendation to council. In most cases, Incentives will be limited to 50% of the calculated direct, indirect and induced benefit, (excluding any bonus incentives earned) unless extraordinary benefit can be shown. All incentives packages will be limited to 100% of the taxes (real & property) actually collected in any given year unless approved by specific council action. For Category 2(c) (Targeted Redevelopment Area), the City Council may consider offering incentives based on capital investment only. Final Percentages of all grants will be at the sole discretion of City Council.

## **SECTION VI. BONUS INCENTIVES**

In order to be eligible under this section, a company must first establish eligibility in one of the prior categories (1 – 4)

A 50% Bonus may be earned if:

1. The company agrees to locate within the area covered by the Downtown 2015 plan.

2. The company locates a headquarters unit with a minimum of 100 employees to El Paso.
3. The company locates their Research & Development (as defined by Federal Tax Code) in El Paso (25% of the total jobs must be Research & Development related or directly support the Research & Development function).

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