CITY OF EL PASO

380 Agreement Monitoring Audit

Economic & International Development

Department Responses and Updates

Overview

- 380 Program Framework
- 380 Program Process
- Audit Findings
    - Process Improvements

Chapter 380 TLGC

Sec. 380.001. ECONOMIC DEVELOPMENT PROGRAMS.

a) The governing body of a municipality may establish and provide for the administration of one or more programs, including **programs for making loans and grants of public money** and providing personnel and services of the municipality, to promote state or local economic development and to **stimulate business and commercial activity in the municipality**…

b) The governing body may:
   1. administer a program by the use of municipal personnel;
   2. contract with the federal government, the state, a political subdivision of the state, a nonprofit organization, or any other entity for the administration of a program; and
   3. accept contributions, gifts, or other resources to develop and administer a program.

380 Program Framework

- 380 Agreements are structured to incentivize or induce behavior
- Based upon a **“but for”** construct
  - But for the incentives being offered, applicant would NOT undertake the project/enterprise
- Overly rigid policies would be incongruous with pace and rate of economic and business developments
- Chapter 380 meant to be **permissive** in interpreting provisions, similar to other development codes
  - Goal is to support successful completion of project
  - **Performance-Based** and not punitive

380 Agreement Process

1. RFP from the state, direct contact or site consultant
2. Early stage, provide incentive application
3. Due diligence and negotiations
4. Mid-stage, identify site and shortlist cities
5. Finalize incentives and present to Council
6. Review with company on compliance
7. BR&E

FACT SHEET

JAGUAR TEXAS

RECRUITMENT
Project Type

ADVANCED MANUFACTURING
Industry

ADDRESS
El Paso, Texas, 79901

PROJECT INFO

NAICS	335912 Primary Battery Manufacturing
SPACE	500,000 SF Manufacturing
FACILITY	Purchase of existing building(s) with renovations and Addition to existing building(s) already owned
BEGIN RENOVATIONS	
BEGIN OPERATIONS	

COMPANY INFO Company

Name	Confidential
Year Established	
State of Formation Business	
Structure Ownership	

EMPLOYMENT
68
New Jobs

CAPITAL INVESTMENT
$562.9M
$129.3M Buildings & Improvements
$433.6M Furniture, Fixtures, & Equipment

PAYROLL
$78,500
Avg Annual Salary
$5.3M
Annual Payroll

DESCRIPTION

A US company seeking an existing building with a fast path to infrastructure upgrades to support the needs identified in the RFI. The company is in the lithium-ion battery manufacturing and raw materials mining space.

RECOMMENDATIONS

The investment amount and industry type qualify this project for a property tax rebate of 70% per year for 10 years. Because of the investment amount, they will also receive up to a $100,000 rebate on permit fees.

It is estimated that a company in this industry with the initial job creation projected, will generate an additional 71 jobs in our area.

An ROI of 4.0% is estimated for this investment.

Comparison Data

Project Name	Industry	Capex	Jobs	Incentives Offered
Project Jaguar	lithium ion battery manufacturer	$562,900,000	68	10 years at 70%
E-Boost	lithium ion battery manufacturer	$400,000,000	305	10 years at 70%
Grip	tire manufacturer	$500,000,000	500	6 years at 70%
Life Crown	proprietary vaccine manufacturing and cryogenic storage	$400,000,000	550	years 1-10 at 100% 11-15 at 90%

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Compliance Process

Compliance Orientation

To kick things off, Compliance will reach out to schedule an orientation with you. We will revisit terms and requirements in your Incentive Agreement that will inform your grant submittal package, and answer FAQs:

- When and where can I submit my first package?
- What should I include in the package?
- How does this differ each year?

- How often will I need to submit a package?
- When can I expect my first payment?
- What activities should I pursue/avoid to remain in Compliance?

Immediately

Construction Period (380 Agreements)

You will start construction and obtain a Certificate of Occupancy, based on the terms in your incentive agreement.

One year or more

Submittal Period

You will deliver submittal package(s) to us until your agreement term is complete, your incentive agreement expires, or you reach the financial limit of your incentive package.

Agreement Term

First Submittal (380 Agreements)

You will provide the most documentation in this phase, as we need to verify that you started development. This includes proof of investments, fees, permits, and general set up forms.

Ongoing Submittal

Your submittal will remain the same each year. We will verify your incentive agreement metrics using information such as tax payments, assessed property value, and jobs created and/or retained.

Keep in mind: required steps and documents vary based on terms in your Incentive Agreement!

Process Improvement Updates 2024-2025

- 5 findings were identified by internal auditors
- 17 Standard Operating Procedures (SOPs) created and implemented since conclusion of audit report
- Monday.com tracking system introduced for real-time monitoring of tasks and deadlines
- Updated checklists to specifically address prior audit findings
- Access controls put in place so all relevant team members can view and update workflows (OTC, OMB, COEP Leadership)
- Annual review schedule and KPIs established to ensure ongoing compliance and continuous improvement

Agreement Checklists

ECONOMIC DEVELOPMENT

BR&E Industry Development Checklist: Ch.380 Economic Development Program Agreements

Agreement Name:

	BRE/Industry Development Staff	COMPLIANCE Staff
	Please add your initials to confirm terms are included in the agreement. Write N/A if document is not applicable.	Please add your initials to confirm terms are included in the agreement. Write N/A if document is not applicable.
Section 1. Definitions		
1. Base Year Value – Specify the dollar amount of the Base Year Value		
a. Specify whether it is Real and/or Personal property		
b. Personal Property Base Year Value – (if applicable) include full definition		
2. Include the capped incentive dollar amounts for each rebate definition		
3. Grant – List all individual rebates awarded in the agreement and specify total aggregate rebate dollar amount		
4. Full-Time Employment Definition (if applicable) – Please use new language with pro-rated hours		
5. Minimum Appraisal Value – Specify the dollar amount of the Minimum Appraisal Value		
a. Specify whether it is Real and/or Personal property		
6. Minimum Investment – Specify dollar amount and ensure expenses listed matches qualified expenditures definition		
7. Property – Include full property address(es)		
8. Property Tax Rebate – Define if Personal and Real property will be rebated or only Real property		
Section 1 NOTES:		
Section 2. Term and Grant Period		
1.Total term years of the agreement		
2.Grant Term, or the consecutive payment term		
Section 2 NOTES:		
Section 3. Obligations of Applicant *add administrative power (Unless otherwise agreed....)		
* 1. First building permit (commencement of construction) – include how many months until they're due		
* 2. Certificate of Occupancy – include how many months until they're due - define that temporary certificates do not qualify		
* 3. Grant Submittal Date – Include a due date (please add one year after COO due date)		
* 4. Grant Submittal Package – Include waiver clause		
Section 3 NOTES:		
Section 4. Obligations of the City		
1. Timeline to process payment – Ensure language specifies the city has 90 days to process payment		
2. Re-state all incentives and dollar amounts proposed in the agreement (ensure it matches definitions)		
Section 4 NOTES:		
Section 6. Recapture * clause may be removed during the negotiation process		
1. Recapture – Include a recapture clause		
Section 8. Miscellaneous Provisions		
1.Notices – Include the ED compliance email as the address for Grant Submittal Packages		
2.Applicant's sale of transfer of the development- include sale or transfer clause.		
Section 6 and 8 NOTES:		
Final run-through		
1.Double check that all dollar amounts add up to total contractual incentive amount		
2.Double check the correct and corresponding exhibits are attached		

FINAL NOTES:

Signature BRE/Attraction POC for agreement: Date:

Signature Compliance Staff: Date:

ECONOMIC DEVELOPMENT

Chapter 380 Economic Development Program Agreements

BR&E Industry Development Checklist Example Language:

Section 1. Definitions

1. and 1.a. **"**Base Year Value. The words 'Base Year Value' mean the value of the real and personal property on the rolls as of January 1st of the year in which this Agreement is executed. For the purposes of this Agreement the Base Year Value is $XXX,XXX.XX." (note: this will be the cumulative amount of Personal and Real property).

1. b.

Personal Property Base Year Value.* "The words 'Personal Property Base Year Value' mean the value of the non-inventory, personal property on the El Paso Central Appraisal District rolls as of [Month Day] of the year in which this Agreement is executed with respect to the Development. However, under no circumstances shall the Personal Property Base Year Value be interpreted to be equivalent or determinative for appraisal purposes or to be utilized in any way to determine market value. For the purposes of this Agreement, this amount______."

Real Property Base Year Value.* The words "Real Property Base Year Value" mean the value of the real property on the El Paso Central Appraisal District rolls as of January 1st of the year in which this Agreement is executed with respect to the Development. However, under no circumstances shall the Real Property Base Year Value be interpreted to be equivalent or determinative for appraisal purposes or to be utilized in any way to determine market value. For the purpose of this Agreement this amount is Two Million Two Hundred Forty Nine Thousand Four Hundred Fifty Five Dollars ($2,249,455.00).

2. For instance:

"Construction Materials Sales Tax Rebate" means a one-time 100% rebate of the City's 1% Sales and Use Tax from receipts for materials and labor of taxable items used in the construction of the Development. The Construction Materials Sales Rebate shall not exceed $XX,XXX.XX, Forty thousand dollars.

"Property Tax Rebate" means a rebate, according to the Incremental Property Tax Rebate Table found in Exhibit D of this Agreement, of the City's portion of the incremental ad valorem property tax revenue generated by the subject property above the Base Year Value for the Grant Period (as defined herein). For the purposes of this Agreement, the total Property Tax Rebate amount shall not exceed $X,XXX,XXX.XX, Two million fifty-one hundred thousand dollars.

Retail Sales and Use Tax Rebate. The words "Retail Sales and Use Tax Rebate" means a rebate, according to the Sales Rebate Table found in Exhibit D of this Agreement, of the CITY'S [NUMBER] percent (XX %) Sales and Use Tax Receipts generated by and attributable solely to Retailer sales of Taxable Items consummated at the Property located in the Project in the immediately prior calendar year and remitted from the State Comptroller to the City and payable from the CITY's general revenue fund. For the Purposes of this Agreement, the maximum value of this rebate is $X,XXX.XX.

3. Grant. "The word 'Grant' means each annual payment to APPLICANT under the terms of this Agreement computed as the sum of the applicable rebates: (i) Construction Materials Sales Tax Rebate; (ii) Retail Sales and Use Tax Rebate; and (iii) Property Tax Rebate. For the purposes of this Agreement, the aggregate Grant payments will not exceed $X,XXX.XX."

4. Full-Time Employment.*

** Exact language in red is strongly recommended, all other language is an example ONLY, please follow legal approved templates.*

1

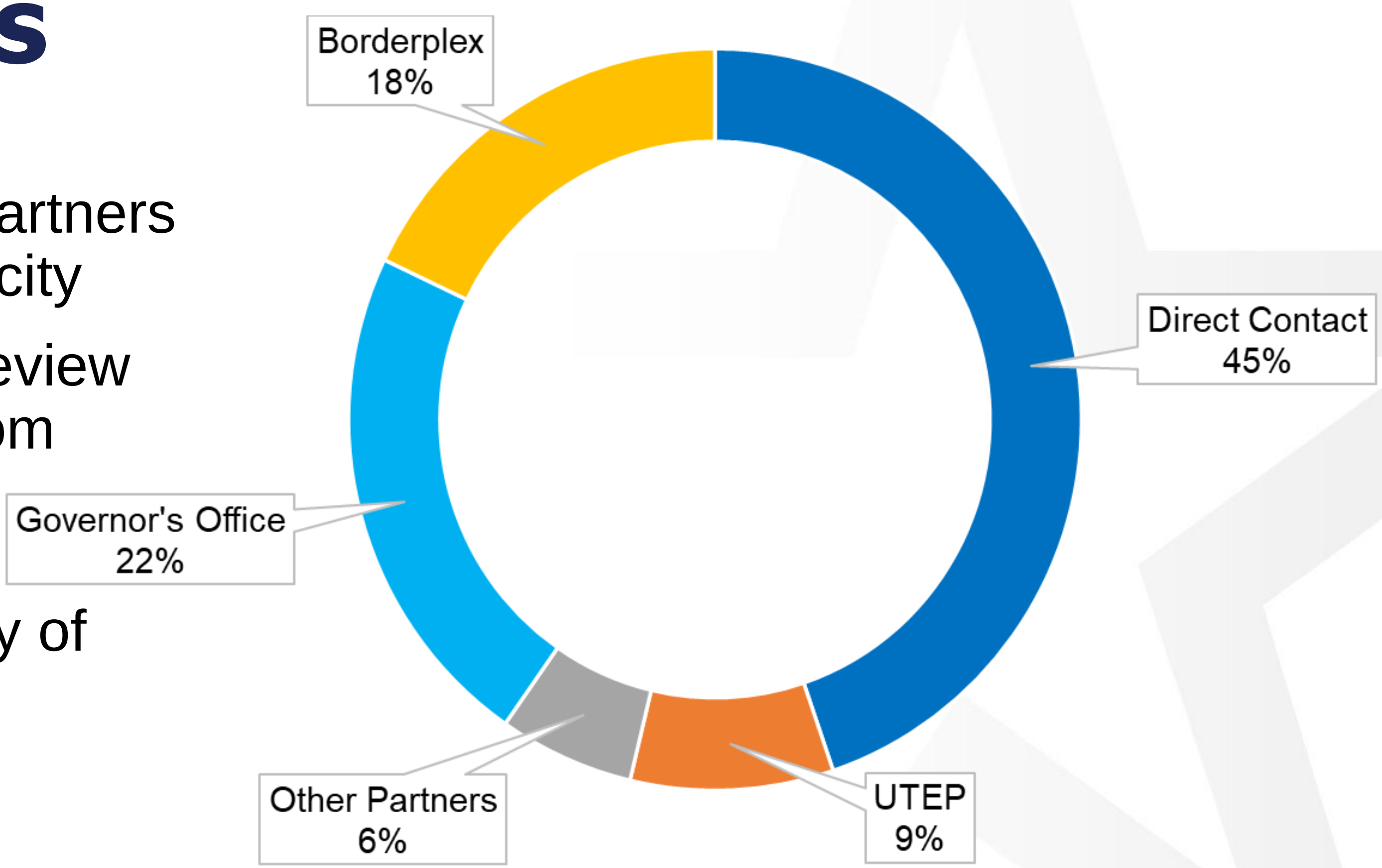
Finding 1: Policy Update

- Per Audit Report - **ALL** agreements approved by council and met adopted policy
- Policy changes were communicated and approved by council
  - Item 37 at the January 19, 2021 meeting
  - Items 3 & 4 at the May 11, 2021 meeting
- Modifications in language of 2021 Chapter 380 Policy intended to provide flexibility to respond to market conditions and Council priorities

- **Process Improvement:** Chapter 380/381 Policy Rewrite with Newmark Consulting

Finding 2: Financial Analysis

- Projects sourced from outside partners are pre-vetted for financial capacity
- Department does request and review financial capacity information from existing, tested sources
    - i.e. SEC, IRS, BLS, TX Comptroller and Secretary of State
- Gap in the documentation and retention of this information



Finding 2: Financial Analysis

Process improvement:

- Coordination with Office of the Comptroller and City Attorney's Office to conduct risk analysis on agreement types to determine:
    - When additional information is needed
    - What type of documentation to provide
    - When to escalate for additional review (OTC, OMB, etc.)

- 380 Agreements are performance-based, focused on rebates and reimbursements
    - Financial risk is generally low

Finding 3:
Incentives Reporting

- Incentives Booklet originally meant to capture payments from General Fund (380)
    - Incentive Agreements across all program types are subject to multiple reporting requirements (i.e. TX Comptroller, grant agencies, EPE)

Process Improvement:

• Full waiver reports are now requested directly from Planning& Inspections

• Step has been added to the 380 Checklist and incorporated into the Booklet for consistent reporting

• Also Integrated Special District reports into Booklet for visibility

Finding 3: Incentives Reporting

- Applicants report employee counts based on the agreement definition of FTE. It does not reflect full employment of a company not part-time employees.
- Counts may change depending on the definition used:
    - IRS: 30 hours/week
    - Workforce / TWC: Employer-defined; typically 32–40 hours/week
    - COEP Chapter 380 Standard: 35 hours/week

Process Improvements

- Waivers, TIRZ, and actual employees are tracked according to the contractual FTE definition on Monday.com.
- Steps added to SOPs and Internal Checklists to ensure accurate reporting and monitoring.
- Incentive booklet will be updated and shared at least annually

Finding 3:
Incentives Reporting

Rebates

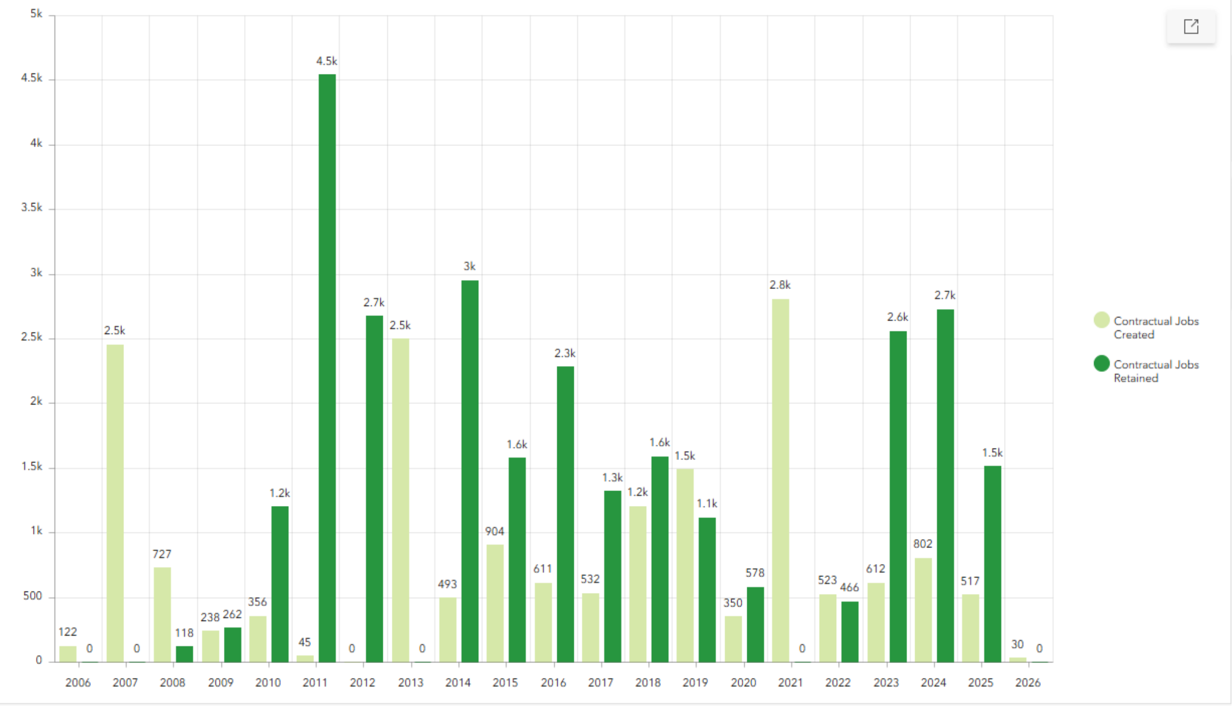
Company Name	Payment	Rebate Type	Agreement Type	Date Done	Amount Paid
Champlain Cable	Building Permit Rebate	Building and Permit Fees Waiver	380	5/1/2024	528.4

Rebates

Company Name	Payment	Rebate Type	Agreement Type	Date Done	Amount Paid
Better Business Bureau	April 2025	ARPA	Federal Grant (ARPA/Innovation)	6/6/2025	15717.49
Campo De Sol (Entitlement Agreement)	2023	TIRZ	TIRZ	6/5/2025	516398.63

District	Company Name	Project Name	Status of the Project	Subtype Status of the Project	Agreement Type	Industry Sector	Executed Date
District 8	Borderplex Community	Borderplex Community Capital 380	Open	Active	TIRZ 5	Business Services	2024-10-22 00:00:00

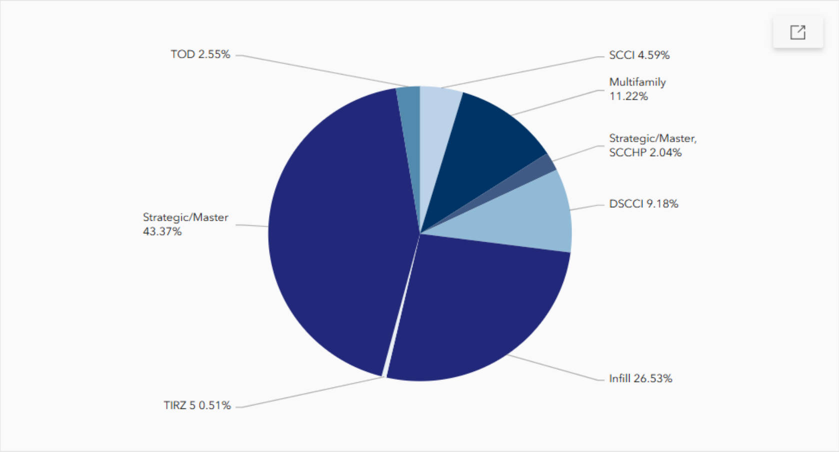
TEZ/ Waivers Tracking



New and Retained jobs for Historical ED Program Agreements from 2006 until 2026-Q1 (Fiscal Year When Agreement Was Executed)

Contractual Jobs

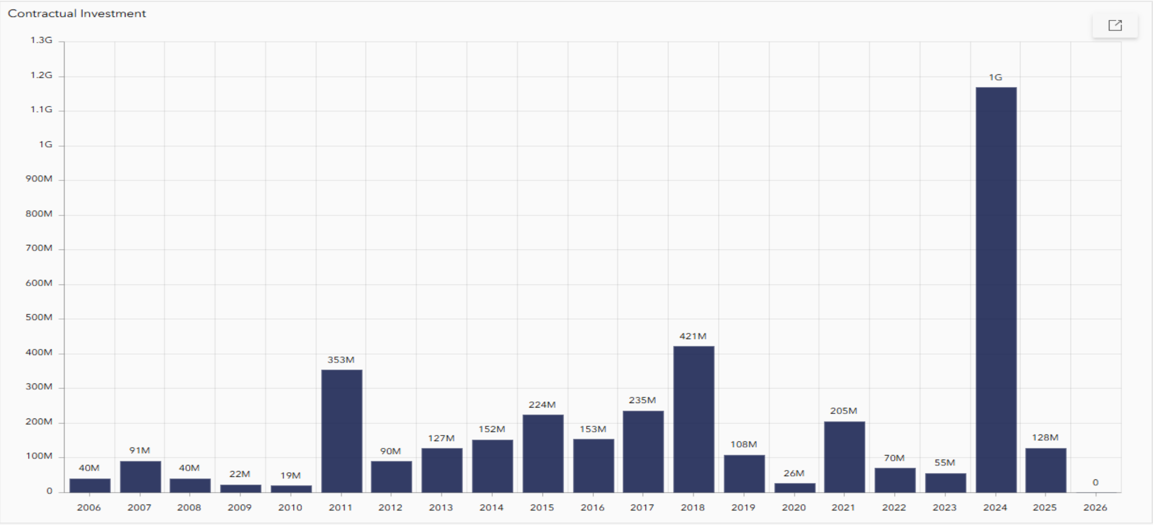
City of El Paso Incentive Agreement Portfolio



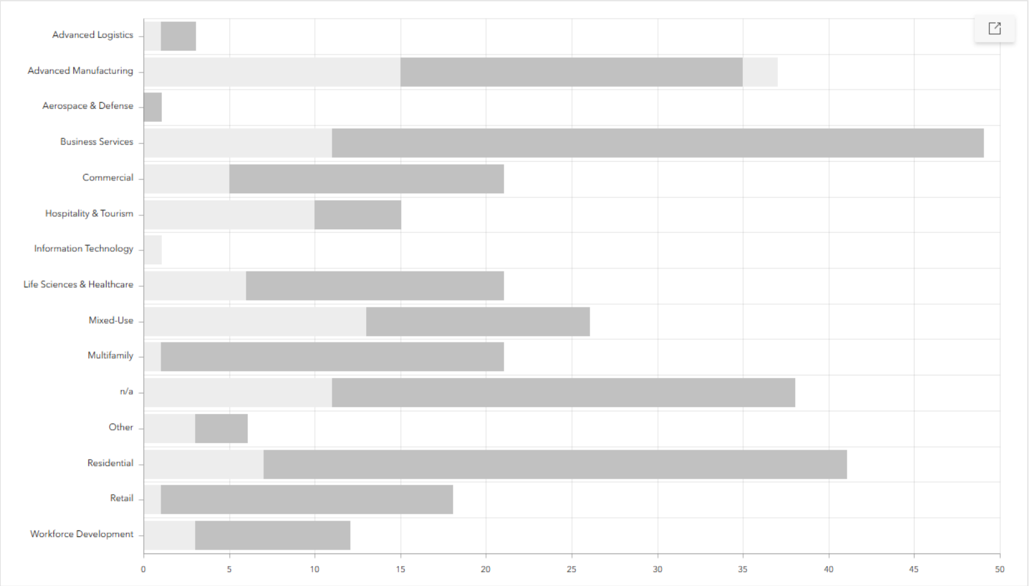
Total Historical Chapter 380 Subtypes up to 2026-Q1

Link to Booklet:

[City of El Paso Incentive Agreement Portfolio]



Contractual Investment for Historical ED Program Agreements from 2006 until 2026-Q1 (Fiscal Year When Agreement Was Executed)



Total Historic Agreements by Industry

Finding 4:
Agreement Monitoring

"Performance-based" Agreements

- We cannot make applicant perform; we can only compensate them for their performance within parameters of 380 agreement
- Close or withdrawals of Agreements ≠ failure of project

Process Improvement:

- Automated notices and submittal tracking implemented to reduce risk of missed deadlines
- CAO updated templates with reminders and standard recapture clause to protect City's interests

Monday.com Automation

Active Agreements

Project	Building Permit...	COO Due Date	Investment Du...	Original- Grant Submitt...	*Next- Grant Submi...	Notify Email- Ext...	Received	Submittal Remin...
MCA Medical Center of th... 49								n/a
McCombs Village	Sep 2, 2021	Mar 2, 2023	Mar 2, 2023	Feb 16	Feb 16, 2025	sajir@mndtx.com		n/a
MedCare Plus Insurance Off... 3				Jul 31, 2014	Jul 31, 2025	ana.l.casillas@hotm...		n/a
Miguel Villanueva & Julio Villan...		Feb 13, 2025		Oct 11, 2025	Oct 11, 2025	admin@villanuevas...		n/a
Montecillo 5				Jul 1, 2020	Jul 1, 2025	dparra@eptcommu...		n/a
Park Tavern / Pallets 4				Jul 31, 2015	Jul 31, 2025	lgaddy@wsilverrec...		n/a
Parkhill Smith & Cooper Arc... 9				Jul 31, 2018	Jul 31, 2025	team-psc.comblrlb...		n/a
Parradame Family Partnershi... 1				May 24	May 24	michael@parraservi...		n/a
Pedro Morales & Francisca Mor...	Jul 3	Jan 3, 2026	Jan 3, 2026	Jan 3, 2026	Jan 3, 2026			
Prod Design & Analysis, Inc	Mar 25	Sep 25, 2025	Sep 25, 2025	Sep 1, 2026	Sep 1, 2026			
Project Arriba (2023) 10								
ROCCO Developers	Aug 31	Sep 30	Sep 30	Aug 3	Aug 3, 2025			
Scenic View Townhomes, LLC	Sep 29, 2022	Mar 29	Mar 29	Mar 29, 2025	Mar 29, 2025			
Schneider Electric USA (20... 6				Jul 15, 2018	Jul 15, 2025			
Schneider Electric USA (2022)				Mar 1	Mar 1, 2025			
South Shore USA 5				Nov 14, 2018	Nov 14			
Stanton Street Boutique Ho... 5				May 31, 2019	May 31, 2025	martin.morgades@...		

monday work management

New notification on The Toro Company

Master Sheet > Active Agreements

Grant Submittal yearly package is due for:
Incentive: The Toro Company
Agreement Type: State Grant (TEZ)
Due Date: October 16th 2024

Open Project

Help

EP TX CITY OF EL PASO

Finding 5: Recapture

- TLGC Chapter 380 does **NOT** require recapture
  - Often confused with Chapter 312.205.(a)(4) – separate program and agreement language
- Recapture **already included in policy**
  - subject to negotiation and final approval by CC
  - job numbers and salary levels being met. The Agreements shall contain recapture clauses in the event that such conditions are not met.

- **ALL** modified recapture clauses were communicated to and approved by City Council

MISSION

Deliver exceptional services to support a high quality of life and place for our community.

VISION

Develop a vibrant regional economy, safe and beautiful neighborhoods and exceptional recreational, cultural and educational opportunities powered by a high performing government.

VALUES

Integrity, **R**espect, **E**xcellence, **A**ccountability, **P**eople