



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

# 380 Agreement Process

## SOP's Mapping Incentive Agreement

PROJECT  
IDENTIFICATION

RESEARCH  
PROCESS

PROJECT  
REVIEW

LEADERSHIP

FINAL  
APPROVAL





FACT SHEET  
**JAGUAR TEXAS**

**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**

**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
<b>Project Jaguar</b>	lithium ion battery manufacturer	<b>\$562,900,000</b>	<b>68</b>	<b>10 years at 70%</b>
<b>E-Boost</b>	lithium ion battery manufacturer	\$400,000,000	305	10 years at 70%
<b>Grip</b>	tire manufacturer	\$500,000,000	500	6 years at 70%
<b>Life Crown</b>	proprietary vaccine manufacturing and cryogenic storage	\$400,000,000	550	years 1-10 at 100% 11-15 at 90%

**RECRUITMENT**  
Project Type

**ADVANCED MANUFACTURING**  
Industry



**ADDRESS**  
El Paso, Texas, 79901

**COMPANY INFO** Company

**Name** Confidential  
**Year Established**  
**State of Formation** Business  
**Structure** Ownership

Comparison Data

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# Agreement Checklists

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

Agreement Name:

[BRE/Industry Development Staff](#)

Please add your initials to confirm terms are included in the agreement. Write N/A if document is not applicable.

[COMPLIANCE Staff](#)

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
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* 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
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### 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:

Signature Compliance Staff:

Date:

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 XXXX,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 XXX,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.*

# 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?



## Construction Period (380 Agreements)

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



## 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.

### 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.



Immediately

One year or more

Agreement Term

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



# Finding 1: Policy Update

- 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
- **ALL agreements approved by council and met adopted policy**
  - This includes any recapture modifications or removals

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## Finding 2: Financial Analysis

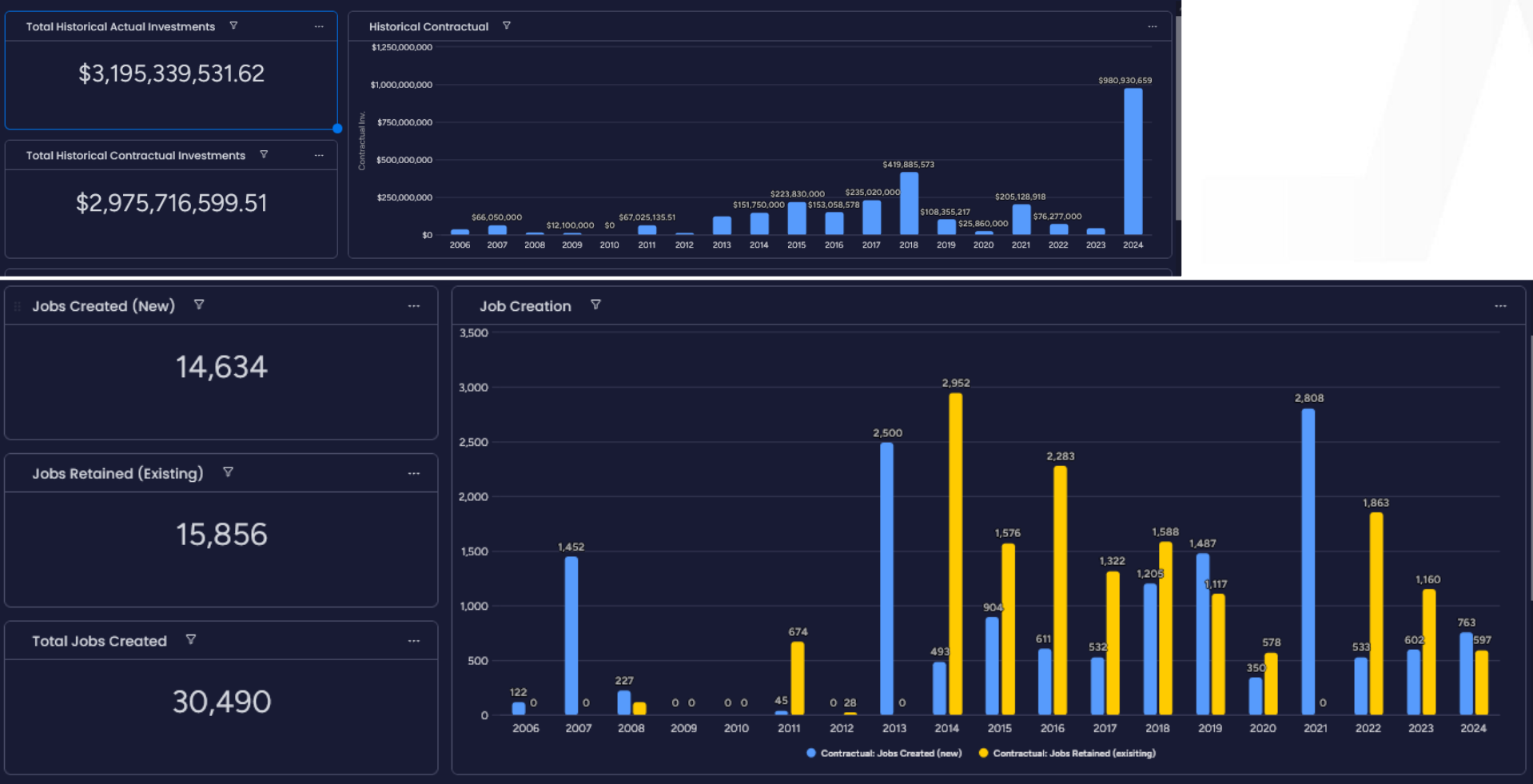
- Department does request and review financial capacity information from existing, tested sources
  - i.e. SEC, IRS, BLS, TX Comptroller and Secretary of State
- Gap in the documentation and retention of this information
- We are in coordination with Office of the Comptroller and City Attorney's Office to develop fully transparent procedures around:
  - When in the negotiation process we request documentation
  - What documentation is necessary
  - When to escalate for additional review (OTC, Professional Services)
- Balance “but for” clause, relative risk, and our recovery ability

# Finding 3: Incentives Reporting

- Incentives Booklet originally meant to capture payments from General Fund
  - Waiver information already tracked and confirmed via Accela
  - Incentive Agreements across all program types are subject to multiple reporting requirements (i.e. TX Comptroller, grant agencies, EPE)
- Note on jobs reporting:
  - **ONLY** a reflection of contractual obligations
  - Does not reflect full employment of a company
- Can easily incorporate additional information to reflect full value of City's participation in projects



# Monday.com Dashboard



# 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
- Have automated much of this process to minimize missed submittals and notices
- Working with CAO to update templates for reminders and notices to ensure City’s interests are protected

# 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.lcasillas@hotmail...		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.comblrb...		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@...		n/a

mondaywork 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

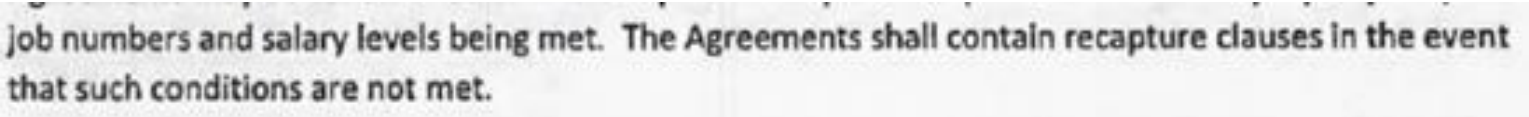
Open Project

Help

14



# Finding 5: Recapture

- **ALL** modified recapture clauses were communicated to and approved by City Council
- Recapture **already included in policy**
  - subject to negotiation and final approval by CC
  - 
- TLGC Chapter 380 does **NOT** require recapture
  - Often confused with Chapter 312.205.(a)(4) – separate program and agreement language

## 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

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