

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

AGENDA DATE:

PUBLIC HEARING DATE: June 29, 2021

CONTACT PERSON(S) NAME AND PHONE NUMBER: Mirella Craigo, 915.867.4685

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: GOAL 1. CULTIVATE AN ENVIRONMENT CONDUCIVE TO STRONG, SUSTAINABLE ECONOMIC DEVELOPMENT

SUBGOAL: 1.1 Stabilize and expand El Paso's tax base

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.

That the City Manager be authorized to sign a Chapter 380 Economic Development Program Agreement by and between City of El Paso and LiftFund, Inc. in support of a program whereby micro business loans shall be provided to eligible small businesses, program referred to as the Dream Makers Fund.

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?

For more than 21 years, LiftFund, a 501(c)(3) nonprofit organization, has helped individuals achieve the American Dream by providing small business lending to those who do not have access to capital from typical lenders, such as traditional banks. Along with vital small business loans, LiftFund provides educational services at no cost to borrowers, which are essential to foster self-sufficiency. LiftFund has worked with the City in administering loans and grants program this past year to assist businesses suffering financial losses due to COVID-19.

The City shall provide a grant payment in the amount of \$600,000 to support the Fund. The fund will provide micro business loans of up to \$25,000 to help small businesses in The City of El Paso. This loan fund will provide affordable access to capital. The City will invest \$540,000 in a revolving loan fund and \$60,000 to buy down the financing cost to borrowers.

PRIOR COUNCIL ACTION:

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

LiftFund administered the City and County's loans and grants program in March 31, 2020, successfully disbursing a combined \$2m to local small businesses. June 24, 2020 the City approved an additional \$523k in grant funding for small businesses. July 2020 City council approved the CARES Act funding of \$8.5m to assist small businesses in El Paso.

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?

Impact Fund 2313

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

Revised 04/09/2021

PRIMARY DEPARTMENT: Economic Development
SECONDARY DEPARTMENT: N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:

Jessica Herrera

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

RESOLUTION

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

That the City Manager be authorized to sign a Chapter 380 Economic Development Program Agreement (“Agreement”) by and between **CITY OF EL PASO** (“City”) and **LIFTFUND, INC.** (“Applicant”) in support of a program whereby micro business loans shall be provided to eligible small businesses, program referred to as the “Dream Makers Fund” (“Fund”). The City shall provide a grant payment in the amount of \$600,000 to support the Fund. The Fund will provide micro business loans of up to \$25,000 to help small businesses in The City of El Paso.

APPROVED this _____ day of _____ 2021.

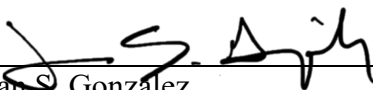
CITY OF EL PASO:

Oscar Leeser
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Juan S. Gonzalez
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Jessica Herrera, Director
Economic & International Development

STATE OF TEXAS)
)
COUNTY OF EL PASO)

**CHAPTER 380 ECONOMIC DEVELOPMENT
PROGRAM AGREEMENT**

This Chapter 380 Economic Development Program Agreement (the “Agreement”) is entered into by and between the **CITY OF EL PASO, TEXAS** (the “City”), a Texas home rule municipal corporation, and **LIFTFUND INC.** (the “Applicant”), a Texas non-profit organization, for the purposes and considerations stated below:

WHEREAS, the City has the authority under Chapter 380 of the Texas Local Government Code (“Chapter 380”) and the Texas Constitution Article VIII, Section 52-a to make grant of public funds to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City, pursuant to Chapter 380, wishes to grant micro businesses loans to eligible businesses; and

WHEREAS, the City has determined that investing funds into the Dream Makers Fund will serve the public purpose of promoting local economic development and enhancing business and commercial activity within the City; and

WHEREAS, this program whereby micro business loans shall be provided to eligible small businesses shall be referred to as the “Dream Makers Fund”; and

WHEREAS, pursuant to Chapter 380, the City desires to enter into an agreement with the Applicant whereby the City provides economic incentives to the Applicant in exchange for the Applicant administering the Dream Makers Fund and

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

WHEREAS, the City has concluded and hereby finds that this Agreement embodies an eligible “program” and 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.

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 exhibit(s) attached to this Agreement.
- B. **Applicant.** The word “Applicant” means LiftFund Inc., a Texas non-profit organization.
- C. **Applicant Grant Payment.** The word “Applicant Grant Payment” means a total payment of Six Hundred Thousand Dollars (\$600,000) to APPLICANT under the terms of this agreement.
- D. **City.** The word “City” means the City of El Paso, Texas.
- E. **Dream Makers Fund.** The words “Dream Makers Fund” means a program described in this Agreement and Exhibit “A” herein, through which the City will provide micro loans to eligible small businesses. Applicant shall administer the Dream Makers Fund and will not receive economic incentives for the performance of such administration.

SECTION 2. EFFECTIVE DATE AND TERM.

The Effective Date of this Agreement shall be the execution date as evidenced below. The Term of this Agreement shall be three years beginning on the Effective Date.

SECTION 3. OBLIGATIONS OF APPLICANT.

During the term of this Agreement, Applicant shall comply with the following terms and conditions:

- I. The Administration of Micro Business Loans.
 - A. Applicant shall administer micro business loans through Dream Makers Fund in the amount of \$600,000.00 to be advanced by the City.
 - B. Applicant shall administer micro business loans in strict and complete accordance with the description of the small business loan program provided in Exhibit “A”.
 - C. Applicant shall make and administer micro business loans of up to twenty-five thousand dollars (\$25,000.00) through the Dream Makers Fund. The \$600,000 be advanced by the City will be divided into two categories as follows: a) \$540,000.00 is applied into a permanent revolving loan fund for micro business loans, b) \$60,000 will be applied to the borrower’s cost in the form of an interest buy down.
 - D. 36 months after the Effective Date, Applicant shall return all undistributed loan funds from the initial \$540,000 funds that were not lent out to the City (“Grant Repayment Date”).

E. Applicant shall provide documentation evidencing all loan disbursements made. If the City is not satisfied with the documentation provided by Applicant to evidence loan disbursements, the City may request additional documentation. If the Applicant is unable to provide evidence that the City, in its sole discretion, finds satisfactory to show loan disbursements, the City may terminate this Agreement and the City shall have all rights and remedies under the law or in equity. Applicant's documentation and records shall be retained for a period of no less than TEN (10) years. Applicant will provide electronic copies of any/all documentation and records to City within 5 working days of request by City.

II. Quarterly progress report on Dream Makers Fund.

Demographic data shall include but not limited to the loan amount, interest rate and loan term, industry type, years/months in business, type of business formation, the name of the business, business address, owner's names, owner's home address, contact information to include telephone number(s) and website and email address (if applicable). Applicant shall also identify if the loan was for an existing business or a business start-up. Applicant shall also supply the repayment history on all the loans. Furthermore, if a loan is determined to be a loss, Applicant shall demonstrate all information related to technical assistance that was provided to mitigate the loss. Quarterly reports will be due within 60 days of the end of the respective quarter.

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, City shall comply with the following terms and conditions:

- A. The City shall advance \$600,000.00 to the Applicant within 30 days of the Effective Date to be utilized for the Dream Makers Fund program as described herein, and in Exhibit "A", attached.
- B. Any funds that have been disbursed and repaid shall not be subject to any recapture or reimbursement provision by this agreement.

SECTION 5. EVENTS OF DEFAULT.

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

- A. **Failure to Administer the Dream Makers Fund in Strict Accordance with the terms of this Agreement and/or Exhibit "A".** Applicant's failure to administer the Dream Makers Fund in Strict Accordance with the Terms of this Agreement and/or Exhibit "A", and Applicant's failure to cure within 60 days after written notice from the City describing such failure, shall be deemed an event of default. If such failure cannot be cured within such 60 day period in the exercise of all due diligence, but the Applicant has commenced such cure within such 60 day period and continue to thereafter diligently prosecute the cure of such failure, such actions or omissions shall not be deemed an event of default.

- B. **False Statements.** In the event the Applicant provides 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 Applicant fails to cure same within 30 days after written notice from the City shall be deemed an event of default. If such violation cannot be cured within such 30 day period in the exercise of all due diligence, but the Applicant commences such cure within such 30 day period and continuously thereafter diligently prosecutes the cure of such violation, such actions or omissions shall not be deemed an event of default. Further, if Applicant obtains actual knowledge that any previously provided warranty, representation or statement has become materially false or misleading after the time that it was made, and Applicant fails to provide written notice to the City of the false or misleading nature of such warranty, representation or statement within 30 days after Applicant learns of its false or misleading nature, such action or omission shall be deemed an event of default.
- C. **Insolvency.** The dissolution or termination of Applicant's existence as a going business or concern, Applicant's insolvency, appointment of receiver for any part of Applicant's portion of the Property, any assignment of all or substantially all of the assets of Applicant for the benefit of creditors of Applicant, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Applicant, shall all be deemed events of default. However, in the case of involuntary proceedings, if such proceedings are discharged within 60 days after filing, no event of default shall be deemed to have occurred.
- D. **Other Defaults.** Failure of Applicant 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 Applicant or City fails to cure such failure within 60 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 60 day period in the exercise of all due diligence, and Applicant or City commences such cure within such sixty 60 day period and continuously thereafter diligently prosecute the cure of such failure, such act or omission shall not be deemed an event of default.
- E. **Failure to Cure.** If any event of default by Applicant or City shall occur, and after Applicant or City fails to cure same in accordance herewith, then this Agreement may be terminated without any further action required of the Applicant or City. Upon termination, Applicant will immediately return any undisbursed funds in accordance to Section 7, below. 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 Applicant which shall become effective immediately only if any state or federal statute, regulation, case law, or other law renders this Agreement ineffectual, impractical or illegal. Should the City terminate this Agreement for its convenience, within 60 days, Applicant shall provide documentation of all loans disbursed and return any undistributed remaining funds initially advanced by the City that remain undistributed to borrowers.

SECTION 7. RECAPTURE.

Should the Applicant default under the terms of this Agreement and provided that the cure period for such default has expired, all unspent Grant Payments and unspent initial funding for the Dream Makers Fund previously provided by the City pursuant to this Agreement shall be recaptured and repaid by Applicant within 60 days from the date of such termination.

SECTION 8. 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 all 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 Applicant's Rights.** Applicant understands and agrees that the City expressly prohibits Applicant 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 is void and may result in the immediate termination of this Agreement, with no ability for the Applicant to cure.
- D. **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 Applicant's behalf warrants and represents that he or she has full authority to execute this Agreement and bind Applicant to the same.
- E. **Confidentiality Obligations.** The confidentiality of 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 Applicant if a request relating to such proprietary information is received. Applicant represents that it understands 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 Applicant as a basis for nondisclosure.

- F. **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.
- G. **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), Applicant shall repay the amount of the Grant payments received by Applicant from the City as of the date of such violation not later than one hundred twenty (120) days after the date Applicant is notified by City of a violation of this section, plus interest from the date the Grant payment(s) was paid to Applicant, at the rate of seven percent (7%) per annum. The interest will accrue from the date the Grant payment(s) were paid to Applicant 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.
- H. **Execution of Agreement.** The City Manager has received authority to execute this Agreement on behalf of the City from the City Council through approval of a resolution.
- I. **Force Majeure.** It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed beyond such party's reasonable control by reason of war, civil commotion, acts of God, severe 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 reasonably delayed.
- J. **Performance.** The City of El Paso shall have the right to monitor performance of the contract on a periodic basis to assure compliance with the provisions of this agreement. The applicant will provide quarterly reports in writing along with an annual in-person presentation to the El Paso City Council. LIFTFUND INC. staff shall deliver three reports (3) reports to the City of El Paso with updates on disbursement of funds, progress of the program, defaults on loans and loan types.

Notices. All notices required to be given under this Agreement shall be given in writing and shall be effective when received by certified mail with a mailing receipt from the United States Postal Service mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the addresses shown below:

CITY:	City of El Paso City Manager P.O. Box 1850 El Paso, Texas 79950-1850
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Copy To: City of El Paso
Economic Development Department Director
P.O. Box 1850
El Paso, Texas 79950-1850

APPLICANT: LIFTFUND
President and CEO
2007 W. Martin St.
San Antonio, Texas 78207

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. Applicant shall provide all required invoices and other required documentation to City electronically at the following address: EDcompliance@elpasotexas.gov.

- K. **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.
- L. **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 PAGES]

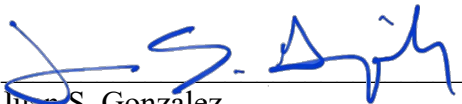
IN WITNESS WHEREOF, the parties have executed this Agreement on this ____ day of _____, 2021.

CITY
CITY OF EL PASO:

Tomás González
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



Juan S. Gonzalez
Senior City Attorney



Jessica Herrera, Director
Economic and International Development

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of _____, 2021, by **Tomás González**, as **City Manager** of the **City of El Paso, Texas (CITY)**.

Notary Public, State of Texas

My Commission Expires:

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

APPLICANT
LIFTFUND INC.

By: 
Name: Richard Ruebe
Title: COO/CFO

ACKNOWLEDGMENT

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This instrument was acknowledged before me on the 11th day of JUNE, 2021,
by RICHARD RUEBE, as COO/CFO of LIFTFUND INC. a
nonprofit corporation.


Notary Public, State of TEXAS

My Commission Expires:
11/10/2024



DREAM MAKERS FUND

LiftFund Inc. (LiftFund) Loan Program in partnership with the City of El Paso

The Program for Loans:

The City of El Paso Dream Makers Fund provides micro business loans of up to \$25,000 to help small businesses in The City of El Paso. The loan is offered through LiftFund, a local Community Development Financial Institution dedicated to strengthening small business in City of El Paso and Texas. The City of El Paso is seeding \$540,000 in a revolving loan fund. Small business owners receive micro business loans to start or grow their businesses. As those loans are repaid, funds are redistributed to other clients, again and again, creating a long-lasting impact. By accessing education and capital through LiftFund, clients discover their dreams are propelled and their families are transformed through asset building and equity creation in their businesses. The clients LiftFund serves often are considered by traditional lenders as “unbankable.” That doesn’t mean they aren’t worthy of opportunity and healthy, affordable capital or backing. That is where LiftFund comes in, providing capital, financial education and consulting clients willing to listen, learn, and better position themselves for loan eligibility and improved credit. LiftFund clients are diverse and motivated job creators and economic engines.

Initial Deployment - How It Works:

- Business owners must apply online at www.liftfund.com to begin the application process and are subject to credit review and financial assessment.
- Loans will range in value up to \$25,000 and will be approved based on such factors as need, location, planning, eligibility and availability of funds.
- Funds may be used for working capital, equipment, furniture, fixtures, inventory, vehicles, and all other acceptable uses of funds according to Liftfund Policy

Initial Deployment - Loan Terms

- Up to 120 day deferral of Principal and Interest (P&I) upon closing of the loan, with a maximum interest rate of 10% before the reduced interest buy down is applied. The interest rate is set at 10% then a buy down on the borrowers cost will be applied to reduce the rate to 6%, as long as the interest buy down funds are available.
- Up to 5% commitment fee
- Terms are based on size of loan:
 - 24 months for loans up to \$10,000
 - 48 months for loans up to \$25,000

Eligibility:

- Business can be a start-up or an established business
- Employed fewer than 10 full time employees at all business locations.
- Annual gross revenues of not more than \$1 million from all business activities at all business locations.
- Must be in good standing with creditors for at least six months prior to COVID-19 outbreak.
- Loans are limited to businesses that are located in the City of El Paso.
- Business existence will be verified using Liffund existing process including one of the following: Smartlinx Report, Entity documents verified with Secretary of State, or copies of Assumed business name filed with the County. Capacity to service the loan will be verified using existing Liffund practice for capacity verification.

Documents:

- Last 90 days of bank or statements connected to business demonstrating expenses and revenue; business formation verification, tax documentation items
- Application completed via liffund.com website
- Purchase orders will be required for large assets to be purchased with loan proceeds (vehicles, heavy machinery and equipment).

Application Submission:

Quickest way to apply is online at www.liffund.com.

Project Budget:

The City of El Paso has committed \$600,000 towards the Dream Makers Fund. The money will be allocated across two buckets.

\$540,000 for Direct Loans (90% of \$600,000 Investment)	\$60,000 for Interest Buy Down (10% of the \$600,000 Investment)	
For micro business loans of up to \$25,000 with flexible repayment terms	To help businesses lower their interest rate this account will buy down the financing costs	

Example of an Interest Buy Down

		Current Rate	Buy Down Options
Loan Amount	\$ 15,000.00	\$ 15,000.00	\$ 15,000.00
Term	36	36	36
	Interest Rate	10.00%	6%
	Payment Amount	\$ 484.01	\$ 456.33
	Monthly buy down		\$27.68
	Total buy down per loan		\$996.43

Recurring Deployment - Revolving Loans

Loan terms, eligibility and required documents will be based on LiftFund's then current lending policies for recurring loan deployments.