

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

DEPARTMENT: Economic and International Development

AGENDA DATE: April 27, 2021

CONTACT PERSON: Mirella Craigo (915) 212-1617
CraigoM@elpasotexas.gov

DISTRICT(S) AFFECTED: District 6

SUBJECT:

That the City Manager be authorized to sign a Chapter 380 Agreement by and between the CITY OF EL PASO, a Texas home rule municipal corporation, and LIFTFUND, INC., in an amount not to exceed \$11,710.00 supporting of the administration of a small business relief program which will provide grants to eligible small businesses located in District 6 within the City of El Paso affected by the COVID-19 pandemic; effectuating the intent of the February 16, 2021 Resolution that authorized the expenditure of General Fund savings generated from the unfilled administrative position.

BACKGROUND/DISCUSSION:

City Council declared that the expenditure of General Fund savings generated from the unfilled administrative position in the office of the City Council District 6 Representative in the amount not to exceed \$11,710.00, to the City's Economic Development department for use in supporting the "El Paso Small Business Emergency Relief Program" administered via Chapter 380 Economic Development Program Agreement by Liftfund Inc., serves the municipal purpose of promoting local economic development and enhancing business and commercial activity within the City as a result of the COVID-19 crisis and approves the expenditure.

The funding will be utilized for small businesses located within District 6.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD/COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:



Jessica Herrera, Director

Economic & International Development

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 Agreement by and between the CITY OF EL PASO, a Texas home rule municipal corporation, and LIFTFUND, INC., in an amount not to exceed \$11,710.00 supporting of the administration of a small business relief program which will provide grants to eligible small businesses located in District 6 within the City of El Paso affected by the COVID-19 pandemic; effectuating the intent of the February 16, 2021 Resolution that authorized the expenditure of General Fund savings generated from the unfilled administrative position.

APPROVED this ____ day of _____, 2021.

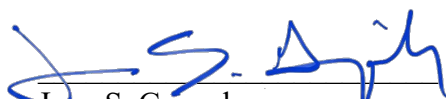
CITY OF EL PASO:

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 & Int'l 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 grants 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 grants to eligible small businesses that have been negatively impacted by the COVID-19 pandemic; and

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

WHEREAS, this program whereby grants shall be provided to eligible small businesses shall be referred to as the “El Paso Small Business Emergency Relief Program”; 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 El Paso Small Business Emergency Relief Program; 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 exhibits attached to this Agreement.
- B. **Applicant.** The word “Applicant” means LiftFund Inc.
- C. **Applicant Grant Payment.** The word “Applicant Grant Payment” means a total payment of \$11,710 to APPLICANT under the terms of this agreement.
- D. **City.** The word “City” means the City of El Paso, Texas.
- E. **El Paso Small Business Emergency Relief Program.** The words “El Paso Small Business Emergency Relief Program” means a program described in this Agreement and Exhibit “A” and Exhibit “B” herein, through which the City will provide grants to eligible small businesses within the City that have been affected by the COVID-19 pandemic. Applicant shall administer the El Paso Small Business Emergency Relief Program and has agreed it 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 four 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 Grants.
 - a) Applicant shall administer small business grants through the El Paso Small Business Relief Program (the “Relief Program”) in the amount of \$11,710 to be advanced by the City.
 - b) Applicant shall administer small business grants in strict and complete accordance with the description of the small business grant program provided in Exhibit “A”.
 - c) Grants shall be exclusively granted to businesses located within the boundary of District Six. Businesses will be randomly selected from the list of businesses that have been approved by Applicant but did not receive funding due to lack of grant funds.
 - d) Twelve months after the Effective Date, Applicant shall return all undistributed grant funds to the City (“Grant Repayment Date”).
 - e) Applicant shall provide documentation evidencing all grant disbursements made. If the City is not satisfied with the documentation provided by Applicant to

evidence grant 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 grant disbursements, the City may terminate this Agreement and the City shall have all rights and remedies under the law or in equity.

II. Applicant Grant Payments from the City.

- A. Applicant shall submit to the City an Applicant Grant Submittal Package in order to receive any Applicant Grant Payment. Unless otherwise agreed by the City and Applicant, each Applicant Grant Submittal Package shall be in the form provided in Exhibit “B”.
- B. Applicant shall submit the Applicant Grant Submittal Package to the City on April 30, 2021 or sooner, covering the entire amount of \$11,710.
- C. If Applicant fails to timely submit an Applicant Grant Submittal Package the City may give Applicant written notice of its failure to timely submit such Grant Submittal Package, and Applicant shall have 30 calendar days from the date on which such written notice is given in which to submit the Applicant Grant Submittal Package. A failure by Applicant to timely submit an Applicant Grant Submittal Package in accordance with this paragraph is a waiver by the Applicant to receive a Grant Payment. A determination by the City not to pay a Grant Payment due to Applicant’s failure to comply with the requirements of this Section C is final and cannot be appealed.

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 \$11,710 to the Applicant within 30 days of the Effective Date to be utilized for the El Paso Small Business Emergency Relief Program as described herein, and in Exhibit “A”, attached.

SECTION 5. EVENTS OF DEFAULT.

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

- A. **Failure to Administer the El Paso Small Business Relief Program in Strict Accordance with the terms of this Agreement and/or Exhibit “A”.** Applicant’s failure to administer the Small Business Relief Program 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. 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 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 grants disbursed and return any remaining funds advanced by the City that remain undistributed to borrowers or grant recipients.

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 funding for the El Paso Small Business Relief Program 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. **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 1850
El Paso, Texas 79950-1850

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

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

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

- K. **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 one final report in writing to detail the name and contact information of the businesses that received a grant.
- L. **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.
- M. **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 ON FOLLOWING PAGES]

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

CITY:
CITY OF EL PASO, TEXAS:

Tomás González
City Manager

APPROVED AS TO FORM:



Juan S. Gonzalez
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



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 FOLLOWING PAGE]

EXHIBIT A

LiftFund Inc. (LiftFund)

COVID-19 Micro Business Grant Program

in partnership with the

City of El Paso

The Program for Grants:

The Micro Business Grant Program provides grants to help small businesses in The City of El Paso that have suffered financial losses as a result of COVID-19. The grant is offered through LiftFund a local Community Development Financial Institution (CDFI) dedicated to strengthening small business in The City of El Paso and Texas. The City of El Paso is reserving \$11,710 for City of El Paso Micro business grant relief up to \$1,000.

How It Works:

- Grants will be awarded to business that were already approved and are on the queue pending funding and are subject to the following terms and conditions:
 - Individual grants will range in value up to \$1,000 and will be awarded based on such factors as need, location, planning, eligibility and availability of funds. Grants may be used for working capital, covering expenses of debt and workforce needs, and equity for additional funding sources.
 - Once an application is approved, businesses will need to submit receipts and/or invoices for the items they are seeking reimbursement for to receive funds.

Eligibility:

- Employed fewer than 5 full time employees at all business locations.
- Annual gross revenues of not more than \$1 million from all business activities at all business locations.
- Located in District Six, in the City of El Paso
- Grants are limited to businesses that are located/will reopen in same location in City of El Paso
- Demonstrates a loss of at least 20% of revenue due to COVID-19 disaster. Must be verified through one or more of the following:
 - paper documentation via bank,
 - utilization of merchant service accounts such as PayPal or other solutions,
 - credit card authorizers,
 - online QuickBooks or similar solutions via online portal,
 - Plaid access via LiftFund or other means established by LiftFund.
- Business will demonstrate/show plan of action including assessment of financials to stabilize with funds as part of the assessment.

- This includes a one-page plan of action and budget from the business demonstrating need and ability to proceed with funding.

Documents:

- Last 90 days of bank or statements connected to business demonstrating expenses and revenue
- Application completed via website (create one for release)
- Documentation of expenses funds will be utilized for (Inventory to be ordered; payroll to be met; or other direct business expense that enables the company to remain in business and retaining their employees.)

Program Budget:

Funding for Remaining Grants	\$11,710.00
LiftFund Administrative Fees (8%)	\$ 936.80
Total City Grant to LiftFund	\$ 10,773.20

