

**CHAPTER 380 ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT BETWEEN
THE CITY OF CORPUS CHRISTI, TEXAS AND LIFTFUND INC.
(Second 380 Agreement)**

This Chapter 380 Economic Development Incentive Agreement ("Agreement") is entered into between the City of Corpus Christi, Texas, a home-rule municipality ("City") and LiftFund Inc. ("Nonprofit"), a Texas nonprofit corporation.

WHEREAS, the City has established a program in accordance with Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code ("Chapter 380") under which the City has the authority to make loans of public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the City;

WHEREAS, the novel coronavirus, known as COVID-19, has created a global pandemic and led to shuttering of many local small businesses, which are in need of relief so that they may continue to provide meaningful, wealth-producing jobs in the future;

WHEREAS, the Nonprofit has proposed to administer a loan program for the City, which will serve as a business incubator to assist small businesses in their ongoing expenses and lead to the creation of meaningful, wealth-producing jobs within the City (the "Project");

WHEREAS, the Corpus Christi City Council has adopted Ordinance No. _____, authorizing City to make certain economic development loans up to \$2,500,000 through Nonprofit in recognition of, conditioned upon and derived from the positive economic benefits that will accrue to City through Nonprofit's administration of a loan program providing relief to small businesses and requiring creation and/or retention of jobs;

WHEREAS, the City has concluded and hereby finds that this Agreement promotes economic development in the City of Corpus Christi and, as such, meets the requirements under Chapter 380 and the City's established economic development program, and, further, is in the best interests of the City and Nonprofit;

WHEREAS, the City recognizes the positive economic impact that the Project will bring to the City through development and diversification of the economy, reduction of unemployment and underemployment through the production of retaining or creating jobs, the attraction of new businesses, and the additional tax revenue generated by the Project for the City; and

WHEREAS, to ensure that the benefits the City provides under this Agreement are utilized in a manner consistent with Article III, Section 52-a of the Texas Constitution, Chapter 380 of the Texas Local Government Code and other law, the Nonprofit has agreed to comply with certain conditions to the payment of those benefits; and

WHEREAS, City acknowledges that Nonprofit will charge borrower a 5% loan origination fee, paid by borrower over the life of the loan, which will be kept by Nonprofit.

NOW, THEREFORE, in consideration of the mutual benefits described in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Nonprofit agree as follows:

1. The recitals to this Agreement are hereby incorporated for all purposes.
2. Effective Date. The effective date of this Agreement (“Effective Date”) is the latest date that either party executes this Agreement, or the date this Agreement has been finally approved by the Corpus Christi City Council. Nonprofit understands that this Agreement is dependent upon the approval of the Corpus Christi City Council.
3. Term. The term of this Agreement is for three years beginning on the Effective Date.
4. Performance Requirements.
 - a. Nonprofit agrees to use the \$2,125,000 described below as a loan fund to provide loans to small businesses in Corpus Christi, in accordance with the Nonprofit’s proposal, which is attached hereto as **Exhibit A** and incorporated by reference as if laid out herein in its entirety.
 - b. Nonprofit agrees to provide the City with a sworn certificate by an authorized representative of the Nonprofit, certifying the amount used.
 - c. For every \$25,000 in loans that Nonprofit provides to a small business in Corpus Christi, Nonprofit shall ensure that the funds will result in the creation or retention of one full-time permanent job in the city of Corpus Christi.
 - d. Upon repayment of any loans funded through this Agreement, Nonprofit will deposit the repaid funds into a separate account for the use of the City of Corpus Christi small business loans that is managed in the same general manner as the existing Dream Makers Fund. Funds deposited into the aforementioned account may only be used to provide loans to small businesses within the City. The requirements related to the aforementioned account will survive the expiration or earlier termination of this Agreement. Both parties agree that a subsequent or separate agreement will be executed by the City and Nonprofit to govern the custody, use, and disbursement of funds in the Dream Makers Fund. In the absence of such subsequent or separate agreement, funds in the Dream Makers Fund will be returned to the City upon deposit therein.
 - e. If at the end of the Term of this Agreement, any funds provided to Nonprofit under this Agreement have not been used to provide loans to small businesses within the City, Nonprofit shall, within 30 days after the end of this Term, return those remaining funds, including any fees associated with those funds, to the City.
 - f. The City may audit Nonprofit’s records to determine their compliance with the terms of this Agreement. Nonprofit, during normal business hours shall allow City reasonable access to its records and books and all other relevant records related to each of the

economic development considerations and incentives and performance requirements, as stated in this Agreement.

5. City's Responsibility. The City will grant Nonprofit a one-time payment in the amount of \$2,500,000, to be paid to Nonprofit as soon as possible following receipt of a correct invoice from Nonprofit requesting the funds. Administrative fees totaling 17.65% of the loans made by Nonprofit in conformance with this contract shall be paid within 30 days after City receipt of a correct invoice. The amount payable for the administrative fee shall, in no event, exceed the lower of 17.65% of the loans made or \$375,000.

6. Warranties. Nonprofit warrants and represents to City the following:

a. Nonprofit is a non-profit corporation duly organized, validly existing, and in good standing under the laws of the State of Texas and has all power and authority to carry on its business as presently conducted in Corpus Christi, Texas.

b. Nonprofit has the authority to enter into and perform, and will perform, the terms of this Agreement to the best of its ability.

c. Nonprofit has timely filed and will timely file all local, State, and Federal tax reports and returns required by laws to be filed and all taxes, assessments, fees, and other governmental charges, including applicable ad valorem taxes, have been timely paid, and will be timely paid, during the term of this Agreement.

d. Nonprofit acknowledges that the funds transferred under this Agreement must be utilized solely for purposes authorized under State law and by the terms of this Agreement.

e. The person executing this Agreement on behalf of Nonprofit is duly authorized to execute this Agreement on behalf of Nonprofit.

f. Nonprofit does not and agrees that it will not knowingly employ an undocumented worker. If, after receiving payments under this Agreement, Nonprofit is convicted of a violation under 8 U.S.C. Section 1324a(f), Nonprofit shall repay any unspent payments received under this Agreement to the City, with interest at the Wall Street Journal Prime Rate, not later than the 120th day after the date Nonprofit has been notified of the violation. The Company shall further repay to the City its outstanding customer loan fund receipts dispersed under this Agreement (less any loan losses), not later than 60 days after receipt.

7. Compliance with Laws. During the Term of this Agreement, Nonprofit shall observe and obey all applicable laws, ordinances, regulations, and rules of the Federal, State, county, and city governments.

8. Non-Discrimination. Nonprofit covenants and agrees that Nonprofit will not discriminate nor permit discrimination against any person or group of persons, with regard to employment and the provision of services at, on, or in the Project, on the grounds of race, religion, national origin, marital status, sex, age, disability, or in any manner prohibited by the laws of the United States or the State of Texas.

9. Force Majeure. If the City or Nonprofit are prevented, wholly or in part, from fulfilling its obligations under this Agreement by reason of any act of God, unavoidable accident, acts of enemies, fires, floods, governmental restraint or regulation, other causes of force majeure, or by reason of circumstances beyond its control, then the obligations of the City or Nonprofit are temporarily suspended during continuation of the force majeure. If either party's obligation is affected by any of the causes of force majeure, the party affected shall promptly notify the other party in writing, giving full particulars of the force majeure as soon as possible after the occurrence of the cause or causes relied upon.

10. Assignment. Nonprofit may not assign all or any part of its rights, privileges, or duties under this Agreement without the prior written approval of the City. Such approval will not be unreasonably denied. Any attempted assignment without approval is void and constitutes a breach of this Agreement.

11. Indemnity. Nonprofit covenants to fully indemnify, save, and hold harmless the City, and its officers, employees, and agents ("Indemnitees") against all liability, damage, loss, claims demands, and actions of any kind on account of personal injuries (including, without limiting the foregoing, workers' compensation and death claims), or property loss or damage of any kind, which arise out of, or are claimed to arise out of Nonprofit's activities conducted under or incidental to this Agreement. Nonprofit must, at its own expense, investigate all those claims and demands, attend to their settlement or other disposition, defend all actions based on those claims and demands with counsel satisfactory to Indemnitees, which choice of counsel shall not be unreasonably denied, and pay all charges of attorneys and all other costs and expenses of any kind arising from the liability, damage, loss, claims, demands, or actions. The requirements of this provision will survive the expiration or earlier termination of the Agreement.

12. Events of Default by Nonprofit. The following events constitute a default of this Agreement by Nonprofit:

- a. The City determines that any representation or warranty on behalf of Nonprofit contained in this Agreement or in any financial statement, certificate, report, or opinion submitted to the City in connection with this Agreement was incorrect or misleading in any material respect when made.

- b. Any judgment is assessed against Nonprofit or any attachment or other levy against the property of Nonprofit with respect to a claim under this agreement remains unpaid, undischarged, or not dismissed for a period of 120 days.
- c. Nonprofit makes an assignment of funds received under this agreement for the benefit of creditors.
- d. Nonprofit files a petition in bankruptcy or is adjudicated insolvent or bankrupt.
- e. If taxes owed by Nonprofit become delinquent, and Nonprofit fails to timely and properly follow the legal procedures for protest or contest.
- f. Nonprofit changes the general character of business as conducted as of the date this Agreement is approved by the City.
- g. Nonprofit fails to comply with one or more terms of this Agreement.

13. Notice of Default. Should the City determine that Nonprofit is in default according to the terms of this Agreement, the City shall notify Nonprofit in writing of the event of default and provide 60 days from the date of the notice ("Cure Period") for Nonprofit to cure the event of default.

14. Results of Uncured Default by Nonprofit. After exhausting good faith attempts to address any default during the Cure Period and taking into account any extenuating circumstances that might have occurred through no fault of Nonprofit, as determined by the City Manager, the following actions may be taken for any default that remains uncured after the Cure Period.

- a. Nonprofit shall immediately repay all unexpended funds paid by City to it under this Agreement. The Company shall further repay to the City its outstanding customer loan fund receipts dispersed under this Agreement (less any loan losses), not later than 60 days after receipt.
- b. Nonprofit shall pay City's reasonable attorney fees and costs of court to collect amounts due to City if not immediately repaid upon demand from the City.
- c. Upon payment by Nonprofit of all sums due, the City and Nonprofit shall have no further obligations to one another under this Agreement.

15. No Waiver.

a. No waiver of any covenant or condition, or the breach of any covenant or condition of this Agreement, constitutes a waiver of any subsequent breach of the covenant or condition of the Agreement.

b. No waiver of any covenant or condition, or the breach of any covenant or condition of this Agreement, justifies or authorizes the nonobservance on any other occasion of the covenant or condition or any other covenant or condition of this Agreement.

c. Any waiver or indulgence of Nonprofit's default may not be considered an estoppel against the City.

d. It is expressly understood that if at any time Nonprofit is in default in any of its conditions or covenants of this Agreement, the failure on the part of the City to promptly avail itself of the rights and remedies that the City may have, will not be considered a waiver on the part of the City, but City may at any time avail itself of the rights or remedies or elect to terminate this Agreement on account of the default.

16. Nonprofit specifically agrees that City shall only be liable to Nonprofit for the actual amount of the money to be conveyed to Nonprofit, and shall not be liable to Nonprofit for any actual or consequential damages, direct or indirect, interest, attorney fees, or cost of court for any act of default by City under the terms of this Agreement. Payment by City is strictly limited to those funds so allocated, budgeted, and collected solely during the term of this Agreement.

17. The parties mutually agree and understand that funding under this Agreement is subject to annual appropriations by the City Council; that each fiscal year's funding must be included in the budget for that year; and the funding is not effective until approved by the City Council.

18. Notices.

a. Any required written notices shall be sent mailed, certified mail, postage prepaid, addressed as follows:

Nonprofit:

LiftFund Inc.
Attn.: Janie Barrera
2007 West Martin Street
San Antonio, Texas 78207
Corpus Christi, TX 78413

City:

City of Corpus Christi
Attn.: City Manager
P.O. Box 9277
Corpus Christi, Texas 78469-9277

b. A copy of all notices and correspondence must be sent the City at the following address:

City of Corpus Christi
Attn.: City Attorney
P.O. Box 9277
Corpus Christi, Texas 78469-9277

c. Notice is effective upon deposit in the United States mail in the manner provided above.

19. Amendments or Modifications. No amendments or modifications to this Agreement may be made, nor any provision waived, unless in writing signed by a person duly authorized to sign Agreements on behalf of each party.

20. Relationship of Parties. In performing this Agreement, both the City and Nonprofit will act in an individual capacity, and not as agents, representatives, employees, employers, partners, joint-venturers, or associates of one another. The employees or agents of either party may not be, nor be construed to be, the employees or agents of the other party for any purpose.

21. Captions. The captions in this Agreement are for convenience only and are not a part of this Agreement. The captions do not in any way limit or amplify the terms and provisions of this Agreement.

22. Severability.

a. If for any reason, any section, paragraph, subdivision, clause, provision, phrase or word of this Agreement or the application of this Agreement to any person or circumstance is, to any extent, held illegal, invalid, or unenforceable under present or future law or by a final judgment of a court of competent jurisdiction, then the remainder of this Agreement, or the application of the term or provision to persons or circumstances other than those as to which it is held illegal, invalid, or unenforceable, will not be affected by the law or judgment, for it is the definite intent of the parties to this Agreement that every section, paragraph, subdivision, clause, provision, phrase, or word of this Agreement be given full force and effect for its purpose.

b. To the extent that any clause or provision is held illegal, invalid, or unenforceable under present or future law effective during the term of this Agreement, then the remainder of this Agreement is not affected by the law, and in lieu of any illegal, invalid, or unenforceable clause or provision, a clause or provision, as similar in terms to the illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable, will be added to this Agreement automatically.

23. Venue and Law. Venue for any legal action related to this Agreement is in Nueces County, Texas. This Agreement is subject to all legal requirements in City Charter and Code of Ordinances of City of Corpus Christi, Texas and all other applicable County, State and Federal laws, and Nonprofit agrees that it will promptly comply with all such applicable laws, regulations, orders and rules of the State, City and other applicable governmental agencies. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas without regard, however, to the conflicts of laws provisions of Texas law.

24. Sole Agreement. This Agreement constitutes the sole Agreement between City and Nonprofit. Any prior Agreements, promises, negotiations, or representations, verbal or otherwise, not expressly stated in this Agreement, are of no force and effect.

25. Survival of terms of Agreement and obligations of parties. The terms of this Agreement and the obligation of the parties relating to Section 14 shall survive the termination of this Agreement.

26. Public Information Act Requirements. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the Nonprofit agrees that the contract can be terminated if the Nonprofit knowingly or intentionally fails to comply with a requirement of that subchapter.

27. Certificate of Interested Parties. Nonprofit agrees to comply with Texas Government Code Section 2252.908, as it may be amended, and to complete Form 1295 "Certificate of Interested Parties" as part of this Agreement if required by said statute.

City of Corpus Christi

APPROVED AS TO LEGAL FORM:

By: _____
Peter Zanoni
City Manager

Assistant City Attorney Date

Date: _____

Attest:

By: _____
Rebecca Huerta
City Secretary

LiftFund Inc.

By: _____
Janie Barrera
President and Chief Executive Officer

Date: _____

THE STATE OF TEXAS §
COUNTY OF BEXAR §

This instrument was acknowledged before me on _____, 2020, by Janie Barrera, President and Chief Executive Officer for LiftFund, Inc., a Texas non-profit corporation, on behalf of the corporation.

Notary Public, State of Texas



Exhibit A

CITY OF CORPUS CHRISTI COVID-19 SMALL BUSINESS RECOVERY PROGRAM

Small Business Recovery Program:

The City of Corpus Christi is proposing a Small Business Recovery Program for small businesses located in Corpus Christi that are impacted by the COVID-19 pandemic. Through a redirection of \$2,000,000 in the Corpus Christi Business and Job Development Fund for economic development, resources are made available for this program. The City will contract with LiftFund Inc. to administer the program through the Dream Makers Fund. LiftFund Inc. is a San Antonio-based microlender that offers small loans to business owners.

Businesses eligible to apply for this Small Business Recovery Program will be those within the Corpus Christi city limits with annual gross revenues of not more than \$1,500,000 from all business activities at all business locations are eligible to apply. Priority will be given to those businesses most affected by Executive Order No. GA-14 signed by Governor Greg Abbott on March 31, 2020. As loans are paid back, LiftFund Inc. will deposit the repaid funds into the existing Dream Makers Fund, created in accordance with LiftFund Inc.'s agreement with the Corpus Christi B Corporation. The fund will absorb any loan defaults – the losses being subtracted from the \$2,125,000 loan fund reducing the amount of funds available for future lending. Funds deposited into the Dream Makers Fund may only be used to provide loans to small businesses within Corpus Christi.

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 at 0% interest and will be approved based on factors such as: need, location, planning, eligibility, and availability of funds
- Funds for loans may be used for working capital, covering expenses of debt, and workforce needs
- Once an application is approved, businesses will be asked to submit additional receipts and/or invoices for the items they are utilizing the funds

Loan Terms:

- Initial 120-day deferral of principal and interest upon closing the loan
- 5% loan origination fee
- Terms are based on size of loan:
 - 24 months for loans up to \$15,000
 - 36 months for loans over \$15,000 up to \$25,000
- It is intended for funding to take place within 10 days of receipt of required documentation and subsequent approval

Eligibility:

- Annual gross revenues of not more than \$1,500,000 from all business activities at all business locations in Corpus Christi for the last year from February 28, 2019 to March 1, 2020
- Priority will be given to those businesses most affected by Executive Order No. GA-14 signed by Governor Greg Abbott on March 31, 2020.
- Must be in good standing with creditors for at least six months prior to March 1, 2020 (COVID-19 outbreak)

- Loans are limited to businesses that are located in Corpus Christi and will reopen in same location
- Demonstrates a loss of at least 15% of revenue in the period beginning March 1, 2020 to the time of application
- Business information must be verified through one or more of the following:
 - o Plaid access via LiftFund application,
 - o Paper documentation via bank,
 - o Business will demonstrate/show plan of action including assessment of financials to stabilize with funds as part of the assessment. The assessment and planning will be done as consultations with the applicants. Team members will assist and review with the applicants.
 - This includes a plan of action and budget from the business demonstrating need and ability to proceed with funding.

Required Documents:

- Last 90 days of bank or statements connected to business demonstrating expenses and revenue; business formation verification, plan of action document, any pending tax documentation items
- Application completed via liftfund.com website
- Documentation of expenses the loan will be used towards

Service Fees:

17.65% of the loans made by Nonprofit in an amount not to exceed \$300,000

Summary of Loan Program: This does not modify contract

	Amount
Loan Fund	\$2,125,000
Service Fees – no more than 17.65% of loans made by Nonprofit	<u>\$375,000</u>
Subtotal (maximum amount paid by City)	\$2,500,000
Loan Origination Fee paid by Borrower [not City] (5% of each loan)	<u>\$106,250</u>
TOTAL LOAN FUND PROGRAM – not the amount payable by the City	\$2,606,250