

**RESOLUTION NO. 2021-041**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COCOA, FLORIDA, CREATING AN UPSTART COCOA MINORITY AND SMALL BUSINESS PROGRAM TO FOSTER THE GROWTH OF SUCH BUSINESSES IN THE CITY OF COCOA AND PROVIDE FORGIVABLE LOANS TO SUCH BUSINESSES RELOCATING TO OR STARTING UP IN THE CITY OF COCOA; ADOPTING AN UPSTART COCOA MINORITY AND SMALL BUSINESS PROGRAM POLICY; ESTABLISHING THE CITY OF COCOA UPSTART COCOA REVIEW COMMITTEE; PROVIDING FOR THE REPEAL OF PRIOR INCONSISTENT RESOLUTIONS; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City is granted the authority, under Section 2(b), Article VIII, of the State Constitution, to exercise any power for municipal purposes, except when expressly prohibited by law; and

**WHEREAS**, pursuant to Section 166.021(8), Florida Statutes, the Legislature has found that there is a need to enhance and expand economic activity in the municipalities of this state by attracting and retaining manufacturing development, business enterprise management, and other activities conducive to economic promotion, in order to provide a stronger, more balanced, and stable economy in the state, to enhance and preserve purchasing power and employment opportunities for the residents of this state, and to improve the welfare and competitive position of the state and that it is necessary and in the public interest to facilitate the growth and creation of business enterprises in the municipalities of the state; and

**WHEREAS**, the Legislature has further concluded that the governing body of a municipality may expend public funds to attract and retain business enterprises, and the use of public funds toward the achievement of such economic development goals constitutes a public purpose, including making grants to private enterprises for the expansion of businesses existing in the community or the attraction of new businesses to the community; and

**WHEREAS**; the City Council desires to create the Upstart Cocoa Minority and Small Business Program ("Program") for the purpose of providing business education and forgivable loans of up to ten thousand dollars (\$10,000.00) to minority small businesses and minority small business entrepreneurs desiring to relocate existing businesses to the City of Cocoa or to start new businesses within the City of Cocoa; and

**WHEREAS**, the Program is designed to empower entrepreneurs to succeed in Cocoa, attract minority-owned businesses to the City, contribute to the City's

economic vitality by promoting small business, and to cultivate vibrant neighborhoods through diverse businesses in Cocoa; and

**WHEREAS**, the City Council also desires to adopt an Upstart Cocoa Minority and Small Business Program Policy, establishing application and eligibility requirements, funding guidelines, and recommendation and reimbursement procedures governing the Program; and

**WHEREAS**, the City Council further desires to create the Upstart Cocoa Review Committee, which shall be an ad-hoc committee assisting in the administration of the Program to include application selections for participation in the business education and coaching element of the Program and recommendations to the City Council regarding the award of forgivable loans; and

**WHEREAS**, the City Council has determined this Resolution is in the best interests of the City of Cocoa.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COCOA**, as follows:

**SECTION 1. Recitals.** The foregoing recitals are hereby fully incorporated herein by this reference and are deemed a material part of this Resolution.

**SECTION 2. Adoption of Upstart Cocoa Minority and Small Business Program Policy.** The Upstart Cocoa Minority and Small Business Program Policy attached hereto and incorporated herein by this reference as “**Exhibit A**” is adopted to establish requirements and procedures relating to applications and application selection, Program eligibility, funding approval, eligible expenses and reimbursement, and other aspects of the Program.

**SECTION 3. Creation of the Upstart Cocoa Review Committee.** The City Council hereby creates an ad-hoc Upstart Cocoa Review Committee (“Committee”) to make decisions and appropriate recommendations to the City Council regarding matters relating to the Upstart Cocoa Minority and Small Business Program (“Program”) and, specifically, selection of applicants to participate in the Program, forgivable loan awards, and appropriate action following grantees’ failure to perform the obligations required by the Program and any Program agreements and policies. The Committee shall have final decision-making authority with respect to selection of applicants to participate in the education and business coaching phase of the Program.

**SECTION 4. Composition of the Upstart Cocoa Review Committee.** The Committee shall consist of no more than five (5) members and no fewer than three (3) members, which shall consist of City of Cocoa staff members and may also include a banking or financial industry representative doing business in the City and a representative of weVenture Women’s Business Center at Florida Institute of Technology’s Bisk College of Business or of a future selected service provider performing business coaching and education services for the Program.

**SECTION 5. Appointment of Members.** The City Manager shall appoint the members of the Committee. The City Manager shall also have the authority to fill vacancies and remove members in his or her discretion as necessary. Each member of the Committee shall serve at the pleasure of the City Manager and may be summarily removed at any time with and without cause. Each member of the Committee shall serve without additional compensation.

**SECTION 6. Upstart Cocoa Review Committee Meetings.** Meetings of the Committee shall be duly-noticed, public meetings which shall be open to the public. Meetings shall be coordinated and scheduled through the City Manager or his or her designee so as not to conflict with other City meetings or overburden limited City resources. A portion of each meeting will be reserved for taking public input relevant to issues being considered during the meeting or matters of special interest to minority small businesses in Cocoa. The agendas, minutes and a record of the proceedings and recommendations of the Committee shall be kept and filed with the City Clerk in the same manner as those kept and filed for the City Council. The first order of business for the Committee shall be to elect a chairperson and deputy chairperson. The chairperson shall be responsible for running the meetings, which may be conducted informally. In the absence of the chairperson, the deputy chairperson shall run the meetings. A majority of the members of the Committee shall constitute a quorum. The Committee shall act by consensus to the extent possible, but if consensus cannot be reasonably reached, then the Committee may act by majority vote. However, the Committee may reference and explain minority opinions/positions which obtained the vote of at least two (2) members of the Committee in any recommendation made to the City Council.

**SECTION 6. Staff Resources.** The Economic Development Manager shall serve as staff liaison to the Committee. The City Clerk's office shall provide administrative assistance to the Committee and shall be responsible for noticing meetings, preparing minutes, and archiving public records.

**SECTION 7. Repeal of Prior Inconsistent Resolution.** All prior resolutions or parts of resolutions inconsistent with this resolution are hereby repealed to the extent of the conflict.

**SECTION 8. Conflicts and Severability.** Should any section or provision of this resolution, or any portion thereof, any paragraph, sentence or word be declared by a Court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereto as a whole or part thereof to be declared invalid.

**SECTION 9. Effective date.** This resolution shall become effective immediately upon its adoption by the City Council of the City of Cocoa, Florida.

**ADOPTED** by the City Council of the City of Cocoa, Florida, in a regular meeting assembled on the 11<sup>th</sup> day of May, 2021.

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Michael C. Blake, Mayor

ATTEST:

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Carie Shealy, MMC, City Clerk

## **EXHIBIT A**

### **Upstart Cocoa Minority and Small Business Program (Forgivable Loans) Policies, Procedures and Conditions**

#### **Purpose**

Upstart Cocoa Small Business Forgivable Loans (“Forgivable Loans”) will be provided through the Upstart Cocoa Minority and Small Business Program (“Program”) to promote the growth of women and minority-owned small businesses (collectively, “Minority-Owned Businesses”) throughout the City of Cocoa. Forgivable Loans are provided on a first-come, first-serve basis to minority small business owners and entrepreneurs looking to either start a business in the City of Cocoa or relocate an existing business to the City of Cocoa to fund certain eligible expenses. The goal of the Program is to empower entrepreneurs to succeed in Cocoa, attract Minority-Owned Businesses to the City, contribute to the City’s economic vitality by promoting small business, and to cultivate vibrant neighborhoods through diverse businesses in Cocoa. The Program is designed as a forgivable loan program, which may be awarded after successful completion of business coaching and educational training for entrepreneurs offered through the WeVenture Program or another service provider selected by the City. The WeVenture Program is part of the Women’s Business Center at Florida Tech’s Bisk College of Business. Forgivable Loan awards made to Minority-Owned Businesses will encourage relocation to Cocoa and support minority entrepreneurs with skill sets by covering eligible start-up, relocation and marketing expenses as further described herein.

#### **Definitions**

Minority-Owned Business – means any small business which is organized to engage in commercial transactions, which is domiciled in Florida, and which is at least 51-percent-owned by minority persons who are members of an insular group that is of a particular racial, ethnic, or gender makeup or national origin, which has been subjected historically to disparate treatment due to identification in and with that group resulting in an underrepresentation of commercial enterprises under the group’s control, and whose management and daily operations are controlled by such persons.

Minority Person - means a lawful, permanent resident of Florida who is:

- (a) An African American, a person having origins in any of the black racial groups of the African Diaspora, regardless of cultural origin.
- (b) A Hispanic American, a person of Spanish or Portuguese culture with origins in Spain, Portugal, Mexico, South America, Central America, or the Caribbean, regardless of race.

(c) An Asian American, a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands, including the Hawaiian Islands before 1778.

(d) A Native American, a person who has origins in any of the Indian Tribes of North America before 1835, upon presentation of proper documentation thereof as established by rule of the Department of Management Services.

(e) An American woman.

Small Business - entrepreneurial ventures that are moving to or starting in the City of Cocoa with 10 employees or less.

Community Enrichment Element – an act of giving back to the community through the donation of volunteer hours, goods or services. Donations shall be made to a public entity (Cocoa High School, etc.) or a 501c3 providing services to the community of Cocoa.

### **Overview of Program Structure**

The Office of Economic Development will oversee the Program for both the City of Cocoa and the Diamond Square Redevelopment Agency's similar program. Funding is based on budget availability and will be considered on a "first come, first served basis." Application submission does not guarantee approval. The Forgivable Loans are funded between \$1,500 and \$10,000 as determined by the City Council. For startup businesses, the minority entrepreneur must obtain at least 10% of startup costs from non-Program related funding sources. Funds shall be provided on a reimbursement basis only. Minority small business owners and entrepreneurs may advance through the Program as follows:

1. Minority small business owners located outside the City and wishing to relocate to the City of Cocoa and minority entrepreneurs desiring to start a business in Cocoa must submit an application to the Program. This application will require the Applicant to demonstrate need for startup costs or relocation costs and comply with application requirements as described further in this Policy. A proposed business plan is required upon submission of the application.
2. The Upstart Cocoa Review Committee and WeVenture or the City's selected service provider shall review applications and choose promising candidates for the Program. The number of applications selected shall depend on budget availability. Application selection shall occur at a duly noticed public hearing.
3. The selected applicants complete business coaching and coursework for approximately a 24-week period with WeVenture or the City's selected

- service provider. Tuition for the business coaching and coursework will be paid for by the City, but all other expenses, such as mileage and supplies for classes, shall be paid for by the applicant. The objective will be to gain further education regarding topics such as business management, finance and budgeting, marketing, product/service development, and human resources. In addition, the selected applicants will work with WeVenture or the City's service provider to refine a business plan appropriate for a start-up business or existing business.
4. At the conclusion of the 24-week period, WeVenture or the City's selected service provider shall provide a funding recommendation to the City's Office of Economic Development regarding the specific eligible expenses that the City may wish to fund. The Upstart Cocoa Review Committee will make a recommendation to the Cocoa City Council regarding the award of a Forgivable Loan, ranging between \$1,500 and \$10,000, based on factors described further in this Policy, including the applicant's performance during the 24-week period and the strength of the refined business plan. The Upstart Cocoa Review Committee's recommendation will be made at a duly noticed public hearing.
  5. Should a Forgivable Loan be awarded by the Cocoa City Council, the Minority-Owned Business shall execute all required Program Agreements, which may include a Security Agreement for specific equipment or inventory funded by the City. Thereafter, the Minority-Owned Business may begin to submit reimbursement requests for eligible expenses as described in this Policy up to the Forgivable Loan amount awarded.
  6. Minority-Owned Businesses must complete a community enrichment element project or service to "pay back" 25% of the Forgivable Loan amount to the community within three years. After three years of maintaining the business in Cocoa, the loan will be 100% forgiven.

#### **Upstart Cocoa Review Committee**

The Upstart Cocoa Review Committee will oversee the review of all applications, recommendations for selection of participants/grantees, funding recommendations to the CRA/City of Cocoa and default procedures. The Committee will meet on an as needed basis. The Upstart Cocoa Review Committee will be comprised of three (3) to five (5) members, which shall include a City staff member from the Office of Economic Development, and may include a representative of WeVenture (or the City's then-current selected service provider) and/or a banking or financial industry representative doing business in the City, all of which will be appointed by the City Manager or his or her designee.

### **Eligible Businesses**

Each applicant must be a small, Minority-Owned Business or minority person entrepreneur of a for-profit, new or relocating business, which intends to locate in the City of Cocoa.

Any eating and drinking establishments may be eligible for funding as long as the business derives at least 51% of its gross revenue from the sale of food and/or non-alcoholic drink for consumption on the premises, whether or not the food is cooked on the premises. This may include restaurants, mobile vending, and refreshment stands selling prepared foods for immediate consumption.

The types of businesses that are not eligible for funding under this Program include: social service providers, non-profit agencies, gun shops, agricultural services, liquor stores, medical marijuana and CBD shops, shops that sell drug paraphernalia, pawn shops, bailbond services, tattoo/body piercing parlors, check cashing facilities, adult entertainment facilities, thrift shops, nightclubs and bars, and any business or service deemed illegal or in violation of the City Code.

Existing businesses in the City of Cocoa are not eligible for funding. However, minority business owners of existing businesses within the City of Cocoa seeking to start an additional business shall be considered eligible, except as further provided herein. The applicant shall not be eligible for the Upstart Cocoa Program if he/she has received Upstart Cocoa Funding, or other business assistance funding from the CRA or the City of Cocoa within the last three (3) years from the date of the current submittal, except for façade improvement programs. If the applicant has received Upstart Cocoa funding more than three years prior to the date of the current submittal, applicant must have successfully completed the Upstart Cocoa Program and not defaulted in order to be eligible for funding assistance for a second and final time. Completion of the Upstart Cocoa Program means complying with the terms of the Upstart Cocoa agreement during the three-year time period of the agreement ("Program Period"). Applicants who have defaulted on a previous Upstart Cocoa agreement are no longer eligible for the Upstart Cocoa Program. If, after review, an application is administratively rejected by staff or has been denied funding by the review committee, the applicant shall not be eligible to reapply for the Upstart Cocoa Program for one year from the date of the original submittal.

Each applicant may be entitled to Upstart Cocoa funding for one business during the three-year Program Period. If the applicant is a corporate entity or principal that owns more than one business, the corporate entity or principal shall submit an application for only one business. For example, if a corporate



entity owns business A and B, an application can only be submitted for either business A or B, but not both. If the corporate entity is granted funding for business A and successfully completes the Upstart Cocoa Program for the business, the corporate entity may then apply for funding for business B after the three-year Program Period has elapsed. In addition, use of the Upstart Cocoa funds cannot be transferred to another business owned by the corporate entity or principal for which an application was not submitted. For example, if a corporate entity owns businesses A and B and submitted an application for business A, any funding assistance granted for business A cannot be given to or used for business B.

### **Application Criteria**

Grant applications will be reviewed for completeness, compliance with Program criteria and deemed acceptable by the Upstart Cocoa Review Committee. Businesses that do not comply with the Program criteria and conditions will not be eligible for funding. All members of the entity applying for the Program must sign the forgivable loan application.

Formal applications will be made with a business plan and Upstart Cocoa Application. Applications will be reviewed and selected by the Upstart Cocoa Review Committee. Applicants are required to submit a proposed business plan, resume, two years of tax returns for both business and/or personal (relocating businesses), and a lease agreement or letter of intent to lease, along with any other requested documents in the application. If the applicant owns the property, then proof of ownership and mortgage information must be provided.

The Program Manager will conduct due diligence as may be appropriate, including researching public records for any liens, lawsuits, or complaints filed against the applicant or the business entity.

Falsifications and omissions on the application may result in administrative rejection of the application.

### **Forgivable Loan Approval Procedure and Program Participation**

The Upstart Cocoa Review Committee will make recommendations to the City Council regarding funding following completion of the approximately 24-week education period. The amount of any forgivable loan shall be determined by the City Council in its sole discretion, based on the following general factors:

- ☐ The estimated cost of proposed eligible expenses
- ☐ Strength of the business plan
- ☐ Evaluations of applicant performance in the WeVenture Program or similar program

- ☐ Potential economic and fiscal impact of the proposed business on the City of Cocoa
- ☐ Location of the proposed business and whether it will be home-based
- ☐ External funding available to the applicant

After a Forgivable Loan is awarded by the City Council, the City Council will enter into an Upstart Cocoa Program Agreement with the applicant (hereinafter referred as the “grantee”), which contains terms and conditions to receiving funding, as well as provisions should the grantee fail to meet the terms of the Upstart Cocoa Agreement. The maximum funding per business that will be awarded under the program is \$10,000.

Conditions included in the Upstart Cocoa Agreement may include, but are not limited to:

- ☐ Grantee shall remain open for business at a City of Cocoa location for a period of at least three years. Funding shall be expended and reimbursed within one (1) year of the effective date of the Agreement.
- ☐ Grantees not yet open for business must be open for business and begin to provide services or products to the general public within six (6) months of the effective date of the Agreement.
- ☐ Business must submit annual reports to the Office of Economic Development.
- ☐ Grantee shall provide and complete a Community Enrichment Element prior to the end of the third year.
- ☐ Grantee shall display the Upstart Cocoa logo, as provided by the City, on the front main entrance door of the business.
- ☐ Businesses that relocate outside of the City prior to loan forgiveness will be required to repay the loan in full.
- ☐ Existing business owners must possess a current City of Cocoa Business Tax Receipt. New business owners must obtain a City of Cocoa Business Tax Receipt within 90 days of agreement execution.

The City may also require the grantee to enter into a Security Agreement to secure the specific capital equipment or inventory funded by the City through the Forgivable Loan.

Grantees will also be required to invest in the project for which funding is requested in an amount of at least 10 percent (10%) of the cost of the items approved for funding.

All grantees must be in compliance with applicable City codes, policies and ordinances and current on federal, state and local taxes. Grantees who are approved for financial assistance for lease costs (rent abatement) must secure

a minimum of a one-year lease, with an option to renew for two additional one-year terms, in the City of Cocoa.

All grantees who will utilize a mobile vending model will need to commit to required hours, percentages of sales, and other conditions as required by the City's Economic Development Manager in the City of Cocoa area.

Once a grantee received funding under the Program, he or she may not apply for other business assistance programs from the CRA/City of Cocoa, except for façade improvement programs, for a period of three years. The Program Manager will remain actively involved with the grantees via site visits or yearly meetings.

### **Eligible Expenses and Reimbursement Procedures**

The program provides financial assistance for the following on a reimbursement basis:

- Start-up expenses or relocation expenses, which may include, but are not limited to:
  - Rent subsidy for a period not to exceed 3 months. During this period rent payments may gradually decrease in increments to be determined by available funds. Rent subsidy includes only the base rent amount and common area maintenance. Home-based businesses do not qualify for rental subsidies.
  - City fees (i.e. utility deposits, permitting fees, Business Tax Receipt fees)
  - Inventory expenses generally not to exceed 25% of the loan amount.
  - Marketing Expenses, which may include marketing campaigns for goods and services, advertising in local papers and on websites, the use of outside marketing firm to design websites, and signage, with the total amount for Marketing Expenses generally not to exceed 25% of the loan amount.
  - Moving expenses for large equipment and furniture
  - Capital equipment purchases of at least \$1,000 necessary to operate the primary functions of the business
  - One Year Membership to the Cocoa Beach Regional Chamber of Commerce
  - Other expenses as recommended by WeVenture or the City's selected service provider.

To be reimbursed, the Grantee must provide to the Office of Economic Development paid receipts from laborers, suppliers, materialmen, contractors, and subcontractors. The receipts must include the following information:

- ☐ Name, address, and telephone number of laborer, supplier, materialmen, contractor, and subcontractor performing work or supplying material or of landlord receiving rent payments;
- ☐ Date of work or material provided;
- ☐ Itemized description of work provided (e.g., who performed the work, how many hours involved, charge for work, type of work performed) or material supplied (e.g., number of gallons of paint, quantity and measurements for each new dome style awning, feet of fence installed, description of LED wall pack) or identification of property and premises for which rent has been paid;
- ☐ Itemized cost of work performed or material supplied;
- ☐ Statement signed by landlord, laborer, supplier, materialmen, contractor or subcontractor that the amount billed has been paid by the Grantee
- ☐ For proof of payment to any contractors/subcontractors, a copy of the Grantee's cancelled check with the proof of payment receipt

Payment is made to the grantee on a reimbursement basis. The grantee must submit invoices with original receipts to the Program Manager for items and services purchased in accordance with the terms of the Forgivable Loan Agreement and this Policy. The expenses will only be reimbursed for items and services purchased after the effective date of the Forgivable Loan Agreement, unless the City Council approves otherwise. If rent abatement has been awarded, payments will be made to the grantee upon proof of payment to the landlord for each month that is specified in the Forgivable Loan Agreement not to exceed three (3) months. All payments will be made to the grantee approximately thirty (30) days from the date of receipt of the requisite documentation. The Program Manager will establish the necessary administrative procedures for processing payment.

Funding provided through the Upstart Cocoa Program will be treated as a deferred loan, whereby no interest will accrue upon the principal of the total loan amount and payment to the City Council is deferred for a three (3) year period. At the end of the three-year period, the loan will be forgiven in its entirety on the condition that the grantee is in compliance with the terms and conditions of the Forgivable Loan Agreement and this Policy.

### **Default**

If the grantee fails to comply with one of the conditions to receiving funds under the Upstart Cocoa Agreement, the Program Manager will contact the grantee in an effort to determine the reason for the noncompliance. Without

compromising the integrity of the program, the Program Manager shall attempt to accommodate legitimate and substantiated problems being faced by the grantee. If a suspected default or breach occurs, as defined in the Forgivable Loan Agreements, the Program Manager will first contact the grantee in an effort to verify the occurrence of a default and determine the reason for the default. If the Program Manager is not successful in contacting the grantee, he/she will inform the City's Attorney of the suspected default. Once the City's Attorney confirms the default, the Manager will cease further payments to the grantee and instruct the City Attorney to send a letter, notifying the grantee of the default and demanding either the grantee cure the default or reimburse the City of Cocoa. The letter will also instruct the grantee to contact the Program Manager to further discuss the matter. If the grantee fails to respond to the demand letter, fails to cure the default or reimburse the City the stated amount, or proposes a settlement, the Program Manager will coordinate a meeting of the Upstart Cocoa Review Committee. The Program Manager will send a letter to the grantee notifying him/her of the date and time of the meeting.

The Upstart Cocoa Review Committee will meet on an as-needed basis and will make recommendations to the City Council regarding the appropriate action to take with regard to seeking reimbursement of funds already paid to the grantee, including, but not limited to: (1) recommending that the City Attorney's Office initiate litigation in the event the grantee fails to respond to the demand letter or refuses to reimburse the City of Cocoa; (2) recommending mediation or other alternative dispute resolution actions; (3) recommending terms of a mutually agreeable settlement in the event the grantee proposes a payment schedule; or (4) recommending no further collection action and termination of the Agreement. The Committee's recommendation will be reported to the City Council for final approval.

### **Disclosures**

The City expressly reserves the right to reject any and all applications or to request additional information from any and all applicants and grantees. The City retains the right to amend this Policy and any supporting documents, including the Forgivable Loan Agreement documents. The City also retains the right to advertise and promote businesses that receive Program funds.