

UPSTART COCOA MINORITY AND SMALL BUSINESS PROGRAM FORGIVABLE LOAN AGREEMENT

[INSERT GRANTEE NAME]

This **UPSTART COCOA MINORITY AND SMALL BUSINESS PROGRAM FORGIVABLE LOAN AGREEMENT** (hereinafter referred to as the "Agreement") is made and entered into this _____ day of _____, 20____, by and between the **City of Cocoa**, a Florida municipal corporation, the principal address of which is 65 Stone Street, Cocoa, Florida 32922, (hereinafter referred to as the "City") and _____, a Florida _____ (hereinafter referred to as "Grantee"), the principal address of which is _____ (hereinafter singularly referred to by their respective designation contained hereinabove, or as the "Party", and collectively as the "Parties").

RECITALS:

WHEREAS, in an effort to promote the growth of women and minority-owned small businesses (collectively, "Minority-Owned Businesses") throughout the City of Cocoa, the City has adopted and established the Upstart Cocoa Minority and Small Business Program (hereinafter referred to as the "Program") and the governing Upstart Cocoa Minority and Small Business Program Policy (hereinafter referred to as the "Policy"), which provide City financial assistance towards certain specified start-up, retention, or relocation costs and expenses for eligible enterprises within the City; and

WHEREAS, the City has found and declared that the Program serves an important and significant public purpose and is necessary and proper in order to promote the health, safety, and welfare of the public by providing vibrant and diverse retail businesses and services within the City; and

WHEREAS, Grantee is eligible for City financial assistance pursuant to the Program because it is either a startup Minority-Owned Business or an existing Minority-Owned Business that is relocating to the City and has already successfully completed a business education curriculum with the weVenture Women's Business Center at Florida Tech's Bisk College of Business or similar service provider at a cost of \$2,500.00 paid by the City; and

WHEREAS, Grantee is seeking assistance under the Program in the form of reimbursement for eligible expenses, such as capital equipment necessary for the operation of the business exceeding \$1,000 in cost, rent abatement, expansion costs, and marketing costs as further specified herein; and

WHEREAS, in order to offset such expenses of the business, the City, upon recommendation by the Upstart Cocoa Advisory Committee, has awarded funding in the amount of up to _____, to be given pursuant to and contingent upon the terms of this Agreement; and

Upstart Cocoa Minority and Small Business Program
Forgivable Loan Agreement
City of Cocoa - _____

WHEREAS, the Grantee has provided to the City copies of its necessary business entity formation documents, registration with the Florida Secretary of State, and has applied or will apply for a City of Cocoa business tax receipt; and

WHEREAS, the governing Upstart Cocoa Minority and Small Business Program Policy is attached hereto as **EXHIBIT A**, which shall be fully incorporated herein by this reference; and

NOW, THEREFORE, in consideration of the promises and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Grantee agree as follows:

1. Incorporation of Recitals. The recitals set forth hereinabove are true and correct and are incorporated herein as if fully set out below.

2. Funding. Subject to Grantee complying with the conditions contained in this Agreement and specifically Section 4 hereunder, the City shall provide funding up to the maximum amount of _____ (\$) ("the Funding" or "Forgivable Loan") on a reimbursement basis in accordance with the following:

a. The City Council has approved, based on the recommendation of the Upstart Cocoa Review Committee, the following eligible expenses that may be reimbursed up to the maximum amount described above and shall not exceed the amount allocated below for each type of eligible expense (if applicable):

Type of Eligible Expenses	Maximum Amount/Conditions

b. To be reimbursed, the Grantee shall provide to the City of Cocoa Office of Economic Development the following:

(i) Paid receipts from laborers, suppliers, materialmen, contractors, sub-contractors, service providers and/or a landlord. The receipts must include the following information: 1) Name, address, and telephone number of laborer, supplier, materialmen, contractor, sub-contractor, and/or service providers performing work or supplying material or of a landlord receiving rent payments; 2) Date of work or material provided or rent received; 3) Description of property upon which the work was provided or to which the material was delivered or for which rent was paid; 4) Itemized description and cost 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. – who supplied the material, quantity and type of material supplied, charge for material); 5) Statement of what work or material was for (e.g. – supplied 2 coats of coal tar emulsion sealer

with sand and latex additive to cover approximately 10,647 square feet of asphalt surface; supplied 26 feet fence for privacy fence to hide parking lot dumpster; number and measurements for privacy fence gate; labor time spent and LED wall pack etc. for parking lot lighting); 6) Statement signed by laborer, supplier, materialmen, contractor, sub-contractor, service provider or landlord that the amount billed has been paid by the Grantee; and 7) for proof of payment to any contractors/subcontractors, a copy of the Grantee's cancelled check with the proof of payment receipt. The paid receipts are subject to review and approval by the City's Office of Economic Development; and

(ii) Paid receipts demonstrating that the Grantee has paid at least 10 percent (10%) of the cost of the items approved for Funding from funds other than the Forgivable Loan.

c. All payments will be made to the Grantee approximately thirty (30) days from the date of receipt of the requisite documentation.

d. Purchases must be made after the Effective Date of this Agreement unless otherwise expressly approved by the City Council.

e. If all items for the above categories have been purchased and the amount the City has reimbursed Grantee is less than the maximum amount of Funding, Grantee may use the remaining funds for other item(s) not included in the proposal submitted, but that are associated with the startup or relocation of the business and are eligible expenses as provided in the Policy, upon approval by the Economic Development Manager, provided that the total amount reimbursed Grantee under the terms of this Agreement does not exceed the maximum amount of Funding.

f. If a specified amount is allocated to a specific type of eligible expense category listed above, such funds cannot be shifted in whole or in part to another category without approval from the Economic Development Manager or the City Council and must be in compliance with the terms of the Policy.

g. All Funding subject to this Agreement must be expended and reimbursed within one (1) year of the Effective Date of this Agreement.

h. By execution of this Agreement, the Grantee acknowledges that only State of Florida/Brevard County contractors licensed pursuant to Chapter 489, Florida Statutes, or as otherwise exempted under Section 489.103, Florida Statutes, shall be used to perform construction work, and that all legally required permits, certifications, licenses, and insurance shall be obtained for the work to be performed. Authorized work may not be performed by the Grantee and be reimbursed.

i. Reimbursement shall be denied for any instance in which the terms of this Agreement or the Policy have been violated.

3. Deferred Loan. The Funding is a deferred loan, whereby no interest will accrue upon the principal of the total award amount and payment to the City shall be deferred during the term of this Agreement. The loan shall depreciate at 33% each year for the first two years and 34% for the third year. At the end

of the three-year period, the loan shall be forgiven in its entirety as long as the Grantee is in compliance with the terms and conditions of this Agreement and the Policy. In the event of a Default, the City shall be entitled to recover, at minimum, a pro rata share (using a three-year amortization schedule for the loan proceeds) of the total Forgivable Loan amount based upon the year in which the Default occurs. Notwithstanding the forgoing, the entire Forgivable Loan shall be repaid in full in addition to the _____ cost of the business education curriculum with the weVenture Women's Business Center at Florida Tech's Bisk College of Business or similar service provider expended by the City should the specific Default event be that the Grantee remains in business but relocates outside the City limits during the three-year period.

4. Conditions of Funding. The City shall not be obligated to provide the Funding in Section 2 herein to Grantee unless Grantee first meets the requirements set forth in Section 2 and maintains compliance with the other conditions listed in this Agreement and the Policy, including:

a. Grantee agrees and warrants to the City that the Funding reimbursed pursuant to this Agreement have and shall only be spent for purposes as approved in Section 2 above.

b. Grantee agrees and warrants that Grantee shall remain open for business at a City of Cocoa location for a period of at least three (3) years from the Effective Date of this Agreement. In addition, Grantee agrees that, if Grantee is not already open for business upon the Effective Date of this Agreement, Grantee shall be open for business and begin to provide services or products to the general public within six (6) months of the Effective Date of this Agreement. For Grantees that are not yet open for business at the time of the Effective Date of this Agreement, the Grantee shall be required to inform the Economic Development Manager of the date upon which the business is open and begins to provide services or products to the general public. Grantee shall further, at a minimum, be open for business at least _____ days per week and at least _____ hours per day for a minimum of _____ hours each work week, except in cases of emergency. If the City determines that the Grantee has not remained open for business for said three (3) – year period, has failed to timely open for business, and/or is consistently failing to maintain hours of operation as agreed to herein, the Grantee agrees that it shall constitute a Default as provided in Section 6 below.

c. Grantee shall at all times be in compliance with the Cocoa City Code, including, but not limited to, code sections pertaining specifically to planning, zoning and permitting, and Grantee shall maintain a current and valid City of Cocoa business tax receipt, which shall be obtained within 90 days of the Effective Date of this Agreement, and any other required licenses at all times. This part is not intended to preclude the City of Cocoa from granting Grantee certain waivers, exemptions, or variances as allowed under the Cocoa City Code.

d. Grantee shall display the City of Cocoa logo, as provided by the City, on the front main entrance door of the business and/or on the business's website as a funding partner for the term of this Agreement.

e. Grantee agrees to seek technical assistance from an economic development organization or company, approved by the Office of Economic Development, on an as-needed basis to address financial

issues, business strategy, and/or marketing, but only to the extent that such services are available to the Grantee at no cost.

f. Grantee shall provide and complete a Community Enrichment Element to “pay back” twenty-five percent (25%) of the Forgivable Loan amount within three (3) years from the Effective Date of this Agreement. The Community Enrichment Element shall consist of an act of giving back to the City of Cocoa community through the donation of volunteer hours, goods or services. Donations shall be made to a public entity, such as Cocoa High School, or a non-profit organization providing services to the Cocoa community. Volunteer hours shall be valued based on an hourly rate calculated from the participating employees’ salary or earnings, as approved by the Economic Development Manager.

g. Grantee shall submit annual reports to the Office of Economic Development describing the number of employees employed during the previous year, compliance with the conditions of Funding as required in this Agreement, including progress on the Community Enrichment Element, number of clients served, profit and loss statements, progress on business plan goals and objectives, and any other information reasonably requested by the Economic Development Manager, in a form acceptable to the Economic Development Manager. These reports may be delivered to the City Council for review.

h. If Grantee has been approved for financial assistance for lease costs (rent abatement), Grantee 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. A copy of this lease shall be provided to the Office of Economic Development within 90 days of the Effective Date of this Agreement.

i. Grantee must maintain compliance with all other requirements of the Policy attached hereto as **Exhibit A**.

j. Grantee shall make timely payment of any and all taxes owed by Grantee and shall timely file sales tax returns with the Florida Department of Revenue. Grantee shall further provide a copy of such filed sales tax return to the City’s Office of Economic Development and Finance Department either monthly or quarterly depending upon the filing frequency established by the Florida Department of Revenue.

5. Books and Records; Public Records. Grantee shall compile and maintain accurate books and records indicating its compliance with the requirements of this Agreement, and shall make such records available at a mutually agreed upon time for inspection and/or audit by the City during regular business hours. Financial records, supporting documentation, statistical and all other records pertinent to this Agreement shall be retained for a period of at least three (3) years after final payment by the City of any Funding, except that in all cases such records shall be retained until final resolution of matters resulting from any litigation, claim, or audit initiated prior to the expiration of the three-year retention period and shall continue to be subject to retention until the same is resolved to the satisfaction of the City. Grantee agrees that it may be audited for internal performance or accounting matters at any time by the City to assure compliance with this Agreement. Any monies finally determined as a result of any financial review or audit which are misspent or otherwise not spent as provided for in this Agreement shall be immediately

returned to the City. Prior to making any final determination of mispending or failure to comply with this Agreement by the Grantee, the City shall coordinate with the Grantee to allow the Grantee an opportunity to explain its actions or otherwise provide compliance with this Agreement.

Pursuant to Chapter 119, Florida Statutes, the Grantee agrees that any records, documents, transactions, writings, papers, letters, computerized information and programs, maps, books, audio or video tapes, films, photographs, data processing software, writings or other material(s), regardless of the physical form, characteristics, or means of transmission, of the Grantee related, directly or indirectly, to this Agreement and made or received pursuant to law or ordinance or in connection with the transaction of official business by the City, may be deemed to be a public record and subject to the provisions of Chapter 119, Florida Statutes, whether in the possession or control of City or the Grantee, and may not be destroyed without the specific written approval of the City's designated custodian of public records. The Grantee shall provide the City, upon request from the City, copies of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by law. The Grantee agrees to comply with public records laws. Should the City not possess public records relating to this Agreement which are requested to be inspected or copied by the City or any other person, the City shall immediately notify the Grantee of the request and the Grantee shall then provide such records to the City or allow the records to be inspected or copied within a reasonable time. All public records in connection with this Agreement shall, at any and all reasonable times during the normal business hours of the Grantee, be open and freely exhibited to the City for the purpose of examination, audit, or otherwise. If the Grantee fails to comply with this Section, and the City must enforce this Section, or the City suffers a third party award of attorney's fees and/or damages for violating Chapter 119, Florida Statutes, due to Grantee's failure to comply with this Section, the City shall collect from Grantee prevailing party attorney's fees and costs, and any damages incurred by the City, for enforcing this Section against Grantee. And, if applicable, the City shall also be entitled to reimbursement of all attorneys' fees and damages which the City had to pay a third party because of the Grantee's failure to comply with this Section. The terms and conditions set forth in this Section shall survive the termination of this Agreement.

6. Default and Remedies. The occurrence of any one of the following events or conditions shall constitute a default and breach of this Agreement by Grantee, and shall entitle the City to enforce the terms of this Agreement and/or any Security Agreement signed by the Grantee and to pursue whatever remedies are available to it under Florida law or equity including, without limitation, termination of this Agreement, an action for specific performance, injunctive relief, immediate cessation of any payments contemplated herein to Grantee, and/or seeking reimbursement of either a prorated amount of the Funding or all of the Funding already paid by the City to Grantee, including the cost of the business education curriculum previously expended by the City. Except where the remedy has been specifically established in this Agreement, the election of remedies, including whether to seek reimbursement of the prorated amount of the Funding or all of the Funding already paid by the City to the Grantee shall be in the sole discretion of the City Council. Prior to the City filing or taking any action as a result of a default under this Agreement (other than immediate cessation of any payments contemplated herein to

Grantee), the City shall first provide the defaulting Grantee with written notice of said default. Upon receipt of said notice, the defaulting Grantee shall be provided a thirty (30) day opportunity in which to cure the default to the reasonable satisfaction of the City prior to filing or taking said action to the extent that such action may be cured.

a. Grantee's failure to comply with any of the requirements of this Agreement, specifically including the Conditions of Funding in Section 4 and the requirements of the Policy attached hereto as **Exhibit A**.

b. Grantee's sale of the business or change of the current business that would not independently qualify for the Program.

c. Grantee's making of a material misrepresentation in any certification or communication submitted by the Grantee to the City in an effort to induce the award of the grant, payment or the administration thereof that is determined to be false, misleading, or incorrect in any material manner.

d. Grantee is found guilty of, or enters a plea of no contest for, committing a misdemeanor or felony that is related to this Agreement.

e. Grantee defaults on its mortgage or terminates its lease without securing a new lease within the City of Cocoa.

Failure of the City to declare a default shall not constitute a waiver of any rights by the City. Furthermore, the waiver of any default by the City shall in no event be construed as a waiver of rights with respect to any other default, past or present.

7. Term and Termination. The term of this Agreement shall be for a period of three (3) years following the Effective Date of this Agreement. The City shall have the unconditional right, but not obligation, to terminate this Agreement, without penalty, if Developer fails to comply with the terms of this Agreement and the Policy attached hereto as **Exhibit A** and, if applicable, fails to cure any default within the time period allowed in Section 6.

8. Effective Date. This Agreement shall become effective upon approval by the City Council and execution of this Agreement by both parties hereto.

9. Indemnification. Grantee shall be solely responsible for all services, products, and work it performs as a business and for the safety of its own employees. As such, to the extent permitted by law, Grantee shall indemnify, defend and hold harmless the City, its agents, employees, and elected and appointed officials, and volunteers, including the Upstart Cocoa Advisory Committee and their members, from and against all claims, damages, losses, and expenses (including all attorneys' costs and fees reasonably and actually incurred, and all attorneys' costs and fees on appeal) arising out of or resulting from (i) Grantee's performance, nonperformance, breach or violation of this Agreement; (ii) Grantee's performance or production of goods and services for the public; or (iii) injury of the Grantee's own employees, and which are caused in whole or in part by Grantee, its agents, employees or subcontractors, anyone directly or

indirectly employed by any of them, or anyone for whose acts any of them may be liable. The forgoing obligation to indemnify, defend and hold harmless the City, its agents, employees, and elected and appointed officials, and volunteers shall specifically extend to and include all claims, damages, losses, and expenses arising from (i) injury or negligence based on a failure to train or supervise workers, employees, contractors, volunteers, or agents of the Grantee in performing services or supplying goods to the public; (ii) failure of the Grantee, or its employees, agents, or volunteers, to employ safety measures in the performance of work or to maintain a safe workplace; (iii) injury or negligence of any person arising from work, material, or equipment supplied that is subject to reimbursement pursuant to this Agreement; or (iv) failure to follow or correctly follow directions of the State or any other governmental entity.

The indemnification provided above shall obligate the Grantee to defend at its own expense or to provide for such defense, at the option of the City, as the case may be, of any and all claims of liability and all suits and actions of every name and description that may be brought against the City or its employees, officers, and attorneys which may result from the acts or omissions stated above under this Agreement whether performed by the Grantee, anyone directly or indirectly employed by the Grantee, or anyone otherwise authorized to act, in any manner, on their behalf. In all events, the City shall be permitted to choose legal counsel of its sole choice, the fees for which shall be reasonable and subject to and included with this indemnification provided herein. This indemnification provision shall survive termination of the Agreement.

10. Bankruptcy. In the event (a) an order or decree is entered appointing a receiver of Grantee or its assets, which is not appealed (or if appealed is determined adverse to Grantee) or (b) a petition is filed by Grantee for relief under federal bankruptcy laws or any other similar law or statute of the United States, which action is not dismissed, vacated or discharged within sixty (60) days after the filing thereof, then the City shall have the right to immediately terminate this Agreement.

11. Force Majeure. The parties shall use reasonable diligence to ultimately accomplish the purpose of this Agreement but shall not be liable to each other, or their successors or assigns, for breach of contract, including damages, costs, and attorney's fees (including costs or attorney's fees on appeal) as a result of such breach, or otherwise for failure to timely perform its obligations under this Agreement occasioned by any cause beyond the reasonable control and without the fault of the parties. Such causes may include but shall not be limited to acts of God, acts of terrorism or of the public enemy, acts of other governments (including regulatory entities or courts) in their sovereign or contractual capacity, fires, hurricanes, tornadoes, floods, strikes, or failure or breakdown of transmission or other utility facilities ("Force Majeure"). Notwithstanding anything herein to the contrary, if Grantee or the City is delayed, hindered or prevented in or from performing its respective obligations under this Agreement by any occurrence or event of Force Majeure, then the hindered party shall provide written notice to the other and the period for such performance shall be extended for the period such performance is delayed, hindered or prevented, and the party delayed, hindered or prevented in or from performing shall not be deemed in breach hereunder.

12. Agency. Grantee and City, and their agents, contractors, and subcontractors, shall perform all activities that are contained herein as independent entities and not as agents of each other.

13. Third-party Beneficiaries. This Agreement is solely for the benefit of the parties signing hereto and their successors and assigns, and no right, nor any cause of action, shall accrue to or for the benefit of any third party.

14. Binding Nature of Agreement. This Agreement shall be binding, and shall inure to the benefit of the successors or assigns of the parties hereto, and shall be binding upon and inure to the benefit of any person, firm, or corporation that may become the successor in interest, directly or indirectly, to the Business, or any portion thereof.

15. Controlling Law and Venue. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida, and all duly adopted ordinances, regulation and policies of the City of Cocoa now in effect and those hereinafter adopted. Unless otherwise specified in this Agreement for a particular issue, all City ordinances, rules, regulations and policies are applicable. The location for settlement of any and all claims, controversies, or disputes, arising out of or relating to any part of this Agreement, or any breach hereof, shall be Brevard County, Florida for state court actions and Orlando, Florida for federal court actions.

16. No Liability or Monetary Remedy. Grantee hereby acknowledges and agrees that it is sophisticated and prudent in business transactions and proceeds at its own risk under advice of its own counsel and advisors and without reliance on the City, and that the City bears no liability for direct, indirect or consequential damages arising in any way out of this Agreement. The only remedy available to Grantee for any breach by the City is one of mandamus to require the City's specific performance under the terms and conditions of this Agreement.

17. Relationship. This Agreement does not evidence the creation of, nor shall it be construed as creating, a partnership or joint venture between Grantee and the City. Grantee cannot create any obligation or responsibility on behalf of the City or bind the City in any manner. Each party is acting for its own account, and it has made its own independent decisions to enter into this Agreement and as to whether the same is appropriate or proper for it based upon its own judgment and upon advice from such advisors as it has deemed necessary. Each party acknowledges that it is not acting as a fiduciary for or any advisor to the other in respect to this Agreement or any responsibility or obligation contemplated herein. Grantee further represents and acknowledges that no one was paid a fee, commission, gift, or other consideration by Grantee as an inducement to entering into this Agreement.

18. Personal Liability. No provision of this Agreement is intended, nor shall any be construed, as a covenant of any official (either elected or appointed), director, employee or agent of the City in an individual capacity and neither shall any such individuals be subject to personal liability by reason of any covenant or obligation of the City contained herein.

19. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the specific matters contained herein and supersedes all previous discussions, understandings, and agreements. Any amendments to or waiver of the provisions herein shall be made by the parties in writing.

20. Severability. If a sentence, phrase, paragraph, provision, or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed an independent provision and such holding shall not affect the validity of the remaining portion hereto.

21. Estoppel Letter. Upon the request of Grantee or one of its lenders, the City hereby agrees to furnish a letter stating whether (i) this Agreement is in full force and effect, (ii) there are any defaults under this Agreement and, if any, identify them, and (iii) all amounts due and payable hereunder have been paid in full, and, if not, the outstanding balances hereunder. Such letter shall be furnished within ten (10) days after request therefore.

22. Notices. Any notice required or allowed to be delivered hereunder shall be in writing and deemed to be delivered when (i) hand delivered to the person hereinafter designated, (ii) if delivered to an overnight courier service, on the business day immediately following delivery to such service; or (iii) if mailed by certified mail, return receipt requested, on the third business day after mailing, addressed to the party at the address set forth below, or at such other address as the applicable party shall have specified, from time to time, by written notice to the other party delivered in accordance herewith:

City of Cocoa

City Manager
City of Cocoa
65 Stone Street
Cocoa, FL 32922

Grantee

23. Assignment. Grantee shall not assign this Agreement without the prior and written consent of the City, which shall not be unreasonably withheld. As stated above in Section 6, the sale of the business or change of the current business that would not independently qualify for the Program shall constitute a default, in which case the City's consent shall be withheld.

24. Grantee's Signatory. The undersigned person executing this Agreement on behalf of the Grantee hereby represents and warrants that he/she has the full authority to sign said Agreement for the Grantee and to fully bind the Grantee to the terms and conditions set forth in this Agreement.

25. Inspection. City staff is authorized to conduct an inspection of the Grantee's property at any time during regular business hours to ensure the terms and conditions of this Agreement have been met, and

Grantee specifically consents to such inspections. The City agrees that any inspection shall be coordinated with the property owner or tenant and conducted in a manner so as to minimize interference with the business of the property owner or tenant.

26. Attorney's Fees. In the event any litigation or controversy arises out of or in connection with the parties hereto, each party shall bear their own costs and attorney's fees. Notwithstanding the foregoing, should the City determine that the Grantee must reimburse the City for failure to comply with this Agreement and terms and conditions of the Funding, the Grantee shall be responsible for all related costs and attorney's fees incurred by the City as to any related litigation or controversy.

27. Sovereign Immunity. The City intends to avail itself of the benefits of Section 768.28, Florida Statutes and any other statutes and common law governing sovereign immunity to the fullest extent possible. Neither this provision nor any other provision of this Agreement shall be construed as a waiver of the City's right to sovereign immunity under section 768.28, Florida Statutes, or other limitations imposed on the City's potential liability under state or federal law. As such, the City shall not be liable under this Agreement for punitive damages or interest for the period before judgment. Further, the City shall not be liable for any claim or judgment, or portion thereof, to any one person for more than two hundred thousand dollars (\$200,000.00), or any claim or judgment, or portion thereof, which, when totaled with all other claims or judgments paid by the State or its agencies and subdivisions arising out of the same incident or occurrence, exceeds the sum of three hundred thousand dollars (\$300,000.00). Nothing in this Agreement is intended to inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity or by operation of law. This paragraph shall survive termination of this Agreement.

28. E-Verify Registration and Use.

a. Pursuant to section 448.095, Florida Statutes, beginning January 1, 2021, Grantee shall register with and use the U.S. Department of Homeland Security's E-Verify system, <https://e-verify.uscis.gov/emp>, to verify the work authorization status of all employees hired on and after January 1, 2021.

b. Subcontractors

(i) Grantee shall also require all subcontractors performing work under this Agreement to use the E-Verify system for any employees they may hire during the term of this Agreement.

(ii) Grantee shall obtain from all such subcontractors an affidavit stating the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, as defined in section 448.095, Florida Statutes.

(iii) Grantee shall provide a copy of all subcontractor affidavits to the City upon receipt and shall maintain a copy for the duration of the Agreement.

C. Grantee must provide evidence of compliance with section 448.095, Florida Statutes. Evidence shall consist of an affidavit from the Grantee stating all employees hired on and after January 1, 2021 have had their work authorization status verified through the E-Verify system and a copy of their proof of registration in the E-Verify system.

D. Failure to comply with this provision is a material breach of the Agreement, and shall result in the immediate termination of the Agreement without penalty to the City. Grantee shall be liable for all costs incurred by the City securing a replacement Agreement, including but not limited to, any increased costs for the same services, any costs due to delay, and rebidding costs, if applicable.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seal on the date first above written.

[SIGNATURE PAGES FOLLOW]

City of Cocoa

By: _____
Stockton Whitten, City Manager

Date: _____

APPROVED AS TO FORM

ATTEST:

By: _____
Carie Shealy, City Clerk

By: _____
Anthony A. Garganese, City Attorney

CITY SEAL

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me by means of (____) physical presence or (____) online notarization, this _____ day of _____, 2021, by Stockton Whitten, the City Manager

Upstart Cocoa Minority and Small Business Program
Forgivable Loan Agreement
City of Cocoa - _____

of the City of Cocoa, on behalf of the City, who is personally known to me or produced
_____ as identification.

(NOTARY SEAL)

(Notary Public Signature)

(Print Name)

Notary Public, State of _____

Commission No.: _____

My Commission Expires: _____

GRANTEE

Printed Name: _____

Title: _____

Date: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of () physical presence or
() online notarization, this _____ day of _____, 2021, by _____,
the _____ of _____, a Florida
_____. He is personally known to me or produced _____
_____ as identification.

(NOTARY SEAL)

(Notary Public Signature)

(Print Name)

Notary Public, State of _____

Commission No.: _____

My Commission Expires: _____

EXHIBIT A

Upstart Cocoa Minority and Small Business Program Policy

TEMPLATE

Upstart Cocoa Minority and Small Business Program
Forgivable Loan Agreement
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TEMPLATE 4/2021