

# AGREEMENT FOR CONSULTANT SERVICES

**THIS AGREEMENT** is entered into by and between the **ULSTER COUNTY ECONOMIC DEVELOPMENT ALLIANCE, INC.**, a local development corporation formed under the laws of the State of New York, with principal offices at 244 Fair Street, Kingston, New York 12401 (the “**UCEDA**”), and **DEBRA BRESNAN**, a professional writer, with principal offices at 105 Abeel Street, Apartment #1, Kingston, NY 12401 (the “**Consultant**”), (each, a “**Party**,” together, the “**Parties**”).

## RECITALS

**WHEREAS**, the UCEDA needs a professional writer to produce content for websites, brochures, blogs, social media and other venues; and

**WHEREAS**, the Consultant is a professional writer who is capable of producing content for UCEDA; and

**WHEREAS**, the UCEDA has agreed to engage the Firm, and the Firm has agreed to contract with the UCEDA to offer writing services in accordance with the terms and conditions set forth in this Agreement.

**NOW THEREFORE**, in consideration of the promises and covenants set forth below, the UCEDA and the Consultant hereby agree as follows:

## ARTICLE 1 - SCOPE OF SERVICES

The Consultant agrees to perform the services identified in Schedule A, the Scope of Services (the “**Services**”), which is attached hereto and is hereby made a part of this Agreement. The Consultant agrees to perform the Services in accordance with the terms and conditions of this Agreement. It is specifically agreed to by the Consultant that the UCEDA will not compensate the Consultant for any services not included in Schedule A without prior authorization, evidenced only by a written Change Order, Amendment, or Addendum to this Agreement, signed by the parties hereto.

## ARTICLE 2 - TERM OF AGREEMENT

The Consultant agrees to perform the Services between **April 16, 2018 and December 31, 2018**.

If, owing to the actions or neglect of the UCEDA, the Consultant is prevented from completing the Services within the Term of this Agreement, then the Consultant’s sole and exclusive remedy will be to request that a Change Order, Amendment, or an Addendum to this Agreement be issued by the Executive or the Purchasing Director, permitting an extension of time to perform the Services, equal to the time lost due to such delay. Such request must be based upon written notice only, delivered to the Department Head promptly, but not later than thirty (30) days after the initial occurrence of the event giving rise to such claim, and stating the specific nature of the claim. An extension of time to perform the Services may only be granted by a written Change Order, Amendment, or Addendum to this Agreement, signed by the Executive or the Purchasing Director. In no event will the UCEDA be liable to the Consultant, its subcontractors, agents, assignees, or any other person or entity, for damages arising out of or resulting from any such delays.

## ARTICLE 3 - COMPENSATION

For satisfactory performance of the Services, or as such Services may be modified by a mutually agreed upon written Change Order, Amendment, or Addendum to this Agreement, the UCEDA agrees to compensate the Consultant in accordance with Schedule B, “**Fees, Expenses, and Submissions for Payment**,” which is attached hereto and is hereby made a part of this Agreement. As directed in Schedule B, the Consultant shall submit invoices to the UCEDA for the Services rendered. Each invoice must be prepared in such form and supported by such documentation as the UCEDA may reasonably require. The UCEDA will remit payment to the Consultant within sixty (60) days of approval of the invoice by the UCEDA Board. The UCEDA will notify the Consultant in writing of its reasons, if any, for objecting to all or any

portion of the Consultant's invoice and/or supporting documentation.

A **not-to-exceed** amount of **TWENTY THOUSAND AND 00/100 (\$20,000.00) DOLLARS** has been established for the Services to be rendered by the Consultant. Costs in excess of the above amount may not be incurred without the prior written authorization of the UCEDA, and evidenced only by a written Change Order, Amendment, or Addendum to this Agreement. It is specifically agreed to by the Consultant that the UCEDA will not be responsible for any additional costs, or costs in excess of the above cost, if authorization by the Executive or the Purchasing Director is not given in writing prior to the performance of any services giving rise to such excess or additional costs.

#### **ARTICLE 4 – REPRESENTATIONS BY THE CONSULTANT**

The Consultant represents that it is fully licensed (to the extent required by law), experienced, and properly qualified to perform the Services to be provided under this Agreement, and that it is properly permitted, equipped, organized, and financed to perform such Services.

#### **ARTICLE 5 - INDEPENDENT CONTRACTOR**

In performing the Services and incurring expenses under this Agreement, the Consultant shall operate as and have the status of an independent Consultant, and must not act as agent for or on behalf of the UCEDA, nor will the Consultant represent the UCEDA, or bind the UCEDA in any manner. As an independent contractor, the Consultant shall be solely responsible for determining the means and methods of performing the Services, and shall have complete charge and responsibility for the Consultant's personnel engaged in the performance of the same.

In accordance with such status as independent Consultant, the Consultant covenants and agrees that neither it, nor its employees or agents, will proclaim themselves to be officers or employees of the UCEDA, or of any department, agency, or unit thereof, by reason hereof, and that the Consultant's employees or agents will not, by reason hereof, make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the UCEDA including, but not limited to, Workers' Compensation coverage, health insurance coverage, Unemployment Insurance benefits, Social Security benefits, or employee retirement membership or credit.

Nothing contained in this Agreement will be construed to create the relationship of employer and employee, principal and agent, partnership, or joint venture, or any other fiduciary relationship.

#### **ARTICLE 6 - ASSIGNMENT**

The Consultant must not assign any of its rights, interests, or obligations under this Agreement, or assign any of the Services to be performed by it under this Agreement, without the prior express written consent of the UCEDA Board of Directors. Any such assignment, transfer, conveyance, or other disposition without such prior consent will be void, and any Services provided thereunder will not be compensated. Any assignment properly consented to by the UCEDA Board of Directors will be subject to all of the terms and conditions of this Agreement.

The provisions of this clause must not hinder, prevent, or affect any assignment by the Consultant for the benefit of its creditors made pursuant to the laws of the State of New York, except where the Federal Supremacy Clause requires otherwise.

#### **ARTICLE 7 – SUBCONTRACTING**

Consultant agrees to include the following provisions in any and all subcontract agreements for Services to be performed pursuant to this Agreement:

- A. That the work performed by the subcontractor must be in accordance with the terms and conditions of this Agreement between the UCEDA and the Consultant, including, but not limited to, the insurance requirements set forth in Schedule C; and
- B. That nothing contained in the subcontractor agreement will impair the rights of the UCEDA; and

- C. That nothing contained in the subcontractor agreement, or under this Agreement between the UCEDA and the Consultant, will create any contractual relation in law or equity, between the subcontractor and the UCEDA; and
- D. That the subcontractor specifically agrees to be bound by the confidentiality provision as set forth in Article 10 of this Agreement between the UCEDA and the Consultant.

Upon signing this Agreement, Consultant shall provide the UCEDA with the names and scope of work of any and all subcontractors to be used in the performance of Consultant's obligations pursuant to this Agreement. Furthermore, upon the UCEDA's request, Consultant shall provide copies of any and all subcontract agreements for Services to be performed pursuant to this Agreement.

The Consultant agrees that it is fully responsible to the UCEDA for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by them to the same extent as it is for the acts and omissions of persons employed by the Consultant. The Consultant will not in any way be relieved of any responsibility under this Agreement by any subcontract.

## **ARTICLE 8 - PERFORMANCE**

The Consultant shall perform the Services using its own equipment and facilities wherever and whenever possible. In performing the Services, the Consultant shall assign qualified personnel and perform such Services in accordance with the professional standards and with the skill, diligence and quality control/quality assurance measures expected of a reputable company performing Services of a similar nature. The Consultant is hereby given notice that the UCEDA will be relying upon the accuracy, competence, and completeness of the Consultant's performance in using the results achieved by Consultant's performance of these Services. The Consultant shall at all times comply with all applicable federal, New York State, and local laws, ordinances, statutes, rules, and regulations.

## **ARTICLE 9 – INTELLECTUAL PROPERTY RIGHTS**

All "Intellectual Property," meaning all graphics, fonts, computer code (with the exception of open source code), photographs, brochures, videos, web pages, trademarks, databases, names and logos, or the copyright in any portion of the works issued by the UCEDA or developed or produced for the UCEDA shall at all times be proprietary to the UCEDA, and shall be the exclusive property of the UCEDA. Upon termination of this Agreement, the Consultant's right or license to use the intellectual property shall terminate.

The Consultant warrants it has full authority to sell, assign and transfer the rights to all graphics, fonts, computer code (with the exception of open source code), photographs, brochures, videos, web pages, trademarks, databases, names and logos, or the copyright in any portion of the works, developed or produced for the UCEDA free and clear of any material encumbrances, liens or claims.

The Consultant agrees, at its own expense, to defend, indemnify and hold harmless the UCEDA from and against any losses, damages, expenses, liabilities and costs (including without limitation, legal fees) incurred by the UCEDA as a result of any claims brought against the UCEDA by third parties arising from any infringement or misappropriation of any Intellectual Property right arising out of or relating to the UCEDA's use of the Consultant's Services.

## **ARTICLE 10 - CONFIDENTIALITY**

For purposes of this Article:

- A. The term "Confidential Information" as used herein, means all material and information, whether written or oral, received by the Consultant from or through the UCEDA or any other person connected with the UCEDA, or developed, produced, or obtained by the Consultant in connection with its performance of Services under this Agreement. Confidential Information will include, but not be limited to: samples, substances and other materials, conversations, correspondence, records, notes, reports, plans, drawings, specifications and other documents in draft or final form, including any documentation or data relating to the results of any investigation, testing, sampling in laboratory or other analysis, and all conclusions, interpretations, recommendations, and/or comments

relating thereto.

- B. The term "Consultant" as used herein includes all officers, directors, employees, agents, subcontractors, assignees, or representatives of the Consultant.

The Consultant shall keep all Confidential Information in a secure location within the Consultant's offices. The UCEDA will have the right, but not the obligation, to enter the Consultant's offices in order to inspect the arrangements of the Consultant for keeping Confidential Information secure. The UCEDA's inspection, or its failure to inspect, will not relieve the Consultant of its responsibilities pursuant to this Article 10.

The Consultant shall hold Confidential Information in trust and confidence, and must not disclose Confidential Information, or any portion thereof, to anyone other than the UCEDA without the prior written consent of the UCEDA Board of Directors, and must not use Confidential Information, or any portion thereof, for any purpose whatsoever except in connection with its performance of the Services under this Agreement.

The Consultant shall notify the UCEDA immediately upon its receipt of any request by anyone other than the UCEDA for, or any inquiry related to, Confidential Information. The Consultant is not prohibited from disclosing portions of Confidential Information if and to the extent that: (i) such portions have become generally available to the public other than by an act or omission of the Consultant, or (ii) disclosure of such portions is required by subpoena, warrant, or court order; provided, however, that in the event anyone other than the UCEDA requests all or a portion of Confidential Information, the Consultant shall oppose such request and cooperate with the UCEDA in obtaining a protective order or other appropriate remedy, unless and until the UCEDA Board of Directors, upon consultation with UCEDA's counsel, in writing, waives compliance with the provisions of this Article 10, or determines that disclosure is legally required. In the event that such protective order or other remedy is not obtained, or the UCEDA waives compliance with this Article 10, or determines that such disclosure is legally required, the Consultant shall disclose only such portions of Confidential Information that, in the opinion of the UCEDA, the Consultant is legally required to disclose, and the Consultant shall use its best efforts to obtain from the party to whom Confidential Information is disclosed, written assurance that confidential treatment will be given to any such Confidential Information disclosed, to the extent permitted by law.

Prior to the performance of any of the Services in connection with this Agreement, Consultant shall obtain from each of its subcontractors, a confidentiality agreement running to the benefit of the UCEDA that is substantively identical to this Article 10. Further, at any time, if requested by the UCEDA, Consultant shall obtain such an agreement from the officers, directors, agents, representatives, or employees of the Consultant and/or any of its subcontractors.

## **ARTICLE 11 – OWNERSHIP OF CONFIDENTIAL INFORMATION**

Notwithstanding any other provision herein to the contrary:

- A. All Confidential Information, as defined in Article 10, including all copies thereof, is the exclusive property of the UCEDA regardless of whether or not it is delivered to the UCEDA. The Consultant shall deliver Confidential Information and all copies thereof to the UCEDA upon request.
- B. To the extent that copies of Confidential Information are authorized by the UCEDA to be retained by the Consultant, such information shall be retained in a secure location in the Consultant's office for a period of six (6) years after completion of the Services, or termination of this Agreement, whichever occurs later, and thereafter disposed of at the UCEDA's direction.

## **ARTICLE 12 – PUBLICITY**

The prior written approval of the UCEDA is required before the Consultant or any of its employees, representatives, servants, agents, assignees, or subcontractors may, at any time either during or after completion or termination of this Agreement, make any statement to the media or issue any material for publication bearing on the Services performed or data collected in connection with this Agreement.

If the Consultant, or any of its employees, representatives, servants, agents, assignees, or subcontractors desires to publish a work dealing with any aspect of this Agreement, or of the results or accomplishments attained by its performance, they

must first obtain the prior written permission of the President of the UCEDA, unless otherwise agreed to in said written permission, will entitle the UCEDA to a royalty fee and a non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, such publication.

### **ARTICLE 13 – BOOKS AND RECORDS**

The Consultant agrees to maintain separate and accurate books, records, documents, and other evidence, and to employ accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

### **ARTICLE 14 - RETENTION OF RECORDS**

The Consultant agrees to retain all books, records, and other documents relevant to this Agreement for six (6) years after the final payment or termination of this Agreement, whichever occurs later. The UCEDA, the County of Ulster, any New York State and/or federal auditors, and any other persons duly authorized by the UCEDA, will have full access and the right to examine any of said materials during said period.

### **ARTICLE 15 – AUDITING AND REPORTS**

All forms or invoices presented for payment to be made hereunder, and the books, records, and accounts upon which said forms or invoices are based, are subject to audit by the UCEDA. The Consultant shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the UCEDA so that it may evaluate the reasonableness of the charges, and the Consultant shall make its records available to the UCEDA upon request. All books, forms, records, reports, cancelled checks, and any and all similar material may be subject to periodic inspection, review, and audit by the UCEDA and/or other persons duly authorized by the UCEDA. Such audits may include examination and review of the source and application of all funds, whether from the UCEDA, private sources, or otherwise. The Consultant will not be entitled to any interim or final payment under this Agreement if any audit requirements and/or requests have not been satisfactorily met.

### **ARTICLE 16 – NO DISCRIMINATION**

As required by Article 15 of the New York State Executive Law (also known as the Human Rights Law) and all other state and federal statutory and constitutional non-discrimination provisions, including the Civil Rights Act, the Consultant must not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition, carrier status, military status, domestic violence victim status, or marital status.

### **ARTICLE 17 - INSURANCE**

For provision of the Services set forth herein and as may be hereinafter amended, the Consultant shall maintain or cause to be maintained in full force and effect during the term of this Agreement, at its expense, insurance with stated minimum coverage as set forth in Schedule C, which is attached hereto and is hereby made a part of this Agreement. Such policies are to be in the broadest form available on usual commercial terms and must be written by insurers who have been fully informed as to the nature of Services to be performed by the Consultant pursuant to this Agreement. Such insurers must be of recognized financial standing, satisfactory to the UCEDA. The UCEDA must be named as an additional insured on all commercial general liability policies with the understanding that any obligations imposed upon the insured (including, without limitation, the obligation to pay premiums) will be the sole obligation of the Consultant and not those of the UCEDA. Notwithstanding anything to the contrary in this Agreement, the Consultant irrevocably waives all claims against the UCEDA for all losses, damages, claims, or expenses resulting from risks commercially insurable under the insurance described in Schedule C and this Article 22. The provision of insurance by the Consultant will not in any way limit the Consultant's liability under this Agreement.

**At the time Consultant submits two (2) original executed copies of this Agreement, Consultant shall include certificates of insurance evidencing its compliance with these requirements and those set forth in Schedule C.**

Each policy of insurance must contain clauses to the effect that (i) such insurance shall be primary, without right of

contribution of any other insurance carried by or on behalf of the UCEDA, with respect to its interests, (ii) it must not be cancelled or materially amended without thirty (30) days prior written notice to the UCEDA, except in the case of cancellation for non-payment of premium which requires fifteen (15) days prior written notice, directed to the UCEDA, and (iii) the UCEDA will have the option to pay any necessary premiums to keep such insurance in effect, and charge the cost back to the Consultant.

To the extent it is commercially available, each policy of insurance must be provided on an "occurrence" basis. If any insurance is not so commercially available on an "occurrence" basis it must be provided on a "claims made" basis, and all such "claims made" policies must provide that:

- A. Policy retroactive dates coincide with or precede the Consultant's start of the performance of Services (including subsequent policies purchased as renewals or replacements); and
- B. The Consultant shall maintain similar insurance for a minimum of three (3) years following final acceptance of the Services; and
- C. If the insurance is terminated for any reason, the Consultant agrees to purchase for the UCEDA an unlimited, extended reporting provision to report claims arising from the Services performed under this Agreement; and
- D. The Consultant must give immediate notice to the UCEDA of circumstances or incidents that might give rise to future claims with respect to the Services performed under this Agreement.

## **ARTICLE 18 - INDEMNIFICATION**

The Consultant agrees to defend, indemnify, and hold harmless the UCEDA, including its officials, employees, and agents, against all claims, losses, damages, liabilities, costs, or expenses (including without limitation, reasonable attorney fees and costs of litigation and/or settlement), whether incurred as a result of a claim by a third party or any other person or entity, arising out of the Services performed by the Consultant, its employees, representatives, subcontractors, assignees, or agents pursuant to this Agreement, which the UCEDA, or its officials, employees, or agents may suffer by reason of any negligence, fault, act, or omission of the Consultant, its employees, representatives, subcontractors, assignees, or agents. The Consultant agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demands, or suits at its sole expense, and agrees to bear all other costs and expenses related thereto, even if such claims, demands, or suits are groundless, false, or fraudulent.

In the event that any claim is made or any action is brought against the UCEDA arising out of the negligence, fault, act, or omission of the Consultant or an employee, representative, subcontractor, assignee, or agent of the Consultant, either within or without the scope of the respective employment, representation, subcontract, assignment, or agency, or arising out of the Consultant's negligence, fault, act, or omission, then the UCEDA will have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover said claim or action. The rights and remedies of the UCEDA provided for in this clause will not be exclusive and are in addition to any other rights and remedies provided by law, in equity, or pursuant to this Agreement.

## **ARTICLE 19 - RESPONSIBILITY TO CORRECT DEFICIENCIES**

The Consultant shall be responsible to correct, in a timely fashion and at the Consultant's sole expense, any deficiencies in its Services resulting from the Consultant's failure to act in accordance with the standards set forth in Article 8 (Performance) and Schedule A, provided such deficiencies are reported to the Consultant within one hundred-twenty (120) days after completion and final acceptance of the Services. If the Consultant fails to correct such deficiencies in a timely and proper manner, the UCEDA may elect to have others perform such corrections, and the UCEDA may charge any related cost of such corrections to the Consultant and/or set-off such amount against any sums otherwise due to the Consultant. These remedies, if effected, will not constitute the sole or exclusive remedies afforded to the UCEDA for such deficiencies, nor will they constitute a waiver of the UCEDA's right to claim damages or otherwise refuse payment, or to take any other action provided for by law, in equity, or pursuant to this Agreement.

## **ARTICLE 20 - PROTECTION OF COUNTY PROPERTY**

The Consultant assumes the risk of and shall be responsible for any loss or damage to the Ulster County's property and equipment, whether owned, leased, or otherwise possessed by the County, used in the performance of this Agreement. Any such loss or damage caused, either directly or indirectly, by the acts, conduct, omissions, or lack of good faith of the Consultant, its officers, directors, members, partners, employees, representatives, or assignees, or any person, firm, company, agent, or others engaged by the Consultant as an expert, consultant, specialist, or subcontractor hereunder, will be the responsibility of the Consultant.

In the event that any such County property is lost or damaged, except for normal wear and tear, then the UCEDA will have the right to withhold further payments hereunder for the purposes of set-off in sufficient sums to cover such loss or damage.

The Consultant agrees to defend, indemnify, and hold the UCEDA harmless from any and all liability or claim for loss, cost, damage, or expense (including without limitation, reasonable attorney fees and costs of litigation and/or settlement) due to any such loss or damage to any such County property described in this Article 20.

The rights and remedies of the UCEDA provided herein will not be exclusive and are in addition to any other rights and remedies provided by law, in equity, or pursuant to this Agreement.

## **ARTICLE 21 – FORCE MAJEURE**

Neither Party hereto will be considered in default in the performance of its obligations hereunder, to the extent that performance of any such obligation is prevented and/or delayed by any cause, existing or future, beyond the control of such Party, and which by that Party's exercise of due diligence and foresight could not reasonably have been avoided.

Upon removal of such cause, the Party affected shall resume its performance as soon as reasonably possible. The Consultant's financial inability to perform will not be deemed to be an event of Force Majeure regardless of the source causing such financial inability. If the Consultant is so delayed in the timely performance of the Services, the Consultant's sole and exclusive remedy is to request that a Change Order, Amendment, or Addendum to this Agreement be issued by the UCEDA and signed by the President of the UCEDA, permitting an extension of time to perform the Services in an amount equal to the time lost due to such delay. Such request shall be based upon written notice only, stating the specific nature of the claim, delivered to the President of the UCEDA promptly, but not later than thirty (30) days after the initial occurrence of the event giving rise to such claim. An extension of time to perform the Services may only be granted by a written Change Order, Amendment, or Addendum to this Agreement, signed by the President of the UCEDA. In no event will the UCEDA be liable to the Consultant or to its subcontractors, agents, assignees, or any other person or entity for damages arising out of, or resulting from, any such delays.

## **ARTICLE 22 - TERMINATION**

The UCEDA may, by written notice to the Consultant, effective upon mailing, terminate this Agreement in whole or in part at any time (i) for the UCEDAs convenience, (ii) upon the failure of the Consultant to comply with any of the terms or conditions of this Agreement, or (iii) upon the Consultant becoming insolvent or bankrupt.

Upon termination of this Agreement, the Consultant shall comply with any and all UCEDA closeout procedures, including but not limited to:

- A. Accounting for and refunding to the UCEDA within ten (10) days, any unearned and/or unexpended funds that have been paid to the Consultant pursuant to this Agreement; and
- B. Furnishing to the UCEDA within ten (10) days, an inventory of all equipment, appurtenances, and property purchased by the Consultant through, or provided under this Agreement, and carrying out any UCEDA directive concerning the disposition thereof; and
- C. In the event that this Agreement is terminated for the convenience of the UCEDA, the Consultant will be paid for all Services rendered through the date of termination in accordance with Schedule B.

In the event the UCEDA terminates this Agreement, in whole or in part, as provided in this Article 22, the UCEDA may procure upon such terms and in such manner as deemed appropriate, Services similar to those so terminated, and the Consultant shall continue the performance of this Agreement to the extent not terminated hereby. If this Agreement is terminated in whole or in part for reasons other than the convenience of the UCEDA, the cost and expense of any Services procured by the UCEDA to complete the Services herein will be charged to the Consultant and/or set off against any sums due to the Consultant.

Notwithstanding any other provisions of this Agreement, the Consultant will not be relieved of liability to the UCEDA for damages sustained by the UCEDA by virtue of the Consultant's breach of this Agreement, or failure to perform in accordance with applicable standards. The UCEDA may withhold payments due to the Consultant for the purposes of set-off until such time as the exact amount of damages due to the UCEDA from the Consultant is determined.

The rights and remedies of the UCEDA provided herein will not be exclusive and are in addition to any other rights and remedies provided by law, in equity, or pursuant to this Agreement.

### **ARTICLE 23 - NO ARBITRATION**

Any and all disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to arbitration unless specifically agreed to in writing by the Board of Directors after consultation with the UCEDA's counsel, but must instead only be heard in the Supreme Court of the State of New York, with venue in Ulster County, or if appropriate, in the Federal District Court, with venue in the Northern District of New York, Albany Division.

### **ARTICLE 24 - GOVERNING LAW**

This Agreement is governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise. The Consultant shall render all Services under this Agreement in accordance with applicable provisions of all federal, state, and local laws, rules, and regulations as are in effect at the time such Services are rendered.

### **ARTICLE 25 - WAIVER AND SEVERABILITY**

The failure of either Party to enforce at any time, any provision of this Agreement, does not constitute a waiver of such provision in any way or waive the right of either Party at any time to avail itself of such remedies as it may have for any breach or breaches of such provision. None of the conditions of this Agreement will be considered waived by the UCEDA unless such waiver is explicitly given in writing by the President of the UCEDA. No such waiver shall be a waiver of any past or future default, breach, or modification of any of the terms or conditions of this Agreement, unless expressly stipulated in such waiver as executed by the President of the UCEDA.

The invalidity or invalid application of any provision of this Agreement will not affect the validity of any other provision, or the application of any other provision of this Agreement.

### **ARTICLE 26 - GENERAL RELEASE**

Acceptance by the Consultant or its assignees of the final payment under this Agreement, whether by voucher, judgment of any court of competent jurisdiction, administrative, or other means, will constitute and operate as a general release to the UCEDA from any and all claims of the Consultant arising out of the performance of this Agreement.

### **ARTICLE 27 - NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES**

No claim whatsoever shall be made by the Consultant against any officer, agent, or employee of the UCEDA, for or on account of any act or omission in connection with this Agreement.

### **ARTICLE 28 - ENTIRE AGREEMENT**

The rights and obligations of the Parties and their respective agents, successors and assignees will be subject to and governed by this Agreement, including Schedules A, B, and C, which supersedes any other understandings or writings



between or among the Parties to this Agreement.

## **ARTICLE 29- SURVIVING OBLIGATIONS**

The Consultant's obligations and those of the Consultant's employees, representatives, agents, subcontractors, successors, and assignees, assumed pursuant to Article 7 (Representations by the Consultant), Article 8 (Performance), Article 9 (Intellectual Property), Article 10 (Confidentiality), Article 11 (Ownership of Confidential Information), Article 12 (Publicity), Article 14 (Retention of Records), Article 18 (Indemnification), Article 19 (Responsibility to Correct Deficiencies), and Article 20 (Protection of County Property), will survive completion of the Services and/or the expiration or termination of this Agreement.

## **ARTICLE 30 - NOTICES**

Except as expressly provided otherwise in this Agreement, all notices given to any of the Parties pursuant to or in connection with this Agreement shall be in writing, shall be delivered by hand, by certified or registered mail, return receipt requested, or by Federal Express, Express Mail, or other nationally recognized overnight carrier. Except where otherwise specifically defined within this Agreement, notices shall be effective when received. Notice addresses are as follows:

Firm:  
DEBRA BRESNAN  
105 ABEEL ST  
Apartment 1  
KINGSTON, NY 12401

UCEDA:  
ULSTER COUNTY ECONOMIC DEVELOPMENT ALLIANCE, INC.  
Attn: President  
244 Fair Street  
Kingston, NY 12401

Any communication or notice regarding indemnification, termination, litigation or proposed changes to the terms and conditions of this Agreement shall be deemed to have been duly made upon receipt by the Parties at the addresses set forth herein, or such other addresses as may have been specified in writing by one Party to the other Party.

Either Party may, by written notice to the other Party given in accordance with the foregoing, change its address for notices.

## **ARTICLE 31 - MODIFICATION**

No changes, amendments, or modifications of any of the terms and/or conditions of this Agreement shall be valid unless reduced to writing and signed by the Parties to this Agreement, and no payment will be due in connection therewith, unless prior to the performance of any such Services, the President of the UCEDA executes an Addendum, Amendment, or Change Order to this Agreement. The aforesaid Addendum, Amendment, or Change Order must specifically set forth the scope of such extra or additional services, the amount of compensation, and the extension of time for performance, if any, for any such extra or additional services. Unless otherwise specifically provided for therein, the provisions of this Agreement will apply with full force and effect to the terms and conditions contained in such Addendum, Amendment, or Change Order.

## **ARTICLE 32 - HEADINGS AND DEFINED TERMS**

The Article headings used in this Agreement are for reference and convenience only, and will not in any way limit or amplify the terms, conditions, and/or provisions hereof. All capitalized terms, acronyms, and/or abbreviations will have the meanings ascribed to them by this Agreement.

**IN WITNESS WHEREOF**, the Parties hereto have caused their duly authorized representatives to enter into this Agreement as of the dates set forth below, effective as of the beginning date set forth in Article 2 above.

ULSTER COUNTY ECONOMIC DEVELOPMENT  
ALLIANCE, INC.

DEBRA BRESNAN

By: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
DATE: \_\_\_\_\_

By: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
DATE: \_\_\_\_\_

DRAFT

**SCHEDULE A**  
**SCOPE OF SERVICES**

1. With direction from UCEDA's President, the Consultant shall provide creative writing and copy editor services to support UCEDA's ongoing social media, web and print communications.
2. The parties shall establish and maintain a weekly meeting time and shall meet at other times as needed in order to ensure that deadlines are met. These meetings may be on the telephone or in person, as needed by the parties.
3. It is expected that the Consultant shall work approximately 10 hours a week for UCEDA, but may work more or less depending on the Consultant's availability and UCEDA's needs.
4. The Consultant shall work with UCEDA's web-based tools, including Facebook, MailChimp and Drupal/Wordpress.

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**SCHEDULE B**  
**FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT**

1. The Consultant's fee for Services must not exceed the amount of **TWENTY THOUSAND AND 00/100 (\$20,000 .00) DOLLARS** for the Term of this Agreement.
2. The Consultant shall invoice the UCEDA on a monthly basis for the Services provided, at a rate of **SIXTY AND 00/100 (\$60.00) DOLLARS** per hour.
3. The Consultant shall submit to the UCEDA original invoices for payment.
4. The Consultant shall submit its invoices by the thirtieth (30<sup>th</sup>) day of each month, for the Services provided during the previous month.
5. The Consultant's invoices must contain, or have attached, sufficient supporting detail, as reasonably required by the UCEDA, to verify the claim.
6. In no event shall claims be submitted in advance or accrued prior to expenditure.
7. The Consultant's final invoice under this Agreement shall be submitted by the thirtieth (30<sup>th</sup>) day of the month following the ending date contained in Article 2 (Term of Agreement).
8. The UCEDA will remit payment to the Consultant within sixty (60) days of approval of the invoice by the UCEDA Board.
9. Notwithstanding any other term or provision of this Agreement, including this Schedule B, Consultant's invoices, together with all documentation required, must be promptly and timely submitted. The UCEDA reserves the right to reject payment of invoices that are submitted more than one hundred twenty (120) days after the required submission date set forth above, regardless of whether the service, work, or delivery was rendered.
10. The Consultant agrees to meet any additional invoicing requirements that the UCEDA may from time to time require, with reasonable notice to the Consultant.

**SCHEDULE C**  
**UCEDA STANDARD CONTRACT INSURANCE REQUIREMENTS**

**CONDITIONS OF INSURANCE**

Unless otherwise authorized by the UCEDA Board of Directors, strict adherence to this schedule is required. Any deviation without prior authorization from the UCEDA Board of Directors will result in a delay in the finalization of this Agreement.

The Consultant shall submit copies of any or all required insurance policies as and when requested by the UCEDA.

**CERTIFICATES OF INSURANCE**

The Consultant shall file with the UCEDA's Insurance Department, prior to commencing work under this Agreement, all proper Certificates of Insurance.

The Certificates of Insurance shall include:

- a. Name and address of Insured
- b. Issue date of certificate
- c. Insurance company name
- d. Type of coverage in effect
- e. Policy number
- f. Inception and expiration dates of policies included on the certificate
- g. Limits of liability for all policies included on the certificate
- h. "Certificate Holder" shall be the Ulster County Economic Development Alliance Inc., 244 Fair Street, Kingston, New York 12401.

If the Consultant's insurance policies should be non-renewed or canceled, or should expire during the life of this Agreement, the UCEDA shall be provided with a new certificate indicating the replacement policy information as requested above. The UCEDA requires thirty (30) days prior written notice of cancellation [fifteen (15) days for non-payment of premium] from the Insurer, its agents or representatives.

**WORKERS' COMPENSATION AND DISABILITY INSURANCE**

The Consultant shall take out and maintain during the life of this Agreement, Workers' Compensation (WC) Insurance and Disability Benefits (DB) Insurance, for all of its employees employed at the site of the project, and shall provide Certificates of Insurance evidencing this coverage to the UCEDA.

If the Consultant is not required to carry such insurance, the Consultant must submit form CE-200 attesting to the fact that it is exempt from providing WC and/or DB Insurance coverage for all of its employees.

The manner of proof related to WC and DB Insurance is controlled by New York State Laws, Rules and Regulations. "ACORD" forms are not acceptable proof of WC and/or DB Insurance.

**WORKERS' COMPENSATION REQUIREMENTS**

To assist the State of New York and municipal entities in enforcing WCL Section 57, a business entity (the Consultant) seeking to enter into a contract with a municipality (the UCEDA) must provide one of the following forms to the municipal entity it is entering into a contract with. The Consultant should contact their insurance agent to obtain acceptable proof of WC coverage:

- Form C-105.2 – "Certificate of NYS Workers' Compensation Insurance" or
- Form U-26.3 – "Certificate of Workers' Compensation Insurance" issued by the New York State Insurance Fund or
- Form SI-12 – "Affidavit Certifying that Compensation has Been Secured" issued by the Self-Insurance Office of the Workers' Compensation Board if the Consultant is self-insured or
- Form GSI-105.2 – "Certificate of Participation in Workers' Compensation Group Self-Insurance" issued by the Self-Insurance administrator of the group or
- Form GSI-12 – "Certificate of Group Workers' Compensation Group Self-Insurance" issued by the Self-Insurance Office of the Workers' Compensation Board if the Consultant is self-insured.

If the Consultant is not required to carry WC coverage, it must submit Form CE-200, "Certificate of Attestation of

Exemption” from New York State Workers’ Compensation and/or Disability Benefits Insurance Coverage. This form and the instructions for completing it are available at <http://www.wcb.ny.gov>

**DISABILITY BENEFITS REQUIREMENTS**

To assist the State of New York and municipal entities in enforcing WCL Section 220(8), a business entity (the Consultant) seeking to enter into a contract with a municipality (the UCEDA) must provide one of the following forms to the municipal entity it is entering into a contract with. The Consultant should contact their insurance agent to obtain acceptable proof of DB Insurance Coverage:

- Form DB-120.1 – “Certificate of Insurance Coverage Under the NYS Disability Benefits Law” or
- Form DB-155 – “Compliance with Disability Benefits Law” issued by the Self-Insurance Office of the Workers’ Compensation Board if the Consultant is self-insured.

If the Consultant is not required to carry DB Insurance coverage, it must submit Form CE-200, “Certificate of Attestation of Exemption” from New York State Workers’ Compensation and/or Disability Benefits Insurance Coverage. This form and the instructions for completing it are available at <http://www.wcb.ny.gov>

**COMMERCIAL GENERAL LIABILITY INSURANCE**

The Consultant shall take out and maintain during the life of this Agreement, such bodily injury liability and property damage liability insurance as shall protect it and the UCEDA from claims for damages for bodily injury including accidental death, as well as from claims for property damage that may arise from operations under this Agreement, whether such operations be by the Consultant, by any subcontractor, or by anyone directly or indirectly employed by either of them.

It shall be the responsibility of the Consultant to maintain such insurance in amounts sufficient to fully protect itself and the UCEDA, but in no instance shall amounts be less than the minimum acceptable levels of coverage set forth below:

- Bodily Injury Liability and Property Damage Liability Insurance in an amount not less than **ONE MILLION AND 00/100 (\$1,000,000.00) DOLLARS** for each occurrence, and in an amount not less than **TWO MILLION AND 00/100 (\$2,000,000.00) DOLLARS** general aggregate.

Other Conditions of Commercial General Liability Insurance:

- a. Coverage shall be written on Commercial General Liability form.
- b. Coverage shall include:
  1. Contractual Liability
  2. Independent Contractors
  3. Products and Completed Operations
- c. “Additional Insured” status shall be granted to “Ulster County Economic Development Alliance Inc. , 244 Fair St., Kingston, New York, 12401”, shown on the Commercial General Liability policy, further stating that this insurance shall be primary and non-contributory with any other valid and collectable insurance.

**UMBRELLA LIABILITY OR EXCESS LIABILITY INSURANCE**

Umbrella Liability or Excess Liability Insurance in an amount not less than **TWO MILLION AND 00/100 (\$2,000,000.00) DOLLARS**.

**AUTOMOBILE LIABILITY INSURANCE**

Automobile Bodily Injury Liability and Property Damage Liability Insurance shall be provided by the Consultant, with a minimum Combined Single Limit (CSL) of **ONE MILLION AND 00/100 (\$1,000,000.00) DOLLARS**.

Coverage shall include:

- a. All owned vehicles
- b. Hired car and non-ownership liability coverage
- c. Statutory No-Fault coverage

**PROFESSIONAL LIABILITY INSURANCE (e.g. MALPRACTICE INSURANCE)**

If this box is checked, Professional Liability Insurance shall be provided by the Consultant in an amount not less than **ONE MILLION AND 00/100 (\$1,000,000.00) DOLLARS** for each occurrence and in an amount of not less than **TWO MILLION AND 00/100 (\$2,000,000.00) DOLLARS** general aggregate.

**CYBER LIABILITY INSURANCE:**

- If this box is checked, Cyber Liability Insurance shall be provided by the Consultant in an amount not less than **FIVE MILLION AND 00/100 (\$5,000,000) DOLLARS** for each occurrence and in an amount of not less than **FIVE MILLION AND 00/100 (\$5,000,000) DOLLARS** general aggregate.

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