



## AMERICAN RESCUE PLAN ACT (“ARPA”) OF 2021 CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUND (THE “SLFRF”) SUBAWARD AGREEMENT

**THIS AGREEMENT** is entered into by and between the **COUNTY OF ULSTER**, a municipal corporation and a county of the State of New York with principal offices at 244 Fair Street, Kingston, New York 12401 (the “**County**”), and **ULSTER COUNTY ECONOMIC DEVELOPMENT ALLIANCE**, a domestic not-for-profit corporation with principal offices at 244 Fair Street, Kingston, New York 12402 (the “**Subrecipient**”), (each, a “**Party**,” together, the “**Parties**”).

### RECITALS

**WHEREAS**, the American Rescue Plan Act (“ARPA”) of 2021 was signed into law on March 11, 2021 and established the Coronavirus State and Local Fiscal Recovery Fund (the “SLFRF”), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of COVID-19 in their communities; and

**WHEREAS**, the County, as a SLFRF recipient, desires to utilize a portion of these funds, to respond to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19) or its negative economic impacts, including assistance to low-to-moderate income business owners; and

**WHEREAS**, the County, as a SLFRF recipient, is authorized to issue subawards for the purpose of carrying out a portion of the administration of the SLFRF; and

**WHEREAS**, the Subrecipient is experienced in providing the desired services having developed the Ulster County Cares Small Business Assistance Program which administered One Million and 00/100 (\$1,000,000.00) Dollars in Community Development Block Grant Funding by providing assistance to low-to-moderate income business owners; and

**WHEREAS**, the County, desires to issue a subaward to the Subrecipient to provide assistance to low-to-moderate income business owners; and

**WHEREAS**, the County has agreed to engage the Subrecipient, and the Subrecipient has agreed to contract with the County, to administer a subaward of the SLFRF for the purpose of providing assistance to low-to-moderate income business owners 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 Parties hereby agree as follows:

### ARTICLE 1 – WORK PLAN

The Subrecipient agrees to utilize the funds provided through this Agreement to meet the needs identified in Schedule A, the Work Plan (the “Work”), which is attached hereto and is hereby made a part of this Agreement. The Subrecipient agrees to perform the Work in accordance with the terms and conditions of this Agreement. It is specifically agreed to by the Subrecipient that the County will not compensate the Subrecipient for any work not included in Schedule A without prior authorization, evidenced only by a written Change Order, Amendment, or Addendum to this Agreement, which is executed by the Ulster County Executive (the “Executive”) or the Ulster County Director of Purchasing (the “Purchasing Director”),

after consultation with the head of the County Department responsible for the oversight of this Agreement (the “Department Head”), and upon review by the County Attorney’s Office.

## **ARTICLE 2 - TERM OF AGREEMENT**

The Term of this Agreement shall **begin March 1, 2022 and end February 28, 2023.**

## **ARTICLE 3 - COMPENSATION**

A **not-to-exceed** amount of **ONE MILLION AND 00/100 (\$1,000,000.00) DOLLARS** has been established for the Work to be undertaken by the Subrecipient. Costs in excess of the above amount may not be incurred without the prior written authorization of the Executive or the Purchasing Director, after consultation with the Department Head, and evidenced only by a written Change Order, Amendment, or Addendum to this Agreement. It is specifically agreed to by the Subrecipient that the County 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 work giving rise to such excess or additional costs. The County shall be invoiced and make payments as described in Schedule B, “Fees, Expenses, and Submissions for Payment.”

In the event that the Subrecipient receives payments, from any source whatsoever, in consideration for the same Work under this Agreement, the monetary obligation of the County hereunder will be reduced by an equivalent amount, provided, however, that nothing contained herein will require such reimbursement where additional similar work provided and no duplicative payments are received.

If this is an Agreement for which the Subrecipient will, in whole or in part, be compensated with New York State funds, the Subrecipient agrees to comply with Executive Order Number 38, which sets limits on state-funded administrative costs and executive compensation contracts. Executive Order Number 38 can be found at the following website address: <https://opwdd.ny.gov/regulations-guidance/executive-order-38>.

## **ARTICLE 4 - EXECUTORY CLAUSE**

The County will have no liability under this Agreement to the Subrecipient or to anyone else beyond funds appropriated and available for this Agreement. The County may terminate this Agreement if funds are not appropriated, available, or are reduced for this Agreement.

The Subrecipient understands and agrees that the dollar amounts identified in this Agreement are based upon funding allocations from the State of New York and/or the Federal Government, which are the basis for any payments made by the County hereunder. In the event that the anticipated amount of funding changes, or is reduced or denied, in part or in full, the County, where appropriate, will not be liable to the Subrecipient for the difference. If the full state and/or federal funding to the County for any payment to be made or which has been made under this Agreement, by the County to the Subrecipient, is reduced for any reason whatsoever, then the County may (i) deduct and withhold from any future payment(s) an amount equal to the reduction in funding, or (ii) otherwise recover from the Subrecipient the amount of the reduction. It is understood that based upon changes in the state and/or federal funding process, the actual amounts in this Agreement may change throughout the Term. The amounts in this Agreement will be amended to reflect the actual amounts to be paid upon notification to the County by the state and/or Federal Government, as necessary.

## **ARTICLE 5 - CONFLICT OF INTEREST**

The Subrecipient represents and warrants that neither it, nor any of its directors, officers, members, partners, or employees, have any interest, nor will they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the Work to be performed pursuant to this Agreement. The Subrecipient further represents and warrants that in the performance of this Agreement, no person having such interest or possible interest will be employed by it, and that no elected official or other officer or employee of the County, nor any person whose salary is payable, in whole or in part, by the County, or any corporation, partnership, or association in which such official, officer, or employee is directly or indirectly interested, will have any such interest, direct or indirect, in this Agreement, or in the proceeds thereof, unless such person (i) is required by the Ulster County Ethics and Disclosure Law, as amended from time to time, to submit a disclosure form to the County’s Board of Ethics, and amends such disclosure form to include their interest in this

Agreement, or (ii) if not required to complete and submit such a disclosure form, either voluntarily completes and submits said disclosure form, disclosing their interest in this Agreement, or seeks a formal opinion from the County's Board of Ethics, as to whether or not a conflict of interest exists. The law and disclosure form may be accessed electronically at <https://ulstercountyny.gov/board-of-ethics>.

For a breach or violation of such representations or warranties, the County will have the right to annul this Agreement without liability, entitling the County to recover all monies paid hereunder, and the Subrecipient must not make claim for, nor be entitled to recover any sum or sums otherwise due under this Agreement. This remedy, if effected, will not constitute the sole remedy afforded to the County for such breach or violation, nor will it constitute a waiver of the County'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 6 – REPRESENTATIONS BY THE SUBRECIPIENT**

The Subrecipient represents that it is experienced, and properly qualified to perform the Work under this Agreement, and that it is properly permitted, equipped, organized, and financed to perform such Work.

The Subrecipient understands that it may become necessary for the County to submit to governmental agencies and/or authorities, or to a court of law, part or all of the data, analyses, and/or conclusions developed as a result of its performance of the Work. The Subrecipient is aware that there are significant penalties for submitting false information to governmental agencies, including the possibility of fines and imprisonment. The Subrecipient shall be responsible for such penalties resulting from false information submitted to the County by the Subrecipient.

By signing this Agreement, the Subrecipient is attesting to that fact that neither it nor any of its employees, agents, representatives, officers, subcontractors, or any other entity or individual performing the Work pursuant to this Agreement has been sanctioned, excluded, or in any other manner barred from doing business with any federal, state, or local agency, municipality, or department. If the Subrecipient or any of its officers, employees, subcontractors, or agents become excluded or barred in any manner from doing business with any federal, state, or local agency, municipality, or department during the Term of this Agreement, the Subrecipient agrees to provide immediate and detailed notice to the County Attorney regarding such status. Any misrepresentation or false statement related to the Subrecipient's status in this regard, or any failure by the Subrecipient to immediately notify the County Attorney of any change in such status will result in immediate termination of this Agreement, in addition to such other remedies as may be provided by law, in equity, or pursuant to this Agreement.

## **ARTICLE 7 – CORPORATE COMPLIANCE**

The Subrecipient agrees to comply with all federal, state, and local laws, rules, and regulations governing the provision of goods and/or Work under this Agreement. In particular, the Subrecipient agrees to comply with the laws, rules and regulations of Ulster County, as well as with its Compliance Plan (the "Plan"). The Plan can be viewed at <https://ulstercountyny.gov/ulster-county-compliance-plan>. Alternatively, a hard copy of the Plan will be provided upon the Subrecipient's request. The Plan relates to the County's compliance with relevant federal and state fraud and abuse laws. The Subrecipient represents and warrants that it has read and understands the Plan and agrees to abide by its terms when performing the Work under this Agreement. The Subrecipient shall ensure that each individual who perform such Work under this Agreement is provided with a copy of the Plan or given access to the Plan. The County strongly encourages all healthcare providers contracting with the County to implement their own compliance programs that address each of the elements of compliance recommended by the Office of the Inspector General, as well as the elements as recommended and/or mandated by the New York State Office of the Medicaid Inspector General.

The County will conduct appropriate screening of providers, independent contractors, vendors, and agents to ensure and verify that they have not been sanctioned and/or excluded by any federal or state law enforcement, regulatory, or licensing authority. The County will also verify that entities and businesses that provide and/or perform the Work have not been the subject of adverse governmental actions and/or excluded from the federal healthcare programs.

The Subrecipient understands that the County has established and implemented a Corporate Compliance Program and has developed "Standards of Conduct for Ulster County Vendors and Contractors" (the "Standards"). The Standards can be accessed electronically at any time by going to <https://ulstercountyny.gov/ulster-county-compliance-plan>. The Subrecipient

represents that it has read, understands and agrees to comply with the Standards with respect to its performance pursuant to this Agreement. The hotline for reporting violations of the Standards is (877) 569-8777.

## **ARTICLE 8 - INDEPENDENT CONTRACTOR**

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

In accordance with such status as independent contractor, the Subrecipient covenants and agrees that neither it, nor its employees or agents, will proclaim themselves to be officers or employees of the County, or of any department, agency, or unit thereof, by reason hereof, and that the Subrecipient'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 County 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 9 - ASSIGNMENT**

The Subrecipient shall not assign any of its rights, interests, or obligations under this Agreement, or assign any of the Work to be performed by it under this Agreement, without the prior express written consent of the Executive or the Purchasing Director, upon review by the Ulster County Attorney's Office. Any such assignment, transfer, conveyance, or other disposition without such prior consent will be void, and any Work provided thereunder will not be compensated. Any assignment properly consented to by the Executive or the Purchasing Director will be subject to all of the terms and conditions of this Agreement.

Failure of the Subrecipient to obtain any required consent to any assignment will be grounds for termination for cause at the option of the County, and if this Agreement be so terminated, the County will thereupon be relieved and discharged from any further liability and obligation to the Subrecipient, its assignees, or transferees; and all monies that may become due under this Agreement shall be forfeited to the County, except so much thereof as may be necessary to pay the Subrecipient's employees for past Work.

The provisions of this clause shall not hinder, prevent, or affect any assignment by the Subrecipient for the benefit of its creditors made pursuant to Article 2 of Chapter 12 of the New York Debtor and Creditor Law, except where the Federal Supremacy Clause requires otherwise.

This Agreement may be assigned by the County to any corporation, agency, municipality, or instrumentality having authority to accept such assignment.

## **ARTICLE 10 – SUBCONTRACTING**

The Subrecipient shall not subcontract any of its obligations under this Agreement.

## **ARTICLE 11 - 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 Subrecipient from or through the County or any other person connected with the County, or developed, produced, or obtained by the Subrecipient in connection with its performance of the Work 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 “Subrecipient” as used herein includes all officers, directors, employees, agents, subcontractors, assignees, or representatives of the Subrecipient.

The Subrecipient shall keep all Confidential Information in a secure location within the Subrecipient’s offices. The County will have the right, but not the obligation, to enter the Subrecipient’s offices in order to inspect the arrangements of the Subrecipient for keeping Confidential Information secure. The County’s inspection, or its failure to inspect, will not relieve the Subrecipient of its responsibilities pursuant to this Article 11.

The Subrecipient shall hold Confidential Information in trust and confidence, and must not disclose Confidential Information, or any portion thereof, to anyone other than the County without the prior written consent of the Executive or the Purchasing Director, and must not use Confidential Information, or any portion thereof, for any purpose whatsoever except in connection with its performance of the Work under this Agreement.

The Subrecipient shall notify the County immediately upon its receipt of any request by anyone other than the County for, or any inquiry related to, Confidential Information. The Subrecipient 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 Subrecipient, or (ii) disclosure of such portions is required by subpoena, warrant, or court order; provided, however, that in the event anyone other than the County requests all or a portion of Confidential Information, the Subrecipient shall oppose such request and cooperate with the County in obtaining a protective order or other appropriate remedy, unless and until the Executive or the Purchasing Director, upon consultation with the Ulster County Attorney, in writing, waives compliance with the provisions of this Article 11, or determines that disclosure is legally required. In the event that such protective order or other remedy is not obtained, or the County waives compliance with this Article 11, or determines that such disclosure is legally required, the Subrecipient shall disclose only such portions of Confidential Information that, in the opinion of the County, the Subrecipient is legally required to disclose, and the Subrecipient 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 Work in connection with this Agreement, the Subrecipient shall obtain from each of its subcontractors, a confidentiality agreement running to the benefit of the County that is substantively identical to this Article 11. Further, at any time, if requested by the County, the Subrecipient shall obtain such an agreement from the officers, directors, agents, representatives, or employees of the Subrecipient and/or any of its subcontractors.

## **ARTICLE 12 – OWNERSHIP OF CONFIDENTIAL INFORMATION**

Notwithstanding any other provision herein to the contrary:

- A. All Confidential Information, as defined in Article 11, including all copies thereof, is the exclusive property of the County regardless of whether or not it is delivered to the County. The Subrecipient shall deliver Confidential Information and all copies thereof to the County upon request.
- B. To the extent that copies of Confidential Information are authorized by the County to be retained by the Subrecipient, such information shall be retained in a secure location in the Subrecipient’s office for a period of six (6) years after completion of the Work, or termination of this Agreement, whichever occurs later, and thereafter disposed of at the County’s direction.

## **ARTICLE 13 – INTENTIONALLY LEFT BLANK**

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

The Subrecipient 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.

The Subrecipient 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 County, any New York State and/or federal auditors, and any other persons duly authorized by the County, 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 County. The Subrecipient shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the County so that it may evaluate the reasonableness of the charges, and the Subrecipient shall make its records available to the County 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 County, the State of New York, the Federal Government and/or other persons duly authorized by the County. Such audits may include examination and review of the source and application of all funds, whether from the County, the State of New York, the Federal Government, private sources, or otherwise. The Subrecipient 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 Subrecipient 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.

If this Agreement provides for a total expenditure in excess of \$25,000.00, the Subrecipient shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on County contracts, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action will mean recruitment, employment, job assignment, promotion, upgrade, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation.

Furthermore, in accordance with New York State Labor Law Section 220-e, if this is an Agreement for the construction or alteration of any public building or public work, or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Agreement will be performed within the State of New York, the Subrecipient agrees that neither it, nor its subcontractors, will, by reason of race, creed, color, disability, sex, or national origin: (i) discriminate in hiring against any New York State citizen who is qualified and available to perform the Work, or (ii) discriminate against or intimidate any employee hired for the performance of the Work under this Agreement. If this is a building service agreement as defined in the New York State Labor Law Section 230, then in accordance with New York State Labor Law Section 239, the Subrecipient agrees that neither it, nor its subcontractors, will by reason of race, creed, color, national origin, age, sex or disability: (i) discriminate in hiring against any New York State citizen who is qualified and available to perform the Work, or (ii) discriminate against or intimidate any employee hired for the performance of the Work under this Agreement. The Subrecipient is subject to (i) a fine of Fifty and 00/100 (\$50.00) Dollars per person, per day, for any violation of the New York State Labor Law Sections 220-e or 239, and/or (ii) possible termination of this Agreement and forfeiture of all moneys due hereunder for a second or subsequent violation.

The Subrecipient understands that the County has established a Sexual Harassment Prevention Policy and Discriminatory Harassment Prevention Policy which applies to all contractors and non-employees conducting business with the County. These policies may be accessed electronically at <https://ulstercountyny.gov/ulster-county-compliance-plan>.

## **ARTICLE 17 - ULSTER COUNTY LIVING WAGE ACT**

In accordance with Local Law 6 of 2021 also known as the Ulster County Living Wage Act, if this Agreement is for an amount of FIFTY THOUSAND and 00/100 (\$50,000.00) DOLLARS or more in a County fiscal year (January 1 – December 31) and the Subrecipient has not received an exemption from the Ulster County Living Wage Act specific to this Agreement, the Subrecipient shall pay its employees that are working or providing services under this Agreement no less than the Living Wage in effect during the term of this Agreement. The current Living Wage can be found on the Ulster County Purchasing Department's website at <https://ulstercountyny.gov/living-wage-act>. The Ulster County Living Wage Act can be accessed electronically at any time by going to <https://ulstercountyny.gov/living-wage-act>.

The County may suspend or terminate this Agreement and impose other penalties for violation of the Ulster County Living Wage Act.

## **ARTICLE 18 - INSURANCE**

For provision of the Work set forth herein and as may be hereinafter amended, the Subrecipient 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 Work to be performed by the Subrecipient pursuant to this Agreement. Such insurers shall be of recognized financial standing, satisfactory to the County. The County shall 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 Subrecipient and not those of the County. Notwithstanding anything to the contrary in this Agreement, the Subrecipient irrevocably waives all claims against the County for all losses, damages, claims, or expenses resulting from risks commercially insurable under the insurance described in Schedule C and this Article 18. The provision of insurance by the Subrecipient will not in any way limit the Subrecipient's liability under this Agreement.

Each policy of insurance shall 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 County, with respect to its interests, (ii) it shall not be cancelled or materially amended without thirty (30) days prior written notice to the County, except in the case of cancellation for non-payment of premium which requires ten (10) days prior written notice, directed to the County's Insurance Department and the Department Head, and (iii) the County will have the option to pay any necessary premiums to keep such insurance in effect, and charge the cost back to the Subrecipient.

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 Subrecipient's start of the performance of the Work (including subsequent policies purchased as renewals or replacements); and
- B. If the insurance is terminated for any reason, the Subrecipient agrees to purchase for the County an unlimited, extended reporting provision to report claims arising from the Work performed under this Agreement; and
- C. The Subrecipient must give immediate notice to the County, through the Department Head, the Ulster County Attorney's Office, and the County's Insurance Department, of circumstances or incidents that might give rise to future claims with respect to the Work performed under this Agreement.

## **ARTICLE 19 - INDEMNIFICATION**

The Subrecipient agrees to defend, indemnify, and hold harmless the County, 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 Work performed by the Subrecipient, its employees, representatives, subcontractors, assignees, or agents

pursuant to this Agreement, which the County, or its officials, employees, or agents may suffer by reason of any negligence, fault, act, or omission of the Subrecipient, its employees, representatives, subcontractors, assignees, or agents. The Subrecipient 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 County arising out of the negligence, fault, act, or omission of the Subrecipient or an employee, representative, subcontractor, assignee, or agent of the Subrecipient, either within or without the scope of the respective employment, representation, subcontract, assignment, or agency, or arising out of the Subrecipient's negligence, fault, act, or omission, then the County 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 County 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 20 - TERMINATION**

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

In the event that this Agreement is terminated for the convenience of the County, the Subrecipient will be paid for all Work rendered through the date of termination in accordance with Schedule B.

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

- A. Accounting for and refunding to the County within ten (10) days, any unearned and/or unexpended funds that have been paid to the Subrecipient pursuant to this Agreement; and
- B. Furnishing to the County within ten (10) days, an inventory of all equipment, appurtenances, and property purchased by the Subrecipient through, or provided under this Agreement, and carrying out any County directive concerning the disposition thereof.

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

The rights and remedies of the County 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 - 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 Executive or the Purchasing Director, after consultation with the Ulster County Attorney, 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 22 – DISPUTES**

In the event of a dispute arising from this Agreement, the Subrecipient shall be liable to the County for reasonable attorney's fees, costs, expenses and disbursements incurred by the County in enforcing its legal and/or equitable rights pursuant to this Agreement by reason of the failure of the Subrecipient to comply with any of the terms, conditions or warranties of this Agreement, express or implied, and/or the exercise of County's remedies with respect thereto, and/or any error, omission and/or professional negligence of the Subrecipient or its subcontractors, including but not limited to all attorney's fees, costs, expenses and disbursements incurred by the County in prosecuting a lawsuit against the Subrecipient,



seeking Indemnification pursuant to Article 19, and Termination pursuant to Article 20. The Subrecipient shall further be liable to the County for all prejudgment interest on any award of attorney's fees, costs, expenses and disbursements so awarded. This provision shall survive completion of the Work and/or the expiration or termination of this Agreement.

### **ARTICLE 23 - GOVERNING LAW**

This Agreement is governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

### **ARTICLE 24 - 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 County unless such waiver is explicitly given in writing by the Executive or the Purchasing Director. 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 Executive or the Purchasing Director.

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 25 - GENERAL RELEASE**

Acceptance by the Subrecipient 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 County from any and all claims of the Subrecipient arising out of the performance of this Agreement.

### **ARTICLE 26 - NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES**

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

### **ARTICLE 27 - 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, C, D, E, and F which supersedes any other understandings or writings between or among the Parties to this Agreement.

### **ARTICLE 28 - SURVIVING OBLIGATIONS**

The Subrecipient's obligations and those of the Subrecipient's employees, representatives, agents, subcontractors, successors, and assignees, assumed pursuant to Article 6 (Representations by the Subrecipient), Article 7 (Corporate Compliance), Article 11 (Confidentiality), Article 12 (Ownership of Confidential Information), Article 13 (Publicity), Article 14 (Retention of Records), and Article 19 (Indemnification), will survive completion of the Work and/or the expiration or termination of this Agreement.

### **ARTICLE 29 - 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 will be in writing, will 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 will be effective when received. Notice addresses are as follows:

Subrecipient:  
Ulster County Economic Development Alliance  
Attention: Chairperson  
PO Box 1800, 244 Fair St.  
Kingston, New York 12402

County:  
Ulster County Department of Finance  
Attention: Commissioner  
244 Fair St.  
Kingston, New York 12401

Any communication or notice regarding indemnification, termination, litigation, or proposed changes to the terms and conditions of this Agreement will be deemed to have been duly made upon receipt by both the County's Department of Finance and the Ulster County Attorney's Office at the addresses set forth herein, or such other addresses as may have been specified in writing by the County:

Mailing Address:  
County of Ulster  
Attention: County Attorney  
Post Office Box 1800  
Kingston, New York 12402

Physical Address:  
County of Ulster  
Attention: County Attorney  
244 Fair Street, 5<sup>th</sup> Floor  
Kingston, New York 12401

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

### **ARTICLE 30 - 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 Work, the Executive or the Purchasing Director, after consultation with the Department Head, 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 31 – 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 ("Impacted Party") including, without limitation, the following force majeure events ("Force Majeure Events"): (a) acts of God; (b) flood, fire, earthquake, other potential disaster(s) or catastrophe(s), such as epidemics or pandemics, or explosion; (c) war, invasion, hostilities (whether war is declared or not); (d) national or regional emergencies; and (e) other similar events beyond the reasonable control of the Impacted Party.

The Impacted Party shall give written notice within thirty (30) days of the Force Majeure Event to the other Party and the Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized.

Upon removal of such cause, the Impacted Party affected shall resume its performance as soon as reasonably possible. The Subrecipient's financial inability to perform will not be deemed to be a Force Majeure Event regardless of the source causing such financial inability. If the Subrecipient is so delayed in the timely performance of the Work, the Subrecipient's sole and exclusive remedy is to request that a Change Order, Amendment, or Addendum to this Agreement be issued by the County and signed by the Executive or the Purchasing Director, permitting an extension of time to perform the Work 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 Department Head 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 Work 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 County be liable to the Subrecipient or to its subcontractors, agents, assignees, or any other person or entity for damages arising out of, or resulting from, any such delays.

**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.

**ARTICLE 33 – COUNTERPARTS**

The Parties may execute this Agreement in counterparts, each of which shall be deemed an original, and all of which taken together constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile, email in portable document format (.pdf), or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document has the same effect as delivery of an executed original of 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 DEPARTMENT OF FINANCE**

(Approved as to content)

By: \_\_\_\_\_  
NAME: Burton Gulnick, Jr.  
TITLE: Commissioner  
DATE: \_\_\_\_\_

**COUNTY OF ULSTER**

By: \_\_\_\_\_  
NAME: Edward M. Jordan  
TITLE: Director of Purchasing  
DATE: \_\_\_\_\_

**ULSTER COUNTY ECONOMIC DEVELOPMENT ALLIANCE, INC.**

By: \_\_\_\_\_  
NAME: Sarah Haley  
TITLE: Chairperson  
DATE: \_\_\_\_\_

**SCHEDULE A**  
**WORK PLAN**

1. The Subrecipient, through its subaward of Coronavirus State and Local Fiscal Recovery Funds (“SLFRF”) from the American Rescue Plan Act (“ARPA”) of 2021 shall perform program delivery and administration for the Ulster County Cares II Small Business Assistance Program (“the Program”).
2. The Subrecipient shall comply with applicable Federal regulations established by the United States Department of Treasury under ARPA.
3. The Subrecipient shall:
  - A. Provide day-to-day oversight and overall program delivery for the Program, including maintenance of project files in accordance with applicable State and Federal requirements.
  - B. Counsel business owners on budgeting, marketing, and planning for their business
  - C. Conduct intake of participant applications and eligibility determinations.
  - D. Provide counseling and information on availability of other financial assistance programs.
  - E. Conduct selection of projects for funding based on selection criteria contained in the grant application.
  - F. Approve all payments to awarded businesses upon successful submission of required expense documentation.
  - G. Provide the County with copies of budgetary and other supporting documentation related to funded projects.
  - H. Provide assistance and instructions to startup businesses needing to file certificates with the Ulster County Clerk’s Office.
  - I. Ensure program compliance with ARPA regulations
4. The Subrecipient understands and agrees that nothing contained in this Agreement shall impose any duties or responsibility upon the Subrecipient to act in the capacity of a building or code enforcement role or the practice of architecture, engineering, accounting, law or any other licensed or regulated profession.
5. The Subrecipient understands that the Program’s activities shall begin after notification of funding approval from the County and shall be performed by the Subrecipient through the entire Term of this Agreement.
6. The following milestones shall be utilized to determine adequate progress on the Program.

Submit First Drawdown	4/1/22			
25% of Funds expended		6/1/22		
50% of Funds expended			8/1/22	
75% of Funds expended				
Submit Final Drawdown				10/1/22
Submit Final Annual Performance Report				
7. Total Amount of CDBG Funds Requested (quarterly):	\$ 250,000	\$ 250,000	\$ 250,000	\$ 250,000

7. The Subrecipient understands that this Agreement, including any of its schedules, may be reviewed and revised if there are Program changes, amendments, or other issues requiring technical assistance from the United States Department of Treasury (the “US Treasury”) or the County, which delay the expected Program progress. Such revisions, if any, shall be made by written amendment as more fully defined in “Article 30 - Modification” of this Agreement.
8. The Subrecipient further understands that delays due to economic conditions or other unforeseen circumstances may affect expected completion dates.
9. The Subrecipient’s staff shall report the Program’s progress upon the request of the County’s Finance Department, or as requested by the County Executive or his authorized designee.

**RECORDS AND REPORTS:**

10. The Subrecipient shall establish and maintain such records as necessary to document and account for all activities and expenditures under the Program throughout the course of the project. The Firm shall retain such records for a period of five (5) years after all funds under this Agreement have been expended.
11. In addition to the conditions set forth in “Article 14 – Retention of Records” of this Agreement, the Subrecipient shall also maintain all files required by the United States Department of Treasury and the County, and shall provide the information necessary to prepare all reports including, without limitation, the annual Performance Assessment Reports, Semi-Annual Progress Reports, and the quarterly Federal Cash Transaction Reports.
12. The Subrecipient understands and agrees that all reports and correspondence with the County with regard to this Program shall be through the County’s Economic Development Department or the County’s Finance Department.

**UNIFORM ADMINISTRATIVE REQUIREMENTS:**

13. The Subrecipient and the County agree to comply with applicable uniform administrative requirements, as described in the Code of Federal Regulations Title 24, Part 200 (24 CFR 200).

**OTHER PROGRAM REQUIREMENTS:**

14. The Subrecipient and the County agree to carry out each activity in compliance with all federal laws and regulations and any regulations and program requirements of the US Treasury with regard to ARPA in effect during the term of this agreement. Specifically, the Firm agrees to comply with the requirements of sections 602 and 603 of the Social Security Act, regulations adopted by the US Treasury implementing section 603(c) and pursuant to section 602(f) of the Act, and guidance issues by the US Treasury regarding the foregoing.

**PROGRAM DESCRIPTION:**

15. Aspiring entrepreneurs from low-income backgrounds are often willing to work hard and invest significant time and energy to begin their business, but face numerous obstacles in their efforts to succeed during the first year, including lack of business background and expertise. The County recognizes this challenge, as well as the importance of small business owners and micro-entrepreneurs to economic development in the County.
16. The Program will provide small business assistance in the form of a direct financial assistance for small business owners residing in Ulster County. The monies awarded by the Program will be reimbursed to business owners after successful documentation and submission of qualified expenses. The impact of the Program shall be a benefit for low to moderate-income business owners. The impact of the Program is designed to assist a minimum of twenty-three (23) businesses.
17. The Subrecipient’s participation shall include: (i) ensuring that the project will be able to meet all Program milestones, (ii) ensuring that businesses assisted by this Program have either income eligible owners or employ 51% or more individuals of low-to-moderate income, (iv) ensuring all businesses have proper counseling on entrepreneurial success strategies and (v) ensuring proper counseling of businesses on operating a successful business.
18. The assistance provided by the Subrecipient through this Program shall be made in the form of a reimbursement for expenses incurred. The Program funds shall be reimbursed to the businesses after submission and acceptance of eligible expenses.
19. The financial assistance provided for each business in the Program shall have a maximum cap of THIRTY-FIVE THOUSAND AND 00/100 (\$35,000.00) DOLLARS per business.
20. The Program’s components will provide business assistance along with counseling to low-to-moderate (LMI) income business owners.

**PROGRAM ELIGIBILITY:**

21. The Program shall primarily serve businesses whose owners qualify due to the following income limits: a single individual making \$49,200.00 per year or less is considered low income. A family of two reporting \$56,200.00 or less qualifies; \$63,250.00 for a household of three; \$70,250.00 for a household of four; \$75,900.00 for a household of five; \$81,500.00 for a household of six; \$87,150.00 for a household of seven; \$92,750.00 for a household of eight. In order for a business with five or less employees to qualify, proof of the business owner’s income will be required. For

businesses with more than five employees who are qualifying based on creating or retaining 51% or more employees of limited incomes, the business must provide a self-certification of their employees' incomes. A business may also qualify by providing data that shows the salaries paid by the business are at or below the above referenced thresholds.

22. The income limits are based on 2021 Housing and Urban Development (HUD) Annual Area Median Income Estimates. Income limits shall be updated only according to HUD'S Annual Estimates.
23. Eligible activities for use of grant funds shall include a variety of purposes to include working capital, permanent machinery and equipment, interior renovations, rent subsidies, and soft costs.

**Selection process/application review:**

24. All candidates for the Program must complete an application and submit it to the Subrecipient. All applicants shall be initially screened by the Subrecipient for income and eligibility qualifications. Qualified applications shall be delivered to a scoring committee comprised of both Ulster County staff and Legislative leadership. Applications shall be competitively scored and awarded based on the rubric incorporated into this Agreement in Schedule E.

**Income eligibility determinations:**

25. The Subrecipient shall use the Annual Gross Income reflected on the applicant's NYS tax returns to determine income. The applicant shall be required to provide to the Subrecipient proof of income (e.g. income tax returns for past year).

**Business eligibility determinations:**

26. The Subrecipient understands that the application for funds shall be competitively scored consistent with the scoring rubric (Schedule E) of this contract. The program will prioritize funding for businesses with twenty-five (25) employees or less.
27. In order for a business with five (5) or less employees to qualify, proof of the business owner's income will be required. For businesses with more than five employees who are qualifying based on creating or retaining 51% or more employees of limited incomes, the business must provide a self-certification of their employees' incomes. A business may also qualify by providing data that shows the salaries paid by the business are at or below the above referenced thresholds.

**Terms of Funding:**

28. Program funds will be provided to successful applicants on a reimbursement basis, once verification of eligible expenditures is provided.

**PROGRAM MARKETING:**

29. **Outreach and Marketing.** Outreach and marketing shall be conducted in a number of ways. First, the Subrecipient has a list of unsuccessful applications to the Ulster County Revolving Loan Fund. Oftentimes, small businesses and those from LMI backgrounds are denied loans from the Revolving Loan Fund due to creditworthiness. The dozens of applicants that are turned down for loans could be redirected and reconsidered as possible grant applicants. As the Revolving Loan Fund is a well-established program with a strong, County-wide reach, this will help us ensure established businesses apply for this new grant program.

In addition, the Subrecipient works closely with the Department of Economic Development, and the Department can supply outreach information from its database on low-income businesses that have inquired about financial assistance during the recent term. The Subrecipient will also employ traditional methods of communication about this program, including but not limited to: email newsletters to the Department of Economic Development subscribers, press releases to the local media, social media postings, and informational Public Service Announcements on local radio stations.

The Subrecipient shall affirmatively market the Program by conducting outreach to Ulster County residents through at least two public informational meetings. The Subrecipient shall also reach out to the Latino community through their relationship with local Spanish radio and other media outlets.

To guarantee maximum outreach and exposure in the Subrecipient's marketing efforts, the Subrecipient shall implement a well-developed digital campaign using a wide variety of electronic outlets and social media/social news sites. The campaign will include, but not be limited to:

- Posting on major list services to which the Subrecipient subscribes,

- Posting on the Subrecipient’s own website and provide material for posting on the Ulster County website,
- Facebook postings,
- Instagram postings,
- Mentions in several related blogs and media sites, and
- Additional community outlets as available

30. Additional Administrative Support: The Subrecipient currently offers informal business counseling through its relationship to businesses as administrator of the Ulster County Revolving Loan Fund. The Subrecipient shall refer clients to counseling as needed and shall also provide referrals to agencies that provide extended businesses counseling services, including the NYS Mid-Hudson Small Business Development Center.

**ENVIRONMENTAL REVIEW:**

31. The Subrecipient, shall be responsible for adhering to the programmatic environmental review established by the County. Flood insurance rate maps shall be checked for assisted businesses. Any business found within regulatory areas shall be required to participate in the Flood Insurance Program, if applicable based on the program regulatory requirements. The footprint of any business located in a regulatory floodplain shall not be increased without required notification. Runway Clear Zones shall also be checked and properties within these zones shall not be funded. A statutory checklist shall be established in the project file and consultation with the New York State Historic Preservation Office, the New York State Department of Environmental Conservation, NYS HCR and the County’s Planning Department shall be done as necessary.

**CIVIL RIGHTS REQUIREMENTS:**

32. The Firm shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury’s Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with “Limited English Proficiency” in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury’s Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement.

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

1. The County shall pay the Subrecipient with American Rescue Plan Act (ARPA), Coronavirus State and Local Fiscal Recovery Funds (SLFRF) for the purpose of program delivery, administration expenses and implementation services of the Program in an amount not to exceed **ONE MILLION DOLLARS AND 00/100 (\$1,000,000.00) DOLLARS** for the Term of this Agreement
2. The Subrecipient agrees that it shall serve as a subrecipient in a manner consistent with the Code of Federal Regulations Title 24, Part 570.204(c) [24 CFR 570.204(c)] for the disbursement of funds to eligible applicants. The County shall release funds to the Subrecipient upon completion of tasks, submission of documentation and certification by the Subrecipient of the following:
  - A. The applicant meets all Program eligibility requirements as required by the grant application; and
  - B. The compliance procedures as set forth within the County’s adopted Environmental Review Record have been met; and
  - C. That all necessary procedures have been followed and the required financial and legal commitments are in place as outlined within this Agreement, together with all necessary documents including insurance as set out in “Schedule C” of this Agreement naming the County as an additional insured, and that copies of all project documents and appropriate billing of monies requested, are included with the Subrecipient’s payment requests submitted to the County in accordance with this “Schedule B” of this Agreement.

**PAYMENT FOR PROGRAM DELIVERY AND ADMINISTRATION:**

3. For and in consideration of the Services to be provided by the Subrecipient hereunder, the County shall reimburse the Subrecipient for program delivery costs associated with the fulfillment of the Subrecipient’s responsibilities, in an amount not-to-exceed **FIFTY THOUSAND AND 00/100 (\$50,000.00) DOLLARS**.
4. The Subrecipient shall also be reimbursed up to and including **TWENTY-FIVE THOUSAND AND 00/100 (\$25,000.00) DOLLARS** for Administration costs.
5. The Subrecipient shall submit invoices to the County’s Finance Department showing named individuals, title, hours worked and hourly rate.
6. The Subrecipient further understands and agrees that it shall be responsible to ensure that program delivery and Administration expenses remain within the budget.
7. The Subrecipient shall submit invoices to the County’s Finance Department on a per project basis. A “project” shall be considered the assistance provided to each individual applicant/client.
8. Upon completion of a project, the Subrecipient shall submit a payment request to the County’s Department of Finance for processing.
9. The Subrecipient shall submit invoices to the County showing actual costs for Program Delivery. Program Delivery costs shall be supported by a breakdown of personnel by hourly rate and hours worked and other direct and indirect costs.
10. The Subrecipient’s invoice must be reviewed by the County’s Department of Economic Development, the County’s Finance Department and authorized and approved by the County prior to payment.
11. The Subrecipient agrees to submit supporting documentation to the County for all direct non-labor expenses, or any other supporting documentation which the County may request and/or require.
12. The County will notify the Subrecipient in writing of any problems or additional information needed to verify and support the Subrecipient’s claim for payment.
13. The Subrecipient understands and agrees that reimbursement is subject to the approval and availability of funds. The



County has the final say on the amount, when and how the funds are reimbursed to the Subrecipient.

**PAYMENT FOR DIRECT FINANCIAL ASSISTANCE:**

14. The County shall pay the Subrecipient for direct financial assistance costs associated with the fulfillment of the Subrecipient's responsibilities, in an amount not-to-exceed **NINE-HUNDRED AND TWENTY-FIVE THOUSAND AND 00/100 (\$925,000.00) DOLLARS**.
15. The Subrecipient understands and agrees that direct financial assistance for an individual business shall not be in an amount greater than **THIRTY-FIVE THOUSAND AND 00/100 (\$35,000.00) DOLLARS** unless prior written approval is obtained from the County.
16. The Subrecipient shall submit invoices to the County's Finance Department showing its intent to award direct financial assistance to a business.
17. All invoices must be reviewed by the County's Department of Economic Development, the County's Finance Department and authorized and approved by the County.
18. The Subrecipient understands and agrees that payment is subject to the approval and availability of funds. The County has the final say on the amount, when and how the funds are paid to the Subrecipient.

**RE-PAYMENT OF UNEXPENDED FUNDS:**

19. The Subrecipient shall submit to the County a complete accounting of all funds advanced by the County and shall reimburse the County for all unexpended funds within thirty (30) days of the earlier of the end date of this Agreement or completion of the Work Plan.

**PLEASE BRING THESE INSURANCE REQUIREMENTS TO YOUR INSURANCE AGENT TO ENSURE PROPER COVERAGE AND LIMITS ARE IN PLACE. FAILURE TO PROVIDE CERTIFICATE(S) OF INSURANCE EVIDENCING REQUIREMENTS BELOW, SHALL DELAY CONTRACT EXECUTION.**

**SCHEDULE C**  
**COUNTY OF ULSTER CONTRACT INSURANCE REQUIREMENTS**

**I. CONDITIONS OF INSURANCE**

Unless otherwise authorized by the Ulster County Insurance Officer, strict adherence to this schedule is required. Any deviation without prior authorization from the County's Insurance Department will result in a delay in the finalization of this Agreement.

The Subrecipient shall submit copies of any or all required insurance documents as and when requested by the County. Upon policy renewal, the Subrecipient shall submit updated insurance policy information.

**II. CERTIFICATES OF INSURANCE**

The Subrecipient shall file with the County'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" for all certificates shall be the County of Ulster, P.O. Box 1800, Kingston, New York 12402-1800.**

If the Subrecipient's insurance policies should be non-renewed or canceled, or should expire during the life of this Agreement, the County shall be provided with a new certificate indicating the replacement policy information as requested above. The County requires thirty (30) days prior written notice of cancellation [ten (10) days for non-payment of premium] from the Insurer, its agents or representatives.

**The Subrecipient agrees to indemnify the County of Ulster for any applicable deductibles and self-insured retentions.**

**III. WORKERS' COMPENSATION AND DISABILITY INSURANCE**

The Subrecipient 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 County's Insurance Department.

If the Subrecipient is not required to carry such insurance, the Subrecipient 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.

**IV. WORKERS' COMPENSATION REQUIREMENTS**

To assist the State of New York and municipal entities in enforcing WCL Section 57, a business entity (the Subrecipient)

seeking to enter into a contract with a municipality (the County) must provide one of the following forms to the municipal entity with which it is entering into a contract. The Subrecipient 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 Subrecipient 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 Subrecipient is self-insured.

If the Subrecipient 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>

#### **V. DISABILITY BENEFITS REQUIREMENTS**

To assist the State of New York and municipal entities in enforcing WCL Section 220(8), a business entity (the Subrecipient) seeking to enter into a contract with a municipality (the County) must provide one of the following forms to the municipal entity with which it is entering into a contract. The Subrecipient 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 Subrecipient is self-insured.

If the Subrecipient 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>

#### **VI. COMMERCIAL GENERAL LIABILITY INSURANCE**

The Subrecipient 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 County 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 Subrecipient, by any subcontractor, or by anyone directly or indirectly employed by either of them.

It shall be the responsibility of the Subrecipient to maintain such insurance in amounts sufficient to fully protect itself and the County, 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 “County of Ulster, P.O. Box 1800, Kingston, New York, 12402-1800”, 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.

**VII. UMBRELLA LIABILITY OR EXCESS LIABILITY INSURANCE**

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

**NOTE: As long as all minimum underlying limits have been met, insurance limits may be a total combined limit of the Umbrella/Excess Liability limits and the underlying liability insurance limits.**

**The Umbrella/Excess Liability coverage MUST be written on a follow-form (drop down) basis to the underlying insurance coverage with no additional exclusions.**

“Additional Insured” status shall be granted to “County of Ulster, P.O. Box 1800, Kingston, New York, 12402-1800”, shown on the Umbrella policy, further stating that this insurance shall be primary and non-contributory with any other valid and collectable insurance.

**VIII. AUTOMOBILE LIABILITY INSURANCE**

Automobile Bodily Injury Liability and Property Damage Liability Insurance shall be provided by the Firm, 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. Any hired automobile
- c. Any non-owned automobile
- d. “Additional Insured” status shall be granted to “County of Ulster, P.O. Box 1800, Kingston, New York, 12402-1800”, shown on the Auto Liability policy, further stating that this insurance shall be primary and non-contributory with any other valid and collectable insurance.

**SCHEDULE D**  
**Contract Provisions for Non-Federal Entity Contracts Under Federal Awards**

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by [41 U.S.C. 1908](#), must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under [41 CFR Part 60](#), all contracts that meet the definition of “federally assisted construction contract” in [41 CFR Part 60-1.3](#) must include the equal opportunity clause provided under [41 CFR 60-1.4\(b\)](#), in accordance with Executive Order 11246, “Equal Employment Opportunity” ([30 FR 12319, 12935, 3 CFR Part, 1964-1965](#) Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at [41 CFR part 60](#), “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended ([40 U.S.C. 3141-3148](#)). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act ([40 U.S.C. 3141-3144](#), and [3146-3148](#)) as supplemented by Department of Labor regulations ([29 CFR Part 5](#), “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act ([40 U.S.C. 3145](#)), as supplemented by Department of Labor regulations ([29 CFR Part 3](#), “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act ([40 U.S.C. 3701-3708](#)). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with [40 U.S.C. 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)). Under [40 U.S.C. 3702](#) of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of [40 U.S.C. 3704](#) are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under [37 CFR § 401.2 \(a\)](#) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of [37 CFR Part 401](#), “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act ([42 U.S.C. 7401-7671q](#)) and the Federal Water Pollution Control Act ([33 U.S.C. 1251-1387](#)), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act ([42 U.S.C. 7401-7671q](#)) and the Federal Water Pollution Control Act as amended ([33 U.S.C. 1251-1387](#)). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see [2 CFR 180.220](#)) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment ([31 U.S.C. 1352](#)) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by [31 U.S.C. 1352](#). Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) Procurement of recovered materials. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(K) Prohibition on certain telecommunications and video surveillance services or equipment.

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](#), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under [Public Law 115-232](#), section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(L) Domestic preferences for procurements.

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

## SCHEDULE E Scoring Rubric

**Ulster County CARES Small  
Business Assistance  
Evaluation Rubric**



Criterion	4 Exemplary	3 Adequate	2 Needs Improvement	1 Insufficient Evidence
<b>Business Activity Viability</b>	Business activities timeline, and budget expenditures congruent with business description and outcome	Deficiencies or overestimations exist in personnel, timeline, or budget within tolerable range, outcomes appear achievable despite gaps or leaps	Business personnel, timeline, or budget expose weaknesses in plan design. Outcomes unlikely to be achieved in project's current form	Insufficient information about personnel, project activities timeline, or budget expenditures to gauge feasibility.
<b>Strength of Connection to COVID</b>	Request for funding directly responds to a need created by COVID	Request for funding indirectly relates to need created by COVID	Weak connection to COVID	No COVID connection
<b>Value to Improve Future Resiliency</b>	Business improvements will create solid plan for future resiliency	Business improvements have potential to aid future resiliency	Business will improve, resiliency questionable	No resiliency created
<b>Measurable Impact</b>	Proposed impact cleared stated and quantifiable	Proposed impact somewhat clear	Proposed impact unclear	No measurable impact
<b>Clear Budget</b>	Budget is appropriate to scope of work. If applicable, the budget states other funding secured/anticipated. The budget has a defined plan for awarded funds. The business can be sustained beyond duration of the financial assistance	Budget contains some gaps. Budget has some plan for awarded funds, but full details not clear. The business has questionable sustainability after award.	Budget contains many gaps. Plan for award funds unclear. Business likely not sustainable after award	No budget
<b>Need</b>	Applicant exceeds income threshold requirements by more than 10 %	Applicant meets income threshold requirements by less than 5 %	Applicant meets income threshold requirements exactly.	Applicant does not meet income threshold



**SCHEDULE F**  
**SUBRECIPIENT INFORMATION GATHERING SHEET**

- Subrecipient Name: **Ulster County Economic Development Alliance, Inc.**
- Subrecipient's Unique Entity Identifier:  
Employer Identification Number: **14-1598275**  
Unique Entity Identifier (UEI): \_\_\_\_\_
- Federal Award Identification Number (FAIN)\*
- Federal Award Date: **May 26, 2021**
- Subaward Period of Performance: **March 1, 2022**
- Subaward Period of Performance: **February 28, 2023**
- Subaward Budget Period: Start Date (*Only needed if different than Period of Performance*)
- Subaward Budget Period: End Date (*Only needed if different than Period of Performance*)
- Amount of Federal Funds Obligated to Subrecipient: **\$1,000,000**
- Total Amount of Federal Funds Obligated to Subrecipient by Ulster County including Current Financial  
Obligation: **\$1,000,000**
- Federal Award Project Description:
- Name of Federal Awarding Agency: **United States Department of the Treasury**
- Name of pass-through entity: **County of Ulster**
- Contact information for awarding official of Ulster County:  
**Ulster County, Commissioner of Finance, Burt Gulnick**  
**244 Fair Street**  
**Kingston, NY 12401**  
[bgul@co.ulster.ny.us](mailto:bgul@co.ulster.ny.us)  
**(845)-340-3460**
- Assistance Listings Number: **21.027**
- Title of Assistance Listing: **Coronavirus State and Local Fiscal Recovery Funds**
- Identification whether Award is R&D: **No**
- Indirect Cost Rate for the Federal Award (Including if the de minimis rate is charged): **2.5% Indirect Cost Rate (Program Administration). This is separate from the 5% charged for Program Delivery.**

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