

**ELLENVILLE MILLION  
GRANT MATCHING/MARKETING AGREEMENT  
By and Between  
ULSTER COUNTY ECONOMIC DEVELOPMENT ALLIANCE  
and  
VILLAGE OF ELLENVILLE**

**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 offices at 244 Fair Street, Kingston, New York 12401 (the “UCEDA”), and **THE VILLAGE OF ELLENVILLE**, a village incorporated under the laws of the State of New York, with its offices at Village Hall, Government Center, 2 Elting Court, Ellenville, New York 12428 (the “Village”), (each, a “Party,” together, the “Parties”).

**RECITALS**

**WHEREAS**, former Ulster County Executive Michael Hein has identified the disproportionate negative impact to the Ellenville/Wawarsing area as evidenced by the local unemployment rate in part due to the loss of manufacturing jobs to overseas competition, the closing of the Nevele Resort and the lack of local funding to invest in the necessary infrastructure, incentives, cultural and recreational attractions and needed marketing to encourage private sector investment and job creation; and

**WHEREAS**, in the 2015 State of the County Address, the former County Executive announced the formation of the Ellenville Million Committee and dedicated one million dollars in County funding to support projects recommended by such Committee; and

**WHEREAS**, in February 2015, the County Executive appointed the Ellenville Million Committee, comprising well-respected business leaders and citizens whose mission was to recommend those specific projects that its members determined would improve the economic condition of the Ellenville/Wawarsing area, and

**WHEREAS**, the UCEDA, a local development corporation under Section 1411 of the Not-For-Profit Corporation Law of the State of New York, entered into a contract with the County in September 2015 to effectuate the implementation of the Ellenville Million Program; and

**WHEREAS**, in July 2017, the Ulster County Legislature approved Resolution Number 295, which further refined the projects and programs that comprise the Ellenville Million Program and allocated \$105,000 for Grant Matching and Grant Writing Assistance, which funding is to be used for identifying grant opportunities, preparing grant applications, and meeting local cash match requirements of grants awarded to businesses, nonprofits and units of local government located in Ellenville and/or Wawarsing; and

**WHEREAS**, after extensive review and careful consideration of the Village’s application to the Ellenville Million Grant Matching Program, the UCEDA has determined that the Village’s proposed project advances the goals of the Ellenville Million Program and meets the guidelines and requirements established by the UCEDA for the Grant Matching and Grant Writing Assistance allocation of the Ellenville Million Program; and

**WHEREAS**, the UCEDA wishes to engage the Village, and the Village has agreed to contract with the UCEDA to provide matching funds to assist the Village toward a shared marketing plan which will be implemented by the Village of Ellenville, Town of Wawarsing and the Ellenville School District designed to promote the excellent qualities of the Village, Town and School District thus boosting an awareness and encouraging prospective individuals and families to consider Ellenville as a good choice community in which to live and raise a family as well as an inspiring tourist destination; and

**WHEREAS**, the UCEDA also desires to successfully market and promote the Ellenville and Wawarsing areas of Ulster County; to attract visitors, businesses and new homeowners to the area; and

**WHEREAS**, in order to achieve these goals, UCEDA recognizes that Ellenville and Wawarsing's marketable assets must be studied and analyzed.

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

## **ARTICLE 1 – SCOPE OF SERVICES**

The Village agrees to perform the services identified in “Schedule A,” the “Scope of Services” (hereinafter, the “Services”), which is attached hereto and is hereby made a part of this Agreement. The Village agrees to perform the Services in accordance with the terms and conditions of this Agreement. It is specifically agreed to by the Village that the UCEDA will not compensate the Village 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 Village agrees to perform the Services **beginning May 7, 2019, and ending August 31, 2019.**

## **ARTICLE 3 - COMPENSATION**

For satisfactory performance of the Services, or as such Services may be modified mutually by a written Change Order, Amendment, or Addendum to this Agreement, the UCEDA agrees to compensate the Village in accordance with “Schedule B, FEES, EXPENSES AND SUBMISSIONS FOR PAYMENT” which is attached hereto and is hereby made a part of this Agreement.

A **not-to-exceed** amount of **SEVENTEEN THOUSAND EIGHT HUNDRED THIRTEEN and 00/100 DOLLARS (\$17,813.00)** has been established for the Services to be rendered by the Village. Costs in excess of the above-noted amount may not be incurred without the prior written authorization of the UCEDA, evidenced only by a written Change Order, Amendment or Addendum to this Agreement. It is specifically agreed to by the Firm that the UCEDA shall not be responsible for any additional costs, or costs in excess of the above-noted cost, if authorization by the UCEDA is not given in writing prior to the performance of the services giving rise to such excess or additional costs.

## **ARTICLE 4 - INDEPENDENT CONTRACTOR**

In performing the Services and incurring expenses under this Agreement, the Village shall operate as and have the status of an independent contractor, and shall not act as or be an agent of the UCEDA. As an independent contractor, the Village shall be solely responsible for determining the means and methods of performing the Services and shall have complete charge and responsibility for the Village's personnel engaged in the

performance of the same.

## **ARTICLE 5 - ASSIGNMENT**

The Village shall 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.

## **ARTICLE 6 – SUBCONTRACTING**

The Village 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 Village, including but not limited to the insurance requirements set forth in Schedule C; and
- B. That nothing contained in the subcontractor agreement shall impair the rights of the UCEDA; and
- C. That nothing contained in the subcontractor agreement, or under this Agreement between the UCEDA and the Village, shall 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 8 of this Agreement between the UCEDA and the Village.

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

The Village 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 Village. The Village shall not in any way be relieved of any responsibility under this Agreement by any subcontract.

## **ARTICLE 7 - PERFORMANCE**

In performing the Services, the Village 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 Village is hereby given notice that the UCEDA shall be relying upon the accuracy, competence, and completeness of the Village's performance in using the results achieved by the Village's performance of these Services. The Village shall at all times comply with all applicable Federal, New York State and local laws, ordinances, statutes, rules and regulations.

## **ARTICLE 8 - 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 Village from or through the UCEDA or any other person connected with the UCEDA, or developed, produced, or obtained by the Village in connection with its performance of Services under this Agreement. Confidential Information shall 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 “Village” as used herein includes all officers, directors, employees, agents, subcontractors, assignees or representatives of the Village.

The Village shall keep all Confidential Information in a secure location within the Village’s offices. The UCEDA shall have the right, but not the obligation, to enter the Village’s offices in order to inspect the arrangements of the Village for keeping Confidential Information secure. The UCEDA’s inspection, or its failure to inspect, shall not relieve the Village of its responsibilities pursuant to this Article 8.

The Village shall hold Confidential Information in trust and confidence, and shall not disclose Confidential Information, or any portion thereof, to anyone other than the UCEDA, without the prior written consent of the Board of Directors, and shall 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 Village 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 Village 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 Village, 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 Village shall oppose such request and cooperate with the UCEDA in obtaining a protective order or other appropriate remedy, unless and until the Board of Directors, upon consultation with UCEDA’s counsel, in writing, waives compliance with the provisions of this Article 8, 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 8 or determines that such disclosure is legally required, the Village shall disclose only such portions of Confidential Information that, in the opinion of the UCEDA’s counsel, the Village is legally required to disclose, and the Village 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.

## **ARTICLE 9 – OWNERSHIP OF CONFIDENTIAL INFORMATION**

Notwithstanding any other provision herein to the contrary:

- A. All Confidential Information, as defined in Article 8, including all copies thereof, is the exclusive property of the UCEDA regardless of whether or not it is delivered to the UCEDA. The Village 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 Village, such information shall be retained in a secure location in the Village’s office for a period of six (6) years after completion of the Services, or termination of this Agreement, whichever later occurs, and

thereafter disposed of at the UCEDA's direction.

## **ARTICLE 10 – INTELLECTUAL PROPERTY**

All "Intellectual Property," meaning all graphics, fonts, computer code (with the exception of open source code), photographs, brochures, videos, web pages, trademarks, databases, reports, plans, drawings, 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 Village's right or license to use the intellectual property shall terminate.

The Village 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, reports, plans, drawings, 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 Village 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 Village's Services.

## **ARTICLE 11 – PUBLICITY**

The prior written approval of the UCEDA is required before the Village, 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 Village, 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 Board of Directors which, 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 12 - BOOKS AND RECORDS**

The Village 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 13 - RETENTION OF RECORDS**

The Village 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 later occurs. The UCEDA, any New York State and/or Federal auditors, and any other persons duly authorized by the UCEDA, shall have full access and the right to examine any of said materials during said period.

## **ARTICLE 14 – 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 Village 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 Village 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 Village shall 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 15 – NO DISCRIMINATION**

As required by Article 16 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 Village will 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 16 - INSURANCE**

For provision of the Services set forth herein and as may be hereinafter amended, the Village 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 shall be written by insurers who have been fully informed as to the nature of Services to be performed by the Village pursuant to this Agreement. Such insurers shall be of recognized financial standing, satisfactory to the UCEDA. The UCEDA 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) shall be the sole obligation of the Village and not those of the UCEDA. Notwithstanding anything to the contrary in this Agreement, the Village 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 16. The provision of insurance by the Village shall not in any way limit the Village’s liability under this Agreement.

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

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 UCEDA, with respect to its interests, (ii) it shall 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 shall have the option to pay any necessary premiums to keep such insurance in effect, and charge the cost back to the Village.

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

- A. Policy retroactive dates coincide with or precede the Village's start of the performance of Services (including subsequent policies purchased as renewals or replacements); and
- B. The Village 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 Village agrees to purchase for the UCEDA, an unlimited, extended reporting provision to report claims arising from the Services performed under this Agreement; and
- D. Immediate notice shall be given to the UCEDA of circumstances or incidents that might give rise to future claims with respect to the Services performed under this Agreement.

## **ARTICLE 17 - INDEMNIFICATION**

The Village 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 Village, 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 Village, its employees, representatives, subcontractors, assignees, or agents. The Village 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.

UCEDA will defend at its expense, and indemnify the Village with respect to any claims, actions, or proceedings arising out of representations, information, or materials supplied by UCEDA to the Village, and approved by UCEDA for inclusion relative to the Services provided by the Village, pursuant to this Agreement

## **ARTICLE 18 - RESPONSIBILITY TO CORRECT DEFICIENCIES**

It shall be the Village's responsibility to correct, in a timely fashion and at the Village's sole expense, any deficiencies in its Services resulting from the Village's failure to act in accordance with the standards set forth in Article 7 (Performance) and Schedule A, provided such deficiencies are reported to the Village within one hundred twenty (120) days after completion and final acceptance of the Services. If the Village 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 Village and/or set-off such amount against any sums otherwise due to the Village. These remedies, if effected, shall not constitute the sole or exclusive remedies afforded to the UCEDA for such deficiencies, nor shall 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 19 – FORCE MAJEURE**

Neither Party hereto shall 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 Village's financial inability to perform shall not be deemed to be an event of Force Majeure regardless of the source causing such financial inability. If the Village is so delayed in the timely performance of the Services, the Village'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 in no event 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 shall the UCEDA be liable to the Village or to its subcontractors, agents, assignees, or any other person or entity for damages arising out of, or resulting from, any such delays.

## **ARTICLE 20 - TERMINATION**

The Agreement may be terminated by either Party upon thirty (30) days written notice to the other Party. Upon termination, the Village will turn over all files, lists, or other work product requested by the UCEDA, provided that all Services performed by the Village has been invoiced and said invoices have been paid in full.

## **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 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 22 - GOVERNING LAW**

This Agreement shall be governed by the laws of the State of New York, except where the Federal Supremacy Clause requires otherwise. The Village 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 23 - 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 shall 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 shall not affect the validity of any other provision, or the application of any other provision of this Agreement.



## **ARTICLE 23 - GENERAL RELEASE**

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

## **ARTICLE 25 - NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES**

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

## **ARTICLE 26 - ENTIRE AGREEMENT**

The rights and obligations of the Parties and their respective agents, successors and assignees shall 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 27 - SURVIVING OBLIGATIONS**

The Village's obligations, and those of the Village's employees, representatives, agents, subcontractors, successors and assignees, assumed pursuant to Article 7 (Performance), Article 8 (Confidentiality), Article 9 (Ownership of Confidential Information), Article 10 (Intellectual Property), Article 11 (Publicity), Article 13 (Retention of Records), Article 17 (Indemnification), and Article 18 (Responsibility to Correct Deficiencies), shall survive completion of the Services and/or the expiration or termination of this Agreement.

## **ARTICLE 28 - 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:

Village:

VILLAGE OF ELLENVILLE

Attn: Hon. Jeffrey Kaplan, Mayor

Village Hall – Government Center

2 Elting Court

Ellenville, NY 12428

UCEDA:

ULSTER COUNTY ECONOMIC DEVELOPMENT ALLIANCE, INC.

Attn: Board Chair, Julie Cohen Lonstein

244 Fair Street

Kingston, New York 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 29 - 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. Changes to Schedule A, the Scope of Services, in this Agreement shall not be binding, and no payment shall 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 shall 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 shall apply with full force and effect to the terms and conditions contained in such Addendum, Amendment or Change Order.

## **ARTICLE 30 - HEADINGS AND DEFINED TERMS**

The Article headings used in this Agreement are for reference and convenience only, and shall not in any way limit or amplify the terms, conditions, and provisions hereof. All capitalized terms, acronyms, and/or abbreviations shall 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.**

By: \_\_\_\_\_  
NAME: **Julie Cohen Lonstein**  
TITLE: Board Chair  
DATE: \_\_\_\_\_

**VILLAGE OF ELLENVILLE**

By: \_\_\_\_\_  
NAME: **Jeffrey Kaplan**  
TITLE: Mayor  
DATE: \_\_\_\_\_

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

1. The Village of Ellenville shall contract with Gerald Berliner to complete a re-branding program for the Town of Wawarsing, the Village of Ellenville, and the Ellenville School District. A copy of that contract is attached hereto and marked as “Schedule D” and Mr. Berliner’s responsibility are more fully described therein.
2. The Village shall be solely responsible for ensuring that all required services as described in the aforementioned contract between the Village of Ellenville and Gerald Berliner are completed.
3. The Village shall assume control and responsibility for the website located at findellenville.com (the “Website”) for the duration of this Agreement. This responsibility includes, but is not limited to maintaining the website, updating the Website as needed, and taking any other website optimization steps deemed appropriate by the Village to assure its continued viability as a marketing and promotional tool.
4. The Village shall complete all services identified above no later than the end date of the term in Article 2, or such end date as may be mutually agreed by written amendment to this agreement.
5. All project invoices, work products/deliverables, reports and supporting documentation shall be submitted by the Village to UCEDA via email to [oed@co.ulster.ny.us](mailto:oed@co.ulster.ny.us), or if such submissions cannot be transmitted electronically, via post to the attention of Suzanne Holt, UCEDA, 244 Fair Street, PO Box 1800, Kingston, NY 12402.

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

1. The Village's fee for Services shall be a not-to-exceed amount of **SEVENTEEN THOUSAND EIGHT HUNDRED THIRTEEN AND 00/100 DOLLARS (\$17,813.00)** for the Term of this Agreement.
2. The Village agrees to seek payment from UCEDA only after the project is complete and evidence of completion is submitted to the UCEDA. Project completion will be evidenced by submission to UCEDA of both a) proof of payment for all project costs (e.g. cancelled checks to contractors/vendors/consultants, and/or documentation of in-kind costs) AND b) a final project report (e.g. a consultant's report or a brief written report compiled by the Village describing and documenting the project's completion).
3. The Village shall submit invoices and supporting documentation to UCEDA, requesting payment for services performed. Payment shall be made only upon audit and approval by UCEDA of the Village's invoices, proof of payment of all project costs, and final project report.
4. In no event shall claims or invoices be submitted in advance or accrued prior to expenditure.
5. The Village's final invoice under this Agreement shall be submitted by the fifteenth day of the month following the ending date contained in Article 2 (Term of Agreement).
6. UCEDA shall remit payment to the Village within sixty (60) days of approval of the invoice by UCEDA's Chief Financial Officer.
7. Notwithstanding any other term or provision of this Agreement, including this Schedule B, the Village'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.
8. The Village agrees to meet any additional invoicing requirements that the UCEDA may from time to time require, with reasonable notice to the Village.

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

**CERTIFICATES OF INSURANCE**

The Village 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 Village'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 Village 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 Village is not required to carry such insurance, the Village 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 Village) 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 Village 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 Village 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 Village is self-insured.

If the Village 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 Village) 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 Village 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 Village is self-insured.

If the Village 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 Village 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 Village, by any subcontractor, or by anyone directly or indirectly employed by either of them.

It shall be the responsibility of the Village 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 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.
- 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 of 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 Village, 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