

# AGREEMENT

**THIS AGREEMENT** is entered into by and between the **ULSTER COUNTY ECONOMIC DEVELOPMENT ALLIANCE, INC.**, a local development corporation formed under Section 1411 of the New York Not-For-Profit Corporation Law, with offices at 244 Fair Street, Kingston, New York 12401 (the “**UCEDA**”), and **FRUITION CHOCOLATE, INC.**, a domestic business corporation with principal offices at 3091 NY-28, Shokan, New York 12481 (the “**Contractor**”), (each, a “**Party**,” together, the “**Parties**”).

## RECITALS

**WHEREAS**, the New York State Housing Trust Fund Corporation, represented by the Office of Community Renewal (collectively, the “**Corporation**”) is authorized to administer and distribute Community Development Block Grant (“**CDBG**”) funds to units of general local government located in the State of New York; and

**WHEREAS**, the Coronavirus Aid, Relief and Economic Security Act (“**CARES Act**”) (Public Law 116-136) was signed into law on March 27, 2020 and made available supplemental CDBG (“**CDGB-CV**”) funding to prevent, prepare for and respond to the effects of the coronavirus pandemic; and

**WHEREAS**, the Corporation has made CDBG-CV funding available to help communities throughout New York State to safely reopen and restart their local economies in the wake of the coronavirus pandemic; and

**WHEREAS**, the County of Ulster (the “**County**”) applied to the Corporation for CDBG funds to finance certain community development activities (the “**County Project**”), as described in the County’s CDBG-CV Grant Application (the “**County Application**”), a copy of which is attached hereto as “**Schedule D**” and made a part hereof; and

**WHEREAS**, the Corporation selected the County to receive an award in an amount not to exceed ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS (the “**County Grant Funds**”); and

**WHEREAS**, the County entered into an Agreement dated July 15, 2021 under Project No. 1160CVSB7-21 (the “**County Agreement**”), a copy of which is attached hereto as “**Schedule E**” and made a part hereof, pursuant to which the County will administer the County Grant Funds in accordance with the terms and conditions of the County Agreement; and

**WHEREAS**, the County entered into an Agreement with the UCEDA (County Contract No. 2021-00000412) to engage the UCEDA as a sub-recipient of the County Grant Funds, a copy of which is attached hereto as “**Schedule F**” and made a part hereof; and

**WHEREAS**, the UCEDA administers the Ulster County CARES Small Business Assistance Program (the “**Ulster County CARES Program**”), which is a business relief response program created as a result of the County Grant Funds awarded to the County; and

**WHEREAS**, Ulster County businesses with fewer than twenty-five (25) employees that have been impacted by the COVID-19 pandemic and that have been unable to access other state or federal resources may apply to the Ulster County CARES Program for assistance of up to Thirty-Five Thousand and 00/100 (\$35,000.00) Dollars; and

**WHEREAS**, the Contractor applied for assistance from the Ulster County CARES Program; and

**WHEREAS**, the UCEDA has determined that the Contractor qualifies for assistance through the Ulster County CARES Program; and

**WHEREAS**, the UCEDA has agreed to enter into an agreement with the Contractor for assistance through the Ulster

County CARES Program 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 - SCOPE OF SERVICES**

The Contractor agrees to perform the services identified in Schedule A, the Scope of Services (the “Services”), which is attached hereto and is hereby made a part of this Agreement. The Contractor agrees to perform the Services in accordance with the terms and conditions of this Agreement. It is specifically agreed to by the Contractor that the UCEDA will not compensate the Contractor for any services 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 UCEDA.

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

The Contractor agrees to perform the Services **beginning May 11, 2022** (the “Award Date”) **and ending July 1, 2022**.

## **ARTICLE 3 - PAYMENT**

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 Contractor 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 **FIFTEEN THOUSAND AND 00/100 (\$15,000.00) DOLLARS** has been established for the Services to be rendered by the Contractor. 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 Contractor 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 Contractor 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 Contractor shall be solely responsible for determining the means and methods of performing the Services and shall have complete charge and responsibility for the Contractor’s personnel engaged in the performance of the same.

## **ARTICLE 5 - ASSIGNMENT**

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

## **ARTICLE 7 – PERFORMANCE**

In performing the Services, the Contractor 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 Contractor is hereby given notice that the UCEDA shall be relying upon the accuracy, competence, and completeness of the Contractor’s performance in using the results achieved by the Contractor’s performance of these Services. The Contractor 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 Contractor from or through the UCEDA or any other person connected with the UCEDA, or developed, produced, or obtained by the Contractor 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 “Contractor” as used herein includes all officers, directors, employees, agents, subcontractors, assignees or representatives of the Contractor.

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

The Contractor 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 Contractor 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 Contractor 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 Contractor, 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 Contractor 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 Contractor shall disclose only such portions of Confidential Information that, in the opinion of the UCEDA’s counsel, the Contractor is legally required to disclose, and the Contractor 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 Contractor 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 Contractor, such information shall be retained in a secure location in the Contractor’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 Contractor’s right or license to use the intellectual property shall terminate.

The Contractor 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 Contractor 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 Contractor’s Services.

## **ARTICLE 11 – PUBLICITY**

The prior written approval of the UCEDA is required before the Contractor, 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 Contractor, 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 Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor 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 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 Contractor 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 Contractor 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 Contractor 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 Contractor and not those of the UCEDA. Notwithstanding anything to the contrary in this Agreement, the Contractor 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 Contractor shall not in any way limit the Contractor’s liability under this Agreement.

At the time the Contractor submits two (2) original executed copies of this Agreement, the Contractor 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 Contractor.

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 Contractor’s start of the performance of Services (including subsequent policies purchased as renewals or replacements); and
- B. If the insurance is terminated for any reason, the Contractor agrees to purchase for the UCEDA, an unlimited, extended reporting provision to report claims arising from the Services performed under this Agreement; and
- C. 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 Contractor agrees to defend, indemnify and hold harmless the UCEDA and the County, including their 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 Contractor, its employees, representatives, subcontractors, assignees, or agents pursuant to this Agreement, which the UCEDA and the County, or their officials, employees, or agents may suffer by reason of any negligence, fault, act, or omission of the Contractor, its employees,

representatives, subcontractors, assignees, or agents. The Contractor 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 Contractor with respect to any claims, actions, or proceedings arising out of representations, information, or materials supplied by UCEDA to the Contractor, and approved by UCEDA for inclusion relative to the Services provided by the Contractor, pursuant to this Agreement.

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

It shall be the Contractor's responsibility to correct, in a timely fashion and at the Contractor's sole expense, any deficiencies in its Services resulting from the Contractor'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 Contractor within one hundred twenty (120) days after completion and final acceptance of the Services. If the Contractor 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 Contractor and/or set-off such amount against any sums otherwise due to the Contractor. 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 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 Contractor'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 Contractor is so delayed in the timely performance of the Services, the Contractor's sole and exclusive remedy is to request that a Change Order, Amendment, or Addendum to this Agreement be issued by the UCEDA and signed by the President of the UCEDA, permitting an extension of time to perform the Services in an amount equal to the time lost due to such delay. Such request shall be based upon written notice only, stating the specific nature of the claim, delivered to the President of the UCEDA promptly, but not later than thirty (30) days after the initial occurrence of the event giving rise to such claim. An extension of time to perform the Services may only be granted by a written Change Order, Amendment, or Addendum to this Agreement, signed by the President of the UCEDA. In no event will the UCEDA be liable to the Contractor 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 Contractor will turn over all files, lists, or other work product requested by the UCEDA, provided that all Services performed by the Contractor have 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 Contractor 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 24 - GENERAL RELEASE**

Acceptance by the Contractor 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 Contractor 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 Contractor 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 Contractor's obligations, and those of the Contractor'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:

Contractor:  
Fruition Chocolate, Inc.  
3091 NY-28  
Shokan, New York 12481

UCEDA:  
ULSTER COUNTY ECONOMIC  
DEVELOPMENT ALLIANCE, INC.  
Attn: Board Chair, Sarah Haley  
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 both the UCEDA and its General Counsel at the addresses set forth herein, or such other addresses as may have been specified in writing by the UCEDA:

Mailing Address:  
ULSTER COUNTY ECONOMIC  
DEVELOPMENT ALLIANCE, INC.  
Attention: General Counsel  
Post Office Box 1800  
Kingston, New York 12402

Physical Address:  
ULSTER COUNTY ECONOMIC  
DEVELOPMENT ALLIANCE, INC.  
Attention: General Counsel  
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 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.

## **ARTICLE 31 – 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.

## **ARTICLE 32 – NEW YORK STATE CDBG CARES GRANT REQUIREMENTS**

The Parties agree to adhere to all terms and conditions contained in the County Agreement (Project No. 1160CVSB7-21). Specifically, notwithstanding any other provision of this Agreement, the Contractor agrees to the following:

- a. The Contractor shall comply with all applicable Federal, State and Local Laws and regulations.
- b. The Contractor shall indemnify the Corporation and the County against any and all claims arising out of the Contractor's performance of work under this Agreement. To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Corporation and the County, and their agents and employees, from and against any and all claims, actions, damages, losses, expenses and costs of every nature and kind, including reasonable attorneys' fees, incurred by or asserted or imposed against the Corporation and/or the County, as a result of or in connection with this Agreement. All



money expended by the Corporation and/or the County as a result of such claims, actions, damages, losses, expenses and costs, together with interest at a rate not to exceed the maximum interest rate permitted by law, shall be immediately and without notice due and payable by the Contractor to the Corporation and/or the County.

c. The Contractor shall execute and deliver to the UCEDA a copy of a photography release in the form attached hereto as "Schedule G."

d. The Contractor understands and agrees that the amount of funds that UCEDA has agreed to provide the Contractor under this Agreement is expressly conditioned upon the UCEDA's receipt of funds from the County.

e. The UCEDA, the County, the Corporation and the Comptroller General of the United States, or any of their duly authorized representatives, shall be granted access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement for the purpose of making audits, examinations, excerpts and transcriptions.

f. Anti-Job Pirating Provision: The Contractor acknowledges that the funds it receives through the Ulster County CARES Program shall not be used to assist directly in the relocation of any industrial or commercial plant, facility or operation from one area to another area, if the relocation is likely to result in a significant loss of employment in the labor market area ("LMA") from which the relocation occurs. For additional information, refer to 24 C.F.R. 570.482 Eligible Activities at <https://www.hudexchange.info/resources/documents/24-CFR-Part%20-570-CDBGs.pdf>.

**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: Sarah Haley  
TITLE: Board Chair  
DATE: \_\_\_\_\_

**FRUITION CHOCOLATE, INC.**

By: \_\_\_\_\_  
NAME: Dahlia Graham  
TITLE: \_\_\_\_\_  
DATE: \_\_\_\_\_

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

1. The Contractor shall comply with the obligations set forth in this Agreement, the County Application, the County Agreement and County Contract No. 2021-00000412.
2. The Contractor shall perform services in accordance with Schedule H attached hereto (the “Services”).
3. All Services shall be performed within one hundred twenty (120) days of the Award Date.
4. The Services shall be performed at the offices of the Contractor located at 3091 NY-28, Shokan, New York 12481.
5. Contractor shall be offered one-on-one technical assistance from the UCEDA and the Mid-Hudson Small Business Development Center. The Contractor shall be paired with a business advisor or industry mentor that will provide the Contractor with guidance on budgeting, marketing and planning for their business. The participation in the mentorship program shall be at the discretion of the Contractor.

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

1. The UCEDA, through the Ulster County CARES Program, shall pay to the Contractor a **not-to-exceed amount of FIFTEEN THOUSAND AND 00/100 (\$15,000.00) DOLLARS** for the Term of this Agreement.
2. The Contractor shall invoice the UCEDA on a monthly basis for reimbursement of the expenditures made by the Contractor during the previous month. Invoices shall be due on the first (1st) of each month for the previous month's expenditures.
3. The Contractor shall expend the funds it receives through the Ulster County CARES Program in accordance with the amounts and categories listed herein, as follows:

a. Furniture /Fixtures:	\$NA
b. Equipment (excludes construction-related projects):	\$NA
c. Personal Protective Equipment:	\$NA
d. Inventory:	\$NA
e. Operating Expenses:	\$15,000.00
f. Payroll:	\$NA
g. Other (must be pre-approved by UCEDA):	\$NA
<b>TOTAL:</b>	<b>\$15,000.00</b>
4. With each invoice, the Contractor shall tender receipts, reports and notes to the UCEDA sufficient for the UCEDA, the County and the Corporation to determine that the Contractor expended the funds in accordance with this Agreement. All invoices, deliverable reports, receipts and notes shall be delivered to Timothy Weidemann, Director (care of Samantha Liotta, Business Services Administrator), at the Ulster County Department of Economic Development, on or before the first (1st) day of the month for the expenditures made by the Contractor during the previous month.
5. The Contractor shall submit to the UCEDA original invoices for payment.
6. Upon receipt of each invoice and proof of expenditures, the UCEDA shall submit the proof of expenditures to the County for approval. The County shall submit the proof of expenditures to the Corporation for approval. Upon the Corporation's approval of the expenditures, the Corporation shall remit payment to the County and the County shall remit payment to the UCEDA. The UCEDA will remit payment to the Contractor within sixty (60) days of its receipt of payment from the County.
7. Notwithstanding any other term or provision of this Agreement, including this Schedule B, the Contractor'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 Contractor agrees to meet any additional invoicing requirements that the UCEDA may from time to time require, with reasonable notice to the Contractor.

**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** **UCEDA CONTRACT INSURANCE REQUIREMENTS**

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

### **II. CERTIFICATES OF INSURANCE**

The Contractor shall file with UCEDA, 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., P.O. Box 1800, Kingston, New York 12402-1800.

If the Contractor’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.

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

### **III. WORKERS’ COMPENSATION AND DISABILITY INSURANCE**

The Contractor 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 Contractor is not required to carry such insurance, the Contractor 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 Contractor) 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 Contractor should contact its 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 Contractor 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 Contractor is self-insured.

If the Contractor 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 Contractor) 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 Contractor should contact its 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 Contractor is self-insured.

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

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

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

**Other Conditions of Commercial General Liability Insurance:**

- a. Coverage shall be written on Commercial General Liability form.
- b. Coverage shall include:
  - 1. Contractual Liability
  - 2. Independent Contractors
  - 3. Products and Completed Operations
- c. “Additional Insured” status shall be granted to “Ulster County Economic Development Alliance, Inc., 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.