

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 **L'IMPATIENCE LLC**, a Limited Liability Corporation with principal offices at 45 Pine Grove Ave., Kingston, New York 12401 (the “**Contractor**”), (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-19 Local Fiscal Recovery Fund (the “CLFRF”), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of the Coronavirus Disease 2019 (“COVID-19”) in their communities; and

WHEREAS, Ulster County, as a CLFRF recipient, desires to utilize a portion of these ARPA funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to Ulster County based small businesses; and

WHEREAS, the County has made a portion of the ARPA funds available to help small businesses throughout New York State to safely reopen and restate their local economies in the wake of the COVID-19 pandemic; and

WHEREAS, the County allocated an amount not to exceed ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS (the “County ARPA Funds”); and

WHEREAS, the County entered into an Agreement with the UCEDA (County Contract No. 2022-00000303) to engage the UCEDA as a sub-recipient of the County ARPA Funds; and

WHEREAS, the UCEDA administers the Ulster County CARES II Small Business Assistance Program (the “Program”), which is a business relief response program created as a result of the County ARPA 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 may apply to the 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 Program, and the UCEDA has determined that the Contractor qualifies for assistance through the Program, for the purpose of rebuilding the Contractor’s business following the COVID-19 pandemic; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance through the 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 April 12, 2023** (the “Award Date”) **and ending August 10, 2023**.

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 **THIRTY-FIVE THOUSAND AND 00/100 (\$35,000.00) 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:
L'Impatience LLC
45 Pine Grove Ave.
Kingston, New York 12401

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, 5th 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.

******Signature page follows******

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: _____

L'Impatience LLC

By: _____
NAME: _____
TITLE: _____
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

1. In response to the COVID-19 pandemic, the Contractor shall use the funds it receives to assist and rebuild the Contractor's business.
2. The Contractor shall use the funds it receives in a manner consistent with the "Proposed Use of Funds" described in the Contractor's Program Application (which is attached hereto as Schedule "D" and hereby made part of this Agreement).
3. The Contractor shall use the funds it receives pursuant to this Agreement in the following categories, as set forth in the Program Application Instructions (which is attached hereto as Schedule "E" and hereby made part of this Agreement):
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

Use of the funds by the Contractor for any other purpose must be approved by the UCEDA in advance of expenditure.

4. The Contractor shall make all expenditures of the funds received pursuant to this Agreement within one hundred twenty (120) days of the Award Date.
5. The Contractor shall provide the following information upon execution of this agreement and at least once per year for two years following completion of the term of this Agreement, upon written request from UCEDA, as part of the program reporting requirements:
 - a. Current roster of all W-2 employees, indicating status for each employee (full-time, part-time, temporary/seasonal) and average weekly hours worked for each employee
 - b. Current hourly wage for each employee and whether each employee receives paid benefits
 - c. Household size, income, and demographics for each employee
 - d. Statement indicating progress toward completion of project and achievement of measurable outcomes that were identified in Contractor's Program Application

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The UCEDA, through the Program, shall pay to the Contractor a **not-to-exceed amount** of **THIRTY-FIVE THOUSAND AND 00/100 (\$35,000.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend Contractor's own funds, consistent with Contractor's commitment of funds as documented in the Program Application, prior to completion of the Term of this Agreement.
3. 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 fifth (5th) of each month for the previous month's expenditures. Invoices shall identify any Contractor funds expended in addition to the amount to be reimbursed, which shall be considered toward Contractor's fulfillment of commitment of funds as documented in the Program Application.
3. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories listed as follows, as set forth in Schedule D:
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

In the event the Contractor wishes to seek reimbursement for an expenditure that does not fall in one of the categories listed in this Paragraph 3, the Contractor must first obtain written consent from UCEDA prior to including such expenditure on any reimbursement invoice.

4. With each invoice, the Contractor shall tender receipts, reports and notes to the UCEDA sufficient for the UCEDA to determine that the Contractor expended the funds in accordance with this Agreement. All invoices, deliverable reports, receipts and notes shall be delivered to UCEDA on or before the fifth (5th) 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 a claim to the County showing its intent to disburse funds to the Contractor, pursuant to County Contract 2022-00000303. Upon the County's approval of the disbursement, the UCEDA shall remit payment to the Contractor within five (5) business days.
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.

SCHEDULE D

PROGRAM APPLICATION INSTRUCTIONS

Applicants **MUST** provide clear, complete details about their request for funding assistance. Please only apply once you have developed a well-thought out plan that clearly describes your need and how/why your proposed plan will meet this need. Please include ALL supporting documentation and evidence. Please use complete sentences. One word answers will not be considered a complete response. Applications will be scored based on need, connection to covid, clear budget, business activity viability, and measurable impact.

Accepting Applications: October 31, 2022

Minimum Request: \$5,000

Maximum Request: \$35,000

Program Description: Up to \$35,000 for businesses located in Ulster County with 25 or fewer employees at the time of application. Funding is meant to spur innovation and adaptation to the new reality of economic life with a highly contagious virus. The fund will provide reimbursement of up to 100% of eligible project costs. All projects must be located in Ulster County, New York

Eligible Applicants Must Meet ALL of the following criteria:

- Your primary business location must be in Ulster County, NY.
- Your business must be a sole proprietorship, partnership, corporation, Limited Liability Company or other legal form of business. Applicants who did not establish their business in New York State must provide a DBA or incorporation paperwork upon award.
- Your business must have 25 or fewer employees at the time of application.
- Must provide personal tax returns from all owners with greater than or equal to 20% ownership
- Business must maintain a separate bank account for business related expenses (cannot co-mingle business and personal expenses)

Other Application Information:

Please only select majority-, woman-, or veteran-owned if more than 50% of the business is owned by an individual or individuals who identify as such. Formal NYS paperwork is not required.

For questions 27-29, please provide a detailed narrative - even if it's repetitive! The scoring committee will be evaluating applications based on a clear need, clear project scope, clear budget, clear impact, and a clear covid connection.

For file uploads, please label your file **CLEARLY**. Business name **MUST** be included. If your file is not labeled clearly, your application may be marked incomplete.

Not for profit businesses that qualify for tax exempt status under section 501c3 of the Internal Revenue Code are **ELIGIBLE** and must complete section 4.

Think ahead about your expenses for next year! This funding does NOT reimburse anything purchased PRIOR to the award date which is expected to be in Q1 of 2023. Upon award, you will be given approval to begin making eligible purchases. Your award term is 120 days from date of award. Expenses made after your contract expiration will not be eligible for consideration.

Eligible Use of Funds:

Eligible expenses include rent, business mortgage payments, furniture, fixtures, equipment, operating expenses, and working capital that will prevent, prepare for, and respond to the impacts of the coronavirus pandemic.

Expenses incurred must be for activities located in Ulster County.

Equipment

- Permanent machinery and equipment (installed equipment/machinery) - **must complete section 8 of application**
- Misc. business equipment
- Vehicles
- Computers/software

Operating Expenses (i.e. Working Capital)

- Payroll (must provide formal payroll documentation from a payroll processing system with reimbursement request)
- Rent (must provide signed copy of lease agreement upon award)
- Utilities (bill submitted must match Ulster County business address)
- Supplies
- Inventory

Fixed Assets

Awards and disbursement of funds are contingent on receiving necessary approvals. If approvals are not received prior to contract end date the award will be rescinded and reimbursement will not be given.

Please complete section 8 of the application in its entirety to be considered.

- Property purchases, including soft costs*
- New building construction*
- Exterior building renovations, including soft costs*
- Signage*
- Interior renovations*

Other Eligible Expenses

- Daycare (only eligible where necessary for owner or employees to continue working)
- Financing Fees
- Loan application/closing fees and interest payments

- Bank charges/fees
- Closing costs

Ineligible expenses

- Owner's payroll or draw (direct payments to owner outside of payroll system)
- Advanced payments of any kind (only payments where goods/services have been provided are eligible).
- Any expense incurred before the award date (see contract) or after contract end date is ineligible.
- Taxes of any kind (property tax, income tax, payroll tax, sales tax, occupancy tax, etc.) are ineligible.
- Franchise fees and loan payments that are NOT mortgage payments (ie: business loans)

Funds will be provided as a reimbursement for eligible expenses. Eligible expenses must be incurred after award, and within 120 days of award.

Reimbursement Procedures

Funds shall not be provided in advance of project completion or full payment for the project by the business. Once the applicant provides verification that the work has been completed and that all vendors have been paid in full, reimbursement will be processed.

Applicants must document project expenditures. Proof of payment to the contractor/vendor is required in the form of an invoice and canceled check or credit card statement. Cash payments are not an acceptable form of payment and cannot be reimbursed.

Only those costs deemed to be reasonable and appropriate to complete the project which was approved and agreed upon will be reimbursed. Applicants may be required to supply additional information.

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 **SADIE'S BABIES, LLC DBA: THE LITTLE GYM OF KINGSTON**, a Limited Liability Corporation with principal offices at 470 Kings Mall Court, Kingston, New York 12401 (the “**Contractor**”), (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-19 Local Fiscal Recovery Fund (the “CLFRF”), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of the Coronavirus Disease 2019 (“COVID-19”) in their communities; and

WHEREAS, Ulster County, as a CLFRF recipient, desires to utilize a portion of these ARPA funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to Ulster County based small businesses; and

WHEREAS, the County has made a portion of the ARPA funds available to help small businesses throughout New York State to safely reopen and restate their local economies in the wake of the COVID-19 pandemic; and

WHEREAS, the County allocated an amount not to exceed ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS (the “County ARPA Funds”); and

WHEREAS, the County entered into an Agreement with the UCEDA (County Contract No. 2022-00000303) to engage the UCEDA as a sub-recipient of the County ARPA Funds; and

WHEREAS, the UCEDA administers the Ulster County CARES II Small Business Assistance Program (the “Program”), which is a business relief response program created as a result of the County ARPA 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 may apply to the 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 Program, and the UCEDA has determined that the Contractor qualifies for assistance through the Program, for the purpose of rebuilding the Contractor’s business following the COVID-19 pandemic; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance through the 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 April 12, 2023** (the “Award Date”) **and ending August 10, 2023**.

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 **THIRTY-TWO THOUSAND FIVE HUNDRED AND SIXTY-NINE AND 00/100 (\$32,569.00) 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:

Sadie's Babies, LLC dba: The Little Gym of Kingston
470 Kings Mall Court
Kingston, New York 12401

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, 5th 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.

******Signature page follows******

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: _____

Sadie's Babies, LLC dba: The Little Gym of Kingston

By: _____
NAME: _____
TITLE: _____
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

1. In response to the COVID-19 pandemic, the Contractor shall use the funds it receives to assist and rebuild the Contractor's business.
2. The Contractor shall use the funds it receives in a manner consistent with the "Proposed Use of Funds" described in the Contractor's Program Application (which is attached hereto as Schedule "D" and hereby made part of this Agreement).
3. The Contractor shall use the funds it receives pursuant to this Agreement in the following categories, as set forth in the Program Application Instructions (which is attached hereto as Schedule "E" and hereby made part of this Agreement):
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

Use of the funds by the Contractor for any other purpose must be approved by the UCEDA in advance of expenditure.

4. The Contractor shall make all expenditures of the funds received pursuant to this Agreement within one hundred twenty (120) days of the Award Date.
5. The Contractor shall provide the following information upon execution of this agreement and at least once per year for two years following completion of the term of this Agreement, upon written request from UCEDA, as part of the program reporting requirements:
 - a. Current roster of all W-2 employees, indicating status for each employee (full-time, part-time, temporary/seasonal) and average weekly hours worked for each employee
 - b. Current hourly wage for each employee and whether each employee receives paid benefits
 - c. Household size, income, and demographics for each employee
 - d. Statement indicating progress toward completion of project and achievement of measurable outcomes that were identified in Contractor's Program Application

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The UCEDA, through the Program, shall pay to the Contractor a **not-to-exceed amount** of **THIRTY-TWO THOUSAND FIVE HUNDRED AND SIXTY-NINE AND 00/100 (\$32,569.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend Contractor's own funds, consistent with Contractor's commitment of funds as documented in the Program Application, prior to completion of the Term of this Agreement.
3. 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 fifth (5th) of each month for the previous month's expenditures. Invoices shall identify any Contractor funds expended in addition to the amount to be reimbursed, which shall be considered toward Contractor's fulfillment of commitment of funds as documented in the Program Application.
3. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories listed as follows, as set forth in Schedule D:
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

In the event the Contractor wishes to seek reimbursement for an expenditure that does not fall in one of the categories listed in this Paragraph 3, the Contractor must first obtain written consent from UCEDA prior to including such expenditure on any reimbursement invoice.

4. With each invoice, the Contractor shall tender receipts, reports and notes to the UCEDA sufficient for the UCEDA to determine that the Contractor expended the funds in accordance with this Agreement. All invoices, deliverable reports, receipts and notes shall be delivered to UCEDA on or before the fifth (5th) 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 a claim to the County showing its intent to disburse funds to the Contractor, pursuant to County Contract 2022-00000303. Upon the County's approval of the disbursement, the UCEDA shall remit payment to the Contractor within five (5) business days.
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.

SCHEDULE D

PROGRAM APPLICATION INSTRUCTIONS

Applicants **MUST** provide clear, complete details about their request for funding assistance. Please only apply once you have developed a well-thought out plan that clearly describes your need and how/why your proposed plan will meet this need. Please include ALL supporting documentation and evidence. Please use complete sentences. One word answers will not be considered a complete response. Applications will be scored based on need, connection to covid, clear budget, business activity viability, and measurable impact.

Accepting Applications: October 31, 2022

Minimum Request: \$5,000

Maximum Request: \$35,000

Program Description: Up to \$35,000 for businesses located in Ulster County with 25 or fewer employees at the time of application. Funding is meant to spur innovation and adaptation to the new reality of economic life with a highly contagious virus. The fund will provide reimbursement of up to 100% of eligible project costs. All projects must be located in Ulster County, New York

Eligible Applicants Must Meet ALL of the following criteria:

- Your primary business location must be in Ulster County, NY.
- Your business must be a sole proprietorship, partnership, corporation, Limited Liability Company or other legal form of business. Applicants who did not establish their business in New York State must provide a DBA or incorporation paperwork upon award.
- Your business must have 25 or fewer employees at the time of application.
- Must provide personal tax returns from all owners with greater than or equal to 20% ownership
- Business must maintain a separate bank account for business related expenses (cannot co-mingle business and personal expenses)

Other Application Information:

Please only select majority-, woman-, or veteran-owned if more than 50% of the business is owned by an individual or individuals who identify as such. Formal NYS paperwork is not required.

For questions 27-29, please provide a detailed narrative - even if it's repetitive! The scoring committee will be evaluating applications based on a clear need, clear project scope, clear budget, clear impact, and a clear covid connection.

For file uploads, please label your file **CLEARLY**. Business name **MUST** be included. If your file is not labeled clearly, your application may be marked incomplete.

Not for profit businesses that qualify for tax exempt status under section 501c3 of the Internal Revenue Code are **ELIGIBLE** and must complete section 4.

Think ahead about your expenses for next year! This funding does NOT reimburse anything purchased PRIOR to the award date which is expected to be in Q1 of 2023. Upon award, you will be given approval to begin making eligible purchases. Your award term is 120 days from date of award. Expenses made after your contract expiration will not be eligible for consideration.

Eligible Use of Funds:

Eligible expenses include rent, business mortgage payments, furniture, fixtures, equipment, operating expenses, and working capital that will prevent, prepare for, and respond to the impacts of the coronavirus pandemic.

Expenses incurred must be for activities located in Ulster County.

Equipment

- Permanent machinery and equipment (installed equipment/machinery) - **must complete section 8 of application**
- Misc. business equipment
- Vehicles
- Computers/software

Operating Expenses (i.e. Working Capital)

- Payroll (must provide formal payroll documentation from a payroll processing system with reimbursement request)
- Rent (must provide signed copy of lease agreement upon award)
- Utilities (bill submitted must match Ulster County business address)
- Supplies
- Inventory

Fixed Assets

Awards and disbursement of funds are contingent on receiving necessary approvals. If approvals are not received prior to contract end date the award will be rescinded and reimbursement will not be given.

Please complete section 8 of the application in its entirety to be considered.

- Property purchases, including soft costs*
- New building construction*
- Exterior building renovations, including soft costs*
- Signage*
- Interior renovations*

Other Eligible Expenses

- Daycare (only eligible where necessary for owner or employees to continue working)
- Financing Fees
- Loan application/closing fees and interest payments

- Bank charges/fees
- Closing costs

Ineligible expenses

- Owner's payroll or draw (direct payments to owner outside of payroll system)
- Advanced payments of any kind (only payments where goods/services have been provided are eligible).
- Any expense incurred before the award date (see contract) or after contract end date is ineligible.
- Taxes of any kind (property tax, income tax, payroll tax, sales tax, occupancy tax, etc.) are ineligible.
- Franchise fees and loan payments that are NOT mortgage payments (ie: business loans)

Funds will be provided as a reimbursement for eligible expenses. Eligible expenses must be incurred after award, and within 120 days of award.

Reimbursement Procedures

Funds shall not be provided in advance of project completion or full payment for the project by the business. Once the applicant provides verification that the work has been completed and that all vendors have been paid in full, reimbursement will be processed.

Applicants must document project expenditures. Proof of payment to the contractor/vendor is required in the form of an invoice and canceled check or credit card statement. Cash payments are not an acceptable form of payment and cannot be reimbursed.

Only those costs deemed to be reasonable and appropriate to complete the project which was approved and agreed upon will be reimbursed. Applicants may be required to supply additional information.

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 **MINARD FARMS BEVERAGE COMPANY INC**, a S-Corp with principal offices at 59 Hurds Road, Clintondale, New York 12515 (the “**Contractor**”), (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-19 Local Fiscal Recovery Fund (the “**CLFRF**”), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of the Coronavirus Disease 2019 (“**COVID-19**”) in their communities; and

WHEREAS, Ulster County, as a CLFRF recipient, desires to utilize a portion of these ARPA funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to Ulster County based small businesses; and

WHEREAS, the County has made a portion of the ARPA funds available to help small businesses throughout New York State to safely reopen and restate their local economies in the wake of the COVID-19 pandemic; and

WHEREAS, the County allocated an amount not to exceed ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS (the “**County ARPA Funds**”); and

WHEREAS, the County entered into an Agreement with the UCEDA (County Contract No. 2022-00000303) to engage the UCEDA as a sub-recipient of the County ARPA Funds; and

WHEREAS, the UCEDA administers the Ulster County CARES II Small Business Assistance Program (the “**Program**”), which is a business relief response program created as a result of the County ARPA 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 may apply to the 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 Program, and the UCEDA has determined that the Contractor qualifies for assistance through the Program, for the purpose of rebuilding the Contractor’s business following the COVID-19 pandemic; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance through the 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 April 12, 2023** (the “Award Date”) **and ending August 10, 2023**.

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 **FIVE THOUSAND AND 00/100 (\$5,000.00) 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:
Minard Farms Beverage Company Inc
59 Hurds Road
Clintondale, New York 12515

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, 5th 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.

****Signature page follows****

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: _____

Minard Farms Beverage Company Inc

By: _____
NAME: _____
TITLE: _____
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

1. In response to the COVID-19 pandemic, the Contractor shall use the funds it receives to assist and rebuild the Contractor's business.
2. The Contractor shall use the funds it receives in a manner consistent with the "Proposed Use of Funds" described in the Contractor's Program Application (which is attached hereto as Schedule "D" and hereby made part of this Agreement).
3. The Contractor shall use the funds it receives pursuant to this Agreement in the following categories, as set forth in the Program Application Instructions (which is attached hereto as Schedule "E" and hereby made part of this Agreement):
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

Use of the funds by the Contractor for any other purpose must be approved by the UCEDA in advance of expenditure.

4. The Contractor shall make all expenditures of the funds received pursuant to this Agreement within one hundred twenty (120) days of the Award Date.
5. The Contractor shall provide the following information upon execution of this agreement and at least once per year for two years following completion of the term of this Agreement, upon written request from UCEDA, as part of the program reporting requirements:
 - a. Current roster of all W-2 employees, indicating status for each employee (full-time, part-time, temporary/seasonal) and average weekly hours worked for each employee
 - b. Current hourly wage for each employee and whether each employee receives paid benefits
 - c. Household size, income, and demographics for each employee
 - d. Statement indicating progress toward completion of project and achievement of measurable outcomes that were identified in Contractor's Program Application

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The UCEDA, through the Program, shall pay to the Contractor a **not-to-exceed amount of FIVE THOUSAND AND 00/100 (\$5,000.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend Contractor's own funds, consistent with Contractor's commitment of funds as documented in the Program Application, prior to completion of the Term of this Agreement.
3. 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 fifth (5th) of each month for the previous month's expenditures. Invoices shall identify any Contractor funds expended in addition to the amount to be reimbursed, which shall be considered toward Contractor's fulfillment of commitment of funds as documented in the Program Application.
3. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories listed as follows, as set forth in Schedule D:
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

In the event the Contractor wishes to seek reimbursement for an expenditure that does not fall in one of the categories listed in this Paragraph 3, the Contractor must first obtain written consent from UCEDA prior to including such expenditure on any reimbursement invoice.

4. With each invoice, the Contractor shall tender receipts, reports and notes to the UCEDA sufficient for the UCEDA to determine that the Contractor expended the funds in accordance with this Agreement. All invoices, deliverable reports, receipts and notes shall be delivered to UCEDA on or before the fifth (5th) 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 a claim to the County showing its intent to disburse funds to the Contractor, pursuant to County Contract 2022-00000303. Upon the County's approval of the disbursement, the UCEDA shall remit payment to the Contractor within five (5) business days.
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.

SCHEDULE D

PROGRAM APPLICATION INSTRUCTIONS

Applicants **MUST** provide clear, complete details about their request for funding assistance. Please only apply once you have developed a well-thought out plan that clearly describes your need and how/why your proposed plan will meet this need. Please include ALL supporting documentation and evidence. Please use complete sentences. One word answers will not be considered a complete response. Applications will be scored based on need, connection to covid, clear budget, business activity viability, and measurable impact.

Accepting Applications: October 31, 2022

Minimum Request: \$5,000

Maximum Request: \$35,000

Program Description: Up to \$35,000 for businesses located in Ulster County with 25 or fewer employees at the time of application. Funding is meant to spur innovation and adaptation to the new reality of economic life with a highly contagious virus. The fund will provide reimbursement of up to 100% of eligible project costs. All projects must be located in Ulster County, New York

Eligible Applicants Must Meet ALL of the following criteria:

- Your primary business location must be in Ulster County, NY.
- Your business must be a sole proprietorship, partnership, corporation, Limited Liability Company or other legal form of business. Applicants who did not establish their business in New York State must provide a DBA or incorporation paperwork upon award.
- Your business must have 25 or fewer employees at the time of application.
- Must provide personal tax returns from all owners with greater than or equal to 20% ownership
- Business must maintain a separate bank account for business related expenses (cannot co-mingle business and personal expenses)

Other Application Information:

Please only select majority-, woman-, or veteran-owned if more than 50% of the business is owned by an individual or individuals who identify as such. Formal NYS paperwork is not required.

For questions 27-29, please provide a detailed narrative - even if it's repetitive! The scoring committee will be evaluating applications based on a clear need, clear project scope, clear budget, clear impact, and a clear covid connection.

For file uploads, please label your file **CLEARLY**. Business name **MUST** be included. If your file is not labeled clearly, your application may be marked incomplete.

Not for profit businesses that qualify for tax exempt status under section 501c3 of the Internal Revenue Code are **ELIGIBLE** and must complete section 4.

Think ahead about your expenses for next year! This funding does NOT reimburse anything purchased PRIOR to the award date which is expected to be in Q1 of 2023. Upon award, you will be given approval to begin making eligible purchases. Your award term is 120 days from date of award. Expenses made after your contract expiration will not be eligible for consideration.

Eligible Use of Funds:

Eligible expenses include rent, business mortgage payments, furniture, fixtures, equipment, operating expenses, and working capital that will prevent, prepare for, and respond to the impacts of the coronavirus pandemic.

Expenses incurred must be for activities located in Ulster County.

Equipment

- Permanent machinery and equipment (installed equipment/machinery) - **must complete section 8 of application**
- Misc. business equipment
- Vehicles
- Computers/software

Operating Expenses (i.e. Working Capital)

- Payroll (must provide formal payroll documentation from a payroll processing system with reimbursement request)
- Rent (must provide signed copy of lease agreement upon award)
- Utilities (bill submitted must match Ulster County business address)
- Supplies
- Inventory

Fixed Assets

Awards and disbursement of funds are contingent on receiving necessary approvals. If approvals are not received prior to contract end date the award will be rescinded and reimbursement will not be given.

Please complete section 8 of the application in its entirety to be considered.

- Property purchases, including soft costs*
- New building construction*
- Exterior building renovations, including soft costs*
- Signage*
- Interior renovations*

Other Eligible Expenses

- Daycare (only eligible where necessary for owner or employees to continue working)
- Financing Fees
- Loan application/closing fees and interest payments

- Bank charges/fees
- Closing costs

Ineligible expenses

- Owner's payroll or draw (direct payments to owner outside of payroll system)
- Advanced payments of any kind (only payments where goods/services have been provided are eligible).
- Any expense incurred before the award date (see contract) or after contract end date is ineligible.
- Taxes of any kind (property tax, income tax, payroll tax, sales tax, occupancy tax, etc.) are ineligible.
- Franchise fees and loan payments that are NOT mortgage payments (ie: business loans)

Funds will be provided as a reimbursement for eligible expenses. Eligible expenses must be incurred after award, and within 120 days of award.

Reimbursement Procedures

Funds shall not be provided in advance of project completion or full payment for the project by the business. Once the applicant provides verification that the work has been completed and that all vendors have been paid in full, reimbursement will be processed.

Applicants must document project expenditures. Proof of payment to the contractor/vendor is required in the form of an invoice and canceled check or credit card statement. Cash payments are not an acceptable form of payment and cannot be reimbursed.

Only those costs deemed to be reasonable and appropriate to complete the project which was approved and agreed upon will be reimbursed. Applicants may be required to supply additional information.

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 **EARLY CHILDHOOD VISIONARY CENTER, LLC**, a Limited Liability Corporation with principal offices at 53 Westwood Ave., Ellenville, New York 12428 (the “**Contractor**”), (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-19 Local Fiscal Recovery Fund (the “CLFRF”), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of the Coronavirus Disease 2019 (“COVID-19”) in their communities; and

WHEREAS, Ulster County, as a CLFRF recipient, desires to utilize a portion of these ARPA funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to Ulster County based small businesses; and

WHEREAS, the County has made a portion of the ARPA funds available to help small businesses throughout New York State to safely reopen and restate their local economies in the wake of the COVID-19 pandemic; and

WHEREAS, the County allocated an amount not to exceed ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS (the “County ARPA Funds”); and

WHEREAS, the County entered into an Agreement with the UCEDA (County Contract No. 2022-00000303) to engage the UCEDA as a sub-recipient of the County ARPA Funds; and

WHEREAS, the UCEDA administers the Ulster County CARES II Small Business Assistance Program (the “Program”), which is a business relief response program created as a result of the County ARPA 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 may apply to the 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 Program, and the UCEDA has determined that the Contractor qualifies for assistance through the Program, for the purpose of rebuilding the Contractor’s business following the COVID-19 pandemic; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance through the 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 April 12, 2023** (the “Award Date”) **and ending August 10, 2023**.

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 **THIRTY-FIVE THOUSAND AND 00/100 (\$35,000.00) 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:
Early Childhood Visionary Center, LLC
53 Westwood Ave.
Ellenville, New York 12428

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, 5th 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.

****Signature page follows****

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: _____

Early Childhood Visionary Center, LLC

By: _____
NAME: _____
TITLE: _____
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

1. In response to the COVID-19 pandemic, the Contractor shall use the funds it receives to assist and rebuild the Contractor's business.
2. The Contractor shall use the funds it receives in a manner consistent with the "Proposed Use of Funds" described in the Contractor's Program Application (which is attached hereto as Schedule "D" and hereby made part of this Agreement).
3. The Contractor shall use the funds it receives pursuant to this Agreement in the following categories, as set forth in the Program Application Instructions (which is attached hereto as Schedule "E" and hereby made part of this Agreement):
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

Use of the funds by the Contractor for any other purpose must be approved by the UCEDA in advance of expenditure.

4. The Contractor shall make all expenditures of the funds received pursuant to this Agreement within one hundred twenty (120) days of the Award Date.
5. The Contractor shall provide the following information upon execution of this agreement and at least once per year for two years following completion of the term of this Agreement, upon written request from UCEDA, as part of the program reporting requirements:
 - a. Current roster of all W-2 employees, indicating status for each employee (full-time, part-time, temporary/seasonal) and average weekly hours worked for each employee
 - b. Current hourly wage for each employee and whether each employee receives paid benefits
 - c. Household size, income, and demographics for each employee
 - d. Statement indicating progress toward completion of project and achievement of measurable outcomes that were identified in Contractor's Program Application

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The UCEDA, through the Program, shall pay to the Contractor a **not-to-exceed amount** of **THIRTY-FIVE THOUSAND AND 00/100 (\$35,000.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend Contractor's own funds, consistent with Contractor's commitment of funds as documented in the Program Application, prior to completion of the Term of this Agreement.
3. 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 fifth (5th) of each month for the previous month's expenditures. Invoices shall identify any Contractor funds expended in addition to the amount to be reimbursed, which shall be considered toward Contractor's fulfillment of commitment of funds as documented in the Program Application.
3. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories listed as follows, as set forth in Schedule D:
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

In the event the Contractor wishes to seek reimbursement for an expenditure that does not fall in one of the categories listed in this Paragraph 3, the Contractor must first obtain written consent from UCEDA prior to including such expenditure on any reimbursement invoice.

4. With each invoice, the Contractor shall tender receipts, reports and notes to the UCEDA sufficient for the UCEDA to determine that the Contractor expended the funds in accordance with this Agreement. All invoices, deliverable reports, receipts and notes shall be delivered to UCEDA on or before the fifth (5th) 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 a claim to the County showing its intent to disburse funds to the Contractor, pursuant to County Contract 2022-00000303. Upon the County's approval of the disbursement, the UCEDA shall remit payment to the Contractor within five (5) business days.
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.

SCHEDULE D

PROGRAM APPLICATION INSTRUCTIONS

Applicants **MUST** provide clear, complete details about their request for funding assistance. Please only apply once you have developed a well-thought out plan that clearly describes your need and how/why your proposed plan will meet this need. Please include ALL supporting documentation and evidence. Please use complete sentences. One word answers will not be considered a complete response. Applications will be scored based on need, connection to covid, clear budget, business activity viability, and measurable impact.

Accepting Applications: October 31, 2022

Minimum Request: \$5,000

Maximum Request: \$35,000

Program Description: Up to \$35,000 for businesses located in Ulster County with 25 or fewer employees at the time of application. Funding is meant to spur innovation and adaptation to the new reality of economic life with a highly contagious virus. The fund will provide reimbursement of up to 100% of eligible project costs. All projects must be located in Ulster County, New York

Eligible Applicants Must Meet ALL of the following criteria:

- Your primary business location must be in Ulster County, NY.
- Your business must be a sole proprietorship, partnership, corporation, Limited Liability Company or other legal form of business. Applicants who did not establish their business in New York State must provide a DBA or incorporation paperwork upon award.
- Your business must have 25 or fewer employees at the time of application.
- Must provide personal tax returns from all owners with greater than or equal to 20% ownership
- Business must maintain a separate bank account for business related expenses (cannot co-mingle business and personal expenses)

Other Application Information:

Please only select majority-, woman-, or veteran-owned if more than 50% of the business is owned by an individual or individuals who identify as such. Formal NYS paperwork is not required.

For questions 27-29, please provide a detailed narrative - even if it's repetitive! The scoring committee will be evaluating applications based on a clear need, clear project scope, clear budget, clear impact, and a clear covid connection.

For file uploads, please label your file **CLEARLY**. Business name **MUST** be included. If your file is not labeled clearly, your application may be marked incomplete.

Not for profit businesses that qualify for tax exempt status under section 501c3 of the Internal Revenue Code are **ELIGIBLE** and must complete section 4.

Think ahead about your expenses for next year! This funding does NOT reimburse anything purchased PRIOR to the award date which is expected to be in Q1 of 2023. Upon award, you will be given approval to begin making eligible purchases. Your award term is 120 days from date of award. Expenses made after your contract expiration will not be eligible for consideration.

Eligible Use of Funds:

Eligible expenses include rent, business mortgage payments, furniture, fixtures, equipment, operating expenses, and working capital that will prevent, prepare for, and respond to the impacts of the coronavirus pandemic.

Expenses incurred must be for activities located in Ulster County.

Equipment

- Permanent machinery and equipment (installed equipment/machinery) - **must complete section 8 of application**
- Misc. business equipment
- Vehicles
- Computers/software

Operating Expenses (i.e. Working Capital)

- Payroll (must provide formal payroll documentation from a payroll processing system with reimbursement request)
- Rent (must provide signed copy of lease agreement upon award)
- Utilities (bill submitted must match Ulster County business address)
- Supplies
- Inventory

Fixed Assets

Awards and disbursement of funds are contingent on receiving necessary approvals. If approvals are not received prior to contract end date the award will be rescinded and reimbursement will not be given.

Please complete section 8 of the application in its entirety to be considered.

- Property purchases, including soft costs*
- New building construction*
- Exterior building renovations, including soft costs*
- Signage*
- Interior renovations*

Other Eligible Expenses

- Daycare (only eligible where necessary for owner or employees to continue working)
- Financing Fees
- Loan application/closing fees and interest payments

- Bank charges/fees
- Closing costs

Ineligible expenses

- Owner's payroll or draw (direct payments to owner outside of payroll system)
- Advanced payments of any kind (only payments where goods/services have been provided are eligible).
- Any expense incurred before the award date (see contract) or after contract end date is ineligible.
- Taxes of any kind (property tax, income tax, payroll tax, sales tax, occupancy tax, etc.) are ineligible.
- Franchise fees and loan payments that are NOT mortgage payments (ie: business loans)

Funds will be provided as a reimbursement for eligible expenses. Eligible expenses must be incurred after award, and within 120 days of award.

Reimbursement Procedures

Funds shall not be provided in advance of project completion or full payment for the project by the business. Once the applicant provides verification that the work has been completed and that all vendors have been paid in full, reimbursement will be processed.

Applicants must document project expenditures. Proof of payment to the contractor/vendor is required in the form of an invoice and canceled check or credit card statement. Cash payments are not an acceptable form of payment and cannot be reimbursed.

Only those costs deemed to be reasonable and appropriate to complete the project which was approved and agreed upon will be reimbursed. Applicants may be required to supply additional information.

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 **HUDSY LLC**, a Limited Liability Corporation with principal offices at 26 Parkcrest Dr., Rosendale, New York 12472 (the “**Contractor**”), (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-19 Local Fiscal Recovery Fund (the “CLFRF”), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of the Coronavirus Disease 2019 (“COVID-19”) in their communities; and

WHEREAS, Ulster County, as a CLFRF recipient, desires to utilize a portion of these ARPA funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to Ulster County based small businesses; and

WHEREAS, the County has made a portion of the ARPA funds available to help small businesses throughout New York State to safely reopen and restate their local economies in the wake of the COVID-19 pandemic; and

WHEREAS, the County allocated an amount not to exceed ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS (the “County ARPA Funds”); and

WHEREAS, the County entered into an Agreement with the UCEDA (County Contract No. 2022-00000303) to engage the UCEDA as a sub-recipient of the County ARPA Funds; and

WHEREAS, the UCEDA administers the Ulster County CARES II Small Business Assistance Program (the “Program”), which is a business relief response program created as a result of the County ARPA 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 may apply to the 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 Program, and the UCEDA has determined that the Contractor qualifies for assistance through the Program, for the purpose of rebuilding the Contractor’s business following the COVID-19 pandemic; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance through the 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 April 12, 2023** (the “Award Date”) **and ending August 10, 2023**.

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 **THIRTY-FOUR THOUSAND SIX HUNDRED AND SIXTY AND 00/100 (\$34,660.00) 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:
HUDSY LLC
26 Parkcrest Dr.
Rosendale, New York 12472

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, 5th 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.

****Signature page follows****

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: _____

HUDSY LLC

By: _____
NAME: _____
TITLE: _____
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

1. In response to the COVID-19 pandemic, the Contractor shall use the funds it receives to assist and rebuild the Contractor's business.
2. The Contractor shall use the funds it receives in a manner consistent with the "Proposed Use of Funds" described in the Contractor's Program Application (which is attached hereto as Schedule "D" and hereby made part of this Agreement).
3. The Contractor shall use the funds it receives pursuant to this Agreement in the following categories, as set forth in the Program Application Instructions (which is attached hereto as Schedule "E" and hereby made part of this Agreement):
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

Use of the funds by the Contractor for any other purpose must be approved by the UCEDA in advance of expenditure.

4. The Contractor shall make all expenditures of the funds received pursuant to this Agreement within one hundred twenty (120) days of the Award Date.
5. The Contractor shall provide the following information upon execution of this agreement and at least once per year for two years following completion of the term of this Agreement, upon written request from UCEDA, as part of the program reporting requirements:
 - a. Current roster of all W-2 employees, indicating status for each employee (full-time, part-time, temporary/seasonal) and average weekly hours worked for each employee
 - b. Current hourly wage for each employee and whether each employee receives paid benefits
 - c. Household size, income, and demographics for each employee
 - d. Statement indicating progress toward completion of project and achievement of measurable outcomes that were identified in Contractor's Program Application

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The UCEDA, through the Program, shall pay to the Contractor a **not-to-exceed amount** of **THIRTY-FOUR THOUSAND SIX HUNDRED AND SIXTY AND 00/100 (\$34,660.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend Contractor's own funds, consistent with Contractor's commitment of funds as documented in the Program Application, prior to completion of the Term of this Agreement.
3. 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 fifth (5th) of each month for the previous month's expenditures. Invoices shall identify any Contractor funds expended in addition to the amount to be reimbursed, which shall be considered toward Contractor's fulfillment of commitment of funds as documented in the Program Application.
3. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories listed as follows, as set forth in Schedule D:
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

In the event the Contractor wishes to seek reimbursement for an expenditure that does not fall in one of the categories listed in this Paragraph 3, the Contractor must first obtain written consent from UCEDA prior to including such expenditure on any reimbursement invoice.

4. With each invoice, the Contractor shall tender receipts, reports and notes to the UCEDA sufficient for the UCEDA to determine that the Contractor expended the funds in accordance with this Agreement. All invoices, deliverable reports, receipts and notes shall be delivered to UCEDA on or before the fifth (5th) 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 a claim to the County showing its intent to disburse funds to the Contractor, pursuant to County Contract 2022-00000303. Upon the County's approval of the disbursement, the UCEDA shall remit payment to the Contractor within five (5) business days.
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.

SCHEDULE D

PROGRAM APPLICATION INSTRUCTIONS

Applicants **MUST** provide clear, complete details about their request for funding assistance. Please only apply once you have developed a well-thought out plan that clearly describes your need and how/why your proposed plan will meet this need. Please include ALL supporting documentation and evidence. Please use complete sentences. One word answers will not be considered a complete response. Applications will be scored based on need, connection to covid, clear budget, business activity viability, and measurable impact.

Accepting Applications: October 31, 2022

Minimum Request: \$5,000

Maximum Request: \$35,000

Program Description: Up to \$35,000 for businesses located in Ulster County with 25 or fewer employees at the time of application. Funding is meant to spur innovation and adaptation to the new reality of economic life with a highly contagious virus. The fund will provide reimbursement of up to 100% of eligible project costs. All projects must be located in Ulster County, New York

Eligible Applicants Must Meet ALL of the following criteria:

- Your primary business location must be in Ulster County, NY.
- Your business must be a sole proprietorship, partnership, corporation, Limited Liability Company or other legal form of business. Applicants who did not establish their business in New York State must provide a DBA or incorporation paperwork upon award.
- Your business must have 25 or fewer employees at the time of application.
- Must provide personal tax returns from all owners with greater than or equal to 20% ownership
- Business must maintain a separate bank account for business related expenses (cannot co-mingle business and personal expenses)

Other Application Information:

Please only select majority-, woman-, or veteran-owned if more than 50% of the business is owned by an individual or individuals who identify as such. Formal NYS paperwork is not required.

For questions 27-29, please provide a detailed narrative - even if it's repetitive! The scoring committee will be evaluating applications based on a clear need, clear project scope, clear budget, clear impact, and a clear covid connection.

For file uploads, please label your file **CLEARLY**. Business name **MUST** be included. If your file is not labeled clearly, your application may be marked incomplete.

Not for profit businesses that qualify for tax exempt status under section 501c3 of the Internal Revenue Code are **ELIGIBLE** and must complete section 4.

Think ahead about your expenses for next year! This funding does NOT reimburse anything purchased PRIOR to the award date which is expected to be in Q1 of 2023. Upon award, you will be given approval to begin making eligible purchases. Your award term is 120 days from date of award. Expenses made after your contract expiration will not be eligible for consideration.

Eligible Use of Funds:

Eligible expenses include rent, business mortgage payments, furniture, fixtures, equipment, operating expenses, and working capital that will prevent, prepare for, and respond to the impacts of the coronavirus pandemic.

Expenses incurred must be for activities located in Ulster County.

Equipment

- Permanent machinery and equipment (installed equipment/machinery) - **must complete section 8 of application**
- Misc. business equipment
- Vehicles
- Computers/software

Operating Expenses (i.e. Working Capital)

- Payroll (must provide formal payroll documentation from a payroll processing system with reimbursement request)
- Rent (must provide signed copy of lease agreement upon award)
- Utilities (bill submitted must match Ulster County business address)
- Supplies
- Inventory

Fixed Assets

Awards and disbursement of funds are contingent on receiving necessary approvals. If approvals are not received prior to contract end date the award will be rescinded and reimbursement will not be given.

Please complete section 8 of the application in its entirety to be considered.

- Property purchases, including soft costs*
- New building construction*
- Exterior building renovations, including soft costs*
- Signage*
- Interior renovations*

Other Eligible Expenses

- Daycare (only eligible where necessary for owner or employees to continue working)
- Financing Fees
- Loan application/closing fees and interest payments

- Bank charges/fees
- Closing costs

Ineligible expenses

- Owner's payroll or draw (direct payments to owner outside of payroll system)
- Advanced payments of any kind (only payments where goods/services have been provided are eligible).
- Any expense incurred before the award date (see contract) or after contract end date is ineligible.
- Taxes of any kind (property tax, income tax, payroll tax, sales tax, occupancy tax, etc.) are ineligible.
- Franchise fees and loan payments that are NOT mortgage payments (ie: business loans)

Funds will be provided as a reimbursement for eligible expenses. Eligible expenses must be incurred after award, and within 120 days of award.

Reimbursement Procedures

Funds shall not be provided in advance of project completion or full payment for the project by the business. Once the applicant provides verification that the work has been completed and that all vendors have been paid in full, reimbursement will be processed.

Applicants must document project expenditures. Proof of payment to the contractor/vendor is required in the form of an invoice and canceled check or credit card statement. Cash payments are not an acceptable form of payment and cannot be reimbursed.

Only those costs deemed to be reasonable and appropriate to complete the project which was approved and agreed upon will be reimbursed. Applicants may be required to supply additional information.

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 **AU MAS TURQUE LLC D/B/A MASA MIDTOWN**, a S-Corp with principal offices at 666 Broadway, Kingston, New York 12401 (the “**Contractor**”), (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-19 Local Fiscal Recovery Fund (the “**CLFRF**”), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of the Coronavirus Disease 2019 (“**COVID-19**”) in their communities; and

WHEREAS, Ulster County, as a CLFRF recipient, desires to utilize a portion of these ARPA funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to Ulster County based small businesses; and

WHEREAS, the County has made a portion of the ARPA funds available to help small businesses throughout New York State to safely reopen and restate their local economies in the wake of the COVID-19 pandemic; and

WHEREAS, the County allocated an amount not to exceed ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS (the “**County ARPA Funds**”); and

WHEREAS, the County entered into an Agreement with the UCEDA (County Contract No. 2022-00000303) to engage the UCEDA as a sub-recipient of the County ARPA Funds; and

WHEREAS, the UCEDA administers the Ulster County CARES II Small Business Assistance Program (the “**Program**”), which is a business relief response program created as a result of the County ARPA 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 may apply to the 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 Program, and the UCEDA has determined that the Contractor qualifies for assistance through the Program, for the purpose of rebuilding the Contractor’s business following the COVID-19 pandemic; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance through the 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 April 12, 2023** (the “Award Date”) **and ending August 10, 2023**.

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 **SEVEN THOUSAND NINE HUNDRED AND NINETY AND 00/100 (\$7,990.00) 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:

Au Mas Turque LLC d/b/a Masa Midtown
666 Broadway
Kingston, New York 12401

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, 5th 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.

****Signature page follows****

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: _____

Au Mas Turque LLC d/b/a Masa Midtown

By: _____
NAME: _____
TITLE: _____
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

1. In response to the COVID-19 pandemic, the Contractor shall use the funds it receives to assist and rebuild the Contractor's business.
2. The Contractor shall use the funds it receives in a manner consistent with the "Proposed Use of Funds" described in the Contractor's Program Application (which is attached hereto as Schedule "D" and hereby made part of this Agreement).
3. The Contractor shall use the funds it receives pursuant to this Agreement in the following categories, as set forth in the Program Application Instructions (which is attached hereto as Schedule "E" and hereby made part of this Agreement):
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

Use of the funds by the Contractor for any other purpose must be approved by the UCEDA in advance of expenditure.

4. The Contractor shall make all expenditures of the funds received pursuant to this Agreement within one hundred twenty (120) days of the Award Date.
5. The Contractor shall provide the following information upon execution of this agreement and at least once per year for two years following completion of the term of this Agreement, upon written request from UCEDA, as part of the program reporting requirements:
 - a. Current roster of all W-2 employees, indicating status for each employee (full-time, part-time, temporary/seasonal) and average weekly hours worked for each employee
 - b. Current hourly wage for each employee and whether each employee receives paid benefits
 - c. Household size, income, and demographics for each employee
 - d. Statement indicating progress toward completion of project and achievement of measurable outcomes that were identified in Contractor's Program Application

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The UCEDA, through the Program, shall pay to the Contractor a **not-to-exceed amount** of **SEVEN THOUSAND NINE HUNDRED AND NINETY AND 00/100 (\$7,990.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend Contractor's own funds, consistent with Contractor's commitment of funds as documented in the Program Application, prior to completion of the Term of this Agreement.
3. 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 fifth (5th) of each month for the previous month's expenditures. Invoices shall identify any Contractor funds expended in addition to the amount to be reimbursed, which shall be considered toward Contractor's fulfillment of commitment of funds as documented in the Program Application.
3. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories listed as follows, as set forth in Schedule D:
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

In the event the Contractor wishes to seek reimbursement for an expenditure that does not fall in one of the categories listed in this Paragraph 3, the Contractor must first obtain written consent from UCEDA prior to including such expenditure on any reimbursement invoice.

4. With each invoice, the Contractor shall tender receipts, reports and notes to the UCEDA sufficient for the UCEDA to determine that the Contractor expended the funds in accordance with this Agreement. All invoices, deliverable reports, receipts and notes shall be delivered to UCEDA on or before the fifth (5th) 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 a claim to the County showing its intent to disburse funds to the Contractor, pursuant to County Contract 2022-00000303. Upon the County's approval of the disbursement, the UCEDA shall remit payment to the Contractor within five (5) business days.
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.

SCHEDULE D

PROGRAM APPLICATION INSTRUCTIONS

Applicants **MUST** provide clear, complete details about their request for funding assistance. Please only apply once you have developed a well-thought out plan that clearly describes your need and how/why your proposed plan will meet this need. Please include **ALL** supporting documentation and evidence. Please use complete sentences. One word answers will not be considered a complete response. Applications will be scored based on need, connection to covid, clear budget, business activity viability, and measurable impact.

Accepting Applications: October 31, 2022

Minimum Request: \$5,000

Maximum Request: \$35,000

Program Description: Up to \$35,000 for businesses located in Ulster County with 25 or fewer employees at the time of application. Funding is meant to spur innovation and adaptation to the new reality of economic life with a highly contagious virus. The fund will provide reimbursement of up to 100% of eligible project costs. All projects must be located in Ulster County, New York

Eligible Applicants Must Meet ALL of the following criteria:

- Your primary business location must be in Ulster County, NY.
- Your business must be a sole proprietorship, partnership, corporation, Limited Liability Company or other legal form of business. Applicants who did not establish their business in New York State must provide a DBA or incorporation paperwork upon award.
- Your business must have 25 or fewer employees at the time of application.
- Must provide personal tax returns from all owners with greater than or equal to 20% ownership
- Business must maintain a separate bank account for business related expenses (cannot co-mingle business and personal expenses)

Other Application Information:

Please only select majority-, woman-, or veteran-owned if more than 50% of the business is owned by an individual or individuals who identify as such. Formal NYS paperwork is not required.

For questions 27-29, please provide a detailed narrative - even if it's repetitive! The scoring committee will be evaluating applications based on a clear need, clear project scope, clear budget, clear impact, and a clear covid connection.

For file uploads, please label your file **CLEARLY**. Business name **MUST** be included. If your file is not labeled clearly, your application may be marked incomplete.

Not for profit businesses that qualify for tax exempt status under section 501c3 of the Internal Revenue Code are **ELIGIBLE** and must complete section 4.

Think ahead about your expenses for next year! This funding does NOT reimburse anything purchased PRIOR to the award date which is expected to be in Q1 of 2023. Upon award, you will be given approval to begin making eligible purchases. Your award term is 120 days from date of award. Expenses made after your contract expiration will not be eligible for consideration.

Eligible Use of Funds:

Eligible expenses include rent, business mortgage payments, furniture, fixtures, equipment, operating expenses, and working capital that will prevent, prepare for, and respond to the impacts of the coronavirus pandemic.

Expenses incurred must be for activities located in Ulster County.

Equipment

- Permanent machinery and equipment (installed equipment/machinery) - **must complete section 8 of application**
- Misc. business equipment
- Vehicles
- Computers/software

Operating Expenses (i.e. Working Capital)

- Payroll (must provide formal payroll documentation from a payroll processing system with reimbursement request)
- Rent (must provide signed copy of lease agreement upon award)
- Utilities (bill submitted must match Ulster County business address)
- Supplies
- Inventory

Fixed Assets

Awards and disbursement of funds are contingent on receiving necessary approvals. If approvals are not received prior to contract end date the award will be rescinded and reimbursement will not be given.

Please complete section 8 of the application in its entirety to be considered.

- Property purchases, including soft costs*
- New building construction*
- Exterior building renovations, including soft costs*
- Signage*
- Interior renovations*

Other Eligible Expenses

- Daycare (only eligible where necessary for owner or employees to continue working)
- Financing Fees
- Loan application/closing fees and interest payments

- Bank charges/fees
- Closing costs

Ineligible expenses

- Owner's payroll or draw (direct payments to owner outside of payroll system)
- Advanced payments of any kind (only payments where goods/services have been provided are eligible).
- Any expense incurred before the award date (see contract) or after contract end date is ineligible.
- Taxes of any kind (property tax, income tax, payroll tax, sales tax, occupancy tax, etc.) are ineligible.
- Franchise fees and loan payments that are NOT mortgage payments (ie: business loans)

Funds will be provided as a reimbursement for eligible expenses. Eligible expenses must be incurred after award, and within 120 days of award.

Reimbursement Procedures

Funds shall not be provided in advance of project completion or full payment for the project by the business. Once the applicant provides verification that the work has been completed and that all vendors have been paid in full, reimbursement will be processed.

Applicants must document project expenditures. Proof of payment to the contractor/vendor is required in the form of an invoice and canceled check or credit card statement. Cash payments are not an acceptable form of payment and cannot be reimbursed.

Only those costs deemed to be reasonable and appropriate to complete the project which was approved and agreed upon will be reimbursed. Applicants may be required to supply additional information.

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 **COSTAS & TATE INSURANCE AGENCY INC.**, a S-Corp with principal offices at 1-3 Henry W. Dubois Dr., New Paltz, New York 12561 (the “**Contractor**”), (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-19 Local Fiscal Recovery Fund (the “**CLFRF**”), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of the Coronavirus Disease 2019 (“**COVID-19**”) in their communities; and

WHEREAS, Ulster County, as a CLFRF recipient, desires to utilize a portion of these ARPA funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to Ulster County based small businesses; and

WHEREAS, the County has made a portion of the ARPA funds available to help small businesses throughout New York State to safely reopen and restate their local economies in the wake of the COVID-19 pandemic; and

WHEREAS, the County allocated an amount not to exceed ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS (the “**County ARPA Funds**”); and

WHEREAS, the County entered into an Agreement with the UCEDA (County Contract No. 2022-00000303) to engage the UCEDA as a sub-recipient of the County ARPA Funds; and

WHEREAS, the UCEDA administers the Ulster County CARES II Small Business Assistance Program (the “**Program**”), which is a business relief response program created as a result of the County ARPA 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 may apply to the 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 Program, and the UCEDA has determined that the Contractor qualifies for assistance through the Program, for the purpose of rebuilding the Contractor’s business following the COVID-19 pandemic; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance through the 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 April 12, 2023** (the “Award Date”) **and ending August 10, 2023**.

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 **THIRTY-FIVE THOUSAND AND 00/100 (\$35,000.00) 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:

Costas & Tate Insurance Agency Inc
1-3 Henry W. Dubois Dr.
New Paltz, New York 12561

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, 5th 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.

****Signature page follows****

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: _____

Costas & Tate Insurance Agency Inc

By: _____
NAME: _____
TITLE: _____
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

1. In response to the COVID-19 pandemic, the Contractor shall use the funds it receives to assist and rebuild the Contractor's business.
2. The Contractor shall use the funds it receives in a manner consistent with the "Proposed Use of Funds" described in the Contractor's Program Application (which is attached hereto as Schedule "D" and hereby made part of this Agreement).
3. The Contractor shall use the funds it receives pursuant to this Agreement in the following categories, as set forth in the Program Application Instructions (which is attached hereto as Schedule "E" and hereby made part of this Agreement):
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

Use of the funds by the Contractor for any other purpose must be approved by the UCEDA in advance of expenditure.

4. The Contractor shall make all expenditures of the funds received pursuant to this Agreement within one hundred twenty (120) days of the Award Date.
5. The Contractor shall provide the following information upon execution of this agreement and at least once per year for two years following completion of the term of this Agreement, upon written request from UCEDA, as part of the program reporting requirements:
 - a. Current roster of all W-2 employees, indicating status for each employee (full-time, part-time, temporary/seasonal) and average weekly hours worked for each employee
 - b. Current hourly wage for each employee and whether each employee receives paid benefits
 - c. Household size, income, and demographics for each employee
 - d. Statement indicating progress toward completion of project and achievement of measurable outcomes that were identified in Contractor's Program Application

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The UCEDA, through the Program, shall pay to the Contractor a **not-to-exceed amount** of **THIRTY-FIVE THOUSAND AND 00/100 (\$35,000.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend Contractor's own funds, consistent with Contractor's commitment of funds as documented in the Program Application, prior to completion of the Term of this Agreement.
3. 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 fifth (5th) of each month for the previous month's expenditures. Invoices shall identify any Contractor funds expended in addition to the amount to be reimbursed, which shall be considered toward Contractor's fulfillment of commitment of funds as documented in the Program Application.
3. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories listed as follows, as set forth in Schedule D:
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

In the event the Contractor wishes to seek reimbursement for an expenditure that does not fall in one of the categories listed in this Paragraph 3, the Contractor must first obtain written consent from UCEDA prior to including such expenditure on any reimbursement invoice.

4. With each invoice, the Contractor shall tender receipts, reports and notes to the UCEDA sufficient for the UCEDA to determine that the Contractor expended the funds in accordance with this Agreement. All invoices, deliverable reports, receipts and notes shall be delivered to UCEDA on or before the fifth (5th) 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 a claim to the County showing its intent to disburse funds to the Contractor, pursuant to County Contract 2022-00000303. Upon the County's approval of the disbursement, the UCEDA shall remit payment to the Contractor within five (5) business days.
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.

SCHEDULE D

PROGRAM APPLICATION INSTRUCTIONS

Applicants **MUST** provide clear, complete details about their request for funding assistance. Please only apply once you have developed a well-thought out plan that clearly describes your need and how/why your proposed plan will meet this need. Please include ALL supporting documentation and evidence. Please use complete sentences. One word answers will not be considered a complete response. Applications will be scored based on need, connection to covid, clear budget, business activity viability, and measurable impact.

Accepting Applications: October 31, 2022

Minimum Request: \$5,000

Maximum Request: \$35,000

Program Description: Up to \$35,000 for businesses located in Ulster County with 25 or fewer employees at the time of application. Funding is meant to spur innovation and adaptation to the new reality of economic life with a highly contagious virus. The fund will provide reimbursement of up to 100% of eligible project costs. All projects must be located in Ulster County, New York

Eligible Applicants Must Meet ALL of the following criteria:

- Your primary business location must be in Ulster County, NY.
- Your business must be a sole proprietorship, partnership, corporation, Limited Liability Company or other legal form of business. Applicants who did not establish their business in New York State must provide a DBA or incorporation paperwork upon award.
- Your business must have 25 or fewer employees at the time of application.
- Must provide personal tax returns from all owners with greater than or equal to 20% ownership
- Business must maintain a separate bank account for business related expenses (cannot co-mingle business and personal expenses)

Other Application Information:

Please only select majority-, woman-, or veteran-owned if more than 50% of the business is owned by an individual or individuals who identify as such. Formal NYS paperwork is not required.

For questions 27-29, please provide a detailed narrative - even if it's repetitive! The scoring committee will be evaluating applications based on a clear need, clear project scope, clear budget, clear impact, and a clear covid connection.

For file uploads, please label your file **CLEARLY**. Business name **MUST** be included. If your file is not labeled clearly, your application may be marked incomplete.

Not for profit businesses that qualify for tax exempt status under section 501c3 of the Internal Revenue Code are **ELIGIBLE** and must complete section 4.

Think ahead about your expenses for next year! This funding does NOT reimburse anything purchased PRIOR to the award date which is expected to be in Q1 of 2023. Upon award, you will be given approval to begin making eligible purchases. Your award term is 120 days from date of award. Expenses made after your contract expiration will not be eligible for consideration.

Eligible Use of Funds:

Eligible expenses include rent, business mortgage payments, furniture, fixtures, equipment, operating expenses, and working capital that will prevent, prepare for, and respond to the impacts of the coronavirus pandemic.

Expenses incurred must be for activities located in Ulster County.

Equipment

- Permanent machinery and equipment (installed equipment/machinery) - **must complete section 8 of application**
- Misc. business equipment
- Vehicles
- Computers/software

Operating Expenses (i.e. Working Capital)

- Payroll (must provide formal payroll documentation from a payroll processing system with reimbursement request)
- Rent (must provide signed copy of lease agreement upon award)
- Utilities (bill submitted must match Ulster County business address)
- Supplies
- Inventory

Fixed Assets

Awards and disbursement of funds are contingent on receiving necessary approvals. If approvals are not received prior to contract end date the award will be rescinded and reimbursement will not be given.

Please complete section 8 of the application in its entirety to be considered.

- Property purchases, including soft costs*
- New building construction*
- Exterior building renovations, including soft costs*
- Signage*
- Interior renovations*

Other Eligible Expenses

- Daycare (only eligible where necessary for owner or employees to continue working)
- Financing Fees
- Loan application/closing fees and interest payments

- Bank charges/fees
- Closing costs

Ineligible expenses

- Owner's payroll or draw (direct payments to owner outside of payroll system)
- Advanced payments of any kind (only payments where goods/services have been provided are eligible).
- Any expense incurred before the award date (see contract) or after contract end date is ineligible.
- Taxes of any kind (property tax, income tax, payroll tax, sales tax, occupancy tax, etc.) are ineligible.
- Franchise fees and loan payments that are NOT mortgage payments (ie: business loans)

Funds will be provided as a reimbursement for eligible expenses. Eligible expenses must be incurred after award, and within 120 days of award.

Reimbursement Procedures

Funds shall not be provided in advance of project completion or full payment for the project by the business. Once the applicant provides verification that the work has been completed and that all vendors have been paid in full, reimbursement will be processed.

Applicants must document project expenditures. Proof of payment to the contractor/vendor is required in the form of an invoice and canceled check or credit card statement. Cash payments are not an acceptable form of payment and cannot be reimbursed.

Only those costs deemed to be reasonable and appropriate to complete the project which was approved and agreed upon will be reimbursed. Applicants may be required to supply additional information.

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 **NINA SCHMIDBAUR LCSW PSYCHOTHERAPY P.C.**, a S-Corp with principal offices at 122 Burt St., Saugerties, New York 12477 (the “**Contractor**”), (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-19 Local Fiscal Recovery Fund (the “**CLFRF**”), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of the Coronavirus Disease 2019 (“**COVID-19**”) in their communities; and

WHEREAS, Ulster County, as a CLFRF recipient, desires to utilize a portion of these ARPA funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to Ulster County based small businesses; and

WHEREAS, the County has made a portion of the ARPA funds available to help small businesses throughout New York State to safely reopen and restate their local economies in the wake of the COVID-19 pandemic; and

WHEREAS, the County allocated an amount not to exceed ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS (the “**County ARPA Funds**”); and

WHEREAS, the County entered into an Agreement with the UCEDA (County Contract No. 2022-00000303) to engage the UCEDA as a sub-recipient of the County ARPA Funds; and

WHEREAS, the UCEDA administers the Ulster County CARES II Small Business Assistance Program (the “**Program**”), which is a business relief response program created as a result of the County ARPA 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 may apply to the 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 Program, and the UCEDA has determined that the Contractor qualifies for assistance through the Program, for the purpose of rebuilding the Contractor’s business following the COVID-19 pandemic; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance through the 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 April 12, 2023** (the “Award Date”) **and ending August 10, 2023**.

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 **FIVE THOUSAND AND 00/100 (\$5,000.00) 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:
Nina Schmidbaur LCSW Psychotherapy P.C.
122 Burt St.
Saugerties, New York 12477

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, 5th 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.

****Signature page follows****

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: _____

Nina Schmidbaur LCSW Psychotherapy P.C.

By: _____
NAME: _____
TITLE: _____
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

1. In response to the COVID-19 pandemic, the Contractor shall use the funds it receives to assist and rebuild the Contractor's business.
2. The Contractor shall use the funds it receives in a manner consistent with the "Proposed Use of Funds" described in the Contractor's Program Application (which is attached hereto as Schedule "D" and hereby made part of this Agreement).
3. The Contractor shall use the funds it receives pursuant to this Agreement in the following categories, as set forth in the Program Application Instructions (which is attached hereto as Schedule "E" and hereby made part of this Agreement):
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

Use of the funds by the Contractor for any other purpose must be approved by the UCEDA in advance of expenditure.

4. The Contractor shall make all expenditures of the funds received pursuant to this Agreement within one hundred twenty (120) days of the Award Date.
5. The Contractor shall provide the following information upon execution of this agreement and at least once per year for two years following completion of the term of this Agreement, upon written request from UCEDA, as part of the program reporting requirements:
 - a. Current roster of all W-2 employees, indicating status for each employee (full-time, part-time, temporary/seasonal) and average weekly hours worked for each employee
 - b. Current hourly wage for each employee and whether each employee receives paid benefits
 - c. Household size, income, and demographics for each employee
 - d. Statement indicating progress toward completion of project and achievement of measurable outcomes that were identified in Contractor's Program Application

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The UCEDA, through the Program, shall pay to the Contractor a **not-to-exceed amount** of **FIVE THOUSAND AND 00/100 (\$5,000.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend Contractor's own funds, consistent with Contractor's commitment of funds as documented in the Program Application, prior to completion of the Term of this Agreement.
3. 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 fifth (5th) of each month for the previous month's expenditures. Invoices shall identify any Contractor funds expended in addition to the amount to be reimbursed, which shall be considered toward Contractor's fulfillment of commitment of funds as documented in the Program Application.
3. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories listed as follows, as set forth in Schedule D:
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

In the event the Contractor wishes to seek reimbursement for an expenditure that does not fall in one of the categories listed in this Paragraph 3, the Contractor must first obtain written consent from UCEDA prior to including such expenditure on any reimbursement invoice.

4. With each invoice, the Contractor shall tender receipts, reports and notes to the UCEDA sufficient for the UCEDA to determine that the Contractor expended the funds in accordance with this Agreement. All invoices, deliverable reports, receipts and notes shall be delivered to UCEDA on or before the fifth (5th) 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 a claim to the County showing its intent to disburse funds to the Contractor, pursuant to County Contract 2022-00000303. Upon the County's approval of the disbursement, the UCEDA shall remit payment to the Contractor within five (5) business days.
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.

SCHEDULE D

PROGRAM APPLICATION INSTRUCTIONS

Applicants **MUST** provide clear, complete details about their request for funding assistance. Please only apply once you have developed a well-thought out plan that clearly describes your need and how/why your proposed plan will meet this need. Please include ALL supporting documentation and evidence. Please use complete sentences. One word answers will not be considered a complete response. Applications will be scored based on need, connection to covid, clear budget, business activity viability, and measurable impact.

Accepting Applications: October 31, 2022

Minimum Request: \$5,000

Maximum Request: \$35,000

Program Description: Up to \$35,000 for businesses located in Ulster County with 25 or fewer employees at the time of application. Funding is meant to spur innovation and adaptation to the new reality of economic life with a highly contagious virus. The fund will provide reimbursement of up to 100% of eligible project costs. All projects must be located in Ulster County, New York

Eligible Applicants Must Meet ALL of the following criteria:

- Your primary business location must be in Ulster County, NY.
- Your business must be a sole proprietorship, partnership, corporation, Limited Liability Company or other legal form of business. Applicants who did not establish their business in New York State must provide a DBA or incorporation paperwork upon award.
- Your business must have 25 or fewer employees at the time of application.
- Must provide personal tax returns from all owners with greater than or equal to 20% ownership
- Business must maintain a separate bank account for business related expenses (cannot co-mingle business and personal expenses)

Other Application Information:

Please only select majority-, woman-, or veteran-owned if more than 50% of the business is owned by an individual or individuals who identify as such. Formal NYS paperwork is not required.

For questions 27-29, please provide a detailed narrative - even if it's repetitive! The scoring committee will be evaluating applications based on a clear need, clear project scope, clear budget, clear impact, and a clear covid connection.

For file uploads, please label your file **CLEARLY**. Business name **MUST** be included. If your file is not labeled clearly, your application may be marked incomplete.

Not for profit businesses that qualify for tax exempt status under section 501c3 of the Internal Revenue Code are **ELIGIBLE** and must complete section 4.

Think ahead about your expenses for next year! This funding does NOT reimburse anything purchased PRIOR to the award date which is expected to be in Q1 of 2023. Upon award, you will be given approval to begin making eligible purchases. Your award term is 120 days from date of award. Expenses made after your contract expiration will not be eligible for consideration.

Eligible Use of Funds:

Eligible expenses include rent, business mortgage payments, furniture, fixtures, equipment, operating expenses, and working capital that will prevent, prepare for, and respond to the impacts of the coronavirus pandemic.

Expenses incurred must be for activities located in Ulster County.

Equipment

- Permanent machinery and equipment (installed equipment/machinery) - **must complete section 8 of application**
- Misc. business equipment
- Vehicles
- Computers/software

Operating Expenses (i.e. Working Capital)

- Payroll (must provide formal payroll documentation from a payroll processing system with reimbursement request)
- Rent (must provide signed copy of lease agreement upon award)
- Utilities (bill submitted must match Ulster County business address)
- Supplies
- Inventory

Fixed Assets

Awards and disbursement of funds are contingent on receiving necessary approvals. If approvals are not received prior to contract end date the award will be rescinded and reimbursement will not be given.

Please complete section 8 of the application in its entirety to be considered.

- Property purchases, including soft costs*
- New building construction*
- Exterior building renovations, including soft costs*
- Signage*
- Interior renovations*

Other Eligible Expenses

- Daycare (only eligible where necessary for owner or employees to continue working)
- Financing Fees
- Loan application/closing fees and interest payments

- Bank charges/fees
- Closing costs

Ineligible expenses

- Owner's payroll or draw (direct payments to owner outside of payroll system)
- Advanced payments of any kind (only payments where goods/services have been provided are eligible).
- Any expense incurred before the award date (see contract) or after contract end date is ineligible.
- Taxes of any kind (property tax, income tax, payroll tax, sales tax, occupancy tax, etc.) are ineligible.
- Franchise fees and loan payments that are NOT mortgage payments (ie: business loans)

Funds will be provided as a reimbursement for eligible expenses. Eligible expenses must be incurred after award, and within 120 days of award.

Reimbursement Procedures

Funds shall not be provided in advance of project completion or full payment for the project by the business. Once the applicant provides verification that the work has been completed and that all vendors have been paid in full, reimbursement will be processed.

Applicants must document project expenditures. Proof of payment to the contractor/vendor is required in the form of an invoice and canceled check or credit card statement. Cash payments are not an acceptable form of payment and cannot be reimbursed.

Only those costs deemed to be reasonable and appropriate to complete the project which was approved and agreed upon will be reimbursed. Applicants may be required to supply additional information.

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 **SO HANDMADE LLC**, a Limited Liability Corporation with principal offices at 6 Oriole Dr., Woodstock, New York 12498 (the “**Contractor**”), (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-19 Local Fiscal Recovery Fund (the “**CLFRF**”), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of the Coronavirus Disease 2019 (“**COVID-19**”) in their communities; and

WHEREAS, Ulster County, as a CLFRF recipient, desires to utilize a portion of these ARPA funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to Ulster County based small businesses; and

WHEREAS, the County has made a portion of the ARPA funds available to help small businesses throughout New York State to safely reopen and restate their local economies in the wake of the COVID-19 pandemic; and

WHEREAS, the County allocated an amount not to exceed ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS (the “**County ARPA Funds**”); and

WHEREAS, the County entered into an Agreement with the UCEDA (County Contract No. 2022-00000303) to engage the UCEDA as a sub-recipient of the County ARPA Funds; and

WHEREAS, the UCEDA administers the Ulster County CARES II Small Business Assistance Program (the “**Program**”), which is a business relief response program created as a result of the County ARPA 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 may apply to the 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 Program, and the UCEDA has determined that the Contractor qualifies for assistance through the Program, for the purpose of rebuilding the Contractor’s business following the COVID-19 pandemic; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance through the 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 April 12, 2023** (the “Award Date”) **and ending August 10, 2023**.

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 **SIX THOUSAND FOUR HUNDRED AND NINE AND 00/100 (\$6,409.00) 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:
So Handmade LLC
6 Oriole Dr.
Woodstock, New York 12498

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, 5th 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.

******Signature page follows******

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: _____

So Handmade LLC

By: _____
NAME: _____
TITLE: _____
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

1. In response to the COVID-19 pandemic, the Contractor shall use the funds it receives to assist and rebuild the Contractor's business.
2. The Contractor shall use the funds it receives in a manner consistent with the "Proposed Use of Funds" described in the Contractor's Program Application (which is attached hereto as Schedule "D" and hereby made part of this Agreement).
3. The Contractor shall use the funds it receives pursuant to this Agreement in the following categories, as set forth in the Program Application Instructions (which is attached hereto as Schedule "E" and hereby made part of this Agreement):
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

Use of the funds by the Contractor for any other purpose must be approved by the UCEDA in advance of expenditure.

4. The Contractor shall make all expenditures of the funds received pursuant to this Agreement within one hundred twenty (120) days of the Award Date.
5. The Contractor shall provide the following information upon execution of this agreement and at least once per year for two years following completion of the term of this Agreement, upon written request from UCEDA, as part of the program reporting requirements:
 - a. Current roster of all W-2 employees, indicating status for each employee (full-time, part-time, temporary/seasonal) and average weekly hours worked for each employee
 - b. Current hourly wage for each employee and whether each employee receives paid benefits
 - c. Household size, income, and demographics for each employee
 - d. Statement indicating progress toward completion of project and achievement of measurable outcomes that were identified in Contractor's Program Application

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The UCEDA, through the Program, shall pay to the Contractor a **not-to-exceed amount** of **SIX THOUSAND FOUR HUNDRED AND NINE AND 00/100 (\$6,409.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend Contractor's own funds, consistent with Contractor's commitment of funds as documented in the Program Application, prior to completion of the Term of this Agreement.
3. 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 fifth (5th) of each month for the previous month's expenditures. Invoices shall identify any Contractor funds expended in addition to the amount to be reimbursed, which shall be considered toward Contractor's fulfillment of commitment of funds as documented in the Program Application.
3. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories listed as follows, as set forth in Schedule D:
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

In the event the Contractor wishes to seek reimbursement for an expenditure that does not fall in one of the categories listed in this Paragraph 3, the Contractor must first obtain written consent from UCEDA prior to including such expenditure on any reimbursement invoice.

4. With each invoice, the Contractor shall tender receipts, reports and notes to the UCEDA sufficient for the UCEDA to determine that the Contractor expended the funds in accordance with this Agreement. All invoices, deliverable reports, receipts and notes shall be delivered to UCEDA on or before the fifth (5th) 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 a claim to the County showing its intent to disburse funds to the Contractor, pursuant to County Contract 2022-00000303. Upon the County's approval of the disbursement, the UCEDA shall remit payment to the Contractor within five (5) business days.
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.

SCHEDULE D

PROGRAM APPLICATION INSTRUCTIONS

Applicants **MUST** provide clear, complete details about their request for funding assistance. Please only apply once you have developed a well-thought out plan that clearly describes your need and how/why your proposed plan will meet this need. Please include ALL supporting documentation and evidence. Please use complete sentences. One word answers will not be considered a complete response. Applications will be scored based on need, connection to covid, clear budget, business activity viability, and measurable impact.

Accepting Applications: October 31, 2022

Minimum Request: \$5,000

Maximum Request: \$35,000

Program Description: Up to \$35,000 for businesses located in Ulster County with 25 or fewer employees at the time of application. Funding is meant to spur innovation and adaptation to the new reality of economic life with a highly contagious virus. The fund will provide reimbursement of up to 100% of eligible project costs. All projects must be located in Ulster County, New York

Eligible Applicants Must Meet ALL of the following criteria:

- Your primary business location must be in Ulster County, NY.
- Your business must be a sole proprietorship, partnership, corporation, Limited Liability Company or other legal form of business. Applicants who did not establish their business in New York State must provide a DBA or incorporation paperwork upon award.
- Your business must have 25 or fewer employees at the time of application.
- Must provide personal tax returns from all owners with greater than or equal to 20% ownership
- Business must maintain a separate bank account for business related expenses (cannot co-mingle business and personal expenses)

Other Application Information:

Please only select majority-, woman-, or veteran-owned if more than 50% of the business is owned by an individual or individuals who identify as such. Formal NYS paperwork is not required.

For questions 27-29, please provide a detailed narrative - even if it's repetitive! The scoring committee will be evaluating applications based on a clear need, clear project scope, clear budget, clear impact, and a clear covid connection.

For file uploads, please label your file **CLEARLY**. Business name **MUST** be included. If your file is not labeled clearly, your application may be marked incomplete.

Not for profit businesses that qualify for tax exempt status under section 501c3 of the Internal Revenue Code are **ELIGIBLE** and must complete section 4.

Think ahead about your expenses for next year! This funding does NOT reimburse anything purchased PRIOR to the award date which is expected to be in Q1 of 2023. Upon award, you will be given approval to begin making eligible purchases. Your award term is 120 days from date of award. Expenses made after your contract expiration will not be eligible for consideration.

Eligible Use of Funds:

Eligible expenses include rent, business mortgage payments, furniture, fixtures, equipment, operating expenses, and working capital that will prevent, prepare for, and respond to the impacts of the coronavirus pandemic.

Expenses incurred must be for activities located in Ulster County.

Equipment

- Permanent machinery and equipment (installed equipment/machinery) - **must complete section 8 of application**
- Misc. business equipment
- Vehicles
- Computers/software

Operating Expenses (i.e. Working Capital)

- Payroll (must provide formal payroll documentation from a payroll processing system with reimbursement request)
- Rent (must provide signed copy of lease agreement upon award)
- Utilities (bill submitted must match Ulster County business address)
- Supplies
- Inventory

Fixed Assets

Awards and disbursement of funds are contingent on receiving necessary approvals. If approvals are not received prior to contract end date the award will be rescinded and reimbursement will not be given.

Please complete section 8 of the application in its entirety to be considered.

- Property purchases, including soft costs*
- New building construction*
- Exterior building renovations, including soft costs*
- Signage*
- Interior renovations*

Other Eligible Expenses

- Daycare (only eligible where necessary for owner or employees to continue working)
- Financing Fees
- Loan application/closing fees and interest payments

- Bank charges/fees
- Closing costs

Ineligible expenses

- Owner's payroll or draw (direct payments to owner outside of payroll system)
- Advanced payments of any kind (only payments where goods/services have been provided are eligible).
- Any expense incurred before the award date (see contract) or after contract end date is ineligible.
- Taxes of any kind (property tax, income tax, payroll tax, sales tax, occupancy tax, etc.) are ineligible.
- Franchise fees and loan payments that are NOT mortgage payments (ie: business loans)

Funds will be provided as a reimbursement for eligible expenses. Eligible expenses must be incurred after award, and within 120 days of award.

Reimbursement Procedures

Funds shall not be provided in advance of project completion or full payment for the project by the business. Once the applicant provides verification that the work has been completed and that all vendors have been paid in full, reimbursement will be processed.

Applicants must document project expenditures. Proof of payment to the contractor/vendor is required in the form of an invoice and canceled check or credit card statement. Cash payments are not an acceptable form of payment and cannot be reimbursed.

Only those costs deemed to be reasonable and appropriate to complete the project which was approved and agreed upon will be reimbursed. Applicants may be required to supply additional information.

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 **DOLORES WARDELL DBA WARDELL POTTERY**, a Sole Proprietorship with principal offices at 158 Partition St., Saugerties, New York 12477 (the “**Contractor**”), (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-19 Local Fiscal Recovery Fund (the “**CLFRF**”), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of the Coronavirus Disease 2019 (“**COVID-19**”) in their communities; and

WHEREAS, Ulster County, as a CLFRF recipient, desires to utilize a portion of these ARPA funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to Ulster County based small businesses; and

WHEREAS, the County has made a portion of the ARPA funds available to help small businesses throughout New York State to safely reopen and restate their local economies in the wake of the COVID-19 pandemic; and

WHEREAS, the County allocated an amount not to exceed ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS (the “**County ARPA Funds**”); and

WHEREAS, the County entered into an Agreement with the UCEDA (County Contract No. 2022-00000303) to engage the UCEDA as a sub-recipient of the County ARPA Funds; and

WHEREAS, the UCEDA administers the Ulster County CARES II Small Business Assistance Program (the “**Program**”), which is a business relief response program created as a result of the County ARPA 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 may apply to the 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 Program, and the UCEDA has determined that the Contractor qualifies for assistance through the Program, for the purpose of rebuilding the Contractor’s business following the COVID-19 pandemic; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance through the 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 April 12, 2023** (the “Award Date”) **and ending August 10, 2023**.

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 **SEVENTEEN THOUSAND SEVEN HUNDRED AND SIXTY-NINE AND 00/100 (\$17,769.00) 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:

Dolores Wardell DBA Wardell Pottery
158 Partition St.
Saugerties, New York 12477

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, 5th 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.

******Signature page follows******

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: _____

Dolores Wardell DBA Wardell Pottery

By: _____
NAME: _____
TITLE: _____
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

1. In response to the COVID-19 pandemic, the Contractor shall use the funds it receives to assist and rebuild the Contractor's business.
2. The Contractor shall use the funds it receives in a manner consistent with the "Proposed Use of Funds" described in the Contractor's Program Application (which is attached hereto as Schedule "D" and hereby made part of this Agreement).
3. The Contractor shall use the funds it receives pursuant to this Agreement in the following categories, as set forth in the Program Application Instructions (which is attached hereto as Schedule "E" and hereby made part of this Agreement):
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

Use of the funds by the Contractor for any other purpose must be approved by the UCEDA in advance of expenditure.

4. The Contractor shall make all expenditures of the funds received pursuant to this Agreement within one hundred twenty (120) days of the Award Date.
5. The Contractor shall provide the following information upon execution of this agreement and at least once per year for two years following completion of the term of this Agreement, upon written request from UCEDA, as part of the program reporting requirements:
 - a. Current roster of all W-2 employees, indicating status for each employee (full-time, part-time, temporary/seasonal) and average weekly hours worked for each employee
 - b. Current hourly wage for each employee and whether each employee receives paid benefits
 - c. Household size, income, and demographics for each employee
 - d. Statement indicating progress toward completion of project and achievement of measurable outcomes that were identified in Contractor's Program Application

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The UCEDA, through the Program, shall pay to the Contractor a **not-to-exceed amount** of **SEVENTEEN THOUSAND SEVEN HUNDRED AND SIXTY-NINE AND 00/100 (\$17,769.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend Contractor's own funds, consistent with Contractor's commitment of funds as documented in the Program Application, prior to completion of the Term of this Agreement.
3. 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 fifth (5th) of each month for the previous month's expenditures. Invoices shall identify any Contractor funds expended in addition to the amount to be reimbursed, which shall be considered toward Contractor's fulfillment of commitment of funds as documented in the Program Application.
3. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories listed as follows, as set forth in Schedule D:
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

In the event the Contractor wishes to seek reimbursement for an expenditure that does not fall in one of the categories listed in this Paragraph 3, the Contractor must first obtain written consent from UCEDA prior to including such expenditure on any reimbursement invoice.

4. With each invoice, the Contractor shall tender receipts, reports and notes to the UCEDA sufficient for the UCEDA to determine that the Contractor expended the funds in accordance with this Agreement. All invoices, deliverable reports, receipts and notes shall be delivered to UCEDA on or before the fifth (5th) 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 a claim to the County showing its intent to disburse funds to the Contractor, pursuant to County Contract 2022-00000303. Upon the County's approval of the disbursement, the UCEDA shall remit payment to the Contractor within five (5) business days.
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.

SCHEDULE D

PROGRAM APPLICATION INSTRUCTIONS

Applicants **MUST** provide clear, complete details about their request for funding assistance. Please only apply once you have developed a well-thought out plan that clearly describes your need and how/why your proposed plan will meet this need. Please include ALL supporting documentation and evidence. Please use complete sentences. One word answers will not be considered a complete response. Applications will be scored based on need, connection to covid, clear budget, business activity viability, and measurable impact.

Accepting Applications: October 31, 2022

Minimum Request: \$5,000

Maximum Request: \$35,000

Program Description: Up to \$35,000 for businesses located in Ulster County with 25 or fewer employees at the time of application. Funding is meant to spur innovation and adaptation to the new reality of economic life with a highly contagious virus. The fund will provide reimbursement of up to 100% of eligible project costs. All projects must be located in Ulster County, New York

Eligible Applicants Must Meet ALL of the following criteria:

- Your primary business location must be in Ulster County, NY.
- Your business must be a sole proprietorship, partnership, corporation, Limited Liability Company or other legal form of business. Applicants who did not establish their business in New York State must provide a DBA or incorporation paperwork upon award.
- Your business must have 25 or fewer employees at the time of application.
- Must provide personal tax returns from all owners with greater than or equal to 20% ownership
- Business must maintain a separate bank account for business related expenses (cannot co-mingle business and personal expenses)

Other Application Information:

Please only select majority-, woman-, or veteran-owned if more than 50% of the business is owned by an individual or individuals who identify as such. Formal NYS paperwork is not required.

For questions 27-29, please provide a detailed narrative - even if it's repetitive! The scoring committee will be evaluating applications based on a clear need, clear project scope, clear budget, clear impact, and a clear covid connection.

For file uploads, please label your file **CLEARLY**. Business name **MUST** be included. If your file is not labeled clearly, your application may be marked incomplete.

Not for profit businesses that qualify for tax exempt status under section 501c3 of the Internal Revenue Code are **ELIGIBLE** and must complete section 4.

Think ahead about your expenses for next year! This funding does NOT reimburse anything purchased PRIOR to the award date which is expected to be in Q1 of 2023. Upon award, you will be given approval to begin making eligible purchases. Your award term is 120 days from date of award. Expenses made after your contract expiration will not be eligible for consideration.

Eligible Use of Funds:

Eligible expenses include rent, business mortgage payments, furniture, fixtures, equipment, operating expenses, and working capital that will prevent, prepare for, and respond to the impacts of the coronavirus pandemic.

Expenses incurred must be for activities located in Ulster County.

Equipment

- Permanent machinery and equipment (installed equipment/machinery) - **must complete section 8 of application**
- Misc. business equipment
- Vehicles
- Computers/software

Operating Expenses (i.e. Working Capital)

- Payroll (must provide formal payroll documentation from a payroll processing system with reimbursement request)
- Rent (must provide signed copy of lease agreement upon award)
- Utilities (bill submitted must match Ulster County business address)
- Supplies
- Inventory

Fixed Assets

Awards and disbursement of funds are contingent on receiving necessary approvals. If approvals are not received prior to contract end date the award will be rescinded and reimbursement will not be given.

Please complete section 8 of the application in its entirety to be considered.

- Property purchases, including soft costs*
- New building construction*
- Exterior building renovations, including soft costs*
- Signage*
- Interior renovations*

Other Eligible Expenses

- Daycare (only eligible where necessary for owner or employees to continue working)
- Financing Fees
- Loan application/closing fees and interest payments

- Bank charges/fees
- Closing costs

Ineligible expenses

- Owner's payroll or draw (direct payments to owner outside of payroll system)
- Advanced payments of any kind (only payments where goods/services have been provided are eligible).
- Any expense incurred before the award date (see contract) or after contract end date is ineligible.
- Taxes of any kind (property tax, income tax, payroll tax, sales tax, occupancy tax, etc.) are ineligible.
- Franchise fees and loan payments that are NOT mortgage payments (ie: business loans)

Funds will be provided as a reimbursement for eligible expenses. Eligible expenses must be incurred after award, and within 120 days of award.

Reimbursement Procedures

Funds shall not be provided in advance of project completion or full payment for the project by the business. Once the applicant provides verification that the work has been completed and that all vendors have been paid in full, reimbursement will be processed.

Applicants must document project expenditures. Proof of payment to the contractor/vendor is required in the form of an invoice and canceled check or credit card statement. Cash payments are not an acceptable form of payment and cannot be reimbursed.

Only those costs deemed to be reasonable and appropriate to complete the project which was approved and agreed upon will be reimbursed. Applicants may be required to supply additional information.

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 **GARVAN'S ROCK AND RYE, LLC**, a Limited Liability Corporation with principal offices at 215 Huguenot St., New Paltz, New York 12561 (the “**Contractor**”), (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-19 Local Fiscal Recovery Fund (the “**CLFRF**”), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of the Coronavirus Disease 2019 (“**COVID-19**”) in their communities; and

WHEREAS, Ulster County, as a CLFRF recipient, desires to utilize a portion of these ARPA funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to Ulster County based small businesses; and

WHEREAS, the County has made a portion of the ARPA funds available to help small businesses throughout New York State to safely reopen and restate their local economies in the wake of the COVID-19 pandemic; and

WHEREAS, the County allocated an amount not to exceed ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS (the “**County ARPA Funds**”); and

WHEREAS, the County entered into an Agreement with the UCEDA (County Contract No. 2022-00000303) to engage the UCEDA as a sub-recipient of the County ARPA Funds; and

WHEREAS, the UCEDA administers the Ulster County CARES II Small Business Assistance Program (the “**Program**”), which is a business relief response program created as a result of the County ARPA 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 may apply to the 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 Program, and the UCEDA has determined that the Contractor qualifies for assistance through the Program, for the purpose of rebuilding the Contractor’s business following the COVID-19 pandemic; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance through the 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 April 12, 2023** (the “Award Date”) **and ending August 10, 2023**.

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 **FIVE THOUSAND AND 00/100 (\$5,000.00) 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:
Garvan's Rock and Rye, LLC
215 Huguenot St.
New Paltz, New York 12561

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, 5th 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.

****Signature page follows****

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: _____

Garvan's Rock and Rye, LLC

By: _____
NAME: _____
TITLE: _____
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

1. In response to the COVID-19 pandemic, the Contractor shall use the funds it receives to assist and rebuild the Contractor's business.
2. The Contractor shall use the funds it receives in a manner consistent with the "Proposed Use of Funds" described in the Contractor's Program Application (which is attached hereto as Schedule "D" and hereby made part of this Agreement).
3. The Contractor shall use the funds it receives pursuant to this Agreement in the following categories, as set forth in the Program Application Instructions (which is attached hereto as Schedule "E" and hereby made part of this Agreement):
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

Use of the funds by the Contractor for any other purpose must be approved by the UCEDA in advance of expenditure.

4. The Contractor shall make all expenditures of the funds received pursuant to this Agreement within one hundred twenty (120) days of the Award Date.
5. The Contractor shall provide the following information upon execution of this agreement and at least once per year for two years following completion of the term of this Agreement, upon written request from UCEDA, as part of the program reporting requirements:
 - a. Current roster of all W-2 employees, indicating status for each employee (full-time, part-time, temporary/seasonal) and average weekly hours worked for each employee
 - b. Current hourly wage for each employee and whether each employee receives paid benefits
 - c. Household size, income, and demographics for each employee
 - d. Statement indicating progress toward completion of project and achievement of measurable outcomes that were identified in Contractor's Program Application

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The UCEDA, through the Program, shall pay to the Contractor a **not-to-exceed amount** of **FIVE THOUSAND AND 00/100 (\$5,000.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend Contractor's own funds, consistent with Contractor's commitment of funds as documented in the Program Application, prior to completion of the Term of this Agreement.
3. 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 fifth (5th) of each month for the previous month's expenditures. Invoices shall identify any Contractor funds expended in addition to the amount to be reimbursed, which shall be considered toward Contractor's fulfillment of commitment of funds as documented in the Program Application.
3. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories listed as follows, as set forth in Schedule D:
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

In the event the Contractor wishes to seek reimbursement for an expenditure that does not fall in one of the categories listed in this Paragraph 3, the Contractor must first obtain written consent from UCEDA prior to including such expenditure on any reimbursement invoice.

4. With each invoice, the Contractor shall tender receipts, reports and notes to the UCEDA sufficient for the UCEDA to determine that the Contractor expended the funds in accordance with this Agreement. All invoices, deliverable reports, receipts and notes shall be delivered to UCEDA on or before the fifth (5th) 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 a claim to the County showing its intent to disburse funds to the Contractor, pursuant to County Contract 2022-00000303. Upon the County's approval of the disbursement, the UCEDA shall remit payment to the Contractor within five (5) business days.
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.

SCHEDULE D

PROGRAM APPLICATION INSTRUCTIONS

Applicants **MUST** provide clear, complete details about their request for funding assistance. Please only apply once you have developed a well-thought out plan that clearly describes your need and how/why your proposed plan will meet this need. Please include ALL supporting documentation and evidence. Please use complete sentences. One word answers will not be considered a complete response. Applications will be scored based on need, connection to covid, clear budget, business activity viability, and measurable impact.

Accepting Applications: October 31, 2022

Minimum Request: \$5,000

Maximum Request: \$35,000

Program Description: Up to \$35,000 for businesses located in Ulster County with 25 or fewer employees at the time of application. Funding is meant to spur innovation and adaptation to the new reality of economic life with a highly contagious virus. The fund will provide reimbursement of up to 100% of eligible project costs. All projects must be located in Ulster County, New York

Eligible Applicants Must Meet ALL of the following criteria:

- Your primary business location must be in Ulster County, NY.
- Your business must be a sole proprietorship, partnership, corporation, Limited Liability Company or other legal form of business. Applicants who did not establish their business in New York State must provide a DBA or incorporation paperwork upon award.
- Your business must have 25 or fewer employees at the time of application.
- Must provide personal tax returns from all owners with greater than or equal to 20% ownership
- Business must maintain a separate bank account for business related expenses (cannot co-mingle business and personal expenses)

Other Application Information:

Please only select majority-, woman-, or veteran-owned if more than 50% of the business is owned by an individual or individuals who identify as such. Formal NYS paperwork is not required.

For questions 27-29, please provide a detailed narrative - even if it's repetitive! The scoring committee will be evaluating applications based on a clear need, clear project scope, clear budget, clear impact, and a clear covid connection.

For file uploads, please label your file **CLEARLY**. Business name **MUST** be included. If your file is not labeled clearly, your application may be marked incomplete.

Not for profit businesses that qualify for tax exempt status under section 501c3 of the Internal Revenue Code are **ELIGIBLE** and must complete section 4.

Think ahead about your expenses for next year! This funding does NOT reimburse anything purchased PRIOR to the award date which is expected to be in Q1 of 2023. Upon award, you will be given approval to begin making eligible purchases. Your award term is 120 days from date of award. Expenses made after your contract expiration will not be eligible for consideration.

Eligible Use of Funds:

Eligible expenses include rent, business mortgage payments, furniture, fixtures, equipment, operating expenses, and working capital that will prevent, prepare for, and respond to the impacts of the coronavirus pandemic.

Expenses incurred must be for activities located in Ulster County.

Equipment

- Permanent machinery and equipment (installed equipment/machinery) - **must complete section 8 of application**
- Misc. business equipment
- Vehicles
- Computers/software

Operating Expenses (i.e. Working Capital)

- Payroll (must provide formal payroll documentation from a payroll processing system with reimbursement request)
- Rent (must provide signed copy of lease agreement upon award)
- Utilities (bill submitted must match Ulster County business address)
- Supplies
- Inventory

Fixed Assets

Awards and disbursement of funds are contingent on receiving necessary approvals. If approvals are not received prior to contract end date the award will be rescinded and reimbursement will not be given.

Please complete section 8 of the application in its entirety to be considered.

- Property purchases, including soft costs*
- New building construction*
- Exterior building renovations, including soft costs*
- Signage*
- Interior renovations*

Other Eligible Expenses

- Daycare (only eligible where necessary for owner or employees to continue working)
- Financing Fees
- Loan application/closing fees and interest payments

- Bank charges/fees
- Closing costs

Ineligible expenses

- Owner's payroll or draw (direct payments to owner outside of payroll system)
- Advanced payments of any kind (only payments where goods/services have been provided are eligible).
- Any expense incurred before the award date (see contract) or after contract end date is ineligible.
- Taxes of any kind (property tax, income tax, payroll tax, sales tax, occupancy tax, etc.) are ineligible.
- Franchise fees and loan payments that are NOT mortgage payments (ie: business loans)

Funds will be provided as a reimbursement for eligible expenses. Eligible expenses must be incurred after award, and within 120 days of award.

Reimbursement Procedures

Funds shall not be provided in advance of project completion or full payment for the project by the business. Once the applicant provides verification that the work has been completed and that all vendors have been paid in full, reimbursement will be processed.

Applicants must document project expenditures. Proof of payment to the contractor/vendor is required in the form of an invoice and canceled check or credit card statement. Cash payments are not an acceptable form of payment and cannot be reimbursed.

Only those costs deemed to be reasonable and appropriate to complete the project which was approved and agreed upon will be reimbursed. Applicants may be required to supply additional information.

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 **ELISA PRITZKER DBA PRITZKER STUDIO & GALLERY**, a Sole Proprietorship with principal offices at 257 S. Riverside Rd., Highland, New York 12528 (the “**Contractor**”), (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-19 Local Fiscal Recovery Fund (the “**CLFRF**”), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of the Coronavirus Disease 2019 (“**COVID-19**”) in their communities; and

WHEREAS, Ulster County, as a CLFRF recipient, desires to utilize a portion of these ARPA funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to Ulster County based small businesses; and

WHEREAS, the County has made a portion of the ARPA funds available to help small businesses throughout New York State to safely reopen and restate their local economies in the wake of the COVID-19 pandemic; and

WHEREAS, the County allocated an amount not to exceed ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS (the “**County ARPA Funds**”); and

WHEREAS, the County entered into an Agreement with the UCEDA (County Contract No. 2022-00000303) to engage the UCEDA as a sub-recipient of the County ARPA Funds; and

WHEREAS, the UCEDA administers the Ulster County CARES II Small Business Assistance Program (the “**Program**”), which is a business relief response program created as a result of the County ARPA 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 may apply to the 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 Program, and the UCEDA has determined that the Contractor qualifies for assistance through the Program, for the purpose of rebuilding the Contractor’s business following the COVID-19 pandemic; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance through the 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 April 12, 2023** (the “Award Date”) **and ending August 10, 2023**.

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 **FIVE THOUSAND SIX HUNDRED AND 00/100 (\$5,600.00) 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:

Elisa Pritzker DBA Pritzker Studio & Gallery
257 S. Riverside Rd.
Highland, New York 12528

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, 5th 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.

******Signature page follows******

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: _____

Elisa Pritzker DBA Pritzker Studio & Gallery

By: _____
NAME: _____
TITLE: _____
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

1. In response to the COVID-19 pandemic, the Contractor shall use the funds it receives to assist and rebuild the Contractor's business.
2. The Contractor shall use the funds it receives in a manner consistent with the "Proposed Use of Funds" described in the Contractor's Program Application (which is attached hereto as Schedule "D" and hereby made part of this Agreement).
3. The Contractor shall use the funds it receives pursuant to this Agreement in the following categories, as set forth in the Program Application Instructions (which is attached hereto as Schedule "E" and hereby made part of this Agreement):
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

Use of the funds by the Contractor for any other purpose must be approved by the UCEDA in advance of expenditure.

4. The Contractor shall make all expenditures of the funds received pursuant to this Agreement within one hundred twenty (120) days of the Award Date.
5. The Contractor shall provide the following information upon execution of this agreement and at least once per year for two years following completion of the term of this Agreement, upon written request from UCEDA, as part of the program reporting requirements:
 - a. Current roster of all W-2 employees, indicating status for each employee (full-time, part-time, temporary/seasonal) and average weekly hours worked for each employee
 - b. Current hourly wage for each employee and whether each employee receives paid benefits
 - c. Household size, income, and demographics for each employee
 - d. Statement indicating progress toward completion of project and achievement of measurable outcomes that were identified in Contractor's Program Application

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The UCEDA, through the Program, shall pay to the Contractor a **not-to-exceed amount** of **FIVE THOUSAND SIX HUNDRED AND 00/100 (\$5,600.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend Contractor's own funds, consistent with Contractor's commitment of funds as documented in the Program Application, prior to completion of the Term of this Agreement.
3. 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 fifth (5th) of each month for the previous month's expenditures. Invoices shall identify any Contractor funds expended in addition to the amount to be reimbursed, which shall be considered toward Contractor's fulfillment of commitment of funds as documented in the Program Application.
3. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories listed as follows, as set forth in Schedule D:
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

In the event the Contractor wishes to seek reimbursement for an expenditure that does not fall in one of the categories listed in this Paragraph 3, the Contractor must first obtain written consent from UCEDA prior to including such expenditure on any reimbursement invoice.

4. With each invoice, the Contractor shall tender receipts, reports and notes to the UCEDA sufficient for the UCEDA to determine that the Contractor expended the funds in accordance with this Agreement. All invoices, deliverable reports, receipts and notes shall be delivered to UCEDA on or before the fifth (5th) 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 a claim to the County showing its intent to disburse funds to the Contractor, pursuant to County Contract 2022-00000303. Upon the County's approval of the disbursement, the UCEDA shall remit payment to the Contractor within five (5) business days.
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.

SCHEDULE D

PROGRAM APPLICATION INSTRUCTIONS

Applicants **MUST** provide clear, complete details about their request for funding assistance. Please only apply once you have developed a well-thought out plan that clearly describes your need and how/why your proposed plan will meet this need. Please include ALL supporting documentation and evidence. Please use complete sentences. One word answers will not be considered a complete response. Applications will be scored based on need, connection to covid, clear budget, business activity viability, and measurable impact.

Accepting Applications: October 31, 2022

Minimum Request: \$5,000

Maximum Request: \$35,000

Program Description: Up to \$35,000 for businesses located in Ulster County with 25 or fewer employees at the time of application. Funding is meant to spur innovation and adaptation to the new reality of economic life with a highly contagious virus. The fund will provide reimbursement of up to 100% of eligible project costs. All projects must be located in Ulster County, New York

Eligible Applicants Must Meet ALL of the following criteria:

- Your primary business location must be in Ulster County, NY.
- Your business must be a sole proprietorship, partnership, corporation, Limited Liability Company or other legal form of business. Applicants who did not establish their business in New York State must provide a DBA or incorporation paperwork upon award.
- Your business must have 25 or fewer employees at the time of application.
- Must provide personal tax returns from all owners with greater than or equal to 20% ownership
- Business must maintain a separate bank account for business related expenses (cannot co-mingle business and personal expenses)

Other Application Information:

Please only select majority-, woman-, or veteran-owned if more than 50% of the business is owned by an individual or individuals who identify as such. Formal NYS paperwork is not required.

For questions 27-29, please provide a detailed narrative - even if it's repetitive! The scoring committee will be evaluating applications based on a clear need, clear project scope, clear budget, clear impact, and a clear covid connection.

For file uploads, please label your file **CLEARLY**. Business name **MUST** be included. If your file is not labeled clearly, your application may be marked incomplete.

Not for profit businesses that qualify for tax exempt status under section 501c3 of the Internal Revenue Code are **ELIGIBLE** and must complete section 4.

Think ahead about your expenses for next year! This funding does NOT reimburse anything purchased PRIOR to the award date which is expected to be in Q1 of 2023. Upon award, you will be given approval to begin making eligible purchases. Your award term is 120 days from date of award. Expenses made after your contract expiration will not be eligible for consideration.

Eligible Use of Funds:

Eligible expenses include rent, business mortgage payments, furniture, fixtures, equipment, operating expenses, and working capital that will prevent, prepare for, and respond to the impacts of the coronavirus pandemic.

Expenses incurred must be for activities located in Ulster County.

Equipment

- Permanent machinery and equipment (installed equipment/machinery) - **must complete section 8 of application**
- Misc. business equipment
- Vehicles
- Computers/software

Operating Expenses (i.e. Working Capital)

- Payroll (must provide formal payroll documentation from a payroll processing system with reimbursement request)
- Rent (must provide signed copy of lease agreement upon award)
- Utilities (bill submitted must match Ulster County business address)
- Supplies
- Inventory

Fixed Assets

Awards and disbursement of funds are contingent on receiving necessary approvals. If approvals are not received prior to contract end date the award will be rescinded and reimbursement will not be given.

Please complete section 8 of the application in its entirety to be considered.

- Property purchases, including soft costs*
- New building construction*
- Exterior building renovations, including soft costs*
- Signage*
- Interior renovations*

Other Eligible Expenses

- Daycare (only eligible where necessary for owner or employees to continue working)
- Financing Fees
- Loan application/closing fees and interest payments

- Bank charges/fees
- Closing costs

Ineligible expenses

- Owner's payroll or draw (direct payments to owner outside of payroll system)
- Advanced payments of any kind (only payments where goods/services have been provided are eligible).
- Any expense incurred before the award date (see contract) or after contract end date is ineligible.
- Taxes of any kind (property tax, income tax, payroll tax, sales tax, occupancy tax, etc.) are ineligible.
- Franchise fees and loan payments that are NOT mortgage payments (ie: business loans)

Funds will be provided as a reimbursement for eligible expenses. Eligible expenses must be incurred after award, and within 120 days of award.

Reimbursement Procedures

Funds shall not be provided in advance of project completion or full payment for the project by the business. Once the applicant provides verification that the work has been completed and that all vendors have been paid in full, reimbursement will be processed.

Applicants must document project expenditures. Proof of payment to the contractor/vendor is required in the form of an invoice and canceled check or credit card statement. Cash payments are not an acceptable form of payment and cannot be reimbursed.

Only those costs deemed to be reasonable and appropriate to complete the project which was approved and agreed upon will be reimbursed. Applicants may be required to supply additional information.

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 **ALLIE ROCKERMANN DBA EVOLVE FUNCTIONAL FITNESS**, a Sole Proprietorship with principal offices at 77 Cornell Street, Kingston, New York 12401 (the “**Contractor**”), (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-19 Local Fiscal Recovery Fund (the “CLFRF”), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of the Coronavirus Disease 2019 (“COVID-19”) in their communities; and

WHEREAS, Ulster County, as a CLFRF recipient, desires to utilize a portion of these ARPA funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to Ulster County based small businesses; and

WHEREAS, the County has made a portion of the ARPA funds available to help small businesses throughout New York State to safely reopen and restate their local economies in the wake of the COVID-19 pandemic; and

WHEREAS, the County allocated an amount not to exceed ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS (the “County ARPA Funds”); and

WHEREAS, the County entered into an Agreement with the UCEDA (County Contract No. 2022-00000303) to engage the UCEDA as a sub-recipient of the County ARPA Funds; and

WHEREAS, the UCEDA administers the Ulster County CARES II Small Business Assistance Program (the “Program”), which is a business relief response program created as a result of the County ARPA 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 may apply to the 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 Program, and the UCEDA has determined that the Contractor qualifies for assistance through the Program, for the purpose of rebuilding the Contractor’s business following the COVID-19 pandemic; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance through the 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 April 12, 2023** (the “Award Date”) **and ending August 10, 2023**.

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 **FIVE THOUSAND AND 00/100 (\$5,000.00) 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:

Allie Rockermann DBA Evolve Functional Fitness
77 Cornell Street
Kingston, New York 12401

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, 5th 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.

****Signature page follows****

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: _____

Allie Rockermann DBA Evolve Functional Fitness

By: _____
NAME: _____
TITLE: _____
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

1. In response to the COVID-19 pandemic, the Contractor shall use the funds it receives to assist and rebuild the Contractor's business.
2. The Contractor shall use the funds it receives in a manner consistent with the "Proposed Use of Funds" described in the Contractor's Program Application (which is attached hereto as Schedule "D" and hereby made part of this Agreement).
3. The Contractor shall use the funds it receives pursuant to this Agreement in the following categories, as set forth in the Program Application Instructions (which is attached hereto as Schedule "E" and hereby made part of this Agreement):
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

Use of the funds by the Contractor for any other purpose must be approved by the UCEDA in advance of expenditure.

4. The Contractor shall make all expenditures of the funds received pursuant to this Agreement within one hundred twenty (120) days of the Award Date.
5. The Contractor shall provide the following information upon execution of this agreement and at least once per year for two years following completion of the term of this Agreement, upon written request from UCEDA, as part of the program reporting requirements:
 - a. Current roster of all W-2 employees, indicating status for each employee (full-time, part-time, temporary/seasonal) and average weekly hours worked for each employee
 - b. Current hourly wage for each employee and whether each employee receives paid benefits
 - c. Household size, income, and demographics for each employee
 - d. Statement indicating progress toward completion of project and achievement of measurable outcomes that were identified in Contractor's Program Application

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The UCEDA, through the Program, shall pay to the Contractor a **not-to-exceed amount** of **FIVE THOUSAND AND 00/100 (\$5,000.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend Contractor's own funds, consistent with Contractor's commitment of funds as documented in the Program Application, prior to completion of the Term of this Agreement.
3. 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 fifth (5th) of each month for the previous month's expenditures. Invoices shall identify any Contractor funds expended in addition to the amount to be reimbursed, which shall be considered toward Contractor's fulfillment of commitment of funds as documented in the Program Application.
3. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories listed as follows, as set forth in Schedule D:
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

In the event the Contractor wishes to seek reimbursement for an expenditure that does not fall in one of the categories listed in this Paragraph 3, the Contractor must first obtain written consent from UCEDA prior to including such expenditure on any reimbursement invoice.

4. With each invoice, the Contractor shall tender receipts, reports and notes to the UCEDA sufficient for the UCEDA to determine that the Contractor expended the funds in accordance with this Agreement. All invoices, deliverable reports, receipts and notes shall be delivered to UCEDA on or before the fifth (5th) 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 a claim to the County showing its intent to disburse funds to the Contractor, pursuant to County Contract 2022-00000303. Upon the County's approval of the disbursement, the UCEDA shall remit payment to the Contractor within five (5) business days.
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.

SCHEDULE D

PROGRAM APPLICATION INSTRUCTIONS

Applicants **MUST** provide clear, complete details about their request for funding assistance. Please only apply once you have developed a well-thought out plan that clearly describes your need and how/why your proposed plan will meet this need. Please include **ALL** supporting documentation and evidence. Please use complete sentences. One word answers will not be considered a complete response. Applications will be scored based on need, connection to covid, clear budget, business activity viability, and measurable impact.

Accepting Applications: October 31, 2022

Minimum Request: \$5,000

Maximum Request: \$35,000

Program Description: Up to \$35,000 for businesses located in Ulster County with 25 or fewer employees at the time of application. Funding is meant to spur innovation and adaptation to the new reality of economic life with a highly contagious virus. The fund will provide reimbursement of up to 100% of eligible project costs. All projects must be located in Ulster County, New York

Eligible Applicants Must Meet ALL of the following criteria:

- Your primary business location must be in Ulster County, NY.
- Your business must be a sole proprietorship, partnership, corporation, Limited Liability Company or other legal form of business. Applicants who did not establish their business in New York State must provide a DBA or incorporation paperwork upon award.
- Your business must have 25 or fewer employees at the time of application.
- Must provide personal tax returns from all owners with greater than or equal to 20% ownership
- Business must maintain a separate bank account for business related expenses (cannot co-mingle business and personal expenses)

Other Application Information:

Please only select majority-, woman-, or veteran-owned if more than 50% of the business is owned by an individual or individuals who identify as such. Formal NYS paperwork is not required.

For questions 27-29, please provide a detailed narrative - even if it's repetitive! The scoring committee will be evaluating applications based on a clear need, clear project scope, clear budget, clear impact, and a clear covid connection.

For file uploads, please label your file **CLEARLY**. Business name **MUST** be included. If your file is not labeled clearly, your application may be marked incomplete.

Not for profit businesses that qualify for tax exempt status under section 501c3 of the Internal Revenue Code are **ELIGIBLE** and must complete section 4.

Think ahead about your expenses for next year! This funding does NOT reimburse anything purchased PRIOR to the award date which is expected to be in Q1 of 2023. Upon award, you will be given approval to begin making eligible purchases. Your award term is 120 days from date of award. Expenses made after your contract expiration will not be eligible for consideration.

Eligible Use of Funds:

Eligible expenses include rent, business mortgage payments, furniture, fixtures, equipment, operating expenses, and working capital that will prevent, prepare for, and respond to the impacts of the coronavirus pandemic.

Expenses incurred must be for activities located in Ulster County.

Equipment

- Permanent machinery and equipment (installed equipment/machinery) - **must complete section 8 of application**
- Misc. business equipment
- Vehicles
- Computers/software

Operating Expenses (i.e. Working Capital)

- Payroll (must provide formal payroll documentation from a payroll processing system with reimbursement request)
- Rent (must provide signed copy of lease agreement upon award)
- Utilities (bill submitted must match Ulster County business address)
- Supplies
- Inventory

Fixed Assets

Awards and disbursement of funds are contingent on receiving necessary approvals. If approvals are not received prior to contract end date the award will be rescinded and reimbursement will not be given.

Please complete section 8 of the application in its entirety to be considered.

- Property purchases, including soft costs*
- New building construction*
- Exterior building renovations, including soft costs*
- Signage*
- Interior renovations*

Other Eligible Expenses

- Daycare (only eligible where necessary for owner or employees to continue working)
- Financing Fees
- Loan application/closing fees and interest payments

- Bank charges/fees
- Closing costs

Ineligible expenses

- Owner's payroll or draw (direct payments to owner outside of payroll system)
- Advanced payments of any kind (only payments where goods/services have been provided are eligible).
- Any expense incurred before the award date (see contract) or after contract end date is ineligible.
- Taxes of any kind (property tax, income tax, payroll tax, sales tax, occupancy tax, etc.) are ineligible.
- Franchise fees and loan payments that are NOT mortgage payments (ie: business loans)

Funds will be provided as a reimbursement for eligible expenses. Eligible expenses must be incurred after award, and within 120 days of award.

Reimbursement Procedures

Funds shall not be provided in advance of project completion or full payment for the project by the business. Once the applicant provides verification that the work has been completed and that all vendors have been paid in full, reimbursement will be processed.

Applicants must document project expenditures. Proof of payment to the contractor/vendor is required in the form of an invoice and canceled check or credit card statement. Cash payments are not an acceptable form of payment and cannot be reimbursed.

Only those costs deemed to be reasonable and appropriate to complete the project which was approved and agreed upon will be reimbursed. Applicants may be required to supply additional information.

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 **BELLEAYRE RENTALS LLC DBA BELLEAYRE LODGE**, a Limited Liability Corporation with principal offices at 15 Hostel Drive, Pine Hill, New York 12465 (the “**Contractor**”), (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-19 Local Fiscal Recovery Fund (the “CLFRF”), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of the Coronavirus Disease 2019 (“COVID-19”) in their communities; and

WHEREAS, Ulster County, as a CLFRF recipient, desires to utilize a portion of these ARPA funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to Ulster County based small businesses; and

WHEREAS, the County has made a portion of the ARPA funds available to help small businesses throughout New York State to safely reopen and restate their local economies in the wake of the COVID-19 pandemic; and

WHEREAS, the County allocated an amount not to exceed ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS (the “County ARPA Funds”); and

WHEREAS, the County entered into an Agreement with the UCEDA (County Contract No. 2022-00000303) to engage the UCEDA as a sub-recipient of the County ARPA Funds; and

WHEREAS, the UCEDA administers the Ulster County CARES II Small Business Assistance Program (the “Program”), which is a business relief response program created as a result of the County ARPA 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 may apply to the 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 Program, and the UCEDA has determined that the Contractor qualifies for assistance through the Program, for the purpose of rebuilding the Contractor’s business following the COVID-19 pandemic; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance through the 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 April 12, 2023** (the “Award Date”) **and ending August 10, 2023**.

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 **THIRY-FOUR THOUSAND TWO HUNDRED AND NINTY-FOUR AND 00/100 (\$34,294.00) 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:

Belleayre Rentals LLC DBA Belleayre Lodge
15 Hostel Drive
Pine Hill, New York 12465

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, 5th 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.

****Signature page follows****

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: _____

Belleayre Rentals LLC DBA Belleayre Lodge

By: _____
NAME: _____
TITLE: _____
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

1. In response to the COVID-19 pandemic, the Contractor shall use the funds it receives to assist and rebuild the Contractor's business.
2. The Contractor shall use the funds it receives in a manner consistent with the "Proposed Use of Funds" described in the Contractor's Program Application (which is attached hereto as Schedule "D" and hereby made part of this Agreement).
3. The Contractor shall use the funds it receives pursuant to this Agreement in the following categories, as set forth in the Program Application Instructions (which is attached hereto as Schedule "E" and hereby made part of this Agreement):
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

Use of the funds by the Contractor for any other purpose must be approved by the UCEDA in advance of expenditure.

4. The Contractor shall make all expenditures of the funds received pursuant to this Agreement within one hundred twenty (120) days of the Award Date.
5. The Contractor shall provide the following information upon execution of this agreement and at least once per year for two years following completion of the term of this Agreement, upon written request from UCEDA, as part of the program reporting requirements:
 - a. Current roster of all W-2 employees, indicating status for each employee (full-time, part-time, temporary/seasonal) and average weekly hours worked for each employee
 - b. Current hourly wage for each employee and whether each employee receives paid benefits
 - c. Household size, income, and demographics for each employee
 - d. Statement indicating progress toward completion of project and achievement of measurable outcomes that were identified in Contractor's Program Application

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The UCEDA, through the Program, shall pay to the Contractor a **not-to-exceed amount** of **THIRY-FOUR THOUSAND TWO HUNDRED AND NINTY-FOUR AND 00/100 (\$34,294.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend Contractor's own funds, consistent with Contractor's commitment of funds as documented in the Program Application, prior to completion of the Term of this Agreement.
3. 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 fifth (5th) of each month for the previous month's expenditures. Invoices shall identify any Contractor funds expended in addition to the amount to be reimbursed, which shall be considered toward Contractor's fulfillment of commitment of funds as documented in the Program Application.
3. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories listed as follows, as set forth in Schedule D:
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

In the event the Contractor wishes to seek reimbursement for an expenditure that does not fall in one of the categories listed in this Paragraph 3, the Contractor must first obtain written consent from UCEDA prior to including such expenditure on any reimbursement invoice.

4. With each invoice, the Contractor shall tender receipts, reports and notes to the UCEDA sufficient for the UCEDA to determine that the Contractor expended the funds in accordance with this Agreement. All invoices, deliverable reports, receipts and notes shall be delivered to UCEDA on or before the fifth (5th) 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 a claim to the County showing its intent to disburse funds to the Contractor, pursuant to County Contract 2022-00000303. Upon the County's approval of the disbursement, the UCEDA shall remit payment to the Contractor within five (5) business days.
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.

SCHEDULE D

PROGRAM APPLICATION INSTRUCTIONS

Applicants **MUST** provide clear, complete details about their request for funding assistance. Please only apply once you have developed a well-thought out plan that clearly describes your need and how/why your proposed plan will meet this need. Please include ALL supporting documentation and evidence. Please use complete sentences. One word answers will not be considered a complete response. Applications will be scored based on need, connection to covid, clear budget, business activity viability, and measurable impact.

Accepting Applications: October 31, 2022

Minimum Request: \$5,000

Maximum Request: \$35,000

Program Description: Up to \$35,000 for businesses located in Ulster County with 25 or fewer employees at the time of application. Funding is meant to spur innovation and adaptation to the new reality of economic life with a highly contagious virus. The fund will provide reimbursement of up to 100% of eligible project costs. All projects must be located in Ulster County, New York

Eligible Applicants Must Meet ALL of the following criteria:

- Your primary business location must be in Ulster County, NY.
- Your business must be a sole proprietorship, partnership, corporation, Limited Liability Company or other legal form of business. Applicants who did not establish their business in New York State must provide a DBA or incorporation paperwork upon award.
- Your business must have 25 or fewer employees at the time of application.
- Must provide personal tax returns from all owners with greater than or equal to 20% ownership
- Business must maintain a separate bank account for business related expenses (cannot co-mingle business and personal expenses)

Other Application Information:

Please only select majority-, woman-, or veteran-owned if more than 50% of the business is owned by an individual or individuals who identify as such. Formal NYS paperwork is not required.

For questions 27-29, please provide a detailed narrative - even if it's repetitive! The scoring committee will be evaluating applications based on a clear need, clear project scope, clear budget, clear impact, and a clear covid connection.

For file uploads, please label your file **CLEARLY**. Business name **MUST** be included. If your file is not labeled clearly, your application may be marked incomplete.

Not for profit businesses that qualify for tax exempt status under section 501c3 of the Internal Revenue Code are **ELIGIBLE** and must complete section 4.

Think ahead about your expenses for next year! This funding does NOT reimburse anything purchased PRIOR to the award date which is expected to be in Q1 of 2023. Upon award, you will be given approval to begin making eligible purchases. Your award term is 120 days from date of award. Expenses made after your contract expiration will not be eligible for consideration.

Eligible Use of Funds:

Eligible expenses include rent, business mortgage payments, furniture, fixtures, equipment, operating expenses, and working capital that will prevent, prepare for, and respond to the impacts of the coronavirus pandemic.

Expenses incurred must be for activities located in Ulster County.

Equipment

- Permanent machinery and equipment (installed equipment/machinery) - **must complete section 8 of application**
- Misc. business equipment
- Vehicles
- Computers/software

Operating Expenses (i.e. Working Capital)

- Payroll (must provide formal payroll documentation from a payroll processing system with reimbursement request)
- Rent (must provide signed copy of lease agreement upon award)
- Utilities (bill submitted must match Ulster County business address)
- Supplies
- Inventory

Fixed Assets

Awards and disbursement of funds are contingent on receiving necessary approvals. If approvals are not received prior to contract end date the award will be rescinded and reimbursement will not be given.

Please complete section 8 of the application in its entirety to be considered.

- Property purchases, including soft costs*
- New building construction*
- Exterior building renovations, including soft costs*
- Signage*
- Interior renovations*

Other Eligible Expenses

- Daycare (only eligible where necessary for owner or employees to continue working)
- Financing Fees
- Loan application/closing fees and interest payments

- Bank charges/fees
- Closing costs

Ineligible expenses

- Owner's payroll or draw (direct payments to owner outside of payroll system)
- Advanced payments of any kind (only payments where goods/services have been provided are eligible).
- Any expense incurred before the award date (see contract) or after contract end date is ineligible.
- Taxes of any kind (property tax, income tax, payroll tax, sales tax, occupancy tax, etc.) are ineligible.
- Franchise fees and loan payments that are NOT mortgage payments (ie: business loans)

Funds will be provided as a reimbursement for eligible expenses. Eligible expenses must be incurred after award, and within 120 days of award.

Reimbursement Procedures

Funds shall not be provided in advance of project completion or full payment for the project by the business. Once the applicant provides verification that the work has been completed and that all vendors have been paid in full, reimbursement will be processed.

Applicants must document project expenditures. Proof of payment to the contractor/vendor is required in the form of an invoice and canceled check or credit card statement. Cash payments are not an acceptable form of payment and cannot be reimbursed.

Only those costs deemed to be reasonable and appropriate to complete the project which was approved and agreed upon will be reimbursed. Applicants may be required to supply additional information.

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 **ALANLINDA LLC**, a Limited Liability Corporation with principal offices at 4802 State Route 209, Accord, New York 12404 (the “**Contractor**”), (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-19 Local Fiscal Recovery Fund (the “CLFRF”), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of the Coronavirus Disease 2019 (“COVID-19”) in their communities; and

WHEREAS, Ulster County, as a CLFRF recipient, desires to utilize a portion of these ARPA funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to Ulster County based small businesses; and

WHEREAS, the County has made a portion of the ARPA funds available to help small businesses throughout New York State to safely reopen and restate their local economies in the wake of the COVID-19 pandemic; and

WHEREAS, the County allocated an amount not to exceed ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS (the “County ARPA Funds”); and

WHEREAS, the County entered into an Agreement with the UCEDA (County Contract No. 2022-00000303) to engage the UCEDA as a sub-recipient of the County ARPA Funds; and

WHEREAS, the UCEDA administers the Ulster County CARES II Small Business Assistance Program (the “Program”), which is a business relief response program created as a result of the County ARPA 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 may apply to the 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 Program, and the UCEDA has determined that the Contractor qualifies for assistance through the Program, for the purpose of rebuilding the Contractor’s business following the COVID-19 pandemic; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance through the 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 April 12, 2023** (the “Award Date”) **and ending August 10, 2023**.

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 **THIRTY-FIVE THOUSAND AND 00/100 (\$35,000.00) 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:
Alanlinda LLC
4802 State Route 209
Accord, New York 12404

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, 5th 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.

****Signature page follows****

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: _____

Alanlinda LLC

By: _____
NAME: _____
TITLE: _____
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

1. In response to the COVID-19 pandemic, the Contractor shall use the funds it receives to assist and rebuild the Contractor's business.
2. The Contractor shall use the funds it receives in a manner consistent with the "Proposed Use of Funds" described in the Contractor's Program Application (which is attached hereto as Schedule "D" and hereby made part of this Agreement).
3. The Contractor shall use the funds it receives pursuant to this Agreement in the following categories, as set forth in the Program Application Instructions (which is attached hereto as Schedule "E" and hereby made part of this Agreement):
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

Use of the funds by the Contractor for any other purpose must be approved by the UCEDA in advance of expenditure.

4. The Contractor shall make all expenditures of the funds received pursuant to this Agreement within one hundred twenty (120) days of the Award Date.
5. The Contractor shall provide the following information upon execution of this agreement and at least once per year for two years following completion of the term of this Agreement, upon written request from UCEDA, as part of the program reporting requirements:
 - a. Current roster of all W-2 employees, indicating status for each employee (full-time, part-time, temporary/seasonal) and average weekly hours worked for each employee
 - b. Current hourly wage for each employee and whether each employee receives paid benefits
 - c. Household size, income, and demographics for each employee
 - d. Statement indicating progress toward completion of project and achievement of measurable outcomes that were identified in Contractor's Program Application

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The UCEDA, through the Program, shall pay to the Contractor a **not-to-exceed amount** of **THIRTY-FIVE THOUSAND AND 00/100 (\$35,000.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend Contractor's own funds, consistent with Contractor's commitment of funds as documented in the Program Application, prior to completion of the Term of this Agreement.
3. 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 fifth (5th) of each month for the previous month's expenditures. Invoices shall identify any Contractor funds expended in addition to the amount to be reimbursed, which shall be considered toward Contractor's fulfillment of commitment of funds as documented in the Program Application.
3. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories listed as follows, as set forth in Schedule D:
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

In the event the Contractor wishes to seek reimbursement for an expenditure that does not fall in one of the categories listed in this Paragraph 3, the Contractor must first obtain written consent from UCEDA prior to including such expenditure on any reimbursement invoice.

4. With each invoice, the Contractor shall tender receipts, reports and notes to the UCEDA sufficient for the UCEDA to determine that the Contractor expended the funds in accordance with this Agreement. All invoices, deliverable reports, receipts and notes shall be delivered to UCEDA on or before the fifth (5th) 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 a claim to the County showing its intent to disburse funds to the Contractor, pursuant to County Contract 2022-00000303. Upon the County's approval of the disbursement, the UCEDA shall remit payment to the Contractor within five (5) business days.
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.

SCHEDULE D

PROGRAM APPLICATION INSTRUCTIONS

Applicants **MUST** provide clear, complete details about their request for funding assistance. Please only apply once you have developed a well-thought out plan that clearly describes your need and how/why your proposed plan will meet this need. Please include ALL supporting documentation and evidence. Please use complete sentences. One word answers will not be considered a complete response. Applications will be scored based on need, connection to covid, clear budget, business activity viability, and measurable impact.

Accepting Applications: October 31, 2022

Minimum Request: \$5,000

Maximum Request: \$35,000

Program Description: Up to \$35,000 for businesses located in Ulster County with 25 or fewer employees at the time of application. Funding is meant to spur innovation and adaptation to the new reality of economic life with a highly contagious virus. The fund will provide reimbursement of up to 100% of eligible project costs. All projects must be located in Ulster County, New York

Eligible Applicants Must Meet ALL of the following criteria:

- Your primary business location must be in Ulster County, NY.
- Your business must be a sole proprietorship, partnership, corporation, Limited Liability Company or other legal form of business. Applicants who did not establish their business in New York State must provide a DBA or incorporation paperwork upon award.
- Your business must have 25 or fewer employees at the time of application.
- Must provide personal tax returns from all owners with greater than or equal to 20% ownership
- Business must maintain a separate bank account for business related expenses (cannot co-mingle business and personal expenses)

Other Application Information:

Please only select majority-, woman-, or veteran-owned if more than 50% of the business is owned by an individual or individuals who identify as such. Formal NYS paperwork is not required.

For questions 27-29, please provide a detailed narrative - even if it's repetitive! The scoring committee will be evaluating applications based on a clear need, clear project scope, clear budget, clear impact, and a clear covid connection.

For file uploads, please label your file **CLEARLY**. Business name **MUST** be included. If your file is not labeled clearly, your application may be marked incomplete.

Not for profit businesses that qualify for tax exempt status under section 501c3 of the Internal Revenue Code are **ELIGIBLE** and must complete section 4.

Think ahead about your expenses for next year! This funding does NOT reimburse anything purchased PRIOR to the award date which is expected to be in Q1 of 2023. Upon award, you will be given approval to begin making eligible purchases. Your award term is 120 days from date of award. Expenses made after your contract expiration will not be eligible for consideration.

Eligible Use of Funds:

Eligible expenses include rent, business mortgage payments, furniture, fixtures, equipment, operating expenses, and working capital that will prevent, prepare for, and respond to the impacts of the coronavirus pandemic.

Expenses incurred must be for activities located in Ulster County.

Equipment

- Permanent machinery and equipment (installed equipment/machinery) - **must complete section 8 of application**
- Misc. business equipment
- Vehicles
- Computers/software

Operating Expenses (i.e. Working Capital)

- Payroll (must provide formal payroll documentation from a payroll processing system with reimbursement request)
- Rent (must provide signed copy of lease agreement upon award)
- Utilities (bill submitted must match Ulster County business address)
- Supplies
- Inventory

Fixed Assets

Awards and disbursement of funds are contingent on receiving necessary approvals. If approvals are not received prior to contract end date the award will be rescinded and reimbursement will not be given.

Please complete section 8 of the application in its entirety to be considered.

- Property purchases, including soft costs*
- New building construction*
- Exterior building renovations, including soft costs*
- Signage*
- Interior renovations*

Other Eligible Expenses

- Daycare (only eligible where necessary for owner or employees to continue working)
- Financing Fees
- Loan application/closing fees and interest payments

- Bank charges/fees
- Closing costs

Ineligible expenses

- Owner's payroll or draw (direct payments to owner outside of payroll system)
- Advanced payments of any kind (only payments where goods/services have been provided are eligible).
- Any expense incurred before the award date (see contract) or after contract end date is ineligible.
- Taxes of any kind (property tax, income tax, payroll tax, sales tax, occupancy tax, etc.) are ineligible.
- Franchise fees and loan payments that are NOT mortgage payments (ie: business loans)

Funds will be provided as a reimbursement for eligible expenses. Eligible expenses must be incurred after award, and within 120 days of award.

Reimbursement Procedures

Funds shall not be provided in advance of project completion or full payment for the project by the business. Once the applicant provides verification that the work has been completed and that all vendors have been paid in full, reimbursement will be processed.

Applicants must document project expenditures. Proof of payment to the contractor/vendor is required in the form of an invoice and canceled check or credit card statement. Cash payments are not an acceptable form of payment and cannot be reimbursed.

Only those costs deemed to be reasonable and appropriate to complete the project which was approved and agreed upon will be reimbursed. Applicants may be required to supply additional information.

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 **CATSKILL CONSTRUCTION CONSULTANTS, INC.**, a Limited Liability Corporation with principal offices at 22 North Main Street, Ellenville, New York 12428 (the “**Contractor**”), (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-19 Local Fiscal Recovery Fund (the “**CLFRF**”), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of the Coronavirus Disease 2019 (“**COVID-19**”) in their communities; and

WHEREAS, Ulster County, as a CLFRF recipient, desires to utilize a portion of these ARPA funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to Ulster County based small businesses; and

WHEREAS, the County has made a portion of the ARPA funds available to help small businesses throughout New York State to safely reopen and restate their local economies in the wake of the COVID-19 pandemic; and

WHEREAS, the County allocated an amount not to exceed ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS (the “**County ARPA Funds**”); and

WHEREAS, the County entered into an Agreement with the UCEDA (County Contract No. 2022-00000303) to engage the UCEDA as a sub-recipient of the County ARPA Funds; and

WHEREAS, the UCEDA administers the Ulster County CARES II Small Business Assistance Program (the “**Program**”), which is a business relief response program created as a result of the County ARPA 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 may apply to the 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 Program, and the UCEDA has determined that the Contractor qualifies for assistance through the Program, for the purpose of rebuilding the Contractor’s business following the COVID-19 pandemic; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance through the 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 April 12, 2023** (the “Award Date”) **and ending August 10, 2023**.

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 **FIVE THOUSAND AND 00/100 (\$5,000.00) 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:

Catskill Construction Consultants, Inc.
22 North Main Street
Ellenville, New York 12428

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, 5th 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.

******Signature page follows******

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: _____

Catskill Construction Consultants, Inc.

By: _____
NAME: _____
TITLE: _____
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

1. In response to the COVID-19 pandemic, the Contractor shall use the funds it receives to assist and rebuild the Contractor's business.
2. The Contractor shall use the funds it receives in a manner consistent with the "Proposed Use of Funds" described in the Contractor's Program Application (which is attached hereto as Schedule "D" and hereby made part of this Agreement).
3. The Contractor shall use the funds it receives pursuant to this Agreement in the following categories, as set forth in the Program Application Instructions (which is attached hereto as Schedule "E" and hereby made part of this Agreement):
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

Use of the funds by the Contractor for any other purpose must be approved by the UCEDA in advance of expenditure.

4. The Contractor shall make all expenditures of the funds received pursuant to this Agreement within one hundred twenty (120) days of the Award Date.
5. The Contractor shall provide the following information upon execution of this agreement and at least once per year for two years following completion of the term of this Agreement, upon written request from UCEDA, as part of the program reporting requirements:
 - a. Current roster of all W-2 employees, indicating status for each employee (full-time, part-time, temporary/seasonal) and average weekly hours worked for each employee
 - b. Current hourly wage for each employee and whether each employee receives paid benefits
 - c. Household size, income, and demographics for each employee
 - d. Statement indicating progress toward completion of project and achievement of measurable outcomes that were identified in Contractor's Program Application

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The UCEDA, through the Program, shall pay to the Contractor a **not-to-exceed amount** of **FIVE THOUSAND AND 00/100 (\$5,000.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend Contractor's own funds, consistent with Contractor's commitment of funds as documented in the Program Application, prior to completion of the Term of this Agreement.
3. 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 fifth (5th) of each month for the previous month's expenditures. Invoices shall identify any Contractor funds expended in addition to the amount to be reimbursed, which shall be considered toward Contractor's fulfillment of commitment of funds as documented in the Program Application.
3. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories listed as follows, as set forth in Schedule D:
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

In the event the Contractor wishes to seek reimbursement for an expenditure that does not fall in one of the categories listed in this Paragraph 3, the Contractor must first obtain written consent from UCEDA prior to including such expenditure on any reimbursement invoice.

4. With each invoice, the Contractor shall tender receipts, reports and notes to the UCEDA sufficient for the UCEDA to determine that the Contractor expended the funds in accordance with this Agreement. All invoices, deliverable reports, receipts and notes shall be delivered to UCEDA on or before the fifth (5th) 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 a claim to the County showing its intent to disburse funds to the Contractor, pursuant to County Contract 2022-00000303. Upon the County's approval of the disbursement, the UCEDA shall remit payment to the Contractor within five (5) business days.
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.

SCHEDULE D

PROGRAM APPLICATION INSTRUCTIONS

Applicants **MUST** provide clear, complete details about their request for funding assistance. Please only apply once you have developed a well-thought out plan that clearly describes your need and how/why your proposed plan will meet this need. Please include ALL supporting documentation and evidence. Please use complete sentences. One word answers will not be considered a complete response. Applications will be scored based on need, connection to covid, clear budget, business activity viability, and measurable impact.

Accepting Applications: October 31, 2022

Minimum Request: \$5,000

Maximum Request: \$35,000

Program Description: Up to \$35,000 for businesses located in Ulster County with 25 or fewer employees at the time of application. Funding is meant to spur innovation and adaptation to the new reality of economic life with a highly contagious virus. The fund will provide reimbursement of up to 100% of eligible project costs. All projects must be located in Ulster County, New York

Eligible Applicants Must Meet ALL of the following criteria:

- Your primary business location must be in Ulster County, NY.
- Your business must be a sole proprietorship, partnership, corporation, Limited Liability Company or other legal form of business. Applicants who did not establish their business in New York State must provide a DBA or incorporation paperwork upon award.
- Your business must have 25 or fewer employees at the time of application.
- Must provide personal tax returns from all owners with greater than or equal to 20% ownership
- Business must maintain a separate bank account for business related expenses (cannot co-mingle business and personal expenses)

Other Application Information:

Please only select majority-, woman-, or veteran-owned if more than 50% of the business is owned by an individual or individuals who identify as such. Formal NYS paperwork is not required.

For questions 27-29, please provide a detailed narrative - even if it's repetitive! The scoring committee will be evaluating applications based on a clear need, clear project scope, clear budget, clear impact, and a clear covid connection.

For file uploads, please label your file **CLEARLY**. Business name **MUST** be included. If your file is not labeled clearly, your application may be marked incomplete.

Not for profit businesses that qualify for tax exempt status under section 501c3 of the Internal Revenue Code are **ELIGIBLE** and must complete section 4.

Think ahead about your expenses for next year! This funding does NOT reimburse anything purchased PRIOR to the award date which is expected to be in Q1 of 2023. Upon award, you will be given approval to begin making eligible purchases. Your award term is 120 days from date of award. Expenses made after your contract expiration will not be eligible for consideration.

Eligible Use of Funds:

Eligible expenses include rent, business mortgage payments, furniture, fixtures, equipment, operating expenses, and working capital that will prevent, prepare for, and respond to the impacts of the coronavirus pandemic.

Expenses incurred must be for activities located in Ulster County.

Equipment

- Permanent machinery and equipment (installed equipment/machinery) - **must complete section 8 of application**
- Misc. business equipment
- Vehicles
- Computers/software

Operating Expenses (i.e. Working Capital)

- Payroll (must provide formal payroll documentation from a payroll processing system with reimbursement request)
- Rent (must provide signed copy of lease agreement upon award)
- Utilities (bill submitted must match Ulster County business address)
- Supplies
- Inventory

Fixed Assets

Awards and disbursement of funds are contingent on receiving necessary approvals. If approvals are not received prior to contract end date the award will be rescinded and reimbursement will not be given.

Please complete section 8 of the application in its entirety to be considered.

- Property purchases, including soft costs*
- New building construction*
- Exterior building renovations, including soft costs*
- Signage*
- Interior renovations*

Other Eligible Expenses

- Daycare (only eligible where necessary for owner or employees to continue working)
- Financing Fees
- Loan application/closing fees and interest payments

- Bank charges/fees
- Closing costs

Ineligible expenses

- Owner's payroll or draw (direct payments to owner outside of payroll system)
- Advanced payments of any kind (only payments where goods/services have been provided are eligible).
- Any expense incurred before the award date (see contract) or after contract end date is ineligible.
- Taxes of any kind (property tax, income tax, payroll tax, sales tax, occupancy tax, etc.) are ineligible.
- Franchise fees and loan payments that are NOT mortgage payments (ie: business loans)

Funds will be provided as a reimbursement for eligible expenses. Eligible expenses must be incurred after award, and within 120 days of award.

Reimbursement Procedures

Funds shall not be provided in advance of project completion or full payment for the project by the business. Once the applicant provides verification that the work has been completed and that all vendors have been paid in full, reimbursement will be processed.

Applicants must document project expenditures. Proof of payment to the contractor/vendor is required in the form of an invoice and canceled check or credit card statement. Cash payments are not an acceptable form of payment and cannot be reimbursed.

Only those costs deemed to be reasonable and appropriate to complete the project which was approved and agreed upon will be reimbursed. Applicants may be required to supply additional information.

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 **WESTWIND ORCHARD, LLC**, a Limited Liability Corporation with principal offices at 215 Lower Whitfield Rd., Accord, New York 12404 (the “**Contractor**”), (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-19 Local Fiscal Recovery Fund (the “**CLFRF**”), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of the Coronavirus Disease 2019 (“**COVID-19**”) in their communities; and

WHEREAS, Ulster County, as a CLFRF recipient, desires to utilize a portion of these ARPA funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to Ulster County based small businesses; and

WHEREAS, the County has made a portion of the ARPA funds available to help small businesses throughout New York State to safely reopen and restate their local economies in the wake of the COVID-19 pandemic; and

WHEREAS, the County allocated an amount not to exceed ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS (the “**County ARPA Funds**”); and

WHEREAS, the County entered into an Agreement with the UCEDA (County Contract No. 2022-00000303) to engage the UCEDA as a sub-recipient of the County ARPA Funds; and

WHEREAS, the UCEDA administers the Ulster County CARES II Small Business Assistance Program (the “**Program**”), which is a business relief response program created as a result of the County ARPA 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 may apply to the 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 Program, and the UCEDA has determined that the Contractor qualifies for assistance through the Program, for the purpose of rebuilding the Contractor’s business following the COVID-19 pandemic; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance through the 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 April 12, 2023** (the “Award Date”) **and ending August 10, 2023**.

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 **THIRTY-FIVE THOUSAND AND 00/100 (\$35,000.00) 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:
Westwind Orchard, LLC
215 Lower Whitfield Rd.
Accord, New York 12404

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, 5th 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.

****Signature page follows****

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: _____

Westwind Orchard, LLC

By: _____
NAME: _____
TITLE: _____
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

1. In response to the COVID-19 pandemic, the Contractor shall use the funds it receives to assist and rebuild the Contractor's business.
2. The Contractor shall use the funds it receives in a manner consistent with the "Proposed Use of Funds" described in the Contractor's Program Application (which is attached hereto as Schedule "D" and hereby made part of this Agreement).
3. The Contractor shall use the funds it receives pursuant to this Agreement in the following categories, as set forth in the Program Application Instructions (which is attached hereto as Schedule "E" and hereby made part of this Agreement):
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

Use of the funds by the Contractor for any other purpose must be approved by the UCEDA in advance of expenditure.

4. The Contractor shall make all expenditures of the funds received pursuant to this Agreement within one hundred twenty (120) days of the Award Date.
5. The Contractor shall provide the following information upon execution of this agreement and at least once per year for two years following completion of the term of this Agreement, upon written request from UCEDA, as part of the program reporting requirements:
 - a. Current roster of all W-2 employees, indicating status for each employee (full-time, part-time, temporary/seasonal) and average weekly hours worked for each employee
 - b. Current hourly wage for each employee and whether each employee receives paid benefits
 - c. Household size, income, and demographics for each employee
 - d. Statement indicating progress toward completion of project and achievement of measurable outcomes that were identified in Contractor's Program Application

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The UCEDA, through the Program, shall pay to the Contractor a **not-to-exceed amount** of **THIRTY-FIVE THOUSAND AND 00/100 (\$35,000.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend Contractor's own funds, consistent with Contractor's commitment of funds as documented in the Program Application, prior to completion of the Term of this Agreement.
3. 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 fifth (5th) of each month for the previous month's expenditures. Invoices shall identify any Contractor funds expended in addition to the amount to be reimbursed, which shall be considered toward Contractor's fulfillment of commitment of funds as documented in the Program Application.
3. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories listed as follows, as set forth in Schedule D:
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

In the event the Contractor wishes to seek reimbursement for an expenditure that does not fall in one of the categories listed in this Paragraph 3, the Contractor must first obtain written consent from UCEDA prior to including such expenditure on any reimbursement invoice.

4. With each invoice, the Contractor shall tender receipts, reports and notes to the UCEDA sufficient for the UCEDA to determine that the Contractor expended the funds in accordance with this Agreement. All invoices, deliverable reports, receipts and notes shall be delivered to UCEDA on or before the fifth (5th) 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 a claim to the County showing its intent to disburse funds to the Contractor, pursuant to County Contract 2022-00000303. Upon the County's approval of the disbursement, the UCEDA shall remit payment to the Contractor within five (5) business days.
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.

SCHEDULE D

PROGRAM APPLICATION INSTRUCTIONS

Applicants **MUST** provide clear, complete details about their request for funding assistance. Please only apply once you have developed a well-thought out plan that clearly describes your need and how/why your proposed plan will meet this need. Please include ALL supporting documentation and evidence. Please use complete sentences. One word answers will not be considered a complete response. Applications will be scored based on need, connection to covid, clear budget, business activity viability, and measurable impact.

Accepting Applications: October 31, 2022

Minimum Request: \$5,000

Maximum Request: \$35,000

Program Description: Up to \$35,000 for businesses located in Ulster County with 25 or fewer employees at the time of application. Funding is meant to spur innovation and adaptation to the new reality of economic life with a highly contagious virus. The fund will provide reimbursement of up to 100% of eligible project costs. All projects must be located in Ulster County, New York

Eligible Applicants Must Meet ALL of the following criteria:

- Your primary business location must be in Ulster County, NY.
- Your business must be a sole proprietorship, partnership, corporation, Limited Liability Company or other legal form of business. Applicants who did not establish their business in New York State must provide a DBA or incorporation paperwork upon award.
- Your business must have 25 or fewer employees at the time of application.
- Must provide personal tax returns from all owners with greater than or equal to 20% ownership
- Business must maintain a separate bank account for business related expenses (cannot co-mingle business and personal expenses)

Other Application Information:

Please only select majority-, woman-, or veteran-owned if more than 50% of the business is owned by an individual or individuals who identify as such. Formal NYS paperwork is not required.

For questions 27-29, please provide a detailed narrative - even if it's repetitive! The scoring committee will be evaluating applications based on a clear need, clear project scope, clear budget, clear impact, and a clear covid connection.

For file uploads, please label your file **CLEARLY**. Business name **MUST** be included. If your file is not labeled clearly, your application may be marked incomplete.

Not for profit businesses that qualify for tax exempt status under section 501c3 of the Internal Revenue Code are **ELIGIBLE** and must complete section 4.

Think ahead about your expenses for next year! This funding does NOT reimburse anything purchased PRIOR to the award date which is expected to be in Q1 of 2023. Upon award, you will be given approval to begin making eligible purchases. Your award term is 120 days from date of award. Expenses made after your contract expiration will not be eligible for consideration.

Eligible Use of Funds:

Eligible expenses include rent, business mortgage payments, furniture, fixtures, equipment, operating expenses, and working capital that will prevent, prepare for, and respond to the impacts of the coronavirus pandemic.

Expenses incurred must be for activities located in Ulster County.

Equipment

- Permanent machinery and equipment (installed equipment/machinery) - **must complete section 8 of application**
- Misc. business equipment
- Vehicles
- Computers/software

Operating Expenses (i.e. Working Capital)

- Payroll (must provide formal payroll documentation from a payroll processing system with reimbursement request)
- Rent (must provide signed copy of lease agreement upon award)
- Utilities (bill submitted must match Ulster County business address)
- Supplies
- Inventory

Fixed Assets

Awards and disbursement of funds are contingent on receiving necessary approvals. If approvals are not received prior to contract end date the award will be rescinded and reimbursement will not be given.

Please complete section 8 of the application in its entirety to be considered.

- Property purchases, including soft costs*
- New building construction*
- Exterior building renovations, including soft costs*
- Signage*
- Interior renovations*

Other Eligible Expenses

- Daycare (only eligible where necessary for owner or employees to continue working)
- Financing Fees
- Loan application/closing fees and interest payments

- Bank charges/fees
- Closing costs

Ineligible expenses

- Owner's payroll or draw (direct payments to owner outside of payroll system)
- Advanced payments of any kind (only payments where goods/services have been provided are eligible).
- Any expense incurred before the award date (see contract) or after contract end date is ineligible.
- Taxes of any kind (property tax, income tax, payroll tax, sales tax, occupancy tax, etc.) are ineligible.
- Franchise fees and loan payments that are NOT mortgage payments (ie: business loans)

Funds will be provided as a reimbursement for eligible expenses. Eligible expenses must be incurred after award, and within 120 days of award.

Reimbursement Procedures

Funds shall not be provided in advance of project completion or full payment for the project by the business. Once the applicant provides verification that the work has been completed and that all vendors have been paid in full, reimbursement will be processed.

Applicants must document project expenditures. Proof of payment to the contractor/vendor is required in the form of an invoice and canceled check or credit card statement. Cash payments are not an acceptable form of payment and cannot be reimbursed.

Only those costs deemed to be reasonable and appropriate to complete the project which was approved and agreed upon will be reimbursed. Applicants may be required to supply additional information.

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 **STARLITE MOTEL LLC**, a Limited Liability Corporation with principal offices at 5938 Route 209, Kerhonkson, New York 12446 (the “**Contractor**”), (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-19 Local Fiscal Recovery Fund (the “CLFRF”), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of the Coronavirus Disease 2019 (“COVID-19”) in their communities; and

WHEREAS, Ulster County, as a CLFRF recipient, desires to utilize a portion of these ARPA funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to Ulster County based small businesses; and

WHEREAS, the County has made a portion of the ARPA funds available to help small businesses throughout New York State to safely reopen and restate their local economies in the wake of the COVID-19 pandemic; and

WHEREAS, the County allocated an amount not to exceed ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS (the “County ARPA Funds”); and

WHEREAS, the County entered into an Agreement with the UCEDA (County Contract No. 2022-00000303) to engage the UCEDA as a sub-recipient of the County ARPA Funds; and

WHEREAS, the UCEDA administers the Ulster County CARES II Small Business Assistance Program (the “Program”), which is a business relief response program created as a result of the County ARPA 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 may apply to the 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 Program, and the UCEDA has determined that the Contractor qualifies for assistance through the Program, for the purpose of rebuilding the Contractor’s business following the COVID-19 pandemic; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance through the 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 April 12, 2023** (the “Award Date”) **and ending August 10, 2023**.

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 **THIRTY-FIVE THOUSAND AND 00/100 (\$35,000.00) 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:
Starlite Motel LLC
5938 Route 209
Kerhonkson, New York 12446

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, 5th 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.

****Signature page follows****

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: _____

Starlite Motel LLC

By: _____
NAME: _____
TITLE: _____
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

1. In response to the COVID-19 pandemic, the Contractor shall use the funds it receives to assist and rebuild the Contractor's business.
2. The Contractor shall use the funds it receives in a manner consistent with the "Proposed Use of Funds" described in the Contractor's Program Application (which is attached hereto as Schedule "D" and hereby made part of this Agreement).
3. The Contractor shall use the funds it receives pursuant to this Agreement in the following categories, as set forth in the Program Application Instructions (which is attached hereto as Schedule "E" and hereby made part of this Agreement):
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

Use of the funds by the Contractor for any other purpose must be approved by the UCEDA in advance of expenditure.

4. The Contractor shall make all expenditures of the funds received pursuant to this Agreement within one hundred twenty (120) days of the Award Date.
5. The Contractor shall provide the following information upon execution of this agreement and at least once per year for two years following completion of the term of this Agreement, upon written request from UCEDA, as part of the program reporting requirements:
 - a. Current roster of all W-2 employees, indicating status for each employee (full-time, part-time, temporary/seasonal) and average weekly hours worked for each employee
 - b. Current hourly wage for each employee and whether each employee receives paid benefits
 - c. Household size, income, and demographics for each employee
 - d. Statement indicating progress toward completion of project and achievement of measurable outcomes that were identified in Contractor's Program Application

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The UCEDA, through the Program, shall pay to the Contractor a **not-to-exceed amount** of **THIRTY-FIVE THOUSAND AND 00/100 (\$35,000.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend Contractor's own funds, consistent with Contractor's commitment of funds as documented in the Program Application, prior to completion of the Term of this Agreement.
3. 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 fifth (5th) of each month for the previous month's expenditures. Invoices shall identify any Contractor funds expended in addition to the amount to be reimbursed, which shall be considered toward Contractor's fulfillment of commitment of funds as documented in the Program Application.
3. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories listed as follows, as set forth in Schedule D:
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

In the event the Contractor wishes to seek reimbursement for an expenditure that does not fall in one of the categories listed in this Paragraph 3, the Contractor must first obtain written consent from UCEDA prior to including such expenditure on any reimbursement invoice.

4. With each invoice, the Contractor shall tender receipts, reports and notes to the UCEDA sufficient for the UCEDA to determine that the Contractor expended the funds in accordance with this Agreement. All invoices, deliverable reports, receipts and notes shall be delivered to UCEDA on or before the fifth (5th) 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 a claim to the County showing its intent to disburse funds to the Contractor, pursuant to County Contract 2022-00000303. Upon the County's approval of the disbursement, the UCEDA shall remit payment to the Contractor within five (5) business days.
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.

SCHEDULE D

PROGRAM APPLICATION INSTRUCTIONS

Applicants **MUST** provide clear, complete details about their request for funding assistance. Please only apply once you have developed a well-thought out plan that clearly describes your need and how/why your proposed plan will meet this need. Please include ALL supporting documentation and evidence. Please use complete sentences. One word answers will not be considered a complete response. Applications will be scored based on need, connection to covid, clear budget, business activity viability, and measurable impact.

Accepting Applications: October 31, 2022

Minimum Request: \$5,000

Maximum Request: \$35,000

Program Description: Up to \$35,000 for businesses located in Ulster County with 25 or fewer employees at the time of application. Funding is meant to spur innovation and adaptation to the new reality of economic life with a highly contagious virus. The fund will provide reimbursement of up to 100% of eligible project costs. All projects must be located in Ulster County, New York

Eligible Applicants Must Meet ALL of the following criteria:

- Your primary business location must be in Ulster County, NY.
- Your business must be a sole proprietorship, partnership, corporation, Limited Liability Company or other legal form of business. Applicants who did not establish their business in New York State must provide a DBA or incorporation paperwork upon award.
- Your business must have 25 or fewer employees at the time of application.
- Must provide personal tax returns from all owners with greater than or equal to 20% ownership
- Business must maintain a separate bank account for business related expenses (cannot co-mingle business and personal expenses)

Other Application Information:

Please only select majority-, woman-, or veteran-owned if more than 50% of the business is owned by an individual or individuals who identify as such. Formal NYS paperwork is not required.

For questions 27-29, please provide a detailed narrative - even if it's repetitive! The scoring committee will be evaluating applications based on a clear need, clear project scope, clear budget, clear impact, and a clear covid connection.

For file uploads, please label your file **CLEARLY**. Business name **MUST** be included. If your file is not labeled clearly, your application may be marked incomplete.

Not for profit businesses that qualify for tax exempt status under section 501c3 of the Internal Revenue Code are **ELIGIBLE** and must complete section 4.

Think ahead about your expenses for next year! This funding does NOT reimburse anything purchased PRIOR to the award date which is expected to be in Q1 of 2023. Upon award, you will be given approval to begin making eligible purchases. Your award term is 120 days from date of award. Expenses made after your contract expiration will not be eligible for consideration.

Eligible Use of Funds:

Eligible expenses include rent, business mortgage payments, furniture, fixtures, equipment, operating expenses, and working capital that will prevent, prepare for, and respond to the impacts of the coronavirus pandemic.

Expenses incurred must be for activities located in Ulster County.

Equipment

- Permanent machinery and equipment (installed equipment/machinery) - **must complete section 8 of application**
- Misc. business equipment
- Vehicles
- Computers/software

Operating Expenses (i.e. Working Capital)

- Payroll (must provide formal payroll documentation from a payroll processing system with reimbursement request)
- Rent (must provide signed copy of lease agreement upon award)
- Utilities (bill submitted must match Ulster County business address)
- Supplies
- Inventory

Fixed Assets

Awards and disbursement of funds are contingent on receiving necessary approvals. If approvals are not received prior to contract end date the award will be rescinded and reimbursement will not be given.

Please complete section 8 of the application in its entirety to be considered.

- Property purchases, including soft costs*
- New building construction*
- Exterior building renovations, including soft costs*
- Signage*
- Interior renovations*

Other Eligible Expenses

- Daycare (only eligible where necessary for owner or employees to continue working)
- Financing Fees
- Loan application/closing fees and interest payments

- Bank charges/fees
- Closing costs

Ineligible expenses

- Owner's payroll or draw (direct payments to owner outside of payroll system)
- Advanced payments of any kind (only payments where goods/services have been provided are eligible).
- Any expense incurred before the award date (see contract) or after contract end date is ineligible.
- Taxes of any kind (property tax, income tax, payroll tax, sales tax, occupancy tax, etc.) are ineligible.
- Franchise fees and loan payments that are NOT mortgage payments (ie: business loans)

Funds will be provided as a reimbursement for eligible expenses. Eligible expenses must be incurred after award, and within 120 days of award.

Reimbursement Procedures

Funds shall not be provided in advance of project completion or full payment for the project by the business. Once the applicant provides verification that the work has been completed and that all vendors have been paid in full, reimbursement will be processed.

Applicants must document project expenditures. Proof of payment to the contractor/vendor is required in the form of an invoice and canceled check or credit card statement. Cash payments are not an acceptable form of payment and cannot be reimbursed.

Only those costs deemed to be reasonable and appropriate to complete the project which was approved and agreed upon will be reimbursed. Applicants may be required to supply additional information.

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 **SCHALLER ENTERPRISES INC. DBA AMERICAS BEST VALUE INN NEW PALTZ**, a S-Corp with principal offices at 7 Terwilliger Ln., New Paltz, New York 12561 (the “**Contractor**”), (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-19 Local Fiscal Recovery Fund (the “**CLFRF**”), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of the Coronavirus Disease 2019 (“**COVID-19**”) in their communities; and

WHEREAS, Ulster County, as a CLFRF recipient, desires to utilize a portion of these ARPA funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to Ulster County based small businesses; and

WHEREAS, the County has made a portion of the ARPA funds available to help small businesses throughout New York State to safely reopen and restate their local economies in the wake of the COVID-19 pandemic; and

WHEREAS, the County allocated an amount not to exceed ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS (the “**County ARPA Funds**”); and

WHEREAS, the County entered into an Agreement with the UCEDA (County Contract No. 2022-00000303) to engage the UCEDA as a sub-recipient of the County ARPA Funds; and

WHEREAS, the UCEDA administers the Ulster County CARES II Small Business Assistance Program (the “**Program**”), which is a business relief response program created as a result of the County ARPA 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 may apply to the 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 Program, and the UCEDA has determined that the Contractor qualifies for assistance through the Program, for the purpose of rebuilding the Contractor’s business following the COVID-19 pandemic; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance through the 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 April 12, 2023** (the “Award Date”) **and ending August 10, 2023**.

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 **THIRTY-THREE THOUSAND SEVEN HUNDRED AND EIGHTY-ONE AND 00/100 (\$33,781.00) 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:

Schaller Enterprises Inc. DBA Americas Best Value
Inn New Paltz
7 Terwilliger Ln.
New Paltz, New York 12561

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, 5th 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.

****Signature page follows****

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: _____

Schaller Enterprises Inc. DBA Americas Best Value Inn New Paltz

By: _____
NAME: _____
TITLE: _____
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

1. In response to the COVID-19 pandemic, the Contractor shall use the funds it receives to assist and rebuild the Contractor's business.
2. The Contractor shall use the funds it receives in a manner consistent with the "Proposed Use of Funds" described in the Contractor's Program Application (which is attached hereto as Schedule "D" and hereby made part of this Agreement).
3. The Contractor shall use the funds it receives pursuant to this Agreement in the following categories, as set forth in the Program Application Instructions (which is attached hereto as Schedule "E" and hereby made part of this Agreement):
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

Use of the funds by the Contractor for any other purpose must be approved by the UCEDA in advance of expenditure.

4. The Contractor shall make all expenditures of the funds received pursuant to this Agreement within one hundred twenty (120) days of the Award Date.
5. The Contractor shall provide the following information upon execution of this agreement and at least once per year for two years following completion of the term of this Agreement, upon written request from UCEDA, as part of the program reporting requirements:
 - a. Current roster of all W-2 employees, indicating status for each employee (full-time, part-time, temporary/seasonal) and average weekly hours worked for each employee
 - b. Current hourly wage for each employee and whether each employee receives paid benefits
 - c. Household size, income, and demographics for each employee
 - d. Statement indicating progress toward completion of project and achievement of measurable outcomes that were identified in Contractor's Program Application

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The UCEDA, through the Program, shall pay to the Contractor a **not-to-exceed amount** of **THIRTY-THREE THOUSAND SEVEN HUNDRED AND EIGHTY-ONE AND 00/100 (\$33,781.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend Contractor's own funds, consistent with Contractor's commitment of funds as documented in the Program Application, prior to completion of the Term of this Agreement.
3. 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 fifth (5th) of each month for the previous month's expenditures. Invoices shall identify any Contractor funds expended in addition to the amount to be reimbursed, which shall be considered toward Contractor's fulfillment of commitment of funds as documented in the Program Application.
3. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories listed as follows, as set forth in Schedule D:
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

In the event the Contractor wishes to seek reimbursement for an expenditure that does not fall in one of the categories listed in this Paragraph 3, the Contractor must first obtain written consent from UCEDA prior to including such expenditure on any reimbursement invoice.

4. With each invoice, the Contractor shall tender receipts, reports and notes to the UCEDA sufficient for the UCEDA to determine that the Contractor expended the funds in accordance with this Agreement. All invoices, deliverable reports, receipts and notes shall be delivered to UCEDA on or before the fifth (5th) 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 a claim to the County showing its intent to disburse funds to the Contractor, pursuant to County Contract 2022-00000303. Upon the County's approval of the disbursement, the UCEDA shall remit payment to the Contractor within five (5) business days.
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:

- Coverage shall be written on Commercial General Liability form.
- Coverage shall include:
 - Contractual Liability
 - Independent Contractors
 - Products and Completed Operations
- “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.

SCHEDULE D

PROGRAM APPLICATION INSTRUCTIONS

Applicants **MUST** provide clear, complete details about their request for funding assistance. Please only apply once you have developed a well-thought out plan that clearly describes your need and how/why your proposed plan will meet this need. Please include ALL supporting documentation and evidence. Please use complete sentences. One word answers will not be considered a complete response. Applications will be scored based on need, connection to covid, clear budget, business activity viability, and measurable impact.

Accepting Applications: October 31, 2022

Minimum Request: \$5,000

Maximum Request: \$35,000

Program Description: Up to \$35,000 for businesses located in Ulster County with 25 or fewer employees at the time of application. Funding is meant to spur innovation and adaptation to the new reality of economic life with a highly contagious virus. The fund will provide reimbursement of up to 100% of eligible project costs. All projects must be located in Ulster County, New York

Eligible Applicants Must Meet ALL of the following criteria:

- Your primary business location must be in Ulster County, NY.
- Your business must be a sole proprietorship, partnership, corporation, Limited Liability Company or other legal form of business. Applicants who did not establish their business in New York State must provide a DBA or incorporation paperwork upon award.
- Your business must have 25 or fewer employees at the time of application.
- Must provide personal tax returns from all owners with greater than or equal to 20% ownership
- Business must maintain a separate bank account for business related expenses (cannot co-mingle business and personal expenses)

Other Application Information:

Please only select majority-, woman-, or veteran-owned if more than 50% of the business is owned by an individual or individuals who identify as such. Formal NYS paperwork is not required.

For questions 27-29, please provide a detailed narrative - even if it's repetitive! The scoring committee will be evaluating applications based on a clear need, clear project scope, clear budget, clear impact, and a clear covid connection.

For file uploads, please label your file **CLEARLY**. Business name **MUST** be included. If your file is not labeled clearly, your application may be marked incomplete.

Not for profit businesses that qualify for tax exempt status under section 501c3 of the Internal Revenue Code are **ELIGIBLE** and must complete section 4.

Think ahead about your expenses for next year! This funding does NOT reimburse anything purchased PRIOR to the award date which is expected to be in Q1 of 2023. Upon award, you will be given approval to begin making eligible purchases. Your award term is 120 days from date of award. Expenses made after your contract expiration will not be eligible for consideration.

Eligible Use of Funds:

Eligible expenses include rent, business mortgage payments, furniture, fixtures, equipment, operating expenses, and working capital that will prevent, prepare for, and respond to the impacts of the coronavirus pandemic.

Expenses incurred must be for activities located in Ulster County.

Equipment

- Permanent machinery and equipment (installed equipment/machinery) - **must complete section 8 of application**
- Misc. business equipment
- Vehicles
- Computers/software

Operating Expenses (i.e. Working Capital)

- Payroll (must provide formal payroll documentation from a payroll processing system with reimbursement request)
- Rent (must provide signed copy of lease agreement upon award)
- Utilities (bill submitted must match Ulster County business address)
- Supplies
- Inventory

Fixed Assets

Awards and disbursement of funds are contingent on receiving necessary approvals. If approvals are not received prior to contract end date the award will be rescinded and reimbursement will not be given.

Please complete section 8 of the application in its entirety to be considered.

- Property purchases, including soft costs*
- New building construction*
- Exterior building renovations, including soft costs*
- Signage*
- Interior renovations*

Other Eligible Expenses

- Daycare (only eligible where necessary for owner or employees to continue working)
- Financing Fees
- Loan application/closing fees and interest payments

- Bank charges/fees
- Closing costs

Ineligible expenses

- Owner's payroll or draw (direct payments to owner outside of payroll system)
- Advanced payments of any kind (only payments where goods/services have been provided are eligible).
- Any expense incurred before the award date (see contract) or after contract end date is ineligible.
- Taxes of any kind (property tax, income tax, payroll tax, sales tax, occupancy tax, etc.) are ineligible.
- Franchise fees and loan payments that are NOT mortgage payments (ie: business loans)

Funds will be provided as a reimbursement for eligible expenses. Eligible expenses must be incurred after award, and within 120 days of award.

Reimbursement Procedures

Funds shall not be provided in advance of project completion or full payment for the project by the business. Once the applicant provides verification that the work has been completed and that all vendors have been paid in full, reimbursement will be processed.

Applicants must document project expenditures. Proof of payment to the contractor/vendor is required in the form of an invoice and canceled check or credit card statement. Cash payments are not an acceptable form of payment and cannot be reimbursed.

Only those costs deemed to be reasonable and appropriate to complete the project which was approved and agreed upon will be reimbursed. Applicants may be required to supply additional information.

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 **MOUNTAINTOP WALDORF, LLC**, a Limited Liability Corporation with principal offices at 68 Band Camp Rd., Saugerties, New York 12477 (the “**Contractor**”), (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-19 Local Fiscal Recovery Fund (the “**CLFRF**”), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of the Coronavirus Disease 2019 (“**COVID-19**”) in their communities; and

WHEREAS, Ulster County, as a CLFRF recipient, desires to utilize a portion of these ARPA funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to Ulster County based small businesses; and

WHEREAS, the County has made a portion of the ARPA funds available to help small businesses throughout New York State to safely reopen and restate their local economies in the wake of the COVID-19 pandemic; and

WHEREAS, the County allocated an amount not to exceed ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS (the “**County ARPA Funds**”); and

WHEREAS, the County entered into an Agreement with the UCEDA (County Contract No. 2022-00000303) to engage the UCEDA as a sub-recipient of the County ARPA Funds; and

WHEREAS, the UCEDA administers the Ulster County CARES II Small Business Assistance Program (the “**Program**”), which is a business relief response program created as a result of the County ARPA 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 may apply to the 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 Program, and the UCEDA has determined that the Contractor qualifies for assistance through the Program, for the purpose of rebuilding the Contractor’s business following the COVID-19 pandemic; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance through the 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 April 12, 2023** (the “Award Date”) **and ending August 10, 2023**.

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 **TWENTY-FIVE THOUSAND AND 00/100 (\$25,000.00) 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:
Mountaintop Waldorf, LLC
68 Band Camp Rd.
Saugerties, New York 12477

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, 5th 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.

****Signature page follows****

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: _____

Mountaintop Waldorf, LLC

By: _____
NAME: _____
TITLE: _____
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

1. In response to the COVID-19 pandemic, the Contractor shall use the funds it receives to assist and rebuild the Contractor's business.
2. The Contractor shall use the funds it receives in a manner consistent with the "Proposed Use of Funds" described in the Contractor's Program Application (which is attached hereto as Schedule "D" and hereby made part of this Agreement).
3. The Contractor shall use the funds it receives pursuant to this Agreement in the following categories, as set forth in the Program Application Instructions (which is attached hereto as Schedule "E" and hereby made part of this Agreement):
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

Use of the funds by the Contractor for any other purpose must be approved by the UCEDA in advance of expenditure.

4. The Contractor shall make all expenditures of the funds received pursuant to this Agreement within one hundred twenty (120) days of the Award Date.
5. The Contractor shall provide the following information upon execution of this agreement and at least once per year for two years following completion of the term of this Agreement, upon written request from UCEDA, as part of the program reporting requirements:
 - a. Current roster of all W-2 employees, indicating status for each employee (full-time, part-time, temporary/seasonal) and average weekly hours worked for each employee
 - b. Current hourly wage for each employee and whether each employee receives paid benefits
 - c. Household size, income, and demographics for each employee
 - d. Statement indicating progress toward completion of project and achievement of measurable outcomes that were identified in Contractor's Program Application

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The UCEDA, through the Program, shall pay to the Contractor a **not-to-exceed amount** of **TWENTY-FIVE THOUSAND AND 00/100 (\$25,000.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend Contractor's own funds, consistent with Contractor's commitment of funds as documented in the Program Application, prior to completion of the Term of this Agreement.
3. 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 fifth (5th) of each month for the previous month's expenditures. Invoices shall identify any Contractor funds expended in addition to the amount to be reimbursed, which shall be considered toward Contractor's fulfillment of commitment of funds as documented in the Program Application.
3. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories listed as follows, as set forth in Schedule D:
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

In the event the Contractor wishes to seek reimbursement for an expenditure that does not fall in one of the categories listed in this Paragraph 3, the Contractor must first obtain written consent from UCEDA prior to including such expenditure on any reimbursement invoice.

4. With each invoice, the Contractor shall tender receipts, reports and notes to the UCEDA sufficient for the UCEDA to determine that the Contractor expended the funds in accordance with this Agreement. All invoices, deliverable reports, receipts and notes shall be delivered to UCEDA on or before the fifth (5th) 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 a claim to the County showing its intent to disburse funds to the Contractor, pursuant to County Contract 2022-00000303. Upon the County's approval of the disbursement, the UCEDA shall remit payment to the Contractor within five (5) business days.
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.

SCHEDULE D

PROGRAM APPLICATION INSTRUCTIONS

Applicants **MUST** provide clear, complete details about their request for funding assistance. Please only apply once you have developed a well-thought out plan that clearly describes your need and how/why your proposed plan will meet this need. Please include ALL supporting documentation and evidence. Please use complete sentences. One word answers will not be considered a complete response. Applications will be scored based on need, connection to covid, clear budget, business activity viability, and measurable impact.

Accepting Applications: October 31, 2022

Minimum Request: \$5,000

Maximum Request: \$35,000

Program Description: Up to \$35,000 for businesses located in Ulster County with 25 or fewer employees at the time of application. Funding is meant to spur innovation and adaptation to the new reality of economic life with a highly contagious virus. The fund will provide reimbursement of up to 100% of eligible project costs. All projects must be located in Ulster County, New York

Eligible Applicants Must Meet ALL of the following criteria:

- Your primary business location must be in Ulster County, NY.
- Your business must be a sole proprietorship, partnership, corporation, Limited Liability Company or other legal form of business. Applicants who did not establish their business in New York State must provide a DBA or incorporation paperwork upon award.
- Your business must have 25 or fewer employees at the time of application.
- Must provide personal tax returns from all owners with greater than or equal to 20% ownership
- Business must maintain a separate bank account for business related expenses (cannot co-mingle business and personal expenses)

Other Application Information:

Please only select majority-, woman-, or veteran-owned if more than 50% of the business is owned by an individual or individuals who identify as such. Formal NYS paperwork is not required.

For questions 27-29, please provide a detailed narrative - even if it's repetitive! The scoring committee will be evaluating applications based on a clear need, clear project scope, clear budget, clear impact, and a clear covid connection.

For file uploads, please label your file **CLEARLY**. Business name **MUST** be included. If your file is not labeled clearly, your application may be marked incomplete.

Not for profit businesses that qualify for tax exempt status under section 501c3 of the Internal Revenue Code are **ELIGIBLE** and must complete section 4.

Think ahead about your expenses for next year! This funding does NOT reimburse anything purchased PRIOR to the award date which is expected to be in Q1 of 2023. Upon award, you will be given approval to begin making eligible purchases. Your award term is 120 days from date of award. Expenses made after your contract expiration will not be eligible for consideration.

Eligible Use of Funds:

Eligible expenses include rent, business mortgage payments, furniture, fixtures, equipment, operating expenses, and working capital that will prevent, prepare for, and respond to the impacts of the coronavirus pandemic.

Expenses incurred must be for activities located in Ulster County.

Equipment

- Permanent machinery and equipment (installed equipment/machinery) - **must complete section 8 of application**
- Misc. business equipment
- Vehicles
- Computers/software

Operating Expenses (i.e. Working Capital)

- Payroll (must provide formal payroll documentation from a payroll processing system with reimbursement request)
- Rent (must provide signed copy of lease agreement upon award)
- Utilities (bill submitted must match Ulster County business address)
- Supplies
- Inventory

Fixed Assets

Awards and disbursement of funds are contingent on receiving necessary approvals. If approvals are not received prior to contract end date the award will be rescinded and reimbursement will not be given.

Please complete section 8 of the application in its entirety to be considered.

- Property purchases, including soft costs*
- New building construction*
- Exterior building renovations, including soft costs*
- Signage*
- Interior renovations*

Other Eligible Expenses

- Daycare (only eligible where necessary for owner or employees to continue working)
- Financing Fees
- Loan application/closing fees and interest payments

- Bank charges/fees
- Closing costs

Ineligible expenses

- Owner's payroll or draw (direct payments to owner outside of payroll system)
- Advanced payments of any kind (only payments where goods/services have been provided are eligible).
- Any expense incurred before the award date (see contract) or after contract end date is ineligible.
- Taxes of any kind (property tax, income tax, payroll tax, sales tax, occupancy tax, etc.) are ineligible.
- Franchise fees and loan payments that are NOT mortgage payments (ie: business loans)

Funds will be provided as a reimbursement for eligible expenses. Eligible expenses must be incurred after award, and within 120 days of award.

Reimbursement Procedures

Funds shall not be provided in advance of project completion or full payment for the project by the business. Once the applicant provides verification that the work has been completed and that all vendors have been paid in full, reimbursement will be processed.

Applicants must document project expenditures. Proof of payment to the contractor/vendor is required in the form of an invoice and canceled check or credit card statement. Cash payments are not an acceptable form of payment and cannot be reimbursed.

Only those costs deemed to be reasonable and appropriate to complete the project which was approved and agreed upon will be reimbursed. Applicants may be required to supply additional information.

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 **ERICHSEN'S AUTO, INC.**, a S-Corp with principal offices at 170 Route 299, Highland, New York 12528 (the “**Contractor**”), (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-19 Local Fiscal Recovery Fund (the “CLFRF”), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of the Coronavirus Disease 2019 (“COVID-19”) in their communities; and

WHEREAS, Ulster County, as a CLFRF recipient, desires to utilize a portion of these ARPA funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to Ulster County based small businesses; and

WHEREAS, the County has made a portion of the ARPA funds available to help small businesses throughout New York State to safely reopen and restate their local economies in the wake of the COVID-19 pandemic; and

WHEREAS, the County allocated an amount not to exceed ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS (the “County ARPA Funds”); and

WHEREAS, the County entered into an Agreement with the UCEDA (County Contract No. 2022-00000303) to engage the UCEDA as a sub-recipient of the County ARPA Funds; and

WHEREAS, the UCEDA administers the Ulster County CARES II Small Business Assistance Program (the “Program”), which is a business relief response program created as a result of the County ARPA 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 may apply to the 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 Program, and the UCEDA has determined that the Contractor qualifies for assistance through the Program, for the purpose of rebuilding the Contractor’s business following the COVID-19 pandemic; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance through the 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 April 12, 2023** (the “Award Date”) **and ending August 10, 2023**.

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 **FIVE THOUSAND AND 00/100 (\$5,000.00) 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:
ERICHSEN'S AUTO, INC
170 Route 299
Highland, New York 12528

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, 5th 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.

******Signature page follows******

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: _____

ERICHSEN'S AUTO, INC

By: _____
NAME: _____
TITLE: _____
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

1. In response to the COVID-19 pandemic, the Contractor shall use the funds it receives to assist and rebuild the Contractor's business.
2. The Contractor shall use the funds it receives in a manner consistent with the "Proposed Use of Funds" described in the Contractor's Program Application (which is attached hereto as Schedule "D" and hereby made part of this Agreement).
3. The Contractor shall use the funds it receives pursuant to this Agreement in the following categories, as set forth in the Program Application Instructions (which is attached hereto as Schedule "E" and hereby made part of this Agreement):
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

Use of the funds by the Contractor for any other purpose must be approved by the UCEDA in advance of expenditure.

4. The Contractor shall make all expenditures of the funds received pursuant to this Agreement within one hundred twenty (120) days of the Award Date.
5. The Contractor shall provide the following information upon execution of this agreement and at least once per year for two years following completion of the term of this Agreement, upon written request from UCEDA, as part of the program reporting requirements:
 - a. Current roster of all W-2 employees, indicating status for each employee (full-time, part-time, temporary/seasonal) and average weekly hours worked for each employee
 - b. Current hourly wage for each employee and whether each employee receives paid benefits
 - c. Household size, income, and demographics for each employee
 - d. Statement indicating progress toward completion of project and achievement of measurable outcomes that were identified in Contractor's Program Application

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The UCEDA, through the Program, shall pay to the Contractor a **not-to-exceed amount** of **FIVE THOUSAND AND 00/100 (\$5,000.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend Contractor's own funds, consistent with Contractor's commitment of funds as documented in the Program Application, prior to completion of the Term of this Agreement.
3. 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 fifth (5th) of each month for the previous month's expenditures. Invoices shall identify any Contractor funds expended in addition to the amount to be reimbursed, which shall be considered toward Contractor's fulfillment of commitment of funds as documented in the Program Application.
3. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories listed as follows, as set forth in Schedule D:
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

In the event the Contractor wishes to seek reimbursement for an expenditure that does not fall in one of the categories listed in this Paragraph 3, the Contractor must first obtain written consent from UCEDA prior to including such expenditure on any reimbursement invoice.

4. With each invoice, the Contractor shall tender receipts, reports and notes to the UCEDA sufficient for the UCEDA to determine that the Contractor expended the funds in accordance with this Agreement. All invoices, deliverable reports, receipts and notes shall be delivered to UCEDA on or before the fifth (5th) 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 a claim to the County showing its intent to disburse funds to the Contractor, pursuant to County Contract 2022-00000303. Upon the County's approval of the disbursement, the UCEDA shall remit payment to the Contractor within five (5) business days.
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.

SCHEDULE D

PROGRAM APPLICATION INSTRUCTIONS

Applicants **MUST** provide clear, complete details about their request for funding assistance. Please only apply once you have developed a well-thought out plan that clearly describes your need and how/why your proposed plan will meet this need. Please include ALL supporting documentation and evidence. Please use complete sentences. One word answers will not be considered a complete response. Applications will be scored based on need, connection to covid, clear budget, business activity viability, and measurable impact.

Accepting Applications: October 31, 2022

Minimum Request: \$5,000

Maximum Request: \$35,000

Program Description: Up to \$35,000 for businesses located in Ulster County with 25 or fewer employees at the time of application. Funding is meant to spur innovation and adaptation to the new reality of economic life with a highly contagious virus. The fund will provide reimbursement of up to 100% of eligible project costs. All projects must be located in Ulster County, New York

Eligible Applicants Must Meet ALL of the following criteria:

- Your primary business location must be in Ulster County, NY.
- Your business must be a sole proprietorship, partnership, corporation, Limited Liability Company or other legal form of business. Applicants who did not establish their business in New York State must provide a DBA or incorporation paperwork upon award.
- Your business must have 25 or fewer employees at the time of application.
- Must provide personal tax returns from all owners with greater than or equal to 20% ownership
- Business must maintain a separate bank account for business related expenses (cannot co-mingle business and personal expenses)

Other Application Information:

Please only select majority-, woman-, or veteran-owned if more than 50% of the business is owned by an individual or individuals who identify as such. Formal NYS paperwork is not required.

For questions 27-29, please provide a detailed narrative - even if it's repetitive! The scoring committee will be evaluating applications based on a clear need, clear project scope, clear budget, clear impact, and a clear covid connection.

For file uploads, please label your file **CLEARLY**. Business name **MUST** be included. If your file is not labeled clearly, your application may be marked incomplete.

Not for profit businesses that qualify for tax exempt status under section 501c3 of the Internal Revenue Code are **ELIGIBLE** and must complete section 4.

Think ahead about your expenses for next year! This funding does NOT reimburse anything purchased PRIOR to the award date which is expected to be in Q1 of 2023. Upon award, you will be given approval to begin making eligible purchases. Your award term is 120 days from date of award. Expenses made after your contract expiration will not be eligible for consideration.

Eligible Use of Funds:

Eligible expenses include rent, business mortgage payments, furniture, fixtures, equipment, operating expenses, and working capital that will prevent, prepare for, and respond to the impacts of the coronavirus pandemic.

Expenses incurred must be for activities located in Ulster County.

Equipment

- Permanent machinery and equipment (installed equipment/machinery) - **must complete section 8 of application**
- Misc. business equipment
- Vehicles
- Computers/software

Operating Expenses (i.e. Working Capital)

- Payroll (must provide formal payroll documentation from a payroll processing system with reimbursement request)
- Rent (must provide signed copy of lease agreement upon award)
- Utilities (bill submitted must match Ulster County business address)
- Supplies
- Inventory

Fixed Assets

Awards and disbursement of funds are contingent on receiving necessary approvals. If approvals are not received prior to contract end date the award will be rescinded and reimbursement will not be given.

Please complete section 8 of the application in its entirety to be considered.

- Property purchases, including soft costs*
- New building construction*
- Exterior building renovations, including soft costs*
- Signage*
- Interior renovations*

Other Eligible Expenses

- Daycare (only eligible where necessary for owner or employees to continue working)
- Financing Fees
- Loan application/closing fees and interest payments

- Bank charges/fees
- Closing costs

Ineligible expenses

- Owner's payroll or draw (direct payments to owner outside of payroll system)
- Advanced payments of any kind (only payments where goods/services have been provided are eligible).
- Any expense incurred before the award date (see contract) or after contract end date is ineligible.
- Taxes of any kind (property tax, income tax, payroll tax, sales tax, occupancy tax, etc.) are ineligible.
- Franchise fees and loan payments that are NOT mortgage payments (ie: business loans)

Funds will be provided as a reimbursement for eligible expenses. Eligible expenses must be incurred after award, and within 120 days of award.

Reimbursement Procedures

Funds shall not be provided in advance of project completion or full payment for the project by the business. Once the applicant provides verification that the work has been completed and that all vendors have been paid in full, reimbursement will be processed.

Applicants must document project expenditures. Proof of payment to the contractor/vendor is required in the form of an invoice and canceled check or credit card statement. Cash payments are not an acceptable form of payment and cannot be reimbursed.

Only those costs deemed to be reasonable and appropriate to complete the project which was approved and agreed upon will be reimbursed. Applicants may be required to supply additional information.

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 **WET BEHIND THE EARS, LLC DBA: MIRABAI OF WOODSTOCK**, a Limited Liability Corporation with principal offices at 23 Mill Hill Rd., Woodstock, New York 12498 (the “**Contractor**”), (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-19 Local Fiscal Recovery Fund (the “**CLFRF**”), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of the Coronavirus Disease 2019 (“**COVID-19**”) in their communities; and

WHEREAS, Ulster County, as a CLFRF recipient, desires to utilize a portion of these ARPA funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to Ulster County based small businesses; and

WHEREAS, the County has made a portion of the ARPA funds available to help small businesses throughout New York State to safely reopen and restate their local economies in the wake of the COVID-19 pandemic; and

WHEREAS, the County allocated an amount not to exceed ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS (the “**County ARPA Funds**”); and

WHEREAS, the County entered into an Agreement with the UCEDA (County Contract No. 2022-00000303) to engage the UCEDA as a sub-recipient of the County ARPA Funds; and

WHEREAS, the UCEDA administers the Ulster County CARES II Small Business Assistance Program (the “**Program**”), which is a business relief response program created as a result of the County ARPA 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 may apply to the 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 Program, and the UCEDA has determined that the Contractor qualifies for assistance through the Program, for the purpose of rebuilding the Contractor’s business following the COVID-19 pandemic; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance through the 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 April 12, 2023** (the “Award Date”) **and ending August 10, 2023**.

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 **TWENTY THOUSAND AND 00/100 (\$20,000.00) 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:

Wet Behind the Ears, LLC DBA: MIRABAI OF
WOODSTOCK
23 Mill Hill Rd.
Woodstock, New York 12498

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, 5th 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.

****Signature page follows****

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: _____

Wet Behind the Ears, LLC DBA: MIRABAI OF WOODSTOCK

By: _____
NAME: _____
TITLE: _____
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

1. In response to the COVID-19 pandemic, the Contractor shall use the funds it receives to assist and rebuild the Contractor's business.
2. The Contractor shall use the funds it receives in a manner consistent with the "Proposed Use of Funds" described in the Contractor's Program Application (which is attached hereto as Schedule "D" and hereby made part of this Agreement).
3. The Contractor shall use the funds it receives pursuant to this Agreement in the following categories, as set forth in the Program Application Instructions (which is attached hereto as Schedule "E" and hereby made part of this Agreement):
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

Use of the funds by the Contractor for any other purpose must be approved by the UCEDA in advance of expenditure.

4. The Contractor shall make all expenditures of the funds received pursuant to this Agreement within one hundred twenty (120) days of the Award Date.
5. The Contractor shall provide the following information upon execution of this agreement and at least once per year for two years following completion of the term of this Agreement, upon written request from UCEDA, as part of the program reporting requirements:
 - a. Current roster of all W-2 employees, indicating status for each employee (full-time, part-time, temporary/seasonal) and average weekly hours worked for each employee
 - b. Current hourly wage for each employee and whether each employee receives paid benefits
 - c. Household size, income, and demographics for each employee
 - d. Statement indicating progress toward completion of project and achievement of measurable outcomes that were identified in Contractor's Program Application

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The UCEDA, through the Program, shall pay to the Contractor a **not-to-exceed amount** of **TWENTY THOUSAND AND 00/100 (\$20,000.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend Contractor's own funds, consistent with Contractor's commitment of funds as documented in the Program Application, prior to completion of the Term of this Agreement.
3. 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 fifth (5th) of each month for the previous month's expenditures. Invoices shall identify any Contractor funds expended in addition to the amount to be reimbursed, which shall be considered toward Contractor's fulfillment of commitment of funds as documented in the Program Application.
3. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories listed as follows, as set forth in Schedule D:
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

In the event the Contractor wishes to seek reimbursement for an expenditure that does not fall in one of the categories listed in this Paragraph 3, the Contractor must first obtain written consent from UCEDA prior to including such expenditure on any reimbursement invoice.

4. With each invoice, the Contractor shall tender receipts, reports and notes to the UCEDA sufficient for the UCEDA to determine that the Contractor expended the funds in accordance with this Agreement. All invoices, deliverable reports, receipts and notes shall be delivered to UCEDA on or before the fifth (5th) 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 a claim to the County showing its intent to disburse funds to the Contractor, pursuant to County Contract 2022-00000303. Upon the County's approval of the disbursement, the UCEDA shall remit payment to the Contractor within five (5) business days.
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.

SCHEDULE D

PROGRAM APPLICATION INSTRUCTIONS

Applicants **MUST** provide clear, complete details about their request for funding assistance. Please only apply once you have developed a well-thought out plan that clearly describes your need and how/why your proposed plan will meet this need. Please include ALL supporting documentation and evidence. Please use complete sentences. One word answers will not be considered a complete response. Applications will be scored based on need, connection to covid, clear budget, business activity viability, and measurable impact.

Accepting Applications: October 31, 2022

Minimum Request: \$5,000

Maximum Request: \$35,000

Program Description: Up to \$35,000 for businesses located in Ulster County with 25 or fewer employees at the time of application. Funding is meant to spur innovation and adaptation to the new reality of economic life with a highly contagious virus. The fund will provide reimbursement of up to 100% of eligible project costs. All projects must be located in Ulster County, New York

Eligible Applicants Must Meet ALL of the following criteria:

- Your primary business location must be in Ulster County, NY.
- Your business must be a sole proprietorship, partnership, corporation, Limited Liability Company or other legal form of business. Applicants who did not establish their business in New York State must provide a DBA or incorporation paperwork upon award.
- Your business must have 25 or fewer employees at the time of application.
- Must provide personal tax returns from all owners with greater than or equal to 20% ownership
- Business must maintain a separate bank account for business related expenses (cannot co-mingle business and personal expenses)

Other Application Information:

Please only select majority-, woman-, or veteran-owned if more than 50% of the business is owned by an individual or individuals who identify as such. Formal NYS paperwork is not required.

For questions 27-29, please provide a detailed narrative - even if it's repetitive! The scoring committee will be evaluating applications based on a clear need, clear project scope, clear budget, clear impact, and a clear covid connection.

For file uploads, please label your file **CLEARLY**. Business name **MUST** be included. If your file is not labeled clearly, your application may be marked incomplete.

Not for profit businesses that qualify for tax exempt status under section 501c3 of the Internal Revenue Code are **ELIGIBLE** and must complete section 4.

Think ahead about your expenses for next year! This funding does NOT reimburse anything purchased PRIOR to the award date which is expected to be in Q1 of 2023. Upon award, you will be given approval to begin making eligible purchases. Your award term is 120 days from date of award. Expenses made after your contract expiration will not be eligible for consideration.

Eligible Use of Funds:

Eligible expenses include rent, business mortgage payments, furniture, fixtures, equipment, operating expenses, and working capital that will prevent, prepare for, and respond to the impacts of the coronavirus pandemic.

Expenses incurred must be for activities located in Ulster County.

Equipment

- Permanent machinery and equipment (installed equipment/machinery) - **must complete section 8 of application**
- Misc. business equipment
- Vehicles
- Computers/software

Operating Expenses (i.e. Working Capital)

- Payroll (must provide formal payroll documentation from a payroll processing system with reimbursement request)
- Rent (must provide signed copy of lease agreement upon award)
- Utilities (bill submitted must match Ulster County business address)
- Supplies
- Inventory

Fixed Assets

Awards and disbursement of funds are contingent on receiving necessary approvals. If approvals are not received prior to contract end date the award will be rescinded and reimbursement will not be given.

Please complete section 8 of the application in its entirety to be considered.

- Property purchases, including soft costs*
- New building construction*
- Exterior building renovations, including soft costs*
- Signage*
- Interior renovations*

Other Eligible Expenses

- Daycare (only eligible where necessary for owner or employees to continue working)
- Financing Fees
- Loan application/closing fees and interest payments

- Bank charges/fees
- Closing costs

Ineligible expenses

- Owner's payroll or draw (direct payments to owner outside of payroll system)
- Advanced payments of any kind (only payments where goods/services have been provided are eligible).
- Any expense incurred before the award date (see contract) or after contract end date is ineligible.
- Taxes of any kind (property tax, income tax, payroll tax, sales tax, occupancy tax, etc.) are ineligible.
- Franchise fees and loan payments that are NOT mortgage payments (ie: business loans)

Funds will be provided as a reimbursement for eligible expenses. Eligible expenses must be incurred after award, and within 120 days of award.

Reimbursement Procedures

Funds shall not be provided in advance of project completion or full payment for the project by the business. Once the applicant provides verification that the work has been completed and that all vendors have been paid in full, reimbursement will be processed.

Applicants must document project expenditures. Proof of payment to the contractor/vendor is required in the form of an invoice and canceled check or credit card statement. Cash payments are not an acceptable form of payment and cannot be reimbursed.

Only those costs deemed to be reasonable and appropriate to complete the project which was approved and agreed upon will be reimbursed. Applicants may be required to supply additional information.

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 **HARANA MARKET, LLC**, a Limited Liability Corporation with principal offices at 603-607 Wittenburg Rd., Mt Tremper, New York 12457 (the “**Contractor**”), (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-19 Local Fiscal Recovery Fund (the “**CLFRF**”), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of the Coronavirus Disease 2019 (“**COVID-19**”) in their communities; and

WHEREAS, Ulster County, as a CLFRF recipient, desires to utilize a portion of these ARPA funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to Ulster County based small businesses; and

WHEREAS, the County has made a portion of the ARPA funds available to help small businesses throughout New York State to safely reopen and restate their local economies in the wake of the COVID-19 pandemic; and

WHEREAS, the County allocated an amount not to exceed ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS (the “**County ARPA Funds**”); and

WHEREAS, the County entered into an Agreement with the UCEDA (County Contract No. 2022-00000303) to engage the UCEDA as a sub-recipient of the County ARPA Funds; and

WHEREAS, the UCEDA administers the Ulster County CARES II Small Business Assistance Program (the “**Program**”), which is a business relief response program created as a result of the County ARPA 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 may apply to the 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 Program, and the UCEDA has determined that the Contractor qualifies for assistance through the Program, for the purpose of rebuilding the Contractor’s business following the COVID-19 pandemic; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance through the 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 April 12, 2023** (the “Award Date”) **and ending August 10, 2023**.

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 **FIVE THOUSAND AND 00/100 (\$5,000.00) 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:
Harana Market, LLC
603-607 Wittenburg Rd.
Mt Tremper, New York 12457

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, 5th 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.

****Signature page follows****

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: _____

Harana Market, LLC

By: _____
NAME: _____
TITLE: _____
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

1. In response to the COVID-19 pandemic, the Contractor shall use the funds it receives to assist and rebuild the Contractor's business.
2. The Contractor shall use the funds it receives in a manner consistent with the "Proposed Use of Funds" described in the Contractor's Program Application (which is attached hereto as Schedule "D" and hereby made part of this Agreement).
3. The Contractor shall use the funds it receives pursuant to this Agreement in the following categories, as set forth in the Program Application Instructions (which is attached hereto as Schedule "E" and hereby made part of this Agreement):
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

Use of the funds by the Contractor for any other purpose must be approved by the UCEDA in advance of expenditure.

4. The Contractor shall make all expenditures of the funds received pursuant to this Agreement within one hundred twenty (120) days of the Award Date.
5. The Contractor shall provide the following information upon execution of this agreement and at least once per year for two years following completion of the term of this Agreement, upon written request from UCEDA, as part of the program reporting requirements:
 - a. Current roster of all W-2 employees, indicating status for each employee (full-time, part-time, temporary/seasonal) and average weekly hours worked for each employee
 - b. Current hourly wage for each employee and whether each employee receives paid benefits
 - c. Household size, income, and demographics for each employee
 - d. Statement indicating progress toward completion of project and achievement of measurable outcomes that were identified in Contractor's Program Application

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The UCEDA, through the Program, shall pay to the Contractor a **not-to-exceed amount** of **FIVE THOUSAND AND 00/100 (\$5,000.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend Contractor's own funds, consistent with Contractor's commitment of funds as documented in the Program Application, prior to completion of the Term of this Agreement.
3. 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 fifth (5th) of each month for the previous month's expenditures. Invoices shall identify any Contractor funds expended in addition to the amount to be reimbursed, which shall be considered toward Contractor's fulfillment of commitment of funds as documented in the Program Application.
3. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories listed as follows, as set forth in Schedule D:
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

In the event the Contractor wishes to seek reimbursement for an expenditure that does not fall in one of the categories listed in this Paragraph 3, the Contractor must first obtain written consent from UCEDA prior to including such expenditure on any reimbursement invoice.

4. With each invoice, the Contractor shall tender receipts, reports and notes to the UCEDA sufficient for the UCEDA to determine that the Contractor expended the funds in accordance with this Agreement. All invoices, deliverable reports, receipts and notes shall be delivered to UCEDA on or before the fifth (5th) 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 a claim to the County showing its intent to disburse funds to the Contractor, pursuant to County Contract 2022-00000303. Upon the County's approval of the disbursement, the UCEDA shall remit payment to the Contractor within five (5) business days.
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.

SCHEDULE D

PROGRAM APPLICATION INSTRUCTIONS

Applicants **MUST** provide clear, complete details about their request for funding assistance. Please only apply once you have developed a well-thought out plan that clearly describes your need and how/why your proposed plan will meet this need. Please include ALL supporting documentation and evidence. Please use complete sentences. One word answers will not be considered a complete response. Applications will be scored based on need, connection to covid, clear budget, business activity viability, and measurable impact.

Accepting Applications: October 31, 2022

Minimum Request: \$5,000

Maximum Request: \$35,000

Program Description: Up to \$35,000 for businesses located in Ulster County with 25 or fewer employees at the time of application. Funding is meant to spur innovation and adaptation to the new reality of economic life with a highly contagious virus. The fund will provide reimbursement of up to 100% of eligible project costs. All projects must be located in Ulster County, New York

Eligible Applicants Must Meet ALL of the following criteria:

- Your primary business location must be in Ulster County, NY.
- Your business must be a sole proprietorship, partnership, corporation, Limited Liability Company or other legal form of business. Applicants who did not establish their business in New York State must provide a DBA or incorporation paperwork upon award.
- Your business must have 25 or fewer employees at the time of application.
- Must provide personal tax returns from all owners with greater than or equal to 20% ownership
- Business must maintain a separate bank account for business related expenses (cannot co-mingle business and personal expenses)

Other Application Information:

Please only select majority-, woman-, or veteran-owned if more than 50% of the business is owned by an individual or individuals who identify as such. Formal NYS paperwork is not required.

For questions 27-29, please provide a detailed narrative - even if it's repetitive! The scoring committee will be evaluating applications based on a clear need, clear project scope, clear budget, clear impact, and a clear covid connection.

For file uploads, please label your file **CLEARLY**. Business name **MUST** be included. If your file is not labeled clearly, your application may be marked incomplete.

Not for profit businesses that qualify for tax exempt status under section 501c3 of the Internal Revenue Code are **ELIGIBLE** and must complete section 4.

Think ahead about your expenses for next year! This funding does NOT reimburse anything purchased PRIOR to the award date which is expected to be in Q1 of 2023. Upon award, you will be given approval to begin making eligible purchases. Your award term is 120 days from date of award. Expenses made after your contract expiration will not be eligible for consideration.

Eligible Use of Funds:

Eligible expenses include rent, business mortgage payments, furniture, fixtures, equipment, operating expenses, and working capital that will prevent, prepare for, and respond to the impacts of the coronavirus pandemic.

Expenses incurred must be for activities located in Ulster County.

Equipment

- Permanent machinery and equipment (installed equipment/machinery) - **must complete section 8 of application**
- Misc. business equipment
- Vehicles
- Computers/software

Operating Expenses (i.e. Working Capital)

- Payroll (must provide formal payroll documentation from a payroll processing system with reimbursement request)
- Rent (must provide signed copy of lease agreement upon award)
- Utilities (bill submitted must match Ulster County business address)
- Supplies
- Inventory

Fixed Assets

Awards and disbursement of funds are contingent on receiving necessary approvals. If approvals are not received prior to contract end date the award will be rescinded and reimbursement will not be given.

Please complete section 8 of the application in its entirety to be considered.

- Property purchases, including soft costs*
- New building construction*
- Exterior building renovations, including soft costs*
- Signage*
- Interior renovations*

Other Eligible Expenses

- Daycare (only eligible where necessary for owner or employees to continue working)
- Financing Fees
- Loan application/closing fees and interest payments

- Bank charges/fees
- Closing costs

Ineligible expenses

- Owner's payroll or draw (direct payments to owner outside of payroll system)
- Advanced payments of any kind (only payments where goods/services have been provided are eligible).
- Any expense incurred before the award date (see contract) or after contract end date is ineligible.
- Taxes of any kind (property tax, income tax, payroll tax, sales tax, occupancy tax, etc.) are ineligible.
- Franchise fees and loan payments that are NOT mortgage payments (ie: business loans)

Funds will be provided as a reimbursement for eligible expenses. Eligible expenses must be incurred after award, and within 120 days of award.

Reimbursement Procedures

Funds shall not be provided in advance of project completion or full payment for the project by the business. Once the applicant provides verification that the work has been completed and that all vendors have been paid in full, reimbursement will be processed.

Applicants must document project expenditures. Proof of payment to the contractor/vendor is required in the form of an invoice and canceled check or credit card statement. Cash payments are not an acceptable form of payment and cannot be reimbursed.

Only those costs deemed to be reasonable and appropriate to complete the project which was approved and agreed upon will be reimbursed. Applicants may be required to supply additional information.

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 **COMMON TABLE, LLC**, a Limited Liability Corporation with principal offices at 191C Hurley Ave., Kingston, New York 12401 (the “**Contractor**”), (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-19 Local Fiscal Recovery Fund (the “**CLFRF**”), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of the Coronavirus Disease 2019 (“**COVID-19**”) in their communities; and

WHEREAS, Ulster County, as a CLFRF recipient, desires to utilize a portion of these ARPA funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to Ulster County based small businesses; and

WHEREAS, the County has made a portion of the ARPA funds available to help small businesses throughout New York State to safely reopen and restate their local economies in the wake of the COVID-19 pandemic; and

WHEREAS, the County allocated an amount not to exceed ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS (the “**County ARPA Funds**”); and

WHEREAS, the County entered into an Agreement with the UCEDA (County Contract No. 2022-00000303) to engage the UCEDA as a sub-recipient of the County ARPA Funds; and

WHEREAS, the UCEDA administers the Ulster County CARES II Small Business Assistance Program (the “**Program**”), which is a business relief response program created as a result of the County ARPA 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 may apply to the 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 Program, and the UCEDA has determined that the Contractor qualifies for assistance through the Program, for the purpose of rebuilding the Contractor’s business following the COVID-19 pandemic; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance through the 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 April 12, 2023** (the “Award Date”) **and ending August 10, 2023**.

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 **THIRTY-FOUR THOUSAND NINE HUNDRED AND SIXTY-NINE AND 00/100 (\$34,969.00) 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:
Common Table, LLC
191C Hurley Ave.
Kingston, New York 12401

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, 5th 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.

****Signature page follows****

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: _____

Common Table, LLC

By: _____
NAME: _____
TITLE: _____
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

1. In response to the COVID-19 pandemic, the Contractor shall use the funds it receives to assist and rebuild the Contractor's business.
2. The Contractor shall use the funds it receives in a manner consistent with the "Proposed Use of Funds" described in the Contractor's Program Application (which is attached hereto as Schedule "D" and hereby made part of this Agreement).
3. The Contractor shall use the funds it receives pursuant to this Agreement in the following categories, as set forth in the Program Application Instructions (which is attached hereto as Schedule "E" and hereby made part of this Agreement):
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

Use of the funds by the Contractor for any other purpose must be approved by the UCEDA in advance of expenditure.

4. The Contractor shall make all expenditures of the funds received pursuant to this Agreement within one hundred twenty (120) days of the Award Date.
5. The Contractor shall provide the following information upon execution of this agreement and at least once per year for two years following completion of the term of this Agreement, upon written request from UCEDA, as part of the program reporting requirements:
 - a. Current roster of all W-2 employees, indicating status for each employee (full-time, part-time, temporary/seasonal) and average weekly hours worked for each employee
 - b. Current hourly wage for each employee and whether each employee receives paid benefits
 - c. Household size, income, and demographics for each employee
 - d. Statement indicating progress toward completion of project and achievement of measurable outcomes that were identified in Contractor's Program Application

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The UCEDA, through the Program, shall pay to the Contractor a **not-to-exceed amount** of **THIRTY-FOUR THOUSAND NINE HUNDRED AND SIXTY-NINE AND 00/100 (\$34,969.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend Contractor's own funds, consistent with Contractor's commitment of funds as documented in the Program Application, prior to completion of the Term of this Agreement.
3. 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 fifth (5th) of each month for the previous month's expenditures. Invoices shall identify any Contractor funds expended in addition to the amount to be reimbursed, which shall be considered toward Contractor's fulfillment of commitment of funds as documented in the Program Application.
3. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories listed as follows, as set forth in Schedule D:
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

In the event the Contractor wishes to seek reimbursement for an expenditure that does not fall in one of the categories listed in this Paragraph 3, the Contractor must first obtain written consent from UCEDA prior to including such expenditure on any reimbursement invoice.

4. With each invoice, the Contractor shall tender receipts, reports and notes to the UCEDA sufficient for the UCEDA to determine that the Contractor expended the funds in accordance with this Agreement. All invoices, deliverable reports, receipts and notes shall be delivered to UCEDA on or before the fifth (5th) 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 a claim to the County showing its intent to disburse funds to the Contractor, pursuant to County Contract 2022-00000303. Upon the County's approval of the disbursement, the UCEDA shall remit payment to the Contractor within five (5) business days.
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.

SCHEDULE D

PROGRAM APPLICATION INSTRUCTIONS

Applicants **MUST** provide clear, complete details about their request for funding assistance. Please only apply once you have developed a well-thought out plan that clearly describes your need and how/why your proposed plan will meet this need. Please include ALL supporting documentation and evidence. Please use complete sentences. One word answers will not be considered a complete response. Applications will be scored based on need, connection to covid, clear budget, business activity viability, and measurable impact.

Accepting Applications: October 31, 2022

Minimum Request: \$5,000

Maximum Request: \$35,000

Program Description: Up to \$35,000 for businesses located in Ulster County with 25 or fewer employees at the time of application. Funding is meant to spur innovation and adaptation to the new reality of economic life with a highly contagious virus. The fund will provide reimbursement of up to 100% of eligible project costs. All projects must be located in Ulster County, New York

Eligible Applicants Must Meet ALL of the following criteria:

- Your primary business location must be in Ulster County, NY.
- Your business must be a sole proprietorship, partnership, corporation, Limited Liability Company or other legal form of business. Applicants who did not establish their business in New York State must provide a DBA or incorporation paperwork upon award.
- Your business must have 25 or fewer employees at the time of application.
- Must provide personal tax returns from all owners with greater than or equal to 20% ownership
- Business must maintain a separate bank account for business related expenses (cannot co-mingle business and personal expenses)

Other Application Information:

Please only select majority-, woman-, or veteran-owned if more than 50% of the business is owned by an individual or individuals who identify as such. Formal NYS paperwork is not required.

For questions 27-29, please provide a detailed narrative - even if it's repetitive! The scoring committee will be evaluating applications based on a clear need, clear project scope, clear budget, clear impact, and a clear covid connection.

For file uploads, please label your file **CLEARLY**. Business name **MUST** be included. If your file is not labeled clearly, your application may be marked incomplete.

Not for profit businesses that qualify for tax exempt status under section 501c3 of the Internal Revenue Code are **ELIGIBLE** and must complete section 4.

Think ahead about your expenses for next year! This funding does NOT reimburse anything purchased PRIOR to the award date which is expected to be in Q1 of 2023. Upon award, you will be given approval to begin making eligible purchases. Your award term is 120 days from date of award. Expenses made after your contract expiration will not be eligible for consideration.

Eligible Use of Funds:

Eligible expenses include rent, business mortgage payments, furniture, fixtures, equipment, operating expenses, and working capital that will prevent, prepare for, and respond to the impacts of the coronavirus pandemic.

Expenses incurred must be for activities located in Ulster County.

Equipment

- Permanent machinery and equipment (installed equipment/machinery) - **must complete section 8 of application**
- Misc. business equipment
- Vehicles
- Computers/software

Operating Expenses (i.e. Working Capital)

- Payroll (must provide formal payroll documentation from a payroll processing system with reimbursement request)
- Rent (must provide signed copy of lease agreement upon award)
- Utilities (bill submitted must match Ulster County business address)
- Supplies
- Inventory

Fixed Assets

Awards and disbursement of funds are contingent on receiving necessary approvals. If approvals are not received prior to contract end date the award will be rescinded and reimbursement will not be given.

Please complete section 8 of the application in its entirety to be considered.

- Property purchases, including soft costs*
- New building construction*
- Exterior building renovations, including soft costs*
- Signage*
- Interior renovations*

Other Eligible Expenses

- Daycare (only eligible where necessary for owner or employees to continue working)
- Financing Fees
- Loan application/closing fees and interest payments

- Bank charges/fees
- Closing costs

Ineligible expenses

- Owner's payroll or draw (direct payments to owner outside of payroll system)
- Advanced payments of any kind (only payments where goods/services have been provided are eligible).
- Any expense incurred before the award date (see contract) or after contract end date is ineligible.
- Taxes of any kind (property tax, income tax, payroll tax, sales tax, occupancy tax, etc.) are ineligible.
- Franchise fees and loan payments that are NOT mortgage payments (ie: business loans)

Funds will be provided as a reimbursement for eligible expenses. Eligible expenses must be incurred after award, and within 120 days of award.

Reimbursement Procedures

Funds shall not be provided in advance of project completion or full payment for the project by the business. Once the applicant provides verification that the work has been completed and that all vendors have been paid in full, reimbursement will be processed.

Applicants must document project expenditures. Proof of payment to the contractor/vendor is required in the form of an invoice and canceled check or credit card statement. Cash payments are not an acceptable form of payment and cannot be reimbursed.

Only those costs deemed to be reasonable and appropriate to complete the project which was approved and agreed upon will be reimbursed. Applicants may be required to supply additional information.

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 **DM DRY CLEANERS INC.**, a S-Corp with principal offices at 12 New Paltz Plaza, New Paltz, New York 12461 (the “**Contractor**”), (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-19 Local Fiscal Recovery Fund (the “CLFRF”), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of the Coronavirus Disease 2019 (“COVID-19”) in their communities; and

WHEREAS, Ulster County, as a CLFRF recipient, desires to utilize a portion of these ARPA funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to Ulster County based small businesses; and

WHEREAS, the County has made a portion of the ARPA funds available to help small businesses throughout New York State to safely reopen and restate their local economies in the wake of the COVID-19 pandemic; and

WHEREAS, the County allocated an amount not to exceed ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS (the “County ARPA Funds”); and

WHEREAS, the County entered into an Agreement with the UCEDA (County Contract No. 2022-00000303) to engage the UCEDA as a sub-recipient of the County ARPA Funds; and

WHEREAS, the UCEDA administers the Ulster County CARES II Small Business Assistance Program (the “Program”), which is a business relief response program created as a result of the County ARPA 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 may apply to the 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 Program, and the UCEDA has determined that the Contractor qualifies for assistance through the Program, for the purpose of rebuilding the Contractor’s business following the COVID-19 pandemic; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance through the 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 April 12, 2023** (the “Award Date”) **and ending August 10, 2023**.

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 **THIRTY-FIVE THOUSAND AND 00/100 (\$35,000.00) 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:
DM Dry Cleaners Inc.
12 New Paltz Plaza
New Paltz, New York 12461

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, 5th 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.

****Signature page follows****

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: _____

DM Dry Cleaners Inc.

By: _____
NAME: _____
TITLE: _____
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

1. In response to the COVID-19 pandemic, the Contractor shall use the funds it receives to assist and rebuild the Contractor's business.
2. The Contractor shall use the funds it receives in a manner consistent with the "Proposed Use of Funds" described in the Contractor's Program Application (which is attached hereto as Schedule "D" and hereby made part of this Agreement).
3. The Contractor shall use the funds it receives pursuant to this Agreement in the following categories, as set forth in the Program Application Instructions (which is attached hereto as Schedule "E" and hereby made part of this Agreement):
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

Use of the funds by the Contractor for any other purpose must be approved by the UCEDA in advance of expenditure.

4. The Contractor shall make all expenditures of the funds received pursuant to this Agreement within one hundred twenty (120) days of the Award Date.
5. The Contractor shall provide the following information upon execution of this agreement and at least once per year for two years following completion of the term of this Agreement, upon written request from UCEDA, as part of the program reporting requirements:
 - a. Current roster of all W-2 employees, indicating status for each employee (full-time, part-time, temporary/seasonal) and average weekly hours worked for each employee
 - b. Current hourly wage for each employee and whether each employee receives paid benefits
 - c. Household size, income, and demographics for each employee
 - d. Statement indicating progress toward completion of project and achievement of measurable outcomes that were identified in Contractor's Program Application

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The UCEDA, through the Program, shall pay to the Contractor a **not-to-exceed amount** of **THIRTY-FIVE THOUSAND AND 00/100 (\$35,000.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend Contractor's own funds, consistent with Contractor's commitment of funds as documented in the Program Application, prior to completion of the Term of this Agreement.
3. 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 fifth (5th) of each month for the previous month's expenditures. Invoices shall identify any Contractor funds expended in addition to the amount to be reimbursed, which shall be considered toward Contractor's fulfillment of commitment of funds as documented in the Program Application.
3. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories listed as follows, as set forth in Schedule D:
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

In the event the Contractor wishes to seek reimbursement for an expenditure that does not fall in one of the categories listed in this Paragraph 3, the Contractor must first obtain written consent from UCEDA prior to including such expenditure on any reimbursement invoice.

4. With each invoice, the Contractor shall tender receipts, reports and notes to the UCEDA sufficient for the UCEDA to determine that the Contractor expended the funds in accordance with this Agreement. All invoices, deliverable reports, receipts and notes shall be delivered to UCEDA on or before the fifth (5th) 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 a claim to the County showing its intent to disburse funds to the Contractor, pursuant to County Contract 2022-00000303. Upon the County's approval of the disbursement, the UCEDA shall remit payment to the Contractor within five (5) business days.
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.

SCHEDULE D

PROGRAM APPLICATION INSTRUCTIONS

Applicants **MUST** provide clear, complete details about their request for funding assistance. Please only apply once you have developed a well-thought out plan that clearly describes your need and how/why your proposed plan will meet this need. Please include ALL supporting documentation and evidence. Please use complete sentences. One word answers will not be considered a complete response. Applications will be scored based on need, connection to covid, clear budget, business activity viability, and measurable impact.

Accepting Applications: October 31, 2022

Minimum Request: \$5,000

Maximum Request: \$35,000

Program Description: Up to \$35,000 for businesses located in Ulster County with 25 or fewer employees at the time of application. Funding is meant to spur innovation and adaptation to the new reality of economic life with a highly contagious virus. The fund will provide reimbursement of up to 100% of eligible project costs. All projects must be located in Ulster County, New York

Eligible Applicants Must Meet ALL of the following criteria:

- Your primary business location must be in Ulster County, NY.
- Your business must be a sole proprietorship, partnership, corporation, Limited Liability Company or other legal form of business. Applicants who did not establish their business in New York State must provide a DBA or incorporation paperwork upon award.
- Your business must have 25 or fewer employees at the time of application.
- Must provide personal tax returns from all owners with greater than or equal to 20% ownership
- Business must maintain a separate bank account for business related expenses (cannot co-mingle business and personal expenses)

Other Application Information:

Please only select majority-, woman-, or veteran-owned if more than 50% of the business is owned by an individual or individuals who identify as such. Formal NYS paperwork is not required.

For questions 27-29, please provide a detailed narrative - even if it's repetitive! The scoring committee will be evaluating applications based on a clear need, clear project scope, clear budget, clear impact, and a clear covid connection.

For file uploads, please label your file **CLEARLY**. Business name **MUST** be included. If your file is not labeled clearly, your application may be marked incomplete.

Not for profit businesses that qualify for tax exempt status under section 501c3 of the Internal Revenue Code are **ELIGIBLE** and must complete section 4.

Think ahead about your expenses for next year! This funding does NOT reimburse anything purchased PRIOR to the award date which is expected to be in Q1 of 2023. Upon award, you will be given approval to begin making eligible purchases. Your award term is 120 days from date of award. Expenses made after your contract expiration will not be eligible for consideration.

Eligible Use of Funds:

Eligible expenses include rent, business mortgage payments, furniture, fixtures, equipment, operating expenses, and working capital that will prevent, prepare for, and respond to the impacts of the coronavirus pandemic.

Expenses incurred must be for activities located in Ulster County.

Equipment

- Permanent machinery and equipment (installed equipment/machinery) - **must complete section 8 of application**
- Misc. business equipment
- Vehicles
- Computers/software

Operating Expenses (i.e. Working Capital)

- Payroll (must provide formal payroll documentation from a payroll processing system with reimbursement request)
- Rent (must provide signed copy of lease agreement upon award)
- Utilities (bill submitted must match Ulster County business address)
- Supplies
- Inventory

Fixed Assets

Awards and disbursement of funds are contingent on receiving necessary approvals. If approvals are not received prior to contract end date the award will be rescinded and reimbursement will not be given.

Please complete section 8 of the application in its entirety to be considered.

- Property purchases, including soft costs*
- New building construction*
- Exterior building renovations, including soft costs*
- Signage*
- Interior renovations*

Other Eligible Expenses

- Daycare (only eligible where necessary for owner or employees to continue working)
- Financing Fees
- Loan application/closing fees and interest payments

- Bank charges/fees
- Closing costs

Ineligible expenses

- Owner's payroll or draw (direct payments to owner outside of payroll system)
- Advanced payments of any kind (only payments where goods/services have been provided are eligible).
- Any expense incurred before the award date (see contract) or after contract end date is ineligible.
- Taxes of any kind (property tax, income tax, payroll tax, sales tax, occupancy tax, etc.) are ineligible.
- Franchise fees and loan payments that are NOT mortgage payments (ie: business loans)

Funds will be provided as a reimbursement for eligible expenses. Eligible expenses must be incurred after award, and within 120 days of award.

Reimbursement Procedures

Funds shall not be provided in advance of project completion or full payment for the project by the business. Once the applicant provides verification that the work has been completed and that all vendors have been paid in full, reimbursement will be processed.

Applicants must document project expenditures. Proof of payment to the contractor/vendor is required in the form of an invoice and canceled check or credit card statement. Cash payments are not an acceptable form of payment and cannot be reimbursed.

Only those costs deemed to be reasonable and appropriate to complete the project which was approved and agreed upon will be reimbursed. Applicants may be required to supply additional information.

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 **HURDS FAMILY FARM LLC**, a Limited Liability Corporation with principal offices at 2187 Route 32, Modena, New York 12548 (the “**Contractor**”), (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-19 Local Fiscal Recovery Fund (the “CLFRF”), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of the Coronavirus Disease 2019 (“COVID-19”) in their communities; and

WHEREAS, Ulster County, as a CLFRF recipient, desires to utilize a portion of these ARPA funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to Ulster County based small businesses; and

WHEREAS, the County has made a portion of the ARPA funds available to help small businesses throughout New York State to safely reopen and restate their local economies in the wake of the COVID-19 pandemic; and

WHEREAS, the County allocated an amount not to exceed ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS (the “County ARPA Funds”); and

WHEREAS, the County entered into an Agreement with the UCEDA (County Contract No. 2022-00000303) to engage the UCEDA as a sub-recipient of the County ARPA Funds; and

WHEREAS, the UCEDA administers the Ulster County CARES II Small Business Assistance Program (the “Program”), which is a business relief response program created as a result of the County ARPA 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 may apply to the 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 Program, and the UCEDA has determined that the Contractor qualifies for assistance through the Program, for the purpose of rebuilding the Contractor’s business following the COVID-19 pandemic; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance through the 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 April 12, 2023** (the “Award Date”) **and ending August 10, 2023**.

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 **THIRTY-FIVE THOUSAND AND 00/100 (\$35,000.00) 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:
Hurds Family Farm LLC
2187 Route 32
Modena, New York 12548

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, 5th 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.

******Signature page follows******

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: _____

Hurds Family Farm LLC

By: _____
NAME: _____
TITLE: _____
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

1. In response to the COVID-19 pandemic, the Contractor shall use the funds it receives to assist and rebuild the Contractor's business.
2. The Contractor shall use the funds it receives in a manner consistent with the "Proposed Use of Funds" described in the Contractor's Program Application (which is attached hereto as Schedule "D" and hereby made part of this Agreement).
3. The Contractor shall use the funds it receives pursuant to this Agreement in the following categories, as set forth in the Program Application Instructions (which is attached hereto as Schedule "E" and hereby made part of this Agreement):
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

Use of the funds by the Contractor for any other purpose must be approved by the UCEDA in advance of expenditure.

4. The Contractor shall make all expenditures of the funds received pursuant to this Agreement within one hundred twenty (120) days of the Award Date.
5. The Contractor shall provide the following information upon execution of this agreement and at least once per year for two years following completion of the term of this Agreement, upon written request from UCEDA, as part of the program reporting requirements:
 - a. Current roster of all W-2 employees, indicating status for each employee (full-time, part-time, temporary/seasonal) and average weekly hours worked for each employee
 - b. Current hourly wage for each employee and whether each employee receives paid benefits
 - c. Household size, income, and demographics for each employee
 - d. Statement indicating progress toward completion of project and achievement of measurable outcomes that were identified in Contractor's Program Application

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The UCEDA, through the Program, shall pay to the Contractor a **not-to-exceed amount** of **THIRTY-FIVE THOUSAND AND 00/100 (\$35,000.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend Contractor's own funds, consistent with Contractor's commitment of funds as documented in the Program Application, prior to completion of the Term of this Agreement.
3. 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 fifth (5th) of each month for the previous month's expenditures. Invoices shall identify any Contractor funds expended in addition to the amount to be reimbursed, which shall be considered toward Contractor's fulfillment of commitment of funds as documented in the Program Application.
3. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories listed as follows, as set forth in Schedule D:
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

In the event the Contractor wishes to seek reimbursement for an expenditure that does not fall in one of the categories listed in this Paragraph 3, the Contractor must first obtain written consent from UCEDA prior to including such expenditure on any reimbursement invoice.

4. With each invoice, the Contractor shall tender receipts, reports and notes to the UCEDA sufficient for the UCEDA to determine that the Contractor expended the funds in accordance with this Agreement. All invoices, deliverable reports, receipts and notes shall be delivered to UCEDA on or before the fifth (5th) 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 a claim to the County showing its intent to disburse funds to the Contractor, pursuant to County Contract 2022-00000303. Upon the County's approval of the disbursement, the UCEDA shall remit payment to the Contractor within five (5) business days.
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.

SCHEDULE D

PROGRAM APPLICATION INSTRUCTIONS

Applicants **MUST** provide clear, complete details about their request for funding assistance. Please only apply once you have developed a well-thought out plan that clearly describes your need and how/why your proposed plan will meet this need. Please include ALL supporting documentation and evidence. Please use complete sentences. One word answers will not be considered a complete response. Applications will be scored based on need, connection to covid, clear budget, business activity viability, and measurable impact.

Accepting Applications: October 31, 2022

Minimum Request: \$5,000

Maximum Request: \$35,000

Program Description: Up to \$35,000 for businesses located in Ulster County with 25 or fewer employees at the time of application. Funding is meant to spur innovation and adaptation to the new reality of economic life with a highly contagious virus. The fund will provide reimbursement of up to 100% of eligible project costs. All projects must be located in Ulster County, New York

Eligible Applicants Must Meet ALL of the following criteria:

- Your primary business location must be in Ulster County, NY.
- Your business must be a sole proprietorship, partnership, corporation, Limited Liability Company or other legal form of business. Applicants who did not establish their business in New York State must provide a DBA or incorporation paperwork upon award.
- Your business must have 25 or fewer employees at the time of application.
- Must provide personal tax returns from all owners with greater than or equal to 20% ownership
- Business must maintain a separate bank account for business related expenses (cannot co-mingle business and personal expenses)

Other Application Information:

Please only select majority-, woman-, or veteran-owned if more than 50% of the business is owned by an individual or individuals who identify as such. Formal NYS paperwork is not required.

For questions 27-29, please provide a detailed narrative - even if it's repetitive! The scoring committee will be evaluating applications based on a clear need, clear project scope, clear budget, clear impact, and a clear covid connection.

For file uploads, please label your file **CLEARLY**. Business name **MUST** be included. If your file is not labeled clearly, your application may be marked incomplete.

Not for profit businesses that qualify for tax exempt status under section 501c3 of the Internal Revenue Code are **ELIGIBLE** and must complete section 4.

Think ahead about your expenses for next year! This funding does NOT reimburse anything purchased PRIOR to the award date which is expected to be in Q1 of 2023. Upon award, you will be given approval to begin making eligible purchases. Your award term is 120 days from date of award. Expenses made after your contract expiration will not be eligible for consideration.

Eligible Use of Funds:

Eligible expenses include rent, business mortgage payments, furniture, fixtures, equipment, operating expenses, and working capital that will prevent, prepare for, and respond to the impacts of the coronavirus pandemic.

Expenses incurred must be for activities located in Ulster County.

Equipment

- Permanent machinery and equipment (installed equipment/machinery) - **must complete section 8 of application**
- Misc. business equipment
- Vehicles
- Computers/software

Operating Expenses (i.e. Working Capital)

- Payroll (must provide formal payroll documentation from a payroll processing system with reimbursement request)
- Rent (must provide signed copy of lease agreement upon award)
- Utilities (bill submitted must match Ulster County business address)
- Supplies
- Inventory

Fixed Assets

Awards and disbursement of funds are contingent on receiving necessary approvals. If approvals are not received prior to contract end date the award will be rescinded and reimbursement will not be given.

Please complete section 8 of the application in its entirety to be considered.

- Property purchases, including soft costs*
- New building construction*
- Exterior building renovations, including soft costs*
- Signage*
- Interior renovations*

Other Eligible Expenses

- Daycare (only eligible where necessary for owner or employees to continue working)
- Financing Fees
- Loan application/closing fees and interest payments

- Bank charges/fees
- Closing costs

Ineligible expenses

- Owner's payroll or draw (direct payments to owner outside of payroll system)
- Advanced payments of any kind (only payments where goods/services have been provided are eligible).
- Any expense incurred before the award date (see contract) or after contract end date is ineligible.
- Taxes of any kind (property tax, income tax, payroll tax, sales tax, occupancy tax, etc.) are ineligible.
- Franchise fees and loan payments that are NOT mortgage payments (ie: business loans)

Funds will be provided as a reimbursement for eligible expenses. Eligible expenses must be incurred after award, and within 120 days of award.

Reimbursement Procedures

Funds shall not be provided in advance of project completion or full payment for the project by the business. Once the applicant provides verification that the work has been completed and that all vendors have been paid in full, reimbursement will be processed.

Applicants must document project expenditures. Proof of payment to the contractor/vendor is required in the form of an invoice and canceled check or credit card statement. Cash payments are not an acceptable form of payment and cannot be reimbursed.

Only those costs deemed to be reasonable and appropriate to complete the project which was approved and agreed upon will be reimbursed. Applicants may be required to supply additional information.

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 **JENNIFER CRANE DBA CRANE ACUPUNCTURE & HOLISTIC MEDICINE**, a Sole Proprietorship with principal offices at 785 Broadway, Kingston, New York 12401 (the “**Contractor**”), (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-19 Local Fiscal Recovery Fund (the “**CLFRF**”), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of the Coronavirus Disease 2019 (“**COVID-19**”) in their communities; and

WHEREAS, Ulster County, as a CLFRF recipient, desires to utilize a portion of these ARPA funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to Ulster County based small businesses; and

WHEREAS, the County has made a portion of the ARPA funds available to help small businesses throughout New York State to safely reopen and restate their local economies in the wake of the COVID-19 pandemic; and

WHEREAS, the County allocated an amount not to exceed ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS (the “**County ARPA Funds**”); and

WHEREAS, the County entered into an Agreement with the UCEDA (County Contract No. 2022-00000303) to engage the UCEDA as a sub-recipient of the County ARPA Funds; and

WHEREAS, the UCEDA administers the Ulster County CARES II Small Business Assistance Program (the “**Program**”), which is a business relief response program created as a result of the County ARPA 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 may apply to the 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 Program, and the UCEDA has determined that the Contractor qualifies for assistance through the Program, for the purpose of rebuilding the Contractor’s business following the COVID-19 pandemic; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance through the 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 April 12, 2023** (the “Award Date”) **and ending August 10, 2023**.

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 **THIRTY-FIVE THOUSAND AND 00/100 (\$35,000.00) 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:

Jennifer Crane DBA Crane Acupuncture & Holistic
Medicine
785 Broadway
Kingston, New York 12401

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, 5th 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.

******Signature page follows******

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: _____

Jennifer Crane DBA Crane Acupuncture & Holistic Medicine

By: _____
NAME: _____
TITLE: _____
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

1. In response to the COVID-19 pandemic, the Contractor shall use the funds it receives to assist and rebuild the Contractor's business.
2. The Contractor shall use the funds it receives in a manner consistent with the "Proposed Use of Funds" described in the Contractor's Program Application (which is attached hereto as Schedule "D" and hereby made part of this Agreement).
3. The Contractor shall use the funds it receives pursuant to this Agreement in the following categories, as set forth in the Program Application Instructions (which is attached hereto as Schedule "E" and hereby made part of this Agreement):
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

Use of the funds by the Contractor for any other purpose must be approved by the UCEDA in advance of expenditure.

4. The Contractor shall make all expenditures of the funds received pursuant to this Agreement within one hundred twenty (120) days of the Award Date.
5. The Contractor shall provide the following information upon execution of this agreement and at least once per year for two years following completion of the term of this Agreement, upon written request from UCEDA, as part of the program reporting requirements:
 - a. Current roster of all W-2 employees, indicating status for each employee (full-time, part-time, temporary/seasonal) and average weekly hours worked for each employee
 - b. Current hourly wage for each employee and whether each employee receives paid benefits
 - c. Household size, income, and demographics for each employee
 - d. Statement indicating progress toward completion of project and achievement of measurable outcomes that were identified in Contractor's Program Application

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The UCEDA, through the Program, shall pay to the Contractor a **not-to-exceed amount** of **THIRTY-FIVE THOUSAND AND 00/100 (\$35,000.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend Contractor's own funds, consistent with Contractor's commitment of funds as documented in the Program Application, prior to completion of the Term of this Agreement.
3. 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 fifth (5th) of each month for the previous month's expenditures. Invoices shall identify any Contractor funds expended in addition to the amount to be reimbursed, which shall be considered toward Contractor's fulfillment of commitment of funds as documented in the Program Application.
3. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories listed as follows, as set forth in Schedule D:
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

In the event the Contractor wishes to seek reimbursement for an expenditure that does not fall in one of the categories listed in this Paragraph 3, the Contractor must first obtain written consent from UCEDA prior to including such expenditure on any reimbursement invoice.

4. With each invoice, the Contractor shall tender receipts, reports and notes to the UCEDA sufficient for the UCEDA to determine that the Contractor expended the funds in accordance with this Agreement. All invoices, deliverable reports, receipts and notes shall be delivered to UCEDA on or before the fifth (5th) 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 a claim to the County showing its intent to disburse funds to the Contractor, pursuant to County Contract 2022-00000303. Upon the County's approval of the disbursement, the UCEDA shall remit payment to the Contractor within five (5) business days.
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.

SCHEDULE D

PROGRAM APPLICATION INSTRUCTIONS

Applicants **MUST** provide clear, complete details about their request for funding assistance. Please only apply once you have developed a well-thought out plan that clearly describes your need and how/why your proposed plan will meet this need. Please include **ALL** supporting documentation and evidence. Please use complete sentences. One word answers will not be considered a complete response. Applications will be scored based on need, connection to covid, clear budget, business activity viability, and measurable impact.

Accepting Applications: October 31, 2022

Minimum Request: \$5,000

Maximum Request: \$35,000

Program Description: Up to \$35,000 for businesses located in Ulster County with 25 or fewer employees at the time of application. Funding is meant to spur innovation and adaptation to the new reality of economic life with a highly contagious virus. The fund will provide reimbursement of up to 100% of eligible project costs. All projects must be located in Ulster County, New York

Eligible Applicants Must Meet ALL of the following criteria:

- Your primary business location must be in Ulster County, NY.
- Your business must be a sole proprietorship, partnership, corporation, Limited Liability Company or other legal form of business. Applicants who did not establish their business in New York State must provide a DBA or incorporation paperwork upon award.
- Your business must have 25 or fewer employees at the time of application.
- Must provide personal tax returns from all owners with greater than or equal to 20% ownership
- Business must maintain a separate bank account for business related expenses (cannot co-mingle business and personal expenses)

Other Application Information:

Please only select majority-, woman-, or veteran-owned if more than 50% of the business is owned by an individual or individuals who identify as such. Formal NYS paperwork is not required.

For questions 27-29, please provide a detailed narrative - even if it's repetitive! The scoring committee will be evaluating applications based on a clear need, clear project scope, clear budget, clear impact, and a clear covid connection.

For file uploads, please label your file **CLEARLY**. Business name **MUST** be included. If your file is not labeled clearly, your application may be marked incomplete.

Not for profit businesses that qualify for tax exempt status under section 501c3 of the Internal Revenue Code are **ELIGIBLE** and must complete section 4.

Think ahead about your expenses for next year! This funding does NOT reimburse anything purchased PRIOR to the award date which is expected to be in Q1 of 2023. Upon award, you will be given approval to begin making eligible purchases. Your award term is 120 days from date of award. Expenses made after your contract expiration will not be eligible for consideration.

Eligible Use of Funds:

Eligible expenses include rent, business mortgage payments, furniture, fixtures, equipment, operating expenses, and working capital that will prevent, prepare for, and respond to the impacts of the coronavirus pandemic.

Expenses incurred must be for activities located in Ulster County.

Equipment

- Permanent machinery and equipment (installed equipment/machinery) - **must complete section 8 of application**
- Misc. business equipment
- Vehicles
- Computers/software

Operating Expenses (i.e. Working Capital)

- Payroll (must provide formal payroll documentation from a payroll processing system with reimbursement request)
- Rent (must provide signed copy of lease agreement upon award)
- Utilities (bill submitted must match Ulster County business address)
- Supplies
- Inventory

Fixed Assets

Awards and disbursement of funds are contingent on receiving necessary approvals. If approvals are not received prior to contract end date the award will be rescinded and reimbursement will not be given.

Please complete section 8 of the application in its entirety to be considered.

- Property purchases, including soft costs*
- New building construction*
- Exterior building renovations, including soft costs*
- Signage*
- Interior renovations*

Other Eligible Expenses

- Daycare (only eligible where necessary for owner or employees to continue working)
- Financing Fees
- Loan application/closing fees and interest payments

- Bank charges/fees
- Closing costs

Ineligible expenses

- Owner's payroll or draw (direct payments to owner outside of payroll system)
- Advanced payments of any kind (only payments where goods/services have been provided are eligible).
- Any expense incurred before the award date (see contract) or after contract end date is ineligible.
- Taxes of any kind (property tax, income tax, payroll tax, sales tax, occupancy tax, etc.) are ineligible.
- Franchise fees and loan payments that are NOT mortgage payments (ie: business loans)

Funds will be provided as a reimbursement for eligible expenses. Eligible expenses must be incurred after award, and within 120 days of award.

Reimbursement Procedures

Funds shall not be provided in advance of project completion or full payment for the project by the business. Once the applicant provides verification that the work has been completed and that all vendors have been paid in full, reimbursement will be processed.

Applicants must document project expenditures. Proof of payment to the contractor/vendor is required in the form of an invoice and canceled check or credit card statement. Cash payments are not an acceptable form of payment and cannot be reimbursed.

Only those costs deemed to be reasonable and appropriate to complete the project which was approved and agreed upon will be reimbursed. Applicants may be required to supply additional information.

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 **CAROLE AMPER INC DBA TOUCAN HATS**, a S-Corp with principal offices at 9 Fair St., Kingston, New York 12401 (the “**Contractor**”), (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-19 Local Fiscal Recovery Fund (the “**CLFRF**”), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of the Coronavirus Disease 2019 (“**COVID-19**”) in their communities; and

WHEREAS, Ulster County, as a CLFRF recipient, desires to utilize a portion of these ARPA funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to Ulster County based small businesses; and

WHEREAS, the County has made a portion of the ARPA funds available to help small businesses throughout New York State to safely reopen and restate their local economies in the wake of the COVID-19 pandemic; and

WHEREAS, the County allocated an amount not to exceed ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS (the “**County ARPA Funds**”); and

WHEREAS, the County entered into an Agreement with the UCEDA (County Contract No. 2022-00000303) to engage the UCEDA as a sub-recipient of the County ARPA Funds; and

WHEREAS, the UCEDA administers the Ulster County CARES II Small Business Assistance Program (the “**Program**”), which is a business relief response program created as a result of the County ARPA 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 may apply to the 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 Program, and the UCEDA has determined that the Contractor qualifies for assistance through the Program, for the purpose of rebuilding the Contractor’s business following the COVID-19 pandemic; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance through the 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 April 12, 2023** (the “Award Date”) **and ending August 10, 2023**.

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 **THIRTY-FIVE THOUSAND AND 00/100 (\$35,000.00) 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:

Carole Amper Inc dba Toucan Hats
9 Fair St.
Kingston, New York 12401

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, 5th 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.

****Signature page follows****

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: _____

Carole Amper Inc dba Toucan Hats

By: _____
NAME: _____
TITLE: _____
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

1. In response to the COVID-19 pandemic, the Contractor shall use the funds it receives to assist and rebuild the Contractor's business.
2. The Contractor shall use the funds it receives in a manner consistent with the "Proposed Use of Funds" described in the Contractor's Program Application (which is attached hereto as Schedule "D" and hereby made part of this Agreement).
3. The Contractor shall use the funds it receives pursuant to this Agreement in the following categories, as set forth in the Program Application Instructions (which is attached hereto as Schedule "E" and hereby made part of this Agreement):
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

Use of the funds by the Contractor for any other purpose must be approved by the UCEDA in advance of expenditure.

4. The Contractor shall make all expenditures of the funds received pursuant to this Agreement within one hundred twenty (120) days of the Award Date.
5. The Contractor shall provide the following information upon execution of this agreement and at least once per year for two years following completion of the term of this Agreement, upon written request from UCEDA, as part of the program reporting requirements:
 - a. Current roster of all W-2 employees, indicating status for each employee (full-time, part-time, temporary/seasonal) and average weekly hours worked for each employee
 - b. Current hourly wage for each employee and whether each employee receives paid benefits
 - c. Household size, income, and demographics for each employee
 - d. Statement indicating progress toward completion of project and achievement of measurable outcomes that were identified in Contractor's Program Application

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The UCEDA, through the Program, shall pay to the Contractor a **not-to-exceed amount** of **THIRTY-FIVE THOUSAND AND 00/100 (\$35,000.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend Contractor's own funds, consistent with Contractor's commitment of funds as documented in the Program Application, prior to completion of the Term of this Agreement.
3. 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 fifth (5th) of each month for the previous month's expenditures. Invoices shall identify any Contractor funds expended in addition to the amount to be reimbursed, which shall be considered toward Contractor's fulfillment of commitment of funds as documented in the Program Application.
3. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories listed as follows, as set forth in Schedule D:
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

In the event the Contractor wishes to seek reimbursement for an expenditure that does not fall in one of the categories listed in this Paragraph 3, the Contractor must first obtain written consent from UCEDA prior to including such expenditure on any reimbursement invoice.

4. With each invoice, the Contractor shall tender receipts, reports and notes to the UCEDA sufficient for the UCEDA to determine that the Contractor expended the funds in accordance with this Agreement. All invoices, deliverable reports, receipts and notes shall be delivered to UCEDA on or before the fifth (5th) 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 a claim to the County showing its intent to disburse funds to the Contractor, pursuant to County Contract 2022-00000303. Upon the County's approval of the disbursement, the UCEDA shall remit payment to the Contractor within five (5) business days.
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.

SCHEDULE D

PROGRAM APPLICATION INSTRUCTIONS

Applicants **MUST** provide clear, complete details about their request for funding assistance. Please only apply once you have developed a well-thought out plan that clearly describes your need and how/why your proposed plan will meet this need. Please include ALL supporting documentation and evidence. Please use complete sentences. One word answers will not be considered a complete response. Applications will be scored based on need, connection to covid, clear budget, business activity viability, and measurable impact.

Accepting Applications: October 31, 2022

Minimum Request: \$5,000

Maximum Request: \$35,000

Program Description: Up to \$35,000 for businesses located in Ulster County with 25 or fewer employees at the time of application. Funding is meant to spur innovation and adaptation to the new reality of economic life with a highly contagious virus. The fund will provide reimbursement of up to 100% of eligible project costs. All projects must be located in Ulster County, New York

Eligible Applicants Must Meet ALL of the following criteria:

- Your primary business location must be in Ulster County, NY.
- Your business must be a sole proprietorship, partnership, corporation, Limited Liability Company or other legal form of business. Applicants who did not establish their business in New York State must provide a DBA or incorporation paperwork upon award.
- Your business must have 25 or fewer employees at the time of application.
- Must provide personal tax returns from all owners with greater than or equal to 20% ownership
- Business must maintain a separate bank account for business related expenses (cannot co-mingle business and personal expenses)

Other Application Information:

Please only select majority-, woman-, or veteran-owned if more than 50% of the business is owned by an individual or individuals who identify as such. Formal NYS paperwork is not required.

For questions 27-29, please provide a detailed narrative - even if it's repetitive! The scoring committee will be evaluating applications based on a clear need, clear project scope, clear budget, clear impact, and a clear covid connection.

For file uploads, please label your file **CLEARLY**. Business name **MUST** be included. If your file is not labeled clearly, your application may be marked incomplete.

Not for profit businesses that qualify for tax exempt status under section 501c3 of the Internal Revenue Code are **ELIGIBLE** and must complete section 4.

Think ahead about your expenses for next year! This funding does NOT reimburse anything purchased PRIOR to the award date which is expected to be in Q1 of 2023. Upon award, you will be given approval to begin making eligible purchases. Your award term is 120 days from date of award. Expenses made after your contract expiration will not be eligible for consideration.

Eligible Use of Funds:

Eligible expenses include rent, business mortgage payments, furniture, fixtures, equipment, operating expenses, and working capital that will prevent, prepare for, and respond to the impacts of the coronavirus pandemic.

Expenses incurred must be for activities located in Ulster County.

Equipment

- Permanent machinery and equipment (installed equipment/machinery) - **must complete section 8 of application**
- Misc. business equipment
- Vehicles
- Computers/software

Operating Expenses (i.e. Working Capital)

- Payroll (must provide formal payroll documentation from a payroll processing system with reimbursement request)
- Rent (must provide signed copy of lease agreement upon award)
- Utilities (bill submitted must match Ulster County business address)
- Supplies
- Inventory

Fixed Assets

Awards and disbursement of funds are contingent on receiving necessary approvals. If approvals are not received prior to contract end date the award will be rescinded and reimbursement will not be given.

Please complete section 8 of the application in its entirety to be considered.

- Property purchases, including soft costs*
- New building construction*
- Exterior building renovations, including soft costs*
- Signage*
- Interior renovations*

Other Eligible Expenses

- Daycare (only eligible where necessary for owner or employees to continue working)
- Financing Fees
- Loan application/closing fees and interest payments

- Bank charges/fees
- Closing costs

Ineligible expenses

- Owner's payroll or draw (direct payments to owner outside of payroll system)
- Advanced payments of any kind (only payments where goods/services have been provided are eligible).
- Any expense incurred before the award date (see contract) or after contract end date is ineligible.
- Taxes of any kind (property tax, income tax, payroll tax, sales tax, occupancy tax, etc.) are ineligible.
- Franchise fees and loan payments that are NOT mortgage payments (ie: business loans)

Funds will be provided as a reimbursement for eligible expenses. Eligible expenses must be incurred after award, and within 120 days of award.

Reimbursement Procedures

Funds shall not be provided in advance of project completion or full payment for the project by the business. Once the applicant provides verification that the work has been completed and that all vendors have been paid in full, reimbursement will be processed.

Applicants must document project expenditures. Proof of payment to the contractor/vendor is required in the form of an invoice and canceled check or credit card statement. Cash payments are not an acceptable form of payment and cannot be reimbursed.

Only those costs deemed to be reasonable and appropriate to complete the project which was approved and agreed upon will be reimbursed. Applicants may be required to supply additional information.

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 **COMMUNITY COMPOST COMPANY LLC**, a Limited Liability Corporation with principal offices at 5941 Route 209, Kerhonkson, New York 12446 (the “**Contractor**”), (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-19 Local Fiscal Recovery Fund (the “CLFRF”), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of the Coronavirus Disease 2019 (“COVID-19”) in their communities; and

WHEREAS, Ulster County, as a CLFRF recipient, desires to utilize a portion of these ARPA funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to Ulster County based small businesses; and

WHEREAS, the County has made a portion of the ARPA funds available to help small businesses throughout New York State to safely reopen and restate their local economies in the wake of the COVID-19 pandemic; and

WHEREAS, the County allocated an amount not to exceed ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS (the “County ARPA Funds”); and

WHEREAS, the County entered into an Agreement with the UCEDA (County Contract No. 2022-00000303) to engage the UCEDA as a sub-recipient of the County ARPA Funds; and

WHEREAS, the UCEDA administers the Ulster County CARES II Small Business Assistance Program (the “Program”), which is a business relief response program created as a result of the County ARPA 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 may apply to the 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 Program, and the UCEDA has determined that the Contractor qualifies for assistance through the Program, for the purpose of rebuilding the Contractor’s business following the COVID-19 pandemic; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance through the 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 April 12, 2023** (the “Award Date”) **and ending August 10, 2023**.

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 **FIVE THOUSAND AND 00/100 (\$5,000.00) 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:
Community Compost Company LLC
5941 Route 209
Kerhonkson, New York 12446

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, 5th 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.

****Signature page follows****

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: _____

Community Compost Company LLC

By: _____
NAME: _____
TITLE: _____
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

1. In response to the COVID-19 pandemic, the Contractor shall use the funds it receives to assist and rebuild the Contractor's business.
2. The Contractor shall use the funds it receives in a manner consistent with the "Proposed Use of Funds" described in the Contractor's Program Application (which is attached hereto as Schedule "D" and hereby made part of this Agreement).
3. The Contractor shall use the funds it receives pursuant to this Agreement in the following categories, as set forth in the Program Application Instructions (which is attached hereto as Schedule "E" and hereby made part of this Agreement):
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

Use of the funds by the Contractor for any other purpose must be approved by the UCEDA in advance of expenditure.

4. The Contractor shall make all expenditures of the funds received pursuant to this Agreement within one hundred twenty (120) days of the Award Date.
5. The Contractor shall provide the following information upon execution of this agreement and at least once per year for two years following completion of the term of this Agreement, upon written request from UCEDA, as part of the program reporting requirements:
 - a. Current roster of all W-2 employees, indicating status for each employee (full-time, part-time, temporary/seasonal) and average weekly hours worked for each employee
 - b. Current hourly wage for each employee and whether each employee receives paid benefits
 - c. Household size, income, and demographics for each employee
 - d. Statement indicating progress toward completion of project and achievement of measurable outcomes that were identified in Contractor's Program Application

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The UCEDA, through the Program, shall pay to the Contractor a **not-to-exceed amount of FIVE THOUSAND AND 00/100 (\$5,000.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend Contractor's own funds, consistent with Contractor's commitment of funds as documented in the Program Application, prior to completion of the Term of this Agreement.
3. 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 fifth (5th) of each month for the previous month's expenditures. Invoices shall identify any Contractor funds expended in addition to the amount to be reimbursed, which shall be considered toward Contractor's fulfillment of commitment of funds as documented in the Program Application.
3. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories listed as follows, as set forth in Schedule D:
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

In the event the Contractor wishes to seek reimbursement for an expenditure that does not fall in one of the categories listed in this Paragraph 3, the Contractor must first obtain written consent from UCEDA prior to including such expenditure on any reimbursement invoice.

4. With each invoice, the Contractor shall tender receipts, reports and notes to the UCEDA sufficient for the UCEDA to determine that the Contractor expended the funds in accordance with this Agreement. All invoices, deliverable reports, receipts and notes shall be delivered to UCEDA on or before the fifth (5th) 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 a claim to the County showing its intent to disburse funds to the Contractor, pursuant to County Contract 2022-00000303. Upon the County's approval of the disbursement, the UCEDA shall remit payment to the Contractor within five (5) business days.
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.

SCHEDULE D

PROGRAM APPLICATION INSTRUCTIONS

Applicants **MUST** provide clear, complete details about their request for funding assistance. Please only apply once you have developed a well-thought out plan that clearly describes your need and how/why your proposed plan will meet this need. Please include ALL supporting documentation and evidence. Please use complete sentences. One word answers will not be considered a complete response. Applications will be scored based on need, connection to covid, clear budget, business activity viability, and measurable impact.

Accepting Applications: October 31, 2022

Minimum Request: \$5,000

Maximum Request: \$35,000

Program Description: Up to \$35,000 for businesses located in Ulster County with 25 or fewer employees at the time of application. Funding is meant to spur innovation and adaptation to the new reality of economic life with a highly contagious virus. The fund will provide reimbursement of up to 100% of eligible project costs. All projects must be located in Ulster County, New York

Eligible Applicants Must Meet ALL of the following criteria:

- Your primary business location must be in Ulster County, NY.
- Your business must be a sole proprietorship, partnership, corporation, Limited Liability Company or other legal form of business. Applicants who did not establish their business in New York State must provide a DBA or incorporation paperwork upon award.
- Your business must have 25 or fewer employees at the time of application.
- Must provide personal tax returns from all owners with greater than or equal to 20% ownership
- Business must maintain a separate bank account for business related expenses (cannot co-mingle business and personal expenses)

Other Application Information:

Please only select majority-, woman-, or veteran-owned if more than 50% of the business is owned by an individual or individuals who identify as such. Formal NYS paperwork is not required.

For questions 27-29, please provide a detailed narrative - even if it's repetitive! The scoring committee will be evaluating applications based on a clear need, clear project scope, clear budget, clear impact, and a clear covid connection.

For file uploads, please label your file **CLEARLY**. Business name **MUST** be included. If your file is not labeled clearly, your application may be marked incomplete.

Not for profit businesses that qualify for tax exempt status under section 501c3 of the Internal Revenue Code are **ELIGIBLE** and must complete section 4.

Think ahead about your expenses for next year! This funding does NOT reimburse anything purchased PRIOR to the award date which is expected to be in Q1 of 2023. Upon award, you will be given approval to begin making eligible purchases. Your award term is 120 days from date of award. Expenses made after your contract expiration will not be eligible for consideration.

Eligible Use of Funds:

Eligible expenses include rent, business mortgage payments, furniture, fixtures, equipment, operating expenses, and working capital that will prevent, prepare for, and respond to the impacts of the coronavirus pandemic.

Expenses incurred must be for activities located in Ulster County.

Equipment

- Permanent machinery and equipment (installed equipment/machinery) - **must complete section 8 of application**
- Misc. business equipment
- Vehicles
- Computers/software

Operating Expenses (i.e. Working Capital)

- Payroll (must provide formal payroll documentation from a payroll processing system with reimbursement request)
- Rent (must provide signed copy of lease agreement upon award)
- Utilities (bill submitted must match Ulster County business address)
- Supplies
- Inventory

Fixed Assets

Awards and disbursement of funds are contingent on receiving necessary approvals. If approvals are not received prior to contract end date the award will be rescinded and reimbursement will not be given.

Please complete section 8 of the application in its entirety to be considered.

- Property purchases, including soft costs*
- New building construction*
- Exterior building renovations, including soft costs*
- Signage*
- Interior renovations*

Other Eligible Expenses

- Daycare (only eligible where necessary for owner or employees to continue working)
- Financing Fees
- Loan application/closing fees and interest payments

- Bank charges/fees
- Closing costs

Ineligible expenses

- Owner's payroll or draw (direct payments to owner outside of payroll system)
- Advanced payments of any kind (only payments where goods/services have been provided are eligible).
- Any expense incurred before the award date (see contract) or after contract end date is ineligible.
- Taxes of any kind (property tax, income tax, payroll tax, sales tax, occupancy tax, etc.) are ineligible.
- Franchise fees and loan payments that are NOT mortgage payments (ie: business loans)

Funds will be provided as a reimbursement for eligible expenses. Eligible expenses must be incurred after award, and within 120 days of award.

Reimbursement Procedures

Funds shall not be provided in advance of project completion or full payment for the project by the business. Once the applicant provides verification that the work has been completed and that all vendors have been paid in full, reimbursement will be processed.

Applicants must document project expenditures. Proof of payment to the contractor/vendor is required in the form of an invoice and canceled check or credit card statement. Cash payments are not an acceptable form of payment and cannot be reimbursed.

Only those costs deemed to be reasonable and appropriate to complete the project which was approved and agreed upon will be reimbursed. Applicants may be required to supply additional information.

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 **SJ GALAXY CONSTRUCTION, LLC**, a Limited Liability Corporation with principal offices at 11 Frances Place, Tilson, New York 12486 (the “**Contractor**”), (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-19 Local Fiscal Recovery Fund (the “**CLFRF**”), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of the Coronavirus Disease 2019 (“**COVID-19**”) in their communities; and

WHEREAS, Ulster County, as a CLFRF recipient, desires to utilize a portion of these ARPA funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to Ulster County based small businesses; and

WHEREAS, the County has made a portion of the ARPA funds available to help small businesses throughout New York State to safely reopen and restate their local economies in the wake of the COVID-19 pandemic; and

WHEREAS, the County allocated an amount not to exceed ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS (the “**County ARPA Funds**”); and

WHEREAS, the County entered into an Agreement with the UCEDA (County Contract No. 2022-00000303) to engage the UCEDA as a sub-recipient of the County ARPA Funds; and

WHEREAS, the UCEDA administers the Ulster County CARES II Small Business Assistance Program (the “**Program**”), which is a business relief response program created as a result of the County ARPA 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 may apply to the 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 Program, and the UCEDA has determined that the Contractor qualifies for assistance through the Program, for the purpose of rebuilding the Contractor’s business following the COVID-19 pandemic; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance through the 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 April 12, 2023** (the “Award Date”) **and ending August 10, 2023**.

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 **THIRTY-FIVE THOUSAND AND 00/100 (\$35,000.00) 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:
SJ Galaxy Construction, LLC
11 Frances Place
Tilson, New York 12486

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, 5th 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.

******Signature page follows******

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: _____

SJ Galaxy Construction, LLC

By: _____
NAME: _____
TITLE: _____
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

1. In response to the COVID-19 pandemic, the Contractor shall use the funds it receives to assist and rebuild the Contractor's business.
2. The Contractor shall use the funds it receives in a manner consistent with the "Proposed Use of Funds" described in the Contractor's Program Application (which is attached hereto as Schedule "D" and hereby made part of this Agreement).
3. The Contractor shall use the funds it receives pursuant to this Agreement in the following categories, as set forth in the Program Application Instructions (which is attached hereto as Schedule "E" and hereby made part of this Agreement):
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

Use of the funds by the Contractor for any other purpose must be approved by the UCEDA in advance of expenditure.

4. The Contractor shall make all expenditures of the funds received pursuant to this Agreement within one hundred twenty (120) days of the Award Date.
5. The Contractor shall provide the following information upon execution of this agreement and at least once per year for two years following completion of the term of this Agreement, upon written request from UCEDA, as part of the program reporting requirements:
 - a. Current roster of all W-2 employees, indicating status for each employee (full-time, part-time, temporary/seasonal) and average weekly hours worked for each employee
 - b. Current hourly wage for each employee and whether each employee receives paid benefits
 - c. Household size, income, and demographics for each employee
 - d. Statement indicating progress toward completion of project and achievement of measurable outcomes that were identified in Contractor's Program Application

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The UCEDA, through the Program, shall pay to the Contractor a **not-to-exceed amount** of **THIRTY-FIVE THOUSAND AND 00/100 (\$35,000.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend Contractor's own funds, consistent with Contractor's commitment of funds as documented in the Program Application, prior to completion of the Term of this Agreement.
3. 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 fifth (5th) of each month for the previous month's expenditures. Invoices shall identify any Contractor funds expended in addition to the amount to be reimbursed, which shall be considered toward Contractor's fulfillment of commitment of funds as documented in the Program Application.
3. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories listed as follows, as set forth in Schedule D:
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

In the event the Contractor wishes to seek reimbursement for an expenditure that does not fall in one of the categories listed in this Paragraph 3, the Contractor must first obtain written consent from UCEDA prior to including such expenditure on any reimbursement invoice.

4. With each invoice, the Contractor shall tender receipts, reports and notes to the UCEDA sufficient for the UCEDA to determine that the Contractor expended the funds in accordance with this Agreement. All invoices, deliverable reports, receipts and notes shall be delivered to UCEDA on or before the fifth (5th) 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 a claim to the County showing its intent to disburse funds to the Contractor, pursuant to County Contract 2022-00000303. Upon the County's approval of the disbursement, the UCEDA shall remit payment to the Contractor within five (5) business days.
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.

SCHEDULE D

PROGRAM APPLICATION INSTRUCTIONS

Applicants **MUST** provide clear, complete details about their request for funding assistance. Please only apply once you have developed a well-thought out plan that clearly describes your need and how/why your proposed plan will meet this need. Please include ALL supporting documentation and evidence. Please use complete sentences. One word answers will not be considered a complete response. Applications will be scored based on need, connection to covid, clear budget, business activity viability, and measurable impact.

Accepting Applications: October 31, 2022

Minimum Request: \$5,000

Maximum Request: \$35,000

Program Description: Up to \$35,000 for businesses located in Ulster County with 25 or fewer employees at the time of application. Funding is meant to spur innovation and adaptation to the new reality of economic life with a highly contagious virus. The fund will provide reimbursement of up to 100% of eligible project costs. All projects must be located in Ulster County, New York

Eligible Applicants Must Meet ALL of the following criteria:

- Your primary business location must be in Ulster County, NY.
- Your business must be a sole proprietorship, partnership, corporation, Limited Liability Company or other legal form of business. Applicants who did not establish their business in New York State must provide a DBA or incorporation paperwork upon award.
- Your business must have 25 or fewer employees at the time of application.
- Must provide personal tax returns from all owners with greater than or equal to 20% ownership
- Business must maintain a separate bank account for business related expenses (cannot co-mingle business and personal expenses)

Other Application Information:

Please only select majority-, woman-, or veteran-owned if more than 50% of the business is owned by an individual or individuals who identify as such. Formal NYS paperwork is not required.

For questions 27-29, please provide a detailed narrative - even if it's repetitive! The scoring committee will be evaluating applications based on a clear need, clear project scope, clear budget, clear impact, and a clear covid connection.

For file uploads, please label your file **CLEARLY**. Business name **MUST** be included. If your file is not labeled clearly, your application may be marked incomplete.

Not for profit businesses that qualify for tax exempt status under section 501c3 of the Internal Revenue Code are **ELIGIBLE** and must complete section 4.

Think ahead about your expenses for next year! This funding does NOT reimburse anything purchased PRIOR to the award date which is expected to be in Q1 of 2023. Upon award, you will be given approval to begin making eligible purchases. Your award term is 120 days from date of award. Expenses made after your contract expiration will not be eligible for consideration.

Eligible Use of Funds:

Eligible expenses include rent, business mortgage payments, furniture, fixtures, equipment, operating expenses, and working capital that will prevent, prepare for, and respond to the impacts of the coronavirus pandemic.

Expenses incurred must be for activities located in Ulster County.

Equipment

- Permanent machinery and equipment (installed equipment/machinery) - **must complete section 8 of application**
- Misc. business equipment
- Vehicles
- Computers/software

Operating Expenses (i.e. Working Capital)

- Payroll (must provide formal payroll documentation from a payroll processing system with reimbursement request)
- Rent (must provide signed copy of lease agreement upon award)
- Utilities (bill submitted must match Ulster County business address)
- Supplies
- Inventory

Fixed Assets

Awards and disbursement of funds are contingent on receiving necessary approvals. If approvals are not received prior to contract end date the award will be rescinded and reimbursement will not be given.

Please complete section 8 of the application in its entirety to be considered.

- Property purchases, including soft costs*
- New building construction*
- Exterior building renovations, including soft costs*
- Signage*
- Interior renovations*

Other Eligible Expenses

- Daycare (only eligible where necessary for owner or employees to continue working)
- Financing Fees
- Loan application/closing fees and interest payments

- Bank charges/fees
- Closing costs

Ineligible expenses

- Owner's payroll or draw (direct payments to owner outside of payroll system)
- Advanced payments of any kind (only payments where goods/services have been provided are eligible).
- Any expense incurred before the award date (see contract) or after contract end date is ineligible.
- Taxes of any kind (property tax, income tax, payroll tax, sales tax, occupancy tax, etc.) are ineligible.
- Franchise fees and loan payments that are NOT mortgage payments (ie: business loans)

Funds will be provided as a reimbursement for eligible expenses. Eligible expenses must be incurred after award, and within 120 days of award.

Reimbursement Procedures

Funds shall not be provided in advance of project completion or full payment for the project by the business. Once the applicant provides verification that the work has been completed and that all vendors have been paid in full, reimbursement will be processed.

Applicants must document project expenditures. Proof of payment to the contractor/vendor is required in the form of an invoice and canceled check or credit card statement. Cash payments are not an acceptable form of payment and cannot be reimbursed.

Only those costs deemed to be reasonable and appropriate to complete the project which was approved and agreed upon will be reimbursed. Applicants may be required to supply additional information.

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 **LIBOLT & SONS INC. (D/B/A AFFORDABLE HOUSING CONCEPTS)**, a S-Corp with principal offices at 15 Steves Lane, Gardiner, New York 12525 (the “**Contractor**”), (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-19 Local Fiscal Recovery Fund (the “CLFRF”), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of the Coronavirus Disease 2019 (“COVID-19”) in their communities; and

WHEREAS, Ulster County, as a CLFRF recipient, desires to utilize a portion of these ARPA funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to Ulster County based small businesses; and

WHEREAS, the County has made a portion of the ARPA funds available to help small businesses throughout New York State to safely reopen and restate their local economies in the wake of the COVID-19 pandemic; and

WHEREAS, the County allocated an amount not to exceed ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS (the “County ARPA Funds”); and

WHEREAS, the County entered into an Agreement with the UCEDA (County Contract No. 2022-00000303) to engage the UCEDA as a sub-recipient of the County ARPA Funds; and

WHEREAS, the UCEDA administers the Ulster County CARES II Small Business Assistance Program (the “Program”), which is a business relief response program created as a result of the County ARPA 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 may apply to the 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 Program, and the UCEDA has determined that the Contractor qualifies for assistance through the Program, for the purpose of rebuilding the Contractor’s business following the COVID-19 pandemic; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance through the 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 April 12, 2023** (the “Award Date”) **and ending August 10, 2023**.

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 **THIRTY-FIVE THOUSAND AND 00/100 (\$35,000.00) 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:

Libolt & Sons Inc. (D/B/A Affordable Housing Concepts)
15 Steves Lane
Gardiner, New York 12525

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, 5th 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.

******Signature page follows******

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: _____

Libolt & Sons Inc. (D/B/A Affordable Housing Concepts)

By: _____
NAME: _____
TITLE: _____
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

1. In response to the COVID-19 pandemic, the Contractor shall use the funds it receives to assist and rebuild the Contractor's business.
2. The Contractor shall use the funds it receives in a manner consistent with the "Proposed Use of Funds" described in the Contractor's Program Application (which is attached hereto as Schedule "D" and hereby made part of this Agreement).
3. The Contractor shall use the funds it receives pursuant to this Agreement in the following categories, as set forth in the Program Application Instructions (which is attached hereto as Schedule "E" and hereby made part of this Agreement):
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

Use of the funds by the Contractor for any other purpose must be approved by the UCEDA in advance of expenditure.

4. The Contractor shall make all expenditures of the funds received pursuant to this Agreement within one hundred twenty (120) days of the Award Date.
5. The Contractor shall provide the following information upon execution of this agreement and at least once per year for two years following completion of the term of this Agreement, upon written request from UCEDA, as part of the program reporting requirements:
 - a. Current roster of all W-2 employees, indicating status for each employee (full-time, part-time, temporary/seasonal) and average weekly hours worked for each employee
 - b. Current hourly wage for each employee and whether each employee receives paid benefits
 - c. Household size, income, and demographics for each employee
 - d. Statement indicating progress toward completion of project and achievement of measurable outcomes that were identified in Contractor's Program Application

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The UCEDA, through the Program, shall pay to the Contractor a **not-to-exceed amount** of **THIRTY-FIVE THOUSAND AND 00/100 (\$35,000.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend Contractor's own funds, consistent with Contractor's commitment of funds as documented in the Program Application, prior to completion of the Term of this Agreement.
3. 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 fifth (5th) of each month for the previous month's expenditures. Invoices shall identify any Contractor funds expended in addition to the amount to be reimbursed, which shall be considered toward Contractor's fulfillment of commitment of funds as documented in the Program Application.
3. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories listed as follows, as set forth in Schedule D:
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

In the event the Contractor wishes to seek reimbursement for an expenditure that does not fall in one of the categories listed in this Paragraph 3, the Contractor must first obtain written consent from UCEDA prior to including such expenditure on any reimbursement invoice.

4. With each invoice, the Contractor shall tender receipts, reports and notes to the UCEDA sufficient for the UCEDA to determine that the Contractor expended the funds in accordance with this Agreement. All invoices, deliverable reports, receipts and notes shall be delivered to UCEDA on or before the fifth (5th) 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 a claim to the County showing its intent to disburse funds to the Contractor, pursuant to County Contract 2022-00000303. Upon the County's approval of the disbursement, the UCEDA shall remit payment to the Contractor within five (5) business days.
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.

SCHEDULE D

PROGRAM APPLICATION INSTRUCTIONS

Applicants **MUST** provide clear, complete details about their request for funding assistance. Please only apply once you have developed a well-thought out plan that clearly describes your need and how/why your proposed plan will meet this need. Please include ALL supporting documentation and evidence. Please use complete sentences. One word answers will not be considered a complete response. Applications will be scored based on need, connection to covid, clear budget, business activity viability, and measurable impact.

Accepting Applications: October 31, 2022

Minimum Request: \$5,000

Maximum Request: \$35,000

Program Description: Up to \$35,000 for businesses located in Ulster County with 25 or fewer employees at the time of application. Funding is meant to spur innovation and adaptation to the new reality of economic life with a highly contagious virus. The fund will provide reimbursement of up to 100% of eligible project costs. All projects must be located in Ulster County, New York

Eligible Applicants Must Meet ALL of the following criteria:

- Your primary business location must be in Ulster County, NY.
- Your business must be a sole proprietorship, partnership, corporation, Limited Liability Company or other legal form of business. Applicants who did not establish their business in New York State must provide a DBA or incorporation paperwork upon award.
- Your business must have 25 or fewer employees at the time of application.
- Must provide personal tax returns from all owners with greater than or equal to 20% ownership
- Business must maintain a separate bank account for business related expenses (cannot co-mingle business and personal expenses)

Other Application Information:

Please only select majority-, woman-, or veteran-owned if more than 50% of the business is owned by an individual or individuals who identify as such. Formal NYS paperwork is not required.

For questions 27-29, please provide a detailed narrative - even if it's repetitive! The scoring committee will be evaluating applications based on a clear need, clear project scope, clear budget, clear impact, and a clear covid connection.

For file uploads, please label your file **CLEARLY**. Business name **MUST** be included. If your file is not labeled clearly, your application may be marked incomplete.

Not for profit businesses that qualify for tax exempt status under section 501c3 of the Internal Revenue Code are **ELIGIBLE** and must complete section 4.

Think ahead about your expenses for next year! This funding does NOT reimburse anything purchased PRIOR to the award date which is expected to be in Q1 of 2023. Upon award, you will be given approval to begin making eligible purchases. Your award term is 120 days from date of award. Expenses made after your contract expiration will not be eligible for consideration.

Eligible Use of Funds:

Eligible expenses include rent, business mortgage payments, furniture, fixtures, equipment, operating expenses, and working capital that will prevent, prepare for, and respond to the impacts of the coronavirus pandemic.

Expenses incurred must be for activities located in Ulster County.

Equipment

- Permanent machinery and equipment (installed equipment/machinery) - **must complete section 8 of application**
- Misc. business equipment
- Vehicles
- Computers/software

Operating Expenses (i.e. Working Capital)

- Payroll (must provide formal payroll documentation from a payroll processing system with reimbursement request)
- Rent (must provide signed copy of lease agreement upon award)
- Utilities (bill submitted must match Ulster County business address)
- Supplies
- Inventory

Fixed Assets

Awards and disbursement of funds are contingent on receiving necessary approvals. If approvals are not received prior to contract end date the award will be rescinded and reimbursement will not be given.

Please complete section 8 of the application in its entirety to be considered.

- Property purchases, including soft costs*
- New building construction*
- Exterior building renovations, including soft costs*
- Signage*
- Interior renovations*

Other Eligible Expenses

- Daycare (only eligible where necessary for owner or employees to continue working)
- Financing Fees
- Loan application/closing fees and interest payments

- Bank charges/fees
- Closing costs

Ineligible expenses

- Owner's payroll or draw (direct payments to owner outside of payroll system)
- Advanced payments of any kind (only payments where goods/services have been provided are eligible).
- Any expense incurred before the award date (see contract) or after contract end date is ineligible.
- Taxes of any kind (property tax, income tax, payroll tax, sales tax, occupancy tax, etc.) are ineligible.
- Franchise fees and loan payments that are NOT mortgage payments (ie: business loans)

Funds will be provided as a reimbursement for eligible expenses. Eligible expenses must be incurred after award, and within 120 days of award.

Reimbursement Procedures

Funds shall not be provided in advance of project completion or full payment for the project by the business. Once the applicant provides verification that the work has been completed and that all vendors have been paid in full, reimbursement will be processed.

Applicants must document project expenditures. Proof of payment to the contractor/vendor is required in the form of an invoice and canceled check or credit card statement. Cash payments are not an acceptable form of payment and cannot be reimbursed.

Only those costs deemed to be reasonable and appropriate to complete the project which was approved and agreed upon will be reimbursed. Applicants may be required to supply additional information.

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 **DIXON STREET RESTAURANT, LLC**, a Limited Liability Corporation with principal offices at 261 Tinker Street, Woodstock, New York 12498 (the “**Contractor**”), (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-19 Local Fiscal Recovery Fund (the “**CLFRF**”), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of the Coronavirus Disease 2019 (“**COVID-19**”) in their communities; and

WHEREAS, Ulster County, as a CLFRF recipient, desires to utilize a portion of these ARPA funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to Ulster County based small businesses; and

WHEREAS, the County has made a portion of the ARPA funds available to help small businesses throughout New York State to safely reopen and restate their local economies in the wake of the COVID-19 pandemic; and

WHEREAS, the County allocated an amount not to exceed ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS (the “**County ARPA Funds**”); and

WHEREAS, the County entered into an Agreement with the UCEDA (County Contract No. 2022-00000303) to engage the UCEDA as a sub-recipient of the County ARPA Funds; and

WHEREAS, the UCEDA administers the Ulster County CARES II Small Business Assistance Program (the “**Program**”), which is a business relief response program created as a result of the County ARPA 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 may apply to the 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 Program, and the UCEDA has determined that the Contractor qualifies for assistance through the Program, for the purpose of rebuilding the Contractor’s business following the COVID-19 pandemic; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance through the 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 April 12, 2023** (the “Award Date”) **and ending August 10, 2023**.

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 **TWENTY-THREE THOUSAND SIX HUNDRED AND FIFTY-FIVE AND 00/100 (\$23,655.00) 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:
Dixon Street Restaurant, LLC
261 Tinker Street
Woodstock, New York 12498

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, 5th 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.

****Signature page follows****

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: _____

Dixon Street Restaurant, LLC

By: _____
NAME: _____
TITLE: _____
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

1. In response to the COVID-19 pandemic, the Contractor shall use the funds it receives to assist and rebuild the Contractor's business.
2. The Contractor shall use the funds it receives in a manner consistent with the "Proposed Use of Funds" described in the Contractor's Program Application (which is attached hereto as Schedule "D" and hereby made part of this Agreement).
3. The Contractor shall use the funds it receives pursuant to this Agreement in the following categories, as set forth in the Program Application Instructions (which is attached hereto as Schedule "E" and hereby made part of this Agreement):
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

Use of the funds by the Contractor for any other purpose must be approved by the UCEDA in advance of expenditure.

4. The Contractor shall make all expenditures of the funds received pursuant to this Agreement within one hundred twenty (120) days of the Award Date.
5. The Contractor shall provide the following information upon execution of this agreement and at least once per year for two years following completion of the term of this Agreement, upon written request from UCEDA, as part of the program reporting requirements:
 - a. Current roster of all W-2 employees, indicating status for each employee (full-time, part-time, temporary/seasonal) and average weekly hours worked for each employee
 - b. Current hourly wage for each employee and whether each employee receives paid benefits
 - c. Household size, income, and demographics for each employee
 - d. Statement indicating progress toward completion of project and achievement of measurable outcomes that were identified in Contractor's Program Application

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The UCEDA, through the Program, shall pay to the Contractor a **not-to-exceed amount of TWENTY-THREE THOUSAND SIX HUNDRED AND FIFTY-FIVE AND 00/100 (\$23,655.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend Contractor's own funds, consistent with Contractor's commitment of funds as documented in the Program Application, prior to completion of the Term of this Agreement.
3. 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 fifth (5th) of each month for the previous month's expenditures. Invoices shall identify any Contractor funds expended in addition to the amount to be reimbursed, which shall be considered toward Contractor's fulfillment of commitment of funds as documented in the Program Application.
3. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories listed as follows, as set forth in Schedule D:
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

In the event the Contractor wishes to seek reimbursement for an expenditure that does not fall in one of the categories listed in this Paragraph 3, the Contractor must first obtain written consent from UCEDA prior to including such expenditure on any reimbursement invoice.

4. With each invoice, the Contractor shall tender receipts, reports and notes to the UCEDA sufficient for the UCEDA to determine that the Contractor expended the funds in accordance with this Agreement. All invoices, deliverable reports, receipts and notes shall be delivered to UCEDA on or before the fifth (5th) 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 a claim to the County showing its intent to disburse funds to the Contractor, pursuant to County Contract 2022-00000303. Upon the County's approval of the disbursement, the UCEDA shall remit payment to the Contractor within five (5) business days.
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.

SCHEDULE D

PROGRAM APPLICATION INSTRUCTIONS

Applicants **MUST** provide clear, complete details about their request for funding assistance. Please only apply once you have developed a well-thought out plan that clearly describes your need and how/why your proposed plan will meet this need. Please include ALL supporting documentation and evidence. Please use complete sentences. One word answers will not be considered a complete response. Applications will be scored based on need, connection to covid, clear budget, business activity viability, and measurable impact.

Accepting Applications: October 31, 2022

Minimum Request: \$5,000

Maximum Request: \$35,000

Program Description: Up to \$35,000 for businesses located in Ulster County with 25 or fewer employees at the time of application. Funding is meant to spur innovation and adaptation to the new reality of economic life with a highly contagious virus. The fund will provide reimbursement of up to 100% of eligible project costs. All projects must be located in Ulster County, New York

Eligible Applicants Must Meet ALL of the following criteria:

- Your primary business location must be in Ulster County, NY.
- Your business must be a sole proprietorship, partnership, corporation, Limited Liability Company or other legal form of business. Applicants who did not establish their business in New York State must provide a DBA or incorporation paperwork upon award.
- Your business must have 25 or fewer employees at the time of application.
- Must provide personal tax returns from all owners with greater than or equal to 20% ownership
- Business must maintain a separate bank account for business related expenses (cannot co-mingle business and personal expenses)

Other Application Information:

Please only select majority-, woman-, or veteran-owned if more than 50% of the business is owned by an individual or individuals who identify as such. Formal NYS paperwork is not required.

For questions 27-29, please provide a detailed narrative - even if it's repetitive! The scoring committee will be evaluating applications based on a clear need, clear project scope, clear budget, clear impact, and a clear covid connection.

For file uploads, please label your file **CLEARLY**. Business name **MUST** be included. If your file is not labeled clearly, your application may be marked incomplete.

Not for profit businesses that qualify for tax exempt status under section 501c3 of the Internal Revenue Code are **ELIGIBLE** and must complete section 4.

Think ahead about your expenses for next year! This funding does NOT reimburse anything purchased PRIOR to the award date which is expected to be in Q1 of 2023. Upon award, you will be given approval to begin making eligible purchases. Your award term is 120 days from date of award. Expenses made after your contract expiration will not be eligible for consideration.

Eligible Use of Funds:

Eligible expenses include rent, business mortgage payments, furniture, fixtures, equipment, operating expenses, and working capital that will prevent, prepare for, and respond to the impacts of the coronavirus pandemic.

Expenses incurred must be for activities located in Ulster County.

Equipment

- Permanent machinery and equipment (installed equipment/machinery) - **must complete section 8 of application**
- Misc. business equipment
- Vehicles
- Computers/software

Operating Expenses (i.e. Working Capital)

- Payroll (must provide formal payroll documentation from a payroll processing system with reimbursement request)
- Rent (must provide signed copy of lease agreement upon award)
- Utilities (bill submitted must match Ulster County business address)
- Supplies
- Inventory

Fixed Assets

Awards and disbursement of funds are contingent on receiving necessary approvals. If approvals are not received prior to contract end date the award will be rescinded and reimbursement will not be given.

Please complete section 8 of the application in its entirety to be considered.

- Property purchases, including soft costs*
- New building construction*
- Exterior building renovations, including soft costs*
- Signage*
- Interior renovations*

Other Eligible Expenses

- Daycare (only eligible where necessary for owner or employees to continue working)
- Financing Fees
- Loan application/closing fees and interest payments

- Bank charges/fees
- Closing costs

Ineligible expenses

- Owner's payroll or draw (direct payments to owner outside of payroll system)
- Advanced payments of any kind (only payments where goods/services have been provided are eligible).
- Any expense incurred before the award date (see contract) or after contract end date is ineligible.
- Taxes of any kind (property tax, income tax, payroll tax, sales tax, occupancy tax, etc.) are ineligible.
- Franchise fees and loan payments that are NOT mortgage payments (ie: business loans)

Funds will be provided as a reimbursement for eligible expenses. Eligible expenses must be incurred after award, and within 120 days of award.

Reimbursement Procedures

Funds shall not be provided in advance of project completion or full payment for the project by the business. Once the applicant provides verification that the work has been completed and that all vendors have been paid in full, reimbursement will be processed.

Applicants must document project expenditures. Proof of payment to the contractor/vendor is required in the form of an invoice and canceled check or credit card statement. Cash payments are not an acceptable form of payment and cannot be reimbursed.

Only those costs deemed to be reasonable and appropriate to complete the project which was approved and agreed upon will be reimbursed. Applicants may be required to supply additional information.

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 **BRYT LIFE FOODS CORP.**, a S-Corp with principal offices at 323 Main street, Kerhonkson, New York 12446 (the “**Contractor**”), (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-19 Local Fiscal Recovery Fund (the “CLFRF”), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of the Coronavirus Disease 2019 (“COVID-19”) in their communities; and

WHEREAS, Ulster County, as a CLFRF recipient, desires to utilize a portion of these ARPA funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to Ulster County based small businesses; and

WHEREAS, the County has made a portion of the ARPA funds available to help small businesses throughout New York State to safely reopen and restate their local economies in the wake of the COVID-19 pandemic; and

WHEREAS, the County allocated an amount not to exceed ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS (the “County ARPA Funds”); and

WHEREAS, the County entered into an Agreement with the UCEDA (County Contract No. 2022-00000303) to engage the UCEDA as a sub-recipient of the County ARPA Funds; and

WHEREAS, the UCEDA administers the Ulster County CARES II Small Business Assistance Program (the “Program”), which is a business relief response program created as a result of the County ARPA 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 may apply to the 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 Program, and the UCEDA has determined that the Contractor qualifies for assistance through the Program, for the purpose of rebuilding the Contractor’s business following the COVID-19 pandemic; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance through the 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 April 12, 2023** (the “Award Date”) **and ending August 10, 2023**.

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 **TWENTY THOUSAND AND 00/100 (\$20,000.00) 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:
Bryt Life Foods Corp.
323 Main street
Kerhonkson, New York 12446

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, 5th 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.

****Signature page follows****

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: _____

Bryt Life Foods Corp.

By: _____
NAME: _____
TITLE: _____
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

1. In response to the COVID-19 pandemic, the Contractor shall use the funds it receives to assist and rebuild the Contractor's business.
2. The Contractor shall use the funds it receives in a manner consistent with the "Proposed Use of Funds" described in the Contractor's Program Application (which is attached hereto as Schedule "D" and hereby made part of this Agreement).
3. The Contractor shall use the funds it receives pursuant to this Agreement in the following categories, as set forth in the Program Application Instructions (which is attached hereto as Schedule "E" and hereby made part of this Agreement):
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

Use of the funds by the Contractor for any other purpose must be approved by the UCEDA in advance of expenditure.

4. The Contractor shall make all expenditures of the funds received pursuant to this Agreement within one hundred twenty (120) days of the Award Date.
5. The Contractor shall provide the following information upon execution of this agreement and at least once per year for two years following completion of the term of this Agreement, upon written request from UCEDA, as part of the program reporting requirements:
 - a. Current roster of all W-2 employees, indicating status for each employee (full-time, part-time, temporary/seasonal) and average weekly hours worked for each employee
 - b. Current hourly wage for each employee and whether each employee receives paid benefits
 - c. Household size, income, and demographics for each employee
 - d. Statement indicating progress toward completion of project and achievement of measurable outcomes that were identified in Contractor's Program Application

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The UCEDA, through the Program, shall pay to the Contractor a **not-to-exceed amount** of **TWENTY THOUSAND AND 00/100 (\$20,000.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend Contractor's own funds, consistent with Contractor's commitment of funds as documented in the Program Application, prior to completion of the Term of this Agreement.
3. 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 fifth (5th) of each month for the previous month's expenditures. Invoices shall identify any Contractor funds expended in addition to the amount to be reimbursed, which shall be considered toward Contractor's fulfillment of commitment of funds as documented in the Program Application.
3. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories listed as follows, as set forth in Schedule D:
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

In the event the Contractor wishes to seek reimbursement for an expenditure that does not fall in one of the categories listed in this Paragraph 3, the Contractor must first obtain written consent from UCEDA prior to including such expenditure on any reimbursement invoice.

4. With each invoice, the Contractor shall tender receipts, reports and notes to the UCEDA sufficient for the UCEDA to determine that the Contractor expended the funds in accordance with this Agreement. All invoices, deliverable reports, receipts and notes shall be delivered to UCEDA on or before the fifth (5th) 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 a claim to the County showing its intent to disburse funds to the Contractor, pursuant to County Contract 2022-00000303. Upon the County's approval of the disbursement, the UCEDA shall remit payment to the Contractor within five (5) business days.
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.

SCHEDULE D

PROGRAM APPLICATION INSTRUCTIONS

Applicants **MUST** provide clear, complete details about their request for funding assistance. Please only apply once you have developed a well-thought out plan that clearly describes your need and how/why your proposed plan will meet this need. Please include ALL supporting documentation and evidence. Please use complete sentences. One word answers will not be considered a complete response. Applications will be scored based on need, connection to covid, clear budget, business activity viability, and measurable impact.

Accepting Applications: October 31, 2022

Minimum Request: \$5,000

Maximum Request: \$35,000

Program Description: Up to \$35,000 for businesses located in Ulster County with 25 or fewer employees at the time of application. Funding is meant to spur innovation and adaptation to the new reality of economic life with a highly contagious virus. The fund will provide reimbursement of up to 100% of eligible project costs. All projects must be located in Ulster County, New York

Eligible Applicants Must Meet ALL of the following criteria:

- Your primary business location must be in Ulster County, NY.
- Your business must be a sole proprietorship, partnership, corporation, Limited Liability Company or other legal form of business. Applicants who did not establish their business in New York State must provide a DBA or incorporation paperwork upon award.
- Your business must have 25 or fewer employees at the time of application.
- Must provide personal tax returns from all owners with greater than or equal to 20% ownership
- Business must maintain a separate bank account for business related expenses (cannot co-mingle business and personal expenses)

Other Application Information:

Please only select majority-, woman-, or veteran-owned if more than 50% of the business is owned by an individual or individuals who identify as such. Formal NYS paperwork is not required.

For questions 27-29, please provide a detailed narrative - even if it's repetitive! The scoring committee will be evaluating applications based on a clear need, clear project scope, clear budget, clear impact, and a clear covid connection.

For file uploads, please label your file **CLEARLY**. Business name **MUST** be included. If your file is not labeled clearly, your application may be marked incomplete.

Not for profit businesses that qualify for tax exempt status under section 501c3 of the Internal Revenue Code are **ELIGIBLE** and must complete section 4.

Think ahead about your expenses for next year! This funding does NOT reimburse anything purchased PRIOR to the award date which is expected to be in Q1 of 2023. Upon award, you will be given approval to begin making eligible purchases. Your award term is 120 days from date of award. Expenses made after your contract expiration will not be eligible for consideration.

Eligible Use of Funds:

Eligible expenses include rent, business mortgage payments, furniture, fixtures, equipment, operating expenses, and working capital that will prevent, prepare for, and respond to the impacts of the coronavirus pandemic.

Expenses incurred must be for activities located in Ulster County.

Equipment

- Permanent machinery and equipment (installed equipment/machinery) - **must complete section 8 of application**
- Misc. business equipment
- Vehicles
- Computers/software

Operating Expenses (i.e. Working Capital)

- Payroll (must provide formal payroll documentation from a payroll processing system with reimbursement request)
- Rent (must provide signed copy of lease agreement upon award)
- Utilities (bill submitted must match Ulster County business address)
- Supplies
- Inventory

Fixed Assets

Awards and disbursement of funds are contingent on receiving necessary approvals. If approvals are not received prior to contract end date the award will be rescinded and reimbursement will not be given.

Please complete section 8 of the application in its entirety to be considered.

- Property purchases, including soft costs*
- New building construction*
- Exterior building renovations, including soft costs*
- Signage*
- Interior renovations*

Other Eligible Expenses

- Daycare (only eligible where necessary for owner or employees to continue working)
- Financing Fees
- Loan application/closing fees and interest payments

- Bank charges/fees
- Closing costs

Ineligible expenses

- Owner's payroll or draw (direct payments to owner outside of payroll system)
- Advanced payments of any kind (only payments where goods/services have been provided are eligible).
- Any expense incurred before the award date (see contract) or after contract end date is ineligible.
- Taxes of any kind (property tax, income tax, payroll tax, sales tax, occupancy tax, etc.) are ineligible.
- Franchise fees and loan payments that are NOT mortgage payments (ie: business loans)

Funds will be provided as a reimbursement for eligible expenses. Eligible expenses must be incurred after award, and within 120 days of award.

Reimbursement Procedures

Funds shall not be provided in advance of project completion or full payment for the project by the business. Once the applicant provides verification that the work has been completed and that all vendors have been paid in full, reimbursement will be processed.

Applicants must document project expenditures. Proof of payment to the contractor/vendor is required in the form of an invoice and canceled check or credit card statement. Cash payments are not an acceptable form of payment and cannot be reimbursed.

Only those costs deemed to be reasonable and appropriate to complete the project which was approved and agreed upon will be reimbursed. Applicants may be required to supply additional information.

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 **ULSTER COUNTY HISTORICAL SOCIETY**, a Public Charity (i.e. 501(c)3 Not-For-Profit Corporation) with principal offices at 2682 Route 209, Kingston, New York 12401 (the “**Contractor**”), (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-19 Local Fiscal Recovery Fund (the “CLFRF”), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of the Coronavirus Disease 2019 (“COVID-19”) in their communities; and

WHEREAS, Ulster County, as a CLFRF recipient, desires to utilize a portion of these ARPA funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to Ulster County based small businesses; and

WHEREAS, the County has made a portion of the ARPA funds available to help small businesses throughout New York State to safely reopen and restate their local economies in the wake of the COVID-19 pandemic; and

WHEREAS, the County allocated an amount not to exceed ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS (the “County ARPA Funds”); and

WHEREAS, the County entered into an Agreement with the UCEDA (County Contract No. 2022-00000303) to engage the UCEDA as a sub-recipient of the County ARPA Funds; and

WHEREAS, the UCEDA administers the Ulster County CARES II Small Business Assistance Program (the “Program”), which is a business relief response program created as a result of the County ARPA 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 may apply to the 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 Program, and the UCEDA has determined that the Contractor qualifies for assistance through the Program, for the purpose of rebuilding the Contractor’s business following the COVID-19 pandemic; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance through the 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 April 12, 2023** (the “Award Date”) **and ending August 10, 2023**.

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 **EIGHTEEN THOUSAND FOUR HUNDRED AND SIXTY-EIGHT AND 00/100 (\$18,468.00) 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:
Ulster County Historical Society
2682 Route 209
Kingston, New York 12401

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, 5th 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.

****Signature page follows****

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: _____

Ulster County Historical Society

By: _____
NAME: _____
TITLE: _____
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

1. In response to the COVID-19 pandemic, the Contractor shall use the funds it receives to assist and rebuild the Contractor's business.
2. The Contractor shall use the funds it receives in a manner consistent with the "Proposed Use of Funds" described in the Contractor's Program Application (which is attached hereto as Schedule "D" and hereby made part of this Agreement).
3. The Contractor shall use the funds it receives pursuant to this Agreement in the following categories, as set forth in the Program Application Instructions (which is attached hereto as Schedule "E" and hereby made part of this Agreement):
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

Use of the funds by the Contractor for any other purpose must be approved by the UCEDA in advance of expenditure.

4. The Contractor shall make all expenditures of the funds received pursuant to this Agreement within one hundred twenty (120) days of the Award Date.
5. The Contractor shall provide the following information upon execution of this agreement and at least once per year for two years following completion of the term of this Agreement, upon written request from UCEDA, as part of the program reporting requirements:
 - a. Current roster of all W-2 employees, indicating status for each employee (full-time, part-time, temporary/seasonal) and average weekly hours worked for each employee
 - b. Current hourly wage for each employee and whether each employee receives paid benefits
 - c. Household size, income, and demographics for each employee
 - d. Statement indicating progress toward completion of project and achievement of measurable outcomes that were identified in Contractor's Program Application

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The UCEDA, through the Program, shall pay to the Contractor a **not-to-exceed amount** of **EIGHTEEN THOUSAND FOUR HUNDRED AND SIXTY-EIGHT AND 00/100 (\$18,468.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend Contractor's own funds, consistent with Contractor's commitment of funds as documented in the Program Application, prior to completion of the Term of this Agreement.
3. 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 fifth (5th) of each month for the previous month's expenditures. Invoices shall identify any Contractor funds expended in addition to the amount to be reimbursed, which shall be considered toward Contractor's fulfillment of commitment of funds as documented in the Program Application.
3. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories listed as follows, as set forth in Schedule D:
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

In the event the Contractor wishes to seek reimbursement for an expenditure that does not fall in one of the categories listed in this Paragraph 3, the Contractor must first obtain written consent from UCEDA prior to including such expenditure on any reimbursement invoice.

4. With each invoice, the Contractor shall tender receipts, reports and notes to the UCEDA sufficient for the UCEDA to determine that the Contractor expended the funds in accordance with this Agreement. All invoices, deliverable reports, receipts and notes shall be delivered to UCEDA on or before the fifth (5th) 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 a claim to the County showing its intent to disburse funds to the Contractor, pursuant to County Contract 2022-00000303. Upon the County's approval of the disbursement, the UCEDA shall remit payment to the Contractor within five (5) business days.
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.

SCHEDULE D

PROGRAM APPLICATION INSTRUCTIONS

Applicants **MUST** provide clear, complete details about their request for funding assistance. Please only apply once you have developed a well-thought out plan that clearly describes your need and how/why your proposed plan will meet this need. Please include ALL supporting documentation and evidence. Please use complete sentences. One word answers will not be considered a complete response. Applications will be scored based on need, connection to covid, clear budget, business activity viability, and measurable impact.

Accepting Applications: October 31, 2022

Minimum Request: \$5,000

Maximum Request: \$35,000

Program Description: Up to \$35,000 for businesses located in Ulster County with 25 or fewer employees at the time of application. Funding is meant to spur innovation and adaptation to the new reality of economic life with a highly contagious virus. The fund will provide reimbursement of up to 100% of eligible project costs. All projects must be located in Ulster County, New York

Eligible Applicants Must Meet ALL of the following criteria:

- Your primary business location must be in Ulster County, NY.
- Your business must be a sole proprietorship, partnership, corporation, Limited Liability Company or other legal form of business. Applicants who did not establish their business in New York State must provide a DBA or incorporation paperwork upon award.
- Your business must have 25 or fewer employees at the time of application.
- Must provide personal tax returns from all owners with greater than or equal to 20% ownership
- Business must maintain a separate bank account for business related expenses (cannot co-mingle business and personal expenses)

Other Application Information:

Please only select majority-, woman-, or veteran-owned if more than 50% of the business is owned by an individual or individuals who identify as such. Formal NYS paperwork is not required.

For questions 27-29, please provide a detailed narrative - even if it's repetitive! The scoring committee will be evaluating applications based on a clear need, clear project scope, clear budget, clear impact, and a clear covid connection.

For file uploads, please label your file **CLEARLY**. Business name **MUST** be included. If your file is not labeled clearly, your application may be marked incomplete.

Not for profit businesses that qualify for tax exempt status under section 501c3 of the Internal Revenue Code are **ELIGIBLE** and must complete section 4.

Think ahead about your expenses for next year! This funding does NOT reimburse anything purchased PRIOR to the award date which is expected to be in Q1 of 2023. Upon award, you will be given approval to begin making eligible purchases. Your award term is 120 days from date of award. Expenses made after your contract expiration will not be eligible for consideration.

Eligible Use of Funds:

Eligible expenses include rent, business mortgage payments, furniture, fixtures, equipment, operating expenses, and working capital that will prevent, prepare for, and respond to the impacts of the coronavirus pandemic.

Expenses incurred must be for activities located in Ulster County.

Equipment

- Permanent machinery and equipment (installed equipment/machinery) - **must complete section 8 of application**
- Misc. business equipment
- Vehicles
- Computers/software

Operating Expenses (i.e. Working Capital)

- Payroll (must provide formal payroll documentation from a payroll processing system with reimbursement request)
- Rent (must provide signed copy of lease agreement upon award)
- Utilities (bill submitted must match Ulster County business address)
- Supplies
- Inventory

Fixed Assets

Awards and disbursement of funds are contingent on receiving necessary approvals. If approvals are not received prior to contract end date the award will be rescinded and reimbursement will not be given.

Please complete section 8 of the application in its entirety to be considered.

- Property purchases, including soft costs*
- New building construction*
- Exterior building renovations, including soft costs*
- Signage*
- Interior renovations*

Other Eligible Expenses

- Daycare (only eligible where necessary for owner or employees to continue working)
- Financing Fees
- Loan application/closing fees and interest payments

- Bank charges/fees
- Closing costs

Ineligible expenses

- Owner's payroll or draw (direct payments to owner outside of payroll system)
- Advanced payments of any kind (only payments where goods/services have been provided are eligible).
- Any expense incurred before the award date (see contract) or after contract end date is ineligible.
- Taxes of any kind (property tax, income tax, payroll tax, sales tax, occupancy tax, etc.) are ineligible.
- Franchise fees and loan payments that are NOT mortgage payments (ie: business loans)

Funds will be provided as a reimbursement for eligible expenses. Eligible expenses must be incurred after award, and within 120 days of award.

Reimbursement Procedures

Funds shall not be provided in advance of project completion or full payment for the project by the business. Once the applicant provides verification that the work has been completed and that all vendors have been paid in full, reimbursement will be processed.

Applicants must document project expenditures. Proof of payment to the contractor/vendor is required in the form of an invoice and canceled check or credit card statement. Cash payments are not an acceptable form of payment and cannot be reimbursed.

Only those costs deemed to be reasonable and appropriate to complete the project which was approved and agreed upon will be reimbursed. Applicants may be required to supply additional information.

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 **NORTHEAST OFFROAD ADVENTURES, INC.**, a S-Corp with principal offices at 23 Tempaloni Rd., Ellenville, New York 12428 (the “**Contractor**”), (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-19 Local Fiscal Recovery Fund (the “**CLFRF**”), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of the Coronavirus Disease 2019 (“**COVID-19**”) in their communities; and

WHEREAS, Ulster County, as a CLFRF recipient, desires to utilize a portion of these ARPA funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to Ulster County based small businesses; and

WHEREAS, the County has made a portion of the ARPA funds available to help small businesses throughout New York State to safely reopen and restate their local economies in the wake of the COVID-19 pandemic; and

WHEREAS, the County allocated an amount not to exceed ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS (the “**County ARPA Funds**”); and

WHEREAS, the County entered into an Agreement with the UCEDA (County Contract No. 2022-00000303) to engage the UCEDA as a sub-recipient of the County ARPA Funds; and

WHEREAS, the UCEDA administers the Ulster County CARES II Small Business Assistance Program (the “**Program**”), which is a business relief response program created as a result of the County ARPA 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 may apply to the 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 Program, and the UCEDA has determined that the Contractor qualifies for assistance through the Program, for the purpose of rebuilding the Contractor’s business following the COVID-19 pandemic; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance through the 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 April 12, 2023** (the “Award Date”) **and ending August 10, 2023**.

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 **THIRTY-FOUR THOUSAND AND 00/100 (\$34,000.00) 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:
Northeast Offroad Adventures, Inc.
23 Tempaloni Rd.
Ellenville, New York 12428

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, 5th 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.

******Signature page follows******

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: _____

Northeast Offroad Adventures, Inc.

By: _____
NAME: _____
TITLE: _____
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

1. In response to the COVID-19 pandemic, the Contractor shall use the funds it receives to assist and rebuild the Contractor's business.
2. The Contractor shall use the funds it receives in a manner consistent with the "Proposed Use of Funds" described in the Contractor's Program Application (which is attached hereto as Schedule "D" and hereby made part of this Agreement).
3. The Contractor shall use the funds it receives pursuant to this Agreement in the following categories, as set forth in the Program Application Instructions (which is attached hereto as Schedule "E" and hereby made part of this Agreement):
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

Use of the funds by the Contractor for any other purpose must be approved by the UCEDA in advance of expenditure.

4. The Contractor shall make all expenditures of the funds received pursuant to this Agreement within one hundred twenty (120) days of the Award Date.
5. The Contractor shall provide the following information upon execution of this agreement and at least once per year for two years following completion of the term of this Agreement, upon written request from UCEDA, as part of the program reporting requirements:
 - a. Current roster of all W-2 employees, indicating status for each employee (full-time, part-time, temporary/seasonal) and average weekly hours worked for each employee
 - b. Current hourly wage for each employee and whether each employee receives paid benefits
 - c. Household size, income, and demographics for each employee
 - d. Statement indicating progress toward completion of project and achievement of measurable outcomes that were identified in Contractor's Program Application

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The UCEDA, through the Program, shall pay to the Contractor a **not-to-exceed amount** of **THIRTY-FOUR THOUSAND AND 00/100 (\$34,000.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend Contractor's own funds, consistent with Contractor's commitment of funds as documented in the Program Application, prior to completion of the Term of this Agreement.
3. 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 fifth (5th) of each month for the previous month's expenditures. Invoices shall identify any Contractor funds expended in addition to the amount to be reimbursed, which shall be considered toward Contractor's fulfillment of commitment of funds as documented in the Program Application.
3. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories listed as follows, as set forth in Schedule D:
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

In the event the Contractor wishes to seek reimbursement for an expenditure that does not fall in one of the categories listed in this Paragraph 3, the Contractor must first obtain written consent from UCEDA prior to including such expenditure on any reimbursement invoice.

4. With each invoice, the Contractor shall tender receipts, reports and notes to the UCEDA sufficient for the UCEDA to determine that the Contractor expended the funds in accordance with this Agreement. All invoices, deliverable reports, receipts and notes shall be delivered to UCEDA on or before the fifth (5th) 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 a claim to the County showing its intent to disburse funds to the Contractor, pursuant to County Contract 2022-00000303. Upon the County's approval of the disbursement, the UCEDA shall remit payment to the Contractor within five (5) business days.
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.

SCHEDULE D

PROGRAM APPLICATION INSTRUCTIONS

Applicants **MUST** provide clear, complete details about their request for funding assistance. Please only apply once you have developed a well-thought out plan that clearly describes your need and how/why your proposed plan will meet this need. Please include ALL supporting documentation and evidence. Please use complete sentences. One word answers will not be considered a complete response. Applications will be scored based on need, connection to covid, clear budget, business activity viability, and measurable impact.

Accepting Applications: October 31, 2022

Minimum Request: \$5,000

Maximum Request: \$35,000

Program Description: Up to \$35,000 for businesses located in Ulster County with 25 or fewer employees at the time of application. Funding is meant to spur innovation and adaptation to the new reality of economic life with a highly contagious virus. The fund will provide reimbursement of up to 100% of eligible project costs. All projects must be located in Ulster County, New York

Eligible Applicants Must Meet ALL of the following criteria:

- Your primary business location must be in Ulster County, NY.
- Your business must be a sole proprietorship, partnership, corporation, Limited Liability Company or other legal form of business. Applicants who did not establish their business in New York State must provide a DBA or incorporation paperwork upon award.
- Your business must have 25 or fewer employees at the time of application.
- Must provide personal tax returns from all owners with greater than or equal to 20% ownership
- Business must maintain a separate bank account for business related expenses (cannot co-mingle business and personal expenses)

Other Application Information:

Please only select majority-, woman-, or veteran-owned if more than 50% of the business is owned by an individual or individuals who identify as such. Formal NYS paperwork is not required.

For questions 27-29, please provide a detailed narrative - even if it's repetitive! The scoring committee will be evaluating applications based on a clear need, clear project scope, clear budget, clear impact, and a clear covid connection.

For file uploads, please label your file **CLEARLY**. Business name **MUST** be included. If your file is not labeled clearly, your application may be marked incomplete.

Not for profit businesses that qualify for tax exempt status under section 501c3 of the Internal Revenue Code are **ELIGIBLE** and must complete section 4.

Think ahead about your expenses for next year! This funding does NOT reimburse anything purchased PRIOR to the award date which is expected to be in Q1 of 2023. Upon award, you will be given approval to begin making eligible purchases. Your award term is 120 days from date of award. Expenses made after your contract expiration will not be eligible for consideration.

Eligible Use of Funds:

Eligible expenses include rent, business mortgage payments, furniture, fixtures, equipment, operating expenses, and working capital that will prevent, prepare for, and respond to the impacts of the coronavirus pandemic.

Expenses incurred must be for activities located in Ulster County.

Equipment

- Permanent machinery and equipment (installed equipment/machinery) - **must complete section 8 of application**
- Misc. business equipment
- Vehicles
- Computers/software

Operating Expenses (i.e. Working Capital)

- Payroll (must provide formal payroll documentation from a payroll processing system with reimbursement request)
- Rent (must provide signed copy of lease agreement upon award)
- Utilities (bill submitted must match Ulster County business address)
- Supplies
- Inventory

Fixed Assets

Awards and disbursement of funds are contingent on receiving necessary approvals. If approvals are not received prior to contract end date the award will be rescinded and reimbursement will not be given.

Please complete section 8 of the application in its entirety to be considered.

- Property purchases, including soft costs*
- New building construction*
- Exterior building renovations, including soft costs*
- Signage*
- Interior renovations*

Other Eligible Expenses

- Daycare (only eligible where necessary for owner or employees to continue working)
- Financing Fees
- Loan application/closing fees and interest payments

- Bank charges/fees
- Closing costs

Ineligible expenses

- Owner's payroll or draw (direct payments to owner outside of payroll system)
- Advanced payments of any kind (only payments where goods/services have been provided are eligible).
- Any expense incurred before the award date (see contract) or after contract end date is ineligible.
- Taxes of any kind (property tax, income tax, payroll tax, sales tax, occupancy tax, etc.) are ineligible.
- Franchise fees and loan payments that are NOT mortgage payments (ie: business loans)

Funds will be provided as a reimbursement for eligible expenses. Eligible expenses must be incurred after award, and within 120 days of award.

Reimbursement Procedures

Funds shall not be provided in advance of project completion or full payment for the project by the business. Once the applicant provides verification that the work has been completed and that all vendors have been paid in full, reimbursement will be processed.

Applicants must document project expenditures. Proof of payment to the contractor/vendor is required in the form of an invoice and canceled check or credit card statement. Cash payments are not an acceptable form of payment and cannot be reimbursed.

Only those costs deemed to be reasonable and appropriate to complete the project which was approved and agreed upon will be reimbursed. Applicants may be required to supply additional information.

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 **AMANDA FAVOINO DBA PAWS OF DISTINCTION**, a Sole Proprietorship with principal offices at 10 Main Street, New Paltz, New York 12561 (the “**Contractor**”), (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-19 Local Fiscal Recovery Fund (the “**CLFRF**”), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of the Coronavirus Disease 2019 (“**COVID-19**”) in their communities; and

WHEREAS, Ulster County, as a CLFRF recipient, desires to utilize a portion of these ARPA funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to Ulster County based small businesses; and

WHEREAS, the County has made a portion of the ARPA funds available to help small businesses throughout New York State to safely reopen and restate their local economies in the wake of the COVID-19 pandemic; and

WHEREAS, the County allocated an amount not to exceed ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS (the “**County ARPA Funds**”); and

WHEREAS, the County entered into an Agreement with the UCEDA (County Contract No. 2022-00000303) to engage the UCEDA as a sub-recipient of the County ARPA Funds; and

WHEREAS, the UCEDA administers the Ulster County CARES II Small Business Assistance Program (the “**Program**”), which is a business relief response program created as a result of the County ARPA 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 may apply to the 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 Program, and the UCEDA has determined that the Contractor qualifies for assistance through the Program, for the purpose of rebuilding the Contractor’s business following the COVID-19 pandemic; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance through the 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 April 12, 2023** (the “Award Date”) **and ending August 10, 2023**.

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 **TWENTY-FIVE THOUSAND AND 00/100 (\$25,000.00) 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:

Amanda Favoino DBA Paws of Distinction
10 Main Street
New Paltz, New York 12561

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, 5th 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.

******Signature page follows******

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: _____

Amanda Favoino DBA Paws of Distinction

By: _____
NAME: _____
TITLE: _____
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

1. In response to the COVID-19 pandemic, the Contractor shall use the funds it receives to assist and rebuild the Contractor's business.
2. The Contractor shall use the funds it receives in a manner consistent with the "Proposed Use of Funds" described in the Contractor's Program Application (which is attached hereto as Schedule "D" and hereby made part of this Agreement).
3. The Contractor shall use the funds it receives pursuant to this Agreement in the following categories, as set forth in the Program Application Instructions (which is attached hereto as Schedule "E" and hereby made part of this Agreement):
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

Use of the funds by the Contractor for any other purpose must be approved by the UCEDA in advance of expenditure.

4. The Contractor shall make all expenditures of the funds received pursuant to this Agreement within one hundred twenty (120) days of the Award Date.
5. The Contractor shall provide the following information upon execution of this agreement and at least once per year for two years following completion of the term of this Agreement, upon written request from UCEDA, as part of the program reporting requirements:
 - a. Current roster of all W-2 employees, indicating status for each employee (full-time, part-time, temporary/seasonal) and average weekly hours worked for each employee
 - b. Current hourly wage for each employee and whether each employee receives paid benefits
 - c. Household size, income, and demographics for each employee
 - d. Statement indicating progress toward completion of project and achievement of measurable outcomes that were identified in Contractor's Program Application

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The UCEDA, through the Program, shall pay to the Contractor a **not-to-exceed amount** of **TWENTY-FIVE THOUSAND AND 00/100 (\$25,000.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend Contractor's own funds, consistent with Contractor's commitment of funds as documented in the Program Application, prior to completion of the Term of this Agreement.
3. 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 fifth (5th) of each month for the previous month's expenditures. Invoices shall identify any Contractor funds expended in addition to the amount to be reimbursed, which shall be considered toward Contractor's fulfillment of commitment of funds as documented in the Program Application.
3. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories listed as follows, as set forth in Schedule D:
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

In the event the Contractor wishes to seek reimbursement for an expenditure that does not fall in one of the categories listed in this Paragraph 3, the Contractor must first obtain written consent from UCEDA prior to including such expenditure on any reimbursement invoice.

4. With each invoice, the Contractor shall tender receipts, reports and notes to the UCEDA sufficient for the UCEDA to determine that the Contractor expended the funds in accordance with this Agreement. All invoices, deliverable reports, receipts and notes shall be delivered to UCEDA on or before the fifth (5th) 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 a claim to the County showing its intent to disburse funds to the Contractor, pursuant to County Contract 2022-00000303. Upon the County's approval of the disbursement, the UCEDA shall remit payment to the Contractor within five (5) business days.
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.

SCHEDULE D

PROGRAM APPLICATION INSTRUCTIONS

Applicants **MUST** provide clear, complete details about their request for funding assistance. Please only apply once you have developed a well-thought out plan that clearly describes your need and how/why your proposed plan will meet this need. Please include **ALL** supporting documentation and evidence. Please use complete sentences. One word answers will not be considered a complete response. Applications will be scored based on need, connection to covid, clear budget, business activity viability, and measurable impact.

Accepting Applications: October 31, 2022

Minimum Request: \$5,000

Maximum Request: \$35,000

Program Description: Up to \$35,000 for businesses located in Ulster County with 25 or fewer employees at the time of application. Funding is meant to spur innovation and adaptation to the new reality of economic life with a highly contagious virus. The fund will provide reimbursement of up to 100% of eligible project costs. All projects must be located in Ulster County, New York

Eligible Applicants Must Meet ALL of the following criteria:

- Your primary business location must be in Ulster County, NY.
- Your business must be a sole proprietorship, partnership, corporation, Limited Liability Company or other legal form of business. Applicants who did not establish their business in New York State must provide a DBA or incorporation paperwork upon award.
- Your business must have 25 or fewer employees at the time of application.
- Must provide personal tax returns from all owners with greater than or equal to 20% ownership
- Business must maintain a separate bank account for business related expenses (cannot co-mingle business and personal expenses)

Other Application Information:

Please only select majority-, woman-, or veteran-owned if more than 50% of the business is owned by an individual or individuals who identify as such. Formal NYS paperwork is not required.

For questions 27-29, please provide a detailed narrative - even if it's repetitive! The scoring committee will be evaluating applications based on a clear need, clear project scope, clear budget, clear impact, and a clear covid connection.

For file uploads, please label your file **CLEARLY**. Business name **MUST** be included. If your file is not labeled clearly, your application may be marked incomplete.

Not for profit businesses that qualify for tax exempt status under section 501c3 of the Internal Revenue Code are **ELIGIBLE** and must complete section 4.

Think ahead about your expenses for next year! This funding does NOT reimburse anything purchased PRIOR to the award date which is expected to be in Q1 of 2023. Upon award, you will be given approval to begin making eligible purchases. Your award term is 120 days from date of award. Expenses made after your contract expiration will not be eligible for consideration.

Eligible Use of Funds:

Eligible expenses include rent, business mortgage payments, furniture, fixtures, equipment, operating expenses, and working capital that will prevent, prepare for, and respond to the impacts of the coronavirus pandemic.

Expenses incurred must be for activities located in Ulster County.

Equipment

- Permanent machinery and equipment (installed equipment/machinery) - **must complete section 8 of application**
- Misc. business equipment
- Vehicles
- Computers/software

Operating Expenses (i.e. Working Capital)

- Payroll (must provide formal payroll documentation from a payroll processing system with reimbursement request)
- Rent (must provide signed copy of lease agreement upon award)
- Utilities (bill submitted must match Ulster County business address)
- Supplies
- Inventory

Fixed Assets

Awards and disbursement of funds are contingent on receiving necessary approvals. If approvals are not received prior to contract end date the award will be rescinded and reimbursement will not be given.

Please complete section 8 of the application in its entirety to be considered.

- Property purchases, including soft costs*
- New building construction*
- Exterior building renovations, including soft costs*
- Signage*
- Interior renovations*

Other Eligible Expenses

- Daycare (only eligible where necessary for owner or employees to continue working)
- Financing Fees
- Loan application/closing fees and interest payments

- Bank charges/fees
- Closing costs

Ineligible expenses

- Owner's payroll or draw (direct payments to owner outside of payroll system)
- Advanced payments of any kind (only payments where goods/services have been provided are eligible).
- Any expense incurred before the award date (see contract) or after contract end date is ineligible.
- Taxes of any kind (property tax, income tax, payroll tax, sales tax, occupancy tax, etc.) are ineligible.
- Franchise fees and loan payments that are NOT mortgage payments (ie: business loans)

Funds will be provided as a reimbursement for eligible expenses. Eligible expenses must be incurred after award, and within 120 days of award.

Reimbursement Procedures

Funds shall not be provided in advance of project completion or full payment for the project by the business. Once the applicant provides verification that the work has been completed and that all vendors have been paid in full, reimbursement will be processed.

Applicants must document project expenditures. Proof of payment to the contractor/vendor is required in the form of an invoice and canceled check or credit card statement. Cash payments are not an acceptable form of payment and cannot be reimbursed.

Only those costs deemed to be reasonable and appropriate to complete the project which was approved and agreed upon will be reimbursed. Applicants may be required to supply additional information.

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 **ELECTRIC VALLEY MEDIA LLC DBA SHAWANGUNK JOURNAL**, a Limited Liability Corporation with principal offices at 122 Canal Street, Ellenville, New York 12428 (the “**Contractor**”), (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-19 Local Fiscal Recovery Fund (the “**CLFRF**”), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of the Coronavirus Disease 2019 (“**COVID-19**”) in their communities; and

WHEREAS, Ulster County, as a CLFRF recipient, desires to utilize a portion of these ARPA funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to Ulster County based small businesses; and

WHEREAS, the County has made a portion of the ARPA funds available to help small businesses throughout New York State to safely reopen and restate their local economies in the wake of the COVID-19 pandemic; and

WHEREAS, the County allocated an amount not to exceed ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS (the “**County ARPA Funds**”); and

WHEREAS, the County entered into an Agreement with the UCEDA (County Contract No. 2022-00000303) to engage the UCEDA as a sub-recipient of the County ARPA Funds; and

WHEREAS, the UCEDA administers the Ulster County CARES II Small Business Assistance Program (the “**Program**”), which is a business relief response program created as a result of the County ARPA 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 may apply to the 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 Program, and the UCEDA has determined that the Contractor qualifies for assistance through the Program, for the purpose of rebuilding the Contractor’s business following the COVID-19 pandemic; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance through the 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 April 12, 2023** (the “Award Date”) **and ending August 10, 2023**.

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 **THIRTY THOUSAND AND 00/100 (\$30,000.00) 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:

Electric Valley Media LLC DBA Shawangunk Journal

122 Canal Street

Ellenville, New York 12428

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, 5th 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.

****Signature page follows****

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: _____

Electric Valley Media LLC DBA Shawangunk Journal

By: _____
NAME: _____
TITLE: _____
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

1. In response to the COVID-19 pandemic, the Contractor shall use the funds it receives to assist and rebuild the Contractor's business.
2. The Contractor shall use the funds it receives in a manner consistent with the "Proposed Use of Funds" described in the Contractor's Program Application (which is attached hereto as Schedule "D" and hereby made part of this Agreement).
3. The Contractor shall use the funds it receives pursuant to this Agreement in the following categories, as set forth in the Program Application Instructions (which is attached hereto as Schedule "E" and hereby made part of this Agreement):
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

Use of the funds by the Contractor for any other purpose must be approved by the UCEDA in advance of expenditure.

4. The Contractor shall make all expenditures of the funds received pursuant to this Agreement within one hundred twenty (120) days of the Award Date.
5. The Contractor shall provide the following information upon execution of this agreement and at least once per year for two years following completion of the term of this Agreement, upon written request from UCEDA, as part of the program reporting requirements:
 - a. Current roster of all W-2 employees, indicating status for each employee (full-time, part-time, temporary/seasonal) and average weekly hours worked for each employee
 - b. Current hourly wage for each employee and whether each employee receives paid benefits
 - c. Household size, income, and demographics for each employee
 - d. Statement indicating progress toward completion of project and achievement of measurable outcomes that were identified in Contractor's Program Application

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The UCEDA, through the Program, shall pay to the Contractor a **not-to-exceed amount** of **THIRTY THOUSAND AND 00/100 (\$30,000.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend Contractor's own funds, consistent with Contractor's commitment of funds as documented in the Program Application, prior to completion of the Term of this Agreement.
3. 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 fifth (5th) of each month for the previous month's expenditures. Invoices shall identify any Contractor funds expended in addition to the amount to be reimbursed, which shall be considered toward Contractor's fulfillment of commitment of funds as documented in the Program Application.
3. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories listed as follows, as set forth in Schedule D:
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

In the event the Contractor wishes to seek reimbursement for an expenditure that does not fall in one of the categories listed in this Paragraph 3, the Contractor must first obtain written consent from UCEDA prior to including such expenditure on any reimbursement invoice.

4. With each invoice, the Contractor shall tender receipts, reports and notes to the UCEDA sufficient for the UCEDA to determine that the Contractor expended the funds in accordance with this Agreement. All invoices, deliverable reports, receipts and notes shall be delivered to UCEDA on or before the fifth (5th) 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 a claim to the County showing its intent to disburse funds to the Contractor, pursuant to County Contract 2022-00000303. Upon the County's approval of the disbursement, the UCEDA shall remit payment to the Contractor within five (5) business days.
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.

SCHEDULE D

PROGRAM APPLICATION INSTRUCTIONS

Applicants **MUST** provide clear, complete details about their request for funding assistance. Please only apply once you have developed a well-thought out plan that clearly describes your need and how/why your proposed plan will meet this need. Please include **ALL** supporting documentation and evidence. Please use complete sentences. One word answers will not be considered a complete response. Applications will be scored based on need, connection to covid, clear budget, business activity viability, and measurable impact.

Accepting Applications: October 31, 2022

Minimum Request: \$5,000

Maximum Request: \$35,000

Program Description: Up to \$35,000 for businesses located in Ulster County with 25 or fewer employees at the time of application. Funding is meant to spur innovation and adaptation to the new reality of economic life with a highly contagious virus. The fund will provide reimbursement of up to 100% of eligible project costs. All projects must be located in Ulster County, New York

Eligible Applicants Must Meet ALL of the following criteria:

- Your primary business location must be in Ulster County, NY.
- Your business must be a sole proprietorship, partnership, corporation, Limited Liability Company or other legal form of business. Applicants who did not establish their business in New York State must provide a DBA or incorporation paperwork upon award.
- Your business must have 25 or fewer employees at the time of application.
- Must provide personal tax returns from all owners with greater than or equal to 20% ownership
- Business must maintain a separate bank account for business related expenses (cannot co-mingle business and personal expenses)

Other Application Information:

Please only select majority-, woman-, or veteran-owned if more than 50% of the business is owned by an individual or individuals who identify as such. Formal NYS paperwork is not required.

For questions 27-29, please provide a detailed narrative - even if it's repetitive! The scoring committee will be evaluating applications based on a clear need, clear project scope, clear budget, clear impact, and a clear covid connection.

For file uploads, please label your file **CLEARLY**. Business name **MUST** be included. If your file is not labeled clearly, your application may be marked incomplete.

Not for profit businesses that qualify for tax exempt status under section 501c3 of the Internal Revenue Code are **ELIGIBLE** and must complete section 4.

Think ahead about your expenses for next year! This funding does NOT reimburse anything purchased PRIOR to the award date which is expected to be in Q1 of 2023. Upon award, you will be given approval to begin making eligible purchases. Your award term is 120 days from date of award. Expenses made after your contract expiration will not be eligible for consideration.

Eligible Use of Funds:

Eligible expenses include rent, business mortgage payments, furniture, fixtures, equipment, operating expenses, and working capital that will prevent, prepare for, and respond to the impacts of the coronavirus pandemic.

Expenses incurred must be for activities located in Ulster County.

Equipment

- Permanent machinery and equipment (installed equipment/machinery) - **must complete section 8 of application**
- Misc. business equipment
- Vehicles
- Computers/software

Operating Expenses (i.e. Working Capital)

- Payroll (must provide formal payroll documentation from a payroll processing system with reimbursement request)
- Rent (must provide signed copy of lease agreement upon award)
- Utilities (bill submitted must match Ulster County business address)
- Supplies
- Inventory

Fixed Assets

Awards and disbursement of funds are contingent on receiving necessary approvals. If approvals are not received prior to contract end date the award will be rescinded and reimbursement will not be given.

Please complete section 8 of the application in its entirety to be considered.

- Property purchases, including soft costs*
- New building construction*
- Exterior building renovations, including soft costs*
- Signage*
- Interior renovations*

Other Eligible Expenses

- Daycare (only eligible where necessary for owner or employees to continue working)
- Financing Fees
- Loan application/closing fees and interest payments

- Bank charges/fees
- Closing costs

Ineligible expenses

- Owner's payroll or draw (direct payments to owner outside of payroll system)
- Advanced payments of any kind (only payments where goods/services have been provided are eligible).
- Any expense incurred before the award date (see contract) or after contract end date is ineligible.
- Taxes of any kind (property tax, income tax, payroll tax, sales tax, occupancy tax, etc.) are ineligible.
- Franchise fees and loan payments that are NOT mortgage payments (ie: business loans)

Funds will be provided as a reimbursement for eligible expenses. Eligible expenses must be incurred after award, and within 120 days of award.

Reimbursement Procedures

Funds shall not be provided in advance of project completion or full payment for the project by the business. Once the applicant provides verification that the work has been completed and that all vendors have been paid in full, reimbursement will be processed.

Applicants must document project expenditures. Proof of payment to the contractor/vendor is required in the form of an invoice and canceled check or credit card statement. Cash payments are not an acceptable form of payment and cannot be reimbursed.

Only those costs deemed to be reasonable and appropriate to complete the project which was approved and agreed upon will be reimbursed. Applicants may be required to supply additional information.

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 **JOE LINGEMAN**, a Sole Proprietorship with principal offices at 1 Henry W. Dubois Rd., New Paltz, New York 12561 (the “**Contractor**”), (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-19 Local Fiscal Recovery Fund (the “**CLFRF**”), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of the Coronavirus Disease 2019 (“**COVID-19**”) in their communities; and

WHEREAS, Ulster County, as a CLFRF recipient, desires to utilize a portion of these ARPA funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to Ulster County based small businesses; and

WHEREAS, the County has made a portion of the ARPA funds available to help small businesses throughout New York State to safely reopen and restate their local economies in the wake of the COVID-19 pandemic; and

WHEREAS, the County allocated an amount not to exceed ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS (the “**County ARPA Funds**”); and

WHEREAS, the County entered into an Agreement with the UCEDA (County Contract No. 2022-00000303) to engage the UCEDA as a sub-recipient of the County ARPA Funds; and

WHEREAS, the UCEDA administers the Ulster County CARES II Small Business Assistance Program (the “**Program**”), which is a business relief response program created as a result of the County ARPA 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 may apply to the 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 Program, and the UCEDA has determined that the Contractor qualifies for assistance through the Program, for the purpose of rebuilding the Contractor’s business following the COVID-19 pandemic; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance through the 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 April 12, 2023** (the “Award Date”) **and ending August 10, 2023**.

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 **SEVENTEEN THOUSAND THREE HUNDRED AND TWENTY-FOUR AND 00/100 (\$17,324.00) 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:
Joe Lingeman
1 Henry W. Dubois Rd.
New Paltz, New York 12561

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, 5th 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.

******Signature page follows******

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: _____

Joe Lingeman

By: _____
NAME: _____
TITLE: _____
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

1. In response to the COVID-19 pandemic, the Contractor shall use the funds it receives to assist and rebuild the Contractor's business.
2. The Contractor shall use the funds it receives in a manner consistent with the "Proposed Use of Funds" described in the Contractor's Program Application (which is attached hereto as Schedule "D" and hereby made part of this Agreement).
3. The Contractor shall use the funds it receives pursuant to this Agreement in the following categories, as set forth in the Program Application Instructions (which is attached hereto as Schedule "E" and hereby made part of this Agreement):
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

Use of the funds by the Contractor for any other purpose must be approved by the UCEDA in advance of expenditure.

4. The Contractor shall make all expenditures of the funds received pursuant to this Agreement within one hundred twenty (120) days of the Award Date.
5. The Contractor shall provide the following information upon execution of this agreement and at least once per year for two years following completion of the term of this Agreement, upon written request from UCEDA, as part of the program reporting requirements:
 - a. Current roster of all W-2 employees, indicating status for each employee (full-time, part-time, temporary/seasonal) and average weekly hours worked for each employee
 - b. Current hourly wage for each employee and whether each employee receives paid benefits
 - c. Household size, income, and demographics for each employee
 - d. Statement indicating progress toward completion of project and achievement of measurable outcomes that were identified in Contractor's Program Application

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The UCEDA, through the Program, shall pay to the Contractor a **not-to-exceed amount** of **SEVENTEEN THOUSAND THREE HUNDRED AND TWENTY-FOUR AND 00/100 (\$17,324.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend Contractor's own funds, consistent with Contractor's commitment of funds as documented in the Program Application, prior to completion of the Term of this Agreement.
3. 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 fifth (5th) of each month for the previous month's expenditures. Invoices shall identify any Contractor funds expended in addition to the amount to be reimbursed, which shall be considered toward Contractor's fulfillment of commitment of funds as documented in the Program Application.
3. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories listed as follows, as set forth in Schedule D:
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

In the event the Contractor wishes to seek reimbursement for an expenditure that does not fall in one of the categories listed in this Paragraph 3, the Contractor must first obtain written consent from UCEDA prior to including such expenditure on any reimbursement invoice.

4. With each invoice, the Contractor shall tender receipts, reports and notes to the UCEDA sufficient for the UCEDA to determine that the Contractor expended the funds in accordance with this Agreement. All invoices, deliverable reports, receipts and notes shall be delivered to UCEDA on or before the fifth (5th) 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 a claim to the County showing its intent to disburse funds to the Contractor, pursuant to County Contract 2022-00000303. Upon the County's approval of the disbursement, the UCEDA shall remit payment to the Contractor within five (5) business days.
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.

SCHEDULE D

PROGRAM APPLICATION INSTRUCTIONS

Applicants **MUST** provide clear, complete details about their request for funding assistance. Please only apply once you have developed a well-thought out plan that clearly describes your need and how/why your proposed plan will meet this need. Please include ALL supporting documentation and evidence. Please use complete sentences. One word answers will not be considered a complete response. Applications will be scored based on need, connection to covid, clear budget, business activity viability, and measurable impact.

Accepting Applications: October 31, 2022

Minimum Request: \$5,000

Maximum Request: \$35,000

Program Description: Up to \$35,000 for businesses located in Ulster County with 25 or fewer employees at the time of application. Funding is meant to spur innovation and adaptation to the new reality of economic life with a highly contagious virus. The fund will provide reimbursement of up to 100% of eligible project costs. All projects must be located in Ulster County, New York

Eligible Applicants Must Meet ALL of the following criteria:

- Your primary business location must be in Ulster County, NY.
- Your business must be a sole proprietorship, partnership, corporation, Limited Liability Company or other legal form of business. Applicants who did not establish their business in New York State must provide a DBA or incorporation paperwork upon award.
- Your business must have 25 or fewer employees at the time of application.
- Must provide personal tax returns from all owners with greater than or equal to 20% ownership
- Business must maintain a separate bank account for business related expenses (cannot co-mingle business and personal expenses)

Other Application Information:

Please only select majority-, woman-, or veteran-owned if more than 50% of the business is owned by an individual or individuals who identify as such. Formal NYS paperwork is not required.

For questions 27-29, please provide a detailed narrative - even if it's repetitive! The scoring committee will be evaluating applications based on a clear need, clear project scope, clear budget, clear impact, and a clear covid connection.

For file uploads, please label your file **CLEARLY**. Business name **MUST** be included. If your file is not labeled clearly, your application may be marked incomplete.

Not for profit businesses that qualify for tax exempt status under section 501c3 of the Internal Revenue Code are **ELIGIBLE** and must complete section 4.

Think ahead about your expenses for next year! This funding does NOT reimburse anything purchased PRIOR to the award date which is expected to be in Q1 of 2023. Upon award, you will be given approval to begin making eligible purchases. Your award term is 120 days from date of award. Expenses made after your contract expiration will not be eligible for consideration.

Eligible Use of Funds:

Eligible expenses include rent, business mortgage payments, furniture, fixtures, equipment, operating expenses, and working capital that will prevent, prepare for, and respond to the impacts of the coronavirus pandemic.

Expenses incurred must be for activities located in Ulster County.

Equipment

- Permanent machinery and equipment (installed equipment/machinery) - **must complete section 8 of application**
- Misc. business equipment
- Vehicles
- Computers/software

Operating Expenses (i.e. Working Capital)

- Payroll (must provide formal payroll documentation from a payroll processing system with reimbursement request)
- Rent (must provide signed copy of lease agreement upon award)
- Utilities (bill submitted must match Ulster County business address)
- Supplies
- Inventory

Fixed Assets

Awards and disbursement of funds are contingent on receiving necessary approvals. If approvals are not received prior to contract end date the award will be rescinded and reimbursement will not be given.

Please complete section 8 of the application in its entirety to be considered.

- Property purchases, including soft costs*
- New building construction*
- Exterior building renovations, including soft costs*
- Signage*
- Interior renovations*

Other Eligible Expenses

- Daycare (only eligible where necessary for owner or employees to continue working)
- Financing Fees
- Loan application/closing fees and interest payments

- Bank charges/fees
- Closing costs

Ineligible expenses

- Owner's payroll or draw (direct payments to owner outside of payroll system)
- Advanced payments of any kind (only payments where goods/services have been provided are eligible).
- Any expense incurred before the award date (see contract) or after contract end date is ineligible.
- Taxes of any kind (property tax, income tax, payroll tax, sales tax, occupancy tax, etc.) are ineligible.
- Franchise fees and loan payments that are NOT mortgage payments (ie: business loans)

Funds will be provided as a reimbursement for eligible expenses. Eligible expenses must be incurred after award, and within 120 days of award.

Reimbursement Procedures

Funds shall not be provided in advance of project completion or full payment for the project by the business. Once the applicant provides verification that the work has been completed and that all vendors have been paid in full, reimbursement will be processed.

Applicants must document project expenditures. Proof of payment to the contractor/vendor is required in the form of an invoice and canceled check or credit card statement. Cash payments are not an acceptable form of payment and cannot be reimbursed.

Only those costs deemed to be reasonable and appropriate to complete the project which was approved and agreed upon will be reimbursed. Applicants may be required to supply additional information.

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 **HEARTMOVES INC**, a C-Corp with principal offices at 186 Mohonk Rd., High Falls, New York 12440 (the “**Contractor**”), (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-19 Local Fiscal Recovery Fund (the “**CLFRF**”), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of the Coronavirus Disease 2019 (“**COVID-19**”) in their communities; and

WHEREAS, Ulster County, as a CLFRF recipient, desires to utilize a portion of these ARPA funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to Ulster County based small businesses; and

WHEREAS, the County has made a portion of the ARPA funds available to help small businesses throughout New York State to safely reopen and restate their local economies in the wake of the COVID-19 pandemic; and

WHEREAS, the County allocated an amount not to exceed ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS (the “**County ARPA Funds**”); and

WHEREAS, the County entered into an Agreement with the UCEDA (County Contract No. 2022-00000303) to engage the UCEDA as a sub-recipient of the County ARPA Funds; and

WHEREAS, the UCEDA administers the Ulster County CARES II Small Business Assistance Program (the “**Program**”), which is a business relief response program created as a result of the County ARPA 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 may apply to the 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 Program, and the UCEDA has determined that the Contractor qualifies for assistance through the Program, for the purpose of rebuilding the Contractor’s business following the COVID-19 pandemic; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance through the 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 April 12, 2023** (the “Award Date”) **and ending August 10, 2023**.

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 **THIRTY-FIVE THOUSAND AND 00/100 (\$35,000.00) 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:
HeartMoves Inc
186 Mohonk Rd.
High Falls, New York 12440

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, 5th 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.

******Signature page follows******

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: _____

HeartMoves Inc

By: _____
NAME: _____
TITLE: _____
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

1. In response to the COVID-19 pandemic, the Contractor shall use the funds it receives to assist and rebuild the Contractor's business.
2. The Contractor shall use the funds it receives in a manner consistent with the "Proposed Use of Funds" described in the Contractor's Program Application (which is attached hereto as Schedule "D" and hereby made part of this Agreement).
3. The Contractor shall use the funds it receives pursuant to this Agreement in the following categories, as set forth in the Program Application Instructions (which is attached hereto as Schedule "E" and hereby made part of this Agreement):
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

Use of the funds by the Contractor for any other purpose must be approved by the UCEDA in advance of expenditure.

4. The Contractor shall make all expenditures of the funds received pursuant to this Agreement within one hundred twenty (120) days of the Award Date.
5. The Contractor shall provide the following information upon execution of this agreement and at least once per year for two years following completion of the term of this Agreement, upon written request from UCEDA, as part of the program reporting requirements:
 - a. Current roster of all W-2 employees, indicating status for each employee (full-time, part-time, temporary/seasonal) and average weekly hours worked for each employee
 - b. Current hourly wage for each employee and whether each employee receives paid benefits
 - c. Household size, income, and demographics for each employee
 - d. Statement indicating progress toward completion of project and achievement of measurable outcomes that were identified in Contractor's Program Application

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The UCEDA, through the Program, shall pay to the Contractor a **not-to-exceed amount** of **THIRTY-FIVE THOUSAND AND 00/100 (\$35,000.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend Contractor's own funds, consistent with Contractor's commitment of funds as documented in the Program Application, prior to completion of the Term of this Agreement.
3. 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 fifth (5th) of each month for the previous month's expenditures. Invoices shall identify any Contractor funds expended in addition to the amount to be reimbursed, which shall be considered toward Contractor's fulfillment of commitment of funds as documented in the Program Application.
3. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories listed as follows, as set forth in Schedule D:
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

In the event the Contractor wishes to seek reimbursement for an expenditure that does not fall in one of the categories listed in this Paragraph 3, the Contractor must first obtain written consent from UCEDA prior to including such expenditure on any reimbursement invoice.

4. With each invoice, the Contractor shall tender receipts, reports and notes to the UCEDA sufficient for the UCEDA to determine that the Contractor expended the funds in accordance with this Agreement. All invoices, deliverable reports, receipts and notes shall be delivered to UCEDA on or before the fifth (5th) 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 a claim to the County showing its intent to disburse funds to the Contractor, pursuant to County Contract 2022-00000303. Upon the County's approval of the disbursement, the UCEDA shall remit payment to the Contractor within five (5) business days.
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.

SCHEDULE D

PROGRAM APPLICATION INSTRUCTIONS

Applicants **MUST** provide clear, complete details about their request for funding assistance. Please only apply once you have developed a well-thought out plan that clearly describes your need and how/why your proposed plan will meet this need. Please include ALL supporting documentation and evidence. Please use complete sentences. One word answers will not be considered a complete response. Applications will be scored based on need, connection to covid, clear budget, business activity viability, and measurable impact.

Accepting Applications: October 31, 2022

Minimum Request: \$5,000

Maximum Request: \$35,000

Program Description: Up to \$35,000 for businesses located in Ulster County with 25 or fewer employees at the time of application. Funding is meant to spur innovation and adaptation to the new reality of economic life with a highly contagious virus. The fund will provide reimbursement of up to 100% of eligible project costs. All projects must be located in Ulster County, New York

Eligible Applicants Must Meet ALL of the following criteria:

- Your primary business location must be in Ulster County, NY.
- Your business must be a sole proprietorship, partnership, corporation, Limited Liability Company or other legal form of business. Applicants who did not establish their business in New York State must provide a DBA or incorporation paperwork upon award.
- Your business must have 25 or fewer employees at the time of application.
- Must provide personal tax returns from all owners with greater than or equal to 20% ownership
- Business must maintain a separate bank account for business related expenses (cannot co-mingle business and personal expenses)

Other Application Information:

Please only select majority-, woman-, or veteran-owned if more than 50% of the business is owned by an individual or individuals who identify as such. Formal NYS paperwork is not required.

For questions 27-29, please provide a detailed narrative - even if it's repetitive! The scoring committee will be evaluating applications based on a clear need, clear project scope, clear budget, clear impact, and a clear covid connection.

For file uploads, please label your file **CLEARLY**. Business name **MUST** be included. If your file is not labeled clearly, your application may be marked incomplete.

Not for profit businesses that qualify for tax exempt status under section 501c3 of the Internal Revenue Code are **ELIGIBLE** and must complete section 4.

Think ahead about your expenses for next year! This funding does NOT reimburse anything purchased PRIOR to the award date which is expected to be in Q1 of 2023. Upon award, you will be given approval to begin making eligible purchases. Your award term is 120 days from date of award. Expenses made after your contract expiration will not be eligible for consideration.

Eligible Use of Funds:

Eligible expenses include rent, business mortgage payments, furniture, fixtures, equipment, operating expenses, and working capital that will prevent, prepare for, and respond to the impacts of the coronavirus pandemic.

Expenses incurred must be for activities located in Ulster County.

Equipment

- Permanent machinery and equipment (installed equipment/machinery) - **must complete section 8 of application**
- Misc. business equipment
- Vehicles
- Computers/software

Operating Expenses (i.e. Working Capital)

- Payroll (must provide formal payroll documentation from a payroll processing system with reimbursement request)
- Rent (must provide signed copy of lease agreement upon award)
- Utilities (bill submitted must match Ulster County business address)
- Supplies
- Inventory

Fixed Assets

Awards and disbursement of funds are contingent on receiving necessary approvals. If approvals are not received prior to contract end date the award will be rescinded and reimbursement will not be given.

Please complete section 8 of the application in its entirety to be considered.

- Property purchases, including soft costs*
- New building construction*
- Exterior building renovations, including soft costs*
- Signage*
- Interior renovations*

Other Eligible Expenses

- Daycare (only eligible where necessary for owner or employees to continue working)
- Financing Fees
- Loan application/closing fees and interest payments

- Bank charges/fees
- Closing costs

Ineligible expenses

- Owner's payroll or draw (direct payments to owner outside of payroll system)
- Advanced payments of any kind (only payments where goods/services have been provided are eligible).
- Any expense incurred before the award date (see contract) or after contract end date is ineligible.
- Taxes of any kind (property tax, income tax, payroll tax, sales tax, occupancy tax, etc.) are ineligible.
- Franchise fees and loan payments that are NOT mortgage payments (ie: business loans)

Funds will be provided as a reimbursement for eligible expenses. Eligible expenses must be incurred after award, and within 120 days of award.

Reimbursement Procedures

Funds shall not be provided in advance of project completion or full payment for the project by the business. Once the applicant provides verification that the work has been completed and that all vendors have been paid in full, reimbursement will be processed.

Applicants must document project expenditures. Proof of payment to the contractor/vendor is required in the form of an invoice and canceled check or credit card statement. Cash payments are not an acceptable form of payment and cannot be reimbursed.

Only those costs deemed to be reasonable and appropriate to complete the project which was approved and agreed upon will be reimbursed. Applicants may be required to supply additional information.

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 **SHADOWLAND ARTISTS, INC. DBA SHADOWLAND STAGES**, a Public Charity (i.e. 501(c)3 Not-For-Profit Corporation) with principal offices at 98 Center St., Ellenville, New York 12428 (the “**Contractor**”), (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-19 Local Fiscal Recovery Fund (the “CLFRF”), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of the Coronavirus Disease 2019 (“COVID-19”) in their communities; and

WHEREAS, Ulster County, as a CLFRF recipient, desires to utilize a portion of these ARPA funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to Ulster County based small businesses; and

WHEREAS, the County has made a portion of the ARPA funds available to help small businesses throughout New York State to safely reopen and restate their local economies in the wake of the COVID-19 pandemic; and

WHEREAS, the County allocated an amount not to exceed ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS (the “County ARPA Funds”); and

WHEREAS, the County entered into an Agreement with the UCEDA (County Contract No. 2022-00000303) to engage the UCEDA as a sub-recipient of the County ARPA Funds; and

WHEREAS, the UCEDA administers the Ulster County CARES II Small Business Assistance Program (the “Program”), which is a business relief response program created as a result of the County ARPA 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 may apply to the 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 Program, and the UCEDA has determined that the Contractor qualifies for assistance through the Program, for the purpose of rebuilding the Contractor’s business following the COVID-19 pandemic; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance through the 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 April 12, 2023** (the “Award Date”) **and ending August 10, 2023**.

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 **FIVE THOUSAND AND 00/100 (\$5,000.00) 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:

Shadowland Artists, Inc. dba SHADOWLAND
STAGES
98 Center St.
Ellenville, New York 12428

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, 5th 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.

****Signature page follows****

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: _____

Shadowland Artists, Inc. dba SHADOWLAND STAGES

By: _____
NAME: _____
TITLE: _____
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

1. In response to the COVID-19 pandemic, the Contractor shall use the funds it receives to assist and rebuild the Contractor's business.
2. The Contractor shall use the funds it receives in a manner consistent with the "Proposed Use of Funds" described in the Contractor's Program Application (which is attached hereto as Schedule "D" and hereby made part of this Agreement).
3. The Contractor shall use the funds it receives pursuant to this Agreement in the following categories, as set forth in the Program Application Instructions (which is attached hereto as Schedule "E" and hereby made part of this Agreement):
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

Use of the funds by the Contractor for any other purpose must be approved by the UCEDA in advance of expenditure.

4. The Contractor shall make all expenditures of the funds received pursuant to this Agreement within one hundred twenty (120) days of the Award Date.
5. The Contractor shall provide the following information upon execution of this agreement and at least once per year for two years following completion of the term of this Agreement, upon written request from UCEDA, as part of the program reporting requirements:
 - a. Current roster of all W-2 employees, indicating status for each employee (full-time, part-time, temporary/seasonal) and average weekly hours worked for each employee
 - b. Current hourly wage for each employee and whether each employee receives paid benefits
 - c. Household size, income, and demographics for each employee
 - d. Statement indicating progress toward completion of project and achievement of measurable outcomes that were identified in Contractor's Program Application

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The UCEDA, through the Program, shall pay to the Contractor a **not-to-exceed amount of FIVE THOUSAND AND 00/100 (\$5,000.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend Contractor's own funds, consistent with Contractor's commitment of funds as documented in the Program Application, prior to completion of the Term of this Agreement.
3. 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 fifth (5th) of each month for the previous month's expenditures. Invoices shall identify any Contractor funds expended in addition to the amount to be reimbursed, which shall be considered toward Contractor's fulfillment of commitment of funds as documented in the Program Application.
3. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories listed as follows, as set forth in Schedule D:
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

In the event the Contractor wishes to seek reimbursement for an expenditure that does not fall in one of the categories listed in this Paragraph 3, the Contractor must first obtain written consent from UCEDA prior to including such expenditure on any reimbursement invoice.

4. With each invoice, the Contractor shall tender receipts, reports and notes to the UCEDA sufficient for the UCEDA to determine that the Contractor expended the funds in accordance with this Agreement. All invoices, deliverable reports, receipts and notes shall be delivered to UCEDA on or before the fifth (5th) 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 a claim to the County showing its intent to disburse funds to the Contractor, pursuant to County Contract 2022-00000303. Upon the County's approval of the disbursement, the UCEDA shall remit payment to the Contractor within five (5) business days.
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.

SCHEDULE D

PROGRAM APPLICATION INSTRUCTIONS

Applicants **MUST** provide clear, complete details about their request for funding assistance. Please only apply once you have developed a well-thought out plan that clearly describes your need and how/why your proposed plan will meet this need. Please include ALL supporting documentation and evidence. Please use complete sentences. One word answers will not be considered a complete response. Applications will be scored based on need, connection to covid, clear budget, business activity viability, and measurable impact.

Accepting Applications: October 31, 2022

Minimum Request: \$5,000

Maximum Request: \$35,000

Program Description: Up to \$35,000 for businesses located in Ulster County with 25 or fewer employees at the time of application. Funding is meant to spur innovation and adaptation to the new reality of economic life with a highly contagious virus. The fund will provide reimbursement of up to 100% of eligible project costs. All projects must be located in Ulster County, New York

Eligible Applicants Must Meet ALL of the following criteria:

- Your primary business location must be in Ulster County, NY.
- Your business must be a sole proprietorship, partnership, corporation, Limited Liability Company or other legal form of business. Applicants who did not establish their business in New York State must provide a DBA or incorporation paperwork upon award.
- Your business must have 25 or fewer employees at the time of application.
- Must provide personal tax returns from all owners with greater than or equal to 20% ownership
- Business must maintain a separate bank account for business related expenses (cannot co-mingle business and personal expenses)

Other Application Information:

Please only select majority-, woman-, or veteran-owned if more than 50% of the business is owned by an individual or individuals who identify as such. Formal NYS paperwork is not required.

For questions 27-29, please provide a detailed narrative - even if it's repetitive! The scoring committee will be evaluating applications based on a clear need, clear project scope, clear budget, clear impact, and a clear covid connection.

For file uploads, please label your file **CLEARLY**. Business name **MUST** be included. If your file is not labeled clearly, your application may be marked incomplete.

Not for profit businesses that qualify for tax exempt status under section 501c3 of the Internal Revenue Code are **ELIGIBLE** and must complete section 4.

Think ahead about your expenses for next year! This funding does NOT reimburse anything purchased PRIOR to the award date which is expected to be in Q1 of 2023. Upon award, you will be given approval to begin making eligible purchases. Your award term is 120 days from date of award. Expenses made after your contract expiration will not be eligible for consideration.

Eligible Use of Funds:

Eligible expenses include rent, business mortgage payments, furniture, fixtures, equipment, operating expenses, and working capital that will prevent, prepare for, and respond to the impacts of the coronavirus pandemic.

Expenses incurred must be for activities located in Ulster County.

Equipment

- Permanent machinery and equipment (installed equipment/machinery) - **must complete section 8 of application**
- Misc. business equipment
- Vehicles
- Computers/software

Operating Expenses (i.e. Working Capital)

- Payroll (must provide formal payroll documentation from a payroll processing system with reimbursement request)
- Rent (must provide signed copy of lease agreement upon award)
- Utilities (bill submitted must match Ulster County business address)
- Supplies
- Inventory

Fixed Assets

Awards and disbursement of funds are contingent on receiving necessary approvals. If approvals are not received prior to contract end date the award will be rescinded and reimbursement will not be given.

Please complete section 8 of the application in its entirety to be considered.

- Property purchases, including soft costs*
- New building construction*
- Exterior building renovations, including soft costs*
- Signage*
- Interior renovations*

Other Eligible Expenses

- Daycare (only eligible where necessary for owner or employees to continue working)
- Financing Fees
- Loan application/closing fees and interest payments

- Bank charges/fees
- Closing costs

Ineligible expenses

- Owner's payroll or draw (direct payments to owner outside of payroll system)
- Advanced payments of any kind (only payments where goods/services have been provided are eligible).
- Any expense incurred before the award date (see contract) or after contract end date is ineligible.
- Taxes of any kind (property tax, income tax, payroll tax, sales tax, occupancy tax, etc.) are ineligible.
- Franchise fees and loan payments that are NOT mortgage payments (ie: business loans)

Funds will be provided as a reimbursement for eligible expenses. Eligible expenses must be incurred after award, and within 120 days of award.

Reimbursement Procedures

Funds shall not be provided in advance of project completion or full payment for the project by the business. Once the applicant provides verification that the work has been completed and that all vendors have been paid in full, reimbursement will be processed.

Applicants must document project expenditures. Proof of payment to the contractor/vendor is required in the form of an invoice and canceled check or credit card statement. Cash payments are not an acceptable form of payment and cannot be reimbursed.

Only those costs deemed to be reasonable and appropriate to complete the project which was approved and agreed upon will be reimbursed. Applicants may be required to supply additional information.

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 **SPORT OF IRON FITNESS, LLC**, a Limited Liability Corporation with principal offices at 120 State Route 28, Kingston, New York 12401 (the “**Contractor**”), (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-19 Local Fiscal Recovery Fund (the “**CLFRF**”), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of the Coronavirus Disease 2019 (“**COVID-19**”) in their communities; and

WHEREAS, Ulster County, as a CLFRF recipient, desires to utilize a portion of these ARPA funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to Ulster County based small businesses; and

WHEREAS, the County has made a portion of the ARPA funds available to help small businesses throughout New York State to safely reopen and restate their local economies in the wake of the COVID-19 pandemic; and

WHEREAS, the County allocated an amount not to exceed ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS (the “**County ARPA Funds**”); and

WHEREAS, the County entered into an Agreement with the UCEDA (County Contract No. 2022-00000303) to engage the UCEDA as a sub-recipient of the County ARPA Funds; and

WHEREAS, the UCEDA administers the Ulster County CARES II Small Business Assistance Program (the “**Program**”), which is a business relief response program created as a result of the County ARPA 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 may apply to the 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 Program, and the UCEDA has determined that the Contractor qualifies for assistance through the Program, for the purpose of rebuilding the Contractor’s business following the COVID-19 pandemic; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance through the 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 April 12, 2023** (the “Award Date”) **and ending August 10, 2023**.

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 **THIRTEEN THOUSAND EIGHT HUNDRED AND TWENTY-EIGHT AND 00/100 (\$13,828.00) 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:
Sport of Iron Fitness, LLC
120 State Route 28
Kingston, New York 12401

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, 5th 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.

****Signature page follows****

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: _____

Sport of Iron Fitness, LLC

By: _____
NAME: _____
TITLE: _____
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

1. In response to the COVID-19 pandemic, the Contractor shall use the funds it receives to assist and rebuild the Contractor's business.
2. The Contractor shall use the funds it receives in a manner consistent with the "Proposed Use of Funds" described in the Contractor's Program Application (which is attached hereto as Schedule "D" and hereby made part of this Agreement).
3. The Contractor shall use the funds it receives pursuant to this Agreement in the following categories, as set forth in the Program Application Instructions (which is attached hereto as Schedule "E" and hereby made part of this Agreement):
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

Use of the funds by the Contractor for any other purpose must be approved by the UCEDA in advance of expenditure.

4. The Contractor shall make all expenditures of the funds received pursuant to this Agreement within one hundred twenty (120) days of the Award Date.
5. The Contractor shall provide the following information upon execution of this agreement and at least once per year for two years following completion of the term of this Agreement, upon written request from UCEDA, as part of the program reporting requirements:
 - a. Current roster of all W-2 employees, indicating status for each employee (full-time, part-time, temporary/seasonal) and average weekly hours worked for each employee
 - b. Current hourly wage for each employee and whether each employee receives paid benefits
 - c. Household size, income, and demographics for each employee
 - d. Statement indicating progress toward completion of project and achievement of measurable outcomes that were identified in Contractor's Program Application

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The UCEDA, through the Program, shall pay to the Contractor a **not-to-exceed amount** of **THIRTEEN THOUSAND EIGHT HUNDRED AND TWENTY-EIGHT AND 00/100 (\$13,828.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend Contractor's own funds, consistent with Contractor's commitment of funds as documented in the Program Application, prior to completion of the Term of this Agreement.
3. 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 fifth (5th) of each month for the previous month's expenditures. Invoices shall identify any Contractor funds expended in addition to the amount to be reimbursed, which shall be considered toward Contractor's fulfillment of commitment of funds as documented in the Program Application.
3. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories listed as follows, as set forth in Schedule D:
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

In the event the Contractor wishes to seek reimbursement for an expenditure that does not fall in one of the categories listed in this Paragraph 3, the Contractor must first obtain written consent from UCEDA prior to including such expenditure on any reimbursement invoice.

4. With each invoice, the Contractor shall tender receipts, reports and notes to the UCEDA sufficient for the UCEDA to determine that the Contractor expended the funds in accordance with this Agreement. All invoices, deliverable reports, receipts and notes shall be delivered to UCEDA on or before the fifth (5th) 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 a claim to the County showing its intent to disburse funds to the Contractor, pursuant to County Contract 2022-00000303. Upon the County's approval of the disbursement, the UCEDA shall remit payment to the Contractor within five (5) business days.
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.

SCHEDULE D

PROGRAM APPLICATION INSTRUCTIONS

Applicants **MUST** provide clear, complete details about their request for funding assistance. Please only apply once you have developed a well-thought out plan that clearly describes your need and how/why your proposed plan will meet this need. Please include ALL supporting documentation and evidence. Please use complete sentences. One word answers will not be considered a complete response. Applications will be scored based on need, connection to covid, clear budget, business activity viability, and measurable impact.

Accepting Applications: October 31, 2022

Minimum Request: \$5,000

Maximum Request: \$35,000

Program Description: Up to \$35,000 for businesses located in Ulster County with 25 or fewer employees at the time of application. Funding is meant to spur innovation and adaptation to the new reality of economic life with a highly contagious virus. The fund will provide reimbursement of up to 100% of eligible project costs. All projects must be located in Ulster County, New York

Eligible Applicants Must Meet ALL of the following criteria:

- Your primary business location must be in Ulster County, NY.
- Your business must be a sole proprietorship, partnership, corporation, Limited Liability Company or other legal form of business. Applicants who did not establish their business in New York State must provide a DBA or incorporation paperwork upon award.
- Your business must have 25 or fewer employees at the time of application.
- Must provide personal tax returns from all owners with greater than or equal to 20% ownership
- Business must maintain a separate bank account for business related expenses (cannot co-mingle business and personal expenses)

Other Application Information:

Please only select majority-, woman-, or veteran-owned if more than 50% of the business is owned by an individual or individuals who identify as such. Formal NYS paperwork is not required.

For questions 27-29, please provide a detailed narrative - even if it's repetitive! The scoring committee will be evaluating applications based on a clear need, clear project scope, clear budget, clear impact, and a clear covid connection.

For file uploads, please label your file **CLEARLY**. Business name **MUST** be included. If your file is not labeled clearly, your application may be marked incomplete.

Not for profit businesses that qualify for tax exempt status under section 501c3 of the Internal Revenue Code are **ELIGIBLE** and must complete section 4.

Think ahead about your expenses for next year! This funding does NOT reimburse anything purchased PRIOR to the award date which is expected to be in Q1 of 2023. Upon award, you will be given approval to begin making eligible purchases. Your award term is 120 days from date of award. Expenses made after your contract expiration will not be eligible for consideration.

Eligible Use of Funds:

Eligible expenses include rent, business mortgage payments, furniture, fixtures, equipment, operating expenses, and working capital that will prevent, prepare for, and respond to the impacts of the coronavirus pandemic.

Expenses incurred must be for activities located in Ulster County.

Equipment

- Permanent machinery and equipment (installed equipment/machinery) - must complete section 8 of application
- Misc. business equipment
- Vehicles
- Computers/software

Operating Expenses (i.e. Working Capital)

- Payroll (must provide formal payroll documentation from a payroll processing system with reimbursement request)
- Rent (must provide signed copy of lease agreement upon award)
- Utilities (bill submitted must match Ulster County business address)
- Supplies
- Inventory

Fixed Assets

Awards and disbursement of funds are contingent on receiving necessary approvals. If approvals are not received prior to contract end date the award will be rescinded and reimbursement will not be given.

Please complete section 8 of the application in its entirety to be considered.

- Property purchases, including soft costs*
- New building construction*
- Exterior building renovations, including soft costs*
- Signage*
- Interior renovations*

Other Eligible Expenses

- Daycare (only eligible where necessary for owner or employees to continue working)
- Financing Fees
- Loan application/closing fees and interest payments

- Bank charges/fees
- Closing costs

Ineligible expenses

- Owner's payroll or draw (direct payments to owner outside of payroll system)
- Advanced payments of any kind (only payments where goods/services have been provided are eligible).
- Any expense incurred before the award date (see contract) or after contract end date is ineligible.
- Taxes of any kind (property tax, income tax, payroll tax, sales tax, occupancy tax, etc.) are ineligible.
- Franchise fees and loan payments that are NOT mortgage payments (ie: business loans)

Funds will be provided as a reimbursement for eligible expenses. Eligible expenses must be incurred after award, and within 120 days of award.

Reimbursement Procedures

Funds shall not be provided in advance of project completion or full payment for the project by the business. Once the applicant provides verification that the work has been completed and that all vendors have been paid in full, reimbursement will be processed.

Applicants must document project expenditures. Proof of payment to the contractor/vendor is required in the form of an invoice and canceled check or credit card statement. Cash payments are not an acceptable form of payment and cannot be reimbursed.

Only those costs deemed to be reasonable and appropriate to complete the project which was approved and agreed upon will be reimbursed. Applicants may be required to supply additional information.

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 **ACCORD MARKET, LLC**, a Limited Liability Corporation with principal offices at 21 Main Street, Accord, New York 12404 (the “**Contractor**”), (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-19 Local Fiscal Recovery Fund (the “**CLFRF**”), with the goal of providing vital federal support to local governments as they address the negative health and economic impacts of the Coronavirus Disease 2019 (“**COVID-19**”) in their communities; and

WHEREAS, Ulster County, as a CLFRF recipient, desires to utilize a portion of these ARPA funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to Ulster County based small businesses; and

WHEREAS, the County has made a portion of the ARPA funds available to help small businesses throughout New York State to safely reopen and restate their local economies in the wake of the COVID-19 pandemic; and

WHEREAS, the County allocated an amount not to exceed ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS (the “**County ARPA Funds**”); and

WHEREAS, the County entered into an Agreement with the UCEDA (County Contract No. 2022-00000303) to engage the UCEDA as a sub-recipient of the County ARPA Funds; and

WHEREAS, the UCEDA administers the Ulster County CARES II Small Business Assistance Program (the “**Program**”), which is a business relief response program created as a result of the County ARPA 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 may apply to the 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 Program, and the UCEDA has determined that the Contractor qualifies for assistance through the Program, for the purpose of rebuilding the Contractor’s business following the COVID-19 pandemic; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance through the 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 April 12, 2023** (the “Award Date”) **and ending August 10, 2023**.

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 **THIRTY-TWO THOUSAND FIVE HUNDRED AND 00/100 (\$32,500.00) 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:
Accord Market, LLC
21 Main Street
Accord, New York 12404

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, 5th 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.

****Signature page follows****

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: _____

Accord Market, LLC

By: _____
NAME: _____
TITLE: _____
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

1. In response to the COVID-19 pandemic, the Contractor shall use the funds it receives to assist and rebuild the Contractor's business.
2. The Contractor shall use the funds it receives in a manner consistent with the "Proposed Use of Funds" described in the Contractor's Program Application (which is attached hereto as Schedule "D" and hereby made part of this Agreement).
3. The Contractor shall use the funds it receives pursuant to this Agreement in the following categories, as set forth in the Program Application Instructions (which is attached hereto as Schedule "E" and hereby made part of this Agreement):
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

Use of the funds by the Contractor for any other purpose must be approved by the UCEDA in advance of expenditure.

4. The Contractor shall make all expenditures of the funds received pursuant to this Agreement within one hundred twenty (120) days of the Award Date.
5. The Contractor shall provide the following information upon execution of this agreement and at least once per year for two years following completion of the term of this Agreement, upon written request from UCEDA, as part of the program reporting requirements:
 - a. Current roster of all W-2 employees, indicating status for each employee (full-time, part-time, temporary/seasonal) and average weekly hours worked for each employee
 - b. Current hourly wage for each employee and whether each employee receives paid benefits
 - c. Household size, income, and demographics for each employee
 - d. Statement indicating progress toward completion of project and achievement of measurable outcomes that were identified in Contractor's Program Application

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The UCEDA, through the Program, shall pay to the Contractor a **not-to-exceed amount** of **THIRTY-TWO THOUSAND FIVE HUNDRED AND 00/100 (\$32,500.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend Contractor's own funds, consistent with Contractor's commitment of funds as documented in the Program Application, prior to completion of the Term of this Agreement.
3. 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 fifth (5th) of each month for the previous month's expenditures. Invoices shall identify any Contractor funds expended in addition to the amount to be reimbursed, which shall be considered toward Contractor's fulfillment of commitment of funds as documented in the Program Application.
3. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories listed as follows, as set forth in Schedule D:
 - a. Equipment
 - b. Operating Expenses
 - c. Fixed Assets
 - d. Other Eligible Expenses

In the event the Contractor wishes to seek reimbursement for an expenditure that does not fall in one of the categories listed in this Paragraph 3, the Contractor must first obtain written consent from UCEDA prior to including such expenditure on any reimbursement invoice.

4. With each invoice, the Contractor shall tender receipts, reports and notes to the UCEDA sufficient for the UCEDA to determine that the Contractor expended the funds in accordance with this Agreement. All invoices, deliverable reports, receipts and notes shall be delivered to UCEDA on or before the fifth (5th) 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 a claim to the County showing its intent to disburse funds to the Contractor, pursuant to County Contract 2022-00000303. Upon the County's approval of the disbursement, the UCEDA shall remit payment to the Contractor within five (5) business days.
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.

SCHEDULE D

PROGRAM APPLICATION INSTRUCTIONS

Applicants **MUST** provide clear, complete details about their request for funding assistance. Please only apply once you have developed a well-thought out plan that clearly describes your need and how/why your proposed plan will meet this need. Please include ALL supporting documentation and evidence. Please use complete sentences. One word answers will not be considered a complete response. Applications will be scored based on need, connection to covid, clear budget, business activity viability, and measurable impact.

Accepting Applications: October 31, 2022

Minimum Request: \$5,000

Maximum Request: \$35,000

Program Description: Up to \$35,000 for businesses located in Ulster County with 25 or fewer employees at the time of application. Funding is meant to spur innovation and adaptation to the new reality of economic life with a highly contagious virus. The fund will provide reimbursement of up to 100% of eligible project costs. All projects must be located in Ulster County, New York

Eligible Applicants Must Meet ALL of the following criteria:

- Your primary business location must be in Ulster County, NY.
- Your business must be a sole proprietorship, partnership, corporation, Limited Liability Company or other legal form of business. Applicants who did not establish their business in New York State must provide a DBA or incorporation paperwork upon award.
- Your business must have 25 or fewer employees at the time of application.
- Must provide personal tax returns from all owners with greater than or equal to 20% ownership
- Business must maintain a separate bank account for business related expenses (cannot co-mingle business and personal expenses)

Other Application Information:

Please only select majority-, woman-, or veteran-owned if more than 50% of the business is owned by an individual or individuals who identify as such. Formal NYS paperwork is not required.

For questions 27-29, please provide a detailed narrative - even if it's repetitive! The scoring committee will be evaluating applications based on a clear need, clear project scope, clear budget, clear impact, and a clear covid connection.

For file uploads, please label your file **CLEARLY**. Business name **MUST** be included. If your file is not labeled clearly, your application may be marked incomplete.

Not for profit businesses that qualify for tax exempt status under section 501c3 of the Internal Revenue Code are **ELIGIBLE** and must complete section 4.

Think ahead about your expenses for next year! This funding does NOT reimburse anything purchased PRIOR to the award date which is expected to be in Q1 of 2023. Upon award, you will be given approval to begin making eligible purchases. Your award term is 120 days from date of award. Expenses made after your contract expiration will not be eligible for consideration.

Eligible Use of Funds:

Eligible expenses include rent, business mortgage payments, furniture, fixtures, equipment, operating expenses, and working capital that will prevent, prepare for, and respond to the impacts of the coronavirus pandemic.

Expenses incurred must be for activities located in Ulster County.

Equipment

- Permanent machinery and equipment (installed equipment/machinery) - **must complete section 8 of application**
- Misc. business equipment
- Vehicles
- Computers/software

Operating Expenses (i.e. Working Capital)

- Payroll (must provide formal payroll documentation from a payroll processing system with reimbursement request)
- Rent (must provide signed copy of lease agreement upon award)
- Utilities (bill submitted must match Ulster County business address)
- Supplies
- Inventory

Fixed Assets

Awards and disbursement of funds are contingent on receiving necessary approvals. If approvals are not received prior to contract end date the award will be rescinded and reimbursement will not be given.

Please complete section 8 of the application in its entirety to be considered.

- Property purchases, including soft costs*
- New building construction*
- Exterior building renovations, including soft costs*
- Signage*
- Interior renovations*

Other Eligible Expenses

- Daycare (only eligible where necessary for owner or employees to continue working)
- Financing Fees
- Loan application/closing fees and interest payments

- Bank charges/fees
- Closing costs

Ineligible expenses

- Owner's payroll or draw (direct payments to owner outside of payroll system)
- Advanced payments of any kind (only payments where goods/services have been provided are eligible).
- Any expense incurred before the award date (see contract) or after contract end date is ineligible.
- Taxes of any kind (property tax, income tax, payroll tax, sales tax, occupancy tax, etc.) are ineligible.
- Franchise fees and loan payments that are NOT mortgage payments (ie: business loans)

Funds will be provided as a reimbursement for eligible expenses. Eligible expenses must be incurred after award, and within 120 days of award.

Reimbursement Procedures

Funds shall not be provided in advance of project completion or full payment for the project by the business. Once the applicant provides verification that the work has been completed and that all vendors have been paid in full, reimbursement will be processed.

Applicants must document project expenditures. Proof of payment to the contractor/vendor is required in the form of an invoice and canceled check or credit card statement. Cash payments are not an acceptable form of payment and cannot be reimbursed.

Only those costs deemed to be reasonable and appropriate to complete the project which was approved and agreed upon will be reimbursed. Applicants may be required to supply additional information.