

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 domestic business corporation 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) pursuant to which UCEDA agreed to administer a subaward of the CLFRF for the purpose of providing assistance to Ulster County small businesses for the benefit of low- to moderate-income business owners (the Ulster County CARES II Small Business Assistance Program); and

WHEREAS, certain Ulster County businesses applied for funding under the Ulster County CARES II Small Business Assistance Program, were initially deemed eligible and awarded funding by UCEDA, but were later deemed to be ineligible to receive funding under the County Contract No. 2022-00000303; and

WHEREAS, said certain ineligible businesses’ applications for funding under the Ulster County CARES II Small Business Assistance Program are on file with UCEDA; and

WHEREAS, the Board of Directors of the UCEDA authorized the UCEDA to enter into County Contract No. 2022-00000695 on August 8, 2023, pending Legislative approval, pursuant to which the UCEDA shall provide assistance to said certain ineligible businesses utilizing a different program; and

WHEREAS, the Ulster County Legislature passed Resolution No. 437 authorizing the County to enter into an Agreement with the UCEDA (County Contract No. 2022-00000695); and

WHEREAS, the Contractor applied for assistance from UCEDA through the Ulster County CARES II Small Business Assistance Program, and the UCEDA deemed the Contractor eligible and awarded the Contractor assistance through the Program, and the Contractor was later deemed to be ineligible to receive funding under the County Contract No. 2022-00000303; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance in order to honor the

award made to the Contractor, 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 December 31, 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 pursuant to this Agreement as set forth below:
 - a. In order to complete the installation of the single serve pint line the Contractor will install the following additional equipment: Bottle coder to spray the individual bottles with a "sell by" batch code, Labeler parts to adapt the label machine to a 3 sided labeler, Taper for carton closure, Box coder to mark the carton with the contents, Working capital to buy larger quantities of bottles.
 - b. Once the installation of the single serve pint line is completed the Contractor will be able to fill existing orders on a more timely basis and aggressively pursue additional single serve pint business by being in a position to fill the orders by running both filling lines at the same time. The completion of the single serve line should add 2 full time positions to staff and give the Contractor the flexibility to produce multiple sizes at the same time. Additionally, the Contractor could add single serve pint sizes to other juice offerings thereby increasing sales.
 - c. Survival in the Contractor's business depends on being able to fill orders on a timely basis. The completion of the single serve pint line will allow the Contractor to fill orders on a timely basis by running both filling lines at the same time. This in turn means the Contractor will be able to survive the new changes in their industry which have shifted more and more business to single serve. The completion of the single serve pint line will allow the Contractor to aggressively pursue more and more single serve pints business as well as offer other juices in single serve pint sizes. More single serve pint business results in measurable growth in their business. It appears at this time that the trend to more and more single serve pint business is here to stay. Therefore being able to fill single serve pint orders as well as gallon and half gallon business will contribute to long term measurable growth.
3. The Contractor shall use the funds it receives in the following categories:
 - 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 provide the following information at least once per year for two (2) 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 consistent with Paragraph 2 of this Schedule A.

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 the Contractor's own funds, consistent with Paragraph 2 of Schedule A of this Agreement, prior to the expiration 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.
4. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories as set forth below:
 - 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 4, the Contractor shall obtain written consent from the President/CEO of UCEDA prior to including such expenditure on any reimbursement invoice.

5. 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 the President/CEO of UCEDA (c/o Samantha Liotta, Business Services Administrator), on or before the fifth (5th) day of the month for the expenditures made by the Contractor during the previous month.
6. The Contractor shall submit to the UCEDA original invoices for payment.
7. Upon receipt of each invoice and proof of expenditures, the UCEDA shall submit an invoice to the County's Finance Department showing its intent to award direct financial assistance to the Contractor, pursuant to County Contract 2022-00000695. Upon the County's approval of the invoice, the County shall remit payment to the UCEDA. The UCEDA shall remit payment to the Contractor within sixty (60) days of its receipt of payment from the County.
8. 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.
9. 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.

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 foreign limited liability company with principal offices at 26 Parkcrest Drive, 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) pursuant to which UCEDA agreed to administer a subaward of the CLFRF for the purpose of providing assistance to Ulster County small businesses for the benefit of low- to moderate-income business owners (the Ulster County CARES II Small Business Assistance Program); and

WHEREAS, certain Ulster County businesses applied for funding under the Ulster County CARES II Small Business Assistance Program, were initially deemed eligible and awarded funding by UCEDA, but were later deemed to be ineligible to receive funding under the County Contract No. 2022-00000303; and

WHEREAS, said certain ineligible businesses’ applications for funding under the Ulster County CARES II Small Business Assistance Program are on file with UCEDA; and

WHEREAS, the Board of Directors of the UCEDA authorized the UCEDA to enter into County Contract No. 2022-00000695 on August 8, 2023, pending Legislative approval, pursuant to which the UCEDA shall provide assistance to said certain ineligible businesses utilizing a different program; and

WHEREAS, the Ulster County Legislature passed Resolution No. 437 authorizing the County to enter into an Agreement with the UCEDA (County Contract No. 2022-00000695); and

WHEREAS, the Contractor applied for assistance from UCEDA through the Ulster County CARES II Small Business Assistance Program, and the UCEDA deemed the Contractor eligible and awarded the Contractor assistance through the Program, and the Contractor was later deemed to be ineligible to receive funding under the County Contract No. 2022-00000303; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance in order to honor the

award made to the Contractor, 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 December 31, 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 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 (c) 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 Drive
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 pursuant to this Agreement as set forth below:
 - a. The funds shall be used to purchase equipment, train staff, integrate live streaming into app technology, the bandwidth fees associated with people watching the live stream, and the person power to research/build relationships/secure venues/setup and film the live streamed events.
 - b. Being able to bring important and interesting live events to the community will increase viewership and hopefully memberships to the Contractor's platform bringing the Contractor closer to sustainability.
 - c. Being able to live-stream opens up partnerships that haven't existed before. These relationships will help the Contractor to create new viewers, which grows membership (providing regenerative income) and opens up additional revenue streams as the Contractor grows. The Contractor's end goal will always be to impact the community in as many ways as possible. Bringing more members, financial resources and quality partners together will allow the Contractor to create more impact by expanding the Apprentice Program and Community Content Fund programs, hiring more locals and telling more important local stories.
3. The Contractor shall use the funds it receives in the following categories:
 - 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 provide the following information at least once per year for two (2) 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 consistent with Paragraph 2 of this Schedule A.

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 SIXTY AND 00/100 (\$34,660.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend the Contractor's own funds, consistent with Paragraph 2 of Schedule A of this Agreement, prior to the expiration 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.
4. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories as set forth below:
 - 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 4, the Contractor shall obtain written consent from the President/CEO of UCEDA prior to including such expenditure on any reimbursement invoice.

5. 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 the President/CEO of UCEDA (c/o Samantha Liotta, Business Services Administrator), on or before the fifth (5th) day of the month for the expenditures made by the Contractor during the previous month.
6. The Contractor shall submit to the UCEDA original invoices for payment.
7. Upon receipt of each invoice and proof of expenditures, the UCEDA shall submit an invoice to the County's Finance Department showing its intent to award direct financial assistance to the Contractor, pursuant to County Contract 2022-00000695. Upon the County's approval of the invoice, the County shall remit payment to the UCEDA. The UCEDA shall remit payment to the Contractor within sixty (60) days of its receipt of payment from the County.
8. 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.
9. 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.

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 domestic business corporation with principal offices at 1-3 Henry W. Dubois Drive, 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) pursuant to which UCEDA agreed to administer a subaward of the CLFRF for the purpose of providing assistance to Ulster County small businesses for the benefit of low- to moderate-income business owners (the Ulster County CARES II Small Business Assistance Program); and

WHEREAS, certain Ulster County businesses applied for funding under the Ulster County CARES II Small Business Assistance Program, were initially deemed eligible and awarded funding by UCEDA, but were later deemed to be ineligible to receive funding under the County Contract No. 2022-00000303; and

WHEREAS, said certain ineligible businesses’ applications for funding under the Ulster County CARES II Small Business Assistance Program are on file with UCEDA; and

WHEREAS, the Board of Directors of the UCEDA authorized the UCEDA to enter into County Contract No. 2022-00000695 on August 8, 2023, pending Legislative approval, pursuant to which the UCEDA shall provide assistance to said certain ineligible businesses utilizing a different program; and

WHEREAS, the Ulster County Legislature passed Resolution No. 437 authorizing the County to enter into an Agreement with the UCEDA (County Contract No. 2022-00000695); and

WHEREAS, the Contractor applied for assistance from UCEDA through the Ulster County CARES II Small Business Assistance Program, and the UCEDA deemed the Contractor eligible and awarded the Contractor assistance through the Program, and the Contractor was later deemed to be ineligible to receive funding under the County Contract No. 2022-00000303; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance in order to honor the

award made to the Contractor, 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 December 31, 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 Drive
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 pursuant to this Agreement as set forth below:
 - a. The Contractor will use the funds for payroll, rent, utilities, advertising (that would help the Contractor to get back on its growth path), membership fees to a Cluster group (which would open up more markets to the Contractor and immediately increase revenue on existing business) that would help the Contractor grow its business. The funds would also help the Contractor to purchase the office supplies that it needs to operate efficiently. Furthermore, it would help pay for advertising efforts in order to bring in more business.
 - b. If the Contractor receives funding the Contractor would be able to join a Cluster group that would give the Contractor access to more markets to offer its clients. It would also immediately give the Contractor a higher commission rate on certain existing business. The Contractor will pay its rent in advance for 4 months, set money aside for 4 months of payroll funds, pay utilities for 4 months and purchase office supplies needed to keep the Contractor up and running for as long as possible. The Contractor will also seek out advertising options such as mailers and internet ads. With these expenses being paid the Contractor will possibly be able to hire a new agent who could bring in more new business.
 - c. If the Contractor joins the Cluster group, commissions will increase for the existing book of business right away. But more importantly, with access to a wider range of markets and therefore being able to write more business, those renewal commissions will compound year after year. This will make the biggest impact after the first year and thereafter. In addition, if the Contractor hires a new producer, the business they write will also continue to gain revenue year after year. The Contractor will also be able to get out from under debt, which will help get the Contractor to a profitable state again. Once the Contractor is profitable, the Contractor can then maintain its own operating expenses.
3. The Contractor shall use the funds it receives in the following categories:
 - 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 provide the following information at least once per year for two (2) 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 consistent with Paragraph 2 of this Schedule A.

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 the Contractor's own funds, consistent with Paragraph 2 of Schedule A of this Agreement, prior to the expiration 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.
4. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories as set forth below:
 - 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 4, the Contractor shall obtain written consent from the President/CEO of UCEDA prior to including such expenditure on any reimbursement invoice.

5. 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 the President/CEO of UCEDA (c/o Samantha Liotta, Business Services Administrator), on or before the fifth (5th) day of the month for the expenditures made by the Contractor during the previous month.
6. The Contractor shall submit to the UCEDA original invoices for payment.
7. Upon receipt of each invoice and proof of expenditures, the UCEDA shall submit an invoice to the County's Finance Department showing its intent to award direct financial assistance to the Contractor, pursuant to County Contract 2022-00000695. Upon the County's approval of the invoice, the County shall remit payment to the UCEDA. The UCEDA shall remit payment to the Contractor within sixty (60) days of its receipt of payment from the County.
8. 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.
9. 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.

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 New York limited liability company with principal offices at 6 Oriole Drive, 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) pursuant to which UCEDA agreed to administer a subaward of the CLFRF for the purpose of providing assistance to Ulster County small businesses for the benefit of low- to moderate-income business owners (the Ulster County CARES II Small Business Assistance Program); and

WHEREAS, certain Ulster County businesses applied for funding under the Ulster County CARES II Small Business Assistance Program, were initially deemed eligible and awarded funding by UCEDA, but were later deemed to be ineligible to receive funding under the County Contract No. 2022-00000303; and

WHEREAS, said certain ineligible businesses’ applications for funding under the Ulster County CARES II Small Business Assistance Program are on file with UCEDA; and

WHEREAS, the Board of Directors of the UCEDA authorized the UCEDA to enter into County Contract No. 2022-00000695 on August 8, 2023, pending Legislative approval, pursuant to which the UCEDA shall provide assistance to said certain ineligible businesses utilizing a different program; and

WHEREAS, the Ulster County Legislature passed Resolution No. 437 authorizing the County to enter into an Agreement with the UCEDA (County Contract No. 2022-00000695); and

WHEREAS, the Contractor applied for assistance from UCEDA through the Ulster County CARES II Small Business Assistance Program, and the UCEDA deemed the Contractor eligible and awarded the Contractor assistance through the Program, and the Contractor was later deemed to be ineligible to receive funding under the County Contract No. 2022-00000303; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance in order to honor the

award made to the Contractor, 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 December 31, 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 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 Drive
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 pursuant to this Agreement as set forth below:
 - a. The Contractor proposes to design, prototype, and make 4 new products. These 4 new products will have an initial run of 150 products each. The budget consists of all the materials and supplies needed to make these products. For example, this includes the fabric, the screens and the ink as well as studio time at Women's Studio Workshop in order to print the designs. The Contractor also budgeted for a professional product photographer to take pictures for use on the website and social media to market the new products. The Contractor included the packaging and marketing materials for a successful product launch. As all craft events were cancelled in 2020 and many in 2021, the Contractor budgeted to attend a craft event in the spring of 2023 called Field + Supply in Kingston NY. This event will serve to launch these new products and help to create content and marketing for its business.
 - b. The Contractor proposes to design, prototype, and make 4 new products. These 4 new products will have an initial run of 150 products each. The Contractor also budgeted for marketing and launching these at a craft event in the spring of 2023. The new products will be available for sale online through a website and on the Etsy store. They will also be available at craft fairs and events throughout 2023 and continuing into the following year. The impact this will have will be measured in terms of units sold at • Online Sales of new products • Craft event Sales of new products • Wholesale orders of new products • Also Marketing on these new products will bring new followers on social media to convert into customers • Bringing new customers to turn into repeat customers through email marketing.
 - c. With the momentum these new products will give the Contractor aims to reinvest back into the Contractor's business. Particularly within developing and streamlining the website and social media channels. The Contractor would like to be able outsource some of the sewing and this is one of the ways the Contractor would like to grow its business in the future.
3. The Contractor shall use the funds it receives in the following categories:
 - 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 provide the following information at least once per year for two (2) 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 consistent with Paragraph 2 of this Schedule A.

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 NINE AND 00/100 (\$6,409.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend the Contractor's own funds, consistent with Paragraph 2 of Schedule A of this Agreement, prior to the expiration 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.
4. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories as set forth below:
 - 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 4, the Contractor shall obtain written consent from the President/CEO of UCEDA prior to including such expenditure on any reimbursement invoice.

5. 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 the President/CEO of UCEDA (c/o Samantha Liotta, Business Services Administrator), on or before the fifth (5th) day of the month for the expenditures made by the Contractor during the previous month.
6. The Contractor shall submit to the UCEDA original invoices for payment.
7. Upon receipt of each invoice and proof of expenditures, the UCEDA shall submit an invoice to the County's Finance Department showing its intent to award direct financial assistance to the Contractor, pursuant to County Contract 2022-00000695. Upon the County's approval of the invoice, the County shall remit payment to the UCEDA. The UCEDA shall remit payment to the Contractor within sixty (60) days of its receipt of payment from the County.
8. 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.
9. 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.

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 **WARDELL POTTERY**, a partnership registered in New York with principal offices at 158 Partition Street, 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) pursuant to which UCEDA agreed to administer a subaward of the CLFRF for the purpose of providing assistance to Ulster County small businesses for the benefit of low- to moderate-income business owners (the Ulster County CARES II Small Business Assistance Program); and

WHEREAS, certain Ulster County businesses applied for funding under the Ulster County CARES II Small Business Assistance Program, were initially deemed eligible and awarded funding by UCEDA, but were later deemed to be ineligible to receive funding under the County Contract No. 2022-00000303; and

WHEREAS, said certain ineligible businesses’ applications for funding under the Ulster County CARES II Small Business Assistance Program are on file with UCEDA; and

WHEREAS, the Board of Directors of the UCEDA authorized the UCEDA to enter into County Contract No. 2022-00000695 on August 8, 2023, pending Legislative approval, pursuant to which the UCEDA shall provide assistance to said certain ineligible businesses utilizing a different program; and

WHEREAS, the Ulster County Legislature passed Resolution No. 437 authorizing the County to enter into an Agreement with the UCEDA (County Contract No. 2022-00000695); and

WHEREAS, the Contractor applied for assistance from UCEDA through the Ulster County CARES II Small Business Assistance Program, and the UCEDA deemed the Contractor eligible and awarded the Contractor assistance through the Program, and the Contractor was later deemed to be ineligible to receive funding under the County Contract No. 2022-00000303; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance in order to honor the

award made to the Contractor, 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 December 31, 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 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:
WARDELL POTTERY
158 Partition Street
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: _____

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 pursuant to this Agreement as set forth below:
 - a. The grant will cover a majority of the costs of the project to respond to changes in the craft market, and the business, due to COVID. These upgrades and replacements will also significantly improve production capacity and the long term resilience of the business. The overall project will include • Upgrading of pottery equipment, including purchase of two (2) pottery wheels and two (2) electric 7 cubic foot kilns. This upgrade will replace 30+ year old pottery wheels and a 25+ year old 7 cubic foot electric kiln that currently requires frequent repairs • An additional ware cart and shelves to support the anticipated increased production • Accessories for the kilns that will significantly increase our production capacity and flexibility without requiring expensive upgrades of the house and studio electric service • Expendable supplies needed to ensure dependable uninterrupted operation of the pottery kilns
 - b. Current sales in the shop (and local wholesale customers) averages approximately \$1,400 - \$1,800 per week. Given current equipment (pottery wheels and kilns) it has been challenging to keep up with the demand for pottery. Before the Contractor attempts to build the business further (exploring wholesale or on-line sales, increasing shop hours) the Contractor needs to upgrade production equipment. It is expected that the equipment purchased with the grant will increase output of pottery by 25-40%, mostly through improved reliability and increased firing capacity of two additional kilns. The kiln "carts" that are part of the proposal will allow the Contractor to fire more frequently without the need to upgrade the electric system in the studio. With the ability to produce pottery more efficiently, the Contractor will be able to confidently increase advertising (for local retail sales) and explore wholesale opportunities and on-line sales locally and nationally.
 - c. The equipment will replace aging equipment that requires frequent service. The replacement of this equipment will significantly increase efficiency and production capability, allowing the Contractor to more quickly grow the business. By improving production capacity, the Contractor can expect to produce a wider variety of pottery, which will improve customer's experience in the retail location and allow business to grow. The Contractor can also consider additional wholesale accounts and building an on-line presence, confident that the Contractor can produce the required product. Lastly, should the Contractor again be faced with another pandemic that limits face to face contact with customers, the improved variety of work offered will provide improved opportunities in the on-line market for handmade goods.
3. The Contractor shall use the funds it receives in the following categories:
 - 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 provide the following information at least once per year for two (2) 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 consistent with Paragraph 2 of this Schedule A.

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 SIXTY-NINE AND 00/100 (\$17,769.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend the Contractor's own funds, consistent with Paragraph 2 of Schedule A of this Agreement, prior to the expiration 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.
4. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories as set forth below:
 - 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 4, the Contractor shall obtain written consent from the President/CEO of UCEDA prior to including such expenditure on any reimbursement invoice.

5. 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 the President/CEO of UCEDA (c/o Samantha Liotta, Business Services Administrator), on or before the fifth (5th) day of the month for the expenditures made by the Contractor during the previous month.
6. The Contractor shall submit to the UCEDA original invoices for payment.
7. Upon receipt of each invoice and proof of expenditures, the UCEDA shall submit an invoice to the County's Finance Department showing its intent to award direct financial assistance to the Contractor, pursuant to County Contract 2022-00000695. Upon the County's approval of the invoice, the County shall remit payment to the UCEDA. The UCEDA shall remit payment to the Contractor within sixty (60) days of its receipt of payment from the County.
8. 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.
9. 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.

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 New York limited liability company 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) pursuant to which UCEDA agreed to administer a subaward of the CLFRF for the purpose of providing assistance to Ulster County small businesses for the benefit of low- to moderate-income business owners (the Ulster County CARES II Small Business Assistance Program); and

WHEREAS, certain Ulster County businesses applied for funding under the Ulster County CARES II Small Business Assistance Program, were initially deemed eligible and awarded funding by UCEDA, but were later deemed to be ineligible to receive funding under the County Contract No. 2022-00000303; and

WHEREAS, said certain ineligible businesses’ applications for funding under the Ulster County CARES II Small Business Assistance Program are on file with UCEDA; and

WHEREAS, the Board of Directors of the UCEDA authorized the UCEDA to enter into County Contract No. 2022-00000695 on August 8, 2023, pending Legislative approval, pursuant to which the UCEDA shall provide assistance to said certain ineligible businesses utilizing a different program; and

WHEREAS, the Ulster County Legislature passed Resolution No. 437 authorizing the County to enter into an Agreement with the UCEDA (County Contract No. 2022-00000695); and

WHEREAS, the Contractor applied for assistance from UCEDA through the Ulster County CARES II Small Business Assistance Program, and the UCEDA deemed the Contractor eligible and awarded the Contractor assistance through the Program, and the Contractor was later deemed to be ineligible to receive funding under the County Contract No. 2022-00000303; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance in order to honor the

award made to the Contractor, 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 December 31, 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 TWO HUNDRED NINETY-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 pursuant to this Agreement as set forth below:
 - a. The Contractor at the time of application had an underutilized commercial kitchen and dining area. The Contractor purchased this business in July 2021 during COVID and at that point were financially unable to open and meet all the safety restrictions imposed by COVID protocols to open the restaurant safely. Upon the date of application, the Contractor has renovated almost all 12 cabins (11 and counting!) and there is a demand and need for restaurant service on site; opening a restaurant to service lodge guests would benefit and grow the business. The Contractor will use these funds to purchase kitchen and HVAC equipment, and new flooring.
 - b. The Contractor projects a gross first revenue of \$65,000. This is an added revenue stream that meets the needs of Lodge guests.
 - c. The Contractor projects 5-10% year over year growth in occupancy due to having a restaurant on site, which will increase both lodging and restaurant revenue. The Contractor is confident having a full service lodge will attract more guests.

3. The Contractor shall use the funds it receives in the following categories:

- 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 provide the following information at least once per year for two (2) 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 consistent with Paragraph 2 of this Schedule A.

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 TWO HUNDRED NINETY-FOUR AND 00/100 (\$34,294.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend the Contractor's own funds, consistent with Paragraph 2 of Schedule A of this Agreement, prior to the expiration 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.
4. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories as set forth below:
 - 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 4, the Contractor shall obtain written consent from the President/CEO of UCEDA prior to including such expenditure on any reimbursement invoice.

5. 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 the President/CEO of UCEDA (c/o Samantha Liotta, Business Services Administrator), on or before the fifth (5th) day of the month for the expenditures made by the Contractor during the previous month.
6. The Contractor shall submit to the UCEDA original invoices for payment.
7. Upon receipt of each invoice and proof of expenditures, the UCEDA shall submit an invoice to the County's Finance Department showing its intent to award direct financial assistance to the Contractor, pursuant to County Contract 2022-00000695. Upon the County's approval of the invoice, the County shall remit payment to the UCEDA. The UCEDA shall remit payment to the Contractor within sixty (60) days of its receipt of payment from the County.
8. 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.
9. 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.

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 New York limited liability company 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) pursuant to which UCEDA agreed to administer a subaward of the CLFRF for the purpose of providing assistance to Ulster County small businesses for the benefit of low- to moderate-income business owners (the Ulster County CARES II Small Business Assistance Program); and

WHEREAS, certain Ulster County businesses applied for funding under the Ulster County CARES II Small Business Assistance Program, were initially deemed eligible and awarded funding by UCEDA, but were later deemed to be ineligible to receive funding under the County Contract No. 2022-00000303; and

WHEREAS, said certain ineligible businesses’ applications for funding under the Ulster County CARES II Small Business Assistance Program are on file with UCEDA; and

WHEREAS, the Board of Directors of the UCEDA authorized the UCEDA to enter into County Contract No. 2022-00000695 on August 8, 2023, pending Legislative approval, pursuant to which the UCEDA shall provide assistance to said certain ineligible businesses utilizing a different program; and

WHEREAS, the Ulster County Legislature passed Resolution No. 437 authorizing the County to enter into an Agreement with the UCEDA (County Contract No. 2022-00000695); and

WHEREAS, the Contractor applied for assistance from UCEDA through the Ulster County CARES II Small Business Assistance Program, and the UCEDA deemed the Contractor eligible and awarded the Contractor assistance through the Program, and the Contractor was later deemed to be ineligible to receive funding under the County Contract No. 2022-00000303; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance in order to honor the

award made to the Contractor, 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 December 31, 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 (c) 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 pursuant to this Agreement as set forth below:
 - a. The funds will be used only for an office technology upgrade. This will include 2 desktop computers, 3 monitors, 3 types of printers to include a HP DesignJet Z6 - 44" PostScript Printer with V-Trimmer with battery backup (\$6900), 2 office chairs and flat file storage cabinet (10 drawer).
 - b. The measurable impact will be that The Contractor can keep up with the everchanging technology upgrades and provide their clients with the most up-to-date documentation for their land use and development projects. This will improve the Contractor's effectiveness upon presenting land use development projects to municipalities (Planning and Zoning Boards) within the Hudson Valley.
 - c. The Contractor will be able to keep pace with their competitors as technology evolves and pivot the company as required by industry standards with this much needed technology upgrade.
3. The Contractor shall use the funds it receives in the following categories:
 - 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 provide the following information at least once per year for two (2) 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 consistent with Paragraph 2 of this Schedule A.

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 the Contractor's own funds, consistent with Paragraph 2 of Schedule A of this Agreement, prior to the expiration 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.
4. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories as set forth below:
 - 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 4, the Contractor shall obtain written consent from the President/CEO of UCEDA prior to including such expenditure on any reimbursement invoice.

5. 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 the President/CEO of UCEDA (c/o Samantha Liotta, Business Services Administrator), on or before the fifth (5th) day of the month for the expenditures made by the Contractor during the previous month.
6. The Contractor shall submit to the UCEDA original invoices for payment.
7. Upon receipt of each invoice and proof of expenditures, the UCEDA shall submit an invoice to the County's Finance Department showing its intent to award direct financial assistance to the Contractor, pursuant to County Contract 2022-00000695. Upon the County's approval of the invoice, the County shall remit payment to the UCEDA. The UCEDA shall remit payment to the Contractor within sixty (60) days of its receipt of payment from the County.
8. 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.
9. 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.

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 New York limited liability company 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) pursuant to which UCEDA agreed to administer a subaward of the CLFRF for the purpose of providing assistance to Ulster County small businesses for the benefit of low- to moderate-income business owners (the Ulster County CARES II Small Business Assistance Program); and

WHEREAS, certain Ulster County businesses applied for funding under the Ulster County CARES II Small Business Assistance Program, were initially deemed eligible and awarded funding by UCEDA, but were later deemed to be ineligible to receive funding under the County Contract No. 2022-00000303; and

WHEREAS, said certain ineligible businesses’ applications for funding under the Ulster County CARES II Small Business Assistance Program are on file with UCEDA; and

WHEREAS, the Board of Directors of the UCEDA authorized the UCEDA to enter into County Contract No. 2022-00000695 on August 8, 2023, pending Legislative approval, pursuant to which the UCEDA shall provide assistance to said certain ineligible businesses utilizing a different program; and

WHEREAS, the Ulster County Legislature passed Resolution No. 437 authorizing the County to enter into an Agreement with the UCEDA (County Contract No. 2022-00000695); and

WHEREAS, the Contractor applied for assistance from UCEDA through the Ulster County CARES II Small Business Assistance Program, and the UCEDA deemed the Contractor eligible and awarded the Contractor assistance through the Program, and the Contractor was later deemed to be ineligible to receive funding under the County Contract No. 2022-00000303; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance in order to honor the

award made to the Contractor, 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 December 31, 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 pursuant to this Agreement as set forth below:
 - a. Goal: Add room 11 and 3 rooms in the motel house to inventory. Move office out of room 11 and renovate the newly created office and garage. The first use would be to pay the mortgage and some utilities on the property for 3 months. The Contractor is moving the office to the house on the property. The additional funds would be used for : **Repainting/patching the existing room and adding a privacy wall to the deck. **The office area in the house will need: a desk area, the flooring redone and some windows replaced. Upgrade the electric. **The Contractor is renovating the garage area so that the on-site storage can move there. The garage needs: sheetrock and insulation, electric upgraded, a new garage door as well as painting and trim. **In order to rent some of the rooms out in the house the Contractor needs to add mini-splits and update the bathroom. ** Several replacement windows added to room 11 and the house. These funds will allow for these much needed upgrades and renovation to help to continue to foster the growth in visitors, overnight guests and economic development in the County
 - b. If the Contractor is able to complete the renovations for room 11 and the adjacent motel house, the Contractor will add 4 rooms and increase revenue minimally by \$60,000.00 per year. The Contractor would also be able to hire additional seasonal employees/contractors and produce additional pop-up events for guests and the broader community. These events in the past have included movie screenings; food pop-ups with local chefs and farmers. The Contractor would be able to extend these events and share them with the local community.
 - c. With these much needed funds, the Contractor will complete the much needed renovation and thereby support year over year revenue and build on the growing success that the Contractor has brought to the community and the County. Beyond these next 12 months, the Contractor will be on more stable footing and able to build on its profit and expand the marketing to continue to ensure that the motel becomes a year-round destination in Ulster County. While room hotel occupancy is continuing to rise in Ulster County, this added funding from the County it will help to support local owned companies like the Contractor to be successful in the short and long term.
3. The Contractor shall use the funds it receives in the following categories:
 - 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 provide the following information at least once per year for two (2) 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 consistent with Paragraph 2 of this Schedule A.

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 the Contractor's own funds, consistent with Paragraph 2 of Schedule A of this Agreement, prior to the expiration 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.
4. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories as set forth below:
 - 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 4, the Contractor shall obtain written consent from the President/CEO of UCEDA prior to including such expenditure on any reimbursement invoice.

5. 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 the President/CEO of UCEDA (c/o Samantha Liotta, Business Services Administrator), on or before the fifth (5th) day of the month for the expenditures made by the Contractor during the previous month.
6. The Contractor shall submit to the UCEDA original invoices for payment.
7. Upon receipt of each invoice and proof of expenditures, the UCEDA shall submit an invoice to the County's Finance Department showing its intent to award direct financial assistance to the Contractor, pursuant to County Contract 2022-00000695. Upon the County's approval of the invoice, the County shall remit payment to the UCEDA. The UCEDA shall remit payment to the Contractor within sixty (60) days of its receipt of payment from the County.
8. 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.
9. 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.

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 new York limited liability company 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 restart 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) pursuant to which UCEDA agreed to administer a subaward of the CLFRF for the purpose of providing assistance to Ulster County small businesses for the benefit of low- to moderate-income business owners (the Ulster County CARES II Small Business Assistance Program); and

WHEREAS, certain Ulster County businesses applied for funding under the Ulster County CARES II Small Business Assistance Program, were initially deemed eligible and awarded funding by UCEDA, but were later deemed to be ineligible to receive funding under the County Contract No. 2022-00000303; and

WHEREAS, said certain ineligible businesses’ applications for funding under the Ulster County CARES II Small Business Assistance Program are on file with UCEDA; and

WHEREAS, the Board of Directors of the UCEDA authorized the UCEDA to enter into County Contract No. 2022-00000695 on August 8, 2023, pending Legislative approval, pursuant to which the UCEDA shall provide assistance to said certain ineligible businesses utilizing a different program; and

WHEREAS, the Ulster County Legislature passed Resolution No. 437 authorizing the County to enter into an Agreement with the UCEDA (County Contract No. 2022-00000695); and

WHEREAS, the Contractor applied for assistance from UCEDA through the Ulster County CARES II Small Business Assistance Program, and the UCEDA deemed the Contractor eligible and awarded the Contractor assistance through the Program, and the Contractor was later deemed to be ineligible to receive funding under the County Contract No. 2022-00000303; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance in order to honor the

award made to the Contractor, 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 December 31, 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 (c) 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 pursuant to this Agreement as set forth below:
 - a. There are four proposed uses of funds: 1. investment in external condensers in order to have a more efficient refrigeration system that creates a quieter indoor experience for customers. The Contractor was short on money in mid-2021 and got the best indoor refrigeration units the Contractor could afford, but an external condenser is a preferred method for a grocery store - this upgrade has been quoted at \$17,500. 2. Pave driveway with blacktop - this will make the conditions safer and is estimated to cost \$5,000. 3. The building is a 100 year old commercial space that is historic registered. The Contractor is keeping the original windows in line with the building's historic registration, but these are extremely expensive to insulate within the original look. With a \$20,000 construction budget, the Contractor's GC has offered to seal the gaps in the windows without altering their look. 4. The majority of the Contractor's team lives in Accord and works for between \$13-18/hr. The Contractor proposes additional working capital to be able to afford an additional staff and give existing staff a \$1/hour raise to keep up with inflation. 85% of people who live in the town of Rochester commute out of town for work - it's a benefit to have more people living and working in town. The Contractor estimates this cost at \$50,000.
 - b. With the money for the condensers, the coolers will be more efficient, effective, and more pleasant to work around. At the moment, they are extremely loud and it has turned off some customers. It has also driven up electric bills. A blacktop driveway would be safer in the winter months with fewer holes, ice areas, and water build-up. The insulation would greatly help with utility bills and carbon footprint, also adding to comfort for people working in the building. Additionally, keeping the store cooler in the summer would keep the local produce fresher. The raises would help with morale since many staff have seen cost of living rise - however, since there's been 20-30% inflation in groceries this year, the Contractor has kept margins small to keep local products within reach - however, this has come at the expense of the ability to pay people more.
 - c. Running a local grocery is a very tight margin business and the Contractor spent over \$100,000 additional in the beginning due to Covid delays. Having a more energy efficient pleasant space will accrue value over time and allow the business to survive in the long-term. Having a larger team of people the Contractor can pay more grow our community and offer better service to residents and the farmers/makers the Contractor works with. If the Contractor can get past this post-covid inflationary crunch, the Contractor believes the business can buy support over a million dollars in local purchasing every year indefinitely as well as paying over a million in wages for local residents per year.
3. The Contractor shall use the funds it receives in the following categories:
 - 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 provide the following information at least once per year for two (2) 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 consistent with Paragraph 2 of this Schedule A.

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 the Contractor's own funds, consistent with Paragraph 2 of Schedule A of this Agreement, prior to the expiration 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.
4. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories as set forth below:
 - 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 4, the Contractor shall obtain written consent from the President/CEO of UCEDA prior to including such expenditure on any reimbursement invoice.

5. 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 the President/CEO of UCEDA (c/o Samantha Liotta, Business Services Administrator), on or before the fifth (5th) day of the month for the expenditures made by the Contractor during the previous month.
6. The Contractor shall submit to the UCEDA original invoices for payment.
7. Upon receipt of each invoice and proof of expenditures, the UCEDA shall submit an invoice to the County's Finance Department showing its intent to award direct financial assistance to the Contractor, pursuant to County Contract 2022-00000695. Upon the County's approval of the invoice, the County shall remit payment to the UCEDA. The UCEDA shall remit payment to the Contractor within sixty (60) days of its receipt of payment from the County.
8. 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.
9. 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.

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 Road, 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) pursuant to which UCEDA agreed to administer a subaward of the CLFRF for the purpose of providing assistance to Ulster County small businesses for the benefit of low- to moderate-income business owners (the Ulster County CARES II Small Business Assistance Program); and

WHEREAS, certain Ulster County businesses applied for funding under the Ulster County CARES II Small Business Assistance Program, were initially deemed eligible and awarded funding by UCEDA, but were later deemed to be ineligible to receive funding under the County Contract No. 2022-00000303; and

WHEREAS, said certain ineligible businesses’ applications for funding under the Ulster County CARES II Small Business Assistance Program are on file with UCEDA; and

WHEREAS, the Board of Directors of the UCEDA authorized the UCEDA to enter into County Contract No. 2022-00000695 on August 8, 2023, pending Legislative approval, pursuant to which the UCEDA shall provide assistance to said certain ineligible businesses utilizing a different program; and

WHEREAS, the Ulster County Legislature passed Resolution No. 437 authorizing the County to enter into an Agreement with the UCEDA (County Contract No. 2022-00000695); and

WHEREAS, the Contractor applied for assistance from UCEDA through the Ulster County CARES II Small Business Assistance Program, and the UCEDA deemed the Contractor eligible and awarded the Contractor assistance through the Program, and the Contractor was later deemed to be ineligible to receive funding under the County Contract No. 2022-00000303; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance in order to honor the

award made to the Contractor, 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 December 31, 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 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 Road
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 pursuant to this Agreement as set forth below:
 - a. The following improvements in studio space, equipment, and business development activities will allow the Contractor to expand the type of visual assets provided, and will grow the Contractor's client base, adding resiliency to the business as different markets expand and contract/clients needs change over time. Rent and Utilities at the Contractor's studio at 1-3 Henry W. DuBois Drive: \$3100 Necessary studio equipment and furniture: This includes upgraded strobe lighting units, a new video-capable camera, additional light stands, a studio cart/tech station for shooting into a computer, a studio monitor, a desk, and an upgraded file storage/backup system. Lights: \$8256.00 The Contractor will purchase a pair of industry-standard Profoto D2 strobe lights and a pair of Aputure 600d LED continuous lights. A faster, video-capable camera: \$5496.95 Funds for a Nikon z9 camera. 3 light stands: \$809.64 Computer monitor and hard drive storage: \$2279 Apple studio display and a hard drive array for backing up and storing files. Furniture/Equipment Storage: \$657 A desk, a laptop/shooting tech station, shelves for storing equipment and supplies. Since moving into the studio, the Contractor hasn't had the extra funds to dedicate to making the space a fully-functional, professional studio. These funds would pay for a desk, a tech station (a dedicated table for a laptop and monitor for shoots), and shelving for storing equipment and supplies. Paid internship: \$2295.00 (135 hours at \$17/hour) This spring semester, the Contractor plans to offer a paid internship in conjunction with the photo department at SUNY New Paltz. Daycare tuition: \$4076.48.
 - b. Funds will have a measurable impact over the next 12 months by allowing the Contractor to immediately set up the studio with modern equipment, dramatically expand image-making capabilities in a way that meets contemporary client needs, increase revenue, and expand client outreach efforts.
 - c. This funding, by investing in modern equipment, client outreach, and crew training will create resiliency well beyond the first year. The equipment itself will not only last for years to come, but the revenue generated from rental fees will allow the Contractor to upgrade if needed and to otherwise reinvest in the business to maintain competitiveness. By not having to rely on NYC rental houses, the Contractor will remain resilient and nimble as shoots come up and, after 2023-4, the Contractor may assess the feasibility of renting equipment and studio space to other local photographers. By investing in client outreach now, the Contractor will be building a diverse portfolio of food clients, cosmetics clients, magazine clients, video clients, and others. In doing so, the Contractor will be setting up for resiliency, even as markets shift. Through the internship, the Contractor will gain a long-term relationship with the SUNY New Paltz Photo department and thus plug the business into a stream of potential assistants and digital technicians based locally in New Paltz.
3. The Contractor shall use the funds it receives in the following categories:
 - 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 provide the following information at least once per year for two (2) 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 consistent with Paragraph 2 of this Schedule A.

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 TWENTY-FOUR AND 00/100 (\$17,324.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend the Contractor's own funds, consistent with Paragraph 2 of Schedule A of this Agreement, prior to the expiration 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.
4. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories as set forth below:
 - 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 4, the Contractor shall obtain written consent from the President/CEO of UCEDA prior to including such expenditure on any reimbursement invoice.

5. 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 the President/CEO of UCEDA (c/o Samantha Liotta, Business Services Administrator), on or before the fifth (5th) day of the month for the expenditures made by the Contractor during the previous month.
6. The Contractor shall submit to the UCEDA original invoices for payment.
7. Upon receipt of each invoice and proof of expenditures, the UCEDA shall submit an invoice to the County's Finance Department showing its intent to award direct financial assistance to the Contractor, pursuant to County Contract 2022-00000695. Upon the County's approval of the invoice, the County shall remit payment to the UCEDA. The UCEDA shall remit payment to the Contractor within sixty (60) days of its receipt of payment from the County.
8. 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.
9. 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.

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 domestic business corporation with principal offices at 23 Tempaloni Road, 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) pursuant to which UCEDA agreed to administer a subaward of the CLFRF for the purpose of providing assistance to Ulster County small businesses for the benefit of low- to moderate-income business owners (the Ulster County CARES II Small Business Assistance Program); and

WHEREAS, certain Ulster County businesses applied for funding under the Ulster County CARES II Small Business Assistance Program, were initially deemed eligible and awarded funding by UCEDA, but were later deemed to be ineligible to receive funding under the County Contract No. 2022-00000303; and

WHEREAS, said certain ineligible businesses’ applications for funding under the Ulster County CARES II Small Business Assistance Program are on file with UCEDA; and

WHEREAS, the Board of Directors of the UCEDA authorized the UCEDA to enter into County Contract No. 2022-00000695 on August 8, 2023, pending Legislative approval, pursuant to which the UCEDA shall provide assistance to said certain ineligible businesses utilizing a different program; and

WHEREAS, the Ulster County Legislature passed Resolution No. 437 authorizing the County to enter into an Agreement with the UCEDA (County Contract No. 2022-00000695); and

WHEREAS, the Contractor applied for assistance from UCEDA through the Ulster County CARES II Small Business Assistance Program, and the UCEDA deemed the Contractor eligible and awarded the Contractor assistance through the Program, and the Contractor was later deemed to be ineligible to receive funding under the County Contract No. 2022-00000303; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance in order to honor the

award made to the Contractor, 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 December 31, 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 Rdoad
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 pursuant to this Agreement as set forth below:
 - a. Funds will be used to improve access and enhance SOAR (Specialized Outdoor Adaptive Recreations) program for guests with mobility impairments. Projects include making an additional 300' - 400' of trails accessible to our all-terrain wheelchairs, ADA compliant picnic tables and a Yurt building to allow guests of all abilities to have a sheltered camping experience - this has been requested by several rehabilitation hospitals that we have partnered with over the past several years.
 - b. These enhancements will directly increase the number of students training at NORA, both mobility impaired guests in addition to able bodied guests. The Contractor has received requests to allow camping for guests with mobility impairments, however they can not easily stay in a tent as ingress/egress may be challenging. While the Contractor already has overnight programs for able-bodied guests, this funding will allow the Contractor to expand overnight camping programs for guests of all abilities. In 2022 the Contractor had 30 able-bodied overnight students and zero students with mobility impairments. The Contractor expects this funding will enable for 60 able-bodied students and 10 students with mobility impairments in 2023.
 - c. The Contractor is recognized as the premier off road driving training facility in the Northeast, in addition to a destination venue where guests with mobility impairments can recreate in the woods with their family, friends and caretakers. This funding will allow the Contractor to become a multi-day destination which will increase brand awareness for the long-term and increase our bookings
3. The Contractor shall use the funds it receives in the following categories:
 - 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 provide the following information at least once per year for two (2) 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 consistent with Paragraph 2 of this Schedule A.

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 the Contractor's own funds, consistent with Paragraph 2 of Schedule A of this Agreement, prior to the expiration 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.
4. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories as set forth below:
 - 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 4, the Contractor shall obtain written consent from the President/CEO of UCEDA prior to including such expenditure on any reimbursement invoice.

5. 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 the President/CEO of UCEDA (c/o Samantha Liotta, Business Services Administrator), on or before the fifth (5th) day of the month for the expenditures made by the Contractor during the previous month.
6. The Contractor shall submit to the UCEDA original invoices for payment.
7. Upon receipt of each invoice and proof of expenditures, the UCEDA shall submit an invoice to the County's Finance Department showing its intent to award direct financial assistance to the Contractor, pursuant to County Contract 2022-00000695. Upon the County's approval of the invoice, the County shall remit payment to the UCEDA. The UCEDA shall remit payment to the Contractor within sixty (60) days of its receipt of payment from the County.
8. 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.
9. 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.

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 domestic business corporation 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) pursuant to which UCEDA agreed to administer a subaward of the CLFRF for the purpose of providing assistance to Ulster County small businesses for the benefit of low- to moderate-income business owners (the Ulster County CARES II Small Business Assistance Program); and

WHEREAS, certain Ulster County businesses applied for funding under the Ulster County CARES II Small Business Assistance Program, were initially deemed eligible and awarded funding by UCEDA, but were later deemed to be ineligible to receive funding under the County Contract No. 2022-00000303; and

WHEREAS, said certain ineligible businesses’ applications for funding under the Ulster County CARES II Small Business Assistance Program are on file with UCEDA; and

WHEREAS, the Board of Directors of the UCEDA authorized the UCEDA to enter into County Contract No. 2022-00000695 on August 8, 2023, pending Legislative approval, pursuant to which the UCEDA shall provide assistance to said certain ineligible businesses utilizing a different program; and

WHEREAS, the Ulster County Legislature passed Resolution No. 437 authorizing the County to enter into an Agreement with the UCEDA (County Contract No. 2022-00000695); and

WHEREAS, the Contractor applied for assistance from UCEDA through the Ulster County CARES II Small Business Assistance Program, and the UCEDA deemed the Contractor eligible and awarded the Contractor assistance through the Program, and the Contractor was later deemed to be ineligible to receive funding under the County Contract No. 2022-00000303; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance in order to honor the

award made to the Contractor, 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 December 31, 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 (c) 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 pursuant to this Agreement as set forth below:
 - a. The funds will be used to purchase 1. furniture: 3-4 tables, 8 chairs, 15ft cushion for banquet for customer seating; 2. equipment: 2-3 display case refrigerators; 1 large walk-in refrigerator; 3. counter top: stone counter top for existing wood 8ft L-shaped counter; 4. shelving units for storage; 5. storage unit for packaging and other inventory; 6. permits and licenses required to operate a retail establishment, overhead, labor and other operating expenses.
 - b. The funding will allow the Contractor to increase revenues to \$500-\$600/day on average as the Contractor plans to incorporate the cheese and yogurt products into grab-and-go value-added products for direct sale to customers in addition to selling individual units. This is an average increase of \$10,000-\$12,000 per month in revenues.
 - c. If the Contractor can establish a retail component that complements and supports existing wholesale business, the Contractor will have a broader and more consistent stream of revenues to handle any future challenges on either side of the business. The area of Kerhonkson is growing rapidly and a neighboring building has recently launched a very successful grocery market with plans to open a restaurant early next year. The future looks very bright for this area of Ulster County.
3. The Contractor shall use the funds it receives in the following categories:
 - 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 provide the following information at least once per year for two (2) 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 consistent with Paragraph 2 of this Schedule A.

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 the Contractor's own funds, consistent with Paragraph 2 of Schedule A of this Agreement, prior to the expiration 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.
4. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories as set forth below:
 - 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 4, the Contractor shall obtain written consent from the President/CEO of UCEDA prior to including such expenditure on any reimbursement invoice.

5. 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 the President/CEO of UCEDA (c/o Samantha Liotta, Business Services Administrator), on or before the fifth (5th) day of the month for the expenditures made by the Contractor during the previous month.
6. The Contractor shall submit to the UCEDA original invoices for payment.
7. Upon receipt of each invoice and proof of expenditures, the UCEDA shall submit an invoice to the County's Finance Department showing its intent to award direct financial assistance to the Contractor, pursuant to County Contract 2022-00000695. Upon the County's approval of the invoice, the County shall remit payment to the UCEDA. The UCEDA shall remit payment to the Contractor within sixty (60) days of its receipt of payment from the County.
8. 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.
9. 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.

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 New York limited liability company 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) pursuant to which UCEDA agreed to administer a subaward of the CLFRF for the purpose of providing assistance to Ulster County small businesses for the benefit of low- to moderate-income business owners (the Ulster County CARES II Small Business Assistance Program); and

WHEREAS, certain Ulster County businesses applied for funding under the Ulster County CARES II Small Business Assistance Program, were initially deemed eligible and awarded funding by UCEDA, but were later deemed to be ineligible to receive funding under the County Contract No. 2022-00000303; and

WHEREAS, said certain ineligible businesses’ applications for funding under the Ulster County CARES II Small Business Assistance Program are on file with UCEDA; and

WHEREAS, the Board of Directors of the UCEDA authorized the UCEDA to enter into County Contract No. 2022-00000695 on August 8, 2023, pending Legislative approval, pursuant to which the UCEDA shall provide assistance to said certain ineligible businesses utilizing a different program; and

WHEREAS, the Ulster County Legislature passed Resolution No. 437 authorizing the County to enter into an Agreement with the UCEDA (County Contract No. 2022-00000695); and

WHEREAS, the Contractor applied for assistance from UCEDA through the Ulster County CARES II Small Business Assistance Program, and the UCEDA deemed the Contractor eligible and awarded the Contractor assistance through the Program, and the Contractor was later deemed to be ineligible to receive funding under the County Contract No. 2022-00000303; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance in order to honor the

award made to the Contractor, 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 December 31, 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 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 pursuant to this Agreement as set forth below:
 - a. **New Picnic Tables & Sanitary Coverings:** The Contractor hopes to add seven new picnic tables to the existing six in its picnic area. All of the tables would be covered with oilcloth so they can be simply and fully cleaned in-between each use. **Lighting & Heating for Picnic Table Area:** The Contractor would like to invest in portable heaters for each table in order to extend the picnic tables' use as long as possible, particularly in the shoulder seasons of April/May and October/November. The Contractor also plans to illuminate the entire picnic table area with industrial quality, all-weather string lighting. These improvements will make it easier for the Contractor to extend its picnic table area use later in the day, especially in the shoulder seasons when sunsets happen long before closure. In order to power this string lighting, the Contractor will need to run power to a centralized point in the picnic table area. The Contractor has an electrician's quote for this feature which would improve visibility and safety for its guests. **Picnic Table Area Boundary:** In order to expand and invite guests to our picnic area, the Contractor will need to establish a natural boundary for this outdoor dining area in compliance with licensing requirements. The Contractor will also need to apply for an expansion of our current, provisional liquor license in order to comply with regulations and best practices. To this end, the Contractor hopes to establish a natural evergreen boundary for the 100-foot perimeter between the picnic table area and parking lot, then wrap it around the existing tree barrier in order to make it a cohesive and cozy space that clearly delineates the boundary between the eating/drinking area and the parking lot. **Beautification & Native Plant Habitat Creation:** In the spirit of the Contractor's core mission to celebrate the bounty and beauty of our area, the Contractor worked with a native plant landscape designer to plan how to transform its industrial, boulder-ridden building facade into a beautiful and pollinator-friendly garden. The Contractor has often received feedback that while its building is architecturally striking, it can appear stark, unwelcoming, and even look closed during the off-season due to the lack of landscaping. The proposed garden design was inspiring, but unfortunately, beyond what the Contractor can afford at this time. Funding to create this space would not only increase its aesthetic appeal and grow the Contractor's business, but would create a pollinator garden with many native plants. The demands of this initiative are extensive – the Contractor needs to first remove several boulders from the property, fill in the areas with plant-friendly soil, and then make a significant investment in native plants to transform the space around our patio. The Contractor believes that this investment could have a huge impact both for the curb appeal and enjoyment of its patrons, along with providing a natural habitat for native pollinators. **Storage/Refrigeration Unit Transformation:** Given the small size of the Contractor's restaurant's indoor storage and refrigeration area, the Contractor had to bring in two shipping containers that sit on a concrete pad outside the core building. These containers house walk-in refrigeration, freezer, storage, and office areas. They're highly visible from the patio, where the majority of the patrons sit. The Contractor would love to transform these industrial and unsightly containers into something visually appealing and memorable. The Contractor has reached out to local artists about painting a mural that would be eye-catching and inviting for patrons driving by and seated on the patio, and would further support a visual artist. **Project Management:** In order to facilitate implementing these facility improvements, the Contractor needs to engage someone to manage getting this work done. The Contractor lost one of its core staff members this year, and due to budget constraints have not been able to replace her. Engaging someone to manage these projects would be instrumental in helping the Contractor to ensure this important work can be accomplished.
 - b. The Contractor believes that this funding could seed its restaurant's growth and have identified the following metrics and immediate goals: - Increase in year-over-year sales of at least 10% during the shoulder seasons: April-May and October/November - Reduce wait times for tables during the busier summer months: June-September - Increase the Contractor's year-over-year staff numbers and/or staff hours to meet growing demand - Re-invest funds in the Contractor's business and roll out new environmental and community projects, e.g. launching a compost program and planting a kitchen garden - Grow the Contractor's support and patronage of local businesses, farms, and food/beverage purveyors.
 - c. Once these short-term goals are achieved, the Contractor hopes to continue this growth trajectory for future years

and expand on them to: - Partner with the new Woodstock library opening next door, the Woodstock Volunteer Fire Department, or other local organizations for hosting community initiatives and events - Offer the Contractor's outdoor space for additional events and gatherings - Increase the Contractor's charitable donations - Become one of the core businesses in the area and expand the Contractor's presence and participation in the Woodstock business community. - Offer continued employment and mentoring opportunities for community members and support local food and beverage purveyors.

3. The Contractor shall use the funds it receives in the following categories:

- 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 provide the following information at least once per year for two (2) 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 consistent with Paragraph 2 of this Schedule A.

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 FIFTY-FIVE AND 00/100 (\$23,655.00) DOLLARS** for the Term of this Agreement.
2. The Contractor agrees to expend the Contractor's own funds, consistent with Paragraph 2 of Schedule A of this Agreement, prior to the expiration 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.
4. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories as set forth below:
 - 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 4, the Contractor shall obtain written consent from the President/CEO of UCEDA prior to including such expenditure on any reimbursement invoice.

5. 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 the President/CEO of UCEDA (c/o Samantha Liotta, Business Services Administrator), on or before the fifth (5th) day of the month for the expenditures made by the Contractor during the previous month.
6. The Contractor shall submit to the UCEDA original invoices for payment.
7. Upon receipt of each invoice and proof of expenditures, the UCEDA shall submit an invoice to the County's Finance Department showing its intent to award direct financial assistance to the Contractor, pursuant to County Contract 2022-00000695. Upon the County's approval of the invoice, the County shall remit payment to the UCEDA. The UCEDA shall remit payment to the Contractor within sixty (60) days of its receipt of payment from the County.
8. 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.
9. 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.

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 New York limited liability company 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) pursuant to which UCEDA agreed to administer a subaward of the CLFRF for the purpose of providing assistance to Ulster County small businesses for the benefit of low- to moderate-income business owners (the Ulster County CARES II Small Business Assistance Program); and

WHEREAS, certain Ulster County businesses applied for funding under the Ulster County CARES II Small Business Assistance Program, were initially deemed eligible and awarded funding by UCEDA, but were later deemed to be ineligible to receive funding under the County Contract No. 2022-00000303; and

WHEREAS, said certain ineligible businesses’ applications for funding under the Ulster County CARES II Small Business Assistance Program are on file with UCEDA; and

WHEREAS, the Board of Directors of the UCEDA authorized the UCEDA to enter into County Contract No. 2022-00000695 on August 8, 2023, pending Legislative approval, pursuant to which the UCEDA shall provide assistance to said certain ineligible businesses utilizing a different program; and

WHEREAS, the Ulster County Legislature passed Resolution No. 437 authorizing the County to enter into an Agreement with the UCEDA (County Contract No. 2022-00000695); and

WHEREAS, the Contractor applied for assistance from UCEDA through the Ulster County CARES II Small Business Assistance Program, and the UCEDA deemed the Contractor eligible and awarded the Contractor assistance through the Program, and the Contractor was later deemed to be ineligible to receive funding under the County Contract No. 2022-00000303; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance in order to honor the

award made to the Contractor, 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 December 31, 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 pursuant to this Agreement as set forth below:
 - a. The funds will be used to re-establish the Contractor in a property that will be renovated to include an office, workshop and storage for equipment, tools, materials, and supplies. Specifically, the funds will be applied to rent, general liability insurance, internal renovations, furnishings and equipment. Other costs, such as vehicle expenses, tools and supplies, will be covered by the Contractor's owners.
 - b. The Contractor anticipates that this Funding will result in a measurable impact on its business income by increasing profitability by 25% in the next 12 months (Jan-Dec 2023). This will be achieved by 1) an increase in the number of customers; 2) a material and supply purchase service through third party professional accounts that the Contractor will provide to customers. This will provide customers with discounted costs and the Contractor with an additional revenue stream.
 - c. This Funding will assist to provide the Contractor with a designated location for its business administration, material and tool storage, and workshop space, which the business has never had. Having one location for administration, access to materials and tools, and a work space will greatly increase the efficiency of both the administrative operations and for the owner/operator and his sub-contractors to conduct the work of the business. With this increased efficiency, service to customers will improve, allowing the Contractor's portfolio of customers to grow and, over the long term, the Contractor will be able to add additional services through sub-contractor relationships and additional third-party accounts, increasing revenue streams.
3. The Contractor shall use the funds it receives in the following categories:
 - 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 provide the following information at least once per year for two (2) 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 consistent with Paragraph 2 of this Schedule A.

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 the Contractor's own funds, consistent with Paragraph 2 of Schedule A of this Agreement, prior to the expiration 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.
4. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories as set forth below:
 - 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 4, the Contractor shall obtain written consent from the President/CEO of UCEDA prior to including such expenditure on any reimbursement invoice.

5. 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 the President/CEO of UCEDA (c/o Samantha Liotta, Business Services Administrator), on or before the fifth (5th) day of the month for the expenditures made by the Contractor during the previous month.
6. The Contractor shall submit to the UCEDA original invoices for payment.
7. Upon receipt of each invoice and proof of expenditures, the UCEDA shall submit an invoice to the County's Finance Department showing its intent to award direct financial assistance to the Contractor, pursuant to County Contract 2022-00000695. Upon the County's approval of the invoice, the County shall remit payment to the UCEDA. The UCEDA shall remit payment to the Contractor within sixty (60) days of its receipt of payment from the County.
8. 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.
9. 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.

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 New York limited liability company 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) pursuant to which UCEDA agreed to administer a subaward of the CLFRF for the purpose of providing assistance to Ulster County small businesses for the benefit of low- to moderate-income business owners (the Ulster County CARES II Small Business Assistance Program); and

WHEREAS, certain Ulster County businesses applied for funding under the Ulster County CARES II Small Business Assistance Program, were initially deemed eligible and awarded funding by UCEDA, but were later deemed to be ineligible to receive funding under the County Contract No. 2022-00000303; and

WHEREAS, said certain ineligible businesses’ applications for funding under the Ulster County CARES II Small Business Assistance Program are on file with UCEDA; and

WHEREAS, the Board of Directors of the UCEDA authorized the UCEDA to enter into County Contract No. 2022-00000695 on August 8, 2023, pending Legislative approval, pursuant to which the UCEDA shall provide assistance to said certain ineligible businesses utilizing a different program; and

WHEREAS, the Ulster County Legislature passed Resolution No. 437 authorizing the County to enter into an Agreement with the UCEDA (County Contract No. 2022-00000695); and

WHEREAS, the Contractor applied for assistance from UCEDA through the Ulster County CARES II Small Business Assistance Program, and the UCEDA deemed the Contractor eligible and awarded the Contractor assistance through the Program, and the Contractor was later deemed to be ineligible to receive funding under the County Contract No. 2022-00000303; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance in order to honor the

award made to the Contractor, 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 December 31, 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 pursuant to this Agreement as set forth below:
 - a. The funds awarded to the Contractor will go towards purchasing electric golf carts. Each of the carts would hold 4 to 6 people and be able to travel around the farm. The goal would be to have a total of 6 golf carts available to rent in the 2023 season. This would enable the Contractor to have around 80 families rent a cart during each of our weekends in the fall. We could also make them available to rent during weekdays when the other forms of transportation activities are unavailable. The golf carts cost \$14,975 each, so the total cost of purchasing 6 would be \$89,850 at the time of application.
 - b. This new and exciting activity at the farm would supplement the loss in hayride and general activity sales the Contractor experienced since 2020. The Contractor will be able to see a direct return in increase of gross profit sales. Since the guest will be driving the carts themselves, the Contractor would only need one team member for rentals and would charge an hourly rental fee for each of the carts. Along with the measure in direct sales for the golf carts specifically, the Contractor expects to see an overall increase in activity sales in general as we would be able to advertise as being the only farm in the area with golf cart apple picking for the family. This would be something that would sway guests to choose the Contractor over other farms. It would be very enticing to grandparents who want to come for the day with the grandkids and not have to walk long distances around the farm to each activity. The Contractor expects a boost in weekday guest purchases to supplement the losses suffered since Covid in field trip visitors.
 - c. This new form of transportation would give the Contractor an opportunity to extend the fall season into the summer and later in the fall. Since the golf carts require limited team members the Contractor could offer this special activity to guests outside of the apple picking season. The Contractor could create special golf cart events with scavenger hunts during the time before and after apples are ready to pick. The golf carts would increase rainy day sales, when usually guests choose not to come. The Contractor expects that if visitors were riding in a covered golf cart they would be more likely to still choose to come to the farm and pick apples and pumpkins. The golf carts themselves could easily last 20 or 30 years with limited maintenance. The batteries should last at least 10 years without need for replacement.
3. The Contractor shall use the funds it receives in the following categories:
 - 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 provide the following information at least once per year for two (2) 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 consistent with Paragraph 2 of this Schedule A.

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 the Contractor's own funds, consistent with Paragraph 2 of Schedule A of this Agreement, prior to the expiration 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.
4. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories as set forth below:
 - 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 4, the Contractor shall obtain written consent from the President/CEO of UCEDA prior to including such expenditure on any reimbursement invoice.

5. 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 the President/CEO of UCEDA (c/o Samantha Liotta, Business Services Administrator), on or before the fifth (5th) day of the month for the expenditures made by the Contractor during the previous month.
6. The Contractor shall submit to the UCEDA original invoices for payment.
7. Upon receipt of each invoice and proof of expenditures, the UCEDA shall submit an invoice to the County's Finance Department showing its intent to award direct financial assistance to the Contractor, pursuant to County Contract 2022-00000695. Upon the County's approval of the invoice, the County shall remit payment to the UCEDA. The UCEDA shall remit payment to the Contractor within sixty (60) days of its receipt of payment from the County.
8. 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.
9. 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.

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 New York limited liability company with principal offices at 603-607 Wittenberg Road, Mount 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) pursuant to which UCEDA agreed to administer a subaward of the CLFRF for the purpose of providing assistance to Ulster County small businesses for the benefit of low- to moderate-income business owners (the Ulster County CARES II Small Business Assistance Program); and

WHEREAS, certain Ulster County businesses applied for funding under the Ulster County CARES II Small Business Assistance Program, were initially deemed eligible and awarded funding by UCEDA, but were later deemed to be ineligible to receive funding under the County Contract No. 2022-00000303; and

WHEREAS, said certain ineligible businesses’ applications for funding under the Ulster County CARES II Small Business Assistance Program are on file with UCEDA; and

WHEREAS, the Board of Directors of the UCEDA authorized the UCEDA to enter into County Contract No. 2022-00000695 on August 8, 2023, pending Legislative approval, pursuant to which the UCEDA shall provide assistance to said certain ineligible businesses utilizing a different program; and

WHEREAS, the Ulster County Legislature passed Resolution No. 437 authorizing the County to enter into an Agreement with the UCEDA (County Contract No. 2022-00000695); and

WHEREAS, the Contractor applied for assistance from UCEDA through the Ulster County CARES II Small Business Assistance Program, and the UCEDA deemed the Contractor eligible and awarded the Contractor assistance through the Program, and the Contractor was later deemed to be ineligible to receive funding under the County Contract No. 2022-00000303; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance in order to honor the

award made to the Contractor, 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 December 31, 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 Wittenberg Road
Mount 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 pursuant to this Agreement as set forth below:
 - a. The funds for which the Contractor requested reimbursement for are operating expenses including 1. RENT; 2. UTILITIES; 3. PAYROLL; 4. INVENTORY.
 - b. Reimbursement of the proposed funds would impact the Contractor immensely. Some of the measurable impacts the Contractor predicts this funding will have -- 1. Assume less (or no) debt to float cash flow tensions due to COVID-related rising costs 2. Maintain existing payroll; no need to layoff any employees 3. Maintain existing hours of operation; no need to reduce hours 4. Satisfy all monthly utility bills ensuring no disruption to facility operations 5. Maintain current cadence of stocking, allowing the Contractor to re-invest money into small and local vendors and AAPI-owned companies 6. No disruption to the Contractor's food equity programs; maintain the Contractor's "give-and-take" community free board, the Contractor's "no questions asked" LGBTQIA+ eat free on Sunday's program in the storefront and continue to donate to make donations to Reservoir Food Pantry (weekly) Ulster Immigrants Defense Network (monthly) and local community programs (as requested).
 - c. This funding will allow the Contractor to adapt easier to the changing circumstances of what it means to be food-based business owners in 2023 in the face of ever-rising food and labor costs. It would relieve financial stress caused by the reoccurring need to close our operations for an extended period due to one or more COVID-related staff shortages, which has happened multiple times since inception. It would reduce anxiety and cash flow tensions regarding Central Hudson bills which has been volatile and immense, regardless of how many energy-saving mitigation solutions employed. This funding will also allow the Contractor to seamlessly maintain current operations in Woodstock while continuing with the logistics for the Contractor's upcoming move from Woodstock to Accord (Ulster County) in Fall 2023 when the Contractor's current lease is up (9/2023). This relocation opportunity is important as it will give the Contractor a place to run the business after the lease is up, and will allow the Contractor to keep longer hours and have expanded offerings (current facilities can not meet minimum demand) ensuring the financial health of the business, continuing sustainable growth, and the ability to employ, train and empower more Ulster county residents.
3. The Contractor shall use the funds it receives in the following categories:
 - 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 provide the following information at least once per year for two (2) 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 consistent with Paragraph 2 of this Schedule A.

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 the Contractor's own funds, consistent with Paragraph 2 of Schedule A of this Agreement, prior to the expiration 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.
4. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories as set forth below:
 - 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 4, the Contractor shall obtain written consent from the President/CEO of UCEDA prior to including such expenditure on any reimbursement invoice.

5. 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 the President/CEO of UCEDA (c/o Samantha Liotta, Business Services Administrator), on or before the fifth (5th) day of the month for the expenditures made by the Contractor during the previous month.
6. The Contractor shall submit to the UCEDA original invoices for payment.
7. Upon receipt of each invoice and proof of expenditures, the UCEDA shall submit an invoice to the County's Finance Department showing its intent to award direct financial assistance to the Contractor, pursuant to County Contract 2022-00000695. Upon the County's approval of the invoice, the County shall remit payment to the UCEDA. The UCEDA shall remit payment to the Contractor within sixty (60) days of its receipt of payment from the County.
8. 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.
9. 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.

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 New York limited liability company with principal offices at 23 Mill Hill Road, 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) pursuant to which UCEDA agreed to administer a subaward of the CLFRF for the purpose of providing assistance to Ulster County small businesses for the benefit of low- to moderate-income business owners (the Ulster County CARES II Small Business Assistance Program); and

WHEREAS, certain Ulster County businesses applied for funding under the Ulster County CARES II Small Business Assistance Program, were initially deemed eligible and awarded funding by UCEDA, but were later deemed to be ineligible to receive funding under the County Contract No. 2022-00000303; and

WHEREAS, said certain ineligible businesses’ applications for funding under the Ulster County CARES II Small Business Assistance Program are on file with UCEDA; and

WHEREAS, the Board of Directors of the UCEDA authorized the UCEDA to enter into County Contract No. 2022-00000695 on August 8, 2023, pending Legislative approval, pursuant to which the UCEDA shall provide assistance to said certain ineligible businesses utilizing a different program; and

WHEREAS, the Ulster County Legislature passed Resolution No. 437 authorizing the County to enter into an Agreement with the UCEDA (County Contract No. 2022-00000695); and

WHEREAS, the Contractor applied for assistance from UCEDA through the Ulster County CARES II Small Business Assistance Program, and the UCEDA deemed the Contractor eligible and awarded the Contractor assistance through the Program, and the Contractor was later deemed to be ineligible to receive funding under the County Contract No. 2022-00000303; and

WHEREAS, the UCEDA has agreed to enter into an agreement with the Contractor for assistance in order to honor the

award made to the Contractor, 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 December 31, 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 (c) 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 Road
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 pursuant to this Agreement as set forth below:
 - a. The Contractor will use the funds to increase ad spending in order to win back local customers, expand inventory by at least 10 percent and take on a new employee to replace a retiring sales associate. A portion will also be used to upgrade landscaping and complete deferred repairs to the business property to make it more inviting and visible. In addition, the funds will help "keep the lights on", assisting in the payment of utilities and other operating expenses until sales return to a healthy sustainable level.
 - b. The Contractor believes the increased advertising, inventory levels and staffing brought about by the proposed funding will not only keep the business afloat, but bring it back to a sustainable revenue base. The Contractor anticipates that, with this assistance, sales will increase ten percent over 2022 levels. If expenses are managed judiciously and cushioned by the funding, The Contractor believes that net income can be increased by at least 20 percent over the next 12 months.
 - c. This assistance with advertising, inventory expansion, landscape renovation and repairs will help the Contractor reintroduce the business to old customers who have 'strayed' during the pandemic, as well as bring in new street traffic to the store. As such, the Contractor will be well positioned to sustain a healthy revenue base derived from the funding. Training a new employee to replace the soon to be retired current sales associate and providing that person with a robust wage in this tight labor market will also provide the Contractor with sustainable ongoing support in the coming years, allowing the Contractor to be open every day of the week.
3. The Contractor shall use the funds it receives in the following categories:
 - 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 provide the following information at least once per year for two (2) 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 consistent with Paragraph 2 of this Schedule A.

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 the Contractor's own funds, consistent with Paragraph 2 of Schedule A of this Agreement, prior to the expiration 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.
4. The Contractor may seek reimbursement pursuant to this Agreement for expenditures made in the categories as set forth below:
 - 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 4, the Contractor shall obtain written consent from the President/CEO of UCEDA prior to including such expenditure on any reimbursement invoice.

5. 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 the President/CEO of UCEDA (c/o Samantha Liotta, Business Services Administrator), on or before the fifth (5th) day of the month for the expenditures made by the Contractor during the previous month.
6. The Contractor shall submit to the UCEDA original invoices for payment.
7. Upon receipt of each invoice and proof of expenditures, the UCEDA shall submit an invoice to the County's Finance Department showing its intent to award direct financial assistance to the Contractor, pursuant to County Contract 2022-00000695. Upon the County's approval of the invoice, the County shall remit payment to the UCEDA. The UCEDA shall remit payment to the Contractor within sixty (60) days of its receipt of payment from the County.
8. 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.
9. 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.