

Ulster County Economic Development Alliance
P.O. Box 1800, 244 Fair Street
Kingston, NY 12402-1800
Tel: 845.340.3556



BOARD OF DIRECTORS MEETING

4:30 p.m.

January 3, 2017

Legislative Chambers

6th Floor

Ulster County Office Building

244 Fair Street

Kingston, NY

AGENDA

1. Call to Order
2. Roll Call
3. Approval of the Minutes of the December 6, 2016 Meeting
4. Ellenville Million
 - Shadowland Theatre
 - ◆ Approval of Contract
 - Ellenville/Wawarsing Parks and Recreation
 - ◆ Approval of Contracts – Town of Wawarsing/Village of Ellenville
5. Education and Training
6. Public Comment
7. Old Business
 - Marketing RFP Update
8. New Business
 - Approval of 2017 Contract Between UCEDA and Ulster County
9. Executive Session
10. Adjournment

The next meeting of the Board of Directors of the Ulster County Economic Development Alliance is scheduled for 4:30 p.m., Tuesday, February 7, 2017.

This institution is an equal opportunity provider, employer, and lender.

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DRAFT MINUTES

Meeting of the Board of Directors
December 6, 2016

A meeting of the Board of Directors of the Ulster County Economic Development Alliance was held at 4:30PM on Tuesday, December 6, 2016, Legislative Chambers, sixth floor, Ulster County Office Building, 244 Fair Street, Kingston, NY.

The following Board Members were present:

Julie Cohen-Lonstein	Chair
Burton Gulnick, Jr.	Treasurer
James Maloney	Vice Chair
Ward Todd	Secretary
Kenneth Crannell	
Hector Rodriguez	

The following Board Members were absent:

Robert Sudlow

President:

Suzanne Holt Director, Ulster County Office of Economic Development

Chief Financial Officer:

Christopher J. Rioux, CPA, Deputy Commissioner of Finance

Board Counsel:

Clinton Johnson First Assistant County Attorney

Staff – Ulster County Office of Economic Development:

Timothy Weidemann

Additional Attendees:

Brendan Burke	Shadowland Theatre
Jim McIntyre	Shadowland Theatre
Deborah Garry	BBG&G
Hank Alicandri	Ellenville/Wawarsing Parks & Rec Commission
Geddy Sveikauskas	Ulster Publishing
Joseph Deegan	SVN/Deegan-Collins Commercial Realty

The meeting was called to order by Chair Julie Cohen-Lonstein at 4:34 p.m.

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MINUTES

Motion: Mr. Maloney, seconded by Mr. Crannell, moved to approve the Minutes of the November 1, 2016 meeting. A copy of said minutes is on file.

Vote: The motion was adopted. .

FINANCIALS

Motion: Mr. Crannell, seconded by Mr. Maloney, moved to approve the Financials for the periods ending October 31, 2016 and November 30, 2016. Copies of said Financials are on file.

Vote: The motion was adopted. .

COMMITTEE REPORTS

Ulster County Revolving Loan Fund Committee

Mr. Maloney, Chair of the Revolving Loan Fund Committee, reported that the Revolving Loan Fund Committee has received and unanimously approved, with certain conditions, a loan application from Ellenville Sand & Gravel, based in Ellenville, NY. The Revolving Loan Fund Committee's approval of a loan in the amount of \$150,000 for purchase of capital equipment was conditioned on an interest rate increase from 2.5% to 3% after the third year of repayment, and on approval by the NYSDEC of all required permits for the business to begin new operations in rock crushing. A copy of the Loan Committee Report is on file. The loan will be presented to USDA for approval, and, if approved, will be funded in part by a \$105,000 draw-down from Ulster County's USDA Intermediary Relending Program funds.

Motion: Mr. Maloney, seconded by Mr. Crannell, moved to approve the loan application of Ellenville Sand & Gravel, contingent on the conditions established by the Ulster County Revolving Loan Fund Committee.

Discussion: The Chair entertained a discussion about the role of the UCEDA Board of Directors in final approval of loan applications previously approved by the Ulster County Revolving Loan Fund Committee. The discussion resulted in no changes to the original motion.

Vote: Ms. Cohen-Lonstein, Mr. Gulnick, Mr. Maloney, Mr. Todd and Mr. Crannell in favor. Mr. Rodriguez opposed. The motion carried.

ELLENVILLE MILLION

Historic Preservation at the Shadowland Theatre

Mr. Burke and Mr. McIntyre provided a brief explanation of the Shadowland Theatre's building renovation project, which has received an allocation of funds through the Ellenville Million. The discussion resulted in no new motions from the Board.

Water/Sewer Improvement Projects

Mr. Drapkin was unable to attend the meeting. Ms. Holt reported on his behalf that, due to unanticipated issues with the contractors, the project is behind schedule. The Board requested an update at its next meeting. The discussion resulted in no new motions from the Board.

Tourism & Marketing Campaign

Ms. Garry from BBG&G provided an update on the Ellenville Million tourism and marketing campaign. A copy of said presentation is on file. Questions from the Board were entertained and discussed. Ms. Cohen-Lonstein requested more information on the number of individuals who took advantage of the campaign's itineraries and packages. Ms. Holt asked Ms. Garry to clarify the remaining budget and plan for continuation of the campaign in 2017, to which Ms. Garry responded that the campaign will continue through August 2017 and will involve social media, digital

advertising, and limited event support. Ms. Cohen-Lonstein requested that event support and promotion be provided for the 100th anniversary of the Hunt Memorial Building.

Motion: Mr. Maloney, seconded by Mr. Rodriguez, moved to approve invoice number 4058 from BBG&G, in the amount of \$8,271.55.

Discussion: Mr. Rioux noted that the contract between BBG&G and UCEDA specifies that the last 20% of the budget for the Tourism & Marketing Campaign may not be paid until the completion of all tasks and activities in the contracted scope of work. The discussion resulted in no changes to the original motion.

Vote: The motion was adopted. .

Ellenville/Wawarsing Parks and Recreation Commission

Mr. Alicandri, Chair of the Ellenville/Wawarsing Parks and Recreation Commission, provided a brief overview of the Ellenville/Wawarsing Parks and Recreation Plan, 2016-2019, a copy of which is on file. Mr. Alicandri explained that the Plan includes a "Phase 1" implementation plan, which calls for the completion of trail improvements on the DOCCS section of the O&W Rail Trail and the development of a new trailhead kiosk and parking lot improvements at Berme Road Park, in the vicinity of the terminus of the Smiley Carriage Road. These projects are the subject of funding requests from the Village and the Town, which amount to a total combined request of \$114,568, to be drawn from the original Ellenville Million allocation of \$150,000 for outdoor recreation opportunities.

Additional "Phase 1" projects, funded through various state and federal grants to the Town and the Village, include a connection between the current Village terminus of the O&W Rail Trail at Sewer Plant Road and Berme Road Park, and design and construction of the O&W Rail Trail between the DOCCS facility and the Rochester Town Line.

Motion: Mr. Maloney, seconded by Mr. Crannell, moved to authorize the President to draft contracts with the Village of Ellenville and the Town of Wawarsing for the purpose of advancing the "Phase 1" projects above, with a budget for the Village's proposal of \$59,568 and a budget of \$55,000 for the Town's proposal.

Discussion: Ms. Cohen-Lonstein inquired as to whether the Commission would be seeking ongoing budget allocations directly from the Village and the Town, to which Mr. Alicandri replied, "yes."

Vote: The motion was adopted. .

Economic Development Fund

Ms. Holt presented to the Board an application from Optimum Windows of Ellenville, NY to the Ellenville Million Economic Development fund, a copy of which is on file. The business intends to expand its operations by 10 full-time equivalent positions, and to invest approximately \$500,000 in new equipment. As per the guidelines for the fund, the business would be eligible for up to \$4,000 per job added since the positions are in the manufacturing industry. The guidelines establish a maximum award of \$50,000 or no more than 20% of the business' capital investment. Based on these conditions, the applicant is eligible for an award of \$40,000 (10 FTEs times \$4,000 per FTE).

Motion: Mr. Todd, seconded by Mr. Rodriguez, moved to approve an award not to exceed \$40,000 to Optimum Windows from the fund, pending counsel's decision on the appropriate mechanism to effect the award.

Discussion: Ms. Cohen-Lonstein pointed out that a principal of the business was appointed to the Ellenville Million committee. She noted, however, that he did not participate in that committee, and that the committee has since been dissolved and has no authority over decisions made by the UCEDA Board of Directors. The discussion resulted in no changes to the original motion.

Vote: The motion was adopted.

Reallocation of Ellenville Million Funds

Ms. Holt noted that any adjustment to the allocation of funds between the existing categories, or the addition of a new category, would require approval by the Legislature. She then presented a summary of the initial budgets, amounts expended to date, payments in process, and remaining budget for each element of the Ellenville Million. Ms. Cohen-Lonstein noted that any requests to the Legislature to reallocate funds should be accompanied by a detailed description of the amount to be reallocated and the purpose of the reallocation. Mr. Rodriguez inquired as to the initial intent of the funds allocated for broadband (Improved Access to High Speed Internet). Ms. Holt indicated that she would request input from the Economic Development & Tourism Committee of the Legislature at its upcoming meeting. The discussion resulted in no new motions.

EXECUTIVE SESSION

The Chair requested and the Board consented to an adjustment in the agenda. The Chair then requested a motion to enter executive session, as authorized by Open Meetings Law section 105, for the purpose of discussing matters related to the sale of real property.

Motion: Mr. Crannell, seconded by Mr. Maloney, moved to enter Executive Session for the purpose of discussing real estate matters.

Vote: The motion was adopted.

The Board of Directors moved into Executive Session at 5:35PM.

Motion: Ms. Cohen-Lonstein, seconded by Mr. Crannell, moved to exit Executive Session.

Vote: The motion was adopted.

The Board of Directors moved out of Executive Session at 5:48PM.

Motion: Mr. Maloney, seconded by Mr. Todd, moved to instruct Mr. Deegan to issue a counter-offer in response to an original offer for purchase of property held by UCEDA.

Vote: The motion was adopted.

Citing a prior commitment, Mr. Todd, Secretary, excused himself from the meeting at 5:50PM. Following Mr. Todd's departure, there being seven members total and five members present, a quorum was confirmed.

MARKETING

Motion: Mr. Crannell, seconded by Mr. Gulnick, moved to approve payment of the invoices from Raleigh Green, Inc. dated November 14, 2016 and November 28, 2016, in the amounts of \$13,348.17 and \$4,500.00 respectively. Copies of said invoices are on file.

Discussion: Mr. Rodriguez inquired as to the remaining marketing budget. Ms. Holt explained that the two invoices presented to the Board covered the period through the end of October, and that the remaining budget of \$4,500 would cover social media buys through the end of the calendar year. The discussion resulted in no changes to the original motion.

Vote: The motion was adopted. Mr. Sudlow and Mr. Todd absent.

Citing a prior commitment, Mr. Maloney excused himself from the meeting at 5:52PM. Following Mr. Maloney's departure, there being seven members total and four members present, a quorum was confirmed.

LUMINARY MEDIA – ECONOMIC DEVELOPMENT GUIDE

Ms. Holt presented a draft Agreement for Professional Services to engage Luminary Media to develop original content for the Ulster County Economic Development Guide, a copy of which is on file. The contract will provide

UCEDA with original written content, photos and images, and profiles of local businesses and business leaders, which UCEDA will own following its creation.

Motion: Mr. Crannell, seconded by Mr. Gulnick, moved to approve the Agreement for Professional Services, as presented. A copy of said agreement is on file.

Discussion: Mr. Rodriguez inquired whether it was necessary to pay an outside firm to develop these materials, or whether it could be done in-house. Ms. Holt clarified that the content currently available to staff is not suitable for this publication and that a media and design firm is better able to produce the content that is needed. She clarified also that drafts will be presented to the Board.

Vote: The motion was adopted. Mr. Maloney, Mr. Sudlow and Mr. Todd absent.

EDUCATION & TRAINING

Ms. Holt provided a summary of recent activities, including a Building Ulster County Together Breakfast in October and a webinar series for restaurant owners spanning September through December. The discussion resulted in no new motions.

PUBLIC COMMENT

No individuals requested the Privilege of the Floor. The Public Comment section of the Agenda was closed.

OLD BUSINESS

No Old Business was identified or discussed.

NEW BUSINESS

Update on Marketing RFP

Ms. Cohen-Lonstein provided an update on the Request for Proposals that is underway to select a vendor for marketing services in 2017. Seven proposals have been received, and four have been selected for interviews. Interviews are scheduled for December 20th.

Approval of Payment – Town of Saugerties Gas Line Project

A Claimant Certification and payment request has been submitted by the Town of Saugerties for payment of costs related to the extension of gas service along Kings Highway, in the amount of \$93,000. The project having been previously approved by the Board, the Chair called for a motion to approve payment to the Town of Saugerties.

Motion: Mr. Rodriguez, seconded by Mr. Crannell, moved to approve the payment request.

Vote: The motion was adopted. .

300 Flatbush Avenue Update

Counsel to the Board, Mr. Johnson reported that a title report on the property was received by his office and is under review. UCEDA is also in receipt of letters from the Office of Planning of the City of Kingston regarding pending approval of the site plan/special permit and recommendation regarding rezoning for the proposed use by RUPCO.

UCEDA Planning for 2017

Ms. Holt reported that she is developing a set of metrics to assist the Legislature and others in evaluating the effectiveness and impact of UCEDA's efforts. She requested input from the Board. The Board agreed to further discussion on the topic at its next meeting.

ADJOURNMENT

Motion: Mr. Gulnick, seconded by Ms. Cohen-Lonstein, moved to adjourn the meeting.

Vote: The motion was adopted.

Meeting was adjourned at 6:10PM. The next meeting of the UCEDA Board of Directors is scheduled for Tuesday, January 3, 2017 at 4:30PM in the Legislative Chambers of the County Office Building, 244 Fair Street, Kingston.

Ward Todd, Secretary

DRAFT

Ulster County Economic Development Alliance - Operating Fund

Trial Balance

As of November 30, 2016

Assets

Account #	Account Name	Amount
1002	M&T Checking	\$ 127.25
1003	M&T Equipment Reserve	227.55
1004	M&T NOW	363,684.44
1016	Cash with Escrow Agent	25,000.00
	Total Cash	389,039.24
1115	Prepaid Expenses	-
	Total Prepaid Expenses	-
1100	Accounts Receivable	-
1120	Due From Other Funds	-
1121	Due from Ulster County	-
1126	Due from Town of Esopus	-
	Total Receivables	-
1200	Equipment - Office & Auto	59,024.75
1200-00	Equipment - Unity Equipment	352,484.66
1201	Accumulated Depreciation - Office	(59,024.75)
1201-00	Accumulated Depreciation - Unity	(352,484.66)
	Total Property and Equipment	-
1280	Contract Advance	20,000.00
	Total Contract Advance	20,000.00
	Total Assets	\$ 409,039.24

Liabilities & Fund Equity

Account #	Account Name	Amount
1300	Accounts Payable	\$ -
1380	Deferred Revenue	141,608.91
	Total Liabilities	141,608.91
1500	Net Assets	267,430.33
	Total Net Assets	267,430.33
	Total Liabilities & Net Assets	\$ 409,039.24

Revenues

Account #	Account Name	Month Ending November 2016 Actual	2016 Year to Date Actual	2016 Budget	2016 Budget vs. Actual
1600	Administrative Fees - Loan Funds	\$ -	\$ 200.00	\$ 13,100.00	\$ (12,900.00)
1600-18	Administrative Fees - TOE Loan Funds	-	-	1,200.00	(1,200.00)
1601	Application Fees	-	-	600.00	(600.00)
1654	Educational Events	40.00	5,980.00	3,000.00	2,980.00
1720	UCIDA - Marketing Support	-	5,000.00	5,000.00	-
1730	Ulster County Subsidy	-	75,000.00	150,000.00	(75,000.00)
1745	U.C. - Ellenville Million	38,162.00	147,391.09	1,000,000.00	(852,608.91)
1780	Interest Income	8.59	85.41	100.00	(14.59)
1783	Miscellaneous Income	-	1,250.00	-	1,250.00
1784	Copier Reimbursement	-	-	3,600.00	(3,600.00)
	Total Revenues	\$ 38,210.59	\$ 234,906.50	\$ 1,176,600.00	\$ (941,693.50)

Expenses

Account #	Account Name	Amount	Amount	Amount	Amount
1810	Bank Fees/Paypal Fees	-	190.94	-	(190.94)
1820	Insurance	-	4,011.09	5,500.00	1,488.91
1822	Miscellaneous Contractual Expenses	40.00	40.00	9,500.00	9,460.00
1830	Marketing Campaign	5,000.00	69,755.00	100,000.00	30,245.00
1830-33	Marketing - Educational Events	1,464.72	7,537.44	4,500.00	(3,037.44)
1860	Office Expense	27.00	534.48	4,000.00	3,465.52
1860-01	Office - Equipment Lease	-	2,701.88	3,600.00	898.12
1880-03	Professional Fees - Legal	-	651.00	20,000.00	19,349.00
1880-04	Professional Fees - Accounting	-	12,054.99	12,000.00	(54.99)
1880-11	Professional Fees - Real Estate	-	71.50	5,000.00	4,928.50
1890-00	Dues, Fees & Subscriptions	-	10,000.00	12,500.00	2,500.00
2005	Ellenville Million	23,884.50	147,391.09	1,000,000.00	852,608.91
1620-00	Depreciation	-	-	-	-
	Total Expenses	\$ 30,416.22	\$ 254,939.41	\$ 1,176,600.00	\$ 921,660.59
	NET INCOME/(LOSS)	\$ 7,794.37	\$ (20,032.91)	\$ -	\$ (20,032.91)

Ulster County Economic Development Alliance - Loan Status - As of 11/30/16

Name	Loan #	Ledger Cash Balances as of 11/30/16	Loan Amts.	Loan Origination Date	Last Payment Date	Mo. Pmt. Including Interest	Principal Balance @ 12/31/15 & New	YTD Pmts Through November 2016	Total Payments Rec'd To Date	Principal Balance as of 11/30/16	Interest Past Due	Late Fees Past Due	Status
Ulster County Loan Funds Administered by UCEDA													
CDBG		#4179											
AmeriBag	150		150,000.00	08/01/11	07/01/18	2,051.01	60,251.07	20,694.52	110,443.45	39,556.55	0.00	0.00	Current through 11/16
Bread Alone	175		150,000.00	09/01/13	08/01/18	908.97	138,018.36	5,021.13	17,002.77	132,997.23	0.00	45.45	Current through 11/16
Falcon Music & Art <i>(Pd by Water Quality Mgt)</i>	650		75,000.00	08/01/09	07/01/19	759.34	31,028.16	8,699.50	52,671.34	22,328.66	0.00	0.00	Prepaid through 12/16
Serra, LLC	1836		45,621.54	11/01/10	10/01/18	556.09	18,785.82	6,493.49	33,329.21	12,292.33	0.00	0.00	Current through 11/16
		339,866.74	420,621.54			4,275.41	248,083.41	40,908.64	213,446.77	207,174.77	0.00	45.45	
In Reserve		11,027.18											
CDBG98		#3021											
GAMEX, LLC	1013		100,000.00	04/24/14	03/24/24	965.61	85,574.24	9,383.71	23,809.47	76,190.53	0.00	0.00	Current through 11/16
Gillette Creamery	751		240,000.00	06/01/13	05/01/18	4,419.97	121,984.88	44,890.06	162,905.18	77,094.82	0.00	0.00	Current through 11/16
		279,874.24	340,000.00				207,559.12	54,273.77	186,714.65	153,285.35	0.00	0.00	
Sect 108 2M													
		9,448.60	0.00				0.00	0.00	0.00	0.00	0.00	0.00	
Sect 108 2.5M		#4699											
New World Catering <i>(Pd by Corrado)</i>	402		130,000.00	08/01/08	07/01/18	1,438.05	44,036.44	16,713.57	102,677.13	27,322.87	0.00	3,651.53	Current through 11/16
		32,459.79	130,000.00				44,036.44	16,713.57	102,677.13	27,322.87	0.00	3,651.53	
Total Page 1		672,676.55	890,621.54				499,678.97	111,895.98	502,838.55	387,782.99	0.00	3,696.98	

Ulster County Economic Development Alliance - Loan Status - As of 11/30/16

Name	Loan #	Ledger Cash Balances as of 11/30/16	Loan Amts.	Loan Origination Date	Last Payment Date	Mo. Pmt. Including Interest	Principal Balance @ 12/31/15 & New	YTD Pmts Through November 2016	Total Payments Rec'd To Date	Principal Balance as of 11/30/16	Interest Past Due	Late Fees Past Due	Status
Ulster County Loan Funds Administered by UCEDA													
UCRLF													
		1,833.37	0.00				0.00	0.00	0.00	0.00	0.00	0.00	
Telecommunications Loan Fund		#8485											
Bread Alone	50		30,000.00	09/01/13	08/01/18	181.79	27,603.76	1,004.19	3,400.43	26,599.57	0.00	9.09	Current through 11/16
			41,459.87				27,603.76	1,004.19	3,400.43	26,599.57	0.00	9.09	
In Reserve			130,345.03										
USDA Intermediary Relending Program		#3140											
Bread Alone	50		120,000.00	09/01/13	08/01/18	727.18	110,414.57	4,016.94	13,602.37	106,397.63	0.00	36.36	Current through 11/16
Costas & Tate	100		20,000.00	10/01/11	09/01/18	273.38	8,529.01	2,739.86	14,210.85	5,789.15	0.00	0.00	Current through 11/16
			55,022.20				118,943.58	6,756.80	27,813.22	112,186.78	0.00	36.36	
Loan Loss Reserve (6%)			6,731.21										
Total Page 2		235,391.68	170,000.00				146,547.34	7,760.99	31,213.65	138,786.35	0.00	45.45	
Grand Total		908,068.23	1,060,621.54				646,226.31	119,656.97	534,052.20	526,569.34	0.00	3,742.43	

ECONOMIC DEVELOPMENT AGREEMENT

TOWN OF WAWARSING PARKS AND RECREATION IMPROVEMENTS

This AGREEMENT is entered into by and between the **ULSTER COUNTY ECONOMIC DEVELOPMENT ALLIANCE, INC.**, a local development corporation formed under the laws of the State of New York, with offices at 244 Fair Street, Kingston, New York 12401 (the “UCEDA”), and **THE TOWN OF WAWARSING**, a municipality within the County of Ulster, New York, with its offices at Town Hall, 108 Canal St, Ellenville, New York 12428 (the “Town”), (each, a “Party,” together, the “Parties”).

RECITALS

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

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

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

WHEREAS, the Ellenville Million Committee held a public information meeting on February 5, 2015, seeking public input and recommendations for best investing one million dollars to help spur economic growth and development in the Ellenville/Wawarsing area; and

WHEREAS, after extensive review and careful consideration, the Ellenville Million Committee recommended an amount of One Hundred Fifty Thousand Dollars towards establishment of an inter-municipal park commission to oversee, improve and manage all the parks within Ellenville/Wawarsing; and

WHEREAS, in June 2016, the Village Board and Town Board each approved resolutions establishing a Joint “Ellenville/Wawarsing Parks and Recreation Commission” (the Commission) and requiring the Commission to establish a plan for parks and recreation improvements in the two municipalities; and

WHEREAS, the Commission has developed and approved by resolution a Parks and Recreation Plan that identifies priority parks and recreation projects for immediate implementation, as well as additional projects for implementation at a later date; and

WHEREAS, the Board of Directors of the UCEDA has received a copy of said Parks and Recreation Plan, and concurs with the priority projects identified in Phase 1 of the plan; and

WHEREAS, the UCEDA has agreed to engage the Town and the Town has agreed to contract with the UCEDA to implement certain projects identified in Phase 1 of the plan, as further defined in Schedule A herein.

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

ARTICLE 1 – SCOPE OF SERVICES

The Town agrees to perform the services identified in “Schedule A,” the “Scope of Services” (hereinafter, the “Services”), which is attached hereto and is hereby made a part of this Agreement. The Town agrees to perform the Services in accordance with the terms and conditions of this Agreement. It is specifically agreed to by the Town that the UCEDA will not compensate the Town for any services not included in Schedule A without prior authorization, evidenced only by a written Change Order, Amendment or Addendum to this Agreement, signed by the Parties hereto.

ARTICLE 2 - TERM OF AGREEMENT

The Town agrees to perform the Services **beginning January 1, 2017 and ending August 31, 2017.**

ARTICLE 3 - COMPENSATION

For satisfactory performance of the Services, or as such Services may be modified mutually by a written Change Order, Amendment, or Addendum to this Agreement, the UCEDA agrees to compensate the Town 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 **FIFTY FIVE THOUSAND AND 00/100 (\$55,000.00) DOLLARS** has been established for the Services to be rendered by the Town. 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 Town 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 Town 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 Town shall be solely responsible for determining the means and methods of performing the Services and shall have complete charge and responsibility for the Town's personnel engaged in the performance of the same.

ARTICLE 5 - ASSIGNMENT

The Town 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 Town agrees to include the following provisions in any and all subcontract agreements for Services to be performed pursuant to this Agreement:

- A. That the work performed by the subcontractor must be in accordance with the terms and conditions of this Agreement between the UCEDA and the Town, including but not limited to the insurance requirements set forth in Schedule C; and
- B. That nothing contained in the subcontractor agreement shall impair the rights of the UCEDA; and
- C. That nothing contained in the subcontractor agreement, or under this Agreement between the UCEDA and the Town, shall create any contractual relation in law or equity, between the subcontractor and the UCEDA.

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

The Town agrees that it is fully responsible to the UCEDA for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, to the same extent as it is for the acts and omissions of persons employed by the Town. The Town shall not in any way be relieved of any responsibility under this Agreement by any subcontract.

ARTICLE 7 - PERFORMANCE

In performing the Services, the Town 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 Town is hereby given notice that the UCEDA shall be relying upon the accuracy, competence, and completeness of the Town's performance in using the results

achieved by the Town's performance of these Services. The Town shall at all times comply with all applicable Federal, New York State and local laws, ordinances, statutes, rules and regulations.

ARTICLE 8 – INTELLECTUAL PROPERTY RIGHTS

All "Intellectual Property," meaning all graphics, fonts, computer code (with the exception of open source code), photographs, brochures, videos, web pages, trademarks, databases, names and logos, or the copyright in any portion of the works issued by the County or developed or produced for the County shall at all times be proprietary to the County, and shall be the exclusive property of the County. Upon termination of this Agreement, the Town's right or license to use the intellectual property shall terminate.

The Town 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, names and logos, or the copyright in any portion of the works, developed or produced for the County free and clear of any material encumbrances, liens or claims.

The Town agrees, at its own expense, to defend, indemnify and hold harmless the County from and against any losses, damages, expenses, liabilities and costs (including without limitation, legal fees) incurred by the County as a result of any claims brought against the County by third parties arising from any infringement or misappropriation of any Intellectual Property right arising out of or relating to the County's use of the Town's Services.

ARTICLE 9 - 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 Town from or through the UCEDA or any other person connected with the UCEDA, or developed, produced, or obtained by the Town 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 "Town" as used herein includes all officers, directors, employees, agents, subcontractors, assignees or representatives of the Town.

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

The Town 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 Town 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 Town 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 Town, 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 Town 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 Town shall disclose only such portions of Confidential Information that, in the opinion of the UCEDA's counsel, the Town is legally required to disclose, and the Town 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 10 – 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 Town 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 Town, such information shall be retained in a secure location in the Town'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 11 – PUBLICITY

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

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

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 Town’s start of the performance of Services (including subsequent policies purchased as renewals or replacements); and
- B. The Town shall maintain similar insurance for a minimum of three (3) years following final acceptance of the Services; and
- C. If the insurance is terminated for any reason, the Town agrees to purchase for the UCEDA, an unlimited, extended reporting provision to report claims arising from the Services performed under this Agreement; and
- D. Immediate notice shall be given to the UCEDA of circumstances or incidents that might give rise to future claims with respect to the Services performed under this Agreement.

ARTICLE 17 - INDEMNIFICATION

The Town agrees to defend, indemnify and hold harmless the UCEDA, including its officials, employees and agents, against all claims, losses, damages, liabilities, costs or expenses (including without limitation, reasonable attorney fees and costs of litigation and/or settlement), whether incurred as a result of a claim by a third party or any other person or entity, arising out of the Services performed by the Town, its employees, representatives, subcontractors, assignees, or agents pursuant to this Agreement, which the UCEDA, or its officials, employees, or agents may suffer by reason of any negligence, fault, act, or omission of the Town, its employees, representatives, subcontractors, assignees, or agents. The Town 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 Town with respect to any claims, actions, or proceedings arising out of representations, information, or materials supplied by UCEDA to the Town, and approved by UCEDA for inclusion relative to the Services provided by the Town, pursuant to this Agreement

ARTICLE 18 - RESPONSIBILITY TO CORRECT DEFICIENCIES

It shall be the Town's responsibility to correct, in a timely fashion and at the Town's sole expense, any deficiencies in its Services resulting from the Town'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 Town within one hundred twenty (120) days after completion and final acceptance of the Services. If the Town 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 Town and/or set-off such amount against any sums otherwise due to the Town. These remedies, if effected, shall not constitute the sole or exclusive remedies afforded to the UCEDA for such deficiencies, nor shall they constitute a waiver of the UCEDA's right to claim damages or otherwise refuse payment, or to take any other action provided for by law, in equity, or pursuant to this Agreement.

ARTICLE 19 – FORCE MAJEURE

Neither Party hereto shall be considered in default in the performance of its obligations hereunder, to the extent that performance of any such obligation is prevented and/or delayed by any cause, existing or future, beyond the control of such Party, and which by that Party's exercise of due diligence and foresight could not reasonably have been avoided.

Upon removal of such cause, the Party affected shall resume its performance as soon as reasonably possible. The Town's financial inability to perform shall not be deemed to be an event of Force Majeure regardless of the source causing such financial inability. If the Town is so delayed in the timely performance of the Services, the Town's sole and exclusive remedy is to request that a Change Order, Amendment or Addendum to this Agreement be issued by the

UCEDA and signed by the President of the UCEDA, permitting an extension of time to perform the Services in an amount equal to the time lost due to such delay. Such request shall be based upon written notice only, stating the specific nature of the claim, delivered to the President of the UCEDA promptly, but in no event later than thirty (30) days after the initial occurrence of the event giving rise to such claim. An extension of time to perform the Services may only be granted by a written Change Order, Amendment or Addendum to this Agreement, signed by the President of the UCEDA. In no event shall the UCEDA be liable to the Town 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 Town will turn over all files, lists, or other work product requested by the UCEDA, provided that all Services performed by the Town 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.

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 Town 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 Town 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 Town 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 Town's obligations, and those of the Town's employees, representatives, agents, subcontractors, successors and assignees, assumed pursuant to Article 7 (Performance), Article 8 (Intellectual Property) Article 9, (Confidentiality), Article 10 (Ownership of Confidential Information), 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:

Town:

Town of Wawarsing
Attn: Town Supervisor
Town Hall
108 Canal Street
Ellenville, NY 12428

UCEDA:

ULSTER COUNTY ECONOMIC DEVELOPMENT ALLIANCE, INC.
Attn: President
244 Fair Street
Kingston, NY 12401

Any communication or notice regarding indemnification, termination, litigation or proposed changes to the terms and conditions of this Agreement shall be deemed to have been duly made upon receipt by the Parties at the addresses set forth herein, or such other addresses as may have been specified in writing by one Party to the other Party.

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

ARTICLE 29 - MODIFICATION

No changes, amendments, or modifications of any of the terms and/or conditions of this Agreement shall be valid unless reduced to writing and signed by the Parties to this Agreement. Changes to Schedule A, the Scope of Services, in this Agreement shall not be binding, and no payment shall be due in connection therewith, unless prior to the performance of any such Services, the President of the UCEDA, executes an Addendum, Amendment or Change Order to this Agreement. The aforesaid Addendum, Amendment or Change Order shall specifically set forth the scope of such extra or additional services, the amount of compensation, and the extension of time for performance, if any, for any such extra or additional services. Unless otherwise specifically provided for therein, the provisions of this Agreement shall apply with full force and effect to the terms and conditions contained in such Addendum, Amendment or Change Order.

ARTICLE 30 - HEADINGS AND DEFINED TERMS

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

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to enter into this Agreement as of the dates set forth below, effective as of the beginning date set forth in Article 2 above.

ULSTER COUNTY ECONOMIC DEVELOPMENT
ALLIANCE, INC.

TOWN OF WAWARSING

By: _____
NAME:
TITLE:
DATE: _____

By: _____
NAME:
TITLE:
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

The Town of Wawarsing shall undertake a program of improvements, as described herein and specified in its prior agreements with the landowner, to provide public access on the O&W Rail Trail across the approved easement on lands owned by New York State Department of Corrections and Community Supervision (NYSDOCCS). The Town shall utilize all funds awarded through this contract for the purposes described herein.

Description of Project

As identified in the Ellenville/Wawarsing Parks and Recreation Plan, 2016-2019, which was adopted by the Commission on November 17, 2016, the Town will utilize funds awarded from the Ellenville Million initiative to develop an additional 1.5 miles of the O&W Rail Trail, within property owned by NYSDOCCS and subject to an easement for trail use obtained by the Town.

The improvements to be completed by the Town include:

- Purchasing and installing approximately 3,200 linear feet of split rail fence, per NYS DOCCS requirements;
- Purchasing and installing crushed stone (Item 4 or equivalent) to construct a new trail surface of a minimum width of 8' and a length of 1.5 miles; and
- Signage, gates, and additional fencing as may be required under the conditions of the Town's easement from NYS DOCCS.

Project Plan and Closeout Report

The Town shall submit to the UCEDA a summary and expenditure plan that identifies all funding sources and uses for all funds involved, expected outcomes; including timeline for completion and other information that the UCEDA deems appropriate. Should the Town be unable to complete all of the items listed above in this Schedule A, the Town may with the written approval of the UCEDA eliminate in whole or in part any area of the expenditure plan.

The UCEDA shall approve the Plan prior to commencement of work.

The Town shall complete and submit a closeout report to the UCEDA upon completion of the project. The closeout report shall include but not be limited to the accomplishments of the project, before and after photos and an accounting of all funds for the project.

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The Town's fee for Services to be provided pursuant to this Agreement shall not exceed FIFTY FIVE THOUSAND AND 00/100 (\$55,000.00) DOLLARS.
2. The Town shall invoice the UCEDA for approved reimbursable costs after the expense has been incurred and paid for by the Town. The following are hereby established as maximum allowable reimbursements for the project.
 - a. Materials (fence, gates, signs, Item 4) \$26,914
 - b. Surveying \$2,000
 - c. Labor (installation) \$26,806

Labor estimates assume Town personnel will perform installation and are based on an estimated daily rate of \$60 per person. The Town agrees to furnish labor for installation of the materials, and to match the amounts above with in-kind labor valued at \$31,514.

The Town may deviate from the estimated costs set forth above only with prior written approval of UCEDA. These deviations shall not increase the not-to-exceed amount contained in paragraph 1 above.

3. The UCEDA shall hold the final twenty percent (20%) of the total Agreement amount as retainage and shall only release this amount upon full completion of the project and submission of the closeout report.
4. The Town shall not invoice the UCEDA for any expenses incurred under the Plan prior to approval of the Plan by the UCEDA.
5. The Town shall submit its final invoice under this Agreement no later than thirty (30) days after the end date contained in Article 2 of this Agreement.
6. The UCEDA will remit payment to the Town within thirty (30) days of approval of the invoice by the Board of Directors.
7. The Town agrees to meet any additional invoicing requirements that the UCEDA may from time to time require, with reasonable notice to the Town.
8. The Town's invoices must contain, or have attached, sufficient supporting detail, as reasonably required by the UCEDA, to verify the claim.

SCHEDULE C
UCEDA STANDARD CONTRACT INSURANCE REQUIREMENTS

CONDITIONS OF INSURANCE

Unless otherwise authorized by the UCEDA Board of Directors, strict adherence to this schedule is required. Any deviation without prior authorization from the UCEDA Board of Directors will result in a delay in the finalization of this Agreement.

The Firm shall submit copies of any or all required insurance policies as and when requested by the County.

CERTIFICATES OF INSURANCE

The Firm 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 County of Ulster, P.O. Box 1800, Kingston, New York 12402-1800.

If the Firm's insurance policies should be non-renewed or canceled, or should expire during the life of this Agreement, the County shall be provided with a new certificate indicating the replacement policy information as requested above. The County requires thirty (30) days prior written notice of cancellation [fifteen (15) days for non-payment of premium] from the Insurer, its agents or representatives.

WORKERS' COMPENSATION AND DISABILITY INSURANCE

The Firm shall take out and maintain during the life of this Agreement, Workers' Compensation (WC) Insurance and Disability Benefits (DB) Insurance, for all of its employees employed at the site of the project, and shall provide Certificates of Insurance evidencing this coverage to the County's Insurance Department.

If the Firm is not required to carry such insurance, the Firm must submit form CE-200 attesting to the fact that it is exempt from providing WC and/or DB Insurance coverage for all of its employees.

The manner of proof related to WC and DB Insurance is controlled by New York State Laws, Rules and Regulations. “ACORD” forms are not acceptable proof of WC and/or DB Insurance.

WORKERS’ COMPENSATION REQUIREMENTS

To assist the State of New York and municipal entities in enforcing WCL Section 57, a business entity (the Firm) seeking to enter into a contract with a municipality (the County) must provide one of the following forms to the municipal entity it is entering into a contract with. The Firm should contact their insurance agent to obtain acceptable proof of WC coverage:

- Form C-105.2 – “Certificate of NYS Workers’ Compensation Insurance” or
- Form U-26.3 – “Certificate of Workers’ Compensation Insurance” issued by the New York State Insurance Fund or
- Form SI-12 – “Affidavit Certifying that Compensation has Been Secured” issued by the Self-Insurance Office of the Workers’ Compensation Board if the Firm 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 Firm is self-insured.

If the Firm is not required to carry WC coverage, it must submit Form CE-200, “Certificate of Attestation of Exemption” from New York State Workers’ Compensation and/or Disability Benefits Insurance Coverage. This form and the instructions for completing it are available at <http://www.wcb.ny.gov>

DISABILITY BENEFITS REQUIREMENTS

To assist the State of New York and municipal entities in enforcing WCL Section 220(8), a business entity (the Firm) seeking to enter into a contract with a municipality (the County) must provide one of the following forms to the municipal entity it is entering into a contract with. The Firm should contact their insurance agent to obtain acceptable proof of DB Insurance Coverage:

- Form DB-120.1 – “Certificate of Insurance Coverage Under the NYS Disability Benefits Law” or
- Form DB-155 – “Compliance with Disability Benefits Law” issued by the Self-Insurance Office of the Workers’ Compensation Board if the Firm is self-insured.

If the Firm is not required to carry DB Insurance coverage, it must submit Form CE-200, “Certificate of Attestation of Exemption” from New York State Workers’ Compensation and/or Disability Benefits Insurance Coverage. This form and the instructions for completing it are available at <http://www.wcb.ny.gov>

COMMERCIAL GENERAL LIABILITY INSURANCE

The Firm shall take out and maintain during the life of this Agreement, such bodily injury liability and property damage liability insurance as shall protect it and the County from claims for damages for bodily injury including accidental death, as well as from claims for property damage that may arise from operations under this Agreement, whether such operations be by the Firm, by any subcontractor, or by anyone directly or indirectly employed by either of them.

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

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

Other Conditions of Commercial General Liability Insurance:

- a. Coverage shall be written on Commercial General Liability form.
- b. Coverage shall include:
 1. Contractual Liability
 2. Independent Contractors
 3. Products and Completed Operations
- c. "Additional Insured" status shall be granted to "County of Ulster, P.O. Box 1800, Kingston, New York, 12402-1800", shown on the Commercial General Liability policy, further stating that this insurance shall be primary and non-contributory with any other valid and collectable insurance.

UMBRELLA LIABILITY OR EXCESS LIABILITY INSURANCE

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

AUTOMOBILE LIABILITY INSURANCE

Automobile Bodily Injury Liability and Property Damage Liability Insurance shall be provided by the Firm, with a minimum Combined Single Limit (CSL) of **ONE MILLION AND 00/100 (\$1,000,000.00) DOLLARS**.

Coverage shall include:

- a. All owned vehicles
- b. Hired car and non-ownership liability coverage
- c. Statutory No-Fault coverage

PROFESSIONAL LIABILITY INSURANCE (e.g. MALPRACTICE INSURANCE)

If this box is checked, Professional Liability Insurance shall be provided by the Firm in an amount not less than **ONE MILLION AND 00/100 (\$1,000,000.00) DOLLARS** for each occurrence and in an amount of not less than **TWO MILLION AND 00/100 (\$2,000,000.00) DOLLARS** general aggregate.

CYBER LIABILITY INSURANCE:

If this box is checked, Cyber Liability Insurance shall be provided by the Firm in an amount not less than **FIVE MILLION AND 00/100 (\$5,000,000) DOLLARS** for each occurrence and in an amount of not less than **FIVE MILLION AND 00/100 (\$5,000,000) DOLLARS** general aggregate.

ECONOMIC DEVELOPMENT AGREEMENT

VILLAGE OF ELLENVILLE PARKS AND RECREATION IMPROVEMENTS

This AGREEMENT is entered into by and between the **ULSTER COUNTY ECONOMIC DEVELOPMENT ALLIANCE, INC.**, a local development corporation formed under the laws of the State of New York, with offices at 244 Fair Street, Kingston, New York 12401 (the “UCEDA”), and **THE VILLAGE OF ELLENVILLE**, a village incorporated under the laws of the State of New York, with its offices at Village Hall, Government Center, 2 Elting Court, Ellenville, New York 12428 (the “Village”), (each, a “Party,” together, the “Parties”).

RECITALS

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

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

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

WHEREAS, the Ellenville Million Committee held a public information meeting on February 5, 2015, seeking public input and recommendations for best investing one million dollars to help spur economic growth and development in the Ellenville/Wawarsing area; and

WHEREAS, after extensive review and careful consideration, the Ellenville Million Committee recommended an amount of One Hundred Fifty Thousand Dollars towards establishment of an inter-municipal park commission to oversee, improve and manage all the parks within Ellenville/Wawarsing; and

WHEREAS, in June 2016, the Village Board and Town Board each approved resolutions establishing a Joint “Ellenville/Wawarsing Parks and Recreation Commission” (the Commission) and requiring the Commission to establish a plan for parks and recreation improvements in the two municipalities; and

WHEREAS, the Commission has developed and approved by resolution a Parks and Recreation Plan that identifies priority parks and recreation projects for immediate implementation, as well as additional projects for implementation at a later date; and

WHEREAS, the Board of Directors of the UCEDA has received a copy of said Parks and Recreation Plan, and concurs with the priority projects identified in Phase 1 of the plan; and

WHEREAS, the UCEDA has agreed to engage the Village and the Village has agreed to contract with the UCEDA to implement certain projects identified in Phase 1 of the plan, as further defined in Schedule A herein.

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

ARTICLE 1 – SCOPE OF SERVICES

The Village agrees to perform the services identified in “Schedule A,” the “Scope of Services” (hereinafter, the “Services”), which is attached hereto and is hereby made a part of this Agreement. The Village agrees to perform the Services in accordance with the terms and conditions of this Agreement. It is specifically agreed to by the Village that the UCEDA will not compensate the Village for any services not included in Schedule A without prior authorization, evidenced only by a written Change Order, Amendment or Addendum to this Agreement, signed by the Parties hereto.

ARTICLE 2 - TERM OF AGREEMENT

The Village agrees to perform the Services **beginning January 1, 2017 and ending August 31, 2017.**

ARTICLE 3 - COMPENSATION

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

A **not-to-exceed** amount of **FIFTY NINE THOUSAND FIVE HUNDRED SIXTY EIGHT AND 00/100 (\$59,568.00) DOLLARS** has been established for the Services to be rendered by the Village. Costs in excess of the above-noted amount may not be incurred without the prior written authorization of the UCEDA, evidenced only by a written Change Order, Amendment or Addendum to this Agreement. It is specifically agreed to by the Village that the UCEDA shall not be responsible for any additional costs, or costs in excess of the above-noted cost, if authorization by the UCEDA is not given in writing prior to the performance of the services giving rise to such excess or additional costs.

ARTICLE 4 - INDEPENDENT CONTRACTOR

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

ARTICLE 5 - ASSIGNMENT

The Village shall not assign any of its rights, interests, or obligations under this Agreement, or assign any of the Services to be performed by it under this Agreement.

ARTICLE 6 – SUBCONTRACTING

The Village agrees to include the following provisions in any and all subcontract agreements for Services to be performed pursuant to this Agreement:

- A. That the work performed by the subcontractor must be in accordance with the terms and conditions of this Agreement between the UCEDA and the Village, including but not limited to the insurance requirements set forth in Schedule C; and
- B. That nothing contained in the subcontractor agreement shall impair the rights of the UCEDA; and
- C. That nothing contained in the subcontractor agreement, or under this Agreement between the UCEDA and the Village, shall create any contractual relation in law or equity, between the subcontractor and the UCEDA.

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

The Village agrees that it is fully responsible to the UCEDA for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, to the same extent as it is for the acts and omissions of persons employed by the Village. The Village shall not in any way be relieved of any responsibility under this Agreement by any subcontract.

ARTICLE 7 - PERFORMANCE

In performing the Services, the Village shall assign qualified personnel and perform such Services in accordance with the professional standards and with the skill, diligence and quality control/quality assurance measures expected of a reputable company performing Services of a similar nature. The Village is hereby given notice that the UCEDA shall be relying upon the

accuracy, competence, and completeness of the Village's performance in using the results achieved by the Village's performance of these Services. The Village shall at all times comply with all applicable Federal, New York State and local laws, ordinances, statutes, rules and regulations.

ARTICLE 8 – INTELLECTUAL PROPERTY RIGHTS

All "Intellectual Property," meaning all graphics, fonts, computer code (with the exception of open source code), photographs, brochures, videos, web pages, trademarks, databases, names and logos, or the copyright in any portion of the works issued by the County or developed or produced for the County shall at all times be proprietary to the County, and shall be the exclusive property of the County. Upon termination of this Agreement, the Village's right or license to use the intellectual property shall terminate.

The Village warrants it has full authority to sell, assign and transfer the rights to all graphics, fonts, computer code (with the exception of open source code), photographs, brochures, videos, web pages, trademarks, databases, names and logos, or the copyright in any portion of the works, developed or produced for the County free and clear of any material encumbrances, liens or claims.

The Village agrees, at its own expense, to defend, indemnify and hold harmless the County from and against any losses, damages, expenses, liabilities and costs (including without limitation, legal fees) incurred by the County as a result of any claims brought against the County by third parties arising from any infringement or misappropriation of any Intellectual Property right arising out of or relating to the County's use of the Village's Services.

ARTICLE 9 - CONFIDENTIALITY

For purposes of this Article:

- A. The term "Confidential Information" as used herein, means all material and information, whether written or oral, received by the Village from or through the UCEDA or any other person connected with the UCEDA, or developed, produced, or obtained by the Village in connection with its performance of Services under this Agreement. Confidential Information shall include, but not be limited to: samples, substances and other materials, conversations, correspondence, records, notes, reports, plans, drawings, specifications and other documents in draft or final form, including any documentation or data relating to the results of any investigation, testing, sampling in laboratory or other analysis, and all conclusions, interpretations, recommendations, and/or comments relating thereto.
- B. The term "Village" as used herein includes all officers, directors, employees, agents, subcontractors, assignees or representatives of the Village.

The Village shall keep all Confidential Information in a secure location within the Village's offices. The UCEDA shall have the right, but not the obligation, to enter the Village's offices in order to inspect the arrangements of the Village for keeping Confidential Information secure.

The UCEDA's inspection, or its failure to inspect, shall not relieve the Village of its responsibilities pursuant to this Article 8.

The Village shall hold Confidential Information in trust and confidence, and shall not disclose Confidential Information, or any portion thereof, to anyone other than the UCEDA, without the prior written consent of the Board of Directors, and shall not use Confidential Information, or any portion thereof, for any purpose whatsoever except in connection with its performance of the Services under this Agreement.

The Village shall notify the UCEDA immediately upon its receipt of any request by anyone other than the UCEDA for, or any inquiry related to, Confidential Information. The Village is not prohibited from disclosing portions of Confidential Information if, and to the extent that: (i) such portions have become generally available to the public other than by an act or omission of the Village, or (ii) disclosure of such portions is required by subpoena, warrant or court order; provided, however, that in the event anyone other than the UCEDA requests all or a portion of Confidential Information, the Village shall oppose such request and cooperate with the UCEDA in obtaining a protective order or other appropriate remedy, unless and until the Board of Directors, upon consultation with UCEDA's counsel, in writing, waives compliance with the provisions of this Article 8, or determines that disclosure is legally required. In the event that such protective order or other remedy is not obtained, or the UCEDA waives compliance with this Article 8 or determines that such disclosure is legally required, the Village shall disclose only such portions of Confidential Information that, in the opinion of the UCEDA's counsel, the Village is legally required to disclose, and the Village shall use its best efforts to obtain from the party to whom Confidential Information is disclosed, written assurance that confidential treatment will be given to any such Confidential Information disclosed, to the extent permitted by law.

ARTICLE 10 – OWNERSHIP OF CONFIDENTIAL INFORMATION

Notwithstanding any other provision herein to the contrary:

- A. All Confidential Information, as defined in Article 8, including all copies thereof, is the exclusive property of the UCEDA regardless of whether or not it is delivered to the UCEDA. The Village shall deliver Confidential Information and all copies thereof to the UCEDA upon request.
- B. To the extent that copies of Confidential Information are authorized by the UCEDA to be retained by the Village, such information shall be retained in a secure location in the Village's office for a period of six (6) years after completion of the Services, or termination of this Agreement, whichever later occurs, and thereafter disposed of at the UCEDA's direction.

ARTICLE 11 – PUBLICITY

The prior written approval of the UCEDA is required before the Village, or any of its employees, representatives, servants, agents, assignees, or subcontractors may, at any time, either during or

after completion or termination of this Agreement, make any statement to the media or issue any material for publication bearing on the Services performed or data collected in connection with this Agreement.

If the Village, or any of its employees, representatives, servants, agents, assignees or subcontractors desires to publish a work dealing with any aspect of this Agreement, or of the results or accomplishments attained by its performance, they must first obtain the prior written permission of the President of the UCEDA which, unless otherwise agreed to in said written permission, will entitle the UCEDA to a royalty fee, and a non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use such publication.

ARTICLE 12 - BOOKS AND RECORDS

The Village agrees to maintain separate and accurate books, records, documents and other evidence, and to employ accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

ARTICLE 13 - RETENTION OF RECORDS

The Village agrees to retain all books, records, and other documents relevant to this Agreement for six (6) years after the final payment or termination of this Agreement, whichever later occurs. The UCEDA, any New York State and/or Federal auditors, and any other persons duly authorized by the UCEDA, shall have full access and the right to examine any of said materials during said period.

ARTICLE 14 – AUDITING AND REPORTS

All forms or invoices presented for payment to be made hereunder, and the books, records, and accounts upon which said forms or invoices are based, are subject to audit by the UCEDA. The Village shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the UCEDA, so that it may evaluate the reasonableness of the charges, and the Village shall make its records available to the UCEDA upon request. All books, forms, records, reports, cancelled checks, and any and all similar material may be subject to periodic inspection, review, and audit by the UCEDA and/or other persons duly authorized by the UCEDA. Such audits may include examination and review of the source and application of all funds, whether from the UCEDA, private sources, or otherwise. The Village shall not be entitled to any interim or final payment under this Agreement if any audit requirements and/or requests have not been satisfactorily met.

ARTICLE 15 – NO DISCRIMINATION

As required by Article 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 Village will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition, carrier status, military status, domestic

violence victim status, or marital status.

ARTICLE 16 - INSURANCE

For provision of the Services set forth herein and as may be hereinafter amended, the Village shall maintain or cause to be maintained, in full force and effect during the term of this Agreement, at its expense, insurance with stated minimum coverage as set forth in “Schedule C”, which is attached hereto and is hereby made a part of this Agreement. Such policies are to be in the broadest form available on usual commercial terms and shall be written by insurers who have been fully informed as to the nature of Services to be performed by the Village pursuant to this Agreement. Such insurers shall be of recognized financial standing, satisfactory to the UCEDA. The UCEDA shall be named as an additional insured on all commercial general liability policies with the understanding that any obligations imposed upon the insured (including, without limitation, the obligation to pay premiums) shall be the sole obligation of the Village and not those of the UCEDA. Notwithstanding anything to the contrary in this Agreement, the Village irrevocably waives all claims against the UCEDA for all losses, damages, claims or expenses resulting from risks commercially insurable under the insurance described in Schedule C and this Article 16. The provision of insurance by the Village shall not in any way limit the Village’s liability under this Agreement.

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

Each policy of insurance shall contain clauses to the effect that (i) such insurance shall be primary, without right of contribution of any other insurance carried by or on behalf of the UCEDA, with respect to its interests, (ii) it shall not be cancelled or materially amended, without thirty (30) days prior written notice to the UCEDA (except in the case of cancellation for non-payment of premium, which requires fifteen (15) days prior written notice), directed to the UCEDA, and (iii) the UCEDA shall have the option to pay any necessary premiums to keep such insurance in effect, and charge the cost back to the Village.

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

- A. Policy retroactive dates coincide with or precede the Village’s start of the performance of Services (including subsequent policies purchased as renewals or replacements); and
- B. The Village shall maintain similar insurance for a minimum of three (3) years following final acceptance of the Services; and
- C. If the insurance is terminated for any reason, the Village agrees to purchase for the UCEDA, an unlimited, extended reporting provision to report claims arising from the Services performed under this Agreement; and

D. Immediate notice shall be given to the UCEDA of circumstances or incidents that might give rise to future claims with respect to the Services performed under this Agreement.

ARTICLE 17 - INDEMNIFICATION

The Village agrees to defend, indemnify and hold harmless the UCEDA, including its officials, employees and agents, against all claims, losses, damages, liabilities, costs or expenses (including without limitation, reasonable attorney fees and costs of litigation and/or settlement), whether incurred as a result of a claim by a third party or any other person or entity, arising out of the Services performed by the Village, its employees, representatives, subcontractors, assignees, or agents pursuant to this Agreement, which the UCEDA, or its officials, employees, or agents may suffer by reason of any negligence, fault, act, or omission of the Village, its employees, representatives, subcontractors, assignees, or agents. The Village agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demands, or suits at its sole expense, and agrees to bear all other costs and expenses related thereto, even if such claims, demands, or suits are groundless, false, or fraudulent.

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

ARTICLE 18 - RESPONSIBILITY TO CORRECT DEFICIENCIES

It shall be the Village's responsibility to correct, in a timely fashion and at the Village's sole expense, any deficiencies in its Services resulting from the Village's failure to act in accordance with the standards set forth in Article 7 (Performance) and Schedule A, provided such deficiencies are reported to the Village within one hundred twenty (120) days after completion and final acceptance of the Services. If the Village fails to correct such deficiencies in a timely and proper manner, the UCEDA may elect to have others perform such corrections, and the UCEDA may charge any related cost of such corrections to the Village and/or set-off such amount against any sums otherwise due to the Village. These remedies, if effected, shall not constitute the sole or exclusive remedies afforded to the UCEDA for such deficiencies, nor shall they constitute a waiver of the UCEDA's right to claim damages or otherwise refuse payment, or to take any other action provided for by law, in equity, or pursuant to this Agreement.

ARTICLE 19 – FORCE MAJEURE

Neither Party hereto shall be considered in default in the performance of its obligations hereunder, to the extent that performance of any such obligation is prevented and/or delayed by any cause, existing or future, beyond the control of such Party, and which by that Party's exercise of due diligence and foresight could not reasonably have been avoided.

Upon removal of such cause, the Party affected shall resume its performance as soon as reasonably possible. The Village's financial inability to perform shall not be deemed to be an

event of Force Majeure regardless of the source causing such financial inability. If the Village is so delayed in the timely performance of the Services, the Village's sole and exclusive remedy is to request that a Change Order, Amendment or Addendum to this Agreement be issued by the UCEDA and signed by the President of the UCEDA, permitting an extension of time to perform the Services in an amount equal to the time lost due to such delay. Such request shall be based upon written notice only, stating the specific nature of the claim, delivered to the President of the UCEDA promptly, but in no event later than thirty (30) days after the initial occurrence of the event giving rise to such claim. An extension of time to perform the Services may only be granted by a written Change Order, Amendment or Addendum to this Agreement, signed by the President of the UCEDA. In no event shall the UCEDA be liable to the Village or to its subcontractors, agents, assignees, or any other person or entity for damages arising out of, or resulting from, any such delays.

ARTICLE 20 - TERMINATION

The Agreement may be terminated by either Party upon thirty (30) days written notice to the other Party. Upon termination, the Village will turn over all files, lists, or other work product requested by the UCEDA, provided that all Services performed by the Village 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.

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

ARTICLE 25 - NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES

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

ARTICLE 26 - ENTIRE AGREEMENT

The rights and obligations of the Parties and their respective agents, successors and assignees shall be subject to and governed by this Agreement, including Schedules A, B, and C, which supersedes any other understandings or writings between or among the Parties to this Agreement.

ARTICLE 27 - SURVIVING OBLIGATIONS

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

ARTICLE 28 - NOTICES

Except as expressly provided otherwise in this Agreement, all notices given to any of the Parties pursuant to or in connection with this Agreement shall be in writing, shall be delivered by hand, by certified or registered mail, return receipt requested, or by Federal Express, Express Mail, or other nationally recognized overnight carrier. Except where otherwise specifically defined within this Agreement, notices shall be effective when received. Notice addresses are as follows:

Village:

Village of Ellenville
Attn: Village Manager
Village Hall, Government Center
2 Elting Court
Ellenville, NY 12428

UCEDA:

ULSTER COUNTY ECONOMIC DEVELOPMENT ALLIANCE, INC.
Attn: President

244 Fair Street
Kingston, NY 12401

Any communication or notice regarding indemnification, termination, litigation or proposed changes to the terms and conditions of this Agreement shall be deemed to have been duly made upon receipt by the Parties at the addresses set forth herein, or such other addresses as may have been specified in writing by one Party to the other Party.

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

ARTICLE 29 - MODIFICATION

No changes, amendments, or modifications of any of the terms and/or conditions of this Agreement shall be valid unless reduced to writing and signed by the Parties to this Agreement. Changes to Schedule A, the Scope of Services, in this Agreement shall not be binding, and no payment shall be due in connection therewith, unless prior to the performance of any such Services, the President of the UCEDA, executes an Addendum, Amendment or Change Order to this Agreement. The aforesaid Addendum, Amendment or Change Order shall specifically set forth the scope of such extra or additional services, the amount of compensation, and the extension of time for performance, if any, for any such extra or additional services. Unless otherwise specifically provided for therein, the provisions of this Agreement shall apply with full force and effect to the terms and conditions contained in such Addendum, Amendment or Change Order.

ARTICLE 30 - HEADINGS AND DEFINED TERMS

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

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to enter into this Agreement as of the dates set forth below, effective as of the beginning date set forth in Article 2 above.

ULSTER COUNTY ECONOMIC DEVELOPMENT
ALLIANCE, INC.

VILLAGE OF ELLENVILLE

By: _____
NAME:
TITLE:
DATE: _____

By: _____
NAME:
TITLE:
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

The Village of Ellenville shall undertake a program of improvements, as described herein, to the property known as Berme Road Park. The Village shall utilize all funds awarded through this contract for the purposes described herein.

Description of Project

As identified in the Ellenville/Wawarsing Parks and Recreation Plan, 2016-2019, which was adopted by the Commission on November 17, 2016, the Village will utilize funds awarded from the Ellenville Million initiative to develop a new trailhead for the Smiley Carriage Road in Berme Road Park.

The improvements to be completed by the Village include:

- Construction and finishing of a six-sided trailhead kiosk to replace the existing trailhead kiosk near the terminus of the Smiley Carriage Road at Berme Road Park;
- Design, fabrication and installation of signage at the new kiosk, and at the existing kiosk in Lippman Park;
- Repair and resurfacing of the access road and upper parking lot at Berme Road Park.

Project Plan and Closeout Report

The Village shall submit to the UCEDA a summary and expenditure plan that identifies all funding sources and uses for all funds involved, expected outcomes; including timeline for completion and other information that the UCEDA deems appropriate. Should the Village be unable to complete all of the items listed above in this Schedule A, the Village may with the written approval of the UCEDA eliminate in whole or in part any area of the expenditure plan.

The UCEDA shall approve the Plan prior to commencement of work.

The Village shall complete and submit a closeout report to the UCEDA upon completion of the project. The closeout report shall include but not be limited to the accomplishments of the project, before and after photos and an accounting of all funds for the project.

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The Village's fee for Services to be provided pursuant to this Agreement shall not exceed FIFTY NINE THOUSAND FIVE HUNDRED SIXTY EIGHT AND 00/100 (\$59,568.00) DOLLARS.
2. The Village shall invoice the UCEDA for approved reimbursable costs after the expense has been incurred and paid for by the Village. The following are hereby established as maximum allowable reimbursements for the project.
 - a. Kiosk – materials \$2,000
 - b. Kiosk – signage \$4,200
 - c. Access road and parking \$53,368

The Village may deviate from the estimated costs set forth above only with prior written approval of UCEDA. These deviations shall not increase the not-to-exceed amount contained in paragraph 1 above.

3. The UCEDA shall hold the final twenty percent (20%) of the total Agreement amount as retainage and shall only release this amount upon full completion of the project and submission of the closeout report.
4. The Village shall not invoice the UCEDA for any expenses incurred under the Plan prior to approval of the Plan by the UCEDA.
5. The Village shall submit its final invoice under this Agreement no later than thirty (30) days after the end date contained in Article 2 of this Agreement.
6. The UCEDA will remit payment to the Village within thirty (30) days of approval of the invoice by the Board of Directors.
7. The Village agrees to meet any additional invoicing requirements that the UCEDA may from time to time require, with reasonable notice to the Village.
8. The Village's invoices must contain, or have attached, sufficient supporting detail, as reasonably required by the UCEDA, to verify the claim.

SCHEDULE C
UCEDA STANDARD CONTRACT INSURANCE REQUIREMENTS

CONDITIONS OF INSURANCE

Unless otherwise authorized by the UCEDA Board of Directors, strict adherence to this schedule is required. Any deviation without prior authorization from the UCEDA Board of Directors will result in a delay in the finalization of this Agreement.

The Firm shall submit copies of any or all required insurance policies as and when requested by the County.

CERTIFICATES OF INSURANCE

The Firm 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 County of Ulster, P.O. Box 1800, Kingston, New York 12402-1800.

If the Firm's insurance policies should be non-renewed or canceled, or should expire during the life of this Agreement, the County shall be provided with a new certificate indicating the replacement policy information as requested above. The County requires thirty (30) days prior written notice of cancellation [fifteen (15) days for non-payment of premium] from the Insurer, its agents or representatives.

WORKERS' COMPENSATION AND DISABILITY INSURANCE

The Firm shall take out and maintain during the life of this Agreement, Workers' Compensation (WC) Insurance and Disability Benefits (DB) Insurance, for all of its employees employed at the site of the project, and shall provide Certificates of Insurance evidencing this coverage to the County's Insurance Department.

If the Firm is not required to carry such insurance, the Firm must submit form CE-200 attesting to the fact that it is exempt from providing WC and/or DB Insurance coverage for all of its employees.

The manner of proof related to WC and DB Insurance is controlled by New York State Laws, Rules and Regulations. “ACORD” forms are not acceptable proof of WC and/or DB Insurance.

WORKERS’ COMPENSATION REQUIREMENTS

To assist the State of New York and municipal entities in enforcing WCL Section 57, a business entity (the Firm) seeking to enter into a contract with a municipality (the County) must provide one of the following forms to the municipal entity it is entering into a contract with. The Firm should contact their insurance agent to obtain acceptable proof of WC coverage:

- Form C-105.2 – “Certificate of NYS Workers’ Compensation Insurance” or
- Form U-26.3 – “Certificate of Workers’ Compensation Insurance” issued by the New York State Insurance Fund or
- Form SI-12 – “Affidavit Certifying that Compensation has Been Secured” issued by the Self-Insurance Office of the Workers’ Compensation Board if the Firm 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 Firm is self-insured.

If the Firm is not required to carry WC coverage, it must submit Form CE-200, “Certificate of Attestation of Exemption” from New York State Workers’ Compensation and/or Disability Benefits Insurance Coverage. This form and the instructions for completing it are available at <http://www.wcb.ny.gov>

DISABILITY BENEFITS REQUIREMENTS

To assist the State of New York and municipal entities in enforcing WCL Section 220(8), a business entity (the Firm) seeking to enter into a contract with a municipality (the County) must provide one of the following forms to the municipal entity it is entering into a contract with. The Firm should contact their insurance agent to obtain acceptable proof of DB Insurance Coverage:

- Form DB-120.1 – “Certificate of Insurance Coverage Under the NYS Disability Benefits Law” or
- Form DB-155 – “Compliance with Disability Benefits Law” issued by the Self-Insurance Office of the Workers’ Compensation Board if the Firm is self-insured.

If the Firm is not required to carry DB Insurance coverage, it must submit Form CE-200, “Certificate of Attestation of Exemption” from New York State Workers’ Compensation and/or Disability Benefits Insurance Coverage. This form and the instructions for completing it are available at <http://www.wcb.ny.gov>

COMMERCIAL GENERAL LIABILITY INSURANCE

The Firm shall take out and maintain during the life of this Agreement, such bodily injury liability and property damage liability insurance as shall protect it and the County from claims for damages for bodily injury including accidental death, as well as from claims for property damage that may arise from operations under this Agreement, whether such operations be by the Firm, by any subcontractor, or by anyone directly or indirectly employed by either of them.

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

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

Other Conditions of Commercial General Liability Insurance:

- a. Coverage shall be written on Commercial General Liability form.
- b. Coverage shall include:
 1. Contractual Liability
 2. Independent Contractors
 3. Products and Completed Operations
- c. "Additional Insured" status shall be granted to "County of Ulster, P.O. Box 1800, Kingston, New York, 12402-1800", shown on the Commercial General Liability policy, further stating that this insurance shall be primary and non-contributory with any other valid and collectable insurance.

UMBRELLA LIABILITY OR EXCESS LIABILITY INSURANCE

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

AUTOMOBILE LIABILITY INSURANCE

Automobile Bodily Injury Liability and Property Damage Liability Insurance shall be provided by the Firm, with a minimum Combined Single Limit (CSL) of **ONE MILLION AND 00/100 (\$1,000,000.00) DOLLARS**.

Coverage shall include:

- a. All owned vehicles
- b. Hired car and non-ownership liability coverage
- c. Statutory No-Fault coverage

PROFESSIONAL LIABILITY INSURANCE (e.g. MALPRACTICE INSURANCE)

If this box is checked, Professional Liability Insurance shall be provided by the Firm in an amount not less than **ONE MILLION AND 00/100 (\$1,000,000.00) DOLLARS** for each occurrence and in an amount of not less than **TWO MILLION AND 00/100 (\$2,000,000.00) DOLLARS** general aggregate.

CYBER LIABILITY INSURANCE:

If this box is checked, Cyber Liability Insurance shall be provided by the Firm in an amount not less than **FIVE MILLION AND 00/100 (\$5,000,000) DOLLARS** for each occurrence and in an amount of not less than **FIVE MILLION AND 00/100 (\$5,000,000) DOLLARS** general aggregate.

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is entered into by and between the **ULSTER COUNTY ECONOMIC DEVELOPMENT ALLIANCE, INC.**, a local development corporation formed under the laws of the State of New York, with offices at 244 Fair Street, Kingston, New York 12401 (the “**UCEDA**”), and **SHADOWLAND ARTISTS, INC.**, a domestic not-for-profit corporation with principal offices at 157 Canal St, Ellenville, New York 12428 (the “**Firm**”), (each, a “**Party**,” together, the “**Parties**”).

RECITALS

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

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

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

WHEREAS, the Ellenville Million Committee held a public information meeting on February 5, 2015, seeking public input and recommendations for best investing one million dollars to help spur economic growth and development in the Ellenville/Wawarsing area; and

WHEREAS, after extensive review and careful consideration, the Ellenville Million Committee recommended an amount of one hundred thousand dollars towards the restoration of the Hunt Memorial Building and its establishment as a tourism and cultural center; and

WHEREAS, the Board of Directors of the UCEDA has met and agrees that the funding of the restoration of the Hunt Memorial Building and its establishment as a tourism and cultural center is within the enumerated purposes of Section 1141 of New York Not-For-Profit Corporations Law which applies to Local Development Corporations; and

WHEREAS, the UCEDA has agreed to engage the Firm, and the Firm has agreed to contract with the UCEDA to assist in the restoration of the Hunt Memorial Building and help establish it as a tourism and cultural center.

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

ARTICLE 1 – SCOPE OF SERVICES

The Firm agrees to perform the services identified in “Schedule A,” the “Scope of Services” (hereinafter, the “**Services**”), which is attached hereto and is hereby made a part of this Agreement. The Firm agrees to perform the Services in accordance with the terms and conditions of this Agreement. It is specifically agreed to by the Firm that the UCEDA will not compensate the Firm for any services not included in Schedule A without prior authorization, evidenced only by a written Change Order, Amendment or Addendum to this Agreement, signed by the Parties hereto.

ARTICLE 2 - TERM OF AGREEMENT

The Firm agrees to perform the Services **beginning January 1, 2017 and ending June 1, 2017.**

ARTICLE 3 - COMPENSATION

For satisfactory performance of the Services, or as such Services may be modified mutually by a written Change Order, Amendment, or Addendum to this Agreement, the UCEDA agrees to compensate the Firm 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 **SEVENTY-FIVE THOUSAND AND 00/100 (\$75,000.00) DOLLARS** has been established for the Services to be rendered by the Firm. Costs in excess of the above-noted amount may not be incurred without the prior written authorization of the UCEDA, evidenced only by a written Change Order, Amendment or Addendum to this Agreement. It is specifically agreed to by the Firm that the UCEDA shall not be responsible for any additional costs, or costs in excess of the above-noted cost, if authorization by the UCEDA is not given in writing prior to the performance of the services giving rise to such excess or additional costs.

ARTICLE 4 - INDEPENDENT CONTRACTOR

In performing the Services and incurring expenses under this Agreement, the Firm 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 Firm shall be solely responsible for determining the means and methods of performing the Services and shall have complete charge and responsibility for the Firm’s personnel engaged in the performance of the same.

ARTICLE 5 - ASSIGNMENT

The Firm 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 Firm agrees to include the following provisions in any and all subcontract agreements for Services to be performed pursuant to this Agreement:

- A. That the work performed by the subcontractor must be in accordance with the terms and conditions of this Agreement between the UCEDA and the Firm, including but not limited to the insurance requirements set forth in Schedule C; and
- B. That nothing contained in the subcontractor agreement shall impair the rights of the UCEDA; and
- C. That nothing contained in the subcontractor agreement, or under this Agreement between the UCEDA and the Firm, shall create any contractual relation in law or equity, between the subcontractor and the UCEDA.

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

The Firm agrees that it is fully responsible to the UCEDA for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, to the same extent as it is for the acts and omissions of persons employed by the Firm. The Firm shall not in any way be relieved of any responsibility under this Agreement by any subcontract.

ARTICLE 7 - PERFORMANCE

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

ARTICLE 8 – INTENTIONALLY LEFT BLANK

ARTICLE 9 - 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 Firm from or through the UCEDA or any other person connected with the UCEDA, or developed, produced, or obtained by the Firm 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 “Firm” as used herein includes all officers, directors, employees, agents, subcontractors, assignees or representatives of the Firm.

The Firm shall keep all Confidential Information in a secure location within the Firm’s offices. The UCEDA shall have the right, but not the obligation, to enter the Firm’s offices in order to inspect the arrangements of the Firm for keeping Confidential Information secure. The UCEDA’s inspection, or its failure to inspect, shall not relieve the Firm of its responsibilities pursuant to this Article 9.

The Firm 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 Firm 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 Firm 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 Firm, 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 Firm 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 Firm shall disclose only such portions of Confidential Information that, in the opinion of the UCEDA’s counsel, the Firm is legally required to disclose, and the Firm 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 10 – OWNERSHIP OF CONFIDENTIAL INFORMATION

Notwithstanding any other provision herein to the contrary:

- A. All Confidential Information, as defined in Article 9, including all copies thereof, is the exclusive property of the UCEDA regardless of whether or not it is delivered to the UCEDA. The Firm 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 Firm, such information shall be retained in a secure location in the Firm’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 11 – PUBLICITY

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

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

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 Firm’s start of the performance of Services (including subsequent policies purchased as renewals or replacements); and
- B. The Firm shall maintain similar insurance for a minimum of three (3) years following final acceptance of the Services; and
- C. If the insurance is terminated for any reason, the Firm agrees to purchase for the UCEDA, an unlimited, extended reporting provision to report claims arising from the Services performed under this Agreement; and
- D. Immediate notice shall be given to the UCEDA of circumstances or incidents that might give rise to future claims with respect to the Services performed under this Agreement.

ARTICLE 17 - INDEMNIFICATION

The Firm agrees to defend, indemnify and hold harmless the UCEDA, including its officials, employees and agents, against all claims, losses, damages, liabilities, costs or expenses (including without limitation, reasonable attorney fees and costs of litigation and/or settlement), whether incurred as a result of a claim by a third party or any other person or entity, arising out of the Services performed by the Firm, its employees, representatives, subcontractors, assignees, or agents pursuant to this Agreement, which the UCEDA, or its officials, employees, or agents may suffer by reason of any negligence, fault, act, or omission of the Firm, its employees, representatives, subcontractors, assignees, or agents. The Firm 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 Firm with respect to any claims, actions, or proceedings arising out of representations, information, or materials supplied by UCEDA to the Firm, and approved by UCEDA for inclusion relative to the Services provided by the Firm, pursuant to this Agreement

ARTICLE 18 - RESPONSIBILITY TO CORRECT DEFICIENCIES

It shall be the Firm’s responsibility to correct, in a timely fashion and at the Firm’s sole expense, any deficiencies in its Services resulting from the Firm’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 Firm within one hundred twenty (120) days after completion and final acceptance of the Services. If the Firm 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 Firm and/or set-off such amount against any sums otherwise due to the Firm. These remedies, if effected, shall not constitute the sole or exclusive remedies afforded to the UCEDA for such deficiencies, nor shall they constitute a waiver of the UCEDA’s right to claim damages or otherwise refuse payment, or to take any other action provided for by law, in equity, or pursuant to this Agreement.

ARTICLE 19 – FORCE MAJEURE

Neither Party hereto shall be considered in default in the performance of its obligations hereunder, to the extent that performance of any such obligation is prevented and/or delayed by any cause, existing or future, beyond the control of such Party, and which by that Party’s exercise of due diligence and foresight could not reasonably have been avoided.

Upon removal of such cause, the Party affected shall resume its performance as soon as reasonably possible. The Firm’s financial inability to perform shall not be deemed to be an event of Force Majeure regardless of the source causing such financial inability. If the Firm is so delayed in the timely performance of the Services, the Firm’s sole and exclusive remedy is to request that a Change Order, Amendment or Addendum to this Agreement be issued by the UCEDA and signed by the President of the UCEDA, permitting an extension of time to perform the Services in an amount equal to the time lost due to such delay. Such request shall be based upon written notice only, stating the specific nature of the claim,

delivered to the President of the UCEDA promptly, but in no event later than thirty (30) days after the initial occurrence of the event giving rise to such claim. An extension of time to perform the Services may only be granted by a written Change Order, Amendment or Addendum to this Agreement, signed by the President of the UCEDA. In no event shall the UCEDA be liable to the Firm 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 Firm will turn over all files, lists, or other work product requested by the UCEDA, provided that all Services performed by the Firm 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.

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 Firm 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 Firm 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 Firm 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 Firm's obligations, and those of the Firm's employees, representatives, agents, subcontractors, successors and assignees, assumed pursuant to Article 7 (Performance), Article 9, (Confidentiality), Article 10 (Ownership of Confidential Information), 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:

Firm:

SHADOWLAND ARTISTS, INC.

ATTN: CHRISTINE CRAWFIS, EXECUTIVE MANAGING DIRECTOR

BRENDAN BURKE, PRODUCING ARTISTIC DIRECTOR

157 Canal St.

Ellenville, NY 12428

UCEDA:

ULSTER COUNTY ECONOMIC DEVELOPMENT ALLIANCE, INC.

Attn: President

244 Fair Street

Kingston, NY 12401

Any communication or notice regarding indemnification, termination, litigation or proposed changes to the terms and conditions of this Agreement shall be deemed to have been duly made upon receipt by the Parties at the addresses set forth herein, or such other addresses as may have been specified in writing by one Party to the other Party.

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

ARTICLE 29 - MODIFICATION

No changes, amendments, or modifications of any of the terms and/or conditions of this Agreement shall be valid unless reduced to writing and signed by the Parties to this Agreement. Changes to Schedule A, the Scope of Services, in this Agreement shall not be binding, and no payment shall be due in connection therewith, unless prior to the performance of any such Services, the President of the UCEDA, executes an Addendum, Amendment or Change Order to this Agreement. The aforesaid Addendum, Amendment or Change Order shall specifically set forth the scope of such extra or additional services, the amount of compensation, and the extension of time for performance, if any, for any such extra or additional services. Unless otherwise specifically provided for therein, the provisions of this Agreement shall apply with full force and effect to the terms and conditions contained in such Addendum, Amendment or Change Order.

ARTICLE 30 - HEADINGS AND DEFINED TERMS

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

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to enter into this Agreement as of the dates set forth below, effective as of the beginning date set forth in Article 2 above.

ULSTER COUNTY ECONOMIC DEVELOPMENT
ALLIANCE, INC.

SHADOWLAND ARTISTS, INC.

By: _____
NAME:
TITLE:
DATE: _____

By: _____
NAME:
TITLE:
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

1. The Firm shall coordinate the restoration of the Shadowland Theatre Second Space in Ellenville, New York. The Firm shall use the funds for the following plan ("Plan"):
 - a. Repairs to existing roof – renewing 18” of the perimeter of the roof
 - b. Architecture and Engineering, including design of all mechanical, electrical and plumbing elements
 - c. Underground Plumbing – moving and installation of new lines to public restrooms
 - d. Electric work – upgrade the current 100 amp service to 400 amp service
 - e. Carpentry Work – framing of internal walls

The Firm shall not remove, remediate or cause to be removed or remediated any lead, asbestos or any other hazardous material under this Agreement.

2. The Firm shall submit to the UCEDA a summary and expenditure plan that identifies all funding sources and uses for all funds involved, expected outcomes; including timeline for completion and other information that the UCEDA deems appropriate. Should the Firm be unable to complete all of the items listed above in Section 1 of this Schedule A, the Firm may with the written approval of the UCEDA eliminate in whole or in part any area of the Plan.
3. The UCEDA shall approve the Plan prior to commencement of work.
4. The Firm shall complete and submit a Plan closeout report to the UCEDA upon completion. The Plan closeout report shall include but not be limited to the accomplishments of the Plan, before and after photos and an accounting of all funds for the Plan.

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The Firm's fee for Services to be provided pursuant to this Agreement shall not exceed **SEVENTY FIVE THOUSAND AND 00/100 (\$75,000) DOLLARS.**
2. The Firm shall invoice the UCEDA for approved reimbursable costs after the expense has been incurred and paid for by the Firm. The following are estimated costs for the Plan.

Roof	\$ 6750.00
Architecture & Engineer	\$36,000.00
Carpentry Work	\$ 7,250.00
Plumbing	\$10,000.00
Electric Work	\$15,000.00

The Firm may deviate from the estimated costs set forth above, with the written approval of UCEDA. These deviations shall not increase the not-to-exceed amount contained in paragraph 1 above.

3. The Firm shall not use any funds under this Agreement for the removal of lead, asbestos or any other hazardous material.
4. The Firm may request up to a twenty percent (20%) advance of the total Agreement amount by completing a Statement of Need and submitting it to the UCEDA.
5. The UCEDA shall hold the final twenty percent (20%) of the total Agreement amount as retainage and shall only release this amount upon full completion of the Plant and submission of a Plan closeout report.
6. The Firm shall not invoice the UCEDA for any expenses incurred under the Plan prior to approval of the Plan by the UCEDA.
7. The Firm shall submit its final invoice under this Agreement no later than thirty (30) days after the end date contained in Article 2 of this Agreement.
8. The UCEDA will remit payment to the Firm within thirty (30) days of approval of the invoice by the Board of Directors.
9. The Firm agrees to meet any additional invoicing requirements that the UCEDA may from time to time require, with reasonable notice to the Firm.
10. The Firm's invoices must contain, or have attached, sufficient supporting detail, as reasonably required by the UCEDA, to verify the claim.

SCHEDULE C
UCEDA STANDARD CONTRACT INSURANCE REQUIREMENTS

CONDITIONS OF INSURANCE

Unless otherwise authorized by the UCEDA Board of Directors, strict adherence to this schedule is required. Any deviation without prior authorization from the UCEDA Board of Directors will result in a delay in the finalization of this Agreement.

The Firm shall submit copies of any or all required insurance policies as and when requested by the County.

CERTIFICATES OF INSURANCE

The Firm 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 County of Ulster, P.O. Box 1800, Kingston, New York 12402-1800.

If the Firm's insurance policies should be non-renewed or canceled, or should expire during the life of this Agreement, the County shall be provided with a new certificate indicating the replacement policy information as requested above. The County requires thirty (30) days prior written notice of cancellation [fifteen (15) days for non-payment of premium] from the Insurer, its agents or representatives.

WORKERS' COMPENSATION AND DISABILITY INSURANCE

The Firm shall take out and maintain during the life of this Agreement, Workers' Compensation (WC) Insurance and Disability Benefits (DB) Insurance, for all of its employees employed at the site of the project, and shall provide Certificates of Insurance evidencing this coverage to the County's Insurance Department.

If the Firm is not required to carry such insurance, the Firm must submit form CE-200 attesting to the fact that it is exempt from providing WC and/or DB Insurance coverage for all of its employees.

The manner of proof related to WC and DB Insurance is controlled by New York State Laws, Rules and Regulations. "ACORD" forms are not acceptable proof of WC and/or DB Insurance.

WORKERS' COMPENSATION REQUIREMENTS

To assist the State of New York and municipal entities in enforcing WCL Section 57, a business entity (the Firm) seeking to enter into a contract with a municipality (the County) must provide one of the following forms to the municipal entity it is entering into a contract with. The Firm should contact their insurance agent to obtain acceptable proof of WC coverage:

- Form C-105.2 – "Certificate of NYS Workers' Compensation Insurance" **or**
- Form U-26.3 – "Certificate of Workers' Compensation Insurance" issued by the New York State Insurance Fund **or**
- Form SI-12 – "Affidavit Certifying that Compensation has Been Secured" issued by the Self-Insurance Office of the Workers' Compensation Board if the Firm 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 Firm is self-insured.

If the Firm is not required to carry WC coverage, it must submit Form CE-200, "Certificate of Attestation of Exemption" from New York State Workers' Compensation and/or Disability Benefits Insurance Coverage. This form and the instructions for completing it are available at <http://www.wcb.ny.gov>

DISABILITY BENEFITS REQUIREMENTS

To assist the State of New York and municipal entities in enforcing WCL Section 220(8), a business entity (the Firm)

seeking to enter into a contract with a municipality (the County) must provide one of the following forms to the municipal entity it is entering into a contract with. The Firm should contact their insurance agent to obtain acceptable proof of DB Insurance Coverage:

- Form DB-120.1 – “Certificate of Insurance Coverage Under the NYS Disability Benefits Law” **or**
- Form DB-155 – “Compliance with Disability Benefits Law” issued by the Self-Insurance Office of the Workers’ Compensation Board if the Firm is self-insured.

If the Firm is not required to carry DB Insurance coverage, it must submit Form CE-200, “Certificate of Attestation of Exemption” from New York State Workers’ Compensation and/or Disability Benefits Insurance Coverage. This form and the instructions for completing it are available at <http://www.wcb.ny.gov>

COMMERCIAL GENERAL LIABILITY INSURANCE

The Firm shall take out and maintain during the life of this Agreement, such bodily injury liability and property damage liability insurance as shall protect it and the County from claims for damages for bodily injury including accidental death, as well as from claims for property damage that may arise from operations under this Agreement, whether such operations be by the Firm, by any subcontractor, or by anyone directly or indirectly employed by either of them.

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

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

Other Conditions of Commercial General Liability Insurance:

- a. Coverage shall be written on Commercial General Liability form.
- b. Coverage shall include:
 1. Contractual Liability
 2. Independent Contractors
 3. Products and Completed Operations
- c. “Additional Insured” status shall be granted to “County of Ulster, P.O. Box 1800, Kingston, New York, 12402-1800”, shown on the Commercial General Liability policy, further stating that this insurance shall be primary and non-contributory with any other valid and collectable insurance.

UMBRELLA LIABILITY OR EXCESS LIABILITY INSURANCE

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

AUTOMOBILE LIABILITY INSURANCE

Automobile Bodily Injury Liability and Property Damage Liability Insurance shall be provided by the Firm, with a minimum Combined Single Limit (CSL) of **ONE MILLION AND 00/100 (\$1,000,000.00) DOLLARS**.

Coverage shall include:

- a. All owned vehicles
- b. Hired car and non-ownership liability coverage
- c. Statutory No-Fault coverage

PROFESSIONAL LIABILITY INSURANCE (e.g. MALPRACTICE INSURANCE)

If this box is checked, Professional Liability Insurance shall be provided by the Firm in an amount not less than **ONE MILLION AND 00/100 (\$1,000,000.00) DOLLARS** for each occurrence and in an amount of not less than **TWO MILLION AND 00/100 (\$2,000,000.00) DOLLARS** general aggregate.

CYBER LIABILITY INSURANCE:

If this box is checked, Cyber Liability Insurance shall be provided by the Firm in an amount not less than **FIVE MILLION AND 00/100 (\$5,000,000) DOLLARS** for each occurrence and in an amount of not less than **FIVE MILLION AND 00/100 (\$5,000,000) DOLLARS** general aggregate.

Invoice

Date	Invoice #
1/3/2017	1575

Bill To
Ulster County Economic Development Corp. Ms. Adele Reiter P.O. Box 1800 Kingston, NY 12402

Description	Amount
2017 Hudson Valley Economic Development Corporation Dues	10,000.00
Total	
	\$10,000.00



AGREEMENT FOR PROFESSIONAL SERVICES

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

RECITALS

WHEREAS, the County’s Planning Department desires to enter into an agreement for certain economic development services which shall include but not be limited to marketing; education; the provision of resources to businesses, nonprofits and municipalities; and program management services; and

WHEREAS, the County has agreed to engage UCEDA, and UCEDA has agreed to contract with the County, to provide marketing; education; the provision of resources to businesses, nonprofits and municipalities; and program management, 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 County and the Firm hereby agree as follows:

ARTICLE 1 - SCOPE OF SERVICES

The Firm 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 Firm agrees to perform the Services in accordance with the terms and conditions of this Agreement. It is specifically agreed to by the Firm that the County will not compensate the Firm 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 Ulster County Executive (the “**Executive**”) or the Ulster County Director of Purchasing (the “**Purchasing Director**”), after consultation with the head of the County Department responsible for the oversight of this Agreement (the “**Department Head**”), and upon review by the County Attorney’s Office.

ARTICLE 2 - TERM OF AGREEMENT

UCEDA agrees to perform the Services **beginning January 1, 2017, and ending December 31, 2017**. In accordance with the Bid, the County, at its sole discretion, may with written notice to the Firm, extend the Term of this Agreement for up to [two (2)] additional [one (1) year] periods under the same terms, prices, and conditions contained herein.

If, owing to the actions or neglect of the County, the Firm is prevented from completing the Services within the Term of this Agreement, then the Firm’s sole and exclusive remedy will be to request that a Change Order, Amendment, or an Addendum to this Agreement be issued by the Executive or the Purchasing Director, permitting an extension of time to perform the Services, equal to the time lost due to such delay. Such request must be based upon written notice only, delivered to the Department Head promptly, but not later than thirty (30) days after the initial occurrence of the event giving rise to such claim, and stating the specific nature of the 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 Executive or the Purchasing Director. In no event will the County be liable to the Firm, its subcontractors, agents, assignees, or any other person or entity, for damages arising out of or resulting from any such delays.

ARTICLE 3 - COMPENSATION

For satisfactory performance of the Services, or as such Services may be modified by a mutually agreed upon written Change Order, Amendment, or Addendum to this Agreement, the County agrees to compensate the Firm in accordance with

Schedule B, "Fees, Expenses, and Submissions for Payment," which is attached hereto and is hereby made a part of this Agreement. As directed in Schedule B, the Firm shall submit invoices to the County for the Services rendered. Each invoice must be prepared in such form and supported by such documentation as the County may reasonably require. The County will remit payment to the Firm within sixty (60) days of approval of the invoice by the Department Head and County Comptroller. The County will notify the Firm in writing of its reasons, if any, for objecting to all or any portion of the Firm's invoice and/or supporting documentation.

A **fixed fee** amount of **ONE HUNDRED TWENTY FIVE THOUSAND AND 00/100 (\$125,000.00) DOLLARS** has been established for the Services to be rendered by UCEDA. Costs in excess of the above amount may not be incurred without the prior written authorization of the Executive or the Purchasing Director, after consultation with the Department Head, and evidenced only by a written Change Order, Amendment, or Addendum to this Agreement. It is specifically agreed to by the Firm that the County will not be responsible for any additional costs, or costs in excess of the above cost, if authorization by the Executive or the Purchasing Director is not given in writing prior to the performance of any services giving rise to such excess or additional costs.

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

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

ARTICLE 4 - EXECUTORY CLAUSE

The County will have no liability under this Agreement to the Firm or to anyone else beyond funds appropriated and available for this Agreement. The County may terminate this Agreement at the end of any fiscal year if funds are not appropriated and available for this Agreement for the following fiscal year.

ARTICLE 5 – PROCUREMENT OF AGREEMENT

The Firm represents and warrants that no person or selling agent has been employed or retained by the Firm to solicit or secure this Agreement upon a separate agreement, or upon an understanding for a commission, percentage, brokerage fee, contingent fee, or any other compensation. The Firm further represents and warrants that no payment, gift, or thing of value has been made, given, or promised to obtain this or any other agreement between the Parties. The Firm makes such representations and warranties to induce the County to enter into this Agreement and the County relies upon such representations and warranties in the execution hereof.

For a breach or violation of such representations or warranties, the County will have the right to annul this Agreement without liability, entitling the County to recover all monies paid hereunder, and the Firm shall neither make claim for, nor be entitled to recover any sum or sums otherwise due under this Agreement. This remedy, if effected, will not constitute the sole remedy afforded to the County for such breach or violation, nor will it constitute a waiver of the County's right to claim damages or otherwise refuse payment, or to take any other action provided for by law, in equity, or pursuant to this Agreement.

ARTICLE 6 - CONFLICT OF INTEREST

The Firm represents and warrants that neither it, nor any of its directors, officers, members, partners, or employees, have any interest, nor will they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the Services to be provided pursuant to this Agreement. The Firm further represents and warrants that in the performance of this Agreement, no person having such interest or possible interest will be employed by it, and that no elected official or other officer or employee of the County, nor any person whose salary is payable, in whole or in part, by the County, or any corporation, partnership, or association in which such official, officer, or employee is directly or indirectly interested, will have any such interest, direct or indirect, in this Agreement, or in the proceeds thereof, unless such person (i) is required by the Ulster County Ethics and Disclosure Law, as amended from time to time, to submit a disclosure form to the County's Board of Ethics, and amends such disclosure form to include their interest in this Agreement, or (ii) if not required to complete and submit such a disclosure form, either voluntarily

completes and submits said disclosure form, disclosing their interest in this Agreement, or seeks a formal opinion from the County's Board of Ethics, as to whether or not a conflict of interest exists.

For a breach or violation of such representations or warranties, the County will have the right to annul this Agreement without liability, entitling the County to recover all monies paid hereunder, and the Firm must not make claim for, nor be entitled to recover any sum or sums otherwise due under this Agreement. This remedy, if effected, will not constitute the sole remedy afforded to the County for such breach or violation, nor will it constitute a waiver of the County's right to claim damages or otherwise refuse payment, or to take any other action provided for by law, in equity, or pursuant to this Agreement.

ARTICLE 7 – REPRESENTATIONS BY THE FIRM

The Firm represents that it is fully licensed (to the extent required by law), experienced, and properly qualified to perform the Services to be provided under this Agreement, and that it is properly permitted, equipped, organized, and financed to perform such Services.

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

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

ARTICLE 8 – CORPORATE COMPLIANCE

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

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

Firm understands that the County has established and implemented a Corporate Compliance Program and has developed "Standards of Conduct for Ulster County Vendors and Contractors" (the "Standards"). The Standards can be accessed electronically at any time by going to www.co.ulster.ny.us/downloads/compliance.pdf. The Firm represents that it has read, understands and agrees to comply with the Standards with respect to its performance pursuant to this Agreement. The hotline for reporting violations of the Standards is (877) 569-8777.

ARTICLE 9 - FAIR PRACTICES

The Firm, and each person signing on behalf of the Firm, represents, warrants and certifies under penalty of perjury, that to

the best of their knowledge and belief:

- A. The prices in this Agreement have been arrived at independently by the Firm without collusion, consultation, communication, or agreement with any other bidder, proposer, or with any competitor, as to any matter relating to such prices which has the effect of, or has as its purpose, restricting competition; and
- B. Unless otherwise required by law, the prices that have been quoted in this Agreement and on the proposal or quote submitted by the Firm have not been knowingly disclosed by the Firm prior to the communication of such quote to the County, or prior to the proposal opening, directly or indirectly, to any other bidder, proposer, or to any competitor; and
- C. No attempt has been made or will be made by the Firm to induce any other person, partnership, corporation, or other entity to submit or not to submit a proposal or quote for the purpose of restricting competition.

The fact that the Firm (i) published price lists, rates, or tariffs covering the Services and/or items being procured, (ii) informed prospective customers of proposed or pending publication of new or revised price lists for such Services and/or items, or (iii) provided the same Services and/or items to other customers at the same prices being bid or quoted, does not constitute, without more, a disclosure within the meaning of this Article 9.

ARTICLE 10 - INDEPENDENT CONTRACTOR

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

In accordance with such status as independent Firm, the Firm covenants and agrees that neither it, nor its employees or agents, will proclaim themselves to be officers or employees of the County, or of any department, agency, or unit thereof, by reason hereof, and that the Firm's employees or agents will not, by reason hereof, make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the County including, but not limited to, Workers' Compensation coverage, health insurance coverage, Unemployment Insurance benefits, Social Security benefits, or employee retirement membership or credit.

Nothing contained in this Agreement will be construed to create the relationship of employer and employee, principal and agent, partnership, or joint venture, or any other fiduciary relationship.

ARTICLE 11 - ASSIGNMENT

The Firm must 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, without the prior express written consent of the Executive or the Purchasing Director, upon review by the Ulster County Attorney's Office. Any such assignment, transfer, conveyance, or other disposition without such prior consent will be void, and any Services provided thereunder will not be compensated. Any assignment properly consented to by the Executive or the Purchasing Director will be subject to all of the terms and conditions of this Agreement.

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

The provisions of this clause must not hinder, prevent, or affect any assignment by the Firm for the benefit of its creditors made pursuant to the laws of the State of New York, except where the Federal Supremacy Clause requires otherwise.

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

ARTICLE 12 – SUBCONTRACTING

Firm agrees to include the following provisions in any and all subcontract agreements for Services to be performed pursuant to this Agreement:

- A. That the work performed by the subcontractor must be in accordance with the terms and conditions of this Agreement between the County and the Firm, including, but not limited to, the insurance requirements set forth in Schedule C; and
- B. That nothing contained in the subcontractor agreement will impair the rights of the County; and
- C. That nothing contained in the subcontractor agreement, or under this Agreement between the County and the Firm, will create any contractual relation in law or equity, between the subcontractor and the County; and
- D. That the subcontractor specifically agrees to be bound by the confidentiality provision as set forth in Article 14 of this Agreement between the County and the Firm.

Upon signing this Agreement, Firm shall provide the Department Head with the names and scope of work of any and all subcontractors to be used in the performance of Firm's obligations pursuant to this Agreement. Furthermore, upon the County's request, Firm shall provide copies of any and all subcontract agreements for Services to be performed pursuant to this Agreement.

The Firm agrees that it is fully responsible to the County for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by them to the same extent as it is for the acts and omissions of persons employed by the Firm. The Firm will not in any way be relieved of any responsibility under this Agreement by any subcontract.

ARTICLE 13 - PERFORMANCE

The Firm shall perform the Services using its own equipment and facilities wherever and whenever possible. In performing the Services, the Firm 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 Firm is hereby given notice that the County will be relying upon the accuracy, competence, and completeness of the Firm's performance in using the results achieved by Firm's performance of these Services. The Firm shall at all times comply with all applicable federal, New York State, and local laws, ordinances, statutes, rules, and regulations.

Health Insurance Portability & Accountability Act of 1996 ("HIPAA"). Under certain circumstances, federal law and regulations governing the privacy of certain health information requires a "Business Associate Agreement" (a "BAA") between the County and the Firm [45 C.F.R. Section 164.504(e)]. If HIPAA is applicable to this Agreement, the County and the Firm agree to enter into a separate BAA that complies with HIPAA, as that law may be amended from time to time. Unless Firm has previously executed a compliant BAA that is in effect and on file with the County, the BAA referenced in this provision must be executed simultaneously with this Agreement.

ARTICLE 14 - 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 Firm from or through the County or any other person connected with the County, or developed, produced, or obtained by the Firm in connection with its performance of Services under this Agreement. Confidential Information will include, but not be limited to: samples, substances and other materials, conversations, correspondence, records, notes, reports, plans, drawings, specifications and other documents in draft or final form, including any documentation or data relating to the results of any investigation, testing, sampling in laboratory or other analysis, and all conclusions, interpretations, recommendations, and/or comments relating thereto.
- B. The term "Firm" as used herein includes all officers, directors, employees, agents, subcontractors, assignees, or representatives of the Firm.

The Firm shall keep all Confidential Information in a secure location within the Firm's offices. The County will have the right, but not the obligation, to enter the Firm's offices in order to inspect the arrangements of the Firm for keeping

Confidential Information secure. The County's inspection, or its failure to inspect, will not relieve the Firm of its responsibilities pursuant to this Article 14.

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

The Firm shall notify the County immediately upon its receipt of any request by anyone other than the County for, or any inquiry related to, Confidential Information. The Firm 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 Firm, or (ii) disclosure of such portions is required by subpoena, warrant, or court order; provided, however, that in the event anyone other than the County requests all or a portion of Confidential Information, the Firm shall oppose such request and cooperate with the County in obtaining a protective order or other appropriate remedy, unless and until the Executive or the Purchasing Director, upon consultation with the Ulster County Attorney, in writing, waives compliance with the provisions of this Article 14, or determines that disclosure is legally required. In the event that such protective order or other remedy is not obtained, or the County waives compliance with this Article 14, or determines that such disclosure is legally required, the Firm shall disclose only such portions of Confidential Information that, in the opinion of the County, the Firm is legally required to disclose, and the Firm shall use its best efforts to obtain from the party to whom Confidential Information is disclosed, written assurance that confidential treatment will be given to any such Confidential Information disclosed, to the extent permitted by law.

Prior to the performance of any of the Services in connection with this Agreement, Firm shall obtain from each of its subcontractors, a confidentiality agreement running to the benefit of the County that is substantively identical to this Article 14. Further, at any time, if requested by the County, Firm shall obtain such an agreement from the officers, directors, agents, representatives, or employees of the Firm and/or any of its subcontractors.

ARTICLE 15 – OWNERSHIP OF CONFIDENTIAL INFORMATION

Notwithstanding any other provision herein to the contrary:

- A. All Confidential Information, as defined in Article 14, including all copies thereof, is the exclusive property of the County regardless of whether or not it is delivered to the County. The Firm shall deliver Confidential Information and all copies thereof to the County upon request.
- B. To the extent that copies of Confidential Information are authorized by the County to be retained by the Firm, such information shall be retained in a secure location in the Firm's office for a period of six (6) years after completion of the Services, or termination of this Agreement, whichever occurs later, and thereafter disposed of at the County's direction.

ARTICLE 16 – INTENTIONALLY LEFT BLANK

ARTICLE 17 – PUBLICITY

The prior written approval of the County is required before the Firm 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 Firm, 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 Executive or the Purchasing Director which, unless otherwise agreed to in said written permission, will entitle the County 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 18 – BOOKS AND RECORDS

The Firm 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 19 - RETENTION OF RECORDS

The Firm agrees to retain all books, records, and other documents relevant to this Agreement for six (6) years after the final payment or termination of this Agreement, whichever occurs later. The County, any New York State and/or federal auditors, and any other persons duly authorized by the County, will have full access and the right to examine any of said materials during said period.

ARTICLE 20 – AUDITING AND REPORTS

All forms or invoices presented for payment to be made hereunder, and the books, records, and accounts upon which said forms or invoices are based, are subject to audit by the County. The Firm shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the County so that it may evaluate the reasonableness of the charges, and the Firm shall make its records available to the County upon request. All books, forms, records, reports, cancelled checks, and any and all similar material may be subject to periodic inspection, review, and audit by the County, the State of New York, the Federal Government and/or other persons duly authorized by the County. Such audits may include examination and review of the source and application of all funds, whether from the County, the State of New York, the Federal Government, private sources, or otherwise. The Firm will not be entitled to any interim or final payment under this Agreement if any audit requirements and/or requests have not been satisfactorily met.

ARTICLE 21 – 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 Firm must not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition, carrier status, military status, domestic violence victim status, or marital status.

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

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

ARTICLE 22 - INSURANCE

For provision of the Services set forth herein and as may be hereinafter amended, the Firm shall maintain or cause to be maintained in full force and effect during the term of this Agreement, at its expense, insurance with stated minimum coverage as set forth in Schedule C, which is attached hereto and is hereby made a part of this Agreement. Such policies are to be in the broadest form available on usual commercial terms and must be written by insurers who have been fully informed as to the nature of Services to be performed by the Firm pursuant to this Agreement. Such insurers must be of recognized financial standing, satisfactory to the County. The County must be named as an additional insured on all commercial general liability policies with the understanding that any obligations imposed upon the insured (including, without limitation, the obligation to pay premiums) will be the sole obligation of the Firm and not those of the County. Notwithstanding anything to the contrary in this Agreement, the Firm irrevocably waives all claims against the County for

all losses, damages, claims, or expenses resulting from risks commercially insurable under the insurance described in Schedule C and this Article 22. The provision of insurance by the Firm will not in any way limit the Firm's liability under this Agreement.

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

Each policy of insurance must contain clauses to the effect that (i) such insurance shall be primary, without right of contribution of any other insurance carried by or on behalf of the County, with respect to its interests, (ii) it must not be cancelled or materially amended without thirty (30) days prior written notice to the County, except in the case of cancellation for non-payment of premium which requires fifteen (15) days prior written notice, directed to the County's Insurance Department and the Department Head, and (iii) the County will have the option to pay any necessary premiums to keep such insurance in effect, and charge the cost back to the Firm.

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

- A. Policy retroactive dates coincide with or precede the Firm's start of the performance of Services (including subsequent policies purchased as renewals or replacements); and
- B. The Firm shall maintain similar insurance for a minimum of three (3) years following final acceptance of the Services; and
- C. If the insurance is terminated for any reason, the Firm agrees to purchase for the County an unlimited, extended reporting provision to report claims arising from the Services performed under this Agreement; and
- D. The Firm must give immediate notice to the County, through the Department Head, the Ulster County Attorney's Office, and the County's Insurance Department, of circumstances or incidents that might give rise to future claims with respect to the Services performed under this Agreement.

ARTICLE 23 - INDEMNIFICATION

The Firm agrees to defend, indemnify, and hold harmless the County, including its officials, employees, and agents, against all claims, losses, damages, liabilities, costs, or expenses (including without limitation, reasonable attorney fees and costs of litigation and/or settlement), whether incurred as a result of a claim by a third party or any other person or entity, arising out of the Services performed by the Firm, its employees, representatives, subcontractors, assignees, or agents pursuant to this Agreement, which the County, or its officials, employees, or agents may suffer by reason of any negligence, fault, act, or omission of the Firm, its employees, representatives, subcontractors, assignees, or agents. The Firm agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demands, or suits at its sole expense, and agrees to bear all other costs and expenses related thereto, even if such claims, demands, or suits are groundless, false, or fraudulent.

In the event that any claim is made or any action is brought against the County arising out of the negligence, fault, act, or omission of the Firm or an employee, representative, subcontractor, assignee, or agent of the Firm, either within or without the scope of the respective employment, representation, subcontract, assignment, or agency, or arising out of the Firm's negligence, fault, act, or omission, then the County will have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover said claim or action. The rights and remedies of the County provided for in this clause will not be exclusive and are in addition to any other rights and remedies provided by law, in equity, or pursuant to this Agreement.

ARTICLE 24 - RESPONSIBILITY TO CORRECT DEFICIENCIES

The Firm shall be responsible to correct, in a timely fashion and at the Firm's sole expense, any deficiencies in its Services resulting from the Firm's failure to act in accordance with the standards set forth in Article 13 (Performance) and Schedule A, provided such deficiencies are reported to the Firm within one hundred-twenty (120) days after completion and final acceptance of the Services. If the Firm fails to correct such deficiencies in a timely and proper manner, the County may elect to have others perform such corrections, and the County may charge any related cost of such corrections to the Firm and/or set-off such amount against any sums otherwise due to the Firm. These remedies, if effected, will not constitute the sole or exclusive remedies afforded to the County for such deficiencies, nor will they constitute a waiver of the County's right to claim damages or otherwise refuse payment, or to take any other action provided for by law, in equity, or pursuant

to this Agreement.

ARTICLE 25 - CURRENT OR FORMER COUNTY EMPLOYEES

The Firm represents and warrants that during the Term of this Agreement and for a period of one (1) year after its expiration or termination, it shall not retain the services of any County employee or former County employee in connection with this Agreement, or any other agreement that said Firm has or may have with the County, without the express written permission of the Executive or the Purchasing Director.

For a breach or violation of such representations or warranties, the County will have the right to annul this Agreement without liability, entitling the County to recover all monies paid hereunder, and the Firm must neither make claim for, nor be entitled to recover, any sum or sums otherwise due under this Agreement. This remedy, if effected, will not constitute the sole remedy afforded to the County for such breach or violation, nor will it constitute a waiver of the County's right to claim damages or otherwise refuse payment, or to take any other action provided for by law, in equity or pursuant to this Agreement.

ARTICLE 26 - PROTECTION OF COUNTY PROPERTY

The Firm assumes the risk of and shall be responsible for any loss or damage to the County's property and equipment, whether owned, leased, or otherwise possessed by the County, used in the performance of this Agreement. Any such loss or damage caused, either directly or indirectly, by the acts, conduct, omissions, or lack of good faith of the Firm, its officers, directors, members, partners, employees, representatives, or assignees, or any person, firm, company, agent, or others engaged by the Firm as an expert, consultant, specialist, or subcontractor hereunder, will be the responsibility of the Firm.

In the event that any such County property is lost or damaged, except for normal wear and tear, then the County will have the right to withhold further payments hereunder for the purposes of set-off in sufficient sums to cover such loss or damage.

The Firm agrees to defend, indemnify, and hold the County harmless from any and all liability or claim for loss, cost, damage, or expense (including without limitation, reasonable attorney fees and costs of litigation and/or settlement) due to any such loss or damage to any such County property described in this Article 26.

The rights and remedies of the County provided herein will not be exclusive and are in addition to any other rights and remedies provided by law, in equity, or pursuant to this Agreement.

ARTICLE 27 – 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.

Upon removal of such cause, the Party affected shall resume its performance as soon as reasonably possible. The Firm's financial inability to perform will not be deemed to be an event of Force Majeure regardless of the source causing such financial inability. If the Firm is so delayed in the timely performance of the Services, the Firm's sole and exclusive remedy is to request that a Change Order, Amendment, or Addendum to this Agreement be issued by the County and signed by the Executive or the Purchasing Director, permitting an extension of time to perform the 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 Department Head promptly, but not later than thirty (30) days after the initial occurrence of the event giving rise to such claim. An extension of time to perform the Services may only be granted by a written Change Order, Amendment, or Addendum to this Agreement, signed by the Executive or the Purchasing Director. In no event will the County be liable to the Firm or to its subcontractors, agents, assignees, or any other person or entity for damages arising out of, or resulting from, any such delays.

ARTICLE 28 - TERMINATION

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

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

- A. Accounting for and refunding to the County within ten (10) days, any unearned and/or unexpended funds that have been paid to the Firm pursuant to this Agreement; and
- B. Furnishing to the County within ten (10) days, an inventory of all equipment, appurtenances, and property purchased by the Firm through, or provided under this Agreement, and carrying out any County directive concerning the disposition thereof; and
- C. In the event that this Agreement is terminated for the convenience of the County, the Firm will be paid for all Services rendered through the date of termination in accordance with Schedule B.

In the event the County terminates this Agreement, in whole or in part, as provided in this Article 28, the County may procure upon such terms and in such manner as deemed appropriate, Services similar to those so terminated, and the Firm shall continue the performance of this Agreement to the extent not terminated hereby. If this Agreement is terminated in whole or in part for reasons other than the convenience of the County, the cost and expense of any Services procured by the County to complete the Services herein will be charged to the Firm and/or set off against any sums due to the Firm.

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

The rights and remedies of the County provided herein will not be exclusive and are in addition to any other rights and remedies provided by law, in equity, or pursuant to this Agreement.

ARTICLE 29 - SET-OFF RIGHTS

The County will have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but are not limited to, the County's right to withhold for the purposes of set-off any monies otherwise due to the Firm (i) under this Agreement, (ii) under any other agreement or contract with the County, including any agreement or contract for a term commencing prior to or after the Term of this Agreement, or (iii) from the County by operation of law. The County will also have the right to withhold any monies otherwise due under this Agreement for the purposes of set-off against any amounts due and owing to the County for any reason whatsoever, including without limitation, tax delinquencies, fee delinquencies and/or monetary penalties or interest relative thereto.

ARTICLE 30 - NO ARBITRATION

Any and all disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to arbitration unless specifically agreed to in writing by the Executive or the Purchasing Director, after consultation with the Ulster County Attorney, but must instead only be heard in the Supreme Court of the State of New York, with venue in Ulster County, or if appropriate, in the Federal District Court, with venue in the Northern District of New York, Albany Division.

ARTICLE 31 - GOVERNING LAW

This Agreement is governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise. The Firm 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 32 – PREVAILING WAGE

In accordance with New York State Labor Law Section 220-d, if this is an Agreement for the construction, reconstruction, maintenance and/or repair of any public work, the Firm agrees that all laborers, workers, or mechanics employed by the Firm and/or its subcontractors in contemplation of the performance of this Agreement will be paid not less than such hourly minimum rate of wage and shall be provided supplements not less than the prevailing supplements as designated by the New York State Commissioner of Labor.

ARTICLE 33 - WAIVER AND SEVERABILITY

The failure of either Party to enforce at any time, any provision of this Agreement, does not constitute a waiver of such

provision in any way or waive the right of either Party at any time to avail itself of such remedies as it may have for any breach or breaches of such provision. None of the conditions of this Agreement will be considered waived by the County unless such waiver is explicitly given in writing by the Executive or the Purchasing Director. No such waiver shall be a waiver of any past or future default, breach, or modification of any of the terms or conditions of this Agreement, unless expressly stipulated in such waiver as executed by the Executive or the Purchasing Director.

The invalidity or invalid application of any provision of this Agreement will not affect the validity of any other provision, or the application of any other provision of this Agreement.

ARTICLE 34 - GENERAL RELEASE

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

ARTICLE 35 - NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES

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

ARTICLE 36 - ENTIRE AGREEMENT

The rights and obligations of the Parties and their respective agents, successors and assignees will be subject to and governed by this Agreement, including Schedules A, B, and C, which supersedes any other understandings or writings between or among the Parties to this Agreement.

ARTICLE 37- SURVIVING OBLIGATIONS

The Firm's obligations and those of the Firm's employees, representatives, agents, subcontractors, successors, and assignees, assumed pursuant to Article 7 (Representations by the Firm), Article 8 (Corporate Compliance), Article 13 (Performance), Article 14 (Confidentiality), Article 15 (Ownership of Confidential Information), [Article 16 \(Intellectual Property\)](#), Article 17 (Publicity), Article 19 (Retention of Records), Article 23 (Indemnification), Article 24 (Responsibility to Correct Deficiencies), and Article 26 (Protection of County Property), will survive completion of the Services and/or the expiration or termination of this Agreement.

ARTICLE 38 - NOTICES

Except as expressly provided otherwise in this Agreement, all notices given to any of the Parties pursuant to or in connection with this Agreement will be in writing, will be delivered by hand, by certified or registered mail, return receipt requested, or by Federal Express, Express Mail, or other nationally recognized overnight carrier. Except where otherwise specifically defined within this Agreement, notices will be effective when received. Notice addresses are as follows:

UCEDA:
Ulster County Economic Development Alliance, Inc.
Attn: President
244 Fair Street, 6th Floor
Kingston, New York 12401

County:
County Of Ulster
Attn: Director of Purchasing
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 will be deemed to have been duly made upon receipt by both the County's Department of Planning and the Ulster County Attorney's Office at the addresses set forth herein, or such other addresses as may have been specified in writing by the County:

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

Physical Address:
County of Ulster
Attention: County Attorney
244 Fair Street, 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 39 - MODIFICATION

No changes, amendments, or modifications of any of the terms and/or conditions of this Agreement shall be valid unless reduced to writing and signed by the Parties to this Agreement, and no payment will be due in connection therewith, unless prior to the performance of any such Services, the Executive or the Purchasing Director, after consultation with the Department Head, executes an Addendum, Amendment, or Change Order to this Agreement. The aforesaid Addendum, Amendment, or Change Order must specifically set forth the scope of such extra or additional services, the amount of compensation, and the extension of time for performance, if any, for any such extra or additional services. Unless otherwise specifically provided for therein, the provisions of this Agreement will apply with full force and effect to the terms and conditions contained in such Addendum, Amendment, or Change Order.

ARTICLE 40 - HEADINGS AND DEFINED TERMS

The Article headings used in this Agreement are for reference and convenience only, and will not in any way limit or amplify the terms, conditions, and/or provisions hereof. All capitalized terms, acronyms, and/or abbreviations will have the meanings ascribed to them by this Agreement.

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 PLANNING DEPARTMENT
(Approved as to content)

By: _____
NAME: Dennis Doyle
TITLE: Director
DATE: _____

COUNTY OF ULSTER

By: _____
NAME: Marc Rider
TITLE: Director of Purchasing
DATE: _____

ULSTER COUNTY ECONOMIC DEVELOPMENT
ALLIANCE, INC.

By: _____
NAME: Julie Lonstein
TITLE: Chair
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

UCEDA shall provide the County marketing; education; the provision of resources to businesses, nonprofits and municipalities related to marketing and education; and program management services. UCEDA's services shall include but not be limited to the following:

- A. Marketing – UCEDA shall develop and execute a comprehensive yearly marketing plan for Ulster County in an effort to promote Ulster County and attract new businesses.
 - 1. UCEDA shall:
 - a. Continue to conduct strategic research that is designed to complement the County's attraction efforts;
 - b. Analyze all media options and select those most suitable for the County's use;
 - c. Create content and post on the County website, on Facebook and through other appropriate social media outlets as needed.
- B. Education – UCEDA shall develop and provide economic development-related educational programming for businesses, municipalities and nonprofits located in Ulster County.
 - 1. UCEDA shall:
 - a. Conduct presentations that engage the business community; promote collaboration among businesses; and help the Office of Economic Development to become a trusted resource to Ulster County's businesses;
 - b. Host conferences that engage the business community; promote collaboration among businesses; and help the Office of Economic Development to become a trusted resource to Ulster County's businesses;
 - c. Host webinars that engage the business community; promote collaboration among businesses; and help the Office of Economic Development to become a trusted resource to Ulster County's businesses; and
 - d. Host and attend meetings that engage the business community; promote collaboration among businesses; and help the Office of Economic Development to become a trusted resource to Ulster County's businesses.
- C. Support Services – UCEDA shall provide municipalities, nonprofits and businesses located in Ulster County with access to needed resources and support services related to marketing and education.
- D. Program Administration – UCEDA shall provide administrative support of County programs including, but not limited to the Revolving Loan Fund, Shovel Ready and Ready-to-Go programs.
- E. UCEDA shall provide the Legislature's Economic Development Committee with reports of activity and expenditure quarterly or at the Committee meeting following the meeting of the Board of Directors of UCEDA.

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

UCEDA's fee for services shall not exceed the amount of **ONE HUNDRED TWENTY FIVE THOUSAND AND 00/100 (\$125,000.00) DOLLARS** for the Term of this Agreement.

2. UCEDA shall invoice the County's Planning Department on a quarterly basis for Services performed at a rate of **THIRTY-ONE THOUSAND, TWENTY FIVE HUNDRED AND 00/100 (\$31,250.00) DOLLARS** per quarter.
3. UCEDA shall submit to the County original invoices for payment.
4. UCEDA shall submit its invoices by the tenth (10th) day of each quarter, for the Services performed during the previous quarter.
5. UCEDA's invoices must contain, or have attached, sufficient supporting detail, as reasonably required by the County, to verify the claim.
6. In no event shall claims be submitted in advance or accrued prior to expenditure.
7. UCEDA's final invoice under this Agreement shall be submitted by the tenth (10th) day of the month following the ending date contained in Article 2.
8. The County will remit payment to UCEDA within sixty (60) days of approval of the invoice by the Director of the County's Planning Department and the Ulster County Comptroller.
9. Notwithstanding any other term or provision of this Agreement, including this Schedule B, Firm's invoices, together with all documentation required, must be promptly and timely submitted. The County 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.
10. UCEDA agrees to meet any additional invoicing requirements that the County may from time to time require, with reasonable notice to UCEDA.

SCHEDULE C
COUNTY OF ULSTER STANDARD CONTRACT INSURANCE REQUIREMENTS

CONDITIONS OF INSURANCE

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

The Firm shall submit copies of any or all required insurance policies as and when requested by the County.

CERTIFICATES OF INSURANCE

The Firm shall file with the County's Insurance Department, prior to commencing work under this Agreement, all proper Certificates of Insurance.

The Certificates of Insurance shall include:

- a. Name and address of Insured
- b. Issue date of certificate
- c. Insurance company name
- d. Type of coverage in effect
- e. Policy number
- f. Inception and expiration dates of policies included on the certificate
- g. Limits of liability for all policies included on the certificate
- h. "Certificate Holder" shall be the County of Ulster, P.O. Box 1800, Kingston, New York 12402-1800.

If the Firm's insurance policies should be non-renewed or canceled, or should expire during the life of this Agreement, the County shall be provided with a new certificate indicating the replacement policy information as requested above. The County requires thirty (30) days prior written notice of cancellation [fifteen (15) days for non-payment of premium] from the Insurer, its agents or representatives.

WORKERS' COMPENSATION AND DISABILITY INSURANCE

The Firm shall take out and maintain during the life of this Agreement, Workers' Compensation (WC) Insurance and Disability Benefits (DB) Insurance, for all of its employees employed at the site of the project, and shall provide Certificates of Insurance evidencing this coverage to the County's Insurance Department.

If the Firm is not required to carry such insurance, the Firm must submit form CE-200 attesting to the fact that it is exempt from providing WC and/or DB Insurance coverage for all of its employees.

The manner of proof related to WC and DB Insurance is controlled by New York State Laws, Rules and Regulations. "ACORD" forms are not acceptable proof of WC and/or DB Insurance.

WORKERS' COMPENSATION REQUIREMENTS

To assist the State of New York and municipal entities in enforcing WCL Section 57, a business entity (the Firm) seeking to enter into a contract with a municipality (the County) must provide one of the following forms to the municipal entity it is entering into a contract with. The Firm should contact their insurance agent to obtain acceptable proof of WC coverage:

- Form C-105.2 – "Certificate of NYS Workers' Compensation Insurance" **or**
- Form U-26.3 – "Certificate of Workers' Compensation Insurance" issued by the New York State Insurance Fund **or**
- Form SI-12 – "Affidavit Certifying that Compensation has Been Secured" issued by the Self-Insurance Office of the Workers' Compensation Board if the Firm 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 Firm is self-insured.

If the Firm is not required to carry WC coverage, it must submit Form CE-200, "Certificate of Attestation of Exemption" from New York State Workers' Compensation and/or Disability Benefits Insurance Coverage. This form and the instructions

for completing it are available at <http://www.wcb.ny.gov>

DISABILITY BENEFITS REQUIREMENTS

To assist the State of New York and municipal entities in enforcing WCL Section 220(8), a business entity (the Firm) seeking to enter into a contract with a municipality (the County) must provide one of the following forms to the municipal entity it is entering into a contract with. The Firm should contact their insurance agent to obtain acceptable proof of DB Insurance Coverage:

- Form DB-120.1 – “Certificate of Insurance Coverage Under the NYS Disability Benefits Law” **or**
- Form DB-155 – “Compliance with Disability Benefits Law” issued by the Self-Insurance Office of the Workers’ Compensation Board if the Firm is self-insured.

If the Firm is not required to carry DB Insurance coverage, it must submit Form CE-200, “Certificate of Attestation of Exemption” from New York State Workers’ Compensation and/or Disability Benefits Insurance Coverage. This form and the instructions for completing it are available at <http://www.wcb.ny.gov>

COMMERCIAL GENERAL LIABILITY INSURANCE

The Firm shall take out and maintain during the life of this Agreement, such bodily injury liability and property damage liability insurance as shall protect it and the County from claims for damages for bodily injury including accidental death, as well as from claims for property damage that may arise from operations under this Agreement, whether such operations be by the Firm, by any subcontractor, or by anyone directly or indirectly employed by either of them.

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

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

Other Conditions of Commercial General Liability Insurance:

- a. Coverage shall be written on Commercial General Liability form.
- b. Coverage shall include:
 1. Contractual Liability
 2. Independent Contractors
 3. Products and Completed Operations
- c. “Additional Insured” status shall be granted to “County of Ulster, P.O. Box 1800, Kingston, New York, 12402-1800”, shown on the Commercial General Liability policy, further stating that this insurance shall be primary and non-contributory with any other valid and collectable insurance.

UMBRELLA LIABILITY OR EXCESS LIABILITY INSURANCE

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

AUTOMOBILE LIABILITY INSURANCE

Automobile Bodily Injury Liability and Property Damage Liability Insurance shall be provided by the Firm, with a minimum Combined Single Limit (CSL) of **ONE MILLION AND 00/100 (\$1,000,000.00) DOLLARS**.

Coverage shall include:

- a. All owned vehicles
- b. Hired car and non-ownership liability coverage
- c. Statutory No-Fault coverage

PROFESSIONAL LIABILITY INSURANCE (e.g. MALPRACTICE INSURANCE)

[] If this box is checked, Professional Liability Insurance shall be provided by the Firm in an amount not less than **ONE MILLION AND 00/100 (\$1,000,000.00) DOLLARS** for each occurrence and in an amount of not less than **TWO MILLION AND 00/100 (\$2,000,000.00) DOLLARS** general aggregate.

CYBER LIABILITY INSURANCE:

- If this box is checked, Cyber Liability Insurance shall be provided by the Firm in an amount not less than **FIVE MILLION AND 00/100 (\$5,000,000) DOLLARS** for each occurrence and in an amount of not less than **FIVE MILLION AND 00/100 (\$5,000,000) DOLLARS** general aggregate.