



City of Saratoga Springs, NY: Risk and Safety Agreement for Technology Services

City Project Number: _____ City Project Name: _____ Prevailing Wage Project No.: _____
 City Department: _____ Department Contact Person: _____ City Ext. _____
 Company Name: _____
 Company Address: _____
 Company Telephone No.: _____ Company Fax No.: _____
 Consultant Primary Contact for This Project: _____ Title: _____

Any and all professional services performed under this Agreement shall be completed by an individual licensed by the NYS Office of Professions - Education Department as applicable to the service provided including, but not limited to accounting, actuarial, engineering and architectural services. The Consultant represents that it has all necessary governmental licenses to perform the services described herein.

The Consultant shall procure and maintain during the term of this contract, at the Consultant's expense, the insurance policies listed with limits equal to or greater than the enumerated limits. The Consultant shall be solely responsible for any self-insured retention or deductible losses under each of the required policies. Every required policy, including any required endorsements and any umbrella or excess policy, shall be primary insurance. Insurance carried by the City of Saratoga Springs, its officers, or its employees, if any, shall be excess and not contributory insurance to that provided by the Consultant. Every required coverage type shall be "occurrence basis" with the exception of Professional Errors and Omissions Coverage which may be "claims made" coverage. The Consultant may utilize umbrella/excess liability coverage to achieve the limits required hereunder; such coverage must be at least as broad as the primary coverage (follow form). The Office of Risk and Safety Management must approve all insurance certificates. The City of Saratoga Springs reserves its right to request certified copies of any policy or endorsement thereto. All insurance shall be provided by insurance carriers licensed and admitted to do business in the State of New York and must be rated "A--:VII" or better by A.M. Best (Current Rate Guide). If the Consultant fails to procure and maintain the required coverage(s) and minimum limits such failure shall constitute a material breach of contract, whereupon the City of Saratoga Springs may exercise any rights it has in law or equity, including but not limited to the following: (1) immediate termination of the contract; (2) withholding any/all payment(s) due under this contract or any other contract it has with the vendor (common law set-off); OR (3) procuring or renewing any required coverage(s) or any extended reporting period thereto and paying any premiums in connection therewith. All monies so paid by the City of Saratoga Springs shall be repaid upon demand, or at the City's option, may be offset against any monies due to the Consultant.

The City of Saratoga Springs requires the Consultant name the City as a Certificate Holder for the following coverage for the work covered by this Agreement:

- **Commercial General Liability** Including Completed Products and Operations and Personal Liability Insurance: One Million Dollars per Occurrence with Two Million Dollars Aggregate;
- **Commercial Automobile Insurance:** One Million Dollars Combined Single Limit for Owned, Hired and Non-owned Vehicles;
- **Cyber Liability:** Five Million Dollars per occurrence aggregate;
- **Excess Insurance:** Five Million Dollars per Occurrence Aggregate;
- **Technology Errors and Omissions Insurance:** Two Million per Claims Aggregate; AND
- **NYS Statutory Workers Compensation, Employer's Liability and Disability Insurance:** Failure to secure compensation for the benefit of, and keep insured during the life of this agreement, employees required in compliance with the provisions of Workers' Compensation Law shall make this Agreement void and of no effect.

It shall be an affirmative obligation of the Consultant to advise City's Office of Risk and Safety via mail to Office of Risk and Safety, City of Saratoga Springs, 474 Broadway, Saratoga Springs, NY 12866, within two days of the cancellation or substantive change of any insurance policy set out herein, and failure to do so shall be construed to be a breach of this Agreement. The Consultant acknowledges that failure to obtain such insurance on behalf of the municipality constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to the City. The Consultant is to provide the City with a Certificate of Insurance naming the City as **Additional Insured on a primary and non-contributory basis prior** to the commencement of any work or use of City facilities. The failure to object to the contents of the Certificate of Insurance or the absence of same shall not be deemed a waiver of any and all rights held by the municipality. In the event the Consultant utilizes a Sub-Consultant for any portion of the services outlined within the scope of its activities, the Sub-Consultant shall provide insurance of the same type or types and to the same extent of coverage as that provided by the Consultant. All insurance required of the Sub-Consultant shall name the City of Saratoga Springs as an **Additional Insured on a primary and non-contributory basis** for the same coverage all those activities performed within its contracted activities for the contact as executed.

The Consultant, to the fullest extent provided by law, shall defend, indemnify and save harmless the City of Saratoga Springs, its Agents and Employees (hereinafter referred to as "City"), from and against all claims, damages, losses and expense (including, but not limited to, attorneys' fees), arising out of or resulting from the performance of the work or purchase of the services, sustained by any person or persons, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of property caused by the tortious act or negligent act or omission of Consultant or its employees or anyone for whom the Consultant is legally liable or Sub-Consultants. Without limiting the generality of the preceding paragraphs, the following shall be included in the indemnity hereunder: any and all such claims, etc.,

relating to personal injury, death, damage to property, or any actual or alleged violation of any applicable statute, ordinance, administrative order, executive order, rule or regulation, or decree of any court of competent jurisdiction in connection with, or arising directly or indirectly from, errors and/or negligent acts by the Consultant, as aforesaid.

The Consultant agrees to comply with the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973 and not discriminate on the basis of disability in the admission or access to, or treatment of employment in its services, programs, or activities. The Consultant agrees to hold harmless and indemnify the City from costs, including but not limited to damages, attorney's fees and staff time, in any action or proceeding brought alleging a violation of ADA and/or Section 504 caused by the Consultant. Upon request accommodation will be provided to allow individuals with disabilities to participate in all services, programs and activities.

The Consultant will provide his or her own equipment and materials as necessary to perform the work except as identified within the RFP/RFQ/BID Documents. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting the Consultant's staff as the agents, representatives or employees of the City for any purpose in any manner whatsoever. The Consultant and its staff are to be and shall remain an independent Consultant with respect to all services performed under this Agreement. The Consultant represents that it has, or will secure at its own expense, all personnel required in performing services under this Agreement. Any and all personnel of the Consultant or other persons, while engaged in the performance of any work or services required by the Consultant under this Agreement, shall not be considered employees of the City, and any and all claims that may or might arise under the Workers' Compensation Laws of the State of New York on behalf of said personnel or other persons while so engaged, and any and all claims whatsoever on behalf of any such person or personnel arising out of employment or alleged employment including, without limitation, claims of discrimination against the Consultant, its officers, agents, Consultants or employees shall in no way be the responsibility of the City; and the Consultant shall defend, indemnify and hold the City, its officers, agents and employees harmless from any and all such claims regardless of any determination of any pertinent tribunal, agency, board, commission or court. Such personnel or other persons shall not require nor be entitled to any compensation, rights or benefits of any kind whatsoever from the City, including, without limitation, tenure rights, medical and hospital care, sick and vacation leave, Workers' Compensation, Unemployment Compensation, disability, and severance pay.

The City of Saratoga Springs specifically reserves the right to suspend or terminate all work under this contract whenever Consultant and/or Consultant's employees or sub-consultants are proceeding in a manner that threatens the life, health or safety of any of Consultant's employees, sub-consultant's employees, City employees or member(s) of the general public on City property. This reservation of rights by the City of Saratoga Springs in no way obligates the City of Saratoga Springs to inspect the safety practices of the Consultant. If the City of Saratoga Springs exercises its rights pursuant to this part, the Consultant shall be given three days to cure the defect, unless the City of Saratoga Springs, in its sole and absolute discretion, determines that the service cannot be suspended for three days due to the City of Saratoga Springs' legal obligation to continuously provide Consultant's service to the public or the City of Saratoga Springs' immediate need for completion of the Consultant's work. In such case, Consultant shall immediately cure the defect. If the Consultant fails to cure the identified defect(s), the City of Saratoga Springs shall have the right to immediately terminate this contract. In the event that the City of Saratoga Springs terminates this contract, any payments for work completed by the Consultant shall be reduced by the costs incurred by the City of Saratoga Springs in re-bidding the work and/or by the increase in cost that results from using a different vendor.

Consultant, having agreed to the terms and the recitals set forth herein, and in relying thereon, herein signs this Agreement.

Consultant Signature: _____ **Date:** _____