



City of Saratoga Springs, NY Vendor Product Agreement

City Department: Public Works Department Contact Person: Barb Maughan City Ext. 2574

Company Name: _____

Company Address: _____

Company Telephone No.: _____ Company Fax No.: _____

Product to be Provided: _____

Vendor Primary Contact: _____ Title: _____

Primary Contact Email: _____

1. **Scope of Agreement:** The Vendor shall provide to the City the products requested at the time of this Agreement, as well as future products, which may be requested during the term of, and which shall be subject to this Agreement. The Vendor assumes full responsibility for the provision of the products made available in this Agreement. The Vendor shall be so liable even when the Vendor subcontracts the provision of a portion of the products. Subcontracting shall be permitted only with the prior written approval of the City. The Vendor assumes all risks in the performance of all its activities authorized by this Agreement.
2. **Term of Agreement:** The term of this Agreement shall commence per the execution of this Agreement by the Vendor and shall continue in force until such time as the Agreement may be terminated in accordance with the terms set forth herein. Any modification of the work performed by the Vendor shall be made in writing and shall not be undertaken until the City agrees to the modification. City Departments are responsible for reviewing the contractual relationship governed by this Agreement on an ANNUAL basis with their Department Head, Purchasing, Finance and Risk and Safety.
3. **Terms of Payment:** Vendor will invoice the City and the City will pay all invoices within thirty (30) days of receipt of the invoice or as practicable. The City shall pay the Vendor in accordance with the City Charter per the Purchasing Guidelines established by the City. Detailed original invoices not received within forty five (45) calendar days of the completed transaction could result in a delay of payment.
4. **Notice:** Any notices sent to the City under this Agreement will be effective five (5) business days after the postmarked date of mailing by certified mail, return receipt requested. Any notice, request, demand or other communication required or provided for in this Agreement shall be in writing and shall be deemed to have been duly given if delivered in person or mailed in a sealed envelope, postage prepaid, addressed to:

To the City: Commissioner of Public Works, City Saratoga Springs, 474 Broadway, Saratoga Springs, NY 12866

To Vendor: _____
5. **Conflicts of Interest:** The Vendor represents and warrants that it has no conflict, actual or perceived, that would prevent it from performing its duties and responsibilities under the Agreement.
6. **Product Liability Indemnification.** Vendor expressly and unequivocally agrees to and hereby does indemnify, release, defend and hold City and its officers, directors, employees, shareholders, agents, successors and assigns harmless from and against all claims, damages, losses, costs and expenses, including attorneys' fees, arising in favor of any person, firm or corporation on account of product liability in any way relating to the Product, provided that City (i) promptly notifies Vendor, in writing, of any notice or claim hereunder of which it becomes aware, and (ii) permits Vendor to control, in a manner not adverse to City, the defense, settlement, adjustment or compromise of any such claim using counsel reasonably acceptable to City. City may employ counsel, at its own expense (provided that if such counsel is necessary because of a conflict of interest of either Vendor or its counsel or because Vendor does not assume control, Vendor will bear such expense), to assist it with respect to any such claim. Vendor shall not enter into any settlement that affects City's rights or interest without City's prior written approval. Unless Vendor fails to perform its obligations pursuant to this section, City shall have no authority to settle any claim on behalf of Vendor.
7. **Compliance with Federal and State Regulations:** The Vendor, to the fullest extent provided by law, shall abide by the regulations which are hereto attached in Appendix A of this Agreement.
8. **Vendor Code of Conduct:** The City of Saratoga Springs is committed to conduct business in a lawful and ethical manner and expects the same standards from Vendors/suppliers that the City conducts business with. The City requires that all Vendors/suppliers abide by this Code of Conduct. Failure to comply with this Code may be sufficient cause for the City to exercise its rights to terminate its' business relationship with Vendors/suppliers. Vendors/suppliers agree to provide all information requested which is necessary to demonstrate compliance with this Code.

At a minimum, the City requires that all Vendors/suppliers meet the following standards:

- Legal: Vendors and their sub-contractors agree to comply with all applicable local, state and federal laws, regulations and

statutes.

- Discrimination: No person shall be subject to any discrimination in employment, including hiring, salary, benefits, advancement, discipline, termination or retirement on the basis of gender, race, religion, age, disability, sexual orientation, nationality, political opinion, party affiliation or social ethnic origin.
- Right to organize: Employees of the Vendor/supplier should have the right to decide whether they want collective bargaining.
- Sub-contractors: Vendors/suppliers shall ensure that sub-contractors shall operate in a manner consistent with this Code.
- Protection of the Environment: Vendors/suppliers shall comply with all applicable environmental laws and regulations. Where practicable, Vendors/suppliers are to utilize technologies that do not adversely affect the environment and when such impact is unavoidable, to ensure that it is minimized.

The undersigned Vendor/supplier hereby acknowledges that it has received the City of Saratoga Springs Vendor/Supplier Code of Conduct and agrees that any and all of its facilities and sub-contractors doing business with the City will receive the Code and will abide by each and every term therein. Vendor/supplier acknowledges that its failure to comply with any condition, requirement, policy or procedure may result in the termination of the business relationship. Vendor/supplier reserves the right to terminate its agreement to abide by the Code of Conduct at any time for any reason upon ninety (90) days prior written notice to the City.

9. **Governing Law:** This Agreement shall be governed and construed under the laws of the State of New York, the location where this Agreement was accepted to by Vendor. The Vendor agrees to comply with all applicable local, state and federal laws, rules and regulations in the performance of the duties of this Agreement.
10. **Venue:** The City and the Vendor hereby agree that any litigated matters shall be venued in the federal and state courts of the State of New York in the County of Saratoga.
11. **Assignment:** The Vendor is prohibited from assigning, conveying, subletting or otherwise disposing of the Vendor's right, title, or interest therein, or the Vendor's power to execute this agreement to any other person or corporation without the previous written consent of the City. If the Vendor assigns, conveys, sublets or otherwise disposes of the Vendor's right, title, or interest without prior written consent, the City shall revoke and annul this agreement, and the City shall be relieved and discharged from any and all liability growing out of this Agreement, and any person or corporation to whom the interest was assigned, transferred, conveyed, sublet or otherwise disposed of shall forfeit and lose all moneys theretofore earned under such contract, except so much as may be required to pay his or her employees.
12. **Termination:** The Vendor and the City may mutually agree, in writing, to terminate this Agreement at any time. The City may also terminate this Agreement at any time and or any reason by mailing written notice to the Vendor at least ten (10) business days prior to such termination date. The City reserves the right to cancel this Agreement at any time in event of default or violation by the Vendor of any provision of this Agreement. The City may take whatever action at law or in equity that may appear necessary or desirable to collect damages arising from a default or violation or to enforce performance of this Agreement.
13. **Default:** Vendor's failure to perform its obligations and comply with its representations under this Agreement shall constitute a default under this Agreement. Upon Vendor's default, the City may cancel this Agreement and immediately stop payment of any fees to Vendor hereunder. City shall also have any all additional rights and remedies under New York State Law as a result of Vendor's default.
14. **Force Majeure:** Neither party shall be held liable for failure to perform its part of this Agreement when such failure is due to fire, flood, or similar disaster; strikes or similar labor disturbances; industrial disturbances, war, riot, insurrection, and/or other causes beyond the control of the parties.
15. **Entire Agreement:** This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter contained herein except as to those matters or agreements expressly incorporated herein by reference. No covenant, representation or condition not expressed herein shall be effective to interpret, change or restrict the express provisions of this Agreement. This Agreement supersedes any and all prior agreements, whether written or oral, relating to the subject matter contained herein. This Agreement shall not be amended, changed or otherwise modified except in writing, signed by both parties.
16. **Severability:** In the event that any portion of this Agreement may be adjudged invalid or unenforceable for any reason, adjudication shall in no manner affect the other portions of this Agreement which will remain in full force and effect as of the portions adjudged invalid or unenforceable were not originally a part thereof.
17. **Modification:** This Agreement may be modified only by a writing signed by both parties.
18. **Vendor Certification:** In addition to the acceptance of this Agreement, I certify that all information provided to the City with respect to New York State Finance Law Section 139-k is complete, true and accurate.

Vendor Signature: _____ **Date:** _____

Print Name: _____ **Title:** _____

City of Saratoga Springs, New York APPENDIX A All City Contracts and Agreements

During the performance of this contract, the Consultant, Vendor and/or Service Provider, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Recipient to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Nondiscrimination provisions of this contract, the Recipient will impose such contract sanctions as it may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 4 71, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.P.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U .S.C. 1681 *et seq.*).

Vendor and/or Service Provider Signature: _____ **Date:** _____
Print Name: _____ **Title:** _____