



MEMORANDUM  
OFFICE OF THE COMMISSIONER OF FINANCE  
CITY OF SARATOGA SPRINGS

MICHELE MADIGAN  
COMMISSIONER OF FINANCE

**TO:** Commissioner John Franck

**CC:** Deputy Commissioner Sharon Kellner-Byrnes  
Stephani Voight, Purchasing  
Marilyn Rivers, Risk and Safety

**FROM:** Commissioner Michele Madigan

**DATE:** May 14, 2013

**RE:** Award of Bid: RFP 2013-2

**RECEIVED**  
MAY 16 2013  
ACCOUNTS DEPARTMENT

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The City of Saratoga Springs Department of Finance, in cooperation with the Department of Public Works, is requesting to add to the May 21, 2013 City Council Agenda, the award of bid for the Spa Solar Park Development, as detailed in RFP 2013-2, to SunEdison.

SunEdison was chosen by a Selection Committee, made up of members appointed by the Mayor and each Commissioner as well as the City Engineer and the Director of Finance, as the bidder submitting the most qualified bid.



**City of Saratoga Springs**  
**OFFICE OF COMMISSIONER OF ACCOUNTS**  
474 Broadway - City Hall  
Saratoga Springs, New York 12866  
Telephone 518-587-3550  
Fax 518-587-6512

JOHN P. FRANCK  
COMMISSIONER

SHARON J. KELLNER-BYRNES  
DEPUTY COMMISSIONER

# Award of Bid Sign-Off Form

Prior to an award of bid being placed on Commissioner Franck's agenda for a City Council meeting, this form **must** be completed and the following **must** occur:

- A memo from your department's commissioner/mayor requesting the award of bid be placed on Commissioner Franck's agenda; and
- the Assistant Purchasing Agent **must** review that the purchasing policy was followed in the selection of the vendor and indicate such by signing below; and
- the Director of Risk and Safety **must** be provided a copy of the vendor's certificate of insurance for review and indicate by signing below that the vendor meets all insurance requirements for the City of Saratoga Springs; and
- certification of funds (if applicable) **must** be obtained and a copy **must** be attached to request an award of bid; and
- the budget line item **must** be identified and indicated below.

**An item to award a bid will not be placed on the Commissioner's agenda if any of the above is missing. The request to place the item on the agenda will be returned to the appropriate department.**

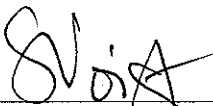
Department of Bid: Finance

Project or Item Being Awarded: RFP-2013-02 Spa Solar Park Development

Vendor Who Won the Bid: SunEdison


Budget Line Item: NA

Assistant Purchasing Agent: Purchasing policy has ☒ / has not ☐ been followed in the selection of the winner of the bid.

  
Assistant Purchasing Agent

5/14/13  
Date

Director of Risk and Safety: Vendor being awarded the bid has ☒ / has not ☐ met all insurance requirements of the City of Saratoga Springs and has provided a copy of their certificate of insurance for review by the Director of Risk and Safety.

  
Director of Risk and Safety

5/14/13  
Date

## Spa Solar Park Development 2013-02

### Advanced Solar Products

30 Irving Street, Albany, NY 12202  
917-886-4793  
Tom Thompson  
[tthompson@advancedsolarproducts.com](mailto:tthompson@advancedsolarproducts.com)

### American Capital Energy

1890 Palmer Avenue, Suite 203, Larchmont, NY 01854  
914-469-7884  
Jack Hennessey  
[jhennessey@americancapitalenergy.com](mailto:jhennessey@americancapitalenergy.com)

### Borrego Solar Systems, Inc

1115 Westford Street, Lowell, MA 01851  
413-214-4762  
Amy McDonough  
[amcdonough@borregosolar.com](mailto:amcdonough@borregosolar.com)

### Dynamic Energy

1550 Liberty Ridge Drive, Suite 310, Wayne, PA 19087  
484-318-8800  
Brett Thibodeau  
[bthibodeau@dynamicenergyusa.com](mailto:bthibodeau@dynamicenergyusa.com)

### Ecoplexus

650 Townsend Street, Suite 310, San Francisco, CA 94103  
415-626-1802  
Erik Stuebe  
[eriks@ecoplexus.com](mailto:eriks@ecoplexus.com)

### ECS Energy

111 Bauer Drive, Oakland, NJ 07436  
215-609-8240  
Myles Burnsed  
[mburnsed@ecs-energy.com](mailto:mburnsed@ecs-energy.com)

### Fonroche

155 N. Lake Avenue, 8th Floor, Pasadena, CA 91101  
626-818-4647  
Stephen Torres  
[s.torres@fonrochegroup.com](mailto:s.torres@fonrochegroup.com)

### Hecate Energy

115 Rosa L Parks Blvd, Nashville, TN 37203  
847-601-3812  
Nick Bullinger  
[nbullinger@hecateenergy.com](mailto:nbullinger@hecateenergy.com)

### REC Solar

775 Fiero Lane, Suite 200, San Luis Obispo, CA 93401  
503-866-1102  
Andy Noel  
[angel@recsolar.com](mailto:angel@recsolar.com)

### Standard Solar

520 White Plains Road, Suite 500, Tarrytown, NY 10591  
917-597-0407  
Gentry Rouse  
[gentry.rouse@standardsolar.com](mailto:gentry.rouse@standardsolar.com)

### Sundurance Energy

2045 Lincoln Highway, Edison, NJ 08817  
732-520-5000  
Todd Martin  
[tmartin@sunduranceenergy.com](mailto:tmartin@sunduranceenergy.com)

### SunEdison

600 Clipper Drive, Belmont, CA 94002  
240-205-9632  
Jarryd Commerford  
[jcommerford@sunedison.com](mailto:jcommerford@sunedison.com)

### TectaSolar

220 Commerce Drive, Suite 220, Fort Washington, PA 19034  
267-671-2463  
Ken Beiser  
[kbeiser@tectaamerica.com](mailto:kbeiser@tectaamerica.com)

### Vanguard Energy Partners, LLC

One Commerce Street, Branchburg, NJ 08876  
908-534-1302  
Thomas Buono  
[tbuono@vanguardenergypartners.com](mailto:tbuono@vanguardenergypartners.com)



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
03/08/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Aon Risk Services Central, Inc.  8182 Maryland Ave Suite 1500 St Louis, MO 63105		<b>CONTACT NAME:</b> <b>PHONE (A/C, No, Ext):</b> <b>FAX (A/C, No):</b> <b>E-MAIL ADDRESS:</b>														
<b>INSURED</b> MEMC Electronic Materials, Inc. Sun Edison LLC, SunEdison Government Solutions, LLC 12500 Baltimore Ave.  Beltsville, MD 20705		<b>INSURER(S) AFFORDING COVERAGE</b> <table border="1"><thead><tr><th>INSURER</th><th>NAIC #</th></tr></thead><tbody><tr><td>INSURER A: ACE AMER INS CO</td><td>22667</td></tr><tr><td>INSURER B: ST PAUL FIRE &amp; MARINE INS CO</td><td>24767</td></tr><tr><td>INSURER C: CATLIN SPECIALTY INS CO</td><td>15989</td></tr><tr><td>INSURER D:</td><td></td></tr><tr><td>INSURER E:</td><td></td></tr><tr><td>INSURER F:</td><td></td></tr></tbody></table>	INSURER	NAIC #	INSURER A: ACE AMER INS CO	22667	INSURER B: ST PAUL FIRE & MARINE INS CO	24767	INSURER C: CATLIN SPECIALTY INS CO	15989	INSURER D:		INSURER E:		INSURER F:	
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## COVERAGES

CERTIFICATE NUMBER: 32415342

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS														
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC		PMI G25518639-002	06/01/12	06/01/13	<table border="1"><tr><td>EACH OCCURRENCE</td><td>\$ 1,000,000</td></tr><tr><td>DAMAGE TO RENTED PREMISES (Ea occurrence)</td><td>\$ 1,000,000</td></tr><tr><td>MED EXP (Any one person)</td><td>\$ Excluded</td></tr><tr><td>PERSONAL &amp; ADV INJURY</td><td>\$ 1,000,000</td></tr><tr><td>GENERAL AGGREGATE</td><td>\$ 2,000,000</td></tr><tr><td>PRODUCTS - COM/OP AGG</td><td>\$ 2,000,000</td></tr><tr><td></td><td>\$</td></tr></table>	EACH OCCURRENCE	\$ 1,000,000	DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000	MED EXP (Any one person)	\$ Excluded	PERSONAL & ADV INJURY	\$ 1,000,000	GENERAL AGGREGATE	\$ 2,000,000	PRODUCTS - COM/OP AGG	\$ 2,000,000		\$
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PRODUCTS - COM/OP AGG	\$ 2,000,000																			
	\$																			
	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS		CAL H08696329	06/01/12	06/01/13	<table border="1"><tr><td>COMBINED SINGLE LIMIT (Ea accident)</td><td>\$ 1,000,000</td></tr><tr><td>BODILY INJURY (Per person)</td><td>\$</td></tr><tr><td>BODILY INJURY (Per accident)</td><td>\$</td></tr><tr><td>PROPERTY DAMAGE (Per accident)</td><td>\$</td></tr><tr><td></td><td>\$</td></tr></table>	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000	BODILY INJURY (Per person)	\$	BODILY INJURY (Per accident)	\$	PROPERTY DAMAGE (Per accident)	\$		\$				
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BODILY INJURY (Per accident)	\$																			
PROPERTY DAMAGE (Per accident)	\$																			
	\$																			
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE  DED RETENTION \$		ZUP-14R5944A-12-NF	06/01/12	06/01/13	<table border="1"><tr><td>EACH OCCURRENCE</td><td>\$ 10,000,000</td></tr><tr><td>AGGREGATE</td><td>\$ 10,000,000</td></tr><tr><td></td><td>\$</td></tr></table>	EACH OCCURRENCE	\$ 10,000,000	AGGREGATE	\$ 10,000,000		\$								
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	\$																			
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y/N <input type="checkbox"/> N/A		WLRC46785666-Deductible	06/01/12	06/01/13	<table border="1"><tr><td><input checked="" type="checkbox"/> WC STATU-TORY LIMITS</td><td>OTH-ER</td></tr><tr><td>E.L. EACH ACCIDENT</td><td>\$ 1,000,000</td></tr><tr><td>E.L. DISEASE - EA EMPLOYEE</td><td>\$ 1,000,000</td></tr><tr><td>E.L. DISEASE - POLICY LIMIT</td><td>\$ 1,000,000</td></tr></table>	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS	OTH-ER	E.L. EACH ACCIDENT	\$ 1,000,000	E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000	E.L. DISEASE - POLICY LIMIT	\$ 1,000,000						
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C	Professional Liability		CPL-199941-0613	06/01/12	06/01/13	<table border="1"><tr><td>Each Occ/Agg</td><td>5,000,000</td></tr></table>	Each Occ/Agg	5,000,000												
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DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

RE: City of Saratoga Springs, NY Project  
City of Saratoga Springs is named as Additional Insured as required by written contract for General Liability, Automobile and Umbrella Liability policies and policies shall apply on a Primary and Non-Contributory basis.

*ok*  
*4/18/13*

## CERTIFICATE HOLDER

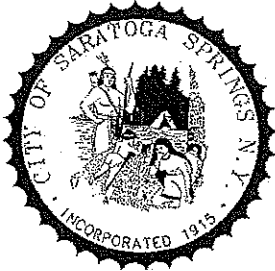
## CANCELLATION

City of Saratoga Springs, NY  
Office of Risk and Safety  
4 Broadway  
Saratoga Springs, NY 12866  
USA

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

*Aon Risk Services Central, Inc.*



### Waiver of Immunity Clause

Upon refusal of a representative of our firm, when called before a grand jury to testify concerning any transaction or contract with the City of Saratoga Springs, New York, or to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transactions or contracts:

- (a) Such person, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any municipal corporation or fire district, or any public department, agency or official thereof, for goods, work or services, for a period of five years after such refusal, and to provide also that
- (b) Any and all contracts made with any municipal corporation or any public department, agency or official thereof, with any fire district or any agency or official thereof, by such person, and by any firm, partnership or corporation of which he is a member, partner, director or officer may be cancelled or terminated by the City without incurring any penalty or damages on account of such cancellation or termination; but any monies owing by the City for goods delivered or work done prior to the cancellation or termination shall be paid.

### Non-Collusive Bidding Certification

Required by Section 103(e) of State Finance Law


"By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and, in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his/her knowledge and belief:

(1) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

(2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and

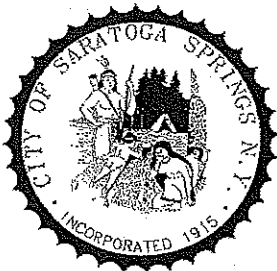
(3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition."

A bid shall not be considered for award nor shall any award be made where (1), (2), (3) above have not been complied with; provided, however, that if in any case the bidder(s) cannot make the foregoing certification, the bidder shall so state and shall furnish below a signed statement which sets forth in detail the reasons therefore:

Signature:  Print Name: Attila Toth  
Title: Authorized Representative Date: 3-8-13  
Company: SunEdison Government Solutions, LLC Address: 12500 Baltimore Ave, Beltsville, MD, 20705

Subscribed to under penalty of perjury under the laws of the State of New York, this \_\_\_\_\_ day of \_\_\_\_\_, 2013 as the act and deed of said corporation or partnership.

APPROVED  
By kktch at 3:59 pm, Mar 06, 2013



### Vendor/Supplier Code of Conduct

The City of Saratoga Springs is committed to conduct business in a lawful, ethical and moral 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/suppliers and their subcontractors agree to comply with all applicable local, state and federal laws, regulations and statutes.
- The City expects vendors/suppliers to respect the City's rules and procedures.
- Conflict of Interest: The vendor/supplier represents and warrants that it has no conflict, actual or perceived, that would prevent it from doing business with the City of Saratoga Springs.
- Wages & Benefits: Vendors/suppliers will set working hours, wages, and NYS statutory benefits and overtime pay in compliance with all applicable laws and regulations. Where applicable, as defined by NYS Labor Law, the vendor/supplier must comply with prevailing wage rates.
- Health & Safety: Vendors/suppliers and their subcontractors shall provide workers with a safe and healthy work environment that complies with local, state and federal health and safety laws.
- 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.
- Working conditions: Vendors/suppliers must treat all workers with respect and dignity and provide them with a safe and healthy environment.
- Right to organize: Employees of the vendor/supplier should have the right to decide whether they want collective bargaining.
- Subcontractors: Vendors/suppliers shall ensure that subcontractors shall operate in a manner consistent with this Code.
- Protection of the Environment: Vendors/suppliers shall comply with all applicable environmental laws and regulations. Vendors/suppliers shall ensure that the resources and material they use are sustainable, are capable of being recycled and are used effectively and a minimum of waste. 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.

### Vendor Acknowledgement

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 subcontractors 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.

Signature: 

Printed name: Attila Toth

Title: Authorized Representative

Date: 3-8-13

Company Name: SunEdison Government Solutions, LLC



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

City Project Number: \_\_\_\_\_ City Project Name: City of Saratoga Springs  
City Department: \_\_\_\_\_ Department Contact Person: Lynn Bachner City Ext. \_\_\_\_\_  
Company Name: SunEdison Government Solutions, LLC  
Company Address: 12500 Baltimore Ave, Beltsville, MD 20705  
Company Telephone No.: 443-909-7200 Company Fax No.: 443-909-7166  
Consultant Primary Contact for This Project: Jarryd Commerford Title: Sales Manager

The City of Saratoga Springs herein requires the following terms and conditions regarding the agreement for the provision of professional services as outlined above:

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 & 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 & 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 (*City is also an Additional Insured on a Primary and Non-contributory Basis for this coverage*);
- **Commercial Automobile Insurance**: One Million Dollars Combined Single Limit for Owned, Hired and Non-owned Vehicles
- **Excess Liability Insurance**: Ten Million Dollars per Occurrence Aggregate
- **Professional Liability Insurance**: One Million per Claims with Two Million Aggregate
- **NYS Statutory Workers Compensation, Employer's Liability and Disability Insurance**

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 Subcontractor for any portion of the services outlined within the scope of its activities, the Subcontractor 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 Subcontractor shall name the City of Saratoga Springs as an **Additional Insured on a primary and non-contributory basis** for all those activities performed within its contracted activities for the contract as executed.

The Consultant, to the fullest extent provided by law, shall 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 Subcontractors. 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 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 subcontractors are proceeding in a manner that threatens the life, health or safety of any of Consultant's employees, subcontractor'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 rebidding the work and/or by the increase in cost that results from using a different vendor.

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

Consultant Signature: \_\_\_\_\_

Date: 3-8-13

APPROVED

By kkoitch at 3:59 pm, Mar 06, 2013