

**AGREEMENT BETWEEN
the City of Saratoga Springs and
Hinman Straub, P.C.
for the Provision of Legal Services to the
City of Saratoga Springs**

The Agreement is entered into between the City of Saratoga Springs and Hinman Straub, P.C. for the provision of legal services to the City of Saratoga Springs.

WHEREAS, the City of Saratoga Springs requires legal representation for legal matters; and

WHEREAS, the City Council has agreed to engage the services of Hinman Straub for the legal services for the completion of the City's Certificate of Need application for a permanent EMS Operating Certificate; and

WHEREAS, Hinman Straub, P.C. has agreed to provide such legal services to the City of Saratoga Springs;

THEREFORE, the City and Hinman Straub, P.C. hereby agree as follows:

1. **Subject of Agreement** – Hinman Straub, P.C. shall advise and represent the City and render legal services relating to the City's certificate of need application for a permanent EMS operating certificate as outlined in Exhibit A and as assigned by City Council on May 21, 2013 under the direction of the Commissioner of Public Safety.
2. **Term and Renewal** – The Term of this Agreement shall be from date of this agreement until each of the matters assigned by City Council has been resolved, including any appeals.
3. **Compensation** – The City will pay Hinman Straub, P.C. for legal services as follows: The hourly rate shall vary from One Hundred Eighty Dollars (\$180) to Two Hundred Seventy Five Dollars (\$275) per hour depending upon the attorneys used within the firm and shall be charged for legal services as rendered up to Five Thousand Dollars (\$5,000). Hinman Straub, P.C. will invoice the City on a monthly basis and the City will pay all invoices within thirty (30) days, or as practicable.
4. **Insurance** – The City of Saratoga Springs requires a Certificate of Insurance naming the City of Saratoga Springs as an ***Additional Insured*** evidencing the following coverage:
 - Commercial General Liability: \$1,000,000 per occurrence and \$2,000,000 aggregate
 - Professional Errors & Omissions Coverage: \$1,000,000 per occurrence aggregate (*Please note that for this coverage, the City of Saratoga Springs shall not be named as an Additional Insured.*)
 - Statutory Workers Compensation and Employer's Liability Insurance for all employees (*Please note that for this coverage per NYS Law, the City of Saratoga Springs shall not be named as an Additional Insured.*)

Certificates of Insurance shall be addressed to the attention of: The Office of Risk and Safety, City of Saratoga Springs, 474 Broadway City Hall, Saratoga Springs, NY 12866

Hinman Straub, P.C. 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 firm is to provide the City with a Certificate of Insurance naming the City as ***Additional Insured*** prior to the commencement of any work. 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.

Hinman Straub, P.C. 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, 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 Hinman Straub, P.C. or its employees, agents or subcontractors.

5. **Attorneys** – Joseph Dougherty, Esq. (Principal Attorney) shall be responsible for providing the legal services described above on behalf of Hinman Straub, P.C. Other attorneys from Hinman Straub, P.C. may be substituted to provide legal services pursuant to this Agreement upon the approval of the Commissioner of Public Safety.
6. **Termination** – This Agreement may be terminated by either party upon thirty days written notice by certified mail.
7. **Assignment** – This Agreement may not be assigned by Hinman Straub, P.C.
8. **Modification** – This Agreement may not be modified except in writing signed by both parties.
9. **Scope of Work** – Exhibit A is attached to set forth the scope of work for this Agreement only. In the event any terms of Exhibit A conflict with this Agreement, the terms of this Agreement shall prevail.

By: _____

By: _____

Date: _____

Date: _____

As per City Council approval on May 21, 2013



121 STATE STREET
ALBANY, NEW YORK 12207-1693
TEL: 518-436-0751
FAX: 518-436-4751

EXHIBIT A

JOSEPH M. DOUGHERTY
DIRECT PHONE: 518-689-7297
E-MAIL: JDougherty@hinmanstraub.com

May 17, 2013

Eileen Finneran
Deputy Commissioner
of Public Safety
City of Saratoga Springs
474 Broadway
Saratoga Springs, NY 12866

Proposal and Fee Agreement Letter

Re: Certificate of Need Application for EMS Operating Certificate

Dear Ms. Finneran:

This will confirm that the City of Saratoga Springs ("City") has retained Joseph M. Dougherty and Hinman Straub P.C. to represent the City with respect to its certificate of need application for a permanent EMS Operating Certificate.

Joseph M. Dougherty and Hinman Straub P.C. are to provide consultation, drafting, review, advice, representation and, if necessary, litigation services in connection with the above-referenced application. Joseph M. Dougherty or other member of Hinman Straub will represent you at all administrative hearings or other legal proceedings scheduled in this matter and prepare memoranda of law and other legal documents as required or appropriate.

Specifically, Hinman Straub will provide review of your CON application to ensure it is drafted in a manner that meets the recertification definition of public need, representation in the public hearing process, and advice as well as representation in any necessary appeals.

Any work that we perform will be billed on an hourly basis. The work will be performed and/or supervised by me or another attorney with the requisite expertise. My current hourly rate is \$275. In addition, some work may be performed by associates where appropriate to control your costs. The range of rates for attorneys working on this matter will be from \$180 to \$275 per hour. Hourly rates are subject to change on an annual basis.

As requested, there will be a total cap of five-thousand dollars (\$5,000) for services provided pursuant to this agreement. In the event such cap is reached an addendum to this agreement would have to be executed for any future services.

In addition to billing for legal services, we will also bill for disbursements including, without limitation, photocopying, courier services, filing fees, recording fees, subpoena fees, retention of

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expert witnesses, appraisal reports, valuation reports, investigative services, travel expenses, transcripts of proceedings, long distance telephone calls, mileage, parking fees, tolls, certified or express mail, UPS/FedEx, and excess postage.

Hinman Straub P.C. bills on a monthly basis for all disbursements and fees. Bills will be sent to your attention at the above address unless you instruct us otherwise. Payment in full is due upon receipt. Any payments not received by us within thirty (30) days of receipt of the invoice will be considered overdue and may be subject to interest at the rate of 1% per month. Failure to make timely payments may, upon notice, result in the firm's withdrawal as your counsel.

Either party may terminate this Retainer Agreement, for any reason, upon thirty (30) days prior written notice, or sooner upon our mutual agreement. In the event of a termination, you agree to pay all fees, costs and disbursements accrued or incurred as of the effective date of the termination.

Although I do not anticipate any confusion over the billing process, please note that if any issues arise concerning billing, you may have the right under Part 137 of the Rules of the Chief Administrator of the Courts to arbitrate any fee disputes, a copy of which will be provided to you upon request.

If this arrangement is acceptable, please sign where indicated below and return a copy to me by mail or electronically at jdougherty@hinmanstraub.com. In closing, we appreciate your trust and confidence, and look forward to working together.

Should you have any questions, feel free to contact me.

Sincerely yours,

Joseph M. Dougherty, Esq.

READ AND AGREED:

By: _____

Joseph M. Dougherty

City of Saratoga Springs:

By: _____

_____ Dated: _____

Print: _____