



City of Saratoga Springs, NY: Saratoga En Point Agreement

This Agreement ("Agreement") is made by and between the City of Saratoga Springs, NY (the "City") with a place of business at 474 Broadway, Saratoga Springs, NY 12866, and City Center. The owner of a project sponsored by the National Museum of Dance called the "Saratoga En Pointe" Project which is herein described as a five (5) foot tall fiberglass sculpture with base decorated in various embellishment that is to be placed in the City of Saratoga Springs' right-of way. The owner of said "Saratoga En Pointe" Sculpture is herein referred to within this agreement as the "Licensee" of the property to be placed in the City right of way. The particular locations for the sculptures shall be determined solely by the City. The City agrees to place the base at each identified location for the sculpture.

Licensee Name: S.S. City Center & Convention Tourism Bureau, Saratoga Hilton
Licensee Address: 522 Broadway
Licensee Telephone No.: 518-584-0027 Licensee Fax No.: 518-584-0117
Licensee Primary Contact for This Project: Mark Baker Title: Saratoga Spirit
Location of the Placement of the "Saratoga En Pointe" Sculpture Placement: 522 Broadway, corner of Broadway & EJP

This Revocable License Agreement shall not grant to the Licensee the exclusive use of the City property. The provisions of Paragraphs 3 and 4, regarding insurance and indemnification, shall survive the termination of this Revocable License Agreement. Licensee may not assign this Revocable License Agreement or its right, title, or interest thereto without the prior written consent of the City. No modification or amendment of this Revocable License Agreement shall be valid unless in writing and signed by the City. In entering into this Revocable License Agreement Licensee acknowledges and agrees that nothing herein shall be construed as creating any right or ownership interests in the City property. This Revocable License Agreement shall solely constitute permission to Licensee to gain access to the City property for the placement and maintenance of the sculpture for the period between 6-1-13 and 11-1-13

- 1. Enforceability: 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.
2. Notices: Any notices sent to the City under this Agreement will be effective five (5) days after the postmarked date of mailing by certified mail, return receipt requested: City of Saratoga Springs, City Attorney, 474 Broadway, Saratoga Springs, NY 12866
3. Insurance: 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 Licensee shall procure and maintain during the term of this Agreement, at the Licensee's expense, the insurance policies listed with limits equal to or greater than the enumerated limits. The Licensee 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 Licensee. Every required coverage type shall be "occurrence basis". 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 Licensee fails to procure and maintain the required coverage(s) and minimum limits such failure shall constitute a material breach of this Agreement. The City of Saratoga Springs requires the Licensee name the City as a Certificate Holder for 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) It shall be an affirmative obligation of the Licensee 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 Licensee acknowledges that failure to obtain such insurance on behalf of the municipality constitutes a material breach of Agreement and subjects it to liability for damages, indemnification and all other legal remedies available to the City. The Licensee 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 property. 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.
4. Indemnification: The Licensee, 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 provision 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 Licensee or its employees or anyone for whom the Licensee 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 Licensee, as aforesaid.
5. Sole Agreement: This Agreement is the only agreement between the parties and is in lieu of any and all previous understandings, representations or agreements, whether oral or written. This Agreement may be modified only by a writing signed by both parties.
6. 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 be "Licensee". The Licensee agrees to comply with all applicable local, state and federal laws, rules and regulations in the performance of the duties of this Agreement. The City and the Licensee hereby irrevocably consents to the personal and subject matter jurisdiction of the federal and state courts of the State of New York.
7. Assignment: This Agreement cannot be assigned by the Licensee without the express written consent of the City.
8. Termination: Either party may terminate this Agreement for any reason upon giving thirty (30) days' advanced written notice to the other party. The City reserves the right to cancel this Agreement at any time in event of default or violation by the Licensee 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.

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

Licensee Signature/Date: Mark E. Baker 6/10/13
Print Name: Mark E. Baker
City Council Approval Date:

Licensor Signature/Date:
Print Name: