

**AGREEMENT BETWEEN
CITY OF SARATOGA SPRINGS, NY
AND
RYAN-BIGGS/CLARK DAVIS ENGINEERING & SURVEYING**

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 **Ryan Biggs/Clark Davis Engineering & Surveying** (the "Consultant") with a place of business at 257 Ushers Rd., Clifton Park, NY 12065.

WITNESSETH THAT:

WHEREAS, the City has requested professional services for the ceiling stabilization of the Canfield Casino Dining Room and the Consultant has submitted a proposal in response to this request; and the Consultant is trained and proficient in the field of structural engineering;

NOW, THEREFORE, in consideration of the mutual promises, responsibilities and covenants set forth herein, the City and the Consultant hereby agree as follows:

1. SCOPE OF AGREEMENT

In response to a request for professional services for the ceiling stabilization of the Canfield Casino Dining Room by the City, the Consultant submitted a proposal dated October 27, 2014 (the "Proposal"), which is attached hereto as Exhibit A. The Consultant shall provide to the City the products and services set forth therein. The Consultant assumes full responsibility for the provision of the products and services made available in this Agreement. The Consultant shall be so liable even when the Consultant subcontracts the provision of a portion of the products and services. Subcontracting shall be permitted only with the prior written approval of the City.

2. CONSULTANT RESPONSIBILITIES

The Consultant shall provide services as outlined in the proposals dated October 27, 2014 as marked.

3. CONSULTANT DISCLOSURE

The requirements of New York State Finance Law Sections 8 and 163 regarding Consultant Disclosure are hereby incorporated into this Agreement.

4. FEES

The costs, fees and disbursements associated with the provision of products and services by the Consultant shall be determined in accordance with the terms and provisions of Exhibit A on an hourly basis, not to exceed Fifty-Four Thousand Dollars (\$54,000), a copy of which is annexed hereto and made a part hereof. No City employee, including the Project Manager named in Section 8 has the authority to request that the Consultant perform any additional work beyond the work authorized or described herein or to incur additional expenses above the amount set forth in Exhibit A of this Agreement.

5. TERM

The term of this Agreement shall commence per the date of approval of this Agreement by the City Council of the City of Saratoga Springs. The Consultant 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 for any reason by mailing written notice to the Consultant at least ten (10) days prior to such termination date.

The City reserves the right to terminate this Agreement in the event it is found that either of the certifications filed by the Consultant in accordance with New York State Finance Law Section 139-k was intentionally false or intentionally incomplete. Upon such finding, the City may exercise its termination right by providing written notification to the Consultant in accordance with the provisions of Section 8 herein.

The City shall not incur any costs if it terminates this Agreement, other than those otherwise due to the Consultant for products delivered and services rendered by the Consultant pursuant to the terms and provisions of this Agreement at the time of such termination. Upon any termination, the Consultant shall only be entitled to compensation for products delivered and services rendered up to the date of termination.

In addition, in the event of any violation by the Consultant of any of the terms of this Agreement, the City may terminate the Agreement without notice and with compensation to the Consultant for fees and expenses rendered only to the date of termination. Any breach of any of the terms of this Agreement by the Consultant will result in immediate and

irreparable injury to the City and will authorize recourse to injunction and/or other specific performance as well as to all other legal or equitable remedies to which the City may be entitled.

6. EFFECTIVE DATE

This Agreement shall have no force and effect until approved by the City Council of the City of Saratoga Springs, NY.

7. BILLING

The Consultant shall provide itemized statements monthly to be reviewed and approved by the City. Invoices must be submitted to: City of Saratoga Springs, NY, Attn. Purchasing Agent, 474 Broadway, Saratoga Springs, NY 12866. Payment by the City will be made in accordance with the State Finance Law, upon receipt of such statements and upon approval by the City. No City employee, including the Project Manager named in Section 8 has the authority to request that the Consultant perform any additional work beyond the work authorized or described herein or to incur additional expenses above the amount set forth in Exhibit A of this Agreement.

8. NOTICE

The Assistant City Engineer, Deborah LaBreche, P.E., is the project manager and shall represent the City in all matters affecting the delivery of products and services. The project manager for the Consultant is Jack Healy, P.E., Principal.

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 as follows:

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

With a copy to: Secretary to the City Council
City of Saratoga Springs
474 Broadway, Saratoga Springs, NY 12866

To Consultant: Ryan Biggs/Clark Davis Engineering & Surveying
257 Ushers Rd., Clifton Park, NY 12065

Either party may designate another or further address by notice given in accordance herewith.

9. CONFIDENTIAL INFORMATION

In connection with the provision of products and/or services to the City by Consultant, the City may disclose to Consultant information that is proprietary or confidential information. Any and all City communications, records, documents, written, oral or electronic communication or other information of any kind shall be deemed and treated as confidential by the Consultant. The Consultant shall not copy, transmit, deliver or communicate in any way to any other person or entity any such communications and/or information without the prior written consent of the City. The Consultant agrees to use such confidential information solely for the purpose of performing services hereunder for the City.

The term "confidential information" does not include information that (i) is or becomes generally available to the public other than as a result of disclosure by the Consultant, (ii) is or becomes available to the Consultant on a non-confidential basis from sources other than the City, provided that such source is not bound by a written confidentiality agreement with the City, or (iii) was lawfully within the Consultant's possession prior to its being furnished to the Consultant by the City, provided that the source of such information was not bound by a written confidentiality agreement with the City, or (iv) is required under applicable law or by deposition, interrogatory, request or demand for information or documents, subpoena, investigative demand, court order or other similar legal process. In such cases the Consultant shall provide the City with written notice that such information is not deemed confidential. Such notice shall provide the City sufficient time to seek a protective order or other legal remedy.

All written confidential information (and all copies, extracts or other reproductions in whole or in part thereof) obtained by the Consultant from the City shall be returned to the City and have the status of City work papers (or, with the City's written permission, shall be destroyed and such destruction certified in writing to the City by an authorized Consultant representative supervising such destruction). Except as set forth herein, no confidential information shall be retained by the Consultant. The Consultant shall be permitted to retain one copy of internal memoranda and other documents, developed

by the Consultant during the term of this Agreement, which contain or refer to confidential information, subject to the confidentiality provisions of this paragraph.

Nothing in this section shall be construed to alter the Consultant's responsibilities under any applicable State Law. Since monetary damages may not be a sufficient remedy with respect to any violation of this section, the City shall be entitled to specific performance and injunctive relief, in addition to any other remedy.

10. CITY PROPERTY

All information and materials received hereunder by the Consultant from the City are and shall remain the sole and exclusive property of the City and the Consultant shall have no right, title, or interest in or to any such information or materials by virtue of their use or possession hereunder by the Consultant. All intellectual property, created by the Consultant hereunder as a product or as a service to the City shall be the sole and exclusive property of the City. The Consultant hereby transfers and assigns to the City all proprietary and intellectual property rights in such property. Effective upon their creation pursuant to Section 2 of this Agreement, the Consultant conveys, assigns and transfers to the City the sole and exclusive rights, title and interest in all documents, electronic databases, and custom programs, whether preliminary, final or otherwise, including all trademarks and copyrights. The Consultant hereby agrees to take all necessary and appropriate steps to ensure that the custom products are protected against unauthorized copying, reproduction and marketing by or through the Consultant, its agents, employees, or subcontractors. Nothing herein shall preclude the Consultant from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under this Agreement in the course of the Consultant's business.

The Consultant grants to the City a perpetual, nonexclusive, royalty-free, unlimited use license to use, execute, reproduce, display, modify and distribute any pre-existing software, tools or techniques delivered by the Consultant under this Agreement. Any written reports, opinions and advice rendered by the Consultant shall become the sole and exclusive property of the City, and the Consultant shall have no right, title, or interest in or to any such information or materials by virtue of their use or possession hereunder by the Consultant.

11. RETENTION OF RECORDS

The Consultant shall make available to the City all information pertinent to the project, including reports, studies, drawings, and any other data. All original records generated as a result of the project shall be maintained by the Consultant for a period of six (6) years after expiration of the Agreement. Upon request, copies of those records shall be provided to the City at no cost.

12. CONFLICTS OF INTEREST

The Consultant represents and warrants that it has no conflict, actual or perceived, that would prevent it from performing its duties and responsibilities under the Agreement.

13. PUBLICITY

The Consultant shall not prepare or release, or cause to be prepared or released, any public notice or announcement concerning this Agreement or performance hereunder. Public notice or announcement includes, but is not limited to, notices published on or in connection with the Consultant's website. The Consultant shall not plan, conduct, or cause to be planned or conducted, or take part in, any news or other conference concerning this Agreement, or work performed pursuant to it, without the City's prior written approval. The Consultant shall not make public or publicize its relation with the City, nor use the City's name, without the City's prior written approval.

14. RELATIONSHIP

No staff member, officer, director or person employed by the Consultant in connection with this Agreement shall be considered or deemed to be an employee of the City of Saratoga Springs, NY or represent him or herself as an employee of the City of Saratoga Springs, NY.

15. INSURANCE

All insurance policies required under this Agreement shall be issued by insurance companies authorized to conduct business under the laws of the State of New York. They shall be written for the benefit of the City of Saratoga Springs, NY; its elected and/or appointed officials, officers, agents, employees and for the Consultant. Said policies shall be effective until all work required or contemplated by the Agreement has been completed. Policies expiring on a fixed date before completion of the Consultant's duties under this Agreement must be renewed not less than 30 days before such expiration date. No policy shall be changed by endorsement without the knowledge and the written consent of the City and, in particular, any notice of cancellation by the insurer shall not be effective until 30 days after the said notice is actually received by the City. Any notice addressed to the City shall be mailed via certified or registered mail to the address set forth

herein. The Consultant acknowledges that failure to obtain such insurance on behalf of the City constitutes a material breach of contract and subjects it to liability for damages indemnification and all other legal remedies available to the City.

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 contact as executed.

Before commencing work under this Agreement, the Consultant shall furnish to the City a certificate of insurance naming: the City of Saratoga Springs, NY; its elected and/or appointed officials, officers, agents and employees as an additional insured on a primary and non-contributory basis. 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 City. Such certificate shall be on forms acceptable to the City's Office of Risk and Safety Management showing that the Consultant has complied with these requirements. In addition, for policies expiring on a fixed date before completion of the Project, certificates showing renewal must be filed not less than 30 days before such expiration date. It shall be an affirmative obligation of the Consultant to advise the City's Office of Risk and Safety at Fax No. 518.693.4070, e-mail Marilyn.Rivers@Saratoga-Springs.org or mail via 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 shall procure and maintain during the term of this contract, at the Consultant's expense, the insurance policies listed in Part II 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 / 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: immediate termination of the contract; withholding any/all payment(s) due under this contract or any other contract it has with the vendor (common law set-off); or 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.

Required Property and Casualty Insurance - Minimum coverage types and amounts:

- 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
- Excess Liability Insurance: Three Million Dollars per Occurrence Aggregate
- Professional Liability Insurance: One Million per Claims with Two Million Aggregate

Required Workers Compensation Insurance – Minimum coverage types and amounts:

- NYS Statutory Workers Compensation, Employer's Liability and Disability Insurance

16. LIABILITY

The Consultant assumes all risks in the performance of all its activities authorized by this Agreement. The Consultant hereby covenants and agrees to defend, indemnify and hold harmless the City of Saratoga Springs, NY; its elected and/or appointed officials, officers, agents, employees and assigns against all liabilities, claims, suits, actions, judgments, costs, expenses, demands, losses, damage or injury, arising out of this agreement, of whatsoever kind and nature including death or injury to person, damage or loss of property, all attorneys' fees and other costs of investigating and defending against such claims, liabilities, losses, damages, expenses, accidents or occurrences. The Consultant shall be responsible for such liabilities that arise at any time prior to termination of this Agreement, whether direct or indirect, and whether caused or contributed to by the Consultant, its Consultants, subcontractors, agents, or employees. The Consultant's responsibility under this section shall not be limited to the required or available insurance coverage.

17. SAFETY

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 re-bidding the work and/or by the increase in cost that results from using a difference vendor.

18. 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.

19. WAIVER

No failure or delay on the part of the City in exercising any right, power or remedy hereunder shall operate as a waiver thereof. No single or partial exercise of any such right, power or remedy shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies provided for herein are cumulative and are not exclusive of any remedies that may be available to any party at law or in equity or otherwise.

20. 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.

21. BINDING AGREEMENT

The covenants and agreements contained in this Agreement shall be binding upon the parties hereto and upon their respective executors, administrators, legal representatives, heirs, successors, distributees and assigns. The rights or obligations granted or allocated to the Consultant herein may not be assigned without the prior written consent of the City.

22. ASSIGNMENT

The Consultant shall not, without the prior written consent of the City, assign, transfer, convey, or otherwise dispose of this Agreement, or any part thereof, or of its right, title, or interest therein or its power to execute this Agreement or any amendment or modifications hereto to any other person, company, or corporation.

23. SEVERABILITY

In the event any provision of this Agreement is determined to be contrary to law or unenforceable for any reason whatsoever, such determination shall not in any way affect the validity or enforceability of the balance of this Agreement or any other term or condition hereof.

24. 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, NY or to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transactions or contracts: 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; 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, buy any monies owing by the City for goods delivered or work done prior to the cancellation or termination shall be paid.

25. NON-COLLUSIVE BIDDING CERTIFICATION: Section 103-d of General Municipal Law

By submission of this quotation, the Consultant and each person signing on behalf of any Consultant certifies, and, in case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of knowledge and belief: The prices in this quotation 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 Consultant or with any competitor; and unless otherwise required by law, the prices which have been quoted in this quotation have not been knowingly disclosed by the Consultant and will not knowingly be disclosed by the Consultant prior to opening, directly or indirectly, to any other Consultant or to any competitor; and no attempt has been made or will be made by the Consultant to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

26. APPENDICES

The Consultant, its subcontractors, vendors and agents shall comply with the terms of the following Appendices which are attached to this Agreement are incorporated by reference herein and which shall be made a part of this Agreement: Appendix A: Vendor/Supplier Code of Conduct

The following are attached to this Agreement for reference purposes: Exhibit A: Proposal dated October 27, 2014

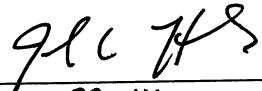
27. EXECUTION

This Agreement may be executed in separate counterparts, which together shall constitute the Agreement of the parties, provided that all of the parties to this Agreement have executed their respective copy of this Agreement.

City Certification: In addition to the acceptance of this Agreement, I certify that original copies of this signature page will be attached to all other exact copies of this Agreement.

Consultant 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.

CITY
Signature: _____
Date: _____
Print Name: _____
Title: _____

CONSULTANT
Signature: 
Date: 10-29-14
Print Name: John C. Healy
Title: Vice President

City Council Approval Date: November 3, 2014

CORPORATE ACKNOWLEDGMENT

STATE OF NEW YORK))
)) SS:
))
COUNTY OF))

ON THIS 29th DAY OF October 2014 BEFORE ME PERSONALLY CAME
HE/SHE John Healy TO ME KNOWN, WHO BEING DULY SWORN, DID DEPOSE AND SAY THAT
Vice President RESIDES IN Delmar, NY THAT HE/SHE IS THE
OF THE Ryan Biggs / Clark Davis
THE CORPORATION DESCRIBED IN AND WHICH EXECUTED
THE FOREGOING INSTRUMENT; THAT HE/SHE KNEW THE SEAL OF SAID CORPORATION; THAT THE SEAL
AFFIXED TO SAID INSTRUMENT WAS SUCH CORPORATE SEAL; THAT IT WAS SO AFFIXED BY THE ORDER OF
THE BOARD OF DIRECTORS OF SAID CORPORATION, AND THAT HE/SHE SIGNED HIS NAME THERETO BY LIKE
ORDER.


NOTARY PUBLIC

BRIDGET REILLY
NOTARY PUBLIC-STATE OF NEW YORK
No. 01RE6280578
Qualified in Saratoga County
My Commission Expires May 06, 2017

APPENDIX A



CITY OF SARATOGA SPRINGS, NEW YORK
VENDOR/SUPPLIER CODE OF CONDUCT

The City of Saratoga Springs is committed to conduct business in a lawful, ethical and moral manner. 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.
- Wages & Benefits: Vendors/suppliers will set working hours, wages, 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 Acknowledgment

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.

Officer: Vice President

Signature: J.C. Healy

Printed Name: John C. Healy

Title: Principal

Date: 10-29-14



RYAN BIGGS
CLARK DAVIS
ENGINEERING & SURVEYING

October 27, 2014

Marilyn Rivers
Director of Risk and Safety
City of Saratoga Springs
474 Broadway
Saratoga Springs, New York 12866

**Re: Canfield Casino Dining Room
Emergency Ceiling Stabilization
Ryan-Biggs Proposal 8736-9**

Dear Marilyn:

We are pleased to submit this proposal for professional services to be performed for the next phase of the emergency stabilization/repair ballroom ceiling at the Canfield Casino located in Congress Park in Saratoga Springs.

In September, we observed several of the original ceiling support hangers to be cracked and damaged resulting in the room being closed for potential safety concerns. As a first step and at Commissioner Scirocco's request, Ryan Biggs | Clark Davis designed temporary measures to allow the room to be reopened. This next step is to design the necessary long-term structural repairs for the ceiling. As part of the ceiling repairs, we will need to perform an evaluation of the roof framing and coordinate the proposed repairs with proposed future improvements. We will retain a subconsultant, Mesick Cohen Wilson Baker Architects to coordinate our design with the future design of the architectural related items.

Considering the proposed future improvements, we anticipate the ballroom project to be completed in three phases:

1. Long-term structural repairs to be performed during the 2015 winter shut down.
2. Mechanical, ventilation, insulation, lighting, window, and maintenance improvements to be performed in 2015.
3. Cosmetic repairs including plaster and painting during the 2016 winter shut down.

The parlor ceiling will also be addressed as part of this project.

Ryan Biggs Clark Davis Engineering & Surveying, P.C., (Ryan Biggs | Clark Davis) and City of Saratoga Springs (Client) agree as set forth below.

A. SCOPE OF SERVICES

The scope of services provided by Ryan Biggs | Clark Davis will be to:

1. Review available documents of the structure, if available. Documents to be provided by Client.
2. Make interior and exterior observations and take measurements of existing conditions as required for our work. This includes a combination of observations from the ground, lifts, roofs, attic spaces, and other pertinent areas. Client to assist in providing access to areas needed for observation.

Client will coordinate access to building interiors, coordinate with tenants, and make arrangements to allow access for equipment and personnel as required for our work.
3. Recommend environmental/asbestos evaluations that would provide necessary information for our work. This includes lead and asbestos evaluations of sealants, coatings, finishes, flashings, flooring, paint, and other materials as required.
4. Perform a structural analysis of the roof structure of the Ballroom and Parlor. Design roof reinforcing if needed. Design new ceiling support structure for the Ballroom and Parlor (if needed). All design will follow provisions of the *Building Code of New York State* (BCNYS).
5. Coordinate design with architect and City regarding proposed future improvements in the attic including new windows, insulation, lighting, ventilation, and maintenance access improvements.
6. Retain a subconsultant to partially develop cosmetic repairs for the ceiling. The repairs will be developed to Design Development level to allow coordination with the structural repairs.
7. Attend up to two coordination/review meetings at Client's office to coordinate structural, architectural, mechanical, electrical, plumbing, building use, and budgetary issues.
8. Prepare drawings for the components we design. Drawing preparation and organization will be based on a single design-bid-build set of Contract Documents.
9. Prepare technical construction specifications for the work we design.
10. Prepare one progress set at 50% completion. Prepare an opinion of probable construction cost.
11. Prepare full bidding package and front-end documents. Client to provide contract provisions to be included in the bid package.
12. Provide electronic files of Contract Documents.

13. To assist with the design, we will retain a subcontractor (Mid-State Industries, Inc.) for the following:
 - a. Provide craftsman to prepare plaster probes as directed.
 - b. Provide mechanical lift for close access to the ceilings in both rooms.
 - c. Provide temporary floor protection for the lift.
 - d. Provide access to the lower attics above the enfilade barrel vaults.

Bid Phase

1. Assist Client in identifying potential bidders.
2. Assist Client in answering bidders' questions and preparing clarification addenda for the structural work we design.
3. Attend prebid meeting.
4. Assist Client in reviewing and assessing bids received.
5. Attend preconstruction meeting.

Construction Phase

1. Review Contractor's submittals for the work we design. Ryan Biggs | Clark Davis will retain one copy of all submittals.
2. Make field observations of construction to review the work for general conformance with the Contract Plans and Specifications. The field observations will satisfy Special Inspection requirements of the BCNYS.
3. Attend job construction meetings.
4. Review and respond to Contractor's questions and requests for information pertaining to the work designed by Ryan Biggs | Clark Davis.
5. Develop Record Drawings for the work designed by Ryan Biggs | Clark Davis, based on information provided by others.
6. Review and process payment applications.

The following services are not included in Ryan Biggs | Clark Davis' or Subconsultant's proposed fee. If requested, Ryan Biggs | Clark Davis can be retained to provide additional scope items.

1. Provide environmental material testing and design services. We understand that some testing has already been performed and found to be not hazardous.
2. Design modifications to other parts of the existing building, including the analysis and reinforcement of existing members to resist seismic loads, increased wind loads, increased snow loads, or drifted snow loads.
3. Perform value engineering after Construction Documents are issued for bid.

4. Assist Client in applying for and obtaining permits. The Contractor will be required to obtain the necessary permits for the work.
5. Attend public review meetings or hearings.

B. COMPENSATION FOR PROFESSIONAL SERVICES

Ryan Biggs | Clark Davis and our Subconsultant, Mesick Cohen Wilson Baker, will perform the listed services on an hourly basis for the following estimated fees.

| | |
|--|-----------------|
| Ryan Biggs Clark Davis: | |
| Design Phase | \$ 22,000 |
| Bid and Construction Phase | \$ 16,500 |
| Mesick Cohen Wilson Baker (Subconsultant): | \$ 8,000 |
| Mid-State Industries (Subcontractor): | <u>\$ 7,500</u> |
| The total maximum fee is not to exceed: | \$ 54,000 |

C. COMPENSATION FOR EXPENSES

Reimbursable expenses incurred for the project are included in the fees listed above and shall include travel mileage. The Subconsultant professional fees listed above will be invoiced as a reimbursable expense.

D. TERMS AND CONDITIONS

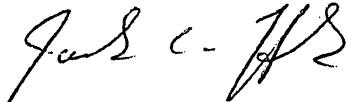
1. The terms and conditions are as set forth in the Agreement between the City of Saratoga Springs, New York, and Ryan-Biggs Associates, P.C., and are understood to apply to the extent of professional services listed above.
2. Standard Hourly Rates

| <u>Personnel</u> | <u>Hourly Rates</u> |
|--------------------------------|---------------------|
| Principal/Principal Consultant | \$210 |
| Principal Associate | 185 |
| Senior Associate | 160 |
| Associate | 145 |
| Senior Engineer | 135 |
| Chief Surveyor | 125 |
| Professional Engineer | 120 |
| Revit Designer | 110 |
| Design Engineer/Technician | 100 |
| Senior CADD | 85 |
| CADD | 75 |
| Submittal Coordinator | 70 |
| Non-Technical | 55 |

Thank you for considering us for this project. We look forward to working with you. Your signature in the space provided indicates your understanding and acceptance of the provisions set forth herein.

Agreed to by:
RYAN-BIGGS ASSOCIATES, P.C.

CITY OF SARATOGA SPRINGS



Authorized Signature

Authorized Signature

Jack C. Healy, P.E., Principal
Print Name & Title

Print Name & Title

October 27, 2014
Date

Date

JCH/jch/01

Client Project Number or Purchase Order
Number



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

City Project Number: _____ City Project Name: _____
 City Department: _____ Department Contact Person: _____ City Ext.: _____
 Company Name: Ryan-Biggs Clark Davis Engineering and Surveying, P.C.
 Company Address: 257 Usters Road
 Company Telephone No.: (518) 406-5506 Company Fax No.: _____
 Consultant Primary Contact for This Project: John Healy Title: Vice President, Principal

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: Three Million Dollars per Occurrence Aggregate
- Professional Errors and Omissions Insurance: One Million per Occurrence with Two Million Aggregate
- NYS Statutory Workers Compensation, Employer's Liability and Disability Insurance

If awarded the bid, 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 contact as executed. For the purposes of this bid, the Certificate of Insurance shall name the Certificate Holder as follows: City of Saratoga Springs, Attention: Purchasing Agent, 474 Broadway, Saratoga Springs, NY 12866.

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 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: [Signature] Date: 10/1/14



RYANB1C

OP ID: DX

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/01/2014

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).

| | | | |
|---|--|---|------------------------|
| PRODUCER Austin & Co., Inc. 20 Corporate Woods Blvd. Albany, NY 12211-2366 Shawn T. Berger | Phone: 518-465-3591 Fax: 518-465-3968 | CONTACT NAME: | |
| | | PHONE (A/C, No, Ext): | FAX (A/C, No): |
| | | E-MAIL ADDRESS: | |
| | | INSURER(S) AFFORDING COVERAGE | |
| | | INSURER A: Travelers Indemnity Company | NAIC # 25658 |
| | | INSURER B: Hartford Insurance Group | 29424 |
| | | INSURER C: | |
| | | INSURER D: | |
| | | INSURER E: | |
| | | INSURER F: | |

INSURED
 Ryan-Biggs Associates, P.C
 Clark Engineering &
 Surveying, PC
 257 Ushers Road
 Clifton Park, NY 12065

COVERAGES**CERTIFICATE NUMBER:****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 INSR | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS |
|----------|--|-----------|----------|-----------------|-------------------------|-------------------------|---|
| A | GENERAL LIABILITY | X | | 6802433M89A | 05/01/2014 | 05/01/2015 | EACH OCCURRENCE \$ 1,000,000 |
| | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY | | | | | | DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 |
| | <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR | | | | | | MED EXP (Any one person) \$ 5,000 |
| | | | | | | | PERSONAL & ADV INJURY \$ 1,000,000 |
| | | | | | | | GENERAL AGGREGATE \$ 2,000,000 |
| | | | | | | | PRODUCTS - COMP/OP AGG \$ INCLUDED |
| | | | | | | | |
| A | AUTOMOBILE LIABILITY | | | BA2944M511 | 05/01/2014 | 05/01/2015 | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 |
| | <input checked="" type="checkbox"/> ANY AUTO | | | | | | BODILY INJURY (Per person) \$ |
| | <input type="checkbox"/> ALL OWNED AUTOS | | | | | | BODILY INJURY (Per accident) \$ |
| | <input type="checkbox"/> HIRED AUTOS | | | | | | PROPERTY DAMAGE (Per accident) \$ |
| | | | | | | | \$ |
| A | UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR | | | XSF CUP9938Y365 | 05/01/2014 | 05/01/2015 | EACH OCCURRENCE \$ 4,000,000 |
| | <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE | | | | | | AGGREGATE \$ 4,000,000 |
| | DED <input checked="" type="checkbox"/> RETENTION \$ 10000 | | | | | | \$ |
| B | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY | | N/A | 01WECZV8283 | 05/01/2014 | 05/01/2015 | WC STATUTORY LIMITS <input checked="" type="checkbox"/> OTHER |
| | ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) | | | | | | E.L. EACH ACCIDENT \$ 1,000,000 |
| | If yes, describe under DESCRIPTION OF OPERATIONS below | | | | | | E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 |
| | | | | | | | E.L. DISEASE - POLICY LIMIT \$ 1,000,000 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Per Policy Terms, Conditions & Exclusions. Certificate Holder is included as an additional insured on the General Liability policy on a primary & non-contributory basis, but only with respects to the Canfield Casino project, if required by written contract.

CERTIFICATE HOLDER**CANCELLATION**

City of Saratoga Springs
 Attn: Purchasing Agent
 474 Broadway
 Saratoga Springs, NY 12866

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

© 1988-2010 ACORD CORPORATION. All rights reserved.