

**AGREEMENT BETWEEN  
CITY OF SARATOGA SPRINGS, NY  
AND  
Art Breault**

***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 **Art Breault** ("CIC") with a place of business at 1131 Hedgewood Lane, Niskayuna, New York 12309..

**WITNESSETH THAT:**

**WHEREAS**, the City desires to employ a Certified Instructor Coordinator (CIC) to perform certain functions on behalf of the City and its Department of Fire and Emergency Services and CIC has submitted a proposal in response to a request for services; and CIC is trained and proficient in the field of medical and emergency management education;.

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

**1. SCOPE OF AGREEMENT**

CIC shall provide to the City the products and services set forth herein. CIC assumes full responsibility for the provision of the products and services made available in this Agreement. CIC shall be so liable even when CIC 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. CIC RESPONSIBILITIES**

The responsibilities undertaken on behalf of the City and performed by the Certified Instructor Coordinator will include:

- a. Provide 96 hours of continued medical education to the employees of the Saratoga Springs Fire Department;
- b. Provide 32 hours of an American Heart Association Advanced Life Support class;
- c. Provide signatures for all required Department of Health and Regional Emergency Medical Organization training documentation;
- d. Acquire from the Department of Health a course number covering training;

**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 CIC shall be Twenty Six Thousand Seven Hundred and Fifty (\$26,750) per annum, payable in advance in two (2) equal installments. No City employee, including the Project Manager named in Section 8 has the authority to request that CIC 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 for a period including January 1, 2015 to December 31, 2015. CIC 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 CIC 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 CIC 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 CIC 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 CIC for products delivered and services rendered by CIC pursuant to the terms and provisions of this Agreement at the time of such termination. Upon any termination, CIC 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 CIC of any of the terms of this Agreement, the City may terminate the Agreement without notice and with compensation to CIC for fees and expenses rendered only to the date of termination. Any breach of any of the terms of this Agreement by CIC 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**

CIC shall provide itemized statements to be reviewed and approved by the City. Invoices must be submitted to: City of Saratoga Springs, Commissioner of Public Safety, 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 CIC 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 Commissioner of Public Safety is the project manager and shall represent the City in all matters affecting the delivery of products and services. The project manager for CIC is Art Breault.

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 Safety  
  City of Saratoga Springs  
  474 Broadway, Saratoga Springs, NY 12866

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

To CIC:                         Art Breault  
  1131 Hedgewood Lane  
  Niskayuna, New York 12309

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 CIC, the City may disclose to CIC 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 CIC. CIC 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. CIC 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 CIC, (ii) is or becomes available to CIC 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 CIC's possession prior to its being furnished to CIC 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 CIC 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 CIC 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 CIC representative supervising such destruction). Except as set forth herein, no confidential information shall be retained by CIC. CIC shall be permitted to retain one copy of internal memoranda and other documents, developed by CIC 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 CIC'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. RETENTION OF RECORDS**

All records shall be maintained in the Saratoga Springs Fire Department.

## **11. CONFLICTS OF INTEREST**

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

## **12. PUBLICITY**

CIC 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 CIC's website. CIC 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. CIC shall not make public or publicize its relation with the City, nor use the City's name, without the City's prior written approval.

### **13. RELATIONSHIP**

No staff member, officer, director or person employed by CIC 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.

### **14. 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 CIC. 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 CIC'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. CIC 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.

Before commencing work under this Agreement, CIC 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 Certificate Holder. 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 CIC 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 CIC 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.

- a. CIC shall procure and maintain during the term of this contract, at CIC's expense, the insurance policies listed in Part II with limits equal to or greater than the enumerated limits.
- b. CIC shall be solely responsible for any self-insured retention or deductible losses under each of the required policies.
- c. 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 CIC.
- d. Every required coverage type shall be "occurrence basis" with the exception of Professional Errors and Omissions Coverage which may be "claims made" coverage.
- e. CIC 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).
- f. The Office of Risk & Safety Management must approve all insurance certificates.
- g. The City of Saratoga Springs reserves its right to request certified copies of any policy or endorsement thereto.

- h. 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).
- i. If CIC 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;
- (1.) withholding any/all payment(s) due under this contract or any other contract it has with the vendor (common law set-off); OR
- (2.) 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 CIC.
- **Professional Liability Insurance: One Million per Claims with Six Million Aggregate**
  - **NYS Statutory Workers Compensation, Employer's Liability and Disability Insurance or proof from the NYS Workers Compensation of a lawful waiver**

## **15. LIABILITY**

CIC assumes all risks in the performance of all its activities authorized by this Agreement. CIC 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. CIC 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 CIC, its CIC's, subcontractors, agents, or employees. CIC's responsibility under this section shall not be limited to the required or available insurance coverage.

## **16. SAFETY**

The City of Saratoga Springs specifically reserves the right to suspend or terminate all work under this contract whenever CIC and/or CIC's employees or subcontractors are proceeding in a manner that threatens the life, health or safety of any of CIC'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 CIC.

If the City of Saratoga Springs exercises its rights pursuant to this part, CIC 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 CIC's service to the public or the City of Saratoga Springs' immediate need for completion of CIC's work. In such case, CIC shall immediately cure the defect.

If CIC 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 CIC 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.

## **17. 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.

## **18. 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.

## **19. 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.

## **20. 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 CIC herein may not be assigned without the prior written consent of the City.

## **21. ASSIGNMENT**

CIC 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.

## **22. 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.

## **23. APPENDICES**

CIC, 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

## **24. 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.

CIC 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

CIC

BY: \_\_\_\_\_  
Signature

BY: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

CORPORATE ACKNOWLEDGMENT

STATE OF NEW YORK            )  
  )  
COUNTY OF                    )

SS:

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_ BEFORE ME PERSONALLY  
CAME \_\_\_\_\_ TO ME KNOWN, WHO BEING DULY SWORN, DID  
DEPOSE AND SAY THAT HE/SHE RESIDES IN \_\_\_\_\_, THAT HE/SHE IS THE  
\_\_\_\_\_ OF \_\_\_\_\_ THE  
\_\_\_\_\_

\_\_\_\_\_, 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

**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: \_\_\_\_\_

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

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_