

**AGREEMENT BETWEEN
CITY OF SARATOGA SPRINGS, NY
AND
MILLER, MANNIX, SCHACHNER & HAFNER, LLC**

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 Miller, Mannix, Schachner & Hafner, LLC (hereinafter "MMSH") with a place of business at 15 West Notre Dame Street, P.O. Box 765 Glens Falls, New York 12801.

WITNESSETH THAT:

WHEREAS, the City of Saratoga Springs requires legal representation for the review of legal issues relating to applications before the City land use boards including the Planning Board, Design Review Commission, and Zoning Board of Appeals; and

WHEREAS, the City Council has agreed by Resolution to engage the services of MMSH on behalf of the City land use boards; and

WHEREAS, the City Council has needed to utilize additional services in 2014 to engage the Services of MMSH on behalf of the City land use boards for additional projects which require addendum to original agreement (see attached contract Appendix C); and

WHEREAS, MMSH has agreed to provide such legal services to the City of Saratoga Springs;

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

1. SCOPE OF AGREEMENT

MMSH shall advise and represent the City land use boards and render legal services relating to applications before such boards as requested by the Mayor, or his/her designee.

Scope of Work and Contract Summary

MMSH shall provide the following legal services on an "as-needed" or "on-call" basis for this project, and shall be provided at the direction of the Mayor, or his/her designee, including but not limited to:

- A. Occasional attendance at land use board meetings and workshops.
- B. Preparation of draft land use board decisions and/or resolutions.
- C. Provision of legal advice on applications before the City land use boards.
- D. Provision of guidance to the City land use boards for compliance with the New York State Environmental Quality Review Act (SEQRA).
- E. Litigation pursued or defended at the direction of the Mayor.

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

MMSH shall provide services detailed above in Section One

3. MMSH/CONSULTANT DISCLOSURE

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

4. FEES

The City will pay MMSH for Legal Services as described above with fees billed at hourly rates not to exceed \$190 per hour. MMSH will invoice the City on a monthly basis and the City will pay all invoices within thirty (30) days, or as practicable. MMSH shall not charge for reimbursable expenses, and total compensation shall be subject to a cap of \$10,000 above and beyond the amount in the original contract for \$20,000 as approved by the City Council on February 4, 2014, exclusive of litigation as described in 1. Scope of Services, E.

5. TERM

The term of this Agreement shall commence January 1, 2014 with the approval of this Agreement by the City Council of the City of Saratoga Springs and run through December 31, 2014. MMSH 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 MMSH 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 MMSH 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 MMSH 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 MMSH for products delivered and services rendered by MMSH pursuant to the terms and provisions of this Agreement at the time of such termination. Upon any termination, MMSH 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 MMSH of any of the terms of this Agreement, the City may terminate the Agreement without notice and with compensation to MMSH for fees and expenses rendered only to the date of termination. Any breach of any of the terms of this Agreement by MMSH 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. The Term of this Agreement shall be from January 1, 2014 through December 31, 2014. This Agreement may be renewed for subsequent years under the same provisions or as modified by Agreement between the City and MMSH.

7. BILLING

MMSH shall provide itemized statements monthly to be reviewed and approved by the City. Invoices must be submitted to: City of Saratoga Springs, NY, Attn. Bradley Birge, 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 MMSH 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 Mayor is the project manager and shall represent the City in all matters affecting the delivery of products and services. The project manager for MMSH is Mark Schachner.

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: Mayor
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

MMSH: Mark Schachner, Partner
Miller, Mannix, Schachner & Hafner, LLC
15 West Notre Dame Street
PO Box 765
Glens Falls, New York 12801

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 MMSH, the City may disclose to MMSH 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 MMSH. MMSH 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. MMSH 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 MMSH, (ii) is or becomes available to MMSH 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 MMSH's possession prior to its being furnished to MMSH 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 MMSH 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 MMSH 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 MMSH representative supervising such destruction). Except as set forth herein, no confidential information shall be retained by MMSH. MMSH shall be permitted to retain one copy of internal

memoranda and other documents, developed by MMSH 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 MMSH'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 MMSH from the City are and shall remain the sole and exclusive property of the City and MMSH shall have no right, title, or interest in or to any such information or materials by virtue of their use or possession hereunder by MMSH.

All intellectual property, created by MMSH hereunder as a product or as a service to the City shall be the sole and exclusive property of the City. MMSH 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, MMSH 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. MMSH 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 MMSH, its agents, employees, or subcontractors. Nothing herein shall preclude MMSH from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under this Agreement in the course of MMSH's business.

MMSH 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 MMSH under this Agreement.

Any written reports, opinions and advice rendered by MMSH shall become the sole and exclusive property of the City, and MMSH shall have no right, title, or interest in or to any such information or materials by virtue of their use or possession hereunder by MMSH.

11. RETENTION OF RECORDS

MMSH 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 MMSH 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

MMSH 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

MMSH 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 MMSH's website. MMSH 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. MMSH 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 MMSH 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 MMSH. 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 MMSH'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. MMSH 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 MMSH 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 MMSH. All insurance required of the Subcontractor shall name the City of Saratoga Springs as an ***Additional Insured on a primary and non-contributory basis*** for all those activities performed within its contracted activities for the contract as executed.

Before commencing work under this Agreement, MMSH 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 MMSH 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 MMSH 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. MMSH shall procure and maintain during the term of this contract, at MMSH's expense, the insurance policies listed in Part II with limits equal to or greater than the enumerated limits.
- b. MMSH 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 MMSH.
- 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. MMSH 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 MMSH 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 MMSH.

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

Coverage Type	Minimum Limits
General Liability Insurance: Commercial General Liability including completed products and operations and personal liability insurance Professional Errors and Omissions Insurance	\$1 Million per occurrence with \$2 Million aggregate \$1 Million per claims aggregate

Required Workers Compensation Insurance – Minimum coverage types and amounts:

Workers' Compensation and Employer's Liability If you have no employees (sole proprietor) you must provide an affidavit of exemption. (WCB forms WC/DB-100 or WC/DB-101).	Statutory limits 100,000
Disability Insurance If you have no employees (sole proprietor) you must provide an affidavit of exemption. (WCB forms WC/DB-100 or WC/DB-101).	Statutory limits

The certificate face shall:

- indicate coverage(s) (other than Workers' Compensation & Disability) & minimum amounts required in part II.1
- provide that the coverage(s) shall not be cancelled, terminated or materially changed (including an insurance limits reduction) unless **thirty (30) days** prior written notice has been given to the Office of Risk & Safety Management.
- Disclose the amount of self-insured retention or deductibles.

Proof of Workers' Compensation Coverage must be provided on WCB form C-105.2 or U-26.3. Proof of NYS Disability Coverage must be provided on WCB form DB-120.1 OR DB-820/829 OR DB-155.

16. LIABILITY

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

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 MMSH herein may not be assigned without the prior written consent of the City.

21. ASSIGNMENT

MMSH 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

MMSH, 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: Waiver of Immunity/Non-Collusive Bidding Certification
- Appendix B: 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.

MMSH 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

MMSH

BY: _____
Signature

Dated

Printed Name

Title

BY: _____
Signature

Dated

Printed Name

Title

City of Saratoga Springs
Purchasing Department
474 Broadway, Saratoga Springs, NY 12866
Tel: (518) 587-3550 ext. 560
Fax: (518) 587-6512



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:

1. 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;
2. Any and all contracts made with any municipal corporation or any public department, agency or official thereof, with any fire district or any agency or official thereof, by such person, and by any firm, partnership or corporation of which he is a member, partner, director or officer may be cancelled or terminated by the City without incurring any penalty or damages on account of such cancellation or termination, but any monies owing by the City for goods delivered or work done prior to the cancellation or termination shall be paid.

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

“By submission of this bid, each bidder and each person signing on behalf of any bidder 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 bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; and

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

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

Signature: _____
Title: _____
Date: _____

APPENDIX B



**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: _____