

**AGREEMENT BETWEEN  
CITY OF SARATOGA SPRINGS, NY  
AND  
GIRVIN & FERLAZZO, P.C.**

**This Agreement** ("Agreement") is made by and between the **City of Saratoga Springs, NY** (hereinafter "City") with a place of business at 474 Broadway, Saratoga Springs, NY 12866, and **Girvin & Ferlazzo, P.C.** (hereinafter "GF") with a place of business at 20 Corporate Wood Blvd, Albany, New York 12211.

**WITNESSETH THAT:**

**WHEREAS**, the City requires legal representation for the City's labor and employment law legal matters on an as needed basis; and

**WHEREAS**, the City Council has agreed by Resolution to engage the services of GF on behalf of the City; and

**WHEREAS**, GF has agreed to provide such legal services to the City;

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

**1. SCOPE OF AGREEMENT**

GF shall advise and represent the City and render legal services relating to the City's labor and employment law matters on an as needed basis, including but not limited to, the following: contract grievances, improper practice charges before PERB, arbitration, litigation and collective bargaining with the City's bargaining units under the direction of the Mayor and the City Attorney.

**2. GF/CONSULTANT RESPONSIBILITIES**

GF shall provide services detailed above in Section One

**3. GF/CONSULTANT DISCLOSURE**

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

**4. FEES**

The City will pay Girvin & Ferlazzo, PC for legal services as described above with fees billed at an hourly rate of \$190.00 per hour for up to 200 hours. For work in excess of 200 hours, the hourly rate would be \$180 per hour. Girvin & Ferlazzo, PC will invoice the City on a monthly basis detailing all services provided and the City will pay all invoices within thirty (30) days, or as practicable. Any disbursements advanced by Girvin & Ferlazzo on behalf of the City, such as fees for stenographic services, witness fees, hearing officer fees, and other court costs, will be reflected on the invoice and paid by the City. Girvin & Ferlazzo will not charge the City for any other reimbursable or business operation expenses (e.g. mileage, copying, postal, etc.). Total compensation shall be subject to a cap of \$20,000.00.

**5. TERM**

The term of this Agreement shall commence January 1, 2015 with the approval of this Agreement by the City Council of the City of Saratoga Springs and run up to and through December 31, 2015. GF 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 GF 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 GF 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 GF 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 GF for products delivered and services rendered by GF pursuant to the terms and provisions of this Agreement at the time of such termination. Upon any termination, GF 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 GF of any of the terms of this Agreement, the City may terminate the Agreement without notice and with compensation to GF for fees and expenses rendered only to the date of termination. Any breach of any of the terms of this Agreement by GF 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, 2015 up to and through December 31, 2015. This Agreement may be renewed for subsequent years under the same provisions or as modified by Agreement between the City and GF.

**7. BILLING**

GF shall provide itemized statements monthly to be reviewed and approved by the City. Invoices must be submitted to: City Attorney, Saratoga Springs City Hall, 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 has the authority to request that GF perform any additional work beyond the work authorized or described herein or to incur additional expenses above the amount set forth in 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 GF is Jeffrey Honeywell, Esq.

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 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
  
- GF: Girvin & Ferlazzo, P.C.  
20 Corporate Wood Blvd  
Albany, New York 12211.

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 GF, the City may disclose to GF 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 GF. GF 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. GF 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 GF, (ii) is or becomes available to GF 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 GF's possession prior to its being furnished to GF 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 GF 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 GF 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 GF representative supervising such destruction). Except as set forth herein, no confidential information shall be retained by GF. GF shall be permitted to retain one copy of internal memoranda and other documents, developed by GF 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 GF'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 GF from the City are and shall remain the sole and exclusive property of the City and GF shall have no right, title, or interest in or to any such information or materials by virtue of their use or possession hereunder by GF.

All intellectual property, created by GF hereunder as a product or as a service to the City shall be the sole and exclusive property of the City. GF hereby transfers and assigns to the City all proprietary and intellectual property rights in such property.

Effective upon their creation, GF 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. GF 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 GF, its agents, employees, or subcontractors. Nothing herein shall preclude GF from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under this Agreement in the course of GF's business.

GF 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 GF under this Agreement.

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

**11. RETENTION OF RECORDS**

GF shall make available to the City all information pertinent to the project, including reports, studies, drawings, and any other data. All original records generated shall be maintained by GF for a period of at least 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**

GF 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**

GF 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 GF's website. GF 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. GF 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 GF 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**

The City of Saratoga Springs requires a Certificate of Insurance naming the City of Saratoga Springs as an **Additional Insured** evidencing the following coverage:

- Commercial General Liability: \$1,000,000 per occurrence and \$2,000,000 aggregate including completed operations, personal injury and product liability
- Professional Errors & Omissions Coverage: \$1,000,000 per occurrence aggregate (*Please note that for this coverage, the City of Saratoga Springs shall not be named as an Additional Insured.*)
- Statutory Workers Compensation and Employer's Liability Insurance for all employees (*Please note that for this coverage per NYS Law, the City of Saratoga Springs shall not be named as an Additional Insured.*)

Certificates of Insurance should be addressed to the attention of: Director of Risk and Safety, City of Saratoga Springs, 474 Broadway, Saratoga Springs, NY 12866

Girvin & Ferlazzo, PC acknowledges that failure to obtain such insurance on behalf of the municipality constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to the City. The firm is to provide the City with a Certificate of Insurance naming the City as **Additional Insured** prior to the commencement of any work. The failure to object to the contents of the Certificate of Insurance or the absence of same shall not be deemed a waiver of any and all rights held by the municipality.

Girvin & Ferlazzo, PC shall indemnify and save harmless the City of Saratoga Springs, its Agents and Employees (hereinafter referred to as "City"), from and against all claims, damages, losses and expense (including, but not limited to, attorneys' fees), arising out of or resulting from the performance of the work, sustained by any person or persons, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of property caused

by the tortious act or negligent act or omission of Girvin & Ferlazzo, PC or its employees, agents or subcontractors.

**16. 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.

**17. 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.

**18. 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.

**19. 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 GF herein may not be assigned without the prior written consent of the City.

**20. ASSIGNMENT**

GF 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.

**21. 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.

**22. APPENDICES**

GF, 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

**23. 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.

GF 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

BY: \_\_\_\_\_  
Joanne D. Yepsen, Mayor

\_\_\_\_\_  
Dated

Girvin & Ferlazzo, P.C

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

1/14/15  
\_\_\_\_\_  
Dated

JEREMY D. HONEYWELL  
\_\_\_\_\_  
Printed Name

PARTNER  
\_\_\_\_\_  
Title

City Council Approval Date: \_\_\_\_\_

