

**AGREEMENT BETWEEN
CITY OF SARATOGA SPRINGS, NY
AND
Icon Enterprises, Inc., d/b/a CivicPlus**

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 **Icon Enterprises, Inc., d/b/a CivicPlus** (the "Consultant") with a place of business at 302 S. 4th Street, Suite 500, Manhattan, KS 65502.

WITNESSETH THAT:

WHEREAS, the City released Request for Proposal #2014-25 "Website and Social Media Design and Upgrade" in November 2014, the Consultant submitted a proposal in response to thereto; and the Consultant is trained and proficient in the field of website redesign, content migration, GCMS@ implementation and training;

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 the City's request for proposals entitled Website and Social Media Design and Upgrade (the "RFP"), which is attached hereto as Exhibit A and incorporated herein, the Consultant submitted a proposal dated December 4, 2014 (the "Original Proposal"), which is attached hereto as Exhibit B and incorporated herein. The Project Development Estimate in the original proposal was revised to include certain Optional Project Enhancements (the "Revised Proposal"), which is attached hereto as Exhibit C and incorporated herein. The Consultant shall provide to the City the products and services set forth in the Original Proposal, as revised in the Revised Proposal, and all in accordance with the RFP. 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 Exhibits A, B, and C.

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 C, not to exceed \$48,000 for Year 1, plus Annual Service Fees in subsequent years as stated, 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 and shall remain in effect for one year (12 months). 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 thirty (30) 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.

In the event that neither party gives termination notice prior to the end of the initial or any subsequent term, this Agreement will automatically renew for an additional contract term. After 48 consecutive months under the terms of this contract and associated pricing, the City will be fully eligible for a CivicPlus Basic Redesign at no additional cost.

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

As detailed in Exhibit C - One half of the total First Year Fee will be invoiced at the completion of the following phases:

- a. Phase 2: Website Layout – one half of the Total Fees Year 1.
- b. Phase 4: Customized Website Training - the remaining half of the Total Fees Year 1.

Year 2 Annual Services will be invoiced one (1) year from contract signing. 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 Information Technology Systems Manager 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 will be assigned upon contract signing.

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 Finance
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: Icon Enterprises, Inc., d/b/a CivicPlus
Attn: Accounting Department
302 S. 4th Street, Suite 500
Manhattan, KS 66502

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

Upon full and complete payment of submitted invoices for the Project Development and launch of the website, the City will own the Customer Content (defined as website graphic designs, the page content, all module content, all importable/exportable data, and all archived information).

Upon completion of the development of the site, the City will assume full responsibility for website content maintenance and content administration. The City, not the Consultant, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Content. Intellectual Property of the CivicPlus Government Content Management System (GCMS®) will remain the property of the Consultant.

The City shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the GCMS® software in any way; (ii) modify or make derivative works based upon the GCMS® software; (iii) create Internet "links" to the GCMS® software or "frame" or "mirror" any GCMS® administrative access on any other server or wireless or Internet-based device; or (iv) reverse engineer or access the GCMS® software in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the GCMS® software, or (c) copy any ideas, features, functions or graphics of the GCMS® software. The CivicPlus name, the CivicPlus logo, and the product and module names associated with the GCMS® software are trademarks of the Consultant, and no right or license is granted to use them.

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. The City allows the Consultant to display a "Government Websites by CivicPlus" insignia, and web link at the bottom of their web pages.

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. 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.

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); 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. 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 the Consultant herein may not be assigned without the prior written consent of the City.

21. 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.

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. 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,

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: _____