

**AGREEMENT  
BETWEEN OWNER AND CONTRACTOR  
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between City of Saratoga Springs ("Owner") and  
DeBrino Caulking Assoc. Inc. ("Contractor").

Owner and Contractor hereby agree as follows:

**ARTICLE 1 – WORK**

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

The base bid includes the complete replacement of five (5) sets of stairs generally including stringers, posts, ornamental handrails, landings, treads and risers at the Putnam and Woodlawn Parking Garages. All new steel is to be hot-dip galvanized with a written performance guarantee from the galvanizer. All components except treads, risers and landings are to be shop powder coated by the galvanizer. The new stair system is to be designed under contract with a steel fabricator who shall provide engineered steel fabrication drawings sealed by a New York State licensed engineer. Work shall be ADA approved and consistent with high heel foot traffic. Work includes joint repairs at the adjacent garage surfaces.

Bid Alternate 1 includes demolition and disposal of the existing concrete filled metal pan stair systems.

**ARTICLE 2 – THE PROJECT**

The project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

2015-01– PARKING DECK STAIR REPLACEMENTS

**ARTICLE 3 – ENGINEER**

- 3.01 The project has been design by the Office of the City Engineer, which will assume all duties and responsibilities and have the rights and authority assigned to the Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contractor Documents. The City Engineer will act as the Owner's representative.

**ARTICLE 4 – CONTRACT TIMES**

4.01 *Time of the Essence*

- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Days to Achieve Substantial Completion and Final Payment*

- A. The work which the Contractor is required to perform under this contract shall commence at the time stipulated by the City in the Notice to Proceed to Contractor. The Contractor shall have 60

calendar days to substantial completion and 75 calendar days to final completion of the work from the date of Notice to Proceed. This includes lead-time for materials.

#### 4.03 Liquidated Damages

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration preceding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$500 for each day that expires after the time specified in Paragraph 4.02 above for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$500 for each day that expires after the time specified in Paragraph 4.02 above for completion and readiness for final payment until the Work is completed and ready for final payment.

#### ARTICLE 5 – CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.01.A, 5.01.B, and 5.01.C below:

- A. For all Work other than Unit Price Work, a lump sum of: \$ 265,567.00

All specific cash allowances are included in the above price in accordance with Paragraph 11.02 of the General Conditions.

- B. **(NOT USED)** For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the actual quantity of that item:

<u>Item No.</u>	<u>Description</u>	<u>Unit</u>	<u>Estimated Quantity</u>	<u>Unit Price</u>
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The Bid prices for Unit Price Work set forth as of the Effective Date of the Agreement are based on estimated quantities in the Bid Proposal. As provided in Paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer as provided in Paragraph 9.07 of the General Conditions.

- C. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

## ARTICLE 6 – PAYMENT PROCEDURES

### 6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

### 6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment at the appropriate phases of completion during performance of the Work. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentages indicated on the approved schedule of values but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions.

a. ~~\_\_\_\_\_ percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and~~

b. ~~\_\_\_\_\_ percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).~~

- B. ~~Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to \_\_\_\_\_ percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less \_\_\_\_\_ percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.~~

### 6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

## ARTICLE 7 – INTEREST

- 7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate of 0 percent per annum.

**ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS**

8.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph SC-4.02 of the Supplementary Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph SC-4.06 of the Supplementary Conditions as containing reliable "technical data."
- E. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

**ARTICLE 9 – CONTRACT DOCUMENTS**

9.01 *Contents*

- A. The Contract Documents consist of the following:

1. This Agreement
2. Performance bond
3. Labor & Materials bond
4. General Conditions
5. Supplementary Conditions
6. Specifications
7. Schematic plans consisting of 4 sheets bearing the following general title:

**Parking Deck Stair Replacements**

Cover Sheet .....	1 of 4
Stairs 1 – 5 Existing Schematics .....	2 of 4
Site Plans, Notes & Photos .....	3 of 4
Photos & Details.....	4 of 4

8. Certificate of Insurance
9. Executed Risk & Safety Agreement
10. Addenda
11. Exhibits to this Agreement (enumerated as follows):
  - a. Contractor's Bid
  - b. Documentation submitted by Contractor prior to Notice of Award
12. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
  - a. Notice to Proceed
  - b. Work Change Directives.
  - c. Change Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

**ARTICLE 10 – MISCELLANEOUS****10.01 Terms**

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

**10.02 Assignment of Contract**

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

**10.03 Successors and Assigns**

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

**10.04 Severability**

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

**10.05 Contractor's Certifications**

Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on 5-19-15 (which is the Effective Date of the Agreement).

## OWNER:

City of Saratoga Springs

By: \_\_\_\_\_

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

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

Attest: \_\_\_\_\_

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

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

## CONTRACTOR

DeBrino Caulking Assoc. Inc.

By: Louis P. DeBrino

Title: President

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: Donna DeBrino

Title: Secretary

Address for giving notices:

DeBrino Caulking Assoc.  
1304 Route 9  
Castleton NY 12033

License No.: \_\_\_\_\_

(Where applicable)

Agent for service of process:

\_\_\_\_\_

In order to guard against premature opening of the bid documents, bids shall be enclosed in a sealed and clearly labeled envelope with the words:

IFB #: 2015-01 PARKING DECK STAIR REPLACEMENTS

Name of Bidder: DeBrino Caulking Assoc. Inc.

Bid Opening: Thursday, APRIL 16, 2015 at 2:00 p.m.

AND RETURN TO:

City of Saratoga Springs  
City Clerk - Department of Accounts  
474 Broadway  
Saratoga Springs, NY 12866

✓ Risk & Safety  
✓ Insurance Limits  
✓ COI Address PENC  
Approved  
4/17/15

As a fair basis of award, the City of Saratoga Springs will award the Contract to the lowest qualified responsible bidder determined by the total sum of the base bid and selected bid alternates, if any. The final cost of the contract work will be based on the actual work performed in the field.

#### 5. BID FORMS

Each Bidder submitting a bid must execute the following forms, provided herein, and include with the IFB response submission. **Failure to submit the executed forms at the time of bid submission will disqualify the bid submission:**

- Acknowledgements
- ☒ Waiver Of Immunity And Non-Collusive Bidding Certification
- ☒ Vendor/Supplier Code of Conduct
- Risk & Safety Agreement
- Certificates of Insurance

Before executing any Subcontract, the successful Bidder shall submit the name of any proposed Subcontractor for prior approval and an affidavit in the form provided herein.

#### 6. CERTIFICATE OF INSURANCE

Contractor must provide Certificates of Insurance covering the work in the Contract Documents, including all subcontractors, and include them with the IFB response submission. Certificate shall name the City of Saratoga Springs as additional insured in accordance with the requirements of the Risk & Safety Agreement. **Failure to provide the Insurance Certificates at the time of bid submission will disqualify the bid submission.**

#### 7. BID BOND

Each bid must be accompanied by Bid Bond made payable to COMMISSIONER OF FINANCE in an amount of ten (10) percent of bidder's maximum bid price and in the form of a certified or bank check or a Bid Bond (on form attached, if a form is prescribed) issued by a surety meeting the requirements of the General Conditions.





JOANNE YEPSEN  
MAYOR

MICHELE D. CLARK-MADIGAN  
COMM. OF FINANCE

ANTHONY SCIROCCO  
COMM. OF PUBLIC WORKS

CHRISTIAN MATHIESEN  
COMM. OF PUBLIC SAFETY

JOHN FRANCK  
COMM. OF ACCOUNTS

City of Saratoga Springs  
IFB PROPOSAL & SPECIFICATIONS  
FOR

**PARKING DECK STAIR REPLACEMENTS**

**BID #2015-01**

**SARATOGA SPRINGS, NY**

PREPARED BY:

**Office of the City Engineer**

**MARCH 2015**

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**ALL BIDS SHALL BE ENCLOSED IN A SEALED ENVELOPE MARKED:**

**IFB #: 2015-01 PARKING DECK STAIR REPLACEMENTS**

**Name of Bidder:** DeBrino Caulking Assoc. Inc.

**IFB Opening:** Thursday, APRIL 16, 2015 at 2:00 p.m.

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### **Submittal Instructions**

**CONTRACTORS PLEASE NOTE YOUR IFB MUST BE RETURNED AS FOLLOWS:**

**Step One:** You MUST execute and include the following documents with your response:

- Bid Proposal - 2 sets - 1 original, 1 copy
- Acknowledgements - 1 each
- Waiver of Immunity and Non-Collusive Bidding Certification - 1 each
- Vendor Code of Conduct - 1 each
- Risk & Safety Agreement - 1 each
- Certificates of Insurance (including Worker's Compensation Certificate) - 1 each
  - o As outlined in the Risk & Safety Agreement
- Statement of Bidder's Qualification - 1 each
- Bid Deposit Check (10% of Base Bid) - 1 each

***FAILURE TO SUBMIT IFB DOCUMENTS AS OUTLINED ABOVE WILL LEAD TO IMMEDIATE IFB DISQUALIFICATION.***

**Step Two:** Enclose your bid in a sealed envelope marked:

**IFB #: 2015-01 - PARKING DECK STAIR REPLACEMENTS**

**Name of Bidder: DeBrino Caulking Assoc. Inc.**

**Bid Opening: Thursday, APRIL 16, 2015 at 2:00 p.m.**

**Step Three:** Please return your response to this IFB to the following address:

**City of Saratoga Springs  
City Clerk  
474 Broadway  
Saratoga Springs, NY 12866**



### Acknowledgements

The Undersigned understands that the City reserves the right to accept or to reject any proposal(s), but that if notice of the acceptance of this proposal is mailed, telegraphed or delivered to the Undersigned within thirty (30) days after the opening of the bids, or any time before this proposal is withdrawn, the Undersigned will execute a contract with the City of Saratoga Springs for this work.

The Undersigned further agrees that if awarded the contract, the undersigned will:

- (1) Commence work upon receipt of the executed contract,
- (2) provide bonds as required,
- (3) commence active construction work at the site as outlined in the Notice to Proceed,
- (4) substantially complete the work in its entirety, ready for use by the City as outlined in the project documents..

Signed: Lewis P. Houghtaling 3rd Pres.

Printed Name: Lewis P. Houghtaling 3rd

Title: President

Company: DeBrino Caulking Assoc, Inc.

Address: 1304 Route 9  
Castleton NY 12033

Date: April 8, 2015

Telephone Number: 518-732-7234

Cellular Number: 518-365-1223

Facsimile Number: 518-732-1306

Email Address: lphoughtaling@debrino.com



**Waiver of Immunity Clause**  
Section §139(a) State Finance Law

Upon the refusal by a representative of your firm, when called before a grand jury to testify concerning any transaction or contract with the City of Saratoga Springs, New York, or to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transactions or contracts,

(a) 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

(b) any and all contracts made with any municipal corporation or fire district, or any public department, agency or official thereof, since the effective date of this law, 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 §139(d) State Finance Law

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and, in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:

(1) 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;

(2) 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

(3) 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."

A bid shall not be considered for award nor shall any award be made where (1), (2), (3) above have not been complied with; provided however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefore.

Signature: Lewis P. Houghtaling Print Name: Lewis P. Houghtaling 3rd

Title: President Date: April 8, 2015

Company: DeBrino Caulking Assoc. Address: 1304 Rte 9 Castleton NY 12033

Subscribed to under penalty of perjury under the laws of the State of New York, this 16th day of April, 2015 as the act and deed of said corporation or partnership.

Joanne Moore  
**JOANNE MOORE**  
Notary Public, State of New York  
Qualified in Columbia County  
No. 11-4991875  
My Commission Expires 2-10-18



## Vendor/Supplier Code of Conduct

The City of Saratoga Springs is committed to conduct business in a lawful, ethical and moral manner and expects the same standards from vendors/suppliers that the City conducts business with. 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.
- Conflict of Interest: The vendor/supplier represents and warrants that it has no conflict, actual or perceived, that would prevent it from doing business with the City of Saratoga Springs.
- Wages & Benefits: Vendors/suppliers will set working hours, wages, and 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.
- 1. 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 Acknowledgement

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.

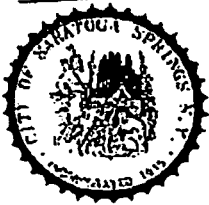
Signature: Lewis P. Houghtaling 3rd

Printed name: Lewis P. Houghtaling 3rd

Title: President

Date: April 8, 2015

Company Name: DeBrino Caulking Assoc. Inc.



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

City Project Number: 2015-01 City Project Name: Parking Deck Stair Replacement  
 City Department: Off. Engineer Department Contact Person: \_\_\_\_\_ City Ext. \_\_\_\_\_  
 Company Name: DeBrino Caulking Assoes. Inc.  
 Company Address: 1304 Rte. 9 Castleton NY 12033  
 Company Telephone No.: 518-732-7234 Company Fax No.: 518-732-1306  
 Contractor Primary Contact for This Project: Lewis P. Houghtaling Title: President

The City of Saratoga Springs herein requires the following terms and conditions regarding the agreement for the provision of professional services as outlined above:

The Contractor shall procure and maintain during the term of this contract, at the Contractor's expense, the insurance policies listed with limits equal to or greater than the enumerated limits. The Contractor shall be solely responsible for any self-insured retention or deductible losses under each of the required policies. Every required policy, including any required endorsements and any umbrella or excess policy, shall be primary insurance. Insurance carried by the City of Saratoga Springs, its officers, or its employees, if any, shall be excess and not contributory insurance to that provided by the Contractor. Every required coverage type shall be "occurrence basis" with the exception of Professional Errors and Omissions Coverage which may be "claims made" coverage. The Contractor 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 Contractor fails to procure and maintain the required coverage(s) and minimum limits such failure shall constitute a material breach of contract, whereupon the City of Saratoga Springs may exercise any rights it has in law or equity, including but not limited to the following: (1) Immediate termination of the contract; (2) withholding any/all payment(s) due under this contract or any other contract it has with the vendor (common law set-off); OR (3) procuring or renewing any required coverage(s) or any extended reporting period thereto and paying any premiums in connection therewith. All monies so paid by the City of Saratoga Springs shall be repaid upon demand, or at the City's option, may be offset against any monies due to the Contractor.

The City of Saratoga Springs requires the Contractor name the City as a Certificate Holder for the following coverage for the work covered by this Agreement:

- Commercial General Liability Including Completed Products and Operations and Personal Liability Insurance: One Million Dollars per Occurrence with Two Million Dollars Aggregate (*City is also an Additional Insured on a Primary and Non-contributory Basis for this coverage*);
- Commercial Automobile Insurance: One Million Dollars Combined Single Limit for Owned, Hired and Non-owned Vehicles
- Excess Liability Insurance: Three Million Dollars per Occurrence Aggregate
- NYS Statutory Workers Compensation, Employer's Liability and Disability Insurance

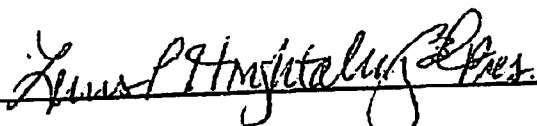
It shall be an affirmative obligation of the Contractor to advise City's Office of Risk and Safety via mail to Office of Risk and Safety, City of Saratoga Springs, 474 Broadway, Saratoga Springs, NY 12866, within two days of the cancellation or substantive change of any insurance policy set out herein, and failure to do so shall be construed to be a breach of this Agreement. The Contractor 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 Contractor is to provide the City with a Certificate of Insurance naming the City as ***Additional Insured on a primary and non-contributory basis prior*** to the commencement of any work or use of City facilities. The failure to object to the contents of the Certificate of Insurance or the absence of same shall not be deemed a waiver of any and all rights held by the municipality. In the event the Contractor 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 Contractor. 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.

The Contractor, to the fullest extent provided by law, shall indemnify and save harmless the City of Saratoga Springs, its Agents and Employees (hereinafter referred to as "City"), from and against all claims, damages, losses and expense (including, but not limited to, attorneys' fees), arising out of or resulting from the performance of the work or purchase of the services, sustained by any person or persons, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of property caused by the tortious act or negligent act or omission of Contractor or its employees or anyone for whom the Contractor is legally liable or Subcontractors. Without limiting the generality of the preceding paragraphs, the following shall be included in the indemnity hereunder: any and all such claims, etc., relating to personal injury, death, damage to property, or any actual or alleged violation of any applicable statute, ordinance, administrative order, executive order, rule or regulation, or decree of any court of competent jurisdiction in connection with, or arising directly or indirectly from, errors and/or negligent acts by the Contractor, as aforesaid.

Contractor shall comply with NYS OSHA laws as of July 18, 2008 requiring all workers on New York State public projects be certified as having completed an OSHA 10-hour construction safety course. Proof of this certification is required at the time of the execution of this Agreement. The City of Saratoga Springs specifically reserves the right to suspend or terminate all work under this contract whenever Contractor and/or Contractor's employees or subcontractors are proceeding in a manner that threatens the life, health or safety of any of Contractor's employees, subcontractor's employees, City employees or member(s) of the general public on City property. This reservation of rights by the City of Saratoga Springs in no way obligates the City of Saratoga Springs to inspect the safety practices of the Contractor. If the City of Saratoga Springs exercises its rights pursuant to this part, the Contractor 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 Contractor's service to the public or the City of Saratoga Springs' immediate need for completion of the Contractor's work. In such case, Contractor shall immediately cure the defect. If the Contractor fails to cure the identified defect(s), the City of Saratoga Springs shall have the right to immediately terminate this contract. In the event that the City of Saratoga Springs terminates this contract, any payments for work completed by the Contractor shall be reduced by the costs incurred by the City of Saratoga Springs in rebidding the work and/or by the increase in cost that results from using a different vendor.

Contractor, having agreed to the terms and the recitals set forth herein, and in relying thereon, herein signs this Agreement.

Contractor Signature:  James P. Hingst, Pres. Date: 4/8/15