

## **MANAGEMENT AGREEMENT**

**THIS AGREEMENT**, made on June 3 , 2015 by and between the **CITY OF SARATOGA SPRINGS, NEW YORK**, a municipal corporation with offices at 474 Broadway, Saratoga Springs, New York 12866 (hereinafter known as "CITY") and the **SARATOGA CONVENTION & TOURISM BUREAU**, a domestic corporation with offices at 60 Railroad Place, Suite 301, Saratoga Springs, New York 12866 (hereinafter known as "SCTB").

**WHEREAS**, the CITY is the owner of premises at 297 Broadway in the CITY of Saratoga Springs and the County of Saratoga, State of New York, known as the "Saratoga Springs Visitors Center" (hereinafter known as "CENTER") whereat the CITY currently conducts its operations as a Visitors Center, as part of a Heritage Area (formerly known as an Urban Cultural Park project) authorized pursuant to an agreement between the CITY and the New York State Office of Parks, Recreation and Historic Preservation (herein after known as "NYSOPRHP") dated July 31, 1992, and

**WHEREAS**, the CITY wishes to maximize the potential benefits of the Visitors Center through increased marketing, expanded programs, additional cultural activities, and more cost-effective and efficient operations, and

**WHEREAS**, SCTB possesses the regional economic and marketing expertise necessary to professionally manage and operate the CENTER and desires to provide such services to the CITY as an independent contractor,

**NOW THEREFORE**, in consideration of the mutual covenants set forth herein, the parties agree as follows:

### **1. MANAGEMENT**

SCTB agrees to manage and operate the CENTER as an independent contractor at 297 Broadway, Saratoga Springs, New York 12866 and to oversee and coordinate the overall administration of the CENTER.

- a. **TERM** – The term of the management agreement shall be for two and one half (2 ½ ) years beginning on the date of this agreement as set forth above and ending December 31, 2017. The term of the management agreement may be extended for two (2) additional one (1) year terms upon the mutual consent of the CITY and SCTB.
- b. **SERVICES** – The services to be provided herein shall include all necessary and required staff, support services, supplies, inventory and administration to effect the following:
  - I. Management and overall administration of the CENTER and its, exhibits, displays, materials and information;
  - II. Technical operation of all of the CENTER's programs, presentations and activities; and

III. All other services that may be necessary for the successful operation, management and improvement of the CENTER.

- c. EXHIBITS & FURNISHINGS – All of the CENTER’s existing exhibits and furnishings shall remain the property of the CITY. SCTB agrees to work closely with the CITY to identify sources of funds and grant monies to keep the exhibits and furnishings up to date and to purchase new exhibits, displays and furnishings.
- d. MANAGEMENT FEES/ACCOUNTING –The CITY shall pay SCTB an annual fee of \$70,000, prorated for the first year from the date of signing, for the management, and operation of the administrative services listed herein The management fee for each subsequent program year shall increase by 2% in accordance with the following schedule :

**Year One: \$40,657 (prorated June 3<sup>rd</sup> – December 31<sup>st</sup>) as of the effective date,  
Year Two: \$ 71, 400 - as of January 1, 2016 (a 2% increase), and  
Year Three: \$ 72,828 - as of January 1, 2017 (a 2% increase).**

Payments shall be made quarterly and in advance upon the submission of standard CITY vouchers.

SCTB shall retain annual gross proceeds of the CENTER’s operation up to the sum of Thirty Thousand Dollars (\$30,000) in any one calendar year. Any and all gross proceeds in excess of Thirty Thousand Dollars (\$30,000) shall be split evenly between the CITY and SCTB. For the purposes of this agreement, the term “gross proceeds” is hereby defined to mean all receipts except amounts collected for sales taxes, customer refunds and employee discounts.

- e. PROGRAMMING – SCTB shall continue to operate the CITY’s Congress Park Walking Tours, Summer Concert Series, and Brown Bag Lunch programs. SCTB may create new or additional programs, at any time, that are consistent with the overall mission and objectives of the Visitors Center and the Heritage Area.
- f. EQUIPMENT - Desks, furniture, programmatic files, brochures, etc., will remain the property of the CITY, but may be used by SCTB. The CITY shall not be responsible for the provision of incidental business supplies including but not limited to office supplies, business materials, kitchen supplies and business equipment including but not limited to computers, printers, telephones etc.
- g. BUILDING MAINTENANCE, REPAIR, AND USE – The CITY shall be responsible for the regular maintenance, repair and upkeep of the CENTER, including its fixtures, both interior and exterior; landscaping and mowing; snow and ice removal; heating, ventilation, air-conditioning; electricity; and hot water. SCTB shall have responsibility for providing internet and telephone services and covering their associated costs.
  - I. CITY HISTORIAN’S OFFICE - SCTB will not under any circumstances use, alter, or otherwise disturb the City Historian’s office and/or any of its associated programs.

- II. **CENTER'S CONFERENCE ROOM** - The CITY shall be able to use at no charge, the CENTER's Conference Room providing forty-eight hours notice is given and the room is not scheduled for use by SCTB. Community organizations and non-profit organizations may have use of the CENTER's conference room with the permission of the CITY providing the appropriate usage documentation is received and approved in advance of that use and the room is not scheduled for use by SCTB. SCTB reserves the right to set rates for private organizations that are seeking to rent the conference room.
  
- h. **DAYS & TIME OF OPERATION** – Unless otherwise agreed upon in writing by the parties, SCTB shall operate the CENTER no less than six days per week. SCTB reserves the right to extend days and hours of operation during peak visitor periods and will staff the CENTER accordingly at no additional expense to the CITY.
  
- i. **BOOKS AND RECORDS** – SCTB shall maintain complete and accurate books and records to document and account for all aspects of its operation as it relates to its management of the CENTER, and shall provide such information to the CITY. The CITY reserves the right to conduct its own audit of SCTB's books and records of the management and operation of the CENTER at the CITY's own expense at any time it deems necessary and prudent.
  
- j. **REPORTING** - SCTB shall provide a bi-annual report to the CITY that outlines visitor traffic; the programs conducted and their attendance records; revenue; expenses; and any other information the CITY may be asked to provide by state, federal or granting authorities.

## **2. CANCELLATION**

- a. The CITY shall have the right to cancel and revoke this entire agreement at any time with or without cause upon ninety (90) days prior written notice to SCTB.
  
- b. SCTB shall have the right to cancel and revoke this entire agreement at any time with or without cause upon ninety (90) days prior written notice to the CITY.

Upon cancellation of this agreement by either party, except in the event of SCTB's breach, the CITY will reimburse SCTB for all quarterly operating expenses, subject to SCTB's repayment to the CITY of all pro-rated fees and rent, applicable to the quarterly term in which cancellation occurs.

## **3. NOTICES**

Any notices sent to the CITY under this Agreement will be effective five (5) days after the postmarked date of mailing by certified mail, return receipt requested:

CITY: City of Saratoga Springs  
Office of the Mayor  
474 Broadway  
Saratoga Springs, NY 12866

SCTB: Saratoga Convention & Tourism Bureau  
Attn: President  
60 Railroad Place  
Suite 301  
Saratoga Springs, NY 12866

**4. NOTIFICATION**

The parties agree that notice of this agreement shall be made to the New York State Office of Parks, Recreation and Historic Preservation (NYSOPRHP) in accordance with the agreement between the CITY and NYSOPRHP.

**5. INTEGRATION AND MODIFICATION**

This agreement constitutes the entire, integrated agreement of the parties and may not be modified, in whole or in part, except in written form and signed by both parties.

**6. INDEPENDENT CONTRACTOR STATUS**

It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting SCTB's staff as the agents, representatives or employees of the CITY for any purpose in any manner whatsoever. SCTB and its staff are to be and shall remain an independent SCTB with respect to all services performed under this Agreement. SCTB represents that it has, or will secure at its own expense, all personnel required in performing services under this Agreement. Any and all personnel of SCTB or other persons, while engaged in the performance of any work or services required by SCTB under this Agreement, shall not be considered employees of the CITY, and any and all claims that may or might arise under the Workers' Compensation Laws of the State of New York on behalf of said personnel or other persons while so engaged, and any and all claims whatsoever on behalf of any such person or personnel arising out of employment or alleged employment including, without limitation, claims of discrimination against SCTB, its officers, agents, SCTBs or employees shall in no way be the responsibility of the CITY; and SCTB shall defend, indemnify and hold the CITY, its officers, agents and employees harmless from any and all such claims regardless of any determination of any pertinent tribunal, agency, board, commission or court. Such personnel or other persons shall not require nor be entitled to any compensation, rights or benefits of any kind whatsoever from the CITY, including, without limitation, tenure rights, medical and hospital care, sick and vacation leave, Workers' Compensation, Unemployment Compensation, disability, and severance pay.

**7. ENFORCEABILITY**

In the event that any portion of this Agreement may be adjudged invalid or unenforceable for any reason, adjudication shall in no manner affect the other portions of this Agreement which will remain in full force and effect as of the portions adjudged invalid or unenforceable were not originally a part thereof.

**8. INSURANCE**

The CITY herein requires the following terms and conditions regarding the agreement for the provision of professional services as outlined above: SCTB shall procure and maintain during the term of this contract, at SCTB's expense, the insurance policies listed with limits equal to or greater than the enumerated limits. SCTB 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, its officers, or its employees, if any, shall be excess and not contributory insurance to that provided by SCTB. Every required coverage type shall be "occurrence basis" with the exception of Professional Errors and Omissions Coverage which may be "claims made" coverage. SCTB 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 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 SCTB fails to procure and maintain the required coverage(s) and minimum limits such failure shall constitute a material breach of contract, whereupon the CITY 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 shall be repaid upon demand, or at the CITY's option, may be offset against any monies due to SCTB.

The CITY of Saratoga Springs requires SCTB to 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:** Two Million Dollars per Occurrence Aggregate
- **Professional Errors and Omissions Coverage:** One Million Dollars per claim and Two Million Dollars Aggregate
- **NYS Statutory Workers Compensation, Employer's Liability and Disability Insurance**

It shall be an affirmative obligation of SCTB 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. SCTB 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. SCTB 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 SCTB 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 SCTB. All insurance required of the Subcontractor shall name the CITY 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.

## **9. INDEMNIFICATION**

SCTB, 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 services provided under this agreement or any physical damage sustained to the building, its exhibits and furnishings, including any injuries 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 SCTB or its employees or anyone for whom SCTB 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 SCTB, as aforesaid.

## **10. AMERICAN WITH DISABILITIES ACT**

SCTB agrees to comply with the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973 and not discriminate on the basis of disability in the admission or access to, or treatment of employment in its services, programs, or activities. SCTB agrees to hold harmless and indemnify the CITY from costs, including but not limited to damages, attorney's fees and staff time, in any action or proceeding brought alleging a violation of ADA and/or Section 504 caused by SCTB. Upon request accommodation will be provided to allow individuals with disabilities to participate in all services, programs and activities.

## **11. SAFETY**

The CITY specifically reserves the right to suspend or terminate all work under this contract whenever SCTB and/or SCTB's employees or subcontractors are proceeding in a manner that threatens the life, health or safety of any of SCTB's employees, subcontractor's employees, CITY employees or member(s) of the general public on CITY property. This reservation of rights by the CITY in no way obligates the CITY to inspect the safety practices of SCTB. If the CITY exercises its rights pursuant to this part, then SCTB shall be given three days to cure the defect, unless the CITY, in its sole and absolute discretion, determines that the service cannot be suspended for three days due to the CITY'S legal obligation to continuously provide

SCTB's service to the public. In such case, SCTB shall immediately cure the defect. If SCTB fails to cure the identified defect(s), the CITY shall have the right to immediately terminate this contract.

**12. SOLE AGREEMENT**

This Agreement is the only agreement between the parties and is in lieu of any and all previous understandings, representations or agreements, whether oral or written.

**13. GOVERNING LAW**

This Agreement shall be governed and construed under the laws of the State of New York, the location where this Agreement was accepted to by "SCTB". SCTB agrees to comply with all applicable local, state and federal laws, rules and regulations in the performance of the duties of this contract.

**14. VENUE**

The CITY and SCTB hereby irrevocably consents to the personal and subject matter jurisdiction of the federal and state courts of the State of New York.

**15. ASSIGNMENT**

This Agreement cannot be assigned by SCTB without the express written consent of the CITY.

**16. DEFAULT**

SCTB's failure to perform its obligations and comply with its representations under this Agreement shall constitute a default under this Agreement. Upon SCTB's default, the CITY may cancel this Agreement and immediately stop payment of any fees to SCTB hereunder. CITY shall also have any all additional rights and remedies under New York State Law as a result of SCTB's default.

**17. Modification**

This Agreement may be modified only by a writing signed by both parties.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands and seals as of the date written below:

**City of Saratoga Springs, NY**

**Saratoga Convention & Tourism Bureau**

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

BY: \_\_\_\_\_  
Todd Garofano, President

State of New York     )  
                                  SS.:  
                                  )

On the \_\_day of \_\_\_\_\_, 2015, before me personally appeared **JOANNE YEPSEN**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed in the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or person on behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

State of New York     )  
                                  SS.:  
                                  )

On the \_\_day of \_\_\_\_\_, 2015, before me personally appeared **TODD GAROFANO**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed in the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or person on behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC