



City of Saratoga Springs' Agreement

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, Friends of Kayadeross (FOK) with a place of business at _____.

- 1. Terms of Donation:** The City hereby accepts the donation of the volunteer efforts of the FOK to include, but not be limited to site work, trail establishment, and the construction of a walk bridge. The donation provided by the FOK that shall be made shall be in accordance with the rules, regulations and laws of the NYS DEC, NYS Building Codes and any other legislative body that governs the site in question. FOK shall be responsible for obtaining the necessary permissions and permits necessary to accomplish any work associated with this donation including obtaining the necessary permissions for any civil work in this NYS DEC identified wetland area.
- 2. "As-Builts," Tools and Equipment:** FOK shall provide blue prints and file the necessary building permits for the work to be donated. FOK shall provide "As-Builts" for any structural work completed on the property including elevations and structural detail. FOK will provide their own equipment and materials as necessary to perform the work except as agreed to by the City for the provision of compost materials as requested.
- 3. FOK 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 FOK's staff as the agents, representatives or Volunteers of the City for any purpose in any manner whatsoever. FOK and its staff are to be and shall remain an independent FOK with respect to all services performed under this Agreement. FOK 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 FOK or other persons, while engaged in the performance of any work or services required by FOK under this Agreement, shall not be considered Volunteers 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 FOK, its officers, agents, contractors or Volunteers shall in no way be the responsibility of the City; and FOK shall defend, indemnify and hold the City, its officers, agents and Volunteers 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.
- 4. 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.
- 5. 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 of Saratoga Springs, City Attorney, 474 Broadway, Saratoga Springs, NY 12866
- 6. Insurance:** The City of Saratoga Springs herein requires the following terms and conditions regarding the agreement for the provision of professional services as outlined above: FOK shall procure and maintain during the term of this contract, at FOK's expense, the insurance policies listed with limits equal to or greater than the enumerated limits. FOK 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 Volunteers, if any, shall be excess and not contributory insurance to that provided by FOK. Every required coverage type shall be "occurrence basis" with the exception of Professional Errors and Omissions Coverage which may be "claims made" coverage. FOK 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 FOK 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 to stop the donated work in progress.

The City of Saratoga Springs requires FOK 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 for this coverage*)
- **NYS Statutory Workers Compensation, Employer's Liability and Disability Insurance or a NYS WCB Waiver of Same**

It shall be an affirmative obligation of FOK 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. FOK 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. FOK is to provide the City with a Certificate of Insurance naming the City as **Additional Insured** 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 FOK 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 FOK. All insurance required of the Subcontractor shall name the City of Saratoga Springs as an **Additional Insured** basis for all those activities performed within its contracted activities for the contact as executed.

- 7. Indemnification:** FOK, to the fullest extent provided by law, shall indemnify and save harmless the City of Saratoga Springs, its Agents and Volunteers (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 FOK or its Volunteers or anyone for whom FOK 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 FOK, as aforesaid.

8. **Safety:** FOK shall comply with NYS OSHA laws as of July 18, 2008. The City specifically reserves the right to suspend or terminate all work under this contract whenever FOK and/or FOK's Volunteers or subcontractors are proceeding in a manner that threatens the life, health or safety of any of FOK's Volunteers, subcontractor's, or member(s) of the general public on City property.
9. **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 "FOK". FOK agrees to comply with all applicable local, state and federal laws, rules and regulations in the performance of the duties of this contract.
10. **Venue:** The City and FOK hereby irrevocably consents to the personal and subject matter jurisdiction of the federal and state courts of the State of New York.
11. **Assignment:** This Agreement cannot be assigned by FOK without the express written consent of the City.
12. **FOK Permitting:** FOK represents that it has all necessary governmental permits to perform the services described herein.
13. **Modification:** This Agreement may be modified only by a writing signed by both parties.

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

FOK Signature: _____ Date: _____

Print Name: _____ Title: _____

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

CITY Signature: _____ Date: _____

Print Name: _____ Title: _____

City Council Approval Date: _____