

AGREEMENT FOR CITY DESIGNATED ENGINEERING SERVICES

This Agreement (“Agreement”) is for Plan Review and Engineering Services, dated as of the ____ day of _____, 2015 between the **CITY OF SARATOGA SPRINGS**, a municipal corporation of the State of New York, located at 474 Broadway, Saratoga Springs, New York 12866, (hereinafter referred to as “City”), and **Creighton Manning Engineering, LLP**, (hereinafter referred to as “Consultant”) a partnership organized under the laws of the State of New York, having its principal office at 2 Winners Circle, Albany, NY 12205

WITNESSETH:

WHEREAS, the City issued a request for qualifications, dated March 20, 2015, from qualified New York State licensed engineering firms to advise and consult with the City on Land Use Board Review and occasional engineering matters, as assigned by the City Engineer’s Office and Department of Public Works;

WHEREAS, the City received statements of qualifications from qualified firms on April 3, 2015;

WHEREAS, the City formed a Committee comprised of the City Engineer, the Assistant City Engineer, the Administrator of Planning and Economic Development, the Principal Planner, the Building and Zoning Inspector and the Risk & Safety Director to review the qualifications submitted by the responding engineering firms, and each of the submissions were reviewed based on criteria outlined in the Request for Qualifications, and the Committee recommended the Consultant be hired for City designated engineering services.

WHEREAS, the City has determined to enter into this Agreement providing for professional services of the Consultant for the purposes set forth herein;

WHEREAS, the City, at its sole discretion, anticipates making individual assignments of work or projects to the Consultant during the term of the Agreement.

NOW THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. SCOPE OF SERVICES.

Each individual assignment of work or project, as determined by the City, shall have an individual scope of services, special and additional terms and conditions and associated fees prepared and negotiated between the parties and included as a written supplemental to this Agreement. The Consultant and the official so designated by the City Council shall formally approve each such supplement. Non escrow funded task orders have a dollar limit not to exceed \$19,999.00

Section 2. CONSULTANT QUALIFICATIONS; REPRESENTATIONS; NO CONFLICTS.

- a. The Consultant represents and covenants that:
 - i. It is experienced in performing professional engineering as described in the consultant proposal.

- ii. At all times during the term of this Agreement the persons assigned to perform services have and will have the experience, knowledge, and NYS engineering and/or architectural licenses necessary to perform the services described in the consultant proposal to the City for services to the City's Land Use Boards and occasional engineering projects..
 - iii. The Consultant will procure and maintain all licenses and permits necessary to perform the work described in this Agreement.
 - iv. The Consultant will comply with the provisions of the Labor Law and all State laws and Federal and local statutes, ordinances and regulations that are applicable to the performance of this Agreement.
- b. Unless otherwise authorized in writing in advance by the City, the persons primarily responsible for performing work under this Agreement, including any subcontractors, are listed in the consultant proposal. Any subcontractors shall be bound by the provisions of this Agreement, such subcontractors and the form of any subcontract shall be subject to prior review and approval by City in its discretion.
- c. The Consultant represents and warrants that:
- i. The Consultant has all requisite power and authority to execute, deliver and perform this Agreement.
 - ii. This Agreement has been duly authorized by all necessary action on the part of the Consultant and has been duly executed and delivered by the Consultant and, assuming due execution and delivery by the City, constitutes a legal, valid, binding and enforceable obligation of the Consultant.
 - iii. The execution and delivery of this Agreement, and compliance with the provisions hereof, do not and will not conflict with or constitute a violation of or default under the organization documents, or any statute, indenture, mortgage, deed of trust or other agreement or instrument to which the Consultant is bound, or to the knowledge of the Consultant, any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Consultant or any of its activities or properties.
- d. The Consultant represents and warrants that it will not enter into any agreement for services with any other party with respect to any future projects under this Agreement. The Consultant shall accept no other compensation, directly or indirectly, from any party, other than the City, for any services connected with the work described in the Scope of Services.
- e. The Consultant represents and warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent on or resulting from the award or making of this Agreement. The Consultant further represents and warrants that neither it nor any of its directors, officers, members, partners, associates or employees, has any interest, nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services. In the event of breach of this provision the City shall have the option to annul this Agreement without liability, or deduct from the Agreement consideration, or otherwise recover, the full amount of any such fee, commission, percentage, brokerage fee, gift or other consideration. Such remedies shall be in addition to and not in limitation of any other remedies available at law or in equity.

Section 3. TERM AND COMPLETION SCHEDULE.

This two (2) year term Agreement shall commence upon its execution by the Consultant and the City. All work identified in future Scope of Services shall commence upon the delivery by the City of a notice to commence work under this Agreement (the “Commencement Date”) and shall be completed within a schedule identified in the Scope of Services. Any extension granted shall be for work and payment purposes only and shall not result in any additional Consultant Costs other than those agreed to herein or by supplemental agreement between the parties. This agreement may be extended at the discretion of the City and upon approval by the City Council. This agreement may be further extended by written addendum upon mutual agreement and as approved by the City Council.

Section 4. REPORTS; RIGHT TO INSPECT.

The Consultant shall report to the City as specified in the assigned Scopes of Services. The City and its duly authorized representatives shall have the right at all times to inspect and receive copies of the work of the Consultant without additional charge.

Section 5. STANDARD CLAUSES.

The Consultant, its subcontractors, vendors and agents shall comply with the terms of the following Appendices which are attached to this Agreement, and are incorporated by reference herein and which shall be made a part of this Agreement:

Appendix A: Vendor/Supplier Code of Conduct

Appendix B: Risk and Safety Agreement for Professional Services

The following are attached to this Agreement for reference purposes:

Exhibit A: Proposal dated April 10, 2015.

Section 6. DELIVERABLES.

The City shall cooperate with the Consultant in providing those deliverables identified in the assigned Scope of Services for each individual project. In the event that such deliverables are not provided within time frame agreed upon for each project assignment, the Consultant may request an extension.

Section 7. FEES AND EXPENSES.

- a. As compensation for the Services performed pursuant to this Agreement, including reasonable expenses consistent with the work assigned and performed, the City shall pay the Consultant its fees and expenses as set forth in the assigned Scope of Services.
- b. Unless otherwise approved in advance by the Mayor, the City shall not pay for the following:
 - i. Travel, except for travel outside of the County of Saratoga, when requested in writing by the City;
 - ii. Meal charges, except for actual and reasonable expenses which are required for business purposes, such as expenses incurred while hosting working group meetings or closings; or time spent in preparing bills.

Any reimbursement for travel, meals and lodging shall be made at the actual cost paid, but such reimbursement shall not exceed the prevailing maximum rates established by the New York State

Comptroller or any lesser standard rates established from time to time by the City for its own employees. Any travel must be approved in advance by the Mayor. Disbursements and expenses shall be itemized by category. Unless otherwise agreed, expenses shall be billed at the same time as the services to which they relate.

Upon request, the Consultant shall provide the City with detailed documentation substantiating all fees and disbursements. This documentation shall be maintained by the Consultant for a period of six years after the completion of the matter. During that period, the City shall have the right to audit the Consultant's charges.

Section 8. PAYMENT.

- a. Work within the Scope of Services shall be billed monthly. Upon request, the Consultant shall provide monthly statements with respect to accrued fees and disbursements for any matters subject to the work performed.
- b. For any Additional Services agreed by the City and the Consultant to be unrelated to the Scope of Services, the City shall pay for services rendered in accordance with the schedule of hourly rates in the consultant proposal. Prior to undertaking any such Additional Services, the Consultant shall inform the City that such services will be billed as Additional Services, shall provide an estimate of the total fees and expenses to be charged for such Additional Services, and shall obtain the City's written authorization prior to commencing such work. For such other services, the Consultant shall submit invoices not more often than once a month.
- c. All statements shall provide:
 - i. The name and position of each individual whose time is billed.
 - ii. The billing rate for each individual.
 - iii. The number of hours expended on behalf of the City on any day that the individual performed services for the City.
 - iv. A brief description of the task(s) performed for which time is billed.
 - iv. The total number of hours billed for services rendered to the City by each individual during the billing period.
 - v. Separate billing statements shall be provided for each project assignment.

Copies of detailed documentation substantiating all disbursements and /or out-of-pocket expenses over Twenty Five Dollars (\$25.00) shall be provided to the City. Disbursements and expenses shall be itemized by category. Unless otherwise agreed, any authorized expenses shall be billed at the same time as the services to which they relate. Invoices shall be submitted to the City at the notice address shown below, to the attention of the City Engineer. The Consultant shall maintain separate billing records with respect to each matter undertaken by the Consultant. At the City's request, the Consultant shall submit invoices on forms provided by the City.

The acceptance by the Consultant of final payment under this Agreement shall operate as and be a release to the City from all claims and liability to the Consultant, its representatives and assigns for any and all things done, furnished for or relating to the services rendered by the Consultant under or in connection with this Agreement or for any part thereof.

Section 9. OWNERSHIP OF DOCUMENTS.

All documents, reports, opinions, source code, system documentation, and other materials prepared for or relating to the Services provided hereunder shall be at all times the sole and exclusive property of the

City, and shall be treated as confidential by the Consultant except as expressly authorized by the City. All work products created in connection with this Agreement, including working papers, data, maps, drafts, and other information in whatever form shall at all times be and remain the property of the City.

Section 10. INDEPENDENT STATUS; TAXES.

- a. The Consultant and their employees, agents, contractors, subcontractors and/or consultants, are independent contractors and not employees of the City. In accordance with their status as independent contractors, the Consultant covenants and agrees that neither the Consultant nor its employees or agents will hold themselves out as, nor claim to be, officers or employees of the City.
- b. Nothing in this Agreement shall impose any liability or duty on the City for the acts, omissions, liabilities or obligations of the Consultant, or any person, firm, company, agency, association, expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent of the Consultant for the payment of taxes of any nature including but not limited to sales tax, unemployment insurance, workers compensation, disability benefits and social security, or, except as specifically stated in this Agreement, to any person, firm or corporation.

Section 11. INSURANCE.

The Consultant shall procure and maintain during the term of this contract, at the Consultant's expense, the insurance policies listed 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 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 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 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 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 the Consultant.

The City requires the Consultant name the City as a Certificate Holder and Additional Insured as specified:

- **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
- **Professional Errors and Omissions Insurance:** One Million per Occurrence with Two Million Aggregate
- **NYS Statutory Workers Compensation, Employer’s Liability and Disability Insurance**

It shall be an affirmative obligation of the Consultant 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 five business 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 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 Consultant 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 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 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.

Section 12. INDEMNIFICATION.

The Consultant, to the fullest extent provided by law, shall indemnify and save harmless the City, 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 tortuous act or negligent act or omission of Consultant or its employees or anyone for whom the Consultant 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 Consultant, as aforesaid.

Section 13. SAFETY

The City specifically reserves the right to suspend or terminate all work under this contract whenever Consultant and/or Consultant’s employees or subcontractors are proceeding in a manner that threatens the life, health or safety of any of Consultant’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 of Saratoga Springs to inspect the safety practices of the Consultant. If the City exercises its rights pursuant to this part, the Consultant 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 Consultant’s service to the public or the City’s immediate need for completion of the Consultant’s work. In such case, Consultant shall immediately cure the defect. If the Consultant fails to cure the identified defect(s), the City shall have the right to immediately terminate this contract. In the event that the City terminates this contract, any payments for

work completed by the Consultant shall be reduced by the costs incurred by the City in re-bidding the work and/or by the increase in cost that results from using a different vendor.

Section 14. RIGHT TO AUDIT AND RECORDS.

- a. The Consultant shall maintain accurate and complete records detailing the back-up documentation required by this Agreement, and shall maintain such documents for a period of six years from document generation and shall allow the City access thereto for inspection and photocopying at all reasonable times.
- b. All receipts and disbursements are subject to audit by the City, and the Consultant agrees to cooperate with any audit of this Agreement undertaken by the City or any entity with jurisdiction to audit the City, including without limitation any granting agency.

Section 15. COMPLIANCE WITH LAW.

The Consultant shall comply with all Federal, State and local laws, rules and regulations applicable to performing the Services herein.

Section 16. DEFAULTS AND REMEDIES.

- a. If either party defaults in the observance or performance of any material term of this Agreement, and such default continues for more than thirty (30) days after written notice of such default is received by the defaulting party from the non-defaulting party, such non-defaulting party may take any action available at law or in equity to enforce the terms of this Agreement, and may suspend work or terminate this Agreement upon thirty (30) days written notice to the defaulting party. If the default is not capable of being cured within thirty (30) days and the defaulting party has commenced cure within thirty (30) days and is diligently pursuing efforts to cure, such thirty (30) day period shall be extended for a reasonable period of time.
- b. If either party is required to enforce the terms of this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and costs. No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute.

No delay or omission in exercising any remedy shall impair any such remedy or construed to be a waiver thereof. It shall not be necessary to give any notice other than as expressly required under this Agreement. In the event any provision contained in this Agreement should be breached and thereafter duly waived by the party or parties so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Agreement shall be established by conduct, custom or course of dealing.

Section 17. EARLY TERMINATION.

The City shall have the right to postpone, suspend, abandon or terminate this Agreement with or without cause, and such action shall in no event be deemed a breach of contract. Upon termination by the City without cause under this section, the Consultant shall be entitled to compensation for acceptable completed Services performed through the date of postponement, suspension, abandonment or termination, such Services to be verified by audit. In the event that this Agreement is terminated by the

City for any reason, then within ten (10) days after such termination, the Consultant shall make available to the City all records, documents and data pertaining to Services rendered under this Agreement.

Section 18. NOTICES.

Unless otherwise specified, all notices required or permitted for herein shall be in writing and sent by U.S. mail, postage prepaid, or by hand, by overnight courier, or by telecopy confirmed by any of the previous methods, addressed to the parties as indicated below or to such addresses as they may designate in writing from time to time:

To the City at: Mayor
City of Saratoga Springs
474 Broadway, Saratoga Springs, NY 12866

With a Copy to: Secretary to the City Council
City of Saratoga Springs
474 Broadway, Saratoga Springs, NY 12866

To the Consultant at: Shelly A. Johnston, P.E.
Creighton Manning Engineering, LLP
2 Winners Circle, Albany, NY 12205

Section 19. SEVERABILITY.

In case any one or more of the provisions of this Agreement shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement, but this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained therein.

Section 20. AGREEMENT IS A LEGALLY BINDING CONTRACT.

Each party hereto represents and warrants that this Agreement has been duly authorized and executed by it and constitutes its valid and binding agreement, and that any governmental approvals necessary for the performance of this Agreement have been obtained.

Section 21. NO THIRD PARTY BENEFICIARY.

Nothing in this Agreement shall act to confer third party beneficiary rights on any person or entity not a party to this Agreement.

Section 22. NO RECOURSE.

All covenants, stipulations, promises, agreements and obligations of the City contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City, and not of any member, director, officer, employee or agent of the City in his individual capacity, and no recourse shall be had for the payment of any claim based under this Agreement against any member, director, officer, employee or agent of the City.

Section 23. COUNTERPARTS.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original.

Section 24. ENTIRE AGREEMENT; GOVERNING LAW AND JURISDICTION; AMENDMENT.

This Agreement contains the entire understanding between the parties with respect to the subject matter herein and supersedes any prior agreements or understandings, either oral or written. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York. This Agreement may be amended only upon mutual written agreement signed by both parties.

Section 25. HEADINGS.

The headings herein are solely for convenience of reference, and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

**AGREEMENT FOR CITY DESIGNATED ENGINEERING SERVICES
CITY OF SARATOGA SPRINGS, NEW YORK**

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first above written.

CITY OF SARATOGA SPRINGS

By: _____

Name: _____

Title: _____

as **Consultant**

By: Shelly Johnston

Name: Shelly A. Johnston

Title: Partner, Director of Business Development

Sworn to before me this 26th day of

June, 20 15

Edward V. Kosinski

Notary Public, State of New York

EDWARD V. KOSINSKI
Notary Public, State of New York
County of Montgomery
No. 01-K04862617
Commission Expires June 23, 20 18