



APPENDIX B

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

City Project Number: City Project Name: On-Call Plan Review and Engineering Services
City Department: Engineering Department Contact Person: Timothy Wales, P.E. City Ext.
Company Name: Creighton Manning Engineering, LLP
Company Address: 2 Winners Circle, Albany, NY 12205
Company Telephone No.: 518.446.0396 Company Fax No.: 518.446.0397
Consultant Primary Contact for This Project: Shelly A. Johnston, P.E. Title: Partner

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 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 of Saratoga Springs, its officers, or its employees, if any, shall be excess and not contributory insurance to that provided by the Consultant. Every required coverage type shall be "occurrence basis" with the exception of Professional Errors and Omissions Coverage which may be "claims made" coverage. The Consultant may utilize umbrella/excess liability coverage to achieve the limits required hereunder; such coverage must be at least as broad as the primary coverage (follow form). The Office of Risk & Safety Management must approve all insurance certificates. The City of Saratoga Springs reserves its right to request certified copies of any policy or endorsement thereto. All insurance shall be provided by insurance carriers licensed & admitted to do business in the State of New York and must be rated "A--VII" or better by A.M. Best (Current Rate Guide). If the Consultant fails to procure and maintain the required coverage(s) and minimum limits such failure shall constitute a material breach of contract, whereupon the City of Saratoga Springs may exercise any rights it has in law or equity, including but not limited to the following: (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 Consultant.

The City of Saratoga Springs requires the Consultant 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
Professional Liability Insurance: One Million per Claims 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 two days of the cancellation or substantive change of any insurance policy set out herein, and failure to do so shall be construed to be a breach of this Agreement. The Consultant 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 of Saratoga Springs as an Additional Insured on a primary and non-contributory basis for all those activities performed within its contracted activities for the contact as executed.

The Consultant, 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 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.

The City of Saratoga Springs 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 of Saratoga Springs in no way obligates the City of Saratoga Springs to inspect the safety practices of the Consultant. If the City of Saratoga Springs exercises its rights pursuant to this part, the Consultant 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 Consultant's service to the public or the City of Saratoga Springs' 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 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 Consultant shall be reduced by the costs incurred by the City of Saratoga Springs in re-bidding the work and/or by the increase in cost that results from using a different vendor.

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

Consultant Signature: [Signature] Date: June 10, 2015
Edward V. Woods, P.E., Partner