



City of Saratoga Springs, NY Contract

Project Number: N/A City Project Name: Recreation Department Tennis Camp
 City Department: Recreation Department Contact Person: John Hirilman City Ext. 2306
 Company Name: Saratoga Regional YMCA- Wilton Branch
 Company Address: 20 Old Gick Road, Saratoga Springs, NY 12866
 Company Telephone No.: (518) 587-3000 Company Fax No.: _____
 Vendor Primary Contact: Jed Murray Title: Director of Tennis
 Primary Contact Email: jed.murray@srymca.org
 Service to be Provided: Co-Sponsor the City's Tennis Camp and usage of City's Tennis Courts
 Remit Name (If different from above): _____
 Remit Address: _____

- Scope of Agreement:** The City of Saratoga Springs and the Vendor, **Saratoga Regional YMCA**, will co-sponsor a summer tennis camp and use City Tennis Courts for YMCA Tennis Camps, as described in Exhibit A. The Vendor shall provide to the City the products and services set forth therein. The Vendor assumes full responsibility for the provision of the products and services made available in this Agreement. The Vendor shall be so liable even when the Vendor subcontract the provision of a portion of the products and services. Subcontracting shall be permitted only with the prior written approval of the City. The Vendor assumes all risks in the performance of all its activities authorized by this Agreement.
- Term of Agreement:** The term of this Agreement shall commence per the date of approval of this Agreement by the City Council of the City of Saratoga Springs. This Agreement shall continue in force from the effective date until the work provided as described herein is satisfactorily completed or by **September 1, 2020**. Any modification of the work performed by the Vendor shall be made in writing and shall not be undertaken until the City agrees to the modification. The Vendor assume full responsibility for the provision of the products and services contracted for in this Agreement. The Vendor shall be so liable even when the Vendor subcontract the provision of a portion of the products and services. Subcontracting shall be permitted only with prior written notice and written approval of the City. The Vendor will provide his or her own equipment and materials as necessary to perform the work except as identified within **Attachment A**. The Vendor assume all risks in the performance of all its activities authorized by this Agreement.
- Terms of Payment:** No money transactions between the Vendor and City will occur as a result of this agreement.
- Notice:** Any notices sent to the City under this Agreement will be effective five (5) business days after the postmarked date of mailing by certified mail, return receipt requested. The Mayor/**John Hirilman** is the designated Project Manager for this Agreement and shall represent the City in all matters and has the authority to affect the delivery of products and/or services. The Project Manager for the Vendor is **Jed Murray**. Any notice, request, demand or other communication required or provided for in this Agreement shall be in writing and shall be deemed to have been duly given if delivered in person or mailed in a sealed envelope, postage prepaid, addressed as follows:
 - To the City:** Mayor, City Saratoga Springs, 474 Broadway, Saratoga Springs, NY 12866
Temporary location, Saratoga Springs Recreation Center, 15 Vanderbilt Avenue, Saratoga Springs, NY 12866
 - With a copy to:** City Attorney, City Saratoga Springs, 474 Broadway, Saratoga Springs, NY 12866
Temporary location, Saratoga Springs Recreation Center, 15 Vanderbilt Avenue, Saratoga Springs, NY 12866
 - To Vendor:** **Saratoga Regional YMCA, Wilton Branch 20 Old Gick Rd, Saratoga Springs, NY 12866.**
Attention: Jed Murray.
- Conflicts of Interest:** The Vendor represents and warrants that it has no conflict, actual or perceived, that would prevent it from performing its duties and responsibilities under the Agreement.
- City Property:** All information and materials received hereunder by the Vendor from the City are and shall remain the sole and exclusive property of the City and the Vendor shall have no right, title, or interest in or to any such information or materials by virtue of their use or possession hereunder by the Vendor. All intellectual property, created by the Vendor hereunder as a product or as a service to the City shall be the sole and exclusive property of the City. Effective upon their creation pursuant to the terms of this Agreement, the Vendor conveys, assigns and transfers to the City the sole and exclusive rights, title and interest in all documents, electronic databases, and custom programs, whether preliminary, final or otherwise, including all trademarks and copyrights. The Vendor hereby agrees to take all necessary and appropriate steps to ensure that the custom products are protected against unauthorized copying, reproduction and marketing by or through the Vendor, its agents, employees, or subcontractors. Nothing herein shall preclude the Vendor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under this Agreement in the course of the Vendor's business. The Contractor grants to the City a perpetual, nonexclusive, royalty-free, unlimited use license to use, execute, reproduce, display, modify and distribute any pre-existing software, tools or techniques delivered by the Vendor under this Agreement. Any written reports, opinions and advice rendered by the Vendor shall become the sole and exclusive property of the City, and the Vendor shall have no right, title, or interest in or to any such information or materials by virtue of their use or possession hereunder by the Vendor.
- Retention of Records:** The Vendor shall make available to the City all information pertinent to the project, including reports, studies, drawings, and any other data. All original records generated as a result of the project shall be maintained by the Vendor for a period of six (6) years after expiration of the Agreement. Upon request, copies of those records shall be provided to the City at no cost.
- Independent Vendor 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 the Vendor's staff as the agents, representatives or employees of the City for any purpose in any manner whatsoever. The Vendor and its staff are to be and shall remain an independent Vendor with

respect to all services performed under this Agreement. The Vendor 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 the Vendor or other persons, while engaged in the performance of any work or services required by the Vendor 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 the Vendor, its officers, agents, Vendors or employees shall in no way be the responsibility of the City; and the Vendor 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.

9. **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: The Vendor shall procure and maintain during the term of this Agreement, at the Vendor's expense, the insurance policies listed with limits equal to or greater than the enumerated limits. The Vendor 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 Vendor. The Vendor 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 Vendor 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 Agreement; (2) withholding any/all payment(s) due under this Agreement or any other Agreement 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 Vendor.

The City of Saratoga Springs requires the Vendor name the City as a Certificate Holder for the following coverage for the work covered by this Agreement **as well as the owner of the East and West Side Rec property, Saratoga City School District:**

- **Commercial General Liability** Including Completed Products and Operations and Personal Liability Insurance: One Million Dollars per Occurrence with Two Million Dollars Aggregate;
- **Commercial Automobile Insurance:** One Million Dollars Combined Single Limit for Owned, Hired and Non-owned Vehicles;
- **Excess Insurance:** One Million Dollars per Occurrence Aggregate; AND
- **NYS Statutory Workers Compensation, Employer's Liability and Disability Insurance:** Failure to secure compensation for the benefit of, and keep insured during the life of this agreement, employees required in compliance with the provisions of Workers' Compensation Law shall make this Agreement void and of no effect.

It shall be an affirmative obligation of the Vendor to advise Office of Risk and Safety, City of Saratoga Springs, 15 Vanderbilt Ave, Saratoga Springs, NY 12866 within two (2) 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 Vendor 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 Vendor 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 Vendor 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 Vendor. 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.

Licensee shall provide a Certificate of Insurance naming the City of Saratoga Springs as an Additional Insured on a primary and non-contributory basis provided by endorsement in the form of CG20, CG26 or their equivalent evidencing Commercial General Liability: One Million Dollars (\$1,000,000) per occurrence Two Million Dollars (\$2,000,000) aggregate including completed products and operations and personal injury liability insurance and One Million Dollars (\$1,000,000) Excess Insurance or the equivalent thereof upon execution of this agreement. The insurance must be from an insurer that has an A.M. Best Rating of "A-" or better and is admitted or licensed to do business in the State of New York. Licensee 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 City.

The Vendor requesting the use of East Side or West Side Recreation Park must also provide a Certificate of Insurance naming the Saratoga Springs School District as an Additional Insured that meets the same requirements as described above. The Certificate naming the Saratoga Springs School District as an Additional Insured on a primary and non-contributory basis provided by endorsement in the form of CG20, CG26 or their equivalent should be addressed to the attention of: **Business Manager, Saratoga Springs School District, Three Blue Streak Boulevard, Saratoga Springs, NY 12866.**

10. **Indemnification:** The Vendor, 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 Vendor or its employees or anyone for whom the Vendor 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 Vendor, as aforesaid. The Vendor's responsibility under this section shall not be limited to the required or available insurance.
11. **Compliance with Federal and State Regulations:** The Vendor, to the fullest extent provided by law, shall abide by the regulations which are hereto attached in Attachment B of this Agreement.

12. **NYS DOL Sexual Harassment Regulatory Requirements:** All employees have a legal right to a workplace free from sexual harassment, and the City of Saratoga Springs is committed to maintaining a workplace free from sexual harassment. Per New York State Law, the City of Saratoga Springs has a sexual harassment prevention policy in place. This policy applies to all employees, paid or unpaid interns and non-employees in our workplace, regardless of immigration status.
13. **Safety:** The City of Saratoga Springs specifically reserves the right to suspend or terminate all work under this Agreement whenever Vendor, and/or Vendor's employees or subcontractors, are proceeding in a manner that threatens the life, health or safety of any of Vendor'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 Vendor. If the City of Saratoga Springs exercises its rights pursuant to this part, the Vendor 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 Vendor's service to the public or the City of Saratoga Springs' immediate need for completion of the Vendor's work. In such case, Vendor shall immediately cure the defect. If the Vendor fails to cure the identified defect(s), the City of Saratoga Springs shall have the right to immediately terminate this Agreement. In the event that the City of Saratoga Springs terminates this Agreement, any payments for work completed by the Vendor 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.
14. **Vendor Code of Conduct:** The City of Saratoga Springs is committed to conduct business in a lawful and ethical manner and expects the same standards from Vendors that the City conducts business with. The City requires that all Vendors 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. Vendors agree to provide all information requested which is necessary to demonstrate compliance with this Code.

At a minimum, the City requires that all Vendors meet the following standards:

- Legal: Vendors and their sub-contractors agree to comply with all applicable local, state and federal laws, regulations and statutes.
- 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.
- Right to organize: Employees of the Vendor/supplier should have the right to decide whether they want collective bargaining.
- Sub-contractors: Vendors shall ensure that sub-contractors shall operate in a manner consistent with this Code.
- Protection of the Environment: Vendors shall comply with all applicable environmental laws and regulations. Where practicable, Vendors are to utilize technologies that do not adversely affect the environment and when such impact is unavoidable, to ensure that it is minimized.

The undersigned Vendor hereby acknowledges that it has received the City of Saratoga Springs Vendor Code of Conduct and agrees that any and all of its facilities and sub-contractors doing business with the City will receive the Code and will abide by each and every term therein.

Vendor acknowledges that its failure to comply with any condition, requirement, policy or procedure may result in the termination of the business relationship. Vendor 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.

15. **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 Vendor. The Vendor agrees to comply with all applicable local, state and federal laws, rules and regulations in the performance of the duties of this Agreement.
16. **NYS Licensure for Professional Services:** Any and all professional services performed under this Agreement shall be completed by an individual licensed by the NYS Office of Professions - Education Department as applicable to the service provided including, but not limited to accounting, actuarial, engineering and architectural services. The Vendor represents that it has all necessary governmental licenses to perform the services described herein.
17. **Non-Collusive Bidding Certification:** Where applicable, upon the submission of a 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 knowledge and belief:
- a. 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;
 - b. 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
 - c. 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.
18. **Iranian Energy Sector Divestment:** Where applicable, upon the submission of a bid, each Vendor and each person signing on behalf of any Vendor 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 its knowledge and belief that each bidder is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the state finance law (Iran Divestment).
19. **Venue:** The City and the Vendor hereby agree that any litigated matters shall be venued in the federal and state courts of the State of New York in the County of Saratoga.
20. **Assignment:** The Vendor is prohibited from assigning, conveying, subletting or otherwise disposing of the Vendor's right, title, or interest therein, or the Vendor's power to execute this agreement to any other person or corporation without the previous written consent of the City. If the Vendor assigns, conveys, sublets or otherwise disposes of the Vendor's right, title, or interest without prior written consent, the City shall revoke and annul this agreement, and the City shall be relieved and discharged from any and all liability growing out of this Agreement, and any person or corporation to whom the interest was assigned, transferred, conveyed, sublet or otherwise disposed of shall forfeit and lose all moneys theretofore earned under such contract, except so much as may be required to pay his or her employees.
21. **Termination:** The Vendor and the City may mutually agree, in writing, to terminate this Agreement at any time. The City may also terminate this Agreement at any time and on any reason by mailing written notice to the Vendor at least ten (10) business days prior to such termination date. The

City reserves the right to cancel this Agreement at any time in event of default or violation by the Vendor of any provision of this Agreement. The City may take whatever action at law or in equity that may appear necessary or desirable to collect damages arising from a default or violation or to enforce performance of this Agreement.

- 22. **Default:** Vendor's failure to perform its obligations and comply with its representations under this Agreement shall constitute a default under this Agreement. Upon Vendor's default, the City may cancel this Agreement and immediately stop payment of any fees to Vendor hereunder. City shall also have any all additional rights and remedies under New York State Law as a result of Vendor's default.
- 23. **Force Majeure:** Neither party shall be held liable for failure to perform its part of this Agreement when such failure is due to fire, flood, or similar disaster; strikes or similar labor disturbances; industrial disturbances, war, riot, insurrection, and/or other causes beyond the control of the parties.
- 24. **Entire Agreement:** This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter contained herein except as to those matters or agreements expressly incorporated herein by reference. No covenant, representation or condition not expressed herein shall be effective to interpret, change or restrict the express provisions of this Agreement. This Agreement supersedes any and all prior agreements, whether written or oral, relating to the subject matter contained herein. This Agreement shall not be amended, changed or otherwise modified except in writing, signed by both parties.
- 25. **Severability:** 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.
- 26. **Modification:** This Agreement may be modified only by a writing signed by both parties.
- 27. **Execution:**

This Agreement may be executed in separate counterparts, which together shall constitute the Agreement of the parties, provided that all of the parties to this Agreement have executed their respective copy of this Agreement.

City Certification: In addition to the acceptance of this Agreement, I certify that original copies of this signature page will be attached to all other exact copies of this Agreement.

Vendor Certification: In addition to the acceptance of this Agreement, I certify that all information provided to the City with respect to New York State Finance Law Section 139-k is complete, true and accurate.

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

Vendor Signature: _____ **Date:** _____

Print Name: _____ **Title:** _____

City of Saratoga Springs' Signature: _____ **Date:** _____

Print Name: Meg Kelly **Title:** Mayor **City Council Approval Date:** _____

Attachment A

The City of Saratoga Springs Recreation Department hereinafter "City" will work with the Saratoga Regional YMCA, Wilton Branch, hereinafter "Organization" in a co-sponsorship effort for the City's Tennis Camp and usage of City Tennis Courts.

A. The City will:

- 1) Take participant registration at the City's Indoor Recreation Center.
- 2) Publicize the information in their marketing materials, and on the City's Website.
- 3) Provide the facilities at the Veterans Memorial Park or West Side Rec. for the Camp.
- 4) Set the per child camp fee. The per child camp Fee will be \$75 for City and \$85 for Non City residents.
- 5) Will conduct background checks on the camp staff.
- 6) Grant the YMCA 3 weeks use of the City's Tennis courts for the purpose of the YMCA to conduct their day camp programming. The YMCA can use one site per week. The date of the courts can be mutually agreed upon at a later date. The courts allowed for usage are as follows:
 - i. 3 Weeks at Veterans Memorial Park on all four (4) courts
- 7) Allow a banner to be hung on the inside of the Tennis court fence promoting the YMCA and City Tennis Camp and listing the dates the YMCA will be using the other courts. The banner is permitted to be on the fences between May 1st and the last day of the co-sponsored camp. The City must approve the banner prior to being installed.
- 8) Each participant for this program shall execute a hold harmless/indemnification participant agreement holding the City of Saratoga Springs harmless for participation in this scheduled activity.

B. The Organization will:

- 1) Provide all Staff for the City Tennis Camp.
- 2) Submit volunteer application to the City for any person working the camp in order for the City to conduct background checks.
- 3) Provide camp shirts with the City and the Saratoga Organization (wording or logo) to each participant. If the City provides the camp shirts the expenses will be deducted from the revenue before splitting the revenue.
- 4) Promote the Tennis Camp on their website and in their promotional materials.
- 5) The Program will run five (5) days from 9:00am to 12noon. The tentative dates, subject to agreement between both the parties are: Monday, August 10 through Friday, August 14. At anytime, the dates of the camp can be adjusted if the Parties mutually agree upon new dates.

C. The City and Organization Jointly will:

- 1) Provide supplies needed to facilitate the camp. In the event additional supplies are needed the parties will mutually agree to furnish the supplies. The supplies purchased by the City will become the property of the City and supplies purchased by the organization will remain the property of the organization.
- 2) The Parties hereby covenant and agree to defend, indemnify and hold harmless the other Party, the Saratoga School District, and its officers, agents, employees and assigns against all liabilities, claims, suits, actions, judgments, costs, expenses, demands, losses, damage or injury, arising out of their negligence under this agreement, of whatsoever kind and nature including death or injury to person, damage or loss of property, including all attorneys' fees and other costs of investigating and defending against such claims, liabilities, losses, damages, expenses, accidents or occurrences arising out of the negligence of their own activities.

**City of Saratoga Springs, New York
Attachment B**

During the performance of this contract, the Consultant, Vendor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Recipient to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Nondiscrimination provisions of this contract, the Recipient will impose such contract sanctions as it may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 4 71, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U .S.C. 1681 *et seq.*).