

**AGREEMENT BETWEEN
CITY OF SARATOGA SPRINGS, NY
AND
CAROUSEL INDUSTRIES**

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, and **Carousel Industries of North America, Inc** (the "Contractor") with a legal mailing address of 659 South County Trail, Exeter, RI 02822.

WITNESSETH THAT:

WHEREAS, the City has requested a pricing proposal requested by the City for telecommunication installation services and equipment; and the Contractor is trained and proficient in the field of telecommunication installation services and equipment;

NOW, THEREFORE, in consideration of the mutual promises, responsibilities and covenants set forth herein, the City and the Contractor hereby agree as follows:

1. SCOPE OF AGREEMENT

In response to a request for a pricing proposal requested by the City for telecommunication installation services and equipment, the Contractor submitted proposals dated November 11, 2015 (the "Proposals"), which are attached hereto as Exhibit A. The Contractor shall provide to the City the products and services set forth therein. The Contractor assumes full responsibility for the provision of the products and services made available in this Agreement. The Contractor shall be so liable even when the Contractor subcontracts the provision of a portion of the products and services. Subcontracting shall be permitted only with the prior written approval of the City.

2. CONTRACTOR RESPONSIBILITIES

The Contractor shall provide services as outlined in the proposals dated November 11, 2015 as marked.

3. CONSULTANT DISCLOSURE

The requirements of New York State Finance Law Sections 8 and 163 regarding Consultant Disclosure are hereby incorporated into this Agreement.

4. FEES

The costs, fees and disbursements associated with the provision of products and services by the Contractor shall be determined in accordance with the terms and provisions of Exhibit A not to exceed ***Thirty Five Thousand Four Hundred Forty Five Dollars and Sixty-six Cents (\$35,445.66)***, a copy of which is annexed hereto and made a part hereof. No City employee, including the Project Manager named in Section 8 has the authority to request that the Contractor perform any additional work beyond the work authorized or described herein or to incur additional expenses above the amount set forth in Exhibit A of this Agreement.

5. TERM

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. The Contractor 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 for any reason by mailing written notice to the Contractor at least ten (10) days prior to such termination date.

The City reserves the right to terminate this Agreement in the event it is found that either of the certifications filed by the Contractor in accordance with New York State Finance Law Section 139-k was intentionally false or intentionally incomplete. Upon such finding, the City may exercise its termination right by providing written notification to the Contractor in accordance with the provisions of Section 8 herein. The City shall not incur any costs if it terminates this Agreement, other than those otherwise due to the Contractor for products delivered and services rendered by the Contractor pursuant to the terms and provisions of this Agreement at the time of such termination. Upon any termination, the Contractor shall only be entitled to compensation for products delivered and services rendered up to the date of termination. In addition, in the event of any violation by the Contractor of any of the terms of this Agreement, the City may terminate the Agreement without notice and with compensation to the Contractor for fees and expenses rendered only to the date of termination. Any breach of any of the terms of this Agreement by the Contractor will result in immediate and irreparable injury to the City and will authorize recourse to injunction and/or other specific performance as well as to all other legal or equitable remedies to which the City may be entitled.

6. EFFECTIVE DATE

This Agreement shall have no force and effect until approved by the City Council of the City of Saratoga Springs, NY.

7. BILLING

The Contractor shall provide itemized statements monthly to be reviewed and approved by the City. Invoices must be submitted to: City of Saratoga Springs, NY, Attn. Purchasing Agent, 474 Broadway, Saratoga Springs, NY 12866. Payment by the City will be made in accordance with the State Finance Law, upon receipt of such statements and upon approval by the City. No City employee, including the Project Manager named in Section 8 has the authority to request that the Contractor perform any additional work beyond the work authorized or described herein or to incur additional expenses above the amount set forth in Exhibit A of this Agreement.

8. NOTICE

The Mayor is the project manager and shall represent the City in all matters affecting the delivery of products and services. The project manager for the Contractor is Michael Hotaling.

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 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 Contractor: Mr. Michael Hotaling
Carousel Industries of North America, Inc
PO Box 842084, Boston, MA 02284-2084

Either party may designate another or further address by notice given in accordance herewith.

9. CONFIDENTIAL INFORMATION

In connection with the provision of products and/or services to the City by Contractor, the City may disclose to Contractor information that is proprietary or confidential information. Any and all City

communications, records, documents, written, oral or electronic communication or other information of any kind shall be deemed and treated as confidential by the Contractor. The Contractor shall not copy, transmit, deliver or communicate in any way to any other person or entity any such communications and/or information without the prior written consent of the City. The Contractor agrees to use such confidential information solely for the purpose of performing services hereunder for the City.

The term "confidential information" does not include information that (i) is or becomes generally available to the public other than as a result of disclosure by the Contractor, (ii) is or becomes available to the Contractor on a non-confidential basis from sources other than the City, provided that such source is not bound by a written confidentiality agreement with the City, or (iii) was lawfully within the Contractor's possession prior to its being furnished to the Contractor by the City, provided that the source of such information was not bound by a written confidentiality agreement with the City, or (iv) is required under applicable law or by deposition, interrogatory, request or demand for information or documents, subpoena, investigative demand, court order or other similar legal process. In such cases the Contractor shall provide the City with written notice that such information is not deemed confidential. Such notice shall provide the City sufficient time to seek a protective order or other legal remedy.

All written confidential information (and all copies, extracts or other reproductions in whole or in part thereof) obtained by the Contractor from the City shall be returned to the City and have the status of City work papers (or, with the City's written permission, shall be destroyed and such destruction certified in writing to the City by an authorized Contractor representative supervising such destruction). Except as set forth herein, no confidential information shall be retained by the Contractor. The Contractor shall be permitted to retain one copy of internal memoranda and other documents, developed by the Contractor during the term of this Agreement, which contain or refer to confidential information, subject to the confidentiality provisions of this paragraph.

Nothing in this section shall be construed to alter the Contractor's responsibilities under any applicable State Law. Since monetary damages may not be a sufficient remedy with respect to any violation of this section, the City shall be entitled to specific performance and injunctive relief, in addition to any other remedy.

10. CITY PROPERTY

All information and materials received hereunder by the Contractor from the City are and shall remain the sole and exclusive property of the City and the Contractor 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 Contractor. All intellectual property, created by the Contractor hereunder as a product or as a service to the City shall be the sole and exclusive property of the City. The Contractor hereby transfers and assigns to the City all proprietary and intellectual property rights in such property.

Effective upon their creation pursuant to Section 2 of this Agreement, the Contractor 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 Contractor 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 Contractor, its agents, employees, or subcontractors. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under this Agreement in the course of the Contractor'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 Contractor under this Agreement. Any written reports, opinions and advice rendered by the Contractor shall become the sole and exclusive property of the City, and the Contractor 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 Contractor.

11. RETENTION OF RECORDS

The Contractor 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 Contractor 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.

12. CONFLICTS OF INTEREST

The Contractor represents and warrants that it has no conflict, actual or perceived, that would prevent it from performing its duties and responsibilities under the Agreement.

13. PUBLICITY

The Contractor shall not prepare or release, or cause to be prepared or released, any public notice or announcement concerning this Agreement or performance hereunder. Public notice or announcement includes, but is not limited to, notices published on or in connection with the Contractor's website. The Contractor shall not plan, conduct, or cause to be planned or conducted, or take part in, any news or other conference concerning this Agreement, or work performed pursuant to it, without the City's prior written approval. The Contractor shall not make public or publicize its relation with the City, nor use the City's name, without the City's prior written approval.

14. RELATIONSHIP

No staff member, officer, director or person employed by the Contractor in connection with this Agreement shall be considered or deemed to be an employee of the City of Saratoga Springs, NY or represent him or herself as an employee of the City of Saratoga Springs, NY.

15. INSURANCE

All insurance policies required under this Agreement shall be issued by insurance companies authorized to conduct business under the laws of the State of New York. They shall be written for the benefit of the City of Saratoga Springs, NY; its elected and/or appointed officials, officers, agents, employees and for the Contractor. Said policies shall be effective until all work required or contemplated by the Agreement has been completed. Policies expiring on a fixed date before completion of the Contractor's duties under this Agreement must be renewed not less than 30 days before such expiration date. No policy shall be changed by endorsement without the knowledge and the written consent of the City and, in particular, any notice of cancellation by the insurer shall not be effective until 30 days after the said notice is actually received by the City. Any notice addressed to the City shall be mailed via certified or registered mail to the address set forth herein. The Contractor acknowledges that failure to obtain such insurance on behalf of the City constitutes a material breach of contract and subjects it to liability for damages indemnification and all other legal remedies available to the City.

In the event the Contractor 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 Contractor. 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 contract as executed.

Before commencing work under this Agreement, the Contractor shall furnish to the City a certificate of insurance naming: the City of Saratoga Springs, NY; its elected and/or appointed officials, officers, agents and employees as an additional insured on a primary and non-contributory basis. 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 City. Such certificate shall be on forms acceptable to the City's Office of Risk and Safety Management showing that the Contractor has complied with these requirements. In addition, for policies expiring on a fixed date before completion of the Project, certificates showing renewal must be filed not less than 30 days before such expiration date.

It shall be an affirmative obligation of the Contractor to advise the City's Office of Risk and Safety at Fax No. 518.693.4070, e-mail Marilyn.Rivers@Saratoga-Springs.org or mail via 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.

- a. The Contractor shall procure and maintain during the term of this contract, at the Contractor's expense, the insurance policies listed in Part II with limits equal to or greater than the enumerated limits.
- b. The Contractor shall be solely responsible for any self-insured retention or deductible losses under each of the required policies.
- c. Every required policy, including any required endorsements and any umbrella / 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 Contractor.
- d. Every required coverage type shall be "occurrence basis" with the exception of Professional Errors and Omissions Coverage which may be "claims made" coverage.
- e. The Contractor 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).
- f. The Office of Risk & Safety Management must approve all insurance certificates.
- g. The City of Saratoga Springs reserves its right to request certified copies of any policy or endorsement thereto.
- h. 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).
- i. If the Contractor 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: immediate termination of the contract;
 - (1.) withholding any/all payment(s) due under this contract or any other contract it has with the vendor (common law set-off); OR
 - (2.) 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 Contractor.

Required Property and Casualty Insurance - Minimum coverage types and amounts:

- 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 Liability Insurance: Three Million Dollars per Occurrence Aggregate
- Professional Liability Insurance: One Million per Claims with Two Million Aggregate

Required Workers Compensation Insurance – Minimum coverage types and amounts:

- NYS Statutory Workers Compensation, Employer's Liability and Disability Insurance

16. LIABILITY

The Contractor assumes all risks in the performance of all its activities authorized by this Agreement. The Contractor hereby covenants and agrees to defend, indemnify and hold harmless the City of Saratoga Springs, NY; its elected and/or appointed officials, officers, agents, employees and assigns against all liabilities, claims, suits, actions, judgments, costs, expenses, demands, losses, damage or injury, arising out of this agreement, of whatsoever kind and nature including death or injury to

person, damage or loss of property, all attorneys' fees and other costs of investigating and defending against such claims, liabilities, losses, damages, expenses, accidents or occurrences. The Contractor shall be responsible for such liabilities that arise at any time prior to termination of this Agreement, whether direct or indirect, and whether caused or contributed to by the Contractor, its contractors, subcontractors, agents, or employees. The Contractor's responsibility under this section shall not be limited to the required or available insurance coverage.

17. SAFETY

The City of Saratoga Springs specifically reserves the right to suspend or terminate all work under this contract whenever Contractor and/or Contractor's employees or subcontractors are proceeding in a manner that threatens the life, health or safety of any of Contractor'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 Contractor. If the City of Saratoga Springs exercises its rights pursuant to this part, the Contractor 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 Contractor's service to the public or the City of Saratoga Springs' immediate need for completion of the Contractor's work. In such case, Contractor shall immediately cure the defect. If the Contractor 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 Contractor 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 difference vendor.

18. 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.

19. WAIVER

No failure or delay on the part of the City in exercising any right, power or remedy hereunder shall operate as a waiver thereof. No single or partial exercise of any such right, power or remedy shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies provided for herein are cumulative and are not exclusive of any remedies that may be available to any party at law or in equity or otherwise.

20. 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.

21. BINDING AGREEMENT

The covenants and agreements contained in this Agreement shall be binding upon the parties hereto and upon their respective executors, administrators, legal representatives, heirs, successors, distributees and assigns. The rights or obligations granted or allocated to the Contractor herein may not be assigned without the prior written consent of the City.

22. ASSIGNMENT

The Contractor shall not, without the prior written consent of the City, assign, transfer, convey, or otherwise dispose of this Agreement, or any part thereof, or of its right, title, or interest therein or its power to execute this Agreement or any amendment or modifications hereto to any other person, company, or corporation.

23. SEVERABILITY

In the event any provision of this Agreement is determined to be contrary to law or unenforceable for any reason whatsoever, such determination shall not in any way affect the validity or enforceability of the balance of this Agreement or any other term or condition hereof.

24. WAIVER OF IMMUNITY CLAUSE

Upon refusal of a representative of our firm, when called before a grand jury, to testify concerning any transaction or contract with the City of Saratoga Springs, NY or to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transactions or contracts: such person, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any municipal corporation or fire district, or any public department, agency or official thereof, for goods, work or services, for a period of five years after such refusal, and to provide also that; any and all contracts made with any municipal corporation or any public department, agency or official thereof, with any fire district or any agency or official thereof, by such person, and by any firm, partnership or corporation of which he is a member, partner, director or officer may be cancelled or terminated by the City without incurring any penalty or damages on account of such cancellation or termination, but any monies owing by the City for goods delivered or work done prior to the cancellation or termination shall be paid.

25. NON-COLLUSIVE BIDDING CERTIFICATION: Section 103-d of General Municipal Law

By submission of this quotation, the Contractor and each person signing on behalf of any Contractor certifies, and, in 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:

The prices in this quotation 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 Contractor or with any competitor; and

Unless otherwise required by law, the prices which have been quoted in this quotation have not been knowingly disclosed by the Contractor and will not knowingly be disclosed by the Contractor prior to opening, directly or indirectly, to any other Contractor or to any competitor; and

No attempt has been made or will be made by the Contractor to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

26. APPENDICES

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

Appendix A: Vendor/Supplier Code of Conduct

The following are attached to this Agreement for reference purposes:

