

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

**Andrews Technology HMS, Inc.**

*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 **Andrews Technology HMS, Inc.** (the "Consultant") with a place of business at 1213 Culbreth Drive, Suite 126, Wilmington, NC 28405.

**WITNESSETH THAT:**

**WHEREAS**, the City has requested a quotation for Time and Attendance System and the Consultant has submitted a proposal in response to RFP 2015-27; and the Consultant is trained and proficient in the field of time and attendance systems;

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

**1. SCOPE OF AGREEMENT**

In response to a request for a pricing proposal requested by the City for an automated time and attendance system, the Consultant submitted a proposal dated August 18, 2015 (the "Proposal"), which are attached hereto as Exhibit A and made a part hereof. The Consultant shall provide to the City the products and services set forth therein for the "Customer Hosted" proposal, with the following exceptions: quantity of terminals purchased is decreased to 10; quantity of employees is increased to up to 600; terms regarding payment are revised to 50% upon execution, 25% upon installation, and 25% upon acceptance. The Consultant assumes full responsibility for the provision of the products and services made available in this Agreement. The Consultant shall be so liable even when the Consultant 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. CONSULTANT RESPONSIBILITIES**

The Consultant shall provide services as outlined in the proposals dated August 18, 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 Consultant shall be determined in accordance with the terms and provisions of Exhibit A, with the exceptions described in Section 1. Scope of Agreement, not to exceed seventy four thousand six hundred ninety dollars (\$74,690) including one-time implementation fees, 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 Consultant 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 Consultant 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 Consultant at least thirty (30) 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 Consultant 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 Consultant 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 Consultant for products delivered and services rendered by the Consultant pursuant to the terms and provisions of this Agreement at the time of such termination. Upon any termination, the Consultant 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 Consultant of any of the terms of this Agreement, the City may terminate the Agreement without notice and with compensation to the Consultant for fees and expenses rendered only to the date of termination. Any breach of any of the terms of this Agreement by the Consultant 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 Consultant 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 Consultant 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 Commissioner of Finance is the project manager and shall represent the City in all matters affecting the delivery of products and services. The project manager for the Consultant is Jamie Blundell.

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: Commissioner of Finance  
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 Consultant: Jamie Blundell, Vice President of Sales  
1213 Culbreth Drive Suite 126  
Wilmington, NC 28405

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 Consultant, the City may disclose to Consultant 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 Consultant. The Consultant 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 Consultant 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 Consultant, (ii) is or becomes available to the Consultant 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 Consultant's possession prior to its being furnished to the Consultant 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 Consultant 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 Consultant 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 Consultant representative supervising such destruction). Except as set forth herein, no confidential information shall be retained by the Consultant. The Consultant shall be permitted to retain one copy of internal memoranda and other documents, developed by the Consultant 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 Consultant'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 Consultant from the City are and shall remain the sole and exclusive property of the City and the Consultant 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 Consultant. All intellectual property, created by the Consultant hereunder as a product or as a service to the City shall be the sole and exclusive property of the City. The Consultant 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 Consultant 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 Consultant 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 Consultant, its agents, employees, or subcontractors. Nothing herein shall preclude the Consultant from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under this Agreement in the course of the Consultant's business.

The Consultant 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 Consultant under this Agreement. Any written reports, opinions and advice rendered by the Consultant shall become the sole and exclusive property of the City, and the Consultant 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 Consultant.

#### **11. RETENTION OF RECORDS**

The Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant's website. The Consultant 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 Consultant 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 Consultant 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 Consultant. 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 Consultant'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 Consultant 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 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.

Before commencing work under this Agreement, the Consultant 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 Consultant 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 Consultant 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.

The Consultant shall procure and maintain during the term of this contract, at the Consultant's expense, the insurance policies listed in Part II 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 / 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: immediate termination of the contract; withholding any/all payment(s) due under this contract or any other contract it has with the vendor (common law set-off); 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.

**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 Consultant assumes all risks in the performance of all its activities authorized by this Agreement. The Consultant 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 Consultant 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 Consultant, its Consultants, subcontractors, agents, or employees. The Consultant's responsibility under this section shall not be limited to the required or available insurance coverage.

#### **17. 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.

#### **18. 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.

#### **19. 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.

#### **20. 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 Consultant herein may not be assigned without the prior written consent of the City.

#### **21. ASSIGNMENT**

The Consultant 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.

#### **22. 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.

#### **23. 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.

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

By submission of this quotation, the Consultant and each person signing on behalf of any Consultant 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 Consultant 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 Consultant and will not knowingly be disclosed by the Consultant prior to opening, directly or indirectly, to any other Consultant or to any competitor; and no attempt has been made or will be made by the Consultant to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

25. APPENDICES

The Consultant, 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:

Exhibit A: Proposals dated August 18, 2015

26. 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.

Consultant 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.

CITY  
Signature: \_\_\_\_\_  
Date: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CONSULTANT  
Signature: [Signature]  
Date: 11/12/15  
Print Name: ANDREW R. BRUNDAGE  
Title: PRES.

City Council Approval Date: \_\_\_\_\_

CORPORATE ACKNOWLEDGMENT

North Carolina  
STATE OF ~~NEW YORK~~ )

SS:

COUNTY OF NEW HAMPSHIRE )

ON THIS 12 DAY OF November 20 15 BEFORE ME PERSONALLY CAME Andrew Brundage TO ME KNOWN, WHO BEING DULY SWORN, DID DEPOSE AND SAY THAT HE/SHE RESIDES IN Wilmington NC, THAT HE/SHE IS THE PRESIDENT OF THE ANDREWS TECHNOLOGY INC, INC.

THE CORPORATION DESCRIBED IN AND WHICH EXECUTED THE FOREGOING INSTRUMENT; THAT HE/SHE KNEW THE SEAL OF SAID CORPORATION; THAT THE SEAL AFFIXED TO SAID INSTRUMENT WAS SUCH CORPORATE SEAL; THAT IT WAS SO AFFIXED BY THE ORDER OF THE BOARD OF DIRECTORS OF SAID CORPORATION, AND THAT HE/SHE SIGNED HIS NAME THERETO BY LIKE ORDER.

[Signature] Notary

Comm exp 5/2/2019

NOTARY PUBLIC

APPENDIX A

City of Saratoga Springs, NY  
Time and Attendance RFP #2015-27

RFP Opening: Tuesday August 18, 2015 2:00 p.m.



**Vendor/Supplier Code of Conduct**

The City of Saratoga Springs is committed to conduct business in a lawful, ethical and moral manner and expects the same standards from vendors/suppliers that the City conducts business with. The City requires that all vendors/suppliers 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/suppliers. Vendors/suppliers agree to provide all information requested which is necessary to demonstrate compliance with this Code.

At a minimum, the City requires that all vendors/suppliers meet the following standards:

- Legal: Vendors/suppliers and their subcontractors agree to comply with all applicable local, state and federal laws, regulations and statutes.
- The City expects vendors/suppliers to respect the City's rules and procedures.
- Conflict of Interest: The vendor/supplier represents and warrants that it has no conflict, actual or perceived, that would prevent it from doing business with the City of Saratoga Springs.
- Wages & Benefits: Vendors/suppliers will set working hours, wages, and NYS statutory benefits and overtime pay in compliance with all applicable laws and regulations. Where applicable, as defined by NYS Labor Law, the vendor/supplier must comply with prevailing wage rates.
- Health & Safety: Vendors/suppliers and their subcontractors shall provide workers with a safe and healthy work environment that complies with local, state and federal health and safety laws.
- 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.
- Working conditions: Vendors/suppliers must treat all workers with respect and dignity and provide them with a safe and healthy environment.
- Right to organize: Employees of the vendor/supplier should have the right to decide whether they want collective bargaining.
- Subcontractors: Vendors/suppliers shall ensure that subcontractors shall operate in a manner consistent with this Code.
- Protection of the Environment: Vendors/suppliers shall comply with all applicable environmental laws and regulations. Vendors/suppliers shall ensure that the resources and material they use are sustainable, are capable of being recycled and are used effectively and a minimum of waste. Where practicable, vendors/suppliers are to utilize technologies that do not adversely affect the environment and when such impact is unavoidable, to ensure that it is minimized.

**Vendor Acknowledgement**

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

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

Signature: *Jamie Blundell* Printed name: JAMIE BLUNDELL  
 Title: VP of SALES Date: 8/11/2015  
 Company Name: ANDREWS TECHNOLOGY HTMS, INC