

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 1/24/2013

Action Requested By:
ITS

Agenda Item Type
Resolution

Subject Matter:

Agreement for Support Services

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into an Agreement between the City of Huntsville and Summit Technology, Inc. for PeopleSoft Support Services.

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

The purpose of this Agreement is to provide professional services in conjunction with the daily operation of PeopleSoft Software Products. Sole Source Letter on File. Approved with FY13 Budget.

Associated Cost: \$4,875.00 Mo.

Budgeted Item: Yes

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: Wayne Brooks

Date: 1/8/2013

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: ITS Council Meeting Date: 1/24/2013

Department Contact: Betty Hughes Phone # 427-6714

Contract or Agreement: Agreement

Document Name: Agreement Between the City of Huntsville & Summit Technology, Inc.

City Obligation Amount: \$4,875.00 Mo.

Total Project Budget: FY13 Funds - 9 Pmts.

Uncommitted Account Balance: \$48,375.00 ✓

Account Number: 01-8100-0511-7401 ✓

Procurement Agreements

<u>Not Applicable</u>	<u>Not Applicable</u>
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Grant-Funded Agreements

<u>Not Applicable</u>	Grant Name: _____
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Department	Signature	Date
1) Originating	<i>Wayne Srook</i>	1/8/13
2) Legal	<i>Mary C. Carter</i>	1/14/13
3) Finance <i>CC</i>	<i>[Signature]</i>	1/14
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

RESOLUTION NO. 13 - _____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama that the Mayor be, and he is authorized on behalf of the City of Huntsville, a Municipal Corporation in the State of Alabama, to enter into an Agreement by and between the City of Huntsville and Summit Technology, Inc. which said Agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Agreement Between the City of Huntsville and Summit Technology, Inc. for PeopleSoft Support Services", consisting of a total of Six (6) pages, and the date of January 24, 2013 appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this 24th day of January, 2013.

President of the City Council of the
City of Huntsville, Alabama

APPROVED this 24th day of January, 2013.

Mayor of the City of Huntsville, Alabama

Agreement Between the City of
Huntsville And Summit Technology,
Inc. For PeopleSoft Support
Services

STATE OF ALABAMA
COUNTY OF MADISON

AGREEMENT

This Agreement is entered into this 24th day of January, 2013 by and between the City of Huntsville, Alabama (hereinafter "City") and The Summit Technology, Inc. (hereinafter "Summit" or "Consultant") located at 120 West Market Street, Athens, Alabama 35611.

WITNESSETH:

WHEREAS, the City of Huntsville utilizes PeopleSoft software and has a need for operational support and maintenance for PeopleSoft; and

WHEREAS, Summit is qualified to render operational support and maintenance of PeopleSoft software;

RECITALS:

The parties hereby agree as follows:

1. Summit shall provide City with operational support and maintenance which shall include:
 - (a) All application/system requests proposed by City of Huntsville support staff
 - (b) System routine maintenance and administrative activities
 - (c) Production support activities
 - (d) Application of Tools releases and Tax updates
 - (e) Assistance with database, web and application servers

President of the City Council of
The City of Huntsville, Alabama

Date: January 24, 2013

- (f) Monitoring and reporting performance on all Summit Technology Services
 - (g) Proactive support aimed at anticipating City's needs such as training, improved user documentation, new help panels. Summit will not initiate any assistance absent receipt of prior approval from City's ITS Department's support staff.
2. The term of this Agreement shall be for a period of six months beginning February 6, 2013 and ending August 5, 2013. The Agreement may be automatically extended by City for another six-month term ending February 5, 2014 upon City's payment to Summit the second payment referenced in Paragraph 3 of this Agreement.
 3. City shall pay Summit a fee of \$4,875.00 payable on February 6, 2013 followed by five monthly payments of \$4,875.00. A second payment of \$4,875.00 shall be due on or before August 6, 2013 in the event City elects to extend the Agreement for an additional six months with five monthly payments of \$4,875.00. In addition, City shall reimburse Summit for actual mileage in accordance with IRS guidelines and provide parking to the Summit consultant. There shall be no additional reimbursable expenses or per diem of any kind.
 4. City Contact: Matthew Evans, Matthew.Evans@huntsvilleal.gov
 5. City is obligated to provide a VPN (Virtual Private Network) link to be put in place between the City of Huntsville's PeopleSoft architecture and Summit's Center of Excellence located in Athens, Alabama.
 6. Both parties acknowledge and agree that in the course of performing services under this Agreement each will disclose to the other trade secrets and other confidential information relating to such party's business ("Confidential Information"). Each party agrees not to disclose the Confidential Information of the other party to any third party and to treat it with the same degree of care as it would its own confidential information.
 7. It is understood and agreed by the parties that the Consultant is an independent contractor and is not an employee of the City. The City will not provide any fringe benefits, including but not limited to insurance benefits and/or workers compensation benefits. Consultant shall have no authority to obligate the City to any indebtedness or other obligation. The parties hereto are independent contractors. Nothing in this Agreement shall be deemed to create any form of partnership, principal-agent relationship, employer-employee relationship, or joint venture between the parties hereto. Neither party shall have any right, power, or authority to act or to create any obligation, express or implied, on behalf of the other.

8. During the course of the parties' relationship, Consultant may have access to Information deemed Confidential by PeopleSoft USA, Inc. including but not limited to Software and Documentation licensed to City by PeopleSoft which is proprietary to PeopleSoft. Software for purposes of this provision means all or any portion of the binary computer software programs and related source code identified above as being licensed by City from PeopleSoft USA, Inc., including Tools and the Merant Third Party Software. Software also includes Updates and Fixes received from PeopleSoft. Consultant hereby agrees that PeopleSoft's Confidential Information shall not be disclosed, orally or in writing, to any third party without the prior written consent of the owner of such information. The Software and any benchmark results regarding such Software shall be treated by Consultant as information identified by PeopleSoft as confidential, trade secret, commercially sensitive information, and shall not be disclosed to any third party without PeopleSoft's written permission. Consultant shall protect all Confidential Information with at least the same degree of care and confidentiality, but not less than a reasonable standard of care, which Consultant utilizes for its own proprietary or confidential information which it does not want disclosed to the public. To the extent Consultant may be required to disclose Confidential Information in a legal proceeding, Consultant may make such disclosure, provided Consultant notifies City and PeopleSoft of such requirement prior to disclosure, and provided further that Consultant makes diligent efforts to avoid and/or limit disclosure.

9. Indemnification.

(a) Intellectual Property Rights.

Consultant agrees to indemnify, hold harmless and defend City from and against any and all liability, losses, judgments, damages, and expenses arising from third party claims that the Products developed and/or Services performed pursuant to this Agreement infringe on or violate any patents, copyrights, or trade secrets of such third parties, except as provided in Section (c)(ii), below. This indemnification is contingent upon City providing prompt written notice of such a claim to Consultant, and granting Consultant the sole right to defend such claim. In the event of any infringement or claimed infringement Consultant, in its sole discretion, shall: (i) modify the infringing Services to be non-infringing as long as there is no loss of functionality by such modification; (ii) obtain a license for City to use the infringing Services; or (iii) terminate the City's right to use the infringing Services and refund to City all amounts paid for such infringing Services, amortized over a period of (5) years from the acceptance of Services.

(b) Bodily Injury and/or Property Damage.

Consultant, to the fullest extent permitted by law, shall indemnify and hold harmless the City, its elected and appointed officials, employees, agents and specified volunteers against all claims, damages, losses, and expenses, including but not limited

to, reasonable attorney's fees, arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (1) is attributable to personal injury, including bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including loss of use resulting there from, and (2) is caused by any negligent act or omission of Consultant or any of its consultants, or anyone directly or indirectly employed by them or anyone for whose acts they are legally liable.

(c) Indemnification of Consultant.

City agrees to indemnify, hold harmless and defend Consultant from and against any and all judgments, liabilities, losses, expenses, and costs (including but not limited to, court costs and reasonable attorney fees) incurred by Consultant in respect to third-party claims that arise from: (i) death, bodily injury, or damage to tangible personal property caused by City's acts of gross negligence or willful misconduct in connection with this Agreement; (ii) the violation of any third-party's intellectual property rights arising in connection with the provision of Services where such violation arises from Consultant's reliance on, or authorized use of, tools, instructions, specifications, or other materials provided by City, including use of any PeopleSoft materials provided by City, including or where City or any third-party modifies, adds to, or combines with any technology or data, any Intellectual Property; or (iii) any failure to obtain intellectual property rights or export licenses of software used during Consultant's performance of Services.

(d) Duties of Indemnitee.

To receive the benefit of indemnification under this Section entitled "Indemnification", the indemnified party must promptly notify the indemnitor of any such claim or lawsuit and provide reasonable cooperation (at indemnitor's expense) and tender to indemnitor (and its insurer) full authority to defend or settle the claim or suit. Indemnitor has no obligation to indemnify for any settlement made without its consent or for any claim to the extent lack of prompt notice shall have prejudiced indemnitor. The remedies provided in this Section shall be the sole and exclusive remedies available in respect to any claim covered hereunder.

10. INJURIES TO CONSULTANT.

Consultant is obligated to obtain sufficient liability insurance coverage (as well as worker's compensation coverage, if required by law) for the benefit of the Consultant and its agents and/or employees. Consultant waives any and all rights to recovery from the City for any injuries that Consultant (and/or its agents and/or employees) may sustain while performing services under this Agreement except in cases where Consultant is injured by City's acts of gross negligence or willful misconduct. Consultant shall maintain minimum limit of general liability insurance in the aggregate amount of \$500,000 per occurrence.

11. Either party may terminate this Agreement at any time for cause upon fourteen days written notice to the defaulting party and failure of the defaulting party to remedy or cure the default within said period.
12. Neither party may assign its rights or delegate its obligations hereunder without the prior written consent of the other party, provided that Consultant may assign its right to receive monies due and becoming due. Consultant may not subcontract its obligations hereunder to independent contractors without the prior written consent of City's ITS Director.

13. INDEPENDENT CONTRACTOR

In the performance of this work, it is understood between the parties that the Contractor, its employees, agents, subcontractors and consultants, if any, shall be acting as independent Contractors and not as employees or agents of the City of Huntsville. Contractor shall have no authority or power to obligate the City to any indebtedness or other obligation nor shall the Contractor or his employees, agents, subcontractors, and consultants have any right or power to hold themselves out as employees or agents of the City.

The Contractor is retained or engaged by the City only for the purposes and to the extent set forth in this Agreement. The Contractor's relationship to City will, during the period or periods of this Agreement, be that of an independent Contractor and as such the Contractor will be free to dispose of such portion of its time, energy and skill when the Contractor is not obligated under this Agreement in such a manner as Contractor sees fit. This Agreement will not establish a joint venture, agency or partnership between Contractor and the City. In the performance of the services required herein, the Contractor shall exercise a high level of independent skill, professionalism, and judgment and shall retain sole and absolute discretion in the means and methods for carrying out the responsibilities contained herein.

The Contractor shall not be considered under this Agreement or otherwise or in any way as having the status of employee or being entitled to participate in any plans, schemes, arrangements, retirement contributions or other benefits ordinarily provided by the City to its employees. As an independent Contractor, the Contractor shall be responsible for providing for and paying all of its own federal, state, or local, tax obligations, withholdings, licenses, permits, and insurance requirements. The City shall have no responsibility for making any payments for the Contractor for any minimum or overtime wages under the Fair Labor Standards Act, or any amounts owed by or on behalf of the Contractor under the Federal Insurance Contribution Act, Federal Unemployment Tax Act, the federal or state revenue codes, state workers' compensation statutes, or state unemployment insurance laws and regulations.

14. E-VERIFY

The Beason-Hammon Alabama Taxpayer and Citizen Protection Act, Act No. 2011-535, Code of Alabama (1975) § 31-13-1 through 31-13-30 (also known as and hereinafter

referred to as " the Alabama Immigration Act") as amended by Act No. 2012-491 on May 16, 2012 is applicable to all competitively bid contracts with the City of Huntsville. As a condition for the award of a contract and as a term and condition of the contract with the City of Huntsville, in accordance with § 31-13-9 (a) of the Alabama Immigration Act, as amended, any business entity or employer that employs one or more employees shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama.

During the performance of the contract, such business entity or employer shall participate in the E-Verify program and shall verify every employee that is required to be verified according to the applicable federal rules and regulations. The business entity or employer shall assure that these requirements are included in each subcontract in accordance with §31-13-9(c). Failure to comply with these requirements may result in breach of contract, termination of the contract or subcontract, and possibly suspension or revocation of business licenses and permits in accordance with §31-13-9 (e) (1) & (2).

Code of Alabama (1975) § 31-13-9 (k) requires that the following clause be included in all City of Huntsville contracts that have been competitively bid and is hereby made a part of this contract:

"By signing this contract the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom."

Agreed to by the parties on the date first written above.

Summit Technology, Inc.

**City of Huntsville,
A Municipal Corporation**

By: _____

Glenn Baker

Its: Vice President

By: _____

Tommy Battle

Its: Mayor

ATTEST:

Charles E. Hagood

Its: Clerk-Treasurer