

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: _____

Meeting Type: Regular

Meeting Date: Mar 13, 2014

Action Requested By: ITS

Agenda Type: Resolution

Subject Matter:
Agreement with Summit Technology for hosting PeopleSoft Database

Exact Wording for the Agenda:

Authorize the Mayor to enter into an Agreement between the City of Huntsville, Alabama and Summit Technology, Inc. for hosting the City of Huntsville's PeopleSoft Database.

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

Item to be considered for: Action

Unanimous Consent Required: _____

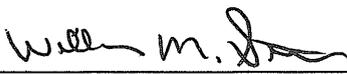
Briefly state why the action is required; why it is recommended; what council action will provide, allow and accomplish and; any other information that might be helpful.

Rimini Street, Inc., has hosted and managed two PeopleSoft development and test servers for The City of Huntsville for many years. These servers are used to develop and test periodic state tax updates for our PeopleSoft environment for a number of years. We currently contract with Rimini for this service and will continue to receive tax updates from Rimini for as long as we remain on PeopleSoft. Due to recent litigation between Rimini and Oracle (owners of PeopleSoft) these servers cannot be hosted by Rimini. This agreement allows Summit Technology to host these servers for the city.

Associated Cost: \$34,200.00

Budgeted Item: Yes

MAYOR RECOMMENDS OR CONCURS: _____

Department Head: 

Date: Mar 13, 2014

**ROUTING SLIP
CONTRACTS AND AGREEMENTS**

Originating Department: IIS

Council Meeting Date: 3/13/2014

Department Contact: Tracy Rosser

Phone # 256-427-5097

Contract or Agreement: Summit

Document Name:

City Obligation Amount: \$34,200

Total Project Budget:

Uncommitted Account Balance:

Account Number: 01-8100-0508-7402

Procurement Agreements

Not Applicable	Not Applicable
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Grant-Funded Agreements

Not Applicable	Grant Name:
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Department	Signature	Date
1) Originating	<i>William M. [Signature]</i>	3/5/14
2) Legal	<i>Mary C. Cates</i>	3/5/14
3) Finance <i>[Signature]</i>	<i>[Signature]</i>	3/10
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

RESOLUTION NO. 14-_____

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, Alabama and Summit Technology, Inc. for hosting the City of Huntsville's PeopleSoft Database" consisting of a total of six (6) pages, and the date of March 13, 2014 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 the 13th day of March, 2014.

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

APPROVED this the 13th day of March, 2014.

Mayor of the City of Huntsville, Alabama

Agreement Between the City of
Huntsville, Alabama and Summit
Technology, Inc. For Hosting the
City of Huntsville's PeopleSoft
Database

STATE OF ALABAMA
COUNTY OF MADISON

AGREEMENT

This Agreement is entered into this 13th day of March, 2014 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 requires hosting of its PeopleSoft database for HCM required by the City's tax and regulatory provider, Rimini Street, Inc.;

and

WHEREAS, Summit has the expertise to provide the above-described hosting and related services;

RECITALS:

NOW, THEREFORE, in consideration of the mutual promises herein, the parties hereby agree as follows:

1. Summit shall provide the City with the following services:

- (a) Host the City of Huntsville's PeopleSoft Database for HCM required by the City of Huntsville's Tax and Regulatory 3rd party provider, Rimini Street, Inc.
- (b) Provide Rimini Street with remote access 24 hours per day, seven days per week, 365 days per year to one or more Summit Hosted non-production development and test environment(s) for the benefit of the City of Huntsville beginning within 30 days of the execution date of this agreement by both parties.
- (c) Provide necessary DBA and Systems Administration functions necessary to keep the system available and properly functioning.

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

Date: March 13, 2014

2. The term of this Agreement shall be for a period of three years with Year 2014 commencing on the execution date of this Agreement and continuing through March 31, 2015; Year 2015 commencing on April 1, 2015 and continuing through March 31, 2016; and Year 2016 commencing on April 1, 2016 and continuing through March 31, 2017. The City may terminate this Agreement without cause after Year 2014. If the City elects to terminate without cause, it shall so notify Summit in writing at least sixty (60) days prior to the end of the then current term.
3. City shall pay Summit a fee of \$15,000.00 for the services specified herein for Year 2014, which said sum shall be due upon receipt of payment to the City from Rimini Street, Inc. pursuant to Modification No. 2 to the Agreement between the City of Huntsville and Rimini Street, Inc., dated March 13, 2014. The City shall pay Summit a fee of \$9,600.00 per year for Year 2015 and Year 2016, which shall be invoiced annually on April 1, 2015 and April 1, 2016. Payment shall be due within 30 days of the receipt of the invoice by the City.
4. City Contact: Matthew Evans, Matthew.Evans@huntsvilleal.gov
5. 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 unless required by law and to treat it with the same degree of care as it would its own confidential information. The obligations of this Section 5 shall survive the termination of this Agreement.
6. 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.
7. 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. The City's liability pursuant to this Section 9(c) shall be as limited by Alabama law.

(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. The City, its officers, employees, agents and specified volunteers are to be covered as Additional Insureds, as their interests may appear, as respects: liability arising out of activities performed by or on behalf of Consultant for products used by and completed operations of Consultant; or automobiles owned, leased, hired or borrowed by Consultant. The coverage

shall contain no special limitations on the scope of protection afforded to the City, its officers, employees, agents or specified volunteers. Additional Insured status on the CGL shall be through ISO Additional Endorsement CG 20 10 11 85 or equivalent that is sufficient to provide coverage as per this Agreement.

11. Either party may terminate this Agreement at any time for cause upon sixty (60) days written notice to the defaulting party and failure of the defaulting party to remedy or cure the default within said period. Any portion of the unused contract year at the end of the 60 day notice period will be refunded to the City of Huntsville.
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 Consultant, 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. Consultant shall have no authority or power to obligate the City to any indebtedness or other obligation nor shall the Consultant or his employees, agents, subcontractors, and consultants have any right or power to hold themselves out as employees or agents of the City.

The Consultant is retained or engaged by the City only for the purposes and to the extent set forth in this Agreement. The Consultant's relationship to City will, during the period or periods of this Agreement, be that of an independent Contractor and as such the Consultant will be free to dispose of such portion of its time, energy and skill when the Consultant is not obligated under this Agreement in such a manner as Consultant sees fit. This Agreement will not establish a joint venture, agency or partnership between Consultant and the City. In the performance of the services required herein, the Consultant 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 Consultant 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 Consultant shall be responsible for providing for and paying all of its own federal, state, or local, tax obligations, withholdings, licenses, permits, and

behalf of the Consultant 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.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

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

Summit Technology, Inc.

City of Huntsville,
A Municipal Corporation

By: Kevin Chowning
Kevin Chowning
Its: Vice President

By: _____
Tommy Battle
Its: Mayor

ATTEST:

Charles E. Hagood
Its: Clerk-Treasurer