CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: _____

Meeting Type: Regular

Meeting Date: Jan 22, 2015

Action Requested By: ITS

Agenda Type: Resolution

Subject Matter:

PeopleSoft 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 and operational support and maintenance for Human Resource Management and Financial Management Systems.

Associated Cost: _____

Budgeted Item: Yes

MAYOR RECOMMENDS OR CONCURS: _____

Department Head: W. W. Brooks

Date: Jan ~~8~~ 7, 2015

ROUTING SLIP
CONTRACTS AND AGREEMENTS

Originating Department: **ITS** Council Meeting Date: **1/22/2015**

Department Contact: **Tracy Rosser** Phone # **256-427-5097**

Contract or Agreement: **Agreement**

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

City Obligation Amount: **$48,375.00**

Total Project Budget: **FY15 Funds**

Uncommitted Account Balance: **$48,375.00**

Account Number: **01-8100-0511-7401**

Procurement Agreements

Not Applicable	**Not Applicable**

Grant-Funded Agreements

Not Applicable	**Grant Name:**

Department	Signature	Date
1) Originating		Jan. 7 2015
2) Legal		1-22-15
3) Finance		1/22/15
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

Revised 04/15/2011

Resolution No. 15-_____

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 Five(5) pages, and the date of January 22, 2015 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 22nd day of January, 2015.

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

APPROVED this 22nd day of January, 2015.

_____
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 22nd day of January, 2015 by and between the City of Huntsville, Alabama (hereinafter "City") and The Summit Technology, Inc. (hereinafter "Summit" or "Consultant") located at 122 West Market Street, Suite B, Athens, Alabama 35611.

WITNESSETH:

WHEREAS, the City of Huntsville utilizes Human Resource Management Systems (HRMS) and Financial Management Solutions (FMS) software and has a need for operational support and maintenance for these software systems and their associated hardware and network infrastructure;

and

WHEREAS, Summit is qualified to render operational support and maintenance of these network, hardware, and software systems;

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 network systems, database, web and application servers

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

Date: January 22, 2015

(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 pages. 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, 2015 and ending August 5, 2015. The Agreement is for a maximum of 272.7 man hours, approximately 45.45 hours per month. The Agreement may be automatically extended by City for another six- month term ending February 5, 2015 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, 2015 followed by five monthly payments of $4,875.00. A second payment of $4,875.00 shall be due on or before August 6, 2015 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 Merchant 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 volunteers against all claims, damages, losses, and expenses, including but not limited to, reasonable attorney 's fees,

arising appointed officials, employees, agents and specified 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) 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 statues, or state unemployment insurance laws and regulations.

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

Summit Technology, Inc.

By: Glenn Baker

Glenn Baker
Its: Vice President

City of Huntsville,
A Municipal Corporation

By: _____

Tommy Battle
Its: Mayor

ATTEST:

_____

Charles E. Hagood
Its: Clerk-Treasurer