

## ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: ITS

Council Meeting Date: ~~2/25/2016~~ 3-10-16

Department Contact: Tracy Rosser

Phone # 256-427-5097

Contract or Agreement: Agreement

Document Name: Agreement Between the City of Huntsville & Wonderware Inc d/b/a CORE Business

City Obligation Amount: 4401.75

Total Project Budget: FY16 Funds

Uncommitted Account Balance:

Account Number: 1000-17-17200-515370-0000000-

### Procurement Agreements

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

<u>Not Applicable</u>	Grant Name: <u></u>
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Department	Signature	Date
1) Originating	<i>William M. [Signature]</i>	<u>2/13/16</u>
2) Legal	<i>Theresa Coates</i>	<u>2/24/16</u>
3) Finance	<i>M. Sargo</i>	<u>2-24-16</u>
4) Originating		<u>2-25-16</u>
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: \_\_\_\_\_

Meeting Type: Regular

Meeting Date: Feb 25, 2016 3-10-16

Action Requested By: ITS

Agenda Type: Resolution

Subject Matter:

Agreement with Core Business Technologies

Exact Wording for the Agenda:

Authorize the Mayor to enter into an Agreement between the City of Huntsville, Alabama and Wonderware Inc. d/b/a CORE Business Technologies.

**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.

Maintain access to historical data to move to a new platform due to Tyler Munis implementation.

Associated Cost: \$4401.75

Budgeted Item: Yes

MAYOR RECOMMENDS OR CONCURS: \_\_\_\_\_

Department Head: Will M. Do

Date: Feb 25, 2016

RESOLUTION NO. 16-\_\_\_\_\_

**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 Wonderware Inc. d/b/a CORE Business Technologies 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 Wonderware Inc. d/b/a CORE Business Technologies for one historical data license", consisting of Seven (7) pages, and the date of March 10, 2016 appearing on the margin of the first page, together with the signature of the President of 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 10th day of March, 2016.

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

**APPROVED** this 10th day of March, 2016.

\_\_\_\_\_  
Mayor of the City of Huntsville,  
Alabama

STATE OF ALABAMA )

COUNTY OF MADISON )

**Agreement Between the City of  
Huntsville, Alabama and  
Wonderware Inc. d/b/a CORE  
Business Technologies for one  
license.**

This Agreement, made and entered into as of March 10, 2016 (the "Effective Date") by and between Wonderware Inc. d/b/a CORE Business Technologies (CORE), a corporation duly authorized and existing under the laws of the State of Rhode Island and having its principle offices at 2224 Pawtucket Avenue, East Providence, RI 02914, and the City of Huntsville, (buyer), a municipal corporation within the State of Alabama having its principal offices at 308 Fountain Circle, Huntsville, AL 35801.

**WHEREAS**, both parties desire to continue the annual licensing, maintenance and support of the One-Step application, originally purchased on October 23, 2003 and continually maintained in effect by buyer since that date.

**NOW THEREFORE**, both parties agree they are able to comply with and will satisfy the terms and conditions as set forth in this Agreement. Both parties, intending to be legally bound, agree to the following:

1. This agreement may be terminated by CORE without notice in the event of the default of the buyer under any of the following terms and conditions:
  - a. The buyer's failure to pay, when same shall be due and payable, the installment, as contained herein, within thirty (30) days of when same is due and payable;
  - b. Assignment of this agreement without prior written consent of the purchaser;
  - c. Assignment of the business of the buyer for the benefit of creditors or upon filing of a petition into receivership, petition of bankruptcy (voluntary or involuntary) which has not been discharged within thirty (30) days;
  - d. Assignment without the prior written consent of CORE Business Technologies of the equipment covered under this agreement.
2. CORE shall not be liable for failure to deliver or delays in delivery occasioned by causes beyond CORE's control, including, without limitation, strikes, lockouts, fires, embargoes, war - or other outbreaks of hostility, inability to obtain materials or shipping space, machinery breakdown, delays of carriers or suppliers,

governmental acts and regulations, other causes beyond CORE's control and receipt of orders from all sources in excess of its suppliers' then-scheduled production capacity.

3. The customer acknowledges that the standard software listed does not include custom modifications, such as software for the customer's host systems, check digit routines, interest computations, OCR edits, etc. These specifications are chargeable and would be delineated in a separate contract.

4. All claims for goods or delay in delivery shall be deemed waived unless made in writing and delivered to CORE within ten (10) days after receipt of goods by the buyer. This limitation of remedy and damages is pursuant to and consistent with the Uniform Commercial Code, Section 2-718 and 2-719, as found in the General Laws of the State of Rhode Island, Title 6A.

5. It is specifically understood and agreed between the parties that all right, title, and interest of any and all goods which are delivered to the buyer under this agreement shall remain in the name of CORE and shall not pass, transfer, or otherwise inure to the benefit of the buyer until CORE has received in hand good and sufficient consideration and is otherwise paid in full under the terms of this agreement. In the event the buyer fails to make timely payment under any credit or installment terms of this agreement, same shall constitute a default under the first paragraph hereof.

6. Each software program is warranted by the original manufacturer to conform to the specifications as defined in the applicable Software Reference manual provided by the original manufacturer for that release version. In the event the program fails to conform to the applicable specifications, and the buyer has advised CORE of such failure in writing during the term of the warranty, CORE will, at its option, either correct or replace the program at no additional charge.

7. The warranty is applicable to each unaltered release of the software program commencing on the date of delivery of the software to the buyer and terminating upon termination of this license agreement.

8. No representation or other affirmation of fact, including, but not limited to statements regarding capacity, suitability for use or performance of the equipment shall be deemed to be a warranty by CORE for any purpose, nor give rise to any liability or obligation of CORE whatsoever.

9. Except as specifically provided in this agreement, there are no other warranties, express or implied, including, but not limited to any implied warranties of merchantability or fitness for a particular purpose. In no event shall CORE be liable to the buyer for loss of profit, indirect, special, or consequential damages arising out of any

breach of this agreement or of obligations under this agreement or the license granted or for any claim made against the buyer by any other party, even if CORE has been advised of the possibility of such a claim. CORE shall not be liable for any damages caused by delay in delivery, installation, or furnishing of the software or other program products or services under this agreement. This limitation of remedy and damages is pursuant to and consistent with the Uniform Commercial Code Section 2-718 and Section 2-719, as defined and found in the General Laws of the State of Rhode Island, Title 6A.

10. In the event the buyer makes use of any software programming in connection with the equipment supplied by CORE which is not provided by or approved in writing by CORE, the buyer acknowledges that CORE has made no representation or warranties with respect to any product not supplied by CORE concerning its performance on the equipment or service supplied by CORE. CORE shall incur no liability to the buyer arising out of the use of such software or devices or the furnishing of such services. The buyer acknowledges that no software is being furnished to the buyer by CORE except pursuant to this agreement or separate license agreements between the buyer and CORE.

11. Upon payment of the annual license fee and acceptance of said annual license fee by CORE, the buyer shall be entitled to:

- a. Unlimited phone support in the form of counsel and advice on the use of the software;
- b. Corrections for problems diagnosed as defects in the software program when provided by the original manufacturer;
- c. Solutions or "workarounds" to problems relating to the software program as such solutions become known to CORE;
- d. All updates, enhancements, and refinements to the current version of the licensed software which the original manufacturer normally supplies in the course of product development;
- e. Any changes or updates to the current documentation as a result of program maintenance. In the event the documentation is completely revised or a new edition is published, such new editions or complete revisions will be provided as part of the current software product in filling any new orders after the date of publication, and otherwise may be purchased separately for the then-current price.

12. If at any time the Buyer shall not timely pay the annual license fee, the Buyer is hereby put on notice that failure to pay the license fee shall terminate the Buyer's right and entitlement to utilize software provided by CORE and that therefore, so as to protect CORE's rights with respect to said software, the software includes a component which will cause it to no longer function if the annual license fee is not paid within thirty (30) days of the due date.

Please be advised that although the program will cease to function, Buyer will of course be able to retrieve its data from said program. Failure to pay said annual license fee will also result in Buyer not being entitled to any of the other benefits of this Software License Agreement, until said annual license fee of Four Thousand Four Hundred and one Dollars and Seventy-Five Cents (\$4,401.75) is paid.

13. The buyer shall not print or copy in any form, in whole or in part, any software provided by CORE except for its own use. Any copies of the software made by the buyer in any form as may be permitted hereunder shall be the sole and exclusive property of CORE and shall become subject to all terms and conditions of this agreement. All copies of programs permitted hereunder shall remain in the possession, custody, and control of the buyer at the buyer's location.

14. Where applicable, CORE grants the buyer one non-exclusive license to use the specified number of copies of each program listed on the face of the agreement. Each licensed copy of a program may be used with a single central processing unit of the buyer's designation. The license, if any, may be granted on behalf of, or in conjunction with the license granted by the original manufacturer of the product.

15. CORE, or its supplier, shall retain title and all rights to all programs, documentation, and promotional material related to the software. No buyer may market, lease, sell, transfer, assign, or grant any interest in the license or programs to any third party. In addition, CORE may seek any legal or equitable remedy available against the buyer for any violation of the terms of this license.

16. The buyer acknowledges the valuable and confidential nature of software and that trade secrets are embodied in the programs, and shall use its best efforts to maintain the confidentiality thereof. Pursuant to its obligations of confidence hereunder, the buyer shall not disclose, provide, or otherwise make available to third parties, for any purpose, any software provided from CORE in any form without the prior written consent of CORE. The foregoing restrictions on disclosure shall survive termination of this agreement. CORE or its suppliers may adopt, from time to time, such mechanical or electronic methods deemed necessary to control the unauthorized use or distribution of software. The buyer may disclose confidential information pursuant to applicable federal, state or local law, regulation or a valid order issued by a court or governmental agency of competent jurisdiction, provided that the buyer shall first make commercially reasonable efforts to provide CORE with: (a) prompt written notice of such requirement so that CORE may seek, at its sole cost and expense, a protective order or other remedy; and (b) reasonable assistance, at the CORE's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure.

17. This agreement shall be effective from the Effective Date. Each software license shall commence upon receipt by the buyer of any software and shall remain in effect for each software product until either terminated by the buyer at calendar year's end or canceled by CORE under the terms of this agreement.

18. The buyer's acceptance of any software from CORE shall be conclusive evidence of buyer's agreement that the use of such software is governed by this agreement and/or the license agreement of the original manufacturer when applicable.

19. This contract shall be governed by and construed according to the laws of the State of Alabama.

20. This contract constitutes the entire agreement between the parties and may not be modified or terminated except in writing and signed by both parties.

21. The term "this agreement" as used herein includes any future written amendments made in accordance hereunder.

22. The buyer acknowledges that he has read this agreement, understands it, agrees to be bound by its terms, and further agrees that it is the complete and exclusive statement of the agreement between the parties, which supersedes all proposals oral or written and all other communication between the parties relating to the subject matter of this agreement, except as set out below. No change, alteration, or amendment of the terms or conditions of this agreement are authorized or effective unless they have been agreed to in writing by both parties.

23. The foregoing terms and conditions shall prevail notwithstanding any variance with the terms and conditions of any order submitted by the buyer in respect of CORE except any equipment lease agreement entered into between the parties.

**IN WITNESS WHEREOF**, the parties hereto have entered into this modification on the date and year first above written.

**THE CITY OF HUNTSVILLE, ALABAMA**

**ATTESTED:**

By: \_\_\_\_\_

By: \_\_\_\_\_  
Mayor Tommy Battle

Date: \_\_\_\_\_

**WITNESS:**

**Wonderware Inc. d/b/a CORE  
Business Technologies**

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF ALABAMA       )  
  )  
COUNTY OF MADISON     )

I, the undersigned, a notary public in and for said County, in said State, hereby certify that Tommy Battle and Ken Benion, whose names as Mayor and City Clerk-Treasurer of the City of Huntsville, a municipal corporation, are signed to the foregoing Modification Agreement, and who are known to me, acknowledged before me on this day that, being informed of the contents of the same, they, in their capacity as such officers, executed the same with full authority for and as the act of said corporation on the day the same bears date.

GIVEN under my hand and official seal this the \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

STATE OF Rhode Island )  
  )  
COUNTY OF                    )

I, the undersigned, a notary public in and for said County, in said State, hereby certify that \_\_\_\_\_ and \_\_\_\_\_, whose names as \_\_\_\_\_ and \_\_\_\_\_ of Wonderware Inc. d/b/a CORE Business Technologies are signed to the foregoing Modification Agreement, and who are known to me, acknowledged before me on this day that, being informed of the contents of the same, they, in their capacity as such officers, executed the same with full authority for and as the act of said entity on the day the same bears date.

GIVEN under my hand and official seal this the \_\_\_\_ day of \_\_\_\_\_, 2016.

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Notary Public

My Commission Expires: \_\_\_\_\_